From Transnational Advocacy Networks to Trans-Spatial Regime Networks: Colliding Structures of Global Governance Regarding Indigenous Peoples and Oil

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Introduction

This article converses with practical and theoretical advances by international relations, sociology and political science scholars to build interdisciplinary bridges regarding the study of the effect of transnational norms on global governance, the dynamics of transnational social movements, and the emergence of global civil society. It proposes that international relations regime theory as reconstructed here can be adapted as an analytical tool useful not only to this inter-disciplinary pursuit,
but also to the study of “new arenas for [transnational collective] action,” the
cultural politics of and changing power relations involved in globalizing processes,
as well as a contemporary “blurring of distinctions between domestic and global
levels of politics” (Khagram, Rilker, Sikkink, 2004, p.4). Scholars in the
abovementioned fields have moved substantially beyond what has oft been
described as a “myopic state-centrism” in international relations and a “myopically
domestic” focus in social movement literature. They have also coincided in an
important re-focusing on multiplications of non-state actors as important agents of
global politics. (Brysk, 2000; Khagram, Rilker, Sikkink, 2004, p.6).

Challenges, however, remain. Methodologically, this article attempts to
address some of these challenges through an in-depth, single-N case analysis
across multiple spatial scales of conflict over a 12-year period between Colombia’s
U’wa indigenous community and their allies, and actors and institutions promoting
the extraction of oil from within sacred U’wa land.¹ In line with Patton’s sampling
strategies, my selection of the U’wa is a “critical case” sample, or a case which “can
make a point quite dramatically” or is “for some reason particularly important in the
scheme of things.” (Patton, 1990, p. 182). In this way, considering extensions, it
“permits logical generalization and maximum application of information to other
cases because if it’s true of this one case, it’s likely to be true of other cases”
(Patton, 1990, p. 182). As Patton describes, when choosing a single case site, or in
this instance, a single conflict which to study in depth, “it makes strategic sense to

¹ I am deliberately employing the term “the extraction of oil” and/or “proponents of an economic
model centered on resource extraction” rather than “oil/resource development.” The former describes
a specific activity – pulling the oil/resource from beneath or upon the earth’s surface -- which may have
positive, intermediary or negative consequences for those involved or affected by it. The latter term
holds a connotative bias (it implies a naturally positive, progressive result); it is inaccurate (the
oil/resource is already “developed”); culturally, it is not commonly used in Spanish, and most likely,
less so in U’wa (proyectos petroleros, or petroleum projects, is more common).
pick the site that would yield the most information and have the greatest impact on the development of knowledge” (Patton, 1990, p. 174).

This case fits these qualifications for several reasons. First, the conflict between the U’wa and proponents of oil extraction and export traversed multiple spatial scales, rapidly and intensely, with strong import not only for democratic practice within Colombia, but, as the case material reveals, in the U.S. electoral political scene as well. Additionally, Colombia’s legal structure regarding indigenous rights is one of the strongest in the world. Indigenous peoples -- even though they constitute less than three percent of the population -- have legal control over 28 percent of the national territory, lands rich in mineral, hydrocarbon, and biodiversity resources. Finally, the U’wa case unfolded at a time of crucial democratic reform in Colombia, a process in which indigenous peoples played a central role. In short, the case permits a particularly rich opportunity for developing knowledge about how marginalized peoples acquire power and voice, how they intersect with powerful actors and institutions, and how changes in governance and power relationships embedded in globalizing processes occur.

Thus, the purpose of this study of a single case falls, considering Van Evera’s list of the purposes of case studies, into the category of creating theory. My objective is to expand and enrich international relations regime theory through extensive empirical case analysis. (Van Evera, 1997, p. 85). The purpose is to enhance the development of knowledge within the mainstream theoretical framework of international relations regime theory by giving voice to the silences that have traditionally characterized it. Selecting from the larger study from which this article is derived, I choose to examine the evolution in practice and meaning construction of a process known as consultation.
The State in an Era of Change

Essential is the way in which this approach contributes to studies challenging conceptualizations of the state as a unitary (ir)rational entity and to new ways of analyzing transformations of the state, the changing boundaries and activities of contemporary political communities and civil society, and the relationship between these. Components of transnational social movement literature attempting to defy state-centric paradigms by focusing on non-state/non-governmental/civil society actors, and attempting to bridge the separation of the state from the market, may run the risk of recreating some of the units of analysis problems they set out to solve. For example, models which consider states “targets” to be impacted by trans-spatial “boomerang patterns,” and which split the state from civil society, can miss the practical, normative and trans-formative influence of actors and processes existing within porous boundaries of the state and multiple ways in which state actors participate, form allegiances and normatively affect networks of civil society actors involved in normative, trans-spatial collective action (Keck and Sikkink, 1998). “State” actors may inhabit spaces of political community inside or outside, above or below or around, the terrain of the state in their daily practice. The same holds true for “non-state actors,” powerful and disenfranchised alike: grassroots movements, corporations, civil society actors, transnational advocacy networks, cross over boundaries of the state, in practice and in the way their normative influences have effect. To move beyond this, this article argues for a conceptualization of the state as an “arena/locus of struggle,” a “terrain of contestation,” or “an amalgamation of contentious politics” constantly re-formulated and reconstructed from without and from within, by both hegemonic and

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2 As Gillian Hart asserts, in her interpretation of Gramsci, “State and civil society [just like state and the market] are not separate, but are deeply interconnected and make one another.” Lecture, Feb 14. 2005. UC Berkeley.
counter-hegemonic globalizing processes, and by both state and civil society actors.

As anthropologist Derick Fay observes:

States are not unitary entities. Likewise, there is no singular official knowledge. Just as the concept of “the state” compresses complex social and institutional relationships in a single entity, so the concept of “knowledge” implies a single body rather than a socially distributed set of understandings (Fay, 2003, p. 1).

In a Gramscian sense, this paper argues that hegemonic and counter-hegemonic influences are not bounded within traditional units of analysis, categories or spatial arenas. A non-governmental organization, or certain actors within it, can be agents of hegemonic construction. On the flipside, counter-hegemonic challenges may originate from within the guts of the same state – from the daily practices of certain actors, shaped by historical social arrangements, who are part of the same state which in other arenas is constructing hegemony. As this case reveals, lawyers and social scientists working for a government entity – precisely because of their historically embedded “socially distributed set of understandings” may present positions that challenge the state status quo. As for corporations, a corporate whistle-blower’s actions can challenge the hegemonic practices and power of the company within which s(he) is embedded. 3

Borrowing from trans-spatial conceptualizations common to geography and certain veins of globalization studies, I problematize bifurcated categories common to political science, international relations and sociology, when discussing transnational collective action and its sustaining institutions. (Cartier, 2001; Hart, 2001)

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3 In this sense, I am partially challenging the frame from which this panel is derived – specifically the petition to analyze how “global interlocutors foster the reframing and resignification of local actors’ agendas within the terms of reference in use among the transnational community.” The social construction of power relationships is inherent to – and can be reinforced by -- our analytical categorizations (See Michael Root, *The Philosophy of Social Science*). I would argue that the causal arrows of “reframing” and “resignification” run in multiple directions, trans-institutionally. Meaning and agendas are constructed in relationship, not simply from a “top-down” dynamic.
A blurring of “state/non-state,” “governmental/non-governmental/intergovernmental,” “local/domestic/global” categorizing occurs. By using geography lexicon of trans-spatiality, I attempt to push the abovementioned interdisciplinary conversation one more step forward, in order to help overcome biases that exist particularly in IR and political science toward Westphalian boundary constructions and thus, levels of analysis, which are increasingly contested through globalizing processes.

**Praxis-based and Theoretical Inspirations**

This begs a question: How might we begin to map the ordering principles of post-Westphalian political communities? Here is a story which offers some insight and which partially inspired the framework developed in this article.

Seated in the kitchen of the headquarters of the environmental and indigenous rights NGO Amazon Watch in Malibu, California, overlooking the dolphin-spotted waters of the Pacific Ocean, I interpreted as U’wa leader Berito Kuwar’U’wa conversed with a group of activists and a Colombian lawyer from a government oversight agency. This group was working through multiple strategies and multiple spatial arenas to support the U’wa people in their resistance to oil extraction, by Occidental Petroleum and the Colombian state oil concern, in and proximate to U’wa demarcated territory. That was early Spring of the year 2000, when trans-spatial regime network activities related to this conflict were rapidly expanding. Kuwar’U’wa had appeared days before at Occidental Petroleum’s annual shareholder meeting, then he had marched though West Los Angeles stopping traffic with scores of supporters. That year, the U’wa gained staunch support from three U.S. congresspersons, and two dozen or so more signed on to a dear colleagues letter sent to President Pastrana on behalf of the U’wa. It was also the
year an Occidental representative had testified, in February, before a U.S. congressional committee, advocating on behalf of the “U.S. private sector,” an expansion of U.S. military aid under plan Colombia to Occidental’s installations proximate to U’wa territory in northeastern Colombia. Simultaneously, the U’wa case began to have import for U.S. domestic electoral politics: Activists discovered a history of financial and personal ties between the family of front runner Democratic Party nominee, Al Gore, and Occidental Petroleum. These links significantly ratcheted the trans-spatial political opportunity structures available to the U’wa and their regime network connections in the United States.

That day, Kuwar’Uwa, as he spoke, waved his hand to signal inclusively to the individuals present, and explained that all of them – and other people working in solidarity with the U’wa struggle -- lived their lives in harmony with and obeying the laws of the U’wa god, Sirá. The Occidental executives, and certain members of the Colombian and U.S. governments, however, he insisted, walked to the rhythms and dictates of another god, one he named the god of the yellow planet.

The way in which Kuwar’U’wa was ordering the world that day was not based on belonging or “we-ness” derived from shared nationality or state citizenship or sub-national identity as commonly understood. Instead, as Janice Bially Mattern has described through her analysis of transnational criminal networks, transnational we-communities increasingly cohere because of practical and normative orderings of trans-spatial political life and notions of what constitutes the “good life” and the political order these networks conceive ought to exist to support it. Thus, what evolves are bonds that defy traditional conceptualizations of boundaries, borders, “state/non-state” allegiances and local/national/global bifurcations. As Bially Mattern asserts, these trans-national we-communities which I categorize as trans-
spatial regime networks, increasingly coalesce around and operate from within structures of shared norms and their implementation, to a point where these may be considered “[political communities] with shared goals” participating in and reconstructing global governance structures, especially thorough contentious politics (Bially Mattern, 2005, p. 63).

Thus, KuwarU’wa’s interpretation that day in Malibu symbolized the ways in which power, authority, allegiance, identity and sovereignty in the world -- and the contemporary polity arrangements and political actions and institutions that represent and mediate these, in short, global governance structures -- are changing. He was grouping actors and institutions according to the norms rules and principles and procedures around which their worldviews, expectations and actions converged – a contemporary “we-ness” that transcends Westpahlian categories. It was, in part, this conversation that urged me to find a theoretical approach that might innovatively capture this; it inspired me to re-examine and find new ways to expand international relations regime theory.

Another inspiration for this pursuit came from Theda Skocpol. In her critique of Immanuel Wallerstein’s world systems theory, Skocpol comments on the historical tendency of the social sciences to “create a new paradigm through direct, polemic opposition to an old one” (Skocpol, 1977, p. 1089). She reminds that while polemics can prove beneficial, social science “can also stagnate through them, if innovators uncritically carry over outmoded theoretical categories...and if they define new ones mainly by searching for the seemingly direct opposite to the old ones.” She advises scholars to:

...ask which units of analysis – probably not one, but several, perhaps changing with historical points of reference – can allow one to cut into the evidence in new ways in order to investigate exactly the problems or the
relationships that the older approaches have neglected (Skocpol, 1977, p. 1089).

Thus, this framework, which I describe as trans-spatial hegemonic and counter-hegemonic regime network conflict, attempts to create an innovative slicing of data – and an innovative mapping of world order -- which can foster new understandings of the contemporary workings of globalization processes and the cultural politics of globalization.  

This approach thus contributes to studies challenging conceptualizations of the state as a unitary (ir)rational entity.

Thus, the framework of trans-spatial regime collision developed here provides a means through which the dynamics and import of hegemonic and counter-hegemonic forces and actors shaping global politics – in this case, the actions and discursive influence of traditionally powerful corporate and state proponents of an economic model centered on resource extraction, and historically disenfranchised indigenous communities resisting it – can be systematically analyzed in simultaneity. “Civil society” – whether local/national/global – may be carved out and inhabited by both actors and institutions acting from positions of hegemony/counter-hegemony and/or power/disenfranchisement. Viewing civil society/non-state actors as primordially influencing state practices and global politics “from below,” as aforementioned in the discussion of the trans-spatial arenas which hegemony and counter-hegemony inhabit, paints only a partial picture.  

We have only one hand clapping if the simultaneity of the actions and influences of hegemonic and counter-hegemonic forces, of traditionally powerful and historically disenfranchised actors, is not analyzed in concert. Increasingly

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5 My framework is deliberately a critique of what I perceive as dangerous generalizations and monolithic mappings developed in Samuel Huntington’s *The Clash of Civilizations*. Huntington (YEAR).

6 Khagram et al, (2002) p. 4
powerful actors, especially corporations and their foundations, intergovernmental organizations, international financial institutions, etc. – have import on and participate in both the dynamics of the state and ian “emerging [local]/global civil society”

In the creation of new arrangements of legitimacy and authority in trans-spatial politics, powerful and disenfranchised actors simultaneously exert influence through a push and pull, through a dialectic relationship, in which the state is involved, struggled over from outside and inside, and constantly reformulated. Indeed, what is occurring is a simultaneous delivery through globalization processes of new tools and rules to disparate sets of actors to advance their interests, materially and discursively. State institutions remain central webs through which this pushing and pulling of the strings that arrange competing notions of authority, legitimacy and order occurs. This is especially pertinent, as my case material reveals, to states and societies enmeshed in 1) rapid processes of capital expansion/foreign direct investment (or “neo-liberal” economic processes); and 2) either democratic transition, or the implementation stages of democratic reforms. Because of the way in which transitional periods create conditions both for new opportunities and constraint, states and societies simultaneously facing these two dynamics, which are both linked to dialectic globalizing processes, provide an edge from which to analyze changing structures in global governance.

7 A poignant example of this is the financing by Ecopetrol, Colombia’s state oil concern, and Occidental Petroleum, of notebooks for schoolchildren in regions of rural Colombia where Occidental has its installations. The notebooks boast a shiny cover with a picture of a pipeline that has been anthropomorphized. The opening of the duct has been turned into a smiling face, and the notebook reads, “Mi amigo el oleoducto” or “My friend the oil pipeline.”

8 This is the terminology which informs this panel. Khagram (2002), et al, p 9, assert: “The members of transnational networks and coalitions can be identified expansively to include all the relevant actors working to influence social change in an issue area. This more inclusive definition would mean that although nongovernmental organizations and social movements are the primary actors of transnational collective action, (parts of ) states and intergovernmental organizations, as well as other non-state actors such as foundations, research institutes, epistemic communities, corporations, domestic interest groups and social movements could also be included. This is what is sometimes referred to as ‘mixed-actor coalitions.’” They cite Shaw, 2000. The framework in this article builds on, maps and clarifies this postulate.
Reformulating and Expanding International Relations Regime Theory

In sum, I conceptualize certain conflicts -- in this case conflicts arising through indigenous resistance to resource extraction and export, particularly the case of oil -- as occurring within a framework of interaction and collision not only between indigenous peoples, oil companies and states, but between two “trans-spatial regime networks.” These are described as 1) an identity-based, counter-hegemonic/challenger regime network, grounded in indigenous and environmental rights regimes; and 2) a hegemonic regime network grounded in an economic model centered on resource (oil) extraction and export, within a neo-liberal market integration context. The latter corresponds to previous regime scholars’ frameworks emphasizing power/interest based priorities.⁹

I posit that significant sectors of Latin American indigenous peoples and their allies, as well as significant sectors promoting oil-led development build, link and use respective issue-based regimes, creating trans-spatial regime networks which traverse units of analysis through the local, national and multi-spatial arenas.¹⁰ Both the oil extraction regime network within a neo-liberal, market integration context and the indigenous/environmental rights regime network both involve tangible components: we can identify actors and institutions composing them, and document concrete ways that these actors and institutions shape global and domestic political arrangements and behavior, based on explicit and implicit, established and shared principles, norms and practices. Thus, adepts shape and use their respective regimes to promote or protect their interests, to achieve specific

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¹⁰ Stephen Krasner is often credited with having condensed sustaining definitions of regimes to qualify an “international regime” as a pattern of “norms, rules and principles around which actors expectations converge.” (1982, p.2) Oran Young (1999) more recently characterized international regimes as “sets of rules, decision-making procedures, and/or programs that give rise to social practices, assign roles to the participants in these practices and govern their interactions.”
goals or “desired outcomes”– constitutional reforms, the creation of new ministries or offices, changes in property rights arrangements, the shaping, defining, and implementation of practices like consultation, the defense of territory, foreign investment arrangements, the implementation of laws and regulatory decrees, etc. Beyond these instrumental components, each regime network involves a discursive, symbolic dimension constructed through a historical process, or in Cox’s terms, a legitimizing ideology.\textsuperscript{11} Thus, regimes and regime networks as I perceive them are culturally embedded – they reflect and affect how their respective actors assign or create meaning in the world, how they define themselves, and how they draw boundaries to define the “other.” They affect, then, not only the “asocial, utilitarian”\textsuperscript{12} structures of the state, but its identity – its symbolic and expressive aspects as well.

I posit that regimes, as expanded here within, provide an innovative analytical tool for this time of change in global governance and government structures for several reasons. First, they can serve as a bridge between the state-centric paradigms and those focusing on civil and global society. By empirically developing cases of regimes of mixed parentage, this study permits an exploration of the interactive relationship between “micro- and macro-level developments” -- not only of the kinds of polity rearrangements occurring in the “processes of governance without government” (Rosenau, 1996, p. 28) -- but also, as Cerny urges, of the “new and more complex functions” of the institutional structure and behavior of the state “in a more open and interdependent world” (Cerny, 1996, p.

\textsuperscript{11}Lipschultz, meanwhile, has urged, a \textit{simultaneous} study of: “...the emergence of a parallel arrangement of political interaction, one that does not take anarchy or self help as central organizing principles, but is focused on the self-conscious constructions of networks of knowledge and actions, by de-centered, local actors, that cross reified boundaries of space as though they were not there (Lipschultz, 1992, p. 390).

\textsuperscript{12}I am grateful to Peter Andreas (1999) for an introduction to expressive/instrumental conceptualizations of state behavior from the literature of institutional sociology.
In sum, my framework moves beyond the two level games which characterized both interdependence and regime theory to see, as Cerny suggests, complex globalization processes as encompassing:

- a structure involving (at least) three-level games, with third-level – transnational – games including not only ‘firm-firm’ diplomacy but also trans-governmental networks and policy communities, internationalized market structures, transnational cause groups, and many other linked and interpenetrated markets, hierarchies, and networks (Cerny, 1996, p. 636).

This analytical creativity is essential given the ways in which the state is being challenged sub-nationally -- as ethnic, religious and other group identities and grievances re-emerge, and as private transnational economic actors and capital increasingly penetrate local terrains and local and national governance structures. The state is also challenged supra-nationally, as global trade and finance multiplies, communications networks and social movement struggles increasingly transcend traditional territorial boundaries, and transform notions of sovereignty, with changes in the weight of the authority of some international and transnational institutions.

Second, regimes and trans-spatial regime networks as conceptualized in this article involve concrete, instrumental structures (actors, institutions, legislation) as well as a more inter-subjective or discursive component (socialization regarding ideas of “the good life,” ideas of what development should look like; in short, or as Ernst B. Haas insists, how \textit{homo politicus} thinks about nature and about culture) (Haas, 1983, p. 24). By attempting to identify simultaneously the “utilitarian accounts of the behavior of regime members” as well as the ways in which...
“institutions can play a constitutive role in shaping the identities of their members and [in] ... influencing the way in which these actors define their interests,” regimes – reconstituted -- can open up dialogue between more mainstream causal theories and methodologies and constructivist and hermeneutical approaches.\(^{15}\)

This study thus considers regimes and trans-spatial regime networks autonomous and interactive variables spanning and simultaneously problematizing levels of analysis (individual/state/system), spatial compartmentalization (local/national/transnational), and other categorizations (state/non-state, governmental/non-governmental; state/civil society, etc).\(^{16}\) They are multi-level sites of interaction, agency and influence, which analytically, allow a transcendence of more rigid and limiting state centrism while still incorporating the state as a key actor (Young. 1999, pp. 8-9).\(^{17}\)

**Silences: Listening to Counter-hegemonic Regimes and Regime Conflict**

This framework enhances international relations regime theory by developing further the mapping of regimes of mixed parentage and by introducing the concepts of counter-hegemonic regimes and regime conflict. Lacking in most regime theory approaches are several important components. The possibility that a simultaneous construction of counter-hegemonic regimes, especially regimes with identity as an essential component, might challenge these power-based assumptions,

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\(^{15}\) Young (1999, pp. 203-308) claims that the “rational choice” and “social practice” or constructivist approaches point to different research agendas – the former focusing on the “external” relations of regimes, the latter on the “internal” relations. He stipulates, however, that this divergence is complementary and positive and that “both are capable of capturing important elements of the roles that institutions play in international society; neither offers a way of thinking that can account for all the variance in these terms.”

\(^{16}\) I have struggled throughout this dissertation process to find language which is amenable across disciplines. I surrender to moving between the more abstracted political science and international relations terminology, which still remains largely bounded in “levels of analysis,” and geography postulates which talk about multiple spatial scales and which allow for a more complex treatment of these phenomena.

\(^{17}\) Young (1999, pp. 8-9) critiques this state centrism, arguing that it introduces a “conservative bias and fails to confront many interesting developments currently under way in international and transnational affairs.”
theoretically and practically, remains underdeveloped in international relations regime theory.\textsuperscript{18} While most of these approaches point to the importance of regimes of “mixed parentage,” few actually empirically or theoretically develop this concept.\textsuperscript{19} Because of a common lack of focus in mainstream international relations theory on actors whose “marginalization [is] exacerbated by the spread of Western capitalism and culture,” combined with a limited focus on the aspects of market dynamics which though which “gains accrue disproportionately to the most powerful states or economic actors,” there is also a void in the literature regarding the notion that certain types of regimes might challenge hegemonic regime arrangements, contradict them, conflict with them, and/or collide (Tickner, 1992, p. 75).\textsuperscript{20}

Thus, I argue that certain sets of actors, institutions, norms, behaviors and practices in the international and the global system do create and use regimes as mechanisms of promoting hegemonic self-interest or to developing transaction cost-lowering institutions of cooperation. Regimes also arise from the dissemination of and support a consensual “legitimate social purpose” in the international system (Ruggie). But, if we “sketch a model of power,” as Stephen Gill suggests, “that is able to account for those who are included and those who are excluded or

\textsuperscript{18} Alison Brysk’s work tracing the development of the Latin American indigenous transnational social movement and its impact on world politics is groundbreaking and strongly informs this analysis. I attempt to build on her work by tracing what happens in structures of governance when a specific regime of the powerful and a regime built from the margins enter into conflict. In this way, I provide a step forward with specific case studies of resource conflict, thus measuring the effectiveness of the indigenous rights regime which she clearly traced. See Brysk (2000).

\textsuperscript{19} Haufler (1993, p. 95) has used this term, referring primarily to regimes including state and powerful private actors (corporations), and claiming it was a “relatively radical approach.”

\textsuperscript{20} Robert Keohane (1998, p. 85-96) expressed concern about the need for mediation of the effects of globalization on distribution. He critiqued the elitism of international financial institutions, and wrote that processes of multilateral cooperation needed to “reflect the interests of broader democratic publics” and that international organizations needed to “maintain sufficient transparency for transnational networks of advocacy groups, domestic legislators and democratic publics to evaluate their actions.” However, he fails to recognize that the very forums he seeks to democratize through grassroots participation often prevent state and non-state actors from acting effectively to promote equity, social welfare and protection of biological and cultural diversity. For a fuller development of this, see Wirpsa (1998, unpublished manuscript).
marginalized in the global political economy,” if we admit the marginalized are “both within the societies of the culture of consumption and elsewhere,” it becomes essential to thicken the geometry of regime theory. We must extend its geography to cultural spaces and polity logics where the market is not necessarily the primary norm, to people and collectivities who “may have forms of knowledge that are not amenable to rationalization and discipline in the sense implied by Foucault,” who may “not necessarily cooperate with normalizing practices,” and who may “actively seek to develop counter-hegemonic forms of power/knowledge” (Gill, 1995, p. 405). We must consider that regimes may not only explain cooperation and collective action in a world of governance without an over-arching form of government, but certain forms of conflict as well.

Problematic Categorizations of Meaning

This article also takes to task the assertion by Khagram et al (2002, p. 11) that the business sector is characterized by “the drive for profit” while the NGO sector is characterized by the “search for meaning.” Both of these assertions are true, but they are partial. “Development,” empire and colonialism – whether executed through resource extraction, domination, slavery or industrialization -- would never have acquired power and an “at home” legitimacy unless a sense of meaning – a salvation mission – had been attached to them. While the meaning structures of the business sector may not be amenable to some, they are still meaning structures. To give a monopoly of meaning to the NGO sector is dangerous. It is also dangerous to promote the assumption that NGOs and the actors inhabiting them are void of self-interest or hegemonic import. Thus I
introduce this framework as a means to analyze the ways in which, cross spatially and cross institutionally, both hegemonic/counter-hegemonic forces and actors use “information, persuasion and moral pressure to change international institutions and governance.” (Khagram et all p. 11). Finally, this approach is significant because it reveals the ways in which both these “relatively weak” and the obviously powerful/hegemonic forces inhabit these practices simultaneously. Both are trying to change international and domestic institutions, the shape of the state, and government practices and policies. Both are involved in the “deployment and engagement of competing justifications.” It is in the edge where the practices, structures and discourse employed by these conflicting sets of actors and worldviews collide that provides an exceptionally productive analytical approach. It is there where an analysis may be conducted of just how, and again, I emphasize in simultaneity, such processes become “highly significant political processes” and the arenas from within which “justifications themselves” – from competing sides of a conflict spectrum – “become a source of political power.” (Khagram, et all, p. 11).
Diagram: Leslie Wirpsa, 2004
THE ARGUMENT

GLOBALIZATION

- New Tools and Rules: Sub-national and Supra-National Devolution of Authority Away from State
- Resource-led Development
- Neo-liberal Market Regime
- Economicization of National Security
- Corporate Accountability

INCREASE IN RESOURCE CONFLICT

INCREASE IN RESOURCE CONFLICT

DIVERSIFICATION ACROSS MULTIPLE SPATIAL SCALES WHERE CONFLICT IS PLAYED OUT

CHANGES IN GOVERNMENT PRACTICES AND STATE STRUCTURE REGARDING RESOURCES AND RIGHTS

Counter-hegemonic or Challenger Regime Network
- Indigenous Rights
- Environmental Rights
- Human Rights
- Movement for Global Justice

Hegemonic Regime Network
- Expansion
- Deepening

Local

National

Transnational

Local

National

Transnational
REGIMES: AN EXPANSION OF HASSENSCLEVER'S (et al) SCHEME

<table>
<thead>
<tr>
<th>REGIME TYPE</th>
<th>Counter-hegemonic or Challenger (Identity)</th>
<th>Knowledge</th>
<th>Interest</th>
<th>Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACTORS AND MECHANISM</td>
<td>Individuals; non-governmental actors, groups, collectivities, transnational action networks, states and state institutions, domestic coalitions: &quot;movements.&quot;</td>
<td>States are principals but incorporate non-governmental actors: &quot;learning.&quot;</td>
<td>States, with some non-governmental actor influence, especially multinational corporations; &quot;leader&quot; states; &quot;bargaining and negotiation.&quot;</td>
<td>States, especially hegemon; &quot;rule makers&quot; and &quot;rule takers.&quot;</td>
</tr>
<tr>
<td>THEORETICAL PERSPECTIVE AND</td>
<td>Critical constructivists; feminists; post-colonialists: Haas; Kratochwil; Bryst; Litfin, Keck and</td>
<td>Liberal constructivist and embedded libera, cognitivists: Haas; Katzenstein;</td>
<td>Neo-liberals: Keohane; Milner; Nye; Levy; Young; Olson; Kindleberger.</td>
<td>Realists and Neo-realists: Krasner, Axelrod; Grieco</td>
</tr>
<tr>
<td>PROPONENTS</td>
<td>Sikkink</td>
<td>Benedick; Ruggie; Finnemore; Meyer.</td>
<td></td>
<td></td>
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<td>FRAMEWORK</td>
<td><strong>System transformer:</strong> Counter-hegemonic to hegemonic regime; emancipation.</td>
<td><strong>System reformer:</strong> Norms, international or world society.</td>
<td><strong>System maintainer/reformer:</strong> Calculated rationality; cooperation; absolute gains and non-zero sum.</td>
<td><strong>System maintainer:</strong> Power and structure; hegemon defines; rational self-interest; relative gains and zero sum.</td>
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<td>ORIGINS</td>
<td>Exclusion, international law, internationalization and de-centering of authority; power relationships; identity politics.</td>
<td>Modernizing rationalizing project; international law; internationalization of authority.</td>
<td>Anarchy; cooperation; market.</td>
<td>Anarchy; hegemony; structure of international system; distribution of capabilities and power.</td>
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Table designed by Leslie Wirpsa, School of International Relations, University of Southern California. The definitions of regimes as power, interest and knowledge based are derived from Hasenclever, Mayer and Rittenberger (1996). The system maintainer, reformer, transformer categorizations are from Steve Lamy, *World Views and International Relations Theory* (1995).
The Case

Trans-spatial Regime Networks and Consultation in the Case of the U’wa

Public relations strategist Lawrence P. Meriage, a Vice President of Occidental Oil and Gas Corporation, Executive Services and Public Affairs, and Roberto Pérez Gutiérrez, President of the Association of Traditional Authorities and the Major Council of Colombia’s 5,000 U’wa indigenous people met rather unexpectedly on March 30, 2000 in office 124 of the Cannon Building of the United States House of Representatives. Both were concerned about the fate of a fixed commodity central to their lives and livelihoods, and to the global economy – crude oil reserves estimated at 1.3 billion barrels, evidently lying deep within land over which the U'wa claimed ancestral territorial rights and over which Occidental, at the time, held a commercial concession. These two men had traveled to Washington D.C. to attempt to influence the decisions of U.S. officials like the tenant of that office, Representative Cynthia McKinney of Georgia. Meriage came as an official spokesperson from Occidental's headquarters in Bakersfield, California, along with another official from the company. Pérez, journeyed from U'wa territory, or Kajka Ika, "the heart of the world," in northeastern Colombia. Pérez was accompanied by a group of six U.S. environmental and human rights activists (Interviews with attendees, March-April, 2000).

The Washington visits were deliberately timed. Pending in Congress was a vote for the approval of Plan Colombia, a $1.3 billion anti-narcotics package that would push Colombia into the rank of the third highest state recipient of U.S. military aid in the world. In this context, oil executives and U.S. policymakers

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21 According to interviews with Pérez and environmental activists attending the meeting, McKinney arranged the visits so that Perez and the environmentalists were waiting in the office when Meriage arrived. At one point during the interaction, McKinney reportedly interrupted Meriage, as he forcefully pointed his finger at Perez while addressing him. As a proud black woman, she said, she found Meriage’s gesturing offensive; she reminded him he was using it against the “President of a People.”
stressed the importance for the U.S. energy market of crude imports from this Andean nation and its closest neighbors -- Venezuela and Ecuador (Coverdell, 2000; Gómez, 2000; Scowcroft and Graham, 2000; Wilhelm, 1998). Projections showed that Colombia and Ecuador, with new discoveries and corresponding infrastructure investment, could nearly double their national oil production within a decade, substantially increasing potential for crude exports to the United States. (United States Energy Information, 2000; \url{www.economagic.com/em-cgi/data.exe/doeme/coimpen}).\footnote{Averages for 1996-2000 show that for U.S. crude imports during this period, Venezuela slightly surpassed Saudi Arabia and Canada as the number one exporter to the United States. For that period, Venezuela, Colombia and Ecuador together exported the same average amount of petroleum to the United States (2.1 million bpd, or 20.1 percent of yearly U.S. oil imports) as the Persian Gulf States combined.}

Beyond company profits, Occidental representatives and their partners from the Colombian government posited that extracting oil from the so-called Sirirí block, would save Colombia's ailing national economy, bring progress to the surrounding region and enhance democracy. Meriage and some U.S. policymakers also claimed the oil would provide a lifeline for threatened U.S. national energy and security interests. "Colombian oil is of vital strategic importance to the United States because it reduces our dependence on oil imports from the volatile Middle East," Meriage testified to the U.S. House of Representatives (Meriege, 2000, p.1). To further that triad of goals, Meriage advocated the expansion of Plan Colombia beyond the originally targeted southern Putumayo department, to the guerilla-plagued, Arauca department and its environs in the northeast, where Occidental was already operator of a mammoth field and a 400-mile pipeline, both known as Caño Limón.

Pérez' community held a radically different view. Oil is a living substance, they claimed, the blood of mother earth. Pulling it from the ground, U'wa elders had
repeatedly warned, would threaten the lives, livelihoods and ecosystem of 5,000-plus members of the tribe. Exploiting the oil, they claimed, would also lead to the end of the world (Project Underground, 1998; Werjayas, Cabildos, Cabildo Mayor, Equipo de Etnoeducación, Pueblo Indígena U’wa, 1996; Wirpsa, 1997). Since 1992, Pérez’ community had resisted efforts by the Colombian government and Occidental, and during one stage, Royal Dutch Shell, to explore for oil in ancestral U’wa land by creating solidarity links and building a trans-spatial regime network that spanned four continents and that used the institutions and norms of evolving global indigenous rights and environmental regimes. Deepening militarization through Plan Colombia, Pérez insisted in Washington, would only exacerbate an already escalating spiral of violence in the region and increase risk for his community.

Espousing different norms, citing divergent sets of rules, and advocating conflicting procedures, both Meriage and Pérez aimed to convince politicians in Washington to heed their particular interests, to give voice to their specific set of rights, and to validate their world views. Beyond the vote of Representative McKinney on Plan Colombia, they sought the congresswoman’s influence on matters of significant import for local and national processes in which they – and the broader set of actors, institutions and regimes with which they were linked -- were both heavily invested in Colombia. At stake was much more than the flow or obstruction of an allegedly huge quantity of crude potentially possessing one of the highest API indices in the world.\(^{23}\) At stake were the content and reach of a new model of participatory democracy, the definition of the meaning and

\(^{23}\) Oil varies in its quality, from heavy to “lighter” or “sweeter” crude. It is classified by an index known as the API Gravity, or the American Petroleum Institute gravity rating. The higher the API, the less effort it takes to turn the oil into gasoline. Colombian oil is generally very “sweet” – it rates a relatively high API index.
implementation of its practices, and outcomes for political and economic decision-making processes in Colombia. (Avirama, Jesus and Márquez, Rayda, 1994; Van Cott, Donna Lee, 2000; Cepeda, 1995).

The novelty of the conversation that occurred that day in Washington was captured in part through one of several key issues: consultation. The question that stood out during that encounter was: *Had the U'wa pueblo been properly consulted, according to Colombian and international law requirements, about the oil development project that would impact their land, lives and livelihoods?* Two decades ago, this question, based in precepts of international law, and many other questions regarding indigenous rights, territorial control, resource propriety and sub-sovereign autonomy would never have been asked. Two decades ago, indigenous peoples had little legal or political grounding from which to authoritatively insist on their own participation in national policy decisions that affected them, especially regarding decision-making pertaining to natural resource exploitation. A relatively short time ago, such concerns were not prominent on the agendas of public relations executives of most multinational corporations. For centuries before, indigenous peoples critiqued yet remained marginalized from involvement and voice in the policies and processes that defined the post-Westphalian shape of particular arrangements of the “republic” or the nation-state. Except for a few exceptional cases of advocacy and representation which had some import because of ongoing indigenous resistance, their plight of Colombia’s indigenous peoples and the systematic violence and exclusion they experienced were largely marginalized from mainstream historical accounts.

Thus, it is in this context that the striking character of the face-to-face debate between actors like Meriage and Pérez in the office of a member of the U.S.
Congress can be considered; it was a debate concerning minority rights, democratic participation, and the modus operandi of foreign capital in a Latin American country. This article argues that this kind of leveraging by historically excluded actors was possible largely for the following reasons: While processes of globalization – for example, information transfer, transnational connections, migration and capital penetration, have, in the last few decades, changed the rules favorably for the powerful – largely multinational corporations and their host governments, particularly in the realm of hegemony of economic processes and information – globalization has also delivered up new rules and tools for historically marginalized peoples to occupy new trans-spatial arenas of resistance, especially in the legal, political, cultural and symbolic realms. (Cartier, 2001; p.1; Held and McGrew, 2002, pp. 1-8).

The afore-described encounter between Pérez and Meriage in McKinney’s office was just one manifestation of an ongoing conflict between the U’wa and proponents of petroleum development in their ancestral land. Between 1995 and 1997, the U’wa built a domestic solidarity movement to resist Occidental’s oil project through legal mechanisms and protest. In May 1997, frustrated by contradictory rulings between two of Colombia’s highest courts, regarding the U’was’ right to consultation and thus the validity of an environmental license, an U’wa leader traveled to Occidental’s corporate division in Los Angeles to take the community’s concerns directly to top ranking executives, an endeavor which ignited the trans-nationalization of the U’wa cause. That initial visit promoted the building of solidarity links – or transnational advocacy networks that eventually evolved into regime networks -- that within three short years reached from U’wa territory in Colombia, throughout Latin America, to Europe, the United States and Southeast
Asia (Keck and Sikkink, 1998). The sites the U'wa employed to resist the oil project multiplied and diversified: With financial, legal and political support from a variety of transnational actors, they continued domestic legal initiatives inside Colombia, initiatives that were possible because of the institutional embedding in the 1980s and 1990s of international human, environmental and collective indigenous rights regimes. They waged campaigns in the United States for stockholder divestment from Occidental. They sustained local on-the-ground protests in their territory and its environs with the support of campesinos, students and local unions. They purchased strategic plots of land and maintained diverse organizational structures, procuring funding through international non-governmental organizations and yes, even Hollywood movie stars. They lobbied in Washington and at the European parliament, meeting with congresspersons, vice-presidents, unions, officials from international financial institutions like the World Bank and the International Monetary Fund. Alternative and mainstream press and their readers grew familiar with the U’wa plight.

The U’wa became more than just poster children for environmental groups in the North of a tribe's struggle against natural resource exploitation in Latin America. Their story and its implications for marginalized peoples in general was incorporated into global citizen movement protests against the International Monetary Fund/World Bank; it was represented at meetings of G-8 industrial countries; the 2000 Democratic Convention in Los Angeles; an April 2001 rally opposing the Free Trade Act of the Americas, for example. The U’wa story was also consistently invoked as a symbolic case for human rights protests opposing U.S. military aid

24 While case specific, the linkages of solidarity built and the mechanisms used by the U’wa community, embedded in a larger indigenous rights framework, resemble the dynamics of what Margaret E. Keck and Katherine Sikkink (1998) have called Transnational Advocacy Networks. This study benefits their work in that it creates an analytical structure from which to trace the overlap and interaction of what I call trans-spatial regime network dynamics.
through Plan Colombia. In these arenas, the U’wa articulated an alternative for a multiplicity of transnational actors – advocates from environmental, indigenous, anti-globalization, corporate responsibility and human rights movements, among others -- who espoused a world view contending that certain forms of market integration under the process known as globalization are persistently contributing to social disintegration and threatening deeply held norms (Arenas, 2000; Rodrik, 1997).

This article contends that the U’wa struggle became embedded within and contributed to a counter-hegemonic regime network, comprised of the aforementioned elements, and that this counter-hegemonic regime network, because of its expansion and deepening, conflicted simultaneously with an expanding hegemonic regime network whose primary component was an economic model centered on resource (oil) extraction and export in a neo-liberal, deregulatory context. These dual dynamics, as the forthcoming case materials reveal, turned the Colombian state into an arena of contention, an amalgamation of contentious politics. The state, rather than retreating, took on new roles in some areas; it delegated others. Thus, the main focus on a single case study of this article provides a remarkable empirical opportunity through which to analyze changing patterns of governance and power relationships – and the transformation of the state -- within the context of globalization.

Through their actions, the U’wa and their supporters collided with actors and institutions upholding the benefits of a hydrocarbon-driven economic model as a motor for economic stability, and peace, purportedly, in Colombia and beyond. Acting within many of the same local, national and transnational spaces, and using varied principles, rules and practices inscribed within many of the same institutions
employed by the U’wa and their allies, Occidental Petroleum and other
multinationals, Colombian and U.S government officials also exerted powerful
influence on decision making and the process of the deepening of democratization
in Colombia. Thus, the Colombian government felt the pressure, both from within its
own institutional framework and from sub-national and supranational actors and
institutions. It became an arena of struggle, an amalgamation of contentious
politics, between two very different sets of interests, pressured by two very
different trans-spatial regime networks, which were simultaneously embedding
themselves in state structures. This double movement had powerful implications for
the Colombian state’s policy and practices pertaining to natural resource policy and
ethnic rights, and for processes of democratic transition in Colombia.

Consultation: Background

ILO 169 and the Colombian Legal System

Colombia is one of 14 countries worldwide which as of December 2004 had
and whose congresses had ratified signed the International Labor Organization’s
Convention Concerning Indigenous and Tribal Peoples in Independent Countries
(known as ILO 169). While the enforcement power of such agreements, norms and
procedures regulating indigenous rights remains fragile, ILO, especially in this case,
deserves special attention.25

Article 7 (3) of the Convention stipulates that "governments shall ensure that,
whenever appropriate, studies are carried out, in cooperation with the peoples
concerned, to assess the social, spiritual, cultural and environmental impact on
them of planned development activities." Article 6 (1a), meanwhile, commands
governments to "consult the peoples concerned, through appropriate procedures

25 The countries include Bolivia, Brazil, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala,
Honduras, Mexico, Norway, Netherlands, Paraguay and Peru.
and in particular, whenever consideration is being given to legislative or administrative measures through their representative institutions which may affect them directly.” Article 6 (1b) meanwhile, attempts to:

establish means by which these people can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them.

ILO 169 and consequent Colombian laws thus dictate that consultations must be “undertaken in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures” (Anaya, 1996, pp. 195-196). However, while Article 15 of ILO 169 stipulates that consultations must occur before access to indigenous lands for exploration or exploitation begins, it fails to regulate the procedures of consultations. Moreover, the requirement for consultation does not stipulate that consent is necessary, another explosive semantic subtlety. Nowhere does ILO 169 grant indigenous peoples a veto power right to say "no" to a development project.

Consultation, therefore, can be considered a normative concept and a concrete process under construction locally, domestically and trans-nationally; it is inextricably linked to collective and regulatory rights to territory, and to decision making and participatory action regarding resources. Moreover, as the case in this study exemplifies, local, national and international actors trans-spatial regime networks grounded in indigenous rights and resource-led economic models all have stakes in the shaping of this edifice.

In 1992, when Occidental, in consortium with Royal Dutch Shell, signed an exploration contract with Colombia's state oil concern, Ecopetrol, in the Samoré
block, later renamed Sirirí, the international Indigenous rights regime was evolving. The normative influence of this evolution affected state identity construction and institutional reform in Colombia. In 1990 and 1991, a crisis of political legitimacy prompted a groundswell from civil society movements, and this eventually led to the election of a constituent assembly to draft a new constitution for the first time in Colombia in 100 years. Indigenous rights were not only inscribed within the document, but in the Colombian case, the constitution as a whole, and especially the model of indigenous rights was one of the most advanced examples of a model of participatory democracy and the inclusion of diversity and proactive ethnic rights into Latin American legal structures. (Valencia, 1997, p. 253-254).

The 1991 Constitution commanded the Colombian state to “recognize and protect the ethnic and culture diversity of the Colombian Nation.” It guaranteed two congressional seats for indigenous representatives through special conscription and provided administrative outlines for the establishment of indigenous territorial entities which entailed a moderate degree of legal, cultural, economic and political autonomy in large extensions of territory.

26 As Valencia (1997, 253-254) described: “Regarding the constitutional rights of indigenous peoples, two aspects must be considered to understand the indigenous participation in the National Constituent Assembly. In 1991, in Colombia, we found ourselves in a situation of social crisis, an acute increment of the armed struggle, in which citizen coexistence (convivencia) was no longer sustainable. A process of negotiation with the groups in arms had begun, and the National Constituent Assembly was convoked. This was not about reform, but about drawing up a whole new Constitution.”

27 Enrique Sánchez, Roque Roldán y María Fernanda Sánchez, Derechos a la Identidad: los Pueblos Indígenas y Negros en la Constitución Política de Colombia de 1991, Bogotá: COAMA/Disloque Editores, 1996, p. 57. As Van Cott observes, this was a remarkable departure from historic national identity and the shape of the state and society, which previously had been constructed “through the conquest, domination, and exploitation of indigenous peoples.” P. 2.

28 As Van Cott (2000) and others have observed, Colombian laws recognizing indigenous territories and governance councils, vestiges from the colonial era and “Spanish legal philosophy from the sixteenth and seventeenth centuries with respect to the rights of people as the basis for Indian law” is fairly unique in Latin America. It “would partially explain the ease with which at least a sector of legal and political society accepted the idea of anomalous administrative-territorial units and group-specific rights in the 1991 constituion” (Van Cott, 2000, p 45). Roldan, meanwhile, as cited in Van Cott (2000, p. 45-46), adds, the “distinguished place” indigenous peoples held “in national imagination” and the growing appreciation by elites in the 1980s of indigenous peoples’ “valuable specialized knowledge and modes of production compatible with the country’s diverse and threatened biodiversity.”
Regarding resource extraction, the Constitution stipulated that projects must be carried out "without harm to the cultural, social and economic integrity of indigenous communities." The Constitution mandated that the government must "propitiate the participation of representatives from respective communities" in decisions about resource extraction in indigenous territories (Sanchez, Roldán and Sanchez, 1993, pp. 58-59; Presidencia, 1991, p. 132). However, as Van Cott observed: “The demand for recognition of indigenous rights over subsoil, water, and air space contiguous to their territories was the only aspiration that the indigenous delegates failed to secure” (Van Cott, 2000, p. 84-85) 29

*Implementation of ILO 169 in Colombia*

In December 1990, prior to the ratification of the Constitution but during the course of deliberation of the constituent assembly, the Colombian Congress passed Law 21, ratifying ILO 169. The government was also required to "consult the [indigenous] people concerned" about "legislative or administrative measures which may affect them directly," among other provisions (Anaya, 1996, pp. 195-196).

On the level of administrative procedures and bureaucratic organization, the Colombian Congress adopted Law 99 of December 1993, creating the Ministry of the Environment, which absorbed many duties previously carried out by the National Institute of Natural Resources (NDERENA). Law 99 also strengthened licensing procedures for mining endeavors, requiring a ministry-approved environmental impact assessment and full consultation with indigenous and Afro-Colombian communities potentially affected by the projects.

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29 However, Van Cott (2000, p. 84 –85) also notes that indigenous peoples failed to procure “the explicit recognition of indigenous rights as collective rights.” However, she adds and the case material of this study reveals, rulings by the newly created Constitutional Court would amplify that concept through its interpretations.
Essential, too, for indigenous rights -- and human rights and participation in general -- was the creation of new legal and oversight institutions, the Office of the People’s Defender and the Constitutional Court – as well as the establishment of a mechanism of legal recourse for the protection of fundamental constitutional rights called the *acción de tutela* — or a writ of protection which could lead to injunctive legal interventions. The Office of the People’s Defender has both a Delegate for Ethnic Minorities and a Delegate for the Environment. These divisions would play a crucial role in the defense of indigenous rights, both critiquing the actions of other state institutions, filing writs of protection, and linking indigenous peoples with international institutional networks.

As aforementioned, the other new institution created through the 1991 constitutional reform process, which proved essential for the general and specific frameworks of human rights and participation, was the Constitutional Court. As Van Cott observes: “The Court has stepped in where the constitution is ambiguous or vague, usually interpreting the text in a spirit favorable to the protection of diversity and the opening of spheres for participation” (Van Cott, 2000, p. 111). It “established a practice of accepting cases only when a power inequality exists that places the fundamental rights of the weak in immediate peril, earning it a reputation as a defender of the powerless” (Van Cott, 2000, 112). (Discuss the Constitutional Court and Council of State’s institutional cultures and political dynamics further).

**The Trans-spatial Expansion of the Counter-hegemonic Regime Network**

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30 The Colombian legal system is complex. Two venues exist – one for constitutional matters, whereby the Constitutional Court acquired status as the court of last instance, removing this from the Supreme Court, and the administrative channel, whereby the Council of State is the court of last instance.

31 Van Cott’s (2000, p. 113) observation of the standards for implementing this right is important for the case on hand: The extent to which cultural traditions had been preserved became an essential components for the Constitutional Court’s ruling: “…[T]he more contact an indigenous community has had with Western culture, the less weight may be given to its cultural traditions.”
In May 1997, Colombia's U'wa indians made international news headlines when community leader Berito Kuwaru'wa arrived at the offices of Occidental Oil and Gas Corporation in the upscale Westwood neighborhood of Los Angeles, California, to voice his community's opposition to attempts by Occidental and the Colombian state oil concern, Ecopetrol, to extract crude from inside ancestral U'wa territory. He met with Occidental executives and urged them to reconsider their sense of entitlement over the exploitation of oil, a resource which the U'wa claim is not only owned by the gods who entrust the U'wa with its administration, but whose permanence in the ground is fundamental to the balance of the earth. (Interview with Berito Kuwar’Uwa, May 1997).

Kuwaru'wa reiterated to a group of journalists and a troupe of environmental activists that if Occidental insisted on exploiting oil in tribal territory, the community would commit collective suicide by leaping off a 15,000 foot cliff. Specifically, KuwarU’wa and his companion said, the government and the company had not fulfilled their legal obligation to conduct a process of prior consultation with the U'wa (Interviews with Berito Kuwar’U’wa, Edgar Méndez, Terence Freitas, Lucy Braham, May 1997). That visit established important initial linkages between the U'wa and U.S. non-governmental organizations. Thus the U'wa were able to integrate into sub-regimes/regime components, as mapped in graphs included previously in this article, across multiple spatial scales. This was significant when domestic opportunity structures closed and in the face of the strengthening of the hegemonic regime network.

The Prelude to Regime Networks: The Local and National Contexts

When Kuwar’Uwa arrived in Los Angeles, the U'wa faced an “existentially problematic moment” – in this case, an eruption or reaction “to events that have
been going on for a long period of time. “National courts had issued what the
U’wa considered contradictory edicts regarding whether or not the government and
the oil company had fulfilled the mandated requirement for consultation. (COURT
CULTURES HERE?). The constitutional provisions protecting indigenous rights, and
the regulatory laws and decrees implementing them, were in nascent stages when
Occidental began operations affecting U’wa lands. This means the definition of what
constituted clear and prior consultation, and clarity regarding to which geographic
terrain it applied, were fuzzy, evolving, and highly contentious. (MORE ON MOMENT
OF DEMOCRATIC CONSOLIDATION. The Environmental Ministry, which first presided
the consultation process, a process which later was absorbed by the Interior
Ministry’s DGAI, was only legally structured through Law 99 in December of 1993. It
took several more months for it to receive effective budget allocations. Thus, this
new institution, endowed, in part, with the task of serving as guarantor for a new
regime of rights protecting the environment and indigenous peoples, in part
through the participatory democracy process of consultation, was just getting off
the ground at a time when economic liberalization was creating a deregulatory push
in the hydrocarbon sector to intensify the activities of actors from the hegemonic
regime network. It also coincided, with a growing drive for more and more oil, and
an increasing thrust in U.S. security policy to procure strategic resources through
military means. (Dunning and Wirpsa, 2004).

The Consultation Controversy with the U’wa

Thus, from the early stages of the U’wa case, severe discrepancies circulated
regarding what constituted the right to and the definition of the process of

finds particular value in identifying what he calls ‘epiphanies’ – ‘existentially problematic moments in
the lives of individuals.’ Patton asserts that Denzin’s biographical structure may be usefully adapted
‘to a program or community as a case study unit of analysis. Programs, organizations, and
communities have parallel types of epiphanies.”
consultation. These discrepancies remained a persistent source of contention, legally and politically, throughout the U'wa-Occidental/Ecopetrol conflict. Consequently, consultation became an issue that traversed trans-spatial arenas, as exemplified at the start of this case analysis. Between 1993 and 1995, Occidental representatives and various officials from Colombian ministries met on different occasions with members of the U'wa community. Occidental and government officials initially considered some of these encounters – which according to their count eventually numbered 33 – as fulfilling requirements for consultation regarding the oil project. During that time, Environmental Ministry officials were involved in a complex process of attempting to translate their on-the-ground experiences with indigenous and company representatives in the arena of consultation into applicable regulatory decrees.

In part, given these discrepancies, U'wa leaders insisted that the abovementioned meetings did not constitute a legal process of consultation, but that they rather involved preliminary discussions of health, sports and education projects offered by the company. According to the U'wa, these initial encounters did not incorporate a full discussion of the social, environmental, cultural and economic consequences of potential oil development on U'wa land. Moreover, as far as indigenous sovereignty and governance structures were concerned, U'wa leaders claimed these early discussions commonly did not adhere to the norms and rhythms of their traditional governance structures, nor did they allow room for a lengthy traditional internal process of meeting and consensus to take place.33

33 An example of this friction, they claimed, was an August 1993 agreement signed by some U'wa representatives, which was cited by company and government officials as evidence of the fulfillment of the consultation requirement for seismic exploration. A spokesperson for the U'wa Traditional Authorities who signed this agreement, and who is illiterate, said he thought the paper was only about health and education projects (Project Underground, 1998, p. 27). (Add more from interviews).
In January 1995, during an annual U’wa assembly, the community declared an unequivocal veto of oil development in U’wa territory. Prior to that gathering, indigenous leaders faced pressures for co-optation, and/or they were approached for involvement in company-community relations. For example, Occidental provided scholarships for schooling for several U’wa high school and college students beginning in 1998.

Concurrently, the newly functioning Environmental Ministry issued an edict on September 28, 1994, ordering that proper consultation should take place with the U’wa. The U’wa were thus sent notification that a meeting had been scheduled for January 10 and 11, 1995, in the city of Arauca, some 60 miles from the boundaries of the U’wa territory. In December, with the January meeting fast approaching, Occidental representatives contacted one U’wa leader to meet in Bogotá. “They said they were aware of the fact that I was a... student, that I was a leader in my community, that they knew my trajectory, and that I could play a good role in informing the community about the project which would take place in our territory” (Interview with U’wa leader, August 2002).

So this leader sought more information, obtaining the first copy of the oil exploitation project, he claimed, to which the community had ever had access. He subsequently told government and Occidental officials he was not individually authorized to make decisions. The leader returned to his community and explained during a January major assembly his vision of the consequences of the project. After hours of deliberation late into the night, the U’wa internally declared unified opposition to oil development affecting their land (Interview with U’wa leader, August 2002; and with group that came to Bogotá). The community representatives drafted a document which they took to the meeting in Arauca with representatives
from Occidental, the General Directorate of Indigenous Affairs (which was under the control of the Ministry of Government, which is now called the Interior Ministry), the Ministry of Mines and Energy, Ecopetrol and the Environmental Ministry on January 10-11, held at the company’s Caño Limón complex (Reunión de Información, 1995). The consultation controversy, in general, and as reflected in the minutes of this meeting and participants’ accounts of it, illustrates the striking different world views regarding resources and rights held by the U’wa, government officials and oil companies. It also reveals the clash the implementation of the newly inscribed indigenous rights/environmental regimes and the simultaneous push to accelerate oil development were causing inside the Colombian state. U’wa representatives present said they did not consider the meeting as fulfilling the requirement for consultation (Interviews with various U’wa representatives, June 2002). They considered it a first encounter to initiate the process, to become informed, and to take the information back to the elders and broader community (Interview, U’wa representative, June 2002, anonymity requested).

Three weeks later, before a second meeting occurred, the Ministry of the Environment issued Resolution 110, granting Occidental the environmental license for seismic exploration. During a meeting held on February 21, 1995, in the aftermath of the granting of the license, the U’wa once again declared their unequivocal opposition to the oil project and their ire regarding the issuing of the

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34 Attending the meeting were: Government Ministry, DGAI, four representatives; Ministry of Mines and Energy, three representatives; Ministry of the Environment, one representative; Ecopetrol, two representatives, Occidental de Colombia, Inc., eight representatives. As for the U’wa, 44 people attended, six elders, two officers from the cabildo, five teachers, three health promoters, five students, nine “active members,” and 14 “assistants.”

35 A point of departure for an analysis of this controversy is the name of the meeting itself. In Spanish, it was called a meeting of information and consultation for the realización of the Samoré seismic project. Realización as a noun translates “realization; fulfillment” and in business terms, “sale.” As a verb, it means “to realize, accomplish, carry out, do, perform; to sell off.” Thus, an inherent presupposition existed that, regardless of the community’s position and belief system, the oil project would “be realized” – it would go forward, it would be fulfilled. See Wirpsa 2004 for a detailed analysis of the meeting.
license. The following week, the U’wa issued their first declaration of willingness to commit collective suicide if oil exploitation continued. DGAI authorities supported the U’wa, affirming in a press release that full consultation with the U’wa had not been reasonably fulfilled, and thus the company had “no legal base to act in the U’wa territory” (Arenas, Doc 2, p. 6).

**The Government Responds: Intra-institutional Contradictions Within the Legal Structure**

A two-year whirl of domestic legal initiatives and appeals ensued, leading up to the first major trans-nationalization of the conflict, marked by Kuwar’Uwa’s Los Angeles visit. The U’wa case was a fundamental test case of the implementation of the newly inscribed indigenous rights norms, both in the arenas of fundamental constitutional rights and the practice of consultation. In March of 1995, the DGAI under the Interior Ministry, issued the first published guidelines regarding the consultation process.

In addition to these broader guidelines and laws, two cases of jurisprudence regarding indigenous rights under the 1991 Constitution and Law 21 of 1991 applied at the time the U’wa were challenging the validity of the environmental license for seismic activity. The first was a *tutela* issued in favor of the nomadic Nukak indigenous people. A second *tutela* put a judicial stay on the construction of a road through land titled to the indigenous community of Cristianía, in Antioquia department. While the government’s obligation to conduct consultation was not

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36 According to this document, based on ILO 169 and the implementing Colombian Law 21 of 1991 and which was of “instructive” character but did not have the weight of a regulatory decree from the ministry, the purpose of consultation was to inform indigenous populations about projects affecting them. For an overview of the guidelines and their implications, see Wirpsa 2004.

37 This edict was issued by the juez promiscuo territorial of San José of Guaviare on September 14, 1992 and upheld in appeal by the Third Civil Circuit (juez tercero civil del circuito) of Villavicencio on Oct 27, 1992.
cited, the courts ruled that the state had not heeded the community’s repeated warnings of the damages the project would incur on their lives and livelihoods. The Constitutional Court, on June 2, 1992, ordered the suspension of the construction; and, similar to the case of the U’wa, the Ministry of Public works appealed to administrative courts to defy the stay, successfully obtaining an environmental license. The Council of State, in a rare decision which favored the position of an indigenous community, revoked the license based on the premise that the state could not guarantee that the project would not bring irreparable harm to the lives and livelihoods of the indigenous community (Corte Constitucional de Colombia, 1992; Email correspondence with indigenous advisor, February 2004).

Cultural Clashes and Regime Collision within and amongst State Institutions

What is important in these two rulings is the tension between decisions protecting fundamental rights and decisions upholding administrative/economic acts, and the role of these different state institutions in this dynamic. For example, the Council of State, as the overseer of administrative acts (for example, decrees implementing national and international law, or environmental licenses or mining resolutions issued by government ministries) can significantly shape the definition, limits, and reach of processes like consultation. But the Constitutional Assembly also created the Constitutional Court, the Office of the People's Defender, and the rite of tutela, all which provided indigenous peoples like the U’wa a different channel of access to protect their rights and influence the national and international debate and state policymaking. The People's Defender is national level ombudsman's division for the protection of human and constitutional rights.
Together with the pre-existing Office of the Procurator General, or Procuraduría, the People's Defender acts as an organismo de control del estado; in short, these are oversight institutions similar to, for example, the U.S. Congress's Government Accountability Office (GAO). (INSTITUTIONAL CULTURES HERE?)

In brief, this was the legal and political framework regarding consultation that existed in August, 1995, when the U’wa sought assistance to suspend oil exploitation, using the temporary protective act of a tutela aimed at avoiding immediate and irreparable damage to the life of the community. They simultaneously petitioned for the more permanent nullification of the environmental license before the Council of State. These actions were actions taken through the office of the People's Defender. (Defensoría del Pueblo, 1995).

On September 14, 1995, the Bogotá Superior Court upheld the request of the People's Defender and ordered temporary suspension of the license and thus seismic activities, ruling that the issuing of environmental license threatened the basic right to life of the U’wa. (Corte Constitucional, 1997, Parte I, Sección 4; Tribunal Superior del Distrito Judicial de Santa Fé de Bogotá, Sala Especial, 1995). The Bogotá Superior Tribunal also ruled that the January 10-11, 1995 meeting described above did not fulfill the requirements of consultation, and the judges reminded that consultation is not “a simple formality to provide a written record that the communities were made aware of the projects in preparation” (Corte Constitucional, 1997, Parte I, Sección 4; Tribunal Superior del Distrito Judicial de Santa Fé de Bogotá, Sala Especial, 1995). This inter-institutional tension is indicative of the push and pull of regime collision within the Colombian state, and it is repeated throughout the U’wa case.
On the same day, however, the Council of State denied the temporary suspension of the license, claiming that the government did not violate the right of the U’wa to participation. It also stated that indeed, the very requirement of an environmental license aimed to protect the country’s “natural riches.” The Council of State argued that participation does not imply accepting the community’s “expression of conformity or assent” to the issuing of the license. MORE FROM OXY: GENERAL WELFARE VS. MINORITY RIGHTS ARGUMENTS.

Occidental subsequently also appealed to the Supreme Court on October 19, 1995. The Supreme Court revoked the writ of protection, and the U’wa requested that the Constitutional Court – the highest tribunal on constitutional matters -- review the decision of the Supreme Court. This request was accepted in January 1996. Still pending at the same time was the Council of State’s definitive ruling regarding the validity of the license. Because the Council had negated the temporary suspension of the license, Occidental was able to resume seismic exploration in February 1996 (Project Underground, 1998, p. 28).

As the magistrates of both high courts deliberated, national solidarity with the U'wa people grew; international non-governmental organizations began to take notice of the conflict; and the U'wa-Occidental standoff began to appear in the international media. The U’wa case was also highlighted during massive indigenous protests and takeovers of government buildings and road blocks in at least nine towns and cities that occurred during the Summer of 1996 (Jackson, 2002, pp. 81-122; Mondragón). The U’wa, meanwhile, organized in their territory the First

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38 The protests, the most visible and prolonged of which was the occupation by 60 indigenous of the Catholic Episcopal Palace in Bogotá for 36 days -- smack in the middle of the bishops’ annual meeting -- represented a sign of unity amongst a historically factioned national indigenous movement. Indigenous peoples nation-wide protested widespread violence against them from all armed actors – guerrillas, paramilitaries and government forces – as well as: respect for territorial rights; control over development processes occurring on indigenous lands; resource transfers; the slow implementation of indigenous rights’ framed by the 1991 Constitution, especially slag on the passage of the Law of Territorial Ordination and the creation of the aforementioned ETIs. (Jackson, 2002, pp. 87-88;
U'wa Forum for Life, in August that year, which was massively attended by prominent indigenous leaders and legal scholars.

The tension amongst and within Colombian government institutions continued. The DGAI had issued a concept regarding the consultation process with the U'wa on February 13, 1996. This document stipulated that consultation was initiated in the January 10-11, 1995, meeting, but not “exhausted,” and that therefore, the obligation had remained unfulfilled (Jimeno Santoyo, Correa C. and Vásquez Luna, 1998, pp. 324-340). A year later, the Constitutional Court issued its edict in favor of the U'wa, stipulating that the issuing of the environmental license threatened their ethnic, cultural, social and economic integrity and their right to life. Thus, consultation – or in this case, the absence of it -- acquired the character of a fundamental right, and omission of this process meant a violation of those rights (Corte Constitucional de Colombia, 1997, Parte II, Sección 3).

The decision also reiterated the obligation of the State to protect the ethnic and cultural diversity and the cultural and natural riches of the nation and validated the U'wa vision of “homo politicus” relationship to nature. One significant outcome of the protests was the issuing of Decrees 1396 and 1397, which, as Arenas (2000) notes, created both a Commission of Human Rights of Indigenous Peoples with “a special program for attention” to this population; and a National Commission of Indigenous Territories and a “permanent table of conciliation with the peoples and indigenous organizations.” These decrees are discussed in Chapter 2.

The DGAI asserted that the oil project “could affect in an irreparable way the ethnic and cultural integrity of the U’wa people, given their unique cosmo-vision and beliefs surrounding causality, the lack of a solution to their territorial unity and the vulnerability in the face of contact with the national society and even more seriously, with the seismic project in question.” It would not be venturesome to affirm that the recognition of the ethnic and cultural diversity of the indigenous peoples maintains harmony with the different precepts of the national constitution relative to the conservation, preservation and restoration of the environment and of the natural resources that conform it, if we consider that the indigenous communities constitute in themselves a human natural resource that is esteemed to be an integral part of the environment, even more so when normally the indigenous populations habitually occupy territories with ecosystems of exceptional characteristics and ecological values that should be conserved as an integrative part of the natural and cultural patrimony of the nation. In this way, the indigenous populations and their natural surroundings constitute a system or a universe which deserves the integral protection of the State....(Corte Constitucional, 1997).
The stakes in the U’wa case were much higher for powerful economic interests, perhaps, at the time, than any other prior case of indigenous resistance to resource exploitation. First, the community was confronting a major U.S.-based multinational oil company whose existing investments in Colombia included the huge Caño Limón oil fields and the country’s most significant pipeline. Moreover, at the time, estimates of the quantity of crude laying beneath U’wa land, deposits anticipated to be of the highest API quality, ranged from 1.2 to 1.5 billion recoverable barrels – mammoth in size. Simultaneously, Colombia was anxious for new hydrocarbon discoveries, given the natural decline of Caño Limón and also of a second major field located at Cusiana/Cupiagua. Additionally, the United States, which imports at of a majority Colombia’s exported crude, had accelerated its national security and energy policies, attempting to direct oil dependency away from the volatile Middle East. The Court demanded that appropriate consultation occur within 30 days, a process the U’wa insist to this day has never occurred (Interviews with U’wa leaders, June-August 2002). With so much at stake, a month later, on March 4, 1997, the Council of State issued a ruling contrary to Constitutional Court’s decision. With a 14 to 7 vote, the Council ruled that adequate consultation had indeed occurred, and this decision was interpreted as holding administrative precedence regarding the legality of the environmental license. Thus, the stage was set for the U’wa struggle to move into ever-more complex, trans-spatial arenas.

**Policy and Legal Battles: The Resguardo Unificado and Decree 1320**

In July 1998 the Colombian government issued a decree with the stated purpose of streamlining the process of consultation. This highly controversial administrative decision represented an advance of the priorities of the hegemonic
regime network regarding consultation and a backlash for indigenous rights. Using extraordinary powers, the executive branch, through its Interior Ministry, issued Decree 1320. Critics of the decree claim it restricted the conceptual and geographical definition of indigenous territory and therefore the conditions under which consultation need occur. In short, it cramped the definition of territory, and thus the physical space in which consultation would be applicable (Gómez Vargas, 2002, pp. 534-548).

The U’wa struggle had garnered significant national and international exposure, as previously described. This contributed to regime network tensions. A private sector representative admitted that the attention to the U’wa case was concurrently creating “an image problem” for Occidental: “Imagine! The indigenous people ended up in the shareholders meeting all the way in Bakersfield” (Interview with a representative from the Colombian Petroleum Association June 20 and

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41 Decree 1397 of 1996 originally stipulated, regarding environmental licenses and consultation: “For the effects of the present decree, concertation will be carried out in concordance with stipulations outlined in the Political Constitution of Colombia, the International Instruments to which Colombia is bound, as well as laws 160 of 1994 and laws 191 and 199 of 1995, as well as other norms guaranteeing the rights of Indigenous Peoples” (Article 6, Concertation). It also stated that no environmental license could be granted without corresponding studies of economic, social and impact of projects on indigenous communities, “which ought to be part of the environmental impact study.” In brief: “The studies will be carried out with the participation of the communities, their authorities, and their organizations” (Article 7, Environmental Licenses). Additionally, Article 7 commands: “When the studies themselves, or the environmental authorities, or the entities in charge of follow-up regarding participation with the affected communities, their authorities or organizations, infer that said project could cause or is causing damage to the economic, social or cultural integrity of the indigenous peoples or communities, the license will be negated, suspended or revoked, through a corresponding resolution.” Decree 1397 was appealed before the Council of State, resulting in a ruling on the 8 of October 1998 nullifying the legal effect of the words “suspended or revoked.” Decree 1397 also established a Permanent Table in Concert under the direction of the Interior Ministry. The decree stipulated that the following individuals should participate in this table: seven ministers, or their delegates; the Director of the National Planning Department or a delegate; the Presidential Advisor on Borders or a delegate; the Presidential Advisor for Social Policy or a delegate; the indigenous senators; the former indigenous representatives to the constitutional assembly; the President of the National Indigenous Organization of Colombia or a delegate; The President of the Organization of Indigenous Peoples of the Colombian Amazon (OPIAC) or a delegate; a delegate from the Tairona Indigenous Confederation; a delegate from each indigenous macro-region or from other regional entities. This body of representatives was mandated to convene and concert whenever the government was formulating administrative and legislative provisions affecting indigenous peoples. It was also charged with evaluating the indigenous policies of the State and following up the fulfillment of agreements established through the entity. The obligation of the government to consult with indigenous peoples through said procedural channels was reiterated even more specifically in Article 12.
August 26, 2002). These regime network pressures, and their transnational-domestic legal implications would, at a later stage, prove essential to the U’wa struggle.

Decree 1320 substantially decreased the territorial space in which the government and foreign oil companies were obligated to implement consultation. According to Decree 1320, consultation would be required only if a project was planned directly within lands of a demarcated resguardo or reserva, or in “zones which are untitled but which are inhabited in a regular and permanent way by said indigenous or Afro-Colombian communities” (Gómez Vargas, 2002, p. 538). As a representative from the Colombian Petroleum Association, a government official from the DGAI and legal advisors to the indigenous organizations asserted, the decree consisted in a mechanism to restrict the geographic scope of consultation – and the very definition of indigenous territory. (ELABORATE IN A FOOTNOTE).

Previous decrees and ILO 169 allowed for a broader spatial and cultural definition of indigenous territory. From the onset, indigenous leaders and legal experts denounced Decree 1320 as unconstitutional on two grounds: 1) It was issued without prior consultation with the indigenous peoples, a condition required by ILO 169 and existing Colombian legislation; and 2) it redefined the definition of indigenous territory in a restrictive way that violated the definition upheld in ILO 169 as well as in Colombian Decree 2164 and the 1998 Mining Code.  

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42 Occidental’s shareholder meeting during the years the U’wa visited it was held actually in Santa Monica, California, not Bakersfield. Bakersfield is the location of Occidental Oil and Gas Company, of which Occidental Petroleum, situated in West Los Angeles, is a wholly owned subsidiary.

43 Decree 1320 was later taken to task before the ILO, with rulings favorable to indigenous interpretations of the obligations of consultation as defined by the Colombian Constitution and other binding international agreements and domestic laws. This was eventually precedent setting in the stage of the U’wa case when the community was confronting the domestic oil company, as described in Chapter 5.

44 In these cases, indigenous territory includes not only demarcated land and land regularly and permanently occupied by indigenous, but also the habitat which sustains the traditional practices and the economic, social and cultural well-being of the indigenous communities. Decree 1397 was considered compatible with this definition. (Interview, advisor to the ONIC, November 2000).
The private sector, meanwhile, considered 1320 an advance and a much more efficient means through which to obtain environmental licenses. A representative from the multinational oil companies’ lobby, described the decree as: “[N]ot perfect, but….definitively, the issuing of 1320 cut down the maximum time for the granting of an environmental license” (Interview with representative from the Colombian Petroleum Association, June 20 and August 26, 2002).

Indigenous peoples and their advocates challenged the decree, and in November 1998, based on a ruling of a writ of protection brought by the Emberá indigenous peoples, Colombia’s Constitutional Court declared 1320 unconstitutional. In August 1999, however, on the eve of the issuing of a second environmental license in the U’wa case which aimed to pave the way for exploratory drilling of the Gibraltar I well, the Council of State, responding to a demand of the decree itself before that entity, upheld as valid Decree 1320. Its limited definition of territory and consultation contradicted the ruling of the Constitutional Court, creating once again an inter-institutional legal tension similar to the conflicting institutional norms exhibited through the first round of tutelas and inter-court discrepancies which fueled the trans-nationalization of the U’wa case (Interview with advisor to the ONIC, November, 2000). Colombian indigenous and environmental organizations were outraged. They began to prepare a demand of the decree, and of the Colombian government’s comportment in the U’wa, Emberá and Cristianía cases, to present before the ILO, thus further expanding the global spaces of conflict and adjudication. The oil sector, meanwhile, considered the decision a victory: “[Decree] 1320 was challenged [before the Council of State], and we won….We paid for the defense. They got rid of a provision dealing with a 24 hour time frame, but the
decree remained intact” (Interview with representative from the Colombian Petroleum Association, June 20 and August 26, 2002).

**The Evolution of Decree 1320: Consultation and Regime Conflict within State Institutions**

The process leading up to the issuing of Decree 1320 reflected how competing interests articulated through regime structures and the corresponding world orders they reflected, created tension within the state institutions. Especially salient during this stage of the implementation of constitutional and legal norms regarding indigenous rights and resources were tensions surrounding *timing*, *knowledge*, *language*, and *definitions of participation*, *representation* and *territory*. A detailed analysis of this process reveals the channels through which the private sector and indigenous actors and their allies influenced policy outcomes in these areas, as well as the relationship of oil companies to the state. It was preceding and during passage of this decree that tensions between people and institutions comprising competing regime structures came to an important apex.

Environmental ministry professionals, in cohort with intra-ministerial colleagues, set out, to develop in praxis with the communities the rules and regulations of consultation, which were to be later formalized in a decree, through “a process carried out in practice at the start, rather than following pre-formed written rules” (Interviews with individuals close to the consultation process, February – August, 2002, Bogotá). Coordinated by the legal office of the Environmental Ministry, this process was conducted by an interdisciplinary team composed of lawyers, engineers, biologists, anthropologists, sociologists – a mix of personnel trained in the natural and social sciences (Interviews with individuals
close to the consultation process, February – August, 2002, Bogotá). With private consulting contractors or oil companies drafting and presenting Environmental Impact Assessments – prelude documents to the granting of an environmental license -- environmental ministry personnel were slated to serve as “guarantors” before the communities throughout the consultation process. From the start, regimes reflected the world orders of some members of this team of “guarantors” and of the indigenous peoples they sought to accompany (Interviews with individuals close to the consultation process, February – August, 2002, Bogotá). This articulation of these world orders was reflected through regime network tensions, especially around language, timing and perceptions of the validity of knowledge systems, and through conflicts of governance between government actors and within state institutions:

The environmental ministry acted as a primary guarantor in the process, trying to assure that all the information the community received from outside was true, precise, that the community was well informed regarding the impacts of the project in their zone. The moment arrived when the... specialists who presented the EIA, they used language that many times the communities did not understand. It was necessary to transform that language into more daily language, to get at what was really going to happen on the ground (Interviews with individuals close to the consultation process, February – August, 2002, Bogotá).

Different language and timing combined to create other tensions, through which conflicting definitions of the principles of consultation and participatory democracy were reflected:

Because of this, sometimes of the meetings for consultation took a week, there were public hearings that lasted five days. As a primary priority, it was important for the communities to be truly well informed. We wanted them to feel that the new Constitution did exist in reality, in practice. The Constitution said the communities were to participate in the processes that the state was developing, that they were no longer passive actors, which had been their status for a long time. Inclusively, the intent was that they could intervene in
the process, in a substantial way, for example in the EIA” (Interviews with individuals close to the consultation process, February – August, 2002, Bogotá).

A private sector representative, meanwhile, described consultation and licensing process as follows:

The new norms in the oil sector regarding ethnic and environmental rights has been so poorly managed that in practice, what ended up happening is that the indigenous territories and their reservations were just excluded from the exploratory blocks. The problem [with consultation and licenses] reached such magnitude, and it became so unmanageable, with even international problems, and image problems for the companies, that...the companies said to ECOPETROL, don’t put any indigenous peoples in my blocks!

So you see, in practice, this eliminated the indigenous peoples from a process of development. ... What began as a legitimate vindication of their rights was so awkwardly managed by the parties involved that it ended up in a simplistic solution: exclude the indigenous peoples, period.

The practical result of the Constitution of 1991 was a bureaucratic procedure aimed at issuing a piece of paper called an environmental license.....it became a piece of paper that just took a really long time to get it issued, and then afterwards, people were able to do what they want with it. Is this a logical and reasonable way to protect the environment?

[No] one was talking about the quality of the environment, of good administration or voluntary systems of responsibility to improve the environmental performance of the industry....there is no regimen of stimulus that is clear so that the companies are going to obtain certification within the system of environmental protections.

All of these things combined – the law, deceptions, the development of a relationship of adversaries within the authority of the productive sector, when we all should be partners in development (Interview with a representative from the Colombian Petroleum Association June 20 and August 26, 2002).

Tensions further exacerbated when individuals close to the consultation process began to insist on the incorporation of indigenous traditional knowledge within the process of consultation, the EIA and the EMP.
The employees from the companies and the officials from ECOPETROL, and from certain other entities of the state, none of them believed in traditional knowledge. They were dedicated to, or at least were formed, in a formal and “scientific” knowledge-system which, and I am deliberately putting that word in quotes. They completely ignored the meaning of traditional knowledge. So that's when a big moment of friction occurred. Because they didn't validate traditional knowledge, they laughed at the idea that a group of people whose knowledge was based on this could enter and question or complement scientific things. It didn’t matter how vast was the store of knowledge the indigenous communities possessed about the zone, because they lived there; for the others, that was just empirical knowledge, of little use to projects based on sophisticated engineering concepts. So the assumption was that the communities could contribute nothing. (Interviews with individuals close to the consultation process, February – August, 2002).

The interrelationship between disparate conceptualizations of appropriate
time frames and diverging knowledge systems created further complications in the praxis of consultation.

Formal education gives people a methodology of work allowing them to have a critical route, and to turn over results quickly, or at least within a specified time frame. The communities did not operate in this way, it wasn’t clear to them. For example, the time frames to turn over information. They operate under different rhythms; they move in different times; they possess a different thought system.

For the companies, the consultations were too long. Government and company representatives would ask, ‘Where is the cutoff limit?’ The indigenous peoples would respond, ‘Our entire lives.’ The concepts of time were different. The indigenous people thought, ‘I’ll take longer, but my territory will be secure.’ The company’s sense of time was, ‘I’m losing money.’ For one, spending time meant gains; for the other it meant a loss of money.

It was hard to clarify so many things, the variables, and the two sides were so different that they became polarized in their discussions and gazes and visions of each other. The process experienced a rupture, and the companies and investors began to see consultation and public hearings as an obstacle. It was in 1998 that it really deteriorated (Interviews with individuals involved in the consultation process, February – August, 2002, Bogotá).

In one case, however, related to flood systems of a river harnessed by a hydroelectric project, the accuracy of traditional knowledge was revealed. Fisher-folk and indigenous peoples critiqued company and ministry water control plans, insisting that a particularly strong cycle of rains recurred every 12 years. The Environmental Management Plan failed to account for these warnings; subsequently, as predicted by the empirical and traditional knowledge of the local inhabitants, the special cycle of rains came, creating havoc both for the dam project and communities alike.

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Despite this decline, several government actors involved in consultations reiterated that this process – even taking into account its foibles -- was extremely important because it created new spaces for democratic practice, for the transition of the new constitution into reality and for inclusion of marginalized actors into social, political and economic decision-making at a time when the legitimacy of government authority, especially in rural areas, was seriously challenged.

**The Push and Pull from the Oil Sector**

The oil sector also cited the absence of clear processes -- for different reasons – as an obstacle to the positive evolution of consultation. A 1996 publication from the Colombian Petroleum Association, the country’s influential lobby supporting international oil companies, revealed the tensions between contending rights regimes, as articulated in the constitution and in government practice, from the private sector viewpoint. The document outlines tensions between rights regimes, describing conflict between “economic development (national interest) and the state’s “fundamental principles and essential goals (interest for the community).” However, it reminds that neither ought deteriorate the constitutional mandate requiring that the state promote the “development of the nation.”

The publication emphasizes the importance of preserving the cultural, social and economic integrity of said communities, within the context of petroleum exploitation. It then, however, claimed that the “present situation is a dark one,” and it criticizes the “between the lines” aspects of decree 1397 of 1996, which it states has not served to help the petroleum industry and the indigenous communities to “walk along a common horizon.” Decree 1397 was the outcome of
powerful indigenous protests, and indigenous people’s and their advocates considered it as strengthening their cause. The ACP, however, claimed said decree contained "such pronounced twists and turns and games that intend to subordinate certain parties to others" (Asociación Colombiana del Petróleo, 1996, p.12).

According to government officials and private sector representatives, it was this burgeoning discontent on part of oil industry representatives, coupled with the difficulties related to timing and world vision regarding consultation described above, that led to a push from the private oil sector, transmitted through Ecopetrol, for the rapid expediting of Decree 1320. The pressures were real, given the exigencies of debt and energy self-sufficiency facing Colombia.

According to an individual close to the consultation process:

There were pressures to establish the rules and regulations through a decree quickly. As time went by there was a lot of pressure, especially from the companies, from the investors, hydrocarbons was a strong sector because of the high level of investment and the multinational companies that came here to Colombia to exploit the resources. Of course, this was done under the auspices of ECOPETROL, which was always involved in establishing the rules and regulations required for the exploitation of oil in Colombia (Interviews with individuals close to the consultation process, February – June, 2002).

Thus what is observed was a time/space compression of the investment priorities of the hegemonic regime network pushing back and creating institutional pressures that collided with the in-process design of the practice of consultation and of a deep interpretation and implementation of the indigenous rights regime.

So [our superior] was very respectful with us. He called and said, okay we are running out of time. The opinion circulating is that the country is being paralyzed. We understood this. Because we knew that natural resources were an important sector that could move the economy of this country. From the point of view of our country’s economic situation, we knew it was important to analyze this, and not lose focus. But it was also hard…You must understand, we were also thinking about the future of the communities, and
the very development of our country’s democratic process. That is what we were constructing. So we said, what can we do? It was very problematic. If we were to issue the licenses, immediately, well we could, we could give our opinion quickly. But we had to ask, what would be lost? (Interviews with individuals close to the consultation process, February – June, 2002).

The tensions between the priorities of the contending regimes exacerbated, and conflict was palpable within institutions and processes of the state. The following narrative reveals the extent to which the divergent interests of the regime networks had created bifurcations within state institutions:

So we got a message [on a Monday] that we would all meet on a Friday. On Friday, we all gathered together: Ministry of Mines, Ministry of the Environment, Ministry of the Interior, the Office of the People’s Defender. We were all convened.

Everything we had worked on was lost. Completely lost. They arrived with new information. With a new document – I have no idea where it came from. It was a new document that had nothing to do with what we had done. We said, “What is going on?” The Vice Minister [of the Interior] had the new document. We told them, this is not the document we have been elaborating, this is not our draft, this is something we have never seen before, and we will not work with this document.

I said, ‘I will not participate working on this document.’ And I left, and I didn’t go back to the meeting. [Two other people] either. Nor [fourth person] We were furious. We said to them, ‘You are insulting our entire process. This is an insult to the process we have carried out with the communities….’ (Interviews with individuals close to the consultation process, February – June, 2002).

The result of the meeting was decree 1320. A private sector representative claimed Ecopetrol, the state oil concern, was the material actor responsible for its design, but under pressure and with “help” from the oil company lobby. Thus what was articulated in legal policy was a leap forward within the terrain of the state which the hegemonic regime interests occupied.

At least six of the people attending the meeting in which 1320 was designed walked out on the sessions, refusing to accept the imposed draft of the regulatory
process (Interviews with individuals close to the consultation process, February – June, 2002). For those government officials, much more than the specific mechanisms of consultation and public hearings was at stake. They expressed as sense of responsibility to implement, from the definitions of the interests of the counter-hegemonic regime network, the components of participatory democracy and indigenous perceptions especially of timing and knowledge, and definitions of participation, nation, belonging, representation and regulatory territorial rights:

We wanted to make the Constitution work. Our experiences in the field were marvelous. People began to say, ‘Wow, the state is finally participating...we are no longer those people strung afar, but instead we are part of the nation...’ We felt part of this, too. As if we were all constructing a patria (homeland or nation). What was happening was that people during our fieldwork, the people were feeling that they really were Colombians, participating.

So the communities were able to express things beyond what the impact of the project would mean for their everyday life, their economic processes, their habitat, their culture, all of the ritual aspects of their lives. They talked about what different times and seasons meant. It was surprising, because we realized this was the vision of the world held by many people, people who see things from the reality of their daily lives, from their lived experience. And this world contrasted a great deal with what was in the EIA. It was like there were two distinct knowledge systems, from very different visions. (Interviews with individuals close to the consultation process, February – June, 2002).

The Hegemonic Vision of Decree 1320

The oil industry considered 1320 as the first in a series of legal reforms that would reduce bureaucratic obstacles to investment. An ACP representative described the role of the private sector in the environmental legislative process as follows:

The role of the ACP and of the private sector in the evolution of the practical norms of environmental licensing, well, we have had to assume a role of absolute leadership. All of the proposal are born in these offices. All of the changes to the bills we have proposed them to the senators....As a business sector, and as a lobbying organization, well, it works through different mechanisms, maybe a congressperson comes here, because of interest in an
The representative admitted that the oil sector had taken even more direct legal actions in the case of. He said, for example that oil company lobbyists organized the appeal of Decree 1397 in court, before the Council of State, to reduce its operative scope. The appeal aimed to overturn the obligation that any project in indigenous territories had to pass through a “table of concertation.” He also said Decree 1320 was the “response” to conversations between the government and the oil sector in the aftermath of the issuing of 1397 and exigencies from the indigenous peoples for the existence of this “table of concertation:”

There was a person in the interior ministry who was all in favor of the indigenous peoples and against the industry. That’s the person that created the muddle, really, with the U’wa and Samoré. So it was necessary to tell Ecopetrol, and the president at the time, it was Samper, that the government needed to make a decision [regarding consultation] because there was not consensus in the ministries....The decree was designed by Ecopetrol.) But we told Ecopetrol, you are the state, you are our partner, you sign contracts with us. So we need to fix this problem. Our only obligation is to invest, not lidiar with indigenous communities, or those kinds of things. That is the government’s responsibility. It needed to issue a document to solve and regulate that kind of thing.....So we helped ECOPETROL, but really, it was ECOPETROL’s responsibility to cope and deal with the issue. It was the only thing causing us grief. (Interview with a representative from the Colombian Petroleum Association June 20 and August 26, 2002).

**Trans-spatial Responses: Challenging Decree 1320**

The response of the U’wa and other indigenous communities to the legal shift was to strengthen activities across multiple spatial scales. As space for maneuver within state institutions constricted, site-specific and transnational activities expanded. Regarding Decree 1320, given that no further appeal of it was possible
within domestic tribunals given the ruling of the Council of State, the ONIC, working through the country’s major labor federation, the Central Unitaria de Trabajadores, began to prepare a complaint to file before the International Labor Organization alleging that Decree 1320 violated ILO Convention 169.46 Again, the trans-spatial proliferation of the U’wa resistance intensified.

Two key processes ensued. First, in part because of the pressure generated by the OAS/Harvard conclusions, the persistence of U’wa leaders and the ONIC, and support from international groups, and according to Occidental, because the company “encouraged the Colombian authorities to resolve a long-standing territorial issue between the Bogotá government and the U’wa,” the government moved forward on the demarcation of the Resguardo Unido U’wa expanding territory collectively held by the U’wa from 268 square miles to approximately 850 square miles, approving a resolution at the INCORA board meeting on August 24, 1999. Still, the demarcation excluded both the site where Occidental had earmarked for drilling the wildcat well, and a sacred mountain located directly in front of it. Once again, regimes and the world orders they reflect came into conflict. Additionally, the spaces where the conflict played out and where attempts at adjudication occurred increasingly crossed levels of analysis.

However, with the U’wa reiterating their staunch rejection to oil development even proximate to the demarcated land, rhetoric hardened. An Occidental spokesperson described the expansion of the reservation and the U’wa claims to

46 The complaint was received by the ILO on November 5, 1999. In brief, it alleged that Decree 1320 violated ILO Convention 169 because 1) it was issued without prior consultation with not only the appropriate indigenous representatives, but also without consultation with the DGAI, the government office legally in charge of coordinating prior consultations, or the Mesa Permanente de Concertación entre los Pueblos y Organizaciones Indígenas; and 2) it restricted rather than facilitated consultation and did not take into account “other logics of thought, time and space held by different indigenous pueblos existing in Colombian territory.” The complaint also brings before the ILO -- as standing in violation of Convention 169 -- the issuing in 1999 of the second environmental license to Occidental in the case of the U’wa and the approval of the construction of a road through the Cristianía indigenous community in the Antioquia department.
broader ancestral territory as follows, accentuating the rhetorical clash between indigenous and majority rights:

The new U’wa reservation is 20% larger than the Department (i.e. State) of Quindio, located in the central part of Colombia...Quindio has a population of 560,000. Viewed within a U.S. context, the U’wa reservation is 70% the size of the state of Rhode Island which has a population of just under 1 million. What the Pastrana government did in expanding the U’wa reservation has no precedent in the history of Colombia or any other nation in Latin America. A backlash has already set in among broad segments of the Colombian population as the U’wa continue to push the edge of the envelope on the territorial issue. How much is enough, they ask? Minorities, including indigenous peoples and blacks, number less than 2% of the Colombian population of 40 million. Given the size of the land grant to the U’wa, other Colombians, including land poor peasants, are asking what about us? (Meriage, 1999).

In short, the Occidental representative framed the conflict as one between minority and majority rights; his declarations appeared aimed at weakening their identity and territorial claims. He also insisted that the U’wa had been unduly influenced by their northern NGO allies:

...[T]here are other legitimate stakeholders in the region where the U’wa live. Consider poor peasant farmers living in the area. Do they not have rights? Incidentally, the Colombian government established a $10 million fund to resettle the peasants whose lands are inside the newly expanded U’wa reservation. Other peasants live in the surrounding area, too. Should only the wishes of the U’wa be addressed to the exclusion of all others as is implied by the rhetoric of many of their international supporters?

Many of these peasants and residents of the communities in the area are eager for Occidental’s exploration project to move ahead because it will create new jobs for this economically hard-pressed region. Moreover, if Occidental makes a large commercial discovery, the local municipalities would receive hundreds of millions of dollars in taxes and royalties to fund education, health care and other needed services and infrastructure. What about the rights of these Colombian citizens who want an opportunity to improve the quality of life for their families? The constitutional and legal rights of the U’wa, that have been respected and upheld by both the government and Occidental, do not supercede those of their law-abiding Colombian neighbors...(Meriage, 1999).
Again, the economic health of the nation and concern for the common good were invoked: The Sirirí project, was cited as the solution to many of Colombia’s economic and social ills:

Oil development is critical to the overall economic development of the Colombian economy that is currently in the midst of the worst depression since the 1930s. Colombia’s economic development problems have been worsened by the escalation of violent civil disorder resulting from the dramatic expansion of narco-trafficking as leftist guerrillas and right-wing paramilitary groups have joined forces with the drug cartels...

The key to Colombian President Andres Pastrana’s plan for economic recovery is oil development, and he is looking to Occidental to be an important contributor to that recovery....

Occidental’s exploration activities in the Samoré area will be carried out in partnership with the Colombian national oil company and the government will receive most of the income from any oil production that might result from this project...If Occidental finds a giant new oil field in the billion barrel class, the field will produce revenue that the Colombian government will use to support much needed education, health care and other essential public services in the Samoré region (Meriage, 1999).

The Second Environmental License

It was in this context that the Colombian government granted Occidental a second environmental license for the exploratory Gibraltar I well. Occidental had previously agreed to reduce the geographical scope of its participation in the Samoré block, limiting activities to the northern most quadrant, and to locate the first well outside of the newly demarcated Resguardo Unido U’wa. 47 Indeed, the well was positioned a scant 500 meters from the reserve’s northern boundary. The precepts of Decree 1320 -- despite allegations by indigenous organizations of its unconstitutionality and its violations of ILO 169, and despite U’wa claims that the well was still located in traditional U’wa territory of traditional and ritual use --

47 This new contract, called Sirirí, was signed on 17 March 2000. It reduced the size of Samoré to approximately 25 percent of the original extension. Still, a considerable portion of the Siriri block was still located beneath demarcated U’wa territory, and all of it remained within what the community claimed as traditional tribal homelands (Penagos Forero, 2004, p. 6).
meant the Environmental Ministry obtained a legal green light to grant Occidental a license to drill the exploratory well without revisiting the consultation process. The license was issued on September 21, less than a month after the vote at the INCORA board meeting to expand the Resguardo. At the time, Environmental Minister Juan Mayr, who had previously headed an NGO that worked with indigenous communities in the Sierra Nevada region, said regarding the license: “There is nothing in Colombian law preventing it.” He emphasized that the government needed to “weigh the possible impact on the U’wa against the economic development of the country as a whole.” The government’s hopes were high for potential of the size of the deposit – estimates ranged from 1.4 to 2.5 billion barrels of recoverable, high quality crude. In the best case scenario, this deposit under the wildcat Gibraltar I well had the potential to lead to a doubling of Colombia’s proven crude reserves.

It was from within this framework that once again, the U’wa struggle globalized, and the crossing of multiple spatial arenas intensified, even more than in the initial stage. This intensification across multiple spatial scales, and the interactive effect it implied – as well as the concurrent process of militarization accompanying this dynamic in the region.

**Ecopetrol, the ILO, Grassroots Protest and the Effects of International Law**

In 2002, Occidental announced, after drilling 15,000 feet, that it had not found the Gibraltar well commercially viable, that it was withdrawing from the project thus turning the rights to exploration entirely over to the Colombian government. Since Occidental’s retreat, ECOPETROL, the Colombian government’s oil concern, has continued to probe for crude, drilling deeper into Gibraltar 1. As of the writing of this draft of this Chapter, the most recent estimate is that the well
holds approximately 15 million barrels – or a mere one percent – of the originally estimated quantity. Exploration for natural gas deposits beneath Gibraltar 1 continue. Simultaneously, in February 2003, ECOPETROL contacted the U’wa, informing them that the state oil company would soon “initiate hydrocarbon exploration activities in the general Sarare region, activities which will include the territories of the U’wa Unified Reserve” (ECOPETROL, 2003, February 10). The U’wa rejected both initiatives, reminding the national and international public that “ECOPETROL and its associate enterprises have destroyed indigenous cultures and the environment.” The community communiqué cites the cases of the Guahibos in Arauca department, the Motilones-Barí in Northern Santander department, and the “indigenous siblings” in the southern Putumayo department. “In all of these cases, what the dominant factor is violence, hunger, displacement, state abandonment and absolute poverty.” (Asociación de Autoridades Tradicionales U’wa, 2003, February 12). The communiqué stated that Major Council President Roberto Cobaría (Berito Kuwar’U'wa) had been given a mandate by the community’s wise elders to continue national and international campaigns against oil development in ancestral U’wa territory, based on decisions made during the Sixth Congress of the U’wa Council in January 2003 that “U’wa people will not negotiate petroleum exploration in our sacred territory” (Asociación de Autoridades Tradicionales U’wa, 2003, February 12). The U’wa advocated an renewed appeal before International Institutions, primarily the OAS.

Then, a most unexpected development occurred. ECOPETROL, notably, in March 2004, announced that it would re-institute a process of consultation with the U’wa in order to continue exploration in other areas, beyond Gibraltar I, of the Sirirí

48 Ecopetrol invested approximately $30 million after Occidental’s retreat. Although the field is miserably smaller than originally estimated, at current record prices of oil – peaking at $55 per barrel in October 2004 – the profits from this find could still be reasonably substantial.
block (ECOPETROL, 2003, February 10; ECOPETROL, 2004, July 27). On one hand, this made legal sense, as the original license was issued to Occidental, not Ecopetrol, and it applied to one well. Decree 1320 stipulated that no consultation was necessary regarding that prospect because the well site was located outside of the demarcated reserve, and because of certification by the Interior Ministry that no regular and permanent presence of indigenous existed in the area. But ECOPETROL, after meetings with the U’wa, agreed to follow a different set of rules, adhering to developments regarding international law. ECOPETROL and the Ministry agreed to disregard Decree 1320 and initiate consultation under prior judicial precedents. One advisor to the U’wa explained the important influence of international law on this decision:

In making this decision, ECOPETROL is expressing a degree of fear that it they might have to confront an international claim. It recalls demands that the consultation process ought isolate Decree 1320. We must also understand that the lawyers from ECOPETROL are not the Oxy lawyers. Some of the ECOPETROL lawyers hold respect for indigenous rights (Email correspondence with indigenous advisor, 2004, March 24).

Moving normatively even beyond this step, on October 13, 2003, the Ministry of the Interior and of Justice (previously the Ministry of Government, then the Ministry of the Interior, finally condensed under the abovementioned title under the administration of President Alvaro Uribe), signed an Act of Agreement Between the Directorate of Ethnic Affairs of the Ministry of the Interior and of Justice, and the Association of U’wa Traditional Authorities and Major Council. Remarkably, the document not only accepts the non-application of Decree 1320, based on international law under the ILO (and in this case, the ILO could still be considered “soft law”), but it also accepts domestic/transnational challenges regarding the unconstitutionality of this decree. The government, by signing this document,
commits to forwarding these challenges through the appropriate entities of the state.

At the same time, despite this apparent shift toward adherence to international standards, the situation on the ground for the U’wa became extremely complex. In February of 2002, the Bush administration asked Congress to funnel $98 million for fiscal year 2003 to train an elite Colombian army brigade “to protect the country’s economic lifeline, an oil pipeline” from guerrilla attacks in the Arauca department (Dunning and Wirpsa, 2004, p. 95). The effects of this militarization were palpable throughout the next year. That pipeline, Caño Limón-Coveñas, runs through an edge of U’wa territory and is slated to serve the Gibraltar I deposit. What is important here, empirically, is that this decision meant increased militarization in the territory surrounding U’wa lands – from all armed actors. It made even more crucial the linkages between the U’wa struggle to not allow oil drilling on their ancestral territory and the broader human rights crisis facing the Arauca department as it increasingly became a foci of U.S. military aid and assistance.

CONCLUSION: PENDING……

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