The year 2005 saw energy return to the top of the international agenda, propelled there by a combination of strong demand, tight capacity, high prices, and concerns over the environmental impact of energy use.

In my view, these events have underlined the need for close international cooperation on energy issues, and also the rationale for the Energy Charter process. It was therefore a great honour for me to be appointed as the new Secretary General of the Secretariat by the Charter’s member states in December 2005.

I would like, first and foremost, to pay tribute to my predecessor in this position, Ria Kemper. This Annual Report bears witness to her leadership of the Secretariat not only during 2005 but throughout the last six years, and the Energy Charter owes her a great debt of gratitude.

The Energy Charter process is still young, but it is becoming stronger and it continues to grow. In 2005, this was highlighted by the establishment of the Charter’s Industry Advisory Panel and, in particular, by Pakistan’s first step towards accession to the Treaty.

I do not underestimate the challenges that remain. However, I am convinced that the Charter process is responding to the key questions. How can we encourage and protect investment in new energy production, generation and transportation infrastructure? How can we ensure reliable cross-border energy flows and reduce the risk of interruptions to supply? How can we cooperate to improve energy efficiency?

The Energy Charter does not have all the answers. But we do have an important part of the solution, and I am convinced that - by developing consensus and binding rules among producers, consumers and transit countries - we have the right approach.

With the support of our member countries, and working closely with other relevant international organisations and stakeholders, I am committed to ensuring that the Energy Charter makes a distinctive contribution to our common energy security.

André Mernier
Secretary General
Energy Charter Secretariat
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The Charter process is directed by the Energy Charter Conference, a governing and decision-making body which brings together representatives of all member states.

The Chairman of the Charter Conference in 2005 was Henning Christophersen, a former Vice-President of the European Commission.

Henning Christophersen

He was assisted by Ivan Materov of the Russian Federation, the Deputy Minister for Industry and Energy.

Ivan Materov

The Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects were signed in December 1994, and entered into force in April 1998. To date the Treaty has been signed or acceded to by fifty-one European and Asian states as well as by the European Communities. Eighteen countries and ten international organisations have observer status.

The Energy Charter Treaty promotes open and competitive energy markets and security of energy supply, while respecting the principles of sustainable development and sovereignty over natural resources. The Treaty is a comprehensive multilateral agreement, which aims to strengthen the rule of law on energy issues by creating common rules to be observed by all participating governments. The Treaty's provisions focus on four broad areas:

- the protection of foreign investments, based on the extension of national treatment, or most-favoured nation treatment (whichever is more favourable);
- non-discriminatory conditions for trade in energy materials, products and energy-related equipment based on WTO rules, and freedom of energy transit through pipelines, grids and other means of transportation;
- the resolution of disputes between participating states, and - in the case of investments - between investors and host states;
- the promotion of energy efficiency, and attempts to minimise the environmental impact of energy production and use.

June 1990  Dutch Prime Minister Ruud Lubbers launches the proposal for a European Energy Community at a European Council meeting in Dublin


Dec. 1994  The Energy Charter Treaty (ECT) and the Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) signed in Lisbon

April 1998  The Energy Charter Treaty enters into full legal force, following completion of the thirtieth ratification. The Trade Amendment to the Treaty's trade provisions is adopted, bringing them into line with WTO rules

Dec. 2004  Conclusion of the Review of the Energy Charter process

The Treaty was developed on the basis of the Energy Charter Declaration of 1991, but while this Declaration signalled the political intent to strengthen international energy ties, the 1994 Treaty is a legally binding multilateral agreement. It is the only agreement of its kind dealing with inter-governmental cooperation in the energy sector, covering the whole energy value chain (from exploration to end-use) and all energy products and energy-related equipment.
Countries marked in green are Energy Charter Treaty signatories.
The countries marked in yellow are observers.

Members of the Energy Charter Conference:
Albania, Armenia, Australia*, Austria, Azerbaijan, Belarus*, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, European Union, Finland, France, Georgia, Germany, Greece, Hungary, Iceland*, Ireland, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Mongolia, Netherlands, Norway*, Poland, Portugal, Romania, Russian Federation*, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, The former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, United Kingdom, Uzbekistan.


Observers:


** denotes observer state which has signed the 1991 Energy Charter Declaration.
The requirement for a regular review of the Energy Charter process by its member states is written into the Treaty itself, in Article 34(7).

The 2004 Review was the first comprehensive assessment of the Treaty’s functioning since it entered into force in 1998, and it was conducted by an Ad Hoc Group under the chairmanship of Dr Pieter Boot, Deputy Director General in the Ministry of Economic Affairs of the Netherlands. Formal conclusions to the Review were adopted by the 15th meeting of the Energy Charter Conference in December 2004.

The full text of the Review conclusions was published in the 2004 Energy Charter Annual Report and is also available on the Energy Charter’s web site.

The Review of the Energy Charter process, which was concluded in December 2004, provides practical and strategic guidance for the development of Energy Charter process. A main outcome of the Review was that all member states confirmed their continuing commitment to the Charter process. At the same time, the Review made a number of recommendations for changes to the Charter’s structure and activities.

Implementation of the Review conclusions has been a priority for the Secretariat in 2005. At its meeting in December, the Charter Conference endorsed the progress made over the course of the year, while emphasising at the same time the need for continued efforts to enhance the efficiency and visibility of the Charter process as a whole.

Structural changes
The main structural conclusion of the 2004 Review was the decision to merge the previously separate Groups on Trade and on Transit in view of the converging agendas in these areas (see page 12). It was also decided to hold regular meetings of the Energy Charter Conference only once a year, rather than the previous practice of two meetings.

Improvements to the efficiency of Charter activities
There was a renewed emphasis by the Secretariat in 2005 to ensure that all Charter activities have a strong link to the implementation of the Treaty, alongside efforts to promote ratification of the Treaty and related instruments by all Signatory States.

The 2004 Review also called for a concentration of Charter activities in areas where its “constituency and legal framework provide it with clear comparative advantages”. This meant in practice a greater focus on member countries in Eastern Europe, the Caspian region and Central Asia, as witnessed in 2005 by the in-depth reviews of Uzbekistan (investment) and of Georgia (energy efficiency).
“The Contracting Parties and other Signatories to the Energy Charter Treaty confirm their continuing commitment to the Energy Charter process, which we consider to be an important and useful tool for enhancing our relations in the energy field, based on complementarities and mutual benefits.

The strength of this process is based upon its unique legal framework and its potential as a policy forum, promoting our common objectives to strengthen international energy cooperation, to enhance the security of energy supply and access to energy markets, to maximise the efficiency of energy production and consumption, and to minimise their environmental impact. Mutual complementarities and increasing interdependence in energy matters underscore the value of a broad cooperative framework that can promote energy investments, facilitate cross-border flows of energy and improve energy efficiency.”

From the conclusions of the Review of the Energy Charter process, as adopted by the Energy Charter Conference in December 2004

At the same time, it has been important for the Charter process to maintain its role as a forum for exchange of experience from across the entire constituency. With this in mind, the Charter’s Investment Group started a study of energy market restructuring in selected OECD countries, and also has welcomed the willingness of countries such as Iceland and Sweden to provide regular reviews in 2005 of their energy efficiency policies.

Cooperation with relevant international organisations

The Review underlined the need for “continued and, where appropriate, strengthened cooperation with other relevant international organisations”, and there was a concerted effort in 2005 to ensure good contact with the International Energy Agency (IEA) and the World Trade Organisation (WTO). The Energy Charter’s autumn policy conference, on risk reduction in the energy sector, was held jointly with the IEA.

In addition, the Secretariat was granted admission in September 2005 as an observer organisation to the UN Framework Convention on Climate Change.

New areas of activity

Cooperation with the newly established Industry Advisory Panel (see page 22) has been important to ensure that activities respond to new developments in the energy sector; input from the Panel was particularly valuable in the Charter’s dialogue with member governments on reducing risks for energy investment.

There has also been increasing interest in the potential role of the Energy Charter in facilitating energy cooperation and cross-border energy trade across Asia. In Southern Asia, Pakistan’s signature of the Energy Charter Declaration in 2005 marked the first step towards accession to the Treaty. In Northeast Asia, the Energy Charter is seen as a possible mechanism to facilitate new energy links across the region, alongside the development by Russia of its Eastern Siberian oil and gas resources.

Promoting greater awareness of the Treaty

The Secretariat organised two major conferences and a number of seminars in different member and observer states in 2005 in order to raise awareness about the Treaty (see pages 24 and 35 for details). Staff of the Secretariat were also regular speakers at energy events throughout the year (see page 36). Better dissemination of information, including a new website for the Energy Charter, will continue to be a priority in 2006.
The aim of the Charter’s work on investment is to promote ‘stable, equitable, favourable and transparent conditions’ for investors in the energy sector (ECT Article 10). This work is pursued in three main ways:

- Reviews of the investment-related policies of member countries
- Efforts to improve the entry conditions for foreign investors by removing exceptions to national treatment
- Dialogue with member states on the main risks facing investment in the energy sector and on strategies and policies for their mitigation or removal

Reviews of the investment climate in member countries have always been central to the work of the Charter’s Investment Group, but these reviews have evolved significantly in recent years with the introduction of ‘in-depth’ studies, undertaken by the Energy Charter Secretariat in close cooperation with the countries concerned. The aim of this new format for country reviews is to arrive at a more complete and independent assessment of the country concerned. Each review examines the country’s compliance with the requirements of the Treaty, and also the extent to which it has succeeded in creating domestic energy market structures in line with the Treaty’s goal to promote open and competitive markets.

The main activity in this respect in 2005 was the in-depth review of Uzbekistan. In preparing its draft report the Secretariat visited Tashkent in March 2005, and the report and its findings were discussed in the Charter’s Investment Group in May – with Armenia and Slovenia taking on the role of examiners in the Group’s peer-review of the report.

Recommendations arising from the review were adopted by the Energy Charter Conference in December. The Conference noted that Uzbekistan had made progress in some areas that were highlighted in its previous recommendations, adopted in 2001, and encouraged the Uzbek authorities to establish a more favourable and non-discriminatory investment climate and to put in place a regulatory system that is less dependent on the political system. The Conference also urged the Uzbek authorities to make further efforts to improve the consistency and transparency of the legal framework.

With regard to access for Uzbek energy exports to international markets, the Conference welcomed the efforts undertaken to improve the technical conditions and the operation of the international transportation routes for export of oil and gas, but noted that the operation of networks would be most efficient when access to continued on page 10...
The Chairman of the Charter’s Investment Group in 2005 was Michael Caramanis from Greece. Since 2004 Dr Caramanis is the President of the Greek Regulatory Authority for Energy.

Dr Caramanis is a renowned expert on energy regulation and restructuring, and has also held senior academic positions in the United States, including the position of Professor of Manufacturing Engineering at Boston University’s College of Engineering.

Miroslav Duda, from Poland, was the Vice-Chairman of the Charter’s Investment Group in 2005.

The Energy Charter Treaty and Investment Security

There is a huge need for new investment in order to meet growing global demand for energy. A significant risk to energy security is that policy frameworks can prevent investment capital from being mobilised and directed to the most efficient energy supply or energy-saving projects. The challenge is to reduce, as far as possible, these policy risks by creating a favourable investment climate based on openness, consistency and non-discrimination.

Oil and gas resources are distributed unevenly around the world, and the Energy Charter takes a balanced approach to investors’ access to resources. On the one hand, the Treaty is explicit in confirming national sovereignty over energy resources: each member country is free to decide how, and to what extent, its national and sovereign energy resources will be developed, and also the extent to which its energy sector will be opened to foreign investments. On the other hand, there is a requirement that rules on the exploration, development and acquisition of resources are publicly available, non-discriminatory and transparent.

Once a foreign investment is made in line with a country’s national legislation, the Treaty is designed to provide a reliable and stable interface between this investment and the host government. The Treaty protects foreign investors against non-commercial risks such as discriminatory treatment, direct or indirect expropriation, or the breach of individual investment contracts. The need for stability in the relationship between investors and host governments is particularly acute in the energy sector, where projects tend to be long-term and highly capital-intensive.

The binding rules contained in the Energy Charter Treaty can play a significant and positive role in mitigating risks. This is because they provide investors with the possibility to protect their rights by taking the host government to international arbitration. Since the Treaty came into force in 1998, several investor-state disputes have already been addressed under the ECT and successfully resolved, either by amicable settlement or by an arbitral award (see page 20-21).

The existence of a functioning mechanism for the resolution of disputes provides persuasive encouragement for states to observe their obligations under the Energy Charter Treaty. As the Charter’s Industry Advisory Panel has observed, “although dispute settlement provisions should normally be perceived as instruments of ‘last resort’, they are of significant value in providing a constructive framework for the resolution of investment related disputes and may thereby make a significant contribution to investor confidence and to a more reliable investment environment”.

Investment
transit is granted for all parties on fair conditions in accordance with the principles of the Energy Charter Treaty, by further development of regional interconnection and transit capacities, and by the harmonization of legal and regulatory frameworks for cross-border energy flows.

In addition to the in-depth review of Uzbekistan, the Investment Group also considered follow-up reports on Croatia and on Poland. The aim of these reports is to monitor compliance with previous policy recommendations adopted by the Charter Conference, and also to inform delegates about new developments in national energy policies.

In both cases, the Investment Group appreciated that steps had been taken to comply with the Conference’s policy recommendations, but highlighted measures that still need to be taken. In relation to Poland, the major challenges were related to the full implementation of the EU’s acquis communautaire and progress with restructuring and privatization of the energy sector.

Finally, the Secretariat has prepared a cross-country report on energy policy and restructuring issues in selected OECD countries. This report responds to a longstanding request from member countries in transition for a balanced consideration of Energy Charter member states in the review process. It presented the policies and strategies of developed market economies in the areas of access to oil and gas resources, electricity and gas sector restructuring, privatization and regulation and market creation.

The report was not intended to provide an exhaustive overview of reform and restructuring policies in the most advanced market economies, but rather to highlight the wide differences in the policy approaches to energy sector reform and implementation. In the economically advanced countries the reform process and the move towards more competitive and liberalized electricity and gas markets is far from finished. There remain many issues to be addressed in the regulatory process, competition policies, and on the issue of market creation.

More information: www.encharter.org > Publications

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The Investment Group continued its practice in 2005 of inviting senior representatives of the energy business community to address its regular meetings. In May the guest speakers were Wang Zhongqiao and Cao Wei, both of whom are Directors in the International Department of the China National Petroleum Corporation (CNPC). CNPC is an increasingly important player in regional oil and gas markets, and Mr Wang and Ms Cao presented CNPC's foreign investment activities and policies.

The speaker at the Autumn 2005 meeting of the Group was Peit Kager of NV Nederlandse Gasunie. Mr Kager presented Gasunie’s investment strategy and some major current investment projects, such as the new pipeline connections to the UK and Germany, storage projects, and a planned LNG reception facility. The discussion following the presentation focused on the challenges and risks of unbundling in the gas sector.

As well as the binding provisions that protect existing investments, the Treaty also contains a ‘best endeavours’ commitment by member states to provide non-discriminatory treatment in the pre-investment phase, i.e. in the making of investments. As of early 2005, there were 97 exceptions to national treatment registered by member states in the so-called ‘Blue Book’, which is available online on the Energy Charter web site and regularly updated. The number of exceptions has declined only marginally in recent years (see table below); for this reason, the Investment Group initiated an intensified effort to reduce the number of these exceptions, and thereby to contribute to entry conditions for foreign investors across the Energy Charter constituency.

### Number of Exceptions to National Treatment
for pre-investment phase, as registered by member states in the ‘Blue Book’

<table>
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<tr>
<th>Year</th>
<th>2000</th>
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<th>2004</th>
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<td>113</td>
<td>99</td>
<td>101</td>
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The Investment Group also began in 2005 a consideration of new risks and challenges that are emerging for governments and investors in the energy sector. This ‘risk reduction dialogue’ is conducted in close cooperation with the Industry Advisory Panel (see page 22), with the intention of highlighting new regulatory and policy risks for investment in the energy sector and to propose measures for their mitigation.

In October 2005, the Secretariat presented a first study on risk mitigation in upstream oil and gas with particular emphasis on the concept and the identification of risks. For the OECD countries the study concluded that the overall policy and regulatory framework for upstream petroleum activities is relatively stable. Relative to most other parts of the world, upstream investments have less policy and regulatory risks in the OECD. In certain economies in transition it is a cause of concern that the treatment of foreign investors seems in some areas to run counter to the spirit of the Energy Charter Treaty. This could threaten the upstream oil and gas investments at a time when these investors and partnerships with host governments and local companies are urgently needed.
The Charter’s Trade and Transit Group was created by decision of the Charter Conference in December 2004, and new terms of reference were approved in April 2005.

The terms of reference define the core priorities for the new Group as follows:

• Monitor and assist with the implementation of the Treaty’s provisions on trade and transit;

• Facilitate discussions among the Member States on measures to ensure secure and reliable cross-border energy flows, and to remove potential obstacles to energy trade and transit;

• Analyse ways to facilitate the development of open, competitive and sustainable energy markets and energy flows across the Energy Charter constituency.

2005 was the first year of operation of a new Energy Charter Trade and Transit Group, established through a merger of the previously separate working groups in these areas. The rationale for the merger was that, by consolidating the Charter’s work into a single agenda, the new Group could address in a more coherent way the range of issues that affect cross-border energy flows across the Energy Charter constituency.

One of the major tasks of the new Group is to monitor the implementation of the relevant Treaty provisions; the Group concentrated in particular in 2005 on the application of the Treaty’s transit provisions in relation to both oil and gas.

This included the completion of a series of detailed reports on domestic gas transportation legislation in seven countries: the Czech Republic, Slovak Republic, Poland, Ukraine, Belarus, Kazakhstan and the Russian Federation. The reports describe and assess domestic legislation on gas transit and transportation in the light of the requirements of the Energy Charter Treaty and the principles of the draft Transit Protocol.

Overall, the reports demonstrated that gas transportation is covered by specific legislation that, in many cases, can support the creation of more open and competitive energy markets. However, the reports also showed that there is very limited specific regulation of gas transit activities. In the non-EU countries studied, and also for the Polish part of the Yamal-Europe pipeline, transit activities are typically governed by intergovernmental transit agreements concluded between supplier and transit countries, which are then implemented by state-owned or state-dominated companies.

In addition, the Group concluded in 2005 a report on gas transit tariffs and tariff methodologies in selected Energy Charter member countries. The study reviews tariff arrangements for existing and new gas pipeline systems, and analyses the overall consistency of gas transit tariffs with the provisions of the Treaty and the principles of the draft Transit Protocol.

continued on page 14...
Reliable Cross-Border Energy Flows

Energy – and hydrocarbons in particular – is transported over increasingly large distances from producers to consumers. In the case of natural gas, most of which is transported by pipeline, this often involves crossing different national borders. Bilateral disputes over energy transit can quickly have multilateral implications for gas supply, underlining the importance of standards, accepted by countries on a multilateral basis, to promote reliability of cross-border energy flows.

A distinctive feature of the Energy Charter Treaty is that it provides a set of rules that covers the entire energy chain, including not only investments in production and generation but also the terms under which energy can be traded and transported across various national jurisdictions to international markets.

The Treaty’s energy-specific provisions on trade and transit are based on those of the WTO, but with two important additional considerations. Firstly, they extend WTO rules for the energy sector even to those Contracting Parties that are not yet members of the WTO; as of January 2006, this was relevant for eight member countries of the Energy Charter Treaty that are not yet members of the WTO.

Secondly, the Treaty addresses in more detail the important strategic issue of energy transit. Current Treaty provisions oblige participating states to take the necessary measures to facilitate transit of energy, consistent with the principle of freedom of transit, and to secure established energy flows. Transit countries are also under an obligation not to interrupt or reduce existing transit flows, even if they have disputes with another country concerning this transit.

In addition, member states have mandated the negotiation of a Transit Protocol to the Treaty (see also page 15) in order to clarify the operational meaning of ‘freedom of transit’ for the energy sector, and to strengthen the obligation on governments to ensure that transit flows through their territory are secure and unimpeded. It would do this by providing clear guidance in areas such as access to networks and the criteria for establishing transit tariffs.

Through its investment and transit provisions, the Treaty also supports the establishment of new transportation capacity and thereby facilitates the diversification of supply and of export. The substantive provisions of the Treaty in these areas are enforceable through a state-to-state dispute settlement mechanism; this can be particularly valuable for complex cross-border infrastructure projects, like the Baku-Tbilisi-Ceyhan and Baku-Tbilisi-Erzurum Gas pipelines, that require the consent and agreement of multiple governments.
The Charter’s Trade and Transit Group launched a consultative initiative in 2005 for information on new cross-border pipeline projects, presented by member countries on a voluntary basis. The intention is to ensure that the Group has regular information on new projects that are underway in member or observer states.

The first discussions took place at the meeting of the Group in spring 2005 and concentrated on the Baku-Tbilisi-Ceyhan (BTC) oil pipeline and the Baku-Tbilisi-Erzurum South Caucasus Gas pipeline, which runs alongside the BTC pipeline until connecting with the existing Turkish gas transmission network at Erzurum. Presentations were made by senior representatives of BOTAS, the BTC company, and the Georgian International Oil Corporation.

The autumn meeting of the Group focused on the Turkey - Greece and Greece - Italy interconnectors, and on the Nabucco project that could bring gas from the Middle East and Caspian regions through Turkey into South-East Europe. The Trade and Transit Group finalised in 2005 a report on the impact of CO₂ reduction measures on energy trade. The report analyses the European Union’s emissions trading scheme and its expected impacts on economic activity, energy prices, trade flows and industrial competitiveness. It also looks at the development of the national allocation plans in EU countries and evolving emissions trading instruments in non-EU countries.

The report concludes that the CO₂ emissions reduction measures so far decided have had limited impacts on energy trade and energy flows. However, exports of energy-intensive goods may fall by 3-5% due to the introduction of CO₂ emissions reduction measures. In addition, as prices for emission trading rights increase over time, this is likely to favour the use of fuels with low carbon intensity, such as natural gas, over fuels like coal and lignite. This could increase imports of natural gas for power generation and stimulate cross-border trade in electricity. Much will depend, though, on future price developments of gas relative to coal.

The Trade and Transit Group worked on a number of initiatives to be completed in 2006. These include an analysis on technology transfer (ECT Article 8), which will aim to identify barriers to the draft Transit Protocol, which include in particular the obligations to ensure transparent, cost-based and non-discriminatory transit tariffs.

Comparisons between tariff levels in various countries reveal substantial differences based on methodology, technical parameters (pipeline diameter, pressure) and economic factors such as the year of construction and changes in exchange rates. The analysis generally showed a significant difference between tariffs charged in EU and non-EU countries, and between tariffs for transit and for domestic transportation within individual countries. This report is available on the Energy Charter’s web site, and will be complemented in 2006 by a corresponding study on oil transit tariffs and methodologies.

More information: www.encharter.org > Publications

Jean-Marie Devos, Secretary General of Eurogas, provided an industry perspective on changes in European gas markets to a Russian Gas Industry Round Table, organised by the news agency Interfax in Tuapse, Russia, in September 2005.

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The Charter’s Legal Advisory Task Force met in November 2005 and agreed to revise and update the first editions of the Model Agreements on Cross-Border Pipelines, which were initially endorsed by the Charter Conference in December 2003. This work should be completed in the course of 2007.

There are two agreements that have been prepared under the Charter’s auspices: an Intergovernmental Model - for state-to-state agreements, and a Host-Government Model, designed for an agreement between an individual state and the project investor(s). These agreements aim to facilitate project-specific negotiations by providing a neutral and non-prescriptive starting point for talks on new cross-border pipelines.

The Legal Advisory Task Force is a consultative body to the Charter process, made up of thirty representatives of leading commercial law firms and senior legal experts from energy companies.

Draft Energy Charter Protocol on Transit

The Charter Conference confirmed in December 2004 the importance of a transparent, non-discriminatory and operational legal framework for energy transit, and expressed its full support for the finalisation of the Energy Charter Transit Protocol. Negotiations on the draft Protocol continued in 2005 with a series of informal expert meetings between representatives of the Russian Federation and the European Union. These discussions made important progress at expert level in finding common understandings on the small number of issues that remain open in the draft text. Multilateral discussions on the draft Protocol, involving all Member States of the Charter, were provisionally concluded already at the end of 2002.

At the Energy Charter Conference in December 2005, the Conference invited the European Union and the Russian Federation to agree by the end of February 2006 a timetable of meetings for the finalisation of their bilateral discussions, and urged a timely conclusion of the negotiations on this important strategic instrument.

The aim of the Protocol is to build on the existing Treaty provisions on transit, and to clarify some key operational issues that are specific to energy transit. These include the conditions for access to pipelines and grids (an obligation on network owners or operators to negotiate in good faith on access to ‘available capacity for transit’) and the criteria for establishing transit tariffs. The value of a completed Protocol would be to provide clear rules governing international energy transit flows, encouraging the efficient development of energy transportation infrastructure and reducing the risk of interruptions to energy supply.

technology transfer in energy and recommend policies and measures that can remove them. The Treaty’s Article 8 commits the parties to promote access to and transfer of energy technology on a commercial and non-discriminatory basis.

There will also be continued discussion on measures to increase competition in the electricity sector, in line with the recommendation from the 2004 Review ‘to examine opportunities and approaches for developing converging rules for regional electricity markets’.

The Group will finalise its work on competition issues in the energy sector, in line with the Treaty obligation on member countries to ‘work to alleviate market distortions and barriers to competition’ (ECT Article 6). The objective of the Charter’s work in this area is to foster transparency on the relevant provisions of national legislation, including the implementation of competition legislation and the institutions in charge of enforcement.
The main country review conducted by the Group in 2005 was the ‘in-depth’ study of energy efficiency policies and programmes in Georgia. The Review Team was made up of representatives from four Energy Charter member countries (Norway, Denmark, the Former Yugoslav Republic of Macedonia, and Sweden) and was led by Johan Vetlesen, a Deputy Director General in the Norwegian Ministry of Petroleum and Energy.

The Review Team visited Georgia in September, and a draft report was considered by the Charter’s Energy Efficiency Working Group (PEEREA Group) in November. Recommendations to the Government of Georgia arising from the Review were adopted by the Energy Charter Conference in December.

Georgia has quite significant domestic energy resources, notably in hydropower, but is still highly dependent on imported oil and gas. Energy infrastructure is in a generally poor state, following years of under-investment and the effects of civil strife. To address these issues, the Georgian government has embarked on a major restructuring and liberalisation programme, with the emphasis on creating a strong market foundation for the energy sector - with consumers paying for correctly metered energy use.

A priority for Georgia has been to secure adequate and diverse sources of energy supply. As progress is made with the restructuring and rehabilitation of the energy sector, the contribution that energy efficiency improvements can make to security of supply will become increasingly visible. The Review encouraged the Government of Georgia to take a balanced approach between energy supply and demand measures, to develop a comprehensive energy efficiency strategy and accompanying legislation, and to strengthen the institutional capacity to implement energy efficiency policies.

More information: www.encharter.org > Publications
In addition to the in-depth review of Georgia, five other countries presented regular reviews of developments in national energy efficiency policies: Armenia, Hungary, Iceland, Kyrgyzstan and Sweden. The range and diversity of country presentations reflected one of the distinctive strengths of the Energy Charter, in that they allowed for an exchange of experience between economies facing a variety of policy challenges.

Lithuania and Poland reported on progress with the implementation of recommendations arising from previous in-depth energy efficiency reviews (conducted in 2001 and 2002, respectively). In both cases, the countries had made substantial progress in developing the regulatory framework for energy efficiency, with accession to the European Union providing the driving force and direction for many of the policy changes.

Alongside country-specific reports, the Group also tackled four cross-cutting issues, based on studies and analysis prepared by the Secretariat. The first of these concerned energy efficiency in the residential sector, and a background paper from the Secretariat looked at trends in residential energy use across the Energy Charter constituency, and the different factors that affect end-use efficiency (income levels, overall economic situation, energy prices, climate etc.). It also identified key policies, regulatory measures and other instruments that can be used to promote greater residential energy efficiency. A Panel discussion on this report, hosted by the PEEREA Group, included representatives

The Chairman of the Working Group on Energy Efficiency since 1998 is Mr Peter Helmer Steen, Director of the ‘Danish North Sea Partner’.

An engineer by training, Mr Steen has spent the major part of his career in senior positions within the Danish Energy Agency and DONG, the National Oil and Gas Company of Denmark. Before taking up his present position, he was Deputy Director General of the Danish Energy Authority.

In 2005, Mr Peter Helmer Steen was assisted by two Vice-Chairmen, Professor Tamas Jaszay of Hungary and Mr Wolfgang Stinglwagner of Germany.

The Energy Charter and Energy Efficiency

The Energy Charter Treaty requires that all member states strive to minimise, in an economically efficient manner, harmful environmental impacts resulting from energy-related activities. (ECT Article 19)

The Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) was signed in 1994 along with the Treaty. PEEREA is designed to reinforce energy efficiency policies and programmes based on the following principles: the development of energy efficiency strategies; price formation reflecting real energy and environmental costs; transparency of regulatory frameworks; dissemination and transfer of technologies; the establishment of domestic programmes for improving energy efficiency; and the promotion of investments in energy efficiency.

The Treaty and PEEREA, and the Charter’s Working Group on Energy Efficiency, provide a valuable forum for multilateral discussion and cooperation on energy efficiency issues. In the conclusions to the 2004 Review, member states supported the contribution made by the Charter in incorporating energy efficiency objectives and strategies into national policies.
Iceland stands out among Energy Charter member states for its extensive use of renewable energy sources. About 90% of all houses in Iceland are heated by energy from geothermal resources, and electricity generation comes either from hydropower (83%) or geothermal energy (17%). Fossil fuels are used only where it is not technologically feasible to use renewables, that is, in road and maritime transport. In this sector, too, Iceland has been at the forefront of international efforts to develop and use alternative fuels: a project for hydrogen-powered buses is already operational in Reykjavik.

The Energy Charter’s review of Iceland’s energy efficiency policies and programmes was presented in 2005, and is available on the Charter’s web site.

from Poland, Russia, Germany, the Joint Research Centre (ISPRA) of the European Commission, and the International Energy Agency.

A second issue for the PEEREA Group in 2005 was the finalisation of a report on the link between policies on energy efficiency and on renewable energy. The objective of this report was to draw the attention of delegates to the synergies between these two policy areas, and to encourage an integrated approach to policymaking.

The report does not identify a simple rule for setting the right balance between energy efficiency and renewables. This should be assessed according to specific national circumstances. It does, however, highlight the benefit and potential for combined programmes and policies. Several policy instruments, such as energy certification, investment tax credits, special lending instruments, third party financing, information and training, can be successfully used in an integrated manner.

A third topic for the Group was energy efficiency and renewables in the transition process. Whereas energy efficiency policies in OECD countries are increasingly driven by environmental concerns, these policies tend to be viewed from a different perspective in countries with economies in transition. Most of the transition economies are reliant on energy imports, and see energy efficiency and renewables as a means to reduce import dependency at a time of rising energy prices. In energy exporting countries, domestic energy efficiency is seen as a way to free up energy resources for export, and thereby to increase revenues. Some transition countries also see energy efficiency as a means to increase the competitive position of their industrial production, and to reduce the burden of increasing energy costs on the public sector and on households.

Kiyoshi Mori, Director of the London Office of the Japan External Trade Organisation (JETRO), addressed the Energy Charter’s Conference on Risk Reduction in October, and highlighted Japan’s experience with demand-side conservation and technological innovation as a means of improving energy security.

**Iceland stands out among Energy Charter member states for its extensive use of renewable energy sources.**

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The Secretariat’s report identifies some key factors that have been associated with successful energy efficiency strategies in economies in transition. It looked at the merits of different regulatory approaches, the need for strong institutional capacity and clear operational responsibilities, and conditions and schemes that can facilitate financing of energy efficiency projects. The report was discussed at the November meeting of the PEEREA Group, with representatives of Croatia, Hungary, the Former Yugoslav Republic of Macedonia and the European Commission on the panel.

Finally, the PEEREA Group discussed a Secretariat paper on Energy Efficiency and Emissions Trading, which provided an update on developments in the EU’s emissions trading system and discussed opportunities that climate change mitigation policies open up for investments in energy efficiency. Special attention was paid to the implications for both EU and non-EU countries of the EU’s ‘Linking Directive’ on the use of flexible mechanisms under the Kyoto Protocol for improving energy efficiency.

“Environment for Europe: from Kyiv to Belgrade”

The ‘Environment for Europe’ process is a partnership of states, international institutions and non-governmental organisations from across Europe and the Caspian region, supported by the United Nations Economic Commission for Europe.

On the basis of its experience with implementation of the PEEREA, the Charter Secretariat was invited to present a report to the Kyiv Ministerial Conference of the Environment for Europe process in 2003. The report covered the status and development of energy efficiency policies across the region.

The Kyiv meeting welcomed the Energy Charter’s input, and a concluding Ministerial declaration invited the Secretariat to report on progress on energy efficiency efforts to the next Ministerial meeting. The Secretariat will be working, in cooperation with other relevant international organisations, on a new evaluation to be

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Erik Sørensen, the Secretariat’s Director for Investment and Energy Efficiency (on right), in conversation with Mithat Rende, Chairman of the Charter’s Trade and Transit Group and Deputy Director General in the Turkish Ministry of Foreign Affairs.
The Energy Charter Treaty contains a comprehensive system for settling disputes on matters covered by the Treaty. The two basic forms of binding dispute settlement are state-state arbitration on the interpretation or application of almost all aspects of the Treaty (except for competition and environmental issues), and investor-state arbitration for investment disputes. There are special provisions, based on the WTO model, for the resolution of inter-state trade issues and the Treaty also offers a conciliation procedure for transit disputes.

A priority for the Secretariat in 2005 was to raise awareness about the Treaty’s mechanisms for dispute settlement, in line with a request from member states made in the 2004 Energy Charter Review. The Secretariat, together with the Arbitration Institute of the Stockholm Chamber of Commerce, therefore took the initiative to organise a Conference on ‘Investment Arbitration and the Energy Charter Treaty’ in Stockholm on 9-10 June.

The Conference reflected the increasing importance of Treaty-based investment arbitration for international commerce, and examined such issues as the concept of expropriation, investments and investors covered by the Treaty, the issue of state responsibility, and the relationship between contractual claims and claims under the Energy Charter Treaty.

Proceedings were opened by H.M. the King of Sweden, and the programme included presentations or commentaries from leading experts on international arbitration and on the application of the Energy Charter Treaty.

Following the Stockholm Conference, the Secretariat held a separate workshop on the Treaty’s dispute settlement mechanisms in Brussels for representatives of Energy Charter member states, and also made a presentation on this topic to the Charter’s Industry Advisory Panel.

More information: www.encharter.org > Events / Seminars

Emmanuel Gaillard, Partner at Shearman & Sterling LLP, and Stephen Jagusch, Partner at Allen & Overy LLP, were speakers in session one of the Stockholm Conference, examining which investments and investors are covered by the Energy Charter Treaty.
Ratification and Investor-State Dispute Settlement

The investment-related provisions are a cornerstone of the Energy Charter Treaty and grant a number of fundamental rights to foreign investors with regard to their investment in the host country. These investors are protected against the most important political risks, such as discrimination, expropriation and nationalisation, breach of individual investment contracts, damages due to war and similar events, and unjustified restrictions on the transfer of funds.

By reducing the political risks that foreign investors face in the host country, the Treaty boosts investor confidence and encourages international investment flows. The investment provisions are backed up by mechanisms both for inter-state arbitration and for investor-state dispute settlement.

The Treaty grants foreign investors in the energy sector the right to sue the host country in case of an alleged breach of an obligation of the host State relating to investment protection. The foreign investor can bring the case before the domestic courts of the host country or submit it to international arbitration.

If an investor chooses to bring a dispute to arbitration, there are three possible avenues: the International Centre for the Settlement of Investment Disputes (ICSID - an autonomous international institution with close links to the World Bank); a sole arbitrator or an ad hoc arbitration tribunal established under the rules of the United Nations Commission on International Trade Law (UNCITRAL); or an application to the Arbitration Institute of the Stockholm Chamber of Commerce. International arbitral awards are binding and final, and each Contracting Party is obliged to make provision for the effective enforcement of such awards in its area.

The table below shows the status of investor-state dispute settlement cases as of the end of 2005.

**Investor-State Dispute Settlement**

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The table below shows the status of investor-state dispute settlement cases as of the end of 2005.

**List of Investor-State Dispute Settlement Cases (as of end 2005)**

<table>
<thead>
<tr>
<th>Investor:</th>
<th>State:</th>
<th>Date and Procedure:</th>
<th>Status:</th>
</tr>
</thead>
<tbody>
<tr>
<td>AES Summit Generation (UK)</td>
<td>Hungary</td>
<td>2001 - ICSID</td>
<td>Settlement agreed by the parties</td>
</tr>
<tr>
<td>Nykomb (Sweden) vs. Latvia</td>
<td>Latvia</td>
<td>2001 - Stockholm</td>
<td>Award rendered in 2003</td>
</tr>
<tr>
<td>Petrobart (Gibraltar)</td>
<td>Kyrgyzstan</td>
<td>2003 - Stockholm</td>
<td>Award rendered in 2005</td>
</tr>
<tr>
<td>Plama (Cyprus)</td>
<td>Bulgaria</td>
<td>2003 - ICSID</td>
<td>Pending; jurisdictional decision 2005</td>
</tr>
<tr>
<td>Alstom (Italy)</td>
<td>Mongolia</td>
<td>2004 - ICSID</td>
<td>Settlement agreed by the parties</td>
</tr>
<tr>
<td>Yukos Shareholders (Cyprus)</td>
<td>Russia</td>
<td>2005 - UNCITRAL</td>
<td>Pending</td>
</tr>
<tr>
<td>HEP (Croatia)</td>
<td>Slovenia</td>
<td>2005 - ICSID</td>
<td>Pending</td>
</tr>
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</table>

NB: There is no requirement that investor-state disputes be notified to the Secretariat, nor is the Secretariat involved in the administration of the investor-state dispute settlement procedure. This information was compiled by the Secretariat from various public sources.

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“Many of the benefits that both current and potential Contracting Parties perceive in the Energy Charter Treaty are linked to its strong self-executing mechanisms for the settlement of disputes.

However, I would not like to assess the importance or effectiveness of the Energy Charter Treaty solely by looking at the number of cases brought to arbitration, or by considering the outcome of any particular case. Effective dispute settlement mechanisms have significance beyond the cases that come before a tribunal, in that they provide persuasive encouragement for Contracting Parties to observe their Treaty obligations in the first place.”

Ria Kemper, Secretary General, in her welcome address to the Conference in Stockholm in June.
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The aim of the newly established Industry Advisory Panel is to strengthen the dialogue with the energy industry and the financial sector on the main directions of the Energy Charter process, with a particular focus on risk mitigation and improvement of the business climate.

The initiative to create the Panel was launched by the Greek Presidency of the EU, and the Charter Conference approved terms of reference and the initial composition of the Panel in 2004.

The Panel acts as a consultative body for the Energy Charter process as a whole and provides advice on the Charter’s work related to energy investments, cross-border flows and energy efficiency.

The Energy Charter’s Industry Advisory Panel (IAP), which started its operation in 2005, provides a perspective from the private sector on the work of the Energy Charter process. The Group met three times during the year, and – among other outputs – produced a report to the Charter Conference on the *promotion of investment across the Energy Charter constituency* (see page 32 for details).

This report underlined that demand for energy is rising sharply, and that there is a consequent need for substantial investment throughout the energy chain in order to ensure an adequate balance between supply and demand. The IAP members noted a number of concerns regarding the investment climate in many Energy Charter countries, including problems in key areas such as clarity of energy policy and objectives; regulatory and fiscal stability; non-discrimination in energy sector licensing procedures and regulation; and transparent rules for access to transportation and transmission infrastructure.

The Panel is composed of senior representatives of energy companies, industry associations and financial institutions from different Energy Charter member states. A key aim is to learn at first hand from the practical experiences of IAP members, and, over the course of the year, the Panel heard and discussed presentations from Russian, Norwegian and EU-based companies as well as from a leading international financial institution.

The Panel intends in 2006 to focus more closely on experience in the financing of major energy developments and to consider some of the barriers and constraints encountered in obtaining access to finance, technology and human expertise. The Panel will also look in detail at principles and best practices for access to infrastructure and facilities, and at the possibility for a more methodical benchmarking of investment and regulatory regimes and their impact on investment flows and performance.

More information: www.encharter.org > IAP

At the first meeting of the Energy Charter’s Industry Advisory Panel, (from left): Wilfred Czernie (E.ON Ruhrgas); Anastasia Kalkavoura (Hellenic Petroleum); Howard Chase, (BP Europe, Chairman of the IAP); Jean-Marie Devos (Eurogas).
“All energy investors take a careful and methodical approach to risk assessment in their investment planning and capital allocation activities. In this way perceptions of risk in the regulatory, fiscal and political environment feed back directly into real investment decisions. It is important for governments to understand that investor perceptions of risk are directly related to real investment flows.

All of this speaks clearly to the need and the benefits of clear energy national energy policies and priorities; of stability and predictability in the legal, regulatory and fiscal framework for energy resource development; and of a functioning multilateral framework for energy trade and investment.”

The Chairman of the IAP, Howard Chase, addressing the Energy Charter Conference in December 2005.

**Members of the Industry Advisory Panel (2006)**

<table>
<thead>
<tr>
<th>Name</th>
<th>Title/Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Howard Chase</td>
<td>Chairman of the IAP, Director, European Government Affairs, BP Europe.</td>
</tr>
<tr>
<td>Kevin Bortz</td>
<td>Director, Natural Resources, EBRD</td>
</tr>
<tr>
<td>Oleg Buchnev</td>
<td>General Director, NIIgaseokonomika, Gazprom</td>
</tr>
<tr>
<td>Paul Bulteel</td>
<td>Secretary General, Eurelectric</td>
</tr>
<tr>
<td>Ksenia Datsko</td>
<td>Chief of Foreign Relations and Protocol, RAO UESR</td>
</tr>
<tr>
<td>Jean-Marie Devos</td>
<td>Secretary General, Eurogas</td>
</tr>
<tr>
<td>Kiril Gegov</td>
<td>Chief Executive Director, Bulgazgaz</td>
</tr>
<tr>
<td>Levan Gogodze</td>
<td>Member of the Supervisory Board, Georgian Gas International Corporation</td>
</tr>
<tr>
<td>Emanuel Höhener</td>
<td>CEO, EG Laufenburg AG</td>
</tr>
<tr>
<td>David Isenegger</td>
<td>Legal Counsel, Shell EP International Ltd.</td>
</tr>
<tr>
<td>Anastasia Kalkavoura</td>
<td>Head of International Activities Department, Hellenic Petroleum</td>
</tr>
<tr>
<td>Serhiy Korniush</td>
<td>Head of Department for External Economic Relations and Investment, NEC Ukrenergo</td>
</tr>
<tr>
<td>Othmar Kranz</td>
<td>Consultant, Österreichische Elektrizitäts-Wirtschafts AG (Verbund)</td>
</tr>
<tr>
<td>Frank Kuijlaars</td>
<td>Head, Integrated Energy CEEMEA, ABN AMRO</td>
</tr>
<tr>
<td>Brett Langley</td>
<td>Manager, Market Development, BHP Billiton</td>
</tr>
<tr>
<td>Evgeny Mishuk</td>
<td>Chairman of the Executive Board, CIS Electric Power Council</td>
</tr>
<tr>
<td>Andrzej Osiadacz</td>
<td>President of the Board, PGNiG</td>
</tr>
<tr>
<td>Cenk Pala</td>
<td>Head of the Strategic Development Department, BOTAS</td>
</tr>
<tr>
<td>José María Paz Goday</td>
<td>Director, Secretaria General de Regulación, Union Fenosa</td>
</tr>
<tr>
<td>Beate Raabe</td>
<td>Director, EU Affairs, OGP</td>
</tr>
<tr>
<td>Klara Rakhmetova</td>
<td>Director of Department, Kazmunaigaz</td>
</tr>
<tr>
<td>Karl-Peter Thelen</td>
<td>Head of Regulatory Affairs, E.ON Ruhrgas AG</td>
</tr>
<tr>
<td>Tom Therkildsen</td>
<td>Special Advisor, Natural Gas Strategy, Statoil</td>
</tr>
<tr>
<td>Nazim Veliyev</td>
<td>Head of Science and Technical Department, SOCAR</td>
</tr>
<tr>
<td>Masaakira Yokoyama</td>
<td>General Manager, London Office, JOGMEC</td>
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</table>
External Events and Seminars

Belarus and the Energy Charter

“As a country without significant resources of hydrocarbons of its own, but as an important transit country, Belarus is interested to participate in the activities of the Energy Charter”. These were the words of Belarusian deputy Prime Minister, Vladimir Semashko at the opening of a workshop in Minsk in June on the Energy Charter Treaty and its relevance for Belarus.

The workshop, which was organised in cooperation with the Government of Belarus, examined the benefits that could accrue from full participation by Belarus in the Charter process. Belarus has not ratified the Treaty, but applies it on a provisional basis.

Discussions at the workshop did not show objections to the substantial provisions of the Treaty. However, Belarus also takes into account the position taken by Russia on the issue of ratification, given the political intention to create a union state and to coordinate legislation between the two countries in the energy sector.

Risk Reduction in the Energy Sector

New risks in the energy sector – and the appropriate responses to them – were the subject of a major policy Conference in October 2005, organised by the Secretariat in cooperation with the International Energy Agency.

Opening the Conference, Secretary General Ria Kemper underlined that meeting future global energy requirements will require massive long-term investment in energy supply and transportation, alongside renewed efforts to improve the efficiency of energy use and to minimise its environmental impact. Speakers from major international energy companies of both consumer and producer countries, from the banking sector and from academia took up this theme, examining the global energy outlook and considering possible constraints on energy investment and supply.

Among the main themes for discussion were the extent to which higher energy prices affect the relationship between producers and consumers of energy, and also whether there is the need to reconsider the balance within individual countries between the potentially competing claims of the competitive market, the environment, fiscal issues, and security of supply.

For consumer countries in particular, there was a renewed emphasis on demand-side measures to reduce energy consumption – or at least to reduce the growth in energy consumption – alongside close cooperation on climate change and clean energy development.

A key element of a successful energy investment project, and a balanced international system, is a fair and sustainable sharing of risks and benefits among different parties. Against this background, the Conference reconfirmed the value of common multilateral rules for the energy sector, such as those provided by the Energy Charter Treaty, which promote a transparent and predictable environment for energy investments and cross-border flows.

More information: www.encharter.org > Events/Seminars

Speakers at the Conference on Risk Reduction included Frode Johansen, Deputy Director General in the Norwegian Ministry of Petroleum and Energy, and Coby van der Linde from the Clingendael Institute in the Netherlands.
Turkmenistan is a major exporter of natural gas and has enormous reserves, but it has no direct access to the main international markets. Access to European markets depends either on the existing Russian network, or potentially in the future on the emerging energy infrastructure to the south of the Black Sea through Turkey and South-East Europe. Prospects for export to the large markets to the south - India and Pakistan - and to the east - China - are likewise dependent on cooperation with the countries that lie between.

In this situation, as Ria Kemper noted, “the realisation of Turkmenistan’s great potential as an exporter of hydrocarbons depends to a large extent on the existence of stable long-term arrangements for investment within Turkmenistan, and also upon arrangements for the transport of its energy resources to consumer markets via the territory of neighbouring states.” This was the topic for detailed discussion at a Round Table on access of Turkmen energy resources to international markets, organised jointly by the Government of Turkmenistan, the Energy Charter Secretariat and the European Commission, in Ashgabat in March.

The Round Table included presentations from senior officials of the Turkmen oil and gas industry, from the Energy Charter Secretariat and the European Commission, and from representatives of the energy industry. It examined the ways in which international cooperation can facilitate the development of the Turkmen oil and gas sector, the prospective markets and demand for Turkmen exports, and how the rules of the Energy Charter Treaty on investment and cross-border flows can provide a more transparent environment for the operation of the energy sector. There was considerable interest in the status of the negotiations on the draft Energy Charter Transit Protocol (see page 15): Turkmenistan has been one of the leading proponents of new multilateral rules in this area.

See also: Conference on ‘Investment Arbitration and the Energy Charter Treaty, information on page 20
Relations with Non-Signatories

“...The Government of Pakistan has carefully reviewed the Energy Charter process over the past months.

In view of Pakistan's prospective participation in cross border energy trade, and the need for foreign direct investments to build the infrastructure, the Government felt that Pakistan's association with the Energy Charter would send the right signals to the international community for the flow of foreign direct investments in national and international energy sector projects in Pakistan.

It would also allow access to the pool of knowledge that has been developed by the Energy Charter and allow participation in the negotiations taking place among the Charter members, and give Pakistan an opportunity to use the Energy Charter as a neutral and depoliticized forum for discussion of international energy issues and the resolution of problems that may arise.”

Ambassador Saeed Khalid of Pakistan, addressing the Energy Charter Conference, December 2005

The Energy Charter has a natural focus on the evolving Eurasian energy market, and the Charter Conference has welcomed the interest shown in the Charter process by several non-member states and acknowledged in particular the growing Asian dimension of the Charter process. The relationship with countries across Asia provided the focus for the Charter’s activities with non-signatories during 2005.

South Asia - Pakistan and India

Discussions about new regional gas pipelines in South Asia have stimulated interest in the protection that the Treaty could provide for investment and cross-border energy flows. In spring 2005, the governments of both Pakistan and India invited the Secretariat to present the Energy Charter process to senior energy officials and industry representatives; workshops were held in Islamabad and Delhi in March and April respectively. There were also preliminary contacts during the year with the government of Afghanistan.

Pakistan’s application to sign the 1991 Energy Charter Declaration, and thereby to begin a formal association with the Charter process, was unanimously approved by the Charter Conference in December. The Declaration was signed by H.E. Saeed Khalid, Ambassador of Pakistan to Belgium, Luxemburg and the European Union.

As an observer state, Pakistan will be entitled to attend all Energy Charter meetings and receive all related reports and analysis. The authorities in India and Afghanistan are continuing their assessment of the Charter process, and contacts with all three countries will be a high priority for the Secretariat in 2006.

Northeast Asia - China and Korea

The development of the oil and gas resources of Eastern Siberia is opening up new possibilities for the social and economic development of this region of Russia, and also for the export of hydrocarbons to the rapidly growing markets of Northeast Asia.

In March, the Secretary General addressed a high-level symposium on the energy situation in China and the prospects for energy...
The 1991 Energy Charter Declaration

The 1991 Energy Charter Declaration, also known as the European Energy Charter, provides the political foundation for the Charter process. The Declaration is a concise expression of the principles that should underpin international energy cooperation, based on a shared interest in secure energy supply and sustainable economic development.

The Declaration has been signed by fifty-five countries, including the United States and Canada. All signatories to the Declaration are observers to the Charter process, and signature is the first step towards full accession to the 1994 Energy Charter Treaty.

Southeast Asia - ASEAN

The ten countries of the Association of Southeast Asian Nations (ASEAN) are looking to improve cross-border interconnections for gas and electricity and to foster a regional approach to energy security through the development of a Trans-ASEAN gas pipeline and an ASEAN power grid. ASEAN Ministers recognised in their Action Plan for energy cooperation, concluded in 2004, that the experience of the Energy Charter can be very useful in facilitating the implementation of these projects.

ASEAN became an observer to the Energy Charter in 2003, and announced in 2005 the creation of an ‘ASEAN-ECT Task Force’, made up of representatives of all ASEAN member states. The Task Force will examine the possible adoption of the Energy Charter Treaty by ASEAN countries, and make recommendations to ASEAN Energy Ministers.

The foundations for regional cooperation in Northeast Asia are in place, based on the availability of resources, on demand for these resources, and upon a growing appreciation of the benefits of transparent, rule-based and sustainable energy markets. The major partners in Northeast Asia are already associated with a relevant multilateral framework through the Energy Charter process; these partners include three signatories of the Energy Charter Treaty – Russia, Japan, and Mongolia – and two countries with the status of observers – China and the Republic of Korea.

I therefore invite all countries of the region to make full use of the Energy Charter framework. In my view, this would provide an optimal and ready-made platform for closer regional ties in the energy sector, and facilitate the emergence of a Northeast Asian Energy Community based on rules and principles that would be shared by countries across Eurasia."

Ria Kemper speaking to the Ninth International Conference on Northeast Asian Natural Gas and Pipeline, Seoul, September 2005

Non-Signatories
The budget for the Energy Charter process in 2005 was 4.6 million Euros, funded through contributions from member states. The share of contributions is calculated using a scale based on that used in the United Nations. The 2005 budget was 3.6% lower in real terms than that of the previous year. Savings were possible because of structural changes introduced by the 2004 Review of the Charter process, including in particular the merger of the Charter’s Trade and Transit Groups.

The work of the Energy Charter Conference and its subsidiary working groups is supported by a small multinational Secretariat, based in Brussels. The staff of the Secretariat is drawn from across the Energy Charter constituency, and it is led by a Secretary General appointed by the Conference. In 2005, after six years as Secretary General, Ria Kemper indicated that she would be saying farewell to the Energy Charter, and in December 2005, the Conference appointed André Mernier as her successor (see opposite).

The Secretariat’s activities are included in an annual Work Programme, which is subject to approval by the Energy Charter Conference. The overall priorities in the Work Programme for 2006 are to promote compliance with and awareness of the Treaty’s provisions, as well as continued implementation of the conclusions of the Review of the Energy Charter (see page 6).

There were twenty-eight staff in the Secretariat in 2005, and, apart from the new Secretary General himself, the Secretariat welcomed three other new members of staff during the year. Thea Khitarishvili, from Georgia, is a lawyer and expert on regulatory issues who is working on trade and transit issues. Julia Selivanova, a Russian national, specialises in international economic law and is responsible for energy trade and relations with the World Trade Organisation. Mara Novello, from Italy, joined the Administration and Finance Section of the Secretariat as a secretary / receptionist. All of the newcomers to the Secretariat are bilingual in English and Russian, the two working languages of the Charter process.

Four staff members left the Secretariat in 2005: Andras Lakatos (Hungary), Janusz Bielecki (Poland), Joachim Karl (Germany) and Lynda Parker (UK). In addition to the staff under contract, the Secretariat benefited from the assistance of five short-term secondees and interns in 2005: Mariola Juszczuk (Poland), Andrei Belyi (Russia), Ganbat Lkhagva (Mongolia), Madina Oryngali (Kazakhstan) and Dimitris Lelovitis (Greece).

Members of the Secretariat at the conclusion of the meeting of the Energy Charter Conference in December 2005 (from the left): Tudor Constantinescu (Senior Expert on Energy Efficiency), Andrei Konoplyanik (Deputy Secretary General), Ralf Dickel (Director for Trade, Transit and Relations with Non-Signatories), Yulia Selivanova (Trade Expert), and Ria Kemper (Secretary General).
The Energy Charter Conference appointed André Mernier as Secretary General of the Energy Charter Secretariat in December 2005. Mr Mernier assumed his duties as Secretary General on 1 January 2006, taking over from Ria Kemper.

Speaking at the Energy Charter Conference, Mr Mernier paid tribute to Dr Kemper’s service to the Charter process during her six years as Secretary General, and thanked the Conference for the confidence shown in him as her successor. Considering the challenges facing governments in the energy sector, Mr Mernier underlined to the Conference the need for strong international cooperation to facilitate energy investment, the need for a reliable and clear regime governing energy transit, and continued efforts to mitigate the environmental impact of energy use and improve its efficiency.

He also emphasised the importance of the Energy Charter process as one of the privileged instruments at the disposal of governments in order to meet these challenges. "In recent years, the Energy Charter process has made a valuable contribution to transparency and dialogue between its members. I am fully convinced that it will continue to do so in the future".

Before becoming Secretary General, André Mernier was the Head of Energy Services in the Ministry of Foreign Affairs of Belgium, in which capacity he has been involved in energy-related questions at national, European and international levels. He has enjoyed a distinguished career in the Belgian foreign service, including appointments as the Ambassador of Belgium in Geneva from 1996-1999 and as Ambassador in Moscow from 2000-2004, during which period he was also accredited to Belarus, Moldova, Armenia, Georgia, Uzbekistan, Tajikistan, Kyrgyzstan and Kazakhstan.
The following reports were made available through the Energy Charter’s web site in 2005. Some are also available in printed form; please contact the Secretariat for more details.

**Investment**

- **Uzbekistan** - In-Depth Review of the Investment Climate and Market Structure in the Energy Sector
- **Croatia** - Follow-up Report on the Investment Climate and Market Structure in the Energy Sector
- **Poland** - Follow-up Report on the Investment Climate and Market Structure in the Energy Sector

**Energy Efficiency**

- **Investing in Energy Efficiency** - Removing the Barriers
- **Carbon Trading and Energy Efficiency**
Integration of Energy Efficiency and Renewable Energy Policies

Georgia - In-Depth Review of Energy Efficiency Programmes and Policies

Armenia - Regular Energy Efficiency Review

Hungary - Regular Energy Efficiency Review

Iceland - Regular Energy Efficiency Review

Kyrgyzstan - Regular Energy Efficiency Review

Sweden - Regular Energy Efficiency Review
The Industry Advisory Panel (IAP) welcomes the opportunity to contribute on the basis of industry and investor experience to the Energy Charter process. It is believed that such an opportunity is important in allowing an informed discussion of key investor risks and in encouraging the practical use and implementation of the provisions of the Energy Charter Treaty.

1. The IAP seeks to offer views based on industry experience regarding the promotion of energy sector investment in the Energy Charter area. To this end the IAP has considered a number of presentations from members regarding their perceptions of opportunities, risks and barriers in energy sector investment. To date these presentations have principally covered investment in the oil and natural gas sectors, with input from European and Russian based companies and from the international banking sector.

2. On this basis the IAP has identified a number of key areas of concern for industrial investors that may (at least in post investment stage) be addressed within the context of the Energy Charter Treaty provisions. Progress in these areas may help to stimulate flows of investment to energy production, processing and transportation capacity through the Charter area.

3. The IAP believes that the Energy Charter Treaty and, in particular, its rules on investor protection, trade and transit, as well as the broader cooperative framework offered by the Energy Charter process, can assist in improving the energy investment climate by strengthening investor confidence and reducing policy and regulatory risks.

4. The IAP in particular noted that:

   • Sharply rising demand (notably in Asia and the United States) has eroded spare capacity in the crude oil, natural gas and refined products sectors, leading to significantly higher prices in the global markets. Substantial investment will be needed in all sectors to ensure an adequate supply demand balance on a long term basis

   • In addition substantial investment may be required to upgrade and replace aging transportation infrastructure and production facilities (notably in the natural gas and electricity sectors) and to create new infrastructure for long-distance gas transportation
5. Key points identified by IAP members with respect to investor risks include the following:

a) Companies generally employ a systematic approach to qualitative and quantitative risk assessment with the objective of prioritizing investment opportunities on a methodical basis. Perceptions of the quality or otherwise of the investment climate feed back into the investment decision making process through this mechanism.

b) Such risk assessments generally take account of both the perceived risks of the investment environment and the ability to mitigate through project specific and wider measures (including through applicable international Treaties).

c) Investment decisions also invariably need to take account of a wide range of environmental and social challenges. Companies have developed a range of methodologies (often in close partnership with appropriate international agencies) to assess and manage such risks in a transparent and methodical manner.

d) Commonly mentioned investment risks in many environments include lack of an independent and effective judicial process, inadequate and unreasonably bureaucratic administrative procedures, lack of clarity in national energy policies and objectives, lack of transparency in government decision making processes, concerns regarding fiscal and regulatory stability, clarity and non-discrimination in natural resources licensing procedures and lack of an adequate framework for corporate governance.

e) Further items commonly taken into account in any investment risk analysis include perceptions of the probability of expropriation, nationalization or other forms of involuntary redistribution of property, restrictions on currency transfers and remittances, import/export limitations and limitations on the deployment and use of qualified and managerial staff.

6. Other areas where clarity and consistency are of particular value include non-discriminatory access to new exploration acreage, the role of state owned companies in the energy sector, the separation of regulatory functions from the interests of other stakeholders, the creation of clear and transparent rules for access to oil, gas and electricity transportation capacity and clarity regarding potential restrictions on the activity of foreign investors in the oil, natural gas and electricity or other sectors.
7. The IAP is encouraged that a track record of dispute resolution is beginning to emerge within the framework provided by the Energy Charter Treaty. Although dispute settlement provisions should normally be perceived as instruments of “last resort”, they are of significant value in providing a constructive framework for the resolution of investment related disputes and may thereby make a significant contribution to investor confidence and a more reliable investment environment.

Given the IAP wish to contribute on the basis of industry and investor experience to the Energy Charter process and taking into consideration the work commenced during 2005, the IAP proposes to continue during 2006 with assessing the main ‘lessons learned’ from a variety of investor experiences in the oil, gas and electricity sectors of the energy industries. The IAP will seek to comment on potential mechanisms within the Energy Charter Treaty context for addressing investor risks. Such approaches could include benchmarking of key elements of the investment cycle, the development of key principles for agreements regarding access to infrastructure and facilities, the further review of important constraints regarding access to financial resources and technology, the comparative impact of different forms of investment and regulatory regimes on investment flows and performance and the potential for synergies between the provisions of the Energy Charter Treaty and other international mechanisms including the relevant articles of the WTO.

Finally the IAP encourages both Energy Charter Conference and the Secretariat to give greater consideration to communication of the provisions and benefits of the Treaty to a wider government, investor and institutional audience. The IAP would be pleased to play an active part in this process.

More information: www.encharter.org > IAP

Deputy Secretary General
Andrei Konoplyanik (third from right) speaking in the concluding panel of the EuroGulf Energy Forum in Kuwait in April, along with representatives of Kuwait, Iran, the IEA, the European Commission and the OPEC Secretariat.
## Meetings and Events in 2005

### 2-3 March
- Round Table on ‘Access of Turkmen Energy Resources to International Markets’, Ashgabat, Turkmenistan *(organised with the Government of Turkmenistan and the European Commission)*

### 14 March
- Workshop on the Energy Charter Treaty, Islamabad, Pakistan *(in cooperation with the Government of Pakistan)*

### 6 April
- Workshop on the Energy Charter Treaty, New Delhi, India *(in cooperation with the Government of India)*

### 7 April
- Inaugural meeting of the Industry Advisory Panel

### 8 April
- Russia - EU Expert Meeting on the draft Transit Protocol

### 23 May
- 2nd Russia - EU Expert Meeting on the draft Transit Protocol

### 24-25 May
- Inaugural meeting of the Trade and Transit Group

### 26-27 May
- Workshop on Energy Efficiency and Related Environmental Aspects

### 9-10 June

### 16-17 June
- Working Group on Energy Efficiency and Related Environmental Aspects

### 22 June

### 29 June
- Round Table Meeting for the Observers to the Energy Charter

### 30 June
- 3rd Russia - EU Expert Meeting on the draft Transit Protocol

### 6 July
- Industry Advisory Panel

### 20 September
- Ad Hoc Expert Meeting on the Secretariat’s draft Work Programme for 2006

### 14 October
- Industry Advisory Panel

### 18-19 October
- Trade and Transit Group

### 20 October

### 24-25 October
- Investment Group

### 26 October
- Conference on ‘Risk Reduction in the Energy Sector’, Brussels *(organised jointly with the IEA)*

### 30 October
- 4th Russia - EU Expert Meeting on the draft Transit Protocol

### 17-18 November
- Working Group on Energy Efficiency and Related Environmental Aspects

### 24 November
- Budget Committee

### 25 November
- Ad Hoc Preparatory Meeting for the Energy Charter Conference

### 9 December
- Sixteenth Meeting of the Energy Charter Conference
**By the Secretary General**

**March**

‘Access of Turkmen Energy Resources to International Markets’. Opening Remarks to the Round Table organised by the Secretariat, the European Commission and the Government of Turkmenistan, Ashgabat, Turkmenistan.


**June**


**September**


**By the Deputy Secretary General**

**February**


**April**


‘Gas Imports to the European Union from Russia and Other Countries: Reliability of Supply, Possible Risks and Instruments for their Mitigation’. Speech to the Conference on Energy Cooperation between the EU and Russia in a Global Context, Paris, France.

‘Russian Gas to Europe, Possible Risks and Instruments for their Mitigation’ and ‘The Energy Charter and the “Yukos Case”’. Presentations to the Eighth Schlangenbad Meeting, Schlangenbad, Germany.

**May**

Speeches

May

‘How Much Does Russia Need Foreign Investment for the Sustainable Development of its Oil and Gas Sector?’ Speech to the International Conference “Mergers, Acquisitions and Licensing in the Russian Oil and Gas Sector”, Moscow, Russian Federation.

‘The Energy Charter and the “Yukos Case”’. Presentation to the to the International Conference “Mergers, Acquisitions and Licensing in the Russian Oil and Gas Sector”, Moscow, Russian Federation.

September


During 2005, the Deputy Secretary General also published numerous articles and commentaries on matters related to the Treaty:


Selected Presentations by Other Members of Energy Charter Staff:

February


March

April

May


June

September


October

December

Annex IV

Conference Officers for 2006

Energy Charter Conference
Chairman: Henning Christophersen (Denmark)
Vice-Chairmen: Ivan Materov (Russian Federation)
Manabu Miyagawa (Japan)

Investment Group
Chairman: Michael Caramanis (Greece)
Vice-Chairman: Shukhrat Khamidov (Uzbekistan)

Trade and Transit Group
Chairman: Mithat Rende (Turkey)

Energy Efficiency Working Group
Chairman: Peter Helmer Steen (Denmark)
Vice-Chairmen: Tamas Jaszay (Hungary)
Wolfgang Stinglwagner (Germany)

Budget Committee
Chairman: Yrjö Saharakorpi (Finland)
Vice-Chairman: Helge Westborg (Norway)

Energy Charter Advisory Board
Chairman: Helga Steeg (Germany)

Legal Advisory Committee
Chairman: Colin Brown (European Commission)
Further Information

The Energy Charter’s web site - at www.encharter.org - gives access to public documents concerning the Charter process, including all publications, and details of past and forthcoming events organised by the Energy Charter Secretariat.

The Secretariat also publishes a regular newsletter, ‘Charter News’, which is available online and in printed form. If you are interested to receive this newsletter, or have any other queries related to the Charter process, please contact the Secretariat at the address below, or send an email to info@encharter.org.

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