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The War of Attrition in Chiapas

by Sarah C. Aird*

On January 1, 1994, in the Mexican State of Chiapas, the Zapatista National Liberation Army (EZLN) launched its first military offensive, occupying four municipal seats from which it declared war against the Mexican government. Although Chiapas is one of the most resource-rich states in the country, *Chiapanecos*, a third of whom are indigenous, suffer intense discrimination, high rates of malnutrition and infant mortality, low levels of education, and dismally poor living conditions. Frustrated with this state of affairs, the EZLN declared war against the Mexican government, grounding its actions in Article 39 of the Mexican Constitution, which states that the Mexican people have, "at all times, the inalienable right to alter or modify their form of government." Based on this provision, the EZLN demanded the overthrow of the PRI (Institutional Revolutionary Party) government, which has held power in Mexico for over 60 years, followed by free and fair democratic elections. Nearly two weeks of active fighting ensued between 3,000 to 4,000 armed rebels and 12,000 Mexican troops, which ended when the Mexican government and the EZLN agreed to a cease-fire on January 12, 1994. Since then, the government and the EZLN have engaged in sporadic but unsuccessful negotiations. Meanwhile, villagers throughout Chiapas, frustrated with the undemocratic and unresponsive nature of official political institutions, have established autonomous governments at the local and state levels, solidifying already deeply embedded political divisions within communities between PRI supporters and detractors. Mexican troops continue to surround most communities that support the EZLN, creating a repressive political environment of daily intimidation that threatens the existence of many indigenous communities.

With hopes of maintaining an image of national stability attractive to international investors, the Mexican government has, over the last six years, downplayed the significance of the armed conflict between the Mexican government and the EZLN. Contrary to government claims, however, Mexican forces are engaged in a low-intensity conflict, or war of attrition, in which serious human rights and humanitarian law violations take place. As part of this strategy, the government supports the growth of paramilitaries, which privatizes the conflict and obscures state responsibility for the violence. Through extensive deployment of soldiers throughout the region, the government creates an environment of intimidation, meant not only to decrease the activity of insurgents, but also to decrease civilian activity in support of the insurgents' goals.

The War of Attrition Violates Human Rights

The Mexican government pursues a war of attrition designed to erode slowly the EZLN's economic and political bases of support with less gunfire and overt violence than in a traditional war. Nevertheless, in waging this war, the Mexican government

violates its obligations under the American Convention on Human Rights (American Convention), which it ratified in 1981, and its obligations under the International Labor Organization Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169), to which it became a state party in 1990.

American Convention. Although especially serious human rights violations, such as violations of the right to life and humane treatment, occur in Chiapas, far more common are violations of seemingly lesser rights. It is the violation of rights such as freedom of association, freedom of movement, and enjoyment of property that the government uses as one of its primary weapons in the war of attrition. Not nearly so dramatic as violation of the right to life, these violations nevertheless fracture communities and undermine the EZLN's support base.

One serious consequence of the war of attrition is the displacement of *Chiapanecos*. For example, in a July 1997 press communiqué, representatives of indigenous *Ch'ol* communities in the Northern Zone of Chiapas denounced paramilitary attacks that forced many pro-EZLN villagers to relocate to temporary camps for displaced persons. According to the *Ch'ol* representatives, paramilitary groups, the army, and the police then forced the internally displaced people to pay a fine of 1,000 to 2,000 pesos for travel outside the camps, an amount few villagers could afford to pay.

This displacement of villagers violated individuals' rights to freedom of movement and residence under Article 22 of the American Convention.

Internally displaced persons also reported that police and paramilitaries made returning to their villages contingent on signing agreements to become members of the PRI or paramilitary groups. In addition, throughout Chiapas, government forces conduct interrogations, search homes, and harass the general population to discourage pro-EZLN supporters from participating in political activities. Hundreds of troops regularly pass through indigenous villages and the military conducts surveillance flights via helicopters and military planes, heightening the military's intimidation and chilling people's political activism. Such practices impinge on people's right to association, in clear violation of Article 16, which states: "Everyone has the right to associate freely for ideological, . . . political, economic, . . . social, cultural, . . . or other purposes."

Mexican soldiers' presence around communities also restricts villagers' access to their lands in violation of Article 21 of the American Convention, which provides that everyone has the right to the use and enjoyment of his or her property. Many villagers are afraid to attend to their crops out of concern they will be disappeared and interrogated by soldiers. In an article published in the



Image of Emiliano Zapata, leader during the 1910 Mexican Revolution after whom the Zapatistas named themselves, on a community building in the village of Oventic.

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Mexican daily newspaper *La Jornada* on December 23, 1997, Andres Aubrey and Angelica Inda, two sociologists and historians living in San Cristóbal de las Casas, Chiapas, reported that soldiers destroyed crops and actively prevented villagers from cultivating their crops in some communities. According to Article 21(2) of the American Convention, the government can deprive a person of his property only in accordance with established law and must provide compensation. By illegally allowing troops to restrict communities' access to their land without providing compensation, Mexico violates its obligation to ensure that *Chiapaneos* are able to use and enjoy their own land.

The Mexican government also violates its citizens' right to be free from discrimination as guaranteed in Article 24 of the American Convention. The Mexican government uses its economic resources in a discriminatory manner to garner political support, effectively dividing villagers into two groups: those who share a strong ideological commitment for social change and those who base their allegiances on more practical economic needs. For example, the government makes services, such as electricity, available to pro-government communities while denying it to communities supportive of the rebels. The government currently spends more money on social services in Chiapas than it does in any other state in the country, using these services to entice EZLN supporters to change their allegiance to the PRI. Not only does this violate the principle of non-discrimination, but it also exacerbates, and in some cases causes, the polarization of indigenous communities, resulting in tense divisions between those who support the government and those who support the EZLN. Basing government provision of services on political allegiance is a direct infraction of Article 24, which guarantees the right to be free from discrimination.

ILO Convention 169. In addition to violating its obligations under the American Convention, Mexico also has failed to abide by ILO Convention 169. According to Article 4 of this convention, states are obligated to adopt special measures for protecting the "cultures and environment of the peoples concerned." Villagers claim that Mexican troops contaminate their communities both environmentally and culturally. By bathing and washing their clothing upstream from communities, soldiers pollute water that communities use for drinking. Soldiers also create an environment particularly conducive to abuse of women. According to women that Physicians for Human Rights interviewed in December 1997, soldiers threaten and harass females as they bathe in rivers. According to its 1998 Country Report on Mexico, the Inter-American Commission on Human Rights (IACHR) has received complaints indicating a noticeable increase in the number of rapes of local indigenous women by police and military forces in rural villages. The Mexican government, by maintaining such a high military presence in the state of Chiapas, under the protests of indigenous villagers, has failed to fulfill its duty to ensure protection of the cultures and environment of indigenous communities in Chiapas.

In violation of its obligations under Articles 4 and 6 of ILO Convention 169, the Mexican government has dismantled many of the autonomous governments in Chiapas. Article 4 provides for the "safeguarding" of institutions of indigenous peoples, and Article 6 says that state parties must support the "full development of [indigenous] people's own institutions and initiatives." Seemingly in compliance with these obligations, and as part of its negotiations with the EZLN in 1996, the Mexican government agreed to implement changes to the Mexican Constitution strengthening indigenous autonomy. One of the provisions to which the EZLN and government agreed allowed for greater indigenous control over local political institutions, including tolerance of indigenous customs of governing. The Mexican government, however, never implemented these constitutional changes. Local autonomous governments flourished nevertheless. Local supporters justified creation of these parallel government structures by citing the government's unfulfilled promise to allow for greater local control. By destroying these local parallel structures, which allow for enhanced community

participation and incorporate traditional governing practices, the Mexican government actually hinders development of indigenous institutions and initiatives, in direct violation, not only of Mexico's international obligations, but also in violation of its own national commitments.

Paramilitaries. The Mexican government, by utilizing paramilitaries in its war of attrition, privatizes the conflict in Chiapas, allowing government denial of responsibility for human rights violations. Although human rights law generally applies to governments, the IACHR, in its Third Report on the Human Rights Situation

in Colombia (Third Report on Colombia), acknowledged the applicability of human rights norms to the activity of paramilitaries under certain circumstances. According to the IACHR, a state can be held accountable for the actions of paramilitaries to the extent that the paramilitaries act as state agents or proxies, or its illicit acts are "acquiesced in, condoned, or tolerated by the State."

Following the IACHR's analysis in its Third Report on Colombia, paramilitaries in Chiapas constitute state actors. Paramilitaries have received funding from the Mexican government, training from federal soldiers, and are affiliated with some local and state government officials. Furthermore, they have committed abuses against the local populations with acquiescence of Mexican officials at the state level.

Local indigenous community leaders, state government officials, and international human rights organizations have publicly recognized paramilitaries' links to PRI officials. The Mexican Army's "Campaign Plan Chiapas 94" called for "training and support for self-defense forces or other paramilitary organizations" and local communities report the participation of paramilitaries in joint military and police actions. Karen Kampwirth, assistant professor of political science at Knox College in Illinois, reported in the March/April 1998 issue of the *North American Congress on Latin America's Report on the Americas* that in 1997 alone,



Community building in the village of Oventic, one of five Aguascalientes, or Zapatista regional political and cultural centers.

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paramilitaries were responsible for over 500 deaths in Chiapas. According to Luis Hernández Navarro, editor and columnist of *La Jornada*, as of 1999, at least nine paramilitary groups were operating within 27 different municipalities.

Perhaps the most shocking evidence of governmental collusion with paramilitaries took place in the village of Acteal on December 24, 1997. The paramilitary organization *Paz y Justicia*, openly led by local PRI deputy Samuel Sánchez Sánchez, received a grant of U.S.\$575,000 from Chiapas Governor Julio César Ruiz Ferro a few weeks before members of the organization carried out a massacre in Acteal. During the killing, local community members and officials from the Catholic Church alerted Mexican authorities of the massacre, but no government official acted to stop the bloodshed, which, after a period of nine hours, left 45 people dead. According to the Physicians for Human Rights' 1999

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report "Mexico: Health Care Held Hostage," Interior Minister Francisco Labastida Ochoa admitted, shortly after the massacre, that "de-commissioned Army officers had provided training to paramilitary groups." Mexican federal prosecutors later reported that the local police commander testified that unnamed "superior officers" had told him to allow pro-PRI paramilitary groups to carry illegal firearms in his jurisdiction. The PRI government blamed long-standing intra-community religious and economic tensions, exacerbated by the creation of an autonomous government within the community, for the Acteal massacre, and ignored the key role played by the paramilitary organization *Paz y Justicia*.

In response to the Acteal massacre, instead of trying to halt violence perpetrated by paramilitaries, the Mexican government sent troops into pro-EZLN communities with little history of violence in order to dismantle other autonomous governments. According to local human rights activists, paramilitaries actually participated in some of these incursions, during which officials detained hundreds of villagers, sacked houses and community buildings, arrested people, and attacked civilians with tear gas, hand-held rocket launchers, and helicopter gunships.

Violations of International Humanitarian Law

The Mexican government's war of attrition also violates its obligations under international humanitarian law. International humanitarian law applies to situations of armed conflict and contains rules restricting the means and methods of combat to spare the civilian population from the adverse effects of hostilities. Unlike human rights law, humanitarian law places restrictions on both parties to a conflict. International humanitarian law instruments applicable to the conflict in Chiapas include Common Article 3 of the 1949 Geneva Conventions, as well as rules of war codified within UN General Assembly Resolutions 2444 and 2675.

Common Article 3 to the Geneva Conventions. Common Article 3 applies to "armed conflict[s] of a non-international character." The Diplomatic Conference of the Geneva Conventions never defined the term "non-international" and did not estab-

lish set criteria for the applicability of Common Article 3. In practice, however, Common Article 3 is generally applied to low-intensity, open, and armed confrontations between organized armed forces within the borders of a particular state. Since 1994, the EZLN has publicly declared its intention to abide by the four 1949 Geneva Conventions, all of which Mexico ratified without reservation on October 29, 1952. Due to the EZLN's willingness to abide by the Geneva Conventions and Mexico's ratification of these treaties, Common Article 3 should be applicable to the situation in Chiapas.

According to Common Article 3, "Persons taking no active part in the hostilities . . . shall in all circumstances be treated humanely . . ." To ensure humane treatment, Common Article 3 prohibits certain acts, including: violence to life and person, such as murder, mutilation, and cruel treatment and torture; taking of hostages; and outrages upon personal dignity, including humiliating and degrading treatment. Within the first few days of fighting in 1994, however, both the EZLN and the Mexican forces committed violations of this rule. The EZLN summarily executed captured civilians, took hostages, and used civilians as shields against the enemy. The Mexican army detained, interrogated, and tortured civilians during military offensives, causing violence to life and person in the form of cruel treatment and torture.

Although Common Article 3 does prohibit torture, the taking of hostages, and outrages upon personal dignity, it was designed to protect captured enemy soldiers, not civilians. In contrast, UN General Assembly Resolutions 2444 and 2675 were designed specifically with protection of the civilian population in mind. According to the International Criminal Tribunal for the former Yugoslavia Appeals Chamber's *Tadić* decision on October 2, 1995, these two resolutions are important because they reflect customary international law at the time of their adoption by the UN General Assembly in 1968 and 1970, respectively.

UN General Assembly Resolution 2444 of 1968. The UN General Assembly adopted Resolution 2444 unanimously on December 19, 1968. Resolution 2444 contains three principles for observance by parties to a conflict: that the "means of injuring the enemy is not unlimited; [t]hat it is prohibited to launch attacks against the civilian population as such; [and] [t]hat distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible." In the case of the conflict in Chiapas, these restrictions should limit the military's strategy of encircling indigenous villages and

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engaging in a war of attrition, since this behavior impinges on the life and well-being of these communities.

In a military campaign carried out in February 1995, the Mexican military violated the second principle, which prohibits launching attacks against civilian populations. According to local human rights advocates, during the campaign, the military moved into EZLN territory in search of EZLN leaders, causing

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over 20,000 villagers to flee their homes. The Mexican army ransacked some of these empty villages and purposefully poisoned water sources and wasted food supplies so that upon villagers' return, they would have little with which to sustain themselves. Rather than selectively targeting EZLN leaders, the military destroyed entire communities, terrorizing civilian villagers, in direct violation of this second principle.

The third principle was designed to enjoin a party that controls a civilian population to distinguish its military forces from members of that civilian population. Under this provision, the EZLN should demarcate its rebel forces from the rest of the population. Rather than try to distinguish themselves from civilians, however, EZLN combatants have often shielded themselves from direct military reprisal by blending into the civilian population, violating this provision and putting civilians at risk.

UN General Assembly Resolution 2675 of 1970. On December 9, 1970, the UN General Assembly adopted Resolution 2675, extending some of the protections provided under Resolution 2444. Among other provisions, Resolution 2675 states that combatants must take all precautions to prevent harming civilians; that housing and other installations used only by civilians should not be the object of military operations; and that civilian populations, or individual members thereof, should not be the object of assaults.

During the 1995 and 1998 military invasions, the Mexican army did not take precautions to prevent harming citizens, and thus failed to comply with its obligations under humanitarian law. In 1995, after civilian villagers returned from hiding in the mountains, many found their homes destroyed, their churches desecrated, and their food and water supplies purposefully contaminated. In 1998, soldiers and police attacked

buildings used by authorities within the autonomous governments for the purpose of storing documents and conducting official business. Such violence against property owned or used for civilian purposes is prohibited by this resolution.

Paramilitaries, according to the Third Report on Colombia, do not fall within the rubric of international humanitarian law unless they become such prominent players as to constitute a party to a conflict. As the growth of paramilitaries in Chiapas is a relatively new phenomenon and their activity still somewhat limited, it is unlikely that international human rights bodies such as the IACHR would consider paramilitaries parties to the conflict at this time. Nevertheless, in the future, regional and international human rights bodies should consider holding the Mexican government accountable for paramilitary activity, since it appears the government utilizes the paramilitaries to carry out government goals.

Conclusion

Contrary to the international image it would like to portray, the Mexican government is fully engaged in a low intensity conflict that wreaks havoc on local communities. Violations of international human rights and humanitarian law are rampant. The ubiquitous presence of soldiers throughout the state affects thousands of individual and communal lives in profound ways that lead ultimately to death and destruction, albeit in a more palatable, less noticeable form. Constant violation of the less prominent rights, such as freedom of association, freedom of movement, and enjoyment of property, dramatically harms the health and well-being of communities and directly contributes to the success of the Mexican government's war of attrition. ☹

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As recently as 1983, in the decision of *B. v. the United Kingdom*, the European Commission deemed a dismissed soldier's complaint inadmissible based on a MoD argument that dismissal was necessary to exclude the "potentially disruptive influence of homosexual practices."

The ECHR's decisions in *Lustig-Prean and Beckett* and *Smith and Grady* also leave no doubt that similar restrictions in certain member states of the Council of Europe are in clear violation of the European Convention. In Germany, for example, lesbians and gay men are disqualified from becoming officers or military instructors, while in Greece and Poland, lesbian and gay service personnel can be discharged on the basis that they suffer from a personality disorder. Both Turkey and the United States also continue to ban acknowledged homosexuals from military service.

Conclusion

In the wake of the United Kingdom's January 12, 2000, decision to eliminate all restrictions on gays serving in its military forces, and the ECHR's findings that neither the investigations conducted into the petitioners' sexual orientation, nor their discharge on the grounds of their homosexuality were justified under Article 8(2) of the European Convention, it is important to realize what was not addressed by the Court. Most significantly, the Court refused to address the issue of whether the for-

The ECHR stated, "To the extent that [these negative attitudes] represent a predisposed bias on the part of a heterosexual majority against a homosexual minority, [they cannot] be considered by the Court to amount to sufficient justification for the interferences."

mer MoD policy constituted discrimination on the basis of sexual orientation. This refusal is attributable to the fact that the Convention itself does not cover discrimination on this ground. Article 14 of the Convention provides

only that "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, . . . [etc.]."

Thus, the true issue underlying both the *Lustig-Prean and Beckett* and *Smith and Grady* cases has yet to be adjudicated by the ECHR. Fortunately, however, efforts are currently underway to address this omission from the statutory language of Article 14. On January 26 of this year, for example, members of the Parli-

amentary Assembly of the Council of Europe voted to recommend that sexual orientation be added to the list of prohibited grounds of discrimination under the European Convention. A new draft protocol has also been put forward by the Council of Europe's governing body, the Committee of Ministers, on this issue. Although these recommendations still are under consideration, favorable ECHR case law such as *Lustig-Prean and Beckett* and *Smith and Grady* hopefully will encourage the Council of Europe to adopt these recommendations. ☹

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