Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline

A background article

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The 1,760 kilometre-long Baku-Tbilisi-Ceyhan (BTC) oil pipeline runs from Baku in Azerbaijan, through Tbilisi in Georgia to a new marine terminal at Ceyhan on Turkey's Mediterranean coast. The project has been developed by BTC Co., a consortium of companies led by the British oil multination BP. Other members of the consortium include: Unocal, Statoil, Turkish Petroleum, ENI, TotalFinaElf, Itochu, Inpex, ConocoPhillips, Delta Hess and the Azerbaijan state oil company SOCAR.

The BTC pipeline was completed in 2006 – a year late and a billion dollars over its projected cost of $2.9 billion. The pipeline will eventually carry 1 million barrels of crude oil a day from BP's Caspian oil fields: all the oil will be shipped to west markets, even though many of the territories through which it passes are energy-poor.

The BTC pipeline forms part of a wider network of pipelines intended to transport oil and gas from the Caspian Sea for sale to western markets, many of the backed by Japan, which views the Caspian region as vital to its energy security. Other pipelines include the Baku-Supsa pipeline and the South Caucasus Pipeline (SPC), which carries gas from Baku to Ezerum in Turkey. The SPC pipeline shares the same corridor as BTC.

Because there is insufficient oil in Azerbaijan's own Caspian oil fields to fill the BTC pipeline, additional supplies will be shipped across the fragile Caspian Sea from Kazakhstan. Over 50% of the oil passing through the pipeline annually is ultimately expected to come from Khazakstan[1] – despite BP having claimed (at least in public) that the pipeline would be financially viable without Khazak oil.

Seventy per cent of the budget for the pipeline was raised directly from public sources or leveraged from private banks with the insurance of public funds. Private investment in the project was provided by 15 banks: ABN AMRO Bank, Banca Intesa, BNP Paribas, Citibank, Credit Agricole Indosuez, Dexia Credit Local, Bayerische Hypo-und Vereinsbank, ING Bank, KBC Finance Ireland, Mizuho Corporate Bank, Natexis Banques Populaires, the Royal Bank of Scotland, SANPAOLO IMI, Societe Generale, and WestLB. In 2004, Banca Intesa withdrew from the project, following concerns over the safety of the pipeline's anti-corrosion coating.

Export Credit Agencies support for the project was approved in February 2004, with Japan's JBIC guaranteeing $580 million and NEXI $120 million. Other ECAs involved included: Britain's Export Credits Guarantee (US$106 million); France's COFACE ($100 million); Italy's SACE ($50 million); Germany's Hermes ($85 million); and the USA's Ex-Im ($160 million). An additional $142 million was provided by the US Overseas Private Investment Corp in political risk insurance. Further public support came in the form of loans from the European Bank for Reconstruction and Development ($250 million) and the World Bank's International Finance Corporation ($250 million).

1. "Kazakhstan commits to BTC", Kazakhstan Oil and Gas Industry Group, 30 March 2007, http://www.kogiguk.com/News/Archive/2007/Mar/Article3351.htm.

Project Agreements: A new colonialism

The BTC project is subject to an international agreement between Azerbaijan, Georgia and Turkey, together with three separate Host Government Agreements between BTC Co and the individual governments. The agreements override all existing laws other than the constitutions of the three countries.

In response to concerns raised by Amnesty International and other NGOs that the agreements would act to deter the three governments from fulfilling their duty to protect the public interest, BTC Co issued.

Under the agreements, which are specifically aimed at guaranteeing the "freedom of petroleum transit", a formulation that effectively claims rights for oil itself,[2] the three governments have all but surrendered sovereignty over the pipeline route to the oil consortium.[3] Not only do the agreements trump all existing and future laws in the three countries, other than the respective constitutions, but they also impose an obligation to compensate BTC Co for any new environmental or social legislation that might impinge on the "economic equilibrium" (read profits) of the project.

In response to pressure from Amnesty and other non-governmental organisations, BTC signed a unilateral declaration that it would not invoke the compensation clauses where new legislation was intended to protect human rights. However, the declaration contains a let-out clause whereby BTC retains the right to do so if it deems the action of the host government to constitute "rent-seeking".

Although BP accepts that the agreements trump local law,[4] it insists that they set out a more stringent regulatory regime than would otherwise be available. The company cites a requirement to comply with "EU standards", [5] implying that the body of EU law will be honoured.[6] In reality, however, the commitments only extend to unspecified EU standards

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2. Reyes,A.S., "Protecting the 'Freedom of Transit of Petroleum': Transnational Lawyers Making (Up) International Law in the Caspian", *Berkeley Journal of International Law* 24,(forthcoming June 2006) (manuscript on file with author).
3. For detailed analysis of the legal implications of the agreements, see: Carrion. M., "Preliminary Analysis of the Implications of the Host Government Agreement between Turkey and BTC Consortium", Baku Ceyhan Campaign, October 2002, www.baku.org.uk ; Susan Leubuscher, 2 June 2003, 'The privatisation of justice: international commercial arbitration and the redefinition of the state'. http://www.fern.org/pubs/reports/dispute%20resolution%20essay.pdf;; Amnesty International, Human Rights on the Line – The Baku-Tbilisi-Ceyhan pipeline project, London, May 2003; Reyes,A.S., "Protecting the 'Freedom of Transit of Petroleum': Transnational Lawyers Making (Up) International Law in the Caspian", *Berkeley Journal of International Law* 24,(forthcoming June 2006) (manuscript on file with author).
4. BTC, "Citizens Guide to the BTC Project Agreements: Environmental, Social and Human Rights Standards", www.caspiandevelopmentandexport.com. The Guide acknowledges (p.6) that the project's legal regime grants investors the power to "supersede provisions that directly conflict with project agreement requirements."
5. BTC Supplementary Lenders Information Pack, "BTC Briefing Ntote on Environmental Standards, Applicability and Enforcement, Final", June 2003, p. B3. The SLIP states: "The reference to EU standards provides a benchmark and floor for what must be considered 'international standards and best practices' for the purpose of the Project. As a result, the IGA [Intergovernmental Agreement] ensures that the BTC project *must* meet or exceed EU standards" (emphasis added).
6. In fact, the only binding EC law relating to pipelines is Directive 94/22/EC on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons. Its Article 6(2) states that 'Member States may, to the extent justified by national security, public

that relate to "technical, safety and environmental" practices within the petroleum industry. Moreover the companies own documentation acknowledges that Azerbaijan's existing surface water quality standards are "*more stringent than EU for some parameters*". [7] In effect, the agreements require Azerbaijan not to raise but to lower its standards.[8]

Human Rights and Environmental Concerns

The construction and financing of the pipeline has provoked major concerns regarding its social, environmental and human rights impact from a range of NGOs including Amnesty International and the World Wildlife Fund.

In 2003, an analysis of the Environmental Impact Assessment for the Turkey section of the pipeline by international Non-Governmental Organisations found the project to be in breach of all relevant World Bank safeguard policies on multiple counts. In all, the review identified at least 153 partial or total violations of IFC and EBRD Operational Policies plus a further 18 partial or total violations of the European Commission's Directive on EIA and at least two direct violations of Turkish law, giving a total of at least 173 violations of mandatory applicable standards.

Environmental baseline studies were grossly inadequate (for example, in the 1,000 km of the pipeline route in Turkey, only 23 sites were studied; most of these were only on a single day – ignoring migration and seasonal effects, as well as leaving too little time for adequate study) and project alternatives were not considered, although required by the international standards to which the project was committed.[9]

Human rights violations alleged by the villagers during BTC construction included: illegal use of land without payment of compensation or expropriation; underpayment for land; intimidation; lack of public consultation; involuntary resettlement and damage to land and property. In Turkey, emergency powers normally reserved for national disasters were invoked to acquire land so that construction could commence before the usual procedures for land expropriation had been completed. Critics of the pipeline were also subject to arbitrary arrest and, in the case of Ferhat Kaya, a Turkish human rights defender, alleged torture.

Although BTC claims to have consulted with all landowners affected by the pipeline, figures from its own environmental impact assessment reveal that less than 2 per cent had in fact been consulted. Other flaws in consultation included: lack of access to project documentation;

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safety, public health, security of transport, protection of the environment, protection of biological resources and of national treasures possessing artistic, historic or archaeological value, safety of installations and of workers, planned management of hydrocarbon resources (for example the rate at which hydrocarbons are depleted or the optimization of their recovery) or the need to secure tax revenues, impose conditions and requirements on the exercise of [hydrocarbon activities]'. Since neither the BTC host States nor the corporation involved in the project are Member States of the European Union, however, the Directive will not apply to them.

7. BTC Co, Matrix of Environmental Standards, p.13, http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/xyz/BTC_English_ESAP_Environmental_Standards_Table_Content_Environmental_S-dards_Table.pdf

8 . For discussion of the legal agreements, see Nicholas Hildyard and Greg Muttitt, Turbo Charging Investor Sovereignty, The Corner House, http://www.thecornerhouse.org.uk/pdf/document/HGAPSA.pdf.

9. Baku Ceyhan Campaign, Review of the BTC Environmental Impact Assessment – Turkey Section, September 2003, www.baku.org.uk

misinformation about legal rights; and a failure to warn villagers of the potential dangers of the project.[10]

A review of the EIA by Britain's Department for International Development cited many instances where the company had failed fully to comply with World Bank guidelines.[11]

Safety Concerns

During construction, BP's own external monitoring body – the Caspian Development Advisory Panel – warned that the pressure on contractors in Turkey to avoid incurring financial penalties created an institutional incentive to cut corners and rush work, particularly over land acquisition and quality control.[12] Testimonies from pipeline experts who worked on the Turkish section highlighted a complete absence of many fundamental safety features. These included not allowing engineers access to construction sites, a lack of necessary specialists (e.g. seismic geologists), no quality recording, ignoring and suppressing warnings from professionals and not following engineering specifications. One expert with over 20 years experience in pipeline construction described it as "the worst project I've ever worked on".[13]

Further concerns over safety have focussed on BP's choice of an anti-corrosion coating which had never been used on a similar pipeline. In 2002 - two years before the ECAs and the multilateral development banks approved funding for the project - BP's own consultant, Derek Mortimore, warned that the chosen coating was "utterly inappropriate to protect the pipeline". As predicted by Mortimore, the SPC 2888-coated sections of the pipeline have been subject to extensive cracking. BP did not inform its funders who only found out after the problem was exposed in Britain's *Sunday Times* newspaper. Over a quarter of the pipeline in Azerbaijan was later found to have been affected. Although BP claimed to have resolved the problem, a major investigation by Bloomberg, the financial news agency, in January 2006 found that cracking had continued. Bloomberg also reported that BP had given the monitoring contract for its Azerbaijan assets to Rasco International Ltd., a Baku-based building company with no previous pipeline monitoring experience.[14] A month later, following a complaint from Georgian environmentalist Manana Kochladze, OPIC's Office of Accountability recommended closer monitoring of the pipeline coating in order to prevent corrosion and leaks.[15]

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10. Appendix C, "Consultation", Sections 3.4.1.3; 3.4.1.12;
11. DfID, Compliance Review of the Environmental Assessment of the Baku-Tbilisi-Ceyhan (BTC) Pipeline, www.dfid.gov.uk/pubs/files/baku-pipeline-report.pdf.
12. The December 2003 *Caspian Development Advisory Panel Report* (www.caspiandevelopmentandexport.org) notes: "[T]he pressure to complete the Project on schedule and on budget, coupled with a weak if evolving environmental and social compliance culture win BOTAS and its contractors, may give rise to pressures to ignore standards and cut corners. In fact, in meetings with the Panel, key senior Turkish government officials demonstrated little appreciation of the need for such standards.
13. *Whistleblowers expose Turkey pipeline failings,* http://www.platformlondon.org/carbonweb/documents/PR260604.htm.
14. Simon Clark and Stephen Voss, "BP Ignores Warnings About Potential Leaks in Caspian Pipeline", Bloomberg, January 2006,, http://www.bloomberg.com/apps/news?pid=20601109&sid=aDbYpRvhzoHA&refer=home.
15. Office of Accountability Compliance Review of OPIC's Environmental Due Diligence and Monitoring of the Baku-Tbilisi-Ceyhan Oil Pipeline Project, OPIC, 2006,

Concerns over Due Diligence and Monitoring

The ECAs and multilateral development banks insist that the project meets World Bank standards and that a "multi-layer" monitoring regime will pick up problems before they result in adverse environmental and social impacts.

Serious doubts have emerged, however, over the extent and thoroughness of the due diligence undertaken by the ECAs and other lenders. In 2006, for example, OPIC's Office of Accountability reported that OPIC "did not attempt a comprehensive review of the ESIAs".[16] Moreover, documents obtained under UK and US Freedom of Information laws reveal that the information provided by BTC Co, on which the ECAs and other lenders relied heavily, example, was heavily biased in the company's favour. It emerges, for example, that BP specifically excluded any groups that it considered "polarizers" (that is, critics) from its consultations. Such groups included CEE Bankwatch and the Georgian Greens, two of the main NGOs in Georgia working with communities affected by the pipeline. A presentation made by BP to the lenders groups for the project states: "No need to engage actively – this would only legitimize their case. But by all means engage opportunistically".[17]

Concern has also been expressed by NGOs over the monitoring for the project. Not only can BTC Co block the release of environmental and social monitoring reports should it disagree with their findings[18] but such findings are only made public after they have been presented to the BTC board.[19] In addition, the terms of reference for the panel set up to monitor the social impacts of the project specifically state that its main role is *not* to identify areas of compliance and noncompliance but rather to provide practical guidance and troubleshooting advice. As such, it is questionable whether it should be considered a source of definitive judgment on compliance.

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http://www.opic.gov/doingbusiness/accountability/documents/compliance_review_opic_environmental_due_diligence0107.pdf

16. Office of Accountability Compliance Review of OPIC's Environmental Due Diligence and Monitoring of the Baku-Tbilisi-Ceyhan Oil Pipeline Project, OPIC, 2006, http://www.opic.gov/doingbusiness/accountability/documents/compliance_review_opic_environmental_due_diligence0107.pdf, p.8.
17. "Environmental and Social Impact Assessment Programme Update", Presentation Notes, 14 pages, F2003-00348, Undated, Released to National Security Archive by US Department of Energy, 4 June 2004, available from http://www.freedominfo.org/ifti/iftifoia/BTC/35.pdf.
18. Annex K: Scope of Environmental Consultant Verification Visits During Construction, p.4, http://www.caspiandevelopmentandexport.com/Files/BTC/English/ESAP/ESAP/Content/Annex_K.pdf. "If as a result of the monitoring, (i) the Consultant or the Senior External Finance Parties believe that BTC Co. is in material non compliance with the ESAP, applicable Environmental Laws or Applicable Lender Environmental and Social Policies and Guidelines, (ii) BTC Co. disagrees with that finding, and (iii) the disagreement cannot be resolved within the 10 working days comment period, then the Consultant's report will not be publicly released until the disagreement is resolved to the satisfaction of all parties. BTC Co or the Lenders may request that the disagreement be resolved through international arbitration in accordance with the provisions of the Common Terms Agreement for the BTC Project financing."
19. BTC Environmental and Social Documentation as agreed at Financial Closure, February 2004, Environmental and Social Action Plan, Annex L: SRAP Terms of Reference, Table 5.1 – Summary of SRAP Monitoring Reports for BTC/SCP, External Social and Resettlement Action Plan (SRAP) Monitoring Report, Column 3, p.12, http://www.caspiandevelopmentandexport.com/Files/BTC/English/ESAP/ESAP/Content/Annex_L.pdf . "'Full findings to be made available publicly after presentation to the BTC Co. Board."