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Rethinking Multinational Corporate Governance in Extractive Industries

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Rethinking Multinational Corporate Governance in Extractive Industries: The Caspian Development Project and the Promise of Cooperative Governance

ABSTRACT

The oil and natural gas reserves under the Caspian Sea have sparked the interest of international investors and oil firms. The political, economic, and social turmoil in the five countries bordering the Caspian Sea, however, pose significant challenges for effective regulation of multinational interaction with the five Caspian states. A joint-effort approach to regulation involving the World Bank, multinational enterprises, and the individual Caspian states' governments poses the most functional and efficient means of instituting international oversight. Such a tripartite structure connects the fortunes of all the parties and provides safeguards against default by any single entity. A mutually beneficial relationship may be established whereby Caspian states benefit from receiving loans at below-market interest rates and establishing sound relationships with multinational enterprises and developed economies. This tripartite structure promotes accelerating the sustained development of the Caspian states while introducing international norms of corporate behavior. This Note addresses the benefits, challenges, and potential that this joint-effort approach to regulation of multinational enterprises holds for the Caspian region.

TABLE OF CONTENTS

I. INTRODUCTION

Perhaps no issue in international business excites the passions of multinational enterprises, environmentalists, and human rights activists as much as oil and gas exploration and development. The five Eurasian countries bordering the Caspian Sea (Russia, Kazakhstan, Azerbaijan, Turkmenistan, and Iran) lie at the center of a global energy focus and are attracting interest from multinational oil and gas firms.[1] Long isolated from first-world economies during the Soviet era, the Caspian states, except Iran, now stand on the verge of a major energy development that promises to bring widespread economic and derivative social benefits to their economies and societies from these oil and natural gas reserves, thanks to the Caspian Development Project (CDP).[2]

There is currently no single unified effort among the five Caspian states to develop the oil and natural gas resources in the Caspian seabed.[3] Rather, each state is considering separately developing these resources, to varying degrees, with domestic entities, multinational enterprises, and foreign governments. The term CDP, therefore, is employed in this Note to describe the overall development efforts of the five Caspian states relating to oil and natural gas, and it should not be confused with an overarching, unified development project.

Experts predict that by 2010, the countries of the Caspian Sea region will produce between three and 4.7 million barrels of oil a day, a total exceeding the annual production of South America's largest oil producer, Venezuela.[4] Estimates for natural gas output are even more optimistic, and many experts predict that the region has the potential to produce quantities of natural gas comparable to that of Saudi Arabia.[5] Given the vastly lucrative potential of the Caspian region in these natural resources, it is easy to see why multinational enterprises (MNEs) have been pressing the various Caspian governments for involvement in developing these assets.

MNE investment in the Caspian region's oil and gas reserves poses mutually beneficial prospects for both multinational businesses and local governments alike by solidifying the economic stability in this region. But, MNE involvement also accentuates the problematic gap between profits and economic principles that, to a large degree,

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1. *See generally* United States Energy Administration, Country Analysis Briefs: Caspian Sea Region, *available at* http://www.eia.doe.gov/emeu/cabs/caspian.html (last visited Jan. 24, 2005).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*

characterizes relations between private sector business interests and national governments in the former Soviet states. Specifically, the Caspian states, to varying degrees, have struggled with the implementation of democratic reforms, such as income distribution, human rights laws, and environmental protection. MNEs' combined motivations for quickly maximizing profits and for a quick infusion of capital, jobs, and corporate connections to first-world economies thus create many incentives for shortcuts to be taken in establishing development projects.

Given these pressures, what oversight, if any, is needed to ensure that MNEs appropriately balance their own profit realization with the sustained development of the host countries? This Note suggests that internal oversight by MNEs alone is insufficient to properly safeguard the interests of the citizens of the Caspian states. Similarly, adopting a solely laissez faire attitude toward MNEs and the respective Caspian governments in joint development projects in extractive industries leaves open too great a possibility for corruption and exploitation of the general populations by political elites. Since the Caspian states lack fully democratic legal and social structures, MNEs should be required not only to coordinate their development activities with the Caspian governments, but also to conform with some form of international regulation over MNE behavior. The non-renewable nature of oil and gas reserves makes international oversight imperative to ensure that the long-term well-being of the various states' citizens and their environmental surroundings are not compromised by MNEs' and current Caspian governments' desires for quick profits.

The success of multinational investment in the oil and gas sectors of the Caspian region depends upon the fulfillment of four criteria. First, entire fairness must be enforced in both the substantive and procedural dimensions of the awarding and structuring of development contracts. Second, guidelines must be established to ensure that funds derived from the CDP are properly distributed among the general populations to further their welfare. Third, labor standards should be adopted that impose requirements upon MNEs to employ as many local workers as possible and to ensure that working conditions meet the standards imposed upon similar projects in first-world economies. Finally, environmental accountability must jointly be borne by MNEs and host nations to ensure that the long-term environmental integrity of this area is not compromised during the CDP. Thus, this Note purports that international oversight is needed to adequately promote sustained socioeconomic development.

A new, non-traditional, and likely controversial form of international oversight would best promote the four goals above. This Note advocates that the World Bank Group (hereinafter, Bank) is the appropriate institution to conduct this oversight. The Bank's current financing scheme, however, must be rethought if it is to hold the Caspian states accountable for their loans.[6] Rather than granting loans directly to Caspian states, the Bank should work in tandem with MNEs when structuring loans for the CDP. Under this revised system, the Bank would grant loans to MNEs instead of the Caspian states. There are a number of benefits to this revised financing structure. First, the net amount of capital available for financing various CDP initiatives would approximate the amount that would be available under traditional Bank financing schemes. Second, the Bank should have recourse against loan defaults by pursuing legal actions against defaulting MNEs in their respective countries of incorporation. Third, in the case of the CDP, which centers upon the extraction and development of lucrative natural resources, MNEs should be permitted to seek collateral from the respective Caspian states in the form of ownership of certain "fields" or development blocks. Under this scheme, the Caspian states would still be responsible for paying to the MNEs the amount of the loan that the MNEs received from the Bank. Coupling the interests of the MNEs and host countries in this manner would provide a powerful incentive for each side both to honor its obligations to the other and to pursue development with the utmost zeal. Most important, however, is that this structure would allow the Bank to condition loans to the MNEs upon fulfillment of the four essential development criteria mentioned above. Under this structure, the twin goals of multinational corporate governance and the sustained development of the Caspian states will be promoted.

Part II of this Note explores the current economic and political conditions in the Caspian region. Part III examines the challenges and suggested reforms for existing political and economic conditions in these states. Part IV addresses the issue of the legal status of territorial boundaries of the Caspian Sea. Part V proposes the importance of international oversight of multinational corporate involvement in the CDP. Part VI studies the financing structure of the World Bank and how it has traditionally operated. Part VII analyzes various models for international oversight and proposes that the joint-effort approach offers the most viable option for international involvement. Part VIII offers final conclusions on this topic.

6. *See generally* The World Bank Group, *available at* http://worldbank.org (last visited Jan. 24, 2005) (explaining current world bank financing schemes).

II. CURRENT POLITICAL AND ECONOMIC CONDITIONS IN THE CASPIAN REGION

A. *Political and Economic Structures*

In examining the various political and economic structures that define the Caspian states, this Note will concentrate on the current receptiveness of each state's governmental and economic apparatuses to foreign investment and multinational involvement in the oil and gas industries. Understanding a government's attitude toward foreign and multinational involvement in the CDP is crucial to understanding how international oversight of such a process can be implemented.

1. Russia

As the former center of the Soviet Union, Russia enjoys several advantages over other Caspian states. Russia's existing infrastructure for oil refining and export capacity, complete with outside sea ports, is far superior to that of the other littoral states given the Russo-centric design of former Soviet economy.[7] Throughout the Soviet period, natural resources were extracted from the outlying Eurasian republics and directed to Russia where refineries would then handle the goods.[8] Russia built more refineries and employed far more workers in this industry than did the other Caspian states.[9] In fact, the development of the Russian infrastructure was advanced at the expense of these other states that never developed the ability to process their own natural resources domestically.[10] Consequently, Russia's economic and social development progressed at a far more rapid rate than that of its Caspian neighbors.[11]

Currently, the Russian government is a federation headed by President Vladimir Putin.[12] With a population of over 144 million people, Russia is the largest and arguably most pro-Western of the Caspian nations.[13] But, many questions still surround Russia's

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7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. The World Bank Group, *supra* note 6.
13. *See* United States Department of Commerce International Trade Administration, Russia Fact Sheet: 2002 Performance- Initial Year-End Data, *available at* http://www.bisnis.doc.gov/bisnis/bisdoc/2002RSFactsheet.htm (last visited Jan. 24, 2005) [hereinafter USDCITA, Russia Fact Sheet] (for statistics concerning Russia's economy).

commitment to privatization.[14] President Putin's arrest of Mikhail Khodorkovsky, the majority shareholder in Yukos, a Russian oil giant, highlighted these uncertainties in the fall of 2003.[15] Foreign investors held their breath again when Putin dismissed the Russian prime minister and entire Cabinet on February 21, 2004, two weeks before the presidential election.[16] Despite questions concerning Putin's commitment to democratic governance, Russia has made efforts to increase the transparency of its economic structure, and its diplomatic correspondence with Western democracies has helped to increase confidence among foreign investors.[17]

Although it experienced a 4.9 percent decrease in GDP in 1998, Russia has otherwise enjoyed a consistent annual increase in its GDP, including a four percent growth in 2002.[18] The United States is the largest foreign direct investor in Russia, having invested $4.3 billion in Russian imported products between January and June of 2003, a fifty-five percent increase over the same period a year prior.[19] Cyprus, the Netherlands, Great Britain, and Germany followed the United States in direct foreign investment in Russia in 2002.[20] Oil was the leading export to the United States in 2002, accounting for forty percent of U.S. imports from Russia.[21] Natural gas, however, was not a major export for Russia.[22]

Russia has put significant effort into developing a more complete registration and licensing scheme for private entities within its borders.[23] In addition, infrastructure improvements are being made in the rail sector to facilitate the transport of goods and resources.[24] In short, while questions exist concerning the current Russian administration's commitment to privatization and the extent to which the state intervenes in economic activity, Russia recognizes the importance of trade with free market economies, and its post-Soviet economic progress reflects this understanding.[25]

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14. *Id.*
15. *The Fallout from Mikhail Khodorkovsky's Arrest*, ECONOMIST, Oct. 30, 2003, *available at* http://www.economist.com.
16. Ryan Chilcote et al., *Putin Fires Premier and Cabinet*, at http://www.cnn.com/2004/WORLD/europe/02/24/russia.putin/index.html (last visited Feb. 22, 2004).
17. *False Calm*, ECONOMIST, Nov. 8, 2003, at 70.
18. *See* USDCITA, Russia Fact Sheet, *supra* note 13.
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. United States Department of Commerce International Trade Administration, *available at* http://www.bisnis.doc.gov/bisnis/country/rusfed.cfm [hereinafter USDCITA].
24. *See* USDCITA, Russia Fact Sheet, *supra* note 13.
25. *And the Owner Is?*, ECONOMIST, Nov. 8, 2003, at 71.

2. Kazakhstan

With a population of 14.8 million people, vast oil and gas reserves, and a government that is relatively friendly to international parties, the Republic of Kazakhstan displays positive indicators for successful integration of the CDP.[26] In 2002, Kazakhstan enjoyed a 9.5 percent growth in GDP, but with gross national income per capita at only U.S.$1,510. With thirty-eight percent of its population living below the national poverty line, the improvement of social welfare programs remains one of the nation's foremost concerns.[27]

Kazakhstan's government is a constitutional republic with a strong executive headed by President Nursultan Nazarbayev.[28] Presidential elections are held every seven years, and President Nazarbayev has been in power since 1991, winning re-election for a second seven-year term in 1999.[29] The Constitution of 1995 concentrates power in the presidency, thus curtailing the power of the judiciary and legislature.[30] Nevertheless, Kazakhstan has expressed continued interest in foreign investment from multinational oil companies, and it seeks to capitalize on international interest in its energy resources.[31]

In 2002, GDP grew a torrid 9.5 percent in Kazakhstan, and 6.3 percent GDP growth was predicted for 2003.[32] Strong GDP growth fueled a budget surplus from 2000 through 2002, but a small deficit was expected for 2003.[33] International optimism in Kazakhstan's economic progress is evidenced by the United States' promotion of the nation to market status as defined by U.S. antidumping law.[34] More encouraging than the numerical indicators, however, are the proactive steps such as the Draft Law of the Republic of Kazakhstan on Investments of 2002 (hereinafter, the Draft Law) and the release of the Caspian Oil Development Plan of 2003 (hereinafter, the Plan).[35] The Draft Law regulates investment relations, defines the legal and economic grounds for encouraging investments, ensures the

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26. USDCITA, *supra* note 23.
27. *Id.*
28. United States Department of Commerce International Trade Administration, Country Commercial Guide Kazakhstan, Fiscal Year 2004 (July 2003), *available at* http://www.bisnis.doc.gov/bisnis/bisdoc/0307KZCCGFY04.htm (last visited Feb. 7, 2005) [hereinafter USDCITA, Kazakhstan].
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. USDCITA, Kazakhstan, *supra* note 28.
35. Azhar Kadrzhanova, *Kazakhstan: Caspian Oil Development Plan*, US Commercial Service Almaty, *available at* www.bisnis.doc.gov/bisnis/bisdoc/0307KZ CaspOilProg.htm (last visited Feb. 7, 2005).

protection of investors' rights, defines the means of state promotion of investments, and establishes the procedure for the settlement of disputes with the participation of investors.[36] While the necessity of such a legal structure for governing investments is obvious, the Plan offers a more detailed account of how the government is promoting oil interests.[37] The Plan is a three-stage project, consisting of an initial stage involving geological exploration work, a second stage centering on the actual development of Caspian reserves, and a final stage focusing on stabilizing production levels.[38] As evidenced by these legal and organizational guideposts, Kazakhstan's commitment to and interest in partnering with foreign investors and multinational oil companies is genuine.[39]

3. Azerbaijan

Azerbaijan is a republic of 8.21 million people that follows a presidential form of government, and its political nature is reflective of its crucial position in the geographic, economic, commercial, and political crossroads of Eurasia.[40] President Heydar Aliyev, although aging and facing some opposition, has been relatively progressive in human rights policy.[41] The country's war against Armenia, in which a cease fire agreement was reached in 1994, led to the displacement of approximately 800,000 Azeri refugees.[42] Since 1999, however, the Azeri government has worked with OSCE Minsk Group, an international body composed of Russian, U.S., and French representatives, to reach a compromise over the return of refugees to Azerbaijan from Nagorno-Karabakh, an internationally unrecognized republic established by Armenian forces.[43]

The economic outlook for Azerbaijan is optimistic, despite its paltry U.S.$710 gross national income per capita, and the fact that fifty percent of its population falls below the national poverty line.[44] The energy sector promises the most potential, with oil and gas

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36. *Id.*
37. Kadrzhanova, *supra* note 35.
38. *Id.*
39. *Id.*
40. United States Department of Commerce International Trade Administration, Country Commercial Guide Azerbajan (2004), *available at* http://www.bisnis.doc.gov/bisnis/bisdoc/0308AJ_CCG2004.pdf. (last visited Feb. 15, 2005) [hereinafter USDCITA, Azerbajan].
41. *Id.*
42. *Id.*
43. *Id.* Nagorno-Karabakh is currently unrecognized as a legitimate territory of Armenia given its establishment via war with Azerbaijan that ended in 1994. *Id.*
44. *See* The World Bank Group, Azerbaijan Data Profile (Aug. 2004), *at* http://devdata.worldbank.org/external/CPProfile.asp?SelectedCountry=AZE&CCODE=AZE&CNAME=Azerbaijan&PTYPE=CP (last visited Feb. 7, 2005).

generating over one-third of the nation's GDP.[45] The Azeri government has been relatively open to foreign investment in its oil industry, and it has consequently set up many production sharing agreements between Azeri oil reserves and multinational oil firms.[46] Of the various oil reserves in the country, the Caspian region has the most potential for oil development.[47] Azerbaijan has made concerted efforts to take advantage of the Caspian's potential.[48] Significant capital, both foreign and domestic, has been invested in developing the offshore potential of Azeri Caspian Reserves.[49] The country has implemented and stayed on track with the IMF's Poverty Reduction and Growth program.[50] In addition to this IMF structural reform program, the Azeri government continues to participate in a Second World Bank Structural Adjustment Program, valued at $60 million, intended to further reforms in public financial management and governance.[51] While the government has a long way to go before attaining economic stability, its willingness to engage in and abide by international economic policies encourages foreign investors and MNEs to become increasingly active in this nation.[52]

4. Turkmenistan

Turkmenistan is a country of 5.8 million people governed by a single party state headed by authoritarian President Saparmurad Niyazov.[53] The National Democratic Party, which succeeded the Communist Party, is currently the only political party in the nation.[54] Relative to the Russian and Kazakhstani governments, the political and governmental structure in Turkmenistan is far less stable.[55] Political analysts fear that members of the Turkmen Parliament are

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45. USDCITA, Azerbajan, *supra* note 40.
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*
50. *See generally* Press Release, International Monetary Fund, IMF Approves US$18 Million PRGF Disbursement to the Azerbaijan Republic and Requests for Waivers of Performance Criteria and Extension of Arrangement (May 15, 2003), *at* http://www.imf.org (last visited Jan. 24, 2005). The Poverty Reduction and Growth program operates in some of the most heavily indebted nations to encourage financial responsibility, poverty reduction and growth in general economic conditions.
51. *See generally* The World Bank Group, *at* http://www.worldbank.org (last visited Jan. 24, 2005).
52. USDCITA, Azerbajan, *supra* note 40.
53. United States Department of Commerce International Trade Administration, Chapter III: Political Environment, *available at* http://www.bisnis.doc.gov/bisnis/country/txChapter_III.htm (last visited Feb. 7, 2005) [hereinafter USDCITA, Political Environment].
54. *Id.*
55. *Id.*

excessively compliant to President Niyazov's demands for fear of being arrested.[56] Human rights groups claim that after a November 25, 2002 coup and assassination attempt on Niyazov, the President had over 100 individuals arrested, beaten, and tortured for information on the incident.[57] In addition, since originally assuming power in 1992, and winning re-election in 1994 and 2002, Niyazov has increasingly used elections as symbols of fabricated support for his policies and has continually eroded the power of the Meijlis (Parliament) and the Halk Maslahaty (People's Council).[58]

Economically, Turkmenistan's natural resources, especially oil and natural gas, make the country an attractive destination for foreign investment.[59] The Turkmen government, because of its need for foreign capital in sustaining its economic welfare, has expressed some interest in foreign investment.[60] But, severe political and economic obstacles currently block infusion of foreign capital.[61] First, governmental instability poses a serious risk to foreign investors.[62] Second, the state has a strong penchant for controlling economic activity as evidenced by the fact that ninety percent of all economic activity is state run.[63] Thus, foreign investors still have legitimate concerns about the expropriation of private foreign property and capital.[64] The government maintains tight control over revenue flow, and fifty-nine percent of the Turkmen populace falls below the national poverty level with a gross national income per capita of U.S.$1,200.[65] Third, Turkmenistan's infrastructure needs to be overhauled, particularly its roads and intercity infrastructure.[66] Similarly, Soviet-era equipment and technology must be replaced or modified with current technology.[67] A restrictive currency scheme is

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56. *See* EurasiaNet, *at* http://www.eurasianet.org/departments/rights/articles/eav112502.shtml (n.d.).

57. *Id.*

58. USDCITA, Political Environment, *supra* note 53.

59. *Id.* The acronym GOTZ is used to abbreviate "Government of Turkmenistan".

60. *Id.*

61. *Id.*

62. *See* The World Bank Group, Turkmenistan Country Brief 2004, World Bank Assistance, *available at*, http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/TURKMENISTANEXTN/0,,menuPK:300741~pagePK:141159~piPK:141110~theSitePK:300736,00.html (last visited Feb. 21, 2005) [hereinafter World Bank Group, Turkmenistan Brief] (The Bank is currently unable to provide new loans to Turkmenistan because of the nation's failure to report its external debt. This is a violation of the Bank's negative pledge clause, and Turkmenistan has not yet met minimum public resource management standards.).

63. *Id.*

64. *Id.*

65. *Id.*

66. USDCITA, Political Environment, *supra* note 53.

67. *Id.*

a fourth concern that dissuades increased foreign investment.[68] Finally, and most adverse to foreign investment, is the lack of "an established rule of law, excessive and inconsistent regulation, and unfamiliarity with international business practices."[69] The unfriendly economic climate of Turkmenistan toward foreign investment stands in opposition to the country's substantial opportunity for developing its oil and gas potential.[70] Consequently, Turkmenistan is in need of legal and economic stabilization both domestically and internationally before it will become an attractive destination for multinational foreign investment.[71]

5. Iran

Iran is a political anomaly among the Caspian states. Iran's peculiarity has engendered great conflict over its treatment of the Caspian Sea's oil potential. Iran maintained its sovereign status separate from the U.S.S.R. throughout the Soviet era. While this allowed the nation to assemble an oil development infrastructure, its government, being founded upon Islamic law, has been in continuous conflict with Western democracies such as the United States since the late 1970s. Iran insists on the validity of treaties signed with the Soviet Union in 1921 and 1940.[72] As such, Iran refuses to recognize bilateral treaties signed between the now- independent Caspian states.[73]

A second major political difficulty surrounding Iran is its marginalized trade status with the United States.[74] In response to a 1995 development deal between U.S. oil company ConocoPhillips and the Iranian government to develop the Sirri oil field, then-U.S. President Clinton issued three executive orders establishing a total embargo on U.S.-Iran trade.[75] The impetus for the embargo was a U.S. response to Iran's support for international terrorism, Iran's undermining of the Middle East peace process, and its pursuit of a nuclear arsenal in addition to the means to deliver such weapons.[76]

68. Turkmenistan: 2003 Investment Climate Statement (July 22, 2003), *available at* http://www.bisnis.doc.gov/bisnis/bisdoc/030722TXICS.htm (last visited Feb. 7, 2005) [hereinafter Turkmenistan].

69. *Id.*

70. *Id.*

71. *Id.*

72. United States Energy Information Administration, Country Analysis Briefs, Iran: Oil- Caspian Sea Region, *available at* http://www.eia.doe.gov/emeu/cabs/iran.htm (last visited Feb. 7, 2005) [hereinafter USEIA, Iran].

73. *Id.*

74. *Id.*

75. *Id.* (specific executive agreement order numbers forthcoming).

76. *Id.*

This sanction remains in place today and limits U.S. multinational activity in Iran in several ways.[77] The first executive order prohibits U.S. companies, but not their foreign subsidiaries, from "supervising, managing, or financing projects relating to the development of Iran's oil and gas resources.[78] The second executive order "established comprehensive economic sanctions on Iran," applicable to U.S. companies, but not their offshore subsidiaries.[79] The third executive order closed off any loopholes that existed where goods were being exported to Iran via third countries.[80]

The Iran and Libya Sanctions Act (ILSA), enacted by the U.S. Congress in 1996, is a third barrier to the development of Iranian oil interests in the Caspian region.[81] The ILSA imposes a secondary boycott intended to make foreign companies choose between doing business with Iran and Libya or doing business with the United States.[82] ILSA also gives the U.S. President the power to impose sanctions on any U.S. or foreign person who after August 5, 1997, "invests $20 million or more in an Iranian project, if the investment directly and significantly contributes to the enhancement of Iran's or Libya's ability to explore for, extract, refine, or transport by pipeline its oil and natural gas reserves."[83] Such sanctions would also apply to any joint-use agreements in the Caspian Sea, and the United States has opposed exchanges of oil with Iran by U.S. companies on a large scale.[84] In practice, ILSA has not been enforced by the United States, as evidenced by the U.S.'s allowance of France's TotalFinaElf, Russia's Gazprom, and Malaysia's Petronas to sign a $2 billion agreement to develop the South Pars oilfield in Iran.[85] Such deference by the United States can be attributed to a desire to avoid conflicts with its European allies.[86] The United States has similarly avoided pursuing ILSA sanctions against ENI (Italy), Royal Dutch/Shell, and BP for agreements these companies have signed with Iran.[87] Nevertheless, ILSA and the embargo of 1995, combined with Iran's opposition to bilateral treaties among other Caspian states, make Iran a problematic partner in Caspian development efforts.[88]

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77. *Id.*
78. USEIA, Iran, *supra* note 72.
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.*
88, *Id.*

As the history above demonstrates, Iran is in a different situation concerning the CDP than the other former Soviet Caspian states. Hence, for the purposes of later analysis, Iran will be treated as an anomaly and will not be included in the general analysis. Nevertheless, Iran is a major player in the Caspian region's oil sector, and thus an understanding of its position is necessary.

III. THE CHALLENGES OF AND SUGGESTED REFORMS FOR EXISTING POLITICAL AND ECONOMIC CONDITIONS

A. *Internal Challenges and Suggested Reforms*

Realizing the maximum benefit from multinational investment in the Caspian's resources will require several reforms from the Caspian states themselves. These reforms must target the following areas: domestic political stabilization, human rights practices, business corruption, and environmental concerns.

Following independence, each of the five Caspian nations pursued different trajectories in reforming its political institutions and organizations.[89] Kyrgyzstan, a non-Caspian state bordering Kazakhstan, has demonstrated the most liberal political climate, undergoing dramatic political change and gaining accession into the World Trade Organization in 1998, thus becoming the first former Soviet state to accomplish this feat.[90] Kazakhstan has been similarly progressive, although the country's evolution toward a more liberal state is more evident in Kazakhstani oil industry economic policies in than in domestic politics.[91] Concentration of wealth in the hands of a few magnates has skewed privatization in a similar fashion to that of Russia's privatization results.[92] Uzbekistan has been much more cautious in reforming its political process than either Kazakhstan or Kyrgyzstan.[93] Similarly, Turkmenistan has developed a highly autocratic political state and has made minimal efforts toward reforming the political process.[94] Obviously, Russia is not included in

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89. *See* Richard Pomfret, *Central Asia Since 1991: The Experience of the New Independent States*, OECD Development Centre, Working Paper No. 212 (July 2003), *available at* http://www.oecd.org/dataoecd/23/58/596/227.pdf (discussing each state bordering the Caspian Sea and their developments).
90. *Id.*
91. USDCITA, Kazakhstan, *supra* note 28.
92. *Id.*
93. *Id.*
94. Turkmenistan, *supra* note 68.

this analysis, as its political structure was at a far more developed stage in 1991.[95]

1. Domestic Political Stabilization

Given the varying degrees of stability and democratization in the various states, what incentives exist for the Caspian states to increase democratic participation in their governments? The purported benefits of democratic governance are twofold. First, democratic support for a given leader strengthens that leader's mandate and legitimacy. This is essential to a leader's ability to formulate and implement new policies. Having popularly elected leaders adds a degree of legitimacy from the perspective of foreign parties as well. Second, perceived legitimacy will likely result in greater trust from multinationals and foreign governments to enter into contracts and deals with these central Asian governments. Of course, getting the current leaders to agree to reforms that may very well lead to them losing a firm hold on political power will doubtlessly be a significant challenge.

Russia's sociopolitical reforms have been the most documented among these states. Putin received 62.9 percent of the popular vote on March 15, 2004, winning re-election to another term as President.[96] Moreover, Moscow's continued dialogue with Western democracies gives its economic and political reforms greater transparency and higher visibility than its fellow littoral states. Kazakhstan, although well on its way to liberalizing its economic and political structures since independence, needs to further engage the populace in the political process.[97] As one of the most progressive nations in Central Asia, Kazakhstan should take the initiative in implementing increased political expression for its citizens.[98] President Nazarbayev of Kazakhstan, despite embracing interaction with multinationals and foreign governments over oil interests, has nevertheless been relatively unchallenged in the domestic political arena.[99] The remaining three states, Turkmenistan, Uzbekistan, and Iran (which for the reasons above are severely restrictive of political expression), lag far behind in terms of political liberalization, and they will likely oppose further democratization indefinitely. But, MNEs engaged in Caspian oil and gas development projects may be able to encourage reform in these countries via economic incentives

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95. *See* USDCITA, Russia Fact Sheet, *supra* note 13 (giving a statistical analysis).

96. *Id.*

97. *See*, USDCITA, Kazakhstan, *supra* note 28.

98. *See generally id.* (illustrating that Kazakhstan is the emerging leader).

99. *See id.* (analyzing Kazakhstan's leaders and their respective roles).

for governmental stability.[100] Domestic political stabilization in all of the Caspian states, therefore, requires increased governmental transparency and democratic reforms that will translate into derivative societal ameliorations.

2. Human Rights

Human rights represents the second major internal "challenge" that Caspian states will face. Institutional reform will have little impact on individuals unless those measures are complemented by human rights initiatives granting civil rights and liberties to the general population.[101] Gender equity is a particularly salient issue, especially in countries such as Iran, Turkmenistan, and to a lesser degree, Kazakhstan, which have all historically marginalized women's rights and equality.[102] Women need to be allowed to participate fully in political and economic activities.[103]

In general, attaining parity with developed economies' worker's rights policies may not be entirely feasible, or (as some might argue) temporarily undesirable, but basic protections need to be granted to workers for long-term growth and stability in the workforce.[104] Hence, each country must address its respective human rights problems if for no other reason than to become more economically productive. Human rights concerns transcend national boundaries, and pressure from MNEs, if properly wielded, could act as an incentive for promoting human rights in the Caspian region.

3. Corruption

A third requisite area of internal reform involves substantially reducing corruption among and between the public and private sectors with regard to business enterprises and investment contracts. Regulating MNE behavior in these states will prove to be an exercise in futility if business corruption persists within these countries. Moreover, for emerging capitalistic economies, it is imperative to establish a regulatory system that investors can trust. Promises to and between governments and businesses need to be kept in order to

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100. *See* United States Department of Commerce International Trade Administration, *available at* http://www.bisnis.doc.gov/bisnis/country/kazakhstan.cfm (n.d.) (linking to each country's commercial and market reports).

101. *See generally* Douglass Cassel, *Does International Human Rights Law Make a Difference?*, 2 CHI. J. INT'L. L. 121, 142-26 (2001) (last visited Feb. 21, 2005) [hereinafter Cassel, *Make a Difference?*].

102. *Compare id.*, *with* Pomfret, *supra* note 89 (connecting the theory to real information about the Caspian Sea countries).

103. Cassel, *Make a Difference?*, *supra* note 101, at 127.

104. *Id.*

inspire the confidence necessary to grow these economies. Domestic legal consequences must be attached to violations of accepted norms of corporate conduct. Russia and Kazakhstan have undertaken some reform in this area, but much needs to be done in all of the littoral states to create corporate codes of conduct that effectively institute compliance.[105]

4. Economic Distribution

The fourth crucial area demanding internal reform is economic distribution, specifically revenue distribution. An unfortunate outgrowth of the rapid demise of the Soviet system was that the newly independent states lacked experience with running a capitalist economy.[106] Since gaining their independence in 1991, many Caspian states have experienced a concentration of wealth among certain individuals while their societies have not enjoyed an overall net increase in income, with many states suffering a decrease in their per capita income.[107] A more egalitarian system of income distribution with a tax system similar to those in place in Western democracies is therefore needed to diminish wealth disparities between the extremely affluent elite and the general population.[108] A more equitable per capita distribution would help to diminish the number of people living below the national poverty line and put disposable income in the hands of more people, thus creating a larger consumer base for the economy.[109]

B. *Extraterritorial Challenges and Suggested Reforms*

Concomitant with the above-mentioned internal obstacles and reforms is the need for an appropriate role for international involvement in the Caspian states. Rather than act as a lording parental figure, international parties, including governments, private enterprises, and non-governmental organizations (NGOs), must respect the sovereignty of the Caspian nations and allow internal reforms to run their course.[110] But, these international parties may

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105. *See* Business and Economy: A Stable Free Market Economy, *available at* http://www.kazakhembus.com/stable_free_market_economy.html (last visited Jan. 28, 2005) (suggesting multiple reform strategies).

106. *See* Pomfret, *supra* note 89, at 18 (analyzing multiple internal policies and procedures).

107. *Id.* at 17, 42, 52.

108. *Id.* at 9, 11, 25-26.

109. *Id.* at 25-26.

110. Elisa Westfield, *Globalization, Governance, and Multinational Enterprise Responsibility: Corporate Codes of Conduct in the 21st Century*, 42 VA. J. INT'L. L. 1075, 1078-79, 1108 (2002).

nevertheless serve an instrumental role in supporting, advising, and incentivizing these nations to institute reforms.[111]

A first obstacle on the road to production is the lack of an adequate infrastructure for exporting oil and natural gas.[112] The Baku-Tbilisi-Ceyhan pipeline represents a major step forward in improving supply networks throughout the region.[113] Despite this improvement, much of the existing infrastructure for these extractive industries is still in need of repair or replacement.[114] Multinational involvement in financing such improvements is a promising solution to this challenge, particularly when coordinated with World Bank financing.[115]

A second point of disagreement between the littoral states concerns which routes to choose for exporting oil and natural gas.[116] Simply put, export routes running through a given nation translate into jobs, revenues, and economic ties to international actors for the host country. All three of these measures would greatly benefit the developing economies of this region. Competition for the routes is heated, and a compromise that can be accepted by all five states, especially by Iran, which has opposed any amendments to its bilateral agreements with the U.S.S.R. from decades past, is needed to promote efficiency in taking these extractive resources to market.[117]

Border disputes between littoral states constitute a third impediment to solidifying sovereignty rights for the littoral states' natural resources.[118] Russia, Kazakhstan, and Azerbaijan signed an agreement over the territorial division of the upper portion of the Caspian Sea in May 2003.[119] Despite this agreement, Turkmenistan and Iran are still withholding their acceptance of a multilateral agreement dividing up the Caspian's resources.[120] Thus, sovereignty rights represent a serious potential for conflict in the region.

Environmental concerns pose perhaps the single most important challenge to the Caspian states in carrying out the CDP.

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111. *Id.*

112. See Pomfret, *supra* note 89, at 31, 32, 35, 41 (generally discussing each Caspian state's infrastructure and reform policies); Energy Information Administration *at* http:// www.eia.doe.gov/emeu/cabs/caspian.html (n.d.).

113. Bretton Woods Project, *available at* http://www.brettonwoodsproject.org/ article.shtml?cmd%5B126%5D=x-126-27515 (n.d.). This pipeline is designed to transport 1 million barrels of oil a day from the Caspian Sea to the Turkish port of Ceyhan. *Id.* Completion of the pipeline is projected for early 2005. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

Understandably, these countries are eager to develop the oil and gas potential of the Caspian Sea. If development is allowed to proceed without sufficient environmental regulation, however, marine life and other ecological dimensions of the Caspian Sea could be jeopardized.[121] Particular emphasis should be placed on each country taking responsibility for its respective environmental obligations. If four of the five littoral states individually institute environmental reforms, but the fifth state imposes no such rules, then it may free-ride off the others' costs.[122] Such free-riding decreases the efficacy of environmental programs and commitment of the other states to continue such programs.[123] Thus, mutually binding environmental policies must be created and enforced among the states.

A final extraterritorial challenge is that diplomatic instability between the respective Caspian region states threatens these countries' ability to agree on a coordinated development plan.[124] This reality also makes foreign investors looking to invest in the development project hesitant to do so.[125] A multifaceted solution is required for this problem, and it is in this arena that multinational corporations should be required to fulfill uniform and predetermined obligations.[126] While internal country-specific stabilization programs are required for reassuring foreign investors and multinational corporations, international actors should, in exchange for the derived economic benefit from the oil and natural gas licenses, be required in turn to reinvest in the respective domestic facets of the Caspian countries.[127] First, compulsory legal standards should be imposed upon multinational corporations to reinvest a determined percentage of their revenues derived specifically from the extraction process back into the country that tendered rights to the resources.[128] International oversight of such standards could be administered by existing international bodies, as will be addressed later in this Note.[129] The outgrowth of such a reinvestment requirement would be threefold. First, political regimes would have an incentive to comply

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121. *Id.*

122. *See generally* Michael P. Vandenbergh, *Beyond Elegance: A Testable Typology of Social Norms in Corporate Environmental Compliance*, 22 STAN. ENVTL. L.J. 55, 99-101 (2003) (an indepth discussion on multiple environmental reforms and their effects).

123. *Id.*

124. *Id.* at 108-09 (advocating the norm of reciprocity).

125. *Id.* at 108.

126. Westfield, *supra* note 110, at 1106-07.

127. *Id.* at 1104-05.

128. For an example of such a recommendation, see generally Somini Sengupta, *The Making of an African Petrostate*, N.Y. TIMES, Feb. 18, 2004, *at* www.nytimes.com/2004/02/18international/africa/18CHAD.html (last visited Feb. 20, 2005).

129, For a detailed explanation, see analysis *infra* Part VII.

with the regulations in order to gain international legitimacy.[130] Second, the distribution of new income would bolster the emerging and often struggling economies of the Caspian states.[131] Finally, portions of the fund could be directly tied to social improvement programs such as health care, education, job training, and other reforms designed to increase the welfare of the population as a whole.[132]

These five obstacles, while significant, are nothing more than temporary impediments that can realistically be overcome within a relatively short amount of time, perhaps within five to ten years.[133] First, construction of new and additional refineries within the respective Caspian states will improve infrastructure shortcomings on the production side.[134] Maintenance and, where needed, construction of new oil pipelines will serve the same purpose.[135] Second, a consensus among the Caspian states must be reached over designated export routes.[136] Such routes must necessarily address issues of sovereignty and compensation dependent upon a respective state's role in the exportation process.[137] Similarly, the third objective of conclusively establishing defined borders must be established in order for the second objective to be successfully implemented.[138] Environmental integrity needs to be protected through effective regulation of extraction procedures. Finally, refined diplomatic relations must be established to ensure that these challenges are conquered by cooperative solutions. Accomplishing these reforms will require time and flexibility in implementation, but if they are successfully instituted, significant progress can be made toward realizing the many benefits that the Caspian's natural resources promise these countries.

The suggested internal and external reforms are interdependent in that progress exclusively in one arena will not alone be enough for the Caspian states to achieve their economic potential. Thus, social progress needs to evolve contemporaneously with economic development to establish a stable and effective structure with which to develop this industry.

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130. *Id.*
131. *Id.*
132. *Id.*
133. *See* United States Energy Information Administration, Caspian Sea Region: Legal Issues, *available at* http://web.archive.org/web/20030803090435/http://www.eia.doe.gov/emeu/cabs/casplaw.html (last visited Feb. 20, 2005).
134. *Id.*
135. *Id.*
136. *Id.*
137. *Id.*
138. *Id.*

IV. THE LEGAL STATUS OF THE TERRITORIAL BOUNDARIES OF THE CASPIAN SEA

A. *Treatment of Oil Rights During the Soviet Period*

Before the dissolution of the Soviet Union, the Caspian Sea's seabed and subsoil resources were, in the view of the U.S.S.R., open only to the Soviet Union and Iran. In 1940, a Soviet-Iranian treaty stipulated that each party had "an exclusive right of fishing in its coastal waters up to a limit of 10 nautical miles."[139] In addition, the treaty provided that ships from Iran and the U.S.S.R. were to enjoy a right of free and equal navigation throughout the Caspian Sea.[140] Impliedly, all other nations were barred from navigation or other economic activities on the Caspian Sea, and the U.S.S.R. was emphatic in maintaining this "closed sea" approach.[141] The U.S.S.R. never formally delineated boundaries among its various republics pertaining to their respective shares of the Caspian Sea, but "in practice" petroleum operations were assigned to agencies connected to the various republics on a geographical basis.[142] The areas presently including the Guneshli, Chi Rag, Azeri, and Kapaz fields were "assigned" for exploration purposes to Caspmor Nefgaz, a production agency located within Azerbaijan.[143] Because these fields were developed during the Soviet era, they are currently at a more developed stage than other Caspian fields.[144] Similar development projects were conducted in the waters off the coast of and adjacent to Kazakhstan.[145]

B. *Current Treatment: 1991-Present*

Following the breakup of the Soviet Union, the "de facto boundaries" among the former Soviet republics have been respected by the "successor states," and each state continues to oversee the resources in its de facto maritime territory.[146] Turkmenistan has also tagged its own "block," labeled "Block 1," with boundaries ranging on the west to the eastern boundary of the Azeri fields, further reinforcing the traditional de facto boundary between those two

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139. Scott Horton, *International Law Ownership of the Caspian Seabed, available at* http://www.pbwt.com/Resources/index-newsletter.html (n.d.).

140. *Id.*

141. *Id.*

142. *Id.*

143. *See* U.S. Energy Information Administration (Mar.3, 2004), *available at* http://www.eia.doe.gov/emeu/cabs/caspian.html.

144. *Id.*

145. *Id.*

146. *Id.*

states.[147] Kazakhstan and Azerbaijan have similarly honored Russian rights to its control over the Caspian sector adjacent to its shoreline.[148] Moreover, Lukoil Russian, an oil and gas giant, has begun exploration for hydrocarbons in the Russian sector.[149]

Despite the relatively harmonious relations of the five littoral states following the dissolution of the U.S.S.R., a disagreement arose between Russia, which advocated common ownership, and Kazakhstan, Azerbaijan, and Turkmenistan, all three of which supported delimitation according to an equidistant shoreline formula.[150] Russia's advocacy of common ownership was rooted in simple geography: the Russian shoreline constituted 18.5 percent of the total Caspian coastline, while the Kazakhstani shoreline constituted 30.8 percent of the coastline.[151] The shoreline of the remaining littoral states of Azerbaijan, Iran, and Turkmenistan constituted 15.2 percent, 18.7 percent, and 16.8 percent of the coastline, respectively.[152] Hence, an even twenty percent split among the five states would have increased Russia's share of Caspian resources while dramatically decreasing Kazakhstan's share, thus leading to a far more advantageous economic position for Russia.[153]

The wrangling over how to determine boundaries for the various nations concerning Caspian sovereignty and resources was resolved, at least in part, in May 2003, when Russia, Azerbaijan, and Kazakhstan divided the northern portion of the Caspian Sea into three unequal parts.[154] A median line principle was used in which Kazakhstan received twenty-seven percent, Russia received nineteen percent, and Azerbaijan received eighteen percent.[155] This northern sixty-four percent of the Caspian contains the lion's share of the region's oil reserves, and thus development of this section's hydrocarbon potential has been most heavily emphasized, as evidenced by the number of large international projects within this area.[156] The tripartite agreement and subsequent development

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147. *See* U.S. Energy Information Administration (Jan. 18, 2004), *available at* http://www.eia.doe.gov/emeu/cabs/kazak.html.

148. *Id.*

149. *Id.*

150. *See* U.S. Energy Information Administration (Jan. 18, 2004), *available at* http://www.eia.doe.gov/emeu/cabs/russia.html. An equidistant shoreline formula involves drawing a straight line out from the various points of a country's shoreline out into the water for a fixed distance (i.e. 75 kilometers).

151. *Id.*

152. *Id.*

153. *Id.*

154. *See* U.S. Energy Information Administration (Jan. 18, 2004), *available at* http://www.eia.doe.gov/emeu/cabs/caspian.html.

155. *Id.*

156. *Id.*

projects should not, however, be confused with an overall consensus, as many points of heated conflict still exist.[157]

C. *Future Direction: Ongoing Conflicts and Anticipated Resolutions*

Of the various problems currently facing the development of Caspian oil reserves, perhaps the most menacing one is that of safeguarding distribution routes and pipelines given the numerous regional conflicts in the area.[158] Afghanistan, despite the ouster of the Taliban, is rife with regional conflicts, and such turmoil unnerves investors and companies looking to run a route through this area.[159] The Azeri-Armenian war over the Nagorno-Karabakh enclave in Azerbaijan, which is populated by Armenians, is ongoing.[160] Georgia is a third troublesome country in the region, with the Pankisi Gorge being dubbed the "world's second main 'nest' of terrorism" by the Russian defense minister in 2002.[161] Finally, the Uzbek government's clamping down on fundamentalism in the country has further increased tensions.[162] Thus, the various regional conflicts present additional external challenges on top of the already challenging domestic tasks faced by the Caspian states in developing their oceanic oil reserves.[163] Should any of these potential problems emerge, development of the CDP infrastructure could be slowed or stopped, at least temporarily.

V. INTERNATIONAL OVERSIGHT OF MULTINATIONAL CORPORATE INVOLVEMENT IN THE CASPIAN DEVELOPMENT PROJECT

A. *Sovereignty Versus Stability: Mutually Exclusive Options?*

Having enumerated the great economic potential of the Caspian states as well as the numerous challenges that they face on the road to development, a central question that emerges regards the proper role of foreign governments and multinational involvement in the stabilization and development of this region. The Caspian states' shift toward market economies, in varying degrees among the countries, has opened up opportunities for international cooperation

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157. *Id.*

158. *See* U.S. Energy Information Administration (Mar. 3, 2004), *available at* http://www.eia.doe.gov/emeu/cabs/caucasus.html.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

in developing the oil and gas resources. Contemporaneously, these nations are sensitive to their political and economic sovereignty, and rightly so, given the desirability and importance that such resources have on both a domestic and international level. To effectively address the appropriate level of international involvement, therefore, it is necessary to examine the motivations and operational structures of multinational corporations and then consider how these elements, in combination with their current activity in the CDP, either do or do not promote sustained development in these countries.

B. *Multinational Enterprises*

Multinational corporations, by promising revenues via joint development partnerships with the various nations, stand in a position to exert influence on the political stability of the respective countries. A compelling argument can be made that it is in the best interests of each respective multinational corporation's management and shareholders to require a certain level of state assurance before investing in certain areas.[164] But, it is this same potential for influence that poses risks for exploitation of host countries by MNEs in their pursuit of profits.[165] Cutting corners in the areas of human rights, environmental regulations, and distributing revenues in an inappropriate manner threatens to undermine the sustained development of these states.[166] Consequently, MNEs should not enjoy total freedom from international oversight in this emerging market region. For the reasons noted previously, the nascent political and legal structures of the Caspian states make them more vulnerable to corporate abuses.[167] The regular market forces cited frequently in reference to self-policing of developed markets have not been developed to the same extent, if at all, in the Caspian states, and thus a laissez-faire approach to MNE involvement would be an irresponsible course of action for the CDP.[168]

If one accepts the premise that international oversight of MNEs in the CDP is needed, two fundamental questions emerge. First, what codes of conduct should be adopted for MNEs to follow? Second, what is the appropriate means of enforcing these standards? Both of these questions are addressed in the analysis portion of this Note.

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164. Eurasia Group – Deutsch Bank Risk Indicator, *available at* http:////www.deutsche-bank.de/presse/en/index.html?contentOverload=http://www.deutsche-bank.de/presse/en/releases_1344.shtml (n.d.).

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

Before making an informed proposal, it is necessary to first examine characteristics of current MNE involvement in the CDP.

1. Current MNE Involvement in the Caspian Development Project

While MNE involvement in Iran predated the dissolution of the Soviet Union in 1991, the newfound independence of the four former Soviet states of the Caspian region was a powerful catalyst for MNE interest in Caspian oil and gas, and vice versa.[169] As market restrictions have decreased, foreign investment opportunities for MNEs have grown at different rates among the different countries.[170] Given the various stages of MNE involvement, the Kazakhstani example illustrates most simply the potential as well as the inherent perils of MNE investment.[171]

In 1993, ChevronTexaco became the first major western oil producer to gain market access in the Caspian region when it reached an agreement with Kazakhstan's Tengizchevroil.[172] ChevronTexaco has expanded upon this initial venture and currently holds a stake in the two largest fields in the Kazakhstani portion of the Caspian, the Tengiz and Karachaganak fields, as well as exploration interests in the Russian and Azerbaijani portions of the Caspian.[173] In 2001, ChevronTexaco contributed $780 million to the $2.6 billion Caspian Pipeline Consortium that carries oil from Kazakhstan to the Black Sea port of Novorossiysk over a span of 1,505 kilometers (935 miles).[174] These two sites created a combined 26,500 jobs, but no breakdown was given on how many are domestic Kazakhstanis versus foreign management. The project also dedicated $300 million in environmental protection designed to protect the Steppe environment.[175] Moreover, in connection with the Tengizchevroil project, Chevron has set up the TCO Charity consisting of a $50 million fund for Kazakhstani development projects including health clinics, vocational training facilities, environmental beautification projects, and housing for flood victims.[176]

Multinational investment such as Chevron's in Kazakhstan is fundamental in helping Caspian states privatize industry and set up

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169. *Id.*

170. *Id.*

171. *Id.*

172. *See* ChevronTexaco, Eurasia Overview, *at* www.chevrontexaco.com/operations/eurasia/ (last visited Feb. 20, 2005).

173. *Id.*

174. *Id.*

175. *See* ChevronTexaco, ChevronTexaco in Eurasia, *at* www.chevrontexaco.com/operations/docs/eurasia.pdf (last visited Feb. 20, 2005) [hereinafter ChevronTexaco in Eurasia].

176. *Id.*

working capital structures.[177] Having had no experience with a capitalistic economy before 1991, the Caspian states need private enterprises to lend their expertise and management to this industry.[178] Market forces, under this arrangement, can promote efficient profit maximization.[179] Moreover, many MNEs do in fact contribute to the welfare of the local population, either directly through job creation and charitable contributions or indirectly by incentivizing local enterprises to integrate free market strategies.[180] On an even more basic level, the addition of gas stations run by Chevron in Kazakhstan, for example, provides basic necessities, such as gas for the vehicles of the Kazakhstani population, which were previously scarce and difficult to attain.[181] An argument can be made, therefore, that MNE secondary ventures such as franchising gas and service stations increase the overall welfare, efficiency, and mobility of the population.[182] In serving these functions, MNE presence is absolutely essential for the development and improvement of Caspian economies.

Not all MNE involvement has resulted in an improvement in the general welfare of the Caspian states, but regulation can help remedy the situation. Regulation promotes two central business principles: fair dealing and fair price.[183] While these two concepts are distinct from one another, they combine to form a prevailing sense of legitimacy among business practices. The development of both concepts, however, is of serious concern in a region of burgeoning democracy such as the Caspian region, where the national leadership may be entangled in corruption or simply lack the legal apparatus present in more developed economies to prevent bribery and other forms of corruption.[184]

2. Concerns

a. Fair Price

Fair price, for the purposes of this Note, connotes that the price charged or paid for a certain asset, commodity, or service appropriately corresponds to its fair market value (FMV).[185]

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177. *Id.*
178. *Id.*
179. *Id.*
180. *Id.* at 3-4.
181. *Id.* at 2.
182. *Id.*
183. *Id.*
184. *See generally id.*
185. Black's Law Dictionary defines fair market value as "[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an

Determining FMV is done on a comparative basis to similar products or service.[186] When pioneering a project such as oil and gas development in the Caspian region, a number of the figures for the project will be fixed, such as the price per foot of the steel needed for constructing the pipeline.[187] The value of fixed-price items can be easily obtained, therefore, and information on the appropriate FMV for a fixed-price item is readily available.[188] More creative valuation methods, however, must be applied to tasks such as property value, particularly in countries that were formerly socialist economies and therefore lack historical values for property.[189]

When MNEs come into a country and look to acquire property, there may be a strong desire to offer an overly low value in order to obtain the asset at as low a price as possible.[190] One example of this involving the oil and gas industry recently occurred in the African state of Chad.[191] Chad, eager for oil company payments to lift it out of its abject poverty, sold one village plot to a multinational firm for a mere U.S.$130.[192] While this practice may not be *per se* illegal, it adversely impacts developing economies by reducing their total revenues from certain items. Applying this concept to Kazakhstan, even seemingly benevolent developments such as the construction of Chevron gas stations throughout the country can have a downside as well.[193] For instance, Chevron could, by aggressively expanding its number of gas stations throughout the country, obtain a virtual monopoly over this commodity and then severely inflate prices.[194]

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arm's-length transaction; the point at which supply and demand intersect." BLACK'S LAW DICTIONARY 1587 (8th ed. 2004).

186. *Id.*

187. *Id.*

188. *Id.*

189. For a description of Black-Scholes valuation methodology, one of the prominent valuation methods, see JACK S. LEVIN, STRUCTURING VENTURE CAPITAL, PRIVATE EQUITY, AND ENTREPRENEURIAL TRANSACTIONS (1998).

190. *Id.*

191. Sengupta, *supra* note 128.

192. *Id.* Note also that of the first $25 million "signing bonus" that the oil companies awarded Chad in 1999 for exploration and development of oil reserves, the government spent the majority of funds on purchasing armaments, refurbishing the ministers' offices, and other extravagances such six off-road vehicles for a single minister. *Id.* Such spendthrift behavior demonstrates the risk inherent in the revenue distribution structure of developing nations. *Id.* However, international regulatory oversight by the World Bank has ensured that subsequent payments to Chad have not suffered from similar mismanagement. *Id.* Acting as an intermediary between Chad's government and various oil companies, the World Bank has required transparency with respect to oil revenues and mandated that a citizens' committee review all spending to guarantee that the revenues are used to improve the welfare of nine million citizens in Chad. *Id.*

193. *Cf.* ChevronTexaco in Eurasia, *supra* note 175.

194. *Id.*

Without alternative suppliers, customers would be forced to pay inflated gas prices.

A predominant counter-argument to the oversight suggested above is that an expansion by other oil companies into Caspian markets would introduce price competition and thus avoid monopolization and price inflation by the presence of a single retailer.[195] Without a strong legal system in place, however, collusion and price-fixing could result among the various MNEs and the host governments.[196] Moreover, given MNEs' constant push for profit maximization, the incentives those enterprises have to avoid paying or charging FMV for certain goods and services is a real concern. For these reasons, international oversight of MNE pricing is needed in the Caspian states to ensure that unfair pricing methods are not employed by MNEs to exploit underdeveloped markets.

b. Fair Dealing

Fair dealing consists of bargaining for a good, contract, or service in a manner that is roughly uniform among all competing parties.[197] The United States is host to more MNEs than any other single nation, and all U.S.-based MNEs are subject to the provisions of the Foreign Corrupt Practices Act of 1977 (FCPA).[198] The FCPA prohibits U.S. companies from, among other things, engaging in bribery of foreign officials in order to secure contracts.[199] Absent investigation by the Department of Justice, the FCPA places the onus of assuring compliance and reporting violations upon MNEs and foreign governments.[200] While such accountability from MNEs is necessary, it may be unrealistic to place full trust in the ability of this

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195. *Id.*

196. *Id.*

197. Fair dealing is "[t]he conduct of business with full disclosure, usu. by a corporate officer with the corporation." BLACK'S LAW DICTIONARY 633 (8th ed. 2004).

198 *See* International Labour Organization, Bureau of Workers' Activities, Multinational Corporations, *at* http://www.itcilo.it/english/actrav/telearn/global/ilo/multinat/multinat.htm#Geographical%20distribution%20of%20largest%20companies (last visited Feb. 21, 2005).

199. The FCPA applies to any firm, officer, director, employee, or agent of the firm and any stockholder acting on behalf of the firm. *See* Business Information Service for the Newly Independent States, Foreign Corrupt Practices Act Antibribery Provisions, *at* http://www.bisnis.doc.gov/bisnis/fcpl.htm (last visited Feb. 21, 2005). Two primary areas are encompassed by the FCPA. *Id.* First, the Act has a blanket prohibition against making bribes. *Id.* Second, the Act places responsibility on domestic firms and its agents for bribes paid by intermediaries. *Id.* The Act requires corrupt intent to be present in order to find a violation. *Id.*

200. *See* Douglass Cassel, *Corporate Initiatives: A Second Human Rights Revolution?*, 19 FORDHAM INT'L. L.J. 1963, 1984 (1996) (describing governments' decreasing ability to effectively safeguard human rights and the need for multinational corporations to pick up the slack).

sort of regulation to single-handedly govern MNE behavior effectively.[201] In addition, the political philosophies of the respective Caspian states' leaders may result in different views on corruption than those advanced in U.S. statutes.[202] Consequently, U.S.-based MNEs may suffer a competitive disadvantage in abiding by the FCPA if MNEs from other countries are not subject to substantially similar regulations. Moreover, host governments often adjust domestic laws to attract foreign direct investment (FDI), and these governments often turn a blind eye to violations to maintain good relations with MNEs.[203] Hence, it is unrealistic to think that self-reporting by MNEs in conjunction with regulatory cooperation from Caspian governments will alone suffice to eliminate unfair dealing practices.[204]

To ensure that fair dealing is exercised in the awarding of extraction contracts, there must be an effective enforcement mechanism to compel both MNEs and the various host governments to abide by commonly accepted principles of international business.[205] Currently, the lack of a capable enforcement mechanism is a problem from which nearly all international legal agreements suffer.[206] Such a mechanism is particularly important in rooting out corruption or unfair dealing practices.[207] The power that the World Trade Organization derives from binding consensus among member states is lacking a functional equivalent in the realm of business practices in extractive industries.[208] Creating a new regulatory body to conduct such reviews would be both time-consuming and susceptible to bureaucratic red tape.[209] By the time such a body were created and became effective, oil and gas interests in the Caspian states would already have been developed, perhaps in a haphazard manner. Thus, an effective, time-efficient solution to enforcing fair dealing in

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201. *See generally* Foreign Corrupt Practices Act of 1977, tit. 1 § 104, 91 Stat. 1496 (1977) (current version at 15 U.S.C. § 78dd-2 (1988)); *see also* Peter Waldman, *Heavy Hand: Washington's Tilt to Business Stirs a Backlash in Indonesia*, WALL ST. J., Feb. 11, 2004, at A1. Louis Wells, a professor at Harvard Business School, contends that U.S. companies have circumvented the anti-bribery provisions of the FCPA by making loans to relatives of foreign officials, thus avoiding liability for direct bribery violations. Waldman, *supra*.

202. Foreign Corrupt Practices Act of 1977, *supra* note 201.

203. Westfield, *supra* note 110, at 1077.

204. *See generally* Natalie Laura Bridgeman, Note, *World Bank Reform in the "Post-Policy" Era*, 13 GEO. INT'L ENV'TL. L. REV. 1013 (2001) (arguing the current safeguard policies of the World Bank are ineffective).

205. Westfield, *supra* note 110, at 1077-80.

206. *Id.* at 1078.

207. *Id.*

208. *Id. at* 1076-80, 1084-86.

209. *Id.*

Caspian extractive contracts needs to be found within and among existing international structures.

VI. TRADITIONAL WORLD BANK FINANCING STRUCTURE

Recently, the World Bank Group has come under attack from a number of economists and governments for its inability to enforce payment upon nations that are in default on their loans.[210] The Bank has five divisions that both perform distinct, independent functions and work together to provide overall management of the Bank's loans.[211] The International Bank for Reconstruction and Development (IBRD) grants loans to the governments of low and middle income nations. In return, the recipient nations are required to pay back the loans plus an attached interest rate that is well below rates offered by commercial lenders.[212] To finance these loans, the IBRD issues bonds to a variety of private and institutional investors and shareholders.[213] Loans from the IBRD were used in the construction of the Baku-Tbilisi-Ceyhan pipeline, along with private funds from ChevronTexaco.[214] IBRD loans, therefore, are already present in the Caspian Development Project.[215] Since the Caspian states do not qualify under World Bank standards as being among the world's poorest nations, grants and interest-free loans from the Bank's second division, the International Development Association, are unavailable to the littoral states.[216] Consequently, Bank funding for the Caspian Development Project must come from the IBRD.[217]

The International Finance Corporation (IFC) invests in private enterprises in nations where access to capital is difficult or impossible to attain.[218] IFC loans pose possibilities for a host of industries in the Caspian nations, including the development of indigenous oil fields in countries like Azerbaijan and Turkmenistan, which currently lack the more robust private oil and gas companies of Russia, Kazakhstan,

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210. James Bovard, Cato Policy Analysis, *The World Bank Vs. the World Poor*, *available at* http://www.cato.org/pubs/pas/pa092.html.

211. The World Bank Group, *supra* note 51.

212. *Id.*

213. *Id.*

214. *See generally* http://www.chevrontexaco.com/news/archive/chevron%5Fpress/1998/98%2D03%2D02%2D1.asp (n.d.).

215. *Id.*

216. The World Bank Group, *supra* note 51.

217. *Id.*

218. *See generally* http://www.ifc.org/about (n.d.). The IFC is a private corporation that promotes sustainable private sector investment in developing countries.

and Iran.[219] Thus, IFC loans are of differing value to the various Caspian states.

An equally important division of the World Bank is the Multilateral Investment Guarantee Agency, which provides guarantees to foreign investors against losses from non-commercial risks incurred from events like war and inability to convert a nation's currency.[220] This agency's usefulness in terms of the CDP is that it gives further confidence to MNEs to invest in these states.[221] But, insurance is its primary benefit, and consequently, it is a corollary rather than primary economic force behind the financing of the CDP.[222] Similarly, the fifth division of the Bank, the International Centre for Settlement of Investment Disputes, while providing a negotiation mechanism, is not a driving economic force for CDP financing.[223]

1. Efficacy of the World Bank's Traditional Financing Structure

Conceptually inviting yet pragmatically troubled, the Bank's traditional financing structure has been widely criticized, and recent criticism has been especially pronounced.[224] Particularly relevant to the Bank's involvement in the CDP has been criticism over the Bank's inability to collect payment on its loans.[225] The World Bank is an economic body, and as such, it has no practical means of enforcing its policies, except refusing to fund future projects in a delinquent nation.[226] This inability to enforce loan repayment is a major weakness in the Bank's current structure.

What potential does the CDP offer for correcting the Bank's enforcement problems? Were some dramatic event to occur, such as a civil war or political upheaval in one or more of the Caspian states, it is true that the Bank could face a default problem mirroring those of the past.[227] The nature of the CDP, namely the enormous property wealth present in the nations' respective Caspian plots, as well as the involvement of MNEs, presents a background upon which a new financing structure for the Bank's development loans can be tested. The next section of this Note will explore one possible solution.

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219. *Id.*

220. *See generally* About MIGA, *at* http://www.miga.org/screens/about/htm (Jan. 24, 2005).

221. *Id.*

222. *Id.*

223. *See* World Bank ICSID, *at* http://www.worldbank.org/icsid/about/main/htm (Jan. 24, 2005).

224. Bovard, *supra* note 210.

225. *Id.*

226. *Id.*

227. *Id.*

VII. RETHINKING THE FINANCING STRUCTURE: MULTILATERAL EFFORTS FOR DEVELOPMENT OF EXTRACTIVE RESOURCES

In examining potential reforms for the Bank's financing schemes and the role of MNEs in the Caspian region, there are virtually unlimited models in the Western business world for corporate responsibility. But these options are severely reduced when corporate responsibility is transposed upon international corporate behavior. Two predominant models for international corporate responsibility include a "cooperative" approach and a pragmatic, joint-effort approach.[228] Under the cooperative approach, MNEs work together with local governments to formulate mutually acceptable business policies.[229] The joint-effort approach, by contrast, is more skeptical of the ability of MNEs to effectively self-police their policies and therefore advocates enforcement by the "joint" bodies of the World Bank and the International Court of Justice.[230]

A. *The Cooperative Approach: Wishful Thinking*

The cooperative approach's merit lies in its flexibility and respect for self-governance by both sovereign states and MNEs.[231] Under this approach, the burden of instituting and enforcing fair business, human rights, and environmental policies falls primarily on the shoulders of MNEs.[232] MNEs, particularly those with a visible presence in developed economies like the United States, have an interest in maintaining a reputable image of their firms as upstanding international citizens that respect the local populations with whom they interact.[233] For a very basic example, assume that a U.S. shoe manufacturer employs workers in Taiwan to assemble their products.[234] The MNE benefits from a cost advantage derived from higher worker salaries in the United States.[235] But Taiwan may have less stringent labor protections for its workers, and its minimum wage requirements may fall, even on a relative basis, well short of U.S. standards. From the cooperative approach, it would be in the MNE's best interest to institute standards in excess of Taiwan's to

228. Westfield, *supra* note 110, at 1078-79; Bridgeman, *supra* note 204, at 1040-46.
229. Westfield, *supra* note 110, at 1078-80.
230. Bridgeman, *supra* note 204, at 1045.
231. Westfield, *supra* note 110, at 1078-79, 1102.
232. *Id.* at 1082-83.
233. *Id.* at 1100-01.
234. *Id.*
235. *Id.*

ensure that the MNE maintains its status as a "reputable" international citizen.[236]

This cooperative approach delegates a tremendous amount of power to MNEs to showcase their commitment to fair business practices. In reality, however, the "cooperative" approach leaves open too great an opportunity for exploitation of the host nations or their citizens by MNEs.[237] Profit maximization is the foremost concern of any MNEs, regardless of their concern for the well-being of host nations and their citizens.[238] With profits at the top of their agendas, it is highly unlikely that any MNEs will voluntarily institute sustained development policies that put them at a competitive disadvantage with other MNEs doing business in a given country that choose not to institute such policies.

Another factor making voluntary self-regulation by MNEs an unsuitable substitute for a more formal enforcement structure is that host countries often bend their laws to attract MNEs or will often have lower legal protections for labor than do Western countries.[239] Such inadequacy in the legal systems would provide a strong incentive for MNEs to exploit less stringent working and environmental regulations to create greater profit.

Finally, the cooperative approach places too great of an emphasis on the influence that informal social norms play in regulating MNE behavior.[240] Although MNEs would prefer a positive public image, minor, intermittent negative press reports are unlikely to cause MNEs to give up their profit-motivated behavior. Although the extractive industry has been the subject of endless critiques by the media, its members have not abandoned controversial projects such as offshore drilling.[241] Thus, there is no real-life precedent upon which to base the premise that MNEs in the Caspian states will voluntarily reform their behavior in order to avoid public critique.

B. *The Joint-Effort Approach: Pragmatic Principles*

The cooperative approach, though geared toward modern codes of corporate conduct, places too great an emphasis on optimistic principles and too little weight on practical results. The joint-effort approach, by contrast, provides policy ideals and proposes a structure

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236. *Id.*
237. *Id.*
238. *Cf. id.* at 1081-82.
239. *Id.* at 1081-83.
240. For a discussion of the potential impact of social norms upon corporate environmental compliance, see Vandenbergh, *supra* note 122.
241. *See* World Bank website, *available at* http://www.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,content MDK:20143509 (n.d.).

with which to enforce these ideals.[242] One scholar advocates a two-part joint-effort structure for governing MNE behavior.[243] First, World Bank involvement in the projects themselves is essential.[244] The Bank's involvement, whether in the form of partial financing in conjunction with MNE funds (as in the case of the Baku-Tbilisi-Ceyhan pipeline project), or in the form of more general consultation services, is a practical way of translating "sustained development" objectives into actual elements of a MNE deal.[245] Moreover, the Bank's expertise in working with developing nations makes it an appropriate body to handle the challenges of structuring MNE projects in the Caspian states.[246]

Since the 1980s, the Bank has operated on the "Washington consensus" model of economic development promoting deregulation, liberalization, privatization, and emphasizing the private sector over state institutions.[247] This model has failed, according to critics, because it creates economies that are too vulnerable to destabilizing shocks.[248] In order for the World Bank to operate most effectively in this capacity, some scholars have suggested that it undertake five reforms.[249] First, the Bank should strive to base representation in its organization on a "one-flag, one-vote" policy to give developing nations a voice tantamount to those of the large economic powers on issues that are of particular concern to them.[250] Second, decentralization of the Bank's offices to regional or sub-regional offices will make it more receptive to local concerns.[251] Third, the Bank should strive to hire residents of the Caspian states on the various projects so that those who have personal experience with the region or issues at hand will be able to offer their tailored insights.[252] Fourth, to increase efficacy among Bank projects, staff should be compensated for compliance with safeguard policies. This would provide economic incentives for those within the Bank to achieve compliance objectives.[253] The fifth and final suggested reform, increased accountability, is by far the most crucial element in seeing

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242. Bridgeman, *supra* note 204.
243. *Id.* at 1041-46.
244. *Id.* at 1041, 1042-43.
245. *Id.*
246. *Id.*
247. *Id.* at 1015-16.
248. *Id.* at 1017-20, 1031-36.
249. *Id.* at 1041-45.
250. *Id.* at 1041-42.
251. *Id.* at 1042-43.
252. *Id.* at 1043.
253. *Id.* at 1043-44.

through the Bank's policies, and it is at this point where the joint-effort approach is particularly relevant.[254]

One scholar proposes a model in which the International Court of Justice (ICJ) could establish a division for claims related to the World Bank's international financial institutions.[255] This reform would require that the Bank's Articles of Agreement be amended to create liability for violations of Bank policies and for torts.[256] In addition, these amendments would remove the Bank's immunity for its conduct and would make the Bank accept being subjected to the ICJ's jurisdiction.[257] Such changes would allow the International Financial Institutions division of the Bank to enforce binding judgments when one of the Bank's policies or procedures was violated.[258] The primary benefit of fusing the ICJ with the Bank in the enforcement context is that it gives the Bank a means of enforcing its policies.[259] The drawback to such a model is that it lacks flexibility as a conflict resolution mechanism, premising its decisions upon stringent statutory provisions.[260] But, in light of the Bank's history of difficulty in enforcing its policies, giving up a degree of flexibility in exchange for more definitive enforcement could be an acceptable trade-off.

1. Challenges and Impediments

For a collaborative effort between the WTO and ICJ to effectively police interactions between MNEs and Caspian governments, several procedural and practical obstacles must be overcome. The ICJ's jurisdiction over bringing claims against MNE behavior presents such an obstacle.[261] The ICJ's jurisdiction is restricted to sovereign states.[262] Thus, a state bringing a claim against a MNE could attempt to bring suit against the MNE's country of incorporation, which would in turn have to impose any penalties. But, such a suit would still fall outside the jurisdiction of the ICJ and therefore fail on jurisdictional grounds.[263] Moreover, even if the jurisdictional hurdle could somehow be circumvented, the efficacy of this adjudicatory structure would be dependent upon the various

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254. *Id.* at 1045.
255. *Id.*
256. *Id.*
257. *Id.*
258. *Id.*
259. *Id.*
260. *Id.* at 1021-22, 1045.
261. *See generally* Statute of the International Court of Justice, June 26, 1945, 49 Stat. 1055, T.S. 933, *available at* http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm.
262. *Id.* art. 34(1).
263. *Id.* art. 36.

member states honoring the decisions of the ICJ.[264] Consequently, while a "cooperative approach" to MNE governance promises great potential, this potential cannot be achieved in the form of a joint effort between the WTO and ICJ.

A second form of joint effort could be in the form of multinational adherence to a legal principle analogous to the United States' Alien Tort Claims Act (ATCA).[265] Such a regulation would allow foreign persons to bring suit against MNEs without having to go through the MNEs respective national governments.[266] Such a direct course of action is particularly important in situations in which Caspian governments might hesitate in prosecuting MNEs for various violations because of the revenues generated for the states by MNEs. In addition, it would allow citizens to report incidents of corruption or bribery involving government officials and MNEs.[267]

Functionally, however, a multinational ATCA equivalent would have very limited applicability. Since this Act pertains to torts, defendants could presumably end-run liability by classifying a particular claim in a non-tort context.[268] Thus, if certain claims were held to be outside the purview of tort law, there would be little or no redress for victims of MNE exploitation. Perverse incentives would also be created to avoid liability, rather than to implement good faith efforts for establishing entire fairness.

2. A Functional Alternative

A new, non-traditional, and likely controversial form of international oversight would best promote the goals of reapportioning voting power within the Bank: decentralizing the bank's offices, hiring residents of the regions in which projects occur, increasing the efficacy within the Bank, and increasing accountability. A tripartite structure that would link the World Bank, MNEs, and Caspian governments poses the best opportunity for effective promotion of sustained development in this region. Rather than having the IBRD grant loans directly to the Caspian governments, the Bank could channel these loans to MNEs instead to defray the cost of development projects. The MNEs would then be responsible for these loans in addition to whatever funds they had

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264. *Id.* art. 34-38.

265. 28 U.S.C. § 1350 (2000). Enacted as part of the Judiciary Act of 1789, the ATCA provides that subject matter jurisdiction in federal courts in the United States to hear claims by aliens alleging violations of international law, even claims against non-US defendants (assuming there is a basis for asserting personal jurisdiction). *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

already committed to a given project. Were the MNEs to keep the entire amount of the loan, the Bank would then impose an interest spike on the loan amount. For example, if the current market interest rate for a certain type of loan was eight percent, the Bank might charge the MNEs ten percent for a given loan. If the MNEs distributed this loan amount to the Caspian states, however, the interest rate that the MNEs would then owe the Bank would be at the below-market rates that the Bank would charge a developing nation. The Caspian states would then be responsible for paying back the principal and same interest rate to the loaning MNEs.

All three groups have incentives for agreeing to such a structure. First, MNEs would have an incentive to use Bank loan financing as a way of getting better interest rates on loans to fund a project than they could obtain via an open-market debt-financing structure. The Bank, in turn, could exercise far greater enforcement of its policies through this structure. In addition to the conditions stipulated above on loans made to MNEs, the Bank could further condition eligibility for such funding upon compliance with the various reform initiatives as being fundamental to sustained development in the region. Caspian states, in turn, would benefit from getting funding for the CDP, while promoting their own socioeconomic development. Ties to MNEs would similarly be strengthened.

The nature of the CDP as an extractive process is the final piece that makes this proposal possible. Since oil and gas are tangible commodities, MNEs could demand property interests as collateral against the loans extended to MNEs. These property interests could be amortized proportionately to how much of the loan had been repaid. When the loans have been fully paid off by the Caspian states, they would then assume full title to the collateralized property tracts. Unlike more speculative, less tangible projects, Caspian states can be relatively confident that major income can be derived in a short period of time from the CDP. This relative assurance substantially reduces the risk to the loaning MNEs and the Caspian states since repayment of the loans is predicated upon a relatively calculable resource.

VIII. CONCLUSION

The emergence of the CDP could not have come at a more opportune time for the Caspian states. World oil prices are streaking toward an all-time high.[269] Conventional oil and gas supplies from

269. *See generally* Bloomberg Market Research, *available at* http://www.bloomberg.com/energy/ (n.d.).

the Middle East exist in a turmoil-filled environment because of the tenuous relationship between the various world economies arising from terrorism concerns and political conflicts.[270] In this context, the CDP stands on the verge of a major leap onto the world economic scene.

The CDP offers great potential for economic stabilization and social improvements in the host nations. It simultaneously poses lucrative profit potential for MNEs looking to invest in this region. MNE involvement in the project is therefore fundamental to the success and the timely attainment of these potential benefits. But, without the requisite governance structure in place, the CDP's potential could go unrealized by those who would most benefit from its revenue creation. As such, a joint international regulatory process must be implemented that appropriately connects the interests of the Caspian states and MNEs and accommodates international corporate norms of behavior.

A tripartite structure linking the World Bank, MNEs, and Caspian states poses the most functional and time-sensitive means of achieving the requisite oversight. All three entities are interconnected under this framework, and each party has adequate safeguards to provide insurance against default by one of the other parties. Moreover, each of the parties would enjoy significant benefits from the tripartite model. First, the Bank can increase its enforcement ability by making loans to MNEs that have more liquid capital structures with which to repay the loans. MNEs would benefit from gaining contributory financing for extractive projects as well as the flexibility option to keep Bank funds for their own use, albeit at an above-market rate. Finally, Caspian states would benefit from receiving below-market-rate loans as well as connections to MNEs based in developed economies. If properly administered, therefore, governance of MNEs in the CDP promises great potential for accelerating the sustained development of the Caspian states.

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270. *Id.*

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