

The Energy Charter Treaty and Energy Security

**OSCE Conference
Strengthening Regional Cooperation in Central Asia for
Promoting Stable and Reliable Energy within Eurasia
Ashgabat, 3-4 May 2010
Olga Sorokina
Energy Charter Secretariat**



WHAT IS THE CHARTER?

- Dec. 1991 – Energy **Charter**
political commitment - not legally binding
- Dec. 1994 - Energy Charter **Treaty**
*legally binding (51 states + EC and Euratom)
entered into force April 1998*
- Energy Charter Process
*based on the ECT – international policy forum,
best practices exchange,
cooperation with interested third parties*



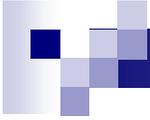
KEY PRINCIPLES

- Open and efficient energy markets
- Non-discrimination among participants
- Sustainable development
- State sovereignty over natural resources
- Freedom of transit
- Environmentally sound and energy-efficient policies



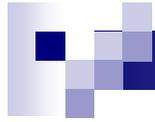
ECT – MAIN FOCUS

- **protection of foreign investments**, based on the extension of national treatment or most-favoured nation treatment (whichever is more favourable)
- **non-discriminatory conditions for energy trade** based on WTO rules
- ensuring **reliable cross-border energy transit**
- **resolution of disputes** between participating states, and - in the case of investments - between investors and host states
- **promotion of energy efficiency (PEEREA)**



CENTRAL ASIA – IMPORTANT REGION OF THE ECT CONSTITUENCY

- Major energy-producing region
- Active members of the Energy Charter Conference and Groups
- Active participants in the Energy Charter Process
- Regional Energy Cooperation



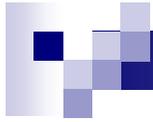
REGIONAL ENERGY COOPERATION

- Regional Task Force on Electricity Cooperation in Central and South Asia
- Afghanistan, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan and Uzbekistan
- Established in 2007, 5 meetings (6th in July 2010)
- Focus: developing a framework for sustainable and secure regional power trade based on the principles of the Energy Charter
- → Regional Energy Cooperation



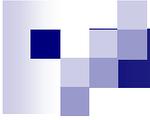
PROTECTING THE SECURITY OF ENERGY FLOWS

- Model Cross-Border Agreements
- Dispute resolution mechanisms, in particular:
 - ECT Article 27 on State-to-State disputes
 - ECT Article 7(7) on Transit disputes
 - ECT Article 26 on Investor-State disputes



MODEL CROSS-BORDER AGREEMENTS

- Oil and Gas Pipelines – 2ND edition
 - Model Inter-Governmental Agreement for state-to-state agreements
 - Model Host Government Agreement for agreements between an individual state and the project investors
- Electricity Projects
 - Adapted from Pipeline MAs, plus System and Market Interoperability Model Agreement



DISPUTE RESOLUTION MECHANISMS: ECT Article 27

- **ECT interpretation or application**
(except for competition and environment disputes)
- **Ad Hoc tribunal, UNCITRAL rules**
- **Arbitral award final and binding**



DISPUTE RESOLUTION MECHANISMS: ECT Article 7(7)

- ECT Article 7 on Transit
 - Access to transit
 - Conditions of transit
 - Non-interference of transit
- **Freedom of transit principle**
- ECT Article 7(7) – conciliation procedure for transit disputes



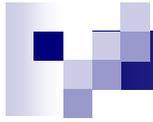
DISPUTE RESOLUTION MECHANISMS: ECT Article 7(7)

- **TRANSIT REMAINS UNINTERRUPTED**
- Exhaustion of all previously agreed remedies
- a party submits a summary to the Secretary General, who notifies all concerned parties
- within 30 days SG appoints a conciliator
- within 90 days the conciliator seeks agreement of the parties
- in case of failure - recommends a resolution, **sets interim tariffs and terms:**
 - 12 months, or
 - resolution of dispute (whichever is earlier)



DISPUTE RESOLUTION MECHANISMS: ECT Article 26

- Investor can opt for:
 - International Centre for the Settlement of Investment Disputes (ICSID)
 - a sole arbitrator or an ad hoc arbitration tribunal established under the rules of the United Nations Commission on International Trade Law (UNCITRAL)
 - Arbitration Institute of the Stockholm Chamber of Commerce
- International arbitral awards binding and final, enforced by:
 - ICSID Convention
 - 1958 New York Convention



NEXT STEPS

- Finalising the negotiations on the draft Transit Protocol
- 2009 Charter Review: modernisation of the Energy Charter Process
- Standing Group on Strategy