

Article 7 – Transit

Notes and General comments

Final Act (17/12/94) <i>Declaration 3 - With respect to Article 7</i>	CONF 104 (Text for adoption) (14/09/94) <i>Declaration 2 - With respect to Article 7</i>
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The **European Community** and its **Member States** and **Austria, Norway, Sweden** and **Finland** declare that the provisions of Article 7 are subject to the conventional rules of international law on jurisdiction over submarine cables and pipelines or, where there are no such rules, to general international law.

They further declare that Article 7 is not intended to affect the interpretation of existing international law on jurisdiction over submarine cables and pipelines, and cannot be considered as doing so.

ECT 7 [CONF 96] (17/03/94) [Article 8] - Transit
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Norway waiting reserve. **Norway** accepts that the new definition of Area in Article 1 is helpful in this context but points out that the issues covered by Article 8 do not fall within the sovereign rights or jurisdiction exercised by coastal states over their Continental Shelf or exclusive economic zones. For the purpose of clarity **Norway** therefore suggests using the word “territory” instead of “Area” in the definition of Transit in paragraph (10)(a), and whenever the word is used in this Article.

Canada reserve on paragraphs (5), (6) and (7) pending a solution to the pre-emption of its regulatory authorities' statutory powers to interrupt energy flows.

ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/10/93) ECT 4 [CONF 64] (07/07/93) [Article 8] – Transit
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Subject to discussion in Plenary on Article 36, **Russian Federation** noted that there might be a need for transitional provisions covering Article 8, in relation to transit between CIS countries.

Norway waiting reserve. **Norway** accepts that the new definition of Area in Article 1 is helpful in this context but points out that the issues covered by Article 8 do not fall within the sovereign rights or jurisdiction exercised by coastal states over their Continental Shelf or exclusive economic zones. For the purpose of clarity **Norway** therefore suggests using the word “territory” instead of “Area” in the definition of Transit in paragraph (10)(a), and whenever the word is used in this Article.

USA supported by **Japan** suggests explicit exclusion of maritime transport from Article 8 (as well as from the Charter Treaty as a whole) - see footnote 8.12.

Canada contingency reserve pertaining to paragraphs (5), (6) and (7) pending a solution to the pre-emption of its regulatory authorities' statutory powers to interrupt energy flows.

ECT 3 [CONF 60] (01/06/93)
[Article 8] - Transit

Norway general reserve (see footnote 8.4).*

Canada contingency reserve pertaining to paragraphs (3), (5), (6) and (7).

ECT 2 [CONF 56] (01/05/93)
[Article 8] – Transport and Transit
Ministerial Declaration 5- To Article 8

Norway and Canada general reserve.

Ministerial Declaration 5 : Ministers recognise that the transit of Energy Materials and products may require transport and port facilities other than those detailed in paragraphs (4), (6) and (7) and that the terms of access to and use of such facilities may unfairly impede trade and transit of Energy Materials and Products. They invite the Charter Conference to consider whether the provisions of paragraphs (1) and (3) of Article 8 are sufficient safeguard against such possible impediments or whether the provisions of paragraphs (4), (6) and (7) should be extended perhaps through Protocols on coal and other energy sectors to cover any other facilities dedicated to the transport of Energy Materials and Products if such extension can be achieved without prejudicial effects on the trade and transport of non-energy materials and products.

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Ministerial Declaration 4 - To Article 8

Ministers recognise that the transit of Energy Materials and Products may require transport and port facilities other than those detailed in paragraphs (4), (6) and (7) and that the terms of access to and use of such facilities may unfairly impede trade and transit of Energy Materials and Products. They invite the Charter conference to consider whether the provisions of paragraphs (1) and (3) of Article 8 are sufficient safeguard against such possible impediments or whether the provisions of paragraphs (4), (6) and (7) should be extended perhaps through Protocols on coal and other energy sectors to cover any other facilities dedicated to the transport of Energy Materials and Products if such

* *Ed. note*: Footnote 8.4 states:

“It was agreed that in relation to paragraph (4), the terms of that paragraph should apply only within the territory of the Contracting Party and that the substance of article 79 of the Convention of the Law of the Sea should be made applicable to the Continental Shelf. In addition it was agreed that when the Law of the Sea Convention enters into force Contracting Parties will give serious consideration to limiting the field of application of Article 8 in the Charter Treaty and to leaving pipelines crossing the Continental Shelf to the Law of the Sea Convention. In Norway’s opinion the Charter Treaty should not interfere with, the regime relating to submarine cables and pipelines on the Continental Shelf already established in international law. The territorial scope of application of Article 8 should therefore be limited to land territory, internal waters and territorial sea.

Legal Sub-Group was asked to draft appropriate provisions. Insofar as coastal states possess no rights in relation to the Continental Shelf relevant to the obligations in a particular paragraph of this Article, that paragraph should not apply to pipelines and cables on the Continental Shelf. Insofar as the coastal states have rights relating to the Continental Shelf relevant to the obligations of any particular paragraph, then the obligations should apply in relation to pipelines and cables on the Continental Shelf.

Informal discussion is to continue.”

extension can be achieved without prejudicial effects on the trade and transport of non-energy materials and products.

The Contracting Parties declare that it is their common understanding that the provisions of the Energy Charter Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access.

BA-37 (01/03/93)
[Article 11] – Transport and Transit
Ministerial Declaration - To Article 11

After resequencing paragraphs in Article 11, Russian Federation footnote 11.14 from BA-31 can not be easily referred to any text in the draft of this Article. Russian Federation agreed to reconsider it in the light of new proposal on this Article.

During the WG II meeting on 22-27 February 1993 it was discussed whether the BA should contain any provisions which address the problems of emergency situations (not only for oil and gas, but also for electricity) since Article 27 does not deal with short-term breakdowns. CIS countries in particular supported this idea. At the same time it was recognised that this is complex, mostly unexplored territory, in which problems arise such as repair obligations, sharing of costs, distribution of remaining flows etc. The OECD countries were invited to make available, if possible, texts of contracts or agreements dealing with these problems. The interested CIS countries were invited to consider draft language.

The WG II Chairman will suggest to the Chairman of the Charter Conference how to proceed with this issue. For ease of future handling, the two draft texts for a new paragraph proposed by certain CIS countries are recorded below:

a) Armenia and Kazakhstan proposal: “In cases of breakdown in the energy transport network, the Contracting Party on whose territory the breakdown occurred shall undertake all necessary measures to eliminate its consequences as promptly as possible, without awaiting the results of analysis of the reasons for the breakdown. The costs of rectifying the consequences of the breakdown shall be shared between the parties to the transit in proportions determined in specific agreements which shall be concluded between the parties. When the volume of energy in transit is reduced, whatever the reasons for this reduction, the remaining volume shall be shared between all the parties using the transport network in accordance with specific agreements which shall be concluded between the parties to the transit.”

b) Ukraine proposal: “In cases of breakdown in the energy transit network, the Contracting Parties shall without delay undertake all necessary measures to eliminate the breakdown and its consequences. The costs for the parties of eliminating breakdowns and their consequences, operational concertation and allocation of transit supplies between parties concerned during the time of breakdown, shall be determined by multilateral and bilateral agreements.”

Canada, Norway, Japan and Azerbaijan general reserve on whole Article.

Ministerial Declaration to Article 11: [Ministers recognize that the transit of Energy Materials and Products may require transport and port facilities other than those detailed in paragraphs (4), (6) and (7) and that the terms of access to and use of such facilities may [unfairly] impede trade and transit of Energy Materials and Products. They invite the Charter Conference to consider whether the provisions of paragraphs (1) and (3) of Article 11 are sufficient safeguard against such Possible impediments or whether the provisions of paragraphs (4), (6) and (7) should be extended to cover any other facilities dedicated to the transport of Energy Materials and Products if such extension can be achieved without prejudicial effects on the trade and transport of non-energy materials and products.]¹

BA-35 (09/02/93)
[Article 11] - Transport and Transit

After resequencing paragraphs in Article 11, Russian Federation footnote 11.15 from BA-31 can not be easily referred to any text in the draft of this Article. Russian Federation agreed to reconsider it in the light of new proposal on this Article.

Canada, Norway, Japan and Azerbaijan general reserve on whole Article.

There are three major issues to be addressed when finalising this Article:

- how to take forward matters indicated in footnote 11.9 and 11.15,
- whether Polish idea on solving disputes under para (6) can be expressed in an acceptable form.
- following the Armenian proposal at footnote 11.16 in Room Document 13 of 3 February 1993, whether BA should contain any provisions which address the problems of emergency situations since Article 27 does not deal with short-term breakdowns.

BA-31 (21/12/92)
BA-26 (25/11/92)
BA-22 (21/10/92)
BA-15 (12/08/92)
BA-14 (24/06/92)
[Article 11] – Transport and Transit

Canada, Australia, Norway, Japan and Azerbaijan general reserve on whole Article.

Work has been completed on this Article in WGII and is being referred to Plenary.

¹ General scrutiny reserve. Chairman will consider whether the notion of a coal protocol might be introduced in the text.

BA 13 (19/06/92)
[Article 11] – Transport and Transit

Canada, Australia, Norway, Japan and Azerbaijan general reserve on whole Article. Chairman will return on this at conclusion of discussion.

Work has been completed on this Article in WGII and is being referred to Plenary.

BA 12 (09/04/92)
[Article 11] - Transport and Transit

On a basis of the first reading of this Article at the WG II meeting on 9 April 1992, the Chairman invited delegations of Austria, Australia, Norway, Russian Federation and USA chaired by the Secretariat for redrafting. The working sub-group will meet as soon as possible.

Canada general reserve on whole Article.

BA 6 (21/01/92)
Article 11 - Transport and Transit

Completely rewritten former Article 11 on "Freedom of Movement".

BA 4 (31/10/91)
Article 11 - Freedom of Movement

New text based on Austrian and EC suggestions. Former subpara (c) deleted and subpara (d) renumbered as para (2).

BP 2 (11/09/91)
Explanatory Memorandum

Article 11 provides for (a) the facilitation of transit of Energy Materials and Products through the Territory of Contracting Parties (Source: GATT Article V); (b) the limitation of fees and charges to the approximate cost of Article 11 services rendered, including a reasonable commercial rate of return, and the avoidance of fiscal protection of domestic products (Source: GATT Article VIII); and (c) the absence of prohibitions or restrictions (other than duties, taxes and other charges) on imports and exports from and to any Contracting Party (Source: GATT Article XI). Under paragraph (d), Contracting Parties' security of supply is protected.

Article 7.1

ECT as adopted (17/12/94) CONF 104 (Text for adoption) (14/09/94) Article 7.1 - Transit	Interim text (25/06/94) Interim text (20/06/94) Compromise text [CONF 98] (22/04/94) Article 8.1 - Transit	ECT 7 [CONF 96] (17/03/94) ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/10/93) ECT 4 [CONF 64] (07/07/93) [Article 8].1 - Transit
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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 3 [CONF 60] (01/06/93) [Article 8].1 - Transit
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Each Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

ECT 2 [CONF 56] (01/05/93) [Article 8].1 – Transport and Transit	(Compromise text) ECT 1 [CONF 50] (15/03/93) Article 8.1 - Transport and Transit
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Each Contracting Party shall take the necessary measures to facilitate the transit through its Domain of Energy Materials and Products from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading, without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

BA-37 (01/03/93) [Article 11].1 - Transport and Transit

Each Contracting Party [shall take the necessary measures to facilitate]² the transit through its Domain³ of Energy Materials and Products from the Domain³ of another Contracting Party to the Domain³ of a third Contracting Party or to or from port facilities in its Domain³ for loading or unloading, without distinction as to the origin, destination or ownership of such Energy Materials and

² USA scrutiny reserve. EC conditional reserve subject to withdrawal of USA reserve.

³ Norway reserve. According to Norway the territorial scope of application of Article 11 should be limited to land territory, internal waters and territorial sea. Submarine cables and pipelines on the continental shelf are covered in Article 4 of the Convention on the Continental Shelf of 1958 and in Article 79 of the United Nations Convention on the Law of the Sea of 1982. The Basic Agreement should not interfere with this regime already established in international law.

Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

BA-35 (09/02/93)
Article [11].1 - Transport and Transit

Each Contracting Party [shall take the necessary measures to facilitate]² the transit through its Domain of Energy Materials and Products from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading, without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

BA-31 (21/12/92)
BA-26 (25/11/92)
BA-22 (21/10/92)
Article [11].1 - Transport and Transit

Each Contracting Party [shall take the necessary measures to facilitate]² the transit through its Domain of Energy Materials and Products from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading, without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

BA-15 (12/08/92)
Article [11].1 - Transport and Transit

Each Contracting Party [shall take the necessary measures to facilitate]² the transit through its Domain of [Energy Materials and Products] from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading, without distinction as to the origin, destination or ownership of such [Energy Materials and Products] or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

BA-14 (24/06/92)
BA 13 (19/06/92)
[Article 11].1 - Transport and Transit

Each Contracting Party [shall take the necessary measures to facilitate]² the transit through its [Territory] of [Energy Materials and Products] from the [Territory] of another Contracting Party to the [Territory] of a third Contracting Party or to or from port facilities in its [Territory] for loading or unloading, without distinction as to the origin, destination or ownership of such [Energy Materials and Products] or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

BA 12 (09/04/92)
[Article 11].1 - Transport and Transit

Each Contracting Party [[undertakes]⁴ to facilitate]⁵ the transit through its Territory of [Energy Materials and Products] between two or more Contracting Parties, without distinction as to the origin, destination or ownership of such [Energy Materials and Products] or discrimination as to the pricing on the basis of such distinction, and without imposing any unreasonable delays, restrictions or charges.

BA 6 (21/01/92)
Article 3.4 - Principles
Article 11.1 - Transport and Transit

The Contracting Parties shall facilitate the transit through their Territory of [Energy Materials and Products] without distinction as to the origin, destination or ownership.

Article 11.1 - Transport and Transit

Each Contracting Party undertakes to facilitate the transit through its Territory of [Energy Materials and Products] between two or more Contracting Parties, without distinction as to the origin, destination or ownership of such [Energy Materials and Products] or discrimination as to the pricing on the basis of such distinction, and without imposing any unreasonable delays, restrictions or charges.

BA 4 (31/10/91)
Article 11.1a - Freedom of Movement

Each Contracting Party undertakes:

- (a) To facilitate by the most convenient means⁶ the transit through its Territory of [Energy Materials and Products] between two or more other Contracting Parties, 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 distinction, and without imposing any unnecessary or unreasonable delays, restrictions or charges. Transit of electricity under this Article shall not impede the optimisation of local electricity grids. Details will be specified in an appropriate Protocol;

BP 2 (11/09/91)
Article 11a - Freedom of Movement

Each Contracting Party undertakes:

- (a) to facilitate by the most convenient means the transit through its Territory of Energy Materials and Products between two or more other Contracting Parties, without distinction as to the origin, destination or ownership of such Materials and Products or discrimination as to

⁴ **Japan** asks for substituting with “shall”.

⁵ **Norway** suggests replacing with : “shall permit”.

⁶ **Switzerland**: insert in subparagraph (a) after “the most convenient means”, the wording “consistent with environmental protection”.

pricing on the basis of such distinction, and without imposing any unnecessary or unreasonable delays, restrictions or charges;

<p style="text-align: center;">Basic Protocol (20/08/91) Article 9a - Freedom of Movement</p>
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Each Contracting Party undertakes:

- (a) To facilitate by the most convenient means the transport or transmission through its Territory of Energy Materials and Products which are in transit between two or more other Contracting Parties, without distinction as to the origin, destination or ownership of such Materials and Products or discrimination as to pricing on the basis of such distinction, and without imposing any unnecessary or unreasonable delays, restrictions or charges;

Article 7.2

ECT as adopted (17/12/94) CONF 104 (Text for adoption) (14/09/94) Article 7.2 - Transit	Interim text (25/06/94) Interim text (20/06/94)* Compromise text [CONF 98] (22/04/94)* Article 8.2 - Transit	ECT 7 [CONF 96] (17/03/94)* ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72](11/10/93) ECT 4 [CONF 64] (07/07/93) [Article 8]. 2 - Transit
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Contracting Parties shall encourage relevant entities to co-operate in:

- (a) modernising Energy Transport Facilities necessary to the Transit of Energy Materials and Products;
- (b) the development and operation of Energy Transport Facilities serving the Areas of more than one Contracting Party;
- (c) measures to mitigate the effects of interruptions in the supply of Energy Materials and Products;
- (d) facilitating the interconnection of Energy Transport Facilities.

ECT 3 [CONF 60] (01/06/93) [Article 8].2 - Transit
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Contracting Parties shall encourage relevant entities to cooperate in:

- (a) modernising Energy Transport Facilities necessary to the Transit of Energy Materials and Products;
- (b) the development and operation of Energy Transport Facilities serving the Domain of more than one Contracting Party;
- (c) measures to mitigate the effects of interruptions in the supply of Energy Materials and Products;
- (d) facilitating the interconnection of Energy Transport Facilities.

ECT 2 [CONF 56] (01/05/93) [Article 8].2 - Transport and Transit
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Contracting Parties shall encourage relevant entities to cooperate in:

- (a) modernising transit networks necessary to the supply of Energy Materials and Products;

* *Ed. note:* in these versions, the drafts are written in US English. The provisions are the same except for the spelling of “modernizing”/“modernising”.

- (b) the development and operation of transport infrastructure serving the Domain of more than one Contracting Party;
- (c) measures to mitigate the effects of interruptions in the supply of Energy Materials and Products;
- (d) facilitating the interconnection of high-pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines and coal slurry pipelines.

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Article 8.2 - Transport and Transit

Contracting Parties shall encourage relevant entities to cooperate in:

- (a) modernising transit networks necessary to the supply of Energy Materials and Products;
- (b) the development and operation of transport infrastructure serving the Domain of more than one Contracting Party;
- (c) measures to mitigate the effects of [DL] interruptions in the supply of Energy Materials and Products;
- (d) facilitating the interconnection of high-pressure gas transmission pipelines, [DL] high-voltage electricity transmission grids, [DL] crude oil transmission pipelines and coal slurry pipelines.

BA-37 (01/03/93)
[Article 11].2 - Transport and Transit

Contracting Parties⁷ shall encourage relevant entities to cooperate in:

- (a) modernising transit networks necessary to the supply of Energy Materials and Products;
- (b) the development and operation of transport infrastructure serving the Domain³ of more than one Contracting Party;
- (c) measures to mitigate the effects of the interruption in the supply of Energy Materials and Products;
- (d) facilitating the connection to high-pressure gas transmission pipelines and the interconnection of high-voltage electricity transmission grids, and crude oil transmission pipelines [and coal slurry pipelines.]⁸

⁷ Austria suggests inserting: “, subject to their applicable legislation, inter alia on safety, technical standards, environmental protection and land use,”.

⁸ General scrutiny reserve.

BA-35 (09/02/93)
[Article 11].2 - Transport and Transit

Contracting Parties⁷ shall encourage relevant entities to cooperate in:

- (a) modernising transit networks necessary to the supply of Energy Materials and Products;
- (b) the development and operation of transport infrastructure serving the Domain of more than one Contracting Party;
- (c) measures to mitigate the effects of the interruption in the supply of Energy Materials and Products;
- (d) facilitating the connection to [high-pressure]⁹ transmission pipelines and the interconnection of high-voltage transmission grids.

BA-31 (21/12/92)
BA-26 (25/11/92)
BA-22 (21/10/92)
[Article 11].2 - Transport and Transit

¹⁰Contracting Parties shall encourage relevant entities to cooperate in:

- (a) modernising transit networks necessary to the supply of Energy Materials and Products;
- (b) the development and operation of transport infrastructure serving the Domain of more than one Contracting Party;
- (c) measures to mitigate the effects of the interruption in the supply of Energy Materials and Products;
- (d) facilitating the connection to high-pressure transmission pipelines and the synchronous interconnection of high-voltage transmission grids.

BA-15 (12/08/92)
[Article 11].2 - Transport and Transit

¹⁰Contracting Parties shall encourage relevant entities to cooperate in:

- (a) modernising transit networks necessary to the supply of [Energy Materials and Products];
- (b) the development and operation of transport infrastructure serving the Domain of more than one Contracting Party;
- (c) measures to mitigate the effects of the interruption in the supply of [Energy Materials and Products];

⁹ **Canada** proposes deletion.

¹⁰ **Greece** reserve.

- (d) facilitating the connection to high-pressure transmission pipelines and the synchronous interconnection of high-voltage transmission grids.

BA-14 (24/06/92)
BA 13 (19/06/92)
[Article 11].2 - Transport and Transit

¹⁰Contracting Parties shall encourage relevant entities to cooperate in:

- (a) modernising transit networks necessary to the supply of [Energy Materials and Products];
- (b) the development and operation of transport infrastructure serving the [Territory] of more than one Contracting Party;
- (c) measures to mitigate the effects of the interruption in the supply of [Energy Materials and Products];
- (d) facilitating the connection to high-pressure transmission pipelines and the synchronous interconnection of high-voltage transmission grids.¹¹

BA 12 (09/04/92)
[Article 11].2 - Transport and Transit

Contracting Parties shall encourage relevant entities to cooperate in:

- (a) modernising transit networks necessary to the supply of [Energy Materials and Products] while complying with specific previous obligations;
- (b) the development and operation of transport infrastructure serving the Territory of more than one Contracting Party;
- (c) measures to mitigate the effects of the interruption in the supply of [Energy Materials and Products].

BA 6 (21/01/92)
Article 11.2 - Transport and Transit

Contracting Parties shall cooperate in or, as appropriate, encourage relevant entities to cooperate in:

- (a) minimising the cost of transit and related operations necessary to the supply of [Energy Materials and Products] through existing pipelines and transmission lines;
- (b) the development and operation of transport infrastructure serving the Territory of more than one Contracting Party to minimize the costs of that infrastructure;
- (c) measures to mitigate the effects of the interruption in the supply of [Energy Materials and Products].

Protocols may include binding provisions to achieve these objectives.

¹¹ Chairman will inform the Bureau about this inclusion.

Article 7.3

ECT as adopted (17/12/94)
CONF 104 (Text for adoption) (14/09/94)
Article 7.3 - Transit

Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products and the use of Energy Transport Facilities shall treat Energy Materials and Products in Transit in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Area, unless an existing international agreement provides otherwise.

Interim text (25/06/94)
Article 8.3 - Transit

Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products and the use of Energy Transport Facilities shall treat Energy Materials and Products in Transit in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Area, **except of otherwise provided for in** unless an existing international agreement provides otherwise.

Interim text (20/06/94)
Compromise text [CONF 98] (22/04/94)
Article 8.3 - Transit

Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products and the use of Energy Transport Facilities shall treat Energy Materials and Products in Transit in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Area, except if otherwise provided for in an existing international agreement.

ECT 7 [CONF 96] (17/03/94)
[Article 8].3 - Transit

Each Contracting Party undertakes that its provisions relating to [transport]¹² of Energy Materials and Products and the use of Energy Transport Facilities shall treat Energy Materials and Products in Transit in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Area, except if otherwise provided for in an existing international agreement.

¹² **Australia** contingency reserve. Removal of reserve depends on Australia concerns about coverage of transport in the Treaty being met through adoption of a legally binding GATT reference approach. **Canada** scrutiny reserve.

ECT 6 [CONF 82] (20/12/93)
ECT 5 [CONF 72] (11/10/93)
ECT 4 [CONF 64] (07/07/93)
[Article 8].3 - Transit

Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products and the use of Energy Transport Facilities shall treat Energy Materials and Products in Transit in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Area, except if otherwise provided for in an existing international agreement.¹³

ECT 3 [CONF 60] (01/06/93)
[Article 8].3 - Transit

[Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products and the use of Energy Transport Facilities shall treat Energy Materials and Products in Transit in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Domain, except if otherwise provided for in an existing international agreement.]¹³

ECT 2 [CONF 56] (01/05/93)
[Article 8].3 - Transport and Transit

[Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products [and the use of harbour facilities,]¹⁴ high pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines and coal slurry pipelines shall treat Energy Materials and Products originating [in another Domain and destined for a third Domain so long as either the other Domain or the third Domain is that of a Contracting Party]¹⁵ in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Domain, except if otherwise provided for in an existing international agreement.]^{16,17}

CONF 50 – ECT 1 (15/03/93)
[Article 8].3 - Transport and Transit

Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products and the use of harbour facilities, high pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines and coal slurry pipelines shall treat Energy Materials and Products wholly or partly originating in or destined for the Domain of another

¹³ **Australia** contingency reserve. Removal of reserve depends on Australia concerns about coverage of transport in the Agreement being met through adoption of a legally binding GATT reference approach.

Canada scrutiny reserve.

¹⁴ **USA** reserve. USA will present a proposal on how to handle its concerns, preferably by drafting a text for the Ministerial Declaration stating that this paragraph does not apply to the means of transportation. The proposal will be forwarded to the Secretariat in good time before the May Plenary Session.

¹⁵ Similar wording for paragraphs (4) and (9) will be proposed by WG 11 Chairman.

¹⁶ **Australia** contingency reserve (removal of reserve depends on Australia concerns about coverage of transport in the Agreement being met through adoption of a legally binding GATT reference approach).

¹⁷ General scrutiny reserve.

Contracting Party, in no less favourable a manner than its provisions treat such materials and products wholly or partly originating in or destined for its own Domain, except if otherwise provided for in an existing international agreement.

BA-37 (01/03/93)
[Article 11].3 - Transport and Transit

Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products [and the use of harbor facilities]¹⁸, high pressure gas transmission pipelines or high-voltage electricity transmission grids or crude oil transmission pipelines [or coal slurry pipelines]¹⁹ shall treat Energy Materials and Products wholly or partly originating in or destined for the Domain³ of another Contracting Party, in no less favourable a manner than its provisions treat such materials and products wholly or partly originating in or destined for its own Domain³, except if otherwise provided for in an existing international agreement.

BA-35 (09/02/93)
[Article 11].3 - Transport and Transit

²⁰Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products [and the use of harbour facilities]²¹, [high-pressure]²² transmission pipelines or high-voltage transmission grids shall treat Energy Materials and Products wholly or partly originating in or destined for the Domain of another Contracting Party, in no less favourable a manner than its provisions treat such materials and products wholly or partly originating in or destined for its own Domain, except if otherwise provided for in an existing international agreement.

BA-31 (21/12/92)
BA-26 (25/11/92)
BA-22 (21/10/92)
[Article 11].3 - Transport and Transit

^{23,20}Each Contracting Party undertakes that its provisions relating to [transport of Energy Materials and Products and the use of harbour facilities]²⁴, high-pressure transmission pipelines or high-voltage transmission grids shall treat Energy Materials and Products wholly or partly originating in or destined for the Domain of another Contracting Party, in no less favourable a manner than its provisions treat such materials and products wholly or partly originating in or destined for its own Domain, except if otherwise provided for in an existing international [agreement]²⁵.

¹⁸ **USA** scrutiny reserve.

¹⁹ General scrutiny reserve.

²⁰ **EC** may prepare additional language reducing any possible doubt that this provision does not require third party access.

²¹ **USA** scrutiny reserve.

²² **Canada** proposes deletion.

²³ **Greece** reserve.

²⁴ **USA** reserve pending further instructions from capital.

²⁵ **Australia** asks for substituting with "law".

BA-15 (12/08/92)
[Article 11].3 - Transport and Transit

²³ ²⁰ Each Contracting Party undertakes that its provisions relating to [transport of [Energy Materials and Products] and the use of harbour facilities]²⁴, high-pressure transmission pipelines or high-voltage transmission grids shall treat [Energy Materials and Products] wholly or partly originating in or destined for the Domain of another Contracting Party, in no less favourable a manner than its provisions treat such materials and products wholly or partly originating in or destined for its own Domain, except if otherwise provided for in an existing international [agreement]²⁵.

BA-14 (24/06/92)
BA 13 (19/06/92)
[Article 11].3 - Transport and Transit

²³ ²⁰ Each Contracting Party undertakes that its provisions relating to [transport of [Energy Materials and Products] and the use of harbour facilities]²⁴, high-pressure transmission pipelines or high-voltage transmission grids shall treat [Energy Materials and Products] wholly or partly originating in or destined for the [Territory] of another Contracting Party, in no less favourable a manner than its provisions treat such materials and products wholly or partly originating in or destined for its own [Territory], except if otherwise provided for in an existing international [agreement]²⁵.

BA 12 (09/04/92)
[Article 11].3 - Transport and Transit

Each Contracting Party [undertakes]²⁶ that its provisions relating to transport of [Energy Materials and Products] by rail, [road]^{27,28}, [harbour facilities]²⁹ and to the use of high-pressure pipelines or high-voltage transmission grids shall, if capacity is available, not be less favourable than those which would have been accorded to such materials and products wholly or partly originating in or destined for its own Territory or the Territory of another Contracting Party, except if otherwise provided for in an existing international agreement.

BA 6 (21/01/92)
Article 11.3 to 11.5 - Transport and Transit

(3) Each Contracting Party undertakes that its provisions relative to transport of [Energy Materials and Products] by rail, inland waterway or sea, shall not be less favourable in their direct or indirect effect on carriers of other states as compared with carriers who are nationals of another Contracting Party or as compared with carriers who are nationals of that state or less favourable for [Energy Materials or Products] originating in or destined for the Territory of another Contracting Party compared with such [Energy Materials and Products] originating in or destined for its own Territory.

(4) In the case of transport within its Territory each Contracting Party shall prohibit discrimination which takes the form of carriers or other providers of transportation services or harbor

²⁶ **Japan** asks for substituting with “shall”.

²⁷ **Austria** considers road transport undesirable.

²⁸ **Australia** requests for inserting : “inland waterways”.

²⁹ **USA** reserve.

facilities charging discriminatory rates and imposing different conditions in respect of the same [Energy Materials and Products] over the same transport links on grounds of the country of origin or of destination of the goods in question.

(5) Each Contracting Party undertakes that its provisions relative to the construction and use of pipelines or high voltage transmission lines shall not be less favourable in their direct or indirect effect on builders and operators of pipelines or transmission lines of other states as compared with those who are nationals of another Contracting Party or as compared with those who are nationals of that state or less favourable for [Energy Materials and Products] wholly or partly originating in or destined for the Territory of another Contracting Party compared with such [Energy Materials and Products] wholly originating in or destined for its own Territory.

<p style="text-align: center;">BA 4 (31/10/91) Article 11.1b - Freedom of Movement</p>

- (1) Each Contracting Party undertakes:
- (b) To limit the amount of any fees and charges (other than import and export duties and internal taxes) imposed in connection with the importation or exportation of [Energy Materials and Products] including the use of facilities necessary for such purposes to the approximate cost of services rendered, including a reasonable commercial rate of return, [and to avoid indirect protection of domestic products or taxation of imports or exports for fiscal purposes]³⁰;

<p style="text-align: center;">BP 2 (11/09/91) Article 11.b to c - Freedom of Movement</p>

Each Contracting Party undertakes:

- (c) to limit the amount of any fees and charges imposed in connection with the importation or exportation of Energy Materials and Products (other than import and export duties and internal taxes) to the approximate cost of services rendered, including a reasonable commercial rate of return, and to avoid indirect protection of domestic products or taxation of imports or exports for fiscal purposes;
- (d) not to institute or maintain any form of prohibitions or restrictions (other than duties, taxes or other charges) or measures having equivalent effect on the importation of Energy materials and Products from any other Contracting Party or on the exportation or sale for export of any such Materials and Products destined for the Territory of any other Contracting Party;

<p style="text-align: center;">Basic Protocol (20/08/91) Article 9.b to c - Freedom of Movement</p>
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Each Contracting Party undertakes:

- (b) To limit the amount of any fees and charges imposed in connection with the importation or exportation of Energy Materials and Products (other than import and export duties and

³⁰ **New Zealand:** supported by **Sweden**, reserved its position on the need for this wording in subpara (b).

internal taxes) to the approximate cost of services rendered, and to avoid indirect protection of domestic products or taxation of imports or exports for fiscal purposes;

- (c) Not to institute or maintain any form of prohibitions or restrictions (other than duties, taxes or other charges) or measures having equivalent effect on the importation of Energy Materials and Products from any other Contracting Party or on the exportation or sale for export of any such Materials and Products destined for the Territory of any other Contracting Party.

Article 7.4

Final Act and ECT as adopted (17/12/94)
CONF 104 (Text for adoption) (14/09/94)
Article 7.4 – Transit
Understanding 8 – With respect to Article 7(4)

In the event that Transit of Energy Materials and Products cannot be achieved on commercial terms by means of Energy Transport Facilities the Contracting Parties shall not place obstacles in the way of new capacity being established, except as may be otherwise provided in applicable legislation which is consistent with paragraph(1).

Understanding 8 – With respect to Article 7(4)*

Interim text (25/06/94)
Article 8.4 – Transit
Understanding 8 – To Article 8(4)

In the event that Transit of Energy Materials and Products cannot be achieved on commercial terms by means of Energy Transport Facilities the Contracting Parties shall not place obstacles in the way of new capacity being established, **subject to** except as may be otherwise provided in applicable legislation which is **compatible** consistent with paragraph (1).

Understanding 8 – With respect to Article 8(4)*

Interim text (20/06/94)
Article 8.4 - Transit
Understanding 8 – To Article 8(4)

In the event that Transit of Energy Materials and Products cannot be achieved on commercial terms by means of Energy Transport Facilities the Contracting Parties shall not place obstacles in the way of new capacity being established, subject to applicable legislation which is compatible with paragraph (1).

Understanding 8 – With respect to Article 8(4)*

Compromise text [CONF 98] (22/04/94)
Article 8.4 - Transit
Ministerial Declaration 7 – To Article 8(4)

[In the event that Transit of Energy Materials and Products cannot be achieved on commercial terms by means of Energy Transport Facilities the Contracting Parties shall not place obstacles in the way

* *Ed. note:* Same text since Interim text 20/06/94 “The applicable legislation would include provisions on environmental protection, land use, safety, or technical standards.”

of new capacity being established, subject to applicable legislation which is compatible with paragraph (1) of this Article.]³¹

Ministerial Declaration 7 - To Article 8(4)

The applicable legislation referred to in Article 8(4) would include provisions on environmental protection, land use, safety, or technical standards.

ECT 7 [CONF 96] (17/03/94) [Article 8]4 - Transit <i>Ministerial Declaration 7 (To Article 8(4))</i>	ECT 6 [CONF 82] (20/12/93) [Article 8].4 - Transit <i>Ministerial Declaration 6 (To Article 8(4))</i>
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[In the event that Transit of Energy Materials and Products cannot be achieved on commercial terms by means of Energy Transport Facilities the Contracting Parties shall not place obstacles in the way of new capacity being established, subject to applicable legislation which is compatible with paragraph (1) of this Article.]^{32,33}

Ministerial Declaration 7/6 - To Article 8(4)

Such applicable legislation would include provisions on environmental protection, land use, safety, technical standards.

ECT 5 [CONF 72] (11/10/93) ECT 4 [CONF 64] (07/07/93) [Article 8].4 - Transit <i>Ministerial Declaration 6 (To Article 8(4))</i>

[In the event that Transit of Energy Materials and Products cannot be achieved on commercial terms by means of Energy Transport Facilities the Contracting Parties shall not place obstacles in the way of new capacity being established, subject to applicable legislation which is compatible with paragraph (1) of this Article.]^{32 33}

Ministerial Declaration 6/5 – To Article 8(4)*

³¹ In the previous version of the Treaty (CONF 96), a general scrutiny reservation was entered to consider the effect of the definition of “Area” on this paragraph.

³² General scrutiny reserve to consider the effect of the new definition of Area on this paragraph.

³³ **Norway** reserve. Suggests substituting “Making Investment” for concept of establishment, and seeks clarification on coverage of transport investments by Part III of this Treaty [*Editor’s note*: CONF 64 – ECT 4 uses the wording “Agreement” instead of “Treaty” in this footnote].

* *Ed. note*: same text since ECT 3 [CONF 60] “Ministers agree that such applicable legislation would include provisions on environmental protection, land use, safety, technical standards.”

ECT 3 [CONF 60] (01/06/93)
[Article 8].4 – Transit
Ministerial Declaration 5 (To Article 8(4))

[In the event that access to Energy Transport Facilities cannot be obtained on commercial terms for Transit of Energy Materials and Products the Contracting Parties shall not place obstacles in the way of establishing new capacity - subject to applicable legislation which is compatible with paragraph (1) of this Article].³⁴

Ministerial Declaration 5 – To Article 8(4)

Ministers agree that such applicable legislation would include provisions on environmental protection, land use, safety, technical standards.

ECT 2 [CONF 56](01/05/93)
Article 8.4 - Transport and Transit

[In the event that access to high-pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines, coal slurry pipelines and other facilities specifically for handling Energy Materials and Products cannot be obtained on commercial terms for transit of Energy Materials and Products from another Contracting Party to a third Contracting Party, the Contracting Parties shall not place obstacles in the way of establishing new capacity - subject to [their applicable legislation [in areas such as]³⁵ safety, technical standards, environmental protection, land use and competition].^{36]}³⁴

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Article 8.4 - Transport and Transit

In the event that access to existing high-pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines or coal slurry pipelines within a Contracting Party cannot be obtained on commercial terms for transit of Energy Materials and Products from another Contracting Party to a third Contracting Party, the Contracting Parties shall not place

³⁴ It was agreed that in relation to paragraph (4), the terms of that paragraph should apply only within the territory of the Contracting Party and that the substance of article 79 of the Convention of the Law of the Sea should be made applicable to the Continental Shelf. In addition it was agreed that when the Law of the Sea Convention enters into force Contracting Parties will give serious consideration to limiting the field of application of Article 8 in the Charter Treaty and to leaving pipelines crossing the Continental Shelf to the Law of the Sea Convention. In Norway's opinion the Charter Treaty should not interfere with the regime relating to submarine cables and pipelines on the Continental Shelf already established in international law. The territorial scope of application of Article 8 should therefore be limited to land territory, internal waters and territorial sea.

Legal Sub-Group was asked to draft appropriate provisions. Insofar as coastal states possess no rights in relation to the Continental Shelf relevant to the obligations in a particular paragraph of this Article, that paragraph should not apply to pipelines and cables on the Continental Shelf. Insofar as the coastal states have rights relating to the Continental Shelf relevant to the obligations of any particular paragraph, then the obligations should apply in relation to pipelines and cables on the Continental Shelf.

Editor's note: in ECT 3 [CONF 60] a final sentence is added: "Informal discussion is to continue."

³⁵ **Poland** and **Hungary** reserve.

³⁶ WG II Chairman proposes following compromise: "any applicable legislation which is not in conflict with paragraph (1) of this Article".

obstacles in the way of establishing financially and economically viable new capacity - subject to their applicable legislation, inter alia, on safety, technical standards, environmental protection and land use.

BA-37 (01/03/93)

[Article 11].4 - Transport and Transit

In the event that access to existing [high-pressure gas transmission pipelines or high-voltage electricity transmission grids or crude oil transmission pipelines [or coal slurry pipelines]³⁷]³⁸ within a Contracting Party cannot be obtained on commercial terms for transit of Energy Materials and Products from another Contracting Party to a third Contracting Party, the Contracting Parties shall not place obstacles in the way of establishing [financially and economically viable]³⁹ new capacity - subject to their applicable legislation, [[inter alia on]⁴⁰ safety, technical standards, environmental protection and land use.]³⁵

BA-35 (09/02/93)

[Article 11].4 - Transport and Transit

In the event that access to existing [[high-pressure]⁴¹ transmission pipelines or high-voltage transmission grids]³⁸ within a Contracting Party cannot be obtained on commercial terms for transit of energy from another Contracting Party to a third Contracting Party, the Contracting Parties shall not place obstacles in the way of establishing [financially and economically viable]³⁹ new capacity - subject to their applicable legislation, [[inter alia on]⁴⁰ safety, technical standards, environmental protection and land use.]³⁵

BA-31 (21/12/92)

BA-26 (25/11/92)

BA-22 (21/10/92)

BA-15 (12/08/92)

BA-14 (24/06/92)

BA 13 (19/06/92)

[Article 11].4 - Transport and Transit

⁴²In the event that access to existing [high-pressure transmission pipelines or high-voltage transmission grids]⁴³ within a Contracting Party cannot be obtained [on commercial terms for transit of energy from another Contracting Party to a third Contracting Party, the Contracting Parties shall

³⁷ General scrutiny reserve.

³⁸ **Australia** supported by **Russian Federation** and **Armenia** asks for replacing with: “facilities for the transport of Energy Materials and Products and harbour facilities”. **USA**, **Japan** and **EC** strongly oppose this suggestion. Chairman suggests that the Charter Conference could be invited to look into the possibility of applying para (4) to port facilities which are dedicated to the transport of Energy Materials and Products, on the condition that this does not interfere with the possible use of these facilities for other goods and products. General reserve on this suggestion.

³⁹ **Norway** scrutiny reserve.

⁴⁰ **Norway** wants substituting with: “In areas such as”. **EC** reserve on Norway proposal.

⁴¹ **Canada** proposes deletion.

⁴² **Greece** reserve.

⁴³ **Australia** asks for replacing with: “facilities for the transport of Energy Materials and Products and harbour facilities”.

not place obstacles in the way of establishing financially and economically viable new capacity-subject to their applicable legislation, inter alia on safety, technical standards, environmental protection and land use]⁴⁴.

BA 12 (09/04/92)
[Article 11].4 - Transport and Transit

In the event that access to existing high-pressure pipelines or high-voltage transmission grids within a Contracting Party cannot be obtained on commercial terms for transit of energy from another Contracting Party to a third Contracting Party, the Contracting Parties shall not place obstacles in the way of establishing financially and economically viable new capacity-subject to their applicable legislation, inter alia on safety, technical standards, environmental protection and land use.

BA 6 (21/01/92)
Article 11.6 - Transport and Transit

In the event that access to existing pipelines or transmission lines within a Contracting Party cannot be obtained on acceptable terms for transit of [Energy Materials and Products] from another Contracting Party to a third Contracting Party, the Contracting Party shall permit new capacity to be established in accordance with its applicable legislation inter alia on safety, environmental protection and land use.

⁴⁴ **Greece** suggests substituting with “for transit of energy from another Contracting Party, the first Contracting Party shall, if requested, attempt to resolve the issue - including if appropriate by considering the possibility of new capacity being established - in accordance with its applicable legislation, inter alia on safety, environmental protection and land use”.

Article 7.5

ECT as adopted (17/12/94) CONF 104 (Text for adoption) (14/09/94) Article 7.5 - Transit	Interim text (25/06/94) Article 8.5 - Transit
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A Contracting Party through whose Area Energy Materials and Products may transit shall not be obliged to

- (a) permit the construction or modification of Energy Transport Facilities; or
- (b) permit new or additional Transit through existing Energy Transport Facilities,

which it demonstrates to the other Contracting Parties concerned would endanger the security or efficiency of its energy systems, including the security of supply.

Contracting Parties shall, subject to paragraphs (6) and (7), secure established flows of Energy Materials and Products to, from or between the Areas of other Contracting Parties.

Interim text (20/06/94)
Compromise [CONF 98] (22/04/94)
Article 8.5 - Transit

A Contracting Party through whose Area Energy Materials and Products may transit shall not be obliged to

- (a) permit the construction or modification of Energy Transport Facilities; or
- (b) permit new or additional Transit through existing Energy Transport Facilities,

which it demonstrates to the other Contracting Parties concerned would endanger the security or efficiency of its energy systems, including the security of supply.

Subject to paragraphs (6) and (7), Contracting Parties shall secure established flows of Energy Materials and Products to, from or between the Area of other Contracting Parties.

ECT 7 [CONF 96] (17/03/94)
[Article 8].5- Transit

[A Contracting Party through whose Area Energy Materials and Products may transit shall not be obliged to

- (a) permit the construction or modification of Energy Transport Facilities; or
- (b) permit new or additional Transit through existing Energy Transport Facilities,

which it demonstrates to the other Contracting Parties concerned would endanger [the security or efficiency of its energy systems, including the security of supply.]⁴⁵

Subject to paragraphs (6) and (7), Contracting Parties shall secure established flows of Energy Materials and Products to, from or between the Area of other Contracting Parties.]^{46,47}

ECT 6 [CONF 82] (20/12/93)
ECT 5 [CONF 72] (11/10/93)
ECT 4 [CONF 64] (07/07/93)
[Article 8].5 - Transit

[A Contracting Party through whose Area Energy Materials and Products may transit shall not be obliged to

- (a) permit the construction or modification of Energy Transport Facilities, or
- (b) permit new or additional Transit through existing Energy Transport Facilities,

which it [demonstrates]⁴⁸ to the other Contracting Parties concerned would endanger [the security or efficiency of its energy systems, including the security of supply.]⁴⁵

Subject to paragraphs (6) and (7), Contracting Parties shall secure established flows of Energy Materials and Products to, from or between the Area of other Contracting Parties.]^{46,47}

ECT 3 [CONF 60] (01/06/93)
[Article 8].5 - Transit

[A Contracting Party through whose Domain Energy Materials and Products may Transit shall not be obliged to

- (a) permit the construction of Energy Transport Facilities, or
- (b) permit terms and conditions governing Transit and use of such facilities,

which it demonstrates to the other Contracting Parties concerned would endanger the security of supply of its customers, the quality of service of supplies of Energy Materials and Products and the most efficient development and operation of all parts of its electricity and gas systems.

Subject to paragraphs (6) and (7), Contracting Parties shall permit the Transit of established flows of Energy Materials and Products to, from or between the Domain of other Contracting Parties.]⁴⁹

⁴⁵ **Ukraine** proposes replacement with: “the security or efficiency, including reliability of supplies, of its energy systems or the systems of other Contracting Parties.”

⁴⁶ **Russian Federation** scrutiny reserve.

⁴⁷ **Switzerland** contingency reserve pending Article 27, and clarification of relationship between paragraphs (5)(a) and (4).

⁴⁸ Chairman asked translators to ensure that Russian language text correctly reflects that there is a distinction between “demonstrate to” and “convince”.

⁴⁹ **Russian Federation, Ukraine and Belarus** reserve. They propose the following wording for this paragraph: “Subject to paragraphs (6) and (7) the Contracting Party through whose Domain Energy Materials and Products may Transit shall not be obliged to endanger existing flows of Energy Materials and Products destined for consumers of

ECT 2 [CONF 56] (01/05/93)
[Article 8].5 - Transport and Transit

[The provisions of paragraphs (1) to (4) above shall not require a Contracting Party through whose Domain Energy Materials and Products transit to take action which it demonstrates to the other Contracting Parties concerned would endanger existing flows of Energy Materials and Products destined for consumers of such products in its Domain or for the Domain of another State.]⁵⁰

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Article 8.5 - Transport and Transit

The provisions of paragraphs (1) to (4) above shall not require a Contracting Party to take action which it demonstrates to the other Contracting Parties concerned would endanger its security of energy supply, quality of service or the most efficient development and operation of all parts of its electricity and gas systems.

BA-37 (01/03/93)
BA-35 (09/02/93)
[Article 11].5 - Transport and Transit

[The provisions of paragraphs (1) to (4) above shall not require a Contracting Party to take action which it demonstrates to the other Contracting Parties concerned would endanger its [security of energy supply,]⁵¹ quality of service and the most efficient development and operation of all parts of its electricity and gas systems.]⁵²

BA-31 (21/12/92)
BA-26 (25/11/92)
BA-22 (21/10/92)
BA-15 (12/08/92)
BA-14 (24/06/92)
BA-13 (19/06/92)
[Article 11].6 - Transport and Transit

⁵³The provisions of this Article shall not require a Contracting Party to take action [– other than the protection of existing flows – which it demonstrates to the other Contracting Parties concerned would

such products in its Domain or for the Domain of another Contracting Party, or the security of its energy systems and the optimal regimes of their operation, if it so proves to other interested Contracting Parties.”

⁵⁰ WG II Chairman proposes following compromise text for paragraph (5):

“The provisions of paragraphs (1) to (4) shall not be construed so as to oblige a Contracting Party through whose Domain Energy Materials and Products may transit to

- (a) permit the construction of high pressure gas transmission pipelines, high voltage electricity transmission grids, crude oil transmission pipelines, coal slurry pipelines and other facilities specifically for handling Energy Materials and Products, or
- (b) permit terms and conditions governing the transit and use of such facilities, which would endanger the security of supply and quality of service of supplies of Energy Materials and Products other than those covered by the transit arrangement, destined for consumers in its Domain or in the Domain of another State.”

⁵¹ **Russian Federation** and **Australia** reserve.

⁵² **EC** and **Russian Federation** reserve.

⁵³ **Greece** reserve.

endanger its]⁵⁴ [security of]⁵⁵ energy supply, quality of service and the most efficient development and operation of all parts of its electricity and gas systems.⁵⁶

BA 12 (09/04/92)
[Article 11].6 - Transport and Transit

The provisions of this Article shall not require a Contracting Party to take action which endangers its [security of energy supply]⁵⁷, quality of service and the most efficient development and operation of all parts of its electricity and gas systems.

BA-6 (21/01/92)
Article 11.8 - Transport and Transit

The provisions of this Article shall not require a Contracting Party to take action which substantially reduces its security of energy supply or impedes the optimisation of local electricity grids and gas pipelines.

BA-4 (31/10/91)
Article 11.2⁵⁸ - Freedom of Movement

The provisions of this Article shall not require a Contracting Party to take action which reduces substantially its security of energy supply.

BP 2 (11/09/91)
Article 11d - Freedom of Movement

The provisions of this Article shall not require a Contracting Party to take action which reduces substantially its security of energy supply.

⁵⁴ **Austria** suggests replacing with: “which - apart from existing supply flows and contractual relations to be maintained - proves to endanger its own”.

⁵⁵ **Russian Federation** and **Australia** reserve.

⁵⁶ **Russian Federation** suggests adding the following text:

“, subject to the requirement, that the relevant policies, measures and practices in the fields covered by this Article are not applied in a manner which causes disturbances to the principles of the present Agreement, would constitute a means of discrimination between the Contracting Parties or its investors, or cause serious damage to existing contractual relations in the fields covered by this Agreement or to the trade flows, and that such relevant policies, measures and practices shall be discontinued as soon as the conditions giving rise to them have ceased to exist”.

⁵⁷ **Australia** suggests deletion.

⁵⁸ **Japan**: provisions of paragraph (2) have wider implications than this Article, and would be better covered elsewhere.

Article 7.6

ECT adopted (17/12/94)
CONF 104 (Text for adoption) (14/09/94)
Article 7.6 - Transit

A Contracting Party through whose Area Energy Materials and Products transit shall not, in the event of a dispute over any matter arising from that Transit, interrupt or reduce, permit any entity subject to its control to interrupt or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products prior to the conclusion of the dispute resolution procedures set out in paragraph (7), except where this is specifically provided for in a contract or other agreement governing such Transit or permitted in accordance with the conciliator's decision.

Interim text (25/06/94)
Article 8.6 - Transit

A Contracting Party through whose Area Energy Materials and Products transit, shall not, in the event of a dispute over any matter arising from that Transit, interrupt or reduce, nor permit any entity subject to its control to interrupt or reduce, nor require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products except where this is specifically provided for in a contract or other agreement governing such Transit or permitted in accordance with the conciliator's decision or other resolution of the dispute referred to in paragraph (7)(e).

Interim text (20/06/94)
Article 8.6 - Transit

A Contracting Party, through whose Area Energy Materials and Products transit, shall not, in the event of a dispute over any matter arising from that Transit, interrupt or reduce, nor permit any entity subject to its control to interrupt or reduce, nor require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products except where this is specifically provided for in a contract or other agreement governing such Transit or permitted in accordance with the conciliator's decision or other resolution of the dispute referred to in paragraph (7)(e).

Compromise text [CONF 98] (22/04/94)	ECT 7 [CONF 96] (17/03/94) ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/10/93) ECT 4 [CONF 64] (07/07/93)
Article 8.6 - Transit	[Article 8].6 - Transit

A Contracting Party through whose Area Energy Materials and Products Transit shall not in the event of a dispute over any matter arising from that Transit interrupt or reduce, nor permit any entity subject to its control to interrupt or reduce, nor require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products except where this is specifically provided for in a contract or other agreement governing such Transit or where the procedure in paragraph (7) has been completed.

ECT 3 [CONF 60] (01/06/93)
[Article 8].6 - Transit

A Contracting Party through whose Domain Energy Materials and Products Transit shall not in the event of a dispute over any matter arising from that Transit interrupt or reduce, nor permit any entity subject to its control to interrupt or reduce, nor require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products except where this is specifically provided for in a contract or other agreement governing such Transit or where the procedure in paragraph (7) has been completed.

ECT 2 [CONF 56] (01/05/93)
[Article 8].6 - Transport and Transit

A Contracting Party through whose Domain Energy Materials and Products transit through high-pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines, coal slurry pipelines or oil product pipelines and other facilities specifically for handling Energy Material s and Products from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading shall not in the event of a dispute over any matter arising from that transit interrupt or reduce, nor permit any entity subject to its control to interrupt or reduce, nor require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products except where this is specifically provided for in a contract or other agreement governing such transit or where the procedure in paragraph (7) has been completed.

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Article 8.6 - Transport and Transit

A Contracting Party through whose Domain Energy Materials and Products transit through high-pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines, coal slurry pipelines or oil product pipelines from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading shall not in the event of a dispute over any matter arising from that transit interrupt or reduce, nor permit any entity subject to its control to interrupt or reduce, nor require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products except where this is specifically provided for in a contract or other agreement governing such transit or where the procedure in paragraph (7) has been completed.

BA-37 (01/03/93)
[Article 11].6 - Transport and Transit

[A Contracting Party through whose Domain Energy Materials and Products transit [through high-pressure gas transmission pipelines, high-voltage electricity transmission grids or crude oil transmission pipelines [or coal slurry pipelines]⁵⁹[or oil product pipelines]⁶⁰]⁶¹ from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in

⁵⁹ General scrutiny reserve.

⁶⁰ General scrutiny reserve.

⁶¹ **Australia** supported by **Russian Federation** suggests deletion. **Belarus** demand that in case of adoption of this suggestion, para (6) should be amended so as not to apply to nuclear Materials and Products.

its Domain³ for loading or unloading shall not in the event of a dispute over any matter arising from that transit interrupt or reduce, nor permit any entity subject to its control to interrupt or reduce, nor [require]⁶² any entity subject to its Jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products except where this is specifically provided for in a contract or other agreement governing such transit or where the procedure in paragraph (7) has been completed.]⁶³

BA-35 (09/02/93)
[Article 11].6 - Transport and Transit

A Contracting Party through whose Domain Energy Materials and Products transit [through [high-pressure]⁶⁴ transmission pipelines or high-voltage transmission grids]⁶⁵ from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading shall not in the event of a dispute over the terms and conditions of that transit interrupt or reduce, nor permit any entity subject to its control to interrupt or reduce, nor require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products until after [the dispute has been referred to the Charter Conference and the Charter Conference has had adequate time to seek conciliation between the parties in dispute.]⁶⁶

BA-31 (21/12/92)
[Article 11].5 - Transport and Transit

A Contracting Party through whose Domain Energy Materials and Products transit [through high-pressure transmission pipelines or high-voltage transmission grids]⁶⁷ from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading shall not in the event of a dispute over the terms and conditions of that transit interrupt nor permit any entity subject to its [jurisdiction]⁶⁸ to interrupt the existing flow of Energy Materials and Products until after [the dispute has been referred to the Charter Conference and the Charter Conference has had]⁶⁹ adequate time to seek conciliation between the parties in dispute.

BA-26 (25/11/92)
BA-22 (21/10/92)
[Article 11].5 - Transport and Transit

A Contracting Party through whose Domain Energy Materials and Products transit [through high-pressure transmission pipelines or high-voltage transmission grids]⁶⁷ from the Domain of another

⁶² **Norway** scrutiny reserve.

⁶³ **Russian Federation, USA, Austria** and **EC** scrutiny reserve on para (6) and (7).

⁶⁴ **Canada** proposes deletion.

⁶⁵ **Australia** supported by **Russian Federation** suggests deletion. **Belarus** demands that in case of adoption of this suggestion, para (6) should be amended so as not to apply to nuclear Materials and Products.

⁶⁶ General reserve. **Poland** outlined the general idea for a fast track procedure involving primarily conciliation but, if necessary, arbitration with clear time limits. **Belarus, Russian Federation** and **Hungary** supported. The Chairman invited all delegations to comment on Poland approach and submit their proposals to the Secretariat.

⁶⁷ **Australia** supported by **Russian Federation** suggests deletion.

⁶⁸ **Finland** supported by **Sweden** and **Switzerland** requests substituting with “control”.

⁶⁹ General reserve by **Japan, Norway, USA, Australia** and **Austria**. Chairman noted that the appropriate form of conciliation procedure could be discussed in the context of Article 29 but asked Australia, USA, Russian Federation to come up with a compromise solution.

Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading shall not in the event of a dispute over the terms and conditions of that transit interrupt nor permit any entity subject to its [jurisdiction]⁶⁸ to interrupt the existing flow of Energy Materials and Products until after [the dispute has been referred to the Governing Council and the Governing Council has had]⁶⁹ adequate time to seek conciliation between the parties in dispute.

BA-15 (12/08/92)
[Article 11].5 - Transport and Transit

A Contracting Party through whose Domain [Energy Materials and Products] transit [through high-pressure transmission pipelines or high-voltage transmission grids]⁶⁷ from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading shall not in the event of a dispute over the terms and conditions of that transit interrupt nor permit any entity subject to its [jurisdiction]⁶⁸ to interrupt the existing flow of [Energy Materials and Products] until after [the dispute has been referred to the Governing Council and the Governing Council has had]⁶⁹ adequate time to seek conciliation between the parties in dispute.

BA-14 (24/06/92)
BA-13 (19/06/92)
[Article 11].5 - Transport and Transit

A Contracting Party through whose [Territory] [Energy Materials and Products] transit [through high-pressure transmission pipelines or high-voltage transmission grids]⁶⁷ from the [Territory] of another Contracting Party to the [Territory] of a third Contracting Party or to or from port facilities in its [Territory] for loading or unloading shall not in the event of a dispute over the terms and conditions of that transit interrupt nor permit any entity subject to its [jurisdiction]⁶⁸ to interrupt the existing flow of [Energy Materials and Products] until after [the dispute has been referred to the Governing Council and the Governing Council has had]⁶⁹ adequate time to seek conciliation between the parties in dispute.

BA-12 (09/04/92)
[Article 11].5 - Transport and Transit

In the event of a dispute over the terms and conditions of existing transit of energy through high-pressure pipelines or high-voltage transmission grids in the Territory of a Contracting Party to the Territory of another Contracting Party or to or from port facilities for loading or unloading, a Contracting Party through which the energy transits shall not interrupt nor permit [any entity subject to its jurisdiction]⁷⁰ to interrupt the existing flow of energy [until after the dispute has been referred to the Governing Council and the Governing Council has had adequate time to seek conciliation between the parties in dispute]⁷¹.

⁷⁰ **Finland** scrutiny reserve.

⁷¹ General reserve by **Japan, Norway, USA** and **Austria** as they see no need for the Governing Council to reconcile the disputes.

BA-6 (21/01/92)

[Article 11].7 - Transport and Transit

In the event of a dispute over the terms and conditions of transit of [Energy Materials and Products] through pipelines or transmission lines in the Territory of a Contracting Party to the Territory of another Contracting Party or to or from port facilities for loading or unloading, a Contracting Party through which the [Energy Materials and Products] transit shall not interrupt nor permit any entity subject to its jurisdiction to interrupt the flow of [Energy Materials and Products] until after the dispute has been referred to the Governing Council and the Governing Council has had adequate time to seek conciliation between the parties in dispute.

Article 7(7)

<p>ECT as adopted (17/12/94) CONF 104 (Text for adoption) (14/09/94) Article 7.7 - Transit</p>
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The following provisions shall apply to a dispute described in paragraph (6), but only following the exhaustion of all relevant contractual or other dispute resolution remedies previously agreed between the Contracting Parties party to the dispute or between any entity referred to in paragraph (6) and an entity of another Contracting Party party to the dispute:

- (a) A Contracting Party party to the dispute may refer it to the Secretary-General by a notification summarizing the matters in dispute. The Secretary-General shall notify all Contracting Parties of any such referral.
- (b) Within 30 days of receipt of such a notification, the Secretary-General, in consultation with the parties to the dispute and the other Contracting Parties concerned, shall appoint a conciliator. Such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or permanently resident in a party to the dispute or one of the other Contracting Parties concerned.
- (c) The conciliator shall seek the agreement of the parties to the dispute to a resolution thereof or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide the interim tariffs and other terms and conditions to be observed for Transit from a date which he shall specify until the dispute is resolved.
- (d) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under subparagraph (c) on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier.
- (e) Notwithstanding subparagraph (b) the Secretary-General may elect not to appoint a conciliator if in his judgement the dispute concerns Transit that is or has been the subject of the dispute resolution procedures set out in subparagraphs (a) to (d) and those proceedings have not resulted in a resolution of the dispute.
- (f) The Charter Conference shall adopt standard provisions concerning the conduct of conciliation and the compensation of conciliators.

Interim text (25/06/94)

Article 8.7 - Transit

- (a) The parties to a dispute **relating to** described in paragraph (6) shall exhaust any contractual or other dispute resolution remedies they have previously agreed.
- (b) If this fails to resolve the dispute, a party to the dispute may refer it to the Secretary General **with** by a **note** notification summarizing the matters in dispute. The Secretary General shall notify all Contracting Parties of any such referral.
- (c) Within 30 days of receipt of such a **note** notification, the Secretary General, in consultation with the parties to the dispute and the other Contracting Parties concerned, shall appoint a conciliator. Such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or permanently resident in a party to the dispute the Areas through which the Transit occurs, from which the Energy Materials and Products being transported originate or to which the Energy Materials and Products are being supplied **or the other Contracting Parties concerned.**
- (d) The conciliator shall **conciliate between** seek the agreement of the parties to the **and seek their agreement** to a resolution **to the dispute** thereof or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide the interim tariffs and other **terms and conditions** to be observed for Transit from a date which he shall specify until **such resolution** the dispute is resolved.
- (e) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under paragraph (7)(d) on tariffs, terms and conditions for 12 months following the conciliator 's decision or until resolution of the dispute, whichever is earlier.
- (f) No dispute concerning a Transit which has already been the subject of the conciliation procedures set out in this Article may be referred to the Secretary General under paragraph (7)(b) unless the previous dispute has been resolved.
- (g) The Charter Conference shall adopt standard provisions **on conciliator's expenses, location, etc shall be decided by the Charter Conference** concerning the conduct of conciliation and the compensation of conciliators.

Interim text (20/06/94) Compromise text [CONF 98] (22/04/94) Article 8.7 - Transit	ECT 7 [CONF 96] (17/03/94) ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/10/93)* ECT 4 [CONF 64] (07/07/93) [Article 8].7 - Transit
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- (a) The parties to a dispute relating to paragraph (6) shall exhaust any contractual or other dispute resolution remedies they have previously agreed.
- (b) If this fails to resolve the dispute, a party to the dispute may refer it to the Secretary General with a note summarizing the matters in dispute. The Secretary General shall notify all Contracting Parties of any such referral.
- (c) Within 30 days of receipt of such a note, the Secretary General, in consultation with the parties to the dispute and the Contracting Parties concerned, shall appoint a conciliator. Such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or resident in the Areas through which the Transit occurs, from which the Energy Materials and Products being transported originate or to which the Energy Materials and Products are being supplied.
- (d) The conciliator shall conciliate between the parties to the dispute and seek their agreement to a resolution to the dispute or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide the interim tariffs and other terms and conditions to be observed for Transit from a date which he shall specify until such resolution.
- (e) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under paragraph (7)(d) on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier.
- (f) No dispute concerning a Transit which has already been the subject of the conciliation procedures set out in this Article may be referred to the Secretary General under paragraph (7)(b) above unless the previous dispute has been resolved.
- (g) Standard provisions on conciliator's expenses, location, etc shall be decided by the Charter Conference.

* *Ed. note:* in these version article 8.7b states that "... a party to the dispute may refer it to the Secretary General referred to in Article 40 ... " (emphasis added)

ECT 3 [CONF 60] (01/06/93)
[Article 8].7 - Transit

ECT 2 [CONF 56] (01/05/93)
[Article 8].7 - Transport and Transit

- (a) The parties to a dispute relating to paragraph (6) shall exhaust any contractual or other dispute resolution remedies they have previously agreed.
- (b) If this fails to resolve the dispute, a party to the dispute may refer it to the Secretary General referred to in Article 40 with a note summarising the matters in dispute. The Secretary General shall notify all Contracting Parties of any such referral;
- (c) Within 30 days of receipt of such a note, the Secretary General, in consultation with the parties to the dispute and the Contracting Parties concerned, shall appoint a conciliator. Such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or resident in the Domains through which the Transit occurs, from which the Energy Materials and Products being transported originate or to which the Energy Materials and Products are being supplied;
- (d) The conciliator shall conciliate between the parties and seek their agreement to a resolution to the dispute or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide the interim tariffs and other terms and conditions to be observed for Transit from a date which he shall specify until such resolution;
- (e) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under paragraph (7)(d) on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier;
- (f) No dispute concerning a Transit which has already been the subject of the conciliation procedures set out in this Article may be referred to the Secretary General under paragraph (7)(b) above unless the previous dispute has been resolved;
- (g) Standard provisions on conciliator's expenses, location, etc shall be decided by the Charter Conference.

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Article 8.7 - Transport and Transit

- (a) The parties to a a dispute relating to paragraph (6) shall exhaust any contractual or other dispute resolution remedies they have previously agreed.
- (b) If this fails to resolve the dispute, a party to the dispute may refer it to the Secretary General referred to in Article 40 with a note summarising the matters in dispute. The Secretary General shall notify all Contracting Parties of any such referral;
- (c) Within 30 days of receipt of such a note, the secretary General, in consultation with the parties to the dispute and the Contracting Parties concerned, shall appoint a conciliator,

such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or resident in the Domains through which the transit occurs, from which the Energy Materials and Products being transported originate or to which the Energy Materials and Products are being supplied;

- (d) The conciliator shall conciliate between the parties and seek their agreement to a resolution to the dispute or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide the interim tariffs and other terms and conditions to be observed for transit from a date which he shall specify until such resolution;

[DL]

- (e) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under paragraph (7)(d) on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier;
- (f) No dispute concerning a transit which has already been the subject of the conciliation procedures set out in this Article may be referred to the Secretary General under paragraph (7)(b) above unless the previous dispute has been resolved;
- (g) Standard provisions on conciliator's expenses, location, etc shall be decided by the Charter Conference.

BA-37 (01/03/93)

[Article 11].7 - Transport and Transit

- (a) [The parties to the dispute shall exhaust any contractual or other dispute resolution remedies they have previously agreed;
- (b) If this fails to resolve the dispute, a party to the dispute may refer it to the Secretary General referred to in Article 31 with a note summarising the matters in dispute. The Secretary General shall notify all Contracting Parties of any such referral;
- (c) Within 30 days of receipt of such a note, the Secretary General, in consultation with the parties to the dispute and the Contracting Parties concerned, shall appoint a conciliator.⁷² Such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or resident in the Domains³ through which the transit occurs, from which the Energy Materials and Products being transported originate or to which the Energy Materials and Products are being supplied;

⁷² Norway is not satisfied with leaving the choice of a conciliator to the Secretary General as proposed, in view of the strong legal and contractual involvement by the Contracting Parties and Investors and the conciliator's powers as proposed.

- (d) The conciliator shall conciliate between the parties and seek their agreement to a resolution to the dispute or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide the [interim tariffs and other terms and]⁷³ conditions to be observed for transit from a date which he shall specify until such resolution;
- (e) [If the parties to the dispute then fail to agree a resolution to the dispute or upon a procedure to achieve such resolution within a further 60 days the Secretary General may seek the consent of the Charter Conference referred to in Article 29 to further conciliation measures;]⁷⁴
- (f) The Contracting Parties undertake to observe and ensure that the entities under their control or Jurisdiction observe any interim decision under paragraph (d) on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier;⁷⁵
- (g) No dispute concerning a transit which has already been the subject of the conciliation procedures set out in this Article may be referred to the Secretary General under paragraph (b) above unless the previous dispute has been resolved;
- (h) [Standard provisions on conciliator's expenses, location, etc.]⁷⁶⁷⁷

⁷³ **Norway** reserve.

⁷⁴ Scepticism was expressed by many delegations on this subparagraph and especially on the possible role of the Charter Conference.

⁷⁵ The Legal Sub-Group is invited to check this subparagraph on its consistency with paragraph (6) in view of the word "require" in the latter paragraph.

⁷⁶ If time allows a draft will be made for such provisions; if not, it will be referred to the Charter Conference.

⁷⁷ **Russian Federation, USA, Austria** and **EC** scrutiny reserve on para (6) and (7).

Article 7(8)

ECT as adopted (17/12/94) CONF 104 (Text for adoption) (14/09/94) Article 7.8 - Transit	Interim text (25/06/94) Interim text (20/06/94) Article 8.8 - Transit
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Nothing in this Article shall derogate from a Contracting Party's rights and obligations under international law including customary international law, existing bilateral or multilateral agreements, including rules concerning submarine cables and pipelines.

Compromise text [CONF 98] (22/04/94)
Article 8.8 - Transit

[This Article shall not derogate from a Contracting Party's rights and obligations under existing bilateral or multilateral agreements or under Article 35.]⁷⁸

ECT 7 [CONF 96] (17/03/94)
[Article 8].8 - Transit

[This Article shall not derogate from a Contracting Party's rights and obligations under existing bilateral or multilateral agreements including Articles 4 and 35 of this Treaty.]⁷⁹

ECT 6 [CONF 82] (20/12/93)
ECT 5 [CONF 72] (11/10/93)
ECT 4 [CONF 64] (07/07/93)
[Article 8].8 - Transit

[This Article shall not derogate from a Contracting Party's rights and obligations under existing bilateral or multilateral agreements [including Articles 4 and 35 of this Agreement.]⁸⁰⁸¹

ECT 3 [CONF 60] (01/06/93)
[Article 8].8 - Transit

[This Article shall not derogate from a Contracting Party's rights and obligations under existing bilateral or multilateral agreements.]⁸²

ECT 2 [CONF 56] (01/05/93)
[Article 8].8 – Transport and Transit

⁸³[This Article shall not derogate from a Contracting Party's obligations under article V of the GATT as applied by Articles 4 and 35 of this Agreement]⁸⁴ nor its rights and obligations under Article 4 of

⁷⁸ Following the Legal Sub-Group redraft of Article 4, a reference to the latter was dropped.

⁷⁹ Advice from Legal Sub-Group requested. In the meantime **EC** and **Canada** scrutiny reserves.

⁸⁰ **Canada** scrutiny reserve.

⁸¹ Subject to advice from Legal Sub-Group on implications. **EC** scrutiny reserve.

⁸² **EC** scrutiny reserve. Legal Sub-Group to advice further on derogation issues.

⁸³ **EC** disagree with the underlined text of para (8) with respect to both Conventions.

the Convention on the Continental Shelf of 1958 or Article 79 of the United Nations Convention on the Law of the sea of 1982, [nor its rights and obligations in existing bilateral or multilateral agreements insofar as the exercise of those rights and obligations does not detract from the rights of Contracting Parties who are not party to such agreements or of the Investors of such Contracting Parties].⁸⁵

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Article 8.9 - Transport and Transit

This Article shall not derogate from a Contracting Party's obligations under article 5 of the GATT as applied by Articles 4 and 35 of this Agreement nor its rights and obligations under Article 4 of the Convention on the Continental Shelf of 1958 or Article 79 of the United Nations Convention on the Law of the Sea of 1982, nor its rights and obligations in existing bilateral or multilateral agreements insofar as the exercise of those rights and obligations does not detract from the rights of Contracting Parties who are not party to such agreements or of the Investors of such Contracting Parties.

BA-37 (01/03/93)
[Article 11].1 - Transport and Transit

[This paragraph shall not derogate from the obligations of Contracting Parties under article 5 of the GATT as applied by Articles 5 and 41 BIS of this Agreement nor a Contracting Party's rights and obligations in existing bilateral or multilateral agreements insofar as the exercise of those rights and obligations does not detract from the rights of Contracting Parties who are not party to such agreements or of the Investors of such Contracting Parties.]⁸⁶

BA-35 (09/02/93)
[Article 11].1 - Transport and Transit

[This paragraph shall not derogate from the obligations of Contracting Parties under article 5 of the GATT as applied by Articles 5 and 41 BIS of this Agreement nor, a Contracting Party's rights and obligations in existing bilateral or multilateral agreements insofar as the exercise of those rights and obligations does not detract from the rights of Contracting Parties who are not party to such agreements or of the Investors of such Contracting Parties.]⁸⁶

⁸⁴ Legal Sub-Group was asked to examine the wording of this part of paragraph (8) and to assure that it fulfills the wish of WG II that this should not derogate from article V of GATT.

⁸⁵ Legal Sub-Group was asked to examine whether, in the light of the Vienna Convention, such language is necessary, or could have harmful effects. The Sub-Group was asked to consider the wording and in the process to give separate consideration to the need for the words “or of the Investors of such Contracting Parties”.

⁸⁶ Chairman’s proposal derived from earlier Hungarian proposal. General scrutiny reserve.

Article 7.9

ECT as adopted (17/12/94)
CONF 104 (Text for adoption) (14/09/94)
Article 7.9 - Transit

This Article shall not be so interpreted as to oblige any Contracting Party which does not have a certain type of Energy Transport Facilities used for Transit to take any measure under this Article with respect to that type of Energy Transport Facilities. Such a Contracting Party is, however, obliged to comply with paragraph (4).

Interim text (25/06/94)
Article 8.9 - Transit

This Article shall not be so interpreted as to oblige any Contracting Party which does not have a certain category of Energy Transport Facilities used for Transit to take any measure under this Article with respect to that category of Energy Transport Facilities. **In relation to that category any measures pursuant to the provisions of this Article.** Such a Contracting Parties y would, however, be obliged to comply with paragraph (4).

Interim text (20/06/94) Compromise text [CONF 98] (22/04/94) Article 8.9 - Transit	ECT 7 [CONF 96] (17/03/94) ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/10/93) ECT 4 [CONF 64] (07/07/93) [Article 8].9 - Transit
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This Article shall not be so* interpreted as to oblige any Contracting Party which does not have a category of Energy Transport Facilities used for Transit to take in relation to that category any measures pursuant to the provisions of this Article. Such Contracting Parties would, however, be obliged to comply with paragraph (4).

ECT 3 [CONF 60] (01/06/93)
[Article 8].9 - Transit

This Article shall not be interpreted as to oblige any Contracting Party which does not have a category of Energy Transport Facilities used for Transit to take in relation to that category any measures pursuant to the provisions of this Article. Contracting Parties would however be obliged to take measures if necessary to meet the obligations in paragraph (4).

* *Ed. note:* wording “so” introduced in the Interim Text (20/06/1993).

ECT 2 [CONF 56] (01/05/93)
[Article 8].9 - Transport and Transit

This Article shall not be interpreted as to oblige any Contracting Party which does not have such international transmission facilities as high pressure gas transmission pipelines, high-voltage electricity transmission grids, crude oil transmission pipelines, and coal slurry pipelines from another Contracting Party to a third Contracting Party to take any measures pursuant to the provisions of this Article. [Contracting Parties would however be obliged to take measures if necessary to meet the obligations in paragraph (4).]⁸⁷

⁸⁷ General scrutiny reserve.

Article 7.10

ECT as adopted (17/12/94)
CONF 104 (Text for adoption) (14/09/94)
Article 7.10 - Transit

For the purposes of this Article:

- (a) “Transit” means
- i. the carriage through the Area of a Contracting Party, or to or from port facilities in its Area for loading or unloading, of Energy Materials and Products 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 Contracting Party; or
 - ii. the carriage through the Area of a Contracting Party of Energy Materials and Products originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party, unless the two Contracting Parties concerned decide otherwise and record their decision by a joint entry in Annex N. The two Contracting Parties may delete their listing in Annex N by delivering a joint written notification of their intentions to the Secretariat, which shall transmit that notification to all other Contracting Parties. The deletion shall take effect four weeks after such former notification.
- (b) “Energy Transport Facilities” consist of high-pressure gas transmission pipelines, high-voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.

Interim text (25/06/94)
Article 8.10 - Transit

For the purposes of this Article:

- (a) “Transit” means:
- i. the carriage through the Area of a Contracting Party, or to or from port facilities in its Area for loading or unloading, of Energy Materials and Products 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 Contracting Party; or
 - ii. **it also means such** the carriage through the Area of a Contracting Party of Energy Materials and Products originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party, unless the two Contracting Parties concerned decide otherwise and record their decision by a joint entry in Annex N. The two Contracting Parties may delete their listing in Annex N by **jointly notifying** delivering a joint written notification of their intentions to the Secretary

General, ~~of that intention~~ who shall ~~notify~~ transmit that notification to all other Contracting Parties. The deletion shall take effect four weeks after such former notification ~~without further procedures~~.

- (b) “Energy Transport Facilities” consist of high-pressure gas transmission pipelines, high-voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.

Interim text (20/06/94)
Article 8.10 - Transit

For the purposes of this Article:

- (a) “Transit” means the carriage through the Area of a Contracting Party, or to or from port facilities in its Area for loading or unloading, of Energy Materials and Products 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 Contracting Party. It also means such carriage through the Area of a Contracting Party of Energy Materials and Products originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party unless the two Contracting Parties concerned decide otherwise and record their decision by a joint entry in Annex N. The two Contracting Parties may delete their listing in Annex N by Jointly notifying the Secretary General of that intention who shall notify all other Contracting Parties. The deletion shall take effect four weeks after such former notification without further procedures.
- (b) “Energy Transport Facilities” consist of high pressure gas transmission pipelines, high voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.

Compromise text [CONF 98] (22/04/94)
Article 8.10 - Transit

For the purpose of this Article:

- (a) [“Transit” means the carriage through the Area of a Contracting Party, or to or from port facilities in its Area for loading or unloading, of products and materials 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 Contracting Party. It also means such carriage through the Area of a Contracting Party of products and materials originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party unless the two Contracting Parties concerned decide otherwise and record their decision by a joint entry in Annex N. The two Contracting Parties may delete their listing in Annex N by jointly notifying the Secretary General of that intention who shall notify all other Contracting

Parties. The deletion shall take effect four weeks after such former notification without further procedures.]⁸⁸

- (b) “Energy Transport Facilities” consist of high pressure gas transmission pipelines, high voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.

ECT 7 [CONF 96] (17/03/94)
[Article 8].10 - Transit

For the purpose of this Article:

- (a) “Transit” means the carriage through the Area of a Contracting Party, or to or from port facilities in its Area for loading or unloading, of products and materials 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 Contracting Party. [It also means such carriage through the Area of a Contracting Party of products and materials originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party unless the two Contracting Parties concerned decide otherwise and record their decision by a joint entry in Annex N. The two Contracting Parties may delete their listing in Annex N by jointly notifying the Secretary General of that intention who shall notify all other Contracting Parties. The deletion shall take effect four weeks after such former notification without further procedures.]⁸⁹
- (b) “Energy Transport Facilities” consist of high pressure gas transmission pipelines, high voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.

ECT 6 [CONF 82] (20/12/93)
ECT 5 [CONF 72] (11/10/93)
ECT 4 [CONF 64] (07/07/93)
[Article 8].10 - Transit

⁹⁰For the purpose of this Article:

⁸⁸ EU scrutiny reservation, in favour of a GATT-type definition of “Transit”.

⁸⁹ General scrutiny reserve. In response to concerns expressed, inter alia, by EC and Norway, the Chairman suggested that if a third party Contracting Party felt it was affected by an Annex N listing, it could raise the matter in the Charter Conference.

⁹⁰ See footnote 8.1. [*Ed. note*: included in general comments]

USA reserve. Suggests replacement of “carriage” in Article 8(10)(a) by “movement over land” and explicit exclusion of maritime transport from coverage of Article 8 (as well as from the Charter Treaty as a whole), by the following wording: “Nothing in this Agreement shall apply to maritime transport (including inland waterways) and related activities, and to air transport (including speciality air services)”.

The intention of the phrase “related activities” would be to exclude lightering, fuel bunkering and offshore services. USA also proposes deletion from Ministerial Declaration to Article 1(5) of “for example” and “e.g.” in chapeau and third tiret respectively.

- (a) “Transit” means the [carriage]¹⁴through the Area of a Contracting Party, or to or from port facilities in its Area for loading or unloading, of products and materials 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 Contracting Party. [It also means such [carriage]¹⁴through the Area of a Contracting Party of products and materials originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party unless the two Contracting Parties concerned decide otherwise and record their decision by a joint entry in Annex N. The two Contracting Parties may delete their listing in Annex N by jointly notifying the Secretary General of that intention who shall notify all other Contracting Parties. The deletion shall take effect four weeks after such former notification without further procedures.]⁸⁹
- (b) “Energy Transport Facilities” consist of high pressure gas transmission pipelines, high voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.

<p>ECT 3 [CONF 60] (01/06/93) [Article 8].10 - Transit</p>

⁹¹For the purpose of this Article:

- (a) “Transit” means the carriage through the Domain of a Contracting Party, or to or from port facilities in its Domain for loading or unloading, of products and materials originating in the Domain of another State and destined for the Domain of a third State, so long as either the other State or the third State is a Contracting Party, it also means such carriage through the Domain of a Contracting Party of products and materials originating in the Domain of another Contracting Party and destined for the Domain of that other Contracting Party unless the former Contracting Party is listed in Annex N. Any Contracting Party may delete its listing in Annex N by so notifying the Secretary General who shall notify all other Contracting Parties. The deletion shall take effect four weeks after such former notification without further procedures.
- (b) “Energy Transport Facilities” consist of high pressure gas transmission pipelines, high voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.

USA reserves possibility of further modification of Article 13(6) in the same sense. [*Editor’s note:* reference to art. 13(9) in ECT4]

Norway draws attention to its proposal contained in CONF-52 for a separate Article on the material scope of application of the Charter Treaty.

⁹¹ **USA** scrutiny reserve on the whole paragraph (10); to be resolved before the June Plenary.