



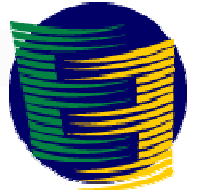
# **Investment Regime of the Energy Charter Treaty: Instrument of Energy Security**

**Dario Chello**

**Director for Investment and Energy Efficiency**

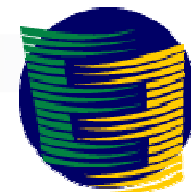
**Energy Charter Secretariat**

**Geneva, 18 November 2009**



# Outline

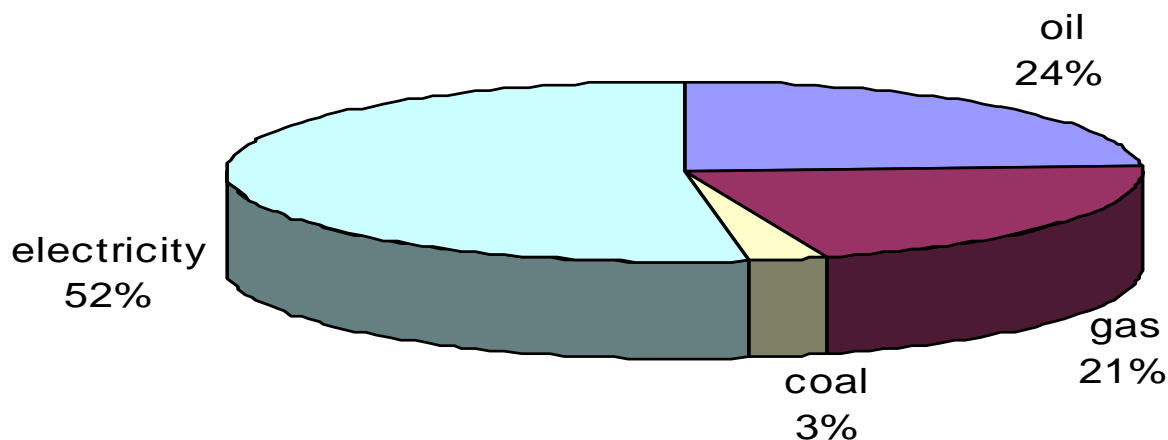
- Energy security challenges linked to investment
- Global / multilateral aspects of investments
- ECT as an existing and applied multilateral investment protection treaty
  - The Energy Charter and the Energy Charter Treaty
  - Coverage
  - Protection offered by the ECT
  - Known arbitration cases
- The Energy Charter: open to meet new challenges



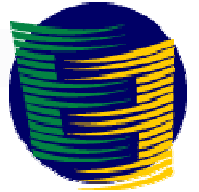
# Availability of energy in long term is contingent on investment

## World Energy Investment by Sector

Total energy investment estimated for 2007-2030:  
\$26 trillion in the year 2007 dollar

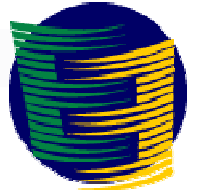


Source: IEA WEO 2008



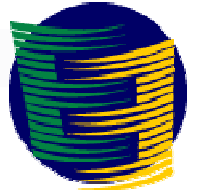
# Characteristics of Energy Investment

- Global markets and global investments
- Large-scale investments
- Capital-intensive projects
- Large initial investments
- Many project participants
- Long project lives
- Technology driven
- High specificity
- Part of a supply chain

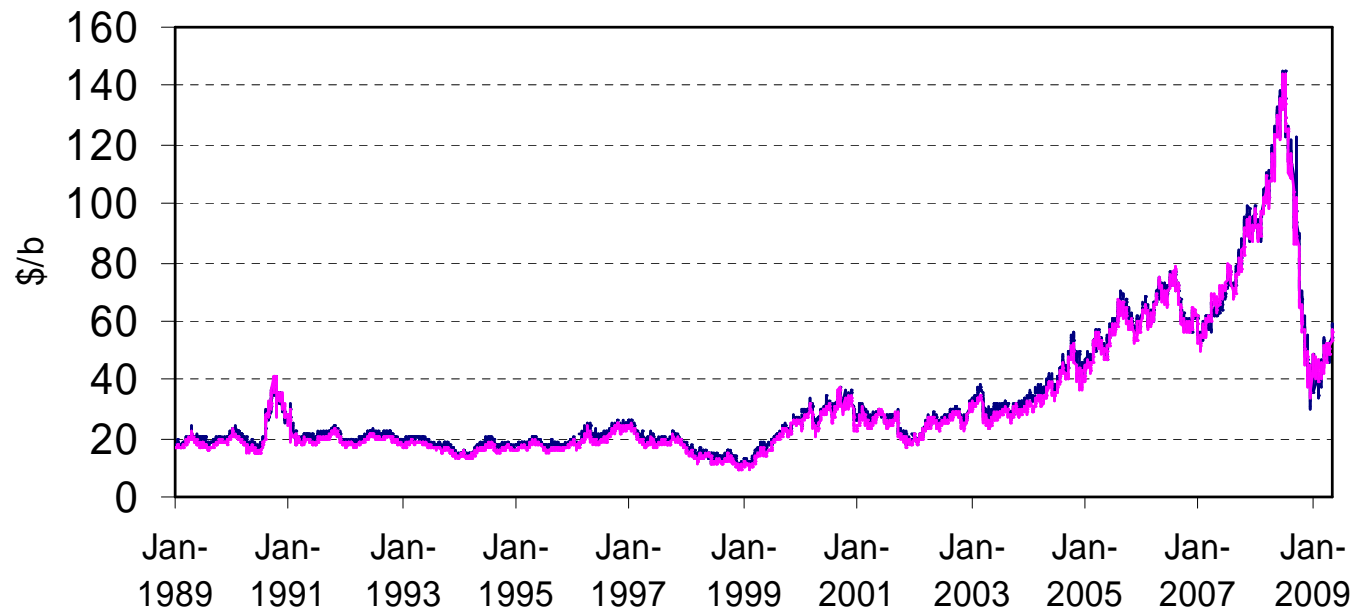


# Risks Associated with Energy Investment

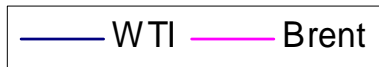
- Economic risks
  - Macroeconomics conditions
  - Energy prices
  - Construction
  - Operation
  - Foreign currency Exchanges
- Other risks
  - Natural disasters
  - Civil unrests, wars
  - Strikes
- Political/legal risks
  - Geopolitics
  - Related regulations
  - Environmental policies
  - Profit transfer
  - Taxes
  - Expropriation
  - Jurisdiction
- Need for investment protection:
  - De facto, rating etc
  - By treaty

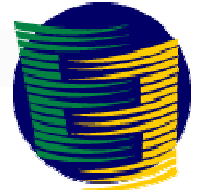


## World Crude Prices (Jan 1989-May 2009)



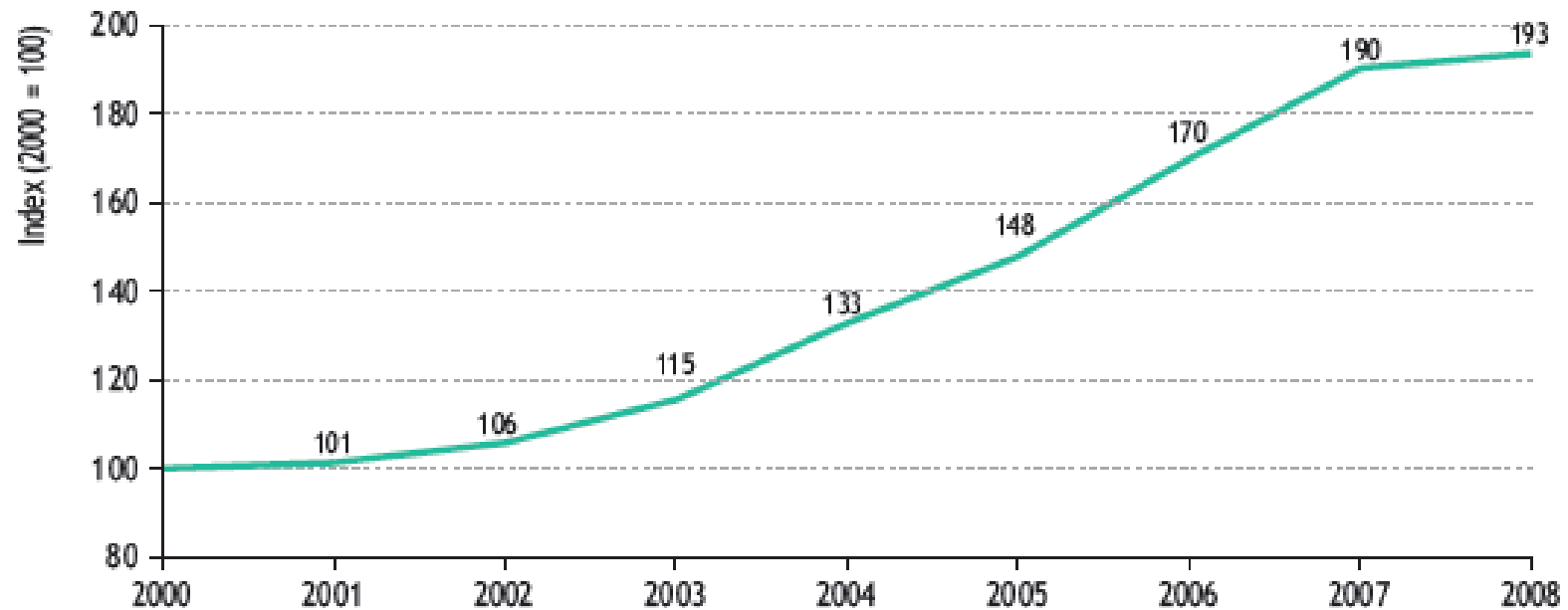
Source: USDOE/EIA



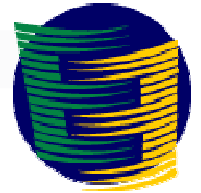
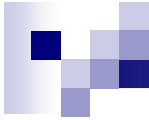


# Upstream Costs

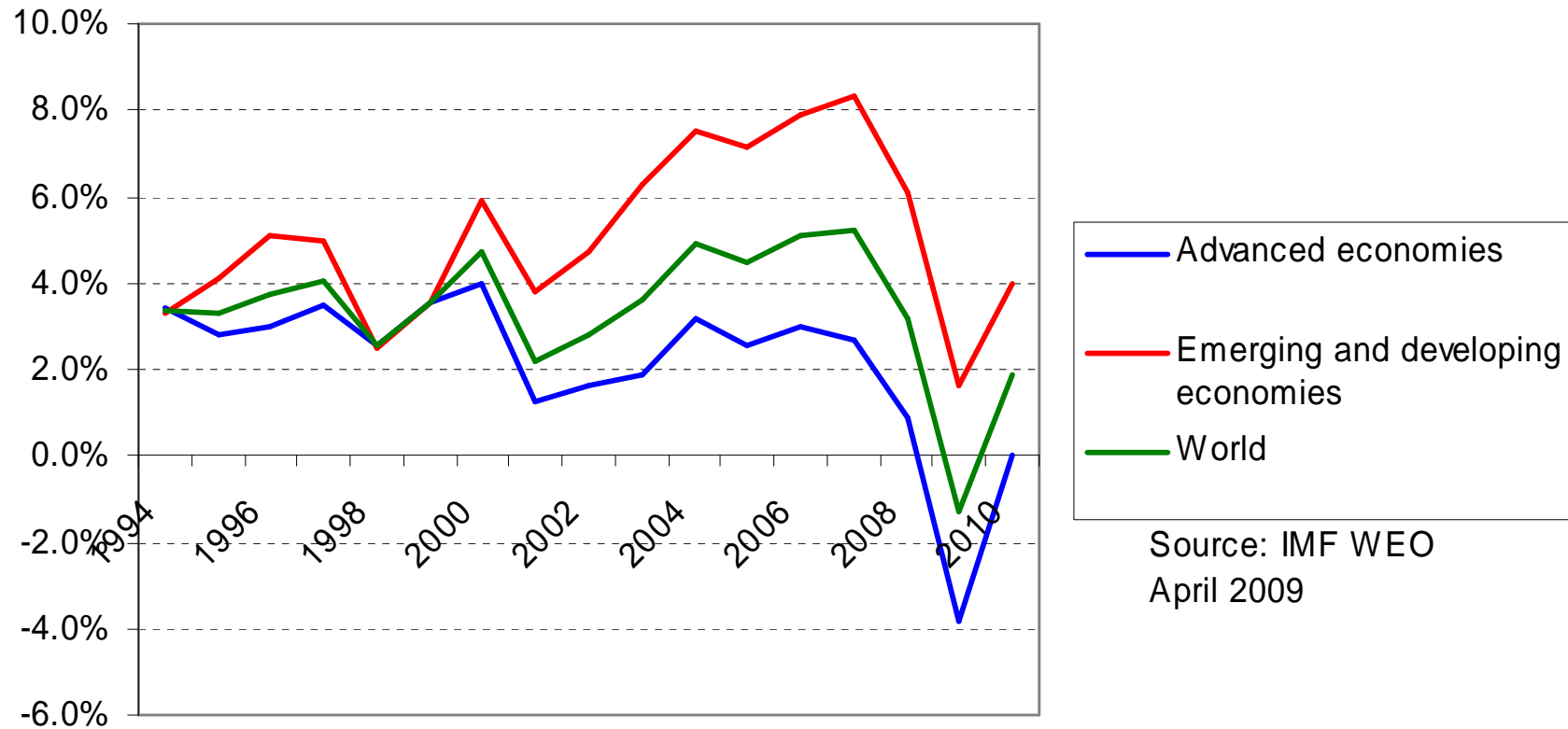
**Figure 13.11** • IEA Upstream Investment Cost Index by activity



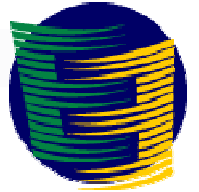
Source: IEA database and analysis.



## GDP Growth (1994-2010)

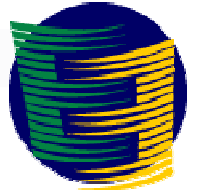


Source: IMF WEO  
April 2009



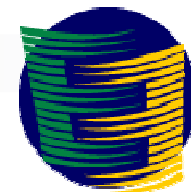
# A Difficult Time for Energy Investment

- Economic downturns and the banking sector crisis having detrimental affects on energy investment
- Private banks losing the capability to finance large projects, such as energy projects, after the crisis started in September 2008
- Project feasibility becoming increasingly uncertain in the volatile markets



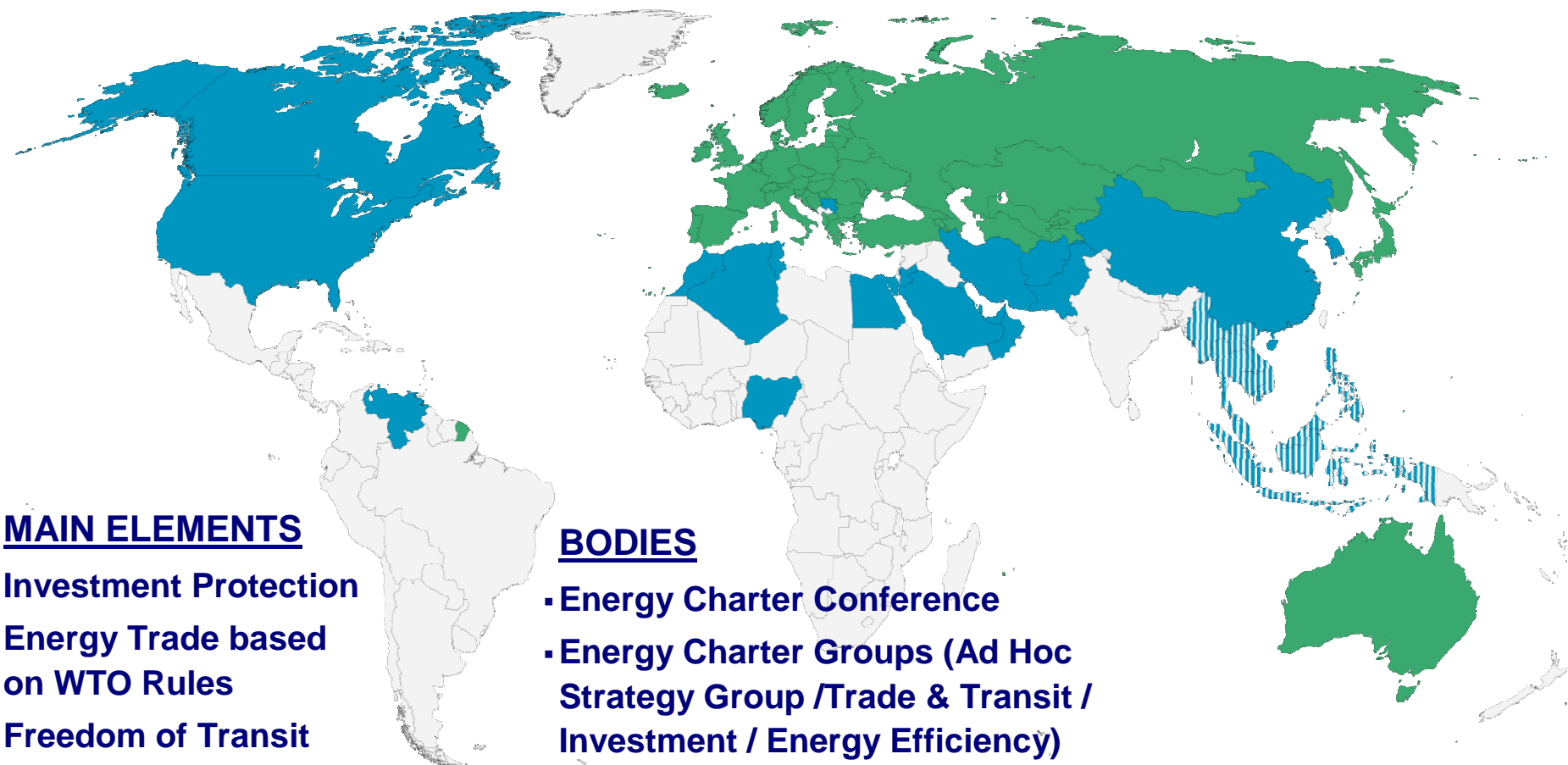
# Advantage of a Multilateral Framework

- Replaces  $n \times (n-1) / 2$  bilateral investment treaties
- Sets a (minimum) protection standard for energy investment
- Reflects the global character of financing and procurement
  - All participants in a project from member countries enjoy the same minimum protection
  - Transparent standard
  - By definition symmetric upstream / downstream protection
- Joint adaptation possible to meet new developments



# The Energy Charter Treaty

1994: Signature      1998: In Force



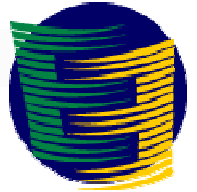
## MAIN ELEMENTS

- Investment Protection
- Energy Trade based on WTO Rules
- Freedom of Transit
- Energy Efficiency
- Dispute Settlement

## BODIES

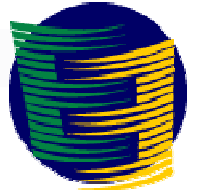
- Energy Charter Conference
- Energy Charter Groups (Ad Hoc Strategy Group / Trade & Transit / Investment / Energy Efficiency)
- Energy Charter Secretariat
- Industry Advisory Panel

- signatory
- observer



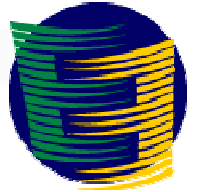
# ECT Investment Protection

- **Strong Protection for Foreign Investment**
  - Binding NT/MFN obligation for post-establishment phase, elimination of QR, TRIMs (e.g. national content)
  - Best-efforts to promote NT/MFN for pre-investment phase
  - Freedom of investment-related capital transfers
  - Protection of individual investment contracts
  - Freedom of employment of key personnel
- **Protection Against Political Risks**
  - Expropriation and nationalization
  - Prompt, effective and adequate compensation for any assets expropriated
  - Breach of individual investment contracts
  - Unjustified restrictions on the transfer of funds
- **Monitoring / Review Process**



# Definition of “Investment” and “Investor”

- **Investment**: Every kind of asset (e.g. shares, claims to money, intellectual property, licenses, concessions);
- **Investor**: natural persons of a CP (including permanent residents), and companies/organisations organised in accordance with the laws of a CP.



# Protection Continues after Withdrawal

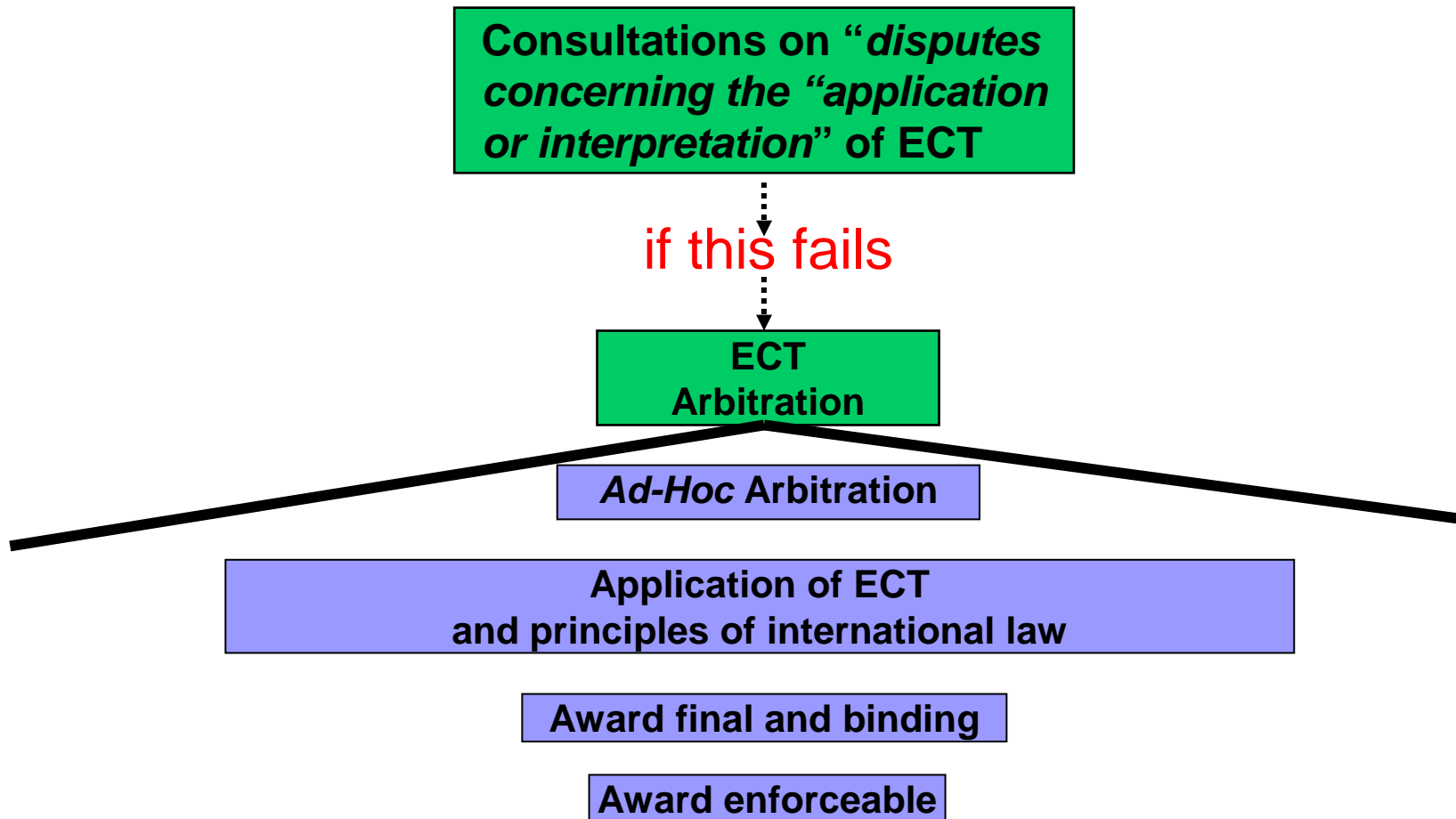
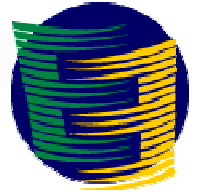
## Art 45(3) b:

In the event that a signatory terminates provisional application under subparagraph (a), the obligation of the signatory under paragraph (1) to apply Parts III [*investment*] and V [*Dispute settlement*] with respect to any Investments made in its Area during such provisional application by Investors of other signatories shall nevertheless remain in effect with respect to those Investments for **twenty years** following the effective date of termination, except as otherwise provided in subparagraph (c).

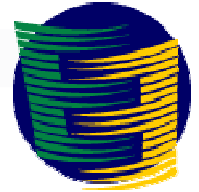
## Art 47 (3)

The provisions of this Treaty shall continue to apply to Investments made in the Area of a Contracting Party by Investors of other Contracting Parties or in the Area of other Contracting Parties by Investors of that Contracting Party as of the date when that Contracting Party's withdrawal from the Treaty takes effect for a period of **20 years** from such date.

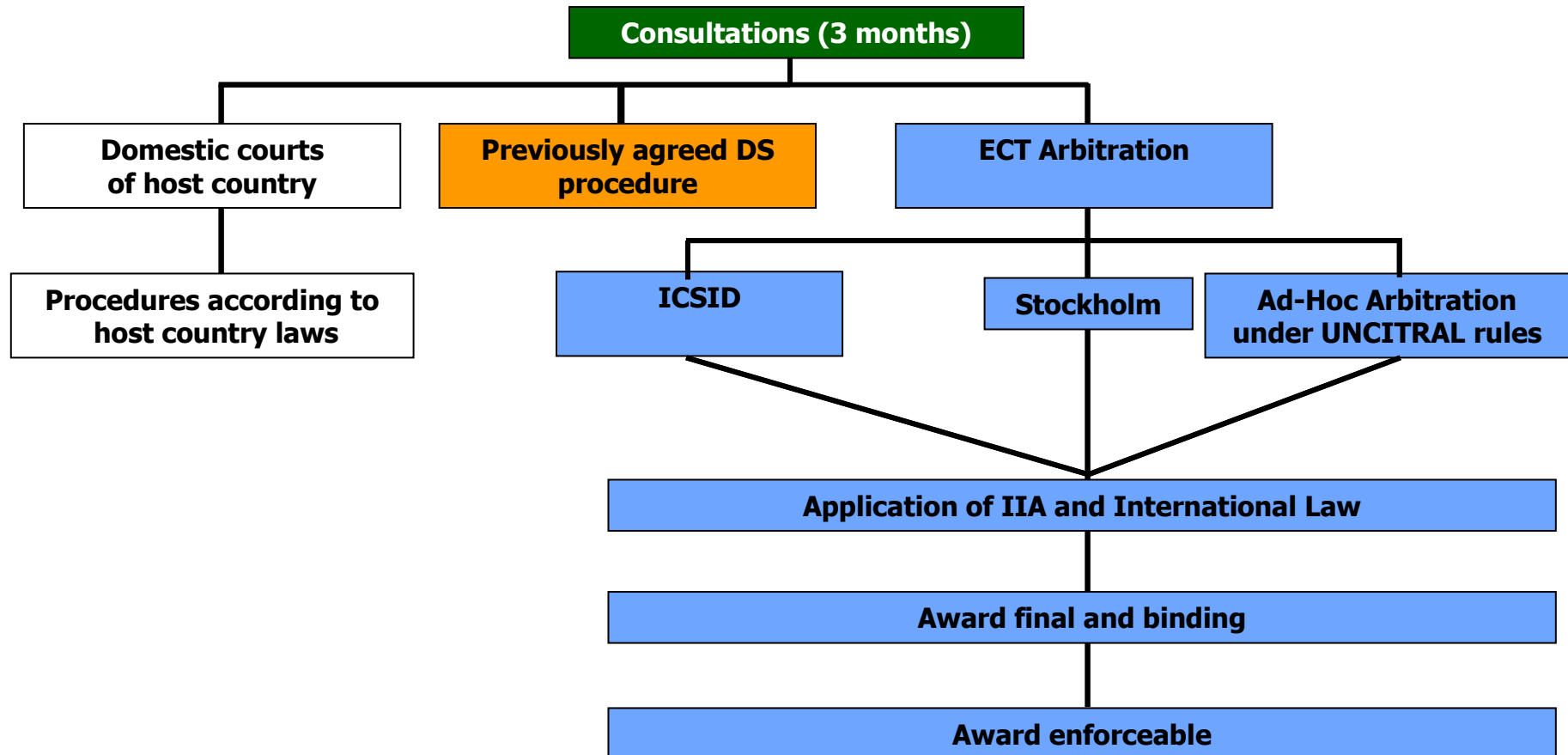
# State-State Dispute Settlement

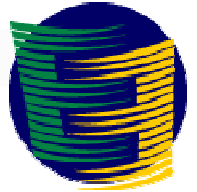


# Investor-State Dispute Settlement



## 21 Cases Known to the Secretariat





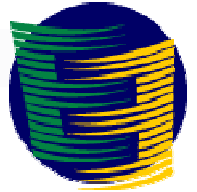
# The Energy Charter: Open to Adaptation

## ■ **Art.33.1 negotiation of new instruments**

“The Charter Conference may authorize the negotiation of a number of Energy Charter Protocols or Declarations in order to pursue the objectives and principles of the Charter.” [*=Energy Charter of 1991*].

## ■ **Creation of the Ad Hoc Strategy Group in 2007**

- to serve as a forum for discussion on strategic issues relevant in the context of the Charter and the ECT
- to foster favourable conditions for the promotion of the principles of the Charter (among which improving security of energy supply)
- to discuss horizontal issues, such as energy security
- to advise on strategic policy direction to be implemented through the Charter’s working Groups
- to identify potential inexactness and unclearness of certain ECT provisions and develop adequate proposals on how to resolve these challenges.



## The Way Forward

- Promoting an open and competitive energy market
- Avoiding the temptation of protectionism in the economic downturns
- Importance of multilateralism in the global market
- Protection of investment crucial for energy security
- The ECT a proven multilateral instrument of investment protection, to further build on



**Thank you for your attention!**