PROJECT FINANCING & POLITICAL RISK MITIGATION: THE SINGULAR CASE OF THE CHAD-CAMEROON PIPELINE

STEPHEN V. ARBOGAST*

I. INTRODUCTION

Since the great nationalizations of the 1970s, international oil companies have faced a daunting problem. The most prospective oil and gas reserves lie in developing countries with unreliable legal frameworks. Contract terms have proved vulnerable to revisions imposed by host governments once oil or gas production has started.[1] Tax and royalty rates have also been revised at governments' discretion.[2] Investment in developing countries is discouraged when the risk of government

* Executive Professor, C.T. Bauer College of Business, University of Houston. Professor Arbogast served as the Treasurer of Exxon Mobil Chemical Company from 1999-2004 and has over thirty years of experience in finance working with Exxon Corporation and Exxon Mobil Chemical. Professor Arbogast's teaching career has focused on International Finance and Project Financing. In addition to authoring over thirty case studies based on his experiences at Exxon Mobil, he has previously taught at both Fordham University's Graduate School of Business in New York and Rice University's Jesse Jones Graduate School of Management in Houston.

1. *See* DANIEL YERGIN, THE PRIZE: THE EPIC QUEST FOR OIL, MONEY & POWER 646-647, 651-652 (Free Press 1993) (1991).
2. *Id.* at 647, 649.

recourse to this *doctrine of changing circumstances* is judged to be excessive.

Major oil companies have worked with their attorneys to develop more enforceable contracts. Unfortunately their efforts have not yielded much improvement. The sovereign powers of states bent on revising contracts are potent. Even contractual agreements to resolve disputes via binding international arbitration can prove difficult to enforce. As one recent law journal article put it:

> In international law, contract terms sometimes can be only as good as the other party's willingness to observe them. Arbitration is fundamentally based on consent, and it works best when the parties continue to support it as a solution. Absent an ultimate authority with the power to exercise force in support of the rules, it is uncertain whether there can be a dispute resolution regime that provides the certainty investors would like.[3]

This absence of enforcement authority prompted some companies to seek other means to underpin contract terms. One of the few options available has been to use project financing. Under this approach both lenders and project sponsors are at risk if contract or fiscal terms are forcibly altered. Presumably lenders will then join with the sponsors to resist changes and enforce deal contracts. The most potent version of this model incorporates Multilateral Lending Agencies, especially the World Bank, into the lending group.[4] In theory, host countries will be reluctant to behave unreliably if that would jeopardize future access to financing from such agencies.

This contract risk mitigation strategy recently received an important test with the financing of the Chad-Cameroon pipeline. The financing was notable both for the World Bank's participation and for the incorporation of an innovative Revenue Management Plan ("RMP").[5] Finalization of the financing allowed an oil company consortium to commercialize oil reserves that had remained undeveloped for three decades. Institution of the RMP was intended to channel the bulk of the Chad government's new revenues into development projects and poverty alleviation. All of these elements together were intended to stabilize the consortium-government contractual relationship while shielding the country from the "curse" of misspent oil revenues.[6]

3. Emily A. Witten, *Arbitration of Venezuelan Oil Contracts: A Losing Strategy?*, 4 TEX. J. OIL GAS & ENERGY L. 56, 56 (2008-2009).

4. BENJAMIN C. ESTY & CARRIE FERMAN, THE CHAD-CAMEROON PETROLEUM DEVELOPMENT AND PIPELINE PROJECT (A) (Case 9-202-010) 5 (Harvard Business School 2006).

5. *Id.* at 8.

6. *Id.*

Events occurring during 2004–2008 led the World Bank to terminate its participation in this financing. On September 9, 2008, the World Bank (formally called the International Bank of Reconstruction and Development ("IBRD")) issued a statement saying that because Chad had failed to comply with key requirements of its agreements, the Bank had "concluded that it could not continue to support the project . . . ."[7] It conveyed these concerns to Chad during August discussions, resulting in Chad's government agreeing to repay $65.7 million in loans from the IBRD.[8]

The Bank's announcement brought swift reactions from various non-governmental organizations ("NGOs"). Long time critics of the project were quick to pronounce the Bank's involvement a woeful failure. A typical comment was this opening to a report by the Bank Information Center:

> The World Bank's request [for loan repayment] amounts to an admission of failure in one of its most controversial and disastrous projects—once touted as a "model" for high-risk projects—after the Chadian government repeatedly used its newfound oil wealth in contravention of its agreements to invest in poverty reduction.[9]

This article will explore the question of whether such a harsh verdict is warranted. The basic conclusion is more positive. The Chad-Cameroon pipeline financing played an indispensable role in allowing development of Chad's reserves. The financing would not have come together without the World Bank's participation. Chad's principal option for economic development was consequently rendered a commercial reality. Moreover, the structure of the financing, including both the World Bank's presence and the inclusion of an RMP, effectively insulated the consortium's contract terms from imposed revisions. This effective risk mitigation took place in the face of economic conditions and security threats that posed quite severe tests.

Unfortunately, the World Bank's withdrawal raises the prospect that the Bank may be reluctant to repeat the experience in other high-risk locations. Based on a careful assessment of the Chad-Cameroon case, such a position would be unwarranted. It would also contribute to a general energy supply shortage that affects not only industrial nations but many developing countries as well. The Bank's first attempt to design an RMP was indeed flawed. However, these mistakes are correctable.

7. Press Release, The World Bank, World Bank Statement on Chad Cameroon Pipeline (Sept. 9, 2008), *available at* http://go.worldbank.org/VQ3HUMMD00.

8. *Id.*

9. *World Bank Announces Withdrawal from Chad-Cameroon Pipeline after Early Repayment,* BANK INFO. CTR., Sept. 12, 2008, www.bicusa.org/en/Article.3892.aspx.

Adopting a "learn and move forward" approach would allow the Bank to employ an improved RMP in other locations.

To support these conclusions, this article begins with a short discussion of the different ways in which project financing can be used to mitigate contract political risk. This discussion will show why the involvement of entities like the World Bank is useful, even essential, in the most risky circumstances. The paper will then discuss the Chad-Cameroon case in detail and assess the contract risk mitigation benefits delivered to the project sponsors by the Bank's presence in the financing.

Next, the World Bank's conduct of the Revenue Account structure in Chad will be discussed. The article contends that very fixable problems were at the root of the Bank's difficulties with the Chadian government. The article will then conclude with specific recommendations for the conduct of a future RMP and an assessment of what this could mean for resource development projects in the highest risk locations.

II. PROJECT FINANCING AND POLITICAL RISK MITIGATION

Prior to 1973 little thought had been given to using project finance to hedge contract-political risks. Project finance was a funding technique used largely by those lacking capital to finance their projects. However, the Arab oil embargo changed this tradition.

Between 1970 and 1973, OPEC's growing economic leverage resulted in major modifications of Middle East oil fiscal regimes.[10] The 1973 Arab oil embargo then demonstrated that the Cartel held all the cards in a tight crude oil market. In the three years that followed, all of the international oil firms' concession agreements were swept away by nationalization.

The major international companies then faced the daunting task of replacing their lost oil reserves. A partial replacement was accomplished on the Alaskan North Slope and in the North Sea.[11] Fiscal regimes in such places enjoyed stronger legal protections and could be considered reasonably stable. However, the firms knew that there was no alternative for the longer term but to find new reserves in emerging market countries. This posed an inescapable problem: what could prevent the *doctrine of changing circumstances* from being applied to contracts in countries like Malaysia, Indonesia, or Nigeria as it had been in Libya, Iran, and Saudi Arabia?

It was in this environment that the major oil companies first thought about using project financing as a contract risk mitigation technique. Ironically it was Exxon, the firm most likely to dismiss project financing as nothing more than high-cost borrowing, which led the way. Exxon had

10. YERGIN, *supra* note 1, at 646.
11. *Id.* at 665-671.

new discoveries in Malaysia; it was interested in ensuring that the tax arrangements under which these fields were developed would remain unchanged once production began.

Exxon was aware of two ways in which project finance could be helpful. The first was fairly straightforward—*stake reduction*. Since a project finance loan typically turns non-recourse to the owner once a project is completed, an owner employing project finance limits its own investment capital at risk. A simple example makes the point. Assume that a project will cost its sponsor $1 billion; if the sponsor finances the project with corporate funds, it puts $1 billion at risk. However, if the sponsor arranges 60% project financing ($600 million) that turns non-recourse after completion, the sponsor's value at risk drops to $400 million.

Stake reduction obviously meant that a company would have much less to lose from catastrophic events like expropriation. It can also be valuable in terms of underpinning the negotiating tactics of a company being pressured for contract concessions. With less to lose, companies can more credibly threaten to use all available remedies—thereby gaining bargaining power.

Potentially more interesting was *deterrence*, the second type of assistance project finance can render. Stake reduction is essentially about loss limitation. It does relatively little to stop host governments from ripping up agreements and unilaterally imposing new terms. If project financing could somehow deter host governments from such actions, its use could deliver real value.

The theory of deterrence associated with project financing involves putting strategic lenders at risk. Using this approach, a private firm would arrange project financing with banks that are also important lenders to the host government. Assuming the financing works as planned, the host government will be reluctant to act in a way that might damage lenders that it might need in the future. Extra-contractual behavior would be deterred and stable deal terms would be preserved.

Much later, a third way to use project financing for risk mitigation would emerge. This approach is known as *terms clarification*. Project sponsors came to value the way in which the project finance deal process clarifies and documents terms with host governments. Lenders to projects lack the same economic upside as project sponsors. Timely payment of loan interest and principal is their primary concern. Moreover, since interest margins are thin, relatively small repayment shortfalls can wreck a lender's deal economics. Consequently, lenders tend to be firmer than sponsors in insisting that host governments spell out commitments and clarify contingencies. These clarified terms then make their way into contract documents governed by New York or United Kingdom law.

Often there is a substantial overlap between what lenders identify as credit issues and what sponsors see as political risks. Astute sponsors found that lenders would often spot credit issues which host governments wanted to leave ambiguous; the deal process would then result in useful clarifications.

When Exxon contemplated involvement in Malaysia in 1978, terms clarification was not yet on the radar screen. Exxon was interested in seeing if having project financing in place might deter Malaysia from raising petroleum tax rates. Project finance as deal-term risk mitigation was about to get its first big test.

III. ESSO PRODUCTION MALAYSIA I & II

Exxon's conceptual design of the Esso Production Malaysia Inc. ("EPMI") financing was quite simple: guarantee lenders against all risks except for fiscal terms being altered by the Malaysian government.[12]

Considerable technical skill was required, however, to implement this simple approach. Only a carefully-calibrated amount of cash flow could be pledged to the lenders. Too much pledged revenue would leave the government room to raise taxes without impacting the lenders. Too little might trigger defaults in response to minor technicalities and tax audits. The deal's financial advisors ran cases and simulations to fine-tune the amount pledged to the scenario where Malaysia altered fiscal terms.

On top of the fine-tuning, a lending group was assembled that presumably would be of strategic importance to the Malaysian government. First, the three biggest project finance banks, J.P. Morgan, Citibank, and Chase, were brought in to lead the financing. All three were giants in the U.S. and London syndicated loan markets. All were leaders in the extensive private bank financings of sovereign borrowers that then were commonplace. All were eager to participate and to test a new project-financing rationale. Beneath the lead group, Malaysia's three largest commercial banks were the next biggest lenders. Adding these banks to the biggest international lenders would, it was hoped, create a loan syndicate which Malaysia's government would be reluctant to damage. Should worst come to worst, the international and the Malaysian banks were expected to employ their offices to counsel the government. The presumption was that the banks would press Malaysia diplomatically to reverse actions that would result in the lenders having non-performing loans.

12. All discussions of EPMI deals are based upon the author's personal recollections of the deal and conversations with Exxon personnel who executed the transactions.

Exxon liked the approach enough to put two loans with such designs in place. EPMI I was completed in late 1978 with EPMI II, covering different fields, following within 18 months.

The test was not long in coming. Oil prices soared in 1979-80 in response to the Iranian Revolution. What had seemed a reasonable deal to the Malaysian government only months before now looked overly generous to the oil companies. Exxon quickly found itself confronting demands for revisions in fiscal terms. The not-so-subtle message between the lines was that Exxon might find the new terms imposed if it did not go along with the request.

The fact that Malaysia made such demands constituted a form of failure. Deterrence was generally understood to mean discouraging such host government demands; this obviously had not happened. Still, it remained to be seen what Malaysia would do when confronted with protests by its banks. The loan syndicate was advised of the government's demands and their impact on cash flow available for debt service. The question then became what would the banks do?

A muddle resulted. The syndicate leaders sent senior executives to talk with the Malaysian authorities. What eventually emerged was that the bank executives focused on protecting their loans rather than Exxon's deal terms. Through conversations and clarifications, it became clear that the final version of the Malaysian tax increases would not cause the loans to become non-performing. As a result, the bank lenders, due to their eagerness to preserve good relations and future deals with Malaysia, retired to the sidelines.

Exxon evaluated this result to be inconclusive at best. Its Malaysian taxes did increase. More importantly though, the principle of preserving deal terms from unilateral alteration had not been sustained. Considering the benefits meager and the loan costs too high, Exxon pre-paid the EPMI loans in the early 1980s.

With the benefit of hindsight, these conclusions may have been overly severe. It can be argued that the EPMI financings set a ceiling on fiscal changes, i.e. no more than the amount that would cause loans to fail. Moreover, it is not clear that Malaysia's authorities fully understood the workings of the financings. Politicians and bureaucrats turned over; different ministries got involved between the deal's conception and the testing point. Once the banks visited senior ministers, the government better understood the interaction between its actions and the loan's solvency. After this initial revision, Malaysia's fiscal terms remained stable. Whether this was a function of what happened on EPMI I and II can be debated, but it may have been a contributing factor.

Exxon's negative assessment helped put its Upstream division's political risk project financing on the shelf for the next decade. Project financing continued to be used in other parts of the business (e.g. Power) and for other financial reasons. However, the idea of using project financing to protect upstream deal terms fell somewhat into disfavor. Then, in the early 1990s, a uniquely challenging project arose that caused reconsideration and resurrection of the technique.

IV. THE SINGULAR CHALLENGE OF THE CHAD-CAMEROON PIPELINE

A. Oil in Chad

Conoco discovered oil in southern Chad in 1973.[13] The discovery would sit in the ground for the next three decades.

Chad confronted a western oil consortium with a unique set of political and location risks. After gaining its independence from France in 1960, Chad was engulfed in civil wars for the next 30 years. Its northern and eastern borders with Libya and the Sudan were chronically unstable. Some measure of political stability followed the 1990 coup that put General Idriss Deby, a French-trained army officer, in power. Despite periodic uprisings and frequent human rights criticism from international watchdog groups, Deby remains president of the country to the present day.

Lacking rainfall and arable land, Chad is sparsely populated. The population totals only nine million.[14] GDP barely topped $4 billion in 2005, yielding per capita income slightly over $300; this puts Chad 173rd out of 177 countries in the UN's Human Development Index.[15] Export revenues totaled only $200 million in 2002, 50% of which was from cotton.[16] Infrastructure is limited near the capital of N'Djamena and largely non-existent elsewhere. As of 2002 only 166 miles of paved roads and no railroads existed in Chad, a country three times the size of France.[17] Clearly Chad's need for development funds was almost limitless. The consortium was concerned that a project whose annual cash flow would exceed the entire government budget was likely to become a target of opportunity for the host government's future revenue needs.

However, Chad's poverty and political instability were not the most serious difficulties facing western oil companies. Their biggest concern involved the logistics of getting Chad's oil to international markets. With

13. CTR. FOR ENERGY ECON., THE UNIV. OF TEX. AT AUSTIN, CHAD-CAMEROON OIL PIPELINE CASE STUDY 2 (2004), http://www.beg.utexas.edu/energyecon/new-era/case_studies/Chad_Cameroon_Pipeline.pdf [hereinafter CEE CASE STUDY].

14. MARIE FRANÇOIS MARIE-NELLY, CHAD CAMEROON PETROLEUM PROJECT BRIEFING TO PARLIAMENTARIANS 3 (2006), http://siteresources.worldbank.org/EXTPARLIAMENTARIANS/Resources/Chad_briefing_PPT.pdf.

15. *Id.*

16. CEE CASE STUDY, *supra* note 13, at 1.

17. ESTY & FERMAN, *supra* note 4, at 5.

little in the way of domestic demand, exporting Chad's oil was the only option.

Given its unstable northern and eastern borders, Chad's oil would have to go southwest to Africa's Atlantic coast. One route lay through Nigeria—itself an oil exporter unlikely to be keen about accommodating a new competitor. Nigeria's own civil unrest, focused in its southern oil producing region, gave the oil companies further reason to reject this option. This left Cameroon as the alternative route. Cameroon was a small oil exporter with a basic oil-handling infrastructure; it also was not an OPEC member. A 670-mile pipeline from southern Chad through Cameroon could get Chad's oil into world markets.

Unfortunately, Cameroon presented its own problems. While the country possessed a larger and more diversified economy than Chad's, Cameroon still ranked 148th out of 177 countries on the UN's Human Development Index.[18] More worrisome, it also ranked 99th out of 99 countries in terms of corruption as measured by the NGO Transparency International.[19] Western oil firms looked at the map and saw visions of Cameroon's government holding the pipeline hostage to extract revised transit fees or tariffs once the oil had started to flow. How could the western firms ensure that some law other than the law of the jungle would govern once the firms had spent their capital developing Chad's reserves?

More than a few oil firms came to the conclusion that this was a hopeless task. The original consortium was composed of Conoco (12.5% and operator), Shell (37.5%), Exxon (25%), and Chevron (25%).[20] This group suspended activity in 1981 due to the escalating civil war in Chad.[21] A new exploration convention was signed between Chad and a restructured consortium in 1988.[22] Conoco withdrew, and Exxon took over as operator. Chevron then sold its interest to Elf-Aquitaine. More oil was discovered, bringing proved and probable reserves to just short of one billion barrels. A final consortium restructuring occurred in 1999, when Shell and Elf-Aquitaine withdrew in favor of Chevron (35%) and Petronas (25%)—the state oil company of Malaysia. Exxon remained the operator with a 40% project stake.[23]

18. MARIE-NELLY, *supra* note 14, at 4.
19. ESTY & FERMAN, *supra* note 4, at 8.
20. CEE CASE STUDY, *supra* note 13, at 2.
21. *Id.*
22. *Id.*
23. *Id.* at 2-3.

B. The Consortium Turns to Project Finance

With almost one billion oil barrels of what the industry would call *static reserves*, the consortium had strong incentives to find some way to commercialize Chad's oil.[24] For one thing, the international majors were facing a growing problem of how to increase oil production. With North Slope and North Sea production declining, this challenge became acute early in the 1990s. Where would the new barrels come from to keep the Upstream, the international majors' profit engine, going strong? Starting around 1993, Exxon Company International, the Exxon regional firm with oversight responsibility for Chad, took the lead on work to commercialize Chad's reserves.[25]

The consortium quickly came to one conclusion—the Chad-Cameroon pipeline would have to be project-financed. This did not represent some sudden oil industry funding crisis. Rather, it represented a decision that substantial risk mitigation would be necessary to offset Chad-Cameroon's special hazards.

To secure that protection, the consortium turned back to project financing and the deterrence concept. It seems surprising that Exxon would lead such an effort given that firm's negative assessment of the Malaysian experience. Lacking other options, however, Exxon decided to give Upstream project finance another try and to improve the chances of success with an important refinement.

This new approach involved persuading Multilateral Agencies ("MLAs") like the World Bank to participate in financing the project. The concept was to employ a new set of lenders that Chad and Cameroon would be highly reluctant to offend. Malaysia had taught Exxon that commercial banks would pull their punch when confronting a host government. To obtain better results this time, the consortium sought the involvement of lenders whose unique status would ensure that Chad and Cameroon would tread carefully.

Involving the World Bank was the lynchpin of this strategy. The Bank has a unique status in the developing world, particularly in its role as a development lender. Its charter calls for the Bank to fight poverty in the poorest of countries.[26] As a result, the Bank will look at projects in the most daunting locations. That makes the World Bank a source of precious development funds, in good times and bad, for places like Chad and Cameroon. The Bank had been active in both countries since their

24. Based on author's knowledge of Exxon's approach to static reserves commercialization.
25. Based on author's knowledge of Exxon's organization and persons responsible for Chad.
26. ESTY & FERMAN, *supra* note 4, at 5.

independence, and programs focused on economic reforms and development had some noteworthy successes in Cameroon after 1990.[27]

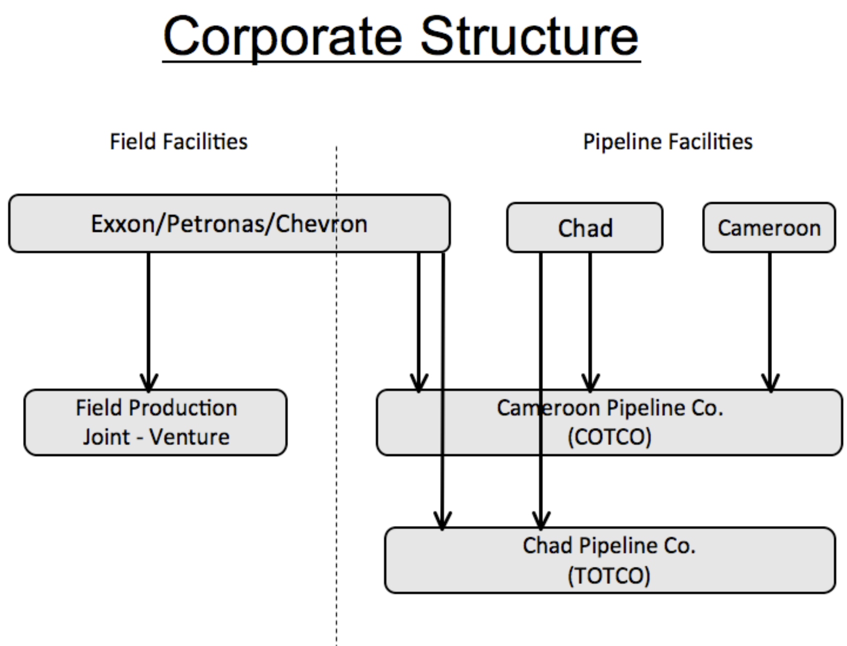
A second strategic benefit of the Bank's involvement is the Bank's close relationship with the International Monetary Fund ("IMF"). Developing countries count on the IMF to be their lender of last resort when financial crises strike. Mistreating the IMF's sister institution is tantamount to jeopardizing access to your lifeline in the next storm. Together these factors produced an important historical record. Few countries ever defaulted on loans from the World Bank. This record endowed the Bank with a kind of *halo effect*. Commercial financial institutions like to lend within the Bank's safety umbrella, and recipient countries know that not to pay the Bank would lead to instant international pariah status.

To round out the deterrence strategy, the consortium also sought to involve other Multilateral and Export Credit ("ECA") lenders important to the two host countries. Ultimately the European Investment Bank ("EIB"), the United States Export-Import Bank, and the French Export Credit Agency, CoFace, joined the lending group. The World Bank lent both directly and through its private sector arm, the International Finance Corporation ("IFC").[28]

The following analysis describes how the project's financing structure was organized. The project was divided into field production and the pipeline. Field production was budgeted to cost over $1.5 billion while the full pipeline was expected to cost $2.2 billion.[29] Exxon, Chevron, and Petronas formed an undivided joint interest, a type of unincorporated joint venture commonly used for upstream operations, to own and operate the production segment.[30] Two corporations were formed to own the pipeline: Chad Pipeline Company ("TOTCO") to own the Chad segment and Cameroon Pipeline Company ("COTCO") for the remaining line.[31] The governments of Chad and Cameroon held equity stakes in their respective pipeline companies, with Chad also having a stake in COTCO.[32]

27. *Id.*
28. CEE CASE STUDY, *supra* note 13, at 5-7.
29. *Id.* at 4-5.
30. *Id.*
31. *Id.*
32. *Id.*

The following diagram illustrates the project's ownership structure:

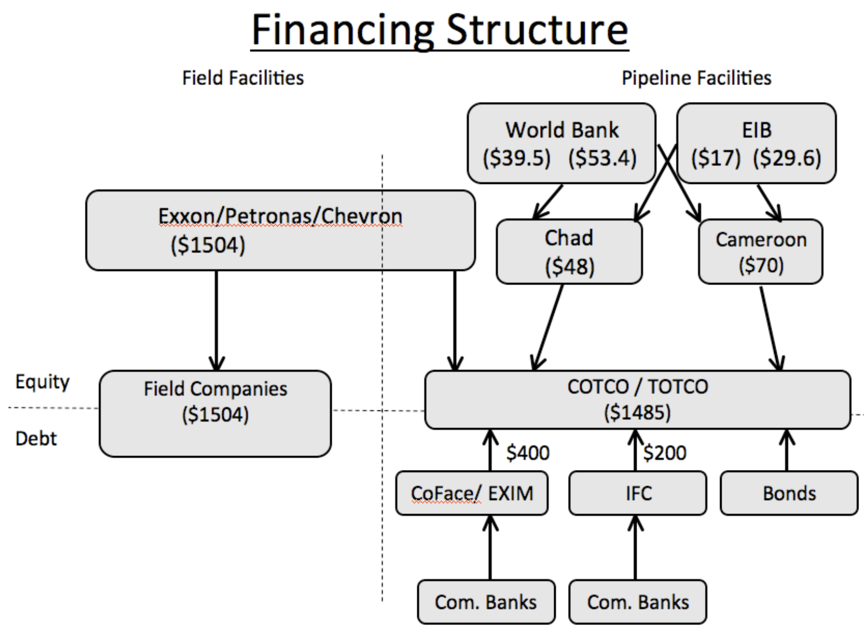


The financing's deterrence strategy became more visible when the project loans were laid atop this structure.[33] The overall financial structure and funding sources were as follows:[34]

Segment	$ Million Amount	Type	Source
Field Production	$1,504	Equity	Private Sponsors
Pipeline	$1,485	Equity & Sponsor loans	Private Sponsors
	$48	Equity	Chad Government
	$70	Equity	Cameroon Government
	$400	Debt	ECAs/Banks
	$200	Debt	IFC Loan
Total	$3,727		

33. *Id.* at 5-6.
34. *See id.*

The following diagram presents this structure in diagrammatic form:



The approach concentrated the project financing within the logistics choke point, which was the pipeline. Note how the World Bank and its agency, the IFC, are strategically located relative to the pipeline and how the exposures of the ECAs are placed in this same segment. The pipeline was also the segment where the host governments directly participated in the project. Chad and Cameroon requested and received equity stakes in the pipeline; the consortium acceded to their request, seeing this as a way to promote adoption of a more commercial perspective. Then the World Bank and the EIB participated by lending Chad and Cameroon the funds needed to finance their pipeline equity positions as follows:[35]

$ Million	Chad	Cameroon	Total
World Bank	$39.5	$53.4	$92.9
EIB	$17.0	$29.6	$46.6
Total	$56.5	$83.0	$139.5

Crafting and closing this financing proved harder and more expensive than the consortium had anticipated. Initial contacts were made around 1993. Serious work involving the Bank and the sponsors started in 1995.

35. *Id.* (Loan amounts to Chad and Cameroon do not match equity positions in the pipeline due to deal expenses and miscellaneous items.)

After consultations with 45 scientists and environmental engineers, 145 meetings with 250 NGOs, 900 village meetings, and project-related studies and reports that culminated in a 3,000-page environmental assessment, financing was closed in mid-2000.[36]

With the close of financing, the consortium could take comfort in two facts: (1) both Chad and Cameroon were invested in the project, and (2) both were indebted to their most important development lenders. However, as a condition of its agreement to participate, the World Bank had sought one more element: a Revenue Management Plan. This innovation later proved to be a source of acute friction between Chad and the Bank; it also would turn out to be the factor that provided the private sponsors with their greatest source of political insulation.

C. The Revenue Management Plan

As it contemplated supporting the project, the World Bank became concerned about the effect a sudden increase in wealth might have on Chad and its government. Other resource-rich countries had already shown what consequences new wealth could bring. This "oil curse" had, for example, brought intensified corruption, internal political struggle, regional discontent, and environmental degradation to Nigeria.[37] Conditions there had deteriorated to the point where oil production was shut down in much of the Niger delta because of kidnapping and violent crime.[38]

The project's financial projections forecasted a considerable revenue boom for Chad. The government's total income typically ran in the neighborhood of $200 million annually.[39] Now Chad was projected to receive $1.8 billion in royalties, income taxes, and dividends over the life of the project.[40] In addition, it would receive $25 million upfront from Chevron and Petronas related to their decisions to buy into the project.[41] Looking at this step-change in government revenue, the World Bank foresaw both an intensified risk of funds misappropriation and bolder attempts by various factions to take control of the government.

To counteract these risks, the Bank conditioned its participation on establishing a Revenue Management Plan. This plan would operate under the Bank's stewardship. Under the plan, Chad's government would receive income taxes as paid and would, within broad limits, have

36. ESTY & FERMAN, *supra* note 4, at 7.
37. *Id.* at 9.
38. *See* Reuters, *French Oil Company Shuts Down in Turbulent Nigerian Delta*, N.Y. TIMES, Mar. 23, 2003, at A15.
39. *See* ESTY & FERMAN, *supra* note 4, at 19.
40. *Id.* at 8.
41. *Id.*

discretion over how such funds were spent. However, all government revenues from royalties and dividends were to be deposited in a Special Petroleum Revenue Account ("SPRA") located at a bank outside of Chad. Based on the project's economic projections, these latter funds constituted 84% of expected government revenues, or $1.5 billion. Once received, these revenues were to be redistributed as follows:

- 10% would remain deposited in international bank accounts outside of Chad and constitute a reserve to finance development projects for future generations (Future Generations Fund projected $150 million)
- 76.5% would be deposited in Chadian commercial banks and used to finance approved contemporary development programs (projected $1.15 billion)
- 13.5% would fund the government's budget and programs in the Doba oil producing region (projected $200 million)[42]

To ensure that these understandings were followed, the Bank and Chad also agreed on the following review and approval procedures:

- A nine-member Oversight Committee would be appointed to review the government's detailed expenditure program. The government would choose seven of its members, with the remaining two coming from an international NGO and a Chadian labor union. Each member would serve for a term of three to five years.
- The World Bank and the Chad government would then review and approve the program referred to it by the Oversight Committee.
- The Oversight Committee then would publish an annual review of operations, which would be subject to an external audit.
- Chad's legal obligations to implement these procedures were documented in the IBRD and EIB loan agreements, which are governed by international law.
- The World Bank explicitly linked its willingness to make future development loans to Chad's performance implementing the RMP.[43]

As an indication of good faith, the Chad government implemented a series of development-oriented reforms in 1998. These reforms included: (1) cutting the size of the army in half; (2) privatizing most state enterprises; and (3) increasing government development spending.[44]

42. *Id.*; CEE CASE STUDY, *supra* note 13, at 10.
43. ESTY & FERMAN, *supra* note 4, at 8.
44. *Id.* at 8.

Encouraged by these measures, the World Bank's board signed off on participating in the deal in June 2000.

The consortium might have regarded the RMP as an unnecessary complication foisted on the deal by the Bank. Upon closer examination, however, company executives could see that the RMP might bring additional protective elements to the deal. For starters, incorporating the RMP into the deal helped address strong opposition to the project in the NGO community. Moreover, if the RMP worked as planned, Chad might be spared the wasteful and/or divisive spending patterns that had produced such sad results elsewhere. Potentially, the consortium might look forward to being able to produce oil for 20 years without having its staff shot at or kidnapped.

More specific to the deterrence strategy, having an RMP might cause the Bank to be even more proactive in protecting the integrity of the deal terms. With the implementation of the RMP, the World Bank put a major stake in the ground—an innovation it had pioneered and which it hoped would serve as a model for resource projects in other places. The Bank could thus be expected to supervise the RMP's operations vigorously. The consortium might not have to worry about a repeat of the tepid protest performance given by the commercial banks in Malaysia. The World Bank's considerable prestige was fully committed to the RMP as evidenced by its decision to explicitly link satisfactory performance to the Bank's continued lending to Chad.

From the beginning of negotiations, the Bank's participation was subjected to scrutiny and criticism. Illustrative of these critiques are the following:

> The World Bank's involvement . . . sets a disturbing precedent of public support for oil development which experience and analysis show has detrimental social and environmental impacts with few development benefits . . . .[45]

> While the law itself represents a remarkable breakthrough in linking private investment, development and human rights, it has little chance of succeeding . . . . According to one high ranking diplomat in Chad, the authorities understood that the law was necessary for the World Bank support, but have little intention of allowing it to affect local practice.[46]

Within the Bank, attitudes were more hopeful. As one Vice President commented, "If it succeeds, wouldn't that be wonderful for a story to be written 20 years from now . . . that the World Bank stood up, did its

45. *Id.* at 9.
46. *Id.* at 10.

homework, [and] supported something that made a tremendous difference in Africa?"[47]

Once the financing came together, the project gathered momentum. By 2003 the pipeline was finished, and the first oil production started to flow. Full production was reached in 2004 as expected. Meanwhile, oil prices began to firm to levels well beyond those used in the project's financial projections.[48] The financing's deterrence strategy was about to be tested right out of the box.

D. Oil Flows—Chad and the World Bank are Unprepared

Arguably, the World Bank's RMP was both daring and innovative. Considerable care had gone into its design, and consultations with Chad had been extensive. The Bank got most of the terms it desired. The majority of Chad's projected revenues would pass through the RMP.[49] The Bank would have the right to approve annual expenditures.[50] Two non-governmental watchdogs would sit on the Oversight Committee ready to blow the whistle.[51] An annual external audit would scrutinize Chad's operating performance.[52]

Upon closer examination however, some design flaws could be glimpsed. For one thing, the RMP was long on oversight but short on providing the Bank with leverage to enforce terms. In a critical concession, the Bank agreed that RMP funds would repatriate to Chad and reside in local commercial banks.[53] It also did not have the ability to prevent repatriation of the Future Generations funds. This surrendered a crucial position of strength—the ability to escrow all RMP funds in international banks to enforce strict observance of the deal's terms. Once funds were repatriated to Chad, they would effectively be at the government's disposal; if push came to shove, troops with sub-machine guns might arrive on the local banks' doorsteps to make a withdrawal.

A second design flaw concerned the possible occurrence of a revenue windfall. The RMP's spending allocations were carefully calibrated based upon the project's financial projections. What if those projections turned out to be grossly understated? In such a case, huge cash reserves might pile up in escrow, far outstripping the country's ability to generate qualified projects to soak up the funds. This would hand the government

47. *Id.* at 11.
48. *Id.* at 4, 15.
49. ESTY & FERMAN, *supra* note 4, at 8.
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*

a grievance, and a pretext, for challenging the RMP as unfairly denying the country its proper share of the project's bounty.

These design flaws would be exacerbated by a major weakness on the project execution front. Chad, it turned out, was woefully unprepared to generate, let alone execute, a major increase in development projects. To do so required a ready cadre of planners, engineers, contractors, and procurement personnel. Chad had few of these resources, and those that existed were already fully-employed. In addition, no local authority existed to receive funds intended for Doba regional projects.[54] Little was done to address these concerns in advance of the pipeline starting up. The World Bank had only a small staff in country before the oil production came on stream. Only after production began did the Bank announce plans to send more staff to ensure that the money flowing back to the government would be used in the most efficient way.

These Bank efforts were largely supervisory in nature. One took the form of an "External Compliance Monitoring Group" that monitored Chad's implementation of its "Environmental Management Plan" associated with the oil production and transport.[55] The second Bank effort was an "International Advisory Group" whose purpose was to advise the Bank and the two governments "whether the broad objectives of the pipeline project [were] being achieved."[56]

More than two years after production began, the Bank could point to only two small projects it had underway: one to help Chad manage its petroleum sector and a second to mitigate project impacts around Doba. When asked in March 2007 whether the pipeline project had resulted in any benefits for the population, the Bank's answer stressed money-transferred rather than results-realized:

> The oil project has resulted in a substantial increase in the revenue flowing to the sectors that can help improve the lives of ordinary Chadians—including schools, health clinics, safe water and roads. As of the end of 2006, over $440 million was transferred to government to be allocated to these development priorities. However, with oil flowing less than four years, it is safe to say that the greatest benefits for the population are not yet realized.[57]

E. Revenues Surge and Conflict over the RMP Erupts

An oil price windfall unleashed a perfect storm that engulfed the RMP almost immediately. The RMP had been designed on the basis of crude

54. CEE CASE STUDY, *supra* note 13, at 12.
55. MARIE-NELLY, *supra* note 14, at 10.
56. *Id*.
57. The World Bank, Chad-Cameroon Pipeline Project Frequently Asked Questions, http://go.worldbank.org/IQKYM82KG0 (last visited Apr. 28, 2009).

prices estimated to range from $14-18 over 20 years.[58] For the years 2004-07, prices of $14.29-14.94 were used.[59] For comparison sake, actual crude prices turned out to be:[60]

$/Barrel	2004	2005	2006	2007
U.S. Domestic Crude Oil, Annual Average	37.66	50.04	58.30	64.20
Chad Project Price Bases	14.29	14.64	14.78	14.94
Differential	23.37	35.40	43.52	49.26

Despite some differences stemming from oil quality and logistics, this data clearly indicates a major revenue windfall for the Chad government. The World Bank's own figures after one year of pipeline operations show transfers to Chad's accounts in excess of $300 million.[61] Putting this in perspective, Chad revenue entitlements after one year equaled approximately 19% of all the country expected to receive over the whole life of the project.[62]

The combination of a revenue windfall and very limited project development capabilities produced a surge of cash piling up in the revenue accounts. By the middle of 2004 it was obvious to the World Bank that problems could be brewing. Feelers were put out to the private consortium asking it to help Chad generate development projects, yet these requests were politely declined. The private companies felt that helping generate projects was the Bank's mandate and was a major reason they had brought the Bank into the deal.

Meanwhile, the Deby government was getting more frustrated with the way the RMP was functioning. From its perspective, "their money" was sitting idle. The fact that the problem was partially rooted in the government's inability and unwillingness to perform did not lessen its frustration. Deby's government was also increasingly worried about security issues. Now that the pipeline was operating and prices were up, incentives were high for regime opponents to act. Chad had cut its army by 50% in 1998 as part of an arrangement to bring the Bank on board.[63] Now Chad felt pressure to rearm. Events in neighboring Darfur signaled

58. ESTY & FERMAN, *supra* note 4, at 15 (showing Exhibit 4a).
59. *Id.*
60. *Id.*; InflationData.com, Historic Crude Oil Prices (Table), http://inflationdata.com/inflation/inflation_Rate/Historical_Oil_Prices_Table.asp (last visited Apr. 28, 2009).
61. MARIE-NELLY, *supra* note 14, at 18.
62. *See id.* This figure is derived from the sum of transfers to Chad of $307 million, transfers of $36 million to Fund for Future, as well as Esty's estimate of $1.8 billion for total project revenues for Chad. *Id.*; ESTY & FERMAN, *supra* note 4, at 16.
63. ESTY & FERMAN, *supra* note 4, at 8.

that threatening forces were close at hand. Deby had used much of the $25 million Chevron/Petronas payment for arms purchases but saw this as only a beginning. He began to press the private consortium to revise deal terms and the Bank to release more funds for security spending.

Matters came to a head in December 2005. Deby orchestrated a new law that unilaterally revised the RMP system. Key features of this law included:

- elimination of the Fund for Future Generations;
- rebalancing the allocation of oil revenues, with general budget to claim 30% and the Priority Sector (development projects in designated areas like health) reduced to 65%;
- adding security, justice, and territorial administration to the Priority Sector; and
- allowing future modification of the Priority Sector by decree.[64]

Not without reason, local and NGO watchdogs saw this to be a wholesale rewrite of the RMP. No project revenues would henceforth be escrowed for the future; most could be spent on arms; and the government could make further changes as it went along. In response, the World Bank suspended all lending to Chad.[65] Under the terms of the loan agreements, this act also froze cash transfers from the offshore escrow accounts to the government's accounts at Chad's commercial banks. Chad reacted by threatening to halt oil production, and a tense standoff ensued.

The World Bank then initiated an energetic diplomatic campaign to persuade Chad to step back. At one point, Kofi Anan was enlisted to intervene with Deby on the Bank's behalf. These efforts resulted in a rapprochement of sorts. In July 2006 a new Memorandum of Understanding ("MOU") restored the Bank's lending program to Chad and the functioning of the RMP.[66]

Under this agreement, Chad's government agreed to allocate 70% of all revenues, oil and non-oil, to poverty-related spending.[67] This agreement in principle was to be implemented via new legislation defining a revised national poverty reduction strategy. A fund to stabilize government revenues in future low-price environments was restored. Chad also agreed to strengthen some aspects of the independent oversight commission.[68] Deby's government did win significantly more latitude to use oil revenues for security spending. Close observers of the Bank noted that the arrangement rested on the good faith compliance of

64. MARIE-NELLY, *supra* note 14, at 13.
65. *Id.* at 14.
66. *Id.* at 15.
67. *Id.* at 15.
68. *Id.* at 15.

Deby's regime, which had already shown its willingness to resort to unilateral pressure tactics.

F. Rebels Attack and the RMP Comes Apart

Conditions surrounding the pipeline project and the RMP stabilized somewhat in 2007. The Bank added staff in-country, and momentum accelerated on development projects, including specific ventures in the Doba oil field region. Oil prices continued their upward march, yet the Bank-Chad MOU held, as did terms between the country and the Exxon-led consortium. Chad indicated it wanted its state oil company, SHT, to join the private consortium but did not force the issue. There were no systematic government attacks on the RMP. NGO watchdogs focused on an oil spill off the shores of Cameroon and on specific instances where development efforts were falling short of expectations.

Conditions changed dramatically in February 2008. Several thousand rebels drove jeeps and trucks across the desert from the Sudan border and attacked Chad's capital, N'Djamena. They reached the gates of Deby's palace before being held back. French forces near the capital initially stayed neutral before assisting the government in repulsing the assault. Some 250 people died in days of confused street fighting. Western firms and the Bank evacuated their personnel. Prominent civilian critics of the government were arrested or fled the country.[69]

Within the month, Deby unilaterally dismantled the RMP.[70] Acting under a State of Emergency imposed after the rebel attack, Deby signed a measure allowing him to approve the government's budget by decree. This act effectively eliminated the requirement for approval by the independent oversight committee and the Bank itself.[71]

Another suspension of Bank lending to Chad ensued. This time, however, there was no freezing of Chad's oil revenues in the offshore accounts. The Bank had effectively surrendered this lever under the 2006 agreement that re-classified most oil revenues into the "General Development" category—which was largely unrestricted and automatically repatriated to Chad.[72]

Conditions eventually stabilized in Chad and discussions among the Bank and the country resumed. The Bank demanded a complete reinstatement of the terms from before the rebel attack. Chad would not agree. The Bank now had a new president, as Paul Wolfowitz, architect of a tough Bank position on corruption, had stepped down in favor of

69. *Chad Decrees Avoid World Bank Controls—Analysis*, REUTERS, Feb. 28, 2008, http://www.reuters.com/article/latestCrisis/idUSL28883018.
70. *Id.*
71. *Id.*
72. MARIE-NELLY, *supra* note 14, at 15.

Robert Zoellick. Senior staffers began to persuade Zoellick that fighting for the RMP was damaging the Bank's reputation, distracting it from other priorities, and making it appear ineffectual. Convinced, Zoellick authorized negotiators to press Chad to repay its Bank loans early. This happened in late August 2008, and the Bank announced its withdrawal from the financing early the next month. Not referenced in the Bank's press release was the fact that the IFC's loans to the pipeline remained in place.[73]

Ironically, the Bank's actions coincided with a crash of the high oil prices that had put so much pressure on the RMP. The Bank was careful to leave the door open to Chad for further discussions. These discussions continue to the present, and reports indicate that agreement is possible on a restored Bank program for Chad. Detailed terms are not yet known, but they appear to involve a broad approach to Chad's spending on poverty. Specific administration of revenue accounts does not appear to be part of the approach.

Does this stance imply that the Bank will not involve itself in natural resource projects elsewhere in Africa? Indications are that such restraint will not be the case. The Bank appears focused on addressing Africa's needs; these needs are acute in the energy area, where the Bank sees a continent-wide supply shortage threatening development prospects. As a result, the Bank is unlikely to rule out participating in African energy resource projects.

As for the private consortium, the essentials of its deal terms with Chad and Cameroon remain intact. Despite peak oil prices, Bank-government showdowns, and Chad's threats to act against the companies in various ways, the consortium has come through without suffering a major contract revision, tax rate change, expropriation, or imposed dilution of its ownership position. With low prices and ample world supplies now redefining the market, the private consortium's position in Chad-Cameroon is probably secure for the immediate future.

V. EVALUATING THE CHAD-CAMEROON FINANCING AS CONTRACT POLITICAL RISK MITIGATION

In terms of results, the private consortium must be pleased with the effect of the Chad-Cameroon project financing. Their basic deal terms made it through a period of record oil prices largely unchanged. As a consequence, they have reaped a larger and faster cash flow than that anticipated in the original project economics.

73. Press Release, The World Bank, World Bank Statement on Chad-Cameroon Pipeline (Sept. 9, 2008), *available at* http://go.worldbank.org/IHZIA90KQ0.

This result, however, is partially a product of unintended consequences. The financing's underlying strategy, deterrence, arguably failed. The original idea was to bring in the World Bank and thereby discourage host governments from taking disruptive unilateral action. This may have been accomplished with Cameroon. To date, that country has not disturbed the operation of the pipeline. Chad, however, made many threats and twice issued laws that overrode its RMP understandings with the Bank.[74] It is hard then to argue that the World Bank's presence discouraged Chad from unilaterally revising any of the project agreements.

More helpful to the companies was the World Bank's vigorous response to Chad's initial challenge. The Bank used its leverage power and played all of its cards. Its diplomatic efforts were wide-ranging and intensive. It cut off loans and froze cash transfers to Chad's accounts. These forceful efforts gave Chad pause and resulted in the 2006 MOU agreement that restored the essence of the RMP's original terms. These terms might have had a chance to survive had the Deby regime not confronted a life or death threat in the form of the 2008 coup attempt.

It is quite possible that the consortium's deal designers did not expect such forceful action by the Bank. Certainly nothing in the EPMI experience would have encouraged the expectation of a vigorous World Bank response. Here it is worth noting why the Bank acted like it did. Its responses were not primarily motivated by a desire to serve as guarantor of the consortium's cash flow. Rather, the strong motivation came from its wish to protect the work of its own hands. The World Bank saw the RMP as an important and hopeful innovation. It cared deeply about making it work. The Bank hoped to extend a successful model from Chad-Cameroon to other high-risk locations. Thus, it was prepared to fight to enable the RMP to succeed. This was the motivation that produced Bank diplomacy that ended up benefiting the consortium.

As the Bank-Chad conflict unfolded, the consortium discovered another key to success: the RMP structurally provided insulation for the consortium's deal terms. The RMP created a structural financial buffer between the companies' cash flow and the host government. By sequestering funds that already "belonged" to Chad, it insured that the primary focus of that government's complaints would be gaining access to its own money. This meant that Chad's aggressiveness would be channeled toward the World Bank first. If the World Bank did not

74. *President of Chad Nullifies World Bank Agreement to Grab Oil Money and Crack Down on Opponents*, BANK INFO. CTR., Mar. 6, 2008, http://www.bicusa.org/en/Article.3693.aspx; *World Bank Announces Withdrawal from Chad-Cameroon Pipeline After Early Repayment*, Sept. 12, 2008, BANK INFO. CTR., http://www.bicusa.org/en/Article.3892.aspx. *See also* MARIE-NELLY, *supra* note 14. 12-15.

quickly cave, the dispute would stay among those parties. The Bank did not cave quickly, and it had enough diplomatic and financial clout to produce a standoff with the host government. This insulated the consortium through the price peak when it otherwise would have been the primary target of Chad's revenue hunger.

What conclusions can private companies draw from this case? Two seem to stand out. The first is that financial structures where the *deterrent lender* is exposed to *first dollar loss* offer the best insulation. Although the RMP's funds were not the World Bank's, the Bank was emotionally invested in the allocation and disbursement of this money. Putting MLA lenders in positions where their interests are engaged first thus seems the structure best suited to provide firms with the deterrence and diplomacy they seek. This leads to the second conclusion: it pays to have the *deterrent lender* care deeply about the deal succeeding. Only this type of commitment will bring forth that lender's full panoply of persuasion and enforcement efforts. Issues of financial gain and loss probably are not enough to accomplish this. The lender needs to see the deal as instrumental to some larger issue, something crucial to its institutional mission. To this extent, the consortium's local study and remediation efforts along with its acceptance of the RMP can be seen as pre-investments that helped the World Bank develop the necessary emotional stake in this project.

VI. LESSONS FOR THE WORLD BANK FROM THIS "FAILURE"

Although many NGOs were quick to pronounce the Chad RMP a failure, it would be more accurate to consider it a worthwhile first experiment. By any objective standard, this was a difficult first effort to pull off. The entire concept was untested, and it involved delicate matters of sovereignty infringement and the loading of heavy burdens onto weak administrative structures. NGO criticism was unrelenting and unsparing. It should not come as a surprise that the Chad RMP's results proved somewhat disappointing.

It also should be noted that the story in Chad has not played out. Some of the RMP structure remains in place. Chad and the Bank remain in discussions regarding a resumption of a World Bank country program. Low oil prices are likely to press Chad towards compromise; its need for World Bank support will be greater in the current environment. The ultimate disposition of oil revenues towards development efforts is yet to be determined.

Did the effort achieve enough to consider repeating? If the answer here is affirmative, what lessons might improve the Bank's odds next time around?

The answer to the first question should unquestionably be yes. The Bank's participation made the project possible, meaning that Chad's best and perhaps only chance for development has come into being. As Bank President Wolfensohn wrote at the outset:

> We think that the project provides the best and perhaps only opportunity for Chad to reduce the severe poverty of most of its population . . . . Chad's development prospects can only be improved significantly through the use of this traditional energy source.[75]

Secondly, the Bank's participation helped stabilize the deal terms for the private consortium. Even a limited success of this nature is important. Companies facing severe political risks have few means available to mitigate those risks. The results obtained by the Exxon-led consortium in Chad are positive enough to encourage other firms to offer the Bank opportunities in other places. That means that other countries with few alternative development options might see their energy resources converted into wealth-generating projects.

Third, it is far from clear that the RMP was fated for failure. Some NGOs consistently advanced the view that Deby's government was operating in bad faith. From their perspective, Chad had no intention of honoring the RMP procedures or implementing its development goals. Once the project was generating revenue, they believed that Deby's government would simply renege on its commitments.

Such an interpretation is too simplistic. For starters, the Deby government had to know that having the World Bank in the deal would greatly lessen the government's ability to maneuver. The Bank's presence would ensure an extraordinarily high degree of international scrutiny of the government's actions; moreover, it would bring into play all of the Bank's diplomatic and financial leverage—precisely those levers sought by the oil company consortium. Nor could the Deby government count on winning a showdown with the Bank. The amount of oil going through the pipeline, 170,000 barrels per day, is not large in terms of global oil supplies.[76] Even in a tight market, it could be replaced from other locations or from inventories. Shutting in oil production would mean cutting off 50% of Chad's budget revenues and all of its international financing.[77] How long could Deby count on lasting in such circumstances? In short, the Deby government had to enter the deal assuming it would have to make some effort to comply with the terms. Given the

75. ESTY & FERMAN, *supra* note 4, at 6.

76. The average annual supply of world oil production in 2008 was 85.46 million barrels per day. Energy Info. Admin., World Oil Supply, 2004-2008, www.eia.doe.gov/emeu/ipsr/t22.xls (last visited Apr. 28, 2009).

77. *See* CEE CASE STUDY, *supra* note 13, at 11.

vulnerabilities of its circumstances, it could not count on an easy overthrow of the RMP at a time of its choosing.

This more realistic interpretation points to two other conclusions: (1) private companies and the Bank cannot count on deterrence alone to provide political risk mitigation—it should be assumed that financial and diplomatic pressure will be needed to counter host government challenges; and (2) a better crafted and executed RMP may have been able to survive even the strong tests Chad posed. By inference, an improved RMP may well succeed in another high-risk location. How then should the RMP be improved?

For starters, the next RMP should give the Bank more enforcement controls over the portion of the host country's project cash flows dedicated to development. This is an area that warrants careful legal study. In the 2006 showdown Chad was able to access enough funds to avoid a financial crisis while it waited out its conflicts with the Bank. Chad already had some cash sitting in its local bank accounts; it also was able to repatriate $36 million from the Future Generations Fund.[78] Quite possibly the Bank's legal advisers were of the view that the Bank could not block a determined effort by a sovereign nation to repatriate its own cash. In the future, with careful legal crafting, the Bank and the host government may agree to characterize the use of offshore escrow accounts as a "commercial matter," the handling of which governments can agree to via contract. This may prevent the host government from later asserting its sovereign powers to force funds repatriation and, at a minimum, channel any dispute to an international dispute resolution forum. If the government knows it cannot quickly force a repatriation of offshore funds, its incentives to breach a contract are greatly reduced. Similarly, if a host government knows it does not have the funding to withstand a long dispute, the likelihood of the government attempting to override contract terms diminishes.

A second design improvement would be explicit provisions anticipating a revenue windfall. It is dangerous to expect a host government to sit patiently while revenues pile up in idle deposits awaiting projects that planners never anticipated having to generate so soon. Should that government also face a mounting security threat, its impatience may quickly turn to action. Provisions releasing some windfall sums for the government to use at its discretion may relieve such pressures. Windfall amounts should probably be divided among such "immediate release" sums, additional funds for the Future Generations Fund ("FGF"), and a third tier—one released for specified uses after a time period used to build project execution capabilities.

78. MARIE-NELLY, *supra* note 14, at 14.

Since revenue shortfalls can also occur, provisions should be made for their occurrence as well. It is interesting to note that the 2006 Chad–Bank agreement recast the FGF as a revenue shortfall fund. Combining the ideas of saving for when the oil runs out and for when prices dip below forecast levels is an optimal design. The approach accommodates filling such a fund faster with a portion of windfall revenues and releasing some of those revenues when low prices threaten execution of development projects already underway.

By far the most important lesson to be learned from the Chad case is the importance of building up government execution capabilities in advance of the resource project's start-up. The World Bank had almost four years to do so in Chad. The financing closed in 2000 while the pipeline only reached full throughput in 2004. During this interval, little was accomplished on the project execution front. Only at project start-up did the Bank significantly beef up its technical staff in country; its own announcements implied that these personnel were to be focused on overseeing Chad's efforts rather than participating directly in project execution. Later reports suggested that much of the bank's technical assistance went to consultants who produced reports telling Chad what to do without adding much to execution capacities. Next time, the Bank should realistically assess the host government's ability to perform as contemplated in the financing agreements. If these capabilities are thin, specific plans to build them up should be added to the agreements. Completion of at least some of these steps can then be made a condition precedent to final drawdown of the Bank's funding. The Bank itself should put more staff in-country; at least some of this staff should be assigned to assist the government in implementing specific projects.

Private companies would be wise not to exempt themselves from such efforts. They would benefit from a fuller realization of the stake they have in seeing an RMP succeed. As noted above, Chad's RMP successfully insulated the consortium's deal during peak oil prices. Also, despite a coup attempt that reached the capital, Chad's oil producing region has been largely free from the unrest that characterizes neighboring Nigeria. A successful RMP adds considerably to the risk mitigation obtained by bringing the World Bank into project financing.

It is understandable that private companies don't want to take on responsibilities more properly within the purview of the government and the Bank. However, there are ways to help the RMP succeed without taking over responsibility for its target projects. Companies like Exxon are experienced in "lending" technical staff to joint ventures. Occasionally they even lend staff to government or non-profit organizations. Such staff makes major contributions to implementing joint projects. This occurs without the private company taking over responsibility for the venture. A willingness to lend a hand in this fashion could give timely reinforcement to the host country's development efforts; this in turn may contribute to a functional RMP that secures stable relations with the host government and the native population.

A word needs to be said here about unsavory governments, security threats, and NGOs. Reading the copious NGO publications on Chad, it is hard to escape the impression that these organizations embody the expression of "the perfect being the enemy of the good." Quick to seize on any problem as evidence of failure but wearing blinders towards realities that scream "progress will only come by degrees," they postured from the position that Chad should be left with its $300/year per capita income undisturbed until the country is somehow taken over by peace-loving democrats.[79] The NGOs play an important role in monitoring events in poor, remote countries like Chad. They pay attention to acts of cruelty and corruption that others prefer to ignore. Yet their own ideological perspectives and distaste for the host governments in question often skew their scrutiny and advice. The Bank and its member governments should see the NGOs' criticism for what it is—a mixture of exaggerated and one-sided criticisms calculated to bend the World Bank into a tool serving the NGOs' overly idealistic agendas.

The NGOs' tactics are served by the fact that the governments in question can fit an unsavory stereotype. They often involve strongmen whose political base resides in a dominant ethnic group. Cronyism, corruption, and human rights abuse will be evident. In future cases, the Bank will have to make careful decisions as to whether a given regime is capable of showing even moderate good faith towards its deal responsibilities. However, should the Bank get past the question of whether it can work with a specific regime, the issue becomes how to work most effectively. Clearly, step one is fashioning a position of strength to enforce agreements. Step two is the anticipation of obvious conditions that will stoke a confrontation, and step three is early, intense work to ensure that project execution is ready when the money starts rolling in.

Additionally, a more realistic approach to regime security is essential. If the Bank commits to work with a specific government, it has a stake in that regime's establishment of reasonable security precautions. Unless and until that government exhibits serious deterioration from past performance, the Bank should be supportive of efforts that deter enemies who otherwise will be emboldened by the prospect of new riches. In this light, encouraging Chad to cut its army by 50% in 1999 was probably not

79. *See*, *e.g.*, ESTY & FERMAN, *supra* note 4, at 9 (quote by the Environmental Defense Fund).

the right move.[80] It infused the Deby regime with a sense of vulnerability while signaling the same to its enemies. In future RMP situations, the Bank will want to show understanding of government defensive measures proportionate to the threats faced. It may also want to buttress such measures with specific understandings of security support from allied countries. One can only wonder if the 2008 attack on N'Djamena would have occurred if the rebels had known that local French legionnaires would have been active in the defense.

As a last lesson, the World Bank might reflect on whether its RMP design overreached in the Chad-Cameroon case. This RMP aimed at nothing less than escrow of the vast majority of government oil revenues and their dedication to well-developed anti-poverty projects. Arguably this approach tied up more money than the government was comfortable seeing escrowed, while also counting on project execution capabilities that did not exist. In encouraging the Bank to overreach in this fashion, the NGO community probably contributed to the RMP's shortcomings. A more modest RMP, one calibrated to escrow revenues proportionate to project execution capabilities, may cause less government/Bank friction.

Better RMP design and more pragmatic execution will greatly enhance the prospects for success in a future World Bank effort. But will there be a future such effort? We conclude now by assessing the likelihood of the Bank attempting another RMP.

VII. RMP–R.I.P. IN CHAD?

The jury is definitely out on whether the World Bank would again undertake a Revenue Management Plan. Its 2006 interim agreement already showed signs of the Bank backing away from administering such a highly structured system. Instead it opted for accepting a broader set of promises from Chad's government and hoping that the confrontation had left the Deby regime with a stronger intention to comply. When dramatic events undermined this hope in 2008, the Bank threw in the towel. It was the Bank that suggested to Chad that it pre-pay its loans and end the IBRD's involvement. Nothing in this narrative suggests a strong appetite for more of the same.

However, several facts suggest that the door to another RMP is not closed. The Bank's private sector arm, the IFC, continues to have several hundred million dollars invested in the Chad-Cameroon pipeline. Chad and the Bank continue discussions on conditions that would allow the resumption of a Bank program. There are also indications that the Bank

80. *See id.*

will consider involvement in future natural resource projects, specifically African oil/gas ventures. This makes relevant the question of what private companies will demand in order to be willing to develop high-risk future projects.

Given the protection afforded to the Chad consortium, private companies may well seek the Bank to play a risk-mitigating role in future ventures. Careful analysis of the Chad-Cameroon case makes the point that even a flawed RMP did much to insulate the consortium from contract revision risk. Demands for similar arrangements might well be a consortium's price for proceeding with future projects in locations such as Sudan, Yemen, Papua-New Guinea, Guinea-Bissau, Equatorial Guinea, Mozambique, or Madagascar.

It is therefore important for the Bank to let it be known that its Chad experience does not rule out consideration of a similar but upgraded approach in another location. Without such a statement, companies will rightly conclude that the Bank's precipitous pullout signals a specific repudiation of the RMP system and a general Bank withdrawal from risk-mitigating project finance. Such a conclusion is not justified on the merits. As noted above, even the flawed effort in Chad can point to significant accomplishments. Signaling an intention to learn from this case and a willingness to apply the lessons to future deals will not only encourage private firms to bring opportunities to the Bank, but it will send a message to governments and NGOs alike that the Bank recognizes that inevitable trial and error will occur in the process of promoting development in poor lands with resource potential.

The need to affirm that message may be the most important lesson for the Bank from the singular case of Chad-Cameroon.