

**THE SECONDARY CONSEQUENCES OF INTERNATIONAL
INSTITUTIONS: A CASE STUDY OF MEXICAN CIVIL
SOCIETY NETWORKS AND CLAIMS-MAKING**

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Francisco runs a small volunteer group in Juxtlahuaca, Mexico.¹ Juxtlahuaca is a regional center of Mixteca Baja, a semi-arid, mountainous region of the state of Oaxaca, with a large indigenous population that remains one of the most economically and politically marginalized in Mexico.² Francisco's volunteer group receives no outside funding, has no staff, nor is it officially incorporated. Francisco started it a few years ago, having grown tired of national projects that attempted to direct local affairs from afar. Francisco and the group's other regular participants squeeze in their activities between their job and family commitments. They often hold meetings in the small

1. For purposes of confidentiality, names have been changed.

2. Kenneth D. Roberts, *Agrarian Structure and Labor Mobility in Rural Mexico*, 8 POPULATION & DEV. REV. 299, 303 (1982).

hardware shop Francisco owns. The group has several ongoing projects that include seeking to strengthen traditional organic agricultural practices with area farmers and working with residents to remove garbage from a nearby stream. In 2000, the group organized a conference on environmental concerns which attracted hundreds of participants from surrounding local communities.

It was largely by chance that Francisco first got involved in the North American Commission for Environmental Cooperation (CEC)—a tri-national institution established under the North American Agreement for Environmental Cooperation (NAAEC), a side agreement to the North American Free Trade Agreement (NAFTA).³ Francisco had never participated in an international forum, nor had he ever heard of the CEC during its seven-year existence. However, in 2003 he learned by word of mouth that the CEC was planning to hold a forum in Oaxaca City to develop policy recommendations on the introduction of genetically-modified (GM) maize into Mexico. Francisco, who had long believed political authorities respond to strength in numbers, decided to attend. He made the six-hour journey through winding mountain roads and stark landscapes studded with cacti to the handsome, restored historical center of Oaxaca City with its café-rimmed plazas that beckon to tourists and offset the five-star hotel where the forum would take place.

Two years later, at a CEC meeting he had received an invitation to attend, Francisco would gesture jokingly at the one suit he owns and remark that he goes to such meetings “in disguise,” masking his indigenous self. Still, he becomes visibly animated when describing the Oaxaca Maize Symposium of 2003—the hundreds of protesters, the row upon row of participants defying the moderator’s instructions to limit their comments to two minutes, and the sense that finally here was an international space that, however momentarily, was being taken over by local actors. Over time, Francisco will decide to scale back his CEC involvement. Subsequent meetings strike him as bureaucratic affairs, full of “just talk.” Perhaps, he muses, he will one day consider participating again; for now he will continue his local

3. North American Agreement on Environmental Cooperation, U.S.-Can.-Mex., Sept. 14, 1993, 32 I.L.M. 1480 [hereinafter NAAEC]. The NAAEC and documents published by the Commission for Environmental Cooperation (CEC), including citizen submissions and factual records, are available at the CEC's Website (www.cec.org) [hereinafter CEC Website].

work. This past summer he planted local organic potatoes on the hill-sides neighboring his village.

INTRODUCTION

The story of Francisco's participation in the CEC opens this article because it describes a form of civil society participation in international arenas not typically recounted in international law scholarship or in other research on emergent transnational public spaces. While an increasing number of scholars, both legal and otherwise, have attempted to devote greater attention to more fully understanding the relationship between civil society groups, international institutions, and laws and norms, much of this research has focused on the long-term participation of cosmopolitan transnational networks.⁴ However, experiences of individuals such as Francisco hint at the wider array of interactions civil society actors can have with international institutions, thereby challenging traditional formulations of what it means to participate in international institutions.

This article attempts to respond to this wider array of civil society experiences by developing two types of claims, one theoretical and one empirical. On a theoretical level, it argues that international law scholarship should build on recent trends in social and political science to expand the range of interactions between civil society groups and international institutions that it studies. Specifically, it argues that international law research should broaden its analysis from an emphasis on the "primary" consequences of international institutions on state actors, to also include an assessment of the "secondary" consequences of those institutions, such as their impacts on civil society groups' identities, issue framing, and networks. Increased attention to secondary consequences is critical for understanding the actual impacts of

4. See generally MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS* 200 (1998) (discussing transnational advocacy networks organized around shared values and discourses); Jackie Smith et al., *Social Movements and World Politics*, in *TRANSNATIONAL SOCIAL MOVEMENTS AND GLOBAL POLITICS* 59, 73 (Jackie Smith et al. eds., 1997) (suggesting that transnational social movements are important actors in global politics); SIDNEY TARROW, *THE NEW TRANSNATIONAL ACTIVISM* 29 (2005) (describing how transnational activists, as "rooted cosmopolitans . . . engage in contentious political activities that involve them in transnational networks of contacts and conflicts").

international institutions and policies. On an empirical level, the article proposes that, to the extent that legal scholars care about the actual effects of international institutions on civil society groups, it is critically important to gather data on civil society groups' interactions with international institutions and on how that interaction shapes their behaviors.

After outlining these arguments in Part I, the article develops a qualitative analysis of Mexican civil society activists' experiences with the CEC. Part II provides background information on the CEC for readers unfamiliar with the institution and its mechanisms, while Part III includes an analysis of interviews with Mexican activists. The purpose of the interview analysis is not to evaluate the effectiveness of the CEC from a policy standpoint. Rather, it is to explore one set of secondary consequences—the impact of the CEC on activists' transnational and domestic networks. Networks were selected as the focus of analysis for two main reasons. First, despite the theoretical importance placed on networks in much of the legal literature on civil society organizations and international institutions, relatively little empirical data has been gathered on this topic. Second, an understanding of networks and their formation is critical for understanding other types of activities central to civil society organizations, such as their legitimacy, strategies, tactics, and access to material resources.

The data analysis in Part III finds that despite the emphasis on transnational activist networks in much legal literature on the CEC and on international institutions generally, the CEC has only functioned to a limited extent as an institutional platform for newly emergent or already existing transnational civil society networks. Part III describes some of the factors that have contributed to this and discusses findings that in some cases the CEC's impact on Mexican activists' involvement in domestic networks may have been more significant than its impact on those activists' involvement in transnational networks. These findings are used to explore larger questions such as the circumstances under which international institutions foster civil society participation, the types of participation that emerge, and prescriptively, the types of participation such institutions should foster. It is argued that an empirical analysis of international institutions' secondary consequences on civil society networks can make more visible the ways in which international institutions both

can and should foster a wider array of forms of civil society participation than international law scholars have traditionally emphasized.

I. THE NEED TO EVALUATE THE SECONDARY CONSEQUENCES OF INTERNATIONAL INSTITUTIONS

Recent years have seen a profound shift in social and political science research on the relationship between international institutions and civil society actors. Traditionally, researchers have focused on how international institutions mediate the relationship between civil society actors and the state.⁵ Consequently, the impact and significance of civil society actors was mainly understood in terms of “the primary consequences” of civil society actors’ impact on state or governmental practices and policies.⁶ Critics of this approach have argued it represents an overly narrow, state-centered view of politics that relies on an artificial separation between civil society and governance activities.⁷ Recent critics within international law have also raised similar criticisms against traditional international law scholarship, stating that it adheres to a state-centered perspective that refuses to recognize the wide variety of fluid and decentralized spaces in which law and politics take place.⁸

In part as a result of this emergent body of criticism, there has been an increasing interest among social and political scientists in the

5. See, e.g., PAUL WAPNER, ENVIRONMENTAL ACTIVISM AND WORLD CIVIC POLITICS 12 (1996) (stating that, until recently in studies, NGOs “gained prominence only to the degree that they affected state policies” and that “their influence on world affairs apart from this role was neglected”).

6. See, e.g., Harold K. Jacobson, *International Institutions and System Transformation*, 3 ANN. REV. POL. SCI. 149, 154 (2000) (arguing that, traditionally, research has tended to focus on the “primary consequences” of international institutions, that is, their direct effect on international relations regarding a particular issue); WAPNER, *supra* note 5, at 152 (“The conventional understanding is that environmental activists are politically effective when they influence state behavior.”).

7. See, e.g., WAPNER, *supra* note 5, at 152-53; THOMAS PRINCEN & MATTHIAS FINGER, ENVIRONMENTAL NGOS IN WORLD POLITICS 64 (1994); Anne Marie Clark, *Nongovernmental Organizations and Their Influence on International Society*, 48 J. INT’L AFF. 507, 513-14 (1995).

8. See Balakrishnan Rajagopal, *International Law and Social Movements: Challenges of Theorizing Resistance*, 41 COLUM. J. TRANSNAT’L L. 397, 402 (2003).

“secondary consequences” of international institutions.⁹ For some political scientists this has meant shifting their focus to examining how civil society actors have used international political arenas to develop non-state forms of governance. Other social scientists have focused greater attention on how civil society groups have used international institutions to build their networks, gain legitimacy, share tactics, and project their activities onto alternate political arenas.¹⁰ The growing emphasis on secondary consequences highlights how civil society participation in international institutions can have effects that go beyond narrowly defined outcomes such as direct policy and legal changes.

Like political and social scientists, international law scholars can benefit from increased attention to international institutions’ secondary consequences. Such attention is critical for several reasons. First, although often unintended by those who design and implement international institutions, secondary consequences can fundamentally affect such institutions’ impact and functioning.¹¹ Therefore, an exclusive focus on primary consequences carries the risk of overlooking many of these institutions’ actual impacts. For example, scholars often observe that international legal mechanisms, including the CEC’s, are ineffective because they are “partial, nonbinding, and unenforceable.”¹² While this observation is valuable in the sense that the NAAEC and other international environmental agreements have largely not led to formal state enforcement action, it can also result in the temptation to cut off further analysis—as if this particular form of

9. See, e.g., Jacobson, *supra* note 6, at 154 (describing increasing scholarly attention paid to secondary consequences of international institutions beginning in the 1990s).

10. See, e.g., Sidney Tarrow, *Transnational Politics: Contention and Institutions in International Politics*, 4 ANN. REV. POLIT. SCI. 1, 15 (2001); PRINCEN & FINGER, *supra* note 7, at 56-60; WAPNER, *supra* note 5, at 11.

11. See generally Balakrishnan Rajagopal, *From Resistance to Renewal: The Third World, Social Movements, and the Expansion of International Institutions*, 41 HARV. INT’L L. J. 529, 541 (2000) (describing how certain international institutions may have effects not intended or even recognized, but which are nonetheless “effective”).

12. WAPNER, *supra* note 5, at 23; see, e.g., Roberto A. Sanchez, *Governance, Trade, and the Environment in the Context of NAFTA*, 45 AM. BEHAV. SCIENTIST 1369, 1388-89 (2002); Beatriz Bugeda, *Is NAFTA Up To Its Green Expectations? Effective Law Enforcement Under the North American Agreement on Environmental Cooperation*, 32 U. RICH. L. REV. 1591, 1616 (1999).

ineffectiveness were synonymous with having no effect at all. Social and political science research on international institutions' secondary consequences has shown that these institutions do have significant effects on civil society actors' networks, tactics, political leverage, and claims-making.¹³ In many instances, such secondary consequences may be more significant than traditionally acknowledged primary consequences.¹⁴ By paying greater attention to secondary consequences, international law scholars can make more visible the actual array of effects that, for better or for worse, international institutions are having, and perhaps even more importantly, can open up those effects to greater analysis and critique.

Second, an emphasis on secondary consequences is beneficial for international law scholarship to the extent that "soft law" mechanisms are becoming an increasingly popular vehicle for facilitating public participation in international institutions, especially in the international environmental arena.¹⁵ Soft law mechanisms are defined as those which lack formal enforcement authority and depend largely on civil society engagement for their impact.¹⁶ Consequently, their success fundamentally depends on the secondary consequences they have

13. See, e.g., Tarrow, *supra* note 10, at 15. For examples of how social movements formulate their strategy in the context of international institutions, see generally THE STRUGGLE FOR ACCOUNTABILITY: THE WORLD BANK, NGOs, AND GRASSROOTS MOVEMENTS (Jonathan A. Fox & L. David Brown eds., 1998); ROBERT O'BRIEN ET AL., CONTESTING GLOBAL GOVERNANCE: MULTILATERAL ECONOMIC INSTITUTIONS & GLOBAL SOCIAL MOVEMENTS (2000); GLOBAL INSTITUTIONS AND LOCAL EMPOWERMENT (Kendall Stiles ed., 2000).

14. See generally BALAKRISHNAN RAJAGOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS, AND THIRD WORLD RESISTANCE 88 (2003) (arguing the importance of recognizing that "international institutions should no longer be thought of merely in terms of whether they successfully carry out the functions that they have been assigned, but rather they should be thought of in their own terms of occupying and politicizing the space of international law").

15. See, e.g., Kal Raustiala, Note, *The "Participatory Revolution" in International Environmental Law*, 21 HARV. ENVTL. L. REV. 537, 537 (1997) [hereinafter Raustiala, *The "Participatory Revolution"*]; Kal Raustiala, *States, NGOs, and International Environmental Institutions*, 41 INT'L STUD. Q. 719, 719 (1997).

16. See John J. Kirton & Michael J. Trebilcock, *Introduction: Hard Choices and Soft Law in Sustainable Global Governance*, in HARD CHOICES, SOFT LAW: VOLUNTARY STANDARDS IN GLOBAL TRADE, ENVIRONMENT AND SOCIAL GOVERNANCE 3, 9 (John J. Kirton & Michael J. Trebilcock eds., 2004).

on civil society actors.¹⁷ Despite the growing use of soft law mechanisms, relatively little data exists on how civil society actors view and seek to use such mechanisms to their strategic advantage. Gathering better data on these matters can be a critical step towards obtaining a better understanding of how such mechanisms succeed or fail. Such an empirical approach offers greater insight into who uses soft law mechanisms and on what terms, helping to illuminate what can all too often be the “black box” of undifferentiated civil society participation. It also offers important policy implications because, in contrast to other areas of law where the proper role of societal pressure on legal institutions remains controversial, soft law’s explicit goal is to encourage civil society participation in order to achieve particular substantive outcomes.¹⁸

Finally, legal scholars have much to contribute to how the secondary consequences of international institutions on civil society actors are understood. Legal scholarship’s longstanding attentiveness to particular factual circumstances and institutional arrangements make it a discipline well-positioned to contribute to this area of inquiry. While social and political scientists tend to emphasize the secondary conse-

17. See generally John H. Knox, *Separated at Birth: The North American Agreements on Labor and the Environment*, 26 LOY. L.A. INT’L & COMP. L. REV. 359, 386 (2004) (arguing that “public participation may be more important to the success of an international institution than the theoretical possibility of government-triggered sanctions”); Mark R. Goldschmidt, *The Role of Transparency and Public Participation in International Environmental Agreements*, 29 B.C. ENVTL. AFF. L. REV. 343, 347 (2002) (describing how “[p]ublic participation, particularly for non-government organizations (NGOs), plays a crucial role in the implementation of and compliance with international environmental treaties”); Bugada, *supra* note 12, at 1616-17 (stating that, for the NAAEC to fulfill its potential, “it will be essential to encourage and to improve the involvement of civil society in the three countries”).

18. See generally Kirton & Trebilcock, *supra* note 16, at 27 (describing how “[t]he soft law legacy speaks powerfully to the importance of widely participatory, equally empowering, consensus-oriented multi-stakeholder regimes, and points to how the ‘sunlight’ of transparency, properly designed and delivered, can substitute for the heavy, coercive sanctions of hard law regimes”); Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 57-58 (2001) (describing tensions between the “well-established aspirational norm” that policy alternatives be evaluated “on their merits, without attending to their social origin,” and recognizing the importance of social movements in the origins of those positions).

quences of international institutions in general,¹⁹ legal scholars can perform the necessary task of exploring the secondary consequences of specific institutional mechanisms and use this information to develop novel institutional designs and practices. This approach not only helps to break down general institutional effects into a more transparent analysis of the effects of particular institutional mechanisms, it also contributes to better understanding the circumstances under which one would expect particular secondary consequences, and why.

Parts II and III apply this framework to an empirical analysis of the secondary consequences of one soft law international institution, the CEC, on the transnational and domestic networks of Mexican civil society actors. Since Part II contains basic background information on the CEC's institutional structure and mechanisms, readers already familiar with this topic may wish to skip directly to Part III.

II. BACKGROUND ON THE NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION

The NAAEC was enacted in 1993 as a side agreement to NAFTA, largely as a result of political pressure from a strategic coalition of Latino and environmental groups.²⁰ It represented a "significant milestone" for civil society, reflecting the unprecedented level of public engagement that led up to the NAFTA negotiations.²¹ The NAAEC established the CEC, a tri-national institution whose stated goals are to "address regional environmental concerns, help prevent potential trade and environment conflicts, and to promote the effective enforcement

19. See generally Tarrow, *supra* note 10, at 2 (arguing that, in research on transnational politics and international governance, "few mechanisms are proposed that link domestic actors to transnational ones and to states and international institutions."); see also Sidney Tarrow, *The Dualities of Transnational Content: 'Two Activist Solitudes' or a New World Altogether?*, 10 MOBILIZATION 53, 66 (2005) (suggesting that one of the lacunae within social movement scholarship is a lack of specification of international institutions and that the institutional parameters of these institutions should be part of the analysis of transnational activism).

20. See Raúl Hinojosa-Ojeda, *Integration Policy from the Grassroots Up: Transnational Implications of Latino, Labor, and Environmental NGO Strategies*, in CROSS-BORDER DIALOGUES: U.S.-MEXICO SOCIAL MOVEMENT NETWORKING 227, 227 (David Brooks & Jonathan Fox eds., 2002).

21. *Id.* at 228.

of environmental law.”²² Given its agenda, the CEC is a relatively small organization of about fifty to fifty-eight staff members with an annual budget of \$9 million.²³ It organizes over forty meetings per year, attracting approximately 1,400 participants.²⁴

Structurally, the CEC consists of three main institutional bodies: the Council, the Secretariat, and the Joint Public Advisory Committee (JPAC).²⁵ The Council consists of cabinet-level or equivalent representatives of each of the three NAFTA countries, and thus is most closely linked to the national governments.²⁶ The Council exercises ultimate executive authority, and meets at least once a year.²⁷ The Secretariat is an administrative body consisting of nationals of each party.²⁸ It provides “operational support to the Council,”²⁹ and prepares reports under some of the NAAEC’s public participation mechanisms.³⁰ The third institutional body, the JPAC, is unique among international institutions in that it is dedicated to creating a link between the North American public and the Commission.³¹ The JPAC consists of fifteen volunteer members, appointed by the three national governments.³² To the largest extent possible, the JPAC makes decisions by consensus.³³

22. Commission for Environmental Cooperation, *Who We Are*, http://www.cec.org/who_we_are/index.cfm?varlan=english (last visited Nov. 25, 2006).

23. Marc Paquin et al., *The Evolution of the Program and Budget of the Commission for Environmental Cooperation of North America (CEC)*, DISCUSSION PAPER (Unisféra International Centre, Montreal, Can.), Sept. 2003, at 2, available at www.unisfera.org/IMG/pdf/Unisfera_-_Evolution_of_CEC_Program.pdf.

24. See Marc Paquin et al., *JPAC and Public Participation in the Activities of the Commission for Environmental Cooperation of North America (CEC)*, DISCUSSION PAPER, (Unisféra International Centre, Montreal, Can.), Mar. 2003, at 3 available at http://www.unisfera.org/IMG/pdf/Unisfera_-_CEC_Public_Participation.pdf.

25. NAAEC, *supra* note 3, art. 8(1).

26. *Id.* art. 9(1).

27. *Id.* arts. 9(1), 9(3)(b), 10(1).

28. *Id.* art. 11(2).

29. *Id.* art. 11(5).

30. *Id.* arts. 12(1), 13(3).

31. See Eric Dannenmaeir, *The JPAC at Ten*, 2 (Mar. 2005), http://www.cec.org/files/PDF/JPAC/JPAC-at-Ten_en.pdf.

32. Paquin et al., *supra* note 24, at 5.

33. JOINT PUBLIC ADVISORY COMMITTEE, COMMISSION FOR ENVIRONMENTAL

One of the CEC's most notable aspects is the relatively wide variety of soft law mechanisms it offers for public engagement.³⁴ This variety offers researchers a valuable opportunity to compare groups' experiences with different mechanisms across the same institution. The following is a brief description of the four CEC soft law mechanisms that will be discussed in this article: the Article 14 and 15 citizen petitions, the Article 13 Secretariat report, the CEC working groups, and the JPAC.

A. The Citizen's Submission Process—Articles 14 and 15

Articles 14 and 15 consist of a complaint-based monitoring system in which private individuals or groups in any of the NAFTA countries can file complaints with the CEC Secretariat alleging that a NAFTA government is failing to enforce its environmental laws.³⁵ Once the Secretariat has received a petition, it has broad discretion in deciding whether to pursue further review, including considering such factors as alleged harm, available private remedies, and the goals of the NAAEC.³⁶ If the Secretariat accepts the submission, it requests a response from the governmental party.³⁷ Based on the governmental party's response, the Secretariat decides whether to prepare a factual record, and may do so provided that it receives two-thirds of the Council's approval.³⁸ In preparing the report, the Secretariat creates a factual record of the issues and does not include its own evaluations, conclusions, or subjective judgments.³⁹ The Secretariat does not have

COOPERATION, JOINT PUBLIC ADVISORY COMMITTEE RULES OF PROCEDURE, Rule 6 (Dec. 2002), available at http://www.cec.org/files/PDF/JPAC/JPA-dec-2002_en.pdf.

34. See Marc Paquin et al., *supra* note 24, at 1-2 (stating that "a key feature of the CEC is its commitment to promoting public participation" and describing some of the CEC's public participation mechanisms); Raustiala, *The "Participatory Revolution," supra* note 15, at 549 (noting that "the [NAAEC] . . . goes further than most multilateral treaties in terms of NGO access and participation").

35. NAAEC, *supra* note 3, art. 14(1).

36. *Id.* art. 14(2).

37. *Id.*

38. *Id.* art. 15(1)-(2).

39. Jonathan Graubart, *Giving Meaning to New Trade-Linked "Soft Law" Agreements on Social Values: A Law-in-Action Analysis of NAFTA's Environmental Side Agreement*, 6 UCLA J. INT'L L. & FOREIGN AFF. 425, 432-33 (2002).

the authority to make the report publicly available; only the Council can release the report with two-thirds of its members' approval.⁴⁰

B. Secretariat Report—Article 13

Article 13 authorizes the Secretariat to prepare a report without Council approval on any matter within the CEC program or on any other matter with Council approval as long as it does not involve allegations of failure to enforce environmental laws and regulations.⁴¹ Like Articles 14 and 15, the Article 13 report can only be released with the Council's permission.⁴² However, there are several key differences between the two mechanisms. First, Article 13 requires that if the Secretariat lacks specific expertise in the report's subject matter, it must obtain independent expert assistance.⁴³ Consequently, in Article 13, the Secretariat functions less as an impartial, quasi-judicial body than as a body that convenes an expert panel, relying on specialized knowledge.⁴⁴ Second, Article 13 does not restrict the Secretariat to factual findings, and all Article 13 reports to date have included conclusions and recommendations.⁴⁵ Third, the Secretariat may inde-

40. NAAEC, *supra* note 3, art. 15(7).

41. *Id.* art. 13(1).

42. *Id.* art. 13(3).

43. *Id.* art. 13(1).

44. See generally Jonathan Graubart, "Politicizing" a New Breed of "Legalized" Transnational Political Opportunity Structures: Labor Activists Uses of NAFTA's Citizen-Petition Mechanism, 26 BERKELEY J. EMP. & LAB. L. 97, 99-100 (2005) (discussing the recent proliferation of quasi-judicial mechanisms in international agreements on value-based norms).

45. See NAAEC, *supra* note 3, art. 13 (giving authority to the Secretariat to prepare a "report"); *Report on the Death of Migratory Birds at the Silva Reservoir*, CEC SECRETARIAT REPORT (Commission for Environmental Cooperation, Montreal, Can.), Oct. 1995, at 63-69 (providing two recommendations to prevent further bird die-off); *Continental Pollutant Pathways*, CEC SECRETARIAT REPORT (Commission for Environmental Cooperation, Montreal, Can.), 1997, at 33-38 (making specific conclusions and recommendations on collaborative action on continental pollutants); *Ribbon of Life*, CEC SECRETARIAT REPORT (Commission for Environmental Cooperation, Montreal, Can.), Jun. 1999, at 7-10 (recommending specific actions the Council may take to better protect the wildlife in the San Pedro basin); *Environmental Challenges and Opportunities of the Evolving North American Electricity Market*, CEC SECRETARIAT REPORT (Commission for Environmental Cooperation, Montreal, Can.), Jun. 2002, at 22-26 (recommending greater North American envi-

pendently initiate the Article 13 process, although, in practice, it has also initiated the Article 13 process in response to civil society petitions.⁴⁶ Finally, Article 13 permits the Secretariat to gather information through public consultations such as conferences, seminars, and symposia.⁴⁷ These consultations have served as significant vehicles for public involvement which have not been available under the citizen petition mechanism.

C. CEC Working Groups and Other Cooperative Activities

The CEC sponsors approximately forty-three working groups.⁴⁸ More so than other mechanisms, working groups tend to emphasize face-to-face stakeholder dialogue on substantive environmental issues.⁴⁹ The groups may consist exclusively of governmental officials, of appointed experts, or of a mix of non-governmental stakeholders and other sectors.⁵⁰ The groups' activities vary, but generally involve

ronmental cooperation and compatibility); *Maize and Biodiversity: The Effects of Transgenic Maize in Mexico*, CEC SECRETARIAT REPORT (Commission for Environmental Cooperation, Montreal, Can.), 2004, at 26-30 [hereinafter *Maize and Biodiversity*] (providing recommendations based on the key findings of the report). All CEC Secretariat Reports available at http://www.cec.org/programs_projects/other_projects/index.cfm?varlan=english.

46. NAAEC, *supra* note 3, art. 13(1). See, e.g., *Maize and Biodiversity*, *supra* note 45, at 34-35 (describing petition submitted by Mexican civil society groups requesting Article 13 report on the impact of transgenic maize in Mexico).

47. NAAEC, *supra* note 3, art. 13(2).

48. Paquin et al., *supra* note 24, at 3.

49. See generally Commission for Environmental Cooperation, *Assessing the Environmental Effects of Trade*, Dec. 2002, at 7, available at http://www.cec.org/files/pdf/ECONOMY/111-03-05_en.pdf (stating one main element of the Trade and Environment project is to “[f]acilitate an open, transparent dialogue to identify options for integration of trade and environmental policies”); Commission for Environmental Cooperation, *Enforcement Working Group Website*, <http://www.cec.org/ewg/index.cfm?varlan=english> (noting the working group’s focus on “[f]acilitating an intergovernmental dialogue and public discussion”); Commission for Environmental Cooperation, *Meeting of the Consultative Group for the North American PRTR Project*, Oct. 20-21, 2004, at 12, http://www.cec.org/files/PDF/POLLUTANTS/TS03discusspaper_en_pdf (describing the PRTR consultative group as a forum for exchanging ideas and obtaining stakeholder input).

50. Paquin et al., *supra* note 24, at 3.

opportunities to apply a group's conclusions to generating non-binding recommendations.⁵¹

D. JPAC—Article 16

The JPAC differs from other CEC mechanisms in that it offers an institutional space for ongoing public engagement which is not linked to a particular substantive project.⁵² Its main vehicles for public involvement are public meetings, which are usually held four times a year in the three NAFTA countries.⁵³ Other avenues for public input include the submission of written comments and the possibility of arranging meetings with JPAC members on an ad hoc basis.⁵⁴

51. See, e.g., Commission for Environmental Cooperation, *Draft: North America Air Working Group Long-term Strategic Framework for Air-related Activities of the Commission for Environmental Cooperation*, Nov. 17, 2003, at 1, available at http://www.cec.org/files/PDF/POLLUTANTS/NAAWGstrategicframeworkraft_en.pdf#search=%22working%20group%20CEC%22 (stating that the working group will identify strategic directions and opportunities for the air-related activities of the CEC that are “intended to benefit from the input of a wide range of stakeholders”); Commission for Environmental Cooperation, *Strategic and Cooperative Action for the Conservation of Biodiversity in North America*, Dec. 2002, at 24-25, available at http://www.cec.org/files/pdf/BIODIVERSITY/211-03-05_en.pdf (reporting on activities that included soliciting input from various stakeholders to identify priority areas and to provide advice on “lines of action the CEC could take on various themes”); Commission for Environmental Cooperation, *Working Draft for Public Input: The CEC SMOC Working Group Strategy Until 2020 Under the Puebla Priority Areas*, Apr. 18, 2006, at 4, available at http://www.cec.org/files/PDF/POLLUTANTS/SMOC-consolidated-paper-041806_en.pdf (explaining that “the initial focus of the [Sound Management of Chemicals] working group was for the three Parties, working with stakeholders, to develop action plans for substances of mutual concern”).

52. See, e.g., Commission for Environmental Cooperation, *Who We Are/Joint Public Advisory Committee (JPAC): Vision Statement*, July 26, 1994, http://www.cec.org/who_we_are/jpac/vision/index.cfm?varlan=english (noting that the JPAC's vision is “to ensure active public participation and transparency in the actions of the Commission” and is “in effect, a model for the future in a process which is without precedent”).

53. Paquin et al., *supra* note 24, at 6.

54. See, e.g., Interview with Executive Director of National Environmental NGO, in Guadalajara, Mex. (Feb. 8, 2006) (describing how his organization was able to arrange individual meetings with JPAC members as a component of its advocacy work). For a complete listing of public comments submitted to the JPAC, see Commission for Environmental Cooperation, http://www.cec.org/pubs_docs/

The JPAC offers financial assistance to offset the cost of attending its meetings.⁵⁵ These meetings have covered a wide variety of subjects, including the CEC's program, specific environmental issues, and CEC policies impacting public participation.⁵⁶ To a limited extent, the JPAC has experimented with different meeting formats. However, participants generally line-up at a microphone to give comments limited to no more than two minutes.⁵⁷ The JPAC has the discretion to decide how and whether it incorporates public input into its communications with the Council.⁵⁸

III. DATA ANALYSIS OF MEXICAN CIVIL SOCIETY ACTORS' EXPERIENCES WITH THE CEC

Part III analyzes Mexican civil society actors' experiences with the NAAEC. Section A outlines the project's methodology and rationale. Section B provides factual background on three case-studies of Mexican civil society engagement with the CEC. Section C includes the data analysis as well as a discussion of their theoretical and policy implications for the relationship between soft law mechanisms and civil society actors.

A. Methodology and Rationale

This study is based on three methods of data gathering: document review, participant observation, and individual interviews. These sources were triangulated so as to allow for more "richly detailed, thick, and holistic" descriptions.⁵⁹ Documents reviewed consisted of

scope/index.cfm?varlan=english&ID=17 (last visited Oct. 17, 2006).

55. Paquin et al., *supra* note 24, at 3.

56. See generally Commission for Environmental Cooperation, Publications and Documents: Joint Public Advisory Committee, http://www.cec.org/pubs_docs/scope/index.cfm?varlan=english&ID=17.

57. Author's personal observation of JPAC meetings.

58. Joint Public Advisory Committee Advice to Council No: 03-03, J/03-03/ADV/Final, at 3 (Nov. 12, 2003), available at http://www.cec.org/files/pdf/JPAC/Advice-03-03_en.pdf (stating that while JPAC seeks public input, it is not bound by public input when developing its advice).

59. David A. Snow & Danny Trom, *The Case Study and the Study of Social Movements*, in *METHODS OF SOCIAL MOVEMENT RESEARCH* 146, 151-52 (Bert Klandermans & Suzanne Staggenborg eds., 2002).

CEC documents, media articles, and civil society group materials. Participant observation involved attending four CEC events over 2005-2006 in Washington, D.C., Montreal, and Mexico City. Qualitative interviews were the principal data source since they were best suited for gaining insight into the Mexican activists' strategic motivations and decision-making.⁶⁰ Twenty-two face-to-face, individual "semi-structured" interviews were conducted with Mexican civil society group representatives. To obtain a varied sample, interviews were conducted with individuals from international, national, regional and local non-governmental organizations as well as grassroots groups, who self-identified with environmental, indigenous, and *campesino*⁶¹ movements. Each interview lasted between forty-five and ninety minutes. In accordance with standard social science methods, activists were guaranteed confidentiality. Confidentiality was critical because activists were asked to speak frankly about the reasons behind sensitive internal decisions and strategies. Mexican groups were chosen as the subject of research because, despite Mexican civil society groups' more extensive use of the CEC's mechanisms, U.S. law journals have gathered less qualitative data on Mexican groups' experiences than on U.S. and Canadian groups' experiences.⁶²

60. See, e.g., Kathleen M. Blee & Verta Taylor, *Semi-Structured Interviewing in Social Movement Research*, in *METHODS OF SOCIAL MOVEMENT RESEARCH*, *supra* note 59, at 92, 95.

61. For the purposes of this paper, the term *campesino* refers to an agriculturalist on a small landholding. See generally David Brooks & Jonathan Fox, *Movements Across the Border: An Overview*, in *CROSS-BORDER DIALOGUES: U.S.-MEXICO SOCIAL MOVEMENT NETWORKING*, *supra* note 20, at 1, 42-43 (describing differences between small agriculturalists in the United States and Mexico).

62. See, e.g., COMMISSION FOR ENVIRONMENTAL COOPERATION, TEN-YEAR REVIEW AND ASSESSMENT COMMITTEE, TEN YEARS OF NORTH AMERICAN ENVIRONMENTAL COOPERATION 39-40 (June 15, 2004), available at http://www.cec.org/files/PDF/TRAC-Report2004_en.pdf (noting that the CEC fills a relatively larger institutional space in Mexico than it does in Canada or the United States, and that the CEC has been instrumental in encouraging public participation in policy development in Mexico, particularly from environmental NGOs). See generally RAJAGOPAL, *supra* note 14, at xiii (noting that the lack of a tradition of socio-legal research in international law has made "thicker," qualitative descriptions of how norms and institutions evolve uncommon); *id.* at 294 (urging the importance of recognizing within international law scholarship that international institutions are constituted through a complex and ambivalent relationship with the "local," increasingly manifested in the form of social movements in the Third World).

For context and comparison, interviews were conducted with activists who had been involved with the CEC on a variety of issues. However, the majority of the interviews focused on three case studies which corresponded to three of the CEC's four main public participation mechanisms: the Pollutant Registry and Transfer (PRTR) project (CEC working group),⁶³ the GM maize report (Article 13),⁶⁴ and the Lake Chapala citizen petitions (Article 14 and 15).⁶⁵ Each case attracted relatively high levels of civil society involvement, and thus offered rich data sources for analyzing the CEC's secondary consequences on Mexican activists. The JPAC was not included as a separate "case study" because it can be used alone or in combination with other mechanisms; it is instead integrated into the analysis of the other case studies. The following section includes factual summaries of the three case studies, which offer basic context for the interview analysis.

B. Background on the Case Studies: PRTR, GM Maize, and Lake Chapala

1. CEC Working Group: The PRTR Project

The PRTR project, an effort to establish a comparable North American pollutant registry,⁶⁶ perhaps represents the CEC's and national governments' most ambitious effort at legally harmonizing environmental standards between the NAFTA countries. In 1994, fol-

63. See generally CEC Website, *supra* note 3 (follow "Our Programs and Projects" hyperlink; then follow "Pollutants and Health" hyperlink) (contains publications and documents on the CEC's PRTR program).

64. *Maize and Biodiversity*, *supra* note 45, at 34-35.

65. Lake Chapala Submission to the Commission for Environmental Cooperation Pursuant to Article 14, A14/SEM/ 97-007/01/SUB, at 1 (Oct. 10, 1997), available at <http://www.cec.org/files/pdf/sem/ACFA1B.pdf> [hereinafter Lake Chapala I Submission]; Lake Chapala II Submission to the Commission for Environmental Cooperation Pursuant to Article 14, A14/SEM/03-003/01/SUB (May 15, 2003), available at <http://www.cec.org/files/pdf/sem/03-3-SUB-s.pdf> [hereinafter Lake Chapala II Submission].

66. Deanna Aguilar, *Is the Grass any Greener on the Other Side of the Rio Grande? A Look at NAFTA and Its Progeny's Effects on Mexican Environmental Conditions*, 10 CURRENTS: INT'L TRADE L.J. 44, 48 (2001).

lowing the enactment of NAFTA, Mexico began to develop a PRTR.⁶⁷ Similar registries had been established in the United States and Canada in 1986 and 1993 respectively.⁶⁸ At the time the Mexican government committed to developing a PRTR, Mexico largely lacked a significant domestic civil society constituency dedicated to the issue.⁶⁹ Consequently, more widespread Mexican civil society involvement began in large part due to outreach efforts by Mexico's environmental ministry, the Instituto Nacional de Ecología (INE), to recruit environmental organizations for a multi-sector national consultative group.⁷⁰ Once they had been recruited, Mexican environmental groups took the initiative to expand the domestic PRTR network.⁷¹ Participation in INE's consultative group facilitated connections between the CEC and Mexican environmental organizations.⁷² The CEC supported the work of Mexican NGOs through financial means as well as through sponsoring tri-national activities.⁷³

One major challenge Mexican activists faced in establishing a national PRTR was to make the registry mandatory for industry.⁷⁴ To accomplish this, Mexican activists went beyond the CEC's cooperative discussion spaces and adopted more confrontational tactics.⁷⁵ They mobilized dozens of domestic groups, leveraged international pressure by collaborating with U.S. and Canadian environmentalists,

67. Talli Nauman, *Toward Pollutant Reporting in Mexico: CEC Workshop Reveals Progress*, TRIO: THE NEWSL. OF THE N. AM. COMMISSION FOR ENVTL. COOPERATION, Winter 2000-2001, available at <http://www.cec.org/trio/stories/index.cfm?varlan=english&ed=2&ID=12>.

68. *Id.*

69. Interview with Executive Director of National Environmental NGO in Mexico City, Mex. (Jan. 25, 2006).

70. Interview with Coordinator of Regional Environmental NGO, in Guadalajara, Mex. (Feb. 6, 2006).

71. See Interview with Coordinator of National NGO in Mexico City, Mex. (Feb. 28, 2006).

72. *Id.*

73. Interview with Executive Director of National Environmental NGO, *supra* note 69.

74. Interview with Coordinator of Regional Environmental NGO, *supra* note 70.

75. Interview with Executive Director of National Environmental NGO, *supra* note 69.

and utilized the CEC to informally pressure the Mexican government.⁷⁶

The Mexican legislature's approval in December 2001 of a mandatory PRTR represented a major victory for Mexican activists.⁷⁷ However, any hopes that a PRTR would soon be implemented quickly diminished as environmental groups faced increasing government and industry opposition.⁷⁸ PRTR activists continued a variety of tactics to maintain pressure on the Mexican government.⁷⁹ In August 2006, the government released preliminary data on emissions of toxic chemicals from over 1,000 industrial facilities in Mexico.⁸⁰

2. Article 13 Report: GM Maize

Over thousands of years, Mexico's indigenous peoples developed maize through cross-fertilization techniques, and it continues to hold deep cultural and social significance in Mexico.⁸¹ Maize is also a critical crop for the large number of Mexican subsistence farmers with small land-holdings.⁸² Although the Mexican government banned GM maize cultivation in 1998, it continued to allow unlabeled GM maize to be imported from the United States, leading many to speculate it would be only a matter of time before GM strains began to appear.⁸³ In April 2002, a coalition of twenty-three Mexican civil society organizations petitioned the CEC to develop an Article 13 report

76. Interview with Coordinator of International NGO in Mexico City, Mex. (Dec. 9, 2005).

77. Talli Nauman, *Mexican Right-to-Know Boosters Should Build Bridges to Environmental Disclosure Law* (Int'l Rel. Center/Americas Program, Silver City, N.M.), Apr. 13, 2005, available at <http://americas.irc-online.org/am/791>.

78. *Id.*

79. Interview with Coordinator of International NGO, *supra* note 76.

80. *Public Gets First Look at Industrial Pollution in Mexico*, CEC LATEST NEWS (Commission for Environmental Cooperation, Montreal, Can.), Aug. 22, 2006, <http://www.cec.org/news/details/index.cfm?varlan=english&ID=2721>.

81. See, e.g., Ricardo J. Salvador, *Maize*, <http://maize.agron.iastate.edu/maizearticle.html>.

82. Gisele Henriques & Raj Patel, *NAFTA, Corn, and Mexico's Agricultural Trade Liberalization* (Int'l Rel. Center/Americas Program, Silver City, N.M.), Feb. 13, 2004, <http://americas.irc-online.org/reports/2004/0402nafta.html>.

83. Ivan Noble, *Mexican Study Raises GM Concern*, BBC NEWS, Nov. 28, 2001, <http://news.bbc.co.uk/2/hi/science/nature/1680848.stm>.

on GM maize's environmental impacts on maize biodiversity.⁸⁴ The coalition included one international NGO (Greenpeace), two national NGOs, and local groups from Oaxaca, a Mexican state with a relatively large population of indigenous and subsistence farmers and where GM maize strains had recently been found.⁸⁵ The case was one of the CEC's most controversial, attracting an unprecedented level of civil society involvement and mobilization.⁸⁶

One key event in the Article 13 process was the CEC Maize and Biodiversity Symposium held in Oaxaca.⁸⁷ The symposium and an independent alternative forum organized by local groups attracted hundreds of participants, including a large number of local grassroots groups, who presented a variety of perspectives both similar to and distinct from the original petitioners'.⁸⁸ The CEC forum and surrounding civil society protests attracted a high level of local, regional, national, and even international media attention.⁸⁹ The political impact was felt immediately when, a few weeks after the Symposium, Distribuidora Conasupo, S.A. (DICONSA), a basic foods program of the Mexican government, stopped distributing GM maize to Oaxaca, thereby shutting down one major entry point to the region.⁹⁰ Even after the Symposium, controversy continued to characterize the Article 13 process. The U.S. government allegedly delayed the CEC report's publication five months beyond its original release date, and even then the report was only officially published after Greenpeace had leaked

84. *Maize and Biodiversity*, *supra* note 45, at 34-35.

85. Interview with Activist Representative of NGO, in Oaxaca, Mex. (Feb. 15, 2006).

86. Interview with Coordinator of National Environmental NGO, in Mexico City, Mex. (Mar. 17, 2006).

87. Commission for Environmental Cooperation, *Maize and Biodiversity Symposium: The Effects of Transgenic Maize in Mexico*, Agenda, Mar. 11, 2004, http://www.cec.org/files/pdf//AGENDA-Maize-symposium-Public_EN.pdf.

88. Interview with Activist Representative of NGO, *supra* note 85; Letter from Commission for Environmental Cooperation, Joint Public Advisory Committee, to Commission for Environmental Cooperation Council (Apr. 13, 2004), http://www.cec.org/files/PDF/JPAC/JPAC-Letter-Maize-13-Apr-04_en.pdf (stating that the maize symposium attracted "several hundred" participants); Interview with Coordinator of Campesino NGO, in Oaxaca, Mex. (Feb. 15, 2006).

89. Interview with Coordinator of National Environmental NGO, *supra* note 86.

90. Interview with Coordinator of Campesino NGO, *supra* note 88.

its contents to the public.⁹¹ Although the U.S. government appended comments to the report calling it “fundamentally flawed” and unscientific,⁹² the report included several recommendations favorable to petitioners, such as minimizing live GM maize imports, requiring GM maize from the United States to be labeled and sent to mills for processing, and urging greater supports for traditional agriculture.⁹³ To date, the Mexican federal government has failed to implement any of these recommendations, and civil society groups continue to pursue a diverse array of strategies in defense of maize.⁹⁴

3. Article 14 and 15 Citizen Petition Mechanism: Lake Chapala

Lake Chapala is the largest lake in Mexico and the third largest in Latin America.⁹⁵ Traditionally it was referred to as *Mar de Chapala*, or the Chapala Sea.⁹⁶ It provides fresh water for over 8 million people, is home to hundreds of plant and animal species, and serves as a critical habitat for migratory birds.⁹⁷ The lake also faces considerable threats from over-exploitation and pollution.⁹⁸

The first Lake Chapala petition was filed with the CEC in October 1997 by the Instituto de Derecho Ambiental (IDEA), then a recently formed public interest environmental law firm in Guadalajara.⁹⁹ In

91. Greenpeace International, *Bush Suppresses GE Crop Warnings: Leaked Report Acknowledges Genetic Threat* (Oct. 18, 2004), <http://www.greenpeace.org/international/news/bush-suppresses-ge-crop-warnin#>.

92. See *Maize and Biodiversity*, *supra* note 45 at 48.

93. *Id.* at 31, 48.

94. Interview with Coordinator of Regional NGO, in Oaxaca, Mex. (Feb. 17, 2006); Interview with President of Indigenous NGO, in Oaxaca, Mex. (Feb. 16, 2006).

95. See Lake Chapala I Submission, *supra* note 65.

96. *Mexico's Largest Lake on the Verge of Collapse?*, GNF NEWSLETTER, (Global Nature Fund, Radolfzell, Germany), Feb. 2003, at 1, available at <http://www.globalnature.org/bausteine.net/file/showfile.aspx?downdaid=5761&sp=E&domid=1011&fd=2>.

97. Tony Burton, *Can Mexico's Largest Lake Be Saved?*, 23 ECODECISION 68 (1997), available at http://www.mexconnect.com/mex_/travel/tonysarticles/tblguna_saved.html.

98. Interview with Executive Director of National Environmental NGO, *supra* note 54.

99. *Saving Lake Chapala*, E-LAW ADVOCATE (Environmental Law Alliance

the petition, IDEA alleged that Mexico's environmental protection enforcement agency, the Procuraduría Federal de Protección al Ambiente (PROFEPA), had failed to comply with its procedural requirements when, instead of initiating administrative proceedings on a domestic complaint the petitioners had filed in 1996, it sent the complaint to other government agencies who refused to intervene.¹⁰⁰ In October 1998, the CEC announced it had accepted IDEA's petition.¹⁰¹ Approximately one month later, PROFEPA issued a decision rejecting the petitioners' original 1996 complaint.¹⁰² In July 2000, the CEC determined that based on PROFEPA's decision, it would close the case.¹⁰³

Despite the CEC's decision to dismiss the petition, IDEA and its collaborators continued to utilize the CEC. They lobbied the JPAC to take action, and in May 2003 a coalition of nine Lake Chapala area civil society organizations represented by IDEA filed a second CEC citizen petition.¹⁰⁴ The petition alleged continuing violations by the Mexican government regarding both the Chapala watershed and the proposed government-sponsored Arcediano dam, which was to be located downstream from the lake.¹⁰⁵ The CEC accepted the second petition in December 2003, and after receiving a response from the Mexican government, announced in May 2005, that it would create a factual record.¹⁰⁶ The petitioners have utilized a variety of tactics to preserve the watershed and have had some success. In 2004, a Mexi-

Worldwide, Eugene, Or.), Winter, 2004, at 1, www.elaw.org/news/advocate/default.asp?issue=2004-1.

100. See Lake Chapala I Submission, *supra* note 65, at 3-5.

101. Letter from Secretariado de la Comisión para la Cooperación Ambiental to Julia Carabias Lillo, SEMARNAP (Oct. 2, 1998), available at <http://www.cec.org/files/pdf/sem/97-7-DET-So.PDF>.

102. Determinación del Secretario en conformidad con el artículo 15(1) del Acuerdo de Cooperación Ambiental de América del Norte [Determinación] [Secretariat Determination Not to Issue a Factual Record], A14/SEM/97-007/16/15(1), (Jul. 14, 2000) at 1-2, <http://www.cec.org/files/pdf/sem/ACFA4D.pdf>.

103. *Id.* at 15.

104. Interview with Executive Director of National Environmental NGO, *supra* note 54.

105. Lake Chapala II Submission, *supra* note 65.

106. Lake Chapala II Submission Timeline, Commission for Environmental Cooperation, available at <http://www.ec.org/citizen/submissions/details/index.cfm?varlan=english&ID=90>.

can administrative law judge suspended the government-initiated Arcediano dam project, and that same year Mexican federal authorities committed \$250 million to restore Chapala's water basin.¹⁰⁷

C. Data Analysis

This section analyzes interview data from Mexican activists to identify the secondary consequences of the CEC's participatory mechanisms on activists' transnational and domestic civil society networks, as well as the impacts of these networks on activists' claims-making. It compares Mexican activists' experiences across the CEC's different soft law mechanisms to identify these mechanisms' distinct opportunities and constraints on activists' international and domestic networking. It then applies this analysis to formulating policy recommendations on how soft law mechanisms can be structured so as to foster varying types of civil society engagement.

1. *The Impact of the CEC on Transnational Networks*

International law scholars researching the CEC and other soft law mechanisms have generally asserted that these mechanisms have encouraged transnational civil society collaboration.¹⁰⁸ This assertion raises, but does not address, the central questions of why, how, and under what circumstances such collaboration occurs. Given the frequency with which transnational network formation has been highlighted by researchers and promoted as a significant counterweight to globalization's technological and institutional changes,¹⁰⁹ precious lit-

107. *Saving Lake Chapala*, *supra* note 99; Chris Kraul, *Mexico: Fight Over Dam Points Up Water Woes*, L.A. TIMES, May 9, 2004, at A5.

108. *See, e.g.*, Gustavo Vega-Canovas, *NAFTA and the Environment*, 30 DENV. J. INT'L L. & POL'Y 55, 61 (2001); Kate Andrias, *Work in the 21st Century—A Look at the Contemporary Labor Movement: Gender, Work, and the NAFTA Labor Side Agreement*, 37 U.S.F. L. REV. 521, 554 (2003); Adelle Blackett, *Towards Social Regionalism in the Americas*, 23 COMP. LAB. L. & POL'Y J. 901, 921 (2002).

109. *See, e.g.*, Peter Evans, *Fighting Marginalization with Transnational Networks: Counter-Hegemonic Globalization*, 29 CONTEMP. SOC. 230, 231 (2000) (arguing that transnational networks form a "globalization from below" that emphasizes challenge rather than adaptation, illustrating possibilities for "cumulative changes that might counteract the inegalitarian consequences of dominant forms of globalization").

tle is known about the institutional circumstances under which it is both most and least likely to emerge.

Mexican activists' experiences with the CEC show that, despite the emphasis placed on transnational collaboration by researchers, participation in the CEC does not "necessarily," or even "probably," result in activists' transnational collaboration.¹¹⁰ This section discusses some of the ways in which the CEC's soft law mechanisms have provided distinct opportunities and constraints on transnational collaboration among Mexican civil society actors. It analyzes these impacts in terms of two processes: transnational framing and the formation of transnational ties between activists.

a. Transnational Framing

Opportunities for activists to develop transnational frames in which they think about their work in transnational terms are one critical but potentially overlooked way in which soft law mechanisms can serve as a critical precursor to the formation of transnational ties. The extent to which Mexican activists reported transnational frame formation within the CEC depended in significant part on the institutional characteristics of the mechanisms in which they were participating.

Those activists reporting the highest levels of transnational frame formation attributed this to opportunities for dialogue with activists and representatives from other NAFTA countries. For example, one activist in the PRTR working group described how discussions with other group members caused her to view environmental issues in transnational terms for the first time.¹¹¹ Another activist described how merely attending just two JPAC meetings dramatically impacted the extent to which he viewed his work in transnational terms:

What interests me [about attending JPAC meetings] is that we can find each other, those of us who don't agree [with what's going on], who are from other countries [I] can get in touch with someone . . . and [that person] can tell me about their [sic] experiences and with the experiences that we exchange, we return as different people. I'm not the same . . . as when I went to [the JPAC meeting in] Canada. I know different things. I know how these people have

110. See discussion *infra* Part III.C.1(a)-(b).

111. Interview with Coordinator of International NGO, *supra* note 76.

struggled. I know what interests them [My participation in the JPAC] has been useful . . . for me to have a more holistic, a more global vision.¹¹²

Significantly, both the PRTR and JPAC were institutional spaces within the CEC that prioritized opportunities for face-to-face interaction between participants. Moreover, each offered relatively low barriers to entry. The PRTR project actively recruited Mexican civil society groups to participate,¹¹³ and activists can attend a single JPAC meeting with financial assistance.¹¹⁴ These lower barriers may result in the participation of a larger proportion of activists who do not already possess strong transnational frames, and for whom such an experience may be potentially transformative.

In contrast, reporting mechanisms like the citizen petition tend to contribute less directly to transnational identity formation due to the higher resource demands of preparing and pursuing a legalistic complaint and lack of institutional opportunities for dialogue. They can, however, offer a useful vehicle to “project” transnational identities. For example, the citizen petition permits organizations irrespective of their countries of residence to file claims regarding any of the NAFTA countries.¹¹⁵ Because relatively few petitions are filed and accepted, citizen petitions offer greater visibility to activists than the CEC’s cooperative mechanisms which involve larger numbers of individuals in more routine activities. According to one activist, a Mexican civil society group’s involvement in a citizen petition filed against another NAFTA country can serve as a vehicle to demonstrate that Mexican civil society “is concerned at a regional and an environmental level, not just at a very local level, and looking for very direct benefits.”¹¹⁶ This type of involvement permits Mexican civil society actors to signal a transnational environmental frame that goes beyond local and domestic concerns, affecting how such organizations are perceived

112. Interview with Coordinator of Indigenous NGO in Mexico City, Mex. (Dec. 5, 2005).

113. Interview with Executive Director of National Environmental NGO, *supra* note 69.

114. Paquin et al., *supra* note 24, at 3.

115. NAAEC, *supra* note 3, art. 14(1).

116. Interview with Executive Director of International Environmental NGO, in Mexico City, Mex. (Nov. 16, 2005).

both domestically and internationally, as well as potentially facilitating future collaborations with transnational partners over the long-term. For example, Lake Chapala activists were able to leverage the attention brought by their CEC involvement to assist in forming relationships with other partners, such as the Living Lakes network, an international organization based in Germany.¹¹⁷

Finally, far from contributing to the growth of transnational frames, under certain circumstances Mexican activists' CEC involvement can lead to the opposite—a reinforcement of local frames and a rejection of the “global.” This is particularly true in institutional spaces that attract participants who do not already possess transnational frames and offer little opportunities for civil society interaction. One activist described how attending the 2003 Maize Symposium in Oaxaca made her realize the CEC was a “deception” and that “the work that we have to do has to come from us.”¹¹⁸ Describing the most disappointing aspects of the meeting, she emphasized its closed dynamics and lack of listening or dialogue.¹¹⁹ Language barriers and the highly programmed nature of the event exacerbated these difficulties, limiting her ability to interact with other activists outside the meeting's formal spaces.¹²⁰

In sum, the CEC's various soft law mechanisms offer distinct possibilities and constraints on transnational frame development. As a policy matter, mechanisms with lower barriers to entry and more opportunities for participant dialogue may increase the likelihood of forming transnational frames. Mechanisms with the higher costs of entry associated with legalistic mechanisms and claims-filtering may play less of a role in frame formation; however, their greater visibility can offer activists opportunities to project transnational frames to a wider public.

Cumulatively, these differences suggest that while soft law mechanisms can contribute to transnational frame formation, such outcomes are far from inevitable, and policy makers who intend soft law mechanisms to encourage transnational frame formation should

117. Interview with Executive Director of National Environmental NGO, *supra* note 54.

118. Interview with Coordinator of Regional NGO, *supra* note 94.

119. *Id.*

120. *Id.*

pay attention to the opportunities for dialogue and exchange such mechanisms offer. These differences are reminders of the challenges of attempting to assess soft law mechanisms' direct and indirect impacts. Since soft law mechanisms may impact how activists perceive and think about their work, the repercussions may extend well beyond the CEC to other areas. For example, one PRTR activist noted that, as a result of her organization's cross-border experiences in the CEC, the organization continued to utilize transnational strategies even after it was no longer involved, because "it is very important to carry out processes that really . . . cross borders."¹²¹ For reasons that will be explored in the following section, Mexican civil society activists have been able to form long-term, intensive transnational ties through their work with the CEC only to a limited extent. Given these limitations it may be that the actual impact of soft law mechanisms like the CEC's are more pronounced with regards to the formation and signaling of transnational frames than to the direct formation of new transnational activist networks. Although such secondary consequences may be difficult to measure, it is necessary to consider them in order to achieve a more complete assessment of the soft law mechanisms' actual effects.

b. Formation of Transnational Ties Between Activists

Mexican activists reported high variation in the intensity and duration of transnational activist ties they formed through the CEC. Of all those interviewed, the only activists that reported forming long-term, intensive cross-border collaboration through the CEC were PRTR participants.¹²² By contrast, Lake Chapala and GM maize activists reported short-term, lower intensity collaboration with a larger number groups, while activists whose primary institutional vehicle was the JPAC reported low intensity collaboration with a low number of groups.¹²³ Although these experiences do not necessarily reflect

121. Interview with Coordinator of National NGO, *supra* note 71.

122. Interview with Coordinator of International NGO, *supra* note 76; Interview with Executive Director of National Environmental NGO, *supra* note 69; Interview with Coordinator of Regional Environmental NGO, *supra* note 70; Interview with Co-Director of International Environmental NGO, in Aguascalientes, Mex. (Feb. 7, 2006); Interview with Coordinator of National NGO, *supra* note 71.

123. Interview with Coordinator of Indigenous NGO, *supra* note 112; Interview with Staff Attorney of International Environmental NGO, in Mexico City,

the overall frequency of different transnational collaboration patterns within the CEC, they show that a wide range of such collaborations can emerge across different soft law mechanisms in the same institution. The following analysis identifies two aspects of soft law mechanisms that played a key role in the emergence and nature of transnational collaboration among activists: (1) institutional opportunities for transnational networking; and (2) the externalization pathway of the dispute.

i. Availability of Institutional Opportunities for Transnational Networking

In the words of one PRTR activist, “[l]ook, that [national, tri-national and international strategy], I didn’t make it up. That . . . was already a given.”¹²⁴ By the time Mexican civil society groups were invited to join the PRTR project, they were entering an institutional space already shaped by a tri-national superstructure in which the Mexican government had committed to developing a PRTR.¹²⁵ This institutional space offered a number of opportunities to PRTR activists that facilitated the emergence of transnational activist collaboration in ways not available to activists involved in other institutional mechanisms within the CEC.

The fact that the PRTR project was a “top-down” effort generated through diplomatic channels played a key role in generating conditions conducive to cross-border civil society collaboration. In part, it created political opportunities that offered activists relatively concrete benefits as a result of transnational participation. First, it facilitated the initial involvement of Mexican, U.S., and Canadian activists by

Mex. (Dec. 8, 2005); Interview with Activist Representative of NGO, *supra* note 85; Interview with Coordinator of Campesino NGO, *supra* note 88; Interview with President of Indigenous NGO, *supra* note 94; Interview with Coordinator of Regional NGO, *supra* note 94; Interview with Coordinator of National Environmental NGO, *supra* note 86; Interview with Executive Director of National Environmental NGO, in Guadalajara, Mex. (May 17, 2006); Interview with Executive Director of National Environmental NGO, *supra* note 54.

124. Interview with Coordinator of Regional Environmental NGO, *supra* note 70.

125. See Commission for Environmental Cooperation, *Pollutant Release and Transfer Registers*, CEC Council Resolution: 00-07 (June 13, 2000) available at http://www.cec.org/files/PDF/COUNCIL/00-07e_EN.pdf.

making it seem more likely a PRTR would be developed.¹²⁶ By contrast, in CEC mechanisms where the outcome is more uncertain because civil society groups lack firmer prior commitments from national governments, activists may be reluctant to invest the time and resources it would take to develop or maintain transnational contacts.

Another way in which Mexico's prior diplomatic commitment facilitated transnational activism's emergence was by constructing a substantive overlap between the interests and experiences of U.S., Canadian, and Mexican groups. Since Mexico had committed to developing a PRTR comparable to those in the United States and Canada, the experiences and technical knowledge of U.S. and Canadian groups became relevant to Mexican groups who were able to use this information in their efforts to pressure government and industry.¹²⁷ Such overlap does not always exist in other CEC mechanisms.¹²⁸ For example, JPAC meetings convene environmental groups on a variety of themes, and groups in attendance may have little in common in terms of their substantive focus.¹²⁹ In CEC mechanisms that are initiated by the public, such as the citizen petition, it is largely up to activists themselves to identify and construct the substantive overlap which justifies cooperation; and many times they must do so in the absence of a pre-existing cross-border regulatory framework.¹³⁰

Finally, the Mexican national government's prior commitment to a PRTR made more material and institutional resources available to civil society groups, which they were able to appropriate for transnational networking. For example, grants from the CEC's now defunct

126. Interview with Coordinator of National NGO, *supra* note 71.

127. Interview with Executive Director of National Environmental NGO, *supra* note 69; Interview with Coordinator of Regional Environmental NGO, *supra* note 70; Interview with Coordinator of International NGO, *supra* note 76.

128. See *supra* Part II (discussing Article 13, citizen petitions, and JPAC).

129. For a complete listing of registered attendees and topics of discussion at JPAC meetings see Commission for Environmental Cooperation, *Who We Are-Joint Public Advisory Committee-Records of Discussion*, http://www.cec.org/who_we_are/jpac/discussions/index.cfm?varlan=english.

130. Richard J. Ansson, Jr., *The North American Agreement on Environmental Protection and the Arctic Council Agreement: Will These Multinational Agreements Adequately Protect the Environment?*, 29 CAL. W. INT'L L.J. 101, 126 (1998) (noting that the NAAEC "failed to provide a forum whereby the three countries could develop standards to prevent transboundary environmental degradation"); Interview with Executive Director of International Environmental NGO, *supra* note 116.

North American Fund for Environmental Cooperation (NAFEC) encouraged cross-border PRTR proposals, and funding from the Mexican government allowed domestic groups to expand into this new issue area.¹³¹ Activists from the three NAFTA countries were also funded to attend CEC meetings,¹³² resulting in semi-regular transnational networking opportunities. Other CEC mechanisms do not offer similar material or institutional supports. Article 13 and the citizen petition process do not regularly convene public meetings,¹³³ and while, in theory, the JPAC offers activists an opportunity to meet on an ongoing basis, in practice, the irregularity and uncertainty of financial assistance undermines activists' ability to sustain their participation and contacts.¹³⁴

However, these factors alone do not fully explain why such a high degree of transnational collaboration occurred among PRTR activists. If these factors fully explained this collaboration, one would expect transnational contacts between activists to have been established relatively early on, though this was not the case. To understand why transnational activism emerged when it did, it is necessary to also consider a second set of factors that reflect the specific opportunities offered by the CEC's participatory spaces.

One PRTR activist described the pivotal shift that occurred during a 2003 CEC meeting, which led to an intensification of tri-national collaboration:

[T]he groups from the three [countries were] very upset because the Mexican PRTR wasn't coming out, and it seemed like it was going to keep on . . . getting put off and put off. . . . Then when . . . [we] saw that the Canadians and the U.S. groups were also angry—naturally we began to get together and plan a meeting inside the meeting. [Two activists, one from the United States and one from Canada] . . . said, "well, why don't we get together and meet in my organization's office [which happened to be near the CEC meeting], to see how we can make the CEC pressure the Mexican gov-

131. *See, e.g.*, Interview with Executive Director of National Environmental NGO, *supra* note 69.

132. Interview with Co-Director of International Environmental NGO, *supra* note 122.

133. *See supra* Part II.A-B.

134. *See, e.g.*, Interview with Coordinator of Regional Environmental NGO, *supra* note 70.

ernment more so that finally the PRTR regulations will come out.”¹³⁵

While the backing of national governments might have created the potential for transnational activism to emerge, this anecdote illustrates that such collaboration did not begin to take root until one critical moment—when activists witnessed, in person, one another’s anger with a common target, the Mexican government. The experience highlights the importance of what might be described as the experiential aspects of activism, which can often get lost in discussions of rational interests. While such intangible experiences may seem to be the result of mere fortuitousness, international institutions can play a role in increasing the likelihood that such opportunities will occur. Mexican activists’ experiences suggest two aspects of soft law mechanisms’ participatory dynamics that support the emergence of transnational collaboration: (1) opportunities for activists to participate in cross-border spaces that convene actors from different sectors (especially those with “opposing” interests), and (2) opportunities for activists to engage in relationship-building in independent spaces with one another.

Institutional spaces that convene actors across different sectors are important because they offer opportunities for activists divided by geography, history, and culture to share experiences of opposition by a common target and provide a concrete experiential basis for solidarity. While such multi-sector spaces are often established to promote cooperative dialogue between sectors, it may be that a certain level of “non-cooperation” contributes to pushing activists to incur the costs of overcoming barriers to transnational collaboration. It may be that in dialogue-based soft law mechanisms, whose non-binding nature offers little real incentive for powerful actors to make concessions, this outcome might be a more common (though unintended) effect.

At the same time, the possibility of transnational collaboration largely depends on activists’ ability to take advantage of moments like the experience that the PRTR activist described.¹³⁶ This raises an important additional factor for transnational network formation—the availability of spaces for activists to strengthen their relationships with

135. Interview with Co-Director of International Environmental NGO, *supra* note 122.

136. *Id.*

one another. The CEC's PRTR meetings offered activists opportunities to meet for several days each year.¹³⁷ Activists pressured the CEC to provide rooms, equipment, and scheduling accommodations so they could hold their own meetings before official PRTR events, after which they maintained contact through telephone and email.¹³⁸ In one Mexican activist's words, "[t]his work [of getting to know environmental groups from other NAFTA countries], isn't only attributable to the CEC, but also to the [environmental] organizations. We demanded spaces from the Commission."¹³⁹

Together, the factors in the PRTR case illustrate the number and depth of institutional supports that may be necessary for soft law mechanisms to foster new transnational ties. In contrast to unitary theories of "globalization from below," these experiences show how "top down" actions by international institutions and national governments can play a critical role in facilitating "bottom up" transnational networks' emergence. Mexican activists' experiences also illustrate the many obstacles activists must overcome to generate transnational ties. Merely establishing tri-national institutional spaces such as the JPAC will not necessarily result in strong transnational relationships. Often, the leverage civil society groups gain from soft law mechanisms is simply too limited to justify the resource investment necessary to form strong transnational ties. One implication of these findings is that, to the extent that transnational collaboration emerges through supports and opportunities provided by soft law mechanisms, such supports may be important in sustaining that collaboration. For example, changes in national governments' priorities in recent years have diminished the PRTR projects' resources, causing activists to reduce the intensity of their transnational collaboration.¹⁴⁰ Such findings however do not account for the fact that many Mexican activists, who were members of well-developed, long-standing transnational networks, nonetheless chose to limit their engagement with those net-

137. *Id.*

138. *Id.*; Interview with Coordinator of Regional Environmental NGO, *supra* note 70.

139. Interview with Coordinator of International NGO, *supra* note 76.

140. Interview with Coordinator of Regional Environmental NGO, *supra* note 70.

works in their CEC work. The next section discusses this phenomenon.

ii. Externalization Pathway of the Dispute

One common civil society motivation for participating in international institutions like the CEC is to externalize disputes, bringing them from domestic to international arenas.¹⁴¹ This section explores how different soft law pathways for externalizing disputes can affect activists' opportunities for transnational collaboration. In the case of Mexican activists and the CEC, a significant difference existed between mechanisms that externalized disputes primarily through the government's own actions (such as the PRTR project) and those mechanisms which externalized disputes primarily through activists' own initiative (such as the Lake Chapala and GM maize petitions).

One reason for this difference between the two types of mechanisms is that Mexican activists bringing sensitive domestic issues to international arenas reported concerns of making themselves vulnerable to politically damaging accusations of having facilitated foreign interference in Mexican affairs.¹⁴² Consequently, many Mexican activists carefully avoided the appearance of collaborating too closely with transnational partners.¹⁴³ For example, in one citizen petition, even though a Mexican activist group already had extensive contacts with a U.S. group that had provided technical assistance, the Mexican group decided against having the U.S. group sign the petition:

We didn't want to give an opening above all at the state . . . or even at the federal level to start saying that there had been foreign interference in such an important and controversial case [W]e would have to be careful that the authorities wouldn't use [non-Mexican groups' support] against us, to say that there's foreign interference, and say, "[W]e're the ones who must decide what gets done [in our state]!" So we said, well, . . . do we want the issue

141. TARROW, *supra* note 4, at 145.

142. *See, e.g.*, Interview with Executive Director of National Environmental NGO, *supra* note 54; Interview with Coordinator of Campesino NGO, *supra* note 88.

143. *See, e.g.*, Interview with Executive Director of National Environmental NGO, *supra* note 54; Interview with Activist Representative of NGO, *supra* note 85.

being discredited like that?¹⁴⁴

Similar actions were reported by other Mexican activists.¹⁴⁵ Petitioners in the Article 13 GM maize case declined to have foreign groups sign their petition.¹⁴⁶ Instead, they used their already-existing international networks and the controversy's high profile to recruit over ninety foreign organizations to send letters of support to the CEC, urging that it accept the case.¹⁴⁷ Once the CEC did so, these groups' involvement nearly ceased. Similarly, in the Lake Chapala case, although petitioners decided against having U.S. and Canadian groups sign their petition, they used JPAC meetings to organize letters of support from U.S. and Canadian groups.¹⁴⁸ In both instances, instead of seeking out high-profile collaboration with foreign groups, activists sought out lower-intensity collaborations in which no one foreign group could be identified as particularly "involved." Concerns of foreign interference accusations were well-founded.¹⁴⁹ In a somewhat notorious example, in response to the first petition filed against the Mexican government, Mexico's environmental minister made widespread and damaging accusations in the press that one high-profile Mexican activist had been paid off and was being directed by foreign interests.¹⁵⁰

In contrast, in cases like the PRTR project where the dispute was primarily externalized through the government's own actions, activists felt fewer constraints on engaging in more intense and public transna-

144. Interview with Executive Director of National Environmental NGO, *supra* note 54.

145. Interview with Activist Representative of NGO, *supra* note 85.

146. *Id.*

147. Interview with Staff Attorney of International Environmental NGO, *supra* note 123; Interview with Coordinator of National Environmental NGO, *supra* note 86.

148. Interview with Executive Director of National Environmental NGO, *supra* note 54.

149. See Fernando Bejarano, *Mexico-U.S. Environmental Partnerships*, in CROSS-BORDER DIALOGUES: U.S.-MEXICO SOCIAL MOVEMENT NETWORKING, *supra* note 20, at 113, 129 (noting that Mexican authorities often try to delegitimize local environmental struggles by suggesting that there are hidden party interests at play, thereby undermining the social cohesion of the affected group).

150. Interview with Director of National Environmental NGO, in Mexico City, Mex. (Dec. 14, 2005).

tional collaboration.¹⁵¹ One PRTR activist described Mexican groups' decision-making process regarding whether to intensify their collaboration with U.S. and Canadian groups:

[W]e even discussed, well, how is this [cross-border collaboration] going to be seen? Whether . . . as foreign involvement in Mexican affairs or if we have to see it as something natural—you're inside a trade agreement. We discussed it between ourselves. We agreed that we had to open up and that this was a way to become stronger . . . because . . . we were going to have . . . more of an international presence.¹⁵²

Since activists perceived that the Mexican government's role in externalizing the PRTR issue through its trade commitments lessened the risk of foreign interference accusations, they determined it would be strategically beneficial to engage in more in-depth transnational collaboration.¹⁵³ Consequently, they coordinated actions, shared information and resources, and developed common strategies and platforms.¹⁵⁴ Far from triggering accusations of foreign interference, the transnational strategy met with a certain degree of success.¹⁵⁵ It enhanced Mexican groups' credibility and launched a period in which government officials became more responsive to activists.¹⁵⁶

Differences between the strategic costs and benefits of cross-border collaboration as a result of soft law mechanisms' externalization pathways have several implications. First, the importance of domestic political culture in mediating these mechanisms' impacts suggests that activists' willingness to engage in transnational networks within soft law mechanisms will vary across domestic settings, implying the need for greater sensitivity to domestic context as well as the need for more place-based, empirical research. Second, while some

151. Interview with Co-Director of International Environmental NGO, *supra* note 122.

152. *Id.*

153. *See id.*

154. *See, e.g.*, Interview with Coordinator of International NGO, *supra* note 76; Interview with Co-Director of International Environmental NGO, *supra* note 122.

155. Interview with Co-Director of International Environmental NGO, *supra* note 122.

156. *Id.*

legal researchers have tended to highlight the benefits transnational collaboration offers in the context of international soft law mechanisms,¹⁵⁷ relatively little attention has been paid to its potential costs.¹⁵⁸ Mexican activists' experiences highlight the presence of a more complex political terrain in which high-profile intensive transnational collaboration is not always beneficial, offering insight into why activists may not pursue certain transnational strategies even if they are theoretically available to them. It may be that, in circumstances where the threat of foreign interference accusations is significant, soft law mechanisms that are more cooperative and dialogue-based are more conducive to promoting overt transnational collaboration than soft law mechanisms which place domestic activists more explicitly and directly in opposition to their domestic governments.

Finally, Mexican activists' experiences with the constraints on transnational activism in the CEC offer evidence for the assertion that transnational activism is not a necessary or even likely outcome of all international institutions' public participation mechanisms. It suggests that specific institutional mechanisms must offer opportunities sufficiently attractive to induce activists to incur the significant cost of engaging in transnational ties. The possibilities and contours of the transnational public sphere—to the extent that such a space may ever exist—are particular, indeterminate, and contingent. Far from inevitable, they are being constructed one space at a time.

157. See, e.g., Blackett, *supra* note 108, at 965 (stating that the need for social regionalism in the Americas is “likely to grow, and with it, trans-governmental and trans-border civil society coalitions that are likely to deepen will repeatedly expose the deficiencies of trade”); Graubart, *supra* note 44, at 434 (inquiring whether groups submitting CEC citizen petitions are “assembling cross-border coalitions of co-submitters to increase the appeal and visibility of the complaint”); David M. Trubek et al., *Transnationalism in the Regulation of Labor Relations: International Regimes and Transnational Advocacy Networks*, 25 LAW & SOC. INQUIRY 1187, 1194 (2000) (arguing that “[t]he real key to the transnational vision is the belief that through the continued operation of networks linking various actors across borders, a number of overlapping normative arenas can be mobilized to create an effective regulatory mosaic”).

158. See John A. Guidry et al., *Globalizations and Social Movements*, in GLOBALIZATIONS & SOCIAL MOVEMENTS: CULTURE, POWER, AND THE TRANSNATIONAL PUBLIC SPHERE 1, 23 (John A. Guidry et al. eds., 2000) (stating the importance of recognizing that “the existing transnational public sphere is much more fractured, potentially exclusive, and power laden than our projects of liberal hope . . . might wish”).

2. *The Impact of the CEC on Domestic Ties Between Activists*

In comparison to the emphasis on transnational networks in much research on international institutions, relatively little attention has been paid to these institutions' impact on activists' domestic networks and relationships.¹⁵⁹ This may be due in part to the ongoing influence of traditional boundaries between the study of international and domestic politics. However, there is an increasing consensus that as a consequence of globalization and its processes, the boundaries between these two domains are becoming more fluid.¹⁶⁰

Given the barriers that continue to hinder the emergence and development of transnational networks, at least in some instances the secondary consequences of international soft law mechanisms like the CEC's may be more significant with regards to activists' domestic ties. In fact, many Mexican activists reported greater success in expanding their domestic ties through the CEC.¹⁶¹ These ties ranged from short-term mobilizations around a single, high-profile international event,¹⁶² to long-term information exchange networks and more intensive campaign coalitions.¹⁶³ The following sections focus on the

159. See generally *id.* at 4, 14 (arguing that “[a]n analytical focus on the transnational can distract us from the significance of the local in transforming globalization itself” and that “far from emphasizing the disappearance of locality that is implied in much writing on globalization . . . globalization helps create locality”).

160. See generally RAJAGOPAL, *supra* note 14, at 270 (2003) (suggesting that sites of resistance can no longer be understood as “global” or as within the categories of the “nation state” and that rather, in this new image of international order, there are particular enclaves of the “international” that exist in different locations); Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 183-84 (1996) (describing how the concept of transnational legal process breaks down traditional dichotomies between the international and the domestic realms that have historically dominated the study of international law).

161. See, e.g., Interview with Executive Director of National Environmental NGO, *supra* note 54; Interview with Executive Director of National Environmental NGO, *supra* note 123; Interview with Coordinator of National Environmental NGO, *supra* note 86; Interview with Staff Attorney of International Environmental NGO, *supra* note 123; Interview with Activist Representative of NGO, *supra* note 85; Interview with Coordinator of Campesino NGO, *supra* note 88.

162. See, e.g., Interview with Coordinator of National Environmental NGO, *supra* note 86.

163. See, e.g., Interview with Executive Director of National Environmental NGO, *supra* note 54.

secondary consequences that the CEC and its soft law mechanisms have had on Mexican activists' domestic ties.

a. Formation of Long-Term Domestic Ties and Their Impact on Claims-Making

One of the most significant secondary consequences Mexican activists reported as a result of their CEC involvement was the formation and strengthening of long-term domestic ties. Activists who reported the greatest impacts on long-term ties were intensely involved with the CEC on a single, well-defined issue.¹⁶⁴ These activists employed multiple strategies to leverage their CEC involvement to assist their outreach and recruitment of long-term domestic civil society allies.¹⁶⁵ These allies' long-term collaboration later shaped both how activists presented their claims and how those claims were received in the domestic and international arenas.¹⁶⁶ Using the PRTR and the Lake Chapala cases as examples, the following analysis discusses the formation of long-term domestic ties and the impact of those long-term ties on activists' claims-making.

i. Formation of Long-Term Domestic Ties

The Lake Chapala and PRTR cases illustrate how Mexican activists who were closely involved with the CEC on a well-defined issue were able to leverage their involvement to assist in forming long-term domestic networks dedicated to that issue. For example, Lake Chapala activists used the citizen process to help form two civil society coalitions, each of which roughly corresponded to the two CEC petitions.¹⁶⁷ These coalitions engaged in legal, media, and grassroots activities, and expanded their involvement to a variety of political arenas

164. See, e.g., *id.*; Interview with Executive Director of National Environmental NGO, *supra* note 69; Interview with Co-Director of International Environmental NGO, *supra* note 122; Interview with Coordinator of National NGO, *supra* note 71.

165. See *infra* Part III.C.2.a.i.

166. See *infra* Part III.C.2.a.ii.

167. Interview with Executive Director of National Environmental NGO, *supra* note 54.

that extended beyond the scope of the original petition.¹⁶⁸ PRTR groups also established a long-term network that was primarily engaged in information and resource exchange, as well as occasional mobilizing efforts.¹⁶⁹ In both cases, activists were able to utilize CEC involvement as a way to support their outreach and recruitment.¹⁷⁰ Activists employed several strategies to facilitate their domestic outreach efforts.

First and foremost, Lake Chapala and PRTR activists generated interest in their work by using the reputation and legitimacy their organizations gained through intensive CEC involvement. Lake Chapala activists reported a long period during which they had been attempting to bring Lake Chapala to greater public attention in Mexico to no avail,¹⁷¹ including filing domestic complaints at a national level against the Mexican government.¹⁷² Consequently, activists' main motivation for filing a CEC citizen petition was to generate interest in Lake Chapala at the domestic, rather than international level:

One of the strategies was that this case must be taken to the international level to make it visible at the level of the whole country This was the main reason because we saw that maybe [the CEC petition] would do well, maybe it wouldn't . . . but what was important . . . was that [the issue of] Chapala came to light in the country, and began to be a national theme.¹⁷³

Widespread domestic media attention following the first and second CEC petitions caused Lake Chapala activists to be invited by other Mexican groups to speak at their events and to network and build alliances with them.¹⁷⁴ This publicity also helped Lake Chapala activists conduct outreach with local groups, presenting the petition in an at-

168. *Id.*

169. Interview with Executive Director of National Environmental NGO, *supra* note 69; Interview with Co-Director of International Environmental NGO, *supra* note 122.

170. *See, e.g.*, Interview with Coordinator of National Environmental NGO, *supra* note 71.

171. Interview with Executive Director of National Environmental NGO, *supra* note 54.

172. *Id.*

173. *Id.*

174. *Id.*

tractive manner in which groups could collaborate around a concrete goal.¹⁷⁵ Ultimately, even though the CEC dismissed the first petition, activists considered it successful because they were able to use the process to expand their domestic networks.¹⁷⁶ Mexican groups in the CEC's PRTR project were also able to leverage the high profile of their international involvement to enhance their domestic networking.¹⁷⁷ One activist who played a key role in the PRTR coalition's domestic outreach efforts described how links formed with U.S. and Canadian groups during CEC meetings allowed her to use those groups' experiences to motivate potential domestic participants:

The positive part [of having networked in the CEC with U.S. and Canadian groups] . . . is sharing experiences that encouraged Mexican organizations to achieve a PRTR. When we see that the registries are functioning in the U.S. and in Canada . . . that was very encouraging Because having a concrete element, having a concrete demonstration that a registry was functioning, was the most effective way to invite Mexican organizations to get involved in all this [PRTR] work.¹⁷⁸

Both the Lake Chapala and PRTR cases illustrate how Mexican activists were frequently able to more readily and successfully use international venues for domestic networking than for transnational networking.¹⁷⁹ For example, in the PRTR case, Mexican groups first used CEC meetings as opportunities to independently network among themselves.¹⁸⁰ Only later did those gatherings among domestic actors become a "template" for collaboration with U.S. and Canadian activists.¹⁸¹ Mexican PRTR activists were also able to expand the domestic network of organizations focusing on the PRTR beyond the original

175. Interview with Executive Director of National Environmental NGO, *supra* note 123.

176. *Id.*

177. Interview with Coordinator of National NGO, *supra* note 71.

178. *Id.*

179. *See, e.g.,* Interview with Co-Director of International Environmental NGO, *supra* note 122; Interview with Executive Director of National Environmental NGO, *supra* note 54.

180. Interview with Co-Director of International Environmental NGO, *supra* note 122.

181. *Id.*

core of CEC groups in ways they were not able to achieve with their transnational collaborators.¹⁸² Lake Chapala activists also reported having an easier time interacting and networking with other Mexican groups during CEC meetings.¹⁸³ For example, during JPAC meetings, informal socializing and relationship-formation more readily took place among Mexican activists than between Mexican, U.S., and Canadian activists, due to the absence of language and cultural barriers.¹⁸⁴ Lake Chapala activists were also more readily able to strengthen relationships made from initial contacts with Mexican groups at JPAC meetings due to the greater ease in maintaining contact with one another.¹⁸⁵

In sum, in several instances activists who were closely involved with the CEC were able to use their involvement to facilitate outreach and recruitment to organizations that were sufficiently similar to form a basis for long-term collaboration. The extent to which these activists were able to more readily form long-term domestic, as opposed to transnational, networks suggests that some of these international institutions' most significant secondary consequences may be taking place primarily in domestic rather than international arenas. If this is the case, a thorough understanding of the effects of international laws and institutions may require greater attention to domestic political spaces, and to the dynamic relationship between domestic and international venues. As will be shown in the following section, attention to these dynamics is critical for assessing the relationship between international institutions' secondary consequences and activists' claims-making.

ii. Impact of Long-Term Domestic Ties on Claims-Making

Using the PRTR and Lake Chapala cases as examples, this section explores how repeated and intensive interactions brought about by the long-term domestic ties activists formed through the CEC impacted activists' claims-making. The discussion of the PRTR case highlights

182. *Id.*

183. Interview with Executive Director of National Environmental NGO, *supra* note 54.

184. *Id.*

185. *Id.*

how long-term domestic ties can play a critical role in filtering and transforming claims as they pass from the international to the domestic arenas, while the discussion of Lake Chapala highlights how long-term domestic ties can impact the domestic claims activists bring forward to the international arena.

Mexican PRTR activists' experiences illustrate how long-term domestic ties formed through the CEC can significantly transform the application of international claims to the domestic arena in at least three ways. First, domestic ties formed through the CEC facilitated knowledge and information sharing between Mexican activists, allowing activists to adapt the internationally developed concept of the PRTR to domestic contexts. For example, Mexican activists were able to tailor some of the approaches of U.S. and Canadian groups' activism around the PRTR issue to the distinct realities of Mexico's industrial sector with its much greater proportion of small- and medium-sized businesses.¹⁸⁶

Second, long-term domestic ties formed through the CEC impacted Mexican PRTR activists' claims by facilitating the development of a larger domestic constituency in support of a PRTR. Mexican activists were able to strategically frame the PRTR for a domestic audience by placing it in the context of locally-based struggles against industrial pollution.¹⁸⁷ Through these outreach efforts, Mexican activists formed a much larger network, which included dozens of groups.¹⁸⁸ This network played a key role in one of the campaign's major victories, domestic legislation authorizing a mandatory PRTR, demonstrating the importance of domestic networks in the implementation of international commitments and norms.¹⁸⁹

Finally, long-term domestic ties formed through the CEC led to the expansion and, in some cases, transformation of the PRTR claim

186. Interview with Coordinator of Regional Environmental NGO, *supra* note 70.

187. Interview with Coordinator of National NGO, *supra* note 71.

188. *Id.*; see also Nauman, *supra* note 77 (noting that dozens of groups were brought together for the mobilization that achieved PRTR legislative reform in 2001).

189. See generally, Talli Nauman, *Mexican Congress Passes Environmental Reform Package* (INT'L REL. CENTER/AMERICAS PROGRAM, SILVER CITY, N.M.), Jan. 30, 2002, available at <http://www.americaspolicy.org/articles/2002/0201env.html> (last visited Dec. 2, 2006).

itself. In some instances, domestic activists multiplied the political arenas in which PRTR claims were brought, for example by pushing for PRTRs at the local and state levels, in addition to the federal level.¹⁹⁰ In other instances, domestic activists reframed the PRTR's conceptual framework to extend it to other substantive areas.¹⁹¹ One Mexican activist described how her organization used its PRTR involvement in the CEC to expand its domestic work into broader right-to-know issues:

[Participating in the CEC's PRTR activities] gave us a cause It began by being a very small cause, a pollutant registry, and over the years it became one of the pillars of the organization's activities. Beyond a pollutant registry, today the organization's access to information program is enormous, it includes the pollutant registry, participation . . . in a coalition for transparency, participation in an . . . access project, . . . [collaboration with international partners, working at a regional level in Latin America to promote access to environmental issues][The CEC] put the seed of this issue into our organization.¹⁹²

In comparison with the PRTR example, in the Lake Chapala case long-term domestic ties formed between activists highlight the important role newly emergent domestic networks played in transforming domestic claims brought to an international level. One striking example can be seen in how the long-term domestic ties formed by activists as a result of the first CEC petition impacted the framing of claims before the CEC in the second petition.

The two Lake Chapala petitions offer a series of stark contrasts that illustrate this process. For example, Mexican activists report that the first CEC petition was filed in a somewhat "isolated" manner, having been signed by only one petitioner, IDEA—a relatively new public interest environmental law firm based in Guadalajara.¹⁹³ By the time it filed the second CEC petition, IDEA had used the first petition

190. Interview with Co-Director of International Environmental NGO, *supra* note 122.

191. Interview with Executive Director of National Environmental NGO, *supra* note 69.

192. *Id.*

193. Interview with Executive Director of National Environmental NGO, *supra* note 54.

to strengthen its domestic networks,¹⁹⁴ and as a result, the second petition was signed by a coalition of nine environmental groups and grassroots associations¹⁹⁵ Differences are also evident in the two petitions' content. Perhaps not surprisingly, the first petition was fundamentally legalistic, highlighting a detailed narrative of procedural violations and ending with a traditional request for specific relief.¹⁹⁶ In the words of one activist it was "a little bit more based on experiences as a lawyer in Mexico [Its] main goal . . . was to display lack of compliance with Mexican law [and lack of] technical and legal consistency."¹⁹⁷ In contrast, the second petition placed greater emphasis on substantive environmental harms, such as misdistribution of water and health threats to local residents.¹⁹⁸ It also more explicitly framed its arguments in political terms, concluding with a public declaration by the petitioning civil society groups.¹⁹⁹ The declaration places the petition squarely in the context of the groups' previous efforts to politically pressure the CEC and,, stepping out of conventional legal argument, vividly evoked the consequences of the CEC's inaction:

As a corollary, the signing Mexican organizations want to place special emphasis on the fact that in several meetings and petitions we have come to this institution for the purpose of contributing to saving Lake Chapala, and up until this very day we have felt an ambiguous position with respect to one of the most important watersheds in the country. Today once again we put in your hands water for 23 million Mexicans, the health of the residents of Juancatlan and Salto, the salvation of Lake Chapala from disappearance, and the salvation of the migratory birds living along the length of the watershed and Lake Chapala itself, which now find themselves in serious danger of disappearing. Let's give Lake Chapala a chance.²⁰⁰

194. *Id.*

195. Lake Chapala II Submission, *supra* note 65, at 14-15.

196. Lake Chapala I Submission, *supra* note 65.

197. Interview with Executive Director of National Environmental NGO, *supra* note 54.

198. Lake Chapala II Submission, *supra* note 65.

199. *Id.* at 14-15.

200. *Id.* at 14.

Activists describe several ways in which the expansion of IDEA's long-term domestic network between the first and second petitions contributed to differences between the two petitions. First, because by the time of the second petition IDEA had more ties to local residents and organizations directly affected by threats to the Chapala watershed, substantive claims were brought to IDEA's attention that might not have been otherwise.²⁰¹ Second, once those claims were raised, IDEA was in a stronger position to bring them because a greater number of organizations could assist in documenting the information necessary to bring such claims forward.²⁰² Third, IDEA's ties to a larger number of domestic groups enabled it to engage in strategies not available in the first petition. For example, one of IDEA's strategies in the second petition was to "personalize" the environmental harm by highlighting the hardship of Guadalupe Lara, a signatory on the second petition and the sole resident remaining in a village slated to be flooded for the government-sponsored Arcediano dam.²⁰³ According to activists, the publicity and media attention they were able to bring to Ms. Lara's plight played a key role in maintaining the pressure of the second petition on the Mexican government.²⁰⁴ Finally, the expansion of IDEA's long-term domestic networks ultimately contributed to the second petition's greater "success" of being approved for the development of a factual record in the sense that, because the second petition was grounded in substantive violations rather than procedural ones, it was more difficult for the Mexican government to render the petition moot through procedural formalities.²⁰⁵

Together, the PRTR and Lake Chapala cases demonstrate how long-term domestic ties facilitated by activists' CEC involvement can impact activists' claims-making. This can occur by adapting and transforming international claims brought to the domestic arena, as in the PRTR case, and by affecting the framing of domestic claims in the

201. Interview with Executive Director of National Environmental NGO, *supra* note 69.

202. *Id.*

203. Interview with Executive Director of National Environmental NGO, *supra* note 54.

204. *Id.*

205. Secretariat Notification to Council under Article 15(1), A14/SEM-003/45/ADV, (May 18, 2005) available at http://www.cec.org/files/pdf/sem/03-3-ADV_en.pdf.

international arena, as in the Lake Chapala case. These examples show how the impact of international institutions on activists' claims can extend beyond the primary consequences of their substantive and procedural legal requirements to also include secondary consequences on activists' networking. An assessment of both types of consequences may be essential to fully understand the relationship between soft law mechanisms and civil society actors, as well as to fully understand such mechanisms' potential impact and effectiveness. Finally, while the foregoing analysis has concentrated on how activists' ongoing interactions in the context of long-term domestic ties can impact activists' claims-making, short-term ties can also have distinct, but no less significant impacts.

b. Formation of Short-Term Domestic Ties and Their Impact on Claims-Making

In comparison to CEC mechanisms which require more intensive involvement by civil society actors over a substantial period of time, relatively high-profile, "one-time" events open to the public offer opportunities for short-term engagement. Such events do not rely on the outreach and recruitment efforts of those groups already most intensively involved in the CEC to as great an extent. Instead, the event's high profile can offer incentives to civil society participants to organize and mobilize in decentralized streams. Generally, the temporary convergence of interests leading to short-term mobilizations means participating groups lack common bases for collective identity, and their collective involvement tends not to last beyond the event itself.²⁰⁶ However, this very lack of common identity can open participation to a wider variety of groups, including those that are unable or unwilling to engage with international institutions over the long-term. Using the CEC's 2004 Maize Symposium as an example, the following sections discuss first, how soft law mechanisms' high-profile events can contribute to the short-term mobilization of a more diverse array of domestic participants; and second, how this larger but short-term domestic mobilization can impact activists' claims-making.

206. TARROW, *supra* note 4, at 168.

i. Formation of Short-Term Domestic Ties

The CEC's 2004 Maize Symposium represents perhaps the most significant example of a large scale short-term domestic civil society mobilization in the CEC's history.²⁰⁷ As a high-profile event on a controversial issue, it attracted hundreds of participants: "[T]here were rivers of people There were all kinds of interventions – indigenous, campesino, students, scientists, and environmental NGOs. It was very varied. It was very rich."²⁰⁸ One of the Symposium's most notable aspects was the extent to which it attracted local and domestic groups with no CEC experience who did not normally participate in international institutions.²⁰⁹ The reasons for these organizations' lack of engagement with international institutions were not exclusively attributable to a lack of information and resources. Many local groups who most actively mobilized around the Symposium were openly skeptical of international institutions like the CEC and were not interested in becoming involved on a long-term basis. One representative of a local organization explained:

[S]ince many years ago, my personal effort, the basic thing I have insisted on, is not to be from the "top" but to be here, "from the bottom," to be with people, not with institutions [W]e used [the CEC] for our own purposes. Before, during, and after the . . . CEC's meeting, I still think it doesn't serve for anything.²¹⁰

Interviews with Mexican activists involved in the mobilization around the Symposium offer insight into why, even if groups remain dubious of an international institution's inherent value, they may nonetheless choose to participate. Because very few organizations have the resources to engage with international institutions over the long-term, understanding such short-term engagements is critical for more fully assessing civil society involvement in international institu-

207. Interview with Staff Attorney of International Environmental NGO, *supra* note 123.

208. Interview with Coordinator of National Environmental NGO, *supra* note 86.

209. *See, e.g.*, Interview with Staff Attorney of International Environmental NGO, *supra* note 123; Interview with Coordinator of Campesino NGO, *supra* note 88; Interview with President of Indigenous NGO, *supra* note 94.

210. Interview with Coordinator of Campesino NGO, *supra* note 88.

tions. In this case, many activists attributed their participation not to the opportunity to offer their input to an international body, but to secondary consequences, such as: greater visibility; greater legitimacy vis-à-vis local networks; and greater access to local and national decision-makers.²¹¹

International events offer valuable opportunities for local activists to make their work more visible. One activist described why a local coalition decided to make a public forum they had been independently organizing coincide with the Maize Symposium:

Fundamentally, [it was] for the public impact, for the media impact . . . [W]e . . . invaded the Commission and . . . we created an incident. This served to . . . "generate news," to achieve public outreach and . . . public diffusion of our position . . . [I]t was a way in which we used the [CEC], we used it for our purposes.²¹²

The independent forum, "The Forum in Defense of Our Maize" (*"El Foro en Defensa de Nuestro Maíz"*), was held one day before the Symposium and attracted over 100 participants.²¹³ Direct actions included marches, press conferences, and a protest in which participants distributed native maize tortillas.²¹⁴ All received significant local, national, and international press coverage.²¹⁵

211. See, e.g., Interview with Activist Representative of NGO, *supra* note 85; Interview with President of Indigenous NGO, *supra* note 94; Participant, Statement at the Commission for Environmental Cooperation's "Maize and Biodiversity Symposium" (Mar. 11, 2004).

212. Interview with Coordinator of Campesino NGO, *supra* note 88.

213. Interview with Staff Attorney of International Environmental NGO, *supra* note 123; Interview with Coordinator of Campesino NGO, *supra* note 88.

214. Interview with Coordinator of Campesino NGO, *supra* note 88.

215. *Id.*; Interview with Coordinator of National Environmental NGO, *supra* note 86; see also Victor M. Sanchez, *Contaminar transgénicos maíces criollos de Oaxaca & con tortillas de maíz criollo se manifiestan*, EL IMPARCIAL, Mar. 12, 2004, at 3A (articles on CEC symposium and surrounding protests in major Oaxaca newspaper); Angelica Enciso & Victor R. Arrazola, *México debe mantener la prohibición de sembrar transgénicos: CCAAN & Toledo defiende las semillas criollas*, LA JORNADA, Mar. 12, 2004, available at <http://www.jornada.unam.mx/2004/03/12/soc-jus.php?fly=1> (articles on CEC symposium and surrounding protests in Mexican national newspaper); Diego Cevallos, *Environment-Mexico: Transgenic Cousin in the Birthplace of Corn*, IPS-INTER PRESS SERVICE, Mar. 11, 2004, available in LEXIS, News Library (article on CEC symposium by global news service).

An additional opportunity high-profile international events like the Symposium can offer to local activists is the possibility of increasing their local and regional legitimacy. One activist, highly skeptical of Article 13 and other institution-centered strategies, explained why his group decided to participate in a highly visible way during the Symposium:

[The CEC Forum] interested us because we realized . . . during 2001, 2002, and 2003 in Oaxaca, despite the fact that we were giving information in the communities, [society] hadn't taken us into account They dismissed us as crazy"Those nuts, who knows what they're talking about?" . . . But when the CEC event comes, people say, "Hey, those nuts are right! So we do have to listen!"²¹⁶

According to this activist, the CEC symposium helped frame the GM controversy in local terms, generating more local interest in his organization's work:

[B]ecause if the [CEC Symposium] is going to talk about Oaxaca . . . and if the event is taking place in . . . Oaxaca, then people said, "Well, I do think it is an Oaxaca problem. So we're going to listen and see what is going on And that permitted us, the different organizations that were working on the issue . . . to be better understood by the media and by civil society That made it possible that . . . they began to believe us [T]hey said, "OK, they're not 'those nuts' anymore. They are people that have information, and we're going to listen to them." So, let's say that legitimated the work we had been doing previously."²¹⁷

Finally, for some local participants, the Symposium presented a valuable opportunity to directly confront domestic governmental officials. One participant, speaking before the entire Symposium, described how the CEC had finally presented the opportunity to voice his concerns directly to the Mexican government:

For all the people that come from outside maybe you are surprised by the dynamic of this meeting. Well, I wanted to tell you why the dynamics of this meeting are so surprising. It's the first public meeting where the communities can express themselves in this country. We have to go to international institutions so that the men

216. Interview with President of Indigenous NGO, *supra* note 94.

217. *Id.*

from CIBIOGEM [Mexican federal commission on GMOs and bio-security] can sit here and we can discuss things with them and talk.²¹⁸

Taken together, the experiences of Mexican activists' illustrate that one key factor for generating short-term domestic engagement by groups that do not routinely participate in international events is to offer sufficiently attractive incentives, many of which can be described as "secondary consequences" of participation. As a policy goal, many international soft law mechanisms, including those in the CEC, strive to attract the broader involvement of local civil society groups.²¹⁹ Often, the public rhetoric that these institutions direct towards civil society groups is designed to assure them that, as the CEC Executive Director stated in his opening remarks at the Symposium, "[Their] input will be taken into account," or, in other words, that local groups' participation will have primary consequences on these institutions' decisions and policies.²²⁰ Yet, given the political realities of international institutions and their relatively weak formal powers, many local groups are all too aware that their influence on decision-making in such settings may be indirect at best and, and at worst, non-existent. Activists' experiences illustrate that many local civil society groups while skeptical of the primary consequences of engagement with international institutions, are nonetheless highly conscious of benefits the secondary consequences of their involvement in international institutions can have.²²¹ Those interested in attracting local groups on a broader basis must carefully consider the secondary consequences such international mechanisms may offer to local groups skeptical of international institutions, such as: visibility, legitimation, and access to local decision-makers. As will be discussed in the following section, this broader local engagement can significantly affect not only those who participate in international events, but also the types of

218. Participant, Statement at the Commission for Environmental Cooperation's "Maize and Biodiversity Symposium" (Mar. 11, 2004).

219. See, e.g., NAAEC, *supra* note 3, pmb1.

220. William Kennedy, Remarks at the Commission for Environmental Cooperation's "Maize and Biodiversity Symposium" (Mar. 11, 2004).

221. See, e.g., Interview with President of Indigenous NGO, *supra* note 94; Participant, Statement at the Commission for Environmental Cooperation's "Maize and Biodiversity Symposium," *supra* note 218; Interview with Activist Representative of NGO, *supra* note 85.

claims participants raise and the impacts of those claims on international institutions.

ii. Impact of Short-Term Domestic Ties on Claims-Making

Short-term participation by a broader range of domestic groups can impact activists' claims-making in at least two ways. First, because a broader variety of groups with a wider variety of motivations is being mobilized, those groups may also employ a broader variety of tactics than would groups who were all uniformly engaged with the international institution over the long-term. Second, because this broader variety of groups also reflects a broader variety of constituencies and backgrounds, these groups may also present a greater array of substantive claims.

In the CEC Maize Symposium, a wide range of participants employed a wide range of tactics to make their voices heard. Some local groups, who were generally skeptical of international institutions but had decided to attend the event, readily employed direct action tactics since they believed that they would otherwise have no impact:

The government doesn't listen to arguments. It doesn't pay attention to anything but strength. So all of us, already knowing this . . . what we did was organize ourselves . . . to come to the session . . . so that the pressure was seen. It wasn't so much to convince [the Commission] with arguments.²²²

Similarly, groups who attended the forum primarily to make their own local work more visible also adopted confrontational and dramatic tactics to bring greater public and media attention.²²³ An organizer of the protest march to the hotel where the Symposium was to take place explained why, strategically, a non-violent public confrontation would serve the group's purposes:

Our main purpose was to exercise an act of public pressure and to have an impact in the media So, it was leaving the [alternative] forum, having a march, advising the local media that we're marching through the street. And then the whole group from the forum arrived at the elegant hotel [where the CEC Symposium was to take place], and in that elegant hotel, we knew we were going to have

222. Interview with Coordinator of Indigenous NGO, *supra* note 112.

223. Interview with Coordinator of Campesino NGO, *supra* note 88.

difficulty. And that was perfectly fine.²²⁴

Local groups employed such confrontational tactics both outside and inside the Symposium. One of the most dramatic examples occurred early on, when a member of the Popular Indigenous Congress (CIPO) challenged the moderator's insistence that no individual public comment should exceed two minutes:

MODERATOR: Excuse me –

SPEAKER: Excuse yourself because I'm in my country, and what's more [this] is in the name of the . . . twenty-three communities my organization represents because we don't have money like you to be able to rent this hotel, the most expensive in Oaxaca. [The communities] couldn't come and no way are we going to allow [ap-
plause] us not to say the words that they trusted us to say. You can't tell us how much time to use and if all the other sisters and brothers need to speak, well then, [so] they take their time, because this forum is to say that we do not agree with transgenics and . . . you . . . aren't going to tell me when I must speak and when I must be silent.²²⁵

Following this exchange, the moderator significantly relaxed the two-minute rule, and when he occasionally tried to enforce it, other participants also insisted on finishing.²²⁶ Confrontational tactics were so widespread that at times mutually-enforcing direct actions took place simultaneously in multiple arenas. One activist describes the moment when the CEC relented to protesters' demands that it remove the pre-registration requirements to attend the Symposium:

[W]e were carrying sound equipment—when the people from the Commission [said] “you can't enter,” then we said, “Okay, we're going to have a meeting outside . . .” [W]e were making a huge uproar! . . . [W]e were presenting our point of view before the media, before the people, and saying that these governments didn't want to hear us and that it was really bad that the Commission didn't want to hear the people's point of view And our supporters who

224. *Id.*

225. Moderator & CIPO Representative, Statements at the Commission for Environmental Cooperation's “Maize and Biodiversity Symposium,” (Mar. 11, 2004).

226. Interview with Coordinator of National Environmental NGO, *supra* note 86.

were inside [the hotel] . . . they began . . . to do interventions . . . saying “We don’t see even why there is a forum. That’s Oaxacan civil society represented. The Commission has to hear them” . . . [U]ntil finally the Commission President decided to let [us] in.²²⁷

In each of the previous examples, none of the activists had been involved in the preparation, filing, or follow-up to the Article 13 petition. However, their willingness to employ confrontational tactics at the Symposium had a highly significant impact on the trajectory and consequences of petitioners’ claims. Social and political scientists have theorized that direct action and other confrontational tactics can play a critical role in forming new and emergent norms by defying expectations and openly challenging accepted boundaries of appropriateness.²²⁸ One implication of this is that direct action and other confrontational tactics are intimately linked to norm development and should be considered as connected to—and not separate from—an analysis of activists’ claims-making activities in international institutions.²²⁹ Insofar as one common feature of soft law is its capacity to respond to emergent norms and to go further and faster than hard law, one would expect direct action tactics to play a pivotal role in soft law institutions’ recognition of newly developing norms and claims. One of the most striking aspects of the wide variety of confrontational tactics that local activists employed both inside and outside the Maize Symposium was the extent to which many of them, such as the protests over pre-registration and the two minute rule, were directed towards offering an opportunity for a wider variety of participants to bring a wider variety of claims. In one activist’s words, these interventions were “[a way of] imposing our rules on the rules of the [CEC] conference.”²³⁰

Cumulatively, activists’ confrontational tactics resisted and made more visible the exercise of power within the Symposium regarding who could attend, how long one could speak, and what type of knowledge and communication was valued. Overall, these tactics widened

227. Interview with Coordinator of Campesino NGO, *supra* note 88.

228. Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT’L ORG. 887, 897-98 (1998).

229. *Id.*

230. Interview with Coordinator of Campesino NGO, *supra* note 88.

the range of claims raised in the Symposium to include, according to one participant, "a river of various expressions."²³¹ This "river of expressions" became so great that at one point one of the original civil society petitioners felt it was necessary to make a public statement during the Symposium to clarify the group's viewpoint.²³²

One striking example of local groups' participation expanding the variety of claims raised beyond those brought by the original petitioners was the emphasis local groups placed on explicitly challenging the weight the Article 13 process gave to scientific knowledge in resolving the GM maize controversy. Civil society petitioners had strategically decided to limit their original Article 13 petition to a relatively narrow, scientific examination of GM maize's environmental impacts.²³³ This included a decision not to request that the CEC consider sociocultural matters in developing its recommendations.²³⁴ Petitioners feared such a request might be beyond the scope of the Article 13 mechanism and they did not want to increase the risk that the CEC would reject their petition.²³⁵

In contrast, short-term participants in the Symposium, who were not operating under such constraints, openly challenged the privileged role the CEC's Article 13 mechanism seemed to bestow on scientific knowledge.²³⁶ Some local activists explicitly questioned the value of modern biotechnology in comparison to longstanding traditional knowledge: "What is more valuable, a science that is just . . . starting up . . . like . . . biotechnology, genetic experimentation, and cloning . . . or a science that has been proven again and again . . . for more than 9000 years?"²³⁷ Others emphasized the ultimate inability of sci-

231. Interview with Coordinator of National Environmental NGO, *supra* note 86.

232. Interview with Activist Representative of NGO, *supra* note 85.

233. Interview with Staff Attorney of International Environmental NGO, *supra* note 123.

234. *Id.*

235. *Id.*

236. *See, e.g.*, statement of Participant at the Commission for Environmental Cooperation's "Maize and Biodiversity Symposium" (Mar. 11, 2004); statement of Participant at the Commission for Environmental Cooperation's "Maize and Biodiversity Symposium" (Mar. 11, 2004).

237. Statement of Participant at the Commission for Environmental Cooperation's "Maize and Biodiversity Symposium" (Mar. 11, 2004).

ence to resolve the controversy: “Questions are going to keep coming up more and more They are questions which are not going to have an answer. Sometimes we must stop being so rational and scientific.”²³⁸

As an alternative, many short-term participants emphasized the sociocultural importance of maize. At the Symposium’s outset, a representative of an indigenous organization read a manifesto that had been prepared as part of the independent forum the previous day. In part, it states:

We are people of maize. The grain is our brother, foundation of our culture, the reality of our being here. It is in the center of our daily life In Oaxaca we will not have transgenics. The fear, for us, is that [scientists] are doing it entirely without concern for the immense cultural damage that their experiments can cause. We are not going to listen to them any more.²³⁹

Consistent with the emphasis on sociocultural matters, many local participants emphasized the situated nature of all knowledge, and challenged the assertion that the CEC or science could serve as a neutral arbiter. One member of an indigenous group forcefully questioned the CEC and its expert panel during the Symposium: “You all say that you have an impartial position. We can’t be here saying, ‘Yes, that [this] is an impartial position.’ My position is partial from this side.”²⁴⁰

Ultimately, in comparison to the relatively minor role given to sociocultural matters in the original petition, sociocultural matters ended up playing a major role in the CEC’s Article 13 recommendations.²⁴¹ Many of the report’s most sweeping policy recommendations, such as requiring labeling and milling of GM maize, were categorized as “sociocultural” and not as “scientific” matters,²⁴² suggesting that the wider range of claims and tactics short-term participants raised in the

238. *Id.*

239. Manifesto of the Forum in Defense of Our Maize in Oaxaca, Mex. (Mar. 10, 2004), http://site.www.umb.edu/faculty/salzman_g/Strate/Salz/2004-03-10.htm.

240. Statement of Participant at the Commission for Environmental Cooperation’s “Maize and Biodiversity Symposium” (Mar. 11, 2004).

241. See *Maize and Biodiversity*, *supra* note 45, at 31.

242. *Id.*

Symposium had significant impact. One of the original civil society petitioners reflected:

I think this meeting [of the CEC Maize Symposium] was what paved the way for the . . . sociocultural chapter [in the CEC report] . . . The chapter was a part of the study's methods that we [as petitioners] weren't expecting. The expectation for the [sociocultural] chapter was that it was unexpected. . . . [I]f you compare what we asked for [in the petition], which [was] basically environmental issues, with the sociocultural issues or even the health issues, which we also didn't . . . think this report could explore—I think that . . . it really is an innovative study.²⁴³

By challenging fundamental assumptions regarding both the participation format and the role of scientific knowledge in the Article 13 process, local domestic groups' short-term participation in the Maize Symposium created an opening for the CEC to institutionally re-evaluate those assumptions and ultimately, to shape the Article 13 report's recommendations. As short-term participants, locally-based groups responded to a wide variety of incentives that attracted a larger range of actors, many of whom fundamentally disagreed with the CEC's institutional norms and principles.²⁴⁴ In contrast, long-term participants who had already demonstrated a willingness to commit a sustained level of resources and energy to the CEC had less motivation to overtly and publicly challenge the fundamental assumptions that formed the basis of the Article 13 mechanism—such as the role of scientific and technical knowledge. Local short-term participation offered a distinct and significant form of public pressure.

Finally, domestic activists' short-term involvement in the CEC Maize Symposium raises important questions regarding how an emergent transnational public sphere is conceived. Much legal and non-legal scholarship has theorized emergent transnational public spaces in terms of cosmopolitan democratic participation, extensive transborder civil society coalition activity, and the development of robust regional identities. However, one must ask whether the participatory and inclusive ideals contained in such formulations are likely to be realized

243. Interview with Staff Attorney of International Environmental NGO, *supra* note 123.

244. *See, e.g.*, Interview with President of Indigenous NGO, *supra* note 94; Interview with Coordinator of Campesino NGO, *supra* note 88.

if transnational public spaces are conceptualized exclusively or even predominantly in those terms. It may be that transnational civil society participation needs to be understood not only in terms of transnational cosmopolitanism, but also in terms of the shifting, and at times transitory, participation of actors whose work and orientation remain profoundly local. If this is the case, then a fundamental rethinking of the role of local participation in transnational spaces may be required to expand how such transnational spaces are imagined. Such a rethinking would go beyond envisioning transnational public spaces solely in terms of the opportunities they offer local participants to develop transnational identities and long-term cosmopolitan commitments, to also focusing on how transnational public spaces can engage local participants, on local terms, however temporarily. Over the long-term, it may be that it is the very fluid and necessarily temporary nature of local participation that is most likely to lead to soft law participatory mechanisms' transformative potential, the evanescence of such participation becoming its very strength.

CONCLUSION

This article has argued for the value of studying secondary consequences of international institutions on civil society actors and claims-making as a way to more fully understand the actual impacts of these institutions. It has applied this approach to examining Mexican civil society actors' experiences with the North American Commission on Environmental Cooperation, focusing on how different soft law mechanisms for public participation have impacted activists' transnational and domestic networks, and in turn, their claims-making activity. Activists' experiences suggest the need for international law scholars to pay greater attention to international institutions' impacts on a wider set of civil society relationships than they have traditionally: weak and strong; domestic and international; as well as short and long-term. It is only if this wider set of relationships and their effects on activists' strategies and claims-making are taken into account, that international law scholars and others who care about the actual impacts of international institutions will be able to more fully understand the current and future impacts of those institutions.