

The United Nations and the Establishment of a New Model of Governance for Central America: The Case of Guatemala

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I. Introduction: Civil War and Political Instability in Central America

On 29 December 1996, the signing of the “Agreement on a Firm and Lasting Peace” by representatives of the Guatemalan Government, leading members of the *Unidad Revolucionaria Guatemalteca (URNG)*, the Guatemalan guerrilla movement, and the Secretary-General of the United Nations, Boutros Boutros-Ghali, in Guatemala City formally put an end to Central America’s longest-running internal armed conflict. The peace accord was the last in a series of agreements concluded between the government and the guerrilla between 1994 and 1996 with the aim of removing the underlying political, social and economic causes of a 34-year long bloody civil war, which had resulted, according to the estimates of human rights groups in Guatemala, in the killing of more than 100,000 Guatemalans and the forced disappearance of some 40,000 others¹, leaving the country with the worst human rights record in the Western hemisphere². At the same time, it represented another remarkable success for the mediating efforts of the United Nations, which had already played a

¹ C. Arnson, “Guatemala – Unidad Revolucionaria Guatemalteca: Agreement on a Firm and Lasting Peace, Introductory Note”, *ILM* 36 (1997), 258; Caribbean and Central America Report, 19 August 1997, 2.

² D. Holiday, “Guatemala’s Long Road to Peace”, *Current History*, February 1997, 68.

crucial role in the peaceful settlement of armed conflicts in Nicaragua and El Salvador³.

Since the late 1950s, the political arena in Central America had been characterized by the emergence of profoundly repressive governments which respected the alternation of executive power only within the narrow circle of military choices and were determined to block any move for genuine political democratization and reform of the prevailing oligarchical economic and social structures by brutal repression against reformist and radical forces⁴. The recourse to repressive methods in the face of demands for a true and participatory democracy reflected a long tradition of political and economic inequality, whose origins date back to the colonial era when a small settler class ruled a much larger general populace. After the nations of Central America gained their independence in the 19th century, this social structure persisted, and with it the grossly inequitable distribution of wealth and power⁵.

Although the popular uprisings and insurgencies in Central America, which, after an early precedent in the 1960s in Guatemala, took the form of a massive armed challenge to the established institutional order in Nicaragua, Guatemala and El Salvador⁶, were originally of a local character, they also acquired an international dimension due to the global competition for influence between the superpowers during the Cold War and the determination of successive American administrations to halt any Communist advance in the region. This became particularly evident after the downfall of the Somoza regime in Nicaragua in 1979 and the change from a Democratic to a Republican administration in Washington in early 1981. The Reagan administration was committed to rolling back Soviet influence globally, and was prepared to use Central America as a test case for its new policy. The United States established, trained and deployed counter-revolutionary forces, later known as "Contras", which began to attack the Sandinista regime in Nicaragua from bases in Honduras⁷. At the same time, it sent high-level US officers as military advisers to El Salvador

³ C. Eguizábal, "Las Naciones Unidas y la consolidación de la paz en Centroamérica", in: O. Pellicer (ed.), *La Seguridad internacional en América Latina y el Caribe: el debate contemporáneo*, 1997, 111 et seq.

⁴ E. Torres-Rivas, "Central America since 1930: an overview", in: L. Bethell (ed.), *The Cambridge History of Latin America, Vol. VII*, 1990, 193 et seq.

⁵ B. Smith/W. Durch, "UN Observer Group in Central America", in: W. Durch (ed.), *The Evolution of UN Peacekeeping*, 1993, 436.

⁶ Torres Rivas, see note 4, 194 et seq.

⁷ Smith/Durch, see note 5, 438.

and massively increased financial aid to the country⁸, determined not to “lose” it to the revolutionary forces of the *Frente Farabundi Martí de Liberación Nacional* (FMLN), which in turn received logistical support from the Sandinistas⁹. The activities of the United States in support of the armed fight against the Nicaraguan government later gave rise to a ruling by the ICJ, in which the Court held that the training, arming and supplying of the Contra forces and certain other military measures taken by the United States government against Nicaragua were in breach of international law¹⁰. Bitter recriminations between El Salvador and Nicaragua over Nicaraguan support for the FMLN and between Nicaragua and its immediate neighbours relating to the use of their territory by the Contras — which led to the lodging of a case by the Sandinista government against Honduras with the ICJ¹¹ — demonstrated that tensions in the region remained high, threatening not just the stability of individual states, but the peace and security of Central America as a whole.

II. UN Peacemaking Efforts in Central America prior to the Guatemalan Peace Accords

1. Origins of the Regional Peace Process and early Initiatives for UN Involvement

During the Cold War era, the United Nations had largely been excluded from the discussion of security problems relating to the situation in Central America and the Caribbean. The United States government, which regarded the Western hemisphere as its exclusive security preserve, repeatedly invoked the competence of the Organization of American States

⁸ According to E. Torres-Rivas, “Insurrection and civil war in El Salvador”, in: M. Doyle/I. Johnstone/R. Orr (eds), *Keeping the peace*, 1997, 222, US financial aid to El Salvador jumped from \$9.4 million in 1979 to \$897.8 million in 1986.

⁹ Smith/Durch, see note 5, 443.

¹⁰ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua*, ICJ Reports 1986, 14 et seq.

¹¹ After the election of Violeta Barrios de Chamorro as new president of Nicaragua and the demobilization of the Contras the case was finally withdrawn in July 1991, see F. Vendrell, “La ONU y la OEA: Diplomática preventiva, ‘Peace-Making’, ‘Peace-Keeping’ y ‘Peace-Building’: Breves apuntes”, in: D. Bardonnet/A. Cancado Trindade (eds), *Derecho internacional y derechos humanos/Droit international et droits de l’homme*, 1996, 237.

(OAS) in order to rule out any substantial UN involvement in regional crisis management, most notably in the Security Council debates following the overthrow of the Arbenz government in Guatemala (1954), US intervention in Cuba (1960 and 1962) and in the Dominican Republic (1965)¹². This left regional peace initiatives as the only viable means by which to achieve a negotiated settlement of the civil wars in Central America. As the fighting continued in Nicaragua and El Salvador, as well as in Guatemala, the threat of regional instability and fear of active military intervention by the US government led to the establishment of the Contadora Group in 1983¹³. This group, which consisted of Mexico, Panama, Colombia and Venezuela, explored ways of reaching peaceful settlement of internal and regional disputes and for the verification of such settlements by an international body. It received the backing of Argentina, Brazil, Peru and Uruguay, which pledged to support the establishment of regional peace in Central America through the Contadora process, and which were known thereafter as the Contadora Support Group. The draft accords put forward by the Contadora Group stimulated discussions among Central American governments about the necessary elements for a negotiated solution to the crisis. Negotiations between the five Central American states of Honduras, Guatemala, Nicaragua, Costa Rica and El Salvador eventually produced an agreement, signed in August 1987 and known as "Esquipulas II" (or as the Guatemalan Agreement, because it was signed in Guatemala City), which committed each of them to take a number of specific measures in order to terminate conflicts in the region¹⁴. These measures included:

- the cessation of hostilities and the negotiation of ceasefires;
- the granting of amnesties to political prisoners and the establishment of national reconciliation commissions;
- ending support for irregular and insurrectionist forces and the prevention of the use of their territory for attacks on other states; and
- a commitment to provide support for refugees and displaced persons.

But the agreement also addressed the root causes of the conflicts by stressing the importance of genuine democratic political processes as a necessary prerequisite for the healing of the deep political and social

¹² Vendrell, see note 11, 228; C. Walter, *Vereinte Nationen und Regionalorganisationen*, 1996, 159 et seq.

¹³ For a detailed account of the regional peace process in Central America during the 1980's see Smith/Durch, note 5, 438 et seq.

¹⁴ Agreement on the Procedure for Establishing a Firm and Lasting Peace in Central America, *ILM* 26 (1987), 1164.

divisions which had haunted Central American societies in the past. The governments explicitly committed themselves "to promote an authentic participatory and pluralistic democratic process involving promotion of social justice, respect for human rights, sovereignty, territorial integrity of the States, and the right of all nations to determine freely and without outside interference of any kind their economic, political and social models"¹⁵. Finally, the agreement provided for the establishment of an International Commission for Verification and Follow-Ups, consisting of the Secretaries-General of the OAS and the UN or their representatives, the foreign ministers of the Central American countries, the Contadora Group, and the Contadora Support Group¹⁶. In practice, however, the large consensus-based follow up mechanism turned out to be too cumbersome to function effectively. When the government of El Salvador strongly questioned the impartiality of the Commission's report on human rights in the Central American states, which had been the result of an extensive mission of CIVS teams to the region in January 1988, the Commission's work was effectively terminated¹⁷.

In this situation, the Central American nations turned increasingly to the United Nations in their search for a reliable verification mechanism which would ensure the impartial monitoring of compliance with the Esquipulas II agreement. The end of the Cold War and the resulting diminution of ideological conflict between the superpowers marked a profound change in the international context as well as in the internal conflicts of Central American countries and created favourable conditions for greater UN involvement in the settlement of the region's wars. This development received a further boost from the outcome of the 1988 US presidential elections which, although returning a Republican president to the White House, led to a pragmatic reassessment of US policy in Central America and to a greater willingness to work towards political compromises acceptable to all parties to the conflict. At a time when UN peace-keeping was proving its worth in countries as disparate as Afghanistan, Angola and Namibia, governments in Central America were increasingly inclined to believe that greater UN involvement could help the halting peace process in the region. In Resolution 42/1 the General Assembly had already expressed its "firmest support" for the Esquipulas II agreement and requested the Secretary-General to "afford the fullest support to the Central American Governments in their efforts to achieve peace, especially by granting the assistance requested of him for the effective functioning

15 Para. 3 of the Agreement.

16 Para. 10 of the Agreement.

17 Smith/Durch, see note 5, 440.

of the machinery provided for in the Guatemalan Agreement for the verification and follow-up of the commitments made¹⁸. An early UN/OAS inspection team sent to Central America in order to check the conditions for an effective implementation of Esquipulas II came to the conclusion, however, that the political environment was not yet favourable enough for an international verification mission to be successfully completed¹⁹.

2. The UN Mission to Nicaragua (ONUCA)

This situation changed, however, when President Daniel Ortega of Nicaragua at a meeting of the five Central American presidents in Tesoro Beach, El Salvador, in February 1989 agreed to advance general elections from November to February 1990, to open them to international observation, and to allow opposition parties to take part in the election campaign. The other states agreed in turn to establish a plan for the voluntary demobilization, repatriation, or relocation of the Nicaraguan Resistance — the Contras — within 90 days²⁰. As part of this agreement, the Central American countries requested UN supervision of the electoral process, a request which was granted by the Secretary-General in July when he announced that a UN Observer mission to Verify the Electoral Process in Nicaragua (ONUVE) would be created to monitor elections. This move was retrospectively approved by the Security Council, which in Resolution 637 noted with appreciation “the effort undertaken to date by the Secretary-General in support of the Central American peace process [...] and particularly the Secretary-General’s agreement with Nicaragua to deploy a United Nations elections observer mission in that country”²¹. At a summit in Tela, Honduras, in early August 1989, the five Central American presidents issued a joint plan which called for the voluntary demobilization, repatriation or relocation of the members of the Nicaraguan Resistance and their families, and requested the Secretary-Generals of the UN and the OAS to create an International Support and Verification Commission (CIAV) to support this process²². Also at Tela an agreement was reached concerning the pending litigation between Nicaragua and Honduras at the ICJ. With this last obstacle out of the way, the Secretary-

¹⁸ A/RES/42/1 of 7 October 1987.

¹⁹ S. Hill/S. Malik, *Peacekeeping and the United Nations*, 1996, 67; Smith/Durch, see note 5, 441.

²⁰ B. Smith/W. Durch, see note 5, 442.

²¹ S/RES/637 (1989) of 27 July 1989.

²² Hill/Malik, see note 19, 67 et seq.

General recommended the establishment of the UN Observer Group in Central America (ONUCA) to the Security Council, whose original mandate consisted in the supervision of the regional ceasefire agreed to by the five Central American governments under the Esquipulas II agreement. The creation of ONUCA was formally authorized by the Security Council in its Resolution 644 of 7 November 1989²³.

ONUVEN, the electoral verification mission in Nicaragua, reported throughout the build-up to the election in Nicaragua. Despite some irregularities, it was able to report that a free and fair election took place on 25 February 1990, which resulted in a surprise defeat for the Sandinista government. ONUCA's mandate, on the other hand, at first allowed only on-site verification of the security undertakings contained in the Esquipulas II agreement. Following the Nicaraguan elections, however, the Contras started to show some willingness to disarm, and ONUCA's mandate was subsequently expanded to authorize deployment of an infantry battalion to provide security for demobilization centers and oversee weapons disposal within Honduras²⁴. A second expansion grew out of talks between the Contras and the government of Nicaragua to allow demobilization within Nicaragua itself. To provide for the creation of five "security zones" in Nicaragua, within which the Contras would demobilize, the Secretary-General sought approval for an expansion of ONUCA's mandate²⁵, which was granted through Security Council Resolution 653 of 20 April 1990²⁶. Once demobilization of the Contras was complete, ONUCA reverted to its original mandate, which was finally terminated on 17 January 1992.

3. From Peace-keeping to Peace-making: The Pivotal Role of the UN in the Peace Process in El Salvador

The United Nations adopted an even higher profile in the negotiations leading to an end of the guerrilla war in El Salvador. Whereas in Nicaragua the role of the organization had essentially been limited to the supervision of the effective implementation of the agreements reached by the parties

²³ S/RES/644 (1989) of 7 November 1989.

²⁴ Report of the Secretary-General to the Security Council of 15 March 1990, Doc. S/21194, and Security Council Resolution S/RES/650 (1990) of 27 March 1990.

²⁵ Letter of the Secretary-General to the President of the Security Council of 19 April 1990, Doc. S/21257, and statement by the Secretary-General to the members of the Security Council of the same day, Doc. S/21259.

²⁶ S/RES/653 (1990) of 20 April 1990.

to the conflict, the UN adopted a much more activist approach in El Salvador in bringing the government and the insurgency movement to the negotiating table and in formulating the strategy for the peace talks. The formal basis for the UN involvement in the negotiations was provided by Security Council Resolution 637²⁷ which lent “full support to the Secretary-General to continue his mission of good offices in consultation with the Security Council in support of the Central American Governments in their effort to achieve the goals set forth in the Guatemala Agreement”²⁸. It began in early 1990 when the UN organized secret meetings between the government and the national guerrilla movement FMLN which eventually lead to formal talks in April 1990. The immediate result was the Geneva Agreement of 4 April 1990, which created the framework for the subsequent peace talks and, in line with the pledges of the Esquipulas II agreement, provided for verification of all subsequent agreements by the UN²⁹. After a meeting in May in which a negotiating agenda — the Caracas agenda³⁰ — was agreed upon, substantive negotiations began in June. The role of the army within a democratic society was to be the first topic of discussion, but it was soon apparent that the views of the parties on this difficult subject were too antagonistic to allow for a swift settlement. The UN mediators therefore decided to change the order of items on the agenda — a move explicitly provided for in the Caracas agreement — and to present a draft agreement on human rights to the parties, which was signed in San José on 26 July after 11 hours of negotiations without any substantial modification³¹. The San José Agreement on human rights³² was unprecedented in UN history as it was the first to spell out specific commitments of the two sides to a conflict with regard to the respect and enforcement of human rights³³. The Agreement provided for the establishment of a UN verification mission to monitor nationwide respect for, and guarantee of, human rights and fundamental freedoms³⁴. Although the agreement envisaged that the mission would begin at the cessation of the armed conflict, the Secretary-General was requested by both parties to send a preliminary mission to assess the feasibility, as a confidence-building measure, of deployment before the fighting had actually stopped. The

27 Eguizábal, see note 3, 113.

28 S/RES/637 (1989) of 27 July 1989, para. 5.

29 Doc. A/46/551 - Doc. S/23128, Annex.

30 Doc. A/46/552 - Doc. S/23129, Annex.

31 M. LeVine, “Peacemaking in El Salvador”, in: Doyle/Johnstone/Orr, see note 8, 233 et seq.

32 Doc. A/44/971 - Doc. S/21541, Annex.

33 LeVine, see note 31, 234.

34 Paras 10 – 19 of the San José Agreement.

mission was sent in March 1991 and the UN Observer Mission in El Salvador (ONUSAL) was officially launched on 26 July 1991 pursuant to Security Council Resolution 693³⁵. Its initial mandate was to verify the parties' compliance with the commitments made under the San José Agreement³⁶.

To complete the peace negotiations, three other agreements were signed between the parties. The Mexico Agreement, signed on 27 April 1991, provided for the establishment of a Truth Commission to investigate human rights violations since 1980 and called for the creation of a new national civil police force which, unlike the old public security bodies, would be completely independent of the armed forces³⁷. The New York Accord, signed on 25 September 1991, laid down directives for a purge and reduction of the armed forces and created a new national body, the *Comisión Nacional para la consolidación* (COPAZ), designed to act in a supervisory and implementing role for all political agreements. The Commission was to be composed not just of the government and the FMLN, but of representatives from all major political parties, with the UN and the church acting as mediators. The Agreement also addressed, for the first time, the issue of land redistribution and economic and social reforms³⁸. The final agreements between the parties were concluded on 31 December 1991 and 13 January 1992 (New York Acts I and II)³⁹, paving the way for the signing of the formal peace agreement in Mexico City on 16 January 1992, which provided for a three-stage process whereby the army and the guerrilla forces would be concentrated in special areas, followed by the demobilization of the FMLN and its subsequent return to civilian life. In later negotiations the parties agreed on the details of the new police force, a reformed electoral code to legalize the FMLN as a political party and the government purchase of land for peasants⁴⁰. In their willingness to provide not only for the technical agreements necessary to end the armed conflict, but also to address the underlying political and economic inequalities which had led to the complete breakdown of civil society in El Salvador and the outbreak of the civil war in the first place — to achieve a “negotiated revolution”, in the words of the UN chief negotiator, Alvaro de Soto⁴¹ — the peace negotiations in El Salvador were to provide an important

35 S/RES/693 (1991) of 20 May 1991.

36 S/RES/693 (1991) of 20 May 1991, para. 2.

37 Doc. A/46/553 - Doc. S/23130, Annex.

38 Doc. A/46/502 - Doc. S/23082, Annex.

39 Doc. A/46/863 - Doc. S/23504, Annexes I and II.

40 H. McCoubrey/N. White, *International Organizations and Civil Wars*, 1995, 219.

41 Quoted in LeVine, see note 31, 227.

model for the efforts to reach a peaceful settlement of the guerrilla war in neighbouring Guatemala.

The final agreement in El Salvador required a substantial enlargement of ONUSAL's mandate so as to include the verification of all aspects of the ceasefire as well as the maintenance of public order during the transition period while the New National Civil Police was established⁴². Upon the proposal of the Secretary-General⁴³, the UN mission was split into two, with a military division to verify ceasefire arrangements and a police division to monitor public order pending the formation of the new national police force⁴⁴. A further expansion of ONUSAL's mandate took place in May 1993, in order to include an electoral component to monitor and verify the elections scheduled for March 1994⁴⁵. ONUSAL's mission was finally terminated on 30 April 1995⁴⁶.

III. Civil War in Guatemala and the Peace Process

Guatemala is distinct from its Central American neighbours in that the armed conflict has endured longer, and been fought with greater brutality, than anywhere else in the region. The roots of civil war in Guatemala lie in the immediate post-war period, when the country experienced its first, and hitherto only experiment in democratization and social reform. After the overthrow of the military dictatorship of General Jorge Ubico at the end of World War II, the freely elected governments of Juan José Arévalo (1945 – 1951) and Jacobo Arbenz (1951 – 1954) promoted the modernization of the socially and culturally backward country by extending free

⁴² S/RES/729 (1992) of 14 January 1992.

⁴³ Report of the Secretary-General to the Security Council of 10 January 1992, Doc. S/23402.

⁴⁴ For a detailed criticism of the resulting organizational structure see D.H. McCormick, "From peacekeeping to peacebuilding: restructuring military and police institutions in El Salvador", in: Doyle/Johnstone/Orr, see note 8, 306 et seq.

⁴⁵ S/RES/832 (1993) of 27 May 1993.

⁴⁶ S/RES/961 (1994) of 23 November 1994; S/RES/991 (1995) of 28 April 1995. In its place the UN Office of Verification in El Salvador was set up by A/RES/50/226 of 10 May 1996 to follow up implementation of pending aspects of the peace accords through 31 December 1996. After the termination of its mandate the verification responsibilities of the UN in El Salvador are now executed through periodic visits by a high-level envoy from the UN headquarters, see A/RES/51/199 of 20 February 1997.

public education, introducing social security and labour laws and creating the conditions for the organization of diverse social interest groups⁴⁷. The culminating moment of the modernization programme was the introduction of an agrarian reform which attempted to punish unproductive large landowners, prohibit any form of personal servitude and utilize the land as a means of production and to create jobs. Leading to the expropriation of more than 100,000 hectares of land, the reform constituted the most profound challenge to the traditional social order in the entire region. At the same time, it dealt a severe blow to powerful foreign interests, since it provided for the expropriation of 15,000 hectares of uncultivated land belonging to the American-run United Fruit Company, the largest landowner in the country. This proved to be the beginning of Arbenz' downfall. A conspiracy within the senior ranks of the army nurtured by the CIA obliged the President to stand down and leave the country in June 1954. His successor, Colonel Castillo Armas, who was installed in office with the help of Washington within weeks of Arbenz' resignation, initiated a comprehensive dismantling of the reforms of the previous decade. For the next three decades, Guatemala was ruled by military-dominated governments hostile to any kind of substantive reform which would have challenged the political and social *status quo*⁴⁸.

After the failure of a military revolt by junior officers dismayed at the degree of official venality under the regime of General Ydigoras Fuentes (1958–1963), the country experienced its first guerrilla campaign against the military government. Two of the rebellion's ringleaders, Captain Marco Yon Sosa and Lieutenant Luis Turcios Lima, failed to surrender and, by 1962, had embarked on a guerrilla campaign similar to that used by Castro's insurgents in Cuba to overthrow the Bautista regime. The establishment of the Fuerzas Armadas Rebeldes (FAR) on three fronts in the eastern departments of Zacapa and Izabal marked the beginning of a guerrilla war that subsequently underwent important shifts in intensity, strategy and popular support but persisted for over two decades as a central factor in Guatemalan political life⁴⁹. The resulting internal war was the historical result of the oligarchical structure and the deep class divisions within Guatemalan society. At the beginning of the 1980s the combined guerrilla groups amounted to more than 8,000 fighters, with non-fighting civilian support including about 250,000 persons in the densely populated indigenous zones of the central and north-east highlands. The mobiliza-

⁴⁷ For a detailed account of reforms under the Arévalo and Arbenz administrations see J. Dunkerley, "Guatemala since 1930", in: Bethell, see note 4, 219 et seq.

⁴⁸ Dunkerley, see note 47, 226 et seq.

⁴⁹ Dunkerley, see note 47, 230 et seq.

tion of the indigenous peoples was the most outstanding feature of the crisis since it raised the question of ethnic repression within the context of civil war and, in effect, constituted the largest indigenous revolt since the era of conquest⁵⁰. Indigenous peoples suffered most from the violence directed by anonymous death squads at opposition groups during this period⁵¹. The army responded to the ascendancy of the guerrilla with a vast counter-insurgency campaign, which used the destruction of villages, the construction of fortified hamlets and the enforced conscription of tens of thousands of able-bodied men into poorly armed "civil defence patrols" in order to reduce popular support for the rebels and cut down the size of their military operations. The offensive of the Guatemalan army led to the destruction of 440 indigenous villages, the killing of 75,000 peasants and produced a population displacement affecting between 100,000 and 500,000 people. In the words of one historian, the army operations amounted to "an act of genocide that destroyed the material and social bases of the indigenous culture"⁵². They did not annihilate the guerrilla but forced them to retreat to the more remote areas of the country. The war ceased to be the defining element of everyday life in Guatemala⁵³. Although by 1985 the rebel groups were beginning to regroup and resume operations at a modest level, the abrupt set-back they had suffered stood in stark contrast to the ability of the Sandinista movement and the FMLN in Nicaragua and El Salvador to sustain respectively a successful insurrection and a prolonged resistance against the military forces of the state⁵⁴.

The strategic defeat of the guerrilla paved the way for a return to civilian rule under the control of the army, which took the form of elections to a constituent assembly in 1984 and further polls for the presidency and a new congress in the following year. Political options for the new President, the Christian Democrat Vinicio Cerezo, who was elected with over 60 per cent of the popular vote in December 1985, were limited, however, since the Cold War continued inside and outside Central America and the Guatemalan military, to which Cerezo remained suspect because he represented the traditional legal opposition, retained full operational independence⁵⁵. Under the framework of the Esquipulas II agreement, President Cerezo established, in August 1987, a National Reconciliation Commission (CNR), headed by a prominent figure of the Catholic Church. However, direct talks between the government and the guerrilla, which

50 Torres-Rivas, see note 4, 204.

51 Dunkerley, see note 47, 240.

52 Torres-Rivas, see note 4, 204.

53 Holiday, see note 2, 68.

54 Dunkerley, see note 47, 247.

55 Holiday, see note 2, 69.

were held in Madrid in October 1987 at the insistence of the UNRG⁵⁶, produced no result since the government had little to offer short of surrender⁵⁷. The failure of the talks, which were followed by renewed insurgencies and counter-insurgency campaigns⁵⁸, left the CNR as the only possible intermediary for contacts between the UNRG and other sectors of Guatemalan society. Initial contacts between the CNR and the UNRG were established at meetings in Costa Rica in 1988, but failed to restart the negotiating process⁵⁹. At the beginning of 1990, however, President Cerezo declared his readiness to resume the negotiations between the government and the guerrilla without prior disarmament of the rebels, and agreed to use the CNR as a mediator⁶⁰. At their meeting in Oslo in March 1990 the CNR and the UNR signed an accord which provided for the holding of a series of meetings between the guerrillas and political parties as well as social, religious and commercial organizations from the various sectors of Guatemalan society⁶¹. These meetings took place over the following months in El Escorial, Ottawa, Quito and Mexico, and produced an agreement between the political parties of Guatemala and the UNRG, which contained a promise by the UNRG to abstain from a boycott of the next presidential elections in return for the undertaking of the political parties to support the integration of the UNRG into the political life of the country⁶². The Oslo Agreement also provided for direct negotiations between the guerrilla, the Guatemalan government and the army, and invited the Secretary-General of the United Nations to appoint an observer to the peace talks and to guarantee the fulfilment of agreements concluded in the process.

Direct negotiations between the UNRG and a governmental Peace Commission started in 1991, following the election of Jorge Serrano Elias, himself a former member of the CNR, to the Presidency of Guatemala. These negotiations led to the signing of an "Agreement on Procedures in Search of Peace through Political Means" in Mexico in April 1991⁶³ and of a second agreement on the principles of democratization to be implemented in the search of peace through political means in Querétaro in

⁵⁶ Guatemala 1986–1994, *Compendio del proceso de paz I*, 1995, 19.

⁵⁷ Eguizábal, see note 3, 138.

⁵⁸ *Compendio del proceso de paz I*, 19.

⁵⁹ *Compendio del proceso de paz I*, 29 et seq.

⁶⁰ *Compendio del proceso de paz I*, 49 et seq.

⁶¹ For the text of the agreement see *Compendio del proceso de paz I*, 267 et seq.

⁶² *Compendio del proceso de paz I*, 270 et seq.; Eguizábal, see note 3, 139.

⁶³ *Compendio del proceso de paz I*, 273 et seq.

July⁶⁴. The former agreement established the basic agenda for the peace talks. As in El Salvador, the parties intended to remove the underlying causes of the conflict by dealing with virtually all aspects of Guatemala's political, economic and social system, including human rights, indigenous rights, the role of the army, the resettlement of the uprooted populations, agrarian reform, constitutional modernization and reincorporation of the UNRG into civil life. Despite the ambitious agenda, the talks made hardly any progress between 1991 and 1993 and received a further setback in May 1993 when Serrano, who had little support in the legislature, used corruption and shady politicking in the Congress as a pretext to carry out, with support from a faction in the military, an *autogolpe*, dissolving Congress and the Supreme Court and calling for new elections. Within days, however, the mobilization of civil society groups across the political spectrum and mounting international criticism forced Serrano and his closest advisers to leave the country and led to the election of the respected human rights ombudsman, Ramiro de León Carpio, to the presidency⁶⁵.

Although León Carpio's inept handling of domestic policy soon lost him most of his political support⁶⁶, his government was still able to negotiate with the guerrilla the "Framework Accord for the Renewal of the Negotiations Process" in January 1994 which contained several new elements crucial for the revitalization of the peace talks⁶⁷. The parties agreed to request the Secretary-General of the United Nations, which had hitherto been confined to an observer role, to appoint a representative which would serve as a moderator of the bilateral negotiations. The Agreement explicitly provided for the moderator to make proposals which would facilitate the signing of a firm and lasting peace accord⁶⁸. The moderator should be assisted in his function by the governments of Colombia, Mexico, Norway, Spain, the United States and Venezuela, which the parties requested to form a group of friends of the Guatemalan peace process⁶⁹. Furthermore, the parties convened that all their undertakings should be subject to verification. With reference to the experience and authority of the United Nations in this area, which in the view of the parties conferred "a high degree of reliability on international verification by the Organization", they agreed to request the United Nations to verify all the agreements, in both their substantive and their operational effects⁷⁰.

64 *Compendio del proceso de paz I*, 276.

65 Holiday, see note 2, 69.

66 Holiday, see note 2, 70.

67 Doc. A/49/61 - Doc. S/1994/53, Annex.

68 Para. II. of the Agreement.

69 Para. IV. of the Framework Agreement.

70 Para. VI. of the Agreement.

The second new element introduced in the negotiating process was the creation of an Assembly of the Civil Society composed of non-governmental sectors of Guatemalan society whose legitimacy, representative character and lawfulness were widely recognized. The Assembly was to discuss substantive issues for the bilateral negotiations with a view to formulating positions on which a consensus could emerge and to transmit to the UN moderator, the government and the UNRG non-binding recommendations and guidelines aimed at fostering understanding between the parties⁷¹. In accordance with the Agreement, representatives from a broad array of social and civic organizations came together for eight months in 1994 and formulated consensus positions on most of the items of the peace accords negotiation agenda. Their views were at least partly to be reflected by the contents of the peace agreements.

The first substantive agreement to be concluded was, as in El Salvador, the human rights accord, which was signed in March 1994. Again following the Salvadoran model, the agreement called for UN verification of the human rights practices of both sides in advance of a formal ceasefire. The United Nations Mission for the Verification of Human Rights in Guatemala (MINUGUA) opened its doors in November 1994, setting up 13 regional and subregional offices throughout Guatemala to register complaints on violations of the commitments made by the parties under the agreement and to assist government institutions responsible for the protection of human rights. The agreement on human rights was followed by further accords on the resettlement of uprooted populations (June 1994), the establishment of a truth commission in order to examine human rights violations of the past (June 1994) and indigenous rights (March 1995). As the presidential elections of 1995 approached, however, the peace process lost momentum, since the guerrilla were reluctant to sign a definitive peace agreement with a caretaker government. The outcome of the election helped the peace process in several ways. The winner of the election, Alvaro Arzú from the *Partido de Avanzada Nacional* (PAN), was not only fully committed to the peace process, but also enjoyed the support of the majority party in Congress and the backing of the private sector, which saw in the successful conclusion of the peace talks a necessary condition for Guatemala's integration into the global economy⁷². Moreover, the URNG-backed *Frente Democrático Nueva Guatemala* (FDNG) won six seats in Congress despite a hasty, underfinanced campaign, thus demonstrating the new opportunities for democratic opposition which the peace process had created. Reflecting the changed political climate, the URNG

⁷¹ Holiday, see note 2, 72.

⁷² *Id.*

suspended its military activities in March 1996, and the government responded with the halt of counter-insurgency operations⁷³. Two major agreements were signed over the next few months, the agreements on social and economic issues (May 1996) and on the role of the military within a civil society (September 1996), the latter removing the biggest stumbling block on the road to peace. After the details of the definitive ceasefire, constitutional and electoral reform, the legal integration of the URNG and the implementation timetable for the agreements had been fixed, the final Agreement on a Firm and Lasting peace could finally be signed in Guatemala City at the end of 1996.

The peace process in Guatemala was influenced by several factors which were unique to the situation of this country and were not to be found in neighbouring El Salvador. The first of these factors was the military weakness of the guerrilla movement, which had suffered a decisive military defeat at the hands of the Guatemalan army in the early 1980s and was therefore unable, unlike their counterparts in El Salvador, to sustain operational activities beyond low-level insurgency. This reduced their margin for negotiation and obliged them, in effect, to accept almost anything that was offered to them by the government. In contrast, the FMLN in El Salvador had achieved a military stalemate in which neither side could hope for a quick victory, thus providing additional incentives for the government to make substantial concessions in negotiations for a peaceful settlement⁷⁴. The second distinctive feature of the negotiating process is directly related to the first. The weak strategic position of the UNRG undermined its ability and authority to negotiate far-reaching reforms on behalf of Guatemalan society. Its role was at least partly taken over by groups and organizations of the so-called civil society. This was already evident at the pre-negotiating stage, when the Commission of National Reconciliation played a crucial role in bringing the government and the guerrilla to the negotiating table. The creation of the Civil Society Assembly, which expanded participation in the peace process to a range of groups not formally represented at the table, marked a further step in this direction. The contributions of these groups are reflected in the structure and the contents of the final agreements. Finally, the UN played a less prominent role in the Guatemalan talks than they had in El Salvador⁷⁵. In El Salvador, the UN had been involved in the negotiating process from early on, benefiting from the experience and authority of the Secretary-

⁷³ MINUGUA's Fifth Report on the human rights situation in Guatemala, Doc. A/50/1006, Annex, para. 8.

⁷⁴ LeVine, see note 31, 231.

⁷⁵ Eguizábal, see note 3, 139 et seq.

General in the region. In Guatemala, on the other hand, the UN assumed an active role rather late in the peace talks. Although the appointment of a moderator to the talks certainly helped to bring the negotiations forward, it is doubtful whether this would have been sufficient to sustain the momentum right through to the end. What proved decisive in the Guatemalan case was the willingness of the parties to put an end to a conflict which, for different reasons, had become a liability for both sides, and the determination on the part of the Guatemalan government to make full use of its powers to implement effectively its peace agenda⁷⁶.

IV. Structure and Legal Nature of the Guatemalan Peace Agreements

The Guatemalan peace agreements consist of a total of ten accords, six substantive agreements and four accords of a primarily operational character. The substantive accords include the Comprehensive Agreement on Human Rights, signed at Mexico City on 19 March 1994⁷⁷; the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, signed at Oslo on 17 June 1994⁷⁸; the Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence, signed at Oslo on 23 June 1994⁷⁹; the Agreement on Identity and Rights of Indigenous Peoples, signed at Mexico City on 31 March 1995⁸⁰; the Agreement on Social and Economic Aspects and the Agrarian Situation, signed at Mexico City on 6 May 1996⁸¹; and the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society, signed at Mexico City on 19 September 1996⁸². The operational agreements deal with the calendar for the constitutional reforms provided for in the other agreements (Agreement on Constitutional Reforms and the Electoral Regime, signed at Stockholm on 7 December 1996)⁸³, the details of the definitive ceasefire (Agreement of 4 December 1996)⁸⁴, the reinsertion of the guerrilla into

⁷⁶ Holiday, see note 2, 72.

⁷⁷ Doc. A/48/928 - Doc. S/1994/448, Annex I.

⁷⁸ Doc. A/48/954 - Doc. S/1994/751, Annex I.

⁷⁹ Doc. A/48/954 - Doc. S/1994/751, Annex II.

⁸⁰ Doc. A/49/842 - Doc. S/1995/256, Annex.

⁸¹ Doc. A/50/956, Annex.

⁸² Doc. A/51/410 - Doc. S/1996/853, Annex.

⁸³ Doc. A/51/776 - Doc. S/1997/51, Annex I.

⁸⁴ Doc. S/1996/1045, Annex.

civil life (Agreement of 12 December 1996)⁸⁵ and the implementation, compliance and verification timetable for the peace agreements (Agreement of 29 December 1996)⁸⁶. All the aforementioned accords are part of the final Agreement on a Firm and Lasting Peace⁸⁷ and have entered into force with the signing of the latter agreement — i.e. on 29 December 1996 — with the exception of the Human Rights Agreement, which was already in force since it had been signed in March 1994, providing the basis for the presence for the United Nations human rights monitors in Guatemala in advance of the definitive ceasefire⁸⁸, and the aspects of the Agreement on indigenous rights which relate to human rights⁸⁹. The Agreement on a Firm and Lasting Peace itself does not contain any new obligations of the parties. It merely sums up the principles and objectives which are spelt out in greater detail in the individual agreements and reiterates the firm commitment of the parties to their progressive implementation.

The precise legal nature of the agreements is difficult to define. They do not qualify as an international law treaty, since only one of the parties, the state of Guatemala, is recognized as a subject of international law. The UNRG did not exert control over any significant part of the Guatemalan territory at the time of the peace negotiations, nor was it recognized by the international community⁹⁰. Moreover, the participation of the UNRG in the peace talks signaled that it no longer pursued the objective of overthrowing the government but aimed for its own integration into the political life of the country, within the reformed institutional framework provided for by the peace agreements. It is even highly doubtful whether the peace agreements can be qualified as treaties under national law, since

⁸⁵ Doc. A/51/776 - Doc. S/1997/51, Annex II.

⁸⁶ Doc. A/51/796 - Doc. S/1997/114, Annex I.

⁸⁷ Doc. A/51/796 - Doc. S/1997/114, Annex II.

⁸⁸ Paras 15, 16 of the Agreement on a Firm and Lasting Peace.

⁸⁹ Para. VII. 2 of the Agreement on Identity and Rights of the Indigenous Peoples.

⁹⁰ On the conditions essential for the recognition of insurgency see P.K. Menon, "Some Aspects of the Law of Recognition — Part IV: Recognition of Belligerency and Insurgency", *RDI* 69 (1990), 274 et seq., T.A. Wilkins, "The El Salvador Peace Accords: using international and domestic law norms to build peace", in: Doyle/Johnstone/Orr, see note 8, denies the status of international treaty to the El Salvador peace agreements whose structure is similar to that of the Guatemalan accords discussed here.

the guerrilla movement was not an established lawful entity recognized as such by the Guatemalan legal order at the time of the negotiations. Although the UNRG had, indeed, played an important role in the 1995 congressional and municipal elections by encouraging Guatemalans to participate and providing support for the newly formed party of the democratic left, the FDNG, the formal conversion of the UNRG into a duly authorized political party did not happen until the peace agreements entered into force and the demobilization of the guerrilla's armed forces was completed. The Framework Agreement of January 1994 which established the procedure to be followed for the resumption of the negotiating process also points to the non-legal character of the peace accords. Para. I of the Agreement explicitly states that "the Government and URNG undertake to be appropriately represented in the negotiations by high-ranking delegates so that *political agreements* consistent with the constitutional order can be entered into, without restricting their power to conclude agreements on institutional and constitutional reforms" (emphasis added by the author). In this provision, the reference to the power to conclude agreements on constitutional reforms is merely a derogation from the general principle that the peace agreements have to be consistent with the existing constitutional order, but does not imply the legally binding character of the agreements on this particular subject.

A further argument for the non-legal character of the agreement can be found in the style and the substance of the peace accords. Substantial parts of the agreements are framed in very general terms, formulating broad principles for a far-reaching reform of the political, economic and social system of the Guatemalan state rather than specific obligations. This lack of precise commitments reflects, at least partly, the peculiar characteristics of the Guatemalan peace talks, which involved not only the government and the guerrilla, but also a vast array of political and social organizations represented through the debates in the Assembly of the Civil Society. As a result the peace accords, as the Agreement on a Firm and Lasting Peace puts it, reflect a "national consensus", a set of common objectives, leaving many legal details to be worked out in the process of implementation. Even where the agreements commit the government to sponsor specific amendments to the Constitution, most notably in the Agreement on the Strengthening of Civilian Power and on the Role of the Army in a Democratic Society, the binding character of these commitments is limited, since, according to article 280 of the Constitution of Guatemala, constitutional amendments have to be approved by a two-thirds majority in Congress (and by the people), and the government cannot validly bind the legislature in the exercise of its constitutional powers. A different interpretation would be incompatible with the constitutionally recognized principle of

separation of powers⁹¹, and there is no evidence that such an infringement was intended by the parties.

This does not mean, however, that the peace agreements are devoid of any legal value. They can be used as a point of reference by the Constitutional Court when it has to interpret amended provisions of the Constitution, and by the ordinary courts when they are required to construe and apply statutory rules which have been enacted under the agreements, since they reflect the spirit in which these instruments have been conceived and the purposes which they are deemed to serve.

Although the Guatemalan peace agreements cannot be qualified as an international treaty, they clearly have an international character. First, the government commits itself to respect certain standards established by international law, especially in the field of human rights and the protection of the indigenous population. Secondly, the agreements explicitly require the government to act in the international arena in a certain manner, particularly with regard to human and indigenous rights. And finally, the peace accords are subject to a comprehensive verification by the international community, which goes beyond compliance with the provisions of the ceasefire agreement and international human rights norms and engages the United Nations in a comprehensive peace-building exercise.

Most of the issues addressed in the Guatemalan peace agreements are familiar from the peace process in neighbouring El Salvador: enforcement of human rights, the integration of opposition movements into the political process, a far-reaching reform of the main instruments of state repression in the past, i.e. the military and the police. The reforms envisaged in this area seek to establish a firm basis for the rule of law, which had never been held in very high esteem in Guatemala until it collapsed completely during the civil war. Even more ambitiously, the agreements address the persistent socio- and economic inequalities which have been a permanent feature of the country's history since the conquest and have prevented the emergence of a truly democratic society in modern times. These issues, which had only been introduced at a very late stage in the Salvadorean negotiations and largely been overlooked in the peace accords⁹², have been dealt with in a systematic and comprehensive manner in the Agreement on Social-Economic Aspects and the Agrarian Situation. Closely connected with this issue is the problem of indigenous rights, which played no role in El

⁹¹ Article 141 of the Constitution of 1985 stipulates: "La soberanía radica en el pueblo quien la delega, para su ejercicio, en los Organismos Legislativo, Ejecutivo y Judicial. La subordinación entre los mismos, es prohibida."

⁹² Wilkins, see note 90, 274.

Salvador where an ethnically distinct population no longer exists⁹³, but is of central importance in a country where more than half of the population is of Mayan descent⁹⁴. A separate agreement has therefore been necessary to deal with the deeply-rooted discrimination against Indians in Guatemala.

V. The Framework for Reform Established by the Agreements

1. Human Rights Agreement

The human rights accord was the first substantive agreement to be concluded between the Guatemalan government and the guerrilla. In a country long known for its state-sponsored violence where even the most atrocious human rights violations would remain unpunished it was also an indispensable first step towards the restoration of at least some measure of public confidence in the sustainability of the peace process and the prospects for its ultimate success. The Agreement consists of two parts, the first dealing with the commitments of the parties to observe and enforce human rights, and the second providing for the establishment of an international mission to verify implementation of the agreement.

Although the majority of the commitments contained in the Comprehensive Agreement fall on the government, the Agreement broadens the traditional view of the scope of human rights and extends the commitment

⁹³ In contrast to most other Central American countries, El Salvador no longer possesses an ethnically or linguistically distinct Indian population, although persons of Indian racial or cultural heritage still live in the western departments of the country. During the 20th century this population was rapidly assimilated into the dominant Hispanic culture. The 1930 census, the last census containing the category of "Indian", designated only 5.6 per cent of the population, or some 80,000 persons, as Indians. In the late 1980s the ethnic composition of the population was estimated at 89 per cent mestizo, 10 per cent Indian, and 1 per cent white, see R. Haggerty (ed.), *El Salvador: A Country Study*, 2nd edition 1990, 53 et seq., (66).

⁹⁴ See T. Merrick, "The population of Latin America", 1930–1990, in: L. Bethell (ed.), *The Cambridge History of Latin America*, Vol. VI, 1994, 28. Estimates of the shares of population of Indian descent are complicated by the effects of racial mixing and assimilation, but also by the fact that statistical systems are often run by and oriented towards the politically and economically dominant *ladino* groups.

to respect human rights to the guerrilla movement which undertakes "to contribute to the effective enjoyment of human rights". In accordance with this principle, MINUGUA stressed from the beginning that, although it considers the government to be the principal legal and political entity responsible for the human rights situation in the country, both the state and the UNRG are bound to respect human rights by virtue of the commitments made under the Comprehensive Agreement⁹⁵. The first part of the Agreement is closely modelled on an official declaration made by the Guatemalan government in September 1993 concerning its commitment to protect and promote human rights⁹⁶. It does not contain any substantive provisions on the contents of the rights to be implemented. Given the extended catalogue of human rights contained in the Guatemalan Constitution of 1985 and in the international treaties and conventions to which Guatemala is a party, in particular the American Convention on Human Rights and the International Covenant on Civil and Political Rights, this was deemed unnecessary. Instead the Agreement stresses the need for strengthening the national institutions most directly concerned with the protection of human rights, i.e. the judiciary, the Counsel for Human Rights and the Public Prosecutor, and commits the Government to take special measures to protect persons and entities working in the field of human rights⁹⁷.

Apart from these general commitments the Agreement addresses several particularly pressing problems related to human rights abuses in the past. The first of these is the question of impunity. The Government agrees to abstain from any measure designed to prevent the prosecution and punishment of persons responsible for human rights violations, and promises to initiate the necessary legal amendments to the Penal Code so that enforced disappearances and summary or extra-judicial executions are characterized as crimes of particular gravity and punished as such. Furthermore, it undertakes to campaign in the international community for the recognition of enforced disappearances and extra-judicial executions as crimes against humanity⁹⁸. Memories of the recent past, in which anonymous death squads operated freely against members of the opposition, are reflected in the principle that there must be no illegal security forces nor any clandestine security machinery⁹⁹.

⁹⁵ MINUGUA's Second Report on the human rights situation in Guatemala, Doc. A/49/929, para. 18; Third Report, Doc. A/50/482, para. 19.

⁹⁶ *Compendio del proceso de paz I*, see note 56, 248 et seq.

⁹⁷ Paras II., VII. of the Comprehensive Agreement on Human Rights, see note 77.

⁹⁸ Para. III. of the Agreement.

⁹⁹ Para. IV. of the Agreement.

A distinctive feature of the bloody repression of the guerrilla insurgency had been the creation of the so-called Voluntary Civil Defence Committees in the great army offensive against the rebels in the early 1980s, which consisted in the enforced conscription of able-bodied men into poorly armed and trained self-defence organizations patrolling in rural areas. The Comprehensive Agreement on Human Rights emphasizes the freedoms of association and movement and entrusts the Counsel for Human Rights with the task of investigating complaints that people have been compelled against their will to join these committees. Where human rights are found to have been violated, the Counsel shall initiate judicial or administrative action to punish the perpetrators¹⁰⁰. However, it does not have the power to grant remedies or impose sanctions by itself. Moreover, the Agreement prohibits forced conscription, and envisages the enactment of a new Military Service Act which will lay down principles for a just and non-discriminatory military service¹⁰¹.

Under the Agreement, the parties request the Secretary-General of the United Nations to organize a mission for the verification of human rights and of compliance with the commitments contained in the accord. The mandate of this mission is conceived in terms similar to those which defined the mandate of the UN mission in El Salvador. The mission is assigned two tasks: to investigate complaints regarding possible human rights violations, and to participate in institution-building activities in order to strengthen the national mechanisms for the promotion and protection of human rights. The standards it applies in its first capacity as an independent monitoring institution are derived from the Guatemalan legal order as well as from international treaties, conventions and other instruments on the subject to which Guatemala is a party¹⁰². This means that international human rights norms become an effective part of the set of rules to be applied by national authorities, with the United Nations being associated with the incorporation of these norms into state practice much more closely than under ordinary treaty mechanisms. In its reports on the human rights situation in Guatemala MINUGUA has repeatedly reprimanded the Guatemalan legislature and the judiciary for their failure

¹⁰⁰ Para. V. of the Agreement.

¹⁰¹ Para. VI. Human Rights Agreement. — The Civil Defence Committees have later been disbanded by the Arzú government. A law adopted by Congress abolished Decree 19-86 which had provided the legal basis for the activities of the Committees, see Sixth Report of the Director of MINUGUA to the Secretary-General on the human rights situation in Guatemala, Doc. A/51/790, Annex, para. 9.

¹⁰² Para. X. 15 of the Agreement.

to take sufficiently into account the norms of the American Convention on Human Rights¹⁰³.

The UN mission is entitled to determine whether violation of human rights has occurred in individual cases, and shall make recommendations to the parties on the basis of its findings as to the measures which have to be taken in order to promote full observance of human rights. For this purpose, the mission has the right to move freely throughout the national territory, to interview individuals or groups of persons and to visit government offices and UNRG encampments without prior notice. It is entitled to disseminate information relating to its activities to the Guatemalan public through the mass media. In verifying respect for specific human rights, the Agreement puts a special emphasis, *inter alia*, upon the rights to life, integrity and security of the person, to due process, to freedom of expression and to political rights¹⁰⁴.

The second aspect of the UN mission's mandate concerns cooperation with national institutions and entities with the objective of strengthening the permanent constitutional mechanisms and other national governmental and non-governmental entities for the protection of human rights. A central national institution in this regard is the Counsel for Human Rights (*Procurador de los Derechos Humanos*). According to the Constitution of Guatemala, it shall promote the respect of human rights in all governmental activities, investigate complaints of violations, make recommendations (in private or in public) on the necessary adjustment in administrative practice with regard to human rights, publicly criticize unconstitutional measures and initiate judicial or administrative remedies in proceedings to which it is a party¹⁰⁵. It cannot, however, take binding decisions on these matters but must work through other state organs. The Human Rights Agreement provides for the UN mission to offer its support to the Counsel, as well as to the judiciary, the Public Prosecutor's Office and the Presidential Human Rights Committee, and to sponsor technical cooperation programmes. More generally, the UN mission shall cooperate with

¹⁰³ See MINUGUA's Fifth Report on the human rights situation in Guatemala, see note 73, paras. 17 and 67 (violation of the American Convention by a reform of the Penal Code which instituted the death penalty for new cases of kidnapping); Sixth Report, see note 101, para. 59 (infringement of article 46 of the American Convention on Human Rights in a case where capital punishment had been extended to a new category of crimes with retroactive effect).

¹⁰⁴ Para. X. 10 - 12 Human Rights Agreement.

¹⁰⁵ Article 275 of the Constitution of Guatemala of 1985.

the State as well as with other non-State entities in order to encourage a culture of respect for human rights¹⁰⁶.

2. The Truth Commission (Comisión de Esclarecimiento Histórico) and Amnesty for Past Human Rights Violations

The peace agreements provide for the establishment of a Commission to clarify past human rights violations, the so-called Truth Commission (*Comisión de Esclarecimiento Histórico*). Over the last 15 years, truth commissions have become an increasingly common feature in countries in the midst of political transition from military to civilian rule¹⁰⁷. In Latin America, the truth commissions created after the end of military rule have attracted particular attention. These commissions were given the task of clarifying past human rights violations and investigating the fate of individual victims. However, they did not have any quasi-judicial powers comparable to those of the Truth Commission which was established in South Africa as part of the transition from white minority rule to the ANC dominated Government of National Unity¹⁰⁸, nor were they entitled to assign individual responsibility for violations or to give the names of the worst perpetrators¹⁰⁹.

Unlike the commissions in Argentina, Chile and South Africa, the Truth Commission in Guatemala was established under the auspices of the United Nations, which raises questions with regard to the preservation of state sovereignty. The Commission consists of three members, one foreign member, who is appointed by the Secretary-General of the United Na-

¹⁰⁶ Para. X. 16 Human Rights Agreement.

¹⁰⁷ For an overview of truth commissions between 1974 and 1994 see P. Hayner, "Fifteen Truth Commissions — 1974 to 1994: A Comparative Study", *HRQ* 16 (1994), 597 et seq.

¹⁰⁸ On the powers of the South African Truth Commission, which include the power to grant criminal and civil indemnity to those who confess the human rights violations in which they were involved, see P. Parker, "The Politics of Indemnities, Truth Telling and Reconciliation in South Africa", *HRLJ* 17 (1996), 7 et seq.

¹⁰⁹ On the work of the Truth Commissions in Argentina and Chile see J. Malamud-Goti, "Punishing Human Rights Abuses in Fledgling Democracies: The Case of Argentina", in: N. Roth-Arriaza (ed.), *Impunity and Human Rights in International Law and Practice*, 1995, 161; J. Mera, "Truth and Justice under the Democratic Government", *ibid.*, 172 et seq.; M. Ensalaco, "Truth Commissions for Chile and El Salvador: A Report and Assessment", *HRQ* 16 (1994), 656 et seq.

tions, and two Guatemalan citizens, who are also selected by the former with the agreement of the parties¹¹⁰. The precedent for the direct involvement of the international community in the investigation of past human rights abuses in a member state is to be found in the activity of the Truth Commission established under the peace agreements in El Salvador¹¹¹. The latter's role, however, proved to be highly controversial. In its final report to the parties and to the United Nations the Commission had recommended sweeping changes, including the resignation of the entire Supreme Court, which in the Commission's view had failed to investigate human rights violations and to act against impunity, and a prohibition for certain individuals named in the report to hold office for 10 years. The Salvadorean government refused to implement these proposals and argued that the Commission had exceeded its mandate and that its recommendations ran counter to Salvadorean law¹¹².

It seems that the lessons of the Truth Commission in El Salvador were not lost on the parties and especially on the Guatemalan government, since the Agreement of 23 June 1994 adopts a more cautious approach with regard to the mandate and powers of the Truth Commission. Whereas in the Salvadorean case the Commission consisted completely of foreigners¹¹³, in Guatemala the power of the UN-appointed coordinator to select the other two members of the Commission is restricted by the requirement that they must be of Guatemalan nationality¹¹⁴ and have to be chosen with

¹¹⁰ The Agreement originally provided for the appointment of the Moderator of the peace negotiations, Jean Arnault, to this function. However, the position of coordinator in the Truth Commission has been given by the Secretary-General to Christian Tomuschat, a professor in public international law and former member of the UN Human Rights Committee.

¹¹¹ On the work of the Truth Commission in El Salvador and its conclusions see the article published by one of its members, T. Buergenthal, "La Comisión de la verdad para El Salvador", in: *Instituto Interamericano de Derechos Humanos*, Estudios Especializados de Derechos Humanos I, 1996, 11 et seq.

¹¹² Wilkins, see note 90, 267 et seq.

¹¹³ The three members of the Truth Commission, all of whom were appointed by the Secretary-General after consultation with the parties, were Belisario Batancur, a former Colombian president, Reinaldo Figerodo, a former minister of foreign affairs in Venezuela, and Thomas Buergenthal, a law professor and ancient President of the Inter-American Court of Human Rights.

¹¹⁴ Although the Agreement is explicit only on the nationality of the second member of the Commission, "a Guatemalan of irreproachable conduct", it was widely understood that the third member, an academic selected

the agreement of the parties. The mandate of the Commission is framed in fairly general terms: It shall clarify the "human rights violations and acts of violence that have caused the Guatemalan population to suffer, connected with the armed conflict". The reference to "acts of violence" is obviously meant to include acts committed by the guerrilla in their armed struggle. Given the scope of the mandate, which covers almost four decades of armed conflict, the time limits established for the work of the Commission appear to be excessively narrow. The Commission is expected to complete its mission within a period of six months and is allowed only one extension of its mandate for a further six months.

Moreover, the Oslo Agreement does not grant the Commission any substantial powers in carrying out its tasks. It shall invite those who may be in possession of relevant information to submit their version of the incidents, but does not have any authority to compel individuals or members of the security forces to give evidence or to hand over incriminating material. Obviously with the Salvadorean experience in mind, the parties have explicitly agreed that the Commission shall not attribute responsibility to any individual in its work or report and that its activities shall have no judicial aim or effect. The Agreement limits the Commission to formulating specific recommendations "to encourage peace and national harmony in Guatemala", in particular with regard to measures which preserve the memory of the victims and foster a culture of mutual respect for human rights. Even within these limits, however, the parties do not commit themselves to carrying out the Commission's recommendations, as the government and the guerrilla in El Salvador had done¹¹⁵. The Oslo Agreement provides only for a general undertaking of the parties "to collaborate with the Commission in all matters that may be necessary for the fulfilment of its mandate", without even addressing the problem of implementation of the Commission's recommendations. By imposing strict limits on the Commission's activities and formulating only vague commitments with regard to the implementation of its recommendations, the government has effectively managed to forestall any unpleasant surprise in its dealings with the Commission which could get it into difficulties similar to those experienced by the Salvadorean government.

The limitation of the Commission's mandate to the determination of institutional responsibility for past human rights violations would matter

from a list proposed by the University presidents, would also be a Guatemalan. In practice, a Guatemalan lawyer (Edgar Balsells) and an Indian Leader (Otilia Lux de Coti) have been selected as members of the Commission.

¹¹⁵ Para. 10 of the Agreement on the Truth Commission for El Salvador, Doc. A/46/553 - Doc. S/23130, Annex.

less if it could be expected that the question would be taken up and dealt with adequately by the courts. Unfortunately, this does not seem to be the case. Apart from the fact that the courts have significantly failed in the past to properly investigate human rights abuses and that the reforms of the judiciary envisaged in the peace agreements (see V. 5. below) will take some time before they produce tangible results, the agreements also provide for a comprehensive amnesty for violations committed in the course of the armed struggle. In the Agreement on the Basis for the Legal Integration of the UNRG of 12 December 1996 the Guatemalan government undertakes to sponsor a National Reconciliation Act in Congress which shall declare the extinction of criminal responsibility of political crimes and related common crimes committed in the armed conflict as well as in respect of common crimes committed with the aim of preventing, thwarting or punishing the committing of those crimes by persons who were involved in the conflict owing to an institutional mandate. The amnesty is only limited by the provision that it shall not extend to crimes which under domestic law or international treaties to which Guatemala is a party are not subject to an extinction of criminal liability¹¹⁶.

A National Reconciliation Act along these lines was passed by the Guatemalan legislature before the entry into force of the peace agreements in December 1996¹¹⁷. The Amnesty granted by the Act covers crimes committed by the guerrilla against State security, public institutions and the public administration as defined in the relevant provisions of the Penal Code (political crimes) and those common crimes which were directly, objectively, intentionally and causally related to political crimes¹¹⁸. In the case of common crimes committed by state agents, the amnesty applies if the crimes were committed in order to prevent, thwart, suppress or punish any of the political or related common crimes perpetrated by the guerrilla, unless it is shown that no rational and objective link between the crime and the stated aim existed or that the crime was perpetrated for personal motives. The amnesty extends to all state agents, irrespective of rank¹¹⁹. In cases concerning political crimes, the Public Prosecutor's Office shall refrain from bringing criminal charges and the courts shall dismiss proceedings¹²⁰. The question of whether a common crime falls within the

¹¹⁶ Agreement on the Basis for the Legal Integration of the Unidad Revolucionaria Guatemalteca, Doc. A/51/776 - Doc. S/1997/51, Annex II, paras 17 et seq.

¹¹⁷ Ley de Reconciliación Nacional, Decreto 145-96 del Congreso de la República.

¹¹⁸ Arts 2, 4 National Reconciliation Act.

¹¹⁹ Article 5 National Reconciliation Act.

¹²⁰ Article 2 National Reconciliation Act.

scope of the amnesty is determined in judicial proceedings before the Court of Appeal, subject to the guarantees of a fair trial. The Truth Commission receives the files of the case after the decision has been given by the court but is not represented in the proceedings. If a common crime is not covered by the amnesty, it is tried in the normal criminal procedure¹²¹.

The amnesty shall not extend to crimes of genocide, torture and forced disappearance, and to those crimes which are imprescriptible or are not subject to an extinction of criminal liability under domestic law or international treaties ratified by Guatemala¹²². These exceptions, however, are fairly limited in scope. Genocide and torture are crimes for which a state duty to prosecute and to punish is widely recognized under the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984¹²³, to which Guatemala is a party. It must be borne in mind that the concept of genocide has a narrow definition under the Convention of 1948, which does not include acts directed against political groups or members of the opposition parties¹²⁴ and therefore is often difficult to apply to killings which take place in the context of civil war. With regard to forced disappearance of persons, the Inter-American Court of Human Rights has explicitly recognized a duty of state parties to identify those responsible for the disappearance and to impose the appropriate punishment under the American Convention on Human Rights¹²⁵. As to the other exceptions mentioned in the National Reconciliation Act, there seem to be no crimes which are imprescriptible or are not subject to an extinction of criminal liability under Guatemalan domestic law¹²⁶. Although the crimes against humanity as international law crimes include, in accordance with modern practice, the crimes of

¹²¹ Article 11 National Reconciliation Act.

¹²² Article 8 National Reconciliation Act.

¹²³ N. Naomi Roth-Arriaza, "Sources in International Treaties of an Obligation to Investigate, Prosecute and Provide Redress", in: Roth-Arriaza, see note 109, 26 et seq.; M. Scharf, "Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?", *Tex. Int'l L.J.* 31 (1996), 21 et seq.

¹²⁴ Scharf, see note 123, 22.

¹²⁵ *Velasquez Rodriguez Case*, Judgement of July 29, 1988, Inter-American Court of Human Rights (Ser. C.), No. 4 (1988).

¹²⁶ Arts 101 et seq. Código Penal.

murder, deportation, imprisonment, torture and rape¹²⁷, they do not trigger a duty of domestic courts to punish these crimes. The principle of “universal jurisdiction”, which applies to this category of crimes, is generally thought to be permissive, not mandatory¹²⁸. This means that extra-judicial killings in particular are not caught by the exception clause and will therefore be subject to the extinction of criminal responsibility under the National Reconciliation Act. Such a result would be highly unsatisfactory and sits oddly with the government’s commitment on the basis of the Comprehensive Human Rights Agreement to treat extra-judicial executions as crimes of particular gravity and to foster their recognition as crimes against humanity in the international community.

Whether the arrangements established by the peace agreements are sufficient to deal effectively with past violations of fundamental rights in Guatemala remains doubtful. While the Truth Commission’s efforts to identify the structural causes for the excessive violence and almost complete disrespect for human rights witnessed in Guatemala over the last decades may provide a useful basis for a public debate on the political conditions which provoked the breakdown of the rule of law and the institutional reforms needed to prevent the recurrence of these atrocities in the future, it does not provide an adequate substitute for the determination of individual responsibility in grave human rights violations. This determination is indispensable in order to demonstrate that ultimately human rights are violated by individuals, not by institutions, and that their abuses will not go unpunished. As long as individual perpetrators are allowed to escape liability by hiding behind the institutions to which they belong, the culture of impunity is likely to survive and the awareness of the importance of fundamental rights will be severely diminished.

3. The Agreement on the Identity and Rights of Indigenous Peoples

Guatemala possesses one of the highest proportions of ethnically distinct Indian population in Latin America. Although the period since 1944 has seen a considerable measure of *ladinización*, *i.e.* the assimilation of indige-

¹²⁷ See the article 3 of the Statute of the International Criminal Tribunal for Rwanda, which contains one of the most recent codifications of crimes against humanity, S/RES/955 (1994) of 8 November 1994.

¹²⁸ Scharf, see note 123, 34; for a different view which affirms that crimes against humanity require prosecution by domestic courts see D. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime”, *Yale L.J.* 100 (1991), 2593.

nous communities into a society dominated by Hispanic social and cultural norms, roughly one half of the country's population had one of the five main Indian languages as their mother tongue and remained more attached to the society of the principal ethnic groups than to that of the Guatemalan nation¹²⁹. Most of these groups lived in the rural areas of the *altiplano* region, where they had managed to preserve a limited degree of cultural autonomy, based on subsistence farming on communal lands. However, the growth of commercial agriculture and the establishment of industrial development zones in the heartland of subsistence agriculture in the 1970s had increasingly challenged the material base of the indigenous universe and provoked a response both peasant and Indian in its nature, combining syndicated forms of organization with a new political discourse which advocated radical Christianity and the liberation of oppressed peoples. The indigenous groups in the Western highlands had been hit hard by the brutal counter-insurgency campaign led by the army with the assistance of anonymous death squads between 1977 and 1983, the period during which the bulk of the more than 100,000 people estimated to have been killed for political reasons in the civil war lost their lives¹³⁰.

The counter-insurgency campaign in the countryside was characterized by the traditional derision shown by the *ladino* elements of Guatemalan society towards the *indio*, whose distinct language, dress and customs are still widely viewed as an impediment to economic progress and the consolidation of a Hispanic culture. The Agreement concluded between the government of Guatemala and the UNRG on the Identity and Rights of Indigenous Peoples explicitly refers to this long history of discrimination by stating in the preamble that "the indigenous peoples have been particularly subject to *de facto* levels of discrimination, exploitation and injustice on account of their origin, culture and language". In order to break with the past, the government commits itself to officially recognize the identity of the indigenous peoples, which is defined in the agreement as a "set of elements", including — in the case of Mayan identity — direct descent from the ancient Mayas, a language deriving from a common root, a specific form of spirituality, a common culture and a sense of the members of the group of their own identity¹³¹. To this effect, the government undertakes to promote a reform of the Constitution in order to define and characterize the Guatemalan nation as being multi-ethnic, multicultural

¹²⁹ See Holiday, note 2, 68, who cites the view of other observers that Guatemala is actually two countries, one Indian, one Ladino.

¹³⁰ Dunkerley, see note 47, 240 et seq.

¹³¹ Para. I. 2 Agreement on Identity and Rights of Indigenous People.

and multilingual, and to recognize explicitly the identity of the Maya, Garifuna and Xinca peoples, within the unity of the Guatemalan nation¹³².

The Agreement also envisages a number of concrete measures with the aim of eradicating the age-old discrimination against indigenous peoples in everyday life. Ethnic discrimination shall be classified as a criminal offence by the legislature. More generally, the Government will promote a review by the Guatemalan Congress of existing legislation with a view to abolishing any law or provision that could have discriminatory implications for the indigenous peoples. With regard to indigenous women, who are recognized as being particularly vulnerable to discrimination, both as women and as indigenous people, the government promises to promote legislation to classify sexual harassment as a criminal offence, taking into account, as an aggravating factor in determining the penalty for sexual offences, that the offence was committed against an indigenous woman. The Agreement also provides for a set of specific commitments concerning international instruments for the protection of indigenous peoples. The government undertakes:

- to promote a bill incorporating the provisions of the Convention on the Elimination of All Forms of Racial Discrimination in the Guatemalan Penal Code;
- to use all available means aimed at recognition of the Committee on the Elimination of Racial Discrimination, as provided in article 14 of the Convention;
- to faithfully implement the Convention on the Elimination of All Forms of Discrimination against Women;
- to promote approval by Congress of ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries¹³³; and
- to seek approval for the Draft Declaration on the Rights of Indigenous Peoples adopted by the UN Subcommission on Prevention of Discrimination and Protection of Minorities¹³⁴.

¹³² Paras I. 4, IV. A. *ibid.*; paras 5, 9 of the Agreement on Constitutional Reforms and the Electoral Regime.

¹³³ *ILM* 28 (1989), 1382. The Convention was ratified by Guatemala in May 1996 and entered into force in June 1997, see MINUGUA's Fifth Report on the human rights situation in Guatemala, note 73, para. 109.

¹³⁴ Doc. E/CN.4/Sub.2/1994/2/Add.1. The draft declaration is strongly objected to by various governments because of the formal recognition of the right to self-determination of indigenous peoples contained in article 3, see C. Brölmann/M. Zieck, "Some Remarks on the Draft Declaration on the Rights of Indigenous Peoples", *LJIL* 8 (1995), 103 et seq.

Apart from these general commitments to the elimination of racial discrimination and recognition of indigenous peoples, the Agreement also addresses the situation of indigenous groups in specific areas. With regard to cultural rights, the government shall grant official status to indigenous languages by initiating a reform of article 143 of the Constitution to incorporate a list of all languages in the Republic which the government is required to recognize, respect and promote¹³⁵. The use of all indigenous languages in the educational system shall be protected, and intercultural bilingual education expanded. A further constitutional reform shall provide for protection of indigenous spirituality by stipulating the State's general duty to recognize, respect and protect the various forms of spirituality practised by the Maya, Garifuna and Xinca people¹³⁶. In the area of civil and political rights, the Agreement recognizes that the indigenous peoples have been excluded from the decision-making process in the country's political process, and therefore stresses the need to institutionalize their representation at the local, regional and national levels. To this effect, the Agreement proposes several reforms for consideration, including mandatory mechanisms for consultation with the indigenous peoples whenever legislative or administrative measures are likely to affect them, and institutions representing the indigenous peoples and defending their interests which would have the power to make proposals to the executive and legislative bodies¹³⁷.

The Agreement further acknowledges the importance of the traditional norms of indigenous peoples for the social regulation of life, and commits the government to the development of rules of law which would recognize the right of the indigenous communities to manage their internal affairs in accordance with their customary norms, provided that they are not incompatible with the fundamental rights defined by the Guatemalan legal system or with internationally recognized human rights. The observance of Indian customary norms in ordinary legal proceedings shall be fostered by several means, including special programmes for judges and officers of the court on the culture and traditional norms of indigenous communities¹³⁸. With regard to economic and social rights, the government agrees to adopt or promote measures designed to regularize the legal situation of communal possession of lands by communities which do not have title

¹³⁵ Para. III. A. 2 a) Agreement on Identity and Rights; para. 6 Agreement on Constitutional Reforms and the Electoral Regime.

¹³⁶ Para. III. C. 3 Agreement on Identity and Rights of Indigenous People; para. 6 Agreement on Constitutional Reforms and the Electoral Regime.

¹³⁷ Paras IV. D. 3, 5 Agreement on Identity and Rights of Indigenous People.

¹³⁸ Paras IV. E. 3, 4 *ibid.*

deeds to these lands¹³⁹. In order to speed up the settlement of land disputes, the government undertakes to promote an increase in the number of courts dealing with land cases and to expedite procedures for the settlement of those cases. Equally important, given the bad experiences of the past, is its commitment to secure approval of the indigenous communities prior to the implementation of any project for the exploitation of national resources which might affect the subsistence and way of life of the communities, and to grant fair compensation for any loss which they may suffer as a result of these activities¹⁴⁰.

However, many of the reforms envisaged with regard to the cultural, political and economic rights of indigenous peoples are only agreed in principle, but not spelled out in detail in the accord. The specific measures regarding the official recognition of indigenous languages, education, spirituality, political rights and indigenous land rights shall be studied and devised by three joint commissions — the commission on education reform, the commission on reform and participation, and the commission on rights relating to land of the indigenous peoples — which will be composed of an equal number of representatives of the government and of indigenous organizations. The commissions shall adopt their conclusions by consensus¹⁴¹ which means that the government stays in control of the reform process.

4. Social and Economic Aspects

Guatemala has long been a country beset by grave economic and social inequalities. The inequitable distribution of wealth, which has its roots in the colonial era, has led to social structures which persist to this day and exclude large parts of the population, especially Indians, from any meaningful participation in economic and social development. According to the United Nations, at the time of the peace negotiations the wealthiest fifth of the population had an income 30 times greater than that of the poorest fifth. The same pattern of economic disparity could be seen in land tenure, with 70 per cent of the arable land owned by less than 3 per cent of the population¹⁴².

If a lasting peace is to be achieved in Guatemala, the grave economic inequalities existing within Guatemalan society will have to be removed.

¹³⁹ Para. IV. F. 5 *ibid.*

¹⁴⁰ Para. IV. F. 6 c) *ibid.*

¹⁴¹ Para. V. d) *ibid.*

¹⁴² Holiday, see note 2, 68.

A first step in this direction was taken by the parties to the peace negotiations when they signed the Agreement on Social and Economic Aspects and Agrarian Situation on 6 May 1996. The Agreement recognizes the need for social and economic development which meets the needs of the whole population and thus creates the conditions necessary to overcome poverty, discrimination and marginalization which have been a source of conflict and instability in the past. In order to promote this objective, the Agreement formulates a number of principles and guidelines for a social and economic policy based on participation and consensus-building. Social participation shall be encouraged, *inter alia*, by the guarantee of full and effective rights for rural and urban workers and small farmers to participate, as organized entities, in the decision-making process with the business sector or at the national level. To this end, flexible laws and administrative regulations shall be passed to grant legal personality or other forms of legal recognition to those organizations requesting it¹⁴³. Moreover, a decentralization of the administrative structure of the state is envisaged in order to broaden the scope of participation in social and economic decision-making at the local and regional levels, through the establishment of urban and rural development councils and the strengthening of their representative character¹⁴⁴.

In the area of social development, the government undertakes to increase social investment significantly by restructuring the budget to allow for increased social expenditure in the health, education and employment sectors. In particular, the Government proposes to step up public spending on education and health as a proportion of gross domestic product by at least 50 per cent over its 1995 level by the year 2000¹⁴⁵. The coverage of the Social security system shall be expanded and its mode of operation be reformed in accordance with the principles of efficiency, universality, unity and compulsoriness¹⁴⁶. In order to pay for the increased spending in the social infrastructure, the Government undertakes to increase state resources by a comprehensive reform of tax legislation and the strengthening of the tax administration. This reform is of particular urgency, given the fact that Guatemala has the lowest tax revenues in the hemisphere — under 8 per cent, compared with the regional norm of 18 per cent — and that any attempt at tax reform in the last decade was successfully blocked by the private sector¹⁴⁷. The new tax system shall be fair, equitable and on the

¹⁴³ Para. 5 Agreement on Social and Economic Aspects and Agrarian Situation.

¹⁴⁴ Paras 8 et seq. *ibid.*

¹⁴⁵ Paras 22 a), 23 c) *ibid.*

¹⁴⁶ Para. 24 *ibid.*

¹⁴⁷ Holiday, see note 2, 70.

whole progressive, in keeping with the constitutional principle of ability to pay; it shall also be universal and compulsory¹⁴⁸. In order to combat tax evasion, which was endemic in the past, the government shall sponsor amendments to the Tax code establishing harsher penalties for tax evasion and eliminating loopholes. The existing auditing and collection mechanisms shall be strengthened and a special programme for large contributors introduced in order to ensure that they comply fully with their tax obligations. The Agreement also provides for “exemplary penalties” for those who engage in various forms of tax fraud¹⁴⁹. By taking these measures, the government hopes to meet its objective to increase the tax burden, by the year 2000, measured as a ratio of gross domestic product by at least 50 per cent as compared with the 1995 tax burden¹⁵⁰. Moreover, the Agreement envisages a more effective role for local bodies — the municipalities and the development councils — with regard to tax policy and tax collection¹⁵¹ in order to allow for adjustment to local investment needs and more efficient public services in the countryside, which have hitherto been concentrated in urban areas¹⁵².

The central question of economic reform concerns access to land and productive resources. In this regard, however, the Agreement contains few specific commitments. The government will:

- promote legal reforms to simplify the procedures for awarding title and registering ownership;
- combat the under-utilization of land through incentives and penalties; and
- protect common and municipal land by limiting to the strict minimum the cases in which it can be transferred¹⁵³.

While these measures may be sufficient to protect subsistence farming at its traditional level, they do not provide for any major changes to the existing, highly inequitable pattern of land tenure. In this regard, the government promises to stimulate the development of a dynamic land market that would enable tenant farmers who do not have land or have

¹⁴⁸ Para. 47 Agreement on Social and Economic Aspects and Agrarian Situation.

¹⁴⁹ Paras 50, 51 *ibid.*

¹⁵⁰ Para. 49 *ibid.*

¹⁵¹ Para. 50 i), j) *ibid.*

¹⁵² R. McCleary, “Guatemala: Expectations for Peace”, *Current History*, February 1996, 92.

¹⁵³ Para. 37 Agreement on Social and Economic Aspects and Agrarian Situation.

insufficient land to acquire land at commercial or favourable interest rates with little or no down payment. However, the amount of land which can be distributed under this mechanism remains limited. Although the Agreement provides for the establishment of a land trust fund for the purpose of promoting greater access to land, the fund will limit its activities to three types of land:

- uncultivated or illegally settled public land;
- land purchased by the State from private owners with resources allocated to this purpose by the government, grants from friendly governments and non-governmental organizations, or loans secured from international financing organizations; and
- land expropriated under article 40 of the Constitution¹⁵⁴.

Whether this framework will allow for any meaningful redistribution of land and the establishment of a dynamic land market necessary for substantial economic progress in rural areas remains to be seen.

5. Strengthening of Civilian Power and Reform of the Security Forces

The peace agreements finally provide for a series of reforms to the civil and military institutions of the state with the aim of adjusting their structure and powers to the needs of a democratic society based on the rule of law. The commitments contained in the Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society are more specific than in most other agreements. To start with, the Agreement reaffirms in general terms the importance of an effective separation of the legislative, executive and judicial branches of the State for a democratic system of government, and stresses the principle that public authority has to be exercised for the common good and in such a way that no person, social sector, military force or political movement can usurp its exercise¹⁵⁵. More specifically, it calls for a strengthening of the legitimacy and efficiency of the legislative branch and proposes a number of concrete measures designed to promote this objective, including among

¹⁵⁴ Para. 34 Agreement on Social and Economic Aspects and Agrarian Situation.

¹⁵⁵ Paras 2, 3 Agreement on the Strengthening of Civilian Power.

other things a freeze of the number of deputies in the Congress at its present level and the introduction of time limits¹⁵⁶.

One of the main concerns of the Agreement is the reform of the judiciary. The aim of the reform is twofold: it shall eliminate corruption and inefficiency in the judicial branch and guarantee free access to the justice system and an impartial application of the law to all sectors of society. The Agreement tries to promote this end by providing for the establishment of a career judicial system which includes guarantees on the adequate remuneration of judges and a system of appointment and promotion based on competitive examinations to promote professional excellence. The judges shall be protected against outside interference by a disciplinary system with pre-established guarantees, procedures, levels of jurisdiction and penalties and the principle that a judge or magistrate can be punished only by his peers¹⁵⁷. Threats and coercion of judicial personnel, bribery, graft and corruption shall be characterized as particularly serious offences which are severely punished in a reform of the Penal Code¹⁵⁸. At the same time, the government commits itself to facilitating access to the justice system by incorporation of several guarantees of the administration of justice into the Constitution, including:

- free access to the courts in the person's own language;
- respect for the multi-ethnic, multicultural and multilingual nature of Guatemala; and
- legal assistance to those who cannot afford their own counsel.

A Public Defender's Office will be established in criminal matters to provide legal support for those who do not have the money to retain their own counsel¹⁵⁹. In order to assign the judicial branch the financial resources to carry out the necessary modernization measures the government intends to increase the net public expenditure allocated to the judiciary and the Public Prosecutor's Office over its 1995 level by the year 2000¹⁶⁰.

One of the most difficult challenges faced by the negotiators was the restructuring of the armed forces. The army had long been the dominant force in Guatemalan life, and was behind many of the most atrocious

¹⁵⁶ Para. 6 Agreement on the Strengthening of Civilian Power. Members of Congress will not be allowed to serve more than two consecutive terms in the future.

¹⁵⁷ Para. 12 Agreement on the Strengthening of Civilian Power.

¹⁵⁸ Para. 13 *ibid.*

¹⁵⁹ Paras 12, 13 *ibid.*

¹⁶⁰ Para. 14 *ibid.*

human rights violations committed in the last three decades. The Agreement recognizes the army as “a permanent institution in the service of the nation”, but commits the armed forces to a radical transformation in accordance with the requirements of a democratic state. Many of the prescriptions for this transformation have been taken from the Salvadorean model. However, in El Salvador the task of purging those military officers who had been directly involved in illegal operations and gross human rights abuses as a necessary prerequisite of a successful restructuring of the armed forces had been assigned to a special commission whose majority was composed of civilians chosen by the UN Secretary-General, thus escaping government control. The conclusions were final and had to be implemented within 60 days¹⁶¹. In Guatemala, no comparable mechanism has been established, leaving the purge of the worst human rights violators to the government and to the armed forces themselves.

The Agreement provides for a constitutional amendment which describes the changed role of the armed forces. According to this amendment, the armed forces are “unique and indivisible, essentially professional, apolitical, loyal and non-deliberative”. Their task is limited to the protection of the sovereignty of the State and its territorial integrity, with no role in domestic affairs¹⁶². Under the old constitutional provision, the army had also been responsible for the maintenance of domestic peace and order. Within the new constitutional framework, the armed forces are firmly placed under the command of the President of the Republic as the highest civil authority in the country¹⁶³. Only in exceptional circumstances, when the ordinary means for the maintenance of public order and domestic peace are exhausted, will the President of the Republic be able to use the armed forces for this purpose. This exceptional intervention of the army in domestic affairs is subject to important procedural safeguards: The deployment of the army shall always be temporary, be conducted under civilian authority and shall not involve any limitation on the exercise of the constitutional rights of citizens. Congress has to be kept informed about the operations of the armed forces, and may at any time decide that such operations should cease¹⁶⁴. Finally, the Agreement limits the jurisdiction of military courts to crimes and misdemeanours specified in the military code. Ordinary crimes and misdemeanours committed by military personnel shall be tried by the ordinary courts¹⁶⁵.

¹⁶¹ Wilkins, see note 90, 264 et seq.

¹⁶² Para. 36 Agreement on the Strengthening of Civilian Power.

¹⁶³ The requirement that the Defence minister must come from the ranks of the military has been abolished.

¹⁶⁴ Para. 45 Agreement on the Strengthening of Civilian Power.

¹⁶⁵ Para. 36 *ibid.*

A new military doctrine shall be formulated in accordance with the changed constitutional role of the armed forces. The size and resources of the Guatemalan army will be adapted to their new mission and to the country's economic capabilities. The Agreement provides for a reduction of the size of the armed forces by 33 per cent in 1997, and a 33 per cent reduction in military spending as a proportion of GDP, as compared to 1995¹⁶⁶.

In keeping with the new role of the military, the scope of the activities of the Intelligence Department of the Office of Chief of Staff shall be reduced to the intelligence-gathering necessary for the defence of territorial integrity and state sovereignty. The other intelligence units¹⁶⁷ shall be under the control of the civilian authorities, i.e. the Ministry of the Interior and the President of the Republic. The activities of all intelligence bodies must scrupulously respect the separation between intelligence and information-gathering functions and the operations to which they give rise. They will be supervised by a commission of the legislative branch¹⁶⁸.

The responsibility for the maintenance of public order and internal security is transferred to a new body, the National Civil Police. The National Civil Police replaces the country's existing public security forces¹⁶⁹. The mobile military police is completely disbanded¹⁷⁰. Private security companies will only be allowed to operate under the strict control of the National Civil Police¹⁷¹. The Agreement provides for a constitutional amendment establishing the functions and main characteristics of the police force. According to the proposed amendment, the National Civil Police shall be a professional and hierarchical institution under the direction of civil authorities whose function consists in the protection of the exercise of the rights and freedoms of the individual, the prevention, investigation and suppression of crime and the maintenance of public order and internal security¹⁷². The Agreement sets forth guidelines for the

¹⁶⁶ Para. 36 b) *ibid.*

¹⁶⁷ The Agreement provides for two civilian intelligence bodies, the Civilian Intelligence and Information Analysis Department to be established under the Ministry of the Interior, which shall be responsible for obtaining information to combat crime, and the Strategic Analysis Secretariat, which shall report directly to the President of the Republic, informing him of situations posing any type of danger or threat to the democratic state.

¹⁶⁸ Paras 47 et seq. Agreement on the Strengthening of Civilian Power.

¹⁶⁹ Para. 22 *ibid.*

¹⁷⁰ Para. 62 *ibid.*

¹⁷¹ Para. 32 *ibid.*

¹⁷² Para. 23 *ibid.*

training of members of the new police force designed to ensure commitment to democratic values and the rule of law. A new police academy is established to oversee admission to the police profession, to train the new police personnel and to retrain the current personnel. The new National Civil Police shall be functioning throughout the national territory by late 1999¹⁷³. In order to meet this objective, the government undertakes to increase its expenditure on public security as a percentage of the gross domestic product by 50 per cent over the amount expended in 1995. The government requests the support of the international community and MINUGUA for the establishment of a comprehensive police and public security plan based on the Agreement, in order to take into account international standards in this area¹⁷⁴.

VI. The Role of the United Nations in the Implementation of the Peace Agreements

The United Nations has been closely involved in the peace process in Guatemala on the basis of Chapter VI of the UN Charter since the resumption of the negotiations between the government and the UNRG in early 1994, when the framework agreement elevated its role to moderator, with the right to make proposals to promote and facilitate the signing of a peace agreement¹⁷⁵. The Framework Agreement also provided for a comprehensive verification of the agreements, in both their substantive and their operational aspects, by the United Nations. The different elements of international verification are set out in greater detail in the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements. According to this agreement, the Parties request the Secretary-General to set up a mission to verify the agreements included in the Agreement on a Firm and Lasting Peace. This mission shall evaluate the implementation and progress of programmes and projects arising out of the agreements, and make the necessary recommendations for avoiding or rectifying any instance of non-compliance. The verification

¹⁷³ Paras 27, 28 *ibid.*

¹⁷⁴ Para. 30 *ibid.*

¹⁷⁵ The Letter of the Secretary-General to the President of the General Assembly and the President of the Security Council of 17 January 1994, Doc. A/49/61 - Doc. S/1994/53 refers to the mandate conferred upon him by S/RES/637 (1989) of 27 July 1989 and A/RES/44/10 of 23 October 1989 to continue his mission of good offices in support of the Central American governments in their efforts under the Esquipulas II agreement as the basis for his role as moderator in the Guatemalan peace process.

mandate is thus conceived in very broad terms since the peace agreements cover all main aspects of Guatemalan public life. The mission includes five separate verification areas:

- human rights;
- indigenous affairs;
- social, economic and agrarian affairs;
- strengthening of civilian power and the role of the army in a democratic society; and
- resettlement and integration¹⁷⁶.

The Verification Mission shall assist, particularly through the Follow-Up Commission, in resolving any difficulties that may arise in the implementation of the peace agreements, including differences between the parties as to the interpretation of the agreements. It may also provide, at the request of either party, advice and technical support on specific issues to facilitate compliance with the commitments made. In order to be able to perform its functions, the mission is granted the right to move freely throughout the national territory, interview any person and entity freely and privately, and obtain whatever information may be relevant. The government undertakes to extend whatever cooperation the mission requires for the performance of its functions¹⁷⁷.

The verification mission of the UN in Guatemala consists of different components, some of which had already been in place before the signing of the Agreement on a Firm and Lasting Peace. The first of these components concerns peace-keeping in the traditional sense, i.e. the supervision, with the consent of the contending parties, of a ceasefire and a subsequent demobilization previously agreed to by the parties¹⁷⁸. The Agreement on a definitive ceasefire, which was modelled on the corresponding agreements in Nicaragua and El Salvador, provided for the establishment of security zones to which the guerrilla troops had to move in order to demobilize and for the withdrawal of the armed forces from these zones.

¹⁷⁶ Report of the Secretary-General to the General Assembly, Doc. A/51/828.

¹⁷⁷ Paras 198–203 Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements.

¹⁷⁸ For explanations of the terms peace-keeping, peace-making and peace-building see the Report of the Secretary-General of 17 June 1992, “An Agenda for Peace”, Doc. A/47/277 - Doc. S/24111; W. Epstein, “The Strengthening Role of the United Nations in Peacekeeping and Peace-making”, in: G. Jacobsen/M. Miller/ M. Spencer/L. Tollefson (eds), *World Security – The New Challenge*, 1995, 100 et seq.

UN personnel were to be deployed in order to monitor the withdrawal, to guarantee security within the assembly areas of the guerrilla and to oversee the disarming of the rebels¹⁷⁹. With Resolution 1094¹⁸⁰ the Security Council, acting upon the recommendations of the Secretary-General, authorized the attachment to MINUGUA of a group of 155 military observers for the purpose of verification of the agreement on the definitive ceasefire. The operation began on 3 March 1997 and was carried out in an exemplary manner, without any major incident during the entire process. The delivery of UNRG weapons, munitions and equipment collected by the verification mission to the Ministry of the Interior of Guatemala on 14 May 1997 concluded the mandate of the military observer group¹⁸¹.

The involvement of the UN in the verification of the Guatemalan peace agreements, however, transcends mere peace-keeping and includes, as in El Salvador, participation in the restructuring of state institutions which are central to a democratic society based on the rule of law. It aims to assist Guatemalans in their endeavour to remove the root causes of their armed conflict and to create the institutional framework which is necessary for a sustained democratization¹⁸². The most important of these peace-building activities of the UN is the active promotion of human rights, which has been pursued by MINUGUA since it started working in Guatemala in November 1994. The mandate of the UN is not limited to reporting on violations, but involves the supervision of, and cooperation with the competent national authorities. However, this cooperation is not restricted to state institutions, but extends to various bodies of society concerned with human rights, and allows the mission direct access to the population by disseminating information relating to its functions and activities to the Guatemalan public through the mass media. In carrying out its numerous verification functions, the mission uses international as well as domestic law rules as norms of reference, thus introducing international human rights standards directly into state practice. This role of the UN is crucial in a country where disrespect for fundamental rights is endemic and a long record of corruption and arbitrariness has undermined the authority of the ordinary institutions of government. In the last parliamentary and presidential elections the presence of MINUGUA's human rights monitors contributed decisively in creating an atmosphere of openness and

¹⁷⁹ Paras 5 et seq. Agreement on the Definitive Ceasefire.

¹⁸⁰ S/RES/1094 (1997) of 20 January 1997.

¹⁸¹ Report of the Secretary-General on the group of military observers attached to Minigua, Doc. S/1997/432, paras 29, 32.

¹⁸² H. Lorenzo, "La Misión de la ONU para la verificación de los derechos humanos en Guatemala (MINUGUA)", in: Bardonnnet/Cancado Trindade, see note 11, 254.

tolerance which considerably broadened the space for political controversy and thus strengthened the legitimacy of the political process as a whole. Although MINUGUA, unlike ONUCA in Nicaragua and ONUSAL in El Salvador, had not been given the mandate to verify the fairness of the elections themselves — which have taken place without fraud in recent years — its presence throughout the country played an important role in the decision of the left to take part in the elections. There was less election-related violence in these elections than in any recent contest, even though the left was fielding candidates for the first time. This experience strengthened the resolve of the guerrilla to seek a rapid re-integration into civil life, the political process being less exclusive than it had seemed before the elections¹⁸³.

The Comprehensive Agreement on Human Rights also provides, in general terms, for the “institution-building activities” of MINUGUA. More specifically, the Agreement on the Strengthening of Civilian Power associates the UN mission with the work of the commission which will discuss and propose the necessary reforms of the justice system¹⁸⁴, and requests its support for the government’s efforts to promote a police and public security restructuring plan in order to take into consideration international standards in this area¹⁸⁵. The UN thus is involved in matters which have traditionally been considered as being exclusively within the domestic jurisdiction of the states¹⁸⁶.

However, the involvement of the United Nations in the peace process in Central America on the basis of Chapter VI of the Charter means that all UN activities with respect to the establishment of a stable democracy in Guatemala have to be based on the consent of the parties. The degree to which the UN, through its Verification Mission, may actively intervene in the implementation of the peace agreements thus depends on the government’s willingness to acquiesce in limitations of state sovereignty and to accept external interference in the exercise of its constitutional prerogatives. In the case of Guatemala, this willingness has been notably more limited than in El Salvador. The UN mission has only limited powers; it cannot act against the will of the government. It does not play any direct role in the reform and the partial dismantling of the armed forces. Its functions in relation to the restructuring of the judiciary and the national police are of a purely advisory and consultative nature. Even in the field of human rights the recommendations made by MINUGUA are not

¹⁸³ Holiday, see note 2, 73.

¹⁸⁴ Para. 15 Agreement on the Strengthening of Civilian Power.

¹⁸⁵ Para. 30 *ibid.*

¹⁸⁶ Epstein, see note 178, 101 et seq.

binding on the parties. The main body to monitor the implementation of the peace agreements is the Follow-up Commission, on which the Verification Mission of the UN is represented through its head, but does not have the right to vote¹⁸⁷. The peace agreements resist any intrusion on national sovereignty which would affect the decision-making powers of the competent institutions of government. As a result, the profile of the UN is not as high in Guatemala as it was in El Salvador. The political control of the peace process rests firmly with the government, whereas in El Salvador the UN directly intervened in the exercise by the executive branch of its constitutional powers, in particular with regard to the judiciary and the armed forces¹⁸⁸. This reflects the different political situation in Guatemala. The success of the army's brutal counter-insurgency campaign of the early 1980s and the military defeat of the guerrilla meant that the rebels did not possess a bargaining position as strong as that of its Salvadorean counterpart which would have allowed it to force the government to relinquish some of its constitutional prerogatives or to concede more far-reaching verification powers to international bodies.

VII. Conclusion

The experience in Guatemala as well as in other countries of Central America demonstrates that the UN can play a valuable role in the peaceful settlement of internal armed conflicts which need not be restricted to its traditional peace-keeping function, but may involve substantial elements of peace-making and peace-building. It is certainly true that the success of UN peace-keeping in Central America was due to several favourable conditions which cannot be easily reproduced elsewhere. The most important of these factors was the end of the Cold War, which did not only put an end to superpower rivalry in the region, but also helped to narrow the ideological divisions within Central American societies which had kept the armed struggle alive. The role of the army as a bulwark in the struggle against communism lost much of its significance, and the parties were increasingly willing to accept that political and social conflicts cannot be settled by military means and that only stable democratic societies will be able to compete successfully in an increasingly globalized economy. As the Report of the Secretary-General on the military observers in Guatemala puts it, the conviction that the time for military confrontation was over

¹⁸⁷ Para. 190 Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements.

¹⁸⁸ Wilkins, see note 90, 264 et seq.

was an invaluable asset as the country embarked on the complex process of post-conflict peace-building¹⁸⁹. Nevertheless, the fact remains that the involvement of the UN added a crucial measure of credibility to the peace process which could not have been provided for by the parties themselves or by any other actors in the region.

Of the elements which were of central importance to the success of the UN mission in Guatemala, three merit particular notice. First of all, the UN was able to achieve a peace settlement based on the consent of all relevant sectors of Guatemalan society. This was vital, since an agreement whose effects had been limited to the parties formally present at the negotiating table would hardly have provided a sufficient basis for the comprehensive efforts needed to heal the deep divisions within Guatemala, since the military and political weakness of the guerrilla effectively barred it from speaking on behalf of large parts of the population. This obstacle was successfully circumvented by elevating the Assembly of the Civil Society as a representative of non-governmental sectors of Guatemalan society to a semi-official status and giving it the opportunity to contribute to the bilateral negotiations in the form of recommendations and guidelines adopted as a result of the Assembly's deliberations. By recognizing the role of the Assembly, the negotiations encouraged the civil, social and economic organizations in Guatemala to take an active interest in the successful conclusion of the negotiating process, while at the same time broadening the basis for the effective implementation of its outcome. Moreover, the agreements not only address the military, political and constitutional aspects of the conflict, they also try to tackle the deep economic, social and ethnic divisions which are at its very heart. In this respect, the scope of the Guatemalan peace agreements extends beyond the reform of certain core institutions of the state — which in itself largely transcends the limits of more traditional peace-keeping missions — to the economic and social order in its integrity, thereby implementing the most ambitious and complex concept of peace-building known so far.

Secondly, the participation of the UN provided much needed neutrality and impartiality through all stages of the peace process in its capacity as a neutral broker and monitoring authority whom both sides, still distrustful of each other after a bloody and protracted civil war, could trust. The deployment of MINUGUA at a time when the hostilities between the parties had not yet formally been ended contributed decisively to the creation of a political climate in which opposition groups could feel comparatively safe and thus participate more openly in the political process. In carrying out its mission, MINUGUA has sometimes had recourse

¹⁸⁹ Doc. S/1997/432, para. 32.

to concepts which modify traditional principles of human rights law but are deemed necessary for a successful completion of its task, most notably by applying human rights standards, whose binding character is usually limited to state authorities, to the activities of the guerrilla movement as well. Besides MINUGUA, although it was not given an official mandate in the supervision of the Guatemalan presidential and parliamentary elections, played a crucial role in securing a fair and open electoral process in which the opposition parties could freely participate, thus facilitating the decision of the guerrilla forces to complete their transition from armed struggle to full involvement in the political process.

Finally, the UN has shown careful respect for the sovereignty of the Guatemalan state, a restraint which had been less evident in the case of El Salvador. While in El Salvador the UN managed to bring a considerable degree of pressure directly to bear upon the Salvadorean government, especially in the area of military and constitutional reform, it had also been more vulnerable to charges that it unduly interfered with the exercise by the elected government of its constitutional powers. The approach to the problem of sovereignty in the case of Guatemala has been a more flexible one, acknowledging the comparatively strong political position of the government *vis-à-vis* the guerrilla and the resulting unwillingness to sacrifice substantial parts of its sovereignty in order to reach an agreement. On the other hand, the Guatemalan political leadership seems determined — at least under the rule of President Arzú — to forcefully implement the necessary political and institutional changes. As a result, the initiative in the design of the constitutional and military reforms envisaged in the peace agreements firmly rests with the government. The role of the UN in this area is predominantly one of offering independent advice and monitoring compliance with the objectives set forth in the agreements. These monitoring and advisory functions, however, are by no means insignificant. The UN is represented in the Follow-Up Commission, the main body to monitor the implementation of the peace accords, and closely follows local developments through the continued presence of MINUGUA. The members of MINUGUA work side by side with government authorities and civil organizations on a daily basis in order to make sure that certain core commitments of the agreements are duly respected. Moreover, the role of the UN, and the view it takes of the faithful execution of the obligations contained in the agreements, are crucial in mobilizing the technical and financial support of the international community for the peace process, which is indispensable if the ambitious programme for reform in the fields of domestic, economic and social policy is to be carried out successfully. The presence of the UN serves as a focus for this external assistance and at the same time reminds the parties of the negative impact a breakdown of the peace process would have on the country's standing in the interna-

tional community. Thus it seems that, although they do not provide for the same kind of limitations on domestic sovereignty as the peace accords in Salvador, the Guatemalan agreements nevertheless grant enough leverage to the UN to discharge their supervisory function effectively.