Chapter Twenty-Seven

The First Accords: Indian Rights and Culture, San Andrés, February 1996

Of the several great questions that the CCRI-EZLN high command put on the agenda for negotiation in March 1995, why was the first to be negotiated “the political, social, economic, and cultural rights of the indigenous in Mexico”?

Without archives and memoirs no one not privy to both sides’ calculations then can confidently tell. Among various hypotheses the likeliest now is that not until after the Zapatistas’ “grand national poll” (which asked nothing about Indians) did either side decide on a substantive agenda, and that both sides then decided to give “the Indian question” priority for different but overlapping reasons. The government would take this question first, because for all its symbolic importance it seemed at once the least important materially, involving only about eight percent of the country’s population, and the most provincial, the easiest to confine to Chiapas. The Zapatista high command would take it first, because it seemed the most promising to then badly beleaguered and bitterly suspicious Zapatista forces and their families.

Whatever the reasons for the choice, the question of Indian rights was an issue of enormous complications. Historically, not counting ancient Indian peoples’ rights in regard to each other, it dated from the Spanish Conquest. The paramount legal and moral problem of Spanish rule for three centuries, it had after Independence so exasperated Liberals and Conservatives in their rival struggles for nationhood that ultimately they could only try together to will it away, admitting no status in the nation but that of citizen, trusting repression, education, and the superiority of “the white race” gradually to expunge “barbarism” and yield “civilization” (their final solution, on which see Reading No. 4). In the same vein nothing about the indigenous or Indians appeared in the Revolutionary Constitution of 1917. Since the 1930s, by law since 1948, INI, the National Indigenous Institute, had been “at the service of . . . indigenous communities,” but working deliberately into the 1980s still to de-indigenize them, “integrate” them into the “true nation.” Even so every decade more Indians had figured absolutely in the national census. By 1990, speaking one or another of 70-odd indigenous languages, there were some seven million, half in four far southern and southeastern states, half in 28 other very different states. INI then was “at the service” of some 3,000 indigenous organizations, and failing by any standard. Since the 1980s national economic booms and busts, migration, urbanization, social programs, Protestant and Catholic missionary campaigns, guerrilla movements, leftist politics, and anthropological criticism inside and outside INI had complicated beyond all historical criteria the conditions and meaning of being indigenous in Mexico. Indians no longer stuck to their native language, village, or corn patch. In Mexico City, speaking good Spanish, there were quite real Indian street vendors, midwives, truck drivers, welders, politicians.

Lately, despite the objections of national states everywhere, the question of aboriginal rights had resurfaced internationally. Since 1982 a UN Working Group on Indigenous Populations had been meeting every year, debating drafts of a “universal declaration on the rights of indigenous peoples.” The World Council of Churches, the Latin American Bishops Conference, OXFAM, Cultural Survival, the Inter-American Foundation, the Human Rights Commission of the Organization of American States, the World Bank, the Inter-American Development Bank, and most ominously the U.S. Agency for International Development were all pressing for recognition of specifically indigenous rights in Latin America.

Anti-INI anthropologists in Mexico had taken a special interest in these developments. They studied most closely the case of Nicaragua. In the early 1980s the Sandinista government, extending its reforms and rule from Managua, had run into deep indigenous resistance on the country’s Caribbean coast. Challenged not so much on their reforms as on their claim to centralized rule, and under heavy foreign pressure, friendly and hostile, to respect the resistance, the Sandinistas sponsored hot debates (including sympathetic Mexican anthropologists) on Nicaragua’s “national-ethnic question,” in 1984 created a National Commission for Autonomy to negotiate with the indigenous, in 1985 surveyed indigenous opinion in the contested region, in 1986 hosted an international symposium on “the State, Autonomy, and Indigenous Rights,” wrote such rights and a mandate for indigenous “autonomous governments” into Nicaragua’s new Constitution, and in 1987 passed an indigenous bill for these governments into national law.

Mexican anthropologists and politicians had also carefully pondered the International Labor Office’s adoption in 1988–89 of a new “Convention on
REBELLION IN CHIAPAS

Indigenous and Tribal Peoples in Independent Countries." Its old Convention No. 157 (from 1957) had been for "integration." The new Convention No. 167 held that "all peoples have the right to self-determination" (although it stipulated that "peoples" here did not necessarily mean "peoples" in international law).

President Salinas had at once committed Mexico to the new Convention. And at his direction the Mexican Congress in 1990 had amended the constitution to define "the Mexican Nation" for the first time in its history as "multicultural" and mandate the first federal law "to protect and promote" indigenous "languages, cultures, practices, customs, resources, and specific forms of social organization." The PRI's traditionalists and the army had accepted the change grudgingly, for in their classic Liberal nationalism they read it as a threat to national unity and sovereignty. A political struggle had followed, Salinas's movement in the PRI trying to unite all major Indian organizations for a consensus on the new law's provisions, the PRD trying to draft its own bill, especially to establish Indian "autonomous regions"; the result, a stalemate. Dissension deepened in the controversies leading up to the Quincentennial Columbus Day in 1992. After the EZLN revolted, Salinas in line with the commitments of San Cristóbal and despite objections from the PRI's traditional bosses and the army had directed another effort to write an Indian law, which also failed.

By then the CCRI-EZLN had its own plan for constitutional reform and "multi-ethnic autonomous regions." Declared on October 12, 1993 (see Reading No. 25), these authorities had quickly taken form in eastern Chiapas, and still functioning in April 1995, when the talks at San Andrés began. Through the summer of 1995 a new and expertly advised National Multi-Indigenous Assembly delivered to the government, CONAI, the PRD, and the EZLN its detailed plan for several constitutional reforms and a law on indigenous rights, above all for "autonomous Indian regions." This plan the PRD and the EZLN promptly adopted.

On September 1, 1995, in his first Annual Report to the Nation, President Zedillo had called on Congress to enact an Indian law. INI began "a broad consultation." In turn the PRD urged Congress to act on the National Multi-Indigenous Assembly's proposal.

These in brief were the complications bearing on the government's and the CCRI-EZLN's delegates when they met in San Andrés on September 5 and agreed on an agenda the first item of which was "Indigenous Rights and Culture." Under so heavy and thorny a charge both teams would need help, not only in contending with each other, but also for their rival ulterior purposes of gaining public sympathy and respect. They therefore agreed too that each team could bring technical advisers to the ensuing talks.

When the teams opened their first substantive "dialogue" in San Andrés on October 1, they both had advisers. The government's were mainly INI's in-house critics, who knew the history and law of "indigenous rights and cultures" nationally and internationally, opposed "integration," and championed Indian communities in the preservation and promotion of their "languages, practices, customs . . ." and in their struggles for economic development. The CCRI-EZLN's advisers were a different sort. They numbered over 100. Their chief was a sophisticated, scholarly, shrewd 59-year-old Jesuit who for the last 31 years had lived and worked with the Tarahumara people in the mountains of Chihuahua. He came with some of Mexico's most distinguished social scientists. And he brought experts who knew the comparative history and law of nationality, ethnicity, and autonomy backward and forward, could identify not only "ethnocide," but "ethnopolgy," "ethnopoliticism," and "ethnism" as well, and stood absolutely for "self-determination," the correct form of which in Mexico, they held, was autonomy. As the "dialogue" proceeded, the government's advisers tended to agree with the Zapatistas. By the time "dialogue" ended on October 22, the government delegates were talking of autonomy as "a solution."

When the second phase of the talks, formally "negotiation," began in San Andrés on November 13, the government team had almost no advisers. It formally accepted autonomy as "the indigenous peoples' contribution to the necessary transition to democracy," then insisted on classic Liberal stumpers: national sovereignty, equality, civil rights . . . The Zapatista team had brought its full company of advisers, and the experts among them, scoffing at the government delegates for their ignorance of ethnic studies, gave them lectures and required reading for the next session. By December 13 both teams had drafts for coherent debate.

They agreed then to suspend talks for the Zapatista high command to make sure independent Indian organizations around the country would approve its positions. There followed the Fourth Declaration, on January 1, 1996, for the EZLN, and a National Indigenous Forum in San Cristóbal, January 3–8, where eventually some 350 delegates from 27 indigenous peoples in 17 states ratified the CCRI-EZLN's stands.

"Negotiation" resumed in San Andrés on January 10. Under pressure from Zedillo, who hoped (in vain) to make a state visit to Europe soon without having to face nasty demonstrations there, the government's team now pushed to bring the talks quickly to a praiseworthy end. For traditional nationalists, it vehemently defended national sovereignty (which the Zapatistas had not questioned) and saved the federal Constitution from any mention of autonomy (which the Zapatistas most wanted). It also contrived to de-link Indian rights and culture from such questions as agrarian reform, which would have to wait for later. But it conceded many other positions, for example, constitutional "rights of jurisdiction" and federal legislation to recog-
nize Indian communities as "entities of public law." On the other side, under
contradictory pressures from the PRD, independent Indian organizations,
and its own bases, the Zapatista high command could not find public support
for its team to win more. On January 18 "negotiation" ended in several ten-
tative "accords."

The government's team reported its success to its superiors. The Zapatista's
advisers argued among themselves. Without clear Zapatista victories on
autonomy, rights to land, etc., were the accords acceptable unconditionally? The
CCRJ consulted its local committees. It received approval of the accords as
"minimal," but also a vote of 96 percent protesting the failure to solve other
demands and ordering the EZLN to continue (by means unspecified) to
struggle for them.

On February 13 the delegates met again in San Andrés. On February 16
they finally signed the accords, making them "commitments." The Zapatista
team attached an addendum to detail the missing points for which the CCRJ-
EZLN would continue to struggle.

So complicated in their background and negotiation, the Accords of San
Andrés were of nevertheless obvious importance as the government's and the
CCRJ-EZLN's first formal compact. The tide of the agreement is itself sug-
gestive: San Andrés is just San Andrés, neither Larrainzar nor Sakachén de
los Pobres. But it remains impossible to tell what was honest and mutually
understood agreement, what was honestly agreed but actually misunderstood
and still in dispute, what was deliberately phrased by one or another side to
feign agreement, or what mattered most to either side for publicly avowed or
ulterior purposes.

The excerpts below are the substantive parts. Two comments may be per-
tinent. First, whoever proposed it, whoever consented to it, whatever its pur-
pose, whatever its consequences, the shift in discourse from "self-
determination" to "free determination" was ingenious (for good or ill). It
allowed claims and commitments to Indian rights without regard to sover-
eignty. Second, Mexico being constitutionally a federal republic (unlike Nic-
agua, a unitary republic), whichever side framed the agreement as "a new
federalism" undermined the Zapatista side. Federalism allowed federal sup-
port for autonomous Indian communities and associations among them, but
explicit recognition of autonomy only in state constitutions (e.g., Chiapas's); for
state legislatures to determine its extent, that is, its limits.

In the wake of the massacre at Acteal in December 1997, badly needing
some good press, President Zedillo on March 15, 1998, sent a diluted version
of the agreement to Congress as a bill on "Indigenous Rights and Culture." No-
thing on the question has yet become law (August 22, 1998).

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**THE FIRST ACCORDS**

**ACUERDOS DE SAN ANDRÉS**

Joint Announcement That the Federal Government and the EZLN Will
Send to the Courts of National Debate and Decision . . .

**III. COMMITMENTS BY THE FEDERAL GOVERNMENT
TO INDIGENOUS PEOPLES . . .**

1. To recognize indigenous peoples in the federal Constitution. The
government must promote the recognition, as a constitutional guarantee, of the
right to free determination of the indigenous peoples that have descended
from populations that inhabited the country at the time of the conquest or
colonization and establishment of the present borders and that, whatever
their juridical situation may be, conserve their own social, economic, cultural,
and political institutions, or part of them. Consciousness of their indigenous
identity must be considered a fundamental criterion to determine the groups
to which the dispositions on indigenous peoples apply. (Definition of "indig-
igenous peoples" according to Convention 169 of the International Labor
Organization. Article 1, paragraphs b and c, accepted by the Mexican
government.) The right to free determination will be exercised in a constitu-
tional framework of autonomy, assuring national unity. Indigenous peoples
will consequently be able to decide their own form of internal government
and their own ways of organizing themselves, politically, socially, economi-
cally, and culturally. The constitutional framework of autonomy will permit
the effective achievement of social, economic, cultural, and political rights
with respect to their identity.

2. To broaden political participation and representation. The government
must press for juridical and legislative changes that broaden the local and
national participation and representation of indigenous peoples, respecting
their diverse situations and traditions and strengthening a new federalism in
the Mexican republic. The claim that indigenous voices and demands be
heard and heeded must carry over to the recognition of indigenous peoples' political,
economic, social, and cultural rights, within the framework of the
Mexican nation, and to a decisive reform of the government on the matter of
institutional practices. The federal government will promote the constitu-
tional and legal reforms that correspond to the accords and consensus
achieved.

3. To guarantee full access to justice. The government must guarantee [in-
digenous peoples'] full access to Mexican courts, with recognition and respect
for cultural specificities and their internal normative systems, guaranteeing

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*February 16, 1996, pp. 11–19.
full respect for human rights. It will promote a reform so that Mexican positive law recognizes the authorities, norms, and procedures for resolving conflicts internal to indigenous peoples and communities, in order to apply justice on the basis of their internal normative systems and so that by simple procedures their judgments and decisions are validated by the government's judicial authorities.

4. To promote the cultural manifestation of indigenous peoples. The government must press for national and local cultural policies of recognition and amplification of the spaces of indigenous peoples for the production, recreation, and diffusion of their cultures; the promotion and coordination of activities and institutions dedicated to the development of indigenous cultures, with the active participation of indigenous people; and the incorporation of the knowledge of diverse cultural practices into the plans and programs of study of public and private educational institutions. The knowledge of indigenous cultures is an enrichment of the nation and a necessary step to eliminate lack of understanding and discrimination against the indigenous.

5. To assure education and training. The government must assure the indigenous an education that respects and uses their knowledge, traditions, and forms of organization. With processes of integral education in the communities that broaden their access to culture, science, and technology; professional education that improves their prospects for development; training and technical assistance that improve productive processes and the quality of their goods; and training for organization that raises the negotiative and management capacity of the communities. The government must respect the educational work of the indigenous peoples within their own cultural space. The education that the government gives must be intercultural. It will press for the integration of regional educational networks that offer communities the possibility of acceding to different levels of education.

6. To guarantee the satisfaction of basic necessities. The government must guarantee indigenous peoples' conditions that allow them food, health, and housing in a satisfactory form and at least an acceptable standard of living. Social policy will press for prioritized programs so that the levels of health care and nutrition among the indigenous peoples' infant population improve, and will support the activity and training of indigenous women.

7. To press for production and employment. The government must build up the indigenous peoples' economic base with specific strategies of development, agreed on with them, that use their human potentialities in industrial and agro-industrial activities that cover their necessities and produce surpluses for markets; that help generate employment through productive processes that increase the added value of their resources; and that improve the endowment of basic services in the communities and their regional environs. Programs of rural development for the indigenous communities will be sus-

tained in planning processes in which the role of their representatives will be central from the design of the program to its execution.

8. To protect indigenous migrants. The government will press for specific social policies to protect indigenous migrants, within the country and beyond its borders, with inter-institutional action in support of jobs and education for women and health and education for children and young people, which in rural regions will be coordinated in the zones of supply and of demand for agricultural day laborers.

IV. PRINCIPLES OF THE NEW RELATION . . .

1. Pluralism. Mutual treatment among the peoples and cultures that form Mexican society is to be based on respect for their differences, on the premise of their fundamental equality. As a consequence, it is to be the policy of the government to conduct itself accordingly and to promote in society a pluralist orientation, which actively combats every form of discrimination and corrects economic and social inequalities. Also it will be necessary to take measures toward the formation of a juridical order nourished by plurality, which reflects intercultural dialogue, with norms common for all Mexicans and respect for the internal normative systems of indigenous peoples. The recognition and promotion of the pluricultural nature of the nation means that, with the purpose of strengthening the culture of diversity and tolerance in a framework of national unity, the action of the government and its institutions must be realized without making distinctions between indigenous and non-indigenous or before any collective socio-cultural option. The development of the nation must be based on plurality, understood as peacefully, productively, respectfully, and equitably living together in diversity.

2. Sustainability. It is indispensable and urgent to assure the survival of nature and culture in the territories occupied and used in any way by indigenous peoples, as Article 13.2 of the ILO's [the International Labor Organization's] Convention 169 defines them. Respecting the cultural diversity of indigenous peoples, governmental action at all levels must consider the criteria of sustainability. The traditional modalities that indigenous peoples and communities put into practice in using natural resources form part of their strategies of cultural survival and their living standard. Recognition will be promoted, in legislation, of the right of indigenous peoples and communities to receive indemnization when the exploitation of natural resources by the government causes damage in their habitat that does harm to their cultural reproduction. For cases in which the damage has already been done, and the indigenous peoples demonstrate that the compensation given does not permit their cultural reproduction, mechanisms of review will be established to permit the government and those affected to analyze jointly concrete cases. In
both cases, compensatory mechanisms will seek to assure the sustainable
development of indigenous peoples and communities . . .

3. Integrity. The government must urge integral and concurrent action
by its institutions and lower levels that bear on the life of indigenous peoples,
avoiding partial practices that fracture public policies. It must likewise pro-
pitiate the honest and transparent management of public resources destined
for the development of indigenous peoples, by greater indigenous participa-
tion in decision making and in social control of public expenses.

4. Participation. The government must favor institutional action in sup-
port of participation by indigenous peoples and communities, and respect
their forms of internal organization, in order to attain the purpose of fortify-
ing their capacity to be decisive actors in their own development . . . And it
must assure adequate coreponsibility of the government and indigenous
peoples in the conception, planning, execution, and evaluation of actions that
affect the indigenous. Because policies in indigenous areas must not only be
conceived with the [indigenous] peoples themselves, but implemented with
them, the present institutions for indigenous affairs and social development
that operate in these areas must be transformed so that the indigenous peoples
themselves conceive projects and operate jointly and in concert with the gov-
ernment.

5. Free Determination. The government will respect the exercise of indi-
genous peoples’ free determination in each of the areas and levels in which they
use and practice their differentiated autonomy, without impairment of na-
tional sovereignty and within the new normative framework for indigenous
peoples. This implies respect for their identities, cultures, and forms of social
organization. The government will also respect the capacity of indigenous peoples
and communities to determine their own development. And so long as the national interest and the public interest are respected, none of the dif-
ferent levels of government will unilaterally intervene in the affairs and deci-
sions of indigenous peoples and communities, in their organizations and
forms of representation, or in their prevailing strategies of using natural
resources.

V. NEW JURIDICAL FRAMEWORK

... The federal government commits itself to promote the following ac-

cions:

1. Recognition in the federal Constitution of indigenous demands that
must remain consecrated as legitimate rights.

a) Political rights. To strengthen their political representation and partici-

pation in state legislatures and government, with respect for their traditions
and to guarantee that their own forms of internal government continue to
exist.

b) Rights of jurisdiction. So that their own procedures for designating
their authorities are accepted, as well as their normative systems for the reso-

lution of internal conflicts, with respect for human rights.

c) Social rights. So as to guarantee their forms of social organization, the

satisfaction of their fundamental human needs, and their internal institutions.

d) Economic rights. In order to develop their plans and alternatives for the
organization of work and for the improvement of efficiency in production.

e) Cultural rights. In order to develop their creativity and cultural diver-
sity and the permanence of their identities.

2. Recognition in national legislation of [indigenous] communities as en-
tities of public law, the right to free association in municipalities with indig-

enous majorities, as well as the right of various municipalities to associate
among themselves in order to coordinate their action as indigenous peoples.
The competent authorities will carry out the orderly and gradual transfer of
resources, so that they [the indigenous] themselves may administer the public
funds assigned to them, and so as to strengthen [them] in their different areas
and levels. It will be for state legislatures to determine in each case the func-
tions and faculties that can be transferred to them.

3. Recognition that in state legislation there must be established the char-

acteristics of free determination and autonomy that better express the diverse
and legitimate situations and aspirations of native peoples . . .

4. Several articles of the federal Constitution must be amended. The fed-

eral government promises to promote the following amendments.

a) Article 4. So that the demands indicated above (points 1 and 2) are con-

secrated as legitimate rights.

b) Article 115. So that the federal pact is strengthened and the participa-

tion of indigenous communities is guaranteed in the integration of town
councils and municipalities of indigenous majority. . . .

c) Other articles derived as a consequence of the above amendments, and

to state expressly in the Magna Carta the content of the government’s new
relationship with native peoples.

5. In the corresponding regulatory laws and juridical instruments of fed-

eral character dispositions must be assured to make them compatible with the
constitutional amendments on new indigenous rights. In this respect, the fed-

eral government promises, on the basis of the constitutional amendments, to
press for federal legislation to provide immediately juridical mechanisms and
procedures so that

a) revision and modification of various federal laws may begin;

b) the states may enact legislation.

6. In state legislation relative to the characteristics of free determination
and indigenous autonomy, the federal government recognizes that the fol-

lowing elements must be taken into account:
R E B E L L I O N I N C H I A P A S

a) Where diverse indigenous peoples coexist, with different cultures and geographic situations, with different types of settlement and political organization, it will not do to adopt a uniform criterion on the characteristics of indigenous autonomy to be legislated.

b) Concrete modalities of autonomy must be defined with the indigenous themselves.

c) To determine in a flexible way the concrete modalities of free determination and autonomy in which each indigenous people will find best reflected its situation and its aspirations, diverse criteria will have to be considered, such as: the permanence of its internal normative systems and community institutions; the degrees of its intercommunity, intermunicipal, and interstate relations; the presence of the indigenous and the nonindigenous and the relations between them; the pattern of population settlements and geographic situation; and the degrees of indigenous participation in the courts of political representation and levels of government.

The federal government promises, in a framework of full respect for republican principles, to press state governments and legislatures to consider these elements among others as criteria for the legislation that will construct the characteristics of free determination and indigenous autonomy.

C O N C L U S I O N

1. The conflict that began January 1, 1994, in Chiapas produced in Mexican society the feeling that government and society needed a new relationship with the indigenous peoples of the country.

2. The federal government assumes the commitment to build, with the different sectors of society and in a new federalism, a new social pact that reforms at the roots the existing social, political, economic, and cultural relations with indigenous peoples. The pact must eradicate the forms that in common daily practice and in public life generate and reproduce subordination, inequality, and discrimination, and must make effective the rights and guarantees to which indigenous peoples are entitled: the right to their cultural difference; the right to their habitat; the use and enjoyment of a territory, in conformity with Article 13.2 of ILO Convention 169; the right to community self-management in politics; the right to the development of their culture; the right to their traditional systems of production; the right to the management and execution of their own development projects.

3. The new relation between the government and indigenous peoples is based on respect for differences, recognition of indigenous identities as intrinsic components of our nationality, and the acceptance of their particularities as basic consubstantial elements in our juridical order, based on multiculturality.

The new relation between indigenous peoples and the government must guarantee inclusion, permanent dialogue, and consensus for development in all its aspects. Neither unilaterality nor underestimation of indigenous capacities to build their future will define the government's policies. Quite the contrary, it will be the indigenous who, within the constitutional framework and in full exercise of their rights, will decide the means and forms in which they are to conduct their own processes of transformation . . .