

Resource colonialism and the Chile-Argentina mining treaty

GRAIN (November 2007)

The bilateral mining treaty between Chile and Argentina signed in 1997 and ratified by both parliaments in 2000, is part of a series of laws and regulations issued to implement and enforce the Agreement on Economic Complementation (1991), in turn presented as part of the implementation of a peace treaty signed in 1984.

More than twenty other legal texts, including a treaty for the promotion and protection of investments and special tax exemption regimes, complement the mining treaty and make up an increasingly complex legal web that facilitates mining activities.

The mining treaty allows for the first time cross-border exploitation of mineral deposits, covering an area of more than 200,000 square kilometres. It is presented as a unique opportunity for both countries to exploit their mining resources more efficiently, cooperate in research and development of new mining technologies, promote "mutual investment" and protect the "national and public interest" of both countries. Yet less than a decade after its ratification, it has proved to be a powerful and exclusive tool for transnational corporations (TNCs) to access and exploit binational resources. No national investments – public or private – have yet been channelled through it.

Indeed, the treaty was the result of years of lobbying by some of the world's biggest mining companies. Rio Tinto, Barrick Gold, Falconbridge and Tenke Mining set up local offices or subsidiaries, joined the National Mining Chambers and/or deployed their lobbying engines. Initially, lobbying efforts produced specific "facilitation protocols", granting special conditions and privileges mostly to Barrick Gold and Falconbridge. The treaty provides a general framework that opens the border region to any mining TNC. Many provisions have been added through further protocols which facilitate TNC activities, granting them privileges and exemptions. As privileges can be transferred through the sale of mining rights, they are fully covered by investment protection clauses. So Chile and Argentina must set up special border controls, grant access to the mining companies to "all types of natural resources" – including water, allow private airports in the border area, grant broad exemptions to their immigration, health, labour and sanitary laws, and grant further privileges in the future. For Chile, whatever is granted through the treaty and these protocols is strengthened and protected by means of the multiple bilateral FTAs it has signed. For Argentina, this role is so far mostly played by a Mining Code (1999), and a Law on Mining Investments (2004). Ironically a peace treaty that ended years of tensions when both countries were on the brink of war over the border areas has been used to surrender the same territories to TNCs.

Mining TNCs have been mostly absent from Argentina (except for oil and gas companies), but are well known in Chile. Demanding all kinds of guarantees and privileges, they are skilled at using every legal loophole to expand their profits. Barrick Gold, for example, has operated a gold mine in Chile for over 15 years without paying any taxes. Year after year they report losses, using different accounting tricks, such as reporting loans at unusually high interest rates, or selling the extracted mineral at unusually low prices to their own subsidiaries. Thus Chile has had almost no income from foreign mining companies, although they extract and market around half of its mineral production.

The impact of the treaty and its associated legal web is already being felt. Four massive binational projects have been approved: Pascua Lama (Barrick Gold), El Pachón (Falconbridge), Vicuña (Rio Tinto) and Amos-Andres (also Rio Tinto). In Argentina, transnational mining projects rose in number from 3 in 2002 to 150 by the end of 2005. Copper and gold is the main focus, but also silver and molybdenum. The projects are so far concentrated in the highlands of northern Chile and Argentina, and the mainly hilly extreme south. Both areas are key



Call to mobilise on 21 December 2006 against Pascua Lama and the "international treaty to destroy nature" forged between the Chilean and Argentine governments



"Water is worth more than gold" says the banner at this people's action against the Treaty

(Photo: noapascualama.org)

sources of water that feed rural communities and several cities. The mining treaty covers over 95% of the border, one of the longest in the world. Future projects will be located in more central areas, near where most of the agricultural activity takes place and where most of the Chilean people, and an important part of the Argentinian population, live.

Mining technologies to be used are mostly open pit and lixiviation, both highly contaminating and requiring huge amounts of water. Open pit entails mountains being blown into small pieces to extract minerals. The daily production of thousands of tons of dust and waste and the consumption and contamination of thousands of litres of water per minute are expected in each project, plus contamination with cyanide and acids. The water supply of rural communities and cities is endangered. The Pascua Lama project could destroy three glaciers that have fed indigenous communities for centuries and allowed them to develop agriculture near the world's driest desert (Atacama), also endangering the water supply of several medium-sized cities.

All companies involved claim in their annual reports and websites that environmental protection is a top priority. However, they have used all sorts of legal manoeuvring to avoid any responsibility. Environmental laws in Chile and Argentina require environmental impact studies for all mining projects. Companies have then requested a "provisional" permit to set up their facilities and start prospecting. Once provisional permits are granted, they

are deemed to be company assets and hence are protected by investment and free trade agreements. So if an environmental study shows an unacceptable impact and the permit is revoked, under such agreements both governments could be brought to the World Bank's International Centre for Settlement of Investment Disputes (ICSID) and pay multimillion-dollar compensation. This possibility, in tandem with continuous and intense lobbying, has caused amazing forms of law-twisting by government and state officials. Pascua Lama, for example, will continue despite its devastating environmental impact. Chile's National Environment Commission, whose legal mandate is to protect the environment, works closely with Barrick Gold to "solve" legal barriers and make its mining project possible.

People's organisations on both sides of the border have actively resisted the mining projects. TNCs have used bribes, promises of future jobs, "development projects", threats and physical intimidation to combat resistance. Opposition has continued, but so has lobbying by the corporations - and they have succeeded: a bill that protects glaciers from mining activities has slept in Chile's Congress since 2004, but a bill recently introduced to allow the exploitation of underground water reservoirs is moving ahead.

Going further:

www.miningwatch.ca/index.php?/chile_en/pascua_lama_action (English)

www.nopascualama.org (Spanish)