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Denying Accountability? Australia's International Mining Shame

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Abstract

Australian mining companies are under considerable international scrutiny due to a number of high profile environmental disasters. This paper is concerned with analysing our ability to hold these companies accountable for their actions.

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Quite clearly there has been contamination of parts of the river system in the region and my heart goes out to those who may be suffering. I stress however that there is **no** evidence to confirm the contamination and the damage said to have been caused is as a result of the tailings dam overflow at Baia Mare on January 30, 2000 (Esmeralda press release, 17/2/2000, www.esmeralda.com.au).

Michael Bowen (*NB: Lawyer for Esmeralda*): As far as we're concerned Esmeralda is a shareholder and it has no exposure. The joint venture is a corporate joint venture (ABC, 25/2/2000, www.zpok.hu).

Unfortunately, it seems as if nothing has been learnt from BHP's Ok Tedi mining disaster in Papua New Guinea. Another Australian Company, Esmeralda Exploration Ltd has been implicated in another environmental disaster of global significance. On January 30th, 2000, a cyanide rich tailings dam overflowed at the companies Baia Mare¹ Treatment Facility, releasing about 100,000 cubic metres of runoff into the river system. This spread from the immediate Tisza River into the Danube killing fish as it spread through the river system and affecting the lives of nearly 2 million people dependent on the river for their livelihood.

The Australian mining industry is quickly earning an appalling international reputation. The industry's reluctance to accept responsibility for its international environmental disasters only makes them appear contemptuous of their accountability function, particularly when operating in countries with less stringent

¹ Baia Mare has a population of about 150,000 people and has a long mining history, it is located in the north western section of Romania about 650km from Bucharest. The company admitted that the spill involved 100,000 cubic metres of water, but could not determine its cyanide level.

environmental legislation (Papua New Guinea and Romania being two good examples). It is also common for Australian corporations to shirk their responsibility and accountability for costly environmental disasters behind the guise of corporate structure (as is suggested in the above quote by Bowen).

Aurul SA, a joint venture company comprised of Esmeralda (50% ownership) and the Romanian state owned company Remin was set up in the early 1990's to explore and exploit gold mining prospects in post-Communist Romania. This being the case, Aurul SA was set up in order to use modern technologies (brought in by the foreign investor) to reprocess old tailings from remaining gold deposits – this being a process that involves the use of dangerous chemicals such as cyanide². The utilisation of high-risk technologies has become increasingly prevalent as pressures on scarce resources grow (which is driven heavily by consumption and is also a product population growth) and as the resources of previously closed nations open up to the operations and exploitations of global capitalism.

Since 1989 the Romanian government's policy has been to attract

² Evans (1999) claims that high-risk technology is being used throughout the mining sector. In Papua New Guinea BHP's Ok Tedi gold and copper mine was located in a high rainfall and earthquake prone region; the Rio Tinto Lihir gold mine and Highlands Pacific's proposed nickel-cobalt mine both use the sea to dump heavy metal tailings (called Submarine Tailings Disposal); in Australia the Beverley and Honeymoon uranium projects in South Australia inject heated sulfuric acid into the ground to dissolve heavy metals, including uranium, which may lead to radioactive runoff into surrounding water resources.

international investors to Romania's faltering mining industry. International investment has proven necessary as the industry has suffered almost 50 years of neglect. It has also been considered important in order to boost the nation's economic standing as they emerge as a market economy³ (the privatisation of industries in Romania is still taking place and mining has been slow to shift from state ownership). This has not been an entirely smooth process, with many Romanian mines failing or at least faltering in the newly competitive market place. Within this context, the government has encouraged joint ventures between the government owned mining company and other foreign corporations.

There are a number of issues that arise out of the Aurul tailings disaster and these may be perceived to reflect Australia's general attitude towards environmental accountability in an international setting – particularly when operating within nation's with less stringent environmental laws.

Firstly, Esmeralda's financial 1999 financial report highlights that there had been a number of problems in the construction of the Tailings Retreatment Plant that has only been operational since March 1999. For example:

- There had been a small leak from pumping equipment, related to difficulties breaking down the material being mined with high pressure water monitors. They wrote that “in May a fissure of the decant return water pipeline occurred due to a hydraulic shock generated by the sudden closure of the automatic valve. A minor

amount of water was released, most of which was contained within lease boundaries, with a small runoff onto a neighbouring field” (Esmeralda Explorations, 1999, p.7).

- Difficulties reducing the tailings into slurry form mainly because of extensive reed growth in the central section of the Sasar dam (this being one of the containment areas and the first dam to be recovered). To be specific they write that “the reeds would break off in clumps and form ‘beaver’ dams trapping slurry behind them which would surge through the pump station when the artificial dam wall breached. This surge would be transferred to the main plant, sometimes at flow rates in excess of twice design flowrates” (Esmeralda Explorations, 1999, p. 6). They also were faced with a higher viscosity of the fine tailings than expected and they experienced higher moisture content in the centre of the dam. This made construction of control towers more difficult.

Although the Romanian EPA investigated the incidents and the company claimed to have implemented the recommendations of the EPA's report, it seems incredible that a company dealing with such high-risk technologies would encounter so many problems.

Secondly, Esmeralda's activities were publicly represented as an ‘environmental clean-up project’. Invest Romania have stated that “the Aurul project in Baia Mare...which is re-treating old tailings, will also help clean up the environment by removing existing tailings which are deposited in unsealed dams within 50 metres of residential apartments” (Johnstone,

³ Although Romania has a long history of mining, during the communist era the sector lacked investment (Johnstone, 25/2/2000, www.investromania.ro).

25/2/2000, www.investromania.ro). Selling a project as environmentally and socially responsible in the context of the annual reports disclosures undermines the meaning of environmentally responsible corporate behaviour. Such actions may make it more difficult to believe organisations making a genuine attempt to address the environmental consequences of their activities. The company claimed in a press release that they take their “environmental responsibilities seriously” (Esmeralda, 25/2/2000, www.zpok.hu). Even if this was to be believed, the fact that the company has consistently denied the magnitude of the accident and their part in it, is suggestive of an organisation that does not want to take responsibility for the risks it has incurred in the ordinary course of business.

Thirdly, the failure of companies to recognise their responsibility and accountability function is likely to occur whilst there is a lack of legislation governing Australian companies overseas. Although there is a Code of Environmental Management for Australian mining companies, it is a voluntary Code that can be ignored, particularly when companies are operating in international jurisdictions – Esmeralda is not a signatory to the Code.

As Friends of the Earth argued “it is counter to the most fundamental principles of human and environmental justice to be (semi) accountable at home and totally unaccountable abroad” (Walker, 22/2/2000, p. 15). The possibility of making Australian companies responsible for damage overseas, within Australia has been debated for a long time and the actions of Esmeralda have raised this to the fore once again. Senator Bob Brown claimed that the environmental

consequences of the company’s actions would damage future business opportunities and although this is a highly functionalist argument, it may be one that would gain currency in policy setting circles. He stated that “we’ve got a complete disaster in Hungary that is going to damage Australia’s reputation, its economic interests, its employment prospects as far as tourism is concerned in a way that is very difficult to manage and the Federal Government needs to act on that as a law maker” (Brown, 9/2/2000, www.zpok.hu).

In a general sense, the disaster in Eastern Europe highlights the need for Australian companies to act in a manner offshore that would be acceptable onshore. Even though Australian environmental legislation leaves a lot to be desired, it does make a provision for a rehabilitation bond, and regulates and prohibits certain actions. The accountability function of companies operating in an international environment should be expanded not contracted. Such a position may dilute the incentive to operate offshore in less regulated environments. It may also reduce the further exploitation of lax accountability functions to national government’s (and people) that are already fighting for survival in an emerging global market economy.

Endnotes

1. After releasing information related to the spill Esmeralda’s stock price plummeted 40% before trading was suspended.
2. On the 16/3/2000 Esmeralda was placed in the hands of an administrator. Greenpeace expressed concerns about the company’s ability to avoid responsibility, liability and

accountability for the accident through such a mechanism.

3. The Australian Stock Exchange was accused of holding information about the spillage for ten days before releasing it to the market.

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