

Response of Azerbaijan in respect of Armenia's submission relating to the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (the "Convention")

Question 1: Please, provide a brief, but complete, description of the projects mentioned in Armenia's submission, including their location on map, and the official names of the projects mentioned in Armenia's submission?

Pursuant to Armenia's submission dated 31.08.2011 the following projects were indicated as allegedly having transboundary effect on it: Azeri-Chirag-Guneshli, Shah Deniz, Baku-Novorossiysk pipeline, Baku-Tbilisi-Ceyhan pipeline, South-Caucasus pipeline and Sangachal oil terminal.

Agreement on the Development and Production Sharing for the Azeri and Chirag fields and the Deep water portion of the Gunashli field in the Azerbaijan Sector of the Caspian Sea (hereinafter "**ACG PSA**"). The ACG PSA between SOCAR, BP, Unocal, Lukoil, Statoil, ExxonMobil, TPAO, Devon Energy, Itochu and Amerada Hess was signed on September 20, 1994 and ratified by the Parliament of Azerbaijan on December 1994. The ACG PSA has the power of law on the territory of Azerbaijan. The project is being successfully realized without any negative impact on environment.

Agreement on the Exploration, Development and production sharing for the Shah Deniz prospective Area in the Azerbaijan Sector of the Caspian Sea (hereinafter "**Shah Deniz PSA**"). The production-sharing agreement on exploration, development and production of **Shah Deniz** gas filed between SOCAR, BP (operator), Statoil, LukAgip, TotalFinaElf, OIEC of Iran and TPAO was signed on June 4, 1996 and ratified by the Parliament of Azerbaijan on October 17, 1996. The Shah Deniz PSA has the power of law on the territory of Azerbaijan. The project is being successfully realized without any negative impact on environment.

Baku-Novorossiysk pipeline- North Route Export Pipeline (NREP). NREP in the same "Early Oil" project has been reconstructed to pump the first oil from Chirag field to Novorossiysk. The relevant contract for the transportation of Azerbaijani oil via Russia to the Black Sea port of Novorossiysk was signed on 18 February 1996 between the Azerbaijan International Operating Company ("**AIOC**"), SOCAR and Transneft (a company based in Russia) and the transportation started on 25 October, 1997. This pipeline was initially constructed and operated in the Soviet period and later was reconstructed. The route is It expands on the coast of the Caspian Sea.

Baku-Tbilisi-Ceyhan pipeline (hereinafter "**BTC**"). The project was proposed and the route of the transportation of oil from ACG PSA to Mediterranean sea was finally defined pursuant to Ankara Declaration dated October 29, 1998 signed by leaders of Azerbaijan, Turkey, Georgia, Kazakhstan, Uzbekistan and the USA as a witnessing Party. The BTC was designed, built and operated in accordance with relevant host governments and intergovernmental agreement where the aspects environmental protection were approved by leading international organizations.

Baku-Tbilisi-Arzrum Gas Pipeline- South Caspian Pipeline (hereinafter "**SCP**"). SCP is a natural gas pipeline from the Shah Deniz gas field in the Azerbaijan sector of the Caspian Sea to Republic of Turkey. It runs parallel to the BTC. The SCP is owned by a set of companies (the "**SCP partners**"). BP is the largest stakeholder in the project and is leading the design and construction phase of the project. Other SCP partners currently include the State Oil Company of the Azerbaijan Republic (SOCAR), Statoil, TPAO, LUKAgip NV, Total-FinaElf and NICO.

The SCP partners bear responsibility for construction and operation of the proposed pipeline in both Azerbaijan and Georgia.

The **Sangacal terminal** is not a separate project as such but is envisioned under the related to the ACG PSA. The construction of the Sangacal terminal began in 1996 in relation Early Oil Project under the ACG PSA which foresaw construction of pipelines, including but not limited, to Novorossiysk. Oil was first exported from the Sangacal terminal in October 1997.

Relevant maps are attached to this document.

Question 2: Please indicate whether each of the projects mentioned has been subject to national EIA and transboundary EIA procedures, and if yes, please describe briefly each of these procedures.

Appropriate international environmental standards, in particular, standards of the World Bank (WB) and the International Finance Corporation (IFC) on implementation of documentation of environmental and social impact assessment (ESIA) were applied to each of the projects mentioned.

Each of the ESIA document related to the development, exploration, exploitation, storage and transportation of oil and gas after 1999 includes a section on the potential transboundary impact of each project. Environmental and social impact assessment for these projects, as well as monitoring program (post-project analysis) had been developed and implemented by the recognized and leading international companies with a good reputation and experience in the oil and gas industry around the world, such as Woodward Clyde International (UK branch), Dames & Moore, Det Norske Veritas (Norway), RSK (UK), AETC - Azerbaijan branch of RSK (UK) and others.

EIA procedure has been applied for each of the mentioned projects. All these EIA procedures reflected the requirements of the Appendix II of the Convention (Content of the Environmental Impact Assessment Documentation) and were conducted in accordance with the requirements of the IFC. Compliance of the EIA procedures with environmental safety is annually approved by the environmental audit of the mentioned projects. EIA's of the mentioned projects include the mandatory public consultation and the participation of environmental NGOs. Pursuant to EIAs, the public was notified at the earliest stage of the project developments. The preliminary version of EIA was provided to the public 60 days prior to the official submission of the document to the shareholders. Information on public participation in regard to the mentioned pipelines was posted in official publications in Azerbaijani, Russian and English. During the involvement of the public, the latter had a number of meetings with the shareholders of the mentioned projects.

Local residents of the states-parties to the mentioned projects were informed about the planned public consultations through mass media and posters along the routes of the pipelines. Deadline for submission of comments and suggestions regarding each project was 60 days after the placement of the relevant EIA documentation on the corporate website of BP (the operator / shareholder of the mentioned projects), at central libraries, universities, local executive branch offices and at the offices of BP. Brochures were prepared and distributed among the population with non-technical summary on the project.

Construction projects of the pipelines were financed by the internationally recognized financial organizations, including WB and European Bank for Reconstruction and Development (EBRD). ESIA documentation was reviewed by the experts of these organizations, and they have not

noticed any transboundary effect on Armenia and provided financing for the implementation of the mentioned projects.

Please find below the internet links in regard to extensive EIA's conducted in respect of major oil and gas projects:

Agreement on the Development and Production Sharing for the Azeri and Chirag fields and the Deep water portion of the Gunashli field in the Azerbaijan Sector of the Caspian Sea:

ACG Environmental Impact Assessment Phase 1

<http://www.bp.com/genericarticle.do?categoryId=9006658&contentId=7013335>

ACG Environmental Impact Assessment Phase 2

<http://www.bp.com/genericarticle.do?categoryId=9006659&contentId=7013347>

ACG Environmental Impact Assessment Phase 3

<http://www.bp.com/genericarticle.do?categoryId=9006660&contentId=7013409>

Agreement on the Exploration, Development and production sharing for the Shah Deniz prospective Area in the Azerbaijan Sector of the Caspian Sea

Shah Deniz Environmental and Socio-Economic Impact Assessment Report for Stage 1, August 2002 <http://www.bp.com/genericarticle.do?categoryId=9006662&contentId=7014175>

Shah Deniz Environmental and Socio-Economic Impact Assessment Report for Stage 2 (Infrastructure Project), 2011,

<http://www.bp.com/sectiongenericarticle.do?categoryId=9039185&contentId=7071810>

Baku Tbilisi Ceyhan (BTC)

Baku-Tbilisi-Ceyhan Environment Impact Assessment Azerbaijan Section December 2002;

http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/xyz/BTC_English_ESIAs_Azerbaijan_Content_Technical_Appendix_BTC_ESIA_Tech_A-cial_Issues.pdf

Baku-Tbilisi-Arzurum Gas Pipeline- South Caucasus Pipeline

<http://subsites.bp.com/caspian/CAU/Eng/esia1/Stmnt/chp06.PDF>

Question 3: When were the final decisions concerning the projects mentioned in Armenia's submission taken? Please note that in the view of the Implementation Committee, the final decision is, in accordance with article 6 of the Convention, the decision that "in real terms sets the environmental conditions for implementing" the projects.

Considering that all the mentioned projects, except for South Caucasus Pipeline, were proposed and necessary documents (declarations, agreements, host government and intergovernmental agreements) were signed before Azerbaijan ratified the Espoo Convention, therefore pursuant to the legislation of Azerbaijan signing of Production Sharing Agreements (PSA's) between the international consortiums and the Azerbaijan Republic is considered to be the "Final decision" for the proposed projects from both legal and environmental point of views. All the PSA's have appropriate extensive provisions on further development of rules and policies in regard to sustainable protection of environment. It should be also noted that the comprehensive information in regard to all environmental regulations can be found in the text of relevant documents, which can be found at the websites provided herein.

In case of South Caucasus Pipeline (the decision was made early in 2002), Azerbaijan fairly assumed that this outstanding project was not likely cause a significant adverse transboundary impact on Armenia. The assumptions of Azerbaijan were proved and confirmed pursuant to a number of EIA conducted in compliance with requirements of national EIA and transboundary EIA procedures. The details of EIA can be found on the official website of BP given in the answer to the above Question 2.

Question 4: Please provide copies of the final decisions, together with their English translations, and the exact dates of the approval of the final decisions?

It should be noted that all final decisions were made in texts of documents submitted to execution by the parties having relevant authorities (PSA's, declarations, intergovernmental agreements and etc.)

The final decisions along with the dates (texts of the PSA's and relevant agreements) can be found on the following website:

<http://www.bp.com/sectiongenericarticle.do?categoryId=9029334&contentId=7053632>

The Ankara Declaration of 29.10.1998 on final decision regarding the BTC is attached hereto.

The dates of final decisions can be found in the Chart attached hereto.

Question 5: Please comment the following references included in the information Armenia provided to the Committee on 15 June 2012 (Note Verbale and its annexes, received further to the Committee's request of 25 April 2012 for additional information) regarding:

(a) Azerbaijan's responses to the question no. 46 of the 2003-2005 and 2006-2009 Questionnaires for the Implementation of the Convention,

Question 46: "Are there projects [...] for which a transboundary EIA procedure should have been applied but was not? Explain why" Azerbaijan responded to that question: "There are such projects. Due to the lack of bilateral and multilateral agreements with the neighboring states, the procedure has not been carried out. The majority of the countries are not Parties to this Convention." The same pattern of responses is noted in Questionnaire for 2006-2009.

The response of Azerbaijan mentioned above, reflects the projects of Shah Deniz Phase 2 and Azeri-Chirag-Gunashli Phase 3, which were and still is at the stage of initial development and have not been implemented yet.

It was revealed that implementation of the above-mentioned projects could cause transboundary environmental impact only on 2 of the neighboring countries, namely Turkmenistan and Iran, which are not parties to the Convention.

Please specify in a precise way what else should be commented as part of answer to the above question.

(a) The information provided by British Petroleum in its Public Consultations and Disclosure Plan?

In 2005, British Petroleum organized Public Consultations and Disclosure Plan¹ and in conclusion it is clearly stated, that:

“Azerbaijan joined the Convention in 1999. The main objective of the Convention is to promote environmentally sound and sustainable economic development through the application of environmental impact assessment, especially as a preventive measure against transboundary environmental degradation. Under the terms of this Convention, Azerbaijan is required to notify other states if there is a potential impact upon their environment resulting from a development on the territory of Azerbaijan including its waters.

Although the Convention does not specifically deal with public participation in environmental decision-making, it provides the requirement for a country conducting a proposed activity to provide an opportunity to the public of a country (ies) likely to be affected to participate in the process of environmental impact assessment regarding the proposed activity.

The Espoo Convention is only applicable if both the party conducting a proposed project and the affected party have ratified the Convention. Currently Armenia is the only Caucasus state that borders with Azerbaijan by land, and Kazakhstan is the only Caspian state that borders with Azerbaijan by water that has ratified the Espoo Convention. As per the Convention, Azerbaijan should notify Kazakhstan and Armenia about the proposed project as soon as possible and no later than informing its own public. This notification should include information about the proposed project. Armenia and Kazakhstan will be expected to respond to this notification indicating whether they wish to participate in the environmental impact assessment process. Should these countries wish to participate, Azerbaijan will ensure that the public of these countries be provided with the opportunity to participate in the EIA process equivalent to that provided to the public of Azerbaijan”.

(¹ Page 16, Espoo Convention on Environmental Impact Assessment in a Transboundary Context,” Public Consultation and Disclosure Plan/ Azerbaijan, South Caucasus Pipeline Company, April 2003 http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/xyz/BTC_English_PCDPs_Azerbaijan_Content_Az_PCDP_Final_A-3_no_photos.pdf)

The South Caucasus Pipeline EIA did not identify any transboundary effects of the construction and operation of the pipeline in relation to Armenia. In accordance with Article 3.1 of the Convention for a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party *which it considers may be an affected Party* as early as possible and no later than when informing its own public about that proposed activity.

We believe that there was no any reasonable ground for considering Armenia as an affected Party in relation to implementation of the Projects in the Republic of Azerbaijan under Article 3.1 of the Convention and therefore, Azerbaijan did not consider itself obligated to notify Armenia about the Projects and involve Armenia in preparation of environmental impact assessment process.

¹ Page 16, Espoo Convention on Environmental Impact Assessment in a Transboundary Context,” Public Consultation and Disclosure Plan/ Azerbaijan, South Caucasus Pipeline Company, April 2003 http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/xyz/BTC_English_PCDPs_Azerbaijan_Content_Az_PCDP_Final_A-3_no_photos.pdf

We believe that a Party [Republic of Armenia] claiming to be an affected party under the definition of the Convention could have proved beyond reasonable doubt and provide reasonable justification to the party of origin [Republic of Azerbaijan], that it would have been reasonably affected by potential significant impact of the activities listed in the Appendix 1 of the Convention.

This assertion is supported by the definition of “affected party” under Article 1 (iii) of the Convention which provides that “Affected Party” means the Contracting Party or Parties to this Convention likely to be affected by the transboundary impact of a proposed activity”. Accordingly, we would like to reiterate that “likely transboundary impact” of a proposed activity shall be proven by an allegedly affected Party with the higher standard of “beyond reasonable doubt” supported by all internationally recognized relevant documentations and data, rather than statement of speculative assumptions.

Hence, we strongly believe that there should be a heavy burden of proof on a Party claiming to be an affected Party under the Convention. Otherwise, the Convention may be interpreted by some countries signatory to the Convention in bad faith and as a result, major development projects within the meaning of Appendix 1, may be potentially hindered and the purpose and objectives of the Convention would be defeated.

Question 6: Has Azerbaijan notified other parties to the Convention in relation to any of the projects mentioned in Armenia’s submission?

Azerbaijan has not notified other Parties to the Convention about the projects, based on the decision that there is no transboundary impact.

Ankara Declaration

Ankara, October 29, 1998

The President of the Republic of Azerbaijan Heydar Aliyev, The President of Georgia Eduard Shevardnadze, The President of the Republic of Kazakhstan Nursultan Nazarbayev, The President of the Republic of Turkey Suleyman Demirel, The President of the Republic of Uzbekistan Islam Karimov signed this statement estimating the possibilities of the exploration and the production of oil and gas supplies in their countries and safe transportation of these supplies by means of several pipelines to the World Market, and taking into consideration the necessity of making decisions on these issues without being postponed.

1. The Presidents consider that the exploration of the carbon-hydrogen supplies of their countries is very significant for strengthening the independence and security of the Caspian Region countries and the neighboring countries. They also affirmed the necessity of the guarantee of the economic growth, and the transportation of the Oil and natural gas by means of pipeline which are very beneficial from the economic and commercial point of view to improve the lives of the nations. The Presidents then affirmed their loyalty to the principles of the European Energy Charter demanding the transportation of the carbon-hydrogen supplies, freely, constantly without hindrance and according to the conditions appropriate to the protection of the Environment.

2. The Presidents, taking into consideration the interests of the oil producing countries, noted that from the commercial point of view, the establishment of the East-West corridor, which is acceptable and just and does not allow the discrimination, and as well as the the establishment of the Caspian Pipeline Company and Transcaspian and Transcaucasian Pipelines systems, is the utmost important project guaranteeing the appearance of the carbon-hydrogen exported in the Caspian Region countries and other neighboring countries.

3. The Presidents decisively stated on the eve of coming to a decision that they have firmly decided to choose the Caspian-Mediterranean Sea/Baku-Tbilisi-Ceyhan Pipeline project into the main export project.

4. They noted the necessity of the openness of the Pipelines, as well as the provision of these pipelines with the necessary amount of product for both the oil producing countries and the transit countries situated on the both costs of the Caspian Sea. For this purpose the Presidents invited the companies participating in exploration the carbon-hydrogen supplies of the Caspian region, other connected companies and international financial institutions to hold detailed and constructive negotiations with the appropriate governments, to provide with useful conditions for the establishment of the Pipelines and to guarantee the provision of the necessary finance.

5. The presidents loaded themselves with responsibility that they would give necessary instructions to their government bodies as soon as possible to establish the East-West energy corridor and also, in this framework, the Baku-Tbilisi-Ceyhan Pipeline, according to the international laws on the protection of the rights of the foreign and local investors who work on the projects about the transportation of the energy supplies to the world markets.

6. The Presidents once more stressed the necessity of making efforts to protect the costs of the Black Sea and Mediterranean Sea, as well as the Straits of Turkey.

The presidents also noticed that, the transportation of the oil and natural gas to the World Market mustn't create any danger and disturb the Environment, the lives of people, their property and safe navigation, taking into consideration the potential increase of tanker navigation especially in the Straits of Turkey.

On behalf of the Republic of Azerbaijan – Heydar Aliyev

On behalf of Georgia – Eduard Shevardnadze

On behalf of the Republic of Kazakhstan – Nursultan NAzarbayev

On behalf of the Republic of Turkey – Suleyman Demirel

On behalf of the Republic of Uzbekistan – Islam Karimov

As a witness – Bill Richardson, the Secretary of Energy of the USA

Name of Project	Date of execution (decision)	EIA	
1. Azeri-Chirag-Deepwater Guneshli	September 20, 1994	ACG Environmental Impact Assessment Phase 1 http://www.bp.com/genericarticle.do?categoryId=9006658&contentId=7013335 ACG Environmental Impact Assessment Phase 2 http://www.bp.com/genericarticle.do?categoryId=9006659&contentId=7013347 ACG Environmental Impact Assessment Phase 3 http://www.bp.com/genericarticle.do?categoryId=9006660&contentId=7013409	No transboundary effect on Armenia was revealed
2. Shah Deniz	October 17, 1996	Shah Deniz Environmental and Socio-Economic Impact Assessment Report for Stage 1, August 2002 http://www.bp.com/genericarticle.do?categoryId=9006662&contentId=7014175 Shah Deniz Environmental and Socio-Economic Impact Assessment Report for Stage 2 (Infrastructure Project), 2011, http://www.bp.com/sectiongenericarticle.do?categoryId=9039185&contentId=7071810	No transboundary effect on Armenia was revealed
3. Baku-Novorossiysk pipeline	February 18, 1996		No transboundary effect on Armenia was revealed
4. Baku Tbilisi Ceyhan Pipeline	October 29, 1998 Ankara declaration	Baku-Tbilisi-Ceyhan Environment Impact Assessment Azerbaijan Section December 2002; http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/xyz/BTC_English_ESIAs_Azerbaijan_Content_Technical_Appendix_BTC_ESIA_Technical_Issues.pdf	No transboundary effect on Armenia was revealed
5. Sangachal terminal	1996-1995 Oil was first exported from the Sangachal terminal in October 1997		No transboundary effect on Armenia was revealed
6. South Caucasus Pipeline	Early 2001 (number of intergovernmental agreements were signed)	http://subsites.bp.com/caspian/CAU/Eng/esia1/Stmnt/chp06.PDF	No transboundary effect on Armenia was revealed