The tragedy which we mourn today with all our pain, far from sowing more hatred and division among the Chiapans, should push all of us toward the path of rejecting violence, of understanding and of agreements for peace and social justice in the entire state of Chiapas.

-Mexican President Ernesto Zedillo on the December 1997 massacre of 45 churchgoers in southern Mexico.

I. INTRODUCTION

On January 1, 1994, an armed rebellion comprised mainly of indigenous peoples from the Tzotzil, Tzeltal and Tojobal Indian groups marched out of the hills and overran several towns in the impoverished Mexican state of Chiapas. The new year dawned on one of the most serious armed insurgency movements to face Mexico in two decades, a revolution which shed light on Mexico's unenviable human rights record and gave voice to Mexican indigenous peoples' unprecedented demands for greater democratization, amelioration of their often abysmal standards of living, and reformulation of the Mexican juridical system. In the Chiapas mountain town of San Cristobal de las Casas, the insurgents made their way to the local paper, El Tiempo—a publication that had often advanced the cause of the indigenous peoples—and proclaimed the nature and intent of the uprising, which they named the "Ejercito Zapatista de Liberacion Nacional" (EZLN) ("the National Liberation Army of the Faction of Zapata"), invoking the figure of Emiliano Zapata, another Mexican revolutionary who had championed the rights of indigenous peoples and rural farmworkers.1

In a manifesto issued by the EZLN, the indigenous peoples summarized their demands in the following ten points: (1) Work, (2) Land, (3) Shelter,

Following a cease fire between the armed rebel insurgents and the Mexican Army and the appointment of Lic. Manuel Camacho Solis as commissioner of Peace and Reconciliation, the EZLN sent thirty-four “Demands and Engagements” to Camacho for review and response by the government of Mexico.³ The Mexican government gave a specific answer to each of the demands on March 2, 1994.⁴

The government responded in most detail to the EZLN’s demand for its own system of justice. In its seventeenth demand, the EZLN sought “[t]hat justice be administered by our own indigenous peoples according to our customs and traditions, without the intervention of illegitimate and corrupt governments.”⁵ To this demand, the Mexican government asserted that it would “promote amendments in order to facilitate the creation of judicial districts coinciding geographically with indigenous communities.” These amendments would provide that judges in these districts, “may be Indians themselves or Mestizo professionals respected in indigenous communities; be familiar with Mexico’s positive law; and be willing to always take into consideration the (indigenous peoples) usages and customs in adjudicating their controversies.”⁶

In February of 1996, Zapatista rebels met with leaders of the Mexican government in hopes of making progress toward peace. On the sixteenth of February, both sides signed documents of compromise. The documents included propositions for modifications of legislation on a national scale, reformations of the Mexican Constitution, and modifications of local government. The agreements also contained concrete proposals concerning the governance of the state of Chiapas, a state with a high indigenous population. These documents comprised some gains of landmark status for indigenous peoples. One of the documents stated: “The national government must recognize the indian townspeople as the possessors of the rights of free determination and autonomy . . . the legal reforms that are promised

² Id.
⁴ Id.
⁵ Demand and Compromises for a Dignified Peace in Chiapas San Cristobal de las Casas, 17 (Mar. 2, 1994), cited in, Vargas, supra note 3, at 76 (translation by Vargas).
⁶ Vargas, supra note 3, at 22.
will need to demonstrate the fundamental judicial principle of the equality of all Mexicans under the law and the legislative, it cannot be a creation of special interests and privileged parties, it must respect the principle that the Mexican nation has a multi-cultural composition, originally sustained in the indigenous townspeople."

The agreement of February sixteenth specifically addressed the subject of judicial reforms when it stated that the government committed itself to recognising "pluri-culturality in the national juridical system," including the acceptance of "the specific competence and jurisdiction of the authorities designated within the communities."  

The grave necessity for such judicial reform was brought sharply into focus in December of 1997 when gunmen, identified by many as followers of the ruling Institutional Revolutionary Party, killed 45 churchgoers who were praying for peace in a remote village of Chiapas. The victims were among the members of a nonviolent civic group which acknowledged support for Zapatista autonomy demands, and most were refugees who had come into the village in order to escape conflict in the region.

President Ernesto Zedillo pledged the support of the federal government in halting the violence, and, in the wake of the violence, said that the Mexican government "reaffirms its willingness to arrive at agreements that, within the framework of the constitution, establish the conditions to allow Chiapas to have peace and resolve its social problems and the old injustices that are at the root of many of the acts of violence that people of Chiapas have suffered."

Recognizing the indigenous peoples’ right to a means of recourse to customary indigenous law and indigenous legal authorities would be a

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7 Guadalupe Irizar, Reformaran Leyes para Lograr la Paz, REFORMA, Feb. 17, 1996, at 3: ("La legislacion nacional debe reconocer a los pueblos indigenas como los sujetos de los derechos a la libre determinacion y la autonomia ... las reformas legales que se promoveran deberan partir del principio juridico fundamental de la igualdad de todos los Mexicanos ante la ley y los organos jurisdiccionales y no creacion de fueros especiales en privilegio de persona alguna, respetando el principio de que la Nacion Mexicana tiene una composicion pluricultural sustentada originalmente en sus pueblos indigenas.") (Translation by author).


11 Smith, supra note 9.
significant step towards the resolution of social problems in Chiapas. This article will provide an argument demonstrating that the form of juridical self-determination promised in southern Mexico does not lead to fragmentation or jurisdictional balkanization, perennial concerns upon which objections to grants of self-determination are often founded. Demands for recognition of traditional cultural law by the indigenous groups of southern Mexico (and the indigenous peoples worldwide who, as heirs to the Zapatista movement, may model their movements upon the demands made by the Mexican Indians), are legitimately founded upon international legal instruments. Moreover, these judicial reforms are necessitated by the socio-political marginalization facing the indigenous population in southern Mexico and by the economic exigencies produced by trade globalization and neo-liberal economic adjustment programs.

II. HISTORICAL DEVELOPMENT

The Spaniards’ belief in the inherent inferiority of the indigenous population pervaded the theory and practice of the colonial juridical system. Although the Spanish crown and the papacy derived political legitimation for the conquest from various sources, including the papal bulls of Alexander IV and the Treaty of Tordesillas (1494), the conceptual legitimation of the subjugation of indigenous populations played itself out in the many tracts and polemics of the time. Some polemicists and theorists affirmed the legitimacy of the conquest through their conceptualization of the Indians as “barbarous, wretched sinners, and depraved infidels...” who “may be counted among the ranks of those possible subjects of Christendom, under the jurisdiction of the papacy, who may at any time annul the organization and judicial rights of the gentiles.” Following the reasoning of men such as Solorzano Periera, the legal propositions advanced on behalf of the rights of possession asserted by the Spanish crown and against the human rights of the indigenous peoples included Divine right, treasure trove and the inherent barbarism of the Indians.

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13 Id. (translation by author).

Vocación Divina: Dios, que es quien dispone de los imperios, quiso que
to New World lands by virtue of their uninhabited status resembled the doctrine of "terra nullius" which the British used to justify imperial expansion into Australia among other lands.  

According to Silvio Zavala, when Alexander Von Humboldt visited New Spain at the end of the Spanish colonization, he observed that the Indians resembled a nation apart and despised by all, separated from the Spaniards and the Mestizos by the laws.  

From the beginning of this marginalization, however, the Indians voiced their dissatisfaction, and advocates such as Francisco de Vitoria, Antonio de Montesinos, and Fray Bartolome de las Casas pled their case to Spain and the world. In fora such as the counsel of Indians, Fray Bartolome de las Casas denounced the "unjust" conquest, the "usurpation" of indigenous reigns, the "tyranny" of the system of estates granted by the Spanish monarchy, and the "robbery" of New World resources by Spanish despoilers. De las Casas was one of the first to declare that the indigenous peoples had "rights belonging to them until the day of judgment."  

The Indians are still in the position of voicing demands against an oppressive and exploitative system of governance. In 1975, organizations of Mexican indigenous groups appealed the effect of the revised Mexican Constitution of 1917 and proposed that the government fulfill the spirit and

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16 ZAVALA, supra note 14, at 86 (translation by author).

17 See Vargas, supra note 3, at 38.

18 Fray Bartolomé de Las Casas, MEMORIAL DIRIGIDO AL CONSEJO DE INDIAS, (1562), cited in STAVENHAGEN, supra note 12, at 299.

19 Id. (translation by author).
the substantive protections of the Constitution. 20 In the Declaracion de Temoaya, promulgated in 1979, the indigenous groups of Mexico again took a stand in favor of reforming the "National Constitution to recognize the multiethnicity of Mexico" and demanded "that the government of the Mexican Revolution legally recognize in political reforms the ethnic complexity of this great nation in which we are all integrated . . . ." 21

Mexico is a federal republic comprised of sovereign and free states. The Federal Constitution is the model for the political constitutions of each of the individual states, which do not differ substantially from the Mexican Federal Constitution. Until 1992, the Mexican Federal Constitution made no mention of the existence of indigenous peoples or languages in the country, nor did it recognize Mexican multiethnicity. 22 The Constitution contains articles that provide special guarantees to other categories of citizens: examples include workers, 23 pregnant women, 24 and peasant fieldworkers. 25 The indigenous peoples, however, did not appear in any part of the Constitution. Thus were the constitutional framers of 1917 (as were the liberals of 1857, when the previous version of the Constitution was drafted) able, through the use of the judicial structure, to erase the legal existence of a large portion of the Mexican population. 26

In 1992, President Carlos Salinas de Gortari, responding to demands by indigenous groups, amended article 4 of the Constitution to read: "The Mexican nation has a multiethnic composition based originally upon its indigenous peoples. The law shall protect and promote the development of

23 "El Congreso de la Unión, sin contravenir a las bases siguientes, deberá expedir leyes sobre el trabajo, las cuales regirán: A.-Entre los obreros, jornaleros, empleados, domésticos, artesanos y, de una manera general, todo contrato de trabajo: I. La duracion de la jornada maxima . . . II. trabajo nocturna . . ." CONST. art. 123 (Mex.).
24 "Las mujeres, durante los tres meses anteriores al parto, no desempenan trabajos físicos." CONST. art. 5 (Mex.).
25 "La propiedad de las tierras y aguas comprendidas dentro de los limites del territorio nacional corresponde originariamente a la Nación, la cual ha tenido y tiene el derecho de transmitir el dominio de ellas a los particulares constituyendo la propiedad privada . . ." CONST. art. 27 (Mex.).
26 STAVENHAGEN, supra note 12, at 303.
the languages, cultures, practices, customs, resources and specific forms of social organization of these peoples, guaranteeing to their individual members an effective access to the judicial system of the State. In the agrarian suits and proceedings in which those members are a party, their legal practices and customs shall be taken into account in the terms established by the law.\textsuperscript{27} The Mexican Constitutional Amendment appears to have taken part of its wording from a 1985 amendment to the Constitution of Guatemala, which likewise recognized the multiethnic complexion of the nation and provided protections for the indigenous groups which comprise such a large segment of the populace.\textsuperscript{28}

These nominal changes in the Mexican Constitution, however, did not ameliorate the condition of the indigenous peoples, who prepared for ten years in anticipation of the now famous Zapatista insurgency movement of 1994.\textsuperscript{29}

\textbf{A. The Peace Accord of February, 1996}

Mexico's indigenous groups saw the first fruits of the rebellion in the signing of a provisional peace accord on February 16, 1996.\textsuperscript{30} The delegates in Chiapas discussed five different issues: (1) Lands, territories, natural resources and autonomy of the indigenous populace; (2) judicial systems and rights of the indigenous populace; (3) forms of political organization, representation and participation; (4) education, culture and means of communication; and (5) cultural identity and the migration of the

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\textsuperscript{27}\textsc{Constitution of Mexico, art. 4 (Mex.)}
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\textsuperscript{28}Vargas, \textit{supra} note 3, at 44. The new Guatemalan Constitution of 1985 provides in art. 66: \textquotedblleft Protection to Ethnic Groups: Guatemala is formed by different ethnic groups, among them the indigenous groups of a Mayan origin. The State recognizes, respects and promotes their way of living, customs, traditions, forms of social organization, the use of indigenous costumes in men and women, languages and dialects.	extquotedblright{} (translation by Vargas).
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\textsuperscript{29}For excellent treatments of the history of the insurgency see: GUIOMAR ROVIRA, \textsc{ZAPATA VIVE: LA REBELION INDIGENA DE CHIAPAS CONTADA POR SUS PROTAGONISTAS}, (1994); LUIS MENDEZ ASENSIO \& ANTONIO CANO GIMENO, \textsc{LA GUERRA CONTRA EL TIEMPO: VIAJE A LA SELVA ALZADA}, (1994); GEORGE A. COLLIER, \textsc{BASTA!: LAND AND THE ZAPATISTA REBELLION IN CHIAPAS}, (1994); SHADOWS OF TENDER FURY: THE LETTERS AND COMMUNIQUES OF SUBCOMANDANTE MARCOS AND THE ZAPATISTA ARMY OF NATIONAL LIBERATION, (Trans. Frank Bardacke \& Leslie Lopez) (1995); Universidad Nacional Autonomia de Mexico, Instituto de Investigaciones Economias, \textsc{CHIAPAS} (1996).
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\textsuperscript{30}Guadalupe Irizar, \textit{supra} note 7.
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urban indigenous workers.\(^{31}\) Measures on the table still include the possible modification of articles 4 and 115 of the Mexican Constitution, electoral reformation and the reformation of the state of Chiapas.\(^{32}\)

In form and substance, the 1996 accord addressed many of the concerns raised in the *Declaracion de Temoaya* long before the EZLN insurgency.\(^{33}\) The focus of the 1996 accord on recognition of the multiethnic character of the Mexican national culture and national juridical system\(^{34}\) and on significant reformation of the Mexican Constitution with a view toward greater and more meaningful integration of the indigenous peoples into the democratic process\(^{35}\) find resonance in the demands voiced in the Temoaya declaration. The issues raised in Temoaya are also reflected in nearly all of the demands given in the EZLN’s 10 point manifesto.

The two principal features of the agreement were political and judicial. The Mexican government accepted the “right of these [Indian] peoples to decide on their internal form of government and on the forms of political, social, economic and cultural organisation which they deem most conve-


\(^{33}\) *Declaracion de Temoaya* (1979), in STAVENHAGEN, supra note 12, at 184.

\(^{34}\) Nos pronunciamos para que el gobierno de la Revolucion mexicana reconozca legalmente, en la Reforma Politica, y no sólo de palabra, la complejidad étnica de esta gran nación que todos integramos. Roto ya el mito del mexicano único, unificado, debemos hacer una realidad reconocida: el pluralismo cultural sólo será cabalmente reconocido con la consagración de un Estado multietnico, en el que todos los indígenas estemos representados.

*Declaracion De Temoaya*, “Estado Multietnico” 1, in STAVENHAGEN, supra note 12, at 185.

\(^{35}\) La consagración de un Estado multiétnico requiere una reforma de nuestra Constitución Nacional, reforma por la que lucharemos. Después de 450 años de dominación, tenemos derecho a ser reconocidos por nuestra carta fundamental. De no ser así se estará confesando la impotencia del sistema que nos sentimos inmersos aún. (The consecration of this multiethnic state requires the reformation of our national constitution, reforms for which we will fight. After 450 years of domination, we have the right to be recognized by our fundamental statement. If this does not occur, it will proclaim the impotence of the system in which we are still immersed.)

*Id.* (translation by author).
nient."\(^{36}\) The accord specifically stated that a proposal will be put to the Federal Congress "to recognise in national legislation the [Indian] communities as public law entities, their right to associate freely in municipalities with an indigenous majority, as well as the right of several municipalities to associate with the purpose of coordinating their actions as indigenous peoples."\(^{37}\)

### B. Pluriculturality in the Juridical System

In the agreement, the Government also committed itself to recognition of "pluri-culturality in the national juridical system," including the acceptance of "the specific competence and jurisdiction of the authorities designated within the communities."\(^{38}\) In so doing, the government initiated a process of reformation which may lead to the creation of disparate jurisdictional pockets in southern Mexico.\(^{39}\) These pockets may approach juridical reformation by either instituting the substance and procedure of indigenous law in indigenous communities or by establishing district judges who will consider applying indigenous customary legal norms in cases involving indigenous peoples.

Constitutional reforms proposed by the Commission of Peace and Cooperation (Cocopa) on November 29, 1996, include specific references to the autonomy of indigenous legal systems: "[t]he indigenous communities have the right of self-determination and, as an expression of that right, to the autonomy pertaining to a part of the Mexican state, to: . . . II. Apply their normative legal systems in the regulation and resolution of internal conflicts, respecting individual rights, human rights and, in particular, the dignity and integrity of women; the indigenous communities' substantive and procedural rules and decisions will be validated by the jurisdictional authorities of the state."\(^{40}\)

Even the government's counterproposal, given to the EZLN on December 19, 1996, nominally guaranteed recognition of legal and jurisdictional

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\(^{36}\) *Chiapas Produces New Indian Charter: Agreement on Self-Rule and Separate Judicial Systems, supra* note 8.

\(^{37}\) *Id.*

\(^{38}\) *Id.*

\(^{39}\) *Id.*

autonomy, permitting the indigenous communities to: "apply their own rules, customs and usages in the regulation and resolution of internal conflicts between their own members, respecting the guarantees which establish this Constitution and human rights, as well as the dignity and integrity of women. The local laws will foresee the reconciliation and recognition of petitions and procedures that will be used for this and will establish the norms in order that laws and resolutions will be homologated by the jurisdictional authorities of the state." The EZLN leadership, in a "Communique of the Clandestine Indigenous Revolutionary Committee-General of the Zapatista Army of National Liberation," rejected the government's counterproposal in its entirety because the EZLN claimed, among other reasons, that the government's proposal ignored the San Andres accords signed by the governmental delegation in February of 1996 and it attempted to renegotiate the entire first round of talks on "indigenous rights and culture." With respect to the specific question of indigenous legal and jurisdictional autonomy, the EZLN objected to the fact that the government's proposal ostensibly signaled the autonomy of the indigenous peoples and their right to legal customs and usages of their own, while providing that the indigenous legal systems will be proscribed by "local laws" and will be homologated by the jurisdictional authorities of the state. In Spanish legal terminology, to homologate ("homologar") indicates the act of ratifying a proposal or law in such a fashion as to ensure that it corresponds to previously fixed norms.

In order for the gains made by the EZLN to survive the process of ratification by indian communities and enactment into law, the government and EZLN negotiators must overcome the disagreements, disparate viewpoints and hostilities which have characterized the talks thus far. The EZLN withdrew from talks last Sept. 2, and has refused to resume negotiations, citing the administration's failure to convert the San Andres accords into law. At the present time, the accords have yet to be ratified, and


the peace process remains stalled amid accusations of fault by both sides. Some hope remains, however, that the EZLN, which recently celebrated the 14th year of its existence, will renew dialogue with the government.

III. THE LEGAL LEGITIMACY OF JUDICIAL SELF-DETERMINATION

The right of Mexican indigenous peoples to have recourse to customary and tribal law figured prominently in the stalled peace negotiations. This right comports with standards for the rights of indigenous peoples established by international instruments in sources such as treaties, conventions and covenants which constitute the doctrinal basis for the rights of indigenous and minority populations to sovereignty and self-determination. Recent developments in international law have provided indigenous peoples with ever more expansive theoretical bases for judicial self-determination, but recourse to the standard of these international instruments proves practically ineffectual.

The practical application of those instruments to the amelioration of the rights of indigenous peoples is precluded by two significant obstacles. First, there is disagreement about the definitions of key concepts in many of the instruments themselves. Second, the international legal materials are influential, but seldom binding. Those instruments which directly address the rights of indigenous peoples appear in conventions and declarations which, as yet, hold relatively little legal or precedential value.

46 Interior Secretary Emilio Chuayffet Chemor has denied that the Zedillo administration is to blame for the impasse in negotiations with the Zapatistas, and pointed a finger instead at the Zapatistas, explaining that the Zapatistas rejected the government revisions presented for EZLN approval Dec. 20, and also failed to respond in March to another government counter-proposal. Labor Party Deputy Ricardo Cantu Garza has said the peace process “has not advanced . . . because the government has not fulfilled the commitments it made to the Zapatista Army of National Liberation (EZLN).” Sheridan, supra note 44.
47 Daniel Pensamiento, Cumplira hoy el EZLN 14 anos de existencia, REFORMA, November 17, 1997.
48 Existen bases para solucionar el conflicto en Chiapas.- Munoz Ledo, EL NORTE, September 17, 1997 at 8; Reivindicael EZLN acuerdos, REFORMA, Nov. 29, 1997 at 17; Opto el gobierno por reventar el proceso de paz, REFORMA, Nov. 19, 1997 at 12.
A. The Draft United Nations Declaration on the Rights of Indigenous Peoples

The strongest doctrinal argument for international legal recognition of claims by indigenous groups to some form of juridical self-determination comes from the new Draft United Nations Declaration on the Rights of Indigenous Peoples (hereinafter “Draft Declaration”). The Draft Declaration represents the work of over a decade of dialogue with representatives of indigenous peoples, as well as studies conducted under the auspices of the U.N. human rights system. In 1982, the Economic and Social Council established the Working Group on Indigenous Populations (WGIP) with the dual mandate of annually examining the situation of indigenous peoples worldwide and considering the development of new international standards for the recognition and protection of indigenous rights. The July 1994 session included the participation of 44 observer governments, 11 U.N. agencies and other intergovernmental organizations, 164 indigenous peoples, organizations and communities, 83 human rights non-governmental organizations and a large number of individual scholars. The United Nations General Assembly has requested that the declaration be adopted before the end of the International Decade of the World’s Indigenous Peoples (1995 - 2004).

The substantively groundbreaking Draft Declaration which they produced represents the recognition of an additional dimension of international human rights norms. The instrument focuses on indigenous societies as the holders of rights, since the survival of indigenous populations requires the recognition and protection of core rights to self-determination, lands and resources and cultural integrity—rights that flow from the nature of an indigenous society and preserve its cultural and social cohesion.


53 Berman, supra note 50, at 542.
B. Customary Indigenous Legal Systems

The Draft Declaration addresses, at several points, the right of indigenous peoples to some forms of juridical self-determination and recourse to customary legal systems. Article 4 of the Declaration states: "indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State." \(^{54}\) The Draft Declaration further provides: "[i]ndigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards." \(^{55}\)

This Draft Declaration, though an unprecedented and positive recognition of the exigencies facing indigenous populations, created with the seminal participation of many indigenous groups, \(^{56}\) still proves to be the ineffectual progeny of other international instruments designed to address the issue of indigenous rights—limited in scope by the same shortcomings which hamper the effectiveness of its predecessors. Though broader in its aims, the Draft Declaration suffers from some definitional obscurity: certain governments from the Asian region continue to express concern that the Working Group has not promulgated an official definition of "indigenous peoples." \(^{57}\) Many other governments are resisting the recognition of collective rights and self-determination implicit in the opening phrase of each article: "indigenous

\(^{54}\) Draft Declaration, art. 4, supra note 49, at 548.

\(^{55}\) Id. at 553.

\(^{56}\) The preamble states: "Believing that this declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field," id. at 547. Dr. Julian Burger, Secretary of the intergovernmental Working Group on the Draft Declaration on the Rights of Indigenous Peoples, states: "[a]lready the indigenous caucus has insisted on full and effective participation in the discussion and in some procedural matters as well as involvement in the final report of the meeting. Over 100 indigenous organizations have been given the opportunity to participate in the Commission's Working Group. Others are applying for the same opportunity. Indigenous people have presented powerful and cogent arguments in favour of the text as it stands and have been able to present unified consensus statements." Julian Burger, *The United Nations Draft Declaration on the Rights of Indigenous Peoples*, 9 ST. THOMAS L. REV. 209, 211 (1996).

\(^{57}\) Id. at 210.
peoples have the rights . . . "58 Moreover, the Draft Declaration remains essentially a non-binding instrument. Not only has it yet to be adopted by the General Assembly, but the system established for its implementation59 depends upon the proactive participation of governments which count indigenous peoples among their citizens, many of which have, in practice, demonstrated a manifest unwillingness to accommodate claims of indigenous peoples to equal status with other citizens. Claims to legal and political autonomy may be expected to fare much worse.

C. The Inter-American Declaration on the Rights of Indigenous Peoples

The Inter-American Declaration on the Rights of Indigenous Peoples60 holds some of the same promise and suffers from some of the same defects as the United Nations Draft Declaration. The Inter-American Commission on Human Rights (IACHR), endowed by the Charter of the Organization of American States (OAS),61 recognized the need for an instrument that would protect and define the rights of indigenous peoples.62 In 1989 the OAS General Assembly issued a resolution approving the IACHR’s proposal to draft an instrument acknowledging its concern "about the frequent deprivation afflicting indigenous peoples of their human rights and fundamental

58 Id. at 210-11.
59 Part VIII of the draft declaration provides for implementation:
States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this declaration. The rights recognized herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice . . . The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.
Draft Declaration, art. 37, 40, supra note 54, at 554-55.
freedoms . . ." and "[r]ecognizing the severe impoverishment afflicting indigenous peoples in several regions of the Hemisphere . . .". In 1994, the Executive Secretariat of the IACHR prepared a "Draft for Consultation" which was revised and approved by the IACHR in September 1995 as a Draft.

The Inter-American Declaration on the Rights of Indigenous Peoples addresses the substantive rights of indigenous groups to their own juridical systems. Article XVI of the Declaration states: "Indigenous law shall be recognized as a part of the states' legal system and of the framework in which the social and economic development of the states takes place." The Declaration also addresses the fora in which indigenous law would be applied: "[i]ndigenous peoples have the right to maintain and reinforce their indigenous legal systems and also to apply them to matters within their communities, including systems related to such matters as conflict resolution, crime prevention and maintenance of peace and harmony." In addition, the Declaration contemplates that procedures concerning indigenous peoples or their interests shall include "observance of indigenous law and custom and, where necessary, use of their language." The framers of the Declaration also intended that the indigenous peoples would have the right to participate in the incorporation of indigenous legal systems into the organizational structures of the states.

Although the Inter-American Declaration on the Rights of Indigenous Peoples suffers from some of the same definitional obscurity as the United

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65 IACHR Proposed Declaration, supra note 60, at Art XVI (1).
66 Id. at Art XVI (2).
67 Id. at Article XVI. Indigenous Law (3)
68 "National incorporation of indigenous legal and organizational systems.
1. The states shall facilitate the inclusion in their organizational structures, the institutions and traditional practices of indigenous peoples, and in consultation and with consent of the peoples concerned.
2. State institutions relevant to and serving indigenous peoples shall be designed in consultation and with the participation of the peoples concerned so as to reinforce and promote the identity, cultures, traditions, organization and values of those peoples." Id. at Article XVII.
Nations Draft Declaration, it constitutes a strong statement on the rights of indigenous peoples to juridical self-determination which could prove a powerful tool. The present draft has been approved by the IACHR for consultation; it is not, however, the final statement of the OAS on the matter. Governments, indigenous organizations, other interested institutions and experts will have a chance to review the draft and present their comments and suggestions. On the basis of these comments, the IACHR will prepare its final proposal to be presented to the General Assembly of the OAS.

D. Self-Determination as a Means of Achieving Recourse to Customary Indigenous Law

The Draft Declaration is not the only legal route to judicial self-determination. The indigenous populations may demonstrate that they are entitled to political as well as legal self-determination by invoking the provisions of the Vienna Declaration and other international human rights instruments.

1. The Historical Background of Self-Determination

The United Nations' 1948 Universal Declaration of Human rights did not explicitly refer to the rights of self determination, although article 21 did set out rights now identified with internal self determination without labeling

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69 The decision by the Inter-American Commission on Human Rights to consider self-identification as a fundamental factor in determining the status of indigenous peoples (“Self identification as indigenous or tribal shall be regarded as a fundamental criterion for determining, the groups to which the provisions of this Declaration apply.”), id. at Art. 1. Sec. II, probably will not do much to resolve issues of definitional obscurity. The inherent difficulty in defining which peoples may or may not be classified as indigenous is evinced in the definitional passages of drafts of the Inter-American Declaration: “Definition: In this Declaration indigenous peoples are those who embody historical continuity with societies which existed prior to the conquest and settlement of their territories by Europeans. (alternative 1) [as well as peoples brought involuntarily to the New World who freed themselves and cultures from which they have been torn]. (alternative 2) [, as well as tribal peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations].” Draft of the Inter-American Declaration on the Rights of Indigenous Peoples, 19 September 1995 Art. 1, 1995 Annual Report of the Inter-American Comm'n on Human Rights, 203, DEA/ser.L/v/II.91doc.7rev.

them as such.\textsuperscript{71} Self-determination, however, became a main focus of the General Assembly’s 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.\textsuperscript{72} The notion of rights to self-determination appears as well in both of the 1966 covenants on Human Rights.\textsuperscript{73}

The recognition of the right to self-determination, however, proved simply the beginning of the debate, as disagreement arose over the meaning of “peoples” and the meaning of “self-determination” within the purview of the instruments. The conventional viewpoint held that “self-determination” signified only that peoples are entitled to determine their own forms of government and shape their own juridical processes when such self-determination meant freedom from colonial domination, especially when people of color experience domination in their own homeland by other racial groups.\textsuperscript{74} Thus, some indigenous and linguistic minorities would not be able to rely on international law to establish the principle of self-determination: “the principle [of self-determination] has been confined in international practice to situations involving separate territories politically and legally subordinate to an administrative power.”\textsuperscript{75} At the other end of the spectrum is the viewpoint, deemed “the controversial view” by Deborah Cass,\textsuperscript{76} that the right of self-determination extends beyond the colonial context.\textsuperscript{77}

\textsuperscript{76} Cass, supra note 75, at 30.
\textsuperscript{77} Kirgis lists the various approaches to the meaning of self-determination between these two extremes:

\begin{itemize}
  \item (3) . . . The right to dissolve a state, at least if done peacefully, and to form new states on the territory of the former one, as in the former Soviet Union and Czechoslovakia . . . (4) The disputed right to secede, as in the
2. The Threat of Fragmentization

It is thus not a simple task to determine the place of judicial self-determination, or recourse to customary law, within the framework of international legal materials. The most significant issue standing in the way of more widespread grants of autonomy is a concern about the fragmentization or dismemberment of states with the resultant potential for conflict, and it should be recognized that, on its face, juridical self-determination may seem to carry the same threat of jurisdictional fragmentization.

The General Assembly, in its Declaration on Principles of International Law Concerning Friendly Relations (The Vienna Declaration), recognized this concern about fragmentization when it disclaimed any intent to authorize or encourage the dismemberment of states. The General Assembly's disclaimer, however, left a good deal of room in its definition of legitimate states: "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole peoples belonging to the territory without distinction as to race, creed or color."

The disclaimer case of Bangladesh and Eritrea. (5) The right of divided states to reunite, as in Germany. (6) The right of limited autonomy, short of secession, for groups defined territorially or by common ethnic, religious and linguistic bonds—as in autonomous areas within confederations. (7) Rights of minority groups within a larger political entity, as recognized in Article 27 of the covenant on Civil and Political Rights and in the General Assembly's 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. (8) The internal self-determination freedom to choose one's own form of government, as in Haiti.

Kirgis, supra note 71, at 307.


79 Kirgis, supra note 71, at 305.

80 Id.

in the Vienna Declaration provided an exemption only for "a government representing the whole people belonging to the territory without distinction of any kind."82 Frederic Kirgis argues that these instruments leave room to assert a right of self-determination against a government that is unrepresentative or in violation of international legal standards: "[t]he striking contrast between the 1960 and 1970 General Assembly formulations suggests that from about 1970 on, there could be a right of "peoples" . . . to secede from an established state that does not have a fully representative form of government, or at least to secede from a state whose government excludes people of any race, creed or color from political representation when those people are the ones asserting the right and they have a claim to a defined territory."83 Actions of the Mexican Army during the Chiapas rebellion and prior to the rebellion seem to have violated many international legal standards,84 including the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the American Convention on Human Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Inter-American Convention to Prevent and Punish Torture; the Convention of Rights and Duties of States in the Event of Civil Strife; and the International Convention on the Elimination of All Forms of Racial Discrimination.85 It may therefore be argued that Mexican human rights violations have disqualified the nation from protection from fragmentization.

According to Kirgis, an evaluation of a claim for self-determination must balance the factor of possible governmental destabilization against the degree of democratic representation enjoyed by the group seeking self-determination: claims by the significantly underrepresented indigenous groups of Chiapas, if it can be shown that such claims would not appreciably contribute to destabilization, stand a greater chance of success, viewed against the standard of international legal materials.86


84 See Vargas, supra note 3, at 30.

85 Vargas, supra note 3, at 58-59.

86 Kirgis, supra note 71, at 308.
Recognizing the right of indigenous peoples to some forms of juridical self-determination and recourse to customary tribal law does not present a significant threat of jurisdictional fragmentation or conflicts arising from inconsistent obligations placed upon some citizens. As we will see, many indigenous tribal groups already regulate relationships in the community according to the normative influence of tribal legal custom and have done so for decades; the more serious conflicts arose from the refusal of the Mexican government to recognize the legal validity of these customary laws.

**E. Conflicts Between Customary Law and Indigenous Law**

Although the Mexican laws purport to pertain to all Mexicans, regardless of ethnicity, many Mexican ethnic groups define and regulate transactions and relationships within the community according to unwritten legal customs and traditions. Students of pre-colonial Mexico have demonstrated that in the towns within the extensive territory of the Aztecs there existed sophisticated normative and regulatory judicial structures. Marked vestiges of these systems still exist today, although much of the time these are syncretistic legal systems, the progeny of indigenous, colonial and republic legislation. In view of the possible recognition by the Mexican government and district judges of the legal legitimacy of these traditions, the traditions merit more study than they have heretofore received.

The different approaches to law between government authorities and the indigenous populations has been the source of much confusion and conflict. For example, the sole recognized marriage is that defined by the civil laws; many indigenous communities, however, recognize marriages in accordance with custom, which are neither recognized by civil law, nor sanctioned by

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87 En los Estados Unidos Mexicanos todo individuo gozara de las garantías que otorga esta Constitucion, las cuales no podran restringirse, ni suspenderse, sino en los casos y con las condiciones que ella misma establece. (In the United States of Mexico, each individual will enjoy all of the guarantees granted by this Constitution, those which can be neither restrained, nor suspended, except in those cases and under those conditions established by this document.)

CONST. art. 1 (Mex.) (translation by author).

88 STAVENHAGEN, supra note 12, at 300.

89 Id.; see JULIAN N. GUERRERO, DERECHO ABORIGEN EN CENTROAMERICA Y EL CARIBE, (1965); ALICIA CASTELLANOS, NOTAS SOBRE LA IDENTIDAD ETNICA EN LA REGION TZOTSIL TZEKLAL DE LOS ALTOS DE CHIAPAS, (1988).
the Catholic Church.\textsuperscript{90} This practice has given rise to several conflicts in the area of inheritance and descent.

In the area of penal legislation, the majority of indigenous groups have their own customs and laws to regulate internal conflict, a situation which is the source of permanent and ongoing tensions and conflicts between the indigenous communities and the judicial authorities of state and federal governments.\textsuperscript{91} Generally, in the case of minor infractions committed by members of indigenous communities, the government authorities try to refrain from intervening in the resolution of the conflict. When faced with crimes of a more serious nature, however, the government authorities step in, notwithstanding efforts by the indigenous communities to resolve the conflict in accordance with customary mechanisms of resolution.\textsuperscript{92}

Rodolfo Stavenahgen cites two examples of the discord created by the competing legal systems. In an indigenous community in the Mexican state of Oaxaca, an individual killed his friend while both were embroiled in a drunken dispute. After several days of consultation, a council of elders, invested with customary and traditional authority, decided that the culprit, an unmarried man, should marry the victim's widow and provide for the economic sustainment of the victim's family. Thus was the culprit made to assume responsibility for his actions by providing for the maintenance of the family; the social equilibrium of the community was preserved and some of the potential conflicts between the families involved was defused.

Nevertheless, the governmental judicial authorities stepped in with the intent of apprehending the criminal. The indigenous community refused to deliver the man over to the authorities and it was only the threat of armed conflict between the indigenous group and the army which influenced the governor of Oaxaca to respect the decision of the elders.\textsuperscript{93}

Among the Huichole Indians of Nayarit, the indigenous governor of the community urged an individual who had committed a homicide to present himself before the national justice system for trial, which he did of his own accord. As the Mexican judge hearing the case had neither documentation of the case, nor testimony of the occurrence, and considering self-confession inappropriate grounds for the charge of murder, he decided not to pursue the case and freed the murderer.\textsuperscript{94}

\textsuperscript{90} \textsc{Stavenhagen}, supra note 12, at 309.
\textsuperscript{91} \textit{Id.} at 310.
\textsuperscript{92} \textit{Id.}
\textsuperscript{93} \textit{Id.}
\textsuperscript{94} \textit{Id.} at 310-11 (translation by author).
These accounts demonstrate some of the fundamental conceptual barriers which divide the indigenous peoples and the Mexican authorities. They also demonstrate that, instead of creating conflict, applying indigenous customary law to internal disputes between members of the indigenous communities may indeed resolve much of the confusion which exists between Indigenous communities and the Mexican authorities.

Moreover, the fact that demands for judicial autonomy amount to much less than outright secession further confirms the validity of the demands. The Inter-American Commission on Human Rights concluded that international law does not recognize the right of an ethnic group such as the Miskito population of Nicaragua to secede, in the sense of shaping its own form of political organization. But, because the establishment of a right to customary forms of law does not constitute full secession, this particular demand by the Mexican insurgents may not specifically contravene OAS precedents in Latin America.

F. Conclusions

The conclusion of a survey of the international legal materials demonstrates that indigenous peoples of Chiapas, and those whose movements are or will be modeled after the example set in Chiapas, may assert a legitimate right to juridical autonomy or recourse to customary tribal law in the declarations and conventions which constitute the international law applicable to indigenous populations. Regrettably, however, few of these materials have attained either binding precedential value or the economic and political backing of signatory nations, and thus guerrilla warfare has proven to be one of the few ways by which the indigenous communities may provide the practical leverage necessary for the attainment of human and civil rights.

IV. THE NECESSITY OF JURIDICAL SELF-DETERMINATION

The rights of indigenous peoples to recourse to customary tribal law is necessitated by the social and economic exigencies facing the Mexican indigenous population. These particular exigencies have arisen as a result of the marginalization of indigenous peoples which occurs when the welfare

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of the Indian groups is at odds with the collective practices or economic interests of the Mexican government or its representatives.

A. Judicial Oppression and Social Reasons Necessitating Judicial Self-Determination

Independent human rights organizations have documented the record of Mexico’s appalling violations of the human rights of indigenous peoples, the vast majority of which occur in rural areas. Most indigenous peoples in Mexico are farmers or fieldworkers by trade; the land provides for the sustainment of their livelihoods and it has also served as the instrument through which the Mexican government and judicial system have administered the greatest inequities. The division of previously ethnic lands and the dispersion of indigenous populations into disparate administrative and territorial divisions occurred with frequency and, it has been argued, with a measure of intentionality. Within the state of Oaxaca, for example, where the indigenous population accounts for over 50 per cent of the total population, there exist more than 500 municipal divisions, each of which scarcely comprise more than a small central community (and some outlying localities). The political privation of the indigenous peoples thus resulted from a lack of bases of collective territorial, jurisdictional recognition; various states of the republic had territorial and population sizes which were less than the populations of indigenous groups. These states were construct-


97 “La intención del legislador "fue clara": promover la fragmentación y atomización de la identidad étnica para impedir la conformación de identidades políticas más amplias y por lo tanto potencialmente más poderosas.” (The legislator’s intentions are clear: to promote the fragmentation and scattering of the ethnic entities in order to impede the strengthening of tribal ties and the creation of more ample and potentially more powerful political entities.) STAVENHAGEN, supra note 12, at 304 (translation by author).

98 “Políticamente y económicamente, el municipio libre, la base del sistema político-administrativo del país, ejerce prácticamente no poder real en el estado mexicano.” Id. (translation by author).

99 Id.
ed in the past century as a function of the interests of economic groups or political or military leaders (caudillos) of mestizos or criollos (creoles). Though some anti-poverty programs have been established, these programs have only nominally affected the indigenous population, which remains subject to political and judicial manipulation.

The patterns of this manipulation are evinced throughout the region; one example may suffice to provide an outline of the nature of the abuses. A confidential document written by highly placed officials in the federal government blamed the then governor of the state of Chiapas, Patrocinio Gonzalez Garrido, “not only for permitting a feudal land system to persist, but also for helping large landowners repress Indian peasants . . . in 1992, he had ordered the arrest of three solidarity officials on charges of fraud, embezzlement and corruption after they refused to let him administer federal anti-poverty funds.” In spite of the fact that president Salinas knew of the reputation associated with the governor of Chiapas, Salinas rewarded Gonzalez Garrido, a member of the PRI, by appointing him to the most powerful political post in the Mexican cabinet: secretary of the interior (Secretario de Gobernacion).

During the 1994 uprising, it appears the Mexican Army violated several specifically enumerated rights granted to all Mexican citizens by the Mexican Constitution. The erection of barricades and the establishment of military checkpoints by the Mexican Army violates Mexican constitutional provisions for “freedom of transit”; documented refusals to permit public assembly near the theater of EZLN operations violates constitutional guarantees of the “right to assemble or associate peaceably for any lawful purpose . . .”; and the Mexican Army’s often violent intrusions into homes and destruction of property in Chiapas violate Mexican constitutional provisions for due process and for prohibitions of molestation of person, family, domicile, papers, or property without legally stated reasons.

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100 Id.
101 S. Lynne Walker, Chiapas, Mexico, Too Little Too Late: Rebel Uprising Exposes Holes in Salinas’ Safety Net For The Poor, SAN DIEGO UNION-TRIB., Apr. 11, 1994.
103 Id. (A few days after the uprising in Chiapas, Gonzalez Garrido was forced to submit his resignation).
104 CONST. art. 11 (Mex.).
105 CONST. art. 9 (Mex.).
106 CONST. art. 14 (Mex.).
107 CONST. art. 16 (Mex.); see, Vargas, supra note 3, at 16-20.
Mexican Army practices of torture violate international standards as well as Mexican constitutional provisions. According to Amnesty International, methods of torture include: "beatings . . . electric shocks . . . submerging the victim's head in water until near suffocation occurs . . . [a] widespread and unique method of torture involves the introduction of mineral water laced with hot chili peppers into the nasal passages of the victim . . . [t]he placement of plastic bags over the victim's head to the point of near asphyxiation . . . rape and sexual abuse . . . psychological torture is also common and takes the form of death threats and mock executions . . ."109

These occasions of human rights violations occur against the backdrop of institutional oppression enacted into law in the form of the Chiapas Penal Code.110 The crime of sedition is defined as a gathering of citizens in large numbers to resist public authorities with the purpose of abolishing or amending the State Constitution, to subtract power from the authority of the state, or deprive certain state powers of their functions.111 The definition of a riot is applied, among other things, to situations in which individuals are gathered in large numbers to exercise a right or resist public authorities in the exercise of their functions to compel these authorities to make a decision.112 "The code provides for a variety of vaguely defined political offenses that state government officials may selectively enforce against dissident peasants or political opponents to maintain its tight control over the state population."113

In San Cristobal de las Casas, a town in Chiapas with a significant indigenous population, "unemployment exceeds 60 per cent; Mexican government census bureau statistics report that 78 per cent of the population live in overcrowded shacks with dirt floors, 66 per cent of which lack

108 Vargas, supra note 3, at 58-59.
110 Codigos Penal y de Procedimientos Penales para el Estado de Chiapas, Editorial Porrua, Mexico (1993).
111 Vargas, supra note 3, at 23.
112 Id.
113 Id. at 24, citing MINNESOTA ADVOCATES FOR HUMAN RIGHTS, CONQUEST CONTINUED: DISREGARD FOR HUMAN AND INDIGENOUS RIGHTS IN THE MEXICAN STATE OF CHIAPAS 5 (1992) supra note 90, at ix.
electricity, 40 per cent lack sewers and water. More than 40 per cent of the people are illiterate and 62 per cent never completed the 6th grade.\textsuperscript{114} Thus, indigenous peoples have few financial or educational resources to fight these constitutional violations.

Violations of international standards and of Mexico's own constitutional provisions create a situation in which Mexico's indigenous peoples have become an oppressed minority in a country which purports to grant them equal status and constitutional protection. Affording Mexico's indigenous population recourse to customary laws or, at the least, to adjudication before a district judge from the indigenous community or acceptable to the community, will not put an end to human rights abuses. These measures will, however, provide a greater check on governmental violations of human rights and will ensure that a greater number of human rights abuses go to trial.

**B. Economic Exigencies Necessitating Judicial Self-Determination**

Mexican economic adjustment programs, which have steadily moved the country from a nationalized, protectionist economy to one of privatization, also create a need for development of legal systems which take particular needs of the indigenous peoples into account. The Mexican approach to the debt crisis of the 1980's was implementation of neo-liberal economic stabilization and structural adjustment measures deemed conditions precedent to the granting of I.M.F. fund arrangements and loans by the World Bank.\textsuperscript{115} "Stabilization" in the context of economic readjustment according to I.M.F. policy priorities, refers to short-term "emergency" measures designed to reduce economic demand and thereby to re-align an imbalance of supply and demand.\textsuperscript{116} "Structural Adjustment" denotes large-scale changes to the national economic infrastructure designed to improve supply and strengthen an economy against the eventuality of economic crisis, conditions of the World Bank's policy-based lending program.\textsuperscript{117} Both

\begin{itemize}
\item \textsuperscript{114} Bill Coleman and Patty Coleman, *Government Blames Church for Chiapas: Mexican Uprising Fed on Poverty, Oppression*, NATIONAL CATHOLIC REPORTER, Jan. 14, 1994;
\item \textsuperscript{116} Id.
\item \textsuperscript{117} Id. at 248.
\end{itemize}
I.M.F. and World Bank programs release funds in installments for which recipient nations qualify once they meet performance criteria.\(^{118}\) The elements of these stabilization programs, though differing from nation to nation, consistently promote liberalization of foreign and domestic trade and privatization of previously public enterprises.\(^{119}\)

Although the World Bank cited "minimization of the cost of adjustment to the poorest," among its defined objectives for structural adjustment loans,\(^{120}\) vulnerable groups, specifically the indigenous peoples, have borne the greatest costs of structural adjustment in Mexico. The Mexican government was able, through economic stabilization and adjustment undertaken with funding arrangements provided by the I.M.F. and several billion in loans from the World Bank,\(^{121}\) to dramatically cut inflation, eliminate fiscal deficit, privatize and deregulate previously state-owned industries,\(^{122}\) and re-invent trade policy by significantly reducing tariffs, import taxation and quantitative restrictions.\(^{123}\) These fiscal gains of privatization were made, however, at the expense of nationalization and social welfare measures which had been instituted for, and often in the name of, politically and economically vulnerable groups such as indigenous ethnic groups.\(^{124}\) Indigenous peoples, deprived of lands, often victims of unjust laws\(^ {125}\) and violations of their constitutional guarantees, without access to the capital necessary to survival in a free market, stand to lose the most from privatization. "The ethnic and economic rivalries to which nationalization was in part a response are not in reality smoothed over in a new national project of cooperative joint enterprise. Instead, the old divisions reappear and worsen."\(^ {126}\)

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\(^{118}\) Id.

\(^{119}\) Id. at 249.

\(^{120}\) Other stated objectives are: "(1) the correction of balance of payments imbalances, (2) the elimination of distortions and promotion of microeconomic efficiency, (3) the reduction of high inflation rates, (4) the protection or resumption of output growth . . ." Id. at n.148, quoting Fahrettin Yagci et al., Structural Adjustment Lending: An Evaluation Of Program Design 7, 15 (World Bank Staff Working Paper No. 735, (1985)).

\(^{121}\) Id. at 253.

\(^{122}\) Id. at 254.

\(^{123}\) Id. at 255.


\(^{125}\) Such as the Penal Code of Chiapas.

\(^{126}\) Chua, supra note 124, at 284.
These divisions include great economic disparities; the wealthiest twenty percent of the Mexican population earns fifteen times more than the poorest twenty percent. In addition, the acceleration of these class divisions has been directly attributed by some to the effects of economic adjustment in accordance with I.M.F. and World Bank policies.

With the dismantling of social welfare, and economic restructuring according to these policies, "[t]hese liberalizing measures increase the polarization of wealth by class, gender, race and nations . . ." With the dismantling of social welfare, and economic restructuring according to these policies, "[t]hese liberalizing measures increase the polarization of wealth by class, gender, race and nations . . ."

The practical effect of this shift has had a deleterious effect on the status of indigenous peoples. The pressures of globalization of markets pits the collective national economic good against individual indigenous communities; national economic survival in a global market depends upon exportation of resources and the subsistence farming of indigenous groups threatens national economic advancement. There is, as yet, little room in a privatized market for the resources and abilities of the indigenous groups. The exigency of economic marginalization necessitates recourse to community juridical systems to prevent legal exploitation as a means toward resource exploitation—taking the gavel out of the hands of the collective interests, interests which are foreign to the indigenous communities.

V. CONCLUSION

If "[e]very revolution tries to bring back a golden age," if "[t]he 'eternal return' is one of the implicit assumptions of almost every revolutionary

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127 Carrasco, supra note 115, at 257.
130 See Nash, supra note 128, at 179 ("The removal of subsidies, including those for corn, the main subsistence crop which small plot cultivators sell for cash, allowed subsidized corn from the U.S. to glut the Mexican market even before the passage of NAFTA. This has forced many corn farmers off the land . . ."); David Barkin, The End to Food Self-sufficiency in Mexico, LATIN AMERICAN PERSPECTIVES 54 (1987).
131 Indigenous peoples' fear of complete marginalization at the hands of large collective interests with the passage of NAFTA, led the EZLN to commence its insurgency movement on Jan. 1, 1994, coinciding with the day on which NAFTA was to go into effect; Vargas, supra note 3, at 1.
theory,"\textsuperscript{132} the indigenous peoples of southern Mexico must cull from the glory of their traditions those elements which fit the contours of present political realities and meet the exigencies of the present day. A means of recourse for indigenous peoples to traditional customary law or to judges who are recognized by the community as authoritative and who will take customary normative standards into account is a legitimate and necessary response to the present needs of the indigenous peoples. The legitimacy of this notion, whether viewed separately or as a part of the entire scheme of indigenous demands for political accountability and measures of self-determination, may be derived from the various international legal documents which address the rights of indigenous peoples either directly or through implication.

The necessity of such measures comes from the dynamics of collective Mexican interests and the pressure they exert on the indigenous groups. Without some legitimate judicial authority which will take into account the unique problems and solutions of indigenous peoples, the Indians of southern Mexico will experience even greater marginalization at the hands of local despots and globalized interests.

\textsuperscript{132} Octavio Paz, \textit{De la Independencia a la Revolucion, El Laberinto de la Soledad} (1950) ("Toda revolucion tiende a establecer una edad mitica . . . El 'eterno retorno' es uno de los supuestos implicitos de casi toda teoria revolucionaria.").