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Terms for Endearment: Business, NGOs and Sustainable Development

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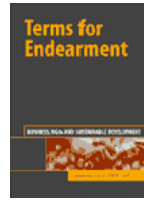
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# SHADES OF GREEN

## NGO coalitions, mining companies and the pursuit of negotiating power

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An appreciation of the dynamics of relationships between different types of NGO within civil society is important for those companies pursuing enhanced systems for corporate accountability—and thereby seeking to consult with NGOs. Consequently, this chapter explores the effect of strategic NGO coalitions on their respective relationships with the business community. The focus is alliances between environmental NGOs (ENGOs) and indigenous rights NGOs (INGOs) in their dealings with mining companies. The relationship between these two types of NGO is particularly intense in the developed world where both groups are seeking remediation and rehabilitation of past injustices. In this chapter I question the assumptive alliance between the green movement and the indigenous rights movement in negotiations with a corporation. Although engaged in strategic alliances to increase their negotiating power with the mining industry and governments, the evidence shows that NGOs do not always have a united and unifying agenda, and coalitions can actually marginalise the interests of certain constituencies in civil society.

The implication for corporations is that, by working with certain NGOs and coalitions of NGOs, they may actually marginalise other interest groups. At first glance this may appear a sensible approach for managing external pressure, and ways of co-opting potential opponents have already been discussed in some of the management and sociology literature (see e.g. Moorhead and Griffin 1992). In this chapter I question this approach, for two reasons. First, it does not allow core issues to be addressed and thereby sustains conditions for future antagonisms. Second, at the personal level, it is an alienated and manipulative approach for a manager to adopt.

The scene for the chapter is the mining industry. Modern society relies fundamentally on mining as a primary source of raw material and fuel for production at all levels of industry. Mining companies are thus powerful entities that can wield considerable

influence with government and the population at large. They also have the resources to bring a sudden surge of development in otherwise remote and impoverished parts of the world, which are often inhabited by indigenous tribal populations. These indigenous groups have limited resources and in most cases feel relatively powerless in negotiating with a large corporate entity. There is frequently an ambivalence regarding the prospect of development on their land. Economic incentives may attract one segment of the population while traditional leaders may oppose the project on grounds of ecological disturbance or cultural and spiritual association with the land.

In such cases environmental organisations aimed at protecting and preserving ecosystems have generally felt a strong sense of sympathy for indigenous groups throughout the world. The enduring theme of natives living in harmony with their natural environment has led many non-governmental organisations to think of native concerns as part of their own agendas. European colonial repression of indigenous communities in the 'New Worlds' of America and Australia was particularly severe and persistent. Unlike regions such as India or most of Africa, the settlers in America and Australia have become a permanent and overwhelming majority of the population, often displacing the indigenous peoples from their environment and instituting resource-intensive enterprises, such as mining, in their place. Environmental groups in Australia and the Americas have thus felt a particular degree of contrition towards the native cause.

The past few decades, particularly since the United Nation's involvement in indigenous people's issues, has brought forth a need for 'atonement' in these countries.<sup>1</sup> This sense of retribution is similar to the congruent need for remediation efforts in the environmental realm, as exemplified by laws such as the Superfund legislation in the United States.<sup>2</sup> There has thus been a confluence of interests between the indigenous rights movement and the environmental movement at the macro scale, which may occlude the latent conflicts in interest between the two movements at other levels of analysis. The common perception is that the native people of the world are inherently environmentalists because for so long they have led relatively sustainable lifestyles.

The value of natural resources in monetary terms is often at odds with their intrinsic worth to certain communities. In most modern economies, the primary agent of change in a resource-rich ecosystem is usually a profit-driven entity, such as a private corporation, for which ecological considerations are generally economic externalities. The inertial forces in the same system are often indigenous groups, and non-profit organisations and individual activists, for whom environmental change is unusually traumatic. Uranium mining presents a perennial imponderable for ENGOs since their environmental motives are often at odds with the aspirations of the native groups. While both ENGOs and INGOs would like to see each other as allies, the following two case studies from Australia and Canada show that alliances have become increasingly tenuous.

- 1 The United Nations presented a draft declaration on the rights of indigenous peoples in 1994. This document is being amended for ratification. The European Union and the Organization of American States have similar declarations. The most important legally binding convention in this regard is the International Labour Organisation's Convention 169.
- 2 Superfund is the common name for the Comprehensive Environmental Responsibility, Compensation and Liability Act of 1980.

## ▲ Olympic Dam mine in South Australia

In 1961, a team of geologists from the Western Mining Corporation (WMC) began to explore the vast expanse of the South Australian desert in search of minerals. Large-scale surveys ten years later indicated a number of coincident gravity and magnetic anomalies west of Lake Torrens, near a small irrigation pond known as Olympic Dam. An exploration licence was granted by the South Australian government in May 1975, and by July drilling had begun. In 1979, WMC joined forces with the British Petroleum Group (BP) to sink an exploration shaft.

An INGO called the Southern Lands Council called for a moratorium on further exploration. However, there were other Aboriginal groups who felt mining would bring much-needed income to their impoverished communities through compensation agreements. One such group called the Andamooka Land Council, based in a town about 15 km from Olympic Dam, began to seek an agreement with the WMC. Meanwhile, Friends of the Earth and several regional ENGOS, with a strong opposition to all forms of uranium mining, quickly started a movement against the project. Soon the Aboriginal opposition movement and the environmental movement came to be heard as one voice.

However, an Act was passed by the South Australian parliament that overrode other laws regarding Aboriginal heritage. Consequently, the mine was established, in spite of vehement protests, including pleas from some Aboriginal groups and ENGOS at the international level. Full production of copper and uranium ore began in 1988 with 45,000 tons per annum of refined copper, and over 830 tons per annum of uranium oxide (WMC Annual Report, 1996).

In 1993, the WMC acquired full ownership of Olympic Dam and soon thereafter announced plans for an expansion of the existing mine. These plans were held back under the Labour government during the early 1990s but this changed after the 1996 election when the Conservative John Howard became Prime Minister. Howard pledged to improve the economic plight of Australia by renewing investment in mining development. Encouraged by the new government's policy on mining, in July 1996, the WMC board commissioned a detailed design study of an expansion to 200,000 tons/annum (t/a) of copper and uranium. In October 1996, an agreement was reached between the WMC and the State government on the expansion to 350,000 t/a of copper and associated products. At this time, the negotiations were entirely bilateral.

Once the environmental impact assessment was commissioned—that is, when the consultation process began formally—public announcements were made regarding the intention to expand mining operations. Anthropologists were hired by the company to identify appropriate tribes with whom consultation should take place. Meanwhile, the Australian parliament in Canberra published a report in May 1997 on 'Uranium Mining and Milling in Australia' and exonerated the WMC of any serious environmental damage in its past operations. The concerns of the environmental groups were raised but summarily dismissed as not being of much validity: 'The Committee has had only limited opportunity to assess the accuracy of matters raised by the Conservation Council and the Friends of the Earth but it notes that only a limited amount of supporting evidence has been tendered' (Parliament of the Commonwealth of Australia 1997: 132).

Around the same time, Australia was embroiled in a major legal debate over the rights of Aborigines to claim title to land after a revolutionary supreme court decision. The case in point is *Mabo v. Queensland* (175 CLR 1, 1992) in which the High Court of Australia for the first time recognised the prior land rights of Australian Aboriginal people. Soon after this decision, the Native Title Act was passed in 1993 to give a systematic process to land title claims. The Act provides a regime for determining whether native title exists over a certain area of land or water. The Act was to be administered by the National Native Title Tribunal, essentially a negotiating and mediating body whose decisions were not binding. Provision is made in the Act for contested claims to be determined by the federal court. Although a number of cases after *Mabo* have not favoured Aboriginal groups,<sup>3</sup> one important case in New South Wales commonly referred to as *The Wik* verdict, stated that native title is not necessarily extinguished by a pastoral lease. Since then the post-1996 Australian government has been continuing a concerted campaign to limit the extent of Aboriginal land claims.

The main environmental groups that were opposing the Olympic Dam expansion—Friends of the Earth, the Australian Conservation Foundation and the Conservation Council of South Australia—campaigned against the government’s attempts to reduce the impacts of the court rulings and the Native Title Act. The ENGOs saw the native land rights issue as a means of halting rapid industrial projects and protecting sensitive ecosystems. Their opposition to mining was voiced on this platform as mining companies were lobbying for limited Aboriginal claims and increased discretion. The Aboriginal groups began to seek alliances as well. Protection of their sacred and significant sites was of immense concern to them but their opposition to mining was certainly not as unequivocal as the ENGOs. Some of the INGOs decided to ally with the mining company to try to get immediate compensation, while others felt that in the long run their interests were more adequately met by alliances with the environmental groups. The dilemma that they faced was not too different from that faced by their distant peers several thousand miles away across the Pacific.

## ▲ McArthur River Uranium Mine in Saskatchewan, Canada

Saskatchewan has been called ‘The Saudi Arabia of the Uranium Industry’. Collectively, the province contains the largest known reserves of uranium in the world, with over five active mines within an area of about 200,000 km<sup>2</sup>. Chipewyan Inuit, Dene and Cree Nations comprise 80% of the 30,000 inhabitants in this region, mostly centred around the shores of the numerous lakes that punctuate the landscape.

3 Some of the cases are: *Western Australia v. Commonwealth* 1995; *Mason v. Tritton* 1994; *Walker v. New South Wales* 1994; *Coe v. Commonwealth* 1993; *Pareroultja v. Tickner* 1993.

In the early 1980s Eldorado Nuclear (now part of Cameco Corporation) entered into an agreement with the provincial government of Saskatchewan to begin mining activities in the vicinity of Wollaston Lake. The Saskatchewan Mineral Development Corporation was thus formed to organise the mining activities. The native communities of the region felt that their subsistence lifestyles of hunting and fishing would be threatened by water pollution from the mining development. Their opposition was partly because of the past experience of affected communities in Uranium City (one of the first uranium mining regions in Canada).

In the late 1980s, the Saskatchewan government deregulated the uranium mining industry and largely divested its own interests to form a publicly traded company named Cameco. This would soon become the largest uranium mining company in the world with control over two-thirds of the world's largest, high-grade uranium mines at Key Lake and Rabbit Lake in Saskatchewan. The 'best' was yet to come. The McArthur River ore body was explored extensively in the early 1990s after a governmental environmental review for underground exploration. The highest-grade deposits (as much as 50% of  $U_3O_8$ ) were discovered 550 m beneath the surface soon thereafter.

The Environmental Impact Statement for the project was prepared in May 1995 and circulated for public comment. Cameco and its partners, Uranerz Exploration and Mining and Cogema Resources Inc., proposed to mine the ore-body underground; crush and grind the ore and render it into a slurry suitable for pumping; thicken the slurry into a paste, and transport it 80 km south-west to the Key Lake operation for milling. The wastes would be disposed of at the existing Key Lake Deilman tailings management facility. The environmental impact of this project would thus be spread across two sites and raised many concerns for environmental groups, most of whom were based in southern Saskatchewan.

The development dichotomy is quite stark between northern and southern Saskatchewan. Unlike common development discourse, 'The North' in this case is the impoverished and underdeveloped region, while 'The South' is considered the more affluent and developed part of the province. More than two-thirds of the residents of northern Saskatchewan claim aboriginal ancestry. In Canada, there are two different categories of aboriginal lineage: (1) registered Indians and Inuits; and (2) Metis (or mixed-blooded aboriginal). There are different treaty obligations for the two groups, though they often present a united front when dealing with issues of development in the north. Nevertheless, surveys conducted by the company had shown that a majority of the people in the north supported uranium mining.<sup>4</sup>

The environmental groups in this case were mostly regional organisations, such as the Inter-Church Uranium Committee and the Saskatchewan Environment Center. Greenpeace had been involved in lobbying efforts in the 1980s but had since withdrawn for financial reasons. The activist movement had been given considerable publicity in the late 1980s with the publication of a book on the Wollaston Lake Community by Miles Goldstick (1987). The main thrust of that book had been the aboriginal resistance to

4 These surveys were conducted for Cameco by independent consultants (personal communication with Jamie McIntyre, Saskatoon, 21 March 1998).

mining—it was subtitled ‘People Resisting Genocide’. Here, too, the aboriginal rights issues were presented in complete congruence with environmental ideals. The tenacity of this alliance was largely unspoken and a challenge to research inquiry.

## ▲ The comparative outcomes

After reading about the outcomes of these cases, one may wonder what the point was of offering this comparison when in both cases the companies attained their desired objectives. Both companies were eventually able to get approval for their mines and are currently mining ore as planned. Is this simply a case of different approaches to community relations depending on different legal contexts? Indeed, law has not figured prominently in my exposition because in my opinion legal recourse should be a means of deterrence but not a process for dispute resolution at the corporate/community level. While my analysis clearly favours the approach taken by Cameco, the study does not espouse a ‘good-versus-bad player’ dichotomy. Indeed, many of the decisions made by the WMC were in good faith and worked out in terms of short-term strategic planning. Long-term community relations were, however, not considered and may come to haunt the project in the future. Issues of social responsibility *vis-à-vis* a private corporation are clearly at stake. While companies cannot assume the role of a social welfare entity, they clearly have certain responsibilities when operating in a remote area in which they have a monopoly over economic opportunities for the population.

The ENGOs in both the Australian and Canadian cases were not successful in satisfying native demands nor were their approaches too dissimilar. My research has revealed that, even though ENGOs often aspire to meet the demands of native groups and appear to lobby on their behalf, the strategic alliances are at best tenuous and usually destructive to both causes.

In summary, even though the outcomes in both cases may appear to be similar (see Table 5.1), there are some distinct differences in the way the companies approached the negotiations and these are likely to lead eventually to a difference in the long-term viability of the projects. Some of the key differences that were found at various tiers of the process are highlighted below, using a model of negotiating power and perceived leverage.

## ▲ Analysis using the sources of power model

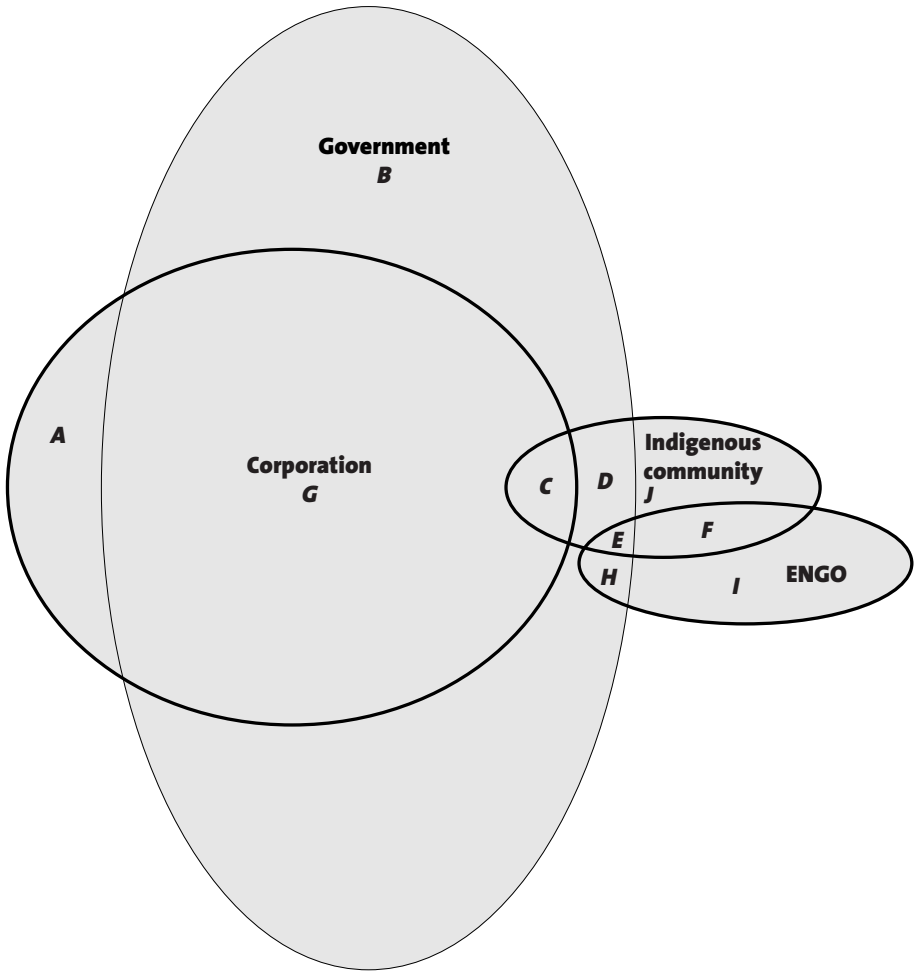
The experience of NGO coalition building on their relations with the mining companies can be analysed in terms of power relations. Sociological and political analyses of ‘power’ are varied, drawing on thinkers such as Emerson (1962) or Lukes (1974) to consider what it is, what it does, who or what it involves and how we can tell if it is there. In this chapter

	Australia	Canada
Corporation	WMC Mining: <ul style="list-style-type: none"> <li><input type="checkbox"/> Annual revenues: A\$2.2 billion</li> <li><input type="checkbox"/> Transnational; HQ: Melbourne, Australia</li> </ul>	Cameco Corporation: <ul style="list-style-type: none"> <li><input type="checkbox"/> ~Annual revenues: C\$642 million</li> <li><input type="checkbox"/> Transnational; HQ: Saskatoon, Canada</li> </ul>
Surrounding indigenous community (within 150-mile radius)	Aboriginal (mainly Kokotha and Arabanna): <ul style="list-style-type: none"> <li><input type="checkbox"/> Originally hunter-gatherer</li> <li><input type="checkbox"/> Population: ~1,500 (estimate)</li> </ul>	Dene and Cree Nations (various N. Saskatchewan bands): <ul style="list-style-type: none"> <li><input type="checkbox"/> Originally hunter-gatherer</li> <li><input type="checkbox"/> Population: ~2,000 (estimate)</li> </ul>
ENGOs	<ul style="list-style-type: none"> <li><input type="checkbox"/> Conservation Council of SA</li> <li><input type="checkbox"/> Friends of the Earth</li> <li><input type="checkbox"/> Australian Conservation Foundation</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Inter-Church Uranium Committee</li> <li><input type="checkbox"/> Saskatchewan Environment Society</li> </ul>
Legal regime	<ul style="list-style-type: none"> <li><input type="checkbox"/> Based on British Common Law</li> <li><input type="checkbox"/> Native title doctrine originally based on <i>terra nullus</i></li> <li><input type="checkbox"/> Native title accepted in 1993 under the Mabo decision</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Based on British Common Law</li> <li><input type="checkbox"/> Several treaties with natives (except in parts of British Columbia and Newfoundland)</li> </ul>
Government authority	<ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental regulations largely under state (not federal) authority</li> <li><input type="checkbox"/> Federal authority over certain aspects of uranium industry</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental regulations largely under provincial authority</li> <li><input type="checkbox"/> Federal authority over certain aspects of uranium industry</li> </ul>
Environmental concerns	<ul style="list-style-type: none"> <li><input type="checkbox"/> Water extraction from Great Artesian basin</li> <li><input type="checkbox"/> Radiation exposure</li> <li><input type="checkbox"/> Aesthetic and cultural appeal of resources</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Water quality concerns and loss of fisheries</li> <li><input type="checkbox"/> Radiation exposure</li> <li><input type="checkbox"/> Aesthetic and cultural appeal of resources</li> </ul>

Table 5.1 Profile of cases

I use the model of bargaining power developed by Fisher (1983). He identifies seven attributes or aspects of power for parties to negotiations: the power of skill and knowledge, of a good relationship, of a good alternative to negotiating, of an elegant solution, of legitimacy, of commitment and finally the power of a process.

Figure 5.1 shows the various stakeholders in the conflict, and their domains of interest and power, as Venn diagrams. The key to the various loci in the diagram are shown in Table 5.2. The size of ellipses indicates the relative bargaining power of each group. The magnitudes of power that I have attributed to each stakeholder ensue from a qualitative



*Size of ellipses indicates the relative bargaining power of each group*

Figure 5.1 Venn diagram showing loci of interest for various players in both disputes

evaluation of the economic resources of each entity and also their potential contributions to the decision-making process.

In the following sections I discuss whether, for each of Fisher’s attributes of power, the alliance between the ENGOs and the INGOs had any effect on the bargaining power of either group of NGOs as they interacted with the mining companies. I consider whether there was any ‘empowerment synergy’ in the interactions between the two.

Venn diagram regions	EXPLANATION WITHIN THE CONTEXT OF THIS CONFLICT AND THE COUNTRY IN WHICH IT IS BEING PLAYED
A	Corporate interest only: Maximising profits from operations beyond this country
B	Government interest only: policies of importance to constituencies outside this dispute
C	Common interests between community and corporation: employment and labour benefits. A portion of the community that feels that the compensation being offered by the company is adequate. Potential for splinter group within community.
D	Common interests between the government and the community only (excluding corporate or ENGO interest): welfare benefits, political representation
E	Common interests between ENGO, government and community (excluding corporate interest): environmental protection through state-level economic analysis
F	Common interest between ENGO and community (excluding government or corporate interest): environmental protection based on normative concerns (value-based)
G	Common interests between corporation and government: strategic economic development concerns for the state, exogenous to the region
H	Common interests between ENGO and government (excluding community and corporation): other environmental lobbying efforts in which the ENGO is involved outside this conflict area (but within the country) that the government endorses
I	ENGO interest only: based on a broader vision of the ENGO's charter. Accountability to international headquarters and to the resolution of other disputes outside this country.
J	Indigenous group interest only: issues of sovereignty, cultural importance and tribal leadership

Note: There is no region of common interest between the ENGO and the corporation (at least from the information currently available for these cases).

Table 5.2 Explication of loci in Venn diagrams

### *The power of skill and knowledge*

The technical skill, which some of the ENGO representatives possessed, was shared with the INGOs but no formal effort at training or education was made. The responses to the environmental impact statement, particularly in the Australian case, exemplify the strong scientific backing that the groups possessed. A leading member of the Conservation Council of South Australia was a tenured Professor of Chemistry at Flinders University and several others were well-educated professionals. Friends of the Earth, the Australian Conservation Foundation and the Conservation Council of South Australia collectively submitted 185 comments to the environmental impact statement for the expansion of the Olympic Dam mine, whereas no formal comments were registered from the Aboriginal groups. Out of the 185 comments registered by the ENGOs, five were

specifically aimed at addressing Aboriginal concerns. According to Joan Wingfield, a member of the Kokotha tribe and an official at the Australian Heritage Commission, skill and knowledge are the most significant contributions that ENGOs can make to the Aboriginal cause.<sup>5</sup>

In the Canadian case, the federal and provincial government convened a panel to review uranium mining activities in Saskatchewan in 1991. This panel submitted comments on various proposals for mining and also held a protracted series of hearings in 1996 in which all the environmental groups participated actively. This was the main forum for informational exchange between ENGOs and native groups. The panel itself comprised four members, a mining engineer, a biologist, an industrial hygienist and the Chief of the Prince Albert Grand Council, John Dantouze.<sup>6</sup> The skill and knowledge exchange in this case appeared to circumvent the ENGO route since the native groups were being given technical feedback directly from the academics on the panel. Just before the panel was to issue its report, Chief Dantouze and the industrial hygienist Dr Annalee Yassi resigned. The environmental groups considered this a sign of victory and a reflection of the dissatisfaction with the environmental situation. However, the statement of the Chief and correspondence between him and Dr Yassi reveals that the main reason for their dissatisfaction with the panel was the issue of revenue sharing and not environmental concerns.<sup>7</sup> The skill and knowledge that the ENGOs may have been able to offer in this case would probably have had little influence because of existing academic expertise on the panel and the overarching concerns regarding economic development.

### *The power of a good relationship*

Environmental groups have a long history of opposition to the mining industry and therefore their relationship with most mining companies has been largely antagonistic. The mining companies appear to harbour a strong degree of suspicion of any group that may be affiliated with environmental causes. Therefore native groups who were allied with the ENGOs were particularly ostracised from interactions with the mining company in both cases. Since the ENGOs had some interests that were exogenous to the direct aspirations of the community (namely their own agenda of anti-uranium campaigning), the negotiation process was confounded and possibly widened disagreements within the Aboriginal communities. In the Australian case, an Aboriginal splinter group, which was more amenable to the mining company's offers for monetary compensation, was formed. Even though a majority of the community representatives favoured the ENGO's opinions on environmental impact, the fact that they were being represented by an external entity in some ways legitimised the corporation's refusal to talk to them. They were branded as the ENGO's cronies and so the mining company was able to get away with limited communications, only involving a small splinter faction that did not have

5 Personal communication with Joan Wingfield, Australian Heritage Commission, Canberra, 15 January 1998.

6 *Report of the Joint Federal-Provincial Panel on Uranium Mining in Northern Saskatchewan* (Hull, Quebec: Canadian Environmental Assessment Agency, February 1997).

7 Press Release from John Dantouze, Prince Albert Grand Council, Saskatchewan, 3 October 1996.

the 'activist' label. The rivalry between the two Aboriginal groups led to a stand-off in 1995 in which one person was killed (by the Aboriginal group supporting the environmental cause).

In Saskatchewan the ENGOs did not foster any positive relationship with the mining companies because, as far as they were concerned, there could be 'no consensus on uranium mining'.<sup>8</sup> Media appearances by the ENGOs representatives were replete with accusations of impropriety aimed at the Cameco corporation. The groups also alienated themselves from a lot of government agencies, by 'removing themselves from the environmental assessment review process' and sending their documentation after the 30-day review period as a mark of protest.<sup>9</sup>

### *The power of a good alternative to negotiating*

Negotiation theorists have articulated the need for a negotiated settlement in terms of opportunity costs. They argue that, at the outset, both sides should estimate their Best Alternative to a Negotiated Agreement (BATNA). 'However unsavoury the other side, unless you have a better BATNA, the question you face is not whether to negotiate, but *how*'.<sup>10</sup> The BATNA of the indigenous groups *vis-à-vis* the mining companies is clearly much lower than it is for the environmental groups. For the former, mining investment may be a matter of economic survival, whereas for the latter it is a value-based cause which would not have any direct short-term impact on their means of survival.

In most public disputes, the BATNA is largely related to the amount of power and authority the government is willing to give to the various stakeholders. Mining is critical to the economies of Saskatchewan and South Australia. In both cases the government receives large royalties from the mining because mineral resources are constitutionally owned by the state. Therefore the government has accorded considerable power and respect to the mining companies in the region. Though the federal government technically has ultimate authority over uranium mining, the devolution of power in both cases is such that the federal authorities largely defer action to their state or provincial counterparts. The Canadian situation with regard to the separatist movement in Quebec has made federal involvement in provincial affairs particularly sensitive. In Australia, the current federal government has stated a policy of encouraging mining and limiting Aboriginal land tenure. Previous attempts at a purely confrontational approach, such as the Wollaston Lake episode in Canada or the initial Olympic Dam project in Australia, have largely been unsuccessful. Given this dynamic, the native groups have no choice but to negotiate: the alternative to negotiating would be to have a relatively austere mining establishment in their midst with minimal regulatory considerations for their welfare.

8 Personal communication with Neil Sinclair, Inter-Church Uranium Committee, 25 March 1998.

9 Prairie Media Watch. Phillip Penna (Inter-Church Uranium Committee), radio interview transcript, CBK, La Ronge, Saskatchewan, 6 May 1997.

10 Fisher *et al.* (1992: 161). In their work, Fisher and associates answer a resounding 'Yes' to the question: 'Should I negotiate even with terrorists?' They cite the example of the Kuwait Airways hijacking in 1988, where a negotiation saved many lives and led the way to a general decrease in hijackings.

On the other hand, the ENGOS are more interested in making a value-based statement of opposition and registering their dissent. Their alternative to negotiation is thus a series of confrontational protests which they have staged in both regions.<sup>11</sup> In Australia, members of the Arabanna and Kokotha people did attend the protest and a nationally televised documentary was made by one of the private television stations highlighting the concerns of these groups. The presence of a strong alternative to negotiation for the ENGOS should have conferred them power at the negotiating table, more than that of the INGOs. However, the ENGOS did not want to enter dialogue in forums that they felt were organised by governments to further the interests of companies, so we did not witness this power in action.

### *The power of an elegant solution*

As far as the ENGOS were concerned, the only acceptable solution to the problem would be no uranium mining whatsoever. The native groups felt that if implemented properly the mining could be a possible solution to the problems of economic development in their region. Interestingly enough, the solution proposed by the ENGOS in both cases to the concerns regarding economic development was to institute means of promoting eco-tourism. This was of course an alternative rather than a solution to the existing negotiation process.

Revenue sharing was the 'elegant solution' proposed by the communities in the Canadian case. This has been the major bone of contention in the negotiations as well. The native groups feel they deserve a larger share of the pie than the company is willing to offer. A remediation model was developed by the community (without ENGO involvement) during the initial working group meetings between the mining company and the native communities. Such simple solutions to potential conflicts, when backed by a commitment, can be an important source of power.

In Australia, the company felt no obligation to present any solutions *per se* but rather to simply comply with government regulations.<sup>12</sup> In any event, the ENGOS did not try to find some amicable solution to the existing situation of economic deprivation. Joan Wingfield of the Australian Heritage Commission felt that the ENGOS should contribute monetarily towards Aboriginal development if they were to use their platform as a means of advocating the environmental cause.<sup>13</sup> Though many of the individual members of the ENGOS have tried to help the Aboriginal people financially, there has not been an institutional effort to accord them a financial assistance package.

11 In Canada most of the protests have taken place at the corporate headquarters of Cameco in Saskatoon, whereas in Australia the protests have taken place at the mine site itself.

12 Personal communication with David Stokes, Community Relations Officer, Western Mining Corporation, Port Augusta, South Australia, 22 January 1998.

13 Personal communication with Joan Wingfield, Australian Heritage Commission, Canberra, 15 January 1998.

### *The power of legitimacy*

The ENGOS in both cases are largely represented by urban inhabitants who are far removed from the plight of the native communities.<sup>14</sup> In the Canadian case, the most prominent members of the Inter-Church Uranium Committee had never actually visited the mining communities in northern Saskatchewan.<sup>15</sup> There was no native person who was formally a member of this organisation. The native groups in Canada could be seen to have a very legitimate concern because most of them were residing in close proximity to the mine and the relative isolation of these communities and their adherence to subsistence-oriented lifestyles based on hunting and fishing was well documented.

In the Australian case, the issue of legitimacy loomed large for both native and green groups. While Canada has a category for multi-racial individuals, known as Metis, Australia does not have such a categorisation. Therefore the mining company was resentful of 'white-looking' people who were claiming Aboriginal ancestry and hence compensation. Because of the hunter-gatherer nature of Aboriginal society, it is also very difficult to delineate tribal domain over areas of land. Indeed there was no formal system of property rights in Aboriginal society and hence anthropologists have struggled to demarcate ancestral lands for mining projects. The legitimacy of certain native claims were therefore subject to scrutiny from anthropologists who had widely differing views. Archaeological evidence was the primary means that the company used in its determination of Aboriginal claim. The ENGOS attempted to present anthropologists that could perhaps legitimise the claims of the Aboriginal groups who were supporting their cause. However, since very few of the Aboriginal people were actually living near the mine itself (and were themselves residing in nearby cities), the claims were difficult to defend. Some notable anthropologists did, however, challenge the mining companies' assertions but were largely ignored. The urban background of the ENGOS also made matters more difficult to defend. The community relations officer for the WMC referred to many of the ENGO representatives as 'kids from the garden suburbs of Melbourne on holiday from universities'.<sup>16</sup>

### *The power of commitment*

Mining ventures by their very nature are relatively ephemeral, usually not lasting for more than 50 years. Therefore, gaining a commitment from the company to decommission the mine and remediate afterwards is the most critical dimension of any such agreement. The company in return could also want a series of commitments to reach an amicable settlement. However, in development disputes of this kind it is not easy to identify the

14 There are of course a few exceptions. Jan Whyte, a member of Friends of the Earth, Australia, has lived with the Arabanna Aboriginal community for the past few years. However, even in such cases, there is always a choice to go back to the life in the city and hence the BATNA generally remains unchanged.

15 Personal communication with David Greenfield and Neil Sinclair, Saskatoon, 25 March 1998.

16 Personal communication with David Stokes, Community Relations Officer, Western Mining Corporation, Port Augusta, South Australia, 22 January 1998.

benefits the company can attain through a formal commitment from the community. The tacit commitment that the company would seek is positive relations with the community so that there would be no hindrance to their activities in terms of protests or sabotage. However, according to the mining executives, the protests that the ENGOS staged were not of much consequence and they would not need any commitments from the environmental groups.<sup>17</sup> The clearest means of gaining commitment in such cases is to involve legal terms and conditions for a settlement. Lawyers are inevitably involved in such cases. The ENGOS in both cases were not staffed by any lawyers nor were they able to hire any legal professionals to this end.

The Aboriginal groups in Australia were partly represented by the Australian Legal Rights Movement, which is not affiliated with any specific environmental cause. In the Canadian case, there was no direct legal involvement as most of the native grievances were addressed through the public hearings held in various parts of the province. An Impact Management Agreement is proposed to be the legally binding document in this case. The governments in both cases are responsible for monitoring compliance with any agreements reached.

### *The power of process*

In both cases the ENGOS did not want to directly negotiate with the mining company. Most communication between the ENGOS and the mining company was carried out through government channels. Environmental Quality Committees were set up by Cameco in northern Saskatchewan to try to garner opinions of native groups regarding environmental management. The Athabasca Working Group comprised the respective chiefs of Hatchet Lake, Black Lake and Fond du Lac and the mayors of the hamlets of Wollaston Lake, Stony Rapids, Uranium City and Camsell Portage, and had regular meetings from March 1993 onwards. It held several public meetings as well but there is no record of ENGO involvement in this process. The Working Group came up with an 'Agreement-in-Principle on Environmental Protection and Compensation' on 31 January 1998.

Various consultative committees were organised in the Australian case as well. The ENGOS believed that most of these entities were moulded by the mining companies to fit their interests and hence they did not participate in any of their activities. Though the credibility of some of these groups, particularly the Dieri Mitha Council, is highly questionable, the inability of the ENGOS to engage the company in any process of reconciliation with the native groups is nevertheless a matter of some concern. A conference was also organised by WMC in which various ENGO representatives were invited. Amnesty International was the only international NGO that agreed to participate in this session and it did so for human rights concerns rather than environmental causes. Though the divisions within the Aboriginal community were often attributed by the

17 Personal communication with Steven Green, Environmental Manager, Western Mining Corporation, Olympic Dam Mine, 23 January 1998, and with Elaine Kergoat, Manager for Public Relations, Cameco Corporation, 24 March 1998.

environmental community to a corporate neo-colonial policy of 'divide and rule', it is important to recognise that the factionalisation made the situation considerably more complex for the mining company as well. In order to alleviate this problem, the company initiated a process of mediation between the Andamooka Land Council and the Kokotha Peoples' Committee. An Aboriginal person from the eastern states was hired to be the mediator.

## ▲ Competing interests and the corporate objective

The INGOs and ENGOs represent stakeholders with a variety of interests and values that are not shared and thus any alliances that may form are usually strategically opportunistic and can be divisive. This is not to doubt the sincerity of each group towards the other but rather a manifestation of differing world-views about development that are not easily reconcilable. Uranium mining exemplifies these differences most acutely because the ENGOs advocate a permanent moratorium on uranium mining, while most of the native groups do not share this stance.

An important lesson is the relationship between culture and power (Lund and Duryea 1994). In both cases the indigenous groups have similar hunter-gatherer lifestyles and hence share certain anthropological traits in terms of their perceptions of the natural world, their values and their conceptions of power. How well an ENGO, INGO or business is able to 'empower' the community or place things in perspective for all sides is dependent on their understanding of this cultural divide. The Canadian company was clearly able to proceed more successfully in its negotiations with the indigenous communities because they provided forums such as the Athabasca Working Group which gave the communities a feeling of empowerment and respect.

Differences in bargaining power can often lead to disillusionment with the process of negotiation. Indeed, there is sometimes a perception that the mere process of negotiation is perhaps a concession to the other side. This has been the case in many ecological disputes, particularly those involving ENGOs.<sup>18</sup> However, a closer analysis reveals that such intransigence usually leads to long-term adversarial relationships among stakeholders, thereby undermining the interests of all sides. Negotiations particularly become important when there is no legal recourse or the expense involved in seeking an adversarial alternative is unacceptable.

Several models of negotiations have been proposed by economists, sociologists and lawyers. In economics, for example, 'game theory' has been used on negotiations discourse ever since Thomas Schelling wrote *The Strategy of Conflict* (1960). However, conceptualising the particular negotiating circumstances in these uranium mining cases requires a broader appreciation for various approaches to dispute resolution. The cases

18 James Crowfoot and Julia Wondolleck have compiled a volume (1990) on environmental disputes with several case examples on how appropriate mediation and negotiations strategies have been more effective than conventional modes of social resistance.

under discussion are not zero-sum games and therefore require more than just a static model of possible outcomes. A more dynamic analysis involving anthropological and qualitative approaches to personal and organisational behaviour is helpful (Susskind and Field 1997).

Positive outcomes from negotiations may be difficult to envisage or attain. Economists such as James Cobbe (1979) have argued that there are essential characteristics of mining companies and the nature of the global mining economy that can cause breakdowns in negotiations.<sup>19</sup> These characteristics result from the relative monopoly over economic development that resource extraction companies have in remote regions. Like all cases of monopoly power some form of external intervention, such as government mediation, may help to move the process forward.

Even without government intervention, existing interactions between businesses and NGOs, both indigenous and environmental, could be improved, and the long-term viability of a project could be considerably enhanced, by appreciating the various sources of negotiating power that have been highlighted in this chapter. The business community needs to understand the dynamics of strategic coalitions between NGOs more closely, and to try to cultivate negotiating power for consensus movements, so that they do not have to rely on opportunistic and divisive activities. We all need to be aware that NGOs may form coalitions in an opportunistic fashion which can mask differences, thereby making the coalition unaccountable to certain interests and concerns. As this case shows, one NGO can be interested in corporate activity because of the impact on a specific issue of ideological concern, and another can be interested because of the affect of a corporation's activity on a group of constituents. This is an important consideration for business because of the increasing concern with accountability.

From the arguments of Cheryl Rodgers (Chapter 2) and Rob Lake and Jem Bendell (Chapter 17) in this volume, we are able to say that many companies today are seeking effective systems for demonstrating their accountability to society, given the breakdown of traditional means of maintaining corporate reputation and legitimacy. Consequently, for a corporation to use divisions between different NGOs to further immediate goals is short-sighted and ultimately counterproductive. Instead, the different interested and affected parties and their representative NGOs should be supported in various ways to partake in meaningful dialogue and then even negotiation. Companies cannot leave this process to civil society alone, as coalitions of NGOs can marginalise certain issues (Wapner 1996). Instead, companies should take a leadership role in helping to support systems of independent consultation, which may include efforts to build the organising and negotiating capacity of affected groups. This is a major undertaking for an individual corporation, and so partnership with other companies, major international NGOs and intergovernmental agencies is advisable. Thus the mining industry may have

19 Smith and Wells (1975) also undertook a detailed study of negotiations involving mining companies and governments of developing countries. The dynamics of such talks may, however, be quite different, given the nature of 'the state' in many parts of the world. The 'bargaining hypothesis' is also tested in some detail by Kobrin (1987), though in the context of the manufacturing industry.

something to learn from initiatives such as the World Commission on Dams or the Forest Stewardship Council (see Chapters 4 and 12).

As far as business interactions with conflict-oriented NGOs are concerned, the doors should always remain open for negotiation. Keeping in mind the other stakeholders' BATNA helps us to appreciate the reasons for resistance. In the final analysis there will always be some degree of value-based resistance between certain sectors of the NGO world and the business community. However, by being more discerning about the reasons for conflicts and going beyond a zero-sum game, we can at least endeavour to disagree without being violently disagreeable.