

## BARONESS SARAH LUDFORD

LIBERAL DEMOCRAT MEP FOR LONDON

Mr Peter Woicke,  
Executive Vice-President,  
International Finance Corporation,  
1818 H St. NW,  
Washington DC, USA

29 October 2003

Dear Mr Woicke,

Re: Proposed Baku-Tbilisi-Ceyhan (BTC) oil pipeline project.

I am writing to express my deep concern about the human rights, environmental and social implications of the proposed BTC pipeline project, and to urge a delay in the potential granting of public funding to it at least until such time as the project fully meets its own World Bank funding criteria and legal clarity is reached over the project agreements.

Of particular concern is the nature of the legal contracts for the project - the Host Government Agreements (HGAs) for the three host countries. As you know, the HGAs override all competing domestic legislation relevant to the pipeline (except for the Constitution), effectively handing control over the environmental, social and security impacts of the pipeline to foreign multinationals. In the process the governments of the three countries are deprived of their capacity to ensure the welfare of their citizens. The HGAs also contain numerous clauses which give rise to grave concern; for example, the 'stabilisation clause' regarding payment of compensation to the BTC consortium in the event of new laws being introduced that adversely affect the profitability of the project. This has the potential to have a "chilling effect" on the State's adherence to human rights standards.

While BTC Co. has taken steps towards rectifying the worst excesses of the HGAs with its recent Deed Poll, legal opinion continues to cast serious doubts on its efficacy. In particular the fact that the Deed Poll is not binding upon host governments, the continuing uncertainty over third party rights and the failure to waive the 'stabilisation clause' with regard to third party claims, and continuing concerns over virtually unlimited security powers suggest that the Deed Poll still does not do enough to protect the rights of affected people.

The existence of the HGAs, drawn up largely by teams of corporate lawyers in Washington and London, could be regarded as a potentially dangerous extension of corporate control over the legislation of autonomous national entities. Moreover, the

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Turkish HGA appears to constitute a clear violation of the terms of Turkey's Accession Partnership with the European Union, which requires Turkey to observe the Copenhagen criteria in its domestic legislation as part of the process of convergence with the *acquis communautaire*. By ceding sovereignty in such wholesale fashion, Turkey seems clearly to move away from the *acquis*, rather than towards it. There is therefore the very real possibility that rather than help Turkey's development, as BTC Co. suggests it will, the BTC project may in fact imperil Turkey's accession to the European Union.

A formal legal submission has been lodged with the European Commission on these grounds, which the Commission has pledged to investigate in its next report. MEPs will also be following up these allegations. I also note that this is only one of two high-level formal complaints against the BTC Project as yet unresolved. The other - that the HGAs conflict with the OECD's Guidelines on Multinational Enterprises on at least five major criteria - has been admitted as eligible by the OECD national contact points in five countries and is currently being assessed. Again, it is clearly unacceptable to grant public money to the BTC project while major investigations against it are pending.

Numerous reports by prominent NGOs have criticised the design and implementation of the BTC project. For instance, the Baku-Ceyhan Campaign (BCC), a coalition of more than eighty NGOs from over twenty countries, recently issued a review of the project's Environmental Impact Assessment. The review identifies at least 173 partial or total violations of mandatory applicable standards, including World Bank and EBRD operational policies, European Commission Directives and, potentially, host country law.

It seems apparent that much work remains to be done before the BTC project can legitimately be thought of as a viable candidate for the granting of public funds. Additionally, if the IFC is to retain its capacity to exert a beneficial influence over the conduct of the BTC project, it is imperative to resist external pressure for a rapid conclusion to the funding process and demand major rectification of existing failures before the granting of funds.

I therefore call upon the IFC and EBRD at the very least to delay the provision of public funds to the BTC oil project until such time as the project fully meets its own World Bank funding criteria, and until significant amendments have been drafted to the project agreements to ensure both that affected people receive their full rights and that the project is no longer in danger of violating international or local law or other international obligations of the three host countries, such as Turkey's Accession Partnership with the EC. I look forward to hearing from you.

Yours sincerely,

Baroness Sarah Ludford MEP