

EL SALVADOR

PEACE AND HUMAN RIGHTS: SUCSESSES AND SHORTCOMINGS OF THE UNITED NATIONS OBSERVER MISSION IN EL SALVADOR (ONUSAL)

Introduction

After twelve long, exhausting years, the war in El Salvador has come to an end. The January 16, 1992 peace accord signed by the Salvadoran government and the *Frente Farabundo Martí para la Liberación Nacional* (FMLN) in Chapultepec, Mexico, lays out sweeping institutional reforms designed to enable the FMLN to demobilize its forces and participate in the political life of El Salvador. Primary among those reforms are provisions for the dissolution of existing security forces and Army rapid-reaction battalions, and the establishment of a new civilian police force open to former FMLN combatants. Two commissions have been formed to overcome impunity for human rights violations, one to examine the records of military officers with an eye toward purging those who committed or tolerated human rights abuses; the second to look into human rights cases over the last decade and make recommendations as to further prosecutions.

Contents

Introduction.....	1
Implementation of Reforms on Human Rights.....	3
Background to the Mission.....	5
The San José Accord.....	7
ONUSAL Begins Operations.....	7
Obstacles Faced by ONUSAL.....	9
Positive Aspects of the ONUSAL	
Presence in El Salvador.....	11
A Critique of ONUSAL:	
Political Limitations.....	14
ONUSAL's Interpretation of its	
Human Rights Mandate.....	16
Problems With ONUSAL's	
Verification Abilities.....	18
Lack of Methodology.....	19
Lack of Oversight of the SIU.....	19
The Role of the Police Division.....	20
ONUSAL's Educational Role.....	21
Limits Faced by ONUSAL: Two Examples.....	21
1. Threats Against the National	
Council of Churches.....	22
2. The Murder of Nazario de Jesús	
Gracias (FEASIES).....	22
Conclusions and Recommendations.....	23
Appendix: San José Agreement on	
Human Rights:.....	26

The months since the signing of the accord, however, have seen numerous delays and frustrating setbacks. Timetables for the dissolution of the security forces, the concentration of government and FMLN troops in designated zones, the creation of the new police, the demobilization of FMLN fighters, and the legalization of the FMLN as a political party have fallen woefully behind. The ceasefire nonetheless remains in place as of this writing, and a new timetable for the implementation of the accord was renegotiated in mid-June. But full compliance by both sides is nowhere assured.¹

The ending of 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. Just as important, however, was the extraordinary and unprecedented role of the United Nations in mediating a civil conflict. Beginning in October 1989 the United Nations provided a representative as "witness" to the initial contacts between the two warring sides. The U.N. role gradually grew to one of directly mediating the talks and drafting proposals for presentation to the two sides. A personal representative of then-Secretary General Javier Pérez de Cuéllar, Alvaro de Soto, took charge of the negotiations, with the Secretary General himself eventually presiding over some of the key bargaining sessions.

Mid-way through the negotiation process, in July 1990, the Salvadoran government and the FMLN signed the San José Agreement, a human rights accord that was, in retrospect, a stepping stone on the path to a broader accord. The agreement envisioned that, after a ceasefire, the United Nations would establish a U.N. Observer Mission in El Salvador (ONUSAL). Its task would be to monitor the compliance of both sides with the human rights principles subscribed to in San José. In July 1991, before the war ended and when the success of the negotiations was nowhere assured, ONUSAL began operations, deploying over 100 human rights, police, and military observers throughout El Salvador. It established six regional and sub-regional offices throughout the country. The launching of ONUSAL marked the first time that the United Nations had monitored the human rights situation in a member state, and certainly the first time such an undertaking had been attempted in the absence of a ceasefire.

Following the conclusion of the peace talks in January 1992, ONUSAL's mandate grew to include the verification of all key aspects of the peace accord. ONUSAL's staff grew to over 700, the majority of them military and police observers: the military to oversee the separation of forces, the reforms of the military, and the demobilization of the FMLN, and the police to verify the reforms in the security forces. ONUSAL Human Rights Division officials also acquired responsibilities for monitoring land conflicts in formerly conflictive areas, as well as monitoring the return of exiled mayors and judges.

This report is an assessment of the U.N.'s first foray into the area of human rights verification. We believe that ONUSAL's impact in El Salvador has been extremely positive; without the U.N. presence it is difficult to imagine the unfolding of the peace El Salvador so desperately needs. Through its sheer number of personnel and by its unprecedented ability to go anywhere and visit any government facility without prior notice, ONUSAL has had a deterrent effect and has contributed to a reduction in the overall number of human rights violations. Its impact, however,

¹ For comprehensive information about compliance with the peace accords, see United Nations Security Council, "Report of the Secretary-General on the United Nations Observer Mission in El Salvador," May 26, 1992. (United Nations Document 2/23999)

should not be overestimated, since the end of the armed conflict has also been a major factor in the decline in violations.

We recognize that ONUSAL is the first mission of its kind ever to be launched by the United Nations, and also understand the difficulties inherent in balancing ONUSAL's human rights role with its ongoing roles as an intermediary during the implementation of the peace. However, we believe that ONUSAL has mistakenly viewed its human rights and peace missions as contradictory. As a consequence, ONUSAL has avoided timely public criticism of the government on human rights matters even when such criticism is warranted, and even when its own investigations have pointed to state involvement in abuses. Because we believe that the observance of human rights is central to the ongoing peace process, we call on ONUSAL to be more forceful in its public representations, to make known the information it has at its disposal in a timely fashion, and to continue its vigilance of the reforms of the police, military, and judicial system, all of which will have a decisive impact on the observance of human rights once the U.N. mission leaves.

ONUSAL should also adopt a broader interpretation of its human rights mandate. Specifically, we urge ONUSAL to become more deeply involved in the creation of the new National Civil Police, and to continue recommending ways to improve the judicial system. We also believe that ONUSAL should channel more financial and human resources toward a public campaign for human rights. The mission will have a greater impact if it can systematize its methods and procedures, something which will also be important for future missions of a similar nature. In general, we are concerned about the fact that the human rights component of the U.N. mission is being downplayed; if anything, given rising tensions around the implementation of the peace accord, and the expectation that tensions will rise leading up to the 1994 elections, we believe that the Human Rights Division should be expanded.

Our hope in pointing out both the strengths and weaknesses of ONUSAL's human rights role is that the United Nations can expand its involvement in other conflict situations, with even greater measures of success. We consider a number of aspects of the Salvadoran situation to be unique, however, and question whether or not ONUSAL, as it has functioned in El Salvador, is a model readily applicable to other internal conflicts. Nevertheless, we hope that our findings contribute to the positive work of the mission in El Salvador, and further a constructive dialogue about the United Nations' role in a post-Cold War era.

Implementation of Reforms on Human Rights

Aside from ONUSAL, the peace accords set in motion numerous other reform mechanisms; two commissions were also set up to provide a better long-term framework for human rights protection in the country. Although not the focus of this report, a discussion of other human rights reform measures helps provide the context in which ONUSAL is functioning.

In 1991, two commissions were established under the peace accords for the purpose of breaking the cycle of impunity for human rights violations; both commissions have started to function.² On May 17, the Ad-Hoc Commission, comprised of three distinguished Salvadorans

² The Truth Commission was agreed to by the two parties in April 1991, while the Ad-Hoc Commission was agreed to in September 1991.

appointed by the U.N. Secretary General, began reviewing the records of military officers with an eye toward purging those who committed or tolerated human rights abuses.³ The Commission will report its findings to President Cristiani and the U.N. Secretary General within a month after it is scheduled to finish its three-month information-collecting phase on August 18. The report will not necessarily be made public. On July 13, the Truth Commission, made up of three distinguished non-Salvadorans also appointed by the U.N. Secretary General, began its six-month task of reviewing "grave acts of violence which have occurred since 1980 and whose mark on society demands with great urgency public knowledge of the truth."⁴

Although it has not yet completed its work, the impact of the Ad-Hoc Commission may be limited, despite the seriousness of its members and their commitment to the Commission's work. First, the information gathered by human rights groups during the war occasionally pointed to specific military units, but rarely to specific officers. Thus, it is up to the Armed Forces and other branches of government to provide the Commission with the relevant information on individual responsibility abuses; it appears that the information offered so far has been very superficial or entirely lacking in human rights criteria.⁵ Second, because of the first constraint, the information that could be provided by agencies of the U.S. government (especially the Defense Department and the Central Intelligence Agency) becomes all the more key. The U.S. government has publicly promised "to cooperate as fully as possible" with the Commission, but it remains to be seen what information will actually be turned over.⁶ Finally, the Commission's findings will only result in certain officers being released from active-duty service, and will in no way result in prosecution.

The Truth Commission also faces major constraints. First, the Commissioners, aided by fifteen international lawyers and human rights experts, will be expected to comment definitively on the human rights situation of the past decade within the brief space of six months. Thus, the ability of the Commission to fulfill its role will depend on the collaboration and cooperation provided by both governmental and nongovernmental organizations. Second, even if the Truth Commission is able to clarify individual cases and recommend prosecution, its work may be undercut by amnesties passed for political reasons. One amnesty law, known as the Law of National Reconciliation, was approved by the Legislative Assembly on January 23, 1992, and specifically exempted those cases for which the Truth Commission might recommend prosecution, as well as those cases which had been decided by a jury trial (as in the Jesuit case). However, the amnesty law allowed the Legislative Assembly a chance to review the amnesty six months after the Truth Commission completes its work. At that time, a blanket amnesty may

³ The members of the Ad-Hoc Commission are Abraham Rodríguez, a respected businessman and former close adviser to President José Napoleón Duarte; Eduardo Molina, one of the founders of the Christian Democratic Party; and Reynaldo Galindo Pohl, an elder statesman who has served in numerous international posts in recent decades.

⁴ The Commission members are Belisario Betancur, former president of Colombia; Reinaldo Figueredo, 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. Betancur is the president of the Commission.

⁵ It is unclear how the Commission will consider the responsibility of officers for abuses committed under their command, without specific evidence indicating their direct involvement.

⁶ See Cynthia J. Arnson, "Will Justice in El Salvador Be Stillborn?" *Los Angeles Times*, July 23, 1992.

well be granted. And even without an amnesty, investigation and prosecution of cases is far from assured without the state assuming its responsibilities.⁷

Even if no serious prosecutions take place, however, the Truth Commission will provide a great service to El Salvador if it furnishes a rigorous, truthful account of what took place in the many tragedies that have shaken the nation in the last decade.

In addition to these commissions, important reforms to the judicial system were adopted in the Mexico Agreement of April 27, 1991, and ratified in the Chapultepec Accord of January 15, 1992. The judicial reforms include revising the way in which judges are selected in order to assure more independent and professional candidates. One of the most important changes in this regard is the restructuring of the National Council on the Judiciary to give it more independence from the Supreme Court and greater say in nominating judges and magistrates of the Court.⁸ Yet, as of late July, the law of the National Judiciary Council had not been approved by the Assembly, nor had the draft law of reforms restricting military jurisdiction been introduced. In any case, the judicial reforms agreed to in the negotiations are only a first step, and further measures will clearly be needed.

The office of the Human Rights Ombudsman (*Procuraduría para la Defensa de los Derechos Humanos*) was another important reform that formed part of the Mexico Accord in April 1991. The Ombudsman is endowed with broad powers, including the reception of complaints about human rights violations, the ability to visit detainees, and the power to make recommendations to the judicial system. On February 27, 1992, Dr. Carlos Mauricio Molina Fonseca was sworn in by the Legislative Assembly as El Salvador's first Ombudsman.⁹ The development of this office has been hindered by the difficulty in getting funds assigned from the Treasury Ministry and by the slow disbursement of those funds. Assistance from foreign governments has also been solicited, but is dependent on a stronger commitment from the Salvadoran government. The Ombudsman opened the San Salvador office to receive denunciations for the first time on July 27, and three other regional offices are planned for San Miguel, San Vicente and Santa Ana.

Taken together, the judicial reforms, the Ad-Hoc Commission, the Truth Commission, and the Ombudsman's office have the potential for helping to overcome impunity and providing the structural basis for a more lasting respect for human rights in El Salvador. Just as important, however, is the full implementation of reforms to the police and military: the abolition of the Treasury Police and the National Guard, the creation of a new National Civil Police, the abolition of rapid-reaction Army battalions associated with numerous atrocities, and the dissolution of the

⁷ Several persons accused in cases that were expected to be taken up by the Truth Commission remained incarcerated following the amnesty. However, shortly after the Commission was installed in late July, jury trials were called for in several of these cases. On July 21, a jury absolved César Erazo Cruz, who had been accused of the 1989 assassination of former Supreme Court President José Francisco "Chachi" Guerrero, and trial dates were also set for the defendant in the Edgar Chacón and Gabriel Payés assassinations, as well as the San Sebastián massacre.

⁸ The Supreme Court magistrates will be elected for nine years (rather than five) by two-thirds of the Legislative Assembly (rather than a simple majority), based on a list of candidates chosen by the National Council of the Judiciary. See "IDHUCA Report: The Judicial System and the Peace Accords," *Proceso*, No. 509, March 25, 1992, for more details.

⁹ Molina Fonseca is a Christian Democratic lawyer from the private sector with no human rights experience. He was approved by the Assembly by a majority vote, with the Democratic Convergence and UDN parties abstaining.

civil defense. ONUSAL, in one way or another, is observer, participant, or guarantor of nearly all of these processes. It thus operates within, and provides a context for, major reforms in the observance of human rights in El Salvador.

Background to the Mission

The United Nations 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.¹⁰ As a first step, the United Nations was called upon to monitor the elections in Nicaragua, scheduled for February 1990. The United Nations Observer Mission for the Verification of the Elections in Nicaragua (ONUVEN) began operations in August 1989, marking the first time that the U.N. had overseen an electoral process in a sovereign state, and the first major U.N. operation in the Western hemisphere.¹¹

In November 1989, the United Nations was again called in to verify compliance with another aspect of the Central American peace plan, that which called for an end to support for irregular forces in the region and required countries not to lend their territory for attacks on another state. The United Nations Observer Group in Central America (ONUCA) began as a military observer force; its functions were gradually expanded to include the monitoring of a ceasefire between the Sandinista government and the contra rebels in Nicaragua, and the disarmament and demobilization of the contra forces. This process ended in late 1990, marking the first time that the United Nations had received weapons from an insurgent group.¹²

The peace talks in El Salvador represented another first: the U.N.'s earliest attempt to mediate an internal conflict. Consultations with the Salvadoran government and the FMLN began in late summer 1989, but talks between the two parties did not begin in earnest until April 1990 in Geneva, Switzerland.¹³ At that meeting, the government and FMLN pledged to work towards political agreements that would lead to an end to the armed confrontation. The talks were to take two forms: direct dialogue between the parties, with the "participation of the Secretary-General or his Representative," and mediation ("an intermediary role") by the U.N. representative between the two parties. In Geneva, Secretary General Pérez de Cuéllar announced that he had:

agreed to carry out this effort ... because I have received assurances from both parties that there is a serious intention and good faith to seek to bring about such an end through negotiations.¹⁴

¹⁰ ONUSAL, "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.

¹¹ *Ibid.*, p. 3.

¹² Interview, Washington, D.C., February 13, 1992.

¹³ After two initial meetings in 1989, the FMLN suspended the talks following the bombing on October 31, 1989, of the FENASTRAS trade union headquarters. In November 1989, the FMLN launched its largest military offensive of the war, and the Salvadoran Army murdered six Jesuit priests. Both these events increased the internal and international pressure for a negotiated settlement.

¹⁴ United Nations, Department of Public Information, "Press Communique Issued Following Geneva Meeting Presided

The U.N. was thus serving as guarantor and facilitator of a process which both sides wanted, a situation that might not obtain in other instances of internal armed conflict.

Over by Secretary-General between Representatives of Government of El Salvador and of FMLN," April 4, 1990, p. 1.

The San José Accord

The first major product of the dialogue was an agreement on human rights signed on July 26, 1990, in San José, Costa Rica. The accord was both a minimum set of conditions that both sides could agree to and a reflection of the centrality of human rights in any effort to end the war. In the agreement, both sides committed to take:

all necessary steps and measures ... to avoid any act or practice which constitutes an attempt upon the life, integrity, security or freedom of the individual ... all necessary steps and measures shall be taken to eliminate any practice involving enforced disappearances and abductions.¹⁵

The accord decreed an immediate end to night arrests, incommunicado detention, and torture, and reaffirmed the rights to habeas corpus, freedom of expression, movement, and association, among others. The accord also envisioned the eventual establishment of a human rights verification mission under U.N. auspices and defined both the mandate of the mission¹⁶ and the obligations of both sides to cooperate with it.¹⁷ The verification component of the human rights accord reflected in part the FMLN's concern that only an international presence could prevent a massacre of their forces once a ceasefire was in place and their troops eventually demobilized.

Most of the provisions simply reiterated legal obligations to which the Salvadoran state was already bound by domestic or international law, although the accord marked the first formal human rights agreement subscribed to by the FMLN. Although both sides flagrantly violated the agreement on numerous instances in subsequent months, it is clear that the accord did have a significant impact on reducing human rights violations during the second half of 1990. Notably, during a November 1990 military offensive, both sides took greater care to avoid civilian casualties.¹⁸ Moreover, the human rights agreement facilitated other aspects of the peace talks. According to a senior ONUSAL official, the accord "made it difficult for the two sides to intensify the fighting or to walk away from the negotiating table."¹⁹

ONUSAL Begins Operations

The U.N. opened a preparatory ONUSAL office in San Salvador in January 1991, to assess the possibilities for launching the human rights verification mission prior to a ceasefire. Following

¹⁵ The text of the Agreement on Human Rights appears as an annex to this report.

¹⁶ The accord stated: "The purpose of the Mission 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.*" (emphasis added)

¹⁷ The parties pledged "to ensure the security of the members of the Mission and of such persons as may have provided it with information ... to provide, as expeditiously as possible, whatever information may be required by the Mission ... [and] to give their earliest consideration to any recommendations made to them."

¹⁸ See Americas Watch, *El Salvador and Human Rights: The Challenge of Reform* (New York: Human Rights Watch, 1991), pp. 1-8.

¹⁹ Interview, San Salvador, May 29, 1992.

the visit of a senior U.N. and human rights delegation two months later, Secretary-General Pérez de Cuéllar reported that there was "a strong and widespread desire in all sectors of opinion in El Salvador" that the United Nations begin the verification mission "as soon as possible."²⁰ The team judged that the risks posed by the ongoing armed conflict were not prohibitive, a further reflection that the negotiations themselves were serving to moderate the level of armed combat.

ONUSAL formally opened its offices on July 26, 1991, one year after the signing of the San José agreement and fully five months before the signing of a comprehensive peace accord. The United Nations deserves substantial credit for launching the mission on the assumption that it would make the broader peace process irreversible: although some progress in the talks had been evident by July,²¹ little or no progress had been made in resolving the thorniest question of all — the reform of the armed forces.

ONUSAL could not have begun operations without the express permission of the Salvadoran government, which opened its territory to an international human rights monitoring presence. Similarly, U.N. officials have pointed out that the establishment of ONUSAL represented a concession by the FMLN to open areas under its control to international supervision.²² Nonetheless, the two sides viewed the mission very differently: the government, as an irritation that was to be tolerated at best; the FMLN, as an accomplishment of the process of dialogue. Although the reaction of most Salvadorans to the U.N. presence was positive, the mission came under vicious attack by elements of the far-right, and, at times, by the government.²³

During a two-month preparatory stage, ONUSAL established four regional offices (San Salvador, San Miguel, San Vicente, and Santa Ana) and two sub-offices (Chalatenango and Usulután). With an initial budget of \$23 million, its staff of 101 included forty-two human rights observers, legal advisers, educators, and political affairs advisers; fifteen military advisers; and sixteen police advisers.²⁴ The mandate of the office was to verify the San José human rights accord; in ONUSAL's words, "to establish that allegations are true and to find out what the party concerned has done to punish the culprits and to prevent such violations in the future."²⁵ It soon

²⁰ United Nations, Security Council, Report of the Secretary General, "Central America: Efforts Toward Peace," April 16, 1991, p. 1 (United Nations Document S/22494).

²¹ Most notably, in April 1991 the Salvadoran Assembly had adopted constitutional reforms that made it possible to implement provisions of the accord within a legal, constitutional framework.

²² Interview, San Salvador, May 31, 1992.

²³ By its very nature, a mission such as ONUSAL was bound to touch on sensitive areas of concern to the government. As one scholar has noted, "human rights claims can strike at the very title of legitimacy of a state. [They] erode the wall of sovereign protection, and [they] invade the relationship — of contract, fealty, or fear — that exists between a state and its citizens." See Bryan Hehir, "The United States and Human Rights: Policy for the 1990s in Light of the Past," in Kenneth A. Oye, Robert J. Lieber, and Donald Rothchild, eds., *Eagle in A New World: American Grand Strategy in the Post-Cold War Era* (New York: Harper Collins, 1992), p. 239.

²⁴ United Nations, ONUSAL, "First Report of the United Nations Observer Mission in El Salvador," September 16, 1991, pp. 2-4 (United Nations Document A/45/1055; S/23037).

²⁵ ONUSAL, "Second Report of the United Nations Observer Mission in El Salvador," November 15, 1991, p. 5. (United Nations document A/46/658; S/23222)

became evident, however, that the agreement provided few if any operational guidelines. Moreover, since the agreement envisioned the establishment of ONUSAL after a ceasefire, it made no reference to international humanitarian law, which bound both sides, and especially the FMLN, during the ongoing armed conflict. As a result, many of the mechanics of ONUSAL's operations were left to improvisation, with each regional office ironing out the details of how work was to be divided among the police, military, legal, and human rights advisers, deciding how to classify abuses and maintain statistics, and setting limits for follow-up on case work. All ONUSAL offices began receiving complaints (*denuncias*) from the outset; what they did with them was a matter of great discretion.

The work of the mission became more complex with the signing of the peace accord, when ONUSAL was charged with overseeing the implementation of central aspects of the agreement: 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, etc. Most of the Human Rights Division's police observers were absorbed into the expanded Police Division, and the size of the human rights component declined relative to the other divisions of ONUSAL. Moreover, the importance attached to the human rights work diminished. In the words of ONUSAL's director Iqbal Riza, "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."²⁶

Obstacles Faced by ONUSAL

In its early reports, ONUSAL publicly thanked both the government and the FMLN for their cooperation, and praised the warm reception they received from the Salvadoran population. Such expressions may have been politic, but did not reflect reality. A few examples suffice: as the office prepared to open in July 1991, 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; while the ultra-right Crusade for Peace and Work questioned the mission's constitutionality.²⁷ In early December, an ONUSAL military observer was insulted outside a restaurant in the capital; moments later, he was knocked to the ground as a driver tried to run him over.²⁸ In October, ARENA President and mayor of San Salvador Armando Calderón Sol accused the ONUSAL of "sleeping" and of failing to denounce the "terrorist acts" of the FMLN, voicing a widespread opinion among senior government officials that ONUSAL was biased against the government.²⁹ Senior ONUSAL officials minimized the effect of the attacks, but noted

²⁶ Interview, San Salvador, May 27, 1992.

²⁷ Beginning in May, the FAS threatened "sanctions" against businesses, individuals, and their families who served members of the United Nations, the International Committee of the Red Cross, and the U.N. Observer Group for Central America (ONUCA). See Human Rights Watch, *World Report 1992*, (New York: Human Rights Watch, 1991), p. 216; and United Nations, ONUSAL, "First Report," p. 11.

²⁸ Tim Johnson, "U.N. monitors caught in cross-fire of civil war," *Miami Herald*, December 23, 1991.

²⁹ "We hope they wake up with these words," Calderón Sol continued, "because if not, the Salvadoran people are going to toss out the international institutions." Radio YSU, INSISTEM, October 31, 1991, quoted in El Rescate, "El Salvador Chronology," November 1991," p. 5. At times, both the government and the FMLN called on ONUSAL to make more vigorous public denunciations of abuses, something which ONUSAL deliberately avoided.

that the pressures "complicated" the work of the mission.³⁰

Despite the pledge of both sides to "ensure the security of members of the Mission," moreover, ONUSAL personnel came under fire on repeated occasions when they visited conflict zones. Some were trapped during skirmishes between the FMLN and government troops, the largely inevitable result of attempting to verify human rights in a war-time situation. Other times, however, the attacks appeared to be more deliberate. On one occasion in November 1991, troops of the Fifth Brigade opened fire in a rural area of San Vicente as an ONUSAL team was meeting with the guerrillas. The commander of the Fifth Brigade claimed not to know of the meeting, but ONUSAL's director in San Vicente stated that the government was always informed in advance of a meeting with the FMLN. Similarly, a group of ONUSAL observers in Chalatenango came under mortar attack in early November during a meeting with a senior guerrilla commander.³¹

For months, the government tried to force ONUSAL to dismiss Argentine legal adviser Rodolfo Mattarollo, a prominent jurist who had given legal advice to the Jesuits following the murder of six Jesuit priests, their housekeeper, and her daughter. Mattarollo was initially denied a visa, something which prevented him from leaving the country. In March 1992, ARENA deputies prevented Mattarollo from speaking at a human rights seminar organized and funded by the U.S. Agency for International Development, and demanded that he leave the country. Following a storm of protest from non-governmental organizations and opposition politicians, the government backed away from publicly pressing the issue.

While the Salvadoran government had been informally ceded the authority to approve the head of ONUSAL and the heads of its three divisions, ONUSAL officials insisted that the government had no right to interfere with the selection of other personnel. Apparently after continued pressure from the government for Mattarollo's dismissal from ONUSAL, the United Nations decided not to renew Mattarollo's contract at the end of August 1992.

A more systematic difficulty affecting ONUSAL's work has been the reluctance of judges to cooperate. According to former chief of the Human Rights Division Philippe Texier, "it is evident that they [the judges] do not feel bound by the accords."³² Supreme Court President Mauricio Gutiérrez Castro has expressed the view to several persons interviewed by Americas Watch that the judiciary, as an independent branch of government, is not bound by the peace accords, which were signed by the executive branch and the FMLN. In extreme cases, judges have refused to share copies of papers bearing on a case. More characteristically, in the words of another ONUSAL official, "they feel defensive when someone is looking over their shoulder, asking 'why did you do this?'"³³ Because under the Salvadoran legal system judges have a prime responsibility for carrying out investigations, their reluctance to collaborate has impinged on ONUSAL's ability to "promote respect for human rights and their guarantee in El Salvador."

³⁰ Interview, San Salvador, May 28, 1992.

³¹ San Salvador Channel 12, November 8, 1991 and *El Mundo*, November 8, 1991, quoted in El Rescate Human Rights Department, "Report from El Salvador," November 4-11, 1991, p. 4; Tim Johnson, "U.N. monitors caught..."

³² Interview, San Salvador, May 28, 1992.

³³ Interview, San Salvador, May 29, 1992.

The historic failure of El Salvador's judicial system to prosecute human rights abuses or, indeed, any crimes, has also had a dramatic effect on ONUSAL's work. Even given varying interpretations of ONUSAL's mandate to carry out investigations,³⁴ it is clear that the United Nations cannot substitute for the judiciary; that is, it cannot prosecute crimes, defend detainees, or otherwise involve itself directly in the carrying out of a judicial proceeding. Numerous ONUSAL officials decried their ability to go "only so far" in any particular case until they came up against the pervasive impunity that has characterized the criminal justice system. In the words of one ONUSAL official, "what is called 'judicial power' is not power. Nothing works, not just the judges. The defense doesn't defend, the Attorney General's office doesn't investigate."³⁵ The failings of the judicial system were so acute that ONUSAL made them the principal focus of its fourth report, released in June 1992. That report concluded:

the criminal justice system should be completely overhauled The flaws in the judicial system, demonstrated by its inability to investigate violent deaths, the selectivity of the criminal justice system and delays in sentencing, cannot be remedied without basic reforms.³⁶

Given the near-complete paralysis of the judiciary, coupled with the rampant human rights abuses that have characterized the last twelve years, it is an understatement to say that Salvadoran civilians lack basic trust in governmental institutions and authorities. This, too, has complicated ONUSAL's work. ONUSAL officials regularly urge those who come to present complaints to denounce their cases before the appropriate authorities, a way of pushing the system to respond so that longer-term change can eventually occur. Civilians rarely go to the authorities, however, out of the belief that it is not worth the time or out of fear of being identified as someone who has made a denunciation. Many civilians, particularly in formerly conflictive zones, fear what will happen to them when ONUSAL leaves. The pervasive distrust is matched in most instances by a profound ignorance of an individual's basic rights before the state. ONUSAL's educational activities are aimed at overcoming these deficiencies; but it is up to Salvadoran institutions to prove themselves worthy of public confidence.

Positive Aspects of the ONUSAL Presence in El Salvador

It is rare to find agreement on anything in El Salvador. But observers across the political spectrum concur that ONUSAL's presence in the country, both before and after the ceasefire, has dramatically improved the observance of human rights. 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 United Nations, which made both sides in the conflict wary of incurring criticism; and 3) most important, ONUSAL's ability to deploy its personnel anywhere in the country without prior notice, and to have access to military barracks and detention

³⁴ The San José Accord states that "the purpose of the Mission shall be to investigate the human rights situation in El Salvador." For the controversy over the interpretation of this mandate, see below.

³⁵ Interview, San Salvador, May 27, 1992.

³⁶ United Nations, ONUSAL, "Fourth Report of the Director of the Human Rights Division," June 5, 1992, pp. 14-15. (United Nations Document A/46/935; S/24006)

centers.³⁷ This potential for surprise — a power not possessed by the International Committee of the Red Cross or the United Nations High Commissioner for Refugees — has been a key element in what ONUSAL officials describe as the "dissuasive" or "preventive" impact of the mission.

With or without ONUSAL, the end of the armed conflict has also had a profound impact on the observance of human rights. Certain violations — attacks on the civilian population, forced recruitment, restrictions on freedom of movement, detentions for suspected collaboration with the guerrillas — have been substantially reduced or eliminated altogether. In formerly conflictive areas, the number of complaints logged by ONUSAL officials has diminished; the same is not true of the San Salvador office, which accounts for more than a third of the cases denounced to the mission.³⁸ At the same time, ONUSAL officials indicate that fewer of the cases they receive are admissible as human rights violations, the majority being instances of common crime.³⁹

Because of its unique position within the country, ONUSAL has documented human rights problems barely touched on in the peace or human rights accords, and has deepened knowledge of the structures that perpetuate human rights abuses. In investigating the murder of a 23-year-old man in Santa Ana, for example, ONUSAL traced responsibility to armed civilians belonging to "the territorial service of military escorts,"⁴⁰ a paramilitary body under the Ministry of Defense that had received scant attention in previous human rights reporting by national and international monitors; this was true despite its complicity in numerous abuses, particularly in the western area of the country. Although the peace accord envisioned the "substitution" of the Territorial Service by a new system of military reserves,⁴¹ the first draft law submitted by the armed forces sought to preserve the Territorial Service. Although ONUSAL's previous attention to the paramilitary body helped alert politicians to the issue, the law passed by the Assembly ultimately failed to abolish the Territorial Services as envisioned in the Peace Accords.

Similarly, ONUSAL has drawn attention to abuses by the Municipal Police, a security force under the direct control of local mayors. The Municipal Police carry out thousands of "administrative" detentions for misdemeanors, which are not recorded; nor are detainees turned

³⁷ The San José Accord gives ONUSAL the power to "visit any place or establishment freely and without prior notice."

³⁸ Interview, San Salvador, May 27, 1992.

The number of complaints received by ONUSAL fell by 19.7 percent between January and March 1992, as compared with the October-December 1991 period. Complaints of violations of international humanitarian law fell more drastically, by 79.1 percent. See United Nations, ONUSAL, "Report of the Director," p. 19.

³⁹ Whether or not there is a crime wave in post-war El Salvador is a hotly debated issue. Public awareness of common crime has certainly gone up, but there are those who believe that Salvadoran government officials, including the military, have exaggerated any increase in crime in order to justify the expansion of the National Police. A senior ONUSAL official told Americas Watch that crime had gone up perhaps ten percent since the ceasefire, but that "there is no wave of crime. That is false." The Deputy Chief of Staff of the Armed Forces General Mauricio Vargas told us that "we are not going to maximize the problem of delinquency." (Interviews, San Salvador, May 27 and 31, 1992.)

⁴⁰ United Nations, ONUSAL, "Third Report of the Director of the Human Rights Division," February 19, 1992, p. 5. (United Nations Document A/46/876; S/23580)

⁴¹ Chapultepec Peace Agreement, Chapter IX, "Calendario de Ejecución," No. 2.8.2.3.

over to a judge.⁴² According to an ONUSAL official, "the Municipal Police are still beating the crap out of people."⁴³ Nonetheless, the force is not specifically mentioned in the peace accord, and ONUSAL has, on occasion, been denied access to Municipal Police facilities.

In a situation where the state has so regularly been the direct perpetrator of human rights abuses, it is easy to forget that the failure to safeguard or protect human rights also constitutes a violation of El Salvador's obligations under international law.⁴⁴ ONUSAL has devoted special attention to acts of omission by the Salvadoran government, detailing in case after case the failure of the police and the judiciary to take action in cases of violent deaths. According to ONUSAL,

state responsibility can arise not only from a lack of vigilance with regard to the prevention of harmful acts but also from a lack of diligence in prosecuting perpetrators and in applying the necessary civil penalties.⁴⁵

ONUSAL's criticisms sharpened after the end of armed conflict caused complaints of human rights violations to decline. "Summary executions and violent deaths ... have continued after the ceasefire, and no effective action has been taken to put an end to them, investigate them or punish the perpetrators."⁴⁶

This emphasis on the mechanisms of protection and prevention led ONUSAL inevitably to focus on the judicial system as a key aspect of the human rights situation in El Salvador. The focus legitimated the concerns of human rights groups in and outside El Salvador, which for years had decried systematic shortcomings, but never with the degree of detail or access that ONUSAL had. ONUSAL's fourth report, published in June 1992, found that:

- The "failure to follow established procedures in the preliminary investigation" of murder cases was a "widespread practice" by the judiciary and police. "Many justices of the peace and even judges of courts of first instance act with gross negligence in securing the scene of the crime, obtaining evidence, taking fingerprints, issuing arrest warrants, interrogating witnesses, having the bodies examined by experts or conducting autopsies." ONUSAL called the failure to order autopsies "inexcusable," given the functioning of five forensic institutes throughout the country.⁴⁷
- The right to legal counsel was systematically violated. Many prisoners who had been

⁴² The February 19, 1992, ONUSAL report describes the case of a member of the opposition *Convergencia Democrática*, who was beaten by the Municipal Police and locked up at the request of the mayor, on charges of "defamation." See p. 11.

⁴³ Interview, San Salvador, May 28, 1992.

⁴⁴ International Covenant on Civil and Political Rights (art. 2, paragraphs 1 and 2); American Convention on Human Rights (art. 1, paragraph 1).

⁴⁵ United Nations, ONUSAL, "Third Report," p. 9.

⁴⁶ United Nations, ONUSAL, "Report of the Director," June 5, 1992, p. 2.

⁴⁷ *Ibid.*, p. 6.

"incarcerated for more than four or five years [had] never seen a lawyer," and most prisoners did not even know of their right to defense counsel.⁴⁸

- A systematic review of the penal system showed that 89.95 percent of prisoners were not serving sentences, but rather, awaiting trial, despite the fact that Salvadoran law specifies that a judge must complete an investigation within 120 days.⁴⁹
- In violation of the San José accord and Salvadoran law, "incommunicado detention appeared to be a de facto practice of many authorities."⁵⁰

ONUSAL concluded that it had a positive impact on the judicial system in the cases in which the mission had intervened, but that it had not produced "an overall improvement in judicial practice."⁵¹ Thus, while ONUSAL's sheer presence has caused the human rights situation in El Salvador to improve, there is currently little reason to believe that quantitative improvements will be matched by qualitative ones once the mission leaves.

A Critique of ONUSAL: Political Limitations

As the first U.N. mission of this kind to be installed inside a member country, ONUSAL has experienced a host of problems, principal among them the multiple roles — monitoring human rights and overseeing the implementation of the peace accord — it has acquired throughout the peace process. Two key factors profoundly circumscribe ONUSAL's independence in fulfilling its human rights functions.

First, ONUSAL has played a major role in mediation and in offering its "good offices" to resolve conflicts over the interpretation and implementation of the peace accord. The behind-the-scenes diplomacy required by such an intermediary role contrasts sharply with the kind of posture normally expected from an institution entrusted with human rights verification. Senior ONUSAL officials apparently believe that a public and aggressive approach to the denunciation of human rights abuses, especially in a situation in which one side — the government — was largely held to be at fault, would undermine the perception of ONUSAL's objectivity and neutrality, requirements for it to carry out its mediating role.⁵²

Second, the Human Rights Division is part of a larger peacekeeping operation that reports directly to the Secretary General, who in turn reports to the Security Council. Thus, the Division does not relate primarily to the bodies of the U.N. traditionally responsible for monitoring human rights, such as the Commission on Human Rights in Geneva. Because actions of the Human Rights Division will inevitably impact on the work of the mission as a whole, the Human

⁴⁸ Ibid., p. 9.

⁴⁹ Ibid., p. 10.

⁵⁰ Ibid., p. 8.

⁵¹ Ibid., p. 12.

⁵² Since the ceasefire, most of ONUSAL's criticisms have been directed at the government. Once the FMLN disappears as a military force, ONUSAL will only be in a position to criticize the government.

Rights Division has substantially less autonomy from political constraints than would, for example, a U.N.-appointed Special Rapporteur. This is true despite the Division's considerable powers of access and investigation.

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, during the period of the negotiations between the Salvadoran government and the FMLN, the Human Rights Division (at that time, all that existed of ONUSAL) took pains not to do or say things that would potentially undermine the talks. ONUSAL apparently believed that during the period of negotiations, in which good faith efforts were needed from all parties, excessive criticism of the government would be detrimental to the overall peace process.

This kid-gloves approach was overwhelmingly evident in ONUSAL's first two reports of September and November 1991, prior to the peace agreement:

- In order to illustrate its contention that "numerous politically motivated violations of human rights ... are continuing" but that "human rights organizations do not use uniform criteria for classifying violations," ONUSAL published, without comment, the diverse data of two governmental and three non-governmental human rights organizations, as if all had equal status and were equally worthy of credibility.⁵³ Regrettably, ONUSAL even included the figures of the Army Human Rights Office, whose weekly faxes to Americas Watch and other human rights monitoring groups have never contained one instance of an abuse by government forces; their exclusive focus on alleged abuses by the FMLN amounts to propaganda.
- ONUSAL described in detail three episodes in August-September 1991 in which a total of ten people were killed "by members or former members of military units;" eight of these civilians were killed when a soldier or ex-soldier threw a hand grenade into a dance. ONUSAL then bent over backwards to distinguish between individual conduct and responsibility on the part of the armed forces, asserting that "there does not appear to be any collusion with their respective institutions."⁵⁴ There was no basis offered for this contention, except to note that in one of the cases, a suspect had been handed over to a judge. In that same case, however, ONUSAL itself stated that the military did not turn over the weapon allegedly used in the crime, and had gathered no evidence at the scene. To make a sweeping statement about the lack of governmental collusion at the outset, rather than at the conclusion of an investigation, is nothing more than an attempt to give the government every possible benefit of the doubt.

Moreover, ONUSAL contradicted itself regarding military responsibility when it criticized the "insufficient monitoring" of military weaponry, "especially hand grenades and explosives."⁵⁵ The failure of the Army to control the weapons that soldiers take off-

⁵³ United Nations, ONUSAL, "First Report," pp. 8-10; IDHUCA (Human Rights Institute of the Central American University), "The First Report by the U.N. Observer Mission in El Salvador (ONUSAL)," *Estudios Centroamericanos*, September 1991.

⁵⁴ United Nations, ONUSAL, "Second Report," p. 9.

⁵⁵ *Ibid.*, p. 10.

base constitutes gross negligence on the part of the institution, particularly when such episodes have occurred repeatedly over the last several years and result in civilian deaths.

- ONUSAL has been more categorical in condemning abuses by the FMLN than by the government. In discussing problems of military recruitment, for example, ONUSAL noted that "the guerrilla ranks clearly include children under the age of 15, in violation of the provisions of Protocol II" of the Geneva conventions. By contrast, the characterization of government behavior was much more restrained and diplomatic. Although describing a string of abuses and violations of established procedures regarding recruitment, ONUSAL limited itself to observing that rules were "generally disregarded," and that recruitment was "carried out in a manner detrimental to individual rights enshrined in the Constitution and in the international instruments ratified by El Salvador."⁵⁶

ONUSAL's willingness to criticize the government did increase over time, notably after the signing of the peace accord.

Since that time, maintaining the cease-fire and fulfilling the timetable of compliance on other accords have taken preeminence over human rights issues within ONUSAL. The Human Rights Division is now not only much smaller than the other divisions, but its presence in the countryside has also diminished vis-a-vis the police and military divisions. Moreover, there is a sense among its personnel that its work is viewed within the mission as less important than it once was. Americas Watch believes that this perception is correct.

In addition, ONUSAL has increasingly used personnel from the Human Rights Division for purely political matters, such as those involving land conflicts and the return of mayors to formerly conflictive zones. While these aspects of the accord are extremely important, the fulfillment of purely political tasks has diverted the focus of the Human Rights Division.

In general, ONUSAL has opted for a conservative application of its mandate, one in which human rights problems are treated with the same kind of cautious diplomacy that one might use in attempting to resolve political disputes. This is not to say that diplomacy can not or should not be used in the service of human rights. However, when diplomacy has failed, ONUSAL has failed to utilize fully the power granted to it by the San José Accord to publicize its information and to publicly press for government action.

ONUSAL's Interpretation of its Human Rights Mandate

In its first report, the Human Rights Division set out the contextual difficulties of its mission as well as the legal parameters it would use to measure human rights performance. Recognizing the inordinately high expectations held by the Salvadoran people, the report stated that ONUSAL's role would not be to substitute for Salvadoran institutions, but rather, to help Salvadoran actors protect and promote human rights:

⁵⁶ Ibid., pp. 29-30.

ONUSAL determined, for example, that written orders are "almost never shown," that local commanders "never obey" requirements to inform the relatives of the recruit's whereabouts, and that "people affected by recruitment belong primarily to the most disadvantaged social sectors."

Far from attempting to replace the institutions responsible for ensuring the protection and promotion of and respect for human rights, the Mission will assist Salvadorans in the effort to ensure unrestricted exercise of those rights. To that end, it will attempt to *persuade the parties to modify conduct* that is incompatible with the Agreement, and its *sole support* in that task will be the moral authority of the United Nations.⁵⁷ (emphasis added)

To pursue its goals, ONUSAL claimed that "its main course of action in dealing with the parties is to make recommendations on the basis of the conclusions drawn from cases or situations which it has considered."⁵⁸

Since ONUSAL lacks any mechanism to enforce its recommendations, the success of the mission will largely be determined by the willingness of the parties to respect its counsel. So far, the response of the government to requests for information as to what consideration it has given to ONUSAL's recommendations has been utterly inadequate.⁵⁹ Despite the lengthy recommendations made in the Division's second and third reports, as of early June 1992, the FMLN had sent a very formal response to the Division on April 27, and the government had not responded at all.⁶⁰

Before recommendations and cases are made public in its reports, ONUSAL makes various efforts — through letters or visits to the proper authorities — in order to ensure that cases are being investigated and prosecuted properly. In effect, public mention of specific cases in its reports is ONUSAL's last resort. Yet, as of late July 1992, only one case had been discussed in any detail in the Division's reports for all of 1992.⁶¹

In mid-July, a former ONUSAL employee levelled several serious charges at the mission, writing to U.N. Secretary General Boutros Boutros-Ghali that ONUSAL was restricting its human rights work by failing to take action on several serious cases.⁶² Largely because most of the cases mentioned in the letter had not previously been made public by ONUSAL, human rights groups and opposition politicians reacted with shock, calling on ONUSAL to provide a full accounting.⁶³

⁵⁷ United Nations, ONUSAL, "First Report, p. 5.

⁵⁸ United Nations, ONUSAL, "Report of the Director," February 19, 1992, p. 44.

⁵⁹ Under Article 15 (d) of the San José Agreement, the Parties pledge "to give their earliest consideration to any recommendations made to them by the Mission."

⁶⁰ United Nations, ONUSAL, "Fourth Report of the Director," June 5, 1992, p. 18; interview, San Salvador, May 27, 1992.

The failure of the state to respond positively to ONUSAL's recommendations runs the risk of creating an even greater lack of confidence in the institutions of the state.

⁶¹ This was the case of Nazario de Jesús Gracias of the FEASIES union, described in ONUSAL's fourth report covering the January-April 1992 period. See below.

⁶² The letter was written by Dr. Reinhard Jung-Hecker, a German national who had worked as a human rights observer in the San Salvador regional office. It was published in *Diario Latino* on July 9, 1992.

⁶³ An open letter to U.N. Secretary-General Boutros Boutros-Ghali was published in *Diario Latino* on July 15 and signed by the Centro de Estudios para la Aplicación del Derecho (CESPAD), Instituto de Estudios Jurídicos de El Salvador (IEJES), Departamento de Derechos Humanos del Sínodo Luterano Salvadoreño, and the Comisión de Derechos Humanos en El

In a press communique on July 10, 1992, ONUSAL stated that the letter "required no commentaries." Americas Watch takes strong issue with ONUSAL's casual dismissal of the allegations, and believes that they are serious enough to warrant a thorough investigation by the Mission.

In one of the cases described in the letter and confirmed by Americas Watch, ONUSAL personnel discovered the apparent authors of a series of murders of common criminals in the Apopa area -- possibly involving ex-military -- and encouraged police and judicial officials to investigate. Yet, even after the local authorities failed adequately to investigate the killings, the Human Rights Division failed 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.⁶⁴

In both of the cases described above, publicity could have provided further pressure on the government. When investigations have touched an especially raw nerve, ONUSAL has been timid in criticizing the government or exposing the practice. With its public silence, ONUSAL -- far from doing anything to break the cycle of impunity -- runs the risk of contributing to it.

Even when cases are mentioned in the reports of the Human Rights Division, the reports' limited circulation diminishes the impact they could have. ONUSAL could make better use of its financial resources to secure access to the media to publicize its findings and recommendations. Summaries of the reports have received press coverage at the time of their release, and ONUSAL has on occasion published its recommendations, but there is no ongoing, systematic effort to disseminate the findings of the mission in a way that is accessible to the majority of Salvadorans.⁶⁵

It may be that ONUSAL has avoided greater publicity for its findings for three reasons: 1) because it believed that it could raise expectations for behavioral change that would be disappointed, and thus provoke social or political problems; (2) because strong denunciations would negatively affect the other mediating roles of the mission; or (3) because the U.N. takes a very restricted view of its human rights mandate, seeing its primary audience as the Security Council and selected Salvadoran political actors. Americas Watch believes, however, that the relative lack of publicity squanders the leverage ONUSAL could exert, and that, precisely by creating expectations and reminding the public of official shortcomings, it could generate useful pressure within El Salvador for structural change.

Problems With ONUSAL's Verification Abilities

The San José Accord provides ONUSAL with an ability to investigate human rights cases that

Salvador (non- governmental) CDHES.

⁶⁴ Jung-Hecker alleged that in this case ONUSAL backed down from the investigation of a triple homicide, when in fact one person had been killed and four persons wounded. Americas Watch could not confirm that ONUSAL had limited its investigation into the case, although failure to bring the case to light publicly surely downplays its importance.

⁶⁵ Many ONUSAL personnel expressed to us their frustration at the lack of a better publicity and educational campaign.

no institution independent of the state has ever had in El Salvador. Article 13 of the accord states that "the purpose of the Mission shall be to *investigate* the human rights situation" and "*to take any steps it deems appropriate to promote and defend such rights.*" (emphasis added.) Article 14 lists the powers that the mission should have within its mandate, including the ability to meet with anyone, at any time, and "to collect *by any means it deems appropriate* such information as it considers relevant." (emphasis added)

Precisely because ONUSAL's powers are so broad, it is important for such a mission to develop uniform criteria for investigating and monitoring cases that are brought to its attention. Amazingly, one year into the mission, the Human Rights Division had still not produced such guidelines, despite the widespread recognition within the Division that this was an important task.

The development of a uniform procedure for following cases would enable a more systematic monitoring of the human rights situation. ONUSAL personnel interviewed by Americas Watch offered different interpretations of their role. Human Rights Division director Philippe Texier told Americas Watch that, regardless of the language of the San José Accord, "we cannot do a direct investigation, but rather, do so by observing the process of justice."⁶⁶ Others within the Division, however, did carry out parallel investigations.

In practice, it would seem that separate investigations by ONUSAL would be the only manner of ferreting out criminal acts from human rights abuses or violations of the laws of war; this is especially true given the woeful inadequacy of the government's investigations of violent crimes.

While we believe that, in the vast majority of cases, investigations were competently carried out by ONUSAL personnel, the need for guidelines is especially important in a situation in which personnel come from a variety of backgrounds and experiences, whether they be civilians or police. The lack of a standard investigative procedure has meant that it is often left to the individual employee, or to the director of one of ONUSAL's regional offices, to determine to what extent and how any given case should be investigated.

Lack of Methodology

The implementation of ONUSAL's mandate has been hindered by the failure of the Human Rights Division to devise a methodology for classifying types of violations. In its first report, the Human Rights Division noted that Salvadoran human rights organizations (both governmental and non-governmental) did not use a standard method of classifying violations, which prevented any comparative analysis of the changing human rights situation. Thus, the report indicated that "the Mission will make an effort to typify the violations of the Agreement precisely and to establish a criterion for measuring their occurrence in time."⁶⁷

One year later, no such methodology has been designed. As a result, ONUSAL continues to report the number of *complaints* received by ONUSAL in any given category of abuse, rather than the number of complaints actually *verified*. The failure to construct a methodology distorts the

⁶⁶ Interview, San Salvador, May 28, 1992.

⁶⁷ United Nations, ONUSAL, "First Report," p. 10.

overall portrayal of the human rights situation, especially given the fact that ONUSAL officials themselves recognize that many abuses denounced as politically-motivated turn out not to be. It is not too late for ONUSAL to refine its methodology, which could assist in setting uniform standards for local human rights groups as well as contribute to future efforts in international human rights monitoring.

Lack of Oversight of the SIU

One impediment to ONUSAL's investigative and oversight abilities pertains to deficiencies in the peace agreements, rather than to any internal decision made by ONUSAL. The agreements on police reform failed to take into account explicit oversight of the Commission on Investigations of Criminal Acts, whose executive unit is known as the Special Investigative Unit (SIU). This body, which is equipped and staffed with trained investigators and is called in on the most important cases, reports directly to a commission headed by the Minister of Justice, rather than of Defense.⁶⁸ It is thus exempt from oversight by the Police Division of ONUSAL. Unlike other police bodies, ONUSAL police are not stationed inside the headquarters of the SIU. In fact, ONUSAL has had extremely limited contact with the SIU, which has consisted mostly of interviews of the director of the siu by the director of ONUSAL's San Salvador Regional Office.

Without oversight by ONUSAL, the SIU will never be able to overcome its controversial history. In recent years, the siu has been criticized for not sufficiently following leads that would implicate the police or military, for endeavoring to make political crimes appear as common crimes, and for identifying a suspect in prominent cases only to satisfy national or international pressure.⁶⁹

The Role of the Police Division

ONUSAL's Human Rights Division has had little success in monitoring investigations carried out by the National Police. This is largely due to the limited role the Police Division has adopted for itself. Admittedly, the mandate of the Police Division is ill-defined, far less so than the other divisions: "cooperating in ensuring a smooth transition and assisting police authorities" as well as "accompanying the officers and members of the National Police in the performance of their duties."⁷⁰

Nonetheless, the access of the Police Division to National Police operations makes it the best situated for overseeing police investigations. Yet, despite its ability to deploy personnel to monitor preliminary and ongoing police investigations, ONUSAL's Police Division has not consistently chosen to do so. This represents a tremendous waste of ONUSAL's resources and potential.

⁶⁸ Its members are drawn directly from the security forces, something which compromises the unit's independence when it is called on to investigate crimes in which the military itself is suspect.

⁶⁹ Future oversight of the SIU by ONUSAL will be more feasible should it become integrated into the investigative unit of the National Civilian Police.

⁷⁰ Chapultepec Peace Agreement, Chapter II, Sec. 7.B.e; Annex to "Letter dated 27 January 1992 from the Permanent Representative of El Salvador to the United Nations addressed to the Secretary General," January 30, 1992, p. 25. (United Nations Document S/23501)

In addition, the amount of cooperation between the Police Division and Human Rights Division appears to vary, depending on the regional office. Coordination should be relatively easy, since each regional office of the Human Rights Division includes several police as well. Yet, the degree to which members of the Police Division refer complaints that come to their attention to the Human Rights Division appears to depend on the discretion of individual officers.

ONUSAL police have played a passive (though not unimportant) role by "accompanying" the National Police in order to prevent abusive behavior on patrol or in the jail cell. On occasion, they have also played a positive and active role in easing tensions during demonstrations and labor incidents. In general, however, better coordination with the Human Rights Division and a broader interpretation of the Police Division's mandate would improve the implementation of the human rights tasks of the mission.

ONUSAL's Educational Role

Apart from the need to better utilize its faculties to press the parties to comply with their obligations under the San José Agreement, greater publicity and education is also important for the promotion of human rights among the citizenry as a whole. Article 14 of the San José Accord gives ONUSAL "the ability to carry out an educational and informational campaign on human rights and on the functions of the mission itself" as well as "to use the media to the extent useful for the fulfillment of its mandate."⁷¹

Because ONUSAL is given wide latitude under the human rights accord to engage in media and other educational campaigns, the failure to do so suggests another area in which it has taken a conservative approach to its mandate.⁷² Although education is a stated priority for the Human Rights Division in the coming period, it is worth noting the problems in pursuing that objective thus far.

ONUSAL's educational activities — giving seminars, lectures, and workshops to organized groups that request them — represent an attempt to plant the seeds for more lasting change in Salvadoran society. Yet few resources within the mission have been devoted to this work. In its first report, ONUSAL announced an ambitious human rights education campaign which, with a staff of five educators for the entire country, has not been fully realized. That plan included the preparation of educational materials and developing a human rights publicity campaign. The need for grassroots education is tremendous, as witnessed by a comment frequently heard by one ONUSAL educator in the countryside: "Is it true that when ONUSAL leaves, the war will start again?"

Perhaps more serious, however, is the failure to devote greater resources toward human rights education through the media. There, ONUSAL could potentially educate citizens about their rights under the Salvadoran Constitution as well as the San José Accord. In practice, ONUSAL has advertised itself and its work in only the most superficial ways: with thirty-second television spots, for example, that said nothing more than "ONUSAL: Road to Peace." ONUSAL's announcement of its presence without an equal presentation of what it hoped to accomplish may have contributed to an exaggerated sense of expectations on the part of the general population. After the ceasefire in early 1992, ONUSAL began circulating weekly press releases that detailed the activities of its various divisions.

Limits Faced by ONUSAL: Two Examples

Especially in the post-war period, one of ONUSAL's most important functions should be to investigate politically motivated crimes that could undermine confidence in the process of transition. ONUSAL has been effective in identifying cases that first appeared to be politically

⁷¹ Interestingly, the exchange of letters of understanding between the U.N. and the Salvadoran government suggests a more limited view of how the media is to be employed: ONUSAL has the "right to make use of the mass media with the object of imparting information about the work of the mission." *Diario Oficial*, December 14, 1991, p. 2.

⁷² Yet education should be a priority for any U.N. entity. As one scholar has noted: the sum total of U.N. activity is supposed to socialize or educate actors into changing their views and policies over time toward a cosmopolitan (universal) human rights standard as defined by the U.N. instruments. See David Forsythe, *The Internationalization of Human Rights* (Lexington, Massachusetts: Lexington Books, 1991), p. 77.)

motivated, but later turned out to be purely criminal.⁷³ It has been less effective in pressing for action on cases which seem by all indications to have been politically motivated and to have had state involvement. Following are two examples of the difficulties, both internal and external, faced by ONUSAL in its verification work. Both cases serve to illustrate the fact that, regardless of the efforts of ONUSAL, cases will remain unresolved unless government authorities provide the requisite political will.

1. Threats Against the National Council of Churches

An example of the latter problem involves a series of threats and arrests in January 1992 that involved members of the National Council of Churches (*Consejo Nacional de Iglesias*, or CNI). Following a January 7 letter from the "Secret Army of National Salvation" containing death threats against the National Council of Churches, ONUSAL recommended that a complaint be lodged with the Attorney General. This was done on January 13.

In its third report, ONUSAL concluded that "there may be a link" between recent death threats received by the Council and the prior arrest of two of its ministers by the National Guard. ONUSAL deemed the case "so serious that it calls for a special effort by the authorities to ensure that it is cleared up fully and expeditiously ... by means of a thorough investigation."⁷⁴

Given the seriousness and political importance of the case, the SIU was placed in charge of investigating the threats. With characteristic negligence, however, and one month after the ONUSAL report was issued,⁷⁵ the head of the SIU told Americas Watch that the siu had still not spoken with the National Guard because there was no material evidence that would implicate them.⁷⁶ Responses such as this diminish the siu's credibility even further. Indeed, the CNI members affected in the case could not be persuaded by ONUSAL to fully cooperate with the authorities, a reflection of their distrust.

2. The Murder of Nazario de Jesús Gracias (FEASIES)

Another case which underscores the limitations faced by ONUSAL in its investigations is that of Nazario de Jesús Gracias, a member of the FEASIES union who was killed in the early morning hours of March 2 in the union headquarters where he worked as a night watchman. According to ONUSAL, the murder is the most clearly "political" crime with indications of state involvement since the ceasefire. It is also the only example of a violent death (out of several dozen that it has monitored) which ONUSAL has reported on in any detail in 1992.⁷⁷

⁷³ Such is the case of Vladimir Flores, an FMLN bodyguard who was shot and wounded by several assailants in a San Salvador suburb in May 1992.

⁷⁴ United Nations, ONUSAL, "Report of the Director," February 19, 1992, p. 8.

⁷⁵ This was two months after the SIU had taken on the case.

⁷⁶ Interview, Lt. Col. José Reynaldo Ayala Rodríguez, March 13, 1992.

⁷⁷ United Nations, ONUSAL, "Fourth Report of the Director," June 5, 1992, pp. 4-6.

ONUSAL was called to the scene by unionists who found the mutilated body, and arrived before any Salvadoran investigating authorities. The ONUSAL personnel were thus able to observe the "entirely inadequate" preliminary measures taken by the judge as well as the fact that the police did not arrive until 6 p.m., some ten hours after the body had been found.

In the Fourth Report, ONUSAL disclosed other important details. First, it noted that Gracias had been detained by the First Brigade in October 1991, then turned over to the National Police. Gracias later said that officers in both bodies had threatened his life. Second, on the day after Gracias' murder, FEASIES members had briefly detained a suspicious individual who had been loitering outside the union headquarters and who was carrying a card that identified him as a member of the Territorial Service.

The SIU took over the investigation of the FEASIES case within the first twenty-four hours, although ONUSAL did not mention this in their report. In an interview with Americas Watch on June 16, the head of the SIU said that the investigation had not progressed due to the lack of cooperation from the unionists, a charge which appears in part to be true. While noting that an important lead might rest with the man captured earlier by the union members, the siu director said his investigators had not been able to locate him, although he had the impression that ONUSAL had spoken with him.

As in the CNI case, the government's investigation failed to follow leads indicated to them publicly in ONUSAL reports. The SIU would like to attribute the failure to advance these cases to the lack of cooperation by the unionists, but a conspicuous lack of political will to investigate crimes implicating government forces would seem closer to the truth.

Conclusions and Recommendations

ONUSAL's multiple roles since the signing of the ceasefire — promoting human rights and overseeing the implementation of the peace accord — have been viewed by some in the mission as contradictory, when in fact the tension 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 — that the physical integrity of former combatants must be guaranteed as they lay down their weapons — but also if El Salvador is to accomplish the broader task of building a democratic society founded on accountability and the rule of law. In fact, the diverse roles of ONUSAL are complementary in many ways. Verifying that reforms in the military and police take place as scheduled is central to guaranteeing respect for human rights in the future. We therefore urge the police and military divisions of ONUSAL to oversee full compliance with the aspects of the peace accord under their jurisdiction, so that the structures that allowed human rights to be abused so massively do not persevere.

Moreover, we are unpersuaded that the diplomacy needed to ensure the implementation of the peace agreement requires the avoidance of public conflict with institutions of the state at virtually any cost. Clearly, there is a role for private overtures and quiet, even forceful diplomacy; but remaining silent about abuses, especially when diplomatic avenues have yielded no results, undermines the quest for accountability and removes other sources of public pressure that could be brought to bear upon the offending party. ONUSAL has yet to use fully the ultimate recourse of public censure, something which detracts from its effectiveness and allows perpetrators of abuse to escape broader detection. The need for disclosure is all the more acute

when the Salvadoran police and judiciary themselves fail to investigate or to adopt appropriate sanctions.

Many of the issues and conflicts discussed in this report have been the subject of a wide-ranging debate within ONUSAL over the best way to carry out its mission. In the interest of contributing to that debate, Americas Watch offers the following recommendations:

- 1) ONUSAL should use its leverage to promote human rights by more timely public disclosure of cases brought to its attention, as well as of official inaction in investigating or punishing the perpetrators. ONUSAL should more aggressively use its resources in the Police Division to actively monitor investigations by the Salvadoran police.
- 2) The acknowledgement that ONUSAL cannot substitute for governmental institutions does not mean that the mission should refrain from making greater efforts in the area of institutional reform. We recognize that certain steps have already been taken in this direction; but given the weakness of the peace accord in the area of judicial reform, we urge ONUSAL to continue recommending areas for change.⁷⁸

Moreover, given the centrality of reconstituting the security forces, we urge ONUSAL to become more intimately involved in the creation of the new National Civil Police, so that its promise on paper matches its actual evolution.

- 3) We are encouraged that ONUSAL has begun working with the newly-created Human Rights Ombudsman's office, which in the best of circumstances will adopt many of ONUSAL's functions when the mission leaves. We urge ONUSAL to help and support the Ombudsman's office in every way possible, so that it can establish its legitimacy and take a leading role in the defense of human rights in the post-war period.
- 4) We urge ONUSAL to live up to its earlier intention to carry out a vigorous educational campaign with the public, by devoting the appropriate financial and human resources to this aspect of the mission's work.
- 5) Given that tensions are likely to rise following the full demobilization of the FMLN and the beginning of the 1994 electoral campaign, we recommend continued, if not expanded support of the mission's Human Rights Division.

Irrespective of these recommendations, one must note that the success of ONUSAL in bringing about structural changes that will lead to a greater respect for human rights in Salvadoran society is fundamentally dependent on the political will of the Salvadoran government. The government must take seriously ONUSAL's recommendations, something which has been gravely lacking, and live up to its responsibilities to safeguard human rights.

Another measure of ONUSAL's success should be the strengthening of nongovernmental human rights organizations and other institutions of civil society, which have an important role

⁷⁸ The need for further judicial reform makes the work of the Commission on Truth, established under the peace accord, even more important; they have the power to make recommendations to the government that will help alleviate the systemic causes of human rights abuses over the last decade.

to play in the post-war period. ONUSAL should explore new ways to support their work.

On balance, we believe that ONUSAL and the United Nations have made extraordinary contributions to peace in El Salvador. Their success has been intimately linked to the desire of both sides in the conflict to find a negotiated, rather than a military settlement. The ability of the human rights mission to begin operations before the ceasefire likewise owes much to the cooperation of both sides; more important, however, was the willingness of the Salvadoran government to allow an international presence to assume some of the prerogatives normally only granted to state actors. Whether an effort such as ONUSAL can be reproduced in other contexts, therefore, depends much on whether these two minimum conditions obtain: the willingness of the warring parties to find a peaceful exit, and the willingness of the state to let the United Nations in.

It is painfully evident in the post-Cold War world that there are numerous candidates for U.N. involvement in human rights verification. When such cases arise, however, we would caution that serious attention be given to the kinds of problems encountered during the implementation phase of the Salvadoran experience. Provided that the means and methods utilized are adapted to local realities and not simply transplanted in a mechanistic fashion, we think that the United Nations can make a creative and positive contribution to the promotion of human rights in post-war situations as well as during the peace negotiations themselves.

* * *

This report was written by Americas Watch Associate Director Cynthia Arnson and Americas Watch Representative for Central America David Holiday. The authors would like to thank the many ONUSAL officials who so generously shared their time and thoughts about the work of the mission.

For further information:

Cynthia Arnson (Washington, D.C.) (202) 371-6592
David Holiday (San Salvador) 011-503-25-28-85

Americas Watch was established in 1981 to monitor and promote the observance of internationally recognized human rights. Americas Watch is one of the five regional divisions of Human Rights Watch. The Chair of Americas Watch is Peter D. Bell; Vice Chairs, Stephen L. Kass and Marina Pinto Kaufman; Executive Director, Juan E. Méndez; Associate Directors, Cynthia Arnson and Anne Manuel.

Human Rights Watch is composed of five regional divisions — Africa Watch, Americas Watch, Asia Watch, Helsinki Watch and Middle East Watch — and the Fund for Free Expression. Its Chair is Robert L. Bernstein; Vice Chair, Adrian W. DeWind; Executive Director, Aryeh Neier; Deputy Director, Kenneth Roth; Associate Director, Gara LaMarche; Washington Director, Holly J. Burkhalter; California Director, Ellen Lutz; Press Director, Susan Osnos; Counsel, Jemera Rone.

APPENDIX