

## **Record note**

### **BTC meeting with NGOs , 8<sup>th</sup> November 2002 at KHRP office, London**

#### **Participants:**

Jane Gordon , Deputy Director, Kurdish Human Rights Project  
Anders Lustgarten, Environment Officer, KHRP  
Phil Michaels, Lawyer, Friends of the Earth  
Nicholas Hildyard, Corner House

Tom Dimitroff  
Barry Halton

#### **Overall observations:**

- The meeting was arranged as a follow-up session to discuss the intent and implications of the BTC IGA and HGAs, which were raised as issues by the NGO group in a previous meeting on 30<sup>th</sup> October.
- This meeting comprised mainly questions from the NGOs, answered by Dimitroff and Halton. The atmosphere throughout was professional and not aggressive. Both sides offered further conversation if needed and the session appeared to end on a constructive note regarding some of the NGO criticisms of the project. Further follow-on conversations on the topics of security, public consultation and land acquisition process (postponed by the NGOs some weeks ago) are proposed, with dates to be arranged.
- Dimitroff was able to make a short presentation on the IGA/HGAs, explaining their purpose, the benefits which accrue to each party and how the agreements relate to national legislation (a copy of that presentation is attached). This was interspersed with numerous questions, which complemented those which the NGOs had already pre-prepared. The main thrust of the presentation was to contextualize the IGA/HGAs – (i) three transit Govts with economies and legal systems at various stages of transition; (ii) the need to harmonize the applicable legal regimes to enable construction and operation of an integrated system; (iii) the existing regimes (particularly Ge and Az) are demonstrably incapable to accommodate not only a project of the size and order of magnitude of BTC, but also SME investments (note the absence thereof) without mechanisms to enable a stable legal, fiscal and administrative environment; (iv) this incapability would otherwise impede not only the project but its ability to construct and operate in accordance with the highest international environmental, technical, safety and social standards

#### **Summary of questions and answers**

Did BTC consult widely before the IGA/HGAs were drawn up?

*WREP with a similar agreement structure was itself a precedent having been enacted by the Parliaments of Ge and Az in 1996. As for BTC, there was wide support in all three Parliaments – note not all laws get adopted without objection – e.g. the*

*Georgian BTC IGA/HGA was debated and adopted with a near unanimous vote demonstrating that the arrangements had the full support of all political parties represented in Parliament.*

When did you start to negotiate the HGAs?

*Late -98. The process was launched through a Govt-to-Govt process and not a company process. Az is the owner of the reserves, so it sent notice of intent to negotiate to Ge and Turkey*

Did the ACG PSA oblige you to have a Main Export Pipeline?

*No – but one is clearly needed. Early discussions included a ‘Black Sea tour’ of potentially interested countries, to explore all options and involved meetings with officials from inter alia Bulgaria, Romania and Moldova. Discussions in earnest started with Turkey c. Oct 98 and took a full year. The IGA was signed in 99, at an OECD summit of countries in Istanbul, Turkey for the final ceremony. At this stage, the BTC arrangements were very much an inter-Govt process. After ratification, the investors were invited to sign HGAs in Oct 2000. We then moved on to basic and detailed engineering, featuring BTC as the best economic and environmental option. The fact that BTC diverts additional Caspian volumes from transiting the environmentally and socially sensitive Turkish Straits underscores the environmental basis of the project and the fact that 4 companies with interests in the Kazak sector of the Caspian have joined BTC underscores the commercial attractiveness of the venture.*

Were BTC lawyers involved before ratification?

*BTC lawyers were in the Az working group; however, the IGA/HGAs were negotiated and determined on a Govt to Govt basis. You need to differentiate between BTC consultation and ultimate Govt decision-making – at the end of the day we could advise but it was up to the Governments to decide what they would do.*

Can BTC take Kazak crude?

*Yes, BTC is capable of expansion through use of DRAs and extra pumping facilities – perhaps to c 1.7mbpd. Moreover, although the arrangements are not yet known, shippers will also use NREP and WREP*

What is the future use of WREP?

*AIOC owners retain the right to ship c 120-140,000 bpd. The capacity of WREP is fixed in the Govt arrangements for WREP, therefore there is no efficient way of increasing throughput.*

If BTC doesn't happen, is there no other export option?

*There is no stopping BTC in a commercial sense – but we acknowledge there may be external events which can't be predicted. Govts are committed to BTC, and the*

*investors have sanctioned not only BTC but Phases 1 and 2 of ACG FFD which will produce the oil to be shipped through it.*

What environmental and technical standards apply to BTC?

*The IGA/HGAs should not be consulted to determine the blueprint for the construction and operation of BTC; rather, the standards set forth therein provide benchmarks against which organizations such as those represented by the NGO group could challenge BTC project performance. Most significantly, any standard or practice employed by BTC may be challenged by Article 4 of the IGA which says that these standards should in no instance be less stringent than those applied by the member state of the EU standards (and in particular Dutch standards for flat and watery areas and Austrian standards for mountainous areas). The actual standards employed by BTC are driven by BP's own HSE requirements .*

How does a 60-year HGA fit with current and future EU legislation – aren't you tying Govts hands?

*That is not the aim - the agreements attempt to create the "legal space" to enable the project to do the right thing, but as mentioned are not a blueprint for the project. Please consider that while new legislation has been adopted in Ge and Az, much of the detail, the administrative law and implementing regulations is of Soviet vintage. This body of sub-law was adopted with completely different drivers in mind, e.g. the thrust of Soviet administrative law was to incentivise performance of admin officials by specifying fines and punishments for failures rather than being targeted to ensure the safety and security of the population and the environment. Moreover, not only are the legal systems inadequate, the ability to implement them in accordance with Rule of Law principles is demonstrably deficient. Consider that Ge currently collects taxes as a % of GDP at a level among the very lowest in the FSU and on par with least developed countries (the system is currently just not working). As time goes on, and as the regimes mature and become more stable, a refusal by the project to comply with higher environmental or social standards will place tremendous strain on the companies reputations. In any event, the standard set forth in Article 4 of the IGA should ensure that there is little disconnect between EU standards and what is to be applied by the project. Finally, much of the IGA and HGAs in the end refer back to local law anyway.*

But you can go to international arbitration at any time?

*Our preference would be for negotiation – to resolve by discussion. BP's regard for its reputation would influence that*

But you did just that with the recent Supsa terminal tariff proposal – you went straight to the Government Agreements for WREP?

*We don't go straight for legal recourse. But projects need certainty. If negotiations to try to get the other side to do the right thing do not work, then the Government Agreements are in place as a matter of last resort. However, while the IGA/HGAs indeed apply, there are other inter-Govt agreements in place – eg. Energy Charter Treaty, bilateral investment treaties between among others Her Majesty's*

*Government and each of Az and Ge, the WTO (Ge and Tky are members), ICSID, the New York Convention on the Enforcement of Arbitral Awards and the Partnership and Cooperation Agreements between each of Az and Ge and the EU.*

Where are the references to other pipelines “international standards”, given that there are not many trans-national pipelines?

*The IGA/HGAs provide a wide tool for benchmarking BTC against other projects, but ultimately the standards refer to EU standards.*

A lengthy assertion by N Hildyard:

What is normal “petroleum industry practice” – what are the standards?

For example, the Turkey ESIA Appendix 5, article 3 HSE lists technical standards, but not environmental and social standards - and the code of practice is nebulous. You call the code of practice a benchmark, but we regard it as a cap, or collar, on standards, which prevent states demanding future improvements. Who are the ‘regional authorities’? You make no reference to the binding nature of these codes – the sanctions are all on the states, not the companies.

The HGAs are a good deal for BTC?

*It's a fair deal for both sides. The deal hadn't been struck in 97/98. The Governments wanted BTC and understood that options and incentives for BTC were needed.*

The technical and environmental standards are known but you also know the social issues – why try to limit your responsibilities in this area?

*We are still open to challenge on the ESIA's. We have said we will disclose our performance and there is no intention to subvert any laws for commercial advantage.*

What will be the social standards?

*This is a relatively new area, less established than the environment and more difficult to quantify. Help us.*

But the standards are a cap on progress?

*BTC is not going to enforce anything which violates anyone's human rights – article 11 says we are obligated to compensate for loss or damage – we are not immunized – local law will apply and BTC and all of its contractors and subcontractors will be accountable before the local law*

Article 7 says the state has to pay if future legal changes damage the economic equilibrium?

*As previously said, we needed to create space for the project in an environment where not much has changed for 10 years and the rules are ill-defined – where we can't do normal business. Remember this is the only large FDI project in Ge and we are spending \$1.4bn in Turkey. Once we have a stable environment, NGOs will have*

*great scope for holding BTC and others to their standards. The HGA is a tool – perhaps rather clumsy, not precise, but designed to give assurance to both sides.*

So you have drawn up a contract you hope not to enforce?

*Yes. But look at the contract – it's mainly about a commercial deal, with safeguards. The safeguards are entirely analogous to those set forth in the more than 2000 Bilateral Investment Treaties currently in place around the world – this is the first time Az, Ge and Turkey have co-operated on this scale – a big achievement.*

If Turkey enacts future legislation which raises environmental standards and therefore costs, who will pay – BTC or Govt?

*Govt. But our industry also raises its standards over time.*

Does the HGA indemnify BTC against claims over violations of human rights by state security forces?

*The check is that security is carried out in consultation with those national forces and we have made our expectation of their performance clear.*

What happens if a future Govt wants to change the law, or even expropriate BTC?

*Look at BP's earlier history in other countries. In BTC, we are engaging international institutions with development objectives who will help us to ensure that the Governments do the right thing and abide by their arrangements. In connection with the financing of BTC, we will assign everything to the lenders who will bear the political risks. We seek to partner with lenders with development objectives, and this shifts Govt risks on to Govt. BP claims would be subordinated to the principal lenders claims.*

Have the EU been involved in preparation of the IGA/HGA, given Turkey's application?

*As stated, IGA/HGA negotiations were conducted on a state-to-state basis. The US Govt invited itself, but the EU didn't. The IGA/HGA agreement exists in public international law, but the HGA with BTC is a contract that exists in private law. BTC was invited to participate in Govt to Govt negotiations as an adviser, but the decisions were made by those Govts. We don't recall EU accession being raised – Dickstein and Shapiro may have raised it – but you would have to ask the Turkish Govt.*

It says that BTC is “not obliged to operate in the public interest or provide a public service”?

*The wording is simply intended to clarify that BTC is not a concession contract in Turkey (which is often the case for powergen projects)*

Can we (the NGOs) have examples of PSAs from other countries?

*BTC took an unprecedented step in the interests of transparency to publish the PSA and the full text of the IGA/HGAs on the worldwide web. No, we are not in a position to unilaterally disclose other PSAs that are subject to confidentiality restrictions with governments . We have posted the ACG and SD ones but we are not prepared to hand out other ones.*

Is the ACG PSA posted on your website the full document?

*Yes, apart from some references to phasing of payments.*

Will the monies to be paid to Govt be disclosed?

*Yes. We have already disclosed signature payments and promised transparency over revenues and taxes paid.*

What is the relationship between the PSA and HGA? Does the PSA underpin the HGA? If I was doing due diligence, would I look at the PSA? Is there a contractual agreement?

*No. The transportation agreement covers the AIOC-BTC relationship. This is not available and we can't violate the confidentiality of this commercial agreement. It is a contractual relationship between the upstream and midstream. Bank due diligence would make disclosure of these arrangements to the banks a sine qua non.*

There have been allegations of corruption against some companies operating in Az?

*We cite the Foreign Corrupt Practices Act and are sure that our bankers would walk away if there were such problems. We operate rigorous due diligence.*

If the World Bank puts conditions or covenants on the loan which raises the land acquisition costs, who pays? (eg if the \$99m for Turkey overruns)

*If BOTAS can't deliver for \$99m, the state has to meet the shortfall.*

But WB OD 4.20 (Indigenous Peoples) could add extra cost?

*See Article 3.1 of the LSTK – which anticipates the lending process. BOTAS and the Turkish Government were fully apprised of the lending requirements and anticipated this at the time they chose to enter into the LSTK arrangements including the undertaking on land acquisition.*

How was the \$99m estimated land cost arrived at?

*Valuation by consultants, who priced different land uses. We are also involving a Turkish land NGO in the process.*

What are the land costs in Ge?

*They are what they are. In the overall cost of BTC , land costs are not a large item and we will pay full fair rates.*

We note the land acquisition process is different in Az, Ge, Turkey?

*RAPs and GLACs for each country will be out soon. Suggest we have another meeting afterwards if necessary.*

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