

UNCTAD Expert Meeting on
FDI IN NATURAL RESOURCES

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**Investment, Energy Security and
the Energy Charter Treaty**

by

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The views expressed are those of the author and do not necessarily reflect the views of the United Nations



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1. Energy Security



Energy Policies since the 1970s

- Energy security was the priority after two oil crises in the 1970s, resulting in industrialised countries diversifying energy sources and non-OPEC areas increasing production
- The market mechanism took over in the 1980s, and oil became a commercial commodity (NYMEX WTI 1983-, IPE Brent 1988-)
- Deregulations were taking place in the natural gas and electricity sector in the 1990s, introducing competition in the sector

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Why “Energy Security” Now?

- Terrorism (9/11, 7/7)
- Political instability in the Middle East (Iraq, Israel, Palestine, Lebanon, Syria)
- Natural disasters (Hurricanes “Katrina” and “Rita” in 2005)
- Blackouts (California in 2000, North America and Europe in 2003)
- Natural gas supply disruptions (Russia-Belarus in 2004, Russia-Ukraine in 2006)
- Collapse of Enron (2001)
- High oil and gas prices
- Stagnant non-OPEC production
- Low investment in resource development and infrastructure
- Demand growths
- Increasing import dependency
- Changes in supply and demand geography (emergence of China and India on the demand side, reemergence of Russia on the supply side)

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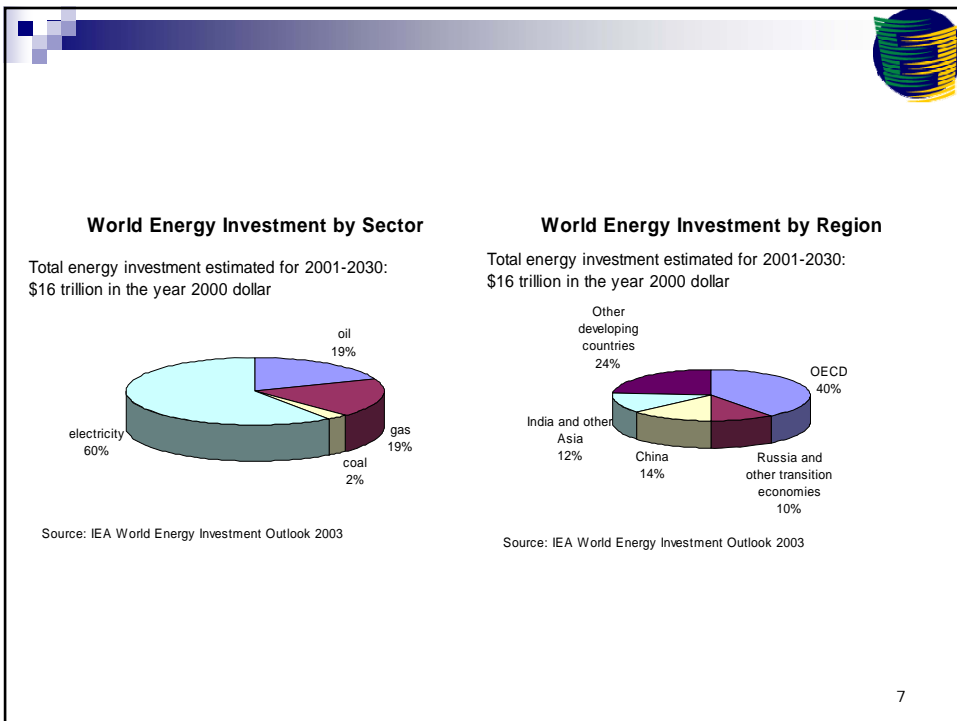
Energy Security Measures

- Diversifying energy sources
- Strategic forces
- Political influences (G8, EU-Russia Summit)
- Petroleum reserves → IEA
- Producer-consumer dialog → IEF
- Promoting energy investment and trade → Energy Charter Treaty

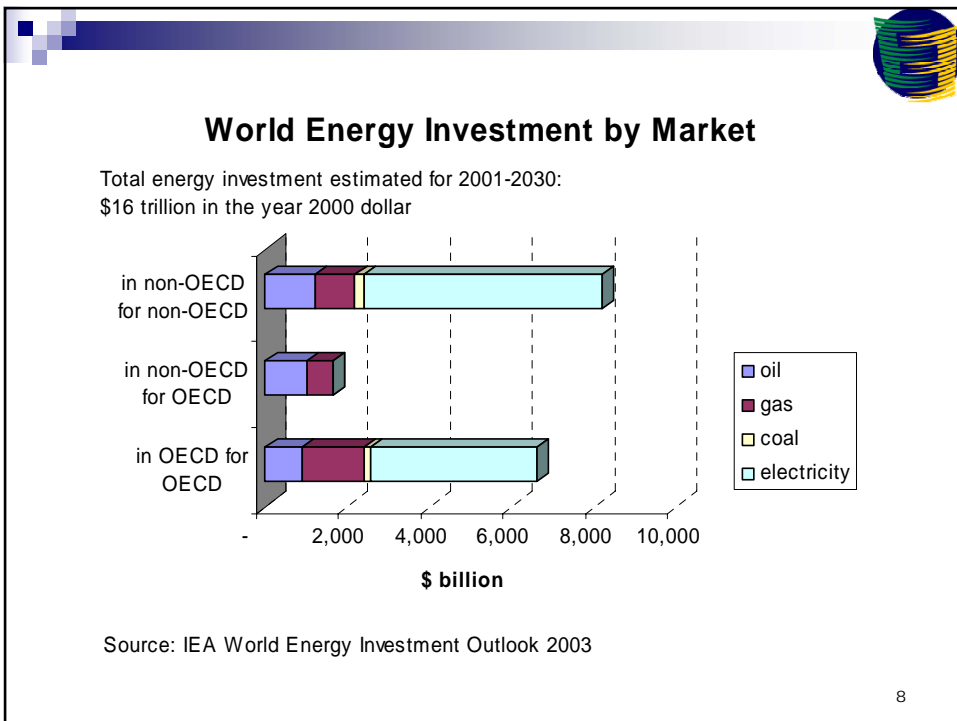
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2. Energy Investment



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Characteristics of Energy Investment

- Technology-driven
- Large-scale and capital-intensive
- Large initial investment
- Long project life
- Idiosyncratic investment
- Part of a supply chain

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Risks Associated with Energy Investment

<ul style="list-style-type: none">■ Political/legal risks<ul style="list-style-type: none">□ Geopolitics□ Related regulations□ Environmental policies□ Profit transfer□ Taxes□ Expropriation□ Jurisdiction■ Energy Charter Treaty designed to take out political/legal risks	<ul style="list-style-type: none">■ Economic risks<ul style="list-style-type: none">□ Macroeconomics conditions□ Energy prices□ Construction□ Operation□ Foreign currency Exchanges■ Other risks<ul style="list-style-type: none">□ Natural disasters□ Civil unrests, wars□ Strikes
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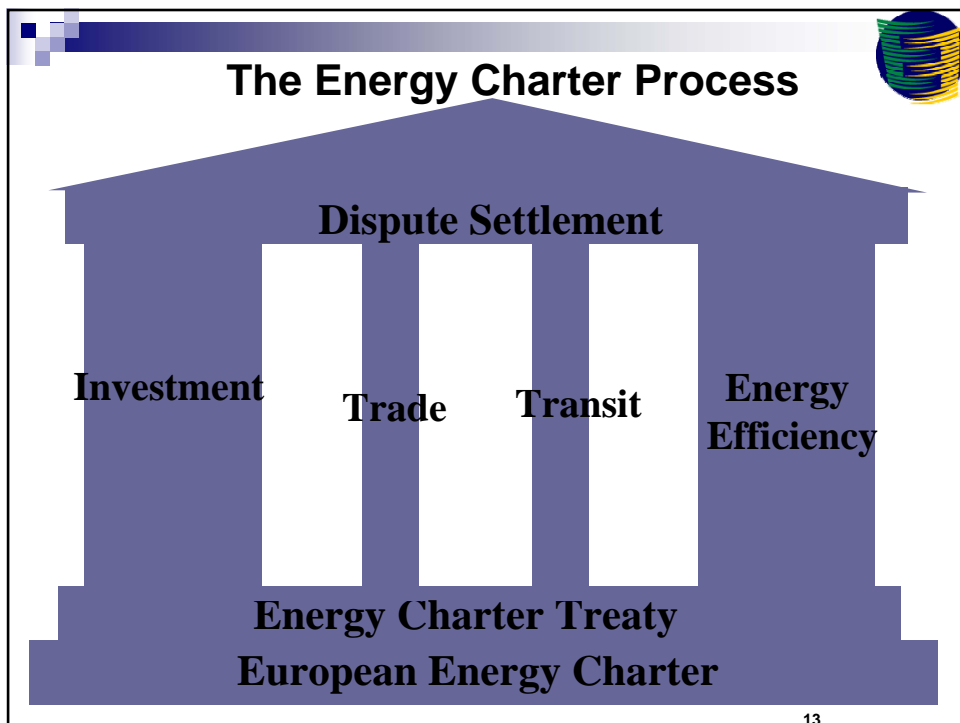


3. Energy Charter Treaty



A Brief History of the Energy Charter Process

- **European Energy Charter** (December 1991): a political declaration for energy cooperation in the post-Cold War era. Western/Central/Eastern European and the FSU countries, plus the US, Canada, Australia and Japan, gathered in the Hague, Netherlands
- **Energy Charter Treaty** (December 1994): Inter-governmental agreement to provide legal framework to protect investment and secure trade and transit in the energy sector. Entering into force in April 1998



The slide features a blue header bar with a small globe icon in the top right corner. The main content is titled "Investment Protection" and lists six bullet points. The slide is numbered 14 in the bottom right corner.

Investment Protection

- First multilateral investment agreement
- Energy sector-specific
- Principle of non-discrimination/national treatment for established investments
- Best endeavour clause for investments in the making
- Confirmation of national sovereignty over natural resources
- A discussion forum for energy investment issues

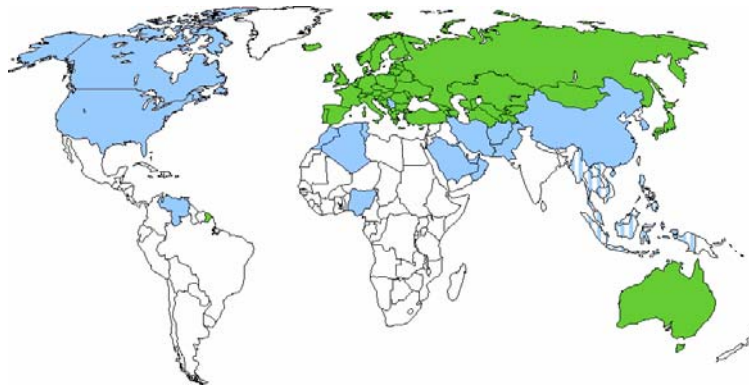
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Dispute Resolution Procedures

- An opportunity for amicable settlement
- In failing the amicable settlement;
 - Investor-to-state disputes (Article 26)
 - UNCITRAL
 - SCC
 - ICSID
 - State-to-state disputes (Article 27)

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Energy Charter Constituency



■ Member Countries

■ Observers

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Recent Developments in the ECT Area: Oil Sector

- Slowing Russian production growths
 - Effects of Yukos/Rosneft and Sibneft/Gazprom mergers
 - West Siberia production peaking?
- Increasing Caspian production
 - Azeri-Chirag-Guneshli fields (Azerbaijan) → BTC pipeline
 - Tengiz/ Karachaganak fields (Kazakhstan) → CPC pipeline
 - Kashagan field (Kazakhstan): start of production around 2010
 - Kazakhstan-China oil pipelines
- New pipeline plan
 - East Siberia-Pacific
 - Bosphorus bypass

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Recent Developments in the ECT Area: Gas Sector

- Gazprom's expansion
- Stagnant upstream investment
- Gas exports from Central Asia
- Investment issue: Sakhalin I/II, Shtokman
- Supply disruption: Belarus, Ukraine, Georgia, Moldova
- New pipeline plan: Nabucco, Northern European, Turkey-Balkans-Italy



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Thank you for your attention





Reserve Slides

Investor-to-State disputes

Case filed	Parties	Institution
25/4/2001	AES Summit Generation Ltd (UK) v Hungary	ICSID
11/12/2001	Nykomb Synergetic Technology Holding AB (Sweden) v Latvia	SCC
1/9/2003	Petrobart Ltd (Gibraltar) V Kyrgyzstan	SCC
19/8/2003	Plama Consortium Ltd (Cyprus) v Bulgaria	ICSID
18/3/2004	Alstom Power Italia SpA, Alstom SpA (Italy) v Mongolia	ICSID
3/2/2005	Group Menatep (Gibraltar), Hulley Enterprises Ltd (Cyprus), Yukos Universal Ltd (Cyprus), Veteran Petroleum Trust (Cyprus) v Russian Federation	UNCTRAL

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Investor-to-State disputes (2)

Case filed	Parties	Institution
3/10/2005	Ioannis Kardossopoulos (Greece) v Georgia	ICSID
28/12/2005	Hrvatska Elektroprivreda dd (HEP) (Croatia) v Republic of Slovenia	ICSID
19/4/2006	Libananco Holdings Co Ltd (Cyprus) v Turkey	ICSID
30/8/2006	Azerpetrol International Holdings BV, Azerpetrol Group BV, Azerpetrol Oil Services Group BV (Netherlands) v Azerbaijan	ICSID

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Trade and Transit

■ Trade

- GATT rules applied by reference for energy products and equipments
- Trade dispute settlement procedures
- Trade Amendment (GATT → WTO) adopted in April 1998

■ Transit

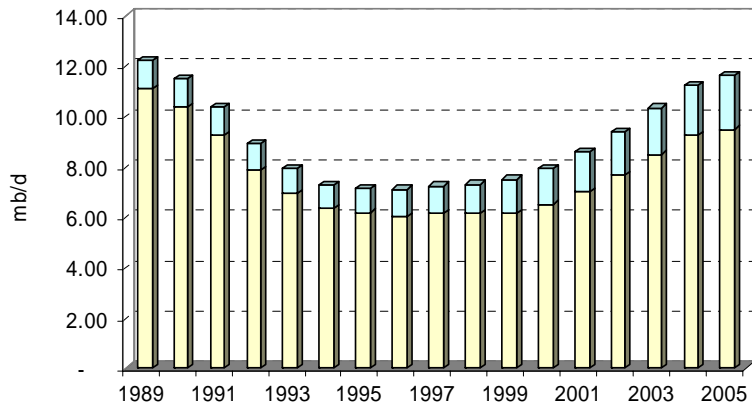
- Covering grid-bound energy transport
- Freedom of transit and non-discrimination
- Transit dispute conciliation mechanism
- Transit Protocol being negotiated

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FSU Oil Production



Source: IEA

■ Russia ■ Other

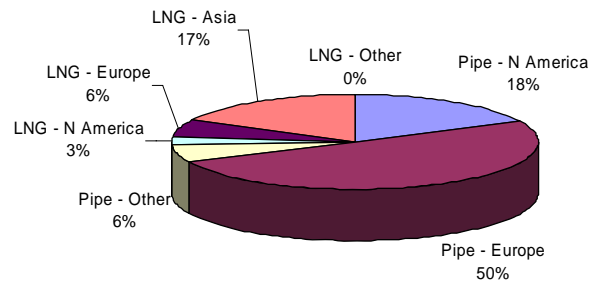
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Gas Pipelines of Eurasia



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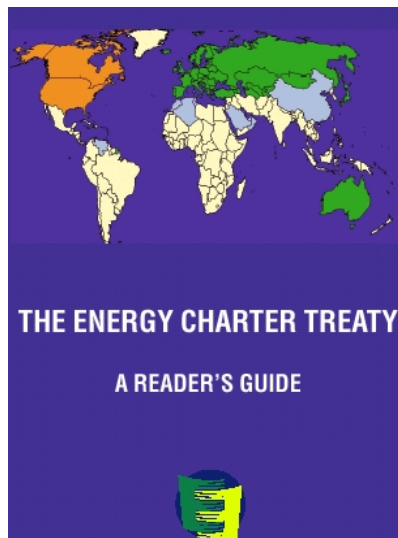
World Natural Gas Trade (2004)



Source: BP Statistics

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www.encharter.org



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