

THE LOST AGENDA

Human Rights and UN Field Operations

Human Rights Watch

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HUMAN RIGHTS WATCH

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TABLE OF CONTENTS

INTRODUCTION	1
El Salvador: A Positive Example	2
Operations to Establish Peace	2
Humanitarian Operations	4
The Causes of UN Inattention to Human Rights	5
A High Commissioner for Human Rights	8
The Need for Leadership	8
EL SALVADOR	13
Background	13
Human Rights Abuses and Violations of the Laws of War	14
UN Actions 1991-93	17
UN Observer Mission in El Salvador (ONUSAL)	18
ONUSAL's Multiple Roles	24
Lack of Government Cooperation	27
The Truth Commission	28
The Ad Hoc Commission	31
Recommendations for UN Action	33
CAMBODIA	37
Background	37
Human Rights Abuses and Violations of the Laws of War	43
UN Actions	44
Rush to Elections	44
Demobilization and Cantonment: The First Failure	46
"Direct Control": The Second Failure	51
Protection and Promotion of Human Rights: a Mixed Record	53
Release of Prisoners and	

Prison Conditions.....	54
The Criminal Code.....	55
Investigations of Serious Abuses.....	57
Taking "Corrective Action".....	60
Racial Incitement and Ethnic Violence: Ineffective Response.....	63
Environment for Elections: Not Neutral.....	66
Conclusions.....	68
Recommendations.....	72

FORMER YUGOSLAVIA.....	75
Background.....	75
Human Rights Abuses and Violations of the Laws of War.....	80
UN Actions.....	85
UN Peacekeeping in Croatia.....	86
UN Actions in Bosnia-Herzegovina.....	90
International Blockade and Other Sanctions.....	92
Delivery of Humanitarian Aid.....	95
Efforts of the Special Rapporteur.....	99
The Peace Plan.....	100
Accountability.....	101
Recommendations.....	103

SOMALIA.....	107
Background.....	107
Human Rights Abuses and Violations of the Laws of War.....	110
UN Actions 1991-93.....	116
Instant Diplomacy.....	117
Sahnoun and the Beginnings of a Response.....	119
Contradictory Relief Efforts.....	121
UNITAF Takes Over.....	123
Peace Talks.....	125

UNOSOM Stands By	128
UNOSOM II	130
Recommendations	131

IRAQ	135
Background	135
Human Rights Abuses and	
Violations of the Laws of War	138
UN Actions	142
Monitoring Abuses	143
Sanctions	151
Prelude to War	152
Post-war Debate	154
Effects of the "No-Fly" Zones	158
International Humanitarian	
Law and War Crimes	160
Iraqi Practices in Kuwait	160
Conduct of the Gulf War	162
Humanitarian Intervention	164
Establishment of the DHA	169
Recommendations	171

INTRODUCTION

In his "Agenda for Peace," Secretary General Boutros Boutros-Ghali called for a new UN activism in confronting armed conflict and humanitarian disaster. His vision, made possible by the end of the Cold War and the new possibility of consensus on the Security Council, corresponded with a dramatic growth in the size and scope of UN field operations. Yet while severe human rights abuses often play a critical part in fueling armed conflict and aggravating humanitarian crisis, they have been given a low priority by the officials who oversee UN field operations. This lost agenda handicaps the UN in its new and ambitious undertakings, as it sells short one of the central ideals on which the UN was founded.

That is not to say that the UN has abandoned the language of human rights. The documents authorizing major UN field operations, from Security Council resolutions to UN-sponsored peace agreements, are often filled with rhetorical commitment to human rights. But the enforcement of that language is, with rare exceptions, weak. Human rights have been treated as a dispensable luxury, not as a central element in the success of UN peacekeeping and humanitarian operations.

The cost of this inattention to human rights is anything but academic. It can be measured in damaged credibility, operational missteps and impaired effectiveness. As an organization committed to upholding human rights standards worldwide, Human Rights Watch is naturally disturbed by the setback to fundamental freedoms implicit in the UN's operational devaluation of the human rights cause. But the effect of this disregard is also felt in the squandered opportunities and diminished prospects for success of UN field operations. Because abuses such as murder, torture and deliberate starvation fuel the crises that the UN is attempting to overcome, the failure to end those abuses and to establish a system of accountability that will deter their recurrence leaves a shaky foundation on which to build long-term security.

This downgrading of human rights is not an isolated phenomenon. In this report, we examine five of the largest UN field operations in recent years, in Cambodia, El Salvador, Iraq, Somalia and the former Yugoslavia. These operations span a broad range of regions and circumstances. Yet with the exception of El Salvador, they have in common the low priority given to human rights.

EL SALVADOR: A POSITIVE EXAMPLE

The exception of El Salvador shows both the feasibility and the importance of a more energetic human rights agenda. Because of the sophistication of the Salvadorans themselves and the vision of the UN officials involved, human rights played a central role in the UN-sponsored peace process. Even before a peace accord was signed, one hundred UN human rights monitors were deployed in the country to deter abuses and to build a climate of confidence in which both sides could make the compromises necessary to end the war. The size of the monitoring force and its deployment throughout the country made it a credible force, and its right to enter detention facilities without prior notice gave it a unique ability to verify detention practices. The peace accord, signed in 1992, provided for continued UN monitoring of human rights, a commission to provide an official accounting of the abuses of the prior twelve years, a restructuring of the security forces to neutralize some of the most abusive agencies, and the purging from the army of those who had been responsible for gross abuses. While problems remain, the prospects for a lasting peace are greater in El Salvador than in any of the other countries under review. The prominent role accorded human rights is an important part of the reason why.

OPERATIONS TO ESTABLISH PEACE

The Salvadoran experience stands in sharp contrast to the Cambodian peace process. Fostered by the Security Council's five permanent members, the 1991 Paris peace accords set up a UN mission of unprecedented size and authority in Cambodia, with a mandate to create a neutral political environment in which to hold elections. Yet while human rights concerns figured prominently in the accords, the UN subordinated most of the human rights agenda in a misguided rush to the ballot box. Fearful of jeopardizing the elections, the UN responded belatedly and ineffectually as political violence accelerated. Despite provisions in the accords allowing the UN to take "direct control" of key ministries of the Cambodian government, the UN kept a passive distance as government authorities murdered political opponents and threatened voters. Despite the power to take "corrective action" to remedy abuses, UN officials waited months before seeking prosecution of government offenders or of Khmer Rouge forces who were murdering ethnic Vietnamese. And despite the largest UN field operation in history, the UN never established an independent and professional justice system that would have helped to build the rule of law and respect for

basic rights.

While conceding that political violence had sabotaged a neutral political environment, UN officials sought to portray the elections as "free and fair." But no public relations campaign, or the unexpected heavy turnout at the polls, can obscure the fact that, whatever government emerges from the elections, the UN's timid promotion of human rights will have bequeathed the Cambodian people a troubling precedent of impunity for political violence.

Similarly in the former Yugoslavia, the UN sought to build peace while disregarding the ethnically motivated murder, torture and rape that was fueling the war. The endless peace negotiations, conducted by UN and European Community negotiators, conferred legitimacy on Serbian forces – the main perpetrators of "ethnic cleansing" – as it helped them stave off more forceful international intervention. Yet the UN never insisted that the price for these important benefits must be even a ceasefire, let alone an end to the killing and the lifting of obstructions to the free delivery of humanitarian supplies. Rather than insist on respect for human rights as a precondition for participation in the peace talks, the UN allowed negotiations to become a cover for further killing. With no apparent consequence for their flouting of basic rights, the killing continued, and the prospects for a lasting peace became ever more remote.

In the meantime, the UN gave little political or financial support to efforts to investigate and prosecute war criminals. A Special Rapporteur for the former Yugoslavia, appointed by the UN Human Rights Commission, did pursue his mandate aggressively, but his insistence on the relationship between human rights, regional security and humanitarian issues was ignored by those with authority over UN operations in the field. A War Crimes Commission was established in 1992 to collect evidence of atrocities, but it was grossly understaffed and underfunded. After lengthy delays a War Crimes Tribunal has now been authorized, but it will remain an empty gesture unless the UN shows new resolve to collect evidence of atrocities, to bring the perpetrators to justice, and to make clear that amnesty for war crimes will never be a

subject of negotiations.

HUMANITARIAN OPERATIONS

A similar narrowness of perspective has been apparent as the UN confronted humanitarian emergencies in Iraq, Somalia and, again, the former Yugoslavia. While these humanitarian crises were the product of widespread human rights abuses, the UN has tended to proceed as if all that is at stake is the logistical problem of delivering relief supplies. UN officials remain fixated on the symptoms of humanitarian catastrophe, while remaining blind to the cause -- the abuses that disrupt the production, distribution and acquisition of food and other necessities.

In the former Yugoslavia, as noted, the UN-sponsored peace talks proceeded without requiring Bosnian Serbs to remove obstacles to the delivery of relief supplies as a precondition to sitting at the bargaining table. In the few instances in which UN officials took courageous stands to highlight the plight of besieged Bosnian cities -- the military commander of UN forces in Bosnia's dramatic stand with the residents of the besieged town of Srebrenica, and the UN High Commissioner for Refugees's temporary suspension of relief supplies to Sarajevo to highlight the plight of the besieged cities in eastern Bosnia -- they were rebuked by their superiors.

In Somalia, the UN abandoned the country throughout most of 1991, and then in early 1992 made feeble and ill-prepared efforts to end the abusive conflict between the warlords that was the cause of the spreading famine. When later in 1992 the Secretary General's Special Envoy recommended more aggressive UN action and publicly criticized the UN's failings to date, he was forced to resign. Even after US-led troops landed in Somalia with Security Council authorization, they made no effort to document the atrocities attributable to the warlords, to establish tribunals to try them, or to exclude them from a role in Somalia's future. To the contrary, the same warlords whose brutality had bred mass starvation were rewarded with a central role in UN-sponsored peace talks.

Iraq represents the UN's most aggressive approach to security issues. From the war to reverse the Iraqi invasion of Kuwait to the tough insistence on Iraqi disarmament, the Security Council required strict conformity with its demands. To some extent, this resolute stance had ancillary benefits for the protection of human rights. In 1991, when Kurdish and Shi'a refugees swarmed to Turkey and Iran to escape the Iraqi government's brutal suppression of an uprising, the Security Council responded with the creation of a safe haven and a

no-fly zone in northern Iraq, to entice the refugees back. But at other times, when the consequence of repression remained within the borders of Iraq, the UN took a much less aggressive posture. In response to reports of severe repression of Marsh Arabs, the Security Council sat on its hands, leaving the establishment of a no-fly zone in southern Iraq to three Western permanent members. The lack of a UN presence on the ground (a critical element of the protection in northern Iraq) allowed serious abuses to accelerate. UN relief agencies, which might have acted as informal human rights observers, have refrained from pressing for access to the populations in southern Iraq that are most at risk. The Special Rapporteur on Iraq, appointed by the UN Human Rights Commission, has called for on-site human rights monitors. But while the UN insisted on deploying monitors of Iraqi weaponry, it has so far failed to heed his pleas for monitors of Iraqi atrocities.

THE CAUSES OF UN INATTENTION TO HUMAN RIGHTS

- o **Misguided Neutrality:** Perhaps the major reason for the UN's downgrading of human rights concerns is the premium placed by the institution on the appearance of neutrality. UN officials tend to conceive of their role first and foremost as that of neutral mediators. Rather than stand for the active implementation of certain values -- among them human rights standards -- they see their primary role as that of passive arbitrators between parties in dispute.

Human rights promotion is an early casualty of this preeminent quest for even-handedness. Because one side to a conflict often violates human rights more consistently than another, UN officials seem to fear that public criticism of human rights violations -- the most readily available weapon to combat abuse -- might spark charges of partisanship. UN officials might rebuff those charges by stressing their impartial application of universal standards, but instead they seem to compensate either by assigning blame with a broad brush to all parties (thus obfuscating responsibility) or by avoiding the topic altogether.

Some officials justify their strict neutrality by arguing that it helps to secure peace, and that peace is the best way to promote human rights. But peace built on indifference to human rights is likely to be short-lived. And, as occurred in former Yugoslavia, peace negotiations pursued with indifference to immediate human rights concerns are prone to become a

cover for ongoing abuse, making the UN complicit in continuing atrocities.

- o **Diplomatic Caution:** The disinclination to direct tough public criticism at human rights violators is only reinforced by diplomatic caution. As diplomats, UN officials tend instinctively to avoid public denunciation of abuses. The discord introduced by public criticism runs counter to the diplomatic preference for cordial relations. Yet warm relations should be earned, with a minimum price being respect for fundamental rights. Again, the UN must stand for more than congenial exchanges; the content of those exchanges should be determined in significant part by the UN's commitment under its Charter to uphold human rights.
- o **Operational Blackmail:** Often the motive for ignoring human rights appears quite benevolent. For example, suppressing public criticism of abuses may be perceived as the price that must be paid to secure various operational goals, such as an abusive government's consent to the shipment of relief to those in need. Particularly when suffering is acute, this argument can appear quite compelling. But the necessity of succumbing to such blackmail would be vastly diminished if the UN made clear as a matter of principle that it will not bargain away its duty to criticize publicly gross abuses of human rights – much as the world now largely accepts that one does not bargain with terrorists. Such a stance would have the effect of removing the issue of public criticism from the negotiating table, as it would permit the UN to continue to highlight the fact that most humanitarian emergencies have their roots in human rights abuse.
- o **Cost and Complexity:** An important factor in the low priority given human rights is the complexity of some human rights concerns. Because major field operations are expensive, the UN has been eager to complete its mission quickly. But this impatience is often incompatible with the determination and commitment required to ensure respect for human rights.

The cost of the desire for a quick fix is perhaps most pronounced when it comes to establishing accountability for gross abuses of the present and recent past. In its eagerness to move forward, the UN has tended to

ignore these atrocities, leaving an unbroken pattern of impunity for serious human rights violations. That impunity not only does a disservice to the victims of gross abuses and to international law requiring criminal prosecution for such offenses. It also leaves an unsteady foundation for national reconstruction, with the legacy of a murderous past haunting future efforts to establish respect for human rights and the rule of law.

Again, El Salvador is the exception that proves the rule. In El Salvador, the care taken to investigate and acknowledge formally the abuses of the past, and the determination to rid the armed forces of the officials who were responsible for those abuses, made important, if incomplete, strides toward establishing the principle that murder, torture and disappearance could not be committed without consequence. But in both Iraq and the former Yugoslavia, the UN has proceeded at a snail's pace with efforts to bring to justice those who are responsible for war crimes and crimes against humanity.

In Cambodia, past abuses were never on the UN's agenda, and the UN's timid response to ongoing abuses meant that they, too, met little active response. In Somalia, establishing accountability for the abuses that led to mass starvation -- such as by investigating cases of abuse and ensuring that those responsible do not play a role in Somalia's political future -- never surfaced as a UN priority.

Indeed, even in El Salvador, despite the UN's success in chipping away at the impunity that had prevailed for past abuses, senior UN officials admitted privately that exposure of contemporary abuses was often made secondary to political tasks. Reports on the mission's human rights findings were few and far between, whereas timely release would have more effectively focused public attention and exerted pressure for improvement.

A HIGH COMMISSIONER FOR HUMAN RIGHTS

One frequently proposed solution to the UN's relative disregard for human rights concerns has been the creation of a UN High Commissioner for Human Rights. The proposed post would parallel but supplement the position of

Under Secretary for Humanitarian Affairs, which was created in December 1991 to coordinate relief campaigns but was given a narrow mandate that attempts to divorce humanitarian disaster from its human rights causes. We endorse any effort to raise the profile of human rights within the UN bureaucracy and to facilitate the flow of human rights information to the Secretariat and Security Council. But many of the proponents of a Human Rights Commissioner conceive of his or her presence in Geneva, where the UN's Centre for Human Rights is located. The discouraging history of Geneva-based efforts to increase the importance of human rights concerns in the running of UN field operations gives ample reason for caution. Special Rapporteurs on Iraq and the former Yugoslavia, authorized by the Geneva-based UN Commission on Human Rights, have vigorously documented abuses within their jurisdiction and offered creative approaches for protecting human rights. But their recommendations have been systematically ignored. For a High Commissioner for Human Rights to make a substantial difference in the priorities of UN field operations, he or she should probably be based in New York, where these operations are conceived and guided, not in Geneva.

THE NEED FOR LEADERSHIP

Quite apart from location, the effectiveness of any mechanism for strengthening the role of human rights in UN field operations will depend on more than bureaucratic rearrangement. There is clearly a need for an early-warning system to alert the UN of impending human rights crises, a pool of experts who can be called on at short notice to serve as human rights investigators, and a heightened profile for human rights within the Secretariat itself. But none of this will be decisive unless it is combined with a commitment from the top -- from the Secretary General and the Security Council -- to apply human rights standards vigorously and early. Elements of that commitment should include:

- o **On-site monitoring:** Where a major UN peacekeeping or humanitarian project is undertaken, it should include adequate numbers of civilian human rights monitors to be deployed widely within the country. These monitors should be well financed, equipped and staffed, and understood to be an essential element of the mission.
- o **Public Reporting:** The human rights monitoring component of a UN mission should be required to publish its findings at frequent intervals and in a manner that is accessible to citizens of the country where they

are at work as well as to the international community. By removing human rights advocacy from the negotiating table – by making it a precondition to any UN field operation rather than a bargaining chip in peacekeeping and humanitarian operations -- regular public reporting can help to ensure that human rights concerns are not subordinated to other political considerations.

- o **Enforcement of human rights guarantees:** Agreements that govern a UN mission's mandate in a country should include provisions for the enforcement of compliance with human rights guarantees. At minimum these should include the duty to investigate gross abuses and to denounce them publicly. But they should also include administrative and legal sanctions, ranging from disqualification from public office to criminal prosecution. The UN must then treat these mechanisms to establish accountability for gross abuse not as an inconvenient obstacle to peacekeeping or humanitarian relief, but as an essential element of the UN's mission, and as critical to its long-term success.
- o **Accountability for Past Abuses:** Where serious human rights violations form the backdrop to a conflict or humanitarian crisis, the UN should not operate in a country as if it were writing on a blank slate. Abuses of the past can haunt future reconstruction, by triggering a cycle of revenge and by establishing a precedent of impunity for gross abuse. To overcome this legacy, the UN must establish a system of accountability, through the same mechanisms that can be used to address ongoing abuses: investigation and formal acknowledgment of the truth about the past, disciplinary measures, and prosecution of the offenders in national or international tribunals.
- o **Placing the Prestige of the UN Behind the Defense of Human Rights:** The UN enjoys enormous prestige and authority in many parts of the world. As it undertakes expanded field operations, its stature should be placed in the service of human rights. UN officials in the field should make clear, through affirmative statement and symbolic action, that the UN takes seriously its obligation under the Charter to promote human rights, and stakes its reputation on defending the human rights of those under its charge. The prospect of incurring the public wrath of the UN would go a long way toward discouraging government and rebel forces from flouting human rights standards.

- o **Creative Defense of Human Rights:** Violent conflict and humanitarian emergency are never predictable. What worked in one situation to avert abuse may not serve well in another. The UN should encourage innovation in the defense of human rights. Creative initiatives, such as the UN military commander in Bosnia's courageous stand with the people of Srebrenica, should be rewarded, not met with reprimand.
- o **Conceptual Leadership:** Perhaps most important, Secretary General Boutros-Ghali should provide the conceptual leadership to raise the profile of human rights in UN field operations, and should receive a firm endorsement by the Security Council. The Secretary General should find opportunities to clarify publicly that the promotion of human rights is critical to the success of peacekeeping and humanitarian efforts. While this position will undoubtedly be unpopular with some governments who wish to banish human rights from the UN's lexicon, the Secretary General should take the lead in asserting the importance of human rights promotion, as a key provision of the UN Charter, a requirement of international law, and a pragmatic necessity to the success of the ambitious new undertakings on which the UN has embarked.

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EL SALVADOR

BACKGROUND

Twelve years of bloody civil conflict in El Salvador came to an end in January 1992, with a peace accord negotiated under the auspices of the United Nations. The Salvadoran government and the *Frente Farabundo Martí para la Liberación Nacional* (FMLN) agreed to a series of institutional reforms designed to enable the FMLN to demobilize its forces and participate in political life. Among these were reforms of the police and judiciary and the creation of a government office to hear and investigate human rights complaints. The accord also projected the creation of two commissions to end impunity for human rights violations: one to reform the military by examining the records of military officers with an eye to purging those who had committed or tolerated abuses, the other to investigate the past and recommend measures to achieve national reconciliation. The reforms and the commissions would be overseen by the UN, the first such effort of this kind.

Even six months before the accord was finalized, the UN was already conducting an unprecedented monitoring effort in El Salvador. Under a 1990 human rights agreement between the two parties, the United Nations Observer Mission in El Salvador (ONUSAL) began operations in July 1991, with a mandate to "take any steps it deems appropriate"¹ to defend human rights, including the crucial ability to visit any military installation or detention center without prior notice. With the signing of the 1992 peace accord, ONUSAL expanded to include large military and police divisions responsible for overseeing the implementation of the accord. Meanwhile, ONUSAL's Human Rights Division continued to play what its own officials called a "dissuasive" and "preventive" role with regard to abuses.

The Salvadoran conflict was characterized by brutal political killings, disappearances, torture and harassment by the armed forces and police, and the FMLN's targeted assassinations of civilians, kidnappings and indiscriminate use of landmines. The conflict claimed tens of thousands of lives, overwhelmingly those of civilians murdered and disappeared by official forces, and 1.2 million

¹ United Nations document A/44/971; S/21541, "Agreement on Human Rights," San José, 1990, paragraph 13.

peasants were displaced within El Salvador or fled the country.

Ending an insurgency through dialogue and mutual concessions was a historic achievement, and could not have come about without the commitment of both sides to a negotiated peace. Equally important, however, was the unprecedented role of the UN in mediating a civil conflict. The UN became observer, participant, or guarantor of nearly all of a package of processes designed to end the war and construct the bases for peace.

Unique characteristics of El Salvador may limit the applicability of the experience there to other situations: both sides negotiated in good faith, in part because both sides concluded that there was no military solution to their differences, in part because they could no longer count on foreign military support; and the nation lacks the ethnic, religious and regional divisions that underlie human rights and humanitarian crises elsewhere. Nor should the achievements in El Salvador be oversimplified. The existence of peace accords has not brought human rights abuses to an end altogether, and political tensions are if anything rising in expectation of elections in 1994. But the experience in El Salvador is the most successful of the recent UN operations in making and keeping peace, and thus is an important precedent.

HUMAN RIGHTS ABUSES AND VIOLATIONS OF THE LAWS OF WAR

A reformist coup in October 1979 is perhaps the clearest point of departure for a history of the civil conflict in El Salvador. A group of junior officers overthrew a repressive general and installed a civilian-military junta, which recognized the need for reform; but hard-line military officers and the political right made that impossible. By the late 1970s the corruption and inequality of the Salvadoran political system and economy had created broad pressure for change. Fraudulent elections, violent suppression of protest, and the concentration of wealth in few hands had created a fertile context in which guerrilla organizations formed, later to become the FMLN. Mass civilian protests illustrated the breadth of demands for change. But the hard-line officers stepped up repression, stymied land reform and seized control again. The trend toward open warfare escalated. Civilians who participated in a sequence of juntas resigned from the government and became part of the opposition. In March 1980, with the death-squad assassination of the archbishop of San Salvador, Oscar Arnulfo Romero, the nation lost its principal mediator and most eloquent voice for non-violence. In mid-1980, the reformists, along with mass-based popular organizations, formed the *Frente*

***Demócrata Revolucionario* (FDR), which later became the political arm of the Marxist and social-democratic opposition. Then came the November 1980 group execution of six senior leaders of the FDR, carried out by the security forces, illustrating the lengths to which government forces would go to eliminate even those who engaged in peaceful political dissent.**

The early 1980s were a period of untrammled abuse by Salvadoran armed forces, the security forces and the paramilitary groups of the far-right. Targeted killings and disappearances registered in the thousands during these years. The death squads composed of plainclothes armed forces agents often abducted their victims in broad daylight, flaunting their impunity, and until 1990, no senior military officer was convicted of a politically motivated human rights offense. The impunity of the armed forces and death squads resulted from a military policy of protecting its own and from the attendant weakness and corruption of the judiciary, as well as successive amnesties. The courts were able or willing to challenge military authority only in cases that provoked sustained international attention over many years and that threatened to endanger US military aid.

From 1980 to 1983, the army, security forces and allied death squads unleashed a wave of unprecedented repression against sympathizers, or suspected sympathizers, of the political left in urban areas. Thousands of deaths also occurred in ground sweeps by the armed forces, who made no distinction between rebel combatants and rural civilians, whom they considered to be actual, or potential, sympathizers. At the Sumpul River near the Honduran border, in May 1980, no less than 300 civilians were massacred by combined troops of the National Guard, the Salvadoran Army, and paramilitary personnel.² Fleeing peasants who crossed the river into Honduras were captured by Honduran soldiers and forced to return to the killing field. The largest civilian death toll in a single episode of the war – a massacre that encompassed six hamlets and villages during December 1981, in Morazán department – has come to be named for one of the hamlets, El Mozote. Tutela Legal, the human rights office of the San Salvador archdiocese, compiled a list of 794 victims.³ Because of international

² United Nations, Informe de la Comisión de la Verdad para El Salvador (hereinafter "Truth Commission Report"), *De La Locura a La Esperanza: La Guerra de 12 Años en El Salvador* (United Nations: San Salvador and New York, 1992) p. 126.

³ The Truth Commission cites "more than 500 identified victims" in and around El Mozote. *Ibid.*, p. 118.

publicity over El Mozote, the scale of killing in ground sweeps declined thereafter; many civilians continued to die in ground sweeps, but not many hundreds together.

As the Salvadoran armed forces received military aid from the United States, however, their air power increased, and was used extensively from 1983 through 1986 to drive civilians out of areas in which guerrillas were active, massively displacing the rural population. Away from rural combat areas, military forces and death squads engaged in campaigns to exterminate popular leaders and potential mediators of the conflict: peasant and union leaders, students and teachers, human rights activists, journalists.

In the early years of the presidency of Christian Democrat José Napoleón Duarte (1984-89), US pressure led to a decline in targeted death squad violence; but toward the end of the 1980s, it was rising again. In November 1989, for example, under pressure from a vigorous guerrilla offensive, the army carried out the cold-blooded murders of six Jesuit priests, their housekeeper and her daughter. The use of severe forms of torture, also systematic in the first three years of the decade, declined for several years only to reemerge later, after the 1989 electoral victory of the extreme-right ARENA party.

Killings by the guerrilla forces made up a smaller proportion of the civilian dead, but were serious violations of international law nonetheless. During the first half of the 1980s, virtually all FMLN killings were either targeted assassinations -- particularly of suspected informants and municipal officials -- killings of civilian passengers of vehicles that failed to stop at guerrilla roadblocks, or executions of captured soldiers. Over time, as pressure to respect human rights and other considerations reduced official abuses, there was less disparity between the level of abuses committed by guerrillas and those committed by official forces. Forced recruitment, the endangerment of civilians through widespread use of landmines, and executions of captured noncombatants were practiced by the guerrillas during the mid-1980s. In later years the guerrillas also assassinated leading government figures, including the nation's Attorney General in April 1989.

In the 1989 elections, a moderate representative of the far-right ARENA party, Alfredo Cristiani, won the presidency, in part because the electorate was exhausted by war and angry at Christian Democratic corruption. Cristiani inherited a military stalemate, and sought political negotiations with the FMLN to end the conflict. These negotiations took on new urgency after the murder of the Jesuits in November 1989. In response to the Jesuits' murders, and in the context of the end of the Cold War, the US Congress halved military aid to El Salvador, the largest reduction of the decade.

UN ACTIONS 1991-93

The UN's role in El Salvador grew out of its work elsewhere in Central America. As the 1987 Central American peace plan spearheaded by Costa Rican President Oscar Arias began to bear fruit, the five Central American presidents called on the United Nations to verify different aspects of the accord.⁴ Its first step was to monitor the 1990 Nicaraguan elections -- the first time that the UN had overseen an electoral process in a sovereign state, and the first major UN operation in the Western hemisphere.

The peace talks in El Salvador were also a first: the UN's first attempt to mediate an internal conflict. Beginning in October 1989, the UN provided a representative as "witness" to the initial contacts between the warring sides. The UN role gradually grew to one of directly mediating the talks and drafting proposals for presentation to the two sides. Talks began in earnest in April 1990 in Geneva, where both parties pledged to work toward political agreements to end the armed confrontation. The UN served as guarantor and facilitator of the process, under assurances that both the government and the FMLN were operating in good faith.

Because human rights violations had played such a major role in the origins and maintenance of the conflict, any negotiations aimed at incorporating the FMLN back into political life would have to deal with the structural roots of political violence. The earliest major product of the dialogue -- a human rights agreement signed in San José, Costa Rica in July 1990 -- set out the minimum conditions to which both sides would agree. It also reflected the central importance of human rights in any effort to end the war. The accord envisioned the creation of a human rights verification mission under UN auspices; the mandate of the mission was defined, and both sides agreed to their obligation to cooperate with it. "The purpose of the Mission," said the agreement, "shall be to investigate the human rights situation in El Salvador as regards acts committed or situations existing from the date of its establishment and to take any steps it deems appropriate to promote and defend such rights."⁵

⁴ONUSAL, "The United Nations Role in the Central American Peace Process," Fact Sheet No. 2 (New York: United Nations Department of Public Information, July 1991), p. 1

⁵ *Ibid.*, paragraph 13.

Subsequent negotiations led to the creation of a Truth Commission and an Ad Hoc Commission. The purpose of the first was to come to terms with the past so as not to repeat it; the second was intended to break the cycle of impunity by purging the military, in conditions where actual trials for human rights abuses were unlikely.

UN Observer Mission in El Salvador (ONUSAL)

ONUSAL, a product of the San José agreement, opened its offices in July 1991, five months before the comprehensive peace accord was signed. Its staff of 101 included forty-two human rights observers, legal advisers, educators and political affairs advisers; fifteen military advisers; and sixteen police advisers. The UN deserves substantial credit for launching the mission at this time, on the assumption that its presence would make the broader peace process irreversible.

But the agreement had provided few if any operational guidelines. The mechanics of ONUSAL's operations, in its six regional and sub-regional offices throughout El Salvador, were left to improvisation. Precisely because ONUSAL's powers were so broad, it was important for such a mission to develop uniform criteria for investigating and classifying cases that were brought to its attention in order to ascribe responsibility and press for further governmental action. For almost eighteen months into its operation, the Human Rights Division lacked a uniform procedure for following cases; some personnel considered that direct investigation was beyond the ONUSAL mandate, while others did carry out investigations parallel to the judicial system. The division adopted a set of methodological guidelines in November 1992, but this should have been done at the outset; now, changes in classification criteria will make it difficult to use ONUSAL data to trace trends over the term of ONUSAL's existence.

When the peace accord was signed in January 1992 in Chapultepec, Mexico, ONUSAL's responsibilities were expanded. It was required to oversee the separation of military forces and the concentration of troops in designated areas; the taking of an FMLN weapons inventory; the abolition of the security forces, and other aspects of the peace plan. Most of the Human Rights Division's police observers were absorbed into the expanded Police Division, and the size of the human rights staff correspondingly diminished. This was a reflection of the fact that senior ONUSAL officials ascribed lesser importance to human rights work – something which Americas Watch has criticized in the past.⁶

⁶ See Americas Watch, "El Salvador -- Peace and Human Rights: Successes and Shortcomings of the United Nations Observer Mission in El Salvador (ONUSAL)," New York,

ONUSAL was not, in fact, equally welcome by both sides. The government viewed international supervision as an irritation to be tolerated; the FMLN, as an accomplishment of the process of dialogue. Although the reaction of most Salvadorans to the UN presence was positive, the mission came under vicious attack by elements of the far-right and, at times, by the government.⁷ And one prominent legal member of the ONUSAL team became such a point of contention with the government that ONUSAL did not renew his contract, thereby submitting to government pressures.⁸

The lack of cooperation from judges was another important difficulty, impeding ONUSAL's ability to follow the investigation of cases. This uncooperativeness stemmed from attitudes of some of the most senior members of the judiciary, including Supreme Court President Mauricio Gutiérrez Castro, who reportedly viewed the peace accord as an agreement between the executive branch and the FMLN, and thus not binding on the judiciary. Judges were frequently defensive about ONUSAL inquiries into legal cases; in extreme instances, a judge would refuse to share copies of papers bearing on a case. Moreover, it became evident as work proceeded that, with judicial resistance to oversight and ONUSAL's lack of a mandate to prosecute crimes, impunity would tend to remain the rule.

So acute were the failures of the judicial system that ONUSAL made them the focus of its fourth report, released in June 1992. Among its findings: that the

September 2, 1992.

⁷ These occurred mainly before completion of the peace accord. For example, in July 1991, as the ONUSAL office prepared to open, a group calling itself the Salvadoran Anti-Communist Front (FAS) threatened to "let loose a truly bloody civil war" if "internationalists" were forced on El Salvador. In early December, an ONUSAL military observer was insulted in a street of the capital and moments later, knocked to the ground as a driver tried to run him over. Among senior government officials it was widely believed that ONUSAL was biased against the government. On October 22, 1992, radio stations broadcast a communiqué from the Maximiliano Hernández Martínez Brigade threatening to kill several top FMLN leaders and also warning ONUSAL personnel and foreign journalists to flee the country or "face the consequences of nationalist justice."

⁸ Rodolfo Mattarollo, an Argentine legal adviser and prominent jurist who had counseled the Jesuits in the 1989 Jesuits case (see section above), was first denied a visa to leave El Salvador, then impeded in his work in other ways and ordered to leave the country.

preliminary investigation in murder cases was often conducted with "gross negligence"⁹ by justices of the peace and even judges of courts of first instance; that it was common for these functionaries to fail to order autopsies, a failure the report called "inexcusable;"¹⁰ that the right to legal counsel was systematically violated, with many prisoners incarcerated for four or five years without ever seeing a lawyer; that 89.95 percent of prisoners were awaiting trial rather than serving their sentence; and that incommunicado detention "appeared to be a de facto practice of many authorities,"¹¹ in violation of the San José accord and Salvadoran law. The report concluded: "the criminal justice system should be completely overhauled."¹²

It is an understatement to say that Salvadoran citizens lack basic trust in governmental institutions and authorities. ONUSAL stepped into this vacuum, raising questions about long-term dependency on international institutions and what should be done to effect genuine reform and avoid such dependency. Citizens rarely go to the authorities for redress, out of a belief that it is not worth their time or out of fear of being identified as the source of a denunciation. Although ONUSAL staff have urged complainants to denounce their cases to the proper authorities, in hopes of creating pressure for systemic reform, they seldom do so. ONUSAL's report on the judiciary concluded that while UN officials had affected the judicial system in cases in which they had intervened, there was no discernible overall improvement in judicial practice. Such improvement is the responsibility of the local authorities, who evidently do not wish to encourage reform. Because ONUSAL is so identified with better general conditions in the country, many civilians, particularly in formerly conflictive zones, fear what will happen to them when ONUSAL leaves.

Following extensive documentation of failures in the administration of justice, ONUSAL and Supreme Court President Gutiérrez Castro signed an agreement on January 20, 1993 setting forth common objectives regarding the training of judges, the sharing of information on the judicial system, and the

⁹ United Nations, ONUSAL, "Fourth Report of the Director of the Human Rights Division," June 5, 1992, p.6 (United Nations document A/46/935; S/24006)

¹⁰ *Ibid.*

¹¹ *Ibid.*, p. 8.

¹² *Ibid.*, p. 14

creation of a mechanism to oversee implementation of ONUSAL's recommendations. While the January *convenio* is still little more than a piece of paper, there may be concrete benefits to be had from training judges and magistrates, particularly if ONUSAL concentrates its efforts on lawyers from whose ranks future justices of the peace will be chosen.

The end of the armed conflict, in itself, has improved the observance of human rights in El Salvador. But there is also a rare consensus, among Salvadorans of divergent political views, that ONUSAL's presence has in fact dramatically reduced the incidence of human rights abuses, both before and during the ceasefire. This appears to be related to three factors: 1) the size of the ONUSAL mission and its deployment throughout the country; 2) the prestige and moral authority of the UN, which made both sides in the conflict wary of incurring criticism; and 3) ONUSAL's ability to deploy its personnel anywhere in the country without prior notice, and to have access to military barracks and detention centers as provided by the San Jose agreement. This potential for surprise is not possessed by the International Committee of the Red Cross or the UN High Commissioner for Refugees, and can yield astounding results: in November 1992, for example, ONUSAL made surprise visits to detention centers of the Municipal Police and National Police, to investigate arbitrary detentions, and found that 3,500-5,000 persons a month were being detained for minor offenses like drunkenness or vagrancy and held *incomunicado*, without access to defense counsel and entirely at the whim of individual police commanders.¹³ Although this initiative was more systematic than any earlier visit to a detention center, ONUSAL had earlier drawn attention to abuses by the Municipal Police, a security force under the direct control of local mayors but not included in the language of the San José accord.¹⁴ And ONUSAL investigations in the western area of the country exposed a paramilitary body under the Ministry of Defense -- the so-called

¹³ Canal Doce, interview with Diego García-Sayán, chief of the ONUSAL Human Rights Division, INSISTEM transcript, January 22, 1993, p. 8. The visits themselves did not produce automatic improvements. But when ONUSAL took its findings to the National Police, a joint commission was formed to draw up new guidelines, the actual results of which remain to be seen.

¹⁴ This police force carries out thousands of "administrative" detentions for misdemeanors, and its detainees are routinely beaten in custody; yet because it is not specifically mentioned in the peace accord, ONUSAL has occasionally been denied access to its facilities.

Territorial Service -- which was responsible for numerous abuses but had largely escaped the notice of national and international human rights monitors.¹⁵

ONUSAL's Police Division, with a mandate even less clearly defined than ONUSAL's other divisions, has gradually expanded its previously narrow interpretation of its functions. In mid-1992, after having failed to do so systematically during ONUSAL's first year, the Police Division began more aggressively to monitor and push forward investigations of the National Police. The Police Division has also participated with the Human Rights Division in the verification of prison conditions, although ONUSAL's intervention has not yet resulted in a decrease in the abusive treatment of detainees. The Police Division has played an important and vital role in the training and deployment of the new National Civilian Police (PNC). ONUSAL police officers have been assigned to the new Public Security Academy to help train the new police, and the Police Division directly supervised (and provided equipment and transportation for) the temporary deployment of police cadets to formerly conflictive zones.

In the final year of ONUSAL's projected tenure in El Salvador, human rights should regain the primacy they lost during the ceasefire period. Following the final demobilization of the FMLN in December 1992, ONUSAL's main human rights tasks were threefold: overseeing the creation of the new police force, protecting human rights, and monitoring the presidential, legislative, and municipal elections scheduled for March 1994. Those elections will be the first in which the former FMLN guerrillas will participate. ONUSAL's presence and active verification will be crucial to ensure that the political passions aroused by expanded participation in the elections do not turn violent.

ONUSAL's contribution is therefore manifest. At the same time, as the first UN mission of its kind in a member country, it has experienced a host of problems. Those associated with the implementation of land reform and other economic aspects of the accord are beyond the scope of this report. But in the interests of future UN efforts of this kind, it is important to highlight the factors that have circumscribed ONUSAL's independence in fulfilling its human rights functions, and note operational areas in which problems have arisen to impede its human rights work.

¹⁵ The peace accord envisioned the "substitution" of the Territorial Service with a new system of military reserves, but the armed forces pressured for the preservation of the service, and the Salvadoran Assembly failed to abolish it when the police reforms were legislated.

ONUSAL's Multiple Roles

First, ONUSAL has played a major role in mediation and in providing its "good offices" to resolve conflicts over the interpretation and implementation of the peace accord, which deals with many crucial issues in only vague terms.¹⁶ A mediator's role, however, is quite unlike that of a human rights investigator. Senior officials of ONUSAL appear to have believed that a public, assertive approach to denouncing human rights abuses -- especially in a situation in which one side, the government, was largely held to be at fault -- would undermine its mediating role, by making it seem to have lost its objectivity and neutrality.¹⁷ Even if one concedes that sustained denunciations make overall negotiations more difficult, it is still the case that ONUSAL opted to interpret that tension as precluding forceful denunciation of specific cases.

ONUSAL's failure to point to specific human rights cases differed markedly from, for example, the UN Human Rights Commission's independent expert on El Salvador, whose November 1992 report contained numerous cases of reported violations by government forces. While the mandate of the independent expert does not permit him to investigate the cases denounced to him, ONUSAL does have that power; but the results of its investigations are rarely made public.

ONUSAL's willingness to criticize the government did increase over time, but throughout the ceasefire period in 1992, other issues superseded human rights within ONUSAL. The diminished importance of human rights within the mission was evident in various ways. Personnel of the Human Rights Division were assigned to other, purely political tasks, such as those involving land conflicts

¹⁶ This is due in part to hasty completion of the accord in December 1991, under the pressure of Secretary General Perez de Cuellar's imminent departure.

¹⁷ The head of the Human Rights Division, in an interview with Americas Watch, insisted that there was, in fact, a real conflict between the broader political and the human rights interests of the mission. Thus, while the Mexico peace accord was being negotiated, ONUSAL (at that stage, purely a human rights verification mission) took pains not to express harsh criticism of the government, for fear of undermining the talks.

This kid-gloves approach was quite evident in ONUSAL's first two reports, of September and November 1991, prior to the peace agreement. For an analysis of that reporting, see Americas Watch, "El Salvador -- Peace and Human Rights: Successes and Shortcomings of the United Nations Observer Mission in El Salvador (ONUSAL)", New York, September 2, 1992, pp. 15-16.

and the return of mayors to formerly conflictive zones. In mid-July 1992, a former ONUSAL employee leveled serious charges at the mission, writing to the Secretary General that ONUSAL was restricting its human rights work by failing to take action on several important cases. Americas Watch confirmed one of the cases described in the letter, a series of murders of common criminals in the Apopa area, possibly involving ex-military personnel. ONUSAL staff who uncovered the apparent authors of these murders had encouraged police and judicial officials to investigate, yet even when local authorities failed to do so, the Human Rights Division decided not to draw public attention to the case. In another episode mentioned in the letter, in which a San Miguel police officer disappeared after investigating a murder case in February, ONUSAL declined to give timely publicity to the case. Given the officer's close contact with the ONUSAL police, his disappearance could be interpreted as a signal both to the National Police and to ONUSAL to stay away from the case.

The restructuring of the Human Rights Division with the arrival of a new director in October 1992 has led to some changes in its practices. For example, in its April 1993 sixth report, the Human Rights Division rectified its failure to highlight important cases by publishing detailed accounts of numerous summary executions, death threats, and cases of mistreatment. Also, the Division made efforts to expand its investigation of cases and to better use the information gained from those investigations to pressure governmental authorities. The human rights impact of these changes in the Division's practices has yet to be seen.

In general, ONUSAL has treated human rights problems with the same kind of cautious diplomacy that one might use in resolving a political dispute. There are some indications that ONUSAL has more actively engaged the government to resolve human rights issues, before utilizing its ultimate recourse of public denunciation. However, ONUSAL still has not made full use of the powers it enjoys under the San José Accord to publicize its information and publicly demand government action. This failure has been evident from the timing and distribution of its reports. There is no ongoing, systematic effort to disseminate the findings of the mission in a way that is accessible to most Salvadorans.¹⁸

Reports by the Human Rights Division have been few and far between; by the time ONUSAL reports on a case, public attention has shifted elsewhere, and this has the effect of shielding perpetrators of abuse from wider condemnation.

¹⁸ Many ONUSAL personnel have expressed to us their frustration at the lack of a better publicity and educational campaign.

For example, ONUSAL held off the release of the Human Rights Division's sixth report pending the expected release of the Truth Commission's report (see below). The Truth Commission delayed its report's publication from mid-February to mid-March 1993. As a result, ONUSAL published no new information on the human rights situation from August 1992 to April 1993; that is, information concerning the spring and early summer of 1992 was not available until almost a year later,¹⁹ an excessive delay by any standard. The April 1993 report of the Human Rights Division announced that future reports would come out quarterly; this is a step forward.

Instead of waiting to publish comprehensive reports by the Human Rights Division, ONUSAL could issue periodic statements on human rights cases, if it wished to keep the Salvadoran public and the international community abreast of developments in this area. However, the leadership of ONUSAL, which is responsible for various tasks, tends to take a restricted view of its human rights mandate, seeing the primary audience for the mission's reports as the Security Council and selected Salvadoran political actors.²⁰ Americas Watch has pointed out that the relative lack of publicity squanders leverage that ONUSAL could exert. We believe that precisely by creating expectations and reminding the public of official shortcomings, ONUSAL could generate useful pressure from within El Salvador for lasting reform.

Lack of Government Cooperation

Because ONUSAL lacks any mechanism to enforce the recommendations following from its investigations, the success of the mission will largely be determined by the willingness of the parties to respect ONUSAL's counsel. In its sixth report, the Human Rights Division noted that the recommendations issued in previous reports had not been given prompt consideration by the government, as required by the San José Accord. Rather, the government had dealt with the recommendations only on an ad-hoc basis. ONUSAL said that new mechanisms were being created to follow up on the implementation of specific

¹⁹ The August 1992 report contained case information up to June 30, 1992.

²⁰ As ONUSAL's director Iqbal Riza told Americas Watch, "This is a political mission, not a purely legal one. It is a political effort to try and change a system...The human rights issue is one of several major aspects." Interview, San Salvador, May 27, 1992, cited in Americas Watch, "El Salvador -- Peace and Human Rights..." *op.cit*

recommendations.

In areas of structural reform, ONUSAL has been confronted by the government's minimalist interpretation of the accord and by its unwillingness to change. Judicial reform is a case in point. The Salvadoran legislature, dominated by ARENA, has failed to enact proposals for reform of the judiciary that fully implement what was envisioned in the peace accords. For example, a law approved in December 1992 on a new National Council on the Judiciary gave the Supreme Court continued power to remove members of the new Council, whereas the peace accords had specified that the power over appointments should be in the hands of the elected Assembly, not the Supreme Court. Furthermore, the law failed to provide for the membership on the National Council of social sectors other than the legal community, as stipulated in the accords. This provision was seen as important to preserving the Council's independence from organs of the state as well as political parties.

Another example of how the political will of the government is key to ONUSAL's success is the case of the Human Rights Ombudsman, an office created by the peace accords, to be elected by the Legislative Assembly, to investigate and recommend prosecutions in human rights cases. If the office functions as it should, it will eventually take over the human rights verification responsibilities assumed up until now by ONUSAL. But in part due to difficulties in the executive branch's approval of its funding, the Ombudsman's office did not begin operation until mid-1992. In his November 1992 report, the UN's independent expert on El Salvador noted that the office had not acted on complaints or "investigated incidents that may constitute serious threats to human rights."²¹ That criticism appears to have yielded some results. In the first months of 1993, the Ombudsman's office published two reports in which it named the police and military officials responsible for abuses investigated.

The Truth Commission

A landmark achievement, and another unique feature of the peace process in El Salvador, is the report produced by the Truth Commission created by the peace accords. Never before had an exercise in official truth-telling been carried out by an international commission under UN auspices; its very existence

²¹ "Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives; Situation of Human Rights in El Salvador - Note by the Secretary-General," November 13, 1992, United Nations document A/47/596, p. 34.

was testimony to the extreme polarization of El Salvador and the view of the parties to the conflict that impartiality was best guaranteed by a panel of international figures. The process of seeking the truth about human rights violations, which has so occupied the peoples of the Southern Cone of Latin America since the early 1980s, is intended to prevent the repetition of systematic abuses in the future. Where prosecutions have been extremely rare, arriving at an official truth has been substituted for obtaining justice.²²

Agreed to by the two parties in April 1991 and included in the 1992 peace accords, the Truth Commission was given a mandate to produce a report on the human rights abuses of the previous decade. Its three members, appointed by the UN Secretary General, were Belisario Betancur, former President of Colombia, who presided over the commission; Reinaldo Figueroa, former Foreign Minister of Venezuela; and Thomas Buergenthal, professor of law and honorary President of the Inter-American Institute for Human Rights in Costa Rica. Aided by international lawyers and human rights experts, the commissioners were given six months to complete their investigation; the deadline for their report was later extended by a month. With such a brief period in which to finish their work, the Commission depended on the extensive collaboration and cooperation of nongovernmental organizations, and of Salvadorans from across the political spectrum who came forward to give testimony.

The Commission began its work in July 1992. It received over 2,000 direct testimonies and information on more than 22,000 cases of violence.²³ Among the more widely publicized of its findings were those based on exhumations at the site of the 1981 El Mozote massacre. Foreign forensic anthropologists confirmed that the vast majority of the dead were children, and that the presence of spent ammunition, as well as the positions of the bodies and other forensic evidence, supported the accounts published in the US press as well as by human rights groups of a large-scale massacre by government troops.

The Truth Commission's report, released on March 15, 1993, concluded that the Salvadoran judiciary was incapable of bringing effective prosecutions in

²² Of the South American countries that have passed through dictatorship in the past thirty years, only Argentina and Chile have produced reports establishing an official truth about repression. Brazil, Uruguay, Bolivia and Paraguay have not. In none of these countries has the former military leadership been imprisoned except in Argentina, and even there they were later pardoned.

²³ Truth Commission Report, p. 41.

human rights cases. Noting that the judiciary was still run by the officials who had overseen the numberless failed human rights prosecutions to date, the Commission's report stated that in El Salvador "there does not exist a justice system which combines the minimum requirements of objectivity and impartiality" needed to impart justice in human rights cases.²⁴ It recommended replacement of the current members of the Supreme Court and a complete reform of the judicial system, as mandated in the peace accords.

The report recommended full compliance with the peace accords' provisions regarding military reform. It also recommended a special investigation into state-tolerated death squads, a ten-year prohibition on holding public office for those found to have committed serious human rights abuses, and a permanent exclusion from military duty for those found responsible for human rights abuses. In contrast to other experiences of truth-telling in the Southern Cone, the Truth Commission opted to identify by name those individuals it found to be responsible for ordering, carrying out or covering up human rights abuses. This was seen as crucial given the historical impunity for human rights crimes.

The effectiveness of these recommendations was challenged immediately by the Salvadoran government's response: President Critiani greeted the report's release by calling for a sweeping amnesty, and on March 20, the ARENA-dominated National Assembly passed such an amnesty. The measure precludes prosecution of members of the military, the death squads or the guerrilla factions, although in a handful of cases, judges have determined that the amnesty should not apply – the majority of these involving the deaths of US servicemen. The two officers convicted in the Jesuits case, however, went free.

By clarifying facts and vindicating the victims of abuse, the Commission's report does a great service to human rights nonetheless, although the Commission was not always able to establish individual responsibility for specific crimes. Describing cases from various stages of the war, the Commission's report establishes that human rights abuses and massacres were part of a deliberate military strategy. "This violence," said the report, "originated in a political construct that made synonymous the concepts of political dissenter, subversive and enemy."²⁵ A chapter devoted to death squads makes clear that civilian and military authorities "participated in, promoted and tolerated"²⁶ these

²⁴ *Ibid.*, p. 190.

²⁵ *Ibid.*, p. 42.

²⁶ *Ibid.*, p. 139.

groups, which were linked to the state structure "by active participation or tolerance."²¹

The report examines some cases in great detail: eighteen involving official forces, and five involving death squads. Among these are the death-squad assassination of Archbishop Oscar Romero; the 1980 murder of four American churchwomen by National Guardsmen who had received prior orders to detain them, and of the six FDR leaders by security forces aided by the Treasury Police; four massacres, including the 1980 Sumpul River killings and the El Mozote massacre by US-trained Salvadoran soldiers; the 1981 murder of Salvadoran Rodolfo Viera, head of the land reform program, and two US labor advisers; the army's planned ambush and murder of four Dutch journalists in 1982; and the

²¹ *Ibid.*

1989 killing of six Jesuit priests, their housekeeper and her daughter, which was ordered by the Defense Minister and other members of the military high command.²⁸ In all, the report attributes some 6,200 cases of human rights violations to official forces²⁹ -- out of the more than 7,000 cases on which the Commission received direct testimony.

The report does a less effective job of documenting FMLN abuses, identifying by name members of only one faction -- the Ejército Revolucionario del Pueblo -- as responsible for murdering civilians. Ten cases are examined in detail, and overall, some 800 "grave acts of violence" are attributed to the FMLN.³⁰ Among these are the 1985-88 summary execution of eleven town and village mayors; the selective assassination of an Attorney General, a conservative academic and several others; and the 1985 killing of four off-duty US Marines and nine other persons at a sidewalk restaurant in the Zona Rosa neighborhood of San Salvador.

The Ad Hoc Commission

Agreed to in September 1991 and formalized in the peace accord, the Ad-Hoc Commission began in May 1992 to review the records of military officers with a mandate to recommend dismissal of those associated with human rights abuses, corruption or incompetence. The Commission's members, agreed to by both parties and appointed by the UN Secretary General, were three respected Salvadorans: Abraham Rodríguez, a businessman and former close adviser to President José Napoleón Duarte; Eduardo Molina, a founder of the Christian Democratic Party; and Reynaldo Galindo Pohl, an elder statesman who has served in numerous international posts. They were given three months to collect information and, after a short delay, in September presented President Cristiani and Secretary General Boutros-Ghali with a confidential list of 103 officers to be removed or transferred. The Salvadoran armed forces, taken aback by the Commission's findings, have not wholly complied with its recommendations:

²⁸ Gen. René Emilio Ponce, the defense minister named in the report as responsible in this case, offered his resignation in advance of the report, which calls for his immediate dismissal and permanent banning from any military or security functions.

²⁹ Truth Commission Report, Anexos Tomo 1, Anexo 5, p. 13. The exact figure is 6,182, or 84% of the total.

³⁰ *Ibid.*, p. 42.

fifteen senior officers – including the Minister and Vice-Minister of Defense – were allowed to retain their positions or take up diplomatic posts abroad beyond the purge deadline of December 31, 1992. This defiance of the peace process created serious political tensions in El Salvador and led to a comparatively strong statement by UN Secretary General Boutros-Ghali, who noted that the measures adopted by the Salvadoran government were "not in compliance" with the Commission's proposals and therefore "not in conformity with the Peace Accords."³¹

Those tensions rose further after the release of the Truth Commission's report, and are expected to remain high as the campaign for the March 1994 elections gets underway. Following the pressure on the military generated by the release of the Truth Commission's report, the Salvadoran government on March 31, 1993 presented the UN with a plan to place the fifteen officers on leave with pay by the end of June, with full retirement to take place in December. The Secretary General accepted that the purge would not be completed until several months later than had been agreed to.

If the Salvadoran government fulfills its commitments in this regard, the Ad Hoc Commission will have achieved, if not justice, an unprecedented transformation of the Salvadoran officer corps. While the need for a purge of the armed forces was amply evidenced by their egregious conduct over a decade, it would have been preferable for an impartial judiciary to have investigated and prosecuted members of the military for their abuses. The creation of the Ad Hoc Commission resulted from the recognition that such trials were not only unlikely or impossible in the Salvadoran context but also that the military would have refused to abide by any peace agreement that made specific provision for the punishment of its members. Given this situation, the Ad Hoc Commission represented a creative answer to the need for a cleansing of the military; that the Commission's members did such a thorough job demonstrates that review commissions per se can be effective instruments for change where judicial power is weak or corrupt.

RECOMMENDATIONS FOR UN ACTION

In light of the tensions that continue to surround implementation of the

³¹ United Nations, "Letter Dated 7 January 1993 from the Secretary-General Addressed to the President of the Security Council," S/25078, January 9, 1993, pp. 2-3.

peace accords, we believe that ONUSAL should adopt a broader interpretation of its human rights mandate. Many key aspects of the accords, including the formation of the new National Civil Police (PNC), and reforms of the intelligence services and judicial system, remain to be fully implemented, and are critical to the long-term protection of human rights. Given the complexity of the task yet to be accomplished, we believe the Human Rights Division should be expanded. Its work could also be strengthened, we believe, in the following areas.³²

- o Disclosure:** ONUSAL has avoided timely public criticism of the government on human rights matters, even when its own investigations have pointed to state involvement in ongoing abuses. The situation requires more forceful public representations and more frequent public statements in between ONUSAL's comprehensive reports. We believe that the tension between ONUSAL's mediating and investigative roles has been overplayed. Just as human rights played a central role in bringing about the peace agreement, so their observance now is central to the maintenance of peace. This is true not only in the most narrow sense -- concerning the physical integrity of former combatants who have laid down their weapons -- but also if El Salvador is to accomplish the broader task of building a democratic society founded on the rule of law. Clearly there is a role for private overtures; but when diplomacy has failed, to remain silent undermines the quest for accountability and reform.
- o The Police Division:** This division should continue to aid the Human Rights Division in investigating cases and monitoring the conduct of the National Police, until such time as the existing police force is completely replaced by the new National Civilian Police (PNC). (This should take place sometime in 1994.) ONUSAL should continue to provide support for the development of the National Civilian Police and should continue its role, even beyond the mid-1994 departure of the mission as a whole, in order to oversee the complete transformation of the PNC.
- o Education:** Where human rights have been so systematically violated, the whole concept of rights appears to be foreign to large segments of the

³² Most of these issues and recommendations were first explored in Americas Watch, "El Salvador -- Peace and Human Rights: Successes and Shortcomings of the United Nations Observer Mission in El Salvador (ONUSAL)" *op.cit.*

population. Perhaps the most effective way to educate the public of its rights is by openly and forcefully denouncing violations. In addition, under the San José accords, ONUSAL may carry out educational and informational campaigns on human rights and "use the media to the extent useful for the fulfillment of its mandate."³³ Yet the mission has failed to do this. Few resources have been devoted to educational work, although the need for basic information is manifestly enormous in a country where few detainees are aware of their right to legal counsel and many citizens believe that the war will start again once ONUSAL is gone. An ambitious plan for educational materials was developed but not realized. Perhaps more serious, ONUSAL has barely utilized the media to acquaint Salvadorans with the provisions of the San José accords and their rights under the national Constitution. We believe that ONUSAL should channel more financial and human resources into a public campaign on human rights.

- o Reform:** Although the implementation of institutional reforms is fundamentally the responsibility of the Salvadoran government, ONUSAL should do everything in its power to foster such reform. Efforts at "active verification," such as the one carried out with detention facilities in late 1992, should be expanded, in order to highlight additional areas in need of improvement. We are encouraged that the Human Rights Division has increased its involvement with the judicial system in light of its own finding that "the criminal justice system should be completely overhauled."³⁴ We regret the resistance shown by senior members of the judiciary, resistance which appears to have increased following the release of the Truth Commission's report. Nonetheless, ONUSAL's training of judges and lawyers holds promise. Collaboration with the new human rights Ombudsman already appears to have borne some fruit. ONUSAL should deepen its commitment to ensuring that the office of the Ombudsman is fully equipped to take over ONUSAL's functions in mid-1994.

³³ "Agreement on Human Rights," *op.cit.*, Article 14, p. 4.

³⁴ United Nations, ONUSAL, "Fourth Report..." *op.cit.*, p. 14.

CAMBODIA

BACKGROUND

In 1989, after years of false starts and seemingly fruitless negotiations to end the conflict in Cambodia, eighteen countries including the five permanent members of the Security Council (Perm-5) met in Paris with the four Cambodian factions to discuss a comprehensive peace settlement. While the meeting ended in a stalemate, the four factions continued to meet over the next two years with representatives of the UN, the Perm-5 and other interested parties in the region. On October 23, 1991, Agreements on a Comprehensive Political Settlement of the Cambodia Conflict were signed in Paris by the participants of the 1989 conference. Those accords marked the beginning of the largest and most ambitious United Nations peace-keeping effort up to that time. By mid-1993, however, the effort was in disarray. That an election was held from May 23-28 did not conceal the fact that, during the tenure of the UN mission in Cambodia, war had resumed and human rights conditions had deteriorated dramatically.

The unraveling of the United Nations peace accords in Cambodia can be attributed, in part, to flaws in conception and implementation at several levels. Unlike the peace plan in El Salvador, the Cambodian accords were designed as much to serve the interests of various external parties – the United States, China, Vietnam, Thailand and the other countries of the Association of Southeast Asian Nations (ASEAN) – as of the four warring factions themselves. The two largest of those factions, the Khmer Rouge and the State of Cambodia, had little interest in implementing key articles of the accords. Non-compliance was thus probable, yet the drafters made no provisions for it, and UN administrators were at a loss when it happened.

Free and fair elections, dependent on the achievement of a neutral political atmosphere, became the linchpin of the accords, and the compressed timetable for holding them became the motor which drove all else. Some tangible objective was clearly necessary as a focus for the agreement, but the emphasis on elections was so strong that other aims, including protection of basic human rights, became secondary.

The concerns we outline below apply regardless of the elections' outcome; the UN mission's failure to protect human rights includes but also goes beyond electoral conditions and affects the country's future well beyond the vote.

Indeed, it is difficult to envision an election outcome that does not contain the potential for ongoing human rights violations.

The accords presupposed the existence of both a functioning legal system which could enforce respect for human rights and fundamental freedoms and elements of a civil society that could provide the underpinnings of a neutral political environment. None of the Cambodian parties to the accords had a democratic tradition, however, and governmental institutions had been destroyed or neglected by war, the period of Khmer Rouge rule in the late 1970s, and international isolation. It was unrealistic to suppose that institutions could be recreated under this compressed schedule.

In the interests of including the Khmer Rouge in the agreement, the drafters of the accords deliberately played down its responsibility for past abuses, referring only to "the recent tragic history" of the country and the need "to take effective measures to ensure that the policies and practices of the past shall never be allowed to return."¹ The failure to address responsibility for the past in the interests of reaching an agreement with the four parties foreshadowed an unwillingness to address human rights abuses in the present for the same reasons of accommodation and served to diminish the importance of human rights more generally.

It was clear that the Paris accords would lead to the UN's largest and most expensive deployment of troops and personnel, and to a more complex role in administering a country than the UN had ever undertaken. It meant that huge numbers of highly paid people with no experience in the region, no training, and no language ability were going to flood the country. There were also preventable failures on the part of UN officials in Phnom Penh. The most important, from the perspective of this report, were the unwillingness of the head of the UN mission and his senior deputies effectively to challenge violations of the accords by all parties until it was too late;² the secondary status given human rights protection relative to peace-making; and the vacillation and delay in responding to serious abuses.

The failure of the UN in Cambodia has left the Khmer Rouge in a stronger

¹ Agreements on a Comprehensive Political Settlement of the Cambodia Conflict (hereinafter "Comprehensive Settlement") Part III, Art. 15. The participation of the Khmer Rouge was considered crucial in order to obtain China's support for the peace process.

² The senior UN official in Cambodia did speak out about abuses, often forcefully; however, the mission regularly failed to follow up on these denunciations.

position than in March 1992 when the UN mission first arrived. While as late as January 1993 the human rights situation was demonstrably better than the pre-accord period by virtue of the numbers of UN personnel and the transparency their presence created, by the time the elections began the fighting and human rights abuses had increased to levels that were close to those of the pre-Paris accords era.

This deterioration in human rights conditions, and the UN's failure to respond in a timely and effective fashion, must be understood in the context of Cambodia's recent history and the nature of the Paris accords as a framework for settling the conflict. Few societies have been as devastated by war and state abuse as Cambodia. The period 1975-78, when the Khmer Rouge presided over the deaths of a million of Cambodia's approximately eight million people, was by far the bloodiest, but the destruction began in the early 1970s with the US bombing of Cambodia during the Vietnam War and continued after the 1979 Vietnamese invasion and subsequent war between resistance forces led by the Khmer Rouge and the combined forces of Vietnam and the People's Republic of Kampuchea (PRK), the government installed by Vietnam.

The 1979 invasion set the stage for many of the political developments that followed. China, worried about Vietnamese expansionism and encouraged by the US, threw its support behind the Khmer Rouge as the best available buffer against Vietnam, thereby giving the decimated and dispersed forces of Pol Pot a new lease on life.

Hundreds of thousands of refugees fled to Thailand after the invasion, partly because for many, it was their first opportunity to flee since the Khmer Rouge had come to power. They settled in refugee camps along the Thai-Cambodian border where they came under the control of various Cambodian political and military factions opposed to the PRK. These included an organization which came into being in 1981 called the Khmer People's National Liberation Front (KPNLF), headed by former prime minister Son Sann; the United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC), formed by followers of Prince Sihanouk; and Democratic Kampuchea, more commonly known as the Khmer Rouge.

In 1982, under pressure from the United States, China and ASEAN,³ the three resistance forces signed an agreement establishing the Coalition Government of Democratic Kampuchea (CGDK). A diplomatic fiction created to

³ ASEAN was then composed of Thailand, Malaysia, Singapore, Indonesia and the Philippines. They were later joined by Brunei.

punish or oppose Vietnam and its client, the CGDK controlled only a sliver of territory inside Cambodia and had no headquarters. Nevertheless, with the help of its backers, it took over Cambodia's seat at the UN and prevented international recognition of the Phnom Penh government.

The Vietnamese presence in Cambodia, the revival of the Khmer Rouge, Western support for the CGDK, and the use of the Thai camps for recruitment and training of a guerrilla resistance had fuelled an unwinnable civil war. By 1986, it was clear that continuation of the war was in no one's interest, and international moves toward a settlement began.

The first major breakthrough came in December 1987 when Prince Sihanouk met PRK Prime Minister Hun Sen. In July 1988 in the so-called Jakarta Informal Meeting, face-to-face talks took place between the Phnom Penh government and the three resistance factions, with representatives of Vietnam, Laos and the ASEAN countries also present. A second round of these talks was held in Jakarta in February 1989 and another in Paris, on the eve of the first Paris Conference, in July 1989. The Phnom Penh government, in an effort, perhaps, to signal a new openness to the West, changed the name of the country from the People's Republic of Kampuchea to the State of Cambodia. In September 1989, Vietnamese forces withdrew from Cambodia. When, in February 1990, Australian Foreign Minister Gareth Evans proposed a settlement plan that would have at its core a temporary UN administration of Cambodia, the elements were in place for an agreement.

The Paris Accords recognized, as the sole legitimate embodiment of Cambodia's sovereignty, a newly created Supreme National Council (SNC), which comprised representatives of all factions and was headed by Prince Norodom Sihanouk.⁴ The SNC, in turn, delegated all power necessary to implement the accords to the United Nations Transitional Authority in Cambodia (UNTAC). The SNC was to advise UNTAC on matters of implementation, but the head of UNTAC, a Special Representative of the Secretary General, was responsible for determining whether such advice was consistent with the objectives of the accords, and for complying only if it was. The Cambodian parties retained responsibility for the administration of the territories under their control, subject to UNTAC "supervision

⁴ The SNC, formed in September 1990, has six representatives from the State of Cambodia and two from each of the three resistance factions: the Party of Democratic Kampuchea (Khmer Rouge); the Sihanoukist party Front Uni National pour un Cambodge Independent, Neutre, Paicifique, et Cooperatif (FUNCINPEC); and the Khmer People's National Liberation Front (KPNLF).

and control⁵ where necessary to accomplish the ends of the settlement. Of the parties, the most important in this regard was clearly the State of Cambodia (SOC), which would remain responsible for basic services in the four-fifths of the country under its control.

The accords authorized UNTAC to verify withdrawal of foreign forces, supervise and monitor the ceasefire, canton and disarm the forces of the four parties, and supervise mine marking and demining. UNTAC was also mandated to organize and conduct elections. "In order to ensure a neutral political environment conducive to free and fair elections,"⁶ UNTAC was authorized to exercise "direct control"⁷ over key ministries of the SOC government, including foreign affairs, national defense, finance, public security, information, and any other agency that could directly influence the outcome of elections.

UNTAC was also made responsible for coordinating the repatriation of refugees such that they might return "to live in safety, security and dignity, free from intimidation or coercion of any kind,"⁸ a task it delegated to the UN High Commissioner for Refugees (UNHCR).

With regard to human rights, the accords contained a recognition that Cambodia's tragic past "requires special measures to assure protection of human rights,"⁹ and responsibility for that protection was to be shared among Cambodia, the other signatories to the Paris agreements, and UNTAC. Cambodia was to ensure respect for and observance of human rights and fundamental freedoms; support the right of all Cambodian citizens to undertake activities that would promote and protect those rights and freedoms; take effective measures to ensure that past policies did not return; and adhere to relevant international human rights instruments.

The other signatories were to encourage respect for and observance of human rights to prevent a recurrence of past practices, and UNTAC was responsible for "fostering an environment in which respect for human rights shall

⁵ Comprehensive Settlement, Section III, Article 6.

⁶ *Ibid.*

⁷ *Ibid.*, Annex I, Section B(1).

⁸ *Ibid.*, Part V, Article 20.

⁹ *Ibid.*, Preamble.

be ensured."¹⁰ In Annex 1, Section E of the Agreements, UNTAC was mandated to develop and implement a program of human rights education and exercise "general human rights oversight." It was also to investigate human rights complaints, "and, where appropriate, take corrective action."¹¹ The scope of such action was not defined.

Structurally, UNTAC was headed by a Special Representative appointed by and directly responsible to the UN Secretary General. Under him were five components: civil administration, electoral, information, finance and human rights. In addition, the Special Representative was responsible for 3,600 civilian police and for a military component consisting of twelve battalions of peacekeeping forces under one overall commander.

¹⁰ *Ibid.*, Part III, Article 16.

¹¹ *Ibid.*, Annex 1, Section E (c).

HUMAN RIGHTS ABUSES AND VIOLATIONS OF THE LAWS OF WAR

None of the four parties to the accords had ever shown much respect for human rights. The Khmer Rouge had far and away the worst human rights record, having presided over the deaths of some one million Cambodians during its 1975-78 government; during the past two years the party has not renounced its past practices and continued to commit serious abuses. The two groups often described as the "non-communist resistance" -- the Sihanoukist FUNCINPEC and the KPNLF -- were not exemplary democrats either; both parties kept tight control over the Cambodians living in refugee camps they administered along the Thai border, where "justice" was dispensed at the whim of military strongmen acting through camp leaders, and they continue to exert political control in "their" areas of Cambodia through violence and intimidation. The SOC was, until 1991, run as a classic one-party socialist state, with imprisonment the consequence of advocating political reforms. The SOC's corruption is also legendary and, in a country so poor, a source of outrage. Prince Sihanouk, now an elder statesman and perhaps the only popular political leader in Cambodia, has a past that includes presiding over scores of political attacks and assassinations during his rule in the 1960s, and suppressing both the Cambodian communists of his day and non-communist opponents as well.

Abuses by the SOC in the period immediately preceding the signing of the Paris Accords included the imprisonment of thousands of persons suspected of being political enemies, torture of prisoners, incommunicado detention of prisoners, the use of dark cells and shackling, and deprivation of food and medical care. Political dissent was punished, as exemplified by the May 1990 arrests of seven government officials who attempted to form an independent political party.¹² The justice system, controlled at every level by the state, was unable to accord defendants the most minimal procedural guarantees, and most detainees were held without ever appearing before a court. The state controlled all publications and media, and at least one independent-minded journalist was dismissed for endorsing political reform. Vietnamese-style mechanisms for the control and surveillance of ordinary people were also in place, with an identity

¹² All were released before the transitional period began; at least two have been the targets of assassination attempts since.

card system linked to political dossiers, and a network of neighborhood police who monitored people's movements.

Although there was less access by human rights monitors to the zones controlled by the factions within Cambodia, characteristic abuses were evident in the refugee camps under their control at the border. In areas under the control of the non-communist factions, military warlords acted with impunity, and arbitrary killings and violence were daily occurrences. The United Nations Border Relief Operation, which operated from 1982 to 1991, eventually installed rudimentary courts and jails in these camps, but this effort to bring a modicum of law and order was usually subverted by massive corruption or political pressure. For all factions, control over rice rations was a key instrument of political control over the population, and forced conscription and labor were common. Khmer Rouge territory and, until very recently, Khmer Rouge refugee camps were for the most part off-limits to outside observers. Those who have visited or left those areas report that tight controls over every aspect of daily life, including food, clothing and marriage, were normal, and contact with foreigners, listening to unauthorized radio broadcasts, and unauthorized travel were strictly prohibited.¹³ Although arbitrary violence appeared less rampant in the more disciplined Khmer Rouge camps, there were reports of summary executions and forced population transfers.¹⁴

UN ACTIONS

Rush to Elections

In February 1992, the Secretary General reported on plans for implementation of the Paris Accords. It became clear that not only had the UN undertaken a project of unprecedented scope, but also that its timetable would require almost perfect efficiency to succeed. Political control of the SOC's key ministries, human rights education, the establishment and staffing of civil institutions such as courts, and the training of independent and professional police were by definition efforts demanding sensitivity and substantial

¹³ These strictures loosened in areas into which foreigners have been permitted, but may still obtain in other closed territories.

¹⁴ See, e.g., Asia Watch, *Khmer Rouge Abuses Along the Thai-Cambodian Border*, New York, 1989.

knowledge of the host culture; yet they would have to be accomplished by personnel rushed to the scene and in barely a year. With elections originally scheduled for late April or early May 1993, more than 320,000 people would have to be repatriated within nine months in order to register to vote.¹⁵ Cantonment and disarmament of 70 percent of the existing armies, as required by the accords, would have to be accomplished by the end of September 1992, with the three-month election registration period beginning the following month.

Even had the deployment of UNTAC's personnel in Cambodia begun on the day of the Paris Accords, such a schedule would have been optimistic for a country with minimal communications and electricity, whose roads are barely passable for motor vehicles in dry season, and impassable for the five months of monsoon rains each year. The schedule was further restricted by the fact that the Secretary General's Special Representative and the head of UNTAC, Yasushi Akashi, did not arrive in Cambodia until almost five months after the signing of the accords, and most UNTAC departments were not fully staffed for another three to six months. UNTAC's initial delays cut into an already short operational timetable – quite apart from the fact that, in the interim, Cambodia was left to wait in conditions of political uncertainty and rising tension.

Thus, one serious drawback to the plan, built in from the start, was the schedule for elections, which drove the other elements of the process at galloping speed. Another was the unwillingness of the UN leadership and the nations that were the main sponsors of the plan to re-assess the situation as it evolved. Both these weaknesses of approach were determined, to a large extent, by the cost of the massive operation; but in order to save money short-term, the UN leadership and UNTAC's main sponsors undermined the effectiveness of money already spent.

Demobilization and Cantonment: The First Failure

The accords assumed that the demobilization and cantonment of 70 percent of the armed forces of all four parties would take about two months from the time the cantonment plan was finalized, and that the process would be

¹⁵ This figure was based on a population of 360,000 refugees, of whom ninety percent were expected to return with UNHCR assistance. Report of the Secretary-General on Cambodia, United Nations Security Council, February 19, 1992, Section F.136, UN Document S/23613.

completed "prior to the end of the process of registration for the elections."¹⁶ Full demobilization of the remaining 30 percent would take place prior to, or shortly after, the elections themselves.

Much hinged on the success of the demobilization -- it was the critical foundation on which the rest of the accords would be based. It was the reason for having such a large contingent of peacekeeping troops, and some programs, such as that of land mines clearance, were premised on the availability of demobilized soldiers to be trained for demining. No provisions were made for non-compliance.

But the Khmer Rouge from the beginning refused to permit its fighters to be cantoned and disarmed, a process which had been scheduled to begin in May 1992. Once the accords were flouted by one party, it was impossible to enforce them with the others.¹⁷ Nor was peace sustainable once the Khmer Rouge refused disarmament: full-scale fighting between the SOC and the Khmer Rouge intensified in Kompong Thom province throughout the 1992 dry season, while ceasefires brokered by UNTAC were continually violated by both sides.

UNTAC's inability to bring about the peace it had promised made the other components of the mission exponentially harder to achieve. A "neutral political environment" for elections could not be established; in the absence of cantonment, the country continued to be rife with heavy weaponry, and armed gangs, party gunmen, common criminals and off-duty police all freely committed murders and other acts of violence. The intensity of such violence, much of it political, mounted dramatically in late 1992 and early 1993 as the election date approached.

The initial cooperation of the Khmer Rouge with some aspects of the peace process may have convinced UNTAC officials that diplomacy rather than pressure would bring it back into the fold. The Khmer Rouge had not opposed the UNHCR-directed repatriation of refugees from camps under its control. It had participated in the SNC's accession to several international human rights agreements; and, for a time, it had tolerated a small number of UN military observers in its territory, while circumscribing their movements so closely that at times they seemed to be more hostages than monitors. By April 1993, and at least until the voting began, even this marginal cooperation had dissipated -- the Khmer

¹⁶ Comprehensive Settlement, Annex 2, Article V (1).

¹⁷ The three other parties engaged in only token cantonment and hand-over of weaponry, and many of their soldiers left ranks on their own to rejoin their families, often taking their weapons with them.

Rouge adopted an open policy of disrupting the electoral process and attacking UNTAC and ethnic Vietnamese living in Cambodia.

The Khmer Rouge justified its non-cooperation on two counts. First, it maintained that UNTAC had not dismantled SOC government structures, and thus the administrative agencies, bodies and offices over which the UN had control were in fact not neutral. It agreed to cooperate with cantonment only if the Supreme National Council – on which, it may be recalled, it had two representatives – was given a direct role in supervising the day-to-day administration of the country. Second, it said that UNTAC had not verified the departure of all Vietnamese "forces," interpreting "forces" to include any ethnic Vietnamese civilians, who, it claimed, were soldiers in disguise. Its demands for dismantling the SOC government and verification of Vietnamese withdrawal were perceived by many as a delaying tactic, and an indication that the party had no interest in the peace process.

In July 1992, after the Khmer Rouge added yet another demand, the redrawing of the border between Cambodia and Vietnam, which it said must be met before cantonment could take place, the UN Security Council took its first protest action. In a response perhaps too measured to have any real effect, the Security Council passed a unanimous resolution to cut off any promised development aid to the Khmer Rouge territories if the party persisted in its failure to cooperate with cantonment and disarmament. By November, when the Khmer Rouge had missed every deadline for compliance, the Security Council voted an embargo on gem and logging exports, as the proceeds from these had made the Khmer Rouge wealthy. It also, however, gave the Khmer Rouge an extra two months' extension of the opportunity to participate in the elections.¹⁸

The results of this decision are discussed in an unusually candid February 1993 report by the Secretary General:¹⁹ continued Khmer Rouge non-

¹⁸ The embargo has had little effect. There is no UN monitoring presence at the Cambodia-Thailand border in the Khmer Rouge areas, and the Thai military has such a large financial stake in the cross-border trade that enforcement by the Thai government is erratic at best. Some military analysts say that Thailand has, contrary to expectations, limited the border trade to some extent. But observers near the Khmer Rouge border report daily shipments of logs, and sawmills have sprouted in Khmer Rouge territory almost overnight, as processed timber is exempted from the embargo. It is estimated that Cambodia may already have lost one-fifth of its hardwood stock.

¹⁹ "Report of the Secretary-General on the Implementation of Security Council Resolution 792 (1992), UN Document S/25289, February 13, 1993.

cooperation; continuing military clashes between the Khmer Rouge and the SOC; setbacks in the area of sanctions enforcement; the absence of a "neutral political atmosphere" for elections; and possible further war after the elections. Nevertheless, the Secretary General concluded that "the imperative need for UNTAC now is to maintain the momentum" toward the elections, and to maintain the Khmer Rouge in the SNC.

The Khmer Rouge's intention to repudiate the peace accords it had signed could hardly have been plainer. Yet UN Secretary General Boutros Boutros-Ghali in his April 1993 visit to Cambodia continued to stress the importance of maintaining a "dialogue" and "keeping the door open" to renewed Khmer Rouge participation. Soon afterwards, the Khmer Rouge abandoned its compound in Phnom Penh.

What purpose a dialogue served was a serious question, because failure to move against Khmer Rouge non-compliance had several consequences, all of them negative. It encouraged the Khmer Rouge to believe that it could get away with any abuse, no matter how blatant; it gave the party the opportunity to strengthen its forces politically as well as militarily; it gave the other Cambodian parties an incentive to violate provisions of the accords and, in some areas, to resume full-scale fighting; and it weakened the credibility of UNTAC as a whole.

The contempt of the Khmer Rouge for UNTAC was demonstrated forcefully even in the earliest months of UNTAC's presence. In May 1992, when Special Representative Yasushi Akashi was halted by a bamboo pole at a Khmer Rouge checkpoint as he and his entourage attempted to enter Khmer Rouge territory near the gem-mining center of Pailin, Akashi turned back and, by doing so, fatally weakened his own authority and encouraged the Khmer Rouge to believe they had nothing to lose by obstructionism.

Even at a time when cantonment was still anticipated, the Khmer Rouge made military gains under cover of the peace plan. Its fighters expanded control over villages in areas aligned with the non-communist resistance forces (FUNCINPEC and the KPNLF), and observers believe that Khmer Rouge units moved into many new communities throughout Cambodia, taking advantage of increased freedom of movement in the country and the spontaneous desertion of SOC troops. Politically, too, the Khmer Rouge utilized the accords to its advantage, enjoying the legitimation conferred by SNC membership and opening a headquarters in Phnom Penh. Those who argued for the inclusion of the Khmer Rouge in the peace process had hoped that whatever legitimacy it gained would be offset by the party's military neutralization, and predicted that the Cambodian people would ultimately reject it at the polls. The Khmer Rouge sidestepped these considerations by abandoning the peace process once that process ceased to

work to its advantage. The ironic result is that the Khmer Rouge may have more influence and control today than it had before the peace accords were signed.

One consequence of the Khmer Rouge's renewed vigor was that the SOC military had no incentive to abide by the ceasefire provisions of the accords. In the 1993 dry season, for example, it moved against the Khmer Rouge near Pailin, coming within shelling range of the town. UN monitors at first credited the SOC explanation that its acts were strictly defensive, then reversed themselves, condemning the SOC for a major "offensive." More seasoned observers reported that the renewed fighting, which had been going on for months before the UNTAC condemnation, followed the traditional cycle of this war – rainy season advances by guerrillas and dry season gains by government forces. On the SOC's part, the advance toward Pailin (which it declined to capture and probably could not have held) was as much a political objective as a military one. The political goal was to impress upon the electorate that the government commanded the only military force capable of effectively opposing the return of the Khmer Rouge.

Forced conscription resumed on both sides. The UNHCR alone of the UN components undertook serious investigation of forced conscription in the SOC areas to which it had access.

The warring parties directed hostilities toward UNTAC as well as each other. In August 1992, two UNTAC police, three election officers and two Cambodian interpreters were captured and detained by the Khmer Rouge in Kompong Cham province and sent back with a warning. In the following months, other UN personnel were held for short periods and sometimes threatened with physical harm, and their vehicles were confiscated. In the first four months of 1993, Khmer Rouge units and unidentified attackers were responsible for the deaths of at least half a dozen UN peacekeepers in direct attacks, and several more injuries.

Violations by FUNCINPEC and the KPNLF were less visible only because their forces were so much weaker. But their militaries have devolved into armed gangs as their political leadership has focused its efforts on the electoral campaign. The zones under their control in northwest Cambodia are governed by military leaders. The few civilian administrators who exist do not dare to challenge the actions of these warlords; violence is the primary method of maintaining control. In these zones, both factions cooperate closely with the Khmer Rouge.

With the failure of disarmament, the aim of the UN project was fundamentally changed. It had begun as a mission to assist in the transition to a popularly elected, legitimate government which would, in turn, lead to peace and the country's reconstruction. It became a mechanism through which the international community could withdraw from Cambodia without losing face. But

at no point was formal exclusion of the Khmer Rouge, or major revision of the peace plan or UNTAC's mandate, publicly considered by the Security Council. The political pressure to carry on to the point of elections – regardless of the conditions in which those elections would be held – precluded serious consideration of whether the plan as formulated could succeed without the cooperation of a major belligerent.

It might have been appropriate, for example, to reevaluate the UN military force in Cambodia, the unprecedented size of which had been agreed to for a specific purpose. Originally sent to supervise cantonment and disarmament of the Cambodian armies, the UNTAC military component was actually occupied with patrolling, border observation and, in some recent cases, rural civic action. Military observers provided valuable information on troop movements and hostilities, other incidents of violence, and violations of the logging, gem and petroleum bans. But this was hardly reason for deployment of over 15,000 troops.

The military component resisted efforts to broaden its mandate, however. Military personnel were reluctant, for example, to assist the UNTAC human rights component in effectuating arrests and housing suspects; since they were the only force bearing arms, their support would have been crucial to enforcing UNTAC's human rights mandate, but it was generally withheld. Where elections were concerned, however, this reluctance was overcome. In late 1992, apparently with the hope that Khmer Rouge non-cooperation with the elections would be limited to passive resistance, and that election-related violence would be low-grade, the mandate of the UNTAC military was expanded to include protection of UN election sites and election workers.

"Direct Control": The Second Failure

Khmer Rouge charges of UNTAC's failure to exert "direct control" over the SOC government are partly true: SOC ministries resisted or ignored the admittedly weak UNTAC efforts to take charge, and the secret police continued to function undisturbed.

UNTAC officials interviewed by Asia Watch point to the inherent impossibility of a handful of foreigners, in the space of less than a year, monitoring and imposing neutral behavior upon an authoritarian bureaucracy determined to resist control. That argument avoids the elements within UNTAC's control that contributed to this failure, among them inadequate or inappropriate staffing and a passivity that in some cases has bordered on incompetence.

Many UNTAC civil administration positions were left unfilled, or were occupied by personnel with no direct experience either in their area of

supervision, or in Asia, or in socialist government institutions, much less in Cambodia or in the Khmer language. Further, Asia Watch is aware of no case in which UNTAC administrators conducted their daily work actually stationed in the offices of the ministry or governor to which they were assigned. Several UNTAC officials interviewed by Asia Watch in early 1993 acknowledged the likelihood that their ministries had established channels of communication with the SOC leadership to which they had no access.

The two UN administrators assigned to the Ministry of National Security, which is responsible for internal security operations and surveillance, relied on periodic briefings by the ministry itself to learn of its activities. Most civil administrators interviewed by Asia Watch described their work in terms of observation and liaison, maintaining cooperative relations with their Cambodian counterparts so as to communicate UN directives or policies. This is not "direct control" or "supervision."

Lack of control meant that the efforts of UNTAC administrators to obtain the dismissal or transfer of Cambodian officials for misconduct or human rights abuses met with stiff resistance and few instances of compliance -- just over a dozen by early 1993. Directives and policies were drafted but often not enforced, and it was never clear where responsibility lay, since UNTAC had failed at the outset to set clear standards for accountability. In late 1992, during an upsurge in political violence, UNTAC civil administrators did not respond when SOC officials claimed ignorance of (or lied about) the acts of their subordinates.

Similar difficulties beset the UNTAC civilian police. Charged with supervising and controlling their Cambodian counterparts, they were often in the position of trying to prod along investigations of political violence in which their Cambodian partners may have been complicit. Opposition party members have not been reassured by the odd sight of SOC police guarding party offices with UNTAC police, since most attacks on such offices have been attributed to the SOC itself.

While SOC resistance and the failure of UNTAC to challenge it effectively have been the major obstacles to control, UNTAC's own lack of qualified personnel has also been a problem. The inherent difficulty of police supervision, for example, was complicated by the fact that a significant part of the UNTAC police force lacked appropriate qualifications. Over a third were unable to drive, hampering patrols in the countryside. A significant number spoke neither French nor English, limiting radio communications, and some countries sent civil servants with no police experience at all. The UNTAC police, who received per diem payments of US\$145, have also been criticized for frequently being off-duty and for discipline problems such as drunk driving and frequenting prostitutes.

Protection and Promotion of Human Rights: a Mixed Record

The period since the signing of the Paris Accords has been marked by both achievements and failures. On the positive side of the ledger, UNTAC's presence resulted in limited improvements in the freedom of Cambodians to travel, associate and speak their minds. UNTAC also persuaded the SNC members to accede to seven international human rights treaties,²⁰ obtained the freedom of hundreds of political prisoners, oversaw the improvement of prison conditions, supported Cambodia's first independent human rights associations,²¹ and trained police, judges, defenders and others in basic human rights norms.

On the negative side, UNTAC proved itself unable to deal effectively with the human rights abuses that continued, from political and ethnic killings to arbitrary detention to intimidation and harassment of potential voters. In the interests of keeping the peace process on track, UNTAC accorded a relatively low priority to human rights, as evidenced in part by the paucity of funds and staff allotted the human rights component.

The design of the component itself was also flawed, however, in that first in the accords and then in their implementation, the emphasis was given to human rights education rather than investigation and punishment. The framers of the accords had chosen a non-confrontational approach to human rights, ignoring the fact that, so long as impunity prevailed, the message of human rights education would be undercut. The human rights component, to its credit, increased its efforts to investigate abuses, but even then there was a misguided

²⁰ During 1992 the SNC acceded to numerous international instruments, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention and Protocol Relating to the Status of Refugees. These commitments must be seen largely as an investment in a future Cambodian government, for at present the members of the SNC manifestly fail to live up to international law regarding human rights.

²¹ These organizations are ADHOC (Cambodian Human Rights Association); Outreach; LICADHO (Cambodian League for the Defense and Promotion of Human Rights); LCDHC (Cambodian League for Human and Citizens Rights); and Human Rights Vigilance of Cambodia.

reluctance within UNTAC to publicize fully the results of those inquiries.

But the most critical step -- establishing a means to enforce respect for human rights on the part of officials and to hold them accountable for abuses -- was not taken. Even when perpetrators could be identified, punishment was rare, due to concern about offending one of the four parties, inability to enforce directives, and lack of a functioning legal system. As the expiration of UNTAC's mandate approached, there was a serious question whether all of the effort expended on teaching Cambodians the Universal Declaration of Human Rights would have any effect in a country that had no real civil institutions to provide the underpinning for those rights.

Release of Prisoners and Prison Conditions

In September 1991, all parties to the conflict agreed to release political prisoners under the auspices of the International Committee of the Red Cross.²² Later UNTAC took over supervision, though not day-to-day management, of SOC prisons. It found that the overwhelming majority of inmates had not been tried. The human rights component, as one of its first tasks, reviewed all cases of people detained without charge or trial and presented recommendations to SOC authorities on the basis of whether prisoners were political, whether evidence was insufficient, and whether prisoners had already served time disproportionate to any reasonable sentence likely to be imposed. (It did not review the cases of prisoners who had been tried and sentenced, even though the justice system was such that tried prisoners could hardly have been said to have been given fairer treatment than untried detainees.) SOC authorities accepted these recommendations and released hundreds of prisoners during mid-1992. But in a backlash, SOC media accused UNTAC of releasing dangerous criminals into society. Sensitive to such allegations, the human rights component sought to have SOC courts review arrests on their own; the result was that by March 1993, prisons were once again full. It remained to be seen whether the courts would recognize bail applications or habeas corpus petitions.

Torture, shackling, use of dark cells and other abuses of prisoners had been common in SOC facilities, and tended to reappear in some areas even under

²² So far as any international observer has been able to verify, only the SOC maintained any permanent jails, although reports of temporary camps or dungeons managed by the other three factions occasionally have come to light. The Khmer Rouge claimed to hold no prisoners.

UNTAC monitoring. SOC authorities in general cooperated with prison monitors, but in some areas, such as Battambang province, UNTAC discovered new prisons, the existence of which the authorities had concealed. There were rumors of others but no further discoveries. Where possible, UNTAC officers supervised the removal of shackling poles (these tended to reappear between visits), the improvement of drainage and bedding in the usually dank and deteriorating colonial-era prisons, and in some, though not all, cases won the dismissal of abusive prison officials. UNTAC also solicited help from nongovernmental organizations in supplementing prison rations and providing medical checkups for prisoners in some localities. These were substantial improvements, although the reappearance between visits of shackling raised concerns about a reversion to previous practices when UNTAC departed.

The Criminal Code

In addition to securing SNC accession to international human rights instruments, UNTAC has contributed to domestic human rights standards, instituting a code governing criminal law and procedure for the transitional period, an electoral law, a set of guidelines for the media, and a number of decrees on such topics as the right to form associations and the right to free speech.

The September 1992 criminal code was intended to be enforced as law in the domestic courts of all parties, although only the SOC had courts at the time of its enactment. Even then, SOC courts refused to implement the code until after January 28, 1993, when the SOC National Assembly passed a criminal procedure law that in some respects was inconsistent with the UNTAC framework.

The UNTAC code had a number of deficiencies,²³ but it included fundamental procedural guarantees, such as the right of a suspect to be brought before a judge and have access to a lawyer or personal representative no more than 48 hours after detention; the abolition of administrative detention and a prohibition on torture or mistreatment; requirements that a file be compiled for each detainee, that the counsel for each suspect have access to the file, that detainees be registered on the roster for each prison, and that detainees be held no longer than six months without judgment; and the stipulation that detainees whose defense had been seriously compromised by official violation of such

²³ Among these was the omission of any of the standard criminal defenses -- such as incapacity, extreme youth, mistake of fact, etc. -- and the inclusion of offenses that were of dubious urgency for the transitional period, like copyright infringement (no penalty given).

procedures be released.²⁴

UNTAC held two-week training sessions for judges to familiarize them with the new law it had drafted. Various components of UNTAC also held training sessions for police and other officials in basic human rights standards, and the human rights component of UNTAC held two training sessions to teach persons how to act as criminal defenders under the new code.

The problem was that UNTAC could not enforce the new law. It was premised on police who were willing to arrest and detain, judges who were willing to try, and lawyers who were willing to defend. As a few cases were to show, none of these premises proved valid. Institutions such as the judiciary and the police were weak and politicized in SOC-controlled Cambodia, and did not exist at all in the zones controlled by the KPNLF and FUNCINPEC in the northwest as of May 1993. No prisons existed in zones controlled by either faction, and arbitrary arrests and summary executions (the disposal of would-be prisoners) continued to be common practice for local military groups. As of March 1993, the KPNLF zone had finally acquired a judge. UNTAC did succeed in training a police force there as well, but it could accomplish little without a court or jail. Once UNTAC leaves Cambodia, there are legitimate doubts as to whether any of its legal initiatives will prove to have taken root.

Investigations of Serious Abuses

UNTAC deliberately restricted itself at the outset to investigating and reporting on abuses that occurred on its watch. Killings that had taken place between the signing of the Paris Accords and the arrival of Mr. Akashi, or for that matter the myriad killings that had occurred even earlier, were deemed too difficult to research. The international community also signaled that these issues were diplomatically off-limits, as evidenced by the various euphemisms, in the Paris Accords, for the holocaust directed by the Khmer Rouge.²⁵

²⁴ Some in UNTAC, and many Cambodian judges, considered the law overly ambitious and impossible to enforce, given the limitations of the Cambodian justice system. Judges, many of whom lack any formal education, are completely under the control of political authorities and unable to enforce decisions or control the police, and the legal system follows a civil law model wherein prosecutors, not judges, review the legality of temporary detention decisions.

²⁵ This approach limited the information available to Cambodians as they voted for new leaders. While the atrocities of the Khmer Rouge and the repressive acts of the SOC are

But even within its own limits, UNTAC set a bad precedent for human rights investigations in Cambodia early on. Within the first week of Special Representative Akashi's arrival in mid-March 1992, a former political prisoner who had been detained by the SOC for an attempt to form an opposition party was assaulted after he had been summoned to a meeting with his former jailors; eventually he died of his wounds. The few UNTAC officials present in Phnom Penh conducted an inconclusive inquiry and declined to issue a full report on the incident or to hold it open for continuing investigation. What many suspected to be a SOC-planned execution went unpunished.

The failure at the outset to publicize abuses or to prosecute those responsible meant there was little to deter potential offenders when political competition aimed at the elections officially began in September 1992. When an upsurge in political violence followed, UNTAC was ill-equipped to respond, in part because of differing bureaucratic interests within UNTAC, in part because of lack of resources for investigation, and in part because of failure to foresee and prepare for a lack of cooperation by key parties.

Between November 1992 and March 1993, UNTAC's human rights component catalogued well over one hundred incidents of serious abuse,²⁶ and these must be understood as only a fraction of the actual number, as many, if not most, acts of political violence -- including killings, bombings and attacks on persons and property -- go unreported. The presence of UNTAC, however, did ensure a new level of transparency for Cambodia; the rise in political violence could not be hidden. In February 1993, after UNTAC detailed UN police to guard vulnerable party offices, the level of attacks on those targets abated, but by March political violence had reached new highs. In the majority of incidents UNTAC investigated, the probable perpetrators were agents of the SOC and the targets members of the FUNCINPEC party, whose rapid rise in popularity in late 1992

generally known, the same cannot be said of the systematic abuses of the smaller factions, whose conduct is known mainly to those in localities and refugee camps they controlled. For example, only those who have lived in the Site 2 camp are likely to recognize a leader of one small, new party as a former KPNLF chief judge who was convicted of rape in one instance, was believed responsible for other rapes and acts of coercion, and subsequently escaped from jail to become a candidate in the elections.

²⁶ This tally includes only incidents recorded and given some preliminary investigation by UNTAC's human rights component. Other UNTAC components may have recorded different figures. The figure does not include attacks on UN personnel.

marked it as the front-runner in the election.²⁷ The escalation of violence continued in the weeks prior to the elections, although it ebbed during the voting itself.

UNTAC's original intention had been to supervise criminal investigations conducted by existing police in each area of Cambodia, rather than automatically to conduct them itself. Investigations were then supposed to be referred to local courts by the Cambodian police. But this model had little to do with a reality in which, in most cases, investigating authorities were closely linked to the perpetrators of political violence or were impotent to oppose them. Time and again, UNTAC requests for police investigation or action were ignored.

In theory, too, local Cambodian police are responsible to provide protection for political figures or activities that might be the object of attack. UNTAC initially maintained that its own police and military could not be used as bodyguards. This approach might have worked if a real effort had been made to reconstitute the police and make them independent of their political masters, or to create a truly integrated police force from the beginning of the transition period. But Cambodian parties resisted the idea, and the police remained firmly attached to political authority and entirely subordinate to the military.

As a result of the politicization of the local police, investigations were conducted primarily by the UNTAC police and military, usually in conjunction with the human rights component. The latter started out with only ten professionals and eventually expanded to include one field officer in each of Cambodia's 21 provinces and municipalities and a half-dozen full-time investigators in the Phnom Penh headquarters.

Investigations were plagued by lack of resources. There were no vehicles for the field staff of the human rights component, who were forced to rely on cooperation from other UNTAC personnel in order to perform monitoring or investigations. Many Cambodians have brought a wide range of complaints to the human rights component, but many also told Asia Watch that they were frustrated by the slowness or lack of response to their complaints, or disillusioned by UNTAC's inability to correct the abuses that were investigated. Indeed, the component's field and investigations staff were overwhelmed with major incidents of serious abuses, which occur virtually every week.

Investigations have also been plagued by lack of coordination among the different parts of UNTAC, with avoidable delays, duplication of effort, and some

²⁷ See next section for discussion of Khmer Rouge killings of ethnic Vietnamese.

outright bungling.²⁸ Investigators interview witnesses and in some cases conduct forensic examinations and ballistic tests. They generally go no further than the investigative stage. Full reports of the investigations generally have not been made public, in part due to legitimate concerns such as witness protection and in part due to less justifiable concerns with negative publicity for the peace process.²⁹

Taking "Corrective Action"

Investigations themselves are only one part of human rights protection; taking action against the perpetrators is another, and few such actions have been taken. In 1992, responding to the crisis of mounting political violence, UNTAC established a committee called the "Action Cell," which comprised top officials of the civil administration, police, military and human rights components, with periodic participation of others such as members of the information unit. This group met regularly to discuss UNTAC's options with regard to taking "corrective action" in cases of serious abuse. UNTAC had three choices: denunciation, request for dismissal or transfer, or prosecution.

Denunciation was used to some effect by Mr. Akashi, who issued strong public criticisms of SNC members for violations of the accords on a number of occasions. But in general, the Special Representative took a conciliatory

²⁸ For example, in mid-1992, UNTAC discovered a secret SOC prison in Battambang province and freed the majority of the prisoners, but not before at least one was taken out and killed, hours before the UNTAC raid. While the local human rights officer was away from the province, however, UNTAC failed to monitor those who were released, or issue them certificates or other proof of their release. In fact, the local UNTAC military commander remanded two prisoners to the custody of a SOC general because their offenses were allegedly "serious" – although the commander could not later recall what the offenses were or the names of the two he remanded.

²⁹ An example of such sensitivity to criticism of the process is a recent "gag order" handed down to UNTAC personnel. On May 13, Mr. Akashi issued a memo to all 22,000 members of the UNTAC mission, declaring that only Akashi and his designated spokesman may give statements to the media, on or off the record. The reason cited was that statements to the press by unnamed UN officials had given an "unduly pessimistic picture" of the Cambodian operation. Mark Dodd, "U.N. Chief Orders Media Gag on Peacekeepers," Reuters, May 18, 1993.

approach when discussing serious human rights abuses with the parties. There were in fact few mechanisms built into the Paris Accords to deal with non-compliance or serious abuses, other than diplomacy and dismissal of officials. Diplomacy was translated as a dogged commitment to the Paris model: it became clear as abuses mounted that, given the international community's stake in holding early elections (as distinct from achieving peace, national reconstruction, a stable human rights environment, or any other goal of the accords), there was virtually nothing that would cause UNTAC to abandon the timetable and framework adopted in Paris.

This unwillingness to stand firm when faced with resistance from the Cambodian parties vitiated UNTAC's attempts to remove officials for abuse. The civil administration component requested dismissals sparingly, and the dozen or so cases in which the SOC eventually complied did not, for the most part, involve either human rights abuses or senior officials. The first dismissal recommended by the human rights component -- of a policeman who was seen by a half-dozen witnesses beating a suspect after apprehending and handcuffing him -- was strongly opposed by the SOC, in part because the victim was a well known criminal and armed at the time of his arrest. After the SOC refused to dismiss the policeman, a joint SOC-UNTAC committee was created in late 1992 to review the case. The committee dissolved without coming to any agreement, and no further action was taken.

Similarly, in the Action Cell described above, action has rarely been taken by consensus. Opinions even in this small group have often been divided as to how much accommodation was necessary for the sake of diplomacy, with the result that even when the group adopted recommendations for dismissals or prosecutions, those decisions were often later compromised or undermined. In one instance, UNTAC gathered evidence, most of it circumstantial, that the governor of Battambang province -- the son-in-law of SOC party chief Chea Sim -- was either directing or tolerating hit squads that were attacking opposition party figures in the province. As various branches of UNTAC discussed the feasibility of dismissal, around November 1992 the news leaked to the press. SOC Prime Minister Hun Sen reportedly declared that UNTAC would have to dismiss him first. The Action Cell eventually endorsed a letter sent to Hun Sen which said that unless the situation in Battambang improved, UNTAC would have to request the governor's dismissal. Shortly thereafter, in February 1993, Hun Sen traveled to Battambang, allegedly to reprimand officials. The province continued to have one of the highest rates of political attacks and murders in the country; UNTAC, however, has taken no additional action against the governor.

Frustration with UNTAC's approach to political violence came to a head in

December 1992, after an attack on a FUNCINPEC official, one of whose eyes was gouged out. This incident, following a string of murders of other FUNCINPEC activists, prompted Prince Sihanouk to declare that he would no longer cooperate politically with UNTAC. In response, Special Representative Akashi announced a set of new measures designed to strengthen UNTAC's ability to respond to political violence. Directive 93/1 of January 1993 authorized UNTAC to prosecute cases involving serious human rights violations, to make arrests and detain suspects in such cases, and to use the courts and prisons of the Cambodian parties for this purpose. A "Special Prosecutor's Office" was created, and an UNTAC human rights officer was named to the post. UNTAC also decided to assign its own police, accompanied by local police, to guard the party offices deemed at highest risk of attack. Unfortunately, only the latter measure had a demonstrable effect on the situation, and even this was brief; attacks and killings soon mounted again, as party members were targeted in public spaces or at home.

The Special Prosecutor's Office was strongly opposed within UNTAC by the civil administration component, which considered it far beyond UNTAC's mandate, but Mr. Akashi overruled these objections. UNTAC succeeded in taking two suspects into custody: a SOC policeman who allegedly murdered a FUNCINPEC member, and a Khmer Rouge deserter who allegedly took part in a massacre of fifteen ethnic Vietnamese. But when the special prosecutor brought the second suspect to Phnom Penh municipal court within 48 hours to request an order of temporary detention (as stipulated in the UNTAC code), the judge refused to cooperate. He had been advised by the Ministry of Justice that his earlier agreement to detain the former suspect had been wrong and he would be punished if he repeated his error. No other Phnom Penh judge would hear the matter, and UNTAC refused to apply to courts in other provinces due to concerns with security and bias. Mr. Akashi then was forced to issue an administrative decree extending the detention of both suspects until a court could be found to hear the matter – thus violating UNTAC's own criminal code.

As of May 1993 no court had been found and no trials had been held. The defendants remained in custody, and no separate jail existed for UNTAC detainees until May 1993; but even that jail remained empty and detainees continued to be housed temporarily in a UN troop barracks. Subsequent UNTAC efforts to arrest officials responsible for political violence have come to nothing, further undercutting the deterrent effect of a special prosecutor's office. Internal conflicts within UNTAC have contributed to this ineffectiveness. Members of the Action Cell wished to be the ones to decide when to authorize an arrest, rather than the special prosecutor. And once the group agreed to make an arrest, there were further divisions, as evident in a case in Battambang province, where seven

SOC military officials had kidnapped four FUNCINPEC members between January 31 and February 1, 1993, in broad daylight and before numerous witnesses. After months of stonewalling by SOC officials, the Action Cell in early 1993 authorized arrests. But some members insisted that the SOC first be informed of the intended arrests and given a week to produce the suspects. The UNTAC military, for its part, refused to permit the use of force in the arrest, which was to take place in a SOC military compound; this was in keeping with the military component's excessively narrow interpretation of its mandate. Not surprisingly, on the day of the projected arrest, the military compound was deserted, and the seven suspects had been transferred to the Pailin front. No other UNTAC arrests had taken place, although UNTAC possessed sufficient evidence in dozens of cases.

The special prosecutor strategy appears to have received little practical thought. No independent court has been found to which the prosecutor could present cases. All other aspects of the criminal process have yet to be outlined. No witness protection has been developed for those who might be called to testify. No defense counsel was provided to the suspects in custody before they made confessions. The sad consequence is that UNTAC's strongest effort to enforce accountability for human rights abuses is in danger of being discredited.

Racial Incitement and Ethnic Violence: Ineffective Response

Three centuries of political subjugation and loss of territory to Vietnam lie behind the almost pathological fear and hatred that many Cambodians feel toward their dominant neighbor. Under the Lon Nol government (1970-74), long-established communities of ethnic Vietnamese in Cambodia were rounded up into concentration camps. Thousands were massacred wholesale, their bodies dumped into the Mekong River; thousands more fled. The Khmer Rouge (1975-78) continued the slaughter of ethnic Vietnamese, as well as of other ethnic minorities such as the Cham and Chinese, and during their rule, almost all remaining ethnic Vietnamese fled or were killed.

Ethnic tensions are reviving in Cambodia, due in part to the immigration of tens of thousands of Vietnamese drawn by the boom in construction and prostitution that the massive foreign presence has stimulated. Since the signing of the Paris Accords, at least eighty ethnic Vietnamese have died in six outright massacres. UNTAC has attributed responsibility in each of those six cases to the Khmer Rouge, although in

a few cases the evidence is circumstantial. According to Khmer Rouge deserters interviewed by UNTAC, the murder of Vietnamese civilians, including women and children, is part of the party's policy, and while the Khmer Rouge publicly disclaims responsibility for the massacres, it does so in statements that typically voice approval for the "people's wrath." The Khmer Rouge has made expulsion of all ethnic Vietnamese from Cambodia one of the conditions for its cooperation with UNTAC, and the party is widely admired for this position, even by ordinary Cambodians or SOC civil servants who lost most of their family to the Khmer Rouge. Tension, and approval for the Khmer Rouge, are highest in the capital, where the influx of Vietnamese immigrants is most apparent. Most of the killing, however, has taken place in the provinces, in remote Vietnamese settlements located by waterways or Cambodia's great lake, the Tonle Sap.

The killings of 33 ethnic Vietnamese – including nine children under the age of twelve – on March 11, 1993, in a fishing village south of Siem Reap, set off a mass exodus of Vietnamese bound for Phnom Penh or Vietnam. At the end of March, a Vietnamese-owned cafe and a Vietnamese brothel in Phnom Penh were the targets of coordinated bombings that killed two persons and injured at least twenty others. Unexploded grenades were found at two other Vietnamese brothels at the same time. In response to reports that SOC soldiers robbed those who fled or forced them to pay protection money at various river checkpoints, UNTAC condemned the extortion and organized naval patrols to escort hundreds of houseboats down the Tonle Sap river.

UNTAC's ability to prevent the massacres of ethnic Vietnamese may have been limited, but it could have been more active in pressing for international support. The international community has failed to exert maximum pressure on the Cambodian parties themselves to repudiate the ethnic killings publicly. Even Prince Sihanouk, who has been the most forthright in calling for an end to racial bloodshed, suggested that all Vietnamese should leave Cambodia for their own safety.

UNTAC completely undercut its own ability to address the issue of the Vietnamese by the way in which it sought to "resolve" the matter of the Vietnamese "forces" which, according to the Khmer Rouge, remained in Cambodia. Under the Paris Accords, all "foreign forces" were to leave Cambodia, and the Khmer Rouge was insisting that UNTAC undertake to find and evict such forces. According to the Khmer Rouge, they numbered in the thousands but were living as civilians, awaiting the moment when the SOC or Vietnam might call upon them.

In an effort to keep the Khmer Rouge participating in the elections, or at least to limit its non-cooperation, UNTAC hunted for these alleged Vietnamese

forces for several months. It increased the number of military posts on the Vietnamese border and created mobile investigative units which concluded that no foreign military forces remained. The Khmer Rouge rebuffed these efforts, continuing to broadcast reports of purported Vietnamese military units' movements, yet refusing to produce any concrete evidence for UN investigators to pursue. On March 2, 1993, under heavy pressure from the Khmer Rouge, UNTAC suddenly announced that it had discovered three individuals who fit the definition of "foreign forces" in the Paris Accords; they would be expelled from the country.

The three men had all served with the Vietnamese army in Cambodia at one time, married Cambodian women, and received Cambodian citizenship cards from the SOC government. One, a 35-year-old ethnic Khmer from Vietnam with a pregnant Cambodian wife and four small children, had been recruited in Cambodia by the Vietnamese army as an interpreter, later interpreted for the SOC military, and now made his living as a motorcycle taxi driver. Once his neighbors discovered he had served in the Vietnamese army, he began to receive death threats. UNTAC admitted that no extra security precautions were being taken to protect the men it had identified. A week later, UNTAC announced that it had found five more men who had served in the Vietnamese army and were to be expelled. Vietnam refused to accept any of these individuals, claiming they had become Cambodian citizens. Just as abruptly as it had begun, UNTAC ceased to identify "foreign forces."

While UNTAC may have wished to prove that it took the Vietnamese forces issue seriously, its actions had exactly the opposite effect. By identifying a small handful of men, UNTAC both confirmed popular suspicion that demobilized Vietnamese soldiers remained in Cambodia, and undermined its credibility by finding so few. As for mollifying the Khmer Rouge, the futility of such a purpose was underscored emphatically by the March 11 massacre. The day the massacre was announced a Khmer Rouge spokesman claimed that Vietnamese fishermen were organized into Vietnamese Communist Party cells and combat units.³⁰ Vietnam's government strongly condemned the Khmer Rouge but also laid some responsibility for the massacre at the UN's doorstep, blaming the international community for the mixed signals it had sent to the Khmer Rouge.

Control of racist speech is also an issue. The Khmer Rouge and other opposition parties, such as the KPNLF, have used racist rhetoric as their main

³⁰ "KR Claim Fisherman Controlled by SRV," Hong Kong Agence France-Presse, March 11, 1993, reprinted in Foreign Broadcast Information Service/Southeast Asia: FBIS-SEA-93-046, March 11, 1993.

weapon to attack the SOC, undermine the credibility of UNTAC, and boost their own political reputations. UNTAC's criminal code explicitly punishes not only incitement to violence but also incitement to racial hostility or discrimination, or abusive language such as "Yvon" (savage), the common epithet for Vietnamese.³¹ Human Rights Watch considers restrictions on racist speech compatible with the international guarantees of free expression only to the extent of punishing incitement to racial violence; name-calling or racist opinions, while repugnant, should not in themselves be defined as criminal acts. The broad sweep of the UNTAC criminal code in this respect set an unfortunate precedent in Cambodian law. Paradoxically, for all its effort to criminalize racist speech, UNTAC restricted its other responses to expressions of disapproval, which were generally ignored. UNTAC did not seek to punish anyone under the criminal code or under the non-binding media guidelines it had drafted, which also enjoin racist incitement.

Environment for Elections: Not Neutral

It is to UNTAC's credit that a harassed and fragile but functioning multiparty system has been created (except in areas of Khmer Rouge control), such that twenty political parties contested the elections of May 23-28, 1993. More than 800 political party offices have opened across Cambodia. The majority of these belong either to SOC or to the Sihanoukist faction, FUNCINPEC, the two main contestants.

UNTAC succeeded in registering 4.6 million potential voters -- more than 90 percent of those eligible to vote -- by the end of January 1993. This represented a significant achievement. Credit for the astonishingly successful registration effort is usually given to the UN election volunteers, who traveled to remote areas, and even to Khmer Rouge-dominated villages, to sign up voters, and to the eagerness of the Cambodians themselves to participate. There is no doubt these factors played a major part. But it must be understood that throughout their territory, SOC local leaders received instructions to make sure every eligible voter registered, and they organized the adults in each village to present themselves at registration stations.

These same village and district leaders began an equally diligent campaign to sign up every adult in their jurisdictions for membership in the

³¹ The common sight of UNTAC personnel with Vietnamese prostitutes, and the perception that UNTAC is overly accommodating to the SOC administration, have popularized the pun "YvonTAC" to refer to the UN.

Cambodian People's Party, the party of the SOC, with a membership pitch that often included threats. Civil servants and professionals were warned they would forfeit their jobs if they failed to join – and, of course, vote for – the party; villagers were told they might lose their land. On the other hand, villagers also reported to Asia Watch prior to the election that the Khmer Rouge soldiers in their areas had threatened reprisals against anyone who participated in the election at all.

This kind of intimidation raised questions about how effective UNTAC guarantees of a secret ballot would be. Those guarantees included carefully controlled polling stations, private ballot boxes, military escort of the collected ballots, and inking of each voter's hand to prevent repeat voting. Polling stations were also guarded by the military.

But many Cambodians distrusted these safeguards. It did not help promote the credibility of the elections and of UNTAC that, in a bizarre bit of luck, the SOC's political party won first place on the ballot through a random drawing UNTAC held. In the period before the specific balloting procedures were made public, local SOC officials often tried to impress upon villagers that their votes would not be secret. One anecdote reported to Asia Watch involved a local SOC leader's threat that villagers would have to go before a statue of Buddha at the local pagoda and tell, before him and under oath, for whom they had voted. The village monk conducted his own counter-propaganda, saying, "Buddha sometimes can understand and forgive a lie."

The wave of politically targeted killings and intimidation had limited the ability of party activists to recruit members and to spread their message in areas not under their control. In SOC territory, opposition party recruiters had no other means to reach voters than discrete face-to-face encounters, and often even this method was difficult, with many staying close to their party offices to reduce the risk of physical attack.³² In the non-communist zones, no SOC party office of recruitment was evident, and officials there also used intimidation to ensure local voters' loyalty. UN military personnel accompanied UNTAC election teams to provide protection, but because of restrictions on their use of force, were limited in their ability to do so.

UNTAC limited the period for official campaigning to six weeks prior to the election, hoping thereby to minimize the potential for political violence and to control security better. This limit had no effect on the dominant party in each area. The SOC, for example, began its "campaign" months in advance, with officials

³² Interviews with organizers of FUNCINPEC, BLDP, LDP and ADD parties in Phnom Penh and Battambang, Banteay Meanchay, Svay Rieng and Prey Veng provinces, February 1993.

lecturing the bureaucracy, the Buddhist sangha and the citizenry on the importance of voting for the party. It converted government buildings into party offices and disseminated campaign posters featuring the party logo that would appear on the ballot.

Growing insecurity and fighting throughout the country forced the UN to scale back plans for polling stations. Following the murder of a Japanese election volunteer in April 1993, at least forty of the approximately 400 UN volunteers decided to leave because of concerns that UNTAC could not adequately ensure their security.

The SOC also enjoys an indisputable advantage in communication. In March, UNTAC opened its radio to access by all parties, but the only television broadcast in the country is controlled by the SOC. UNTAC initially declined to insist on time-sharing for all parties in television, raising the issue to the SNC only in April 1993. Radio is in fact more important in Cambodia, but television is critically important in Phnom Penh, Battambang and other major towns.

Conclusions

The extraordinary mandate of the UN in Cambodia, through which it assumed quasi-governmental powers, had the effect of raising expectations that the UN would also assume quasi-governmental responsibilities, expectations that the peacekeepers ultimately failed to fulfil. It is doubtful whether the Cambodian parties would have acquiesced to handing over so much authority, on paper at least, had it not been for the extraordinary pressure brought to bear by their patrons in the Perm-5 and the region. And indeed, once the UN mission was on the ground, and costly preparations had finally gotten underway, neither of the two main combatants was willing to yield control when the other failed to perform key concessions – disarmament, on the part of the Khmer Rouge, and dismantling of political control, on the part of SOC.

The goals that required the extraordinary powers of the UN – cantonment and disarmament, fostering of a neutral political environment, direct control and supervision of administration, reconstruction of the country – all were subordinated to the political agendas of the foreign signatories to the accords. That agenda was to constitute an internationally acceptable government in Cambodia, and to create conditions that would lead ultimately to the international isolation of the Khmer Rouge, and the economic integration of Cambodia and her immediate neighbors. Consequently, the holding of elections that was to conclude the mission became a non-negotiable feature. Khmer Rouge refusal to disarm was ruled a barrier to participation in the elections only in January 1993. SOC efforts at

political intimidation have yet to be seen as disqualifying that party, despite over one hundred documented cases of abuse. Withdrawal or modification of the UN mission was ruled out as an option, and the UN lost an important source of leverage over the parties as they failed to cooperate.

The scope of the plan -- requiring the deployment of 20,000 peacekeepers in a country with virtually no infrastructure -- combined with the tight 18-month timetable, dictated by the unprecedented cost of the mission -- immediately put in doubt whether the UN could actually supervise and control the existing power structures. Staffing problems, particularly for the 5,000 civilian peacekeepers, raised these doubts further. Delays in recruiting and replacing key administrators, and the failure to employ appropriately qualified persons in such vital areas as administrative supervision and policing compromised the UN's ability to take charge in areas such as internal security. This in turn fed a tendency to interpret UNTAC's mandate narrowly. Observation and advice appeared to be as much as UNTAC administrators could accomplish, not supervision and direct control.

UNTAC tested the limits of its authority gingerly, if at all. No one publicly questioned the continued functioning of institutions such as SOC's National Assembly -- hardly an "administrative" structure -- and no one undertook to explicitly abrogate the laws passed during the transitional period, even when they were in direct conflict with UNTAC directives adopted by the SNC. Rather than target the leaders of uncooperative bureaucracies, dismissals were usually sought for low-level officials, and compliance accomplished only after considerable delays. In the case of serious human rights abusers, UNTAC has yet to succeed in obtaining the dismissal of a SOC policeman who brutally beat a criminal suspect, much less the dismissal of the governor of Battambang, who is responsible, either directly or through inaction, for the numerous acts of political violence, intimidation and killing in his province.

The UNTAC bureaucracy's reluctance to take a confrontational approach undermined later attempts to invigorate human rights enforcement. Creation of the Special Prosecutor's office was strongly opposed within UNTAC, and once approved, top administrators still sought to subordinate the decision to prosecute to political rather than legal concerns. As UNTAC never created the conditions for a truly independent judiciary to function in Cambodia, no independent tribunal has been found, and UNTAC's prisoners remain in limbo, held under an administrative order of indefinite detention.

These radical swings between ill-prepared intervention and accommodation to the Cambodian parties point to a vacuum of leadership and planning, and a failure to decide on the minimum standards for cooperation on the

part of the Cambodian parties. Had standards of accountability for all Cambodian authorities been set and enforced early on, dismissals of high-ranking officials might have facilitated compliance by the lower ranks. Similarly, had UNTAC immediately acknowledged that Cambodian police and courts as currently constituted are incapable of correcting political abuses, many other actions might have been taken that would have avoided the present impasse with the special prosecutor.³³

The handling of violence against ethnic Vietnamese presents the clearest case study of the disastrous effects of this vacillation. UNTAC leaders failed to recognize how central the issue of Vietnamese domination was to Cambodians. The Khmer Rouge and other opposition factions took full political advantage of these issues, through racist rhetoric, and in the case of the Khmer Rouge, through massacres of Vietnamese civilians. Notwithstanding their expressions of outrage, neither UNTAC nor the Security Council took steps actually to punish the parties that conducted or condoned these killings.

The poor funding and inadequate staffing of the human rights component point to the low priority human rights protection was accorded among the goals of the mission. The accords, which stress that "non-return" to the "policies and practices of the past" be assured, contain no mention of specific enforcement procedures. The component was designed to focus mainly on education, with the idea that all UNTAC personnel would to some degree be involved in monitoring and enforcement. In fact, no one was charged with enforcement until the creation of the Special Prosecutor's Office, which finally gave some purpose to the investigations that human rights officers had conducted. UN officials now insist that despite their failure to ensure a "neutral political environment," the elections were still "free and fair." In essence, this implies judging the success of the mission by the results of the balloting -- since SOC's opposition appears to have won a significant part of the vote, the international community can believe Cambodians were able freely to choose their next leaders.³⁴ This position ignores

³³ Instead, UNTAC adopted rules that prohibited any budgetary support for Cambodian administration. The most thorough effort to constitute a multi-faction independent police force was done by Australian civil police in Thmar Pouk, the KPNLF "zone" -- the Australians paid for the new force's uniforms. When UNTAC brought judges from all over the country to participate in training sessions on the new criminal code, the UNTAC administrator who organized the training was unable even to draw on UNTAC funds to provide coffee for the Cambodian participants.

³⁴ The fallacy inherent in this view is evident. Anything short of a complete victory by the

the fact that a "neutral political environment" was essential for the accomplishment not only of the elections, but also of all the other goals of the accords – the end of the war, demilitarization, reconstruction, and establishment of institutions that would prevent the gross abuses of Cambodia's recent past. As the peacekeepers' mandate expires, the accomplishment of these goals is still a long way off.

The UNTAC mission has temporarily improved the overall human rights situation in Cambodia, even while it has failed to enforce human rights standards or even bring political stability within reach. Hundreds of prisoners have been released, prison conditions improved, and jails and courts are under construction in the noncommunist zones. Although UNTAC has not helped courts become independent, it has advanced basic education in law and human rights, and a program to bring judges from other Asian countries to advise their Cambodian counterparts is in the planning stages. Cambodians in the SOC enjoy a greater freedom of association than ever before, even in the face of official intimidation. Cambodian nongovernmental groups are springing up, including human rights groups. What remains to be seen is whether any of these improvements will last beyond the expiration of UNTAC's mandate. For all UNTAC's failures to bring peace or secure human rights, it has at least raised the expectations of some Cambodians as to the sort of treatment they are due from their leaders.

RECOMMENDATIONS

The lessons that can be drawn generally from the peacekeeping effort in Cambodia include:

- o Human rights protections are central, not ancillary, to goals such as establishing trust between belligerent parties, accomplishing a ceasefire and demobilization, and creating conditions for reconstruction of countries devastated by war. Accordingly, appropriate resources must be provided for monitoring human rights and correcting serious abuses.**
- o The means to enforce human rights standards must be clearly set out and agreed to by all parties, regardless of what those means are**

opposition raises the question of whether it would have won more in an atmosphere free of intimidation.

(publicized investigations, tribunals, administrative actions). Agreement on effective means of enforcement should be a pre-condition to UN deployment. Non-compliance with enforcement should trigger specific penalties, including possible termination of UN involvement and any associated benefits.

- o The UN and donor countries must ensure that the personnel provided for peacekeeping missions are appropriately qualified and trained for the positions they will assume. In addition to professional qualifications, the UN must ensure that all its representatives are trained in basic human rights standards, the background to the conflict they are helping to resolve, and the culture of the country they will be guests in. Codes of appropriate behavior, including sexual behavior, must be strictly enforced.**
- o Human rights monitoring, investigation and enforcement must be independent of other UN administrative functions, and publication and corrective actions must not be subordinated to political considerations. Silence and inaction on the part of the UN should not be traded for the cooperation of the belligerent parties.**
- o In any peacekeeping mission, the UN must urge the parties to adopt the broadest possible range of international human rights protections and standards. It is inexcusable, for example, that the Optional Protocol to the International Covenant on Civil and Political Rights was not recommended for adoption by the SNC because other countries in Asia had yet to adopt it, or that UNTAC has yet to propose amendments to its transitional criminal code to incorporate the standard defenses to crimes. The UN must also hold itself to internationally recognized human rights standards, avoiding actions such as administrative detention (as occurred in two cases described above) or impunity for common crimes (UN personnel have diplomatic immunity throughout Cambodia -- this has caused ill-will when soldiers and police refused to pay victims of traffic accidents caused in some cases by drunk driving; the UN had to create a voluntary accident fund.).**

UNTAC will retain most of its authority during the three months following the elections, until a new government is installed. In view of the likelihood that war will continue after the elections, and that the situation in Cambodia will be

extremely unstable in the transitional period, Asia Watch also recommends with respect to Cambodia that:

- o the international community immediately take steps to ensure the continued presence of UN peacekeepers for the three-month transitional period, and for a period of time thereafter if requested by the constituent assembly. There should be a continued presence of human rights monitors in each province with adequate logistical support;**
- o the international community provide support to indigenous, independent Khmer nongovernmental organizations, particularly human rights groups and professional associations;**
- o the Security Council extend and reinforce economic sanctions against the Khmer Rouge, and press Thailand to take further steps to ensure these sanctions are respected. The border with Thailand should be monitored by the UN, both to ensure that log and gem exports do not cross and to ensure that future refugees fleeing persecution are not forced back into Cambodia;**
- o the Security Council develop a concrete plan of action to respond to the possible refusal of a party or parties to respect the results of elections and engage in violence, or to attempt reprisals against political opponents;**
- o the Security Council develop a concrete plan of action to protect ethnic Vietnamese, Cambodian employees of UNTAC, and other vulnerable groups after the election;**
- o the UNHCR continue to monitor the protection of Cambodians who returned from the Thai camps, internally displaced people within Cambodia, and new refugees; and**
- o the Security Council call for the immediate establishment of an independent tribunal to try the cases brought by the UNTAC special prosecutor, and the results of all UNTAC investigations should be referred to such a tribunal for prompt action or, consistent with measures to protect witness safety, publication.**

FORMER YUGOSLAVIA

BACKGROUND

Five states have emerged from the former Yugoslavia since 1991. In two, Croatia and Bosnia-Herzegovina, their birth was accompanied by armed conflict marked by appalling brutality inflicted on the civilian population and extreme violations of international humanitarian law, or the laws of war.¹ Croatia's independence was recognized by the European Community and other countries in January 1992, after a half-year of warfare; Bosnia-Herzegovina's, in April 1992; and both, along with Slovenia, became member states of the United Nations in May of that year.

The war in Croatia began in mid-1991. Serbs feared that resurgent Croatian nationalism might breed the kind of ethnic reprisals that had marked the Nazi-aligned Ustasa government, which had been responsible for the deaths of thousands of Serbs between 1941 and 1945. The government of the Republic of Serbia played upon these fears and exaggerated the persecution faced by Serbs in Croatia. Moreover, leaders of the Serbian Democratic Party (SDS) and elements of the Yugoslav People's Army (JNA) armed the Serbs in parts of Croatia and Bosnia. For its part, the Croatian government led by Franjo Tudjman² did little to reassure the Serbian minority and, in August 1990, Serbs in the town of Knin launched a rebellion against the Croatian government. Soon the Serbs had declared autonomous regions throughout much of Croatia and denied Croatian government authorities access to these areas. Full-scale fighting ensued, while

¹ A third state, Slovenia, is recognized internationally. Macedonia was recognized by the UN in April 1993. Because Greece objected to Macedonia's name, which it regards as part of Greek heritage, the new state was admitted under the temporary name of "the former Yugoslav Republic of Macedonia." Further UN-sponsored negotiations are in progress to settle the name issue and other bilateral disputes between Macedonia and Greece. The republics of Montenegro and Serbia joined to form a new Yugoslav state, the Federal Republic of Yugoslavia.

² Tudjman was elected in April 1990 and his Croatian Democratic Party (HDZ) obtained a majority of the seats in parliament.

Serbs in neighboring Bosnia also declared the establishment of Serbian autonomous regions in many parts of that republic. By late 1991, Serbian irregulars in Croatia -- aided by the Serbian-dominated JNA and Serbian and Montenegrin paramilitaries -- had captured one-third of Croatia and had expelled or executed most of the region's non-Serbian inhabitants. They declared this territory to be independent of Croatia, calling it the "Republic of Serbian Krajina," and announced their intention to combine it with other Serbian-occupied lands of the former Yugoslavia to form a "Greater Serbia."

A ceasefire between warring factions in Croatia was brokered by Cyrus Vance, Special Representative of the UN Secretary General, in January 1992. Although UN peacekeeping forces were sent to Croatia, and full-scale fighting diminished there, violations of the laws of war continued. The forcible displacement of non-Serbs in Serbian-controlled areas of Croatia and the destruction of Serbian and Croatian property in Croatian- and Serbian-controlled areas of the country continued unabated throughout the latter part of 1992 and into 1993.

After international recognition of Bosnia-Herzegovina's independence in April 1992, Serbian armed forces and paramilitary groups and the JNA launched an offensive and eventually captured 70 percent of Bosnia-Herzegovina's territory. Serbian and Yugoslav forces fought against the Bosnian (predominantly Muslim) army as well as against Croatian forces that are both indigenous to Bosnia-Herzegovina and from Croatia proper. The JNA formally withdrew in May 1992, but left behind both men and materiel to assist the Bosnian Serb forces and maintained a flow of supplies to Serbian-controlled areas of Bosnia-Herzegovina and Croatia.

Bosnia's ethnic groups have varied political goals. Muslim representatives in Bosnia-Herzegovina argue in favor of a single, democratic state for all the nation's citizens and oppose division along ethnic lines, also called "cantonization." They fear that division into regions controlled by the various ethnic groups (Croat, Serb, Muslim) would eventually result in the incorporation of Croatian and Serbian cantons into Croatia and Serbia proper. Some moderate Serbs and Croats support this view. Nationalist Bosnian Croat forces have established a semi-autonomous region in western and parts of central Bosnia and formed a nominal alliance with predominantly Muslim Bosnian government forces. Increasing armed conflicts between Bosnian Croat forces (known as HVO) and Muslim troops continue to damage the Croat-Muslim alliance, however. Most of the fighting is related to disputes concerning which armed force will retain control over territory in which both Croats and Muslims comprise significant portions of the population. Through conquest and

"cleansing" of non-Serb controlled areas of Bosnia-Herzegovina and Croatia, Serbian leaders in predominantly Serbian-controlled areas seek to incorporate their areas into a "Greater Serbia." Some Serbs also claim that they fear the fundamentalist policies of a predominantly Muslim government, although the mainly Sunni Muslims of Bosnia are relatively secular and tolerant.³

All sides have taken recourse to intimidation, harassment and violence against civilians. In particular, Serbian forces have carried out a policy of "ethnic cleansing," which has involved the summary execution, disappearance, torture, arbitrary detention, deportation and forcible displacement of hundreds of thousands of people on the basis of their religion or nationality. Croatian and Muslim forces have also carried out such abuses, to a lesser extent and in a less organized fashion. Indiscriminate force, and rampant sexual abuse of women, have been used primarily to terrorize the civilian population to induce surrender or flight. The extent of the violence and its selective nature along ethnic and religious lines suggests crimes of a genocidal character, particularly against Muslim and, to a lesser extent, Croatian populations in Bosnia-Herzegovina.

UN efforts in Croatia have focused on peacekeeping; in Bosnia-Herzegovina its goals have been to secure peace, impose sanctions and deliver humanitarian assistance. The UN's failure to stem human rights abuses in Croatia, which should have underscored the need for a different approach to the Bosnia crisis, apparently did not; in neither situation has the UN prevented or even appreciably reduced the commission of human rights abuses and war crimes. Peace talks on Bosnia-Herzegovina have been stalled time after time as the parties -- principally the Serbs -- have demonstrated bad faith. While UN officials and agencies search for a negotiated solution to the conflict, the scope and nature of human rights violations go beyond anything seen in Europe since 1945.

The Bosnian crisis, now in its fourteenth month, has claimed thousands of lives and, in addition to the hundreds of thousands displaced, endangers the very survival of perhaps one million more non-Serbs trapped in communities under siege. Although the abusers themselves bear primary responsibility for this crisis, it must be said also that the international community's response has been inadequate to protect the lives of endangered civilians, in part because the UN and the European Community (EC), in negotiating with those responsible for massive

³ Helsinki Watch has, to date, found no evidence to suggest that Muslim members of the government or leaders of the predominantly Muslim Party of Democratic Action (SDA), which holds a majority of seats in parliament, discriminated against, or infringed upon the rights of, non-Muslims in Bosnia-Herzegovina prior to the outbreak of war in the republic.

abuses of human rights, have not placed the prevention of war crimes at the center of the negotiating agenda. The governments of powerful European countries and the United States, and such intergovernmental bodies as the EC and the UN, appear to lack the political will to stop the atrocities. While the lives of thousands in Bosnia remain at risk, the task of saving lives in the here-and-now has been left to the beleaguered and largely unprotected medical and relief personnel of the UN High Commissioner for Refugees (UNHCR). And the mandate of the UN troops assigned to protect food and medical convoys in Bosnia has been so vaguely defined, and so narrowly interpreted by the UN leadership, that the troops have become virtual hostages to harassment by all parties to the conflict, with the UN Security Council time and again failing to issue practical instructions on a more forceful interpretation of the mandate, and hesitating for months to punish those responsible for obstructing relief deliveries.

The UN Security Council also faces the difficult, but essential and ultimately unavoidable, issue of accountability for crimes against humanity. Human Rights Watch has long called for an international tribunal to investigate, prosecute and punish those responsible for war crimes, or "grave breaches" of the 1949 Geneva Conventions and their 1977 First Additional Protocol, in Bosnia-Herzegovina.⁴ The proposal for a war crimes tribunal gained momentum with a Security Council resolution in February 1993 calling for the establishment of such a tribunal and requiring the Secretary General to present a draft statute regarding the makeup and jurisdiction of the tribunal.⁵ A tribunal was finally approved by the Security Council in late May.⁶ But preparatory work has been so minimal as to raise questions about deliberate foot-dragging. A panel of experts convened in October 1992 was grossly understaffed and underfunded, and has produced little of substance.⁷ Funding and commitment remain critical issues. According to the

⁴ See, for example, Human Rights Watch/Helsinki Watch letter to Honorable Boutros Boutros-Ghali, Secretary General of the United Nations, January 14, 1993, reproduced as Appendix D to Helsinki Watch, *War Crimes in Bosnia-Herzegovina, Vol. II*, New York, 1993.

⁵ Security Council Resolution 808 of February 22, 1993.

⁶ Security Council Resolution 827 of May 25, 1993.

⁷ "It's not much more than a cosmetic effort," former State Department desk officer on Yugoslavia George Kenney is quoted as saying, in Roy Gutman, "War Crime Unit Hasn't a Clue," *New York Newsday*, March 4, 1993. The author cites "many" at the UN who "think the meager results of [the preliminary investigation panel] are what the nations in the Security

Secretary General's blueprint, funding is to come from the general UN budget, which entails a cumbersome process of approval by committee. But an effective effort requires immediate action and resources. Trials may become impossible as a practical matter if the necessary evidence is not collected and preserved now. In addition, the longer it takes for the tribunal to get started, the greater the pressure will be to use it as a trade-off in peace negotiations, a prospect we consider unacceptable.

We understand and sympathize with the difficult task faced by diplomats and negotiators who are striving to bring an end to the conflict in the former Yugoslavia. But the UN Secretary General, members of the UN Security Council and the UN and EC negotiators often appear to be neglecting the human rights of the people of Bosnia-Herzegovina in the interests of signing a peace accord. Serbian forces, meanwhile, delay the process of negotiating that accord as they attempt to complete the process of "ethnic cleansing" in territory they control or besiege. Moreover, the signing of a peace accord has led to an increase of fighting between, and the commission of atrocities by, Muslim and Croatian forces in western Herzegovina and central Bosnia.⁸ Human Rights Watch has urged UN negotiators to make negotiations contingent on the cessation of ethnic cleansing practices and the unencumbered delivery of humanitarian assistance to besieged communities in Bosnia. Without such requirements, the negotiations have become a cover for genocide and other war crimes.

HUMAN RIGHTS ABUSES AND VIOLATIONS OF THE LAWS OF WAR

"Ethnic cleansing," the most notorious of the campaigns of terror underway in the former Yugoslavia, has taken place in Bosnia-Herzegovina, Croatia and the new self-styled Yugoslavia, primarily in the republic of Serbia. The

Council intended."

⁸ The UN/EC peace plan -- which both Muslim and Croatian representatives have signed -- places under Croatian control certain regions with large Muslim populations. Citing the terms of the plan, Croatian forces have demanded that Muslim forces cede authority to them in these regions. Muslim forces have refused, and armed conflict ensued in early 1993, resulting in the "cleansing" of Muslim and Croatian villages in central Bosnia by Croatian and Muslim forces.

characteristics of ethnic cleansing include intimidation, harassment, discrimination, rape, indiscriminate bombardment of civilian communities, forced displacement and murder, by Serbian armed forces against non-Serbs in areas under Serbian control. Albeit to a lesser extent, Muslims and Croats have used similar tactics against Serbs in areas under their control. The goal is to rid all areas controlled by a respective armed force of members of the "enemy" ethnic group, or at least to diminish their numbers significantly. In Croatia, approximately 577,000 persons have been displaced as a result of the conflict; and approximately 1.4 million have been displaced from their homes in Bosnia.⁹ Moderate Serbs who have voiced opposition to these tactics have been murdered in Serbian-controlled areas of Bosnia-Herzegovina and Croatia. In the province of Vojvodina in Yugoslavia, many permanent Serbian residents have opposed the forcible displacement of their Croatian, Hungarian and other neighbors by radicalized Serbian refugees from Croatia and Bosnia-Herzegovina and by Serbian paramilitary groups.

In Bosnia-Herzegovina, hundreds of thousands of civilians, most frequently Muslims, have been victims of ethnic cleansing practices. In some cases, Serbian forces have "cleansed" an occupied town or village by summarily executing the non-Serbian inhabitants.¹⁰ Helsinki Watch is also concerned that Serbs opposed to such methods of ethnic cleansing may have been executed, by Serbian forces, for treason. After an area has been occupied by Serbian forces, many civilian inhabitants have been imprisoned for varying periods in Serbian-occupied areas of Bosnia or Croatia. Often they are released and expelled only after signing declarations forfeiting ownership of their homes, lands and other possessions -- which are taken over by Serbs in many instances.

Muslim, Croatian and Serbian forces contend that areas of detention, which they refer to as "concentration camps," exist throughout Bosnia-Herzegovina. All sides allege that schools, military barracks and stadia have been converted into detention facilities. In some cases, entire villages have served as places of detention for civilians.¹¹ Some assertions concerning the camps cannot

⁹ This figure reflects UNHCR data as of February 25, 1993.

¹⁰ Helsinki Watch is aware of mass executions in the towns of Bijeljina, Foča, and Bratunac, and the villages of Zaklopača, Omarska and Kozarac (municipality of Prijedor) and on Vlašić mountain, among others.

¹¹ Information gathered during 1992 by Helsinki Watch. Cf. Helsinki Watch, *War Crimes in Bosnia-Herzegovina, Vol. I*, New York 1992, pp. 16-17.

be substantiated. But testimony taken by Helsinki Watch, reports by independent foreign media, and UN documents provide at least prima facie evidence that Serb-operated camps, particularly in northern Bosnia, have been used systematically to detain, torture and possibly execute non-Serbs.

For purposes of "ethnic cleansing", artillery -- and earlier, aerial -- bombardment of civilian areas by Serbian forces is common and indiscriminate. Serbian paramilitary and regular JNA forces in Bosnia-Herzegovina have launched mortar attacks against non-Serbian controlled areas for prolonged periods, to force the population to surrender or flee. These tactics have produced a phenomenon of serial displacement, with civilians driven from village to village, in the absence of significant armed resistance to the Serbian offensive.¹²

During the 1991 war in Croatia, Serbian forces engaged in similar practices of "cleansing." Forcible displacement and deportation were the methods most frequently used, with non-Serbs systematically expelled from their homes, their property destroyed and their villages burned. There is also evidence of mass executions of perhaps as many as 200 Croats and others, in November 1991, in Vukovar.¹³

In Croatia, Serbs are also victims of ethnic hatred, suffering discrimination and harassment at the hands of Croatian extremists who have branded them supporters of, or collaborators with, the Serbian insurgents in Croatia and Bosnia-Herzegovina. The methods used to supplant Serbs from their homes in territory under Croatian control have included dismissal from jobs, destruction of property, questioning by the police, general harassment by individual extremists, and disappearance. Although the Croatian government has taken very modest steps to punish perpetrators of such abuses, the vast majority of cases involving violence against Serbs and mistreatment of Serbian prisoners have gone unpunished. Meanwhile the government has filed thousands of criminal charges against Serbs accused of "war crimes."

¹² For example, in 1992 Helsinki Watch interviewed a woman from the village of Jeleći (municipality of Foča) who was forced to flee 15 times in 40 days; in the course of her exodus, she claimed, no opposing forces were fighting the advancing Serbian and Yugoslav troops. Cf. Helsinki Watch, *War Crimes...*, *op. cit.*, pp. 72-73.

¹³ Physicians for Human Rights, "Report of a Preliminary Site Exploration of a Mass Grave Near Vukovar, Former Yugoslavia," January 19, 1993, inserted as Annex II to "Letter Dated 9 February 1993 from the Secretary-General Addressed to the President of the Security Council," S/25274, February 10, 1993.

Rape, long overlooked as a supposedly inevitable part of war, has been practiced on so wide a scale in Bosnia-Herzegovina, by all parties, that it has received belated international attention as a systematic violation of human rights. Although all sides practice rape, the Serbian forces appear to use it most widely. The European Community, in a much-publicized report released in January 1993, offered the estimate that 20,000 Muslim women had been raped by Serbian forces;¹⁴ no verifiable figures have been offered by any source, to our knowledge. In the case of Serbian fighters raping Muslim and Croatian women, the rapes often take place before witnesses, and may involve multiple rapists, indicating that the perpetrators do not fear punishment. The practice appears to be at least tolerated and in some cases encouraged by local Serbian commanders.

Because much of the violence against civilians in Bosnia-Herzegovina is committed by groups operating under limited command and control, it is often difficult to determine responsibility. Bosnian government troops, comprising mainly Muslim soldiers and also some Croats and Serbs, generally operate under local or regional command. But there are also numerous independent armed groups. On the Serb side there appears to be cooperation between regular armed forces personnel (former JNA) and paramilitary groups that operate with varying degrees of autonomy, but there is also a certain compartmentalization that has the effect of distancing military commanders from abuses. In general, the pattern is that regular armed forces take control of an area, then pass control to paramilitary groups or armed bands of civilians, who carry out most of the abuses of the laws of war. The abusive groups pursue a policy that is tolerated and even encouraged by the military command, but the groups are not members of the military themselves. Nonetheless, the link exists between formal and irregular forces, and at the very least the military command fails to exercise control to prevent abuses.

The gross violations of human rights described above provided the context, in Bosnia-Herzegovina, for UN efforts to deliver humanitarian assistance to starving inhabitants of Sarajevo and besieged Muslim communities in eastern

¹⁴ EC Investigative Mission into the Treatment of Muslim Women in the former Yugoslavia, Report on Preliminary Visit, 18-24 December 1992, p. 3. The report, citing "interlocutors whom the delegation considered responsible and credible," notes: "While a precise figure for the number of rape victims involved cannot be given, the delegation accepts, on the basis of evidence available to it, that it is possible to speak of many thousands. The most reasoned estimate suggested to the delegation indicated a figure in the region of 20,000 victims."

Bosnia during the winter of 1992-93, when hundreds of thousands of civilians, pinned down by Serbian artillery fire, without heat or food or medical supplies, awaited outside aid. According to the UNHCR, 380,000 people were at high risk of exposure, starvation and endemic diseases in Sarajevo; in eastern Bosnia, particularly in the besieged areas of Goražde, Zepa and Srebrenica, an additional 100,000 were at similar risk.¹⁵ In Zepa, which did not receive outside supplies until January 1993, scores of people had died, and UN personnel arrived to find the town's doctors amputating limbs with a carpenter's saw, administering liquor to surgical patients for lack of anesthetics, and cauterizing surgical wounds with a heated wire.¹⁶ Yet all parties to the conflict have impeded the delivery of essential supplies provided by the UN under a guarantee of humanitarian neutrality. Indeed it is evident that the starvation of Muslim civilians in the besieged communities, a violation of the laws of war, is viewed by the Serbs as a means of accomplishing "ethnic cleansing." Between October 1992 and mid-January 1993, the UN documented 54 incidents of attack on humanitarian convoys and personnel, in addition to thefts of supplies and delays at manned checkpoints.¹⁷ The obstruction of convoys became even more confrontational in March and April, as the months of suffering in winter cold made the besieged communities of eastern Bosnia desperate.

In Sarajevo, the capital of Bosnia-Herzegovina, aircraft containing humanitarian supplies have been shot at, on the ground and in the air. UN soldiers charged with unloading humanitarian cargo have been wounded by shrapnel.¹⁸

¹⁵ United Nations High Commissioner for Refugees, Office of the Special Envoy for former Yugoslavia, "Information Notes on Former Yugoslavia," January 22, 1993, and John F. Burns, "Bosnians Tell U.N. They'll Refuse Relief Aid Shipments to Sarajevo," *The New York Times*, February 13, 1993.

¹⁶ John F. Burns, "Primitive Bosnian Clinic Appalls Convoy," *The New York Times*, January 19, 1993.

¹⁷ John F. Burns, "Most Relief Operations in Bosnia Are Halted by U.N. Aid Agency," *The New York Times*, February 19, 1993.

¹⁸ For example, two Canadian UN soldiers were wounded by shrapnel and six UN trucks destroyed on the airport tarmac in July 1992. See "Sarajevo Aid Cut Off," Associated Press article carried by *New York Newsday*, July 21, 1992.

Trucks carrying food and medicine have been fired on.¹⁹ This and other interference with relief deliveries around Sarajevo has come as often from Muslim and Croatian as from Serbian forces. Sniper attacks and artillery fire against hospitals and ambulances carrying wounded are further unconscionable violations of the laws of war.

Article 54 of Protocol I additional to the Geneva Conventions of 1949 states, with regard to sieges, that starvation of civilians as a method of warfare is prohibited, and that it is further prohibited to attack or destroy objects that are indispensable to the survival of the civilian population, including foodstuffs, in order to starve civilians, or cause them to move away. The delivery of food supplies is protected under the Fourth Geneva Convention and Protocol I. Shelling, machine-gunning and sniper fire against civilians are prohibited by Article 51 of Protocol I, which specifically forbids indiscriminate attacks and acts whose primary purpose is to spread terror among the civilian population. All of these prohibitions exist as a matter of treaty and customary international law.

UN ACTIONS

The United Nations established a peacekeeping presence in Croatia, after achieving a ceasefire there in January 1992,²⁰ and later extended its peacekeeping operation in Croatia to facilitate deliveries of humanitarian aid to areas of Bosnia-Herzegovina. During 1992 the European Community tried to broker a political solution to the Yugoslav crisis by bringing the various parties to the negotiating table, while the United States led the effort to impose UN sanctions against Yugoslavia for its use of force in Bosnia-Herzegovina. Since then, the UN has tried to maintain peace on the ground in Croatia, address humanitarian needs in Bosnia-Herzegovina and, with the European Community, explore diplomatic

¹⁹ John F. Burns, "The Food Gets Through, a Brave but Small Step," *The New York Times*, July 16, 1992.

²⁰ The parties were the Republic of Croatia, leaders of the Serbian insurgents in Croatia, and their supporter, the then-Socialist Federal Republic of Yugoslavia, since renamed the Federal Republic of Yugoslavia. The concept for the UN peacekeeping operation in the former Yugoslavia is contained in Annex III of the "Report of the Secretary-General Pursuant to Security Council Resolution 721 (1991)," United Nations Security Council, S/23280, December 11, 1991.

avenues to resolve the crisis. These actions, while commendable, have had little if any effect on the fighting in Bosnia-Herzegovina or the human rights situation in Bosnia or Croatia.

UN peacekeeping and other efforts in both Croatia and Bosnia-Herzegovina have been marked by timidity, disorganization, unnecessary delay and political indecision. Quite apart from the difficulties of negotiating among parties that are unwilling to cease fighting and are acting in bad faith, UN operations in the region have been hampered by competition between member states and the Secretary General; disputes between the Secretary General and UN personnel in the field; member states' unwillingness to commit necessary financial resources; and violations of the arms and trade embargos by several nations.

UN Peacekeeping in Croatia

Under the January 1992 ceasefire agreement, commonly known as the "Vance plan," troops of the United Nations Protection Force (UNPROFOR) were deployed in three regions of Croatia, starting in mid-May. UNPROFOR initially had 14,000 troops in the former Yugoslavia but that number was eventually increased.²¹ At first, UNPROFOR made its headquarters in Sarajevo, the Bosnian capital, hoping to discourage armed conflict in that republic. Headquarters were later moved to Zagreb and Belgrade.

UNPROFOR was responsible for ensuring compliance with the plan's requirements that all parties in four sectors known as UN Protected Areas (UNPAs) should demobilize and disarm and that the JNA should withdraw from all parts of Croatia. The UN infantry units were also to control access to UNPAs and prevent the renewal of hostilities. Initially, unarmed UN military observers were deployed to verify demilitarization. The Vance plan called for the maintenance of the political status quo in the UNPAs, i.e., the continued functioning, on an interim basis, of the existing local authorities and police, which would be under UN supervision until an overall political solution was reached. But the composition of the local police was to be reformed immediately, to reflect the ethnic composition of the communities before hostilities commenced. UN police monitors were deployed to observe the work of the local police forces and to investigate complaints of discrimination or other human rights abuse. Massive displacement having

²¹ As of May 1993, 14,000 UN peacekeeping troops are deployed in Croatia, and 9,000 throughout Bosnia. "Bosnia: The Situation Inside and Out," *The New York Times*, May 9, 1993.

occurred during the conflict, UN peacekeeping forces were to assist in the repatriation of the more than 500,000 persons who had fled the UNPAs. A civilian police component, commonly referred to as CIVPOL, was to ensure that local police carried out their duties and that residents' human rights were respected. Comprising approximately 600 police officers, CIVPOL was authorized to monitor human rights abuses, receive complaints from the public, carry out parallel investigations and identify people in need of humanitarian aid.

UNPROFOR's mandate of one year has been extended, but not without protest from the Croatian government, which has expressed dismay that UNPROFOR has not met its responsibilities. UNPROFOR has placed significantly more emphasis on its own troop deployment than on giving logistical, financial or public support to CIVPOL. In a July 1992 report to the Security Council, Secretary General Boutros-Ghali stated that he attached "special importance" to the repatriation of displaced persons;²² yet, to date, not one individual has been repatriated to the UNPAs since the arrival of UNPROFOR. The UN agency traditionally responsible for repatriation, the UN High Commissioner for Refugees (UNHCR), has deployed field officers in Croatia who have, perforce, taken on the role for which UNPROFOR was to be responsible – the security of civilians. Many UNHCR field officers have actively intervened to prevent abuses of non-Serbs living in Serbian-controlled areas of Croatia and Bosnia, as well as Serbs suffering abuses at the hands of Croats and Muslims in Bosnia and Croatia. They have worked largely without protection from UNPROFOR.

Even within the military domain that it has emphasized, UNPROFOR has been ineffective. UN peacekeeping forces have not imposed their authority in the UNPAs, where Serbian officials continue to do as they will. Most international observers and UN personnel interviewed by Helsinki Watch in the past eighteen months believed that Serbian militias had merely changed military for police uniforms. Most concurred that, in fact, the UNPAs had not been de-militarized and the Serbian military had not been demobilized. Indeed, the Secretary General acknowledged this fact in a report to the Security Council in July 1992.²³ Moreover,

²² United Nations Security Council, "Report of the Secretary-General Pursuant to Security Council Resolution 762," S/24353, July 27, 1992.

²³ "The process of demobilization of the TDF [Serbian Territorial Defense units which have received much JNA weaponry] in the sectors has been complicated by the parallel emergence of the strengthened police and militia organizations. These groups, designated as 'Special Police,' 'Border Police,' and so on, are equipped with automatic rifles and, in some cases, with machine-guns, in violation of the provisions of the Vance plan." United

areas that were due to be returned to Croatian government control under the Vance plan have not been relinquished by the Serbs; rather than insist on compliance, UN negotiators have declared such areas to be "pink zones," supposedly neutral territory under UN control. In fact, such zones remain largely under Serbian control, the UN has done little to prevent the continued displacement of non-Serbs from those areas, and Serbian forces continue to commit human rights abuses without the impediment of even a nominal UN monitoring presence. Thus, timidity has led to euphemism to disguise the fact that actual concessions have been made to Serbian intransigence. To its credit, the UNPROFOR mission prevented an all-out war between Croatia and Serbian forces in Serbian-occupied areas of Croatia.²⁴ But control of Serbian weaponry, and of Serbian military activity in support of fellow-Serbs in Bosnia-Herzegovina, appears to be minimal.²⁵

We are concerned, moreover, that UN officials withheld information about human rights abuses committed by both Serbian and Croatian forces in Croatia. Complaints about these abuses were privately presented in separate

Nations Security Council, "Report of the Secretary-General Pursuant to Security Council Resolution 762 (1992)," S/24353, July 27, 1992.

²⁴ A Croatian offensive against Serbian military positions in the Zadar hinterland in January 1993 ruptured the ceasefire in the southern sector. On April 6, 1993, representatives of the Croatian government and local Serbian insurgents signed an agreement regarding the implementation of Security Council Resolution 802, which demanded an end to hostilities in the Zadar area, the withdrawal of Croatian troops from areas recently captured, and the immediate return of heavy weaponry seized by Serbian forces from UNPROFOR-controlled storage areas. The Croatian government agreed to the April 6 document on the same day. However, at a meeting of the self-proclaimed parliament of the "Republic of Serbian Krajina" in the town of Okučani on April 20, Serbian forces rejected the terms of the agreement. As a result, fighting between Serbian and Croatian troops continues in and around the coastal cities of Zadar and Šibenik.

²⁵ For example, sporadic shelling continues, particularly in the Zadar region, between Serbian forces within the UNPAs and Croatian forces outside them. And as the Secretary General noted in July 1992, "Serbs within the UNPAs are increasingly involved in the conflict in Bosnia and Herzegovina and this is making it more difficult for UNPROFOR to demilitarize the UNPAs." United Nations Security Council, "Report of the Secretary-General Pursuant to Security Council Resolution 762 (1992)," *op. cit.*

reports to Croatian and Serbian government officials, but the information was never made public, nor were the abuses publicly condemned by the UN.²⁶ We believe this is a serious error. Croatian authorities have taken modest steps to improve their human rights record, but only when criticism of that record has been made public and supported with specific documentation, such as the UN possesses. Serbian parties to the conflict, while less responsive to public criticism, have been forced by prolonged and vociferous condemnation to release detainees in prison camps.

We are also disturbed that the forcible displacement of non-Serbs from the Serbian-controlled areas of Croatia continues despite the UN's presence in those areas. This occurred largely because the arrival of UN troops was delayed; rather than assume full duties in mid-April 1992 as projected, troops did not begin arriving until mid-May and deployment was not completed until late June.²⁷ Serbian authorities seized the moment to displace most of the remaining non-Serbs in areas under their control. Prior to the full deployment of UN soldiers in the UNPAs, some 1,500 UN observers were in Croatia, but the UN did not respond adequately to these abuses. Helsinki Watch has interviewed UN personnel who were aware of the displacements and reported them to their superiors, who in turn did nothing.

In March and April 1992, when the majority of expulsions of non-Serbs took place in various regions of Serbian-controlled Croatia, Helsinki Watch representatives saw numerous UN military observers and personnel in those regions. Although UN personnel appear not to have directly witnessed the expulsions, they were aware of the names of the villages from which non-Serbs had been displaced, the number displaced and the date of the expulsions. This information was never made public by UN officials – much to the frustration of UN personnel with whom Helsinki Watch representatives spoke in Belgrade and

²⁶ Abuses by Croatian forces that have been documented by the UN include the continuing destruction of Serbian villages and property in western Slavonia, an area currently under UN supervision. Some of these abuses have been documented by the Croatian government, and the government has taken some steps to prosecute and punish some Croatian soldiers. Helsinki Watch believes, however, that this effort has not been sufficiently thorough and vigorous, and that public UN pressure would have increased pressure for full prosecutions.

²⁷ The delay was caused in part by the outbreak of war in Bosnia-Herzegovina and the resulting difficulties of basing UN headquarters in Sarajevo. Disagreements between UN officials also contributed.

Zagreb as well as in the field. Similarly, UN authorities did not respond to the destruction of Serbian property in Croatian-controlled areas, which like the Serbs' actions was aimed at permanently changing the demography of the region. If the UN could not fully assume its duties in the UNPAs according to schedule and was aware of forcible displacement that flew in the face of the Vance plan, steps should have been taken to prevent expulsions in the interim, for example by forceful public denunciations. Some modest actions have been taken to prevent expulsions, starting in May 1992, but active UN involvement in protecting the UNPAs' residents has generally been the exception rather than the rule. The various UNPROFOR battalions take different postures when confronted with abuses; Belgian, Canadian and French battalions have actively pressured local authorities to cease abusive behavior, while a Russian battalion has notoriously failed to do so.

The Secretary General has also misrepresented reality in the field, reporting for example that expulsions have ceased as a result of UNPROFOR's "intense patrolling and control at checkpoints" in Serbian territories of Croatia.²⁸ Such a statement is misleading; although mass expulsions have decreased in frequency, this is due largely to the fact that most of the area's non-Serbian population had already been expelled by the time UNPROFOR was fully deployed. Moreover, during the summer and early fall of 1992, expulsions continued at a rate of three or four per week in one sector, according to a UN official who spoke in confidence to Helsinki Watch that October. In sum, although the UN may have lessened the intensity of fighting in Croatia, ethnic cleansing in the UNPAs has continued uninterrupted since January 1992, and the UN has done little to raise public awareness of this fact; indeed, if anything, it has fostered the opposite impression.

UN Actions in Bosnia-Herzegovina

In Bosnia-Herzegovina, the UN's peacekeeping efforts were at first only symbolic, part of the Croatia mission and as a hoped-for deterrent to wider conflict. But areas of Bosnia-Herzegovina had been heavily militarized by the JNA by late 1991, and tensions in Bosnia-Herzegovina were high prior to the UN's arrival in Sarajevo. Had the UN seriously hoped to discourage the outbreak of fighting in Bosnia-Herzegovina, a larger force, similar to that for Croatia, would probably have been necessary. But UN member states and leadership were

²⁸ UN document S/24353, July 27, 1992.

unable to make such a commitment of financial resources; one reason for the delays in deployment of UNPROFOR troops was that member states, which called for and approved the plan, spent weeks complaining about the operation's cost.²⁹ Deployment was therefore slow and disorganized, further diminishing the impact of the troops' arrival on the prospects of war. Serbian forces took advantage of the delay to assume military and political control over parts of Bosnia-Herzegovina.³⁰

After armed conflict had broken out in parts of Bosnia-Herzegovina, Secretary General Boutros-Ghali ruled out early deployment of an international peacekeeping force in that republic and recommended that UN forces be evacuated from Sarajevo, as it was evident that the parties to the conflict, particularly Serbian forces, refused to seek peace.³¹ After delays due to heavy fighting and the collapse of two ceasefires, most UN troops were evacuated, with somewhat over 100 left in Sarajevo to assist relief convoys. Headquarters for UNPROFOR was moved to Belgrade and Zagreb.

An early opportunity to encourage the disarming of the warring factions in Bosnia-Herzegovina was suspended – and later effectively abandoned – due to competition between UN member states and the UN leadership. In response to an EC-brokered cease-fire agreement in July 1992, the Security Council authorized UN forces to take control of all heavy weapons in the region, thereby angering the Secretary General. In a private letter dated July 20, Secretary General Boutros-Ghali admonished members of the Security Council for ignoring his objections

²⁹ Even after Croatian and Yugoslav authorities agreed to contribute more toward the costs of the peacekeeping force, the UN's member states have been slow in paying their shares. As permanent members of the Security Council, France, Britain, Russia, China and the United States are responsible for paying more than half of the cost of the operation, and these countries' failure to fulfill their obligation prevented the troops' timely arrival.

³⁰ For example, Helsinki Watch representatives traveling to Knin from Belgrade in late March 1992 were confronted by Serbian paramilitary units belonging to "Arkan" on the outskirts of Banja Luka, who prevented all but a very few persons, residents or others, from passing through their barricades. In the city itself, Serbian paramilitaries were roaming the streets with heavy weapons; according to residents, the Serbs had that morning assumed control of the city government.

³¹ Paul Lewis, "UN Rules Out a Force to Halt Bosnia Fighting," *The New York Times*, May 14, 1992. See also "Further Report of the Secretary-General Pursuant to Security Council Resolution 749 (1992)," United Nations Security Council, S/23900, May 12, 1992.

and expanding the role of the UN force. In a report issued two days later, the Secretary General rejected the Council's approval of the EC plan, citing the difficulties posed by the incessant fighting but objecting most strongly on procedural grounds.³² Most notably, the Secretary General was disturbed by the fact that the London agreement had been made, and approved by the Security Council, without his knowledge.³³

International Blockade and Other Sanctions

Early in the conflict UN members called for sanctions against Yugoslavia, primarily Serbia. The United States favored comprehensive and immediate sanctions, while Belgium, France and Britain favored a more gradual approach. The Security Council approved a resolution imposing economic and trade sanctions on the Belgrade government, by an overwhelming margin of 13 in favor with 2 abstentions. Resolution 757 of May 30, 1992 justified the imposition of sanctions against Yugoslavia by citing Chapter 7 of the UN Charter, which requires compliance by all UN members with efforts to deal with "threats to international peace and security." Trade in all commodities, including oil; all air traffic links and aircraft spare parts; all Yugoslav participation in international sporting events; and all cultural, scientific and technical contacts with Belgrade were to be suspended. The aim of the sanctions was to force compliance by Serbian authorities in Belgrade with UN Resolution 752, adopted in early May, which called for an immediate ceasefire and an end to ethnic oppression in Bosnia-Herzegovina.

On April 17, 1993, the Security Council approved further sanctions by a vote of 13 to 0, with China and Russia abstaining.³⁴ The new sanctions freeze funds

³² "Seth Faison, "UN Chief Rejects Plan to Collect Bosnian Arms," *The New York Times*, July 23, 1992.

³³ See *Ibid* and Seth Faison, "UN Chief Mired in Dispute with Security Council," *The New York Times*, July 24, 1992.

³⁴ The resolution did not go into effect until April 26, after the Russian referendum; this was the price of the Russian abstention. Russian President Boris Yeltsin feared that his government's support of sanctions against Serbs would be exploited in the referendum campaign by his opponents, who were more sympathetic to the Serbs because of Russia's religious and historical ties with Serbia.

held overseas by the Yugoslav authorities; empower all countries to impound all Yugoslav vessels, trucks, rolling stock and aircraft found to be abroad, which can be forfeited if found violating sanctions; prohibit the shipment of goods to or through Yugoslavia except for relief supplies, which must be approved case-by-case by the Security Council's sanctions committee; severely limit Yugoslav traffic on the Danube and require monitoring of vessels passing through Serbia; and prohibit all services to anyone in Yugoslavia except for telecommunications, postal and legal services, while humanitarian aid and services for "other exceptional purposes" must be approved by the sanctions committee.³⁵

Investigation by Helsinki Watch has convinced us that the Federal Republic of Yugoslavia and, in particular, the Serbian government, exert great influence over Serbian paramilitary and political forces in Bosnia-Herzegovina that are responsible for gross violations of humanitarian law in the current conflict. We therefore consider it appropriate that sanctions were imposed on the Federal Republic of Yugoslavia, although most (but not by any means all) of the Serbian combatants in Bosnia-Herzegovina are residents of the latter country. Indeed, we consider the sanctions not only justified but too-long delayed. We also believe that sanctions, once imposed, should not be lifted unless and until governments have demonstrated that they have altered their policies of gross abuses that gave rise to the sanctions. A reduction of abuses is not sufficient; the policy of abuse must end.

Initially, many countries took advantage of the sanctions to obtain premium prices for their embargoed goods; Bulgaria and Romania were especially at fault³⁶ but by no means alone in this. An October 25, 1991 arms embargo on all the former Yugoslav republics has been violated by numerous member states of the UN, and so has done little but maintain the balance of power in the former Yugoslavia, a balance which overwhelmingly favors Serbian and Yugoslav forces who repeatedly have used their firepower against civilian targets.

Equally half-hearted has been the Security Council's activity with regard to a ban on military flights over Bosnia-Herzegovina. Because of hesitations on the part of Britain and France, an October 1992 resolution imposing a flight ban lacked provisions for enforcement.³⁷ When the Serbian air fleet commander

³⁵ Security Council Resolution 820.

³⁶ John M. Goshko, "Allies Move to Plug Trade Leaks to Serbia," *The Washington Post*, September 5, 1992.

³⁷ Paul Lewis, "U.S. Agrees to Compromise on Bosnia Flight Ban," *The New York Times*,

refused to place planes in his control under UN observation pursuant to the resolution, the Security Council let it pass. By December 1992, the US had confirmed that Serbian planes had flown more than 200 unauthorized flights;³⁸ by April 1993 the number of flight violations had risen to 500.³⁹

On March 18, 1993, after two Muslim villages in eastern Bosnia were bombed by Serbian forces, the Security Council finally began preparations for authorizing the enforcement of the six-month-old flight ban.⁴⁰ Action was delayed twice, however, for fear of weakening President Boris Yeltsin's chances of political survival in his struggle with the Russian parliament. On March 31, NATO was finally authorized to shoot down any plane or helicopter violating the no-fly order.⁴¹ Enforcement began in early April. But half-heartedness again displayed itself: only days into the enforcement, NATO planes were instructed to use force only as a last resort, in order to lessen the possibility of conflict with Serbian forces. Strict limitations were placed on pilots as to when they might fire. The Serbian response: in blatant defiance of the flight ban, Gen. Ratko Mladić traveled to a meeting with the commander of UN forces in Bosnia, Lieut. Gen. Philippe Morillon, on April 9, in a military helicopter. Three days later, Serbian forces -- in an apparent response to the deadline set for NATO monitoring of military flights -- unleashed intense artillery attacks on Sarajevo and the eastern Bosnian enclave of Srebrenica.

The flight ban has been enforced not only too little but also much too late. It would have had some effect in 1991 and early 1992, when Yugoslav aircraft attacked civilian targets in Croatia and during the early stages of the Bosnian war.

October 8, 1992, and Trevor Rowe, "U.S. Allies to Seek Unenforced No-Fly Zone Over Bosnia," *The Washington Post*, October 8, 1992.

³⁸ Elaine Sciolino, "U.S. May Seek the Use of Force to Stop Serbs' Flights Over Bosnia," *The New York Times*, December 4, 1992.

³⁹ William Daozdiak, "NATO Sets Monday as Start of Bosnia Mission," *The Washington Post*, April 9, 1993.

⁴⁰ Paul Lewis, "U.N. Moving to Toughen Yugoslav Flight Ban," *The New York Times*, March 19, 1993.

⁴¹ Alan Riding, "NATO Agrees to Enforce Flight Ban Over Bosnia Ordered by U.N.," *The New York Times*, April 3, 1993.

By April 1993, however, the destruction of civilian populations and targets was being accomplished by ground artillery, not aerial bombardment. As usual, the UN did not respond in a timely fashion; only after the issue has become moot was it addressed.

Delivery of Humanitarian Aid

The UN has not forcefully dealt with Serbian forces that obstruct the delivery of humanitarian aid to Muslims in besieged areas. While ground personnel and field officers are becoming more vociferous in condemning Serb attacks, the Security Council has not clearly delineated the role that UN troops should play, within their overall mandate to use "all means necessary" to ensure the delivery of aid. UN personnel are therefore left to haggle with local and regional military commanders without serious backing from world governments. And when UN personnel have taken unilateral action to ensure the delivery of humanitarian aid, or to make valid public protests against interference, they have been reprimanded by the UN leadership in New York and Geneva.

UNHCR is the only UN agency that has publicly and consistently called for respect for human rights and has chided the UN and its member states for their inaction, stressing that "ethnic cleansing" is central to the conflict. On February 17, 1993, the UNHCR suspended most relief operations in Bosnia, as a protest against the failure of all sides to honor their agreements and provide safe passage for humanitarian aid.⁴² On February 19, Secretary General Boutros-Ghali resumed relief efforts across Bosnia-Herzegovina and implied that the blockade of supplies would be lifted as early as the next day, making clear that UNHCR had acted without his approval. UNHCR thus resumed its work with no new guarantees of protection or cooperation, and in dozens of cases, the UN has been unable to defend either its personnel or its humanitarian cargo. In effect, UN humanitarian operations have been held hostage to the parties to the conflict, and the Security Council has not forced compliance with innumerable resolutions requiring the delivery of such aid, thereby leaving local field personnel at risk of attack, and the population at risk of starvation or disease.

Elsewhere we have documented in detail the obstruction of humanitarian assistance in Bosnia-Herzegovina,⁴³ and some examples are also

⁴²John F. Burns, "Most Relief Operations in Bosnia Are Halted by U.N. Aid Agency," *The New York Times*, February 19, 1993.

⁴³ See Helsinki Watch, *War Crimes in Bosnia-Herzegovina, Vol I*, August 1992, and *War*

noted in the section above. Violations of the laws of war with regard to the delivery of aid have included attacks on relief flights to Sarajevo airport; the obstruction of UN evacuations of civilians and the wounded from besieged areas; attacks on, and obstruction of, aid convoys; attacks on medical personnel and hospitals; and attacks on UNPROFOR personnel. The UNPROFOR mission in Bosnia-Herzegovina has been two-fold: to enhance the possibilities of a political settlement to the Yugoslav crisis, and to ensure delivery of humanitarian assistance. Instead, UN troops have been subjected to repeated attacks, have witnessed the destruction of civilian centers, and remain powerless to stop the killing, while having only minimal success in delivering humanitarian aid to Bosnia's civilians. UNHCR personnel are deeply frustrated and at risk in Bosnia. Thus, even though in September 1992 the Security Council voted to add 5,000 troops to the 1,700 then stationed in Bosnia and to assign most of these additional troops to escort relief convoys,⁴⁴ the winter of 1992-93 offered numerous and horrifying examples of interference with the delivery of desperately needed food and medicines.

Perhaps the most widely publicized of these was the siege of Srebrenica, in eastern Bosnia, a town that had not received outside supplies for eight months. In late November 1992, a UN convoy reached the town after a three-day delay at a Serb roadblock, to find that in the local hospital, 320 people had died for lack of medicine, and surgeons had operated without anesthesia or antibiotics.⁴⁵ After the initial delivery, there was repeated obstruction of efforts to deliver aid to Srebrenica. By mid-March 1993, UN field personnel, impatient with international inaction and Serbian obstruction, adopted a tougher approach with Serbian forces – an approach that should have been used months earlier. Gen. Morillon announced he would not leave the besieged city until Serbian forces allowed a relief convoy to enter. On March 19, the convoy was allowed passage.⁴⁶ But the residents were exhausted by months of siege and, in an effort to evacuate the

Crimes in Bosnia-Herzegovina, Vol. 2, April 1993.

⁴⁴ Paul Lewis, "U.N. Votes to Reinforce its Troops in Bosnia," *The New York Times*, September 15, 1992.

⁴⁵ Chuck Sudetic, "After 8 Months, First Relief Reaches One Bosnian Town," *The New York Times*, November 29, 1992.

⁴⁶ John F. Burns, "Aid Trucks Arrive in a Bosnian Town After Serbs Yield," *The New York Times*, March 20, 1993.

elderly, sick and women with small children, UN relief officials unwittingly began a stampede of evacuees, some of whom died en route to Tuzla. UNHCR was accused, by Bosnian authorities and others, of assisting in the process of "ethnic cleansing," to which relief officials responded that their first duty was to save lives, irrespective of the warring parties' military objectives. Despite further personal intervention by Gen. Morillon, Serbian leaders in Belgrade refused to allow UN troops to enter Srebrenica as guarantors of the town's safety.⁴⁷ A senior UN official anonymously stated that "the UN has been had, as usual, and the Serbs must be laughing at us."⁴⁸ The behavior of UN field personnel involved in the efforts to deliver aid to Srebrenica should be commended. But Secretary General Boutros-Ghali responded with anger at Gen. Morillon for "exceeding his mandate." In April it became known that France had decided to withdraw Gen. Morillon, a development that further lowered the morale of relief personnel in Bosnia.

In an emergency session in April, the Security Council called for additional peacekeepers to be sent to Bosnia but refused to consider the recommendations of a senior UN official that the organization send in an armed force to take Srebrenica and save the remaining civilians.⁴⁹ On April 18, Canadian UN troops finally were permitted to enter Srebrenica. The UN designated the town a UN-protected "safe area," where UN soldiers were charged with disarming the Muslim defenders and protecting the civilian population and disarmed combatants from Serbian attack.

Such action is commendable and should have been taken earlier in innumerable similar situations throughout Bosnia. However, only 146 soldiers from the Royal Canadian Regiment and a dozen UN police officers are charged with protecting Srebrenica's approximately 30,000 residents from a "besieging force of several thousand heavily armed Serbian troops."⁵⁰ Following the UN

⁴⁷ John F. Burns, "Serbs Reject U.N. Demands to Preserve Bosnia Enclave," *The New York Times*, April 10, 1993.

⁴⁸ John F. Burns, "Serbs Bar U.N. General From a Muslim Enclave," *The New York Times*, April 9, 1993.

⁴⁹ Paul Lewis, "U.N. Panel Calls for More Peacekeepers in Bosnia," *The New York Times*, April 4, 1993.

⁵⁰ John F. Burns, "Tense U.N. Troops Hold Fast as Serbs Demand They Quit Enclave," *The New York Times*, April 27, 1993.

troops' April 18 arrival in Srebrenica, Serbian forces did not allow UN troop reinforcements to enter the town, nor did Serbian commanders allow the reprovisioning of the UN troops remaining in the enclave.⁵¹ Rather than demand Serbian cooperation, UN commanders reportedly considered asking the United States "to include supplies for their troops on aircraft making nightly airdrops of food to Srebrenica's residents."⁵² Similarly, on May 6, 1993, the Security Council declared as "safe havens" the Bosnian cities of Sarajevo, Tuzla, Žepa, Goražde and Bihać but did not provide the necessary UN military personnel or power to protect the enclaves from further attack. Indeed, as Goražde came under heavy Serbian attack in late May, Serbian forces barred UN observers from entering the enclave without apparent repercussion. As in the case of Srebrenica, the establishment of such "safe havens" was declarative rather than real.⁵³

Efforts of the Special Rapporteur

In August 1992, the UN Commission on Human Rights decided to name a Special Rapporteur to investigate human rights conditions in the former Yugoslavia. Since his appointment to the post, Tadeusz Mazowiecki, former Prime Minister of Poland, has been a voice of reason with regard to solutions for Bosnia's crisis. He is the only UN representative to have correctly and consistently assessed the realities in the field and to have made concrete recommendations that involve action, not complacency. Unfortunately, none of his recommendations has been implemented.

Mazowiecki has repeatedly called for enforcement of UN resolutions that require parties to the conflict to desist from the practices associated with "ethnic cleansing." He has called for the establishment of international human rights monitors on the ground in the former Yugoslavia with the power to report on and prevent dislocations of populations. In the interim he has recommended the establishment of safe havens within Bosnia for refugees and/or for Western countries to increase the number of refugees they admit. Importantly, he has called for the international community to guarantee the right to return for

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Frank J. Prial, "Resolution Establishes Safe Areas But Lacks Enforcement Provisions," *The New York Times*, May 7, 1993.

refugees leaving Bosnia. This might help to counteract de facto ethnic cleansing and refute the argument that the UN is supporting such a policy by relocating refugees. And he has proposed that the UN send additional troops to patrol all of Bosnia-Herzegovina, with a mandate to respond directly to human rights abuses, assist victims and report on all atrocities they witness. The report he prepared after his first mission to Bosnia also recommended that UN monitoring delegations be set up in other volatile areas of the former Yugoslavia, such as Kosovo, Sandžak and Macedonia, to provide early warning of abuses and, if possible, to prevent the spread of "ethnic cleansing."⁵⁴

In mid-February, Mazowiecki threatened to resign if nothing was done to improve human rights in the former Yugoslavia. At a meeting of the UN Human Rights Commission he stated that he would resign because he "had no wish to fulfill the role of an umbrella disguising the helplessness of the international organization."⁵⁵ But the UN leadership seems to be ignoring his pleas in favor of peace negotiations that do not deal with the human rights of the citizens of the former Yugoslavia.

The Peace Plan

Efforts by the European Community to broker a peace in Yugoslavia were joined by the UN in the summer of 1992. The venues for the negotiations were London, then Geneva and, most recently, New York. Since the outbreak of war in Bosnia in April 1992, countless negotiating sessions have been scheduled and have failed to bring about a lasting peace. In the meantime, the Security Council's continuing emphasis on negotiations, absent a willingness to enforce requirements for an end to human rights abuses, serves to permit the continuation of "ethnic cleansing"; has enabled the international community to evade its responsibility to act to end abuses; has shown disregard for the realities in the field; has perpetuated a false idea that all sides are equally to blame, an approach which has become an excuse for the international community to label this war a result of bickering by ethnic groups; and, by accepting them at the negotiating table, has lent a semblance of respectability and legitimacy to figures

⁵⁴ Paul Lewis, "Envoy Urges Roles for U.N. Forces in Bosnia," *The New York Times*, September 1, 1992.

⁵⁵ "Mazowiecki Threatens to Resign Commission," PAP Warsaw, February 10, 1993, as reported in Foreign Broadcast Information Service, February 11, 1993.

who should be investigated for their role in the commission of war crimes.

The peace plan under discussion since September 1992 -- commonly referred to as "Vance-Owen," after UN negotiator Cyrus Vance and EC negotiator Sir David Owen -- was the subject of protracted negotiation with all three parties, and accepted only by the Croats until March 1993, when the Bosnian government accepted it conditionally. In April, however, the Serbs rejected even a conditional acceptance of the plan. Although the plan was finally signed by Bosnian Serb leader Radovan Karadžić, it was rejected by the self-styled Bosnian Serb "parliament" and, in mid-May, in a referendum among Bosnian Serbs. The persistent delay on the part of Serbian parties to the conflict has also delayed the international response to continuing abuses in the field.

In a letter to Cyrus Vance in February 1993, Human Rights Watch urged the negotiators to state publicly that peace negotiations would not continue unless and until (1) a neutral body, such as the International Committee of the Red Cross, certified that the "grave breaches" of the Geneva Conventions, or war crimes, that are known collectively as ethnic cleansing, had been halted; and (2) the parties allowed and facilitated the delivery of humanitarian assistance to civilians in besieged communities. Serbian forces have long been aware that the maintenance of negotiations has been an important factor in holding off external military intervention or other sanctions, such as the lifting of the arms embargo on Bosnia-Herzegovina. In our view, therefore, UN negotiators' authority to demand compliance with an agreement on human rights in Bosnia-Herzegovina before proceeding further with political negotiations should have been great.

Accountability

In August 1992, the Security Council's Resolution 771 called on states and international humanitarian organizations to provide the Council with documentation on violations of humanitarian law in the former Yugoslavia. On October 6, the Security Council requested the Secretary General to establish a Commission of Experts to examine and analyze that information and other information that the Commission might obtain through its own efforts.⁵⁶ The Commission was to provide the Secretary General with its conclusions "on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law..."⁵⁷

⁵⁶ Security Council Resolution 780.

⁵⁷ *Ibid.*

The Commission has not been provided with the resources necessary to enable it to carry out its own investigations or to confirm details of the reports it has received. As a result, it is reduced to cataloguing information in reports and newspapers. One on-site investigation, carried out by a private US organization, Physicians for Human Rights, allowed the Commission to identify and survey the site of a mass grave believed to contain the remains of 180 Croatian civilians and disarmed combatants in the Serbian-occupied city of Vukovar, in Croatia. But the Commission cannot proceed with an investigation of this case or exhumation of the bodies because, among other reasons, UNPROFOR claims it is unable to guarantee the commissioners' safety and because of a lack of resources. The salary, travel and other expenses of the Commission and its staff for a nine-month period must be met from a budget of only \$690,000, indicating little enthusiasm on the part of the UN Secretariat. Individual members of the Commission have had to approach outside sources for funding to finance basic work. This lackluster beginning does not augur well for future prosecutions.

Human Rights Watch first called on the UN to establish a war crimes tribunal in August 1992. We believe that a tribunal is essential to prosecute, adjudicate and punish those responsible for war crimes, starting with those with the highest level of responsibility for the most egregious crimes. Although Germany and the US made public calls for the establishment of a war crimes tribunal in August and November 1992, respectively, France was the first country to bring the proposal formally to the Security Council, in February 1993. On February 22, the Council adopted the French proposal to establish an international tribunal to prosecute "persons responsible for serious violations of international law committed in the former Yugoslavia since 1991."⁵⁸ Following the Secretary General's submission of a blueprint for a tribunal on May 3, the Security Council authorized its establishment on May 25. But funding is likely to take time, and resources for investigation are required immediately. Human Rights Watch is also concerned that the political will to support such a tribunal is weak, and fears that this could delay the appointment of judges, a prosecutor and staff necessary for the functioning of a tribunal. Meanwhile, on April 8, the International Court of Justice, acting with an expeditiousness that should provide an example to the UN, ordered Yugoslavia to take measures to prevent the "crime of genocide" and "to ensure that any groups under control or influence – military units, paramilitary groups or irregular – do not commit genocide" in Bosnia-Herzegovina.⁵⁹

⁵⁸ Security Council Resolution 808.

⁵⁹ Eugene Robinson, "World Court Orders Belgrade to Prevent Genocide," *The Washington*

RECOMMENDATIONS

What is taking place in Bosnia-Herzegovina is attempted genocide -- the extermination of a people in whole or in part because of their race, religion or ethnicity.⁶⁰ Under Article 1 of the 1951 Convention on the Prevention and Punishment of the Crime of Genocide, the parties undertake "to prevent" acts of genocide as well as "to punish" them. Article 8 authorizes the United Nations to take appropriate action "for the prevention and suppression of acts of genocide."

The UN's efforts in the former Yugoslavia should have placed human rights in the center of debate from the start. Genocide, of all crimes, is the most unspeakable. The authorization that the Convention provides to the UN carries with it an obligation to act. The only guidance the Convention offers as to the nature of the action is that it must be "appropriate." We interpret this as meaning it should be effective.

It was evidently the intention of the framers of the Geneva Conventions that war criminals be identified, prosecuted and punished. Article 146 of the Fourth Geneva Convention of 1949 on the Protection of Civilian Persons in Time of War requires the parties to enact legislation to provide effective penal sanctions for those committing or ordering others to commit "grave breaches" of the Convention; and to search for such persons and to bring them to trial. Articles 129 and 130 of the Third Geneva Convention Relative to the Treatment of Prisoners of War also require penal sanctions for "grave breaches." Article 86 of Protocol I Additional to the Geneva Conventions stipulates that when a subordinate commits a breach of the Protocol, his superiors are not absolved of "penal or disciplinary responsibility" if they knew or could reasonably have known of the breach or of plans to commit it and did nothing to prevent the crime's commission.

"Grave breaches" are defined as willful killing, torture or inhuman treatment including, *inter alia*, "causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person...and extensive destruction and appropriation of property, not justified by

Post, April 9, 1993.

⁶⁰ Article II of the Genocide Convention defines genocide as consisting of specified acts, including murder, committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."

military necessity and carried out unlawfully and wantonly."⁶¹ The conduct of the warring factions in the former Yugoslavia, and most particularly, though not exclusively, of the Serbian forces and their allies in Bosnia-Herzegovina and Croatia, conforms to this definition.

We therefore reiterate our call on the UN Security Council, the United States, and other governments and intergovernmental bodies to take the following steps:

- o Commit themselves to take measures immediately to prevent and suppress genocide in Bosnia-Herzegovina, and implement those measures.**
- o Proceed as quickly as possible with the actual establishment of a war crimes tribunal and the office of a prosecutor for the tribunal, allocating adequate resources to this effort.**
- o Use such military force as is required to protect the delivery of humanitarian assistance to those civilians who are now threatened with starvation utilized as a weapon and directed against them in violation of the laws of war.**
- o Deploy United Nations human rights monitors right away, without waiting for a ceasefire or peace agreement, in all parts of Bosnia-Herzegovina and Croatia, giving those monitors the mandate to report publicly on "ethnic cleansing" and other human rights abuses.**
- o Make an end to gross abuses and the acceptance of the free movement of relief supplies preconditions for participation in peace talks.**

⁶¹ Article 147, Fourth Geneva Convention of 1949.

SOMALIA

BACKGROUND

Somalia was a country of between six and seven million inhabitants in 1990, a nation with no appreciable religious, linguistic, cultural or other divisions. Yet it has since lost at least 300,000 of its citizens to famine and warfare based on the manipulation of clan and sub-clan allegiances, and has seen nearly two million more displaced within Somalia or driven across the nation's borders.¹ There is a tendency in Western journalistic reports to regard the Somalia crisis, and its magnitude, as inevitable or typically tribal; but this is not so. The suffering that has been visited on Somalia is the product of two decades of misrule by a repressive dictator, followed by an internal power struggle and two years of exceptionally cruel warfare, most of which the international community preferred to ignore.

The abusive, corrupt Siad Barre dictatorship (October 1969 - January 1991) received heavy international military and political support for twenty years, first from the Soviet Union and then competitively from the United States. But in the wake of the Cold War the nation was no longer a strategic asset. As internal conflict led to thousands of civilian deaths and massive displacement, individual governments, including Somalia's former patrons in the West and most of its neighbors, neither condemned the warring factions nor spoke out for the victims' humanitarian needs. The United States in particular – having supported Siad Barre for the preceding decade – bears a large measure of the blame for abandoning Somalia.

The UN as an institution also avoided its responsibilities in Somalia. The country manifestly needed mediation of the conflict, nationwide disaster assistance and effective protection of what remained of its civil society, all of

¹ The United Nations has estimated that at least 300,000 Somalis have died due to war and famine, while the International Federation of Red Cross and Red Crescent Societies estimates that the number is closer to 500,000. There are said to be 945,000 refugees in Ethiopia and Kenya, and some one million internally displaced persons. Department of State, Office of Foreign Disaster Assistance, "Somalia - Civil Strife, Situation Report No. 19," March 12, 1993.

which the UN could have provided. However, just before Siad Barre was forced out in January 1991, after eighteen months of bloody and crop-destroying warfare, the UN withdrew its personnel, citing security reasons.² The organization was therefore unprepared for the events that followed.

The destruction of Somalia's civil society, the absence of a central government or governmental structures, the existence of myriad bands of armed gunmen, and the massive famine were situations that demanded a new approach to humanitarian assistance. Moreover, the famine itself was a direct product of illegitimate methods of warfare, which included the killing of civilians in farming communities, crop-burning, theft and killing of livestock, and the destruction of wells and farming tools throughout the southern and central regions. During 1991, however, even after full-scale fighting began in Mogadishu in November, the UN provided no aid to Somalia. The UN's absence during that crucial year virtually ensured that when its agencies finally did return to Somalia, the crisis would have outrun all the experts' projections. In a vicious circle of non-action, UN agencies refused to deliver food to the starving until a ceasefire could be negotiated, but in part because of widespread hunger and the violence that accompanied looting for food, no permanent ceasefire was possible. Had large quantities of food been delivered, the violence could have been more controlled and food deliveries made safer. The UN agreed only to monitor a March 1992 ceasefire with observers, to

² Security of personnel is a legitimate concern, and conditions in Somalia at that time were precarious. But those considerations did not drive out nongovernmental groups such as the International Committee of the Red Cross or Save the Children-UK, and the question arises whether the UN could not have overcome the difficulties that these much smaller and less powerful entities chose to face by staying. A high-level UN determination that the country was unsafe prevented any initiatives.

Determinations regarding safety are made by the field office of the UN in the country in question together with UN headquarters in New York. The assessment is generally based upon an analysis of conditions on the ground including attacks on UN staff and violence in general. UN security staff consulted by Africa Watch state privately that increasing attacks on foreign NGO personnel in November and December 1990 set the stage for the decision to withdraw. As we have noted elsewhere, however, the application of the unsafe determination to Somalia appears to be somewhat selective, in light of the significant numbers of UN civilian personnel in such danger spots as the former Yugoslavia and Cambodia.

wait and see. The sluggish response of the Security Council during much of 1992, as the proportions of the famine became known, would further contribute to the displacement of hundreds of thousands of Somalis – who might have been fed in their home areas if aid had begun earlier – and to the deaths of many thousands more.

The crucial role in galvanizing the UN to respond to Somalia's emergency was played by the US government, not any UN agency; indeed, the UN leadership ignored or rejected the guidance of its most qualified envoy, before forcing him to resign. The Bush Administration, however, which originally viewed Somalia as a political liability in an election year and had weakened early Security Council resolutions on the crisis, was forced by public exposure of Somalis' suffering first to airlift food and later to offer troops for the protection of relief supplies. The US-led United Task Force (UNITAF) was officially replaced by a UN force on May 4. Up to the date of transfer of command, the bulk of the negotiations and reconstruction planning had been carried out not by UN officials but by representatives of the United States and the US-led forces. Now with the famine coming under control and the new UN troops assuming full control, it is evident that the UN's role cannot stop with the provision of humanitarian assistance and the troops necessary to protect it. The 30,800 expected UN personnel³ – the largest operation of this kind ever undertaken by the UN – have an explicit mandate to assist in national reconstruction efforts like repatriating refugees, removing land mines, and creating "conditions for the participation of Somali civil society in political reconciliation..."⁴

Africa Watch believes, and has urged repeatedly, that the UN must consider as a central part of its mandate in Somalia the creation of conditions of respect for human rights. This requires a broadly participatory approach to the process of political reconstruction, and an approach that encourages the emergence of legitimate leadership to replace the warlords who been responsible for massive violations of human rights. A process of accountability, to identify and marginalize those responsible for gross abuses, is a prerequisite for rebuilding the society on a more equitable footing; in this process the UN could play an important role. Indeed, we believe that international assistance is essential to ensure a climate of security and the bases for a broad political process, such that the future leaders of Somalia have clean hands and are

³ Of these, 28,000 are military, the rest civilian.

⁴ Security Council Resolution 814, March 26, 1993.

accountable to their fellow citizens.

HUMAN RIGHTS ABUSES AND VIOLATIONS OF THE LAWS OF WAR

The dictatorship of Mohammed Siad Barre systematically engaged in gross abuses of human rights, destroyed the institutions of civil society and manipulated the nation's clan system to divide his opponents. Thousands of Somalis were executed, tortured, imprisoned, kept under surveillance and otherwise harassed during the Siad Barre regime. While reliance on clan identity and competition among clans and sub-clans have long been part of Somali politics, clan animosities were radically heightened when Siad Barre utilized clan differences to consolidate his base and to punish opposition. In Siad Barre's hands, traditional clan allegiance became a force to divide and rule. Thus, in the late 1970s, Siad's forces slaughtered civilians of the Majerten clan, due to their presumed support for the Somali Salvation Democratic Front (SSDF), an armed opposition group in the northeast and central areas.

In 1988, the situation deteriorated dramatically, when the Somali National Movement (SNM), a political and military organization largely comprising members of the Isaaq clan in the north of the country, made a military push from the Ethiopian border. Siad Barre presided over a counterinsurgency campaign in which 50,000 to 60,000 civilians of the Isaaq clan were killed between May 1988 and January 1990.⁵ Government forces, armed with equipment provided by the United States, laid waste to the SNM's northern homeland. The north's capital city of Hargeisa was virtually destroyed, and in a matter of months, some 400,000 civilians had fled into Ethiopia to escape the slaughter. Although by late 1989 the US had ended military assistance to the regime, neither the US nor the UN attempted to negotiate a transition to democracy; nor did the scale of the human rights disaster receive much international attention.

In May 1990, some one hundred Somali intellectuals, professionals and political figures issued a declaration calling upon the government to respect human rights, negotiate with the opposition and engage in a transition to democratic rule. In an open letter to Siad, the so-called Manifesto Group called for

⁵ Africa Watch, "Somalia - Beyond the Warlords: The Need for a Verdict on Human Rights Abuses," New York, March 7, 1993, p. 4; and Africa Watch, *Somalia: A Government At War With Its Own People*, New York, 1990, p. 10.

an end to the killing of unarmed civilians and the destruction of towns and wells, and accused the government of violating human rights. It proposed the formation of a committee to prepare for a national reconciliation conference. In June, forty-five of the signatories were arrested and briefly held before government prosecutors dropped sedition and treason charges against them. But while Siad chose not to imprison them, neither did he enter into dialogue, and the last opportunity for peaceful transition passed. Clan factions throughout Somalia armed themselves, and civil war ensued. By January 1991, Siad Barre had been forced from office as troops led by Mohamed Farah Aidid closed in on Mogadishu and other clan factions took over various parts of the country. With the overthrow of Siad, Mogadishu fell into anarchy; most foreign governments closed their embassies, and the United Nations removed virtually all its personnel from Somalia.

Not all foreigners stayed away, however, and contrasting examples are instructive. An emergency surgery unit of the France-based medical organization, Médecins Sans Frontières, opened in Mogadishu on January 8; its staff were among the last foreigners to leave Somalia. On January 21, two MSF doctors returned to Mogadishu to set up a hospital in an Aidid-controlled area of the city. The team was again evacuated on January 30, but returned shortly thereafter.⁶ Staff of the International Committee of the Red Cross (ICRC), evacuated in early January, returned to Mogadishu at the end of the month.⁷ The ICRC would make Somalia its first priority for the next eighteen months, forming the backbone of the voluntary assistance effort and creating a network of effective relationships with Somali employees and civic organizations. Another European voluntary group, the SOS-Kinderdorf, operated and manned a trauma ward throughout the fighting. The SOS's director of operations in Mogadishu told Africa Watch that to leave the city at that time would have been a betrayal.

The UN does not have a tradition of this sort of tenacity, and indeed had little experience in delivering relief supplies in war zones. But the need for humanitarian assistance was already great, and the situation was not a traditional one with a protective government. The divisive, violent legacy of the dictatorship had passed to the "warlords" who were contesting authority and the opportunity for plunder. The two principal military leaders – self-appointed

⁶ Reuters, "Foreign Doctors Flee Battle Torn Mogadishu," January 16, 1991, and Reuters, "Foreign Doctors Return to War-Torn Somali Capital," January 23, 1991.

⁷ Reuters, "Somali Rebels Say They Might Fight over New President," January 30, 1991.

Interim President Ali Mahdi Mohamed and a former soldier, Gen. Mohamed Farah Aidid -- came from the same clan and the same political party, but their sub-clans fought one another and brutally mistreated each other's civilian supporters. Ali Mahdi was estimated, by the end of 1991, to control about 20,000 fighters in Mogadishu, where he held the north of the city, and General Aidid was estimated to control a somewhat smaller number, based in the city's south; no more than 2,500 of the fighters in Mogadishu had military training, most of these on the side of Aidid.⁸ Other clan-based forces also proliferated. All of the warring factions have been responsible for attacks on civilians who have been targeted solely on the basis of their clan identity.

Also passed on from the dictatorship was a strategy of banditry, which originated in the 1988 fighting against the SNM. In 1988, Siad Barre's troops, many of whom later joined clan factions after the regime's collapse, were allowed openly to loot and sell the spoils of war with no fear of punishment, thus breaking with traditional Somali customs. After the regime was ousted, other clan factions continued these tactics. Unpaid soldiers were permitted to steal in order to eat; as civil authority broke down and food became desperately scarce, freelance banditry also became common, with looters and thieves displaying a near-total disregard for human life. The absence of a central government, judiciary or police force meant that none of this violence was restrained by national authorities. The portion of the violence that was attributable to fighters of the various factions, however, must be considered the responsibility of the military commanders who had authority to restrain and discipline their subordinates and failed to do so.

According to calculations made by Africa Watch and Physicians for Human Rights, 14,000 people were killed and 27,000 injured in Mogadishu alone, between November 1991, when open warfare broke out over the succession to Siad Barre, and the end of February 1992.⁹ The overwhelming majority of the victims were civilians, and the fighting involved much indiscriminate brutality, as all the weapons of the ousted dictatorship were deployed, including heavy artillery, mortars and missiles fired with only approximate aim by untrained teenagers.

A citywide ceasefire between Aidid and Ali Mahdi, negotiated under UN auspices in March 1992, restrained the use of heavy artillery and curbed the pitched battles between the two factions for almost a year in Mogadishu, with

⁸ Africa Watch, "Somalia - A Fight to the Death?" New York, February 13, 1992, p. 10.

⁹ Cited in *Ibid.*, p. 2

short-lived breaches from time to time.¹⁰ Throughout 1992, however, a general situation of anarchy prevailed in the capital; clan fighters turned their attention more exclusively to looting and theft. It is evident that this was not solely an individual decision but a direct result of the manner in which the armed factions chose to recruit their forces and wage war. In fact, many observers argue that without the implied promise of looting, few factions would have been able to summon any significant military support. Because it is a direct outcome of this strategy of warfare that "soldiers" become looters and thieves, and because senior commanders have had notice that their subordinates engaged in looting and did nothing to stop it, those commanders must be held responsible for the actions of those under their command.

During 1991 and 1992, meanwhile, southern Somalia was the scene of fighting, executions of civilians, rape, and the destruction of farmers' livelihood. In mid-1991, fighting between two factions in the lower Jubba River area, in southern Somalia, led to looting of farms and massive displacement of residents, as crops, seeds, tractors and other equipment were stolen by "soldiers." As the year went on, a campaign led by Gen. Aidid to control the south was accompanied by extraordinary brutality against civilians of Siad Barre's Marehan clan, and other related clans. Hundreds of thousands of civilians were forced to leave their homes; about 200 a day were arriving in Mogadishu in mid-1992. By this time, the ICRC was estimating that 1.5 million Somalis risked death by starvation.¹¹ In the southern town of Bardera, in September 1992, the rate of deaths was estimated at fifty a day.¹²

In December 1992, immediately prior to the arrival of the first contingent of foreign troops sent to guard relief supplies, various warlords carried out murderous clean-up operations to strengthen their positions. In Kismayu in early December, for example, Col. Ahmed Omar Jess, a member of the Ogaden clan, ordered his militia to conduct house-to-house searches to eliminate prominent members of the Harti clan, whose elders might pose him a political challenge

¹⁰ A more comprehensive ceasefire was agreed to in March 1993, as a result of the talks in Addis Ababa; see below.

¹¹ Jane Perlez, "Officials Say Somali Famine Is Even Worse Than Feared," *The New York Times*, September 6, 1992.

¹² *Ibid.*

once foreign troops had arrived.¹³ In the southern town of Baidoa, General Aidid unleashed his forces prior to the troops' deployment, displacing thousands of residents and executing political rivals.¹⁴

The warring factions cannot be excused from their responsibility for the creation of Somalia's humanitarian disaster. In particular, the deliberate destruction of farming communities in the south, by various armed factions – the looting of harvests and the theft of livestock – ensured that those communities would be at the mercy of internationally donated food. Supplies of donated food, in turn, were disrupted by the armed factions and free-lance looters. The nature of the war, far more than drought, has been responsible for the hundreds of thousands of deaths.

But the UN's refusal to acknowledge the crisis also played a large part. Lacking a presence in Somalia, the UN could not follow events adequately. Yet in July 1991, when the government of Djibouti invited representatives of Somalia's major clans to meet for comprehensive talks, the UN declined to attend. According to former UN Special Envoy Mohammed Sahnoun, the Djibouti authorities relayed, through the UN Development Program representatives in their country, a request for UN assistance in mediating the discussion among the Somalis, but as Amb. Sahnoun told Human Rights Watch recently, "The answer came back, no way. We're not going to deal with this case."¹⁵ In the ambassador's view, the Somali crisis was inconvenient: it was an election year for UN Secretary General, and various under-secretaries may have seen the Somalia issue as unhelpful to their candidacies. As other observers have also noted, Somalia's political problems were not likely to be solved easily, and no aspirant to the post of Secretary General would benefit by association with a lengthy, possibly failed negotiation in a distant country.¹⁶

¹³ Africa Watch received a list of 126 Harti individuals thought to have been killed by Jess's Somali Patriotic Movement (SPM) forces during this episode. Somali refugees in Kenya allege that these names are only a portion of the 600 victims of the operation in Kismayu; other sources put the number of dead at between 100 and 200. Africa Watch cannot confirm any figure, but considers it well established that Omar Jess ordered a systematic campaign of executions. See Africa Watch, "Somalia - Beyond the Warlords..." *op.cit.*, p. 8.

¹⁴ Andrew Cohen, "Some Scenes from an Intervention," *The Nation*, February 9, 1993.

¹⁵ Interview, Washington, D.C., April 23, 1993.

¹⁶ See, for example, Ray Bonner, "Why We Went," *Mother Jones*, March/April 1993, p. 55.

In the latter half of 1991, the ICRC conducted a thorough survey of malnutrition in southern Somalia. The results were astounding: 40 percent of the population was severely malnourished, and 50 percent moderately malnourished.¹⁷ During 1991 and 1992, the central region lost 70 percent of its livestock; the south lost 50 percent.¹⁸ According to the Food and Agriculture Organization, by the end of 1992 as many as 50 percent of Somalia's children under age five had died.¹⁹ This indicates the speed with which the crisis developed, and its extraordinary scope. The international community was generally unwilling to face these facts and respond.

UN ACTIONS 1991-93

The determination that Mogadishu was unsafe – made in January 1991 by Osman Hashim, chief UN representative in Mogadishu, and adopted by the Secretariat in New York – was still in place at the end of that year. Although humanitarian organizations operating in Somalia met repeatedly with Hashim in Nairobi, Kenya during 1991 and asked the UN to return, and although the UN had a plane and warehouses filled with food to donate, it did not venture to become involved.

In a reflection of Somalis' own bitter frustration, and in an exception to its rule of public silence, a representative of the ICRC asked in mid-December 1991, "How come UNICEF-Somalia has thirteen people in Nairobi and no one inside Somalia?"²⁰ The senior UN representative for Somalia responded, "In a situation of war, we don't operate."²¹ The United States at this time doubled its emergency

¹⁷ This compares with the 10 to 20 percent moderate malnutrition that, elsewhere in the world, the ICRC considers grounds for alarm. Cited in Africa Watch, "Somalia – Beyond the Warlords...", *op.cit.*, p. 9.

¹⁸ *Ibid.*, p. 9.

¹⁹ FAO assessment cited in U.S. Department of State, Office for Foreign Disaster Assistance, "Somalia - Civil Strife, Situation Report No. 19," *op.cit.*

²⁰ Pierre Gassmann, Delegate-General for Africa of the ICRC, quoted in Jane Perlez, "Somali Fighting Keeps Aid from a Suffering City," *The New York Times*, December 11, 1992.

²¹ Marco Barsotti, UNDP Acting Resident Representative for Somalia, quoted in *The New*

assistance to Somalia, in response to the UN's failure to act, but when it requested a UN plane to assist in delivering aid, there was no response. According to Andrew Natsios, the director of USAID's Office for Foreign Disaster Assistance, a UN official in New York had described Mogadishu as "unfit for humans"; Natsios protested that this was a "symbol" of the point of view that kept the UN plane out of Mogadishu.²²

The UN began funding relief flights later that month, however, and UNICEF staff returned to Mogadishu in late December to begin small programs of food distribution to relief organizations already operational in the city. Apparently stung by repeated accusations that it was neglecting Somalia, the UN began to bestir itself. In January 1992, then-Assistant Secretary General (since promoted to Under-Secretary General) James Jonah visited the Somali capital.

Instant Diplomacy

This visit, which was a fiasco from almost any perspective, illustrated the dangers of attempting instant diplomacy without even rudimentary groundwork, which was not possible in the absence of a UN representative in Mogadishu. First Mr. Jonah's arrival was manipulated by General Aidid, who forestalled a plan by neutral clans to meet the plane, present Mr. Jonah to the two military leaders in turn, and possibly offer their services as a local peacekeeping force. Mr. Jonah, apparently quite unaware of the existence of the neutral clans, made no arrangement to meet them, and when General Aidid's forces deterred his plane from landing at Mogadishu's main airport, he agreed to be diverted to an airstrip controlled by the General, who personally received him and managed his itinerary throughout his first day.

Thus, Ali Mahdi, the self-proclaimed president of Somalia, was made angry. On his second day, after conferring with Ali Mahdi, Mr. Jonah succeeded in alienating General Aidid, in turn, by publicly calling him the obstacle to progress. General Aidid, not previously hostile to the UN and the idea of an international peacekeeping force, became distrustful. One result of Mr. Jonah's visit was that both parties became more deeply entrenched in their positions. Another was that,

York Times, op.cit Somalis were quick to point out that the UN remains operational in countries such as Yugoslavia and Cambodia.

²² Andrew Natsios, quoted in Jane Perlez, "U.S. Increases Aid to Somalia After U.N. Balks," *The New York Times*, December 15, 1991.

as a result of Aidid's displeasure, the Mogadishu airport was shelled and remained closed for ten days, halting essential humanitarian relief supplies.²³

But the UN did not appear to learn much from this debacle. In late January 1992 the Security Council passed its first resolution on the Somali crisis, imposing an arms embargo and urging the Secretary General to seek a ceasefire. Accordingly, in early February 1992, a delegation led by UN Special Coordinator Brian Wannop made a brief visit to Mogadishu, to invite the two warlords to ceasefire talks in New York. But no clan leaders or independents were invited, evidence of the UN's continuing insensitivity to the realities of Mogadishu. In March, when the ill-conceived ceasefire fell apart, James Jonah responded with a vague threat to the helpless victims of war and hunger: "It should not be taken for granted that the international community, in the face of such behavior [resumed conflict between the competing factions], will continue to exert all efforts to bring food to Mogadishu when there are equally competing demands in other parts of the world."²⁴ A new ceasefire was signed later in March, authorizing a fifty-member UN observer team to monitor compliance.

Despite the Security Council's passing three separate resolutions on Somalia during the spring of 1992, regional UN representatives remained stationed in Nairobi, while the ICRC and a handful of other voluntary relief groups struggled to confront the growing famine. The UN appeared incapable of responding to humanitarian needs in a country with no government, and its agencies would not return to Somalia without a formal ceasefire. Yet it was clear to observers on the ground that a durable ceasefire was not possible in Somalia at that time, not least because much of the violence was fueled by lack of food – the very food the UN could provide. Voluntary relief groups active in Somalia pleaded with UN agencies to saturate the country with food as a means of dispelling some of the scarcity-driven violence. The UN insisted instead on monitoring the March ceasefire before providing humanitarian assistance.

²³ See Africa Watch, "Somalia: A Fight to the Death?" New York, February 13, 1992, pp. 7-9. This publication compares the Jonah visit with that of an Eritrean delegation which remained more than two weeks in Mogadishu and held extensive discussions with both sides as well as clan elders and independents. The delegation made no public statements and gained the respect of all groups.

²⁴ Jane Perlez, "U.N. Halted by Somali Shelling Says Food Relief Could End," *The New York Times*, March 7, 1992.

Sahnoun and the Beginnings of a Response

In April the new Secretary General, Boutros Boutros-Ghali, appointed a special envoy for Somalia, Algerian diplomat Mohammed Sahnoun. Sahnoun's performance remains the highlight of the UN's relation with Somalia since 1990, and that his tenure ended bitterly is more a comment on the UN's approach to Somalia than on Sahnoun's considerable achievements. Sahnoun worked tirelessly to make contact with Somalis of all persuasions and to overcome their disgust with the UN. Through his dedication and willingness to listen, he won the confidence of the warring leaders, independents, clan leaders and relief organizations. He was thus able to maintain dialogue, or begin it, during a period when the rest of the world understood little of the realities of the war in Somalia.

Like the private relief groups, Sahnoun believed that tension could be defused by flooding the country with food. By this time, tens of thousands of Somalis were dying of starvation, and the UN had the resources to bring in adequate amounts of food. But when he called for the immediate involvement of UN humanitarian agencies, Sahnoun received little support, and let his frustration be known. He attributed delays in food distribution to bureaucratic wrangling within the UN. "Mr. Sahnoun singled out the United Nations Children's Fund and the World Food Program as organizations whose officials have exaggerated the dangers in Somalia as an excuse for limiting their efforts in the capital, Mogadishu," noted one news report.²⁵

His relations with the UN humanitarian agencies were not helped by incidents like the one in which carelessness by UNICEF almost derailed the deployment of the ceasefire observers. Approved in March, the observers did not begin to arrive in Mogadishu until July. After the first contingent's arrival, a plane that UNICEF had recently chartered to fly supplies from Nairobi to Mogadishu was impounded by Kenyan police after it was discovered to be flying money and military uniforms to Ali Mahdi while still bearing UN markings and using the UN flight code. General Aidid accused the UN of sending military aid to Ali Mahdi; the UN did not deny the charge and remained silent for days, leading Aidid to threaten to block deployment of further UN observers. UNICEF's failure to attend to such basic details as removing its markings from a hired plane, and the UN leadership's failure to respond to Aidid's angry accusations, made it necessary for Sahnoun to negotiate to salvage the observer mission.

²⁵ Seth Faison, "U.N. Head Proposes Expanded Efforts for Somali Relief," *The New York Times*, July, 25, 1992.

Still, UN member states persisted in ignoring Somalia. Secretary General Boutros-Ghali's own calls for action fell on deaf ears until July 1992, when he chided the Security Council for a double standard in its treatment of Somalia as compared with the former Yugoslavia, which he called "the rich man's war." Coinciding with this much-publicized criticism, US Senator Nancy Kassebaum visited Somalia.

The Kassebaum visit created pressure on the US government to step up its humanitarian efforts in Somalia. During 1991 and early 1992, the Bush Administration had given generous humanitarian aid but resisted a more comprehensive political approach to the Somalia crisis, particularly at the UN. Security Council resolutions in January and March 1992 were reportedly weakened by the United States, due to the Administration's reluctance to face such a foreign policy issue in an election year. After the publicity generated by the Kassebaum visit, however, and in what many perceived as an effort to make a dramatic political gesture during his campaign for reelection, President Bush ordered an airlift of relief supplies to Somalia in August 1992. Initially a military operation, the airlift passed to civilian control under USAID's Office for Foreign Disaster Assistance in November and continued until the end of February 1993.

Though hastily conceived and executed, and not the most efficient way to move large quantities of food, the airlift had an immediate effect on the creaking UN machinery. In a matter of weeks, the director of UNICEF, James Grant, and the UN's humanitarian affairs coordinator, Jan Eliasson, made their first trip to the country and promised the kind of large-scale programs that voluntary groups had sought for more than a year. Observers agree that the August airlift, and its effect on the actions of other countries, UN agencies and nongovernmental organizations, began to turn the tide of the famine.

Contradictory Relief Efforts

It would be months more, however, before UN officials' promises were put into action. The role of the Department of Humanitarian Affairs (DHA) headed by Jan Eliasson provides a glimpse of the problems. Formed in response to a landmark December 1991 General Assembly resolution that demanded more coordinated emergency response, the DHA faced its first major challenge in Somalia – and played almost no role whatsoever. One critical factor was that the UN system, which is really a federation of fiefdoms, does not take to coordination easily. Another is that the DHA was given no significant resources with which to

mount operations, and lacked the authority to command resources from the agencies it was expected to coordinate. It thus depended wholly on the good will of agencies such as UNICEF, WFP, and UNDP, which had their own priorities and competitions. And lacking resources of its own, DHA could not create a staff made up mostly of specialists appropriate to its complex job, but inherited a staff of UN bureaucrats. With these handicaps it acted in Somalia not as an urgent-action response center but like another sluggish UN operation.

Sahnoun's frustration with the UN agencies increased with the growing famine. At a meeting of international donors in mid-October 1992, the special envoy was particularly blunt: "A whole year slipped by whilst the UN and the international community, save for the International Committee of the Red Cross and a few nongovernmental organizations, watched Somalia descend into this hell. The damage will not be repaired."²⁶ Less than a week later, an interview with Sahnoun was aired on the influential US television program "Sixty Minutes," and millions of viewers watched him say that earlier UN intervention in Somalia could have saved lives. On October 26, Sahnoun submitted his resignation, reportedly after receiving a letter from the Secretary General rebuking him for his public criticisms of the UN and in particular of James Jonah. Thus, the diplomat who did the most to promote reconciliation in Somalia and humanitarian aid to its people was marginalized; Jonah would later be promoted. In a highly unusual step, relief groups working in Somalia issued a statement to express their sadness and frustration over Sahnoun's departure: "Ambassador Sahnoun gained the confidence of those he dealt with through his in-depth understanding of the sensitive and very complex situation in Somalia...His outspoken criticism of the UN's response in Somalia has, we believe, resulted in his being sacrificed by the UN bureaucracy at the expense of the humanitarian relief effort."²⁷

In the meantime, relief convoys were routinely looted for lack of protection, and tens of thousands of Somalis died of hunger or disease. Sahnoun had called for a UN peacekeeping force of at least 6,000 troops to protect relief workers and convoys; security conditions in Mogadishu had become so precarious that private relief organizations had taken the unprecedented step of hiring security guards to protect aid deliveries. Despite its emphasis on problems of security, the UN did not address these problems rapidly or efficiently once given

²⁶ The statement has been widely reproduced in press reports. See, for example, Ray Bonner, "Why We Went," *op.cit.*

²⁷ Quoted in Ray Bonner, "Why We Went," *op.cit.*

the mandate to do so. The Security Council had approved the deployment of 50 military observers to monitor the March ceasefire in Mogadishu and an unspecified number of troops to protect relief supplies and personnel,²⁸ but the 50 observers did not arrive until July. In July, "the urgent deployment" of the protective troops had been called for,²⁹ but not until September was a lightly armed force of 500 Pakistani troops sent. In August, a further resolution authorized the deployment of 3,000 more troops,³⁰ but these troops were not sent at all; plans for their deployment were repeatedly deferred. Even the Pakistani troops did not actually take up protective positions at the Mogadishu airport until mid-November, because General Aidid initially would not consent to it.

The UN's failure to keep pace with the situation was disastrous. Armed militias and so-called uncontrolled elements took advantage of the delays in deployment and increased their extortion of nongovernmental organizations attempting to deliver emergency assistance. According to aid workers, up to 40 percent of the food arriving after August was being stolen.³¹

Secretary General Boutros-Ghali noted in a November 29 letter to the President of the Security Council, "The situation in Somalia has deteriorated beyond the point at which it is susceptible to the peace-keeping treatment."³² He added:

Several of the de facto authorities, including especially General Aidid, have refused to agree to the deployment of United Nations troops in areas where the need for humanitarian relief is most acute. Even when they have agreed, their subsequent cooperation ... has been at best spasmodic...

The Secretary General noted that forces had shelled and rocketed the Pakistani

²⁸ Security Council Resolution 751, of April 24, 1992.

²⁹ Security Council Resolution 767, of July 27, 1992.

³⁰ Security Council Resolution 775, of August 28, 1992.

³¹ Jane Perlez, "Aide's Departure Another Blow to UN in Somalia," *The New York Times*, October 31, 1992.

³² UN Document S/24868, p. 18.

battalion and shelled a World Food Program ship in the days before his letter, and that neither Ali Mahdi nor Aidid would admit to responsibility over the forces involved. Clearly the UN troop presence was insufficient.

UNITAF Takes Over

Fighting along the Kenyan border and continuing disruptions in the delivery of relief supplies – and most likely domestic political considerations as well – led the US, in late November, to offer a troop division. The following week, the Security Council unanimously passed Resolution 794, authorizing "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia." The resolution also welcomed the US offer to provide military forces and authorized the Secretary General and member states to devise a plan for establishing a secure environment. The military operation thus received a UN mandate, but it had been offered on condition that the US retain command. The alternatives, as Boutros-Ghali noted in his letter quoted above, were to send a smaller force under UN command, or to withdraw. The US government's condition was accepted.

The troop contingent, known as UNITAF, began its deployment on December 9 in Mogadishu, under the military command of US Marine Lt. Gen. Robert B. Johnston. Its size varied during the following five months, reaching a maximum level of 33,000, deployed throughout southern and central Somalia. Under Resolution 794, other countries were asked to contribute to the effort, and as of early February 1993, twenty-two nations were participating, the majority of them with financial support or with small military contingents. But the new UN Special Envoy for Somalia, Ismat Kittani, and the initial UN presence generally (UNOSOM), relied on the US to conduct on-the-ground diplomacy. According to Amb. Robert Oakley, former US Special Envoy to Somalia, efforts to set up local police forces and coordinate with local Somali elders and authorities were conducted with minimal support from the UN.³³ UNOSOM did not even station representatives in most of the regional centers where troops were deployed.³⁴ Africa Watch interviews and our direct observation during a visit to Somalia in January 1993 confirmed that Oakley had become the most important political authority in Somalia, overshadowing any UN official, and that day-to-day

³³ Interview with Africa Watch, Washington, D.C., March 26, 1993.

³⁴ *Ibid.*

diplomatic efforts were left almost completely to Oakley's staff, with UN personnel not in evidence.

Africa Watch found, on its January 1993 visit to Somalia, that voluntary relief groups' personnel agreed on the need for a protective troop presence; they also agreed that the deployment of troops had made an enormous difference in their ability to stem the tide of famine. As of early January it had become possible to deliver meals and supplemental food to virtually all parts of southern and central Somalia, without interference from thugs or bandits. Certain areas were insufficiently served, malnutrition was still widespread, and a very high percentage of the population in the south-central region was wholly or partially dependent on relief assistance for food. Moreover, the delivery of supplies remained dangerous in some parts of Somalia. Nonetheless, this represented a dramatic improvement over conditions only months previously.

Peace Talks

Once the famine was being addressed, it became possible to examine the structural and human disaster caused by warfare and to consider the future of Somalia as a nation. A peace process initiated in January 1993, hosted by Ethiopia and sponsored by the UN, sought a ceasefire and some future agenda for the distribution of power. The UN's approach to this process was initially flawed. Rather than recognize the close relationship between the famine, the nature of the war and a practice of systematic human rights violations, the UN treated the very warlords who have devastated Somalia as legitimate authorities, future leaders of the society they had victimized and plundered, while alternative leadership and governance structures went unexplored and other voices for Somalia had not been invited to speak.

Given that the disaster in Somalia was created, in large measure, by massive, persistent, deliberate violations of human rights committed by all armed factions, the country's long-term recuperation depends on making human rights a central concern -- with human rights conceived in terms of authentic political participation, legitimate representation in a credible government, and accountability for the human rights violations of the recent past, beginning with the documentation and exposure of past abuses. A durable peace requires that the parties agree to respect human rights and to allow their behavior to be monitored.

It is hard to imagine a legitimate, responsive future government arising from any combination of the presently warring factions in Somalia. It was the responsibility of the United Nations, therefore, to generate conditions for a

process of rebuilding that would encourage and incorporate emerging leadership with clean hands. Among those conditions are the following: First, those responsible for war crimes and previous repression must be identified and marginalized from the political process. Second, the armed factions must be demobilized or at least restrained, so that communities may participate in reconstruction free of interference. Third, for credible new leadership to assert itself, and reconstruction priorities to be decided upon freely by local communities, long-term security must be assured; Somali law enforcement bodies are urgently needed, and it is critical that their membership exclude the thugs and murderers now in the various militias. In these closely related matters, the UN could play a significant role as guarantor of security and facilitator of reconstruction. And to arrive at the bases for a credible peace agreement, a broad process of consultation, incorporating a range of Somali opinion and experience, is essential.

It was therefore a positive sign that the second round of talks in Addis Ababa, in March,³⁵ included not only the fifteen armed-faction leaders invited in January. Some 200 representatives of Somali civil society were also present – among them clan elders, intellectuals, women's organization leaders and religious figures. The talks ended in late March with the agreement to establish a Transitional National Council (TNC) with a two-year mandate, which is to serve as a central administrative body responsible for social, economic and humanitarian affairs.³⁶ Under the agreement the TNC would be composed of three representatives from each of Somalia's eighteen regions; one representative of each warring faction; and five representatives from Mogadishu. The women's groups at the conference won a victory in securing the commitment that at least one of each three regional delegates to the TNC would be a woman.

But there are no guarantees or concrete plans that the agreement's provisions will be enacted. This is due, on the one hand, to the volatile military situation, and on the other hand, to the text of the agreement itself, which omits details about implementation. When the TNC is to begin functioning, who will preside over it, and how the regions are to select their delegates, are all questions the agreement does not answer. Also to be considered is the de facto control

³⁵ These talks were sponsored by the UN, the League of Arab States, the Organization of African Unity and the Islamic Conference.

³⁶ The TNC is not given authority over Somaliland, which continues to proclaim its independence.

exerted by military leaders; General Aidid has claimed that he controls ten of the country's eighteen districts and will control the TNC, no matter what the intent of those who endorsed the agreement. Clearly the process by which delegates will be selected is crucial to safeguarding the TNC's effectiveness; if the regional delegates are merely appointed by the factions in control of the different regions, there is little hope of a government that goes beyond legitimizing the warlords.

Disarmament is another crucial area in which results of the talks remain to be seen. So long as all factions and bandits and other "uncontrolled elements" possess weapons, insecurity and fear will prevent broad political participation and the emergence of an authentic new leadership. UNITAF, reluctant to become engaged in the policing function that is implied in a mass-scale disarmament program, made only selective efforts to control the possession and display of weapons. The UNOSOM II force will have broader disarmament responsibilities, under the Addis Ababa accords.

A disarmament agreement that emerged from the January talks was disregarded by the warring factions; they repeatedly missed deadlines to declare their troop strengths to the UN and UNITAF. The accords emerging in March contained the stipulation that disarmament "must and shall be comprehensive, impartial and transparent" and committed the signatories to "complete and simultaneous disarmament throughout the entire country" ³⁷on a timetable of ninety days. That timetable expires in late June. As the second round of talks ended, a Ceasefire and Disarmament Committee comprised of Somali representatives met on March 30 and agreed to set up disarmament zones, calling on the UN to establish 55 "transition sites" where combatants would be disarmed, fed and retrained.³⁸ Shortly thereafter the committee drew up penalties for violating the ceasefire agreed to in January. According to press reports, these penalties range from condemnation to "on the spot" disarmament of the violator, withdrawal of forces from captured land, and restoration of property to its rightful owners. Violations were to be determined by the committee, in conjunction with legal advisors and representatives of UNOSOM.³⁹ When the ceasefire committee encountered its first possible violation -- fighting between the forces of Omar Jess

³⁷ Agreement of the First Session of the Conference of National Reconciliation in Somalia, Addis Ababa, March 27, 1993, Section I (Disarmament and Security), points 2 and 3.

³⁸ Paul Alexander, "Cease-Fire Committee Meets," Associated Press, March 31, 1993.

³⁹ Sue Fleming, "Somali Factions to Cut Aid to Truce-Breakers," Reuters, April 1, 1993.

and General Morgan in the southern town of Kismayu – news reports indicated that the committee declined to issue a decision. That is, the brave plans of the Addis agreements did not prevent the fighting or end it; in the event, UNITAF forces eventually moved in to bring the fighting to a halt.

Although the participants in the Addis Ababa talks agreed that "all disputes must henceforth be settled by dialogue, negotiations and other peaceful and legal means,"⁴⁰ the agreements contain no immediate commitments to respect human rights, only to disarm. The protection of human rights is projected in the accords for such time as a new constitution will be in process and place; principles of human rights law are to guide the framers of the Transitional Charter, and the accords propose a new government characterized by the rule of law, decentralized power, human rights protections and guarantees of individual liberties.⁴¹

UNOSOM Stands By

In the meantime, during the early months of 1993 humanitarian assistance and de facto reconstruction proceeded under primarily UNITAF guidance. The UNITAF leadership initially followed its protective mandate in the narrowest sense, limiting deployment of troops to the protection of relief supplies. But in the absence of strong UNOSOM involvement, UNITAF was faced with practical problems that required it to expand into oversight of the distribution of food and essential efforts at reconstruction, like training local police forces. Primarily a military mission, UNITAF was not designed to function as a bridge to Somali civil society, and it often performed this function poorly. Had the civilians of UNOSOM and Special Envoy Kittani chosen to take a more active role, or received clear instructions to do so, the errors committed by UNITAF might have been less serious. But according to former US Special Envoy Robert Oakley, "There was either a deliberate or unconscious decision taken to do nothing and just say, 'The US is here, they'll take care of it.'"⁴² Accordingly, valuable Somali help was not obtained and, in several areas, thugs were the beneficiaries.

⁴⁰ Agreement of the First Session of the Conference of National Reconciliation in Somalia, *op.cit.*, Section III (Restoration of Property and Settlement of Disputes), point 1.

⁴¹ *Ibid.*, Sections IV (Transitional Mechanisms) and V (Conclusion).

⁴² Interview with Africa Watch, Washington, D.C., March 26, 1993.

For example, when Africa Watch representatives attended daily meetings to coordinate relief efforts in Mogadishu and Baidoa in February 1993, no Somali citizens were included in those meetings.⁴³ These daily sessions were highly effective in achieving coordination and exchanging information as to security problems. We note, however, that the opinion of legitimate Somali organizations, in matters that affected their vital interests and security, was not sought in this forum. This was both a practical and an analytical error. Throughout the worst moments of the famine, the nongovernmental organizations remaining in Somalia received invaluable help from persons and groups that are given scant credit and attention: their Somali employees, the clan elders and civic leaders who helped to coordinate their efforts, and Somali doctors and other health professionals who labored selflessly for months without reward. Even under the most dangerous conditions, Somalis created their own organizations of civil society to provide some educational and health services, as well as employment and development opportunities. All the nongovernmental experts consulted by Africa Watch during its January 1993 mission agreed that reconstruction in Somalia must be based on a foundation that includes these people.

The enormous risks inherent in ignoring such potential allies are illustrated by the case of Baidoa, a town that was among the hardest hit by famine in mid-1992. It is often touted as a "model" of what is being accomplished in the political realm through the protection of relief supplies and the international presence. In February 1993, Africa Watch representatives noted that the town was certainly secure, and humanitarian assistance was being delivered without obstacle, but relief workers invariably pointed out that the same people who for months had held them hostage were now in charge of coordinating relief services with them and the UNITAF troops. Thugs who used to loot relief convoys had now redefined themselves as members of the "relief committees" conceived originally by UNOSOM; so, not surprisingly, the looting of relief supplies continued despite the presence of UN troops.

UNOSOM had intended the "regional relief committees" as a means to bring Somalis into the relief effort. And in some places, this appeared to have worked. But in Baidoa, the Regional Relief Committee was dominated by a militia allied to General Aidid,⁴⁴ while valuable local Somali citizens groups and aid

⁴³ The participants were representatives of nongovernmental organizations, UNOSOM humanitarian coordinators, and officers of UNITAF assigned to civilian-military operations.

⁴⁴ The local Somali Democratic Movement (SDM), a Rahanweyn militia allied with Gen. Aidid in the Somali National Alliance.

organizations – people who had played no part in the destruction of Baidoa – were not represented. UNITAF did nothing to keep the gunmen out of the process, according to relief workers. With reason, therefore, the international humanitarian groups openly refused to work with the Regional Relief Committee supported by the UN's civilian-military operations command. In other towns as well, thugs have dominated the relief committees and issued threats to foreign humanitarian groups that do not, for example, recruit workers through the committee.

UNOSOM II

On March 26, 1993, the Security Council unanimously passed Resolution 814, mandating a new UN-led mission to Somalia. UNOSOM II is to involve 30,800 troops and civilian personnel under UN command -- making it the largest operation of its kind ever undertaken by the UN -- and a "rapid reaction" battalion commanded by the United States. Unlike UNITAF, the new force is to be deployed throughout Somalia, including Somaliland and the northeast, and will also patrol the borders with Ethiopia and Kenya, in an effort to enforce the UN arms embargo imposed in 1991. Its presence in Somaliland is expected to be controversial, for the region insists on its independence and its ruling faction, the Somali National Movement, is wary of possible international efforts to unify the country. Of the 2,800 civilians in UNOSOM II, between 500 and 600 are to be foreigners, and the remainder Somalis.

UNOSOM II's mandate includes providing humanitarian and other assistance; assisting in the provision of relief and economic aid; assisting in the repatriation of refugees; reestablishing a Somali police force; developing a land-mine removal program; and creating conditions for political participation, reconciliation and reconstruction. Its military mandate, like UNITAF's, is defensive: it is authorized to "take such forceful action as may be required" to protect humanitarian personnel -- of the UN or voluntary relief groups -- from attacks or threatened attacks. But it is also expected to "prevent any resumption of violence" and supervise aspects of the disarmament process.

RECOMMENDATIONS

- o **Accountability:** So far not mentioned during the peace talks, accountability must be included in the agenda for reconstruction. It is critical that the parties agree to respect human rights and to allow their

behavior to be monitored, and a process must be set in motion to achieve accountability for the crimes of the past. At the least, the UN should undertake to document past and ongoing abuses, in an effort to assist victims until such time as Somali or international courts may adjudicate their cases. Indeed, the United States proposed that the collection of information on human rights abuses be part of the mandate of UNOSOM II, but the final resolution did not include it.⁴⁵

As it has elsewhere, the UN should deploy specialized personnel to investigate and document violations of human rights committed in recent years in Somalia. At some point, the courts and civilian authorities of a reconstituted Somali state will decide whether to prosecute and punish those responsible. In the meantime, as they select their future leaders, Somalis will be able to make informed judgments as to the past actions of each warlord and faction. This investigation and truth-telling must be a credible, long-term effort, conducted under rigorous research standards with guarantees of impartiality, balance and reliability.

The UN will need to commit resources to the verification and truth-telling efforts, as it does to its military, relief and diplomatic tasks; for this, governments must be willing to provide the UN with adequate funding and in-kind assistance, and to allow their own officials to be assigned temporarily to UN duties.

Once the evidence of atrocities has been compiled, the decision whether to pursue prosecutions will fall to the courts of a reconstituted Somali state. If those courts are unable or unwilling to live up to their obligation, then the United Nations should create an international tribunal to bring to justice those who may be guilty of crimes against humanity.

- o The Creation of Somali Police Forces:** It is encouraging that UNITAF has taken concerted steps toward assisting the formation of a Mogadishu police force. We believe it is important to proceed on this matter without waiting for a comprehensive political settlement, because a possible result of inaction could be that the ranks of the future police would be

⁴⁵ As it has in other similar circumstances, China objected to the inclusion of a human rights component in the UN's mission.

filled by the demobilized combatants of the factional militias, a terrifying prospect.

It is also important, given Somalia's lack of a central authority but the existence of credible community-level structures, that at the outset the goal not be a national police force but rather local and regional bodies; from the start, small local forces could be made more accountable to the community. This does appear to be the model favored by UNITAF in various cities, but it is unclear how well UNITAF has succeeded in screening out abusive elements. Africa Watch has learned that in Mogadishu, for example, UNITAF sought to include only former police with experience of two years prior to 1991, to screen out undesirables, but found that applicants were forging credentials to evade the restriction.

Legitimate Somali leaders should be encouraged to devise mechanisms that would ensure citizen-based review of police actions. Where communities have already attained some measure of order -- in the north and northeast, for example -- they should be assisted immediately with the creation of police forces; these may provide models to follow elsewhere.

- o Diplomacy on the Ground and Participation in Relief Efforts:** Africa Watch representatives noted in February that, in general, the UNOSOM presence throughout Somalia was passive, leaving to workers of relief groups the task of on-the-ground diplomacy with the warring factions. An expanded UN civilian presence with more active involvement -- as may be possible under UNOSOM II -- would, we believe, encourage genuine organizations of civil society and other Somalis with clean hands to come forward and participate in recreating a Somali state. Without active diplomacy, however, the regional relief committees and other structures conceived by UNOSOM are easy prey for the organized thugs of the armed factions. In this connection we note that the UN appears to be trying to address this issue by stipulating that the majority of the civilian component of UNOSOM II will be Somalis.
- o A Broad Process of Peacemaking and Reconstruction:** The UN and Ethiopia fortunately saw the need to expand representation at the peace talks in March, and specifically to break through the factional -- and to a large degree fictional -- representation of clans and sub-clans, to assure

a fair representation of traditional and emerging leadership. Now the UN needs to be present at the local level to help Somalis recreate local town councils and regional administrations. To the extent that this has occurred, it has been done piecemeal by UNITAF. The resolution establishing UNOSOM II states that it will be active in such political reconstruction efforts, but it is obviously too early to tell how active a role it will play.

- o Verification of the Peace Accords:** The UN must be prepared to verify compliance, to deploy civilian agents in sufficient numbers to monitor the behavior of all factions, to verify implementation of the ceasefire and other specific accords, and to witness a peaceful transition to a new Somali state. In particular, civilian monitors -- backed where necessary by foreign troops -- are needed to monitor compliance with human rights standards by those entrusted with governmental functions, and to scrutinize compliance with the laws of war and the truce by armed factions until they disarm.

- o Creation of a Safe Environment:** This is essential for the reduction and prevention of abuses, and the crucial prerequisite for the creation of a safe environment is disarmament. For disarmament to proceed successfully, it must be conducted even-handedly, to avoid creating unfair advantages for any party. It must be accompanied by some form of receivership in neutral hands, with full public disclosure and verified destruction of weapons and munitions. Whether the entity in charge is UNOSOM, the TNC Committee on Disarmament operating with UNOSOM logistical support, or some third alternative, it must have a timetable that ensures as rapid a process as possible. Although UNOSOM II's mandate includes working with the armed factions on disarmament, so far there is no indication that the UN has a disarmament or demobilization strategy. Without the possibility of jobs or some sort of assistance, it is doubtful that fighters and private "security guards" hired by nongovernmental humanitarian groups will surrender their weapons; so far there is no visible plan to assist with the re-integration of these people into civilian life.

There must also be a concerted plan to prevent importation of new weapons. The UN's own arms embargo on Somalia, declared unanimously by the Security Council in January 1992, has not yet been

seriously enforced.⁴⁶ While enforcing such an embargo in a country with porous frontiers and myriad small fighting groups is difficult, it is important for the UN to back up its own decisions with an effort of some kind, lest the UN lose credibility. UNOSOM II's mandate includes patrolling the borders with Ethiopia and Kenya, a positive step.

⁴⁶ Security Council Resolution 733, of January 23, 1992.

IRAQ

BACKGROUND

In July 1988, Iraq and Iran agreed to end their ruinous eight-year war under the terms of UN Security Council Resolution 598. Prior to that resolution, the United Nations had shown a distinct preference for Iraq in its public statements and actions, reflecting the undisguised support for Iraq on the part of the three Western permanent members of the Security Council – the United States, Britain and France.

The Iraqi government's use of chemical weapons against Kurdish civilians and fighters alike in 1987 and 1988 had provoked hardly a squeak from the UN. Even when Saddam Hussein's repression of the Kurds drove hundreds of thousands from their villages in the north in 1988 and led to the "disappearances" of tens of thousands more – the notorious *Anfal* campaign – the UN system remained disengaged from Iraqi government atrocities. No condemnatory resolution was passed; no public or private inquiries were made of Baghdad; and no changes were apparent in the fieldwork of UN development agencies present in the country. Between 1988 and 1990, UNHCR failed to oppose Turkish government discrimination against some 65,000 Kurds who had fled the *Anfal* to Turkey; the Kurds were denied refugee status and, in some cases, were forcibly returned to Iraq. Even less attention was paid by the UN refugee agency to the waves of deportations, from Iraq to Iran, of an estimated 200,000 Feyli (Shi'a) Kurds and persons of Iranian origin during the 1970s and 1980s.

In the past three years, however, there has been a 180-degree turn in the treatment that UN bodies accord to Iraqi human rights abuses – from lassitude to forthright condemnation in the strongest possible terms. The world body's public rhetoric on human rights in Iraq changed after the end of the 1991 Gulf War, in light of political shifts by the major powers. These reflected the conflict itself – conducted under a rare Security Council-mandate on the use of force by the US-led coalition – the end of the Cold War, and the perceived lessening of the threatened "export" of the Islamic revolution in Iran. In 1992, a UN-appointed investigator could describe the Iraqi government's human rights record as being among the worst in the world for almost half a century; and the following year the Security Council held informal consultations on a US proposal to establish a commission of inquiry into alleged Iraqi war crimes and exceptionally grave human rights violations, notably genocide.

The course of this shift, and its limitations, suggest the extent to which human rights concerns have been secondary to political, funding and developmental considerations within the UN as a whole. That is, while there have been undeniable, massive human rights abuses in recent years, they are of a piece with earlier repression that should also have been condemned but was not; and, while the UN has embarked on numerous laudable human rights initiatives related to Iraq since 1991, these only prosper if consistent with the interests of the most powerful member states.

The policy goals of the United States in particular have set the tempo for UN action, or inaction. For instance, the UN leadership stood by and said nothing when, in March 1991, after then-President George Bush and his advisers decided to call a halt to the Gulf war, loyalist Iraqi forces crushed popular uprisings in the north and south of the country with extraordinary brutality. Proposals to investigate and prosecute Iraqi war crimes rise and fall depending on initiatives from Washington. And the implementation of the UN's stringent sanctions against Iraq -- in force continuously since August 1990, on the basis of shifting rationales -- has rested ultimately on Western governments' political calculations, in which human rights have been of minor concern.

The enormous cost of the UN's failure to monitor and defend human rights in Iraq for so long is exemplified by three recent waves of people fleeing to take refuge outside Iraq, and the UN's laggardly response to their humanitarian needs. The first wave, in 1988, consisted of up to 100,000 Kurds; the second, in the months after Iraq's August 1990 invasion of Kuwait, involved over 700,000 third-country nationals who had been resident in Iraq and Kuwait; the third, during and after the suppression of uprisings in March 1991, comprised an even larger number -- 1.8 million -- of Iraqi Kurds and Shi'a. The Iraqi refugees mostly sought sanctuary in Iran and Turkey, while the vast majority of the foreign "guest workers" escaped to Jordan. Three times in three years the UN was caught ill-prepared or unready to stand up to regional governments who failed to respect human rights norms. Particularly in Iran and Turkey, during the 1988 and 1991 refugee exodus of Iraqis, humanitarian assistance was poorly distributed; mistreatment of refugees by local authorities was overlooked or ignored; and deceitful Iraqi amnesties were not criticized by the UN. If it had not been for Western media coverage of the plight of hordes of Kurds stranded on frozen mountainsides, as Turkey refused to let them enter, a larger tragedy than actually transpired would have ensued.

Dissatisfaction with the world body's performance during and after the Gulf war was so widespread that, in December 1991, General Assembly Resolution 46/182 established a new UN Department of Humanitarian Affairs (DHA) to

coordinate humanitarian assistance. But the DHA's impact on humanitarian programs for Iraq is difficult to discern, and better coordination in itself is not sufficient to correct the malfunctions of the emergency relief machine. Better-informed assessments of prevailing human rights conditions are essential; yet, citing financial pressures, the remaining UN humanitarian agencies operating in Baghdad currently plan to withdraw all but a skeleton office staff. In light of continuing repression and the UN's failure to enforce its humanitarian resolution on Iraq, a new wave of internally displaced persons could erupt at any moment, with the UN likely to find itself once more ill-informed and ill-equipped to meet the emergency. Although the Iraqi government must bear primary responsibility for the plight of the displaced, the UN has not done everything possible to address the problem. During 1992 and 1993, when security concerns and government pressure led to the removal of UN security personnel and UNHCR staff from southern Iraq, the UN agencies that continued to operate from Baghdad – primarily, UNICEF and the World Food Program – failed even to seek government permission to visit the southern marshes, the region of the country where human rights and humanitarian problems were most acute. A UN needs assessment mission to Iraq in March 1993 similarly ducked the issue as too hot to handle.

The contrasting treatment over the past two years of two parallel Security Council Resolutions dealing with Iraqi state aggression – the first against the outside world, the second against its own citizens – highlights the secondary place accorded by the UN to human rights concerns. Security Council Resolution 687 of March 5, 1991, calling for the delineation of Iraq's border with Kuwait and the elimination of its weapons of mass destruction, has been backed by the Security Council and the Western permanent members, who have repeatedly declared their determination to ensure its implementation, if necessary by resorting again to military force. By contrast, flagrant and constant breaches of Security Council Resolution 688, which had called on the government to desist from oppressing its own people, notably the Kurdish minority, have encountered much less resolve during this period.

HUMAN RIGHTS ABUSES AND VIOLATIONS OF THE LAWS OF WAR

Iraq has been governed since 1968 by the Arab Ba'th Socialist Party, under a system Iraqis know as "terror and reward."¹ Combining the benefits of

¹ In Arabic the two words are alliterative, *tarhib* (terror) and *targhib* (reward). Hanna

statist welfare programs with the controls of a well-organized police state, the Iraqi government rules through the Ba'th party organization, which is responsible for enforcing political loyalty; through a cult of personality surrounding President Saddam Hussein, in which those loyal to the government are expected to participate; and through informers and secret police agencies. The secret police may detain without trial, and torture and kill detainees with impunity.

During the 1980s Iraq became a favorite of the West, seen as a bulwark against the spread of Islamic fundamentalism from Iran and, given its oil wealth, a market for industrial goods. Consequently, its human rights record was largely ignored. But the 1980s was a period of mounting repression by the Ba'th Party-led regime, particularly against the Shi'a, and, in the latter half of the decade, against the Kurds as well. While Shi'a Iraqis represent some 55 to 60 percent of the population, they have long been subjugated and discriminated against by successive regimes in Baghdad. In the early 1970s and again in the early 1980s, as many as 200,000 Arab and Kurdish Shi'a may have been summarily expelled to Iran.

The Kurdish minority² has struggled for decades with the Arab government of Baghdad over land, oil wealth, and political and cultural rights. The Kurdish population of northern Iraq suffered particularly brutal repression during 1987-89, in the course of a Kurdish insurgency. Part of that campaign, known as the *Anfal*,³ involved a forced relocation program of such proportions as to threaten Kurdish ethnic identity and cultural survival, a scorched-earth policy that left

Batatau, as cited in Middle East Watch, *Human Rights in Iraq*, New York, 1990, p. 1. This section is based largely on information from sections of Middle East Watch's 1990 report on Iraq, cited above, and on a subsequent Middle East Watch/Physicians for Human Rights report, *The Anfal Campaign in Iraqi Kurdistan: the Destruction of Koreme*, New York, 1993.

² The Kurds are generally agreed to be the fourth largest ethnic group in the Middle East, after the Arabs, Turks and Persians. Their total number is variously estimated at between eighteen and thirty million, living in Iraq, Turkey, Iran, Syria, and parts of the former Soviet Union. In Iraq, they are believed to represent 23 percent of the population, or over four million people.

³ This was the name used by the Iraqi government, a religious term that translates as "the plunder of the infidel," despite the fact that the Kurds, like most Iraqis, are Muslim, and Iraq is nominally a secular state.

thousands of Kurdish villages abandoned. In a pattern of destruction that was fairly consistent, villages would first be bombed; then as villagers attempted to flee, they would be trapped by troops surrounding the village. In the hands of the army and other security forces, the men and boys would be killed, or would "disappear;" the surviving elderly, women and children were forcibly relocated to camps. In some stages of the 1988 *Anfal*, women and children also joined their male companions in mass killing pits that consumed over 50,000 Kurds.

The Iraqi government embarked on the *Anfal* campaign because, in expectation of a ceasefire in its 1980-88 war with Iran, the regime wished to "settle" the Kurdish problem; the *Anfal* was a "final solution" strategy, designed not only to prevent future Kurdish insurgencies but to end their traditional way of life in the mountains of northern Iraq. Thus, as it had in its war with Iran, in the *Anfal* the Iraqi regime used chemical weapons and set tens of thousands into flight to Turkey and Iran. Iraqi soldiers opened fire on refugees at the Turkish border, to prevent their escape; other victims of gas attacks were too far from the borders to flee, and remained trapped inside Iraq.

Atrocities against Kuwaiti citizens commenced within weeks of Iraq's August 2, 1990 invasion and annexation of its small neighbor, which was designated as Iraq's "nineteenth province." Civilians suspected of opposing the takeover or remaining loyal to the deposed Kuwaiti royal family were arbitrarily rounded up, tortured and often executed; their bodies would be dumped on their families' doorsteps or left in the open for days on end as a warning to others. Brief peaceful protests of the takeover were suppressed by force; Western residents of Kuwait were seized as hostages, in an attempt to forestall a war; and thousands of Kuwaitis were transported back to Iraq, in defiance of the Fourth Geneva Convention on occupied territories. Several hundred Kuwaitis⁴ known to have been seized are still to be accounted for by the Iraqi authorities. Not coincidentally, the person who as governor of occupied Kuwait presided over the worst abuses was Ali Hassan al-Majid; "Chemical Ali," as he is known to the Kurds, had been the mastermind of the *Anfal*.⁵

In 1990, an estimated 750,000 fled Iraq, overwhelmingly made up of third-country nationals who had been resident in Iraq and Kuwait prior to that country's

⁴ The exact number is disputed, in part because of Kuwait's refusal to recognize the rights of those of its *bidoon*, or stateless, population who were trapped in Iraq at the end of the war to return to Kuwait.

⁵ A cousin and son-in-law of Saddam Hussein, Al-Majid is today Iraq's Defense Minister.

occupation. The following year, some 1.8 million Kurds and Shi'a -- ten percent of Iraq's entire population, and over one-third of all its Kurds -- left as a direct consequence of the brutal crushing of a March 1991 uprising that followed the allied war with Iraq. Fears of renewed use of chemical gas, this time against undefended cities, played a large part in the wholesale emptying of urban areas. As Iraqi forces retook cities in rebellion from south to north, they committed atrocities on a massive scale, including indiscriminate attacks on residential areas, attacks on fleeing unarmed civilians by helicopter gunships, summary executions, and mass arrests.

The Iraqi government moved quickly to choke the separatist sentiment of its three northern provinces, using military force to seal off the Kurdish region and impose an economic embargo. But the Western powers' "no-fly" zone north of the 36th parallel has held back any further large-scale government attempts to attack the population, which has been engaged in rebuilding homes and villages and creating self-governing political institutions.

Since 1991, southern Iraq has become the scene of the regime's most intensive counterinsurgency campaign. Throughout 1992 there were reports of punitive military operations in the southern marshlands, which are home to an indigenous people and have sheltered Iraqi rebel forces and military deserters. The counterinsurgency campaign included indiscriminate attacks on villages by artillery, helicopter gunships and fixed-wing aircraft. Civilians in these villages, including tribal leaders, were arrested and executed, property and livestock were destroyed, and entire villages were razed.

Also sinister, in their long-term implications for the destruction of an ancient community whose origins predate the Arab invasions of Mesopotamia, part of modern Iraq, are the extensive engineering works that have proceeded apace in the marshes since the crushing of the 1991 uprising. Forcible displacement of the population is accompanying the construction of a complex of ambitious hydrological schemes along southern sections of the Tigris and Euphrates before they merge to become the Shatt al-Arab waterway, and along their distributaries; the apparent goal of the project is to dry up more than 10,000 square kilometers of lakes and deep-water marshes inhabited for five millennia by the Ma'dan, or Marsh Arabs.⁶ A London-based relief organization, Iraqi Civilian

⁶ The Saddam government defends its so-called Third River scheme, a drainage canal extending over 500 kilometers, on developmental grounds. But it has remained silent over the purpose of a series of dams, levees and other earthworks in and around the marshes being constructed with great speed, under army protection, after the forcible depopulation of the affected region.

Aid (ICA), visited the marshes in early November 1992 and reported that the area was totally blockaded by Iraqi troops, such that food and medicine could not reach civilians, and that escape across the Iranian border was largely prevented by stepped-up Iraqi patrols. A visit to nearby areas in Iran by Middle East Watch, in February 1993, confirmed that the draining of the marshes and the forcible relocation of residents are well advanced. To help overcome the government siege of the marshes region, Iraqi non-governmental organizations such as ICA and the Teheran-based organization known as Gulf War Victims are carrying out unauthorized cross-border relief operations for needy individuals and groups.

UN ACTIONS

The regime's deprivations over the past decade have not gone unnoticed. During the early 1980s, competent UN organs frequently addressed their concerns to Baghdad, albeit in an innocuous manner that almost invited a predictable rebuff. No serious attempt was made at the annual sessions of the Human Rights Commission, or at the General Assembly, to pass a tough resolution critical of the government's record. Going the next step and placing the country under formal scrutiny, by appointing a Special Rapporteur or Representative charged with examining Iraq's human rights performance, was out of the question until February 1991 – after the second Gulf war, over Iraq's occupation of Kuwait.

One explanation for this gentle treatment lies in the composition of the Human Rights Commission. With most of its developing country members unenthusiastic in principle about the intrusions of a Special Rapporteur, this body's natural inclinations to vote against an appointment were reinforced by the desire of the US and European Community to protect Saddam Hussein. Iraq could therefore get away with providing incomplete or patently false information to the Human Rights Committee, entrusted with examining compliance with UN human rights treaty instruments to which a country is a party. Its April 1986 submission to the Committee, for instance, stated – incredibly, to any honest observer – that it was making every effort to promote human rights; and yet it was not challenged by the UN on this assertion. Similar obfuscation and refusal to permit independent examination of the facts on the ground characterized other dealings with the international human rights community.

Iraq has ratified most international instruments, including the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Prevention and Punishment of the Crime of Genocide, and the four Geneva Conventions on international humanitarian law. It is not a signatory to the Convention Relating to the Status of Refugees or to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Nonetheless, Human Rights Watch believes that aspects of these conventions are part of customary international law, and thus binding on Iraq.

Privately, the Iraqi government was contemptuous of the international community's efforts to monitor its human rights behavior; a measure of its attitude was the fact that, from 1988 to early 1993, Iraq's Permanent Representative to the UN at Geneva was Saddam Hussein's half brother, Barzan al-Takriti, a noted torturer who had previously headed the Mukhabarat, an elite

security agency. But the government fought a vigorous public campaign to forestall UN condemnation, drawing on all its powers of economic patronage as a wealthy oil producer to influence uncommitted UN member states.

By 1988, amidst growing clamor by Amnesty International, Kurdish parties and others, the Human Rights Commission began to pay more serious attention to Iraqi practices. The Working Group on Disappearances pressed hard to visit the country that year, only to see its request brushed aside like that of non-governmental organizations. However, the UN system remained equivocal and contradictory over its treatment of Iraq. Representations about consistent patterns of gross abuses, made under the confidential 1503 procedure and endorsed by the Subcommission on Discrimination and the Protection of Minorities, were not adopted by the full Commission.

As a demonstration of the UN's impotence in the face of Iraqi abuses, 1988 may have been the nadir. At the February session of the Human Rights Commission, held as reports about a spate of Iraqi chemical gas attacks against the Kurds were beginning to filter out, no resolution condemning Iraq could be passed. With the Reagan Administration standing on the sidelines, there was no political will among the Commission's other members to stigmatize Iraq. Later that year, in mid-September, Secretary General Javier Pérez de Cuéllar asked Iraq and Turkey for permission to send a UN team to examine claims that chemical weapons had been used against the Kurds; both governments refused, and the matter was dropped.

Monitoring Abuses

The climate had changed dramatically by February 1992 when, in the wake of the Gulf war, Special Rapporteur Max Van der Stoep described Iraq's record as among the worst anywhere and secured a ringing endorsement of his judgement from the Commission. But the UN's belated recognition of the facts of the Iraqi record obscures the sad truth that the UN machinery responsible for observing human rights worldwide remains the Cinderella of the UN system. And perhaps nowhere is the gap between UN rhetoric and reality more apparent than in the case of Iraq. Over the past two years, as he attempted to grapple with the enormity of the Iraqi government's crimes, the Special Rapporteur – a part-timer with other substantial duties – has had the support of only one UN aide lacking even a permanent office or computer. And at the UN's highest levels, there has been only lukewarm support for the kind of innovations in human rights monitoring proposed – and practiced where possible – by Van der Stoep to meet the difficulties of the Iraqi case. For example, when pressed to support the Special

Rapporteur's proposal for sending UN human rights monitors to Iraq during 1993, to provide a modicum of protection to vulnerable groups there, Secretary General Boutros-Ghali's response was that the funds were not available -- in fact, a statement of priorities.

The Iraqi case exemplifies the Security Council's potential to elevate human rights concerns when politics dictate. In late November 1990, as war between Iraq and the US-led coalition was becoming likely, the Council met in an highly unusual session, staged by the US public relations firm Hill & Knowlton, to hear graphic testimony about abuses in Iraqi-occupied Kuwait; one Western diplomat who participated later told Middle East Watch privately that it had been "a circus" staged for the benefit of the Kuwaiti government-in-exile and the Bush Administration -- preparing the diplomatic ground for war. Immediately after the war's end, the Security Council passed Resolution 688, in which human rights abuses were, for the first time, raised to the level of a regional security threat.

But the Iraqi case also illustrates how quickly human rights can be demoted on the Security Council's agenda. When Van der Stoep, technically the Secretary General's representative, attempted to brief the Security Council in July 1992, and again that November, about the crisis in the southern marshes, despite Western government support he was allowed to speak only in his personal capacity. The Council gave him a polite, informal hearing but issued no statement and took no other action. China and India led those members who argued that the Security Council was not the appropriate arena for the airing of human rights concerns, which they said did not fall within its "peace and security" mandate.

Equally revealing is the longer history of UN inability or unwillingness to monitor human rights in Iraq. Prior to Iraq's invasion of Kuwait on August 2, 1990, in the absence of big power support the UN's formal human rights machinery was patently unable to come to grips with a dictatorial regime such as that run by Saddam Hussein. A variety of UN agencies maintained local offices and administered developmental programs in Iraq; one regional body, the UN Economic and Social Committee for West Asia, was even based in Baghdad. Yet there is no indication that information about what was going on in Iraq was ever passed on to the full-time specialists of the UN Human Rights Centre, in Geneva, or to the relevant Special Rapporteurs on disappearances and extra-judicial executions. In part, this may have been due to the UN's compartmentalization into autonomous fiefdoms; but in larger part the failure of UN fieldworkers in Iraq to act on behalf of their human rights colleagues reflects inbuilt tensions between developmental and human rights concerns. At a time when Iraq was being so conspicuously favored by the major Western powers, who were also leading funders of their agencies, field representatives of such bodies as UNDP, UNICEF

and WHO lacked incentive to address human rights issues, despite the detrimental effect of abuses on the programs they promoted.

During the build-up to the January 16 outbreak of the war against Iraq, the Baghdad government refused to permit any UN official or agency to carry out its own assessment of humanitarian needs. Thus, the UN's first examination of conditions in Iraq -- and it was limited mainly to the capital -- was made in mid-February 1991, at the height of the allied bombing campaign. A joint UNICEF/WHO mission was permitted to bring in 54 tons of medical supplies and to "ascertain essential health needs." The mission was circumscribed; team members spent only five days in the country, four of which were in the capital, and did not attempt to go to occupied Kuwait, where food shortages were said to be dire. Nonetheless, its report addressed many of the concerns of the international community about the consequences of the allied bombing campaign.

Noting that in Baghdad "normal life had come almost to a halt" as citizens searched for food, drinking water, cooking and heating fuel, the report provided the first independent confirmation that all major electrical power generating plants in Iraq had been destroyed, along with refineries and fuel storage facilities.⁷ The UNICEF/WHO team publicly confirmed a major concern of Western governments and human rights organizations, which was "the need to assure that the supplies it delivered would be distributed evenly, and according to need, to all civilian populations under Iraqi Government administration -- including Kuwait."⁸ UNICEF team members were to remain behind to monitor Iraq's compliance with this key demand. When Iraq did not honor this understanding, however, the UN failed to protest publicly, thus weakening the international community's authority vis-a-vis Baghdad.

The February and March 1991 session of the Human Rights Commission marked a turning point for the UN with respect to Iraq. Straddling the period covered by the ground war between the allied coalition -- operating under a UN mandate provided by Security Council Resolution 678 of November 29, 1990 -- and the subsequent popular uprising against Saddam's government, this session

⁷ WHO/UNICEF Special Mission to Iraq, February 1991, UN Security Council S/22328, March 4, 1991. Middle East Watch has criticized the allies for having gone too far in attacking all electrical plants and other public service facilities essential for civilian life. Middle East Watch, *Needless Deaths in the Gulf War: Civilian Casualties During the Air Campaign and Violations of the Laws of War*, New York, 1991, pp. 171-93.

⁸ Special Mission to Iraq, *op cit*.

produced the appointments of two Special Rapporteurs to examine aspects of Iraq's recent human rights record. One, Walter Kalin of Switzerland, was asked to deal with the occupation of Kuwait, seven months of extraordinary brutality by the occupying forces; the other, Max Van der Stoel of the Netherlands, would concern himself with the much tougher task of Iraq's internal record. Whereas in the past Iraq could muster a majority of votes on the Commission, predictably there was no opposition this time; the political winds having changed, the resolutions passed virtually unanimously.

The selection of a Special Rapporteur is a lottery, decided more by political considerations of regional blocs' turns to select one of their own than by merit. In the Iraq vote the right to nominate had fallen on the Western Europeans, and their choice was a distinguished former Netherlands Foreign Minister and chair of the Netherlands Helsinki Committee. Max van der Stoel has proven to be an outstanding example of what the UN system can produce from time to time. He has been courageous and determined in his pursuit of a regime that is used to intimidating its opponents. Equally important, in the two years that he has held the post Van der Stoel has shown his willingness where necessary to challenge a hidebound UN system, seeking new ways to gather information and bring his findings to the attention of the Secretary General and the Commission.

In his first report to the Human Rights Commission, in February 1992, Van der Stoel astounded delegates and journalists with the force of his language and the clarity with which he held the Iraqi government responsible. He concluded:

(T)he violations of human rights which have occurred are so grave and are of such a massive nature that since the Second World War few parallels can be found. Nor is it likely that these violations will come to an end as long as the security forces have the power to decide over the freedom or imprisonment, or even life or death, of any Iraqi citizen.⁹

Going further than any foreign government or UN official, before or since, in drawing conclusions about the Iraqi government's 1988 *Anfal* campaign against the Kurds, the report said:

⁹ UN Economic and Social Council document E/CN.4/1992/31; Final Report on the situation of human rights in Iraq by the Special Rapporteur of the Commission on Human Rights, Mr. Max Van der Stoel; p. 65, para. 154.

It is clear that the Anfal Operations constituted genocide-type activities which did in fact result in the extermination of a part of this population and which continue to have an impact on the lives of the people as a whole...There can be no doubt that particular individuals bear the burden of a large part of the responsibility.¹⁰

The report amounted to a call to member states of the UN and to state parties to the 1951 Convention on the Prevention and Punishment of the Crime of Genocide to take the appropriate action required of them to bring to justice those responsible. Yet, nothing has so far transpired, despite the fact that, were the allied shield over northern Iraq to be withdrawn, there is a strong possibility that mass reprisal killings would recur. Van der Stoel's February 1992 report also set the stage for proposals to establish an international tribunal to consider prosecuting Iraq for war crimes and crimes against humanity.¹¹

Van der Stoel's attempts during late 1992 to address the Security Council on abuses in the southern marshes were only partially successful. The Security Council was divided, but a majority did not wish to keep Iraq's human rights situation on its agenda. At the same time, the Rapporteur found his ability to carry out credible investigations circumscribed by his mandate and by the UN leadership's overly broad definition of national sovereignty. Since the publication of his 1992 report, Saddam Hussein's government has refused to cooperate with Van der Stoel, denouncing him as a tool of the West. Iraq has not granted him a visa to return. Because of a UN decision to restrict his travel only to areas approved by Baghdad, the Special Rapporteur has been unable since 1991 to visit even the Kurdish-controlled region of northern Iraq. Unlike scores of foreign officials and non-governmental organizations, such as Middle East Watch, he has thus been unable to take advantage of the region's unprecedented freedom, and gather first-hand the wealth of human rights-related information available.

In order to secure timely and reliable human rights information from Iraq, Van der Stoel conceived a bold new initiative, which has received surprisingly broad support in the UN Human Rights Commission and General Assembly. At four successive UN meetings commencing with the Commission's

¹⁰ *Ibid.*, p. 65, para. 153. The statement was a reference to, among others, the present Iraqi Defense Minister, Ali Hassan al-Majid, a close relative of President Saddam Hussein.

¹¹ See below.

February 1992 meeting, and including the 1992-93 General Assembly session, resolutions calling for the deployment of UN human rights monitors in Iraq were passed by large majorities. The proposal for extraordinary measures, such as in-country monitors, is one that the Special Rapporteur made first in his report of February 1992 to the Human Rights Commission; the resolutions authorizing the monitors potentially take the UN into new terrain, as their implementation does not necessarily depend on the consent of Baghdad.

UN monitors deployed elsewhere have been with the prior agreement of the government concerned. However, the Iraqi government has made plain its intention to reject the imposed presence of monitors on its soil, as a breach of national sovereignty – setting the stage for a likely stand-off with the UN on the issue later in 1993. As of this writing, the outcome remains uncertain. But resistance at the Security Council from China and other members meant that proponents appeared unwilling to bring the proposal to a vote.

The proposal is of particular urgency, however, in part because another means of informally gathering first-hand information, the UN Guards Contingent, has proven inadequate. The lightly armed Guards, first deployed during the early summer of 1991, under a six-month Memorandum of Understanding (MOU) with the Iraqi government to protect the distribution of UN relief supplies, were conceived by senior UN officials as a compromise between a full-scale peacekeeping force and no protection at all for vulnerable relief workers. Arriving about two months after the mass exodus, and subsequent return, of nearly two million Iraqis to neighboring Iran and Turkey, the 500 Guards were intended as a deterrent to further massive human rights abuses. Middle- and senior-level UN officials envisaged that they would act as a mobile tripwire-cum-early warning system, but would not actually intervene to stop actions by the government security forces; their potency, it was thought, would stem from their mere presence and their ability to be in instant satellite communication with New York; representations by the Secretary General or his chief aides to Iraq's Permanent Representative to the UN could then be passed back to Baghdad. In reality, they were doomed to failure from the outset: their numbers were inadequate to cover the country in any meaningful way, and their personal weapons could only be used in self-defense.

Moreover, although on paper the Guards were permitted anywhere in the country, in practice most were located in Baghdad and the Kurdish-controlled north; after the summer of 1992, the handful present in southern cities were withdrawn. A new MOU covering the six months to March 31, 1993, openly criticized by the Bush Administration as ceding too much authority to the Iraqis, confined the Guards – now reduced to a maximum of 300 – to Baghdad and the Kurdish-controlled northern region, not the areas where human rights abuses were most

severe. The government regarded the Guards as an infringement on Iraqi sovereignty and raised constant obstacles to their activities.¹²

Arguably, the security situation in Baghdad and the north would have been even worse without the presence of the Guards. But despite their deployment in Kurdistan, the area experienced frequent bombings and shooting incidents, credibly attributed to Iraqi agents, in 1992 and early 1993; the targets were variously Kurds, fieldworkers for non-governmental organizations, and UN premises and personnel, including the Guards themselves. The incidence of these clandestine attacks rose and fell in accordance with the state of relations between Iraq and the international community. During the winter of 1992-93, a string of delayed-action timebombs went off against relief trucks that had just passed through government checkpoints into Kurdish-controlled territory, injuring and killing dozens of persons. The attacks against convoys escorted by Guards were so flagrant that Boutros-Ghali issued a public protest.

These bombings apart, there is little evidence that the Guards in fact acted as informal human rights monitors for the Secretary General or the UN Secretariat as a whole, as had been suggested. They were frequently confined to base, operating under such restricted guidelines as to limit their usefulness. As of this writing, the number of Guards has been reduced to 186; and, if further funds from donor countries are not forthcoming soon, they may all be withdrawn from Iraq by the end of June.

¹² Aware of the MOU's limitations, UN officials in New York argued that it was better to have a written agreement with Baghdad, however flawed, than attempt to operate in Iraq without one at all. UN headquarters stressed the need to get emergency winter aid to the 3.5 million inhabitants of Iraqi Kurdistan; Turkey, concerned about the consolidation of a de facto Kurdish state on its southeastern border, would otherwise never permit relief supplies to pass through its territory to the rebel enclave, it was argued. Iraqi permission for relief convoys was thus deemed essential.

Sanctions¹³

Comprehensive economic sanctions were applied against Iraq by the Security Council on August 6, 1990, four days after Iraqi tanks crossed the border into Kuwait. Support for the measures among the Council's fifteen members was remarkably solid. Yemen and Cuba – the latter a target of US sanctions for over thirty years – abstained on Security Council Resolution 661 and again on Resolution 665, but no country voted against.

The sanctions imposed under Resolution 661, and the enforcement resolutions, 665 and 670, that followed, were unprecedented in scope and toughness. As the Council met on September 25 in a rare ministerial-level session to extend the maritime blockade, then-Secretary General Pérez de Cuéllar eloquently acknowledged his awareness of the fateful steps being taken by the UN body:

The world has not had an experience of enforcement provisions under Chapter VII (the UN Charter provision permitting the use of force) being used in the manner and on the scale in which they are in the present crisis. Now that they are actually applied, the UN is being subjected to an unprecedented test. It needs to demonstrate that the way of enforcement is qualitatively different from the way of war; that as such action issues from a collective engagement, it requires a discipline all its own; that it strives to minimize undeserved suffering to the extent humanly possible...that what is demanded from the party against which it is employed is not surrender but the righting of the wrong that has been committed; and that it does not foreclose diplomatic efforts to arrive at a peaceful solution consistent with the principles of the Charter and the determinations made by the Security Council.¹⁴

Those principles -- striving for a balance between the righting of a wrong

¹³ This section draws on research conducted by Marian Houk on behalf of Middle East Watch and Physicians for Human Rights, the Boston-based organization of medical professionals.

¹⁴ S/PV.2943, p.7

and the imposition of undue suffering on innocent people, emphasizing the peaceful as opposed to the military options, while maintaining the latter in reserve – were to characterize the worldwide debate over the UN's treatment of Iraq that fall. Almost all UN members were agreed on two points: that war should be avoided at all costs, and that Iraq should not be permitted to get away with such a naked act of aggression against a small, peaceful neighbor. As reports of atrocities emerged from occupied Kuwait, strength of feeling over the latter began to grow. Basic human rights were very much at issue. And yet there was a justifiable feeling at the General Assembly that, for both sides to the conflict, human rights considerations had become a political football.

What occurred over the next two and a half years was the utilization of sanctions to accomplish a political objective for which human rights concerns appear to have been largely an excuse. Sanctions became the thin edge of a major US-led military involvement, after which – despite humanitarian need created in part by the allied forces' manner of waging the war – sanctions have been maintained as a means of enforcing Security Council Resolution 687 (the ceasefire resolution of March 5, 1991, which required Iraq to dismantle its weapons of mass destruction under UN inspection). Informally, sanctions were also regarded by the Western permanent members of the Security Council as a weapon in their efforts to oust Saddam Hussein, the continuation of war by other means.

Prelude to War

As war approached, debate arose over decisions enforcing the sanctions, which tended to undervalue humanitarian need as the basis for exemption. The membership of the Sanctions Committee mirrored that of the Security Council, but decisions were taken by consensus, effectively giving veto power to all fifteen participating states. The Committee was regularly split along political lines over the issue of how to interpret the humanitarian exemptions to sanctions authorized by Security Council Resolution 666 (passed on September 13, 1990), which provided for foodstuffs for vulnerable social groups such as expectant mothers, children and the elderly, and confirmed the exemption of medicines. With support from China and Yemen, Cuba argued that "access to basic foodstuffs and to adequate medical assistance is a fundamental human right to be protected under all circumstances."¹⁵ But it was in vain; the Committee

¹⁵ U.N. document S/21742, rev. 1

was unable to stand up to the constant pressure from Washington for a tight embargo, and blockade.

In our judgement, inadequate efforts were made by the UN to secure the on-the-ground information needed by those in the Sanctions Committee who wanted Resolutions 661 and 666 to be applied in light of the needs of the Iraqi population; by default, the most hardline position always won the day. The UN Secretariat was overwhelmed by the task of servicing the Sanctions Committee, while its efforts to send missions to Iraq lacked credibility in Iraqi eyes as to their neutrality. In addition, the Security Council -- and thus the Sanctions Committee as well -- did not recognize the applicability of Protocol I of the Geneva Conventions, in which starvation is expressly prohibited as a means of warfare.

The debate over the efficacy of sanctions, and the extent to which they were having an unwanted deleterious effect on the civilian population, polarized around the issue of whether there could be an independent assessment of need in Iraq and occupied Kuwait. While Iraqi officials cried loudly about the suffering of their people, there was suspicion that this was a tactic both to split the Arab states being lined up behind the Western powers and to secure an end to the sanctions. Baghdad's refusal to permit the UN's Executive Delegate for Iraq, other UN officials or the International Committee of the Red Cross to visit Iraq and Kuwait to assess the humanitarian need until the eve of the air war¹⁶ strengthened the allied argument that Iraq was merely seeking to avoid compliance with the UN's main demands.

Some of the UN's difficulties over sanctions were self-inflicted; UNICEF's unilateral decision (the Secretary General was not consulted) to close its Baghdad office and pull out all its international staff, well before war had become a reality, deprived UN headquarters in New York of its best means of monitoring the humanitarian situation inside Iraq. If UNICEF or another major agency had been present on the ground during the fall of 1990, it would have been easier to counter the Western permanent members' argument that there was no neutral agency capable of determining that the humanitarian exemptions provided for in Resolution 666 should be triggered, and no means of monitoring the distribution of whatever supplies were allowed through the blockade. Instead, the daily debates at the UN Sanctions Committee became increasingly sterile, based on inadequate information on either side.¹⁷

¹⁶ On January 14, 1991, it invited the World Health Organization and UNICEF to conduct a mission.

¹⁷ As Finnish Ambassador Marjatta Rasi later told Middle East Watch, during the

Post-war Debate

The rationale for continued sanctions against Iraq, as made by the permanent members of the Security Council, has changed twice over the intervening two-and-a-half years. When the war began on January 17, 1991, it was argued that sanctions were now part of the price Iraq would have to pay for its defiance of the UN. Then, when the war ended, sanctions were maintained as the lever to ensure Iraqi compliance with the terms of its defeat.¹⁸ These included the destruction of its nuclear, chemical and biological weapons capability and full acceptance of a UN-demarcated border with Kuwait.

Now it is Baghdad's continuing failure to comply fully with Resolution 687 that is the formal argument for the maintenance of sanctions banning all Iraqi exports and the import of all items other than food and medicine except with the prior permission of the Sanctions Committee. The Security Council has repeatedly expressed its concern over Iraq's refusal to provide a list of its nuclear equipment suppliers; breaches of 688's human rights clauses have also been taken up with Iraqi officials. At the same time, the credibility of the UN's stance was undermined by frequent statements during 1991 and 1992 by then-US President George Bush and British Prime Minister John Major that, whatever Iraq might do to comply with UN terms, sanctions would be maintained so long as President Saddam Hussein remained in power.¹⁹

When the war ended on February 27, 1991, reliable data about the extent of destruction and civilian suffering was scanty. Nonetheless, there were pressures at the UN – among member states and within the senior staff – for the immediate lifting of sanctions and the delivery of humanitarian relief to war-damaged Iraq. On March 2, Austrian Ambassador Peter Hohenfellner, who was

committee's first five months, when she served as its chair, its work was frequently bogged down in arcane discussions over whether powdered baby milk constituted a food that could benefit Iraqi soldiers. Another point of contention was whether scissors in medical kits could also be used as weapons.

¹⁸ Security Council Resolution 687 (1991) of March 5, 1991.

¹⁹ President Clinton has insisted that sanctions will remain in force until there is full compliance with UN resolutions, but has carefully avoided pinning the policy on the continuation in office of the Iraqi leader.

both chairman of the Sanctions Committee and Security Council President that month, noted that "measures will have to be taken urgently to safeguard access by the Kuwaiti and Iraqi population to medical supplies and foodstuffs under the terms of Security Council Resolution 666. We should be aware that urgent measures for further humanitarian relief will be required from the international community."²⁰

Yemen's veteran Permanent Representative, Ambassador Abdalla al-Ashtal, articulated the feelings of many UN members after the war:

When the Council adopted Resolution 661 and imposed a stringent embargo regime against Iraq and then occupied Kuwait, it was because it was believed that the sanctions would lead to Iraq's withdrawal and implementation of Resolution 660. There has already been war, and Iraqi installations have been severely damaged, especially civilian installations such as those for electricity and water and those pertaining to the economic infrastructure that concerns the life of civilians, and tens of thousands have been killed, not to mention the other casualties. After all this, the people of Iraq, including civilians and military personnel, are enduring enormous suffering.²¹

However, the hardline camp led by the US was able to rely on Third World allies such as Zaire. Despite all the anecdotal evidence to the contrary, on March 3 its representative, Lubaku Khalbouji N'Zaji, expressed satisfaction with the way in which the Sanctions Committee was ensuring access by the Iraqi civilian population to "adequate, regular supplies of foodstuffs, medicines and other health products."²²

UN efforts during the first half of 1991 to address the humanitarian calamity affecting the Iraqi people -- a calamity that stemmed, in part, from breaches of the laws of war in the allied bombing campaign²³ -- centered on a

²⁰ U.N. Security Council document S/PV.2978, p.86

²¹ Ibid, pps 25-26

²² U.N. Security Council document S/PV.2981, p. 53

²³ In its 1991 report, *Needless Deaths in the Gulf War: Civilian Casualties During the Air Campaign and Violations of the Laws of War*, Middle East Watch concluded that the allies

series of needs assessment missions. Among them were a WHO/UNICEF mission, from February 16-21, an inter-agency mission led by Under-Secretary General Martti Ahtisaari, from March 10-17, and a July mission headed by Prince Sadruddin Aga Khan. Of the three, the Ahtisaari report was the most alarming and set the tone for what became UN calculations of need. Its opening paragraph read, in part:

It should... be said at once that nothing that we had seen or read had quite prepared us for the particular form of devastation which has now befallen the country. The recent conflict has wrought near-apocalyptic results upon the economic infrastructure of what had been, until January 1991, a rather highly urbanized and mechanized society. Now, most means of modern life support have been destroyed or rendered tenuous. Iraq has, for some time to come, been relegated to a pre-industrial age, but with all the disabilities of post-industrial dependency on an intensive use of energy and technology.²⁴

In retrospect, it seems clear that the Ahtisaari team overstated the extent of the destruction and the length of time it would take Iraq to recover. Nonetheless, the conclusions were a sobering reminder to the UN of the consequences of the military action it had authorized, and spurred repeated efforts to find ways of assisting the Iraqi population, while maintaining the sanctions squeeze.

On August 7, 1991, the five permanent Security Council members agreed among themselves on a tough plan whereby Iraq would be permitted, on a one-time basis, to sell \$1.6 billion worth of crude oil. Proceeds would be placed in an escrow account under the control of the UN and used to pay for food and medicine as well as some war reparations to Kuwait. Iraq angrily denounced the plan and refused to comply with the resolution that put it into effect. But Western governments also appeared aware that, by taking control of Iraqi assets abroad that had been frozen in August 1990, they had set Saddam Hussein's government conditions that it would find impossible to swallow. Intermittently over the

frequently failed to take all feasible precautions to avoid civilian casualties in their bombing campaign. The allies were also excessive in their targeting of Iraqi basic infrastructure facilities such as electricity, sewage and water treatment plants, contributing to a breakdown in conditions of civilian life.

²⁴ U.N. Security Council document S/22366 of March 20, 1991; p. 1.

following months Iraq and UN officials met to negotiate over the "food-for-oil" proposal, to no avail.

During the course of 1992, the UN felt obliged to change its stance on the provision of relief aid, due largely to the privation faced by Kurds in their semi-independent northern enclave. Together with the US, Saudi and Kuwaiti governments, it came up with an \$85 million relief program for the north. Possible widespread starvation and deaths from cold in the mountainous northern region had to be alleviated, yet any relief program for Kurdistan would, in effect, be compensation for the harsh internal blockade Baghdad had kept in place.

Periodically over the past two years, Kurdish representatives and non-governmental organizations have pleaded with the UN to permit a partial lifting of sanctions, to free the northern enclave from the injustice of what the Kurds refer to as a "double blockade" – at the hands of the UN and Baghdad. The devastated northern region, suffering from the combined effects of the Anfal, the 1991 Gulf War and the subsequent uprising is unable to undertake the rehabilitation of its economy without equipment and agricultural supplies from abroad, whose import is prohibited by the UN sanctions. The Iraqi Kurdish authorities point out that as the central government has withdrawn its authority and services from the region, it is unjust that they be punished for Baghdad's sins. UN officials at the DHA and elsewhere listen sympathetically, but place the blame on member countries; these countries, in turn, argue that any discriminatory treatment between different parts of Iraq would imply recognition of a separate status for the Kurdish enclave.

As of this writing, sanctions are still being renewed every sixty days by the Security Council, following a determination as to whether the terms of Security Council Resolution 687 have been met. Indices of infant mortality, child malnutrition and contagious diseases have increased exponentially in Iraq, as the government consistently points out. But there is compelling evidence that the humanitarian problem is also in large part caused by the persistence in power of a dictatorial regime. Contributory factors are: foot-dragging by the regime over compliance with Security Council Resolution 687, favoritism over the allocation of foodstuffs, two internal economic embargoes and general economic chaos stemming from the 1991 war and its aftermath. At a time when most Iraqis find that government supplied rations are barely adequate for half the time period they are meant to cover, luxury items such as whisky and expensive imported foods are widely available in Baghdad shops, for those who have the cash.²⁵

²⁵ See "Baghdad rich enjoy life of luxury as UN trade embargo makes the poor scramble for food"; a headline in *The Guardian* of January 18, 1992, on a Reuters despatch from

Effects of the "No-Fly" Zones

The bans in force today on flights by Iraqi aircraft of any type in the country's own airspace, north of the 36th and south of the 32nd parallels, were initiated not by the UN, but by the Bush Administration in Washington. Aircraft from Britain and France then joined US-led task forces charged with enforcing the prohibition. In both regions, human rights arguments – protection of returning Kurdish refugees, and prevention of aerial attacks on residents of the southern marshes – were used by Western officials as justifications for their actions.²⁶ Resolution 688, because of its specific calls on Baghdad to halt oppression of the Kurds, was publicly declared by the allies to be the legal basis for the northern "no-fly" zone. No such mandate existed for the south, nor did Resolution 688 contain an enforcement provision.

The northern "no-fly" zone does not cover all the area that Kurdish and other Iraqi opposition figures would wish;²⁷ on the other hand, the 3.5 million people who today live under Kurdish rule regard the overflights as an important daily reminder of Western protection. They were particularly comforted by the visible display of air power put on by the allies during the May 1992 regional elections that Baghdad had threatened to disrupt. In the southern zone, the benefits for Iraqi civilians have been more mixed. US officials have argued privately²⁸ that the ban on Iraqi flights has prevented any large-scale military

Baghdad.

²⁶ When the southern zone was declared, on August 26, 1992, President Bush cited the government's "harsh repression" of the Shi'a as justification. Lt.-Gen. Martin Brandtner, director of operations for the US Joint Chiefs of Staff, said: "The purpose of establishing the no-fly zone – I would emphasize it's a no-fly zone, and not a security zone -- is to ensure the safety of coalition aircraft monitoring Iraqi compliance with United Nations Security Council Resolution 688." "Allies Declare 'No-Fly Zone' in Iraq," *The Washington Post*, August 27, 1992.

²⁷ The region's largest city, Suleimaniyya, and other smaller towns, lie south of the 36th parallel, but Washington and London have resisted Kurdish and other opposition calls for an extension of the zone.

²⁸ In meetings with Middle East Watch, April 1993.

movements by the government against rebels and civilians living in and around the marshes. At the same time, they do not deny the continuation of serious violations of human rights and the rules of war: arbitrary arrests, extra-judicial executions, indiscriminate shelling, the denial of medical treatment to civilians and fighters, and the imposition of a stringent blockade on the affected region.

For its part, the UN has attempted to distance itself from the Iraqi flight ban, acting on the ground as if there were no special international regime in force south of the 32nd parallel. Top UN officials have noted pointedly that the allies were acting without any UN legitimacy; yet these comments are delivered sotto voce.

International Humanitarian Law and "War Crimes"

The UN acknowledges a clear obligation to monitor respect for human rights in times of armed conflict.²⁹ During the 1967 Arab-Israeli War, for example, Security Council Resolution of June 14, 1967 emphasized:

(T)he essential and inalienable human rights should be respected even during the vicissitudes of war...The Security Council called upon the Government concerned [Israel] to ensure the safety, welfare and security of the inhabitants of the areas where military operations had taken place and to facilitate the return of those inhabitants who had fled the areas since the outbreak of hostilities. The Security Council further recommended to the Governments concerned the scrupulous respect of the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war...³⁰

Iraqi Practices in Kuwait

Several of the Security Council resolutions passed in the weeks after Iraq's occupation of Kuwait referred to breaches of international humanitarian law. Resolution 664 of August 18, 1990 dealt with the safety of foreign diplomats and third-country nationals in Iraq and Kuwait. Resolution 674 of October 29, 1990 returned to the subject in a stronger vein. Resolution 664 was adopted unanimously, while Cuba and Yemen abstained on 674, which was passed by a vote of thirteen to zero.

Asserting its rights under Chapter VII of the Charter, in Resolution 674 the Security Council demanded in paragraph 1:

that the Iraqi authorities and occupying forces immediately cease and desist from taking third-State nationals hostage, mistreating and oppressing Kuwaiti and third-State nationals and any other actions, such as those reported to the Security Council and described above, that

²⁹ See, *inter alia*, the official compendium of UN statements, "United Nations Action in the Field of Human Rights" (New York, 1983), pp. 234-43.

³⁰ *Ibid.*, p. 234

violate the decisions of this Council, the Charter of the United Nations, the Fourth Geneva Convention, the Vienna Conventions on Diplomatic and Consular Relations and international law...

The resolution went on to ask UN member states "to collate substantiated information in their possession or submitted to them on the grave breaches by Iraq as per paragraph 1 above and to make this information available to the Security Council." To the knowledge of Human Rights Watch, this requirement that information about war crimes be gathered was respected only by the United States.

At a time when President Bush was denouncing Saddam Hussein as "another Hitler," and using Iraqi human rights abuses in occupied Kuwait as an argument for pressing forward with a military option, the threat of a war crimes tribunal was seen as a useful stick with which to beat the Iraqi leader. A legal unit within the US Department of Defense collected information during and after the Gulf War. But a decision was taken by the Bush Administration, reportedly at the urging of its ally Saudi Arabia, not to proceed with publicizing these findings or to seek legal accountability by individual Iraqis. It was argued internally that such action would only hamper the overriding US policy goal of fomenting a palace coup against Saddam Hussein, in which it was anticipated he would be replaced by one of his associates or military officers.

Having apparently come to the conclusion that the Iraqi leader was not going to be overthrown in the near future, the Clinton Administration has reversed this policy: in March 1993, it therefore publicly revealed some of the evidence the US had accumulated about the mistreatment of US prisoners of war, and presented its entire war crimes dossier to the UN, as Resolution 674 had requested. How 674's provisions will be implemented by the UN, long after the events to which they refer have passed, is as yet unknown. At a time when its Department of Humanitarian Affairs is trying to coax the Iraqis into cooperating with a large-scale relief plan, the so-called Plan of Action, difficult tactical considerations of timing arise.

We believe the UN should proceed speedily with a commission of inquiry into Iraqi war crimes; but it should not confine itself to this narrow focus. Any UN tribunal should examine evidence about breaches of the rules of war brought by any party to both the 1980-88 Iran-Iraq war, which Iraq launched, and the 1990-91 conflict, where Iraq was again the original aggressor. At the same time, the tribunal's mandate should include violations such as the internal use of banned chemical weapons, against the Kurds. Nor is there any logical reason why the tribunal should not explore the credible evidence which exists as to the

perpetration by Iraqi security forces of "crimes against humanity," against various Iraqis, and, genocide, against the Kurds. The internal and external dimensions of the issue are linked in the person of Iraq's current Defense Minister, Ali Hassan al-Majid; al-Majid presided over the 1988 *Anfal* campaign against the Kurds and was governor of Kuwait during 1990, when many atrocities against Kuwaitis took place.

Conduct of the Gulf War

Former Secretary General Pérez de Cuéllar frequently deplored Iraqi actions in occupied Kuwait. However, neither he nor other UN officials or bodies ever publicly commented on whether the belligerents conducted the subsequent hostilities in line with basic norms of international humanitarian law. Allied assurances that the Geneva Conventions were being respected went unchallenged, and unscrutinized.

In many instances, the US and its allies failed to respect the requirement that all feasible precautions be taken to avoid civilian casualties. (Iraq also violated the laws of war by using SCUD missiles against major population centers in Israel and Saudi Arabia.) As Middle East Watch observed in its report on violations of international humanitarian law in the Gulf war, the allies attacked targets in commercial areas during daytime, when there was a higher likelihood of civilian casualties; they bombed a shelter being used by civilians without giving required advance warning that they regarded it to be a military target; they went too far in destroying Iraq's basic infrastructure; they used a far higher proportion of unsophisticated "dumb" bombs against targets in civilian residential areas than their wartime propaganda would have led anyone to believe; and they failed to provide an accounting of Iraqi war dead.

Evasion of the facts was not a practice limited to the allies or their militaries. At the height of the allied bombing campaign against Iraq, in February 1991, the UN High Commissioner for Refugees (UNHCR) issued two documents summarizing its activities in the Persian Gulf region. These public statements indicated scant concern for human rights inside Iraq. For example, UNHCR noted with some puzzlement on February 4 that, contrary to the UN's expectations, less than 20,000 persons had fled Iraq to neighboring countries since the war began. "There is much speculation as to the causes of this phenomenon," continued the statement. "Reasons given range from the type of warfare being waged to a general breakdown of transport systems."³¹

³¹ UNHCR Information Bulletin No. 1, February 4, 1991; "Operations in the Persian Gulf

UNHCR should have known perfectly well why so few people had been able to escape the massive bombing campaign. Bad winter weather along Iraq's northern and northeastern borders with Turkey and Iran was part of the explanation. Much more important, however, were the actions of Iraq and the allied coalition, euphemistically referred to as "the type of warfare being waged." The Iraqi government forbade its own citizens to leave the country, on pain of stiff penalties; it also created many obstacles for foreign residents of Iraq and Kuwait leaving along the only feasible escape route, the desert road from Baghdad to the Jordanian border. Many groups of refugees braved allied bombing and other hazards, only to be turned back at the border by Iraqi guards and told to return to Baghdad for exit permits. Allied bombers repeatedly struck civilian vehicles, such as buses and private cars traveling along the highway in daylight. Many of the dead and injured were persons attempting to flee the country.

It seems, therefore, that the UNHCR's head-scratching was either evidence of a failure to be informed or an attempt to avoid the UN's part in these tragic events. The UN had an obligation to ensure that civilians were protected to the maximum extent possible during the conflict. Yet neither the UN leadership in New York, nor the major humanitarian agencies, including the Inter-Agency Working Group specifically charged with coordinating war-related actions, issued a single statement about the way in which the allied bombing prevented uninvolved persons from seeking safety.

Nor did the UN leadership speak out when, after its forces abandoned their mission in Iraq, insurgents there suffered terrible repression. Having given authority in Resolution 678 to the allied coalition to implement 660 (Iraqi withdrawal from Kuwait) "and to restore international peace and security in the area," the UN then stood by in March 1991 as popular uprisings in the north and south of Iraq – catalyzed by the war – were brutally suppressed.³² Allied forces, who stopped fighting when the US decided to call a halt on February 27, watched helplessly as Iraqi forces used helicopter gunships and heavy artillery to attack major cities and fleeing columns of refugees; yet the UN leadership declined to comment.

Special Rapporteur Van der Stoep has gathered ample evidence, published in his 1992 and 1993 reports to the Human Rights Commission, pointing

Region", p. 2

³² **The US government must bear part of the blame for these gross abuses because of the open encouragement it gave the Iraqi people to overthrow their government.**

to the Iraqi government's perpetration of crimes against humanity and genocide. In light of this evidence, one course of action open to the UN itself is for "a competent body," as described in the 1951 Genocide Convention, such as the UN Economic and Social Council (ECOSOC) or the General Assembly, to ask the International Court of Justice to issue an advisory opinion as to whether there has been a *prima facie* breach of the Convention. Middle East Watch believes that an advisory opinion by the ICJ is less desirable from the point of view of reinforcing the rule of international law than a full-fledged "contentious jurisdiction" case, filed by a state party to the Convention.

Humanitarian Intervention

During the crisis that began in August 1990, neither human rights considerations nor the urgent needs of refugees fleeing persecution were adequately addressed. The UN Inter-Agency Working Group that met from August 1990 to June 1992 in Geneva on Iraq-related issues did not assign any organization with a specific responsibility for the observation of human rights, nor did it include specialists from the adjacent UN Human Rights Centre. There was no precedent for including in the discussions anyone concerned specifically with human rights. But the absence of such a person or organization meant that broader considerations under international law of the rights of refugees, the rights of foreigners trapped in Iraq and Kuwait, the effect of the Iraqi government's internal blockades and related matters were either neglected or not raised by the UN in a forceful manner. The Working Group dealt with the problems engendered by the war as technical matters, requiring so many blankets or tents, rather than as issues that could be alleviated by pressing governments to comply with their treaty obligations.

In the first months after the invasion of Kuwait, the Working Group was able to deal with the estimated 800,000 foreigners able to flee Iraq and Kuwait on their own to Jordan. The International Organization of Migration, together with the Jordanian authorities, then repatriated some 700,000 third-country nationals during the fall of 1990. But the UN's lack of a capacity to investigate internal Iraqi conditions -- its lack of personnel in Iraq -- meant that the UN Working Group did not concern itself with matters *inside* Iraq, and was therefore helpless over foreign worker communities such as the Vietnamese and Sri Lankans who found themselves trapped there with dwindling food and little prospect of safe evacuation. In contrast with international rescue missions conducted elsewhere in the past, the UN made no attempt to organize airlifts out of Iraq or occupied Kuwait, nor to arrange for convoys of buses and trucks to enter Iraq.

This was not necessarily due to the UN's lack of motivation; the Iraqi government opposed international involvement. At the same time, the UN did not take the lead in pressing Baghdad to permit the two million foreigners living under its control to leave the country in an organized fashion. The Secretary General repeatedly deplored the taking of hostages by Iraq, as shields against Western military intervention; but most of the initiatives to secure their eventual release came from private Western citizens.

The suppression of the March 1991 uprisings produced a mass exodus, as some 1.8 million Iraqis fled into Iran, Turkey and, to a much lesser extent, Saudi Arabia. Despite extensive publicity in the West about the course of the short-lived uprisings, and the near certainty of indiscriminate government reprisals on a mass scale,³³ the UN was caught flat-footed. There were no UN officials present inside Iraq at this time, either to monitor events or to protest to the government.³⁴ Outside, the various UN humanitarian agencies, notably the now-abolished Disaster Relief Organization, UNDRO, were caught by surprise by the speed and scale of the human flood; contingency plans drawn up a few weeks earlier were predicated on coping with barely ten percent of the actual number of refugees. This gross misjudgement, which contributed to a lack of preparation in neighboring capitals and at the borders, stemmed directly from the UN's lack of knowledge, or appreciation, of long-standing human rights conditions in Iraq.

While Iran received by far the most refugees (an estimated 1.3 million Kurds and Shi'a), Turkey received the bulk of international attention and assistance. NATO member Turkey was easier for Western donors to work with than the more isolated Iran, and Turkey asked for help sooner; also, and perhaps most important, Western media had easier access to the Turkey-Iraq border than to the border of Iraq and Iran, and television publicity was what spurred the UN and other donors to action. The imbalance in assistance to the two host countries was a serious error, nonetheless. Adding insult to injury as far as Iran was concerned,

³³ A casual glance at any Amnesty International report on Iraq, or at Middle East Watch's February 1990 book, *Human Rights in Iraq*, could have forewarned even the most inexperienced of UN officials that massive reprisals against civilians were imminent.

³⁴ All UN expatriate staff had been withdrawn from Iraq the previous fall, prior to the outbreak of war, out of concern for their safety. The one senior official remaining was an Iraqi national, who was not asked to represent the UN on business unrelated to his agency, the Baghdad-based Economic and Social Committee for West Asia, as it was thought this would place him in an untenable position.

was the fact that Ankara had initially attempted to hold back the desperate refugees at its mountain border, while Teheran had opened its doors wide and given sanctuary to all comers. The two host governments' contrasting attitudes were never acknowledged, in word or deed, by the UN or Western donor nations.

In this huge human drama, spread across hundreds of miles of often inaccessible terrain, the UN played only a bit part. UN Resident Representatives in Teheran and Ankara were development experts, unused to handling emergencies; nor did they have any training in human rights standards. In practice, therefore, the UN's office in Teheran surrendered the lead role to the ICRC and its affiliate, the League of Red Cross and Red Crescent Societies, and to the Iranian Red Crescent Society, the domestic relief agency. In Ankara, responsibility for the coordination of relief operations along the border was taken by the US armed forces, together with their Turkish counterparts and the Turkish Red Crescent.

The refugee flight, and its origins in Iraqi human rights abuses, led to passage of Security Council Resolution 688 of April 5, 1991, an historic call on the Iraqi government to desist from oppressing its own people. The resolution was introduced by France, following a letter sent by the French government to the UN on April 4,³⁵ and supported by Britain and the United States. Strong opposition came from China and other developing country members of the Security Council, anxious about a precedent that would challenge the right of sovereignty. The resolution was, in this sense, typical of the dilemma facing the UN today, as it attempts to balance the conflicting pressures of sovereignty and human rights. But China chose to abstain, rather than use its veto, and the resolution obtained the necessary two-thirds majority.

It is worth recalling the resolution's strong language, especially in light of the gap between the UN's demands and Iraq's compliance. Paragraph 2:

Demands that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end [this] repression and expresses the hope in the same context that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected.

Paragraph 3:

Insists that Iraq allow immediate access by international humanitarian

³⁵ UN Security Council document S/22442 of April 4, 1991.

organizations to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations.

The Bush Administration was reluctant to act itself, or even to press for concerted action through the UN Security Council to deal with the tidal wave of desperate refugees. The US had just emerged from a war that President Bush had declared a resounding victory, and had no wish to get dragged back into Iraq again. This time, it was pressure from Britain, particularly Prime Minister John Major, and from France – led by Mme. Danielle Mitterand, wife of the French President and a longtime friend of the Kurds – that compelled Washington, and the UN, to act.

The immediate humanitarian crisis cited in the resolution – the flow of Kurdish refugees – was addressed effectively and speedily by Operation Provide Comfort, in effect the military arm of the resolution. Still in existence two years later, it is a coalition of the three allies together with Turkey, the host country for military aircraft patrolling northern Iraq. Under their protection, the human tidal wave gradually changed direction and returned home; in October 1991, the Iraqi government withdrew its remaining officials and security forces from the Kurdish-controlled north, in effect setting up the Kurdish enclave.

But while most Kurdish refugees were able to return to northern Iraq in relative safety, little attention was paid by the international community, including the UN, to human rights norms in the south. Many Shi'a refugees who returned during 1991 were arrested, and disappeared; Saudi Arabia forcibly repatriated groups of Iraqi refugees who managed to cross the border illegally during 1992; newly liberated Kuwait refused to allow any Iraqi refugees to enter its territory, and even denied entry to some of its own long-term residents, known as *bidoon*, who found themselves trapped inside Iraq when the war ended.

The few UN efforts established to assist needy people in the south, did not always prosper. In mid-July 1991, the senior UN official, Prince Sadruddin Aga Khan, led a team to the Hammar marshes region, where the Iraqi regime took careful precautions to remove its military presence during the visit. He then arranged to establish a small food distribution post at the village of Hammar, only for Baghdad to order its closure a week later. At a press conference later, Prince Sadruddin charged that Iraq had deceived the UN mission.³⁶

There is a notable contrast between UN enforcement of its security-

³⁶ "Iraq Tells U.N. to Halt Food Distribution," *The Washington Post*, August 17, 1991; "U.N. says Iraq "Tricked" Aid Mission", *ibid*, August 19, 1991.

related resolutions – such as 687, on the destruction of Iraq's weapons systems – and its ability to enforce Resolution 688 with regard to deliveries of humanitarian aid. Part of the problem is practical; UN officials point out that aid cannot be effectively delivered without some legal agreement with the Iraqi government. At the same time, however, the Kurdish authorities and Iraqi Shi'a opposition groups, as well as Iraqi relief organizations abroad, are unanimous in their criticism of the performance in Iraq over the past two years of the UN's large, permanent specialized relief agencies – UNICEF, UNHCR, WFP and WHO. Kurdish representatives say the \$86 million "winterization" program originally planned for northern Iraq, in the 1992/93 winter, began late and failed to reach the most needy.

In our judgement, the UN underestimates its bargaining position with the Iraqi government, whose public bluster conceals a weak hand and a steadily emptying government treasury. Faced with a serious public health problem, the regime needs the WHO and UNICEF in particular. Fieldworkers, meanwhile, have often not received adequate support from their head offices, which have not been prepared to face down Baghdad over the innumerable restrictions the government places on the movement of foreigners in Iraq.

Establishment of the DHA

However daunting the obstacles faced by UN agencies, dissatisfaction over their performance was widespread by December 1991, when the General Assembly approved Resolution 46/182. That measure established a new UN Department of Humanitarian Affairs (DHA), a body that would coordinate humanitarian assistance, headed by Swedish diplomat Jan Eliasson as Under-Secretary General. In operation since March 1992, the DHA has found its attention divided between major crises occurring simultaneously in Somalia, former Yugoslavia, Iraq and elsewhere. In consequence, its ability to focus on any one of these problem areas and, equally seriously, to raise funds from the donor community for relief programs has been limited.

In dealing with Iraq, DHA has found itself understaffed and overstretched, relying on the cooperation of the long-established agencies. It inherited an ad hoc administrative structure created during the Gulf emergency under Prince Sadruddin, and has yet to stamp its own character on the work in Iraq. At the working level, it has also been excessively docile towards a pariah regime. When Iraq refused to give visas to representatives of Western donor nations, to accompany a UNICEF-led team on a needs assessment mission in March 1993, the DHA, as coordinator, meekly went along with Baghdad's diktat. The needs mission

did not even ask permission to visit the marshes region, where tens of thousands of people were suffering from an economic blockade, the drying-up of the surrounding marsh waters, and daily shelling of their homes. The government had warned the UN off, saying it could not guarantee the safety of UN staff in the region; but it was inexcusable that the DHA did not make a more serious effort to overcome the obstacles erected by Baghdad. It was a serious blow to Eliasson's contention that quiet diplomacy and the carrot of humanitarian assistance could also advance the cause of human rights.

In setting up the new body, the UN explicitly rejected calls for human rights to be merged with humanitarian affairs. Senior UN staff, including the incoming Secretary General, did not favor the mixing of these two elements, arguing privately that access to many countries would be impaired.

Eliasson contends privately that, in practice, much can be done by the DHA to advance the cause of human rights, using its apolitical, unthreatening approach. An example of the backdoor approach to tackling human rights was said to be the success of the negotiations conducted with Baghdad by James Grant, head of UNICEF, during the late summer of 1992. A previous memorandum had expired on June 30, and the Iraqi government was increasing pressure on nongovernmental organizations and UN relief personnel in Iraq. Visas were not being renewed, internal movements were being curbed, and unexplained attacks on foreigners were growing daily. The word from Baghdad was that it saw no more need for the UN, in any capacity, and wanted it to pull out. Against this inauspicious background, in mid-September, Grant was able to cobble together another six-month extension of the MOU, enabling UN personnel -- including 300 Guards -- to remain in Iraq until March 31, 1993, and the UN to deliver the remainder of a \$200 million aid program.

In effect, the UN was pleading for understanding, saying that under the circumstances this was the best it could do. On August 25, Secretary General Boutros-Ghali told the Security Council that Iraq had threatened to retaliate for the parallel US-led plan to impose a "no-fly" zone in Iraq south of the 32nd parallel, by expelling all the remaining UN Guards in Iraq. He warned that international efforts to provide humanitarian assistance in Iraq were already weakening because of the government's failure to renew the MOU.³⁷ Faced with growing threats to their own safety, the handful of UN security personnel remaining in southern Iran were withdrawn during the fall. In December 1992, UNHCR closed its Basra office in

³⁷ "Ouster of Security Forces Seen Harming Relief Efforts", *The Washington Post*, August 26, 1992.

southern Iraq, ending the last permanent presence of the UN in the threatened region. In Middle East Watch's judgment, there were compelling reasons for the UNHCR to remain in Basra. The harassment and arrest of returning refugees and the relatives of those who have fled abroad is standard practice for the Iraqi security forces; following Iran's expulsion of the ICRC earlier in the year, the Basra office, moreover, was the only remaining link between Shi'a refugees in Iran and their families back home.

RECOMMENDATIONS

- o Human rights in the southern marshes: The UN should address the ongoing human rights emergency in the southern marshes with all the mechanisms at its command; this would include: holding an emergency session of the Human Rights Commission to examine the current situation in the marshes region, and suggest specific remedies; considering the declaration of a demilitarized "safe haven" in and around the marshes region, together with a relief "corridor of tranquility" from the Iranian border to the marshes, as a matter of urgency; and establishing an independent commission of experts charged with examining the human rights-related consequences of major hydrological works currently underway in the marshes and along adjoining sections of the Tigris and Euphrates rivers.**

- o Obtaining first-hand human rights information: To this end, the Security Council should reconfirm the right of UN Guards to be deployed throughout Iraq in sufficient numbers as to ensure the safety of all existing and future UN operations; pursuant to Resolution 688, it should insist on the principle of unimpeded access by UN officials to all parts of Iraq, irrespective of whether a specific UN agency plans activities in the region concerned; if Iraq definitively rejects the measure, it should bring the proposal to deploy teams of UN human rights monitors in Iraq before the Security Council at an early date, and examine ways to implement the plan successfully. The Secretary General should permit Special Rapporteur Max van der Stoep to gather information independently of Baghdad in those northern regions from which the central government has withdrawn its authority; and the Security Council should stand ready to treat information about grave human rights abuses and breaches of international humanitarian law on a par with traditionally defined**

threats to "peace and security."

- o Possible genocide and war crimes: The Security Council should create a commission of inquiry similar to that established for the former Yugoslavia, to examine evidence of war crimes committed in the course of the 1990-91 Gulf crisis, and of possible crimes against humanity and genocide committed by Iraqi government forces prior to these events; if the evidence merits, as we believe it does, the appropriate body of the UN should request an advisory opinion of the International Commission of Justice as to whether Iraqi government actions in the Kurdish region during the years 1987-89 constituted genocide, as defined in the 1951 Convention on the Prevention and Punishment of Genocide.**
- o Documentation and accountability: The appropriate UN bodies should insist that the Iraqi government comply with previous demands for a full accounting of all citizens who have "disappeared" at the hands of the authorities since the Ba'th Party came to power in 1968; insist on access to all suspected sites of mass executions and places of detention; work with the International Committee of the Red Cross to draw up a register of all acknowledged and clandestine places of detention run by Iraqi security agencies, together with a list of their inmates; and insist that, under Resolution 688, the ICRC have access to all such places, on its standard terms.**
- o Humanitarian needs: Iraq's refusal to accept the Security Council's two "oil-for-food" resolutions should not become an argument for the denial to the Iraqi people of essential relief, food and medical supplies. To increase the effectiveness of aid distribution, part of the UN's humanitarian assistance program should be channeled through Iraqi non-governmental organizations, based inside Iraq and abroad.**
- o UN field operations: In its one-year Plan of Action for Iraq, now under negotiation with Baghdad and donor nations, the Department of Humanitarian Affairs should devise health, sanitation and other programs that would enable UN officials to have access to those parts of Iraq most subject to government abuses; UNICEF, WHO and WFP should instruct their field staff not to cooperate with discriminatory government programs that favor regime supporters or districts considered loyal to the regime.**

HUMAN RIGHTS WATCH'S STATEMENT OF CONCERNS for the WORLD CONFERENCE ON HUMAN RIGHTS

June 1993

The World Conference on Human Rights, which is about to convene in Vienna, is a moment of opportunity for the human rights movement, but also a moment of peril. Coming a quarter of a century after the last such meeting, the Conference is an occasion for the international community to reaffirm its commitment to human rights, to celebrate the substantial advances made in establishing a system for the protection of human rights, and to examine that system critically with the aim of bolstering its guarantees, expanding its reach, and strengthening its implementation. Yet a handful of abusive governments also see the Conference as a chance to reverse course, to weaken a movement that has been an irritating restraint on their efforts to cling to power by lawless means. Deeply concerned, Human Rights Watch issues this statement both to highlight the dangers posed by this challenge and to stress the opportunities presented by the Conference to defend and advance human rights and to reaffirm the importance of this ideal. The issues that we highlight are the ones that we believe will be most controversial in Vienna or most prone to unjustifiable neglect.

The Indivisibility of All Human Rights

Human Rights Watch believes that political and civil rights and social, economic and cultural rights are interdependent and indivisible. Contrary to the claim of some governments that economic development must precede the granting of political and civil rights, Human Rights Watch believes that respect for civil and political rights is a vital element of development, that peace and prosperity cannot be secured without respect for these rights. Indeed, as we show in our report, *Indivisible Human Rights: The Relationship of Political and Civil Rights to Survival, Subsistence and Poverty*, subsistence and even survival can depend on the existence of political and civil rights, particularly freedom of expression and association. An inability to criticize government policies or to report truthfully their consequences can turn food shortage into famine, or humanitarian hardship into calamity. Censorship of public discussion about corruption can encourage official preying on the economy and stifle development. Restrictions on the right to organize can prevent workers from earning a subsistence wage and deprive peasants of effective means to retain their land. Limitations on the ability to organize against misguided development projects can lead to environmental degradation.

Nor are high levels of per capita income, literacy or other indices of economic development a guarantee against the worst abuses of physical integrity. Sri Lankans, for example, know well that relative prosperity provides no security against a cycle of violent abuse that was founded on basic breaches of civil and political rights.

Given this interdependence of all rights, we take exception when governments assert the need for economic development as an excuse to violate civil and political rights. While some countries have managed to develop despite repressive governments, many more have suffered stagnation and decline. If economic well-being were truly the goal

of these governments, they would allow the free discourse and association that is the best guarantee of sustained economic progress and a vital antidote to humanitarian disaster. Instead, we believe their primary concern is to preserve power by stifling dissent, even at the cost of the welfare of their people.

The Universality of Human Rights

The universality of human rights -- the principle that all people are entitled to fundamental rights regardless of their circumstances -- is a core human rights principle. This basic tenet is recognized in the Universal Declaration of Human Rights, which opens with the assertion that "all members of the human family" have "equal and inalienable rights." The Universal Declaration goes on to provide that "everyone is entitled to all the rights and freedoms set forth...without distinctions of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Human Rights Watch upholds the universality of human rights, and opposes any attempt to diminish or dilute this principle. At the same time, we affirm our respect for religious, cultural, ethnic and other differences. We celebrate cultural pluralism and recognize that, within the limits of fundamental rights, domestic laws and practices may be rooted in different cultural or religious traditions. But we oppose any attempt to use cultural, religious, customary, ethnic or other forms of intolerance to justify human rights abuse or to shirk responsibility for preventing and punishing violations. And we regard with particular skepticism and concern governments that invoke or fuel such intolerance to silence dissent or to repress weak elements of a population.

Women's Rights

Human Rights Watch believes that human rights are for women as well as men. Unfortunately, this fundamental principle is often not reflected in the practices of the United Nations, which if it addresses women's rights at all, tends to relegate them to a separate and inferior status. As a result, violence against women and invidious gender discrimination that are tolerated or committed by governments often go unchecked by the international community. Human Rights Watch supports the full integration of women's rights into the human rights mechanisms of the United Nations. The UN Division for the Advancement of Women has provided invaluable assistance in exposing human rights violations against women and examining the context in which they occur. However, the Division's work is no substitute for the greater investigative powers and stronger mechanisms of accountability that are available through the traditional UN human rights bodies. These bodies should more effectively address women's rights violations that fall within their mandates.

We also oppose any attempt to use cultural, religious or other intolerance to justify abuse of women's fundamental human rights. We call on the United Nations to improve the protection and promotion of women's rights worldwide by taking steps that include appointing a Special Rapporteur to the UN Human Rights Commission to address violence against women and gender discrimination; strengthening the procedures for implementing the Convention on the Elimination of All Forms of Discrimination Against Women; and training all UN personnel and experts to address without gender-bias the full ranges of abuses of women's rights.

Enforcing International Standards by Conditioning Aid on Respect for Basic Rights

One of the strongest tools for enforcing international human rights standards has been the willingness of many donor governments to condition foreign assistance on the recipient government's respect for human rights. Human Rights Watch strongly supports withholding military and most forms of economic assistance from governments and rebel groups that consistently commit gross abuses of human rights, such as summary execution, torture and prolonged arbitrary detention. We make an exception for aid that meets basic human needs, but even then we believe that aid should be channeled as much as possible through nongovernmental organizations rather than through abusive regimes. Maintaining this linkage between aid and human rights is a direct corollary of the principle that all rights are indivisible, and that economic welfare cannot be ensured in an environment of disrespect for fundamental civil and political rights.

Our support for conditioning foreign assistance on the human rights record of the recipient is informed by our experience with the United States government. Particularly in the 1980s, Washington provided vast amounts of

assistance, including military aid and training, to governments and rebel groups that practiced systematic executions, torture and disappearances. The aid given to the government of El Salvador and the *contras* in Nicaragua is illustrative. Other donor governments have been responsible for similar complicity in the abuses of governments and rebel groups. If human rights concerns had limited the provision of foreign assistance, thousands of lives would have been saved, and much suffering would have been avoided.

Many governments with poor human rights records have challenged such conditioning of foreign aid precisely because foreign assistance is an essential source of funds for the corruption and machinery of repression that helps to maintain their grip on power. In the name of the welfare of the people they repress, these abusive governments seek to maintain a flow of funds that would permit them to continue to deprive their citizens of basic rights. Human Rights Watch rejects this cynical argument. We are concerned about the welfare of all people, including those who suffer poverty and economic deprivation. But we believe that the path to development lies not in bolstering governments that care foremost about retaining power, but by fostering governments that are accountable to citizens who are free to exercise and pursue their fundamental rights.

UN Peacekeeping and Humanitarian Operations

In his "Agenda for Peace," Secretary-General Boutros Boutros-Ghali called for a new UN activism in confronting armed conflict and humanitarian disaster. His vision, made possible by the end of the Cold War and the new possibility of consensus on the Security Council, corresponded with a dramatic growth in the size and scope of UN field operations. Yet while severe human rights abuses often play a critical part in fueling armed conflict and aggravating humanitarian crisis, they have been given a low priority by the UN officials who oversee field operations. As we show in our report, *The Lost Agenda: Human Rights and UN Field Operations*, this downgrading of human rights concerns handicaps the UN in its new and ambitious undertakings, as it sells short an ideal that should be central to the UN's mission.

That is not to say that the UN has abandoned the language of human rights. The documents authorizing major UN field operations, from Security Council resolutions to UN-sponsored peace agreements, are often filled with rhetorical commitment to human rights. But the enforcement of that language is, with rare exceptions, weak. Human rights have been treated as a dispensable luxury, not as a critical element of any successful UN peacekeeping or humanitarian operation.

The cost of this inattention to human rights is anything but academic. As an organization committed to upholding human rights standards worldwide, Human Rights Watch is naturally disturbed by the setback to fundamental freedoms implicit in the UN's operational shunning of the human rights cause. But the effect of this disregard is also felt in the squandered opportunities and diminished prospects for success of UN field operations. Because abuses such as murder, torture and deliberate starvation enflame the crises that the UN is attempting to overcome, the failure to end these abuses and to establish a system of accountability that will deter their recurrence leaves a shaky foundation on which to build long-term security.

There are various causes for this disregard of human rights: a misguided sense among some UN officials that neutrality requires public silence (particularly when human rights violations are committed primarily by one side to a conflict) rather than an even-handed application of human rights principles to all parties to a conflict; an inherent resistance among diplomats who value cordial relations to engage in the public criticism that should be their first tool in combatting human rights abuse; and a mistaken fear that establishing respect for human rights will compound the cost and complexity of UN operations, rather than relieve a principal cause of the wars and humanitarian disasters that the UN seeks to overcome.

To rectify this inattention to human rights in the conduct of UN field operations, there is a need for strong leadership from the Secretary-General and the Security Council. A commitment should be made to bolster on-site human rights monitoring as an important element of all UN field operations; to report promptly and publicly on serious abuses by any party; to institute mechanisms for the enforcement of human rights standards, including by establishing accountability for gross abuses; and to clarify that building and maintaining respect for human rights is critical to the success of UN peacekeeping and humanitarian operations.

Prison Conditions as a Human Rights Concern

While the treatment of political prisoners has long been a concern of the human rights movement, the treatment of common criminals and criminal suspects is often neglected. As we show in our recent publication, *Global Report on Prison Conditions*, such prisoners in many countries are kept under inhuman and degrading conditions. Many of these conditions could be ameliorated without large expenditures of funds, but with simple changes in policy and operating procedure.

To end the needless suffering of these prisoners, Human Rights Watch calls on the UN to create a body with a mandate for inspecting prisons. A permanent Working Group on prison conditions, along the lines of the Working Group on Disappearances, would play an important role in improving prison conditions worldwide, and would be the key to more effective implementation of the UN Standard Minimum Rules for the Treatment of Prisoners. Such a Working Group should undertake prison inspections, hold hearings, and publish its findings in reports for general distribution. Using information issued by the Working Group as well as by other UN agencies, the UN Secretary General should publish an annual report on prison conditions.

In addition, we call on the Secretary General to undertake annual demographic surveys of prisons worldwide, in place of the current quinquennial surveys, and to publish the findings within a year of the survey's completion. We also call on the UN to sponsor periodic international conferences on prison conditions. These conferences would help to stigmatize the world's worst violators before the eyes of the international community. Because the conditions, trends and methods of incarceration undergo constant change, the UN should also periodically examine its own rules governing prison conditions for the purpose of keeping pace with these changes.

Accountability for Gross Abuse of Human Rights

In recent years, largely through the efforts of the nongovernmental community, an understanding has emerged that respect for human rights cannot be built effectively without a system that establishes accountability for serious abuses. In countries such as Argentina, Chile and Paraguay, organizations representing victims or their families have brought judicial actions or forced the creation of administrative bodies to conduct thorough examinations of patterns of abuse in the recent past. The UN has borrowed a page from that experience with considerable success through the establishment of a Truth Commission in El Salvador. Although the process worldwide has been obstructed by amnesties, pardons and other legislation that impede prosecutions, an emerging principle in international law is making its mark. It establishes that, when it comes to crimes against humanity, governments are duty-bound to investigate, prosecute and punish the perpetrators and those who gave the orders or tolerated their crimes when they could have stopped them. International legal authorities have embraced the rule and elevated it to precedent, such as the decision by the Inter-American Court of Human Rights in the *Velásquez* case.

The UN must take appropriate steps to implement this principle of accountability by incorporating it into all of its human rights programs and activities. In its field operations, it must make efforts to document war crimes and crimes against humanity. In the work of its rapporteurs and working groups, it must seek to develop the principle and apply it consistently to specific country situations. Most important, the UN in all of its activities must stand for the proposition that victims of war crimes or crimes against humanity are entitled to special consideration from the international community: a right to be heard, to see that their plight will not be ignored, to seek and obtain compensation, and to see justice done in accordance with due process of law. No government should be free – even through the decision of a majority – to deprive victims of these rights.

Democracy and Human Rights

The right to take part in the conduct of public affairs, and to vote and elect governmental representatives in genuine periodic elections with universal and equal suffrage, is guaranteed under international law, specifically Article 25 of the International Covenant on Civil and Political Rights. Human Rights Watch believes that more than periodic elections are required for this right to be meaningful. A strong and independent civil society must also be permitted to flourish, and there must be freedom to exercise other fundamental rights set forth in the Covenant, such as the right to free speech, press and assembly, the right to be protected from discrimination on the basis of "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and the

right to hold abusers of fundamental rights accountable under law.

Human Rights Watch is painfully aware that majoritarian rule alone does not assure protection for individual rights or for a diverse and vibrant civil society. Indeed, as the actions of the government of Serbia demonstrate, elected government can be exceedingly abusive if it lacks a commitment to the human rights of all people. Accordingly, we call upon the international community to adopt a vision of democracy that transcends elected rule to include a commitment to protect the range of rights articulated in international law, and to ensure that serious abusers of those rights are held accountable.

A High Commissioner for Human Rights

Human Rights Watch supports the initiative to create a high-ranking position in the structure of the United Nations with a mandate to oversee all UN human rights programs and to ensure that human rights play a central role in all UN undertakings. Our experience with the large variety of scattered UN human rights offices persuades us that, for the UN to fulfill its stated commitment to promote and defend human rights, it must raise the visibility and stature of its human rights machinery. We would expect that a person appointed to such a post would be selected for his or her moral leadership and expertise on human rights, that he or she would be assured of support from the political organs of the UN, and that his or her views on human rights matters would carry substantial weight in all important decisions.

We are particularly concerned that the office of High Commissioner for Human Rights serve to integrate human rights concerns into UN peacekeeping and humanitarian operations. Appointing a High Commissioner for Human Rights, with the stature and authority to raise human rights concerns forcefully at the highest levels of the Secretariat and in the halls of the Security Council, would be an important step toward rectifying the UN's inattention to human rights concerns.

Traditionally, the UN's human rights machinery has been headquartered in Geneva. Yet since the end of the Cold War, the UN's greatest potential to defend human rights stems from the major humanitarian and peacekeeping operations that are run from New York. To ensure that the UN Human Rights Centre in Geneva is not marginalized, but can begin to insert its concerns into these field operations, we believe that strong consideration should be given to basing the High Commissioner for Human Rights in New York.

An International Criminal Tribunal

Human Rights Watch has long endorsed the establishment of an international criminal tribunal to ensure that those responsible for war crimes and crimes against humanity are brought to justice. It is widely recognized that these crimes give rise to universal jurisdiction, allowing them to be tried by any competent tribunal worldwide. Yet to date, there has been no serious effort to establish an international tribunal based upon such jurisdiction. For that reason, we support the initiative to create a permanent judicial body with jurisdiction to try individuals accused of serious violations of human rights and humanitarian law.

We have already called for special international tribunals to address war crimes and crimes against humanity in Iraqi Kurdistan and in the former Yugoslavia. We have also joined in efforts to make universal jurisdiction a reality by bringing cases of abuse before international judicial bodies (the Inter-American Court of Human Rights) and domestic courts of another state (*Forti v. Suárez Mason*, etc.). We pursue these initiatives when the state where the crimes occur fails to live up to its obligation to investigate, prosecute and punish the perpetrators of these crimes. The creation of a permanent international court to try such criminals would be an important addition to the efforts to establish penal responsibility for human rights crimes.

We note that such a court would not relieve an offending state of its primary duty to uphold justice. Indeed, an international tribunal's competence would be triggered only when the courts of the country where the crimes take place are unwilling or unable to act.

We believe that such a court would enjoy greater authority if it obtained jurisdiction by consent of the states involved, through a multilateral treaty. While the principal treaties of humanitarian law already contain provisions establishing universal jurisdiction for war crimes, we favor drafting an additional protocol to the International Covenant on Civil and Political Rights, either to expand the powers of the present Human Rights Committee to act as a court in cases of crimes against humanity, or to create a new judicial body.

A Campaign to Abolish Torture

Human Rights Watch supports the initiative to engage the UN in a campaign to abolish torture, although we disagree that this should take a decade and believe that, if governments had the political will, torture could be abolished tomorrow. Torture stands out among human rights violations because of the widespread agreement to condemn it and to reject any excuse for its commission. Yet torture is still practiced widely in many parts of the world. We believe that a concerted effort by the international community is needed to address it. We must ensure that those who inflict, order or condone torture are effectively punished. The international community must be ready to refuse "business as usual" with governments that commit or acquiesce in a pattern of torture. The UN should also support victims of torture by providing treatment and by arranging for responsible governments to provide compensation – both ways of expressing solidarity with the victims and of further delegitimizing the abuse. The UN must also find ways to implement principles already embodied in the UN Convention Against Torture, such as that obedience to orders is no excuse for committing torture, that safe haven through asylum or exemptions from extradition will be denied to torturers, and that all states are obligated to make torture criminally punishable. And the UN should give full recognition to the often-neglected fact that rape and other gender-specific forms of abuse can function as torture.

International Human Rights Treaties

Human Rights Watch seeks ratification of the system of human rights treaties that have been developed under UN auspices, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. We also support ratification of regional human rights treaties. In addition, as an organization that devotes considerable energy to curtailing violations of the laws of war, we urge ratification of treaties of international humanitarian law.

We attach particular importance to strengthening the right of individual access to mechanisms for the protection of human rights and the adjudication of complaints of abuse. For example, we urge ratification of the First Optional Protocol to the International Covenant on Civil and Political Rights, which establishes the right of individual petition to the Human Rights Committee. We endorse acceptance of the compulsory jurisdiction of such bodies as the Inter-American Court of Human Rights. And we oppose reservations to human rights treaties that are designed to prevent litigants from invoking treaty guarantees in domestic courts.

About Human Rights Watch

Human Rights Watch monitors and promotes civil and political rights in some 70 countries worldwide. Human Rights Watch is the largest US-based human rights organization, and the second largest worldwide after Amnesty International. Human Rights Watch is composed of five regional divisions – Africa Watch, Americas Watch, Asia Watch, Helsinki Watch and Middle East Watch – and special projects on free expression, prisoners' rights, women's rights and arms transfers. Robert L. Bernstein is chair; Adrian W. DeWind, vice chair; Kenneth Roth, acting executive director; Holly Burkhalter, Washington director; Gara LaMarche, associate director; Susan Osnos, press director.

The regional directors are: Africa Watch, Abdullahi An-Naim; Americas Watch, Juan Méndez; Asia Watch, Sidney Jones; Helsinki Watch, Jeri Laber; Middle East Watch, Andrew Whitley. The project directors are: free expression, Gara LaMarche; prisoners' rights, Joanna Weschler; women's rights, Dorothy Thomas, and arms transfers, Kenneth Anderson.

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