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From the Law to the Global Market: The Campaign of the U'wa Indigenous People in Colombia
(1995-2010)

By

Pablo Rueda

A dissertation submitted in partial satisfaction of the
requirements for the degree of
Doctor of Philosophy
in
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of the
University of California, Berkeley

Committee in Charge:

Professor Calvin Morrill Co-Chair
Professor Malcolm M. Feeley Co-Chair
Professor Martin M. Shapiro
Professor Laura Nader

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Abstract

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Doctor of Philosophy in

Jurisprudence and Social Policy

University of California, Berkeley

Professors Calvin Morrill Chair and Malcolm M. Feeley, Chairs

This dissertation uses the campaign of Colombia's U'wa indigenous people against oil extraction in their land as a case study to understand the impact of the state, the law and the market over the tactics and scale of social movements. It studies how the campaign shifted away from litigation, expanded its scale transnationally and started using the tools available in the global market economy to prevent oil exploration in the U'wa land. The dissertation suggests the need to understand social movement tactics as a complex, multidimensional phenomenon in order to capture the relation between activism and multiple institutions. Finally, it also provides a framework to understand the relation between different tactics and institutions that helps to explain the roles of economic, political, and legal factors in providing the resources and opportunities for tactical innovation and transnational activism.

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CHAPTER 1

INTRODUCTION

This dissertation is a case study. It is a case of transnational activism against oil extraction in indigenous lands. Throughout the dissertation I analyze the campaign against oil extraction, focusing on the changes in scale and strategy. The first aspect of the campaign that I try to explain is why its scale expanded from a small-scale, purely local “not-in-my-back-yard” (NIMBY) conflict between a local group and three oil companies to a transnational social movement. The second aspect that I seek to explain is why the campaign changed its strategies. Initially, the campaign relied mostly on law and litigation to resolve the conflict, but it later changed and resorted to market strategies, such as divestment campaigns, boycotts, and targeting shareholders.

The indigenous group involved in the campaign is the U’wa people, a group of around five thousand six hundred people who live seventeen different towns in the northeastern slopes of the Colombian Andean Mountains, a few miles south of the border with Venezuela. The oil companies involved are three: Occidental Petroleum (Oxy), which is a company based in Bakersfield California, Royal Dutch Shell (Shell), a Dutch-British company, and their domestic partner, the *Empresa Colombiana de Petroleos*, or Colombian Oil Company (Ecopetrol).

The purpose of the dissertation is to trace the processes and mechanisms that shape the ways in which indigenous people deal with conflicts involving resource extraction from their lands. The analysis presented here seeks to generate theories about the way in which globalization limits the options that indigenous people have for mobilizing locally and nationally, and how it opens the door for a type of activism that uses the resources, venues and opportunities provided by the global market economy to target corporate actors. I call this form of activism *transnational market mobilization*.

This is a theory-generating project. It seeks to generate theories about the way neoliberal reforms contribute to the emergence and tactical innovation of transnational movements. In doing so, it seeks to overcome the debates between scholars who claim that transnational movements are best explained by economic factors, which they call “globalization,” (Loker 1998, Rodrik 1997, Walton and Seddon 1994) and those who say that it is political factors, particularly the increase in international activity of the state, which they call “internationalization” (Tarrow 2005, della Porta and Tarrow 2005). For this purpose, I use the concept of the “oil complex,” a term coined by social geographer Michael Watts (2004) to explain how the type of alliance between states and transnational corporations produces not only economies of violence, but a form of neoliberal legality that helps to break, or, as in this case, transform local communities. This concept helps me explore how market actors are really embedded in a larger institutional context that involves both oil producing and oil consuming states. In particular, it seeks to understand the way in which the relations between market actors (transnational companies) and political actors (particularly states and intergovernmental organizations) contribute to structure the political and economic opportunities that activists have to mobilize in different forums and to deploy different strategies.

To understand how and why transnational indigenous movements have been able to use multiple institutions and strategies this dissertation builds upon on the multi-institutional approach to social mobilization and contentious politics proposed by Elizabeth Armstrong and Mary Bernstein (2008). In their approach Armstrong and Bernstein show how social movements relate to and target multiple institutions besides the state. However, the approach presented here differs from theirs in two important respects. First, it reaches beyond their analysis in that it uses the U'wa campaign as a case study to generate hypotheses with respect to when, how, and why, activists reach beyond the state. Secondly, although this dissertation analyzes the reasons why social movements decide to target corporations instead of targeting the state, it analyzes the changes in targets from the standpoint of the different strategies that social movements have at their disposal.

Moreover, the analysis presented here does not seek to provide a general theory that explains the emergence of transnational social movements in general. The scope of the research enterprise presented here is far less ambitious. This dissertation offers a framework to conceptualize social movement strategies within a multi-institutional political context. It seeks to advance our understanding of the ways in which the state and the market provide the resources and opportunities for a particular type of activism: *transnational market activism*. Specifically, it advances a hypothesis to answer the following research question: how, when, and why do activists expand their scale transnationally and shift from law-centered strategies to market strategies?

My findings suggest that neoliberal globalization, understood as a specific configuration of state-society relations at a global scale, reduces the opportunities that social movements have of targeting transnational corporations by using the coercive power of the law, particularly through the state and intergovernmental organizations. However, by that same token, neoliberal globalization also enhances the resources and opportunities available to social movements. They can target those corporations directly, persuading key shareholders to support their claims, exploit fractures within corporate governance, and use “market” strategies to produce schisms within corporations.

This dissertation uses evidence gathered throughout two years of direct observation, semi-structured interviews, and archival research carried out in multiple sites and archives in Colombia and the United States to establish how the political economy of oil has shaped the strategies, scale, and success of indigenous activism against oil companies. In particular, my dissertation shows how neoliberal reforms changed the role that oil played in Colombia's model of development and the effects that these changes had for social contestation at the local, national and international levels.

According to the model of economic development based on import substitution industrialization states were supposed to use the resources obtained from oil extraction to “deepen” the industrialization process. However, beginning in the late 1980s, and especially during the 1990s, at the same time that Colombia started adopting neoliberal policies it also found new oil deposits which significantly increased its oil reserves. During that time, however, oil became first and foremost as a source of revenue for the state. The government became more and more dependent on oil revenues to soften the negative political effects of its own “adjustment” policies.

However, attracting investment in the oil industry became increasingly difficult and the government implemented policies that attracted risk-seeking companies. During the 1980s and 1990s the number of oil producing countries increased significantly. Moreover, political violence in Colombia escalated and it began to threaten the interests of the oil industry. In this difficult context, the government started pursuing foreign investment aggressively. Thus, multinational oil corporations willing to operate in Colombia's violent context received high premiums for assuming the type of security risks that their activity entailed. The result was an inflow of risk-seeking oil corporations into the country. These corporations produced a particular configuration of state-society relations in certain oil producing areas of the country increasing violence and militarization. Furthermore, dependence on oil revenues in a highly competitive and violent context weakened the capacity of the state to mediate social conflicts involving the oil industry at the national level. My dissertation seeks to explain how this configuration of state-society relations in oil-producing countries like Colombia constrains the opportunities for both local protests and legal mobilization.

However, my dissertation also shows how the inflow of transnational oil corporations into countries of the global south can provide incentives and opportunities for transnational mobilization and tactical innovation. My research documents the mechanisms through which indigenous organizations are able to frame their conflict in a way that appeals to a broad audience worldwide, including environmentalists, labor unions, anti-capitalists, and religious groups, and insert their claim within the global justice movement of the late 1990s. This broad frame helps them build transnational support among activists in the global north, which in turn enables them to mobilize different kinds of institutions and use the tools of the global market economy to target oil corporations. In particular, it shows how activist organizations use the corporate structure and business model of these oil companies to affect corporate decision making, forcing the company management to attend the claims of indigenous people.

The dissertation is divided into ten chapters. The first chapter is the introduction. The second one is the methodological accounting of the research project. In this chapter I document the way in which I combined archival research with a multi-sited ethnography to provide the evidence that supports my research findings.

The third chapter provides the historical background that shows how indigenous land rights have been both a mechanism of control and a source of autonomy. This chapter uses secondary sources to show how since the Spanish colony indigenous lands (*resguardos*), have been used to control indigenous populations using them as a source of labor and political control. However, it also shows how during the 1970s indigenous people in Colombia revived and subverted a 19th century law to legitimize their own occupation of the colonial *resguardos* that they had lost almost a century before to white landowners. Finally, this chapter shows how the legal mobilization of indigenous groups helped to politicize indigenous identities nationwide, create indigenous organizations, and strengthen indigenous authorities across the country.

The fourth chapter expands on the ambivalent character of indigenous land rights, a topic that was introduced on the third chapter. It uses interviews and descriptive statistics to show how the government expanded indigenous lands through the system of *resguardos* during 1988-1989 at unprecedented levels. I claim that the purpose of this expansion was to delegate governance to indigenous authorities over isolated and remote regions of the country that the state could not

control directly. To do so, the government relied on re-emergent indigenous authority structures and helped to consolidate local indigenous governments. However, this chapter also illustrates how the expansion of indigenous lands paradoxically helped to commoditize them, facilitating the inflow of oil companies into those same lands.

The fifth chapter documents the process through which oil produces economies of violence in Colombia. The first part of this chapter again uses descriptive statistics and interviews to show the growing political importance of oil in Colombia during the late 1980s and early 1990s. It shows the growing political influence of risk-seeking oil companies that were willing to invest in Colombia despite security risks, and how these companies use their influence to minimize the risk to their investments through U.S. military aid. The second part of this chapter relies on direct observation and interviews to show how the increase of military aid to protect oil infrastructure increases violence and constrains the possibility that indigenous people have to resort to protests and other “disruptive” social movement tactics at a local level.

The sixth chapter focuses on the origins of the U’wa campaign and documents the role of organizational resources in shaping the perception of political opportunities. It uses archival materials and interviews to illustrate how the trajectory and expertise of the leaders, activists and organizations that supported the claims of the U’wa indigenous people, as well as the overall context of optimism with the constitutional reform in Colombia in the 1990s led the U’wa campaign to focus on litigation.

The seventh chapter shows how multicultural reforms introduced Colombia’s legal system paradoxically constrained the opportunities that the U’wa had to resolve their conflict with the oil companies through domestic courts. It relies on interviews and analysis of judicial opinions to show how courts assimilated multiculturalism and indigenous rights to rights of democratic participation, reducing them to procedural safeguards in their negotiation with oil companies. Moreover, due to the notion of indigenous autonomy and its critique of state intervention as a form of paternalism, the courts failed to create any substantive rules to protect indigenous people against the state and the oil companies. This means that litigation inevitably leads indigenous people to negotiate with oil companies. Thus, instead of “bargaining under the shadow of law”, indigenous people end up “litigating under the shadow of a bargain.”

The eighth chapter documents the second stage of the campaign in which the U’wa and their supporters resorted to international legal institutions. This chapter uses direct observation, interviews and archival documents to show how international organizations do not help to resolve conflicts, but provide forums or “battlegrounds” used by the interest groups, states, and activists to frame their conflicts and legitimize their claims before international audiences. The standstill created in the domestic legal system led the U’wa, the government, and the oil companies to resort to various judicial and quasi-judicial bodies of international organizations to resolve their conflict. However, although international forums proved to be useless and even detrimental for that purpose, they helped the U’wa to expand their network of supporters transnationally, and build links with environmental and religious NGOs around the world.

The ninth and final empirical chapter shows the emergence of a new form of mobilization which I call transnational market activism. In it I use interviews, direct observation and archival research to show how activists shifted away from state-focused legal strategies. Instead of

relying on courts and other legal institutions activists targeted key shareholders and political supporters of the company exploiting their exposure to reputational risks involved in oil exploration in U'wa land. The pressure exerted by the U'wa and their supporters over key shareholders and political supporters of the leading oil company helped to pressure its management to decide to abandon the oil exploration project in U'wa land.

The tenth chapter presents the conclusions of the dissertation. In particular, it suggests some possible implications of my findings for the literature on globalization and transnational mobilization. In addition, it also proposes some possible avenues of research on this topic.

Motivating Puzzle and Framing

In May, 1995, written media throughout the world reported that the U'wa, an indigenous group living in the Andean rainforests of Colombia, had threatened to commit collective suicide to prevent oil exploration in their land. The threat was the group's reaction to the decision Colombian government's decision to grant a license to explore their land in search for oil to Occidental Petroleum (Oxy), Shell, and the Colombian state-owned oil company Ecopetrol. Instead of self-immolation, however, the U'wa conducted a successful campaign that prevented Oxy and Shell from exploring oil in their land. Five years later, the U'wa had consolidated support from a transnational network of activists which enabled them to conduct a global campaign, mobilize various dispute-resolution forums, and target corporate and state actors. Support from environmentalists, religious organizations and global justice groups enabled the U'wa to gain access to the Organization of American States, the International Labor Organization, and target Oxy's shareholders, including powerful financial institutions and a presidential candidate in the United States.

The U'wa people have not been the only indigenous group to target oil companies through transnational campaigns, nor have they been the only group to resort to dispute in forums outside their country of origin. A local indigenous campaign that the Achuar, Shuar, and Cofan indigenous groups initiated in Ecuador in 1973 became, twenty years later, a transnational legal dispute. This dispute was initially promoted in the ninth circuit of the United States under the Alien Torts Claims Act (ATCA). Later, litigation moved back again to Ecuador supported financially by U.S. law firms, hedge funds and private investors. Recently, an Ecuadorean court awarded \$17.2 billion dollars to these indigenous groups for the environmental damages produced by Chevron-Texaco, although the battle to make this award enforceable in the United States and other parts of the world is still ongoing. The Achuar people of Peru filed a similar law suit against Oxy in the Superior Court of Los Angeles, and recently the appellate court rejected Oxy's motion to move the case to Peru for being a more convenient forum. The emergence of this trend of activism seems even more important in the face of what the New York Times has called the changing geography of oil, which is shifting the provision of oil to the United States from the Middle East to the Americas.

However, this emergent trend of transnational indigenous legal activism against oil extraction extends beyond the context of the Americas. The Ogoni people of Nigeria were fighting locally against Shell since 1958. In 1996 they also brought a dispute under ATCA and the Torture

Victim Protection Act against Shell seeking compensation for serious human rights violations committed against indigenous activists. After thirteen years of litigation the parties settled for \$15.5 million.

Moreover, indigenous people are not only filing claims in courts in the United States. The U'wa filed claims against the Colombian state for authorizing oil exploration in their lands in the Inter-American Commission of Human Rights and the directorate of the International Labor Organization. Meanwhile, the Ogoni also filed a civil lawsuit against Shell in the Dutch civil courts to claim compensation for environmental damages, and this court has recently asserted its jurisdiction over the case. As these cases suggest, there is an emergent trend of transnational indigenous mobilization against oil extraction in which law seems to play important, albeit also very diverse roles.

Despite their similarities, the trajectory of the U'wa campaign differs significantly from those in Nigeria, Ecuador and Peru. The latter three campaigns started long before they eventually reached the legal system, and when they did, the claimants sought compensation for damages already caused. Meanwhile, from the outset the U'wa campaign relied on legal strategies. However, contrary to the other cases, the U'wa sought to prevent oil extraction, not to seek compensation for damages.

Nevertheless, the U'wa stopped relying on litigation and later changed their strategies by resorting to what some environmentalists call "market" strategies. By market strategies activists usually refer to boycotts, divestment campaigns, targeting brands, or purchasing enough company shares to be able to address company shareholders in their annual meetings and persuade them to support their causes. More generally market strategies are all those strategies in which activists resort to the tools, opportunities and venues available in the global market economy to gain leverage with the company's management and persuade them to make compromises with respect to environmental protection or human rights standards.

Social Movement Strategies, the State and the Market

Social scientists from different disciplines have sought to explain the rise of ethnic mobilization since the 1980s and 1990s in Latin America and around the world. The explanations given to this phenomenon can be divided into two general groups, each with its own theoretical approach. A first approach highlights the role of the state and its institutions in providing the resources and opportunities for ethnic mobilization. Proponents of this approach tend to focus on the ways in which political factors such as democratization processes or the enhancement of the international activity of the state in international organizations and regimes have provided the resources and opportunities for formerly disenfranchised ethnic groups to mobilize both domestically and internationally. However, they also acknowledge that the processes of democratization and internationalization of the state have been incomplete. Thus, although these processes have induced marginalized ethnic groups to voice their claims, they have done so largely outside the domestic and international political institutions (Sieder 2002, Van Cott 2000, 2007, Yashar 2005).

A second general approach emphasizes the relation between the rise of ethnic and indigenous mobilization and models of economic governance, namely neoliberal globalization (Comaroff and Comaroff 2009, Hale 2006, Rodrik 1997). While this approach does not negate the importance of the state, it shifts its gaze to focus on how the state aligned its interests with those of large economic actors, fostering a form of governance commonly known as neoliberalism around the globe. Thus they explain ethnic mobilization as a consequence of neoliberal globalization. Neoliberal globalization, as it is understood here, is the result of a certain form of governance –neoliberalism– visible in a series of policies created to reduce domestic barriers the flows of people, capital, goods, information and ideas across countries (Keohane 2002). Theoretical arguments within this approach to ethnic mobilization vary substantially. However, most proponents of this approach suggest that neoliberal globalization has provided not just the motives for ethnic mobilization, but also the necessary *resources* and *opportunities* for these groups to to organize and voice their claims.

The proponents of these two approaches to ethnic mobilization are a heterogeneous group of scholars coming from different disciplines that do not necessarily use the concepts and propositions of the literature on social movements. Some of them are political scientists studying the emergence of ethnic politics and the demise of class-based political parties in Latin America (Madrid 2008). Others are anthropologists studying the origins of indigeneity (Niezen 2003) and the political and economic uses of the discourses of multiculturalism (Hale 2006), and ethnicity (Comaroff and Comaroff 2009).

However, despite the differences in disciplinary backgrounds, their explanations to the emergence of ethnic mobilization tend to converge and mirror recent critiques made to the political process literature on social movements. Their approaches echo the claims made by a recent body of literature on social movements that questions the importance traditionally awarded to the state, the political process, and the concept of political opportunity structures as factors that explain the emergence, form, and trajectory of social movements. In particular, these approaches to the emergence of ethnic mobilization echo the recent challenges posed to the political process approach by the multi-institutional approach to social movements proposed by Elizabeth Armstrong and Mary Bernstein (2008).

The challenges posed by the multi-institutional approach to social movements focus on three interrelated elements of the political process approaches: the assumption that social movements primarily pursue material claims and only marginally seek cultural change, the excessive importance given to the state as a determinant of mobilization, and the emphasis on non-institutional strategies as a feature that distinguishes “contentious” politics from other forms of politics. In this dissertation I will focus on the two latter challenges.

The political process approach to social movements has focused mostly on the analysis of domestic movements, and this has limited the scope of many of its concepts and propositions. Theoretical emphasis on domestic movements has affected particularly the concept of political opportunity structure which denotes the series of exogenous political factors that “encourage people to engage in contentious politics” (Tarrow 1998: 20), whether these are structural factors usually highlighted in cross-sectional comparisons, or more conjectural factors usually highlighted in longitudinal studies. However, both types of analysis focus on the state as a factor that shapes why, when and how social movements emerge and fade away. They emphasize the

importance of the degree of openness of state institutions and the points of access that are accessible to marginalized groups as the main determinants of mobilization (Meyer 2004). Within the political process theory, the importance of the state is two-fold: it is a target of mobilization due to its capacity to harness social change and it may constrain mobilization through its repressive power.

The role that the concept of political opportunity structure attributes to the state thus relies on a series of empirical assumptions. A first set of assumptions refers to the capacity of the state. Particularly, the concept of political opportunity structure assumes that the state has the capacity to repress social movements and/or to address their claims. However, these two assumptions do not necessarily hold true across time and place. A state may lack both the capacity to repress social mobilization and to address the claims of a social movement. A state may lack the necessary resources for repressing social movements, or even if it has the resources, it may be unable to use them for repression. Moreover, even if the state does have the repressive capacity, it may simply be unable to address the claims made by social movements.

State capacity, however, does not depend solely on material factors. It is a social construct related to what policymakers, government officials, bureaucrats, and other relevant actors perceive as the appropriate role of the state in a specific time and place. The state may be unable to address social movement claims either because public officials perceive that it lacks the power or authority to address them, or because these claims are directed toward targets that are beyond what they regard as the appropriate role of the state in a given historical period. The targets of social movements that are situated beyond the scope of the coercive power of the state may be specific actors like multinational corporations, social constructs like the military-industrial complex, or diffuse collectivities, like consumers, or “the ninety nine percent” of the population, whose cultural values, beliefs, and behaviors they seek to transform. In all such cases social movement actors may perceive the state as a rather irrelevant actor and decide not to target it.

The State and the Shape of Social Movement Strategies

The state-centered character of the concept of political opportunity structure also relies on a series of assumptions with respect to the influence that the state has over the strategies that social movements use. It assumes that certain features of the state shape the strategies of social movements. According to the logic of the concept of political opportunity state institutions that are very open to claims made by the citizens do not foster social mobilization. If state institutions, such as the courts, are readily accessible to marginalized groups, then collective organization and social mobilization are unnecessary; a fact that has motivated long-standing critiques against portraying litigation as a way to promote social change (Bell 1989, Rosenberg 2008, Tushnet 2000). On the other hand, if the state is completely closed to the citizenry, and the costs of mobilization are too high as a consequence of state repression, activists will not mobilize either (Kitschelt 1986). In this view, the state is seen both as a target and as a potential constraint on mobilization. Thus, underlying the concept of political opportunity structure there is a theoretical claim being made according to which social mobilization varies depending on the degree of openness of state institutions. However, this theoretical claim depends in turn on a series of assumptions with respect to the types of strategies used by social movements.

Proponents of the political process approach accept that the strategies¹ used by social movements vary significantly across countries (Kousis and Tilly 2005). However, they also assert that a common feature of social movements is that they normally resort to strategies that transgress formal and conventional institutions and processes to make their claims and have developed elaborate techniques for observing and measuring these strategies. In their view, this transgressive element is a defining feature of social movement strategies which may bring about either repression or concessions by the state. As a consequence, they use ‘contentious politics’ as a generic term to refer to multiple forms of contention of which social movements are a specific type (McAdam et al. 1996, 2001, Tilly 2004, Tilly and Tarrow 2006, Tarrow 1989).

On the other hand, social movements may explicitly avoid resorting to strategies that elicit repression. In fact, recent work bridging social movements and the sociology of organizations has shown that the use of transgressive tools by social movements should not be overstated (Davis et al 2005). Although activists frequently seek to produce such changes through transgressive actions, they also use conventional and institutionalized tools, resources, and venues provided by institutions to make their claims. In sum, then, the kinds of strategies that activists use vary greatly, and they usually combine “various forms of struggle.”

Proponents of the political process approach do recognize that social movements resort to contentious strategies as well as to established mechanisms within the political and/or legal process proper (Kousis and Tilly 2005, McAdam et al 2001, Tilly and Tarrow 2006). In fact, this leads them to conceptualize strategies along a single dimension that varies depending on how far they deviate from a standard set of instruments, mechanisms and procedures available to activists in the legal and political systems proper. In one extreme of the spectrum are contentious, disruptive, or more generally, *non-institutional* strategies. These are strategies that drastically deviate from formal styles of claims-making. They may or may not entail the use of violence, but nevertheless aim at disrupting the ordinary functioning of different kinds of institutions. Such strategies include, but are not limited to actions like protests, rallies, marches and sit-ins, among others. These strategies are normally attributed to transgressive groups such as some ethnic, social, independence, and revolutionary movements (McAdam et al 2001:7-8). However, as organizational sociologists have shown, economic and policy interest groups, coalitions and firms also use some of the transgressive strategies used by social movements (Davis et al 2005).

On the other extreme of the tactical spectrum are the most *institutional* strategies, which are means of political pressure that rely on a standard set of rule-governed instruments, mechanisms and procedures, available to them in the legal and political systems, such as litigation. These strategies, along with other slightly less formalized ones such as lobbying and negotiation, have been studied, conceptualized, and theorized much less by social movement scholars, because they are seen as being outside their domain, and typical of other types of collective actors like interest groups or political parties. In particular, political process approaches to social movements have not adequately provided a framework to understand the complexity of these strategies, and their relation not only to the state and state law, but to other types of social and political institutions.

¹ For the purposes of this dissertation I will use the term “strategies” to refer to those actions that activists carry out to induce or discourage changes in institutions, organizations, groups, or individuals, either directly or indirectly.

The variable role of the State and the multiple uses of Law as a Social Movement Tactic

Although strategies are best understood as continuums, there are also important qualitative differences which make it useful to talk about distinct types of strategies. In their study of peasant revolts in rural China, for example, O'Brien and Li (2007) identified a particular form of activism that they called 'rightful resistance' due to the types of strategies that were being used. The form of activism that O'Brien and Li identified resembles Scott's (1990: 106) "critiques within the hegemony" (1990:106) and Field's (1976) "rebels in the name of the czar," in the sense that all of them are characterized by marginalized or subaltern groups that use hegemonic discourses to exploit schisms within the state in order to voice their grievances and advance their claims.

O'Brien and Li (1990) show how groups of peasants use the discourses of the central Chinese regime to protest against the acts of local government officials that have deviated from them. Such discourses are of various kinds, ranging from laws, to policy objectives, to mottos and propaganda used by the Chinese central regime. Thus, the degree to which these strategies are institutional varies, but they are all clustered around the institutional extreme along the institutional-disruptive dimension. However, peasants use these discourses in various ways. In some cases they use them to make claims and bargain directly with the local government officials "under the shadow of law" (Mnookin and Kornhauser 1979) or some other form of hegemonic discourse (Ewick and Silbey 1995). Alternatively, they may use such discourses to target local officials indirectly, by appealing to their superiors or to institutions of the central regime.

Closely related to the rightful resistance identified by O'Brien and Li is what Michael McCann (1994) and others have referred to as the use of "legal strategies" or "legal mobilization."² This concept comprises very different ways of using the law and legal arguments and protocols for various purposes. Legal mobilization³ may involve the use of third parties or institutions, like the case of litigation in formal legal institutions like courts, arbitration tribunals, or even occur within mediation (Shapiro 1981). Moreover, legal strategies also operate in direct interactions in which activists use the law to obtain specific advantages in their negotiations with their

² O'Brien and Li (2006) suggest that *legal mobilization* as it is used by McCann (1994) is a subtype of the concept of *rightful resistance*. However, the term 'resistance' narrows the scope of the possible forms of mobilization of the law excessively. Whether law can be mobilized to achieve systematic social and political change is an issue that is subject to empirical inquiry, and thus, reducing its role to a form of resistance seems precipitated. In this dissertation, although I recognize there is an overlap between the concepts of legal mobilization and rightful resistance, I also use the term legal mobilization as a much broader category, not just as a subtype of rightful resistance.

³ The expression "legal mobilization", however, can be rather confusing because it does not lend itself easily to a classification of strategies, and because strategies outside of this type are not necessarily the contrary of legal, which may be understood as illegal. Thus, the term legal mobilization here refers to the use of law as a social movement tactic.

antagonists by ‘bargaining under the shadow of law’ (Mnookin and Kornhauser 1979). Finally, activists can also mobilize the law to shape the collective consciousness of groups (Ewick and Silbey 1998), identify and label grievances, and thus, to formulate collective claims (Felstiner, Abel, and Sarat 1981), as well as to shape or negate collective identities (Maravall and Przeworski 2003, McCann 1994:12).

Absent a conceptual framework to organize the multiple ways in which social movements use the law and the relation of law to other institutions, the term legal mobilization may tend to obscure more than it illuminates. Moreover, as Laura Nader (2002) has pointed out, law is best conceptualized not as a discrete, self-contained, autonomous technology of social control, but as one element within a continuum of social control technologies. Therefore, the concept of legal mobilization by itself does not allow us to understand and organize analytically the differences and similarities between various types of legal strategies and their relation to different types of institutions.

An important feature in the elaboration of a framework to understand the multiple uses of law would need to take into account the variable role and capacity of the state and its institutions. A state interested in competing with others for foreign investment may be weak vis-à-vis foreign investors and multinational corporations, and at the same time be interested in showing that it is respectful of the decisions of its legal institutions like domestic courts. In fact, according to Tamir Moustafa (2003) this is why the Egyptian government created a constitutional court and obeyed its adverse rulings following Sadat’s economic liberalization policies. An international context characterized by increasing competition to attract foreign investment may promote tensions inside governments between the imperative of satisfying the interests of specific investors and a more diffuse interest in preserving an image as a country respectful of the rule of law. The tension that arises between these conflicting imperatives constitutes an opportunity which partially opens law and legal institutions as a point of access for social movements. Naturally, in a context where the government faces these types of tensions individuals and groups have an incentive to resort to courts. However, the concept of political opportunity structure understood as the “degree of openness of the political system,” (Kriesi 2004: 70) and the availability of its particular institutions to the citizenry cannot capture the complexity of the interplay between the market and the state, and how it influences “the choice of strategies and the impact of social movements on their environment” (Kitschelt 1986: 58).

Moreover, the specific manifestations and more general types of rightful resistance mentioned in the literature rely on the existence of the modern nation state, conceived as a powerful, centralized, political structure which has few competitors in terms of power and resources. The forms of contentious politics, mobilization, and resistance studied by O’Brien and Li, Field, and Scott, whether in China, Czarist Russia or 16th century France all occurred in relatively strong, or at least autonomous, states. But what happens to rightful resistance when activists have to interact with actors and institutions more powerful than the state? Does legal mobilization look the same in small, weak or revenue dependent states where multinational corporations, international organizations, international NGOs, and other transnational players alter the domestic balance of power?

The Market Economy and Social Movement Strategies

As we will see, the trajectory of the U'wa campaign suggests that in such instances activists tend to experiment with different strategies, combining coercion with persuasion, direct and indirect engagement of antagonists, and institutional and disruptive strategies, both domestically and internationally. Experimentation, however, does not mean randomness. In weak states there is no centralized institution with the willingness or the ability to enforce its decisions upon the various types of actors that are rising in the international system. Moreover, a similar pattern exists in the international arena, because no international actor can enforce authoritative decisions upon all states, much less upon other types of actors like transnational corporations. Thus, activists will find substantial constraints in trying to use courts to mobilize the law against a transnational company either in an international forum or in a small or weak state. In addition, domestic legal mobilization against large transnational actors is also unlikely given the asymmetries of power and resources between them and national activists. This seems especially true in cases involving mobilization against transnational corporations in small states with developing economies in need of foreign investment like those of most countries in Latin America after the neoliberal reforms of the 1980s and 1990s.

Activists in small and relatively weak states in Latin America and Africa, and even in other countries have sought to exploit different vulnerabilities which are specific to the corporations they are targeting (Rao 2008). In some cases those activists have appealed to consumers, like in the case of anti-sweatshop campaigns against Nike, Gap and American Apparel, among others (Seidman 2009). In others they have exploited schisms between the company shareholders and the managers or built tension between companies and the government like in the case of baby formula advertisement (Keck and Sikkink 1998). Campaigns that appeal to consumers and use strategies such as boycotts have been waged against transnational corporations like Nestle (Sikkink 1986), or even against leading brands to change economic sectors like the apparel industry (Armbruster-Sandoval 1999, 2003, 2005), among others.

Moreover, aware of the political influence of transnational corporations, activists have waged some of these same strategies indirectly pressuring states by boycotting their companies or products. Similarly, anti-apartheid activists in the U.S. and elsewhere pressured the governance bodies of universities to divest from South African companies in order to pressure the apartheid regime (Klug 2000, Seidman 2009).

How should we conceptualize these strategies that exploit divides in the capitalist economy by using ordinary market mechanisms to obtain political goals? On the one hand, 'market-oriented' activists are seeking to turn the institutions and tools of the market economy against capitalist actors like corporations. In fact, as in the counter-hegemonic forms of resistance studied by O'Brien and Li, Scott, and Field, they are explicitly attempting to use market institutions and tools to disrupt the behavior of 'ordinary market forces' like the demand for certain products and services. However, unlike such strategies they are not using hegemonic discourses to maintain an appearance of consistency of a powerful and centralized political regime. Instead, as the U'wa

case suggests, they are seeking to alter the behavior of market actors, this is, they aim at altering more or less decentralized patterns of investment and consumption in a globalized context.⁴

Some proponents of the political process approach to social movements have claimed that economic factors, particularly the increase in the flow of capital across national borders –an element of what Sidney Tarrow calls *globalization*- does not contribute to provide the resources and opportunities for the emergence of transnational social movements (Tarrow 2005, della Porta and Tarrow 2005). In contrast, they claim that the increase in the international activity of the state, which they call *internationalization*, provides the forums and opportunities for transnational social movements to emerge. From this perspective, then, the creation of international organizations, the promotion of international regimes and institutions, including the strengthening of international law helps activists to advance their grievances in the international arena.

It is undeniable that there have been some social movements have resorted successfully to international organizations and to international law using them as venues and discourses to conduct their campaigns. However, the internationalization of the state, understood as an extension of the political opportunity structure to the international arena, is not helpful to explain the different forms that transnational activism has adopted. In particular, it cannot explain why other transnational social movements have either abandoned these institutions, or resorted to others, like the institutions, opportunities and tools available in the global market economy to conduct their campaigns.

The Multi-Institutional Approach to Politics

In a recent article, Elizabeth Armstrong and Mary Bernstein (2008) introduced the concept of multi-institutional politics as a critique of the political process approach to social movements. In their view, social movements challenge not only the state, but “other institutions, or cultural meanings,” including those of the “world order of which they are a part” (2008:84). The multi-institutional approach seeks to re-conceptualize social mobilization to include other forms of activism not contemplated by what they consider to be the excessively materialist and state-centered focus of the political process approach to social movements.

Their critique focuses on the fact that politics occurs within the state as well as outside of it. Moreover, they argue that the capacity of the state to repress social movements and to address their claims cannot be taken from granted, but should be a matter of inquiry. They also argue that social movements in different parts of the world target the state as well as non-state institutions, like corporations, the educational system, cultural and religious institutions, among others. In fact, they claim that state and non-state institutions are overlapping and nested.

Analysts of social movements, then, should focus on the ways in which state and non-state institutions are nested. This requires, for example, an examination of the domestic and

⁴ Moreover, this type of contention has an important theoretical significance. Against Sydney Tarrow’s contention, it shows how globalization provides more than just ‘causes’ and ‘incentives’, but also helps to shape the resources and opportunities for transnational contentious politics. Tarrow (2005:16-9).

international alliances, interests, norms, and values between the institutions of the state and the market, instead of assuming that the openness or closed character of state institutions determine when and how social movements will emerge, change or disappear. Moreover, a multi-institutional approach to politics also requires us to investigate the ways in which institutions are providers of material as well as symbolic resources that help individuals and groups understand their own identities and the world around them. Moreover, Bernstein and Armstrong say, because symbolic resources help to shape individual and collective identities and worldviews, they have important implications for the distribution of material resources. Thus, by understanding the complexity of state and non-state institutions and their relation with each other helps we gain a better understanding of why social movements seek to transform culture and beliefs, and not just alter the allocation of rewards and punishments.

However, although Armstrong and Bernstein make a strong case for the incompleteness of the political process approach and for the necessity for a multi-institutional approach to contentious politics, their article is largely concerned with the conceptualization of the main features of their approach. Thus, they do not seek to explain when or why activists target different institutions, or resort to different strategies. This dissertation seeks to provide a framework to conceptualize strategies within a multi-institutional political context, and to advance our understanding of the ways in which the state and the market provide the resources and opportunities for transnational market activism. Particularly, as it was already stated above it seeks to advance a hypothesis to explain why activists expand their campaign transnationally and shift from law-centered strategies to market strategies.

CHAPTER 2

METHODOLOGY

Combining Archival Research and a Multi-sited Ethnography to bridge Action and Meaning at multiple scales

Investigating a transnational campaign poses two major methodological challenges. The first challenge is locating the interactions between global, national, and local phenomena. As sociologist Saskia Sassen (2007) has pointed out, global processes are spatialized. In other words, global processes occur in specific places. Thus, to uncover the ways these interactions work we need to adapt our understanding of the location of global relations. Once we adapt our understanding of where these interactions occur, we realize the ways in which spatial hierarchies, from the global to the local, are nested within each other. In other words, global processes not only are facilitated by, but actually occur in the national and local levels.

To resolve the challenge of locating global interactions my dissertation research combined archival research with a multi-sited ethnography. Multi-sited ethnography, as defined by George Marcus (1995:105-10), consists on a direct, continued, on-site observation of human interactions as they develop across various settings, following people, things, or –as in this case– a conflict.

The second challenge, which is closely related to the first one, is that studying a transnational indigenous campaign involves studying not just the U’wa and their local context, but a broad array of actors, processes, and structures, including oil executives, lobbyists, courts, governmental institutions, and intergovernmental organizations, among others. In other words, it requires observing a vertical slice of social reality, or studying “up, down, and sideways” (Nader 1969). Otherwise, if one seeks to understand the way in which globalization or a global process is affecting a local community and only observes that community one can only acquire a partial understanding of the problem. In the same way, if one seeks to understand indigenous mobilization one also needs to understand the actors and circumstances that trigger that mobilization. If one only observes indigenous people one cannot really understand the magnitude, or quality of their grievances.

Moreover, investigating the tactical decisions and expansion in the scale of a social movement requires an inquiry into human perception and meaning. This inquiry requires a comprehensive analysis of decision making processes, which includes studying individual and collective behavior, as well as shared perceptions and meanings. Studying perception and meaning allows the researcher to understand the accounts that human beings give when they adhere to certain causes or adopt specific tactical behaviors. In particular, my research involves investigating the tactical innovation and the transnational expansion of a social movement campaign, which entails documenting past events. However, equally important, it requires investigating the meanings that people living in various, significantly different contexts give to them. Grasping

meanings helps us to understand why and how indigenous actors decide to mobilize, why activists in different countries decide to support them, how all these actors understood the strategies of the campaign, and how they perceive the constraints and opportunities for success.

Archival Research

To address these methodological challenges I followed a two-stage research chronogram. First I conducted archival research between 2007 and 2009 in Colombia and the United States. I consulted five different archives (public and private) in Colombia and the United States. Archival research helped me to establish a baseline: construct a chronology of events, identify the various actors and institutions that interacted with the campaign, and their roles. Then, as I established the events and identified the relevant actors and institutions, I started to build the list of interviewees, draft the interview topics and questions, and determine the most relevant research sites to carry out a systematic, continued direct observation.

TABLE 1.		
SITES OF OBSERVATION: 10 (TWO YEARS)		
LOCAL SITES	NATIONAL SITE	INTERNATIONAL SITES
Cubara	Bogota	San Francisco and East Bay
U'wa Reservation (multiple sites)		Santa Cruz
La China road site (blockade)		Los Angeles
Samore oilfield		Washington D.C.
		New York
ACTORS INTERVIEWED: 57		
LOCAL ACTORS INTERVIEWED	NATIONAL ACTORS INTERVIEWED	INTERNATIONAL ACTORS INTERVIEWED
10 U'wa leaders (multiple clans)	7 Government Officials	1 Oil Lobbyists
2 U'wa dissidents (multiple clans)	4 Oil Executives (various companies)	3 International Organization Officials
3 Police officers	9 Supreme Court and Constitutional Court Judges	2 Oil Executives
2 Military personnel	2 Investment Bankers	5 Environmentalists
	3 National Indigenous Leaders	1 Lawyers
	2 Supporting Lawyers-Academics	
	3 Environmentalists	
ARCHIVES CONSULTED: 7		
LOCAL ARCHIVES	NATIONAL ARCHIVES	INTERNATIONAL ARCHIVES
Asou'wa headquarters	Private archives of former public officials	Environmental Organizations
	Oil Company archives	International Organizations
	Public archives	
	National Indigenous Organization	

As table 1 shows, following the logic of the chain that connects the local, national and international links, I carried out archival research in these three levels. In order to investigate the local interactions I carried out research in the archive of the *Asociación de Autoridades Tradicionales y Cabildos U'wa*, or U'wa Association of Traditional Authorities and Councils (Asou'wa) during my stay in the town of Cubará in 2008. The archive consisted of a vertical filing cabinet which was not well kept and there were various documents and files misplaced and missing. Thus, I organized, revised and scanned all the documents that I found regarding the campaign. The documents that I found in this archive consisted mainly of correspondence including printouts of e-mail messages most of which dated back to the initial stages of the campaign, particularly from 1993 to 1997 as well as media releases, official documents and maps.

To complement the information gathered at the local archive I resorted to the archives of another indigenous organization: the *Organización Nacional Indígena de Colombia*, or Colombian National Indigenous Organization (ONIC) in Bogota. I hired a research assistant to carry out the archival research and scan all the documents we could find about the U'wa. After revising their general archive for two weeks my assistant and I realized that contrary to my expectations they did not have files on the U'wa campaign apart from a few newspaper articles. The legal director of ONIC then told me that they had made a special archive for all the documents related to the U'wa campaign including the printouts of newspapers and magazines from a daily follow-up on media releases that they carried out. Thus, we spent five weeks in this archive revising the documents, scanning them and classifying them in my computer. The period covered by this archive was significantly greater than the period covered by the documents that I found in Asou'wa. It contained similar types of documents to the archive in Asou'wa, but it also had a systematic organization of the interactions between ONIC and national and international entities, including courts, journalists, NGOs, labor unions, and international organizations. Moreover, it also contained documents related to the nationwide campaigns carried out in Bogota and other parts of the country, which were missing in the archive of Asou'wa. In addition, it contained documents that showed the important role played by ONIC during the national stage of the campaign. However, the archive lacked a comprehensive analysis of the international legal campaign conducted before the Inter-American Commission of Human Rights. Finally, it also lacked a complete and systematic documentation of the period going from 2005 to 2008.

To find information from the latter period of the campaign I resorted to a series of public and private archives. The first of those archives was the private archive of former minister of the environment Juan Mayr, who had been involved as a minister in the conflict and had made copies of everything that was available in the Ministry of Environment. Although this archive provided a systematic documentation from 1993, it only went until 2002, when Mayr finished his term as minister. Thus, my research assistant and I spent three weeks revising and scanning all the documents in the U'wa archive. Moreover, then we decided to conduct archival research in the Ministry of the Environment. However, this archive did not provide evidence other than the one we had already gathered in Mayr's archive.

To obtain systematic documentation of the years 2002-2008, I resorted to three different sources. The first one was the *Grupo de Consulta*, or Group of Prior Consultation, which is a unit of the Ministry of the Interior that conducts the prior consultations between indigenous people and oil

or other extractive companies. Moreover, as we carried out our search we realized that the archive had been created with a very specific purpose: to provide evidence that exonerated the Colombian government in the complaint made by the U'wa against them in the Inter-American Commission of Human Rights. In fact, the U'wa archive contained more documents than the archives they had for all the fifty seven consultations that they were carrying out, and the U'wa had never been in consultation with them, since this unit was created after the group had decided to pull out of their consultations with the government and the oil companies. In any case, we spent three months scanning and saving the whole U'wa archive into PDF files.

After consulting this archive we consulted two others: the private archive of Ester Sánchez, an anthropologist who had been a consultant for Ecopetrol, and the archive in that company. Apart from evidence documenting the prior consultation with the U'wa, these two archives did not provide greater information about the campaign.

Finally, I covered the link to the international stage of the campaign by consulting the archive at the Organization of American States (OAS), especially as it referred to the case being heard before the Inter-American Human Rights Commission. The archive of the OAS did not provide information with respect to the case in the Commission other than the one that I had already gathered in the Ministry of the Interior. This in itself was indicative of the control that the Colombian government had over the case. However, apart from this, there was no significant information on the legal case or the campaign.

Multi-Sited Ethnography: Description of Sites

I carried out participant observation in Colombia and the United States. In Colombia, my participation in the campaign consisted in providing legal assistance to ONIC and Asou'wa, and auditing prior consultations of indigenous leaders carried out by the government and oil companies in three different indigenous reservations. Legal assistance consisted in digitalizing and systematizing all their files on the U'wa campaign, and helping to design the strategy in the legal claim they have before the Inter-American Commission of Human Rights against the Colombian government. My participation enabled me to observe different kinds of political actions including various meetings between indigenous groups and representatives of the United Nations and the European Union and two indigenous mobilizations: a nationwide march from southern Colombia to Bogota, led by ONIC and other indigenous organizations, and a three day blockade to a local road led by Asou'wa. In the United States I carried out participant observation of the campaign mostly in California, where I participated in many events in the fund-raising campaign organized by the environmental organization Amazon Watch, which took place in various locations of the San Francisco Bay Area, Santa Cruz, and Los Angeles. My participation in this campaign allowed me to observe the interactions between U'wa leaders, United States environmental activists and donors.

The fifty seven interviews were conducted in Spanish and English, last between one and four hours, and were digitally recorded and transcribed. To select the interviewees I listed all those institutions, organizations, and individuals that directly intervened or indirectly affected the scale and strategies of the campaign. Through documentary evidence and some initial interviews I was

able to identify the individuals within the institutions and organizations who were directly involved in decision making processes regarding the campaign's strategies and scale. I identified a total of seventy nine people, fifty seven of whom agreed to be interviewed. The fifty seven interviewees represent a majority of the institutions and organizations that directly intervened or indirectly affected the scale and strategies of the campaign. The interviewees include twelve activists, eleven high court judges, eight oil company executives, six government officials, three national indigenous leaders, fourteen U'wa leaders, two officials from international organizations, and a Washington D.C. lobbyist for the oil companies.

Each level of analysis –local, national, and international –can be investigated in multiple research sites. Nonetheless, the U'wa campaign expanded from the cloud forests and towns in the slopes of the Northeastern Colombian Andes to various cities in the United States, Europe, and Asia. Thus, I conceptualize the sites described below as links in a chain that connects the local, national, and international levels.

I conducted on-site observation of the local link over a two-year period in three main settings: the U'wa reservation, the nearby town of Cubará where Asou'wa has its office, and the area of La China, in the border of the reservation. I contacted the U'wa through two different channels: through the president of Asou'wa, which is the largest U'wa organization and maintains a solid opposition to oil exploration, and through the leaders of two dissident factions in the communities of Uncasia and Segovia which turned out to favor such exploration, whom I met during a three-day road blockade carried out by the U'wa near their reservation in which I participated. Having this dual channel of access to the U'wa group (peak of main organization and local dissidence) helped me in situ the interactions between the U'wa and their leaders, between the U'wa leaders and national indigenous organizations during their regional meetings, as well as the interactions between the U'wa and the police, the military, the oil personnel, and the local peasant community living in the area.

Observation of the nationwide link was conducted in Bogota, where the offices of the National Indigenous Organization of Colombia (ONIC), the national government, and domestic NGOs are located. In Bogota I worked at ONIC offices organizing documents for international litigation. My work with ONIC enabled me to observe the interactions between the U'wa leaders, ONIC, and environmental organizations in order to assess the role of each in domestic and transnational mobilization, and in tactical innovation. Moreover, it also allowed me to observe the interactions between local and national indigenous leaders, government officials, and representatives of intergovernmental organizations. Besides the meetings in ONIC headquarters, I observed these interactions in various conferences, public events, nationwide indigenous protests, and protests of solidarity with indigenous groups from other countries in front of these countries embassies.

Finally, as it was already mentioned on-site observation of the international link was conducted in San Francisco, Santa Cruz, Berkeley and Los Angeles, and interviews were conducted in Washington D.C., and New York. In these U.S. sites I interviewed oil executives and their lobbyists, activists, international organizations officials, lawyers for these indigenous groups, and donors, and participated in the events carried out by Amazon Watch.

CHAPTER 3

CONTROL AND AUTONOMY: A HISTORY OF INDIGENOUS LANDS IN COLOMBIA (1595-1975)

Introduction

This chapter provides a historical background that helps to understand two interrelated aspects of regulation indigenous land tenure. The first aspect refers to elucidate the purpose that the Spanish crown had to create a framework regulating indigenous lands and governance. In this respect, the chapter asserts that the legal regime created by the Spanish to grant land to indigenous people was a mechanism to control indigenous people and secure agricultural production to maintain the mining industry in what is now Colombia, Panama, Venezuela and Ecuador. Although the colonial regime of indigenous land tenure existed from the late 16th century to the early 18th century, it was maintained after the colonies obtained their independence and is still used today in Colombia and other countries of Spanish America.

The second aspect that this chapter seeks to illuminate is how the regime created by the Spanish to control indigenous groups and maintained by the early Colombian government was subverted by indigenous groups in the 1970s, which transformed it into an institution of that allowed them to mobilize the law to reaffirm their indigenous identity for political purposes, assert their autonomy and consolidate indigenous self-government in their lands. As we will see in chapter 4, the assertion of a distinct indigenous identity, a greater autonomy from the state, and self-government were processes initially supported by the state in an attempt to delegate governance over remote areas of the country's territory to indigenous groups. These processes were later threatened by the inflow of oil companies during the period of neoliberal reforms that started in the late 1980s (chapter 5). However, as the case of the U'wa illustrates (chapters 6, 7, 8) indigenous movements contest these threats by shifting from law to market tactics and by expanding their scale transnationally.

In the late 16th century, the Spanish crown established the institution of the *resguardos* (meaning shelters) to delimit indigenous lands. *Resguardos* have survived throughout the centuries in many Latin American countries, and they have been particularly important in Colombia, where they occupy approximately 30 percent of this country's territory. The institution of *resguardos* has been seen as a benevolent protection to indigenous people. However, it has been used by the Spanish and Colombian governments predominantly a mechanism of economic and political control. This chapter traces the colonial origins and transformation of indigenous *resguardos* in Colombia and explains how the development of this institution is related to the politicization of indigenous identity, the forging of a specific form of "rights consciousness" and to the construction of "multicultural" governance.

Tracing the origins and transformation of *resguardos* is important to understand the causes for the legal mobilizations for land among indigenous people in the 1970s, their impact over indigenous identity and rights' consciousness, and ultimately, why the campaign of the U'wa

indigenous people resorted to legal mobilization as an initial strategy. The main argument elaborated in this chapter is that the mobilization of indigenous people for land during the first half of the 1970s combined with the government's top-down expansion of *resguardos* during the late 1980s helped to politicize indigenous identity and their relation to their land. Moreover, the type of legal mobilizations during the 1970s and the expansion of *resguardos* helped to promote a special type of indigenous legal consciousness based on the idea that indigenous law and land rights were prior to, and thus, *above* the law of the hegemonic society.

In tracing the history of the *resguardos* I will follow in part the periodization of this institution done by historian Margarita González and sociologist Orlando Fals-Borda, who divided the history of *resguardos* into three different periods: colonial (1561-1850), republican (1890-1910), and contemporary (1966-2011).⁵ In the first section of this chapter I will describe the origins, evolution, and decay of the colonial *resguardo* (1561-1850), and its brief revival during the republican period (1890-1910). In the second section, I will describe some of the constraints that successive Colombian governments faced to consolidate the state throughout the country's territory, and how the various governmental initiatives to expand the agricultural frontier failed in their purpose. Finally, in the third section of this chapter, I will show how indigenous people redefined the identity of the peasant organizations they belonged to adopting explicitly indigenous identities, and reinvented the institution of the *resguardos*, transforming them from spaces for controlling indigenous people to space of indigenous autonomy.

Resguardos have been a mechanism by which different political regimes have controlled indigenous populations and their land, and also, a form of indigenous self-government. Thus, throughout the three periods the *resguardo* system the types of controls and levels of autonomy granted to indigenous people has varied significantly. Throughout the history of *resguardos* these two elements, i.e. control and autonomy, have varied depending on the interests, capacity, and political alignments of the central government, and the ability of indigenous groups to manipulate these factors to their own advantage. However, as we will see in chapter 4, during the contemporary period of the *resguardos*, there are two major historical discontinuities in this institution. Until the early 1970s the Spanish crown and the Colombian government sought to use *resguardos* to control the indigenous population, using them initially as inexpensive labor, and then, as political supporters of a conservative regime. Later, since the early 1970s indigenous people reinvented this institution to gain autonomy from the state. However, from 1988 onward, *resguardos* were used, not as a way to control the indigenous population, but as a means to exert an indirect, decentralized control over the country's remote areas.

The Resguardo: Origins of the Institution

The *resguardo* is one of a series of legal institutions that kings Charles I and Phillip II of Spain started establishing since the first half of the 16th Century (1512 and 1542) to organize and

⁵ However, I distance myself from this classification in that I do not consider the *resguardos* that existed during the initial period of the independence as a republican institution, since there were no legal or de facto changes introduced between 1810 and 1850. In this respect, I will follow McGreevey (1968), who regarded this first stage of republican *resguardos* as a continuation of the decaying colonial institution, and not as a different or renewed one.

control indigenous populations and territories in the Americas. The origins of *resguardos* have been discussed by historians and historical sociologists interested in colonial Latin America. Some claim that the origins of *resguardos* are an altruistic institution (B. Sánchez 2001:13); a reflection of the paternalist style of government that the Hapsburgs established toward indigenous people. They argue that this institution reflects the influence of the Catholic Church in the government of the Spanish colonies. In particular, they see it as a result of the campaign carried out by Bartolomé de las Casas to protect the basic rights of indigenous peoples against the abuses of local colonial rule (Sahagún 1989). Certainly, this might have been the way *resguardos* were seen from the standpoint of indigenous peoples. However, the Spanish crown had other reasons for establishing this institution throughout the Americas. In fact, other scholars argue that *resguardos* were established with administrative and economic objectives: to increase the revenue that Crown received from indigenous tributes, and to organize indigenous labor in order to guarantee the continuity of agricultural production to feed the mining activities in the colonies. First, *resguardos* were a form of administrative organization that increased the Crown's control over indigenous tribute, helped to centralize its recollection and facilitated it. Moreover, this institution was also a form of organizing and maintaining indigenous labor by protecting indigenous people from the abuse of local colonial authorities (Fals-Borda 1968:331, González 1970:14, McGreevey 1968).

The altruistic, administrative, and economic purposes sought with this institution were not always at odds with each other. In some historical junctures they acted synergistically, while in others one prevailed over the other, depending on the power alignments and time horizons of the prevalent interests of the government. One of the arguments that I will make throughout this chapter states that governments that have a prevalent long-term interest in expanding and centralizing political power throughout the territory have expanded indigenous lands and increased the autonomy of indigenous people. However, governments with more immediate interests in increasing their revenue have sought to expand resource extraction, and to do so they have restricted the rights of indigenous people over their lands and limited their autonomy.

Protecting indigenous people against the decimation produced by the abuses of Spanish conquistadors helped the crown to maintain a distinct and inexpensive indigenous labor force. Maintaining this labor force helped secure the availability of agricultural products to feed the gold mining industries in the New Kingdom of Granada, in what is now Colombia, Panama, Venezuela and Ecuador (González 1969:20). Moreover, Indians organized in the *resguardos* would stop working for the *encomenderos*, or local administrators of the colonies, and become direct tributaries of the crown. This would reduce the power that *encomenderos* had vis-à-vis the Spanish crown, and at the same time, it would improve the situation of indigenous people, who would stop being serfs, and become lessees of the Spanish crown (Fals-Borda 1957:333). However, this change of status also meant a greater control over indigenous people, who could not practice any trade or activity other than agricultural work (González 1969:17). By protecting the indigenous population and organizing it in areas outside of the influence of the *encomenderos*, the crown could organize and safeguard a permanent labor force for itself, secure a direct, constant source of revenue, and centralize political power, vis-à-vis the power of the *encomenderos*. This system served to gradually increase Spanish royal control over its colonies, and secured long-term governance and economic prosperity of the crown until the end of the 18th century.

Like its predecessor the *encomienda*, the *resguardo* system is an adaptation of the Spanish medieval institution of serfdom to local indigenous customs of collective organization and work. In contrast with the *encomienda*, however, the *resguardo* is also a modern institution that seeks the rationalization of labor in the mercantilist economy, contributed to administrative efficiency, and to the centralization of power that sustained Spanish domination until the 18th century. The *encomienda* was a system through which the Spanish Crown gave to conquistadors *mercedes reales* (royal grants) to exploit its colonies in exchange for the payment of royalties and the execution of certain public functions. *Encomenderos*, then, were private landowners who carried out an economic activity like agriculture or mining in their own land, and used (and abused) Indian labor for this purpose. One of the public functions that *encomenderos* had to perform in exchange was to “reduce indigenous people to civilized life” by converting them to Catholicism, teaching them Spanish, prohibiting them from speaking their languages and practicing their customs, usually subcontracting these services with the regular religious orders of the Catholic Church. In this system *encomenderos* and Indians lived together in the areas of land that had been given to the former by the crown. The *encomenderos* leased parts of their land to indigenous peoples and demanded a tribute in exchange (Capdequí 1941). Part of this tribute was to be paid in agricultural products, but the other part was to be paid in labor. In turn, part of the product of the economic activity carried out by the *encomenderos* was to be paid to the Crown.

During the initial stages of the Conquest and colony the crown depended on the conquistadors to gather information about the kinds of resources available in the colonies and the possibilities for their extraction. Because the crown initially depended on the *encomenderos* to explore and exploit the land, it allowed them to extoll the majority of the resources in the colonies, including the exploitation of indigenous people, regardless of the long-term consequences of their activity, in exchange for the risks they were taking (González 1970:8). However, once the crown had a better notion of the resources available in its colonies, it depended less on *encomenderos*, and could increase the portion of the revenue it received from the economic activities carried out in its colonies.

The *encomienda* system led to inhumane treatment and abuse of indigenous labor, and this abuse produced a substantial decrease of the indigenous population. It is very difficult to establish with precision exactly how much the indigenous population of Latin America decreased during the time of the *encomienda*, among other things, because the calculations of the population in Pre-Columbian times vary substantially. Kroeber calculated around 8.4 million, while Henry Dobyn estimated they were between 90 and 112 million (Newson 1985:41). Moreover, the ratios of depopulation varied significantly from one region to another and from one country to the other. The depopulation of Mexico’s central coastal region between 1532 and 1608 was 26:1, while in plateau it was 13.2:1. In the coast of Peru between 1518 and 1568, the ratio was 47.80:1, in the plateau it as 9.55:1, and in the highlands it was 6.60:1 (Newson 1985:43). In the case of Colombia, the only information that we have refers to the members of the Quimbaya ethnic group that paid tribute to the crown. The Quimbayas diminished from 15,000 in 1539, to one hundred in 1630 (McGreevey 1968:266).

This decrease of the indigenous population led to a decrease in the revenue that the Crown received from their tribute and labor during the second half of the 16th century. Thus, from the perspective of the crown the institution of the *encomienda* became economically unprofitable,

unnecessary, and unsustainable in the long-term. Moreover, the depletion of the Indian population was jeopardizing the availability of agricultural resources necessary to secure a continuous and inexpensive extraction of gold and other precious metals from its colonies. Thus, the king decided to abolish the *encomienda* and return indigenous populations to their land. Instead, it created the *resguardo* system where indigenous people were to be segregated in order to “protect” them from the Spanish *encomenderos*, as well as from mestizos and slaves (Fals-Borda 1957, González 1970, Mörner 1985). However, the *encomienda* system could not be abolished completely. The crown had to arrive at a compromise with the *encomenderos* and created a system of paid but mandatory in-house indigenous labor which was administered by the *caciques* or indigenous chieftains of the newly created *resguardos*. Although this system established limitations to the rights of *encomenderos*, like a maximum eight hour labor days, minimum wages, and a weekly day of weekly rest, it soon reverted back to the system of serfdom that the crown sought to abolish (Fals-Borda 1957:339).

On September 22, 1593, the king sent Antonio González to survey the situation on the ground and to return the lands to the Indians. González ordered a census of the indigenous populations, established the size and limits of indigenous lands according to number of able males of each ethnic group, and ordered the *encomenderos* to give those lands back to the Indians and refrain from using them as labor. He started by creating *resguardos* among the most densely populated ethnic groups. This suggests that the interest of the crown was to control the labor force provided by indigenous groups, not to control the territory itself. Moreover, when indigenous populations were geographically dispersed, González grouped the dispersed populations into a single *resguardo* in order to facilitate agricultural production and tribute recollection by concentrating it on a single place. These *resguardos*, which comprised Indians belonging to different ethnic groups in a single territorial unit, were called *agregaciones de indios*, or congregations of Indians.

Formally, the crown gave the communal property titles of the *resguardos* to each indigenous group or *agregación*. However, these groups held their *resguardos* “in perpetuity”. This meant that *resguardos* were a limited form of property because then (as now) indigenous groups could not sell them or rent them to third parties. This shows that *resguardos* were indeed an adaptation of a Spanish form of serfdom to mercantilist purposes. This restriction meant that land was excluded from the market, which helped to ensure the continuous availability of land for the agricultural production in the colonies. On the other hand, given the relative lack of power of indigenous people, this form of perpetual property was also a protection, because Spanish conquistadors could displace indigenous people and appropriate their *resguardos* alleging they had been sold or rented to them unless indigenous people had abandoned them. Thus, the restriction secured both the crown’s and the Indians’ long-term availability of agricultural land.

However, the crown needed to secure that indigenous lands were in fact used to provide agricultural products for the colonies. Thus, it protected *resguardos* as long as they were in fact being used for agricultural production and indigenous people had not abandoned them. In those cases in which the indigenous population had died, abandoned the *resguardo* or decided not to use the land for agriculture, the crown could take away the land, in part or in whole, selling it to the Spanish neighbors and keeping the proceeds of this purchase. The limits of the *resguardos*, which were defined by especially designated Spanish officials, should be maintained unless

ulterior official revisions established abandonment or misuse. In practice this rule was only enforced from the late 16th century onward when, as we will see, due to the war with England the Spanish crown needed to increase its resources and decided to sell indigenous lands to Spanish *encomenderos* and local colonial officials and entrepreneurs.

The colonial *resguardo* was structured and managed according to the following rules. Each indigenous family was distributed a portion of land to derive its subsistence. The size of each family portion depended on the amount of members it had. Besides the portions given to each individual family, there was a large part of the *resguardo* that was worked in common by all the members of the group on a rotational basis. The product of these communal areas was then collected by a *cacique* or a *gobernador del cabildo* who was an indigenous chieftain. The *caciques* or *gobernadores de cabildos* were personally accountable to the crown for the tribute that the group had to pay. Thus, they had the authority to exert coercion among the members of the group to extract this tribute. Usually, this meant that they were people who already had authority within the group, but this was not necessarily true in every case. In exchange for their function, these chieftains enjoyed a special status which enabled them to eat certain foods forbidden to the non-Spanish population, drink wine, and dress like Spaniards (González 1970:25). These chieftains gave the product of the communal land of the *resguardo* to a *corregidor*, who protected the indigenous population and their land, and administered its production. Twice a year, the *corregidor* gave one third of the product to the crown, another part to the priest of the *resguardo* in exchange for the “civilizing” mission that the Church was carrying out, and the rest was used for the maintenance of the elderly, widows, and orphans of the *resguardo*, and to cover administrative costs (Fals-Borda 1957:334, González, McGreevey 1968, Roldán 2000:12, B. Sánchez 2001).

At the same time, however, *resguardos* conferred certain autonomy to indigenous groups and changed their status from serfs to lessees of the Spanish Crown (Fals-Borda 1957:333). *Resguardos* were not ruled under Spanish law or forms of government. Instead, they were ruled by their own laws and forms of government, which many times coincided with the Spanish institution of the *cacicazgos* or *cabildos*. However, the extent to which this system allowed to maintain indigenous laws and forms of government perhaps should not be exaggerated given that members of different ethnic groups oftentimes lived together in the same *resguardo*. In many cases, this system may have, at best, helped to foster new hybrid laws and forms of government, although it is hard to know to what extent (Fals-Borda 1957). In any case, as far as the Spanish authorities were concerned, it was the *caciques* or *gobernadores de cabildos* that applied these laws inside indigenous lands. Additionally, *resguardos* constituted barriers that protected indigenous people from external interferences and encroachment of indigenous property, a function that, as it was already mentioned, belonged to the *corregidor*.

The Spanish crown created innumerable *resguardos* from 1596 to 1642. For this purpose the Spanish officials called *visitadores* and *oidores* inspected the areas occupied by the indigenous population, received testimonies from the neighbors and the *caciques* with respect to the size of the population, gave a concept about the necessity of creating, expanding, or reducing a *resguardo*, and formalized the land titles in favor of the indigenous *cacique* or *gobernador*. During the 1630s, the crown created ninety four *resguardos* only in the area occupied by the U’wa indigenous people, who were then known as Tunebos. Among the most important were the

resguardos of Chiscas-Tunebia, Güicán-Panqueba-Cocuy, Chita, Batáitiva, Cómbita, and Motavita (Fals-Borda 1957:337). As we will see in chapter 6 of the dissertation, these titles awarded by the Spanish crown to the U'wa during the 1630s became a tool in their legal battles against the oil companies.

By the end of the 1600s, however, several factors contributed to the decay of the *resguardo* system. A first factor was the expansion of paid indigenous labor. A form of mandatory paid labor was administered by the *caciques* and *gobernadores* that resulted from the compromise between the crown and the *encomenderos*. However, throughout the 16th and 17th centuries, new forms of voluntary indigenous labor were created, and the majority of indigenous people preferred being paid for their work instead of subsisting only by consuming what they produced. In fact, the indigenous population that paid tribute to the crown through the system of the *resguardo* was reduced to a tenth of its size throughout the second half of the 1600s (Fals-Borda 1957:340). This meant that the revenue that the crown was receiving from indigenous tributaries throughout the end of the 1600s and the early 1700s was decreasing substantially, and thus, it had no incentive to protect indigenous *resguardos*.

The second factor was that the increase in Spanish immigration to the New Kingdom of Granada. A larger population meant an increase in the demand for agricultural products, and thus, exerted pressure to use the *resguardo* lands. Moreover, demographic growth in the colonies meant a greater supply of labor, and consequently, a reduction in its price. Thus, the Spanish crown did not need to maintain an artificially inexpensive form of indigenous labor to secure the continuity of agricultural production required by its extractive industries. The increase in the demand for agricultural products, combined with the decrease of the price of labor, and a reduction of the availability of indigenous labor mean that the pressure that the new Spanish settlers exerted over indigenous lands was becoming greater. The *hacendados* or small and medium farmers started squatting on Indian *resguardos* or renting parts of their lands, despite the legal prohibition of renting *resguardos*. As a consequence, the *caciques* and *gobernadores de cabildos* also lost an important part of their authority, and the life within the indigenous groups suffered greatly. Examples of the decomposition of indigenous life that historians often cite were the *resguardos* of Chiscas and Güicán, precisely where the U'wa lived, which were completely invaded by Spanish settlers. This forced the U'wa to move higher up into the Andes, which meant that many of them could not continue some of its cultural practices like the vertical agricultural system that characterizes this indigenous group.

Until then, the crown had simply stopped supporting the *resguardo* system actively, but it had not actively undermined it. However, international factors were about to change this circumstance. The third factor, which detonated an explicit royal campaign to abolish the *resguardo* system, was the impending Spanish war with England in the second half of the 1700s. As it was mentioned above, despite formally giving the property of the *resguardos* to indigenous groups, the crown retained its power to reduce or abolish *resguardos*, sell them to the Spanish in the colonies, and keep the product of the sale for itself. This could be done whenever the property titles were not clear, when indigenous people had abandoned their *resguardo*, or when it was not being used for agricultural production. Although as it was already mentioned the crown had not really exerted its prerogative until then, now it needed to increase its revenue to sustain war with England. Thus, Ferdinand VI issued the Cédula del Pardo in 1754, ordering its officials

in the colonies to analyze indigenous property titles and inspect the population and agricultural use of the *resguardos*. A few years later, the Viceroy José Solís Folch de Cardona found that most Indian lands were at fault, abolished them in part or in whole, and displaced the Indian families living in them (Fals-Borda 1957:341). As we can see, then, the advent of the wars with England in the late 18th century demanded that the crown increase its revenues, shortening the time frame of its interests and forcing a political realignment with local colonial rulers and colonizers to whom it sold many of the *resguardos*.

Moreover, it was the reduction of the time frame of the Spanish crown that also motivated a strict application of its laws regarding the economic function of indigenous property. The fact that the application of the laws regarding the economic function of indigenous property depended on the variations in the time frames of the crown suggests that compassion toward indigenous people had little to do with the creation, maintenance and demise of the *resguardo* regime during the colonial period. Instead, international economic factors were the driving force behind the creation and decay of indigenous lands. Similarly, as we will see in the next chapter, the adoption of neoliberal policies required expanding oil exploration provide the revenue and compensate for the reduction in the goods and services provided by the state in this new model of development. This need for resources also reduced the extent to which the Colombian government protected the property rights of indigenous groups over their land.

However, although the policy of selling indigenous lands during the colony severely undermined the *resguardo* system, it did not abolish it completely. In fact, the *resguardo* system continued even after the colonies had gained their independence from Spain, albeit briefly. After the declaration of independence of the Republic of New Granada (which later became Colombia, Ecuador, Panama, and Venezuela) in 1810, Simón Bolívar maintained the *resguardos* and established that indigenous lands should be protected from external interference. However, the new republics sought to expand their agricultural frontier in order to diversify their exports beyond gold, in order to build independent economies according to the dominating liberal models of economic development. Thus, ten years after their independence, a congress dominated by the liberal party enacted Law 11 of 1820, abolished the system of *resguardos*. In doing so, Congress turned some indigenous land into private property owned by the indigenous people that inhabited them, and declaring the rest as *terra nullius*, or no man's land. However, due to administrative difficulties, the abolition of the *resguardos* could not be implemented until thirty years later in 1850, during the administration of liberal president José Hilario López. Thus, from 1850 onward, indigenous people started selling or otherwise losing their lands gradually throughout the 19th century or migrated to more isolated places outside of the reach of the state and settlers.

Paradoxically, the arrival of a government dominated by the conservative party in 1886 reestablished the rights of indigenous people to their lands. Congress then enacted Law 89 of 1890, which retroactively annulled all sales contracts and titles obtained by non-indigenous people over the *resguardos* from 1820 to 1890. Under this conservative regime, the *resguardos* were organized under the protectorate of the regular religious orders of the Catholic Church. Moreover, the internal organization of the *resguardo* remained practically identical to its colonial predecessor. It was governed by a cacique, and divided into a communal area and individual family plots. However, the influence exercised by the church varied depending on the degree of

“civilization” reached by the indigenous groups. In other words, this influence varied according to the extent to which the indigenous population had adopted Spanish religion, language, and customs. *Resguardos* were divided into three categories depending on the degree of assimilation. If indigenous people were completely unassimilated, the Catholic Church had the greatest degree of authority to ensure that they adopted Spanish forms. However, in *resguardos* where indigenous people had adopted Spanish forms, indigenous authorities were granted autonomy from the Church, to the extent that in many cases *resguardos* became administered solely by the indigenous groups themselves.

The configuration of republican *resguardos* responded to, and mirrored, the battle between liberal and conservative ideologies that pervaded the 19th century in Colombia. In contrast with colonial *resguardos*, indigenous people were not regarded as economic subjects. Even though *resguardos* with savage and semi-savage indigenous groups had to repay the “services” provided by the Church, they were exempt of any kind of tribute or service to the state. In fact, indigenous people did not pay taxes or military service. Furthermore, *resguardos* were used more as a way in which the conservative party attempted to gain terrain vis-à-vis the recently defeated liberal party, and transmit its ideology throughout the countryside. To be sure, the conservative party maintained a condescending view of indigenous people as minors that needed the protection and guidance of the Church. However, the ideological differences between political parties were adeptly exploited by indigenous people seeking to attain special benefits from the state. The contrast that the conservative party wanted to emphasize with respect to the policy of indigenous assimilation promoted by the liberal party during the previous decades helped to strengthen indigenous organizations and systems of government (Rappaport 2005).

However, the relative autonomy granted by Law 89 was short-lived. Although some indigenous groups recovered their lands during this period, Colombia’s civil war erupted in 1899, and this law, despite remaining valid in the books, was quickly forgotten. Thus, by the beginning of the 20th century the only remaining *resguardos* were those located in the southern part of the country, where the indigenous population was greater. In fact, by the beginning of the 20th century the discontent with the situation of indigenous land tenure led to the emergence of indigenous subversion. Manuel Quintín Lame, an indigenous leader from the department of Cauca, led a strong, if fugacious insurrection to claim for the expansion of indigenous lands. However, Lame was unsuccessful and quickly forgotten by his contemporaries. Nevertheless, as we shall see in the next section, both Law 89 and Lame were rediscovered, reinvented, and mobilized in the 1970s by a left leaning indigenous movement.

In this section we have seen how the colonial powers in the Americas used the *resguardo* as an institution to secure the supply of labor, and ultimately, the supply of those agricultural goods that were necessary to maintain the mining industry. In other words, they were using a legal institution to create a colonial market economy. This illustrates the idea furthered by Karl Polanyi with regards to the role of the state (in this case of an imperial power) in creating markets. In Polanyi’s view, markets were not autonomous social occurrences. Rather, they were created by states with the help of legal and political institutions. In the next section we will observe how the Colombian government adopted a model of national development based on the expansion of the agricultural frontier which rendered the *resguardos* useless, affecting once more the relation that indigenous people had with their land. However, we will also see how the 19th

century regulation of the *resguardos*, this is, “laws on the books,” helped to forge a collective indigenous identity in Colombia and contributed to the recovery of colonial *resguardos* that had been stolen, abandoned, or illegally sold to whites.

Land Reform and Rehabilitation of Conflict-ridden Areas as “Top-Down” Policies to Consolidate the Territorial Power of the State

“To expand our agriculture it would be necessary to Hispanicize our Indians. Their idleness, stupidity, and indifference toward normal endeavors causes one to think that they come from a degenerate race ... it would be very desirable that the Indians be extinguished, by miscegenation with the whites, **declaring them free of tribute and other charges, and giving them private property and land.**” Pedro Fermín de Vargas, Colombian early 19th Century liberal politician and intellectual (Lynch 1986: 260).

This quote illustrates a rather unusual recipe for economic development and ethnic assimilation that combines staunch racism with a “benevolent” form of economic liberalism. More importantly, however, it suggests that behind the expansion of agriculture there was an underlying political project that sought to build a “Hispanic” nation and expand state sovereignty over the territory. We will see throughout this section that different variations on this recipe have captured the imagination of Colombia’s elite since this country’s independence and informed many of its state-building projects well into the 20th century. I shall argue that ever since Colombia’s independence state-building projects have been marked by a double quest. The first one is expanding economic frontiers in order to secure the territorial sovereignty of the state. The second consists in defining the nation’s cultural and ethnic boundaries. The government initially tried to define such boundaries by Hispanicizing “its” Indians, and then, as we will see in the next chapter, by resorting to what Charles Hale has called neoliberal multiculturalism; this is, by recognizing and even celebrating their cultural differences without redistributing power on their behalf.

The quote illustrates one way in which the projects of state-building and indigenous assimilation are related. Given Colombia’s abrupt geography and the concentration of non-indigenous population in relatively small areas, securing the country’s territorial sovereignty required defining the nation’s cultural and ethnic boundaries. After all, indigenous groups have historically been the majority of the population in the country’s large extension of jungles and rainforests, including those located around the country’s borders. Moreover, these remote areas have been almost completely disconnected from Bogota and other major cities, and beyond occasional resource extraction enterprises like quinine and rubber, the white and *mestizo* population has not been either interested or capable of settling in them permanently to exploit them economically. In fact, there are large areas where elites have not sought to dispossess indigenous people from their lands and take them to the cities, mostly because they have not been interested in appropriating their land or using them as labor. As a consequence, securing

Colombia's sovereignty in those areas has required making indigenous people a part of the national project. To do so, elites sought to "civilize" indigenous populations –a task largely carried out by Catholic missionaries–, give them land either in the form of *resguardos* or as private property, and exempt them from paying tribute. In other words, in this state-building project the extinction of indigenous people that the author of the quote desired would not result from massacring indigenous people or dispossessing them from their land, but from integrating to the market economy.

To be sure, harsher forms of extermination of indigenous populations have been devised and carried out in Colombia throughout the 19th and 20th centuries as well. These forms have included the massacres, enslavement, and forced displacement of indigenous groups. One such case is that of the Peruvian Amazon Company or Casa Arana, a Peruvian-British rubber extraction company established in 1903 in the Amazon region of La Chorrera. Until the intervention of the British parliament in 1909, this company, aided by the Peruvian army, enslaved, displaced, and killed indigenous people to extract rubber and transport it from Putumayo in Colombia to Belem do Para in Brazil. However, given the difficulties in the consolidation of state control throughout the territory, even the more "benevolent" state-building projects that have sought to include indigenous populations by celebrating ethnic difference and recognizing indigenous land rights have aggravated power asymmetries and fostered violence.

In what follows I will address some of the difficulties that the state has had to face in order to expand and consolidate its control.

Throughout its history, perhaps the most important difficulties that the Colombian government has faced in order to assert an effective control over the territory are the climate and geographical characteristics of the country. These have limited the government's capacity in two important ways. First, historically two thirds of its population has been dispersed throughout myriad small cities mainly located throughout the Andes' highlands and slopes, while the lowlands, which are eighty five percent of the country have remained practically uninhabited. Moreover, the lowlands of the Amazon Rainforest and the Eastern Grassland Plains occupy over 56 percent of the territory but host slightly over one percent of the population. Secondly, until the late 20th century the different regions of the country have remained economically isolated from each other. Geographical dispersion combined with economic isolation have prevented the territorial consolidation of the state; a situation which, we will see later on, has stimulated different kinds of governmental policies to try to consolidate the state's territorial control by expanding the "economic frontier".

The first mechanism through which Colombian administrations have sought to expand the economic frontier of the country is through land reform. "Land reform" policies in Colombia have not been oriented toward the redistribution of agricultural land (Kalmanovitz 2003, Kalmanovitz and Lopez 2006, Reyes 2009). In fact, land reform in Colombia has never entailed expropriating farms from rich capitalists to give them to landless peasants (Houghton 2008, Gros 2000). Instead, land reforms have been mechanisms through which the state has sought to expand the agricultural frontier to uninhabited areas in the hope of promoting economic activities in those areas. In other words, for the most part they have not been used as a means to resolve the problem of unequal distribution of land tenure in Colombia, but as a way of fostering economic

growth ((Kalmanovitz 2003, Kalmanovitz and Lopez 2006) and increasing the state's political control over the territory.

The first land reform took place during the reformist administrations of Alfonso Lopez Pumarejo (1934-38, 1942-45), who changed the constitution to establish that private property had a "social function", legalized unions and strikes, and promoted Law 200 of 1936. This law established that *baldios*, this is, land that had no formal property titles, became state property through an administrative procedure initiated by request of individuals interested in obtaining property titles for themselves. If those individuals demonstrated that they had developed the land economically during a certain period, the state would grant them property over the land. Legally, anyone could request being granted a property title over a *baldio*; however, not everyone had the means to develop the land for economic purposes. Thus, if the government wanted to turn Law 200 into a mechanism of redistribution, it needed to complement it with a system of loans that would enable small landowners and landless peasants to use their land. However, Lopez Pumarejo confronted a divided government, and the opposition, the conservative party which was traditionally part of Colombia's landed elite, dominated Congress. Thus, shortly after he was elected, Lopez was already receiving fierce criticism (Bushnell 1993). Moreover, he did not have control over the Agrarian Bank, which remained in control of the opposition. Thus, he could not transform Law 200 into a real land reform mechanism, and although in theory Law 200 benefitted small landowners and peasants, as well as large landowners, its benefits in terms of improving distribution and generating growth were marginal.

The second land reform took place in 1961, as a part of the Alliance for Progress promoted by the United States government as a strategy to delegitimize communism. It started during the administration of Alberto Lleras Camargo, and was strengthened later in 1968 during the administration of Carlos Lleras Restrepo. In contrast to the first reform, this second one was accompanied by the strengthening of credit lines through the Agrarian Bank as a means to achieve the desired redistribution of land. However, this reform was short lived. In 1973, an agreement between the two main political parties and landowner associations known as *Pacto de Chicoral* made land expropriations practically impossible (Kalmanovitz 2003). Moreover, the government underfunded the *Instituto de Reforma Agraria*, or Institute for Agrarian Reform (INCORA) to the point in which it became inoperative, and made the bureaucratic requisites to obtain the benefits of the reform so burdensome that they detracted a great number of peasants. Besides this, many peasants knew that acquiring property titles also meant having to pay taxes for their property, so even those people who had lived in *baldios* for decades did not request property titles from the state. In contrast with the first reform, this second one attracted local landowners from different regions who wanted to expand their lands and had the expertise and political contacts to obtain property titles and subsidized credits. Thus, not only did this land reform contribute only marginally to grant property titles to landless peasants, it helped to expand the property of large landowners (Kalmanovitz 2003).

However, the 1961-68 land reform did not contribute to expand the territorial control of the state in a significant way. Although it did expand the economic frontier to some extent, the newly appropriated lands were used mostly for extensive (outdoor) cattle ranching, and this industry has three important features that make it less useful as a source of regional economic development. First, it does not require intensive labor, which means that it does not attract a

migrant population, and thus, it does not help to increase the population in cattle ranching areas. Secondly, it is not capital intensive either, and the majority of the costs are those associated with the land, which means that this activity does not attract capital to the area. Finally, cattle can move by itself, which means that cattle ranchers have little incentives to request the government to improve the roads and other systems of transportation (Kalmanovitz and Lopez 2006).

Thus, neither of the two land reform attempts really achieved the goals of improving land distribution or expanding the state's control over its territory. Colombia still maintains one of the most unequal land tenure structures in the world and lacks road access and other adequate systems of communication to major parts of the territory, which remain mostly uninhabited. In 2001, 99.5% of the landowning population in the country owned only 34% of the land, while the top 0.2% owned 52% (IGAC, Sub-directorate of Cadastre, Summary of National Cadastral Statistics, 2001).

In sum, then, during the 20th century the state attempted to expand its agricultural frontier by promoting the colonization of remote areas. Two liberal governments resorted to land reform, not as a way of redistributing the means of agricultural production, but as an incentive to commoditize remote parts of the territory. These attempts failed precisely because the state provided the formal incentives but failed to provide the necessary resources to transform nature into a commodity: land. However, as we will see in the next section, the last of these attempts to expand the domestic agricultural market was accompanied by an intervention of the state to mobilize society in favor of its land reform. Although the government failed to organize peasants in support of its land reform policies, governmental intervention in combination with the laws on the books that regulated indigenous *resguardos* did produce a “double movement” which led to the politicization of indigenous identities, the creation of indigenous organizations, the revival of indigenous authorities and the recovery of indigenous lands.

Law, the Politicization of Indigenous Identity and the Subversion of the Resguardo System

Despite the failure of its land reform policy, the government of Lleras Restrepo left an important social legacy. The government sought to build a support structure for its land reform policies, and thus, it politicized peasants and promoted the creation of a strong peasant organization called the *Asociación Nacional de Usuarios Campesinos*, or National Peasant Association (ANUC), in 1969 (Gros 2000). This organization sought to obtain property titles for landless peasants through the INCORA. However, as it was already mentioned, INCORA lacked the resources to provide lands. Therefore, its members promoted squatting on the lands of large landowners. This organization included a small but very active group of indigenous people (indigenous secretariat) that was part of its management structure. However, after some time the leaders of ANUC became too politically radical for the government. Thus, the government started supporting the more mainstream factions within ANUC, until the organization finally split into different organizations. The two major ones were the so called *Línea Sincelejo* of ANUC, and ANUC UR, or *Línea Armenia* (Rivera 1982). Within the next three years, these two organizations would fade away without major achievements.

In contrast, a third organization that split from ANUC early on, and grew significantly in the years that followed was the *Consejo Regional Indígena del Cauca*, or Cauca Regional Indigenous Council (CRIC), created in 1971 (Gros 2000). CRIC is of key importance to understand the nature of indigenous mobilization in Colombia because it was the first self-proclaimed indigenous organization in the country. Moreover, CRIC also shaped the legalistic bent of Colombian indigenous organizations because it reinvented and mobilized Law 89 of 1890 to regain the *resguardos* that had been taken from indigenous people in the department of Cauca, and because throughout the thirty years following its creation, it would help to establish many other indigenous organizations under its model, including the *Organización Nacional Indígena de Colombia*, or National Indigenous Organization of Colombia (ONIC). However, despite its name, CRIC did not start as being explicitly an indigenous organization. Both its initial composition and the declared objectives of the organization, which came out of its first meeting illustrate this.

The CRIC emerged from a peasant organization called *Federación Regional Social y Agraria*, or Regional Social and Agrarian Federation (FRESAGRO). FRESAGRO was founded by a leftist militant and a radical Catholic priest from the Golconda movement, who were trying to mobilize to the afro-descendant sugarcane workers in the region *along class interests and discourse* into claiming their rights to land (Trojan 2008:174-5, Gros 1991:175). Although they did not have much success mobilizing the afro-descendant workers, they did succeed in mobilizing indigenous populations, mostly from the Guambiano and Nasa groups. However, the problem of land in the Cauca region transcended questions of ethnic origin, and in fact, was more associated with class struggles. Thus, people from different ethnicities attended the first meeting in which CRIC was created. The first meeting of CRIC, held in the municipality of Toribío, Cauca, in February 24, 1971, congregated people from Guambiano and Nasa indigenous ethnic groups, as well as union leaders, afro-descendants, *mestizo* peasants, members of the communist party, members of the *Movimiento Revolucionario Liberal*, or Liberal Revolutionary Movement (MRL) which was a radical faction of the liberal party, officials from INCORA, and even undercover police and military officials (Trojan 2008:173-4).

Besides its broad, multi-ethnic composition, there are several aspects of the first CRIC meeting that are worth recalling. The first one is the role of the state in promoting and controlling indigenous mobilization. On the one hand, the state actually funded this meeting through funds that INCORA had given FRESAGRO specifically for that purpose. On the other hand, however, after the meeting the police arrested several leaders that had attended the meeting; especially those that had some form of affiliation with leftist organizations.

This combination of support and repression has been interpreted as a strategy of the state to define the parameters of indigenous activism along ethnic lines, cleansing it from any class-based elements (Trojan 2008). However, there is no empirical evidence that supports that an identifiable agent devised a plan to distribute rewards and punishments to depurate CRIC from communist elements leaving only “harmless” indigenous elements. In fact, there is a history of repression directed against indigenous organizations which is exemplified in the massacres of Sikuani Indians (formerly called Guahibo) known as the *Guahibidas*. Moreover, in Colombia there has been repression against any form of non-institutional collective organization, regardless

of the ethnicity, political affiliation, or the ideology of its members (Archila 2005, Fals-Borda 2008).

It is more likely that the combination of support and repression reflects the existence of two different lines of interaction between members of this indigenous organization and two functionally specialized organs of the state. These organs work separately even though they are part of a state structure that combines coercion and consent to control its population. In this way, although the ultimate goal of both agencies may have been directed toward preventing the expansion of what they considered communist subversion, their actions were not necessarily coordinated. While the armed forces were seeking to coerce potentially insurgent organizations, INCORA was pursuing an agenda more closely related to the Alliance for Progress, which operated independently of what the armed forces did (Gros, Troyan).

Moreover, it is unlikely that the government at the time would consider ethnicity to be less subversive than class. In the first place, because it was president Lleras Restrepo himself, who was in fact attempting to politicize peasants along class lines in search of popular support for his land reform. Moreover, there is no evidence that suggests that class-based and ethnic-based claims were considered mutually exclusive to the eyes of government officials, or to those of indigenous activists. Quite the opposite is true. There had been subversive leftist, indigenous groups throughout Latin America, and Colombia was no exception. Many of the most important indigenous activists who took up arms in the department of Cauca in the early 20th century were also founders of the communist party, and had close ties to Moscow (Gros 1991:180-1, Fals-Borda 2008). Additionally, there is significant evidence that INCORA officials, peasant activists, and indigenous leaders believed that their claims coincided significantly. In fact, the support that CRIC received from INCORA reflects long-standing amiable relations between regional officials of INCORA and peasant organizations. In many cases, INCORA officials were peasant activists themselves, and were closely related to the founders of CRIC. After all, despite its limited success, the purpose of INCORA was to promote and execute the government's land reform, and these government officials were likely to be sympathetic to the claims of landless peasants. This is the case of Graciela Bolaños, a peasant activist, who was also an official of INCORA, and the wife of Pablo Tattay, one of the (non-indigenous) founding members of CRIC (Troyan 2008:173).

The second element worth discussing is the marginality of claims directly related to the recognition of a differentiated indigenous culture made by CRIC during its first meeting. By the end of the meeting the CRIC formulated six objectives: the abolition of a system of sharecropping called *terraje*, the expansion of the existing *resguardos* by INCORA, and the abolition of the Directorate of Indigenous Affairs, the expropriation of latifundia located in former *resguardos*, the reform of Law 89 of 1890 inasmuch as it considers indigenous people as minors, and finally, the participation of indigenous people in this reform. This absence would later be considered a result of the dominating role that *terrajeros*, this is, indigenous sharecroppers, exerted in the first meeting. Others have claimed that this absence suggests that indigenous people at the time did not identify themselves primarily as indigenous people (Troyan and Gros 1991). This, however, seems an overstatement. Guambianos, one of the two indigenous groups that initially became members of the CRIC had preserved their language, traditional dress, and customs. Meanwhile the other group, the Nasa of Tierradentro in Eastern Cauca,

preserved their systems of indigenous authority. Thus, it was not that indigenous people did not consider themselves indigenous, but rather, that there was no reason for them to politicize their identity.

Finally, the third element worth noting is the attitude that CRIC assumed toward Law 89 of 1890 during its first meeting. This attitude, and particularly the intention that indigenous leaders in CRIC had of reforming Law 89 of 1890, is closely related to their depoliticized notion of indigenous identity, firstly, because the law treated indigenous people as savages and minors. However, their attitude toward the law was also informed by ideological attitudes of the left toward the law. Moreover, in their first meeting CRIC leaders had not yet realized how the law, despite its racist undertones, could contribute to politicize their indigenous identities and legitimize their claims to land, autonomous government, and culture. As Troyan recounts from her interview with Pablo Tattay, one of the organizers of the meeting:

“The one who was against Law 89 of 1890 because of the minority of age issue was Trino Morales, who changed his position with regard to Indian law. For me, instead, what happened was that we did not know much about indigenous law in the first conference. We were evaluating the possibilities.” (in Troyan 2008:178)

In the second CRIC meeting three important elements changed. The second meeting took place in Suzana in the municipality of Toribío, on September 6, 1971 and according to Troyan’s account, this was a secret meeting (Troyan 2008: 176, cfr. Gros 1991:215). Regardless of whether the meeting was secret the fact is that the objectives of the organization changed significantly. The first change has to do with the inclusion of “cultural” elements specifically related to indigenous identity, and the second refers to the drastic change in the attitude of CRIC toward Law 89. The seven points of the organization’s program, as they were redefined by this second committee, and which are still the objectives of the organization, are the following:

“1. Recover the *resguardos*, 2. Expand the existing *resguardos*, 3. Strengthen indigenous *cabildos*, 4. Stop paying *terrajés*, 5. Propagate knowledge of laws regulating indigenous peoples and demand their just application, 6. Defend indigenous history, languages, and customs, 7. Educate indigenous teachers so that they in turn can educate [indigenous children] according to the context of indigenous peoples and in their own languages.” (CRIC 1971)

As we can observe, not only is their aim for legal reform taken out of the agenda, but the knowledge of the law and the demands for its just application are adopted as parts of the project. Moreover, the elements that identify and differentiate indigenous culture from that of the rest of the population are also highlighted and the preservation of these elements becomes a central part

of the program. Finally, another central aspect is the absence of the state as an interlocutor to which the claims are directed. Instead, what these new objectives suggest is that the organization assumes the roles, functions and services that traditionally were expected from the state. As I will claim below, this combination of fostering legal consciousness and at the same time gaining greater autonomy from the state characterizes the attitude of CRIC toward the law. This combination enabled indigenous groups from the department of Cauca to expand their *resguardos* and strengthen their system of governance. Furthermore, as we will also see below, CRIC expanded this approach to other indigenous groups throughout the country.

In addition, as we will see throughout this dissertation, by the end of the next decade this search for autonomy also facilitated the implementation of a neoliberal program that promoted the decentralization of governance and indigenous self-help. However, it also facilitated the global expansion and tactical innovation that has allowed the emergence and success of indigenous activism.

Paradoxically, the activity of the state is closely involved in this parallel expansion of legal consciousness and indigenous autonomy. An important element of this contribution was when the *Departamento Administrativo Nacional de Estadística*, or National Department of Statistics (DANE) asked CRIC to organize and carry out the census of the indigenous population in the department of Cauca for the national census carried out in 1972. The task of carrying out the census helped CRIC gain valuable information about the configuration of the indigenous population in the department of Cauca. Not only did CRIC gain access to the kind of demographic information that they were gathering for DANE, it also gained information about the problems and forms of organization of the various indigenous groups they were censusing.

More importantly, perhaps, the census enabled the members of the CRIC to carry out the dissemination of Law 89, and raise consciousness among indigenous people about their rights, and the abuses that *hacendados* (large farmers) were committing against them. Thus, while carrying out the census during the day, they gathered the population at night, urging them to regain their lost colonial *resguardos* and prevent the *hacendados* from appropriating the land that they had preserved. As one of the founders of CRIC told Troyan in an interview: “We wanted the people to realize the importance of the *resguardos*” (2008:180).

The process of recovering the history of the *resguardos* was much easier in Cauca than in other parts of the country. In the first place, because Cauca has the highest density of indigenous population of the country, and this had prevented the abolition of many of *resguardos* during the 18th century. Secondly, after the *resguardos* were abolished during the federal period in 1850, the only state that preserved them in clear defiance of the federal constitution of the time was Cauca. Moreover, the state of Cauca was also a predecessor of Law 89 in that it established the annulment of any sales over *resguardo* lands. This meant that throughout the second half of the 19th century, when the *resguardos* in the rest of the country became private property and were sold, Cauca had a prohibition against their sale. This does not mean that the *resguardos* in Cauca were intact. In fact, there was great demand for land in this department, since at the time 80 percent of its population obtained its economic sustenance through agriculture (Gros 1991:177). However, reconstructing the histories of the *resguardos* was facilitated by the legislative history and demographic composition of this department.

CRIC and other newly created indigenous organizations revived law 89 of 1890 in the 1970s. Leaders of CRIC combined a reconstruction of the history of the *resguardos* with direct action, in what Michael McCann calls a “decentered” form of legal mobilization (McCann 1994). The leaders of such organization initiated a campaign so that indigenous groups in their areas of influence started investigating the limits of the colonial *resguardos* that had been taken from them by force, abandoned, or sold illegally. Thus, many such groups were able to collect part of the information about the location and limits of the colonial *resguardos* through the oral histories of the elders of each group, and then visiting the notaries and public offices that kept records of land transactions. With that information they started searching for the colonial property titles awarded by the Spanish crown through archival research. Once they had gathered the necessary documents, the problem was how to best use that evidence to recover the *resguardos*. They could file law suits against the *hacendados* who had possession over their *resguardos* claiming that they were the rightful owners, or they could simply occupy the land and wait to see what happened. If the police came to evict them or they were sued, they could present their colonial titles as a defense. If they were not sued, they would simply stay in their land. Most of these groups assembled in large groups and occupied the land collectively. The purpose of this behavior was to make a symbolic statement about the superiority of their rights to the land: those were indigenous lands regardless of whether the legal system of the state recognized indigenous people their ownership over them. Moreover, this statement was not only directed toward the Colombian society in general, but to instill a sense of confidence and legitimacy among the indigenous people of Cauca. This objective is evident in the official statement of the CRIC with respect to the history of their organization, which establishes: “our intention was not to promote a ‘battle of papers’ (to refer to the law suits) but to make the indigenous communities realize the rights that they had, right which even the (Colombian) law recognizes.” (CRIC: 1974)

From 1971 to 1974, CRIC obtained a series of victories. The first such victory was the recovery of twelve thousand hectares through this form of legal mobilization. Moreover, in the process of recovering the *resguardos* indigenous people also gained important political battles against some of the most important actors in the region. However, their campaign was fought hardly. One of the first *resguardos* to be recovered was that of Coconuco, which was in the hands of the Catholic Church. To take over this farm 517 indigenous families had to occupy the 350 hectares of land on more than 30 occasions. Many of the people who participated in the occupations were arrested and one was even killed by the police. Finally, the archbishop of Popayán, the capital of department of Cauca, decided to give the land back to these indigenous families. Moreover, indigenous people were occupying more valuable lands near the department’s capital. Another success took place in the *resguardo* of Paniquitá, located just 25 kilometers out of Popayán, where one hundred families occupied two hundred hectares of land. In the meantime, while the indigenous movement of Cauca was recovering the *resguardos*, the peasant movement was not so successful. Despite being much larger in terms of its members, throughout its history ANUC only obtained eight thousand hectares of land of bad quality, and INCORA required the peasants to pay for the land (Gros 1991:189).

As we can see then, Law 89 became very important for the birth of the indigenous movement in Colombia during the 1970s. The importance of this law has made commentators assert that this law was in fact “the cornerstone” of the indigenous movement (Gros, Laurent, Rappaport, Troyan). However, despite the importance of law in their strategy of mobilization, indigenous

people were not naïve, and none of them believed that Law 89 of 1890, a law created by a conservative party that was triumphant after a series of bloody civil wars against the liberals, was created to protect them. One of the indigenous leaders that participated in the occupation of the *resguardo* of Coconuco summarizes indigenous skepticism and distrust of the law very clearly. He says:

“We Indians have awakened a little. We now know that the landlords and oligarchs created the laws, the public deeds (containing real estate transactions), the public offices, and the police to turn us into slaves, and to have us under the yoke of ignorance. All this is because it is not convenient for them that we are free.”

Immediately after saying this he then contrasts these laws with their own rights to land as indigenous people, highlighting the foundations of their rights and their superiority over the laws of white peoples. He continues saying:

“We also know that we have a right to the land, because we were the first people to be born in these lands. It was not the white landlords... And we also have a right [to the land] because we have been working in it since the times of our ancestors.” (ANUC, Indigenous Secretariat: 1973)

This excerpt shows that at this point the argument for the superiority of the relation of indigenous people to the land was closely related both to the fact that indigenous people had worked this land, and to its ancestral character. However, the discourse of the superiority of the indigenous claims to the land evolved quickly, and sometime later, these claims were not just based on the number of years that they had been living and working on these lands. They were also based on a relation to the land that was qualitatively different from that of the non-indigenous population. In other words, the superiority of indigenous property was based on the meaning that they gave to the land.

In this respect, the success that indigenous people had in their strategy to regain their land also benefitted from the way in which Law 89 of 1890 distinguished indigenous people from non-indigenous people, and the different land tenure regimes that each had. From the standpoint of the emergent indigenous organizations like CRIC the objective of these land recovery campaigns was not merely economic. What they claimed they wanted was not to just to recover their lands to increase the means of sustenance of indigenous groups, but to regain legal and political governance over indigenous communities and autonomy with respect to the non-indigenous people as well. To do this they highlighted their differences from the rest of the population, and gave land a meaning that incorporated but went beyond its economic value. Three years after the creation of CRIC, its leaders had already elaborated rhetorical links between their rights to their

land, labor, and their own identity and culture. In the official history of the organization, one of its founders frames the relation of indigenous people to the land in a way that combines the leftist emphasis on labor, but adds more experiential features that give land the virtue of being the foundation of their culture:

“For us Indians the land is not just a part of a hill or of a plain that gives us food. Because we inhabit this land and we work in it, as we enjoy it and suffer for it, and it is for us the root of life, then we look at it and we defend it as the root of our customs. That is why in Silvia (in the 3rd CRIC congress) we demanded respect for our culture, which is born from the land and is developed through our labor.” (CRIC 1974:15)

In fact, by the time of its third congress in Silvia in July 15 and 16, 1973, the nature and claims of CRIC were more closely linked to a differentiated pan-indigenous identity. This is reflected in the differences with respect to the second CRIC congress. In the third congress, indigenous people were appointed in all the directive positions of CRIC, while all the non-indigenous leaders that were initially part of the directorate were named *external* advisers. Secondly, the CRIC emphasized the need to recover and reinvent another Spanish institution to strengthen indigenous governance, which was established in law 89: the *cabildos*. A few *cabildos* remained in existence throughout Cauca. However, this institution had been largely forgotten and the ones that still existed had been coopted by local religious or civil authorities, who had to confirm the appointments of the indigenous authorities. Thus, CRIC worked to create new *cabildos* and to strengthen their autonomy from local political and religious figures (Troyan 2008, Gros 1991). To be sure, this role was a complicated one, and many of the *cabildos* at the time and afterwards resented what they considered an arbitrary intervention of CRIC in the affairs of local indigenous governance. However, despite inevitable tensions CRIC has sought to maintain a balance between respecting the autonomy of local indigenous authorities and coordinating regional (and as we will see, also national) indigenous affairs.

The search for autonomy was constant in CRIC and other emergent indigenous organizations. In fact, it is worth remembering at this point that CRIC became a dissident faction of ANUC, among other reasons, because the latter was becoming increasingly involved in, and thus dependent on, Colombian politics and subversion (Archila 2003). One of its factions was becoming more radical politically, and allied itself with leftist ideologies close to existing guerrilla groups. Meanwhile, the other factions of ANUC were becoming increasingly dependent on political parties and their clientelistic practices. In contrast, CRIC was seeking to remove itself from electoral and subversive partisanship and wanted to pursue their struggle in their own terms. However, this search for autonomy from the state should not be overstated. After all, the extended use of Law 89 by CRIC and the other organizations to recover their lands shows that asserting a distinct indigenous identity helped them to redefine their terms of interaction with the state.

Finally, a third element was the presence of indigenous from around the country in the third CRIC congress. By 1973, the achievements of the organization, and its leadership in the process of creating a rights' consciousness among indigenous people of Cauca and recovering their *resguardos* had become famous among the various ethnic groups of the country. Thus, indigenous groups seeking to organize themselves and recover their lands wanted to observe how the CRIC operated. According to the official history of the organization, more than two thousand indigenous people from all over the country attended the meeting. In this way, CRIC strengthened its bonds with other indigenous groups, and established itself as a national leader and as a model among indigenous groups. Thus, in the decades that followed, the CRIC participated in the creation of regional indigenous organizations in other parts of the country, as well as in the creation of two national indigenous organizations which were modeled according to the structure and under the tutelage of ONIC. In particular, the three national organizations were: *Autoridades Indígenas de Colombia*, or Indigenous Authorities of Colombia (AICO), and the *Organización Nacional Indígena de Colombia*, or National Indigenous Organization of Colombia (ONIC).

The relation between Law 89, the separation of the indigenous secretariat of ANUC, and the emergence of a movement that for the first time explicitly identifies itself as indigenous that have been described so far do not mean that indigeneity or ethnicity are unauthentic. Some authors have recently conceptualized “indigeneity” and “ethnicity” as a political weapon, created solely for political purposes (Comaroff and Comaroff 2009, Cattelino 2008). This approach renders ethnicity as somewhat unauthentic: as a strategic option that certain groups have which is somewhat devoid of any non-political content. Although indigenous identity is dynamic, and politics certainly influences many of its changes, this is not the case that this chapter is making with respect to the indigenous movement in Colombia. After all, distinct indigenous identities have existed throughout the country's history.

Rather, the point that this section is trying to make is that ethnicity is a complex, multidimensional phenomenon which does include a political dimension, but this dimension is variable and does not exhaust ethnicity. In fact, what the revival of law 89 suggests is that law can be used as an element of a cultural toolkit (Swidler 1986) to give political salience to existing ethnic identities in order to redefine the relation that marginalized social groups have with the state (Maravall and Przeworski 2003) and other social actors. To be sure, ethnic identities are modified as a consequence of their politicization. However, this does not mean that one can reduce ethnicity to politics, or that the relation between ethnicity and politics can be captured by a simple matrix.

In fact, as we will see in the next chapter, the relation between ethnic identities and politics in Colombia is more complex than the metaphor of the “weapon” suggests. Indigenous identities were used to shape state policies, but they were also shaped by them. Moreover, the idea that ethnicity is a “weapon” that can be purposely used by indigenous groups (in our case to shape state policy with regard to the expansion of *resguardos* during the Barco administration) does not correspond to the way ethnic identity and state policy interacted in Colombia. As we will see, during the late 1980s, the state needed to expand its control over areas that were being controlled by organized armed groups. Thus, the government promoted the search for an autonomous indigenous political agenda that had started in the early 1970s, and built on it to advance a new

program for expanding and decentralizing governance and state-building to large isolated areas that were being controlled by organized armed groups.⁶

Conclusion

As a conclusion to this chapter we can observe how the *resguardo* was an institution created to provide a framework regulating indigenous labor. Specifically, it was a mechanism to control indigenous people and secure agricultural production to maintain the mining industry. After the Spanish colonies of the New Granada obtained their independence and Colombia maintained the institution during the first part of the republican period as did other countries of Spanish America.

In the 1970s, indigenous groups that had been mobilized by the government to support its land reform and agricultural development project sought to recover their colonial lands with the help of a 19th century law regulating the *resguardos* that had been forgotten. However, they transformed this legal regime from a mechanism of control to an institution that helped them reaffirm their indigenous identity, assert their autonomy and consolidate indigenous self-government over their lands. In the next chapter we will observe how the state supported and used the assertion of a distinct indigenous identity and self-government to delegate governance over areas of the country that it did not have the means to control directly.

⁶ For a complete analysis of the relation between indigenous groups and guerrilla groups see Gros 1991.

CHAPTER 4

MULTICULTURAL GOVERNANCE

Introduction

This chapter traces the origins of the expansion of indigenous lands and the promotion of local indigenous authorities in Colombia during the 1980s. In it I claim that the decision government's decision to expand indigenous lands over almost thirty percent of the country's territory was a pragmatic policy to delegate governance over remote yet critical regions that it could not control directly. Thus, like with the *resguardos* created by the Spanish crown since the 1600s and those created by the conservative government of the late 19th century, the expansion of *resguardos* during the late 1980s was also a strategy of control. However, contrary to the former regimes, the *resguardos* of the 1980s were established to exert (an indirect) control over the territory, not over people. In fact, the expansion of the *resguardos* during the 1980s helped to strengthen indigenous authorities with respect to local powers and helped to reassert their power among the members of their indigenous groups even though they also increased their dependence on the central government.

Moreover, this expansion of *resguardos* had two important effects over the relation that indigenous people have with their land, which contributed to the proliferation of conflicts between indigenous peoples and different kinds of economic development projects. On the one hand, the formal recognition of property titles legitimized the claims that indigenous people all over the country had over the lands that they inhabit. On the other hand, the formalization of property titles on behalf of indigenous groups helped to commoditize indigenous lands. Even though the *resguardos* themselves cannot be bought or sold, their expansion did place indigenous peoples in the midst of a quest for natural resources found on and under the surface of their lands. As we will see in chapters 5 and 6, these two conditions have fostered the types of conflicts that arose between the U'wa and the oil companies.

Delegating Governance through Multiculturalism: the Expansion of Indigenous Lands between 1988 and 1989

The Threats to the Territorial Sovereignty of the State

Contrary to other Latin American countries Colombia has a small, yet diverse indigenous population living dispersed throughout a significant part of the country's territory. Meanwhile, the non-indigenous population has remained concentrated around small pockets. Indeed, according to a 2005 census indigenous people are 3.4% of the population but they belong to

eighty five different ethnic groups⁷ that speak seventy five different languages. Forty five percent of this indigenous population lives in the Andes, while sixty five percent lives in the plains, jungles, and deserts (what I will refer to as the lowlands). Moreover, one third of the indigenous population lives near the country's international borders. Meanwhile, the non-indigenous population lives mostly around the slopes of the Andes and in the Caribbean coast, two areas that amount to only fifteen percent of the country's territory. This means that there are vast areas of Colombia's lowlands where only indigenous people live. Moreover, given that this part of the indigenous population of Colombia represents only 2.2 percent of the total population, one can easily realize that the lowlands in Colombia remain largely isolated.

In the large areas of the territory, a series of threats to state sovereignty started flourishing. The first of such problems was an upsurge in the drug business, which had been marginal until the late 1960s. During the 1970s and early 1980s, however, marijuana and cocaine started being produced in vast, isolated areas of the country, processed, and later transported to the United States and Europe. During those years drug lords started exerting a de facto military, political, and economic control over large, marginalized areas where these drugs were being produced. However, these areas were largely unpopulated and isolated from the country's main centers of political and economic power. Thus it was not until the power of these groups reached national political and economic interests that the government started reacting against them.

In the early 1980s, the power of drug lords started penetrating national politics. By 1982 the economic power and capacity for corruption of the drug cartels had allowed them to gain power in national politics (Reyes 2009). Thus, the well-known drug lord Pablo Escobar became a congressional representative in that period, and so did some of his cronies. The infiltration of drug lords and drug money into the national political landscape brought severe opposition on the part of various politicians, including Rodrigo Lara, the minister of justice, who was assassinated after denouncing the power that drug lords had in congress. A second threat to state sovereignty came from guerrilla groups. These were increasing their economic power through extortion of local landlords and foreign companies, and gradually gaining popular support in rural areas – albeit to a variable degree. Finally, a third threat to the government's territorial control was the emergence of paramilitary groups in rural areas in the early 1980s, which was initially the response of drug lords, landlords, and agricultural and mining companies to the expansion of guerrilla groups and the incapacity of the state to protect their economic interests (Reyes 2009).

The lack of control over certain areas of Colombia was becoming especially problematic since the early 1980s. The drug cartels, which had become immensely powerful during the first part of the decade, were confronting the government directly by the late 1980s. In addition, the drug cartels were also confronting each other, the guerrilla, and even the paramilitary armies that they had contributed to create. The homicide rate was of 70 people per 100,000 inhabitants per year, and in some areas of the country it reached 400 people per 100,000 inhabitants. In sum, as sociologist Daniel Pécaut has said, during the 1980s Colombia passed from banal violence to generalized terror (2001:187).

⁷ According to the National Indigenous Organization of Colombia ONIC, there are 102 different indigenous ethnic groups in Colombia. As it will be explained below, the difference in the numbers is closely related to the problem of land in that country.

As we can conclude, then, during the 1980s various factors contributed to jeopardize the territorial sovereignty of the state precisely in the regions of the country where indigenous people live. Drug trafficking, guerrilla groups and paramilitaries controlled vast areas of Colombia's lowlands, and these forces were not just threatening these marginal areas, but even the government itself.

Devising a Solution: the Plan Nacional de Rehabilitación, or National Rehabilitation Plan, and its Shortcomings

Although this period of violence began during the administration of president Belisario Betancur (1982-86), the period of Virgilio Barco (1986-90) was one in which violence in Colombia was especially intense. Moreover, this period of violence was different from previous ones in that it was also taking place the country's main cities and affecting economic and political elites. Four presidential candidates, several hundred judges and policemen, and more than three thousand members of leftist political parties were killed during this period (Palacios 2006). Bombs were being placed in malls, schools, clubs, media headquarters, governmental offices, and even in airplanes.

In 1982 the administration of president Belisario Betancur initially responded to these threats, among others, by implementing its *Plan Nacional de Rehabilitación* or National Rehabilitation Plan (PNR). This was a social policy that sought to deliver state services and economic opportunities, targeting the population of marginalized areas where drug and/or guerrilla problems were especially acute. There were multiple components to the PNR, which are not relevant for the purpose of understanding the relation between the lack of territorial consolidation of the state, the armed conflict, and the expansion of indigenous lands. However, one of them, the replenishing of INCORA, illustrates the limits of the government's program to expand state control via land reform.

As it was mentioned in the previous chapter, during the second land reform attempt INCORA was in charge of expropriating latifundia, acquiring *baldío* lands, and later giving them to people who were able to exploit them economically. In 1982, INCORA was given the necessary funds to acquire lands, but its mandate was not to redistribute land generally all over the country (Archila 2003, Houghton 2008). Instead, INCORA was supposed to target only those areas where guerrilla groups, drug lords, or paramilitaries were exerting control. By redistributing land and expanding the provision of services to marginalized areas, the government expected to stop the expansion of violence and delegitimize the control exerted by armed groups and foreign governments. Thus, in contrast with the two previous land reform attempts, the main objective of the PNR was not to populate isolated areas and expand the economic frontier as a way to extend state control over the territory. Rather, the objective of the PNR was to increase state control over the population in conflict-ridden areas. In an interview, a former PNR official stated:

“The discourse of PNR was ‘let’s take the state directly to the places where it has not existed and where historically there has been conflict due to the lack of state presence’”

The fact that PNR was focused on the areas where the armed conflict was occurring meant that its capacity to expand the presence and control of the state throughout its territory was limited. The strategy of redistributing land and extending the provision of state services to conflict-ridden areas presupposes that those areas are already to some extent populated. After all, the role of PNR was to prevent social conflict, not to expand territorial control. Although to some extent the expansion of territorial control and the prevention of conflict are connected, the solution devised by the government presupposed the existence of a substantial population in the areas that it targeted. The PNR was not really about expanding state sovereignty over large areas that were almost uninhabited, and thus, did not have violence at the time. Thus, drug crops and guerrilla activities could easily shift to these uninhabited areas, as in fact they did. The problem for the government, then, was how to extend control over those areas as well.

The Path Toward Multicultural Governance

At this juncture, while state institutions were under attack, and organized armed groups ruled vast extensions of the country president Barco took an unusual measure: he decided to expand indigenous *resguardos* to those remote, largely unpopulated areas that the state could not control directly. Doing so meant that the government delegated an important part of its direct authority over such areas to the authorities of each indigenous group living in them. In particular, the government granted indigenous people the power to rule those areas according to their own systems of government, enact their own laws, establish their own system of justice, and carry out their own enforcement mechanisms, as long as these were not unconstitutional.

This section contends that Barco’s decision to expand indigenous *resguardos* promoted the assimilation of indigenous people and lands into the neoliberal project. The Barco strategy seems counterintuitive: by creating *resguardos* over vast areas of the country including some of the county’s international borders it decentralized and delegated governance over those areas to indigenous authorities. This delegation of governance meant that the government lost its full sovereign powers over those areas. On the other hand, however, this delegation of governance made sense because the government did not have the capacity to exercise sovereignty over those areas. In contrast, CRIC and ONIC had already been strengthening indigenous authorities since the 1970s and Barco’s strategy both promoted and relied on this process. As we will see throughout this section, Barco’s policy rewarded and actively –although strategically, and selectively– promoted indigenous autonomy and strengthened indigenous identity and government. By accepting that these lands belonged to indigenous groups, and formally recognizing indigenous authority over them, the government sought to undermine the power being exercised by foreign governments, drug lords, guerrilla, and paramilitary groups in these areas.

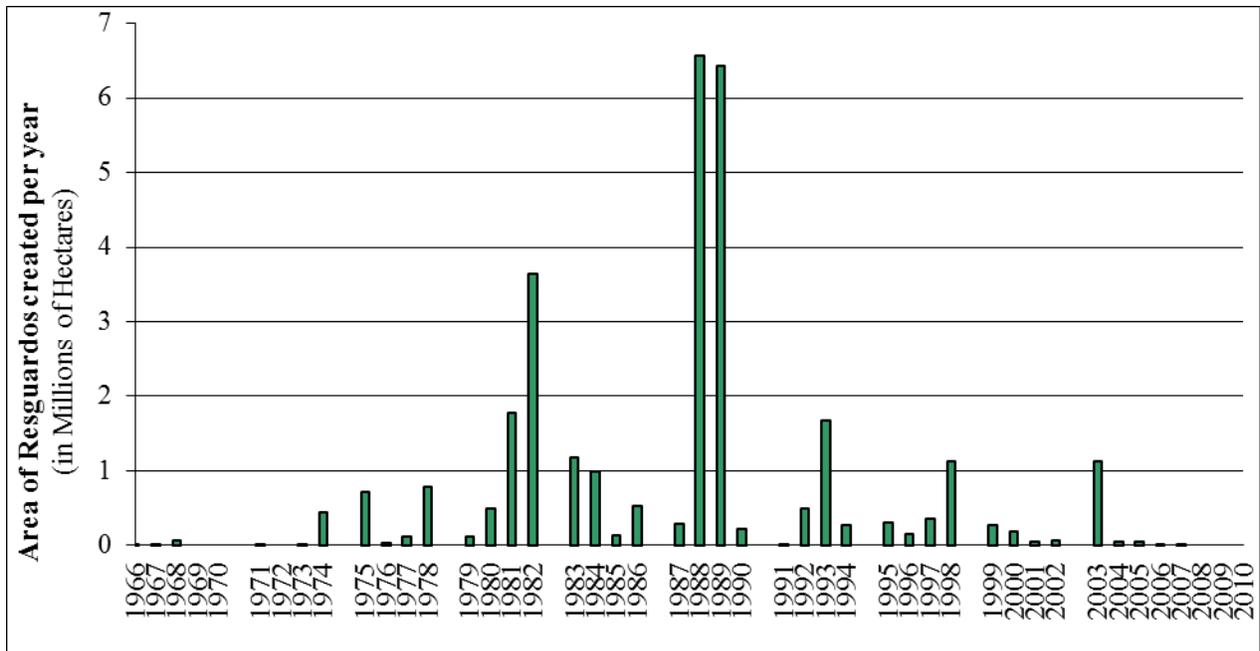
In that same vein, Barco's policy had an additional advantage over past attempts to establish sovereignty via colonization: it relied on organizations created by people that had been living in those areas of the country for centuries. One of the basic problems that previous governments faced in their attempts to increase territorial control by expanding the agricultural frontier was that migrants who went to those areas seeking economic opportunities did not remain in these far away areas for very long. The poor quality of the soil, violence, and a lack of adequate systems of communication made agricultural production and distribution difficult. Thus, migrations into those areas were exceptional, mostly related to occasional (legal and illegal) economic booms (Reyes 2009, Molano 1987, 1990). Once the booms ended the people migrated somewhere else, abandoning their lands and leaving towns desolate. The temporary character of these migrations made governance in those regions very difficult. Consolidating permanent social and political institutions had been practically impossible, and the presence of the state was thus limited to eventual military or police posts. Thus, to avoid the problems that internal migration caused to territorial governance Barco decided to delegate this governance to the authorities of indigenous people, who were the permanent population of the areas.

Instead of trying to control these regions directly by promoting migration to populate them like previous administrations had unsuccessfully tried in the past, the Barco administration decided to formalize the relation that indigenous peoples had with these lands, and delegate political, legal, and economic control over these territories to their authorities and/or local organizations through the legal figure of the *resguardos*. In this section I will briefly recount some of the features of the Barco *resguardos* and then focus more deeply on how the Barco administration sought to establish a system of governance by creating *resguardos* and strengthening indigenous authorities.

The Expansion of Resguardos as a Top-Down Strategy during the Government of Virgilio Barco

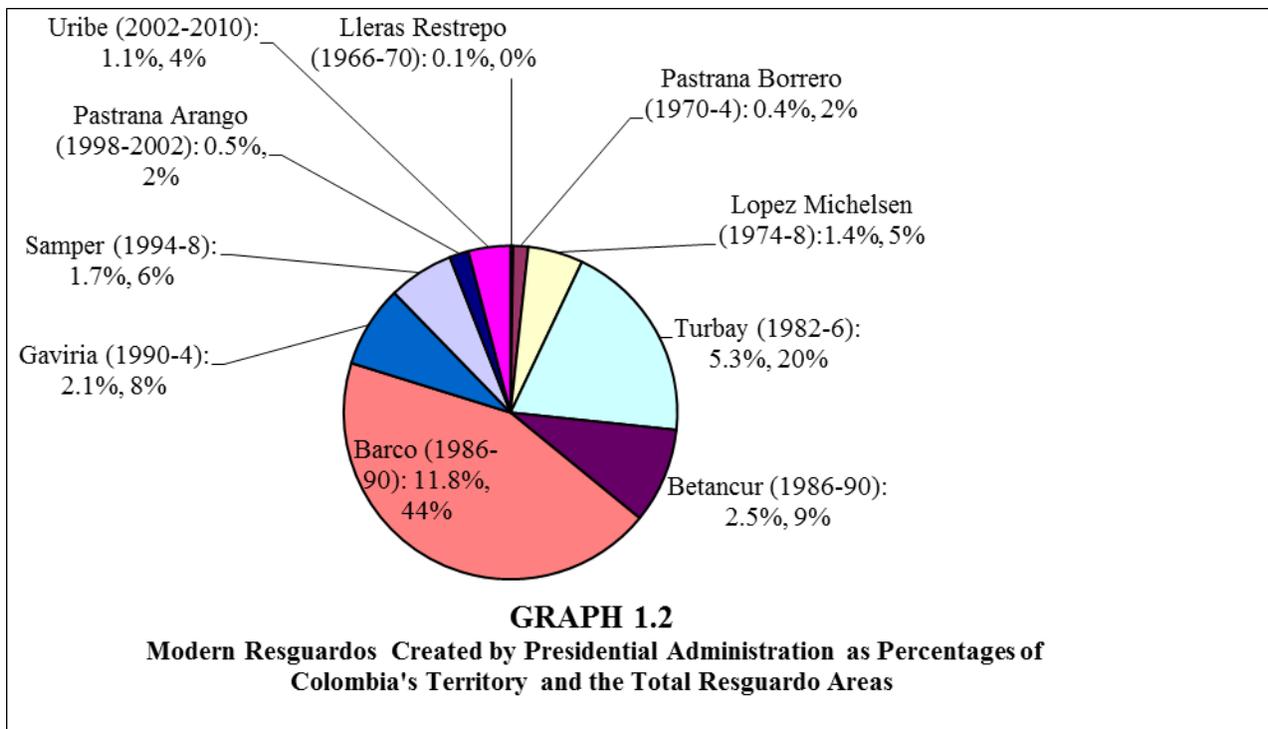
During his four years in office, the Barco administration gave back more land to indigenous people than all the country's governments had given them back since the beginning of the Spanish colony. Graph 1 shows the amount of hectares per year that the government has established as indigenous *resguardos* since 1966. The X axis is grouped in four year clusters corresponding to each presidential administration until 2002.⁸ This graph, however, does not include *resguardos* created prior to this date or colonial *reguardos* that still exist, because as we will see below (table 1), these are practically insignificant in terms of their area, occupying only 1.5 percent of the total of *resguardos*. In contrast, as we can appreciate in the graph, 1988 and 1989, which correspond to the second and third years of the Barco administration, were the two years the government most expanded indigenous lands. To have a better idea of the order of magnitudes, in those two years (1988-89), the administration created *resguardos* over an area twice the size of Ireland.

⁸ In 2002 an amendment to the Colombian constitution permitted presidential reelections and thus the last cluster shown in the graph is of eight years.



Graph 1.1

The fact that a single administration expanded *resguardos* over more than 13 million hectares in two years shows the significance of this governmental program. This significance, however, can be appreciated much better by comparing the percentage of *resguardos* created by each president, in terms of the total area of *resguardos*, and in terms of the total area of the country. As graph 2 shows, even comparing the areas of the *resguardos* created in modern times in Colombia both before and after Barco, his administration exceeds them all. The first percentage after the name of the presidents and dates of their administration refers to the total area of *resguardos*. The second refers to the percentage of the total area of the country. The area of *resguardos* created by Barco amounts to 44 percent of the total area of *resguardos* created in the modern era, which is approximately 12 percent of the total territory of Colombia. The second most important is the Turbay administration, especially during 1981 and 1982, the two last years of his administration, which only accounts for only 20 percent of the total area of *resguardos* and slightly over 5 percent of the total area of the country.



In two years, the administration created *resguardos* over an area larger than all previous administrations in the last four hundred and eighty years. This suggests a rupture with the policies of previous administrations with respect to indigenous lands. However, besides the differences in the overall magnitude of the area of the *resguardos* created between 1988 and 1989, these differ from the rest in other important respects. Firstly, Barco created fewer but also much larger *resguardos* than those created by previous administrations. Thus, the average size of a *resguardo* increased almost four times in the 1988-9 period, from 53474.76 to 212073.67ha. Moreover, in contrast with colonial and other previous administrations, Barco did not create the *resguardos* in the fertile agricultural lands located in inter-Andean valleys, but in unpopulated and remote areas of jungle, plains, and desert surrounding the country's international borders.

As table 1 illustrates, although the area of Barco's *resguardos* is greater than the area of all the *resguardos* that had been created until then, he created ninety five *resguardos* less than those created between 1961 and 1986, and eighteen less than those remaining from the colonial period. Moreover, the indigenous population living in Barco's *resguardos* is less than one tenth of the indigenous population living in the rest of the *resguardos*.

Period	Percentage of Colombia's Territory	Percentage of the total area of resguardos in Colombia	Amount of resguardos	Area (sq. ha.)	Population
Colonial	0.36%	1.5%	81	399,688	156,680
1961-86	11.63%	47.4%	158	12,380,780	127,697
1986-90	12.05%	51.1%	63	13,360,641	27,397
Total up to 1990	24,04%	100%	302	26,117,109	311,774

These features suggest that the objectives of Barco's government were not to redistribute land to a significant part of the indigenous population, or to expand agriculture. Moreover, the features also suggest that the purpose of Barco's policy of expanding *resguardos* was related to the land itself, and – at least not primarily – directed toward favoring the people inhabiting them.

Security Issues in the Areas where the New Resguardos were Created

The regions of the country where Barco created the forty nine *resguardos* between 1988 and 1989 were mostly located in the country's lowlands. As explained in the second chapter, these have been historically unpopulated areas lacking any state presence, which has made them an easy target for the emergence of illegal economic activities. The largest *resguardos* created during those years are located in the departments of Guajira, Vaupés, Amazonas, and Guainía.

The Barco government recognized three million hectares in the department of Vaupés, located in the Amazon jungle near the border with Brazil. This department has been constantly invaded by Brazilian rubber barons and *garimpeiros* (illegal miners, mostly for gold), and in the 1980s became a coca producing region, and lastly, a stronghold of the FARC. Shortly after, the government created *resguardos* in the department of Guajira covering one million hectares. This desert area is also strategically important for various reasons. It is located in the northeastern Caribbean coastline, along the border with Venezuela, a country with which Colombia has continuously sustained territorial disputes during the last fifty years. Moreover, the presence of the state in that region has been historically scarce, which has made it an area suitable for contraband, an activity that is very common in the region since the early 19th century. However, Barco had to confront an additional threat to sovereignty in the area of Guajira. From the early 1980s onward, drug lords also started distributing cocaine from Guajira to several islands in the Caribbean en route to their final destinations. After creating the Guajira *resguardos*, in 1989 the government created *resguardos* over an area of 7.5 million hectares in the department of

Amazonas, which limits with Peru and Brazil, a region in which the threats to state sovereignty were very similar to those of the department of Vaupés. Finally, the government established *resguardos* over six million hectares in the department of Guainía, near the Orinoco river, which has both grasslands and tropical jungles, and limits with Venezuela and Brazil. This department, in addition to having coca crops and FARC guerrilla, also was a stronghold for paramilitary armies (Molano 1990).

A high ranking member of the Barco administration who was very close to the president explained to me what the government at the time thought about the situation in these far-away areas of the country, and the role that the government believed indigenous authorities should play once these lands became their *resguardos*:

“In those far-away regions where there is no presence of the government, subversive groups begin to replace it. However, if indigenous groups in those areas started organizing themselves and creating formal organizations in the most isolated parts of the country, even FARC (*Fuerzas Armadas Revolucionarias de Colombia*, or Revolutionary Armed Forces of Colombia) and the others would have to recognize that. If say, near the Mirití river, or near the Caquetá river, or in any other area, there is an indigenous government, if there is in fact a government, then that government is respected, and they (the FARC and the “others”) know who they have to address, and there would be specific rules of interaction that need to be followed. However, when there is no (indigenous) government there is dispersion, people are adrift, and thus they become dependent on whatever authority comes into the area, whether it is legal or illegal.”

From the former excerpt we can observe the general diagnosis that government officials made about the consequences of a lack of government presence in remote areas of the country where indigenous *resguardos* were created. Namely, the government acted under the conviction that not having a permanent governmental presence in those areas enabled armed groups to take control and the people who lived in them had no option except establishing a relation with those groups in order to survive. Moreover, we can also observe that the best solution in those areas with a majority of indigenous population was to turn these into indigenous lands, establish indigenous governments, and delegate these authorities the power to control those areas. Doing so, of course, would not mean that these armed groups would disappear or leave. However, if the indigenous groups were able to assert their authority, these armed groups would have to negotiate their power, and the terms of their intervention in these areas with the indigenous authorities. Delegating governance to indigenous groups would not give the government a military victory over these armed groups. However, the idea was precisely to avoid having to engage in military confrontations by delegating the institutional authority of the state to indigenous groups. Indigenous people had lived in the areas where these armed groups operated, they had interacted with them on a daily basis, and therefore, they would be in a better position to establish certain rules of interaction. As a result, they would also become more capable of

reducing violence in those areas. Moreover, creating *resguardos* would also legitimize any military actions in those areas as a way of protecting indigenous interests and governments.

In fact, the decision to establish indigenous *resguardos* throughout the international borders also guaranteed the preservation of such borders. One of the reasons for this was that neighboring countries do not have as many advantages for indigenous populations as Colombia. Brazil, for example, does not allow the establishment of indigenous reservations in the borders of the country. Moreover, at that time Peru did not even recognize the existence of indigenous identities within its territories (Barie 2003). Instead, the government regards them as *campesinos* or peasants. In comparison with most of its neighbors Colombia gives indigenous people greater guarantees with respect to the protection of their land. Thus, indigenous people have an incentive to protect Colombian territorial interests throughout the borders. The government officials promoting the expansion of *resguardos* within various government agencies were aware of the fact that Colombia gave greater territorial rights to indigenous people than its neighbors, and were able to use this as a comparative advantage. In fact, they used this advantage to answer to certain doubts that the military personnel had with regard to their initiative of delegating governance to indigenous populations. Throughout the process various governmental agencies had to sit down and decide whether the project of expanding the *resguardos* was a good policy. The following is a transcript of an interview in which the director of indigenous affairs recounts how he appeased the military personnel present at the meeting and initially opposed the creation of the *resguardos* in international borders. He said:

“In the debate at INCORA, the first people to question me were the military. They said: ‘we have a problem there, because the location of your *resguardo* is in the border, and indigenous people go from one side of the border to the other ... and in the future the border gets blurred, and the *resguardo* then generates a serious national security concern.’

“Then I told him: ‘you know? I am in complete agreement with you. You do have a border problem there, because the border is in the middle of the jungle, and this country has no capacity of knowing or controlling what happens there.’

“Then I continued saying to him: ‘The day that Brazil invades a piece of our land we have nothing to do, because it does not even make the local news! Moreover, none of us has any idea whether this piece of land is Colombia’s or Brazil’s. However, if that land is part of a *resguardo*, then the news [of an eventual Brazilian invasion in the jungle] makes the headlines all over the world! So [by giving this land to indigenous people] what you are really doing is building national sovereignty. You are taking a governmental decision saying that this land belongs to indigenous peoples.’

“After that, the military delegates that were present in the meeting remained silent.”

We can conclude from this section that state officials had two basic goals in their decision to delegate governance to indigenous groups. The first goal was to reduce the amount of military

interventions and also their cost. The second goal was to legitimize state interventions in those areas among the people that inhabited them.

Creating a Need for Indigenous Agency and Self-Help

Thus, the creation of *resguardos* during the Barco administration was a top-down governmental policy directed toward increasing the efficiency of their territorial control by delegating it and decentralizing it. In most of the places where *resguardos* were being created indigenous people did not feel threatened by external forces. There were no settlers in the area, no landowners, and very little extraction of natural resources was taking place at the time. The top-down character of this policy is evident in the interactions between governmental officials and indigenous leaders at the time. One such interaction occurred before the government created the *resguardo* called *Predio Putumayo*, an area of around 6 million square hectares in the Putumayo region near the Amazon near the border with Peru. During one of the interviews conducted in Bogota, a former official of the administration of Barco paraphrased a dialogue that he held with an indigenous leader of the Amazon before the *resguardo* was created. In this conversation, the official was explaining the indigenous leader why the government was about to establish very large *resguardos* despite their lack of concern creating a mechanism of legal protection for these lands, and even though indigenous people did not consider the land to be theirs to begin with. The official told recounted:

“The indigenous leader said to me: ‘We do not understand what you are saying, because we do not consider ourselves as the owners of this land. Moreover, we don’t see white people around, so who is going to take these lands away? What are we talking about?’

“And then I (the director) responded: ‘And we are not only going to give you this piece of land. We are going to give you everything. We are going to request twenty or twenty five million hectares. This whole territory should be yours, so you can be once again its owners and masters; masters at least in the sense of being able to control your own destiny.’”

According to the recount of this conversation, it was the government, not indigenous leaders that sought to expand indigenous lands. Moreover, the justification that this governmental official gives the indigenous leader for the need to protect this land also sheds light into the motivation behind the policy. The idea that giving land to indigenous people would make them “able to control their own destiny” shows that the strategy of increasing indigenous lands was directly related to ability of indigenous groups to govern those areas. From the perspective of the government recognizing property rights over the land was not enough to establish governance. Establishing strong indigenous governments over the newly created *resguardos* was imperative for the success of the government’s strategy of delegitimizing the power that armed groups were exerting over them. The government was perfectly aware that simply giving land to indigenous people would not be enough to delegitimize armed groups operating in those areas. Establishing governance also required the existence of some form of indigenous authority, organization or

government over such areas. Thus, the policy that government officials devised required recognizing the *resguardos* as well as the existence of indigenous authorities or governments over them and contributing to strengthen them whenever this was necessary.

The director of indigenous affairs who conducted the process of *resguardo* expansion during the Barco administration was perfectly aware of the need to establish strong systems of indigenous government in those areas. In fact, in an interview he referred to his personal role in the Division of Indigenous Affairs of the Ministry of the Interior at that specific historical moment in the following way:

“In any case, Barco wins the election and he asks me to be a part of the government; or rather, he gives me the chance to work in the Ministry of the Interior. I was interested in working there because I had a clear role. For me this role consisted in [achieving the recognition of] indigenous territories –which was the main issue–, and strengthening indigenous governments. Those were the two basic issues: territory and government.”

This excerpt illustrates the way in which government officials that were in some way related to the expansion of indigenous lands during the Barco administration perceived their own role. This excerpt also shows how the government’s policy had two basic components: giving back the land to indigenous people and both recognizing and strengthening their capacity to govern it.

Moreover, the perception that this public official had about the role that he had to perform is connected with a broader notion about the role that corresponded to indigenous groups and the state in order to strengthen governance in these areas. The government perceived its role as that of contributing to strengthen the authority of indigenous groups in those areas whenever this was necessary.

However, contrary to what some authors in Colombia have claimed, the expansion of indigenous *resguardos* during the Barco administration was not a consequence of the indigenous mobilizations of the 1970s. According to their view, these mobilizations strengthened indigenous organizations by giving them the legal expertise necessary to obtain their claims from the division of indigenous affairs of the Ministry of the Interior (Houghton 2008:87). Some of the facts on which this claim is based are accurate. For example, it is true that the 1970s coincides with an increase of indigenous mobilizations in various parts of the country. Moreover, it is also true that these mobilizations were largely motivated by territorial claims. Finally, as it was illustrated in the previous chapter, indigenous organizations did in fact seek to expand knowledge of the law in order to forge an “indigenous rights’ consciousness” in the different indigenous groups throughout the country, especially in the recovery of colonial *resguardos*. However, there were no indigenous claims to the areas that were granted as *resguardos* between 1988 and 1989.

When asked about the role of indigenous mobilizations in the creation of the *resguardos*, the director of indigenous affairs whom I already mentioned responded:

“I have no recollection of that. In other words, we in the government were not even aware that there were any indigenous mobilizations, which means that they did not have an impact on us.”

However, even if what this informant states is true and no formal requests to create the *resguardos* made by indigenous people that does not necessarily mean that the indigenous organizations were irrelevant. For the sake of argument one can claim that it is possible that the government reacted in advance to prevent indigenous organizations from calling to any protests and even before these organizations formally requested the creation of *resguardos* to show the good will of the government. However, this possibility is unlikely for two reasons. First, indigenous mobilizations during the 1970s mostly responded to local land conflicts in areas other than those where the Barco government created *resguardos*. Mobilizations during that era were the result of conflicts between indigenous groups and landlords in the Andean plateaus (Cauca, Nariño) and inter-Andean valleys (Tolima), and in the plains near the Caribbean coast (Córdoba). Meanwhile, the *resguardos* were created in the Colombian lowlands, especially in southern (Putumayo, Amazonas) and southeastern Amazon jungles (Guainía), in the plains to the eastern (Vaupés) and in the desert to the northeast of the country (Guajira). In these places there were no major land conflicts for land.

In fact, according to the data from the Ministry of Agriculture,⁹ the land where these *resguardos* were located either had no formal owner or was owned by the state. Although this does not mean that only the dwellers were indigenous, the fact is that there were very few any settlers living there at the time. In contrast to the lands that motivated the mobilizations of the 1970s, those where the Barco *resguardos* were created were considered *baldíos*. Moreover, as rural sociologist Christian Gros has claimed, at the time there were no elite interests in the regions where the Barco *resguardos* were created and this is why creating them was possible (Gros 2000). In fact, the lack of importance that those lands had for economic elites at the time is confirmed by an official that worked in the division of territory of the PNR during the Barco administration. This informant framed it to me in this way:

“Well, and something else that happened was that at the time there was no awareness about the importance of what was called the “national territories” [the regions where the *resguardos* were created]. I believe that in this country we still had the idea that those were territories that were not part of this nation. At that time such perception was still dominant. This is not the case anymore; that perception does not make sense, because of the importance of economic interests in those areas. Those areas are important for palm oil, the oil industry, for this famous compound coltan, which everybody is talking about these days” (MS 30:02).

⁹ According to the administrative acts that created *resguardos* between 1988 and 1989 these lands were mostly *baldíos*, which means they had no registered owner. The only registered owner was the state, which had bought lands in Putumayo from Peruvian settlers as part of the peace agreement after the war with Peru.

In sum then, the Barco administration devised a top-down policy that sought to expand control over remote parts of the country's territory by establishing indigenous governments and delegating governance to them in such areas. This process was not triggered by indigenous organizations created by the indigenous movement of the 1970s. However, this does not mean that the achievements of the indigenous movement in terms of fostering indigenous identities and strengthening their traditional authorities were irrelevant. In fact, identity formation and organization were essential for the implementation of the governance strategy of the Barco administration.

For Barco's policy to succeed the government needed to grant property titles to indigenous groups, but it also needed to strengthen indigenous authorities, and this second aspect was perhaps as important as the first. As we will see in the next section, the government did in fact build upon the process of promoting indigenous identity and strengthening indigenous authorities carried out by CRIC and ONIC since the 1970s.

Building Identity, Authority and Place

The delegation of governance that the Barco administration made to indigenous groups significantly required setting in place indigenous governance structures. For this purpose, they relied on the work of indigenous organizations created during the 1970s and early 1980s (particularly the CRIC and ONIC), which had carried out a nationwide campaign of strengthening indigenous identity, government structures and organization, and promoting the importance of land as part of indigenous culture and identity. The existence of indigenous government structures and their strengthening during the previous decades meant that the government did not have to establish governments in these regions, but only to contribute to strengthen indigenous governments that already existed, and (explicitly or tacitly) support the campaigns that CRIC and ONIC had been carrying out for decades.

The government supported the task of indigenous organizations by promoting indigenous identity, strengthening their authorities, and their sense of belonging to their territories, and sought to link these three dimensions of their policy. It promoted identity by conferring special (individual and collective) rights to indigenous people and supporting indigenous education. It strengthened indigenous authorities by giving them new functions, and by teaching seminars and workshops to local, regional, and national state authorities about the legal and political autonomy that indigenous groups and their authorities were granted within their territories. Furthermore, the government also strengthened the Division of Indigenous Affairs and established direct connections with indigenous authorities. However, the creation of direct channel of communication between the central government and local indigenous authorities had a second purpose as well, which was to cut out larger intermediary indigenous and political organizations (regional and national) that sought to aggregate indigenous interests. In doing so, the government sought to fragment indigenous power and facilitate negotiations with them.

Moreover, besides promoting identity, authority and territorialization, the government sought to create strong links between these three dimensions. The way in which the government created these links, however, was ambiguous. In some respects it sought to protect indigenous culture and environment by excluding lands and people from the “logic of market”, while in others seemed to articulate indigenous peoples into the market as entrepreneurs and commoditize their lands.

The strengthening of indigenous authorities was carried out in three different fronts. The first front consisted in recognizing, celebrating, and promoting cultural difference and indigenous identity. The way in which the government sought to do this was by sponsoring indigenous people’s education. The government sought to promote indigenous identification through the implementation of a series of “special” rights for indigenous people. It waived their duty to pay a year of military service, gave them tax exemptions, gratuitous affiliation to the health system, and recognized their own forms of practicing medicine, among others. Moreover, the government also wanted to preserve indigenous culture by diffusing customs among the population of different ethnic groups, fostering a sense of pride for their cultures and identities, and helping to groom an indigenous intellectual elite. Thus, in 1986 the government created the National Committee of Aboriginal Linguistics and adopted an “intercultural” and bilingual curriculum in public schools located inside or near to the *resguardos* throughout the country with a strong participation and input from indigenous organizations, traditional authorities, and indigenous teachers from each *resguardo*. Moreover, the government also established scholarships in the National University of Colombia and the District University of Bogotá, and designated a fixed quota of two percent of the places in these universities for indigenous students, which roughly corresponded to the percentage of the population that indigenous people were at the time.

The second front was recognizing and strengthening indigenous authorities. The government promoted the recognition of these authorities by carrying out a series of “educational” seminars with local authorities, police officials, the military, prosecutors, and judges. The central government hired lawyers specialized in indigenous rights to explain these officials in the various regions of the country about the role played by indigenous authorities in the administration of justice and government. The purpose was that these state officials recognized, complied, and executed the decisions of indigenous authorities in their territories.

Linking Identity, Authority and Territory: the Law of the Ecological Native

The government sought to strengthen the link between identity, authority, and place by a series of formal and informal mechanisms. Among the formal mechanisms, the government created a mechanism of dual recognition of indigenous identity. Individuals belonging to a certain ethnic group can only be recognized as indigenous by that group, this is, by its authorities. Thus, they are only eligible to receive the special benefits that the government awards to indigenous people if the authorities of a group recognize them as members of it. This strengthened the position of traditional authorities within their groups, and their ability to decide who was a member and who was not, and to establish the criteria for identifying individuals as members of the group. In

defining these criteria, indigenous authorities were able to establish and enforce rules of conduct within the group. Authorities, in turn, had to be formally recognized as such by their *comunidades* (the smallest territorial unit of indigenous governance), and the act of recognition had to be formally registered in the Division of Indigenous Affairs. This helped to legitimize indigenous governance within the group, regardless of the system that the *comunidades* adopted to identify their authorities, or the type of authorities that they have. However, for an indigenous group to be registered as such, it needs to have both an established system of authority and a territory. Otherwise, the group is not granted recognition, and thus, its members are not eligible to receive the benefits that the government awards indigenous people. Thus, for example there are currently more than fifteen indigenous groups that the government does not recognize as such. This is the case of urban indigenous groups. A famous case among these is that of the Muisca, whose land was absorbed by the city of Bogota. Since they live in the city and no longer have land, the government refuses to award them the status of indigenous group. To gain this status, the group has started trying to recover their colonial *resguardos* through litigation, and by purchasing land as a private organization.

Moreover, to strengthen the relation between identity, authority, and territory, the government also made use of a trend that was growing globally during the 1980s, which sought to establish a link between biodiversity and cultural diversity. This process, which Colombian anthropologist Astrid Ulloa (2010), studying the Kogui indigenous people of northern Colombia has called “the construction of the ecological native”, connects local processes of territorialization of indigenous communities to global trends within the environmentalist movement. In particular, this global trend sought to respond to critiques according to which environmentalism as a new form of colonialism imposed by rich countries to the global south (Brosius 1999:283). Environmentalists responded by highlighting the way indigenous groups, and other rural communities have been able to achieve sustainable development. According to this view, the best way to protect biological diversity, and ecosystems more generally was by empowering indigenous people, placing them at the center of the picture, and learning from the way they relate to their environments. The rationale behind this idea was that indigenous people had lived in their environment for thousands of years, and learned to use its resources without depleting them. Thus, the best way to actually learn how to use these resources in a sustainable manner was by preserving the knowledge that indigenous groups had acquired with regard to the best ways to use their environment. This worldview apparently allowed environmental campaigns to overcome what had been conceived as an inevitable tension between nature and culture.

This idea underlies the policies of the Barco administration. In particular, it was shared by high public officials in the Institute of Land Reform, the Ministry of Agriculture, the Institute of Natural Resources, and the Division of Indigenous Affairs. In particular, the director of the latter, which has already been mentioned, was an anthropologist who had written his doctoral dissertation at the *Ecole des Hautes Etudes en Sciences Sociales* about indigenous worldviews and environmental management. However, even President Barco himself publicly affirmed this idea. In the speech he gave when he inaugurated the resguardo called Predio Putumayo, Barco said:

“Indigenous groups have maintained and conserved it [the predio Putumayo], using their very particular ancestral wisdom concerning the management of nature, during all the years of its existence; even when their lineage has been looked down upon and despite a decrease in their numbers because of all sorts of unjust attacks, the indigenous people are here and this land has welcomed and nourished them. This is, then, the reason why the Colombian State has formally recognized the indigenous peoples their ownership, under the structure of the *resguardos*, of the Putumayo Property. So that the millennial reality of their possession of the land receives is formalized as ownership; so that they may achieve their wellbeing; so that in this manner this land will be conserved to the benefit of the ecosystem.”

Moreover, a significant portion of the indigenous *resguardos* created by the Barco administration overlapped with natural reserves or as national parks, which were also created during his administration. Most of the departments of Amazonas, Putumayo, and Guainía, for example, were both indigenous *resguardos* and national parks. Moreover, an important part of the U’wa *resguardo* of Cobaría, Tegría, Bókota, and Rinconada that the Barco government created in 1987 overlaps with the National Park of Cocuy. In most cases, the government also gave the administration of the parks or reserves to the indigenous groups that live in the overlapping *resguardos*. In others, however, the government maintained the administration of the parks and reserves; granting it only when the groups have demonstrated their “ability” or willingness to carry out this task.

Ethnicity Inc. or Neoliberal Multiculturalism? Natural Resources, Indian Entrepreneurs, and Commoditized Resguardos

In any case, regardless of whether they overlapped with natural reserves or parks, the government decided that the lands of the *resguardos* should be explicitly excluded from the market. This meant that *resguardos* could not be bought, sold, or acquired by non-indigenous people through continued occupation. Otherwise, indigenous people would be hard-pressed to sell them. With respect to this Barco’s director of indigenous affairs said:

“We needed to take these lands out of the market because this is what ends up ruining rural areas: the government gives them the lands and the tendency is to sell them, and then they end up with nothing, and land lords end up buying these lands, and we needed to stop that pattern.”

Excluding the lands of the *resguardos* from the market was not problematic. After all, the *resguardos* created between 1988 and 1989 were located in remote areas with a low agricultural value. However, the will of the government to exclude the lands from the market does not mean

that the government was against commoditizing these lands to use the natural resources in their surface and subsurface. After all, for the most part the state owns subsurface resources. Alas, the government did not exclude the possibility of extracting natural resources from indigenous lands. In fact, Barco's government was ambiguous with respect to a complete exclusion of indigenous lands and from the market. Instead, the director of Indigenous Affairs presented indigenous groups as potential entrepreneurs that could eventually become partners of people or companies who wanted to extract natural resources from those lands in a "sustainable manner". When he was narrating how he answered to the objections that some governmental officials had against the creation of the *resguardos* because they wanted those lands to be available to other citizens and/or companies, he said:

"Let's give all this [land] to indigenous groups, which will take care of it. And if at some point we have the technology to exploit the resources in those areas in a sustainable manner, and other Colombians want to be a part of such enterprise, well make them sit with indigenous groups and negotiate how they are going to carry out that enterprise together. In other words, this is like private property: the fact that you own a farm does not mean that we can't work together in it"

This ambiguity with respect to the commoditization of indigenous lands is evident in the speeches that President Barco himself gave when he inaugurated the indigenous *resguardos*. On the one hand, he recognized the importance of indigenous land and government as the two main pillars of his policy. Moreover, as it was already mentioned, he also emphasized the fact that indigenous people had lived in those areas for thousands of years without depleting natural resources, and thus, they are best suited to take care of them. On the other hand, however, Barco also assimilated the relation of indigenous peoples to their *resguardos* to a Western, liberal system of property, and emphasized the economic dimension of this relation. He mentioned that the exclusion of third parties would enable indigenous people to make these areas economically productive. At the same time, he suggested that indigenous people have a responsibility in the governance of such *resguardos* by saying that "national legislation" would assign them certain functions. Later in his speech during the inauguration of the *Predio Putumayo*, he said:

"Indigenous communities have the right to an exclusive territory which will serve them as a place to settle down; a place in which they can carry out their productive activities. They have the right to have their own forms of organization, to set their own regulations, and to elect their authorities. They are assisted by a characteristic degree of autonomy in the management of their internal affairs. ... Similarly, pursuant to Law 89 of 1890, indigenous people have the right to organize themselves according to their own uses and customs. The government will then guarantee them the conditions that enable them to perform the functions that the community may assign them and those which are conferred upon them

by national legislation.” (Virgilio Barco Vargas, Speech at La Chorrera, Colombia, April 23, 1988)

The possibility of extracting natural resources from indigenous lands was closely connected to the idea that the government should strengthen the agency of indigenous people. Referring to the problems that the previous strategies based on land reform had had in the past in Colombia, Barco’s director of indigenous affairs mentioned that it was necessary that the state helped to promote agency, entrepreneurship, and self-help on the part of indigenous peoples. In his words:

“The problem, like that of any land reform, like in every decision, is that if the state does not accompany the people so that they assume their own responsibility, and start administrating their land the way local governments do, evidently giving that land away and then leaving them [the indigenous groups] alone is not the answer. On the other hand, the answer is not that the central government sustains them through money transfers. ONIC pressed the government a lot so that the transfers to these *resguardos* were sent from the funds that the government transfers to local governments. And this would not have resolved anything, because the transfers by themselves, well ... you end up creating pyramids with lots of privileged groups that end up staying with the money.”

Behind the idea of governance, then, was the notion that the appropriate role of the state was to help indigenous people organize themselves in order to govern the recently created *resguardos* and manage their *own* resources. In other words, the role of the state consists not so much in providing the resources that are necessary to supply services and goods to the population, but in strengthening indigenous agency from the top down. However, even in these cases, what the government did was simply to support the process of strengthening local organizations and indigenous authorities that was being carried out by CRIC since the 1970s, and by the recently created National Indigenous Organization of Colombia (ONIC), since its creation in 1982. As it was mentioned in the previous section, during the 1970s and 1980s members of regional and national indigenous organizations had been traveling throughout the country to promote local indigenous organizational processes on the ground. In some cases this meant reviving the “traditional” authority structures of the different indigenous ethnic groups, in others it meant using colonial Spanish structures like the *cabildo*, resorting to the institutions created by rubber barons to enslave indigenous peoples in the Amazon like the *capitanes*, combining these institutions, or simply creating inter-ethnic organizations when the indigenous population belonged to different ethnic groups or it was too dispersed.

Moreover, the government’s plan assumed that through the promotion of indigenous identity and authority indigenous groups would make their *resguardos* self-sustainable. However, the government did not focus on promoting individual entrepreneurship, but to use the forms of collective organization and action that indigenous groups have instead.

The director of indigenous affairs also mentioned the current importance of strengthening collective indigenous agency. He said that the focus on building agency and strengthening indigenous organizations was imperative, given that these people are now facing evermore pressing challenges from global capitalism. Secondly, he considered the growing economic significance of genetic resources and the fact that now governments and international organizations are beginning to think about the possibility of expanding a market to pay for the provision of environmental services, particularly carbon emissions could be especially important to his program of indigenous governance. He referred to the possibility that first world countries started paying so that developing countries that have rainforests which are important to the world at large, like the Amazon rainforest, preserve them instead of exploiting them economically.

Paradoxically, however, the director of indigenous affairs saw the strengthening of collective indigenous agency as a way of protecting indigenous people and their culture by excluding indigenous people, and their lands, from the individualistic logic of neoliberalism and the market. He said:

“If countries start paying for environmental services, for keeping the forest, which is the current tendency, how are we going to do? There are companies that belong to a voluntary market that would like to obtain money. For example, let’s say they pay five dollars per hectare of forest, or they want to make a profit out of the biodiversity in the region. The problem is how to maintain the notion that indigenous people have of community and solidarity despite the fact that these resources derive from the concept of privatization and private property. We should allow indigenous people to provide these [environmental] services, but we [the state] also need to put a barrier, a conversion mechanism if you want, so that the money that is given to indigenous groups for environmental services is used for education, health and wellbeing. In other words, how do we avoid the privatization of such resources? Because if we do not, the only outcome that we will see is that some people will become rich, nothing else. If we allow the concept of privatization and the market to reach the *resguardos* we will begin to destroy them. That is why the concept of collectivities is outside of the market. All the money that arrives should serve a collective purpose, be it education, health, etc. So, we should be aware of not getting carried away by the concept of privatization and individualism because that could start eroding aspects of indigenous culture like the system of lineage, for example”

In sum, and as we can see from this excerpt the Barco government was ambivalent about incorporating indigenous lands into the market. It sought to make *resguardos* inalienable to avoid indigenous people from selling them and becoming impoverished. On the other hand, however, it accepted the possibility that private companies extracted natural resources from those lands. Although perfectly aware of the negative impact that companies may have over the culture of indigenous people, they conceived the maintenance of their forms of collective organization as the route that would protect them from the market because it would avoid the potential harm of its “individualistic” logic.

Conclusion

Thus, as we can observe, Barco established a top-down policy of expanding indigenous *resguardos* and strengthening indigenous government. In contrast with previous *resguardo* regimes, this one did not seek to control indigenous population, but to increase state control over the vast extensions of land that indigenous people inhabit. Moreover, the attempt to strengthen indigenous governance reflects an underlying notion of the appropriate roles that correspond to both the Colombian government and indigenous authorities. It also shows the inadequacy of the views that conceive neoliberalism as a form of governance that is inherently contrary to indigenous autonomy and self-determination (Rodríguez 2011). However, they do entail a rather specific view of the roles of the state in the protection of indigenous rights. According to this notion, the role of government was not to provide the funds, or even the services traditionally associated with the role of the state, but to help to strengthen the capacity of indigenous authorities to provide those services themselves. In other words, the government wanted to strengthen indigenous collective agency and entrepreneurship. Furthermore, even though the Barco administration maintained the inalienable character of the *resguardos*, it failed to recognize the complexity of the meaning that indigenous people were attributing to their relation to their land. As a consequence, the government was ambiguous with respect to the possibility of extracting natural resources from *resguardo* lands. In accordance with its objective of promoting indigenous government, self-help, and agency, it saw indigenous peoples as potential entrepreneurs for the extraction of resources from their lands.

CHAPTER 5

OIL POWER, VIOLENT SPACES, AND THE REPRESSION OF LOCAL INDIGENOUS MOBILIZATION

Introduction

The previous two chapters show how since the colony the state and indigenous people have struggled to define not only the extension, but the level of control that each has over indigenous lands. Those two chapters also illustrate political and economic factors have shaped the amount and purpose of indigenous lands in Colombia since colonial times. Finally, those chapters also showed how indigenous people have reacted against this movement by organizing themselves, politicizing their ethnic identity, and by recovering and reinventing old laws to subvert both the amount and purpose of their lands.

This chapter shows the growing political importance of oil in Colombia during the late 1980s and early 1990s, the influence that risk-taking oil companies have, and how they use it to secure their high risk investments through U.S. military aid. I will show then how the increase of military aid to protect oil infrastructure increases violence and constrains the possibility that the U'wa have to protest at a local level.

Contrary to what some economists and political scientists have said, oil violence is not simply a phenomenon in which foreign investment in an extractive industry creates an incentive for looting and hence fostering violence at the local level. This chapter suggests that oil producing states are key players in this process, because the militarization of oil producing areas carried out to protect pipelines and oil installations helps to escalate violence. Moreover, transnational oil companies and oil consuming states also play a fundamental role in the escalation of violence in oil-producing regions of the world. As this section shows, militarization is produced by the coordinate political action of oil producing governments (Colombia in this case), transnational corporations, in this case Oxy, and oil consuming countries, in this case through the direct supply of military training and weapons to protect oil investments provided by the United States government. In fact, this chapter will show that the U.S. shifted the allocation of resources that Plan Colombia had initially established for the “war on drugs” to the military protection of Oxy’s oil pipelines and infrastructure. In doing so, both the “war on drugs”, counterinsurgency, and the militarization of the area encountered a new ally in the U.S. oil companies operating in this region of Colombia.

Documenting the role that the Colombian and U.S. governments, the oil companies, and armed groups play in the construction of oil power and violence is important to understand the changes in scale and tactics, and the success of the U'wa campaign. As we will see in chapters five and six of this dissertation, the allocation of U.S. resources for the militarization of the area helped to shape the scale, tactics, and success of the U'wa campaign in two different ways. On the one hand, it illustrates how the intervention of U.S. government and transnational oil capital

constrained the possibilities that the U'wa had for resorting to local mobilization. On the other hand, it shows how the intervention of the U.S. government and companies made the political supporters of oil companies in the U.S. more vulnerable to reputational attacks carried out by indigenous people and environmental activists.

The Political Economy of Oil in Colombia: a brief introduction

The ambiguity of the Barco government with respect to the commoditization of indigenous lands acquires relevance if one shifts one's gaze to his policy for economic development. At the same time that the Colombian government was expanding indigenous lands the country was adopting structural transformations toward an export-driven economy, and oil was becoming the country's largest export. However, despite a substantial increase in oil exports, investment in oil exploration in Colombia was decreasing due to the reduction of proven oil reserves and the increase in security risks. However, this situation would not last long. Due to a combination of economic policies and promising findings, during the early 1990s oil exploration in Colombia became increasingly attractive. However, security risks were not resolved and the country became a target for risk-prone oil companies. These companies expected higher premiums in exchange for assuming higher risks, and managed their security risks by resorting to political contacts to ensure military protection for their investments.

Attracting investments to promote the oil industry was supposed to enable the government to obtain the resources to strengthen state institutions and expand their reach throughout the country's territory while at the same time maintaining a "healthy" fiscal balance. Moreover, oil extraction in those problematic, remote regions of the country would constitute an engine that would bolster regional development. It would produce royalties and taxes that would enrich local governments, facilitating the projects of territorial expansion, decentralization, and institution-building that the government was carrying out (Puyana and Thorpe 1998).

In contrast with these expectations oil-driven development weakened the role of the state in the countryside. As we will see in the next chapter, the model of oil-driven development made the government more vulnerable to the pressure exerted by risk seeking oil companies to militarize the countryside to manage their security risks. This dependence reduced the capacity of the state to mediate the social conflicts between local populations and oil companies introduced new actors and sources of conflict in certain regions, and helped to escalate violence.

Understanding the Political Consequences of Oil Production

There is an abundant literature on the economic, political, and social effects produced by the extraction of oil and other raw natural resources (Collier and Hoeffler 2005, Fearon 2005, Humphreys 2005, Karl 1997, Klare 2002, 2005, Peet and Watts 2004, Kashi and Watts 2010, Peet et al 2011). The "Dutch disease" refers to the so called "direct" effects that booms in primary commodities have over the productive capacity of the manufacturing sector of domestic

economies that produce them, and ultimately, over their economic growth. In turn, the “resource curse” and the “paradox of plenty” are broader concepts that encompass different “indirect” effects of oil or other primary commodity production over economic development, rent-seeking, state-building, and the political regime type. Besides these, there are other terms that seek to capture some elements of the effects that primary commodities have, especially in relation to oil, like “oil addiction” and “oil dependency”. Despite conveying complex mechanisms of interaction linking political, social, and economic factors, these terms have become part of our common parlour and are now used constantly by the popular media. The popularization of these terms, especially in relation to oil, attests to the growing awareness about the effects that this commodity has had over the world’s economy, politics, and culture since the World War I.

However, the nouns “disease”, “addiction” and “curse” tend to convey the erroneous idea that these effects are produced by external factors beyond our control. They obscure the processes and specific mechanisms through which oil produces economic, political and cultural outcomes. In particular, it hides fact that governments in oil producing and oil consuming countries have adopted a series political choices that have led these counties to their current situation. The same can be said of various economic analyses of the impact of oil, like those of Sachs and Werner (1995), Leite and Weidman (1999), and Klare (2001), which underspecify the mechanisms through which oil produces effects over politics. These concepts undervalue the importance of political factors in bringing about both political and economic consequences attached to oil production and consumption. As Terry Karl (1997) has vehemently pointed out, the Dutch disease and the resource curse are not economic but *political* problems, and they have more to do with the capacity of states and firms to protect a monopoly over this commodity than with its quality or the efficiency of its distribution. However, Karl’s analysis also privileges certain actors at the expense of others. In particular, it considers the role of oil producing states but leaves consumer states and transnational oil companies “off the hook”. The following analysis considers how these outcomes are brought about by the capacity of the oil industry to forge alliances with governments to maintain their joint monopoly over oil.

Since the “oil crises” of 1970s, the disappearance of the cartel established by the largest oil companies known as “the seven sisters”, and the emergence of many smaller companies, oil producing countries have gained some autonomy vis-à-vis the oil industry. Thus, the alliance between oil companies and governments, and more generally, the political economy of oil production, became more embedded in the models of political and economic development adopted by oil producing countries. During the periods of import substitution industrialization, many oil producing countries started using oil revenues to promote the development of their own industrial capacity. However, most of these oil producing countries maintained dependent patterns of capital accumulation, technological advancement and industrialization. Thus, even though the oil crises of the 1970s represented the greatest redistribution of wealth not produced by means of a war, they were not able to attain significant levels of capital accumulation and a sustainable level of industrialization. Instead, oil booms had an unanticipated consequence: they produced rent-seeking states that became increasingly vulnerable to external and internal factors affecting the economy of oil and to the specific types of oil companies operating in their territory (Karl 1997).

The Evolution of the Oil Industry in Colombia: from Import Substitution Industrialization to Financing the Fiscal Deficits produced by Neoliberal Reforms

The history of the oil industry in Colombia exemplifies this trend. Like most countries, the government in Colombia owns subsurface natural resources, including oil and gas. Thus, the government has historically controlled the conditions of its extraction through regulation. The history of the oil industry can be divided into three basic periods which correspond to three different regulatory models of extraction established by the government: oil concessions to private companies, direct extraction by state-owned oil company Ecopetrol combined with joint ventures between Ecopetrol and private, mostly foreign oil companies, and a third model of “free” competition between Ecopetrol and other oil companies. These three regulatory models are partially embedded in three models of development adopted in Colombia at different times: classical liberalism, import substitution industrialization, and neoliberalism.

As we will see there is not a perfect one on one correspondence between a single form of oil extraction and a corresponding model of development. In the late 1980s the government started adopting neoliberal reforms, and yet, it deviated from the archetype of neoliberalism by maintaining its state-owned oil company called Ecopetrol. However, during the neoliberal period the state maintained this state-owned company not as a way of developing the domestic industrial capacity of Colombia through the intervention of the state, but as a source of government revenue which it needed to implement its program of state-building and institution strengthening.

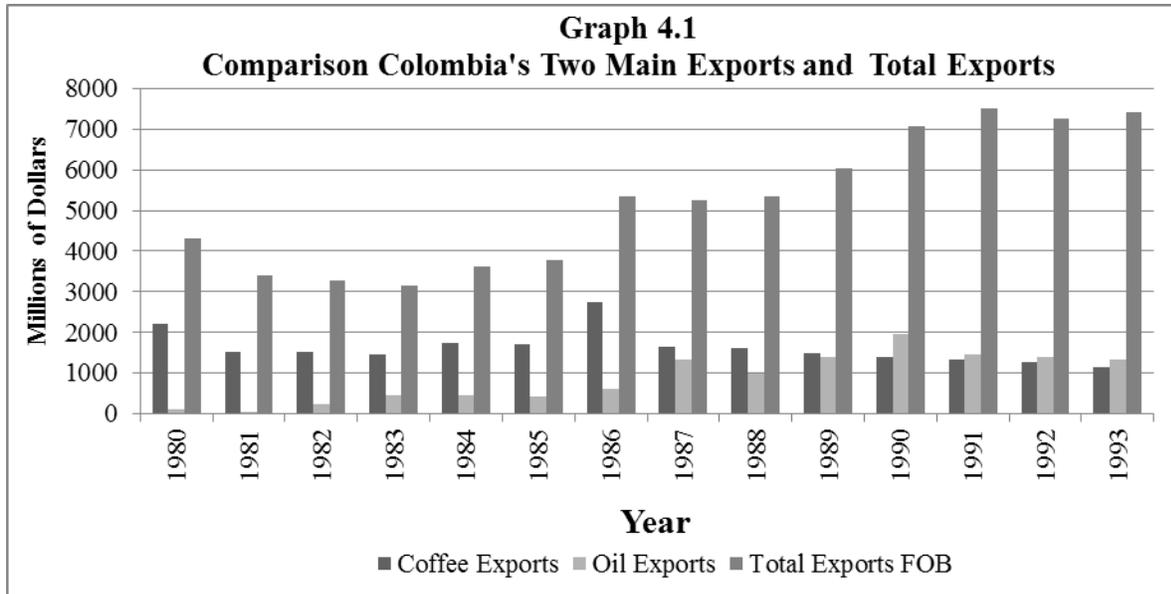
The concession period started in the early 20th century around 1921, and was gradually dismantled from the 1950s to the 1970s. Until the 1970s, the state granted foreign oil companies concessions to explore and extract oil within large areas of land and for long periods of time. In exchange, the state received royalties that oscillated between 7.5 and 14.5 percent of the gross production (Pulido et al 2004: 12), while Venezuela received royalties of 50 percent. The Barco and Mares concessions, the two major concessions at the time, produced endless litigation and disputes in congress. However, the U.S. government strongly opposed the initiatives to rescind the concessions awarded to U.S. oil companies.¹⁰

In 1955, however, the Colombian government decided to gradually change the concession system for one of joint-ventures between foreign companies and a new state-owned oil company: Ecopetrol. The creation of a state-owned oil company reflected the prevalent Keynesian view of the time, and sought to develop the technology and accumulate the capital necessary to explore, extract, transport, refine, and distribute oil and oil-derived products through domestic enterprises.

From 1974 onward, all oil extraction had to be carried out either directly by Ecopetrol or through jointly ventures which were increasingly favorable to Ecopetrol. In these joint ventures the private companies carried out exploration on their own, and assumed all the costs if they did not find oil. However, the privileged position of Ecopetrol did not last very long. In 1989, at the

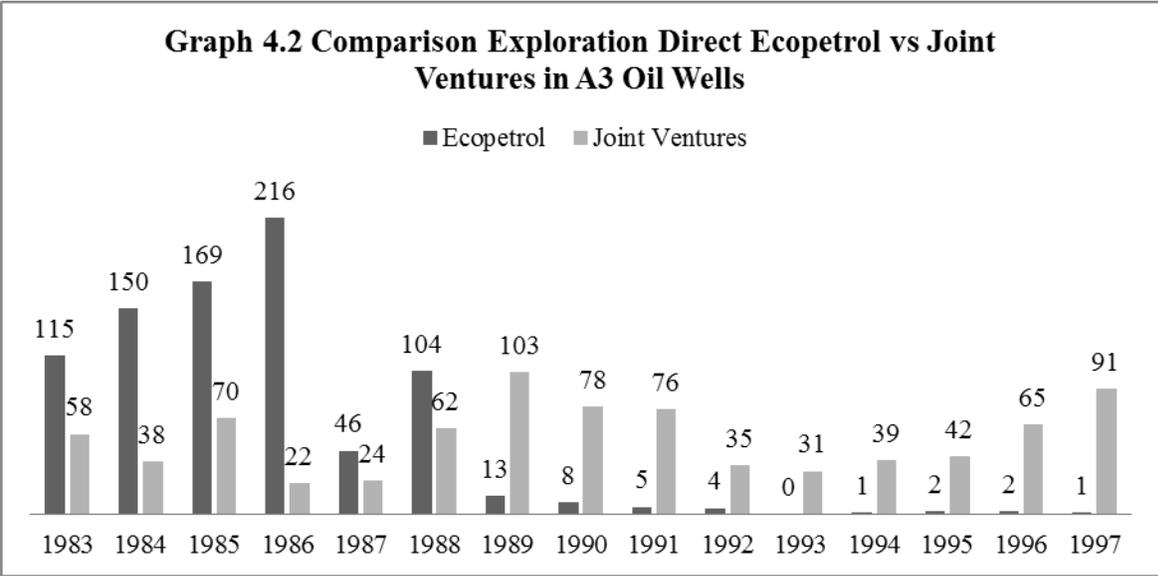
¹⁰ Andrew Mellon who was the secretary of the treasury at the time, announced that the U.S. government would condition government loans to Colombia to the maintenance of the concession system. During the concession period Colombia exported the majority of its oil production. Moreover, 65 percent of these exports were to the United States, and between 1921 and 1973, Colombia exported 1.8 billion barrels to this country alone.

same time that oil production was increasing and becoming the country's largest export, the government started adopting a structural adjustment "neoliberal" program which included reforms to promote foreign investment in oil exploration. As graph 4.1 illustrates, by 1989 oil exports had increased significantly, and oil was becoming Colombia's largest traditional export, above coffee, which historically had been the country's largest export since the mid-19th century. In 1989 coffee represented 24 percent of the country's total exports, while oil represented 23 percent. A year later, oil would become the largest export amounting to 28 percent of the total exports, and coffee moved to a second place with only 20 percent.



Governmental Dependence on Oil Revenues and the Influence of Firms that Arrive Early

Despite the increase in oil production the country's proven reserves were dwindling and the government wished to promote oil exploration to increase oil reserves. In this juncture, instead of capitalizing Ecopetrol, the government decided to make foreign investment in oil exploration more attractive to foreign capital. It reduced the percentage of participation of Ecopetrol in joint ventures and as a consequence, the amount of direct exploration carried out by Ecopetrol diminished significantly, while the amount of joint ventures increased. The level of oil exploration in a country is usually measured by the number of the riskiest type of oil wells (A3 wells). As graph 4.2 illustrates, from 1988 to 1989 the amount of wells being perforated directly by Ecopetrol dropped from 104 to 13, while the perforations in joint ventures increased from 62 to 103. This change marked the beginning of a new era in which Ecopetrol became a source of revenue, rather than an industrialization mechanism. Thus, at the same time that the Colombian government was expanding indigenous lands in 29 percent of its territory, it was promoting foreign investment in oil exploration and initiating a path of "dependence" on oil rents to smoothen the impact of neoliberal reforms.



The use of the oil industry as a rent seeking mechanism increases the capacity of the government to provide goods and services throughout its population. In the case of Colombia, the increase in oil revenues enabled the government to expand its institutions and provide its services throughout the territory without increasing public debt or raising taxes, two issues that were contrary to the tenets of fiscal austerity and market-driven, export-oriented growth of neoliberalism. In this way, the revenues produced by the oil industry were instrumental for carrying out the process of decentralization. The new constitution of 1991 increased the percentages of oil royalties awarded to the regional and local governments and this helped to expand the reach of the state and regain some control over the more remote and isolated parts of the territory (Fainboim and Rodríguez 2000).

The second consequence of using oil to increase government revenues is that it enhances the influence that transnational oil corporations have over the implementation and functioning of government programs, and in this sense, the term oil dependence is accurate. This gives these companies greater influence in political decision making processes, not only because they are providing the means that make them possible, but because once these programs are in place the costs that the government has to assume to change them rise significantly. Moreover, as these companies become more knowledgeable of the domestic political environment and gain connections, they use them to increase their leverage. As an oil executive put it in an interview when talking about the way Oxy dealt with the risks involved in engaging in new operations in Colombia:

“We did not see any risks that were larger or different than those which we were already accustomed to deal with in our operation of seven years in the Cañolimon well and the pipeline, which had already been subject to various security situations, a lot of community

relations, and a lot of interaction with the authorities. On the contrary, we realized that all this interaction gave Occidental a competitive advantage. We knew what kinds of situations we would have to deal with, we knew the right people, and we knew the institutions. I would say that we had developed a reputation as effective operators in complicated contexts”

The influence of a company in any given country depends, of course, not just in the amount of resources that it has, but in how early they entered the country compared to its competitors. The reason for this is that smaller companies incorporated in a country at an early stage of its oil production may already have gained political influence by the time larger ones that incorporate. Thus, governments and oil corporations have both institutional and personal incentives to help each other.

Security Risks and the Influence of Oil Companies

The influence of the oil industry means that the government is more likely to address industry demands to increase investments and even anticipate measures with the intention of attracting new firms. This includes deregulating certain activities to increase their profits and adopting provisions to protect their investments against risks. However, the risks and needs of each company and project vary significantly depending on the country and more specifically on the region where these companies are operating inside a country, and even on the type of oil well that they are seeking to operate. Oxy, for example, had to assume very high security risks when it built its pipeline from the oil well in Cañolimón to the port in Coveñas in the Caribbean because the pipeline crossed a region that had already been permeated by oil violence. Other companies, however, have not had to assume such risks because they operate in regions that are not so permeated by conflict and violence. As mentioned above, this variable structure of risk gives companies that arrive early an insider’s knowledge, experience and expertise to manage the specific types of security risks that are involved in their operation in any given country. Moreover, the companies that arrive early are more likely to have developed the types of political connections that are necessary to manage those risks. For those reasons, companies that arrive early have an advantage over those that arrive later.

In Colombia, the main concerns that oil companies have are security risks and community relations. This became evident in the interviews that I conducted with oil executives both in Colombia and in the U.S. All the oil executives that I interviewed (7/7) expressed that their main concerns whenever they decided to invest in a new exploration project are security and community relations.

“Really operating in Colombia, no matter where you are, our concerns were consistent with our operations in Cañolimón. Our number one concern was security.... And the second was - tied to security- was how you deal with local communities...”

References to concerns with community relations, however, may be a more recent phenomenon related to a change in the policies not just of oil companies but of extractive industries as a whole. As another oil executive mentioned, a few years back companies wanted to maintain their community relations projects with a very low profile because they wanted to avoid the perception that they were somehow involved in politics or in the internal affairs of a country. This executive said:

“The issue of the security of the pipeline (in 2000) fostered a discussion about community relations. And this concern is not just of Oxy. All the extractive industries went through this same stage where the strategy was to maintain a low profile. The rationale was: if we all maintain a low profile we can all operate better. We are not visible, and we avoid security problems. But they realized that they could not keep the low profile strategy because everybody in the area [where the company operates] knows the company is there, so why keep a low profile? Who are you trying to fool? And the other reason was because communities felt that they were not receiving the benefits from social projects and other things. And Oxy knew that they were giving benefits to the population, but since it never put its logo [in those projects], well the community never knew that the projects they were receiving were carried out by Oxy. Thus these companies changed and started making their social projects visible and saying that they were the ones involved in carrying them out.”

This period of low visibility was followed by one in which companies actively publicized their projects in the communities they operated to improve their public relations image. However, instead of improving their image, this visibility created public expectations that oil companies should carry out certain social services in the areas where they extract oil. To avoid this problem, companies belonging not just to the oil industry but to various extractive industries, along with the World Bank, the United Nations, USAID, and other governmental and intergovernmental entities have promoted the adoption of the Extractive Industries Transparency Initiative (EITI), which seeks to make the amounts and destinations of so-called “state takings”, this is, the revenues that the state perceives from natural resource extraction more visible to the general population.

Risk-Taking Firms and Business Strategy: How to Flourish in a Violent Environment

Within the oil industry Oxy developed a reputation for entering countries where no other American company entered, and operating in politically difficult environments. Thus, among others places, Oxy was developing the Soviet gas pipelines in the 1970s during the height of the cold war (Brada and King: 1973) and operating in Libya during the time in which this country was considered a Pariah state by the U.S. during the mid1970s.¹¹ The operations of Oxy in

¹¹ For an interesting account of how Oxy and other oil companies lobbied the U.S. government to support the coup given by Muammar Gaddafi in exchange for the regime’s maintenance of the privileges granted to them by king

political environments considered hostile to U.S. investments was possible thanks to the political connections of the company both in the United States and in the producing companies. Their business strategy consisted in developing strong political connections both in oil producing countries and in the U.S. in order to serve as political brokers between them.¹² As we will see in the next chapter, this allowed the company to have privileged access to government officials and processes of decision making, altering the outcomes of policy both in Colombia and in the United States.

However, not all companies are willing to assume the security risks involved in operating in Colombia. Many foreign companies like Shell and Repsol sold their inland operations in Colombia during the 2000s because they were unwilling to assume the security risks that their operations pose over their employees and assets. Moreover, perhaps because of the magnitude of violence in Colombia during the late 1980s, after the reforms to the oil industry adopted by the Colombian government in 1989 only 3 out of 35 firms accepted the invitation to participate in the round to promote oil investment in the country. As it was already mentioned above, while the importance of oil in terms of exports and state revenues was increasing during the second half of the 1980s, foreign investment in the industry was decreasing. The conditions of the partnership regime initially worked, and direct foreign investment in oil increased from 200 million in 1980, to 800 million in 1984. However, in 1985 direct foreign investment in oil plummeted reaching a low point of 200 million in 1987.

The high security risks involved in the oil industry in Colombia helped to shape the types of companies that have historically been willing to maintain their operations in that country. Security risks act as filters excluding some companies but not others that are willing to operate under security and other types of risks in exchange for higher profits. These are companies with more aggressive business models that are consistent with taking high risks in exchange for higher profits.

One of these risk-seeking companies was Occidental Petroleum (Oxy). Since 1983, oil companies had been discovering relatively large oil deposits in Colombia, mostly in the easternmost slopes of the Andes, and in the grassland plains located east of those slopes. During the 1980s, three discoveries were of particular importance. The first was in “Cañolimón”, discovered by Oxy. Two years later, Cañolimón was producing one third of the country’s oil, and passed from being a net oil importer, to a net exporter.

One way to show how risk-seeking oil companies can take advantage of complicated investment scenarios is by providing some context of the incursion of Oxy into the land of the U’wa. As it

Idris, although they were shipping unmetered quantities of oil out of Libya to avoid paying royalties, see Cooley (1981).

¹² Thus, after defending Oxy’s longtime main shareholder and CEO Armand Hammer against Edgar J. Hoover’s accusations of being a communist for having business interests in the USSR, Senator Al Gore Sr. became a member of its board of directors, CEO of Oxy subsidiaries, and bought and sold interests in mining industries to Occidental. Moreover, according to newspaper reports, Hammer took pride in saying that he had senator Gore “in his back pocket.” Silverstein, Kenneth. *The Nation* “Gore’s Oil Money” May 22, 2000. In Colombia, the company followed this same pattern. The company also achieved important political connections by maintaining important politicians in its payroll. Thus, the company appointed Rodolfo Segovia, a Colombian politician and former CEO of Ecopetrol to its executive committee and to its board of directors since 1994.

has already been mentioned by the end of the 1980s Colombia was going through its worse situation of violence. Precisely at the peak of Colombia's violence Oxy decided to expand its operations in Colombia. In particular, the company was interested in obtaining a license to explore oil in the Sarare region, a historically conflict-ridden area where the U'wa indigenous people live. As it was already mentioned above in the excerpts from the transcripts of interviews with oil executives, Oxy did not believe that there were new risks in this new operation in the Sarare region. After all, the company was already present in the area and knew its people and institutions.

Moreover, the Sarare region is located precisely in the route through which Oxy's Cañolimón-Coveñas pipeline passes by. Thus, the acquisition of exploration rights in U'wa land represented a great business opportunity for Oxy because the cost of transporting oil from the Sarare region to the Coveñas port in the Caribbean would have been minimal. For this purpose, Oxy bought the rights to explore oil in what was later called the Samoré bloc from a junior company, privately owned Colombian oil company called *Petróleos Cordillera* (Copeco), which belonged to one of the largest Colombian petroleum service providers.¹³

However, who were the inhabitants of this land? In what follows I will briefly describe the relevant features of the social organization, history, and belief system of the U'wa. After this, I will describe how oil exploration had helped militarization and the escalation of violence, and ultimately constrained local mobilization in their land.

The U'wa: Indigenous Cosmopolitans

The Political Organization of the U'wa

The U'wa are an indigenous group of approximately 5,600 people¹⁴ that live in the slopes of the eastern branch of the Colombian Andes and in the grasslands to the east of these slopes, between longitude 72 32' and 72 00' W and latitude 7 00' and 6 30' N (Osborn 2010:1). The U'wa are a loosely related and disperse group comprised of six different clans, which are distributed in different localities called *comunidades*, or communities. Each *comunidad* has its own *cabildo*, an institution that among the U'wa refers to a chief,¹⁵ which is elected by the people of the community to serve for a temporal mandate. *Cabildos*, which were originally a Spanish institution, are one prong in a three-pronged system of government which shares power with the

¹³ Ecopetrol, Shell, and Copeco had signed the joint venture agreement to oil in an area of 185,688 hectares, which would later expanded to 208,934ha., located in the municipalities of Guicán and Cubará in the department of Boyacá, Toledo in the department of Northern Santander, and Saravena and Tame in the department of Arauca. Copeco ceded 75% of its participation in the joint venture to Oxy, which was designated as the operator of the contract. Thus, Oxy get 37.5% of the shares in the contract, Shell 37.5% and Ecopetrol 25%. Then 23,246 hectares are added to the initial contract.

¹⁴ The growth rates of the group are impressive. By 1982, Osborn estimated that the U'wa population reached 1,800 people.

¹⁵ The term *cabildo* refers to a council or committee. However, the U'wa use this term to designate the leader of the council and not to the council as a whole.

Werjayas, or elderly spiritual leaders, and the assembly of the U'wa people. In practice *Werjayas* are in charge of resolving internal conflicts, establishing the general guidelines of government (Falchetti 2003: 46, Osborn 1995: 81, Pradilla 1983), mostly from inside the U'wa territory, while the *cabildos* are in charge of the more mundane management of the community affairs, and their relations with white people and their local, regional, national and international institutions, according to the mandate received from the people. For all administrative, legal and fiscal purposes the Colombian government considers the *cabildos* as the representatives and authorities of their communities.

Despite this formal recognition by the state, from the time spent in the U'wa *resguardo* I could conclude that the internal power structure is very different. In fact, the system of accountability of the *cabildos* is very strict. *Cabildos* are subject to the scrutiny of the people from their communities and to the *Werjayas*. I observed two different *cabildos* being stripped from their powers before their term was over because the people did not feel satisfied with the way they were carrying out their tasks. Moreover, *cabildos* are also commonly chastised by the *Werjayas* for not following their guidelines in the management of the "external" affairs of the community, and for failing to comply with their religious obligations. Thus, I observed two *cabildos* being punished by orders of the *Werjayas*: one for not complying with his duty to fast during the required periods and the other one for not entering the U'wa land through the appropriate path in order to cleanse himself after being outside with the white people for too long.¹⁶

The U'wa *cabildos*, in turn, are grouped into a *cabildo mayor*, which is elected by the representatives of all the communities during the U'wa Congress, which takes place every four years. The *cabildo mayor* plays a double role as indigenous government and as U'wa indigenous government and as an indigenous organization. The U'was are divided into two major organizations: the first one comprises slightly over 87 percent of the U'wa population that belong to seventeen U'wa *cabildos*. It is the *Asociación de Cabildos y Autoridades Tradicionales U'wa*, or Association of U'wa *Cabildos* and Traditional Authorities (*Asou'wa*). The second is a multiethnic organization that comprises the remaining slightly under 13 percent of the U'wa population that belong to ten *cabildos* U'wa ethnicity as well as other *cabildos* from the Sikuani and Piapoco ethnic groups located in the departments of Arauca and Casanare. This organization is called *Asociación de Cabildos y Autoridades Tradicionales de Arauca y Casanare*, or Association of *Cabildos* and Traditional Authorities of the departments of Arauca and Casanare (*Ascatidar*).

¹⁶ This last obligation of a cleansing after being in contact with white people is perhaps a remnant of epidemics suffered by the U'wa during the colony and transmitted to them by the Spanish and the whites. This is perhaps because the Spaniards, who transmitted them smallpox and measles entered their territory through the east. The U'wa require that members of the group that have been in contact with the outside enter through the difficult and mountainous area in the southwest, perhaps to make sure that those who enter are in good health. For an account of the epidemics suffered by the U'wa and the consequences for the population see Cabrera (1999), Osborn (2010).

Table 3.1: U'wa location, population and political organization of U'wa communities

Organization	Department and Clans	Community/Cabildo	Population (est. 2000)	Percentage
Asou'wa	Boyacá clans: Cobaría, Tegría, Bókota	Cobaría	1,650	60%
		Tegría	630	
		Bókota	165	
		Rinconada	60	
		Bachira	165	
		Ravaría	70	
		La Barrosa	144	
	Norte de Santander clans: Agua Blanca, Bókota	Cascajal y La Mulera	183	13%
		Uncasía*	44	
		Segovia*	149	
		Tabatinga	64	
		Tamaranda	171	
	Santander clans: Agua Blanca, Bókota	Agua Blanca	184	14%
		Concepción	102	
		Támara	105	
Taburetes		200		
Rotarvaría		60		
Ascatidar	Arauca clans: San Miguel/Barronegro, Sínsiga	Angostura	80	8%
		Calafitas	28	
		Chivaraquía	64	
		Uncaríá	124	
		Surquesía y Royatá	19	
		Crobariza	61	
	Casanare clans: San Miguel/Barronegro, Sínsiga	Campo Hermoso	81	5%
		Chaparral	42	
		Corozo	48	
		Curripago Barronegro	47	

*Seceded from Asou'wa in 2009, reincorporated in 2010.

From the field research that I conducted, I concluded that despite the efforts of the oil companies Asou'wa is still a strong political organization, capable of incorporating the interests of the different clans and communities. The strength of the organization, in particular with respect to represent the position of the 17 U'wa communities with respect to oil companies, was overstated by its leaders. All except one of the leaders I interviewed (10/11) claimed that the U'wa had maintained their position against oil exploration. In reality, however, not all the U'wa were against it. The dissident interviewee, a former president of Asou'wa told me when I asked him whether the U'wa were still against oil exploration:

“To the best of my knowledge the U’wa maintain their position, but there are youths that are easy to convince, and they become complicit. You know that money is good for the pockets, or as we say, to buy *guarapo*.¹⁷”

However, the weaknesses of the organization run deeper. There is a great deal of dissatisfaction with the leadership among the U’wa rank and file, especially in the communities that live in the departments of Santander and Norte de Santander, which feel that their interests and claims are not being addressed. In fact, the communities of Santander and Norte de Santander still have a significant amount of white settlers living inside the *resguardo* and the U’wa blame their leaders for this. When the unified *resguardo* was created in 1999 and the government started using the money to buy the land from the white peasants that were living in the *resguardo*, the organization started buying lands in the department of Boyacá and not in the departments of Santander and Norte de Santander. Besides this, there has not been a president of Asou’wa from these departments in the last three periods (12 years). Under these circumstances, the U’wa from these regions could become easily alienated.

In 2009 two communities seceded from the organization: Segovia and Uncasía. This secession was carried out by a young Evangelist leader who was the *cabildo* of Segovia, and his wife who was the *cabildo* of Uncasía. The couple was seeking to obtain economic support from the oil company Ecopetrol. Thus, they convinced their constituencies in these two communities that the best they could do was to secede from Asou’wa and create their own organization in order to negotiate with the oil companies by themselves. After all, he said, the company was not interested in exploring oil in Boyacá, but in Norte de Santander where these two communities are located. Knowing that I was a lawyer, this leader invited me to travel with him to the part of the *resguardo* where he lived in Norte de Santander. I accepted. During our trip he complained about the corruption of the leadership of Asou’wa and asked me to help him with the legal matters so that he could create a new organization of U’wa *cabildos* for the communities of Santander and Norte de Santander. I refused and told him that he should try to address the problems of the organization from within. After all, he was a *cabildo* and that meant that he was in a position to make his voice heard.

The U’wa from Uncasia and Segovia soon realized that they had made a mistake by seceding from Asou’wa. During the 7th U’wa Congress in December 2009, they formally requested to be reintegrated into the organization to be able to vote for *cabildo mayor*. Nevertheless, legally these two communities could not vote. Their *cabildos* had to request to be reintegrated as members of the organization, then the organization would have to meet to accept their reintegration, and the whole process had to be formalized upon the Ministry of the Interior. A few months later, the Evangelist leader and his wife were stripped from their positions as *cabildos* and Segovia and Uncasía were reincorporated as members of Asou’wa.

The secession of Segovia and Uncasía promoted a change in power within the organization. For the last eight years power had been held by the Tegría clan, in particular by Sirakubo and Berú Tegría. However, the incumbent, Sirakubo, lost the race against his competitor from the Cobaría

¹⁷ An alcoholic beverage made from fermented sugar cane or fruit which is very common among indigenous people and peasant populations in Colombia.

clan: Wuris Burushua, or Gilberto. Moreover, the secession forced the new president to address the situation in Santander and Norte de Santander more generally. The new president of Asou'wa, who was perfectly aware of the situation of Segovia and Uncasia, and realized that some of the complaints against the leadership were reasonable would later state that his priority was to "work with the bases" in order to address their concerns and maintain the unity of the organization and the U'wa people. And he did. In a rather unusual behavior for a president of Asou'wa, he decided to walk through the different regions of the *resguardo* listening to the concerns that the members of the different communities had.

Social Cleavages among the U'wa

There are three major social cleavages among the U'wa which are related to differences in language, geographical location, and clan identity. The strongest division is between the U'wa from Santander, Norte de Santander, and Boyacá, on the one hand, and those from Arauca and Casanare on the other. These two groups live in different areas, speak different languages, belong to different clans, and as we will see below, they have separate organizations/political authorities. My research focuses mostly on the first group, from the departments of Boyacá, Santander, and Norte de Santander.

The second cleavage is a division between the U'wa that live in the departments of Santander and Norte de Santander, and those that live in Boyacá. These two U'wa groups speak different languages and belong to different clans. Historically these groups have had only scarce contact with each other because they live in opposite sides of the eastern branch of the Andes. Besides, since the time of the Spanish colony they have had very different experiences with external influences. Although both groups have had continuous contact with white people and settlers, the U'wa from Santander and Norte de Santander have been subject to stronger pressures by settlers, particularly since the violence of the 1950s pressed migrations into their lands, and by religious missionaries, especially protestant.

This influence persists even today. During my fieldwork I observed that in the meetings of the U'wa Congress these two groups slept in different places, held separate meetings, lighted separate fires, and cooked their food separately. Moreover, I saw significant differences in their interaction with outside influences, especially religious ones. I observed four protestant churches including an Adventist temple inside U'wa land in Santander and Norte de Santander. Moreover, most of my informants from this region were Christians and lived in their *resguardo* with many non-Indigenous peasants. In fact, during a five day walk through this part of the *resguardo* I saw as many white people as U'wa. On the other hand, the U'wa from Boyacá have been able to withdraw to the highlands, avoiding some of the pressure exerted by white settlers and there are very few non-U'wa people living inside their part of the *resguardo*. Moreover, there are no religious missions inside U'wa land in Boyacá. The last one that remained, a group of Catholic missionary nuns and priests that were living inside the *resguardo* were expelled in the 1990s after having lived there even before the land was formally constituted as a *resguardo*. In any case, the U'wa maintained their dormitories, houses, schools, sugarcane mills, stables, and other constructions.

The third type of social cleavage among the U'wa is clan-based. Traditionally, the U'wa kept a complex system of intermarriages between the six different clans. Marriage possibilities of certain family members belonging to certain clans were restricted to those in other clans depending on their geographical location relative to one another, and their belief in reincarnation in a way that maintained certain demographic balance (Osborn 2010: 41). Moreover, these clans have historically maintained separate *resguardos*. It was not until the 1970s, perhaps under the influence of CRIC and ONIC, and their "central committee" strategies that the Werjayas saw sought to create a unified U'wa *resguardo*, initially with the help of British anthropologist Ann Osborn. However, even today these divisions between clans still exist. Even among those U'wa leaders that have more contact with the outside, marriages between certain clans is socially reproved. One of my informants was constantly mocked by the friends from his clan for maintaining a romantic relation with a woman from another clan by saying that he was "deteriorating the blood". However, it is not clear whether these divisions are due to traditional reasons or whether they come from a certain animosity between clans fighting for power. Historically, the two dominant clans have been the Tegria and the Cobaria clans, both of which are from Boyacá. During the last four Congresses these two clans have competed for the position of *cabildo mayor*, and competition has been bitter, including mutual accusations of corruption, boycotts to elections, and the calling of votes of no confidence to recently elected *cabildos*.

Being Intelligent and Eloquent: The Common Identity of the U'wa

Despite their differences, the U'wa identify all clans as belonging to the same ethnic group. According to the ethnographic research carried out by Ann Osborn in the 1970s, historically this sense of identity was maintained through the pilgrimages that Werjayas belonging to different clans made through their territories. In these pilgrimages they chanted their common myths of origin and celebrated rituals together. According to my informants these pilgrimages are no longer carried out. Some of my informants from the younger generations had not even heard of them. Another source of identification are inter-clan marriages. However, nowadays, perhaps the strongest bonds across clans of Boyaca, Santander and Norte de Santander¹⁸ come from the fact that they now live in the same *resguardo* and are part of a single organization or *cabildo mayor*: Asou'wa.

Besides having a common identity, the U'wa have a positive identification with their ethnic group. Until the 1990s the U'wa had been called Tunebos, the name given to them by the Spanish. During the 1990s, they decided to re-brand their collective and individual identities as U'wa. Thus, various members of the U'wa, mostly in Boyacá, started calling themselves by their U'wa names and stopped using Spanish names that they had received. The same happened with their collective name. Thus, they stopped using the word Tunebo and replaced it with name that they gave to themselves: U'wa. As a consequence, they also renamed their organization from Asoutunebo to Asou'wa.

¹⁸ The U'wa from Arauca, which amount to less than 15 percent of the total population have their own *resguardos* and are organized in Ascatidar, the multiethnic organization mentioned above.

This rebranding of collective identity went hand in hand with a positive identification of their own ethnicity. According to them the name U'wa means "intelligent people that know how to speak". In fact, in the interviews that I conducted with U'wa people, all of them referred to one of two things: their identity as intelligent people who know how to speak –mostly, but not exclusively among the Cobaría and Tegría clans–, or to their role as guardians of the balance of the earth. One of my informants from Boyacá put it this way:

“Well, you know, many anthropologists have translated the term U'wa as intelligent people who know how to speak. They classified it that way.”

Another informant, a teacher from Norte de Santander told me directly:

“[U'wa] means intelligent people that know how to speak. That, and being guardians of the earth. That is what U'wa means”

This elaborate meaning contrasts with the definition provided by Ann Osborn in her ethnography of the U'wa, where she says it literally means “the people” (2020: 223). Be that as it may, it is undeniable that the U'wa have identified themselves historically as an ethnic group having both a privileged intellect and a special eloquence, at least since colonial times. Eighteenth century Spanish Jesuit missionary Juan Rivero (1956: 57) recounted and resented this identification. In his chronicles about the U'wa in 1730, he states:

“These brutes consider themselves to be very intelligent and even more than whites. They say that when God created the world and distributed his gifts among the peoples he gave riches to the whites, a priest to the Girara people who were in great need of him to whip them, and intelligence to the Tunebo. This great intellect is the cross that has to be borne by those who deal with them, because, holding themselves to be so intelligent, and being great talkers, they make the head ache with gossip of every possible kind”

The appreciation of the U'wa toward learning and their inclination toward debate are well documented both by ethnographers and historians. As early as the seventeenth century there are numerous letters written by U'wa leaders that had learned how to read and write in Spanish, appealing to the Spanish crown so that he would intercede against the *encomenderos* and other Spanish officials in the colonies who were taking away their lands (Falchetti 2005).

Counterhegemonic Cosmopolitans: the Cultural Translations of the U'wa

More surprising yet is the way the U'wa use the arguments and cultural topoi of their interlocutors to translate their own beliefs and give strength to their arguments as a form of resistance, something that was also noted by Osborn (2010: 4). To substantiate their claims to the

Spanish crown, the U'wa resorted to Spanish law and institutions, to the Bible, and to Christian doctrine and beliefs. However, according to various historians and anthropologists, these appeals to Spanish law and religion were not simply the result of the Christian conversion and indoctrination of the U'wa. These were in fact rhetorical strategies used with the explicit purpose of translating elements from their own belief system, particularly the relation between their land and their cosmology, into a belief system that was apprehensible and acceptable to the Spanish crown (Falchetti 2005: 167, Headland 1997, Pradilla 1983: 14-15, Osborn 1985: 26). In other words, even in the seventeenth century, and even more in the eighteenth, the U'wa were using the weapons of the hegemonic class, like law and religion, for a counterhegemonic purpose: to recover the land of the U'wa colonial *resguardos* that the Spanish crown was selling to sustain its wars. Moreover, besides being counterhegemonic, this strategy is cosmopolitan in the sense that it embraces the possibility that substantially different cultures can understand and value each other.

This practice of cultural translation to make an indigenous practice or argument acceptable is still common among the U'wa. An example of this rhetorical practice comes from my fieldwork experience. In some of the first interviews I was conducting in the *resguardo*, when I was not yet so familiar with them, some of the U'wa men started distributing coca leaves among themselves and chewing them. I asked them about what the effects of the coca leaves were and one of them told me that chewing coca leaves for them was like drinking coffee was for us white people. It did not provide any rush, but instead helped them stay awake and alert throughout their day.

Besides this anecdote, the interviews themselves are filled with explanations of elements of their culture and cosmology using analogies of the Western cultural canon, including references to elements like law, technology, science, the Bible, even to Plato, so that I could understand and value what they meant. Nevertheless, the U'wa still believe that there are certain concepts and ideas in their culture which are not translatable, things which only their shaman elders, this is, the *Werjaya*, are able to understand. When I asked one of them about some of the reasons that the U'wa elders had to oppose oil exploration, he said:

“It is as I was saying, because of the cultural importance given to the blood of the earth [which we call] *ruiria*. That is an issue that is decided by the elders; it is a spiritual question, it is something that not even I as an U'wa can understand. Maybe as an Indian I have an idea about it, but ... it is something that transcends us, it is like Plato said, ‘one can sometimes go to the world of ideas, but one cannot translate them’ ... because one is not an elder.”

The understanding that the U'wa have acquired of Western culture and their ability to translate their own beliefs using the beliefs of other cultures is a cultural resource that they have deliberately acquired. The U'wa never were an isolated group. While many areas of their land are forbidden to white people, the fact is that since before the Spanish colony the U'wa have had continuous commercial exchanges with other groups. Moreover, there is evidence that shows that at least since the colony, the U'wa sent their teenage sons to work outside of their land with white peasants to learn Spanish and the customs of whites (Osborn 2010: 2, 17), something that I could corroborate through my interviews. Moreover, as the cases of many U'wa leaders attest, it was not uncommon for U'wa parents to place their sons and daughters with religious orders to

provide them with food and education and then bring them back home when they were able to work. However, these intercultural experiences were not usually easy for the U'wa. Some of them, like Berito Cobaría, resented the alienation from land and culture, and the imposition of Colombian language and religion, and refused to learn how to read and write.

Thus, through different kinds of mechanisms, the U'wa have sought knowledge about hegemonic cultures in order to interpret the world, but also to communicate and validate their own beliefs. This has provided them with an important tool of adaptation both in a temporal and spatial dimension. In a temporal dimension, they have been able to draw parallels between their world and that of whites in order to replace the elements of their culture that are disappearing with others from white culture, and understanding new elements in terms of others that belong to their culture (Osborn 2010: 216-7).

One key example of this is oil, which the U'wa from Boyacá have associated with the term *ruiría*. *Ruiría* for them is not the physical substance of oil, rather, it is an immaterial entity, a principle that makes life on earth possible, and is associated with fluid qualities and the underworld. To communicate the importance of the role that *ruiría* in maintaining life, the U'wa established an analogy between *ruiría* and blood, and the earth and living beings. This simplified the whole matter, and enabled them both to assume a position with respect to a new problem which was oil extraction. Moreover, this translation by analogy also helped them to explain in simple terms and validate upon government officials, environmentalists, indigenous activists, why they were opposed oil exploration: oil is the blood of mother earth, if you extract oil, mother earth dies. This, of course, does not mean that *ruiría* is the physical substance of blood, or that it is related to the word mother. In fact, the words for blood and mother are the same *aba* (also *kena*) and they are not related to *ruiría*. However, none of this actually explains why the U'wa started to coin the term *ruiría* to refer to oil, or why they consider its maintenance underground to be fundamental for preserving life on earth.

The U'wa and Place: land as a changing microcosm

Even if the way in which the U'wa started associating oil extraction with the possibility of life on earth is not clear, their sense of space and place, and their beliefs with respect to the centrality of the role they perform in the maintaining the universe are well documented. In what follows I will give a brief description of some of the key aspects of the cosmology of the U'wa, focusing on its relation to place, particularly to their land, and to the role that they play in preserving the universe.

According to U'wa cosmology, before the earth was created there were two worlds: the skies, or high world (*Kubina*), which is associated with male features, dryness, and the color white, and the world below, or underworld (*Ruya*), which is associated with female features, moisture, and the color red. The sun lighted both worlds, and when it did, it carved a series of paths through which elements from the two worlds came into contact and became mixed, creating a middle world: the earth, or blue planet, and the middle beings in it (*Ura*). Thus, everything in the earth is composed of a combination of varying levels of elements from these two worlds. However, this

middle world is not just an epiphenomenon; it plays the role of maintaining a separation and a balance between the elements coming from the sky and those that come from the underworld. On the other hand, this separation is not absolute. In fact, life, the existence of the earth, and the identity of the universe itself depend on the maintenance of an adequate exchange between elements of the two opposite worlds. If elements inadequate mixtures of elements would result, life on earth would cease to exist, the elements of the universe would reverse, low would become high and vice versa (Osborn 2010: 53). Maintaining the appropriate balance and exchange of elements between the skies and the underworld is the role that the Creator (*Sira*) gave to the U'wa.

An important part of U'wa life used to be structured around the role of maintaining the balance between the skies and the underworld (high and low), which the U'wa perform through multiple tasks. One of them is by migrating to the lowlands during the summer when the sun spends more time in the skies, and migrating to the highlands of the Andes during winter when it spends more time in the underworld (less time in the skies). Moreover, the designation of the months of the year, their diet, and their sowing seasons are also related to their cosmology (Osborn 2010: 24-5). Nowadays, from my observations in the U'wa *resguardo*, both in Boyacá and in Norte de Santander, although they keep strict dietary restrictions and fasting, many of the U'wa clans have become sedentary and stay in their houses throughout the year, whether these are located in the highlands or in the lowlands.

Given their migratory trajectories, the U'wa conceive of their own land as a microcosm, and identify specific places within their ancestral lands with qualities from the skies or the underworld. Moreover, they locate their deities as living in specific places within their land, and classify them not according to their genealogies, but according to the place where they live (Osborn 2010: 55-7). Furthermore, U'wa cosmology, which is through prose recitations and chants, is strongly anchored to their sense of place. The myths that the U'wa chant help to maintain their deities in motion, and in doing so, they maintain the balance of the universe. These myths consist mostly of descriptions of journeys of their deities or animals which name and describe different places in their land.

However, the meanings that the U'wa attach to their land are more or less fluid, showing how they weave place into their myths, and how doing so helps them to adapt to change and make sense of their context in terms of their own culture. According to Osborn (2010: 69) when the U'wa from a clan have a dispute against another clan, they refrain from singing those parts of the chant that refer to the places that the other clan inhabits. Moreover, they also abstain from singing parts of chants that referred to the clans that are now extinct. Finally, although there are some parts of the chants that refer to places that are common to all the clans, there are others that situate the deeds of their deities in different places depending on the clan that is singing them. Thus, deeds of mythical characters like foxes, the flight of kites, the deeds of deities and ancestors are set to occur in places corresponding to the clan that sings the chant.

The U'wa: Indigenous Cosmopolitans

As a conclusion we can say that the U'wa have two main features that qualify them as “indigenous cosmopolitans”. The U'wa are a group comprised of clans that have loose ties, live in different places, have different languages, and yet they maintain a strong sense of ethnic identity based on two main features. The first feature is their ability to translate their own belief system using concepts and ideas from other cultures so that people from those cultures can understand and validate them. The second feature is that the identity of the U'wa is firmly anchored to their land. However, their sense of place is not parochial or isolated from the larger context in which they live. Quite the contrary, the U'wa conceive themselves and their land as performing an important ecological function for the earth as a whole. Thus, their longstanding ability to articulate their land and culture to other lands and cultures in a flexible manner allows them to validate their ideas across different places and cultures. As we will see in further chapters, this helped them to overcome the constraints to local mobilization against oil exploration, to frame their concerns in a way that appealed to very different groups and organizations in different parts of the world and to build support and solidarity for their campaign.

Oil and the Escalation of Local Violence

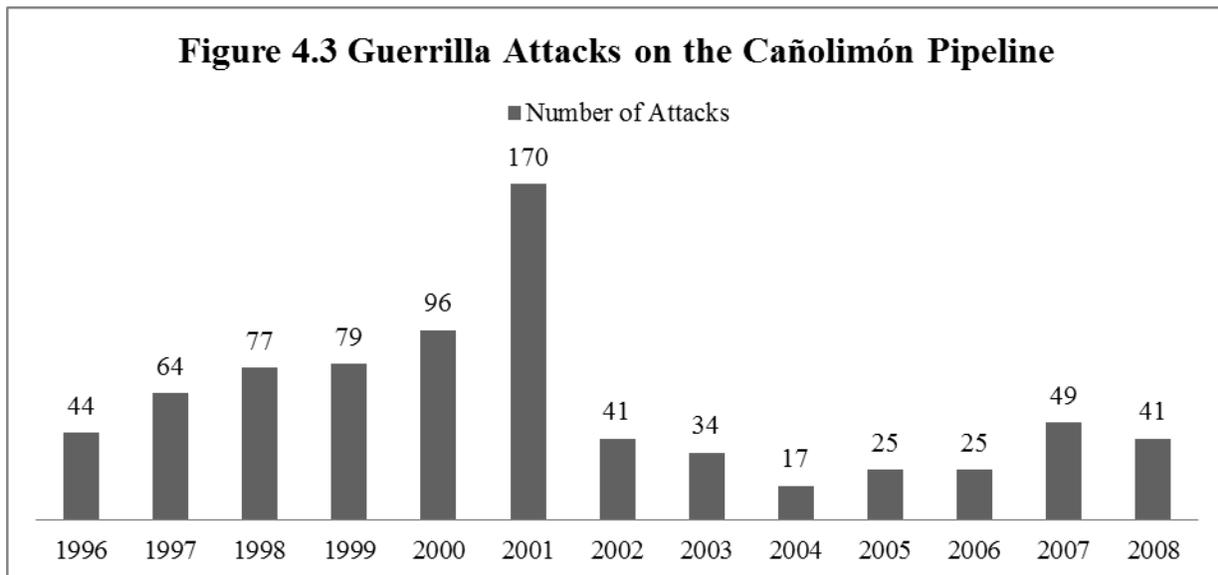
Violence is one of the consequences of oil production in Colombia. The kind of violence that oil produces comes from different organized armed groups: guerrilla groups, the military, and paramilitary forces. Oil related violence, however, has not affected the various oil-producing areas of the country in the same way. In fact, in many parts of the country the activities of armed groups have little relation with oil production. However, in the place where the U'wa live in the Andean slopes in the northeastern part of Colombia near the border with Venezuela, which is the oldest oil producing region of the country (departments of Santander, Norte de Santander, Casanare, Arauca, and northern Boyaca), the activity of armed groups is closely related to oil. This is precisely where the U'wa indigenous group lives (see table 4.1), along with other indigenous groups like the Motilón-Barí, the Sikuani, and the Piapoco.

There are different guerrilla groups operating in the specific area where the U'wa people live. Three different divisions that are part of the *Ejército de Liberación Nacional*, or National Liberation Army (ELN) have been operating in the area since the late 1960s: the Efraín Pabón front, Domingo Laín front, and the Simacota company. Since the 1980s, two fronts of a second guerrilla group, the *Fuerzas Armadas Revolucionarias de Colombia*, or Colombian Revolutionary Armed Forces (FARC) appeared: the Guadalupe Salcedo 10th Front, and the Atanasio Girardot 45th Front. However, their presence was initially related to the growth of the coca business. In fact, FARC traditionally scorned the ELN for focusing on attacks against the oil and energy infrastructure, and only relatively recently has it adopted the same strategies to extract revenue from oil companies.

The northeastern part of the country has produced oil since the early 20th century, and its history has been related to violence at least since the 1940s. However, violence increased significantly in

those areas during the 1980s and 1990s, and achieved its peak during in 2000, especially since oil production increased significantly due to the discovery of the Cañolímón well, and the construction of the pipeline that connects the well of Cañolímón with the oil port of Coveñas in the Caribbean.

The range of violent actors and actions in the area varies significantly. Guerrilla groups, as well as military and paramilitary forces operating in the region have carried out kidnappings, summary executions, indiscriminate massacres, torture, among others. However, the link between these actions and oil are not always evident or direct. Thus, recognizing that the frequency of attacks on oil pipelines does not measure the whole range of oil-related violence, it is nonetheless a way to observe and measure the concerns that oil companies operating in this region have with respect to violence. As Graph 4.3 shows, the amount of attacks on the pipeline owned by Oxy increased steadily throughout the mid 1990s, precisely during the initial years of the conflict between Oxy and the U'wa people, until in 2000, the pipeline was bombed 170 times, this is, almost every other day.



Oil and Armed Conflict

Social scientists belonging to different disciplines have studied the correlation between oil and violent civil conflicts from different perspectives. One such perspective has been put forth by British economist Paul Collier (2003, Collier and Hoeffler 2005), who focuses on the way oil and other primary commodities affect rebellious behavior. He adapted the concept of “opportunity structure” developed by political sociologists for the study of social movements, and claimed that economic dependence on primary commodities constitutes an opportunity for rebel groups to loot and carry out extortions, which inevitably leads to violence. In his view, then, the opportunity structure for violence can be measured, and violence can be predicted,

depending on the percentage of the GDP that a single primary commodity represents in any given country.

This approach highlights the fact that rebel groups need resources to carry out violent actions, and how the abundance of primary commodities like oil constitutes an incentive for violence. Moreover, this approach can have potentially important policy implications. According to this approach, diversifying the types of goods that an economy produces and diminishing the percentage of primary commodities as represented in the country's GDP could constitute a disincentive for armed groups and foster peace. However, despite its prescriptive value, this approach cannot explain existing patterns of violence and non-violence in Andean countries. It cannot explain why there is a civil conflict in Colombia, where oil is the main legal export but it only amounts to 24 percent of the total exports, while there is no armed conflict in its neighbors Venezuela and Ecuador where oil exports amount to 95 and 50 percent of their total exports, respectively. One can claim that the incidence of civil conflict in Colombia can be explained by the reliance of this country's armed groups on illegal exports, namely cocaine. However, two of Colombia's neighbors, Bolivia and Peru, also have had armed groups and also produce and export cocaine. Nevertheless, armed groups in these countries ceased to exist at the same time that they became increasingly reliant on oil, gas and mining exports in the 1980s and 1990s.

Collier's explanation of the relation between primary commodities and civil conflict focuses only on the incentives that rebels have for looting certain resources, but it does not specify the mechanisms through which they produce violence. Moreover, as Michael Watts (2003) has noted, strangely neither Collier nor other economists and political scientists that study the relation between primary resources and civil conflict take into account the impact that oil companies and the military guarding the oil pipelines and installations have over oil producing areas. They do not take into account the effects of what Watts has called the *oil complex*. In other words, Collier does not account for the ways in which particular configurations of state and corporate actors contribute to produce enclave economies and authoritarian forms of governance in certain spaces (Watts 2003).

In what follows I will describe these spaces of authoritarian governance and the role of different participants in its production focusing on the repression of local (indigenous) protest. I will start by illustrating the ways in which the military and traditional political forces shape local political participation. In this picture, repression is not simply synonymous with authoritarian (non-democratic) forms of government. Instead, the repression of contentious politics is smoothly combined with "democratic" (electoral) practices which seem to bear no relation to the claims being made by the U'wa protesters.

Violence and the Experience of Place in the Land of the U'wa

There are three different ways to travel from Bogota to Cubará, the town in northeastern Colombia where the U'wa organization has its headquarters. The first one is to travel six to eight hours by road (depending on the weather) through a series of inter-Andean plateaus that lead to the southernmost part of the U'wa *resguardo* near the Cocuy national park. Taking this route has several problems. This part of the Andes has high levels of rain and the road is frequently

blocked or damaged by mudslides. Moreover, leading U'wa organizations are located in the Northern part of the *resguardo*, and the only way to cross U'wa land is walking more than ten days through a mountain chain with peaks that rise above five thousand meters. Finally, various fronts of the FARC frequently block the road searching for people to kidnap for ransom.

The second route descends from Bogota to the plains east of the Andes and then travels north through the grasslands. The trip takes approximately 24 hours. Indigenous people take this route frequently, although it is the most dangerous route. The southern part of the plains is controlled by right-wing paramilitary groups; the northern part is controlled by two leftist guerrilla groups. Crossing from one area to another is dangerous because both groups are suspicious of whoever crosses their lines. Furthermore, guerrilla groups frequently declare a *paro armado*, or a general strike enforced with arms, shooting at any vehicles traveling on the roads. In two of my five trips the guerrilla was holding a *paro armado*, and thus, it was impossible to travel by bus.

The third way to arrive to the land of the U'wa is in a small, forty-passenger plane belonging to a commercial airline owned by the Colombian air force, Satena. This airline flies to the nearby town of Saravena three times a week. The flight from Bogota to Saravena lasts only thirty five minutes. I took this route the five times I travelled to the U'wa *resguardo*. Most of the airplane passengers were soldiers. Others worked for the oil companies. A couple French and Belgian people I talked to during my first flight worked with the International Committee of the Red Cross. Finally, I also met a cattle rancher, an anthropologist, and a group of protestant missionaries.

The plane lands at the small airport of Saravena, a town located five miles south of the border with Venezuela in the grasslands between the eastern branch of the Andes, located to the east of the town, and the western part of the Orinoco river basin. The airport is called *Colonizadores*, a reference to the process of colonization of the region during the 1960s, at a time where political violence and the promise of oil riches was attracting people from different parts of the country to this region. The zinc roofed airport is very small, yet heavily militarized. It has a small cafeteria, three counters and two restrooms. However, in my first flight I counted thirty soldiers and at least ten policemen located in different parts of the airport, including those acting as secretaries in the military office inside the airport.

Once the plane lands everybody must show their identification and register with a soldier sitting behind a computer inside a small room that remains warm despite the fan working at full speed behind the soldier's desk. After the soldier has asked the arriving passenger a series of routine questions and introduced the basic information into a computer, the passenger must then follow a similar procedure with a police officer located behind one of the airline counters. Passengers leaving the airport are also required to register with the police and the army before their departure. However, the ritual of military and police control starts at the entrance before admittance to the airport's parking lot, when soldiers with dogs carry full searches passengers' vehicles, bags, and bodies in three different points of the airport.

Militarization and ritualized control are not the only evidence of this region's insecurity. Prisoners are constantly being transferred through this airport, because local prisons are the object of continuous attacks by organized armed groups. Seven out of the ten times that I visited

the airport there was also a team of heavily armed prison guards from the *Instituto Nacional Carcelario y Penitenciario*, or National Prison and Penitentiary Institute (INPEC) holding a prisoner in handcuffs. Through an informal conversation with a police officer I learned that these prisoners were usually leaders of organized armed groups, and the prisons in Saravena were at risk of rescue attempts carried out by those groups. Thus, prisoners were transferred to nearby cities to minimize the risk of attacks. Prisoners were usually transferred to larger, more secure prisons in the nearby city of Bucaramanga, the next stop of the planes flying from Bogota.

I had been advised to have someone pick me up in the Saravena airport to travel to the town of Cubará, which is a half an hour drive. In contrast with the towns of Saravena and Cubará, the road that connects them is commonly without police or military surveillance, and often times guerrilla groups set blockades on the road, searching at random among travelers for potential kidnap candidates. These fears were not unfounded. During my first visit a bus driver that refused to stop at a guerrilla blockade was shot at several times. Fortunately, no one in the bus was hurt. However, others have not been so lucky. In this same road the ELN guerrillas kidnapped and later released Indian senator Lorenzo Muelas and an anthropologist travelling with him during his visit to the U'wa. Moreover, this was also the road where the FARC kidnapped and later murdered Terence Freitas, Ingrid Washinawatok, and Laheenae Gay, three American activists working with the U'wa in December 1999.

After driving for almost an hour we are approaching Cubará which we can see on the other side of the Royota River. The only entrance from Saravena to Cubará is through a metal bridge that crosses the river and the path is strictly controlled by military and police personnel. Before crossing the bridge travelers can observe a series of military defense posts made out of sandbags along the riverside on the opposite side of the river, inside Cubará, including two posts that are strategically located at end of the bridge. Sandbag defense posts are not just by the riverside, they ubiquitous in Cubará. In fact, they are strategically located throughout the town to protect soldiers in confronting any takeover attempt by the guerrilla. These defense posts are structures made of green sandbags piled up one on top of the other, forming two interconnected rooms or areas. The first room is a four by four meters area, protected by four walls of piled sandbags about three meters high, and a tin roof also covered by sandbags. The structure is completely closed on all four sides, except for small holes in its walls at a height of about 1.70 meters, that allow soldiers to cover a 360 degree shooting perimeter while standing up, and a small entrance in one of the walls, which is about one meter high, and through which soldiers must crawl to go in and out. This door does not lead directly outside, but connects the first area of the sandbag structure to the second, which is a smaller rectangular area. This second area has walls about 1.20 meters high and no roof, which enables soldiers jump in and out of the structure, but is sufficiently high so as to expose anybody attempting to enter, and covers the soldiers inside while they shoot their rifles from a kneeling position.

A few meters after the sandbag posts located at the town entrance there is a green tent with a police control point, and all vehicles and people coming in and out are subject to searches. Everybody is asked to hand their *cédula*, or national identification card, and the numbers are typed into a computer by one of the policemen conducting the search. It is important to clarify that the Colombian national police is not a civilian force. Policemen wear green uniforms, military boots, and helmets; they use assault rifles, carry out anti-guerrilla operations that are

typically carried out by the military in other parts of the world, and are subject to a strict chain of command supervision and military jurisdiction.

After crossing the entrance bridge you find the town's main street, which is a half-paved street with stores that sell different kinds of products to each side. The street has four eateries usually busy with people drinking bottled beer, a two-story bar with loud music, a large dancing floor illuminated with stroboscopic lights, and people coming in and out drinking beer and *aguardiente*, a national anise-flavored liquor at night. Beside the bar there is a three story motel and an eatery. Across the street, there are three protestant churches busy with people coming in and out, a couple drug stores, a grocery shop, two cell phone provider stores, and series of miscellaneous shops where you can buy all sorts of products, including hammocks, sweets, cheese, watches, clothing, and even computers. In both sides of the street there are groups of men standing in front of the pick-up trucks or SUVs. These are people from different parts of Colombia who purchase pick-up trucks and SUVs, and go to live in oil producing areas expecting to provide services to the oil companies to run their errands. The oil companies pay them very high fees, but they are not always in need of their services. So, these men stand in the main street waiting for anyone, or almost anyone else who wants to hire them at half the price they charge the oil companies, which is still a high price. One of them who had recently come from Medellin refused to take me and the U'wa informant I was travelling with to the oil field and told the U'wa informant:

“You know that I cannot take indigenous people to [the] Gibraltar [oil well] because if someone sees us together I will not get hired by the company anymore.”

Further into the main street there is a shiny bronze statue of an indigenous family walking proudly in line, which stands on a pedestal overseeing the street. This statue was erected in the 1990s as a tribute to the U'wa indigenous people, the original dwellers of the town. The statute serves as a meeting spot for the U'wa, especially those that are either entering the town, or asking for a ride to the *resguardo*. The statute, however, contrasts starkly with what happens beneath its pedestal, where U'wa men gather in their way in and out of the *resguardo*. These men are constantly subject to body searches, whenever the police or the army believes that there are too many indigenous people gathered together on the street. Apparently, the meeting of a sizeable group of indigenous people was a cause for alarm and a justification to make indigenous men lean with their hands against the wall and have their legs spread out to facilitate the search.

Besides the bodily searches, the constant state of alarm of the police and the army can be seen in the physical setup of the governmental offices, all located in the same building on a heavily guarded street where public access has been restricted. Nonetheless, the presence of armed forces extends throughout the whole town. Groups of six and ten soldiers and groups of policemen with rifles constantly patrol the streets of Cubará. Others stand on street corners. Others are sitting in the many sandbag defense posts throughout town.

Nevertheless, despite the strong presence of soldiers and policemen, there is very little interaction between them and the local civilian population. The reason for this, I was told, is that neither soldiers nor policemen performing “anti-subversive” tasks remain in the town for very long. Only the high command of the army and the police remain in Cubará for more than a couple months. The rest of the police and army personnel only remain in Cubará for a couple months and then they are relocated. Thus, the armed forces never get to establish any kind of connection with the local population. The fact that the civilians do not know the police that are roaming the streets of their town also reinforces the notion that the police and the army are alien to the town and its problems, and that they are not there to provide security to the population, but to the government and the oil companies. To be sure, the army does carry out activities of community involvement like paving the streets and fixing the sidewalks, but this does not seem to help ameliorate the feelings of estrangement between the military and the civilian population.

Furthermore, this divide with the local population extends to the oil companies as well. According to various accounts from the dwellers of Cubará, apart from the drivers that the company occasionally uses to run errands, there were only two people in the whole town that are currently working for the oil companies. This is not because the people in the town do not want to work for the oil companies, but rather, because these will not hire locals. Instead, the oil companies working in the area hire their personnel in other towns and even in other areas of the country, a fact which has further accentuated the split between the company and the town’s population. Moreover, only blue-collared workers and minor technicians stay in the town while they are working. The company’s best-paid personnel, including high-level technical staff and company managers are flown in and out of the oil well in a helicopter to one of the local the airports, and from there they fly in charter flights to Bogota or to nearby cities. Oxy’s reluctance to hire local population contrasts with the embedded character of other companies that hire their employees among the local population. Hiring the local population means that this population is invested in the company and has an interest in the company’s well-being. This may deter people from raising grievances against the company as it happened in Minamata, Japan even after it had been demonstrated that the company had poisoned the water sources (Smith and Smith 1981).

Apart from not receiving any significant benefits from the presence of the oil companies, the local population bears the increases in the prices and the limits on availability of various goods and services in these enclave economies. Although the oil company managers and well-paid technical personnel do not stay in the town, food, lodging, and other services provided to lower rank employees is expensive. The prices of food and lodging in Cubará, for example, are comparable to those of Bogota, and taxis and other means of transportation are even more expensive, despite the lower cost of readily available contraband gasoline brought from Venezuela. The reason for this is that budgetary decisions such as the amounts awarded for food and lodging allowances to employees, as well as transportation costs, tend to be centralized in Bogota, or even abroad, and they are usually taken without much knowledge of the prices and resources available in the local economy. Moreover, working and dwelling in Cubará or in any other oil town is not necessarily an appealing option. Oil companies compensate their employees by giving them relatively generous allowances which they tend to spend in the town. As a consequence, even low ranking oil company employees tend to overpay for the goods and services they purchase, reducing their availability and increasing the prices of such goods and services in small town economies like Cubará.

The International Dynamics of Oil Violence: Who Benefits from Oil Production?

The violence and authoritarian mode of governance in oil producing areas are not just the product of an isolated local political dynamic. The governance of oil rich areas is directly fueled by international factors and involves transnational oil companies, as well as U.S.-Colombian politics. In fact, the particular form of alliance that Watts has called “the oil complex” does not only involve the governments of oil-producing states with transnational oil companies. Instead, the latter are closely related to oil-consuming governments like the United States.

The combination of military personnel guarding the pipeline, civilian security contractors hired by oil companies, and American military aid have already had casualties in Colombia. On December 13, 1998, Colombian soldiers and policemen in helicopters given by U.S. military-aid were misguided by U.S. security contractors hired by Oxy, who told them that the guerrilla which they had been fighting against the night before had hidden in the town of Santo Domingo. This information resulted in the soldiers firing missiles and cluster bombs from the helicopters on the civilian population of Santo Domingo while they were celebrating a bazaar outdoors. They killed seventeen innocent people, including six children (ages 4, 5, 5, 7, 13, and 14), and injuring twenty five more. The military denied this saying that “the facts of the confrontation were not clear”. However, soldiers were later held guilty in criminal courts, and the state was condemned to pay compensation for damages.

To be sure, since the beginning of oil extraction in Colombia transnational oil corporations have used Colombia’s government forces to provide security to their investments. Since the 1930s the Standard Oil Company and other companies extracted oil in the area surrounding the city of Barrancabermeja and in the region of Catatumbo, not far away from where the U’wa live. A clause of the concession contracts required that the state protect the companies’ investments and employees against the “ferocious indigenes” in the area. This led to a series of massacres of people from the Barí indigenous group, in the so called “oil wars.” In 1992, the Colombian government sought to recover the expenses that they incurred in for protecting oil companies by means of a “war tax.” However, soon after it was established this tax was declared unconstitutional by the Colombian constitutional court.

In 1999 the Clinton administration decided to increase military and police aid to Colombia in the context of the war on drugs turning this country into the third largest recipient of U.S. military aid at the time, after Israel and Egypt. Politicians in the Democratic Party, however, were concerned that the aid would mean U.S. military involvement in Colombia’s internal conflict. Thus, counterinsurgency was explicitly excluded from the aid, which was to be used exclusively for counter-narcotics operations and training. However, the next year the Colombian government pleaded to expand military aid to counterinsurgency operations. The government argued that the drug trade was largely controlled by guerrilla and paramilitary forces and thus it was impossible to combat drugs without combating these groups. This claim was actively supported by U.S.-based transnational oil companies operating in Colombia, and particularly by Occidental Petroleum.

The company's vice-president of government relations at the time, Larry Meriage, declared in 2000 both before the Foreign Affairs Committee of the House of Representatives and the House Floor, requesting the approval of funds for counterinsurgency in Colombia. The U.S. government accepted. Once the U.S. government had accepted to extend the aid for counterinsurgency purposes, in 2002, the Bush administration requested an additional six million dollars to protect for the Cañolimón pipeline, which were to be managed by the State Department through its International Narcotics Control fund (INC). In 2003, it successfully requested an additional ninety eight million to be managed through the Foreign Military Financing fund (FMF), also managed by the State Department.

During the proceedings in Congress, Senator Patrick Leahy introduced an amendment so that oil companies reimburse the expenses of security provided with U.S. funds to the U.S. government. To avoid this Oxy hired a Washington D.C. lobby firm that successfully convinced other congressional representatives to exclude this provision. When asked about his role in the process, the lobbyist told me:

“we took Larry [Meriage] up to a couple of meetings in the Senate, and possibly the House too, actually, because we were trying to get the word out, basically. We were lobbying, we were trying to push back on Leahy's language and we ultimately succeeded in doing that. He had to -- I think he had to withdraw his language, it didn't make it to the final bill.”

Then he explained why the oil company was so interested in the language of a bill about foreign military assistance. He said:

“Yes, they [the oil companies] had to compensate the U.S. for the value that they received of this foreign assistance. That was what it was. It's a really interesting concept, it's something that I had never seen before, but that didn't make as a final product, I would like to think in part because of our efforts.”

Adding later on that the use of military aid had been very successful in achieving the objectives that the company had, defining them in narrow economic terms:

“Obviously we saw it [Leahy's amendment] as a threat to Oxy's interest to limit the extent to which the pipeline could be protected. And frankly, with that protection it was a remarkable, there had been a lot of destruction of the pipeline, a lot of bombings and stoppages that really decreased the flow of oil and when the attacks were going on, when the bombing was going on. And with the pipeline being protected, it was a dramatic difference. It really reduced the

number of those attacks dramatically and increased the efficiency of the pipeline obviously in a big way.”

However, even though the oil companies are receiving the benefits of enhanced militarization of the area, they do not want to be considered a part in the conflict. Thus, oil executives in the U.S. have to treat local violence simply as a fact of life in oil producing regions, as if killings and massacres were an inherent attribute of certain places and certain people, trying to dissociate themselves from everything that happens. To use Watts’ term, they are not a part of the “oil complex.” An oil executive referred to another incident in which three U’wa children drowned when they were being evacuated from the U’wa land that was going to be drilled, and alluded to the Santo Domingo massacre committed by the military and the police, saying:

“We were obviously concerned about our overall image and the idea that somehow an oil company is ordering to force or remove a lot of people. We’ve been sued in Colombia for allegedly telling the Air Force to drop bombs off! I mean it’s -- we recognized those people were out there intentionally to have something happen. That’s what they hoped to happen. It wasn’t just they wanted a peaceful protest and that because I think there’s a value there but there’s a lot of value in continuing the troubled relations effort -- and they were very, very good at that, and we recognized it.”

Immediately thereafter, the executive referred to the importance of not being associated with the efforts of the armed forces to evacuate the population from the drilling site, even though it was the company that actually initiated the proceedings to have the armed forces evacuate the indigenous population:

“And we continued to try to make sure that it wasn’t Occidental that was involved in dealing with the local populations. It was a function of the government and they were very adamant.”

We can see from this excerpt that no one wanted to assume the responsibility for the social costs of the activity carried out by the police. Nevertheless, as another company executive explained to me, the company exerted a tight control over every single aspect that involved the interaction between the armed forces and the population. In fact, the company signed agreements with the police force establishing the conditions in which they were to resort to the use of force. This executive described the role played by the company in the eviction of the U’wa from the well site in the following words:

“We took the Red Cross, and we took police force from Bogota, and we took representatives of the United Nations Agency for Development as observers... Everything was foreseen and (agreements were) signed. And we had meetings with the police because we knew, they had

told us that there were people moving up toward Samoré (the well site) and that there were people from the guerilla inside and that they were going to provoke an incident. Therefore, the police had instructions, and we had surveillance from the Bogota police, who were to use force professionally, only if it was strictly necessary.”

At another point during the interview, he showed his own perceptions about the level of control that oil and mining companies had over the police in certain regions of the country, and the repercussions that this had for indigenous people in a less favorable fashion. He said:

“These are regions that unfortunately start being protected (by the armed forces) when there is oil activity, or mining, or whatever, but they are left unprotected when there is none.

And immediately thereafter he acknowledged that this put indigenous people in a situation where they had to decide whether they wanted to increase the presence of the armed forces into their region, in which the guerilla is a fact of everyday life. He said:

That is perverse; it is perverse because it puts indigenous people in a very difficult position, because they become the triggers. If they agree and there is a project (of oil or mining exploration or extraction) then they come, the army comes. And thus one arrives at the inevitable conclusion that the armed forces, which are supposed to provide security as a source, as a guarantee of people’s rights, become a privilege of the companies and not a collective good. And that was what was happening in this (the U’wa) case. And they never told us this, but the real issue is: ‘What are the armed groups in the region going to say? What is their behavior going to be like?’”

In sum, then, oil violence is constructed by the militarization of certain spaces, coordinated by oil companies and oil producing and consumer governments in their fight to combat insurgency and secure oil investments. In areas inhabited by indigenous groups, this puts them in a very difficult situation. Accepting oil exploration and extraction increases military presence and escalates violence. On the other hand, if indigenous people do not agree to oil extraction “the country puts them against the wall saying that they are blocking economic development” as a rather critical oil executive that I interviewed explained.

Under these circumstances, one can expect indigenous people to resort to some form of resistance against oil extraction. However, as we will see in the next subsection, the militarization of these spaces and the repressive forms of governance that it produces have an effect over the opportunities for local mobilization.

How Militarization Shapes Local Politics

The authoritarian mode of governance produced by the “oil complex” can best be observed in the way that the army and the police deal with collective disruption. The third period I spent in the U’wa *resguardo* coincided with October 12, 2009, when indigenous groups throughout the country were carrying out various public manifestations throughout the country. The U’wa were not the exception. One of the U’wa leaders who had contributed to arrange the blockade explained the blockade as a manifestation of a national, pan-indigenous solidarity:

“What we are doing here now is supporting the activities carried out throughout the whole nation, which are being proposed by the indigenous authorities at the national level. In this case it is ONIC and other national organizations who are also mobilizing their people so that their problems also become our problems and vice versa. What we want is for people to be aware of what happens in indigenous territories”

Following the call of the national indigenous organization, ONIC, the U’wa organized a three day blockade of the road called *Carretera de la Soberanía*, which literally means the Road of Sovereignty, in a place called La China. The road and the specific place where the blockade was held have important strategic value for the armed forces and for the oil companies, for multiple reasons. First, the road runs through the northeastern part of the country, and connects the grasslands in the eastern part of the country with Colombia’s coast in the Caribbean. Secondly, at La China, the road marks the northern limit of the U’wa *resguardo* and is less than three kilometers south of the border with Venezuela. And perhaps more importantly, at that place the Cañolimón pipeline runs fifty meters south of the road inside the *resguardo*.

The site of the blockade was also chosen strategically by the U’wa. Although at a very general level the purpose of the blockade was to commemorate the arrival of Christopher Columbus to America on October 12th, 1492, the U’wa understood it as an opportunity to protest against what they considered to be contemporary attacks on their culture. Thus, protesting near the pipeline was in part a provocation to the oil companies that are present in the region. The banners and signs that the more than two hundred U’wa people carried were directed against the oil companies. Moreover, the chants were also directed against the oil companies and the mottos were the same that they had used during their campaign against the companies. However, the place was also strategically chosen because of its proximity to the U’wa *resguardo*, to give them an escape route in case the police or the army decided to disperse them violently. According to the Colombian constitution indigenous authorities have jurisdiction over their *resguardos*. Thus, neither the police nor the army could legally go after the participants in the protest or arrest them inside the U’wa territory. However, this did not mean that they did not in fact go in and out of the *resguardo* continuously. In fact, the soldiers of the *Batallón Plan Especial Energético y de Vías No. 1*, or First Battalion of the Special Plan for Energy and Transportation Network (BPEEV 1)¹⁹ guarded the pipeline from inside the *resguardo*. However, their presence in the

¹⁹ This battalion has been receiving direct military assistance from Plan Colombia funds at least since 2000.

resguardo was normally coordinated and agreed upon in advance with the indigenous authorities.

I arrived at La China with a group of environmentalists, academics, and U'wa leaders on October 11th before the blockade started. The place is a group of two houses, a small grocery shop, and a stable for weighing cattle located on a curve after the bridge that crosses over a creek called *Quebrada La China*. The pipeline that runs inside the *resguardo* is vigilantly protected in this point by the BPEEV 1. When we arrived there was a group of twenty enlisted soldiers from the BPEEV 1 in the area which were between eighteen and twenty years of age, dressed in camouflaged uniforms and heavily armed. Most soldiers were armed with rifles and grenades, but a two of them had larger machine guns, one had an X-shaped belt of bullets around his torso, and the other one had wrapped it around the gun. Other soldiers still were carrying rockets in special pockets in their chests, and one of them was walking a yellow Labrador retriever, presumably for the purpose of locating explosives. There was a sergeant with them, and later came the colonel that commanded the battalion.

When we arrived at the site the soldiers guarding that point were calm and interacted with the U'wa and with us. As the day went by more U'wa people started gathering around La China, coming in trucks or by foot, until there was a sizable group gathered in the area. The women came with their children, some brought their babies in the back, and the older children came walking. At midnight, a group of indigenous men brought a huge log and placed it across the road right after the bridge. Then they placed large rocks at different parts of the road to strengthen the blockade. After this, a group of around eight men, including elders and children sat across the log and held a large paper sign that said "*La Cultura con Principios no tiene Precio*", or "a culture founded on principle is priceless." Their plan was to hold the blockade for eight hours, lift it for an hour to let the repressed vehicles pass by, and then reestablish the blockade for eight more hours, holding these eight-hour blockades during a total of three days. During the night, the soldiers did not attempt to disperse the U'wa or lift their blockade. Although they became somewhat restless, and a few hours later there were about twenty soldiers present in the road, the sergeant was giving orders and regrouping them along the line of the pipeline without interfering in the actions of the U'wa.

The next day, however, the state blockade would show how the oil companies and the state combine violence and control, authoritarianism and clientelistic politics. In the morning two trucks were allowed to pass through the blockade. They were personnel from the municipal government of the nearby town of Toledo, which knew about the blockade and decided to provide free medical and dental services to the indigenous population gathered in the blockade. Three medical doctors and several nurses affiliated with the municipal secretary of health established a temporary office in the porch of one of the houses and examined the population, vaccinated the children, and provided free medication to the people who needed it. In the meantime, a dentist set a dental chair and improvised a dental office in a different section of the house, providing dental services and treatment to the people that needed it. They worked from nine in the morning until six in the afternoon.

The fact that the mayor of a nearby town was providing medical and dental services to indigenous people gathered in a road blockade was initially puzzling. It is not common that local

administrations reach to the indigenous population to provide health services, much less when they are carrying out a road blockade. One would expect the local administrations of nearby towns to reject this kind of disruptive behavior being carried out by the U'wa. I realized then that in another section of the house there was a third group of local government officials taking fingerprints, pictures, and signatures from a line of U'wa people. While doctors and dentists were providing their services, government officials were providing *cédulas*, this is, they were issuing identification cards to the undocumented members of the U'wa community. The U'wa needed these *cédulas* if they wanted to receive gratuitous medical attention in the future. However, the provision of *cédulas* during a blockade served another purpose: local elections were to take place a couple months later, which suggested that local politicians were providing health services and issuing *cédulas* to secure votes among the U'wa population. The level of penetration of local politicians in the U'wa community could also be observed in the fact that many U'wa members were wearing T-shirts of their electoral campaigns.

For the U'wa, however, wearing the T-shirts was not a sign of political commitment or support on their part, but an indication that they owned few clothes. In fact many members of the U'wa, including children, were also wearing T-shirts with the logos of Oxy and Ecopetrol during the blockade. Knowing the importance that the U'wa attribute to competitions and games involving physical endurance, the oil companies had organized and sponsored a race. They had made T-shirts for the participants who had kept them and wore them frequently. However, they resented the fact that the oil companies had made them pay the equivalent of a dollar for the T-shirts and the right to participate in the race. In turn, the environmentalist groups also distributed T-shirts for their own purposes with a picture of an U'wa woman and the motto of what they considered to be the new era of the campaign against the oil companies. This T-shirt said "*yo también soy U'wa*", which means I am U'wa too. However, the fact that many members of the tribe were wearing T-shirts of political campaigns, oil companies, and anti-oil campaigns, does reflect the extent to which local politicians, oil companies, and activists actively seek to gain the favor of the U'wa and control them.

However, external control over the U'wa is not only sought through the relatively benevolent means of providing health services, organizing races, or giving T-shirts away, but by means of undermining the authority of its leadership and repressing non-violent protests. Throughout the day many of the leaders had been summoned to Cubará to meet with the political, military and police authorities in the town. However, the U'wa leadership refused to attend the meeting. Throughout the day undercover members of the police had been gathering information about and taking pictures of the U'wa leadership, the environmentalists, and the rest of the participants. The U'wa had realized this and refused to talk to them. Around six in the afternoon, however, the major who commanded the police force in the area appeared at La China accompanied by a group of policemen, all armed, but dressed as civilians. The major and his men entered the *resguardo*, and I ran into them while I was walking outside toward the road. They asked me whether I was the leader of the protest. I answered I was not, and told them it was a protest organized in commemoration of the arrival of Christopher Columbus to America on October 12th. 1492. The major then mumbled that it was the white people from Bogota that were the "ideologues of the blockade."

The police commander that had been appointed to Cubará was also ethnically indigenous, although he was not U'wa. He also had a reputation for being ruthless, and he combined ethnicity and ruthlessness to isolate the U'wa from white supporters and control them. An informant told that a group of ELN militias had assaulted the police forces in Cubara earlier that year and he had personally witnessed how the major had taken a rifle from one of his men and shot dead three captured guerrillas even though they had already been controlled and were injured and lying on the ground. During the blockade he used his indigenous ethnicity to gain the support from the U'wa population and put them against the environmentalists. He wanted to portray the blockade as a manipulation of the white environmentalists, and explicitly undermined the authority of the *cabildo mayor* in front of his own people telling him that he was being used to block the road for purposes other than his own. He told the *cabildo* that there had been violent incidents nearby and that he did not want to be responsible for a violent event occurring in La China. At that point an increasing number of military personnel and policemen started coming to the place where the leaders of the U'wa organization were gathered talking to the police major. Then, one of the environmentalists started shouting at one of the policemen that accompanied the major, claiming that he had been taking pictures of them without permission and required him to erase the pictures. Indeed, the policemen had been taking pictures of the environmentalists and of me at least with two different cameras. The undercover policeman who had been taking the pictures shouted back. While this discussion about the pictures was going on, the police major grabbed the *cabildo mayor* – whom he had just humiliated in front of his people – by the arm and took him to the side. They discussed for a while. Twenty minutes later the *cabildo* gave his men the order of lifting the blockade and dispersing the crowd. Around two hundred and fifty indigenous men, women and children returned to their homes two days before planned, and Asou'wa had to give away most of the food that it had bought to feed the protesters.

Conclusion

The description of the militarization of the area where the U'wa live and their failed attempt to commemorate “America’s Discovery” illustrates how the authoritarian form of governance in oil rich areas shapes local politics in various ways. First, it reinforces clientelism through the provision of free health services and securing votes, at the same time that it represses contentious politics. This combination tends to weaken any possible claim to indigenous autonomy, while at the same time it reinforces relations of state patronage. Moreover, this mode of governance promotes the inflow of certain non-indigenous actors, while discouraging others. It shows how ethnic identification is used by the state’s armed forces as a tool to fracture alliances between indigenous people and environmentalists, while it promotes the penetration of local politicians and transnational oil corporations.

CHAPTER 6

ORGANIZATIONAL RESOURCES, DOMESTIC LEGAL ENVIRONMENTS, AND THE PERCEPTION OF OPPORTUNITIES FOR LITIGATION

Introduction

This chapter documents the origins of the U'wa conflict and explains why they, along with some of their supporters, decided to bring this conflict to court. In this chapter I show how from the initial stages of their campaign against oil exploration the U'wa were able to frame their conflict in a way that combined cultural and ecological concerns with human rights in a narrative. Documenting the way in which the U'wa framed their conflict against the oil companies is important to understand why their campaign attracted attention from the media and brought them support from environmental and human rights NGOs throughout the world. It shows how their values and agendas resonated with those of different people, groups and organizations in different parts of the globe.

Moreover, I also show some of the factors that contributed to their decision to resort to litigation as a way to resolve their conflict with the oil companies. I claim that chief among those factors were the experience of indigenous organizations and leaders with the law, the environment of optimism with legal institutions that was prevalent after the creation of the 1991 constitution, and the victories that indigenous people and other traditionally marginalized social groups had achieved in constitutional litigation. These factors suggest that the tactical decisions made by social movements are mediated by the perceptions that their leaders have of the opportunities they have, which in turn are dependent on their experiences. Moreover, it also suggests that these leaders are likely to resort to organizations and networks that confirm their own perceptions with respect to the efficacy of the tactics that they favor.

The Origins of the Conflict: Oxy Requests an Environmental License to explore in U'wa Land

On April 27, 1992, Occidental Petroleum, Royal Dutch Shell and Ecopetrol signed a joint venture agreement to explore oil in an area which came to be known as the Samoré bloc where the U'wa indigenous people live, under the leadership of Occidental. This area of 208,934 hectares covers parts of the municipalities of Guicán, Cubará, Saravena, and Tame in the Northwestern part of Colombia (departments of Arauca, Santander, Norte de Santander, and Boyacá), less than three kilometers south of the border with Venezuela. At least 20 percent of the Samoré bloc overlapped with land that was formally constituted as belonging to the U'wa. Part of the oil bloc overlapped with an U'wa *resguardo*, a second part overlapped with an U'wa *reserva*, a form of indigenous land tenure which formally includes the same extent of indigenous self-determination, but entails only the custody over the land, not the formal property, which remains in the hands of the government. Finally, besides the areas that were formally considered

U'wa land, there was a significant part of the Samoré bloc which was de facto inhabited by the U'wa but lay outside the *resguardo* and *reserva*.

Initially, the exploration project did not entail any major legal or bureaucratic hurdles. However, two legal developments in Colombia complicated the picture somewhat. The first one was that roughly nine months before, on August 7th, 1991, Colombia had ratified and incorporated the *169 Convention on Indigenous and Tribal Peoples of 1989* created by the International Labor Organization (ILO 169). This treaty requires that in “cases in which the State retains the ownership of mineral or sub-surface resources²⁰ or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these [indigenous and tribal] peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.”

The second development that complicated Oxy's oil exploration project was the ratification of a new constitution in Colombia in July 1st, 1991. The new constitution established a similar provision, albeit it was somewhat more ambiguous in its wording. On the one hand, this provision establishes a strict prohibition when it says that the “[e]xploitation of natural resources in indigenous lands shall be carried out without impairing the cultural, social, and economic integrity of indigenous communities.” Immediately after, however, it mellows down its imperative language even below the standard established in the 169 ILO Convention by saying that “[i]n the decisions adopted with respect to the said exploitation, the government *will encourage* the participation of the representatives of the respective communities.” (text italicized by the author).

As established in these two legal documents, the duty of the government and the companies of carrying out prior consultation procedures with indigenous groups (hereinafter called prior consultations) did not appear to be a major obstacle for the oil exploration project that was going to be executed by Oxy and its partners. After all, the 169 ILO Convention does not require the government and the oil companies to obtain consent from the U'wa indigenous people living in the area. According to article 6 of the Convention these consultations are to “be undertaken, in good faith and in a form appropriate to the circumstances, *with the objective* of achieving

²⁰ According to Colombian laws, oil and any other natural resources found underground belong to the state. Regardless of who has the ownership over the land in the surface, can declare eminent domain over the land required to extract resources that are under ground. However, legal requirements for exploring and extracting oil require more than a declaration of eminent domain over the surface. First of all, according to the laws at the time the company had to obtain an exploration license from the national environmental authority. In order to file a request to obtain an environmental license, the company first had to carry out a PMA, which had two parts: first, it had an analysis of the physical, biological and socioeconomic characteristics of the area where the project was going to take place. Besides this, the company had to describe the project, evaluate its impact, and devise an environmental management plan to prevent and minimize any adverse impacts, and compensate possible damages. The environmental authority would first decide on the adequacy of the company's description, analysis, and management plan. Once these were approved, the environmental authority would determine whether to grant the license, define its scope, and establish the obligations that the company had to carry out previously or throughout the execution of the project.

agreement or consent to the proposed measures.” (text italicized by the author). Thus, it was not actually necessary that the government and the oil companies arrived at an agreement with indigenous groups, and their legal duties were satisfied if they could show that they wanted to arrive to an agreement in good faith, and in a form appropriate to the circumstances.

U’wa Opposition and Framing of the Conflict with the Oil Companies

However, the U’wa had serious objections to the oil exploration project. Even without having formally started the consultation procedure it was clear for the company that their project would stand opposition among the U’wa, that the issue might end up in court, and that the company needed to protect itself legally. Some of these objections are evident in an affidavit made by two members of the U’wa group in December 3, 1993 upon a Notary public in Bogota, found in the archives of Oxy headquarters in Bogota.

Although the two U’wa signing the affidavit said that the U’wa communities they represented did not openly oppose the exploration project, they clarified that they did not want oil exploration either. These communities simply did not oppose oil exploration because they considered oil companies and the government would explore oil in their land regardless of what they wanted. Therefore, these two U’wa representatives were simply accepting the oil exploration project because it had been presented to them by the oil companies and the government as something that was inevitable. If the company was inevitably going to enter their land, they added, it was better to establish a good relation with them from the outset instead of opposing the project uselessly. This same notion was reiterated by other members of the U’wa at the time. The vice-president of the U’wa organization said to the media that:

“We do not want the exploration because it would be detrimental to our people, and they (the people from the oil company) have told us that they are going to enter into our land anyway.”

As this short excerpt and the affidavit show, from the perspective of the U’wa indigenous people the laws that establish prior consultations were a mechanism that enabled the state to use its power in favor of oil exploration regardless of what the U’wa wanted. In other words, these laws legitimized the use of state power, and although they were being consulted, this consultation was an imposition, through which they were being forced to acquiesce to oil exploration. Thus, the best thing for them would be to adapt to the new circumstances and try to obtain the most benefits they could during the consultation negotiations.

However, not all U’wa decided to adapt to the new circumstances, particularly once they saw how the consultations were to be carried out. Outspoken opposition to the Samoré project started once Oxy and the government had allegedly carried out prior consultations on January 1995. Initially, leaders from the U’wa communities of Aguablanca and Támara in the department of Santander took the lead and wrote an “open letter” to the international community opposing the oil exploration project, which intended to mobilize different segments of the government and society, both domestically and internationally.

This letter shows the main elements of the frame that the U'wa used to portray their conflict. In the letter the U'wa portray themselves as ecological cosmopolitans. They illustrate how their belief system seeks to protect not only their own land, but the earth as a whole. Moreover, the U'wa also portray their antagonists and their intentions, and frame their struggle as that of an indigenous group against a transnational oil company that only seeks profit. Moreover, they also suggested the legal turn that the whole conflict was to take from then on, by claiming that the project violated the Colombian constitution, among others, because the government had not called the U'wa to participate in the evaluation of the environmental impact. They were especially detailed in distinguishing their motivations from those of the company and the government. They said that oil extraction project was only inspired by greed, whereas the interest that the U'wa had in opposing exploration was motivated by a traditional belief system, according to which the purpose of the U'wa people was to protect the earth. They said:

“We, the U'wa people are very different from the white man; we live in very different worlds. Maybe not from a physical perspective, but our way of understanding this world, our conception of it is very different. ... What we have now was given to us by our ancestors, who put us in charge of its conservation, under a series of guiding principles that we must preserve. ... We the U'wa cannot violate them because (our god Sira) has not given us the authority to become owners. The Universe belongs to Sira and the U'wa just administer it according to the rules that the Supreme Being left us, but the white man considers himself the owner of the Universe. ... We are the guardians of the ecosystem, and being against our principles is tantamount to being against life itself.”

However, the U'wa did not just frame their conflict in idiosyncratic aspects of their belief system, but instead translated their arguments in a way that appealed to Colombian and foreign environmentalists. They cited a well-known environmental-indigenous staple, the famous speech of 1854 in which allegedly Chief Seattle refuses the offer made by governor Isaac Stevens to purchase their land. This reference appeals both to environmentalists abroad and identifies them with broader struggles of indigenous people to preserve their land based on principle. Moreover, in their arguments they also refer to the principles on biodiversity established during the Conference of Rio de Janeiro. Using both Seattle's arguments and the Rio Principles, as rhetorical tools, the U'wa say they cannot allow oil exploration in their land because according to their belief system the earth is the mother of all human beings (including whites), oil is her blood, and that they “will never contribute to make her bleed to death, because it is she who gives life to us all.” Thus, by appealing to a narrative that is both cosmopolitan and local, and ties biodiversity with cultural diversity they identify themselves as indigenous cosmopolitans; they are not just fighting for themselves and their land, but to preserve life on earth.

This letter resonated with environmentalist groups and it was used by them to promote the U'wa campaign abroad. Moreover, some of the strategists in the campaign both at RAN, Amazon Watch and Earthjustice attributed the success that the campaign had in mobilizing environmentalists around the world to this and other U'wa communiques. As one the campaign strategist at RAN said “the earth-based poetry” of these communiques helped to galvanize the

movement. Referring to the way in which the U'wa framed the conflict and the values of the parties in it he said:

The fact that the U'wa who are so rooted in a specific culture and tradition are fighting this truly multi-tentacle octopus that's not ultimately human at all, that's just driven by profits and the need to maximize profits for their shareholders, and it's extremely – it's a true clash of worldviews, you know. And I think that the clarity with which the U'wa spoke to that and frankly the clarity with which we were able to present and position the U'wa as one pole of that clash of values was part of what brought thousands of people into the campaign.

Then, when I asked about what was particular about the U'wa story he made reference to their communiqués:

The U'wa wrote lots of communiqués. Some of them were very poetic, and some of them not so much. We didn't circulate them. We pulled emblematic paragraphs. Part of what was so motivating about the U'wa is this positioning within the global justice movement as frontline resisters against resource extraction, abridging the worlds between a common sense ecological critique of fossil fuel addiction and human rights and indigenous rights. This captures a series of organized sectors and people can see themselves in it, and the power of their statements.

Furthermore, in the initial stage of the U'wa conflict Guaviso, a Werjayá or shaman from the community of Tegría made an unusual public appearance and made a series of statements against oil exploration to a Colombian newspaper. Guaviso's statements lack the same kind of environmental cosmopolitanism evident in the letter of the U'wa from Aguablanca and Támara. However, Guaviso does allude to an narrative element that was present in the frame that would define the U'wa campaign from that moment onward: the U'wa's collective suicide pact. However, in his version of this narrative, U'wa martyrdom is a response to external threats over their way of life. Instead of referring to the importance of the U'wa in the protection of the environment, Guaviso said that he feared that if "white men" found oil, they would stay inside their territory and never leave. With respect to the suicide pact he mentioned that Guacaní, an U'wa leader that lived in the 18th century threw himself along with all women and children from his community down the cliff known as the *Peña de los Muertos* in despair because of the penetration of the Spanish colonial forces into their land. However, he clarified that:

"It would be a gradual form of suicide, little by little, because we are not going to allow them (the oil companies) to take us away from the lands that belong to us"

Secondly, in his statements Guaviso referred to a second narrative that would also become a landmark in the U'wa campaign: the analogy between oil and blood. With respect to the first narrative he gave a less reified, more allegorical version of their belief with respect to oil than the one diffused by the media; a version that seems more attuned to the way the U'wa talk when they

want to explain concepts that are proper to their own culture. What he said was that if Oxy extracted crude from their land, it would be as if they extracted *his* own blood.

Nevertheless, although Guaviso was giving an allegorical explanation of the way the U'wa traditional authorities conceived the exploration project, the media conflated the two powerful images to construct an image of the U'wa as ecological martyrs. In fact, it was this image of an indigenous group about to commit collective suicide to save the earth from environmental depredation by a transnational oil company that captured the imagination of the media in Colombia and around the world. Little did it matter that Guaviso later clarified that "their suicide was going to be gradual," and that he was really referring to an ethnocide. In the next two years to come, the news about the suicide of this group of ecological martyrs would travel around the world, making headlines in newspapers like the New York Times, the Los Angeles Times, The Nation, The Guardian, in radio stations like National Public Radio, Pacifica Radio, and in television news like CNN, NBC, CBS, BBC, Channel News Asia, American Public Media, among others. Thus, we can conclude that from the outset the U'wa used a narrative to frame what was at stake in their conflict that attracted different "sectors" of the environmental, human rights, indigenous and even religious movements.

The Three-Pronged Initial Strategy of the U'wa Domestic Campaign

When the news about the suicide dispersed in Colombia and around the world, various organizations decided to get involved. The type of actors that got involved varied greatly: indigenous organizations, political parties and politicians, environmental groups, academics, student organizations, labor unions, peasant associations, and government entities like the offices of the ombudsman and the procurator, and the *Instituto Nacional de Antropología e Historia*, or National Institute of Anthropology and History ICANH. These activists and organizations became articulated through a coalition called *Colombia es U'wa* which was coordinated by ONIC, and especially, by Lorenzo Muelas, an experienced indigenous leader that had been a member of the constituent assembly and later became a Colombian senator, elected as the candidate of ONIC. As we will observe, the trajectory of this leader helped to shape both the perception of political opportunities and the resources for legal mobilization.

The different actors that became involved performed different roles within the domestic campaign of the U'wa. The campaign was heavily reliant on law and litigation as means of achieving a solution to the conflict between the U'wa, the oil companies and the government. However, law and litigation were articulated within a larger and more complex political strategy. In fact, one can define the strategy of the U'wa campaign as having three basic pillars: gaining visibility and cultural acceptance, exerting pressure over government officials through institutional political mechanisms, and the use of legal tools. This strategy of using the law along with an important communications and organizational strategy is common among indigenous organizations and groups, especially in those campaigns that have been promoted, supported, or otherwise influenced by ONIC. As a young indigenous lawyer who is the director of the legal

division of ONIC told me referring to the U'wa legal strategy, but generalizing to the strategies used by indigenous people in general:

“In relation to strategy, I believe what I told you before: legal strategies among indigenous people have always been combined with other forms of struggle. This is something that perhaps we can teach the rest of the world. We are not simply “law-centered,” we know that a law suit needs to be accompanied by a communications strategy, and a strategy of mobilization and resistance; our people know that.”

Later on, she clarified to me that the adoption of complex legal strategies that conceive legal mobilization as part of a larger strategy is related to their conception of the law as an integral part of social life, not as an autonomous realm that is separated from all other aspects of life. When she referred to the way in which legal strategies were planned in ONIC she explained:

Here in ONIC we never sit down and plan a legal strategy by itself, instead around that legal strategy we define a communications strategy, a strategy of organizational strengthening, and of internal strengthening. And this has to do with the fact that for us (indigenous people) juridical issues, norms, have to do with our everyday life, with our practical life. In other words, norms are not something that is outside of life, of our day to day; they are a part of culture. Therefore, for us, perhaps legal issues are – we understand law that way, not as a self-contained entity, but as something that needs to be integrated with everything else.

In this campaign each organization performed a specific role and a series of well-defined tasks. Indigenous organizations, particularly Asou'wa and ONIC, helped to design the strategy, provided the resources and the spatial link between the actors in Bogota and the U'wa people. ONIC even provided Asou'wa with an office in its headquarters in Bogota. Moreover, ONIC was involved in the organization and logistics of all public events and the public relations campaign that helped the U'wa gain visibility and cultural acceptance, and did the follow up of media and public relations. ONIC also helped to connect the U'wa with other indigenous groups fighting against oil companies in other countries, particularly the Achuar, Shuar and Cofan peoples in Ecuador, and the Ogoni in Nigeria,. Finally, ONIC also provided them with a connection to labor unions, particularly the largest union in Colombia, the *Central Unitaria de Trabajadores* (CUT), Unified Workers Central, and the union of oil workers *Unión Sindical Obrera*, or Syndicated Workers Union (USO). As we will see in the next chapters, these networks helped the U'wa to consolidate its support network with environmental activists and unions in the U.S. and Europe.

Environmental organizations, particularly Fundacion Hemera and Censat also provided resources and logistics, and served as a link between the U'wa and various environmental organizations and coalitions abroad, particularly Friends of the Earth and Oilwatch. Bureaucrats and public officials, particularly from the Division of Indigenous Affairs, the ICANH, and the ombudsman office provided technical-legal support and connections within the state. Finally, academic institutions also provided technical support, and a forum to gain visibility, cultural acceptance, and support, especially on the part of students and progressive elites.

To gain greater visibility and cultural acceptance the U'wa relied on three main tactics: resorting to protests and direct action, using the media to frame the conflict, and campaigning in university campuses, schools and other venues throughout the country. Initially, the campaign resorted to direct action measures at the local level. The U'wa started by blocking the roads that lead to the Samoré bloc to prevent the company from being able to take its machinery to the bloc. Doing so, however, produced violence and placed the U'wa in the midst of Colombia's political conflict. As it was shown in the previous chapter, the inflow of oil companies to the region produced the militarization of the region, which constrained the opportunities that the U'wa had for resorting to protests and other disruptive tactics at the local level.

Shortly thereafter in December 1995, the ELN decided to "help" the U'wa in their struggle by capturing Oxy's machinery and throwing it down a cliff and into the river. The U'wa authorities were swift to condemn the actions of the ELN, but decided to abstain from carrying out any more disruptive actions at the local level in the meantime. In Bogota the situation was less repressive and the U'wa were able to organize marches throughout the city and sit-ins in the premises of the Ministry of the Environment.

The second strategy, the media and educational campaign coordinated by ONIC, was perhaps more important in terms of giving visibility and cultural acceptance to the U'wa campaign. The head of ONIC Abadio Green, as well as various activists and academics wrote newspaper articles, columns, and gave interviews informing the Colombian audience about the culture of the U'wa, their belief system and the arguments they had for opposing oil exploration in their land. Besides writing articles and columns directly, ONIC also established a close relation with journalists and columnists. This support given to the U'wa by key columnists was based more on the existence of shared ideas more than on personal contacts or political militancy, which enabled the U'wa to cast a wide net of supporters including religious groups. Thus, even socially conservative columnists supported the idea that religious beliefs and traditional forms of life were worth defending over economic interests.

Moreover, ONIC also maintained a close monitoring of the media in order to respond with letters to the various media outlets and contest columnists and editorials that portrayed the U'wa as an obstacle to Colombia's economic development. In most of these documents the representatives of ONIC sought to reframe the debate from the standpoint of environmental protection and the importance that cultural diversity had in achieving this goal.

However, the role played by ONIC in promoting a cultural understanding of the position of the U'wa went beyond their interaction with the media. ONIC also promoted a series of academic events in universities and schools to disseminate their arguments and gather support. Thus, with the help of university professors and school teachers, the U'wa and some representatives of ONIC travelled throughout the country giving public speeches and expressing their views on oil extraction. These speeches had two basic purposes. The first one was to gather support among students by raising public awareness about the relation between environmental protection and cultural diversity, particularly by highlighting the role that the U'wa culture had in protecting the environment, and to engage students actively in the campaign.

This campaign to seek greater knowledge and appreciation of U'wa culture was faced with a counter-campaign orchestrated by Oxy and the government. The counter-campaign had two basic objectives. The first one was to frame the conflict between the U'wa and the government as a counter-majoritarian one. In other words, the goal was to suggest that an indigenous minority was obstructing economic development of the whole nation because of their idiosyncratic worldview and culture. The second goal was to undermine U'wa culture in general and their view of oil and the ecology in particular. Thus, the government and the oil companies mobilized editors of various influential newspapers and media in Colombia to write editorials and columnists highlighting the benefits that Colombia would receive from oil extraction and ridiculing the U'wa belief system.

Moreover, the government also responded by mobilizing the legal system to instill fear among indigenous leaders and as a cultural tool to undermine U'wa belief system. Firstly, the prosecutor's office initiated criminal investigations against many of the U'wa leaders and attempt to frighten the members of ONIC that were involved in the U'wa campaign, they made these investigations known to the leaders of ONIC was well. More importantly, while the campaign was ongoing, officials from the *Instituto Colombiano de Bienestar Familiar*, or Colombian Institute of Family Welfare (ICBF) filed a law suit against the U'wa denouncing the U'wa practice of abandoning newborn twins beneath a tree until one of them died. The case was highly publicized in the media and eventually it reached the constitutional court. The U'wa started being portrayed in the media not as 'ecological natives' (Ulloa 2010) but as savage barbarians that were inhumane with their own people.

Furthermore, Oxy also exploited internal schisms within the U'wa leadership to denigrate their culture. Oxy published and financed Bericha, or Esperanza Aguablanca, a disabled U'wa teacher who had become something of a national celebrity some years before when she won the prize of "woman of the year." However, Bericha who initially was a member of Asou'wa had fallen out of favor with the leaders of the organization, and decided to write a book called *Tengo los Pies en la Cabeza*, I have my Feet on my Head. In her book Bericha narrates how U'wa culture is indolent with the weakest of its members, particularly people with disabilities, and how she had been abandoned by her U'wa family because of her disability. In contrast, she praised majoritarian Colombian culture by saying that she had been rescued from her abandonment by Catholic nuns who gave her an education.

As we can observe, the U'wa, with the support of indigenous organizations, especially ONIC, were able to frame their conflict with the oil companies by translating certain aspects of their own belief system in terms of a defense of religious and ecological values. Framing their conflict in terms of this "ecological cosmology", this is, establishing a link between their own culture and the protection of the environment had two major advantages. It mapped onto a growing belief within the environmental movement according to which the best way to protect ecosystems and biodiversity is by protecting cultural diversity. The second advantage was that the combination of protecting traditional lifestyles, religious beliefs and environmental interests made the U'wa claims acceptable to both environmental and religious organizations. Moreover, as we will see in the following chapters the fact that they were fighting against a transnational oil company and the government gave them additional prestige and to garner solidarity from various environmental and religious organizations abroad.

In sum, then, the strategy adopted in the campaign was devised by various organizations under the leadership of Asou'wa and ONIC. As we will see in the next chapter, this strategy was heavily focused on the law and legal mobilization because violence posed significant constraints on local protest. However, despite its law-centered focus, the campaign followed the well-known repertoires of indigenous organizations, particularly, ONIC, in that it beyond winning legal victories, it sought to legitimize the claims of the U'wa and frame the conflict in terms of their own culture, but appealing to broader notions of environmental protection.

Indigenous Politicians, Institutional Politics, and the Emergence of the Litigation Strategy

Institutional political mechanisms played a somewhat less important role. Initially, a group of indigenous senators, especially Senator Lorenzo Muelas, sought to call the ministers of mines and energy, and the environment, for a hearing in Congress about the U'wa. However, he did not succeed. Despite having won two seats in the senate indigenous senators remained highly isolated from mainstream politics in Colombia. Moreover, in 1995 the liberal party, which is one of the two mainstream political parties in Colombia, was in the presidency and it also had a majority in Congress, and the indigenous minority in Congress lacked the political clout to promote a hearing of this sort against the party in power.

Five years later, by March 2000, the political situation had changed. That year president Pastrana had said that he would support a citizens' initiative to dissolve congress, which had been largely discredited because of corruption scandals. After saying this Pastrana lost the support of a significant part of the coalition between the conservative party and a faction of the liberal party which had taken him to power. In fact, Pastrana was governing with a minority in congress. In this context, the indigenous senators attempted to use another institutional mechanism in alliance with politicians from the left and the liberal party. They proposed a vote of no confidence to oust the minister of the environment Juan Mayr for his role in the U'wa case. Although the vote failed, it failed by four votes, the narrowest margin since the vote of no confidence was established in 1991.

Despite the political opportunities provided by the changes in the government coalition, the U'wa could not achieve a major political victory that would force the government to abandon the oil exploration project in their land. This shows that the political support obtained by the U'wa was not enough to counter the interests and political connections of Oxy in Colombia. After all, as I showed in the previous chapter, Oxy had lobbied the U.S. Congress in favor of expanding the military aid that the U.S. was giving Colombia to eliminate drug production to fund counterinsurgency operations and to protect the country's energy infrastructure. Thus, the Colombian government had reasons to be grateful with Oxy.

The lack of success with institutional political mechanisms however, does not mean that the role of indigenous politicians was irrelevant. On the contrary, indigenous politicians, especially Senator Muelas used his political influence and authority within certain circles to design and set in motion the strategy of the campaign.

The strategy that Muelas, Asou'wa and ONIC designed was largely influenced by Muelas' personal involvement in the constituent assembly of 1991 and his belief that its institutions could help to foster social change in favor of indigenous people. Muelas, a *taita* or leader of the Guambiano people, had been a regional activist in the indigenous mobilizations of the 1970s in the departments of Cauca and Nariño. Later on he came to be recognized as a national leader and an indigenous intellectual (Rappaport 2005: 42), and he was elected to the 1991 constituent assembly, where he participated actively in the debates. Then, when the new constitution created a special indigenous circumscription in the senate, he was elected senator for ONIC²¹. Thus, Muelas' professional career was closely linked with the legal mobilization of the 1970s in Cauca, and with constitutional reform.

Muelas along with Abadio Green and other ONIC leaders decided to assume the role of organizer of the U'wa campaign during its initial stage. Muelas was one of the first national political figures to visit the U'wa in their land. Moreover, he ended up being caught amidst the violence of the area during his first visit. When he was going back to the airport after visiting the U'wa, he was kidnapped for a few days by guerillas of the ELN, along with an anthropologist who served as his adviser, and some public officials that were travelling with him. The ELN, he would later state, just wanted to talk to him and to listen to his perspective with respect to the U'wa situation.

After his kidnapping, Muelas focused on litigation and legal mobilization as a form of struggle, and in designing the strategy of the campaign Muelas resorted to various institutions created by the new constitution. In particular, he resorted to the ombudsman's office. This office was created to protect and promote human rights, a function which includes providing legal counseling and representation for people and groups who lack the material resources. Thus, Muelas used his influence as a senator to request help from the newly appointed ombudsman. The ombudsman decided to get involved in the case and appointed the deputy for indigenous rights to represent the U'wa in any lawsuits filed on their behalf.

Moreover, Muelas' involvement in the constituent assembly also helped him use more informal connections to create a team of well-respected jurists to craft the legal strategy. Thus, he sought help from Ciro Angarita, a well-known university professor and former justice of the constitutional court. Muelas had met him during the constituent assembly where Angarita was an adviser. This group, along with other high profile lawyers, a team of law students which included members of the U'wa, anthropologists from the ICANH, environmentalists, and members of public interest law firms, constituted the legal team of the U'wa.

The ombudsman filed two separate lawsuits to prevent the oil exploration project. The first lawsuit was a newly created constitutional writ called *tutela* to have a court order the ministry of the environment to revoke the environmental license granted to Oxy. In this lawsuit the ombudsman alleged that granting a license without consulting the U'wa authorities constituted a threat against the fundamental constitutional rights of the U'wa. To protect those rights, the MA should carry out the prior consultation procedures with the U'wa properly and only then it could grant a license. However, *tutela* can only provide a definitive protection when there is no other

²¹ At that time ONIC had established itself as a political party and Muelas was a senator from ONIC.

course of legal action available, and in this case the U'wa had another one. The U'wa could request the Council of State to annul of the environmental license because it was issued without the prior consultation required by the constitution and the ILO Convention 169, which in fact they did.

The participation of Muelas shows the influence that personal histories of movement organizers have over the tactical decisions of these movements' campaigns. Thus, strategic decisions are not just the product of a disembodied calculation of expectations based on objective conditions. Rather, strategy is to a large extent the product of perceptions, which in turn are shaped by the personal trajectories that organizers have had with what Charles Tilly has called "well-known tactical repertoires" (Tilly 2006:30). After his experiences in Cauca and in the constituent assembly, senator Muelas naturally was optimistic about the possibilities of promoting social change through the use of legal institutions. Moreover, these personal experiences tend to shape not only the perceptions of activists, but the personal contacts that they have, the networks they are a part of, and thus, also the kinds of resources that they can mobilize. Throughout his career Muelas was able to establish personal and institutional connections with progressive lawyers, bureaucrats and NGOs, which had close ties with indigenous movements and organizations, and this aspect of his trajectory in the indigenous movement also helped to shape the kinds of tools that were and were not available to the U'wa.

Indigenous Lawyers as Transmission Belts between Perceptions and Political Opportunities for Legal Mobilization

However, perceptions are informed by an empirical basis, regardless of whether activists' perceptions are wrong. The decision to resort to the law as a cornerstone of the campaign strategy was not exclusively based on Muelas' personal enthusiasm with the 1991 constitution and his connections with lawyers sympathetic to indigenous claims. As we will see in the following section, there was a solid "objective" foundation that led him and the rest of the campaign strategists to believe that law could provide the kind of protection that the U'wa required. However, the decision making process among the U'wa required a transmission belt that between the U'wa traditional authorities and the campaign activists in charge of defining the strategy.

The emergence of U'wa leaders and indigenous leaders in ONIC, who had acquired legal expertise, was fundamental for this purpose. During the 1970s and 1980s, indigenous people had established networks with lawyers and legal clinics that provided legal services to their organizations. By the 1990s, however, the situation had changed and there were a growing number of indigenous people that had become studied law and become advisors to the various indigenous organizations. Famously, Francisco Rojas Birry, who was also elected to the constituent assembly along with Muelas, performed a role as legal adviser to various indigenous organizations. However, within the younger generation of indigenous leaders who were in their teens and twenties during by the early 1990s, legal expertise was becoming increasingly important, especially after the ratification of the new constitution and the 169 ILO Convention.

Within the U'wa in particular, a young U'wa leader from the Tegría clan, Ebaristo Tegría, was finishing law school in the nearby city of Tunja. Paradoxically, Tegría was one of a series of U'wa leaders that had been able to study in the university thanks to the scholarships awarded by Oxy years before the problem between the oil company and the U'wa people emerged. However, besides Tegría, there were other indigenous lawyers in ONIC, who had become instrumental in the adoption of legal strategies, especially since the beginning of the 1990s (Santamaría 2008). The legal expertise that Tegría and other indigenous lawyers had acquired helped to shape the campaign toward a law-centered strategy for two different reasons. Firstly, because it provided the conditions of possibility that enabled traditional authorities to participate in the decision making process. Indigenous lawyers kept the traditional authorities informed of what was happening with the legal strategy outside of the *resguardo* without having to depend on non-indigenous lawyers and translators. This helped traditional authorities to understand better what was happening, and in turn, it enabled them to exercise greater control over the campaign. The flow of information toward these traditional authorities helped to maintain good relations with ONIC and with the team of lawyers and activists helping the U'wa. As anthropologist Joanne Rappaport has said, the creation of a new leadership with technical-legal expertise after the 1991 constitution to some extent weakened the power that traditional indigenous authorities held within their groups, but it also helped generational renovation, and a new balance of power when the traditional authorities recognized their need for indigenous leaders with legal expertise within their communities. Thus, despite being largely isolated from the world outside their *resguardo*, the help of indigenous lawyers like Tegría helped the U'wa traditional authorities were able to exert greater control over the U'wa leaders and the campaign.

The second reason was that indigenous lawyers and leaders with legal expertise had important personal incentives to adopt and maintain law as an important part of the campaign. Leaders who are up and coming like Tegría became indispensable whenever they were able to convince their traditional authorities and other decision makers that law is an important part of their strategy. This can be observed in the responses that indigenous people gave me in the interviews whenever I suggested that law had stopped being a useful tool in these campaigns. They all contradicted me clarifying that law was still a very important tool. Moreover, one of them decided that he would allow me to interview him only if I allowed him to manifest his disagreement with my statement in writing on the margins of the statement of informed consent, which in fact he did.

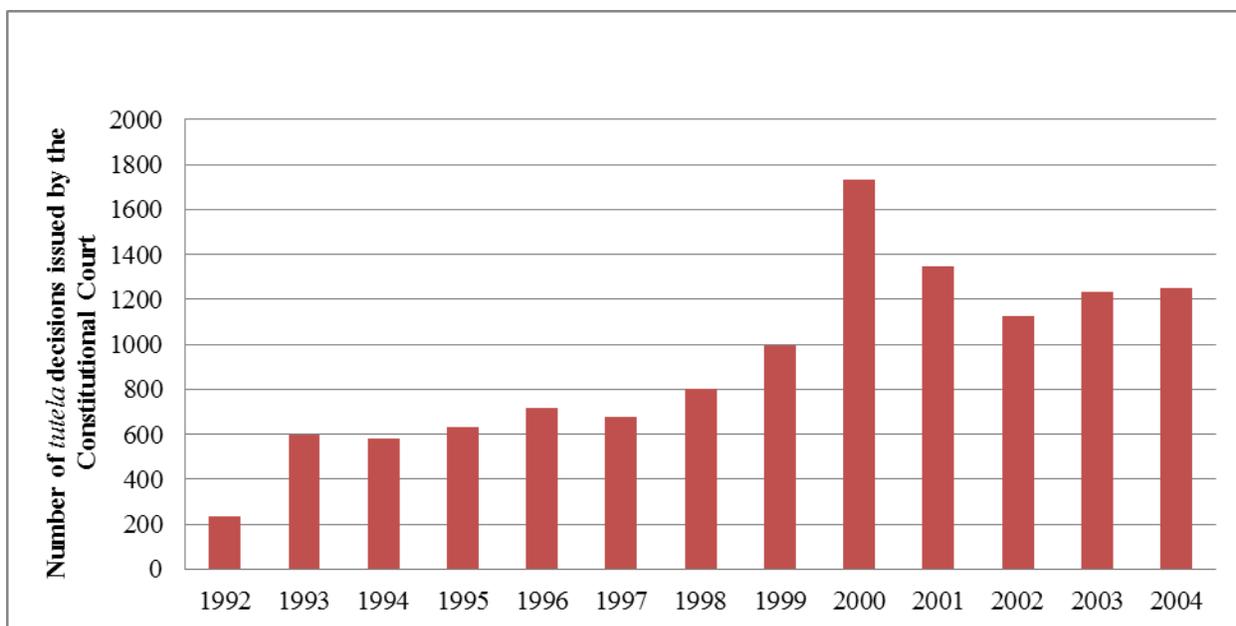
“Objective” Political Opportunities for Litigation: Constitutional Reforms and the Judicialization of Indigenous Politics

As it was briefly mentioned above, in 1990, a constituent assembly representing a broad array of social and political forces including indigenous groups and four recently demobilized guerrilla groups²² was elected to create a new constitution. The 1991 constitution established a generous

²² One of these demobilized guerrilla groups, the Movimiento Armado Quintín Lame (MAQL) was an indigenous guerrilla group that was created to protect indigenous leaders against the attacks of death squads hired by landlords of the department of Cauca in the 1970s. Later on, this group also sought to protect members of indigenous groups against leftist guerrilla groups, especially FARC, whenever they attempted to recruit its members from within the indigenous population.

catalogue of rights, including indigenous rights, created *tutela*, a writ for the protection of fundamental rights, and established a specialized constitutional court to review *tutela* decisions issued by lower courts. The newly appointed judges wanted to distinguish themselves from the formalistic, and apolitical legal tradition of the older high courts. In particular, they wanted to differentiate themselves from the Supreme Court and the Council of State, which they, and a great part of the Colombian elite, considered had rendered law and courts useless to face the kinds of problems that Colombian society was facing at the time.²³

As we can observe in figure 5.1, throughout the 1990s, the constitutional court started intervening more and more in Colombian social life. In particular, it became involved in issues that were considered to be the realm of the legislature and the executive to the extent that very few major political conflicts where the court did not intervene. In other words, due to the increasing activism of the constitutional court, Colombia started experiencing what has been called a “judicialization of politics”, which Tate and Vallinder (1995: 28) define as the “process by which courts and judges come to make or increasingly to dominate the making of public policies that had previously been made (or, it is widely believed, ought to be made) by other governmental agencies, especially legislatures and executives”

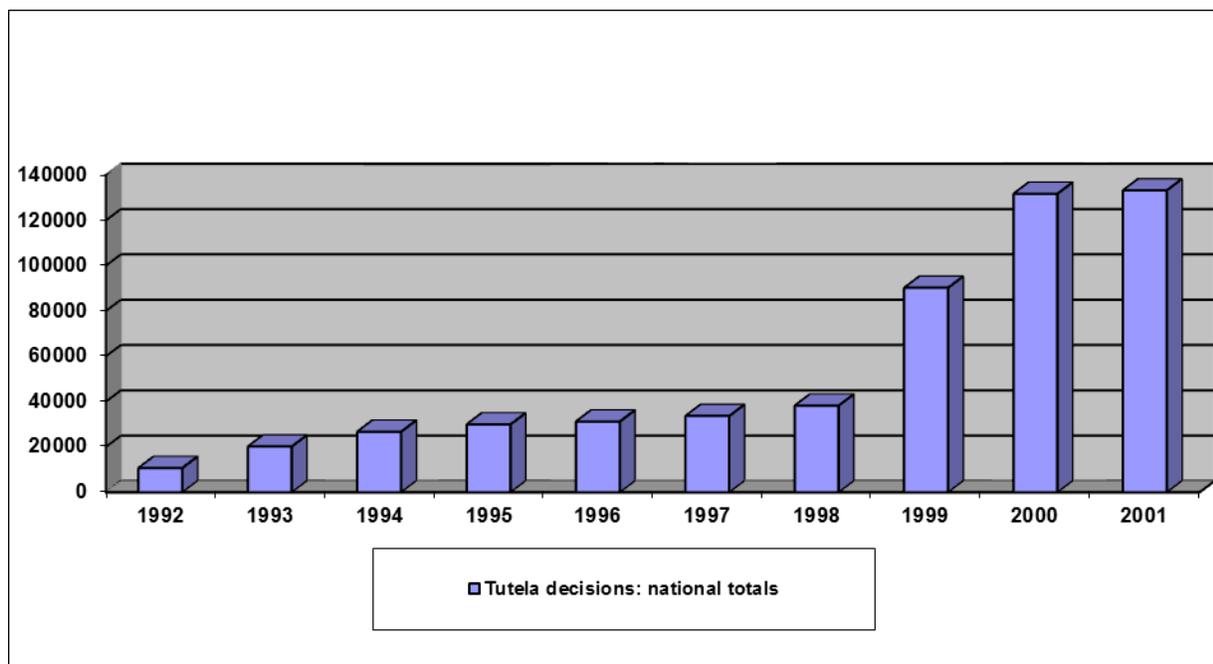


Graph 5.1 Tutela Decisions reviewed by the Constitutional Court

Due to the great importance that the mechanism of *tutela* acquired throughout the 1990s, judicialization in Colombia was strongly tied to the notion of human rights and rights discourses.

²³ The Colombian Supreme Court had held constitutional review of congressional statutes since 1863, but was stripped from its powers in 1991 because the members of the constituent assembly had considered that historically it had failed to comply with its role. In a similar way, the Council of State held constitutional and statutory review of administrative regulations since 1910. Although the assembly maintained most of its powers, it would be confronted continuously with the constitutional court.

This connection between rights discourses and the judicialization of politics becomes even clearer when one observes the total amount of *tutelas* filed nationwide during the 1990s and early 2000s, as it is shown in graph 5.2. Indeed, the rights' litigation explosion during that period is an indication that fundamental rights became a very popular discourse to channel social demands that were not being satisfied through majoritarian political institutions and processes. Thus, as it will be shown later on in this chapter, rights adjudication in *tutela* decisions was justified by the idea that law and courts, especially constitutional courts, exist to correct for the incapacity of democratically elected institutions to include discrete and insular minorities that are excluded from these majoritarian institutions that are part of the democratic process.



Graph 5.2 *Tutela* Decisions Nationwide

The Judicialization of Indigenous Politics in Colombia: Conflicts Involving Economic Development and Political Autonomy of Indigenous Groups

Indigenous politics were no exception to the general trend of greater judicial intervention, especially in issues related to land rights and the power of traditional authorities. In fact, given that indigenous groups represent such a small percentage of Colombia's population, and that they have been traditionally marginalized from national politics, they were the perfect subjects for the court's rights-based adjudication. Since its creation the court was faced with two major types of problems: conflicts between indigenous rights and economic development, and conflicts between

the indigenous self-governance and the individual rights and liberties of its members. In fact this was the most common type of problem involving indigenous people that the court confronted. The court resolved these conflicts systematically in favor of indigenous groups. In its first case, the court ordered the government to suspend the construction of a highway until it had consulted with indigenous authorities living in the areas that were going to be crossed by the highway. After this case, similar ones followed. In a second one the court ordered the government to suspend the construction of a U.S.-Colombian military base in the Amazon until the prior consultations were carried out with potentially affected indigenous groups. In its decisions the court opened the way so that indigenous people could start claiming protection to their lands. It established that collective indigenous land rights were fundamental under the constitution. Thus, indigenous land rights could be protected directly by judges through *tutela* writs, even when those rights were confronted against the general interest of the population in economic growth and development. Thus, the court has declared the unconstitutionality of the national budget law, the forestry law, the statute of agrarian development, and the mining code among others, because the government failed to consult the bills with indigenous groups before promulgating them into law.

A second type of conflict that the court became involved in was the clash between indigenous authorities and minorities within their groups. Particularly, the court decided various cases involving Christian indigenous individuals who defied indigenous the authorities and their beliefs arguing their right to exercise individual religious freedom. In such cases, besides siding with traditional authorities, the court affirmed the right of such authorities to use their traditional forms of punishment, like banishment, or whippings, and other forms of public shaming, even when according to Western standards they would constitute breaches of human rights. As it will be shown later on, in these cases the court also ruled systematically in favor of traditional authorities and reaffirmed the autonomy that they had to exclude and punish deviant practices and to determine what ideas and practices were part of their own culture.

In this context it seems perfectly reasonable that an indigenous group like the U'wa would resort to law and courts to prevent oil exploration in their land. In other words, the availability of a new and generous catalogue of rights, and a sympathetic court, constitutes a favorable political environment in which to mobilize the law.

Conclusions

In this chapter we were able to observe two elements that are of key importance to understand the changes of social movements. The first element refers to the relation between the way aggrieved parties frame a conflict and the scale of the social movement that supports them. The framing of a conflict entails understanding what is at stake. A conflict framed as a so-called NIMBY problem in which a local population does not want oil exploration in their land may not have the kind of international resonance that allows movement leaders to attract different groups and organizations around the world. In this case, it was the polyphonic value of the U'wa conflict which resonated with human rights, environmentalists, indigenous, religious, and other types of activists, and situated the campaign within the global justice movement in Seattle and other parts

of the world. Besides the presentation of the “stakes” in the conflict, another key aspect in the framing of a conflict is the way it portrays the identities of the parties to that conflict. In this case, the asymmetry between the parties and the portrayal of their values, interests and motivations also helped to define the position adopted by bystanders and to draw support for the campaign. This chapter as well as chapter 8, suggest that the transnational expansion of a movement depends on whether the conflict is framed in a way that is “cosmopolitan,” this is, whether it appeals to and touches upon shared elements in our human experience.

The second conclusion that this chapter suggests is that social movement leaders tend to seek organizations and networks that reinforce the perceptual mechanisms that lead them to resort to certain tactics. As we saw in this chapter and will see in the next one, some of the leaders of the movement during this initial stage considered only the favorable elements of the institutional background which presented law and litigation as providing the tools to resolve the conflict, but disregarded the larger structural and ideological context in which this institutional background operates. In this case, the leaders of the U’wa movement during its domestic phase relied heavily on lawyers and legal institutions and bureaucracies, and thus overestimated the opportunities of achieving their goals by resorting to the coercive dimension of the law.

This is a case in which even if political opportunities are objective, the professional de-formation or inclination of participants orients the course of action (Elster 1989: 20). In many circumstances, activists actually need to overestimate their chances of success and distort their opportunities if they wish to have success (Gamson and Meyer 1996: 285).

However, as we will see in the next chapter, this was not the case. The form of multiculturalism promoted by the Colombian legal system, and particularly by its constitutional court is an example of what Charles Hale (2002: 490, 2006) and others (Jackson 2006, Mitchell 2003, Park and Richards 2007) have called neoliberal multiculturalism. This is a form of multiculturalism that recognizes and even celebrates ethnic differences symbolically. However, it stops short of redistributing power. Instead, it constrains both the types of rights that are admissible and the forms of political action that are legitimate to attain them.

CHAPTER 7

NEOLIBERAL MULTICULTURALISM AND THE CLOSING OF OPPORTUNITIES FOR LITIGATION

Introduction

This chapter focuses on the U'wa domestic litigation campaign to illustrate how neoliberalism, the so-called new constitutionalism, and multiculturalism, adopted during the late 1980s and 1990s in Colombia and throughout the world, constrained the use of courts and litigation as social movement tools. I claim that, paradoxically, the new constitutionalism and multiculturalism reflect and help to naturalize neoliberal values and interests by adopting what I call a model of "procedural justice." In this model, courts shift away from substance (Tribe 1986) to focus on the regulation of procedures to give greater voice to indigenous minorities without redistributing power. In addition, in the model of procedural justice courts also attempt to resolve social conflicts by mediating the interests of the parties instead of ruling based on a structured model of justice. In doing so, they end up reinforcing existing power asymmetries in society, instead of resolving social conflict.

I also claim that the underlying ideas of autonomy and distrust of state intervention, which are present in both multiculturalism and neoliberalism, prevented courts from authoritatively creating norms to allocate value and distribute rewards and punishments in society according to a substantive model of justice. The accounts of most of the judges that I interviewed suggest that they feel that courts lack the authority to allocate value in society according to a substantive model of justice. Thus, they promote the direct, decentralized, and, unfettered interactions between extractive industries and indigenous groups intervening only to establish procedural safeguards to enhance the voice of indigenous minorities. Nevertheless, I suggest that this model of procedural justice adopted by courts has a consequence for the negotiations themselves. Since courts focus primarily on procedural aspects of these interactions but abstain from formulating norms that help to shape their outcomes, they leave the parties to negotiate without the "shadow of law."

The experience that the U'wa had with domestic litigation helps to illustrate the processes and mechanisms through which courts and other legal institutions embody, legitimize, and expand neoliberal ideas, values, and interests, which in combination with multiculturalism and the new constitutionalism, end up constraining the opportunity that indigenous people have to use law to prevent oil exploration in their land. A significant body of literature in anthropology and political science has addressed the relation between the rise of neoliberalism, identity politics and multiculturalism, and the adoption of legal reforms to strengthen the rule of law during the 1980s and 1990s. A key question in this literature regards the consequences of the simultaneous emergence of these intellectual trends in the political and cultural milieu of the 1980s and 1990s: have these reforms brought greater justice for the underprivileged (Mendez, O'Donnell, Pinheiro 1999, Santos 2004)? What are the effects that multiculturalism has brought for the access to

resources, wellbeing, and culture of indigenous people (Hale 2002, 2006, Comaroff and Comaroff 2010)?

In particular, these otherwise disparate bodies of literature help us understand an important empirical puzzle. They allow us to understand why, despite the global adoption of legal reforms that seek to strengthen the rule of law adopted during the 1980s and 1990s, law and litigation have lost a substantial part of their importance as a social movement tool in places like Colombia and other parts of the global south. However, these bodies of literature have an important shortcoming. Political science literature focuses on a macro-structural level of analysis. This focus does not allow this body of literature to identify and trace the specific mechanisms through which institutions embody and carry these ideologies. On the other hand, the anthropological literature, while tracing specific processes and mechanisms, deals mostly with discursive practices among majority groups (Hale 2006) or within ethnic groups, but ignores the role of legal institutions in legitimizing and diffusing neoliberal ideas and programs. This chapter seeks to fill this gap by tracing the history of litigation and bridging its failure with the ideas that constitutional court judges have with respect to their role in regulating the interactions between indigenous groups, the government, and companies that seek to extract resources from their lands.

The Paradox of Procedural Justice: Neoliberalism, New Constitutionalism, and Multiculturalism

Neoliberal Multiculturalism: Law under the Shadow of Bargaining

The previous chapters of this dissertation mentioned that in the late 1980s, around the time it was substantially expanding indigenous lands, Colombia initiated a series of economic and institutional reforms which include adopting a new constitution. Colombia was not alone. Similar packages of reforms were being adopted in the rest of the world at more or less the same time.²⁴ Economic reforms sought to liberalize, deregulate, and privatize domestic economies, opening them to trade and foreign capital, and restrict state intervention in the economy, limit and redirect state expenditures, among others (Williamson 1990). Legal reforms, in turn, sought to strengthen and expand the reach of the rule of law and create more efficient legal institutions. Finally, political reforms sought to foster greater accountability, efficiency, and participation in government. Many of the legal and political reforms throughout the world entailed major constitutional reforms or the adoption of new constitutions. Furthermore, the diffusion of a series of ideological and institutional arrangements, including the adoption or strengthening of systems of judicial review, helped to foster new models and understandings of law and constitutionalism, to the extent that some authors talk about a “new constitutionalism” (Elkin and Soltan 1993, Ginsburg 2003, Hirschl 2007, Stone 2000, 2003).

An element of these reforms which was present in Colombia and other parts of the world was “multicultural” reforms. These reforms sought to incorporate disenfranchised indigenous, afro-

²⁴ These reforms came to be known, respectively, as neoliberalism, the “rule of law project”, and the “third wave of democratization”.

descendant and rom populations or other ethnic minorities into social, political, and economic life. To do so, these countries created a series of measures to accommodate their institutions, policies and procedures to the existence of the ethnically differentiated collective identities of these groups. To a great extent –and this was certainly the case in the Andean region– multicultural reforms were adopted in the constitutions, fostering what has been called “multicultural constitutionalism” (Van Cott 2007).

The adoption of neoliberal reforms seems somewhat at odds with the strengthening of the rule of law and legal institutions. Strengthening the rule of law entails giving courts and legal institutions greater leeway to create general, abstract rules to allocate rewards and punishments in society. In principle, whenever courts and other legal institutions create more rules to allocate rewards and punishments social actors have less “freedom” to allocate them by themselves. This means that social interactions, and for that sake market interactions, become more rigid, and according to the neoliberal creed, also less efficient. Moreover, neoliberalism also seems to be at odds with multiculturalism because the allocation of value according to ethnicity would not be efficient from a market perspective.

Social scientists have sought to resolve the tension in the coetaneous adoption of constitutional and economic reforms. Some claim that strengthening the rule of law was necessary to protect property rights and enforce contracts, two elements which were necessary to secure the investments of transnational corporations, especially in the global south (Williamson 1990). Others claim that strengthening the rule of law and legal institutions was necessary to provide legitimacy to the authoritarian –even violent– form in which workers, peasants, and the middle class were being stripped from their rights with neoliberal reforms (Chalmers et al 1997). A third argument claims that legal institutions were considered necessary to create, expand, and “deepen” the markets themselves (Evans 1995, Fligstein and Stone 2002, Fligstein 2001). To put it in Polanyi’s (2001) terms, law and legal institutions were a necessary artifice to create the framework for and legitimize the commoditization of nature and human labor.

In a similar vein, a growing group of scholars has claimed that multicultural reforms are a part of the “cultural project” of neoliberalism. However, even within this group the mechanisms through which multicultural reforms contributes to the consolidation of neoliberalism vary. Some scholars claim that institutionalizing multiculturalism is a strategy used by elites to reward mainstream strands within ethnic groups, divide indigenous movements, and depoliticize indigenous populations (Hale 2002). In a slightly different fashion, others have said that multicultural reforms are a mechanism used by political authorities adopting neoliberal reforms to highlight ethnic differences, undermine and fragment class identities, and adopt anti-worker and anti-peasant reforms without major disruptions. Finally, others say that multicultural reforms are a tool used especially by elites within ethnic groups to commoditize and reify culture and reaffirm hierarchies within ethnic groups (Comaroff and Comaroff 2009).

All these explanations show two key features of the relation between neoliberalism and law. The first feature is that neoliberalism requires the rule of law to legitimize a certain mode of allocating resources. Secondly, they show that this need for more law comes from a crisis of legitimacy of the neoliberal state, and particularly, from the fact that neoliberal reforms have

reduced the capacity of the state and its political institutions to resolve social conflicts (Collier 2001, Gibson 1997, Levitsky 2003, Levitsky and Burgess 2003, Roberts 2004, Tanaka 2006, Weyland 1996). These explanations focus on the relation between neoliberalism and the rule of law at the macro-structural level of analysis. However, at that level of analysis, they cannot help us to trace the processes and mechanisms of interaction between law and neoliberalism. Moreover, the analyses of anthropologists like Hale and the Commaroffs do not take into account the mechanisms through which law and legal institutions legitimize and link multicultural and neoliberal discourses. Thus, none of these explanations consider the ways in which legal institutions embody the ideas and values of neoliberalism, new constitutionalism, and multiculturalism.

The inherent tensions in the parallel expansion of neoliberalism and the new constitutionalism can be observed in the global proliferation of private organs that carry out conflict resolution. Part of the adaptation of the state to economic globalization has meant the expansion of arbitration, mediation, and other mechanisms of alternative dispute resolution, which are carried out by private or semi-private organs, companies, or individuals. These private organs or bodies have two basic features that differentiate them from courts. The first one is that for the most part they do not adjudicate disputes according to preexisting substantive rules the way courts are supposed to, but instead seek to harmonize the conflicting interests of the parties. In the terms of Martin Shapiro (1981), they are closer to mediators than to courts in the “mediating continuum.” The second feature is that their decisions are usually secret, or at least private, in the sense that they do not carry any general normative consequences for future cases.

However, the two features that distinguish courts from these private bodies should not be overstated. First, as Yves Dezalay and Bryan Garth (1998) have noted, arbitration has become public and produced a new body of global law. A second and perhaps more important reason is that to a variable extent courts also mediate disputes. In contrast with idealized models that conceive courts as independent bodies that resolve disputes according to preexisting rules and arrive at dichotomous solutions, Martin Shapiro (1981) claimed that courts perform three basic functions: mediation, lawmaking, and social control. In his view courts do decide according to preexisting rules most of the time, which shows that they are not independent from the political regime that created those rules. Instead, courts serve as the instruments of those regimes because they expand their normative order throughout society. Nevertheless, courts also need to create new rules to resolve some cases, although they claim incessantly to be simply following preexisting rules. Moreover, courts also need to avoid being perceived as imposing their own preferences or favoring the winning party to the conflicts they resolve. Finally, courts are not chosen by the parties and in most jurisdictions in the world they are not elected by popular vote, and the rules they apply are not directly chosen by the parties either. Thus, courts are on a permanent crisis of legitimacy that leads them to mediate between the conflicting interests or values of the parties.

However, the success of mediation, both inside and outside the courtroom depends on the existence of a substantive body of law that shapes expectations and negotiations of the parties. A seminal piece that addresses the way law shapes negotiations is the article that Robert Mnookin and Lewis Kornhauser wrote in 1979 about divorce negotiations. In it they claimed that the

lawyers of the divorcing parties “bargain under the shadow of law.” This means that the law shapes the behavior of the parties in and the outcomes of, direct (dyadic) negotiations about their distribution of rights and duties after the dissolution of their marriage. The analysis of Mnookin and Kornhauser relies on the assumption that courts and other legal institutions are creating rules that govern the substance of the negotiations between divorce lawyers, and deciding cases according to those rules. As a longstanding literature in anthropology and political science has shown, law can only project itself into mediation and negotiation if parties can credibly threaten their counterparts with adverse or costly outcomes of litigation (Nader 1978, 1979, 1991, Shapiro 1981). In other words, bargaining under the shadow of law necessitates the existence of two elements: 1) courts or legal institutions that adjudicate conflicts, and 2) substantive rules that shape the outcomes of such conflicts.

Moreover, Mnookin and Kornhauser studied relations between spouses where (all things being equal) there are no salient power asymmetries. More recent studies have shown that their conclusion does not apply to negotiations where there are significant power asymmetries (Bibas 2004, Stuntz 2004). In such situations the law vanishes or disappears and it does not project a “shadow” with the potential of minimizing existing power asymmetries between the parties to the negotiation. Thus, the law is less useful as a way to balance social inequalities, or to put it in Gramscian terms, as a “counterhegemonic” tool in negotiations between parties where there are significant power asymmetries.

In this section I will show how neoliberalism does not only privatize justice in the sense that it assigns the functions of courts to private bodies, but also in that it actually changes the extent to which courts engage in lawmaking and mediation. The synergy between neoliberalism, multiculturalism and the new constitutionalism adopted in Colombia fostered a legal ideology of “procedural justice” and “interest harmonization” which turns Mnookin and Kornhauser on their heads. Instead of casting the shadow of the law, courts legitimize and promote bargaining as a way to resolve conflicts between disempowered and powerful parties, but leaving the former without the “shadow of law” as a negotiation tool.

The synergy of neoliberalism, new constitutionalism, and multiculturalism, diminished the possibilities of using law for counterhegemonic purposes. In fact, it forced subaltern groups –in this case indigenous and rural afro-descendant populations – to negotiate resource extraction from their lands with extractive companies directly. In the resulting model of justice which I call procedural justice, instead of distributing rewards and punishments according to a substantive model of justice, courts understand their role in terms of adopting procedural guarantees to correct the flaws of the democratic process and give voice –but no vote – to minorities. As the case of the U’wa illustrates, indigenous people and afro-descendants who seek to preserve their culture and prevent resource extraction in their land end up litigating under the shadow of a bargain.

Litigation under the Shadow of a Bargain: the Incursion of the U'wa in the Domestic Legal Process

In the previous chapter we saw that the ombudsman had filed two law suits, one of which sought an injunction to prevent oil exploration from U'wa land. Shortly after the ombudsman filed the *tutela* lawsuit on behalf of the U'wa, the first instance *tutela* judge (the court of appeals of Bogota) granted the injunction ordering the ministry of the environment to suspend its license and consult the U'wa properly. It also ordered Oxy to suspend its exploration activities until such consultation had concluded. Oxy and the ministry appealed and the case went to the Supreme Court, which overturned the decision allowing Oxy to resume exploration. However, the Supreme Court did not have the final decision with respect to the *tutela* writ. Despite its name, in Colombia the Supreme Court is really a court of cassation, not the highest court in constitutional matters. Thus, as far as obtaining injunctive relief through *tutela*, the U'wa still had a chance if the Constitutional Court decided to review their case.

The following year, on February 3rd, 1997, the Constitutional Court granted the protection to the rights to life, cultural diversity, and due process on the *tutela* writ filed by the ombudsman on behalf of the U'wa. However, the court did not identify the content of such rights or attempt to establish whether or not oil exploration actually placed the cultural integrity of the U'wa at any risk. As a result, it did not prohibit oil exploration in U'wa land, nor did it establish substantive limits that the government should follow to protect the life and cultural identity of the U'wa from the effects of oil exploration. Instead, the court attempted to balance the interest of the government in allegedly promoting economic development through oil investment, with interest of the U'wa in preserving their own culture by creating certain safeguards to guarantee an adequate level of indigenous participation in the prior consultation procedure. Thus, the court claimed that indigenous people had a constitutional "right to prior consultation", which could be inferred from the constitution even though it not explicit in its text. However, it decided to establish the content and limits of such right based on the text of the 169 ILO Convention. Thus, based on the language of the treaty the court argued that the right to consultation did not mean that indigenous people had to give their consent to resource extraction for the government to carry it out. In other words, indigenous people did not have a veto power over resource extraction in their land.

The only rules that the court created were directed toward regulating the procedure of consultation. Indigenous and afro-descendant peoples needed to have enough information about the project, they had a chance to participate amply in the procedure, and that they were represented by their traditional authorities. Finally, it ordered the Ministry of the Environment to begin a consultation within the next 30 days, even though this type of direct engagement with Oxy was precisely what the U'wa wanted to avoid.

From the court's decision we can extract two basic conclusions. The first one is that the court refused to create a rule to resolve the outcomes of future conflicts between the state's interests in resource extraction and the interest in protecting the culture and way of life of indigenous people. Instead it ordered the parties to carry out a prior consultation; this is, to negotiate the terms of

resource extraction. In other words, resource extraction in indigenous lands was never subject to any form of restriction to determine when, how, and much less if, it was possible.

Moreover, by interpreting the newly created constitutional right to prior consultation in terms of the text of 169 ILO Convention and explicitly stating that prior consultation does not entail a veto power, the court deprived indigenous groups from using their bargaining power in the negotiations with extractive industries. Thus, the court sought to enable the parties to “harmonize” their interests by themselves, without: a) providing them with a substantive rule to negotiate when, how, or if extraction is possible, and b) enabling the weak party to decide by themselves when, how, or if, they wanted third parties to extract resources from their land.

The second element that we can infer from the decision is that the court focuses exclusively on regulating the procedure of interaction between these two parties. The court establishes a series of procedural guarantees that enable the parties to have all the information they need about the project, enough time and opportunities to express their opinions and eventually their objections to it, and makes sure that the people who represent the indigenous groups in the consultations are in effect their leaders. The court then somehow assumes that these guarantees adequately protect the life and cultural integrity of indigenous or afro-descendant groups. In other words, the court believes that by limiting the scope of its intervention to the process of the consultation it will also be able to control the outcomes.

Justice as the Creation of Procedural Guarantees to Enhance Indigenous Democratic Participation

At first glance, the decision adopted by the court seems somewhat contradictory and flawed, yet it is perfectly consistent within the model of justice adopted by the court in these cases. This model, which I will call a *procedural model* of justice, is rooted in a notion about the appropriate role of constitutional judges in a democracy which is pretty widespread throughout the world. In this model of justice social conflict can be resolved in purely procedural terms by enhancing the voice of marginalized social groups. However, despite enhancing the voice of minorities, judges should abstain from interfering in the outcomes of social interactions. According to the model judges should facilitate the allocation of values through direct, “free” interactions between the parties, instead of allocating values authoritatively from the bench. Thus, the role of judges in the procedural model of justice is not to allocate values and distribute rewards and punishments in a society according to a *substantive* model of justice, but to correct the shortcomings of the democratic *process*. As a consequence, in the procedural model of justice the role of constitutional courts is limited to the protection of “insular and discrete” minorities, to put it in John H. Ely’s terms. As one of the judges of the constitutional court that I interviewed put it:

“Constitutional actions have a very specific purpose, which is to defend minorities. Minorities, as such, have very little political representation and the way through which they acquire voice, the way in which they are represented is through these constitutional actions, through constitutional judges. These are the mechanisms, the means through which they can voice their interests and request their protection.”

A liberal theme underlies the notion that judges should limit themselves to correcting the insufficiencies of majoritarian politics in a democracy: the distrust of state organs imposing their own substantive understandings of justice to the population. To be sure, this model does privilege certain minorities, but it does not privilege them because the constitution attributes an inherent value to some substantive aspect of the culture of those minorities in particular. Rather, the purpose of providing them with special protections is to give them political agency in order to enable them to participate in the democratic process. One of the judges explained the purpose of multiculturalism in the following way:

The Constitution starts by recognizing these groups a special protection as minorities that are in a condition of subordination with respect to the majority. We can say that special mechanisms (of judicial protection) start from recognizing their status as minorities in order to give them a series of privileges, or what we could call, invoking the principle of material equality, affirmative actions; a series of elements that allow them to survive, maintain their customs, and be able to claim the full realization of their rights from the state.

Thus, multiculturalism is not based on the idea that there are people with different cultures living in the same territory and the state can benefit from the exchanges and cross-pollination resulting from this cultural diversity. Instead, the model is based on the idea that there are certain groups that have been and still are marginalized by the country's hegemonic culture. The state is neutral with respect to the value of such cultures. Its role is to allow these marginalized groups to participate in the democratic process. However, since such groups are minorities, the courts need to intervene to enhance their voice. In fact, the perception that judges have of their own role within the democratic process is one of the reasons why the constitutional court became so involved in conflicts involving ethnic minorities, particularly indigenous groups and communities of rural afro-descendants. When I asked another judge about how he understood the role of the constitutional judge in a multicultural state, he said:

Judges should be the guarantors of the multicultural state. Now, being a guarantor means understanding that in the balance, until indigenous people acquire a stronger position (in society), the constitutional judge should compensate their shortcomings to some extent. (The court) should compensate the shortcomings (of the political system) to potentiate them into the future as a more autonomous actor, stronger, capable of confronting more powerful groups on equal standing.

In sum, then, the judges of the Colombian constitutional court conceive of the role of multiculturalism in general and prior consultations in particular in terms of a larger model of constitutional adjudication as procedural justice that seeks to enhance the voice of minorities (ethnic minorities being just one of them). However, as it is evident in the previous excerpt, the protection that the court gives to minorities is clearly temporary. The temporary character of the protection referred to in the excerpt suggests that the court should not empower minorities because the constitution recognizes that their cultures are valuable to society. The type of recognition of ethnically differentiated identities in this model of justice is devoid of value

judgment. Thus, the court is agnostic as to the potential contribution of indigenous cultures; its role is simply to enable them as well as any other type of minority to participate in the democratic process and claim their rights from the state.

The emptiness or neutrality of this form of multicultural recognition with respect to the cultures it recognizes has its roots in a liberal distrust with the imposition of substantive models of justice by the state. This tendency has led some legal scholars like Cass Sunstein (2001) to advocate for judicial minimalism, especially since such models are imposed by judges that do not represent the population and are not democratically elected. In substantive models of justice, courts are supposed to define the outcomes of social interactions authoritatively, allocating values in society and distributing rewards and punishments among people and groups accordingly. In contrast, in a procedural model like the one adopted by the Colombian court, judges become involved in what Laurence Tribe (1985) has negatively called a “futile search for their own legitimacy” within the context of a democratic, and in the case of Colombia, also a multicultural state. Moreover, courts also engage in what Tribe has also called the “pointless flight from substance”, this is, the belief according to which courts are not supposed to choose between substantive values or interests in conflict from the bench. Substantive values and interests should be discussed, debated, and negotiated through the different procedures of democratic participation established in the constitution. The role of courts in a procedural model of justice is to facilitate –or as we will see later on, even to force – the participation of minorities in this process.

Moreover, the fact that courts are not supposed to intervene over the substance of social conflicts but establish the procedural conditions for “free” exchanges between social actors has ideological and pragmatic affinities with neoliberalism. The lack of substantive intervention by the courts reduces the impact of noise and other exogenous elements that may diminish the efficiency of exchanges between multinationals, the government, and indigenous people. In other words, the parties are allegedly subject to a private form of ordering without having to “bargain under the shadow of law”. Additionally, in the procedural model courts are supposed to ensure that the parties have adequate representation, opportunity of participation, and access to information. All these procedural guarantees contribute to minimize transaction costs. However, as we will also see in this chapter, the practical implementation of a neoliberalism relies strongly on state law and its rhetoric both to enforce and legitimize the changes in the economic and political order.

The Harmonization of Interests: How Constitutional Judges become Mediators

In this section I will claim that neoliberalism, the new constitutionalism, and multiculturalism helped to shape the model of procedural justice adopted by the Colombian constitutional court to resolve conflicts between development and cultural identity. This model accentuated the role of judges as mediators while reducing their role as lawmakers to interventions over procedure. The synergies between these ideologies helped to bring about this model of justice by shaping the self-perception that judges had of their own role. In particular, these ideologies emphasized two key aspects. First, in combination they stress the lack of legitimacy of regulating the outcomes of conflicts between development and cultural identity. Secondly, these three ideologies stimulate

mediation because they share the view that the appropriate role of law and legal institutions is to facilitate the coordination of interests and values rather than to create a more just society.

The constitutional court as well as other high courts in Colombia, have attempted correcting the shortcomings of the democratic process by adopting two related techniques of judicial interpretation. The first technique is softening legal rules to allow the *harmonization* of the interests and values involved in social conflict. The second technique is focusing on a *procedural regulation* that establishes guarantees over the process but does not attempt to alter the outcomes of social interactions, allowing the parties to distribute rewards and punishments in society directly.

Harmonization is originally a German jurisprudential strategy or a mode of decision making that has become common with the spread of the new constitutionalism around the world (Stone 2000, Hirschl 2004). In some countries this strategy is called proportionality analysis. In others like the United States, it is referred to as a balancing test. This is a strategy to resolve conflicts between rights, interests, or values. It conceives law not as a set of rules with a more or less well defined set of factual hypotheses and a normative predicate (or outcome), but as “maxims of optimization.” In other words, the purpose of the technique is to mediate sacrificing as little as possible of the clashing values, interests, or rights. The need to harmonize or balance whatever values or interests are in tension has been adopted by Colombian judges as a methodological principle. As a constitutional court judge said referring to the task of judges:

I believe this: the most comprehensive and interesting corollary that you can derive from the constitution is the challenge that the judge has to resolve problems that nobody else can; for example, those regarding the hierarchy between rights, right? None other than a judge can evaluate, in case of conflict between two rights, which one must prevail. Well I believe that you cannot establish any a priori rules about whether a collective right should prevail over an individual right of the traditional ones.

Another judge told me, referring to conflicts between economic development and the rights of indigenous peoples, about the importance of harmonization as a judicial method of conflict resolution:

“The collective interests of indigenous peoples tend to clash with the general interest in economic development. And it is there, I insist, that constitutional suits have been very helpful, because they (those suits) seek to strike a balance, a harmonization, or in the end, a defense of those interests.”

When courts attempt to harmonize the interests of the parties from the bench, as well as when they allow parties to negotiate their interests directly, they must avoid creating hard, general legal rules or establishing priorities or hierarchies of values that can constrain their decisions or the negotiations of parties in the future. Of course, judges know that harmonization is an ideal, and preserving the parties’ interests is not always possible. However, all the judges that I interviewed (10/10) felt that they had the duty to preserve all such interests as much as possible. This need to harmonize interests has two consequences for the way courts carry out their role.

The first consequence is that courts then soften legal rules to allow the harmonization of the interests and values of social actors in conflict, either by reducing or blurring their scope of application, or by softening the consequences of legal rules. Thus, judges understand their role as a conciliation or mediation between conflicting interests rather than as that of creating rules. As one judge said to me when he referred to the possibility of harmonizing the rights of indigenous people with the interest in economic development, whenever there was clash between them:

“I believe as a matter of principle – I am under the conviction that conciliation is possible, that there are creative ways of constructing conciliation formulas in cases of collision. I do believe that.”

The softening of legal rules entails that courts do not assert a hierarchy between conflicting values or interests according to their understanding of what is a fair or just society. Moreover, they tend not to commit themselves to establish such hierarchies in specific factual contexts. Instead, what they seek is a way to maximize all of them regardless of the content of those values or interests. Thus, courts should either try to achieve social order by attempting to “harmonize” the parties’ interests sacrificing as little as possible of each one, or by allowing the parties themselves to allocate value and distribute rewards and punishments. One of the judges of the constitutional court framed the way he perceived his role in the following terms:

Well, what the constitution and Convention 169 have established is that what is at stake here is (a clash between) the right of indigenous peoples to their own identity, the right to be respected in their traditions, and economic interests. In particular I am referring to the right to extract natural resources. In my view, we should try to harmonize these two. That is why Convention 169 talks about arriving at settlements with indigenous peoples. Although those settlements cannot be arrived to at the price of disavowing those constitutional values, we just mentioned. Rather, the settlements should advance those values, or at least try to prevent their detriment, and if those values need to be sacrificed to some extent, settlements should seek to sacrifice them minimally.

In the end, the emphasis on harmonization, whether it is called proportionality analysis, or balancing, means that the lawmaking function of courts becomes less salient. In contrast, this emphasis indicates an expansion of the role that courts normally perform as mediators. To be sure, this does not mean that harmonization, proportionality analysis or balancing tests are not used to create substantive legal rules. Courts can use these techniques aggressively to create legal rules. However, such techniques tend to limit two elements of legal rules. First, they can limit the set of circumstances to which the rule is applicable, leading to a less general and more case-by-case application of the rule. Secondly, these techniques can mellow down the legal effects of those rules in order to sacrifice as little as possible those values or interests that are in conflict with the rule. Thus, because of the appearance of these techniques courts tend to behave more like mediators and to formulate less stringent legal rules in terms of the scope of application and consequences.

If courts resort to mediation as a way to resolve their permanent crisis of legitimacy, as Martin Shapiro (1981) has claimed, then the greater salience given to mediation at the expense of rule-

making in neoliberalism combined with the tendency to judicialize politics in Colombia and elsewhere suggests that courts are attempting to resolve a problem of legitimacy which may go way beyond the courts themselves. In fact, given the neutrality of the judicial approach to multiculturalism, this change in the role of courts may reflect the value-free style of market exchanges of neoliberalism. This conclusion would be consistent with the claim made by the Jean and John Comaroff (2009) that multiculturalism as an ideology is part of the cultural project of neoliberalism. However, as we will see in the following section, the emphasis on procedure as a way of giving greater voice (but no decision making capacity) to minorities also reflects the crisis of legitimacy of the state and the resulting reduction in its capacity for solving social conflicts after the adoption of neoliberalism.

Achieving Legitimacy by Regulating Procedures and Enhancing Participation

The second technique that courts adopt to correct the failures of the democratic process with respect to minorities is to protect them by establishing *procedural* guarantees, but allowing the parties to distribute rewards and punishments in society through their direct (dyadic) interactions. In this sense, there is a significant affinity between the procedural model of justice and the ideological tenets and pragmatic project of neoliberalism. In the procedural model of justice the rule-making activity of courts focuses almost exclusively on establishing procedural guarantees that allow a more “efficient” allocation of value through the direct interaction of the parties, instead of distributing rewards and punishments in society directly according to some substantive model of justice. This is why in the case of the U’wa the court established that indigenous people in prior consultations should have all the necessary information, time to process it and ample opportunities of participating in the process.

Moreover, judicial regulation over the procedure of prior consultations shows how the neoliberal state enhances indigenous participation in the process to legitimize the commoditization of nature. The strategy of enhancing the opportunities for participation to legitimize the outcomes of a process is a widespread practice, particularly in the regulation of administrative procedure. During the expansion of neoliberalism in the United States, Europe, and elsewhere, courts have sought to regulate the administrative process to enhance citizen participation. To be sure, like in Colombia, the administration in the U.S. and Europe was under no obligation to adopt the opinions of the citizenry in the administrative rules that it created. However, by enhancing the opportunity that citizens have of participating in decisions that affect them, the courts are intentionally or unintentionally legitimizing the decisions of technocrats (Shapiro 1988, 2002). Thus, ultimately, courts end up deferring judgment over the substance of the decisions to the administration, and the focus of judicial review becomes the procedure through which these decisions were adopted.

Political theorists that advocate for deliberative democracy like Habermas (1998) and some social scientists have given support to the belief according to which participation in a decision making process legitimizes its outcomes. In his study of misdemeanors in Chicago Tom Tyler (2006) claimed that people believe that the outcomes of the legal process were perceived as being more just whenever his interviewees had the chance to participate and be heard in the process, even if ultimately they were declared guilty. Thus, judicial enhancement of people’s

participation in the state's decision making processes serves to legitimize state intervention in different aspects of the private sphere, regardless of whether such participation actually helps to shape the decisions that have been adopted.

In its own way, multiculturalism has also helped to propagate this notion. Multiculturalism, which in Latin America was adopted against the backdrop of Spanish paternalism, also helped to give greater salience to the idea that to re-legitimize the state indigenous people should be given more participation in decision making processes. Although the law that regulated indigenous affairs, Law 89 of 1890, which was alluded to in chapter 3 of this dissertation, helped indigenous peoples to recover their *resguardos*, it also limited their participation in decision making processes by classifying them as civilized and savages, and giving the latter category the same legal treatment that minors have under civil law. In fact, this classification was the reason why CRIC, the indigenous organization of the department of Cauca, initially sought to reform this law. CRIC reacted against this paternalist model, and promoted multicultural reforms during the 1980s and 1990s, which actively sought to treat indigenous individuals as agents with full legal and political capabilities.

However, perhaps the most significant development to multicultural reforms in this respect is that the courts and governmental agencies also started treating indigenous groups as collective agents and granting them a great political significance in decision making processes. Thus, instead of considering indigenous groups as minors in need of protection, the court recognized them as agents capable of elucidating what is in their best interest, and conducting their own negotiations. The court, then, would only guarantee that indigenous people had enough information, that they had ample time to deliberate among themselves, participate in the process, and that they were represented by their traditional authorities. Thus, as a tenet of multiculturalism judges somehow assume that indigenous groups have the knowledge to understand and use the information given to them, assess the potential consequences of an oil or resource extraction project that has not been carried out, and have the internal cohesion as a group to act as a collective autonomous subject based on this assessment. In other words, the court situates indigenous people in the position of having to evaluate the environmental, social, cultural, economic and political consequences of an oil exploration or extraction project that is likely to last between twenty or thirty years, before it is even carried out.

The role played by multiculturalism in legitimizing the court's procedural approach could be observed in the responses given by the judges of the constitutional court in the interviews I conducted. I asked all the constitutional court judges whether they believed that the court should grant protection when there was no procedural fault in consultation procedures but they as judges observed that nevertheless the extractive project entailed a risk for the group's cultural integrity. Again, all but one of my interviewees (9/10) answered negatively. For some of them, procedural protections were enough, and establishing substantive protections over the outcomes of prior consultations would be paternalistic. One of the judges that represents the majority view put his position in the following terms:

I believe that if indigenous people have been informed and they have full knowledge of the harmful effects that the project is going to cause them, and nevertheless they accept it, they

consent to the carrying out of the project; well that is a perfectly respectable decision. I believe that if we start from the premise that indigenous people know about the consequences that follow from the carrying out of the project, then we have to consider them as being legally capable of deciding. It would be, according to my judgment, an uncalled for paternalism if a judge were to impose his own criterion to the consent expressed by the indigenous community.

However, the synergy between the court's procedural model of justice and multiculturalism goes beyond the rejection of paternalism in the Latin American context. Interestingly, other judges arrived at the same result, but they did not arrive to that result from the standpoint of paternalism. In other words, they did not believe that the question was whether or not indigenous groups had the capacity to understand the consequences of a project and act accordingly, but who had the authority and knowledge to represent the cultural identity of the indigenous group. They claimed that the court should abstain from interfering with the outcome of a prior consultation because it was the traditional authorities, which represented the indigenous group in the prior consultations, who were best situated to establish the content of the group's culture, and thus, what was best for its integrity. One of them said:

“The court tends to –I believe it would protect the position of the (traditional) authority, not because it is an authority, but rather, because it is the way the indigenous group itself has chosen to express its own identity autonomously.”

Once again here we see the extent to which the court's approach to multiculturalism affirms its own agnosticism with respect to indigenous culture and defers to the group's allegedly traditional authorities. In this respect, one can agree with Jean and John Comaroff (2009) in their analysis of how the growing political salience of ethnicity since the 1980s has tended to reassert intra-group hierarchies. Given that the expansion of extractive industries both in this stage of neoliberalism as well as during colonial times requires strong governance mechanisms that enable companies to have interlocutors that are not only able to negotiate with them the conditions of extraction, but to enforce those conditions inside the group. One could suggest that in this way, too, the strengthening of traditional authorities (as opposed to national indigenous organizations, for example) documented in previous chapters of this dissertation and alluded to here, is a key element of multiculturalism that is functional to the interests of extractive companies and the government.

The answers of the judges show the extent to which multiculturalism, and more generally the value given to autonomy from state intervention help to remove judgment from the substance of the conflict and into the procedure. In fact it shows how in Colombia, judges tend not to establish substantive limits on the interaction between the parties in a participation mechanism such as prior consultations. Instead, they have adopted Tom Tyler's notion with respect to the legitimizing function of procedure and participation. Moreover, most judges believe that procedure and substance are so closely related that the cultural integrity of indigenous groups can

be protected by way of a well-designed and carried out procedure of consultation. A judge from the constitutional court expressed the relation between procedure and outcomes directly:

I believe that if the prior consultations are carried out in a serious manner, then the outcome of the consultation is going to be a legitimate one; it is going to be acceptable.

Another judge affirmed that those rules gave legitimacy to the procedures and that the scope of procedural rules imposed by the court extended beyond the procedure proper. In other words, in their view the court seeks to affect the substance by tinkering with the procedure:

I believe that those procedural measures (adopted by the court) give legitimacy, and they help the parties to find creative solutions. So in that sense, it is not just procedural, it can have an important effect over the substance because you can construct a solution that in concrete cases helps to harmonize through the prior consultation carried out seriously.

As we can observe from the past excerpt, judges assume that regulating the procedure through which indigenous groups engage in “democratic participation” and the “harmonization” of their interests will provide the two basic institutional conditions necessary to assure cooperation. Cooperation between oil companies and the government on the one hand, and indigenous groups on the other, however, is not easy to attain. There are substantial power asymmetries between these parties, and thus, the oil or mining companies and the government lack incentives to cooperate with indigenous people when they can simply impose their will on them. However, judges seem to be more concerned with the abstract possibility of sacrificing economic development and oil extraction, and are constantly seeking to harmonize development with indigenous rights. Mentioning the case of the U’wa, one of the judges said to me:

The way to harmonize those two interests has been to establish procedural safeguards, not so much substantive ones. In the case of the U’wa, for example, the court set a series of procedural safeguards. The court never said: ‘you can never extract oil’, the court never said that. Instead, the court established if it was possible, then where it was, and how it was possible. Procedure and participation: the harmonization has been carried out through participatory procedures; that’s it.

And then he added:

If there is a way of harmonizing the interest in achieving economic development with the preservation of cultural identity, the court searches for it, and it does so by affecting the procedure; for better or for worse, but that is what it does.

This does not mean that judges are biased in favor of the interests of corporations, or that they are unaware that there are substantial asymmetries of power between the parties. In fact, judges believe that prior consultations are beneficial to indigenous peoples. As one of them said to me

that consultations were the ideal mechanism of participation to protect the interests of indigenous people. He said:

“Consultation procedures are a mechanism – and I would believe that they are the fastest and most viable [mechanism] within the participation mechanisms to obtain benefits in favor of indigenous communities’ interests.”

Moreover, judges are also quite aware that there are significant asymmetries between indigenous groups and oil companies, and if something, they are more inclined to favor indigenous people. However, they believe that these inequalities are mostly in their knowledge of technical issues regarding the project. Thus, inequalities are minimized when indigenous people have advisers. One of these judges said to me referring to the lack of advisers:

The inequality of indigenous people is evident, for example, when they tell them that they are going to carry out a consultation for mining in their land. When indigenous people lack advisers multinational corporations can lie to indigenous people because the corporation has all the technical information about the objectives that it seeks, and why it wants to invest in a certain area.

However, they believe that courts are able to balance this inequality by intervening over the procedure and providing them with technical knowledge about the causes, the process, and the possible consequences of the extractive project being discussed. When I asked him about how to solve the problem of the asymmetry between the companies and the indigenous groups, this same judge said:

First, the court should put them (indigenous people) in equal standing (with the companies). And equality cannot just be understood in formal terms; it must be real, so indigenous people should have advisers that prevent them from being deceived. ... So if the parties are going to negotiate through prior consultations, it must be on the basis of equality; equality that must be established in terms of their technical capacity, equality of information.”

As it can be observed from the excerpts, judges believe that the court should let indigenous people interact directly with the oil or mining companies, with the technical help of their advisers. However, the court does not establish what outcomes of such interactions are unconstitutional. As a consequence, the allocation of value in direct negotiations between indigenous groups and the government and corporations is not done under the shadow of law anymore. There is no shared normative understanding with regards to when a given project is acceptable and when it is not. In sum, the shadow of law has vanished.

The lack of rules to gain leverage is not the only problem that indigenous people confront in their negotiations with the government and the companies that seek to extract resources from their land. As it was already mentioned, according to the court indigenous people need to be informed

about the impacts that resource extraction may have, and they must have ample opportunity to deliberate among themselves, and with the other parties involved in the prior consultation. Moreover, they must also be represented by their traditional authorities. However, the court constructed the “fundamental” constitutional right of indigenous people to a prior consultation based on the text of the ILO 169 Convention, which says that such consultations must be carried out with the objective –yet not the result – of arriving at an agreement.

Thus, once the government has authorized exploration or extraction of the resources in their land, the companies are entitled to extract them, regardless of what the indigenous group has said. The entitlement that ILO 169 gives to the government and the companies is currently used as a weapon both by the government and by the oil companies during consultation procedures with indigenous people. During the prior consultation meeting held between the U’wa, Oxy, and the Colombian government on January 10, 1995, representatives various governmental institutions, as well as Oxy emphasized that regardless of the opinions of the U’wa the project would be carried out. Thus, when the U’wa started raising objections because they had not read the environmental management plan devised by the company, every single governmental institution present in the meeting as well as the representative of Oxy said that the government had already taken decided that they would explore oil in their land. Even the director of indigenous affairs said that the purpose of prior consultation was not to ask permission to indigenous people but to obtain an appreciation about the possible effects of the project and the measures that should be adopted to prevent, mitigate, and compensate them.

Thus, despite all the lore about harmonization and balance, the negotiations between indigenous people and these companies are nothing like a private contract. In fact, these negotiations do not even allow a private ordering in which the different stakeholders are able to allocate value. Instead, prior consultations are a mechanism through which extractive industries and governments in the countries that have ratified ILO Convention 169 use the language of law, rights, and participation to legitimize plunder, as Mattei and Nader (2007) have said.

Forced Participation

Shortly after the Constitutional Court issued its decision, the Council of State, which had received the second lawsuit from the ombudsman, issued theirs. In it they said that the U’wa had been adequately consulted and that Oxy could resume operations in Samoré anytime. By then, however, the U’wa already had ample domestic and international support and thus the government was cautious in its approach. Thus, from then onward the government constantly called the U’wa to meet for prior consultations. By then the U’wa had already learned the importance of procedures and forms, and had learned how to use the procedural requirements to their own advantage. They knew that Oxy could not start explorations without conducting a prior consultation. Therefore, they prolonged, and delayed the meetings, at times accepting to enter into consultation procedures, at times pulling out of consultations, until finally they decided they would not enter into consultation procedures. After observing the way in which the U’wa were using the procedure to delay oil extraction, the government resorted once more to the law. It asked for an advisory opinion to the Council of State asking whether the government could start exploration when indigenous groups decided not to attend the prior consultations. The Council

answered that it depended on the reasonableness of the decision of the indigenous group not to attend the consultation. However, the government also said that the analysis of the reasonableness depended on the government's judgment.

In other words, the courts were forcing indigenous people to be part of the consultation procedures or risk allowing the government to enter without having the opportunity even to manifest their opinions. Precisely because the purpose of the procedural model of justice is to attain greater political participation, indigenous people like the U'wa cannot abstain from participating. Legitimizing the decision not to participate would defeat the whole purpose of giving minorities a greater voice. Thus, deciding not to participate in prior consultations about resource extraction is not a conduct that judges believed should be protected by the fundamental right to prior consultations.

However, indigenous people in Colombia are increasingly deciding not to go to the prior consultations, and judges understand this situation in purely procedural terms. In the interviews that I carried out when I asked the judges and former judges of the constitutional court about their thoughts with respect to the causes of this phenomenon, all but one (9/10) attributed it to "deficiencies in the procedure." They did not mention the fact that the court itself had established that indigenous people did not have a right to veto subsurface resource extraction from their land. The following excerpt summarizes the view of the majority of judges (9/10) with respect to the problems of prior consultations:

The problem is that it (the prior consultation) is not done correctly. I believe that sometimes prior consultations are carried out just for the sake of complying with a bureaucratic hurdle, a legal requirement. Even though prior consultations do not entail accepting what indigenous leaders say, it should not be perceived as a fraud, and many indigenous people perceive it that way, and that is because it is not well structured; it is not carried out in a serious manner.

In contrast, the one judge in the minority attributed the decision not to participate to the fact that prior consultations did not enable indigenous people to veto a given project. When I asked him why he thought that indigenous people were no longer attending prior consultations, he responded:

Because the requirements established by the constitutional court and the council of state are fulfilled with the formal compliance with a procedure. And once it has been carried out, regardless of whether indigenous people are against a given project, the project is executed. That is a strange formality, by means of which what ultimately really prevails is the general interest of development ... or in other cases, it has been used as an instrument to bribe indigenous or afro-descendant leaders.

In fact, even though according to the court indigenous people to veto resource extraction or any other project taking place in their land, judges nevertheless insist that the mechanism of prior consultation is an effective mechanism to protect cultural diversity. A judge said to me referring to prior consultations:

“That is where the ... interests of these indigenous groups in maintaining their cultural diversity needs to be harmonized with the public interest of the country. In this case, what the court has said is that the right of indigenous groups to preserve their own identity, the right to cultural diversity, and the protection of all their fundamental collective rights does not entail the existence of a right to veto the extraction of those natural resources. Instead, it imposes the need for conciliation, in order to protect the rights of indigenous people but without vetoing the decisions of state authorities. That is why I tell you that every concrete situation is different.”

Conclusion

This chapter has shown that multiculturalism and the new constitutionalism reinforce neoliberal values and reflect the crisis of legitimacy of the state and the reduction of its capacity to resolve social conflicts. Both neoliberalism and multiculturalism highlight the importance of autonomy, and the role of both individual and collective agents²⁵ in the allocation of value in society. The importance given to agency is furthered by the suspicion that the new constitutionalism poses over the allocation of values from the bench and its re-legitimation of the state and a way to facilitate the inflow of oil companies into indigenous lands. The courts facilitate this process by enhancing the (symbolic) participation of indigenous people and seeking to “harmonize” the social conflicts that arise.

This chapter also shows that the judicialization of politics need not necessarily be coetaneous to the expansion of law, or to use Guillermo O’Donnell’s term, with the juridification of politics (O’Donnell 2009). Paradoxically, the judicialization of politics may well go hand in hand with the opposite phenomenon: a disappearance of law as a mechanism to redistribute rewards and punishments authoritatively, and its transformation into an anomic, decentralized form of mediation. For this reason, we can conclude that the so-called strengthening of the rule of law during the neoliberal period has not increased the counter-hegemonic function of law.

²⁵ Liberal and communitarian political theorists have created highlighted the incompatibility between (neo)liberalism and multiculturalism because, allegedly, while the former tends to highlight the role of individuals, the latter highlights the role of groups. Although this distinction is real, it becomes important only in extreme cases, it remains somewhat marginal. After all, the various currents of economic liberalism, classical and neoclassical have treated collectivities, like corporations, as individuals, giving them the same rights and attributions that they afford to individuals.

CHAPTER 8

INSTITUTIONAL INTERNATIONAL MOBILIZATION

Introduction

This chapter documents transnational expansion of the U'wa campaign and shows how oil companies and the state use the institutions, discourses, and even international organizations and NGOs traditionally used by subaltern groups for hegemonic purposes. It documents two important aspects of the transnational expansion process. The first aspect is how ideas about global warming motivated environmental NGOs to become involved in indigenous campaigns against oil during the mid-1990s. The second aspect is the complex interactions between subaltern and hegemonic actors, international law and international organizations. In one of these interactions the chapter shows how hegemonic and subaltern actors compete to gain control over international organizations and international legal discourse. In the second interaction, it shows the limitations of the strategy of resorting international organizations to affect domestic processes, which Margaret Keck and Kathryn Sikkink (1998) have called the “boomerang effect” of international institutions.

The previous chapter documented how the U'wa and their supporters resorted to law and courts as a way to resolve their conflict with the oil companies. In the domestic part of the campaign documented in the previous chapter the institutions of the state played a double, or even more, a triple role. They were the main target of the actions of the U'wa, the venue through which those conflicts sought resolution, and the representatives of the U'wa in their legal claims. However, Colombian courts were unable to resolve the conflict. Instead, they granted the state the right to extract oil leaving indigenous people without any substantive legal tool to protect themselves from the effects that this would have over their safety and way of life.

In this chapter I will show how the failure of domestic courts triggered the internationalization of the legal campaign. In the first section I describe the main actors involved in the international campaign, and show how dominant environmental discourses and ideas like global warming help to influence the types of cases, causes and campaigns in the global south get picked up by activist organizations in the north. In turn, I also suggest that social movement organizations are highly specialized and segmented, although informally there are important levels of fluidness among the staffs and “entrepreneurs” of these organizations, even across different issues, like environmentalism and human rights. Moreover, precisely because these organizations are specialized and segmented they are also highly interdependent. These organizations tend to collaborate intensely with each other depending on the types of issues, tactics, and geographic areas in which they focus. However, as the framing, tactics, or scale of a campaign changes, so do the types of organizations involved.

In the second and third sections of the chapter I document how the U'wa and their supporters resorted to international judicial and quasi-judicial bodies to strengthen their domestic legal campaign. These judicial and quasi-judicial bodies lack the capacity to enforce their judgments directly. Yet the Colombian government needed to present itself internationally as being compliant with international norms and institutions. Thus, the purpose of resorting to these international judicial and quasi-judicial bodies was not to resolve the dispute internationally in these forums. Instead, the aim of the U'wa and their supporters was to obtain a favorable interpretation that would give them leverage to fight their battle against the state in domestic courts. As said above, this strategy resembles the “the boomerang effect,” this is, a strategy by which activists use different forms of international support –in this case legal support– to gain domestic leverage. However, this strategy backfired. Among other reasons, it backfired because their antagonists, this is the oil companies, their lobbyists, and governments have also learned how to mobilize intergovernmental organizations, law, and human rights discourses as well as human rights non-governmental organizations for their own purposes.

Is there also a Globalization from Below?

After the anti WTO and G8 mobilizations in Seattle and Genoa, and the subsequent creation of World and regional Social Forums social movement theorists have conceptualized globalization as having two distinct dimensions: a hegemonic, economic, or neoliberal globalization, and a globalization from below (della Porta and Tarrow 2004, della Porta et. al. 2006, Kriesi et. al. 2009, Tarrow 2005). In their view, a globalization from below, sometimes called counter-hegemonic globalization, or internationalization provides transnational activists, be they environmentalists, labor, anti-sweatshop, and human rights activists with the resources and opportunities for activism. In their view, these resources and opportunities come from their capacity to mobilize international institutions, particularly international organizations as forums for their “global justice” causes. Similarly, law and society scholars studying the relation between law and globalization have highlighted the importance of mobilizing legal institutions, particularly international law as a way of enhancing their voice and gaining international salience (Rajagopal 2003, Santos and Rodriguez 2005). In their view, then, international organizations provide the forums and international law, particularly human rights law, provides the discourse that helps to bolster recognition and support for marginalized groups, among others, those affected by the harmful consequences of neoliberal globalization.

The following two chapters show how this distinction between these two dimensions or forms of globalization each having its distinct forms of political action is not accurate. In this chapter I will show that international organizations and even human rights discourses and NGOs are a disputed and sometimes unreliable terrain of struggle; definitely not part of the exclusive domain of subaltern groups. It will show how both governments and transnational oil companies, two key actors of neoliberal globalization, mobilize international organizations and law seeking to frame conflicts and shape the kinds of groups they want to have as their antagonists. In the Organization of American States the U'wa and other activists initially framed their case as a human rights violation, but the oil companies and the Colombian government were able to reframe it as a private intercultural dispute. They activated alternative dispute resolution forums

and silenced the accusations of human rights violation raised by the U'wa and their supporters. In the International Labor Organization the U'wa won their case but the strength of their domestic legal argument was severely damaged. While the ILO directorate established that the Colombian government had breached ILO Convention 169, it also reaffirmed that resource extraction in indigenous land does not require the consent of indigenous peoples according to the treaty. The directorate's statement was then used by the Colombian government to present the U'wa opposition to prior consultation as unreasonable and advance the oil exploration project.

Scaling-Up: Global Ecological Discourses, Environmental Organizations and the Emergence of Transnational Campaigns against Oil Extraction in Indigenous Lands

A month after the Colombian Constitutional Court issued its decision ordering the Ministry of the Environment to conduct a new prior consultation with the U'wa, the Council of State issued its own decision allowing Oxy to resume exploration in the Samoré bloc. The Council of State said that the environmental license granted by the Ministry was lawful and it did not violate any constitutional right. Given the discrepancy between the two decisions, the U'wa along with a group of supporters in Colombia and abroad decided to take the case to international judicial or quasi-judicial institutions. By that time, the U'wa had already become well-known internationally, calling public attention and fostering support for their campaign among a wide array of individuals and organizations throughout the world. The way the press framed their story, as well as the time and place where these events occurred account for a great part of the support that the U'wa received.

The U'wa conflict emerged to the public arena during the highlight of a worldwide concern and international political mobilization with respect to global warming. The Kyoto protocol was being negotiated and adopted that same year (1997) and a growing body of scientific evidence showed the importance of mitigating global warming by reducing carbon emissions caused by oil and other fossil fuels. Thus, the public perception with respect to the need to reduce oil and fossil fuel production and consumption started changing albeit the change has been slow and partial and has not affected the practice of oil production and consumption. This concern with global warming also highlighted the need to protect certain areas of rainforest like the Amazon. At the same time, previous waves of environmentalists, especially in the global north, had been attacked for their elitism, especially from governments and marginalized populations in resource producing countries in the global south. These environmentalists gradually abandoned their nature-centered approach, and redefined their focus to re-legitimize their cause. Particularly the environmental justice movement of the 1980s and early 1990s left an important legacy, which recovered the social dimension of environmental concerns, introduced the concept of sustainability, and saw the need to establish alliances and mobilize the marginalized communities, especially ethnic communities, which were suffering the worst consequences of environmental degradation.

Throughout the 1980s and 1990s, indigenous people were also acquiring more salience in international politics. Anthropologists and other academics from around the world gave public declarations with respect to the rights of indigenous peoples after having met in a series of

conferences in Barbados (1971, 1987, 1993), Guadalajara (1991) and Rio de Janeiro (1993). Moreover, international organizations, most notably the United Nations and the International Labor Organization, and to a more modest extent the World Bank and the Inter-American Development Bank also highlighted the role of indigenous people during the late 1980s and early 1990s. Thus, the ILO created the 169 Convention that was already mentioned in 1989. Meanwhile, the UN decided to commemorate 1993 as the international year of indigenous people, and that same year it published a Proposal for a Declaration on the Rights of Indigenous People, which was finally adopted by the UN General Assembly in 2007. Furthermore, it also created the position of Special Rapporteur on the Rights of Indigenous Peoples in 2001. Thus, indigenous people, who had been largely ignored as international actors, were becoming more significant players in the international arena (Bob 2005, Brysk 2000, Comaroff and Comaroff 2009, Engle 2010, Hale 2006, Niezen 2003, Olzak 2006).

During the mid-1990s, a series of campaigns between indigenous groups and oil and other resource extraction companies “suddenly erupted” throughout the world. Chief among these campaigns was well-known battle of the Ogoni people against Royal Dutch Shell in Nigeria, led by its charismatic leader, TV producer turned environmentalist Kenule “Ken” Saro-Wiwa, who was later convicted and sentenced to death by Nigerian military authorities. For his struggle against Shell Ken received the Goldman Environmental Prize in 1995, which, as we will see, was also awarded to Berito Cobaria, the leader of the U’wa in 1998. However, environmentalists in the global north became interested in indigenous struggles against oil extraction only decades after indigenous people were already carrying out their campaigns domestically. The Ogoni had already been fighting against the environmental degradation produced by Shell and other oil companies since the 1950s, but environmentalists only became a part of the campaign in the mid-1990s. Around that same time, world attention also focused on the battle that the Shuar, Achuar, Cofán and other ethnic groups had been giving against Texaco (later Chevron), even though these groups had been campaigning against Texaco since 1972, and against ARCO since 1988 (Martin 2003). Similar campaigns of indigenous people against oil companies that are less known emerged during that time in other areas of the Amazon like Peru, Brazil and Venezuela. Moreover, these campaigns expanded beyond the extraction of oil and fossil fuels from indigenous lands and started including different campaigns against development projects like the one held by the Kayapo people of Brazil against the dam that the Brazilian government was going to build with funds from the World Bank, as well as the more recent campaign against Belo Monte dam.

Thus, in the context of a heightened awareness with global warming and a global rise of multicultural reforms, indigenous campaigns against oil extraction and development projects acquired greater salience throughout the world. This does not mean, like some authors have suggested, that suddenly indigenous people became more contentious or more environmentally conscious during the last decades. In fact, many of these campaigns did not begin as self-proclaimed environmental campaigns at all. The sudden salience of these campaigns and their environmental dimension means that only recently they were noticed, selected, reframed, and promoted by environmental groups. As Clifford Bob has said (2005, 2009) the struggles, causes and campaigns of aggrieved groups, which have a local NIMBY flavor, are oftentimes repackaged to adapt them to the “global” agenda of the dominant environmental discourse.

The Environmental Organizations: Template Tactics, Specialized Roles and Interdependence

In this context, a series of organizations and networks which sought to mobilize or give support to the campaigns of indigenous groups against oil extraction started to emerge. Although many such organizations carry out campaigns in different parts of the world, one of the epicenters of activism has been the Amazon and the rainforest of the northern part of the Andes. These organizations vary greatly, and are formally segmented and specialized in their tactics and geographic scope. As we will see, this segmentation is more formal than substantive. In reality, the composition of these organizations is rather fluid, firstly, because their staff is constantly shifting, changing from one organization to the other. Secondly, because some of them are entrepreneurial and create new organizations that seek to exploit a specific niche, this is, a cluster of campaigns that combines the right kinds of issues, tactics, and geographic scope that will bolster their organizations.

Moreover, because these organizations are highly specialized in terms of their tactics and geographical scope, they are also highly interdependent. Thus, if a grassroots organization or another type of small organization, like an indigenous group requires on-the-ground fact-finding to give credibility to their claims, they may decide to partner with organizations specialized in monitoring and publicly denouncing certain problems, like environmental degradation, or human rights violations. These organizations commonly have the adjective “-watch” in their name after the issue area in which they focus. However, it may well happen that “-watch” organizations do not have the resources to organize any form of political pressure by themselves beyond the diffusion of information on the issue areas of their interest. To organize various forms of political pressure, these organizations may partner with other types of organizations depending on the tactics they seek to deploy. In many cases they partner with the so-called “-action” organizations, especially when they require to exert political or economic pressure over key decision makers. This pressure can be exerted through lobby, public relations campaigns, boycotts, through large mobilizations and public displays of support, or, more commonly, through a combination of tactics. In the same way, an activist organization may rely on a public interest law firm if litigation turns out to be an important component of their campaign.

However, it must be clarified from the outset that these campaigns normally involve various overlapping topics or issue areas beyond environmentalism proper. Thus, the networks are mobilized and become involved in any specific campaign tend to comprise organizations dedicated to very diverse issues like North-South solidarity, labor, human rights, partisanship, religious freedom, and cultural survival, global justice, among others. Moreover, besides formal segmentation, issue specialization, and interdependence, membership fluidity across issue areas among these organizations are also very common. Thus, some of the activists working for environmental organizations had worked for North-South solidarity and Human Rights organizations before. Finally, as we will see, as the campaign advances there is also a great fluidity with respect to the organizations involved in any specific campaign. As the campaign advances, and certain frames (issues) and tactics are seen as more successful than others. Also,

the types of organizations involved also vary significantly depending on how relevant their area of expertise is for the campaign at any given moment.

In what follows, I will describe the main features of the organizations that worked with the U'wa in the international part of the campaign, their form of involvement, and role that they played. However, not all these organizations are “international” in the sense of having their headquarters outside of Colombia. In fact, as we will see in this chapter, at least three organizations, ONIC, the *Comisión Colombiana de Juristas*, or Colombian Commission of Jurists, and a labor union called the *Central Unitaria de Trabajadores*, or Unitary Workers' Central (CUT) played a significant role in the initial years of the international campaign. Particularly the two latter organizations played a key role in the deployment of legal strategies.

Oilwatch

According to its website, Oilwatch is a network of resistance organizations created in 1996 to fight against oil extraction in the tropics and in the global south more generally. Oilwatch was born out of the interaction between various indigenous groups and local organizations affected by the negative effects of oil. The interactions between the Ogoni people in Nigeria and the Shuar, Cofan, and Achuar people in Ecuador showed the importance of exchanging experiences of indigenous resistance against oil extraction across the globe to improve their chances of success against oil companies. Asou'wa and ONIC were two of the fifteen organizations and groups that were present in the founding meeting of Oilwatch in Ecuador along with others from Ecuador, South Africa, Cameroon, Gabon, Thailand, Sri Lanka, East Timor, Mexico, Guatemala, Peru and Brazil. Currently, Oilwatch has regional offices in Ecuador, Nigeria, Indonesia and Guatemala, and member organizations in over fifty countries.

The purpose of the network is to provide information and support to these indigenous and local organizations so that they can use the resources and opportunities at the international level both to prevent harmful oil extraction and to obtain compensation and restoration. In their statement, they are explicit about the need to link environmental damage to social damage, and to do so from a “Southern perspective.” To carry out their task, they focus on four different strategies: they provide support to local communities that are resisting oil extraction, a moratorium on new oil and gas projects as a transition toward a world that does not rely on fossil fuels, and a system of energy sovereignty in which energy production is sustainable and produces minimal effects on local communities. Key among their functions is “the exchange of information on oil company operations in each affected country, their practices of operation and the distinctive resistance movements and international campaigns against specific companies.” In other words, they provide relevant information about the companies that activists can use to target their management and shareholders.

This network provided a key role in the internationalization of the campaign. In fact, it was in their meeting in Ecuador that the U'wa and members of ONIC met the members of the environmental organizations that would later be of key importance in the campaign, namely Shannon Wright, who was the person in charge of the oil campaigns in the Rainforest Action Network (RAN), and Atossa Soltani, the founder of Amazon Watch. Moreover, the direct

participation of U'wa and ONIC leaders in this network made them realize the opportunities that building coalitions with environmental activists in the United States and Europe could have for their campaign. Thus, it was in the meetings of Oilwatch in Ecuador that Berito Cobaría and Roberto Pérez, two presidents of the U'wa organization Asou'wa, along with Colombian indigenous senator Lorenzo Muelas became aware that there were other indigenous groups in similar situations, and that they had could obtain support for their cause abroad. Eventually, Oilwatch and some of its member organizations started using their e-mail lists and listservs to inform activist organizations in other parts of the world about the events that were occurring with the U'wa campaign in Colombia, and organize and coordinate mobilization activities throughout the world, especially in countries in Latin America and Europe.

Rainforest Action Network

According to their website Rainforest Action Network (RAN) is an environmental organization, created in 1985 that focuses on raising awareness about the need to protect endangered forests, promote human rights, and sustainable development. RAN has its headquarters in San Francisco, in fact in the same building as Amazon Watch, as well as in Tokyo, Japan. Initially, they focused on two main issues: preventing deforestation and timber extraction, and preventing oil extraction. However, lately they have diversified to include their issues, like their campaigns against palm oil and coal. They mainly target multinational corporations and the banks that finance them using what they call “market strategies” or “market campaigns.” These strategies aim at diminishing market share, market value, or creating schisms within the corporate structure of these companies engaging their management directly and forcing them to compromise.²⁶ As former organizing campaign manager at RAN said to me:

The market campaign model essentially stepped into the gap left by the corporate takeover of government, and instead of looking at say pass a law or create some sort of regulatory framework it tries to marshal social pressure directly onto corporations and influence market forces in a way that forces corporations to make concessions, to make agreements. So the Home Depot campaign was sort of the flagship campaign at the time that the U'wa was going on.

This strategy has been very controversial among environmentalists. Indigenous people have a lot to lose in these campaigns, and yet it is usually not them but the environmental organizations that usually decide what concession from the corporation's management is an optimal outcome. This situation underscores the problem of representation that is also present in cause lawyering, and is a classic problem between principals and agents. From the perspective of its critics market tactics leave too many unanswered questions, like: what is a *successful* campaign? Who is entitled to

²⁶ In their website they define the strategy that they call “market activism” in the following way: “our campaigns leverage public opinion and consumer pressure to turn the stigma of environmental destruction into a business nightmare for any American company that refuses to adopt responsible environmental policies. But much more needs to be done. For our society to truly break its oil and coal addictions, protect endangered forests, and promote human rights and sustainable finance, everyone must get involved.”

call a certain corporate concession a victory? And whether environmentalists working with indigenous peoples are accountable to them or to their donors in terms of the results of their campaigns – the “deliverables” as they are known among these organizations. As a former RAN employee explained to me:

One of the many tensions there was RAN’s relationship with indigenous folks and the different styles of campaigns. RAN had been very successful in developing a style of campaign called “markets campaign,” and RAN had created a certain model, you know, delivering some sort of a campaign win, which is a very noble ethic, you know, both in terms of making real-world change and also some of the tensions that are there in raising money for political work in this country in the non-profit world. ... There is a tension to straddle that model with long-term principled support to an indigenous community-led struggle. The tension between them (the two models) is between short-term and long-term, and deliverables, to use the common language of the non-profit industrial complex, i.e. what are the results, and how quickly are results yielded.

However, as stated above, these problems seem to be less a quality of market tactics, and more a general problem of advocacy campaigns. There does not seem to be a particular feature of market tactics that makes these campaigns more likely to have problems of representation than any other kind of advocacy, perhaps with the exception of legal campaigns in which at least formally lawyers have a duty to represent the interests of their clients. However, as the literature on cause lawyering shows, this is a problem even with litigation campaigns (Sarat and Scheingold 1998).

Later on this activist complemented his critical analysis with arguments which are more directly applicable to market campaigns. He showed that corporate actors are: a) structurally unable to comply with the claims made by indigenous peoples or other communities affected by their activity, and b) just one among many actors involved in a more structural and ingrained threat to indigenous people, in other words, oil corporations are just a part of the oil complex described in previous chapters. In his view, the threat coming from oil extraction actually exceeds the capacity or the will of a single oil company, and thus, presenting the defeat of a single oil company or two of them –as was the case of the U’wa campaign – as a victory is simply fictitious. In his analysis, this activist actually mentions how the fact that the Colombian and United States governments, the military, and a whole range of other actors were involved rendered the whole market-strategy less useful. He said:

... A common tension between market campaigns and community-led campaigns is that often times the corporations are structurally unable to give a community what they really need. You know the U’wa were not asking for a better deal from Occidental Petroleum, they were asking to be left alone! And (there is) a much more complex scenario in their situation in Colombia, where sure, Occidental was maybe the more visible face of the threat to them but underlying that is the full support of the Colombian state, the militarization, U.S. military aid, so the market’s campaign model was not designed – and at least in the way it was

happening at RAN in terms of our work of old-growth, you know banning old-growth timber, uhm, it didn't have to deal with the state and militarization in the same way.

On the other hand, this strategy has called the attention of the business media. On its website RAN transcribed an excerpt of the Wall Street Journal in which a journalist called them “the most savvy (sic) environmental agitators in the business” because of its “hard-hitting markets campaigns to align the policies of multinational corporations with widespread public support for environmental protection.”

RAN chooses its campaigns based on its ability to gain leverage over corporations, and force them to adapt their policies to certain environmental standards. This means that they need to be able to observe the way to gain leverage over their corporate targets before they become involved. Usually, albeit not always, this means targeting companies that have a brand, those that care about their image, or otherwise have a vulnerability which RAN can readily exploit. Although they do not have a specific geographic area of focus, they have been involved in various campaigns in Latin America, starting with the boycott against Burger King for contributing to deplete rainforest land for cattle-ranching in Central America, which according to them resulted in the drop of 12 percent in sales in 1987 and the cancellation of \$35 million worth of contracts in Central America. Moreover, although they claim that they work with grassroots organizations and indigenous groups in more than sixty countries, at least one third of what they claim to be successful campaigns from 1987 to 2010 are specifically targeting resource extraction in Latin America. In particular, RAN has been closely involved in the campaign of various indigenous groups against Chevron-Texaco in Ecuador.

Moreover, in contrast to other environmental organizations which tend to target resource extraction companies since its beginnings RAN has also targeted the sources of capital used by these companies for their projects. The sources of capital that RAN targets are very different kinds of organizations. They can sometimes be multilateral banks like the World Bank and the IMF, they can be private investment banks like JPMorgan Chase, Citigroup, and Toronto Dominion, or public banks like the Export-Import Bank in the United States. In other words, RAN was perhaps one of the pioneer organizations in terms of using the market to obtain concessions from corporations. However, RAN's innovation did not consist in their “market approach” which was a strategy that consumer activist Ralph Nader was using since the 1960s and 1970s to seek greater corporate accountability. Instead, their innovation consisted in targeting sources of capital of these companies, given that since the 1980s and 1990s corporations –especially extractive companies– have become increasingly reliant on banks and external financial resources for the development of new projects and businesses.

RAN became actively involved in the U'wa campaign from its beginning in 1997 and continued its involvement for five more years until 2002. This organization decided to get involved in the U'wa campaign because at the time it had just started carrying out its Beyond Oil, No New Oil Explorations (NONEX) campaign, which according to a former employee of RAN tried to prevent new oil explorations “to support the Oilwatch declaration that came out of (the) Kyoto (Protocol); the parallel declaration.” Thus, we can conclude that the decision making process that

took RAN to become involved in the U'wa campaign was motivated by their involvement in post-Kyoto coordinate actions against oil exploration carried out by the environmentalist movement, and as the RAN campaign strategist cited in chapter 6 of this dissertation said, by the fact that the "earth-based poetry" of the U'wa communiques gave it a global salience and situated it as a poster child of the larger global justice movement.

However, RAN could not assume the whole tasks of organizing the campaign. Thus, during that time it requested Amazon Watch to become partners in the coordination activities of the campaign in the U.S. and abroad. RAN contributed to the campaign in three basic ways. First, it was members of the staff of RAN that helped to establish the contact between the U'wa and Amazon Watch. Secondly, as we will see in greater detail in the next chapter, it helped to design, develop and adapt its strategy of "market-activism." Finally, besides providing the campaign with a legacy in terms of its tactical repertoire, RAN supplied material and intellectual support for the activities that Amazon Watch and the U'wa Defense Project carried out.

Amazon Watch

Amazon Watch is an environmental organization also created in 1996, which "partners with indigenous and environmental organizations" to "protect the rainforest and advance the rights of indigenous peoples in the Amazon Basin." It was created by Atossa Soltani, formerly a director of the Los Angeles office of RAN, who saw the need to have a geographical focus in the Amazon region. At the time there were a lot of "mega-projects" starting in the Amazon including the construction of or plans to build new oil and gas wells, coal mines, pipelines, dams, and highways in the Amazon, which were part of a plan to establish the necessary infrastructure for the economic integration and industrial development of the Amazon, and South America more generally. However, neither RAN nor any other U.S.-based environmental organization had the resources to initiate campaigns that focused on contesting this increasing industrial and development activity in the region.

As the name of the organization indicates, an important part of the activity of Amazon Watch is focused on monitoring, observing, and raising public awareness about corporate and government actions that endanger the Amazon, particularly, those related to oil extraction and the construction of dams in indigenous lands. Amazon Watch dedicates an important part of its resources to carry out and analyze research about the environmental, social, political, and economic situation of different parts of the Amazon basin (loosely defined) as well as conducting educational, public relations, and political campaigns. It carries out its task by using the political support from like-minded politicians as well as attracting publicity by involving celebrities, particularly from the movie industry, in their campaigns. Finally, according to the opinions of various environmental activists, it has been a pioneer in terms of making visible the effect that environmental degradation has over the livelihood of indigenous populations, and locating these effects at the forefront of environmental conflicts.

The geographic distribution of the offices of the organization reflects the organization's strategy, and particularly, the types of partners that it seeks to carry it out. Thus, the organization has its headquarters in San Francisco, where many of its partner environmental organizations are

located, like RAN, the Sierra Club, Earthjustice, the Accountability Counsel, Project Underground, and the U'wa Defense Project. It also has offices in Washington D.C., which helps it gain immediate access to the U.S. federal government, foreign diplomats, and international political institutions, like the OAS, the World Bank, as well as to human rights organizations, like Human Rights Watch and the Center for Justice and International Law (CEJIL). It has an office in Los Angeles, which gives it immediate access to Hollywood celebrities that are often involved in its campaigns, like Leonardo di Caprio, James Cameron, Sting, Daryl Hannah, Sigmorey Weaver and Peter Coyote. Finally, Amazon Watch also develops campaigns to impact corporate and government action and policy, and for this purpose it partners with indigenous organizations in its target area (the Amazon, very loosely understood). Thus, it also has an office in Quito, Ecuador. Despite having offices in both coasts of the United States and abroad, Amazon Watch is a relatively small organization focusing on campaigns, so it also partners with organizations specializing in certain tactics that seem useful in any given campaign, particularly law firms that focus on environmental litigation like Earthjustice, organizations that specialize in market-oriented and direct action tactics like RAN, or those that focus on providing indigenous people with the capacity to address the financial vulnerabilities of their corporate and state targets like the Accountability Counsel.

The role of Amazon Watch in the U'wa campaign against oil extraction has been fundamental, and it became the sole leader of the campaign since 2002. However, along with RAN, it coordinated the campaign from the start and participated in the execution of its most significant actions in the United States. The members of this organization had already heard of the struggle of the U'wa people when they became involved in their campaign. Some heard it from the news, while others heard it from e-mails sent through the listserv of Amazon Alliance, an environmentalist network to which both Amazon Watch and RAN were affiliated. Amazon Watch only became involved when staff members of Rainforest Action Network requested Soltani to meet with the U'wa during a conference of Oilwatch in Ecuador in 1997.

Interestingly, Amazon Watch decided to support the campaign although it was outside of its geographic scope of action, given that the U'wa people do not live in the Amazon rainforest. Moreover, according to Soltani the U'wa case was not among the ten or twenty most pressing environmental risks in the region according to their classification. However, because both RAN and Amazon Watch were part of the Amazon Alliance, their people had read the letter in which the U'wa call the world for help and according to them also threaten to commit collective suicide as we mentioned in chapter 5 of this dissertation, and they saw an opportunity of impacting Occidental. Soltani narrates her interaction with the people from RAN who requested her to get involved in the U'wa campaign in the following way:

“This was after the constitutional court decision and the other courts in Colombia. Basically Shannon and Melina (a member of the RAN staff working on its oil campaign and a member of the Goldman Environmental Prize) said ‘we want to invite them to come to the U.S. and tell their message.’ You know, Occidental Petroleum at the time was about nine miles from my house, you know, in L.A. They (Shannon and Melina) were basically saying, you know ‘the shareholder meeting is coming up; we want to bring the U'wa for the shareholder’s meeting, or just before, or just after, to like bring their message to the world, and get media coverage, and pressure off the (company’s management) ... And I said great, let’s do it. I’d

love to have - I'm not going to be there, I am in Brazil, but I'll get my team of mostly volunteers.”

As we can see from the transcript, there are three factors that contributed to the involvement of environmental activists in a campaign such as the one of the U'wa. The first element is the rapid diffusion of information across the globe which is made possible thanks to e-mail communications. It was in this way that both Soltani and the people at RAN came to read the open letter written by the U'wa, and got to know about the U'wa and their struggle. Moreover, the interaction between Amazon Watch and RAN also suggests that the existence of environmentalist networks and mentorship relations between organizations also help to convince some organizations to adopt certain causes. Finally, a key point seems to be that the decision makers of an organization tend to become involved in campaigns even when they are out of their geographic scope of action when they perceive that they are well positioned in time and place to have an impact over their target. In other words, Amazon's decision making process suggests that activists prioritize their probability of having an impact and their capacity to deploy their tactical expertise over their commitment to a specific geographic area. Their probability of having an impact, in turn, depends on their own geographic location, their expertise with applicable tactics, and the identity and location of their targets.

Earthjustice

Earthjustice is a non-profit, public interest law firm that focuses on environmental litigation and policymaking. It was founded in 1971 as the Sierra Club Legal Defense Fund, but it changed its name in 1997. Earthjustice promotes the conservation of natural habitats and wildlife, as well as environmental rights of people through litigation. In its domestic litigation, it resorts to federal and state legislation, while in its international campaigns its lawyers use international environmental law as well as international human rights law, among others. It has 150 employees that work in nine offices in different regions of the U.S., including Alaska and Hawaii as well as a policy and legislation office in Washington D.C. However, Earthjustice has its headquarters and international division in Oakland, California.

The law firm selects its cases by evaluating them according to three basic criteria. First, they must be cases that have high stakes, which means that the environmental consequences of the conflict or dispute must be significant. Secondly, besides the environmental significance of the dispute, since it is a public interest law firm, the cases must represent a public interest beyond the private interests of the parties involved. This means that litigation must be susceptible of being translated into broader political gains, which more concretely means that the expected ruling of the court has an impact beyond the specific case being litigated. Finally, like RAN and Amazon Watch, Earthjustice seeks to build partnerships with local groups and organizations. However, Earthjustice seems to be interested in partnering with communities to enhance the effectiveness of its litigation campaigns. The part of their website which details how they work seems to suggest this when it says:

“STRONG PARTNERSHIPS: Earthjustice looks for cases that help build strong, lasting partnerships with national and local groups. Our effectiveness comes from our unique ability to leverage our regional offices and reach out to valuable allies on the ground. These strong regional partnerships greatly contribute to our success in court.”

They became involved in the U’wa campaign through their contacts with Project Underground, particularly because the director of the international office of Earthjustice was a member of its board. The extent of their involvement was very intense during the initial part of the campaign, especially in designing the strategy for taking the U’wa case to the Inter-American Human Rights Commission. During this stage even the director of their international office travelled to the U’wa *resguardo*, something which almost none of the U.S. environmental activists did. However, their involvement became less significant as litigation and law-centered strategies became less relevant within the campaign.

Project Underground

Project Underground was a short-lived environmental organization located in Berkeley. It was created in 1996 after the death of Nigerian environmental activist Ken Saro-Wiwa mentioned in previous chapters of this dissertation, who was fighting to hold Royal Dutch Shell and the Nigerian government responsible for their human rights abuses, militarization and environmental degradation in Ogoniland. The organization focused on what they called abusive oil and mining. More specifically, they monitored and denounced the abuses committed by resource extraction companies and provided the communities affected by such extractive companies with the scientific, legal and technical information necessary. In particular, they informed communities of the environmental impacts of oil and mining activities, their rights under international and national law, and supplied corporate data, history, and examples of best-practice.

Like Amazon Watch and RAN, this organization also operated under the assumption that human and indigenous rights and environmental and economic justice were “intrinsically linked.” They were involved in various campaigns in different parts of the world including the Ogoni campaign against Royal Dutch Shell, the campaign against Freeport McMoRan mining company in Indonesia, the campaign against Newmont gold mines in Peru, among others. Like RAN and Amazon Watch, Project underground was a member of specialized environmental networks that were leading campaigns against oil exploration and extraction in northern South America, like Oilwatch and the Indigenous Environmental Network. They were also closely involved in the campaign from the beginnings of its international phase in 1997 through Terence Freitas, a 24 year-old activist and UC Santa Cruz student, who had worked in Amazon Watch and who had travelled to the U’wa *resguardo* in Colombia several times. Three years later, however, in February 1999 Freitas, along with two Native American women were kidnapped and killed by the FARC guerilla near the U’wa *resguardo*. Some years later Project Underground disappeared.

ONIC

The history and main features of the National Indigenous Organization of Colombia ONIC were addressed in a previous chapter, and thus, I will not describe them here. However, it is important to mention that ONIC played an important part of the internationalization of the campaign. In particular, ONIC provided Asou'wa with an important part of the material resources and the contacts that enabled them to internationalize their campaign. Among others, even though various organizations, including Earthjustice provided the professional expertise that was necessary in the claim against the Colombian government before the CIDH, ONIC was the formal plaintiff in the claim.

In sum, we can observe that all these organizations with the exception of ONIC have very similar characteristics. Although they use different tactics, and each one emphasizes particular issues or geographical areas, there is a significant overlap in terms of their objectives and tactics. In terms of their objectives, they all seek to be involved in campaigns to fight against oil and mining, as well as other industries that extract resources from countries of the global south. Their tactics vary to some extent. For example, some organizations resort to the legal system, others seek to gain leverage by using market tools, and still others seek to provide information to the local communities affected by these industries. Some use market strategies that engage extractive industries directly, while others resort to third parties like banks and other sources of capital, or to courts and other traditional dispute resolvers. Despite the differences in tactics, all these organizations focus on campaigns that require the deployment of multiple tactics, and thus, they are highly interdependent. These organizations focus on campaigns and campaign outcomes as the measure of their success. The successes that these organizations have in their campaigns allow donors, other organizations, their boards of directors, and their own staff to evaluate their successes and failures. Although they have sought to involve indigenous people and local communities in their work to varying degrees, in some cases their focus on the "outcomes" of these campaigns as well as the nature of their targets and the unilateral commitments that they can extract from corporate managers can pose problems of accountability with respect to these populations.

The Organization of American States and the Struggle to Re-define the Terms of the Internationalization of the Campaign

This section documents how the failure of domestic courts to resolve the U'wa conflict fostered an internationalization of their campaign. At this stage, however, the U'wa and their supporters still relied on highly institutionalized third parties like international courts or quasi-judicial institutions to resolve their conflict by using the coercive dimension of law. In contrast, Oxy and the government sought a less institutionalized international dispute settlement mechanism; one that allowed them to avoid dealing with law and with U'wa supporters in the U.S., and to negotiate with the U'wa directly.

To prevent Oxy from resuming its exploratory activities, the U'wa and their supporters swiftly shifted their campaign to the international legal arena. On April 28, 1997, Asou'wa, along with ONIC, Earth Justice Legal Defense Fund, and the Coalition for the Amazonian Peoples and their Environment filed a claim against Colombia upon the Inter American Commission of Human Rights (CIDH) in Washington D.C. They requested suspending the exploration license given to

Oxy, adopting measures to avoid damages on the U'wa people, and visiting the U'wa territory to verify the actual possibility of damages. The president of Asou'wa at the time, an indigenous leader who cannot read or write, explained the decision to give the campaign an international scope in simple terms:

“When a company comes to your land you have to look where their machinery was made and you have to talk to the people working there and ask where they are from. That is where you have to go (to carry out your campaign).”

The CIDH is an autonomous fact-finding institution which is part of the Inter American Human Rights System of the Organization of American States, with headquarters in Washington D.C. This system has two main bodies: the CIDH and the Inter American Court of Human Rights (IACHR).²⁷ In this system, member states, NGOs, and individuals, have standing to claim that a member state has violated international human rights law. However, they cannot go directly to the Court. Instead, they need to file their complaints in the CIDH first. After gathering enough evidence, the CIDH may decide – discretionally – to either close the case, propose inter-party negotiations, to issue a statement condemning the violations, and/or, to take the case to the IACHR.

Ebaristo Tegria, the U'wa lawyer explained to me the decision taken by the campaign strategists to file a claim in the CIDH. He said that it was a way to overcome the deadlock between the high courts in Colombia, and that internationally they could resolve the matter. He said:

“It was then (after the U'wa learned about the decision of the Constitutional Court and the Council of State) that we started to learn a lot about the logic of the (Colombian) judicial system. And we also learned that we can resort to other international judicial bodies, that we can present our arguments in those forums, and that they would analyze the problem to the best of their abilities and decide whether they would grant us our rights or deny them.”

However, the U'wa knew the limitations of the international legal campaign, particularly with respect to their claim in the CIDH. They were perfectly aware that politics played an important role in its decisions. Ebaristo realized that the decision that the CIDH adopted would be based on political considerations, not necessarily on legal ones. After talking about the many problems in the domestic implementation of the decisions of the CIDH, he continued saying:

“What is undeniable is that the CIDH ... is a political institution. Thus, focusing the campaign on the case before the CIDH, well ... let's say it would be a political mistake. They are going to recognize that there were human rights violations, and so on, but in the end their decision is more political, and you see this whenever they make a decision with respect to other countries, like Venezuela and Ecuador.”

²⁷ The usual English acronyms for the Inter-American Human Rights Commission and of the Inter-American Human Rights Court are confusing: IAHRC and IACHR, respectively. Thus, I will use the Spanish acronym of the CIDH for the former, and the English acronym IAHRC for the latter.

So, to avoid further polarization, but more importantly, to counter the complaint filed by the U'wa upon the CIDH, the Colombian government also decided to take their conflict with the U'wa to an international forum. Interestingly, the government decided to take their conflict with the U'wa to a different organ from the same international organization that the U'wa had resorted to: the OAS. Moreover, the government decided to involve the head of the OAS directly in the case. Secretary On May 4, 1997, the Minister of Foreign Relations requested that the Secretary General of the Organization of American States (OAS) create a team along with experts in negotiation in ethnic conflicts from Harvard University. The purpose of this team was to investigate the U'wa situation and recommend the best option for a friendly resolution of the conflict. At the time Cesar Gaviria, the former president of Colombia, was the Secretary General to the OAS. Gaviria contacted the Weatherhead Center for International Affairs at Harvard University, and the team was created with two experts on indigenous issues associated with Harvard, and one person from the OAS. Only a few days after the request had been made, on May 14 an official from an OAS organ, the Unit for the Promotion of Democracy, and the two members of the Harvard part of the team were sent on a mission to Colombia as part of the "OAS/Harvard Project" to study the conflict, visit the area and talk to the parties involved. As an OAS official said in an interview when asked about the decision of creating this team and the speed with which it carried out its mission:

"There was, of course, a personal concern on the part of the Secretary General, but there was also a concern that this problem would inevitably surpass Colombia's internal mechanisms."

However, although the decision to request a recommendation from an OAS organ other than the CIDH was made by the Colombian government, this had not been their idea. The idea of creating a mixed, ad hoc commission that involved the Organization of American States had been suggested to them by the executives of Oxy. Moreover, all the expenses of the members of the Harvard part of the team were covered by the oil company. In an interview, a former employee of Oxy narrated the way in which Oxy convinced the government of requesting the Secretary General of the OAS:

"You did not ask me this, but I will tell you. When the campaign became transnational we [at Oxy] started going in circles not knowing what to do, because the reputational problem was enormous for us. Then I conceived the strategy. I invented it and presented it to other people in Occidental, and they approved it, and we sustained various meetings with people from the government talking about it. The idea was that this [the campaign] had already been internationalized and we had to internationalize it too. ...Their [the government's] calculation was the following: if Colombia's answer is proactive, interested, various things are going to happen. The CIDH is not going to get involved in something in which Colombia does not need it, and has already asked the OAS to carry out an independent observation of the issue. That gave us a lot of control, on the one hand, and on the other, with the recommendations in hand we could start working around a common agenda."

However, the motives that the company had for requesting the collaboration of the OAS were different from those of the government. Oxy was not just trying to substitute one OAS organ for the other in order to replace the potentially stigmatizing human rights frame for one of conflict resolution and “intercultural” dialogue in order to avoid the potentially stigmatizing human rights frame.

In fact, Oxy also was in a dialogue with at least two different human rights organizations that they considered reasonable and mainstream, and eventually open to assume the defense of the U’wa. One of these organizations was Amnesty International, and the other was Human Rights Watch. As Oxy’s vice-president for governmental affairs Laurence Meriage, along with the manager for corporate social responsibility (CSR) in Colombia, met several times with members of the staff of Amnesty International in Washington D.C. to talk about the U’wa case. Moreover, Meriage and his successor, as well as the CSR manager met with José Miguel Vivanco, director of Human Rights Watch –Americas’ Division- to take the case of the U’wa, although they rejected their request because he was not interested in the case. The company was more interested in determining what types of activist groups they wanted to have as their antagonists. They were trying to take the U’wa cause away from what they considered to be off-mark, radical San Francisco-based environmental groups.

Moreover, the company executives sought to present the environmental groups that supported the U’wa as being equally interested in obtaining economic resources as Oxy. The difference, they said, was that these groups received more resources the more they exacerbated the conflict between Oxy, the government and the U’wa. Thus, they claimed that these organizations were more interested in maintaining the conflict for their own fundraising purposes than in the well-being of U’wa people themselves. The Oxy former employee continued:

Interviewee: “That was the way the idea of the OAS-Harvard Commission emerged. Or, what does one do in a situation in which there are people that declare themselves to be friends of the victims, their representatives, their mourners, with an altruistic agenda? ... Those people have to take their kids to school and pay their bills”

Interviewer: “So, do you think that somehow the supply of these conflicts generates a demand for them?”

Interviewee: “Yes.”

Moreover, this same idea that the environmental NGOs are really no different from corporations was reiterated by the vice-president of Oxy. Speaking about Amazon Watch, he said:

“I am always amazed by how similar these NGOs are to a corporation. Their interests, and the way they operate is really the same to say, the way we operate.”

However, this interviewee did not mention the fact that the company had requested the intervention of human rights NGOs, international organizations, and academics in their conflict with the U’wa.

Furthermore, Oxy sought to present itself as the only party really interested in resolving the conflict. The rest of the parties were only interested in its continuation. Further along in the interview, the former Oxy CSR manager asserted that there was no way for Oxy to come out ahead in this conflict in the forum provided by these radical activists:

“The official position of Oxy was that this was a way of protecting the company’s reputation. Thus, we opened a forum for dialogue so that we could *really* resolve this conflict, which was not that of the ladies with banners there in the Golden Gate Park (laughs). We were lost *there!*”

And, immediately after, this interviewee contrasted the role of activists in helping to resolve the conflict with the U’wa with what he considered a way to resolve the conflict authoritatively. In fact, the strategy was to call academics with an important reputation in resolving conflicts with indigenous peoples. In particular, they called James Anaya, a law professor from the University of Arizona, an expert in indigenous rights, and currently the UN Special Rapporteur for Indigenous Rights and Theodore Macdonald, an expert in intercultural conflicts from the Weatherhead Center at Harvard University. This former Oxy executive said:

“This is an effect that has not been discussed enough. Because the [Colombian] government asked the OAS to resolve this and to call Harvard, and that was what they did. And well, that was where the authority was. In other words, Harvard had the technical authority, and the OAS had political authority, so it was Jim [James] Anaya, [Theodore S.] MacDonald, the government, and the OAS.”

In sum, then, the strategy of Oxy was directed toward reframing the conflict, shifting it from a human rights violation to a technical/political dispute, and narrowing the interested parties to more mainstream NGOs. In their strategy to resolve the conflict at that point Oxy was pursuing some notion of technical and political authority, but bracketing the issue of legal authority. More precisely, it was not considering that the mandate given to the OAS-Harvard Commission was not to resolve the conflict but to give a series of non-binding recommendations for the parties to carry out the negotiation process. Furthermore, these were recommendations for the negotiation process, which already presupposes that all the parties (U’wa, government, Oxy) had the intention of negotiating. In contrast, indigenous and environmental organizations appealed to the CIDH, which is a legal organ with a fact-finding mission, the purpose of which is to determine whether a state has violated human rights, so that the IAHR can order compensation. This, of course, would affect the Colombian government, not the company, but it may indirectly affect the relation between these two parties.

In November, 1998, the OAS-Harvard Commission published its report. It recommended that the oil companies suspend activities in the field. The government, in turn, should expand and unify the U’wa reservation as the U’wa had requested five years before, establish consultations under its exclusive responsibility, and grant the U’wa independent technical assistance to assess the effects of oil exploration. Both Oxy and the government should respect the U’wa traditional

organization, authorities, and procedures, including their own mechanisms to resolve internal differences in their negotiations with them. Finally, the parties should moderate their public rhetoric against each other and create a program for mutual understanding.

On the other hand the claim raised upon the CIDH, on April 1997 is still ongoing, although in a dormant, pre-admissibility status. However, the U'wa have had to overcome various obstacles to become an active part in this legal process. Particularly, they have had difficulties obtaining the necessary funds to travel to Washington and narrate their version of the conflict with the state to the CIDH. In the meantime, the Minister of Mines and Energy, his vice-Minister, and the manager of Ecopetrol had continuous meetings with the executive secretary and the delegates of the CIDH, both in Washington and in different countries in Latin America. This allowed the government to provide evidence and show their version of the situation personally to the various members of the CIDH.

Moreover, because consultation procedures did not require indigenous people's consent, a victory in the Inter American Human Rights system or in any other court system, either domestic or international, would not take them very far. After all, the U'wa could have not used the 169 ILO Convention to prevent oil exploration in their territory directly but only to carry out consultation procedures once again.

Seeking Domestic Leverage with the Legal Interpretations of the ILO Directorate: a Boomerang that Backfired

This section documents yet a third route to the internationalization of the conflict. In contrast to the routes described in the previous section, recourse to international institutions is not sought as a last option when rifts cause domestic legal institutions to fail. Rather, the U'wa and their supporters use international institutions to gain "doctrinal" leverage and secure outcomes in domestic litigation processes. This resembles the "boomerang" effect used by transnational activists and described by Keck and Sikkink (1998). However, despite formally receiving favorable outcomes from international legal institutions, domestic courts strategically selected this doctrine and the whole strategy backfired.

In Colombia the U'wa conflict had divided the Colombian administration. The Director of Indigenous Affairs in the Ministry of the Interior opposed what he considered to be undue influence by the Minister of Mines and Energy on his division's work. In turn, the Minister of the Environment also opposed what he considered to be the pro-oil and confrontational strategy that the Minister of Mines and Energy had promoted in the government's interaction with the U'wa. Instead of going ahead with the oil exploration immediately, the Minister of the Environment favored a negotiated solution. The Minister of the Environment during this time commented on this dynamics when I asked him about the divergent positions within the government:

"The Minister of Mining and Energy used to tell me that I was compromising the future of forty five million people in favor of a group of four thousand, which showed that he clearly did not understand anything about land or [indigenous] culture. ... And then there

was the Minister of the Interior, who is the head of Indigenous Affairs. He also had a position, which I would say was in favor of oil, in favor of economic development. And I had to confront all of them in the cabinet meetings!” [emphasis by the informant] (Interview with the Minister of the Environment from 1998-2002. Bogota, April 24, 2009)

The struggle between the part of the administration that was favorable to oil and the one that was favorable to indigenous rights had effects over the regulation of consultation procedures. The process through which the government created a new administrative regulation of prior consultations, Decree 1320 of 1998, attests to the role played by the hard line in the government in coordination with the oil companies, and shows how the hard line in the government was able to impose its views. However, this dispute involved more than just the government. In fact, the decree did not have its origin in the Ministry of the Interior, which was the entity that issued it, but in the association of oil companies of Colombia.

Soon after the Constitutional Court and the Council of State decisions were made public, and without waiting for the recommendations of the OAS/Harvard team, the Minister of the Interior issued decree 1320 of 1998, which regulated the consultation procedure of ILO Convention 169 only for projects related to the extraction of natural resources. The new regulation established that the government only needed to invite indigenous authorities to participate in the plan for resource extraction, but not to the exploration stage of the project. Moreover, the refusal of indigenous groups to accept resource extraction from their territory did not prevent the government from actually extracting such resources. If they objected to the plan or refused to attend the invitation, the MA could nevertheless issue environmental licenses without any further requirements. Finally, according to the decree, this invitation should only be extended to indigenous groups when the extraction of oil or any other natural resource took place inside a formally constituted reservation, not when it took place in areas inhabited by indigenous people but not officially designated as a reservation.

Moreover, the government did not consult indigenous people before issuing the decree. This motivated indigenous people to challenge the conformity of the decree with ILO 169 because the convention mandates that indigenous people be consulted when the government adopts administrative measures that affect them directly. Thus, the U’wa and ONIC devised a strategy to attack the decree which included both international and domestic legal institutions. In their boomerang strategy first, they would file a complaint against the Colombian government upon the directorate of the International Labor Organization. The directorate is an international legal organ of the ILO which lacks the ability to enforce its decisions, but does have the authority to hear complaints, interpret the ILO Conventions, and establish whether ILO any of the parties has breached them. After filing the complaint with the directorate, they would file a law suit in the Council of State. If the directorate established that there had been a breach, they could gain much greater leverage with the Council of State and ask it to annul decree 1320 definitively.

Thus on October 29, 1999, the *Central Unitaria de Trabajadores* (CUT), Colombia’s largest labor union, filed a legal claim against the Colombian government on behalf of the U’wa and other indigenous groups upon the General Directorate of the International Labor Organization.

The CUT argued that the government was violating the ILO 169 Convention by issuing the Decree without consulting with the indigenous peoples, by restricting the scope of application of consultation procedures, and by applying the decree and not consulting with the U'wa before granting the second exploration license. Therefore, they requested that the ILO Directorate declare the Colombian government was in violation of ILO Convention 169 on all three accounts.

In the meantime, Oxy was moving fast to resume its oil exploration operations. On October 16, 1998, Oxy requested a second license based on the newly created decree. This time it was a perforation license to determine whether there was oil by drilling in the site. The MA requested DAI to certify whether there were any indigenous lands in the area of perforation. Since the border of the U'wa reservation was a few hundred meters away from the oil bloc according to the new decree there was no need to carry out a consultation. Thus, the DAI certified that the perforation area did not overlap with indigenous land and perforation could be initiated without consulting the U'wa.

A year later, on November 2001, the ILO General Directorate met and issued a report finding that Colombia was violating ILO Convention 169 on all three accounts. It ruled that the government and the companies had failed to consult with indigenous peoples before issuing the decree, reduced the scope of consultation procedures by excluding situations in which land was inhabited, owned or considered sacred to indigenous peoples but it had not been formally recognized as a reservation by the government. In this last respect, the ILO Directorate also concluded that granting the perforation license to Oxy without consulting with the U'wa because the reservation started a few hundred meters away also constituted a violation of the treaty.

However, not everything that the Directorate said was positive for the U'wa. In fact, perhaps the most important point in raising the issue internationally was to determine the extent to which the consultation procedures actually provided a useful legal tool for their objective, which was to prevent oil exploration in their territory. In particular, the U'wa wanted to determine whether indigenous peoples' consent was a prerequisite for the extraction of natural resources from their land. In this respect, the ILO General Directorate explicitly stated that the obligation to carry out a consultation did not entail that indigenous peoples' consent was necessary. Moreover, it stated that according to the treaty itself, member parties have great leeway to implement it domestically. Thus, despite obtaining a declaration acknowledging that the Colombian state had violated the ILO 169 Convention, the directorate's opinion was harmful for the U'wa. It raised important doubts about the real purpose of the consultation, its legal force, and the extent to which indigenous people can use it as a tool for resistance against encroachment of the state and oil and other resource extraction corporations in their land.

The U'wa lawyer who devised their strategy recounted to me their position with respect to the ILO 169 consultation procedures in the following way:

To me, prior consultation procedures are simply a negotiation process. They are designed so that indigenous people identify the impact of a given project, and the state and the company then say that they are going to mitigate or compensate the impact of that project. But when

you show your house to someone – I was using this analogy just the other day in my indigenous community – when I allow someone to enter mi house and stay in my place, and tell that person here is the soap, and here is the toilet, and here is this and that, I am simply telling them that those things are theirs to use. But if I do not want them to enter my property, I should tell them to stay outside because my house is private. ... Then, if an indigenous group does not want consultation procedures because they do not want their sacred elements to be desecrated, then why waste time? Why waste three or six months, if in the end what you need is for that person not to enter into your house?

Moreover, referring to the Directorate's position with respect to whether the prior consent of indigenous people was necessary to carry out resource extraction in their land, he added:

“When they interpret the Convention they just refer to the fact that consultations with indigenous people do not entail a veto power. But there is no article in the convention that actually says that. I cannot find the word veto. Quite the contrary is true. The Convention does refer to the right to self-determination of indigenous peoples, and that is why I told you that it is all a matter of interpretation. It would be different if the Convention mentioned something about veto powers. This is the case of the 2007 Declaration [of the UN General Assembly on the Rights of Indigenous Peoples], that does say that indigenous people must give a prior and informed consent in these cases, and which the Colombian government abstained from signing for that reason.”

Meanwhile, the U'wa and their supporters had resorted to domestic law in their campaign once again. ONIC and the Asou'wa were battling against the new license in domestic courts. ONIC presented an administrative recourse against the license while the U'wa authorities filed a *tutela* writ. The administrative recourse was denied two months later, and the writ was granted on first instance but reversed on appeal. Moreover, ONIC also filed a second suit against decree 1320 upon the Council of State. However, the Council of State upheld the decree. This court claimed that despite not having been consulted with indigenous peoples, decree 1320 was enacted according to domestic law arguing that the 169 ILO Convention also explicitly establishes that party states have great leeway to implement prior consultations domestically.

Shortly after the U'wa had suffered these legal defeats, they purchased three small pieces of land in Gibraltar 1; the land where Oxy and Ecopetrol were going to carry out the exploratory perforation project. With the money that their leader Berito Cobaría had received from two awards he had recently won: the Bartolomé de las Casas and Goldman environmental prizes, and help of environmentalists in the United States, the U'wa were able to purchase the land from the peasants that owned it. Since this land was purchased privately by Asou'wa it was not considered part of the U'wa reservation. Thus, according to the rules established in Decree 1320 land owned privately by indigenous groups was not subject to the regime established in ILO 169, and Oxy was under no obligation to consult the U'wa. In fact, they already had obtained the environmental license and thus they could legally start exploratory perforation anytime.

Nevertheless, the objective of the U'wa was not to use the coercive element in law to prevent oil exploration. Rather, they purchased this land because they considered it historically theirs to begin with, and in their view they only needed a formal document to reaffirm their historical ownership in the eyes of the general public. However, owning the land also served a strategic purpose. Ownership would help them frame Oxy's oil exploration as a clear act of arbitrariness without having to explain to outsiders in Colombia or abroad that historically this was *their* land even if it had not been legally recognized as such by the state.

The strategy to highlight the arbitrariness of the exploration project had a more disruptive component to it as well. On November 15, 1999 around four hundred members from the various clans of the U'wa group decided to occupy the land that they had just purchased. They took enough food and built shelters so that men, women and children could dwell in the field. They also requested the provision of health services and medication from the local governmental authorities, as well as from the Red Cross. Moreover, the U'wa also invited sympathetic human rights and environmental NGOs, other indigenous organizations, labor and peasant unions, as well as international organizations to the site. Finally, by way of ONIC the U'wa invited both domestic and international press to cover the whole process. During the time that the U'wa occupied the site, the leaders of Asou'wa and ONIC gave public speeches and made news statements explaining their presence in the site. The U'wa leaders in particular claimed that this was their land, that they had every right to occupy it, and requested Colombian president Andrés Pastrana to go to the field and expose the reasons why the government had decided to grant the environmental license to Oxy. As one of the U'wa leaders put it:

“We were there in the field for about three months, and the purpose was to show the government that we were willing even to give our lives to defend our land. So that they realized – because some may have not believed us – that these were not idle words, that we cared more about our land than about our own lives.”

Oxy and Ecopetrol reacted to the U'wa occupation by resorting to the courts to mobilize the coercive element of law. Oxy and Ecopetrol filed a law suit to evict the U'wa from the field. Although Oxy and its partners did not own the land, they had been granted a right to carry out the exploratory perforation in this land by the MA, which entitled them to use the land and evict the owners during the duration of the project if necessary. Thus, on December 6, 1999 a local court ruled that Oxy and its partners could evict the U'wa with the help of the police if this was necessary. The U'wa did not leave the field. More than a month later, on January 20, 2000, personnel from Oxy and Ecopetrol, along with various governmental officials went to the field to explain the U'wa the reach of the local court decision and request them to leave. The U'wa refused. Then, on February 11, members of the police squad came with tear gas and helicopters to evict the U'wa. They handcuffed the leaders and flew them away in the helicopter, and dispersed the rest of the people with tear gas. In the process of evacuating the site, three children drowned in the nearby Cobugon River.

The strategy, however, did increase the local and even national support for the U'wa, helping them to mobilize not just popular protests, but institutional tools within the political system as well. Shortly thereafter, however, between 2,500 and 3,000 peasants from neighboring regions

went to the perforation area to express their solidarity with the U'wa and blocked the roads once again. Moreover, the expressions of solidarity also reached the Colombian legislature. On April 11, 2000, a group of indigenous and non-indigenous legislators from the opposition, both in the Senate and the House of Representatives initiated a no-confidence-vote procedure to oust the minister of the environment Juan Mayr. They based their initiative on his decision to grant environmental licenses to companies without following consultation procedures in two cases. One case was the construction of a dam that killed the fish, and thus, the means of subsistence of the Embera-Katio indigenous people. The other was the case of the U'wa. Although finally the minister was not ousted, his political situation was very difficult. He was saved by a small margin of only four votes.

After their failures with legal strategies and having felt the repressive element of the law directly, the U'wa adopted the strategy of delegitimizing the law by staunchly refusing to attend to any consultation procedure carried out pursuant of ILO 169 Convention. Instead, every time they are invited to participate they express consistently and publicly that they refuse to attend because this procedure does not guarantee their right to self-determination.

The government, in turn, started resorting to law and courts, albeit in a slightly more subtle and less coercive way to frame the refusal of the U'wa to attend consultations as unreasonable. After the U'wa stopped attending the invitations from DAI and publicly manifested their opinions toward the way the government and the companies understood consultations, the government requested an advisory opinion from the Council of State. These advisory opinions are not legally binding, rather, they are opinions rendered on the government's request on a rather abstract legal issue. However, although these opinions are not binding, they do offer a legal basis for the government to adopt or abstain from adopting certain policies. In its request, the government asked the Council whether the refusal of an indigenous group to attend to the consultations prevented them from granting the necessary environmental licenses and initiating oil exploration. In its opinion the Council of State started by qualifying consultation procedures as an exceptional guarantee awarded to indigenous people to participate and deliberate in democratic governance. Then, in response to the government's question, it declared that the answer depended on whether the decision of the indigenous group was reasonable, limiting "reasonableness" to the occurrence of extreme, unforeseeable events that impede their attendance. Moreover, the Council added that it was up to the government to evaluate the reasonableness of their refusal. In sum, this meant that the government could construe indigenous resistance as an unreasonable opposition to an exceptional form of democratic participation in order to grant the licenses and the companies could start exploration without even formally carrying out the consultation.

Conclusion

This chapter illustrated the role of international non-governmental and intergovernmental organizations in defining and redefining disputes. It illustrated how discourses around climate change provided an opportunity for indigenous movements fighting against oil extraction from their land in different parts of the world to internationalize their campaigns. However, it also helped to transform the nature of their disputes. It also showed how environmental NGOs are

highly segmented and specialized, depending on the issues the focus on and the tactics that they use. Thus, since a campaign usually requires the deployment of various tactics and focuses on multiple issues, these organizations are interdependent and complement each other throughout a campaign. Moreover, the role of these NGOs varies depending on the usefulness that their particular resources and expertise have for the campaign at a given time period and different NGOs go in and out from a campaign depending on the types of tactics that prove to be successful.

In addition, this chapter also illustrated the role of intergovernmental organizations. It showed that both indigenous people and their antagonists resort to intergovernmental organizations turning them into sites of contestation. Moreover, it also showed that the oil complex, this is, governments and oil corporations have a significant amount of access to these organizations and uses this access as a response to minimize reputational and legal risks. Intergovernmental organizations play an important role in framing and reframing their grievances, and legitimizing or delegitimizing the positions of social movement actors and their antagonists. These organizations also play an important role in either politicizing or depoliticizing certain conflicts, turning them into private disputes. However, these organizations fail to resolve those conflicts. Instead, this interaction between social movements and their antagonists transforms international organizations and NGOs into sites of struggle for symbolic power.

CHAPTER 9

THE SHIFT TOWARD MARKET ORIENTED TACTICS

Introduction

The legal internationalization of the campaign was not the only strategy that the U'wa and their supporters pursued abroad. Almost at the same time, the campaign shifted its target. In the initial stages, the actions of the campaign were directed either to mobilize state institutions against the company or to target the state. In the last stage of the campaign, which I will analyze in this chapter, the campaign started targeting Oxy more directly. However, this direct engagement with Oxy was not carried out in Colombia, where the U'wa had no direct access to the company's decision making processes and thus could only negotiate the terms of exploration, not prevent it. Neither was this direct interaction carried out in the disadvantageous terms established by the ILO 169 Convention, according to which the only leverage that the U'wa had was the possibility of raising the costs that the company had to assume by delaying oil exploration. Rather, the campaign was held in the U.S., where the U'wa could have greater access to Oxy's governance structure.

Deciding the Strategy: the exhaustion of domestic and international litigation

The problem that the campaign had to resolve then was deciding the strategy that they would deploy. Using U.S. laws was really not a viable option according to the activists. Contrary to the situation of other indigenous mobilizations against oil extraction, like that of the Cofán and other groups against Chevron-Texaco in Ecuador, the Shuar people in Peru, and the Ogoni in Nigeria, Oxy had not started extracting oil in U'wa land, and thus, they had not produced any damages that could be claimed through U.S. law, and in particular, through the Alien Tort Claims Act. Moreover, while indigenous people both from the U'wa and from ONIC recognized the symbolic effects that judicial decisions had, there was disillusionment with the courts as institutions for resolving conflicts. An indigenous lawyer and leader working for ONIC explained this disillusionment by referring to the outcome of a *tutela* case where indigenous Pentecostals sued the traditional authorities for not allowing them to preach their faith inside the *resguardo*. She said:

When the U'wa read the constitutional court's decision they did not know whether they had won or lost... And this happens very often to indigenous peoples. This happened too in the case of the expulsion of Pentecostal preachers from the *resguardo* of the Arhuaco people. The people, indigenous people (referring to non-Pentecostals) felt they had won, and Pentecostals also felt they had won. So this is an aspect of legal tools that makes things really complicated. That is why I believe that the response of the legal system was not so definitive (in the U'wa case).

What she meant when she said that the response of the legal system was not definitive was that the courts had not been able to resolve the underlying conflict. In particular the Constitutional Court sought to harmonize the interests in conflict and arrive at a solution that did not sacrifice either the well-being of the U'wa or the economic interest in oil extraction, but the result of this was that all the parties felt uncertain as to what the outcome really was. Immediately after she had said this I asked her why she thought that the response of the legal system was not definitive. Her response illustrates the notion that indigenous people have with respect to the formal character of legal victories and that real victories come as a result of indigenous mobilization:

Well, because what the U'wa expected was that (the court) ordered Oxy to leave, and Oxy did end up leaving, but due to the pressure that the U'wa exerted through their mobilization, not because a judicial decision said it.

Moreover, the legal organs of international organizations displayed the same incapacity that domestic legal institutions showed to resolve the conflict of the U'wa. Thus, the U'wa and their supporters favored adopting a strategy that was less reliant on the coercive power of state law and relied more on persuasion instead. In fact, leaders in ONIC realize that a legal strategy based on the enforcement of judicial decisions was not going to be effective. Thus, like in the recovery of colonial *resguardos* through the occupations carried out by CRIC activists in the 1970s, the strategy of the U'wa did not just involve law, but included other elements as well. As this same indigenous lawyer said to me when I asked her why the U'wa had changed their strategy:

Legal strategies among indigenous peoples have always been combined with all sorts of other tactics. Maybe this is something that we can teach the rest of the world. We are not "legalistic" we know that a law suit needs to be accompanied by a whole communication strategy, and with a strategy of (popular) mobilization, and resistance, and people know that... People realized that legal strategies by themselves did not work, and thus they started changing, learning to combine those various forms of action. We never sit here at ONIC to define a legal strategy, (separately from) a communications strategy, and a strategy of building our internal organizational capacity.

However, the knowledge of the limits of law as a social movement strategy did not mean that indigenous people or the U'wa stopped believing in the usefulness of law. On the contrary, law has a very important place in the everyday lives of indigenous people. In fact, she explained to me how their strategy of combining law with other kinds of strategies was closely related to the place that they understood the law had in their everyday social and cultural lives. Immediately after, she said:

And this (ONIC's custom of combining law with other strategies) has to do with the fact that for us (indigenous people) the law, legal rules, and all things legal are embedded in our daily lives, our practical lives. In other words, the law and "the legal" are not something that is outside of our lives, of our day to day. For us law is part of culture. For us the law has never been an isolated element, but one that needs to be combined with everything else –or at least that is the way we understand it.

Understanding law as a part of culture, as something that is "in society" and not apart from it is a topic that has been the object of multiple debates among socio-legal scholars, particularly among anthropologists of law. These debates revolve around the autonomy of law, this is, the extent to which law is outside of, and thus, neutral with respect to social, economic and cultural institutions. For indigenous people, however, the dimensions of the problem were somewhat different. Their conceptual approach to this matter had practical implications with respect to social action. As we will see in the next section, their approach to law as not autonomous, an institution that needed to be combined with others to bring about social change, helped them to shape the strategies that the campaign used to target Oxy and the government.

Shifting the Targets of Contention: from the State to the Corporation

The U'wa and their supporters knew that even though law remained an important tool, they needed to resort to strategies other than litigation. Initially, however, they remained ambivalent with respect to what institutions or organizations to target. Should they continue to target the state as they had been doing throughout their domestic and international litigation campaigns? Should they attempt to target Oxy directly instead? Each target involved a series of opportunities and constraints. On the one hand, the Colombian government was especially vulnerable to accusations for violating human rights, especially abroad. The record of human rights violations attributable to the Colombian government made the state an easy target. Particularly since the Pastrana administration wanted to cleanse its reputation as a government that was respectful of human rights. On the other hand, however, targeting the government would not necessarily prevent Oxy from exploring oil in U'wa land because there was not really much that the government could do without breaching their contract with Oxy. A breach of contract would also undermine the reputation of the government with international investors during a period of acute economic recession.

Nevertheless, the strategic decisions with respect to the identification of the targets of blame depended on more than a cost-benefit calculation with respect to the opportunities and constraints. Thus, environmental activists initially targeted the Colombian state abroad. Rainforest Action Network organized protests in front of multiple Colombian consulates throughout the United States, and targeted representatives of the Colombian government whenever they were on an official mission in the United States or Europe. The person in charge of strategy at RAN at the time described their initial strategy in the following way:

Interviewee: We originally – I think our first wave of actions were around – were around, were built around cities where there were Colombian consulates. There were, I recall fourteen cities (that have) Colombian consulates.

Interviewer: so let's go to the beginning of the campaign. The campaign started by going to the consulates?

Interviewee: Yes. I believe that's how it started. We certainly did that several times and we tried to, you know, there is a way in which it is trying to put pressure on the Colombian government through the consulates, delivering letters, trying to show them that this was a big issue. Hit them all in one day so that people show up on every consulate in the United States delivering the same letter, saying you know we are watching this, we demand action.

Immediately after this, I asked the interviewee whether the strategy of protesting in front of the Colombian consulates had worked. His answer suggests that this strategy was directed more toward expanding their network of supporters and building a movement around the campaign, than actually targeting their opponents. He said:

Did it work? Hmm ... Well, it depends. It worked for building – The real goal of this action is not that we thought that the government would have some epiphany about the destructiveness of oil or indigenous rights, or even that the people in the consulates have a great deal of influence. But what it worked for was to build a network of folks who could get invested in this issue by taking action, and that's the model that was built. We frequently used – so it was a “day of action” model, sort of we kind of built it and they would come, announce this day of action, publicize the campaign and the issue, in existing networks of activists. RAN had a network base, but also through our allies, and mobilize people altogether in the same day. So I think those were the first actions.

This suggests that the actions carried out by social movements are not necessarily motivated by a single purpose. Some social movement theorists have drawn a sharp distinction between “expressive” or symbolic actions, in which activists attempt to build collective identities and solidarity, and “strategic” actions in which activists target their antagonists. The first category refers more to ideational factors and the second is usually applied to action (McAdam et al 2001, Tarrow 1998). However, as we can see from the account given by this RAN activist of the motives of protests against the Colombian consulates, a single action like protesting in front of consulates or targeting the state may have multiple purposes. Thus, an action that may seem ineffective or pointless may in fact be effective if the one considers the various purposes that activists have. Moreover, this also suggests that their intention of exerting pressure over their targets in this case was secondary. Their real purpose was to call the attention over the issue and to draw support from other activists and organizations. To understand how activists seek to draw

support for their campaigns one must understand the ways in which they are able to articulate them in larger conversations that are taking place in the field in which these activists operate.

The U'wa campaign was not occurring in a vacuum, but at a time of significant global civil unrest. This was a time when activists in the global north and south were mobilizing against what they considered were some of the most harmful consequences of global capitalism. Thus, as Donatella della Porta (2006) and others have pointed out, there was at the time a global justice movement that incorporated different kinds of claims. Some activists and organizations focused on the effects of sweatshops, others acted in solidarity with the Zapatista movement, others revolved around the claims of farmers against the liberalization of agricultural products, others came from traditional labor unions, others were protesting against old-forest timber extraction, or oil and coal extraction. In sum, then, although there were significant tensions within the global justice movement, various sectors of activists converged against the present and future consequences of economic globalization. In this respect, otherwise very different kinds of activists coalesced in their struggle for global justice and against economic globalization as embodied by corporations and international institutions and entities such as the World Trade Organization, the World Bank, the International Monetary Fund, and the G8.

Part of the objective of the environmental justice activists that worked with the U'wa was to situate their campaign as a poster child of the larger movement that has been called the global justice movement (della Porta et al 2004, 2006, Kriesi et al 2009, Smith et al 1997, Tarrow 2005). The global justice movement led to the mobilization in Seattle and their attempt was to situate the U'wa campaign as an example of how corporate greed affects the lives of people in the global south. Showing the social, cultural and environmental dimensions of the U'wa struggle would help to draw support from the various groups and factions that were part of the Seattle activists. After describing the initial stage of the U'wa campaign in front of the Colombian consulates, the former RAN strategist continued describing their strategy of articulating the U'wa campaign within the larger global justice movement.

This would probably be in (nineteen) ninety eight, maybe? Ninety eight, (or) ninety nine. The turning point was in the lead up to Seattle. I remember in September of ninety nine was when the military and Oxy invaded the drilling site. ... We were actually organizing an action camp to train people to prepare for the actions of Seattle, so I was actually in Washington State, and I actually had to leave the camp and go and start mobilizing folks around this, so right from then was the beginning of a period of time that was recognizing the power of the Seattle moment and that *corporate globalization* was becoming a useful euphemism for the system in general, writ large. In w way that people could recognize that, you know, people that had been sweatshop activists or that had maybe worked in the Home Depot Campaign, or that were concerned about different issues, primarily young people that said ok, here, with this showdown in Seattle with the WTO, this sort of names the whole system (author's highlight).

Later on he added that after the U'wa campaign announced their idea of targeting Fidelity Investments, which was Oxy's largest shareholder, it received the unintended support and publicity from the most radical groups that were present in Seattle:

So that campaign got announced for the first time, I think ever, in the convergence days in Seattle, like literally the night or two before the original November 30th before the shutting down of the WTO. Interestingly enough the U'wa then reached another level of prominence because of –strangely- the autonomous groups, the Black Block that engaged in property destruction one of their number one targets that they struck was Fidelity Investments. And in their communique that they put out, that then got scrutinized by all of the police services and government forces, the very first thing in that communique from that block of militant people, who stole so much of the limelight of Seattle, was the U'wa. You know, so it was interesting juxtaposition. That was not a tactic that we were advocating, nor necessarily a sector that we were looking to mobilize, but it did bring some attention to things. And it kind of speaks to the initial success, and then we built it up in a more deep and strategic way to show how the U'wa were a poster child of the victims of corporate globalization. And what was this fight really about, what was really behind the worldview of the WTO and to be able to contrast that with the cultural logic and the earth-based sort of poetry of the U'wa, and their charisma, and the depth of their resistance. These were all great mobilizing tools.

These excerpts show how the activists involved in the U'wa campaign were trying to attract supporters who had been previously involved in campaigns against corporations, which had been both labor solidarity movements like the anti-sweatshop campaigns against Nike, Gap, American Apparel and others (Armbruster-Sandoval 2004) and environmental ones like the Home Depot campaign against old-forest timber logging. Appealing to this group of people was very important for the activists that were directly involved in the U'wa campaign because it would help to give it greater momentum. Moreover, the search for supporters also had an effect over the identification of the culprits.

The excerpt also shows how the framing of the conflict helps to identify its cause (Benford and Snow 2000), and thus, also the antagonists that activists should target. In this case, the best way to obtain support and situate the U'wa campaign within the field of the global justice movement was to present their conflict as a consequence of corporate globalization. Thus, Oxy would be the ideal target. Although initially the activists at RAN and Amazon Watch had targeted the Colombian government via its consulates, what they really wanted to do with this strategy was to enhance the network of supporters for their campaign. In light of the context of civil unrest against corporate globalization in which the activists were, the best course of action to obtain support for their cause was to blame and target Oxy. In other words, to become appealing to these groups the campaigners had to portray the conflict in a certain way, and be able to identify the culprits in terms that were aligned with the worldviews held by potential supporters. As the campaign strategist at RAN put it: “there is a kind of narrative logic” in the idea of targeting Oxy and its institutional investors.

The Road to Market Activism

However, the U'wa campaign did not target Oxy just because they needed to expand their network of supporters and become articulated within the larger global justice movement. Rather, a combination of ideational and material factors contributed to redirect the campaign in this direction. The first of such factors is refers to the ideational context, particularly to the emergence of a worldwide concern with global warming, and the evaluation that environmental groups made of the Kyoto Protocol as an inadequate framework to control climate change. After Kyoto, environmental organizations in the United States adopted a harder stance against the oil industry. Some of them adopted specific lines of action to prevent oil exploration, like the Beyond Oil and No New Explorations (Nonex), adopted by RAN as a way to prevent carbon emissions coming from oil. It may well be that these organizations were adopting these climate change related campaigns because at the time donors and foundations were allocating resources to campaigns that sought to control global warming. Thus, it is possible that environmental organizations were simply shifting their lines of action according to the areas of interest of donors to assure their resources. In this sense, the rising interest in global warming may reflect a typical organizational goal displacement of the type identified by Michels a century ago (1962[1911]). On the other hand, environmental organizations are not simply responding to external factors that shape their agendas. In fact, as John Ruggie (1974, 1975, 1998a, 1998b), Ernst Haas (1980) and Peter Haas (1989, 1992), and others have shown, these environmental organizations are part of epistemic communities that play an important role in setting the agenda of the environmental movement. From this perspective, one can rightly assume that they also motivate donors and foundations to fund action in certain areas like global warming because they consider them important. The most likely scenario is that scientists, activists, donors, government and even corporations influence each other in setting the agenda and defining the priorities of environmentalism and that the ideas, resources, and negotiation processes between these actors played an important part in shaping the emergence of new lines of action against oil exploration.

RAN, its spinoff organization Amazon Watch, and an organization specialized in oil and mining, Project Underground, adopted the U'wa campaign as a part of the Nonex line of action that RAN was implementing. All these organizations focus on campaigns, this is, they seek outcomes, as opposed to other organizations that seek to intervene over long-term social processes of community building, education, or other forms of cultural transformation. Thus, they select the campaigns in which they consider that they can have an impact. The criteria for deciding whether they can have an impact, in turn, depends on the opportunities that they observe of obtaining the outcomes that they seek, the broader consequences of their intervention for other campaigns, and their own resources and capabilities. As Amazon Watch director said in an interview:

Going back to your question about the criteria for selecting ... we prioritize cases or issues in which we can actually have an impact from this far away. You know, we are not there, we are an international group, so our role is important, so sometimes it is a U.S. bank, or sometimes it is a U.S. company, like Oxy, or Canadian company, or the state of California's natural gas consumption from Peru. There's got to be some linkages where we think that we can actually have an influence and it's in our sphere of influence.

In the U'wa case, a combination of organizational resources and the opening of opportunities helped the organizations to decide to get involved in the market campaign against Oxy. Environmental activists realized that they had two advantages that enabled them to make an impact. The first advantage was that the U'wa shareholder meeting was about to take place in Bakersfield, California, and that given that they were located in Northern California and the Los Angeles area, and that they had a network of activists they could mobilize in the area, they were in an ideal position to have an impact. Thus, the time and place of the campaign were incentives to intervene.

The second advantage that they had was their prior experience deploying market tactics. The expertise of these organizations gave them an advantage to influence Oxy's governance structure. In fact, at least two of the environmental organizations involved, RAN and Amazon Watch became involved with the U'wa campaign due to the comparative advantages that they had of deploying the market tactics that they had learned in their campaigns against Mitsubishi, the Hollywood studios, and Home Depot against Oxy. Moreover, the director of Amazon Watch had been the director of the Los Angeles office of RAN, and had participated in both the Mitsubishi and the Home Depot campaigns in which RAN had perfected their "market tactics." Project Underground had been involved in the campaign of the Ogoni people against Shell, and thus, they had previous experience in campaigns of indigenous people against oil companies. The director of Amazon Watch narrated the way they decided to become involved in the U'wa case in an interview:

Interviewee: My friend, who later worked in Amazon Watch, was working at RAN at the time running the Beyond Oil Campaign, and we were members of the Amazon Alliance. Amazon Watch was brand new, we had just issued one report, I was in Brazil delivering that report, meeting with – having strategy meetings in Brazil. It was April of nineteen ninety seven, and while I was in Brazil someone tracked me down and said "you need to call Shannon and Melina, you know, they have an urgent request for Amazon." So I picked up the phone and basically called them, and they said "did you see the (U'wa) letter?" And I had seen it, I had seen it in my e-mail, a letter from the U'wa to the world, an open letter to the world, I don't know if you have seen that letter. It's the first one that they put out ... threatening – It was after the constitutional court decision – and the courts in Colombia – basically threatening with mass suicide, you know, calling to the world for help. And basically Shannon and Melina said "we want to invite them to come to the U.S. and tell their message" you know, and Occidental Petroleum at the time was like nine miles from my house, you know, in L.A., and they were basically saying "the shareholder meeting is coming up, you know, we want to bring the U'wa either for the shareholders' meeting or just before, or just after, to bring the message to the world and get media coverage and pressure Oxy."

Interviewer: Was that in the 1997 shareholders' meeting?

Interviewee: Yeah. And I said yeah, great, let's do it. I'd love to help. I'm not going to be there, I'm in Brazil, but I'll get my team of mostly volunteers to – (interruption) – I was basically not even in town, but I had been working with a group of, you know, at the time Amazon Watch was mostly volunteers, I had been working with a team in L.A., so I made arrangements to receive the U'wa

Despite identifying the existence of opportunities for the success of the U'wa campaign, there were several constraints that limited the possible strategies that the campaign could use against Oxy. Appealing to consumers and consumer solidarity in order to stage a boycott against products produced by Oxy was almost impossible. The company has no brands, nor did it sell gas or other retail products that could be boycotted by appealing to consumer solidarity. The lack of brands constituted an obstacle for activists to adopt a strategy directed toward consumer persuasion. As Lisa Margonelly (2007) has pointed out, unless there is a brand, tracing the trajectory of oil between the pump and the oil sites where it comes from is a daunting task. Thus, appealing to the consumer part of the oil market and to their solidarity without having a brand was simply not an option. A staff member who was working with the U'wa campaign initially at RAN and then at Amazon Watch explained how the lack of a brand or an institutional face led the campaign into their next phase, which was to target those of its shareholders who really did have a face r a brand and cared about their reputation. He compared RAN's campaign against Home Depot with the one against Oxy:

The market campaign model is particularly effective against brands or brand-sensitive organization, like a company like Home Depot that has stores all over the place, is very invested in their image, compared to Occidental, where it was useless, really. They couldn't give a shit about their image, most people don't even know about their product, they don't even have a consumer face, which is why, in adapting that model, is why we went after Fidelity.

Moreover, it was also very difficult for activists to appeal to shareholders in order to promote a divestment campaign. The price of the shares of Occidental Petroleum has been increasing steadily and significantly in the last twenty years. From 1990 to 2010, during the tenure of its CEO Ray Irani, the company went from \$5.4 billion to 79.7 billion in market capitalization, becoming the fourth largest oil and gas company in the United States. Thus, the probabilities of obtaining a shareholder divestment from the company were not so high.

Initially, the U'wa supporters in the U.S. attempted targeting Oxy by staging protests in front of Oxy annual shareholder meetings. However, gradually they staged a more complex strategy. Nevertheless, the activists decided to engage the company directly, and strategically deployed various means of persuasion through a combination of protests and more institutional tools. Initially, they targeted Oxy directly. Then because Oxy lacked a brand or an institutional face that they could use to gain leverage, they targeted key shareholders by protesting in front of their offices, hanging banners, publishing ads, and resorting to key allies to pressure them trying to

forge alliances with them to pressure Oxy's management directly. Finally, would use their alliances with shareholders to pressure Oxy's management in different ways, whether through divestment, by submitting shareholder propositions, or by simply issuing declarations against oil exploration in U'wa land. In what follows, I will document this strategy.

Engaging with Oxy's Shareholders

On April 1997 the U'wa leaders visited various cities in the East coast and California. They travelled along with a representative of ONIC and members of the environmental INGOS which were part of the Coalition for Amazonian People and their Environment.²⁸ The U'wa and their supporters met with other organizations and activists, and gave talks in universities and colleges. More importantly, perhaps, they staged protests in front of the headquarters of Oxy, met some shareholders as well as with some of the managers of the company in its headquarters in Los Angeles.

During the visit of the U'wa to California, the Coalition first organized a rally in front of Oxy's headquarters in Los Angeles during the company's annual shareholders' meeting. During their rally, they distributed pamphlets to the shareholders asking them to intercede on their behalf with the company's management and convince them not to explore oil on U'wa territory. Later, they held a meeting with the executive vice-president of the company, and with the operations manager for Colombia.

However, the U'wa realized that this strategy was fruitless. They knew that engaging with company management directly without having some kind of leverage was not going to produce the results that they wanted even those meetings were held with the company's most important decision makers in Los Angeles. On the contrary, holding meetings with the company's management could be used to portray the situation as a friendly encounter, and make the campaign lose momentum. Thus, Berito Cobaría, then president of the U'wa *cabildo mayor*, or superior counsel took a strong position after his meeting with the company's management. He claimed that this meeting was fruitless in terms of achieving any kind of compromise on the part of the company. In a press conference held after the meeting with various vice-presidents of Oxy he said:

“No one took any positions. They gave us no answers and they did not commit themselves to giving an opinion. We can hold thousands of meetings like this, but this is a lost cause. We cannot negotiate.” (National Catholic Reporter: June 20, 1997, p.13)

²⁸ These organizations were: the U'wa Defense Project, Project Underground, Rainforest Action Network, Amazon Watch, and Earthjustice. The only ones that currently exist are Earthjustice, Rainforest Action Network and its offspring Amazon Watch. Project Underground no longer exists, and the U'wa Defense Project was absorbed by Amazon Watch.

However the announcement of the meeting had called the attention of the press²⁹ and forced the company's executive vice-president to give public statements and to write a letter to the U'wa leaders saying that the company was willing to evaluate different approaches to resolve the problem with them. Moreover, this meeting also marked the beginning of a campaign to engage the company from the inside. Exploiting any existing internal divisions would be difficult because as it was already mentioned, during the tenure of its current CEO Ray Irani, the management had been increasing shareholder value consistently and substantially. Thus, the U'wa in fact had to resort to more aggressive tactics and provoke new divisions between management and shareholders by targeting the reputation of key shareholders.

In May 1998, the U'wa traveled to the United States once more. Among their plans was to attend Oxy's shareholder meeting that year. Right before this happened two important events changed the terms of the interaction between the company, the government and the U'wa. First Oxy announced that it would accept reducing the oil exploration area to one tenth of its original size (from 200,000ha to 20,000ha), and explore only outside of the U'wa *resguardo*. The second event was that Royal Dutch Shell, Oxy's partner³⁰ decided to opt out of the exploration project and give their part of the business back to Oxy.

The managers of Shell explicitly said that theirs was a business decision. However, as it has already been mentioned Shell was facing similar opposition to their business in the Niger Delta in Nigeria, and also in the United Kingdom. In Nigeria they were facing fierce opposition from a coalition between the Ogoni, and international environmentalist and human rights organizations, including Project Underground, which as it was mentioned, was also involved in the U'wa campaign. The Ogoni campaign, which had started four decades ago, and had started being supported by environmentalists in the United States in the mid1990s, had already resulted in the killing of various environmentalists and journalists by the Nigerian military, including Ken Saro-Wiwa, giving Shell a significant amount of bad press. In the UK, Shell was also facing environmentalists, Greenpeace in particular. They were opposed to the company's decision to use the oil storage loading and platform called Brent Spar in the North Atlantic.

The Strategic Engagement of Shareholders: using reputational concerns to target large shareholders

The decision of Oxy to reduce the area of exploration and limit themselves to areas outside of the formally recognized U'wa *resguardo*, and Shell's decision to abandon the exploration project were two victories that gave the U'wa campaign reasons for optimism. However, Occidental and Ecopetrol were still seeking to explore oil in the land that the U'wa considered part of their ancestral territory. Thus, these were only relative victories and the U'wa and the NGOs that supported them continued with their transnational campaign against Oxy. However, given the

²⁹ On April 25 Los Angeles Times published an article about it in the first page of the newspaper called "Colombian Tribe has Oxy sitting on a Barrel".

³⁰ Oxy had 37.5%, Shell 37.5% and Ecopetrol 25% of the business in the Gibraltar drilling site and Samoré block.

difficulty of targeting consumers directly, simply appealing to shareholder solidarity, or exploiting existing schisms between shareholders and the company's management, they would exert pressure against shareholders by attacking their reputation.

The U'wa and their supporters knew that using reputational concerns was a strategy that had various difficulties. The first difficulty that they had was that even when companies have a reputation to protect, the impact of reputation over the company's cash flow, or their shareholder value is very difficult to establish or measure. Therefore, the company's management is less vulnerable to these kinds of attacks than to other more disruptive strategies like boycotts or occupation of company premises. To be sure, the executives of Oxy in the United States viewed the reputational concerns as something completely separate from the economic effects of the U'wa campaign. One of the executives that I interviewed said to me referring to the effects of the U'wa campaign:

Interviewee: Yeah, yeah. It did harm -- it did harm our reputation for a period of time. There's no question about it although --

Interviewer: And did it affect the shareholder value, or did it not?

Interviewee: No, it had no impact. I think whether it's fair or not I don't think that the investment community really -- first of all the Colombia operation relative to Occidental as a whole is very small so we could lose -- and we were talking about an exploration play that had less than 10% chance of success so -- and I think we may have spent 70 or 80 million dollars or more so is the investment community really going to get overly alarmed? I mean ... I think the tactics that they started with us may be more effective when you look at the Chevron situation in Ecuador

The activists were well aware of this limitation in their strategy. One of them said to me:

Whereas past generations of social movements could maybe have more dramatic impact directly economically and say "let's occupy their factory" or "let's boycott them," the reality of the scale of many of these global corporations is that we do not have the ability to affect their bottom line. The power of brand attack is not quantifiable. It's not the kind of thing that the CEO of a -- If you are running a boycott the CEO can come every morning go to the Chief Financial Officer and say "so, how are the numbers? Did the boycott affect us? They're up, they're down?" If you are doing a brand attack and you are kind of threatening, at least in the CEO's mind, and in the institutional shareholders that maybe you are going to turn a whole generation of their next wave of consumers against them. That's the power that I think market campaigns have successfully leveraged.

Thus, as this excerpt shows, the activists are well aware that the tool that they are using is more closely related with perception and attitudes toward risk than with a rigorous analysis of the economic impact of brands and reputation.

The U'wa campaign abroad continued. This time, the U'wa and their supporters attended the annual shareholders' meeting of Occidental in Los Angeles. They had done so in the past, but this time they changed their strategy slightly. Instead of simply organizing a rally in front of the company's headquarters and meeting directly with the management, they devised a more complex strategy of targeting key shareholders before the meeting. First, the U'wa decided to purchase shares in Occidental Petroleum. Purchasing shares in Oxy gave them the right to be present in the annual shareholder meetings and to make use of a certain amount of time to address the rest of the shareholders. Thus, with the aid of a translator, the U'wa leaders addressed the shareholders of Oxy to request support their cause.

In particular, they were seeking support for a shareholder proposition that had been set forth by an Oxy shareholder that became an important ally of the U'wa: the Sinsinawa Dominican Sisters. This was a group of Catholic nuns from Minnesota that was respected by other shareholders, although in comparison they did not own a significant amount of shares in Occidental. The nuns attended the U'wa request for support and set forth a proposition to suspend oil exploration in U'wa land until there was an assessment of the environmental and cultural consequences of the project carried out by a neutral third party. Their Washington D.C. – based lawyer, Spencer Adler, agreed to meet with the representatives of the U'wa. Moreover, Adler agreed to contact other major shareholders before the meeting, and inform them of the U'wa situation. Then, he would take a proposition to the shareholder's meeting suggesting that the company should not explore for oil near the U'wa reservation until an independent committee had certified that there was no risk for the material and cultural survival of the U'wa people.

To be sure, shareholder resolutions are not an effective mechanism to enhance corporate social responsibility. As the socially responsible movement has shown, this mechanism has been largely unsuccessful in transforming corporate practices (Haigh and Hazelton 2004, Lodgson and Van Buren 2009). The U'wa and their supporters knew the limits of this mechanism, and they did not expect that the rest of the shareholders supported the resolution. In fact, they knew that the resolution would not be adopted, but they nevertheless framed it in such a way that it was palatable to the rest of the shareholders. Nevertheless, their tactic in putting forth the resolution was directed toward drawing the attention of the media, the shareholders and the management by alerting them to the possible negative reputational consequences that the campaign could have. Again here, the goal was setting the agenda for the shareholders' meetings, instead of resolving the issue directly. One of the U'wa supporters explained how the terms in which the shareholder resolution was framed to highlight the issue of reputational concerns. In an interview this person said:

The U'wa wanted Oxy off their land, they wanted basic respect. You can't pass a shareholder resolution – you couldn't introduce a shareholder resolution about that. It would be very easy to dismiss. So the way to make try to get a little bit of like traction – and again this is all a

game for media attention and public pressure. As you and I know corporations are not democracies. They are not going to be like “we won the vote, now they are going to pull out.” And a successful shareholder resolution is one that wins five or six percent of the vote, you know; something that is noteworthy. So the shareholders’ resolution was something like that Oxy had to assess the potential negative public relations consequences of this campaign.

Moreover, Oxy executives were also well aware that activists were setting forth among shareholders the idea that investment in Oxy entailed a reputational risk for them. He recounted how Atossa Soltani, founder of Amazon Watch wore the hat of a shareholder during the shareholder meetings. He said:

I think they felt that if they have exhausted sort of the straightforward way and then needed another way and that was to do enough damage to our reputation that it would erode shareholder value and so that was the tactic to get shareholders to abandon the company because of the reputation risk involved in investing in Oxy and they would say that very openly. Atossa Soltani would show up at our shareholders meeting and tell our board of directors and our chairman and all the executives of the company what we need to do to enhance shareholder value which is the ultimate irony to have, the head of Amazon Watch telling a Fortune 50 company what they need to do to enhance shareholder value and she would assert that if we continued to do this we would -- we would lose investors and we would -- our shareholders would go away and then she would say, “As an Occidental shareholder, I’m only here because I care about the shareholders and all these people (the U’wa) are gonna jump.”

After having raised the issue of the potential reputational damage that the U’wa conflict may produce on Oxy, the U’wa campaign targeted key shareholders.

The U’wa targeted and met with Sanford Bernstein, president of the Alliance Group, which owned \$1.19 billion in shares of Oxy. Their strategy that the campaigners used with Bernstein was very similar to the one they initially had used against Oxy: they protested in front of his offices, asked for an audience, and once the meeting was granted asked for his support. Moreover, they targeted his office in the Bank of America in San Francisco and hung a banner from the building. In this case, although neither the Alliance group nor Bernstein divested from Oxy, they did agree to meet with the U’wa in their office.

Another shareholder that the U’wa and the NGOs targeted was the mutual fund Fidelity Investments. Fidelity at the time was the largest corporate shareholder in Oxy, and thus, the activists thought that there was a “narrative logic” in holding this fund responsible for the actions carried out by Oxy. Moreover, activists also a more pragmatic reason for targeting Fidelity, which was that it had offices in the United States and around the world, and this enabled them to carry out rallies and protests that would call media attention. In addition, Fidelity has a well-

known brand in which they are invested. Moreover, the type of business model that Fidelity has developed is to attract young people so that they invest their life-long savings in the company. According to the logic of the activists the fact that Fidelity sought to attract young people meant that they would be especially sensitive to the types of issues that their potential clients care about, like environmental degradation and human rights violations. One of the activists explained how their strategy and organizational resources mapped onto the business model of Fidelity in the following way:

They had a model in which they were trying to build life-long customers and they are particularly interested in young people, so how do you get young people to get connected and then be sort of their financial services for life? So the idea then was lining up our strength and ability to mobilize young folks with their weakness, which is their brand liability, particularly among the youth.

They then mobilized young people to protest in front of their local Fidelity offices and hand out leaflets. During the next six months, seventy five protests or “days of action,” as they were called, were organized simultaneously in front of the offices of Fidelity Investments in forty four different cities throughout the United States and the United Kingdom. The objective was to exert a bottom-up organizational pressure over the company’s top management who would receive calls from their office and regional managers throughout the country on the same day telling them that there were protesters shouting in front of the local offices of Fidelity. One of the organizers of this campaign described the strategy in these terms:

The standard action would be – we would do protests, days of action. Go, adopt your local Fidelity go do a rally in front of their offices, and hand out leaflets. Some of these days of action probably, I would have to look, but we are talking about forty or fifty locations around the country. On a single day, anything from twenty to a hundred people show up at a Fidelity and just raise hell. They protest outside, they had billboards that said Fidelity invests in genocide, and you know, the goal of these things is to freak the hell out of the local managers so that he calls head offices and asks: “what the hell do I do?” And hopefully get some press coverage of the issue, sort of as a pressure tactic. Interestingly enough some of these went global through some of the networks that we are part of, so there was a major action in London at Fidelity’s headquarters. And because the group that was engaged in solidarity there was London reclaim the streets, and London reclaim the streets had been the main organizer of the June 18 protests ... Fidelity freaked out even though there were only twelve people. Fidelity boarded up their entire building, furloughed all their staff...

However, besides the protests, activists motivated people who had their investments in Fidelity to divest from the company and were able to obtain some divestments. As Atossa Soltani, director of Amazon Watch said in an interview this strategy was combined with an appeal to investors to divest from Fidelity. In the end, through the protests and the divestment convinced Fidelity management to divest more than \$400 million from Occidental.

A bunch of people pulled out their Fidelity investments, you know, moms and pops, you know, they said t us “I have ten thousand or twenty thousand dollars and I am pulling them out of my retirement fund.” ... Ultimately within six months Fidelity had divested four hundred million dollars from Occidental.

Strategic Engagement of Shareholders: targeting political supporters and affecting business strategy

The other shareholder that the U’wa campaign targeted was not important in terms of the amount of shares that he had, but because of his political salience: Al Gore. Gore had received around one million dollars in shares of the oil company from his father’s estate after he died. Regardless of the relatively insignificant amount of shares that he had, there were several reasons that made Al Gore an ideal target. First, Al Gore was known as an environmental champion, and an advocate for reducing carbon emissions. Moreover, he was already familiar with the conflict of the U’wa, whom he had met two years before in San Francisco when the group was awarded the Goldman Environmental Prize. Moreover, not only was he the vice-president at the time, but he was also the Democratic candidate running against a politician from Texas who had close ties with oil companies. However, he too had a close relation with Oxy. His father had been a senator for Tennessee, the state where Oxy Chemical had most of its coal and phosphate mines, was very close to Armand Hammer, the CEO and owner of Oxy before it became public, and a long-time member of a board of directors of Oxy Petroleum.

The request that the U’wa campaign made to Al Gore to divest from Oxy was dismissed by Gore because even though he was the executor of his father’s estate he had no control over the investment of its portfolio. Thus, the U’wa campaign felt that it would be enough to receive a simple public message of support on behalf of the U’wa, requesting Oxy to leave their land. To secure the support of Gore, the U’wa campaign decided to carry out a nationwide campaign by mobilizing and coordinating protests in front of any possible public venue where Gore or his 2000 presidential campaign were likely to be present. Thus, U’wa supporters appeared in the Democratic National Convention in Los Angeles with banners protesting against the candidate. They also protested in the campaign offices in the various cities that he toured throughout the campaign. They paid a full page ad in the New York Times questioning his credentials as an environmentalist and exposing his relation to Occidental Petroleum. They even protested during his second daughter’s graduation from Columbia University.

One of the strategies that the U’wa campaign used was that they threatened to pay ads in all the college newspapers in the swing states, which was exactly the segment of the population that Gore was appealing to in order to win the presidency. The former campaign strategist for RAN told me in an interview:

We ran mock ads, we made fake ads about this issue, maybe some version of the original Al Gore - U'wa ad that we had done for the New York Times, and we threatened to run them in college newspapers in swing states where Gore was worried about Nader, and basically for him to be like: look, you need the campus vote and the swing states to turn for you, and if we run this ad and help people understand that you are a hypocrite, and this oil thing, they'll vote for Nader. So that was ten days out of the election.

At a certain point, the Gore campaign said they could not grant the U'wa supporters their request for a statement in support of the U'wa based on legal reasons. According to them Gore was also the vice-president and the U'wa conflict was related to foreign policy, and issuing a statement would entail stepping on the exclusive prerogative that the U. S. Constitution gives the president to conduct foreign relations. Thus, they decided to refer them to the National Security Council. This may have been in part a strategy to create a bureaucratic hurdle, and divert the attention of activists from the presidential campaign to an obscure bureaucracy. On the other hand, it was precisely during that time that the Clinton administration was authorizing the use of military aid granted by the U.S. Congress to Colombia to secure the protection of Oxy's pipelines and infrastructure.

Regardless of whether this was a diversion strategy the activists remained in contact with the presidential campaign negotiating the terms of the statement that the candidate would eventually issue. However, the Democratic Party was counterattacking. They attacked RAN accusing the organization of intervening in politics, requested them not to target Gore and threatened them with requesting a court injunction to keep them quiet due to their status as a non-partisan non-profit organization. Although the board of directors of RAN initially suspended its actions against Gore, it later reconsidered its position and resumed its campaign. By then, however, the Gore campaign had decided not to negotiate the terms of an eventual statement by the candidate anymore. According to the U'wa campaign this was due to the fact that Democratic National Committee was distributing a letter signed by Spencer Adler, the Washington D.C.-based lawyer of the Sinsinawa Dominican sisters, claiming that he was a lawyer for the U'wa and that the U'wa did not have any problem with Al Gore. Thus, the U'wa had lost their clout with the presidential campaign.

However, Occidental decided not to comply with the terms of their agreement with the Colombian government, and their lack of compliance was penalized with the "reversion" of the contract on behalf of the government. The contract between Oxy and the government required Oxy to carry out a perforation of a certain depth in order to maintain the exploration site. In their initial perforation Oxy found gas, but they did not find oil. According to the U'wa, their god Sira had "hidden the oil." However, they decided that they would not conduct a deeper perforation, nor to explore oil in other parts of the area that had been granted to them. Thus, in May 7, 2002, eleven years after the joint venture to explore oil in the Samoré bloc was signed with the Colombian government, Oxy decided to close the exploration site and gave their exploration area back to their Colombian government.

The decision not to continue exploring oil in U'wa land was a business decision. However, saying this, as the manager of Oxy in Colombia said, does not explain why they decided not to

explore oil in the rest of the area that they had, or why they decided not to drill the depth that they had committed themselves to drill in their contract.

First, the percentage of the business represented by Colombia and South America is negligible compared to the part of its business in the United States, North Africa (Libya) and the Middle East. In 2010 the United States represented 66percent of its reserves and slightly more than half of its production. The Middle East and North Africa represented 38percent of its production and 26percent of its reserves. In turn, South America, this is, Bolivia and Colombia represented only 8percent of its reserves and around 11percent of its total production.

These percentages show a trend that of the last thirteen years. Since 1997, Oxy started changing their business model dramatically. Instead of focusing on drilling in conflict-ridden areas like North Africa, the Middle East, or Colombia, as it was their tradition since the early days of the company under CEO Armand Hammer, the company was focusing on more “reliable,” and less risky parts of the world. In particular, the company was reducing its operations in South America and expanding its drilling operations in the United States. Thus, in the last years the company has sold its operations in Argentina and in Ecuador they were expropriated.

In contrast, Oxy has been buying oil fields in North Dakota, South Texas, Pennsylvania, Colorado and California. Moreover, in California Oxy is the largest producer of natural gas and the second largest producer of oil. Part of this transformation has been facilitated by the process of privatization of oil fields that were no longer considered of strategic value for national security. Since the Clinton administration, the U.S. government had been selling a series of oil fields that formerly belonged to the military because of their strategic value as energy supply, but were no longer considered as such. In particular, in 1997 Oxy acquired the Elk Hills Oil Field, which by then was the sixth largest in California, and in 2009 they discovered more oil, which made it the largest onshore oil field in California. According to various media sources the purchase of Elk Hills by Oxy has been the object of accusations against Al Gore, as well as some of the members of his campaign and some members of the Clinton administration who were involved. Regardless of the veracity of these accusations, it was in Occidental’s best interest to avoid any recriminations against Al Gore for his relation to Occidental in a context in which they were seeking to expand their business domestically by purchasing oil fields from the U.S. government. Thus, a plausible explanation for Oxy’s decision was that they decided to avoid compromising their new business strategy when they no longer pretended to expand their business in Colombia anymore.

The Problems of Market Activism

An important limitation of market activism is that it relies on persuasion and activists do not have a way to enforce the unilateral and voluntary commitments assumed by the corporations. Corporations may have agreed to assume certain commitments and comply with certain standards of human rights, or environmental protection, but they face small costs if they decide to renege their commitments or “reinterpret” them. In those cases, the movement that persuaded the corporation to assume such commitments may have faded away, and as Gay Seidman (2007) has pointed out, monitoring compliance, let alone, enforcing it may pose a difficult task for

activists. Moreover, the ability of monitoring and enforcing the concessions made by a corporation hinges upon uncertain factors like the ability of activists to mobilize public opinion, which in turn depends on external factors that are uncontrollable. Some environmentalists are aware of these limitations. As one environmentalist told me in an interview:

There is a real tension in the market campaigning model in being like, you know, ultimately there is only so much leverage that you, there is no, you, you are extracting concessions out of the company, but they are voluntary. You know, your ability to police those concessions is largely public opinion.

Moreover, attributing blame exclusively on an oil corporation like Oxy in order to target it, however appealing as a strategy, also meant selecting the relevant facts in a specific way. The occupation of the U'wa land by the military, the excessive use of violence, and the death of children was represented as a situation in which the state and its institutions did not have any agency, but instead they were used as the armed branch of a multinational corporation. Moreover, the exclusive focus on corporations does not just obscure the role played by the Colombian government and the interest that it has in obtaining revenues from oil extraction. It also obscures the role played by the United States government and the decision of the Clinton administration to grant military aid to Colombia in 1999, converting it in the third largest military aid recipient at the time, after Israel and Egypt. Some activists were well aware of the consequences of the focus on corporations, and the campaign strategist at RAN said it clearly in the interview:

In some ways the work around Colombia was very prefigurative. Several of us –speaking for myself specifically – were very consciously aware in the global justice period that we were perpetuating a euphemism for the system, and that by talking about corporate rule and corporate power we were mobilizing political forces at the time, but we were of course leaving a huge part of the global structure out. And that was the other side of the equation, which was of course U.S. military power.

This is not the only case in which violence committed by the state, or more precisely, by the combination of state and corporate forces that Michael Watts (2004) calls the “oil complex” which is reframed as the exclusive working of a corporation. A similar case occurred with human rights violations and summary executions committed by the Nigerian government with respect to the Ogoni people. Even though the Nigerian government also had an interest in silencing activism against oil extraction, the killings and torture of activists like Kenule Saro Wiwa on the part of the Nigerian military was read as a consequence of the actions of Shell. In fact, the tendency to focus exclusively on corporations was widespread, a flaw of the whole global justice movement. The RAN strategist continued:

Some of us, particularly myself, and I come from a more peace and anti-militarism background, I was particularly nervous about that and was trying to position again the U'wa, and Colombia as a sort of secret war and as a way to try to help the global justice movement that was so focused on corporate power and looking for corporate control everywhere to

understand the role of U.S. militarism in supporting corporate globalization and promoting Colombia as that case.

This suggests, as Clifford Bob (2005) has pointed out, that the name that activists give to their grievances and the people or entities that they blame may vary depending, among others, on their strategic decisions with respect to the kinds of support they want to seek for their cause. However, the exclusive focus on a specific actor may obscure the complexity of the relation between state and corporate interests, and the extent to which they are mutually reinforcing. From the standpoint of some of the more critical of these activists, the wars that occurred after 9/11 showed the flaws of this corporate-centered model and its failure to grasp the importance of the alignment between state and corporate interests, rather than focus on a specific actor. As the RAN campaign strategist put it:

And then unfortunately in 9/11 we paid that price and told a whole generation of young activists that “it is all about corporate rule” and suddenly when U.S. militarism became so much more visible and so much more the driver of U.S. policy we lost a lot of people, a generation of bewildered young activists that were kind of – they developed a good critique of corporate power but not the state and it definitely hurt campaigns like the U’wa and it hurt broader social change afterwards.

CHAPTER 10

CONCLUSIONS

There is a growing literature that seeks to understand the role of law in neoliberal globalization (Balakrishnan 2003, Comaroff and Comaroff 2009, Engle 2010, Mattei and Nader 2008, Santos and Garavito-Rodriguez 2005,). A strand of this literature claims that globalization entails two autonomous processes. The first process is usually called economic, hegemonic or neoliberal globalization. The second is commonly known as counterhegemonic globalization, or globalization from below. Some International Relations scholars have gone even further asserting that there are two international regimes: a hegemonic international regime and a subaltern one (Wirpsa 2004). Be that as it may, these scholars generally consider hegemonic or neoliberal globalization as the realm of market actors; typically multinational corporations, international financial institutions, governments and other governance bodies. These actors carry out exchanges to maximize their interests at a global scale. In contrast, subaltern groups and individuals use new technologies to forge transnational networks with international NGOs and grassroots organizations around the world. In many occasions these groups organize protests and large-scale, sometimes even global actions to exert pressure over their antagonists. Alternatively, these subaltern groups resort to various international institutions like human rights bodies in international organizations and use resources like international law or human rights discourse to make their claims.

Throughout this dissertation I provide evidence that suggests that these two processes are highly interdependent. Hegemonic actors like oil companies are also able to mobilize human rights discourses, institutions, and organizations like the OAS and the ILO to further their own agendas. Moreover, they even have access to international NGOs like Amnesty International and Human Rights Watch. In addition, throughout the dissertation I show that that the types of discourses that allegedly seek to empower local, indigenous and other marginalized ethnic communities actually disempower them. Multiculturalism, human rights, and the domestic and international bodies that promote these discourses can actually disempower them. This project underscores the role of multicultural reforms, which were supposed to empower indigenous communities. In reality, however, multiculturalism turns out to be a tool to disempower these same populations and gain access to their lands.

Charles Hale (2006), Cesar Rodriguez (2011) and others have argued that there are various types of multiculturalism. Some of these forms of multiculturalism are harmful for indigenous groups while others empower them. According to them there is one form of multiculturalism, *neoliberal* multiculturalism, which is centered on the recognition of ethnically differentiated identities but stops short of promoting the redistribution of power. Thus, neoliberal multiculturalism is used by elites to fragment indigenous movements rewarding only the more mainstream groups and punishing more radical groups. In contrast, “counterhegemonic” forms of multiculturalism seek both the recognition of ethnically differentiated identities and a more fair redistribution of power.

This dissertation, however, shows that since the times of the Spanish colony and throughout the 19th and 20th centuries, long before neoliberalism, the so-called autonomy granted to indigenous people with respect to their land, customs and forms of government has been promoted inasmuch as it furthers the economic and political agendas of domestic and foreign elites. During the expansion of neoliberalism in the 1980s and 1990s multiculturalism and indigeneity simply perpetuated existing forms of control over land and people, and helped to legitimize forms of domination at a global scale. This dissertation also shows how governments and oil companies have gained greater access to international organizations, international legal discourses (particularly the Convention on Indigenous and Tribal Peoples of the International Labor Organization), and even some human rights NGOs. Thus, I show how the ability of corporations to mobilize their resources and venues to annul the actions of indigenous groups in international organizations that were traditionally more amenable to their claims and grievances.

The second argument to support that globalization from below is not autonomous from economic globalization is that even though indigenous groups are able to adapt and respond to these changes, their responses depend on the resources and opportunities provided by economic globalization. As Karl Polanyi (2001) and Pierre Bourdieu (2005) have shown, there are social and political structures which are deeply embedded in the economy, and this facilitates the type of activism which I have called transnational market activism. Or, to put it in Polanyi's terms, this facilitates a "double movement" of social actors against the encroachment of hegemonic agendas that seek to expand the scope of the market. However, by that same token, whenever social movements use the tools and institutions of the global market economy against hegemonic actors, they become dependent on the global market economy.

In the previous chapter I showed how social movements resort the tools, venues and opportunities provided by the global market economy to confront globalization itself. Subaltern groups like indigenous groups have learned to establish transnational networks and partner with other NGOs that enable them to use market tools and institutions to further their claims when international law, international organizations, human rights, multiculturalism, and other institutions and discourses fail. However, the subversive potential of this form of transnational market mobilization is limited because in order to carry out their campaigns and deploy their market strategies these movements depend on the resources and opportunities provided by economic globalization.

Moreover, in this last chapter I also described how there are significant limitations and risks to these transnational alliances with environmental NGOs and with the use of "market strategies." Some of these risks are related to the advocacy in general. NGOs may claim victories when in reality indigenous people have not received any substantial benefits. However, this risk is not inherent to transnational activism or to market tactics. A more significant critique has to do with the fact that the types of concessions that indigenous movements can extract from corporations are "voluntary." This means that they are to be monitored not by the state, but by the organizations and groups that are being affected. As Seidman (2009) has noted, monitoring these voluntary commitments made by corporations is costly and difficult and sometimes even impossible. Neither social movement organizations in the global north nor the social groups affected by these corporations have the capacity to police these corporate commitments. Moreover, once the movement has claimed victory and demobilized, corporations can openly

renege their commitments. As McAdam et al (2001) have shown, in current times the media and even social movement organizations themselves have only a fleeting interest in any given issue, and thus it is very difficult for these groups and NGOs to mobilize their base to target the same corporations once again.

There is a great need for further research on the impact that reputational concerns have over corporate management and decision making. Specifically, we know very little with respect to the relative importance of material and cultural factors, as well as the specific mechanisms through which corporate actors translate reputational concerns into economic ones. There have been recent international developments in the way corporations handle their “social responsibility,” such as the Equator Principles, or the Extractive Industries Transparency Initiative (EITI). The Equator Principles is a set of voluntary commitments made by seventy two financial institutions in various parts of the world with respect to certain standards of environmental protection in project finance. This mechanism has its own private reporting mechanisms and grievance procedures. In turn, the EITI is an initiative promoted by the World Bank, the UN, USAID, and other governmental and intergovernmental bodies, that seeks to publicize the amounts that companies give the governments where they extract resources. Publicizing royalties helps make government more transparent. However, it also helps to redefine the current regimes of corporate social responsibility and shift their burdens to the state. Instead of having to assume the costs of certain social programs for the communities where they extract resources as they are currently doing, these corporations can point to the state and claim that these functions correspond to the state, not to them. These two international initiatives seek to enhance transparency, social participation and expand the scope of “stakeholders” in their projects. However, we know very little with respect to the way these initiatives can immunize corporations from reputational risks, and ultimately, how they will affect corporate decision making.

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