

Strengthening regional co-operation in Central
Asia for promoting stable and reliable energy
within Eurasia

Panel on Legal Framework

Dr. Karin Kneissl/Webster University
Austria

Survey

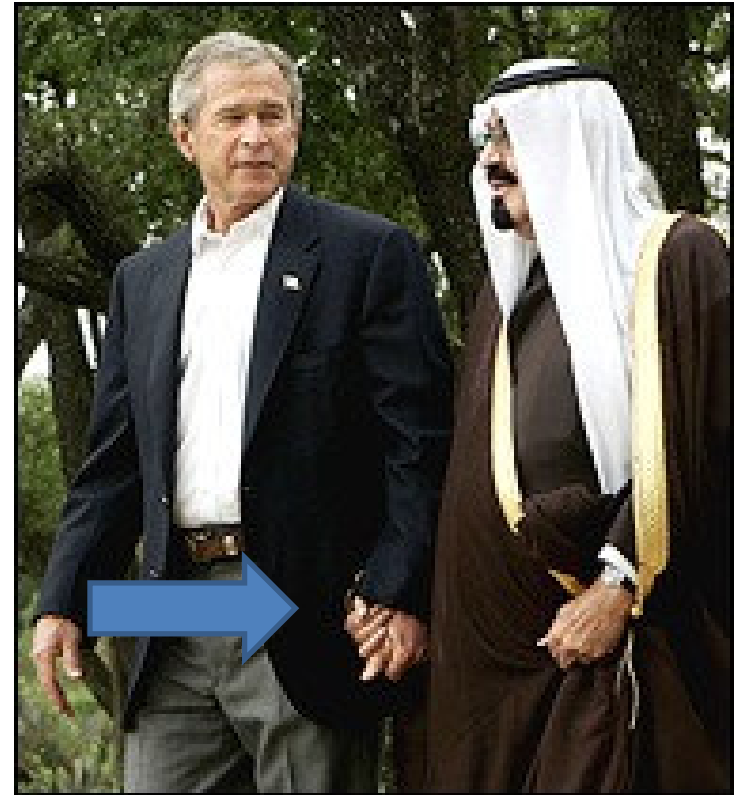
- What is law? Unsatisfactory guess-work
- The territorial issues: Caspian Sea; Transcaspian cooperation – achievements and setbacks
- Bilateral or multilateral framework?
- Development of energy transit legislation as a means of ensuring common operating standards for infrastructure across border
- Importance of the private-public partnership
- The determining factor of the price-level

Defining the region: Eurasia

- causes dreams for some, nightmares for others...
- Western technology and capital; the resource-rich Asian landmass
- Old great game and new actors
- Carter, who as US president during the oil shocks of the late 1970s passed the most sweeping energy legislation in the country's history, says in an interview that energy insecurity is "still a major issue and will be increasingly a crisis situation in the years to come". The present situation differs from the one he tackled in one main respect: "Today we are experiencing on a global basis competition from China and India that I didn't know when I was president."
- Backed China's quest to secure the energy it needs, CNPC is the rule maker on access to new reserves in new markets

Physical access to the fields

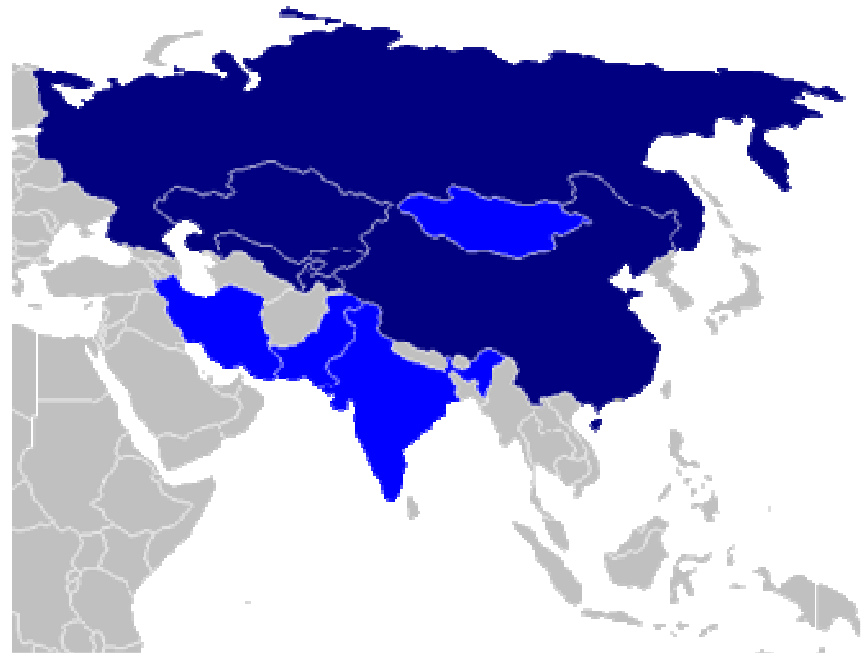
- Since World War I: need for physical control of oil and gas fields at center-stage
- Legal title often might prove insufficient
- The physical ownership can prove decisive
- Possession –property
- The military dimension
- ***Energy-alliances are stronger than catholic marriages*** (Zaki Yamani; former oil minister of Saudi Arabia)



Ap Crawford Ranch April
2004

Geography is the constant dimension of history (Bismarck)

- Applies to all types of resource conflicts; Border issues
- Railway concessions (Baghdad-Berlin); Turkmenistan; the North-South railroad will connect Kazakhstan to Iran's Persian Gulf ports, with stops in Turkmenistan along the way. A new trade route in the heart of the Eurasian continent could mitigate the effect of international sanctions on Iran.
- Energy, security and regional cooperation – a mirror is the Shanghai cooperation Organization



Iraq was created on the basis of an oil agreement and could be „reshuffled“ along new oil production contracts

- 1920 San Remo oil agreement between Great Britain and France
- British pipeline transporting oil from N-Mesopotamia to the port of Haifa
- Borders Iraq, Syria, Jordan traced along the pipeline
- Risk of a falling apart along exploration agreements
- Particular problem: federal constitution of 2005



The various unsolved legal issues

- Territorial regime: The Caspian
- Where to trace mutually accepted boundaries?
- Boundary regimes prevail in case of “fundamental change of circumstances”
- See Vienna Convention on Law of Treaties
- EU: a normative structure – to remain true to its rule of law doctrine: first clarify territorial issue, then invest

The legal status of the Caspian Sea lake, sea, delimitation etc



Legal regime

- While the legal status of a particular area dictates which state the area belongs to (for instance, a territorial sea), or which areas are not subordinated to the sovereignty of any state (for instance, the high seas), the concept of a legal regime includes the entirety of state rights and obligations regarding the use of this sea area. The Framework Convention for the Protection of the Marine Environment of the Caspian Sea is, for instance, classified as a regime issue.
- However: unsolved remain all issues pertinent to mineral exploration, tracing of pipelines etc.

The need for clearly defined borders

- <http://www.eurasianet.org/departments/insightb/articles/eav072909.shtml#T> AZERBAIJAN: NO JITTERS OVER TURKMENISTAN'S CASPIAN SEA THREAT **Shahin Abbasov 7/29/09**
- (...) “Turkmenistan’s pledge to take Azerbaijan to court over the two countries’ rival claims to Caspian Sea oil fields has sparked more confusion than anger in Baku. Some Azerbaijani experts even believe that an international arbitration hearing could prove the best way to resolve a long-standing energy dispute.
- At a special July 24 (2009) government meeting in Ashgabat, Turkmen President Gurbanguly Berdymukhamedov ordered Foreign Minister Rashid Meredov to have lawyers investigate the legitimacy of Azerbaijan’s claims to the Omar, Osman and Serdar fields. These fields are known as Azeri, Chirag and Kapaz in Baku. Berdymukhamedov also expressed a desire to probe the legality of foreign energy companies’ participation in the fields’ development. Berdymukhamedov called for the lawyers’ findings to be sent to an unspecified international arbitration court, according to the Turkmen state-owned TDH news agency. (...)
- The fact that a BP-led consortium has already begun development work in the Omar/Azeri and Osman/Chirag fields under a 1994 agreement with Azerbaijan suggests that Baku holds a "one-sided" approach to the issue, Berdymukhamedov said. "Such one-sided work practices in the Caspian are unacceptable for Turkmenistan." (...)

Energy Charter Treaty: Art. 6 of 2nd ed.

Of Model agreements

- **LAND RIGHTS**
- Each State undertakes to grant and maintain such Land Rights as may be reasonably necessary for the conduct of Project Activities under fair, transparent, legally enforceable and clear commercial terms and conditions to the extent provided in Article 14 of Host Government Agreement and Appendix I, Part II, entered into by such State.
- **ARTICLE 15 ISOLATION OF ANY BOUNDARY OR TERRITORIAL DISPUTES**
- 1. Each State agrees that its obligations under this Agreement and its commitment to the Project Activities subsists notwithstanding any dispute, difference, claim, demarcation, fixing, change or other modification regarding the location of any of its boundaries or the composition or extent of its Territory that may exist now or
- may arise in the future or take place between or amongst it and any other state(s) (for the purposes of this Article, “Boundary or Territorial Dispute”).
- 2. No Boundary or Territorial Dispute between or amongst any of the States shall interfere in any manner with any Project Activities. In particular, the obligations of the States described in this Agreement and the Host Government Agreements shall not be altered or varied by reason of any Boundary or Territorial Dispute (whether arising before or after the date of this Agreement) or by reason of the settlement of any Boundary or Territorial Dispute.
- 3. This Article shall be without prejudice to the application of Article 17 in circumstances of *Force Majeure*.

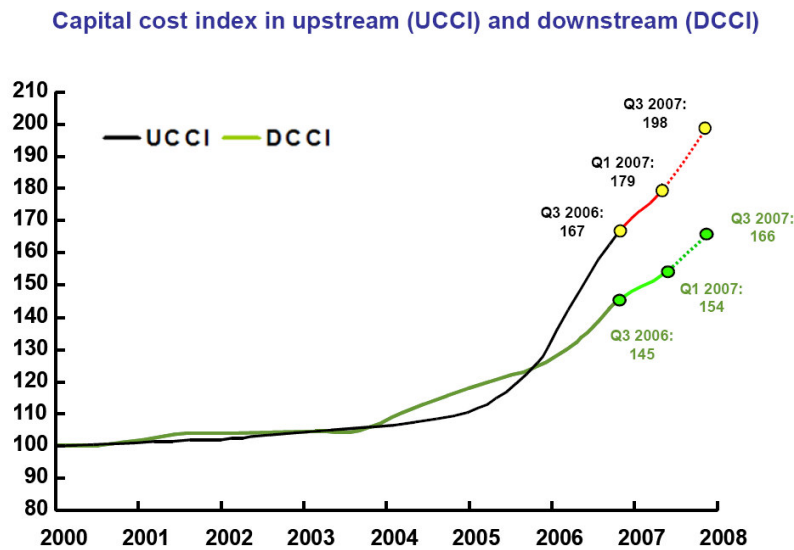
Role of model agreements

- The Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects were signed in December 1994 and entered into legal force in April 1998. To date, the Treaty has been signed or acceded to by fifty-one states, the European Community and Euratom (the total number of its members is therefore fifty-three).
- The Treaty was developed on the basis of the 1991 Energy Charter. Whereas the latter document was drawn up as a declaration of political intent to promote energy cooperation, the Energy Charter Treaty is a legally-binding multilateral instrument.
- The fundamental aim of the Energy Charter Treaty is to strengthen the rule of law on energy issues, by creating a level playing field of rules to be observed by all participating governments, thereby mitigating risks associated with energy-related investment and trade.

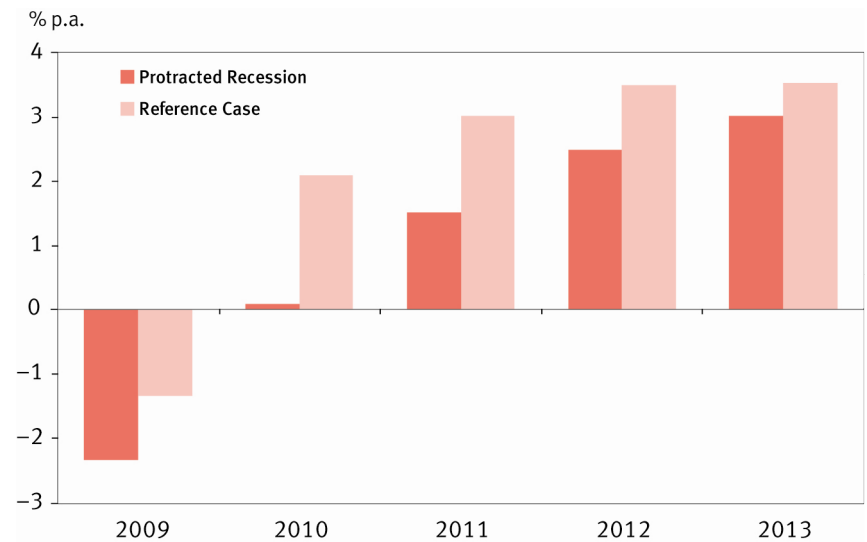
Investment climate

- Predictability: accepted legal tools; no pactum leoninum; but: pacta sunt servanda
- Which types of contracts for upstream investment
- Open it up?
- Central Asia different experience with IOCs
- Taxing, environment, labour regulations
- Not forget: public opinion and image of oil industry and its projects

The price-level, costs of exploration and development of demand



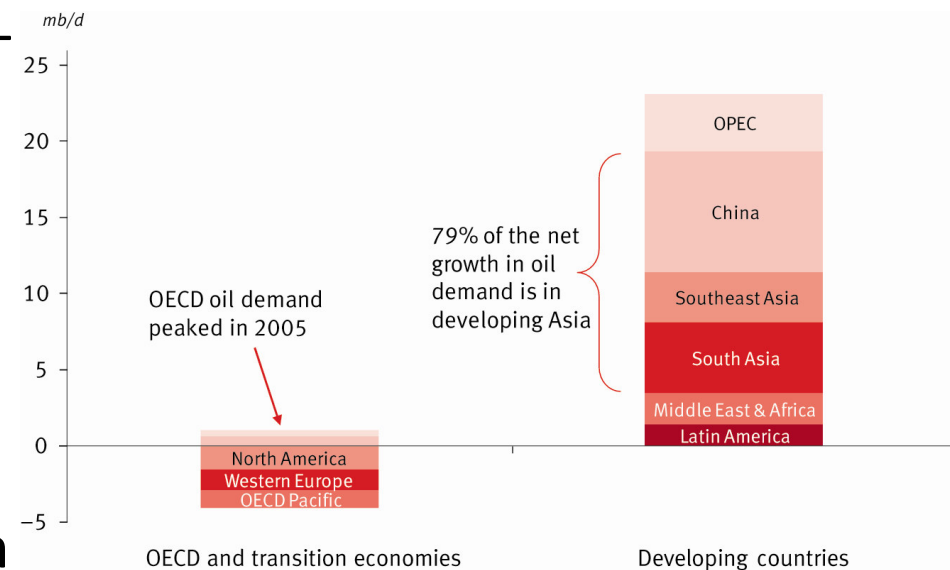
Source: Cambridge Energy Research Associates



OPEC World oil outlook
2009

It is not a natural law that Central Asian oil and gas flow west or north

- Much will depend on the ability of the Turkmen leadership to conduct multi-focus relationships successfully
- without causing too much upset amongst its partners and
- improving its business environment so that foreign investors have the confidence to invest in the country for the long term.

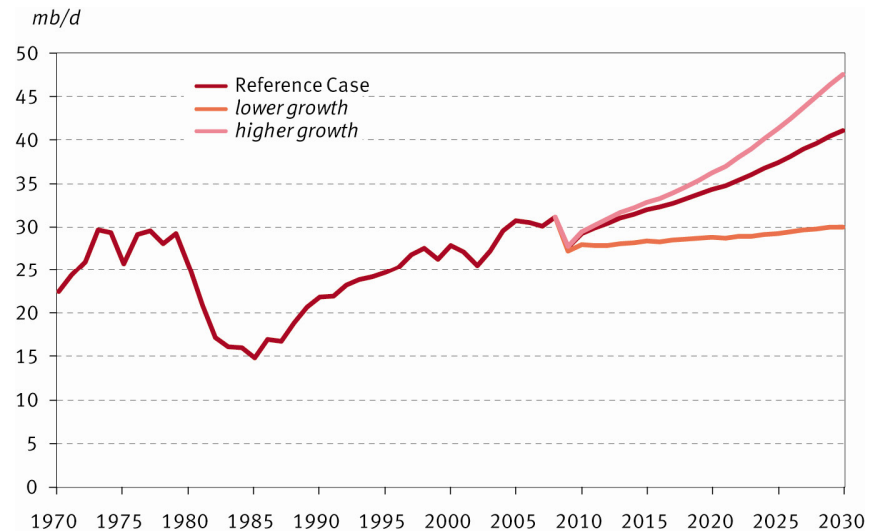


OPEC World Oil Outlook 2009

Uncertainty of price development

Security in demand

- Which formula for gas price
- Still oil indexed?
- Will the gas market turn more flexible?
- Or might the oil market turn more stable and long-term?
- New legislation on regulation of Financial Markets will show parts of the way



Thank you for your attention

Looking forward to our debate!

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