

The U'wa Community's Battle against the Oil Companies: A Local Struggle Turned Global

Luis Carlos Arenas¹

INTRODUCTION

Since 1993, the U'wa people, a small indigenous community in Colombia, have been waging a battle against the American oil company Occidental Petroleum Corporation and, more recently against the Colombian state-owned oil company, ECOPELROL, in order to keep them from drilling for oil on their ancestral lands. The conflict surrounding the oil issue began in 1991, when Occidental and other associated companies acquired exploration and drilling rights for what is known as the "Samoré Block," a large tract of land that cuts across a portion of the U'wa's ancestral lands in the foothills of Colombia's eastern mountain range, the home of this people for countless generations. The oil companies started moving into U'wa territory in late 1992, and the U'wa staged their first public protests sometime in 1993. However, their opposition to the drilling did not receive national attention until 1995, when the recently created Ombudsman's Office took their case against the oil companies to the highest court in the land. Since that time, not only has publicity on the case increased, it has gained surprising force, spilling over the national borders. In fact, for several reasons I will address later, the U'wa case has been at the international forefront since 1997, during which time it has provided unexpected revelations as to the current dimensions, potential, and limits of contemporary globalization processes.

Two decisive legal changes—one national and one international—affecting indigenous peoples' rights have played a major role in the conflict between the oil companies, the Colombian government, and the U'wa community: 1) International Labor Organization (ILO) Convention #169, which established a new international framework of regulation for indigenous peoples; and 2) the 1991 changes framed in the Political Constitution of Colombia, one of which provided for ample protection of indigenous

peoples. As we will see, these two key legal instruments will be a continuous reference for the issue of oil found on the U'wa's territory.

The "U'wa case" has now become the symbol for a broad range of struggles currently being waged inside and outside of Colombia's borders by indigenous peoples, environmental and human rights movements, and in the mobilizations against multinational companies. How could an indigenous community that has been insulated and forgotten for such a long time become the center of worldwide attention? Why has the U'wa case been so attractive to very different kinds of activists and the mass media? What can we learn of this process of local struggle which has become global? How did it become a symbol in the struggle against hegemonic globalization? These are some of the questions that this chapter will try to address.

SOCIAL STRUGGLES BEYOND NATIONAL BORDERS

Although the study of forms of collective action beyond national borders is a new academic field, in the last years some very influential texts have been published on this subject (Smith *et al.*, 1997; Keck and Sikkink, 1998; Brysk, 2000; Tarrow, 1998; Evans, 2000; Smith, 2000). However, this bibliography usually perpetuates the confusion regarding the role and interaction of grassroots movements and international NGOs in building up collective forms of transnational struggles. International NGOs have undoubtedly been the most visible actors and have played an important role in the globalization of these social struggles. However, they are not the only actors, and in many cases are not even the leading players. There are many varied and rich experiences in local struggles, which, for different reasons, have managed to establish international ties, thus changing the balance of power in their specific fights. In order to fully appreciate these local struggles, we must look beyond the international NGOs. By no means am I suggesting that the two are in opposition; in fact, the most successful cases of social struggle are those with dynamic local-national-global interactions and ties. In this sense, as emphasized by Boaventura de Sousa Santos, the U'wa case is paradigmatic (Santos, 2001: 201). The international NGOs facilitate the transnationalization of social struggles, but they cannot assist in all of them and certainly cannot take the place of local efforts (Evans, 2000). Nevertheless, as we will see in the U'wa case study, the success and emancipatory potential of transnationalized social struggles depend to a great extent on the local organizations, working day to day and serving as the grounding force for a specific social effort.

One of the paradoxes faced by any social movement that transcends national borders is the continuous temptation for international NGOs and their allies to usurp the role of local groups and for analysts to fail to recognize

the importance of local battles. Any solidary-emancipatory perspective should always seek to increase the success potential of local struggles through transnational actions, while attempting to ensure that any decision-making power as to the direction of the struggle remains in the hands of local organizations. The emancipatory potential of these struggles also lies in creating horizontal solidarity ties, be these North-South or South-South, and working to avoid falling back on traditional forms of interaction based on imposed conditions, subordination, and vertical relationships. Otherwise, their emancipatory potential will be greatly reduced. As we will see, the U'wa case is a good example of the success that can be achieved through a high degree of cooperation among international NGOs, social organizations, and in this case the traditional authorities of the U'wa community, who undoubtedly still hold decision-making power as to the direction in which they wish to take their fight, despite its marked transnationality.

Another argument in favor of the importance of taking a closer look at local developments in social conflicts that manage to establish transnational ties is related to the fact that the current hegemonic globalization process is bringing about major institutional transformations on both global and national levels. These changes have led to the creation of new institutions or have transformed existing ones, as witnessed by the current reforms in justice systems, the creation of Ombudsman's Offices, and the adoption of "multicultural constitutionalism" in Latin America (Van Cott, 2000), as well as the adoption of ILO Convention #169.

Within the framework of contemporary globalization processes, any social struggle now has the potential to take its case beyond national borders. The U'wa case provides examples of the specific forms these efforts can take. Nevertheless, I propose to focus on the different situations that favor the creation of collective actions outside national borders. Social struggles are generally efforts to influence decision-makers and so change social conditions seen as unjust or damaging (or potentially unjust or damaging) by those who are subject to, or concerned by, such conditions (or who fear being subjected to them in the future). Below I cite at least two different situations in which social struggles have the potential to generate collective transnational actions.

First, there is the case when the power to make a decision depends on a national government or a state institution. However, sometimes social mobilization or actions at the national level do not succeed in changing the situation, or the state institutions do not work (for example, judicial institutions). These kinds of situations can open a set of possibilities for collective action beyond national borders for the following reasons:

- (a) Countries are signatories of international conventions. There are some international institutions in the field of human rights which were created to

enforce those conventions when national institutions are not working. For example, actions before the human rights system of the United Nations, or before the regional systems of human rights, such as the Inter-American System of Human Rights.

- (b) Countries have a scheme of international relations (commercial, political) with other countries. Some countries react when they know that other countries are concerned about a specific issue.

Second, there is when the power of decision-makers is to a considerable extent outside the control of the national government.² This kind of situation could be generated for at least three main reasons:

- (a) The power of decision is in the hands of an international institution. International financial institutions in most cases are the institutions that have this power, such as the World Bank, the International Monetary Fund, regional development banks, etc. One of the classic examples is the case study that Margaret Keck analyzed (1998) about the project *Planaflo*, funded by the World Bank in Brazil.

- (b) The power of decision is in the hands of a multinational corporation. The U'wa case is a good example of this type of situation.

- (c) The power of decision is in the hands of a hegemonic country, such as the United States. One has, as an example, decisions about the forced eradication of illegal crops in Colombia and Bolivia.

The changing of the place in which the power of decision about more general matters resides is one of the main characteristics of the current process of hegemonic globalization. National sovereignty is not diluted, but transformed. The power that national states are losing is displaced to international financial institutions, multinational corporations, or hegemonic powers. Transnational social struggles undoubtedly make a contribution to the reversal of this process.

AN APPROACH TO THE U'WA PEOPLE

The U'wa currently inhabit northeastern Colombia, close to the border with Venezuela. Their ancestral territory, however, extended from the territory around the Sierra Nevada del Cocuy, in the department of Boyacá, Colombia, to the Sierra de Mérida in Venezuela (Osborn, 1985). Traditionally, the U'wa have lived and moved inside their territory between three

different altitudinal spaces: the low areas, the foothills, and the mountains of the eastern range of the Colombian Andes (Osborn, 1995). For more than three centuries they were known as *Tunebos*, a nickname that was introduced by the Spanish conquerors, and which was abandoned only ten years ago. Since that time, in a process of growing cultural affirmation, they have been using their real name, U'wa, which means "people that think, people that can speak."

The U'wa are a very ceremonial people, who relate and recreate their own system of thinking through song.³ Songs are complemented by their own system of rituals and the structure of social relations (Osborn, 1985: 18). The U'wa society is "very flexible and decentralized" (Osborn, 1985: 27). According to their mythical texts, it was divided formally into eight groups, but some of these have disappeared (Osborn, 1985: 27). The most traditional group is the Kubaru'wa. All U'wa groups speak the same language, *Uw'aka*, which means "the soul of the people" (Osborn, 1985: 26). Their language is very flexible and each group has its own variations, and additional variations exist in each group between the spoken language and the ceremonial language (Osborn, 1985: 26).

The modern process of social organization among the U'wa has followed a path parallel to that of the modern Colombian indigenous movement, which in the early 1970s started to create social organizations to fight for indigenous peoples' rights. At the beginning of the 1980s, some U'wa leaders decided to create *cabildos*, the kind of indigenous organization promoted by the most important indigenous organization at that moment, the CRIC (Consejo Regional Indígena del Cauca—Cauca Regional Indigenous Council). In 1984, representatives of the majority of the U'wa communities created the *Cabildo Tunebo*. Between 1987 and 1989, with the aid and guidance of the National Indigenous Organization of Colombia (ONIC), the U'wa founded the Tunebo Indigenous Organization of Eastern Colombia (Organización Indígena Tunebo del Oriente de Colombia—OITOC).⁴

Prior to this, the traditional U'wa authorities had never been represented in any of the organizations founded from the late 1970s on. For this reason, the U'wa community initiated an internal dialogue with its traditional authorities to determine what name would best represent their entire community. In 1990, after extensive internal debate, a consensus was finally reached to call themselves U'wa, and to rename the organization. The final consensus was the name "Asociación de Cabildos y Autoridades Tradicionales U'wa," or "Cabildo Mayor U'wa," which became the legal name in 1994.

Beginning in the 1940s, the U'wa began to lose their land to peasants who wanted to settle the Sarare region, which was the last frontier of the ancestral U'wa territory. The settlement process slowly ate away at the U'wa territory.

Even so, relations between the U'wa and the peasants never became violent (Rucinque, 1972: 46). In the early 1970s, the U'wa began to claim their land and to call for a reservation to be created (Osborn, 1982: 8). From the mid seventies to the mid eighties the Colombian Institute for Agricultural Reform (INCORA) granted 61,115 hectares of land to the U'wa.

In 1992, ONIC and the U'wa put together a territorial reorganization team whose mission was to reconstruct the historical borders of the U'wa territory and to create a territorial entity in the future, as had been established in the 1991 Colombian Constitution. This effort led to the idea of building the *Resguardo Único U'wa* (IDEADE, 1996: 8). At the beginning of 1993, the U'wa made a request to INCORA asking for the creation of this reserve, which would bring together the U'wa communities living in the departments of Boyacá, Santander, and Norte de Santander. The petition coincided with the beginning of the search for oil by Occidental Petroleum through its contracted companies. With the passage of time, the U'wa community began to perceive that the oil issue could become an obstacle to the success of their territorial claims.

THE U'WA OPPOSITION TO THE OIL DRILLING: THE NATIONAL SCENARIO

In late 1991, Colombia's state-owned petroleum company, ECOPETROL, began signing equal partnership contracts (50/50) with the transnational oil companies Occidental Petroleum and Shell. From that time on, Occidental and Shell each held 25 per cent of the shares, while ECOPETROL held the remaining 50 percent.

On 14 May 1992, Occidental applied to INDERENA, Colombia's National Institute for Renewable Natural Resources, for an environmental license to start drilling for oil in the Samoré Block zone. At around the same time, Occidental used one of its subcontractors to begin geological testing on the U'wa territory (Project Underground, 1998: 27). It appears that the first public complaint by the U'wa was filed on 31 March 1993, against a company called Grand Tensor for unauthorized seismic activities as part of oil-related exploration in its territory (Mesa Cuadros, 1996: 174). On this date the U'wa issued the following communiqué:

The company Grand Tensor commenced oil exploration on a portion of the Traditional U'wa Territory, despite the fact that, in January 1993, this same company held a meeting in which it agreed to respect the borders of the duly constituted Indigenous Reserve and Reservation. We, the U'wa people, hereby restate our opposition to any type of study or tampering with the natural resources of our land [. . .]. We are against exploration because: The

land has a head, arms, and legs, and the U'wa territory is its heart, it is the wing that sustains the Universe; if it is bled dry, it cannot continue to give life to the rest of the body. Oil and other natural resources are its blood, and for this reason we must take care of them. (U'wa Communiqué, 31 March 1993).

Between 1993 and 1995, Occidental developed public relations programs geared towards the U'wa community, highlighting the benefits of the company's investment in the area, such as health and education programs, roads, etc. (Project Underground, 1998: 27). Occidental took advantage of the absence of government institutions and attempted through numerous strategies to convince the members of the U'wa community to sign documents approving and accepting the oil exploration project on their lands.⁵ At the same time, the company managed to divide the community: on one side stood a few members in favor of Occidental's position, and on the other the U'wa authorities and the majority of the community who were opposed to it.

THE CONFLICT REGARDING THE PROCESS OF PREVIOUS CONSULTATION IN ADMINISTRATIVE AND LEGAL JURISDICTIONS: THE FIRST ROUND

On 1 November 1994, the Cabildo Mayor U'wa sent a letter to the General Directorate of Indigenous Affairs (DGAI) expressing their opposition to the oil project and asking for a meeting (Jimeno Santoyo, 1995: 8). After consulting with the Ministers of the Environment and of Mining, as well as with ECOPETROL (Jimeno Santoyo, 1995: 7), the DGAI wrote up a document that included general criteria for the dialogue with the U'wa, and scheduled a meeting for early January 1995 in Arauca, a city in the department of the same name. In this document, the DGAI emphasized that Occidental and the Colombian government had to provide the U'wa with "ample information and effective intercultural communication" (DGAI, 1994). The DGAI further pointed out that the U'wa "should independently consider the different aspects of the project proposed, and inform the national government of their conclusions through the pertinent institutions [the Ministry of Government, DGAI] which would then issue an opinion on the consultation and make the pertinent recommendations" (DGAI, 1994). The DGAI emphasized two main concerns with respect to the project. One was the absence of a study on the possible social and cultural impacts of the project, and the other was the severe impact that other previous national projects had had on the life of the U'wa (DGAI, 1994).

A few days prior to the meeting in Arauca, the U'wa held the Third U'wa

Congress in el Chuscal, Boyacá. In the course of the Congress, the U'wa representatives repeated that Occidental had never attended its group assemblies or congresses and stated that "we, the indigenous U'wa ethnic communities, had no knowledge of the existence of this project." The assembly added that "in our territory there have been assemblies and congresses and Oxy was never present. They always talk with some U'wa members, but the majority of the population does not know them" (Centro de Bienestar Indígena, 1995).

The meeting in Arauca was held with the participation of the Ministry of Mines and Energy and the Ministry of the Environment, the DGAI, ECOPETROL, Occidental, and the U'wa. The minutes of the meeting stated: "There is a unanimity for beginning to study the modifications to the seismic project of Samoré with the participation of the U'wa authorities." The meeting concluded that an intercultural commission composed of the Cabildo Mayor U'wa, the DGAI, and Occidental would be created, with the purpose of reconnoitering the lands in which the project would take place, as well as those where the *resguardos* and indigenous reservations are located (DGAI, 1995). However, on 3 February 1995, the Ministry of the Environment (through Resolution #110) granted an environmental license to Occidental, a decision that took everyone by surprise.

The second meeting scheduled to continue talks was held on 21 February 1995. The U'wa representatives at this meeting protested because the license had been given without the due process of consultation (Corte Constitucional, 1997). "Some representatives of the indigenous communities expressed the necessity of not committing themselves to any kind of agreement before consulting their respective communities" (Ministerio de Medio Ambiente, 2000). After consultations, the U'wa made public a communiqué that had a strong impact at the national and international level:

Facing certain death as a result of the loss of our lands, the extermination of our natural resources, the invasion of our sacred places, the disintegration of our families and communities, the forced silence of our songs and the lack of recognition of our history, we prefer a death with dignity: THE COLLECTIVE SUICIDE OF THE U'WA COMMUNITIES. This type of death corresponds with the pride of our ancestors who challenged the domination of the conquerors and missionaries (U'wa Communiqué, 1995).⁶

The DGAI took the threat of collective suicide seriously, and strongly emphasized that the conditions agreed in the meeting of Arauca had not yet been accomplished, and therefore it "considered that currently there is no legal basis to act in the U'wa territory" (DGAI, 1995).

On 22 August 1995, the ombudsman filed two different legal suits on behalf of the U'wa against the environmental license granted by the Ministry of the Environment. As the decision to grant this license had been an administrative decision, the regular legal path for this kind of suit was a petition of nullification before the Council of State (*Consejo de Estado*), the highest administrative court in Colombia. However, since the main purpose of the suit was to avoid irreparable damage to the U'wa people, the ombudsman also resorted to an extraordinary measure, a *tutela* action (writ of protection), as a rapid, temporary protective mechanism. This meant that the U'wa's legal dispute entered the court system through two different legal routes.

The *tutela* was filed with the Bogotá Superior Court. Twenty days later, the court ruled in favor of the petitioners. In fact, the court concluded that the administrative decision of the Ministry of the Environment was an attempt against the right to live of the U'wa, because "it did not take into account their own will" and was "precipitate" because it took everyone by surprise, including the officials of the DGAI. Therefore, the court decided to declare inapplicable the administrative decision of the Ministry of the Environment until the "the process of consultation is accomplished in a proper and legal manner" (Tribunal Superior de Bogotá, 1995).

The specific outcome of the Bogotá Superior Court's decision was that all seismic activities within U'wa territory be suspended until a true consultation process had been completed. Then, two days later, there was news regarding the suit filed with administrative authorities. The Council of State issued its initial decision, admitting the claims made by the ombudsman, but it also ruled that the seismic testing could not be suspended while the case was under consideration, effectively blocking the main legal consequences of the Bogotá Superior Court decision.

Occidental and ECOPEPETROL contested the unfavorable decision of the Bogotá Superior Court. Thus, the *tutela* action went before the Supreme Court on appeal. A month later, the Supreme Court ruled that the competent judicial authority to make a decision on the case was the Council of State. The Supreme Court reversed the Bogotá Superior Court decision without considering the case in depth. According to the Supreme Court, the differences in the interpretation of how the consultation process was to be managed did not constitute a violation of any constitutional right (Corte Suprema de Justicia, 1995).

In early 1996, the Constitutional Court, exercising its discretionary powers of review, selected the U'wa *tutela* case for review. This meant that two of the highest courts in Colombia were simultaneously studying the U'wa case in different jurisdictions.⁷ Finally, on 3 February 1997, a year after it began considering the case, the Constitutional Court reached a decision. As we will

see, the Council of State made its decision almost immediately afterward, only one month later.

The Constitutional Court framed the constitutional discussion of the case as a conflict "created as a result of the exploration of natural resources in indigenous territories," and referred to "the special protection that the state should provide to the indigenous communities to preserve their ethnic, cultural, social, and economic identity and integrity" (Corte Constitucional, 1997). Thus, the court concluded that the right of the indigenous communities to preserve their cultural integrity is a fundamental right, as it is their right to participate in the decisions that affect them "through the mechanism of consultation." Effective participation in decisions is ensured by consultation. To the Constitutional Court, the right of participation established in Article 40(2) of the Colombian Constitution and ILO Convention #169 (approved by Colombia through Law 21 from 1991) represents a group of norms that "tend to secure and make effective that participation" (Corte Constitucional, 1997). With respect to this concrete case, the Constitutional Court found that the meeting of 10 and 11 January 1995, did not fulfill the requirements of a consultation. In conclusion, the court considered that the granting of the environmental license was accomplished in an irregular manner, and ruled that a new consultation process take place within the next 30 days.

After awaiting the Constitutional Court's decision for more than a year, the U'wa were very critical about it:

The U'wa have learned through the media of the verdict of the Constitutional Court. [. . .] It is said that this verdict is favorable to us, that it recognizes that the government did not consult us about the project, and that they will now have to do this within a month. [. . .] However, we are also aware that the verdict authorizes the government to make the final decision, even if it is not in agreement with our way of thinking, or our life. If this is true, we are sorry that those judges have not been able to defend our fundamental rights: the integrity of our territory, our culture, and, in general, our lives. Rights which, besides being recognized by the constitution and both national and international norms presently in force, are also ancestral rights. [. . .] We do not understand why they will call us to a consultation if they already know what we have to say, which is what we have been saying since the beginning. (U'wa Communiqué, 10 February 1997)

As I said before, the Council of State's decision was issued a month later than that of the Constitutional Court. The Council of State concluded that the license had been granted in accordance with the legal requirements, and that a new process of consultation was not necessary. It emphasized that its

decision would be final regarding this case. The main issue the Council of State analyzed to arrive to this conclusion was the indigenous communities' right of participation through the process of consultation, which, although not mandatory, was an ideal that the state should strive to achieve. The power to decide pertains to the Ministry of the Environment, not to the indigenous community. The Council of State added that, since the norms regulating the consultation do not specify the way to accomplish it, it is not possible to require the environmental authority to follow a specific procedure. It is only necessary that a representative of the state and the multinational company make a presentation of the project to the indigenous community, and that the latter expresses its opinions about the issue. As a result, the Arauca meeting in January 1995 was deemed a valid "consultation" (Consejo de Estado, 1997).

THE U'WA-OXY CONFLICT ARRIVES ON THE INTERNATIONAL SCENE

In the first half of 1997, the U'wa-Oxy conflict entered the international scene through two different and simultaneous paths. In early May 1997, U'wa leader Berito Kubaru'wa and some members of ONIC were invited to the United States by the environmental group Amazon Coalition. Berito and the other indigenous leaders initially visited the cities of Washington, DC, New York, Los Angeles, and San Francisco. The meetings with Berito Kubaru'wa made a great impression on the US environmental, human rights, and indigenous organizations. In Washington, DC, Berito and the chairman of ONIC presented the case of the U'wa people before the Inter-American Human Rights Commission, with the legal assistance of the Earth Justice Legal Defense Fund, CEJIL, and the Colombian Judiciary Commission. Later, Berito traveled to New York, Los Angeles, and San Francisco.⁸

The success of the first visit to the US led to another invitation extended to Berito five months later, in October 1997. During the second visit, Berito Kubaru'wa went to Washington, DC, New York, Cambridge, Los Angeles, San Francisco, and Berkeley. In the course of that visit, he sent an open letter to the chairmen of Occidental and Shell, in which he stated:

I am writing to ask you to hear my people's request and suspend your oil drilling project on the U'wa ancestral land. It is our hope that you will comply with the request of the U'wa people contained in this letter, you have no other choice. [. . .] You speak of negotiation and consultation with the U'wa. My people say that they cannot negotiate. Our Father has not authorized it. We cannot sell oil, the blood of our Mother Earth. Mother Earth is sacred. It is not for negotiation, so please do not try to confuse us and

others with offers. Please hear our request, a request that comes from our ancestral right by virtue of being born on our territory: Halt your oil project on U'wa ancestral land. The U'wa people need your sign of respect (U'wa Communiqué, 20 October 1997).

At the same time that the U'wa began traveling to the US, the Colombian government officially asked the Organization of American States (OAS) to intervene in the case (Arenas, 2001). In fact, in May 1997, the Colombian Minister of Foreign Affairs formally asked the OAS Secretary-General, headed by a former Colombian President, to conduct a research project about the dispute between the U'wa and Occidental, taking into account that the U'wa had a petition before the IACHR (Inter-American Commission on Human Rights). Former Colombian Minister of Defense, Rafael Pardo, working at that moment with the OAS, suggested the participation of Harvard University's PONSACS group in the mediation process (Arenas, 2001). As a result, the Secretary-General created the OAS/Harvard ad hoc project under the responsibility of the Unit for the Promotion of Democracy and indirectly funded by Occidental through Harvard University. The OAS/Harvard team visited Colombia a couple of times, and elaborated a document with recommendations that were presented to the Colombian government in September 1997 (Arenas, 2001).

The OAS/Harvard team made eight recommendations (Macdonald, Anaya, and Soto, 1998a), among them the following:

—An immediate and unconditional public statement by Oxy and Shell, "in which they commit to suspending the execution of plans for oil exploration or exploitation in the Samoré Block as a first step toward creating better conditions for any future resumption of oil development activities."

—The "normalization of the process to expand the U'wa *Resguardo*," as a way to eliminate the perception that it had been stopped "as a means of exerting pressure on them."

—"A moderation of the public rhetoric," especially "in statements that link those who have opposed the oil companies to the guerrilla movement or drug traffickers."

—"Recognition of and respect for the U'wa system of leadership and authority." As a result, if there are internal differences among the U'wa, "they must be allowed to resolve their differences using their own system of authority."

—"Establishment of a consultation process under the responsibility of the Government of Colombia" that should be divided into two phases, the first to occur in the near future, and the second later. The purposes of the first consultation would be "to reach an agreement with the U'wa on the

geographical limits of their territory, which should also serve to identify the area outside of which the suspension of oil operations could be lifted." The purposes of the second phase would be "to develop measures to prevent harm to the U'wa that might result from renewed operations in the Samoré Block."

The conclusions and recommendations from the OAS/Harvard team were widely publicized in the Colombian mass media and presented as a big success for the U'wa claim. The Colombian government and the oil companies sent letters to the OAS accepting the recommendations and showing their interest in the continuation of the process (Avila, 2000). However, the U'wa and ONIC reacted with caution. Both were worried that the recommendations might open the door to future oil exploration within U'wa territory. In a communiqué, ONIC stated its agreement with some of the conclusions, but was very critical of the entire framework of the ad hoc project:

A dialogue in which only one party is expected to persuade the other is not a dialogue, but an imposition. [. . .] These recommendations seem to prefigure a result, and there is no space for deliberation. As a result, the procedure that is recommended and the temporary suspension of the project will benefit the oil companies and the government, and will prolong the anxiety of the U'wa people (ONIC Communiqué, October 1997).

The continuation of the OAS/Harvard project was made dependent on a written answer from the U'wa expressing their interest in continuing with the process. The U'wa verbally said that they were interested, but never sent a letter (Avila, 2000).⁹ As a result, the second phase of the work of the OAS/Harvard team could not be developed.¹⁰

THE NEW DYNAMICS OF THE NATIONAL AND INTERNATIONAL SCENARIOS

The U'wa-Oxy conflict has not been the same since it became an international story. Now, it is more complex, more public. Perhaps that is why the U'wa struggle is quite exceptional within the context of contemporary Colombia, where the majority of social struggles, including those of other indigenous peoples, have been harshly and bloodily repressed by paramilitary groups, with close collaboration from the Colombian army representing the interests of landowners, drug traffickers, and local and national politicians.

Occidental has tried to take the main decisions relating to the conflict back to the national scenario. For this reason, it has not been very active in

promoting a second stage of the OAS/Harvard project.¹¹ The publicity received by the case changed the balance of power between the oil company and the U'wa, and the first result of this was Shell's decision to withdraw and sell its shares to Occidental in 1998 (Avila, 2000).

It is clear that the Colombian government changed its strategy regarding the U'wa conflict, and took into account some of the ideas contained in the OAS/Harvard report (Arenas, 2001). President Samper's government (1994–1998) began the process by designing a new legal framework that would change the reference points of the U'wa-Oxy conflict; President Pastrana's government (1998–2002) maintained and reinforced these changes. Legislation regarding the consultation process with indigenous communities, the requirements for granting environmental licenses to oil companies, and the status of oil territories changed, in ways that are undoubtedly more favorable to multinational companies. At the same time, in an apparently contradictory measure, the government increased the size of the U'wa territory, and issued an environmental license to Oxy, allowing it to begin oil exploration on U'wa land.

As we saw before, the expansion of the U'wa *resguardo* was an old aspiration of the U'wa people. As part of the new strategy of the government, the Minister of the Environment decided to push that petition before INCORA. For this purpose, the Minister began to approach the U'wa community. The discussion about the expansion of U'wa territory started formally on 23 January 1999 in Samoré. By July 1999 the work of delimitation was completed. One of the last minutes of the meetings between the Ministry of Environment and the U'wa stated that "the U'wa highlighted the accomplishment of the activities accorded by the Minister and involved institutions, expressing their satisfaction about the advance of their territorial aspirations" (Mayr and Pérez, 1999b). In fact, it only took six months to resolve an issue that had been raised more than ten years previously.

On 23 August 1999, the Colombian government formally gave the U'wa community the title of the expansion of their territory, and promised 150 million dollars to clear the area and buy the land from the settlers who lived there. The Ministry and the Cabildo Mayor U'wa signed a joint statement to the following effect:

Today, we complete the process agreed to between the Minister of the Environment, the INCORA, and the Cabildo Mayor U'wa to define the limits of the *Resguardo Unido U'wa*, which are protected through Resolution #56 of August 6, 1999 elaborated by INCORA (Mayr and Pérez, 1999b).

In this same communiqué, the U'wa added: "The U'wa hereby state [. . .] that the process that was just completed in no way compromises their position of disagreement regarding oil exploration either on or off their land"

(Mayr and Pérez, 1999b). The Cabildo Mayor U'wa also sent a letter to President Pastrana stating:

Today you have shown a willingness to recognize a part of our struggle in the defense of life. Although today you are formally turning over to us a portion of our territory, we request unconditional respect for the position that we the U'wa maintain of not permitting any type of OIL EXPLORATION AND DRILLING ON OR OFF THE LAND you have legally recognized as ours (U'wa Comunicué, 23 August 1999).

At the same time that the reserve's boundaries were being expanded (in October 1999), Occidental applied for a new environmental license under the new regulations mentioned earlier. This was denounced by the U'wa and ONIC in February 1999 in the following terms:

[T]he national government, through the Ministry of the Environment and with the support of the General Directorate of Indigenous Affairs of the Ministry of the Internal Affairs, is about to issue a new license for exploratory drilling in the U'wa territory behind the U'wa people's back [. . .]. It is almost certain that in the next few days the Ministry of the Environment will grant Oxy a new environmental license inside the U'wa territory (U'wa Comunicué, 4 February 1999).

However, the environmental license was granted only after the process of extension of the U'wa territory was finished. On 21 September 1999, the Minister of the Environment authorized Oxy to explore the Gibraltar I well, in the department of Norte de Santander. The well is located just 500 meters outside of the new *resguardo*, but is still part of the U'wa's ancestral territory. The decision caused indignation among the U'wa, who said that the government had deceived them:

In an ironic move that injures our most highly esteemed historic and ancestral rights, the Minister of the Environment, Juan Mayr, has issued an environmental license that will allow the multinational company Occidental of Colombia (Oxy) to begin drilling activities [. . .].

Furthermore, we would like to make it known that, through a shady process that was conducted without full consultation, we were called to negotiate the terms of our territory, which historical circumstances wrested from our community. With good faith, we attempted to secure a part of our legitimate rights, but on a parallel path, the Minister of the Environment and his closest aids have shown that economic interests will pilfer and destroy our Mother Earth (U'wa Comunicué, 21 September 1999).

The growing support for the U'wa at the local level

Support for the U'wa among the social organizations from the Arauca Department started before the U'wa Hearing for Life, in 1996. However, it was only after August 1998 that the U'wa and the social organizations in Arauca started to work together. In that month, the social organizations of the Sarare region, in the departments of Arauca, Norte de Santander and Boyacá, organized a two-week civic protest. The protest involved the towns of Araquita, Saravena, Fortul, and Tame (Arauca), Cubará (Boyacá), as well as Toledo and Labateca (Norte de Santander), and mobilized almost 20,000 peasants. The main objective of the protesters was to paralyze the commercial activities in all the towns in the region. The novelties were the participation of the U'wa and the inclusion of a list of claims against oil exploration throughout the region, especially inside U'wa territory, as well as the demand for the expansion of their *resguardo*.

The U'wa feel that the Arauca people have been their main ally in this struggle. They have mobilized the Araucas to work with them "because they already had the experience of the Caño Limón catastrophe, brought about by Occidental in their own department."¹² ONIC and indigenous Senator Lorenzo Muelas have also been very important allies of the U'wa. ONIC has given priority to the U'wa case, as well as to another very complex and tragic case: the struggle of the Emberá Katio people against a dam that was built in their territory with funds from Canadian and Swedish corporations. The Emberá Katio have been regularly attacked and massacred by paramilitary groups as punishment for their opposition to the dam. Without a doubt, after the U'wa case, the Emberá Katio case is the Colombian social struggle that has attracted the most global attention.

The mobilization of the Colombian indigenous movement in support of the U'wa and Emberá Katio peoples started at the national level in September 1999, when ONIC, the movement Autoridades Indigenas de Colombia [Colombian Indigenous Authorities] (AICO), and the Coordinadora Indigena de la Cuenca Amazonica [Indigenous Coordinating Committee of the Amazon Basin] (COICA), stated that the Pastrana government had declared a war of extermination against Colombian indigenous peoples because it was not complying with the constitutional and legal measures that protect indigenous people and had introduced changes to the law to benefit multinational corporations (ONIC Comunicué, 23 September 1999). ONIC stated that "a long process is beginning, a process of legal developments and regulations that openly clash with the recognition of the country's multiculturalism" (ONIC Comunicué, 21 October 1999). On 25 February 2000, ONIC and environmental groups mobilized in Bogotá in

support of the U'wa and Emberá Katio people. On 4 April 2000, ONIC announced the beginning of a national mobilization in defense of their fundamental rights, after President Pastrana expressed interest in being part of the North American Free Trade Agreement (NAFTA). ONIC stated: "We are facing the imminent possibility of a constitutional counter-reform that will eliminate our rights [. . .]. Our future depends on the struggle of the U'wa and Emberá Katio peoples. This struggle will define what will happen concerning agrarian reform, territorial organization, cultural diversity, autonomy, and life" (ONIC Communiqué, 4 April 2000).

The U'wa advocacy network in the United States, Europe, and Latin America

As stated previously, the group Amazon Coalition invited the U'wa to the United States in May 1997. The news about the U'wa's threat to commit mass suicide in 1995 attracted the attention of many environmental groups to their dispute, but it was the U'wa's first trip to the United States that represented the main impulse in the construction of networks and the high public profile of the case in the US. As a result of this visit, the activist Terry Freitas from the United States became one of the most active supporters of the U'wa (Arenas, 2001). Two years later, in circumstances that remain unclear, Freitas and two North American pro-indigenous leaders working in support of the case against Oxy were murdered by leftist FARC guerrillas on U'wa lands in Colombia.

The U'wa have been traveling to the United States regularly since 1997, visiting cities such as Washington DC, New York, Boston, Cambridge, Los Angeles, San Francisco, Berkeley, Chicago, and Madison. The most active groups supporting the U'wa in the United States have been the Rain Forest Action Network (RAN), Amazon Watch, Amazon Coalition, and the U'wa Defense Project. The first two organizations have the most complete and updated web sites about the U'wa case (www.ran.org and www.amazonwatch.org). One of the first strategies used by the coalition of US environmentalist, human rights, and indigenous groups supporting the U'wa cause was to take out advertisements in the *New York Times*.

Former Vice-President Al Gore and the investment fund giant Fidelity Investment were favorite targets of the US environmental movement supporting the U'wa people. Their mobilization against these targets got the attention of the most important newspapers in the United States. The main US-based U'wa support groups were in constant communication with the U'wa people in Bogotá and Cubará, where the Cabildo Mayor's headquarters is located.

One of most interesting outcomes of the U'wa support networks in the

United States was the fact that their cause became linked to the new and growing movement against multinational companies. For many individuals involved in this movement, the U'wa case has been a source of inspiration. In April 2000, the Rain Forest Action Network (RAN) organized public protests in Washington, DC as part of the demonstrations against the World Bank, and a more ambitious action was organized in Los Angeles during the August 2000 Democratic Convention, when nearly 3000 people took to the streets to express their support for the U'wa.

The U'wa made their first trip to Europe in March 1998 when they went to England. Between this date and June 2000, the U'wa made seven different tours of Europe, visiting at least nine countries: England, Spain, Finland, Russia, Belgium, Germany, Switzerland, Holland, and Italy. The first group to support the U'wa in Europe was probably the one created in Madrid, Spain, in 1997. The publicity of the U'wa case in Spain resulted in the selection of Berito Kubarú'wa as the recipient of the prestigious Bartolomé de las Casas Prize, awarded by the Spanish government in April 1998.

Many of the solidarity actions in Europe and Latin America originated from the actions of the main Ecuadorian environmental group, Acción Ecológica. They were the only non-Colombian organization that was present at the U'wa Hearing for Life, in August 1996, representing Oilwatch. Acción Ecológica is the umbrella organization of Friends of the Earth-Ecuador and one of the most active members of the coalition of environmental groups in Friends of the Earth International (FoEI). This coalition created Oilwatch in 1996, a global network of activist groups campaigning against the oil industry. Oilwatch's International Secretariat is located in Ecuador, under the responsibility of Acción Ecológica.

In an interview, one of the members of the Oilwatch Secretariat stated that the organization's strategy is to work directly with local people (Melsher, 1999).¹³ In keeping with this philosophy, in February 1999, Oilwatch Africa organized a trip to Nigeria for Colombian indigenous leader and senator Lorenzo Muelas, to get a firsthand impression of the effects of oil drilling on the Niger River delta. The Oilwatch International Secretariat also organized the July 1999 visit of Lorenzo Muelas, Berito Kubarú'wa, and two other U'wa leaders to Ecuador, to visit the Secoya, a small indigenous community on whose lands Occidental Petroleum is conducting drilling.¹⁴ In late 1999, the Oilwatch Secretariat stated: "the U'wa are now at the head of the environmental movement because they are bringing new arguments to the table. This brings hope to other peoples in their efforts to resist the onslaught of the oil industry" (Melsher, 1999).

The Colombian Minister of the Environment's initiative to organize a conference in Brussels in the summer of 2000, entitled "Colombian-European Environmental Alliance," was hailed by many U'wa support

groups as a unique lobbying opportunity (Van der Hoek, 1999). For this reason, Oilwatch organized a European tour for U'wa and Emberá Katio spokespersons. Although the event itself was cancelled at the last minute due to growing opposition and criticism of the Colombian government in many Brussels diplomatic circles (Dupret, 2000: 13), the U'wa and Emberá Katio spokespersons made successful visits to six European countries, including a presentation before the European Parliament, meetings with representatives from the International Labor Organization responsible for Convention #169, and a meeting with the Secretariat of the UN Working Group on Indigenous Peoples.

The U'wa have been connected to indigenous organizations throughout Latin America, some of which have invited them to events in Mexico, in 1998, and in Chile, in June 2000. Paradoxically, the interest of the U'wa in maintaining control over their struggle at the national level, and thus avoiding manipulation, has caused a demobilization of many environmental and human rights NGOs in Colombia. Despite the fact that these NGOs are supportive of the U'wa cause, they have taken a passive role in the last couple of years. This tendency slowly began to be changed from the outside, through Friends of the Earth International, which has been encouraging the environmental NGO Censat-Agua Viva to have a more active role in the U'wa case and inside the Oilwatch group.¹⁵ As a result, Censat-Agua Viva has become the main local point of support for many international initiatives related to the U'wa struggle.

THE CONFLICT REGARDING THE PROCESS OF PREVIOUS CONSULTATION IN ADMINISTRATIVE AND LEGAL JURISDICTIONS: THE SECOND ROUND

After the environmental license was granted to Occidental in September 1999, the President of ONIC appealed against this administrative decision. Responding to the appeal, the Minister of the Environment stated that "based on the information contained in the socioeconomic study of environmental impact, it was possible to establish with certainty that there are no indigenous or black communities in the region of the well, or within the area of interest to the drilling, or in the areas where it can have a direct or indirect influence" (Ministerio de Medio Ambiente, 1999).

He added that, in compliance with Decree #1320 of 1998, he had consulted the Ministry of Internal Affairs and INCORA, the institutions responsible for certifying the presence of indigenous peoples in areas of oil exploration. The Office of Indigenous Affairs (Ministry of Internal Affairs), using only maps, concluded and certified that there was no permanent presence of indigenous peoples in the area of the project. INCORA, also

using only maps, certified that no indigenous territory had been legally established in that area. As a result, the Minister of the Environment washed his hands of the issue and concluded:

Thus, the Ministry of the Environment has strictly and diligently complied with the legal provisions that require that certifications from the competent authorities must document the facts related with the presence of indigenous communities in the territory and that an adequate consultation takes place (Ministerio de Medio Ambiente, 1999).

There is no doubt that Minister Mayr knew that what the DGAI was certifying was patently false. He had personally visited the U'wa territory several times, but the civil servants who wrote the certification based their information only on maps. Perhaps for this reason, Mayr added the following to his response:

[T]he Honorable Council of State declared that Decree #1320 of 1998 [. . .] conforms to the law [. . .]. In this case, the Ministry of the Environment has made a strict application of Decree #1320 of 1998 [. . .]. Taking this into account, the Ministry of the Environment cannot order the realization of a previous consultation with the U'wa indigenous community, because it would be violating the juridical order of the country (Ministerio de Medio Ambiente, 1999).

Although the Ombudsman's Office continued supporting the U'wa, especially through the delegate for indigenous affairs, it did not present a new complaint against the Ministry of the Environment's decision to grant an environmental license to Oxy. This time, the U'wa had the legal support of MINGA, a Colombian human rights NGO.¹⁶ The U'wa's lawyer filed a *tutela* action (writ of protection) against the Minister of the Environment, the Minister of Internal Affairs, and Occidental Petroleum for violation of the fundamental right of the indigenous communities to be consulted.

In the first hearing, the judge concluded that the legal problem was to determine if in the process of granting an environmental license to Occidental the administration had failed to comply with the fundamental right of consultation to the indigenous communities established in ILO Convention #169. Basing her arguments on the constitution, previous rulings from the Constitutional Court, ILO Convention #169, and especially on the fact that Decree #1320 had not been applied, the Judge of the 11th Circuit Court of Bogotá concluded that the license had been granted without previous consultation. Additionally, the judge found "serious doubts" and contradictions in the process concerning the possible existence of indigenous

peoples and *resguardos* in the area of the environmental license. The judge concluded that the plaintiff should carry the case before the administrative jurisdiction, which should decide the matter. However, at the same time, she accepted the *tutela* as a transitory mechanism of protection until the administrative jurisdiction made a decision. Finally, the judge decided to order the suspension of activities in the Gibraltar I well to avoid any irreparable harm to the indigenous community.

The decision of the 11th Circuit Court of Bogotá was impugned by the Ministry of the Environment, the Ministry of Internal Affairs, and Occidental Petroleum. Occidental argued that the decision ignored the current norms relating to the process of previous consultation to indigenous communities, and that the order for suspension of activities would bring serious damage to the country.

The Bogotá Superior Court studied the petition in its second hearing, and centered its analysis on two main issues. The first was the protection of fundamental rights invoked by the plaintiff. The court concluded that, because Occidental Petroleum had annexed a study of environmental impact and a study of the ethnography of the region to their petition for an environmental license, the Minister of the Environment had arrived at the conclusion that the life of the U'wa community was not in danger, and neither was the natural and cultural wealth in the area of influence of the project. The court added that "the area of exploratory interest of the Gibraltar I Well is completely outside the new U'wa *resguardo*" (Tribunal Superior de Bogotá, 2000).

The second issue that the court analyzed was the legal path taken by the plaintiff. In this respect, the court concluded that the *tutela* was not the way to decide these matters, but the administrative jurisdiction was, because the impugnation of a study on the social and anthropological reality of an indigenous community takes time and requires the advice of experts. The court added that the ancestral territories are not recognized by the constitution or by ILO Convention #169. As a result, it revoked the decision of the 11th Circuit Court of Bogotá.

THE LATEST DEVELOPMENTS IN THE AREA OF OIL EXPLORATION

After the Ministry of the Environment approved Oxy's new environmental license in 1999, the U'wa launched a series of direct actions that they termed civil disobedience. Those actions included a peaceful occupation of the drilling site, a general strike in the Sarare region, and the blockade of regional routes, among other actions. The Colombian government initially responded to those actions with violence, taking back the Gibraltar I Well

by force,¹⁷ and violently dispersing the indigenous people involved in the blockades, resulting in the death of three U'wa children.¹⁸ Days later, about 1200 U'wa and 4000 peasants from the region staged a demonstration at the Gibraltar site, in the municipality of Toledo, Norte de Santander.¹⁹ The Colombian government chose to completely ignore most of the direct actions taken by the U'wa. In late June 2000, the social organizations of the region launched a new popular strike by blocking the Saravena-Pamplona road.²⁰ A week later, the blockade was called off after a partial agreement was reached with the government, which promised to start negotiations to seek a solution to the conflict.

However, at the beginning of September 2000, after increased incidents and rising tension with the police and the army, the U'wa community issued the following statement:

The U'wa people reject the despotic attitude of the Andres Pastrana government, the lies and the deceit that he attempts to legalize by means of informing national and international citizens of a process of alleged respect for our rights that in reality does not exist. While national talks are taking place, the machinery is arriving at the drilling site and the process of violence is growing stronger. (U'wa Communiqué, 11 September 2000).

Consequently, days later the U'wa community decided to walk out on the negotiations with the government. Through mass militarization of the zone, the Colombian government managed to allow Occidental to start exploration by the end of that year. The mobilizations of the year 2000 basically closed out another cycle of direct local struggle.

Given the intense militarization to which the zone was subjected, and the repression of all peaceful protest, the U'wa community intensified its actions on an international level. However, in an unexpected turn of events, on 3 May 2001 Occidental announced that it had not found oil in the area; as a result, it returned oil concessions on U'wa land to the Colombian government. Transnational NGOs supporting the U'wa announced their victory and celebrated the episode as the culmination of the international campaign (Reinsborough, 2004). With Occidental's withdrawal, therefore, the cycle of contentious transnational mobilization that began in 1997 with the first visit of the U'wa to the US came to an end.

After witnessing many tactics by their opponents, the U'wa were most skeptical about Occidental's withdrawal, and declared that "a battle has been won, the war to defend the earth and our territories is on."²¹ In fact, in early 2002, ECOPETROL resumed seismic prospecting in U'wa land, now renamed Siriri and Catleya blocks. Since then, the U'wa have tried to reignite international solidarity, but the response has not been as enthusiastic

as before, despite several trips to the US by some of their leaders. It is clear that it is always harder for international supporters to fight against local actors such as ECOPETROL.

The oil exploration on U'wa territory has advanced very slowly during the last few years, allowing the U'wa to concentrate on strengthening their own community, including starting some projects on education and health with the support of some international NGOs. Violence continues to be a permanent threat to the U'wa as a result of the unresolved Colombian armed conflict. Anticipating the possibility of future drilling inside the U'wa territory, for the last three years ECOPETROL has tried to reach an agreement with the U'wa for a new consultation process. If oil is found inside the U'wa territory, ECOPETROL would apply for a new environmental license from the environmental authorities, which could restart a third wave of conflict at administrative and judicial scenarios at both national and international levels. In May 2005, the U'wa categorically rejected any possibility for a new consultation process proposed by the Colombian government. Instead, they asserted that their territorial aspirations had not yet been accomplished, even though INCORA had ordered in 1999 that the area granted to the U'wa be cleared. Additionally, they asserted that they do not have knowledge about the state of the investigation for the killings of the three Americans killed inside U'wa territory in 1998 nor the killing of three U'wa children during the repression of their protest in 2000.²² Whatever the results of the exploration now underway, the outcome of the U'wa-oil companies conflict remain uncertain.

CONCLUSIONS

If any one trait can be used to describe Latin American indigenous communities, it is their tenacity, their refusal to disappear as a people. In recent decades this trait, combined with their ability to adapt their struggles to the historical moment, have once again demonstrated the originality and wealth of ideas of the cause they defend. In an era of transnationalization, indigenous movements have achieved one of the most dynamic and original linkages among local, national, and transnational efforts seen to date. As Boaventura de Sousa Santos points out, even when an initially local struggle becomes national, it remains local, and the same occurs when it becomes transnational. But at the same time, when a struggle is taken up outside national borders, it becomes deterritorialized, and new national and local dynamics are created (Santos, 2001: 211); in turn, these new local dynamics transform and influence transnational actors and spaces.

Some have suggested that solidarity with the U'wa was aroused due to their dramatic strategy of threatening mass suicide, which elicited an unexpected

international response. The truth is that the suicide threat did initially help attract both national and international attention to the U'wa community's cause. However, as I have attempted to show, all individuals and organizations who have come into direct contact with the U'wa people have been struck by the richness of their culture, the charisma of many of their spokespersons, and by the originality, exemplarity, and emancipatory potential of their discourse and struggle. For the great majority of their supporters, it is the preservation of the U'wa culture and their very special relationship with nature that has motivated their solidarity. It should be noted that as time goes on, the issue of group suicide is less and less frequently cited in news about the U'wa struggle, but solidarity with their cause has continued to grow.²³

The U'wa case contains a series of special circumstances that have led to its successful transnationalization: 1) the strong cultural heritage of the U'wa people; 2) their collective pride and incredible ability to speak for themselves, as well as their talent for adapting the presentation of their arguments to many different scenarios; 3) the extensive use the U'wa made of public communiqués and open letters, which helped to keep their allies informed as well as to provide an ongoing update on the facts regarding their case; 4) the existence of a national and international human rights movement focused on Colombia (with headquarters in large cities like Washington, DC, Madison, and Brussels), possessed of extensive experience in legal work and lobbying, plus national and international contacts and resources that have helped support and build promotional networks for the U'wa cause in Europe and the United States; 5) the fact that Occidental Petroleum's headquarters is located in the US, a hegemonic global power and principal player in Colombia's economic and political affairs.

In this chapter I have attempted to illustrate the social and institutional complexity underlying a specific social struggle before it became an issue taken up by a "transnational promotional network." I have offered a detailed analysis of the process the U'wa community was involved in before the issue of oil exploration placed them in the national and international spotlight. The oil conflict arose at a time when the U'wa were immersed in a positive process of reconstructing their culture and identity as a people, which was linked to consolidating their social organization, to a willingness to fight to recover a large portion of their ancestral lands, and to the growing national prestige of the indigenous movement. I have also described the complex institutional, administrative, and legal developments that can be activated in cases such as this, which serve to mobilize and test such institutions. Many of the national institutions involved in the case, such as the Ombudsman's Office and the Constitutional Court, were newly created under the 1991 Constitution. Some of the legal concepts and regulations are also new, such as the concept of the *tutela* action, and ILO Convention #169.

I have attempted to pay attention to all processes: local (the U'wa's development of a process of modern social organization, their fight for their lands), regional (the social struggles in the Arauca Department), national (the responses of administrative and legal institutions to the conflict between the U'wa and Oxy, the national solidarity in the Colombian indigenous movement and others), and transnational (the construction of solidarity networks and promotion of the U'wa cause). I have also described how transnationalization has created new dynamics and fostered new relationships among local, national, and transnational spheres.

BIBLIOGRAPHY

- Arenas, Luis Carlos (2001). "Postscriptum: sobre el caso U'wa," Boaventura de Sousa Santos and Mauricio Garcia-Villegas (eds.), *El Caleidoscopio de las Justicias en Colombia. Análisis sociojurídico*. Vol. II. Bogotá: Colciencias. 143-157.
- Avila, Ricardo (2000). "El Caso de la Comunidad U'wa: Territorio y Petróleo," (mimeo).
- Berichá (1992). *Tengo los Pies en la Cabeza*. Bogotá: Los Cuatro Elementos.
- Brysk, Alison (2000). *From Tribal Village to Global Village. Indian Rights and International Relations in Latin America*. Stanford, CA: Stanford UP.
- Centro de Bienestar Indígena (1995). *Tercer Congreso Indígena U'wa*. 7 January.
- Corte Constitucional (1997). Sentencia T-652/97. Bogotá, 10 November.
- Corte Suprema de Justicia (1997). Sentencia SU-039/97. Bogotá, 3 February.
- Defensoría del Pueblo (1996). "Audiencia U'wa por la Vida. Intervención de la Defensoría del Pueblo" (mimeo), 17 August.
- DGAI (1994). "Criterios generales sobre la consulta al pueblo U'was en relación con el proyecto Samoré" (mimeo).
- _____ (1995). "Comunicado de Prensa" (mimeo), 4 May.
- Dupret, Paul-Emile (2000). "Conferencia 'Tierra, derechos humanos y paz en Colombia,'" *Boletín Informativo de la Coordinación Colombia-Europa-Estados Unidos* 8 July: 13-14.
- Evans, Peter (2000). "Fighting Marginalization with Transnational Networks. Counter-Hegemonic Globalization," *Contemporary Sociology* 29(1): 231-241.
- IDEADE—Instituto de Estudios Ambientales para el Desarrollo, et al. (1996). "Estudio Socioeconómico, Ambiental, Jurídico y de Tenencia de Tierras para la Constitución del Resguardo Único U'wa. Resumen Ejecutivo" (mimeo), Bogotá.
- Jimeno Santoyo, Gladys (1995). Letter to Judge Aida Rangel Quintero, Magistrate of the Bogotá Superior Court (mimeo), 7 September.
- Keck, Margaret E. (1998). "Planaflo in Rodania: The Limits of Leverage?" Jonathan A. Fox and L. David Brown (eds.), *The Struggle for Accountability. The World Bank, NGOs, and Grassroots Movements*. Cambridge, MA: MIT Press.
- _____, and Kathryn Sikkink (1998). *Activists Beyond Borders. Advocacy Networks in International Politics*. Ithaca, NY: Cornell UP.
- Macdonald, Theodore (1998). "Environment, Indians, and Oil, 'Preventive Diplomacy,'" *DRCLAS News* Fall.
- _____, James Anaya, and Yadira Soto (1998a). *The Samore Case: Observations and Recommendations. Organization of American States/Harvard University*. Washington, DC. Accessed on 10 October 1999.
- _____. (1998b). Letter to Roberto Cobarria and Abadio Green, (mimeo), Washington, DC, 16 June.
- Mayr, Juan, and Roberto Pérez Gutierrez (1999a). "Comunicado" (mimeo), Tamaría, 23 August.
- _____. (1999b). "Acta de Acuerdo del Consenso entre el Ministerio del Medio Ambiente y el Cabildo Mayor U'wa" (mimeo). Cubará, 19 July.
- Melsher, Elisa (1999). "A Year of Oil Resistance. An Interview with FoE Ecuador's Esperanza Martinez," *Link* 91, October/December. Friends of the Earth.
- Mesa Cuadros, Gregorio (1996). "Los U'wa: Pueblo Indígena Ancestral del Norte de Boyacá," *Memorias Ambientales de las Provincias de Norte y Gutierrez, Boyacá (1990-1996)*. Bogotá: Pontificia Universidad Javeriana—IDEADE.
- Ministerio de Medio Ambiente (1999). *Resolución Número 0997. Por Medio de la Cual se Resuelve un Recurso de Reposición Interpuesto contra la Resolución # 0788 del 21 de Septiembre de 1999 y se Toman Otras Determinaciones*. Bogotá, 23 November.
- _____. (2000). "U'wa" Accessed on 7 July 2000.
- ONIC (1997). "U'wa: Defensa del Destino Indígena. El Presente y Futuro de un Pueblo y el Petróleo," *Utopías* 5(42), March.
- _____. (1999). "Defendiendo la Sangre de Kerachikará. Breve Resumen del Caso del Pueblo U'wa," (mimeo), Oficina jurídica de la ONIC.
- Organizaciones Sociales Departamento de Arauca y Cubará (1998). "Pliego de Exigencias del Paro Cívico por el Derecho a la Vida, Soberanía y Medio Ambiente—Contra la Explotación y Exploración Petrolera y el Fenómeno Paramilitar en Arauca" (mimeo), Saravena, August.
- Osborn, Ann (1985). *El Vuelo de las Tijeretas*. Bogotá: Fundación de Investigaciones Arqueológicas Nacionales, Banco de la República.
- _____. (1995). *Las Cuatro Estaciones. Mitología y Estructura Social entre los U'wa*. Bogotá: Banco de la República.
- Project Underground (1998). *Blood of Our Mother. The U'wa People, Occidental Petroleum and the Colombian Oil Industry*. Berkeley. http://www.moles.org/ProjectUnderground/uwa_index.html.
- Reinsborough, Patrick (2004). "How the U'wa and People's Globalization Beat Big Oil," David Solnit (ed.), *Globalize Liberation. How to Uproot the System and Build a Better World*. San Francisco: City Lights.
- Rucinke, Hector F. (1972). *Colonization of the Sarare Region of Eastern Colombia*. PhD dissertation. University of Wisconsin-Madison.
- Santos, Boaventura de Sousa (2001). "El significado político y jurídico de la jurisdicción indígena," Boaventura de Sousa Santos and Mauricio Garcia Villegas (eds.), *El Caleidoscopio de las Justicias en Colombia*. Bogotá: Colciencias.
- Smith, Jackie (2000). "Globalizing Resistance. The Battle of Seattle and the Future of Social Movements," paper presented at the seminar "Contentious Politics," Lazarsfeld Center for Social Movements, Columbia University.
- _____, Charles Chatfield, and Ron Pagnuco, eds. (1997). *Transnational Social Movements and Global Politics. Solidarity beyond the State*. Syracuse, NY: Syracuse UP.
- Tarrow, Sidney (1998). *Power in Movement. Social Movements and Contentious Politics*. Cambridge: Cambridge UP.

- Tribunal Superior de Bogotá (1995). Sentencia de Tutela. Magistrado ponente Aída Rangel Quintero, Bogotá, 12 September (mimeo).
- _____ (2000). Sentencia de Tutela. Sala Penal. Magistrado ponente Marco Elias Arevalo Rozo. Bogotá, 15 May (mimeo).
- Tribunal Superior de Pamplona (2000). Sentencia de Tutela. Magistrado ponente Victor Hugo Ballen. Pamplona, 10 July (mimeo).
- U'wa Defense Working Group (2000). "U'wa Leaders Present the Colombian Government with Proof of Royal Land Titles Granted by the King of Spain." E-mail from the U'wa Defense Working Group, 15 September.
- Van der Hoek, Aart (1999). "At the Cliff's Edge. Demonstrating with the U'wa in Colombia," *Link* 91 (Oct/Dec). Friends of the Earth.

Notes

1. My thanks to U'wa leaders Berito Kubaru'wa, Gilberto Kubaru'wa, and Ebaristo Tegria. For their generous collaboration, I would like to thank Carlos Gomez of ONIC, the National Indigenous Organization of Colombia; Tatiana Roa of Censat-Agua Viva; Leslie Wirpsa, Amanda Hammatt, Esther Sanchez, and Yesenia Pumarada. Obviously, the author assumes sole responsibility for all statements, interpretations, and omissions in the text.
2. There are multiple reasons that can explain why the decision could be out of the hands of a national government (in the case of agreements, contracts, different kinds of conditions or restrictions, fear of economic sanctions, etc.).
3. "Our university is the song," stated Berito Kubaru'wa to the students of the University of Wisconsin-Madison (transcript of the public presentation of Berito and Gilberto Kubaru'wa at the University of Wisconsin-Madison, 20 July 2000).
4. Interview with Gilberto Kubaru'wa (Madison WI, 20 July 2000).
5. The company stated that during this period it held 33 meetings with members of the U'wa community (Corte Constitucional, 1997).
6. This important communiqué was probably made public between late February and the end of April, 1995.
7. This situation has arisen on several occasions in Colombia due to a lack of clarity in the constitution regarding which court has the broadest jurisdiction over the others. This has led to serious differences among Colombia's highest judicial authorities. Both courts' lengthy deliberation processes (over one year) led to a great deal of speculation in Colombia, since it appeared that the last court that issued its ruling would have the power to determine the final decision.
8. Interview with Berito Kubaru'wa (Madison, WI, 20 July 2000).
9. Telephone interview with Yadira Soto, OAS (22 July 2000).
10. Theodore Macdonald, from the OAS/Harvard team, is more optimistic about the project. He wrote: "The U'wa have not yet responded, nor, however, have they indicated that they will not do so sometime in the future. Moreover, they still have a 'complaint' before the Inter-American Commission on Human Rights. As such, they still retain the right to respond to the OAS, and have not indicated that they consider the matter closed. Therefore the issue remains open, even though, as you can see, there has been no action in three years" (Personal e-mail message from Theodore Macdonald to the author. 28 August 2000).

11. According to OAS sources, the Ministry of the Environment and Oxy wanted to avoid further internationalization of the case. Occidental was tired of the patience shown by the OEA/Harvard team, and pressured the Ministry of Mining to put the problem back into the hands of Colombia, to be dealt with by Colombians.
12. Gilberto Kubaru'wa, press conference (Madison, WI, 19 July 2000).
13. "If we play a strong role locally, increasing information flows, exchanging experiences, providing arguments, including legal strategies, and preparing ways to confront corporations, we open up a unique pathway for waging a sustainable battle" (Melsher, 1999).
14. During the visit, Lorenzo Muelas said: "I am very pleased to be on Secoya land. First I want to say that we have come to speak honestly to you about the consequences of oil. We haven't come to help you negotiate better. Our sole interest is for you to continue to live here, on your land. I am sure that when Oxy finds out that the U'wa or I have been here, they will try to make up something to derail our efforts. Sometimes they call us guerrillas, or communists, because we oppose the type of development they impose on us. This is why I want to warn you of the consequences" (<http://www.oil-watch.org.ec/intercambio/uwa.htm>, consulted on 12 July 2000).
15. Censat-Agua Viva has also worked for several years in the municipality of Cerrito, Santander, where some U'wa people live (interview with Tatiana Roa and Hildebrando Velez of Censat-Agua Viva; Bogotá, 1 June 2000).
16. Interview with Tito Gaitán from MINGA, the lawyer of the U'wa community in this process (Bogotá, 15 June 2000).
17. U'wa communiqué, 25 January 2000.
18. U'wa communiqué, 11 February 2000.
19. U'wa communiqué, 21 February 2000. After two months of protest, the U'wa issued a statement, saying: "the goals of our mobilization are so important that they have gained international awareness and support. Among those who have publicly supported our cause are the European Parliament, environmental and human rights NGOs in Sweden, Canada, Germany, France, China, Spain, Belgium, as well as US ethnic groups. All have recommended and then demanded that the Colombian government and the multinational company respect the agreements signed by the Colombian government with the ILO (Indigenous Legislation, Convention #169)" (U'wa communiqué, 3 April 2000).
20. U'wa communiqué, 29 June 2000.
21. U'wa communiqué, 31 July 2001.
22. U'wa Communiqué, 5 May 2005.
23. For the U'wa people, the possibility of suicide was always taken very seriously and had a major impact inside the community. The U'wa asked themselves and their traditional leaders what was going to happen. The traditional authorities have reinterpreted their original message, in yet another demonstration of cultural adaptability, stating that the U'wa will not commit mass suicide but that they may well be murdered by the Colombian government and Occidental Petroleum because they are willing to give up their lives in order to protect their sacred territory (interview with Gilberto Kubaru'wa; Bogotá, 15 June 2000).