

Thank you very much!

First of all I would like to thank the Centre for Sámi Studies and also the organizers of this conference for the great invitation to come here and present not only my thesis topic, but also the results of being back in my country for four months and all the activities around the ILO 169 issue in Guatemala.

I would like to begin also presenting the title of the thesis. The thesis is 'The Unfinished Mission. The History of the ILO 169 concerning Indigenous Peoples in Guatemala'. Why it is the unfinished mission? Beyond this catchy title, the ILO mission in Guatemala is 'unfinished' for three actors of the political scene: the first one is the state, that still has a big mission to implement the ILO 169, then the indigenous movement who also has to take into account the ILO 169, a powerful tool for negotiation, and the third one, that is the ILO itself as an international organization.

How did I do this study? First I begin with the methodological issues. The first one is that this thesis was a qualitative research, so it consisted of interviews with the Mayan leaders in Guatemala during the 3 months of fieldwork, in the year 2004. I had open interviews and additionally used secondary sources for complementing all the information that I had, and also for having a methodological and theoretical background for the thesis. And then, what were the questions that guided this research? I was giving the formal frame, and then focused on the empirical findings. The first question for this research was: How important it is for the indigenous peoples to obtain political representation toward the state in this globalization period? That was the most general one. And there was also a particular one: How important it is for the indigenous peoples in Guatemala to use the ILO Express Committee as a mechanism of political representation towards the state. These were the two questions that I was supposed to answer in the conclusion of this thesis. And then I began with this thesis. It has 6 chapters, but it can actually be divided into three: first, the methodological and theoretical issues, and then I moved to the description of the ILO 169 in Guatemala, the ratification, until the last report that Guatemala sent to the ILO that was in 2003, and then I drew a comparison with the Sámi case. Later on you will find out why I used this case.

In the description of the methodological and theoretical issues of the thesis I first found that the indigenous peoples have the opportunity for using several channels of political representation; among them you can find first the civil society, then the media, then the political parties – the most important one! And, at the end, I propose the ILO 169, the ILO Express Committee as the last channel for political representation - that was the proposal of this thesis. Why I propose this one? The first one of these channels is the political parties. The indigenous peoples of Guatemala since 1985 still do not have representation in the political parties. The number of indigenous members that recognize themselves as Mayas or indigenous has increased from 1985 until 2005 maybe five times. There are no political parties that are indigenous by themselves yet. Then we come to the media. In Guatemala, the media is mainly written and spoken in Spanish. All the television channels are in Spanish and all the newspapers are in Spanish. The local radio stations are the only media that the indigenous peoples have in their own languages. In the civil society, in the terms of Marie Caldoro, the English academic, she explains that there are three different types of civil society. In Guatemala we can find two types of civil society: the first one is the neo-liberal civil society, that is all the rich people and all the very conservative people in Guatemala, and then, on the other hand, we can find the activist civil society, that is the left-oriented civil society. After the peace accords, the civil society was born and they started to ask for the political demands of the public society. And among the civil society, the indigenous people were one part of them, but had the status of minority, not 'people', so the representation the indigenous peoples could have in this type of civil society was reduced.

The aspect I said I propose in my thesis is the ILO First Committee as a channel for political representation. Why the ILO First Committee? It was not divine inspiration, but just regarding the case of the Sámi people, I found that the use of the international organizations in the political struggle for indigenous rights can give

a good counterbalance of power. Involving the international organizations into the national struggles of the indigenous peoples can be useful for them. That is the way in which the Sámi peoples have used the ILO First Committee and that was the reason why I made this comparison with the Sámi people, with the Sámi case. In the early 1980s, the Alta case brought all the attention on the Sámi people and after this crisis they managed to determine the Norwegian government to create first the Sámi Parliament and also to do the amendment to the Constitution on them. In spite of the Sámi Parliament, the Sami used also the ILO 169, that Norway was the first country to ratify, and they moved the Sámi Parliament with direct representation to the ILO. And what they were doing: each time that the Norwegian government did not want to negotiate with them any issue, they just took the issue to the ILO. They sent this representation to the ILO and ILO asked the Norwegian government for a response. In this way, they engaged this international organization and also moved Norway to create a democratic dialogue, and also to recognize that they were a 'people' in Norway. That is a very practical way to do that! And I propose that for Guatemala. I thought, maybe it could be so. Because in Norway there are certain differences. For example, The Guatemalan State could be seen as one of the worst human rights' defender in the world. On the other hand, Norway is a pioneer of the human rights. But this difference can be erased when you see the percent of indigenous population in Norway that is just 1%, while in Guatemala it is more than 50%. So I thought maybe this difference can create this harmony and, in the end, it can work for that.

So that is what I did. I started proposing these theoretically and then I went to the description of the ILO 169 ratification process in Guatemala and that was very different from Norway. At the beginning, in Guatemala, the ILO was proposed in 1982, but then it was avoided because Guatemala was still in the context of war and they decided not to ratify the Convention. And then the discussion was postponed until 1995, while the peace accords were going to be signed. The indigenous movement got the skills to determine the state to ratify the ILO 169. Why do I say 'skills'? Because those were negotiation skills that the indigenous movement was achieving from the beginning of 1990s until 1995. The indigenous movement grew so strong and also with good skills of negotiation. And they managed to make the state ratify the ILO 169 and to have a compromise with the international community – that was a very important goal for the indigenous peoples. Sometimes I say that more than the Peace Accords that are on the side of the indigenous peoples, I believe that the ILO 169 is the most important juridical tool for the indigenous peoples in Guatemala. First, because it is a convention on human rights and the construction of Guatemala speaks about the human rights saying that all the conventions signed by the Guatemalan state on human rights have to be over the national Constitution. So that is a very important tool. And then, of course, the indigenous movement realized the strong component of this convention and they pushed the state to ratify that. That was a ratification process that was not easy at all. They began with the reaction of the elites of power in Guatemala because the elites of power saw their interest affected with the ILO 169. Why? Because the ILO 169 speaks about indigenous peoples' lands and indigenous peoples' power now, so they can start asking for the demand of land, that is a demand that even created the frame for the war in Guatemala. And then, after the indigenous peoples moved, the indigenous movement moved the discussion of the ILO 169 into the National Congress. Into the National Congress, the elites of power have representation and they have the representation with the political parties that were strong in that time. And one of those political parties was in Government. And the indigenous peoples, the indigenous movement, had representatives in each of these parties so strategically everyone was thinking that the ratification of the ILO 169 was going to be fast. And what they found was that the Guatemalan Congress proposed two amendments to the ratification instruments to Geneva, to the ILO headquarters. And when it arrived to Geneva, the Ministry of Labor from Guatemala wanted to present these ratification instruments. And the Secretariat of the ILO told him: it is impossible to receive this, the ILO does not accept amendments on these treaties, so what are you pretending? And then the Ministry of Labor accepted that those were not amendments, that those were just observations. So, with no legal capacities, these amendments were accepted in the ILO and that means that Guatemala ratified this convention, and also the indigenous people had the right to claim these conventions whenever they need to. And then, after this, the changes in Guatemala, the indigenous movement was expecting these changes and they asked for these Conventional reformations that Kate Warren just spoke about yesterday. Unfortunately these reformations did not come, the people did not accept to reform the Constitution in Guatemala and the Government argued that they do not have the constitutional framework for implementation. And then, I describe in my thesis how these three reports started

changing each five years. The first one was a very brief one – they sent in just two pages saying that the Guatemalan government cannot implement the ILO 160 because they are still in the peace process, but they promised that the next one is going to be a better one. They sent a second one, and in the second one they said: sorry we cannot send a better one because the Constitutional reformation was not accepted and then the ILO sent one more to the Guatemalan Government asking for more informational instrument, and saying that it had nothing to do with the reformation of the Constitution. Then the third one was the last report of the Guatemalan state. And there is a change in the situation because there is a dramatic change in this last report. And this last report gives account of the creation of almost each Commission in the state.

Lots of Commissions were created: Commission for the bilingual education, Commission for the women, Commission for everything... Everything has a commission in the state; and all these commissions related to the indigenous peoples, but they never recognize in the Constitution the existence of indigenous peoples in the country. Yesterday, when Doctor Demetrio Cojti made his presentation, he said that there is this Language Law, ‘los indigenas’, where they recognize the indigenous peoples, but in the meantime you can see also in the Guatemalan Constitution: there is a whole section where they speak about indigenous communities. What is the importance of this terminology? It is more than terminology. They are juridical terms. What they are doing is to close the door for the indigenous peoples to claim for any international instrument they can call for. The indigenous peoples are still waiting for the draft declaration to transform into a declaration, but until that happens they have the ILO 169 to use in the countries where this Convention has been ratified. And Guatemala is the case, but they still do not have this Constitutional frame. Thus this is a very juridical discussion, it is a very formal discussion, but it is also a very important discussion because it is a question of terminology. And to change the state of Guatemala, that has all these liberal traditions of law, that what is written is what counts, the indigenous movement has this mission to transform the situation and to determine the state to ratify and to really understand that they have to change the national Constitution. But it does not happen right now.

And then I finished with the thesis and the conclusion was that the Guatemalan state was slowly moving from being an autocratic state, a mono-ethnic state, to being a very democratic one because of all these actions of creating commissions were like creating a landscape where the indigenous people have been every day progressing relating to their rights.

And then I finished the thesis. And I went back to Guatemala and it was the end of innocence: I arrived there and I realized that there was a big movement around the ILO 169. And I asked myself: what is happening here? Because the ILO 169 is like a taboo subject, nobody speaks about it, nobody wants to learn anything about that. And all the academics want to study nothing about that. I do not now why. Maybe because it is a sensitive subject, or maybe it is because they do not understand what is going on. And then I found that what was happening by that time with the ILO 169 was that the Guatemalan state had an agreement with one gold mining company. Five years ago, they accepted this gold mining company to come to Guatemala. But it was a unilateral decision. Nobody else decided anything there. It was just the government of that time and then the mining company. The mining company then started to do all the exploration in the indigenous lands and indigenous peoples denounced that and said: ‘There are people coming here to study the soil. What is going on here? And then these gold mine companies said that they are gold mines in Guatemala and they can do these open sky mining exploitation. And they began with that. In two years they started moving all the machinery. Everything! To dig on the soil. And indigenous peoples reacted. They had this mobilization. They started with the mobilization denouncing that asking that company to get out of the place. What the government said at that time was: ‘Ok. We ratified the ILO 169 and in the article 6 we said ‘we accept it and the indigenous people have to be consulted of any decision that has to be made regarding these lands and the underground resources also’. (The resource is not only from the sea and land, the resources are also what the mining companies were looking for.) And the government proposed a consultation, but they said: ‘How can we do this consultation?’ That was the government question. And they said: ‘Ok, we can charge the municipalities. The municipalities are going to be like the figure that is going to represent this consult and then they are going to present to us the result.’ What they were expecting was a positive answer from the indigenous peoples. They said: ok, we do the consultations, but we know in advance that we are going to win, that we are going to receive a yes. The problem was that the contrary happened. The indigenous people said: ‘No, we do not want that. No,

this is going to create a lot of problems here: ecological devastation, we are going to lose our land, we are going to work as cheap labor.' And, in the end, what happened was that the municipality received 6 million quetzals that is the equivalent of approximately 1 million dollars to do these consultations. And when I was in Guatemala, they did it. They did these consultations with the indigenous peoples. And then all the indigenous peoples participated massively and said: 'We don't want this company to be here.' And then the government said 'Yes, but this is not a binding decision. We cannot accept that'... because they were expecting a 'yes'. And even the gold mining company had already constructed their industry; they have everything there. So why were they asking? That was the question. And the government had these complaints for the mining companies saying: 'Why didn't you ask in advance?' And then the government said no.

What is the lesson? The indigenous movement of that time had the ILO 169. Guatemala ratified ILO 169 and that is our law. But, of course, that was a very simple way of proposing that, because to move one of these international conventions into the constitutional law of each country is necessary to have this indigenous movement or social movement that moves the law. That is the pragmatic way. The other way is that we expect the government to do their work, but usually they do not do it. And then, what is the lesson from this? The lesson is first: there are negative aspects and positive aspects. The negative aspect is the ecological devastation and indigenous peoples lost their lands and it is a problem also that they could not use the frame when they needed to. And what is the positive thing for this? It is hard to see the positive thing in this situation, but the positive thing is that once again the subject of the ILO 169 and the international conventions and the struggle for the juridical instruments opens again. And this is a very important fact, because it talks about a very different paradigm. It is a paradigm of negotiation. Something that in Latin America the social movements are used to because we just come out to live in democracy. We still are trying to find a way to make consensus. And that is what is happening now. So the indigenous movement has this opportunity to claim attention from the state in that subject and finally change the few things that are still pending. That was the same as what happened here in the Alta case. The government came and went, and built the dam, they also took the river, and the Sámi could not do anything about that, but just demonstrated against. And still the government constructed the hydro-electric. But that was the initial point for negotiation for new political and juridical tools for the Sámi people.

That is the same thing that is happening in Guatemala and that could be seen as an opportunity because right now how can they make this company get out from their lands? The only way is the sabotage, but the sabotage cannot be because it is illegal. How can they deal with this legal and illegal frame? They have to start thinking in another way. And it is not just the indigenous movement. It is also the other movements, like the social movement in Guatemala, because the indigenous movement has this big mobilization, has these big demonstrations. But then how can they find the way to start negotiating if they still do not have the resources to do that. That is the problem. It is the creation of several NGOs in Guatemala about several subjects, but never these NGOs go to the subjects of this juridical frame that is the first step to do a self-sustainable movement because first they need to create the frame and then they can start asking for demands.

That is all. Thank you!