**TODO CAMBIA Y TODO SIGUE SIENDO IGUAL (THE MORE THINGS CHANGE THE MORE THEY STAY THE SAME): HOW FIFTEEN YEARS LATER THE CONSTANT THREAT OF AN END TO THE ZAPATISTAS CONTINUES TO JUSTIFY THEIR MEANS**

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**INTRODUCTION**

On January 1, 1994, armed guerilla fighters of the Zapatista National Liberation Army (EZLN), known by its initials in Spanish, took control of the municipal government buildings of six towns in the state of Chiapas, Mexico.\(^1\) Since then the EZLN has worked to establish autonomous municipalities that function independently of the federal Mexican government. The EZLN is not an indigenous “tribe” or ethnic group in itself; it is a political movement created by the indigenous peoples of Chiapas, who are descendants of the Classic Maya civilization, for the purpose of taking control of the conditions of their lives and the lives of their children. Given this purpose and because its bases of support are primarily indigenous communities in Chiapas, the EZLN displays some very unique characteristics that begin in indigenous thought and worldview. After the creation of the EZLN and the uprising these characteristics were implemented as the Zapatista communities saw fit and by the Zapatistas themselves, not the Mexican government. In other words, achieving this level of autonomy in Chiapas required an armed uprising by the indigenous Maya population; and with no true reform in Mexican law nor any official truce in place, it requires continuous resistance to survive. This fact invites an inquiry into the conditions faced by the indigenous peoples of Chiapas and, to an extent, Mexico before the uprising and the options, other than armed struggle, available to them for remedying these conditions. The use of violent confrontation by the EZLN was limited to the first 12 days of their struggle. It was used to bring attention to the plight of the indigenous in Chiapas. However, while the Zapatista forms of resistance against the exploitation of and oppression by the Mexican government have taken different forms, the possibility that armed resistance may again be needed has not been completely removed from the reality in Chiapas.

In analyzing the conditions that led to the uprising, it becomes evident the Zapatistas were faced with multiple factors which precluded them from improving their situation and that of their children through any legal or political avenue. Faced with an ever-shrinking physical territory and a virtually non-existent space for their participation in Mexican and local Chiapan government, the Zapatistas set out on January 1, 1994 to create a space for themselves within the government in order to rescue and improve their territory.

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* Although the freedoms of speech and expression inherently belong to all humans, it is very much a Western idea that one can research, study, document, probe and write about anything, including other human beings, without any consideration as to the effects one’s work may have upon one’s subject. This note is my attempt to deviate from that approach as much as possible and to try to explain my reasons, motivations, and intentions in putting forth this article. **Para los Zapatistas: con todo el respeto del mundo, y toda la honradez de mi corazón, presento este trabajo. Mi aspiración es que a través de el, se conozca en mas partes del mundo el gran ejemplo que nos han dado con su determinación a no ceder el derecho a una vida digna. (For the Zapatistas: with all the respect in the world, and all the sincerity of my heart, I present my work. My aspiration is that through it, the great example that you have given us with your determination to not give up the right to a dignified life ay be known throughout more of the world.)**

\(^1\) **MIHALIS MENTINIS, ZAPATISTAS: THE CHIAPAS REVOLT AND WHAT IT MEANS FOR RADICAL POLITICS** 1 (2006).
It is this attempt to etch out an existence against an opponent such as the Mexican government with the backing of the United States corporate and political forces that make the story of the EZLN very important to introduce into a discussion of tribal law. In “Indigenous Self-Government”, Jacob T. Levy discusses some of the logistical and theoretical reasons why it is difficult (and in some instances counterproductive) for states to grant indigenous peoples the opportunity to govern themselves. Among these reasons is the fact that unlike a state, many indigenous groups are incapable of meeting all of its members’ needs due to their small number, as well as a potential he asserts among indigenous governments to exclude and oppress individuals and non-indigenous minorities within their territories in an attempt to promote and enhance the traditional culture. However, despite these shortcomings raised by Levy, he concludes that in the end indigenous peoples are the best equipped to govern their lives and manage their affairs, and should be afforded opportunities to exercise self-government. Providing support for this conclusion, Levy gives two primary reasons.

The first is the nature of the “guardian-ward” relationship, which has emerged in countries like the United States, between the national government and the indigenous groups that live within it, where the state takes on a parental relationship towards a tribe or other group, effectively denying them the opportunity to make important decisions about their government and administration of their territory. As Levy points out, all competent persons outgrow the need for a guardian even if it were appropriate at one time. The second reason is related to the first-if the “guardian-ward” relationship was properly initiated, states the world over—and the United States is a prime example—have failed the indigenous groups they were entrusted to protect by becoming the biggest threats to their well-being and to the preservation of their territories, resources and cultures.

While many of the circumstances facing the Zapatistas have historically been similar to those facing indigenous peoples of the world (including those within the territorial United States) their approach to finding a solution for their survival was novel. The concept of autonomy has played out and has been implemented within Zapatista communities with a strong reliance on traditional legal norms and the concepts of human dignity and human rights. Through conducting the research for this paper and then writing the paper itself, I have come to believe that there are lessons within Zapatismo that may prove to be very valuable to indigenous peoples as groups experimenting with different methods of exercising their collective right to self-determination and as individuals seeking to strengthen their ties to the past in order to secure a dignified future.

This article gives a chronological account of the events pre-dating the uprising of January 1, 1994 and the Zapatista struggle through the years. After examining those events in light of the case for indigenous self-determination, this article takes into consideration conditions within Mexico and developments of international law to comment on the courses of action taken by the EZLN, from its earliest days, through the uprising, and into the present.

With the intention of writing an article that was inclusive of the indigenous story, I selected each of my sources with a specific purpose in mind. In my search for sources of information regarding the culture of the Classical Maya, I looked at different sources, and

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3 Id. at 120.
4 Levy, supra note 2, at 125-26.
5 Id. at 128.
6 Id. at 129.
7 Id.
ultimately settled on the book by Simon Martin and Nikolai Grube, *Chronicles of the Maya Kings and Queens*. I found a certain degree of objectivity that comes from their use of writings which can be examined and interpreted by others. Ideally, I would have liked to use primary sources to write the section on the Classic Maya, but time constraints made this impossible.

One unique characteristic of the Zapatista movement is that it has been very well documented from within and has been the subject of countless news articles, books, and essays. I tried to use primary sources whenever possible, and so *20 y 10: El Fuego y La Palabra* by Gloria Muñoz Ramirez, in which Zapatistas recount the story of the early years of resistance and organization, proved valuable, as did the Zapatista’s own website. When seeking to learn about the negotiation process between the EZLN and the Mexican government, Juan Guerra’s first-hand account of his participation and that of COCOPA, as he tells in *Historia Personal de la COCOPA*, also provided very helpful insight.

I also decided to include references from non-primary sources Nick Henck and Mihalis Mentinis. I found their writings useful because Henck relied upon primary sources, including EZLN communiqués, video documentaries, and news reports, for his biography of Subcomandante Marcos, while Mentinis relied on primary sources and his own observations from the time he spent in Chiapas. However, Mentinis also relies on some sources (De la Grange and Rico) which have been noted by others who have written on the Zapatistas (Henck included) to be personally biased against Marcos individually and the EZLN generally, so further scrutiny was used when assessing Mentinis’ reliance on their assertions.

I dedicate the first three sections of this paper to a historical backdrop of the events that led to the creation and uprising of the EZLN in the mid-1990s. This backdrop includes origins of Mayan culture and events local to Chiapas that impacted the lives of the indigenous peoples there and helped shape the future of the state. I finish the historical background section with a discussion of more recent events in Chiapas and the public life of the EZLN. In the fourth section of this paper, I give an overview of the structure that Zapatista government has taken and how the rule of law is applied at both the local and regional levels, as well as how this application has borrowed from notions of government traditional to the indigenous peoples of Chiapas.

The final section of this paper lays out my argument in defense of the course of action taken by the EZLN and its support bases in creating a space for themselves within Mexican society, and demonstrates why the current state of federal Mexican law and international law do not leave indigenous peoples, including the EZLN, viable options for resolving injustices committed against them. This section explores the reasons behind the pervasive hesitance and, at times, utter refusal by states to recognize indigenous rights to self-determination, and how different approaches to self-determination are serving to reduce the potential fears of instability and degradation of territorial integrity for states and are doing away with the available pretexts for the inaction of states. I end by reiterating that the continued complacency of states to the lack of recognition of self-determination rights for indigenous peoples, particularly in Mexico, requires continued actions like those of the EZLN.

**PREHISTORY OF TRADITIONAL MAYAN LAW**

With the exception of a few non-indigenous mestizo militants that belong to the EZLN, the majority of its members belong to six major indigenous ethnic groups: the Tzotzil, Tzeltal,
All six of these groups are descendants of the classic Mayan civilization of Mexico and Central America. While they speak different Mayan languages and have individual customs, these six groups share several common aspects of their culture, mythology and rituals that can be traced back to their classic Mayan roots.

Mayan writing has been a great source of information about ancient and traditional law of the Maya. It is still unclear where writing in Mesoamerica originated, but its importance in Mayan culture began in the late Pre-Classic and early Post-Classic Periods. From one period to the other, the change in social and political structure and, in particular, a stronger emphasis on dynastic descent required detailed written records. The earliest Mayan writing was developed by Mayan people speaking Ch’olan, a principal Mayan language group. Their writing would be adopted by Maya speaking other languages, such as Yucatecan, but the Ch’olan language remained a prestigious language used in royal inscriptions throughout the Mayan world.

Much of the Mayan writing that remains today is found on large monoliths called stelae, or on stone wall panels, altars, thrones, door lintels, stucco plaster, and wood carvings, and the majority of Mayan inscriptions were commissioned by kings or related to the vast royal culture the Maya developed. This royal culture showed through every aspect of Mayan culture and the structure of Mayan society. The evidence of the royal culture of the Maya that survives today is a valuable source for studying traditional Mayan law in its practical application across every class of Mayan society.

Mayan hieroglyphs were done with brush strokes by scribes, whose position in Mayan society was a prestigious one. Only four books called codices, written on bark paper, survive today, and these are all non-historical almanacs. The texts that survive are dedicated exclusively to the lives and dealings of the elite class. The one exception is a text called the Popul Vuj, the sacred book of the K’ichee Maya of Guatemala, which survived destruction and tells their creation story.

The writings found on stelae and temples usually deal with historic facts and political events. New stelae were erected by Mayan rulers to commemorate a newly completed temple, a military victory, or the ascension of a new king or dynasty to the throne. Ascension to the throne was very much a patrilineal system, and queens were only used when the possibility existed that a dynasty would die out. The ascension ceremony included a complicated series of rituals, among them a naming ceremony, in which the king took a “divine name” and added it to the name he had in childhood. The divine names were often the names of a grandparent or other predecessor of the ruler and, even among the Maya today, children are believed to be reincarnations of their grandparents.
Mayan society, as with all Mesoamerican civilizations, revolved around the harvesting and use of maize or corn.\textsuperscript{21} The Popul Vuj tells that in the beginning of time there were only four men who were made of corn: Jaguar Cedar, Jaguar Night, Not Right Now, and Dark Jaguar.\textsuperscript{22} In fact, the life cycles of humans were compared with the different phases of the corn cycle.\textsuperscript{23} Through the intertwining of sustenance and the cycles of life, a bond was formed that linked all levels of Mayan society with each other for the survival of the civilization as a whole. Thus, a king’s royal duties and responsibilities were just as important as those of the maize farmer, and the end goal was the same for each.\textsuperscript{24}

In addition to royal authority, the Maya also held age in high regard,\textsuperscript{25} and elders were given a prestigious position in Mayan society. Simply put, the Maya believed that only intelligent people with the skills to survive made it to old age. Those rulers who survived into old age were highly regarded, and their titles amended to include the number of \textit{k’atuns} (periods of 20 years in the Mayan calendar) that they had lived through.\textsuperscript{26} Through the comparison of the life cycles with the phases of corn, death came to be viewed as a journey through the Underworld, at the end of which one was reborn just as corn springs out of the ground year after year.\textsuperscript{27}

The Popul Vuj, an ancient document that contains the creation myth of the K’iche Maya of Guatemala, tells that in the beginning, the four humans made of corn were able to see through mountains and into all things just as the gods could, and this made the gods so jealous that they blinded the humans, forcing them to look at an object that is nearby in order to see it clearly.\textsuperscript{28} This notion of a loss of vision and a time when humans were better off would survive the centuries, be passed from one indigenous generation to the next, and eventually play an important role in the Zapatista movement.\textsuperscript{29} In many of their communiqués, the Zapatista command would later invoke a need to return to this time through self-reflection and participation.\textsuperscript{30}

**HISTORY AND CREATION OF THE EZLN**

Prior to their attack on the municipal heads of New Year’s Day in 1994, there were many years of incidents and actions that led to the formation of the EZLN and their declaration of war against the Mexican government. While a history of exploitation of the indigenous populations of Chiapas by foreigners (namely Spanish conquerors and colonizers) can be traced back 500 years ago, two separate chronological series of events in the recent history of Mexico would converge in the Lacandona Jungle of Chiapas and lead to the creation of the EZLN. One proximate incident that eventually led to the Zapatista rebellion has been thought to be the massacre of students at Tlatelolco in Mexico City in October of 1968.\textsuperscript{31} That year on October 2,
federal Mexican troops opened fire on students protesting against repression and questioning the legitimacy of the federal government.\textsuperscript{32} While the authorities acknowledged the death count at 27, unofficial reports have placed it at 300 or greater. Further, the federal government labeled all documents concerning the massacre as “classified,” thus blocking any investigation into the killings.\textsuperscript{33} The massacre at Tlatelolco had the result of inspiring students and other visionaries to form various organizations with the purpose of overthrowing the ruling political party, the PRI (Institutional Revolutionary Party), which had been in control of the Mexican government since the end of the Mexican Revolution.\textsuperscript{34} One of these organizations was the \textit{Fuerzas de Liberación Nacional} (National Liberation Forces or FLN), which was founded by brothers Cesar Germán and Fernando Yañez in 1969, and was comprised of students. Fernando would later become one of the main founders of the EZLN and would remain its symbolic leader for years to come.\textsuperscript{35}

At the same time during the 1970s, the federal government of Mexico began encouraging settlement of the jungle lands of Chiapas as a way to resolve land disputes and conflicts in other parts of Mexico, including the Yucatán.\textsuperscript{36} Luis Echeverria, who had been the Minister of the Interior during the Tlatelolco massacre, was elected president in 1970. In an attempt to improve his image, Echeverria began several government initiatives, one of which was the promotion of \textit{ejidos}, land collectively owned by indigenous communities, where interest can be inherited by future generations but cannot be sold.\textsuperscript{37} Because the promotion of \textit{ejidos} and \textit{campesino} (rural people) organizations did little to improve the conditions of life for rural peasant farmers and indigenous people, the 1970s saw the creation and flourishing of campesino and indigenous movements in Chiapas.\textsuperscript{38} It was in 1992 that, as part of the provisions requested by the United States in order to allow Mexico entry into the North American Free Trade Agreement (NAFTA), the United States demanded the Mexican constitution be amended to dissolve the \textit{ejidos} and open up this land that was once communally held for sale by corporations; the request was granted and implemented by the PRI (under President Carlos Salinas).\textsuperscript{39}

Many of the organizations that emerged in the 1970s and 80s in the Lacandona Jungle of Chiapas were encouraged and helped by outside forces and groups that began coming into the jungle and sharing revolutionary and socialist ideas with the indigenous people (the FLN was one of these groups); another of these influencing organizations was the Catholic Church and its missionaries.\textsuperscript{40} In particular, the Bishop of San Cristóbal de la Casas, Samuel Ruiz, was a strong proponent of Liberation Theology, a radical doctrine which blends leftist political ideologies with religious (specifically Roman Catholic) validation for armed struggle.\textsuperscript{41} Bishop Samuel Ruiz helped found one of these organizations, Quipitic, in 1974.\textsuperscript{42} The aim of organizations

\begin{itemize}
\item \textsuperscript{32} \textit{Id.}
\item \textsuperscript{33} \textit{Id.}
\item \textsuperscript{34} \textit{Id.}
\item \textsuperscript{35} NICK HENCK, \textsc{Subcommander Marcos: The Man and the Mask} 200 (2007).
\item \textsuperscript{36} DUNCAN EARLE & JEANNE SIMONELLI, \textsc{Uprising of Hope: Sharing the Zapatista Journey to Alternative Development} 77 (2005).
\item \textsuperscript{37} MENTINIS, \textit{ supra} 1, at 3.
\item \textsuperscript{38} \textit{Id.}
\item \textsuperscript{39} \textit{Id.} at 5.
\item \textsuperscript{40} MENTINIS, \textit{ supra} 1, at 4.
\item \textsuperscript{41} See LEONARD BOFF & CLODOVIS BOFF, \textsc{Introducing Liberation Theology} 66-75 (Paul Burns trans., Search Press Ltd. 1987) (1986).
\item \textsuperscript{42} MENTINIS, \textit{ supra} 1, at 3.
\end{itemize}
formed by the Catholic Church was to organize indigenous resistance and, with that aim, the Church created another group, Slop. “Slop” in the Tzeltal language means “root.”

With little evidence that conditions would improve in the jungles of Chiapas, the decades of the 1970s and 80s were also a time of protest in Chiapas. But with the interests of the large landowners (called finqueros in Spanish) in mind, the government sent federal forces into the jungle. These federal troops, along with paramilitary troops privately hired by the finqueros themselves, violently put down any form of protest in the jungle. It was not uncommon for indigenous organizers and activists to disappear or be assassinated.

According to the biography by Nicholas Henck, it is around this time (the early 1980s) that the man who would come to be known by the world as Subcomandante Marcos, the military leader and often the voice of the EZLN, possibly began making his first trips into the jungle to make the transition from urban life in Mexico City to life in the Lacandona jungle. Henck’s biography quotes Marcos as stating that he met Germán, head of the FLN, around 1980, and that it was Germán who gave him some of his first military training.

In this climate of violent political repression and worsening conditions for the indigenous population, the organized political struggles in Chiapas took a unique form, as members of indigenous organizations founded by the Catholic Church met and began collaborating with armed guerilla groups and organizations from outside the Lacandona Jungle. Among those organizations which traded members with the FLN, though at times unwillingly, was Slop, whose members were cooperating in efforts with the FLN by 1982.

Up until this point the FLN had made initial contact with the indigenous communities in eastern Chiapas, but its members from the city had only stayed in the jungle a few days at a time and returned. It was on November 17, 1983, after another group of militants arrived from Mexico City (the group included a few indigenous guerillas among their ranks) that the Chiapas branch of the FLN changed its name to the Ejercito Zapatista de Liberación Nacional (EZLN).

The years between 1983 and 1994 were used by the new organization to prepare for the resistance. In the late 1980s, the Zapatistas formed the Emiliano Zapata National Independent Campesino Alliance (ANCIEZ for its abbreviation in Spanish). The creation of this second group would also show the two distinct sides of zapatismo as a movement: revolutionary and reformist.

Two major events led up to the eventual taking of municipal buildings by the Zapatistas on January 1, 1994. First, President Carlos Salinas, after promising to improve conditions throughout Mexico, including Chiapas, entered the country into the North American Free Trade Agreement (NAFTA) with the United States. Among the most damaging of NAFTA’s provisions to the livelihood of indigenous peoples was the dissolution and opening for sale of the 

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43 Id. at 4.
44 Id.
45 Id.
46 HENCK, supra note 35, at 57.
47 Id. at 39.
48 MENTINIS, supra note 1, at 4.
49 Id.
51 MENTINIS, supra note 1, at 4.
52 Id. at 5.
53 Id.
1992, which took away the base of subsistence for many indigenous communities.\textsuperscript{54} The North American Free Trade Agreement was to go into effect on New Year’s Day in 1994.

That same year in October, Mexico as a nation was celebrating the 500th anniversary of the Spanish conquest of Mexico (more specifically, the arrival of Columbus in the Americas in 1492), which the government called “the meeting of two worlds.”\textsuperscript{55} On October 12, while the rest of the country celebrated, 10,000 indigenous people (half were members of ANCIEZ) entered the center of the town of San Cristóbal de las Casas and took down the statue of Diego de Mazariegos, a conquistador and the town’s Spanish founder, before retreating to the mountains. This was the first public appearance of the Zapatistas.\textsuperscript{56} Nick Henck argues that this action, more than just a demonstration of their presence in Chiapas, was actually a “practice run” in which Marcos rehearsed the taking of San Cristóbal that would take place a few months later.\textsuperscript{57}

Henck also describes the second critical event leading up to the uprising in January of 1994. This was a meeting in late January, 1993 of the highest ranking individuals of the EZLN in Chiapas.\textsuperscript{58} Among the business addressed at this meeting (ratification of the Revolutionary Laws and reduction of the size of the FLN’s National Directive from six to three, leaving Germán, his wife Lucía, and Marcos in the leadership roles), the vote was taken among the Zapatista communities and the EZLN troops on whether to go to war.\textsuperscript{59} The result of growing anger toward the government for the amendment to Article 27 of the Constitution and the indignation felt at the country’s celebration of Columbus’s arrival was that everyone approved the decision to go to war.\textsuperscript{60} After a collective discussion, they gave Marcos permission to begin preparing for war.\textsuperscript{61}

THE ZAPATISTAS 1994-2006

In the early hours of January 1, 1994, Zapatista forces entered the towns of Margaritas, Altamirano, Rancho Nuevo, Comitan, Ocosingo, and San Cristóbal de las Casas and occupied the town centers.\textsuperscript{62} In the center of San Cristóbal de las Casas, Subcomandante Marcos spoke to the media, explaining to the cameras what was taking place.\textsuperscript{63} The Indigenous Revolutionary Clandestine Committee—General Command of the EZLN (CCRI-CG) then issued what it called The First Declaration of the Lacandona Jungle titled, “Today we say ‘ya basta!’” or “enough is enough.”\textsuperscript{64} In the First Declaration, the CCRI-CG gave its justification for the armed struggle and called on all Mexicans to unite and overthrow the PRI, the political party in power.\textsuperscript{65}

In response to the occupation, the Mexican government initially adopted a strategy of minimizing the conflict and willingness to negotiate, asking that the rebels put down their arms
and agree to negotiate for their demands. When the rebels did not do as “ordered” by the
government, the government ordered a military offensive by federal troops in Chiapas, resulting
in ten days of battles between the EZLN and the federal army with deaths estimated between 200
and 300, mostly Zapatistas. The government had no choice but to put a stop to their offense and look for non-violent solutions. On January 10, Minister of Foreign Affairs Manuel Camacho was appointed the Minister for Peace and Reconciliation in Chiapas, and tasked with finding a peaceful resolution. On January 12, he announced a unilateral ceasefire in Chiapas, which the EZLN agreed to. After giving their version of events to “civil society” through the media and much internal discussion, the Zapatistas agreed to talk with the government’s representative Camacho to put forth an agenda with four main talking points. The talks were to happen at the Cathedral of San Cristóbal de las Casas, with Bishop Samuel Ruiz as the facilitator. The Zapatistas entered the Cathedral on February 21 for talks on peace with the Mexican government.

The twenty Zapatista comandantes (members of the CCRI-GC) and Subcomandante Marcos attended the talks at the Cathedral, all wearing ski masks (pasamontañas in Spanish) over their faces. The first person to speak was the Intermediary, Bishop Samuel Ruiz, followed by the Zapatista comandantes, who expressed their pride at being indigenous Chiapanecos and explained their taking up of arms as a defensive action against the treatment they received by the Mexican government. After their speeches and explanations of the Zapatista movement, the comandantes left the government representative in a position where he had to accept that the EZLN was made up of indigenous people of Chiapas, which was contrary to President Salinas’s theories of foreign insurgents. At the end of the talks on March 2, 1994, the EZLN left with thirty-two proposals made by Camacho as possible solutions to their demands and agreed to take them back to the communities for discussion.

The Zapatistas were to take back the proposals and discuss whether they would be an acceptable incentive to cease the violent conflict, but a separate national crisis and the government’s handling of that crisis would interfere in this discussion. The PRI party in Mexico had the tradition of handing the presidency from one president to the next by having the outgoing president appoint his own successor. On March 23, 1994, the PRI candidate for president and appointed successor of President Carlos Salina, Luis Donaldo Colosio, was shot and killed while on a trip to Tijuana. The killing was immediately labeled a political assassination, and the media pointed to internal conflicts between different factions of the PRI. However, President Salinas
pointed at the Zapatistas, claiming they were responsible for creating an atmosphere of insurgence and violence in the country, to which the Subcomandante replied denying the accusations and pointing to the political turmoil within the party itself. As a result of growing mistrust by both parties, and the continuing militarization of Chiapas, the Zapatistas rejected the proposals made at the San Cristóbal Cathedral on June 10, and issued their Second Declaration of the Lacandona Jungle. Unprepared to enter into a long-term armed conflict with the Mexican government, and realizing their best hope for change was to appeal to “civil society,” they asked in the Second Declaration for civil society to organize a Convención Nacional Democrática (National Democratic Convention or CND) and for independent political parties to form a transitional government. Even though the Mexican army continued encircling them in the jungles and mountains of Chiapas, the Zapatistas managed to organize a CND which took place from August 5-10, 1994, and in which 7,000 indigenous Chiapanecos, activists, political and civil organizations, and non-governmental organizations (NGOs) participated. This meeting took place in a small village in the Lacandona Jungle named Guadalupe Tepeyac; however, the village and the meeting were renamed Aguascalientes, in commemoration of the 1914 meeting of the Mexican Revolutionaries at Aguascalientes. The new Aguascalientes, located in an area inhabited by Tojolabales, introduced the world to a Zapatista innovation for government structure, the Caracól. Tojolabal Maya are known to be great architects and builders, and showed their skill at Aguascalientes by constructing the wooden buildings for the CND so they would resemble a snail, or caracól, when seen from above. The Caracól or Aguascalientes would come to be used by the different Zapatista autonomous municipalities as cultural, educational, and meeting centers for discussion and decision-making.

The CND met again in October of 1995, two months after the country had elected Ernesto Zedillo Ponce de Leon, PRI candidate, the next president of Mexico. At this second meeting of the CND, the EZLN denounced the government’s continuing presence and encroachment into the Chiapas jungle, and their refusal to look for a non-violent resolution to the conflict. On October 19, 1994, the EZLN were able to break through the military lines of the Mexican army and establish positions without violence in 38 autonomous municipalities throughout Chiapas that contained 1,111 autonomous communities.

The devaluation of the Mexican peso on the same day (October 19, 1994) would again result in the Zapatistas being blamed for a national crisis, this time by Mexican Treasury Secretary Jaime Serra Puche. At the same time, President Zedillo and others in the executive branch, eager to replace the National Commission of Intermediation (CONAI), the original mediation organization formed by the Catholic Church with Bishop Samuel Ruiz presiding, asked the legislature to create a commission to serve this purpose. The Commission for Concordance and Pacification, or COCOPA, was created in December and included members from both parliamentary houses and from each of the political parties. However, the legislators agreed to serve on this commission on the condition that the government recognize CONAI as

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76 Id.
77 Id.
78 Id. at 14.
79 Id.
80 Id.
81 Id.
82 Id. at 15.
83 Id.
84 Id.
the official intermediary for peace talks, which meant the agreements could be passed into legislation by vote. By the end of the year and at the insistence of COCOPA, the Mexican government and the Zapatistas agreed to the mediation of the CONAI, which would be presided over by Bishop Samuel Ruiz.\textsuperscript{85} The Zapatistas issued their Third Declaration of the Lacandona Jungle on January 1, 1995,\textsuperscript{86} on the first anniversary of their armed resistance.

The second set of negotiations was almost abandoned before they began. Although the EZLN called for "civil society" to form a movement for national liberation and did not advocate violent resistance in their Third Declaration, the Mexican government under the Zedillo administration maintained a military presence in Chiapas and continued to pursue a violent end to the conflict.\textsuperscript{87} A betrayal by a former member of the EZLN led to the revelation of Subcomandante Marcos' true identity on national television in Mexico.\textsuperscript{88} The Mexican government claimed Marcos' real name to be Rafael Sebastián Guillén Vicente, a 38-year-old former professor at Autonomous Metropolitan University (UAM) with degrees in philosophy and communications.\textsuperscript{89} With this information, President Zedillo issued arrest warrants for Marcos and 19 other Zapatista Comandantes\textsuperscript{90} and ordered the Mexican army to advance into Zapatista-controlled territory on February 9, 1995. The Mexican army broke the ceasefire, occupying Zapatista communities and forcing thousands of indigenous people to flee their homes.\textsuperscript{91} The Mexican army tore through Chiapas, poisoning rivers, raping women, and killing people and animals.\textsuperscript{92} Marcos was among those who escaped into the jungle, making his new base at La Realidad, another Tojolabal village. While the Mexican government tried to use propaganda to make this revelation appear a great political success,\textsuperscript{93} the non-violent approach that the Zapatistas had taken gained them support among Mexican society, and 100,000 people took to the streets of Mexico City, shouting "Todos Somos Marcos" (We are all Marcos).\textsuperscript{94}

The president's military offensive conducted after the decision to again try and solve the conflict through dialogue did not sit well with members of COCOPA. Many threatened to boycott the entire process and some members resigned, only rejoining the commission after Zedillo agreed to order the army to return to the positions it held prior to February 9, 1995. So, in March, arrest warrants were suspended at the behest of COCOPA.\textsuperscript{95} The negotiations would continue on and off for the next ten months.\textsuperscript{96}

In December, celebrations of the second anniversary of their insurrection included the inauguration of four more Aguascalientes centers in four autonomous communities. The Mexican government, taking these actions as preparations for war, increased their military presence in Chiapas.\textsuperscript{97} Also during 1995, the Zapatistas went around the country conducting a consulta, or consultation of the Mexican people on concerns they had for the government and the

\textsuperscript{85} Id.
\textsuperscript{86} Id.
\textsuperscript{87} Id. at 16.
\textsuperscript{88} Id.
\textsuperscript{89} Id.
\textsuperscript{90} Id.
\textsuperscript{91} Id.
\textsuperscript{92} Id.
\textsuperscript{93} HENCK, supra note 35, at 169.
\textsuperscript{94} MENTINIS, supra note 1, at 16.
\textsuperscript{95} Id. at 17.
\textsuperscript{96} Id. at 17-18.
\textsuperscript{97} Id. at 18.
constitution of Mexico.\textsuperscript{98} New Year’s 1996 began with the Zapatistas issuing their Fourth Declaration of the Lacandona Jungle, in which they reported the results of the previous year’s \textit{consulta}.\textsuperscript{99}

Early in 1996 the Zapatistas began discussing the results of the talks with the government and its civil bases, and developed a plan which emphasized indigenous rights and constitutional reform. Following the development of this discourse, the Zapatistas agreed on February 16 to sign the \textit{First Accords on Indigenous Rights and Culture} with the federal government in San Andrés.\textsuperscript{100} But while the Zapatistas entered the accords with a good-faith belief that they would be honored, the federal government was attempting to make Mexico an economic equal to Europe, and saw the San Andrés accords as a way to enhance the democratic facade of the country.\textsuperscript{101} The government voiced many objections to the original provisions of the accords, and despite attempts of COCOPA to get the accords passed by the Senate, they failed. COCOPA returned to meet with the Zapatistas in the Aguascalientes of La Realidad in January 1997 with the counter-proposal made by the government.\textsuperscript{102} The Zapatistas rejected this counter-proposal and announced they would not negotiate any further until the San Andrés accords were implemented.\textsuperscript{103}

The worst year the Zapatistas can recall was 1998.\textsuperscript{104} That year, pro-government factions in Chiapas and federal soldiers massacred 45 men, women and children in the village of Acteal.\textsuperscript{105} To make matters worse, the federal government began expelling foreign supporters of the Zapatistas,\textsuperscript{106} and more troops were sent into Chiapas.\textsuperscript{107} The Zapatistas continued to battle the PRI-controlled government through the media and a low intensity war waged on them until 2000 when, in a historical election, the PRI’s candidate for president lost to PAN, Vicente Fox.\textsuperscript{108}

Since the 2000 elections, the EZLN and its supporters have refocused their efforts on encouraging civil society to work for a progressive government in which all Mexicans and all global citizens are treated with dignity and allowed to participate in the process. Even though the Fox administration did little to improve the situation in Chiapas, the Zapatistas have continued to opt for a peaceful fulfillment of their demands. In 2001 The Zapatista March from Chiapas to Mexico City drew much attention, as the commandantes of the EZLN traveled to the capital to address the National Congress.\textsuperscript{109} And in 2006, the EZLN launched “La Otra Campaña,” or The Other Campaign, to coincide with the 2006 Mexican presidential campaign.\textsuperscript{110} Through La Otra Campaña, the EZLN has spread its model for an alternative world to the country and has encouraged Mexicans to take an active role in shaping the future of Mexico.

\begin{footnotes}
98 \textit{Id.} at 16.
99 \textit{Id.}
100 \textit{Id.} at 18.
101 \textit{Id.}
102 \textit{Id.} at 19.
103 \textit{Id.}
104 EARLE & SIMONELLI, \textit{supra} note 36, at 107.
105 MENTINIS, \textit{supra} note 1, at 20.
106 \textit{Id.} at 22.
107 \textit{Id.}
108 \textit{Id.} at 25.
109 \textit{Id.} at 26.
\end{footnotes}
GOVERNING STRUCTURE OF THE ZAPATISTA COMMUNITIES

While it has been influenced by ideas of democracy and Liberation Theology brought into the jungle by non-indigenous people, and while the movement has evolved to encompass work for rights and interests of indigenous peoples, the Zapatista struggle has indigenous roots which show in how ideas of social justice are practically applied “on the ground” in Chiapas.

The Zapatistas created 38 autonomous municipalities in October of 1994. The municipio, or municipality is a political subdivision of the Mexican governmental system, comparable to the county in the United States. However, the boundaries of municipios do not coincide with those established by the federal government, and often times several Zapatista municipios make up one federally recognized municipality. These municipalities contain a total of 1,111 autonomous communities, each of which decided collectively and on its own to go into rebellion and support the EZLN. At the time they decided to go into rebellion, each of the communities gave up assistance from the government (economical, medicine, food aid, etc.) in protest, and began to rely on its own and fellow communities. Each municipio autónomo is governed by a consejo autónomo (autonomous council), a council comprised of representatives from each of the municipio’s villages and communities that remain Zapatista supporting communities. In order to provide the most extensive opportunity for participation in government, the consejo consists of an assembly whose representatives rotate every two weeks. Today, the autonomous municipalities administer their own education, health care, and dispute resolution.

Decisions are made collectively, as is traditional among the indigenous communities of Chiapas. This is reflected in the communal form of Zapatista government, in which groups of elders (both people of advanced age and others who are elders in political or spiritual leadership roles) from a community serve on each community’s consejo, which also decides how disputes are resolved and what to do about law-breakers. The autonomous municipalities of the Zapatistas have a system of “law and order” that they based on usos y costumbres (customs and uses).

In late 2006 and early 2007, the Zapatistas organized the First Encounter of the Zapatista People with the People of the World in Chiapas, which was attended by thousands of activists and organizers from all over the world. The Second Encounter took place in July 2007, and the Third Encounter was scheduled for December 28-31, 2007. These efforts at outreach to the world have transformed the Zapatista movement into a global initiative, in which one can become involved in making a “better world” in her own community, by applying alternative models of government and autonomy.

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111 MENTINIS, supra note 1, at 157.
112 Id. at 14.
114 Id. at 399.
115 Id.
116 EARLE & SIMONELLI, supra note 36, at 89.
117 Id.
118 CARMACK ET AL., supra note 113, at 401.
119 EARLE & SIMONELLI, supra note 36, at 105.
120 Id.
121 Enlace Zapatista, supra note 110.
122 Id.
SELF-DETERMINATION

Now that I have given a history of the major events in the public history of the EZLN, I turn the focus of this article to an analysis of those events and to my argument that there was from the beginning not only a justification for the course of action taken but a need for the creation and maintenance of the space for indigenous peoples in Mexico that exists today as a result of the emergence and subsequent actions of the EZLN. In the course of my analysis, I will touch on some of the justifications for supporting the self-determination of indigenous peoples, the conditions in Mexico for indigenous peoples prior to the uprising and since its inception, and the current status of international law as it relates to the collective rights of indigenous peoples.

Self-determination, the idea that a people have the right to determine for themselves the way they are to be governed is one of the generally accepted inherent rights of human beings, both in a collective sense and at an individual level. The notion that ruling entities acquire the legitimacy needed to govern a people through the consent and approval of that people is widely accepted as one of the many justifications for affording groups of people self-determination. However, there are other reasons why allowing indigenous peoples their right to self-determination is not only appropriate but necessary.

In her essay An Historical Argument for Indigenous Self-Determination, Margaret Moore puts forth two separate arguments for granting self-determination to indigenous peoples. She begins by explaining that her historical argument deviates from the general argument for self-determination because the latter is founded on basic concepts of human rights that apply to all individuals, while her own arguments take as their base the historical treatment of indigenous peoples and their relationship with non-indigenous colonizers. The first of these arguments is that historically, there have been injustices committed against indigenous peoples through the conquest, colonization, and dispossession of their lands, and that these injustices are directly related to the conditions of indigenous peoples and the status of their right to autonomy within the territory they have historically occupied. This argument holds that as a result of the colonization and subjugation of indigenous peoples, not only do they continue to be marginalized today, but non-indigenous citizens benefit from these injustices and continue to profit from them. Because indigenous peoples are the most competent entities for determining their best interests and implementing those ideas, acknowledging the right of indigenous peoples to self-government serves as a remedy for the continuing injustice.

The second historical argument put forth by Moore is that prior to colonization, indigenous peoples formed self-governing communities and exercised autonomy in their

123 I would like to note while looking to define this term, I initially sought a definition from Black’s Law Dictionary, both the online version available through Westlaw and Third Pocket Edition. The term “self-determination” is not listed in either source. However the term “autonomy” is defined as “the right to self-government,” which is not further defined in the dictionary. See Merriam-Webster’s Online Dictionary, http://www.merriam-webster.com/dictionary/self-determination (last visited Apr. 12, 2009) (defining self-determination as: 1) the free choice of one’s own acts or states without external compulsion; 2) determination by the people of a territorial unit of their own future political status); see BLACK’S LAW DICTIONARY 56 (3d Pocket ed. 2006); see also http://lawschool.westlaw.com (follow “Westlaw Research” hyperlink; then follow “Define Using Black’s Law Dictionary” hyperlink).
125 Id. at 93.
126 Id.
127 Id. at 97-98.
Tribal Law Journal

Vol. 9

The fact that this autonomy was stripped through violence and conquest and that indigenous peoples were subjugated, calls into question the very legitimacy of the nation-states that developed out of that conquest and that claim jurisdiction over the land natives inhabitants.\textsuperscript{128} Here, Moore’s argument follows the reasoning that, if democratic nation-states achieve jurisdiction to govern through consent and sovereignty of the people, then the jurisdictional claim of nation-states (particularly in the Americas and Australia) over indigenous peoples, by nature of having forcibly incorporated them into the nation-state, is illegitimate. It therefore stands that the nation-state, having illegitimately obtained authority to govern indigenous peoples, does not have that authority from a democratic standpoint.\textsuperscript{129}

As is supported by other authors on the subject, self-determination as a right is only significant and of any true value when, should it be challenged or abrogated altogether, those peoples whose rights have been violated have some avenue for addressing that violation and obtaining redress.\textsuperscript{130} And the course that the development of jurisprudence on indigenous peoples would take, in particular in the Americas, would not only rob indigenous peoples of their right to govern themselves, but also prove to be hostile to future claims of indigenous self-determination.

By the late fifteenth and early sixteenth centuries when they arrived in the Americas, Europeans had several centuries of experience dealing legally, politically and militarily with non-Christians during the Crusades.\textsuperscript{131} Ideas about the justified taking of lands and property from non-Christians by Christian Europeans’ because they were somehow superior, and the medieval feudal tradition of Europe, were applied in the Americas and became the most powerful tool to subjugate the natives. In the United States, one cornerstone of federal Indian Law is the Doctrine of Discovery. First legally asserted in the United States in Johnson v. McIntosh, the Doctrine of Discovery recognized title to land in the Americas to vest in the first European nation to possess it and its successor nation-states (i.e. first to England and then the United States).\textsuperscript{132} The handing down of the Doctrine of Discovery by the Supreme Court in the Johnson decision gave legal backing to the dispossession of indigenous lands and would become the vehicle by which other indigenous rights would be abrogated. Though not expressly laid out in law by other nation-states, the basic tenets of the Doctrine of Discovery (collectively called the theory of discovery by Álvarez Molinero)\textsuperscript{133} would become the vehicle for the legalized abrogation of indigenous rights across the Americas. This in turn would make obtaining redress at the national level a daunting if not impossible task for indigenous groups.

Mexico was no exception, as redress was not available within the Mexican legal system in the years prior to the 1994 uprising, and there is little indication to suggest any substantive change has been made. In order to gauge the degree to which indigenous peoples in Mexico are included in the development of Mexican jurisprudence, I conducted research in an effort to locate Mexico’s civil law equivalent of the United States’ Doctrine of Discovery. After several weeks of frustrated efforts which yielded no results, my findings, or rather lack thereof, were confirmed by Kevin J. Worthen who stated in his law review article that he had been “unable to find any formal national legal document recognizing or delegating sovereign authority to

\textsuperscript{128} Id.
\textsuperscript{129} Id. at 100-01.
\textsuperscript{130} See NATALIA ÁLVAREZ MOLINERO, THE LEGALIZATION OF HUMAN RIGHTS: MULTIDISCIPLINARY PERSPECTIVES ON HUMAN RIGHTS AND HUMAN RIGHTS LAW 165, 177 (2006).
\textsuperscript{131} Id.
\textsuperscript{132} See generally Johnson v. McIntosh, 21 U.S. 543 (1823).
\textsuperscript{133} See MOLINERO, supra note 130, at 167.
indigenous peoples in Mexico”. However, Worthen suggests that the reason there is no mention of indigenous peoples in the Constitution of 1917 or any other government document is perhaps an intentional omission of distinctive identities in expression of a “deep-seated commitment to treat all groups the same”. I argue it was just the opposite intention which led to this omission, that in fact the absence of any legal doctrine similar to the doctrine of discovery in the United States signifies a disregard for indigenous peoples by the legal system. In other words, in handing down its decision in Johnson v. McIntosh, the U.S. Supreme Court created the legal doctrine by which the United States could divest Indians of their land and their rights legally, acknowledging that as the first inhabitants of the continent they once had these rights which they exercised freely through traditional legal systems that were sovereign prior to being conquered; neither the Spanish colonizers who developed Mexican jurisprudence nor the Mexican government officials who would inherit it felt any such need to justify the conquest and colonization of Mexico. In their worldview, indigenous legal systems simply did not merit recognition, much less require justification before they were violated.

This attitude of superiority toward the indigenous peoples of Mexico by the government changed little from colonial times to the times leading up to the Zapatista uprising and the years following. The government and the EZLN agreed to a second round of negotiations in 1995 after the first talks at the San Cristóbal Cathedral yielded no agreements. But the entire negotiation process was jeopardized from the beginning by the refusal of the Mexican government to negotiate in good faith and to honor the agreements it entered into with the EZLN.

It can be concluded from the military offensive and arrest warrants issued by President Zedillo before the talks began and other actions, that the Mexican government never entered the negotiation process with any real intention to meet any demands made by the EZLN or to better the conditions of Chiapas’ indigenous population that had led to the uprising. In addition to breaking the ceasefire and invading villages in Chiapas searching for the EZLN commanders, the government arrived at the negotiations with a strategy of achicamiento or minimization of the concerns and proposals the EZLN offered in regards to Chiapas and to the country. The government negotiation team hoped that by limiting the scope of the talks to conditions in Chiapas and not permitting the Zapatistas to comment on national affairs, their influence and the legitimacy of their uprising would be reduced. The government would throw a variety of obstacles into the negotiations, from refusing to engage in the conversation of topics dealing with national reform, to sitting by with complicity while the EZLN was labeled a terrorist organization by a judge sentencing Zapatista prisoners for being “terrorists.”

135 It should be noted there is now acknowledgement of indigenous peoples in the Mexican Constitution as the first peoples and their contribution to the founding of the nation. It describes the rights of indigenous peoples to preserve their culture and identity and the responsibilities of the federal government to assist them. This is the amended, much weakened version of the provisions of the San Andrés Accords negotiated by the EZLN and the government in 1995 and 1996. See Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Diario Oficial de la Federación [D.O.] art. 2, 5 de Febrero de 1917 (Mex.).
136 Worthen, supra note 134, at 329.
137 MENTINIS, supra note 1, at 17.
139 Id. at 129-30.
140 Id. at 139-40.
In the end, despite having signed an agreement with the EZLN on the first subject on the agenda at San Andrés, the government would come back later to say that there were many problems with the agreements and so they could not be implemented.\(^{141}\) The biggest betrayal to the peace process by the government would be their refusal to implement the accords as they were signed in 1996; that version of the San Andrés Accords on Indigenous Rights and Culture has never been put into action.\(^{142}\)

Little seems to have improved in Mexico that would indicate an adherence to the Accords, yet plenty of indications that the Mexican government still entertains the notion of a resolution to the conflict through the use of force are evident. In a speech delivered during a colloquium in San Cristóbal de las Casas on December 17, 2007, Subcomandante Marcos warned that “the signs of war are clear on the horizon” in Chiapas,\(^{143}\) referring to increased presence of the military in the state. Beginning in April of 2008, indigenous communities throughout Zapatista territory have been harassed and threatened by a combination of Federal troops, state police officers, and armed civilian paramilitary groups. The pretext for these incursions given by the government is that security forces are looking for drugs, in particular marijuana, that are allegedly being grown in villages by Zapatistas.\(^{144}\) This renewed hostility makes an improvement of the situation improbable.

While it could be expected that nation-states around the world would be less than open to the idea that groups of people within their territorial bounds would suddenly become autonomous and independent of the state’s jurisdiction, it is more alarming that the case for indigenous self-determination is not much easily addressed in the realm of international law. An examination of the origins of the international law system provides strong evidence that there is advocacy for the preservation of the nation-state as the absolute holder of political sovereignty to the exclusion of all other groups.

From its earliest forms through its evolution into the legal body it is today, international law has focused and been developed with the nation-state as the basic unit in international matters and over which it has jurisdiction, to the exclusion of nearly all other groupings of persons with common interests.\(^{145}\) This exclusion includes the self-determination of indigenous peoples which were it fully recognized and granted, would pose a serious threat to the vitality of the nation-state, and ultimately to the entire premise that nation-states are the entities to deal with internationally.\(^{146}\)

On this subject, Álvarez Molina describes the approach of international law toward the claims of indigenous peoples as a “decadent nostalgic regret about what the Western culture should have done but could not do.”\(^{147}\) And while she acknowledges the development of a theory of recognition which recognizes the rights of indigenous peoples to land and self-determination among other things, the failure in international law to put any power to vindicate those rights

\(^{141}\) MENTINIS, supra note 1, at 19.

\(^{142}\) For a more detailed account of the breakdown in the negotiation process, see GUERRA, supra note 138.


\(^{145}\) MOLINERO, supra note 130, at 167.

\(^{146}\) Id.

\(^{147}\) Id. at 166.
behind the theory begs the question “what is the point?” A step in the right direction, the theory of recognition will require enforcement powers at the international level and within nation-states before it becomes a viable tool for indigenous peoples to reclaim their rights.

One of the biggest reasons that the recognition of a right to self-determination for indigenous peoples has been vehemently opposed by states of all political inclinations is that it has often been thought to be accompanied by an underlying right of secession for those groups to which it belongs. A most disheartening contention from the point of view of the nation-state, acknowledging the right of any minority group within its territory to govern itself and also to secede if it so wishes stood as the biggest obstacle to recognition of indigenous self-determination because of the perceived threat it posed to the integrity of the state. The generally accepted position among scholars of international law is that there is no express right to secede under international law to groups of racial or ethnic minorities, and many scholars go even further to say that secession is not in the best interest of minority groups and in fact works to erode democratic practices.

One such argument is that of David Held, a professor of political science and global governance at the London School of Economics and Political Science, which is outlined by Professor Russell A. Miller in *Theoretical Approaches to International Indigenous Rights: Collective Discursive Democracy as the Indigenous Right to Self-Determination*. Held is summarized as attributing three major dynamics for the emergence of the nation-state as the promoter of democracy, accountable to its citizens: the democratic state and militarism, the democratic state and capitalism, and the democratic state and citizenship. Held’s argument states that in the case of militarism, rulers became more willing to negotiate with subjects as the cost of waging wars increased. Capitalism, by nature of being independent and global, served to promote democracy by forcing rulers to become responsive to civil society. And third, the idea of identity based primarily on citizenship and nationality helped to make the state the vehicle for promoting democratic ideas.

If Held’s argument says these three dynamics helped push democracy to the forefront of national politics within the international nation-state system, and because of this, the exercise of any asserted right which threatens the integrity of the state is undemocratic (such as secession), then perhaps an instance in which these three dynamics do not help to promote democracy within a state may serve to invalidate it. In fact, there are several conditions present in Mexico that raise concern with respect to the dynamics of militarism, capitalism and citizenship.

According to Held, militarism as a dynamic served to promote democracy at the state level by forcing rulers to negotiate with their subjects for their support in waging costly wars. However, the nature of this dynamic may be significantly undermined when the only war being waged by a state is in a conflict with a segment of its own population and is being funded by third party states. Such is the case in Mexico, where the federal government has steadily increased its military presence in Chiapas, and recently “declared war” on the drug cartels and

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148 *Id.* at 177.
149 *Id.*
151 *Id.* at 346.
153 *Id.* at 356.
154 Moore, *supra* note 124.
organized crime in the country. Exacerbating the lack of understanding between the ruler and the ruled in Mexico, in June of 2008 the United States Congress passed the Mérida Initiative, also known as Plan Mexico. Hailed by the Sub-Secretary of Western Hemisphere Affairs for the U.S. State Department to be the “armoring of NAFTA,” Plan Mexico is a $1.6 billion aid package for Mexico to help in the fight against the cartels, providing the executive in that country with funding to continue waged war without needing the consent of the people. Plan Mexico, coupled with NAFTA, may also be the reason why the second dynamic, capitalism and its global nature, have not led to the further democratization of Mexico. Held’s contentions that capitalism’s independent nature makes governments accountable to civil society which possesses capital may hold true, but in the case of Mexico, it is not Mexico’s populations “holding the key to the bank” so to speak, but foreign corporations and the U.S. government that pursue their interests before the Mexican government via capital.

The last of Held’s dynamics, citizenship and national identity, ideally encourages democracy at the level of national government by creating an identity for its citizens based on that nationality. Unfortunately for the indigenous peoples of Mexico and many other countries, the national identity that was created and developed along with the founding of the state was not inclusive to their identity or the contributions their cultures and histories made to the state. Discussed above was the lack of any mention of indigenous origins of Mexico as a nation until the amendment of the constitution as part of the adoption of the Mexican government’s unilateral version of San Andrés Accords.

Whether the existence of these factors which seem to invalidate the value of the state for the promotion of democracy in Mexico creates a right of secession is rather a moot conversation for purposes of this article, the reason being that neither the San Andrés Accords nor the UN Declaration on the Rights of Indigenous Peoples, two documents which Mexico has adopted but has yet to implement, calls for the exercise of self-determination by indigenous peoples in a way that would result in secession from the state. Professor Miller describes the model set out in the UN Declaration as one of “discursive democracy” in which the state and indigenous peoples agree to communicate and collectively arrive at methods for indigenous peoples to exercise their self-determination within the structure of the state. The UN Declaration assigns different levels of collaboration and consultation of indigenous peoples that must accompany the

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155 Mexico’s drug wars have cost thousands of lives and decimated police forces, HOUSTON CHRON., May 30, 2008, at B8.
158 Brandi Grissom, Border Sheriffs disappointed Merida Initiative doesn’t include cash for them, E.P. TIMES, July 13, 2008.
159 See supra note 29.
162 It is noted while no right to secede is recognized in customary international law, an emerging theory deeming secession an appropriate remedy for the most egregious violations of a group’s human rights is gaining popularity. In his article, Professor Miller briefly comments on Self Determination of Peoples: A Legal Reappraisal by Antonio Cassese, which outlines the potential remedial value of secession in instances where there are both “gross breaches of fundamental human rights and the exclusion of any likelihood for a possible peaceful solution within the existing State structure.” Miller, supra note 150, at 348.
163 Id. at 366.
implementation of different indigenous rights, depending on their significance to indigenous self-determination. The San Andrés Accords call for the amendment of the Mexican constitution and legislative reform at the national level to provide for the unhindered inclusion and participation of indigenous peoples in the government and society of the nation. And the launching of the Zapatista’s “La Otra Campaña” in 2006 should serve to further discredit any fears that acknowledging and honoring self-determination for indigenous peoples in Mexico would lead to a destabilizing of the country or a violent secession. The fact that a fertile situation exists for the implementation of self-determination for indigenous peoples in Mexico, and yet neither adoption of the UN Declaration nor the San Andrés Accords by the Mexican government has moved it to any significant action strengthens my argument for the justification of the actions by the Zapatistas for a space for indigenous peoples of Mexico and for the necessity that this space be preserved for the future. At the very least, until laws recognizing indigenous rights to self-determination are “given teeth.”

CONCLUSION

In 1994, the world learned of the EZLN, an armed group primarily made up of indigenous peoples who trace their ancestry back to the Mayan civilization of Mesoamerica. At that time, nobody could predict that nearly 14 years later, the Zapatistas would still be an active force in Mexican and international politics. And while the movement’s indigenous and traditional roots are evident, the fusion of democratic ideas and the notion of self-determination that the Zapatistas offer are put forth in a way that the ideals can be taken and applied in a number of settings, spreading Zapatismo throughout the world to improve the conditions of oppressed and ostracized people everywhere.

I’ve demonstrated why legal avenues were not available and are still not available for meeting EZLN demands of autonomy, and why it is unlikely that any significant change will come soon, why Mexican government’s past and current actions left Zapatistas no real options for changing deplorable conditions of living and obtaining basic human rights like self-determination but to seek them through avenues outside the legal and political spheres, in the forms of their armed uprising, networking and grassroots organizing. Until Mexico either self-imposes responsibility to enact full indigenous rights as agreed to at San Andrés, or the structure of international law changes to recognize political units other than nation-states as being entitled to participate at the international level, EZLN and other indigenous groups in the country will have no other recourse. For when there is no way, no way can be wrong.

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164 Id. at 369-73.
166 See MENTINIS, supra note 1, at 22.