



WORKING PAPER

Resource nationalism and sustainable development:

a primer and key issues

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Introduction

Resource nationalism is characterised by the tendency for states to take (or seek to take) direct and increasing control of economic activity in natural resource sectors. Practitioners of resource nationalism can be found in countries from Russia to Venezuela and Guinea and many in between.

Increasingly, resource nationalism encompasses not only producer countries but also a variety of approaches adopted by consuming countries seeking to increase their access to natural resources in other countries. Additionally, worries about the strategies behind investments by sovereign wealth funds that are built on natural resource revenues are giving rise to defensive reactions from some investment target countries. These may mark the emergence of a third kind of 'resource nationalism' that is only indirectly linked to the exploitation of natural resources (and the revenues generated by them) elsewhere.

Traditionally understood as an effect of upward commodity price curves, or a symptom of developing country backlash against former colonial masters, today's resource nationalism seems surprisingly resistant to the commodity price collapse of the second half of 2008.

In reality, as this paper shows, resource nationalism is driven by a far more complex and varied set of factors than price alone. Today's resource nationalism, unlike that of the 1970s, needs to be understood in the context of global concern for resource security, climate change, sustainable development and poverty reduction. All are inter-related.

The aim of this paper is to place sustainable development at the centre of an analysis of resource nationalism. This is not a subject that has been explored in any detail to date, and as such this paper simply offers a primer on some of the key issues in the relationship between resource nationalism and sustainable development, and areas for further analysis.

The underlying idea of sustainable development is as resonant today as when it was first encapsulated in the report of the World Commission on Environment and Development in 1987. Then, sustainable development was described as: "*Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organizations on the environment's ability to meet present and future needs.*"¹

Many obstacles continue to hamper efforts to pursue sustainable development. Four in particular stand out:

- Dominant economic growth models. Too often it is these models which are considered inviolable, not peoples' rights and welfare, or environmental processes and limits
- Environmental costs and benefits of human activity are 'externalised' (i.e. the environmental impacts of transactions of various kinds are not reflected in market prices, so they tend not to be taken account of in decision-making)
- Poor people are marginalized, and inequities entrenched
- Governance regimes are inadequately designed in terms of internalising environmental factors, ironing out social inequities, and developing better economic models.²

Resource nationalism can be variously a symptom, a cause and a result of each of these obstacles to sustainable development. A key question then is this: what contributions, positive and negative, do various kinds of resource nationalism make to sustainable development? There are difficult framing issues involved in answering this question; both because resource nationalism is difficult clearly to define, and because unlike foreign direct investment or privatisation, it has not yet been assessed in terms of its impacts on sustainable development.

Resource nationalism can be found in a variety of natural resource sectors, including food and agriculture, fisheries, mining and minerals and oil and gas. However, the current visibility of energy security and climate change considerations on the global stage has meant that it is the oil and gas sector that dominates much contemporary analysis of resource nationalism. In this paper, the detailed investigation needed effectively to analyse resource nationalism across all the sectors where it has been practised is beyond the scope of the paper – oil and gas dominates in this paper too – but where possible examples are drawn from a wider range of sectors.

The paper positions resource nationalism in its contemporary global context. It highlights a range of definitional approaches to resource nationalism and their pluses and minuses in terms of ‘sustainable development policy analysis’, and the range of motivations for resource nationalism. Throughout, avenues for further exploration are highlighted, as well as a number of conceptual and practical implications of efforts to assess the sustainable development implications of resource nationalism.

Resource nationalism as the flip side of ‘resource privatism’

Resource privatism

Resource nationalism and economic liberalisation are uneasy bedfellows. So it is helpful to explore some of the ways in which resource nationalism is linked to other kinds of backlash against economic liberalisation – including critiques of the perceived power of multinational corporations in the global economy. For these purposes, resource nationalism can usefully be positioned as a counterpoint to what might usefully be termed ‘resource privatism’.³ Resource nationalism lies at the opposite end of a ‘host state influence versus investor influence’ spectrum to ‘resource privatism’.

Multinational corporations and non-governmental organisations that work on corporate and corporate accountability are familiar with the accusation that businesses exercise behind the scenes political influence in order to secure the best investment deals for themselves. Sometimes these accusations acquire precision beyond conjecture, for example when they are mirrored in Foreign Corrupt Practices Act proceedings in the United States which uncover corrupt payments from companies working in the natural resources sector to officials (see *Box 1* below for an example).

Almost all analysts would agree that transactions based on these kinds of underhand tactics not only deprive countries of legitimate revenues, but that they also harm equitable development and threaten to unseat companies that play fair in their efforts to win long-term investment projects.

In natural resources sectors, ‘resource privatism’ might be coined as a shortcut for describing a situation in which the interests of private enterprises so dominate negotiations with host country governments over access to or management of natural resources, or the way in which deals are done, that the public interest of the nation endowed with the resources is squeezed into a corner.

‘Resource privatism’, defined in this way, is closely linked to another kind of abuse of power; when companies use their economic might in untransparent ways to secure political goals that are aligned with their commercial interests or to destabilise democratic processes. Among the most extreme examples of this kind of ‘privatism’, since it involved both lack of transparency and opposition to the outcomes of a democratic process (though not a natural resource sector), were allegations that US conglomerate ITT Corporation had provided financial support for opponents of Salvador Allende’s socialist government in the period leading to the military coup of 1973.

In the 1970s, concerns about corporate abuses of their economic power fed into broader developing country calls for a ‘New International Economic Order’. The New International Economic Order (NIEO) was an idea promoted by post-colonial newly independent states and developing countries. It

was also reflected in a number of internationally agreed (though controversial) United Nations documents adopted during the 1970s. Essentially, the NIEO reflected a set of economic policy concerns and approaches held in common by a number of developing countries, many of which faced considerable ongoing economic influence from their former colonial masters.

The overall dynamics of the NIEO debate were characterised by a positional North-South dividing line on economic development concerns related to issues such as commodities trade, debt, industrial development and technology transfer. Rather than interdependent cooperation among nations, a key priority was enshrining the right to the full and independent expression of territorial sovereignty. So too was the right of developing countries to control fully the activities of multinational corporations in their territories.

These underlying NIEO era concerns about corporate abuse of power resonate in contemporary civil society demands that companies – particularly large multinational corporations – be transparent about their lobbying.⁴

Box 1: 'Resource privatism' in action: Baker Hughes Services International in Kazakhstan

In April 2007, the US Securities and Exchange Commission (SEC) filed a 'settled action' against Baker Hughes Incorporated, a major contractor providing oil products and equipment worldwide. The SEC's civil charges were laid in connection with allegations of major bribery and kickback payments (involving some \$5.2 mln). In parallel, the US Department of Justice filed criminal charges against Baker Hughes Incorporated and a Kazakhstan-based subsidiary on grounds of violating the Foreign Corrupt Practices Act in relation to activities in Kazakhstan.

In one case an agent retained to influence officials of state-owned oil companies was allegedly paid a total of \$4.1 mln in order to ensure securing contracts for provision of services to the Karachaganak consortium in Kazakhstan after a major tender process had closed. The approval of the state oil company, Kazakhoil, was sought by the consortium at various stages of the tender process for the award of a very substantial oil services drilling contract. After retaining the agent, Baker Hughes was awarded an oil services contract worth \$219.9 mln in gross revenues over the period 2001-6. In a second set of facts in the SEC case, the SEC alleged that from 1998-1999 payments to an agent of nearly \$1.1mln were made 'at the direction of a high-ranking executive of KazTransOil.

In the SEC case, Baker Hughes agreed to disgorge a total of \$23 million 'ill-gotten gains', in any event without admitting or denying allegations in the complaint. In the criminal FCPA case, the company pleaded guilty and paid \$11 mln in criminal fines, whilst agreeing to retain a monitor to review and assess the company's compliance and implementation program in accordance with new internal policies.

Sources: <http://www.sec.gov/litigation/litreleases/2007/lr20094.htm>
<http://www.reuters.com/article/governmentFilingsNews/idUSN2728075120070827?pageNumber=2>,

Resource nationalism

This paper centres not on 'resource privatism' but on the other end of the spectrum of investor versus host country influence: 'resource nationalism'. Like resource privatism, resource nationalism is often associated with accusations and complaints of foul play. Here though, the central accusation is that the governments of natural resource-rich countries insist on governing natural resources, or doing deals, in a way that places national interests – or national political interests – significantly

above established good practice norms for doing business with investors in a partially liberalised global economy.

In this paper, the initial analytical scope of 'resource nationalism' is drawn by observable, publicly accessible suggestions that this term is relevant in understanding a particular government action. In this sense, it is self-defining, though the paper also offers thoughts on definitional issues.

In contrast to 'resource privatism', the principal complainants in cases of 'resource nationalism' tend to be foreign investors or consuming countries, not ideologues or civil society campaigners. Typically resource nationalism has been analyzed, almost always critically, from an economic or investor perspective. To borrow from Andreas Pickel's analysis of economic nationalism,⁵ "*neoliberal discourse treats economic nationalism as a pernicious doctrine, and its proponents as the political enemy*". Serious analysis in favour of enhanced 'resource nationalism' is thin on the ground – perhaps because at national level such analysis might tend instead to be couched in terms of 'nationalism' plain and simple.⁶

Three resource nationalisms

It is perhaps helpful to think of three distinct resource nationalisms: the resource nationalism of producer countries (which is the focus of the bulk of the analysis in this paper – in which producer countries increase control of economic activity in their natural resource sectors); consumer country resource nationalism (in which consumer countries seek to gain greater control or increased access to natural resources in other countries), and a relatively new form of 'resource nationalism', namely the nationalism of investment target countries whose territories are a target for investment by sovereign wealth funds derived from natural resource revenues. Each is considered briefly in turn below. In practice, producer country resource nationalism has tended to be more widely analysed than the resource nationalism practices of consumer countries or (more recently) the 'target countries' of natural resource-derived sovereign wealth funds.

Producer country resource nationalism

Much of this report focuses on producer country resource nationalism. This introductory section is intended to show the breadth of the policy tools associated with the phenomenon.

The most far-reaching instances of 'resource nationalism' such as Bolivia or Venezuela's partial 'nationalisations' of their oil and gas sectors, mining contract renegotiation in the Democratic Republic of Congo, or Shell's forced sale of its stake in the Sakhalin-II project are widely reported in the mainstream press. But there are many more examples of policy initiatives or tools that might be dubbed 'resource nationalism' around the world. It is important that extremes do not define approaches or policy responses to what is in reality a relatively every day phenomenon. The tools of producer country resource nationalism are extremely wide-ranging. A brief run-down of some of the available tools shows how diverse the range of approaches has been:

- renegotiation or cancellation of existing natural resource contracts (as in the Democratic Republic of Congo or Guinea (see *Boxes 10* and *18* below));
- rejection of particular kinds of governance frameworks (such as production sharing contracts) considered less favourable to producer countries (as in Russia, Kazakhstan and popular sentiment in Iraq)
- nationalisation (as in Bolivia (see *Box 19* below) and Venezuela);
- outright prohibition on international oil company production (Saudi Arabia) or increasingly stringent demands for national shares in natural resource joint ventures (as in Kazakhstan, Algeria or Russia) or for regulatory scrutiny and prior approval of commercial disposals or acquisitions in the natural resource sectors (as in Kazakhstan);

- rapid increases in taxes payable by natural resource companies in times of high commodity prices (as in Bolivia and Venezuela);
- stringent and mandatory regulation of local content (as in Nigeria and many other countries);
- restrictions on exports of natural resource products (as in Argentina's 2006 ban on beef exports⁷ and Vietnamese, Indian, Egyptian and Cambodian restrictions on rice exports linked to rapidly rising food prices⁸);
- reservation of specified quantities of natural resources on grounds of national security or food or energy security (as in Western Australia (see *Box 4* below));
- measures for 'domestication' of key sectors (as in the Pacific Islands tuna industry – see *Box 2* below).
- Requirements for investors to make increasing contributions to direct social spending by executing infrastructure projects, or investing in a variety of social investment projects in localities, or at the national level where they invest (as in Kazakhstan and proposed in Nigeria).

Producer country resource nationalism is not inherently linked to any particular national resource – though it is most often heard of in connection with oil and gas and mineral resources. But other sectors are also implicated. One example concerns the evolution of policy measures governing access to Pacific tuna resources, highlighted in *Box 2* below.

Box 2: Resource nationalism in the pacific tuna sector

In the Pacific Islands, the late 1980s and early 1990s saw a shift towards 'resource nationalism' in the Pacific tuna fishing industry, motivated by the unsatisfactory outcomes of negotiations between coastal states and fishing states with superior bargaining power and skills. The 1982 UN Convention on the Law of the Sea had established an 'exclusive economic zone' (EEZ) of 200 miles, giving coastal states increased territorial control over large areas. Pacific Islands hoped to benefit economically by charging access fees to fishing nations outside their new EEZs. But legal rights did not translate readily into negotiating might and "hopes were frustrated both by the superior negotiating position of most distant water fishing nations (notably Japan) and by the initial refusal of the United States to recognise the Pacific island states' claims to tuna in the exclusive economic zones due to the delay in ratification of UNCLOS III and on the basis that tuna are a migratory species (Schurman, 1998)." The late 1980s and early 1990s therefore saw a shift towards 'resource nationalism' as Pacific Island states adopted policies designed to encourage domestication of their fishing industry. As one commentator explains: "This philosophy was inspired by many factors, including anti-colonial feelings, the need for local employment, and by a feeling that distant water fishing nations had both lacked respect for the islands' exclusive economic zones and that they had out-manoeuvred island states in access fee negotiations (Schurman, 1998). The domestication policy has included large-scale public investments in fishing activities (such as vessels, port infrastructure, and transshipment bases) and incentives for locally-based foreign direct investment." But the outcomes of the policy, at least as at 2002, appear not to have been as positive as Pacific island states had hoped, providing insights into the challenges of seeking to build indigenous production capacity almost from scratch in a highly competitive and relatively capital-intensive sector based on a migratory resource.

Sources: Rachel Schurman, *Tuna Dreams: Resource Nationalism and the Pacific Islands' Tuna Industry*, Development and Change Volume 29 1998, and http://66.102.1.104/scholar?hl=en&lr=&safe=off&q=cache:upTI5LXZAXsJ:rspas.anu.edu.au/papers/rmap/Wpapers/rmap_wp39.rtf+%22resource+nationalism%22

Not all government changes in operating regimes applicable to natural resource projects should be associated with resource nationalism. However, some kinds of policy changes that lead to significant changes in financial modelling and cash flow of individual projects without breaching host country commitments to producers have sometimes been dubbed ‘resource nationalism’ – or even ‘benign resource nationalism’. In essence these, like other forms of resource nationalism, represent efforts by governments to capture greater benefits from natural resource exploitation in ways that are unpopular with enterprises. The UK windfall tax on North Sea oil and gas profits is one example (see *Box 3* below). Western Australia’s reservation of gas for domestic consumption (see *Box 4* below) has also been labelled ‘nationalism’ by at least one commentator, but it may equally be a cost-effective way of meeting domestic energy security concerns.

Box 3: ‘Benign’ resource nationalism? The UK ‘windfall tax’ on North Sea oil and gas

In early 2006, the UK government introduced changes to the North Sea tax regime, increasing the supplementary North Sea corporation tax charge from 10% to 20%, making a total corporation tax rate of 50 percent. Then Chancellor Gordon Brown argued the increase was justified given a rise in oil prices from USD25 a barrel to more than USD55. Notwithstanding generous UK tax incentives for drilling investment, a BP spokesman warned that ‘money that goes in taxes is not available for investment’. The company was said to face a tax increase of £350million on an existing bill of £1.2billion – compared to third quarter profits alone (many earned abroad) of £3.5billion.

Pressure for (and opposition to) further so-called ‘windfall taxes’ on the North Sea oil and gas sector continued into 2008. In October 2006 a report from advocacy groups New Economics Foundation and the World Wide Fund for Nature UK was launched, which argued that a windfall tax could be used to support creation of an Oil Dependency Fund to facilitate a transition away from economic and consumer dependence on fossil fuels. 2008 saw pressure from some MPs and trade unions for a windfall tax targeted at power companies to help consumers struggling to manage the impact of rapidly rising energy bills. The government eventually opted for increases in the power companies’ contribution to funding for home energy efficiency measures.

Sources: <http://www.guardian.co.uk/politics/2005/dec/06/uk.oil>;
http://www.rigzone.com/news/article.asp?a_id=50633;
http://www.csis.or.id/scholars_opinion_view.asp?op_id=647&id=14&tab=1; *Hooked on oil: breaking the habit with a windfall tax*, NEF and WWF-UK, available online via www.neweconomics.org;
http://business.timesonline.co.uk/tol/business/industry_sectors/utilities/article4720282.ece
<http://www.number10.gov.uk/wp-content/uploads/energy-saving-programme110908.pdf>

Box 4: Western Australia’s gas reservation policy

In the second half of 2006, the government of Western Australia announced a new gas reservation policy. Driven by energy security considerations, the policy envisages that grant of access to Western Australian land for processing facilities be conditional on the outcome of case-by-case negotiation with export gas (LNG) project proponents, with a view to ensuring that up to 15 per cent of LNG production be set aside for future domestic use.

Sources: [http://www.dmp.wa.gov.au/documents/DomGas_Policy\(1\).pdf](http://www.dmp.wa.gov.au/documents/DomGas_Policy(1).pdf)

Consumer country resource nationalism

Countries that consume natural resources may display 'consumer country resource nationalism' when they take aggressive steps to maintain security of supply to consumers – whether through regulatory or broader advocacy or political means (as with the European response to the Russia-Ukraine gas supply dispute of winter 2008).⁹ Resource competition among consuming countries, it is suggested, is the 'reverse of the resource nationalism coin'.¹⁰ In the most extreme cases, consumer country resource nationalism may lead directly to armed conflict. Some would argue that the invasion of Iraq can be understood in this way.¹¹

Surging interest in the role of biofuels in the overall energy mix and rapidly expanding investment in the sector has also been associated with 'nationalist' advocacy on the part of consuming nations worried about energy security. One blog¹² describes this as a worrying manifestation of 'environmental nationalism', in which consuming countries aggressively seek more environmentally benign raw materials – even at the expense of negative social outcomes in other countries.

In the case of the biofuels sector, the association between biofuels expansion and rising food prices has in turn triggered producer country 'resource nationalism' movements as citizens have taken to the streets to protest at rising food costs. The current financial crisis and its associated deflationary pressures may to some extent ease the pressure on food prices as well as energy demand. But the overall contours of the links between biofuels expansion, consumer country resource nationalism advocacy and exporting country grassroots resource nationalism movements are likely to remain.

Home countries of multinational corporations affected by resource nationalism abroad face choices about whether and if so how, actively to support their economic interests. Those interests become the direct interests of the home country when the multinationals concerned are directly state-owned or controlled.

The strategic use of state-owned enterprises to pursue natural resources in other countries is another manifestation of producer country resource nationalism. For example, in October 2007, Algerian Energy and Mining Ministry and the state-owned oil company Sonatrach presented 10 new exploration blocks. Later industry reporting suggested that Algeria's Energy and Mines Minister Chakib Khelil said: "*We will favour partners who will give us, in return, access to reserves... We are going to use this bid to boost Sonatrach's presence abroad*".¹³

China's rapidly growing need for resources fuelled by rapid economic growth at home has also led the country's enterprises to build increasingly visible presences in resource-rich countries. Particular interest has been raised by China's rapidly growing presence in Africa – sometimes dubbed the new Silk Road.¹⁴ Interestingly, China's 2006 African policy identifies sustainable development in host countries as one of the goals of economic engagement:

*The Chinese government encourages and supports competent Chinese enterprises to cooperate with African nations in various ways on the basis of the principle of mutual benefit and common development to develop and exploit rationally their resources, with a view to helping African countries to translate their advantages in resources to competitive strength, and realise sustainable development in their own countries and the continent as a whole.*¹⁵

In the oil and gas sector alone, Chinese companies Sinopec, China National Offshore Oil Corporation (CNOOC) and China National Petroleum Corporation (CNPC) have interests in Nigeria, Angola, Sudan, Equatorial Guinea, Gabon and Chad. Significant minerals sector investments have also been made – for example in Zambia and the Democratic Republic of Congo.¹⁶

In a variation on consumer country resource nationalism, nationalist fears have on occasion been raised in some countries – including the US and Kazakhstan – about Chinese acquisitions in strategic sectors (see *Box 5* below). This might be dubbed ‘double resource nationalism’ on the part of both producing and consuming countries simultaneously: it involves consuming country resource nationalism in the form of pursuit, through national natural resource companies, of access to resources in other countries; and a nationalistic protective response on the part of the target country concerned.

Box 5: ‘Double resource nationalism’: Chinese acquisitions in the US, Canada and Kazakhstan

In the US, a 2005 CNOOC unsolicited cash bid for Unocal caused consternation and was vetoed by Congress. CNOOC ultimately withdrew its offer. In China’s neighbour Kazakhstan, President Nazarbayev gave his consent in 2005 to CNPC’s acquisition of Canadian registered Petrokazakhstan on condition that CNPC transferred a third of the company to the Kazakhstani national oil company, KazMunaiGas (KMG), with payment to be made out of future oil revenues. Early in 2007, Chinese CITIC Group bought the Kazakhstani oil assets of Canadian Nations Energy. The condition was that CITIC granted an option on a 50 percent interest to KMG.

Sources: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/01/04/BUGDBNCR41.DTL&hw=kazakhstan&sn=001&sc=1000>
<http://query.nytimes.com/gst/fullpage.html?res=9F01E0D91630F932A35752C0A9619C8B63>

Alongside directly nationalist fears, worries have also been expressed about the possibility that Chinese investors will have less respect for human rights or corporate responsibility than Western oil companies. This was for example the case when Chinese company Sinopec and CNPC entered the Sudan after the departure of Canadian Talisman Oil. Talisman had been pressured into divestment by NGO campaign pressure based on human rights concerns that ultimately depressed the company’s share price.¹⁷

As ever, the story is not straightforward. The Chinese approach to negotiating investment deals appears to be one of the country’s many successes. As Sanusha Naidu and Martyn Davies note,¹⁸ the Chinese approach to diplomacy in Africa offers marked differences from Western neo-colonialism and political conditions, with China according Africa equal diplomatic status with ‘the dominant powers’ in its political engagement. Second, China is able to pursue ‘coalition investment’ strategies in which a recipient African economy is engaged ‘in a way that can include tying energy acquisitions to funding for infrastructure development’. Third, Beijing is able to extend development assistance and cooperation to African governments *as part of its overall commercial engagement*. They go further, suggesting that the apparently commercially illogical deals entered into by Chinese companies may be explained by China’s strategy of disengagement from global market mechanisms in an effort to develop an alternative mechanism.

Paul Collier, in a piece for the Extractive Industries Transparency Initiative,¹⁹ hints that Chinese investors may simply be better at giving host countries what they want. China, he suggests, has ‘developed a distinctive model of doing business for resource extraction deals in which resource extraction rights are bartered directly for the construction of infrastructure. The package includes a component of Chinese aid, although since the packages are not individually priced the value of the aid is uncertain’. Professor Collier advises introduction of competition from other countries into China’s ‘packaged deal’ approach by encouraging other countries to do so too, with significant implications for the donor agencies of ‘home’ states.

The examples of Sonatrach and of the Chinese overseas investment model show consumer country resource nationalism with potential to trigger entirely new models of doing business; models that inherently lean towards a greater role for public sector actors. Helping to shape the terms of the competition that is likely to follow is a key task for advocates of sustainable development.

Investment target country resource nationalism

A different set of concerns associated with ‘consumer country resource nationalism’ – or, rather, ‘investment target country nationalism’ arises out of the strategic uses of Sovereign Wealth Funds around the world. 2007 saw a rise of discussion on the ethics of investment decision-making associated with state-owned sovereign wealth funds. Some, like the State Oil Fund of the Republic of Azerbaijan or the Norwegian Oil Fund, are earmarked for earnings from rich natural resource endowments. Others, less relevant to this paper, simply reflect large foreign exchange reserves.²⁰ Either way, the total stock of sovereign wealth funds, currently put at USD2-3trillion is set to rise: a Morgan Stanley research report (published before the current financial crisis) estimates that Sovereign Wealth Funds will have USD12trillion under management by 2015.²¹

Sovereign wealth funds are often considered a policy tool for combating the risk of ‘Dutch disease’ (in which manufacturing may decline and inflation increase as a result of increases in natural resource revenues exerting a knock-on effect on exchange rates).²² In countries with rich natural resource endowments, economic and social instability can result from rapid acceleration in spending at national level that is fuelled by exploitation of natural resources. In extreme cases, this may be dubbed the ‘natural resource curse’.²³ Smooth economic and social development and the needs of future generations can be managed more effectively, the thinking goes, when natural resource revenues are accumulated in funds earmarked for long-term spending (as in the case of the Norwegian Oil Fund) or specific social goals (as with the hypothecated fund established in connection with the Chad-Cameroon pipeline).²⁴

Concerned ‘consumer country’ commentary on the rise of sovereign wealth funds has been fuelled by increased awareness of the scale of the rapid rise in the economic influence of emerging markets – led by China – and worries over the considerations that might govern these ‘emerging players’ decisions in their search for effective return on their investment. Concerns have been expressed over the use of sovereign wealth funds to pursue economic or non-economic foreign policy goals (effectively a form of resource nationalism).

An untransparent, well-capitalised and strategically wielded sovereign wealth fund offers added political power to its government; power which may be applied to create alliances or to threaten opposing interests. But, as Blackburn *et al* point out,²⁵ there may also be some costs in political wielding of sovereign wealth funds, including increasing interest in target states in imposing restrictions on sovereign wealth fund investments, limited voting rights and liability to be targeted by defensive legislation allowing governments to prevent acquisitions on national security grounds. Lack of transparency in the governance of some funds is also a real concern. For example the Abu Dhabi Investment Authority has never revealed the value of its assets. Lack of transparency in the governance of the fund, in turn, may lead to protectionist responses to investments on the part of target states.

In October 2008, a 23 member-country Working Group of Sovereign Wealth Funds convened by the International Monetary Fund agreed to new investment practices and voluntary principles, dubbed the Santiago Principles.²⁶ Among other issues, these address a number of the key concerns over transparency of sovereign wealth fund objectives, governance and decision-making.

In any event, sovereign wealth funds including China's China Investment Corporation look set to become increasingly scrutinised players in the international economy. Commentators have wryly begun to note that Chinese state controlled entities could at this point, with a little organisation, effectively buy up Wall Street.²⁷ Whether the Chinese would wish to exercise their much-debated clout this way is a different question.

Certainly, China seems prepared to make strategic use of her sovereign wealth. Officials of the China Development Bank expressed concern over the proposed Rio Tinto-BHP merger in the iron ore industry on grounds that consolidation would mean higher prices for Chinese firms and citizens. The Sovereign Wealth Fund was also reported to have funded an unsolicited bid by China's state-owned mining corporation Chinalco, acting jointly with US firm Alcoa, to acquire a 12% stake in Rio Tinto in a move many considered was an attempt to block the planned merger,²⁸ (itself subsequently dropped in November 2008 on the back of falling commodity prices).²⁹ In February 2009 the Financial Times reported that Chinalco was set to acquire a total stake of 18% in Rio Tinto, up from an existing 9%, by means of a purchase of minority stakes in a number of Rio Tinto assets. Existing major investors were said to respond with 'fury'.³⁰ Whilst consolidation would not confer monopoly power, the psychic impacts of China's initial move alone appear to have been sufficient to stoke fears over politically motivated uses of sovereign wealth funds.

As with consumer country resource nationalism, there is a significant task for sustainable development advocates to help shape the emerging governance context for sovereign wealth funds. Principles associated with transparency have long been part of the sustainable development armoury, but it is important that in a time of global financial crisis and widespread recession, protectionist fears should not be allowed to dominate rational policy analysis. Understanding the worries of target country governments (at least in relation to natural resource-based sovereign wealth spending) as part of the spectrum of resource nationalism can help to break down barriers between 'producer' and 'consumer' perspectives to allow instead a focus on wider approaches – or scenarios – for global governance.

The definitional dilemmas of resource nationalism

There is no single definition of resource nationalism, much less any sustainable development typology of resource nationalism. However, the core elements in a sample collection of definitions (see *Box 6* below) seem to lie with government efforts to maximise revenues from and exercise greater state control over the exploitation of natural resources.

For a broader perspective on the term, it is worth looking at the link between 'resource nationalism' and other related terms – including 'nationalism', 'economic nationalism' and 'protectionism' since these are also terms that are associated with uses of 'resource nationalism'. Each has something to offer to consideration of resource nationalism in the context of sustainable development.

Nationalism

First, nationalism. In one sense, nationalism can be taken to refer to struggles that aim for congruence between political and national units; between 'the nation' (redefined in line with the goals of the movement or group concerned), and the government of 'the state'.³¹ Producer country resource nationalism is more often than not external-facing, in that its targets, de facto or expressly, are foreign multinational companies, and in this sense it is less easy to connect to the kinds of struggles that mainstream definitions of 'nationalism' have in mind. But resource nationalism may also be linked to intranational struggles when it expresses the outcome of internal struggles for control of resources or for decentralisation so that resource-rich regions can control the revenues from natural resource exploitation. The Scottish nationalist movement could to some extent be understood in this way at the height of the UK's North Sea oil and gas revenues.

This kind of 'inward-facing' resource nationalism tends to be described only as a concomitant effect of resource nationalism, not a distinctive sub-type of 'resource nationalism'. Instead, issues surrounding the struggle of local communities to receive a fair share of the benefits of natural resource development are more often considered under the heading 'community development'. This points to the insight that resource nationalism cannot be understood simply by looking to the policy tools to which this label has been attached by external commentators. For example, it is increasingly common for international donors (the World Bank Group in particular) to support efforts to build public policy frameworks to address the community development impacts of mining activity.³² These kinds of approaches minimise the likelihood that even a 'nationalist' resources policy could lead to negative outcomes in terms of internal social unrest or inequitable development. Indeed in post-conflict contexts, effective policies on extractive industries and sustainable development have potential to support efforts to build a sense of 'nation' as ethically mixed and congruent with statehood.

John Breuilly suggests a slightly different approach to understanding nationalism when he argues that:

"A nationalist argument is a political doctrine built upon three basic assertions:

- a) There exists a nation with an explicit and peculiar character.*
- b) The interests and values of this nation take priority over all other interests and values.*
- c) The nation must be as independent as possible. This usually requires at least the attainment of political sovereignty.³³"*

The elements of independence (from the legal and economic pressures exerted by foreign investors or from the investment legacy of previous administrations) and of pre-eminence (if not absolute dominance) of national interests and values can be found in most contemporary examples of resource nationalism. But views would likely differ on the extent to which resource nationalist policies and tools reflect the idea that 'the interests and values of this nation take priority over all other interests and values.'

It has been suggested that 'nationalism' works to generate a 'psychic' benefit on the part of citizens which may be entirely decoupled from material benefits.³⁴ This is also a characteristic of much resource nationalism. For example, Russian resource nationalism, in the form of increasing state control of oil and gas assets, is strongly supported by a majority of the population who are weary of Russia's privatisation processes allowing criminals or foreign oil companies to plunder the country's natural resource heritage. Equally, the resource nationalism of President Putin may have played an important role in rebuilding the national sense of pride and kinship after the insecure years and fear that followed the 1998 collapse of the rouble. To the extent that such 'psychic benefits' help to form social capital at the national level, they may be considered broadly supportive of sustainable development; but unless such benefits are integrated with wider economic, social and environmental policy concerns, any sustainable development benefits must be incidental.

Box 6: Definitions of resource nationalism

A. *Producer country resource nationalism*

Nations wanting to make the most of their endowment
Middle East Economic Survey (MEES), 25 September 2006

A situation where producer countries have moved to maximize revenue from present oil and gas production while altering the terms of investment for future output
Bill Farren Price, MEES, 11 September 2006

It generally refers to a set of policies as well as the justifications given to policies that increase government intervention in resource development.

Nordine Ait-Laoussine, *Middle East Economic Survey*, 3 November 2008,
<http://www.mees.com/postedarticles/oped/v51n44-5OD01.htm>

An expression of [the].. ‘obsolescing bargain’ .. whereby once oil has been discovered and the investment sunk in development, relative bargaining power switches in favour of the host government, which then tries to increase its fiscal take by unilaterally changing the terms of the original contract.

Paul Stevens, *National oil companies and international oil companies in the Middle East: Under the shadow of government and the resource nationalism cycle*, JWELB 2008, Volume 1 No 1

An expression of political antipathy to the United States (and by implication its oil companies), wider Western interests, and/or economic globalization

Paul Stevens, *The Coming Oil Supply Crunch*, Chatham House, 2008

It has two components: limiting the operations of private international oil companies, and asserting greater national control over natural resource development

Adapted from Paul Stevens, *National oil companies and international oil companies in the Middle East: Under the shadow of government and the resource nationalism cycle*, JWELB 2008, Volume 1 No 1

An increasingly dominant national oil company, sudden and unilateral changes in upstream ownership and operating regime and barriers to, or higher costs for, upstream entry characterise resource nationalism in its more extreme form

International Energy Agency, *Medium Term Oil Market Report*, July 2007,
<http://omrpublic.iea.org/currentissues/mtomr2007.pdf>

Governments deny private companies access to new oil fields and nationalise the fields that the private companies have started to develop.

Sergei Guriev, Anton Kolotilin, Konstantin Sonin *High Oil Prices and the Return of “Resource Nationalism”* (<http://www.voxeu.org/index.php?q=node/1050#fn1>)

The increasing use of control of natural resources to advance policy goals—both economic and foreign policies

Joseph Stanislaw, *Power Play: Resource Nationalism, the Global Scramble for Energy and the Need for Mutual Interdependence*, Deloitte US, 2008

B. *Consumer country nationalism*

“Resource nationalism involves governments attempting to take control of sources of raw materials outside their borders in an attempt to prevent monopoly or collusion”.

John Blackburn et al, *Sovereign Wealth Funds: Do sovereign wealth funds best serve the interests of their respective citizens?*

Economic nationalism

Resource nationalism needs in turn to be distinguished from two other terms – economic nationalism, and protectionism.

US conservative Pat Buchanan's view of economic nationalism is broad: "*I am an economic nationalist. To me, the country comes before the economy; and the economy exists for the people. I believe in free markets, but I do not worship them. In the proper hierarchy of things, it is the market that must be harnessed to work for man - and not the other way around.*"³⁵ This comes close to John Breuilly's characterisation of nationalism, but expressed through economic policy tools.

More narrowly, economic nationalism, it has been suggested, "*is a term used to describe policies which are guided by the idea of protecting domestic consumption, labo[u]r and capital.*"³⁶ The resource nationalism of Pacific Islands seeking to protect their tuna industries through policies of domestication is of this sort, but the wider political goals of many resource nationalists suggest that economic nationalism is too narrow a term to encompass the full range of resource nationalist tools and practices.

Protectionism

Protectionism is generally expressed through the use of *trade* policy tools (covering both trade in goods and trade in services) to protect a nation's producers or enterprises from competition. Note the emphasis on protection of a nation's enterprises – not its people. Resource nationalism generally makes more use of investment policy than trade policy; but there is no inherent exclusion of 'protectionist' trade policy tools from the scope of possible resource nationalist policies. On the other hand, it is difficult to dub measures restricting exports of rice on food security grounds 'protectionist' – on the contrary, such measures are often deeply unpopular with domestic producers (as in the case of Argentina's 2006 restrictions on exports of beef and subsequent disputes with farmers).³⁷ In other words, some resource nationalism is protectionist, but not all protectionism in natural resource sectors is a reflection of resource nationalism.

The vital importance of context

The terms 'nationalism', 'economic nationalism' and 'protectionism' are, thus far, of limited value in arriving at more precise understanding of resource nationalism, but they do at least point to three things:

- The potential value of understanding resource nationalism in the context of a variety of intranational struggles for control of natural resources, and the importance of taking such an enquiry beyond the direct terminological field of 'resource nationalism' to consider areas such as community development
- The distinction between 'protectionist' and 'non-protectionist' resource nationalism (in the trade policy sense of 'protectionist'), and
- The (so far) loose fit between economic nationalism and resource nationalism – but the limited explanatory force of the term 'economic nationalism' for building understanding of resource nationalism.

In an important paper on 'economic nationalism', Andreas Pickel³⁸ offers a number of insights that are of more direct value to an enquiry into the links between resource nationalism and sustainable development. He suggests that "*the economic dimensions of specific nationalisms make sense only in the context of a particular national discourse, rather than in the context of general debates on economic theory and policy*". Economic nationalism cannot be adequately explained, he suggests, "*in strictly economic terms without taking into account historical, political, cultural or social factors*".

The examples of resource nationalism in Russia and Bolivia respectively – quite different in underlying characteristics and historical context – clearly demonstrate this. Economic culture is another important contextual component. For example, Central Asians can often be heard complaining with resignation that corruption is part of their culture. This may help to explain why it is so difficult to combat economic policy approaches that facilitate corruption, including in particular lack of transparency in investment decision-making.

Energy trade conflict strategies

A piece by Paul Williams in *Third World Quarterly* identifies six distinct categories of ‘energy trade conflict strategies’ which have some overlap with resource nationalism.³⁹ Each is based on specific strategic rent-seeking actions that place the interests of Northern consumer countries and their corporate in opposition to those of Southern exporters. He distinguishes between strategies based on whether they are initiated by Southern exporters or Northern interests; whether the action takes effect in buyer’s or seller’s markets, and related to this, whether the action can be classified as ‘defensive’ or ‘offensive’

The typology is readily understandable given its conflict focus, but is less readily adaptable to sustainable development considerations since it provides no mechanism for revealing or evaluating the underlying development contribution of the measure concerned. Neither is a distinction between ‘Northern’ and ‘Southern’ countries entirely well suited to resource nationalism given the significance of countries that are not readily classified as either (e.g. Former Soviet Union countries, or Middle East exporters). Yet there is potentially a valuable role to be played here – both to point to the ‘ordinariness’ of resource nationalism in its many guises, and to counter the one-size-fits-all pejorative nature of the term.

Conclusions

In conclusion, there is potentially value in arriving at a more detailed sustainable development-driven conceptualisation of resource nationalism that can (at least):

- Account for the distinctions between producer and consumer country resource nationalisms
- Take account of intra-national dimensions of resource nationalism (including approaches to ensuring community development and fair and equitable sharing of benefits from natural resource exploitation)
- Account for the particular historical, cultural, socio-economic and environmental characteristics of ‘resource nationalist’ countries and the tools adopted.

It is beyond the scope of this paper to develop such a conceptual framework in detail, but the promise that it holds is to break resource nationalism out of its current largely negative narrative to drive enquiry in directions that can actively build understanding on new or refined combinations of tools and wider governance settings for pursuit of sustainable development.

Resource nationalism in global context

Features of the contemporary context

The concept of resource nationalism can be readily linked to a wide variety of contemporary global concerns, including discussion on ‘the resource curse’; increasing OECD country concern over the economic significance of sovereign wealth funds, ‘good governance’ in middle and low income countries; trends in political risk management; practical endeavours to design methodologies for measurement of socio-economic development contributions of extractive sectors, and wider issues about the ‘enabling environment’ for responsible business practice.

The context in which resource nationalism is practised includes high food prices coupled with increasing pressure on productive land from intensification of biofuels production; a rise in economic (and hence political) significance of national oil companies; increasing concerns for energy

and natural resource security; and recent rapid increases in economic growth and domestic consumption in a series of rapidly developing middle income countries, including notably India and China.

Comparisons with the 1970s

The tendency to resource nationalism is far from new: Mexico nationalised its oil industry in the 1930s, and OPEC, the producers’ cartel, was formed in 1960. The last intense wave of analysis of ‘resource nationalism’, however, was seen in the 1970s (though to be sure, resource nationalism has not been absent since – as in the case of expropriations in Peru during the mid-1980s).⁴⁰ In 1973, Saudi Arabia’s embargo on exports of oil to the West in retaliation for Western support for the Yom Kippur war had led to a quadrupling of oil prices. This marked the first of a series of oil shocks and nationalisations of previously private enterprises in sectors considered strategically important to the governments of many newly independent countries. Even then, however, just 28 governments accounted for some 62 percent of all expropriations in the period from 1960-1985.

Today’s context is both similar and different to that of the 1970s. The table below makes comparisons based on a collection of existing writings – largely from the oil and gas sector.

Table 1: Taking Stock: Comparing Resource Nationalism in the 1970s and 2000s

1970s	2000s
Sweeping nationalisations	Limited nationalisations
Collective international economic policy activism	Limited activism? (with the possible exceptions of Russian calls for a new gas producers’ organisation; ALBA in Latin America)
Newly independent states seeking to ‘overturn an old order’	No old order to overturn
Ideologically driven by newly independent countries in the post-colonial period- stressing need for independence, self-determination and control of the national patrimony	Less widespread ideologically driven resource nationalism? Pragmatic approaches prevail driven mostly by perceived immediate national interests. Exceptions in Latin America in particular (“The leaders of Venezuela and Bolivia use the rhetoric of the past, but mostly for the benefit of their domestic and regional audiences” – PIW; cf “Venezuela’s efforts to spread its leftist political ideology throughout Latin America” (Ait-Laoussine and Gault) Russia’s officially stated goals for its gas industry include ‘securing Russia’s political interests in Europe and neighbouring states, as well as in the Asia-Pacific region’
Russia/USSR not a focal point	Russia a focal point – “Russian resource nationalism is essentially power politics applied to energy” (Petroleum Intelligence Weekly)
Resource nationalism almost entirely practised by producer countries	Rise of consumer country resource nationalism? (e.g. through support for national oil company investments abroad; invasion of resource-rich countries whose governments are considered a threat to resource security); Rise of ‘economic

	patriotism'? (e.g. US Congress blocking of CNOOC's bid to acquire Unocal)
Energy policy driven by security of supply considerations (especially after the oil supply embargo of 1973)	Energy security a major driver of energy policy, together with climate change
Little analysis of the 'resource curse'	'Resource curse' phenomenon fuels perception that resource-rich countries are associated with poor governance, corruption and poverty
Government intervention in the economy regarded as the norm and necessary to pursuit of development up to the 1970s	Washington Consensus advocating minimal state intervention in the market pursued throughout the 1980s through privatisation, deregulation and liberalisation and upheld as dominant view. 2000's sees revival of view that state should play a greater role in the economy.
Sustainable development does not exist as a driver of government policy	Sustainable development accepted as a policy goal by a majority of governments around the world

Sources: Paul Stevens, *National oil companies and international oil companies in the Middle East: Under the shadow of government and the resource nationalism cycle*, JWELB 2008, Volume 1 No 1; Paul Stevens, *The Coming Oil Supply Crunch*, Chatham House, 2008; Petroleum Intelligence Weekly, *Petroleum Comment: Resource Nationalism: Then and Now*, January 8 2007; Nordine Ait-Laoussine and John Gault, *Petroleum Comment: the Multiple Faces of Resource Nationalism*, Petroleum International Weekly, February 5 2007

Some of these comparisons are less useful than others in terms of building a robust conceptual understanding of resource nationalism. For example, the claim that resource nationalism is 'less ideological' today than in the 1970s may simply reflect the absence of a coherent international movement akin to the New International Economic Order. Equally the suggestion that Russian resource nationalism is not ideologically motivated is readily contested given its role in asserting and rebuilding a national identity after the collapse of the rouble in 1998. The resource nationalism of countries like Russia and Kazakhstan has played a significant role, it might be argued, in rebuilding the 'psychic' well-being of the two nations.

A further key contextual difference as between the 1970s and today in the energy sector concerns the rise of national oil companies. Governments often consider that national oil companies serve national interests better than private companies. One oft-quoted figure is that as at 2005, national oil companies controlled 77% of proven world oil reserves with no equity participation by foreign oil companies.⁴¹ Consequently, the pressure on these companies to develop capacity to supply the rapid predicted increases in global demand for oil and gas is very significant.

In the future, private oil companies will need carefully to consider how best to add value in a world where opportunities to access new resources are increasingly scarce. Evidence suggests that corporate (i.e. non-state) ownership of oil assets is increasingly 'limited to marginal assets in low risk non-OPEC countries'. This is coupled with a 'strong negative interaction between state ownership and the technical complexity of the field' and the fact that 'state ownership increases with country risk.'⁴² The result is that international oil companies will need increasingly to emphasise their technological capacities in difficult environments. If they are to win new acreage they will increasingly need, too, to develop new capabilities to partner with state-controlled oil companies in countries with high levels of sovereign risk.⁴³ This will place real strains on established approaches to

corporate responsibility, which struggle to work well in difficult governance environments where innovation and high standards are not rewarded.

The concerns and priorities of corporate responsibility are in principle as relevant to national oil companies as to their international counterparts; but the differential exposure of national oil companies to the market drivers of corporate responsibility can have a negative effect on their investment in this area of management and operational practice. A Baker Institute study notes that *'the fact that the Chinese and Indian National Oil Companies are not active participants [in corporate citizenship initiatives] is especially problematic'*.⁴⁴

The situation for service companies – contractors – has also changed. Many of these companies were previously housed inside major international oil companies. As the number of international oil companies diminished through the mergers of the 1990s, service sector companies began to grow. The international oil and gas service sector companies present a pool of knowledge and expertise that is readily available to national oil companies.⁴⁵ Home country attitudes to their protection and promotion in a global climate of increased resource security concerns may therefore shift within overall consumer country energy security strategies.

Crucially for understanding the consequences of extreme resource nationalism that favours national oil companies, national oil companies have non-commercial objectives. The 2007 outcomes of a major Baker Institute study of national oil companies identify six distinct non-commercial objectives⁴⁶: *"a) oil wealth redistribution to society at large; b) foreign and strategic policy and alliance building; c) energy security, including assurance of domestic fuel supply and security of demand for producing countries, d) wealth creation for the nation, e) participation in national-level politics, and f) industrialisation and economic development."*

Mixing of commercial and non-commercial objectives has caused internal management difficulties and inefficiency in a number of national oil companies. And there are wide differences in the ability of national oil companies to support sustainable development in their home countries. Often, national oil companies may be tapped for investment (for example in schools or construction) to support domestic development priorities, or to promote the wider geopolitical goals of their governments. For example, Venezuelan PDVSA's political role is said to include 'protecting President Chavez and his Bolivarian revolution'.⁴⁷

Scenario planning for sustainable futures

Scenario planning offers a useful approach to understanding some of the policy choices that crystallise in the tools of resource nationalism. Scenarios planning typically describes and considers a variety of external contextual variables and internal factors and their implications, in different combinations, for a given problem area. Global energy company Shell has for many years been making use of this planning process in a series of published scenarios reports.

Shell's 2008 scenarios report is especially helpful for purposes of this paper, since it focuses on energy to 2050.⁴⁸ Three hard truths about energy supply and demand can no longer be avoided, says the report: consumption of energy is set to intensify as developing countries enter their most energy-intensive phase of economic growth; supply will struggle to keep pace with these new demands; and environmental stresses are increasing: *even if* it were possible for fossil fuels to maintain their current share of the energy mix and respond to increased demand, emissions of carbon dioxide would, in the oil company's words, "then be on a pathway that could severely threaten human well-being".

The International Energy Agency's 2008 World Energy Outlook 'reference scenario' to 2030 (in which futures are modelled on the assumption that policies remain embodied as at mid 2008) suggests

that world primary energy demand will grow by 45% between 2006-2030, with China and India accounting for half of incremental energy demand (and the Middle East a further 11%). Already, new coal-fired power stations are opening in China at the rate of one a week.⁴⁹ National oil companies would account for 80% of total incremental oil production over the period 2007-2030, assuming the necessary investments are made.⁵⁰ This is a significant assumption, since in countries whose governments have earmarked natural resource revenues for major social spending programmes, there may be significant political pressure on national oil companies to maximise revenues and hence squeeze investment in development of new production capacity. Equally, there may be a perception in resource rich countries that with finite reserves and the potential for 'peak oil' to drive major increases in oil prices, there is long-term value in keeping reserves in the ground for longer.

Policy turbulence is likely to continue for some time if for no other reason than the lack of consensus over prioritisation as between the goals associated with Shell's three 'hard truths'. As Jan Horst Keppler puts it in the European context, there is a "*lack of a sustainable policy trade-off between the competing objectives of energy supply, competitiveness and environmental protection.*"⁵¹ From a swing towards environmental protection over 2007-8 with global increase in concern over climate change, a volley of articles and reports have more recently argued for rebalancing in policy efforts so as to accord greater priority to energy security or peak oil. For example, in 2008 the UK Industry Taskforce on Peak Oil and Energy Security issued a report which argued, with some sophistication, that "*..[P]eak oil is more of an immediate threat to the economy and people's lives than climate change. The Taskforce is not saying that climate change is less important but that the impacts of a decline in easily and cheaply available oil will hit us before the worst impacts of climate change. The Government needs urgently to reflect this threat in their analysis and planning.*"⁵²

Shell's two 2008 scenarios – *Scramble* and *Blueprint* (see Boxes 7 and 8 below) - provide a useful approach to understanding some of the policy choices that crystallise in the tools of resource nationalism. Which scenario will prevail, if any, is by no means clear; though *Blueprint*, with its emphasis on multistakeholder cooperation and its prioritisation of environmental concerns offers a more globally comfortable transition to sustainable development.

Scramble represents a world in which national energy security concerns dominate, initially at least, and in which nations play out their concerns in a competitive, zero-sum game. Resource nationalism in this scenario might be a producer country response to deals that favour consuming countries' investors over producing country revenues, an effort on the part of consuming countries to secure additional access to reserves, or producer country concern to maximise revenues from control of increasingly scarce resources. In a *Blueprint* scenario, resource nationalism is likely still to exist – but is more likely to be driven by concerns for equitable division of the benefits of natural resource exploitation, and characterised by cooperative efforts to get the best sustainable development outcomes from investors. Both forms of resource nationalism can currently be seen, and each overlaps.

Many of the negotiating approaches associated with resource nationalism are at odds with the kinds of cooperative approaches that underpin Shell's **Blueprints** scenario – even when they genuinely respond to the concerns of citizens from the bottom up. Intuitively, the resource nationalism of Russia, however misunderstood it may be, is more at home in a **Scramble** scenario.

The challenge from a sustainable development perspective for consumer states and their electorates is to take advantage of the incentive offered by resource nationalism to accelerate learning and innovation in *responsible* direct investment, alternative economic and partnership models of direct investment (learning, perhaps, from the example of China's investments in Africa),

dematerialisation,⁵³ energy efficiency and renewable energy and strategic alliances for technology transfer.

Producer countries need to be more active in shaping the terms of discussion about resource nationalism, so that the focus of critique goes beyond charges of rent-seeking to examining more deeply whether individual approaches make sense in terms of sustainable development. Indeed, the relative absence of producer country non-industry voices from the debate makes it largely one-sided.

Box 7: Scramble – overview at a glance

Scramble reflects a focus on national energy security. Immediate pressures drive decision-makers, especially the need to secure energy supplies in the near future for themselves and their allies. National government attention naturally falls on the supply-side levers readily to hand, including the negotiation of bilateral agreements and incentives for resource development. Growth in coal and biofuels becomes particularly important.

Despite increasing rhetoric, action to address climate change and encourage energy efficiency is pushed into the future. Demand-side policy is not pursued meaningfully until supply limitations are acute. Likewise, environmental policy is not seriously addressed until major climate events stimulate political responses. Events drive late, but severe, responses to emerging pressures.

Although the rate of growth of atmospheric CO₂ has been moderated by the end of the period, the concentration is on a path to a long-term level well above 550ppm. An increasing fraction of economic activity and innovation is ultimately directed towards preparing for the impact of climate change.

In Scramble, major resource holders are increasingly the rule makers rather than the rule takers. They use their growing prominence in the world to influence international policies, particularly when it comes to matters they insist are internal such as human rights and democratic governance. Nations who have hammered out 'favourable' deals with oil-producing nations do not want to rock the energy boat they have just managed to board, resulting in a world in which international relations are mainly a race to ensure continuing prosperity, not the building of a more sustainable international community.

Box 8: Blueprints – overview at a glance

Blueprints describes the dynamics behind new coalitions of interests. These do not necessarily reflect uniform objectives, but build on a combination of supply concerns, environmental interests, and associated entrepreneurial opportunities. It is a world where broader fears about life style and economic prospects forge new alliances that promote action in both developed and developing nations.

This is not driven by global altruism. Initiatives first take root locally as individual cities or regions take the lead. These become progressively linked as national governments are forced to harmonise resulting patchworks of measures and take advantage of the opportunities offered by these emerging political initiatives. Indeed, even the prospect of a patchwork of different policies drives business to lobby for regulatory clarity.

As a result, effective market-driven demand-side efficiency measures emerge more quickly and market-driven CO₂ management practices spread. Carbon trading markets become more efficient, and CO₂ prices strengthen early. Energy efficiency improvements and the emergence of mass-market electric vehicles are accelerated. The rate of growth of atmospheric CO₂ is constrained leading to a more sustainable environmental pathway.

At the political level, there is increased synergy between national policies and those undertaken at the sub-national and international levels... International organisations – concerned with the environment, global economic health and energy – increasingly agree on what works and what

The legal context for resource nationalism

Sustainable development and its relationship with international law

Changes in the international legal order over the past thirty years – and their ability to support sustainable development outcomes from direct investment and resource nationalism – are a distinct and important part of the context for understanding the most recent wave of resource nationalism.

In the period before the oil shocks of the 1970s, the great economic globalisation endeavours of trade and investment liberalisation had not gathered pace. Whilst a number of bilateral investment treaties had been signed, they were relatively few in number. But the period from 1970 to 1999 saw a fifteen-fold increase in the number of bilateral investment treaties.⁵⁴ The same period also saw the creation of a powerful new organisation to oversee the rules of trade liberalisation: the World Trade Organization (WTO) was created in 1994 as the successor to the Secretariat to the General Agreement on Tariffs and Trade.

Since the 1970s, sustainable development has also risen in importance as a normative framework at international level. In its 1992 report, the Sustainable Development Committee of the influential International Law Association (ILA) noted: “*sustainable development has become an established objective of the international community and a concept with some degree of normative status in international law. This is not to say that its contents are clear.*”⁵⁵ In the same year, the 1992 Rio Declaration on Environment and Development was adopted at the UN Conference on Environment and Development. Its 27 Principles encapsulate the core notions of sustainable development as agreed by state participants in UNCED.

Respect for state sovereignty over natural resources is a widely if not universally accepted principle both of international environmental and investment law and of sustainable development.

At first glance, the tools of resource nationalism complement this approach since at the simplest level, ‘taking control’ of natural resources amounts to a simple expression of state sovereignty over natural resources. As the late Professor Thomas Waelde puts it, “[p]olitical demands, often dressed in legal concepts, that were last heard of in the NIEO period of the 1970s, are now again the common currency of resource nationalism”.⁵⁶

Tension, from an international legal perspective, comes from elsewhere within the international legal order. Since the early 1970s two overarching sets of international legal frameworks that are particularly relevant to this paper have evolved to temper and constrain the exercise of territorial sovereignty. The first is the law of international investment. The second is the international law relating to sustainable development. The former has evolved – particularly through growth in bilateral investment treaties - largely to secure protection for the rights of foreign investors, backed by well-developed dispute resolution mechanisms which often centre on the use of commercial arbitration. The latter has evolved to offer normative frameworks for pursuit, at the state and international levels, of integrated approaches to environmental protection, economic development and social development (including through poverty reduction). Whilst many treaties and declarations address the subject matter of sustainable development (most particularly the body of international environmental law) they have typically not been associated with the stronger compliance mechanisms (or ‘teeth’) of international trade and investment law.

However, sustainable development offers a more nuanced, cooperative, and hence in some respects constrained, vision for the exercise of the right of state sovereignty over natural resources than its expression during the New International Economic Order debate. In particular, Principle 2 of the 1992 Rio Declaration on Environment and Development tempers the exercise of state sovereignty over natural resources “pursuant to their own environmental and developmental policies” with a responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

In practice, international law relating to sustainable development has had little direct impact on international investment law. Indeed for some commentators, international investment law is almost entirely one-sided: Professor Sornorajah dubs it ‘the Law of Greed’, “because of the fact that it is built on accentuating only one side of the picture of foreign investment so as to benefit the interests of multinational corporations which exist to seek profits for their shareholders”.⁵⁷

Whether or not one agrees with this strongly expressed view, the ‘international investment law of sustainable development’ is rudimentary, with the possible exception of the more sophisticated regional frameworks such as the North American Free Trade Agreement, NAFTA, which incorporates both environmental and investment provisions. Some limited steps have been taken to incorporate concern for labour or ‘corporate stewardship’ in bilateral investment agreements⁵⁸ – but these are at a relatively early stage of development for the time being.

Tensions between investment law and sustainable development

In the event that a legal dispute arises out of the adoption of ‘resource nationalism’ tools by host states – for example an unexpected increase in the tax burden on an investment project, or the unilateral cancellation of an investment contract - there are three sets of legal rights that may come into play to protect the investor: the national law of the host state, the contractually negotiated rules that were initially agreed between the investor and the host state in relation to the investment in question, and the provisions of any state-to-state bilateral or regional investment treaty or agreement applicable to the investment in question.

We may assume that in many if not most cases of determined ‘resource nationalism’, national law offers limited options for protection unless the investor is prepared to bring a constitutional law

challenge to the host government's actions. So it is to the safer territory of contractually negotiated rules applicable to the investment project and to bilateral or regional investment agreements that most investors will turn should they seek legal support for protection of their rights.

The lack of real integration of international investment law and sustainable development raises a particular problem since it provides no mechanism for weighing most resource nationalism against affected investor rights in terms of the sustainable development objectives of the host state or the sustainable development performance of the investor. For example, investment law does not contain any principle of 'proportionality' that could allow consideration of the extent to which the intrusion of a 'resource nationalist' measure into an investor's property interests was proportionate to sustainable development dimensions of the public policy goals being pursued. Indeed, crafting such a balancing exercise faces the obvious obstacle that the notion of proportionality would be difficult to apply to, say, an increase in the tax burden on an investment projects in *prima facie* breach of an investment contract.

This kind of host state measure may serve to increase host state revenues but cannot be concluded *per se* to complement sustainable development without investigation of the policy goals to which the additional revenues might be applied, and consideration of the sustainable development impacts of the project itself. Asking investment tribunals to permit (or rather, not to sanction) 'resource nationalism' based on its net contribution to sustainable development would be a radical departure. Given that (historical, cultural and political) context is everything to understanding of resource nationalism, it is clear that protecting the contractual or treaty-based expectations and rights of an investor is much simpler than engaging in second-guessing evaluation of host country policy priorities. Neither would it be appropriate for investment law to incorporate such second-guessing principles unless they were to be applied by tribunals effectively equipped – both legally and by reason of training – to carry out such an evaluation.

Particular concerns have been expressed – by NGOs and others – over the potential for key principles and approaches of international investment law to undermine host state efforts to pursue sustainable development at national level. Lorenzo Cotula has outlined some of the key areas of concern in a series of IIED briefing papers for civil society organisations.⁵⁹ They include:

- The use of a range of legal devices to stabilise the legal framework applicable to an investment project to facilitate the investor's management of non-commercial (i.e. fiscal, regulatory or political) risk. 'Stabilisation' or 'equilibrium' clauses can work in ways that can constrain the host country's ability to improve human rights or environmental standards – because they require payment of compensation to investors.
- The interpretation of certain principles of investment law in ways that have potential to undermine progressive development of public policy related to sustainable development. The 'regulatory taking' doctrine is particularly worrisome. International law sets limits on the legality of expropriation of foreign investors' assets: in essence, foreign investors may only be deprived of property rights a) for public purpose, b) in a non-discriminatory way, c) if compensation is paid, and d) based on due process. In practice, expropriation has been defined very broadly, and some cases have suggested that where a regulation affects an investment project very significantly, it may be treated *de facto* as an expropriation – triggering an obligation to pay compensation. This has come to be known as 'regulatory taking' – or 'indirect expropriation', with potentially significant negative effects on the political acceptability of some kinds of environmental protection measures.
- Lack of transparency in the processes by which contracts between foreign investors and host states are negotiated and implemented. In many cases even the terms of the contract once it has been concluded, let alone the processes by which it has been agreed, may be

considered secret – and when public consultations about aspects of investment projects take place, they too often happen after key decisions have already been taken. A further significant problem of transparency concerns the lack of transparency in the resolution of most investment disputes. Dispute settlement away from the public gaze can also facilitate bribery. As Professor Waelde puts it, *“There should be little doubt that the settlement of not overly politicized disputes with new governments is facilitated by bribery and patronage in favour of people with influence in the new government.”*⁶⁰

- The role of international commercial arbitration in resolution of disputes between investors and host states. Particular issues relate to a) the expertise of arbitrators in relation to non-commercial public policy issues; b) the tendency (indeed, sometimes requirements) to treat investor-state disputes as arising out of the law applicable to the investment project in isolation from wider public policy or human rights goals, or the interests and legal expectations of third parties; c) problems of potentially unregulated conflicts of interest where arbitrators whose commercial practice is built on advising investors are called upon to adjudicate in disputes involving host states, d) (as mentioned above), lack of transparency in the conduct of arbitration proceedings; arbitral awards are often confidential, and even the fact that a dispute is under way may not be a matter of public knowledge. Some Latin American countries have become so concerned that international commercial arbitration does not serve their interests that they have withdrawn, or threatened to withdraw, from some of the international commercial arbitration frameworks that they had previously signed up to (see *Box 9* below). In practice, this tactic has been so closely associated with resource nationalism that it may legitimately be understood, itself, as a tool of resource nationalism.

Box 9: Withdrawal from international arbitration as a tool of resource nationalism

An emerging tool of resource nationalism is host state withdrawal from international arbitration frameworks considered unfavourable. Bolivia formally denounced the World Bank Group International Centre for the Settlement of Investment Disputes (ICSID) in 2007, with President Evo Morales quoted as saying *“(We) emphatically reject the legal, media and diplomatic pressure of some multinationals that ... resist the sovereign rulings of countries, making threats and initiating suits in international arbitration”*. Venezuela Nicaragua and Ecuador have also indicated that they would like to do so.

In May 2008, energy ministers from the 11 South American nations met for the first time as the Energy Council for South America to discuss a regional Energy Security Treaty. Venezuelan energy minister Rafael Ramírez was reported to have announced at the conclusion of the meeting that the Council had approved working groups whose task is to design a legal mechanism to settle investor-state disputes related to the energy sector; a mechanism that would eventually replace those of ICSID as the preferred means to settle disputes between foreign energy companies and governments of Latin America. The Energy Council has given itself six months to finalize the Energy Security Treaty.

Sources: <http://www.brettonwoodsproject.org/art-554233>
<http://www.brettonwoodsproject.org/art-558781> ;
<http://www.investmenttreatynews.org/cms/news/archive/2008/08/06/south-american-alternative-to-icsid-in-the-works-as-governments-create-an-energy-treaty.aspx>
<http://www.investmenttreatynews.org/cms/news/archive/2008/08/06/south-american-alternative-to-icsid-in-the-works-as-governments-create-an-energy-treaty.aspx>

Concern for transparency in processes of contract negotiation has been a direct focus of campaign pressure linked to renegotiation of mining contracts in the Democratic Republic of Congo (DRC). Consequently, rather more information than is usual is in the public domain about the process of mining contract review in the DRC. The 2007 decision of the Democratic Republic of Congo to review its mining contracts (see *Box 10* below) became a focal point for international civil society calls for investment contract transparency. The targets were not only the contracts themselves, but also the review process, with civil society actors seeking input into the initial review process. Subsequently, not only did civil society actors call for the renegotiation process itself to be transparent, but for the renegotiations to be ‘fair’. Throughout, NGOs commented on the composition of relevant review processes, the timescale, and the practices of the companies under review. The country’s former colonial ruler, Belgium, was also active in the process. As the contract renegotiation process was about to get under way, the Belgian government issued a press release calling, rather ambiguously for outsiders, for the process of renegotiations to proceed in an open manner, and emphasizing that there should be “no taboos”.

Box 10: Mining contract review in the Democratic Republic of Congo

In 2007 the Democratic Republic of Congo, the government announced a review of 61 mining contracts and charged an Interministerial Commission with the task. Most of the contracts concerned had been concluded during the 1998-2003 civil war. The Commission completed its review in October 2007. A summary of its reported was leaked to the press, but was not made public initially. Following Congolese and international civil society pressure, the government published the final report of the interministerial commission in March 2008. At a major mining conference in South Africa in February 2008, vice minister of mines announced that all of the contracts that had been considered needed some degree of modification. As the subsequent renegotiation of contracts drew to a close, much delayed, in December 2008, six companies had pulled out of talks with the remainder of the negotiations concluded. An extension of 45 days was announced by the government to allow negotiations to resume between Ministers and First Quantum, Banro, AngloGold Ashanti , Gold Fields, Mwana Africa, and Freeport McMoran.

Sources: <http://www.humansecuritygateway.info/showRecord.php?RecordId=24106;www.11.be;>
http://www.humansecuritygateway.info/documents/GPF_DRC_042008miningreview.pdf

There is a risk that the permissibility of a pro-sustainable development policy tool attracting the pejorative ‘resource nationalism’ label may fall to be determined by investment law requirements that are blind to the sustainable development-related public policy objectives of the state in question.. On the other hand, as concerns for environmental security mount around the world it is increasingly likely that environmental nationalism will become part of the resource nationalist’s toolkit. There will be increasing expectations on arbitrators and tribunals to adjust their reasoning by incorporating respect for environmental imperatives at the same time as acquiring an ability to distinguish between actions driven by genuine environmental concerns and those driven by other motives – such as maximisation of rents - in which environmental arguments simply offer a convenient pretext.

Experience to date is mixed. In a 2008 article for the *Journal of World Energy Law and Business*, renowned international investment law expert Professor Sornarajah⁶¹ cites the 2003 treaty-based case *Compania del Desarrollo de Santa Elena v Costa Rica* (2003) by way of example. In this case, Costa Rica’s concern to protect the habitat of the black panther had led it to expropriate land

intended for a tourism and residential site for conservation purposes. The project proponent remained in possession, but could not develop the land as planned, and the land had no significant resale value. The arbitrators ruled that the environmental public purpose was not relevant for purposes of determining compensation payable in relation to the expropriation.

In the NAFTA *Methanex* tribunal⁶² – a case concerning Californian legislation banning the use of a chemical substance manufactured by Canadian company Methanex on environmental grounds – ruled that this interference in investment interests was a regulatory measure which need not be compensated. The tribunal in the case stated that “*As a matter of general international law, a non-discriminatory regulation for a public purpose, which is enacted in accordance with due process and which affects, inter alios, a foreign investor or investment is not deemed expropriatory and compensable unless specific commitments had been given by the regulating government to the then putative foreign investor contemplating investment that the government would refrain from such regulation*” (para. IV.D.7).⁶³

Bridging the gap: resource nationalism as a response?

If the rise of bilateral investment treaties can be understood as a response to the threat posed to investors’ assets by the NIEO, the reverse trend is now in motion. Some ‘resource nationalist’ countries have begun the process of withdrawing from existing investment treaty commitments. For example, in April 2008, Venezuela notified the Dutch government of its desire to terminate a 15-year-old bilateral investment agreement between the two countries.⁶⁴ *Foreign Direct Investment* magazine explains the implications: “*Both Exxon-Mobil and Conoco-Philips have invoked the Dutch treaty in their battles with Venezuela over the nationalisation of key oilfields. By virtue of being able to fly the Dutch flag, the two US energy giants managed to drag Venezuela to binding arbitration at the World Bank. (The US and Venezuela have never signed their own bilateral investment protection treaty.) While Venezuela’s plan will not derail the lawsuits with Exxon and Conoco, it could mean that future investments into the country will not enjoy similar legal protections. Dutch investors – not to mention the Dutch subsidiaries of foreign multinationals – might need to pursue lawsuits against the government in the Venezuelan courts (unless foreign investors find some other international treaty under which to shelter).*”⁶⁵ Other countries reported to be contemplating withdrawal from existing investment arrangements include Bolivia and Ecuador – which has indicated that it intends to withdraw from a total of nine bilateral investment treaties, many of them with smaller neighbouring Latin American countries.⁶⁶

New experiments in economic integration arrangements are emerging out of the current political climate in Latin America and the antagonism towards existing investment agreements. The Bolivarian Alternative for the Americas (ALBA in Spanish) is a grouping developed as an alternative to the Free Trade Area of the Americas (FTAA) and is based on a Cuban-Venezuelan cooperation agreement of 2004. Its members are Bolivia, Cuba, Dominica, Nicaragua, St Vincent and Venezuela. ALBA pursues integration through strategies including mutual economic support, placing a high emphasis on meeting the social needs of its members and combating poverty and social exclusion. For example, within the overall cooperation arrangements, Venezuela has forgiven Nicaraguan debt, and exchanged oil for medical resources from Cuba. These ‘self-help’ strategies lie far beyond the mainstream of trade and investment policy thinking for most governments, but they look increasingly sensible at a time of rapidly declining commodity prices and hence revenues.

There are clear potential tensions between investment liberalisation and sustainable development more widely. Investment liberalisation and foreign direct investment tend to support sustainable development *only* in governance environments that are conducive to them so doing. Equally, the market-based voluntary ‘corporate social responsibility’ practices of foreign investors tend to work best where public governance is itself supportive of maximising sustainable development outcomes.

Investors therefore face significant hurdles in getting the best developmental outcomes from their approaches to corporate responsibility in many resource nationalism-prone countries.

If the investment law applied to instances of 'resource nationalism' were redesigned to place sustainable development, not investor protection, at its heart, there would be a need to ensure effective protection of beneficial foreign investment (as Professor Sornarajah suggests). Clearly, this would demand sophisticated balancing acts: many resource nationalist countries move against foreign investors precisely because their projects are not considered beneficial for the interests of the country. An international 'investment agreement for sustainable development' would necessarily need to leave considerable 'sustainable development policy space' to host states. But its rules would need to be capable of intervening to prevent rent-seeking resource nationalism against investors that could be seen to be making a genuine contribution to sustainable development at national and local levels. Even then, the challenges of arbitrating between the demands of sustainable development at different levels – from the local to the national – make for great difficulty in crafting such rules. Many investment projects are very difficult to define as 'good' or 'bad' for sustainable development.

IISD, the International Institute for Sustainable Development, has taken a bold step, developing a 'Model International Agreement on Investment for Sustainable Development'.⁶⁷ The Model agreement provides, at Article 16 (A), that "*investors and their investments should strive to make the maximum feasible contributions to the sustainable development of the host state and local community through high levels of socially responsible practices*". On the host state side, the Agreement states at Article 25 (B) that "*In accordance with customary international law and other general principles of international law, host states have the right to take regulatory or other measures to ensure that development in their territory is consistent with the goals and principles of sustainable development, and with other social and economic policy objectives*".

This is not the place to analyse the IISD Model Agreement's provisions in detail; suffice it to say that this statement of the 'right to regulate', linked to the investor's obligation to maximise its contribution to sustainable development lie at the heart of a balancing act that places sustainable development, not the protection of investment, at the head. Running an indicative range of 'resource nationalist' tools through the provisions of the Model Agreement would be a good test of its ability to accommodate the nuances of this continuing contemporary phenomenon. It might also help to sharpen understanding of boundaries between 'legitimate' and 'illegitimate' resource nationalism from a sustainable development perspective.

In fact, the rhetoric of resource nationalism is divorced from the contemporary legal reality that not all 'resource nationalist' steps taken by host states are justiciable as a matter of investment contract or investment treaty. This may be one reason why the term has evolved to cover such a broad range of measures: since some resource nationalism does involve breaches of legal commitments on the part of host states, tarring other kinds of resource nationalism with the same brush may create the impression of wrong-doing beyond simple introduction of policy measures that some sections of the business community do not like. As Prof Waelde points out, most developed producing countries adjust their regulatory system regularly.

As already indicated, justiciability does not match the sustainable development contribution of either the investment project or the policy measure at stake, since it has not (so far at least) been designed to do so. Even in cases of resource nationalism that are *prima facie* justiciable, two broad sets of legal principles may be in opposition when investment contract changes are proposed: on the one hand is the maxim *pacta sunt servanda* (broadly, that a deal is a deal and must be respected), and on the other is the idea that contracts are valid only *rebus sic stantibus* (i.e as long as circumstances remain the same). Since the investor protections afforded by international

investment law are designed precisely to protect investors against changing circumstances, investment law is a mechanism for transforming commercial and political accord over the terms of investment into effective contractual promises.

Even so, many investors faced with 'resource nationalism' demands to renegotiate their contracts have chosen not to stand on their rights, but to negotiate. In Venezuela, for instance, most but not all companies accepted the renegotiated terms *"on the premise that it is better to continue to have a smaller share in the more profitable petroleum assets than being left with a combination of full exit and a compensation claim requiring protracted international arbitration under available contractual or BIT-based arbitration with no guarantee of compliance with an award. However, some companies with assets that are less profitable are resorting to arbitration with the hope that a subsequent government, in the downwards cycle, may be willing to come to a settlement and pay on an eventual arbitral award"*.⁶⁸ In the DRC, the situation was the similar, with just a small group of mining companies walking away from negotiations. The clear implication is that legal rights are just one part of the picture. Any investor knows this – but the implications and opportunities for civil society-based organisations seeking to promote sustainable development have not clearly been explored.⁶⁹

From a dispute avoidance perspective, it is clearly in the interests of foreign investors to be able to negotiate investment arrangements with host country negotiators with high levels of capacity and expertise. To some extent, a robust contract negotiated between equally skilled negotiating teams can help to minimise against the risk that a contract will subsequently be considered 'unfair' by an incoming government. This issue of lack of parity in bargaining capacity may particularly be an issue in the early days of a new administration, post independence, or in a situation of civil conflict where legitimate government is weak or absent. No doubt some investors base their business models on their ability to do deals in such circumstances, but for a mainstream of investors there is real benefit in doing business with host state negotiators who have equal bargaining capacity.

The development of pacific island state policy approaches (see Box 2 above) to maximisation of financial benefits from tuna negotiators shows resource nationalism as a response to inability of coastal states to negotiate satisfactory access deals with states with superior negotiating power, leaving pacific island fisheries officials feeling 'cheated and deceived'.⁷⁰ In the case of the tuna industry, the response was to compete directly with these states' fishing industries, rather than to shut them out entirely – but the broader point is that investors have an interest in ensuring that the best negotiating capacity exists in host countries.

In sum, the international law of investment is currently of limited value in a) ensuring that resource nationalism, where it is practised, is supportive of sustainable development, or b) protecting investors on the basis of their contribution to sustainable development in host states. Yet the general trend is clear: *"sustainable development, even in economic law negotiations, is moving from a contentious form of conditionalized developed country protectionism to a core value of international law on a broader global basis"*.⁷¹

Some tools of resource nationalism, including alternative regional economic integration arrangements in Latin America and have been deployed precisely in response to perceived shortcomings in existing approaches to the protection of investors. But without a balancing mechanism to adjudicate between investors and states on the basis of sustainable development, international law is ill-equipped to channel these efforts towards sustainable development. Resource nationalism operates independently of existing legal rights and obligations to some extent, but there are still strong policy as well as legal arguments for ensuring integration of sustainable development into investment law.

What motivates resource nationalism

As this paper has shown, resource nationalism is not yet a term of art. Any case study or example that might be offered has its nuances. Resource nationalism offends (and the term is almost always used by people who are, or represent, 'offended' interests) because the tactics and policy instruments associated with it are in some sense considered to step over the line of what is acceptable in the contemporary international economy.

It is commonly suggested that resource nationalism tends to occur at the high point in the commodity price cycle, with 'resource nationalist' policies tending to follow the price cycle in a political economy cycle of their own.⁷² The late Professor Thomas Waelde describes the cycle eloquently, identifying three circumstances in which extensive changes in original investment terms are likely⁷³: when contracts with host states were negotiated in times of relatively low oil and gas and mineral prices; in cases where a fundamental reorientation of a host state's policy towards foreign and private investment has taken place, and cases where new governments have reversed previous policies of privatisation. Indeed, as he suggests, for a new government resource nationalism may be one way of distancing an incoming government from its predecessor.

The IEA, too, describes resource nationalism as part of a cycle, in which a host government's aspiration for increased rent and control is fuelled by high prices.⁷⁴

In terms of the industry cycle, high levels of revenues can hold back investment in further exploration and development at the same time as high prices encourage demand restraint on the part of consumers. At the other end of the cycle, the downswing *'tends to lead to lower prices and revenue streams, encouraging host governments to reintroduce more open-access and international company-friendly policies. International expertise is sought to stem mature field decline, to exploit more difficult-to-find oil or to manage complex, integrated oil, gas and petrochemical projects - areas where international companies still retain an edge'*. In the oil and gas sector, the distinctive characteristics of the market tend to prolong both the upward and downward price cycles⁷⁵ – in part because these markets are so regulated and so influenced by politics and government action, including through OPEC.

The focus on the resource cycle is clearly oversimplistic. It is unable sufficiently to contextualise the distinct political and historical circumstances of individual resource nationalist nations. And it may also need to be revised in light of the current downturn in commodity prices. The precipitous rapidity of the downturn that has accompanied the current financial crisis from historic highs is itself unusual. Unsurprisingly therefore, there are signs that the feedback loops to resource nationalism are responding more slowly than prices themselves – but there are certainly some signs of a retreat from resource nationalism in some countries.

Recent announcement of a mining contract review in Guinea (see *Box 18* below) reinforces the intuitive conclusion that there is no necessary connection between high commodity prices and resource nationalism. Resource nationalism that is linked to 'economic nationalism' in producer countries might even deepen as recessionary triggers of gather pace. But a Reuters piece in December 2008 argues that resource nationalism might now be scaled back *'as producer countries are forced to seek greater foreign investment to counter lower crude prices and shrinking budgets'*.⁷⁶ Earlier in the month, the Mongolian government had dropped its demands for a majority stake in the Oyu Tolgoi copper deposit, a move that had been resisted for some time by Rio Tinto and Canadian mining company Ivanhoe Mines.⁷⁷ Elsewhere, in Venezuela, there are signs of a softening in President Chavez's stance towards international oil companies – though not of a u-turn by any means.⁷⁸ In Zambia, plans to increase revenues from mining by one fifth were shelved in January 2009 (see *Box 17* below).

Companies are themselves stoking the retreat: in February 2009, BG chief executive Frank Chapman was reported saying that the trend of resource nationalism now appeared to be changing with governments: *“Governments the world over now need investment more than ever,”* he said. *“They know capital is in short supply the world over, they know they are competing with other countries for capital, and they know the value investors place on stability and sanctity of contracts.”*⁷⁹

Another suggestion is that resource nationalism may be driven by lack of institutional capacity to deal with the revenue collection requirements of a privatised natural resource sector. One commentator thus suggests that ‘it is clear that the return [to] government from full nationalisation or a perfect tax system with privatisation are the same. But when governments cannot create the ‘perfect’ tax system because of lack of institutional framework, the only option is nationalisation.’

The question of underlying government motivation is often present where allegations of resource nationalism are found. The January 2009 gas supply dispute between Russia and the Ukraine, for instance, is hard to describe entirely as resource nationalism given the underlying commercial facts – including the huge debts owed by Ukrainian Naftogaz to Russian Gazprom. Yet it feeds a perception in European countries that Russia – even a Russia weakened economically by low commodity prices – is willing to ignore the discomfort of innocent near-neighbours in the pursuit of wider political goals. Just as worrying for consuming countries, and just as difficult to interpret, were fears that Russia might be moving to create a new gas-producers’ cartel (see *Box 11* below) that could increase the country’s leverage with consuming countries through cooperation with other gas exporting countries. With greater Russian state influence over the Sakhalin-II LNG project secured, its LNG production amounts to about 6% of total world production.

Box 11: A new OPEC for gas?

Members of the Gas Exporting Countries Forum met in Moscow in December 2008 and agreed to transform the Forum into an international organisation, to be headquartered in Qatar, producer of a majority of the world’s Liquefied Natural Gas (LNG) – a relatively new fuel that is easier to store and therefore to trade than natural gas. The older product is sold with prices fixed within long contracts – often 25 years – so the development of major new sources of LNG has potential to transform market pricing mechanisms in the gas sector. Most members of the Forum deny plans to create a ‘gas OPEC’.

Source: adapted from *Russia look to control world gas prices*, <http://www.telegraph.co.uk/earth/energy/gas/3982543/Russia-look-to-control-worlds-gas-prices.html>

Another cautionary note when distinguishing between different motivations for resource nationalism arises out of the use of one policy label to a measure that is in fact motivated by an entirely different policy consideration – and, linked to this, the potential for ‘baptist-bootlegger’ coalitions to form. The use of environmental policy arguments may offer one example.

Host country governments including Russia and Kazakhstan have sometimes invoked environmental protection concerns alongside efforts to renegotiate investment contract terms or seek greater national shares in oil and gas projects (see *Boxes 12* and *13* below). The precursor to the Russian government securing a greater stake in the Sakhalin-II gas project in the Russian Far East was investigations into the consortium’s environmental impacts and alleged transgressions. At the same time environmental campaigners internationally were also campaigning against operator Shell. Informally, company lobbyists grumbled that the environmentalists had shot themselves in the foot since environmental improvements were unlikely to be a result of Shell’s withdrawal from, or reduced role in, the project. ‘You haven’t seen anything yet’ warned one, ‘just wait ‘til the Barents

sea opens up, then you'll wish companies like Shell were bigger players'. No serious commentary – nor the states themselves – have suggested that the goal that these countries are seeking to attain in linking resource nationalism to environmental protection arguments is sustainable development.

Box 12: Resource nationalism and environmental enforcement combined: Shell and the Sakhalin-II project

The Sakhalin-2 project on Russia's Sakhalin Island in the Russian Far East is operated by the Sakhalin Energy Investment Company. Until its divestment in December 2006, the project was operated by 55% shareholder Royal Dutch Shell. Oil and gas development on Sakhalin Island had been controversial with NGOs for some time on socio-economic and environmental grounds – particularly since the various Sakhalin projects had potential to impact negatively on endangered Western Grey Whales. A pipeline was rerouted to avoid whale feeding grounds, causing project delays. There are also cultural and socio-economic issues relating to the indigenous people of Sakhalin Island. Campaigners had targeted their advocacy in part on the project's efforts to seek project finance from the European Bank for Reconstruction and Development.

The Sakhalin-II project is one of five Sakhalin projects, and was the last major project in Russia not to have a local partner. In 2005 Shell revealed that costs on the project would double from a projected USD10bn to USD20bn, significantly reducing government revenues from the project.

Ministry officials threatened to revoke its license over environmental violations. The threats were said to have included a \$50bn fine, imprisonment of managers for up to seven years, halting the project, and pursuing the consortium through the international courts. Inspectors' allegations included that trees had been illegally felled, that breeding grounds for salmon had been destroyed, and that rivers and coastal waters had been polluted. In December 2006, Shell sold a 50% plus one share equivalent of its controlling 55 per cent stake in the Sakhalin-2 project to Gazprom making its share 27.5%. At the same time the project share of Japanese project partners Mitsui and Mitsubishi was dropped to 12.5 percent from 25 percent and 10 percent from 20 percent respectively. At the Kremlin meeting announcing the sale, President Putin announced that all environmental problems had been resolved. Shell was widely believed to have sold at an undervalue of some USD5billion, and remains involved in the project as operator. The EBRD subsequently withdrew its consideration of project finance for the project. In June 2008, Sakhalin Energy obtained project finance of USD5.3billion from the Japanese Bank for International Cooperation.

Sources: <http://en.rian.ru/russia/20080616/110673641.html>
<http://www.ft.com/cms/s/0/3db26a1c-f4cd-11d9-9dd1-00000e2511c8.html>
<http://www.iht.com/articles/2006/12/21/business/shell.php>

Box 13: Resource nationalism and environmental enforcement combined: Kazakhstan – Kashagan and Karachaganak

Kazakhstan is home to three 'super-projects': Kashagan, Tengiz-Chevroil, and Karachaganak. Tengiz and Karachaganak are onshore projects. Kashagan, an offshore project in the Kazakhstani North Caspian Sea, has not yet begun production. The operator of all operations in this sector is joint venture Agip-KCO, a wholly owned subsidiary of Italian state-controlled enterprise ENI, which manages operations on behalf of a consortium of six international companies plus state oil company Kazmunaigas.

First oil from the Kashagan field was initially due in 2005, but delays and cost overruns mean that that date was postponed to (at least) 2010. Against initial estimates of 57 billion USD development costs, revised estimates were said to be 136 billion USD. Since the terms of the Kashagan production sharing agreement are reported to allow for royalty payments to be made only after the consortium recoups development costs, one consequence is a delay in the flow of revenues to the government. In July 2007 the government announced its intention to renegotiate the production sharing agreement. Reuters reported that the government would be seeking an increase in the share of profit oil under the contract, from 10% to 40%.¹

In late August 2007 Kazakhstan's environment minister announced a three-month cessation of operations on grounds of infringement of environmental requirements. At the end of September 2007, the Majilis (Kazakhstan's Parliament) approved amendments to the subsoil use law, to provide for contract renegotiation on 'national security' grounds. The change was believed to be designed to put additional pressure on the partners in AGIP-KCO.

Following the conclusion of initial contract renegotiations in January 2008, KazMunaiGas increased its share in the Kashagan project from 8.33 percent to 16.81 percent, with each of the major foreign partners surrendering a little over 1.7% of their stake and reportedly agreeing to pay up to USD5 billion as compensation for lost profits due to cost overruns and delays.

Final negotiations concluded in October 2008, as a result of which, according to an Agip press release of 31 October 2008, the joint venture partners agreed changes including revised operating responsibilities at different stages of the project. KazMunaiGas will take on an increasing role in the project and will be involved in each step of its development. Importantly, the agreement envisages the creation of a new joint operating company comprising all the co-venturers in the NCSPSA Consortium. The new company will take over the responsibilities which are currently with Agip KCO as the sole operator of the North Caspian Sector Production Sharing Agreement. The Managing Director of the new joint operating company NCOC will be on rotation among the Partners and this role is initially fulfilled by a Total executive while the Deputy Managing Director is a KMG executive. The NCOC will be staffed by representatives of all partner companies.

In a separate issue, in March 2008, a Kazakhstan court fined the Karachaganak consortium KPO group USD15million for unauthorised gas emissions through gas flaring. KPO's Karachaganak project is jointly operated by BGplc and ENI, with other partners including Lukoil and ChevronTexaco. There were concerns that the move might presage moves by KazMunaiGas to take a greater share in the project.

Sources: <http://www.msnbc.msn.com/id/20459193/>
<http://www.agipkco.com/wps/wcm/connect/agip+kco/AgipKCO+EN/Home/About+Agip+KCO/News/Kashagan+project+Final+Agreements+and+Creation+of+the+North+Caspian+Operating+Company?id=79d9fc004b94f96c8e7a9e263a1de0af&pagedesign=Common/ContentPrintStyle>
<http://www.reuters.com/article/companyNews/idUSL2010489220080320>

Where raw power play is a motivation or state manipulation of control over natural resources punishes or silences political opponents, it is hard to link producer country tactics with any policy goal associated with sustainable development. The 'destruction of Yukos' is one example of an approach that has often been analysed in these terms (see *Box 14* below).

Box 14: Resource nationalism or revenge? The destruction of Yukos

"In 2004-05, Russia destroyed Yukos, a private Russian oil company partly owned by Russian, Yeltzin-era oligarchs (in particular M. Khodorkovsky) and by minority US investors, through a combination of discriminatory and retroactive tax reassessments. Russian authorities accomplished this with large penalties and a rapid, manipulated and contrived auction which allowed state company Rosneft to purchase most of Yukos' assets at a bargain price. Tax practices that were normal, tolerated and accepted by the Russian tax authorities were invalidated... The Russian oligarchs [had not] acquir[ed] the assets through a transparent and non-discriminatory tender process, but in the questionable 'loan for shares' deal to support President Yeltzin's re-election bid.. Yukos' chief shareholder had used Yukos' funds and networks to support the new President Putin's opponents."

When Rosneft was subsequently floated on the London stock exchange in 2006, commentators asked whether it was ethical for the Financial Services Authority to allow the company to list or subsequently for investors to buy its shares. Oil giant BP, itself exposed in Russia through its TNK-BP venture, decided to bid on the share offer, reportedly to the tune of USD1billion. Yukos asked the Financial Services Authority to prevent the flotation, to no avail.

Sources: Thomas Waelde, *Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law*, Journal of World Energy Law and Business, 2008, Vol 1 Number 1, at page 74

<http://www.independent.co.uk/news/business/news/a-1636bn-london-flotation-a-russian-oil-company--and-a-question-of-morals-407349.html>

BP's problems in Russia have characteristics of resource nationalism – yet they are also accompanied by an undoubted internal shareholder dispute with a group of Russian oligarchs with whom BP had formed the joint venture TNK-BP. The suggestion has been that state failure to intervene, or possibly behind-the-scenes involvement in shaping the Russian 'side' of the internal shareholder dispute, makes it part of a coherent tactical application of a range of pressures that are linked to resource nationalism (see *Box 15* below).

Given the wide range of triggers and motivations of resource nationalism, it is unsurprising that it may be contagious for other sectors too: interestingly, Professor Waelde highlights a spillover effect from resource nationalism for other infrastructure-intensive sectors, such as telecommunications or water, that may effectively be subject to the same political cycles in countries where large mineral rents make the risks inherent in renegotiation feasible.⁸⁰

Box 15: Internal shareholder dispute or state-backed resource nationalism? TNK-BP

TNK-BP is Russia's third largest oil company. The British headquartered multinational BP owns half of the joint venture, with the remaining 50% held by a consortium of four Russian oligarchs (one a US national) called AAR.

BP's recent troubles in Russia began with a dispute over the Siberian Kovytko gas field. The commercial dimensions of dispute over the Kovytko field centered on the company's failure to launch commercial production at 9 billion cubic meters in 2006, with a view to supplying that volume of gas to local consumers in Irkutsk oblast. In 2006 there was no demand for nearly that volume in Irkutsk oblast; and consequently, it made no sense to build a supply pipeline from the field. Gazprom was said to have blocked building an alternative pipeline export route to China. Accordingly, the operator proposed changes to the licence, but Russian authorities turned these down. By December 2006, it seemed likely that TNK-BP would cede control over the gas project to Gazprom, and in June 2007 it sold its 62.9 percent stake in Russia Petroleum, the holder of the Kovytko development licence, at a price said to be well below the asset's value. An investment partnership between Gazprom, BP and TNK-BP was simultaneously signed, under which the parties agree to identify opportunities to invest jointly in major long-term energy projects or swap assets around the world. A longer-term 'call' option for TNK-BP to buy a 25 per cent plus one share stake in Kovytko had also been agreed.

In March 2008, visa difficulties for expatriate workers forced BP to suspend 148 employees seconded to TNK-BP. In separate incidents, a junior employee was charged with industrial espionage, and the Interior Ministry said that it had launched investigations into tax evasion at a former TNK-BP unit.

Whilst a limited number of visas were subsequently awarded, TNK-BP's American chief executive Robert Dudley was forced to leave Russia in July 2008. He vowed to continue to manage the operation from outside Russia, but AAR partners supported his ouster. The Russian partners also took issue with BP's management of the project, claiming it was running the venture as if it were a BP subsidiary. BP Chairman Peter Sutherland said that BP was fighting a corporate takeover by its 50% shareholding Russian partners that appeared to be backed by the Russian authorities. Russian authorities said the dispute between the partners was a private matter.

In June 2008, BP launched legal proceedings against AAR in the UK over a tax claim for £180m. A memorandum of understanding was signed in 2008. BP retained its 50% share in the venture. A new board was appointed in January 2009, following signature of a new shareholder agreement which provided for a new 11-person board with three independent directors and a BP-nominated independent chief executive rather than a BP-backed chief executive. However, on 23rd January 2009 the Financial Times reported that the appointment of previously mutually agreeable independent chief executive Denis Morozov had been called off after the Russian partners decided against him at the point of contract signature.

Sources:

http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=32439

http://www.sptimes.ru/index.php?action_id=2&story_id=22128

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<http://www.ft.com/cms/s/0/9a95b296-e8f0-11dd-a4d0-0000779fd2ac.html>

The motivating factors behind individual government policy measures are clearly often much more complex than rent maximisation pure and simple, or seeking to overturn the effects of a previous administration's commitment to attracting foreign direct investment or of a negotiation process that resulted in a deal that was simply too favourable to the investor (as some commentators have suggested in the case of the Russian government's treatment of Shell in relation to the Sakhalin-II project in the Russian Far East).

'Nationalist' populism rather than economic efficiency is another powerful motivation. For example investors – and the principles of international investment law and the Trade-Related Investment Measures (TRIMS) Agreement of the World Trade Organization – tend to dislike mandatory local content requirements, which require investors to ensure that specified proportions of their production inputs or other supply chain requirements are sourced from 'local' enterprises. In practice, there is no international consensus on either the meaning of 'local' for these purposes or for the most appropriate target-setting metric. Nonetheless, local content requirements are widely used. Even if inefficient in economic policy terms, their intuitive appeal to many citizens means that local content requirements offer politicians scope to demonstrate that they are taking account of local or national concerns.

It would be wrong to assume that resource nationalism necessarily generates increased revenues for host country governments. If state enterprises are poorly managed and inefficient, or if resource nationalism pushes so far that foreign direct investment dries up entirely, revenues may not increase substantially. For example, a 1983 study of copper industry nationalisation in Zaire and Zambia indicates that both countries received fewer benefits from copper after nationalisation.⁸¹ Rachel Schurman's account of pacific tuna industry resource nationalism suggests that "*nationalization led to a loss of 'insulation' in these countries – that is, the buffer that the multinational corporations provided to the governments against external risk, and internal political and economic pressures.*"⁸² There are however also positive examples in the case of nationalisation as much as resource nationalisation. The crucial variable appears, unsurprisingly, to be government and institutional capacity.

Even high prices linked to increased revenues do not necessarily bring improvements in governance at national level, or enhance prospects for sustainable development. On the contrary, there is strong evidence of a 'paradox of plenty', in which resource rich states and high revenues fail to produce positive developmental outcomes.

To what extent, then, can resource nationalism in different contexts be attributed to efforts to escape from the negative aspects of this cycle and promote sustainable development?

In some instances, very direct links can be made. When in December 2008 the government of Guinea (see *Box 18* below) announced its intention to review mining contracts, it cited a history of corruption as the reason. The policies of Bolivia's President Evo Morales are expressly designed to ensure more equitable sharing of the benefits of Bolivia's oil and gas riches. In Zambia, forced to abandon much needed increases in mining revenues in the face of falling commodity prices and industry opposition, there appeared at first glance to be a strong case for reform: it had been reported that even the World Bank had encouraged this, promoting creation of an infrastructure fund for mining revenues (see *Boxes 16* and *17* below).

Box 16: Resource nationalism for sustainable development? Zambian mining policy reform

In 2007, Zambia's Ministry of Mines and Mineral Development put forward a new draft mining policy for the country. The draft would have replaced a 1995 mining policy "that was anchored to attracting investors into the mines as the country privatised the industry". The proposal contained substantial increases in the transparency of mining agreements, suggesting that any fiscal provisions in any agreement will be subject to public scrutiny and be gazetted before taking effect. Fiscal incentives should be provided "in exceptional circumstances" only with the approval of an inter-ministerial team that including experts from the Ministry of Finance and National Planning and Parliamentary ratification. The draft policy also proposes a periodic review of any concessions given to investors to reflect changes in macro-economic and market conditions.

Under the 1995 policy, the government has the prerogative of negotiating development agreements with investors and giving them any incentives deemed necessary to enhance the investment's viability without seeking Parliamentary approval. Other proposals include facilitation of indigenous Zambians' participation in mining ventures, guided by the recently-enacted citizens economic empowerment Act.

The Zambian chronicle expressly linked the proposal to popular concern about the initial mining privatisation process: "These new measures, if the policy is ratified by Cabinet, are likely to pacify many Zambians who are angry at what they see as the government's failure to protect national interests when privatising the mines. Such agitation shaped the mood of the country's last general election, in which populist opposition candidate Micheal Sata promised to assume control of all privatised entities so that local people could benefit more. For that, his Patriotic Front won Parliamentary seats in the copper-rich Copperbelt Province, traditionally a stronghold of the ruling party".

Source: Zambia seeks to change its mining policy, August 4 2007, available online at <http://zambianchronicle.com/2007/08/04/zambians-to-have-a-large-stake-in-mines/>

Box 17: January 2009: Zambia retreats on mining taxes

In April 2008, the Zambian government introduced a package of measures which effectively raised mining taxes to 47 percent from the previous 31.7 percent. Mining companies responded negatively, and some suspended projects, citing uncertainty and difficulty raising mining capital.

In January 2009, the Financial Times reported that the government appeared set to abandon proposals for a new mineral tax regime after mining companies threatened to cut jobs and shelve projects in light of a fall in global metal prices. The new taxes and royalties were to be 'no harsher than standard rates worldwide', but Zambia had previously been home to one of the world's 'most generous mining codes' for investors. When the proposals were initially made public, copper, the heart of the Zambian economy, was close to USD9000/tonne. As the price fell towards USD3000/tonne, mining companies' lobbying began to take effect. The new President of Zambia was reported to say 'we must ensure that we do not kill the goose that lays the golden egg'. Reverting to the old terms, said the report, would reduce the government's tax take by more than one-fifth. The increased revenues were to have been paid into an infrastructure fund designed to help diversify the economy. "Instead, the expected concessions will mean that the state risks seeing little of the benefit once the commodity cycle turns up again, said Kapil Kapoor, head of the World Bank's Zambian office. "This is a perishable resource. Once it's gone the country has no more access to it. It should be benefiting from it more now.""

Sources: Reuters, June 11th 2008
(<http://www.reuters.com/article/businessTravelerNews/idUSL1134911720080611>); Tom Burgis, Financial Times, 26 January 2009 (<http://www.ft.com/cms/s/0/de47fa70-ebd5-11dd-8838->

Box 18: December 2008: Guinea announces review of mining contracts

In Guinea, a new military leadership seized power following the death of President Lasana Conte in December 2008. Days later, Bloomberg News reported announcement of a decision to 'cancel' all mining agreements and revise existing contracts due to corruption in the mining sector. A spokesman for South African AngloGold Ashanti, which owns Siguiri gold mine in Guinea, said that it was continuing operations since their mining rights had not been obtained 'under the table.' Bauxite and related industries account for 80 percent of Guinea's foreign exchange earnings. Other foreign investors with a presence in the country include Rio Tinto, Alcoa, BHP Billiton and United Co Rusal.

Source: China Economic Net, http://en.ce.cn/World/biz/200812/29/t20081229_17819230.shtml

From a social justice perspective, it has been suggested that "[t]he most common root cause of resource nationalism in oil exporting countries is the failure of revenues from oil exports to be converted into modern social services, employment, and an improved standard of living for ordinary citizens. This failure contradicts the expectations aroused by oil revenues. The sense of local deprivation and frustration, exacerbated by higher prices, presents an opportunity for producer-country politicians to attempt to deflect responsibility from themselves to the foreign investor".⁸³

This judgment seems too harsh, however, in the case of a country where the links between exploitation of natural resources and armed conflict are at their clearest: the Democratic Republic of Congo. In 2001, the UN Security Council noted "with concern that the plundering of the natural resources and other forms of wealth of the Democratic Republic of the Congo continues unabated.

*The Security Council strongly condemns these activities, which are perpetuating the conflict in the country, impeding the economic development of the DRC and exacerbating the suffering of its people, and reaffirms the territorial integrity, political independence, and sovereignty of the Democratic Republic of the Congo, including over its natural resources”.*⁸⁴ The behaviour of multinational enterprises operating in the mining sector of the Democratic Republic of Congo (DRC) has been subject to complaints to the UK ‘National Contact Point’ under the OECD Guidelines for Multinational Enterprises, a set of guidelines on responsible business behaviour backed by complaints and investigation mechanisms in each of the signatory countries. The Security Council had earlier convened an Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo (DRC), which reported initially that a total of 85 companies had not observed the OECD Guidelines for Multinational Enterprises.⁸⁵ Environmental crime advocacy group Global Witness has campaigned over the links between natural resource exploitation and armed conflict in the DRC country over a number of years.⁸⁶

The population of the DRC, patently, had not received its ‘fair share’ of mining revenues. Precisely this became the clarion call of an international NGO coalition appeal and campaign under the slogan ‘a fair share for Congo!’. As the coalition explains: *“Whether the Congolese population will benefit from the mining revenues depends to a large extent on the contracts that have been signed between Congolese state companies and private partners. Many of these contracts were signed in the war or transition period under little transparent circumstances. In the majority of the cases, they are not balanced nor [do they] guarantee a fair return for the Congolese State and its people.”*⁸⁷

This brief review of the varied motivations for resource nationalism in all its guises shows both the diversity of drivers and motivating factors, and the value of an analytical approach that does not harness analysis of resource nationalism too closely to economic assessment of the resource price cycle. From a sustainable development perspective, resource nationalism(s) need to be understood as individual policy tools as much as political approaches. In reality, resource nationalism has many shades – from naked aggression and power-grabbing, to reflective efforts to right the inequities of past deals or political climates.

It is hard, however, to avoid the suggestion that criticism of all but the most inequitable forms of resource nationalism tends to originate in the offence that it gives to a worldview of highly liberalised investment. In practice, the legal frameworks that fall to determine the outcome of disputes between are also biased towards a commercially-centred, investor rights-friendly view in which it is hard for ‘external’ policy concerns – such as community development, or environmental protection, to find voice. These issues are considered further later in this paper.

There is another fundamental challenge: at what level should a sustainable development assessment of resource nationalism fall to be considered in any event? It is to this thorny question that the paper now turns.

Sustainable development – but at what level?

Resource nationalism illuminates one of the most pervasive challenges facing advocates of sustainable development: the messiness of trade-offs between economy, environment and social concerns; and the difficulty of prioritising and ordering as between sustainable development at local, national and regional levels. This section gives examples of the tensions, and suggests approaches to developing ways forward.

Investing for long-term development – for future generations – is an important part of the overall policy mix at every level from a sustainable development perspective. Yet it has been suggested that of the key emerging markets, only India and China are actively seeking to manage investment for

long-term economic development.⁸⁸ From a global perspective, it might be argued that, even so, resource nationalism offers a positive contribution to the pursuit of sustainable development. Crudely put, by tightening control of access to natural resources or arriving at rational determinations that there is more value to natural resource assets kept in the ground than as sources of revenue today, producer state governments have the potential to drive pro sustainable development innovation in consumer countries. Resource nationalism has the potential to stimulate reuse or recycling of mineral resources, or to quicken the pace of investment in renewable resources, thereby helping to combat climate change.

Each tool of resource nationalism has individual pros and cons in sustainable development terms. For example, the outcomes of measures addressing community development programmes in natural resource sectors (as proposed for the oil industry in Nigeria⁸⁹) are highly dependent on the motivation of individual investors, their relationship with stakeholders at national level, and the extent to which deployment of the investors' resources can be aligned with wider national or local policy priorities in areas such as health or education.

Measures mandating increases in revenues payable to producer governments need not, as we have seen, be linked to better quality public spending or to its deployment for policy goals connected to sustainable development – but they might be. A ban on exports of an increasingly pricey commodity might have the effect of increasing the world price of that commodity (as happened with India's ban on exports of Basmati rice) and harm the global community of consumers by redistributing scarcity, but at the same time provide for greater food security at national level. And, as we have seen, there may sometimes be 'psychic' benefits in the pursuit of populist by economically less-than-optimal policies that nonetheless have the benefit of building a sense of national identity or values in ways that can help countries through troubled times or processes of transition.

Resource nationalism may sometimes lead to a complete cessation of investment – an outcome that is certainly undermining of immediate national growth targets - but may not ultimately be bad for sustainable development at national level. For example, in December 2008, Algerian officials were reported to have withdrawn the Ahmet basin from a licensing round after foreign oil companies failed to put forward suitable bids in a first bidding round under a law giving national oil company Sonatrach a mandatory majority.⁹⁰ A simplistic approach is unlikely to tell the whole tale: Algeria's foregoing of the revenues and wider socio-economic impacts of exploitation of the Ahmet basin now may turn out to be of longer-term benefit, depending on how other policy measures evolve.

Outright or partial nationalisation may, with effective management capacity, bring benefits at national level (as the governments of many Western governments are now rediscovering) - but if nationalised companies have no commitment to high standards of corporate responsibility at local level, local communities may suffer.

In Bolivia (see *Box 19* below), President Morales's policy of 'nationalisation' of the oil and gas sector through a variety of approaches has been associated with social unrest and considerable implementation challenges, some of them related to institutional capacity constraints within agencies tasked with implementation. But overall revenues have increased, and the longer-term prognosis cannot definitively be assessed.

At the national level, natural resource projects that benefit the nation as a whole by providing much-needed revenues for social spending or infrastructure may nonetheless impose unacceptably high social or environmental costs at local level, or cause major physical spillovers for other nations in the form of polluting emissions. The mechanisms for achieving balance are not well developed.⁹¹

A simple argument for 'bottom-up' decision-making tends to prioritise the interests of citizens and communities closest to where natural resource development takes place. In almost all resource-rich countries, there is a greater need for participation by affected citizens in decision-making over natural resource investment since natural resource project agreements are typically concluded away from full parliamentary scrutiny, let alone local scrutiny or participation. For governments, two mechanisms for achieving balance include requirements or encouragement for social investment projects on the part of resource companies; and legal frameworks for the sharing and allocation of revenues as between national and subnational levels.

There are other reasons why resource nationalism is an uncomfortable tool of sustainable development at the national level. 'Resource nationalists' frequently invoke policy goals that are closely related to sustainable development – such as environmental protection, transparency or community development – but the evidence is far from clear that these policy outcomes are consistently achieved through the use of resource nationalism as a strategic tactic.

Box 19: Resource nationalism in action: Bolivia

A 2007 analysis for the Council for Foreign Relations by Eduardo Gamarra explains a fundamental Bolivian dilemma: "The great tragedy of Bolivian democracy is that despite some sincere efforts to incorporate the indigenous majority into mainstream politics these measures failed to foster equitable development. Poverty, unemployment and institutionalized exclusion have resulted in two separate Bolivias: one urban, *mestizo* and the beneficiary of the process of democratization and democratic reform; and the other indigenous and *mestizo* poor, urban and rural, and the bearer of the costs of economic development."

President Evo Morales of Bolivia, the first Aymara Indian in this office, was elected in December 2005 with 53.7% of the vote, promising to nationalise the oil and gas industry. The immediate backdrop to his election lay with popular protests in September and October 2003 in which citizens demanded greater public benefits from the country's huge gas reserves. A total of 67 people died in the protests, and then-President Sanchez de Lozada resigned.

Caretaker president Carlos Mesa organised a national referendum in which a large majority of citizens voted for greater state control of the gas industry, and an increased share of revenues for the state. National Law 3058 was passed in May 2005, imposing a new tax on petroleum companies and specifying a greater role for the state oil and gas company, YPFB. But the president hesitated signing the law, and popular protests in turn forced his resignation. Interim measures ensured that the Bill was put into effect, and under new Interim President Eduardo Rodriguez, decrees established mechanisms to distribute the increase in gas revenues.

In May 2006, three months after his inauguration, President Morales announced nationalisation of the oil and gas industry. His approval rating as at July 2006 stood at 81 percent. The 'nationalisation' did not involve expropriation of assets: rather, it consisted of higher taxes, rebuilding of the state oil and gas company, and renegotiating contracts with private companies: 'nationalisation by renegotiation'. Over the following six months, forty-four contracts were negotiated with twelve different companies, reviewed by the Bolivian congress, approved in April 2007, and entered into effect in May 2007. Government share of total oil and gas income is now at about 54%.

A new law mandated YPFB participation in the entire chain of production and commercialisation of oil and gas, and acquisition of majority control or a 51 percent share of the privatised petroleum company operations. The effect of the changes was that the Bolivian government's income leapt from USD173million in 2002 to USD1.57billion in 2007. However, the Bolivian government has faced considerable problems in implementation of its gas nationalisation programme, with problems including 'contract errors and ongoing turnover of high-level administration officials'.

In an interview with Christian Science Monitor in March 2007, Bolivian Vice-President Alvaro Garcia Linera outlined his party's overall perspective on the international dimensions of resource nationalism: "*We offer our humble contribution to what we see as 21st century-style nationalization, which means that foreign companies with capital and know-how are present in the country with their machinery, and they can earn profits, but never again can they be the owners of the gas and the petroleum...*". In January 2009 a new constitution was adopted which mandates domestic dispute settlement under domestic law in hydrocarbon disputes.

Sources: Adapted from Tina Hodges, *Bolivia's Gas Nationalization: Opportunity and Challenges*, Petroleumworld Opinion Forum, 25th November 2007; discussions on OGEL, January 2009; Eduardo Gamarra, *Bolivia on the Brink*, Council on Foreign Relations, February 2007; *Interpreting Bolivia's Political Transformation*, Democracy Center, Cochabamba, May 2007, *Bolivia's Vice President on indigenous rights, coca crops and relations with the US*, Christian Science Monitor, March 27, 2007, at <http://www.csmonitor.com/2007/0327/p12s02-woam.html?page=3>

Critics of resource nationalism also sometimes invoke policy goals that are closely linked to sustainable development to justify their critiques. Democracy itself, which many consider to be an underpinning of sustainable development,⁹² as well as the *de facto* partner of marketisation, may be invoked in support of criticism. For example, one analysis suggests that “*The rise of ‘resource nationalism’ is seen as integrally linked to the non-democratic politics of producer states such as Iran, Nigeria and Venezuela*”.⁹³

Beyond the broad idea that citizens should have opportunities to participate in decision-making, and be granted rights of access to information, the concept of sustainable development is not inherently dogmatic on what forms of democracy are best suited to sustainable development. The two great projects of the Western world – marketisation and democratisation – have often been pursued hand in hand. Sustainable development offers an umbrella for both. But it is clear that marketisation has often been pursued without democratisation, and sometimes democratisation has been pursued without full liberal marketisation (as in the case of India for many years).

There is certainly evidence that high resource rents *can* work to undermine the functioning of democracy because they bring checks and balances on a government’s use of power under pressure. Collier and Hoeffler find globally that once resources rents become substantial, over the ensuing thirty years checks and balances are weakened.⁹⁴ On the other hand, the existence of electoral competition seems to be damaging to the governance of resource rents.⁹⁵ The challenge, then, is to strengthen checks and balances which define limits to a government’s use of power: without them, resource revenues are too often not harnessed for development, lobbying defines priorities and social returns from spending decrease.

A second problem with rapidly increasing revenues – which tend to be a consequence of resource nationalism - is that governments may be tempted to neglect the future,⁹⁶ with implications for pursuit of the sustainable development principle of ‘intergenerational equity’. This problem is illustrated by the difference between civil society demands for reform of Oil Fund spending in two Caspian oil-producing countries. In Azerbaijan, civil society pressure has been directed towards reducing the rate of spending from the State Oil Fund (implicitly, the government’s uses of oil fund monies leave insufficient for the future). In Kazakhstan, the civil society complaint is that the needs of the present are inadequately served and that more of the fund’s monies need to be spent on meeting those needs.

The principle of intergenerational equity is among the most fundamental precepts of sustainable development. Yet surprisingly little practical attention has been paid to how to achieve this in the exploitation of non-renewable natural resources, aside from economic calculations of optimal depletion rates of non-renewable natural resources.⁹⁷ Sovereign wealth funds may in some cases expressly address this issue by reserving funds for future generations, but they can also be liable to being raided in support of current spending plans.

Among the most damaging associations of resource nationalism is the phenomenon of the ‘resource curse’, when dependence on natural resource revenues generates economic distortions, fosters corruption and in extreme cases fosters violence.⁹⁸ This has increasingly led to demands (see *Box 20* below) not only that companies ‘publish what they pay’ to host countries, but also that host countries ‘publish what they spend’; in other words, that there is transparency over the setting and prioritisation of public spending based on resource revenues. Without transparency over the links between natural resource revenues and public spending plans, efforts to assess the contribution of resource nationalism to sustainable development are significantly hampered.

Box 20: From publish what you pay to publish what you spend

In 1999, the UK -based NGO Global Witness published a damning report, *A Crude Awakening*, which drew links between the activities of the oil and banking sectors and the plundering of state assets during the Angolan civil war. The particular focus since then has been on countries whose economies are heavily dependent on oil, gas or mining revenues and in circumstances where there is a substantial risk of embezzlement, or that the revenues may be used to fund armed conflict. Lack of transparency in government income and expenditure hampers citizen efforts to call their governments to account. For NGOs campaigning on this issue, the call is not for companies to pull out, but to publish the details of the payments that they make. BP's voluntary commitment to publish financial data related to its Angolan operations showed that voluntary initiatives can meet opposition from host country governments. NGOs within the UK -based 'publish what you pay' campaign argue that the solution is mandatory disclosure by publicly listed companies through stock exchange disclosure requirements. The IFC, UNDP, Tony Blair and George Soros supported enhanced transparency.

Concerns that lack of transparency in natural resource revenues may fuel poor governance and corruption prompted the creation in 2002 of the Extractive Industries Transparency Initiative, launched by then UK Prime Minister Tony Blair at the World Summit on Sustainable Development in 2002. EITI is an increasingly sophisticated approach to combating corruption and poor governance in natural resource rich countries by encouraging natural resource companies in the oil and gas and minerals sectors to publish details of the revenues paid over to host country governments. As such, the EITI represents a multistakeholder coalition approach to addressing the role of business in strengthening good public sector governance. Twenty-three countries are currently participating in the initiative. Discussion on mandatory requirements for reporting of natural resource revenues is also beginning to emerge on the back of the EITI's voluntary approach. In early 2007, Kazakhstan became the first participating country *de facto* to require compulsory participation in the EITI by applicants for new subsoil use rights.

Today, the goals of the Publish What you Pay coalition have expanded to call for transparent and accountable management and expenditure of public funds as an essential way to addressing the poverty, corruption and autocracy that too often plague resource rich countries, and to campaign for the public disclosure of extractive industry contracts and for licensing procedures to be carried out transparently in line with best international practice.

The damaging practices that are tackled by the Publish What you Pay coalition are also a feature of some 'resource nationalist' countries' approaches to natural resource management. For example, in many countries, natural resource contracts are not publicly available and opportunities for even parliamentary, let alone public, scrutiny and input are limited. It would be wrong to suggest, however, that there are inherent links between 'resource nationalism' and untransparent management of contracts and revenues; indeed, some resource nationalism is a reaction against previous bad practice or the investment legacy of corruption in natural resource sectors.

In Bolivia, highly transparent disputes over distribution of massively increased hydrocarbon revenues have created major public unrest (see *Box 19* below). Even there, there is no clear separation between oil and gas revenue spending plans and those from other sources. Whilst participatory planning processes at local levels help ensure public participation in budget decision-making,⁹⁹ there are no similar mechanisms for regional and national development issues. The Bolivian government has committed to distribute the country's oil and gas income 'equitably'. But a variety of factors have hampered achievement of this aim, demonstrating the need for effective public sector

governance capacity to underpin 'resource nationalism for sustainable development'. Resource nationalism, then, should not be considered as a single homogenous phenomenon.

Given the importance of the issue for revenue sharing for the overall development impacts of resource extraction, it is surprising that to date very little guidance has been developed for public sector actors, whether on how most appropriately to structure revenue-sharing mechanisms as between national and local levels, or decision-making tools for burden-sharing on the allocation and internalisation of environmental and social externalities associated with resource development. Yet the absence of clear frameworks for revenue-sharing between national and subnational levels can severely restrict the community development or local sustainable development benefits of individual investors' social investment programmes.¹⁰⁰ Simply achieving the goal of increasing revenues from oil and gas through resource nationalism does not mean that the revenues will be shared fairly.

In Bolivia, demands for regional autonomy reflected a struggle for control, by oil and gas rich departments, of revenues generated by 'their' resources (see Box 19 below). Paul Collier contrasts Nigeria and Malaysia: *"In Nigeria there has been prolonged and violent pressure for local ownership from the Delta. In Malaysia, the basic geography of natural resource extraction is far less favourable to national unity than in Nigeria: the resource-rich regions of Sabah and Sarawak are not part of the mainland Malay peninsular. Yet over the decades Sabah and Sarawak have essentially acquiesced in the use of resource revenues for national development."*¹⁰¹

These findings offer important insights for the links between resource nationalism and sustainable development. For resource nationalism to work for sustainable development, effective checks and balances must be in place. In a number of resource nationalist countries, checks and balances are defective and therefore the likelihood that host states will be able to overcome the link increase in revenues and decrease in the quality of public spending is limited. The example of Bolivia is relevant here, since capacity of the present government to implement its reforms has been widely debated.¹⁰²

Mining industry association the International Council on Mining and Metals (ICMM), in its 'Resource Endowment' initiative, aims to *"identify[y] a set of factors that have allowed some countries to benefit from their substantial resource endowments through economic growth and poverty reduction and avoid the so-called 'resource curse'. It also aims to determine some of the practical steps that can be taken by companies, governments, local communities and aid agencies to build such propitious factors where they are lacking."*¹⁰³ The study's methodological approach and case study findings are potentially relevant to an inquiry into the conditions under which resource nationalism in various forms could lead to positive sustainable development outcomes.

An initial study commissioned as part of the project¹⁰⁴ points to *"the absence of any coherent argument to explain the differences in outcomes between countries that suffer from the resource curse and those that have benefitted from broad-based socio-economic development"*. Two conventional explanations of socio-economic performance are: the quality of governance and the quality of macroeconomic management – with the latter itself being dependent on the former. Whilst most analysts would agree with ICMM that the answer lies in *"the quality of institutions, governance and policies in each host country and to the way that large mining investments relate to such arrangements"*, this insight alone is insufficient basis for general conclusions or insights to be drawn.

Box 19: Revenue management disputes in Bolivia

Bolivia's policy of nationalisation but not expropriation has resulted in huge increases in government revenues at the same time as intensification of a push for departmental autonomy, in particular in terms of control over collection and spending of revenues derived from their land and natural resources.

The Democracy Center in Cochabamba describes the issues: "Even before Morales' election, the elites and civic leaders in the country's wealthier eastern departments recognized that the demand for constitutional change, coming from indigenous and social movements centered in the country's west, posed a threat to what they saw as key regional interests. This included, in particular, their desire to maximise their control and profits from the gas and oil resources that geography had put under their feet. Leaders in Bolivia's eastern departments (Santa Cruz, Tarija, Beni and Pando) devised two important strategies to construct a political protective shield. The first was the demand for regional autonomy. The second was the demand that a 2/3 vote – as opposed to a simple majority – be required in the Assembly to approve all procedural votes as well as the separate articles of a new constitution.

The autonomy issue quickly became a stand-in for the country's much larger political battles. It became, essentially, a debate over how much the gas-rich eastern departments could separate themselves from the more impoverished highlands and the 'Morales revolution'.

National debate on revenue management in Bolivia therefore focused on how to distribute revenues from the national government to departmental and municipal governments, rather than how to invest the resources. Only the conclusion of the new constitution (agreed in January 2009) would settle the structure of local government, leaving resource nationalism, revenue management and regional autonomy and administrative reform inextricably linked. Departmental and municipal governments benefit from a majority of gas revenues, but suffer from lack of capacity to carry out projects, leaving large funds sitting in bank accounts. The largest expenditures at departmental and municipal levels are going to road construction.

At national level, the government is spending oil and gas revenues in a programme to provide money to the families of each child enrolled in primary school. Proposals to cut funds from the main oil and gas tax funds received by departments and municipalities by 30 percent received support from the elderly, but also widespread protests. Aside from these programmes, specially promoted as benefitting from oil and gas revenues, 'it is currently not possible to determine which central government programmes are being funded from oil and gas revenues and which from general treasury sources, according to government officials.'

Sources: Tina Hodges, *Bolivia's Gas Nationalization: Opportunity and Challenges*, Petroleumworld Opinion Forum, 25th November 2007;

Eduardo Gamarra, *Bolivia on the Brink*, Council on Foreign Relations, February 2007

Interpreting Bolivia's Political Transformation, Democracy Center, Cochabamba, May 2007

ICMM's researchers built an analytical basis for systematic comparative studies. Drawing on a review of existing literature, ICMM's consultants conclude that efficient governance has five components:

- 1) Strong states, administrative capacity, credible government commitments
- 2) Limits to state strength
- 3) Compatibility of formal and informal institutions
- 4) Formal Economic Institutions to oversee and support markets
- 5) Technical Capacity

However, they acknowledge, mining projects themselves have the potential to impact positively or negatively on efficient governance. Corporate responsibility, too, is an important determinant of outcomes.

If resource nationalism is here to stay – and this does appear to be the case, with price-independent pushes to both producer and consumer resource nationalism at national levels (particularly in the form of resource scarcity and regime change at national level) it is potentially valuable to build on the ICMM analysis, integrating a stronger environmental component, to ask under what circumstances different kinds of resource nationalist policies have potential to contribute to maximised positive socio-economic (and thereby sustainable development) outcomes.

In subsequent case studies, ICMM researchers considered a range of countries - Ghana, Peru, Chile and Tanzania and tested a 'resource endowment toolkit' based on their overall analytical framework. A 'resource nationalism' evaluation of the approach taken would need to consider how policies that can be identified as in some way 'nationalist' might be considered within the overall framework both to adapt the toolkit to the task of policy evaluation (which its level of aggregation does not currently facilitate) and to identify any methodological bias towards particular state roles, refine as necessary and to see whether any tentative insights might be gained.

An alternative approach to assessing the sustainable development impacts of resource nationalism might be to compare the potential sustainable development outcomes of *alternative* policy scenarios at national level. This is broadly the methodological approach taken in a recent analysis of the benefits to citizens of Sovereign Wealth Funds.¹⁰⁵ Blackburn *et al's* paper identifies a limited number of alternative uses of Sovereign Wealth Fund assets (lowering taxes and greater investments in infrastructures), asking whether given these alternatives a set of six sovereign wealth funds may be said to 'best serve' the interests of their respective citizens. But the analysis considers only the economic interests of citizens, not the psychic value of saving for future generations or the creative potential for radically different uses of the funds.¹⁰⁶

This serves to point to the difficulties of evaluating the sustainable development implications of resource nationalism: the alternatives to it are in any situation multiple – but may well include 'lesser' forms of resource nationalism that intrude less in property rights. A more realistic approach might be to compare the outcomes and impacts for different actors of resource nationalist policies against the likely long-term outcomes of status quo policies and investment agreements. That task is beyond the scope of the present paper but offers a promising avenue for further research.

For researchers, the tasks at different levels might address some or all of the following issues:

- Generally:
 - o Preparing and comparing 'with and without resource nationalism' scenarios in terms of socio-economic and environmental outcomes of natural resource exploitation at different levels (from national to local)
- At national level:
 - o investigating how revenues might optimally be distributed between different levels, in light of national and local contexts; and identifying 'governance' prerequisites for enhanced revenues at national, local or regional level to be wisely managed
 - o Investigating the 'fit' between resource nationalist tools of different kinds and existing policy commitments related to sustainable development – including identifying mechanisms for ensuring enhanced alignment
 - o Casting light on the existing mechanisms in place for balancing economic, social and environmental priorities as between national, regional and subnational levels, and their legitimacy, social acceptability and effectiveness

- At local level:
 - o building understanding of the ‘local governance’ prerequisites for enhancing the community benefits of natural resource exploitation, including mechanisms for public participation and access to information
- Globally:
 - o Building understanding of the implications or contribution of resource nationalism of different clustered policy tool types for achievement of key global sustainable development indicators and outcomes.

To some extent, these tasks are no different to those involved in any exercise of assessment of, for example, the sustainable development implications of foreign direct investment, or nationalisation, or privatisation.

One difference arises out of the breadth and combinations of policy tools and sectors that might be considered if ‘resource nationalism’ were the focus. A second difference concerns messaging at global, national and local levels respectively. Since there is no equivalent of a global movement towards liberalisation of investment or privatisation to act as an audience for findings, an enquiry into the sustainable development impacts or outcomes of resource nationalism needs to be tailored to the particular contexts out of which the label ‘resource nationalism’ has arisen. For without the label (and the implicit criticism) there is no inherent need to evaluate policy tools as ‘resource nationalism’ rather than some other more specific label such as nationalisation or increasing local content.

Conclusions

No general conclusion can be drawn that resource nationalism is good or bad for sustainable development, since there are so many co-dependent variables at stake. Sustainable development outcomes are all dependent – no matter what the policy tools applied – on how resource nationalism is combined with other policy tools and institutional governance structures. Only at a macro level in terms of the most general links between security and climate change is general hypothesising fruitful if the whole range of ‘resource nationalism’ is taken as a central focus.

There is however a strong likelihood that some kinds of resource nationalism (those that are driven by power-grabbing pure and simple, or revenge unconnected to citizen sentiments or concerns) may harm both sustainable development and investor interests.

The problem with resource nationalism from a sustainable development perspective tends not to be so much the economic ideology(ies) that underpin it as the lack of transparency or equitable participation in distributive mechanisms associated with revenue generation and management. Sustainable development itself is agnostic on the question of ownership models for exploitation of natural resources. A further problem is the lack of any effective mechanism at the international level for ensuring that sustainable development considerations are integrated into the legal consideration of ‘resource nationalism’ disputes between investors and host states.

If generalisations about the impacts of resource nationalism on sustainable development are unlikely to be fruitful, it might nonetheless be possible, with appropriate on-the-ground verification of insights, to identify key variables and link resource nationalist tools – in their individual country and geopolitical contexts – to sustainable development. There is real scope here for methodological innovation, drawing on existing research in a wide variety of fields, including the impacts of privatisation, nationalisations and foreign direct investment, as well as ongoing efforts to assess the socio-economic impacts of mining projects.

There remains some value in attempting to reflect on the contribution of resource nationalism to sustainable development, since it entails a process of reflection that is useful in responding to a use of rhetoric that is both highly politicised and largely the tool of defenders of a neoliberal perspective on the global economy that may rapidly be becoming outmoded as both reality and prescription. The real world fact is that globalisation, nationalism and resource nationalism co-exist. Resource nationalism exists as a phenomenon through which the global and the national space and their relationship with one another are tested and refined.

Businesses and their advisers have begun to think through the kinds of approaches that might serve them best in an investment climate where a range of potential 'resource nationalisms' create a variety of non-commercial risks. For example, mining company CEO Cynthia Carroll of AngloAmerican said at the annual conference of Business for Social Responsibility in 2007: *"resources businesses must contribute to sustainable development if we are to continue to have access to resources."*¹⁰⁷ Such existing advice as exists for investors on how best to navigate a 'resource nationalist' landscape already hints in this direction. The emphasis, in the words of a Deloitte thinkpiece, is on 'building mutual trust and interdependence.'¹⁰⁸

Oil and gas adviser Robert Amsterdam has developed a 'resource nationalism checklist' for investors.¹⁰⁹ He argues that *"Investors often bring in major new technologies and capital improvements which can develop strong local allies. This is part of "becoming invaluable". If an investor can structure operations in such a way as to be either economically or politically invaluable to the host government, that may buy considerable protection. Particularly in the extractive energy fields, local talent may not be able to operate without foreign know-how and technology. If able to provide such services through the investment, far better protection will result. Lastly, investors and major corporations must move toward transparency and best practices in their global conduct as a protective measure"*

From a sustainable development perspective, the checklist resonates more of risk management rather than proactive creation of value through ethical and responsible business practices. Even so, there is some overlap. Mr Amsterdam cautions against corruption, and counsels effective community liaison since: *"In many resource exporting nations from Africa to Latin America, a process of decentralization is occurring whereby local ethnic or community groups are gaining increasing influence over the capitol, and are in many cases mounting their own independent campaigns against foreign investors working in the region. Effective liaisons can be established within these communities to promote the company's image, inform on activities, and notify of problems before relations become problematic."* Even in authoritarian countries with resource nationalist tendencies there is real value for foreign investors in establishing strong and positive links with communities, developing strong positive employee relations strategies, respecting the imperative to maximise local content and build capacity of both suppliers and workers. Equally, there are few examples of environmental enforcement measures that are without any foundation and a strong environmental management system to 'home country' management standards should be a feature of any modern operation.

For investors faced with the very real possibility that a natural resource deal struck during the low part of a commodity price cycle may be a target for 'resource nationalism', one clear risk management approach is to 'indigenise' to the greatest extent possible. That means maximising employment of nationals and use of local content in supply chain management; building capacity of host country nationals, and adopting approaches to corporate responsibility that are tailored to the reality of the host state.

Another approach is suggested by Miguel Schloss.¹¹⁰ He supports a new understanding of the goal of resource nationalism as 'real' nationalism – in which the focus of enquiry for resource nationalists is

not so much how to control extractive industries through public sector fiat, but rather how to create 'enabling environments' to promote private investment at the same time as ensuring use of revenues to deliver against the nation's wider public needs. In this model, he suggests, the private sector's role would be to concentrate on productive extractive industry activities, with the government focusing on unlocking natural resource wealth and reinvesting it in the country's human resources and basic needs. In some respects, Mr Schloss's suggested approach restates the problem: this paper's brief consideration of the range of drivers and motivating factors behind resource nationalism, and the dilemmas involved in reconciling its outcomes with sustainable development at different levels, tend to suggest that it is precisely the pros and cons of this model as it has been practised to date that have generated controversy, with a variety of resource nationalisms among the responses.

Today, sustainable development is *de facto* wedded to the dominant economic ideology of market-based capitalism. It is this ideology that has framed most intergovernmental meetings on sustainable development, and sustainable development is in fact currently pursued within it in most of the world's countries. But an important insight from Andreas Pickel's work is that 'economic nationalism' should not properly be understood as the opposite of economic liberalism: in some cases the 'nationalising mechanism' may not be at odds with economic liberalism. This helpful insight is useful in building understanding of how 'resource nationalism' may be practised by countries – such as the UK, the US, Canada or Australia – that are at once committed to economic liberalism. In the context of the current economic crisis, a swathe of countries have (rhetorically at least) pursued a commitment to liberalisation of markets¹¹¹ at the same time as acquiring control interests in a number of banks.

This fact, with its potential to stimulate new thinking on the balance between state and market, as well as the range of equity-based motivations for resource nationalism, mean that analysts should be alive to the possibility that there might be other ways of harnessing economic activity to sustainable development than those that were part of the trickle-down approaches of the so-called 'Washington consensus'.

In an era of resource scarcity, rising demand for natural resources, and global concern for climate change, there is today as never before a strong case for exploring the potential positive role of 'non zero-sum resource nationalism' in the overall mix of approaches to bridging balancing these competing policy imperatives. The end goal must be to ensure that what emerges, to borrow from Shell's 2008 scenarios, is a cooperative 'blueprint' in service of sustainable development not a lose-lose 'scramble' for access to natural resources.

Some implications for IIED

The overview of resource nationalism offered in this paper underscores the idea that the tools are so varied that they point to a variety of enquiries from a sustainable development perspective. The paper has pointed to a number of that might be fruitful. They include:

- Linking work on sovereign wealth funds to wider efforts to build comprehensive understanding of appropriate frameworks for 'governance of natural resource investment for sustainable development'
- Building understanding of implications of Chinese models of foreign investment in natural resource sectors for public sector actors in OECD countries, and possible new approaches to 'bundled' approaches to private sector investment, development assistance and infrastructure development
- Development of tools to assist decision-making on design of natural resource revenue-sharing mechanisms as between national, regional and local levels in a variety of

- governance contexts, and understanding on the kinds of participatory processes that can facilitate public sector choices on the necessary balances
- Descriptive approaches bringing to light the extent and tools associated with 'resource nationalism' (loosely defined in the sense in which it has been used in this paper) in a variety of sectors that have not so far received attention in these terms – including for example agriculture, forestry, water and electricity.
 - Legal approaches to integration of sustainable development considerations into investment law in cases of 'resource nationalist' disputes between investors and host states

In countries whose governments are pursuing coherent policies of enhancing state control over national resource exploitation, there may also be scope to work closely with citizen groups or, as appropriate, public sector actors, to identify optimal approaches to achievement of sustainable development outcomes.

It is questionable whether advice for governments on how to implement 'resource nationalism for sustainable development' could really help transform some of the political agendas at play in countries that have adopted policies described as 'resource nationalist'. However, the key would be *not* to take an approach in which 'resource nationalism' was viewed as inherently tarred by virtue of its antagonism to established thinking on the balance between state and market in a liberalised economy. As the paper has suggested, producer country voices from middle and low-income countries are sorely lacking in the current debate over resource nationalism. IIED could help to bring these voices into the international debate to bring greater diversity into analysis and understanding.

There are other more general insights, too. First, it is important – in the oil and gas sector at least – that IIED engage more with national, as opposed to multinational, oil companies. Given the wide-ranging motivations of resource nationalism, even sustained commercially successful leadership in responsible business practices from international oil companies cannot be expected to drive a 'race to the top' in a sector that is dominated by national oil companies working to a different set of drivers and political expectations. If IIED wants to engage with the mainstream of the international oil and gas sector, it will need increasingly to seek engagement with national oil companies, and to build an understanding of their strategies and practices into its project planning and partnerships.

Second, the greatest task that this paper's focus on resource nationalism has identified at global level is to sharpen understanding of the different combinations of policy tools that might come together in different 'global sustainable development' scenarios. The 2008 Shell energy scenarios tell two powerful underlying stories that can help to shape decision-making and strategic and tactical policy approaches to addressing global environmental and resource security challenges.

Squaring the circle between energy security, potentially peak oil, and climate change is the big picture challenge so far as resource nationalism in the energy sector is concerned. For IIED, the single biggest challenge is to ensure that long-term thinking for sustainable development outcomes sufficiently informs decision-making at a time of near-global recession and heightened natural resource security worry. Resource nationalism will almost certainly be part of the mix for the foreseeable future. The task is to ensure that it does not distract the global community from its commitments to sustainable development, and that it is pursued in ways that are not destructive of wider commitments to intra and intergenerational equity and international cooperation. That may be a tall order – but it is eminently a task to which IIED is suited.

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- ¹ *Our Common Future*, Report of the World Commission on Environment and Development, Oxford University Press, 1987
- ² Steve Bass, *A New Era for Sustainable Development*, An IIED Briefing, IIED, 2007, available online via <http://www.iied.org/pubs/pdfs/11071IIED.pdf>
- ³ The phrase is not a term of art, and to the best of my knowledge is used here for the first time.
- ⁴ See e.g. AccountAbility, *Towards Responsible Lobbying: Leadership and Public Policy*, AccountAbility/UN Global Compact, 2005
- ⁵ Andreas Pickel, *Explaining with Economic Nationalism*, TIPEC Working Paper 02/1, available online at <http://www.trentu.ca/org/tipec/2pickel1.pdf>
- ⁶ It has not been possible to test this idea through detailed searches in the preparation of this paper – but it would be an interesting area for future analysis
- ⁷ http://www.economist.com/displayStory.cfm?story_id=5637566
- ⁸ <http://www.iht.com/articles/2008/03/28/business/rice.php>
- ⁹ See for example the news report *Russia-Ukraine gas dispute prompts EU meeting*, 5 January 2009, at <http://www.euractiv.com/en/energy/russia-ukraine-gas-dispute-prompts-eu-meeting/article-178273>, and links to other news articles on EU responses to the dispute from that page.
- ¹⁰ <http://www.informaworld.com/smpp/content~content=a780978472~db=all>
- ¹¹ Paul Williams, *Market Cycles, Power Politics and the Latest North-South Energy Trade Conflict*, 2007 Third World Quarterly, 28:1, 45-58
- ¹² Alexis Ziegler, at <http://www.theoil Drum.com/node/3992>, May 16th 2008
- ¹³ See http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/newsbriefs/business/2004/10/21/newsbrief-01 and <http://archive.gulfnews.com/articles/07/10/26/10162694.html>
- ¹⁴ Sanusha Naidu and Martyn Davies, *China Fuels its Future with Africa's Riches*, South African Journal of International Affairs, Volume 13, issue 2, Winter/Spring 2006, pp 69-83
- ¹⁵ *Ibid*, at page 73
- ¹⁶ *Ibid*
- ¹⁷ See e.g. <http://socialinvestment.ca/News&Archives/news-1102-Talisman.htm>, and also report in the Financial Times, 31st October, 2002
- ¹⁸ Sanusha Naidu and Martyn Davies, *China Fuels its Future with Africa's Riches*, South African Journal of International Affairs, Volume 13, issue 2, Winter/Spring 2006, pp 69-83
- ¹⁹ Paul Collier, *Implications of changed international conditions for EITI*, EITI, October 2008
- ²⁰ See <http://www2.goldmansachs.com/ideas/brics/book/BRICS-Chapter18.pdf>
- ²¹ Cited in Blackburn et al, *Sovereign Wealth Funds: do Sovereign Wealth Funds best serve the Interests of Their Respective Citizens?*, University of Chicago Graduate School of Business, March 2008, at page 4
- ²² More specifically, the term derives from a phenomenon observed after major increases in wealth in the Netherlands in the 1960s following discovery of large North Sea gas deposits. The Dutch guilder became stronger, making non-oil exports less competitive. The resulting syndrome is known as 'Dutch disease'. The term can be applied to any development that triggers a large inflow of foreign currency. See Christine Ebrahim-Zadeh, *Back to basics*, in "Finance and Development", March 2003, Volume 40, Number 1, International Monetary Fund, Washington, available online at <http://www.imf.org/external/pubs/ft/fandd/2003/03/ebra.htm>.
- ²³ Thomas Palley describes the phenomenon in the following way:
"[N]umerous academic studies show that, controlling for income level, countries that are highly dependent on revenues from oil and other minerals score lower on the U.N. Human Development Index, exhibit greater corruption, have a greater probability of conflict in any five-year period, have larger shares of their population in poverty, devote a greater share of government spending to military spending, and are more authoritarian than those with more diverse sources of wealth.
This occurs because the income from these resources is often misappropriated by corrupt leaders and officials instead of being used to support growth and development. Moreover, such wealth often fuels internal grievances that cause conflict and civil war. This pattern is widely referred to as the "natural resource curse" -- natural resource wealth creates stagnation and conflict, rather than economic growth and development". See Thomas I. Palley, *Lifting the Natural Resource Curse*, Foreign Service Journal, December 2003, available online at <http://www.globalpolicy.org/security/natres/generaldebate/2003/12curse.htm>

²⁴ In the latter case, the government of Chad had agreed with pipeline financier the World Bank to apply 72% of oil revenues to be paid into the fund for initiatives designed to combat poverty in the country. A further 10% was to be held in reserve for future generations. But in September 2008 the World Bank announced that it was withdrawing its finance for the project as it became clear that the poverty reduction spending targets were consistently not being met (See <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21894530~pagePK:34370~piPK:34424~theSitePK:4607,00.html>). The news was linked to increasing evidence of an increase in military spending on the part of Chad's President Deby (see e.g. <http://www.guardian.co.uk/world/2008/sep/11/chad>, and <http://www.bicusa.org/en/Article.3892.aspx>).

²⁵ Blackburn et al *Sovereign Wealth Funds: do sovereign wealth funds best serve the interests of their respective citizens?* University of Chicago Graduate School of Business, March 24, 2008, available at Available at SSRN: <http://ssrn.com/abstract=1309285>

²⁶ See <http://www.iwg-swf.org/pubs/santiagoprinciples.pdf> and also

http://carnegieendowment.org/files/arab_sovereign_wealth_funds.pdf

²⁷ See e.g. http://blogs.telegraph.co.uk/malcolmmoore/blog/2008/09/23/financial_crisis_will_china_help_

²⁸ <http://news.bbc.co.uk/1/hi/business/7221710.stm>

²⁹ <http://news.bbc.co.uk/1/hi/business/7747418.stm>

³⁰ *Investor Fury over Rio Tinto's China cash*, Financial Times, February 12 2009, page 1

³¹ See generally www.nationalismproject.org/what.htm

³² IIED was involved, with partners Riinvest Institute in one such study in Kosovo. See <http://www.riinvestinstitute.org/?cid=2,30>

³³ From: <http://www.nationalismproject.org/what.htm>, John Breuilly, *Nationalism and the State*, page 3

³⁴ Johnson, cited in Andreas Pickel, *Explaining with Economic Nationalism*, TIPEC Working Paper 02/1, available online at <http://www.trentu.ca/org/tipec/2pickel1.pdf>

³⁵ See <http://www.chuckbaldwinlive.com/read.freetrade.html>

³⁶ Wikipedia definition: see http://en.wikipedia.org/wiki/Economic_nationalism

³⁷ Even if they might be criticised as populist and economically distorting. See e.g.

<http://www.cgdev.org/content/opinion/detail/15820/>, or *Cereal Offenders*, *The Economist*, 27th March 2008, available online at http://www.economist.com/finance/displaystory.cfm?story_id=10926502

³⁸ Andreas Pickel, *Explaining with Economic Nationalism*, TIPEC Working Paper 02/1, available online at <http://www.trentu.ca/org/tipec/2pickel1.pdf>

³⁹ Paul Williams, *Market Cycles, Power Politics and the Latest North-South Energy Trade Conflict*, 2007 *Third World Quarterly*, 28:1, 45-58

⁴⁰ See generally, Stephen Kobrin, *Expropriation as an attempt to control foreign firms in LDCs: trends from 1969 to 1979*. "International Studies Quarterly", 18, pp. 329-348, 1984. Kobrin's table of expropriation is reproduced in Charles Kennedy's piece on *Relations between transnational corporations and governments of host countries*, *Transnational Corporations*, Volume 1 Number 1, 1992, at http://www.unctad.org/en/docs/iteitv1n1a5_en.pdf

⁴¹ See e.g. introduction to papers from the Baker Institute study on national oil companies at <http://www.rice.edu/energy/publications/nocs.html>. This figure, whilst three or four years out of date, is nonetheless often quoted without reference to the 2005 baseline date.

⁴² Gavin L Kretzschmar and Liliya Sharifzyanova, *Resource Nationalism – Limits on FDI*, January 2 2009, available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1317395

⁴³ Gavin L Kretzschmar and Liliya Sharifzyanova, *Resource Nationalism – Limits on FDI*, January 2 2009, available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1317395. See also http://www.worldenergyoutlook.org/docs/weo2008/WEO2008_es_english.pdf

⁴⁴ See Matthew E. Chen, *National Oil Companies and Corporate Citizenship: A Survey of Transnational Policy and Practice*, James A Baker III Institute for Public Policy, Rice University, available online at http://www.rice.edu/energy/publications/docs/NOCs/Papers/NOC_CC_Chen.pdf, and also cited at <http://www.rice.edu/energy/publications/nocs.html>

⁴⁵ Thomas Waelde, *Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law*, *Journal of World Energy Law and Business*, 2008, Vol 1 Number 1

⁴⁶ *The Changing Role of National Oil Companies in International Energy Markets*, Baker Institute Policy Report, April 2007, available online at <http://www.rice.edu/energy/publications/nocs.html>

⁴⁷ *The Changing Role of National Oil Companies in International Energy Markets*, Baker Institute Policy Report, April 2007, available online at <http://www.rice.edu/energy/publications/nocs.html>

⁴⁸ See *Shell Energy Scenarios to 2050*, available online at http://www-static.shell.com/static/public/downloads/brochures/corporate_pkg/scenarios/shell_energy_scenarios_2050.pdf

⁴⁹ Joseph Stanislaw, *Power Play: Resource Nationalism, the Global Scramble for Energy and the Need for Mutual Interdependence*, Deloitte US, 2008, available online at http://www.deloitte.com/dtt/cda/doc/content/us_er_PowerPlayResourceNationalism_theGlobalScramble_for_EnergyWEB_240209.pdf

⁵⁰ See http://www.worldenergyoutlook.org/docs/weo2008/WEO2008_es_english.pdf.

⁵¹ See http://www.cairn.info/resume.php?ID_ARTICLE=RPVE_464_0031

⁵² The report is available at <http://peakoiltaskforce.net/download-the-report/ga/>. See also John Gault: writing in May 2007, he suggests, 'attention to climate change and related environmental concerns is on the upswing in Europe... In spite of resurgent resource nationalism and the publicity given to 'peak oil' theories, there is no comparable crescendo of public concern about energy security' (John Gault, *European Energy Security: Balancing Priorities*, FRIDE Comment, May 2007).

⁵³ That is, reduction of the overall throughput of materials (including energy) in any given product or service.

⁵⁴ A collection of bilateral investment treaties on the website of the International Centre for the Settlement of Investment Disputes lists 88 signed in the period from 1970-1979; and 1396 signed between 1990-1999. Even if the numbers are not precise, they are broadly indicative of a fifteen-fold increase in the rate of signature of BITs. See <http://icsid.worldbank.org/ICSID/FrontServlet>.

⁵⁵ ILA Committee on Legal Aspects of Sustainable Development, *Fifth and Final Report: Searching for the Contours of International Law in the Field of Sustainable Development*, International Law Association New Delhi Conference (2002), at page 5

⁵⁶ Thomas Waelde, *Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law*, *Journal of World Energy Law and Business*, 2008, Vol 1 Number 1

⁵⁷ M Sornarajah, *A law for need or a law for greed?: restoring the lost law in the international law of foreign investment*, *International Environmental Agreements*(2006) 6: 329-357

⁵⁸ For further analysis see Halina Ward, *Integrating Corporate Accountability and Corporate Social Responsibility in a Model Investment Agreement*, background paper for IISD model agreement on investment, IIED, London, 2004

⁵⁹ Lorenzo Cotula, London, *Strengthening Citizens' Oversight of Foreign Investment: Investment law and Sustainable Development*, IIED, Sustainable Markets Investment Briefings, numbers 1-5, August 2007. See also Dominic Ayine et al, *Lifting the Lid on Foreign Investment Contracts: the real deal for sustainable development*, London, IIED, Sustainable Markets Briefing Paper, September 2005

⁶⁰ Thomas Waelde, *Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law*, *Journal of World Energy Law and Business*, 2008, Vol 1 Number 1, at page 71.

⁶¹ M Sornarajah, *A law for need or a law for greed?: restoring the lost law in the international law of foreign investment*, *International Environmental Agreements*(2006) 6: 329-357

⁶² *Methanex Corp. v. United States of America*, Final Award, 3 August 2005, <http://www.state.gov/documents/organization/51052.pdf>.

⁶³ I am grateful to Lorenzo Cotula for this reference

⁶⁴ http://www.fdimagazine.com/news/fullstory.php/aid/2417/In_Dispute:_Are_Dutch_investment_treaties_on_their_way_out_.html

⁶⁵ *In Dispute: Are Dutch Investment Treaties on their way out?*, *Foreign Direct Investment*, June 9, 2008, available online at

http://www.fdimagazine.com/news/fullstory.php/aid/2417/In_Dispute:_Are_Dutch_investment_treaties_on_their_way_out_.html

⁶⁶ http://www.bilaterals.org/article.php3?id_article=11396

⁶⁷ Available online at http://www.iisd.org/pdf/2005/investment_model_int_handbook.pdf

⁶⁸ Thomas Waelde, *Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law*, *Journal of World Energy Law and Business*, 2008, Vol 1 Number 1, at page 75

⁶⁹ Indeed, Professor Waelde goes so far as to ask whether the rule of law might primarily be a concept of Western culture.

⁷⁰ Rachel Schurman, *Tuna Dreams: Resource Nationalism and the Pacific Islands' Tuna Industry*, *Development and Change* Volume 29 1998, and

http://66.102.1.104/scholar?hl=en&lr=&safe=off&q=cache:upT15LXZAXsj:rspas.anu.edu.au/papers/rmap/Wpapers/rmap_wp39.rtf+%22resource+nationalism%22

⁷¹ Howard Mann, *From a law for greed to a law for need: the underlying importance of prof. Sornarajah's paper*, *Int Environ Agreements* (2006) 6:359-363

⁷² Thomas Waelde, *Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law*, *Journal of World Energy Law and Business*, 2008, Vol 1 Number 1

⁷³ *Ibid*

⁷⁴ International Energy Agency, *Medium Term Oil Market Report*, July 2007,

<http://omrpublic.iea.org/currentissues/mtomr2007.pdf>

⁷⁵ Thomas Waelde, *Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law*, *Journal of World Energy Law and Business*, 2008, Vol 1 Number 1

⁷⁶ *Oil drop may break resource nationalism wave*, Reuters, 18th December 2008

⁷⁷ <http://www.forbes.com/feeds/afx/2008/12/05/afx5785930.html>

⁷⁸ See *Contrite in Caracas*, *Financial Times*, January 16 2009

⁷⁹ *Resource nationalism on the wane, says BG*, Ed Crooks, *Financial Times*, 5th February 2009

⁸⁰ Thomas Waelde, *Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law*, *Journal of World Energy Law and Business*, 2008, Vol 1 Number 1, at page 61

⁸¹ Rachel Schurman, *Tuna Dreams: Resource Nationalism and the Pacific Islands' Tuna Industry*, *Development and Change* Volume 29 1998, and

http://66.102.1.104/scholar?hl=en&lr=&safe=off&q=cache:upT15LXZAXsj:rspas.anu.edu.au/papers/rmap/Wpapers/rmap_wp39.rtf+%22resource+nationalism%22, citing Michael Schafer, (1983) *Capturing the Mineral*

Multinationals: Advantage of Disadvantage, *International Organization* 37(1): 93-119

⁸² *Ibid*, at page 131

⁸³ Nordine Ait-Laoussine, *Middle East Economic Survey*, 3 November 2008,

<http://www.mees.com/postedarticles/oped/v51n44-5OD01.htm>

⁸⁴ UN Security Council Presidential Statement PRST/2001/39, cited in UN Security Council Press Release SC/7246, 19th December 2001, available online at <http://www.un.org/News/Press/docs/2001/SC7246.doc.htm>

⁸⁵ This claim was contested by a number of businesses, who said that there was a lack of transparency and due process in the Panel's decision to name them. See *OECD Guidelines for Multinational Enterprises: Conducting business with integrity in weak governance zones: OECD Instruments and examples from the OECD*, OECD Secretariat, 2004, <http://www.oecd.org/dataoecd/1/3/33760086.pdf>

⁸⁶ See http://www.globalwitness.org/pages/en/drc_conflict.html

⁸⁷ See www.11.be/fairshare

⁸⁸ Jack Lifton, *Lessons for investors from the year in resource nationalism*, *Resource Investor*, 6 December 2006, available online at <http://www.resourceinvestor.com/pebble.asp?relid=26894>

⁸⁹ *Nigeria Oil: oil groups fear reforms*, *Financial Times*, October 20th 2008, reproduced at

http://www.eiu.com/index.asp?layout=ib3Article&article_id=1343877319&pubtypeid=1142462499&country_id=1650000165&page_title=&rf=0

⁹⁰ *Oil drop may break resource nationalism wave*, Reuters, 18th December 2008

⁹¹ As the ongoing battle over the principle of 'prior informed consent' in the mining sector shows

⁹² See e.g. Ian Christie's piece *Democracy*, *Civil Society, Sustainability*, at

http://democracy.sustainability.com/insight_and_analysis/christie.cfm

⁹³ Richard Youngs, *Energy: A Reinforced Obstacle to Democracy?* CEPS Working Document Number 299/July 2008, Centre for European Policy Studies, available online at shop.ceps.eu/downfree.php?item_id=1688

⁹⁴ Collier and Hoeffler, 2008, cited in Paul Collier, Paul Collier, *Implications of changed international conditions for EITI*, *EITI*, October 2008

⁹⁵ *Ibid*

⁹⁶ Paul Collier, *Implications of changed international conditions for EITI*, *EITI*, October 2008

⁹⁷ See for example the discussion of Hotelling's rule in Blackburn et al *Sovereign Wealth Funds: do sovereign wealth funds best serve the interests of their respective citizens?*, University of Chicago Graduate School of Business, March 2008. "Hotelling's rule suggests that in order to maximise the present value of returns to a non-renewable natural resource, producers should supply output to the point where the projected rate of increase in unit profits equals the rate of return that owners of the resource can earn from alternative investments.. If the projected rate of unit profit increase is greater than the opportunity cost of capital, then producers should restrict output to sell more at future, higher prices until the current price increases sufficiently to restore the equality. If, on the other hand, the projected rate of profit increases falls below the opportunity

cost of capital, then producers should boost their production and invest the proceeds of their sales to earn [the discount rate] until [the discount rate] and market prices drop and Hotelling's Rule holds once more"

⁹⁸ Paul Williams, *Market Cycles, Power Politics and the Latest North-South Energy Trade Conflict*, 2007 Third World Quarterly, 28:1, 45-58

⁹⁹ Tina Hodges, *Bolivia's Gas Nationalization: Opportunity and Challenges*, Petroleumworld Opinion Forum, 25th November 2007

¹⁰⁰ See e.g. the recommendations of Pristina-based Riinvest Institute, in collaboration with IIED, in a World Bank-funded project to develop recommendations for the government of Kosovo on mining and community development and mining and community consultation, at <http://www.riinvestinstitute.org/?cid=2,30>

¹⁰¹ Paul Collier, *Implications of changed international conditions for EITI*, EITI, October 2008

¹⁰² Eduardo Gamarra, *Bolivia on the Brink*, Council on Foreign Relations, February 2007; *Interpreting Bolivia's Political Transformation*, Democracy Center, Cochabamba, May 2007

¹⁰³ See <http://www.icmm.com/page/1409/resource-endowment-initiative>

¹⁰⁴ This section draws in large measure on the analysis in the report *Analytical framework: The challenge of mineral wealth: using resource endowments to foster sustainable development*, available online via <http://www.icmm.com/page/5902/resource-endowment-initiative-phase-1>. Detailed analysis of the complete outputs to date of the ICMM project has sadly been beyond the scope of the present report.

¹⁰⁵ Blackburn et al, *Sovereign Wealth Funds: do Sovereign Wealth Funds best serve the Interests of Their Respective Citizens?*, University of Chicago Graduate School of Business, March 2008

¹⁰⁶ The analysis criticizes the Norwegian Oil Fund on the basis of a 'political aspect' that it says could be seen as negative – namely its history of divesting from investments on human rights grounds. The authors say that '*it is hard to say whether the costs of such political statements would be desired by Norwegian citizens. Considering that their government can make political statements in other ways and forums, would they want a higher return instead?*'

¹⁰⁷ See <http://www.mineweb.com:8080/mineweb/view/mineweb/en/page68?oid=38816&sn=Detail> In 2007. Cf Miguel Schloss, *Governance and Policy Framework for Extractive Industries' Performance*, Oil, Gas and Energy Law Intelligence, January 2008, available online via www.gasandoil.com/ogel/ who says 'leading mining companies now accept that the industry's continuing access to resources on viable terms – its 'license to operate' – is dependent upon demonstrating that the industry has the will and the capability to operate within transparent and sustainable development principles. To this end the industry needs better governance structures to help manage the resources generated by the sector'.

¹⁰⁸ Joseph Stanislaw, *Power Play: Resource Nationalism, the Global Scramble for Energy and the Need for Mutual Interdependence*, Deloitte US, 2008, available online at http://www.deloitte.com/dtt/cda/doc/content/us_er_PowerPlayResourceNationalism_theGlobalScramble_for_EnergyWEB_240209.pdf

¹⁰⁹ http://www.robertamsterdam.com/2008/06/the_resource_nationalism_check.htm, June 3 2008

¹¹⁰ See M. Schloss, *Governance and Policy Framework for Extractive Industries' Performance*, Oil, Gas and Energy Law Intelligence, January 2008, available online via www.gasandoil.com/ogel/

¹¹¹ See e.g. the statement of a White House spokesperson announcing the US intention to host the November 2008 G8 summit on the financial crisis stated that the gathering "*will provide an important opportunity for leaders to strengthen the underpinnings of capitalism*" and "*how they can enhance their commitment to open, competitive economies, as well as trade and investment liberalisation*". See <http://www.america.gov/st/econ-english/2008/October/20081022124842dmslahrellek0.359234.html>, last visited February 16 2009