

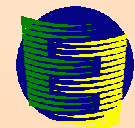
Transit Provisions of the Energy Charter Treaty

**Dr. Andrei Konoplianiuk
Deputy Secretary General
The Energy Charter Secretariat**

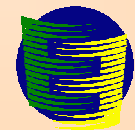
**Seminar for Iranian Authorities on
“Prospective benefits of Iran’s full membership in the Energy Charter Process”
23 February 2004, Tehran, Iran**

CONTENTS

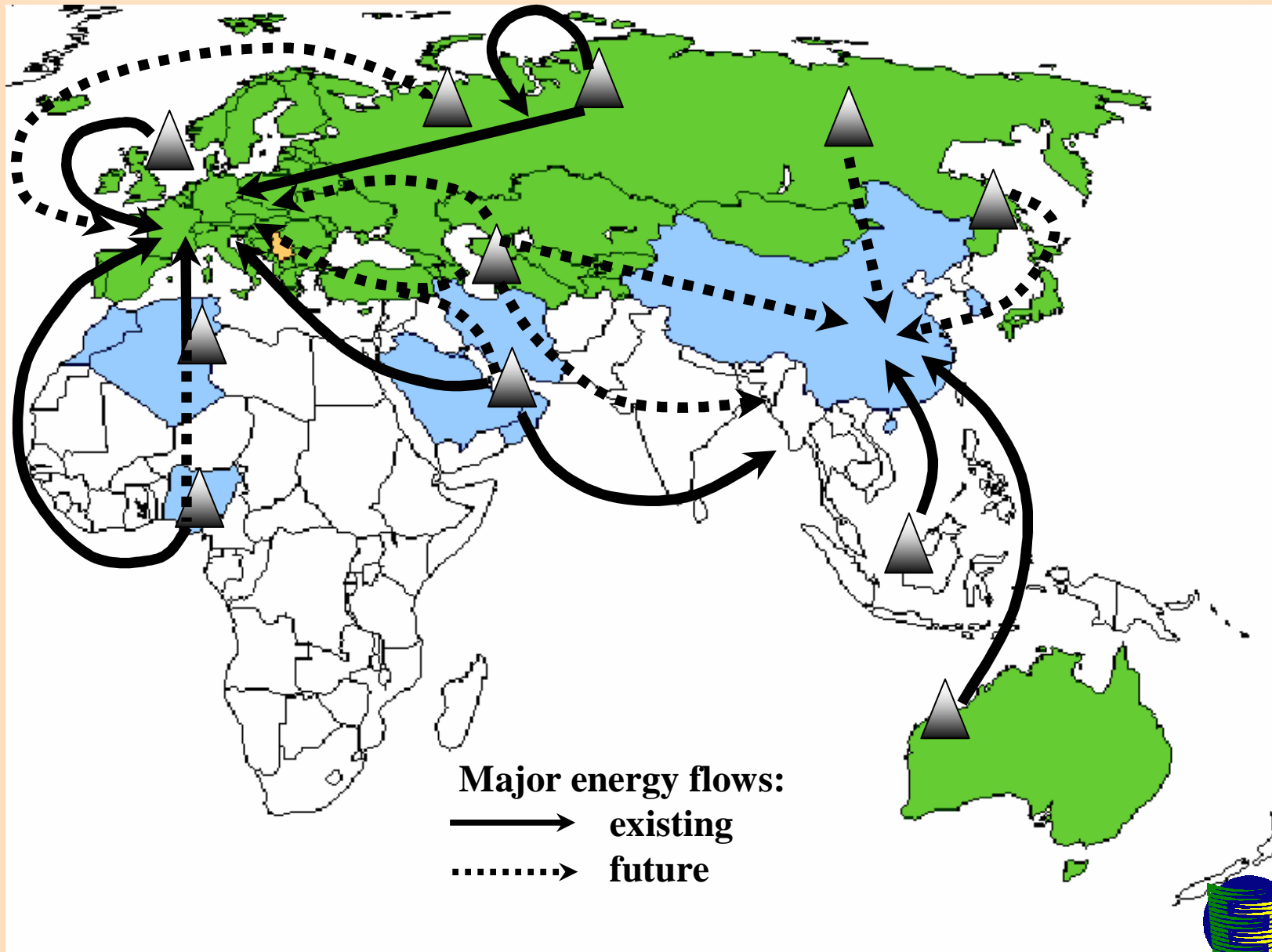
- 1. Major energy flows in the Eastern hemisphere: the growing role of transit**
- 2. Definition of Transit in the Energy Charter Treaty**
- 3. Major Energy Charter Transit Issues:**
 - a. Available Capacity**
 - b. Access to Available Capacities**
 - c. Transit Tariffs**
 - d. REIO clause (geographical & legal aspects)**
 - e. Right of First Refusal**
 - f. other**
- 4. Transit Protocol finalisation prospects (incl. RUF-EU ECT-WTO debate)**
- 5. Model Transit Agreements**
- 6. Energy Charter Working Groups on Transit**



- 1. Major energy flows in the Eastern hemisphere: the growing role of transit**



ENERGY CHARTER WORLD AND MAJOR ENERGY FLOWS IN THE EASTERN HEMISPHERE

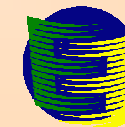


Dr. A. Konoplianiuk, 23 February 2004, Tehran - Figure 1

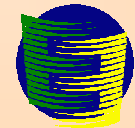
GAS TRANSIT ROLE FOR MAIN EXISTING (1999) AND PROSPECTIVE EXPORTERS TO EUROPE

Country-exporter	Direct supplies, % of volume of exports	Transit through the territory of: % of volume of exports			
		one country	two countries	three countries	four countries
EXISTING EXPORTERS					
Netherlands	76,2	13,8	10,0	-	-
Norway	67,7	7,5	21,4	3,4	-
Algeria	44,9	14,8	9,6	24,3	6,4
Russia	39,5	9,4	11,4	28,1	11,6
PROSPECTIVE EXPORTERS					
Turkmenistan:					
- NW bound	√	--	--	--	--
- SW bound (x)	--	√	√	√	√
Kazakhstan:					
- NW bound	√	--	--	--	--
- SW bound (x)	--	--	--	--	?
Azerbaijan (x)	--	√	√	√	√
Iran (x)	√	√	√	√	√
Nigeria	--	--	√	√	√

(x) Turkey, and later Iran = markets and transit hubs



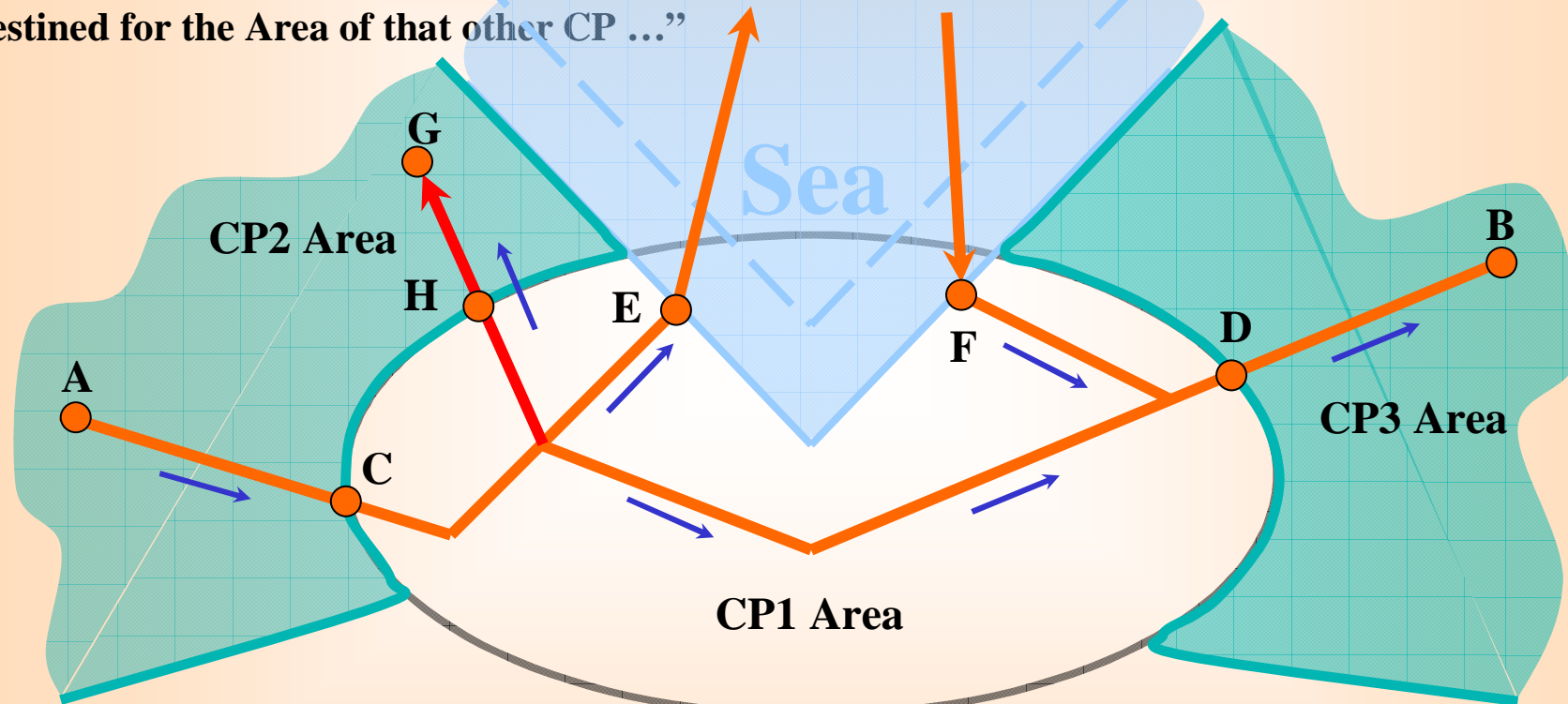
2. Definition of Transit in the Energy Charter Treaty



DEFINITION OF TRANSIT (Art. 7(10) ECT)

“... (a) Transit means:

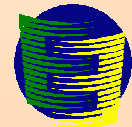
- (i) the carriage through the Area of a CP, or to or from port facilities in its Area for loading or unloading, of EMP originating in the Area of another state and destined for the Area of a third state, so long as either the other state or the third state is a CP; or
- (ii) the carriage through the Area of a CP of EMP originating in the Area of another CP and destined for the Area of that other CP ...”



3 possibilities of energy supplies from A to B:

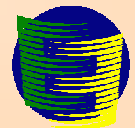
No transit (on-boarder sales at C, D): RUF-EU, Turkm-RUF, Kaz-RUF, Alger-Italy, Alger-Spain

- Transit:
- through the pipe owned/leased by shipper: Fra-Germ, Norw-Fra; planned RUF-CIS/EE
 - through the pipe not owned by shipper



3. Major Energy Charter Transit Issues:

- a. Available Capacity**
- b. Access to Available Capacities**
- c. Transit Tariffs**
- d. REIO clause (geographical & legal aspects)**
- e. Right of First Refusal**
- f. other**

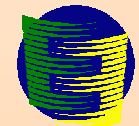


ECT TRANSIT PROTOCOL

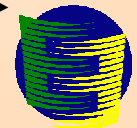
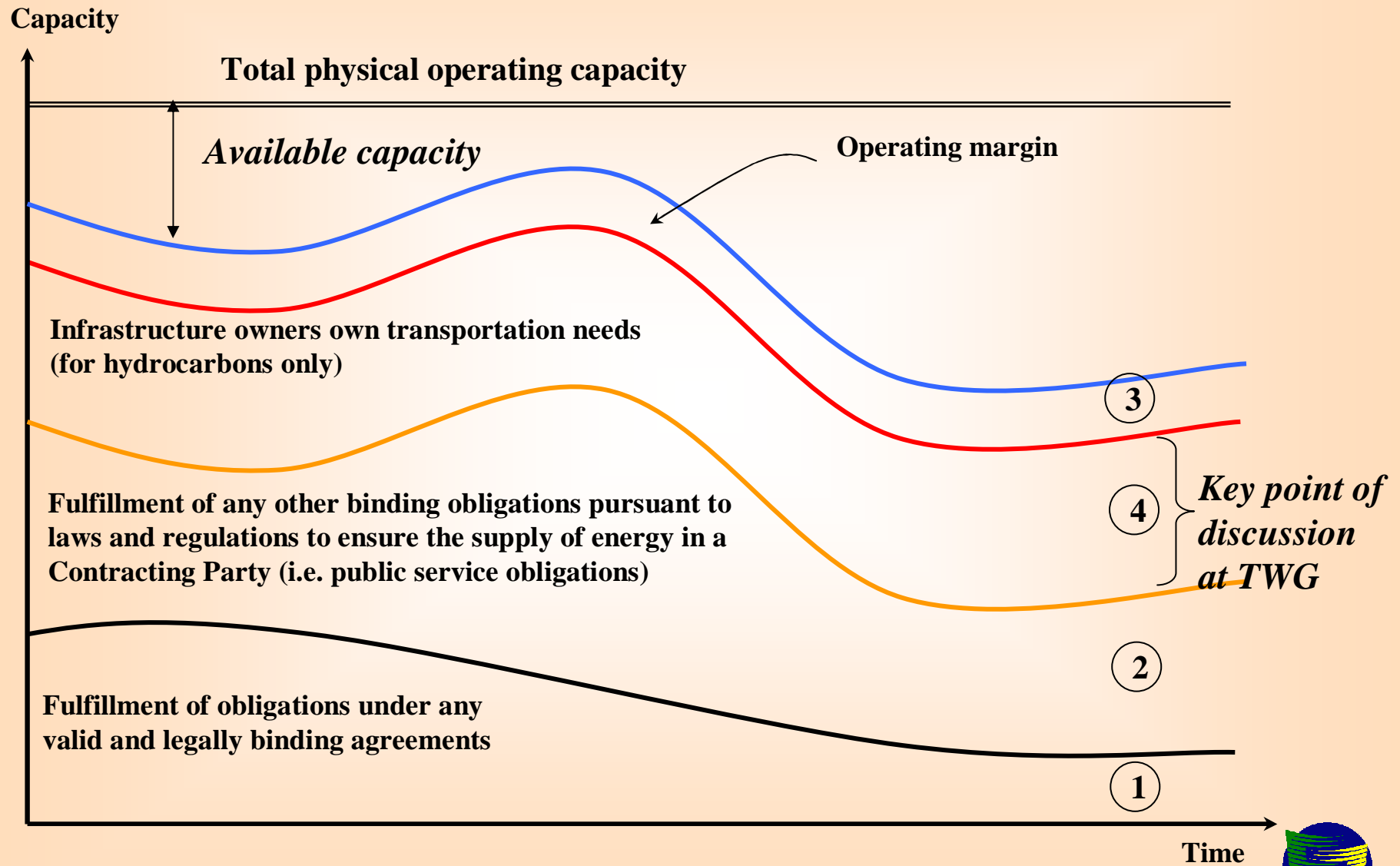
- 1. Obligation to observe Transit Agreements**
- 2. Prohibition of unauthorized taking of Energy Materials and Products in Transit**
- 3. Definition of Available Capacity in Energy Transport Facilities used for Transit**
- 4. Negotiated access of third parties to Available Capacity (mandatory access is excluded)**
- 5. Facilitation of construction, expansion or operation of Energy Transport Facilities used for Transit**
- 6. Transit Tariffs shall be non-discriminating, objective, reasonable and transparent, not affected by market distortions, and cost-based incl. reasonable ROR**
- 7. Technical and accounting standards harmonized by use of internationally accepted standards**
- 8. Energy metering and measuring strengthened at international borders**
- 9. Co-ordination 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**

Result:

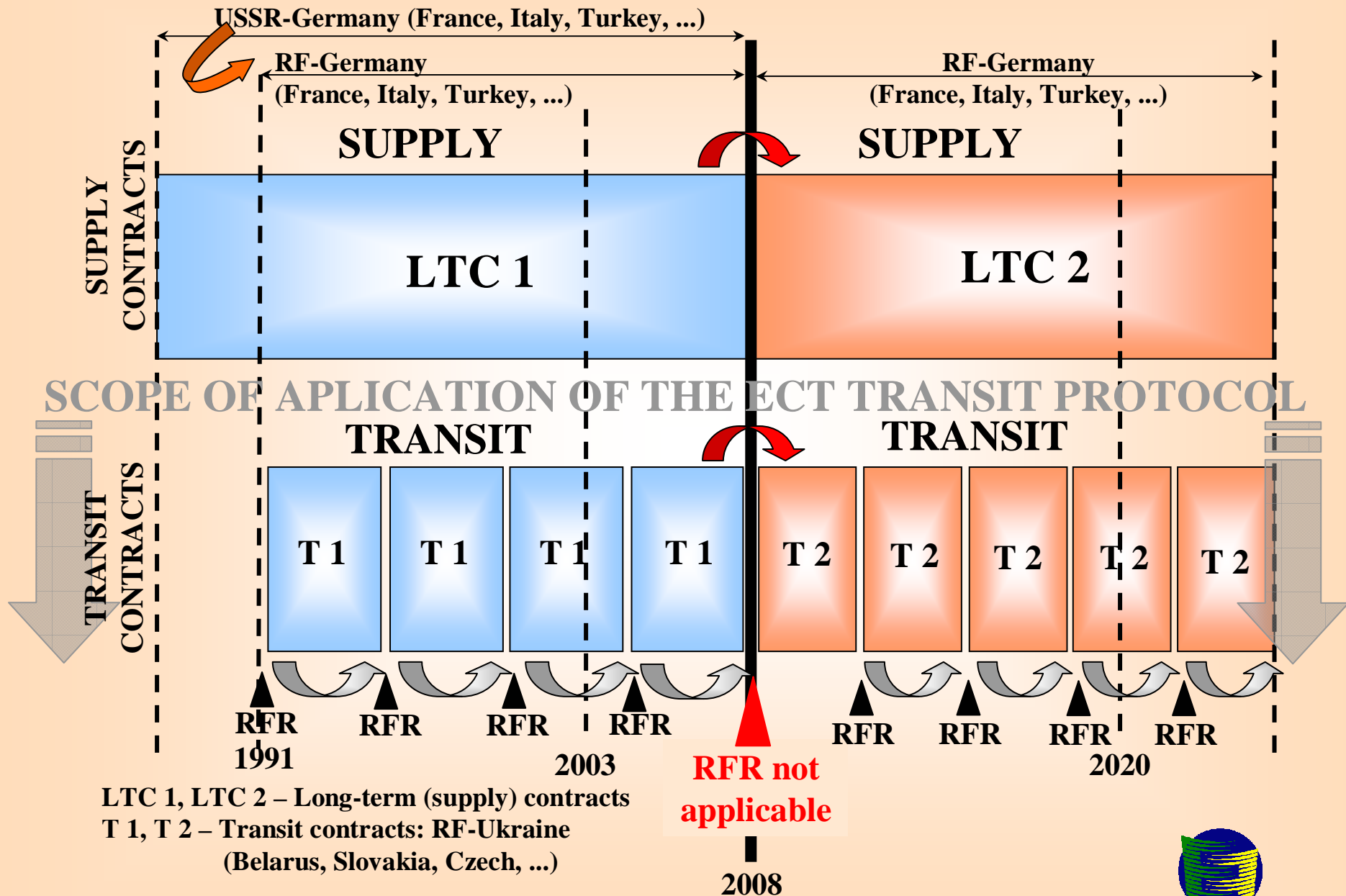
- risks & costs related to transit diminishes**
- competitiveness of transit supplies increases**
- improves “energy security” (“security of supplies”+”security of demand”+”security of infrastructure”)**



DEFINITION OF AVAILABLE CAPACITY



RIGHT OF FIRST REFUSAL (RFR): SCOPE AND MECHANISMS OF APPLICATION

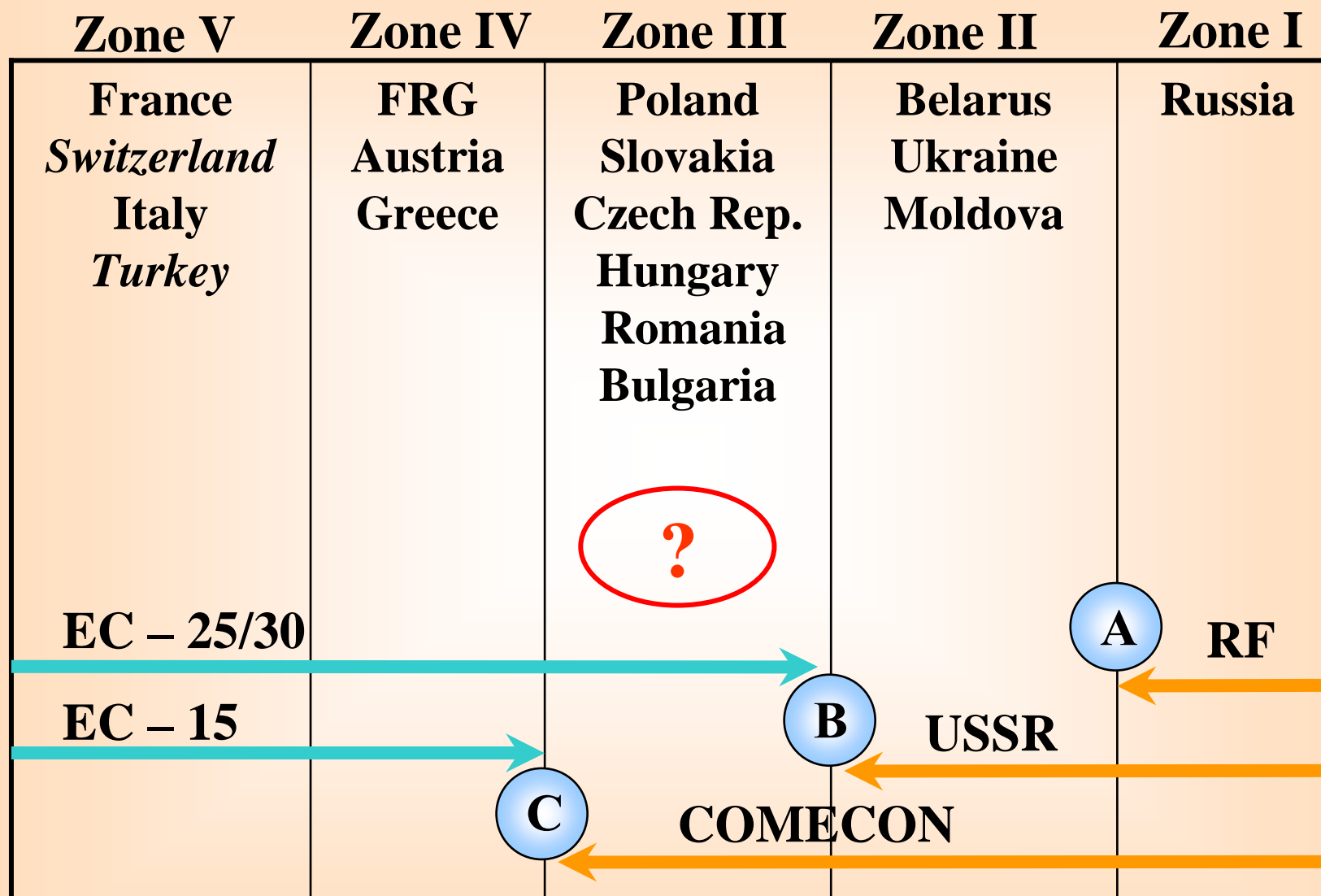


RIGHT OF FIRST REFUSAL AND INTEREST OF DIFFERENT COUNTRIES IN ITS APPLICATION IN EUROPE (case-study: Russia -1)



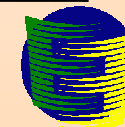
Figure 7

RIGHT OF FIRST REFUSAL AND INTEREST OF DIFFERENT COUNTRIES IN ITS APPLICATION IN EUROPE (Case-study: Russia - 2)



Italic – non-EC countries

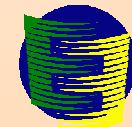
A, B, C – points of change of ownership for gas and/or pipeline



ECT MAJOR OPPONENTS IN RUSSIA AND THEIR ARGUMENTS

Arguments against ECT ratification	Comments
<p><u>Gazprom:</u></p> <ol style="list-style-type: none"> 1) ECT demands mandatory TPA to Gazprom's pipelines for cheap gas from Central Asia 2) Obligation to transit Central Asian gas at low (subsidised) domestic transportation tariffs 3) ECT will "kill" LTCs 	<p>No such obligation. ECT excludes mandatory TPA (ECT Understanding IV.1(b)(i)).</p> <p>No such obligations (ECT Article 7(3)). Transit and transportation are different in non-EU.</p> <p>Not true. ECT documents do not deal with LTC at all. Economic niche for LTCs will become more narrow due to objective reasons, but they will continue to exist as a major instrument of financing greenfield gas projects.</p>
<p><u>Ministry of Nuclear:</u></p> <ol style="list-style-type: none"> 1) Bilateral RF-EU trade in nuclear materials is not regulated by ECT 	<p>Prior to ECT signing in 1994, RF and EU has agreed to regulate nuclear trade bilaterally (P&CA).</p>

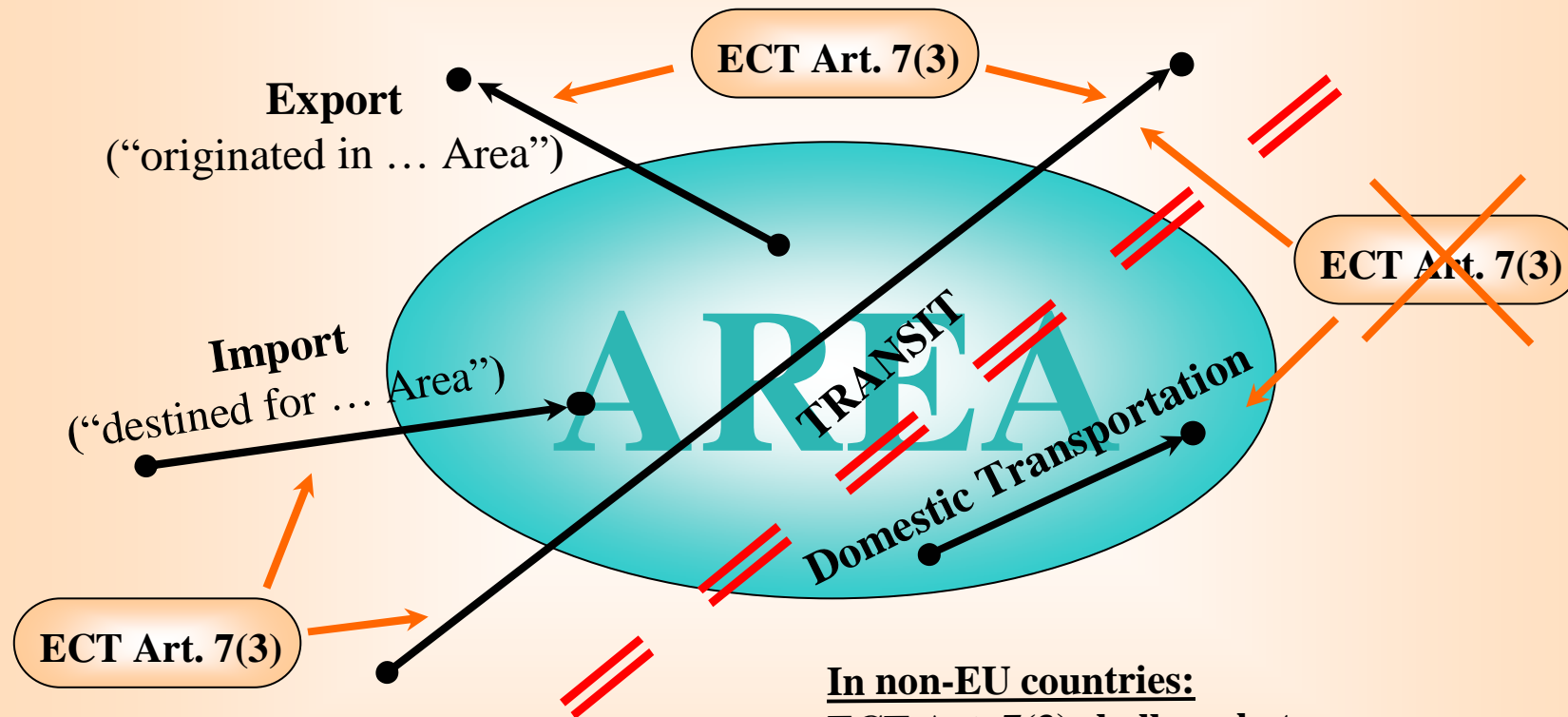
Major Russia's concern regarding ECT ratification relates to **gas transit** issues



ARE THERE ANY BENEFITS FOR RUSSIA (IRAN) IN REIO CLAUSE?

ECT Article 7(3):

“Each Contracting Party ... shall treat Energy Materials and Products in Transit in no less favourable manner than its provisions treat such materials and products originating in or destined for its own Area ...”



In EU countries (with or without REIO):
ECT Art. 7(3) shall apply to all means of transportation (free movement of goods)

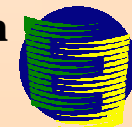
In non-EU countries:

ECT Art. 7(3) shall apply to:

- transit vs. export / import

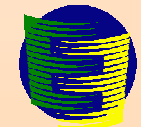
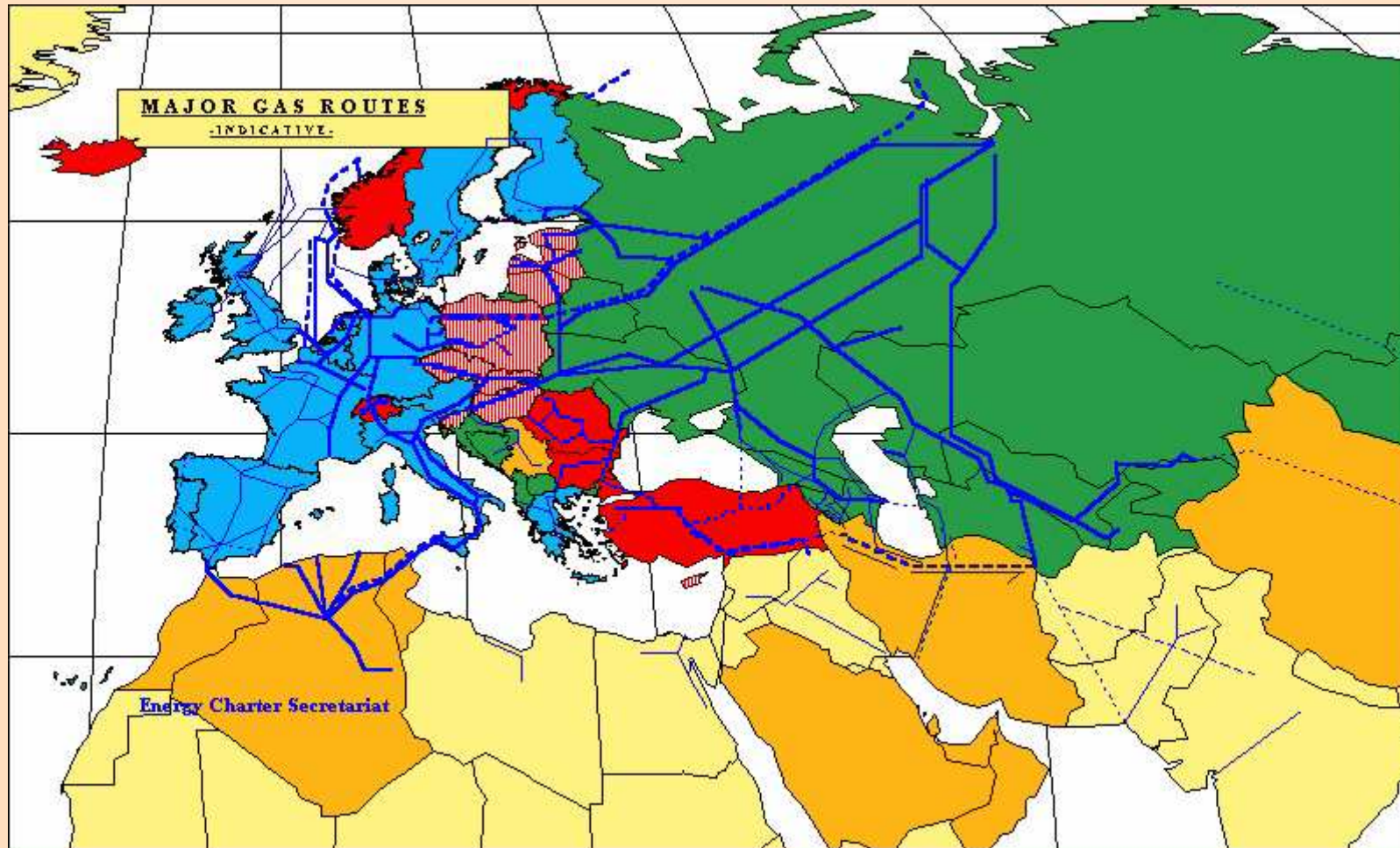
ECT Art. 7(3) shall NOT apply to:

- transit vs. domestic transportation



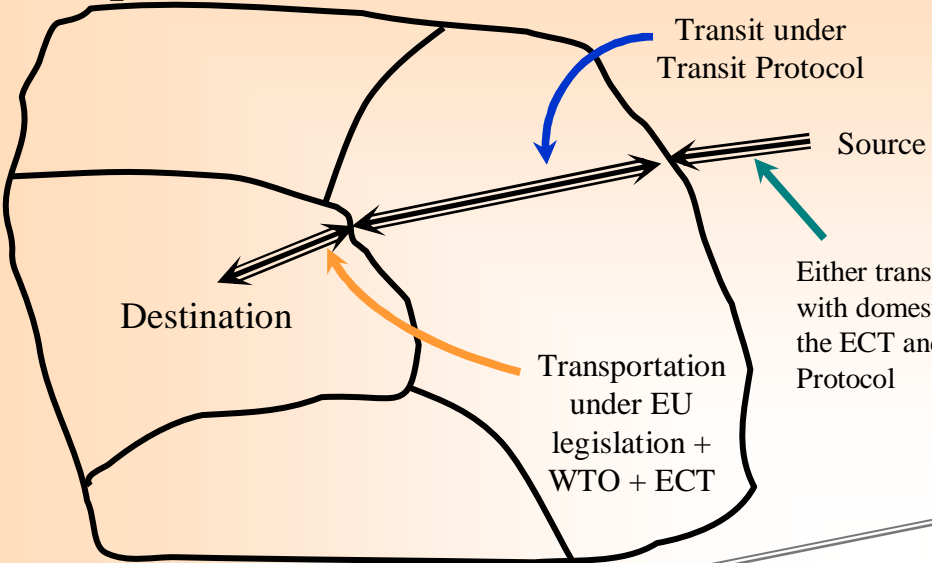
REIO CLAUSE: GEOGRAPHICAL ASPECTS

(case-studies: Russia and Iran)



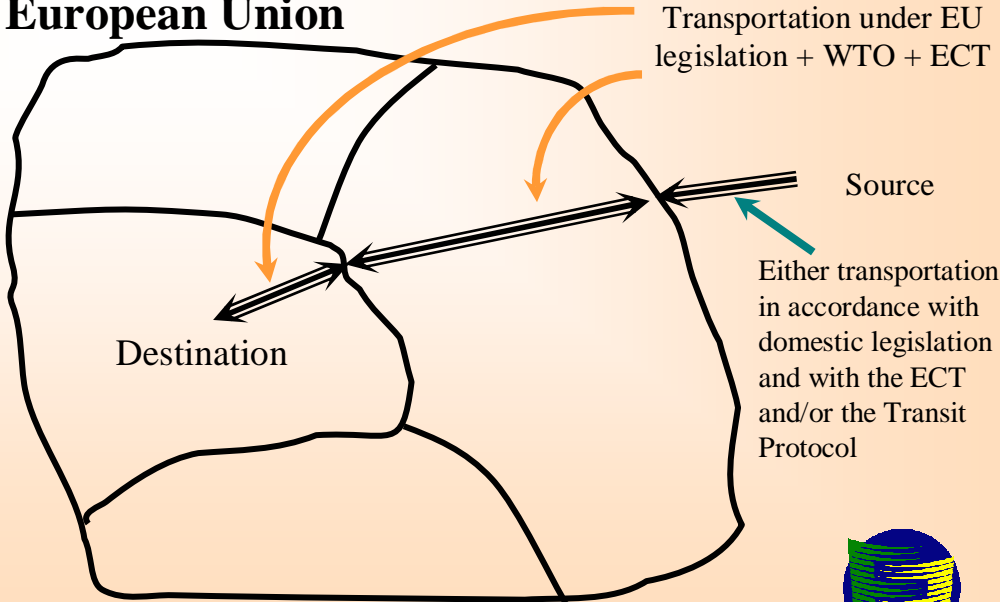
REIO CLAUSE: LEGAL ASPECTS

European Union

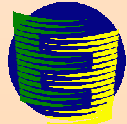


(a) Before REIO:

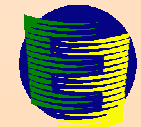
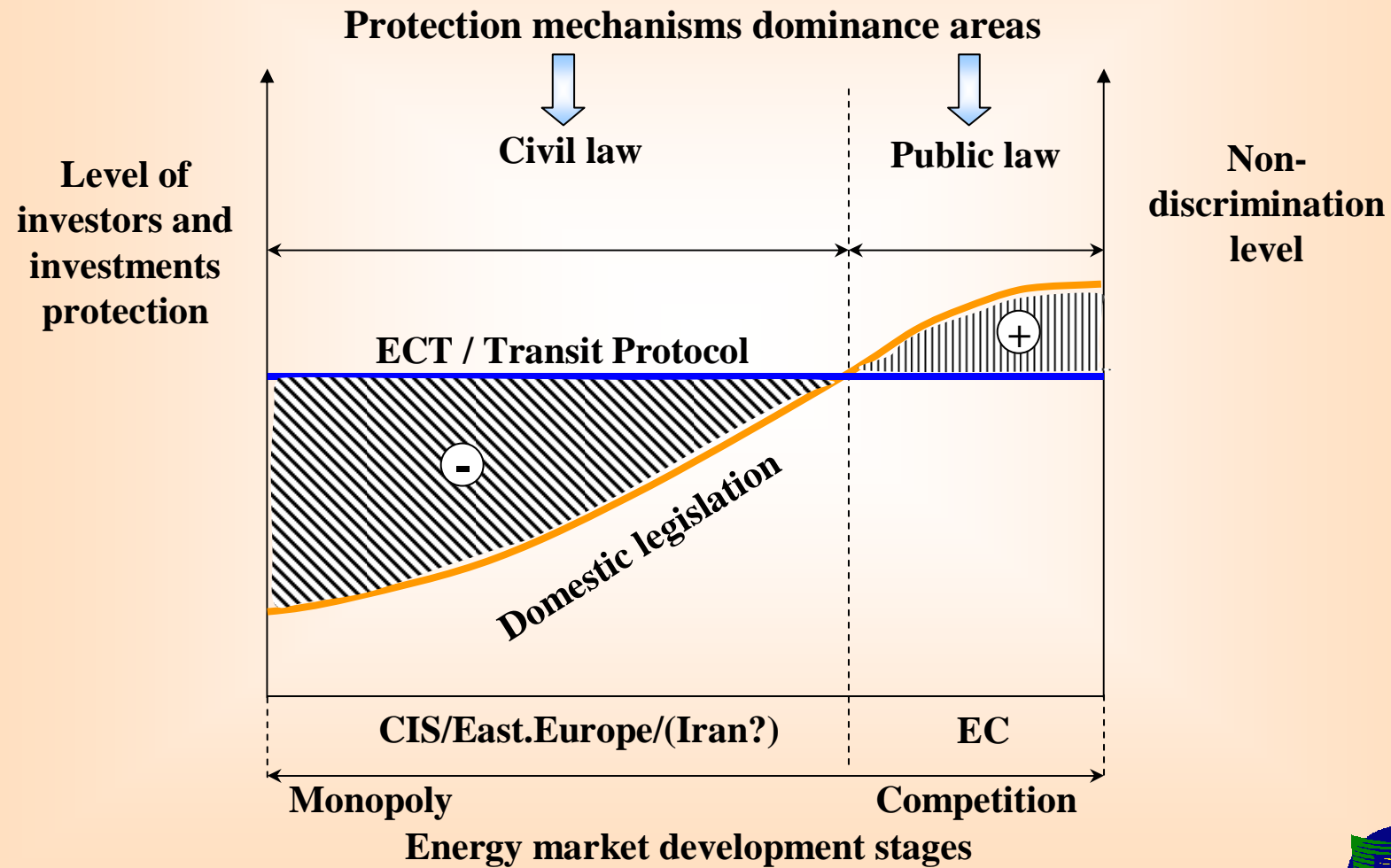
European Union



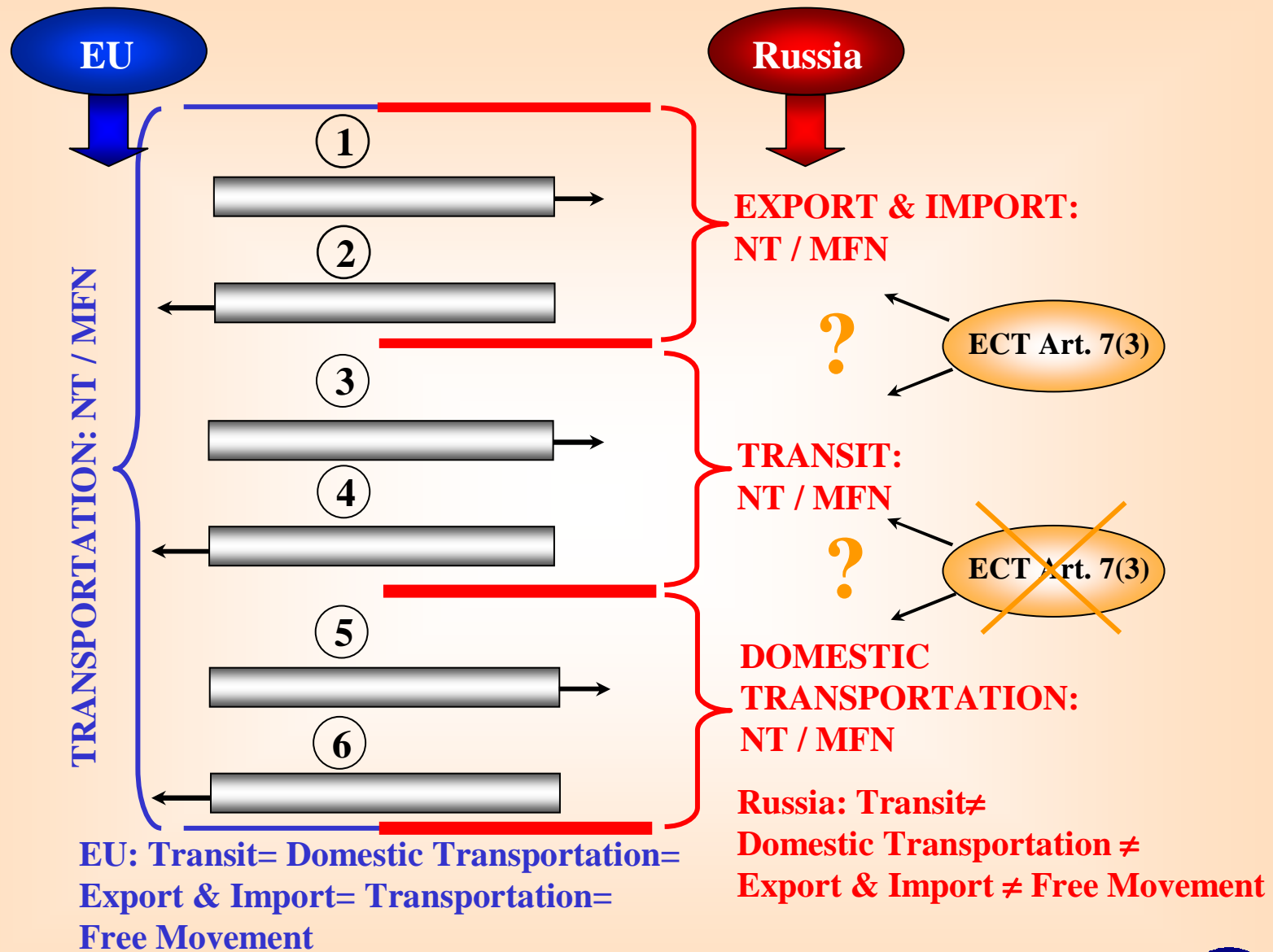
(b) After REIO:



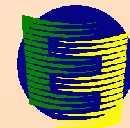
TRANSIT PROTOCOL AND “MINIMAL STANDARD” PROVISION IN REIO CLAUSE



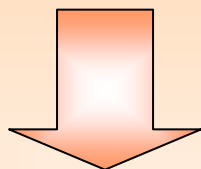
REIO CLAUSE: TRANSIT VS. TRANSPORTATION (EU/non-EU)



What does Iranian legislation says on transit/transportation ?

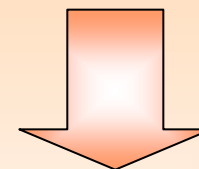


TWO SCENARIOS OF RUSSIAN GAS EXPANSION FURTHER IN EUROPE



1) Gazprom = owner of pipeline
(construction of new pipeline capacities, purchase of pipeline companies shares)

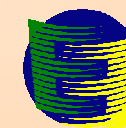
- More expensive
- Decreasing rights of pipeline owners on decisions for transit/ transportation conditions according to EC legislation



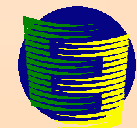
1) Gazprom = shipper (from gas sales at the border to wholesale buyers/resellers – to sales to final consumers inside the country)

- Less expensive
- Increasing rights of transporters on decisions... according to EC legislation

What is the policy of Iran on the same issues?

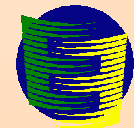


**4. Transit Protocol finalisation prospects
(incl. RUF-EU ECT-WTO debate)**



2002-2003 TRANSIT PROTOCOL FINALIZATION CRONOLOGY

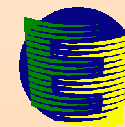
- **18 December'02.** 11th ECC. Multilateral phase of negotiations ended to be continued by bilateral consultations RUF-EU on 3 remaining outstanding issues (REIO clause, RFR, transit tariffs/auctions).
- **10 June'03.** Bilateral consultations RUF-EU. Preliminary agreement reached on 3 outstanding issues between delegations subject to approval in the capitals.
- **23 June'03.** Statement of RUF Government on TP.
- **26 June'03.** 12th ECC. RUF delegation: consultations on 3 issues to be continued.
- **17 September'03.** Provisionally agreed RUF-EU bilateral consultations postponed by RUF (mentioned as joint) initiative.
- **4-6 October'03.** RUF-EU WTO accession negotiations. EU has presented new energy-related agenda of 6 issues, incl. 4 energy-transit-related.
- **01 December'03.** Statement of RUF Government on ECT-WTO/transit.
- **10 December'03.** 13th ECC. RUF delegation: no way to finalise TP negotiations until ECT-WTO agenda is decoupled. TP negotiations suspended.



RUSSIA (V.KHRISTENKO) ON THREE OUTSTANDING ISSUES

“Ratification of the ECT means only one thing for Russia as of today - namely, completion of negotiations and reaching final formulations on the one single protocol ... That is the Protocol on Transit ... Consultations on this protocol ... are still being conducted. As of today, the Russian Federation still has a number of serious concerns. We have three points, which are quite serious ones for us, and on which we would like to find satisfactory answers. Once we achieve satisfactory results on this protocol, we will be ready to sign it ... Therefore, we are proposing to continue the work and seek a mutually acceptable outcome - and then, correspondingly, options will open up with regard to the ECT in general.”

(Press-conference given by Russian Deputy Prime Minister Viktor Khristenko at the Russian EU Mission in Brussels , 23 June 2003)



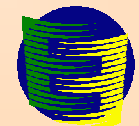
RUSSIA (V.KHRISTENKO) ON ECT - WTO

The issue of transiting Russia's gas across the European Union should be dealt with in the framework of the Energy Charter, not WTO.

V.Khristenko labelled "unexpected" the fact that the issue of gas transit across Europe has surfaced in the framework of negotiations on Russia's accession to the WTO. "From our point of view, this is impossible as a matter of principle: to leave aside the Charter which has been established especially to deal with such issues, and take the topic to negotiations on the WTO. Our position is simple - WTO in no way resolves the transit problems. This theme is not covered by WTO norms and rules"

"It is not possible to discuss a topic everywhere and in all places. For starters, clarity should be reached where to discuss and return to a single venue - either one or the other negotiating table". Vice-premier stated that, in all likelihood, the theme of gas transit in WTO negotiations will be dropped, after all, and the discussions will return to the Transit Protocol of the Energy Charter.

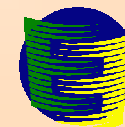
From RIA-Novosti, Moscow, 1 December 2003



EU ON TRANSIT PROTOCOL

“The Council recalls the importance of the role of the Energy Charter Treaty in supporting long-term cooperation between the EU and its neighbors and partners by promoting investment in energy facilities, free trade in energy, and the uninterrupted transit of energy; underlines that the Russian Federation should be further encouraged to ratify the Energy Charter Treaty and seek agreement to the Transit Protocol...”

From Conclusions adopted by the Meeting of the European Union Council on Transport, Telecommunications and Energy, Brussels, 15 December 2003



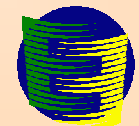
From the Conference Chairman's Statement
on the results of the 13th Meeting of the ECC on 10th Dec.'03 concerning
the Energy Charter Protocol on Transit

I note that delegations have reached wide agreement on most of the provisions of the draft Energy Charter Protocol on Transit as contained in document CC 251 of 31 October 2003. I am therefore of the view that this draft represents the best possible compromise.

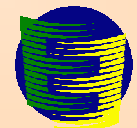
In recognition of the above, the Energy Charter Conference will continue to work actively towards achieving a situation in which the Transit Protocol can be adopted and signed by all Contracting Parties and Signatories of the Energy Charter Treaty at the earliest possible stage.

I would strongly recommend that the draft Energy Charter Protocol on Transit should guide Contracting Parties and Signatories when formulating policies concerning Transit of Energy Materials and Products.

I invite the Energy Charter Secretariat to review the application of this statement and to report to the Energy Charter Conference, recommending any measure necessary to reach its objectives.



5. Model Transit Agreements



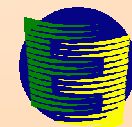
STRUCTURE OF MODEL AGREEMENTS PACKAGE

- **Inter-Governmental Agreement (“IGA”)**

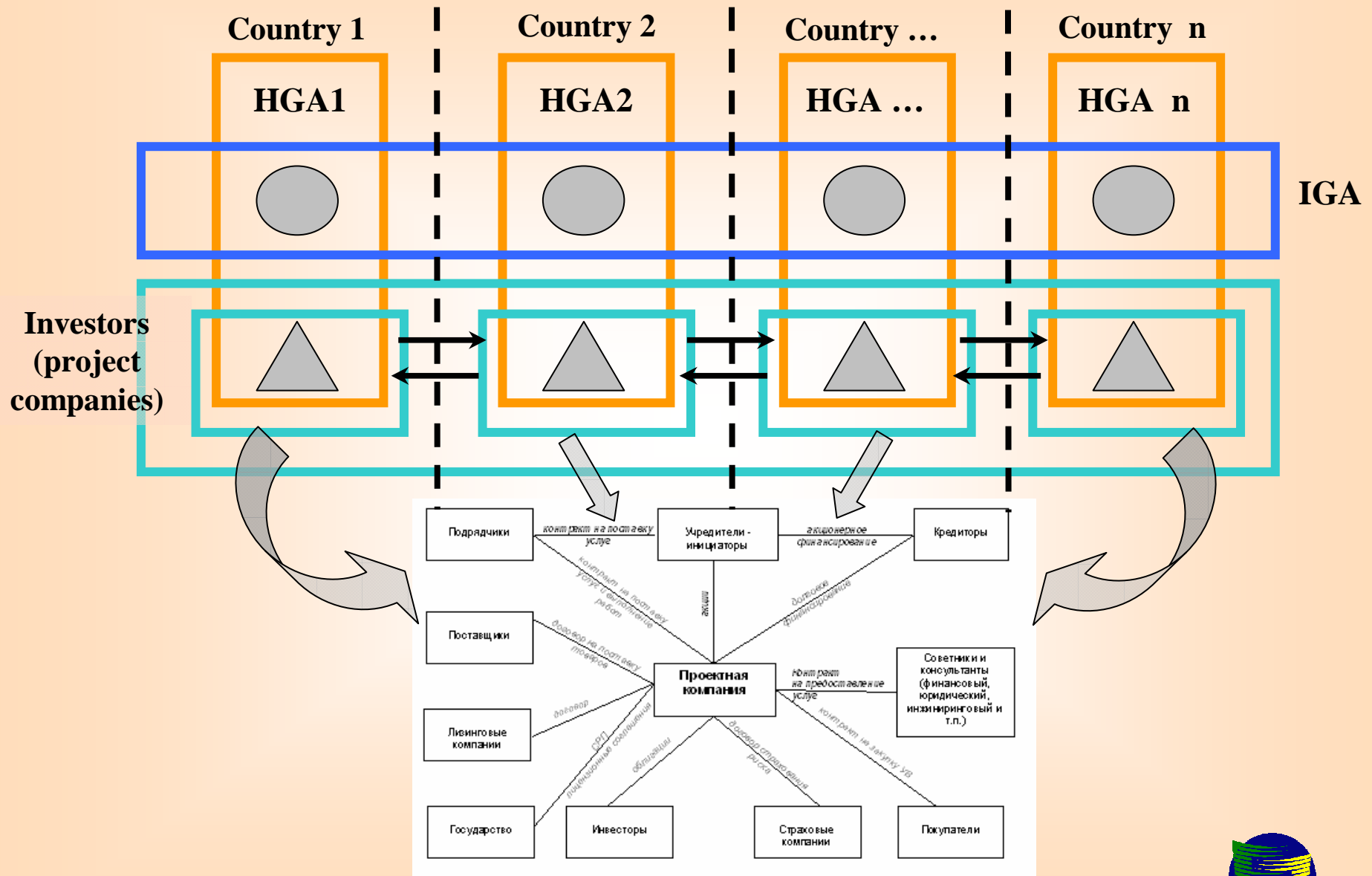
- Treaty model among states (CP/Signatories under International Law)
- At least 3 states assumed: Producer, Transit and Consumer
- Main concept: umbrella agreement to Host-Government Agreement (“HGA”) and Project Agreement
- Horizontal issues

- **Host-Government Agreement (“HGA”)**

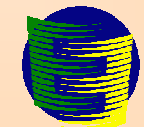
- Different nature: agreement between state and investor = contract
- Project and investors are identified
- Main concept: covers commercial terms and the economics of the project
- Vertical issues



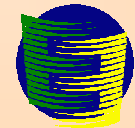
LEGAL STRUCTURE OF THE PRODUCTION & TRANSNATIONAL PIPELINE TRANSPORTATION CONTRACTS AND ECT



Dr. A. Konoplianik, 23 February 2004, Tehran - Figure 23

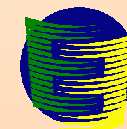


6. Energy Charter Working Groups on Transit



ENERGY CHARTER WORKING GROUP ON TRANSIT (Dec.1998-June 2003, NEGOTIATING)

- 1. Established in 1998 under the chairmanship of Helga Steeg, a former Executive Director of the International Energy Agency, IEA.**
- 2. Mandated by the Energy Charter Conference in December 1999 to commence international negotiations on an Energy Charter Protocol on Transit to expand and amplify the existing Transit provisions of the Energy Charter Treaty.**
- 3. Contracting Parties to the Treaty and Signatories to the Treaty and the European Energy Charter may participate in the international negotiations.**
- 4. Negotiations suspended in December 2003, draft Transit Protocol publicly available to act as a guidance when the negotiating parties develop domestic measures in the field of Transit.**



ENERGY CHARTER TRANSIT GROUP (June 2003- ...)

- 1. Established in June 2003 based on the original mandate established for the Transit Working Group.**
- 2. Process of identifying the chairman ongoing.**
- 3. Main tasks to facilitate intergovernmental energy policy debate and dialogue.**
- 4. Currently the work is focused on exploring issues identified during the Transit Protocol negotiation.**
- 5. Main issues are:**
 - 1. Supply source competition**
 - 2. Third party access to energy transport facilities**
 - 3. Cost reflective natural gas prices in the economies in transition**
 - 4. Foreign direct investment protection**
 - 5. Comparative legal analysis of domestic natural gas transportation legislation**

