

**“TODAY WE SAY, ENOUGH!”<sup>1</sup>**  
**THE ZAPATISTA REBELLION, AUTONOMY,**  
**AND THE SAN ANDRÉS ACCORDS**

*A POPULAR MEXICAN BANDIT OF THE 1920S, EL TIGRE DE SANTA JULIA, DIED IN A RATHER UNSEEMLY MANNER, TRAPPED AND PUMPED FULL OF LEAD BY THE POLICE WHILE HE WAS SITTING ON THE TOILET. WHEN YOU’RE CAUGHT OFF GUARD, PEOPLE SAY, “THEY GOT YOU LIKE EL TIGRE DE SANTA JULIA.” THE MEXICAN STATE [WAS] TAKEN BY SURPRISE, LIKE EL TIGRE DE SANTA JULIA.<sup>2</sup>*

**BY ROBERT PAUL MADDIX\***

**I. INTRODUCTION**

Saturday, January 1, 1994, was slated to be a momentous day in Mexico’s history. It was to be the day the North American Free Trade Agreement (NAFTA) officially took effect, sending “trade barriers tumbling between Mexico, the United States and Canada.”<sup>3</sup> It was the day that Mexico finally “join[ed] the ranks of its richer neighbors north of the border.”<sup>4</sup> Like many Mexicans, writer Paco Taibo II probably went to bed late Friday night, expecting the inception of NAFTA to be Saturday’s only historic event. However, Taibo’s wife woke him up just in time to witness an astonishing, yet equally historic, event unfolding before the eyes of the world in Mexico’s southernmost state.

What the hell is this? Paloma wakes me up in midmorning and puts me in front of the TV. The Zapatista guerrilla army has taken half a dozen cities in Chiapas, including the state’s traditional capital, San Cristobal de las Casas.

The first words delivered by the rebels to the TV cameras are enunciated in shaky Spanish with a peculiar syntax: . . . “We came here because we couldn’t take it, see?, the army persecuting us. We came to the war.”

Among the guerrillas are some officers, very few, whose speech gives away their urban origins . . . . But the vast majority are indigenous. . . . From the tribal babel of Chiapas, where the *lingua franca* of almost 60 percent of the population is not Spanish but one of the indigenous dialects.

Their weapons are indigenous, too. The images show an AK-47 here and there, an assault rifle stolen from the Mexican Army, but the majority are carrying shotguns and .22-caliber hunting rifles, even machetes and stakes, or wooden guns with a nail in the tip of the barrel. A lot of them

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<sup>1</sup> General Command of the EZLN, *Declaración de la Selva Lacandona* (Dec. 31, 1993) [hereinafter EZLN, *Declaración*], in *REBELLION IN CHIAPAS: AN HISTORICAL READER* 247 (John Womack, Jr. ed. & trans., 1999) [hereinafter *REBELLION IN CHIAPAS*].

<sup>2</sup> Paco Ignacio Taibo II, *¡Zapatista! The Phoenix Rises*, *THE NATION*, Mar. 28, 1994, at 406.

<sup>3</sup> *The Revolution Continues*, *THE ECONOMIST*, Jan. 22, 1994, at 19. The full text of the NAFTA treaty can be accessed on-line at <http://www.nafta-sec-alena.org> (last visited January 24, 2003).

<sup>4</sup> David Oliver Relin, *Fire from the Jungle: Chiapas Rebellion Inspires Native People in Americas*, *SCHOLASTIC UPDATE*, Feb. 10, 1995, at 18.

are women and children. They're uniformed: green baseball caps, green pants, homemade black vests, *paliacates* [bandanas] around their necks or covering their faces.

The country enters the year 1994 with an insurrection and no one except the rebels understands anything.<sup>5</sup>

This article will provide insight into what drove the Zapatistas to rebel. A general overview of the events comprising the 1994 rebellion will be followed by a discussion of some of the possible reasons why the Zapatistas revolted, focusing on what the Zapatistas characterize as human rights violations committed against them and other indigenous peoples in Mexico. Finally, this study will consider the San Andrés Accords, an agreement signed jointly by teams representing the Zapatistas and the Zedillo administration in 1996, but not yet ratified by the Mexican government, and what effect it will have on remedying their concerns, specifically focusing on the Zapatistas' chief demand—autonomy.

## II. A BRIEF OVERVIEW OF THE 1994 ZAPATISTA REBELLION

In the early morning of Saturday, January 1, 1994, a group of 300 Indian men and women "slipped out of the Lacandon jungle"<sup>6</sup> of eastern Chiapas and "marched" into the center of San Cristobal de las Casas,<sup>7</sup> formerly the colonial capital of Chiapas and currently one of Chiapas's most "important commercial and tourist center[s]."<sup>8</sup> Taking advantage of the reduced police force on the holiday weekend, the self-proclaimed rebels; sporting ski masks, bandanas, and hand-made army outfits, and carrying a variety of weapons from machine guns and machetes to toy pistols; proceeded to the town hall, broke the doors down, ransacked the building and set it on fire.<sup>9</sup> In a matter of hours, close to 2,000 rebels took over more than 500 ranches<sup>10</sup> and six more towns<sup>11</sup> in eastern and central Chiapas, ransacking their town halls and, in the process, destroying decades of important government records.<sup>12</sup>

Through tracts and over the airwaves of one captured city, these indigenous rebels identified themselves as members of the Zapatista Army of National Liberation (EZLN),<sup>13</sup> a militant group of indigenous Mexicans heavily influenced by leftist political thought.<sup>14</sup> They proceeded to "declar[e] war on the Mexican government"<sup>15</sup> through a powerfully-worded statement:

<sup>5</sup> Taibo, *supra* note 2, at 406.

<sup>6</sup> Relin, *supra* note 4, at 18.

<sup>7</sup> Michael S. Serrill, *Zapata's Revenge*, TIME, Jan. 17, 1994, at 32.

<sup>8</sup> GEORGE A. COLLIER & ELIZABETH L. QUARATIELLO, BASTA! LAND & THE ZAPATISTA REBELLION IN CHIAPAS 1 (1999).

<sup>9</sup> See Serrill, *supra* note 7, at 32.

<sup>10</sup> 135

See Zeitgeist Films, *A Place Called Chiapas: Historical Background*, at <http://www.zeitgeistfilm.com/current/chiapas/chiapashistory.html> (last visited Oct. 3, 2000).

<sup>11</sup> See *id.*; COLLIER & QUARATIELLO, *supra* note 8, at 1.

<sup>12</sup> See COLLIER & QUARATIELLO, *supra* note 8, at 1.

<sup>13</sup> See *id.* at 1-2. The Zapatistas took their name from war hero Emiliano Zapata, "the legendary leader of the Mexican Revolution of 1910 who fought to distribute land to the poor." See Relin, *supra* note 4, at 32. Ironically, the Institutional Revolutionary Party (PRI), the controlling force in Mexican politics since the Mexican Revolution and the object of the EZLN's ire, claims its roots in the Zapata-led revolution as well. See Zeitgeist Films, *supra* note 10 (discussing the birth of the PRI).

<sup>14</sup> See generally John Womack, Jr., *Chiapas, the Bishop of San Cristóbal, and the Zapatista Revolt* (Aug. 22, 1998), in REBELLION IN CHIAPAS, *supra* note 1, at 33-38 (documenting the presence and influence of leftist political organizations in Chiapas starting in the 1970s in conjunction with the development of the EZLN).

<sup>15</sup> Serrill, *supra* note 7, at 32.

We are a product of 500 years of struggle: first against slavery, during the War of Independence against Spain led by the insurgents; afterward to avoid being absorbed by American imperialism; then to promulgate our constitution and expel the French Empire from our soil; and later the Porfirista dictatorship denied us just application of the Reform laws, and the people rebelled, forming their own leaders; Villa and Zapata emerged, poor men like us, who have been denied the most elemental preparation so as to be able to use us as cannon fodder and pillage the wealth of our country, without it mattering to them that we have nothing, absolutely nothing, not even a decent roof over our heads, no land, no work, no health care, no food, or education; without the right to freely elect our authorities; without independence from foreigners, without peace or justice for ourselves and our children.

**BUT TODAY WE SAY, ENOUGH!** We are the heirs of those who truly forged our nationality. We the dispossessed are millions, and we call on our brothers to join this call as the only path in order not to die of hunger in the face of the insatiable ambition of dictatorship for more than 70 years led by a clique of traitors who represent the most conservative and sell-out groups in the country. These are the same as those . . . who take everything from us, absolutely everything.

To prevent this, and as our last hope, after having tried everything to put into practice the legality based on our Magna Carta, we resort to it, to our Constitution, to apply Constitutional Article 39, which says:

“National sovereignty resides essentially and originally in the people. All public power emanates from the people and is instituted for the people’s benefit. The people have, at all times, the unalienable right to alter or modify the form of their government.”

Therefore, according to our Constitution, we issue this statement to the Mexican federal army, the basic pillar of the Mexican dictatorship that we suffer, monopolized as it is by the party in power and led by the federal executive that is presently held by its highest and illegitimate chief, Carlos Salinas de Gortari.

In conformity with this Declaration of War, we ask the other branches of the Nation’s government to meet to restore the legality and the stability of the Nation by deposing the dictator.

We also ask that international organizations and the International Red Cross keep watch over and regulate the battles that our forces fight, in order to protect the civilian population, for we declare now and forever that we are subject to the stipulations of the Geneva Convention’s Laws on War, the EZLN forming a belligerent force in our struggle for liberation. We have the Mexican people on our side, we have a Fatherland, and the tri-color Flag is loved and respected by the INSURGENT fighters. . . .

**PEOPLE OF MEXICO:** We, upright and free men and women, are conscious that the war we declare is a last resort, but it is just. The dictators have been applying an undeclared genocidal war against our people for many years. Therefore we ask for your decided participation in support of this plan of the Mexican people in their struggle for work, land, housing, food, health care, education, independence, liberty, democracy, justice, and peace. We declare that we will not cease fighting until we

achieve the fulfillment of these basic demands of our people by forming a free and democratic government in our country.<sup>16</sup>

While awaiting a response to their declaration of war from an “embarrassed” President Salinas,<sup>17</sup> the Zapatistas continued their offensive, attacking a military prison and releasing almost 180 prisoners,<sup>18</sup> and then kidnapping and threatening to execute a former Chiapas governor.<sup>19</sup> Within a few days, however, the Mexican Army mobilized, sending bomber planes, helicopters, tanks, armored personnel carriers, and roughly 12,000 troops to counter the rebellion.<sup>20</sup> Outnumbered six-to-one and lacking adequate firepower to combat the impending onslaught, the Zapatistas retreated to the dense jungle from most of the seized towns before the Mexican Army arrived.<sup>21</sup> During the six-day skirmish, over one hundred people died.<sup>22</sup>

Fearing further reprisals by the Mexican Army, the EZLN’s leader, known only as “Subcomandante Marcos,”<sup>23</sup> launched a national public-relations campaign to gain sympathy for the Zapatistas against the Mexican establishment.<sup>24</sup> Marcos e-mailed Mexican newspapers a “series of communiques,” including the one mentioned above, “detail[ing] the discrimination and starvation the Indians faced and propos[ing] sweeping changes in Mexican politics.”<sup>25</sup> Almost immediately, Marcos captured the hearts of thousands of Mexicans and “became an overnight media sensation.”<sup>26</sup> Suddenly, the tide of popular opinion began to turn against Salinas and the Mexican Army:

An enormous demonstration is held in Mexico City against the government’s policy in Chiapas and for peace, with close to 150,000

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<sup>16</sup> EZLN, *Declaración*, *supra* note 1, at 247-49. In an attempt to get international recognition, “the ‘General Command’ explicitly claimed belligerent status for the EZLN, which (if neutral powers elsewhere recognized it) would not only . . . oblige the Mexican army and the EZLN to abide by the international laws on war, but also assume a government de facto responsible for the EZLN.” REBELLION IN CHIAPAS, *supra* note 1, at 246.

Interestingly, although it contains demands for liberation from Mexico, this first EZLN communique focuses more on bringing a truly democratic government to Mexico rather than seeking autonomy for the indigenous communities. As time wore on, the EZLN narrowed its focus substantially, calling instead for recognition of Indian rights and autonomy. See Clandestine Revolutionary Indian Committee-General Command of the Zapatista Army of National Liberation, *Quinta Declaración de la Selva Lacandona* (July 19, 1998), in REBELLION IN CHIAPAS, *supra* note 1, at 365-70.

<sup>17</sup> Geri Smith, *The Guns of NAFTA: From Mexico’s Wretched, a Bloody Dissent*, BUS. WK., Jan. 17, 1994, at 17.

<sup>18</sup> See Serrill, *supra* note 7, at 32; COLLIER & QUARATIELLO, *supra* note 8, at 2.

<sup>19</sup> See COLLIER & QUARATIELLO, *supra* note 8, at 2.

<sup>20</sup> See Serrill, *supra* note 7, at 32.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.* The Mexican troops killed at least 30 Zapatistas in the town of Ocosingo, where six of the bodies were found with their hands tied and “a bullet in the back of the head, apparent victims of a summary execution.” Serrill, *supra* note 7, at 32. “By the ceasefire on January 12 the dead were 13 Mexican army soldiers, 38 state police, . . . more than 70 Zapatista soldiers, and from 19 to 275 or more civilians.” Womack, Jr., *supra* note 14, at 43-44.

<sup>23</sup> In February 1995, in an effort to capture him, President Zedillo claimed to identify “Subcomandante Marcos” as Rafael Sebastián Guillén Vicente, “a former university professor from Tampico and member of an urban guerilla organization, the National Liberation Forces (FLN).” NEIL HARVEY, *THE CHIAPAS REBELLION: THE STRUGGLE FOR LAND AND DEMOCRACY* 9 (1998).

<sup>24</sup> See Relin, *supra* note 4, at 18.

<sup>25</sup> *Id.* The original Spanish-language communiques are available on the EZLN website located at <http://www.ezln.org>. For an English translation of these communiques, see SUBCOMANDANTE MARCOS ET AL., *SHADOWS OF TENDER FURY: THE LETTERS AND COMMUNIQES OF SUBCOMANDANTE MARCOS AND THE ZAPATISTA ARMY OF NATIONAL LIBERATION* (Leslie Lopez trans., 1995).

<sup>26</sup> See Relin, *supra* note 4, at 18.

attending. One of the chants: "First World, ha ha ha." Again we see the faces of the old and new left, but also of thousands of students joining the movement for the first time. The Zapatistas are not alone. Their program and the faces and motives of the indigenous rebels are greeted with a massive outpouring of sympathy that is reflected in the press. Something new, something different, is happening.<sup>27</sup>

Faced with mounting pressure internally and internationally to "show that [he] care[d] about the poor"<sup>28</sup> and as he watched the Mexican stock exchange suffer through "its worst day in more than four years" only nine days after NAFTA's inception,<sup>29</sup> President Salinas fired Interior Minister Patrocino González, a former Chiapas governor accused by the Zapatistas of violating human rights during his tenure.<sup>30</sup> Then, on January 12, Salinas abruptly "declared a unilateral cease-fire" and began offering to negotiate with the Zapatistas about their concerns,<sup>31</sup> "proclaiming a desire for 'reconciliation, peace and respect for human rights.'"<sup>32</sup>

### III. WHY THE ZAPATISTAS REBELLED AND REMAIN IN REBELLION

A multitude of factors worked together to stir the Zapatistas to take up arms and rebel against the Mexican government in January 1994. Among these are what the Zapatistas see as a long tradition of human rights violations committed against the indigenous peoples by or with the knowledge of the Mexican government, keeping them in a 500-year state of oppression. The alleged violations include the Mexican government's keeping the Zapatistas in abject poverty and virtual slavery; subjecting them to brutality and violence; stealing their rights to acquire land by amending the Mexican Constitution; and taking away autonomy they would have by fraudulently preventing the election of their desired leaders and unjustly preventing them from employing their customary laws and traditions to settle disputes.

#### A. Poverty and Servitude

Chiapas plays a very important role in Mexico. Geographically it serves as a border with Guatemala,<sup>33</sup> but it also boasts rich natural resources.<sup>34</sup> Described by some as Mexico's "internal colony,"<sup>35</sup> "[w]ith three percent of the nation's population," Chiapas provided Mexico with most of its electricity (54%), as well as much of its corn (13%), timber (5%), beans (4%), gas (13%), and oil (4%).<sup>36</sup> Chiapas supplies Mexico with coffee, cattle, and sugar as well.<sup>37</sup>

Despite its vast natural resources, Chiapas is considered by many to be among the poorest, if not the poorest state, in all of Mexico.<sup>38</sup>

<sup>27</sup> Taibo, *supra* note 2, at 406.

<sup>28</sup> Smith, *supra* note 17, at 17.

<sup>29</sup> *The Shock Waves Have Spread*, THE ECONOMIST, Jan. 15, 1994, at 39 (stating that, on January 10, 1994, the Mexican "market fell 6.3% in heavy trading").

<sup>30</sup> See *The Revolution Continues*, *supra* note 3, at 19; *infra* notes 58-66 and accompanying text.

<sup>31</sup> COLLIER & QUARATIELLO, *supra* note 8, at 4.

<sup>32</sup> *The Shock Waves Have Spread*, *supra* note 29, at 39.

<sup>33</sup> See Womack, Jr., *supra* note 14, at 4.

<sup>34</sup> See COLLIER & QUARATIELLO, *supra* note 8, at 16-17.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See *id.* at 16.

<sup>38</sup> See *id.*; Womack, Jr., *supra* note 14, at 11.

Chiapas lags behind the rest of Mexico in almost every way measurable: household income, education, and basic standard of living fall far behind the national average, and infant mortality is much higher. Many indigenous people in Chiapas are illiterate and only about half the men and a tiny percentage of the women speak Spanish. According to census figures, only eleven percent of adults earn what the government calls moderate incomes of at least \$3,450 per year (versus 24 percent nationally); less than fifty percent of households have running water (versus 67 percent nationally); and only fourteen percent have televisions (versus 45 percent nationally).<sup>39</sup>

Even more shocking, official estimates show that half of Chiapas's 3.7 million people suffered from malnourishment in 1994.<sup>40</sup> In the region Zapatistas homeland, the level of poverty is even worse than Chiapas's average. Almost 70 percent of workers in that area made less than Mexico's minimum wage, \$1,500 per year, in 1994.<sup>41</sup> In that same region, with a population of 650,000, "probably two-thirds of the homes, crowded, dirt-floor shacks, had no electricity, drinking water, or drainage."<sup>42</sup> Meanwhile, most of the wealth remains heavily concentrated in a few non-indigenous "*ladino*" landowners who control Chiapan politics and continue to build their fortunes on the Indians' backs.<sup>43</sup>

The Zapatistas trace these inequities to the subservient status of Indians in Chiapas since the early days of Spanish occupation in the 1500s.<sup>44</sup> By the 1910s, whether Indians were classified as indentured servants, peons, or sharecroppers, "all [labor] arrangements were enforced by patronage and coercion," with the "rural state police . . . guarantee[ing] compliance and subservience."<sup>45</sup> Many of these practices continued for decades after the Mexican Revolution and the establishment of Mexico's "progressive" constitution in 1917,<sup>46</sup> prompting some to remark that "in effect, the Revolution never reached Chiapas at all."<sup>47</sup>

Since the 1930s, Mexican presidents have made some superficial attempts to improve the Indians' plight by redistributing some of the land, funneling money to

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<sup>39</sup> See COLLIER & QUARATIELLO, *supra* note 8, at 16. All references to dollar amounts (\$) are in U.S. dollars.

<sup>40</sup> See *id.*

<sup>41</sup> See Womack, Jr., *supra* note 14, at 11.

<sup>42</sup> *Id.*

<sup>43</sup> See COLLIER & QUARATIELLO, *supra* note 8, at 7, 16.

<sup>44</sup> See *id.* at 21. Through "periodic conscriptions" of members of Chiapas's Mayan Indian population, the Spanish instituted a system of "migratory labor," enslaving the Indians for use in their colonies "as farm workers and two-footed beasts of burden." Womack, Jr., *supra* note 14, at 5. Even after Spain officially outlawed slavery in the Chiapas colonies in 1542, the control and exploitation of the Indian labor supply still played a major part in political struggles in Chiapas well into the twentieth century. See HARVEY, *supra* note 23, at 38-54 (documenting the different political struggles in Chiapas through the centuries relating to Indian labor).

<sup>45</sup> HARVEY, *supra* note 23, at 51. Researcher Neil Harvey suggests that the Mexican Revolution itself, at least in Chiapas, was all about "who would control access to Indian land, labor, and production." *Id.* at 52.

<sup>46</sup> COLLIER & QUARATIELLO, *supra* note 8, at 28.

<sup>47</sup> *Id.* at 29. For example, in 1914, members of the Revolution came to Chiapas and "promulgated a Labor Law that abolished debt servitude and granted workers the right to a minimum wage and other benefits." HARVEY, *supra* note 23, at 52. The angry *ladino* landowners banded together and organized their own counterrevolutionary forces, eventually ousting the revolutionaries six years later and taking control of the area's government "with the help of impoverished peasants who were pressed into joining the cause." COLLIER & QUARATIELLO, *supra* note 8, at 28-29. In addition, Indians working in the plantations in the far reaches of Chiapas did not even know about the reforms the revolution brought to Chiapas until well into the 1930s, at which time they began to organize to ask for their rights. See *id.* at 30.

the region and instigating social reforms in Chiapas.<sup>48</sup> However, the economic instability of the 1980s and early 1990s,<sup>49</sup> the availability of dirt-cheap labor from illegal aliens from Guatemala,<sup>50</sup> and the misappropriation and inequitable allocation by local Institutional Revolutionary Party (PRI)<sup>51</sup> officials of federal money sent to Chiapas<sup>52</sup> have combined to keep many Chiapas' indigenous citizens in a perpetually oppressed state.

## B. Violence and Brutality

Over these 500 years of oppression many instances of violence and brutality against the Indians of Chiapas have occurred. Examples abound of government-sponsored or government-abetted brutality and violence, ranging from the "harsh treatment" of Mayans by the Spanish in early colonial days<sup>53</sup> and the cutting off of the ears of Indians who rebelled against *ladinos* in the 1700s<sup>54</sup> to the arrest and torture of a former agriculture teacher and two associates who were educating and training leaders of indigenous organizations in Chiapas in the 1980s<sup>55</sup> and the recent massacre of Indian women and children in the allegedly pro-Zapatista village of Acteal.<sup>56</sup>

Violence and repression in Chiapas against the Indians and their supporters began to escalate during the administration of PRIista Patrocino González, who became governor of Chiapas in December 1988.<sup>57</sup> In January of the following year, Governor González greatly expanded Chiapas's penal code to allow for punishment of public protests and many other forms of political dissent, filling Chiapas's prisons with political prisoners.<sup>58</sup> Then, in March 1989, "several members of independent organizations, including two of [Chiapas's] principal peasant leaders," were assassinated.<sup>59</sup> In April of 1990 and 1991, *ladinos* and state policemen conspired together to destroy indigenous settlements in Chiapas de Corzo.<sup>60</sup> While in October 1990, "unknown assailants" opened fire on a peace march involving members of the

<sup>48</sup> These attempted reforms ranged from President Lazaro Cardenas's establishing a new federal Indian Affairs department (the INI) and organizing the National Peasant Confederation (the CNC) in the 1930s, see Womack, Jr., *supra* note 14, at 9, to President Salinas's Solidarity program, through which he sent more than \$500 million over five years to Chiapas, the most of any state, "for jobs and support 'for those of us who have the least.'" *Id.* at 11.

<sup>49</sup> Chiapas went through a "severe depression" between 1989 and 1992 due to the Salinas economic reforms and the drastic drop in the price of coffee, bankrupting many small coffee producers and leaving many migrant laborers unable to find work. *See id.* at 21.

<sup>50</sup> Some coffee growers were paying Guatemalan workers a mere \$1.60 per day, a wage not even the Mexican Indians could compete with. *See id.*

<sup>51</sup> *See supra* note 13.

<sup>52</sup> *See* COLLIER & QUARATIELLO, *supra* note 8, at 130-35 (giving examples of the money-control practices of local PRI officials, which included only distributing funds to and commencing projects for regions in Chiapas that supported the PRI).

<sup>53</sup> HARVEY, *supra* note 23, at 38.

<sup>54</sup> *See id.* at 42 (discussing a Mayan rebellion in Cancuc, Chiapas, in 1712 that occurred after the Virgin Mary was reportedly seen there).

<sup>55</sup> *See id.* at 104, 110-12.

<sup>56</sup> *See infra* note 97. For a more detailed look at the violence and brutality carried out against the Mexican Indians over the last five centuries, see generally COLLIER & QUARATIELLO, *supra* note 8; HARVEY, *supra* note 23; and REBELLION IN CHIAPAS, *supra* note 1.

<sup>57</sup> *See* HARVEY, *supra* note 23, at 171.

<sup>58</sup> COLLIER & QUARATIELLO, *supra* note 8, at 127. The revised penal code "empowered the Chiapas government to quell spontaneous public protest, curb organized opposition, and restrain agrarian activists." *Id.* at 126. For excerpts from the Chiapan penal code as revised under Governor González, see C.P. CHIAPAS (1990), in REBELLION IN CHIAPAS, *supra* note 1, at 229-33.

<sup>59</sup> HARVEY, *supra* note 23, at 171. As can be expected, "González denied government involvement" in the killings. *Id.*

<sup>60</sup> *See id.*

Emiliano Zapata Peasant Organization (OCEZ), wounding two.<sup>61</sup> Police broke up another peaceful protest march by peasants in July 1991 with tear gas and clubs, arresting seven of their leaders and forcing them “to sign confessions linking them to Central American guerrillas and drug trafficking.”<sup>62</sup> In March 1993, after two Mexican soldiers were mistakenly killed by Indians in San Isidro El Ocotil, police arrested and tortured 13 suspects, then came back twice more and “carried out further illegal arrests and beatings.”<sup>63</sup> These incidents and many others gave the Zapatistas some justification to declare war against the “Mexican dictatorship”<sup>64</sup> that “use[d] coercive measures to keep its constituency in line.”<sup>65</sup>

### C. Land Reforms

In the eyes of the poor, one of the greatest reforms the Mexican Revolution and the 1917 Mexican Constitution brought was the redistribution of land through the creation of *ejidos*, lands that “vested in peasant communities by agrarian reform.”<sup>66</sup> The federal government would grant an *ejido* to a community who applied for a grant after squatting on land, either public or private, for a period of time.<sup>67</sup> With the *ejidos*, peasants’ hopes for better lives soared and colonization of lands exploded, particularly in the jungles of eastern Chiapas.<sup>68</sup>

All this changed drastically in 1992, when Salinas coerced the Mexican legislature to “reform” Article 27 of the Mexican constitution.<sup>69</sup> The legislature repealed sections X-XIV, the very parts of the constitution that provided for the granting of and the restrictions on the alienation of *ejidos*.<sup>70</sup> Subsequently, in February 1992, the legislature passed a new agrarian law that gave holders of *ejidos* the “legal right to purchase, sell, rent, or use as collateral” the *ejido* lands and gave private companies the right to buy these lands from the *ejido* holders.<sup>71</sup>

Almost immediately, critics began characterizing the reform of Article 27 as “the death knell for the peasantry.”<sup>72</sup> Peasant communities who owned no land of

<sup>61</sup> *Id.* at 172.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 173. All 13 of the original suspects “were eventually released without charges being brought against them.” *Id.*

<sup>64</sup> EZLN, *Declaración*, *supra* note 1, at 248.

<sup>65</sup> COLLIER & QUARATIELLO, *supra* note 8, at 126.

<sup>66</sup> *Id.* at 32.

<sup>67</sup> See *id.* at 32-33; CONST. POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS art. 27, §§ X-XIV (1917)(Mex.)(repealed 1992), available in English at <http://www.ilstu.edu/class/hist263/docs/1917const.html>. Although before 1992 *ejido* land could not be sold or purchased, peasants could choose to farm their plots themselves, either individually or collectively, or rent out their plots out. See COLLIER & QUARATIELLO, *supra* note 8, at 32, 116.

<sup>68</sup> “Peasants in eastern Chiapas hold proportionately more land under agrarian code provisions than almost any other region of the state.” COLLIER & QUARATIELLO, *supra* note 8, at 39. However, most of the land held by peasants in eastern Chiapas is “barely arable,” contributing to their state of abject poverty. *Id.*

<sup>69</sup> See *id.* at 88. President Salinas’s massive overhaul of the Mexican economy, citing the needs to prevent further land from being absorbed into inefficient peasant production” and to “increase the productivity of millions of peasant-held hectares used for crops not competitive on world markets.

<sup>70</sup> The most important of the repealed sections, section X, read as follows:

Centers of population which lack communal lands (*ejidos*) . . . shall be granted sufficient lands and waters to constitute them, in accordance with the needs of the population; but in no case shall they fail to be granted the area needed, and for this purpose the land needed shall be expropriated, at the expense of the Federal Government, to be taken from lands adjoining the villages in question. . . .

CONST. POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS art. 27, § X (repealed 1992).

<sup>71</sup> HARVEY, *supra* note 23, at 187.

<sup>72</sup> COLLIER & QUARATIELLO, *supra* note 8, at 88.

their own or needed more could no longer acquire land through squatting—unless they pledged loyalty to the PRI.<sup>73</sup> Further, the new law does not restrict the lands the peasants already owned from being alienated, by allowing private investors or businesses to take advantage of the Indians' impoverished state and "robb[ing] the Indians of their lands and plung[ing] them [deeper] into penury."<sup>74</sup> In addition, critics believed that the ability of the peasants to use the land as collateral "expose[d] poor and disadvantaged individual peasants to the unprecedented risk of losing land altogether to creditors," thus removing "one more protection for the poor."<sup>75</sup>

Salinas, in his desire to attract international investors to Mexico, had altered a major tenet of the Mexican Revolution, one which the poor particularly revered.<sup>76</sup> His move "galvanized peasant antagonism to the national state"<sup>77</sup> by causing many peasants to lose what little hope they had of getting plots of land of their own.<sup>78</sup> With NAFTA looming on the horizon, panic gripped the hearts of many of Mexico's poor,<sup>79</sup> who feared that big businesses and "greedy capitalists" from north of the border would swoop in and take from them what little they still possessed.<sup>80</sup>

#### D. Politics and Autonomy

In Chiapas, in particular, there was a tradition of self-government among the several Indian peoples that endured up until the last 20 or 30 years. A succession of rapacious governors allied to equally rapacious land owners and cattle barons has since destroyed the autonomy of the Indian people, taking their land and driving them to desperation and poverty.<sup>81</sup>

Despite the prevalence of the Indian population in Chiapas, politics in the state have been traditionally dominated by PRIista *ladino* landholding families.<sup>82</sup> Time and again, when elections rolled around, candidates from opposing parties, such as the National Action Party (PAN) and the left-wing Party of the Democratic Revolution (PRD), consistently lost to the PRI candidates who sometimes fraudulently received as much as 90 percent of the Chiapan vote.<sup>83</sup> On the rare

<sup>73</sup> In August of 1996 President Zedillo signed an agreement with 69 peasant organizations whose members were illegally squatting on private property in Chiapas. See REBELLION IN CHIAPAS, *supra* note 1, at 316-17. Those who signed the agreement that pledged loyalty to the PRI had the government buy the land for them; other squatters who were members of organizations unfriendly to the PRI were violently evicted. See *id.*

<sup>74</sup> COLLIER & QUARATIELLO, *supra* note 8, at 88 (comparing the effect of the reforms to the Liberal Reform laws of the 1800s).

<sup>75</sup> *Id.* at 124.

<sup>76</sup> See *id.* at 28, 31, 87.

<sup>77</sup> *Id.* at 88.

<sup>78</sup> See HARVEY, *supra* note 23, at 188.

<sup>79</sup> See *id.* at 188-89 ("[I]n most areas of rural Mexico, the immediate response to Salinas's announcement of *ejido* reform was one of fear and confusion.").

<sup>80</sup> See generally Womack, Jr., *supra* note 14, at 22 (discussing the effect NAFTA would have on the Mexican corn farmers by ending Mexico's corn subsidy). The reforms to Article 27 may have been the straw that broke the camel's back for the Zapatistas, who, soon after it was changed, decided to rebel. See COLLIER & QUARATIELLO, *supra* note 8, at 88.

<sup>81</sup> Carlos Fuentes, *Carlos Fuentes on Chiapas*, at <http://www.indians.org/welker/carlosfu.htm> (last visited Sept. 9, 1998).

<sup>82</sup> See COLLIER & QUARATIELLO, *supra* note 8, at 16.

<sup>83</sup> See *id.* at 82 (noting that the 1988 "[o]fficial election results strained credulity, reporting overwhelming PRI majorities in the rural regions of eastern Chiapas where the Cardenistas [supporters of Cuauhtémoc Cárdenas, the PRD candidate for president] were strongest"). In an August 1996 interview with a French magazine, Subcomandante Marcos commented on the 1994 elections, in which PRI candidate Ernesto Zedillo won the presidency:

occasion where an opposition party candidate won a local election, the state PRI would use its power over the purse strings to coerce him to become a PRIista.<sup>84</sup> All of this served to frustrate many Indians who, being heavily influenced by left-wing liberation organizations and the Catholic church's social gospel message,<sup>85</sup> wanted their lives and communities improved.<sup>86</sup> By controlling Chiapan politics, the PRI generally helped to maintain the status quo with the Indians, benefiting the *ladinos*.<sup>87</sup> At the same time, the PRIistas made limited reforms in certain pro-PRI villages in order to pacify their inhabitants, keeping them as allies and making them less prone to heed calls for change from their more left-leaning brothers.<sup>88</sup>

In addition, many indigenous communities became frustrated with their lack of autonomy in matters of dispute resolution and local politics.<sup>89</sup> As far back as 1542, the Spanish permitted the Mayan "authorities to control community affairs as long as they remained responsible to the Crown."<sup>90</sup> In the recent past, prior to 1989, the Mexican government allowed the Indians a limited amount of autonomy in these matters by allowing each village to have several magistrates, one from each major political party, who were available to "resolve all non-felony disputes" using the village's customary laws and traditions.<sup>91</sup> Beginning in 1989, however, the state PRI stopped this practice, making a new law<sup>92</sup> that allowed each village to have only one magistrate, who would be appointed by the PRIista governor.<sup>93</sup> This magistrate applied Mexican civil law, not the customary laws of the village.<sup>94</sup> This development led to several outbreaks of violence directly resulting from the villagers' inability to resort to customary law through their own magistrates.<sup>95</sup> Today, autonomy "has become *the* central demand of the Zapatista movement."<sup>96</sup>

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We thought the PRI was going to win, but by a fraud so enormous that people would revolt. I'm not talking about arms, but about a great protest movement. . . .

[T]he electoral result in '94 was so perfect that it makes you think. For example, look at the percentages: altogether, they give 50 percent to the PRI, 30 percent to the PAN, 15 percent to the PRD, and 2 percent to the PT [Partido del Trabajo]. Everywhere. For the presidential election, you have the same result in Lomas de Chapultepec or Polanco [Mexico City neighborhoods], where people live very well, as in La Lagunilla [another Mexico City neighborhood, but poor], for example, or in Chiapas, or in Guerrero, corners of the country where people are barely surviving. You find the same percentages [in the presidential vote], when they vary for congressional elections, for local elections.

Yvon Le Bot, *Le Rêve Zapatiste* (1997), in *REBELLION IN CHIAPAS*, *supra* note 1, at 322.

<sup>84</sup> See COLLIER & QUARATIELLO, *supra* note 8, at 130-31 (giving two examples of local PANistas who won local elections in Chiapas but later joined the PRI after being unable to get the PRI-controlled state government to issue public funds or licenses to them).

<sup>85</sup> See generally *id.* at 53-90 (discussing the impact of Catholic and left-wing social movements in Chiapas amongst the Indians).

<sup>86</sup> See *id.* at 82.

<sup>87</sup> See *id.* at 16.

<sup>88</sup> See *id.* at 125; see also *supra* note 73.

<sup>89</sup> See COLLIER & QUARATIELLO, *supra* note 8, at 128.

<sup>90</sup> HARVEY, *supra* note 23, at 39.

<sup>91</sup> COLLIER & QUARATIELLO, *supra* note 8, at 128.

<sup>92</sup> See *supra* note 58 and accompanying text.

<sup>93</sup> See COLLIER & QUARATIELLO, *supra* note 8, at 128.

<sup>94</sup> See *id.*

<sup>95</sup> See *id.* at 129-30 (documenting several examples of outbreaks of violence resulting from the inability of members of opposition parties to have their magistrates appointed by the governor and to have their customary laws applied to their disputes).

<sup>96</sup> COLLIER & QUARATIELLO, *supra* note 8, at 162; see *supra* note 16. For an interesting article discussing the "emerging" trend of indigenous groups around the world seeking autonomy, see Raizda Torres Wick, *Revisiting the Emerging International Norm on Indigenous Rights: Autonomy as an Option*, 25 YALE J. INT'L L. 291 (2000).

## IV. THE SAN ANDRÉS ACCORDS

Since Salinas's cease-fire declaration, talks between the Zapatistas and the Mexican government have started and stalled several times over the last eight years, with moments of tension and outbreaks of violence scattered throughout.<sup>97</sup> The administrations of both Salinas and his successor, Ernesto Zedillo, made but did not keep numerous promises to the Zapatistas to begin correcting the injustices of which the Zapatistas have so bitterly complained.

In 1996, the Zapatistas and the other indigenous peoples received a glimmer of hope in their struggle for rights and autonomy. On February 16, in San Andrés, Chiapas, after several months of dialogue and negotiations, teams representing the Zapatistas and the Zedillo administration officially signed a tentative agreement they had reached one month earlier.<sup>98</sup> However, Zedillo later balked at enacting the compact and implementing changes in the constitution and laws to fulfill the compact's promises.<sup>99</sup> This failure prompted the Zapatistas to "march on Mexico City" nineteen months later "to demand compliance with [these] agreements on indigenous rights and autonomy signed by the Zedillo government."<sup>100</sup> By December 2000, the end of Zedillo's term in office, the Mexican government had done little to fulfill the spirit of the promises in the compact, especially as it relates to autonomy.<sup>101</sup>

<sup>97</sup> For example, on December 22, 1997, members of an alleged "paramilitary group" supported by the PRI ambushed the village of Acteal, where "hundreds of displaced Zapatista supporters" were believed to live. Midwest Treaty Network, *Massacre in Chenalhó, Chiapas: At Least 45 Indians Killed*, at <http://www.alphacdc.com/treaty/chiapas2.html> (last visited Nov. 28, 2000). The group brutally massacred 45 villagers, the majority of them women and children, while local police turned a blind eye. See *id.* Many of these murdered villagers turned out to be members of "Las Abejas" (the Bees), a group dedicated to praying for peace in Chiapas who were praying at the time they were massacred. See *id.* For the EZLN's response to this massacre, see Subcomandante Marcos, *Comunicado del Comité Clandestino Revolucionario Indígena-Comandancia General del Ejército Zapatista de Liberación Nacional* (Dec. 23, 1997), in REBELLION IN CHIAPAS, *supra* note 1, at 349-51.

<sup>98</sup> REBELLION IN CHIAPAS, *supra* note 1, at 308.

<sup>99</sup> See *Zapatista Leader to Come Out of Hiding for Talks: Fox Extends Peace Proposal*, FLA. TIMES-UNION, Dec. 4, 2000, at A5. Rather than give in to the Indians' desire for autonomy, Zedillo called for "a new social pact with indigenous Mexico" where "the reforms would emanate from the state, top down, rather than from the rights of indigenous peoples, from below." COLLIER & QUARATIELLO, *supra* note 8, at 174. Zedillo finally did introduce a watered-down version of the compact to the legislature in March 1998, right after the Acteal massacre, but it failed to pass. See REBELLION IN CHIAPAS, *supra* note 1, at 308.

<sup>100</sup> John Ross, *Zapata's Return*, THE NATION, Oct. 13, 1997, at 6.

<sup>101</sup> Despite the federal government's failure to enact the provisions of the compact, by 1999, interim Chiapas Governor Albores Guillén has claimed to have "his own program to partially 'implement' the San Andrés Accords." COLLIER & QUARATIELLO, *supra* note 8, at 173. However, Guillén's "legal initiatives subvert the very principles of indigenous collective rights and self-determination, [yet] nonetheless have been put forward as supposedly in the spirit of the San Andrés accords." *Id.* at 175. For example,

[I]n Chiapas, the Albores Guillén government has set up a branch of the state public defenders office that employs legally-trained indigenous public defenders to help represent indigenous defendants. A state law has been passed establishing seven Indigenous Courts of Peace and Reconciliation which, for the first time in state history, legally acknowledge the legitimacy of indigenous customary law as a basis for arriving at the resolution of conflict. As the Zapatistas deployed nationally to conduct their March 21, 1999 referendum in favor of the San Andrés accords, Albores Guillén announced his own proposal for a State of Chiapas Law of Indigenous Rights and Culture. The timing of the proposal smacks of co-optation. . . . The initiative . . . leave[s] it entirely to the state to decide who is indigenous and what rights should be recognized and respected, seemingly rigidifying the existing structures of traditional power holders that the Zapatista rebellion undertook to replace.

*Id.* at 174.

Mexico's 2000 elections, however, brought a major shake-up to the Mexican political landscape that has brought new hope to the country's tribes. PANista Vicente Fox, formerly a top Coca-Cola executive, became the first non-PRlista in 71 years to win the Mexican presidency,<sup>102</sup> partly as a result of a new political consciousness instilled in the Mexican people after six years of seeing the Zapatistas at the forefront of Mexican politics. After taking office in December 2000, Fox, who "vowed to bring peace in Chiapas,"<sup>103</sup> immediately took several significant steps toward reducing the tension in the area. He ordered military roadblocks in Chiapas to be removed and Mexican troops stationed near indigenous camps to "pull back."<sup>104</sup> He also mandated the closing of seven Mexican military bases in Chiapas, converting them into "indigenous development centers."<sup>105</sup> And, just "[m]inutes after . . . being sworn in, Fox urged Congress to adopt the Indian rights bill Zedillo had rejected."<sup>106</sup>

On April 25, 2001, Mexico's Senate seemed to respond to President Fox's overtures by unanimously passing a bill, the Indian Rights and Culture Law,<sup>107</sup> to amend the Mexican Constitution. President Fox "called the Indian Rights Law ... 'a great step forward, a giant step' toward achieving peace in Chiapas."<sup>108</sup> However,

[i]n almost all key areas, the Senate added language that said the Indians must act in accordance with the national constitution and laws. That dashed the hopes of Indian supporters hoping to establish broad autonomy for Indians to control local politics,

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<sup>102</sup> Niko Price, *Mexico's Fox Set to Take Over*, CHI. TRIB., Nov. 27, 2000, at N3. In addition, Fox ally Victor Pablo Salazar became the new governor of Chiapas, winning the August 2000 election. *Top of the Times: A Review of the Week's News*, WASH. TIMES, Aug. 27, 2000, at C2.

<sup>103</sup> Susana Hayward, *Rebels, Fox Both Happy, For Now*, SAN ANTONIO EXPRESS-NEWS, Apr. 1, 2001, at 1A.

<sup>104</sup> *Zapatista Leader to Come Out of Hiding for Talks*, *supra* note 99, at A5.

<sup>105</sup> Hayward, *supra* note 103, at 1A.

<sup>106</sup> *Zapatista Leader to Come Out of Hiding for Talks*, *supra* note 99, at A5. Whether the San Andrés Accords are ratified or not, theoretically the Zapatistas and the other Mexican Indian groups could still try to have their rights enforced under the International Labor Organization's Convention No. 169, *see* Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 28 I.L.M. 1382 (1989) [hereinafter ILO Convention No. 169], as well as the United Nations' Universal Declaration of Human Rights, *see* G.A. Res. 217, at 71, U.N. Doc. A/810 (1948), both already ratified by Mexico and purporting to provide many of the same rights to the Indians the San Andrés Accords do. Although conceivably one of the other signatories could try to enforce the applicable provisions of the conventions on behalf of the Mexican Indians, none of the other signatories to either instrument has done so. Moreover, it is questionable whether the indigenous communities of Mexico have enough unity or financial strength to challenge the Mexican government in court on the basis of violating these instruments. It is also questionable whether these instruments are even considered legally binding under Mexican civil law. *See infra* Section IV.B. For an excellent article discussing the problems with the "practical application of [international] instruments to the amelioration of the rights of indigenous peoples," specifically concerning the situation in Chiapas, *see* Jeffrey N. Gesell, *Customary Indigenous Law in the Mexican Juridical System*, 26 GA. J. INT'L & COMP. L. 643 (1997).

Alternatively, the Zapatistas could try to enforce the provisions of the unratified San Andrés Accords on the basis of customary law, with the Accords and the other international instruments serving as evidence of Mexico's intent to establish the provisions in those agreements as customary law concerning its relationship to the indigenous communities. Again, however, the practical problems of using this line of reasoning to enforce those provisions on the basis of customary law are the same as with depending on the other international conventions discussed above.

<sup>107</sup> *See* Global Exchange, *Indian Rights Bill Gains Victory*, at <http://www.globalexchange.org/campaigns/mexico.news/ap042601.html> (last visited April 26, 2001).

<sup>108</sup> Martin Diego and Roberto Garduno, *President Fox Challenges Detractors of the Indian Rights Law to Offer Proposals*, LA JORNADA, Apr. 30, 2001, available at <http://www.globalexchange.org/campaigns/mexico/news/ap043001b.html> (last visited Jan. 24, 2003).

justice, land rights and natural resources based on their traditional practices, outside the jurisdiction of federal law.<sup>109</sup>

#### A. Providing for Autonomy and the Use of Customary Law

Dubbed the San Andrés Accords, the compact between the Zapatistas and the federal government, has the potential to improve the situation among the Indians, to some degree should it be substantially enacted in its current form. The agreement contains broad human rights commitments by the Mexican government to the Indians, including promises to officially recognize them in Mexico's Constitution, to increase the Indians' participation and representation in politics, to ensure complete access to the justice system, to promote the Indian culture, to guarantee education and training to the Indians, to ensure the meeting of basic needs, to work to decrease inefficiency and unemployment among the Indians, and to protect migrating Indians<sup>110</sup>—all issues of vital importance to the Zapatistas. Probably the most significant reform included in the compact, however, is the explicit recognition by the Mexican government that the various Indian communities should have a degree of autonomy, albeit within the framework of Mexican federalism. Section II of the compact provides for

[t]he creation of a judicial framework that establishes a new relationship between indigenous peoples and the State, *based on the recognition of their right to self-determination and the judicial, political, social, economic and cultural rights that obtain from it.* The new constitutional dispositions must include a framework of autonomy.

[S]uch a judicial framework must be produced with the recognition of the self-determination of indigenous peoples, who, with previous societies, are the ones who have suffered a historical continuation of colonial oppression, maintain and recognize their own identities; and possess the will to preserve them, based on their own, distinct cultural, social, political and economic characteristics. Those attributes characterize them as indigenous peoples, and as such, they are constituted as subjects with a right to self-determination.

Autonomy is the concrete expression of the exercise of the right to self-determination, within the framework of membership in the National State. *The indigenous peoples shall be able, consequently, to decide their own form of internal government as well as decide their way of organizing themselves politically, socially, economically and culturally.* Within the new constitutional framework of autonomy, the exercise of self-determination of indigenous peoples shall be respected in each of the domains and levels in which they are asserted, being able to encompass one or more indigenous groups, according to particular and specific circumstances in each federal entity. The exercise of autonomy of indigenous people will contribute to the unity and democratization of national life and will strengthen national sovereignty.

*It is appropriate to admit, as a fundamental demand of the indigenous peoples, their right to autonomy, insofar as they are communities with different cultures and they have the faculty to decide*

<sup>109</sup> Kevin Sullivan, *Measure on Mexican Indian's Rights Gets Mixed Reviews*, WASH. POST, Apr. 30, 2001, available at <http://www.globalexchange.org/campaigns/mexico/news/washpost043001.html> (last visited Jan. 24, 2003).

<sup>110</sup> See *Acuerdos de San Andrés* [San Andrés Accords], Feb. 16, 1996, available in English at [http://flag.blackened.net/revolt/mexico/ezln/san\\_andres.html](http://flag.blackened.net/revolt/mexico/ezln/san_andres.html) (Rosálva Bermúdez-Ballín trans.) (emphasis added) [hereinafter San Andrés Accords].

*their own local issues within the framework of the National State.* This acknowledgement is based on Agreement 169 of the OIT International Labor Organization, and ratified by the Senate of the Republic. Thus, the recognition of autonomy is based on the concept of indigenous group, which is founded on historical criteria and on cultural identity.<sup>111</sup>

These provisions would give the indigenous communities more power to self-govern, at least on the local level, than they have had in 500 years.<sup>112</sup> By providing the Indians with the ability “to decide their own form of internal government,” the compact would effectively legitimize the indigenous “autonomous municipalities” that were set up as alternatives to the official local governments after the 1994 rebellion.<sup>113</sup>

Regarding the use of customary laws by these indigenous municipalities, the compact further provides that

[t]he State *must guarantee* the towns full access to the jurisdiction of the Mexican State, *with recognition and respect for their own internal normative systems, guaranteeing full respect for human rights.* It will promote *the recognition that positive Mexican Law may acknowledge the authorities, norms and internal procedures for conflict resolution of towns and communities,* [and] will guarantee that local judgments and decisions are confirmed by the judicial authorities of the State.<sup>114</sup>

By allowing recognition by Mexican positive law of the communities’ “internal normative systems,” this provision would have the effect of not only allowing the indigenous communities to once again use their own customary laws and traditions for resolving disputes,<sup>115</sup> but also give their practices a legitimacy equivalent to Mexican civil law, a status indigenous customary law has never before enjoyed on a national level.<sup>116</sup> In addition, by allowing legal recognition of the communities’ “authorities, norms and internal procedures for conflict resolution,” the compact also opens the door for the indigenous municipalities to once again resort to their own magistrates rather than a state-appointed magistrate for their disputes.<sup>117</sup>

One of the most unusual provisions on autonomy included in the agreement pertains to the funding of the new autonomous Indian governments, transferring to them some power over the purse strings:

It is proposed to the Congress of the Union to recognize, in national legislation, these communities as entities with public rights, with the right

<sup>111</sup> San Andrés Accords, *supra* note 110, §II, pts. 1-2 (emphases added). As noted within the language of the compact itself, many of the concepts incorporated in this and other parts of the San Andrés Accords relate directly to the rights already purportedly conveyed to indigenous people in 1989 by the ILO Convention No. 169, a convention of which Mexico is one of ten signatories. See ILO Convention No. 169, *supra* note 106.

<sup>112</sup> See *supra* notes 89-96 and accompanying text.

<sup>113</sup> See Womack, Jr., *supra* note 14, at 46 (stating that after the 1994 elections the “[i]n many places PRDistas refused to accept defeat, occupied town halls, or seceded from their municipalities and organized their own local governments”); COLLIER & QUARATIELLO, *supra* note 8, at 169-70 (discussing the efforts of Governor Guillén “to disband . . . the 37 autonomous centers and arrest their leaders” by “declar[ing] illegal the autonomous municipalities that the Zapatistas had set up for governing their territory”).

<sup>114</sup> San Andrés Accords, *supra* note 110, § III, pt. 2 (emphasis added).

<sup>115</sup> See *supra* notes 89-96 and accompanying text.

<sup>116</sup> *But see supra* note 101 (discussing measures taken at the state level in Chiapas to accommodate the use of customary law in the state judicial system).

<sup>117</sup> See *supra* text accompanying notes 92-95.

to free association in municipalities with populations that are predominantly indigenous, as well as the right of a group of municipalities to associate, in order to coordinate their actions as indigenous peoples.

*Competent authorities will execute the orderly and gradual transference of resources, so that the people themselves may administer the public funds assigned to them, and to strengthen the indigenous participation in government, negotiations and administration in the various domains and levels. It will be up to state legislatures to determine, in their case, the obligations and faculties that might be transferred.*<sup>118</sup>

Under this part of the compact, the indigenous municipalities would be given power to distribute public funds to better meet the needs of the community as they see fit rather than being completely at the mercy of those who wish to keep them in their current miserable condition.<sup>119</sup> However, as the wording of the agreement suggests, the state government has the power to determine *what* is transferred to the local governments, which, could maintain the status quo if the state government keeps the purse strings tight.<sup>120</sup> Regardless, the measure is still a step in the right direction for the indigenous communities in their struggle to improve their plight.

The compact does not provide Chiapas' indigenous citizens with total autonomy, which some of the Zapatistas have sought. Rather, it grants a measure of autonomy "within the framework of the National State" and that serves to "strengthen national sovereignty."<sup>121</sup> This gives the Mexican government a final say concerning the activities of the local indigenous governments and what fits within and outside of the national framework, as well as what strengthens national sovereignty and what does not. But the above provisions would still give the Indians an official recognition by the federal government of their autonomy and, should the government pass protective legislation, would provide a basis for legal recourse should the government violate Indian autonomy.

## B. Ratifying the San Andrés Accords

Ratification of the San Andrés Accords by the Mexican government would be a major step toward resolving many of the Zapatistas' concerns. However, without the government enacting laws to implement the compact's provisions, it is questionable whether the compact would have any effect on the situation in Chiapas which continues to fester six years after the initial rebellion. Like Mexico's constitution, the compact is lofty in its goals, laying out a long series of promises and ideals. However, Mexico's governing charter,

like all Latin American constitutions written within the framework of the civil law system, sets forth ideals toward which the government should strive, rather than iron-clad guarantees promised by Anglo-Saxon constitutions. What the Mexican constitution promises and what the national and state governments legislate and actually (if ever) deliver are two different things.<sup>122</sup>

<sup>118</sup> San Andrés Accords, *supra* note 110, § II, pt. 4 (emphasis added).

<sup>119</sup> See *supra* note 83 and accompanying text.

<sup>120</sup> As of 2002, however, this point may not be as strong as before since the new governor of Chiapas is not a PRIista. See *supra* note 102.

<sup>121</sup> San Andrés Accords, *supra* note 110, § II, pt. 2.

<sup>122</sup> COLLIER & QUARATIELLO, *supra* note 8, at 28.

In other words, even if the Mexican government ratifies the Accords, without the backing of the Mexican civil law, the compact may not have any real teeth. This has been illustrated by the few substantive changes in the Indians' plight since 1989, when Mexico ratified the International Labor Organization (ILO) Convention No. 169, the Convention Concerning Indigenous and Tribal Peoples in Independent Countries.<sup>123</sup> The ILO Convention purported to give indigenous people many of the same rights and privileges that are contained in the San Andrés Accords.<sup>124</sup> For example, the Indians of Mexico already supposedly have the following rights concerning use of customary law:

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.<sup>125</sup>

Yet, until 1999,<sup>126</sup> the Indians of Chiapas were unable to resort to customary law when resolving disputes but were forced to use the PRI-appointed magistrates who only applied Mexican civil law.<sup>127</sup> Although the ILO claims that Convention No. 169 is "legally binding once it is ratified by governments," the organization itself admits that it has "no coercive power" to force countries who have ratified the convention to adhere to its standards.<sup>128</sup> Rather, "[t]he basic principles of the ILO's supervisory procedures are dialogue and persuasion."<sup>129</sup> Thus, if no laws are passed following the ratification of the San Andrés Accords to give the compact teeth, the San Andrés Accords could prove to be just another Convention No. 169 for the Mexican Indians—many promises, few of which are fulfilled.<sup>130</sup>

<sup>123</sup> See *id.* at 173; ILO Convention No. 169, *supra* note 106. The most significant change made between Mexico's ratification of the ILO convention and the signing of the San Andrés Accords is the revision of Article 4 of the Mexican constitution, which now recognizes Mexico as a pluralistic culture. See CONST. POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS art. 4 (1917) (Mex.) (amended 1992), available in English at <http://www.fortunecity.com/victorian/wooton/34/mexico/constitution.html>.

<sup>124</sup> Compare San Andrés Accords, *supra* note 110, with ILO Convention No. 169, *supra* note 106.

<sup>125</sup> ILO Convention No. 169, *supra* note 106, § 8.

<sup>126</sup> See *supra* note 101.

<sup>127</sup> See *supra* notes 91-95 and accompanying text. Ironically, the same year Mexico became a signatory on the ILO Convention No. 169, see COLLIER & QUARATIELLO, *supra* note 8, at 173, Governor González instituted his changes in Chiapan law that took away the Indians' privilege to resort to customary law through their own magistrates. See *id.* at 128.

<sup>128</sup> International Labor Organization, *Convention No. 169: Its Nature and Fundamental Principles*, at <http://www.ilo.org/public/english/employment/strat/poldev/papers/1998/169guide/169guide.htm> (last visited Apr. 22, 1998).

<sup>129</sup> *Id.*

<sup>130</sup> In Guatemala, however, Convention No. 169 seemed to work better than in Mexico, "provid[ing] a strong legal basis for indigenous groups in Guatemala to demand protection of cultural rights after the Guatemalan war ended in the 1980s." See COLLIER & QUARATIELLO, *supra* note 8, at 160. For more information about the Guatemalan civil war and the human rights violations committed against the indigenous in Guatemala, see, e.g., ARCHDIOCESE OF GUATEMALA, GUATEMALA: NEVER AGAIN! (1999); GUATEMALA IN REBELLION: UNFINISHED HISTORY (Jonathan E. Fried ed., 1983); RIGOBERTA MENCHU, I, RIGOBERTA MENCHU: AN INDIAN WOMAN IN GUATEMALA (Ann Wright trans., 1987); DAVID STOLL, RIGOBERTA MENCHU AND THE STORY OF ALL POOR GUATEMALANS (1999), and JENNIFER SCHIRMER, THE GUATEMALAN MILITARY PROJECT: A VIOLENCE CALLED DEMOCRACY (2000).

A direct comparison of the Zapatista rebellion to other Latin American uprisings is beyond the scope of this note, as is a comparison of human rights violations by Mexico against the indigenous to human rights violations in other Latin American countries. For information about rebellions and violations of human rights in other parts of Latin America, see, for example: YVON GRENIER & MITCHELL

### C. Looking Internationally

Continued pressure from human rights activist groups, who have been heavily involved in the Chiapas situation since the Zapatista rebellion in 1994, could ultimately keep the Mexican government from reneging on the provisions of the San Andrés Accords, and cause it to install the protections for the indigenous in Mexican civil law.<sup>131</sup> Because Mexico's economy has become increasingly dependent on international investment, particularly from the United States and Canada via the NAFTA treaty,<sup>132</sup> sustained international pressure has and will continue to force Mexico to seek to resolve this conflict by implementing the San Andrés Accords and the other instruments which it has already ratified.

## V. CONCLUSION

Ultimately, to help resolve the conflict that surfaced on that fateful New Year's Day in 1994, President Fox must, at the very least, push hard to have the San Andrés Accords ratified and to enact new laws to implement its provisions. In a major development toward settling the conflict between the Zapatistas and the Mexican government, on March 28, 2001, the leaders of the Zapatista rebels spoke before the Mexican Congress about their plight.<sup>133</sup> It was "the first time the Zapatistas acknowledged the peace overtures made by President Vicente Fox, who has struggled to meet their demands."<sup>134</sup> Although "Congress responded warmly," the Zapatistas' political battle seems to have just begun: "Congressmen from Fox's own National Action Party have been most reluctant to embrace the Indian rights bill, and many shunned the session."<sup>135</sup> About 295 of the 628 senators and congressmen were present.<sup>136</sup> "Some Zapatistas believe the accords . . . should pass exactly as they are, an impossibility to some members of Congress."<sup>137</sup> The rest of the members of the Congress apparently agreed with the sentiment towards the accords and eventually passed a watered-down bill that, to the Zapatistas, essentially gutted the

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A. SELIGSON, *THE EMERGENCE OF INSURGENCY IN EL SALVADOR: IDEOLOGY AND POLITICAL WILL* (1999); HUMAN RIGHTS WATCH, *EL SALVADOR'S DECADE OF TERROR: HUMAN RIGHTS SINCE THE ASSASSINATION OF ROMERO* (1991); GONZALO SANCHEZ, *BANDITS, PEASANTS, AND POLITICS: THE CASE OF "LA VIOLENCIA" IN COLOMBIA* (Donny Meertens & Alan Hynds trans., 2001); and LAWRENCE WESCHLER, *A MIRACLE, A UNIVERSE: SETTLING ACCOUNTS WITH TORTURERS* (1998) (discussing human rights violations in Brazil).

The humanitarian organization Human Rights Watch maintains a website, located at <http://www.hrw.org>, dedicated to monitoring human rights violations all around the world. For current news releases and other information concerning human rights violations in Latin America, see Human Rights Watch, *Americas*, at <http://www.hrw.org/americas> (last visited Apr. 19, 2001). To access Human Rights Watch reports on violations in any specific country, see Human Rights Watch, *Publications*, at <http://www.hrw.org/reports98/publicns.htm> (last visited Apr. 19, 2001).

<sup>131</sup> In fact, pressure from international indigenous rights groups was the biggest reason why the Mexican government even revised Article 4 of the Mexican constitution in 1992. See COLLIER & QUARATIELLO, *supra* note 8, at 173.

<sup>132</sup> See Traci Carl, *Fox Promises More Growth to Mexicans*, CHATTANOOGA TIMES, Nov. 29, 2000, at C1 (stating that NAFTA has "created thousands of jobs and brought millions of dollars in foreign investment" to Mexico).

<sup>133</sup> See Niko Price, *Chiapas Rebels Put Peace on the Table*, CHI. TRIB., Mar. 29, 2001, at N4 ("23 ski-masked Zapatista rebels strode . . . onto the floor of Congress and proclaimed the beginning of a political struggle for Indian rights.")

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Tessie Borden, *Zapatistas Heading Home: Negotiations Still Needed*, ARIZ. REPUBLIC, Mar. 31, 2001, at A20.

<sup>137</sup> *Id.*

San Andrés Accords, especially regarding autonomy.<sup>138</sup> The Zapatistas responded by ending all communication with the Mexican government, which has not been reestablished to the degree that it previously existed in March 2001.<sup>139</sup>

The Accords do not even begin to solve all of the practical problems the Zapatistas and Mexico's other indigenous groups face and do not address some of their concerns, such as Article 27.<sup>140</sup> The Accords represent a significant step in granting the indigenous peoples of Mexico more rights than they have had since they were conquered by the Spanish 500 years ago. Only time will tell whether Fox will be able to fulfill his campaign promises in this area, but the Zapatistas are cautiously optimistic.<sup>141</sup> After all, the rebellion has not only caused their plight to become an international concern, but has also had a substantial effect in changing the way Mexican politics are conducted. They were no doubt at least partially responsible for the collapse of the PRI, the dominant political force in Mexico since the time of the Mexican Revolution.

The Zapatista Revolution has forever changed Mexico—and it got Mexico “like el Tigre de Santa Julia.”<sup>142</sup>

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<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *See supra* Section III.C.

<sup>141</sup> Subcomandante Marcos, after being silent for months after Fox's July 2 victory, had this to say on November 29, 2000: “It has been a long nightmare for millions of Mexicans. . . . For us the nightmare ends today. Another could follow, or it could be a new dawn.” *Fox Gov't Orders Mexican Army to Abandon Chiapas Checkpoints*, HA'ARETZ (Tel Aviv), Dec. 3, 2000 (quoting Subcomandante Marcos). President Fox, in his inaugural address, replied, “Today a new dawn begins for Chiapas.” *Id.*

<sup>142</sup> Taibo, *supra* note 2, at 406.