Decades of consistent growth in the Asia-Pacific Region have led to the rapid economic modernisation and sophistication of a few economies, such as Korea and Singapore and the breath-taking industrialisation of populous countries such as China and Malaysia. Although economic growth in the region has never been uniform across different countries, its momentum is turning to places where previously constrained economic potential can now be realised, such as in Myanmar and Vietnam.

One of the crucial aspects of this dynamic is the increasingly significant cross-border flow of energy resources, investments and know-how within the region. As the world’s biggest destination for crude oil, LNG and new power-generation capacity, there is no doubt that both the desires and the opportunities to capitalise on the dynamism within the energy sector in the Asia-Pacific region are strong. According to the World Bank, 34% of global energy investments in the coming years will go to Asia. At the same time, bigger and more sophisticated projects that involve a wide range of stakeholders of different nationalities and sectorial backgrounds are becoming the norm in the region. Examples include the Central Asia-China Gas Pipeline, which ultimately may involve the crossing of five national borders and the various hydropower projects along the Mekong, with environmental and agricultural implications for all countries along the river. Additionally, the rapid internationalisation and privatisation of energy enterprises amidst liberal energy market reforms has also opened up new opportunities for domestic and foreign interests alike.

As these linkages intensify and become more complex, potential for commercial disputes and political risk due to the sensitive nature of the energy sector may soon become too challenging and too critical to be left alone, or managed bilaterally. Additionally, countries in the region are now facing strong pressure to strengthen their national energy security through diversification of energy sources, spurring economic development through energy exports, or transitioning to more environmentally friendly sources of energy – often at the same time. In order for countries to manage these priorities and economic relations, which are often tied to factors that lie beyond their own national borders, a more multilateral and focused approach will be required to provide the necessary political and legal frameworks that will help to define how investors, governments and other stakeholders might be expected to interact with each other.

Recognising this, while institutions such as ASEAN and the Asian Development Bank, which provide crucial multilateral fora and platforms for energy cooperation in the region, have so far not received a mandate, or the institutional building blocks to successfully define a widely accepted structure for energy governance in the region. This will surely require a lengthy and potentially politically toxic process of negotiations.

To this end, one possible remedy that may help to expedite the slow progress of regional energy cooperation, which in turn will unlock its energy potential, is the Energy Charter Treaty. The Treaty’s legal framework is the first attempt to create a multilateral platform to address challenges such as investment risks, energy transit, and energy poverty reduction. The Treaty also provides for transparent, non-discriminatory and consistent rules of investment promotion and protection, which allow countries to increase their attractiveness for foreign investment. Furthermore, the Energy Charter Treaty provides a long-term, competitive, stable and reliable interface between investors and host countries by allowing countries of various backgrounds to subscribe to a uniform set of binding rules, thus streamlining their investment environment.

Additionally, in terms of an inter-governmental policy dimension, the Energy Charter Treaty and its related mechanisms provide a dedicated platform for multilateral energy governance based on broad principles of non-discrimination, market mechanisms and a common legal framework, as outlined by the 1991 European Energy Charter and the updated International Energy Charter (IEC). The IEC is designed to enhance the Energy Charter’s Expansion and Modernisation policies, with a view to undergoing subsequent update in light of new global energy challenges and realities.
On 20-21 May 2015, states representing up to one half of the UN membership will gather at a Ministerial Conference on the International Energy Charter (IEC) hosted by the government of The Netherlands in the Hague. The IEC is a political declaration that will be formally adopted and signed at the Ministerial Conference. The Conference has a world-wide focus, with attendees coming from every continent. It is aimed at promoting the modernisation of the Energy Charter Process and the expansion of the geographical scope of the Energy Charter Treaty.

Around 80 states took part in the negotiations on the IEC throughout 2014. The final text was agreed in the autumn of that year and is currently being prepared for adoption. The IEC reflects the established principles of the European Energy Charter of 1991, such as political and economic cooperation, sovereignty over energy resources, the development of efficient energy markets, non-discrimination, investment promotion and environmental issues.

In addition, it reflects some of the most topical energy challenges of the 21st century, in particular the growing weight of developing countries for global energy security, the ‘trilemma’ between energy security, economic development and environmental protection, the role of enhanced energy trade for sustainable development, as well as the need for diversification of energy sources and routes. Furthermore, the IEC aims at developing regional and international cooperation in order to address the fundamental issues of access to modern energy services, energy poverty reduction, green economy and clean energy.

The IEC has been negotiated and will be signed by members of the Energy Charter together with non-members from the rest of the world. Modernisation of the Energy Charter and expansion of its geographical scope are currently the priority of the 54 members of the Energy Charter. The new Charter thus provides a powerful political vehicle to promote international cooperation and energy governance, in fields ranging from energy efficiency to investment protection and promotion, trade, transit and energy security. Greater regional energy cooperation and market integration are among the benefits offered by the Energy Charter in its work in the Asia Pacific Region. Non-members signing the IEC will be eligible for observer status under the Energy Charter, allowing them to work together with members on the implementation of agreed principles.

The Ministerial Conference on the International Energy Charter represents a landmark with regard to the development of global energy governance architecture. Binding rules on investment promotion and protection, trade and transit, as enshrined in the Energy Charter Treaty, are essential for such architecture. By signing the International Energy Charter, Asia-Pacific countries will be invited to become active observers to the Energy Charter Process. Doing so will also enable these countries to send a concrete signal to outside investors and the rest of the international community regarding their commitment towards common rules and multilateralism to tackle global energy security and governance issues.

More information can be found on the website of the Energy Charter Secretariat www.encharter.org

"In order to promote the international flow of investments, the signatories will make every effort to remove all barriers to investment in the energy sector and provide, at national level, for a stable, transparent legal framework for foreign investments, in conformity with the relevant international laws and rules on investment and trade."

Excerpt from the text of the International Energy Charter
The Asia-Pacific Region and the Energy Charter Treaty

- Tremendous potential for continued growth, but serious challenges exist with respect to regional imbalances.
- Significant cross-border flow of energy resources, investments and know-how within the region. 34% of global energy investments in the coming years will go to Asia.
- Increased multilateral approach to strengthen political and legal frameworks for investors and governments.
- Internationalisation & privatisation of energy enterprises & liberal energy market reforms opened new opportunities for domestic & foreign interests.
- Unlock energy potential by expediting the progress of regional energy cooperation.
- Long-term, competitive, stable & reliable investor-host country interface fostering investment attractiveness.
- Transparent, non-discriminatory & consistent rules of investment promotion & protection.