THE SPIRAL AND BOOMERANG MODEL ON TRANSADVOCACY NETWORKS CASE: THE SARAYAKU ECUADOR

CITRA HENNIDA

[1]International Relations Department, Airlangga University, Indonesia
E-mail: [1]c.hennida@gmail.com

Abstract- On June 27, 2012, the group indigenous Sarayaku in Ecuador won a lawsuit in the Inter-American Court of Human Rights in its efforts to maintain traditional land of exploration by international oil companies, CGC / Chevron Texmaco. Their struggle conducted for ten years, beginning in 1996 when the Ecuadorian government granted the concession block 23, which is 65% of the Sarayaku without prior communication with the Sarayaku community. The case in Ecuador is interesting because it involves MNC, the weak federal government, and marginalized indigenous groups. I argue that the Sarayaku indigenous community adopted spiral and corporate boomerang model on its transnational advocacy networks strategy. This model was chosen because of the asymmetric position of indigenous compare to the state and MNC. In addition, the state is more concerned with the interests of multinational oil companies. Involving transnational actors such as the ILO, the UN, the OAS, and INGOs does external pressure. Meanwhile, the internal pressure is done by Sarayaku indigenous community at the local level through a protest against the government and oil companies. They also approach company shareholders in order to change policy at the corporate level. The research is limited from 1996 to 2012. In 1996 the Ecuadorian government and multinational oil companies signed cooperation in block 23. In 2012, the Sarayaku indigenous community won their case at the Inter-American Court of Human Rights.

Keywords- international advocacy network, spiral model, corporate boomerang model, indigenous people, international oil companies

I. INTRODUCTION

On June 27, 2012, the indigenous Sarayaku won a lawsuit in the Inter-American Court of Human Rights against international oil companies, CGC / Chevron Texmaco. The case begins in 1996 when the Ecuadorian government granted the concession block 23 to CGC/Chevron Texmaco, on which is 65% of the Sarayaku without prior communication with the Sarayaku community. About 1200 people Sarayaku tribe inhabit this region. The indigenous Sarayaku are living in the Amazon tropical rainforest in the Ecuador

Indigenous community is defined as people who inhabit the land gained by its ancestral heritage. Their custom and values are different from the national community. Group called as the indigenous group when: (1) there is a historical connection that connects the pre-invasion society and the conservation of a particular system of government; (2) they have a subjective parameter that is identified as the identification of indigenous communities and the acceptance of that person as a member of the community. Meanwhile, ILO Convention 169 Article 1 defines indigenous people as:

a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Inter-American Court of Human Rights (IACHR) stated that the region, and cultural life of Sarayaku threatened by the arrival of the oil exploration project. The court stipulates that the government should consult with indigenous communities and pay for physical and psychological damage caused to the community. The success of the issuance of rules within the framework of the IACHR showed great strides to protect the rights of indigenous rights, in particular the need for informed consent in development in indigenous territory. The court decision is the starting point for the success of the struggle for the rights of other indigenous. As a result of these rules, the government of Ecuador had to pay US $ 90,000 for material damages and US $ 1,250,000 for moral damages, and should retrieve 1 ton of dynamite buried in the Sarayaku territory.

The case in Ecuador is interesting because it involves the strong MNC, the weak of federal government and marginalized indigenous groups. The oil company has a strong power given state revenues depend on oil and the oil companies have a strong support from the military. About 45% of oil revenues are used to finance the armed forces of Ecuador from 1972 to 2000. Foreign companies have operations in many countries and can be moved easily if deemed a region prone to conflict, and with the opposition of the local communities.

Research discusses the strategy of indigenous Sarayaku in winning court cases against multinational

oil companies that is operating in its territory. The research question is how the strategy undertaken by indigenous people to win their demands to the multinational oil companies? Who involved in the design and implementation of the strategy?

Article argues that the strategy adopted by the Sarayaku indigenous community in winning their demands is by developing transnational advocacy networks with the spiral model and corporate boomerang model.

II. LITERATURE REVIEW

2.1. The Spiral Model

The spiral model is a framework for international norm internalization by state, underline the evolution of the actions undertaken by the state, from repression to norm internalization and then form a behavior that is consistent with the norms. The spiral model needs two pressures o make it work, from above and from below. This model was chosen because the power between state, oil companies and indigenous is asymmetric. Moreover, the state is taking side on the interests of multinational oil companies in the name of foreign direct investment and national welfare. Pressure from above is involving transnational actors such as the ILO, the UN, the OAS, and INGOs. The Sarayaku indigenous community protest against the government and oil companies. They are approaching shareholders in order to change policy at the corporate level. The pressure from below is done with less collecting evidence of violations and other information that can ultimately strengthen an international campaign. The company's approach to shareholder because MNCs are protected by the local government or local governments do not have sufficient tools to force the rules and laws governing the industry behaviors. In such situations, the choice for local people is creating external relationships to other groups with the aim to bring about change. They target group of senior executives so that the changes can be top down. MNC in the home country is the target in order to suppress the MNC in the host country. This model is called as corporate boomerang model.

2.2. The Corporate Boomerang Model

Corporate boomerang model is an expansion of transnational advocacy networks. They are four types of suppressed: through political information mobilization, political symbols, political accountability, and political leverage. Political information can be done by emphasing on corporation’s working area, annual reports, records of waste, and a government report. Focusing on company’s brand and advertisement can do political symbols. Political accountability can be done by giving emphasis on CSR report (Corporate Social Responsibility). Political leverage point is affecting actors who have more power to influence the situation where weaker members of a network that has no effect. On corporations, the corporate home country has stronger power than corporations in the host country. Campaign is targeted to CEOs and other high positions. It aims that changes occur from insider, not from outsider who are confrontational. In addition, the campaign is also targeted consumers by doing boycott actions. Lastly is the community, the expected result is lawsuits.

III. RESULTS AND DISCUSSION

3.1. Oil Mining in Ecuador

Under the tropical rain Ecuador contains a lot of oil deposits and other resources. The first oil exploration in the Amazon carried out in 1040 by Royal Dutch Shell. The discovery of a large deposit in Ecuador conducted by Texaco Gulf Consortium. The discovery of the initial launch massive exploration in Ecuador and Ecuador declared itself as an oil country. There are three stages in the oil industry in Ecuador. The first phase is the period of 1972-1990 known as the petrol bomb era. Ecuador started exporting oil in the international market and in 1973 became a member of OPEC (Organization of the Petroleum Exporting Countries). Ecuador oil bomb made GDP increased to twice. Ecuador's foreign debt also increased along with the increase in loans to Ecuador as an oil country.

The second stage is the commencement of the application of the Washington consensus in 1992 were intensively directed towards the development of neoliberal development. This era was indicated by the sale of SOEs, the opening of Ecuador's oil market for foreign exploration companies, legal security of foreign investment and labor flexibility. Hydrocarbon law was also changed. It changed the previous government ownership of 90% to 33%. Structural adjustment programs reduce state’s investment in social services and state's role in the national economy through a number of privatization. Poverty then spread. From 1995 to 2000, the number of poor increased from 3.1 million to 9.1 million, a 71% of the overall population. Between 1996 to 2005 there was no elected president could complete his year as a result of protests that arise because of the crisis.

The third stage is the stage where oil prices go up, triggered by high world demand. Unfortunately, this moment is not necessarily capable of distributing welfare in the country. In this era also issued the 2008 constitution that changed the hydrocarbons law. The constitution mentioned that indigenous as part of Ecuador and their rights are recognized. Indigenous rights recognized by international law, which include: (1) the right to life, regulate the ownership of their traditional lands, including the natural resources therein without any intervention from the outside; (2) the right to participate in cultural, economic and social development; (3) the right to organize themselves on the relationships within their common

law, including the right to use the traditional procedure; (4) the right to participate actively, at all levels of decision-making, on any decisions affecting them. Development of indigenous communities is also listed in the National Development Plan that aims to establish buenvivir, the welfare conditions for all the natural harmony. The Act also stipulates that the oil company only service providers, while for exploration must pay a certain fee to the government. That way the state controls 100% of oil production.

Long before the time bomb of oil, the extraction and exploration of oil in Ecuador began in the 1960s. Commercial exploration is done first by Texmaco in 1967. Texaco conjoined with local partners, Petroecuador, a state-owned oil company until 1992 where the management was turned over to Petroecuador. The exploration activities were carried out in the northern Amazon region of LagoAgrio and extended to Napo, Orellana and Sucumbios.

Texaco has built 350 oil wells and 1000 open waste management. It has dumped about 18 million gallons of sewage into the river and land in the Amazon. It gives impact to local communities living around the area of exploration. Cancer, birth defects, miscarriages are some indications that spread occurs in people who live in the area of exploration. Road infrastructure development also forces local people to move from their traditional territories. Additional deteriorating environmental situation makes them difficult to find food, which in turn makes them sell communal land they owned in order to buy food and other necessities of life. Exploration of Texaco followed by Chevron merged with Texaco in 2001. The protests of indigenous peoples for environmental remediation and compensation addressed to Chevron. Burlington is also facing the same problem. Burlington operates in the southern region to explore blocks 23 and 24. But the indigenous people there make demands for exploration canceled before the impacts of environmental degradation, over the function of indigenous lands, and the emergence of various diseases spread in the region.

For the people of Sarayaku in Ecuador, the region is not only meant as a resource that is materially lost. The area has a complex meaning, which in today's modern outlook is regarded as something mystical, and legend. The Sarayaku people's movement is to fight for its epistemic forms of epistemic violence that has occurred on the system created by the modern colonial. Modern colonial system and then create a system of political organizational Sarayaku community becomes irrelevant. This form of protest is more to form a chain of solidarity horizontal than vertical shape as a modern state.

3.2. Pressures from Above

There are some things that need to be considered in the conflict between oil corporations and indigenous peoples. These things are the duration of the operation of the oil company, the racial hierarchy that follows, the lack of representation of indigenous peoples in the political space, the dependence of the country by multinational oil companies, the vulnerability of the country to the demands of international financial institutions and lending, and the attitude of the government that prohibits the emergence of environment advocacy efforts. On the other hand, there is more and more global public attention on the rights of indigenous people spread and corporate awareness of the issue of CSR.

Indigenous groups benefited by the importance of human rights. Human rights issue helps the emergence of indigenous issues rise to the surface and help the formation of indigenous networks worldwide. For example, what is done by Amnesty International on its website that tried to observe the rights of indigenous people in Ecuador when confronted with the oil companies. The website clearly concerned with a variety of background information, request support and action recommendations. Because of its relationship with nature, advocacy for indigenous groups also carried out by the organizations concerned with the environment such as WWF, Earth Rights International, Amazon Watch and the Rainforest Foundation. Not only INGOs; IGOs, transnational indigenous movements, states and international political elites are also involved in international advocacy networks. Transnational advocacy networks aimed at creating a "boomerang effect".This boomerang effect appear to change weaknesses in domestic social movements into force by projecting the information to form an international alliance in which this alliance will suppress the country from the top and from the bottom to accept international norms. They use all forms of media to form an international campaign and disseminate attention and support. These organizations identify violations, present evidence and to articulate a clear and concrete demands for change and accountability. With an extensive international network they form a global "shaming" to pressure the country into line with international human rights norms so that the state is expected to be embarrassed when the policy is not in accordance with the standards of international norms.

What happened in Ecuador is the country does not seem willing to acknowledge indigenous rights to land for economic reasons, especially when the land had to contain reserves of oil, gas and other minerals. On the one hand, for the indigenous people there is nothing more important than land because of the strong links between regions, cultures and survivor. Indigenous rights over their traditional territory are essential for an indigenous nation to exist, thrive and survive. Solutions for modern society such as compensation and relocation do not adequately address the problems associated with the indigenous land.

Sarayaku region is the largest ethnic group in the Amazonian Kichwa. The population is divided into

five communities that Sarayaku Centro, Cali Cali, Sarayakillo, Shiwacocha and Chontayacu; with a population of about 1,235 people (Court Judgement 2012). In 1992 as a response to the demands of the indigenous movement, the Ecuadorian government legally recognizes indigenous territories. Sarayaku legally recognized inhabit the 135,000 hectares of land they had inhabited for centuries. On August 26, 1996, the Ecuadorian government signed a contract with Petroecuador oil exploration cooperation with Argentine oil company CGC / Chevron Texaco. This contract is the extension of the exploration contract for 20 years overdue. Exploration territory covers 200,000 hectares of the Amazon region. The region overlaps with 65% Sarayaku territory. The Sarayaku community rejected the presence of CGC / Chevron Texaco and exploration activity in 1999 was postponed until 2002. During the delay, the company offers several strategies to Sarayaku community as it offers the development project, money or gifts. Indigenous communities around Sarayaku such as Pakayaku, Shaimi, Jatun Molino and the Canelos accept the offers and signed an agreement with CGC / Chevron Texaco. On July 2002, the CGC started operations. Ecuador's government was also providing military assistance as a form of protection to the CGC / Chevron Texaco to enter Sarayaku territory.

Putting pressure from the top was started by representatives Sarayaku to ask for help from Centre for Economic and Social Rights. Not long after, Sarayaku widespread support and help throughout the world. One of them is Carlos Viteri living in Washington are responsible for visiting several offices of human rights. There is only Center for Justice and International Law (CEJIL), which received the case. Sarayaku then took its case to IASHR. In 2003, the General Assembly with the support Sarayaku CDES and CEJIL submitted their case to the Inter-American Human Rights Commission. Commission then issued an order for protection against Sarayaku residents were intimidated by the military, but then ignored by the government. In 2005 the Commission issued disposition to take dynamite planted in the ground along the Sarayaku. Until August 2007, the dynamite that can be lifted only 14 kilograms.

In the same year, in September 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous after more than twenty years of negotiations. Adoption conducted with 143 votes in favor and 4 votes against that of Canada, Australia, New Zealand and the US. This declaration represents a fundamental acquisition of transnational advocacy networks in the codification norms of indigenous rights. All countries in Latin America support this declaration except Colombia.

January 2010, the commission issued a resolution. July 2011 conducted public hearings in Costa Rica as the headquarters. The court heard testimony of victims, witnesses and experts from both sides. After the hearing, the court was invited by the government of Ecuador to carry out site visits to the Sarayaku territory on April 21, 2012. On June 27, 2012 the court ruled that the government of Ecuador guilty and should provide compensation to the Sarayaku community.

3.3. Pressures from Below

The pressure from above and below must be balanced. If the above is too strong pressure from protesting inside is weak, then the state can circumvent that acts as a form of foreign intervention. Similar to the model of the boomerang, the spiral model is a framework for international norm internalization by state, underline the evolution of the actions undertaken by the state, from repression to the internalization of norms and then forming behavior consistent with the norms. By conducting case studies in Argentina, Kenya, and South Africa; this model to see how the pressure of domestic and international pressure could trigger a change in the law in the government policy of repression becomes gradually lead to the implementation of norms and demonstrate compliance. The idea is given by the pressure from above and below the transnational advocacy networks provided by domestic civil society and social movements. When the international community is becoming increasingly active voice, citizens became feel safe to express protest and build domestic opposition. Interactions with INGOs also help build domestic and spur organizational capacity to act. And when there is a domestic organization, the organization can collect evidence of violations and other information that can ultimately strengthen international campaign.

Domestic structures must be strengthened because if this structure is weak then the country's ability to implement international norms can be compromised despite the high political desire. It takes the norm salience. Norm salience refers to the social and political relevance to the needs of the general public. There are three indicators which show the norm salience: (1) the emergence of discourse on these norms in domestic discourse; (2) changes in national institutions to accommodate and support the norm; (3) changes in the consistency and support to national policy in the region related issues. Material interests are the main obstacles. Elite in Latin America is mostly wealthy and politically connected to each other. The Government would not implement policies that would adversely affect their financial status. In Latin America that is required is how to keep the investment climate remains conducive ultimately marginalize even the protection of indigenous rights.

In Latin America, indigenous communities have long suffered political and social exclusion. Nationalists have made indigenous mestizo conception of history, not as social and political realities. State and conception of citizens reject those who identify themselves as indigenous, not embraced in a national

identity such as in Ecuador and Nicaragua. In the social divisions based on class, accommodation for special rights related to ethnicity are also absent. In Nicaragua, for example, the movement of the Sandinista revolution failed to facilitate the aspirations of indigenous communities. The biggest challenge for the pressure from below is how to make the domestic community is aware of the rights of indigenous, how to make indigenous norms into norm salient.

Burlington is a gas exploration company based in North America. Revenue from oil only 1% of the company's revenue. Burlington is also not much invested in drilling infrastructure in Ecuador. For that reason, the choice is easier for the company to leave the area. Many conflicts with local population in the long term will give a lot of risk to the company. Burlington corporate culture also showed a relationship between executive compensation for companies with environmental issues, health and safety. Burlington also operates a limited and does not involve a lot of shareholders like other oil companies such as Chevron. Therefore, experience in the face of pressure from shareholders as practiced by the local population in Ecuador is new so it does not have much experience to deal with it. Leaving is the most rational choice it has.

Network in Burlington and Chevron are complex, involving actors in four levels. The first is the local nodes, including indigenous communities and communities that exist in the settler. In the case of Burlington, affected communities are Achuar, Shuar, Zapara, Shiwiar and Kichwa. Each nationality is organized in three levels of governance: communities, associations, and federations. The Nacionalidad de Achuar del Ecuador (NAE), the Federacion Interprovincial de CentrosShuar (FICSH), the FederacionIndependiente del Pueblo Shuar del Ecuador (FIPSE), the NacionalidadSchiwiar del Ecuador (NASHIE), the NacionalidadZapara de la Amazonia Ecuatoriana (NAZAE) and federation Sarayaku community, Tayjasaruta are some examples.

The second is domestic actors such as NGO. The influential one is PachamamaAliiance based in San Francisco (USA). Pachamama before accompanying the struggle waged by indigenous federation Pastaza and Morona Santiago. In the case of Burlington, they affiliated with the Achuar communities, FIPSE, FICSH, Shiwiar and Sarayaku. Other key NGO is the Centro de DerechosEconomicos y Sociales (CDES) that is a branch of the NGO based in New York (USA). It concentrates on economic and social rights problems. Ibis based in Danish (Denmark), as well as AccionEcologica who is a member of a transnational network Oilwatch.

The third and fourth are international NGOs and the shareholders of the company. The most influential is Amazon Watch. Amazon Watch consists of four INGO which support the financing and other initiatives of the indigenous movement in the case of Burlington. Amazon Watch perform tasks such as connecting to the shareholders, initiate a dialogue with Boston Common Asset Management (an investment company focus on social responsibility) who have a stake in Burlington. Here Amazon Watch managed to influence Steven Heim, director of the Boston Common to include the issue of conflict in the Amazon region oil to shareholder resolution with Burlington Resources. There were four resolutions that have successfully signed: resolution regarding the policy on the rights of indigenous (November 2003), the publication of sustainability report (November 2004 and November 2005), reports on indigenous rights (November 2005). To support these resolutions, delegates from the Shuar, Achuar and Sarayaku represent their attitude to the Annual General Meeting in April 2004 and May 2006. In March 2005, shareholders do mission 'fact finding' in Ecuador. The mission visited four communities in the province of Pastaza. They met with representatives of indigenous and did site visit in northern Amazon where damaged by oil exploration. The aim is to promote understanding and coordination between members of the network and make shareholders familiar with the issues of environment and indigenous community Initiation carried to fruition. In its annual report in 2004 stated that the company would not impose oil concession in Ecuador.

CONCLUSIONS

The strategy of indigenous Sarayaku in winning court cases against multinational oil companies that is operating in its territory is by developing transnational advocacy networks with the spiral model and corporate boomerang model. Both give pressures from above and below. INGOs, IGOs, transnational indigenous movements, states and international political elites give pressures from above. They use all forms of media to form an international campaign and disseminate attention and support. With an extensive international network they form a global "shaming" to pressure the country into line with international human rights norms so that the state is expected to be embarrassed when the policy is not in accordance with the standards of international norms.

Pressures from below come from domestic. It creates norm salience through (1) the emergence of discourse on these norms in domestic discourse; (2) changes in national institutions to accommodate and support the norm; (3) changes in the consistency and support to national policy in the region related issues.

REFERENCES

[1]. Lenzerini, F. 2007.*Reparation for Indigenous Peoples in International and Comparative Law: an Introduction.* Oxford: Oxford University Press.

[2]. Gerlach, A. 2003. *Indians, Oil and Politics: A Recent History of Ecuador*. Wilmington: Scholarly Resources Inc.
[3]. Risse et al. 1999. "The Socialization of International Human Rights Norms into Domestic Practices: Introduction" in SC Ropp and K Sikkink (eds). *The Power of Human Rights: International Norms and Domestic Change.* Cambridge: Cambridge University Press
[4]. Brysk, A. 1993. "From Above and Below: Social Movements, The International System and Human Rights in Argentina". *Comparative Political Studies.*26(3), pp. 259-285
[5]. O'Rourke, D. 2005. Market Movements: Nongovernmental Strategies to Influence Global Production and Consumption. *Journal of Industrial Ecology*. 9(1-2), pp. 115-128.
[6]. Keck, M dan Sikkink, K. 1998. *Activist Beyond Borders: Transnational Advocacy Networks in International Politics.* Ithaca: Cornell University Press.
[7]. Hamilton, J. 1995. Pollution as News: Media and Stock Market Reactions to the Toxics Release Inventory Data. *Journal of Environmental Economics and Management.* 28(1), pp. 98-113.
[8]. Garwood, S. 2005. Politics at Work: Transnational Advocacy Networks and the Global Garment Industry. *Gender & Development.* 13(3), pp. 21-33.
[9]. Weinberg, A. 1998. Distinguishing among Green Business: Growth, Green, and Anomie. *Society and Natural Resources.* 11(3), pp. 241-250.
[10]. Spar, DL., La Mure, LT. 2003. "The Power of Activism: Assessing the Impact of NGOs on Global Business". *California Management Review.*
[11]. Saavedra., L. 2012. Ecuador: Breaking with Neoliberalism to Strengthen the Market in South American and Political Affair.
[12]. UNDP. 2010. Human Development Report for Latin America and the Caribbean 2010. Acting on the Future: Breaking the Intergenerational Transmission of Inequality
[13]. Kimerling, J. 2006. Indigenous Peoples and the Oil Frontier in Amazonia: the Case of Ecuador, Chevrontexaco, and Aguinda V. Texaco. *NYU Journal of International Law and Politics*. 38(3), pp. 413-664.
[14]. Donziger, S. 2004. Rainforest Chernobyl: Litigating Indigenous Rights and the Environment in Latin America. *Human Rights Brief: American University Washington College of Law.* 2(2).
[15]. Arteta, G. danHurtado, O. 2005. "Political economy of Ecuador: the Quandary of Governance and Economic Development" in A. Solimano (ed). *Political Crises, Social Conflict and Economic Development: the Political Economy of the Andean Region*. Northampton: Edward Elgar Publishing Inc.
[16]. Brysk, A. 1993. "From Above and Below: Social Movements, The International System and Human Rights in Argentina". *Comparative Political Studies.*26(3), pp. 259-285
[17]. Cortell, AP., Davis, JW. 2000. "Understanding the Domestic Impact of International Norms: A Research Agenda". *International Studies Review.*2(1), pp. 65-87.

★★★