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Adapting Human Rights to Privatised Infrastructure Projects

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Adapting Human Rights to Privatised Infrastructure Projects*

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Abstract

As the planning for South America's largest natural gas project, the Camisea Project, in Peru progressed, meanwhile at over fifty universities in the United States students were holding demonstrations to protest the involvement of Citigroup, the commercial and investment bank, in this and other infrastructure projects. Natural gas extraction and distribution was a surprising lightning rod for non-violent action. However, perhaps the alleged potential negative impact of the project on the rainforest and indigenous groups of the region goes some way to explain things. Such protests were a part of a larger movement to target public and private financial institutions involved in financing infrastructure projects. This and other protests targeting the Camisea Project have succeeded in eliciting concessions and policy changes by the major players who underwrite and participate in the project. However, despite successes and mutual agreements between protesters and project planners about how an infrastructure project should be carried out, questions still persist as to what is the appropriate human rights standard and also how should a human rights standard be implemented in the context of a specific project. This article seeks to provide an institutional solution as an answer to these outstanding questions—the creation of a United Nations-based Human Rights Unit for infrastructure projects that will set standards for projects and monitor compliance with those standards.

KEYWORDS: Law and Globalisation, International Infrastructure Projects, Privatisation, Human Rights

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I. Introduction

As the planning for South America's largest natural gas project¹, the Camisea Project, in Peru progressed, meanwhile at over fifty universities in the United States students were holding demonstrations to protest the involvement of Citigroup, the commercial and investment bank, in this and other infrastructure projects.² Natural gas extraction and distribution was a surprising lightning rod for non-violent action. However, perhaps the alleged potential negative impact of the project on the rainforest and indigenous groups of the region goes some way to explain things. Such protests were a part of a larger movement to target public and private financial institutions involved in financing infrastructure projects.³ This and other protests targeting the Camisea Project have succeeded in eliciting concessions and policy changes by the major players who underwrite and participate in the project. However, despite successes and mutual agreements between protesters and project planners about how an infrastructure project should be carried out, questions still persist as to what is the appropriate human rights standard and also how should a human rights standard be implemented in the context of a specific project. This article seeks to provide an institutional solution as an answer to these outstanding questions—the creation of a United Nations (Hereinafter 'UN')-based Human Rights Unit (Hereinafter 'HRU') for infrastructure projects that will set standards for projects and monitor compliance with those standards.

While these social movements excel at pointing out the shortcomings of projects and spurring policy changes by project sponsors, oftentimes questions persist as to whether the measures adopted by project planners actually alleviate the human rights problems. This leads in the Camisea case as elsewhere into an ongoing and often very public tug-of-war between social movements, on the one hand, and companies and governments, on the other. These tug-of-wars are often antagonistic and involve the reputations of all parties involved. At the end of the

¹ "Modern El Dorado Emerges" 17(7) *Business Korea* 62, 63 (July 2000)

² "Environmentalists, Students and Human Rights Advocates Confront Citigroup as Number One Funder of Global Warming" (7/11/01) archived at www.ran.org/news/newsitem.php?id=453&area=finance viewed on 12/2/03

³ See Michael B. Likosky "Editor's Introduction: Privatising Development: Global Project Finance Law and Human Rights" in Michael B. Likosky, ed., *Privatising Development: Transnational Law, Infrastructure and Human Rights* (forthcoming). See also Alan Dabbs and Matthew Bateson "The Corporate Impact of Addressing Social Issues: A Financial Case Study of a Project in Peru" 76 *Environmental Monitoring and Assessment* 135, 141 (2002). On the involvement of banks in projects see Michael B. Likosky "Mitigating Human Rights Risks Under State-Financed and Privatized Infrastructure Projects" 10(2) *Indiana Journal of Global Legal Studies* 65, 67 (2003) and MB Likosky "Editor's introduction: transnational law in the context of power disparities" in Michael B. Likosky, ed, *Transnational Legal Processes* at xvii, xxiv (2002)

day, quite often all parties are frustrated. Community groups and non-governmental organisations (Hereinafter ‘NGOs’) claim that project planners have not gone far enough to safeguard human rights, while project planners complain that they continue to be targets for human rights groups even after making a good faith effort to incorporate demands into the project matrix. At the end of the day, social movements feel that their policy recommendations are poorly implemented and project planners wonder what more they could do to satisfy demands.

This article addresses this quandary. Essentially, a consensus does not exist over what is an accurate assessment of the human rights risks associated with projects and also what is a reasonable means of incorporating measures into the project that will make it a human rights-friendly project. It is argued here that the solution to the problem is to create a HRU under the umbrella of the UN. To do so, this article will first sketch the contours of the HRU. Its institutional form, goals and the problems that it might solve are discussed. Next, a case study of the Camisea Project is presented in order to demonstrate how the HRU might offer a solution in the context of a specific ongoing infrastructure project. Here, attention will be paid to the project history, the laws of the project and then the human rights risk assessment strategies and mitigation measures associated with the project. In conclusion, a number of observations are made regarding how the HRU might be modelled in light of the case study findings. Importantly, this article concerns itself primarily with infrastructure projects that are either privatised or else include a substantial private element. Thus, World Bank-financed projects are outside the scope of this article. At the same time, World Bank projects might submit themselves to the proposed HRU.

II. Towards a HRU

Presently, a movement is underway in international law to have human rights universally recognised with remedies transnationally-available. Notable examples of advocacy for this trend may be found in the work of Anne-Marie Slaughter and David Boscoe and also of Harold Koh. Slaughter and Boscoe have, for instance, advocated the pursuit of ‘plaintiff’s diplomacy’ as a means of using the courts to have human rights abuses committed abroad recognised domestically.⁴ While they focus on a number of categories of ‘plaintiff’s diplomacy’, most relevant for our purposes are those cases brought in the home state of transnational corporations alleging that these companies are engaged in abuses abroad.

⁴ Anne-Marie Slaughter and David Boscoe, “Plaintiff’s Diplomacy” 79 *Foreign Affairs* 102 (2000). For a discussion of ‘plaintiff’s diplomacy’ in the context of infrastructure projects, see Michael B. Likosky, “Mitigating Human Rights Risks Under State-Financed and Privatized Infrastructure Projects” 10(2) *Indiana Journal of Global Legal Studies* 65, 70-71 (2003).

Examples of such cases are those ones brought under the Alien Tort Claims Act of the United States.⁵ Similarly, Harold Koh refers to the broader trend of which ‘plaintiff’s diplomacy’ is a part as ‘transnational public law litigation’ or ‘attempts to vindicate public rights and values through judicial remedies’.⁶ While ‘plaintiff’s diplomacy and ‘transnational public law litigation’ focus on the use of courts to spur transnational corporations to respect the human rights of project-affected communities, this article focuses instead on an extra-judicial, institutional solution to the alleged problem of a real world gap between stated commitment to human rights and actual respect for human rights. Specifically, it offers an institutional solution to the problem of an alleged lack of respect for human rights by major infrastructure projects globally. This solution is the HRU. It is in line with the proposal by Richard Falk and Andrew Strauss to create an independent and democratically accountable extra-state, non-judicial institution of global governance in the United Nations.⁷

Projects like the Camisea gas pipeline suggest the need for an independent HRU to set standards for international infrastructure projects in the area of human rights and then to monitor compliance by projects with these standards. This task is not an entirely straightforward one as standard setting and compliance are often processes and it is often difficult to assess the adequacy of processes. For instance, project planners might seek to respect the human rights of indigenous groups by including representatives of a group in the decision-making processes of the project. If so, the next question would be what constitutes ‘inclusion’. Also, does the indigenous group representative participate in all or select meetings and which ones? Does the indigenous group hold voting rights at important planning meetings? In other words, what type of involvement rises to the level of ‘respect for human rights’? At present NGOs are becoming increasingly adept at targeting project participants for reform, setting new benchmarks for their behaviour in projects. However, although written commitment to high human

⁵ *Id* at 103 and 107. On the Alien Tort Claim Act *see e.g.* Annie-Marie Burley, “The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor” 83 *American Journal of International Law* 461 (1989); Richard L. Herz, “Litigating Environmental Abuses Under the Alien Tort Claims Act” 40 *Virginia Journal of International Law* 545 (2000). For high profile cases *see e.g.* *Doe v. Unocal Corp.*, Case No. C99-2506 (N.D. Cal.); *Wiwa v. Royal Dutch Petroleum*, 226 F.3d 88 (2d Cir. 2000); *Jota v. Texaco Inc.*, 157 F.3d 153 (2d Cir. 1998); and *Bano v. Union Carbide Corp.*, 2000 WL 1225787 (S.D.N.Y. 2000).

⁶ Harold Hongju Koh, “Transnational Public Law Litigation” 100 *Yale Law Journal* 2347 (1991)

⁷ Richard A. Falk and Andrew Strauss “Globalization Needs a Dose of Democracy” *International Herald Tribune* 5/10/99 at 8; Richard Falk and Andrew Strauss “On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty” 36 *Stanford Journal of International Law* 191 (2000); and Andrew L. Strauss “SYMPOSIUM: RE-FRAMING INTERNATIONAL LAW FOR THE 21ST CENTURY: Overcoming the Dysfunction of the Bifurcated Global System: The Promise of A Peoples Assembly” 9 *Transnational Law and Contemporary Problems* 489 (1999)

rights aspirations is increasingly the norm, far too little attention is paid to translating this commitment into actual respect for human rights on the ground.

To remedy this deficiency, this article argues for the establishment of a HRU under the auspices of the UN. The UN parentage would capitalise on the UN's ability to act as a moral force for companies wishing to pursue human rights-respecting projects. This role of the UN can be seen in the work of the International Labor Organisation, the World Bank, the UN Centre on Transnational Corporations and the UN Global Compact.⁸ With the notable exception of the inclusion of resettlement programmes in World Bank-financed projects⁹ and several other Bank initiatives, these UN efforts remain largely aspirational. This character has led commentators to focus on using the UN to institute compliance with Codes of Conduct. Realising this criticism of the UN efforts to ensure that transnational corporations implement human rights, the HRU would not only set standards for human rights respecting infrastructure projects, it would also include an institutional apparatus that is capable of monitoring compliance. In effect, standards would be scrutinised and processes assessed.

The HRU would be composed of a number of classes of actors. The goals are to have its membership reflect roughly the stakeholders in a typical infrastructure project. Thus, the HRU would draw its membership from NGOs, transnational corporations, international banks, community groups, governments from industrialised and developing countries as well as less interested parties such as UN bureaucrats and academics. At present, these groups are unevenly represented within projects. For instance, NGOs and community groups are generally invited only at certain stages of a project to participate in official project planning. So, they are not insider participants throughout. As a result, decisions affecting their interests are made without meaningful participation and consultation. To ensure that the HRU does not come to represent a set political perspective, membership would rotate over time. Further, if the organisation to which a member of the HRU becomes involved in a project under evaluation, then that member must recuse her or himself.

The instituting of a UN HRU would centralise what is at present an often disorganised and motley means of assessing and monitoring compliance with human rights standards. For instance, at present public banks that finance projects may attach human rights conditions on their money. They typically have their own way of setting standards and monitoring compliance. Simultaneously, project planners might set different standards and monitoring mechanisms. What results are parallel and overlapping efforts that are not always mutually

⁸ See Michael B. Likosky "Mitigating Human Rights Risks Under State-Financed and Privatized Infrastructure Projects" 10(2) *Indiana Journal of Global Legal Studies* 65, 67 (2003).

⁹ Michael M. Cernea and Christopher McDowell, eds, *Risks and Reconstruction: Experiences of Resettlers and Refugees* (2000)

reinforcing. Further, this overstretches the capacities of community groups and NGOs which are often *de facto* monitors of the human rights standard-setting and implementation of projects. This results often in shaming without necessarily producing desired outcomes.

The HRU's remit would be fairly broad, i.e. setting human rights standards for and monitoring compliance with them for infrastructure projects that are public, private and mixed. It would handle projects across economic sector, ranging from roads to airports to pipelines. The HRU would also be involved in projects at every stage from planning, building and operation. When certain types of human rights are at issue, it might require the translation of the model, 'impoverishment risks and reconstruction model for resettling displaced populations', developed by Michael M. Cernea from World Bank projects to privatised infrastructure projects.¹⁰ A tendency might exist to broaden the remit to include non-infrastructure-based commercial activity such as the retail sector; however, the infrastructure project speciality is already a large challenge. In concerning itself with private sector corporate activity, the HRU will build upon the experience of the UN Global Compact¹¹.

As is the case with the UN Global Compact, if a project is submitted to the HRU, then upon the necessary scrutiny, if successful, the company will receive a retractable UN Seal of Compliance. This Seal would be modelled upon the Global Compact which is available to companies demonstrating respect for human rights. However, the standard for the Seal from the HRU would be higher than the Global Compact. It would not only require a pledge to respect human rights from the company; it would also require the submission of specific projects to the monitoring arm of the HRU. In many cases this submission might present a substantial commitment.

Like retail companies, many of the major players in the infrastructure field face problems of reputational risk. Oftentimes, in major infrastructure projects,

¹⁰ Michael M. Cernea 'Risks, Safeguards, and Reconstruction: A Model for Population Displacement and Resettlement' in Cernea and McDowell, *supra* note --, 11-55.

¹¹ See <http://www.unglobalcompact.org/Portal/Default.asp>; Ambassador Betty King "SYMPOSIUM: The UN Global Compact: Responsibility for Human Rights, Labor Relations, and the Environment in Developing Nations" 34 Cornell International Law Journal 481 (2001); William H. Meyer and Boyka Stefanova "SYMPOSIUM: Human Rights, the UN Global Compact, and Global Governance" 34 Cornell International Law Journal 501 (2001); Meaghan Shaughnessy "Human Rights and the Environment: The United Nations Global Compact and the Continuing Debate About the Effectiveness of Corporate Voluntary Codes of Conduct" 2000 Colorado Journal of International Environmental Law and Policy 159 (2000); Lee A. Tavis "Novartis and the U.N. Global Compact Initiative" 36 Vanderbilt Journal of Transnational Law 735 (2003); Alexis M. Taylor "UN REPORTS: The UN and the Global Compact" 17 New York Law School Journal of Human Rights 975 (2001); Aurora Voiculescu 'Privatising Human Rights: Corporate Codes of Conduct between Standards, Guidelines and the Global Compact' in L Williams, ed, Poverty and Law: Towards an International Law on Poverty (2003)

elite banks such as Chase Manhattan, Citigroup and Morgan Stanley are involved in financing infrastructure projects. Similarly infrastructure companies such as Bechtel, Shell and Mobil are also increasingly recognisable to the average consumer. Further, some of these companies not only are involved in extraction, but they are at times involved in retail. The Seal from the HRU would be important in diminishing reputational risk. Increasingly, banks and larger companies are acknowledging the need to respect human rights in the course of an infrastructure project. In many ways, these companies are most vulnerable to questions concerning their commitment to human rights, because they have large reputational risk since their brand names are global. At the same time, infrastructure projects come in various shapes and sizes and often do not involve companies that are household names.

The carrying out of infrastructure projects almost always involves numerous medium- and small-sized companies. This is true whether a brand name infrastructure company takes the lead or else if such a company is not involved in the project at all. With regard to the former, infrastructure projects typically have a large number of subcontractors. Making sure that these subcontractors abide by human rights commitments might usefully fall upon the contracting party. This would ensure a point of contact and also the involvement of a party with reputational risk. However, infrastructure projects may be carried out by a consortium of companies that do not have retail arms and are thus not brand name companies. How does one then ensure that human rights are respected by such projects?

The ability to ensure that human rights are respected in the context of infrastructure projects wherein a brand name company is not involved as a contractor is through the state. Typically, states are lenders of last resort in infrastructure projects. In other words, if an infrastructure project goes belly-up, it is typically the state that suffers most. The state in certain cases may end up buying-out the private participants. Also, it is the state that often requires an infrastructure project to be undertaken as a part of a larger development strategy. So, in these cases it is in the interest of the state that the infrastructure project is carried out in a sustainable way. Thus, where a brand name infrastructure company is not involved in a project, it might be the state that liases with the HRU.

In order to explore further how the HRU might function in practice and how it might solve real world problems in the context of infrastructure projects, it is useful to examine a specific case study—the Camisea Project in Peru. After discussing how human rights risks have been assessed and mitigated in the context of the Camisea Project, we will then return to the HRU to discuss how it might help solve some of the human rights problems that the Camisea Project faces.

III. The Camisea Project

A. History of the Project

The Camisea Project is now almost twenty-five years old. When an agreement was signed with Shell and Mobil to exploit the reserves,¹² then Peruvian President Alberto Fujimori called the project the “deal of the century”.¹³ If the project fulfilled expectations, it would make the country a net exporter of hydrocarbons.¹⁴ Gas was first discovered in 1980¹⁵ by Royal Dutch Shell.¹⁶ In 1981 Shell signed an exploration contract with Peru for Blocks 38 and 42 in the Ucagali Basin. From 1984 to 1986, Shell drilled five wells.¹⁷ In May of 1999 Shell and its partner Mobil pulled out of the project.¹⁸ The relationship between Shell and the Peruvian government had been, throughout Shell’s involvement in the project, spotty and stilted with Shell pulling out of the project more than once.¹⁹ When Shell and its then partner Mobil finally backed out of the project it was due to disagreements with the Peruvian government over distribution, prices and the export of gas.²⁰ At that time, Shell had already spent two hundred and fifty million dollars on the project.²¹

When Shell and Mobil departed from the project, the government set up the Camisea Committee charged with identifying future investors in the project.²² This Committee went on road shows to Asia, Europe, the US and Canada to promote the project.²³ What resulted is the project as it presently stands

¹² Shell held a fifty-seven point five per cent stake in the venture. “Mobil, Royal Dutch Quit Project in Peru to Supply Natural Gas” Wall Street Journal (Eastern Edition) 1 17/7/98

¹³ Jane Holligan “Stoking Demand” The Economist Intelligence Unit 12/1/98

¹⁴ Bob Williams “Camisea project transforming Peru into major regional gas player” 100(48) Oil and Gas Journal 20 (25/11/02)

¹⁵ “Lifting Local Power” Latin Finance, March 2002.

¹⁶ “Pluspetrol-led group wins Camisea Contract” 98(8) Oil and Gas Journal 26 (21/2/00)

¹⁷ Maria Kielmas “Seeking investors for gas exploration” 66(9) Petroleum Economist 35

¹⁸ “Pluspetrol-led group wins Camisea contract” 98(8) Oil and Gas Journal 26 (21/2/00)

¹⁹ “Lifting Local Power” Latin Finance March 2002. In 1988, for instance, Shell and its then partner Mobil pulled out “after failing to reach terms with the government for gas pricing and distribution.” *Id.*

²⁰ “The Americas: Seismic shock from Camisea” 348(8078) The Economist 35 (25/7/1998)

²¹ “Mobil, Royal Dutch Quit Project in Peru to Supply Natural Gas” Wall Street Journal (Eastern Edition) 1 17/7/98

²² “Pluspetrol-led group wins Camisea contract” 98(8) Oil and Gas Journal 26 (21/2/00)

²³ “Peru’s Camisea tender process to continue” 97(25) Oil and Gas Journal 30 21/6/99 and German Barrios “Why Camisea is Feasible Today” NAFTA: Law and Business Review of the Americas (2000)

comprised of three parts and spearheaded by two consortia already contracted to exploit and distribute reserves.

B. The Project at Present

The Camisea Project as it presently stands is divided into three parts; the extraction and production of the gas fields, the transportation and distribution of the gas to Lima (350 miles southeast of the fields²⁴) and also the distribution of gas from the capital city.²⁵ In total, it is estimated that the fields contain “eleven trillion feet of natural gas and six hundred million barrels of condensate.”²⁶ The gas will be produced by a consortium of companies, including, Pluspetrol Peru Corporation, S.A., Hunt Oil Company, SK Corporation and Tecpetrol SA. The distribution of the gas to Lima will be carried out by another consortium, including Tecgas N.V., Pluspetrol Resources Corporation, Hunt Oil Company, SK Corporation, Sonatrach Petroleum Corporation B.V.I. and Grana y Montero S.A.²⁷ The Project consists of two pipelines: one for natural gas and the other for liquid natural gas.²⁸ Gas will first be consumed in Lima and then distributed nationally and perhaps internationally.²⁹

The Project will be regulated under The Law for the Promotion and Development of the Natural Gas Industry. The Peruvian Energy Tariffs Commission will charge tariffs at point of sale and also for the distribution of gas. The government has also promised to provide guaranteed use of natural gas during the period for which sunk costs are recovered by companies.³⁰ The law firm of Sullivan and Cromwell is representing the upstream and downstream consortia.³¹

Consortium companies will carry out their work both through concession contracts and build-operate-transfer (Hereinafter “BOT”) contracts.³² The advantage of the latter type of contractual arrangement is that companies can be sure to recoup sunk costs and capture an agreed upon profit. The concession option is for a fixed number of years and thus a company may or may not have fully recouped costs and captured a reasonable profit. However, in this case, as

²⁴ Peggy Williams, “International Highlights” 1819 Oil and Gas Investor 90 (9/98)

²⁵ Larry Luxner “Bloom is off Mining, Energy Sector in Peru” Journal of Commerce 9A (10/9/98)

²⁶ Peggy Williams “International Highlights” 1819 Oil and Gas Investor 90 (9/98)

²⁷ “Camisea Project” www.camisea.com.pe viewed on 12/2/04

²⁸ “Camisea Project: Public Participation and Consultation Process: Summary and State of the Project” 7 (10/02)

²⁹ Id

³⁰ “Natural Gas Rules for Camisea Project Set” 97(39) Oil and Gas Journal 30 (27/9/99)

³¹ www.sullcrom.com/display.asp?section_id=15 viewed on 15/12/03

³² On BOT projects *see eg* David A. Levy *BOT and Public Procurement: A Conceptual Framework*, 7 Indiana International and Comparative Law Journal 95 (1996)

the government has committed itself to purchasing a fixed amount of gas during the recoup stage, the risk is mitigated.

The Camisea Project involves the extraction of gas in the Nahua-Kugapakori Reserve which is a home to a number of indigenous groups.³³ In fact three quarters of the project is located in the Reserve.³⁴ Specifically, the Nahua, Kirineri, Nanti, Marhiguenga and Yine live in the Reserve.³⁵ Since the time of Shell to present-day, tension has existed over how the human rights of these communities will be safeguarded. Strategies to protect human rights have been pursued by community groups, NGOs, governments and companies.

C. Human Rights Strategies by NGOs and Community Groups

Community groups and NGOs have pursued a number of different strategies to have human rights concerns recognised by project planners and incorporated into the project matrix itself. The successes of these strategies are difficult to objectively assess. However, it appears that some of them have accomplished their goals, while others remain frustrated. Here, a number of strategies and campaigns will be detailed and, to a limited extent, assessed.

Infrastructure projects with a significant element of risk involved often receive funding from public banks, such as export credit agencies and development banks. These banks may guarantee private loans, issue their own loans or insure projects against political risks associated with them. In the case of Camisea, money was sought from both export credit agencies and the Inter-American Development Bank.³⁶ NGOs devised strategies to target both.

US consortium participants sought loans from the Export-Import Bank of the United States of America. Specifically, companies asked for two hundred and fourteen point six million dollars in loans.³⁷ A number of NGOs, including Amazon Watch Friends of the Earth, The Bank Information Center, Environmental Defence, Amazon Alliance and the Institute for Policy Studies

³³ The Reserve was established by Ministerial Resolution No. 00046-90-AG/DGRAAR 14/2/1990

³⁴ "Execs, enviros tussle over financing of Peru Project" 28/6/02 archived at www.ran.org/news/newsitem.php?id=5542=finance

³⁵ Andrew Grumbel "Bush, the rainforest and a gas pipeline to enrich his friends" 30/7/03 London Independent archived at www.ran.org/news/newsitem.php?id=770&area=finance

³⁶ Money was also sought successfully from the Andean Development Bank. "Camisea IDB Loan Approved: Ex-Im denies other loan" 101(35) Oil and Gas Journal 37. The Andean Development Bank approved seventy-five million dollars in loans. Luisa Palacios "Latin America Update" JBIC (16/9/03)

³⁷ Tom Ichnoiowski "Ex-Im Bank Denies Aid for Peru Gas Project" 25(10) Engineering News Round 1 (9/8/03)

targeted the Export-Import Bank, attempting to influence the Bank to deny funding.³⁸

The NGOs involved used two strategies. First, NGOs detailed the human rights and environmental problems of the project. Second, they identified the political linkages between company executives and the current presidential administration. For instance, they indicated that Ray Hunt, who was the chairman of the consortium company Hunt Oil had fundraised one hundred thousand dollars for the present administration. In response to this campaign and based on their own assessment, the Export-Import Bank declined to fund the Camisea Project.³⁹ At the same time, despite the success with the Export-Import Bank, companies sought financing from alternative means, including the export credit agencies of other countries, importing equipment instead from Germany and Italy.⁴⁰ Also, consortium companies sought funding from the Inter-American Development Bank, leading to further NGO campaigns targeting the Bank.

When consortium companies sought financing from the Inter-American Development Bank, there was some question as to how the U.S. government would respond. The U.S. government had denied funding through the Export-Import Bank; however, it was now faced with a decision on the same project, except in a different institutional forum. The U.S. held a thirty per cent voting share and veto rights in the Inter-American Development Bank.⁴¹ At issue were two loans, one was a seventy-five million dollar direct loan and the other sixty million dollars in privately syndicated loans.⁴² NGOs launched a campaign to persuade the Inter-American Development Bank to refuse financing for the project. The results of this campaign differed from the campaign targeting the Export-Import Bank.

Initially, the NGO campaign succeeded in delaying a decision by the Inter-American Development Bank.⁴³ The lobbying of the Bank was, however, difficult as the Bank does not have a formal public consultation process. NGOs, specifically the Institute for Policy Studies, the Bank Information Center, Friends

³⁸ "Financing for Peru's Camisea Project Voted Down by U.S. Ex-Im Bank: US Agency Applauded for Upholding Indigenous and Environmental Safeguards in Controversial Amazon Energy Project" www.bicusa.org/lac/camisea_project_page.htm (28/8/03) viewed on 10/12/03.

³⁹ "Ex-Im Declines Financing Request to Bank Peru's Camisea Gas Development Project" www.exim.gov/pressrelease.cfm/49A5YDF9-A3ED-883F.OCB97EKDBF5423/ (28/8/03) viewed on 10/12/03 & "Sonatrach Buys Pluspetrol's Share in Camisea Project" 101(35) *Oil and Gas Journal* 37 (15/9/03)

⁴⁰ "Sonatrach Buys Pluspetrol's Share in Camisea Project" 101(35) *Oil and Gas Journal* 37 (15/9/03)

⁴¹ Tom Ichniowski "Big Peru Gas Project Gets Lift from Multilateral Bank Loan" 251(12) *Engineering News-Record* 17 (22/9/03).

⁴² "World Watch" *Wall Street Journal* (Eastern Edition) 11 (6/8/03)

⁴³ Jay Griffiths "Progress is a Four-Letter Word: Sometimes Even Pipe Dreams Come True" *The Ecologist* (10/03); "Gas for Peru v. Green Imperialism" 368(8336) *Economist* 28 (8/9/03)

of the Earth, Environmental Defense and Amazon Watch, pointed out that this lack of public consultation existed even though a 1996 Position Paper commissioned by the Bank had recommended that one be instituted.⁴⁴

Ultimately, the Inter-American Development Bank agreed the loans on September tenth of 2003.⁴⁵ The U.S. abstained from voting on the project. As a member of the Board of Directors of the Bank, the U.S. could have vetoed the project. Although the U.S. had declined to fund the project through the Export-Import Bank, Jose A. Fourquet the U.S. representative to the Inter-American Development Bank, abstained from voting for rather than vetoed the project. Fourquet gave two grounds for the abstention: first, private financing would be available for the project. Second, Fourquet argued that the U.S. had “not been able to allay doubts about the adequacy of the environmental assessment conducted for the project.”⁴⁶ The decision by the U.S. government to abstain from voting on the Camisea financing drew criticism both from NGOs and also U.S. Congresswoman Nancy Pelosi.

Congresswoman Nancy Pelosi argued that the U.S. government should have voted against the issuing of loans by the Inter-American Development Bank. Specifically, Pelosi cited to the Pelosi Amendment of the International Development and Finance Act 1989. This Act prevents the U.S. from supporting projects in the Inter-American Development Bank with “significant impact on the environment unless an environmental assessment is made publicly available.”⁴⁷ Pelosi also referenced the human rights of indigenous peoples as a concern.⁴⁸

Although the Inter-American Development Bank did agree to fund the Project, it did appear to make a concession to NGOs. Specifically, the Bank made its loan conditioned upon the inclusion of measures intended to safeguard human rights and to protect the environment. For instance, the Bank gave “Peru a five million dollar ‘institution-building’ loan to help police the Camisea Project, and

⁴⁴ “Institute for Policy Studies and Amazon Watch: Evaluation: The Inter-American Development Bank’s Public Consultation on the Camisea Project” www.bicusa.org/lac/camisea_consultation_evaluation.htm (12/8/02) viewed on 10/12/03

⁴⁵ Jay Griffiths “Progress is a Four-Letter Word: Sometimes Even Pipe Dreams Come True” *The Ecologist* (10/03); “Gas for Peru v. Green Imperialism” 368(8336) *Economist* 28 (8/9/03)

⁴⁶ Tom Ichniowski “Big Peru Project Gets Lift from Multilateral Bank Loan” 251(12) *Engineering News Record* 17 (22/9/03)

⁴⁷ “Pelosi Statement on Camisea Project in Peru” From the Office of Congresswoman Nancy Pelosi, San Francisco, California, 8th District, www.house.gov/pelosi/press/releasses/sept03/p_camiseapipeline09/0003.htm (10/9/03) viewed on 15/12/03

⁴⁸ *Id.* Also, “USAID recommended that the U.S. Treasury Department Not Fund Camisea and Overseas Private Investment Corp. declined funding.” Senator Patrick Leahy “Letter to the Editor of the *Economist* www.bicusa.org/lac/camisea/leahy_letter.htm/ (23/8/03) viewed on 10/12/03

proposes to finance parallel monitoring by local groups.”⁴⁹ The Inter-American Development Bank went further, requiring:

the development and implementation of environmental, social, health and safety, and contingency plans, procedures and systems, in form and content acceptable to the IDB; use of independent environmental and social consultants to monitor the entire Camisea Project, as well as company, governmental and community monitoring consultants to monitor the entire Camisea Project, ongoing reporting and monitoring by the companies to the IDB and project stakeholders; and specific financial mechanisms to ensure compliance with environmental and social requirements.⁵⁰

So, the whilst the Inter-American Development Bank did approve the project with reservations regarding the environmental and human rights risks, it did require project planners to implement certain measures to mitigate these risks. Interestingly, while the decision to finance the project was criticised by NGOs, little attention was paid to whether the standards required by the Inter-American Development Bank were tailored to the project and of an appropriate level. Further, processes of monitoring compliance were not discussed at the time.

NGOs have, however, monitored compliance with human rights standards in various ways. For instance, in August of 2002 NGO representatives from Amazon Watch, the Institute for Policy Studies, CEADES, OICH , Shina, and Serjal undertook a field mission to Peru. These representatives reported alleged violations of worker codes of conduct, noted that contact had occurred with isolated indigenous groups, identified that no clear methodology for calculating compensation existed, indicated that no system of monitoring was in place and also that no independent system was in place for responding to local communities’ concerns. In fact, an argument was made that consortium companies had undermined parallel-monitoring efforts. The findings of this mission were written up in the form of a report.⁵¹ It is unclear what effect this report has had on human rights policies.

In addition to the campaigns targeting public banks, as indicated in the Introduction of this article, NGOs targeted private banks. Generally, NGOs sought to capitalise on the recent commitment to environmental protection and human rights by the leading investment banks. A number of NGOs were involved

⁴⁹ “Gas for Peru v. Green Imperialism” 368(8336) *The Economist* 28 (8/9/03)

⁵⁰ Inter-American Development Bank “Project Abstract: Camisea: Peru” at 4.

⁵¹ “Report on the Social and Environmental Impacts of the Camisea Gas Project by the International Delegation to the Lower Urubamba” (8/02) archived at www.bicusa.org/lac/camisea_ngo_report_impacts.htm viewed on 10/12/03

in this campaign. They hailed from a diverse set of countries, including, the United States, Italy, Germany, Finland, Belgium, Australia, Portugal, The Netherlands and Australia. They included Rainforest Action Network, Campagna Perla Riforma della Banca Mondiale, The Berne Declaration, Greenpeace, Friends of the Earth, International Rivers Network, Urgewald e.u., Finnish ECA Reform Campaign, FERN, EURONatura, Mineral Policy Institute, World Economy, Ecology and Development, Quercus, Both Ends, Environmental Defense, Institute for Policy Studies, Friends of the Earth, The Corner House and The Wilderness Society. These NGOs sent a letters to Equator banks urging them to withdraw financing from the Camisea project. Letters were sent to an equally international group including banks from The Netherlands, the United Kingdom, the U.S., France, Switzerland, Germany, Italy, Canada, Australia and New Zealand. The banks were ABN AMRO, Barclays PLC, Citigroup, Credit Lyonnaise, Credit Suisse Group, Dresdner, Bank, HVB Group, ING Group, MCC, Rabobank Group, Royal Bank of Canada, The Royal Bank of Scotland, West LB AG and Westpac Banking Corporation.⁵² It is difficult to assess the impact of this campaign, as NGOs do not provide a sense of the extent of involvement of each bank and the human rights standards, if any, demanded on the project by these banks.

A particularly high profile campaign was launched against one of the Equator Banks—Citigroup. NGOs used a variety of strategies to target Citigroup, including, an advertisement in the New York Times⁵³, letters and student protests. These campaigns are part of the Equator Principles phenomenon which is a movement by investment banks, Equator Banks, to adopt human rights standards for privatised international infrastructure projects which they finance.⁵⁴

A Report targeting the Peruvian state⁵⁵ was also issued by a number of South American community groups.⁵⁶ These groups argued that “[t]he

⁵² “Press Release: Camisea Project is Litmus Test for New Equator Principles: Environmental Allies Urge Banks to Uphold Commitments” 5/9/03 archived at www.ran.org/news/newsitem.php?id=807&area=finance viewed on 21/12/03

⁵³ “Citigroup will be target of negative ad by Rainforest Action Network” AFX News, 26/8/02 archived at www.ran.org/news/newsitem.php?id=567&area=finance viewed on 21/12/03

⁵⁴ See Michael B. Likosky, ed., *Privatising Development: Transnational Law, Infrastructure Projects and Human Rights* (forthcoming)

⁵⁵ “Position and Recommendations Presented by Various Peruvian Civil Society Organizations to the IADB, The Andean Development Corporation (CAF) and the Export-Import Bank” 2/7/03 archived at www.bicusa.org/lac/camisea_ngo_position_nov02.htm at C2

⁵⁶ These groups included: Association for the Conservation of the Cutivireni Patrimony; Peruvian Association for Nature Conservation; ProHuman Rights Association; Center for the Development of Indigenous Amazonians; Peruvian College of Architects; Conservation International; Peruvian Committee of the World Union for Nature; National Coordinator of Rural Communities Affected by Mining; City for Life Forum; Ecological Forum; Peruvian Group for the Resolution of Conflicts; Oxfam America; Shinai Serjali; National Environmental Society; Peruvian Society for Environmental Law; Association for the Conservatino of the Peruvian Sea; World Wildlife

participation of civil society would not only improve the project's content and proposals, but would also serve to strengthen the credibility and legitimacy of the decision-making process."⁵⁷

As well as NGO and community group campaigns, protests also took a more violent form with Shining Path allegedly responsible for the bombing of a Shell Oil office.⁵⁸ On another occasion sixty pipeline workers were kidnapped.⁵⁹

So an international group of NGOs and Peruvian civil society organisations have pursued a number of strategies targeting a range of actors in the hopes of having an effect on the human rights practices of the Camisea Project. It is difficult to assess the impact of these efforts; however, some seemed to have achieved their objectives while others appear stillborn. On the other side of the fence, project planners have also sought to mitigate human rights risks of the Camisea Project.

D. Human Rights Strategies by Project Sponsors and the Peruvian State

As indicated above, the Camisea Project has been underway for some time and has undergone a shift in the makeup of the project planners. Since Shell and Mobil pursued the project for a number of years before the present consortium took over, it is useful to examine the measures taken to safeguard human rights by each group separately. Also, it is important to note a key activity by the Peruvian state in safeguarding human rights.

1. Shell and Mobil and Human Rights

Shell and Mobil took a proactive and public stance to safeguard human rights. Alan Hunt, the General Manager of Shell Prospecting and Development, reinforced this point, saying, "we need criticism from the outside"⁶⁰ and that its agreement with the government will reflect "a high level of sensitivity to social and environmental issues."⁶¹ This position reflected a sign of the times. Shell had been starkly criticised for its human rights practices, in particular the

Foundation-Peru Program Office; Confederation of Amazonian Nationalities of Peru; Institute of the Commons; Machiguenga Council of the Urubamba River; Labour Civil Association; Management Committee for Sustainable Development of the Lower Urubamba; Racimos de Ungurahui. Id

⁵⁷ Id at 9

⁵⁸ "Shell and Mobil Agree with Peru's Oil Firm on Gas Exploration" Wall Street Journal (Eastern Edition) A8 20/5/96

⁵⁹ Andrew Gumbel "Bush, the rainforest and a gas pipeline to enrich his friends" The Independent 30/7/03 archived at www.ran.org/news/newsitem.php?id=770&area=finance viewed on 2/12/03

⁶⁰ Pratap Chatterjee "Peru goes beneath the Shell" 18(5) Multinational Monitor at 14 5/97

⁶¹ "World Class Peruvian Development" 224(10) Pipeline and Gas Journal 18 10/97

campaign against Brent Spar and also its activities in Nigeria.⁶² As the Managing Director of Shell indicated, “[t]his is a whole new approach. . . . We know the eyes of the world are on us’”⁶³.

Shell hired a Peruvian anthropologist Alonso Zarzar⁶⁴ trained at Cambridge University to develop a plan for safeguarding the human rights of indigenous groups.⁶⁵ Also, Shell hired an NGO, Natura USA, and a Peruvian community group, Red Ambiental Peruana.⁶⁶

Shell adopted a number of measures designed to safeguard human rights. These have been detailed elsewhere⁶⁷, so here a brief overview is provided. First, Shell devised an “Off-shore” Policy. This Policy prevented workers from leaving the site so as to prevent contact with isolated communities. Second, a Health Passport Scheme was instituted to ensure vaccination of workers to prevent the spread of disease from and to local communities. Third, a consultation programme was established including one-to-one meetings and workshops with local communities. Fourth, a ‘No-road’ Commitment was instituted whereby planners avoided building roads so as to prevent exploitation of the area by outsiders. Fifth, planners identified the optimal location for the gas plant, drilling and pipelines. Sixth, hovercrafts were modified to prevent disruption to community-owned boat. Seventh, long-term Social Capital and Biodiversity Programs were established to involve local communities in the project planning and to support local initiatives. Eighth, planners devised a compensation programme that included a process of consultation and negotiation. Ninth, an effort was made to establish a high standard for health, safety and the environment.⁶⁸

Shell’s efforts were criticised by Amazon Watch which argued that there were “gaps between rhetoric and reality”.⁶⁹ A Release by a number of indigenous groups went further, blaming Shell for specific violations of human rights. These violations included the death through spread of disease of fifty-percent of the population, an “unjust ‘negotiation’ process” and contact with

⁶² “It’s not easy being green” 136(3) *Fortune* 124 4/8/97

⁶³ *Id*

⁶⁴ Pratap Chaterjee “Peru goes beneath the Shell” 18(5) *Multinational Monitor* at 14 5/97

⁶⁵ Jonathan Friedad “Green Acres: Oil Companies Strive to Turn a New Leaf to Safe Rain Forest—Shell, Mobil Want to Avoid Raising Ire of Activists at Massive Peru Project—But Skeptics Wait and See” *Wall Street Journal* (Eastern Edition) A1 17/7/97

⁶⁶ *Id*

⁶⁷ Alan Dabbs and Matthew Bateson “The Corporate Impact of Addressing Social Issues: A Financial Case Study of a Project in Peru” 76 *Environmental Monitoring and Assessment* 135 (2002)

⁶⁸ *Id*

⁶⁹ Jonathan Friedad “Green Acres: Oil Companies Strive to Turn a New Leaf to Safe Rain Forest—Shell, Mobil Want to Avoid Raising Ire of Activists at Massive Peru Project—But Skeptics Wait and See” *Wall Street Journal* (Eastern Edition) A1 17/7/97

isolated groups.⁷⁰ Regardless of the efficacy of Shell and Mobil's actual practices, when the companies pulled out of the project, the landscape changed dramatically with attention shifting to the practices of consortia companies.

2. The Consortia Companies

During the post-Shell period, policies to protect human rights have continued, albeit in a somewhat less public and less extensive fashion. However, the consortia have definitely made a vocal commitment to human rights and have instituted practices in order to realise these goals. Among the policies are:

- “Compliance with the socio-environmental legislation and with the Consortium Corporate Policy on Environment, Health and Safety
- Respect towards the Communities: ‘Good Neighbor Policy’
- Respect for property and land possession
- Collaboration with the Government of Peru to meet local needs— Sustainable development
- Recognition of the high sensitivity and biodiversity”⁷¹
- The production of an Environmental and Social Impact Assessment
- The convening of public consultations⁷²

The project planners’ public consultation process involved multiple stakeholders:

Over a period of four months the social team of ERM along with project engineers from Pluspetrol, were involved in a series of workshops in order to inform stakeholders about the project component, and receive their inquiries and concerns. The process involves a broad sector of society, including local authorities, unions, church representatives, NGOs, universities, different groups of fisherman present in the area, and representatives from [sic] the Paracas National Reserve. The consultations were, and are, conducted in the City of Pisco and the villages of San

⁷⁰ Coordinator of Indigenous Organizations for the Amazon Basin, the Inter-Ethnic Association for the Development of the Amazon Rainforest, the Permanent Coordinator for Indigenous Peoples in Peru, The Matsigenka Council for the Urubamba River, the Peruvian Communities Affected by Mining, The Regional Association of Indigenous Peoples of the Central Rainforest of Peru “Declaration by Indigenous Peoples in Defence of Life, Territory and the Environment: The Camisea Project is Threatening the Fundamental Rights of Indigenous Peoples and Damaging Fragile Ecosystems and Amazon Biodiversity” signed 25/8/03 archived at www.bicusa.org/iac/camisea_project_page.htm viewed on 10/12/03

⁷¹ CAMISEA PROJECT: Public Participation and Consultation Process: Summary and State of the Project 11 (October 2002)

⁷² Id at 29

Andres y Paracas, and has [sic] not ended with the submission of the EIA, since it has been conceived as a continuous process.⁷³

Also, in addition to these consultations, planners have established a Community Relations Program to evaluate the social impact of different stages of the project. This Program will

- Identify and involve the local population.
- Establish communication and participation channels.
- Identify the institutions (public and private) and organizations (national/regional/local).
- Establish contacts.
- Recurrent disclosure workshops.⁷⁴

As well, the project will hire members of local communities.⁷⁵

The project planners also devised a framework for compensating local communities. A number of principles were set forth, including an agreement to make sure that compensation benefited the entire community; that dependence on the planners would be avoided; compensation would be “oriented towards improving the education, health, productive activities, training, communication, native communities’ organization and the role of women in the local economy”⁷⁶, and that the community assemblies would legitimate the agreements.⁷⁷ Compensation would be distributed directly to communities, although sometimes the NGO Pro-Naturaleza would be involved.⁷⁸

An additional relevant policy adopted by the consortium is the Social Contingency Program. This Program is designed to maintain the way of life of indigenous communities. This programme involves understanding the local communities, gaining knowledge about how to communicate with these communities, devising rules to govern the interaction between communities and project workers, develop a protocol in case contact with isolated communities occurs and devise a plan for handling “difficult situations”.⁷⁹ Related, a Community Relations Plan was instigated “to identify, understand and handle the social aspects related to the Project, minimize and/or eliminate potential negative

⁷³ Id at 29-30

⁷⁴ Id at 32

⁷⁵ Id at 33

⁷⁶ Id at 34

⁷⁷ Id at 33-34.

⁷⁸ Id at 34

⁷⁹ Id at 35

impact resulting from construction activities and increase the positive environmental impacts.”⁸⁰

3. The State

Although the activity of the state with regard to human rights has been somewhat less publicised, the state has created an ombudsman for the project. The goal of the ombudsman is

to develop conflict-prevention activities between people, organizations and entities related to the development of the Camisea Project. Other functions will be to mediate, conciliate, or facilitate solutions in case of disagreement or conflicts related exclusively to the social and/or environmental aspects derived from the implementation and start up of the Camisea Project.⁸¹

How the ombudsman functions in practice has yet to be evaluated.

So, as the above attests, project planners, NGOs, community groups and governments in the context of the Camisea Project have hotly contested human rights standards and the implementation of these standards. Next, this article returns to the discussion of the UN HRU to evaluate how it might offer a solution to some of the real world problems raised by the Camisea Project and also how the HRU might be modelled in order to be a responsive institution.

IV. The HRU Revisited: Concluding Observations

In sum, it has been argued here that a HRU should be created under the auspices of the UN. The centralisation of authority to scrutinise human rights standards and to monitor compliance with them would solve many real world problems highlighted by the Camisea Project case study. In this regard, a number of observations might be made.

First, oftentimes the motley nature of international law is one of its highlights; the fact that grievances might be adjudicated in multiple institutions and in different ways. It is one of the attributes that transnational corporations like most. However, in the case of Camisea and its human rights practices, standards emanating from a diverse range of sources and the monitoring of compliance from an equally diverse range, rather than being a cause for celebration, has resulted in a system in which tasks are often repeated with an

⁸⁰ Id at 43

⁸¹ “Camisea Project: Camisea Project Ombudsman” www.camisea.com.pe viewed on 12/2/03

unevenness in quality. Thus, a case may be made in this situation for the centralisation and rationalisation of authority. This is where the HRU comes in.

This lack of centralisation is exemplified by the way in which the public banks function in practice. In the Camisea case, a quick “race to the bottom” occurred. The Export-Import Bank of the U.S. has the highest human rights standards of export credit agencies. However, in practice, when the Export-Import Bank denied funding, the U.S. government sanctioned funding by other means in the Inter-American Development Bank. Also, the consortium itself simply imported its goods from another jurisdiction. So lobbying pressure on the Export-Import Bank might have succeeded in the short run, but it was deficient in the long term.

Second, in the Camisea case, during the first phase of the project when Shell and Mobil were heading up things, it was possible for NGOs and community groups to capitalise on the reputational risk of those companies to push for the institutionalisation of human rights into the project. However, with the shift away from brand-name companies to lesser-known ones, strategies have become less focused. A HRU would ameliorate this problem by pressuring all projects to be scrutinised at the same level by the same institution. As noted above, this could occur through pressuring the Peruvian state to submit the project to the HRU. This would economise current strategies.

Third, as has been discussed, NGO campaigns in the Camisea Project focused on detailing the political connections of companies with financiers and also putting forth the human rights problems incurred by company projects and lawsuits against companies.⁸² While this is an important first step, it has led to denials of funding and setting of human rights standards at the aspirational level, rather than to the implementation of human rights norms in the context of the project itself. Importantly though, the Inter-American Development Bank has taken steps in this regard. The HRU would move the discourse towards the next level, away from reputation and towards results

Fourth, in the Camisea case study, the NGOs and community groups have been incorporated into the project planning after tendering and spottily during the construction phase. Alan Dabbs and Matthew Bateson have argued for a need to involve these groups throughout the project:

stakeholders must have a clear understanding of all potential impacts and an opportunity to suggest mitigation measures before they can be expected

⁸² See eg Amy Gray “BIC Letter to the IDB Board of Executive Directors, Camisea Project” (24/7/03) archived at www.bicusa.org/lac/camisea_amy_letter.htm viewed on 10/12/03

to support a project⁸³ . . . Effective management of social issues requires a process to identify and incorporate those issues into the project. This is an iterative process of consultation with key stakeholders so that the design, construction and operation of facilities are managed for the mutual benefit of the business and of the local society.⁸⁴

A HRU would require that projects be submitted for scrutiny at the tender stage. This would ensure processes of inclusion at the onset of a project. This would mitigate against the common practice in infrastructure projects identified by Dabbs and Bateson wherein, the “practice is to employ people to ‘sell the project’ or ‘clear the way’ for development without iterative consultation. Then the company concentrates on ‘fire fighting’ any negative social consequences.”⁸⁵ Thus, in the cases such as Camisea wherein indigenous groups are involved, the requirement of consultation by ILO Convention 169 would be met.⁸⁶

Fifth, it is unclear whether the indigenous groups in the Camisea case have been fully included in project decision-making and also the extent to which they have been able to monitor the effect of decisions on their natural resources. Laura Rival has argued that “[t]he success of the private sector’s model of equal partnership will depend on the sharing of control, and on how much training indigenous peoples receive to enable them to monitor and control exploitation of their natural resources.”⁸⁷ As a part of its monitoring mechanism, the HRU would ensure training of indigenous groups. Also, process-rights of these groups would be central to the functioning of the HRU. Having an objective outside party working to this end would help to provide companies and indigenous groups with an idea of practices elsewhere.

Sixth, in the context of partially-privatised projects such as Camisea, often the state does not receive an appropriate level of scrutiny for its actions. States maintain rights under the BOT scheme and the concession contract. Not only are tariffs set, but projects will ultimately devolve into state hands. In the Camisea Project, NGOs did not tend to target the state; although Peruvian civil society organisations did. Peruvian civil society organisations argued for the

⁸³ Alan Dabbs and Matthew Bateson “The Corporate Impact of Addressing Social Issues: A Financial Case Study of a Project in Peru” 76 *Environmental Monitoring and Assessment* 135, 137 (2002)

⁸⁴ *Id*

⁸⁵ *Id*

⁸⁶ Judith Kimerling “International Oil Standards in Ecuador’s Amazon Oil Fields: The Privatization of Environmental Law” 26 *Columbia Journal of Environmental Law* 289, 308-309 (2001)

⁸⁷ Laura Rival “Oil and sustainable development in the Latin American humid tropics” 13(6) *Anthropology Today* 1, 2 (12/97)

centralisation of monitoring with human rights standards under the auspices of the Peruvian state. Specifically, they advocate:

The Peruvian Government, supported by a panel of internationally renowned experts and representatives of Peruvian civil society, should ensure the effectiveness, enforcement and integration of monitoring that is being carried out by the consortia, OSINERG, IADB, and others.⁸⁸

A HRU would provide a common end-game for the targeting of both public and private actors—the submission of the project to the HRU.

In conclusion, in a world in which infrastructure projects are increasingly privatised, it is necessary to retain some level of public scrutiny for their human rights practices. The HRU would work with governments, companies, NGOs and community groups to ensure that human rights standards are set forth at the level of aspiration and also are translated into real world practices.

⁸⁸ “Position and Recommendations Presented by Various Peruvian Civil Society Organizations to the IADB, The Andean Development Corporation (CAF) and the Export-Import Bank” 2/7/03 archived at www.bicusa.org/lac/camisea_ngo_position_nov02.htm at 10