Mining Industry Association at Multiple Levels of Governance

Mining Industry Association at Multiple Levels of Governance:

Drilling Down

By

Aynsley Kellow and Marian Simms

Cambridge
Scholars
Publishing

Mining Industry Association at Multiple Levels of Governance:
Drilling Down

By Aynsley Kellow and Marian Simms

This book first published 2022

Cambridge Scholars Publishing

Lady Stephenson Library, Newcastle upon Tyne, NE6 2PA, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

ISBN (10): 1-5275-7691-4
ISBN (13): 978-1-5275-7691-9

For our students – from whom we learned so much.

CONTENTS

PREFACE

This book has had a long gestation. Longer than we would have preferred. We secured a grant from the Australian Research Council in 2000 to undertake the research for it, but it really had its origins in 1994, when David Hughes, Environment Affairs Manager at MIM Holdings (now part of Glencore) commissioned me to undertake a consultancy examining the emerging global environmental policy agenda—especially on the risks of toxic substances—and the organisation of the mining industry to engage with this regulatory agenda.

That project opened numerous doors: to the International Council on Metals and the Environment; various metals commodity associations; representatives of mining companies; risk management officials in agencies in Canada, the United States, the United Kingdom, Sweden and Australia; similar staff in international organisations such as the OECD and UNEP and the then GATT. It also led to further work, including preparing instructional materials on risk management of nickel and copper for WMC Resources, which was staffed overwhelmingly by geologists and mining engineers who were largely unaware that the products they mined were toxic substances—like most substances, at specific doses. (As Paracelsus put it, the dose makes the poison). And I found myself on two Australian Delegations to OECD Workshops on Risk Reduction for Existing Chemicals in Rome in 1995 and 1996.

All this led to three prongs of work. First, a book on global risk policy, *International Toxic Risk Management: Ideals, Interests and Implementation* with Cambridge University Press in 1999. That touched upon the problems of the poor organisation of the mining industry in engaging with the global agenda, and so the present project really evolved out of that. But my exposure to the OECD made me aware of how little scholarly literature there was on that international organisation, a view I discovered that was shared with my colleague Peter Carroll. The resulting ARC funded project has yielded three books and numerous articles and chapters. That was something of a diversion, as were the changes of position by Marian, who went from the Australian National University to Otago, then to Deakin and then to the Australian Research Council.

The subjects of our study were not standing still all the while. Particularly significant was the failed introduction of a "Resource Super Profits Tax" that the Australian Government attempted to introduce in 2010, bungling the introduction of a tax that the industry initially supported, but eventually opposed vehemently, resulting in a reinvigoration of the Minerals Council of Australia. Then the Minerals Council came under assault from some of its larger members over its stand on climate change issues.

The bulk of the research for this book was undertaken in the period 2000-2005, and was able to capture the significant changes that saw the Global Mining Initiative, including the review of industry associations that led to the establishment of the International Council on Mining and Metals, the first industry-wide association formed at the international level. The research involved both documentary research and interviews with key participants.

Interviews were conducted with Sir Robert Wilson (Executive Chairman, Rio Tinto) and Doug Yearley (CEO of Phelps Dodge) and a conversation with Hugh Morgan at an early stage in the GMI process (October 1999) at which the intentions of the main founders for the process were enunciated was also of great assistance.

Interviews were also conducted with a number of the "Sherpas", appointed by the CEOs to progress negotiations for the formation of the ICMM. These were: Andy Vickerman, Rio Tinto; Gordon Drake, then with WMC Resources, and formerly with BHP; John Groom, Anglo American; Dave Rodier, Noranda; and Ian Wood, BHP Billiton. Interviews were also conducted with key players in the GMI: Eric Derobert, Vice-President, World Business Council for Sustainable Development; Tim Duncan, Hintons Ltd and formerly with Rio Tinto; George Littlewood, Allens Consulting, and formerly with Rio Tinto; Anita Roper, ICMM, formerly with WMC, and then with Alcoa; Richard Sandbrook, International Institute of Environment and Development; Ivor Kirman, Nickel Development Institute; Kathryn Tayles, formerly with Rio Tinto and then with UNEP, Paris; Doug Horswill, Teck Cominco and Chairman, Canadian Mining Association; Jack Whelan, International Chamber of Commerce; Millie Edwards, International Chamber of Commerce, Australia Committee. Mick Buffier of Glencore, then Chairman of the World Coal Association, also shared his insights into the tensions over coal in the Minerals Council.

Overwhelmingly, these were used to reconstruct the history of the GMI, rather than to seek opinions or assessment of the initiative, and these oral history accounts have been triangulated with both the recollections of others and documentary sources such as the MMSD report.

Extensive documentation was available on the Minerals Council of Australia and state chamber of mines, but this was supplemented with interviews with key informants: Mitch Hooke, MCA; Dick Wells, formerly with the MCA; Ian Satchwell, MCA, and later Chamber of Minerals and Energy of Western Australia (and previously with the Tasmanian Chamber); Tim Shanahan, Chamber of Minerals and Energy of Western Australia; Karen Grady, Business Council of Australia and formerly MCA; Nikki Edwards, NSW Minerals Council; Chris Fraser, Victorian Minerals and Energy Council; Michael Pinnock, Queensland Resources Council; and Phil Sutherland, South Australian Chamber of Minerals and Energy.

We are grateful to them all for sharing their insights and inside knowledge of the processes we seek to describe, without which we could not have provided as much empirical depth.

We are also grateful to Ted Lowi, who was there at the commencement as a Partner Investigator and who provided conceptual guidance. Ted collaborated on a theoretical paper at the beginning (Kellow, Lowi and Simms, 2000) and then provided advice and criticism of early drafts during visits to Hobart in 2001 (which allowed a workshop with Marian) and the summer of 2008-09 when he taught a summer school with Phil Schmitter on a related topic "Governance in the 21st Century". Phil's views also helped adumbrate the topic. Unfortunately, Ted passed away in early 2017.

Also of great sadness was the sudden passing of my co-author, Marian Simms, in 2021 as we were finalising the manuscript. Just as the book drew on my knowledge of the mining industry and its engagement with environmental issues, Marian's knowledge, in particular, of interest groups, trade unions, the land rights issue and Australian politics were vital to the project. We spent many hours on the fringes of conferences we both attended and enjoyed many lively email discussions, and the final product is fully the fruit of her work. As she was not available to sign off on the final manuscript, any mistakes are inevitably mine.

Aynsley Kellow, Hobart, September 2021.

CHAPTER 1

PUSHING BACK THE TIDE: GLOBAL POLITICS AND THE MINING INDUSTRY

Business has long been a global actor, but the international representation of business is problematic. Transnational corporations have long been a feature on the global landscape, but as governance has become increasingly global in character, the manner in which business engages with global governance institutions has varied according to the kind of policy in question and from sector to sector.

Global governance institutions have become increasingly complex and problematic. On the one hand, they show signs of 'licensing' civil society groups to undertake the provision of public goods, in an interesting parallel to the actions of nation-states, which under neo-liberalism often license community groups to undertake welfare functions (Kamat 2004). On the other hand, there are growing concerns about the legitimacy of such civil society groups. Global governance institutions extend from the United Nations (UN), which often seeks a regulatory function, to the so-called 'Bretton Woods' institutions—the World Bank and the International Monetary Fund (IMF)—and the World Trade Organization (WTO). Non-Governmental Organizations (NGOs) licensed by the UN include both Business International NGOs (BINGOs) and those sometimes called Public Interest NGOs or PINGOs, that have generally sought greater regulation and compliance to new international norms. The UN strategy is often two-pronged: the promulgation of UN Conventions, which may then be implemented to varying degrees at the national level; and, the creation of international NGO conferences.

Formal provision for NGOs is made within the UN system, with article 71 of the UN Charter providing for 'suitable arrangements' to be made for consultation with NGOs concerned with matters within its competence. ECOSOC Resolution 1296 (XLIV) of 23 May 1968 governs these arrangements. It went on to define NGOs as providing specific relationships '....between civil organizations and the intergovernmental process' (UNRISD 1997, 11).

Four topics have become prominent since the 1970s within the UN umbrella: gender relations, including the abolition of sexual trafficking; labour regulation, including prohibitions against the labour of children; development and post-colonialism, known in the 1990s as the "North-South" dialogue; and environmental sustainability. The last-named topic has generated activism by both capital and labour.

The global sustainability agenda started with UN Conference on the Human Environment (Stockholm) 1972, and, in many ways peaked with the UN Conference on Environment and Development (Rio De Janeiro) 1992. The Kyoto Protocol to the Framework Convention on Climate Change was adopted in 1997. The movement towards globally-sanctioned regulation, on pollution in general, and carbon dioxide emissions in particular, led to a range of responses by business. The prominence of environmental NGOs such as Greenpeace created a 'countervailing' response from business. A socially-responsible business agenda emerged both in the formation of BINGOs and in the development of company level campaigns.

Business is represented globally by a peak business group, the International Chamber of Commerce, but this has its limitations, and the whole question of business representation in international politics raises important questions about how interest groups are affected by different jurisdictional levels as suggested by Lowi (2001), from the macro-level realm of international relations down to the micro-level well below the meso-level of the nation-state. In this book we discuss these questions, focusing on one sector—mining and metals—and one country—Australia—where that sector is especially important and where the presence of a federal polity allows us to examine how that sector organises at each level, and how it relates to peak associations of business and labour. Mining was chosen because at the start of the period we examine it had no international business association at the international level. We explore why this was the case.

We identify the factors which have made the international arena more propitious for the mining industry since then, such that it overcame its reluctance and organized at that level. We also ask: What was the role of countervailing groups in the formation of a more well-organized mining industry group at the international level? It is important to define the many meanings of the 'international'. It includes peak associations, BINGOs, and media campaigns by those plus individual firms designed to sway the opinion of middle class consumers, to purchase their products and to resist the ideas and views of world-wide NGOs such as Greenpeace. This question regarding international activities takes on a heightened importance because environmental NGOs are more influential relative to business at that level than they are at the domestic level (Levy and Egan 1998; Kellow 2002), and because their influence was amplified by the use of the Sustainable Development agenda by the trade union movement internationally. This was largely in response to changes in Australian industrial relations (IR) law which encouraged the unions to socialize their conflict by going global and making linkages with environment and development groups.

We ask whether countervailing groups or some other factors have driven this increase in the associability of unions and business.

Globalization has been a significant factor, with the emergence of a global middle class of consumers, as well as greater investment opportunities fostered by the WTO, but a further question is raised, as follows: If the associability of the sector was increasing at the international level, what was happening to national and sub-national mining industry associations? National associations appear to have become less-and-less relevant for the chemicals sector, and sub-national chemicals associations appear *never* to have been significant. In the Australian states, for example, there is no sign that state chemicals associations have ever existed. We wish to explore, therefore, the changing patterns of interest association in the mining sector, and the sector's changing relationship with peak associations and labour groups at the international, national and sub-national levels.

Our research questions focus on why the sector belatedly began organizing internationally; how associations changed at the sub-national and national levels; whether factors within the industry, the emergence of countervailing groups, and/or shifts in the policy '*compétences*' at each level drove the changes; what the relationship was between the sector and peak business associations at each level of governance; how the sector's relationship with labour at each level changed, and what part (if any) this played in the formation of an international association. In short, we examine associability at multiple levels. First, in Chapter 2, we turn to a consideration of why the mining industry had not formed a business association.

The period we study covers primarily from 1990 to 2008, because the mining and minerals industry came under increased pressure in the 1990s to improve its social, developmental, and environmental performance.

(We also note some developments before 1990 and after 2008). Previously, it had little organized presence in global politics, and its sub-national organizational forms developed as the *compétences* of state and national governments changed, again largely in response to UN and other global initiatives, especially in relation to environment and development issues, brought together under the rubric of 'sustainable development.' These developments have both required business to organize globally, and changed the nature of the constitutional balance between the states and territories, on the one hand, and the Australian national government, on the other, especially in ways that have also required mining industry associations to change. Here we track how these policy changes have impacted on mining industry associations as they have sought to deal with new challenges in a globalized world.

The challenges faced by the mining industry over this period have been many-faceted, as can be illustrated by the experience of the industry in one country, Papua New Guinea. The Panguna copper mine on the island of Bougainville operated by Conzinc Riotinto of Australia (CRA, then a subsidiary of, but since 1995 a part of Rio Tinto) became caught at the center of a separatist movement seeking independence from Papua New Guinea, motivated at least in part by a desire for better returns for Bougainville denizens from the mine, which ironically closed—perhaps never to reopen—as a result of the conflict.

The Papua New Guinea government, pressured by the loss of taxation revenues and foreign exchange earnings, was then caught in a poacher-gamekeeper dilemma over its equity holding in the Ok Tedi copper and gold mine, majority-owned by BHP. BHP had originally preferred to exploit only the gold-rich ore that sat atop the larger copper-gold deposit. The PNG government had insisted as a condition of developing the mine that BHP develop the whole deposit, giving rise to considerably more mine tailings than would have resulted from a gold-only operation. The area had very difficult terrain, peppered with limestone caves, and was subject to tropical rainfall. An attempt was made (at a cost of tens of millions of dollars) to construct a tailings dam under these difficult conditions, but a flood washed it away.

The PNG government had taken equity in the project, and was thus doubly compromised: not only did it benefit from foreign exchange earnings, taxation and the purchase of labour and other services by the mine, but it had a direct interest in the profitability of the mine. When the question arose as to whether Ok Tedi should be permitted to continue to operate without a tailings dam, the PNG government not just permitted it, but actively encouraged this course. After the loss of Panguna in 1989, Ok Tedi was even more important to the PNG economy, as a source of both foreign exchange and tax revenue. Operating Ok Tedi without a tailings dam had a devastating impact on a large section of the Fly River, and gave rise to a class action by landholders in the Australian courts, which BHP settled out of court, later quitting its interest in the mine (which nevertheless continued to operate) and placing its compensation payment for landholders into an independently administered trust fund.

Similar problems became apparent with mining activities elsewhere, especially but not exclusively in the developing world. Gold mining, which almost universally relies on the use of cyanide in ore treatment, was especially problematic, with tailings dams failing at Omai in Guyana in 1995 and at the Esmeralda mine in Romania in 2000, causing widespread fish kills. Esmeralda, a small Australian-owned company, went into liquidation when faced with the clean-up costs from the disaster, which killed fish downstream in Hungary. The emergence of the sustainable development agenda internationally focused attention on both environmental performance and community relations, especially with the indigenous people who often inhabited the land under which mineral ores were to be found. Moreover, more traditional countervailing groups such as trade unions were willing to build coalitions to exploit such issues for their own ends, as we can see with a brief case study that raises questions (central to our theoretical concerns) about whether the belated formation of a mining industry association at the global level was a response to such campaigns, or a response to the salience of policies developed at that level.

The Campaign Against Rio Tinto

In February 1998 a visiting group of Dyak people attended a stop-work meeting of coal miners, members of the Construction, Forestry, Mining and Energy Union (or CFMEU) in the Hunter Valley in Australia, seeking support for their grievances over the impact of Rio Tinto's mining operations in Kalimantan, Indonesia on their environment and their traditional lifestyle. Their translator put their case, and the Australian workers followed the presentation with a thunderous chant of 'The workers, united, will never be defeated!' The Dyaks initially recoiled, intimidated by this chant, but—according to a report in the *Newcastle Herald* (February 3, 1998)—eventually they seemed to understand its meaning and began raising their fists in defiance, bringing further cheers from the crowd.

This unlikely clash of cultures was one of the first public manifestations of a global campaign against Rio Tinto over its environmental performance and treatment of indigenous people. It came after a meeting in November 1997 between the CFMEU and Vic Thorpe, general secretary of the International Federation of Chemical, Energy, Mine and General Workers Union (ICEM), where it was agreed to devise a strategy to attack Rio Tinto. The Australian union and its international counterpart considered a range of environmental, consumer and land rights issues they believed had the potential to embarrass the London-based Rio Tinto. No definitive policy decisions were taken at this November meeting, but it was decided to hold a three-day meeting in Johannesburg in January 1998 to further canvass the issues. In South Africa, former Australian Labor prime minister (and former union leader) Bob Hawke addressed the 45 delegates from 14 countries attending the anti-Rio Tinto planning meeting.

Later in 1998, during Metals Week, an annual gathering and dinner every October associated with the London Metal Exchange,[1] ten of the world's largest mining companies established the Global Mining Initiative (GMI) to explore how the industry could engage with the sustainable development agenda. Within a year, these companies and some 20 others commissioned the International Institute for Environment and Development (IIED) in London, through the World Business Council for Sustainable Development (WBCSD), to conduct what was named the Mining, Minerals and Sustainable Development (MMSD) project. This was an independent two-year project which sought to involve relevant stakeholders to try to develop an understanding of how the sector could make a transition to sustainability. A parallel process in the GMI saw a review of industry associations, culminating in the establishment in October 2001 of the first broad-based sector organization at the international level, the International Council on Mining and Metals (ICMM), which would be charged with developing an industry response to the issues of sustainable development.

---

[1] The London Metal Exchange (LME) is a market in which refined copper, aluminium, nickel, lead, zinc, tin, and silver are bought and sold, for delivery either immediately or at fixed dates in the future. LME prices are used world-wide as the basis price for transactions in these metals (with the exception of silver), and for products upstream (such as ores and concentrates) and for downstream products, and even scrap prices. Most LME contracts are hedging transactions and only an estimated 5 percent of the metals produced annually are physically traded through the LME, with most metal normally sold directly or through merchants. The total value of the trade was historically around $US 12 trillion annually. (Clow 1992).

To what extent, if any, were these developments linked? Was the GMI a response to the campaign against Rio? Certainly, Rio Chairman Sir Robert Wilson was identified as playing a prominent role not just in these events, but in responding in order to blunt developments at the Johannesburg meeting in 1998 and in playing a leading role in the industry response, and Rio seemed to be the prominent target of this and similar campaigns. Rio Tinto's Kelian gold mine in Kalimantan, from whence the Dyaks came, had twice been shut by blockades by protestors, which had trimmed its returns. It also had a 14 percent stake in Freeport Indonesia, the operator of Grasberg, the world's largest gold mine, and a 40 percent stake in some of its lucrative expansion activities, including Kucing Liar (*Weekend Australian* 27-28 May 2000). Freeport was the target of international campaigns and became intertwined with the separatist politics of the Free Papua Movement (OPM). The Rainforest Action Network and Project Underground ran a campaign against Freeport-McMoRan from 1995 which Manheim (2000, 342) suggests might have been related to the Rio campaign.

Campaigns initiated by unions had also been conducted against other mining companies, including Phelps Dodge (1983, 1998), Agip mining subsidiary ENI (1988-89), and Kaiser Aluminium (1998), so Rio was not alone, but it was one of the global mining giants. The GMI and the increased level of organization of the industry at the international level thus appeared at least to come in response to the activities of 'countervailing groups'. This would suggest that a society-centred explanation of interest group formation might be preferred to those which seek to explain this in terms of the characteristics of the state (or some similar 'reciprocating agent' at the international level). The question of interest group formation and maintenance in an increasingly globalised world is thus one which demands more detailed analysis. Relationships between firms and groups representing their industrial sectors, between sectors and countervailing groups, and between peak associations of business and labour now occur at sub-national, national, and transnational levels, and they require explanation.

As we shall see, as with these other campaigns, the international campaign against Rio had more to do with the campaigners' weakness in domestic-level industrial relations than with environment and development, and while Sir Robert Wilson was an important player, others were as, if not more, instrumental in initiating and driving the GMI, which was more a response to an emergent policy agenda advanced by international governance structures than a direct response to NGO campaigns. Further, the GMI had as much to do with issues of improving industry financial performance as with sustainable development. The debate over sustainable development therefore was not solely about reconciling development in the Third World with environmental concerns, but also served as a medium through which other agendas were addressed, by both labour and capital, rather than an issue solely of concern on its own merits. It provided the basis for an expansion in the scope of industrial conflict, which was in the interests of the unions.

For the unions, sustainable development provided a means whereby their weakness in the industrial relations arena nationally could be remedied by a campaign which was not just socialised, but globalised. It was an extension to the global stage of Schattschneider's (1960) dictum that the loser in any conflict will socialise the conflict to draw in other participants to change the balance of power. While any issue is likely to see the 'whirlpooling' of different agendas being drawn into the maelstrom, the process is not random and actors seek to expand or limit the scope of conflict by making or breaking linkages with other issues.[2] For the industry, sustainable development was an agenda which was important for its continued financial performance (which had been historically poor) and its continued 'licence to operate' (a concept that emerged in the mining industry in the mid-1990s). This is not to say that there was not concern on both sides for the issues of environment and development (especially as they relate to indigenous people) which come together under the rubric of sustainable development. Rather, the point is that sustainable development also meant other things to each side, and there was at best a somewhat incidental connection through sustainable development which gave the illusion that the GMI was a response to the union campaign against Rio and (to a lesser extent) others.

The meeting of Dyaks and miners in the Hunter Valley clearly indicated that a linkage had been made between industrial relations and the issues concerning indigenous people which are part of the sustainable development agenda. The campaign against Rio Tinto gave prominence to its corporate conduct in the Third World, but these were in reality concerns added to the traditional issues of industrial relations that were of greater concern to the trade union movement. The 'local' (in the form of industrial relations at a Hunter Valley mine) now had the potential to 'go global.' The mining industry, however, found itself both without a global champion (in the form of an industry association) and ill-equipped to contest those things

---

[2] While the notion of 'whirlpooling' is usually attributed to Henning (1970), it should be noted that he attributed the concept to Ernest S. Griffith (1956, 127).

that might do it harm at a sectoral level, rather than just at the level of the individual firm.

Ultimately, as the Rio case shows, there was potential to link such issues to what can be called 'redistributive' issues, which involve capital and labour in peak associations (Lowi, 1964). For this reason, we will consider later not just the association of firms into sector groups at state, national and international levels, but the relationship between these organizations and peak business groups—*and* we must also consider briefly what was happening with organised labour.

The extent to which the concerns about Rio's performance in the Third World were secondary to the issues of industrial relations can be seen by asking just how serious the threat Rio posed to the Third World was. And, reversing the question, by asking how serious the threat of a campaign based on Third World concerns was to Rio. It is easy to overestimate the importance of both threats, as Rio had relatively *little* exposure to developing countries. Rio's assets were located 45 percent in Australia, 40 percent in North America and 3 percent in Europe—88 percent in 'old' (First and Second World), politically stable areas. Only 3 percent of Rio's assets were in Africa and 5 percent in South America (Gottliebsen 2002). Industrial relations in Australia, the location of the largest share of its assets, was a much more significant factor, though there was good prospectivity outside its traditional areas of investment, and its reputation in these areas was important.

Rio had gained a reputation for aggressive industrial relations at its iron ore mines in the Pilbara region of Western Australia. The rewards for the company were significant: Rio had improved vastly the productivity of its Hamersley Iron subsidiary in the Pilbara, with tonnes per employee rising 4.5 times over 20 years (Gottliebsen 2002), and it had acquired Robe River where aggressive labour relations had been pioneered in the 1980s. A key to this had been the introduction of individual employment contracts under the Western Australian (Richard) Court government's industrial relations policy, which effectively shut the unions out of the mines.

The election of a Liberal-National coalition government and the defeat of the Australian Labor Party (ALP) nationally in 1996 heralded a new era in industrial relations in Australia, which provided Rio with an opportunity to bring its industrial relations practices from its iron ore mines in the West to its coal mines in the East. This was largely because the new legislation (the *Workplace Relations Act 1996*) not only provided for individual work contracts but prohibited so-called secondary boycotts on the threat of substantial penalties and the possibility of damages being awarded against unions. Secondary boycotts had previously limited attempts at industrial relations reform in the coal industry because, in the event of an industrial dispute involving the coal mining union (the CFMEU), the waterfronts would likely be closed down under secondary boycotts by the maritime unions, inflicting heavy costs on the substantially export-oriented industry. Ironically, the first major test of the 1996 legislation involved the dockworkers of the Maritime Union of Australia (MUA), breaking restrictive work practices which had previously resulted in poor 'lift rates' in container cargo terminals, after a bitter dispute.

The MUA set a precedent for the CFMEU campaign against Rio in the 1997 waterfront dispute when it received support from the International Transport Workers Federation (ITWF) to threaten an international ban on shipping. The ICEM was briefed subsequently by the ITWF on the strategy of international campaigns. The resort by the MUA to international support in itself indicated the new realities, because its power to close ports in the days before the *Workplace Relations Act* usually would have sufficed. Economic liberalisation on cabotage also meant fewer crews on ships involved in international trade from Australian ports were now Australian nationals and were therefore not likely to be MUA members. The new industrial laws on secondary boycotts meant the MUA was forced to pursue an international campaign.

The international campaign against Rio Tinto followed immediately from the failure of the CFMEU to get Rio to change its industrial relations policies at the Hunter Valley No 1 mine. The CFMEU was forced to seek allies offshore because it could not win the battle on the ground or in the Industrial Relations Commission, after a full bench verdict overturned a decision to arbitrate the Hunter Valley No 1 dispute. The CFMEU attempted to portray Rio Tinto internationally as a pariah because the company was seeking reform of work practices while attempting to sideline the CFMEU. Individual work contracts posed a threat not so much to workers' incomes as to the union itself, since the company was seeking better productivity by weakening restrictive work practices rather than wage cuts, and individual contracts between the company and workers would have sidelined the CFMEU.

Restrictive work practices in place in the Hunter Valley included: restrictions on freedom to use contractors, part-time, temporary or casual labour on any work as required; restrictions on the right to allocate overtime at management's discretion, rather than through a union seniority list; the right to hire and fire on 'merit' as decided by the company in place of recruitment from a union list of retrenched miners; and retrenchment on a 'last on, first off' basis. The company offered a substantial $10,000 a year pay rise as an inducement as well as concessions in superannuation and medical benefits to anyone accepting an individual contract, but all but seven of the 430 workers at the Mt Thorley mine refused the contracts, insisting instead on a collective agreement, and commencing a five week strike which ended with Rio securing reform, but the CFMEU securing continued representation.

So in the extension of individual work contracts from the Pilbara to the coal mines of the Hunter Valley the CFMEU was seriously weakened by the secondary boycotts provisions of the *Workplace Relations Act*. The eventual gains for the company were even more spectacular than they had been in the Pilbara, with new Rio CEO Leigh Clifford achieving similar gains in coal mine productivity over five years to those that had been achieved in iron ore over a decade, with productivity increasing 3.5-fold at the Blair Athol mine and a similar increase over five years at the Mt Thorley mine (Gottliebsen 2002).

This occurred in a context where the labour movement in Australia was already in some trouble, in both its political and industrial wings. The poor performance of the ALP federally over the decade until 2007 is well-enough known, and its membership had also been in decline. Just as important was the decline in membership of the trade union movement, with which it is formally affiliated (on a state and territory basis).

In a column published in the *Weekend Australian* on 3-4 June 2000, the newspaper's political correspondent, Ian Henderson—a former assistant national secretary of the ALP—pointed out just how significant had been the decline in trade union membership in Australia. In August 1999 1,878,200 people were recorded as trade union members in an official survey. This represented only 25.7 percent of employees overall. Membership was a mere 19.6 percent of employees in the private sector workforce, and it continued to fall to 19.1 percent in 2000 and 17.6 percent by 2003. By August 2003, only one in five female employees and less than one in four males were members of a trade union, although almost 47 percent of public sector employees were (ABS Series 6310.0). By 2106, membership was only 10.4 percent in the private sector and 38.5 percent in the public sector. The changing face of unionism is reflected in the fact that the then president of the peak Australian Council of Trade Unions (ACTU) was a woman who rose through the teaching sector. Gone were the days of blue-singleted blokes dominating unions; service unions were now the powerbases, and the services were more likely *public* services at that. However, a number of senior male union officials, who identified strongly with blue collar workers, rose to national prominence after 2005, largely through media campaigns, and this provided a platform for entry into national politics, via ALP endorsement. By way of contrast, 40.6 percent of the adult workforce were direct shareholders in 1999 and 54 percent were shareholders when indirect shareholding in superannuation and managed funds was taken into account. The number of direct shareholders was 5.7 million—three times the number of union members.

This changed the face of politics, with large numbers of people having interests not just in maximising income and wealth through wages and salaries, but through the profitability of business. Unions, particularly those in traditionally strong sectors such as extractive industries, came under threat. The CFMEU, in particular, was thus angered by the use of individual work contracts by Rio and its plans to change work practices at its Hunter Valley coal mines, and this is a fundamentally important factor in understanding why it and its brother unions sought to expand the conflict internationally, and to the additional domains of human rights, environment and indigenous rights.

The Rio Campaign Goes Global

As noted above, the first signs of the union-led campaign against Rio came in 1998, when ICEM held a meeting in Johannesburg and decided to target Rio. ICEM represented 467 industrial trade unions in 132 countries, covering 20 million workers. Many of these were employed in the mining industry. A key activity of ICEM was negotiating and monitoring global agreements with multinational companies.

This meeting had the objectives of developing a global profile of the company, establishing an international framework for unions dealing with it, and devising a strategy for pressuring Rio Tinto. In a report on this meeting, ICEM focused not just on industrial relations issues but included human rights, environment and indigenous people issues. It then produced two ‘white papers’ (*Rio Tinto—Tainted Titan* and *Rio Tinto—Behind the Facade*) for the company’s 1998 and 1999 annual meetings. In order to take the campaign to the shareholders, CFMEU national secretary, Mr John

Maitland,[3] and ICEM General Secretary, Mr Vic Thorpe, had purchased shares in the conglomerate to gain a voice at the meeting (*Australian Financial Review* 25 May 1998). Maitland and Thorpe, criticized Rio's record on indigenous land rights, environmental management and relations with unions at the London AGM, accusing it of a systematic campaign to undermine collective bargaining.

The campaign also included a complaint to the OECD under its Guidelines for Multinational Enterprises, and a video, 'Naked into the Jungle'. Manheim (2000, 128) describes ICEM's Rio campaign as 'the prototype for the transposition of the corporate campaign from the domestic U.S. arena into the international economic system.' Manheim does not discuss, however, the extent to which it was the extension of an industrial relations campaign from Australia to the international arena, although his appendix summarising union-led campaigns makes a brief reference to these factors (Manheim 2000, 334). At the conference in South Africa in 1998 former Australian Prime Minster and union leader Bob Hawke and former South African President Nelson Mandela were photographed with CFMEU secretary John Maitland to highlight human rights issues. This aspect of the campaign was quickly blunted by Rio; Chairman Sir Robert Wilson was able to undercut the campaign by producing letters at the subsequent Rio annual meeting from Mandela and Amnesty International disassociating themselves from the protest.

The CFMEU then organized the first proxy fight mounted by an Australian trade union. This style of action was being led by the then ACTU Secretary Greg Combet—who went on to be elected to the national parliament for the ALP. Union delegates from Rio operations around the world met in Canberra in February 2000 to plan the campaign. In March 2000 the global proxy campaign was launched with the formation of the Rio Tinto Shareholders Coalition, backed by the AFL-CIO in the US, Trade Union Congress in the UK, and the ICEM, as well as the CFMEU and the ACTU. Then they gave Rio its first fully-fledged proxy fight at the annual meeting of Rio Tinto in Brisbane in May 2000. The union global campaign managed to get the Australian Securities and Investments Commission to order nominee companies to disclose to the coalition the names of shareholders on whose behalf they were acting, the first time this had

[3] Maitland was later convicted of corruption in 2017 over the granting of coal leases by his friend, Resources Minister Ian Macdonald in the NSW ALP government, but both were freed on appeal in February 2019 and a retrial ordered which remains pending at the time of writing.

occurred outside the context of a corporate takeover. The unions also secured the assistance of former ALP minister Susan Ryan, who was president of the Australian Superannuation Trustees Association at the time, to solicit shareholder support within Australia.

Ryan ran an argument that profitability depended on good corporate governance, under which she included good industrial relations, and that superannuation (retirement benefits) fund managers concerned with returns should support the union proxy fight. Since many such funds are industry funds with union representatives on their boards (established under reforms initiated by ALP Treasurer, later Prime Minister, Paul Keating, and promoted by former ACTU secretary Bill Kelty), many were only too willing to accept Ryan's argument. One of the resolutions put to the Rio meeting called on Rio to develop an industrial relations code of conduct which enshrined the rights of collective bargaining and trade union representation in line with ILO standards, and to have its compliance independently verified. Ryan used a cover story in the magazine of the Australian Institute of Company Directors (AICD) to argue that if the company ran down its 'industrial relations infrastructure' it might not be able to retain the workforce to maintain shareholder value. The unions then mounted an investor campaign portraying Rio as a poor performer, underperforming the Dow Jones mining diversified index for the preceding two years. The other resolution put to the meeting sponsored by the coalition would have required Rio's deputy chair to be a non-executive position.

Ryan's role was the signature of a classic corporate campaign, in which a person with good personal credentials had been selected to become the public face of the campaign, masking the identity of the real authors—John Maitland and Tony Maher of the CFMEU. Ryan's job was to widen the campaign and approach audiences valued by the target company, just as Hawke had tried three years earlier to secure Nelson Mandela's support for the Hunter Valley CFMEU. Rio's then general manager corporate affairs, Tim Duncan, maintained that Ryan played the role so well that the AICD missed entirely the point that she was ultimately working for the CFMEU. The industrial relations resolution won 17 percent of the approximately one-third of the total capital which voted, and the corporate governance resolution 20 percent. Duncan argued that most of those voting saw through the resolutions as really being about 'very narrow industrial issues located in the coal fields of the upper Hunter Valley' (Uren 2000).

Ultimately, however, the coal disputes were settled with union representation continuing in the Hunter Valley, but with sweeping reform of work practices that yielded Rio the productivity gains it sought. One observer remarked that there was now less of an ideological emphasis on industrial relations in Rio than there had been in the past, and a much greater focus on outcomes beneficial for shareholders. After that, the global campaign against Rio subsided at least so far as substantial union involvement was concerned. This is hardly surprising: mine workers are in the highest paid sector in Australia, and are after all, ultimately supportive of the industry which employs them, and the alliance with groups which were essentially opposed to mining was unlikely to be more than a tactical one for the unions. The ability of the unions to create alliances and build a global campaign, however, did highlight the lack of an organizational basis for the industry to counter such campaigns in future. While the GMI had a wider base than just the campaign against Rio, the campaign did underscore the need for the industry to get its act together.

The coalition of the unions with environment and indigenous groups was an alliance of convenience, not one based on fundamentals, and was therefore vulnerable to countermeasures. The environment and development NGOs were able, with union funding, to produce better publications and to enhance their visibility, but some NGOs were fundamentally anti-mining whereas ICEM was fundamentally committed to mining. Rio engaged with the union movement at the highest level, and talked with ICEM about the possibility of a global agreement. Some of the union leadership at the international level wanted it. Fred Higgs (ICEM general secretary) and ICEM played a key role in MMSD, with Reg Green representing ICEM on the MMSD Assurance Group. Higgs' view was that unions had a big stake in the mining industry and he was to differentiate his stance from the NGOs during the MMSD process. The CFMEU's John Maitland continued to be disgruntled, but Rio wanted outcomes, so yielded on the question of union agreements to achieve the productivity improvements it wanted.

Rio had also moved on a different front to help divide the union and environment movements, committing \$1.4m over four years to WWF to fund a frog conservation program (Burton 2000). This provoked an angry response from John Maitland, who wrote to WWF Australian CEO Dr David Butcher, pointing out that Rio Tinto was the focus of an international campaign on human rights, and its environmental record and occupational health and safety performance and arguing that it was 'stunning' that WWF could associate itself with the company and allow its PR machine to assert how wonderful the company was because it had a partnership with WWF (Moody 2001).

So the international campaign changed little on the ground. It helped focus attention within Rio on productivity outcomes, rather than on ending union representation and thus moved aside some ideologues in Rio. It also encouraged Rio to engage more actively with the investment community, moving it to take a more proactive role in response to the shareholder proxy battle. But the GMI was to be driven by a number of companies, not just Rio, and WMC Resources and Phelps Dodge were marginally ahead of Rio in the vanguard of the GMI, which was fundamentally a response to 'the licence to operate' issue. The industry feared it was being driven out of markets and off land because of perceptions about its behaviour.

At best, the Rio campaign was a catalyst, helping accelerate the move to openness and recognition of the need to engage with stakeholders, but Rio did so by focusing on the key stakeholders—unions and communities, more so than environment and development NGOs—engaging them separately and leaving the more extreme groups to one side. But these developments were well under way in Rio before the union campaign commenced in 1998.

The threat to the licence to operate was greatest for the global players, because they had global reputations to defend. It was not the campaign by unions and its allies against the industry in the form of an international social movement that was to prove important in driving the GMI response, but concerns over access to ground for prospecting and mining development (matters within the *compétence* of national and subnational governments) by companies with global reputations, together with the emergence of an international regulatory agenda that threatened markets for products that were largely undifferentiated. The unions were largely with Rio while on their home ground, but had an interest in making more difficult access to ground in other jurisdictions where production costs (including labour) might be lower. Both these factors reflected to some extent the activities of NGOs, but the main driver was the changing nature of governmental and intergovernmental policy—in short, of governance—rather than the need to respond to the competition of NGOs as participants in social movements, supporting a top-down rather than bottom-up view of the factors driving interest group formation.

And ironically, just as the CFMEU used the Sustainable Development agenda as the basis for globalising its campaign because of threats to its organizational base, the industry quite selectively chose Sustainable Development as its organizing focus because it would maximize associability, carefully avoiding those issues which might have divided the industry.

The Global Mining Industry at the End of the Millennium

The mining industry was not the only sector to be targeted by global social movements at this time. Other corporate sectors also came under pressure during this period to improve their ‘corporate social responsibility’, but in the mining and metals sector, companies were also coming under increasing pressure over their poor financial performance. In short, the sector was failing to earn the real cost of its capital, meaning that investors would have earned higher returns had they invested in bonds. Rio Tinto CEO Leigh Clifford stated in 2002 that while average annual returns of business globally were 7.35 percent and a slightly higher 8.6 percent in the oil and gas sector, mining was at the bottom with returns on capital of only 4.67 percent (Gottliebsen 2002).

Globalisation had exacerbated the predicament of the mining sector. Not only did an end to the Cold War result in substantial privatization of assets (such as copper producer ZCCM in Zambia, tin producer Comibol in Bolivia, copper producer Tintaya in Peru, and Karaganda Steelworks in Kazakhstan) and the opening up of new areas for exploration, but the competition between the large global players for access to these new exploration and development opportunities brought into sharper focus the important role played by reputation in the granting by governments of a ‘licence to operate’. Increasing pressures surrounding existing operations on social and environmental grounds meant that the ‘licence to operate’ could no longer be taken for granted in any jurisdiction, but a good corporate reputation came to be seen as an almost ‘bankable’ asset in securing access to new prospects and projects.[4] Privatization did moderate a perennial problem for the industry however: the continuation of mining at below cost at nationalized mines which contributed to low profitability and unstable commodity price cycles.

The industry, led by the large global players with global reputations to defend, was to develop an effectively self-regulatory approach in response to these challenges, raising industry performance through the development of codes of practice. This was sound business, of course, because not only did this response address social concerns, but — inasmuch as higher standards became the norm — raised the costs of entry of new

[4] The concept of a ‘social licence to operate’ was enunciated by James Cooney, the Vice President of External Relations for Placer Dome Inc., a Vancouver-based Canadian gold mining company, in 1997. In 1996 Placer Dome received criticism after the failure of one its tailings dams in the Philippines.

players. Large, global corporations could spread reputation management costs across a large number of mines; small companies were faced with higher marginal costs of securing their reputations. Just as the widespread cessation of national ownership would make the bottom of commodity cycles more shallow, regulation (albeit self-regulation) would make more costly the entry of new producers that might clip the peaks off the top of the cycle.

Transnational ownership of the largest global players accentuated the willingness of NGOs to criticize corporate behaviour, because, as Mary Douglas (2002) pointed out), many of the complaints about the environmental risks associated with large corporations are essentially attacks on their power and influence. But transnational ownership of the industry leaders could also help drive pressures for a 'race to the top.' The large global players actually had global reputations to worry about—in the manner described by Leonard (1988)—whereas the smaller players frequently had only one or two mines, often located within a single jurisdiction, and were immune from the damage that criticism of their operations might mean for government approvals in other jurisdictions.

The problem for the industry was, many mining operations could be commenced by smaller players, particularly in the gold sector, where operations could start and stop according to gold price movements. Whereas state-owned enterprises wrought havoc on supply and demand when prices were low by continuing to mine below cost, small and artisanal mining clipped returns at the top of commodity cycles. The Esmeralda disaster seemed to typify another problem, because a small undercapitalized operation did serious harm to the reputation of the sector as a whole, which was also dependent on the use of cyanide extraction methods. In an industry which is fundamentally a price taker, this ability for small players to either continue with less than 'best practice' approaches to environmental or indigenous people's issues, or to enter the market with minimal standards was a serious problem as it both limited the ability of any players to bring external diseconomies within their cost structure, and threatened to undermine any pressures for a race to the top among the larger global players, since they were vulnerable to reputational damage at the sectoral level as a result of the practices of the smaller players. Each firm could work on its own reputation, but there was a class of issues which were sectoral in their impact, so that the large players could be harmed by the performance of the small players mining the same product, such as Esmeralda.

These industry characteristics are important. Considered in a global context, the minerals industry is relatively small, despite the appearance that they are large players in countries such as Australia, and despite also the central importance of a range of mined products, especially metals, to many other industrial sectors. In September 2001, the top 150 international minerals companies had a combined market capitalization of only $US224 billion. This was less than the capitalization of single companies in other sectors, such as General Electric ($US469 billion), ExxonMobil ($US289 billion) and Wal-Mart ($US241 billion). The top 10 mining companies had a combined capitalization of $92 billion, with Alcoa valued at $US26 billion, BHP-Billiton at $US25 billion, Anglo-American $US17.5 billion, and Norsk Hydro at $US10 billion. The mining sector represented only 0.6 percent of the value of the capital in the United States (as measured by the S&P 500 index) and 6 percent of the value of the Toronto Stock Exchange 300. It was more significant in Australia, but even there had declined from 26 percent of the value of the All Ordinaries Index in 1996 to 12 percent in 2000 (Allen Consulting Group 2000, 7). By 2008, BHP-Billiton (thanks to acquisitions and organic growth) was valued at $US130 billion, having briefly touched $US160 billion, and had issued a takeover bid for the $US50 billion Rio Tinto.

By the late 1990s, the mining industry was declining in size and significance, and it was not particularly well-organized to affect its fate. Ineffective participation at the United Nations Conference on Sustainable Development at Rio de Janiero in 1992 had seen the adoption of a work program in Agenda 21, Chapter 19 that was to address chemicals that were persistent, toxic, and bioaccumulative, and this included almost every non-ferrous and non-precious metal. There were about 30-40 large multinational corporations which explored, mined, smelted, refined, and sold metal concentrates and metals on world markets. Low commodity prices and poor returns among the big players produced greater concentration in the late 1990s. Mergers included BHP and Billiton, Cominco and Teck, and the acquisition of Asarco by Grupo Mexico, CRA and North Ltd by Rio Tinto, and MIM Holdings by Xstrata. Political association was, for various reasons, more problematic. Of great significance were the differences between firms producing different commodities.

The degree of concentration of ownership varied significantly across of producers of metals and minerals. Steel had a relatively dispersed structure, with the 10 largest firms producing less than 30 percent of global output, but the ten largest producers of aluminium accounted for more than 90 percent of global output. There was little vertical integration in iron and steel and, of the top five iron ore producers, only Rio Tinto was active in as many as three countries. In aluminium, the industry was highly vertically-integrated, but this was atypical of the sector. Co-products were often significant. For example, firms producing nickel from sulphide ores (such as Inco, Norilsk, and Falconbridge) derived significant by-product revenues from copper, cobalt, and precious metals. This meant that there was significant trade in non-ferrous metal concentrates and residues, many of which were potentially classifiable as hazardous wastes, which was why the industry became concerned over the proposal to adopt a trade ban under the Basel Convention (Kellow 1999a). There were thus also numerous small traders, fabricators and recyclers in non-ferrous metals, although there were some exceptions, such as the fully integrated multinational copper producer Phelps Dodge, which was involved in all stages of copper production from mining to wire making.

The large multinational companies were highly visible and thus relatively well-aware of the need for a ‘licence to operate’. Many had developed codes of practice, business plans, and reporting procedures in response to environmental and social concerns. They were more likely to make a substantial effort to assess, minimize, and mitigate many of the environmental and social impacts of a new mine development, to develop an effective closure plan, and to seek to engage with the local community. This was driven by their concern with global reputation, and they could more readily afford to meet the costs of such improved behaviour. Smaller companies could buy in consultant expertise to deal with development approval issues such as environment or indigenous rights, but these concerns were necessarily less well-embedded in such companies. They were vulnerable to competition from those not globally-focused, who might not need to be overly concerned with global reputation, and were more likely to be able to rely upon structural power within a jurisdiction to reduce the costs of regulation.

This included intermediate companies operating several small to medium-sized (typically gold or base metal) mines in one or a few countries selling concentrates to a trader or custom smelter, but also companies known as ‘juniors’, which might be involved exclusively in mineral exploration, negotiating agreements with larger players for the development of an ore body they had discovered, or perhaps trying to exploit the ore body themselves. Canada had more than 1,000 junior companies (compared with about only 100 in the United States), and they were also active in Latin America, Africa, the Pacific Rim, Europe, and Australia — where they are referred to colloquially as ‘dirt diggers’ and ‘rock kickers.’