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The Architecture of Investment Climate Surveillance and the Space for Non-Orthodox Policy

Håvard Haarstad

The purpose of this article is to take preliminary steps towards a critical theory of what is termed an 'architecture of investment climate surveillance'. The paper outlines the contours of this architecture, which it suggests is made up of various private and public agents that have authoritative positions in the market for evaluating investment opportunities and risks. By way of illustrating basic linkages and mechanisms, it examines the way in which these agents 'read' the implementation of a piece of non-orthodox policy: Bolivia's nationalisation of gas. Though not unproblematic, Bolivia's policy of nationalisation has significantly increased state revenue and allowed new social spending on poverty reduction. Yet despite these positive developmental effects, readings of this policy shift within the investment community have been highly critical, illustrating the investor-centred values on which these evaluations are based. The article concludes by suggesting that scholars of globalisation must pay more attention to whether and how such discursive responses are able to delimit the space for non-orthodox policy in the global South.

Introduction

The effects of conditionalities embedded in structural adjustment and development finance have been at the centre of critical debates surrounding neoliberal globalisation. The principle of conditionality – which makes the extension of credit and rescheduling of debt to governments conditional upon lender-specified reforms – has been widely criticised for imposing blueprint policy models on borrowing countries. Partly in response to this critique, conditionality has been rethought within the international

finance institutions. But the characteristics and importance of conditionality are changing for other reasons as well; some countries have prepaid debts to avoid conditionality, and development thinking increasingly stresses borrowing country 'ownership' of policy reforms.[1] When taken together, these trends indicate how governments in the global South are designing and implementing policy in a shifting external environment.

The purpose of this article is to take some steps towards an analysis of how these changing forms of opportunities, pressures and constraints are shaping the policy space for governments in the global South. In particular, it aims to generate theoretical debate and empirical analyses of the diffuse mechanisms through which investment climate surveillance, and potentially other types of financial surveillance, delimit the range of policies and pathways that are deemed acceptable for developing countries to pursue. In order to do this, it introduces the concept of an 'architecture' of investment climate surveillance, which indicates a variety of private and public agents involved in evaluating the opportunities and risks associated with investing in particular countries. There are existing contributions that can be drawn on in this respect, and some of these are discussed below.[2] But to the knowledge of this author, investment climate surveillance has not previously been considered in this context, nor has any attempt been made to construct critical theory around it. In turn, the article points to linkages and mechanisms that should be subject to critical attention and suggests some starting points for such a theory. By way of illustration, the article examines the way in which investment climate surveillance agents 'read' the implementation of a piece of non-orthodox policy: i.e., Bolivia's nationalisation of gas.

Investment climate surveillance has some similar characteristics to traditional conditionality, but its structures of accountability are more diffuse or even non-existent. There are few, if any, possibilities for democratic institutions to hold these agents accountable. The architecture of investment climate surveillance, through the particular values embedded in evaluations, might delimit policy spaces for governments by generating incentives for pursuing particular policy models, and imposing constraints on policies that diverge from the interests of international investors. It employs discourses that foster investor-centred values and disseminates these discourses through its agents' authoritative positions as providers of 'rational' market information, in a manner that is in many ways reminiscent of Michel Foucault's account of governmentality and disciplinary power.

The way in which investment climate surveillance agents "read" the implementation of Bolivia's nationalisation of gas illustrates the values embedded in such market information. Bolivia's gas policy has during the past decade been formed in the context of increasing civil society mobilisation and critique, including the election of President Evo Morales on a platform of exploiting gas resources in ways that promise to benefit the population more broadly. Recognising that the gas sector needs foreign private investment, the Morales administration has attempted to balance popular

demands for full nationalisation with attractive opportunities for companies. Though not without its problems, the policy of nationalisation has significantly increased state revenue and allowed new social spending on poverty reduction, including a set of conditional cash transfer programmes, and it is therefore asserted that the developmental effects are positive (at least in the short term).

In contrast to these developmental effects, investment climate surveillance readings of the policy shift have been highly critical. In the wake of nationalisation, the International Monetary Fund (IMF) warned of 'potentially far-reaching consequences', Bolivia dropped almost 100 places in a ranking of 'investment freedom', and a trade preference agreement with the US was suspended. While it is difficult to establish direct causal links between investment climate evaluations and levels of post-nationalisation investment, the interpretive values that are employed in these readings point to the disciplinary mechanisms working to proscribe non-orthodox policy. This suggests that more critical attention should be paid to how the 'architecture of investment climate surveillance' disciplines governments in the global South by promoting the discourse of 'investment climate', and thereby creating strong disincentives for non-orthodox policy.

Policy Space, Investment Climate, and Disciplinary Mechanisms

Globalisation has transformed notions of national sovereignty and the boundaries between the domains of national and international politics (Fraser, 2008). In the multifaceted and layered debate on these issues, one popular argument has held that national sovereignty has been undermined and increasingly replaced by a form of global governance that is less democratically accountable (Swyngedouw, 2000). It seems beyond reasonable doubt that the policy space for governments in general, and perhaps those of the global South in particular, has been affected by new rules and institutions at the global scale (Jayasuriya, 1999). Looking at the 'policy space' for governments means focusing on the set of opportunities and constraints that shape the possibilities that these governments have for pursuing a particular type of policy. Tarrow (1988), Cerny (1995) and others have focused on the opportunity structures in politics that give rise to the choices that actors can make, and thereby lead political practices in particular directions. The importance of this perspective is that it recognises that public policy is not simply an object of choice for politicians and planners, and instead puts explanatory weight on how political practitioners manoeuvre within a complex field composed of multiple actors with diverse interests that enable and constrain options in a variety of ways. Policy is shaped, enabled and constrained by forces and mechanisms that operate across different scales (Spiller et al., 2008).

Policy constraints at the global scale can arise from rules embedded in programmes of political and economic integration or from the need to attract

investments, credit or aid. In the extant literature, authors have primarily looked at policy space in the context of free trade agreements such as the World Trade Organisation (WTO), arguing that these agreements reduce flexibility for member countries to set national priorities, determine their own tariff levels or prolong compliance timetables (Hoekman, 2004; Khan, 2007). In its 2005 Human Development Report, the United Nations Development Program (UNDP) laments that the WTO agreements in the Doha Development Round have severely restricted the scope for industrial and technology policy (UNDP, 2005, pp. 133-138). Beyond trade rules, policy spaces for developing countries are shaped by a wider set of multilateral institutions and state agents. Chang (2005) stresses the role of the United States (US) and its influence on institutions such as the World Bank and the IMF, as well as its bilateral trade agreements. These institutional and state agents act as 'gatekeepers' by putting in place and enforcing particular rules and practices, and by acting as the assessor of whether these rules are being complied with. It follows that gatekeeping comes with a great degree of formal and informal power – gatekeepers influence a host of agents on investment decisions, financial transactions, determination of interest rates, aid flows and more. The IMF recognises to some extent the problem of gatekeeping, and has (by its own account) taken steps to increase the policy space of low-income countries in response to recent food and financial crises (IMF, 2009b).

Of course, policy constraints are not necessarily negative. Countries comply with transnational rules in order to show their commitment to particular regimes of practices and to make others do the same, thereby encouraging stability, predictability and mutually beneficial systems and norms. Comprehensive trade rules can allow poor countries to negotiate in a single bloc rather than one-on-one against richer and more powerful countries. But critical attention must be paid to values embedded in these regimes, and the asymmetries between countries in shaping the values and entry criteria. Approaches in the critical geopolitics tradition have attempted to show how such regimes are socially and historically constructed through geopolitical power relations casting US and Western institutions as authorities on finance and development (Dalby, 1991; Popke, 1994).

These approaches often draw on Foucauldian theories on discourse and governmentality that show how the power of government operates through diffuse and decentralised mechanisms that work to delimit what is considered as 'rational' behaviour (Jessop, 2007; Lemke, 2002). Foucault described 'governmentality' as a complex form of power that arose with the emergence of modern government and its associated sciences of health, statistics, and economics. It is an "ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics" that allow the government to control and discipline the population (Foucault, 1991, p. 102). Disciplinary power cannot be described in terms of a theory of sovereignty, he stressed, for it is not exercised from a singular point or institution. Instead, it is a dispersed type of

power "exercised through constant surveillance" permeating society through multiple points (Foucault, 2004, p. 36). The power of government is therefore described not through the monopoly on the means of coercion, but as operating through a complex set of instruments, institutions and knowledge that normalise particular behaviours, actions, and ways of thinking. Hence, Foucault's work emphasises how power relations and socially constructed values underpin the very idea of 'rational' practice, which includes the practices of states and governments.

Writers in critical and political economy traditions have since taken up Foucault's insights into the informal power of gatekeeping, and have suggested that national governments are disciplined and sanctioned for pursuing progressive policy by a diffuse set of emerging global control mechanisms. Stephen Gill (1995b), for example, argues that the policy regimes promoted by international finance institutions were reinforced not just by a handful of easily identifiable institutions, but through the disciplinary effects of intensified surveillance mechanisms embedded in the structures of capital accumulation, which define the limits of what is possible for governments. He therefore points to the disciplinary power embedded within the diffuse mechanisms of neoliberalism rather than the sovereign power of traditional conditionality. In the context of information technology, these mechanisms favour internationally mobile finance capital and those seeking to liberalise financial regulation. The effect, in his perspective, is the subordination of state policies to the interest of large holders of capital (Gill, 1995a). For Atilio Boron (2008, p. 247), this framework can explain how governments coming to power in Latin America with a popular mandate to end further liberalisation are constrained from properly following through on that agenda; there is a persistence of "traps and mechanisms that 'discipline' unruly governments via a range of instruments". These mechanisms include preferential treatment agreements or other agreements needed to facilitate the inflow of capital and investment.

Using these critiques as starting point, we can begin to approach the discourse of 'investment climate' in a new light. Specifically, investment climate surveillance does not appear as a sovereign form of power, as traditional conditionality to some extent did through the policy prescriptions of the IMF and the rest of the Washington Consensus. Instead, it appears as a disciplinary form of power much like that described in Foucault's work on governmentality. Washington Consensus institutions such as the World Bank do still participate in the exercise of this power, but the discourse of 'investment climate' both consists in and underpins a much broader architecture of surveillance and discipline.

Investment Climates and Development Orthodoxy

The importance of a good 'investment climate' is now a central plank of development orthodoxy. As stated in the Monterrey Consensus, foreign direct investments (FDI) are "vital components to national and international development efforts" (UN, 2003, p. 9), and that liberalisation and minimal policy intervention are necessary to create a proper 'investment climate' for FDI (World Bank, 2005). Conventional ideas about creating such an attractive investment climate are premised on the notion that government intervention poses a threat to investors and needs to be restrained (Moore and Schmitz, 2008). The World Bank report on investment climates, *A Better Investment Climate for Everyone*, provides a set of actions that governments should pursue in order to attract investment and reach development goals. The basic message is that governments should focus on 'delivering the basics' – such as property rights, contract enforcement and fostering a skilled workforce – and that selective intervention in the market should be avoided (World Bank, 2005, p. 9). It is a discourse that emphasises the liberal, market-oriented view of development.

What typically constitutes a good climate in the eyes of the investor are low tax rates, flexibility with regard to hiring and firing, low labour costs, an absence of local content requirements, and the provision of various types of economic incentives (World Bank, 2005). In order to foster a good investment climate, governments are encouraged to offer these conditions in a stable and predictable manner. As some have already argued, the stability of incentives and conditions may be more important than the conditions themselves (Spiller et al., 2008). The degree of stability influences the external credibility of government reform and policy which is, as Rodrik (1989) stresses, critical for the success of that reform or policy. Looking at post-communist countries, Hewko (2002) argues that investor's perceptions of investment climates were central to whether investments were made, yet judgments about investment climates were rarely based on an in-depth understanding of local conditions. Instead, investors relied on visceral perceptions and the reports of external experts.

There are however some contributions to the literature that argue that states need active policy to reap the benefits of foreign investments. Research on the link between FDI and development or poverty reduction suggests that absorptive capacity, a skilled labour force, and human capital are necessary ingredients in host countries (Borzensztein et al., 1998; Lall and Narula, 2004; Nunnenkamp, 2004). This means that governments need policy space to upgrade the capabilities of national firms, institutions and the labour force. As Gallagher et al. (2009) argue on the basis of a series of country case studies on FDI in Latin America, international agreements should leave developing national governments the space to pursue the domestic policies necessary to foster development through FDI. This policy space would allow governments and state institutions to act strategically in determining a regulatory framework for foreign

investors, providing incentives and disincentives for particular types of economic practices, or putting in place requirements for the employment of the local labour force or use of locally produced goods. It has been argued that these are among the success factors in the case of the East Asian 'tigers' (Narula, 2002) and the industrialisation of the Western developed countries (Chang, 2004). In turn, there is potentially a paradox here for countries attempting to use FDI to reach development goals; active policy is needed to get the most out of foreign investment, yet active policy damages evaluations of the 'investment climate' and in turn the chance of attracting the investment needed. Hence, policy action intended to increase a country's development outcome from foreign investment might actually hurt its 'investment climate', as conventionally conceived.

At this point, two important caveats should be acknowledged. Firstly, international relations can of course open policy spaces for governments as well as narrow them. Stable aid flows, deepened financial markets or high international prices for natural resources and other exports can provide a government with greater room for manoeuvre (Ocampo and Vos, 2006). Second, there are many conditions besides perceived investment climates that influence where investments flow. As both Moore and Schmitz (2008) and Schultz (2001) point out, investment policies in China – which is a state-driven and highly bureaucratic economy that bears little resemblance to those promoted by international institutions – illustrate that investors are primarily attracted by business opportunities, not by particular policy models. In the case of natural resource extraction, much FDI goes to countries that are far from possessing exemplary investment climates. Nevertheless, the need to demonstrate commitment to an externally defined policy framework – understood as a 'proper' investment climate defined via appeals to credibility and economic rationality – is a key determinant of the policy space available to governments in the South. But if such a discourse of 'investment climate' is indeed operative, then we must look into precisely how its disciplinary power is exercised. Or to put it differently: What is its corresponding architecture of surveillance?

The Architecture of Investment Climate Surveillance

Investment climates are evaluated by a complex set of agents that derive influence from their status, legitimacy and perceived trustworthiness. Foreign investors base their investment decisions at least in part on information and analysis regarding host country outlooks, and this has created both a market and a governance role for the private agents and multilateral institutions that are able to provide such insight into potential host countries.[3] Hence, an important element of the argument here is that the investment climate discourse is not disseminated from a single source or institution, but that it instead flows and circulates in a complex network of different actors and institutions. The following discussion outlines what I see as some of the central actors through which this

discourse works (although it is by no means exhaustive).

Public economic surveillance at the global scale is arguably an offspring of the Bretton Woods Agreement and the responsibilities it granted to the IMF. The IMF was conceived to oversee countries' macroeconomic policies, and particularly those that would impact upon its balance of payments. It has evolved, however, and its surveillance of member countries' economies has come to involve new policy areas, now covering institutional and microeconomic reform, along with various social conditions that impact the implementation of economic policy (Braithwaite and Drahos, 2000, p. 115). Its annual World Economic Outlook, and the annual Article IV Consultations with member countries on which it is based, have become crucial indicators of how countries' policy directions will impact economic conditions and competitiveness (James, 1995). While the IMF controls a significant amount of resources through its Special Drawing Rights, supplying information and analyses that affect capital markets have become a means through which the institution guides economic policymaking in its member countries and influences the access of governments to resources. The World Bank and the Organisation for Economic Co-operation and Development (OECD) also supply information to guide foreign investors. The *Doing Business* reports published by the World Bank quantify business regulations and their enforcement across countries, and their Country Profiles are based on surveys of firms' experiences with conducting business in a particular country. These are then used to rank countries on 'Ease of doing business' and to create statistical breakdowns of the business environment.[4] The OECD instead conducts 'peer review' of competition policy in both member and non-member countries, but its aim is similarly to foster best practices and improve the business climate in the countries it reviews (OECD/IADB, 2006).

Investment climate surveillance is at times tied to foreign policy as well. The US Department of State issues 'Investment Climate Statements' on most countries, which are intended for US investors and firms operating abroad, and consist of qualitative evaluations of factors such as countries' openness to foreign investment, trade policy, and levels of private property protection. Such surveillance is also embedded in inter-state treaties. Bilateral and multilateral trade agreements, and the international arbitrations that enforce them, provide a mechanism for surveillance on how involved states treat foreign investors. Such treaties and their related arbitration have flourished globally in recent decades. Latin American countries have historically been guided by the Calvo Doctrine, which states that firms are subject to the laws of the state where they do business. Recently, however, Latin American countries have come to accept international law and arbitration in relation to foreign investment (Cremades, 2006; Vallejo, 2007). This allows institutions such as the World Bank's International Centre for Settlements of Investment Disputes (ICSID) to evaluate whether governments are granting foreign investors the rights and treatment that treaties afford them, which in turn makes the panels bellwethers of the country's investment climate.

At the same time, certain private agents are among the most authoritative sources of judgments on economic conditions in countries – namely, credit rating agencies. Moody's and Standard and Poor's (S&P) are the two major firms in the credit rating industry. Their ratings of credit products increasingly include the bonds of states, which are given grades (AAA to D) according to their creditworthiness. This factor can be seen to serve as a proxy for general economic conditions in a country and the 'rationality' of a government's economic policy. Yet as Sinclair (2005) argues, it is appraised against historically derived, often US-based norms and procedures (both Moody's and S&P are headquartered in the US). Among these norms is the separation of economic and financial policy, which is seen as belonging to the domain of independent central banks, from social and other types of policy, which are seen as belonging to the domain of political institutions more broadly. Another norm is the adherence to privatisation programmes. Senegal, for example, received a positive evaluation from S&P as a reflection of the expectation that the government would "adhere to its programme of structural reforms, which includes selling many of the assets that still remain in state hands" (Wallis, 2000).

According to Hill (2004), investors automatically react to the upgrades and downgrades of credit rating agencies, knowing that markets will as well. Interestingly, however, in court cases in the US, where investors have sued Moody's or S&P after following their advice, the rating agencies' analyses were deemed to be mere 'opinions'. The Seventh Circuit court characterised reliance on an S&P's rating as 'unreasonable' (Hill, 2004). S&P upheld their top rating of Lehman Brothers right until its collapse, just as it did with Enron. Iceland, Spain and Ireland also enjoyed high ratings just before or even after their financial woes became public knowledge (Silver, 2011). Yet their ratings have remained a staple in the underpinning of investment decisions. Using either Moody's or S&P's ratings, or both, in investment decisions has become expected practice in the capital market, and many financial products have embedded rules that require them to pull out of an investment object should the rating drop below a certain level. This in turn positions rating agencies as an important node in making the evaluations that shape the flows of investment capital.

Further, there are private foundations and think tanks that have acquired prominence and legitimacy for their comprehensive data collection, and their analyses of information germane to the question of investment climate. For example, the Heritage Foundation based in Washington DC publishes annually its Index of Economic Freedom. The foundation has strong links to the Republican Party and the conservative base, and is known as a key architect of the policies of the Reagan administration. Yet the Index is published with the Wall Street Journal and has a broader readership. It covers 183 countries and ranks them by ten types of 'freedom', including 'investment freedom', measured on a score from 0 to 100. The freedoms are defined in relation to the idea that

the state should tax citizens to provide a police force, contract enforcement and common defence, and that state intervention beyond this minimum corrodes freedom (see Heritage Foundation, 2009). These rankings are the basis for the Heritage Foundation's analyses of which countries are moving ahead or falling behind in terms of economic freedom.

Another such foundation is the Bertelsmann Foundation in Germany, which owns the transnational media corporation Bertelsmann AG, and publishes an annual Transformation Index and Country Reports of 128 countries defined as 'in transition'. Here each country's market economy is measured on a scale from 1 to 10, which is used in a ranking of all countries according to management capacity and transition status. The *Institutional Investor* magazine also publishes proprietary market intelligence for investors, including evaluations and rankings of country's credit rankings. As a final example, the International Institute for Management Development (IMD) in Switzerland publishes annually the IMD World Competitiveness Yearbook. The Yearbook ranks countries according to government efficiency, infrastructure, economic performance and business efficiency.

As this brief outline of the different types of agents involved in investment climate surveillance illustrates, this architecture is composed of sets of different types of agents with different interests. These rely primarily on legitimacy accumulated over time, authoritative positions and perceived trustworthiness to make judgments about a country's economic policy and outlook. Though this is a decentralised system, some agents have more formal influence than others. Rating agencies like Moody's and S&P have their positions in credit rating formalised by the practice that credit issuers have to obtain ratings, and favourable ones at that, in order for institutional investors to be allowed to buy their bonds. For institutional investors, a downgrade to a 'junk' rating a rating agency often means that they are legally obliged to disinvest. An agent like the Heritage Foundation has no formal influence, but arguably influences informal perceptions by creating systematised and comparable indicators of 'economic freedom'.

For all these agents, their 'power' is limited by their need to continue providing what the relevant agents acting on their analyses consider accurate information and informed analyses (although the April 2010 hearings in the US Congress on credit ratings and the financial crisis brought to light how subjective and arbitrary credit ratings can be). So the point to be made here is not that these agents exercise discretionary power over the policy spaces of sovereign governments. Rather, the production of this information and its availability to investors forms a decentralised network of agents, and a comprehensive system of economic policy surveillance, that creates carrots and sticks plain to see for policy makers. Evaluations that warn against the effects of policies on investment can become self-fulfilling prophecies, since the market reads these evaluations as signals of future developments.

The Latin American Context and Bolivia's So-Called Nationalisation

The architecture of investment climate surveillance seems to increasingly structure policy spaces for governments in the Global South, including in Latin America. While the 1980s and 1990s were characterised by a strong policy orientation towards global markets through neoliberal models, often pushed through via the traditional tools of conditionality (Green, 2003), Latin American countries have during the past years to a greater extent sought more state centred policy solutions and stronger regional alliances (Keeling, 2004). A range of presidents have been elected on left-leaning platforms in what many see as a reaction to neoliberalism and the blueprint models of the Washington Consensus (Barrett et al., 2008).

Economic developments have been positive overall. External debt-to-GDP ratios have fallen significantly across the continent (IMF, 2009c), which has left governments constrained to a lesser degree than before by the conditionalities that the Bretton Woods institutions have tied to rescheduling and debt relief arrangements. Some of the new policy directions have been portrayed as a return to protectionism or 'resource nationalism' in the business press and some academic literature (Gallagher et al., 2009; Manzano and Monaldi, 2008). Venezuela, Argentina, Bolivia and other countries have used new macroeconomic conditions and high prices as opportunities to increase state participation in natural resource sectors. Yet they rely on the international market for the export of their main commodities (The Economist, 2010).

Bolivia's 'nationalisation' of gas resources appears to be one of the few non-orthodox policy initiatives on a larger scale, disregarding developments in Venezuela under Chávez. President Evo Morales announced on 1 May 2006 a presidential decree stating that all foreign companies in the gas sector would have to renegotiate their contracts with the state within six months, that the state enterprise would recover majority ownership in the sector, and that private companies would face increased tax and royalty rates. The nationalisation decree was the expected outcome of a widely popular election platform for the party Movimiento al Socialismo (MAS, Movement Towards Socialism) that had promised to overturn previous bouts of privatisation. President Gonzalo Sánchez de Lozada left office in 2003 after massive popular dissatisfaction. President Carlos Mesa (replacing Sánchez de Lozada) held a national referendum on the gas question in 2004 showing vast support for greater state involvement, and passed legislation for that purpose (Democracy Center, 2007). At the same time, Morales campaigned to take the natural resources back to state ownership and use these in ways that benefited the majority. Morales was elected with 53.7 per cent of the popular vote in December 2005, and has since carried a recall election (2008), a referendum on the new constitution (January 2009) and re-election (December 2009). Notwithstanding his success at the ballot box, Morales' tenure has been fraught with

aggressive opposition, particularly from the secessionist eastern departments.

While popular demand provided much of the push for nationalisation, the policy framework of 'actually existing' nationalisation has been to a significant extent highly shaped by Bolivia's integration in the international economic arena, particularly the need to attract investment and maintain bilateral relations (Haarstad, 2009). The Morales administration recognised that the state enterprise – Yacimientos Petrolíferos Fiscales Bolivianos (YPFB) – did not possess the capital, competence or technology to develop the sector without foreign investment. Therefore it has been a goal to balance the populist rhetoric with steps to maintain a climate for investment. The 2006 'nationalisation' did not expropriate the property of foreign companies, as previous nationalisations in Bolivia's history have done. Instead it raised the nominal tax rate on private operators to 82 per cent and offered reductions for different types of investment activity, making the effective tax rate about 50 per cent. While investors immediately after the announcement threatened to bring cases before the International Center for Settlement of Investment Disputes (ICSID, an arm of the World Bank), all 12 foreign companies in the sector eventually accepted the new terms and negotiated new contracts with the government. In turn, the new policy regime is not as radical as the label 'nationalisation' would suggest, and it is actually conservative compared to that of Norway, hardly considered 'resource nationalist', which maintains tax rates between 80 and 90 per cent (Martinez, 2007).

In the perspective of the Bolivian government, nationalisation represents an attempt to regain national sovereignty in relation to foreign investors and the international institutions, but it also represents an attempt to better utilise FDI for the benefit of the population. Morales' mantra has been that the country seeks foreign investment, but wants 'partners, not bosses'. In an interview with the author in 2007, the Finance Minister stressed that despite nationalisation, the Bolivian government aggressively seeks foreign investment and is concerned about how its investment climate is evaluated externally. "We don't have any loans or new loans and agreements", he said, "but we maintain a close relationship because we understand that many donors still trust the IMF reports. The IMF is a well-known institution, with the [Article IV] reports".[5] In 2007, however, Bolivia withdrew from the ICSID. Days before the withdrawal, Bolivia published – along with Venezuela and Nicaragua – a statement saying that they "reject the legal, diplomatic and media pressure exercised by some multinational companies" by initiating international arbitration against national states for example within the ICSID, and that the countries had decided to withdraw "in order to guarantee the sovereign right of countries to regulate foreign investment on their national territories" (ALBA-PTA, 2007).

The 'nationalisation' of the gas sector has contributed to an export boom and significantly increased the generation of state revenue. Boosted by high international commodity prices, total export receipts increased 230 per cent between 2005 and 2008,

and GDP growth in 2008 stood at 6.1 per cent. Average economic growth since the Morales administration took office (2006-2009) has been 5.2 per cent, the highest in 30 years (Weisbrot et al., 2009). This has enabled Bolivia to build up a comfortable buffer of reserves, turning one of the poorest countries in Latin America into a net external creditor in 2008. Gas sector revenue has been used by the government to fund a set of social programmes aimed at eradicating extreme poverty, including *Renta Dignidad*, a universal pension scheme for all Bolivians aged 60 and above; *Bono Juancito Pinto*, a conditional cash transfer programme aimed to reduce school drop-out; and *Bono Juana Azurduy*, a conditional cash transfer programme for pregnant women and young children. Bolivian authorities report significant positive results yielded by these programmes, including a drop in extreme poverty of 4.8 per cent in 2008, a school dropout decline from 5.2 per cent to 2.8 per cent, and a reduction in the illiteracy rate.[6] The Morales administration stresses this close link between social programmes and nationalisation. In advertising its achievements, such as the *Bono Juancito Pinto* programme and its positive results, it is stated explicitly that the programme is made possible by the nationalisation of hydrocarbons. Bolivia's nationalisation of gas is arguably one example of a non-orthodox policy that has helped generate significant positive macro-economic and poverty-reduction results.[7] Even though aspects of nationalisation have surely been problematic, given the outcomes it can reasonably be argued that the nationalisation model roughly corresponds with the country's development objective and has had positive developmental effects, at least in the short term.

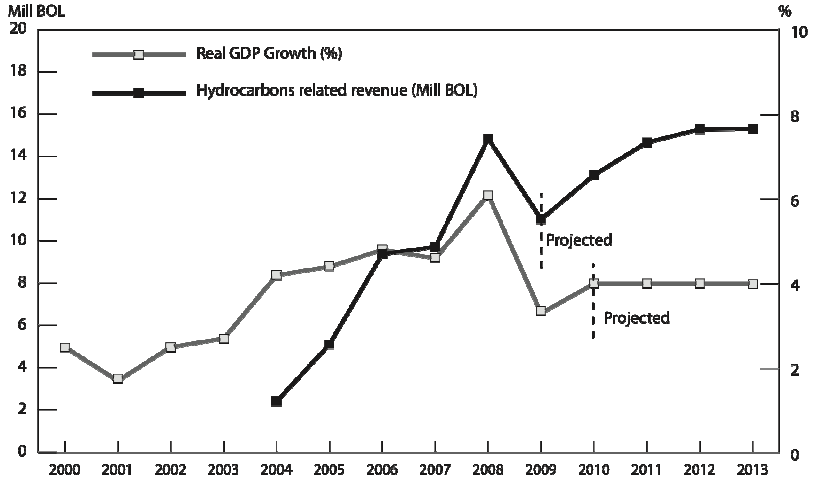

Figure 1. Bolivia GDP growth (per cent), hydrocarbons revenue (mill BOL)
Source: IMF, YPFB

Nationalisation and Surveillance Response

Surveillance response to nationalisation makes visible a significant contrast in relation to its developmental effects and the way this architecture disciplines non-orthodox policy. A couple of weeks after the Nationalisation Decree was issued, the IMF Spokesman warned against 'potentially far-reaching consequences'. In what may have been a self-fulfilling prophecy, it was said publicly that the country may lose access to foreign capital if it fails to compensate affected companies (IMF, 2006a). Though the IMF has been positive on the macroeconomic impacts of nationalisation and the social policies it helps finance, it has been highly sceptical of the nationalisation itself. The 2006 Article IV Consultation expressed unease about 'major uncertainties' for private investment and the prospect of downside risks associated with institutional changes hinging on the constitutional assembly planned by the Morales administration (IMF, 2006b, pp.17). The 2008 Article IV Consultation, written in the context of the emerging hydrocarbons boom, stresses that improving the investment climate should be a top priority for Bolivia (IMF, 2009a). The Article IV Consultation the following year echoes this, recommending to the Bolivian authorities the "benefits for private sector investment of removing expeditiously uncertainties in the legal framework, especially in hydrocarbon and mining sectors" (IMF, 2010, pp.1).

Similarly, The Heritage Foundation is highly sceptical of the nationalisation. The rating of Bolivia's 'investment freedom' stood at 90 points out of 100, a very high

grade, until the year prior to nationalisation. The evaluation had been that "few restrictions remain in effect, and those that apply to the petroleum and mining industries are minimal". In 2005 Bolivia began a rapid downward decline on this scale, "based on the increasing evidence that corruption and bureaucracy hinder foreign investment". In 2006, referring to the passing of the new Hydrocarbons law that was approved by a wide margin in a nation-wide referendum, the Foundation reported that "the legislation follows growing hostility to foreign investment by radical elements", and that taxes on oil and gas were likely to increase sharply. The 2010 Index rates Bolivia's investment freedom at 15 point out of 100, citing primarily nationalisation of hydrocarbons as the concern, as well as the possible nationalisation in other industries. In the wake of the Morales administration's nationalisation, Bolivia has dropped from a total country ranking of 50 in 2005 to 146 in 2010.

Moody's downgraded the Government of Bolivia's sovereign currency rating from B1 to B3 in April 2003, the first such downgrade since the government's first rating in 1998.[8,9] This downgrade was maintained throughout the nationalisation process, despite stable economic growth and a boom in government hydrocarbon revenue. In September 2009, when Moody's decided that Morales' position and the macroeconomic situation looked sufficiently stable, Bolivia's rating was upgraded to B2. S&P issued a statement immediately after nationalisation saying that its previous low rating already accounted for the degree of uncertainty that nationalisation highlighted, but that it judged outlooks to be negative (S&P Credit Research, 2006).

Similarly, nationalisation is a major concern for Bertelsmann in its evaluations of Bolivia's transition process. The 2008 Index held that foreign investment was threatened by "the government's traditional interventionist policies of nationalisation", which has affected the gas and oil sector in particular. The Bertelsmann analysis acknowledges that there has been a long-term social pressure for a change away from the neoliberal model, that growth rates under the neoliberal model were not high enough to trigger a substantial reduction of poverty, and that there was a structural need for greater democratic inclusion of the indigenous majority. But it also claims that the changes implemented by Morales, and particularly the nationalisation of hydrocarbons, endanger the fundamentals of market-based competition, increase the tendency towards traditional state interventionism, undermine private property rights, and represent political limitations on private companies. The Bertelsmann Status Index, a composite score (1-10) of a country's democracy and market economy, slipped from 6.3 in 2003 to 5.75 in 2008, increasing to 5.98 again in 2010 (Bertelsmann Stiftung, 2007; 2009).

The US Department of State also changed its evaluation of Bolivia's investment climate in the wake of the nationalisation. In its 2009 Investment Climate Statement, it warns potential investors against the increasing difficulty of doing business in Bolivia, and holds that all investors should take note of the legislative changes

represented by nationalisation. It stresses that Morales' move away from market-oriented economic policies and his pledge to empower the indigenous population, along with the resultant political and economic uncertainty, presents challenges for potential investors. Hence, it argues, "companies considering doing business in Bolivia should carefully weigh the advantages and risks of potential investments, conduct extensive due diligence before committing funds, and retain competent Bolivian legal and other counsel" (US Department of State, 2009). It also expresses concern for property and contractual rights, which may be subject to politically influenced enforcement and "discretionary decisions". The US government has also made use of more direct pressure mechanisms, such as those in the Andean Trade Promotion and Drug Eradication Act (ATPDEA) from 2002. The ATPDEA allowed Bolivia and three other Andean countries duty free and preferential trade treatments, subject to eligibility criteria. Bolivia's ATPDEA designation was suspended by President Bush in 2008, and this suspension was upheld by President Obama in 2009. As reasons for the suspension, the presidential decree cites the nationalisation of the hydrocarbon sector and other moves to "consolidate state control over the industry", in addition to inadequate counter-narcotics efforts.

In summary, investment climate surveillance agents reacted negatively towards the shift in Bolivia's gas policy. Nationalisation is read as a return to a traditional state interventionist and populist model that threatens the rational governance of natural resources and market-based principles. In the perspective of these analyses, state intervention and regulations are primarily burdens on private sector activity, and the broader developmental effects of nationalisation and the public revenue it generates are not considered. There is thus a considerable contrast between the investor-centred values embedded in the investment climate analysis on one hand, and the social, political and economic impacts of nationalisation on the other.

Though it is difficult to establish a causal relationship here, the tendency of the evaluations is to some extent reflected in the levels of FDI in the hydrocarbon sector. Decline in investments begins before nationalisation, but investment levels plummet to almost zero the year after nationalisation is announced. Although foreign companies renegotiated their contracts to stay in the country, investment has stalled. There are signs of a comeback in investments, but not to the levels seen before the beginning of political uncertainty surrounding the gas sector in 2003. According to the official investment plan for 2009-2015 (YPFB, 2009), foreign firms are planning to invest 3.5 billion USD in exploiting already developed reserves, which represents almost 90 per cent of planned investments in exploitation. But in the exploration, finding and developing of new reserves, foreign firms have made almost no new commitments. The only commitment in the plan is for 50 million USD from Brazil's Petrobras, which represents less than five per cent of total planned investment in exploration. Total has since committed 70 million USD for exploration (Reuters, 2010). Exploration commitments still fall far short of the 11 billion in investments that the government has called for (Oil Daily, 2009). The vast

majority of investment commitments to secure future production come from various Bolivian state owned firms.

In this way, the apprehensions of private investors have created difficulties for the Morales administration in achieving its planned development in the hydrocarbons sector, for Bolivia is dependent on heavy investments in the sector if it is to meet its contractual commitments of gas deliveries to Brazil and Argentina. Of course, no singular supranational institution can directly instruct the Bolivian government to overturn nationalisation, and the IMF has merely an advisory role. Yet the external evaluations of the country's investment climate provide diffuse yet clear incentives to water it down. Whether investment climate surveillance has a causal effect on actual investment levels is partly beside the point. The Bolivian government is aware that nationalisation is interpreted as a hostile act, and contractual partners are expected to treat it as such. It is therefore the very dissemination of investment climate evaluations, along with the particular values embedded in them, which shape these incentives and structure the reactions of potential investors and contractual partners. The expectation of particular reactions to non-orthodox policy is primarily what forms incentives for governments to act in a particular way, and it is these incentives that discipline attempts at non-orthodoxy.

At the same time, the operating companies already established in the gas sector have not fled, but instead accepted renegotiation of their contracts (Stanley, 2008). Bolivia certainly has a strong bargaining chip in its large deposit of a natural resource priced highly in the international market and the 'sunk investments' made during the decade before Morales came to power. All foreign companies in the gas sector opted to stay in Bolivia and renegotiate contracts despite warnings of a deteriorating investment climate and analyses of negative outlooks. These investors have most likely recovered their initial 'entry' investment, and have little to lose from maintaining operational activity. Bolivia and other countries with large deposits of natural resources have a degree of policy space generated from the simple fact that highly capital and technology intensive firms need these resources for their operations (which is probably why oil and gas sectors are usually the first ones nationalised).

Ideologically based regional alliances have also provided an environment in which some degree of non-orthodoxy has been accepted. Bilateral relations with Brazil and Argentina have been important to Bolivia's gas exports, which may have increased Morales' policy space somewhat. But these countries are now attempting to decrease their dependence on Bolivian gas. Brazil responded to nationalisation by cancelling planned investments in pipelines between the two countries and announcing the construction of two LNG (liquefied natural gas) terminals in the northeast. Peru and Chile are also developing their gas export capacities, which may enable them to eat into Bolivia's export markets and foreign investments. Recently Venezuela, China and the Russian Gazprom have signalled that they are willing to invest, potentially filling some the

void left by private investors.

Nationalisation was designed to generate state revenues for social spending and to satisfy popular demands for (at least symbolic) national sovereignty, while at the same time attract the necessary foreign investment. The values embedded in the architecture of investment climate surveillance arguably make these goals less compatible. The evaluations seem to place high value on political and economic stability, which is understandable from the investors' point of view. Political and economic stability is of course generally a public good, in the sense that instability undermines redistributive policy, democratic procedures and government planning. Yet for unconsolidated democracies, stability may also hide democratic deficiencies. In the case of Bolivia, and also other Latin American countries, a changing balance of power and a mobilised civil society could be seen as signs of democratic maturation (Kurtz, 2004). A longer-term perspective on investment climates might valorise such changes, as these may signal transition towards future democratic stability, but surveillance evaluations primarily adopt short-term outlooks.

The non-orthodox policy that nationalisation represents has been interpreted as an attack on investors' interests and a threat to the private sector ability to generate profit. In this particular case it can be argued that these evaluations have been off the mark; nationalisation was followed by a boom in the sector and significant economic growth, despite a drop in private investment. It can also be argued that the surveillance analyses overemphasise Morales' political rhetoric aimed at a national electoral constituency hungry for symbolic action, and fail to see the underlying social and political trends in the country that may benefit investors in the long run. However, we also see an indication of the discursive constraints on non-orthodoxy imposed by a complex set of unaccountable surveillance agents. This is much more than a problem of arbitrary ratings, and it is embedded in the structures and power relations of the global economic system itself.

Towards a Critical Theory of Investment Climate Surveillance

This article has explored and problematised what has been described as an emerging 'architecture of investment climate surveillance'. Its intended contribution is to take steps towards a critical theory of how this phenomenon delimits policy spaces for governments in the global South. It was initially asserted that investment climate agents must be seen as gatekeepers of foreign investments and capital flows, and that they have similarities with traditional conditionality arrangements in the IMF but with a more diffuse structure and far less accountability. The discourse of investment climate and the complex network of investment climate surveillance agents exercise a more dispersed form of power attached to their authoritative positions as providers of 'rational' market information. This points to the need to go beyond concepts of sovereign power and assemble this critical theory

on the basis of Foucauldian concepts of disciplinary power and governmentality. Foucault described governmentality as a type of power that operates through a complex set of instruments, institutions and knowledge that normalise particular behaviours, actions, and ways of thinking. This is echoed in the way that the investment climate discourse, circulated by a complex set of agents, embeds particular investor-centred values in development orthodoxy and limits policy spaces for non-orthodox policy.

On the basis of these preliminary theoretical reflections, the article has attempted to illustrate some of the basic mechanisms at work by examining reactions to Bolivia's nationalisation of gas. This is not just to show how reactions were negative, which is to be expected, but to illustrate the evaluative framework and show the contrast between the investor-centred values promoted by the evaluations and the developmental effects of non-orthodox policy. Broader developmental effects or underlying structural changes, which may be beneficial for a country in the long run, do not seem to be part of the evaluative framework. While Bolivian nationalisation has resulted in a significant increase in state revenue and funds for poverty reduction programmes, investment climate evaluations have been negative across the board. Investment climate evaluations are articulating the short-term interests of private investors, and reward policy models that satisfy these interests. It would be difficult to prove that investment climate surveillance has a causal effect on actual investment levels, and this article has not attempted that. Instead, the point is that it is the investment climate evaluations and the particular values embedded in them that shape incentives and structure reactions of potential investors and contractual partners. It is primarily the expectation of particular reactions to non-orthodox policy that form incentives for governments to act in a particular way.

As traditional conditionality is rethought and restructured within the IMF, World Bank or other development finance institutions, the 'gatekeeping' of investment through investment climate surveillance appears as an emerging mechanism that channels policy in particular directions. But Thomas Friedman's suggestion that there are two superpowers in the world – USA and Moody's (cited in Sinclair, 2005) – is not particularly accurate. Agents of surveillance do not exercise discretionary power over perceptions on investment climates, and these agents do not control flows of resources in a direct way. Instead, these agents are in different respects dependent on the authority, competence and trust that capital markets confer onto them, factors that grant them particular positions in the architecture of surveillance. Authoritative legitimacy can be lost if evaluations fail to provide investors with precise and relevant surveillance. This does not mean that there are sufficient checks and balances on this architecture. These agents will maintain their position to the degree to which they manage to provide intelligence that is in the interest of private international investors. Compared to the traditional conditionality system, this decentralised system of investment climate surveillance is less

subject to oversight. In fact, it is difficult to imagine this system being subject to any form of oversight and accountability at all, short of critical attention.

There are multiple directions such critical theorisation and research can take. There is clearly scope for building on the preliminary theoretical reflections here to further conceptualise the forms of power that investment climate and other types of financial surveillance takes, and the types of disciplinary mechanisms through which it operates. There is also scope for statistical and econometric work to assess correlations between quantifiable investment climate evaluations and actual levels of investment, in order measure the effects that negative evaluations have on investment levels. This can be paired with attempts to develop more precise and less ideologically based indicators of economic risk. Further, the recent downgrade of the US credit rating by S&P, along with the subsequent stock market volatility, suggests that more work needs to be done on the politicised and subjective nature of rating agencies and their evaluations. A lot of media commentary is now focused on this issue, and much of it pointing to the apparent arbitrariness of the credit ratings of S&P and Moody's. Theoretical work should take this one step further by conducting more structurally oriented analyses of the broader architecture of financial surveillance; the economic interests in which it is embedded, and its effects on spaces for non-orthodox policy.

More generally, critical debates on globalisation should pay attention to how the 'architecture of investment climate surveillance' disciplines governments in global South by promoting a discourse of 'investment climate' to create strong disincentives for non-orthodox policy. This deserves attention because investor-centred models are not necessarily overlapping with development objectives of governments in the South. Creating incentives for investors can certainly be in the interest of development – but there are also situations where higher tax rates, more interventionist government policy and episodes of political instability are necessary steps on a country's development path. It is also a challenge to democracy if agents of investment climate surveillance can narrow the policy space for governments while themselves remaining unaccountable to democratic governance structures.

Notes

[1] For background on this issue, compare IMF (2009b) with various articles published by the Bretton Woods Project (www.brettonwoodsproject.org).

[2] Previous contributions have highlighted how trade agreements delineate spaces for national level policy (Chang, 2005; Gallagher et al., 2009; Hoekman, 2004; Khan, 2007), and how finance institutions discipline this policy (Boron, 2008; Gill, 1995a).

[3] These agents do not necessarily use the term 'investment climate' explicitly, although most do. In cases where they do not, I consider them relevant if they use a cognate term or perspective.

[4] See www.doingbusiness.org, www.enterprisesurveys.org.

[5] Finance Minister Luis Arce, in interview with the author on 12 January 2007 in La Paz, Bolivia.

[6] Bolivian authorities, cited in IMF (2010).

[7] Positive economic results in the Bolivian gas sector can also be attributed to private investments made in the sector prior to nationalisation, and to the high international price of gas. I do not intend to downplay these factors here, but I focus here on the effects of policy shifts under Morales.

[8] Standard and Poor's have only two relevant ratings on Bolivia, both in 2003, so these are not drawn into the analysis here.

[9] All B ratings are considered speculative ('junk') and subject to high risk. B3 is the lowest B rating, one notch over CAA (or 'subject to very high risk'.)

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Håvard Haarstad is a post-doctoral research fellow at the Department of Geography, University of Bergen. His current research focuses on the political economy of natural resource governance in Latin America, and he is preparing an edited collection on the topic with Palgrave Macmillan. He can be reached at Havard.Haarstad@geog.uib.no