

# El Salvador

Implementation of the Peace Accords

Edited by **Margarita S. Studemeister**



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UNITED STATES INSTITUTE OF PEACE  
1200 17th Street NW, Suite 200  
Washington, DC 20036-3011

Phone: 202-457-1700  
Fax: 202-429-6063  
E-mail: [usip\\_requests@usip.org](mailto:usip_requests@usip.org)  
Web: [www.usip.org](http://www.usip.org)

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## Key Points

The following key points highlight perspectives on the implementation of the El Salvador peace accords discussed at a December 1999 conference on the topic at the United States Institute of Peace. Readers are invited to consult the papers by five experts and the concluding summary of the discussion contained in the body of this publication for a more extensive and detailed treatment of key points below.

1. Under the auspices of the United Nations, twenty months of negotiations and a series of partial settlements between the government of El Salvador and the rebel Farabundo Martí National Liberation Front (FMLN) culminated January 16, 1992 in the signing of the Chapultepec Peace Accords in Mexico City. The implementation of the accords initiated a transition from war to peace and profoundly transformed political life in El Salvador.
2. El Salvador's peace settlement provided for a cease-fire; the demobilization of military and guerrilla forces; the establishment of the FMLN as a political party and the reintegration of its combatants into society; changes in the nature, responsibilities, and size of the country's armed forces; creation of a new national civilian police force and an intelligence service separate from the military; human rights measures; electoral and judicial reforms; and limited social and economic programs primarily benefiting members of the demobilized forces and war-ravaged communities.
3. Major accomplishments of the peace accords were the end of hostilities and political violence, the disarmament and demobilization of the FMLN, and the retreat of the military from politics, as the army was downsized and subjected to civilian control and its constitutional role confined to national defense. Eventually, the government purged high-ranking members of the military, and subsequently, an amnesty law, favored by both sides to the conflict, was passed, exempting all those responsible for extrajudicial crimes during the war.
4. Furthermore, three existing security forces under military oversight were dissolved and a new civilian police force under the Ministry of Public Defense was organized and deployed. Noteworthy was the adoption of a modern police doctrine focusing on the protection of citizens' rights and the development of the new force's crime-fighting capacity.
5. Experience shows that a disarmament and demobilization process must be intelligently designed and managed in order to prevent post-conflict violence and crime. In El Salvador, the demobilization of armed government and guerrilla forces left many combatants from both sides unemployed and maladjusted, contributing to a rise in public insecurity.
6. The conversion of the FMLN into a political party, and electoral reform as mandated in the accords, have led to unprecedented levels of political pluralism, highly competitive political processes, and free and fair elections, and more generally to vibrant political debates in El Salvador. Politics have been marked by partisanship,

party fragmentation, and the creation of a few new smaller parties, as well as by a number of initiatives seeking to build coalitions, dialogues, and national consensus.

7. The implementation of the peace accords also led to a dramatic improvement in the human rights situation in El Salvador. However, progress in implementing the wide-ranging recommendations of an international truth commission to prevent the repetition of past violence and promote reconciliation has been slow. And while the accords had a limited focus on the justice system, negotiators agreed to reforms aimed at augmenting the independence of the judiciary from other government branches and from political party control. Many recommendations of the truth commission also dealt with criminal and justice reform. These efforts preceded an enhanced impetus to the advancement of judicial reform in post-war El Salvador.
8. The United Nations played an unprecedented and critical role in peace-building in El Salvador, verifying the implementation of the peace accords, contributing to institution-building, and mediating to overcome a number of significant crises that arose during implementation. Throughout its engagement in El Salvador, the UN's role was guided by the principle of impartiality and an adherence to the peace accords in order to avoid a relapse into conflict.
9. In relation to Colombia, the Salvadoran peace process highlights the importance of the relationship between battlefield conditions and perceptions of parties to the conflict on the one hand and, on the other, the willingness of the parties to negotiate a political settlement. In contrast with El Salvador, Colombia's prior experiences with disarmament, demobilization, and reintegration of rebels into society are likely to influence the content of any agreement ending conflict there. Also unlike El Salvador, the mobilization of civil society for peace is already a significant factor in Colombia. A possible third-party role for the international community in Colombia, like that of the United Nations in El Salvador, remains to be seen. Meanwhile, in the United States, recent debates regarding assistance to Colombia reveal difficulties and choices that are reminiscent of policymaking towards El Salvador in the past.

## Introduction

**T**he largest offensive ever of the rebel Farabundo Martí National Liberation Front (FMLN), in November 1989, made evident the urgency of a negotiated settlement of El Salvador's protracted civil war. The Salvadoran military had been unable to defeat the rebels; the FMLN lacked the power to overthrow the elected government of Alfredo Cristiani—a costly stalemate. The murder of six Jesuit priests by the Salvadoran army during the offensive shook public opinion worldwide. Threatening a cutoff of military assistance to El Salvador, the United States pressured for peace negotiations.

Moreover, worldwide changes at the end of the Cold War impelled the negotiations beginning in early 1990. Nearly two years later, United Nations–brokered peace accords concluded a war that had claimed the lives of more than 75,000 Salvadorans, internally displaced another half million, and sent nearly one million citizens fleeing the country. The Chapultepec Accords, as they are known, signed on January 16, 1992, in Mexico City, culminated twenty months of negotiations and a series of partial settlements between the government of El Salvador and the FMLN.

At a December 1999 conference in Washington, D. C., the United States Institute of Peace set out to assess the significance of the implementation of the peace accords nearly ten years after the initiation of negotiations under United Nations auspices. The conference considered a number of important questions. To what extent have the constitutional reforms called for in the peace agreements consolidated the political transformation in El Salvador? What has been the impact of ambiguities, strengths, and weaknesses in the provisions encountered during their implementation? How did the third-party role of the United Nations (UN) contribute to the political transition? Do any troubling portents remain? Is the transformation durable and irreversible? What lessons from peace-building in El Salvador are applicable to other international conflicts?

Five distinguished experts guided discussions on a wide range of topics. Their papers, and a summary of the day's discussion by Fen Osler Hampson of Carleton University, are published here. The views expressed by the authors do not necessarily reflect those of the U. S. Institute of Peace.

The final El Salvador accords provided for the cessation of armed conflict by means of a cease-fire, the demobilization of forces, and the establishment of the FMLN as a political entity. Among the key provisions were a number seeking to transform the nature and responsibilities of El Salvador's armed forces. These included measures redefining the armed services' mission as the defense of El Salvador's territory and its sovereignty; placing the armed services under civilian control; and reducing their size, reorganizing them, and revising their training programs. Other stipulations addressed the creation of a new national civilian police force and intelligence service separate from the military, and reform of the judicial system to include a new judicial training school and an Office of

by  
Margarita S.  
Studemeister

National Counsel for the Defense of Human Rights. Political and economic clauses encompassed measures to transfer agrarian lands, with preference given former combatants from both sides and land occupants in contested areas, loans to the agricultural sector, measures to alleviate the social cost of structural adjustment programs, a forum for economic and social construction, and the National Reconstruction Plan. The accords also contained measures to guarantee former FMLN combatants full exercise of their civil and political rights and reintegration into society.

In her paper, human rights expert Margaret Popkin details the effectiveness of measures relating to human rights and judicial reform, examining the difficulties of addressing truth and justice issues in post-war El Salvador and transforming the judiciary into a functioning and credible institution accessible to all Salvadorans. Popkin concludes that the advancement of Salvadoran capacity to establish and uphold the rule of law is an essential and long-term process. Additionally, she points out that the reconciliation of the country's political elite is not a substitute for a broad national reconciliation based on truth and justice.

Gino Costa, former political advisor to the chief of the UN Observer Mission in El Salvador, reflects on his experience with police reform. Should the police force be placed under civilian or military control? Should it be reorganized, or dismantled, and its members purged or retrained? Should a wholly new police force be created? How do rising crime rates affect police reform and, ultimately, political transition? Costa argues that any country undergoing a transition from war to peace, from authoritarianism to democracy, should question the nature, organization, and role of its police forces.

Ricardo Córdova Macías, executive director of the Guillermo Manuel Ungo Foundation (FundUngo), a social science institute in San Salvador, reviews the implementation of the military and electoral reforms and the demobilization and conversion of the FMLN into a political party. He argues that the El Salvador peace accords inaugurated a change in the political regime by circumscribing the role of the military, defining new rules for access to political power, and fostering political pluralism. He contemplates the need for enhanced legislative oversight and citizens' involvement in military matters, the restoration of public trust and political participation, and a national development strategy that complements the political transition of El Salvador.

Teresa Whitfield, special assistant to the UN's assistant secretary-general for political affairs, reflects on the UN's unprecedented experience in El Salvador. From peacemaking, to monitoring and verifying implementation, to institution-building, was the role of the UN mission to El Salvador indispensable? What were the key successes and shortcomings of its mandate? What has been learned from the scope and length of UN involvement in El Salvador? To some extent, according to Whitfield, peace-building must occur in tandem with peacemaking; it cannot be conceived strictly as part of a sequential process—peacemaking to peacekeeping to peace-building. For best results, planning for peace-building should begin during negotiations, and, when the United Nations is involved, it should continue through the implementation of the peace settlement.

Cynthia Arnson, of the Woodrow Wilson International Center for Scholars, discusses the implications of the El Salvador peace process for Colombia. She stresses the importance of perception and choice rather than military conditions in shaping the political will



of warring forces toward peace negotiations. “Conditions on the battlefield may alter perceptions,” she writes, “but they do not necessarily generate sufficient political will to negotiate a settlement.” Arnson also underscores that the history of demobilization negotiations with rebel forces in Colombia suggests that any acceptable peace proposals there need to go beyond the political solutions attempted in the past. Further, while acknowledging the importance of involving civil society in any peace process, she is cautious about the leverage of the international community, asserting that “no international body can substitute for the political will of the contending parties.”

Fen Osler Hampson of Carleton University summarizes the discussion and the recommendations contributed by conference participants, including measures to strengthen human rights and judicial reform, public security, and democratic development in El Salvador. This discussion, and the experts’ papers, confirm that there are many lessons to be learned from the implementation of the peace accords in El Salvador—lessons that speak not only to the people of El Salvador themselves but also to the wider Latin American community and the world.

Many thanks to those who contributed to the organization of this conference and to this publication: U.S. Institute of Peace Vice President Charles Nelson; Patrick Cronin, director of the Institute’s research and studies program; William Stuebner, formerly of its rule of law program; Debbie Liang-Fenton of the Human Rights Policy Project at the Institute; research and studies program assistant Christina Zechman; and the Institute’s publication and marketing department staff. Special thanks to the authors of the papers, and to commentators and attendees who generously gave their time and shared their valuable thoughts and expertise during the conference. Commentators included the Honorable Bernard Aronson, Ambassador Mauricio Granillo Barrera, Phillip Chicola, Louis DuPart, the Honorable Gerson Martínez, the Honorable James McGovern, Aryeh Neir, and Margaret Sarles.

## Two

### Building the Rule of Law in Post-War El Salvador

by  
Margaret  
Popkin<sup>1</sup>

Implementation of the Salvadoran peace accords related to human rights and justice has been fraught with difficulties stemming from a lack of political will to carry out particular reforms and, in some cases, inadequacies in the accords themselves.

International involvement was crucial to the success of the Salvadoran peace process, but the manner in which it was provided did little to build Salvadoran capacity to promote, implement, or monitor reforms, and contributed to a lack of Salvadoran “ownership” of the process.

An unprecedented post-war crime wave has further complicated the situation in El Salvador, straining the capacities of the new civilian police force and of the justice system. Public insecurity—both real and perceived—is so great, and the institutional capacity to respond so inadequate, that increasing numbers of Salvadorans are calling for more authoritarian measures. This situation threatens the democratic gains produced by the peace process.

#### Overcoming Impunity for Past Human Rights Violations

In April 1991, both the FMLN negotiators and the Salvadoran government accepted a UN proposal to form a truth commission to examine the “serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth.”<sup>2</sup> Although it was not written into the January 1992 peace accords, all Salvadoran political parties also agreed that a broad amnesty would follow. The January 1992 “National Reconciliation Law” legalized the situation of FMLN leaders and paved the way for a delayed general amnesty.<sup>3</sup> After lengthy and difficult negotiations, the parties also agreed to form an Ad Hoc Commission to review the records of military officers and make binding recommendations for the transfer or dismissal of those found responsible for human rights violations or otherwise unfit to continue in the armed forces.

#### The Ad Hoc Commission

The Ad Hoc Commission, made up of three respected Salvadorans appointed by the UN secretary-general, was initially given ninety days to carry out its task, which was completed in late 1992. The Ad Hoc Commission focused on the higher echelons of the military hierarchy and, in its confidential report, recommended the transfer or discharge of 103 officers, including virtually the entire High Command.<sup>4</sup> While the government substantially complied with most of the recommendations, it refused to remove some of the most senior officers named. It was not until April 1993, after the Truth Commission’s report was issued and significant international pressure was brought to bear, that the govern-

ment advised the United Nations of its plan to implement the remaining recommendations.

The Ad Hoc Commission's unanticipated decision to focus on the highest ranking officers increased the symbolic impact of its work at the same time that it heightened resistance to implementation of its recommendations. The commission's work, though limited in scope by the time and resources available, constituted an unprecedented civilian review of the military.

Military officers, while apparently unrepentant about the human rights abuses committed by the army, generally seem to have accepted the new doctrine and the limited role of the armed forces as defined in the peace accords. Reports on human rights violations no longer find the army to be a major perpetrator of abuses. With little reason for concern about the possibility of prosecution for human rights crimes in El Salvador, former military leaders, including some named by the Truth Commission, are active in politics and business.

### The Truth Commission

The Truth Commission for El Salvador issued its powerful report on March 15, 1993. It included specific findings on thirty-two particularly notorious or representative cases, and implicated virtually the entire High Command of the Salvadoran Armed Forces in the November 1989 murder of six Jesuit priests, their cook, and her daughter. The report attributed the vast majority of violations to agents of the Salvadoran state, although it did find that the FMLN had also committed serious violations.

Despite intense lobbying by the Salvadoran government, the Truth Commission concluded that its mandate to disclose the complete truth required it to name those responsible for abuses when they could be identified.<sup>5</sup> The commission's broad mandate also allowed it to make far-reaching, binding recommendations designed to address its findings; strengthen state institutions; eradicate the structural causes of violence; overcome impunity; prevent the repetition of past violence; and promote reconciliation. More than half the commission's recommendations addressed problems in the justice system.

The negotiating parties' decision to rely on a wholly international Truth Commission both helped and limited the process.<sup>6</sup> Many Salvadorans maintain that it would have been impossible to have an impartial Salvadoran or mixed commission. The international composition of the commission undoubtedly made it easier for many people to come forward and facilitated international technical assistance. However, without Salvadoran involvement in the commission and with limited Salvadoran input, the Truth Commission in no way constituted a national process. In contrast, the Guatemalan Historical Clarification Commission, which carried out its work five years later, was a mixed (international and Guatemalan) commission that involved Guatemalan civil society in its work and the presentation of its findings.

The Truth Commission delivered a scathing indictment of the Salvadoran judiciary and concluded that undertaking prosecutions without significant judicial reform would be counter-productive. The commission recommended the immediate replacement of the entire Supreme Court, and called for the removal from public office of officers and civilians found responsible for abuses. It further recommended barring them from serving in

any public capacity for a period of ten years, with permanent disqualification from any activity related to public security or national defense. The Salvadoran government's reaction was swift and negative: it maintained that the commission had exceeded its mandate and called for an immediate and sweeping amnesty to prevent any prosecutions for human rights abuses committed during the armed conflict.<sup>7</sup> Only those officers who had already been named by the Ad Hoc Commission were forced to retire from the military.

The Truth Commission was given an assignment that exceeded the abilities of a body constituted for only a six-month period. The parties to the negotiations had called on it to make the complete truth known and strengthen the means and resolve to establish the truth; to overcome impunity on the part of officers of the armed forces; to achieve quick results without preempting the role of the courts; and to promote reconciliation. The commission addressed itself to a group of representative cases, well aware that it could not address all episodes of abuse. Clearly, its timetable and mandate had more to do with political considerations than with directly addressing the needs of victims.

The Truth Commission for El Salvador spawned one internal successor: the Joint Group for the Investigation of Illegal Armed Groups, established in late 1993 to investigate the continued existence of death-squad-like structures. Few of its recommendations were heeded; organized criminal structures, some of which evolved from death squads, remain a key public security problem. The challenge for a temporary body like the Truth Commission is to find ways to help state institutions assume their responsibilities rather than to inadvertently encourage them in the assumption that they have been adequately addressed by the special commission. This task was complicated in El Salvador because state institutions and political actors in general lacked the political will to do anything more. Ideally, a temporary commission should facilitate a longer-term societal process, not become a substitute for it.

The commission's investigations and report constituted an important, if limited, advance in determining the truth and making it known. Unfortunately, its work became a substitute for any other official effort to address the legacy of atrocities committed during the conflict. Since the Truth Commission's report, there have been no prosecutions, no moral or material reparations, no official efforts to determine the fate or whereabouts of the disappeared, and no official acceptance of responsibility for abuses that occurred during the war. The Truth Commission's recommendations to promote national reconciliation were "largely ignored," and with no great insistence coming from Salvadoran society, the United Nations itself did not place great emphasis on them.<sup>8</sup>

The remarkable political reconciliation in El Salvador, contrasted with the failure to provide the basis for reconciliation to the population that suffered most, suggests two competing views of what constitutes reconciliation. New-found tolerance of political differences and guarantees of the exercise of free speech and association have allowed former battlefield foes to bury the past and work together in the new civilian police and the legislative assembly. Yet the vast majority of the population that suffered the brunt of the violations during the war has had no chance to obtain the truth or justice that could serve as a foundation for forgiveness and reconciliation.

Salvadoran non-governmental organizations (NGOs) have not insisted on the need for truth and justice as effectively as their counterparts in Argentina and Chile, or even in

neighboring Guatemala. An important exception is the work of the Association in Search of Missing Children (Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos), formed in 1994 by families whose children had been taken away by the military or otherwise separated from their families during the war. Culling through orphanage and adoption records, collecting witness testimony, and using DNA tests to confirm suspected matches, Pro-Búsqueda has succeeded in locating more than 100 children in other countries and in El Salvador.<sup>9</sup> The courts have been reluctant to get involved in this endeavor and the military has not been forthcoming with information.

In an attempt to preserve historic memory, a number of Salvadoran human rights NGOs have joined together and in 1998 persuaded San Salvador's mayor to set aside part of the city's Cuscatlán Park for a monument to the civilian victims of the war. In early 2000, forensic anthropologists began a renewed effort to locate and exhume the remains of the victims of the "El Mozote" massacre, an effort that had been suspended in the wake of the 1993 amnesty law. Following the decision of the Inter-American Commission for Human Rights, the Jesuits asked the attorney general to reopen the Jesuit murder investigation, to prosecute those responsible for ordering and covering up the 1989 murders. The attorney general initially declined to reopen the case, maintaining that he had to await the Supreme Court's response to petitions challenging the constitutionality of the 1993 amnesty law.

### The Salvadoran Amnesty Law

Salvadoran military and political leaders have described the amnesty as the embodiment of reconciliation and an end to the discussion of the past. Many consider it a major achievement of the peace process and stress the need to forgo investigations of past human rights abuses and to impose a veil of forgetting and forgiving.<sup>10</sup> While politically expedient and advantageous for those who might have to answer for past crimes, such positions fail to take into account the rights of victims and survivors and the requirements of international law applicable in El Salvador.

Immediately following passage of the amnesty law, Salvadoran NGOs petitioned the Supreme Court to find it unconstitutional. The Court dismissed their challenges by terming the amnesty a political question not subject to judicial review.<sup>11</sup> The Inter-American Commission on Human Rights (IACHR) has found that El Salvador's sweeping amnesty law contravenes its obligation to investigate, prosecute, and sanction those responsible for human rights violations under the American Convention on Human Rights.<sup>12</sup> The IACHR has specifically stated that the Truth Commission process did not relieve El Salvador of these obligations.<sup>13</sup>

In the case of El Salvador, the international community largely accepted the amnesty law. The UN secretary-general expressed concern, noting that it would have been preferable to have achieved a broad degree of national consensus before approving an amnesty law.<sup>14</sup> The United States did not oppose the amnesty law, but did challenge its application in cases involving the murder of U.S. citizens.<sup>15</sup> Although the United States was the principal donor involved in justice reform in El Salvador at the time, it clearly did not perceive that efforts to reform the administration of justice cannot be divorced from justice for human rights violations, past and present.<sup>16</sup>

However, reliance by the international community and domestic courts on the jurisprudence of the Inter-American Court and Commission on Human Rights implies that a state cannot use an amnesty law to abrogate its obligation to investigate, prosecute, and punish serious violations of human rights, and that a Truth Commission is not an adequate substitute. Recent treaties have placed specific obligations on states to investigate and prosecute those responsible for torture, forced disappearances, and violence against women.<sup>17</sup>

Courts in Argentina and Chile, for example, taking account of international law developments, have both recently ruled that forced disappearance is a continuing crime for which responsibility cannot be extinguished even if the fate or whereabouts of the victim has not been established. In October 2000, the Salvadoran Supreme Court finally ruled on the constitutional challenges to provisions of the 1993 amnesty law. Although the Court found that the amnesty law was not unconstitutional *per se* as it could be applied in a manner consistent with other constitutional provisions, the court rejected its predecessor's position that the amnesty law was not subject to its constitutional control. The Supreme Court's decision clarifies that lower courts must analyze any cases involving crimes that might be subject to amnesty to determine whether the amnesty can constitutionally be applied to the case at issue.<sup>18</sup>

In El Salvador there is a widespread belief that it is not possible to do anything more about the past. After all, proponents of this view maintain, both sides inevitably commit terrible abuses in wars, and the best thing to do is to bury the past and make changes to ensure that it cannot be repeated. Whether this can be achieved without addressing the past more fully is a debatable question. The failure to adequately address the legacy of past human rights atrocities leaves open the possibility that demands for justice will resurface, as they have in Argentina and Chile. It also leaves open the possibility that foreign courts will choose to exercise universal jurisdiction to hold those responsible accountable.

### **The National Counsel for the Defense of Human Rights**

The constitutional reforms negotiated during the peace process called for the appointment of a new National Counsel for the Defense of Human Rights, with a broad mandate to oversee the country's human rights situation and the conduct of state institutions in regard to human rights. The Salvadoran Legislative Assembly appointed Carlos Molina Fonseca as the first National Counsel for the Defense of Human Rights in February 1992. Molina Fonseca had little experience in the human rights field, though his staff included a number of people with backgrounds in human rights. After a slow start, the institution opened offices throughout the country, and during 1994–95, the last year the United Nations Observer Mission in El Salvador (ONUSAL) was present, the mission worked closely with the National Counsel's office.

When Molina Fonseca's term ended in 1995, the Legislative Assembly appointed Victoria Marina Velásquez de Avilés, then the Deputy National Counsel for Children, as the new National Counsel for the Defense of Human Rights. During her tenure, the office took on a prominent role in defending human rights. She spoke out against abuses committed by state authorities and against efforts to reinstate the death penalty; investigated and published reports on a number of sensitive cases that police had failed to investigate



adequately (including some in which police officers were found to have been involved); and successfully challenged the constitutionality of provisions of emergency anti-crime legislation. Throughout her term, Velásquez de Avilés maintained close relations with human rights NGOs and women's organizations. As her three-year term drew to a close, it was clear that the governing Nationalist Republican Alliance (ARENA) party would not countenance her re-election, and she decided to vie for the FMLN presidential nomination in the 1999 elections.

In 1998, after lengthy delays and discussions, the political parties in the Legislative Assembly, including the FMLN, appointed appellate judge Eduardo Peñate Polanco to the human rights post. Previously unknown in human rights circles, Peñate Polanco turned out to have had a number of complaints lodged against him for his conduct as a judge. Concerns about Peñate's qualifications were borne out by his performance as National Counsel. Resorting to wartime rhetoric, he publicly labeled dissenting staff members "communists."<sup>19</sup> Key staff members with significant training and experience were forced out of the institution. Questions were raised about the institution's use of funds and excessive and unnecessary travel expenditures. The office's profile was significantly lowered, with far fewer cases investigated and resolutions issued. Most international donors suspended funding to the institution, and the damage to the institution, which was by no means consolidated, was incalculable.

Realizing that it had made a serious mistake with this appointment, in late 1999 the legislature assigned a commission to examine Peñate's performance. The undermining of the National Counsel's office represented a very serious threat to one of the key human rights guarantees established by the peace accords. In early 2000, facing legislative action to remove him from office, Peñate resigned. As the year drew to a close, the legislature had yet to name his successor.

## Justice Reform

Despite the peace accords' limited focus on the justice system, all parts of the justice system have been the focus of reform efforts in the post-war period. Ongoing reform efforts led by the Ministry of Justice, which were funded and promoted by the United States Agency for International Development (USAID), received new impetus as the peace accords were implemented and the climate for reform improved significantly. The United Nations, through ONUSAL and the permanent UN Development Program mission, also began to look for ways to encourage justice reform, although not always in coordination with ongoing U.S.-funded efforts.

The peace negotiators had agreed to reforms designed to increase the independence of the judiciary from other branches of government and from political party control.

In an attempt to end one-party domination of justice sector institutions, negotiated constitutional reforms introduced a requirement that Supreme Court justices, the attorney general, the state counsel, and the newly established National Counsel for the Defense of Human Rights all be elected by a two-thirds majority of the Legislative Assembly.

Although these reforms established new procedures for nominating Supreme Court justices and lower court judges, the latter were still to be named by the Supreme Court. Constitutional reforms also enhanced the independence of the National Judiciary Coun-

cil, formerly essentially an appendage of the Supreme Court, and gave it responsibility for nominating and evaluating judges and running the Judicial Training School. The Supreme Court retained the power to appoint lower court judges and to suspend, transfer, and remove them. It also retained responsibility for the administration of the judicial branch and for overseeing the legal profession. The accords called for a reformed judicial career law and a new Judicial Training School.

The Truth Commission's recommendations called for the National Judiciary Council to carry out a thorough vetting of all judges and for the removal of those found unfit. It also urged that supervision of the legal profession be removed from the control of the Supreme Court.

While the Truth Commission's call for the immediate replacement of the Supreme Court had been roundly rejected as violating the Constitution, it may have helped to ensure that an entirely new Supreme Court was selected in June 1994 (when the former Court's term expired) and that professional experience was taken into consideration in the selection process. Alignment with particular political parties remained an important factor, but the new Court was no longer controlled by a single political party. In the post-war years, as the judiciary and the legislature have taken on roles more independent of the executive branch, they have often entered into conflict with one another, and the legislature has sought to review some of the Court's actions.

The National Judiciary Council has gone from being a virtual appendage of the Supreme Court to including no representatives of the judicial branch. The legislature's decision to exclude the judiciary from the Council is controversial and runs counter to attempts elsewhere in the region to promote judicial self-governance. Under the new enabling legislation, the Council has been granted administrative autonomy but it has not been given the power to implement its recommendations either to sanction or to appoint judges. The Supreme Court retains responsibility for judicial appointments, transfers, and discipline, as well as supervisory responsibility over the legal profession.

Public opinion surveys indicate that El Salvador's judiciary still enjoys very little public credibility. Despite regular evaluations, relatively few judges have been removed from office and the renewal of the judiciary envisioned by the Truth Commission has not taken place. In part, this situation reflects the difficulty of producing rapid change in the legal and judicial culture. Unlike the police, the judiciary cannot be wholly replaced by new recruits intensively trained over a six- to twelve-month period. Building a legal culture based on respect for human rights and equal protection under the law is inevitably a long-term process, complicated by the resistance to change.

### **Criminal Justice Reform**

Although the first substantive accord between the FMLN and the Salvadoran government, the San José Accord on Human Rights of July 1990, included protection of individual rights, the Chapultepec Accords did not include any criminal justice reforms. The Truth Commission addressed the need for criminal justice reform, endorsing the Justice Ministry's USAID-funded reform efforts, which began focusing on criminal justice reform at the same time that the peace negotiations were under way and led to the drafting of mod-



ern criminal, criminal procedure, and sentencing codes after the peace accords were signed.

The inclusion of recommendations about criminal justice reform in the Truth Commission report opened the door for UN verification of the reform process. In late 1996, after the United Nations exerted substantial pressure on Salvadoran authorities, the reformed codes were finally approved. The new codes, which took effect in April 1998, sought to transform the Salvadoran criminal justice system into a more adversarial, transparent, efficient, oral process, with greater protection for individual rights.

The new Criminal Procedure Code represents a radical change from the traditional “inquisitorial” written process to an adversarial oral process. It has separated judicial investigative and sentencing functions and given prosecutors and defense attorneys far greater roles. It also provides greater protection for individual rights and gives victims a greater role in criminal proceedings. The reforms sought to limit the use of preventive detention, introduce the notion of prosecutorial discretion, encourage conciliation between perpetrators and their victims, and encourage alternative sentences. Under the new code, an extra-judicial confession can only serve as evidence if the suspect has had a chance to consult with counsel and counsel is present when the confession is made. The new law also guarantees the right to defense from the beginning of proceedings, strengthens the presumption of innocence, and seeks to ensure strict compliance with time limits for detention. Despite these provisions, the percentage of prisoners without sentences remains high. Statistics from May 1999 showed a prison population of 7,027, out of which 1,576 inmates (22.43 percent) were serving sentences, while 5,451 (77.57 percent) had yet to be sentenced.<sup>20</sup>

A year after the new laws went into effect, Minister of Public Security Hugo Barrera described the new codes as “the principal public security problem, as they give exaggerated protection to criminals,” and blamed the codes for the failure to adequately control common crime.<sup>21</sup> Police complained that their hands were tied by the new codes’ requirements regarding searches and detentions. Dozens of reforms to the new legislation have been presented and many have already been approved. Although the draft laws were available and in circulation for several years before they were approved, it was not until they entered into effect that many provisions were questioned. Important advances in the new codes, including the greater transparency and efficiency of oral proceedings, the reduction in the number of pre-trial detainees, and the separation of responsibilities for investigation and sentencing, have not been adequately recognized.

The new civilian police force, while clearly an enormous improvement over its predecessors, has proven woefully inadequate to address El Salvador’s soaring crime rate—scores of police officers have themselves been killed. The crime wave needs to be addressed on many fronts. While post-war El Salvador is awash with weapons and people who know how to use them, virtually nothing has been done to limit the flow or possession of weapons. And Salvadoran authorities have been slow in establishing and implementing an integrated crime prevention strategy and targeted crime prevention measures. Longer-term measures contemplated include improved educational, recreational, and employment opportunities for youth; anti-violence campaigns in the media; and other

measures designed to address the socio-economic causes of crime need to be implemented.

But legitimate concerns about the current crime wave should not be allowed to undermine the democratic model of policing established by the peace accords or the new criminal justice codes. The new laws mandate a massive transformation of the criminal justice system, and it is far too soon to judge the results. There is cause for concern, however, that in the name of fighting crime, many of the guarantees included in the new codes may be undermined.

### **The Attorney General's Office**

Other than assigning the responsibility for directing criminal investigations to the attorney general's office, the peace accords failed to address the need to reform the institution. The constitutional reform which set aside six percent of the national budget for the judiciary did not include the attorney general's office or the public defenders' office, leaving them seriously underfunded in both real and relative terms, particularly in light of the responsibilities assigned to them under the new Criminal Procedure Code. International donors, notably USAID, focused on the need to restructure the attorney general's office and provided extensive training to both prosecutors and public defenders.

The legislature deadlocked in 1999 when it had to appoint a new attorney general or reappoint the incumbent by the two-thirds majority mandated by the peace accords. Four months of partisan wrangling ended when the legislature named the new attorney general, Belisario Artiga, on November 24. After consulting with a number of civil institutions to obtain names of suitable candidates, the legislators ignored their recommendations and eventually appointed Artiga, who was close to the ARENA party but had limited criminal law experience. With political considerations prevailing, the legislators were again unable to agree on any of the more qualified candidates, including the incumbent.<sup>22</sup>

### **Conclusions**

Despite the political logic of the peace accords, the reconciliation of political elites that has former battlefield foes working together in the Legislative Assembly is not a substitute for a broader reconciliation based on truth and justice. The imposition of a policy of burying the past, after the Truth Commission's work was completed, has left thousands of families with no way to find out what happened to their loved ones, much less to seek justice or compensation.

The Truth Commission was able to address many of the justice issues neglected in the accords, but did not necessarily reflect a Salvadoran consensus. Some issues, such as the need to transform and strengthen the institutions responsible for prosecutions and public defense, or make justice truly accessible, were not addressed.

The Salvadoran peace process benefited from enormous international involvement, particularly by the United Nations and the United States. Between 1993 and 1998, El Salvador received almost \$41 million in U.S. rule of law funding, making it the third largest recipient in the world during that period. At the time of the peace accords, most justice sector institutions had little political will to undertake serious reforms. The United Nations did not make a concerted effort to identify those institutions interested in reform, or

to work on building the capacity of NGOs to contribute to institution-building. The United States, the principal donor involved in justice reform, neither called for justice for past human rights violations nor consistently embraced the Salvadoran priorities reflected in the peace accords. Salvadoran institutions, for their part, failed to capitalize on the technical assistance available.

In particularly controversial or difficult areas, including many aspects of justice reform, international donors could assist by creating opportunities to learn about other (particularly Latin American) experiences with different reforms. Likewise, confronting the post-war crime wave requires ongoing study of different measures and their effectiveness. Faced with a massive crime wave and calls for authoritarian measures, El Salvador must rise to the challenge of developing comprehensive anti-crime policies consistent with international human rights norms, at the same time maintaining key democratic reforms.

Although the Legislative Assembly now includes political parties representing a broad political spectrum, it has yet to rationalize its legislative processes. Laws are seemingly approved, and reformed, and reformed again without serious consideration of the consequences. The legislature remains unable to fill important positions based on the qualifications of candidates rather than on political considerations, and therefore tends to select less qualified—even completely unqualified—candidates.

The Salvadoran experience has shown that guaranteeing the independence of the judiciary from the other branches of government is an essential but insufficient step to transform it into a credible institution. Such a transformation is, of course, a long-term process. In this sense, building Salvadoran capacity to propose, implement and oversee reforms becomes particularly important. Reforming and strengthening legal education becomes key, so that future generations of lawyers will have a different conception of their role and that of the justice system. Educating the public about the roles of the different institutions in the justice system and improving access to justice are also essential to building a more democratic system. Thus El Salvador still faces the serious challenges of consolidating a credible and reliable justice system, accessible to all Salvadorans.

## Three

### Demilitarizing Public Security

#### Lessons from El Salvador

by  
Gino Costa

**T**he transformation of public security was a key component of El Salvador's peace-building, aimed at preventing a recurrence of armed conflict there. Such transformation was intended to end human rights abuses committed by, and to overcome the impunity of, the security forces, so it was not exclusively or chiefly a technical police matter but eminently political. It confronted the powerful interests of those who, inside and outside the security forces, benefited from the status quo both politically and economically. Police reform had to be carried out to a great extent against their will and that of their political allies.

Public security reform was one of the concessions relating to institutional transformation that the government had to make to the Farabundo Martí National Liberation Front (FMLN) in exchange for their demobilization. It is paradoxical that peace-building fell to a government that could see no advantage in institutional change. None of the reforms in El Salvador's peace agreements were part of then-President Alfredo Cristiani's electoral platform, or his plan of government, nor did they become his own projects. And the same could be said of his successor, President Armando Calderón Sol.

For its part, the FMLN was acutely aware of the risk of losing its leverage by agreeing to a cease-fire and demobilization before the Salvadoran government began to fulfill its obligations under the accords by implementing public security and other reforms. It was to offset this imbalance that the FMLN turned to the United Nations (UN).

The United Nations was called upon to compensate for the power imbalances between the actors during the implementation period. This explains the constant pressures the UN put on the government and the difficult relations between them. As many of the government's obligations, including public security, dealt with matters of sovereignty, not a few persons and institutions regarded the UN's role as an unacceptable interference in El Salvador's internal affairs.

#### The Need to Demilitarize Public Security

Questioning public security structures is a necessary exercise, especially for countries moving from war to peace, or from authoritarianism to democracy. In El Salvador and other countries, the transformation of public security was part of a negotiated solution to an armed conflict. It served as the *sine qua non* of a political settlement that facilitated the incorporation of political forces in confrontation with the state. Additional reasons justify public security reform.

In El Salvador, the lack of political control over the security forces—and over the armed forces to which they belonged—translated into grave violations of human rights,

and apparently into large-scale corruption in the management of resources. Corruption led to the subordination of duty to the need for profit, affecting efficiency and performance. With the end of war, the illegal forces of political repression within the security forces turned into criminal gangs involved in common crime and equally willing to commit politically motivated crimes.

The El Salvador experience shows that the reluctance of the old forces to disappear had to do not so much with concern for public security as with their members' desire to preserve their privileges and prerogatives. The survival of the security forces actually became a cause of insecurity, not only because of the corruption and criminal activity of many of their members but because of the inefficiencies thus created in the whole body.

Citizens' rights aside, corruption and crime undermine peace and democracy, and are not the best features of a force that needs to inspire trust in the public it is meant to protect. The challenge of dealing with increasingly widespread crime, ordinary and organized, is a major concern of governments and citizens throughout Latin America today.

Curiously, none of the legislative reform processes in Latin America in the last decade have addressed the issue of reforming the security forces, still less the military. This is an indication of the low level of control Latin American societies have over their police and military, reflecting a legacy from years of authoritarianism and conflict. In many cases, the legacy is even older and creates an obstacle not only to democratic but especially to economic and social development.

In fact, not only political reasons justify the transformation of the security forces. Their high degree of autonomy translates into inefficient resource management and deficient public service, forcing those who can afford it to invest directly in private security providers. The absence of accountability of official security forces further aggravates large-scale corruption. Now that most large state companies in Latin America have been privatized, the security forces are the most inefficient of the surviving state entities. Since they cannot be privatized, they must be modernized. To fail to do so would be contrary to efforts to streamline public spending and to make state services more efficient.

### **Dilemmas of Police Reform**

Panama, in 1990, and Haiti, in 1994, opted for civilian police forces, in response to the collapse of their discredited armed forces, until then the guarantors of internal order. El Salvador did the same at the negotiating table in 1991, in an effort to demilitarize the state and public security. But all three faced the same dilemmas, as did Guatemala and Honduras. Other of the region's countries may encounter the same predicament in the future. Mexico, for example, has an almost overwhelming problem with corruption in its various police forces, and Brazil's Military Police have been widely implicated in the illegal use of force for what is called "social cleansing."

El Salvador's experience has shown, better than any other attempt at transforming public security, what these dilemmas are, and how to respond to them and the corresponding dangers. Generally, the success of police reform depends on how three main challenges are handled. The first concerns identifying the most feasible and enforceable police model and doctrine. The second concerns the depth of the institutional changes to be made—whether to retrain few or many current personnel, or whether to start over

entirely. The third challenge lies in the time the reform takes, in other words, the transition period.

### **The Police Model**

The reform process must first identify the type of police force required; how police are to be selected, trained, organized, and supervised; the force's position within the state structure; its relationship with the military; the nature and source of its authority; and its links with the community. The doctrine of the new El Salvador civilian police force is one of the most advanced of its kind and a remarkable achievement of the El Salvador peace process. It is both civilian and democratic, because it understands police activity as a public service geared to protect citizens so they can exercise their lawful rights and liberties. Respect for citizens' rights, along with efficient crime fighting, are the central elements of this interpretation of police functions.

Imbuing a civilian police force with democratic principles and values is no easy feat. In Latin America, public security has traditionally been the task of the military, and until relatively recently, the functions of the military and police were difficult to separate. Armies guaranteed external and internal security at the same time. The involvement of Latin American militaries in counter-subversion since the 1960s and their more recent participation in counter-narcotics activity has helped blur the line between police and military action even more.

The militarization of public security means that civilians are excluded, either directly or because they delegate the responsibility. The effect is that civilians know little about these matters as they exist, and, even less about democratic public security. Any civilian reform of Latin American police forces will therefore confront not only resistance from the military, but, as in El Salvador, from those civilians who have not imagined alternatives. What is more, reformers will have to deal with non-democratic political cultures that do not facilitate change, because in Latin America police forces have traditionally wielded unlimited power. Against this backdrop, the creation of a police force respectful of the rule of law and of citizens' rights, and under public control is a considerable challenge.

### **The Depth of Reform**

The second hurdle concerns the existing security forces. Panama and Haiti opted to create new forces, simply because there were no civilian police forces. In El Salvador, the three existing security forces were dissolved, two of them at once and the third gradually, while the new civilian police force was organized and deployed. Although at first it was thought sufficient for the National Police to clean up its own personnel and reorganize itself, technical advice from the United Nations contributed to the decision to create a new force. This was a wise decision, given the appalling inefficiency of the old security forces and their high degree of corruption. Internal deterioration and public distrust of the old structures—not to speak of the fear and terror they inspired in the population—fully justified this.

The creation of a new security force usually seems the most expensive option, and slow and inefficient in comparison with the option of reorganizing or restructuring current forces. This may be so in the short term, but in the long term it is economically more

viable and faster, because when a force is unsound and out of control as a result of years of abuse of power and corruption, there is little that re-engineering can be expected to do.

More recently, Guatemala and Honduras have encountered the same dilemma. Of all Central American security forces, Guatemala's were clearly the most corrupt and discredited, yet Guatemala has ignored various international missions' diagnoses of the condition of its security forces, and international experience of police reform. With the enthusiastic support of the Spanish Civil Guard, the government has decided to change the name of the National Police and retrain the personnel with a few courses. Time will tell if it was the right decision.

Generally, decisions about reforming or dissolving existing security forces should result from objective diagnoses that identify institutional strengths and weaknesses. In some cases, they are already so discredited that it is easy to create consensus for their dissolution. However, it is often difficult to make such a diagnosis because the organizations themselves provide the information, which tends to be not only scant, but biased. Hence, analyses of necessary change, if they are to be objective and dispassionate, must be made by people outside the institution and must go hand in hand with an independent audit. Only then will it be possible to know enough to determine the direction of the reform.

If a wholly new force is to be created, the disposition of existing staff must be determined. Panama, Haiti, and El Salvador decided to incorporate the old personnel into the new forces. In Panama, after the defense forces were purged, remaining members were transferred to the new national police force. El Salvador and Haiti have tried to limit the number of police transferring into the new force. The difficulty of such a process is, again, the lack of reliable information about the policemen being evaluated, since the information comes from the very institution subject to reform.

Arguments for retaining former policemen cite the convenience of not wasting their experience or the limited resources spent on training them. But the experience retained usually goes together with all the defects institutionalized in a deteriorating police force. If this is the case, the influence of such staff on the new force will be more pernicious than positive, perpetuating in it precisely those vices that were to have been reformed.

## The Transition

The third challenge concerns the length of the transition period. The reforms in Panama, Haiti, and El Salvador had extremely short transition periods, by force of circumstance. Following military interventions in Panama and Haiti, the collapse of public order made it imperative to speed up the preparation of a new police force, with serious consequences for selection and training. In El Salvador, the FMLN's distrust of the old forces made it necessary to agree on a two-year transition which, while certainly longer than earlier similar processes, was nevertheless dramatically short. In future police reform processes, the pressure of time is unlikely to disappear, because if a police force must be dissolved, it is best to replace it as soon as possible. At any rate, the longer the transition, the better the selection and training of new personnel, and the easier it will be to manage the demobilization of the original forces.

The El Salvador experience shows that a badly managed demobilization process can contribute to a significant deterioration in public security. This is not a good reason to



avoid the dismissal of bad policemen; quite the contrary. Nevertheless, we should not be unprepared for criminal action on their part when they see that avenues of power and graft are closed. Hence police demobilization is a process to be handled intelligently. The demobilized must be given adequate compensation, offered new jobs, and trained for them, though the most actively corrupt are, of course, unlikely to find much benefit in such opportunities.

In post-war El Salvador, many organized gangs appeared in the cities and the countryside, becoming the chief source of public insecurity. Despite government rhetoric, little was done to tackle them, because in the effort to create a new police force, the immediate creation of expert detective units was not given its due. As in all post-war periods, a high number of demobilized soldiers, policemen, and combatants swell the ranks of the unemployed and maladapted, increasing unrest and insecurity. To prevent this, future reform processes must give priority to the development of a criminal investigation capacity to disband organized gangs efficiently. The course followed by Honduras seems wise—an efficient criminal investigation force was set up first, and the transformation of the police force followed.

Another critical issue, perilously neglected in the El Salvador transition, was the control of arms—especially war weapons—in private hands. If, in addition to a high number of demobilized men, there are thousands of war weapons in the hands of civilians, the existing security crisis will be all the more violent and lethal. Any reform effort in post-war societies should be accompanied by a strategy for decommissioning weapons in private hands. Countries such as Haiti and Nicaragua have implemented more or less successful programs for disarming the civilian population in exchange for economic benefits. And creation of an efficient and effective police force will convey to citizens that the state in fact will be able to protect them from crime.

Private security companies should be another source of concern. Recent dizzying development of these companies worldwide is a general and indisputable phenomenon and the clearest evidence of the growing privatization of security. At times of great insecurity, they may be an adequate complement to state action. However, what seems to be a solution to insecurity can become a source of it. Many dismissed police and military end up working for these companies, which can turn into a new base for criminal operations, hence the importance of strict control and supervision.

The police force is only one component of the justice administration system. The El Salvador peace agreements accorded great importance to the reform of public security, but neglected to include the modernization of the justice and prison administrations. The latter was not even suggested. This seriously affected the state's capacity to respond to the rises in both common and organized crime, and to begin reversing decades of institutionalized impunity.

The various components of the justice administration system must be modernized simultaneously. Where there is no such joint effort, the chance of success is much reduced. This may seem obvious, but not so much in Latin America, where today, with diverse levels of success, attempts are being made to bring the deteriorated and anachronistic judiciaries up to date. Paradoxically, these efforts are not accompanied by others aimed at



modernizing the security forces, as if this task were not as urgent, and as if the success of judiciary reform were not somehow dependent on the quality of police action.

### **The Role of the International Community**

Given the political nature of institutional change and the level of resistance peace-building encounters, intelligent political leadership and extensive public participation will be needed to transform those institutions that have become incompatible with peace and democracy. The role of the international community is decisive at this time, as it was in El Salvador. Its role should be to strengthen and support civilian power and to subordinate the security forces and other state institutions to it, submitting them to the control of parliament and the oversight of an independent press, human rights bodies, and civil society in general.

In the short term, outside help from multilateral banks, bilateral aid agencies, and other international groups could help civilians strengthen their understanding of public security problems by identifying new crime phenomena and ways of tackling them; analyzing their security forces' performance; and learning about how the forces are administered. The closed nature of security institutions, their lack of interaction with civilians, and their generally defensive attitudes toward the community make it very difficult for citizens to know more about or study these institutions. International agencies should work for the acknowledgment that public security is a component of development, and for the recognition of its civil and democratic nature as an indicator of good government. This would encourage a change in attitudes in places where this idea is not part of civil culture.

The multilateral banks could also help carry out assessments of the security forces and empirical studies of public security problems to provide the basis for defining strategies and guidelines for institutional reform and modernization. The slight interest shown by the international community to these issues is surprising, especially because many security forces are the most inefficient and expensive state enterprises in their respective countries, which clearly is in the interest neither of the country nor its lenders.

At the same time, it is important to have more detailed knowledge and a comparative perspective of the experience of dealing with public insecurity. Where conditions are ripe for reform, it is important that multilateral banks and donor countries strengthen the civilian authorities' political will with easily and rapidly available resources. It is also important that the various international actors coordinate their efforts in reform programs, so that the scarce resources available complement each other and the efforts are not duplicated and wasted, as often happens. The international community's political and diplomatic backing, and its technical support, will continue to be decisive in shaping the momentum for change.

### **Conclusion**

El Salvador's experience with public security reform leaves four unavoidable lessons for would-be reformers. First, it is fundamental to examine Latin America's current public security systems from the focus of democracy, human rights, and peace.

Second, the substance of dilemmas faced in police force reform anywhere are much the same as those that arose in El Salvador. Is the police force civilian or military? Should a

new force be created or should the present one be reorganized, and its members demobilized, purged, or retrained? How should the transition and its inevitable concomitant problems be addressed?

Third, the transformation of public security, and peace-building in general, are political processes that profoundly threaten the interests of very powerful groups that wish to maintain the status quo. These processes will encounter serious resistance which cannot be overcome without clearly established objectives and broad-based political and public backing.

Fourth, public security reform is an effort in which the international community can and ought to play a very important part, providing technical advisors and instructors, funding, and political and diplomatic support.

## Four

### Demilitarizing and Democratizing Salvadoran Politics

Undoubtedly, El Salvador's peace agreements have led to its most important political transformation in the twentieth century. The end of the war in El Salvador marked the beginning of a political transition that can be characterized as a fundamental change in its regime, which determines the means of access to power, restrictions on those who hold political power, and who is included in or excluded from the political process. El Salvador's political transition created the necessary conditions for the inclusion of historically unempowered sectors of society and a new set of rules for political competition. It also delegitimized the use of violent means to resolve political confrontation.

This paper focuses on political accomplishments resulting from the implementation of those peace accord provisions mainly dealing with military reform, the conversion of the insurgent Farabundo Martí National Liberation Front (FMLN) into a political party, and electoral reform. It also examines challenges to consolidation of these political accomplishments, more democratic governance, and the development of national consensus in post-war El Salvador.

#### Demilitarizing the State and Society

From the outset of negotiations, proposals for the dissolution of El Salvador's armed forces and the fusion of the Salvadoran military and FMLN units into a joint force were regarded as untenable. Three sweeping measures—force reduction, mission redefinition, and purging those military most directly responsible for human rights abuses during the conflict—became the essence of the military reform written into the peace agreements. Measures for both military reform and the demobilization of the FMLN sought civilian control over the military and the establishment of the rule of law in El Salvador.

Constitutional reforms redefined the mission of the military, limiting it to the defense of sovereignty and the territorial integrity of the state, reducing its broad decision-making powers, range of action, and autonomy, and placing it under executive control. Until then, under the Salvadoran Constitution, the armed forces had multiple responsibilities, including internal order and public security; the defense of the constitution and of the nation's form of government and political regime; and the protection of citizens' political and human rights.<sup>23</sup> The new constitutional role was introduced into military education under the oversight of an academic council composed of civilian and military members in charge of curriculum, admissions, and faculty appointments at the military school.

Between January 1992 and February 1993, the size of the armed forces diminished from 63,175 to about 31,000 members, with the demobilization of some units, such as those charged with public security and intelligence, which were re-established under

by  
Ricardo  
Córdova Macías

civilian control, and of special combat battalions. Moreover, a “purification” process based on recommendations of the Ad Hoc and Truth Commissions removed those officials identified as responsible for past human rights abuses. The implementation of military changes met resistance and delays from those who sought to keep their long-standing privileges intact, and on several occasions required the intercession of the United Nations to overcome noncompliance with the provisions of the peace accords.

This military transformation created the possibility for further redefining civil-military relations in El Salvador. In this regard, academic and research institutions have an important role to play. Studies of the military institution can help develop strategies for improved oversight, educate policymakers and the public in military affairs, and promote an overall understanding and expertise on civil-military relations in El Salvador. For example, a key indicator of civilian supremacy would be the appointment of a civilian as Minister of Defense. Other crucial changes would be enhanced legislative oversight and the involvement of civilians, political parties, and the state in the review and debate of military programs and budgets.

Still, civilian and state involvement is perceived by some as an inappropriate encroachment on military autonomy because of the deep conviction that civilians and politicians should not intrude on internal military affairs. Such thinking reflects a culture that does not understand the subordination of the military to civilian power in a democracy.

### **Demobilization of Former Combatants**

Accord provisions related to the demobilization of former combatants were part of the “National Reconstruction Plan,” designed to create conditions for economic growth and development in war-afflicted areas of El Salvador. Under this plan, an estimated 10 percent of agricultural land would be distributed to 47,500 beneficiaries including ex-combatants from both sides of the war as well as land occupants who had worked plots in contested areas during the war. Additionally, the plan provided for housing, training, and credit for urban and rural workers.

The plan has been criticized for the limited participation of beneficiaries and non-governmental organizations associated with the government’s political opposition, suggesting an unwillingness to include traditionally marginalized sectors of society. Rather than seeking consensus with opposition forces,” a report states, “the [Secretariat for National Reconstruction] has taken a more exclusionary attitude, perhaps owing to a perceived need not to allow the FMLN to gain any political benefits from the distribution of the reconstruction funds.”<sup>24</sup>

Studies of El Salvador’s “reinsertion” programs, which reintroduced former combatants to civilian life, describe uneven progress and are far from encouraging. One concludes: “It is possible for programs designed for ex-combatants to be successful and to have their incomes raised over the levels they had immediately following the war, but those who are reinserted into civilian and productive life are just as poor and frustrated as the rest of the inhabitants of those communities.”<sup>25</sup> A second study points out that such reinsertion programs have lacked “specific development goals for their beneficiaries or for the communities destined to receive ex-combatants.”<sup>26</sup> Yet another asserts that “the initial objectives of reinsertion [are] yet to be achieved . . . there are no secure jobs, profitability

is almost nil and the permanence of economic activities is not ensured. The beneficiaries of the various programs fear that in the future their enterprises will be worse off than today.”<sup>27</sup>

Reinsertion programs would thus seem to bear careful scrutiny, not only of their performances but of their design, objectives, and long-term effectiveness. Nonetheless, economic support for ex-combatants during the period of demobilization and disarmament, and immediately thereafter, contributed significantly to the political stability necessary for implementation of the peace accords.

### **Broadening the Party Spectrum**

On December 15, 1992, the United Nations certified that the FMLN had turned in all its armaments and could therefore register as a political party. Less than six months later, however, a weapons deposit belonging to an FMLN member organization exploded in Managua, Nicaragua. The UN secretary-general described the discovery as a serious violation of the peace accords, and called on the FMLN to hand over all remaining weapons. By mid-1993, the FMLN had identified another nine deposits in Nicaragua, two in Honduras, and 109 in El Salvador, satisfying the UN that it had completed demobilization requirements. Any future discovery of weapons would be considered an ordinary criminal matter.

The FMLN's acceptance of responsibility for the arms deposits was a crucial moment in peace-building, marking its serious commitment to, and acceptance of, the political course mandated in the peace accords. The price paid by the FMLN for the breach was high at the time, hurting its credibility nationally and worldwide. Afterwards, the FMLN organized itself as a political party to participate in the presidential, legislative, and municipal elections of 1994. For the first time in the contemporary history of El Salvador, the political parties contesting an election reflected the nation's entire ideological spectrum.

### **Defining Rules for Political Competition**

A new electoral code proposed by a special commission of the Legislative Assembly was enacted in 1993. Constitutional reforms created the Supreme Electoral Court (TSE) to replace the Central Election Council, and a special body to ensure the impartiality of the TSE and its members, who were to be elected by the Legislative Assembly. This set of changes fulfilled the electoral reforms in the peace accords.

However, the shortcomings of the electoral code became evident with the emergence of technical irregularities during the first round of presidential elections in March 1994, leading presidential candidates Armando Calderón Sol and Rubén Zamora to sign a compromise prior to the second electoral round. The UN secretary-general opined that reform was absolutely necessary.<sup>28</sup>

Upon taking power, President Calderón named a multiparty commission to propose a set of electoral reforms. The commission proposed the creation of a national voter registry responsible for issuing personal identification and voter registration cards; establishing the ability to vote by place of residence; and proportional representation in the municipal councils. Only the first proposal was approved by the Legislative Assembly, in December 1995. Though the Legislative Assembly has continued to work on electoral re-

form, little progress has been made, and the implementation of the national registry has been slow. In 1995, a report of the UN secretary-general found that implementation of constitutional reforms had not contributed to the efficient functioning of the TSE, and the situation has not changed.

Moreover, the political behavior of the existing parties has undermined public trust in electoral politics. Internal struggles, corruption and scandals, and authoritarian and undemocratic practices have contributed to party fragmentation and in some cases to the establishment of smaller, ineffective parties. Also, political parties and their coalitions have been unable to advance national strategies and programs and to offer qualified candidates for elected and appointed offices. Members of the Legislative Assembly frequently use their positions for partisan politics, demonstrating unwillingness and inability to develop consensus around national interests and bogging down the enactment of legislation. Thus, the new electoral rules for political competition and greater pluralism have failed to engage the citizenry. Voter absenteeism, for example, has hovered around 50 percent in elections held between 1994 and 1999.

The fundamental problem seems to be the relationship between the elected representatives and the citizens in the post-war political regime of El Salvador. Additionally, there is a limited understanding of the relationship between majorities and minorities in a democracy. According to some, the ruling ARENA party, having obtained the majority of votes in subsequent elections, has a firm mandate for governing without the agreement of those in the minority. Some conservative sectors reject the search for consensus, believing that negotiations with other political parties or consensus attained by sacrificing their own interests or convictions is dispensable.

Consensus building is a mechanism of stability that would seem to be both necessary and urgent in post-war El Salvador. The future governability of the country depends on the development of consensus on national matters among the main social and political forces. Since the peace accords were signed in 1992, political parties and the Legislative Assembly have repeatedly missed opportunities to provide leadership in shaping a national consensus or to address the needs and interests of various groups who have expressed them through demonstrations, strikes, and publications. The requirements of a transition such as that of post-war El Salvador's have surpassed the capacity of the ruling and opposition parties and the partisan members in the Legislative Assembly.

### **Seeking National Consensus**

By mid-1996, almost all of the provisions in the peace accords had been implemented. However, delays and lack of the political will to complete important programs, including a land transfer program, provision of benefits to war-wounded, repeal of a 1886 police law, establishment of an agrarian code and national reconciliation measures, continue to represent a source of instability.

There appears to be a need for a coherent development policy based on consensus among political parties and the consent of the governed in El Salvador. The fates of four

post-war initiatives addressing wide-ranging social and economic concerns demonstrate this need. Three have failed; the outcome of a fourth one is pending.

As called for in the peace agreements, the Forum for Economic and Social Consultation was officially installed in September 1992 once the private sector agreed to participate. It was a unique vehicle for fostering dialogue, understanding, and consensus among government, business leaders, and labor union representatives. Until then, these sectors had traditionally no formal venue to exchange views and ideas. Consequently, bringing all parties to the forum became a challenging endeavor. The forum defined an agenda and plan of work, which were made public, and established a number of sub-commissions particularly dealing with economic reactivation of the industrial sector and revisions to the labor code. Soon after forum representatives signed an agreement of principles and commitments in mid-February 1993, there were labor protests and firings, and serious differences regarding International Labor Organization conventions and El Salvador's new labor code emerged among forum members. The work of the forum was suspended and none of the represented parties seemed interested in its reactivation.

Two other short-lived initiatives were the 1995 San Andrés Pact, between the government and the newly formed Democratic Party, a center-left grouping of political parties, and the 1996 "Salvadoran Manifesto" issued by the National Association of Private Enterprises. The first was criticized as an attempt by the ruling ARENA party and the government to secure political support for a proposed increase in the value-added tax. The Salvadoran Manifesto advocated three principles for El Salvador: economic growth based on internal savings, social spending with fiscal responsibility, and democratic development. The document was well received among social and political sectors. For the first time, Salvadoran businessmen presented their views on national objectives for public discussion. The Manifesto created awareness of the need for a long-term vision on economic, political, and social issues, but failed to create or define one.

In 1997, then-President Calderón established a National Commission on Development (CND), which, between February and December 1998, led nationwide public consultations to develop a shared vision of what would be necessary to consolidate democracy and promote development in El Salvador. In October 1999, when the CND unveiled its proposals, their potential impact was unclear, particularly since a new president had taken office months before. In November 2000, President Francisco Flores and political parties in the National Assembly endorsed the CND's recommended development projects targeting five different areas of El Salvador.

It is important to recall that parties to the peace negotiations agreed not to consider broad economic and social matters. Limited economic provisions primarily targeted former combatants and war-ravaged communities. Therefore, the political reforms stemming from the accords had no relation to subsequent concerns about the economic development of El Salvador. Nonetheless, they were instrumental in creating conditions for a new generation of changes in response to growing concerns for the future. The restoration of public trust and participation in political processes will require the state and political parties to lead, reform, and further advance the consolidation of democracy.



## Lessons Learned

- w The El Salvador peace accords were an imperfect instrument of peace-building. But they initiated a significant change in El Salvador's political regime, by restricting the dominant role of the military in the state and society, promoting new electoral rules that defined access to power, and expanding the range of actors in political processes.
- w El Salvador's transition from war to peace demonstrates that no single force can effectively lead and govern the country. The implementation of the accords required more than the commitment of the negotiating parties. It required the involvement of the state institutions and other political parties and the consent of social forces in the country.
- w The implementation of a negotiated settlement requires a complex policymaking process and the development of a legal framework and institutional capacity along with the education of policymakers and the citizenry. In El Salvador, negotiators underestimated the level of resistance to political transition, while the capacity to achieve the transition rapidly was overestimated.
- w Programs supportive of the demobilization and reintegration into civilian life of former combatants should be understood as part of a broader national development plan. Unaddressed social and economic concerns of former combatants and the communities that received them are continued sources of political instability in El Salvador. Furthermore, the Salvadoran experience demonstrates the importance of defining from the outset the scope and objectives of reinsertion or reintegration programs, as well as measures for assessing their effectiveness.
- w In post-war El Salvador, political parties and the Legislative Assembly could play a leading role in shaping political consensus on major national matters. When these bodies are weak, however, alternative mechanisms for political consultation and consensus building are likely to emerge. The future governability of El Salvador depends on the consolidation of the new political regime and on an appropriate level of consensus around national priorities and policies.



## Five

### The UN's Role in Peace-building in El Salvador

For a number of reasons El Salvador presents an excellent example of peace-building from which the United Nations, as well as other members of the international community involved in its peace process, can derive important lessons. The extent of UN involvement in El Salvador's transition from a civil war to peace was unprecedented at the time; it was consequently highly improvisational, and nothing lends itself to the learning of lessons so readily as the considered assessment of improvisation.

Moreover, the United Nations' engagement in El Salvador took place at a crucial moment in the organization's history. As the Cold War ended, it appeared that the United Nations was ideally placed to take on the role of world troubleshooter. Successes in Afghanistan (1988–90) and Namibia (1989–90) and the comprehensive role given the United Nations by the Paris Accords on Cambodia in October 1991 contributed to this optimism. El Salvador also came at a moment of conceptual importance for United Nations peace operations. In *An Agenda for Peace*, published in June 1992, it was with “new departures in peace-keeping” in mind—El Salvador foremost among them—that Secretary-General Boutros Boutros-Ghali introduced the concept of post-conflict peace-building—“action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict.” The United Nations' leadership of this process in El Salvador makes it relatively easy to look back on who did what, when and how, and to consider the consequences. Finally, the role of the United Nations in El Salvador is widely, and rightly, considered to have been successful. Recognizing its success allows room for constructive criticism.

An assessment of peace-building in El Salvador is particularly timely in view of the other locations in which the United Nations has been tasked with broad responsibilities for peace-building, a number of them in situations considerably less auspicious than El Salvador's. In any discussion of peace-building and the United Nations, Kosovo and East Timor must come to mind, both situations in which the organization faces daunting challenges. Meanwhile, in the Latin American context, much thought is being given to the enormous challenges that the international community will eventually face in supporting the construction of durable peace in Colombia.

#### Negotiation: Peace-building Foreseen

In an account of the negotiations published in *Herding Cats: Multiparty Mediation in a Complex World* (United States Institute of Peace Press, 2000), Alvaro de Soto, the UN mediator in El Salvador, remarks that “the peace negotiation in El Salvador turned out to be about the building of democracy.” By implication, it is impossible to consider the UN's contribution to peace-building in El Salvador without looking first at the negotiation itself.

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Teresa  
Whitfield<sup>29</sup>

As outlined in the Geneva Accord of April 1990, which set up parameters for the negotiation process, negotiations between the Salvadoran government and the Farabundo Martí Liberation Front (FMLN) had a fourfold objective that made clear that an ambitious peace-building program would be the end product. They aspired to end the armed conflict through political means as speedily as possible; to promote democratization; to guarantee unrestricted respect for human rights; and to reunify Salvadoran society. Nearly two years later the Chapultepec Accords codified a deal by which the Salvadoran government accepted extensive reform of the coercive structures of the state, together with measures to reintegrate former combatants and promote reconciliation within society as a whole, in exchange for the FMLN's agreement to lay down its arms and participate as a political party within the reformed democratic system that would emerge from the peace process.

The national and international circumstances that contributed to the successful outcome of the negotiations are well known and need not be analyzed here. Instead, it may be useful to look at those internal aspects of the process of negotiation and the accords that had the most far-reaching consequences for peace-building in El Salvador.

On the positive side, the peace talks were conducted by the United Nations as a single negotiator poised between strong parties brought to the table by military stalemate. Moreover, the principal negotiating method—working from a single text put forward by the mediator—placed the United Nations in a strong position to make constructive suggestions to break deadlocks. These suggestions, for example, lay behind the human rights accord, the Truth Commission, and the *ad hoc* mechanism for a purge of the army.

Furthermore, the Geneva Agreement's provisions allowing the secretary-general to maintain a wide range of contacts permitted consultations with different actors within El Salvador and a range of countries, some of them, notably the United States, Cuba, and the Soviet Union, clearly aligned regarding the Salvadoran conflict and others not. One result of these consultations was the Group of Friends which, although only formally recognized in July 1991, was an idea pioneered in El Salvador. It proved, in this instance, an effective and flexible mechanism to ensure that the leverage of countries friendly to El Salvador but not aligned in its conflict (Colombia, Mexico, Spain, and Venezuela) could be used to further the secretary-general's efforts.

While the process of negotiation was lengthy, the time taken reaped benefits in terms of the detail and quality of many of the accords, perhaps especially those relating to military and public security reform. A more hurried pursuit of an artificial deadline would have had a negative effect on the accords' ability to address the root causes of the conflict and thus help prevent its recurrence.

In addition to providing for the demobilization of the FMLN and the reintegration of former combatants from both sides, the final accords amounted to a blueprint for the transformation of key institutions of the Salvadoran state. Their highlights included the reform of the military and military doctrine; the replacement of the public security forces of old with a new National Civil Police (PNC); the creation of a human rights ombudsman's office; and agreements to promote the independence and professionalization of the judiciary. Moreover, in the interest of national reconciliation a serious effort was made to

address the past through the agreement that a Truth Commission, headed by three prominent international figures, would be formed.

Some of the more negative aspects of the negotiations and agreements include a number of elements that were either unavoidable or unforeseeable. However, that makes them none the less valid as lessons for the future.

The other side of the coin of conducting direct negotiations between two strong parties was that other key political and social forces were not represented within them. This led to a certain alienation from both the negotiation and implementation processes of important constituents of Salvadoran society, despite efforts to broaden the base for implementation with the creation of the National Commission for the Consolidation of Peace (COPAZ) and other mechanisms such as the Economic and Social Forum.

The lack of attention by UN negotiators to how implementation was to be financed (everyone presumed that the United States would foot the bill), both with respect to external assistance and the possibility of the mobilization of domestic resources, has been openly acknowledged as a substantial oversight. More specifically, there was a lack of consultation with the Bretton Woods institutions deeply involved in the guidance of economic policy in El Salvador. In 1994, in an influential article in *Foreign Policy*, de Soto, writing with Graciana del Castillo, raised the flag on this issue by warning that the macroeconomic stabilization pursued by the international financial institutions “could be on a collision course” with the implementation of the peace accords. This dislocation raised serious concerns about the funding of some aspects of implementation, particularly the PNC and some elements of reintegration. It also suggested the possibility that broader goals could be undermined by an economic policy designed and executed without reference to the political requirements of the peace process.

The lack of consultation hit closer to home for some other UN actors, mostly because of the institutional differences and distrust prevalent at the time. It contributed to both the conceptual and practical difficulties experienced in working with agencies and programs during the period of implementation. (Luckily some of these deep-rooted institutional problems have since been addressed—if not yet fully resolved—as a result of the reform process initiated by Secretary-General Kofi Annan in 1997.)

The dynamics of the El Salvador negotiation led to inherent weaknesses that would be sorely felt during implementation. Two much cited examples come to mind. The first was the relative weakness of that section of the accords dealing with judicial reform, in part as a result of the FMLN's concentration on military aspects of the April 1991 negotiations on constitutional reform and in part because of the clear opposition to the negotiations as a whole demonstrated by the then-president of the Supreme Court. This weakness was to a certain extent rectified by the binding recommendations of the Truth Commission, which were made subject to UN verification.

The second major area of weakness was revealed by the limitations of the socioeconomic chapter of the agreements, which was primarily restricted to issues relevant to reintegration. This was largely the result of the FMLN's acceptance of the government's position that economic policy was not up for negotiation and that the most to be gained was the right to pursue change through the democratic process. It was also a consequence

of the haste with which this chapter of the accords was negotiated in the final days of 1991.

It is also possible to point to a number of *lacunae* exposed within the accords as they have been implemented, for example the lack of a specific mandate for institution-building in the San José accord on human rights and the failure of the accords to establish that a set percentage of the national budget would fund, and therefore protect, the ombudsman's office. These kinds of oversights serve as pointed reminders to be considered during other UN-negotiated agreements.

### **Implementation: Peace-building in Action**

It is important to note that the United Nations' peace-building activities were underpinned by efforts to ensure a framework for the respect of human rights. This concern was a backbone of the accords, and indeed a *sine qua non* for the United Nations' engagement in El Salvador, in no small part as a response to the human rights abuses that were both cause and characteristic of the Salvadoran conflict. Peace-building in El Salvador began in July 1991 in the midst of war, with the deployment of the United Nations Observer Mission in El Salvador (ONUSAL) as a human rights mission mandated to verify compliance with the provisions of the San José accord. This early deployment of ONUSAL had important results: an almost immediate decline in the level of grievous human rights abuse; the building of confidence in the process as a whole; and the indelible association of the presence of the United Nations in El Salvador with the promotion of human rights.

Three general observations about the functions through which ONUSAL, and the smaller UN political missions that followed, contributed to peace-building can usefully be made.

The accords included important guidelines for institution-building as well as verification provisions. A further element of the United Nations' role in peace-building was the continuation of UN mediation throughout the period of implementation. This was key for overcoming a number of crises ranging from major reschedulings of the implementation calendar, to the renegotiation of the issue of land transfer in October 1992, or the resolution of the occupation of the Legislative Assembly by disgruntled former members of the armed forces in early 1995.

Maintaining the UN's authority throughout the implementation process was very important. Its success can largely be attributed to the impartiality the United Nations displayed, and its principled adherence to the accords themselves—even when, as in late 1992 and early 1993, the government and the FMLN reached agreements behind the back of ONUSAL. While the United Nations' objections to such agreements created short-term problems with the parties, they contributed to its overall credibility as verifier of the process. This credibility allowed the United Nations to act as the certifier or decertifier of the good conduct of the Salvadorans before the eyes of the international community and thus enhanced its leverage over the parties.

Finally, the relationship between the verification and institution-building roles of the United Nations was problematic. For most of ONUSAL's mandate there were unresolved tensions between the two. Despite the mission's broad responsibilities for institutional reform, institution-building was generally informed by and improvised from the infor-

mation gathered from verification, rather than being the result of a specific mission strategy. It is indicative of the complexity of this relationship that the case may also be made that concern for institution-building led the mission to pull its punches in its reporting, for example on some of the problems besetting the formation of the National Civil Police and the office of the human rights ombudsman.

A brief review of peace-building activities within three broad areas of the accords illustrates the kinds of difficulties encountered in the implementation process. The accords placed priority on the incorporation of the FMLN into civilian life as a political party, and on the rapid and efficient reintegration into society of combatants from both sides, as well as their civilian base, refugees, displaced, war wounded and others marginalized by the conflict. The main vehicles for this reintegration were to be an extensive land transfer program (PTT) and the creation of the National Civil Police, or PNC. Additional measures included programs and packages earmarked for former combatants. The UN's emphasis on reintegration was in part in recognition of errors made in Nicaragua, where neglecting the issue set back the peace process considerably. However, a direct challenge to the UN's efforts soon emerged, with the explosion of a post-war crime wave and clear indications that former combatants of both sides were involved.

While the PTT would result in the transfer of about 10 percent of El Salvador's rural land, it was essentially a political program, offering "land for arms" and designed in acknowledgment that the issue of land was one of the root causes of the Salvadoran conflict. Implementation of the PTT involved an enormous effort on the part of both the United Nations and the United States, its key donor. That, in the end, its funding difficulties were not as acute as had appeared possible to de Soto and del Castillo, was largely a consequence of USAID commitment to the program. Rather, the major obstacles were logistical and bureaucratic headaches, magnified by an absence of political will to proceed with the PTT, particularly evident in officials of the government's implementing agencies. While the PTT was eventually brought to virtual completion, questions remain about its sustainability, in part as a result of the failure to provide land, credit, and technical assistance simultaneously. Over the long term, the gradual diminution of the importance of the agricultural sector to El Salvador's economy, compounded by the lack of a clear agrarian policy in the years since the war's end, and the difficulty of taking up hardscrabble subsistence farming by those who have only military training, also raise concerns.

## **Institutional Reform**

While verification of institutional reform constituted a central axis of the United Nations' responsibilities under the peace accords, its direct contribution to institution-building was much more limited until the latter stages of ONUSAL's mandate, after 1994. This was the case for a number of reasons, some unavoidable. They included fluctuations in access to and influence on the formation of the PNC; the fact that Supreme Court opposition to the thrust of reform contained in peace accords drastically limited ONUSAL's ability to act; the slow formation of the office of the ombudsman for human rights; and the reluctance of the first ombudsman to work with ONUSAL.

The problems encountered in the consolidation of the National Civil Police were indicative of fundamental difficulties that the United Nations is likely to encounter in

institution-building elsewhere. Poor coordination between ONUSAL's separate police and human rights divisions, and among donors, sometimes led to a tug of war between the priorities for police assistance (particularly those of some of the bilateral donors), and the model established by the peace agreements. Meanwhile, persistent difficulties in financing the new police force were a product of donor reluctance to fund police and nervousness about association with an institution questioned by the United Nations' own verification. The UN's difficulty highlighted a central dilemma of peace-building: the United Nations generally knows better than any other actor what is wrong with a new or reformed institution it is assisting, but it must advocate continued support if the problems are to be overcome.

This paradoxical situation was also evident in the area of judicial reform. Developments in the two sectors illustrated that serious investment in resources and time will be required long before national institutions present the kind of project opportunities most attractive to funders. It is a reality of peace-building that some efforts will fail, at least at first, and money will be spent on those failures.

After ONUSAL's departure both the smaller missions that followed it and the UN Development Programme (UNDP) worked on the premise that successful institution-building would underpin the sustainability of the peace process as a whole. The human rights ombudsman's office, with which ONUSAL had been working intensively in its final months, assumed primary responsibility for monitoring human rights violations. Meanwhile, the UN continued to direct its monitoring efforts toward developing recommendations to strengthen the judiciary and the police. Institution-building largely took the form of direct collaboration with the authorities in the preparation of legislative, judicial, or executive reforms. UNDP technical assistance projects, designed in coordination with ONUSAL and its successor missions, gradually got underway in the areas of the administration of justice; public security; the reintegration of former combatants and demobilized soldiers; the establishment of the Fund for the Protection of the War-Wounded and Disabled; and projects encouraging democratic participation.

### **National Reconciliation**

Perhaps the most difficult area of peace-building involves the development of civil society and promotion of reconciliation. This was complicated in El Salvador by the dynamics of the negotiations, and the fact that ONUSAL always had a somewhat strained relationship with national human rights non-governmental organizations (NGOs). The nervousness of some UN staff regarding the political alignment of some of the NGOs was compounded by their perception of the NGOs' lack of technical capacity. Meanwhile, the NGOs thought their historic contribution to the Salvadoran peace process was not being recognized by overpaid UN officials who had recently arrived in the country. Efforts made to reach out to wider civil society through educational programs and to overcome the NGOs' distrust got off to a difficult start, but gradually improved during ONUSAL.

It is perhaps not surprising that national reconciliation should be a peculiarly difficult endeavor for international efforts. El Salvador represents a notably successful example of reconciliation of the political elites, but questions still remain over how much has been achieved in broader sectors of society. The Truth Commission published its report in



March 1993 “with the fervent hope” that it would be “an adequate starting point for national reconciliation and the desired reunification of national society.” But while a number of its concrete recommendations relating to institutional and legislative change were eventually complied with, the government’s immediate guarded, even hostile, response to the report, its promotion of a sweeping amnesty, and its subsequent failure to act on recommendations aimed at promoting reconciliation among Salvadorans, represent a loss to Salvadoran society as a whole.

### Lessons Learned

A number of specific lessons for peace-building may be extracted from the UN’s experience in El Salvador.

- w Peace-building is a long haul. UN engagement in El Salvador through negotiations, a major multifunctional peacekeeping operation mandated by the Security Council, smaller political missions mandated by the General Assembly, and then close liaison through UNDP provides a successful example of the merits of “staying the course.” Here it is in obvious contrast with Cambodia, where it can be argued that a price was paid for the UN’s precipitous departure after the 1993 elections.
- w Planning for peace-building should begin early, during negotiations when this is possible. The phrase “post-conflict peace-building” can be deceptive, in giving rise to the impression that post-conflict peace-building follows peacekeeping, causally and temporally, as peacekeeping itself follows peacemaking. Rather it should be present in some form throughout.
- w Post-conflict peace-building of this kind is essentially a political activity, intended to prevent the recurrence of conflict. The strong political leadership given to ONUSAL well illustrates the difference that can be made by the personal abilities of the special representative of the secretary-general when the United Nations is involved.
- w Negotiators need to consult with those who will be involved in financing the agreements that may be reached. How will implementation be paid for? Will broader economic policy support the peace process as a whole? Not a small consideration is how much easier it will be to line up multilateral and bilateral actors before an agreement is signed—afterwards, once the pressure to bring hostilities to an end is off, it becomes much harder to collect. (Guatemala provides a successful example in this regard.)
- w Coordination is vital at all stages of the process, whether within the UN system or with appropriate regional and other organizations. Efforts made within the United Nations, for example in the design of missions in Kosovo and East Timor, are indicative of the importance now given this aspect of peace-building.

- w While there will always be tensions between verification and institution-building, institution-building should be present throughout the life of a peace-building mission as it involves establishing means to ensure that future disputes will not have to be settled by war. The international community should be prepared for the fact that institution-building is a slow process; its progress cannot necessarily be tied to a strict timetable.
  
- w The equity criteria of traditional development activities are sometimes overshadowed by political necessity in post-conflict situations. Efforts to prevent recurrence of conflict will involve preferential attention to some actors, especially former combatants and victims of the conflict. (The fund created in Mozambique by the secretary-general's special representative Aldo Aiello for members of RENAMO—the “RENAMO slush fund”—is an oft-cited example.) In El Salvador much was done in this area but there the question remains whether higher priority attention to reintegration of former combatants, especially from the army, could have helped curb the post-war crime wave.
  
- w A certain flexibility is needed if economic programs are to pay for such critical post-conflict peace-building activities as reconstruction, demobilization, reintegration, institution-building, and reconciliation. In such cases political logic may have to predominate over strictly economic concerns. In the long run, of course, that political logic should foster the stability of the country and allow for the economic development that will ensure that conflict remains firmly a thing of the past.



## El Salvador and Colombia

### Lessons of the Peace Process

This paper focuses on the implications of the peace process in El Salvador for the one currently underway in Colombia. It also considers the nature of the political debates in the United States over the wars in Colombia and El Salvador, highlighting similarities as well as key differences. As the United States is significantly increasing its financial commitment to Colombia, the ability to positively influence the peace process while pursuing other U.S. objectives will depend on a close reading of the lessons of peace processes elsewhere in the hemisphere.

Colombia and El Salvador differ more than they resemble one another, in terms of the size of their territories and populations;<sup>30</sup> the nature and roots of the insurgencies; the number of actors involved in overlapping forms of political, social, and criminal violence; the proportion of political violence relative to violence overall; the sources of financing for the military activities of both guerrillas and paramilitary groups; the size of their economies and national budgets relative to all forms of external assistance; and the depth of divisions and conflicts within and among the guerrilla movements themselves. Notwithstanding the complexity and particularity of the Colombian situation, however, the Salvadoran experience contains useful precedents and constructs that have enriched the field of conflict resolution.

#### The “Hurting Stalemate”

One important lesson of the Salvadoran negotiations has to do with the relationship between battlefield stalemate and the successful outcome of peace talks. Conflict resolution theory has long held that a “mutually hurting stalemate,” defined as a condition of “mutually blocking vetoes” in which military escalation provides no hope of a satisfactory outcome, generates the most propitious moment for a negotiated settlement.<sup>31</sup> The military outcome of the FMLN’s 1989 offensive, in which the guerrillas moved into the capital of San Salvador with massive numbers of troops, was seen as the expression *par excellence* of stalemate: the guerrillas could not produce a popular uprising sufficient to seize power, nor could the government, despite a decade of effort and billions of U.S. dollars, defeat the insurgency. The Salvadoran negotiations thus took place “almost in laboratory conditions,” in the words of United Nations negotiator Alvaro de Soto, the product of conditions internal to El Salvador as well as a favorable international climate at the end of the Cold War.<sup>32</sup>

What is often overlooked in the Salvadoran case, however, is the relationship between the so-called “objective conditions” of the battlefield and the subjective, human elements of perception and choice. Conflict resolution theory has captured this distinction, moving

by  
Cynthia J.  
Aranson

away from a concept of stalemate rooted uniquely in questions of military balance to the “softer notion of a perceived stalemate,” defined as a “no-win situation” for both sides.<sup>33</sup> Thus, in the words of Salvadoran guerrilla commander Ana Guadalupe Martínez, “what obliged us to sit down at the table was the stalemate. But what obliges one to negotiate is something different. We saw the attrition of our forces, and the rejection by society of military forms of struggle.”<sup>34</sup> Or in the words of Salvadoran General Mauricio Vargas, a member of the government’s negotiating team, “It’s absurd to think that a military victory wasn’t possible. But a rational person looks for the least-cost solution.”<sup>35</sup>

Both these statements indicate that, however much perceptions might be rooted in some external, measurable reality, the way that key actors perceive the costs of continuing the war—or their ability to envision a future with and without the conflict—are central to the prospects for peace. Conditions on the battlefield may alter perceptions, but they do not necessarily generate sufficient political will to negotiate a settlement.

How might this apply to Colombia? The argument is made with increasing frequency in Washington that for the peace process to bear fruit, the Colombian armed forces must be strengthened and guerrilla military advances reversed. Indeed, since 1996, units of the Fuerzas Armadas Revolucionarias de Colombia (FARC) have inflicted a series of defeats on the Colombian military, although the improved performance of government troops during a July 1999 guerrilla offensive is considered by many to have been a turning point in the momentum of the war. At the same time, the guerrillas have shown scant indications of interest in the peace process, in which President Andrés Pastrana has invested unprecedented attention and political capital. The Colombian government has made a number of difficult concessions and gestures, including the demilitarization of an immense swath of territory in southern Colombia, the dismissal of some army generals linked to paramilitary groups, and holding face-to-face meetings between the president and the guerrilla leadership. The FARC has not only failed to reciprocate with any gestures of its own, it has made a series of augmented demands on the government. Thus, one logic would suggest, only military pressure will bring the FARC to the negotiating table in good faith.

This may prove correct, especially if support to the armed forces heightens their professionalism and respect for human rights, serves to break historic linkages to the paramilitary right, and contributes to the military’s willingness to actively combat all armed actors, including paramilitary groups. Equally possible, however, is that the formula will backfire, by deepening the violence, lending credence to paranoid guerrilla rhetoric about U.S. intervention, strengthening those guerrilla hard-liners most skeptical of negotiation, and stiffening the opposition of segments of the economic and political elites to the kinds of concessions that would make a peace process viable.

Similarly, as it is difficult to send soldiers to fight and die one day for the purpose of sitting down with the enemy the next, increased U.S. support could harden attitudes within the military against the peace process, particularly among field officers. If guerrilla military offensives are taken as indications of their lack of interest in the peace process, it should not be hard to imagine that the insurgents might view government actions in the same light.

For the logic of military balance to produce positive results, the role of perceptions and not just “objective conditions” must be kept in the forefront of policy planning. Incentives must accompany force, in order to influence minds and not just thresholds of pain. The goal should be to contribute to a process by which the insurgent movement begins to conceive of a future without war, and sees the prospect of realizing its agenda at the peace table rather than through combat. This evolutionary process almost certainly would be truncated by policies aimed at strengthening government capacity alone.

What might this effort look like? One aspect would include fostering dialogue between the politically isolated and insular guerrilla leadership and representatives of various groups in Colombian civil society, along the lines of the process fostered by the Norwegian government between the Guatemalan rebel group URNG and representatives of the Guatemalan church, private sector, labor, and academic groups. Indeed, the process of engaging the guerrillas politically took major steps forward in early 2000, when a joint FARC-government delegation visited several European capitals in February, and a number of Colombia’s most prominent business leaders visited the demilitarized zone the following month. Another possibility is to encourage guerrilla participation, alongside the government and non-governmental organizations, in development projects or pilot drug eradication programs. Such engagement would not only test the guerrillas’ stated interest in ending their involvement in the drug trade, it would minimize the possibility that state-launched development projects throughout rural areas would become, as they did in El Salvador, targets of guerrilla military attack. Additionally, the United States government should consider weathering the domestic political fallout of renewing direct contact with the guerrilla leadership, if the Colombian government should again request it.

Ultimately, however, and in contrast to El Salvador, what the Colombian guerrillas seek at the bargaining table is the ability to negotiate aspects of a socio-economic agenda that have proven so elusive in other peace settlements in the hemisphere. The peace accord in El Salvador gave priority to political and security force reform, given the history of political exclusion and human rights violations by the government security apparatus, as well as the government’s refusal to consider socio-economic issues. However, in Colombia, the FARC created a political party in the mid-1980s—the Unión Patriótica, or Patriotic Union—that was subsequently decimated by political assassination. Similarly, Colombia’s political system underwent significant political reform as a result of the drafting of a new constitution in 1991. Demobilized guerrilla groups played a significant role in that process.

Given this background, there is an insistence by the guerrillas, and a recognition by prominent Colombian academics and policymakers (including several former peace advisers), that the current peace process must go beyond prior formulas of disarmament, demobilization, and reincorporation and deal instead with the root causes of conflict.<sup>36</sup> Reforms in Colombia must be deep and novel enough to warrant the risk of laying down weapons. As Cynthia McClintock and others have argued, post-Cold War insurgencies in Latin America obey a different logic than their Cold War predecessors, enduring and growing despite periods of political opening and giving priority to structural economic issues.<sup>37</sup> If what is at stake in Colombia is not only the reform of state institutions and state

policy, but the reform of economic structures and models involving state as well as private behavior, the road to peace will be long indeed.

### **Internal and External Inducements**

Two other aspects of the peace settlement in El Salvador would appear especially relevant to Colombia.

The first concerns the role of civil society. The Salvadoran negotiations took place exclusively between the government and the insurgent leadership (with the United Nations acting as moderator), something roundly criticized in the post-accord environment as detracting from the legitimacy of the peace process, depriving it of an active constituency, and contributing to the difficulty of implementing the final accords. Partially in response to the Salvadoran experience, and partly because of the political and military weakness of the Guatemalan guerrilla movement, peace negotiations in Guatemala actively engaged civil society, through the Civil Society Assembly, in debating and providing substantive input into the peace talks.

The vigor of Colombia's civilian peace movement is unprecedented in Latin America. During the 1997 municipal elections, a "civilian mandate for peace" garnered 10 million votes. All major candidates in the 1998 presidential elections recognized the salience of the peace issue by making the search for a negotiated settlement a core component of their political platform.<sup>38</sup> Civil society organizations have proliferated, among them the Catholic Church-led National Conciliation Commission (CCN). A demonstration in October 1999 brought millions into the streets demanding an end to the conflict. While the demand for peace is not the same as wide social consensus on just how to achieve peace, the unprecedented mobilization of millions of Colombians, coupled with the political isolation of the guerrillas, suggests that any successful peace process must find an organic linkage between what is taking place at the bargaining table and the debate in civil society.

A second issue concerns the role of the international community. In El Salvador, the United Nations participated for the first time in its history in negotiations to resolve an internal rather than an interstate conflict. Elsewhere around the globe, the role of third parties has come to be seen as essential to the conclusion of peace agreements. Colombians across the political spectrum have slowly come to embrace the notion of international involvement, and an international role has developed by accretion. In 1997 the United Nations established a Bogotá office of the Geneva-based High Commissioner for Human Rights, and of the United Nations High Commissioner for Refugees shortly thereafter. In December 1999, UN Secretary-General Kofi Annan named Norwegian diplomat Jan Egeland to be his special advisor on Colombia, to deal with international assistance and peace process issues, something that might presage a more formal UN role in the peace talks in the not-too-distant future.

Having bridged the intellectual gap concerning the desirability of an international role, however, Colombians and the international community must be careful not to invest too heavily in its prospects. If there is one lesson to be learned from failed peace processes around the world, it is precisely that no international body can substitute for the political

will of the contending parties. Whether that will exists or can be constructed is yet to be seen in Colombia.

### The Nature of the Debate

In addition to the parallels concerning peace processes, there are also similarities between the debates in the United States over El Salvador and Colombia policies. One is that both El Salvador and Colombia have been deemed vital, in some important way, to U.S. national interests. In El Salvador from 1979 onward, the issue was to prevent a leftist guerrilla victory and defeat communism, and external actors—the Soviet Union, Cuba, and Nicaragua—were seen as playing decisive roles in guerrilla insurrection.

U.S. interests in Colombia have for at least a decade been overwhelmingly framed in terms of counter-narcotics, given Colombia's central role in narcotics production and trafficking.<sup>39</sup> Unlike in El Salvador, where many liberals and moderates questioned whether issues of vital national security were actually at stake, most Americans—and a bipartisan majority in Congress—see drugs as a threat to American society and source reduction as an important strategy to confront it. The role of Colombian guerrillas, principally the FARC, in protecting coca producers and drug-producing installations has blossomed, yielding millions of dollars in profits for the insurgents, and the vast expansions of coca production in southern Colombia have occurred precisely where the guerrillas control major swaths of territory. Thus, even if “narco-guerrillas” do not represent the full panoply of actors in the drug trade, they constitute a highly salient threat in terms of domestic U.S. politics, combining historical fears of the Cold War with the post-Cold War agenda regarding new hemispheric security challenges.

There are several difficulties, however, with the sort of policy that evolves from a threat scenario. One is the tendency toward reductionism, where certain goals have supremacy over others. In El Salvador, for example, human rights improvements were viewed strategically in terms of their place in winning in the war. In many cases, however, the United States did not have sufficient influence to prevent rightist officers known for their brutality or death squad connections from achieving positions of prominence in the Salvadoran armed forces. At other times, the United States actively chose not to exercise the influence it did have, when human rights considerations interfered with the prosecution of the war or other U.S. policy goals. U.S. documents declassified in the wake of the report of the Truth Commission in El Salvador establish unequivocally that the United States knew exactly with whom it was dealing in the Salvadoran officer corps, and persisted with those relationships in the pursuit of overarching strategic goals.<sup>40</sup>

In Colombia as in El Salvador, the political imperative to confront the central threat of drugs risks displacing a more complex, and thereby less politically appealing, analysis of the multiple ills besetting Colombian democracy: paramilitarism, human rights abuse, corruption, economic decline, institutional decay. The U. S. State Department has advocated a multi-faceted approach to Colombia, emphasizing the inter-relatedness of anti-drug efforts, the peace process, human rights reform, and democratic governance.<sup>41</sup> But it only belatedly seized the policy initiative, which for several years remained largely with Republicans on Capitol Hill, and with the Office of National Drug Control Policy (ONDCP) and the U.S. Southern Command within the administration. All have increas-

ingly focused on a broad range of issues in Colombia. But their operational approach and central agenda remain heavily focused on the interdiction, eradication, and border enforcement traditionally associated with the “war” on drugs, a policy framework reflected in the Clinton administration’s two-year, \$1.6 billion aid request unveiled in January 2000.

A more troubling parallel between El Salvador and Colombia is that the threat from the guerrilla left has been accorded far more priority in the public debate than the threat from the paramilitary right. Paramilitary groups are now responsible for the majority of human rights abuses in Colombia, and have expanded their territorial control during the last two years under a security umbrella provided by the Colombian armed forces.<sup>42</sup> Yet the threat to democratic governance and state legitimacy posed by paramilitary violence has only recently begun to achieve the same centrality in policy discussions as the guerrillas’ role in kidnapping, extortion, murder, and drug trafficking.

The issue is not to determine who is worse than whom, but to base policy on a balanced picture of the forces undermining Colombian democracy. The State Department has begun to play a more forceful role in condemning paramilitary violence, and Under Secretary of State Thomas Pickering, who as ambassador to El Salvador led a crackdown on the death squads, has been in the forefront of that effort.<sup>43</sup> Nevertheless, questions remain as to whether a greater public emphasis on the issue of paramilitary groups is matched by concrete policy measures to contain them.

Finally, policy toward Colombia, like that toward El Salvador, navigates between conflicting currents and imperatives deriving from the U.S. body politic. Clinton administration officials have determined—and the early 2000 congressional debate has confirmed—that there is no political consensus in favor of involvement in Colombia’s counterinsurgency war, given the army’s historically poor human rights record and its long-standing ties to paramilitary groups. The so-called “Leahy amendment” restricts U.S. military assistance and training to officers vetted through a human rights screening process, a legal requirement that counter-balances efforts by congressional conservatives to provide expanded support and materiel to police and army units engaged in the drug war.<sup>44</sup>

Within these poles, or perhaps because of them, the Clinton administration has maintained a distinction between counter-narcotics and counter-guerrilla operations, despite the inevitable overlap between the two missions as well as documented problems with end-use monitoring. The net risk is an ever-widening gap, as with the human rights certification debates in El Salvador, between political imperatives in Washington and realities on the ground in Colombia. Ultimately, however, the eclecticism of U.S. policy may serve U.S. interests as much as any forced effort to achieve overarching consensus. After all, it was not policy consensus but its breakdown that opened the door to a negotiated solution in El Salvador. The same may prove true for Colombia.



## Seven

### Conclusion

#### Assessing the Results of the Peace Process

Undoubtedly, the implementation of the El Salvador peace accords brought the 12-year war to an end and inaugurated the country's transition to peace. The peace-building experience of El Salvador is noteworthy in a number of key aspects, argued participants at the December 1999 U.S. Institute of Peace conference on the subject. First, the United Nations Observer Mission in El Salvador (ONUSAL) was the first UN peace-building mission to have a special focus on human rights in its mandate, and soon included responsibility for verifying all aspects of the cease-fire and demobilization of forces under the peace agreements; responsibility for monitoring public order during the transitional period while a new National Civil Police was established; and, at the request of the Salvadoran government, responsibility for observing the national elections held in March and April 1994.

Second, among the more recent UN peace-building operations, the Salvadoran peace process is regarded as one of the more successful. In this sense, conference participant Aryeh Neir noted that the Salvadoran experience was particularly significant in the formation of the Latin American human rights movement and the operation of human rights organizations worldwide.

Many of the conference participants expressed the view that the overall terms of the peace settlement were essentially sound. The UN-monitored cease-fire was seen as crucial to the demobilization of forces by both sides and the consolidation of the peace process. The settlement included provisions not only for free and fair elections, but also for far-reaching reforms of the judiciary and security institutions. Several key elements of the accords led to a fundamental change in the civil-military relationship.

Conference participants acknowledged that the accords contributed to real changes in El Salvador's human rights regime and the retreat of the military from national politics. Civilian controls over the military and security apparatus of the state were also strengthened. Electoral reforms derived from the peace process have helped bolster democracy and achieve greater levels of political pluralism in El Salvador. There were serious efforts at police reform with the disbanding of the existing National Police and other security forces and the establishment of a new National Civil Police force. The Truth Commission's public naming of those guilty of human rights abuses contributed to the purge of top levels of the military.

However, conference participants also noted difficulties with the various judicial, human rights, electoral, military, and police reforms initiated by the accords. They offered their recommendations to advance the reforms or to meet challenges either partially

by  
Fen Osler  
Hampson



contemplated or not addressed in the accords. Their overall perspectives and recommendations constitute the discussion that follows.

### **Human Rights and the Administration of Justice**

After the signing of the peace accords, a cease-fire, demobilization of the insurgent forces and the reform and reduction of the Salvadoran military led to a dramatic decline of human rights violations in El Salvador. As stated by several commentators, the issue of implementing the recommendations of the Truth Commission was a source of controversy. The six-month deadline given to the ambitious mandate of the Truth Commission was totally unrealistic. Nonetheless, its final report, with conclusions and recommendations, was promptly delivered to the UN secretary-general and to President Alfredo Cristiani on September 22, 1992. Over the government's objections, the commission went public with the names of senior officers and officials who had been perpetrators of serious human rights abuses. The commission also offered recommendations requiring a wide range of administrative, legislative, and constitutional measures. Five days after the report was released in 1993, the Salvadoran assembly passed legislation granting broad amnesty to all those guilty of extrajudicial crimes during the war, thereby pointedly rejecting some principal recommendations of the report.

Progress in implementing other key recommendations of the Truth Commission has been slow and the recommendation that members of the Supreme Court of Justice resign their posts proved difficult to accomplish because of the separation of powers in the Salvadoran Constitution. Furthermore, the reconciliation of political elites was achieved by burying the past and allowing parties on both sides of the conflict to work together. In the words of Margaret Popkin, the Truth Commission's work "became a substitute for any other official effort to address the legacy of the atrocities committed during the conflict." In addition to the absence of prosecutions, there have been no reparations, no effort to find the disappeared, and no official acknowledgment of wrongdoing.

The accords were weak in specifying reforms to the judicial system. The procedures for selecting and training new judges, justices, and prosecutors were not as clearly spelled out as they might have been. The failure to maintain a clear separation of judicial and administrative functions in the justice system also remains a serious problem, as does the need to reform the office of the attorney-general. Speakers identified the following recommendations for strengthening judicial independence and accountability:

- w Approving constitutional reforms to end the concentration of functions in the Supreme Court;
- w Providing proper training for judges;
- w Appointing attorneys-general who can be trusted to act with independence and integrity and who will restore public trust in the National Civil Police and its investigative capacity, for which the attorney-general is responsible;

- w Providing adequate funding for the attorney-general's office as well as the office of the public defender;
- w Ensuring that the office of the National Counsel for the Defense of Human Rights, which has a broad mandate to oversee the country's human rights situation and the conduct of state institutions, is properly staffed and led by an individual who has credibility and a national profile;
- w Encouraging El Salvador's courts to rely on the jurisprudence of the Inter-American Court and Commission on Human Rights, which establishes that a state cannot use amnesty laws that abrogate its obligation to investigate and punish those guilty of serious human rights abuses; and
- w Strengthening civil society and community-based organizations while also forging coalitions between groups that are working for human rights and judicial reform.

### **The Role of the Armed Forces and National Civil Police**

The retreat of the Salvadoran armed forces from politics was one of the major achievements of the accords; however, conference participants considered that subsequent reforms failed to adequately address several important areas in which the military retained political influence. Although the army was downsized and its constitutional role confined to national defense, there continue to be concerns about civilian control over the military, transparency, and accountability.

Commentators noted that corruption and what Gino Costa calls "the subordination of duty to the need for profit" had become one of the chief problems of public security during the war, affecting not only the efficiency but also the conduct of El Salvador's security forces. In post-war El Salvador, many security officials have sought to preserve their privileges and prerogatives, turning to criminal elements, and, in the process, undermining the integrity and ability of the public security sector to fight common and organized crime.

The new National Civil Police (PNC), now under the Ministry of Public Security, replaced the three previously existing security forces. It has been, however, challenged by the growing number of murders and assaults and a resurgence of illegally armed groups.

Some participants argued that rising violence and criminality pose a real risk to democratic consolidation in El Salvador. The overall effectiveness of the PNC has been hindered by a number of problems. Delays in creating the PNC's Investigations Division have thwarted the creation of a new, professional investigative body. The incorporation of personnel from the former and much-criticized body, the Commission to Investigate Criminal Acts (CIDH), was done without the kind of training and vetting mandated by the PNC law. Many of the PNC's own officers have been killed in the line of duty, which has had an adverse impact on morale and police force capabilities. The PNC continues to suffer from lack of resources, basic equipment, and proper training programs for its personnel. Many of these problems are attributable to a lack of international donor support for the reform of the public security sector.

Discussants identified a number of possible measures to strengthen the civilian-military chain of command and overall public security, including:

- w The need to appoint civilian ministers of defense;
- w The need to eliminate continuing ambiguities regarding the policing roles and function of the armed forces;
- w The importance of establishing strict civilian control over military budgets and appropriations while strengthening public accountability and transparency in the system of national accounts;
- w The importance of eliminating corruption in the military by establishing strict rules and codes of conduct that prohibit serving military personnel from becoming involved in business ventures; and
- w The implementation of measures to improve police performance and crime prevention programs, and over the long term, to stem the flow and possession of weapons and address the socio-economic causes of crime.

### **Political Institutions and Parties**

Discussing democratic development in El Salvador, El Salvador's ambassador to the Organization of American States, Mauricio Granillo Barrera, suggested that there has been an important change in the values, conduct, and expectations of the people, in general, and political actors, in particular, since the peace accords were signed. Electoral coalitions have emerged; elections are highly competitive at the national and municipal levels; and there has been a full and complete reintegration of demobilized elements, notably the FMLN, into the political life of the country. This sentiment was echoed by the Honorable Gerson Martínez, then vice president of El Salvador's Legislative Assembly and an FMLN member, who stated that the peace accords were the country's most important political act since independence and that the quality and depth of the country's political transformation, which began in 1992, has been quite impressive.

Nonetheless, conference participants commented on the current practice and consolidation of democracy in El Salvador in the following ways:

- w The potential for stalemate in the Legislative Assembly did not improve with the recent legislative and municipal elections. The FMLN won thirty-one of the eighty-four posts in the single-house congress. The ruling Nationalist Republican Alliance (ARENA) holds twenty-nine seats with the remaining ten held by other parties. More than ever, all sides will have to compromise if the country is to move forward.
- w There is a real need for a professional, non-partisan electoral commission or council to oversee elections and institute further electoral reforms.

- w The existence of illegal armed groups pose a continuing threat to democracy.
- w The process of reconciliation between El Salvador's two major political parties, ARENA and FMLN, has not been accompanied by a similar process at broader levels of civil society, giving rise to the possibility of a resurgence of demands for justice for past human rights violations.

## The UN's Role

It is widely recognized that the United Nations played a critical role in the various phases of the peace process. Once the settlement was reached, as noted by Teresa Whitfield, the UN's role in the peace process became even more important. Although the UN was instrumental in ensuring that the peace process stayed on track, difficulties and problems hampered it. While the reintegration of the FMLN was successful, arrangements for transferring land to former combatants of both sides, and for legalizing wartime occupations of land, were delayed by the government's continuing opposition to the transfer conditions. There was poor coordination among donors and little UN attention to financing issues associated with implementation of the accords. These problems were accentuated by lack of consultation between the negotiators and those responsible for implementation with the Bretton Woods institutions such as the International Monetary Fund and the World Bank. Insufficient funding of the implementation of the accords and the absence of an overall economic strategy for development weakened the peace process.

Among the various lessons and recommendations that came out of the discussion of the UN role in El Salvador were the following:

- w Peace-building is a long-term process that requires a great deal of commitment.
- w There is a real need for early and continuous consultation with international financial agencies and donors during the negotiation of any peace settlement.
- w The United Nations role within any peace negotiation is set by the unique dynamics of each agreement so that the framework of the accords will determine the level of UN activism.
- w The United Nations cannot dictate the role of civil society in the peace process. Although civil society groups are critical to the peace process, they must establish their own roles, as outside intervention is not viewed as legitimate.
- w UN leverage over the actors in any peace process is a declining resource once the settlement is signed and ratified by the parties. The United Nations and other international actors will have a waning influence over outcomes as the actors become more independent and democracy is strengthened.

## Lessons Learned

A key lesson that emerges from the Salvadoran peace process, highlighted in Cynthia Arnson's presentation to the conference, is that although a military stalemate and a supportive regional and international environment helped to bring the parties to the negotiating table, a political settlement was far from preordained. Although the conflict in El Salvador was in one sense "ripe for resolution," ripeness was not a sufficient foundation for a durable settlement. The foundations of the peace settlement had to be laid with third-party assistance that could contribute to altering perceptions, defining the terms of a negotiated settlement, and ensuring that, once the settlement was negotiated, the disputants adhered to its terms and lived up to their commitments.

This lesson speaks to other conflicts in the region, notably the current conflict in Colombia. Arnson argued that there is a real danger that the notion of a "hurting stalemate" is being taken too literally in U.S. policies towards Colombia, and the perception that military pressure, including the provision of military assistance, will bring about a hurting stalemate is too one-sided. There is a considerable risk that the policy will backfire by deepening the violence, giving credence to guerrilla claims of U.S. military intervention, and strengthening the position of guerrilla hardliners. The role of perceptions must be kept at the forefront of interventionist policies, recognizing that the political challenge is to influence minds and not just using military force to inflict damage on the other side. As the experience of the international community in El Salvador attests, international actors have a key mediating role to play in the peace process and in helping to change local perceptions. Furthermore, according to Arnson, negotiations must move beyond formulas of disarmament, demobilization, and reincorporation and address the socio-economic and developmental causes of conflict.

There was animated discussion of the U.S. role in the peace process. It is important to recall that the peace process in El Salvador was a direct beneficiary of the end of the Cold War and the desire to end proxy wars in regions like Central America. From 1981 to 1989, U.S. policy toward El Salvador followed primarily a military track. During Ronald Reagan's presidency, the United States provided massive aid to the Salvadoran government to defeat what the U.S. administration saw as a communist-led insurgency. The election of George Bush, however, witnessed an important shift in U.S. policy to deemphasize Central America. The United States began to reduce its aid to the Salvadoran military. President Bush threatened to cut off aid after the murder in El Salvador of six Jesuit priests and two female witnesses, and began to cooperate with efforts to find a negotiated settlement to the conflict. The United States was strongly supportive of UN efforts; it also helped to nurture President Cristiani's moderate conservative credentials recognizing him as a leader who could retain the support of the nation's strong right-wing forces while winning the trust of rebel leaders. U.S. diplomats also exerted useful influence on Cristiani during the final round of negotiations in New York by pressuring him to make the concessions necessary to clinch the deal. Through its various El Salvador aid programs, the United States has continued to be a crucial player in the implementation of aspects of the accords dealing, for example, with justice reform.

In their responses to Arnson's paper, Bernard Aronson, former assistant secretary of State for Inter-American Affairs, and Phillip Chicola, director of Andean Affairs in the

State Department's Bureau of Western Hemisphere Affairs, offered the following more general lessons about U.S. policies in El Salvador and the relationship between democracy and peace-building.

- w The United States should never disengage its national interests from its democratic values. When democracy is threatened in any society, the U.S. should help defend the democratic center from hostile forces on the right and the left.
- w The experience in El Salvador demonstrates the need to internationalize the peace process by helping to build the appropriate infrastructures for peace and bringing all of the relevant parties into the peace process.
- w The mobilization of civil society is critical for any peace process and is necessary for all phases of the peace process, including the negotiation and implementation phases of a political settlement.
- w Although the lack of certainty regarding implementation details in a peace settlement may foster ambiguous outcomes, there is also a real risk that if the endgame is defined too early in the negotiations, key actors will never be brought to the table.

Among the more general conclusions to emerge at the end of the conference were these:

- w A peace settlement is an obsolescing bargain. As soon as it goes into effect, the parties will gradually take over the process of implementation.
- w Leadership and political will are critical to the successful implementation of any settlement, and civil society has an important oversight role in the formulation of subsequent policies.
- w The peace process in any setting demands a principled defense of democracy and requires risk takers at all levels: the national, the subnational or community level, and the international.

Ten years later, the peace process in El Salvador demonstrates some of the strengths and limitations of a negotiated settlement and peace process. On the one hand, the settlement and the peace process brought about real change in the overall human rights climate of a country that had been wracked by a brutal civil war. It also created real political opportunities for the country to move forward. On the other hand, it is undeniable that some elements of the peace process could have been approached differently, particularly to deepen and accelerate the pace of political, judicial, economic, and security reforms. But the real lesson is that a negotiated settlement is indeed possible if there is sufficient commitment to a peace process, not only by outside third parties, but also—and more crucially—by the directly concerned parties themselves, who must not allow their commitment to wane in the months and years that follow.

## Notes

1. The views expressed herein are those of the author and not necessarily those of the Due Process of Law Foundation.
2. Mexico Agreement and annexes signed on April 27, 1999, by the government of El Salvador and the FMLN, UN Doc. A/46/553-S/23130, October 9, 1991.
3. Legislative Decree 147, January 23, 1992. This law excluded from its benefits: (1) persons convicted by juries (to prevent the release of the two officers convicted four months earlier for the killing of six Jesuit priests, their cook, and her daughter); and (2) those named in the Truth Commission report as responsible for serious human rights violations, to allow the Truth Commission to carry out its work before the application of amnesty in all cases.
4. One officer was no longer a member of the Salvadoran armed forces. See letter dated January 7, 1993, from the secretary-general, addressed to the president of the Security Council, UN Doc. S/25078, January 9, 1993. Of the 102 remaining, 26 officers were recommended for transfer and 76 for discharge.
5. See Thomas Buergenthal, "The United Nations Truth Commission for El Salvador," *Vanderbilt Journal of Transnational Law*, 27 (1994), p. 517.
6. The Truth Commission's members were former Colombian president Belisario Betancur, former Venezuelan foreign minister Reinaldo Figueredo, and U.S. law professor Thomas Buergenthal.
7. General Amnesty Law for the Consolidation of Peace, Legislative Decree 486, passed on March 20, 1993.
8. See Teresa Whitfield, "Staying the Course in El Salvador," in Alice H. Henkin, ed., *Honoring Human Rights: From Peace to Justice—Recommendations to the International Community* (Washington, D.C.: Aspen Institute, 1998), p. 182.
9. See Tina Rosenberg, "What Did You Do in the War, Mama?," *New York Times Magazine*, February 7, 1999, p. 52.
10. See, e.g., T. Rosenberg, p. 93.
11. Resolución de la Demanda de Inconstitucionalidad presentada por Joaquín Antonio Cáceres Hernández, Sala de lo Constitucional de la Corte Suprema de Justicia, Inconstitucionalidad No. 10-93, May 20, 1993.
12. Inter-American Commission on Human Rights, Report No. 136/99 (El Salvador) (Case No.10.488, December 22, 1999) and Report No. 1/99 (El Salvador) (Case No. 10.480, January 27, 1999), para. 145, 155; see also Inter-American Commission on Human Rights, El Salvador Report (1994).
13. Inter-American Commission on Human Rights, Report No. 1/99; Report No. 36/96 (Chile), 95th Sess., OEA/Ser.L/V/II.95 (October 15, 1996).
14. United Nations, Report of the Secretary-General on the United Nations Observer Mission in El Salvador, UN Doc. S/25812/Add.1, May 24, 1993.



15. In two cases the United States was successful in avoiding the application of the amnesty law. The cases involved the December 1980 murder of four U.S. churchwomen by Salvadoran National Guardsmen. The five guardsmen convicted in this case were repeatedly denied amnesty after the United States exerted great pressure, including the threat of withholding aid, to convince Salvadoran authorities that this was actually a “common crime,” not subject to amnesty. In the “Zona Rosa” attack, an FMLN commando had opened fire on U.S. marines and others at an outdoor restaurant. Four U.S. marines stationed at the Embassy and nine other people died in the attack. The United States successfully argued that the marines enjoyed special diplomatic protection that made their killers ineligible for amnesty.

16. See Leonardo Franco, “Comments on Brody and a Discussion of International Reform Efforts,” in Juan E. Méndez, Guillermo O’Donnell, and Paulo Sergio Pinheiro, eds., *The (Un)Rule of Law and the Underprivileged in Latin America* (Notre Dame: University of Notre Dame Press, 1999). As Reed Brody has pointed out, this disjunction was still more severe in Haiti after the return of President Aristide as the United States, while pouring millions of dollars into justice reform, “opposed accountability and justice and actively undermined pursuit of these goals.” (“International Aspects of Current Efforts at Judicial Reform: Undermining Justice in Haiti,” in Méndez, et al, eds., *The (Un)Rule of Law*.)

17. Douglass Cassel, “Lessons from the Americas: Guidelines for International Response to Amnesties for Atrocities,” *Law and Contemporary Problems*, 59 (1996): pp. 197, 228.

18. According to the Supreme Court’s decision, amnesty cannot be granted (pursuant to article 244 of the Constitution) if a case deals with a violation, infraction, or alteration of constitutional provisions committed by a civil or military public official between June 1, 1989 (the day President Alfredo Cristiani was sworn in) and January 1, 1992, the end of the period to which the amnesty law applies, or if the application of the amnesty would deny the possibility of reparation for the violation of a fundamental right as guaranteed by article 2 of the Constitution.

19. “Gracias a Dios, no pienso renunciar,” *La Prensa Gráfica*, February 10, 1999.

20. IDHUCA, 1999.

21. *La Prensa Gráfica*, April 6, 1999, p. 4.

22. Originally, ARENA supported the incumbent, Manuel Córdova, for another term, while the FMLN did not. As months went by, the FMLN changed its position and urged the re-election of the former incumbent. By that time ARENA no longer supported him. The former attorney general had earned considerable respect with his handling of sensitive cases, including several in which police had mishandled the investigation or were themselves involved in the commission of crimes. A number of civil society organizations, including lawyers organizations and human rights NGOs, had supported his reelection.

23. See article 211 of the political constitution of El Salvador, 1983.

24. Kevin Murray, et al., *Rescuing Reconstruction: The Debate on Post-War Economic Recovery in El Salvador* (Cambridge, Massachusetts: Hemisphere Initiatives, 1994).

25. Assistance to the Transition from War to Peace: Evaluation of the USAID/El Salvador’s Special Strategic Objective (Washington D.C.: Management Systems International, 1996).

26. Final Report. Impact Evaluation: Reinsertion of Ex-combatants in El Salvador (Washington, D.C.: Creative Associates International, 1996).

27. De la esperanza a la realidad. 4 años de inserción del FMLN (San Salvador: Fundación 16 de Enero, 1996).

28. Report from April, 1996.

29. The views contained within this paper are those of the author, who works as an official within the United Nations Department of Political Affairs, and do not necessarily reflect those of the United Nations.

30. The size of the demilitarized zone (or *despeje*) in Colombia is itself twice the size of the entire country of El Salvador.

31. See I. William Zartman, "Ripening Conflict, Ripe Moment, Formula, and Mediation," in *Perspectives on Negotiation: Four Case Studies and Interpretations*, Diane B. Bendahmane and John W. McDonald, Jr., eds. (Washington, D.C.: Center for the Study of Foreign Affairs, Foreign Service Institute, 1986), pp. 205-27.

32. Teresa Whitfield, "The Role of the United Nations in El Salvador and Guatemala: A Preliminary Comparison," in *Comparative Peace Processes in Latin America*, Cynthia J. Arnson, ed., (Stanford: Woodrow Wilson Center Press and Stanford University Press, 1999), p. 258.

33. I. William Zartman, *Elusive Peace: Negotiating an End to Civil Wars* (Washington, D.C.: The Brookings Institution, 1995), p. 18.

34. Ana Guadalupe Martínez, interview with author, San Salvador, February 23, 1995, quoted in *Comparative Peace Processes in Latin America*, Cynthia J. Arnson, ed., (Stanford: Woodrow Wilson Center Press and Stanford University Press, 1999), p. 17.

35. *Ibid.*, General (ret.) Mauricio Vargas, interview with author, San Salvador, February 24, 1995, p. 17.

36. See Jesús Antonio Bejarano, *Una agenda para la paz: Aproximaciones desde la teoría de la resolución de conflictos* (Bogotá: Tercer Mundo Editores, 1995); and Marc Chernick, "Negotiating Peace Amid Multiple Forms of Violence: The Protracted Search for a Settlement to the Armed Conflicts in Colombia," in *Comparative Peace Processes in Latin America*, Cynthia J. Arnson, ed., pp. 159-195.

37. Cynthia McClintock, *Revolutionary Movements in Latin America: El Salvador's FMLN and Peru's Sendero Luminoso* (Washington, D.C.: United States Institute of Peace Press, 1998), pp. 11-19 and 299-312.

38. The one exception was General Harold Bedoya, former commander of the armed forces, who pledged total war and garnered less than two percent of the vote.

39. Colombia exports 80 percent of the cocaine consumed in the United States, and has displaced Asian countries as the largest supplier of heroin to the East Coast. Coca production has "exploded," in the words of General Barry McCaffrey, director of the Office of National Drug Control Policy, and reductions in Peruvian and Bolivian production have been more than offset by increases in the quantity and potency of coca cultivated in Colombia.

40. See Cynthia J. Arnson, "Window on the Past: A Declassified History of Death Squads in El Salvador," in Bruce B. Campbell and Arthur D. Brenner, eds., *Death Squads in Global Perspective: Murder with Deniability* (New York: St. Martin's Press, 2000), pp. 85-124.

41. This position was articulated most prominently by Secretary of State Madeleine Albright in an August 10, 1999 op-ed in the *New York Times*. See also the testimony of Ambassador Thomas R. Pickering, under secretary of state for political affairs before the Senate Committee on Foreign Relations, October 6, 1999.

42. The State Department's annual human rights report published in February 1999 stated that "credible allegations of cooperation with paramilitary groups, including instances of both silent support and direct collaboration by members of the armed forces, in particular the army, continued. There were tacit arrangements between local military commanders and paramilitary groups in some regions, and paramilitary groups operated freely in some areas that were under military control." U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, "Colombia Country Report on Human Rights Practices for 1998," February 26, 1999. See also, George Vickers, "Targeting the Guerrillas or the Traffickers?," presentation at the U.S. Army War College conference, "War and Peace in Colombia: Strategy for Ambiguous Warfare," November 12, 1999, Carlisle, Pennsylvania.

43. The Clinton administration, through the embassy in Bogotá and the State Department's human rights bureau, has given unprecedented attention to human rights issues, and has pushed successfully for the dismissal of senior military officers involved in death squad killings and paramilitary terror. President Pastrana has dismissed four generals that participated or acquiesced in paramilitary violence.

44. See Nina M. Serafino, "Colombia: Conditions and U.S. Policy Options," Congressional Research Service, Library of Congress, October 7, 1999, pp. 24-27.

## Conference Panelists

**Cynthia Arnson**, assistant director, Latin American Program, Woodrow Wilson International Center for Scholars

**Bernard Aronson**, former U.S. assistant secretary of state for inter-American affairs

**Phillip Chicola**, director, Office of Andean Affairs, Bureau of Western Hemisphere Affairs, U.S. Department of State

**Ricardo Córdova**, executive director, FundaUngo

**Gino Costa**, former political adviser to the chief of the UN Observer Mission in El Salvador

**Louis DuPart**, former U.S. deputy assistant secretary of defense for inter-American affairs

**Mauricio Granillo Barrera**, ambassador, permanent representative of El Salvador to the Organization of American States

**Fen Osler Hampson**, Carleton University

**Gerson Martínez**, then–vice president, Legislative Assembly of El Salvador

**Aryeh Neir**, president, Open Society Institute

**Charles E. Nelson**, vice president, United States Institute of Peace

**Margaret Popkin**, executive director, Due Process of Law Foundation

**Margaret Sarles**, chief, Democracy and Human Rights Office, Bureau for Latin America and the Caribbean, United States Agency for International Development

**William Stuebner**, then–adviser, Rule of Law Program, United States Institute of Peace

**Teresa Whitfield**, special assistant to the assistant secretary general for political affairs, United Nations

## About the Contributors

**Cynthia Arnson** is assistant director of the Woodrow Wilson Center's Latin American Program. She is editor of *Comparative Peace Processes in Latin America* (Woodrow Wilson Center and Stanford Press, 1999), and author of *Crossroads: Congress, the President, and Central America, 1976–1993* (2nd ed., Pennsylvania State University Press, 1993). As director of the Project on Comparative Peace Processes in Latin America, she has focused intensively in recent years on Colombia, and has written frequently on Central America, Colombia, and U.S. policy in Latin America. Previously she was associate director of Human Rights Watch/Americas, with responsibility for Colombia, El Salvador, and Nicaragua.

**Ricardo Córdova Macías** is the executive director of the Guillermo Manuel Ungo Foundation (FundUngo), a social science institute in San Salvador. He is also the president of the Central American Association of Sociology and writes a column for the Salvadoran daily *La Prensa Gráfica*. Córdova has authored several publications relevant to peace-building in El Salvador, including writings on military reform and civil-military relations, political parties and elections, and political transition and democratic governance in El Salvador and Central America.

**Gino Costa** has been deputy ombudsman for human rights in Peru since 1997, and executive secretary of the Ad Hoc Commission, established in 1996 to review more than four thousand judicial rulings on terrorism. He is a consultant for the United Nations and international aid agencies on police reform and human rights. Costa joined the United Nations in 1988, where he spent six years, first in Geneva at the Centre for Human Rights and later in Central America as part of three peacekeeping missions. From 1990 to 1994, he was a member of the team that supervised the implementation of the peace accords in El Salvador. In 1994, he received grant support from the U.S. Institute of Peace to write *La creación de una policía civil*, a book on the creation of the National Civil Police in El Salvador, published in 1999 by the Universidad Centroamericana José Simeón Cañas.

**Fen Osler Hampson** was a Jennings Randolph senior fellow at the U.S. Institute of Peace from 1993 to 1994, where he wrote *Nurturing Peace: Why Peace Settlements Succeed or Fail*, which included a chapter on the peace settlement in El Salvador. He currently is professor of international affairs and associate director of the Norman Paterson School of International Affairs, Carleton University, Ottawa, Canada. From 1983 to 1986, he was a fellow at the Centre for Science and International Affairs at Harvard University. From 1987 to 1990, he served as a senior associate at the Canadian Institute for International Peace and Security, and began teaching at Carleton. He is the author of four books and the coeditor of sixteen.

**Margaret Popkin** is the executive director of the Due Process of Law Foundation. From 1995 until November 1999, she worked at the Robert F. Kennedy Memorial Center for Human Rights, as program director for Africa and Latin America and later as acting director. She lived in El Salvador from 1985 to 1993. For most of that time, she was deputy director of the Jesuit-run Central American University's Human Rights Institute. While in El Salvador, she served as a consultant for the Lawyers Committee for Human Rights, the United Nations Truth Commission for El Salvador, and the United Nations Development Program. She has published and spoken widely about efforts to build the rule of law and address past human rights abuses in Latin America, and is the author of *Peace Without Justice: Obstacles to Building the Rule of Law in El Salvador* (Pennsylvania State University Press, 2000).

**Margarita S. Studemeister** assists U. S. Institute of Peace vice president Charles E. Nelson in coordinating and implementing Latin America-related activities and was instrumental in organizing the December 1999 conference on El Salvador. Previously she managed the publication of declassified U. S. government documents in foreign affairs at the National Security Archive and for many

years served a variety of nongovernmental organizations dedicated to research and information services, human rights, and community development in Central America. She is director of the Jeannette Rankin Library Program at the Institute of Peace and codirects the Institute's Virtual Diplomacy Initiative.

**Teresa Whitfield** has been special assistant to the assistant secretary general for political affairs at the United Nations since 1996. She has worked as a writer and television journalist, specializing in Latin America, and is the author of *Paying the Price: Ignacio Ellacuría and the Murdered Jesuits of El Salvador* (Temple University Press, 1994) and, most recently, "The Role of the United Nations in El Salvador and Guatemala: A Preliminary Comparison," in *Comparative Peace Processes in Latin America* (Stanford University Press, 1999), edited by Cynthia J. Arnson.





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