

YASUNÍ ITT INITIATIVE AND THE REINVENTING SOVEREIGNTY OVER NATURAL RESOURCES

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This paper discusses the Yasuní ITT Initiative through which a sovereign state (Ecuador) proposed it would forgo oil extraction in an area overlapping with a global biodiversity reserve and indigenous territory in exchange for financial compensation from the global community. This paper argues that the ITT Initiative provides an excellent opportunity for a much needed discussion about limits on sovereign rights to natural resources. The article first looks into problematic features of sovereignty with respect to natural resources and argues that it fails to facilitate a use of natural resources compatible with demands of domestic and international justice. Three issues are identified: the extractivist bias, the problem of territorial monism, and the justice deficit. In the second part of the paper I show how the ITT Initiative innovatively attempted to transcend these structural weaknesses in the current system thus providing a valuable model of self-limiting sovereignty over natural resources. Three aspects are highlighted: a fiduciary model of resource sovereignty, the recognition of extraterritorial rights of others to sovereign resources, and a model of international cooperation for the non-exploitation of resources and the effective mitigation of climate change.

Keywords: Yasuní ITT Initiative – Sovereignty over natural resources – Natural resource justice – Biodiversity – Indigenous rights – Climate change

Yasuní National Park is an area of almost 10,000 square kilometers of Amazonian rainforest located in northeastern Ecuador. The park is believed to be part of a zone that did not freeze during the last ice age and that likely became a place where flora and fauna took refuge, survived, and eventually re-populated the Amazon region. Unlike anywhere else on the planet, there are species in the park which inhabited the Earth before the last ice age. Yasuní Park features an extraordinary and record-breaking biodiversity (Bass et al. 2010). The park also partially overlaps with the claimed ancestral territory of the Huaorani indigenous people and is home to other indigenous peoples. The Tagaeri and Taromenane live there in harmony with nature and in voluntary isolation for centuries.

As a national park, Yasuní was established in 1979. In 1989, the park was designated a UNESCO Biosphere Reserve and Cultural Heritage site. A year later, the Ecuadorian

government declared parts of the park an intangible zone protected from any activity which may negatively affect its biodiversity or cultural significance. At the same time, so long as it was outside of the intangible zone which comprises 70 % of the park, the new regulation allowed the development of oil extraction blocks. The abundance of oil in the area has been the most serious challenge confronting Yasuni's biodiversity and indigeneity. Ecuador's second largest untapped oil fields lie beneath the intact northeastern section of the park. According to estimates, the block called ITT (Ishpingo-Tambococha-Tiputini) contains 850 million barrels of crude oil, approximately 20 % of the country's petroleum reserves.

The pressure to drill in Yasuni's ITT section which partially overlaps with the intangible zone has been intense. Oil is the key natural resource for Ecuador, defining its economy and politics. The extent to which oil has been ingrained into this country's economic and political identity has also been reflected in a long-term conflict between resource exploitation, environmental protection, and indigenous rights. In response to a strong opposition to oil drilling from indigenous groups, human rights advocates, and conservationists, the unprecedented Yasuni ITT Initiative was launched in 2007. A part of then President Rafael Correa's new social democratic politics strongly oriented toward social and environmental justice goals, the Initiative proposed to keep the ITT oil permanently underground. In exchange Ecuador requested the world community to contribute one half of the estimated income it would be forgoing, amounting to \$3.6 billion over a 13 year period, with the balance being the contribution of the people of Ecuador to biodiversity conservation and climate change mitigation.

In August 2013, President Rafael Correa made an announcement that Ecuador will exploit the oil reserves hidden beneath the Yasuni Park, after its National Assembly voted to approve the extraction project invoking the exception in the country's constitution that allows oil to be extracted from protected land in case of compelling national interest. The decision to pursue oil extraction in the area marked the collapse of the UN-backed ITT Initiative. Having set the bar at \$3.6 billion, Correa responded to the international community's pledges of \$116 million and actual contributions of just \$13 million by declaring in a televised speech that the world had failed Ecuador. He called the world's richest countries hypocrites who emit most of the world's greenhouse gases while expecting nations like his to sacrifice economic progress for the sake of the environment (Valencia 2013). Drilling in the ITT block started in 2016.

Despite this regrettable development, Yasuni ITT Initiative remains a groundbreaking proposal to be studied as a practical attempt to reinvent sovereignty over natural resources. This paper aims to assess the Initiative precisely in this respect, namely in terms of providing a model for the reinvention of the dominant extractivist model of sovereignty over natural resources which often engenders severe injustices of exclusion, inequality, and environmental harm. I will argue that the ITT Initiative's core aim to forgo oil drilling was rooted in a novel idea of sovereignty over natural resources that moves away from the

dominant practice of treating natural resources as a sovereign's property, to be exploited in an unlimited fashion and for the exclusive benefit of a few and often regardless of the social and environmental costs of the resource extraction. The thesis I will defend is that the ITT Initiative embodies a progressive model of natural resource justice based on striking a balance between competing intra- and extra-territorial rights, compelling interests, and claims to natural resources. The cooperative financing scheme compensating for the non-exploitation of the fossil fuels and thus the potential reduction of CO₂ emissions will also be assessed as a significant contribution to climate change justice.

The interpretation of the ITT Initiative I propose also represents a fresh input to the philosophical debate on natural resource justice. Philosophy of justice has recently developed quite a few conceptions of justice with respect to natural resources. Assuming uncritically that natural resources are an important distributive good which has a universally beneficial value for humans, thinkers such as Beitz (1979), Steiner (2009, 2011), and Armstrong (2017) defended global redistribution of natural resources or their monetary value to compensate for the unjust, arbitrary distribution of natural resource holdings or to solve global inequalities. These global redistributive solutions do not contribute to the project of a more just use of natural resources in a real world in which resources are subject to conflicts and are configured in histories of injustice. The method of strictly normative theorizing employed by these thinkers makes it impossible for these conceptions to account for complex, historically contingent, and conflicting entanglements of humans with nature and natural resources and hence apprehend and appreciate the morality of solutions arising from these historically embedded conflicts. This, however, ought to be a distinct goal of practice-oriented philosophy in the area of natural resources. In order to provide a moral guidance for the practice, philosophy has to be able to account reflexively and critically for specific existing conditions of injustice and propose emancipatory visions of the transformation which arise out of struggles of concerned actors.

This paper seeks to exercise this kind of practice-oriented moral theorizing. The first part looks at the dominant system of permanent sovereignty over natural resources and the problematic uses of natural resources it facilitates. I show that there are three main problems built into the very structure of this system – an *extractivist bias* which encourage states to exploit their resources to the fullest for economic gain, a problem of *territorial monism* which enables states to ignore various intra- or extra-territorial rights to resources, and a *justice deficit* which concerns the lack of substantive limits on the use of natural resources by states. The second part of the paper examines the history of oil extraction in Ecuador, showing how oil and its extraction in this country has represented a particular version of this dominant paradigm of sovereignty over natural resources – one that failed to improve the economic welfare of the country, caused widespread and severe human rights violations and environmental harm. The third part assesses the ITT Yasuní Initiative as a part of a new resource sovereignty model which prioritizes environmental sus-

tainability, indigenous rights, biodiversity protection, equitable benefit sharing, and global cooperation for a common goal of climate change mitigation.

I. Permanent Sovereignty over Natural Resources and Its Discontents

Ecuador, as any country in the current international system, has so called permanent sovereignty over natural resources (hereafter referred to as PSONR) which allows it to exploit freely, exclusively, and with little limitations all natural wealth and resources within its territory. This sovereign right allows Ecuador's government to make a fully legitimate decision to suspend the ITT Initiative, sell concession rights, allow the drilling for oil in Yasuni to proceed, and decide how to regulate the extractive activity, as well as how to use the oil revenue.

Sovereignty over natural resources is one of the most consequential norms of international law. Allocated to states and their people in the process of decolonization and the postwar transformation of international law in the 1960s, PSONR corrected the injustice of colonial appropriation of natural resources from foreign territories which consisted in unilateral and forceful imposition of property and sovereignty rights and ruthless exploitation of both human and natural resources based on violence, exclusion, and radical inequality. Simultaneously, the new sovereign territorial system of rights to natural resources was meant to secure economic benefits arising from the exploitation of natural resources for the people of developing and newly independent states. The principle that states and their people have an exclusive right to control and use natural resources occurring on their territories so that they can fully realize the right to self-determination and provide economic development to their people is a moral foundation of this historically unprecedented system of distribution of rights to natural resources (Schrijver 1997).

Given its historical origins and corrective justice aims and based on the recognition of each state's equal right to a full autonomy of decision making within territorial boundaries, PSONR gives states a very broad range of powers and prerogatives over natural wealth and resources. The powers include the right to freely decide on their extraction, determine property rights to resources, agree on terms of foreign investment or extraction contracts, nationalize foreign property, sell resources as commodities and also decide on the allocation of extraction revenues. Nature and its resources are essentially considered sovereign property and the key feature of the practice is that states use this natural property of theirs with a considerable degree of discretion and for their exclusive benefit. Three main problems are built into the very structure of the system. I call them the *extractivist bias*, the problem of *territorial monism*, and the *justice deficit*. Let me briefly explain each in turn.

The first structural problem concerns a strong *extractivist bias*. Historically, sovereign enclosure of the natural space which started in the Age of Discovery in the late 15th century arose from unjust acts (war, dispossession, inequitable treaties) and created political spaces with arbitrary boundaries cutting across established human societies and ecosystems.

Within these arbitrary political spaces, sovereigns made claims to a supreme and unlimited authority to rule over the people and laid property claims to territory and its natural resources which they exploited for an exclusive private benefit and to sustain their rule. This property logic also shaped the emergence of the PSONR and is reflected in its scope and content. To correct the injustice of colonialism and to boost economic development of newly established states, PSONR created a system in which the sovereign is authorized to a permanent possession, a free use and a full exploitation of natural resources and all other components of the natural environment in a given territory. It grants states an extensive bundle of powers and full discretion in making decisions about what to do with their natural environment in accordance with their domestic law and national development strategy. Significantly reinforced by international legal and political regimes regulating trade, foreign investment, development and monetary aid, and debt alleviation (Feichtner 2016), PSONR's design encourages states to exploit their resources to the fullest for economic gain.

The second structural problem of *territorial monism* follows from the fact that in the current system of PSONR, it is countries and their people as a whole who are the only holders of collective rights to resources. This feature of the system results from the fact that during the process of decolonization, the collective right to self-determination was granted to existing states and their people and newly to 'colonized peoples' – units whose boundaries were defined not by ethnic or religious identity but being subject to territorial domination by colonizing powers. The postcolonial states emerged out of colonial administrative boundaries and comprised multiethnic and multi-religious entities who became collective holders of the right to self-determination and sovereignty over natural resources. These rights, moreover, were understood to be uniquely fulfilled by sovereign statehood. The resulting political geography of sovereign states thus not only granted collective sovereignty over natural resources holistically to pluralistic entities within historically contingent territorial boundaries, it also endowed their governments with sweeping jurisdictional prerogatives concerning resources. PSONR, in other words, was established as a territorially monistic and exclusive collective right which recognizes neither intra- or extra-territorial and resource rights of minorities nor extra-territorial rights to resources of outsiders (Gümplová 2018).

The third and related problem pertaining to sovereignty over natural resources I call domestic and international *justice deficit*. PSONR, as Schrijver has shown (1997, 306), is a system which emphasizes rights to resources over duties and limits. Both in theory and in practice, there is a remarkable lack of a systematic view concerning how states should use their natural endowments justly. On the one hand, there are no effective conditions of legitimacy of the exercise of rights to natural resources. Unlike the sovereign power over persons which is now with an increasing effectiveness limited by international law of human rights, the sovereign power over natural space and its resources has been virtually

unlimited. Whatever the constitutionality or legitimacy of a regime, governments acting on behalf of states have all the jurisdictional powers associated with PSONR. Countless illegitimate or corrupt governments abuse natural resources for the perpetration of injustices such as political oppression and violence (Ross 2012, Wenar 2016). Similarly, there has been no debate about how states ought justly to allocate the benefits and burdens arising from the use of natural resources. Finally, PSONR is not well equipped to respond to demands of international distributive and environmental justice as it validates property and exploitation claims to territorial parts of global commons or domains providing vital ecosystem services for humankind.

To correct these issues, the system of PSONR has to be revised and reformed in terms of a conception of natural resource justice which addresses urgent problems and is feasible for the existing international system of sovereign states. What is unique about the ITT Initiative is that it is a government's policy plan. Given the fact that it arose in a legitimate democratic political context as a solution to a set of pressing problems involving a variety of stakeholders, it has a unique epistemological and moral value. It provides an excellent opportunity to consider questions of natural resource justice, especially concerning the reinvention of the content and scope of the norm of permanent sovereignty over natural resources and the possibilities of global cooperation on climate change mitigation. Let me now assess the impact of the ITT Initiative on PSONR, both in the context of the dominant practice of exercising sovereign rights to natural resources but also in the context of Ecuador's ambiguous history of oil exploitation.

II. Oil and Sovereignty in Ecuador

Ecuador is not a country afflicted by a resource curse in the conventional sense of the term of having to suffer under a combined curse of authoritarianism, low growth, and civil conflict. Yet, as in most countries rich in it, oil has been a problematic natural resource for its people. Ecuador started building an oil industry in late 1960s by relying on loans and foreign oil companies' investment. Loans and the 1970s oil price shocks led to mounting foreign debt. After the so called 'lost decade' of the 1980s, during which Ecuador (along with other Latin American countries) was unable to pay back its debts, neoliberal reforms of privatization, deregulation, and austerity were introduced by the IMF and World Bank through their structural adjustment programs and conditional loans. Oil revenues increased due to privatization but failed to bring substantial benefits to the country's diverse population. Poverty and inequality increased along with a widespread experience of economic and political exclusion and social injustice (Silva 2009). Debt generated through the necessity to finance the building of infrastructure for accessing the oil reserves, technological dependence on foreign money and expertise, liberalization of the investment regime and the reduced capacity of the state to redistribute oil wealth, lack of control over

price variations on the global market have meant that real national sovereignty over this valuable natural resource has not fully materialized (Temper et al 2013, 12 – 13).

Along with the economic ‘quasi-sovereignty’ over oil, there has been a profound conflict between oil extraction and preservation of the rainforest and biodiversity, and protection of the livelihood and lifestyle of indigenous groups since the very beginning of oil extraction occurring mostly in the Amazon region, a resource domain providing overlapping values of biodiversity, ecological services, and indigeneity. In Ecuador, oil extraction has involved the most severe of social and environmental impacts including massive hazardous pollution, deforestation, biodiversity loss, and the violation of indigenous rights. The most burdensome effects of oil exploitation are known as ‘Amazon Chernobyl’ and they resulted from Chevron’s (formerly Texaco) decades long practice of dumping hazardous waste into open-air pits and draining them into streams and rivers. To this day, toxic substances contaminate the soil, rivers, and groundwater and local indigenous and farming communities continue to suffer with cancer, birth defects, miscarriages, and other ailments (Zuckerman and Koenig 2016). Chevron’s toxic and criminal legacy exemplifies another deeply problematic aspect of the exercise of sovereignty over natural resources, namely that it not only fails to contribute economically to the material wellbeing of the society but also involves grave human rights violations and provokes resistance and causes social conflict (Sawyer 2004, Vasquez 2014).

Rafael Correa’s ascent to power in 2006 and his attempt to reclaim sovereignty over oil and utilize it to fulfill rather than to undermine domestic social justice has to be seen in this context. Correa campaigned with the program of *Revolución Ciudadana*, a thorough transformation of Ecuador’s political economy toward a democratic, socially just, and environmentally sustainable model which prioritizes social welfare, sustainable extraction of resources, and equitable redistribution of its benefits. Dubbed ‘21st century socialism’, his neo-developmental model relied on capitalist economy with a high degree of regulation and a consolidated and expanded public sector focused on welfare spending and green development (Kozloff 2008). In this model, the hitherto existing pattern of resource extractivism was supposed to be replaced by a reformed hydrocarbon governance on the one hand (greater regulation of the industry by the state, mitigation of environmental and social impacts, fair redistribution of benefits to the population to reduce poverty and inequality, ultimate transition to renewable energy sources), and on the other hand by conservation of those natural resources or resource domains whose environmental and social values cannot be compared to the monetary benefit gained by their extraction.

Correa’s *Allianza PAIS* won 100 out of 131 seats in the National Assembly and this majority allowed him to pursue his project over the next decade. In 2007, Correa reconvened the Ecuadorean Constituent Assembly to draft a new constitution which was then approved in 2008. The constitution relies on the concept of *Buen Vivir* (translated from an indigenous concept of *Sumak Kawsay* of a good life or living well) which is centered

around two core social justice tenets – sustainable prosperity based on harmony with nature and inclusion and equality. In an unprecedented move, the constitution entrenches the rights of nature. Articles 71 – 74 declare the right of nature to be respected in its existence, integrity, and maintenance of life cycles and evolutionary processes and the duty of humans to enforce these rights of nature as well as restore its vital functions. The state is obliged to apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles.

The ITT Initiative is a practical policy outcome of this attempt by an oil-dependent developing country to launch a thorough social and economic transformation toward a sustainable and equitable development model based on a redefined relationship between nature and society and its constituent parts as well as global society at large. Implicitly, the Initiative relied on a vision of a reinvented, self-limiting model of sovereignty over natural resources which offered innovative responses to the three above-mentioned structural problems of territorial monism, the extractivist bias, and the justice deficit.

III. Yasuní and Reclaiming Oil as a Sovereign Resource

Sovereignty as a Fiduciary of Nature and its Resources

The campaign not to drill in the ITT Block was originally initiated in 1997 by an alliance of civil society groups including *Acción Ecológica* and *Oil Watch* under the name *Option One*. While it initially failed to gain traction within the government of Ecuador at that time, due in large part to an existing agreement that gave Brazilian company Petrobras rights to the ITT field, the proposal resurfaced and eventually found its most important advocate in Alberto Acosta, a former *Acción Ecológica* collaborator and later Correa's first Minister of Energy and Mining. When Correa made it an official government policy, it became the first policy proposal by a developing country's government to keep oil in the ground permanently for the sake of protecting indigenous rights, keeping biodiversity intact, and avoiding carbon emissions and thus contributing to global efforts to fight climate change.

In essence, the ITT Initiative implied that Ecuador renounces its sovereign right to extract an economically valuable natural resource. The right to extract has been one of the key prerogatives of PSONR which, as I argued above, has been organized around the logic of free and unlimited exploitation of natural resources for a country's economic benefit. This overarching right – defined in the UN Declaration on Permanent Sovereignty over Natural Resources as 'the inalienable right of all states freely to dispose of their natural wealth and resources in accordance with their national interests' – involves a bundle of rights concerning exclusive use, allocation and transfer of property rights and income regulation.

Indeed, the territorially exclusive and extensive scope of rights involved in PSONR is hardly defensible. Until now, however, the critical discussion pertaining to PSONR has almost exclusively focused on the demands to globally redistribute the income countries

gain from exploitation so that unequal natural resource holdings are equalized among nations (Beitz 1979) or individuals (Steiner 2011) or to compensate for other inequalities (Pogge 2002, Armstrong 2017). The debate is based on an assumption which Armstrong called ‘natural resource exceptionalism’ – a view that natural resources are a special and unambiguously beneficial good which ought to be divided equally or according to other substantive principles of distributive justice among individuals or collectives (Armstrong 2017, 64-68). Given the focus on natural resources as a prominent global distributive benefit, there has been until recently no systematic discussion about domestic natural resource justice which would address questions of the permissible scope of sovereign rights of states to their territorial natural resources, about possible substantive limits on those rights, and the conditions of their legitimate and justice-inducing exercise.

In an influential and path-breaking book *Blood Oil*, Wenar (2016) argued that all of a territory’s natural resources are property originally vested in the people and that this core feature of the current international law system implies that the people must have guaranteed basic civil liberties and political rights to be able to collectively authorize property laws and other decisions over resources. According to Wenar, civil and political rights determine the permissible scope of sovereign rights of states to manage natural resources within their territories. Wenar’s proposal of a global accountability reform consisting in obstructing the ability of governments of the countries with dismal human rights records to sell natural resources is a plausible and very important reform proposal. Focusing on the problem of using natural resources to perpetrate grave injustices such as political oppression, violence, or corruption, the proposal does not, however, address the problem of socially and environmentally adverse effects of extractive projects and climate change.

The Yasuní Initiative can be seen as the most effective attempt to address precisely these endemic issues. It consisted in redefining the sovereign jurisdictional right of control and decisional autonomy over a valuable natural resource in terms of a *permanent non-use* of resources, especially those which fail to bring benefits and the use of which is incompatible with broader demands of domestic and international justice. The reason for this unprecedented self-limiting move is not that the resource extraction is principally immoral on some practice-independent moral grounds. The reason to redefine sovereignty over resources in terms of their non-use has to do with the recognition of the fact that a particular resource (oil) and its extraction effectuates injustice (discrimination, inequality, pollution, deforestation, ecocide, volatile economic dependence) and is incompatible with the protection of other rights, interests, and benefits (biodiversity, ecological services, indigenous rights). When these rights and interests cannot be made compatible with the resource use, then non-use is a preferred response.

The proposal to keep ITT oil in the soil can thus be seen as a sort of reclamation of sovereignty over natural resources – sovereignty redefined in terms of limits resulting from compelling demands of domestic and global justice, most importantly involving the

protection of indigenous rights, fair and equitable distribution of benefits and burdens related to resource exploitation, biodiversity conservation, and climate change justice. Sovereignty redefined in this justice-based, self-limiting way acquires what Evan Fox-Decent called a 'fiduciary character' (Fox-Decent 2011). A fiduciary character of sovereignty means that the state exercises its sovereignty over persons but also, derivatively, over natural resources as an authority justified solely on the basis of a moral obligation to guarantee equal moral status and well-being to the people under its jurisdiction and a use of resources within its territory which does not impair this equal moral status and well-being of the people. Sovereignty over natural resources, in other words, can only be legitimately exercised when demands of justice are met.

The collapse of the Initiative is very regrettable. However, precisely because of its attempt to strike a better balance between economic benefits and social and environmental harms of oil extraction, its legacy is alive and resonating in various movements for non-extraction. There are proposals to leave oil in the soil, coal in the hole, tar sands in the land, and shale gas under the grass around the world known as *Yasunization*. They are actively pursued by groups and environmental organizations in Nigeria (where Ogoni communities in the polluted Niger delta have been calling for the stoppage of environmental devastation since the 1990s), Bolivia, Guatemala, Madagascar, Ghana, South Africa, Quebec, Canary Islands, and Lofoten in Norway (see Temper et al 2013, 62 – 135). In one success story from 2012, a Colombian court has stopped the exploitation of oil blocks in the Caribbean islands of San Andrés, Providencia, and Santa Catalina, a UNESCO Biosphere Reserve featuring extensive coral reefs and a unique ecosystem (Rainforest Rescue 2012). These resistance movements, as Temper et al correctly state, emphasizes a non-extractivist re-source sovereignty, making obvious that affected actors find it better aligned with overlapping demands of domestic social justice and global environmental and climate change justice (Temper et al 2013, 9).

The Recognition of Intra- and Extra-territorial Rights

In many places on Earth, the extraction of fossil fuels takes place at the commodity extraction frontiers. These could be at the bottom of the sea or in territories, like Yasuní, inhabited by indigenous people, or places of extraordinary biodiversity. Commodity frontiers, in other words, are places where other legitimate claims to territory and resources exist and conflict with extractivist claims made by states. So far, the overwhelming tendency has been for governments of countries claiming hydrocarbon deposits to maintain that their rights to extract – which are conventionally justified by appeals to economic development, GDP growth, or democratic majoritarian decisions – can never be trumped by other rights claims. Often, states also consider resistance to the extraction as unreasonable and illegitimate if not illegal (Temper et al 2013, 140).

The Yasuní Initiative invokes at least three conflicting sets of existing rights to resources – Ecuador’s sovereign right to oil extraction for the sake of national economic development, indigenous rights to territories and resources, and humankind’s right to biodiversity and its conservation. While the first right justifies oil extraction, the latter two imply its non-extraction. The Yasuní Initiative explicitly recognized the validity and legitimacy of the latter two intra-territorial and extra-territorial resource rights and attempted to uphold them by giving up the right to extract. It has thus challenged the dominant monistic conception inherent in the system of PSONR according to which states and their people as a whole are exclusive owners of all territorial natural resources which they can use exclusively for an economic benefit, and that intra- or extra-territorial claims to resources are irreconcilable with collective sovereign rights.

Indigenous rights now represent the most compelling intra-state claims. In recent decades, they have been established both morally and also legally as the main ‘competitors’ of PSONR. International legal instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) declares that indigenous peoples have the right to self-determination, to autonomy and self-government, and to maintain their distinct social and cultural institutions and religious practices. UNDRIP also places states under a duty to obtain indigenous peoples’ free, prior, and informed consent (FPIC) in relation to any action which might affect their lands, territories, and resources. Indigenous rights are embedded in the regional Inter-American system of human rights of which Ecuador is part and which explicitly recognizes the rights of indigenous communities to ownership of the natural resources of lands they have used and traditionally occupied, as well as an unequivocal duty of the state to acquire free, prior and informed consent of these populations concerning development projects on their lands. Last but not least, indigenous rights are entrenched in Ecuador’s constitution which protects the rights of indigenous communities to land ownership, common law systems and cultural and subsistence practices, and to consultation. Article 57 thereof also explicitly prohibits extractive activities on territories of indigenous peoples living in voluntary isolation.

The recognition of indigenous rights is based on the fact that indigeneity is a special kind of collective identity, not only based on cultural features (language, ethnicity, or religion) but primarily featuring a particular spiritual and physical relationship with specific territories and with the natural world in general. Indigenous people are defined first and foremost by specific economic and social practices – customary land tenure regimes, forest rights, subsistence practices, and long-term possession of ancestral territories. The pursuit of these practices depends on their territorial and ownership rights to natural resources. Indeed, an almost complete bundle of rights inherent in sovereignty over natural resources such as the right to own, use, manage, develop, and control these resources and regulate their uses by others is a prerequisite of their survival as a group (Daes 2005). Large extractive projects, oil drilling no least, have a destructive impact on the natural en-

vironment and hence on the indigenous way of life. Since there is no ‘clean technology’ of extraction available, the only measure which can effectively uphold indigenous rights is a moratorium on extractivist projects (Temper et al 2013, 140).

Humankind’s right to biodiversity conservation has a less developed legal status. The UN Convention on Biological Diversity (CBD) signed during the Earth Summit in Rio de Janeiro in 1992 has an almost universal acceptance and implies legally binding commitments for countries to conserve biodiversity, to sustainably use its components, and share the benefits arising out of the utilization of genetic resources equitably. It commits states to establishing a system of protected areas where special measures need to be taken to conserve biodiversity. The CBD also mandates developed country parties to provide financial resources to developing countries while recognizing that economic development and eradication of poverty are the overriding priorities of the developing country parties (UN Convention on Biological Diversity, 1993). But enforcement mechanisms are missing. The Yasuní-ITT Initiative proposed to protect parts of a biosphere reserve threatened by the extraction and can thus be seen as an attempt to implement provisions under the CBD. Moreover, it may be seen as improving the realization of CBD-mandated financial flows not only from CBD Parties, but also from other governments, organizations, enterprises, and individuals (Warnars 2010, 62).

Having recognized these compelling intra- and extra-territorial rights to natural resources within a sovereign territory, the ITT Initiative challenged the dominant state practice and interpretation of PSONR according to which all territorial natural resources are claimed by states exclusively in the name of a singular and narrow economic interest. Moreover, the process of turning the ITT Initiative into a policy proposal has also reinforced the idea that local communities have a democratic right to have a say in decisions concerning natural resources as they bear the adverse effects of extraction. They also have a right to resist when their participation is not enabled. In Ecuador, intense political mobilization was led by indigenous people but also by agricultural settlers and petroleum workers who, despite differences in livelihood and cultural struggles, shared an opposition to the dominant political economy of oil extraction (Valdivia 2008). The term *Yasunisar* now signifies the spread of similar movements to other regions and countries worldwide: not just campaigns to keep fossil fuels in the ground but all kinds of alliances and resistance movements working toward socially and environmentally just resource use and for the protection of territories with great natural and cultural diversity against activities with harmful impacts (Temper et al 2013, 24, 46).

Collective Action for Climate Change Mitigation and Resource Conservation

Through the ITT Initiative, Ecuador committed itself to forgo the extraction of an estimated 850 million barrels of petroleum if the international contribution of at least half of the revenue that the state would have received by extracting the petroleum (US \$3.6 billion

dollars) was raised in a 13-year period. For the receipt of financial contributions, a committee-controlled Yasuní ITT Trust Fund was established at the United Nations Development Programme (UNDP). The Fund and the agreement with the UNDP guaranteed that the funds would be allocated exclusively in sustainable development programs – renewable energy projects, forest and watershed management, nature conservation and regeneration, social development, and indigenous peoples' protection. These goals were aligned with the Ecuadorian National Plan for investment in a sustainable future. Ecuador also planned to issue Yasuní Certificates of Guarantee for the nominal value of the contributions up to a total of 407 million tonnes of CO₂ of avoided emissions from burning of extracted oil.

The model of partial financial compensation for ecological services with direct emission reduction effects outpaced the available frameworks of climate change mitigation developed within the United Nations Framework Convention on Climate Change (UNFCCC). There is the Kyoto Protocol's Clean Development Mechanism (CDM) developed under the UNFCCC framework which allows developed countries to implement an emission-reduction project in a developing country and acquire tradable Certified Emission Reduction units. There is also the UN-REDD Programme (Reducing Emissions from Deforestation and Forest Degradation) which seeks to curb developing countries' GHG emissions by preventing deforestation. None of these available mechanisms are designed to directly tackle the main source of climate change – the burning of fossil fuels – and thus contribute significantly to a globally agreed objective to avoid temperature rises in excess of 2°C which, according to estimates requires that at least two-thirds of the world's proven fossil fuel reserves must go unused by 2050 (International Energy Agency 2012; Vallejo Silva and Calisto Friant 2015).

The ITT Initiative strikes at the heart of the problem of climate change in that it sought to prevent the release of emissions in the first place. It has to be seen, as Vallejo Silva and Calisto Friant argued, as the first practical attempt to apply a scheme of avoided net emissions of greenhouse gases to one of the main sources of climate change which is the burning of fossil fuels. In addition to the 407 million metric tonnes of CO₂ emissions that the Yasuní-ITT initiative would have avoided by keeping oil in the ground and not burning it (a so called direct carbon mitigation), the initiative would also have led to savings of 800 million metric tonnes of CO₂ through avoided deforestation and reforestation that would have been carried out with the Initiative's funds (indirect carbon mitigation). With an additional shift to renewable energy, the Yasuní-ITT Initiative would have led to an estimated total savings of 1,278 million metric tonnes of CO₂ (Vallejo Silva and Calisto Friant 2015, 283 – 284).

To achieve this goal, the Initiative relied on a simple cooperative scheme of voluntary financial contributions from governments, international organizations, civil society groups, companies, and individuals. The appeal to the international community invoked the idea of

shared but differentiated responsibility for the mitigation of climate change and the demand for fairness in sharing conservation burdens. There is a political and intellectual consensus that the burdens which arise from the protection, restoration, or non-exploitation of resources cannot be borne by countries on the basis of the ‘proximity principle’ according to which those who have resources on their territories are responsible for their conservation, especially not when the ‘owners’ do not have an equal ability to bear the costs and when resources at stake deliver important benefits across borders and to humankind as a whole and future generations. ITT block forests provide ‘non-excludable’ public goods – they absorb greenhouse gases, minimize other pollution, sustain the global hydrological cycle, and harbor invaluable biodiversity. Their destruction or pollution generates burdens for distant others and impairs the environment for future generations. Justice requires that all who consume these public goods ought to contribute to their maintenance or costs of their production (Armstrong 2017, 220 – 230).

Ecuador, a developing country whose environment was severely damaged by the oil industry, intended to take a substantive share of the burden (50% of estimated oil revenues) to benefit the entire global community. It outlined a simple mechanism of partial compensation for ecosystem services while at the same time addressing directly the main cause of climate change as well as its own domestic issues. Despite its non-realization, it might serve as a pilot project for other developing countries containing significant fossil fuel reserves in highly biologically and culturally sensitive areas such as Bolivia, Colombia, Peru, Brazil, Costa Rica, the Democratic Republic of Congo, Madagascar, India, Indonesia, Malaysia, Papua New Guinea, the Philippines and Venezuela – places which are trapped in some version of a petro-curse and seek solutions contributing towards sustainable development and social justice (Warnars 2010; Vallejo Silva and Calisto Friant 2015, 291). The combined goals of transitioning to more equitable and sustainable paradigms of development and the protection of global commons require, however, collective global action and common responsibility for the protection of resource domains whose importance and ecological services transcend local context.

Bibliography

- ARMSTRONG, C. (2017): *Justice and Natural Resources*. New York: Oxford University Press.
- BASS, M. S., FINER, M., JENKINS, C. N., KREFT, H., CISNEROS-HEREDIA, D. F., MCCRACKEN, S. F., PITMAN, N. C. A., ENGLISH, P. H., SWING, K., VILLA, G., DIFIORE, A., VOIGT, C. C., KUNZ, T. H. (2010): Global Conservation Significance of Ecuador's Yasuni National Park. *PLoS ONE* 5 (1): e8767. Available at: <https://doi.org/10.1371/journal.pone.0008767>.
- BEITZ, C. (1979): *Political Theory and International Relations*. Princeton: Princeton University Press.

- DAES, E. I. (2004): Indigenous peoples' permanent sovereignty over natural resources. Final report of the Special Rapporteur to the Commission on Human Rights. UN Doc E/CN.4/Sub.2/-2004/30.
- FEICHTNER, I. (2016): International (Investment) Law and Distribution Conflicts over Natural Resources. In: Schill, S. W. – Tams, Ch. J. – Hofmann, R. (eds.): *International Investment Law and Development: Bridging the Gap*. Cheltenham: Edward Elgar, 256 – 284.
- FOX-DECENT, E. (2011): *Sovereignty's Promise: The State as Fiduciary*. New York: Oxford University Press.
- GÜMPLOVÁ, P. (2017): Rights to Natural Resources and Human Rights. In: Oksanen, M. – Dodsworth, A. – O'Doherty, S. (eds.): *Environmental Human Rights. A Political Theory Perspective*. Abingdon: Routledge.
- GÜMPLOVÁ, P. (2018): Popular Sovereignty over Natural Resources: A critical reappraisal of Leif Wenar's Blood Oil from the perspective of international law and justice. *Global Constitutionalism* 7 (2), 173 – 203.
- KOZLOFF, N. (2008): *Revolution!: South America and the Rise of the New Left*. New York: Palgrave Macmillan.
- LARREA, C., WARNARS, L. (2009): Ecuador's Yasuni-ITT Initiative: Avoiding emissions by keeping petroleum underground. *Energy for Sustainable Development, International Energy Initiative* 13 (3), 219 – 223.
- POGGE, T. (2002): *World Poverty and Human Rights*. Cambridge: Polity.
- ROSS, M. (2012): *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations*. Princeton: Princeton University Press.
- SAWYWER, S. (2004). *Crude Chronicles: Indigenous Politics, Multinational Oil, and Neoliberalism in Ecuador*. Durham, N. C.: Duke University Press.
- SCHRIJVER, N. (1997): *Sovereignty over Natural Resources*. New York: Cambridge University Press.
- SILVA, E. (2009): *Challenging Neoliberalism in Latin America*. New York: Cambridge University Press.
- STEINER, H. (2009): Left Libertarianism and the Ownership of Natural Resources. *Public Reason* 1, 1 – 8.
- STEINER, H. (2011): Sharing Mother Nature's Gifts: A reply to Quong and Miller. *Journal of Political Philosophy* 19 (1), 110 – 123.
- VALDIVIA, G. (2008): Governing relations between people and things: Citizenship, territory, and the political economy of petroleum in Ecuador. *Political Geography* 27 (4), 456 – 477.
- VALENCIA, A. (2013): Ecuador to open Amazon's Yasuni basin to oil drilling. Reuters, August 15. Available at: <https://www.reuters.com/article/us-ecuador-oil-idUSBRE97E15220130816>.
- VALLEJO SILVA, T., CALISTO FRIANT, M. (2015): Ecuador's Yasuni-ITT initiative for mitigating the impact of climate change. *Environmental and Planning Law Journal* 32, 278 – 293.
- VASQUEZ, P. (2014): *Oil Sparks in the Amazon: Local Conflicts, Indigenous Populations, and Natural Resources*. Athens, GA : University of Georgia Press.
- WENAR, L. (2016): *Blood Oil: Tyrants, Violence, and the Rules that Run the World*. New York: Oxford University Press.
- WARNARS, L. (2010): The Yasuni-ITT Initiative: A New Model to Implement Human Rights and Biological Diversity Conventions and Frameworks? *Policy Matters* 17, 55 – 62.

TEMPER, L. et al. (2013): *Towards a Post-Oil Civilization: Yasunization and other initiatives to leave fossil fuels in the soil*. EJOLT Report No. 6.

ZUCKERMAN, A., KOENIG, K. (2016): From Well to Wheel. The Social, Environmental, and Climate Costs of Amazon Crude. A report by Amazon Watch. Available at: <https://amazonwatch.org/assets/files/2016-amazon-crude-report.pdf>.

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