

**ENERGY CHARTER
SECRETARIAT**

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DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Report under Article 34(7) of the Energy Charter Treaty

The Conference took note of the report contained in document CC 150, and approved the following Conclusions of the Review prescribed by Article 34(7) of the Energy Charter Treaty:

- the Energy Charter process, based on the ongoing implementation of the Treaty and PEEREA, and on the unique and governing role of the Energy Charter Conference as a forum for ensuring the effective implementation of binding commitments as well as for policy discussions among the governments of its constituent states on energy issues, should continue to develop;
- those Signatories who have not yet ratified the Treaty, PEEREA and the Trade Amendment to the Treaty are encouraged to do so as soon as possible;
- continuing emphasis should be placed by the Charter Conference on monitoring implementation of the Treaty and PEEREA's provisions, in terms of fulfilment of the Treaty and PEEREA's legal obligations, in terms of the compliance of national legislation with them, and also in terms of how those obligations are translated into everyday practice at national level;
- efforts should continue to be made by the Charter Conference to develop, where appropriate, new Protocols (legal instruments), in accordance with the original aims of the 1991 European Energy Charter (*Title III: Specific Agreements*), thus ensuring that the Charter process continues to develop in line with the purpose stipulated in Article 2 of the Treaty;
- further efforts to expand the Treaty and PEEREA's geographical coverage to those states, particularly in emerging energy markets, that express willingness to subscribe to the

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obligations contained therein would be in the long-term interest of global energy security. The further integration into the Charter process, including where appropriate on an observership basis, of relevant organisations also merits positive consideration.

ENERGY CHARTER CONFERENCE

REVIEW OF FUNCTIONS IN ACCORDANCE WITH ARTICLE 34 (7) OF THE ENERGY CHARTER TREATY

I. INTRODUCTION

Article 34 (7) of the Energy Charter Treaty states that in 1999 the Charter Conference “shall thoroughly review the functions provided for in this Treaty in the light of the extent to which the provisions of this Treaty and the Protocol have been implemented.” The following report on the functions of the Treaty and the Protocol (PEEREA) since their signing in December 1994 has been prepared by the Secretariat in order to inform and assist the Conference in conducting this review. It is also based on information received from Contracting Parties/Signatories.

II. REVIEW OF FUNCTIONS

A) Overall Aims and Objectives of the Treaty and PEEREA

An analysis of the Treaty and PEEREA’s functioning should take as its starting-point Article 2 of the Treaty, which defines the Treaty’s purpose as the establishment of “a legal framework in order to promote long-term cooperation in the energy field”.

This purpose has also to be viewed in the light of the political background to the Treaty’s original inception. The Treaty was developed on the basis of the European Energy Charter of 1991, which was adopted in the early days of the post-Cold War period with the aim of creating a unifying basis for increased energy sector activities between western democracies and the newly independent states of Central & Eastern Europe and the CIS. In particular, the Charter’s Signatories declared their intention “to promote a new model for energy cooperation ... within the framework of a market economy and based on mutual assistance and the principle of non-discrimination.”

Set against the background of this overall objective, the following assessment can be given of the functioning of the Treaty and PEEREA:

- As a basis for cooperation between Eurasian governments on energy-sector issues, the Treaty and PEEREA remain unique in terms of their geo-political scope. Furthermore, the Treaty’s governing body, the Charter Conference, is unique in its role as a policy forum on energy issues. By bringing together on an equal basis 51 sovereign governments for policy discussions on energy issues, the Charter Conference can play a major role in ensuring the continuation of dialogue between states on energy sector issues, even during periods of regional tension and conflict within certain areas of the Charter’s constituency.
- Strengthening multilateral cooperation between governments on the key issues covered by the Treaty and PEEREA – promotion of non-discriminatory investment

practices, liberalisation of trade, regulation of inter-state energy trade and transit flows, development of energy efficiency policies and protection of the environment – remains an important long-term political goal. Indeed, it can be argued that developments in the Charter’s constituency since the Treaty’s signing in 1994 have served to underline still further the importance of its existence as a foundation for cooperation. Such developments include in particular the opening up of new oil and gas fields, e.g. in the Caspian region, and the consequent increase in political focus on the establishment of a favourable investment climate for energy transit; the emergence of new oil and gas transit routes (Caspian-Mediterranean Main Export Oil Pipeline “Baku-Tbilisi-Ceyhan” Project, Trans-Caucasian “Turkmenistan-Turkey-Europe Natural Gas Pipeline” Project, Russia-Turkey “Blue Stream” gas pipeline project, Caspian Pipeline Consortium oil export project, Yamal gas pipeline project, Baltic Pipeline System project); the signing of the Ankara Declaration by the Presidents of the Republics of Azerbaijan, Georgia, Kazakhstan, Uzbekistan and Turkey for realising secure transportation of domestic oil and gas resources to world markets through economically and commercially viable multiple pipelines, which included a declaration of commitment to the principles of the European Energy Charter; and the growing awareness among governments and their populations of the need to devote further political attention to the strategic objectives of increasing energy efficiency and reducing wasteful consumption.

- Contracting Parties/Signatories have acknowledged the importance of the Treaty and PEEREA as the basis upon which national governmental policy concerning the creation of an open, competitive energy market has developed (*see also section III*).
- Attention should also be drawn to the policy role of the Treaty and PEEREA more broadly as instruments which promote, in a sector-specific context, the overall principles of the Rule of Law, transparency and market-oriented behaviour. Through their promotion of these principles in relation to the energy sector, the Treaty and PEEREA complement the wider political and economic objectives pursued by the international community through a variety of other bodies, such as the EU, IEA, EBRD, World Bank, OSCE, etc.: namely, the strengthening of regional security, the prevention of conflict and the creation of long-term economic stability, in particular among the transition economies of Central & Eastern Europe and the CIS.
- It should also be noted that the Charter Conference has sought to build on the basis of the Treaty and PEEREA in order to ensure that the Energy Charter remains an active process which responds to the developing political and economic environment within its constituency. Thus, the Trade Amendment of 1998 brought the Treaty’s trade provisions into line with contemporary WTO practices; and the Multilateral Transit Framework is being developed in recognition of the growing concern over strengthening long-term supply security for oil and gas transmission.
- From the above, it can be concluded that the overall objective of the Treaty, as formulated in Article 2, remains a highly relevant one in political terms; that the Treaty and PEEREA continue to be valuable and appropriate legal instruments for pursuing this objective; that the development of other Protocols (e.g. on transit) under the Energy Charter’s auspices might serve to strengthen the Energy Charter process in future; and that the Energy Charter Conference is capable of playing a major role

as a policy forum in which governments can review and discuss the achievement of the purpose defined in Article 2 in a broad range of areas.

B) Ratification and Entry into Force

The Treaty and PEEREA have been in force since April 1998, and have been ratified by, respectively, 40 and 39 states of the Charter's constituency. Several Charter states who have yet to complete the ratification process apply the Treaty and PEEREA on a provisional basis pending ratification.

It should, therefore, be noted as part of this Review that whilst Charter states remain fully bound by the Treaty and PEEREA's aims and obligations, only a relatively short period of time has elapsed (16 months) during which they can be considered to be fully functional as legally-binding instruments. Moreover, only when ratification has been completed by all states of the Charter's constituency will the full potential of both the Treaty and PEEREA as instruments for cooperation be realised, primarily on the basis of stable and transparent national legislation which conforms to the Treaty, and its implementation into daily practice as well as its enforcement by national courts.

It should also be noted that many of the Treaty and PEEREA's obligations are self-executing as a matter of international law. The primary focus of the Charter Conference in terms of implementation should therefore rest on provisions (e.g. with regard to promotion of investments, liberalisation of trade, free and non-discriminatory energy transit, energy efficiency and environmental protection) where monitoring and guidance is required in order to ensure full compliance by Contracting Parties/Signatories.

In the meantime, as an important consolidation of the Treaty and PEEREA's functions which is highly relevant to the Review exercise, the active usage of both documents as tools for furthering East-West cooperation by individual states or groups of states can be noted. Thus, for example, the obligations contained in both documents are enforceable for all European Union Member States, and will also become so (as far as this has not been achieved already) for those countries which have applied for EU membership, by virtue of the fact that the Treaty and PEEREA form part of the "acquis communautaire". Furthermore, the rules and principles enshrined in the Treaty have been included in the Partnership and Cooperation Agreements signed by all CIS states with the EU as the legal foundation for bilateral energy cooperation.

C) Phase-Out of Transitional Arrangements

Article 32 of the Treaty lists seven other Articles, certain of whose provisions were left open for possible temporary suspension by Contracting Parties. A total of 24 Signatory states accordingly made use of their right to claim temporary exemption from full compliance with certain of the above provisions (see Annex T to the Treaty).

In accordance with Article 32 (6), the Charter Conference has kept the phasing out of these transitional arrangements under constant review, and was able to conclude at its 2nd Meeting on 3-4 December 1998 that welcome progress had been made in this area,

resulting in fewer exceptions to the Treaty remaining in force at that time that had been originally anticipated according to Annex T.

1999 has witnessed further progress in the area of phasing-out transitional arrangements. The outstanding transitional suspensions maintained by Contracting Parties/Signatories, except the Bulgarian one on Article 10(7), have very limited impact on business in the energy sector. As a consequence, the Investment Group recommended in November 1999 that annual review of transitional arrangements in the year 2000 would not be necessary and that the remaining transitional suspensions would be terminated before or no later than the dates included in Annex T of the Treaty or as granted by the Conference.

It can therefore be concluded that the phase-out of transitional arrangements as listed in the Treaty has in practice been successfully accomplished.

However, it should be underlined this assessment relates solely to the limited legal obligation of certain Contracting Parties/Signatories to phase out the temporary suspensions listed in Annex T. Aside from an assessment of this limited requirement, a review of the Treaty's functioning should also address the broader question of how much progress has been made by Contracting Parties/Signatories in achieving a full transition, in the wider sense of the term, towards full implementation in their national legislation and every-day administrative practices of the Treaty's commitments and principles.

An assessment of transition in this wider context would have to conclude that in a number of cases, particularly in transition economies, further steps are required to bring the implementation of domestic laws and policies on energy-related issues fully into line with the non-discriminatory, transparent and market-oriented approach which the Treaty embodies.

D) Relationship to Other International Organisations

Article 34(4) states that the Charter Conference, through the Secretariat, "shall cooperate with other institutions and organizations with established competence in matters related to the objectives of this Treaty."

In reviewing the functioning of this cooperation over the last five years, the following can be observed:

- The European Union, in its dealings with non-EU members on energy sector issues, has made substantive use of the Treaty and PEEREA as a foundation for cooperation with such countries. Moreover, through its TACIS, Synergy and PHARE programmes the EU is offering an important contribution to the Charter Conference's efforts to ensure compliance with the Treaty and PEEREA's aims and commitments.
- The Treaty's trade rules, as updated following the adoption of the 1998 Trade Amendment, constitute the sole multilateral legal basis covering energy-related trade with and among Contracting Parties/Signatories who are not WTO members. Furthermore, the Treaty's trade regime represents an important stepping stone for countries in the process of accession to WTO, allowing them to familiarise themselves with the practices and disciplines that WTO membership entails through the

application of its rules “by reference” to trade in energy materials and products and energy-related equipment. In this respect, the Treaty’s complementarity to the WTO process, as a vehicle which assists non-WTO Signatories in their preparations for full WTO membership, represents an important feature of the Charter Conference’s cooperation with other relevant organisations. Moreover, given the likely timetable of further accessions to the WTO by Contracting Parties/Signatories who are not yet members, it can be concluded that this will continue to be an important aspect of the Treaty’s role and functions for several years to come.

- The Protocol on Energy Efficiency and Related Environmental Aspects has been highlighted as a mechanism for promoting implementation of the conclusions of the UN-ECE Aarhus Ministerial (June 1998) on Energy Conservation issues. Work in this context is currently being taken forward by the Charter Conference’s corresponding Working Group. It can be anticipated that, in the light of the increasing political priority attached by governments to energy conservation and efficiency policies, this area of the Charter Conference’s cooperation with other relevant international institutions and organisations will continue to expand in the foreseeable future. As agreed by the Charter Conference, this cooperation will be pursued with the emphasis on avoidance of any duplication of activities carried out in other international fora.
- The Treaty’s Investment Rules were the basis for a substantial input with regard to Energy Investment for the G8-Energy Ministerial Meeting in Moscow on 1 April 1998. This input was prepared together with the International Energy Agency. The proposals contained in the relevant documents have been widely endorsed at international level. Energy Policy Country Reports have been published together with the IEA and the Black Sea Regional Energy Centre. First steps have been taken in relation to a co-operation project, first and foremost with the World Bank group, in respect of Restructuring including Privatisation in the energy sector.

E) Dispute Settlement and Conciliation Mechanisms

Articles 26, 27 and 29(7) of the Treaty establish dispute settlement procedures for application in the respective cases of investment-related disputes between an investor and a Contracting Party, investment-related disputes between Contracting Parties, and trade-related disputes between Contracting Parties (the latter procedure envisages the application of a panel system along WTO lines for the settlement of disputes).

Article 7(7) of the Treaty establishes a conciliation procedure in relation to disputes between Contracting Parties or entities thereof as described in Article 7(6) over any matter arising from Transit. Rules concerning the conduct of this latter conciliation procedure were adopted by the Charter Conference at its 2nd Meeting on 3-4 December 1998.

Article 19(2) of the Treaty entitles Contracting Parties to bring any disputes arising from the application or interpretation of that Article (concerning Environmental Aspects) to the attention of the Charter Conference for review.

In assessing the functioning of the above dispute settlement and conciliation provisions of the Treaty, emphasis should be placed on the fact that their very existence has a significant confidence-building effect. The fact that such mechanisms are available, and that Contracting Parties/Signatories have taken on the unconditional obligation to accept their application where necessary, provides in itself important reassurance for those looking to invest in energy sector projects within the Charter's constituency. Such investors know in advance that, in the case of a dispute, they will be entitled to have recourse to the above mechanisms in defence of their interests.

The very fact that the dispute and conciliation mechanisms described above are technically such strong instruments, in terms of the legal powers with which they are endowed, has meant that there has been a natural desire on the part of Contracting Parties/Signatories to exhaust all other avenues of potential dispute settlement before seeking recourse to them. Consequently, as is well known, no actual cases have been brought under any of the above mechanisms since the Treaty was signed.

The conclusion to be drawn from the above is a positive one: namely, that the very existence of the Treaty's dispute and conciliation mechanisms is of considerable value in confidence-building terms. The absence of practical cases of their application to date should be seen as confirmation of their legal value; this encourages parties to any relevant dispute to move towards an amicable resolution, which the Treaty itself stipulates as the primary objective in such cases (*Articles 26(1) and 27(1)*).

Nonetheless, in view of the increasing globalisation of energy markets and the consequent growth in importance of energy transit as an economic activity for many of the Energy Charter's constituents, the Charter Conference may wish to give consideration in future, based on a thorough and careful analysis of the legal implications, to strengthening the confidence-building benefits of the above dispute and conciliation mechanisms, inter alia through the elaboration of new multilateral instruments on energy transit (*see section IV below*)¹.

F) Investment Provisions and the Supplementary Treaty

The fundamental objective of the Treaty's provisions on investment issues (*Articles 10-17 of the Treaty*) is to ensure the creation of a "level playing field" of non-discriminatory treatment towards energy sector investments throughout the Charter's constituency. Among the Treaty's key stated goals in this context is the task of ensuring that the principle of non-discrimination is observed by Contracting Parties throughout the whole investment cycle.

In this connection, Article 10 (2) of the Treaty requires Contracting Parties to "endeavour to accord" to investors of other Contracting Parties national treatment, or most-favoured nation treatment, whichever is more favourable, as regards the process defined in the Treaty as "Making of Investments" (*Article 1 (8)*). Article 10 (4) envisages that a supplementary treaty making this an obligatory requirement would be negotiated and concluded by 1 January 1998.

¹ One delegation has commented that the legal implications of any additional "plus-conciliation" mechanisms need to be "analysed and defined delicately"

The conclusion of the Supplementary Treaty within the above time-frame was not achieved, notwithstanding the fact that by 1998 a very broad measure of agreement on its content had been reached among the Charter's participating states. Preparations for the finalisation of the Supplementary Treaty are now in hand, and it is hoped that a resolution of the very few outstanding issues relating to it can be achieved in the near future, thus allowing for the Supplementary Treaty Adoption Conference to be resumed.

From the above, it is necessary to conclude that the provisions of the Treaty in the particular area of investment promotion and protection have not been strictly implemented in full in the manner originally envisaged when the Treaty was signed, in the sense that the target date specified in Article 10(4) was not complied with. However, an assessment of the functioning of the Treaty's investment provisions must also take account of the progress achieved in this area since the Treaty's adoption. In particular, at its 2nd Meeting on 3-4 December 1998 the Energy Charter Conference was able to conclude that steps towards liberalisation and transparency and a rollback of pre-investment exceptions to most-favoured nation/national treatment are occurring in many areas of the Charter's constituency as part of the transition to a market economy. Survey sessions held under the auspices of the Charter Conference since the signing of the Treaty have revealed that there has been no significant departure by Contracting Parties/Signatories from the treatment standard specified in Article 10(5)(a) of the ECT. Moreover, no economically relevant cases have been established where a new measure introduced by a Charter state decreased the conformity of its previously-existing measure with the non-discrimination standard in Article 10(5)(a) of the Treaty.

In the absence of the legally-binding commitment originally envisaged for inclusion in the supplementary treaty, the Energy Charter Conference, through its mandated function to "keep under review and facilitate the implementation ... of the provisions of this Treaty" (*Article 34(3)(b)*), has acquired a role of commensurately greater importance on investment issues. By providing an assessment, through the above-mentioned survey activities and peer reviews, of investment practices among its participating states, the Conference has maintained a level of political focus on investment climate issues which, it can be argued, has been highly instrumental in achieving the progress on stand-still and roll-back noted above.

The majority of the Treaty's investment-related provisions, aimed at the creation of the appropriate investment climate, are self-executing. There has been no review of the functioning of those provisions (i.e. post-establishment regimes, compensations, expropriation, transfer of payments). Although no disputes have been lodged as yet in respect of those provisions, there is a growing awareness of them in the business society. However, greater efforts should be undertaken to publicise further the existence of these provisions. Even though the Treaty's investment obligations are self-executing under international law, their implementation in national laws and practices remains important.

III. SUMMARY OF ASSESSMENTS PROVIDED BY CONTRACTING PARTIES/ SIGNATORIES

In response to Message No 185/99, in which Contracting Parties/Signatories were requested to provide written assessments of their own implementation of the Treaty and Protocol, contributions have been received by the Secretariat from delegations, which can be summarised as follows:

The Republic of Austria notes that the Treaty and PEEREA were adopted unanimously by the Austrian Federal Parliament on 11-12 June 1996 and by the Austrian Federal Council on 23 June 1996. The Treaty is considered as directly applicable national law, for which no special national implementing statute had to be issued. This applies to the Treaty's key obligations concerning trade, investment, transit and energy efficiency. With regard to the latter, Austria stresses the fact that Austrian energy policy has always been characterised by the concept of an efficient and environmentally benign handling of existing resources.

The Azerbaijan Republic states that the provisions of the Treaty and PEEREA have directly influence the development of the country's energy policy, aimed at the creation of a favourable investment climate, and have been taken into account in particular in the development and adoption of a number of legislative acts on energy, environmental and investment-related issues. Azerbaijan attached particular importance to the Treaty's extension of WTO trade rules to energy-related trade among the Treaty's signatories. Azerbaijan considers the Treaty and Protocol as a model for East-West cooperation based on market economics, non-discrimination and mutual assistance.

The Kingdom of Belgium reports that Belgian legislation and policies in the energy sector are consistent with most of the aims and objectives of the Treaty and PEEREA, and underlines the importance which Belgium attaches to both documents as important mechanisms for east-west energy cooperation. The one exception to the Treaty's MFN/national treatment provisions which Belgium maintains is not due to be phased out within the foreseeable future.

The Republic of Bosnia-Herzegovina assesses that its current state policies in the energy sector reflect to a great extent the aims and objectives of the Treaty, and have led to the creation of an open and competitive market economy and a very liberal investment regime. Future policies and legislation currently under development, including the State Electric Energy Law, will likewise be influenced by the principles laid out in the Treaty and PEEREA. It is assessed that ratification of the Treaty and PEEREA by the Presidency of Bosnia-Herzegovina, with the consent of the Parliamentary Assembly, will take place before the end of 1999.

The Republic of Cyprus assesses that its national legislation and policies reflect to a great extent the aims and objectives of the Treaty and PEEREA. Particular attention is drawn to the positive influence which the Treaty and PEEREA's provisions have exerted on the formation of national energy efficiency policies.

The Czech Republic notes that the country's draft Energy Act, draft Energy Management Act and the Czech government's draft Energy Policy Paper all fully reflect and take account of the aims and objectives of the Treaty and PEEREA. The importance

of the Treaty in terms of attracting energy sector investments into the Czech economy is also underlined.

The Kingdom of Denmark reports that the Treaty and PEEREA's aims and objectives are fully reflected in Denmark's legislation and policies.

On behalf of **the European Communities**, the European Commission reports that EC legislation and community policies fully reflect the objectives of the Treaty and PEEREA. The Treaty and its related instruments form part of the "acquis communautaire" which the EU accession countries must comply with. All EU member states have ratified the Treaty.

The Republic of Finland notes that its national legislation and policies fully reflect the aims and objectives of the Treaty and PEEREA, and that both documents have contributed to the development of Finland's national policy aimed at the creation of an open, competitive energy market.

The Federal Republic of Germany reports that no new national legislation was needed in order to implement the Treaty and PEEREA, and underlines the valuable role of both documents in underpinning Germany's efforts to increase East-West energy cooperation.

The Republic of Hungary, which maintains no exceptions or transitional measures in relation to the Treaty, notes that Hungary's energy policy, as approved by the Hungarian parliament in 1993, fully corresponds with the aims and objectives of the Treaty and PEEREA. These aims and objectives are also reflected in the "Principles of the Hungarian Energy Policy" document drawn up by the Hungarian government in 1998.

Japan notes the high value which it attaches to the Treaty as a model for law and policy making in Asia. Despite the fact that the Treaty has not yet been ratified by Japan, it is regarded as an important contribution to consolidating Japan's energy security. Looking to the future, Japan notes its support for a further extension in Asia of the Treaty's geographical coverage, and for a strengthening of cooperation between the Charter process and other relevant international organisations, such as the IEA.

The Republic of Kazakhstan reports that the Treaty and PEEREA are widely used in the discussion of specific investment projects and in the preparation of inter-state agreements on cooperation in the energy sector. Legislation and policy in the country's energy sector, in particular the government's "Programme for the Development of the Power Industry up to 2030", the 1997 Law on Energy Saving, and the 1999 Law on the Power Industry, reflect the principles and obligations contained in the Treaty and PEEREA. The Kazakhstan delegation underlines the particular importance which Kazakhstan attaches to the ongoing development within the Energy Charter process of the Treaty's provisions on transit issues.

The Republic of Lithuania reports that relevant legislation in the energy sector continues to be developed in order to create favourable conditions for the integration of the Lithuanian energy sector into the EU internal market. The preparation of a new National Energy Strategy began in 1998. In both cases, the Treaty and PEEREA have been taken into account, demonstrating the commitment of Lithuania to the Treaty's implementation. Lithuania is currently investigating whether or not it has any trade

related investment measures (TRIMs), and hopes to be able to make a corresponding notification in the near future.

The Republic of Poland assesses that the Treaty and PEEREA have had a significant impact on Poland's national policy and legislation in the energy sector, despite the fact that neither document has yet been ratified by the Polish parliament. Both documents were taken into account in the preparations of Poland's national energy policy guidelines, the governmental programme for de-monopolisation and privatisation of the power sector, and the new Law on Energy. Following the adoption of the latter in 1997, Poland no longer maintains any national exceptions to the Treaty's obligations.

Romania reports that its national legislation and policies reflect to a great extent the objectives of the Treaty, and that the Treaty's basic principles on transit have influenced the country's national programme for the establishment of a transport corridor from the Caspian Sea to Europe through Romania. In Romania's view, greater emphasis should be placed on supporting and monitoring implementation of the Treaty's provisions.

The Russian Federation assesses that the provisions of the Treaty and PEEREA have had a direct impact on the elaboration of Russian energy policy and legislation, notwithstanding the fact that neither document has so far been ratified by the Russian parliament. In particular, the 1999 Law on Foreign Investments reflects the Treaty's provisions on investment issues, and other governmental programmes in the energy sector have been elaborated taking full account of the Treaty and PEEREA's provisions. Should ratification of the Treaty and Protocol by the Russian parliament not take place in 1999, the Russian government plans to organise "round table" meetings for representatives of the State Duma, Federation Council, and other interested business and governmental circles in 2000, with the aim of discussing the major issues relating to the implementation of the Treaty's provisions in Russian energy-sector practices.

The Slovak Republic reports that the principles of the Treaty and PEEREA have been fully included in the country's newly established energy legislation and in draft laws, such as the Energy Efficiency Act, which are currently being developed. The Treaty and PEEREA will also be reflected in the revised Slovakian Energy Policy which is at the moment being prepared by the government. The importance of ensuring the compliance of national legislation with the Treaty and PEEREA as part of Slovakia's efforts to fully comply with EU legislation in the energy sector is also underlined. Slovakia's three remaining transitional measures in relation to the Treaty's provisions are assessed by the Slovak delegation as not constituting substantial exceptions to the Treaty.

The Republic of Slovenia notes that both of its original transitional measures in relation to the Treaty's provisions have now been phased out and are fully implemented. The main energy policy document reflects the basic orientation of the Treaty and PEEREA, while regarding legislation steps have been made to implement key obligations of the Treaty. The newly adopted 1999 Energy Law enhances trade by considerably opening the electricity and gas market, fosters investment by introducing transparent licensing and enables transit. There has also been new development regarding expropriation, key personnel and taxation which implement obligations of the Treaty.

The Kingdom of Spain notes that from 1986 onwards its authorities have undertaken a major programme of reform in the country's energy sector, with the emphasis on decentralisation, increased competition and the promotion of market-oriented behaviour. The Treaty and PEEREA, together with other international instruments such as the Treaties of the European Union, the agreements establishing the International Energy Agency, the World Trade Organisation and others, are regarded by the Spanish government as important legal foundations to set the framework of this reform programme.

The Kingdom of Sweden reports that it maintains no exceptions to the provisions of the Treaty and PEEREA. Both documents have provided an important platform for the development of Sweden's regional and bilateral cooperation on energy issues with other states, for example the Russian Federation. The Swedish authorities underline the significance of the Treaty and PEEREA for the strengthening of pan-European energy cooperation in general, and note in particular that the current development of the Multilateral Transit Framework may contribute positively to Sweden's internal policy-making on gas transit issues.

The Swiss Confederation reports that its domestic legislation and policies fully reflect the aims and objectives of the Treaty and PEEREA, and that no legislative changes have been required to ratify either document. Switzerland maintains no exceptions to the Treaty.

The Republic of Tajikistan notes that its energy policy and laws fully reflect the aims and objectives of the Treaty and PEEREA, with no exceptions maintained to national treatment. Tajikistan underlines the importance it attaches to the Treaty's investment provisions in support of national policy aimed at stimulating investor activity. Importance is also attached by Tajikistan to the ongoing work on transit within the Charter process, and to the possibility of adopting a separate Protocol on electricity.

Ukraine reports that the Treaty and PEEREA are considered as an integral part of national legislation, and have had a direct influence of the formation of legislative acts and other normative documents in the sphere of energy, particularly in the areas of investments and competition. The importance of the Treaty's provisions for the development of national programmes on oil and gas and on energy saving is also noted. Ukraine attached particular value to the development, based on the Treaty, of a Multilateral Transit Framework, which should help to shape Ukraine's own future internal legislation in this area.

The United Kingdom of Great Britain and Northern Ireland notes that the Treaty and PEEREA's aims and objectives are fully reflected in its national legislation and policies, which are directed at the creation of an open and liberal investment regime in the energy sector and the fostering of a competitive and sustainable energy market. The UK authorities continue to support multilateral efforts to strengthen the framework for investment flows, including through the adoption of the Supplementary Treaty. The UK maintains no national exceptions to national treatment for investors under the Treaty. Due consideration is currently being given to the provisions of the Treaty and PEEREA in the development of the UK's national Climate Change Programme.

IV. FUTURE DEVELOPMENT OF THE TREATY AND PROTOCOL, INCLUDING POSSIBLE FUTURE LEGAL INSTRUMENTS

Proceeding again from the overall purpose of the Treaty as defined in Article 2, the Conference is invited to endorse the following aspects of the Treaty and PEEREA's further development as instruments for multilateral cooperation as part of the review process:

- Implementation: The next phase of the Energy Charter process must be devoted to securing the full and faithful implementation of the Treaty's principles and objectives at national level. The Charter Conference resolves to give continued consideration to the development of adequate instruments for securing such implementation, including effective enforcement of binding Treaty obligations as well as continued monitoring of national laws, regulations and administrative practices. Standard and/or in-depth national reviews at regular intervals for assessment of Contracting Parties'/Signatories' implementation and practices could be foreseen. Review of the latest progress made as regards adoption of the Supplementary Treaty could also be considered in this context.
- Transit issues: The Conference notes the growth in importance over the last five years of energy transit as an actual or potential form of economic activity within the Charter's area of application. As a consequence, the need to elaborate on the Treaty's existing transit provisions (Article 7) has already been recognised by the Conference, which has embarked on the development under the Treaty's auspices of a Multilateral Transit Framework (MTF) as a more detailed set of regulations governing transit flows. In this context, the importance is underlined of achieving the Conference's stated objective of developing and adopting the MTF as a package consisting of a legally-binding instrument and a series of non-binding Model Agreements by the end of 2000. Within the MTF's development, the potential implications of imposing "plus-conciliation" (or internal arbitration) type dispute settlement mechanisms in addition to the existing dispute settlement mechanisms of the Treaty (Articles 26, 27 and the Conciliation Rules) should be analysed in detail from the viewpoint of legal consequences.
- Implementation of PEEREA: The Conference reiterates the importance of increased focus within the Charter process on implementation by Contracting Parties'/Signatories to PEEREA of the commitments contained therein.
- Investment issues: The Conference resolves to continue to address energy market reforms (liberalisation, competition, access to markets, investment climate) with focus on countries in transition and promote awareness and understanding of different techniques for realising and reinforcing open, efficient energy markets, including exchange of regulatory experience.
- Electricity Issues: Following the conclusion of the Multilateral Transit Framework, which will deal inter alia with transit aspects of electricity, and also of certain bilateral agreements currently under consideration on electricity issues, e.g. between the European Union and other states, the Conference may decide to revisit the question of whether Electricity Issues merit separate formal treatment within the Energy Charter process.

- Expansion: Having assessed that the Treaty and PEEREA have been instrumental in promoting energy security within the Charter's present constituency, it can be concluded that future efforts to expand the coverage of the Energy Charter's rules geographically would be in the interests of international energy security more generally. Such a further expansion could in time help to extend the rule of law, as embodied by the Treaty and PEEREA, to important energy-sector states who are currently not members of the Charter Conference.
- Moreover, the Charter Conference should reiterate its continuing readiness to ensure in time the fuller involvement in the Charter process of the United States and Canada, both of whom are Signatories to the European Energy Charter but have not acceded to the Treaty and PEEREA.

V. RECOMMENDED OVERALL CONCLUSIONS FOR THE CHARTER CONFERENCE'S REVIEW OF THE IMPLEMENTATION AND FUNCTIONING OF THE TREATY AND PROTOCOL

Based on the above analysis, the following Conclusions of the Review prescribed by Article 34(7) of the Energy Charter Treaty are recommended for adoption by the Charter Conference:

- the Energy Charter process, based on the ongoing implementation of the Treaty and PEEREA, and on the unique and governing role of the Energy Charter Conference as a forum for ensuring the effective implementation of binding commitments as well as for policy discussions among the governments of its constituent states on energy issues, should continue to develop;
- those Signatories who have not yet ratified the Treaty and PEEREA are encouraged to do so as soon as possible;
- continuing emphasis should be placed by the Charter Conference on monitoring implementation of the Treaty and PEEREA's provisions, in terms of fulfilment of the Treaty and PEEREA's legal obligations, in terms of the compliance of national legislation with them, and also in terms of how those obligations are translated into everyday practice at national level;
- efforts should continue to be made by the Charter Conference to develop, where appropriate, new Protocols (legal instruments), in accordance with the original aims of the 1991 European Energy Charter (*Title III: Specific Agreements*), thus ensuring that the Charter process continues to develop in line with the purpose stipulated in Article 2 of the Treaty;
- further efforts to expand the Treaty and PEEREA's geographical coverage to those states, particularly in emerging energy markets, that express willingness to subscribe to the obligations contained therein would be in the long-term interest of global energy security. The further integration into the Charter process, including where appropriate on an observership basis, of relevant organisations also merits positive consideration.