

# **EMERGING ENERGY SECURITY RISKS AND RISK MITIGATION: THE ROLE OF INTERNATIONAL LEGAL FRAMEWORK**

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**Panel Session on “Energy Security: Emerging Energy Security Risks and Risk Mitigation  
- A Global Overview and Global Energy Security and the Caspian Sea region”**

**UNECE Committee on Sustainable Energy, 15<sup>th</sup> Annual Session**  
**Special Focus: “Sustainable Energy Policies: the Key to Energy Security”**

**28-30 November 2006, Geneva**

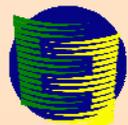
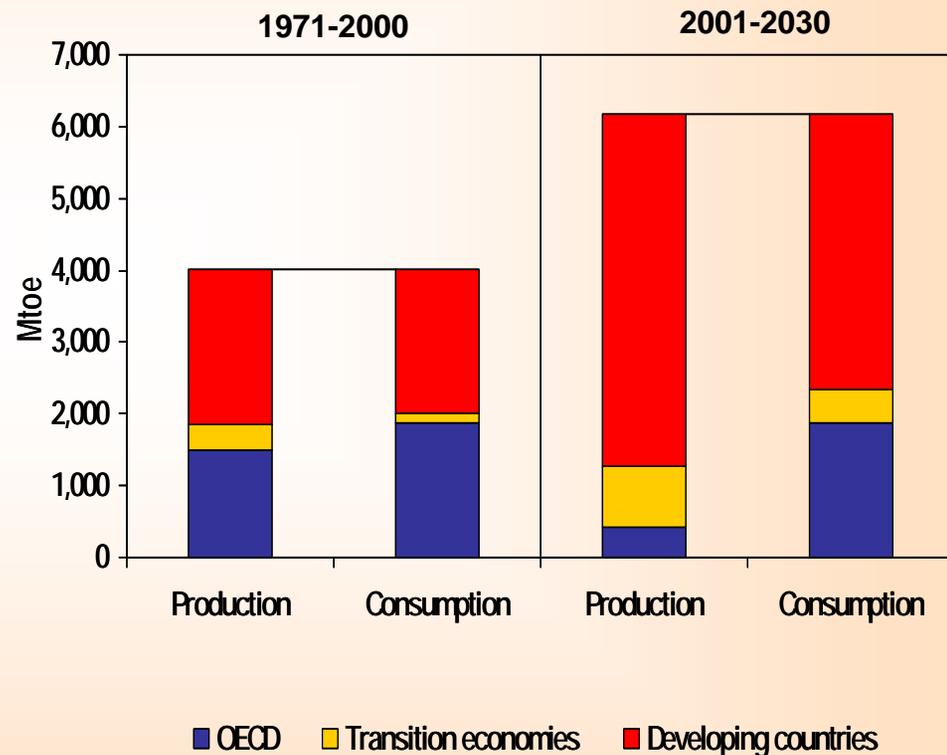
# GLOBAL ENERGY TRENDS: WHY NON-OECD IMPORTANT

## 2001-2030:

- Increase in energy production:  
95% outside of OECD
- Increase in energy consumption:  
70% outside of OECD
- Cumulative energy investment:
  - 50% from non-OECD to non-OECD markets, and
  - 10% from non-OECD to OECD markets

## Increase in World Energy Production and Consumption

(Source: IEA WEIO 2003)



# ENERGY SECURITY AND DIVERSIFICATION

## Diversification :

- of supply routes (“multiple pipelines”)
- of sources of supplies (“multiple suppliers”)
- of markets and routes to access them

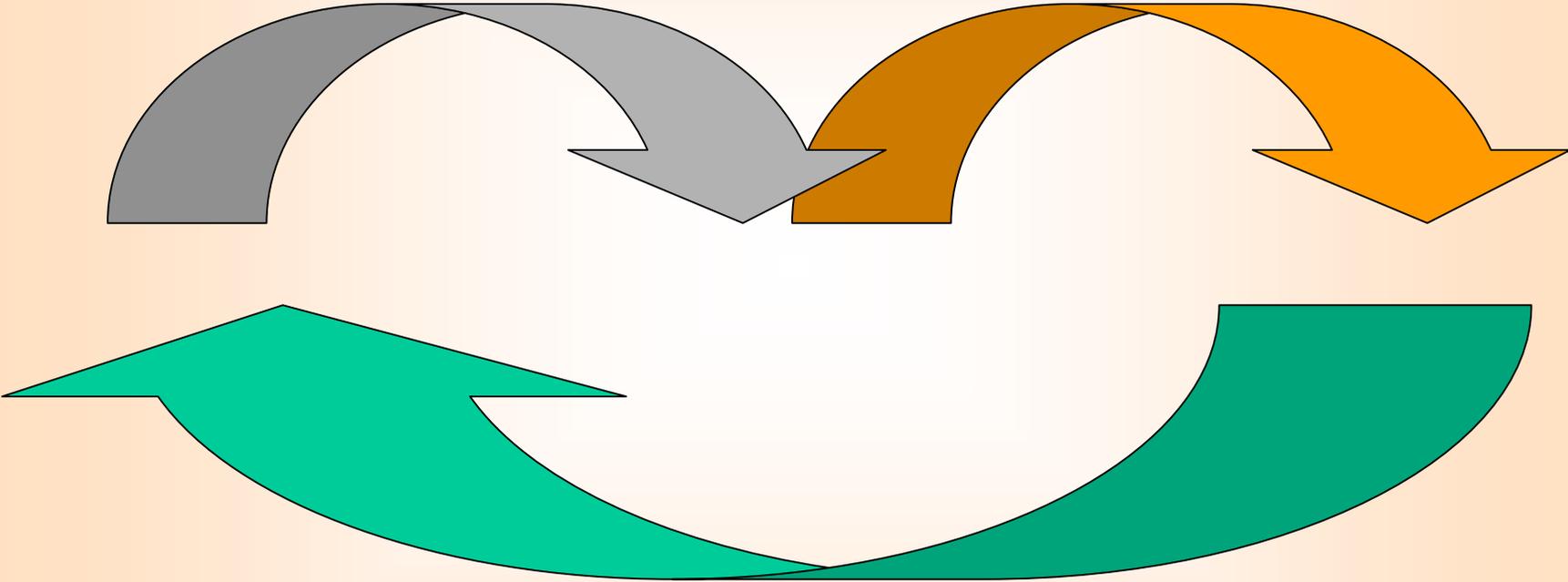
**=> to be based on balance of interests of *all* players throughout whole energy value chain: *producers, consumers, transit states***



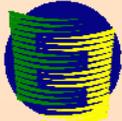
# ECONOMIC “CIRCLE OF LIFE” OF ENERGY PROJECTS

**INVESTMENT**

**ENERGY**



**REVENUE**



# **FULL INVESTMENT CYCLE AND ENERGY SECURITY**

**Full investment cycle in energy =**

**investment flows,**

**+ energy flows,**

**+ revenue flows**

**=> Balanced approach to energy security =**

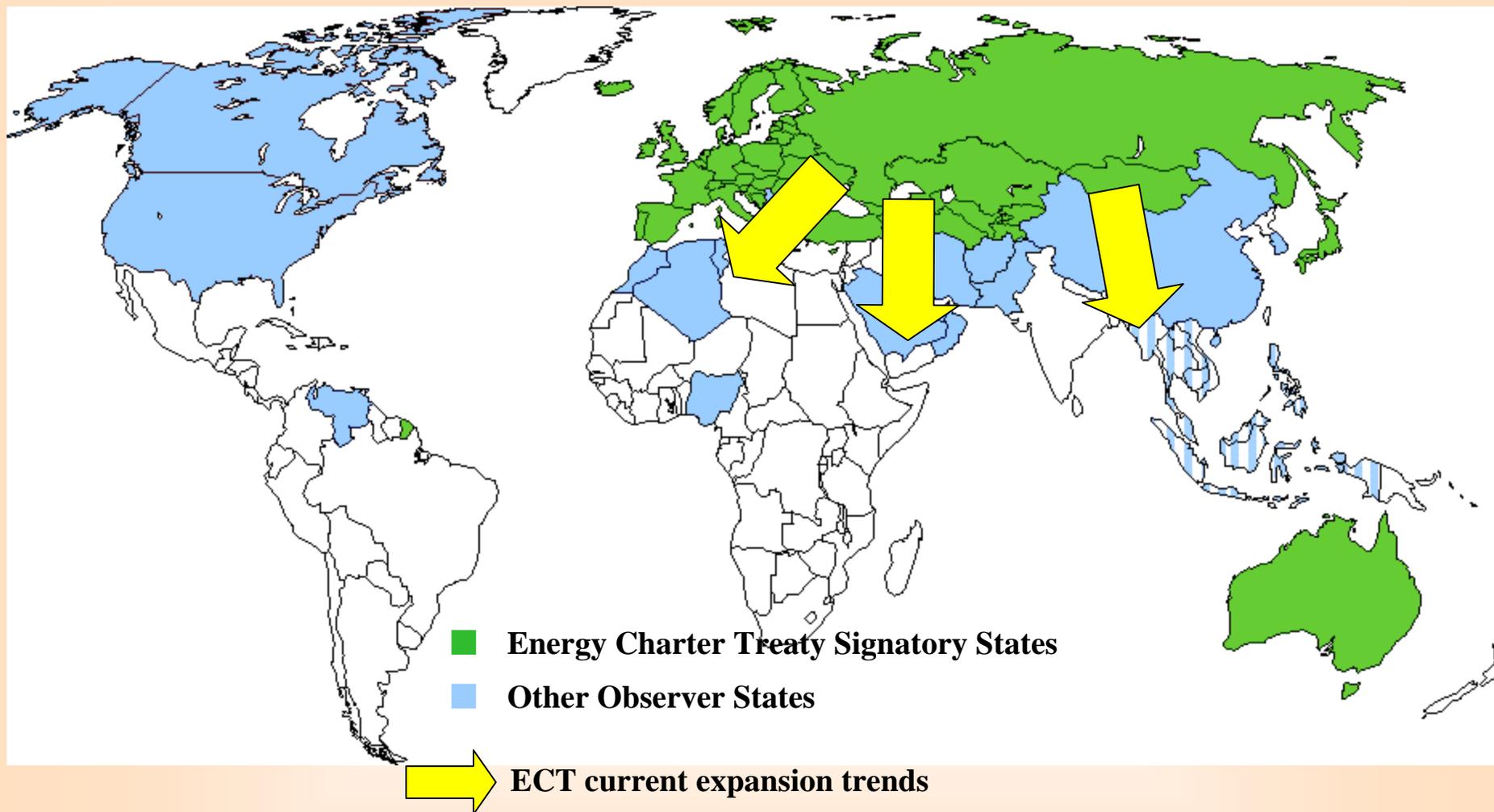
**security of supplies (incl. access to resources),**

**+ security of transportation (incl. access to infrastructure),**

**+ security of demand (incl. access to the markets).**



# ENERGY CHARTER PROCESS: GEOGRAPHICAL DEVELOPMENT



1. From trans-Atlantic political declaration to broader Eurasian single energy market
2. ECT expansion - objective and logical process based on clear economic and financial reasoning

Dr. A. Konoplianiuk, UNECE Comm. on Sustainable Energy, 15th Annual Session. 28-30.11.2006 - Figure 5



## **RUSSIA'S ECT RATIFICATION HISTORY**

- **Russia started ratification procedure in 1996**
- **Evolution of RF State Duma position:**
  - **1997: No – but linked to WTO accession,**
  - **2001: Russia will ratify ECT, but not yet (depending on finalisation of Transit Protocol which is to address Russia's concerns on transit)**
- **Major Russia's concerns regarding ECT ratification relates to gas transit issues or to the issues outside the scope of the ECT**
- **Successful finalisation of Transit Protocol = key to reopen ECT ratification issue**



**Thank you for your attention!**

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# Back-up slides

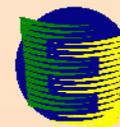


## **ENERGY ECONOMY: DEMAND FOR QUALITY OF REGULATORY FRAMEWORK**

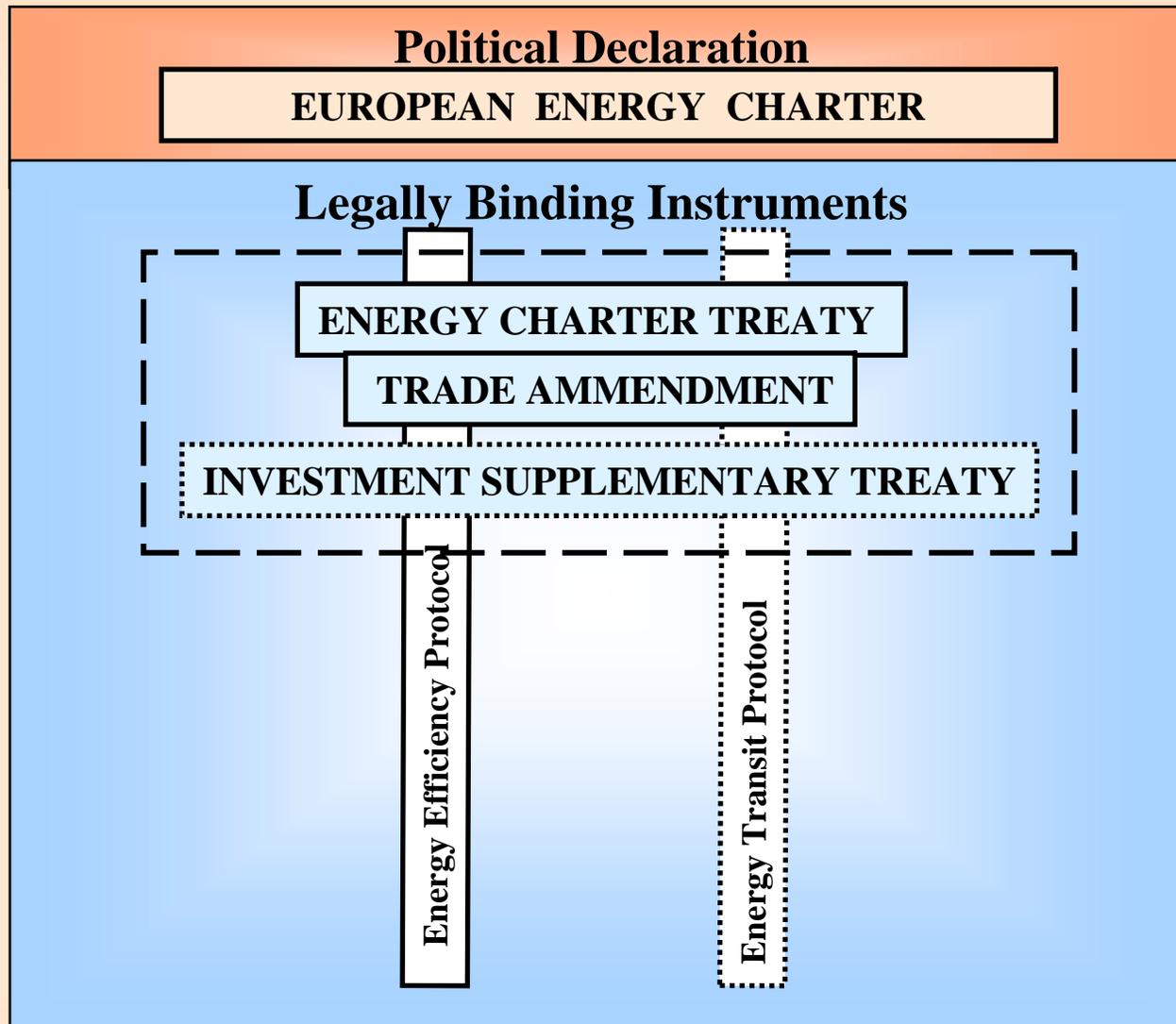
### **Energy projects (compared to other industries):**

- Highest capital intensity (absolute & unit CAPEX per project),**
- Longest project life-cycles,**
- Longest pay-back periods,**
- Geology risks (+ immobile infrastructure, etc.),**
- Highest demand for legal & tax stability,**
- Role of risk management.**

**=> Higher/highest demand for “quality” of legal and regulatory framework compared to other industries**



# ENERGY CHARTER AND RELATED DOCUMENTS



- in force



- negotiations not finished yet



## ENERGY CHARTER SPECIFIC ROLE

- **Energy Charter *Treaty*:**

- **Unique coverage of different areas for *energy* cooperation:**

- investment, trade, transit, energy efficiency, dispute settlement,
- energy materials & products + energy-related equipment,
- 51 member-states (52 CPs) + 19 observer-states + 10 observer international organisations

- **First and only one multilateral investment agreement with high standard of investment protection, incl. dispute settlement**

- **Energy Charter *process*:**

- ***Implementation* of ECT,**

- **Specialized forum for “*advanced*” discussion of the issues of energy markets evolution that *might create new risks* for development of energy projects in ECT member-states,**

- **Platform for *preparation of new legally binding instruments* to diminish such risks within ECT member-states (e.g. broadening & deepening of ECT & upgrading its “*minimum standard*”).**



## SELECTED INTERNATIONAL INVESTMENT-RELATED AGREEMENTS

Organisation (member- states/CPs)	Legal Status	Scope	Investment	Trade	Transit	Energy Efficiency	Dispute Settlement
<b>ECT (52/53)</b>	<b>LB</b>	<b>Energy</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>WTO (149)</b>	<b>LB</b>	<b>General</b>	<b>(Yes?) (Services)</b>	<b>Yes</b>	<i>Yes/No*</i>	<i>No</i>	<b>Yes</b>
<b>NAFTA (3)</b>	<b>LB</b>	<b>General</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<b>Yes</b>
<b>MERCOSUR (4)</b>	<b>LB</b>	<b>General</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<b>Yes</b>
<b>OECD (30)</b>	<b>LB</b>	<b>General</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>
<b>APEC (21)</b>	<i>Non- LB</i>	<b>General</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>	<i>No</i>

\* application of GATT Art.V to grid-bound transportation systems is under debate

=> Plus specialised energy-related organisations: OPEC, IEA, IEF, UN ECE (broader than just energy), IAEA, ...

=> Plus specialised “regional” organisations: BSEC, BASREC, ...



## **ECT EXPANSION PROCESS: ASIAN DIMENSION DOMINATES**

- **New ECT members:**

**Mongolia – 1999**

- **New ECT observers:**

**China – 2001**

**Korea Rep. – 2002**

**Iran – 2002**

**Nigeria – 2003**

**ASEAN – 2003**

**Pakistan – 2005 (“CP elect” 20.11.06)**

**Afganistan – 2006**

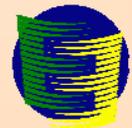


# **KEY ARGUMENTS AGAINST ECT RATIFICATION IN RUSSIA**

**– related to the substance on ECT**

## **Opponents, as if:**

- **ECT demands mandatory TPA to Gazprom’s pipelines for cheap gas from Central Asia**
  - **No such obligation. ECT excludes mandatory TPA (ECT Understanding IV.1(b)(i)). Transit is only one of the available options (+ on-border purchases, swaps)**
- **Obligation to transit Central Asian gas through Russia at low (subsidised) domestic transportation tariffs**
  - **No such obligations (ECT Article 7(3)). Transit and transportation are different in non-EU states (it being further clarified in draft Transit Protocol)**
- **ECT will “kill” LTCs**
  - **Not true. ECT documents do not deal with LTC as such at all. Economic niche for LTCs will become more narrow due to objective reasons, but they will continue to exist as a major instrument of financing Greenfield oil & gas projects. ECT supports LTC by diminishing political and regulatory risks.**



# KEY ARGUMENTS AGAINST ECT RATIFICATION IN RUSSIA

– *non*-related to the substance of ECT

**Opponents: ECT does *not* address/solve/regulate problems of:**

- **Bilateral RF-EU trade in nuclear materials**
  - Prior to ECT signing in Dec.1994, RUF and EU has agreed in July 1994 to regulate nuclear trade between them on a bilateral basis (RUF-EU PCA, Art. 22). Bilateral declaration in the ECT Final Act. This concern raised again by RUF as result of EU expansion. Lack of bilateral progress under PCA is not a fault of multilateral ECT.
- **Black Sea straits**
  - 1936 Montreaux Convention on the regime of Turkish Straits sets forth freedom of passage and navigation,
- **Maritime transit of oil & products**
  - Maritime transportation is covered by the UN Convention on the Law of the Sea
- **Most recent: ECS was silent during RUF-UA gas dispute**
  - Not true. ECS SG letter to RUF & UA & EU as of Jan 3, 2006 (re conciliation procedure), etc.
- **Most recent: Supplementary Treaty not finished**
  - Russia is not ready today for implementation of national treatment at pre-investment phase (draft Law “On Subsoil”)

