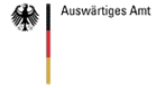


# International Conference



## **Moving forward from Cancún**

### **The Global Governance of Trade, Environment and Sustainable Development**



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## **Balancing Stakeholder Interest when Investing for the Long Term**

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Good morning.

I have been asked to talk about balancing stakeholder interests in a long-term investment.

Obviously, at BP we believe this is something that can be done.

Not everyone agrees. Many people are skeptical of the benefits of international investment and trade.

Our critics charge that in too many cases natural resource developments bring a distortion of the economy, corruption, and a weakening of effective government.

Of course, there are examples to support that view but we don't believe investment in natural resources is doomed to fail the people who should be the beneficiaries.

We're committed to working to improve the societies where we do business. We do this in a spirit of enlightened self-interest. Of course, the business of business is business! In a global market, unless we can demonstrate that doing business will bring returns to all stakeholders, we will not be able to do business effectively.

For everything we do, and I think this is true for most natural resource companies, is very long term. Our projects typically have a life span of at least 40 years.

An increasingly important part of our portfolio is in developing countries or emerging economies. We have to be cautious. At BP we sometimes say we have lost more oil by forceful disappropriation - in Iran, in Nigeria, and elsewhere - than any oil company has ever found. This may be an exaggeration, but not as large a one as you might think.

And we at BP have been exposed in 70 places of conflict over the last thirty years. Conflict these days is much more likely to be internal than external, to be a civil war than a war of aggression.

Internal conflicts have many and varied causes, but in a broad way they can be described as being about access. Access to wealth, to resources, to land, to water, to education. Poverty is a root cause of conflict.

And here business comes into play. To overcome poverty many countries need foreign direct investment. But they need this investment in a framework that does not on its flip-side hinder their economic and social progress.

And there we are at the question I have been asked to address. How can we balance the interests of the respective stakeholders?

I would like to explain our views using a pertinent example: The BTC pipeline. This pipeline is the world's largest cross-boundary infrastructure project. This pipeline will open the Caspian oil reserves to the world, making oil supply more secure and developing the Caspian economy.

BP has a leading role in these developments, although in the BTC project we're just one of 11 partners.

The legal arrangements governing the development of large resource projects are complex. There is a need for a durable legal framework which provides legal protection for all stakeholders. A legal framework provides investors with greater certainty, and states benefit from investments which might otherwise not be made. Ensuring certainty and high standards in the BTC project is a **special challenge** because the pipeline is being constructed in a part of the world where economies and legal frameworks are in transition.

The complex legal structure that has been developed is called the "Prevailing Legal Regime". The prevailing legal regime is composed of a number of different legal instruments.

At the highest level is an Intergovernmental Agreement (IGA), that is, an international treaty signed by each of the three nations through which the pipeline runs – Azerbaijan, Georgia and Turkey. Three Host Government Agreements (HGAs) set out the legally binding rights and obligations of the host states and the BTC Project. The Host Government Agreements contain important commitments in key areas such as environment, health, safety, labour and human rights.

I shall not dwell here on these agreements. Their language is legal and complex. Those interested can read the texts on a BTC website.<sup>1</sup> BP is committed to a policy of transparency in connection with the BTC legal arrangements.

Instead, I want to take a closer look at the so-called "joint statement" and some of the more recent agreements because they spell out clearly the spirit in which the project is undertaken and they may well become a blueprint for future projects of this nature.

In May this year the BTC consortium and the host governments signed the so-called "Joint Statement". This is an unprecedented legal document in which the parties:

- First, reiterated their commitment to adhere to international best practices in environmental, labour, human rights, security, social and corporate responsibility standards;
- second, pledged to make the project "a model in all respects"; and
- third confirmed that these commitments are part of the prevailing legal regime governing the implementation of the project.

What does this mean in detail?

It means that the parties, that is, the BTC consortium and the host governments, commit themselves to fulfilling the OECD Guidelines on Multinational Enterprises.

The parties agree to respect and to comply **with human rights** principles, such those set forth in the Universal Declaration of Human Rights.

The parties agree that all pipeline **security operations** must be conducted in accordance with international norms such as the "Voluntary Principles on Security and Human Rights."<sup>2</sup>

The parties agree to apply international labour standards, such as so-called 'ILO Standards'.

The parties agree that the application of **environmental standards** and practices shall be "no less stringent" than those generally applied within member states of the European Union. Furthermore, the Joint Statement confirms that the benchmark for environmental standards is dynamic; this benchmark will evolve together with EU standards and directives and international standards and practices within the petroleum pipeline industry.

Finally, the parties are committed to developing and operating the BTC Project as a model for good environmental, labour and social practices.

The legal arrangements surrounding the BTC project are unprecedented. Yet they were not perfect.

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<sup>1</sup> at <http://www.caspiandevlopmentandexport.com>.

<sup>2</sup> These may be examined in detail at [www.state.gov/g/drl/rls/2931.htm](http://www.state.gov/g/drl/rls/2931.htm).

Subsequent to the issuance of the Joint Statement, concerns were raised by some commentators – especially international NGOs such as Friends of the Earth and Amnesty International – that the Prevailing Legal Regime was flawed. Specifically the NGOs were worried that the Turkish government would not be able to regulate the project and that third parties would not be allowed access to advance claims against the project.

After extensive consultations with Amnesty International and other non-governmental organizations, BTC executed, on 22 September 2003, a further binding legal agreement, referred to as the BTC Human Rights Undertaking, which is to be part of the Prevailing Legal Regime, and which specifically addresses these concerns.

The BTC Human Rights Undertaking confirms:

- The Host Government's ability to regulate the human rights, health, safety and environmental aspects of the project in the territory of the Host Government in accordance with Project Agreement standards; and
- The dynamic nature of project standards, which will evolve in accordance with the highest of the international standards specified in the Project Agreements.

Furthermore, the BTC Human Rights Undertaking confirms that the Legal Regime's arbitration provisions **will not hinder people's access to domestic courts**, and that BTC will **never seek compensation from any host government** when that government is attempting to enforce international standards in areas such as human rights and the environment.

**The Prevailing Legal Regime** is an attempt to provide adequate protection to investors against unforeseen political developments which could lead to unreasonable demands being placed on BTC. It is not, and was never meant to be, a clever legal document which would shield BTC from reasonable demands. In the Human Rights Undertaking we have defined reasonable demands best international practice. The applicable standards can never be lower than EU standards and directives.

To return to the question: What should be the balance between investors rights and the state's right to regulate on environmental(or social) issues? How should this balance be found?

There is no single answer to this question. All situations are different.

This is new territory for BP, too. We are not perfect. We are learning as we go along.

Obviously, the Prevailing Legal Regime is not a 100% consistent uniform piece of contract. It is too complex to be anything else.

What makes the BTC Project different from some other projects is the level of transparency in the legal arrangements and the commitment to adhere to international best practices. The Prevailing Legal Regimes provides stable legal protection for all stakeholders in this project. We have listened to constructive criticism and have worked with international organisations and NGOs to improve the legal framework.

This is a breakthrough. We at BP believe it is also a benchmark for future projects of this nature.

Thank you.