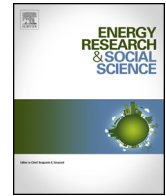


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Short communication

The new International Energy Charter: Instrumental or incremental progress in governance?



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ABSTRACT

The International Energy Charter, signed by 64 states in May 2015, is analysed here against the structure of the existing formal institutions of international energy governance as outlined in the literature. In terms of actors, the Charter has a Europe/Eurasia centred nucleus of signatory states accompanied by the United States, China and some further 'regional ambassador countries' in Africa, Asia and Latin America. However, references to non-state actors are scant. In terms of the dimensions of energy policy, the Charter is relatively comprehensive, pertaining to all main sources of energy, addressing the modernisation of infrastructure and technology; stressing non-discriminatory ownership and taxation of resources, likewise facilitation of energy trade and investment; while remaining a non-binding political framework retaining sovereignty over resources; and omitting climate change issues from its references to market-based measures in environmental protection. The Charter remains instrumental to protect the market interests of large energy consumers and represents at best incremental progress vis-à-vis linking the interests of producers, transit states and consumer states. However, it offers few building blocks for a more precise roadmap or eventual Treaty.

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1. Introduction

During the past half decade, several observers have lamented the absence of proper international energy governance [1]. It is often claimed that we have a 'complex and fragmented landscape of parallel, overlapping, and nested institutions' which fails to respond to current international energy challenges [2]. These challenges convey the trilemma of multiple problems of energy security, access to energy, and the negative environmental and climatic externalities created by the extraction, production, transport and consumption of energy [3]. Faced with such challenges, the existing international institutions are 'utterly outdated', especially when compared to international governance in other areas [1]. Moreover, the existing institutions have a 'partial scope, limited membership and/or weak authority' [4]. Their weakness stems from the hybrid nature of international energy governance, where multilateral institutions co-exist and compete with strong bilateral and bloc relations [5].

Given the alleged shortcomings of international energy governance, it is debatable if 64 states signing the new International

Energy Charter in May 2015 will improve matters [6]. In this short communication, I will argue that the event reflects at best instrumental or incremental progress in international energy governance. While the Charter is likely to attract further debate, I will highlight three issues: the actors involved; the dimensions of energy policy covered; its functions regarding current energy challenges and energy transitions; then conclude by summarising briefly mentioning some remaining problems in the further institutionalisation of international energy governance.

2. Material and methods

The material utilised in this short communication is restricted to the text of the International Energy Charter and the relevant literature. The method employed is a qualitative content analysis of the Charter's content in light of the structure of the existing formal institutions of international energy governance as outlined in the literature. More specifically, I will treat the Charter as representing the soft law end of formal regulation in this area. In other words, it is yet another non-binding political declaration with limited precision, regulatory authority and power to issue obligations. Nevertheless, given the trend for an enhancing role of states and politics in international energy issues, even as a soft law regulation, the Charter is important in that it articulates a political will to

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Table 1
Signatory states to the European Energy Charter, Energy Charter Treaty and International Energy Charter.

Signatory state	European Energy Charter 1991	Energy Charter Treaty 1994	International Energy Charter 2015
EU Member States (n = 28)	X	X	X
EEA Member States			
Iceland	X	X	
Liechtenstein	X	X	
Norway	X	X (did not ratify)	X
Switzerland (not ratified)	X	X	X
Energy community			
Albania	X		X
Armenia (observer)	X		
Bosnia and Herzegovina	X		
Former Yugoslav Republic of Macedonia	X		X
Georgia (candidate)	X		
Moldova	X		X
Montenegro	X		
Serbia	X		X
Turkey (observer)	X	X	X
Ukraine	X	X	X
Euro-Mediterranean Partnership (EUROMED)			
Algeria			
Egypt			
Israel			(adopted, not signed)
Jordan	X		X
Lebanon			(adopted, not signed)
Mauritania	X		X
Morocco	X		X
Palestine	X		X
Syria (suspended)	X		
Tunisia			
Other Eurasian states			
Azerbaijan	X	X	
Belarus	X	X (did not ratify, applies provisionally)	X
Kazakhstan	X	X	X
Kyrgyzstan	X	X	(adopted, not signed)
Russia	X	X (did not ratify)	
Tajikistan	X	X	(adopted, not signed)
Turkmenistan	X	X	X
Uzbekistan	X	X	X
Other states			
Afghanistan	X	X	X
Australia	X	X (did not ratify)	
Burundi	X		X
Canada	X		
Chad	X		X
Indonesia	X		
Japan	X	X	X
Mongolia	X	X	X
Niger	X		X
Pakistan	X		X
United States of America	X		X
Yemen	X		X

reduce transaction costs, create the necessary order and mitigate the negative externalities of the energy sector. These are highly warranted functions of international institutions [7].

3. Results

3.1. Actors included

The International Energy Charter was signed at a ministerial conference at The Hague in the Netherlands, which remains a key European natural gas and oil producer. The preparation of the Charter involved the signatory states of the 1991 European Energy Charter, and the resulting 1994 Energy Charter Treaty, both of which represented efforts to support energy trade in the aftermath of the Cold War. Further invitees included the observer States of the Energy Charter Conference, and a dozen further states including the emerging powers Brazil, India, Mexico and South Africa.

Such wide-ranging consultation among states was important given the relatively diverse group of signatories to the European Energy Charter diminished to a practically Eurasian core group of countries when its binding supplement, the Energy Charter Treaty, was signed in 1994. The subsequent loss of momentum in the Energy Charter process necessitated new diplomatic efforts [2]. Several structural changes underpinned this renewed demand for diplomacy. Many emerging states empowered themselves by increasing their energy exports, while many others became more dependent on these new exporters. Anticipated increasing scarcity altered producer–consumer relations and rendered energy commodities strategic. The overall structure of international relations became more multipolar. Competing institutions also emerged, including the EU–Russia Energy Dialogue and the Energy Community [5,8].

The 64 signatory states of the International Energy Charter as of August 2015 exceeds the number of original signatories to the

Table 2
Signatory states to the International Energy Charter not previously part of the European Energy Charter or Energy Charter Treaty.

Bangladesh	X
Benin	X
Botswana	(adopted, not signed)
Burkina Faso	(adopted, not signed)
Cambodia	(adopted, not signed)
Chile	X
China	X
Colombia	X
Iran	(adopted, not signed)
Nigeria	(adopted, not signed)
Philippines	(adopted, not signed)
Republic of Korea	(adopted, not signed)
Tanzania	X
Uganda	X

European Energy Charter (originally 49 states plus the EU; as of August 2015, 66 states) or the Energy Charter Treaty (originally 49 states plus the EU; today 52). Yet it falls short of the number of signatories to the Statute of the International Renewable Energy Agency (IRENA). Seventy-five states signed the IRENA Statute in 2009. Today it has 143 members, with a further 29 states in accession. By comparison, as of August 2015, 11 states intend soon to sign the International Energy Charter although that number is likely to grow.

The 28 Member States of the EU are the core signatories of the new Charter. Of the European Economic Area, which extends the EU's common market regulation beyond the Union, also largely vis-à-vis energy markets, Norway and Switzerland signed. Of the Energy Community, which more specifically extends the EU's energy acquis further beyond its borders, five countries have signed (Albania, the Former Yugoslav Republic of Macedonia, Moldova, Serbia, Ukraine), likewise a candidate country to the Energy Community Treaty (Georgia) and two observers (Armenia, Turkey). Moreover, some signatory states of the Charter are the EU's partners through its neighbourhood policy, where energy relations are also significant (Jordan, Morocco and Palestine).

A further group of signatories consists of Eurasian countries in area of the former Soviet Union; most of these were already signatories to both the European Energy Charter and the Energy Charter Treaty. Finally, some signatories in Africa, Asia and Latin America have a history with the European Energy Charter. Among these, the return of the United States to multilateralism is significant. However, so also is the current refusal of other large fossil fuel producers and consumers Australia, Canada and Indonesia to augment their existing commitment to the European Energy Charter by signing its updated version, the International Energy Charter (see Table 1).

The most prominent completely new entrant to multilateral energy governance in a signatory capacity to the International Energy Charter is China. Among large fossil fuel producers, Iran and Nigeria have adopted but not signed the Charter. They are also the only OPEC members within the Charter's remit. Among notable consumer countries, the Philippines and South Korea have adopted but not signed the Charter. Of other relevant blocs, the G20 is not prominent among the signatories, even though it is in principle well placed for international energy governance, representing both established and emerging powers, five continents, approximately four-fifths of world total energy consumption and of CO₂ emissions [2,8]. Missing from this fairly well representative but diverse bloc are Argentina, Australia, Brazil, Canada, India, Indonesia, Mexico, Russia and Saudi Arabia, all of them large fossil fuel producers. The significant fossil fuel producers of the ASEAN, where member states are endeavouring to integrate their energy markets, are also missing [9] (see Tables 1, 2).

At its inception, the International Energy Charter remains a relatively regional document in terms of signatory states. Its Europe/Eurasia centred nucleus is accompanied by the United States, China and some further 'regional ambassador countries' in Africa, Asia and Latin America. At the same time, the Charter refers little to other groups of actors such as energy companies, international financial institutions or NGOs, which have assumed more weight in international energy governance [10,11]. Indeed, the Charter remains a traditional diplomatic and political framework outlining several generic objectives and some areas of implementation without issuing any obligations. Its so far limited geographical coverage, especially of emerging states producing fossil fuels, is explicable by referring to the dimensions of energy policy it covers.

3.2. Dimensions of energy policy covered

The Charter is sufficiently comprehensive to address the complex nature of international energy governance, where at least four dimensions are discernible: resource development, infrastructure and technology; costs, finance, business models and markets; institutions; and the ecological and climate dimension [12].

(i) In terms of resource development, the infrastructure and technology dimension, the Charter covers all main energy resources—oil, natural gas, nuclear energy, coal and renewables, while it also touches upon end products by referring to electricity production. However, there is no mention of the various segments of renewables or prioritisation of any sources of energy or ranking them in any way. While this wide coverage seeks to attract as many actors as possible by offering something for everyone, it represents incremental progress in relation to the existing structure of institutions of international energy governance. There are several segment-specific formal institutions and regulations which together account for a fragmented structure. The OPEC is concerned with oil. The main regulations of the IEA concern oil stocks, although it conducts research on all main energy resources. IRENA works on renewables while the IAEA addresses nuclear energy, and so on.

The Charter further refers to the 'modernisation, renewal and rationalisation' of the energy infrastructures of signatory countries, for 'maximising the efficiency of production, conversion, transport, distribution and use of energy' [6]. It mentions clean and low-emission technologies and energy efficiency. Crucially, it expresses the growing concern of actors in the EU, the United States and China in particular, regarding the diversification of energy sources and supply routes. However, this may be one of the features persuading regionally pivotal fossil fuel exporters locked in pipeline-based exports to refrain from signing the Charter, such as Algeria, Azerbaijan and Russia even though they seek to diversify their export infrastructure.

(ii) In terms of the costs, finance, business models and markets dimension, the Charter is instrumental to reiterating the economic preoccupations of the European Energy Charter and the Energy Charter Treaty. The former remains a political declaration, while the latter introduces binding regulation on investment, trade and transit related issues, including a dispute settlement mechanism [13]. On this basis, the new International Energy Charter commits its signatories to 'avoid imposing discriminatory rules' on the ownership of resources, operation of companies and taxation. Such restrictions prevail for example in the pipeline based gas export monopoly of Gazprom in Russia, and in Russia's Arctic offshore where Gazprom Neft and Rosneft are privileged actors and foreign companies as a rule banned from new field acquisitions. These restrictions are significant as Russia's final withdrawal from the Energy Charter Treaty in 2009 questioned the whole Energy Charter process.

The International Energy Charter calls to 'facilitate the operation of market forces and promote competition' and to remove barriers to trade in energy products, equipment and services, as

well as investments, in line with WTO provisions and nuclear non-proliferation regimes. It recognises the role of ‘commercially sound’ conditions for transit; and stresses the development of cross-border oil and gas networks and power grids to practically facilitate energy trade [6]. These provisions are instrumental to the largely market centred interests of the European signatories and the United States. Yet, they are at odds with the remaining developmentalist, market socialist and state capitalist policies of several large fossil fuel producer and consumer countries of Eurasia and Asia. However, competition is a growing megatrend [14]. For example, South East Asian states strive to introduce more competition into their energy sectors as the current Charter signatories China and Japan have attempted to do [9]. For many signatories in West Africa and Latin America, the Charter’s provisions on access to capital, the removal of barriers to and protection of investments, together with the creation of a legal framework for foreign investments, are crucial in order to improve energy access, develop new sources of energy and promote economic growth [15]. Unfortunately, expectations for private investment appear overblown for tackling energy access and poverty [3]. Meeting energy security needs and existing policy goals will require USD 1.6 trillion by 2035. Addressing the energy poverty challenge will cost an additional USD 1 trillion [11]. In sub-Saharan Africa, 68% of the population lacks access to electricity and in developing Asia, 17% [10].

(iii) In terms of the institutional dimension, the main thrust of the Charter is to provide a non-binding political framework for the new relationships that have recently formed among producer, consumer and transit states. It mentions upfront developing countries and emerging economies, and the need for a ‘structured dialogue with non-signatories of the European Energy Charter’ [6]. The Charter makes a welcome move from the overwhelming prioritisation of the security of supply concerns of European consumer states towards facilitating access to energy sources, services and technology. The explicit recognition of ‘the sovereignty of each State over its energy resources, and its rights to regulate energy transmission and transportation within its territory’ [6], reiterates an established norm of international energy law [16], and is directed at resource-rich states like Russia, on whom many other energy exporters depend for transit. However, to the extent that the Charter advances the competition and market interests alongside the ‘compatibility of national and regional energy systems’ and the creation of ‘a common energy space’ [6], such sovereignty will always be conditional. Yet, for a country like Kazakhstan, which chaired the final negotiations for the Charter during 2014, the resulting document helps to create a multilateral institutional basis for its otherwise potentially asymmetrical natural gas and oil trade relations with China [15]. A multilaterally accepted framework is even more crucial for smaller states dependent on co-operation with international financial institutions, donor countries and foreign developers.

(iv) Regarding the ecological and climate dimension, the Charter quite realistically proceeds from the ‘trilemma between energy security, economic development and environmental protection’ without elevating any of these grand challenges above the others. Trying to reconcile these somewhat incompatible objectives, the Charter advocates no particular energy system and remains open to actors with highly diverging interests. It does not mention climate change but more specifically addresses energy efficiency and environmental protection, encouraging ‘the clean and efficient use of fossil fuel resources’ and ‘use of renewable energy sources and clean technologies’ equally. It strives to reduce gas flaring, encouraging sharing of best practices on clean energy, investment and ‘low emission technologies’ [6]. Regarding implementation, the Charter foresees joint safety principles and guidelines, exchange of knowhow, education, training and R&D activities. It is careful to accompany almost any mention of ‘environmental problems’

or ‘costs’ with references to ‘market-based’ or ‘market-oriented’ measures and instruments [6].

3.3. Tackling energy challenges and steering energy transitions?

The International Energy Charter sets some general signposts for the large-scale reform of energy systems foreseen by many other international institutions such as the IEA, EU or the UN climate change institutions. Yet by not privileging any energy challenge, source or technology over others, the Charter offers few building blocks for a more precise roadmap or eventual Treaty. Any follow-up work is in fact fairly demanding because the vested interests among the current signatories vary widely even as regards transitions to renewable energy in China, Denmark or Japan, each of which is implementing ambitious projects in this area [17]. Prior to such intensification of cooperation, the likely priority is persuading more countries to sign the new Charter. This will be difficult on its own—so different are the interests of, say, in current non-signatories India, Russia or Qatar.

The Charter may thus serve, for example, as a political foundation for cross-border oil or natural gas extraction or transport projects between Kazakhstan and China. Equally well, it can serve the development of new decarbonising energy systems in Morocco or the Euro-Mediterranean solar plan project [15]. In fact, such co-existence of the traditional fossil fuels dominated agenda and the emerging transitions to new decentralising and decarbonising agendas prevail in many countries. Moreover, in countries spearheading the ongoing energy transitions, such as Denmark or Germany, public funding is crucial to any progress [18]. In Denmark, part of public funds to support the energy transition through which consumers become producers, wind power receives feed-in tariffs and smarter energy networks are developed, come from the taxation of the fossil fuels industry. In this sense, we once more find the Charter an instrument of careful balancing. This may prove a catalyst rather than a predicament in its further adoption and implementation.

4. Conclusion

I have portrayed the new International Energy Charter as representing at best incremental progress in international energy governance. To a degree, it has revitalised the Energy Charter process in terms of attracting some new signatories, although not all the original signatories of the European Energy Charter of 1991 are yet convinced about signing. To this end, the Charter treats the interests of energy producers and transit states on more equal terms vis-à-vis those of energy consumers, just as some other institutions, like the International Energy Forum, have sought to do. Nevertheless, the Charter’s references to competition and diversification remain instrumental to the market interests of its European core and may continue to obstruct several major fossil fuel producers with developmentalist or state capitalist policy preferences. Although the Charter makes little reference to concretely aligning those highly diverse interests, its references to low emission and clean energy technologies can link the established and emerging economies, and states and companies. The Charter mentions in passing how ‘commercial forms of cooperation may need to be complemented by intergovernmental cooperation’ [6]. This may ring equally true for many strategists in state-owned companies in the Persian Gulf as for an increasing number of policy-makers in European capitals.

The notion of incremental progress becomes even more appropriate if we examine the Charter against the deep structure of the informal institutions of international energy governance. Here we should bear in mind how the currently fragmented structure of

formal institutions could be remedied by efforts to promote the convergence of the underlying rules and norms shaping the conduct of actors [19]. On this more social scientific level of analysis, which must remain the subject of future research, we know how informal institutions such as practices, norms and rules may serve as powerful barriers to the realisation of objectives expressed not only in political declarations as the Charter, but also in binding treaties. In this sense, the Charter will be tested not only in legal analysis vis-à-vis other formal regulations, but also in daily interactions among the engineers and economists of energy companies, and regulators and financiers whose political masters have adopted the Charter.

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