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Natural Resources & Foreign Investors: A tale of three Andean countries

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Introduction

Over the past 25 years, Latin American governments have undertaken a structural-adjustment process including, among other actions, the elimination of trade barriers, privatization of large public domestic firms, and deregulation of markets. This move towards deregulation and market reform has included a new embrace of foreign direct investment, even in the strategic oil-and-gas industry. Considering the former regulations and polices in this sector introduced during the nationalization wave of the 1970s, the transformation has been amazing: foreign investors have not only been welcomed but even granted proprietary rights over extracted oil. Most Latin American oil-and-gas-producing countries agreed to fix royalties at very low levels. Furthermore, the 1990s witnessed the rise of bilateralism (bilateral investment treaties (BITs) plus International Centre for Settlement of Investment Disputes (ICSID) jurisdiction), which transformed the institutional framework governing the relationship between foreign investors and host states.

Paradoxically, after a decade of market-friendly reforms and neo-liberal policies, the beginning of the new millennium was marked by economic crisis, social conflict, and political turmoil.

The Andean countries (Bolivia, Colombia, Ecuador, Peru, and Venezuela) are usually grouped together for analytic purposes. However, the countries on which this chapter focuses (Bolivia, Ecuador and Venezuela) share some particularities, calling for an analysis separate from the rest (Colombia and Peru).

First, although political instability was a common feature of all countries in the region (Solimano, 2003), this subgroup of countries moved towards a new kind of populist politics. Venezuela moved in this direction first, after Hugo Chavez came to power in 1999, signaling the collapse of the political duopoly of Acción Democrática and COPEI. In Bolivia, the transformation came with the election of Movimiento Al Socialismo (MAS) leader Evo Morales in December 2005, after two years of political turmoil that saw three presidents fall from power (G. Sánchez de Lozada, C. Mesa and E. Rodriguez). In Ecuador, another political outsider, Rafael Correa, recently won the presidential election (November 2006) backed by a new political party (Alianza País – Patria Altiva y Soberana). Hopefully this administration will close seven years of recurrent political crises, starting with the 1999 crash, which have taken down four administrations (J.Muhaud; G.Noboa Gejareno; L.Gutierrez; and, A. Palacio).

Secondly, these three Andean countries are also different in their approach to integration with world markets (Fairlie Reinoso, 2005). Whereas Colombia and Peru are both engaged in talks with the U.S. on free trade arrangements (FTAs); Bolivia, Ecuador and Venezuela are moving in another direction (pro-Mercosur)[i]. This strategy is quite striking, when considering the FDI partners of the two groups of countries. Cumulative FDI data for the period 1992-2001 (ECLAC 2002, page 66 - Table II.3) show that U.S. investors accounted for the largest individual-country shares of FDI in Bolivia (42.4%), Ecuador (58.7%), and Venezuela (34.8%), whereas in Colombia and Peru this was not the case. For Ecuador and Venezuela, a similar pattern exists for international trade: the U.S. market accounted for 62.9% of Ecuador's total oil exports in 2005 (PetroEcuador, 2006). The figure for Venezuela is even more stunning: the country ranks as the fourth-leading supplier of imported crude and refined petroleum products to the U.S. (U.S. Department of State, 2007). By contrast, Bolivia's is less dependent on the U.S. market. The main companies involved in this country's hydrocarbon sector are EU-based or regional (e.g., PETROBRAS from Brazil), and its biggest external market is currentlyBrazil.

Thirdly, from an economic perspective, energy-related income is crucial for all three countries, with oil and natural gas exports serving as the main source of foreign exchange (ECLAC, 2002). For Venezuela, oil accounts for more than three fourths of total exports. The importance of energy exports is less dramatic for the other two countries. Still, Bolivia ranks as an important regional player in the natural-gas market and trade figures show a high share of hydrocarbon-related exports for both Bolivia and Ecuador. In terms of public revenues, oil-and-gas-related income is highly significant for all three countries. For Bolivia, natural gas provided an average of 34% of current government revenue during the 1990s, though most of this came from local gas taxes rather than natural gas exports[ii] (Andersen and Mesa, 2001). The equivalent figure was slightly higher in preceding years (1982-92), when hydrocarbon-related income accounted for 42% to 50% of government revenues (Sánchez Albavera and Altomonte, 1997). In Ecuador, oil accounts for 40% of public sector proceeds; whereas for Venezuela, the share reaches 50% (Jiménez and Trombón, 2006).

Table 1: Selected countries, main statistics (2005)

Concept	Unit	Bolivia	Ecuador	Venezuela
Population	Million	9,42	13,21	26,55
GDP	Current U$S – Billion	9,3	36,5	140,2
Change in GDP	2005 vs. 2004	4,05	3,93	9,33
GNI per capita	Atlas Methodology - Current U$S	1.010,0	2.620,0	4.820,0
GNI per capita	PPP – International U$S	2.710,0	4.110,0	6.540,0
Hydrocarbon Exports / Total exports	Percentage	46,3	56,9	87,2
Hydrocarbon Revenues	Share over Total Fiscal Revenues (%)	25,3	30	55,2
Oil Production	Barrels	15.416,9	194.169,0	1.098.218,3
NG Production	Thousands m3	12.716,5	1.608,0	34.755,5
Per capita oil production	Barrels of oil produced / population	1,6354	14,6975	41,3548
Per capita NG production	Cubic feet produced / population	1,3489	0,1217	1,3088
FDI	US$ Million	-241,6	1.646,1	2.583,0
FDI - Natural Resources	Percentage	71%	90%	34%

Source: Data from World Bank Database, ECLAC Database, Jimenez & Tromben 2006.

All three countries considered in this paper share another characteristic: their relationship with foreign investors is presently under stress. In all three, the governments have introduced legislation to regain control over natural resources, bypassing previous legislation and moving away from previous contracts. Paradoxically, instead of prompting a legal battle at international tribunals (as allowed by the bilateral agreements signed in the 1990s), foreign firms have accepted the new rules and agreed to renegotiate contracts.

What explains this behavior? Do developing countries now have more bargaining power vis-à-vis foreign corporations than before? Or are conditions in the oil-and-gas sector important to this outcome (i.e., is this an exceptional case)?

These are some of the questions motivating this paper. In the search for answers, attention is paid first to the oil-and-gas industry, its main markets and players, and a brief historical account of the evolution of the contractual frameworks in the industry. In the next section, the evolution of FDI in the selected countries is summarized. The third section provides an analysis of the relationship between host states and foreign investors and how this relationship has evolved over the past decade (including a brief description of BITs). In the fourth section, the recent institutional breakdown and current situation are described, and some clues offered as to why foreign investors have not opted (at least not yet) to sue host countries. The final section draws a few conclusions.

The oil and gas markets exhibit some features that impact heavily on the relationship between host governments, multinational companies, and state-owned companies. With more than 80% of world reserves in hands of state-owned firms, multinational corporations' (MNC) ability to dictate the rules of the game cannot always be taken for granted. At present, the bargaining power MNCs enjoyed in the 1990s has all but disappeared. Soaring prices have tempted governments to increase the tax burden on energy firms, almost worldwide. "The average tax rate paid by oil and gas companies operating in the UK today," notes the United Kingdom Offshore Operators Association (UKOOA), "is 57%, with all those companies paying corporation tax at a special rate of 50% and around 140 of the UK's older offshore fields subject to a further tax, Petroleum Revenue Tax (PRT), at 75%"[iii]. As stated in *The Economist* (2006 and 2007), even UK Prime Minister Gordon Brown is tempted to tax windfall gains.

From an "institutional" perspective, one might be tempted to conclude after recent events that Venezuela ranks as one of the worst places to invest in the oil sector. However, some informed commentators disagree. According to Rahim, a consultant at Washington based PFC Energy, the wrong place to invest "is not Russia or Venezuela, but Britain, which is constantly tinkering with its tax rates." He argues that "recent tax changes in Britain cost oil firms more money than similar measures in Venezuela" (*The Economist* 2007).

Oil and gas: markets and players

For most countries around the world, oil and natural gas are considered strategic assets. The geopolitical importance of oil has long been recognized by academics and policy makers. The three countries considered in the paper are all important players in one (Bolivia and Ecuador) or both (Venezuela) markets.

Table 2: Oil and Gas Reserves

Resource	Source	Date	Measure	Bolivia	Ecuador	Venezuela
Oil	*BP Statistical Review*[1]	Year-End 2005	BB	No data	5,060	79,729
	Oil & Gas Journal[2]	January 1, 2007	BB	0,440	4,517	80,012
	World Oil[3]	Year-End 2005	BB	0,456	5,145	52,650
Gas	*BP Statistical Review*[1]	Year-End 2005	TCF	26,122	No data	152,320
	CEDIGAZ[4]	January 1, 2006	TCF	26,133	3,178	152,384
	Oil & Gas Journal[2]	January 1, 2007	TCF	24,000	0,000	152,380
	World Oil[3]	Year-End 2005	TCF	26,700	0,350	150,890

Source: Energy Information Administration – US Government[iv]

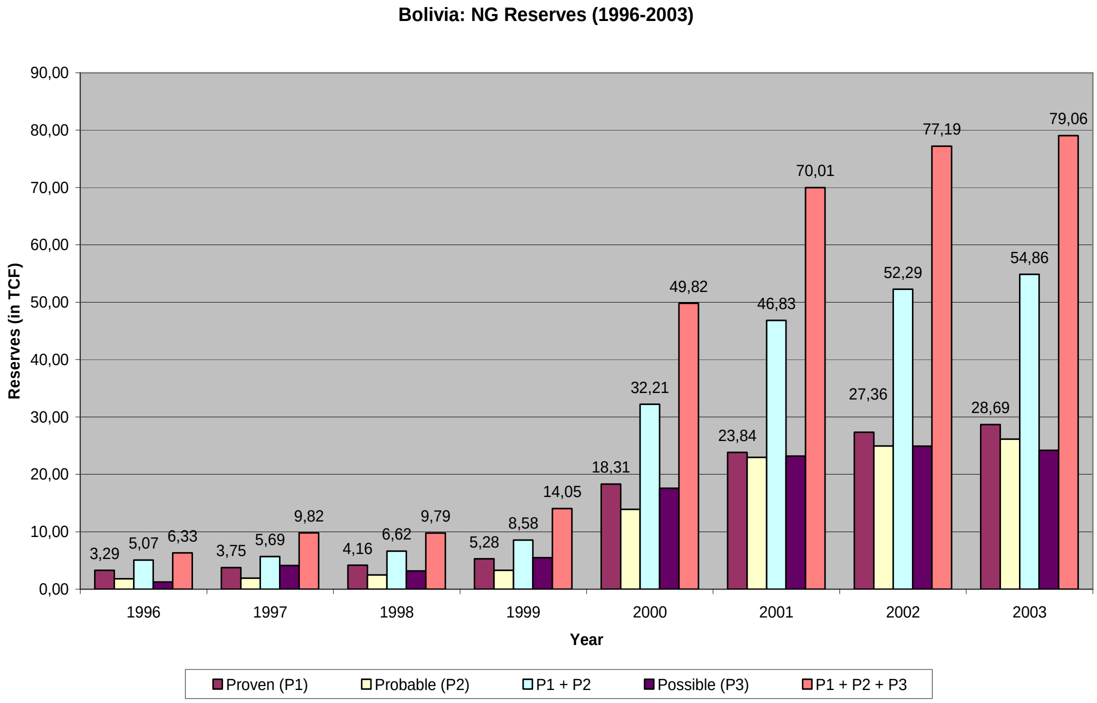
Bolivian oil was first discovered in the 1920s by Standard Oil of New Jersey. In 1939, President D. Toro nationalized the company's Bolivian holdings and created the state-owned oil company (Yacimientos Petroleros Fiscales Bolivianos – YPFB). During the 1950s, the Bolivian government offered new concessions (under very generous terms) to foreign firms in order to promote hydrocarbon-related exports (Bulmer-Thomas, 1995). As a consequence, Gulf Oil Company began to invest in the country, It, too, ended up being nationalized, by President Alfredo Ovando in 1969[v].

Bolivia ranks second in natural gas reserves among Latin American countries (after Venezuela). Although the first gasfield was discovered during the 1960s, in the Department of Santa Cruz, hydrocarbons did not become the country's principal export until the 1980s, when tin prices plummeted (Loza, 2002; Sánchez Alvabera, 2005)[vi]. Argentina was the main external market for Bolivian natural gas from 1972 until the 1990s. After the collapse of the Argentinean market, Brazil emerged as the principal regional buyer of Bolivian natural gas[vii]. The original contract between Bolivia and Brazil,[viii] signed in 1991 with a term of twenty years, called for Bolivia to supply 8 MCM/day during the first year with an annual increase projected to double exports by year eight. The base price was set at US$ 0.90 per MBTU with the price to be adjusted each trimester following the price path of a basket of three international fuels, and a "take or pay" clause obliging Brazil to pay for at least 65% of the contractual daily quantity even if it chose not to accept such a quantity. Negotiations over the pipeline were concluded in February 1993, fixing capacity at 30 MCM/day. In addition to the quantities initially fixed, both governments later agreed on an additional supply of 6 MCM/day for electricity generation with a price fixed at US$ 1.20 per MBTU, a slight increase on the original price.

Encouraged by the new hydrocarbon legislation introduced in 1996, several oil firms decided to invest in Bolivia (among others, Spanish Repsol-YPF, French TOTAL, Brazilian PETROBRAS, U.S. Exxon Mobil and British BP). Hydrocarbon-related foreign investment accounted for 40% of total FDI incoming to Bolivia during the period 1993-2002.

Most of the investments were concentrated in the two departments (Santa Cruz and Tarija) with the most promising geological conditions (UNDP/WB ESMAP, 2005). Since 1999, known Bolivian reserves increased substantially (see next figure)[ix], with proven plus probable reserves (P1 + P2) rising from 5.69 TCF (Trillion cubic feet) in 1997 to 54.8 TCF in 2003 (and 79.06 TCF if probable reserves are considered).

Graph 1



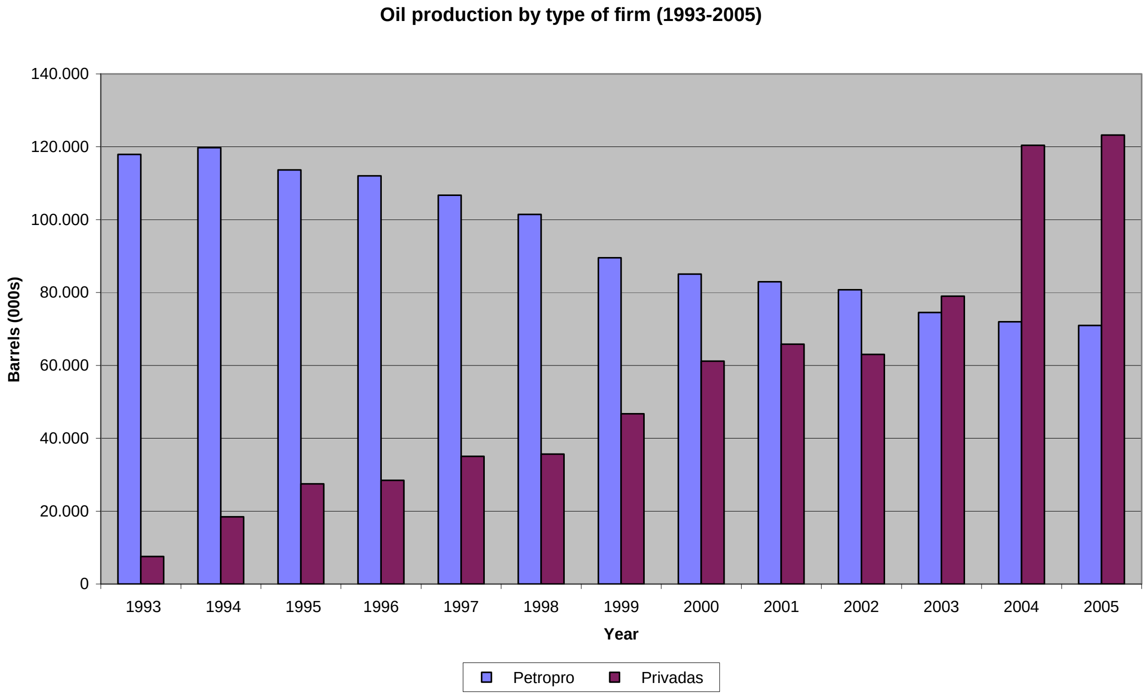
At this point, the Bolivian government faced strategic dilemmas about how to diversify markets and whether to move downstream into the industrialization process. Some policy makers favored transforming Bolivia into the dominant energy supplier for the Southern Cone of South America. Others touted the advantages of transforming the country into a world player, selling excess natural gas to new markets (e.g., California)[x].

Oil exploration and exploitation erupted in Ecuador at the time of the first oil shock, basically after important discoveries in the Oriente region. In 1971, the Ecuadorian government launched the Corporación Estatal Petrolera Ecuatoriana (CEPE), later becoming PETROECUADOR. At the same time, the government bought a stake of the Texaco-Gulf consortium, and renegotiated the concession contract with the Anglo-Ecuadorian Oil Fields Co. However, oil-related FDI inflows remained prominent in the early 1970s, and oil exports have soared since then (Gelb, 1988).

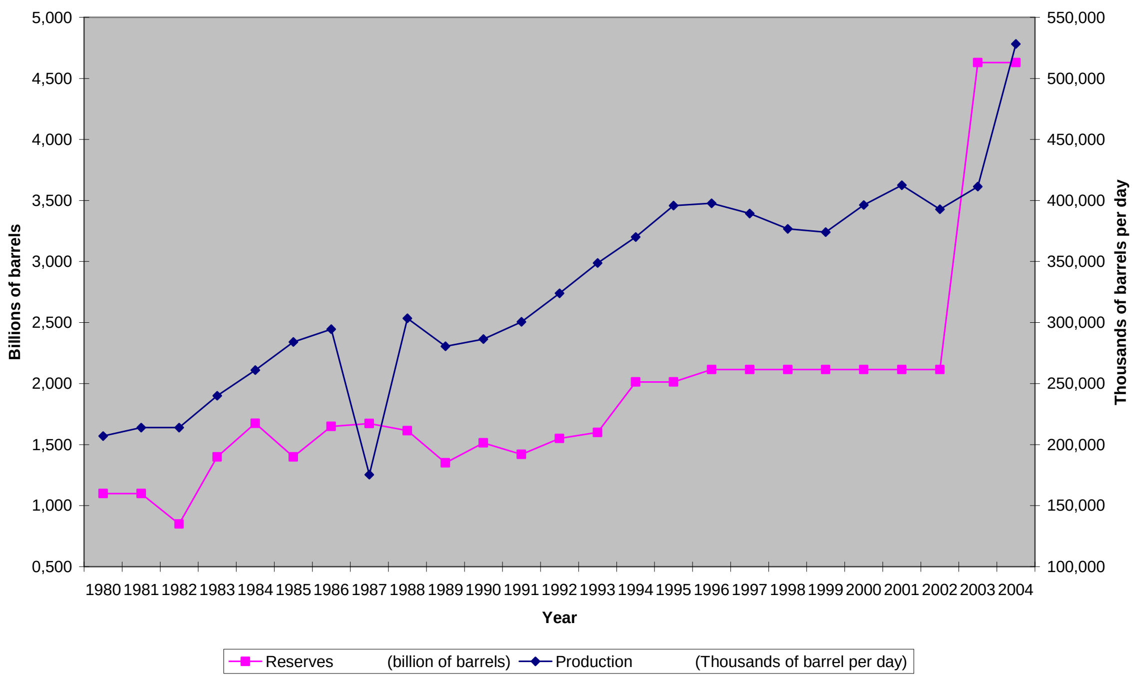
During the nineties, the Ecuadorian government introduced a new foreign investment policy generating a sharp increase in FDI in the hydrocarbon sector. The main policy objectives were to modify the oil contract system (in order to increase firms' incentives), open downstream activities to private investment, and expand the Trans-Ecuadorian Oil Pipe System. As a consequence, production from private oil companies increased substantially, surpassing PETROECUADOR in 2003, as shown in graph 2 (ECLAC – DATABASE):

In contrast to new investors, who focused on new fields, most PETROECUADOR production continued to rely on mature oil fields. Falling production might also reflect insufficient investment and [also highlight bad performance records at the state-owned company (BCE, 2006). Alongside PETROECUADOR, many foreign firms – Spanish Repsol-YPF, Canadian Alberta Energy and City Investing, Italian AGIP and US Occidental Petroleum (Oxy)[xi] – have become important players in the Ecuadorian market over the past decade.

Graph 2



Graph 3



Foreign investment in exploration and exploitation increased spectacularly (from US$ 90 million in 1991 to US$ 1,120 million in 2001), allowing foreign companies´ production to rise from 7,500 barrels per day in 1993 to 62,000 barrels per day in 2002 (UNDP/WB ESMAP, 2005). Known reserves, meanwhile, increased from 2,115 billion barrels in the mid 1990s to 4,630 billion in 2004 (EIA, 2007), as shown in Graph 3.

By 2007, Ecuador ranked fourth in the region in known reserves, and accounted for 4.5 billion barrels of proven reserves, and production reached 528,473 barrels per day by 2005 (EIA, 2007). In recent years, thanks to high oil prices and soaring production, Ecuador's crude exports increased significantly. Foreign companies accounted for almost 60% of total exports (PetroEcuador).

Venezuela became a major oil exporter in the early 1920s, following important oilfield discoveries by Standard Oil of New Jersey and Royal Dutch Shell in the 1910s (Haussman, 1995). The leading industrial nations and foreign investors, attracted by Venezuelan oil, gained a high degree of influence on the country's political elite. Under President Juan Vicente Gomez's government (1908-1914, 1922-1929), foreign oil companies even shaped the oil law (Bethel, 2002).

In the 1940s, Juan Pablo Pérez Alfonso (by that time the country's Minister of Development), signed the first "50/50" formula[xii]. He also introduced a more activist role for the government, beginning to market in-kind royalties on the open market, rather than selling them back to TNCs at below-market prices. Later on, in 1972, the Venezuelan government passed a number of laws and decrees that gave the country effective administrative control over every phase of the oil industry (from exploration to marketing), and raised the effective tax rate to 96%. The following year, a new law was passed cancelling former concession contracts, although with compensation. On January 1, 1976, Venezuelan President Carlos Andrés Pérez enacted the Hydrocarbon Nationalization Law, taking possession of the country's oil wealth and enlarging the role of Petroleos de Venezuela, S.A. (PDVSA)[xiii].

During the 1990s, the Venezuelan government introduced massive changes to the hydrocarbon legislation, the so-called "opening process," in order to attract foreign investors. The objective was twofold: Firstly, to keep the industry close to the state of the art by incorporating new technology and skills from abroad. Secondly, to increase the state-owned oil company's access to new markets. To this end, the government passed two new laws: an organic law opening the domestic gasoline market and other hydrocarbon-related products, and a law to promote the development of the petrochemical, coal-chemical, and other related sectors. The opening process took place in three different rounds: in the first round (1992-93) three contracts were awarded; in the second round (1993-95) eleven more were granted; and, in a final round in 1997, three other agreements were added. During the first two rounds, the government secured foreign investment of over US$ 2 billion; and during the third, which was a big success, added inflows of US$ 2.17 billion. These operational agreements allowed private firms to participate in 32 oil fields. By the mid 1990s, under Rafael Caldera's government, the opening process, previously confined to also extended towards the Orinoco belt[xiv].

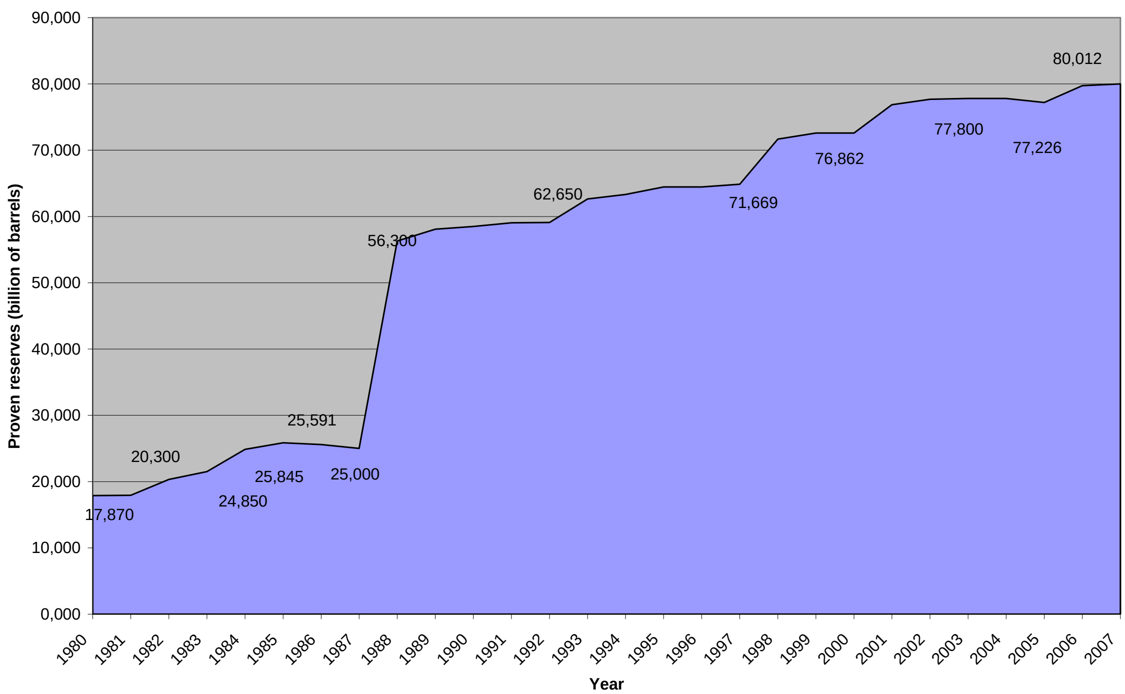
Venezuela is a top world player in both the oil and gas markets. A leading member of OPEC, the country ranks as an important oil producer and one of the top exporters (Agnani and Iza, 2005). Venezuela also has important reserves of natural gas, ranking first in Latin America, and is one of the leading natural-gas producers in the Western Hemisphere.

Table 3: Hydrocarbons reserves in Latin America (as at January 1st, 2007)

Country	Oil		Natural Gas	
	Billions of barrels	**Participation**	**TCF**	**Participation**
Argentina	2,468	2.1	16,090	6.3
Bolivia	0,440	0.4	24,000	9.4
Brazil	11,773	10.2	10,820	4.2
Colombia	1,453	1.3	3,996	1.6
Ecuador	4,517	3.9	0,000	0.0
Mexico	12,352	10.7	14,557	5.7
Peru	0,930	0.8	8,723	3.4
Trinidad and Tobago	0,728	0.6	18,770	7.4
Venezuela	80,012	69.5	152,380	59.7
Total	**115,150**	**100.0**	**255,302**	**100.0**

Source: Oil & Gas Journal

Graph 4



Venezuelan's proven oil reserves increased from 17,870 BB (billion barrels) in 1980 to 56,300 BB by 1988. Since then, reserves have increased annually at very low rates, but after exceptional increases in 1998 (a 10% increase) and 2001 (5.87%) they now stand at about 80,000 BB.

To the above figures, one may add heavy-grade oil reserves at the Orinoco belt of about 235,000 BB. Consequently, total reserves add up to about 315,000 BB. Venezuela's claim to be the world's number one country in terms of reserves may prove correct.

A final comment in relation to hydrocarbon reserves has to do with host country strategies. In the case of Bolivia, the country's strength relates to its neighbors' weakness: energy anxiety has made Brazil willing to accept renegotiated contracts, and scarce resources have led Argentina to rush for new sources of natural-gas. However, looking into the future, the main strategic asset of Bolivia might be related to its geographical position, something that sounds paradoxical but true. Venezuela's bargaining power will continue (or even increase, if reserves in the Orinoco Belt are developed) as long as prices remain at present levels and the world's reliance on hydrocarbon continues. Finally, the future may look less optimistic for Ecuador, as the country doesn't enjoy the geographical or market advantages of the other countries.

Rules and Institutions

At the beginning of the past century, most Latin American governments cultivated foreign investment by granting vast reserves of hydrocarbons (oil and gas) and minerals to private companies. Most FDI flows were directed at public utilities' operations and, in the three countries analyzed, especially focused on the exploitation of natural resources. Under the liberal model in place at that time, the region's government made little effort to control or restrict international private capital transactions.

However, since the 1950s, most states in the region adopted a more protectionist approach. And in the late sixties and seventies, after the decolonization process, a massive nationalization wave took place in Latin America. Since then, FDI has been a hot topic. On the one hand, investors have asked for "more protection" at multilateral fora. On the other, for those sympathetic to developing countries' positions, the main point was how to set "MNCs codes of conduct" in order to countervail their former power. Host countries' attitudes towards foreign investors can be summarized in their support of a "New Economic Order", in a series of UN resolutions emphasizing the sovereignty of nations with respect to foreign investors,[xv] and in Andean Pact (AP) Decision 24/71. The debt crisis of the 1980s, and the generalization of the bilateral scheme (based on bilateral investment treaties – BITs) put an end to this debate.

As mentioned above, the three countries under study have always relied on primary exports for foreign-exchange revenue. However, this "primary export development" strategy has been particularly disappointing for them (Bulmer-Thomas, 1995). The fall of export commodity prices and the eruption of the Latin American debt crisis generated a more inviting attitude towards foreign investors among the region's governments, who began to view FDI as the new hope for the development process. The movement towards FDI liberalization was exemplified by AP Decision 220 (later expanded by AP Decision 291).

The 1980s saw a collapse in oil prices (along with other commodity prices), and a significant increase in world oil supply. Under these conditions, some flexibility was introduced to promote FDI but contracts did not change substantially[xvi].It was not until the 1990s that countries in the region (with the exception of Mexico) began to loosen their previously rigid entry conditions for the oil-and-gas sector. However, restructuring was far from homogeneous (Sanchez Albavera, 1997). Differences were mainly related to each country's attributes, such as reserves, production/consumption ratio for hydrocarbons and by-products, technological level, and experience in the national oil-and-gas industry, among others. Another important transformation in the contractual relationships between oil companies and host states allowed foreign investors to enter the industry under new contractual forms: associative contracts and service contracts in Venezuela and private investment promotion, among other legal forms, in Ecuador (Sánchez Albavera, 1997; UNDP/WB ESMAP, 2005)[xvii]. An even more acute change took place in Bolivia, where the capitalization process ended the former public monopoly of YPFB and the state-owned company was opened to private investors [xviii].

The bilateral scheme

Although the bilateral treaty system began in the late 1950s, this legal framework only proliferated in the late 1980s and 1990s. The change was not only legal. The international political environment changed substantially during those years, with developing countries' bargaining position diminishing (UNCTAD, 1999). Following the worldwide trend, all three countries considered in the present chapter were very active in signing BITs.

From a theoretical viewpoint, BITs were introduced in order to overcome dynamic inconsistency problems (i.e, as a commitment device). In contrast to trade, direct investment involves the acquisition or creation of productive capacity, thus implying a long-term perspective. Hence, once investment becomes "sunk" in a particular location, the host country may have a strong incentive to change the "rules of the game" (engage in "hold-up"). In order to attract FDI, developing countries may wish to signal that they are "investor-friendly" by adopting tax incentives and subsidies favoring MNCs, embracing market liberalization, and signing BITs. From this perspective, economic factors[xix] play a minor role in providing incentives to foreign investors. Instead, political goodwill – demonstrated by importing institutions from abroad – is key.

In practice, the bilateral system emerged due to the pressure exerted by capital-exporting countries. After the defeat of multilateral accords on foreign investment, BITs became the second-best solution for foreign investors seeking more guarantees and security. Bilateral agreements introduced a new institutional scheme biased in favor of foreign investors, backed by the neoliberal views dominant during the 1990s (Sornarajah, 2006).

Although BITs vary across countries, most of them share similar features when it comes to foreign investment (e.g., the same basic standards in regard to treatment, transfer of funds, expropriations, and mechanisms for dispute settlement). Expropriation clauses included in these agreements generally include some standard "prompt, adequate and effective compensation" or "just compensation" formula. By contrast, BITs differ on the definition of "indirect expropriation," government actions not expropriating private property outright but substantially impairing the value of an investment.

Other important clauses are those dealing with the investor-state investment dispute mechanism, which allows foreign investors to make claims against the host country before multilateral institutions, such as the International Centre for the Settlement of Investment Disputes (ICSID) or the United Nations Commission on International Trade Law (UNCITRAL). The impact of this arrangement can be seen from the recent experience of Argentina: once a country changes the "rules of the game," foreign investors may launch a legal offensive against it.

Table 4: BITs signed and in force

Country	**Nº of BITs - Signed**	**Nº of BITs - in force**	**Before 1990s**	**During the 90s**	**After 2000**	**TBIs partners**
Bolivia	22	18	0	18	0	Argentina; Austria; Belgium and Luxembourg; Chile; China; Costa Rica; Cuba; Denmark; Ecuador; France; Germany; Italy; Republic of Korea; Netherlands; Paraguay; Peru; Romania; Spain; Sweden; Switzerland; United Kingdom; and USA.
Ecuador	28	21	2	17	2	Argentina, Bolivia, Canada; Chile, Costa Rica; Cuba; Dominican Republic; Egypt; El Salvador; Finland; France; Germany; Honduras; Italy; Netherlands; Nicaragua; Paraguay; Peru; Romania; Russian Federation; Spain; Sweden; Switzerland; United Kingdom; USA; Uruguay; and, Venezuela
Venezuela	25	21	0	20	1	Argentina; Barbados; Belgium and Luxembourg; Brazil; Canada; Chile; Costa Rica; Cuba; Czech Republic; Denmark; Ecuador; France; Germany; Indonesia; Italy; Lithuania; Netherlands; Paraguay; Peru; Portugal; Spain; Sweden; Switzerland; United Kingdom; and Uruguay
Total	***75***	***60***	***2***	***55***	***3***	

Source: Own elaboration based on UNCTAD Database

From this perspective, one would expect Bolivia and Venezuela to be frequent targets of complaints before ICSID tribunals (as Argentina was after the collapse of the Convertibility Plan in 2002). However, this has not been the case.

During the 1990s, increasing availability of capital (both portfolio investment and FDI) and foreign exchange constraints in host countries (particularly in Latin America) enabled foreign investors to extract legal concessions from host states in developing countries. At present, oil firms have lost bargaining power relative to countries with (important) hydrocarbon reserves, such as Bolivia and Venezuela. Host-country leverage is evident in Venezuela's new contracts with foreign oil companies. The new arrangement stipulates that all disputes arising in the future must be settled in domestic courts, not in international tribunals such as ICSID (Vis-Dunbar, 2006). Although foreign investors' first instinct, when faced with changed policies in Bolivia and Venezuela, was to intimidate host countries with the threat of claims before ICSID or other international tribunals, most of them finally accepted the new "rules of the game."

Foreign Investors' Treatment and FDI Inflows: The Recent Facts

Regardless of the policies followed and institutional changes introduced, FDI to the Andean region has *increased* sharply since the beginning of the 1990s (see table 4 below). Since then, and especially after 1997, Venezuela has become the region's main recipient of foreign investment. Using the latest data available, FDI inflows almost doubled in 2005 over the previous year's figure (ECLAC, 2006).

This performance has remained unchanged in recent years (i.e., since Chavez has taken office). In 1999, the natural-gas sector was opened to foreign investors, as PDVSA approved the operation by two U.S. firms (Chevron and Texaco) and one Norwegian firm (the state-owned Statoil) of two offshore blocks close to the border with Trinidad and Tobago (Kozjul, 2004). In the natural gas industry, the government launched a bidding process in April 2005 over exploration rights for six offshore blocks in the Gulf of Venezuela and in the northeast region of the country. A total of 29 companies from 15 different countries participated and the PDVSA ultimately awarded 6 licenses (PDVSA Newsletter, 2005a). Contracts are expected to last for a 25 year period. The government may have a share of up to 35% through PDVSA, and the gas produced will be mainly devoted to the internal market (exports are allowed only after meeting domestic demand).

In the case of Bolivia, new FDI is expected after the revival of the Argentinean export market following the natural gas shortage. Bolivia has signed a new agreement with Argentina, fixing an initial price of US$ 5 per MBTU. Investment will be directed not only at the development of gasfields (US$ 3 billion) but also at the construction of the pipeline necessary for export (over US$ 4 billion). Notably, private companies will invest only in gasfield development, not the pipeline project.

Finally, in the case of Ecuador, FDI inflows have continued to grow in the present decade, making it the region's top FDI recipient in 2003, with U$S 1,55 billion[xx]. From the latest data available, as of 2005, it appears that FDI inflows to Ecuador have continued to increase (ECLAC, 2006).

Table 5: FDI Inflows, in U$S millions (1980-2004)

Period	Bolivia	Colombia	Ecuador	Peru	Venezuela	Andean Pact
1980-89	39,40	434,78	85,10	28,89	22,70	610,87
1990-99	398,30	1.803,00	470,80	1.573,10	2.067,00	6.312,20
2000-04	454,54	2.060,88	1.220,06	1.360,40	2.511,20	7.607,08

Source: own elaboration from ECLAC data

Governments' Policy Options and Investors' Strategies

The latest policy decisions in these countries represent a reversal of the liberalization trend initiated in the 1980s and deepened in the 1990s. What is more, in the oil-and-gas sector, the regulatory change was undertaken against an industry always characterized by strong bargaining power[xxi]. In view of the Argentinean experience, one might expect foreign investors to insist on the *a priori* rules and to unleash a massive dispute response. However, if their sunk FDI and future stakes in the countries under study are large enough, investors may well have incentives to avoid disputes. From this perspective, investors may use litigation mainly as a signaling device and a threat when facing renegotiation with host countries, as a closer look at the Argentinean experience has also highlighted (Stanley, 2004).

On November 13, 2001, under the enabling law authorized by the National Assembly, President Chavez signed the new Hydrocarbons Law, which came into effect in January 2002. The new law replaced the Hydrocarbons Law of 1943 and the Nationalization Law of 1975. Among other things, the 2001 law declared all oil production and distribution activities to be the domain of the Venezuelan state, with the exception of the joint ventures targeting extra-heavy crude oil production. Under the new law, private investors cannot hold a majority stake in an exploration project. Furthermore, PDVSA will have a majority stake plus operational control over the fields. In addition, by virtue of the new rules, royalties were increased from 1% to 30% (later raised to 33.3%), and taxes raised from 34% to 50%. The Venezuelan government gave foreign investors short notice to sign new contracts in compliance with the new conditions.

In late 2005, the government started to apply the 2001 Hydrocarbon Law more strictly, forcing oil companies to accept a new mixed-ownership contractual scheme. To this end, the government revised 32 operational agreements signed during the 1990s, which it argued were disguised concessions, a contractual form illegal under 1975 Organic Law. According to the government, the previous arrangements had also allowed tax havens, paving the way for tax-evasion operations in the millions of dollars[xxii]. Finally, in January 2007, the Venezuelan government ,moved further toward nationalization ("*Transition is over*")[xxiii], announcing that foreign oil companies operating in the Orinoco belt would have to give the state company a majority stake in the oilfields (though not the refineries) (*The Economist*, 2007a). The main foreign companies operating in the Orinoco are from the U.S. (Conoco-Phillips, Chevron, Exxon Mobil), France (Total), Italy (ENI), and Norway (Statoil).

In Ecuador, institutional changes were introduced even before Correa took office. In April 2004, the Congress passed a law raising oil taxes to 50% whenever oil prices exceeded a fixed level (Ley 2006-42 Reformatoria a la Ley de Hidrocarburos). The Ecuadorian government gave foreign oil firms 45 days to submit new contractual terms conforming to the modified Hydrocarbon Law. It also took over Block 15, previously run by the U.S. firm Occidental Petroleum (Oxy), outright[xxiv]-[xxv]. PETROECUADOR began to operate this field in May 2006. The introduction of a windfall tax by President Palacio was seen by foreign investors as cause arbitration claims against the Ecuadorian government, but few companies dared defy the government (Peterson, 2006).

On May 1, 2006, Evo Morales announced the nationalization of Bolivia's oil-and-gas industry. By virtue of Decree 28,701, the government took "ownership, possession and total and absolute control" of the country oil and gas reserves (Article 1). Further, the decree empowered the Bolivian government to manage the marketing of all oil and gas produced in the country, to establish the volume, prices, terms and conditions for the sale of Bolivian gas (Article 2), and to control transport, refinement, storage and distribution of gas within the country (Article 5). The government gave foreign companies a 180-day deadline to enter into new contracts with YPFB. Rent reallocation was substantial: Until May 2005, 82% of natural gas revenue went to multinational companies; one year later, the government claimed the lion's share[xxvi]. However, final terms ended up less draconian for the foreign companies than the nationalization decree had initially suggested[xxvii]. The Bolivian government also initiated a renegotiation process with Brazil in order to modify contract prices (i.e., natural gas export prices).

As mentioned above, the drastic changes introduced might have triggered a wave of foreign investors claims by foreign investors before international tribunals. Considering foreign investors' enhanced rights under bilateral investment treaties, we would expect to see these countries facing numerous claims in international tribunals. Table 6 shows the number of pending cases that these three countries have at the International Centre for Settlement of Investment Disputes (ICSID) of the World Bank.

In spite of the outstanding legal and contractual changes, Bolivia and Venezuela have few pending cases at international tribunals. Venezuela faces only one case before ICSID, brought by the Italian-owned ENI after Caracas terminated its contract at the Dación field in April 2006, while Bolivia is not facing a single oil-sector-related suit. Ecuador, by contrast, faces several claims[xxviii], including two in the oil sector. In addition to the Oxy case (mentioned above), the Ecuadorian government is facing another claim, filed after the introduction of the "windfall tax" on oil profits, from City Oriente Ltd. company. This was the first and, up to now, the only, company to take Ecuador to arbitration for that reason (Peterson, 2007).

This evidence should not lead to the conclusion that foreign investors accepted the new contracts passively. However, it suggests that investors were open to renegotiating contracts, and to accepting new conditions as long as the new rules still allowed them to make profits. In other words, contract breaching does not always mean foreign investors will bring disputes before international tribunals.

From a strategic point of view, foreign investors' first reaction was to intimidate host countries with the threat of claims before ICSID or other international tribunals, as they did in both Bolivia and Venezuela.

Table 6: ICSID pending cases

Country	Case	Firm	Sector
Bolivia	ARB/06/2	Química e Industrial del Borax Ltd.	Mining concession
Ecuador	ARB/03/6	MCI Power Group and New Turbine INC	Power generation project
	ARB/04/19	Duke Energy Electroquil Partners	Power generation facilities
	ARB/05/9	Empresa eléctrica del Ecuador (EMELEC)	Electricity enterprise
	ARB/05/12	Noble Energy INC and Machala Power Co.	Electricity enterprise
	ARB/06/11	Occidental Petroleum Co.	Hydrocarbon concession
	ARB/06/17	Técnicas Reunidas	Oil refinery expansion
	ARB/06/21	City Oriente Limited	Hydrocarbon concession
Venezuela	ARB (AF)/04/6	Vannessa Ventures Ltd.	Gold and mining project
	ARB/05/4	I&I Beheer B.V.	Debt Instruments
	ARB/06/4	Vestey Group Ltd.	Farming enterprises
	ARB/07/4	ENI Dación B.V.	Hydrocarbon rights

Source: Own elaboration based on data at ICSID Webpage

In the former case, foreign firms made some moves toward suing the host country (e.g., filing so-called triggering letters), basically aimed at intimidating the government. This strategy was pursued by many foreign investors, including some of the most prominent ones (Peterson, 2006). However, on October 28, just before the deadline, all energy firms signed the new contracts[xxix]. Similarly, Brazil reached agreement with Bolivia over a new gas price (US$ 4.20 per MBTU).

In this case, it should be mentioned that natural gas enhances host country leverage (as the recent Russian example illustrated). By virtue of this, the host government's threats become more plausible. Once investments are sunk, Bolivia's leverage surpasses that of Brazil, which, in the language of game theory, becomes a "hostage."

A similar pattern of acceptance of the new rules was followed by foreign investors in Venezuela. After reacting aggressively to the introduction of new taxes, foreign firms pledged to comply with Venezuelan income tax and hydrocarbons laws and SENIAT regulation.[xxx] By the time the negotiation process ended, on December 31, 2005, however, 32 multinational companies had agreed to a new legal status as PDVSA partners[xxxi], with the state-owned firm having a majority stake of 60% in the new mixed companies[xxxii]. From the firms' perspective, the deal was not too bad. As *The Economist* reported, "with oil selling for almost US$ 50 a barrel – up to five times the price when the original contracts were signed – and access to the world's remaining reserves at a premium, the companies can probably live with the consequences" (*The Economist*, 2005). Paradoxically, an independent oil and gas company from Texas (Harvest Natural Resources) became one of the first foreign companies to accept the new joint-venture arrangement, becoming PDVSA´s partner after the National Assembly approved the formation of the new mixed company PETRODELTA SA.[xxxiii]

For the oil companies, the present situation is not as bad as they first imagined. Firstly, because of the increase in oil prices, the economic and financial equation may still be positive even after the introduction of the new taxes. Secondly, the government's interest in taxing the Ricardian rent is a worldwide phenomenon and investors might be better off in the Andes than in other regions (*The Economist*, 2006a and 2007b)[xxxiv]. Thirdly, those companies that have entered the market during the last decade have already recouped their initial investments, as indicated by Stiglitz (2006) in the case of Bolivia[xxxv]. These factors offer some clues as to why foreign investors, although initially tempted to sue host countries, finally ended up accepting renegotiation. However, this might not always be the case. For instance, investors' stances might have been different had oil prices been lower. Furthermore, foreign investors might also avoid new investments in a particular country if the business environment deteriorates further or if the country's demands are too ambitious.

In the case of Venezuela, the Orinoco belt renegotiation has not ended yet[xxxvi]. Although the government's proposed deal is similar to the previous one (a joint-venture agreement with a majority stake for PDVSA), some factors differentiate this case from earlier ones. Firstly, a renegotiation process was launched by mid 2006, but no agreement was reached. Secondly, firms' investments were huge, as were expected revenues. Does this suggest that foreign investors will pursue international claims against Venezuela in this case? Or are their gestures in this direction just cheap talk, suggesting that Chavez will prevail again? It is too soon to tell for certain, but experience suggests that continued access to oil assets and revenues could prove more profitable than the pursuit of legal claims[xxxvii]. As stated by Roger Tissot (another consultant at Washington based PFC Energy), "there will always someone who will be looking for the possibility to exploit those reserves"[xxxviii].

The case of Ecuador is slightly different. Only one out of seven pending cases at ICSID relates to the regulatory change introduced in the oil industry by the previous administration. This suggests that claims have not been the main business response to regulatory change. But renegotiation has not been initiated by the government yet (*La Nación*, 16 March 2007), so this case remains open.

Conclusions

Until recently, FDI inflows were the most important factor for the development of the hydrocarbon sector in all three Andean countries considered in this paper. In most cases, foreign investment contributed to the expansion of proven reserves and total production, as the aggregate numbers reflect. With the increased public-sector role in strategic decision making, investment, and resource ownership, this no longer appears to be the case.

These three countries, after experiencing a severe economic crisis, are now going through a vast political transformation in which the key role of foreign investment is being contested. Bolivia's most dramatic crisis took place in the eighties, when hyperinflation severely hurt the economy. After a period of deep political turmoil that brought down three presidents, the country is now moving towards a new political model. In the case of Ecuador, the economic crisis exploded in 1999 with a bank collapse, general strikes, and political paralysis, all which contributed to dollarization. But even as this policy allowed for some growth and stabilization, political uncertainty remained. Local hopes are that the election of Correa will end the political crisis. Finally, in the case of Venezuela, the 1980s were "a terrible decade for Venezuelan development" (Haussman, 1995), and during the 1990s the crisis moved to the political system. In other words, in all three countries, economic crisis led to political transformation, as well as to a new vision of FDI's benefits and costs, especially in the strategic oil and gas sectors. The explanation may well go beyond economic and institutional factors. Because of the importance of these sectors as engines of growth and development, they affect politics directly through the mood and expectations of ordinary people.

During periods of political tension, the energy sector has come under stress. Debate about the structure of this sector and the role of foreign investment in it is not new. All three countries discussed in this chapter have nationalized oil companies in the past, and all have later called back foreign companies to play an important role in further development of oil and gas.

At the global level, a political race over energy security is under way. This is not new either. The U.S. international energy policy changed in response to energy-security concerns early in the 1980s, and the U.S. government has now become aware, once again, of the need for a new strategy (Valenzuela, 2006)[xxxix]. Furthermore, the increase in fuel demand for the transport sector worldwide and the continuing strong economic growth of India and China are intensifying the race for access to energy supplies[xl].

Aiming to expand world energy markets, developed countries (basically, the U.S.) introduced BITs and other special legal frameworks to make the world "safer" for energy-related FDI. In contractual terms, where the 1990s saw a return to pre-nationalization-era contracts and to private-firm rights over energy resources, the present legal U-turn and contract renegotiation has been interpreted as a return to the 1970s (nationalization) experience. [A similar tale of swinging mood could be told when observing the treatment granted to foreign investors. The institutions that received investors' favor (and guaranteed their rights) during the nineties may seem pretty useless nowadays . perhaps it is time for these three countries to look for a political and legal framework working beyond boom and bust, aimed at attracting foreign investment in a way that can contribute to the countries' sustainable development. Strong rules and hard commitments, like those drawn in bilateral treaties, are not essential to this aim. It may be time for the international community to renew debate over a *multilateral* scheme to guarantee FDI contribution to sustainable development.

This paper looked for explanations for the puzzling fact that firms largely chose to renegotiate under their status new terms imposed by the governments instead of trying to defend their rights under previous contracts. This was analyzed giving special attention to the investors' incentives for renegotiation. In this sense, the discussion above may suggest the relative irrelevance of BITs in driving FDI: Foreign investors are attracted by economic rather than institutional factors. At the very least, that seems to be the case of hydrocarbon-related FDI, where foreign investors accepted the new terms apparently because operations in these countries continued to be profitable. The high oil prices of the current period may have played an important role. If the price cycle changes and rents dissipate, investors might be tempted to change their strategy and bring claims before international courts. This could represent a serious risk for pending contracts (e.g., in the case of Ecuador). Foreign investors' mood might also prevent new investments, keeping host countries from exploiting new opportunities.

These three Andean countries should take into account that their present leverage for negotiation could be short-lived, if oil prices decrease below a certain threshold or new reserves are discovered. This suggests that these countries need a longer-term strategy in their relationship with foreign investment, which is essential in view of all three countries' capital and technology shortages. From this perspective, recent regulatory changes in the oil and gas sectors of these countries seem more like a correction of the balance of power in the investor-biased BITs, rather than the optimal policy. Continuing the reduction of companies' profits and rights could hardly be the best long-term option.

To conclude with a general thought on BITs and renegotiation, it is worth noting that, in principle, these countries may pursue the same strategic behavior observed in the oil and gas industry, and renegotiate the treaties as a whole. However, the newest bilateral treaties appear to be more ambitious, including new guarantees for foreign investors (e.g., on intellectual property). Therefore, although these countries may enjoy high leverage to renegotiate contracts in the oil and gas sector, their bargaining power might be much lower in a broad-based negotiation (in terms of investments in general). Bolivia recently announced its intention to revise BITs, focusing on three areas: definition of investment, performance requirements, and dispute resolution (Peterson, 2007a) [xli]. An alternative could be to suspend those bilateral treaties seen as prejudicial by the host country. This solution was recently suggested by the Ecuadorian government, when it announced its intention to decline a renewal of the BIT signed with the U.S. (Peterson, 2007b).

It is too soon to guess what the final decision regarding BITs and renegotiation will be in these countries, even if BIT renegotiation or non-renewal seems to fit with some recent political decisions (e.g., nationalization).

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[i] Venezuela has gained MERCOSUR full member status in 2006, and Bolivia is seeking membership.

[ii] However, most of them come from local gasoline taxes. When looking at revenues arising from NG exports, the figure for that period is only 6%.

[iii] UKOOA Response to Budget 2006 – Current Press Releases. March 22, 2006 (available at http://www.ukooa.co.uk/media/view-press.cfm/386) .

[iv] Notes : 1) BP p.l.c., *BP Statistical Review of World Energy June 2006*, except United States. Oil includes crude oil, gas condensate, and natural gas liquids; 2) PennWell Corporation, *Oil & Gas Journal*, Vol. 104.47 (December 18, 2006). Oil includes crude oil and condensate; 3) Gulf Publishing Company, *World Oil*, Vol. 227, No.9 (September 2006), except United States. Oil includes crude oil and condensate but excludes natural gas liquids; 4) Centre International d'Information sur le Gaz Naturel et tous Hydrocarbures Gazeux (CEDIGAZ), *Natural Gas in the World, End of July 2006.*

[v] The 1956 Hydrocarbon Decree (also called Davenport code), granted important advantages to oil companies. Paradoxically, this decree also established royalties at 18%, but Gulf's payments were fixed at 11% (Source: La Prensa – La Paz, Bolivia. May 2, 2006).

[vi] During the 1930-70 periods, tin accounted for more than 60% of exports. Tin remained as the main export until the nineties when become surpassed by natural gas exports.

[vii] Talks with Brazil began at 1974, after the subscription of the "Cooperation and Industrial Complementation Agreement", aimed at the export of 6.8 MMC /day.

[viii] Whereas oil is usually traded internationally and prices are more or less fixed at market rates, natural gas is different: trade takes place at bi-national level, where prices and conditions are fixed in contractual terms under some kind of "take or pay" clause. Another characteristic feature of this industry relates to delivery: a pipeline must be constructed or should be available.

[ix] Two main discoveries were TOTAL´s discovery in Campo Itaú – Tarija, and PETROBRAS´s confirmation of natural gas reserves in San Alberto and Sábalo.

[x] In July 2002, some of the industry main players (Repsol-YPF; BG and BP) created a consortium in order to produce LNG (Liquid Natural Gas) to be exported to the US market. The project included a 688 km length pipeline to be settled between the Margarita gasfield in southern Bolivia to a some Pacific port (either Ilo in Peru or Mejillones in Chile).

[xi] This company's concession in block 15 site was withdrawn in May 2006, and since then the field is operated by PETROECUADOR. Therefore, state share over total oil production increased significantly but showing lower productivity than the former private operator (BCE, 2006).

[xii] Pérez Alfonso is known as the father of the OPEC.

[xiii] Actually, this state-owned company ranks first among Trans-Latin Corporations, totalizing annual sales of U$S 63,.200 billion and operations in three continents (ECLAC, 2006).

[xiv] In order to initiate the exploration and exploitation process, the government divided the area (54.000 km^2) in four sub regions: Cerro Negro, Machete, Hamaca and Zuata. The benefits introduced by the original contract embarked oil companies in a process of drilling, and recently, in upgrading the Orinoco crude oil into a lighter, marketable product. Production in this area amounts to 600,000 barrels a day.

[xv] The most important are: Resolutions 1803/62 and 3171/73 on permanent sovereignty over Natural Resources, Resolution 3201 on New Economic Order, and Resolution 3281/74 adopting the Charter of Economic Rights and Duties.

[xvi] In the 1970s, most of the countries in the region introduced some type of operational or service contracts, a contractual form from Middle East countries. Under such a scheme, foreign companies undertake exploration and exploitation risks, and are compensated by the host country in cash or oil. Certainly, under such a legal scheme oil belongs to the state.

[xvii] The above exemplifies the main legal frameworks adopted during the nineties. However, in the case of Ecuador, a wide range of agreements were introduced: service contracts; participation agreements; marginal fields, operational alliances; strategic alliances; and specific services contracts (UNDP/WB ESMAP, 2005).

[xviii] The state-owned company (YPFB) was divided up into three independent parts: Chaco, Andina and Transredes.

[xix] However, the traditional literature dealing with MNCs, always stress economic motivations. In principle, most of the FDI directed at some specific country is either attracted by lower wages at comparable skill levels, or the availability of natural resources (i.e.: vertical FDI) or because of transport costs, tariffs and non-tariffs-barriers (i.e.: horizontal FDI).

[xx] Recently, companies from China and Japan entered the market. CNPC from China acquired Rompetrol in late 2003 (Block 11), whereas Teikoku Oil from Japan bought Ecuadorean block stakes in early 2005, and joined in developments controlled by PETROBRAS (a 40% share in blocks 18 and 31).

[xxi] According to Fortune, 7 oil companies rank among the top 25 world corporations in 2006 (Exxon Mobil, Royal Dutch/Shell Group, BP, Chevron Texaco, Conoco Phillips, Total, and Sinopec)

[xxii] For example, production costs declared by oil firms reached values up to US$ 20 per barrel, much above the US$ 4 cost for PDVSA (PDVSA Newsletter, 2005 and 2006).

[xxiii] The plan not only touched companies working in the energy sector, extending the nationalizations to the telecommunications and electricity industries.

[xxiv] Since it arrived in Ecuador in 1999, the company invested US$ 1 billion. Before its departure, Oxy was producing almost a fifth of total oil output (around 100,000 barrels of petrol per day).

[xxv] The Ecuadorian government accused Oxy of having breached its contract, by failing to register its sale of a stake in another field. For the company this was nothing but expropriation, consequently it filed an arbitrational case until ICSID Tribunals.

[xxvi] This was a two-step movement. By virtue of the new legislation passed by president Mesa (Hydrocarbon Law No. 3058 of May 19), royalties increased up to 50% of production. The remaining increase was introduced by President Morales after the sanction of Supreme Decree 28701.

[xxvii] That was the case for the two main gasfields under Petrobras´s concession, which finally agreed to pay royalties and taxes of 50% (The Economist, 2006).

[xxviii] From a total of 7 cases pending until ICSID, 5 of them relates with procurement contracts or regulatory activity.

[xxix] Contracts were finally approved and signed on May 2, 2007 (Andean Information Network, Friday 4 May, 2007).

[xxx] The Venezuelan government introduced a retroactively tax package for unpaid taxes over period 2001-04. According to Venezuela's tax agency, related revenues might sum up to U$S 891 million. Among the 22 companies included, Royal Dutch Shell become firstly at receiving a retroactive tax bill (Peterson, 2006a and 2006b).

[xxxi] The negotiations were closed with small groups of firms over time. Firstly, with Spanish Repsol, Chinese CNPC, and some Venezuelan oil firms. Secondly, Brazilian Petrobras signed the new agreement on September 28th, three days later was the turn of Tecpetrol and other small firms. Finally, during December was the turn of French Total, British Petroleum, and Chevron.

[xxxii] Even in his dispute with ENI, the Venezuelan government is confident in settle their oilfield dispute to resolve the issue (Settlement with ENI Possible - BNAmericas, 5/25/2007)

[xxxiii] Venezuelan Assembly Okays Harvest´s Mixed Company Conversion (Harvest Natural Resources, INC. 6/18/2007, from http://www.rigzone.com/news/article.asp?a_id=46557)

[xxxiv] Furthermore, in the same article it is argued that Ecuador even outperforms the US market, when looking at profits made "even after the windfall tax introduced last year" (The Economist, 2007b).

[xxxv] Seems to be the case for PETROBRAS, according to Mr.Gabrielli (company's CEO) (The Economist, 2006)

[xxxvi] Negotiations are expected to be settled by end-August. Shortly soon, on June 26, Joint-Ventures might be approved and then pass to the National Assembly for ratification (Venezuela Sets August Deadline to define Orinoco JV Structures – BNAmericas, 6/12/2007).

[xxxvii] Resorting to arbitration is not "high in our priorities", as expressed by Jim Mulva (Conoco Chief Executive), to comment further that the company sought an "amicable solution" (World Bank Withdrawal latest Latin headache for big oil – by Angel Gonzalez, at Houston – Market Watch).

[xxxviii] Quoted from Angel Gonzalez at Houston – Market Watch (see above for reference).

[xxxix] The author quotes a report by the International Energy Agency (IEA), analyzing the consequences entailed in the US energy forecast: as internal production is expected to stagnate in the near future, thus highlighting the role of oil imports (Valenzuela, 2006).

[xl] In contrast with the 1970s, when high prices responded to supply side policies, the current price increase might be better explained by demand pressure (Sánchez-Albavera and Vargas, 2005)

[xli] At the same time, the Bolivian government announced its decision to withdraw from the ICSID Convention. If such a move pursue formally, Bolivia will become the first country to do that. This issue deserves a separate analysis, which is beyond the scope of the present chapter.