

Energy Charter Treaty : Good Governance of Energy Security and Energy Investments

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Dr. Matteo BARRA
Investment Expert Officer
Energy Charter Secretariat,
Brussels



Energy Charter Treaty : **COMMON RULES** for **GLOBAL ENERGY SECURITY**

- **Multilateral and binding** international treaty : the common rules
- Link between **energy security** (supply and demand) and **security of investments** in the energy sector (level playing field) (Energy Charter)
- **Collective responsibility** of the international community (G7 2014) and **global energy architecture** (G20 2014)
- Responding to **growing global energy needs** : IEA call for 4 trillion USD energy investments by 2035 (WEIO 2014)
- Sustainable Development Goal No. 7 : “**Access to affordable, reliable, sustainable and modern energy for all**” (UN Post 2015 Development Agenda)



Energy Charter Treaty : GOOD GOVERNANCE of CROSS BORDER ENERGY INVESTMENT

- Creating a **climate favourable** to cross border **enterprises** and **investment flows**
 - **Good governance** of energy investments : **market confidence** and **regulatory stability** (non discr., transfer of capital, key personnel)
 - **Protection** against **breaches** of international standards (rule of law; losses ; direct and indirect expropriation)
 - General **exception** : to protect essential security interests and to maintain public order
- Within State ***sovereignty over natural resources***
 - **No interference** with the public/private energy market structure; no privatisation nor liberalisation ; no market access
 - **Political commitment** to open and efficient market
- Taking into account ***environmental concerns***
 - Technologically neutral : including low carbon and energy efficiency



IMPLEMENTING the Common Rules : Effective DIALOGUE with Public Private Stakeholders

- Empowering **governments' sovereignty** over energy resources
 - Peer review of **domestic** law and policy on foreign energy investments
 - Policy **recommendations** by the Energy Charter Conference
- **Regional cooperation** for cross border projects
 - Regional **studies for integration** of energy markets
 - **Model agreements** for cross border pipelines (Baku-Tbilisi-Ceyhan) and cross border electricity projects
- Solid and constant **dialogue** with the **private sector** (Energy Charter Industry Advisory Panel IAP)
 - **Energy companies and industry associations** reporting to the Energy Charter Conference and to other international organisations
 - **Financial institutions** to support ratification of the Energy Charter Treaty in target countries for energy projects



Regional Cooperation : FACILITATING Energy INFRASTRUCTURES AND TRADE

■ Central and Southern Asia

- **Task Force** on Regional Cooperation (Afghanistan, China, Kazakhstan, Korea, Kyrgyzstan, Mongolia, Pakistan, Tajikistan, Turkmenistan, Uzbekistan)
- Price of Electricity Transit in Transition Countries

■ North East Asia

- **Gobitec** and the Asian Supergrid (Russia, Mongolia, China, South Korea and Japan)
- Integration of energy markets

■ East and Central Africa

- African Clean Energy Corridor (**ACEC**) with IRENA
- Enabling **Frameworks** for Markets and Investments



ENFORCEABLE Common Rules : EMPOWERING the Investor against Host State

- **Directly enforceable** by the investor against the host state
 - Before **domestic** courts or administrative tribunals
 - Before **international arbitration** under ICSID, UNCITRAL and SCC rules
 - As opposed to state to state **diplomatic** protection
- **Investor state** dispute settlement
 - Equivalent to an **investment insurance** against political and regulatory risks
 - **Compensates damages** arising from breaches of international standards (non discrimination; direct and indirect expropriation)
- Integrating **criticism** against investment dispute settlement
 - UNCITRAL **Transparency** Rules
 - **Mediation** and conciliation



An EGREGIOUS and Recent Case : The Former Yukos Shareholders vs. the Russian Federation

- Since **2001** : 60 known cases (16 cases in 2013) ; 17 arbitral decisions ; 7 settlements ; **6 awards of damages** in compensation ; 24 disputes still pending
- Russian Federation to compensate **USD 50 billion** an unlawful and **indirect expropriation** consisting in tax assessments, harassment and interference with the management leading to bankruptcy
- The Energy Charter Treaty is a **powerful instrument** to scrutinise host state measures and to protect foreign investments but **magnitude** of the award raise **concerns** regarding its **enforcement**
- Announcement of **attempts to seize** Russian oil companies' assets in **Germany**, according to 'equivalence' to assets owned by the Russian Federation; and of Russian **countermeasures** against Germany



Exploiting **COMPLEMENTARY** Roles : Activities with **INTERNATIONAL ORGANISATIONS**

- With **UNCTAD**, **promoting investment** for sustainable development
 - Investment country reviews and training programs

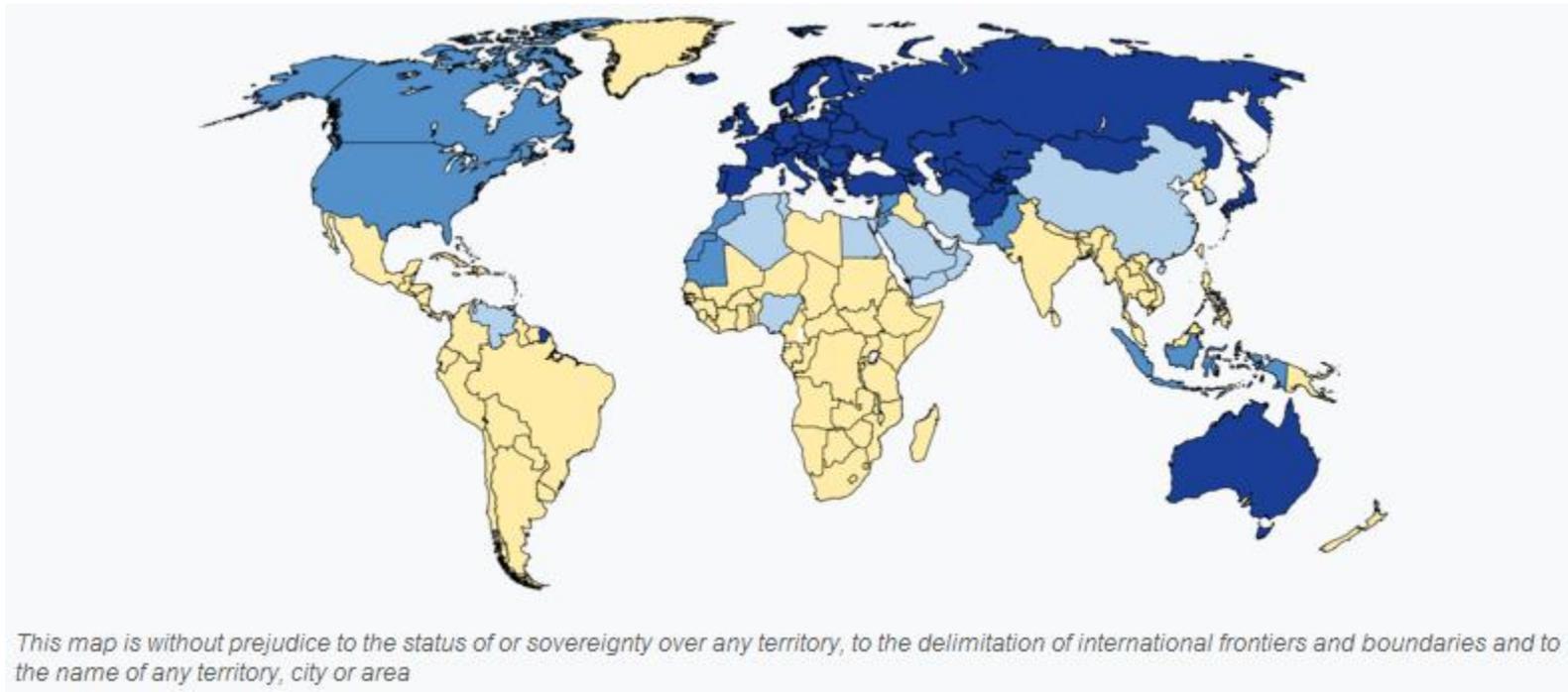
- **Enabling Frameworks** for Markets and Investments with **IRENA**
 - Africa **Clean Energy** Corridor

- Promoting, with **OECD**, **Low Carbon Investment**
 - Achieving a **Level Playing Field** for International Investment in **Green Energy**



Energy Charter MEMBERS and OBSERVERS

54 Contracting Parties (*Afghanistan, 2013*) and OPEN to any consuming, producing and transit countries regardless whether industrialised, developing and transition



■ Members ■ Observers (signed 1991 Charter) ■ Observers (by invitation)

This map is without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area



LOOKING FORWARD : International or World Energy Charter

- **Link** between **energy security** and **security of investments** is still of relevance
- **Reaching out** to new countries and regional organisations
- Political declaration supporting the Energy Charter as a **model** for international **cooperation in energy**
- **Domestic** and **regional** activities, dialogue with **private** sector and complementary **international** organisations
- **100 countries** participating
- Signature expected **spring 2015** in The Hague

1991 Energy Charter Declaration

Preamble



- The signatories are desirous of **improving security of energy supply** and of maximising the efficiency of production, conversion, transport, distribution and **use of energy**, to enhance **safety** and to **minimise environmental problems**, on an acceptable economic basis.
- (...)
- They are **determined** to create a **climate favourable** to the operation of **enterprises** and to the flow of **investments** and **technologies** by implementing **market principles** in the field of energy.