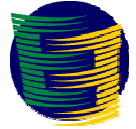


The Energy Charter Treaty as an instrument of international and regional cooperation and dispute resolution

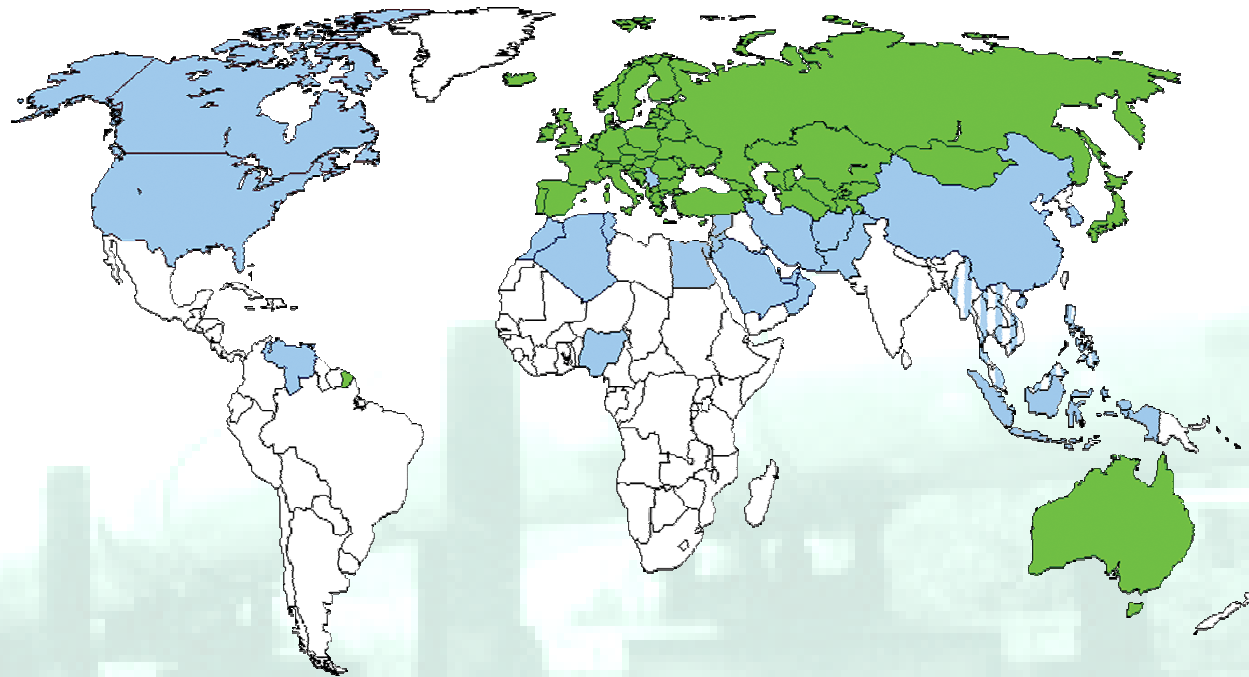
Patrick Larkin
Energy Charter Secretariat
www.encharter.org

Caspian Oil and Gas Offshore 2012

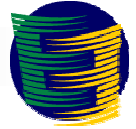
Astana, Kazakhstan – 14 June 2012



The Energy Charter

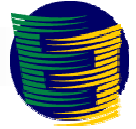


- **51 Countries (green) represent:**
 - Around 40% of global GDP
 - Around 40% of global gas production
 - Around 25% of global oil production



The Energy Charter

- National sovereignty over energy resources
- Respect for contract and property rights
- Stable and open frameworks for flows of energy, capital, technology and investment
- All inspired by an orientation towards market solutions, among them non-discrimination, transparency, energy efficiency and sustainable development



Investment Protection

1. Bilateral Investment Treaties compared with the multilateral nature of the Energy Charter Treaty
2. Article 10 (1) of the ECT “*Each Contracting Party shall observe any obligations it has entered into with an Investment or an Investor of any Contracting Party*”



ECT Article 7 on Transit

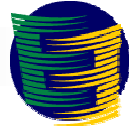
Freedom of Transit

GATT – Article V.2

There shall be **freedom of transit** through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. **No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership or goods**, of vessels or of other means of transport.

ECT – Article 7.1

Each Contracting Party shall take the necessary measures to **facilitate the Transit** of Energy Materials and Products **consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to pricing** on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.



ECT Article 7 on Transit

Facilitation of transit based on non-discriminatory and transparent rules

- ☐ States to encourage cooperation of network owners/operators
- ☐ Non-discrimination as to origin, destination, ownership or pricing
- ☐ National provisions to treat transit no less favourable than import or export (national treatment)
- ☐ No obstacles to the creation of new capacity
- ☐ Security of established transit flows
- ☐ Non-interruption of transit flows in case of a dispute
- ☐ Conciliation procedure for transit disputes



Legal Matters Dealt with in the Energy Charter Treaty

- Institutional Matters
- Dispute settlements
 - Investment Disputes (Investor-state disputes)
 - State-to-state Disputes
 - In general
 - Trade Disputes
 - Transit Disputes
 - Competition Disputes
 - Environment Disputes



Investment Disputes

- Investor-State Disputes (Article 26)
 - Prior Consultations
 - If failed:
 - Domestic courts or arbitration tribunals;
 - Applicable pre-agreed DS procedure; or
 - International arbitration
 - ICSID
 - Sole arbitrator or arbitral tribunal under the UNCTRAL Arbitration Rules
 - Arbitration Institute of the Stockholm Chamber of Commerce



State-to-state Disputes

- In general (Article 27)
 - Except:
 - Competition;
 - Environmental issues; and
 - Trade-related matters
 - Additional mechanism for Transit
- Diplomatic channels
- Ad hoc arbitral tribunal
 - Procedures like those found in BITs



Transit Disputes

■ Article 7(7)

- ❑ Contracting Party may refer the dispute to the Secretary General
- ❑ SG consults with interested parties and appoints a conciliator (within 30 days)
- ❑ Conciliator seeks agreement between the parties
- ❑ If failed within 90 days, the conciliator:
 - recommends a resolution or a procedure to achieve resolution; and
 - decides the interim tariffs, etc. to be observed until the dispute is resolved



Transit Disputes (continued)

- When you are a party to the dispute:
 - ❑ Conciliation may be faster than more formal procedures
 - ❑ Conciliation does not derogate from Contracting Parties' rights and obligations under international law
 - ❑ Conciliation procedure can be invoked only after exhaustion of all other DS remedies