

World PetroCoal Congress 2013

THE RELEVANCE OF GLOBAL ENERGY GOVERNANCE FOR INDIA AND THE POTENTIAL OF THE ENERGY CHARTER

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I am very honoured as Secretary General of the Energy Charter to be here in New Delhi for this important Congress. I would like to particularly thank the organisers for the invitation and for the great opportunity to speak here.

This is not the first time that a representative of the Energy Charter has spoken in New Delhi. My predecessor as Secretary General, Ambassador Andre Mernier, spoke at the 2010 Asia Gas Partnership Summit. Last year my Senior Adviser spoke on my behalf at that same event (*organised by GAIL*).

The Energy Charter Secretariat is based in Brussels, Belgium. There in recent years we have been working closely with the Indian Embassy on the question of India becoming an Observer to the Energy Charter.

Part 1. What is the Energy Charter

I first need to explain, or perhaps remind you, of what I mean precisely by (a) the Energy Charter and (b) the Energy Charter Treaty. The Energy Charter Treaty was developed on the basis of the 1991 Energy Charter. Whereas the Charter was drawn up as a declaration of political intent to promote energy cooperation, the Energy Charter Treaty is a legally-binding multilateral instrument and part of international law.

The legal framework provided for by the Energy Charter Treaty provides some principles on the role of governments in facilitating international cooperation in the energy field and in addressing non-commercial risks. The Treaty provisions include common rules on investment promotion and protection, and on trade and transit.

The Energy Charter is one of a number of international institutions which attempt to provide a system for multilateral cooperation on energy policy. The Energy Charter is however based on a binding treaty, the Energy Charter Treaty of 1994. The European Union and its 27 member states are all members, as is Euratom. Twenty four other countries in Europe, Asia and Australia, including important energy producing countries such as Azerbaijan, Kazakhstan, Turkmenistan; and transit countries such as Turkey and Ukraine are also members. The Russian Federation signed the Treaty but has not ratified it. However the Russian Federation actively participates in the Energy Charter Process, and I have reason to believe that the Russian position towards the Energy Charter is now moving in a positive direction.

According to recent news, the Parliament of Afghanistan approved that country's ratification of the Treaty. I expect that Afghanistan will very soon accede to the Treaty and be the 54th member.

China, the United States and Indonesia are among the important Observer States to the Energy Charter Conference.

As a multilateral organisation the Energy Charter is less focused on independence than on mutual cooperation. That is because the Charter is founded on the basis of common rules and the belief in the benefits of mutual cooperation. From the Energy Charter's perspective, the notion of diversification of supply and demand is fully within the scope of the founding documents.

A critical issue in the provision of energy supply and energy supply routes is investment. One way to improve the climate for investment is to reduce the level of risk. A suitable legal and judicial framework is very important to attract and encourage the necessary energy infrastructure investments. The rules of international trade and co-operation must be defined, accepted and known by the players. Very generally this is the aim of the World Trade Organization (WTO). But more specifically in the energy context, this is the aim of the Energy Charter Treaty. Moreover the WTO does not cover investment protection, and Energy Trade is covered only in a limited way. It is noteworthy that India has long played a significant role in the development of world trade rules having been a founder member of the General Agreement on Tariffs and Trade (GATT) whose successor is the WTO.

The Energy Charter Treaty fulfils this particular role through its investment promotion and protection provisions, including the legally binding commitment made by parties to the Treaty to abide by international investor-state arbitration in cases of dispute. Beyond the immediate resolution of particular disputes, these provisions have the secondary effect of helping to strengthen the rule of law and transparency, thereby contributing to an improvement in the general investment climate.

Part 2. *Modernisation and Expansion*

Some commentators point to short comings in the Energy Charter. This is why a modernisation process is underway. The objective of this modernisation process is to secure the full adherence of all its parties to the common rules and to attract new members, particularly major energy producing and consuming countries. India's involvement with the Energy Charter Process would be of great benefit not only to the existing membership, but to India itself.

The Twenty Third Meeting of the Energy Charter Conference was held in Warsaw in late November. Those discussions in Warsaw are of great relevance today here in New Delhi. The Ministerial Session of the Conference in Warsaw focused on the topic "*The Demands for Global Energy Governance and the Potential of the Energy Charter*". The United States of America was represented for the first time in some years. A high level delegation from the People's Republic of China was also present and took an active part in the discussions.

The Ministerial discussions contributed much to a mutual understanding of the complex challenges of the energy world. Delegations confirmed that there was a need to find solutions to enhance energy security and to promote economic development as well as to protect the environment. Energy security means different things to producers and consumers. To producers it means security of demand. To consumers it means security of supply. Energy producing countries, in Warsaw, wished to optimise their buyer's market and to enhance stability. For energy consuming countries the main concern was sustainable supply and access to energy at acceptable prices. This was a particularly pressing issue for emerging markets. Volatility of energy prices is a threat to both groups.

There was general agreement on the need for an effective global governance structure to promote cooperation on the basis of common rules and principles. The value of the Energy

Charter Treaty with its unique legally binding framework was recognised and there was an acknowledgement that the Charter needs to modernise to adapt to new realities.

The advantages of the Energy Charter Treaty with regard to the challenges identified by the G8 and G20 were also discussed. Those advantages included its unique legal framework for investment promotion and protection, with rules on energy trade and transit and a cooperation framework for energy efficiency, its broad membership and openness to all countries. Ministers and distinguished delegates from the Energy Charter Constituency present expressed their support for the potential of the Energy Charter in addressing the issues of global energy governance.

Mr. Guenther Oettinger, the European Union Commissioner for Energy, remarked that the more countries subscribe to the principles of the Energy Charter, the more they would set the standard for international energy relations on a global basis.

Member countries therefore agreed in Warsaw to engage in a process which envisages the preparation of a draft updated version of the 1991 Energy Charter. In today's situation the need to focus on the modernisation, indeed revitalisation of the Energy Charter is all the more pressing. I believe that India's engagement with in this process is important and would be of benefit, given India's long history of contribution to international organisations such as the WTO.

Should India deem signature of the Energy Charter to be an appropriate step, India would be entitled to participate in all activities of the Energy Charter Process, including negotiations on Protocols and Declarations authorised by the Charter Conference and very importantly on any negotiations on an updated version of the 1991 Energy Charter.

Part 3. The Relevance of Energy Charter to India

Ladies and Gentlemen, I would now like to focus more specifically on the question the relevance of Global Energy Governance for India, and the potential of the Energy Charter in that regard.

Last year the whole world became aware of the problems experienced by the Indian power sector. There were electricity blackouts in July 2012 which demonstrated its vulnerability. Clearly there is a desperate need to invest in the transmission infrastructure, introduce better regulation and promote market reforms in the sector. I have already mentioned the role of the Energy Charter in investment protection and arbitration. These provisions can be of clear benefit for the energy sector in India, including to the coal industry. The coal industry is as we know, very important for the power sector since more than 50% of generation is based on coal-fired plants.

Energy issues in South Asia, India, in particular, are linked to developments in Central Asia. Turkmenistan has been a prominent member of the Energy Charter Treaty constituency from the early days. It was one of the first countries to sign the Treaty in 1994, and has been actively involved in all Charter activities ever since. Turkmenistan has launched an important initiative within the United Nations framework aimed at securing cross-border energy transit on a global scale. It has offered a valuable stimulus to intensify the search for the right approach. As a direct result, the UN has adopted the resolution on "Reliable and Stable Transit of Energy and its Role in Ensuring Sustainable Development and International Cooperation" on 19 December 2008.

I have mentioned that Afghanistan seems set to soon ratify the Energy Charter Treaty. Afghanistan is of course strategically located in-between of Central and South Asia countries.

Afghanistan is therefore a bridge for any inter-regional initiative whether that is TAPI project or CASA 1000. Accession by Afghanistan to the Energy Charter Treaty will benefit Central and South Asian countries by helping find them new transport routes to market for their electricity and gas, and that in turn is of obvious benefit to India.

Pakistan has been an Observer to the Energy Charter Conference since signing the Energy Charter in 2005. In November 2006, the Energy Charter Conference approved Pakistan's Accession Reports and invited the Government of Pakistan to accede to the Energy Charter Treaty and Related Documents. I hope that this process will soon be completed.

The potential of the Energy Charter Treaty as the legal framework for TAPI is becoming ever more apparent when one considers the existing and anticipated involvement of each of Turkmenistan, Afghanistan and Pakistan with the Energy Charter.

The Energy Charter has a special project in the region of Central and South Asia. The Task Force on Regional Energy Cooperation in Central and South Asia was established in 2007 in order to intensify and develop cross-border energy trade on the basis of the Energy Charter Treaty. Today the Task Force consists of delegates from Afghanistan, Kazakhstan, Kyrgyzstan, Mongolia, Pakistan, Tajikistan, Turkmenistan and Uzbekistan. Representatives from India have participated in several of these events by a special invitation. I would be very pleased to see some of you at the next meeting of the Task Force scheduled for April this year in Astana, the capital of Kazakhstan.

The Treaty has already contributed much to energy sector reform and the development of a well functioning trade and system of cooperation in energy for its 51 member states. That is particularly so in Kazakhstan, and in Central Asia and the Caucasus region. The development of the Caspian energy resources is a good example of the positive role that the Energy Charter can play. I believe that the whole Caspian development story which started back in the 1990s has benefited greatly from the Energy Charter Treaty. Today, the investment situation seems so much more attractive, but the stabilising effect the Energy Charter played 15 years ago should not be underestimated.

I will conclude at this point in the hope that my remarks will be an incentive for further consideration of the potential for India of involvement in the Energy Charter as a regional multilateral framework to secure energy investments.