



# The Energy Charter and its Modernization

**Geneva, 25 November 2010**

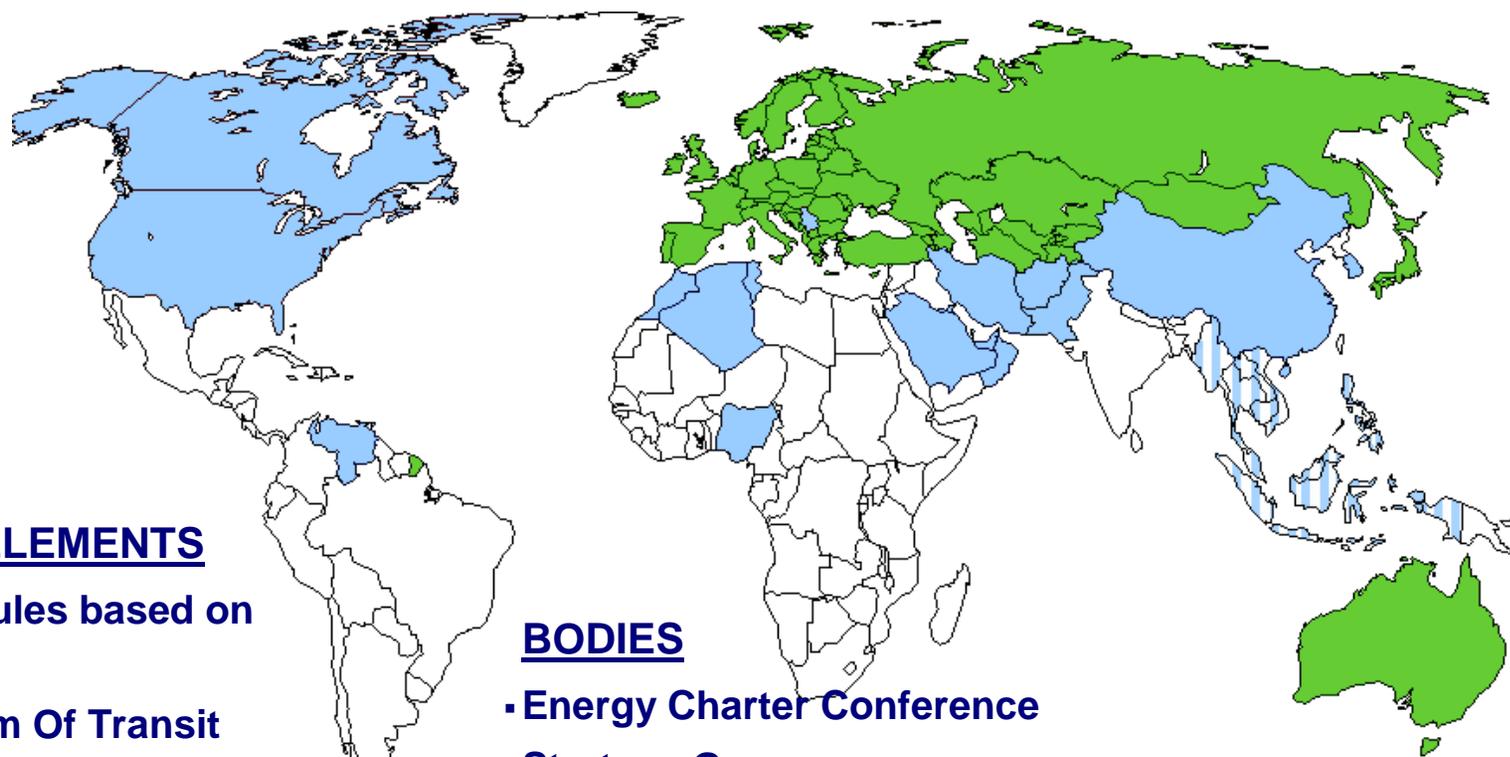
**Odd Sverre Haraldsen**

Ministry of Petroleum and Energy of Norway  
Chairman of the Energy Charter Strategy Group



# The Energy Charter Treaty

## 1994: Signature      1998: In Force



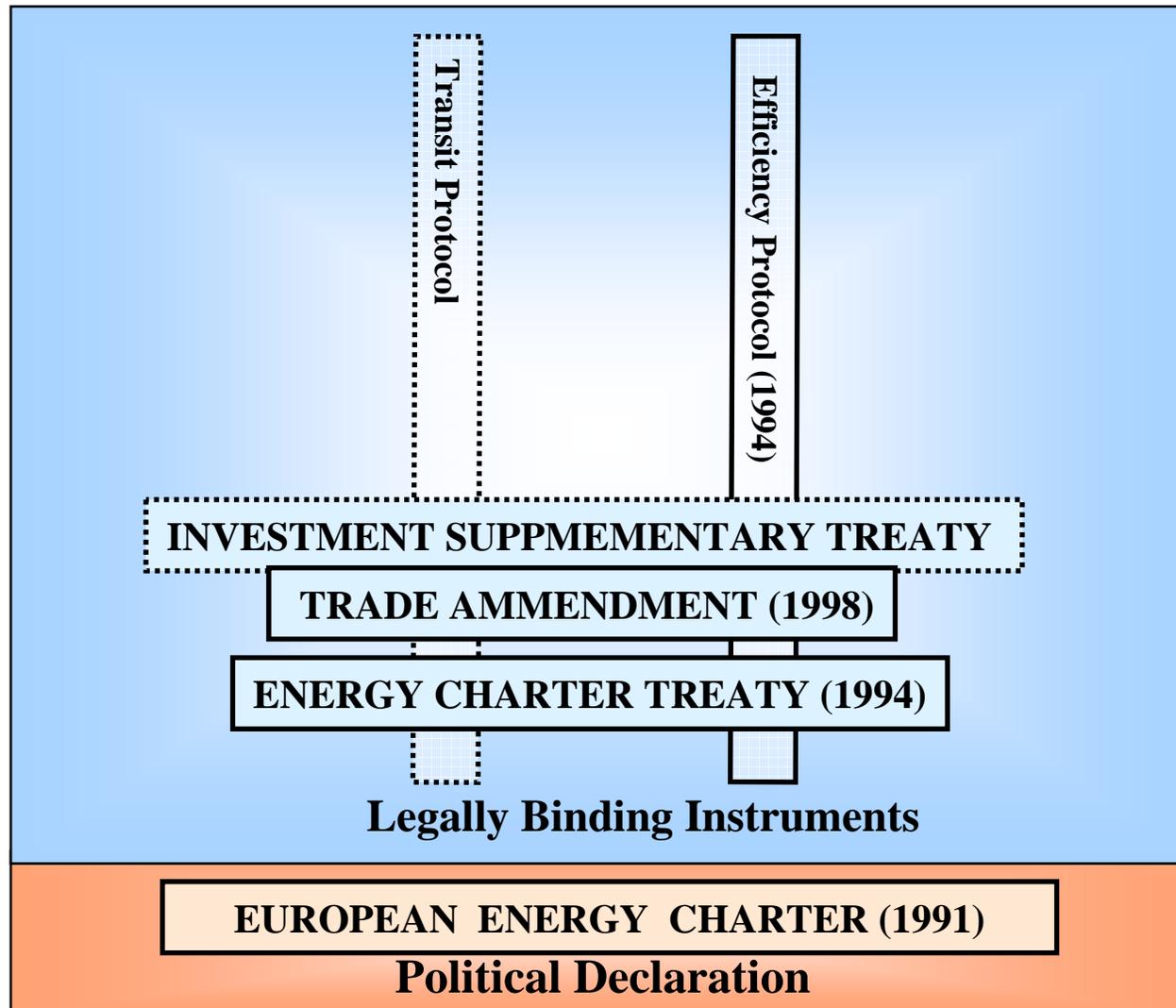
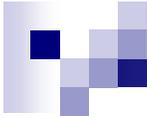
### MAIN ELEMENTS

- Trade rules based on WTO
- Freedom Of Transit
- Investment Protection
- Energy Efficiency
- Dispute Settlement

### BODIES

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

- signatory
- observer



- in force



- negotiations continue or not finished



# Binding provisions of the Energy Charter Treaty (I)

- **Trade rules** applying by reference WTO rules to all energy trade, also between CPs that are not WTO members; energy-related equipment covered following the entry into force of the Trade Amendment in January 2010; possibility to move to binding tariffs regime
- **Freedom of Transit**, national provisions to treat transit no less favourable than import or export, no obstacles to the creation of new capacity in energy transport facilities, security of established flows
- **Investment promotion and protection**: Binding NT/MFN obligation for post-establishment phase, protection against expropriation, nationalization and breach of individual investment contracts



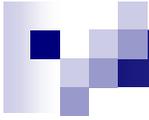
# Binding provisions of the Energy Charter Treaty (II)

- **Environment;** Protocol on **Energy efficiency** and Related Environmental Aspects
- **Dispute settlement:**
  - Ad hoc arbitral tribunal for State – State disputes concerning the application or interpretation of the ECT
  - International arbitration for disputes between a contracting party and an investor or another contracting party
  - Conciliation for transit disputes
  - Interim provisions for trade dispute settlement
- **Other provisions:**
  - Competition
  - Transfer of technology
  - Access to capital
  - Sovereignty over energy resources
  - Transparency

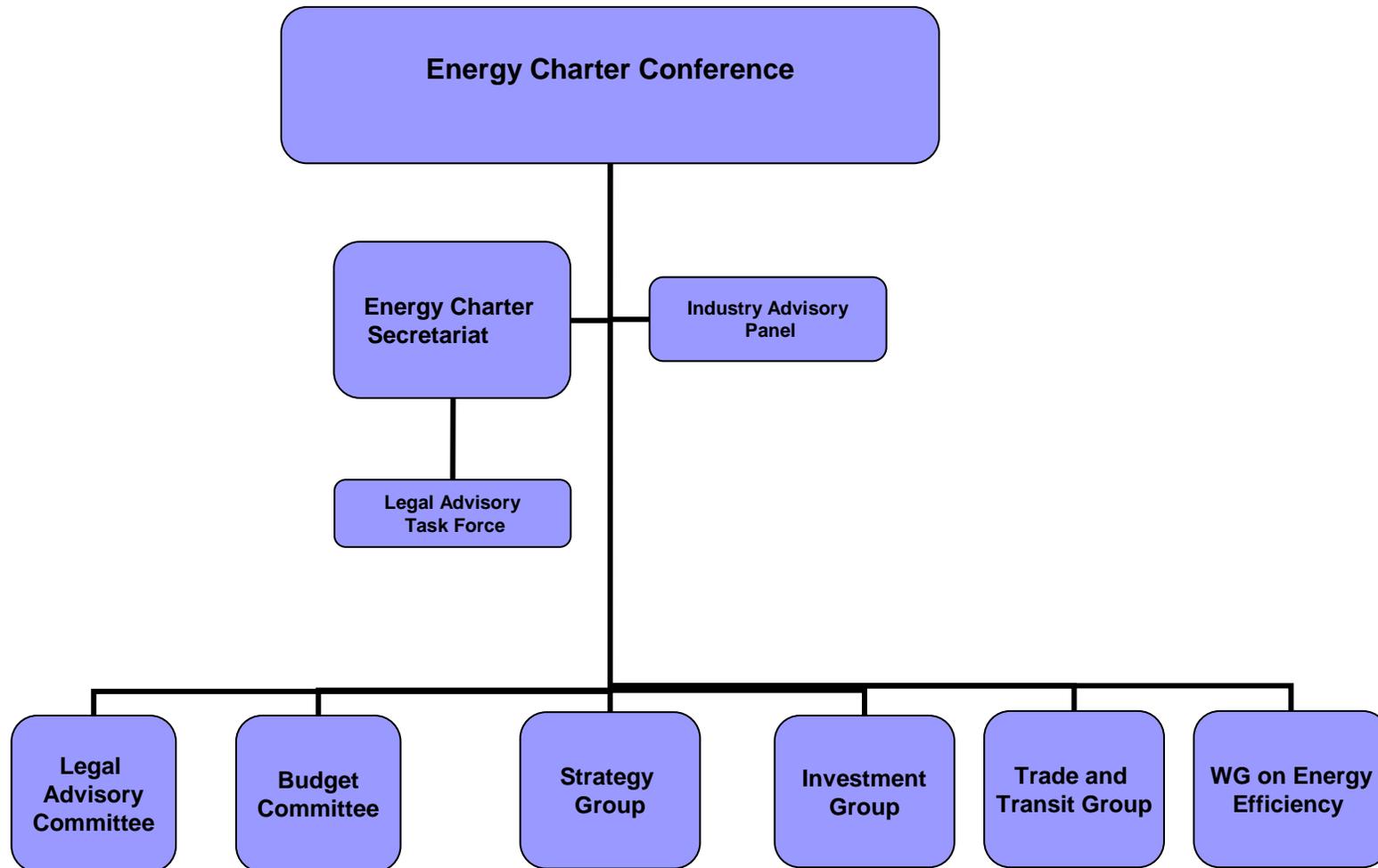


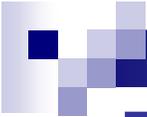
# The Role of the Energy Charter

- **Energy Charter**
  - Members: Energy consumers, producer, transit countries
  - Open to all countries
  - Legally binding multilateral instrument with enforceable rules / minimum standards
  - Transit provisions
  - Protection of site specific investment
  - Foster trade in energy & energy equipment
  - Forum / knowledge sharing for all countries along the energy chain / with different experience
- **UNECE Sustainable Energy Committee**
  - UNECE countries
  - Policy forum
  - Energy efficiency, gas, resource classification
- **IEF**
  - Producer / consumer countries
  - Global oil focus
  - Statistics and forum for policy discussion on global oil
- **OPEC**
  - Oil producer countries
  - Output / Export quotas
  - Statistics, analysis
- **IEA**
  - OECD countries
  - 90 days oil stocks
  - Counter part to OPEC
  - Statistics
  - Analysis
  - Policy discussion



# Energy Charter Institutions





# Energy Charter Strategy Group and the modernization process

- **Ad Hoc Strategy Group** established by the Conference in 2007 to deal with new challenges
- **Major challenges** identified in 2008: Climate change, changes in global market balance, energy security, investment issues, energy transit, energy efficiency and market structure
- **Discussions** in 2009 on the January 2009 gas crisis and President Medvedev's "Conceptual Approach to the new legal framework for energy cooperation" as part of the discussion on the modernization of the Energy Charter Process
- **Review under Art. 34(7) ECT in 2009**: commitment to the Treaty and acknowledgement of its achievements; recognition of the need to modernize the Charter Process in the face of the rapid evolution of the international energy challenges
- **Modernization** envisaged by Rome Statement of 9 Dec 2009. Establishment of the **Strategy Group** as a Standing Group



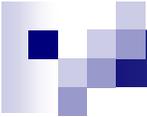
## Discussion on the modernization of the Energy Charter Process

- Basis for discussion on modernization in 2010: **Rome Statement** of 9 Dec 2009, the **G8-declaration** on energy security of 2006, “**Conceptual Approach**” and other strategic documents
- Aim to address new challenges to energy security on the basis of the Charter’s **core competences**
- Mandate of the Strategy Group to **promote the ECT** and to examine options for **modernization of the Energy Charter Process**



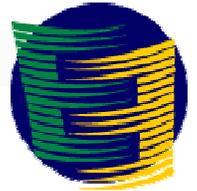
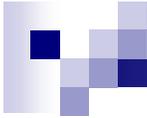
## Road Map for the Modernization of the Energy Charter Process (I)

- Road Map prepared by the Strategy Group, approved by the Conference on 24 Nov 2010, as an instrument to modernize the ECT-process and guide the work towards 2014
- Open to discuss new initiatives, such as a draft “Convention on Ensuring International Energy Security”



## Road Map for the Modernization of the Energy Charter Process (II)

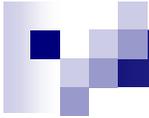
- Areas for action:
  - A: Promotion of Energy Charter and ECT
  - B: Transit/cross-border trade
  - C: Emergency response
  - D: Investment
  - E: Energy Efficiency
  - F: Policy Forum
  - G: Management, finance and legal affairs



## Road Map Area A

### Promotion of Energy Charter and ECT

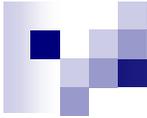
- Objective: targeted expansion and consolidation of the ECT's geographical scope
- Elaboration of an Integrated Energy Charter Policy on **Expansion, Outreach and Consolidation**
- A clear vision on the complementary role of the Energy Charter in relation to other organizations



## Road Map Area B

### Transit/cross-border trade

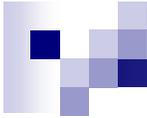
- Objective: expeditious conclusion of the negotiations on the **Transit Protocol**
- Clarification of the relationship of the draft Transit Protocol with EU legislation



## Road Map Area C

### Emergency response

- Objective: solving controversies in case of emergency in the context of common implementation mechanisms of the ECT
- Options for enhanced state-to-state arbitration (**fast-track arbitration** under Art.27 ECT)
- Assessment of the role of the **Conciliator** (Art. 7(7)) ECT
- Contribution by the Charter Conference to early warning mechanisms, preventing and settling disputes not excluded



## Road Map Area D

### Investment Promotion and Protection

- Objective: complementing the effectiveness of ECT provisions in view of major trends affecting investments into the energy sector
- Policy recommendations with regard to **entry regulations** for foreign investments
- Analysis of the scope for a **Model Investment Agreement**
- Assessment of ECT's provisions with regard to climate change and promotion of low-carbon investments



# Road Map Area E

## Energy Efficiency

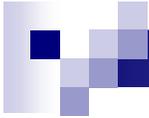
- Objective: Co-operation with other organizations to maximize the effects of current activities within each organization
- **Identify common areas of interest and co-operation, e.g.:**
  - Joint events, reports, exchange of deliverables
  - Synergies with IEA/OECD with regard to energy efficiency policy reviews
  - Implementation of recommendations of PEEREA Reviews under the UNECE "Global Energy Efficiency 21" project
  - Increased benefit for States from PEEREA Reviews in the context of their efforts to address climate change



## Road Map Area F

### Policy Forum, Interdependence, Energy Security

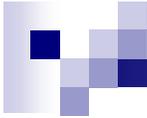
- Objective: Contribution for strengthened **partnership** between all relevant stakeholders to enhance global energy security and interdependence
- Discussion of inputs from members, observers or other interested states or organizations
- Analytical work with other subsidiary bodies
- Participation of Strategy Group in consultations on possible enhanced legal frameworks
- Dialogue with the industry



## Road Map Area G

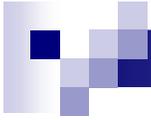
Management, finance and legal affairs

- Objective: Full targeted support by the secretariat and working groups to the Conference in carrying out its duties
- Streamlined steering processes to be more effective



## Conclusion

- The Energy Charter remains an important political instrument and valid as a legal framework
- New challenges to the energy sector are being recognized
- Modernization process is under way; may open new prospects to consolidate and to enhance co-operation with outreach to new partners



# Back up

# Energy Charter Conference and its subsidiary bodies



- **Energy Charter Conference:** Governing and decision making body, members and observers, meeting annually
- **Review and facilitation** of the implementation of the principles of the Charter of 1991 and of the provisions of the Treaty and the Protocols
- **Authorizes negotiation and adopts** Protocols, Declarations, association agreements, amendments to the Treaty, decides on accessions to the Treaty
- May establish **subsidiary bodies**
- Assisted by the **Secretariat**