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The BTC Pipeline Case Study: Following through on Global Compact Commitments

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Global Compact Learning Forum

The BTC Pipeline Case Study: Following through on Global Compact Commitments

I. Case Abstract

This study focuses on the Baku-Tbilisi-Ceyhan (“BTC”) oil and gas pipeline project which, when completed, will carry up to a million barrels of oil a day over a thousand miles across the Caspian region and provide the first direct transportation link between the Caspian and Mediterranean Seas. In designing the BTC Project, BP p.l.c. (“BP”), the Project operator, on behalf of itself and the other shareholders (collectively, “BTC Co”), sought to establish a new benchmark for a major infrastructure project with respect to the promotion of internationally recognized human rights and environmental standards. To this effect, BP incorporated into core Project documents a commitment to respect applicable standards articulated in the U.N. Universal Declaration of Human Rights (“UDHR”), the Tripartite Declaration of Principles established by the International Labor Organization (“ILO”), and the Guidelines for Multinational Enterprises promulgated by the Organization for Economic Cooperation and Development (“OECD”). Early initiatives to implement such standards included efforts to avoid a significant environmental and safety hazard, adopt a precedent-setting level of transparency, and comprehensively engage local populations.

Despite these commitments and BP's initial efforts to implement them, several non-governmental organizations (“NGOs”) raised environmental and human rights concerns about the Project. In particular, these organizations contended that the pipeline could undermine the human rights of local residents, endanger the environment, and spark further conflict in a region that suffers from ethnic tension. This case study is primarily relevant to concerns raised in conjunction with Principles 1, 2, and 7 of the U.N. Global Compact regarding broad human rights and environmental principles, including the overarching objective that businesses are expected to support and respect, within their spheres of influence, the protection of international human rights and adopt a precautionary approach in addressing environmental challenges.

After these concerns were raised by the NGOs early in 2003, BP guided BTC Co in addressing the issues in several ways. In the most far-reaching response, the company drafted and orchestrated the signing of a “Joint Statement” on May 16, 2003 by the three host governments, guaranteeing adherence to internationally recognized human rights, labor rights, and environmental standards, including a commitment to the standards espoused in the Voluntary Principles on Security and Human Rights (“Voluntary Principles”). Additionally, BP engaged Amnesty International (“Amnesty”) in an open dialogue about Amnesty’s concerns regarding the Project. As a result of this dialogue, BTC Co took steps to address Amnesty’s chief concern by drafting and signing a Deed Poll, a legally binding contract designed to protect the rights of the three host governments to promote and regulate human rights and environmental issues.

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Although the BTC Project continues to face opposition from a group of NGOs that sought to halt funding for the Project from the International Finance Corporation (“IFC”) and the European Bank for Reconstruction and Development (“EBRD”), Amnesty, without endorsing the Project per se, has welcomed the company’s commitment to promote the highest human rights standards. BP may have been able to avert some of the NGOs’ concerns by undertaking a Human Rights Assessment and proactively engaging with these stakeholders at an earlier juncture. In light of the Project’s anticipated lifespan of forty years, the primary challenge facing BP at this juncture will be to effectively operationalize and implement the standards it has set.

II. Company Profile

The BTC Project is owned by BTC Co and its shareholders -- a group of eleven petroleum companies with upstream interests in the Caspian region. BP holds the largest ownership share in BTC Co, and will act as the operator of the Project. As an original signatory to the Global Compact, BP was invited to have a case study presented regarding the BTC Project.

BP is the holding company of one of the world’s largest petroleum and petrochemical groups. Its main activities include the exploration and production of crude oil and natural gas; the refining, marketing, supply, and transportation of those products; and the manufacturing and marketing of petrochemicals. BP is also active in exploring renewable sources of energy generation, including solar power. It has operations in over 100 countries in Europe, North and South America, Asia, and Africa.

BP is one of the three largest integrated energy companies and has one of the top three reserves in the global oil and gas industry. Each day BP generates approximately three million barrels of oil equivalent production. With revenues of \$179 billion, market capitalization of \$152 billion, and over 115,000 employees, BP is among the world’s most significant multinationals. During the past decade it merged with Amoco and acquired other companies, including ARCO. Although BP maintains a diversified portfolio, the BTC Project is of great importance to the company and is the largest cross-border project in the world.

During the past decade, BP developed a reputation for adopting progressive policies, which are also closely associated with its chief executive, Lord John Browne. Lord Browne’s introduction to BP’s website states, “A good business should be competitive, progressive and a force for good. In everything we do, we seek to make a constructive contribution to the world’s increasing requirements for energy and materials.”

BP’s business principles were adopted by all of BTC Co’s shareholders for the BTC Project. To this effect, BTC Co shareholders are committed to “respecting the rule of law, conducting [their] businesses with integrity, and showing respect for human dignity and the rights of the individual wherever [they] do business; creating mutual

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advantage in all [their] relationships so that people will trust [them] and want to do business with [them]; demonstrating respect for the natural environment and work towards [their] goals of no accidents, no harm to people and no damage to the environment; and managing [their] financial performance to maximize long-term value for [their] shareholders.”¹

III. The BTC Pipeline Project

A. Scope and History of Project

The BTC Project is of great regional significance because it represents the first direct transportation link between the Caspian and the Mediterranean Seas, thereby avoiding the environmentally sensitive Turkish Straits (including the Bosphorus which flows through the center of the World Heritage City of Istanbul). The Caspian region has the potential to become one of the major oil and gas producing areas in the world; its oil and gas reserves are estimated to be similar in size to those in the North Sea and the Gulf of Mexico. The landlocked nature of the Caspian Sea, however, combined with the limited capacity of pipeline and rail networks serving the region and the reliance of the existing networks on export via the Turkish Straits, have posed particular challenges for the long-term development and export of Azerbaijan’s petroleum resources.

The pipeline will be the primary conduit for oil produced from the Azeri-Chirag-Gunashli (“ACG”) oil field, which is about 100 kilometers off the coast of Baku and has an estimated 5.4 billion barrels of recoverable resources. Oil exports from the development of ACG are expected to increase to more than one million barrels a day by 2009 and this production could meet up to 10% of incremental global oil requirements over the next decade. The pipeline will stretch for 1,760 kilometers from Baku, through Georgia, to the port city of Ceyhan in southeast Turkey. From Ceyhan, the oil will be loaded onto tankers and transported to international markets. The estimated cost of the pipeline’s construction is \$2.95 billion.

When it is completed in 2005, the Pipeline and the associated ACG, Shah Deniz, and South Caucasus Pipeline (“SCP”) projects will have generated more than \$20 billion in investment. This investment is expected to enable the Azerbaijan Republic to realize between \$30 and \$65 billion in revenues from the sale of its oil. Additionally, Georgia and the Republic of Turkey will together realize approximately \$2.4 billion in transit revenues during the first twenty years of operation and the Shah Deniz and SCP gas Projects will deliver energy throughout the region. Approximately 10,000 jobs will be created during the construction of the pipeline and approximately 850 permanent positions will be established during its 40 years of anticipated operation.

The oil and gas production facilities and pipelines in Azerbaijan, the pipelines in Georgia, and the pipelines and terminal in Turkey represent the largest single foreign

¹ “Breaking New Ground,” BTC pipeline project.

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direct investment in each country. This presents both opportunities and challenges for the Project and the host governments.

B. Consultations With Stakeholders

According to BTC Co, the Project was designed to “demonstrate that business can be conducted in a way that makes a positive commitment to human rights.” It was also intended to be “a model for good corporate governance, and ...not become a catalyst for conflict in the region.”² As the Project’s operator, BP states that it is committed to “ensuring that the project results in real benefits for the countries through which the pipeline passes -- from the seats of government, to local villages and farmers living along the pipeline route.”³

In an early effort to implement that commitment, BP undertook steps to ensure that the more than 450 communities and 30,000 landowners and land users affected by the pipeline were consulted over a 20-month period. BP publicly emphasized that it was critical to the Project’s success that communities along the pipeline route and those directly affected by construction were actively involved in project planning. Community-level consultation occurred at every settlement within two kilometers of either side of the pipeline right of way, within two kilometers of potential locations for pipe yards, and within five kilometers of potential sites of major construction camps. The objective behind such extensive consultation was to secure significant community involvement and support at the outset of the Project by dealing with concerns proactively and supporting sustainable community development.

BTC’s consultation process was based on the IFC’s policy on Disclosure of Information. The consultation and disclosure process carried out for the BTC Project was designed to comply with international best practices and was unprecedented in scope. BP based this process on the IFC’s guidelines for managing a public consultation process: plan ahead; test the program; invest time and money; involve operations managers directly; hire and train the right people; maintain overall responsibility; coordinate all consultation; build dialogue and trust; manage expectations; work with governments; and work with NGOs and community-based organizations.

Key stakeholders for the Project were identified at an early stage: local authorities; national and local NGOs with an interest in the project and useful data or insight into local and national challenges; broad-based interest groups, such as the media, academics, foundations, and community organizations; residents of communities adjacent to the pipeline corridor and above-ground installations; landowners and land users, including migratory herders who would be affected by the Project and fishermen near the marine terminal; international financial institutions (“IFIs”), including the IFC and the EBRD; and BTC partner organizations.

² Id.

³ Id.

SMITH, Gare, A., *The BTC Pipeline Case Study: Following through on Global Compact Commitments*, [s.l.], BTC, 2004.

Several projects were commissioned by BTC Co prior to commencement of the Project to communicate the Project sponsors' goals and expectations to affected communities. One of these was the "Regional Review," which was prepared to stimulate dialogue between the Project sponsors and the relevant stakeholders, as well as to increase the flow of information about the Project. The Regional Review reflects 18 months of consultation and evaluation and serves as a comprehensive socio- and macro-economic assessment of the BTC Project's impact on the region. No other extractive sector project has undertaken a broader or more extensive multi-dimensional assessment of its impact on surrounding communities.

One of the Regional Review's principal findings is that the BTC Project can serve as an example and as a positive influence by engaging with stakeholders in constructive dialogue and incorporating them into the business process. Within the business teams, there was also agreement that the Project should use best international practices and standards. Broadly speaking, the issues addressed by the Review can be divided into three categories: economic (oil and gas revenues; employment, and procurement; community/social investment; and domestic energy), social (ethical performance; human rights; and conflict); and environmental (biodiversity; oil spill response; and greenhouse gas emissions).

Perhaps most important with respect to community engagement, the most detailed consultation regarding the pipeline route was done as part of the integrated Environmental and Social Impact Assessments ("ESIAs"). A separate ESIA was conducted for each of the three nations, as required under the Host Government Agreements ("HGAs") signed by BTC Co with each sovereign government. The ESIAs examined the potential environmental and social impacts of the projects on the biological, physical, and human environment. The ESIA process culminated in the production of a draft ESIA report for each country, which was followed by a 60-day public consultation, disclosure, and review period. Comments received during the review stage were incorporated into a final ESIA report, which was submitted to the host government for review and approval. Management and monitoring plans were developed as part of an effort to ensure that the commitments made in the ESIAs will be delivered and acted upon throughout the life of the Project.

During the preparation of the ESIAs, a range of participatory consultation mechanisms were employed, including one-on-one interviews with members of the local communities along the pipeline corridor, workshops with local and international NGOs, workshops and meetings with regulatory authorities, meetings with scientists and experts, feedback questionnaires, and project information leaflets. Cultural and gender-specific mechanisms were developed in an effort to maximize the consultation's effectiveness, including female-to-female meetings, venues chosen to ensure maximum access, and transportation assistance. Local libraries, government and local authority offices, community centers, schools, NGO offices, and BP offices in Baku, Tbilisi, and Ankara were used to disclose and receive comments on the draft ESIAs. Draft ESIAs were also translated into local languages to facilitate the consultation process.

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In conducting the ESIA for Georgia alone, 74 meetings were held with local communities; 6 environmental workshops were hosted; 27,500 disclosure documents were distributed to 26 locations around the country; and advertisements were run in 20 newspapers. Feedback from all of these initiatives was factored into the ESIA, along with more than 3,000 public comments that were individually answered. In Turkey, 450 copies of the draft ESIA were distributed to stakeholders along the route, and 10,000 non-technical summaries and 22,000 community pamphlets were distributed. In addition, BP hosted more than 100 community meetings, 10 meetings with regional NGOs, and three major conferences with international NGOs and the press. As a result of these engagement efforts, 1,652 comments were incorporated into the final ESIA submitted to the Turkish government.⁴

In keeping with the HGAs and IFIs requirements, part of the consultation process with the local communities also included developing a comprehensive Public Consultation and Disclosure Plan (“PCDP”) for each of the three countries. Each PCDP was translated and appended to the country-specific ESIA. Each PCDP articulates the following elements: roles and responsibilities, project description, regulatory context, stakeholders consulted, plans for document disclosure, questionnaires used, and leaflets and other supporting information disseminated.

The continuous nature of the contact that BTC Co maintains with stakeholders has been essential for understanding concerns about the Project and expectations of the local communities. This dialogue has enabled BTC Co to identify potential problems at an early stage and propose solutions to such issues.

Traditionally, large projects are accompanied by philanthropic contributions to local communities. BTC Co reports that it intends to go beyond this approach by establishing a multi-million dollar community investment program with the objective of supporting local social infrastructure and stimulating economic opportunities. The program is intended to use the BTC investment as a catalyst for building sustainable economic and community capacity, including for education, local enterprise development, and other activities that extend associated benefits to the wider population.

The program is to be based on best practices developed by donor and development agencies and involve NGOs and other organizations as implementing partners. BP is exploring ways to create partnerships between BTC Co and other organizations, including the IFIs. In October 2002, for example, several projects were jointly funded with the Eurasia Foundation to support business ethics, commercial law, and accounting courses in Azerbaijan.

⁴ BP Environmental and Social Review, 2002.

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C. Transparency

BP publicly recognized at an early stage that transparency with respect to the BTC Project could play a significant role in ensuring the Project's success. It also recognized that establishing a stable and transparent legal and fiscal regime for the Projects' investments could provide a model for other foreign investment in the region and help to facilitate the development of local enterprise.

To this end, BP took steps to ensure that the BTC Project set a new industry benchmark for transparency. Over 11,000 pages of project documents were made available to the public on the BTC website, www.caspianexportanddevelopment.com. The publication of this information provided stakeholders with a broad understanding of the Project and its implications. Included on the website are the HGAs signed with each country and the ESIA and PCDDPs regarding each country, as well as core project documents such as the Production Sharing Agreements ("PSAs") and the Inter Governmental Agreement ("IGA"). The Regional Review is also located on the website. Readers are invited to submit comments regarding their questions and concerns with respect to the Project.

The BTC Project is the first extractive sector project undertaken to make this amount of material publicly available.

D. Human Rights and Environmental Concerns in Designing the Pipeline

In its Regional Review, BTC Co commits to ensuring that "respect for culture, individual dignity and human rights," will "dominate all interactions."⁵ Implementation of this commitment in a manner deemed satisfactory to all stakeholders may not be possible and will certainly not be easy.

One of the first human rights issues the Project confronted was the selection of the pipeline route. BTC Co sought a commercially viable option that would deliver the oil to an appropriate location for sale to world markets while minimizing risk, avoiding the displacement of communities, and incorporating long-term security arrangements.

Ultimately, BTC Co was able to design a pipeline route that avoided the permanent dislocation of any people and the destruction of any buildings. The BTC pipeline, as well as the affiliated SCP pipeline, will be buried, with land reinstated for use following construction. Economically displaced landowners and users are to be compensated using a transparent and consultative process that provides opportunities for economic enhancement. Procedures and mechanisms associated with the land acquisition and compensation process are reported in the Resettlement Action Plans ("RAPs"), which were publicly released to the communities and to the general public on the Project website.

⁵ BTC Regional Review, Executive Summary.

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Security considerations were another integral factor in the decision-making and design of the Project. The Pipeline was routed as far as possible away from conflict zones and areas with known security concerns in order to minimize the need for security interventions. The pipelines avoid, for example, passing through areas of unrest in Georgia and provinces in Turkey that were under a state of emergency during the last decade.

Environmental concerns were also fundamental in the design of the pipeline. Oil spills from onshore and offshore exploration, production, and transportation represent potentially significant environmental hazards. The independent Environmental Risk Assessment concluded that the pipeline presented the lowest risk of an oil spill and, therefore, was the environmentally optimal mode of transporting oil from the Caspian region to world markets. Perhaps most significantly, the creation of a pipeline avoids additional tanker traffic in the already congested and narrow Turkish Straits. Construction of the BTC pipeline eliminates approximately 29,000 ship movements through the Turkish Straits over the course of the 40-year lifetime of the Project.

During the pipeline route selection and facilities siting process, both BP and NGOs agreed that a particular emphasis needed to be placed on avoiding sensitive and protected environmental areas. As a result of numerous re-routings and route refinements, the pipeline was able to circumvent internationally or nationally-designated protected areas, including the Borjomi-Kharagauli National Park, the Ardahan Forest in Turkey, Lake Jandar on the Azerbaijani/Georgian border, the nationally designated Gorchay and Shamkir Reserves in Azerbaijan, and the Kelkit Wildlife Protection Area in Turkey. Some environmental NGOs, however, oppose the current routing. One of their chief concerns is that it poses an unacceptable risk to the Borjomi region in the event of a leak in the pipeline. According to BP, measures will be taken to minimize the number of potential leak sources, including optimizing pipeline block valve locations, designing adequate corrosion protection and secondary containment systems, and instituting procedural measures to prevent and minimize spillages.

Mitigation measures are also to be implemented during the Project's execution aimed at the removal or reduction of potential adverse impacts on natural habitats or their functions. These measures include restrictions on the conversion of natural habitats, restoration of degraded habitats, and retention of strategic species. A voluntary regional biodiversity action plan is also being developed which will include investments in projects to maintain and enhance biodiversity. Several such biodiversity initiatives have already been started, including a tortoise breeding project at Sangachal and a study of fish in the Caspian Sea.

E. Legal Framework

Legal regimes must provide clarity, certainty, and high international standards to attract complex and long-term infrastructure projects like the BTC pipeline. In this instance, the transitional economic and political natures of the three host governments, in particular, those of Azerbaijan and Georgia, presented obstacles to BTC Co and the

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international investment community. To ensure that the highest possible standards were maintained, the parties created a Prevailing Legal Regime (“PLR”), a specially designed legal framework, for the Project. The creation of such a legal framework is not unusual, and has been used by extractive projects even in nations with highly developed legal systems, such as Canada and Australia. The PLR is designed to supplement the existing framework, rather than replace existing laws or regulations. Its implementation enabled investors to obtain the necessary comfort required for investment in the Project and will help ensure that the Project is operated in accordance with best international practices.

The Project is to be implemented according to the terms of the IGA between the three host countries. The IGA was signed on November 18, 1999 by the Presidents of the Azerbaijan Republic, Georgia, and the Republic of Turkey, and memorializes each country’s support for the development, construction, and operation of the pipeline across its territory, along with the transit of petroleum liquids. As such, the IGA has the force of an international treaty and contains commitments from each government with respect to the application of uniform and clearly identified technical, safety, and environmental standards; a detailed basis for taxation; and provisions regarding security for the Project.

The three Host Government Agreements (HGAs), which are between the host countries and BTC Co, enable the development of the Project. The HGAs are substantially similar for each of the countries and set out in greater detail the technical, legal, and fiscal regime under which BTC Co undertakes the Project and the mutual rights and obligations of each government and BTC Co. The HGAs contain rights and guarantees from the respective countries to BTC Co with respect to matters necessary to ensure the success of the Project, including land rights for the construction and operation of the Project, rights to import and export goods and services, rights to transfer and convert currency, and guarantees of economic stabilization. The HGAs also set out the terms of the direct financial compensation for each of the host countries.

The HGAs also set out a process for land acquisition and compensation that is tied to the legal requirements and preferences of the host countries. The Project participants are committed to ensuring that land acquisition and compensation is based on an open and fair process following consultation with affected communities and meets the standards established by the IFIs. To that end, the BTC Project complies with a range of regulations promulgated by the World Bank and the IFC, including World Bank Operational Directive (“O.D.”) 4.30 on Involuntary Resettlement, World Bank Opinion 11.03 on the Management of Cultural Property, IFC Opinion 4.04 on Natural Habitats, and the IFC’s Operational Procedure Opinion 4.01 on Environmental Assessment.

The PLR governing the Project ensures that health, safety, and environment (HSE) and the human rights and labor standards applicable to the BTC Project will in no event be less stringent than the highest of European Union standards (including EU Directives), World Bank Group standards applicable to the Project, and standards under applicable international labor and human rights treaties. BP’s policies on ethical conduct, relationships and security, which set out commitments and responsibilities for all BP employees and their contractors, are also incorporated into the PLR. These include

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explicit support for the principles in the UDHR, the 1977 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises, and the 2000 OECD Guidelines for Multinational Enterprises.

IV. Concerns Raised by External Stakeholders

A. Amnesty International

In 2002 and early 2003, Amnesty International UK conducted research and analysis on the legal structure underpinning the BTC pipeline. Amnesty's purpose was to understand "the human rights implications of the commercial agreements between the oil consortium and the host governments in the countries where the Pipeline would be built." Amnesty published its findings in May 2003 in a report titled, "Human Rights on the Line: the Baku-Tbilisi-Ceyhan Pipeline Project." The report concluded that the legal agreements "undermined the protection of human rights and created disincentives for the three states to fulfill their current and future human rights obligations." It warned that the agreements would "effectively create a 'rights-free corridor' where the human rights of thousands of people in the region will not be protected."

The essence of Amnesty's critique of the BTC Project was that the Project Agreements could have a "chilling effect" on the host governments' willingness to enforce their human rights, labor rights, and environmental obligations pursuant to international treaties. Amnesty warned that the land acquisition could have the effect of resettling the 30,000 people who would be "forced to give up their land rights to make way for the pipeline"; there could be "inadequate enforcement of health and safety legislation to protect workers and local people"; and there could be a "serious risk to the human rights of any individuals who protest against the pipeline." Amnesty expressed particular concern that the HGAs would create a disincentive for the host countries to protect human rights because the "governments have agreed to pay compensation to the BTC consortium if pipeline construction or operation is disturbed" pursuant to the HGA clause indicating that host countries are liable for any "disruption to the economic equilibrium of the project."

Based on the report, Amnesty sought: (1) clauses inserted into the HGAs stating explicitly that no part of the agreements shall make it more difficult for the host governments to comply with their human rights obligations under national and international law; (2) the formation of independent stakeholder committees which would be responsible for monitoring standards and hearing grievances over the lifetime of the project; and (3) the signing of contracts by BTC Co with those employed to provide security for the pipeline making human rights obligations explicit and enforceable. In essence, Amnesty's overarching interest was to create a mechanism to ensure that BTC Co's commitment to construct and operate the Project in accordance with "best international practice" was enforceable by the host governments.

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B. Other Stakeholder Concerns

Other NGOs, including Friends of the Earth (“FOE”), the World Wildlife Fund, Corner House, and the Kurdish Human Rights Project, raised similar concerns regarding the interpretation of the IGA and the HGAs and additional environmental concerns. These groups targeted their energies primarily at the IFIs in an attempt to delay or halt financing for the Project, including loans by the IFC and the World Bank Group.

In addition, FOE wrote to the designated National Contact Points of five OECD countries alleging five areas of Project non-compliance with the OECD Guidelines for Multinational Enterprises. These allegations are that: (1) BP exerted undue influence on the regulatory framework for the BTC project; (2) BP sought or accepted exemptions related to social, labor, tax, and environmental laws; (3) BP failed to operate in a manner contributing to the wider goal of sustainable development; (4) BP failed to adequately consult with project-affected communities on pertinent matters; and (5) BP undermined the host government’s ability to mitigate serious threats to the environment, human health, and safety. In response, BTC Co maintains that it exceeded the standards set by the OECD Guidelines. To date, several of the inquires are still ongoing.

V. BTC Co Response to NGO Concerns⁶

A. Joint Statement

In an effort to respond to concerns that BTC Co needed to clarify its commitment to international environmental, social, labor, and human rights standards, the Governments of Azerbaijan, Georgia, and Turkey, and BTC Co, issued a landmark “Joint Statement on the BTC Pipeline Project” on May 16, 2003.

The first paragraph of the Joint Statement notes that the parties “take the concerns [of the NGOs] seriously” and are “determined to make the BTC Project a model project in all respects,” and that “the environmental, social, and human rights aspects of the project are of fundamental importance.” In paragraph four, the parties state that they are aware of speculation among NGOs that provisions in the project agreements might be interpreted in a manner contrary to international human rights, environmental, or social and labor norms.

The Joint Statement stipulates that BTC Co and the host governments “considered each of the provisions identified [by the NGOs] and have concluded that none of the speculation included in recent correspondence reflects the intent or understanding of the parties with respect to their meaning or operation. We are determined to uphold the highest international standards for BTC and we cannot agree with those speculations.” The parties entered into the Joint Statement to “minimize further misunderstandings, in

⁶ Although there are always differences of opinion within any large organizations, the positions stated to the author within the context of the BTC Project were institutionally consistent. For a list of senior officials consulted in the course of writing this case study, please see Section VII.

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particular in relation to project security and human rights, the environment, social and labor standards.”

The Joint Statement then delineates the international standards to which the parties are committed within the areas of human rights, security, labor, and environmental standards. It reaffirms that the principles and policies set out in the OECD Guidelines on Multinational Enterprises “were fully considered during negotiation of the BTC Project Agreements” and are reflected in the BTC Project Agreement structure. With regard to the environment, the Joint Statement clarifies that the “IGA commits each State to the application of environmental standards and practices that are ‘no less stringent’ than those generally applied within member states of the European Union from time to time. The HGAs and other BTC Project Agreements give effect to this commitment, and provide a dynamic benchmark that will evolve as EU standards evolve.”

With regard to labor standards, the Joint Statement confirms the parties’ understanding that ILO Conventions on Forced Labor, Freedom of Association and the Right to Organize, Collective Bargaining, Discrimination, Equal Remuneration and Minimum Age, “all as in effect from time to time, will apply to the development and operation of the project.”

B. Project Security

The Joint Statement is also a landmark document with respect to the issue of security, inasmuch as it is the first legal commitment to the Voluntary Principles on Security and Human Rights. The U.S. and U.K. governments announced the Voluntary Principles in December 2000, and they have since gained recognition as the emerging international standard addressing the human rights responsibilities faced by extractive companies in their global security arrangements. The BTC Project is the first time that the Voluntary Principles have been incorporated into the legal contracts governing a project.

Security is perhaps the single most important human rights issue to oil and gas companies due to the reputational and legal risks related to the actions of security forces assigned to protect company assets in conflict-prone or conflict-ridden countries.

The Voluntary Principles address three sets of issues: Risk Assessment; Interactions Between Companies and Public Security; and Interactions Between Companies and Private Security. The Risk Assessment of the Voluntary Principles identifies key human rights “factors” to be taken into account as security arrangements are planned, including: identification of security risks; potential for violence; the human rights records of public and private security forces; strength of the rule of law; conflict analysis; and equipment transfers. Key elements governing the interactions between companies and public/private security include the degree of consultation and advice with stakeholders, responses to human rights abuses, compliance with policies, and the deployment and conduct of personnel.

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Although BTC's "Regional Review" provides that the Voluntary Principles "are embedded into BP's security management system," the Joint Statement was the first Project Agreement to state that commitment and ensure that it became part of the PLR governing the Project. Specifically, it provides that "[t]he parties confirm to each other their mutual commitment to the goal of promoting respect for and compliance with human rights principles, including those set forth in the Universal Declaration of Human Rights, the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials, United Nations Code of Conduct for Law Enforcement Officials, the European Convention on Human Rights and, in a manner consistent with our national laws, the Voluntary Principles."

Subsequent to the signing of the Joint Statement, the three host governments made another important commitment to security practices that, in effect, helps to operationalize the Voluntary Principles. In accordance with both the IGA and the HGAs, and "recognizing the need for transparency and the sharing of information and experiences in performing security obligations and promoting human rights," the Governments of Azerbaijan, Georgia, and Turkey signed a "Protocol Relating to the Provision of Security for the East-West Energy Corridor" on July 23, 2003. In the first chapter of the Protocol, the governments agree to cooperate in security matters, including identifying and classifying potential security risks related to terrorism or acts of sabotage, sharing information that directly impacts the Project, and exchanging information regarding methods to combat acts that pose security risks to the Project. In addition, the parties agreed to establish a Joint Pipeline Security Commission and cooperate in the mutual training of members of security units involved in pipeline security.

The second chapter of the Protocol is titled the "Human Rights Dimension." In this chapter, the governments recommit to implementing the Voluntary Principles within the framework of their national legislation, as well as taking all necessary actions to ensure that individuals who may have been credibly implicated in human rights abuses or criminal activities do not participate in security services. The parties also agree "to take all appropriate actions necessary to fulfill their obligations related to security in compliance with" the principles and obligations set forth in a variety of international treaties and human rights instruments, including the UDHR, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the European Convention for the Protection of Human Rights, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

C. The Deed Poll

Soon after the Amnesty report was published, BP and BTC entered into a dialogue with representatives of Amnesty to address their human rights concerns and mitigate negative human rights impacts stemming from the PLR. Over the course of

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several months, they engaged in a series of discussions regarding how best to resolve the issues outlined in the Amnesty report and, perhaps just as importantly, to set the stage for a cooperative effort through which to share lessons learned more widely and develop best practice guidelines for the protection of human rights within legal frameworks for large projects.

As an outgrowth of this dialogue, BTC Co determined that through the use of a Deed Poll it could address both Amnesty's overarching interest in creating a mechanism to ensure that BTC Co's commitment to operate the Project in accordance with "best international practice" was enforceable by the host governments and Amnesty's more specific interest in ensuring that the HGA not have a "chilling effect" on the host governments' willingness to enforce their human rights, labor rights, and environmental obligations. (A Deed Poll, referred to more specifically on the BTC's Project website as the "Human Rights Undertaking," is a unilaterally binding contract made under British law.)

Accordingly, on September 22, 2003, a legally binding and irrevocable Deed Poll was signed to achieve the following goals: (1) protect the rights of the three host governments to regulate in the areas of human rights, health, safety, and the environment, without fear of claims by BTC Co that such regulation was a breach of the HGAs; (2) clarify that the standards in the HGAs are not "frozen" as of the time the Project Agreements were signed, but are instead dynamic and will change over time as EU directives and standards evolve; (3) protect the right of third parties injured by the BTC Project to bring claims in domestic courts without fear that BTC Co would argue that domestic courts do not have jurisdiction to hear such claims; and (4) protect the host governments from fear of having to pay compensation to restore the "economic equilibrium" of the Project as a result of legislation or other action reasonably required by international human rights, labor, health, or safety laws in force in the host countries.

In addition to the Deed Poll/Human Rights Undertaking, BP also committed to publishing a "Citizen's Guide" to the BTC Project on its website in several of the local languages used along the pipeline's route. BP will also seek Amnesty's continued input with respect to operationalizing the Voluntary Principles and other security practices in a manner that demonstrates respect for human rights and monitoring human rights activities with respect to the BTC Project. Both BP and Amnesty agreed to work together to proactively address key human rights aspects of investment and development, such as the creation of best practices regarding the establishment of HGAs and IGAs, and monitoring instruments and processes.

Notably, without taking a position regarding the Project as a whole, Amnesty welcomed the Deed Poll for addressing the concerns noted and establishing a leadership position on human rights within the industry. Amnesty also emphasized, however, that the document was an "after-the-fact" effort to correct the HGA and that future Project Agreements of this nature should address these issues clearly from the start to avoid the need for additional Deed Polls. In addition, Amnesty believes that for the Deed Poll to

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have its intended effect, the option of local remedies will need to be communicated to local lawyers and relevant civic groups.

Overall, the BP/BTC-Amnesty dialogue and the execution of the Deed Poll and other steps to address human rights concerns represented significant progress for each of the parties and set a symbiotic precedent for other members of the industry and the NGO community. The impact of the dialogue -- while only representing a beginning -- was immediate and broad, providing Amnesty with new credibility as a guide and interlocutor with the business community, and BP/BTC with diminished reputational and legal risks with respect to the Project and enhanced brand equity.

VI. Conclusion: Issues for the Future

A. Response of the IFIs

On November 4, 2003, the IFC's Board approved loans of up to \$250 million for the BTC Project. While acknowledging that the "IFC has heard from a number of environmental groups who have raised significant concerns with regard to routing options, particularly through the Borjomi area in Georgia," Rashad Kaldany, Director of the World Bank Group's Oil, Gas, Mining and Chemicals Department, responded to those concerns by observing that "[r]outing options were carefully assessed by IFC staff...who confirmed that the route chosen was the only viable one with the significant mitigation and protection measures proposed in this area."

The IFC described the Project as "break[ing] new ground in transparency, environmental and social safeguards, community consultation and involvement, national and international civil society engagement, and local economic benefit."

Regarding consultation with those affected by the pipeline, the IFC stated that it was "gratifying to hear directly from local NGOs and local communities. It is clear that local people want the pipeline to be built -- but they want it built in a safe, sustainable, and environmentally sound way." The IFC also noted that the compensation packages for land, "which are consistently above market rates, have been set and are independently monitored."

On November 11, 2003, following the decision of the IFC, the Board of the EBRD approved \$250 million in loans for the Project. Agreement on the loan followed a two year analysis of the Project's environmental and social impact and the EBRD's own public consultations.

B. Monitoring and Compliance

In the IFC statement regarding the approval of the loans, the Director of the World Bank Group's Oil, Gas, Mining, and Chemicals Department noted that the Project includes "nine layers of monitoring -- four internal and five external -- that will result in

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seven different reports being made public.” He added, “IFC believes this level of monitoring and transparency is unprecedented and provides the correct balance of internal monitoring verified by external, independent monitoring and public disclosure for BTC. It also demonstrates that the project sponsors and the lenders will focus on implementation challenges and results on the ground.”⁷

Although it appears that the BTC Project is a model for the industry with respect to its commitment to human rights, labor rights, and environmental standards, construction of the pipeline is only 40% complete, and the Project is expected to be operational for at least 40 years. Accordingly, it is imperative that BTC Co and the host governments quickly put these monitoring programs into place. Some of these programs will be more difficult to implement than others, particularly those for which monitoring standards are only now being developed – such as security compliance for the Voluntary Principles.

In developing monitoring and compliance mechanisms, BTC Co should continue to benefit from the relationships that it forged with Amnesty and other NGOs. Indeed, BTC Co and Amnesty are committed to working together to create effective human rights monitoring instruments and grievance mechanisms for people in affected communities.

C. Continued Relationships with Stakeholders and Communities

In a similar vein, BTC Co must follow through with respect to its comprehensive stakeholder engagement and consultation process, both in the short-term during construction of the Project as well as in the long-term over the life of the Project.

According to the Regional Review’s Executive Summary, “As the projects move from planning to construction and into operations, there will be follow up consultation and reports tracking the issues and project activities in the region. In the projects’ aim to keep dialogue flowing and to obtain feedback and suggestions, further consultations will be planned over the next several months, and will continue through the life of the projects.”

The onus will be on BP to meet this commitment. The company must ensure that it continues its outreach to the communities including, perhaps, by facilitating the creation of citizens’ advisory groups to counsel the Project regarding ongoing and timely issues. Although the company set numerous precedents with regard to community outreach and the incorporation of international standards and best practices in Project agreements, the challenge now will be to maintain this momentum. BP’s ultimate test will be how it puts theory into practice and fulfills these commitments in the coming years.

⁷ IFC Press Release, November 4, 2003.

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VII. Sources

The information and material in this case study was obtained from a variety of sources. Many publicly available corporate documents were used as reference, including BTC Co's "Environmental and Social Overview of the Baku-Tbilisi-Ceyhan Pipeline Project," published in September 2002; BTC Co's "Regional Review," published in February 2003; BP's 2002 Environmental and Social Review; BTC Co's pamphlets on "Breaking New Ground" and "Citizen's Guide to the BTC Project Agreements," and each of the HGAs and the IGA. In researching the perspectives of a broad range of NGOs, extensive web-based research was performed, and Amnesty International's report, entitled "Human Rights on the Line," published in May 2003, was cited frequently.

Additionally, the author was provided access to a number of senior-management officers at both BP and BTC Co, as well as to key NGO leaders. At BP, the author worked closely with staff members in the London, Washington, and Baku offices, including the Group Vice President; Vice President for Reputation and Assurance; Vice President for External Affairs; Director of International Affairs; Director of Government and Public Affairs; Commercial and Reputation Assurance Manager; Government and Community Relations Manager; and Manager of Corporate Communications.

At BTC Co, the author was provided access to a broad spectrum of individuals in both Baku and Tbilisi, including the Chief Executive Officer; Commercial Director; General Counsel; Director of Security; Regional Security Advisor; Communications Director; Environmental Manager; and Project Security Managers for Azerbaijan, Georgia, and Turkey.

The author met with representatives of Amnesty International offices in London, New York, Washington, Oslo, and Paris, including the Chair of the Business Group (UK); Director of Finance (UK); Business Group Manager (UK); Legal Advisor (UK); Business & Human Rights Coordinator (USA); Political Advisor/IGO Coordinator (Norway); President (France); and Commission Enterprises (France).

The author also conducted first-person research by visiting the project site in Azerbaijan and Georgia and participating in meetings between BP, BTC Co, and Amnesty officials in London, New York, Washington, Oslo, and Paris.

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VIII. About the Author

Gare A. Smith chairs the corporate social responsibility and risk management practice at the law firm Foley Hoag LLP. Prior to joining Foley Hoag he was a Vice President at Levi Strauss & Co. where his responsibilities included supervising global implementation of the company's code of conduct. During the Clinton Administration, Mr. Smith served as Principal Deputy Assistant Secretary in the U.S. Department of State's Bureau of Democracy, Human Rights & Labor. In that capacity, he was a U.S. representative to the U.N. Human Rights Commission, the International Labor Organization, and the U.N. Working Group on the Rights of Indigenous Peoples. He also helped to launch the President's Model Business Principles and advise the Apparel Industry Partnership in creating a code of conduct and an independent monitoring system. Previously, he served as Senior Foreign Policy Advisor & Counsel to Senator Edward M. Kennedy. Mr. Smith serves on the boards of a number of human and labor rights organizations.

Mr. Smith and Foley Hoag were retained to provide corporate social responsibility advice, particularly with respect to human rights, security, and labor rights issues, to BTC Co with respect to the BTC Project. In that capacity, Mr. Smith was provided access to a wide array of material and worked closely with executives at BP and BTC Co. and the leaders of non-governmental organizations interested in the BTC Project.