
DIPLOMACY AND HUMAN RIGHTS: THE ROLE OF HUMAN RIGHTS IN CONFLICT RESOLUTION IN EL SALVADOR AND HAITI

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"I should stress . . . my belief that respect for human rights constitutes a vital, indeed a critical component, among measures to resolve, on a long term basis, conflicts . . . including efforts to promote enduring conditions of peace, national reconciliation and democracy."

*U.N. Secretary-General Boutros Boutros-Ghali
Report to the Security Council on Angola (S/25840, May 1993)*

Preventive diplomacy and post-conflict peace-building are inherently linked and human rights are essential to their application.¹ In order for these policies to succeed, an integrated and complementary approach to conflict resolution is necessary, including an important role for human rights verification and education, along with institution strengthening and the political will of the international community to oversee implementation of these policies. This article analyzes the role of human rights in preventive diplomacy and post-conflict peace-building in the context of recent U.N. operations in El Salvador and Haiti, and the lessons which they offer for future U.N. operations, such as that now underway in Guatemala.

Within preventive diplomacy, the theory of human rights is simple: address human rights early in areas of potential conflict in order to prevent disputes

¹ Post-conflict peace-building is seen as the counterpart to preventive diplomacy: "In surveying the range of efforts for peace, the concept of peace-building as the construction of a new environment should be viewed as the counter-part to preventive diplomacy, which seeks to avoid the breakdown of peaceful conditions. . . . Preventive diplomacy is to avoid a crisis; post-conflict peace-building is to avoid a recurrence." Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peace-Making and Peace-Keeping*, U.N. doc. A/47/277-S/24111 (17 June 1992), 33.

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from escalating and to limit the spread of the latter when they do occur.² The same principle guides the theory of human rights in post-conflict peace-building: address human rights within the process of post-conflict reconstruction to ensure a stable and long-lasting peace.

Parties to a conflict can learn to respect each other as morally and substantively equal if human rights are addressed preemptively in areas of potential conflict, early on in the case of an existing conflict, and during a political process aimed at ending a conflict. In societies where an oppressed party has been deprived of basic human rights and dignity, addressing these issues empowers the oppressed and helps redress the balance of power between the different sectors of society. The new balance provides for a more equal basis for political negotiations during the course of which previously silenced parties, now aware of their rights, can present their arguments with adequate force.

Only in recent years, after the end of the Cold War, has it become possible to debate human rights in the Security Council. Whereas in the past human rights were debated exclusively in the General Assembly of the United Nations, in recent years some of the reports of the independent experts of the U.N. Human Rights Commission have been discussed in the Security Council. Further, a number of peacekeeping operations have included large human rights components. Human rights are no longer a taboo subject in the Security Council.

The recognition of the role of human rights in preventive action has also recently been advocated by the U.N. Secretary-General Boutros Boutros-Ghali. He wrote that democracy within nations requires respect for human rights and fundamental freedoms, and that it requires deeper understanding and respect for rights of minorities and for the more vulnerable groups of society.³ The Secretary-General has also advocated the complementary nature of operations designed to end civil strife and institutionalize peace.⁴

Institution building is an essential component of both preventive diplomacy and post-conflict peace-building. This includes strengthening both governmental and non-governmental organizations, including those with responsibilities and interests that go beyond mere human rights. A state is better able to ensure

² Ibid.

³ Ibid.

⁴ In *An Agenda for Peace*, Boutros-Ghali wrote: "Increasingly, peace-keeping requires that civilian police officers, human rights monitors, electoral officials, refugee and humanitarian aid specialists and police play as central a role as the military [. . .] Peace-making and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people. Through agreements ending civil strife, these may include . . . advancing efforts to protect human rights, reforming or strengthening institutions, and promoting formal or informal processes of political participation." In the recent *Supplement to an Agenda for Peace*, the Secretary-General wrote: "The validity of the concept of post-conflict peace-building has received wide recognition. The measures it can use — and there are many — can also support preventive diplomacy. Demilitarization, the control of small arms, institutional reform, improved police and judicial systems, the monitoring of human rights, electoral reform and social and economic development can be as valuable in preventing conflict as in healing the wounds after the conflict has occurred." U.N. doc. A/50/60-S/1995/1 at 12.

that its population lives in peace if there is a strong infrastructure for the protection of human rights, including an independent legislature and judiciary, a counsel for human rights, a civilian police, and a credible army. It is also of utmost importance to address the specific characteristics of the conflict on a political level, to ensure that all groups affected by the conflict are represented in the peace process, and that there is political will to resolve the conflict. Similarly, the political and economic will of the international community is essential to the success of preventive diplomacy and post-conflict peace-building.

By examining recent U.N. operations in El Salvador and Haiti, one can see how the powers granted a human rights mission can affect the success of conflict resolution and post-conflict peace-building. The challenge facing the current U.N. mission in Guatemala is to take the lessons of these two operations—both negative and positive—and apply them in a manner which will help construct a stable resolution to the Guatemalan conflict.

Understanding Contemporary Peacekeeping

In the early history of the United Nations, two types of peacekeeping missions existed: military observer groups and infantry-based forces.⁵ Their primary task was to observe cease-fire arrangements, at the request of the parties.⁶ In recent years, peacekeeping has expanded beyond these traditional categories in response to changing circumstances.⁷ Boutros-Ghali has advocated the use of peacekeeping missions in a wide range of areas, including that of preventive action. These operations are known as "preventive deployment peacekeeping missions." One such mission exists in the former Yugoslav Republic of Macedonia where approximately one thousand peacekeepers have been guarding the border with Serbia since June 1993, successfully preventing the spread of conflict.

Many of today's conflicts are within states rather than between states and thus require new and unique responses from the international community. For example, internal armed conflicts are usually fought not only by a regular army, but also by militias and armed civilians. They are often guerrilla wars without

⁵ See Marrack Goulding, "The Evolution of United Nations Peacekeeping" *International Affairs*, 69 (July 1993): 451-64.

⁶ Military observer groups, which were usually unarmed, were intended to create the conditions necessary for successful political negotiations to proceed. These include the United Nations Truce Supervision Organization (UNTSO) which was set up to supervise the 1949 armistice agreements after the Security Council called for an end to the Arab-Israeli war, and the United Nations Military Observer Group for India and Pakistan (UNMOGIP) which was set up to monitor the ceasefires following the hostilities between India and Pakistan over Jammu and Kashmir in 1965 and 1971.

⁷ For example, the U.N. Observer Mission in Liberia (ONUMIL) departs from traditional peacekeeping in that it is mandated to oversee the activities of a regional peacekeeping force rather than monitor the activities of the parties themselves. The U.N. operation along the Iraq/Kuwait border (UNIKOM) has a "traditional" mandate to monitor the demilitarized zone on the border ceasefire violations; however, the context of its deployment was "non-traditional" because it followed from a peace enforcement operation.

clear front lines. Civilians are the main victims and often the main targets.⁸ The number of refugees and internally displaced people is often so large in such circumstances that the existing authorities in the country rarely have the means or will to remedy the situation.⁹

Another feature of such conflicts is the collapse of state institutions, especially the police and the judiciary, with resulting paralysis of governance and a breakdown of law and order. In such cases, international intervention must extend beyond military and humanitarian tasks and include the promotion of national reconciliation and the reestablishment of effective government. Thus, in contemporary peacekeeping, implementation of comprehensive peace agreements is increasingly common.¹⁰ These multi-functional peacekeeping operations have highlighted the role the United Nations can play after a negotiated settlement has been implemented. Coordinated programs need to be implemented early and function throughout the duration of U.N. involvement to help ensure a lasting peace. These programs should include measures for the promotion of human rights, the bolstering of national institutions, the creation of civilian police forces, and other actions in the political field. Only sustained efforts to resolve underlying socio-economic, cultural, and humanitarian problems can place an achieved peace on a durable foundation.¹¹ Such efforts can benefit from an emphasis on human rights.

Human Rights in Preventive Diplomacy and Post-Conflict Peace-Building

In three recent operations, El Salvador, Haiti, and Guatemala, human rights were a centerpiece of the political negotiations and consequently were given a high priority in the composition of the respective U.N. missions. In all three cases, the deployment of human rights components preceded the final political settlement. In El Salvador, the 1990 San José Agreement on Human Rights called for the establishment of a U.N. human rights verification mission prior to the signing of a comprehensive peace treaty. In Haiti, a joint effort by the Organization of American States (O.A.S.)/U.N. civilian mission was established before any timetable for negotiations to restore democratic rule to Haiti was signed. In early 1993, both parties to the Haitian conflict agreed on the terms of reference for the mission, which included observation of the human rights situation. In Guatemala, a U.N. human rights verification mission has been established

⁸ *Supplement to an Agenda for Peace, supra*, note 4.

⁹ The number of refugees registered with the Office of the United Nations High Commissioner for Refugees (UNHCR) has increased from 13 million at the end of 1987, to 26 million at the end of 1994. The number of internally displaced persons has increased even more dramatically. *Ibid.*, 5.

¹⁰ The comprehensive 1978 settlement plan for the independence of Namibia, the implementation of which began in 1988, initiated a wave of peacekeeping operations characterized by the implementation of comprehensive peace settlements.

¹¹ See *Supplement to An Agenda for Peace, supra* note 4, and *An Agenda for Development*, U.N. doc. A/48/935.

under the terms of the Comprehensive Agreement on Human Rights signed between the parties to the conflict in March 1994.

El Salvador

The San José Agreement on Human Rights was among the first of a series of agreements constituting the peace settlement between the government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN).¹² In the first section of the agreement the parties committed themselves to take immediate steps to "avoid any act or practice which constitutes an attempt upon the life, integrity, security or freedom of the individual." The second part of the agreement provided for the establishment of an international verification mission, the United Nations Observer Mission in El Salvador (ONUSAL).¹³

ONUSAL began verification of the San José Agreement in July 1991, nearly six months before the full peace settlement was finalized.¹⁴ The United Nations' experience in El Salvador established a number of precedents in the area of human rights monitoring.¹⁵ The San José Agreement was the first specific human rights agreement concluded in the context of a peace settlement which provided a clear framework for U.N. verification of human rights. ONUSAL's Human Rights Division was the first such component to be established in a peacekeeping context, and is unique for having been deployed before a ceasefire was in effect.

The El Salvador Peace Accords incorporated another unprecedented human rights measure by establishing two separate bodies to address impunity. The first of these bodies was the Commission on the Truth, charged with investigating human rights violations during the civil war between 1980 and 1992. The second body was the Ad Hoc Commission on the Purification of the Armed Forces, charged with evaluating the professional behavior of all members of the

¹² The San José Agreement on Human Rights of 26 July 1990 is reprinted in U.N. doc A/44/971-S/21541. The agreement was signed under the auspices of the U.N. Secretary-General Javier Pérez de Cuéllar and his personal representative for Central America, Alvaro de Soto.

¹³ For more details about the work of ONUSAL, see the reports of the mission to the General Assembly and Security Council, U.N. docs. A/45/1055-S/23037 (1991) 16 September; A/46/658/corr.1-S/23222/corr.1 (1991) 29 November; A/46/876-S/23580 (1992) 19 February; A/46/935-S/24066 (1992) 5 June; A/46/955-S/24375 (1992) 12 August; A/47/912-S/25521 (1993) 5 April; A/47/968-S/26033 (1993) 2 July; A/47/1012-S/26416 and addendum; A/49/59-S/1994/47 (1994) 18 January; A/49/116-S/1994/385 (1994) 5 April; A/49/281-S/1994/886 (1994) 28 July; A/49/585-S/1994/1220 (1994) 31 October. Reed Brody, "The United Nations and Human Rights in El Salvador: Negotiated Revolution," *Harvard Human Rights Journal*, Vol. 8 (1995) (forthcoming); Diego Garcia-Sayan "Active Verification and Institution Building: The Experience of ONUSAL in El Salvador," paper presented at a seminar on "Human Rights and United Nations Peace-Keeping." The Aspen Institute, September 1994; and, Ingrid Kircher, "The Human Rights Work of the United Nations Observer Mission in El Salvador," *Netherlands Quarterly of Human Rights*, Vol. 3 (1992): 303-17.

¹⁴ On 16 January 1992, the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) signed a comprehensive peace accord putting an end to El Salvador's civil war which lasted over eleven years.

¹⁵ See Amnesty International: Peace-Keeping and Human Rights, (AI Index: IOR 40/01/94, January 1994).

armed forces with the aim of recommending personnel to be discharged in the process of "purification" of the armed forces.

ONUSAL was the first in a new generation of U.N. operations whose purpose is post-conflict peace-building. In these missions the United Nations offers its good offices toward a solution of an internal conflict and then assumes responsibility for compliance. ONUSAL verified the fulfillment of four objectives, as agreed upon by the parties: ending the armed conflict through political negotiations; consolidating democratic life and democratic institutions; establishing guarantees of unrestricted respect for human rights; and reunifying and reconciling Salvadoran society.¹⁶ Of these four ONUSAL objectives, perhaps the most crucial was to monitor the human rights situation in El Salvador.

The San José Agreement gave ONUSAL a wide range of powers, including the authority to investigate, promote, and defend human rights in El Salvador. Specific powers included the ability to receive communications from any individual, group of individuals, or body in El Salvador reporting human rights violations; to visit any place or establishment without prior notice; to hold meetings freely and privately with any individual or group; to collect by any means it deems appropriate such information as it considers relevant; to make recommendations to the parties on the basis of any conclusions it has reached with respect to cases or situations it may have been called upon to consider; and to report regularly to the Secretary-General of the United Nations and through him to the General Assembly and Security Council.

While the San José Agreement provided a broad mandate, it also included in its preamble a working definition of human rights which further widened the juridical framework of the verification missions activities.¹⁷ Other sections of the peace accords, signed after the San José Agreement, broadened the scope of ONUSAL's active verification to include other human rights related commitments, including judicial reform, the elaboration of a new military doctrine, the restructuring of the armed forces system of education, and the formation of the National Civilian Police and the Office of the Human Rights Counsel (Ombudsman).

Although the San José Agreement originally referred to U.N. verification following an end to the armed conflict, the parties asked for the mission to be established even before a ceasefire was reached. The Security Council established the mission in May of 1991.¹⁸ ONUSAL had several functional components: the Human Rights Division, the Military Division and, during the electoral period, an Electoral Division.¹⁹ While the Human Rights Division was only

¹⁶ These objectives of the peace process are contained in the Geneva Agreement which was signed under U.N. auspices on 4 April 1990. See Garcia-Sayan, 4.

¹⁷ Preamble to the San José Agreement, U.N. doc. A/44/971-S/21541. Also cited *ibid.* The preamble says that "for the purposes of the present political agreement human rights shall mean those rights recognized by the Salvadoran legal system, including treaties to which El Salvador is a party, and by declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States."

¹⁸ Security Council resolution 693.

¹⁹ Garcia-Sayan, 8.

the first element of an integrated operation, the defense and promotion of human rights became the core of the mission. The establishment of a human rights verification mission in the absence of a ceasefire actually helped the parties reach the final New York Accords in that the missions deployment on the ground discouraged those who were committing human rights abuses.

An important goal of the Human Rights Division of ONUSAL was "active verification"—a systematic investigation process aimed at gathering evidence of human rights violations.²⁰ The process employs specific corrective measures, and attempts to promote human rights activities within the work of institution building.²¹ The verification of violations by the FMLN during the period of armed conflict was limited to categories related to international humanitarian law. When the ceasefire took effect on 1 February 1992, ONUSAL's military and police divisions were added. Their activity fostered the progressive decline of two kinds of violations: improper human rights treatment, and the negative effects of military actions against the civilian population.

On the basis of the experience of active verification, a range of measures were put into practice with the aim of diminishing abuses. Agreement was reached with the National Police on instructions for "on the ground" operations. Under this agreement there was a dramatic decrease in violations. This kind of verification also allowed for defining and formulating more general recommendations aimed at producing certain legal reforms which would help ensure against draconian laws.²²

When a peacekeeping operation withdraws, the real test of its success is the ability of national institutions to function independently. As ONUSAL is withdrawing from El Salvador,²³ it is up to the newly reorganized institutions, including the judiciary, the Human Rights Counsel (Ombudsman), the new police, and the armed forces to maintain adequate support for human rights. Of these institutions, the judiciary is extremely weak and incapable of functioning adequately. This incapacity has consistently encouraged a vicious cycle of impunity. In fulfillment of the Peace Accords, in July 1994, the Assembly elected a new Supreme Court.

A second national agency, the office of the Human Rights Counsel (Ombuds-

²⁰ According to Garcia-Sayan, "active verification is carried out via a process which has various phases. The first phase involves the reception of accusations, or the decisions by ONUSAL to look into a case situation on its own initiative. The second phase involves an investigation which includes a detailed follow-up of the facts, police work, judicial proceedings, and the exercise of the missions power to seek information. In the third phase, after the facts have been corroborated, if it is decided that no human rights violations exist, the case is closed; but if the verification determines the contrary, recommendations are made for rectifying the harm done, and for remedying the cause which originated or facilitated the violation. In the fourth phase, during the entire process, active verification presupposes the offering of the United Nations' good offices to contribute to the transparency and efficiency of the police work, to due process, and to security for the witnesses, as well as to help, through its power to take initiatives, to overcome situations of existing violations." *Ibid.*, 12-13.

²¹ *Ibid.*

²² The draconian 1986 Police Law is still in force; its abolition is pending.

²³ ONUSAL's mandate expires at the end of April 1995. It is not expected to be renewed.

man) was instituted as part of constitutional amendments required by the Peace Accords. The constitution gives the office of the Ombudsman a broad mandate, conferring on it the capacity to investigate human rights violations with the ability to utilize various administrative and judicial processes. As ONUSAL withdraws, the office of the Ombudsman faces an increasing challenge of verifying human rights violations throughout El Salvador. Currently, it has a satisfactory juridical base and adequate human resources.

One of the key elements of the Peace Accords was the separation of the police from the armed forces through the creation of a new national police force, replacing the old militarized and discredited national police. Insofar as the armed forces themselves are concerned, ONUSAL's Human Rights Division has been applying a specific program related to the development of elements of military formation in a democratic system. Despite the cooperation between the Human Rights Division of ONUSAL and the armed forces, the Division has expressed its concern over the fact that some armed forces units have continued to pursue intelligence operations which under the Peace Accords are limited to a new government agency. In order to secure a safe transition, a "Joint Group for the Investigation of Illegal Armed Groups with Political Motivation in El Salvador" was established. The group proposed a series of recommendations to official institutions and to different sectors of society directed toward guaranteeing an adequate system of prevention of repression.

Within the framework of post-conflict peace-building it is recognized that "only sustained, cooperative work to deal with underlying economic, social, cultural, and humanitarian problems can place an achieved peace on a durable foundation."²⁴ Although not all the root problems of human rights violations have been addressed in El Salvador, the structure necessary for addressing them does exist. Much depends, however, on the long-term viability of the new police, the reformed judicial system, and the Ombudsman. In order for peace to endure, these institutions must be able to function well independent of ONUSAL.

In sum, the practice of active verification in El Salvador has had positive results. It has contributed to the ending of the armed conflict; a decrease in human rights violations; constitutional and legislative reforms which have strengthened democratic institutions; and the progressive dissipation of a culture of fear and its replacement by an alternative culture of respect for human rights. The successful transition to peace and democracy in El Salvador demonstrates the essential role of human rights in helping resolve conflict and in post-conflict peace-building.

Lessons For The Future

The strong and clear mandate of ONUSAL's Human Rights Division was the first key factor in the success of the work and impact the Division had on the human rights work in the country. Second, the political will of the parties,

²⁴ Boutros-Ghali, *An Agenda For Peace*, 33.

namely the Government of El Salvador and the FMLN, to resolve the conflict and to cooperate with ONUSAL was essential. Third, the coherent approach of the international community was a substantial contributing factor to the success of the mission. The support of the group *Friends of the Secretary-General*—which included Colombia, Mexico, Spain, and Venezuela—was also a considerable factor in shaping a consensual approach to resolving the conflict.²⁵ Perhaps most importantly, the work of the mission was aided by cooperation between the political negotiators and the Human Rights Division. As will be seen in the next section, these factors were absent from the U.N. mission to Haiti, which was characterized by the incoherent approach of the international community and its lack of political will in enforcing a commitment to human rights.

Haiti

On 30 September 1991, the first democratically elected President of Haiti, Jean-Bertrand Aristide, was overthrown in a bloody military coup d'état led by General Raoul Cédras. Cédras became the head of a military government which remained in power until the U.S.-led intervention in September 1994. Reports of human rights violations after the coup revealed a pattern of gross and widespread human rights abuses.²⁶ These included extra-judicial executions; severe ill-treatment amounting to torture; arbitrary and illegal arrests; abuses by members of the security forces and civilians working for them; intense harassment and intimidation of journalists, human rights monitors, lawyers, priests, nuns, and grassroots leaders; reprisals against popular movements supporting President Aristide; and restrictions on the right of freedom of association.²⁷ The judicial system, traditionally inefficient and corrupt, lay in

²⁵ Several others lessons relating to the integration of a human rights component in a mission can be taken from ONUSAL's success. First, ONUSAL gave institution building a top priority and consequently was successful in its work in this area. This was necessary in order to have a sustainable impact on a society and to ensure respect for democracy and human rights in the long run. After all, the United Nations cannot run the country, it can only help it find the best way to run itself. Second, public reporting is important to help the international community pursue an adequate approach and policy toward the country in question and to inform and exercise pressure on the local authorities implicated or praised in the report. Thus coherent guidelines for reporting should be established for every mission. Third, there should be extensive use of the local media in order to keep the local population apprised of the missions activities. Fourth, well-defined chains of command inside the mission are essential and should be made clear to mission staff, national institutions, and the public. Every mission should have a manual outlining the lines of authorities. A simplified version of the manual should be made available to the public. Fifth, every mission should keep a database summarizing its experience, difficulties, and how they were overcome. This database and analysis can help not only the mission itself as it is likely to face similar difficulties in different areas of operation, but also future missions operating in the area of human rights.

²⁶ *Report of the Secretary-General: The Situation of Democracy and Human Rights in Haiti*, U.N. doc. A/47/599.

²⁷ For a detailed analysis of the human rights situation after the coup, see Anne Fuller and Amy Wilenz, *Americas Watch/National Coalition for Haitian Refugees/Physicians for Human Rights, Return to the Darkest Days: Human Rights in Haiti Since the Coup* (New York: Human Rights Watch, 1991), 1-20. See also Beatrice Pouligny, *Haiti: Situations des droits de l'homme depuis le coup du 29*

tatters, leaving the population powerless to seek redress before the courts.²⁸ The political repression manifested in these gross human rights violations led to a growing number of refugees.²⁹

These provocative actions triggered the adoption of an O.A.S./U.N. resolution to launch a civilian mission to help reestablish and strengthen constitutional democracy in Haiti. In early September 1992, emissaries for President Aristide and de facto Prime Minister Bazin held talks in Washington D.C. in the presence of the O.A.S. Secretary-General. The de facto government consented to the presence of eighteen observers whose mandate was to diminish violence from any source, to promote respect for human rights, to facilitate the distribution of humanitarian assistance and, in general, to assess the progress being made toward a resolution of the Haitian crisis. The observers of this first civilian mission arrived in Haiti in September 1992. As will be seen in the next section, they were succeeded by the later deployment of a joint O.A.S./U.N. civilian mission—Mission Civile Internationale en Haïti (MICIVIH)—the first joint O.A.S./U.N. civilian operation in the history of the two organizations and the largest human rights mission ever to be deployed anywhere by an international organization.³⁰

Shortly after the deployment of the first O.A.S. civilian mission, Boutros-Ghali appointed Dante Caputo as his Special Representative for Haiti. Caputo was later appointed Special Representative for Haiti by the Secretary-General of the Organization of American States and thus became the joint Special Representative of both Secretaries-General. It was thenceforth within Caputo's mandate to negotiate a comprehensive political settlement to bring an end to military rule in Haiti and supervise the work of the O.A.S. civilian observers.

By mid-June 1993 the Haitian de facto authorities still had shown little political will to negotiate, but pressure was increasing.³¹ Caputo warned the de facto government that it must enter into a dialogue with the representatives of the legitimate government to avoid the imposition of U.N. sanctions.³² Exercis-

septembre 1991 (Institut d'Etudes Politiques de Paris, Cycle Supérieur d'Etudes Politiques, November, 1994), and "Haiti" in *Populations en Danger* (Médecins sans Frontières, forthcoming). For a description of the effect the coup had on the different sectors of Haitian society, see Americas Watch/National Coalition for Haitian Refugees, *Silencing a People: The Destruction of Civil Society in Haiti* (New York: Human Rights Watch, 1993), 9-124.

²⁸ *Report of the Secretary-General, supra*, note 26.

²⁹ A year after the coup, UNHCR reported that approximately 38,000 boat people had been intercepted by the U.S. Coast Guard, of whom about 27,000 had been repatriated by force and approximately 12,000 had been admitted as asylum seekers. In May 1992 the United States started returning boat people to Haiti without prior questioning, a decision which was widely deplored and specifically condemned by the United Nations High Commissioner for Refugees. *Ibid.*, 15.

³⁰ Some of the material used in this section is based on: Nomi Bar-Yaacov, "Haïti: la lutte pour les droits de l'homme dans un conflit entre l'Etat et la nation" *Le Trimestre du Monde*, 1, No. 29 (1995) 135-59.

³¹ See *Note by the Secretary General: Human Rights Situations and Reports of Special Rapporteurs and Representatives*, U.N. doc. A/48/561 (10 November 1993).

³² Under Security Council resolution 841 (1993) sanctions under Chapter VII of the U.N. Charter would come into force on 23 June 1993 unless the Secretary General, having regard to the views of the Secretary General of the Organization of American States, had reported to the Council that, in

ing further pressure, Caputo secured the participation of Aristide and Cédras in a meeting that began on 27 June 1993 at Governors Island, New York. The meeting culminated in the signing of the Governors Island Agreement of 3 July 1993³³ in which Aristide and Cédras pledged to cooperate in the return of the parliament, constitutional prime minister, and president, and to suspend the economic sanctions immediately after the prime minister was confirmed and assumed office in Haiti. Following the Governors Island Agreement, an inter-Haitian political dialogue took place in New York from 14 to 16 July 1993. At its conclusion, the participants signed the New York Pact, which provided for a six month political truce, during which period parliament was to resume its normal functioning.³⁴

Human rights were not discussed in the Governors Island Agreement beyond a mere pledge by both sides to cooperate in a peaceful transition to democracy and respect for human rights. Specific mention of human rights issues was made, however, in the New York Pact. Under the Pact, the parties undertook to secure the immediate release of all persons detained for offenses related to their views, to have the status of prisoners reviewed, and to promote the establishment of a compensation commission for the victims of the coup. The Pact also called for an amnesty as well as the establishment of a police force separate from the military, abolition of all paramilitary forces, the establishment of the Citizens Protection Bureau, and reformed prison administration.

The Governors Island Agreement and the New York Pact provided the framework for restoring democracy to Haiti. Most of the provisions of these two documents, however, were never implemented. In fact, the human rights situation in the country continued to worsen. In light of this intransigence, the United States co-sponsored Security Council resolution 940 which, under Chapter VII, authorized member states to form a multinational force and to use all necessary means to facilitate the military leaderships departure from Haiti. The U.S.-led multinational force entered Haiti in mid-September 1994, and President Aristide returned to the National Presidential Palace on 15 October 1994.³⁵

The Joint Civilian Mission: MICIVIH

MICIVIH had been established in response to Aristide's letter of 8 January 1993 to the U.N. Secretary-General, in which he appealed for deployment of a major international presence throughout the country to supervise respect for human rights. He was influenced by the positive role that a joint O.A.S./U.N.

light of the negotiations conducted by the Special Envoy, the imposition of sanctions was not warranted at the time. The sanctions commenced on 23 June.

³³ The Governors Island Agreement has been reprinted in *Report of the Secretary-General: The Situation of Democracy and Human Rights in Haiti*, U.N. doc. A/47/975-S/26063 (12 July 1993).

³⁴ For the full text of the New York Pact of 16 July 1993, see *Report of the Secretary-General: The Situation of Democracy and Human Rights in Haiti*, U.N. doc. A/47/1000-S/26297 (13 August 1993).

³⁵ Aristide demonstrated his concern for human rights upon his return to Haiti. On 17 December 1994 he created a Truth Commission to investigate crimes committed by the government after the coup. He decreed that the purpose of the Commission would be to bring to justice and establish the truth about all grave violations of human rights committed between 29 September 1991 and 15 October 1994.

election observer mission had played in the 1990 elections. Aristide saw his proposal as a first step in an initiative which would lead to the nomination of a prime minister and the formation of a constitutional government, including his return as president.³⁶

In mid-January 1993, Caputo had obtained agreement from Cédras and the de facto Prime Minister Marc Bazin for MICIVIH's deployment. MICIVIH's terms of reference were based closely on the San José Agreement of July 1990 between the government of El Salvador and the FMLN which had defined ONUSAL's mandate, and ONUSAL's work was studied in MICIVIH's planning stages. Observers were mandated to receive communications concerning alleged human rights violations, set up offices anywhere in the country, speak with any member of the Haitian public, gather information, submit recommendations, follow-up, institute a program of human rights information and education, and make extensive use of the media. The de facto authorities in Haiti were obliged to provide the necessary facilities, guarantee protection to the observers and to those who came into contact with them, and to ensure freedom of communication and movement. The mandate also made reference to technical reform for the judicial system, the professionalization of the Haitian armed forces, and the establishment of a separate police force. However, so long as the de facto authorities were still in power, it was inappropriate for MICIVIH to focus on institutional reform.³⁷

Cases of assassination and disappearances were given top priority by MICIVIH. The mission also investigated numerous cases of detention without arrest warrants, the single most common complaint. In cases of reported assassination, observers sought to determine the reason for the attack: political or criminal. Cases of disappearance were more difficult to handle, because of a lack of institutional support to help find the victims. If a person was illegally detained, observers sought to discover who carried out the arrests and on what legal grounds. They would then have to locate the victims and ensure that they were brought before a judge of the peace. If a judge was aware that observers were following the case, it was easier to ensure the victims release.³⁸

The evolution of the human rights situation in Haiti after the deployment of

³⁶ Ian Martin, "Haiti: Mangled Multilateralism" in *Foreign Policy*, No. 95 (Summer 1994): 75.

³⁷ In order to coordinate the observers work in the field and to channel the flow of information to O.A.S. and U.N. Headquarters, a system of desk officers for every region was established at MICIVIH headquarters in Port au Prince. Desk officers would receive daily communications from the coordinators of bases and provide guidance where necessary. A number of offices at MICIVIH headquarters dealt with issues which were of interest and concern to observers all over the country, including special units to deal with legal issues, human rights education, and prisons. MICIVIH produced a valuable manual outlining the structure of the mission, the terms of reference and their practical implementation on the ground, and the methodology of reporting on human rights violations in July 1993. The manual provides useful guidelines for observers on recording and reporting human rights violations.

³⁸ In cases where individuals had been detained without an arrest warrant and consequently without a charge, the observers would take the cases up with the *Commissaire du Gouvernement* (public prosecutor) who in most cases ordered that the individual be brought before a judge of the peace. In most cases, as soon as a detainee was brought before a judge, he was released.

MICIVIH was closely linked to the progress, or lack thereof, in the political negotiations. Without fundamental political changes, human rights problems reemerged. It is noteworthy that the problems caused by a lack of coordination between political and human rights processes was predicted by the United Nations itself. Before MICIVIH was deployed to Haiti, a U.N. team of experts concluded that an observer presence could initially deter political repression in Haiti, but it offset this positive assessment with a prophetic warning:

We predict the rapid emergence of serious problems for the Mission if many months elapse before a legitimate government enjoying public confidence returns to power. If the Mission is indeed successful in raising the confidence of the population, it will lead rapidly to increasingly assertive attempts to exercise freedom of expression. The overwhelming preponderance of freely expressed political, popular and journalistic activity can be expected to challenge the de facto authorities and the human rights record of the military and to demand the early return of President Aristide. On the other hand, we found little indication that the military and de facto authorities are prepared to tolerate such activity in practice. We find it hard to envisage the Mission performing successfully the role of protecting human rights, including freedom of expression and association for more than a few months, without clear progress toward a political solution of the crisis satisfactory to the majority of the population.³⁹

Coordination between the human rights mission and the political process was not planned strategically, undermining the ultimate effectiveness of each. In Haiti, it became clear that the political process took precedence over MICIVIH's efforts to emphasize human rights concerns. With little coordination between political negotiations and the human rights mission, the military was free to abuse human rights with impunity. MICIVIH continued to report on human rights violations, but little action was taken in response.⁴⁰ It was only when serious pressure was exerted that observers could carry out their work without impediment from the Haitian military. For example, during the few days of negotiations on Governors Island in July 1993, the High Command

³⁹ Martin, 76, note 36, *supra*.

⁴⁰ The Organization of American States and the United Nations had been monitoring the human rights situation on the ground in Haiti through their existing mechanisms for over a decade. The Inter-American Commission for Human Rights has been following events in Haiti since 1979, undertaking on-site visits and submitting reports to the Permanent Council of Ministers and to the General Assembly of the Organization of American States, as well as working on individual cases submitted under Article 44 of the American Convention on Human Rights. The U.N. Commission on Human Rights first examined the situation in Haiti in 1981 under its confidential procedure and, since 1987, in open hearings. The Commission on Human Rights first appointed a Special Rapporteur for human rights in Haiti in 1986. The current rapporteur, Marco Tulio Bruni Celli visits Haiti regularly and submits reports on the human rights situation to the Commission on Human Rights and to the General Assembly.

complied with the demands of the observers. However, the de facto government was constantly testing the seriousness of the international community's threats.

Once U.N. sanctions were lifted, the High Command was in control. Observers spent most of their time counting dead bodies. The mission issued numerous press releases, but the High Command felt no threat. The High Command was, literally, getting away with murder while the international community was still talking about the realization of Governors Island. The observers themselves were threatened and were consequently evacuated in mid-October 1993, shortly after the *Harlan County* incident. A skeleton group of observers returned to Haiti in January 1994, but the de facto authorities ordered them to leave in 1994. They returned only after President Aristide was restored to power in October 1994.

Lessons For The Future

If a human rights mission is to have the cooperation of the de facto authorities, there must be direct coordination between the political negotiation process and the human rights mission. This coordination was lacking in Haiti. Negotiators must continuously assess the situation on the ground, integrating the reports of the human rights observers. If human rights agreements are to be respected, it must be clear they are a high priority and will be enforced by all appropriate means. This requirement was met in El Salvador where there was full coordination between the political process and ONUSAL. The political negotiators first stipulated the mandate for ONUSAL and, second, incorporated the work of ONUSAL into the political process.

Another shortcoming was the ambiguity of MICIVIH's terms of reference. Its legal status was unclear and the manner in which it was to be implemented seemed to change according to the mood of the Haitian de facto authorities. By contrast, ONUSAL's terms of reference were based on an agreement signed and accepted by both sides. In Haiti there was no such agreement.

The strengthening of national institutions and cooperation with local non-governmental organizations (NGOs) was also problematic in Haiti. With the constitutional government in exile, the part of the mandate stipulating the strengthening of local institutions was never realized. Because of this vacuum, MICIVIH's relationship with the NGOs was all the more critical. However, there was only one staff member in MICIVIH in charge of the relationship with NGOs, which hindered the development of this relationship. The mission in El Salvador was more successful in this respect. In the San José Agreement, specific mention was made of the need to strengthen national institutions and NGOs. ONUSAL concentrated much of its work in these areas, which ultimately proved vital to the success of the mission. In Haiti, MICIVIH was limited to mere denunciations of human rights violations.

The manner of recording and reporting human rights violations changed a number of times throughout the course of the mission in Haiti. It is absolutely vital for human rights monitoring missions to have clear and consistent guide-

lines for recording and verifying reports of human rights violations, and for conducting investigations. While MICIVIH made a substantial effort to develop such guidelines during the initial phase of the mission, the process took several months, and the standard forms for recording reported violations were modified several times.

Much can be learned from the MICIVIH experience in terms of integrating human rights components into future peacekeeping missions. It is of immense importance to identify the purpose of the mission well in advance and to define the nature of the mission's relationship with a parallel on-going political process. A human rights mission cannot function without the strong backing of the political negotiators. Just as importantly, the ultimate success of political negotiations is handicapped if a human rights mission is not invested with strong powers. Had political pressure on the armed forces of Haiti been consistent, MICIVIH would have been able to perform its tasks with fewer obstacles and with greater impact. The evacuation of MICIVIH could have been avoided if sanctions had been monitored and implemented from the outset, the threat of force been serious, and the foreign policy of influential governments been coherent on those issues. Most importantly, Aristide and democracy would have returned much sooner.

Conclusions

Human rights have a crucial role to play in preventive diplomacy and in post-conflict peace-building. They are an essential component of an integrated multidisciplinary approach which must include the support of other states, international economic bodies, and the political will of all parties to the conflict. This was the key to the success of the El Salvador mission, which effectively integrated human rights into conflict resolution. Gross violations of human rights are characteristic of civil wars. In El Salvador, the protection of human rights and the consolidation of the peace process were mutually reinforcing. The advance deployment of a human rights mission served as a confidence building measure which helped facilitate an overall political settlement. The human rights work contributed substantively to the irreversibility of the peace process. Unfortunately, in the case of Haiti, the political will did not exist to integrate a serious commitment to human rights into political negotiations; consequently, the human rights mission could not contribute as it should have to a non-military resolution of the Haitian situation.

Human rights missions must have clear and coherent mandates communicated to all parties and to the local populations. Strengthening of national institutions and NGOs with human rights responsibilities is also extremely important if the country is to eventually function on its own. Further, a human rights think tank should be based at U.N. headquarters in New York and work in coordination with the U.N. High Commissioner for Human Rights and the Human Rights Centre in Geneva in order to ensure that human rights compo-

nents within peacekeeping operations function with maximum support and with an understanding of the role human rights can play in such an operation.⁴¹ In addition, a task force composed of experts in police, military, and human rights affairs should be created in order to plan, coordinate, and supervise the work of the different units of multidimensional operations. Such a task force would ensure integrated planning and management of these operations. The recently established Mission Planning Service within the Secretariat should work in coordination with the proposed bodies.

The U.N. mission to Guatemala is the latest attempt to integrate human rights into conflict resolution and represents a test case of whether the lessons of El Salvador and Haiti have been learned, and of whether human rights will be recognized as an essential component of conflict resolution. The government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) have agreed to resume peace negotiations on the basis of the Framework Agreement signed on 10 January 1994.⁴² In September 1994, the General Assembly established MINUGUA, a mission for the verification of compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala for an initial period of six months.⁴³ The Comprehensive Agreement on Human Rights contains a wide range of commitments which apply to rights recognized in the Guatemalan legal order—including international treaties, conventions, and other international instruments to which Guatemala is a party—and a commitment to observe human rights during the internal armed confrontation, which refers to the rights of the wounded and captured and the commitment to prevent suffering by the civilian population.⁴⁴

Only time will tell whether immediate human rights verification can make a decisive contribution to on-going efforts in Guatemala to put an end to a persistent pattern of human rights violations and to bolster the peace process. If MINUGUA acts according to clear guidelines, impartially, and receives the cooperation of all sectors of Guatemalan society, and with the backing of the international community, it will play an essential role in securing a safe transition to peace, democracy, and respect for human rights.

⁴¹ At present the High Commissioner for Human Rights and the Centre for Human Rights are based in Geneva. Their liaison office in New York is the only representative body in New York. It consists of one professional post; it cannot be expected that such an office, as currently staffed, be responsible for planning human rights components within peacekeeping missions.

⁴² U.N. doc. A/49/61-S/1994/53, annex.

⁴³ U.N. doc. A res/48/267 (28 September 1994).

⁴⁴ Article X of the Comprehensive Agreement on Human Rights in Guatemala outlines, in particular, the functions and powers of the verification mission. Under the Agreement, the mission is to move freely and privately for the proper performance of its functions; to visit government offices and URNG encampments freely and without prior notice; and to collect whatever information may be relevant for the implementation of its mandate. The Agreement also provides for the establishment of bilateral forums for dialogue between the verification mission and each party to the conflict in order to discuss the missions recommendations and their implementation. Human rights verification must be set in the context of wider efforts to end the armed conflict and to promote the rule of law, in particular the current negotiating process between the Government of Guatemala and the URNG, which provides a unique opportunity to settle the armed confrontation by political means and strengthen the democratic process.

The international community has increasingly turned to the U.N. Security Council to deal with perceived threats to international peace and security. Today, the Security Council deals with a wide range of issues including traditional peacekeeping, election monitoring, voter registration, providing security or humanitarian operations, restoring an elected government to power, observing human rights violations, and even protecting civilians from oppression by their own government. The distinction between domestic affairs and international affairs is no longer as clear cut as in the past. Internal matters can be and are considered a threat to international peace and security. The Security Council's positive attitude toward human rights is evident. Interests of governments clearly still play a role; however, a sincere concern with human rights and an appreciation of their importance to the maintenance of peace and security have also contributed to this new attitude. The success or failure of recent operations authorized by the Security Council is a reflection of the imprecise, at times conflicting, and frequently changing objectives of individual governments in specific situations, rather than the effectiveness of the United Nations as an international institution. When the Security Council is in agreement, its actions have been effective.

If the United Nations is to carry out its obligation set out in the U.N. Charter to "save succeeding generations from the scourge of war" and to "reaffirm faith in fundamental human rights," the organization should increase pressure on governments to respect human rights early on in the political debate; include human rights in agreements between parties to a conflict; monitor the situation on an ongoing basis; strengthen institutions responsible for the promotion of human rights; and ensure that political and human rights objectives are mutually reinforcing. The importance of human rights to conflict resolution must be recognized if the resolution of conflict is to be lasting.

