

*Of Peace-making and Basket-weaving: ILO Convention N° 169 and the
Guatemala Peace Process*

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The purpose of this paper is to examine, by reference to experience in other countries, how ILO Convention N° 169, concerning Indigenous and Tribal Peoples in Independent Countries, 1989, might contribute to the improvement of security and well-being for communities and groups of people in Nepal described as “indigenous” or “tribal” and, by extension help the Nepali people to construct better social, economic and political systems to ensure development towards this objective.

In this regard it is important to understand clearly the nature and purpose of the Convention before analysing it in greater detail. Like any legal instrument, the Convention is based on a number of assumptions. The first of these is that there is a *state* which acts through a *government*. Convention N° 169 does not offer a blueprint for a system of government, much less a model for a constitution or the establishment of a state. When, five years ago, I was sent to Fiji as Special Representative of the Director-General of the ILO to help resolve the insurrection and constitutional crisis in that country, I encountered a number of indigenous leaders who had stated publicly that the Convention (which Fiji had ratified) gave ethnic Fijians the right to deny the East Indian population access to land, to public services and to participation in government on the basis of traditional indigenous customs and practices in respect of such matters. I had to explain to these leaders that they were mistaken in their interpretation of the purpose and provisions of the Convention. Article 8(2) of the Convention is quite clear in this regard:

“These peoples shall have the right to retain their own

customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights.

The obligations and responsibilities defined by the Convention are duties of the state which must be implemented and guaranteed by the government. Let us look a little more closely at Article 8(2) quoted above because it helps us to understand how the different – and sometimes contradictory – systems of law relate to one another. Think of a set of baskets, with the biggest basket on the outside and a series of smaller and smaller baskets inside. The big outside basket represents *internationally recognised human rights*. All of the inside baskets have to be of such a shape as to fit inside that big basket. They cannot have large handles sticking out or extra compartments or strange shapes, because then they will not fit inside it. The second basket, inside the big one, is *fundamental rights defined by the national legal system*. This basket can have a different design or form or colour than the biggest international human rights basket but it still has to fit into it. If any parts of the second basket stick out in such a way as not to fit into the big one, they have to be changed or removed. The second basket represents a country's constitution or basic law which will often include something entitled a *Bill of Rights* or *Charter of Fundamental Liberties* and in any case all of the other laws and regulations of the country must respect the special, basic laws of this second basket.

Just as the second basket has to fit within the first, so the third basket must fit within the second. The third basket is the laws of the country which have to be in conformity with the Constitution. There can be still smaller baskets representing community laws, religious laws, professional rules and family hierarchies. Much of the business of establishing, managing and maintaining a modern state is ensuring that all of these baskets fit smoothly inside one another. If one or more of the smaller baskets swells out of shape because it is exposed to the dirty water of corruption or the blood of war and civil violence, the whole set is ruined and has to be replaced. The fundamental aim of Convention N° 169 is to promote a harmonious design and implementation of these baskets of laws, especially in relation to the traditional laws and values of indigenous and tribal societies.

The usual way of expressing this idea of a set of legal baskets that fit nicely into one another is to use the expression *the Rule of Law*. This means that there has to be a generally accepted set of rules to decide what the laws should be – or how the baskets should be shaped to use our image – as well as a generally accepted set of rules to decide what is to be done when different groups think that the laws mean different things or should be applied in different ways. The law-makers usually deal with the first set of rules, the judges with the second. Convention N° 169 assumes that all of these systems are in place and working, thus enabling the Government to give full effect to its provisions.

In reality, however, things do not operate so smoothly in any country. Many of the most experienced and supposedly most advanced democracies such as Australia, Canada, France, Norway and the United States of America continue to have considerable difficulty in defining and applying fair and just policies for indigenous and tribal peoples. When Mr. Kompier's country, the Kingdom of the Netherlands, ratified Convention N° 169 in 1998, many people thought this was rather silly since the Netherlands, one of the world's most advanced, liberal and tolerant democracies, had no identifiable indigenous or tribal people. Yet now, only seven years later, the question of how to fit an Islamic *basket of laws* into the big basket of the Dutch state has become this single most critical issue in that country's politics. Convention N° 169 does not deal with the rights and obligations of religious minorities unless they also fall within the definition of "indigenous" or "tribal" peoples but the issues now being confronted by the people and Government of the Netherlands are very similar to the issues dealt with in Convention N° 169.

In any case, whether by reference to the Convention or not, there is good reason to be optimistic that the Netherlands, with its strong and respected democratic traditions and its generally fair and efficient administration of justice, will find a lasting solution to its current difficulties. Most countries are not so fortunate as to have such a solid legal and political base to build on. The organisers of this meeting have asked me to speak particularly of situations of extreme conflict, violent revolution and civil war and how Convention N° 169 has

been used to assist in achieving and maintaining peaceful solutions to such conflicts.

The Guatemala Case

There can be no doubt that the clearest example of this has been the peace treaty of 1996 which finally brought to an end the 37-year-long civil war in Guatemala. I shall describe to you how the Convention became central to the peace process and then how its various provisions were applied in practice, in the hope that this experience may be a useful contribution to current thinking in Nepal as to how to resolve the serious and dramatic situation which this country is confronting.

First, however, it will no doubt be useful to provide a little information about Guatemala, since most people in Nepal will know as little about Guatemala as Guatemalans know about Nepal. Guatemala is a country about the same size as Nepal, situated just south of Mexico, between the Pacific Ocean and the Caribbean Sea. Like Nepal, it is a very mountainous country and historically people have tended to settle in the fertile valleys between the volcanic mountain ranges. The majority of people, about 70% of the total population, are indigenous and pursue a traditional way of life based materially on subsistence agriculture and spiritually on beliefs and values that have lasted for thousands of years.

Present-day Guatemala was the centre of a powerful empire of the Mayan people, which flourished until about 1350 of the Christian era or 1800 of the Buddhist era. The empire then broke up into some twenty or more smaller communities, each with its own language and culture, but there was enough similarity among the cultures that all identified themselves as *Maya*. When the Spaniards arrived in America some 150 years later, they did not find a ready-made empire as they did in Mexico or Peru, that they could simply take over by military force and rule for their own purposes. The Mayans retreated to their mountain valleys and waged what we would now call guerilla warfare against the Spanish occupiers for hundreds of years. When Guatemala, along with all of the other Spanish colonies of Central and South America, declared its independence from Spain in the 1820's and set up a republic, this was done without any reference to or consultation with the Maya and, in fact, made no difference to them. Instead of armies being sent out from Spain to subjugate them, the armies were now sent from Guatemala City where the white descendents of the Spanish colonizers had established their rule. The most fertile land was occupied by the Europeans who now called themselves Guatemalans and the Maya either worked on that land more or less as slaves or tried to grow enough food higher up in the mountains on the poorer land that the Spanish descendents did not want.

In both cases the result was extreme poverty and no access to education or health care. In each generation, many of the young men would be forced into military service and, if they survived, would be sent back to their valleys when the State

no longer needed them. The result was that by the twentieth century there was a functioning republic run by and for the Spanish descendents, speaking the language of their European forefathers (which was the only official language of the country), practising the Christian religion of Europe (which was the only official religion) and being educated as if they were going to school in Europe. Underneath this European superstructure was the vast majority of the people in the country who were Mayan, did not speak much or any Spanish, trying to preserve their traditional values and beliefs in spite of being forced into the Christian religion and having no education at all to equip them to function as citizens of the Republic of Guatemala. They were poor, ignorant and invisible.

But these inequalities in access to services did not lead them to start a revolution. When the civil war began in 1959, it was between two opposing groups of European descendents, the Government in power, very right-wing and capitalistic (Guatemala supported the fascist powers during the Second World War), aligned with the United States, and the insurgents (or *revolutionaries* as they called themselves) who were inspired by communist ideology and were aligned with the Soviet Union, China, Cuba and the other communist countries. In a bid for *democratic legitimacy* and the moral high ground, each side claimed to represent the indigenous majority, though neither side actually ever consulted with indigenous people or promoted the establishment of representative and legitimate indigenous peoples' organisations so that there could be any kind of consultation. Government troops would occupy a village or a valley and kill the

people they thought might assist the insurgents. Then the insurgent armed forces would take the same place and kill those who were left because they suspected that they were allied with the Government. The indigenous people, who quite correctly understood that neither side was fighting for their interests were at first just innocent victims of the conflict and then were relentlessly drawn into the war itself because in desperation to defend their families and their way of life, they accepted arms from whomever would offer them (whether rebels or government). They then organised themselves into pro-Government and pro-rebel militias and started to kill each other. And, of course, every occupation of every village, whether by Government or insurgent forces was accompanied by rape, torture, murder and destruction.

When the so-called Cold War ended in 1990, the flow of foreign money which was fuelling this killing machine started to dry up and both the Government and the insurgents began to realise that they could no longer sustain the civil war. At that point they decided to try to negotiate a peace deal. Once again, the indigenous people of Guatemala were neither consulted nor invited to participate in the negotiations. The position of the Government was simply to deny their existence and relevance under the slogan “We are all Guatemalans”. The communist ideology of the rebels was equally exclusive of the Maya. In the communist view, the civil war was understood to be a *class struggle* between “poor peasants” (who just happened to be also indigenous) and “rich land-

owners” (who just happened to be Spanish). The spiritual and cultural dimensions of the issue were irrelevant as far as the rebels were concerned.

With the help of some friendly countries (Mexico, Guatemala’s much larger northern neighbour deserves particular praise for its help) a peace process was begun based initially on a bilateral ceasefire agreement between the parties. After a series of breaches of the ceasefire agreements and given the deep mistrust between the parties, they finally decided (under a certain amount of international pressure) that they needed to appeal to a neutral third party to monitor the ceasefire and to conduct the peace negotiations. It was decided to request the United Nations Organization to do this.

The Secretary-General of the UN agreed, but only under certain conditions. The most significant of these was that any final peace deal had to be in conformity with internationally recognised human rights, to use the terminology of Art. 8(2) of the ILO Convention once again. This meant that instead of a framework for a peace settlement under which the warring parties essentially divided up the country between them (as had happened recently in the neighbouring country of Nicaragua) with little reference to the needs and rights of the majority indigenous population, there was now a framework whose principal focus was the rights of the indigenous population. In order to secure UN participation in the peace talks, therefore, the parties had to agree that after dealing with the urgent matters of a sustainable ceasefire and the plight of a large

number of refugees and internally displaced persons, the first order of peace business would be an agreement on the *Identity and Rights of the Indigenous Peoples of Guatemala*.

Effective Machinery and Provisions

The United Nations Organization does not, however, have any human rights instrument which dealt directly with the rights of indigenous peoples. There had been some on-and-off discussions on the margins of the General Assembly for some years about drafting such an instruments, possibly in the form of a *declaration* but these discussions had not born fruit (nor did they subsequently). Four years earlier, however, the International Labour Organization, part of the United Nations System, had adopted Convention N° 169.¹ It just so happened that the then Secretary-General of the UN, Mr. Boutros Boutros-Ghali, had some years earlier been a member of the ILO Committee of Experts on the Application of Conventions and Recommendations and had specifically been responsible for monitoring the application of the earlier ILO Convention on Indigenous and Tribal Populations of 1957 (N° 107). I had worked with him during that period and by the time the Guatemala peace process presented itself, he was Secretary-

¹ Whether ILO Convention N° 169 could be considered part of *internationally recognised human rights* became an important issue in the Guatemala peace talks for two reasons. First, if it were considered to be a part of internationally recognised human rights, there could be nothing in the peace settlement which was not in full conformity with the Convention, since one of the requirements (as mentioned above) which the Secretary-General had stipulated for UN moderation of the negotiations was that any agreement resulting from them had to respect internationally recognised human rights law. Secondly, the parties had already agreed that whereas the various agreements which were to compose *The Final and Lasting Peace Settlement* would only come into effect once all of the terms had been negotiated and agreed to (which finally happened at the very end of 1996), any provisions on human rights issues agreed on came into effect immediately. After consultations between the representatives of the UN Secretary-General and the ILO Director-General, it was agreed that **Convention N° 169 is a human rights instrument of the UN System.**

General and I was the ILO Representative to the United Nations. He asked me to join the UN peace negotiating team as legal adviser.

But just as the UN had laid down a certain number of conditions to the parties, I found myself having to stipulate a certain number of conditions to the Secretary-General, without which I felt ILO could not participate. The first and most important of these concerned the participation of the indigenous people themselves. Just as the war had been fought over their heads but with far, far too much of their blood, the parties (including the UN itself) were proposing to negotiate a peace settlement over their heads also. There was no provision for indigenous participation in the peace talks. The fundamental essence of Convention N° 169 is that nothing should be decided by the State which affects indigenous peoples without specific and full consultation with them. It would, therefore, not only have been morally wrong but also constitutionally impossible for the ILO representative to assume a direct role in negotiations which violated that principle of consultation.

In the arrangements for the negotiations, provision had been made for a consultative body called the *Assembly of Civil Society* . Throughout the peace process this body had a shifting membership of sometimes more, sometimes less than 100 representatives of various non-governmental organisations and associations, such as women's groups, journalists, students, farmers' cooperatives, trade unions, etc. Indigenous peoples' organisations were also

invited to participate. While better than nothing, this Assembly could not, in my opinion, be sufficient to satisfy the consultation requirements of Convention N° 169 because it was too indirect. The decisions and proposals of the Assembly had to be agreed upon by too many different groups and there was a distinct danger – indeed a likelihood – that the indigenous views would simply be “drowned”.

Understandably, the UN did not want to re-open the question of the composition of the peace delegations based on equal numbers of representatives of the Government and the rebels. They suggested that perhaps I could speak for the indigenous at the negotiations. This, of course, I immediately refused to do since the indigenous peoples had given me no mandate to be their spokesperson and I had not the experience of their lives and their culture to be qualified to do so, even if they requested this. After a stand-off on this issue on which I felt the ILO could not compromise its basic principles, it was agreed that a specially constituted group of indigenous leaders would provide me with their views on each issue being negotiated. The parties were also urged to hold direct consultations with indigenous organisations. If, in the course of the peace talks, any decision or agreement was proposed which did not appear to me to be acceptable to the indigenous peoples, I could consult with them directly to see what solution might be found. I reluctantly agreed to this only on condition that the legitimate representatives of the indigenous peoples of Guatemala authorised me to do so and on the clear understanding that I would not function as a *spokesperson* for them at the negotiating table, but only as a *go-between* or

messenger. I am pleased to say that in spite of initial misgivings, this procedure functioned well.

The second condition involved the role of the ILO constituents. Once again both trade unions and employers' organisations had been invited to participate in the Assembly of Civil Society but for various reasons most had decided not to do so. It was agreed that I could both inform these ILO constituents as to the matters being discussed at the negotiating table and seek their opinions, even on confidential (though not sensitive military) matters. This worked well on the whole, during the process which led to the *Agreement on the Identity and Rights of Indigenous Peoples* but when we came to negotiate the next part of the peace agreement on social and economic questions and land reform, the main employers' organisation and several of the trade unions were so opposed to the proposals that, as an ILO official, I felt I had to withdraw from the negotiations out of respect for the position of the ILO constituents.

Identity and Rights

Let us now turn to the specific issues on indigenous identity and rights as negotiated in the Guatemala conflict and consider how the rights and obligations defined in Convention N° 169 were translated into provisions to guarantee lasting peace in that country.

As the peace treaty states, *Recognition of the identity of the indigenous peoples in fundamental to the construction of a national unity based on respect for and the exercise of political, cultural, economic and spiritual rights of all Guatemalans*. The issue of identity is fundamental for two main reasons, one cultural and one legal.

Identity is the basis of culture and culture is the basis of identity. As human beings we all have multiple *identities*. We have a personal identity, our own view of who we are, without which we cannot function in life. This is our psychological identity or “personality”. Because we need to be part of a society, we also have group identities which determine how we interact with other people in our families, as fathers, mothers, sisters, brothers, sons, daughters, etc. in our work as farmers, tourist guides, doctors, lawyers, civil servants or revolutionaries, for example, and politically as citizens of a certain country, residents of a certain district or members of a community. Underlying all of these *identities* is our cultural identity which provides us with the values, beliefs and rules that form the framework for our lives. It is to this cultural identity that both the peace treaty and the Convention which inspired it refer. Both the treaty and the Convention reaffirm that everyone, and most particularly indigenous people, have an inalienable right to their own cultural identity and the State, Government and the authorities all have a corresponding obligation to protect this right. This means that the group, whether defined as an indigenous or tribal *people* or an indigenous or tribal community is free to define its own values, rules and beliefs without

interference or undue influence from any other group in the country. This includes maintaining traditional and historical values as well as developing new ones to meet the changing needs and challenges of the society. The only limitations on the exercise of this right are the “bigger baskets” of internationally recognised human rights and the fundamental rights defined by the national legal system, as stipulated in Article 8(2) of the Convention and Article E,3 of the treaty. To take an extreme example, if traditionally the indigenous or tribal group practises human sacrifice, forbids female children to go to school or encourages husbands to beat their wives, such practices would not be allowed to continue because they are in violation of internationally recognised human rights to life, to equality of treatment between the sexes and to physical security.

It is important also for legal purposes to have clear criteria for recognising cultural identity. If, as is the case of both the Convention and the treaty, special rights are created and protected for persons of a particular cultural group, it is indispensable to be able to decide who enjoys these rights and who does not. Article 1 of the Convention sets out some general rules in this regard, referring to special social, cultural and economic conditions and to the historic facts of conquest and colonisation. The treaty is much more specific and names the peoples and groups to which it applies. It must be noted, however, that an important, indeed fundamental, element in determining the cultural identity of any group includes letting that group decide who are its members and who are not. This is the purpose of the criterion of *self-identification* mentioned in Article 1(2)

of the Convention and Article I(2)(c) of the treaty. There is sometimes confusion about what *self-identification* means. Some people have thought that it entitles an individual to decide whether he or she is a member of a particular indigenous or tribal group or not. This is not the case. Self-identification refers to the right of any indigenous people or community to decide who is and who is not a member of that group. It is rather like the question of nationality. I cannot simply come to Nepal and say that I am a Nepali. I must satisfy the conditions and follow the procedures that Nepalis have decided on to grant Nepalese citizenship to foreigners. Self-identification is a collective right not an individual right.

In addition to all of the other types of identity mentioned earlier, as individuals we all have a *sexual identity*: we are all men or women. In many cultures, both indigenous and non-indigenous, there are long-standing traditions of discrimination against women. This proved to be a very complex and contentious issue in the negotiation of the peace treaty. It must be mentioned that there was no woman present at the main negotiating table. A number of Mayan women's organisations approached me to complain of their exclusion from the discussions and decision-making processes in their own indigenous ethnic groups. When I raised their concerns with the traditional indigenous authorities, the *spiritual leaders*, many became quite angry, pointing out that indigenous women had no right to put forward such views because in so doing they were failing to respect the traditional hierarchy of men over women in the Mayan cultural

tradition. I pointed out that Convention N° 169 is very clear on this matter. Article 3(1) provides that

Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

One of the most important “human rights and fundamental freedoms” referred to in this Article is, of course, freedom of expression. I took the position with the Mayan spiritual leaders that I could not accept or defend any proposed provision in the treaty that was discriminatory towards indigenous women, or women in general, because such provisions would not fit into the “bigger basket” of internationally recognised human rights and the ILO Convention. As you can see from the treaty, this principle was accepted not only by the inclusion in the treaty of a special section on the rights of indigenous women (section IIB) but also by including a commitment by the Government to implement “faithfully” all of the provisions of the UN *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* (Art. II B (1)(c)).

The treaty, like the Convention (Arts. 3 and 4) is careful to ensure that protecting the special rights of indigenous peoples does not in any way diminish their rights as citizens. Historically in many countries, and Guatemala was one of them, particular measures ostensibly designed to protect the indigenous peoples

were actually applied in such a way as to prevent them from benefitting from rights enjoyed by non-indigenous citizens, such as engaging in certain forms of economic activity, possessing land, having access to education at all levels, etc. In many ways they were treated like children or animals in a zoo, to be protected but not free to make their own decisions about their lives. Indigenous peoples must not be forced into “trade-offs” involving having to choose between the benefits of non-indigenous citizens and the benefits of being indigenous. They have the right to both identities and to participate in both cultures.

Section III of the treaty seeks to give effect to Article 5 of the Convention dealing with cultural rights. The principle underlying both is the recognition and acceptance that both indigenous and non-indigenous cultures are of equal value. One is not *better* or *worse* than the other. They are simply different but equally valuable ways of interpreting the human experience in the world that surrounds us. Historically the existence of minority value systems, religious beliefs and cultural traditions have usually been seen by the dominant majority as a threat to national unity. For this reason such peoples and groups have often been treated as *primitive, backward* or simply quaint tourist attractions, so as to justify their exclusion from the national mainstream. An important objective of both the Convention and the treaty is to change such thinking fundamentally. As part of the nation, indigenous peoples have much to contribute culturally and their traditions and values are an inseparable part of the national culture. As the treaty puts it (Art III,2):

*The development of the national culture is...inconceivable
without recognition and promotion of the culture of in-
digenous peoples.*

In order to achieve this aim, there has to be much more dialogue between indigenous and non-indigenous groups. Education systems and the media have a special responsibility in this regard, not only to promote greater knowledge of the various cultures in the country but, above all, to promote respect and tolerance for cultural differences. In Central and South America where most countries have large indigenous populations, this process is called *intercultural dialogue*. Many of the countries have ratified Convention N° 169 and are using it as a framework for the dialogue. In Bolivia, for example, the process has gone so far that during this year (2005) there will be created a Constituent Assembly, whose mandate is to re-invent the Bolivian Republic so as to be more inclusive and respectful of indigenous values, traditions and beliefs. I recently participated on behalf of the United Nations and the ILO in a meeting in Bolivia to help ensure that the process is successful and applies all of the fundamental principles and procedures set out in Convention N° 169.

Implementation and Change

Time does not permit a detailed examination of how the treaty seeks to give practical effect to the provisions of the Convention in areas such as education, employment, land rights, social security and others but a reading of

both documents makes it clear how closely the treaty followed the Convention. I should like to emphasise two final points about the treaty with respect to its application now that we find ourselves ten years on from its signature.

First, it is important to remember that at the end of any civil war, the State has to be re-invented. A peace process is only the first step in achieving this. The ultimate goal must be to establish a state which guarantees the equal rights of all citizens and the best way that has been devised to achieve this is through representative and freely elected bodies such as parliaments or legislatures, as well as through independent and fair judicial structures. Any peace treaty must seek to promote the establishment of such institutions but must be very careful not to limit their capacity to determine the future shape of the country. Delegates at peace talks are not duly elected representatives of the people and therefore do not have the right to make decisions which will limit the powers of such representative institutions as the new State will have. This is why in the Guatemala indigenous peace treaty we opted for the bodies called *joint committees* to give effect to the provisions agreed on by the Government and the rebels. The powers of these committees, consisting of equal numbers of indigenous and non-indigenous members, were restricted to advising the new democratic institutions. The joint committees cannot make laws or regulations because that is the exclusive right of the democratically elected legislature. On the other hand, the new government institutions have an obligation to pay serious attention to the joint committees' recommendations and to give clear and public

explanations of why they have chosen not to implement these recommendations, if such is the case.

The second point is about verification or monitoring of peace agreements. A civil war represents the breakdown of trust and confidence in the institutions of the State by those who have taken up arms against it. Because of this lack of trust, the insurgents obviously will not agree to a peace settlement unless there is some means, beyond the mere assurances of the Government they have been fighting, to ensure that the treaty will be implemented. The solution to this problem in Guatemala was to request a UN observer mission, called *MINUGUA*, which provided regular reports to the national authorities, the public and the international community on the progress, or lack of it, achieved in implementing the peace agreements. The special UN mission, which operated for a decade, ended its work in November, 2004. Because, however, Guatemala ratified Convention N° 169 as part of the peace settlement, the national and international communities will continue to be informed on the implementation of the Agreement on the Identity and Rights of the Indigenous Peoples of Guatemala because of the regular reports which the Government must send to the ILO supervisory bodies and if problems are identified, the ILO can at any time send an investigative team or refer the matter to the Economic and Social Council of the UN with a view to setting up a joint mission of inquiry. The ratification of the Convention was therefore crucial to the on-going process of verification.

To sum up, I emphasise the following points in relation to the peace process in Guatemala on indigenous issues:

(1) Clear and realistic objectives: Both of the warring parties have to agree from the outset on a clear and mutually acceptable set of objectives which they wish to achieve jointly. This always involves a recognition that a negotiated settlement of the issues dividing them is better and more desirable than a military solution. It also requires a commitment on both sides to establish new institutions of the state. A civil war is always clear proof that the former institutions have ceased to function properly.

(2) Participation: There must be mechanisms to ensure that as many parts of the society as possible, ideally all of them, can participate in the peace process by providing proposals, ideas, advice and expertise. When significant sections of the population have different cultural identities, it is particularly important to recognise and respect the rights of these groups to formulate and put forward their viewpoints, thus encouraging them to become stakeholders in the new state.

(3) Framework: There must be a clearly defined and agreed framework of reference for a settlement to be achieved. Peace can only be negotiated on the basis of a set of just values shared in good faith by all of the parties concerned. *Internationally recognised human rights* provide such a

framework. Where indigenous and tribal peoples are involved, ILO Convention N° 169 is a useful - indeed indispensable - part of the human rights framework.

(4) Process: As mentioned earlier, the result (as well as the cause) of a civil war is a failure of confidence between the sides. This requires a third party to lead and moderate (or mediate) negotiations between them. This can be done by some other country, a regional or international organization or a respected and neutral individual. The critical factor is that both parties have full confidence in that person or body and that the latter have no interest in the settlement beyond achieving the just aims of the parties and the population at large.

(5) Implementation: The most basic principle of international law is that agreements must be respected. All of the parties to the peace negotiation, as well as everyone else in the country, and most particularly the reformed institutions of the state, must make every effort possible to implement in the utmost good faith all of the elements of the peace settlement.

(6) Verification: There must also be a body or person who supervises the implementation of any peace agreement. This can be whoever presided over, or facilitated, the peace talks, as long as they have the military, financial and technical capacity to sustain this effort. While this will

normally require a verification mission of some sort to be “on the ground” in the country for some time, especially to ensure the maintenance of a ceasefire and disarming of the civilian population. Once the peace has been consolidated, reporting, monitoring and supervision can be sustained and supported by reporting requirements and supervisory arrangements of the sort foreseen by the various UN-System instruments, including ILO Conventions, such as N° 169.

And one final word. The actual implementation of the treaty has been long and complex. It is still a work in progress. If the treaty can be considered a success because it has ensured peace in Guatemala for ten years now, and one hopes much longer still, a recent report of the Secretary-General to the Security Council notes that only some 30% of its provisions have been fully implemented. Some of the Joint Committees, for example, never functioned properly, there is still widespread discrimination against indigenous people and still many instances of violation of human rights. But there is peace and there is progress. The lesson is that the signature of a peace treaty or the ratification of a Convention will not change the difficult situations confronting indigenous people from one day to the next. The struggle for cultural, economic, social and political equality will always be a long one and the commitment to the objective of all parties involved has to be firm and steadfast.