

INTERNATIONAL ENERGY CHARTER ROUNDTABLE



TRANSPARENT MARKETS FOR SUSTAINABLE ENERGY INVESTMENTS: Policy options for sustainable development investment strategies

UNCTAD World Investment Forum 2016:
Investing in Sustainable Development

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SUMMARY REPORT

In the framework of the close cooperation between UNCTAD and the International Energy Charter, the Secretariat of the International Energy Charter organised a side event to the 2016 UNCTAD World Investment Forum (WIF) on 'Transparent Markets for Sustainable Energy Investments: Policy Options for Sustainable Development Investment Strategies'. The roundtable event took place on 20 July 2016 at the UNCTAD Investment Village within the Kenyatta International Convention Centre in Nairobi, Kenya. The roundtable discussed the available policy options within an 'integrated investment and sustainable development strategy' which preserve and promote the factors enabling sustainable energy investments.

The roundtable was well attended by representatives from governments, investment promotion agencies, academia, industry and financial institutions. Speakers and participants were encouraged to comment on and question the subject of the energy investments required to achieve the United Nations Sustainable Development Goal to 'Ensure access to affordable, reliable, sustainable and modern energy for all' (SDG7). Different policy options were suggested which have a strong potential to mobilise sustainable energy investments.

Mr Patrick Obath, associate director at Adam Smith International Africa Limited (Nairobi), illustrated the specific concerns in the African energy sector, including; fuel wood and other forms of biomass amounting on average to 60% of the energy supply and use in rural areas; off-grid power solutions and high renewable energy potential; access and competing uses of arable land. Mr Obath suggested that transparent and stable legal frameworks could answer to the screaming need of energy investment beyond the usual political cycle. Governments and international organisations share a responsibility to unlock the investment opportunities and build the capacity of institutions and investors to create a future of sustainable energy. Questions addressed to Mr Obath included uses of biomass for cooking and the use of LPG and kerosene in poor areas.

Mrs Nathalie Bernasconi, head of the Economic Law & Policy Programme at the International Institute for Sustainable Development (Geneva), evidenced the impact of COP21 and of Paris Agreement on the IEC. In this respect, there is a clear need to strengthen the clean energy dimension of investment promotion and protection. For long, the Energy Charter has been associated with oil and gas industry and the large number of investment arbitration under the Energy Charter Treaty (ECT) may be an obstacle towards removing fossil fuel subsidies and transition to low carbon energy. This point was also raised and stressed extensively during the debate, and in particular within the context of sequencing of accession to ECT with the ongoing reform objectives (see below). In addition, Mrs Bernasconi remarked that the objectives of market access and liberalization in the energy sector – as stated under IEC – should not neglect the protection of prevailing public interests and the achievement of sustainable development objectives.

Mrs Elisabeth Tuerk, Chief of the Section on International Investment Agreements (IIAs) at UNCTAD's Division on Investment and Enterprise (Geneva), recalled the energy investment gap to achieve on the ground universal access to energy and to combat climate change (as identified in UNCTAD's 2014 World Investment Report). She emphasised the importance of balancing between public and private funds, and between competing objectives of liberalization and regulation. UNCTAD's Investment Policy Framework for Sustainable Development (IPFSD) and UNCTAD's Roadmap for IIA Reform provide precious guidance for policy makers seeking to define modern investment policies. The latter outlines five reform objectives: safeguarding the right to regulate; reforming investment dispute settlement; promoting and facilitating investment; ensuring responsible investment practices; and enhancing systemic consistency. While sustainable development-oriented IIA Reform has entered the mainstream of international investment policy making, the next phase of IIA reform will require countries to focus more on the existing stock of treaties such as the Energy Charter Treaty. This, in turn, will require enhanced collaboration and coordination between treaty partners. UNCTAD stands ready to support the Energy Charter Secretariat and its Member States in this process.

Mr Matteo Barra, senior investment expert at the Energy Charter Secretariat (Brussels), illustrated the potential of the International Energy Charter to mobilise clean energy investment and achieve universal access to energy. Since 2015, more than 75 countries have signed the International Energy Charter. In the first place, the International Energy Charter and the Energy Charter Treaty provide the key principles that enable energy investments. In the second place, these documents restate the sovereignty over energy resources and the right to regulate the energy sector so as to balance the prevailing public interests. For 25 years, the Energy Charter Treaty has proved a multilateral platform providing technical assistance to states without preference for any energy sector. The outcomes of ongoing investment arbitration will illustrate the implementation of these principles in relation to renewable energy subsidies.

The questions and answers session highlighted the role of all stakeholders in the investment cycle and referred to the role of African regional economic organisation in energy governance. Investment promotion agencies hold very valuable knowledge throughout the whole investment cycle which should be further elaborated with reference to the energy sector. Corporate social responsibility of investors should also be a part of the investment package with a view to balance private and public interests.

During the discussion, the adoption of the principles of the IEC by countries from Europe, Africa, South and East Asia, Latin America and Middle East was addressed as a welcome complement to their domestic energy investment and sustainable development strategy. Such concrete interest of least developed countries in the Energy Charter principles has prompted a serious discussion on the modernisation of the Energy Charter Treaty. Countries willing to accede bear the responsibility to propose for reforming and improving the Energy Charter Treaty to match prevailing standards of modern international investment agreements. Ultimately, the treaty should serve to respond to the current global and regional energy challenges of universal energy access and of clean energy transition.

Reference was also made to the principles of predictability, transparency, regulatory stability, market confidence, rule of law, regulatory cooperation and investment facilitation. In addition, it was stressed that the possible modernisation of the ECT should aim at reforming the Treaty in line with sustainable development objectives and the needs of developing countries across the energy value chain. Among others, a reformed and modernised ECT should clarify the potential of its provisions to mobilise the energy investments required to achieve universal access and transition to low carbon energy. Provisions on the establishment of energy investment should therefore draw a transparent and predictable balance between establishment market access on one side and the protection of essential public interests on the other side.

THE SPEAKERS

MATTEO BARRA

is Senior Investment Expert at the Energy Charter Secretariat (Bruxelles, Belgium). Dr. Barra acts as expert on the promotion and dispute settlement of international energy investments under the Energy Charter Treaty. His main tasks include technical assistance to governments (Mongolia, Morocco, Armenia, Latvia, Cyprus, Tajikistan), cooperating with international organizations (IEA, IRENA, UNCTAD, OECD, ICSID, SCC, PCA) and promoting dialogue with energy industry (Energy Charter Industry Advisory Panel). He provides policy analysis in relation to investment dispute settlement and to energy investment strategies. Prior to joining the Secretariat, Matteo was associated with a large international arbitration in Geneva. He acted in investment and commercial arbitrations concerning, among others, electricity, gas and oil industry. He advised and defended cases under public international law and under EU law in connection to foreign investment, expropriation, energy regulation and competition, sovereignty over natural resources, international trade and transportation, border delimitation. Dr. Barra holds a Ph.D. in International Economic Law (Bocconi) and an LL.M. in International Energy Law and Policy (CEPMLP).

NATHALIE BERNASCONI

is a senior international lawyer and heads the Economic Law & Policy work of the International Institute on Sustainable Development (IISD). She has advised over 20 developing country governments across Africa, Asia and Latin America in relation to bilateral and regional investment treaty negotiations, investor-state contracts, model investment treaties and foreign investment laws. She previously worked as an attorney at the Center for International Environmental Law in Washington and Geneva, where she also managed the office. She also worked in Hanoi, Vietnam, for a legal reform project of the United Nations Development Programme (UNDP) and for the Australian law firm Phillips Fox. In Switzerland she is admitted to the Bar of Basel and has worked for the Justice Department, Berne, in the Section for International Law.

PATRICK OBATH

is the Associate Director at the Adam Smith International Africa Ltd. He is also the Partner at Eduardo and Associates, the Chairman of the Board of African Alliance Investment Bank Kenya Limited, an independent director at Standard Chartered Bank (K) Ltd., and the Chairman of PZ Cussons EA Ltd. He previously held Director positions at the Kenya Private Sector Alliance, the African Alliance Kenya Investment Bank Limited, and the Kenya Power and Lighting Company Limited. He holds a BSc. in Mechanical Engineering from Nottingham University and is a Member of the Energy Institute (UK), the Petroleum Institute of East Africa and the Institution of Engineers in Kenya.

ELISABETH TUERK

is Chief of the Section on International Investment Agreements (IIAs) in UNCTAD's Division on Investment and Enterprise (DIAE). She leads the Section's work across the three pillars of UNCTAD activities: research and analysis, capacity-building and consensus-building. The IIA Section seeks to help countries to participate as effectively as possible in international investment rulemaking, with a view to strengthening the sustainable development dimension of IIAs. In 2015, the Section was instrumental in developing UNCTAD's "Roadmap for IIA Reform", which identifies reform objectives, areas and solutions, outlines a common roadmap for the reform process, and invites countries to use an action menu to define their own, individual roadmaps for IIA reform. The Section also developed "UNCTAD's Investment Policy Framework for Sustainable Development", now available in its 2015 update, which helps policymakers design "new generation" investment policies that place inclusive growth and sustainable development at the heart of efforts to attract and benefit from investment.

THE ORGANISERS

ENERGY CHARTER SECRETARIAT

It's a multilateral international treaty concluded in 1994 currently in force among 54 contracting parties from Europe, Central Asia, South Caucasus and East Asia. The Treaty offers a multilateral cooperation platform for the promotion and protection of energy investments. The Energy Charter Secretariat offers its technical assistance to contracting parties, observer and third states by means of energy investment country reports, policy recommendations, model agreements, regional cooperation, seminars and training programmes, private sector dialogue. On 21 May 2015, the International Energy Charter was adopted in The Hague by more than 75 countries from Africa, Middle East, Latin America, South and East Asia, besides China and the United States of America to share the political objectives development of trade and investment in energy, cooperation, energy efficiency and environmental protection.

UNCTAD

Governed by its 194 member States, it's the United Nations body responsible for dealing with development issues, particularly international trade – the main driver of development. Its work can be summed up in three words: think, debate, and deliver. Reflection on development is at the heart of UNCTAD's work. It produces often-innovative analyses that form the basis for recommendations to economic policymakers. The aim is to help them take informed decisions and promote the macroeconomic policies best suited to ending global economic inequalities and to generating people-centred sustainable development. UNCTAD is also a forum where representatives of all countries can freely engage in dialogue and discuss ways to establish a better balance in the global economy. In addition, UNCTAD offers direct technical assistance to developing countries and countries with economies in transition, helping them to build the capacities they need to become equitably integrated into the global economy and improve the well-being of their populations.



ENERGY CHARTER SECRETARIAT
BOULEVARD DE LA WOLUWE, 56
B-1200 BRUSSELS
BELGIUM
TEL.: +32 2 775 98 00
FAX: +32 2 775 98 01

WWW.ENERGYCHARTER.ORG
INFO@ENCHARTER.ORG

TWITTER: @ENERGY_CHARTER
FACEBOOK: [FACEBOOK.COM/ENERGYCHARTER](https://www.facebook.com/ENERGYCHARTER)
LINKEDIN: [LINKEDIN.COM/COMPANY.ENERGY-CHARTER](https://www.linkedin.com/company/energy-charter)