

**Box 2. A particular case—Russia's post-revolutionary concessions**

While the concession system developed as an instrument for providing energy security for oil-importing states, some of the energy resources-rich countries were looking to concessions as an instrument of development of their own energy resources to raise energy supplies both domestically and for export. Post-revolutionary Russia is a particular case in point.

After the revolution in 1917 and victory in the civil war, reconstruction was a key concern of the new Soviet government. Foreign investment was vital for this purpose, with guarantees of investor protection necessary in the unstable investment climate prevailing at the time. The government turned to the currently popular economic tool—the concession. On 23 November 1920, Decree No 481 was adopted on the 'General Economic and Legal Terms and Conditions of Concessions'. By a further Decree dated 1 February 1921, oil concessions in Baku and Grozny were approved.

Russian oil concession of the 1920s, as exemplified by the Baku and Grozny agreements, had specific features of the production sharing agreements (PSA) that were to emerge some 45 years later in Indonesia and then in global markets. Variants of this Russian contract conformed to the modern PSA model with a one-step production sharing applied in Libya for example.<sup>38</sup> Thus, in July 1923, discussing a draft letter to Sinclair with conditions on the proposed grant of an oil concession at Sakhalin, the Politbureau (Presidium) of the Central Committee of the then All-Russian (Bolshevik's) Communist Party indicated some key provisions to be included in the proposed concession:

1. Determine the programme of works (POW).
2. Fix investment volumes which would be linked with satisfaction of the POW.
3. Share production with the state portion equal to 30 per cent of gross production.
4. Maintain a state majority in the governing board and the right to establish a Board of directors.
5. Maintain control over financing of the whole enterprise.
6. Take a percentage from net profit (ie dividends).
7. Give an immediate loan to the Soviet government.
8. Orders to be placed at Russian manufacturing plants; and
9. The concession to be 30–40 years' duration.<sup>39</sup>

<sup>38</sup> This one-step Libyan PSA model was re-introduced recently in Russian legislation, in addition to the more traditional 'modernized Indonesian PSA model' that was implemented in Russian legislation in 1995.

<sup>39</sup> At the end of the letter it is indicated that the concession agreement can be signed only after normal relations between the USSR and the US are established (ie when political risks for the host

In the 1970s, the oil market moved to another stage of development in which traditional and modernized concessions with extensive duration periods no longer reflected the balance between the interests and the powers of the contracting parties, ie of the importing and exporting states. Host states became stronger to have an opportunity to dictate their interests to the international companies. The establishment by oil producing states of OPEC in 1960 led to, inter alia, significant changes in the institutional structure of the oil market, nationalization of the upstream assets of the international oil companies in the producer states, cancellation of the existing concessions, an increase in oil prices, and politically motivated interruptions in oil supplies. This in turn led to increased demands for new mechanisms to provide energy security in this new energy world.

#### E. Energy security instruments after the ‘oil shocks’: strategic reserves and commercial stocks

The oil embargo of 1973 focused the attention of oil-importing countries on their vulnerability stemming from dependence upon oil imports. The United States was the major oil producer among its importers and at that time came to the peak of its production in 1970 (as Hubbert predicted earlier) and then declined. Spare US domestic capacity had essentially disappeared by the October 1973 embargo. The old policy, of continuity of supply through the evolution of dominant companies’ concessions in favour of importing countries, had given way to coordination by a more powerful government-controlled organization of the exporting states. Control over the market (at least in its upstream oil segment) switched from major international oil companies to OPEC. Import supplies became unreliable—volumes were still there, but their risk component became too high with the changes in institutional structure of the market. Adequate domestic supplies were not available.

In these circumstances, the United States created ‘Project Independence’ which, inter alia, examined building emergency supplies. Until the beginning of the Carter administration, the US focus remained on oil imports and how to lessen oil import dependency. Two important developments sought to address these national security concerns: the creation on the international level of the International Energy Agency (through the International Energy Program) and its oil allocation plan; and the creation of the strategic petroleum reserve (SPR).<sup>40</sup> SPR is thus a government-controlled part of total petroleum inventories, while the oil allocation plan relies on commercial stocks.

country become minimal), which were in practice normalized only 10 years later, in 1933, when diplomatic relations between the two countries were established: A. Konoplyanik and A. Kursky, ‘State Regulation and Mining Law Development in Russia Since XVI till XXI Century’ in *Kluwer’s Mineral Law Compendium* (2003).

<sup>40</sup> Coburn (above n 14).



The International Energy Agency (IEA) was established in November 1974.<sup>41</sup> The agreement on an international energy programme, signed by 16 original IEA member countries, called for each to hold oil stocks representing 60 days of net imports, later raised to the present level of 90 days, although many members have more (see Figure 3.4). It also contained the obligation of demand restraint and a system for allocating these stocks in the case of a supply shortfall of over 7 per cent.

According to Claude Mandil, the Executive Director of IEA, 'for us, the stocks are a deterrent, a threat to act if the market is not sufficiently supplied, an arm we have no intention of using unless it becomes necessary'.<sup>42</sup> That is why, in the nearly 30 years of the IEA's existence, the only time the stocks were used was during a brief period once the fighting started in the 1991 Gulf War.<sup>43</sup>

The major aim of today's stockpiling policy of the IEA states is to protect energy security by creating an opportunity to react in case of emergency. The IEA believes stocks should be used only in case of supply disruption. The purpose of the oil-security Directive, under consideration by the European Parliament, is to strengthen the EU's storage policy and to maximize the dissuasive effect of the emergency stocks, ie to use the stocks both for emergency

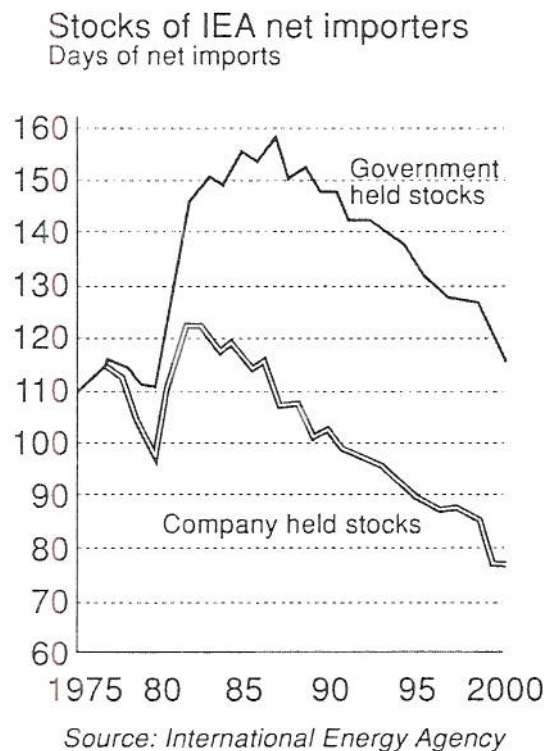


Figure 3.4: Oil stocks of IEA net importers. Source: International Energy Agency, reproduced by kind permission.

<sup>41</sup> See further discussion in ch 2 above.

<sup>42</sup> 'A steadying influence in uncertain times' (IEA: Claude Mandil) (2003) 8 *Petroleum Economist* 15–17.

<sup>43</sup> And without legally invoking the emergency sharing system per se, see ch 2 above.

reasons and for counter-cyclical interventions to influence prices. It calls for an increase in the obligatory level of stocks to 120 days of the past year's consumption (while IEA stocks are based on net import) and gives the Commission a say in deciding their use. This proposition has been sharply criticized by the vast majority of the business community and by academic experts.<sup>44</sup> The majority of the EU member states do not want to increase their stocks or give the Commission the right to decide on their use, and have given the proposal a cool reception.<sup>45</sup>

One of the economic reasons for this cool reception is that the development, storage, and utilization of the stocks is a process the costs of which change with time and the state of the market. The higher the stock volumes, the higher the storage costs. When prices increase, the importance of stocks likewise increases as the relative value of supply interruptions has increased. When prices fall, so too does the importance of stocks with the decrease in the relative value of supply interruptions. Business is more sensitive to price fluctuations and cost assessments and usually more quick in decision-making, as illustrated by their swift response in reducing stocks in response to price falls from historic highs in the 1980s (see Figure 3.4).

During the past 15 years the reasonable level of IEA stocks has exceeded the minimum level required whilst experiencing a steady decline, of up to a third over this period (see Figure 3.4). This reflects changes in the cost-benefit analysis of the reasonable stock quantity required in the light of diminishing technical and political risks. On the one hand, the above-mentioned oil market developments stipulate diversified supplies and infrastructure, and thus a decrease in the technical risks of oil shortages and interruptions. On the other hand, cooperative efforts between energy consumers and producers have improved as well, which proves the thesis that in a current globally interdependent world producer and consumer governments have similar interests in avoiding a supply shortage since this will create a 'lose-lose' situation for both, though with consumers likely to identify rather quickly alternative supplies. Under such assumptions and cooperative policies the political risk of supply interruptions has been diminishing as well. As a result, an appropriate relative stocks figure will be smaller compared (as an assumption) with the policy of confrontation between consumers and producers that prevailed in the 1970s.

Under the IEA requirements, OECD importing states are building stocks and SPR as emergency oil stockpiles. Emergency oil stockpiles are the only available tool to deal with severe short-term supply shortages, whatever their origins, whether political tensions between the states or due to natural catastrophes. Thus the 'shadow G-8' recommends that G-8 should strengthen these emergency oil stockpiles. Two problems that could be remedied to improve

<sup>44</sup> 'Restoring G-8 leadership of the world economy: Recommendations for the Evian Summit from the "Shadow G-8", May 2003' (2003) 1 *Russia in Global Affairs* 148–174 (2003).

<sup>45</sup> Above n 42.



international energy security are indicated. One is that, unlike developed market economies, it is emerging market economies that usually lack emergency oil stockpiles. These economies account for a growing share of global petroleum demand and would suffer substantially in the case of severe oil shock. Arguing that oil security is clearly a public good, 'shadow G-8' recommends that OECD countries should support financially the building of such stocks. The proposal of the US Bush Administration, that emerging countries could lease spare capacities in the US Strategic Petroleum Reserve, also deserves attention.<sup>46</sup> SPR has been steadily increasing, exceeding in mid-2003 600 million barrels (bbl) with the aim of the Bush Administration to further increase its volume up to 700 million bbl.

The second problem identified by the 'shadow G-8' is that existing strategic stocks lack a clear doctrine for utilization. There are many reasons for this. For example, governments would like to keep their hands off price management, which would be both very costly and bound to fail. A practical solution, long advocated by economists but never implemented, consists in treating strategic stocks as a publicly provided source of supplementary supply that the private sector could bid for through options contracts.<sup>47</sup> In 1999–2000, when the previous draft of the Russian Energy Strategy with its establishment of a Russian State Oil Company (by merging Rosneft, Slavneft, Onako, and, possibly, Zarubezhneft) was debated, the establishment of a Russian SPR was proposed with the similar utilization doctrine.<sup>48</sup> It was not adopted, though recently this discussion has been reactivated.

#### IV. EVOLUTION OF ENERGY MARKETS AND THE DEVELOPMENT OF LEGAL INSTRUMENTS OF INVESTMENT PROTECTION

Along with internationalization and globalization processes affecting energy markets, investment activity risks are also growing, in particular due to the fact that the commodity flows of produced energy materials and products (EMP) are crossing the territories of an increasing number of states and hence are subject to a variety of national jurisdictions. The role of oil and gas transit from producing countries to the markets of consuming states is growing. With an economically feasible average range of delivery of energy resources increasing in time in consequence of scientific and technical progress, the number of state borders crossed during export deliveries is also growing, not least owing to the disintegration processes which occurred in the early 1990s in the post-Soviet territory (when 15 independent states appeared in place of a single country, the USSR). Former COMECON (Committee on Economic Cooperation, including

<sup>46</sup> Above n 44.

<sup>47</sup> *ibid.*

<sup>48</sup> Министерство энергетики Российской Федерации, *Энергетическая стратегия России на период до 2020 года* (2001), 544 с.; А. Конопляник, 'К вопросу о создании в России Государственной Нефтяной Компании' (1999) 4 *Нефть, Газ и Право* 23–49.

the USSR and its allies in eastern Europe) states of eastern Europe, a major transit area in Europe, have moved from the implementation of a unified pro-Soviet policy during the USSR period, to the development of their own sovereign, and inevitably diverging, energy law and policies. Whilst accession to the EU of a number of east European states will have a certain reintegrating effect on law and policy, the fact of diversity remains. Inevitably the risk of supply disruption during transit increases with the increase in the range of trans-border EMP deliveries and in the number of national borders crossed. This in turn increases the general investment risk of developing export-oriented projects in oil and gas and power generation, and consequently the capital cost of such projects given that, under current market trends, debt financing generally amounts to 70–80 per cent of capital investments made into upstream energy projects.

In respect of economies in transition in particular, where considerable instability in the economic and legal climate is still experienced, there are two options with respect to host state investor protection within national laws (see Figure 3.5): to form legal ‘enclaves of stability’ in the generally unstable economic and legal environment; and/or to raise the overall level of institutional appeal of the economic and legal environment within the country.

If Russia is taken as an example of an energy-rich economy in transition, examples of the former include laws on production-sharing agreements (PSA), concessions, and free economic zones (FEZ). Under this type of legislation,

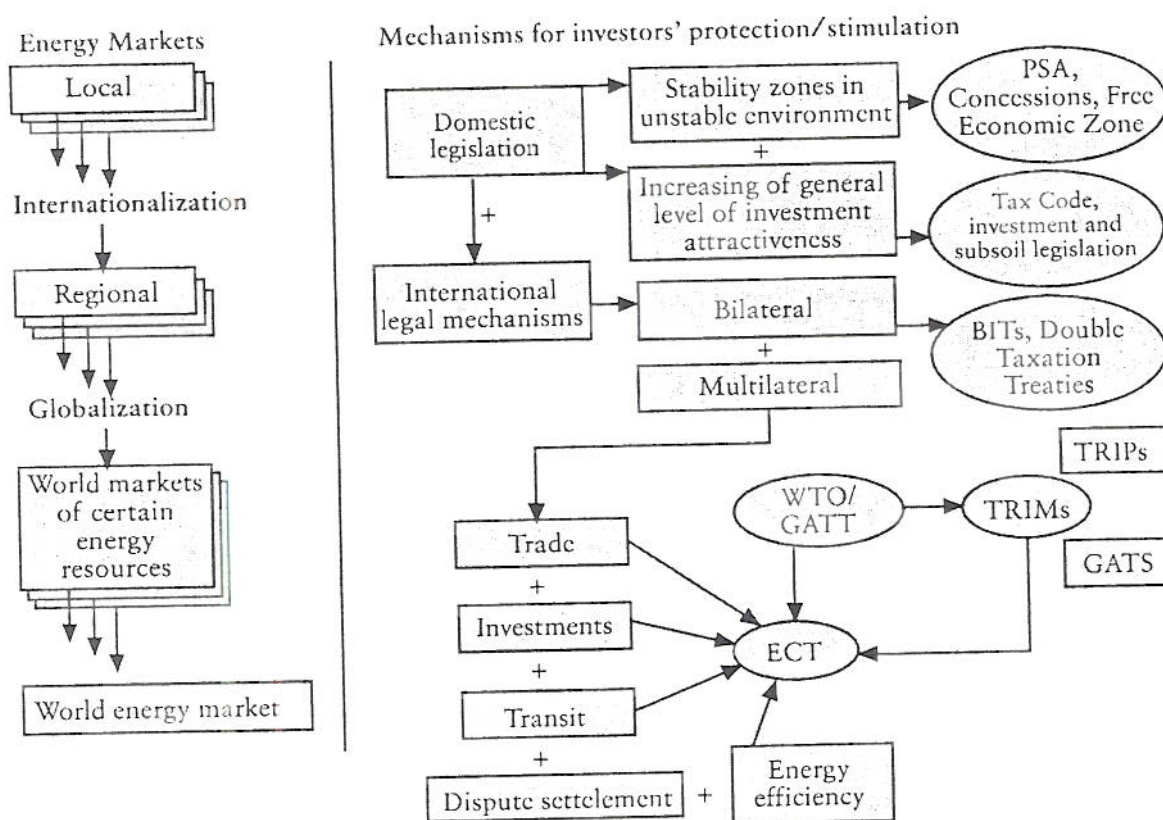


Figure 5: Development of energy markets and mechanisms for investor protection/stimulation



investors in individual projects are protected by law against risks related to instability of the legislation per se (the widespread application of the so-called 'stabilization' or 'grandfather' clauses for the whole term of project implementation). The latter option implies incorporation of appropriate amendments and amplifications to tax legislation, and laws on investment, the use of the subsoil, transportation, and competition, etc in order to improve the investment environment in the whole of the country, that is, for investors of all types of projects. It is obvious that these law-making options are not mutually exclusive but rather may be seen as complementary undertakings that may be developed in parallel. Under the first option, the legislator may expect to receive positive practical results at a quicker pace considering the narrower and more target-oriented areas of individual investment activity, with indirect and multiplier effects felt across the rest of the economy. Under the second option, the positive results of the law-making process may well take longer whilst the effects will be on a much larger scale.

International legal instruments are a significant factor influencing the development of national legislation. At the initial stage, during the transfer from local to regional markets and with energy projects usually linking individual producers with individual consumers, a system of bilateral international law instruments to protect investors is common, most notably bilateral investment treaties (BITs) and double taxation treaties (DTTs). The system of bilateral treaties has been steadily developing, with 2,181 BITs and 2,256 DTTs signed by the end of 2002.<sup>49</sup> However, no two BITs/DTTs are exactly alike. The formulation of individual provisions varies, with differences in the language of the BITs/DTTs signed some decades ago and those signed more recently. Such diversity gives rise to investment risks and hence to pressure for 'model agreements' and multilateral treaties to create unified rules to minimize such risks. Such instruments set the standard rules of the game within an aggregate of states linked by present or anticipated commodity and/or investment flows, and function in parallel with unification and standardization of contractual arrangements. Increased international cooperation enhances the potential for integration of national markets with multilateral international law instruments facilitating and protecting trade and investment. From an economic point of view, bilateral and multilateral regulation with harmonized national legislation minimize energy trade-related and investment-related risks at a lower cost than the historic approach of, say, developing a concessionary system based on colonial occupation or control.

Today, of the various multilateral international law mechanisms regulating trade and/or investment activity, the most significant from an energy security perspective is the World Trade Organization (WTO)<sup>50</sup> and the Energy Charter

<sup>49</sup> UNCTAD, *World Investment Report 2003: FDI Policies for Development: National and International Perspective* xvi (2003).

<sup>50</sup> For more detailed discussion, see ch 2 above.



Treaty (ECT). The former, the legal successor of the General Agreement on Tariffs and Trade (GATT), has 145 member states and 31 states with observer status. The GATT/WTO rules establish non-discrimination as a basic principle for trade in goods and services—including energy trade and services—for the member states. WTO Agreement on Trade-Related Investment Measures (TRIMs) creates a bridge from trade in goods to investments, but the WTO does not deal specifically with investments and investment risks. Moreover, since WTO is not a specific sectoral agreement, it could not address the specific incremental investment risks that exist in the energy sector. In this sector, not only is the capital intensiveness of a single project the highest among other industries, but the list of risks which investors usually face in energy (especially in upstream energy production) is broader than in, say, manufacturing.

In any event, trade in goods and services is only part of the investment cycle. The ECT and related agreements<sup>51</sup> cover risks arising from the whole investment cycle, ie not only commodity flows but also movement of capital. Moreover the ECT is exclusively focused on energy trade and investment. It is more limited in membership than the WTO with 52 parties, including 51 member states and the European Community. The purpose of the ECT is to establish a legal framework in order to promote long-term cooperation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the Charter (Article 2 ECT). The Contracting Parties shall work to promote access to international markets on commercial terms, and generally to develop an open and competitive market, for energy materials and products (Article 3 ECT). The ECT envisages the provision of national treatment or most-favoured nation treatment to investors of Contracting Parties, which is fully compatible with the GATT provisions (that is, Articles I and III). Indeed, the whole trade chapter of the ECT is covered by WTO rules in the sense that the ECT requires the direct application of GATT/WTO rules by GATT/WTO members (40 members of WTO are ECT member states), while non-members (11 among ECT member states) shall apply GATT/WTO rules by reference.

The investment chapter of the ECT is much wider than the relevant investment-related issues in the WTO, covered by TRIMs. Interpretation of trade-related investment measures in both the WTO/TRIMs and in the ECT is very close in substance, except that dispute settlement provisions in the ECT are much broader than under WTO. In particular, enforcement is stronger under the ECT since an investor has the right to bring a claim against the state regarding an investment-related measure, a right not available under WTO/TRIMs.

<sup>51</sup> A detailed legal analysis of ECT-related issues in a broad historic retrospective is presented in T. Waelde (ed), *Energy Charter Treaty—a Gateway to Investments and Trade between East and West* (1996); and its updated Russian version, *Договор к Энергетической Хартии: путь к инвестициям и торговле для Востока и Запада*, под ред. Т. Вальде (англ. изд.) и А. Конопляник (русс. изд.), М.: Международные отношения (2002). See further the Energy Charter website at <[www.encharter.org](http://www.encharter.org)>.



Thus, there is an inseparable link between the ECT and the WTO to the extent that the ECT applies the same trade and investment principles found in the WTO agreements, though clearly extending beyond the WTO in its application to the full energy trade and investment cycle.

#### V. THE ENERGY CHARTER PROCESS AND INTERNATIONAL ENERGY SECURITY

As indicated above, there are two dimensions to international energy security going beyond the approach of military protection of unstable energy exporting regions: (i) defence against short-term shocks (the IEA approach); and (ii) investment in energy resource development especially in underdeveloped areas. It was recommended recently that the G-8 should consider ways to strengthen the legal regime for international energy investments.<sup>52</sup> This recommendation should be addressed not only to the G-8, but to the broader international community. It underscores one of the major themes of this chapter, which is that international energy security in the long term depends on international energy investment, and on the management and minimization of risks posed to such investment.

According to the 'shadow G-8':

[A] great deal has been done in this area over the last 15 years. More is needed, however, as most of the energy-rich regions are plagued with defective governance and especially defective security for investments, which especially hinders the flow of foreign investments. The United States favors bilateral approaches as well as a regional scheme that would be part of the Free Trade Area of Americas (FTAA). The Energy Charter Treaty (ECT), the only multilateral energy-specific international law instrument, already has [52] parties and perhaps more in the near future. The United States, by far the largest 'exporter of energy capital' has not signed it. The G-8 should endorse the Energy Charter Treaty process and encourage its enlargement to both new capital-importing and capital-exporting countries.<sup>53</sup>

The origins of the Energy Charter process lie in energy cooperation between East and West in the broader European space after the fall of the Berlin Wall and the collapse of the Soviet Union (see Table 3.4). The 'West' (developed market economies) includes non-European OECD states as well. Hence the political declaration known as the 'European Energy Charter' was also signed by the non-European OECD states of Australia, Canada, Japan, and the United States. In recent years the Energy Charter process has expanded towards a broader Eurasian dimension following trends in energy market development, and in line with the creation of the broader Eurasian energy market (see Figure 3.6).

If a map of the eastern hemisphere is examined in energy terms, two major markets dependent on external supplies are evident: Europe and Asia. Since the European market is a mature one and the Asian market is still growing, it is the

<sup>52</sup> Above n 42.

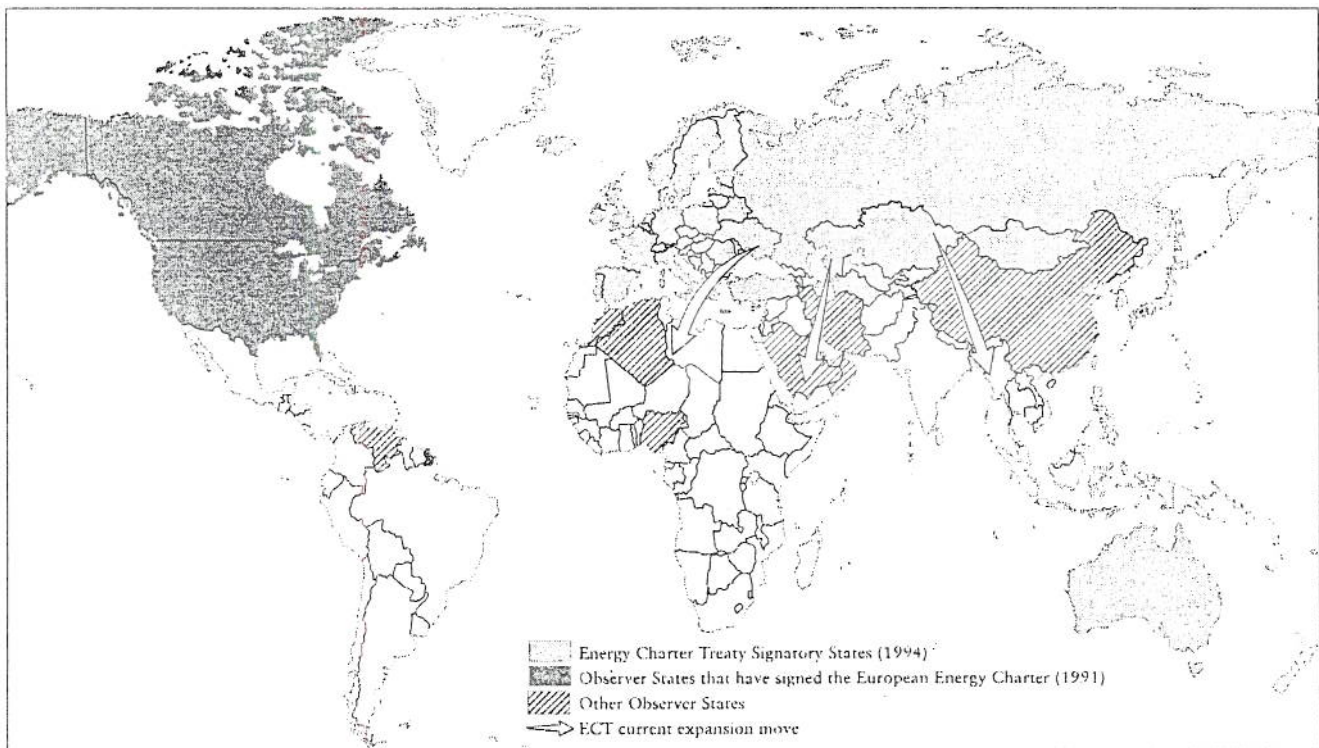
<sup>53</sup> *ibid.*

Table 3.4: Energy charter history

25 June 1990	Lubbers' initiative on common broader European energy space presented to the European Council
17 December 1991	European Energy Charter signed
17 December 1994	Energy Charter Treaty (ECT) and Protocol on Energy Efficiency and Related Environmental Aspects (PEPEREA) signed
16 April 1998	ECT enters into force
As of today	<ul style="list-style-type: none"> <li>• ECT signed by 51 states + EC = 52 ECT signatories</li> <li>• ECT ratified by 46 states + EC (excl. 5 countries: Russia, Belarus, Iceland, Australia, Norway)</li> <li>• Russia and Belarus: provisional application of ECT</li> </ul>

Russia started the ratification process in 1996

RF State Duma (2001): Russia will ratify ECT, but not yet (depending on Transit Protocol)



1. From trans-Atlantic political declaration to broader Eurasian single energy market
2. ECT expansion is an objective and logical process based on economic and financial reasons

Figure 3.6: The geography of the Energy Charter Treaty

latter which offers the most potential for development of major future markets for energy trade and investment. The broader Eurasian energy market has been established, while Northern Africa and the Middle East are already part of European energy supply, as is Australasia for Japan and some other Asian



states. What principles will be used to regulate integrated pipelines and electricity grids? What investment rules will be implemented in the countries of the broader Eurasian energy market? Since the ECT is the only international instrument embodying a set of common rules for energy-related trade and investment, it is not surprising that states in these regions are approaching the ECT initially to familiarize themselves with its rules through observer status, and possibly later to implement them in full through full membership. China became an observer in 2001, Iran and South Korea in 2002, and Nigeria in June 2003, whilst ASEAN states have recently applied for observer status. Non-European expansion of the Energy Charter process may therefore be seen as an objective and logical process.

Figure 3.7 shows the structure of the ECT which comprises a 'package of documents' including a political declaration and several independent legally binding international treaties, three of which have already come into force (the ECT, an Energy Efficiency Protocol, and the 1998 Trade Amendment), as well as those on which negotiations have not concluded (an Investment Supplementary Treaty and the Transit Protocol).

Of particular note is the Transit Protocol to the ECT which develops generally acceptable legal principles applicable to transit flows (those crossing at least two national borders) of energy materials and products and ensures terms of transit appropriate for different parties (see Table 3.5). The Protocol is intended as an elaboration of the transit provisions of Article 7 ECT.



Figure 3.7: Energy Charter and related documents

Table 3.5: ECT Transit Protocol: main provisions

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1. Obligation to observe Transit Agreements
  2. Prohibition of unauthorized taking of Energy Materials and Products in Transit
  3. Definition of Available Capacities in Energy Transport Facilities used for Transit
  4. Negotiated access of third parties to Available Capacity in Energy Transport Facilities used for Transit (mandatory access is excluded)
  5. Facilitation of construction, expansion, or operation of Energy Transport Facilities used for Transit
  6. Transit Tariffs shall be non-discriminatory, objective, reasonable, and transparent, not affected by market distortions, and cost-based, incl. reasonable rate of return
  7. Technical and accounting standards harmonized by use of internationally accepted standards
  8. Energy metering and measuring strengthened at international borders
  9. Coordination in the event of accidental interruption, reduction, or stoppage of Transit
  10. Protection of International Energy Swap Agreements
  11. Implementation and compliance
  12. Dispute settlement
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Result: —risk and costs related to transit diminishes  
 —competitiveness of transit supplies increases  
 —improves energy security (security of supply + security of demand + security of infrastructure)

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Coming back to the financial issues, as indicated above the current trend in energy project financing is a shift from equity to debt financing. An example is the recent Baku-Tbilisi-Ceyhan pipeline and the Sakhalin-2 PSA project, with equity/debt ratios of 30:70 and 20:80 respectively. This trend has increased the role of finance costs in the overall costs of the project, in addition to its technical costs, in a context where the availability and cost of raising capital are among major factors in competitiveness. The example of Russia is salutary. It only recently regained the financial rating it enjoyed in 1996 and even managed to exceed it in December 2002. Nonetheless Russia is still considered speculative in the ratings, though in the highest positions in the ‘speculative’ ratings zone. This means that the cost of raising capital for the projects financed by Russian companies is commensurately rather high, due to the higher cost of raising capital. Energy products produced from these projects will have a higher cost-component in the price and thus will be less competitive in the international market. To improve competitiveness, a decrease in costs is highly welcome. The ECT can help with this as a business-oriented treaty intended, *inter alia*, to facilitate investment.

In particular, by aiding in the reduction of investment risks, implementation of the ECT exerts downward pressure on the project-finance cost component of overall production costs. In addition, a decrease in the cost of raising capital expands capital supply in a twofold manner: increased inflow of foreign direct investments and reduced capital flight. Moreover, to the extent that working or productive capital encourages innovation, technical improvements and reduction in costs will also be experienced over time, thus increasing revenues and



pre-tax profits. With an adequate tax system in the host country, investors' after-tax profits should increase as well, increasing their overall rate of return and shareholders dividends. This in turn increases competitiveness, leading to a larger market share and increased sales volumes and revenues.

Thus a primary function of the ECT and its accompanying instruments is to encourage this multiplier effect, diminishing risks with the consequential economic benefits of cost reduction and an increase of revenues and profits. The ECT aims to decrease full investment-cycle risks thus leading to a reduction of both the technical and financial costs of energy projects, an increase in competitiveness and an adequate rate of return at each step of the energy and investment cycle (see Table 3.6). By these means the ECT enhances security of supply as well as security of demand throughout the broader Eurasian common energy space.

*Table 3.6: Energy Charter process: then and now*

	Initially	Currently
Driving force	Motivated and dominated by interests of consumers	Consumer–producer balance of interests
Policy vs. economy dominance	Politically initiated	Economically driven
Geography	Broader ‘Trans-Atlantic’ Europe (ie in political/OSCE terms) = OECD+FSU/CIS+EE	Broader Eurasia, incl. North Africa, Australasia (ie in energy and economic terms)=OECD+FSU/CIS+EE +Asia+Africa+ . . .
Approach to energy security	Physical security of supplies from (FSU/CIS) and through (eastern Europe) economies in transition to the West (western Europe)	Security of supplies + security of demand (by economic, or administrative means) throughout broader Eurasian common energy space
Competitiveness	To decrease final energy prices to consumers even by diminishing producer’s ROR	To decrease full investment-cycle risks → to diminish both technical and financial costs → to increase competitiveness and protect adequate ROR at each step of energy and investment cycle

## VI. CONCLUSION

Energy markets have been developing according to common rules from monopoly to competition. The driving force in this development is investment. Energy security concerns at different stages of the energy markets’ development have been aimed at providing maximum protection for energy supplies, and thus for energy investments. Both producer and consumer states view investment protection and stimulation measures as instruments for the improvement of their energy security. In the course of market development the number and efficiency of instruments aimed at minimizing investment-related risks has increased.

Threats to short-term energy security have been met, *inter alia*, through the development of different types of stockpiling mechanisms. Longer-term energy security instruments, aimed at minimizing risks related to energy investments, have been developed historically in the legislative area. In the early days the mechanism employed was the concessionary system, based on individual project-related agreements between investor and the host state. Today international law performs this function, through bilateral and now multilateral intergovernmental undertakings. The only multilateral set of legally-binding instruments related specifically to energy investment and aimed to minimize related risks are being developed within the Energy Charter process.

At the Seminar on 'Global Security and Natural Resources' held in September 2002 in Moscow,<sup>54</sup> former UK Foreign Minister Lord Owen mentioned that 'transparency is the best chance for stability'. Stability of supplies is one of the key components of energy security. Creation of common rules of the game adds to transparency of investments and trade and will minimize investors' risks related to energy projects. Development of an open and competitive market alongside objective trends in energy markets' development improves stability of international energy flows. This will increase international energy security at all levels—local, national, regional, and global.

<sup>54</sup> Above n 1.