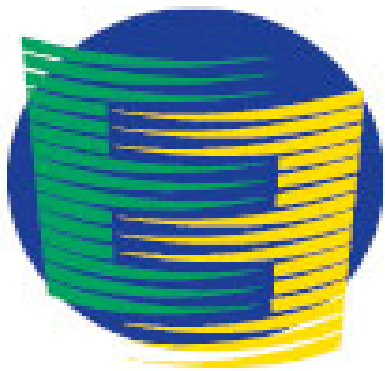




Energy Charter Treaty: Investment Rules for Energy

**Role of Intergovernmental Agreements
in Energy Policy
Geneva, 29 April 2013**

Matteo BARRA
Energy Charter Secretariat



Energy Charter : *Common Investment Rules for Global Energy Security*

- **1991 *Energy Charter* Principles and Objectives**
- **1994 *Energy Charter Treaty* (in force, 1988)**
- Investment Promotion
- Investment Protection
- Environmental Aspects
- Provisional Conclusions



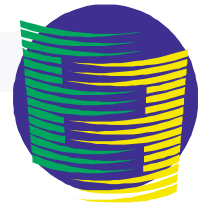
1991 Energy Charter

Principles

- ***Global*** energy cooperation
- ***Non-discrimination*** and ***market*** principles
- Common interest in ***environmental protection***
- Potential towards ***sustainable development***
- State ***sovereignty over natural resources***

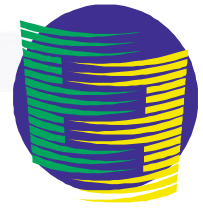
Objectives

- ***Energy security, efficiency, safety***
- Creating a climate favourable to ***enterprises*** and ***investment flows***



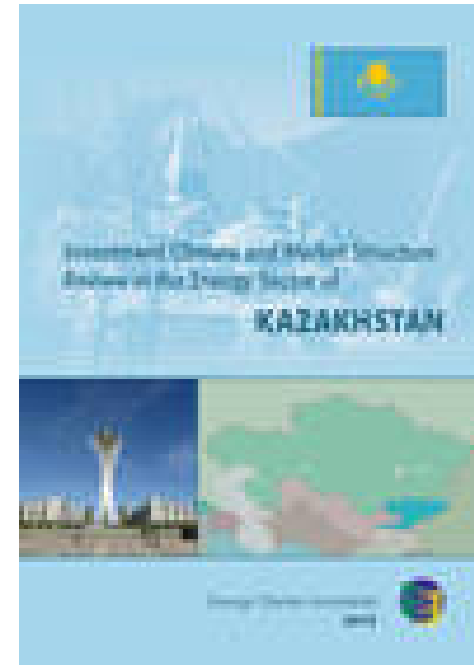
1994 Energy Charter Treaty (ECT)

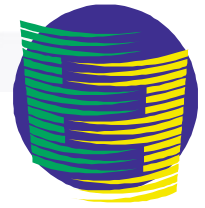
- 53 Contracting Parties (*Afghanistan, 2013*)
- Open to any exporting, transit or importing country
- Chapter on Trade and Transit
- ***Chapter on Investment Promotion and Protection***
- Sovereignty over Energy Resources
- Environmental Aspects
- Dispute Settlement



ECT – Investment Promotion

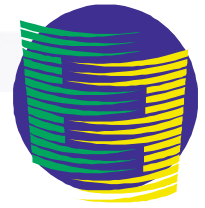
- Investment Group
 - Policy forum
 - Country and horizontal reports
 - Peer pressure and recommendations
 - Share experiences and knowledge
 - Sector studies
- Industry Advisory Panel (IAP)
 - Dialogue with the private sector
 - Risk mitigation
 - Improvement of the business climate
- Energy Charter Secretariat





ECT – Investment Protection (i)

- Binding non-discrimination (post-establishment)
 - Contingent Standards:
 - National Treatment
 - MFN
 - Non-Contingent Standards:
 - Fair and Equitable Treatment
 - Constant Protection and Security
 - *No “impair[ment] by unreasonable or discriminatory measures”*
- Best-efforts for ‘Making of Investments’ (pre-establishment)
 - Limit exceptions (or standstill clause)
 - Remove existing restrictions
 - Blue Book



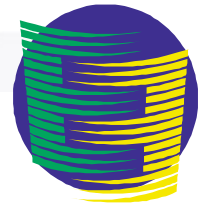
ECT – Investment Protection (ii)

■ Investment:

- ☐ Asset-based definition : Goods; Credits and other rights (by law, contract, licences); Company, shares, stocks, equity, bonds and debts; Claims and profits, dividends
- ☐ Owned by an national of a Contracting Party
- ☐ Denial of Benefit Clause
- ☐ Associated with an Economic Activity in the Energy Sector

■ Individual investment contracts

- ☐ Each State “shall observe any obligations it has entered into with an Investor” (*umbrella clause*)
- ☐ Opt-out



ECT – Investment **Protection** (iii)

- Freedom of investment-related capital transfers
- Freedom of employment of key personnel
- Protection Against Losses
- Protection Against Expropriation
 - “Investments (...) shall not be nationalized, expropriated”
 - “Investments (...) shall not be subjected to a measure or measures having effect equivalent to nationalization or expropriation”
 - Except: In the public interest; Non-discriminatory; Carried out with due process; Prompt, adequate and effective compensation



ECT – Investment **Protection** (iv)

■ Exceptions

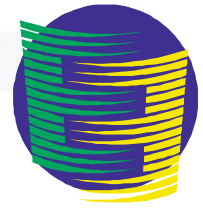
- ☐ Measures to protect human, animal and plant life; in case of short supply; to benefit aboriginal people or disadvantaged groups
- ☐ Measures to protect essential security interests; to implement non-proliferation; to maintain public order

■ State-to-State dispute settlement

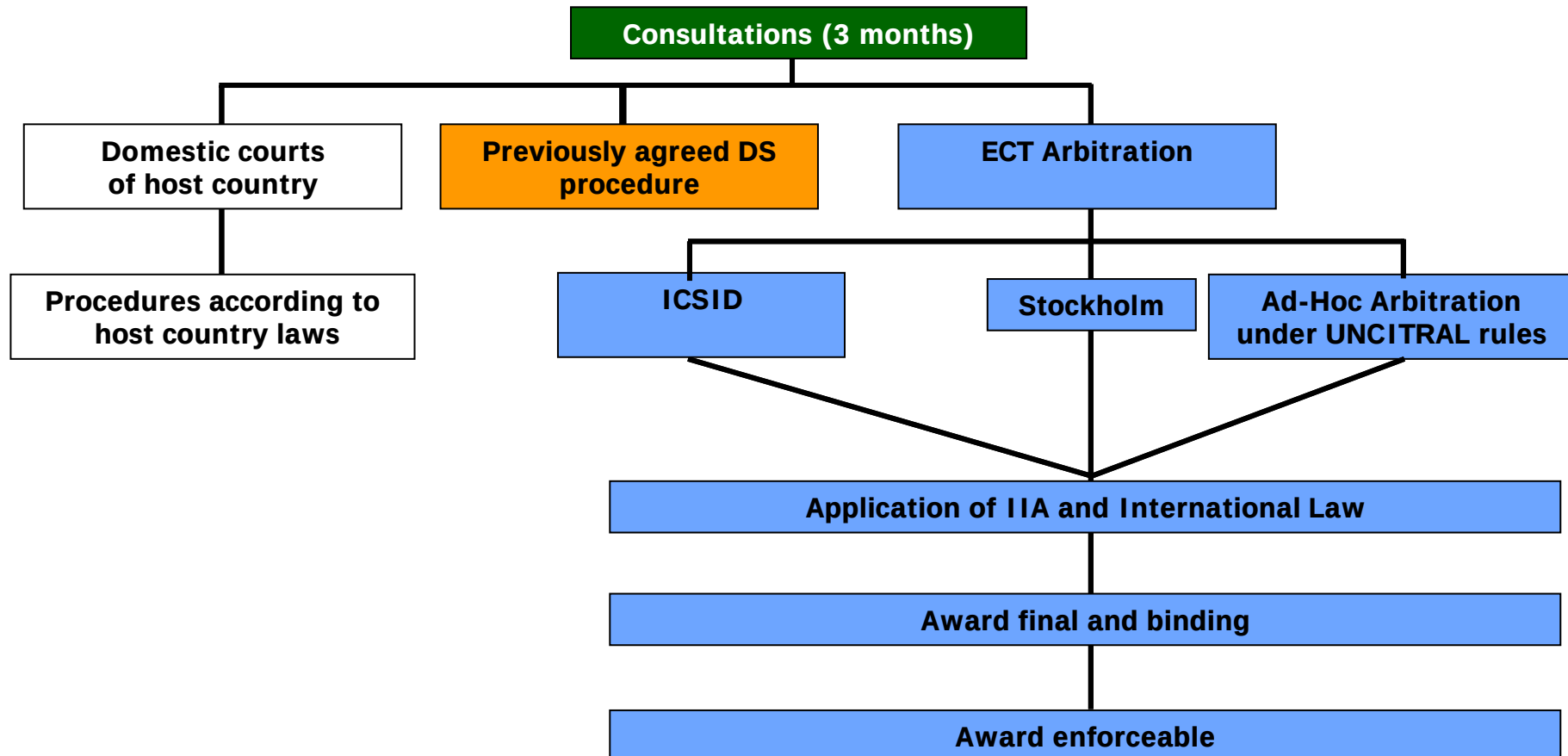
- ☐ Diplomatic channels or *ad hoc* arbitration

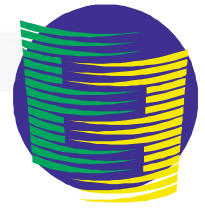
■ Investor-State dispute settlement

- ☐ Request for amicable settlement and three months cooling-off period
- ☐ Before local courts or before the ICSID / arbitral tribunal under UNCITRAL rules / Stockholm Chamber of Commerce



ECT Investor-State dispute settlement





ECT Investment Chapter : **What it Does**

- Cooperative process on: favourable investment climate, 'Making of Investment'
- Binding rules on non-discrimination, transfer of capitals, personnel, expropriation
- Dispute settlement

ECT Investment Chapter : **What it Does Not**

- Determine national energy policies
- Impose right to access national energy markets
- Privatised
- Require mandatory third party access
- Provide supranational regulation



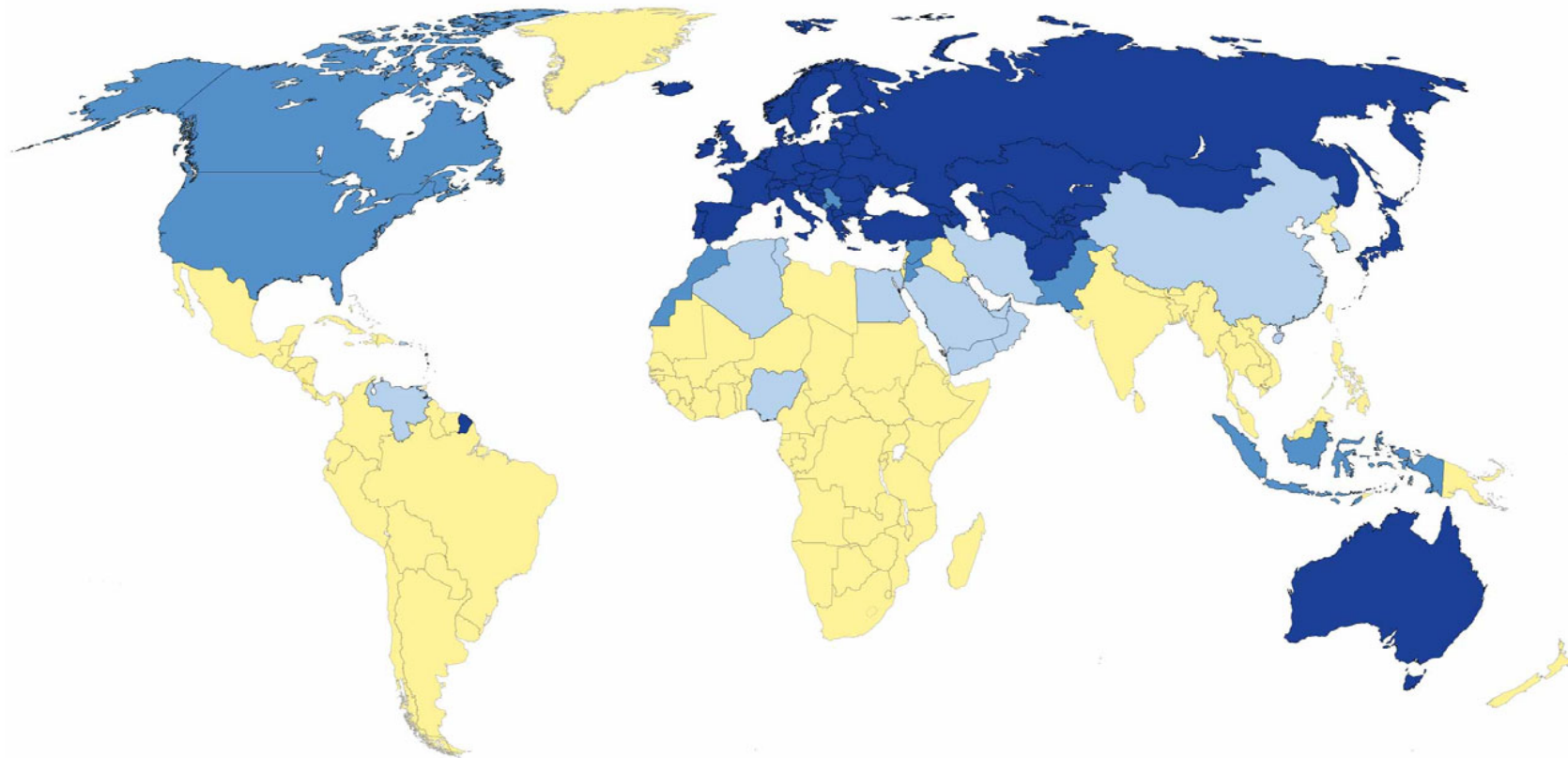
ECT – Environmental Aspects (Art. 19; PEEERA)

- Cooperative process on energy efficiency (EE) taking into account sustainable development, precautionary measures, polluter-pays principle
- Peer review and recommendations on legal, regulatory and institutional frameworks:
 - Energy Efficiency (50% of required CO₂ savings by 2050, IEA); renewable energy and low-carbon
- Exception for the protection of human, animal and plant life, essential security interests, ...

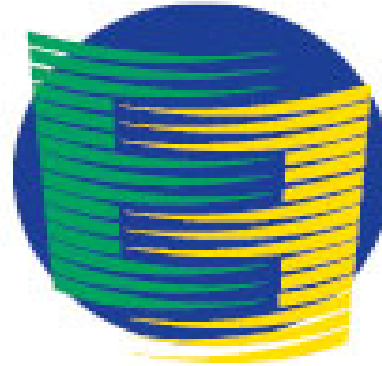
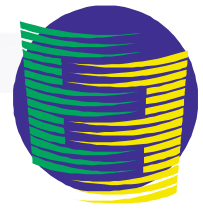


Energy Charter Treaty: Investment Rules for Energy

- **Open and global** energy cooperation framework
- **Integrating environmental concerns** and sovereignty over energy resources
- **Dispute Settlement**
- **Managing complexity:**
 - 1'275 BITs and completing WTO commitments
 - Taking **account of international energy co-operation**₁₃



This map is without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.



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Common rules for global energy security