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Diego Garcia-Sayan

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# HUMAN RIGHTS AND PEACE-KEEPING OPERATIONS\*

*Diego García-Sayán\*\**

## I. INTRODUCTION

The purposes of the United Nations, as specified in Article 1 of the United Nations Charter, are to “maintain international peace,”<sup>1</sup> to promote and encourage “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”<sup>2</sup> and to “achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character.”<sup>3</sup>

The changes that have occurred in the world order during the last few years, mainly the end of the Cold War, have revitalized the original purposes of the United Nations and, as the Secretary-General of the United Nations has said, the need to explore “the place being accorded within the United Nations to the promotion of democracy side by side with the protection of human rights.”<sup>4</sup> The paralysis in the United Nations decision-making process—represented very explicitly by the continued vetoes in the Security Council (279 during the Cold War era)—seems to be a matter of the past. This evolution has opened new opportunities for more comprehensive approaches to peace-keeping and to different measures that may be regarded as responding to the actual needs of promoting human rights and democracy.

As the U.N. Secretary-General has recalled,<sup>5</sup> the corner-stone

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\*\* Director of the Human Rights Division of the United Nations Observer Mission at El Salvador (ONUSAL). The views expressed in this paper are of the author.

1. U.N. CHARTER art. 1, ¶ 1.

2. *Id.* ¶ 2.

3. *Id.*

4. Secretary-General Boutros Boutros-Ghali, Remarks on Being Awarded an Honorary Doctorate from Laval University, Quebec City (Aug. 23, 1993) (on file with the *University of Richmond Law Review*) [hereinafter Remarks at Laval University].

5. Secretary-General Boutros Boutros-Ghali, *An Agenda for Peace-Preventive Di-*

of this work is, and must remain, the State. Nevertheless, the "time of absolute and exclusive sovereignty . . . has passed."<sup>6</sup> It is no longer conceivable that a State use national sovereignty as a shield or buffer to scorn democratic principles and violate human rights. The Charter itself places a restraint on all member states of the United Nations, as does the Universal Declaration of Human Rights. Since 1948, more than fifty international declarations or treaties have been drafted and approved, making the fields of international protection and human rights increasingly specific: genocide, elimination of discrimination, torture, enforced disappearances, women, indigenous populations, to name only a few. The progressive standard-setting put forth more precise definitions of rights and mechanisms of protection.

The U.N. Human Rights Commission, for its part, has recently developed very significant non-conventional mechanisms for the protection of human rights such as working groups, special rapporteurs, and independent experts. Although lacking a binding character, they do periodically report to the Commission on key issues of on-going human rights violations in the world such as disappearances, torture, summary or arbitrary executions, and arbitrary detention. Their efforts have contributed, in any event, to a meaningful improvement of standards and mechanisms of protection.

Nevertheless, standard-setting and the steps taken by the U.N. Human Rights Commission have proven to be insufficient in dealing with increasing human rights violations in the world. Since it is impossible to reduce complex human rights situations to one simple source or explanation, it is obvious that the weakness of democratic institutions and both international and non-international armed conflicts are critical factors that provoke situations leading to violations of fundamental human rights. A strategy oriented to overcome those situations must consider the need to improve human rights protection mechanisms.

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*plomacy, Peacemaking and Peace-keeping: Report of the Secretary General.* U.N. SCOR, 47th Sess., Agenda Item 10, § 17, U.N. Doc. S/24111 (1992) [hereinafter *An Agenda for Peace*].

6. *Id.*

To establish that strategy, firm global steps towards peace and democracy are necessary in order to abandon rhetoric and begin the twenty-first century with an advantageous perspective. Appropriate measures should be implemented by the international community; to that end, steps taken in the last few years may function as a useful starting point. The U.N. Secretary-General has said, "it is the moral duty of the United Nations to intervene in an effort to make up for the shortcomings of non-democratic states."<sup>7</sup> Many crucial questions may be raised regarding how far the international community can go in strengthening human rights and democracy and what the limits are to international intervention. There are no clear-cut responses, but there is no room for the old and frozen concept of absolute national sovereignty opposed to human rights; which rights themselves belong to universal sovereignty.

## II. NEW RESPONSES TO ACTUAL CHALLENGES

In his *An Agenda for Peace*<sup>8</sup> Boutros-Ghali has detailed an integrated approach in which he connects four critical expressions: *preventive diplomacy*, *peacemaking*, *peace-keeping* and *peace-building*. They are possible measures oriented to deter conflicts and achieve and consolidate peace. In each of them, human rights arise as a very important—eventually crucial—component.

Even assuming the measures which build confidence and provide early warning based on information-gathering and fact-finding in *preventive diplomacy*, it is not hard to imagine that in certain circumstances the recognition of human rights may be necessary to generate an appropriate atmosphere so as to halt a deterioration of a situation that could undermine peace and stability. As the Secretary-General has said in this respect, "goodwill missions or good offices missions [can be sent] to Governments to help them resolve political crises or to try to prevent events detrimental to democracy and human rights from occurring in the country."<sup>9</sup> In that case, proper coordina-

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7. Remarks at Laval University, *supra* note 4.

8. *An Agenda for Peace*, *supra* note 5, §§ 20-21.

9. Remarks at Laval University, *supra* note 4.

tion of the appropriate mechanisms of the Human Rights Commission (working groups or special rapporteurs) would be advisable so each could benefit from the experience and information the other may have.

In the above-mentioned *An Agenda for Peace*, the Secretary-General has considered including so-called "preventive deployment" as a possible measure for *preventive diplomacy*.<sup>10</sup> This would involve a U.N. deployment oriented to deter the further erosion or deterioration of a particular situation: "for example, in conditions of national crisis there could be preventive deployment at the request of the Government or all parties concerned, or with their consent."<sup>11</sup> At this stage, the only "preventive deployment" operation undertaken by the U.N. has been a mainly military one in the former Yugoslav Republic of Macedonia, where almost 1,000 peace-keepers have been observing the boundary with Serbia since June 1993.

But the principle of "preventive deployment" does not have to be restricted to military operations. For instance, nothing inhibits a sovereign country suffering a profound political or institutional crisis from asking or authorizing a human rights verification operation, which could serve to establish democratic order and proper institutional behavior. In fact, the experience in El Salvador illustrates very clearly that the deployment of a human rights mission, even before cease-fire or the achievement of peace agreements, was a crucial confidence-building measure which created a more appropriate atmosphere for the completion of negotiations.

*Peacemaking* has usually been a preamble of peace-keeping, since it is primarily intended to bring hostile parties to agreement through negotiations. The "good offices" of the Secretary-General in the peace process of El Salvador have been quite a successful example of the role the U.N. can play when there is political will from the parties to make peace through a comprehensive negotiation. It is no coincidence that the first substantial agreement concerned human rights ("Acuerdo de San José"). The process of mediation and negotiation may include, more often than not, a role for human rights as part of a political

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10. *An Agenda for Peace*, *supra* note 5, ¶¶ 23, 28-32.

11. *Id.* ¶ 28.

agreement-possibly being addressed as a specific chapter within an agreement, as Amnesty International has suggested.<sup>12</sup>

If we consider the use of military force as a *peacemaking* mechanism to maintain or restore peace and security, as provided in Chapter VII of the U.N. Charter,<sup>13</sup> we are obviously dealing with a military operation. But having said so, such an operation must have precise terms of reference and guidelines, so that its participants fully respect human rights and humanitarian law. Nothing would be more contradictory than a peace-enforcement unit of the United Nations transgressing international human rights standards which have been gradually and painstakingly created during the last almost fifty years. Therefore, human rights, again, appears to be a key issue in guaranteeing consistent and effective peacemaking.

### III. PEACE-KEEPING AND PEACE-BUILDING

When the Nobel Prize was awarded to United Nations peacekeepers in 1988, Javier Pérez de Cuellar, then Secretary-General of the U.N., said that “[p]eace-keeping operations symbolize the world community’s will to peace and represent the impartial, practical expression of that will. The award of the Nobel Peace Prize to these operations illustrates the hope and strengthens the promise of this extraordinary concept.”<sup>14</sup> On making this statement, de Cuellar considered the forty years of efforts since the first U.N. peace-keeping operation in Palestine in 1948.

Since then, several peace-keeping operations have been launched. Some observers have sub-categorized them as “observer missions”<sup>15</sup> and more precisely as “peace-keeping opera-

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12. AMNESTY INTERNATIONAL, PEACE KEEPING AND HUMAN RIGHTS 36-37 (1994).

13. U.N. CHARTER art. 42.

14. UNITED NATIONS PEACE-KEEPING, 1993.

15. In the “observer missions,” the military units that may be part of the mission are unarmed, while the “peace-keeping missions” are primarily composed of armed military personnel. The “observer missions,” according to those categorizations, have been the following: India-Pakistan (UNMOGIP) since 1949 to date; Lebanon (UNOGIL) in 1958; Yemen (UNYOM) in 1963; India-Pakistan (UNIPOM) in 1965; the mission of the Representative of the Secretary-General at the Dominican Republic (DOMREP) in 1965; the good offices mission at Afghanistan and Pakistan (UNGOMAP) in 1988; the military observer group in Iran-Ira (UNIIMOG) in 1988;

tions."<sup>16</sup> The distinctions between them, however, have never been clear-cut. This is more the situation now when the characteristics of the operations in the field tend to suffer dramatic innovations. The figures, as well, are quite impressive. From 1945 to 1987, thirteen peace-keeping operations were launched;<sup>17</sup> since 1987, there have been eighteen new operations, among them thirteen begun since 1991. In the last three years, the number of new peace-keeping operations is comparable to the total number in the previous four decades.

Among the broad and diverse activities of the U.N., peace-keeping operations are now the most prominent. Roughly 90,000 persons (civilians, military personnel and police) are deployed worldwide<sup>18</sup> under the flag of the U.N., including more than 10,000 civilians.<sup>19</sup> The peace-keeping operations that mushroomed during 1992-93 now involve more than 35% of the U.N. global budget. While the budget for peace-keeping operations in 1990 was approximately \$400 million, in 1993, it exceeded \$3 billion. The Secretary-General has emphasized "the contrast between the costs of United Nations peace-keeping and the costs of the alternative, war."<sup>20</sup> In social terms, then, peace operations are "cheap."<sup>21</sup>

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the verification mission in Angola (UNAVEM) since 1989 to date; the observer group in Central America (ONUCA) in 1990; the mission for the referendum in Western Sahara (MINURSO) since 1991 to date; the observer mission in El Salvador (ONUSAL) since 1991 to date; the observer mission in Haiti (MICIVIH); the United Nations Observer Mission in South Africa (UNOMSA); and the United Nations Observer Mission in Liberia (UNOMIL) since 1993 to date.

16. In this sub-category, which is somewhat arbitrary, the following have been seen as "peace-keeping operations": UNEF I at Egypt-Israel in 1956; ONUC at Congo (today Zaire) in 1960-64; UNSF in Western Iran in 1962-63; UNEF II, which was the second emergency force between Egypt and Israel in 1973-79; UNTAG in Namibia in 1989-90; and UNTAC, the transitory authority in Cambodia in 1991-93. Still ongoing is: the mission in Cyprus (UNFICYP) established in 1964; the observer mission in Golan (Syria) (UNDOF); the interim force at Lebanon (UNIFIL) established in 1978; the protection force in the former Yugoslavia (UNPROFOR) since 1992 to date; the two operations in Somalia-UNOSOM I (April 1992-April 1993) and UNOSOM II (May 1993 to date); the operation in Mozambique established in 1992 (ONUMOZ); and the operation in Rwanda (UNAMIR).

17. *An Agenda for Peace*, *supra* note 5, ¶ 47.

18. Compared with 10,000 in 1987. See *UN Operations: Not Only Expanding But Breaking New Ground*, UN MONTHLY CHRON., Sept. 1993, at 43. [hereinafter *UN Operations*].

19. Compared with 900 in 1987. See *id.*

20. *An Agenda for Peace*, *supra* note 5, ¶ 48.

21. For example, the budget of the U.N. in El Salvador during 1993 was approxi-

Paradoxically, peace-keeping operations do not have a clear-cut legal foundation since they are not clearly specified in the U.N. Charter. Peace-keeping "goes beyond purely diplomatic means specified" in Chapter VI of the Charter ("Pacific Settlement of Disputes,")<sup>22</sup> but "falls short of the military or other enforcement provisions in Chapter VII."<sup>23</sup> Chapter VI of the Charter asserts that conflicts that endanger peace and international security<sup>24</sup> may come under the consideration of the Security Council or the General Assembly. The Security Council is empowered to promote the peaceful settlement of controversies.<sup>25</sup> But when the Security Council determines that there is a threat to peace or an aggression, it may use the ample powers established in Chapter VII. Among other measures, the Council may direct member states to interrupt economic relations.<sup>26</sup> If those measures are inadequate, the Council may decide to use force under the provision of Article 42: "by air, sea, or land forces as may be necessary to maintain or restore international peace and security."<sup>27</sup> Under these circumstances, Dag Hammarskjöld, former Secretary-General, has characterized these operations as a sort of "new Chapter 'six and a half.'"<sup>28</sup> The fact that peace-keeping operations are not specifically considered in the U.N. Charter has, in a way, been useful because it has given the Secretary-General and the Security Council enormous flexibility to establish peace-keeping operations in a wide range of different circumstances. These operations have been shaped more by urgent needs than by a precise doctrine or theory.

During their first four decades, peace-keeping operations had three major characteristics: 1) a predominantly military composition; 2) an orientation towards monitoring cease-fires or the separating of military forces; 3) an orientation toward responding to international armed conflicts. The end of the Cold War

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mately \$35 million. During the war, U.S. military aid to the Salvadorian government was approximately \$50 million annually.

22. U.N. CHARTER ch. VI.

23. *UN Operations*, *supra* note 18, at 44.

24. U.N. CHARTER art. 35.

25. *Id.* art. 37, ¶ 2.

26. *Id.* art. 41; *see UN Operations*, *supra* note 18, at 44.

27. *Id.* art. 42; *see UN Operations*, *supra* note 18, at 44.

28. *See UN Operations*, *supra* note 18, at 44.



has not only increased the quantity of peace-keeping operations, but also has led to crucial changes in their attributes.

In "new generation" peace-keeping operations, the role of civilians has obtained special relevance. The operations themselves tend to move far beyond the context of purely military activities—cease-fires or separation of forces—and become more comprehensive operations aiding in the implementation of negotiated settlements of long-standing non-international armed conflicts. This has been the case in Angola, Cambodia, El Salvador and Mozambique. As a consequence, issues such as human rights and democracy have become an important part of the agenda of these operations. As the U.N. Secretary-General has said, "most of the peace-keeping operations today are in fact designed to restore both democracy and the protection of human rights. This tendency is reflected in most of the major operations conducted by the United Nations since 1991."<sup>29</sup> As may be obvious, these purposes imply a dramatic change from the "classical" approach and trigger, at the same time, many questions regarding their consistency.<sup>30</sup>

Having said this, the distinction between peace-keeping and peace-building<sup>31</sup> is not rigid and does not assume two distinct kinds of operations. As the experience in El Salvador has shown, the role of active verification, monitoring, and investigation of human rights violations can, and must, be performed with peace-building measures which promote institutional reform, an independent and efficient judiciary, and the consolidation of institutions which grow out of the peace agreements, such as the Procuraduría Nacional para la Defensa de los

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29. Remarks at Laval University, *supra* note 4.

30. Referring to Angola, Amnesty International, for instance, has expressed its concern for "the weaknesses in the *civilian* components of UNAVEM II, including a lack of sufficient attention to human rights . . . [and that in the accord] there was no clear human rights chapter specifying the source of specific rights to be guaranteed and setting out investigative and remedial provisions." PEACE KEEPING AND HUMAN RIGHTS, *supra* note 12, at 10. Mentioning Mozambique, Amnesty International says that while the peace agreement binds the parties to respect civil and political rights, "it does not provide a specific mechanism to monitor reports of human rights violations and ensure that such reports are properly investigated and remedied." *Id.* at 11.

31. Peace-building is defined as "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict." *An Agenda for Peace*, *supra* note 5, ¶ 21.

Derechos Humanos (Procuraduría) and the National Civilian Police (PNC).

Within this context, it is not difficult to imagine the possibility of the deployment of purely civilian observer missions not accompanied by a military staff and in the absence of a peace agreement. The two purely civilian missions already undertaken, the International Civilian Mission in Haiti (MICIVIH) and the U.N. Observer Mission in South Africa (UNOMSA), are concrete examples.

In any event, we are now in a new situation characterized by the incorporation of human rights as a crucial component of the peace strategy of the United Nations and, by extension, into the organization's other activities as well, such as preventive diplomacy, peacemaking, peace-keeping and peace-building.<sup>32</sup> The case of El Salvador illustrates well these different approaches. The good offices of the Secretary-General were a crucial factor in the negotiating phase (peacemaking). This was followed by the Observer Mission of the United Nations at El Salvador (ONUSAL), which fulfilled peace-keeping and peace-building roles simultaneously.

#### IV. SPECIFICITY OF THE SALVADORIAN CASE

ONUSAL constitutes an integrated operation that, at the request of the government and the Frente Farabundo Martí de Liberación Nacional (FMLN), has the responsibility of actively verifying the fulfillment of the four objectives for re-establishing peace:

- 1) ending the armed conflict through political negotiations;
- 2) consolidating democratic life and democratic institutions;
- 3) establishing guarantees of unrestricted respect for human rights; and
- 4) reunifying and reconciling Salvadorian society.

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32. Even in the more recently implemented concept of "peace enforcement", enforcement measures such as the embargo approved in June 1993 by the Security Council to defend human rights and democracy in Haiti "constitute[] an illustrative example in this connection." Remarks at Laval University, *supra* note 4.

These objectives of the peace process are contained in the Geneva Agreement which the parties signed, under U.N. auspices, on April 4, 1990.<sup>33</sup> Achieving peace commitments in El Salvador was a long and difficult process which culminated in the signing of peace accords on January 16, 1992, in Mexico.<sup>34</sup>

External political factors, combined with the will of the parties and the maturity of the Salvadorian people, created a supportive climate both for the agreements and their fulfillment. In particular, the end of the Cold War generated concerted pressure on the warring parties to reach a peace agreement. The "Friends of the Secretary-General" (Colombia, Mexico, Spain and Venezuela) with the United States, leaned on the parties during the negotiations and worked with the United Nations to ensure that the parties fulfilled their commitments.

On July 26, 1990, in San José, Costa Rica, the parties, under the auspices of then United Nations Secretary-General Javier Perez de Cuellar, signed the first agreement in the negotiating process, which dealt with unrestricted respect for human rights.<sup>35</sup> The "San José Agreement," as it came to be known, established commitments aimed at assuring respect for and the guarantee of human rights through a broad, United Nations-led process of international verification. This agreement was crucial to the eventual creation of ONUSAL. While ONUSAL was to be an integrated mission in charge of overseeing the implementation of all the political agreements reached between the government and the FMLN, in its first stage it had only a limited mandate: the verification of the San José Agreement.

The parties committed themselves in the agreement to take immediately all necessary steps and measures (1) to avoid any act or practice that would constitute a threat to the life, integrity, security or freedom of the individual; and (2) to eliminate any practice involving disappearances and abductions.<sup>36</sup>

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33. See *El Salvador Agreements: The Path to Peace*, ONUSAL 1 (1992).

34. U.N. GAOR, 46th Sess., Agenda Item 31, U.N. Doc. A/46/868 (1992).

35. San José Agreement on Human Rights, July 26, 1990, El Sal.-FMLN, reprinted in *Note Verbale Dated 14 August 1990 From the Chargé d'Affaires a.i. of the Permanent Mission of El Salvador to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 44th Sess., U.N. Doc. A/44/971-S/21541 [hereinafter San José Agreement].

36. *Id.* at 2.

The parties also agreed to immediately take certain measures designed to guarantee individual freedom and integrity.<sup>37</sup>

By their very nature, the human rights obligations contained in the San José Agreement were binding on the Salvadorian State. Nevertheless, the section of the agreement which requires the respect for and the guarantee of human rights includes a commitment by the FMLN to respect the inherent attributes of the human person.<sup>38</sup>

The San José Agreement on Human Rights provided for the verification of all human rights commitments by a United Nations mission with the following mandates:

a) to investigate the human rights situation in El Salvador regarding acts committed or situations existing as from the date of its establishment, and to take any steps it deems necessary to promote and defend such rights;

b) to devote special attention to the observance of the rights to life, to the integrity and security of the person, to due process of law, to personal liberty, to freedom of expression and to freedom of association;

c) to clarify any situation which appears to reveal the systematic practice of human rights violations and to recommend, to the party concerned, appropriate measures for the elimination of the practice.<sup>39</sup>

The San José Agreement gave the verification mission a wide range of specific powers to help it fulfill these mandates. Included were the powers to: actively verify the observance of human rights; receive communications containing reports of human rights violations from any individual, group of individuals or body in El Salvador; visit any place or establishment freely and without prior notice; hold meetings freely anywhere in the national territory; interview freely and privately any individual, group of individuals or members of bodies or institutions; collect, by any means it deems appropriate, such information as it considers relevant; make recommendations to the

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37. *Id.* at 3.

38. *Id.* at 2.

39. *Id.* at 4.

parties on the basis of any conclusions it has reached regarding cases or situations it may have been called upon to consider; and report regularly to the Secretary-General of the United Nations and, through him, to the General Assembly.<sup>40</sup>

While the San José Agreement provided a broad mandate, it also included in its preamble a working definition of human rights that further widened the judicial framework of the verification mission's activities. The preamble states that:

[F]or the purposes of the present political agreement, "human rights" shall mean those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, and by the declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States.<sup>41</sup>

Peace accords signed after the San José Agreement broadened the scope of ONUSAL's active verification to include other human rights-related commitments, such as: judicial reform; the elaboration of a new military doctrine; the restructuring of the armed forces' educational system; the formation of the National Civilian Police (PNC); and the creation of the Office of the Human Rights Ombudsman (Procuraduría). Each of these commitments is linked, conceptually and normatively, to the need to affirm human dignity and to promote respect for human rights.

#### V. THE U.N. IN EL SALVADOR: FROM SYSTEMATIC VIOLATION TO ACTIVE VERIFICATION

From the beginning of the 1980s, Salvadorian society was immersed in an internal conflict between successive governments and the insurgent FMLN. Apart from the causes which gave rise to the conflict and led to its subsequent development, the violent situation in El Salvador was steadily aggravated by increased violations of humanitarian law and by the systematic practice of human rights violations.

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40. *Id.* at 4-5.

41. *Id.* at 2.

The war produced thousands of victims. Moreover, the violence led to a lack of respect for life and human dignity, and to an attitude of mistrust toward the law and political, judicial, and social institutions. The very basis of the rule of law was called into question, and the Salvadorian judiciary was notoriously weak and politicized. Even under pressure from the United States, the judicial system was unable, or unwilling, to pursue cases as notorious as the killing of Archbishop Romero and the rapes and killings of four American nuns.<sup>42</sup>

Between 1980 and 1990, the attention of the international community and the U.N. to El Salvador was very important. Since 1981, the United Nations Human Rights Commission has had an expert (first José Antonio Pastor Ridruejo as special representative, and later Pedro Nikken as independent expert) in charge of reporting on the human rights situation in El Salvador. The current mandate of the independent expert has two purposes: to inform the U.N. Human Rights Commission; and to provide El Salvador with technical assistance to help improve the human rights situation.<sup>43</sup> Although strong resolutions adopted each year by the General Assembly and the Human Rights Commission served to isolate the government of El Salvador, and perhaps prevented the situation from becoming even worse, they were not enough in themselves to effect any real improvements.

On July 26, 1991, ONUSAL was established to verify whether human rights were receiving unrestricted respect.<sup>44</sup> In January of the previous year, a preparatory office had been established to evaluate the situation in the country and support the Secretary-General's good offices in the negotiations. While the San José Agreement spoke of United Nations verification following an end to the armed conflict, the parties later asked the Secretary-General to establish the mission without waiting for a cease-fire. The Secretary-General sent the preparatory mission in March of 1991 and, on the basis of its recommendations, informed the Security Council, which then established the veri-

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42. See, e.g., Douglas Farah, *El Salvador Says Court Ruling Shuts Case in Killing of Archbishop Romero*, WASH. POST, Dec. 28, 1988, at A16.

43. S.C. Res. 693, U.N. SCOR, 46th Sess., 2988th mtg., at 2, U.N. Doc. S/RES/693 (1991).

44. *Id.*

fication mission.<sup>45</sup> From its inception, the mission had almost all the components it would have in the end: human rights monitors, lawyers, educators, and military and police observers.

While the Human Rights Division was only the first element of an integrated operation, the defense and promotion of human rights was to become the core of the U.N. Mission. It would be fair to conclude that the decision to establish a human rights verification mission, in the absence of a cease-fire, definitely helped the parties reach the final New York accords, since the deployment of the United Nations on the ground and the active vigilance of respect for human rights were dissuasive factors which improved the country's internal situation.

Later, ONUSAL, as an integrated operation to maintain the peace, carried out its activities through three functional components: the Human Rights Division, the Military Division, and the Police Division (and, during the electoral period, the Electoral Division).

Given the special characteristics of human rights verification and the need to judge cases and situations on their own merits, the Human Rights Division has a special status which endows it with an important conceptual and practical autonomy. It is the only component of ONUSAL with an integral mandate contained in an ad-hoc instrument such as the San José Agreement. This mandate gives the director of the Human Rights Division the power to send periodic reports directly to the Secretary-General and, through him, to the General Assembly.

This important level of autonomy in the context of an integrated mission constitutes a substantive factor in the definition of the Division as a permanent mechanism of active verification since it gives the director the necessary legitimacy and autonomy to act in an area as sensitive as that of human rights. In this way, the Human Rights Division affirms its ability to work with the parties, non-governmental organizations and other related actors, inside and outside the country, toward the promotion and protection of human rights.

At the same time, the integrated nature of the peace opera-

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45. *Id.*

tion allows for the fulfillment of the general mandate of the verification mission in coherent and unitary terms. Such is the task of the Chief of Mission and Special Representative of the Secretary-General, who is in charge of guiding ONUSAL's activities and coordinating the work of the three divisions in a systematic and permanent way, in order to assure the coherent and orderly fulfillment of the mandates.

The Human Rights Division functions throughout the country. It has a central team responsible for guiding and supervising the fulfillment of the Division's mandate, and the work of active verification. The Division also works out of six regional offices with multidisciplinary staffs, including human rights observers, legal officers, political officers, and military and police personnel. These offices are directed by regional chiefs (earlier called "coordinators") who are also responsible for tasks related to the Mission's overall functioning in their regions, including the work of the military and police observers. Experience has demonstrated the importance of police observers in the mechanism of active verification, especially in the processing of information related to the complaints received by the Division.

#### VI. ACTIVE VERIFICATION: FROM THE WAR TO INSTITUTION-BUILDING

At the beginning of the verification mission's activities, there was a need to elucidate the scope of the mission in relation to international humanitarian law, taking into account that human rights observation had to be carried out in the midst of the armed conflict, and that the situation demanded verifying the effects of the conflict on the civilian population. On October 1, 1991, the Division began its work of active verification. During the period of the armed conflict more than one thousand complaints were received, many of them relating to acts and situations derived from the armed conflict. The verification of violations by the FMLN was limited to categories related to international humanitarian law.

When the cease-fire took effect on February 1, 1992, ONUSAL's military and police divisions were added. Their activities contributed to a progressive diminishment of two kinds of violations: improper human treatment, and the negative



effects of military actions or movements on the civilian population. In contrast with this positive tendency in the area of humanitarian law, the human rights situation continued to be worrisome.

On December 15, 1992, with the definitive end of the armed conflict, the fulfillment of the principal peace accords linked to the cease-fire, the purging of the armed forces, and the demobilization of FMLN members and their integration into civilian life, peace finally became a reality for the Salvadorian people.

Beginning in November, 1992, and based on the experience of the earlier period, the Human Rights Division elaborated a "Methodological Guide." The goal was for active verification to be carried out with a more adequate methodological instrument. This, among other things, would guarantee the use of homogeneous criteria and conceptualizations, which were certainly indispensable. More rigorous and selective criteria were established for the admissibility of complaints. At the same time, the diverse categories of rights violations were defined with greater technical criteria. Finally, a uniformity was achieved for categories of analysis for follow-up work, the closing of cases, and investigations done by ONUSAL on its own initiative.

All this was done with the clear perception that active verification—a notion created in the Salvadorian experience—constitutes a multifaceted activity which includes the capacity of ONUSAL to intervene, even when there have been no complaints, in cases of qualitatively important violations. "Active verification" is a systematic investigation process aimed at gathering objective elements of judgment which allow for the corroboration of the existence of human rights violations. Other aims of the process include the initiation of specific corrective measures, and the promotion of activities within the framework of institution-building.

Active verification is carried out via a process which has various phases. The first phase involves the reception of accusations, or the decision by ONUSAL to look into a case or a situation on its own initiative. The second phase involves an investigation which includes a detailed follow-up of the facts, police work, judicial proceedings, and the exercise of the Mission's power to gather information. In the third phase, after the facts

have been corroborated, if it is decided that no human rights violation exists, the case is closed. However, if the investigation determines the contrary, recommendations are made for rectifying the harm done and for remedying the causes which originated or facilitated the violation. During the entire process, active verification presupposes the offering of the United Nations' good offices to contribute to the efficiency of police work, due process, and security for the witnesses. It also presupposes the United Nations' active intervention to overcome situations of existing violations.

In this way a dialectical relationship is established between vigilance and institution-building. This relationship is, without doubt, the key to an operation of this kind, which goes beyond the mere verification and denouncing of violations, and the traditional technical assistance programs which often have no relation to practical results or people's daily lives.

As noted earlier, active verification allows the Human Rights Division, on its own initiative, to investigate violations. In November, 1992, for example, after detecting a massive and systematic practice of arbitrary detentions which had their origins in so-called "faltas de policía" (minor offenses), the Division carried out a simultaneous and unannounced verification in twenty-six municipal and police (National Police, not the yet undeployed PNC) jails throughout the country. By checking the entry-book information for each of the detained people, their dates of detention, the reason for their detention, and the time they had spent in detention, it was possible to identify a series of irregularities. These irregularities were especially visible in the administrative categorizing of the charges, the unequal punishments meted out for the same offense, the total absence of proceedings to fully guarantee the rights of the detained people, the violation of their right to be in communication with their families, and their inability to exercise their right to a legal defense.

The experience of active verification prompted the implementation of a range of measures designed to reduce these kinds of abuses. Agreement was reached with the National Police on instructions for on-the-ground operations. Under this agreement, there was a dramatic decrease in these kinds of violations. This kind of verification also allowed for defining and

formulating more general recommendations aimed at producing certain legal reforms which would help insure there would be no anachronistic laws that could provide an excuse for these abuses, such as an 1886 police law which is still in force and whose abolition is still pending.

The need to emphasize institution-building has been evidenced by structural situations marked by institutional weakness which is caused by an absence of legal tradition. Moreover, as ONUSAL's withdrawal from the country draws nearer and, with it, the end of an institutional presence of the international community for the verification of human rights in the country, it becomes clearer that the sustainable results of ONUSAL's presence will be seen in the ability of permanent institutions to address the problems of the Salvadorian society.

The Mission's mandate gives it the power to "offer its support to the judicial authorities of El Salvador in order to help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law."<sup>46</sup> But institutions such as the Procuraduría, the PNC, and non-governmental organizations are of similar importance for the protection of human rights.

The subject of judicial reform was taken up by the parties in the peace negotiations. The Human Rights Division has expressed its profound concern regarding the administration of justice and its conviction that there is need for a broad transformation in this area, a transformation which would include the auxiliary organs, the Public Ministry, and the work of defense lawyers. Besides the normative reforms, relations were established with the judicial system. The permanent relationship with magistrates and judges made it possible to carry out training activities in a perspective of modern and democratic reform which would make it possible to gradually remedy the problem of a virtual absence of due process.

In this perspective, a particularly hopeful and encouraging development was the Legislative Assembly's election, by consensus, of a new Supreme Court in late July, 1994. The constitutional reforms derived from the peace accords established the

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46. San José Agreement, *supra* note 35, at 5.

requirement that the Supreme Court be elected by a two-thirds majority of the Legislative Assembly. These reforms also included a participative mechanism for designating the candidates. All of this worked extremely well, allowing for the election of a court made up of illustrious and outstanding jurists. This court, which has recently begun its work, has made an emphatic declaration of the need to act independently in the face of power.

The Procuraduría was instituted as part of constitutional amendments made in fulfillment of the peace accords. The constitution gives the Procuraduría a broad mandate and confers on it the capacity to promote administrative and judicial processes. It also has competence to investigate cases of human rights violations. In that sense, the institution of the Procuraduría reflects advanced criteria of international doctrine on the constitutional protection of human rights. Strengthening the Procuraduría institutionally has been one of ONUSAL's central concerns. As part of the program destined to prepare for this transition, it has been decided in recent months to verify certain categories of human rights violations under an operative modality in which ONUSAL offers technical assistance to the Procuraduría's investigative teams. Without doubt, the Procuraduría is currently facing a huge responsibility and challenge. It faces the unavoidable challenge of taking on the work the United Nations started and continuing it in a way which produces no shocks or traumas.

Another key element of the peace accords was the separation of the police from the armed forces through the creation of a new police, the National Civilian Police (PNC), to replace the old militarized and discredited National Police. Entry into the PNC would come via a new and apolitical National Public Security Academy (ANSP), which would take students in equal numbers from the National Police and the FMLN (20% from each), but whose majority (60%) had not participated at all in the conflict. As the ANSP graduates new recruits, the PNC is gradually replacing the militarized National Police. The Human Rights Division has prioritized its work with the PNC, producing very positive results with the understanding that public security and human rights are not contradictory considerations.

Periodic meetings between the Division and the PNC have served as a forum to discuss a variety of important themes,

including: the elaboration of a plan for a cooperation agreement between the PNC and the Division; the on-the-ground verification of complaints against the PNC; the transmission of relevant verified cases against PNC agents; the design of a plan for workshop courses for PNC officers; the publication of a guide of norms and procedures for the PNC; and the taking of PNC complaints about official behavior of ONUSAL observers.

Tested by a decade of war and repression, some of the Salvadorian non-governmental human rights organizations (NGO's) entered the new era better prepared for human rights protection than some of the country's formal institutions. At the same time, NGO's have had to adapt their work to the challenges of a new situation. While the human rights groups naturally approached many situations from a different angle using different criteria than ONUSAL, their shared objectives made NGO's a natural partner for the mission. In addition to common efforts in human rights verification, the mission's collaboration with NGO's has included training workshops, assistance in drawing international financial support, and joint publications.

Like state institutions, the NGO's face enormous challenges. Those NGO's which fail to adapt to the country's social and political evolution will surely die or be marginalized. The NGO's that will mark the way for the future are those that accept the challenges of providing professional training for their workers, and expand their work agenda to include proposals and cooperation, and not just denunciations. In this perspective, the Human Rights Division is working with some NGO's to try to promote, among other things, international cooperation in a global context where Latin America has ceased to be a priority for many donor agencies.

One of the Division's principal focuses has been to encourage the armed forces to implement new constitutional and other dispositions that grow out of the peace accords, especially those related to the creation of a new doctrine of democratic security which acknowledges the rule of law, and respects human rights and fundamental freedoms. In coordination with the armed forces, the Division has been implementing a program related to the development of elements of military formation in a democratic system. Also in conjunction with the armed forces, the

Division has prepared a book on military doctrine and army/society relations. Ten thousand copies of the book have been printed.

One of the activities that a mission like ONUSAL must treat as critical is education on human rights. After the signing of the peace accords, the Human Rights Division gave priority to specific themes related to the transition period, such as reconciliation and reinforcing the peace. These aspects were fundamentally linked to the fulfillment of the accords, the democratic advancement of the country, and the consolidation of the rule of law. After the first experiences, the mission's approach to education on human rights centered on the idea that the best way for ONUSAL to contribute to education on human rights was for it to support the work of national organizations which had on-the-ground experience and were properly trained to do this work. This support consisted of, in part, the preparation of materials which the national organizations could distribute on a massive scale.

In light of its experience and the above-mentioned decision, the Division has given priority to certain national institutions in its human rights training work. Among these institutions are the Procuraduría, the armed forces, and the PNC, all of which are crucial to the respect for, and guarantee of, human rights. Given the new situation created by the end of the armed conflict, a greater need was perceived for sustained work in the area of human rights education, especially formal education. This work was also necessary within those sectors of society, such as certain NGO's and the Ministry of Education, which were responsible for creating a culture of human rights. As a result, ONUSAL prepared and distributed materials on human rights. The goal was for these materials to be available to every teacher in the country. This goal was achieved.

While ONUSAL's emphasis has been on work with institutions, it also organized radio and television campaigns on human rights. There is a widespread, but certainly reductionist, perception that the theme of human rights refers only to political persecution, disappearances, torture, etc., and that the everyday problems of the ordinary citizen are not necessarily linked to these issues. The precise aim of the radio and television campaigns was to speak to ordinary citizens about their

everyday problems. The campaign was implemented in 1993, and had a very positive impact. It helped the population not only become more aware of its rights, but also to learn how to defend them. According to a poll, 78.9% of the population of San Salvador saw or heard the campaign, and within that group, 85.9% thought the campaign had contributed to people's recognition of their rights.<sup>47</sup>

## VII. POSITIVE RESULTS

Peace has created better conditions for respect of human rights, the realization of which depends on a rigorous application of the agreements. Between 1992 and 1994, there was a dramatic decrease in the number of the most serious human rights violations, such as summary executions, attempted summary executions, torture, and improper treatment. In fact, since 1992, no case of a disappearance has been verified or documented. Given the country's recent history, this in itself is encouraging. Additionally, cases of torture are now occasional and not systematic.

The peace accords, which brought about an end to the armed conflict and transformed both the state and society, have made possible a positive and substantive change in the conditions for protecting and exercising human rights. The grave and systematic human rights violations, which gave rise to the process of international monitoring, are no longer part of Salvadorian reality. The conflict has been replaced by peace.

A political regime which once excluded important national sectors has now been replaced by a democratic project which includes the ex-guerrillas as a legitimate political party. The implementation of the peace accords has resulted in constitutional, institutional, and structural reforms, all aimed at giving rise to the rule of law—the best guarantee of the protection of human rights. In general, there has been a qualitative change in the social, judicial, and political conditions in which Salvadorians can exercise their rights. In that sense, the structural situation which generated grave and systematic violations

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47. Jose Matias, Research project carried out at Delgado University.

in the 1980s is being replaced by the process of building a democratic, reconciled society.

While the implementation of the peace accords is a process whose final results will only be seen in definitive terms when the institutions and democratic system function efficiently, there is no doubt that, in global terms, the human rights situation in the post-conflict period shows an improvement. Institutionally, politically, and legally, the current human rights environment is radically more favorable than the one which existed during the armed conflict. The peace accords and their subsequent execution have had and are continuing to have an exceptionally important global impact in improving the human rights situation in El Salvador. This has been clearly understood by the Salvadorian public which supports the work of ONUSAL.<sup>48</sup>

Some serious problems, however, have still not been resolved; the main one being impunity. This is confirmed daily by the facts themselves, and it is the perception of the Salvadorians. It is a factor which threatens public security and the maintenance of human rights. In order to deal with this problem, it is important to continue efforts to strengthen the new PNC and reform and modernize the judicial system. The new public security policy and the recent Supreme Court election provide excellent conditions for carrying out these measures, for fully implementing other legal and institutional reforms which have already been adopted, and for adopting still other pending reforms for which there is increasing consensus (for example, reforms in the penal system).

United Nations Secretary-General Boutros Boutros-Ghali has formulated the concept of "post-conflict peace-building," defining it as "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into

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48. This has been documented in many polls made during the last two years. For instance, a 1992 poll conducted by the Central American University's University Institute of Public Opinion (IUDOP) established that 70% of the population had a positive attitude toward ONUSAL, and only 5% had a negative attitude. EL SALVADOR PROCESO, Weekly bulletin, Number 528. In May and June of 1994, at a time when ONUSAL's mandate had been extended several times, another IUDOP poll found that 27% of the population said they wanted ONUSAL to "stay forever," 10.3% wanted it to "get out now," and around 60% said it should stay until the peace accords had been carried out.



conflict.”<sup>49</sup> Once peacemaking and peace-keeping have fulfilled their objectives, “only sustained, cooperative work to deal with underlying economic, social, cultural and humanitarian problems can place an achieved peace on a durable foundation.”<sup>50</sup>

It would be foolish to think that all the root problems of human rights violations in El Salvador have been fully addressed by the peace operation described here. In order to provide a long-lasting and irreversible response to human rights problems, it is imperative that there be appropriate instruments of control and solid institutions functioning within the framework of the rule of law. The utopia here and elsewhere is, and should continue to be, that there are no human rights violations. Unfortunately, however, human rights violations will continue to exist in various degrees, in all societies. For this reason, conditions must exist to discourage these violations, and to investigate and sanction them when they do occur.

In the post-Cold War era, the integrated peace-keeping operation in El Salvador has emerged as a pioneering experience, transcending the already-important task of eliminating the conflict and establishing peace. The distinctive feature of “peacemaking,” “peace-keeping” and “institution-building” in El Salvador is that the peace accords foresee an interrelated series of tasks to be executed by the internal actors under the international verification of the United Nations. The goal is to generate State and social institutions and political conditions which permit the efficient functioning of democracy and the rule of law, while promoting, at the same time, changes in the relations between the State and society, with the ultimate goal of achieving national reconciliation and reunification.

The practice of active verification in El Salvador has had positive results. It has contributed to: the ending of armed conflict; an important decrease in human rights violations; constitutional and legislative reforms which have strengthened democratic institutions promoting sustained improvement in the country’s human rights situation; and the progressive overcoming of a culture of fear and its replacement by an alternative culture of human rights.

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49. *An Agenda for Peace*, *supra* note 5, ¶ 21.

50. *Id.* ¶ 57.

Worrisome human rights situations continue to exist in El Salvador, but the situation is obviously better than that existing before peace negotiations began. Since ONUSAL's mandate will expire in the coming months, the roles and responsibilities of permanent State institutions and social organizations will become crucial and decisive. In this context, it will surely be necessary to define new forms of international cooperation. These forms will probably be different from those provided in the framework of active verification during the last three years. But this does not mean ending an entire experience and replacing it with traditional programs of "technical support" which lack the strategy and ambitious content aimed at really changing the state of things.

*San Salvador, September 1994*

