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Introduction

As this report goes to press on December 3, the Salvadoran peace process has reached a defining moment. During the month of December the Government of El Salvador (GOES) and the Farabundo Marti National Liberation Front (FMLN) must implement several of the most sensitive provisions of the comprehensive peace agreement they signed last January. The intricate jockeying for position that has characterized each step of the implementation process continues, but both sides are now entering into an endgame where the actions to be taken have irreversible consequences.

Among the steps to be taken this month are the collection and destruction of all FMLN weapons, the demobilization of the last contingents of FMLN combatants and end to FMLN military structures, and the removal or transfer of more than one hundred of the most senior officers of the Salvadoran armed forces. As the deadlines for compliance approach tensions are high and rumors rampant.

There have been prior postponements of scheduled dates for implementing provisions of the Accords, and there remains a real risk that one or both of the parties will again try to delay, stall or refuse to carry out the measures required of them. The United Nations, the United States and other countries that have supported the peace process have publicly stated their firm conviction that no further delays in carrying out the measures scheduled this month should be permitted. If, despite those statements, additional delays occur the credibility and viability of the entire peace process will be called into question.

Under the original timetable October 31 was supposed to mark the beginning of a new era of peace in El Salvador. Despite significant progress in some areas, however, that date passed with the most critical provisions still outstanding. FMLN and Salvadoran government leaders accused each other of bad faith and placed troops on alert, while UN mediators shuttled back and forth seeking to defuse the crisis.

In early November UN officials announced agreement on a new timetable of implementation that will stretch deadlines for carrying out some important provisions of the Accords into 1993, although it calls for final demobilization of FMLN military structures by December 15, 1992. The announcement followed earlier calendar revisions in June and August, but marked the first time the date for final demobilization was changed.

The frequent and intense negotiations over changes in the timetable of implementation underline the extent to which the peace Accords represent a complex array of reciprocal promises made by each side. In negotiating the calendar each side sought to avoid taking concrete actions solely in exchange for promises of future compliance by the other side.

Although there is no formal linkage among promises, the calendar of implementation was designed to “synchronize” the reintegration of the FMLN’s ex-combatants into civilian life with the implementation of reforms by the Salvadoran government affecting land tenure, political activity, institutional restructuring and the creation of a new National Civilian Police force.

The purpose of the Accords is not only to end a civil war but to transform the institutional structures of Salvadoran society. The United Nations mediator during seventeen months of negotiations, Alvaro de Soto, has called the agreements “a negotiated revolution”. Given such a broad purpose, it is important for international observers to avoid too narrow a focus on the cease-fire and military demobilization provisions of the agreements. The process of institutional reforms agreed-to in the negotiations will require a considerably longer time-frame to complete than the demobilization of FMLN military units.

*As of December 2, the first FMLN AK47 assault rifles were being destroyed by acetylene torch under UN observation
** In the words of UN Secretary General Boutros-Ghali.
International support for the peace process was a critical factor in achieving a negotiated settlement of the civil war in El Salvador. Continued international support for the full implementation of the Accords will influence how fast and how completely the promises they contain become reality.

There will be a number of moments between now and March 1994 when the substance and degree of specific institutional reforms called for in the Accords are in the balance. That date will mark an important checkpoint, since new elections will be held for President and Vice President, Deputies to the Legislative Assembly, and municipal officials. Under Salvadoran law elections for president and legislative elections coincide only once every fifteen years, so the 1994 elections will significantly shape the distribution of political power. The electoral process will test the extent to which the Accords have succeeded in opening up the political system and the commitment of the parties to compete by democratic means.

Responsibility for monitoring and verifying compliance with the peace agreement is shared by a UN observer mission (ONUSAL) and a National Commission for Consolidation of Peace (COPAZ) comprised of representatives of the government, FMLN, and political parties represented in the Legislative Assembly. Hemisphere Initiatives (HI) will be closely following their work to help build support for their very difficult assignments. HI will also directly monitor the peace process to form an independent assessment of the successes and problems as they develop.

This preliminary report examines the state of implementation efforts as of December 3, 1992. It discusses the principal unresolved issues delaying final implementation, and potential pitfalls that can endanger the process. This is the first of several reports. A more comprehensive report will be issued after the first anniversary of the signing of the Accords and the scheduled final demobilization of the government's counterinsurgency battalions. HI will report on progress in carrying out land transfers, on the formation of a new police force, on reforms to the judicial system, and on the impact of the Accords on dynamics of political party competition and electoral campaigning for 1994.
I. Where Things Stand

Several of the most sensitive provisions of the Salvadoran Peace Accords are scheduled to be carried out in December 1992. These include the removal or transfer of officers of the armed forces whose human rights records were judged unacceptable, the destruction of all FMLN weapons, demobilization of the last group of FMLN combatants, and the final end of the FMLN's military structure.

The Ad Hoc Commission empowered by the Accords to review the records of officers of the Salvadoran armed forces has ordered the removal of eighty officers and the transfer of forty others out of a total of 2293 military officers. The list is rumored to include all but two of the Generals, all of the full colonels and many of the lieutenant colonels on active duty. The removals and transfers are to be made official through the "General Orders" of changes in command issued November 30 and December 31, but President Cristiani was to deliver the orders to the Secretary General of the UN by November 29. Amidst rising tension he did so a day late.

The FMLN provided a revised inventory (including missiles and additional weaponry not included on its original list) on December 1 and placed these under ONUSAL supervision. These weapons are to be destroyed between December 1 and December 15, when the last contingent of FMLN combatants is scheduled to be demobilized.

Removal of Salvadoran military officers in accordance with the report of the Ad Hoc Commission will provide to the FMLN an important symbolic and concrete assurance that the Salvadoran armed forces are becoming subject to civilian authority. For the Salvadoran armed forces, destruction of FMLN weapons and armaments and the formal demobilization of the last FMLN combatants will provide greater confidence that the peace process is not a trap set by the FMLN to lull its opponents into letting down their guard.

Since both these steps involve real surrendering of power for individuals directly affected, tension and suspicion have risen as the moment for implementation draws near. The UN has explicitly linked these two steps: the Secretary General will order the destruction of weapons when he is certain the purging of the officer corps is irreversible, and he will order the purging to proceed only when he is certain the FMLN has turned over most if not all of its sophisticated weaponry. After a day's delay he ordered the destruction of the weapons on December 1.

A. The Linkage Among Issues

The uniqueness of the Chapultepec Accords is that they seek to address the root causes of civil war in El Salvador. There are four principal objectives set forth in the Accords:

1. to end the armed conflict by political means as speedily as possible;
2. to promote the democratization of the country;
3. to guarantee unrestricted respect for human rights;
4. to reunify Salvadoran society.

The calendar of implementation established by the Accords is "an intricately designed and carefully negotiated mechanism whose purpose is to synchronize (a) the reintegration of the FMLN's ex-combatants into civilian life and (b) the measures that the Government has committed itself to take in order to facilitate that process". The timetable is gradual and designed to build trust among the parties and to permit phased implementation of other provisions. Under the original timetable FMLN military forces were to be reduced

* Named after the castle in Mexico City where they were signed on January 16 1992. In addition to the January comprehensive agreement the "peace Accords" include a July, 1990 agreement on human rights monitoring; an April, 1991 agreement to establish a Truth Commission to investigate major violations of human rights; a series of constitutional reforms agreed to in April, 1991; and a September, 1991 agreement in New York that set the basic framework of the comprehensive agreement.
in five equal steps as the GOES carried out other provisions.

Key among the government's obligations were the dissolution of the Treasury Police and National Guard, the staged demobilization of rapid response infantry battalions, the establishment of an Ad Hoc Commission empowered to review the human rights records of military officers, establishing a new civilian-run police academy to train a new civilian police force, and placement of civilians on the governing board and faculty of the Military School. Equally important were provisions requiring the transfer and sale of land to ex-combatants and civilians in conflict zones, the legalization of land titles for those occupying land, and the adoption of a revised electoral code and measures to legalize the FMLN as a political party.

Under the original timetable most of these actions were to be completed by October 31, 1992. That date was to mark the end of the armed conflict in El Salvador but not the end of the peace process. Several provisions of the Accords were not scheduled to be completed by that date, including demobilization of the last rapid response battalion, transfer and sale of land to peasants in conflict zones and full deployment of the new civilian police force.

The timetable was always ambitious, since many of the provisions required enabling legislation to be drafted and approved by COPAZ and by the Legislative Assembly. Delays led to accusations of bad faith and to deliberate postponement of actions called for under the Accords. The UN played a growing role negotiating revisions to the original timetable that tried to maintain the rhythm and sequence of actions by both parties.

These efforts were not completely successful. The first two "re-calendarizations" (in June and August) sought to get the process back on track so that the original October 31 deadline for completing cease-fire and FMLN demobilization provisions could be achieved. Delays in establishing a new police training academy, however, made it virtually impossible to begin deployment of the new police force prior to the scheduled final demobilization of FMLN military units. Despite continuing problems with meeting deadlines for implementation there were no violations of the cease-fire provisions. By October, however, problems with carrying out provisions dealing with land in conflict zones brought progress to a halt. The UN again stepped in with a proposal which was accepted by both parties. This proposal effectively postponed distribution and legalization of land in conflict zones past the scheduled date for final FMLN demobilization.

The process became so unbalanced that the Secretary General concluded that a more fundamental adjustment to the calendar was necessary. He proposed a new calendar that set December 15 as the date for final FMLN demobilization, with other key provisions originally scheduled to be completed prior to that action now rescheduled between early November and mid-December. President Cristiani argued that he could not carry out the decisions of the Ad Hoc Commission prior to December 15 and proposed a gradual implementation of that provision during 1993. The Secretary General and the FMLN rejected his proposal, but after intense negotiations agreed to a compromise that delayed full execution of the decisions of the Ad Hoc Commission to December 31.

B. Mixed Progress So Far

The peace process has advanced during the past eleven months, but unevenly and with great difficulty. To an important degree the "process of implementation" has really been a process of continuing negotiation over each and every provision of the Chapultepec Accords. In most cases the manner of implementation has generated new disputes. Thus,

- The security forces have been formally dissolved as required by the Accords. But the units were maintained intact, allegedly performing non-security functions.
- The FMLN gave UNUSAL an inventory of weapons and stored those weapons under UN supervision as required by the Accords, but the inventory did not include sophisticated and modern weapons they are known to possess.

* See "Public Security and the New National Civilian Police" later in this report.
** See "The Land Conflict" later in this report.
*** See "Cleansing the Officer Corps" later in this report.
The Ad Hoc Commission has ordered very sweeping changes in the top command of the armed forces as authorized by the Accords, but the commission only reviewed the records of ten percent of the officer corps.

A new National Academy for Public Security has begun training candidates for the new civilian police force as called for by the Accords, but former members of the security forces have been permitted to enter the program in violation of the Accords. Also, adequate government financing is far from certain. And there have been efforts to reduce the criminal investigative capacity of the new police force by placing the investigative unit under the authority of the Attorney General’s office.

Procedures to legalize existing land tenancy in the conflict zones have been accepted by the FMLN and the GOES in accordance with the Accords, but the procedures have no final deadline for completion nor guarantees of sufficient financing.

Considerable resistance has so far prevented changes in the judicial structure.

The chart on pages 6-8 provides a detailed outline of progress on implementing major provisions of the Accords. On lesser issues there has been greater progress.

As this report is written (December 3) the direction of the process is not clear: whether a foundation is being laid for gradual progress toward greater democratization of Salvadoran society once the military demobilization is completed; or whether fundamental institutional reforms are being thwarted and delayed until military demobilization is completed, after which those reforms will be forgotten.

C. The Peace Process After December 15

The month of December will provide important clues about the future of the peace process. The worst-case scenario is a collapse of the process and a resumption of civil war, but that is not really likely.

Less apocalyptic but more in keeping with the pattern of the past eleven months is the possibility of a growing imbalance between the gradual dismantling of the FMLN’s military structures and the partial and tentative implementation of structural reforms to the traditional order.

Under the latest calendar, FMLN military structures will be ended on December 15 and the “cleansing” of the top ranks of the officer corps of the armed forces will be effective by the beginning of January. Further delays in implementing these provisions will raise serious questions, inside and outside El Salvador, about the continued viability of the peace process itself.

In any case, December 15 will not mark the end of the peace process. Among the outstanding items will be the following:

Deployment of the new National Civilian Police force will not yet have begun.

The Truth Commission is scheduled to issue its report and recommendations for prosecution of human rights violations that occurred during the civil war in January, 1993.

Distribution of land and legalization of land tenure in conflictive zones will be still in the first phase (out of three) of implementation.

Reforms to the judicial system will not yet have begun, though a much delayed new law on the judiciary should have been approved by this time.

The reduction in size and restructuring of doctrine and training of the armed forces will still be far from complete. The extent of civilian control is uncertain.

Reforms to the electoral code will not yet be implemented, though there is some chance changes to the code would be finished.

Once the threat of renewed military conflict has eased the pressure to carry out other provisions of the Accords will likely diminish. That is why international attention to and support for the ongoing peace process by donor countries and other international actors will play a crucial role in shaping the degree and pace of deeper democratization of the country.
### Relation of FMLN Demobilization to Other Key Provisions

<table>
<thead>
<tr>
<th>SCHEDULED ACTIONS</th>
<th>Original Schedule</th>
<th>Actual Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First 20% of FMLN Forces Demobilized</strong></td>
<td>May 1</td>
<td>July 1</td>
</tr>
<tr>
<td><strong>Other Actions to be completed by time of FMLN demobilization:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FMLN to provide UN an inventory of all FMLN arms, ammunition and military equipment.</td>
<td>January 25</td>
<td>ONUSAL not verified as of Dec. 1</td>
</tr>
<tr>
<td>Concentration of all FMLN arms, munitions and military equipment in designated locations under UN supervision.</td>
<td>March 2</td>
<td>June 25</td>
</tr>
<tr>
<td>National Guard and Treasury Police to be abolished and their members incorporated into the armed forces.</td>
<td>March 2</td>
<td>June 28</td>
</tr>
<tr>
<td>A new State Intelligence Department under civilian authority to be created and its Director named.</td>
<td>March 17</td>
<td>June 12</td>
</tr>
<tr>
<td>All Civil Defense Units to be registered.</td>
<td>April 1</td>
<td>April 1</td>
</tr>
<tr>
<td>The Director-General of a new National Civilian Police force that will replace the old National Police to be appointed and training classes for the first group of applicants to the new police force are to begin.</td>
<td>March 2,</td>
<td>July 31,</td>
</tr>
<tr>
<td></td>
<td>May 1</td>
<td>September 1</td>
</tr>
<tr>
<td>The Legislative Assembly to approve a new law establishing a National Council of the Judiciary.</td>
<td>May 1</td>
<td>Not Complete as of Dec. 1</td>
</tr>
<tr>
<td>The government to begin transferring landholdings in excess of 245 hectares and state-owned land to former combatants of both the FMLN and the government.</td>
<td>February 1,</td>
<td>Not Begun as of Dec. 1</td>
</tr>
<tr>
<td></td>
<td>May 1</td>
<td></td>
</tr>
<tr>
<td>The government and Legislative Assembly to grant licenses to FMLN-owned mass media and to approve the legalization of the FMLN as a political party.</td>
<td>March 2,</td>
<td>Not Complete as of Dec. 1</td>
</tr>
<tr>
<td></td>
<td>May 1</td>
<td></td>
</tr>
<tr>
<td>The government to begin implementing programs to facilitate the reintegration of former FMLN combatants.</td>
<td>March 31</td>
<td>Begun in July</td>
</tr>
</tbody>
</table>
### SCHEDULED ACTIONS

<table>
<thead>
<tr>
<th>SCHEDULED ACTIONS</th>
<th>Original Schedule</th>
<th>Actual Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second 20% of FMLN Forces Demobilized</td>
<td>May 31</td>
<td>Sept. 24</td>
</tr>
<tr>
<td>Other actions to be completed by time of FMLN demobilization:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The members of an Academic Council to oversee the Military College to be appointed.</td>
<td>May 11</td>
<td>July 31</td>
</tr>
<tr>
<td>An Ad-Hoc Commission with authority to review the records of all military officers and to recommend transfer or dismissal is to begin work.</td>
<td>May 16</td>
<td>May 16</td>
</tr>
<tr>
<td>Civil Defense Units to be disarmed.</td>
<td>May 31</td>
<td>May 31</td>
</tr>
<tr>
<td>The Territorial Service of the armed forces reserves is to be replaced by a new system.</td>
<td>May 31</td>
<td>Scheduled for Nov. 30</td>
</tr>
<tr>
<td>Legal reforms of the electoral system to be adopted.</td>
<td>May 31</td>
<td>Not Done as of Dec. 1</td>
</tr>
<tr>
<td>Third 20% of FMLN Forces Demobilized</td>
<td>July 30</td>
<td>October 31</td>
</tr>
<tr>
<td>Other actions to be completed by time of FMLN demobilization:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Teaching staff of Military College to be designated by Academic Council.</td>
<td>July 30</td>
<td>Scheduled for Nov. 30</td>
</tr>
<tr>
<td>National Intelligence Directorate (DNI) to be abolished.</td>
<td>June 15</td>
<td>Announced June 15, but not verified by ONUSAL</td>
</tr>
<tr>
<td>Civil Defense Units to be disbanded.</td>
<td>June 30</td>
<td>June 30</td>
</tr>
<tr>
<td>National Council of the Judiciary established and members elected.</td>
<td>July 30</td>
<td>Scheduled Jan 15, 1993</td>
</tr>
<tr>
<td>Land tenure in conflictive zones is to be legalized.</td>
<td>July 14</td>
<td>Underway in 3 phases but with no final date</td>
</tr>
<tr>
<td>SCHEDULED ACTIONS</td>
<td>Original Schedule</td>
<td>Actual Completion</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Fourth 20% of FMLN Forces Demobilized</td>
<td>Sept. 28</td>
<td>In process Dec. 1</td>
</tr>
<tr>
<td>Other actions to be completed by time of FMLN demobilization:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reforms to the educational system for the armed forces are to be completed and a new system for admission to the Military College adopted.</td>
<td>August 29</td>
<td>Scheduled for Nov. 30</td>
</tr>
<tr>
<td>The Ad-Hoc Commission is to report its conclusions to the President of El Salvador and to the UN Secretary General, and the President is to report to the UN Secretary General on administrative actions he will take to implement the conclusions.</td>
<td>Aug. 14, Sept. 13</td>
<td>Sept. 23, Nov. 30</td>
</tr>
<tr>
<td>The first two of five Rapid Deployment Infantry Brigades (BIRI's) of the armed forces are to be demobilized, with their members incorporated into other units.</td>
<td>Aug. 18 &amp; Sept. 18</td>
<td>Aug. 18 &amp; Sept. 18</td>
</tr>
<tr>
<td>The entire functional structure of the new National Civil Police is to be in place.</td>
<td>Sept. 28</td>
<td>Scheduled for Nov. 30</td>
</tr>
<tr>
<td>Final 20% of FMLN Forces Demobilized</td>
<td>October 31</td>
<td>December 15</td>
</tr>
<tr>
<td>Other actions to be completed by time of FMLN demobilization:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All FMLN weapons destroyed and the military structure of the FMLN ended.</td>
<td>October 31</td>
<td>December 15</td>
</tr>
<tr>
<td>The decisions of the AD-Hoc Commission regarding transfer and dismissal of military officers are to be carried out.</td>
<td>October 13</td>
<td>From Nov. 30 through Dec. 31</td>
</tr>
<tr>
<td>The third of five BIRI's is to be demobilized. This is to be the Atlacatl battalion.</td>
<td>Oct. 19</td>
<td>Dec. 8</td>
</tr>
<tr>
<td>The territorial deployment of the new National Civil Police is to begin.</td>
<td>Oct. 28</td>
<td>Jan. 26 1993</td>
</tr>
</tbody>
</table>
II. The Ceasefire and Demobilization Process

The most successful aspect of the Accords to date has been the cessation of hostilities in the wake of a decade-long civil war. There have been no serious violations of the cease-fire, but the demobilization process is behind schedule.

The cease-fire provisions required the Salvadoran military and the FMLN to concentrate their forces in two stages into specified locations by March 2. The FMLN was then to carry out a phased demobilization beginning May 1 and culminating October 31.

The first phase of the separation of forces was completed on schedule. The second phase was not completed until the end of June, however, as was the demobilization of the first contingent of FMLN combatants. The FMLN complained that several settlement points lacked basic facilities and sanitary conditions, and accused the government of holding up international funds designated for FMLN settlements. They also pointed to the lack of progress on land transfers and the delayed opening of the new police academy as evidence of the government's unwillingness to facilitate the demobilization process.

The government and military high command accused the FMLN of suspending demobilization as a way of extracting concessions not agreed to in the Accords. They dismissed the FMLN's arguments as a smoke screen to hide unwillingness to transform the FMLN from a military organization into a political party.

On June 12 GOES and FMLN representatives agreed to a revised schedule of implementation brokered by UN officials. The FMLN agreed to demobilize the first 20% of its forces by July 1, in return for the government's compliance with several outstanding provisions of the Accords. The second 20% was to follow on July 31, but was postponed amidst new recriminations between the government and the FMLN over non-compliance with parts of the June 12 agreement. In mid-August, UN representative Marrack Goulding mediated yet another revised timetable whereby the FMLN would demobilize the second 20% on September 16, the third on September 30, the fourth on October 15, and the last on October 31.

The FMLN completed the demobilization of the second contingent on September 24, but increasingly tied demobilization to on the land question. Citing a lack of progress in setting up programs to benefit ex-combatants, the FMLN insisted that land transfers to ex-combatants occur simultaneously with demobilization. Although a final inventory of lands to be transferred was accepted by the Special Agrarian Commission of COPAZ in June, disagreements persisted as to the type (individual vs. cooperative) and size of transfers. These were finally resolved with a new land proposal from the UN (see "The Land Conflict" on pg. 22), and the FMLN demobilized the third contingent of combatants on October 31.

By October it was clear to all parties that the original date for completing demobilization could not be met because implementation of other provisions was well behind schedule. The Secretary General proposed a new timetable that sought to retain the basic sequence of implementation among the key provisions. The FMLN accepted the Secretary General's proposal, but the government objected to several specific items. The key issues involved timing of carrying out the decisions of the Ad Hoc Commission regarding purging of the officer corps and government (and UN) complaints that the FMLN had not provided an accurate inventory of its heavy weapons.

After nine days of intense negotiations a new calendar was approved, under which the FMLN was to present a revised weapons inventory and concentrate those weapons under UN supervision by November 30, destroy the weapons between December 1 and 15, and demobilize its last military forces by December 15. The government is to continue demobilizing its five rapid response battalions (BIRI's) with the third and most famous, the Atlacatl, scheduled for demobilization December 8. The government is also to carry out the decisions of the Ad Hoc Commission in two steps, on November 30 and December 31.

* The fourth BIRI's demobilization should end January 5, the fifth BIRI on February 6.
III. Reform of the Armed Forces

Constitutional reforms affecting the Salvadoran armed forces were negotiated and approved in April 1991. The reforms completely redefine the armed forces' role and doctrine. The military is assigned primary responsibility for national defense. Its role in public security is limited to situations of emergency and only under strict executive control. Deployment requires notification of the legislature, which can recall them. The peace Accords also call for a change in military doctrine to stress the pre-eminence of human dignity and democratic values, respect for human rights and subordination to the constitutional authorities.

The Chapultepec Accords required the dissolution or radical restructuring of security forces and the intelligence agency that had been part of the armed forces command structure, as well as the reduction in size of the military. They also require the military to disband the five specialized combat battalions (BIRI's) and the civil defense units.

The armed forces claim they have complied with all these provisions on time, but in some cases the measures adopted have been more formal than substantive.

A. Cleansing the Officer Corps

A central issue in the negotiations was how to "cleanse" the armed forces, so that Salvadoran military officers known to be responsible for human rights violations would be discharged or transferred. The September 1991 New York accord stipulated that all Salvadoran armed forces officers would be evaluated by an Ad Hoc Commission comprised of three prominent Salvadorans. Two military officers were to participate in a limited way in the commission.4

The January Accords specified that respect for human rights was a primary criterion for evaluating each officer's record, and established command responsibility, especially in cases of serious or systematic failure to correct and sanction troops under the officer's command. Professional competence and ability to adapt to working in a democratic society were also criteria. A serious deficiency in any of these categories could be sufficient basis for recommending the officer's transfer or discharge.5

The Accords empowered the Commission to recommend the discharge or transfer of officers reviewed. The Commission was not required to use a particular standard of evidence and was authorized to use information from any source it considered reliable. It was required to interview officers before including them on the list for administrative action. Its decisions have no impact on possible recommendations of the Truth Commission, including judicial actions.6 No review or appeal process was established for the Commission's decisions, nor was there any requirement that the Commission explain its conclusions.

The Ad Hoc commission was given three months from the date of its installation to complete its task. The Government was granted 30 days after receiving the commission's report to take the necessary administrative actions to implement the commission's decisions. These administrative actions were to be carried out within 60 days of the delivery of the report.

In effect, the Commission was given a three-month period to evaluate 2,293 active duty officers. Aside from the magnitude of the task, the Commission rapidly discovered that it lacked necessary information. Defense Ministry service records contained little information relevant to the Commission's task.

Local and international human rights groups became key sources of information. Yet in few of the thousands of documented human rights cases were the officers directly responsible named.7 In many cases, however, commanding officers could be identified. The Commission also
sought information from various agencies of the U.S. government.

Limited by time, resources and information available, the Commission ultimately reviewed the records of 232 top officers—approximately 10% of the total. Christian Democratic Party deputy Gerardo LeChevalier criticized the Commission's failure to evaluate the remaining officers, warning that "suspicion will remain that those who were not evaluated and those who were not interviewed could be persons who have committed errors or even crimes."

On September 23, 1992 the Commission's report was delivered to UN Secretary General Boutros Boutros-Ghali and to President Cristiani in New York. Both vowed to keep its content secret. News reports soon appeared in the U.S. press indicating that substantial numbers of colonels and generals were included in the Commission's report, however, and supporters of the armed forces began to react. The right wing Central American Studies Institute (IESCA) warned that the Commission's report "has no guarantee of impartiality and reveals a manipulation and concertation of leftists and FMLN leaders, who seek the destruction of the Armed Forces, through purging." The "Civic Movement Free El Salvador" (Movimiento Civico El Salvador Libre) blasted the Commission, impugning the impartiality of the Commission members and staff, because several had ties to the PDC.

Defense Minister General René Emilio Ponce and his deputy, General Juan Orlando Zepeda, head the Ad Hoc Commission list of approximately 120 officers, eighty of whom were to be removed and forty transferred. The list was not made public. General Zepeda later told the New York Times that if he were actually included, "I am going to defend myself." He described the report as "an attack on the institution" and "the prolongation of a strategy of leftist struggle against the armed forces," aided by midlevel officials of the United Nations. Defense Minister Ponce likewise charged that "the creation of the Commission was part of a plot instigated by left-wing parties, "to damage the armed forces' prestige." In response to the outcry President Cristiani asked the UN Secretary General to permit some officers on the list to remain in their posts until August 1993 and others through the end of next year. This proposal was rejected. The FMLN's failure to complete demobilization of all of its forces by October 31 provided grounds for the government to argue that it was entitled to additional time to implement the Ad Hoc Commission's findings. UN Secretary General Boutros-Ghali proposed rescheduling implementation of the Ad Hoc Commission's decisions to December 15, 1992, the same day that the FMLN was to finish dismantling its military structure. President Cristiani rejected the UN's proposal, maintaining that he would not proceed to implement agreements relating to the armed forces until after the FMLN had completely demobilized.

The ensuing crisis required the intervention of UN envoys Marrack Goulding and Alvaro de Soto. After nine days of sensitive negotiations, de Soto resolved the impasse. In a November 11 letter to the Security Council, the UN Secretary General indicated that it was necessary to make certain adjustments in the timetable for implementation of the Commission's report because "decisions regarding military personnel are issued and made public on the last day of each month and become effective the first day of the following month." According to the Secretary General, President Cristiani committed himself to complete the implementation of the recommendations of the Ad Hoc Commission within a specified time frame.

The new agreement required President Cristiani to communicate his administrative decisions implementing the Ad Hoc Commission report to the Secretary General by November 29. "Assuming that these decisions match the recommendations of the Ad Hoc Commission...., the FMLN is to provide ONUSAL with a final inventory of weapons, conclude the concentration of those weapons on 30 November and begin their destruction by 1 December." Based on the Secretary General's "confirmation that these actions have been duly completed, the Government will promptly resume the dissolution of military units as previously agreed."
The implementation of the Ad Hoc Commission report is directly linked to the FMLN providing a new and more complete inventory of its weapons. The Secretary General pointed out that "it has been expressly stipulated, for the first time, that compliance with certain key points in the calendar by one side is contingent upon compliance with specific undertakings by the other side."

Although the Secretary General's letter does not specifically address this point, the Ad Hoc Commission's decisions will be incorporated into the year-end "general orders" of armed forces promotions and retirements to be announced on November 30 and December 31. The December 31 order takes effect on January 6. The FMLN reportedly agreed to the postponement of the implementation of the Ad Hoc Commission report because of a commitment by the Secretary General to see that the full peace process is carried out as well as assurances by donor countries that delivery of reconstruction funds will be based on full compliance with the Accords.

It remains unclear whether the officers affected and their supporters have accepted this agreement. Vice President Francisco Merino has continued to disparage the Commission, saying that its report is "not truly serious or professional." He claims that the evaluation was based on information "from leftist sources or the FMLN itself."

The Accords as originally drafted provided for the cleansing process to be carried out fully prior to the complete demobilization of the FMLN, but under the adjusted timetable the FMLN will finish demobilization weeks before the Ad Hoc Commission’s findings are implemented.

International pressure will be crucial to help guarantee the success of this process. On November 15, for example, General Colin Powell, head of the U.S. joint chiefs of staff, briefly visited El Salvador, reportedly to communicate to President Cristiani and the High Command the necessity of full compliance with the Ad Hoc Commission’s report, no matter how difficult that might be.

### B. Dismantling the Security Forces

The Accords call for the dissolution of the security forces and the military's intelligence apparatus (National Intelligence Directorate—DNI), creating in their place a new national civilian police force and an intelligence agency under direct executive control. Two of the largest security forces (the National Guard and Treasury Police) were to be dissolved by March 2 and their agents dismissed or incorporated into the ranks of the army. The government was to name a director for the new state intelligence agency by March 17, who would oversee the dissolution of the DNI during a four and a half month period.

The government announced the dissolution of the two security forces on March 2. In fact, however, they were incorporated structurally intact into the army, with the National Guard relabeled as the National Border Guard and the Treasury Police as the Military Police. Both remained in their original barracks. In response to protests, the military high command argued that the Accords only called for the suppression of the security forces in their public security functions, not their organizational dissolution.

The FMLN accused the army of slight-of-hand and announced that it would postpone the demobilization of the first group of combatants. ONUSAL also considered the actions a violation of the Accords, and Marrack Goulding mediated new talks that resulted in the army’s agreement to vacate the National Guard barracks. The agreement permitted the Military Police to remain, however. The Legislative Assembly finally repealed the laws creating the two security forces on June 24.

Although the army relies on conscripts, the security forces traditionally relied on volunteers who made a career out of their service. Some of the resistance to dissolving the security units apparently originated with lower level career officers in the security forces who worried about their own future.
The DNI was formally dissolved on schedule, but there are signs that it was simply absorbed whole into the armed forces. No files have been turned over to the new State Intelligence Organization, nor have any of the ex-DNI employees applied for jobs in the civilian agency.

The government did not appoint a director of the new agency until June 12, some three months after the deadline stipulated in the Accords. There was significant opposition to President Cristiani's choice, Mauricio Sandoval, who had served as director of the National Information Secretariat. Under Sandoval's leadership, that agency was responsible for controversial publicity campaigns in support of the ARENA government. The FMLN and opposition parties expressed fears that the new intelligence agency would be driven by partisan political interests.

C. Reduction of the Armed Forces

The Accords call for the reduction and restructuring of the armed forces to take place over a two-year period. Estimates vary regarding the armed forces' overall troop strength, with the high command claiming 63,175 troops, including the security forces. A more accurate estimate of troop strength at the time of signing the Accords is 54-57,000, including approximately 15,000 security forces. The government's plan for reduction commits it to reducing the size of the military by about 50%, or to some 31,000 troops, over a two-year period. Considering that the National Police was to be separated from the armed forces and the National Guard and Treasury Police dissolved, the overall reduction is probably closer to twenty-five percent, from about 42,000 to 31,000.

The planned reduction of the officer corps is also less than it appears on paper. The armed forces claim an officer corps of approximately 2800, but most observers agree that the real number is closer to 2,300. Since the plan's target is an officer corps of around 2,000, the reduction is about fifteen percent.

D. Redefinition of Mission and Doctrine

Under the terms of the Accords, the military's educational system is to be revamped, incorporating its new constitutional mission and doctrine into training programs. A new academic council for the Military Academy, made up of civilians and military will be responsible for overseeing curriculum, admissions procedures, and designating faculty. The creation of the academic council is a step toward establishing civilian oversight, but the Accords make no mention of subsequent officer training programs, which will apparently not be subject to the academic council.

Strengthening civilian oversight of the military's educational system is likely to be a slow process. Most military officers consider continued control of the military school a core interest. One high-ranking officer described civilian participation in the academic council as "blatant meddling", and said that the creation of the council was the most unacceptable of all the Accords related to the military.

E. Civil-Military Relations in the Wake of the Accords

The Accords, if fully implemented, could lead to a significant transformation of civil-military relations. They do not address several important aspects of military influence, however. Among these are the military's presence within the state, the military's institutional autonomy and the military's network of control in the countryside.

Even during periods of civilian rule, military officials have directed key state institutions. These include the: National Telecommunications Administration, National Administration of Water and Aqueducts, Port Commission, Directorate of Land Transport, Directorate of Statistics and Census, Customs, Civil Aeronautics, and the Postal Service.
The Accords make no mention of military direction of these institutions.

Nor do the Accords require a civilian Minister of Defense. Colonel José Humberto Corado, whose name is frequently mentioned as a possible Chief of Staff or Minister of Defense, argues that the public would oppose such a move, since "a civilian would project an image of lack of solidarity" with the military institution, thereby "weakening the armed forces." 17

A civilian minister of defense would enable the government to take major responsibility for the military budget, defense policy and internal promotions, though the President has constitutional authority in these areas. The Accords make no mention of the military's internal promotions and while they refer to the need for legislative oversight of the military, no specifics are provided regarding how this will be accomplished. Currently legislators have no access to details of the military budget, limiting the possibility for serious debate, and play no role in overseeing internal promotions. Colonel Mauricio Vargas, Deputy Chief of Staff, argues that there is no tradition of disclosure and debate of the military budget in El Salvador, and that civilian politicians have no experience on military matters. 18 Colonel Corado was even more categorical in stating that he does not see the logic behind legislative oversight of the defense budget. He contends that civilian politicians (who he describes as "subversives") cannot be trusted with military secrets. 19

Despite these areas of continued military influence and authority in civil society, the Chapultepec Accords represent a remarkable change in civilian-military relations. The Ad Hoc Commission's report marks the first time in Latin American history that a military has agreed to an external evaluation of its officer corps. The successful implementation of the Commission's decisions will demonstrate a significant expansion of civilian control over the armed forces.

The Accords require the creation of a new National Civilian Police force (PNC), and the dismantling of three public security force under the authority of the Ministry of Defense: The Treasury Police, the National Guard and the National Police. The agreement to dissolve the old security forces, remove internal security functions from the jurisdiction of the armed forces and to create a new PNC resolved a deadlock in the negotiations over how to provide security guarantees to demobilized FMLN combatants and their supporters following the cease-fire period.

The PNC was to be made up of individuals who had no history of direct involvement in the armed struggle, with two specific exceptions: equal numbers of former National Police and former FMLN combatants would be allowed to join the force, on the condition that they jointly constitute less than half of the force. All entrants would have to pass rigorous admission requirements and participate in a training program at a new civilian National Academy for Public Security (Academy) established to train cadets and officers for the new Civilian Police.

Under the original timetable deployment of the first trained units of the new PNC would begin prior to final demobilization of FMLN military units. There have been major problems and delays in the implementation of these provisions:

• A director of the PNC was not selected until July 31, 5 months late. The Academy opened in temporary quarters, at the beginning of September, four months late. This meant that deployment of trained personnel could not begin prior to the October 31 deadline for final demobilization of FMLN military units.
There is a serious shortfall in GOES and international funds for both the Academy and the PNC amounting to at least $15 million for the Academy and almost $100 million for the PNC's start-up costs.

The GOES has resisted including operating expenses of the Academy in the governmental budget. This has caused potential international donors to resist making commitments of funds. There is concern that similar problems may arise with far larger PNC budget.

Former National Guard, Treasury Police and Army personnel have been admitted to command-level civilian police training programs in violation of the Accords, further undermining confidence in the ability of the PNC to act as a guarantor of safety to ex-FMLN combatants.

Also in apparent violation of the Accords, ex-members of the Treasury Police and National Guard, and intact units from one demobilized army battalion, have been placed in the existing National Police force that will continue to operate until the PNC is deployed.

Both the COPAZ Subcommission on the Civilian Police and Academy and ONUSAL have had trouble performing their supervision and oversight roles effectively because of a lack of access to timely and complete information about decisions taken, especially by the Director and the Academic Council of the Academy.

President Cristiani recently announced his intention to deploy the Army to help protect the coffee harvest from a perceived crime wave against crops. This would represent use of the armed forces for internal security functions prohibited by the Accords.

The replacement of three security forces with a new police force would, under any circumstances, be difficult. In El Salvador President Cristiani is confronted with an extensive reported crime wave in a nation with extensive poverty and with a post-war situation where widespread availability of arms and equally widespread knowledge of how to use them makes crime an easy option.

Under these circumstances it is understandable that problems of interpretation and execution would arise. The delays in recruitment, training and deployment of the new National Civilian Police are not surprising. The dispute over transfer of personnel from security forces dissolved under the Accords to the National Police reflect different interpretations of what is prohibited by the Accords. The placing of some former members of dissolved security forces in training programs for senior officials of the PNC may be due to bureaucratic bungling, but when ONUSAL criticized the move the government did not reverse course.

The legitimacy of using the armed forces to perform internal security functions guarding the coffee harvest may be more palatable to opponents of President Cristiani if he could offer compelling evidence of a widespread threat to harvest crops. ONUSAL argues that with adequate transportation the National Police would be adequate to the task, and the government has agreed to provide transportation until December 15.

Individually each of these issues is probably manageable. Taken together, however, they raise serious questions about what guarantees will protect FMLN ex-combatants and their supporters after the final demobilization of FMLN military units, and the extent to which the government is ready to fully implement changes in the role of the military.

The PNC is central to the Accords. It is the guarantor for the FMLN and the public that policing will no longer be politicized, that human rights abuses can be curbed, and that death squad members can be apprehended. Given this centrality, and recent assassinations and abductions for apparently political reasons, delays and disagreements over the implementation of this part of the Accords must be taken very seriously.
A. Problems in Starting the National Academy for Public Security

The new Academy, under the Accords, is to have a civilian director, a civilian academic council set up along pluralist lines, and a civilian faculty including foreign police and legal specialists. The original timetable called for the Academy to admit its first class of roughly 300 students on the May 1, 1992, with the goal of deploying the first contingent of PNC officers just prior to the final demobilization of the FMLN on October 31, 1992. The Academy is to train 5,700 police during the first two years and the PNC is projected to reach a full strength of 10,000 officers by mid-1999.

The Academy opened four months late in two temporary sites. The main delay was lack of a suitable site. The obvious best location for the academy was the military’s Public Security Academy, which had trained officers for the National Police, the National Guard, and the Treasury Police. But the military appropriated this facility for its Military School in December 1991. ONUSAL urged that this site or another military base be utilized, but the government was unable to provide such a facility.

The two temporary sites chosen by the government, the former technical school for the National Police (CETIPOL) near San Salvador, and the base previously occupied by the Bracamonte Rapid Reaction Infantry Battalion on the coastal plain, do not belong to the Defense Ministry. When Academy officials took possession of CETIPOL, they found that the military had stripped it of everything of value, including beds, lockers, windows, doorjambs, and even light bulbs.

The CETIPOL site is far too small for the needs of the academy and the Bracamonte site is remote from San Salvador, and required extensive work. There have been serious health problems among students at the Bracamonte facility as a result of poor sanitary conditions.

The failure of the government to obtain a military-owned facility for the Academy has created serious financial problems. An estimated $8 million must be allocated to purchase and recondition a permanent site; and an additional $1 million was spent to prepare the CETIPOL and Bracamonte temporary sites.

Headquarters for the new Civilian Police must also be found. With the demobilization of military units, the Defense Ministry has or will soon have a surplus of base facilities which may be appropriate for the PNC headquarters and local offices. The Defense Ministry may also possess some materiel that would be of use to the new PNC, such as vehicles, office equipment, arms, and radios, though most observers argue that these resources are minimal. So far the government has not tapped into these resources.

There is a $15 million shortfall in funding for the Academy. International aid officials claim that many nations are reluctant to contribute to police forces, because of their negative reputations. Few nations have established programs of police aid, and many of those that exist are already overextended. The government’s initial failure to commit to funding the operating expenses of the academy made potential donors reluctant to contribute funds for capital costs. According to one international aid official, “this breaks all the rules of the international donor community.” But the GOES claims that United Nations representatives promised to obtain international funding for the development of the police academy.

Similar problems beset the PNC. The estimated start up and operating costs are $74 million for the first year and $63 million the second. Of this GOES is committed to pay salaries and operating expenses, about $15 million in year one and $26 million the second year. This suggests $59 million in outside funds will be needed the first year, $37 million the second. So far, only the United States has made even a tentative commitment, of around $6 million.

The Academy director, Mario Bolaños, was chosen at the end of March (with a May opening date) and faced the daunting task of assembling technical support for the recruitment and admissions process. This no doubt added to problems of coordination and planning. These problems, in turn, delayed UN solicitation of foreign funds for the Academy.
B. Recruiting from the National Guard and Treasury Police

The first 622 candidates were admitted to the Academy in September, 357 more in October, and 330 in November. In addition to these basic-level cadets, 120 candidates for senior and executive-level positions in the PNC were admitted in October. It does not appear that the examination process has systematically discriminated against either ex-FMLN combatants or ex-members of the National Police, though the FMLN has done somewhat better in preparing its people for the process. Several observers commented that the examinations are probably least fair to the civilian applicants, who lack effective organizational support to appeal problems in the examinations.

The government maintains that former members of the National Guard and the Treasury Police may be admitted to the Academy if they have been discharged from those units and become civilians, or they may enter as part of National Police 20% quota if they have been transferred to the National Police. The FMLN argues that this would violate the Accords. The government has committed itself to not presenting former National Guard, Treasury Police or Armed Forces cadet candidates "in the immediate future." The Sub-commission of COPAZ for the PNC and ONUSAL raised objections to these decisions, but were ignored. The Academic Council, where ONUSAL was not permitted to attend meetings, admitted them.

The Academic Council was designed to be pluralistic along lines similar to COPAZ and its sub-commissions. Unlike COPAZ and its sub-commissions, however, the Academic Council is not effectively deadlocked between government and opposition because the Academy director is able to vote on the Council, giving the government at least a 5-4 advantage in most cases. The FMLN is represented by the Secretary General of the National Revolutionary Movement (MNR), a political party. He seldom attends council meetings, being replaced by his substitute who lacks the power to vote. The representative of the Democratic Convergence on the Council, Enrique Argumedo, often votes with the government. As a result, the Academy director is generally in a position to impose his preferences.

C. Public Security in the Interim

To avoid the presence of the National Police in Conflict Zones, the Accords permitted the deployment of Auxiliary Transitory Police (PATs) units made up of PNC cadets under ONUSAL supervision and leadership. Only 150 of 320 PAT officers were deployed on time, because of failures by the government to provide for their housing. In the field, they are completely dependent upon ONUSAL to provide transportation and telecommunications equipment. This is partially a consequence of the lack of international assistance, but it also does not send a positive signal regarding the government's commitment to the new police force.
In addition to these PATs, the National Police will continue to function until the PNC is fully deployed. ONUSAL has documented the incorporation of large numbers of Treasury Police and National Guard personnel into the PN. 1009 members of the Treasury Police and 111 members of the National Guard were transferred to the National Police prior to May 1. In addition, self-contained units (including officers) from one of the demobilized Rapid Reaction Infantry Battalions have been incorporated into the National Police.

The government has argued that there was a need to increase the strength of the National Police to help prevent an increase in crime following the elimination of the National Guard and Treasury Police and the exclusion of Army units from public security activities. However, as the Secretary General of the U.N. states in his May 26 report to the Security Council:

"ONUSAL has made it clear that in its view this argument is irreconcilable with the whole thrust of the Agreements, which is to replace the existing public security bodies with a new civilian police force. The first step in this process was precisely the disbanding and abolition of the Treasury Police and the National Guard. To reassign their ex-members to law and order functions thus runs directly counter to the agreements."

President Cristiani announced on November 17th that he would deploy Army troops, after the final demobilization of the FMLN, to help provide security during the coffee harvest. The Constitution of the Republic does provide that in exceptional cases:

"when ordinary means for the maintenance of internal peace, tranquility and public security have been exhausted, the President of the Republic may deploy the Armed Forces for this purpose. The activation of the Armed Forces will be limited to the time and the measures strictly necessary for the reestablishment of order and will cease as soon as this has been accomplished."

The President’s proposal to deploy Army forces in a “dissuasive” mission to prevent theft of coffee during the harvest does not appear to meet this constitutional requirement, and has raised fears that the armed forces will resume internal security functions following final demobilization of FMLN military units. Senior army officials have expressed the view that such deployments after the 15th of December would not be subject to review by ONUSAL and that it would be up to the Supreme Judicial court to evaluate the constitutionality.

D. The Special Investigative Unit (SIU)

A constant criticism of the Salvadoran justice system has been the lack of an independent and competent criminal investigatory body under genuine civilian control. Violent crimes are not routinely investigated. Judges and prosecutors thus frequently lack reliable evidence. Threats or political pressure often deter or deform even those investigations that are initiated.

The Commission to Investigate Criminal Acts is a United States-created and funded investigatory unit which continues to function in this transition period. It is commonly referred to in English by the name of its investigative arm, the Special Investigative Unit (SIU). Originally placed in the Executive Branch under a civilian commission headed by the Minister of Justice, the Commission’s direction and institutional ties had been the subject of heated debate for several years prior to the April 1991 constitutional reforms. Despite the nominal civilian leadership, SIU investigations have been run by active duty military officers who head the Commission’s Executive Unit. Because of persistent criticism of the military domination of the SIU and its poor track record in investigating human rights violations, the U.S. Congress froze further funding in 1990 until a plan to civilianize the unit was approved.

A constitutional reform negotiated in April 1991 increased the Attorney General’s responsibility for criminal investigation, establishing that “an organism for the investigation of crime will function under the direction of the Attorney General’s office, in the terms that the law defines.”

These reforms also required the establishment of a civilian police force, but it was not until months later that the negotiating teams agreed to a proposal for creating the new police force. The peace Accords established that the PNC “will be
the only armed police force with national jurisdiction." To reconcile this understanding with the constitutional reform giving increased investigatory responsibility to the Attorney General, the law establishing the new civilian police force33 provided that the investigative unit would be an integral part of the new police.34

But in October 1992 the Attorney General began lobbying for a bill (presented a year earlier) which would reform the SIU and transfer it to his jurisdiction. After objections, the Justice Minister and the Attorney General appeared before COPAZ on November 11 to announce that the government is working on a revised proposal. They maintained, however, that the SIU would be transferred to the Attorney General's office as a separate unit, complementary to but not part of the PNC.

The Archdiocese's Legal Aid office, Tutela Legal, denounced the proposed reform as contrary to the peace Accords.35 The conservative San Salvador daily, La Prensa Gráfica, ran an editorial warning that it would be not only contrary to the plain intent of the peace Accords, but also dangerous to create two entities for criminal investigation. The editorial urged careful review of the proposed reform of the SIU: "If it is attempting to resolve a problem related to the transition in a provisional form, the reform is understandable; if it aims to create...an institution within the Attorney General's office that duplicates what would be a principal function of the PNC, this would imply acting against the content of the peace Accords."36

The law establishing the PNC reflects an effort to harmonize the Accords relating to the PNC with the constitutional reform. The bill currently in the Assembly does not even mention the PNC. Under its terms, the Commission on Investigations would be made up of the Attorney General, the Minister of Justice and the Minister of Interior. The proposed legislation provides, however, that the SIU would have (as it currently does) exclusive jurisdiction over the cases it decides to investigate, precluding the PNC from investigating those cases.

This plan to retain the SIU as a separate entity outside the new civilian police force is plainly contrary to the intent of the Peace Accords and to the law establishing the National Civilian Police.

V. Reforming the Judicial System

The Salvadoran justice system was and is a weak link in the chain of institutions needed to support and maintain a democratic society. Power in the justice system resides in the Supreme Court, which acts as the ultimate constitutional and appellate authority. The Supreme Court also names all lower court judges, is responsible for disciplinary and administrative functions for judges and court personnel, and authorizes and suspends lawyers from practice.

Aggravating this inherently dangerous concentration of powers, the Supreme Court has been controlled by political parties. The majority party in the Legislative Assembly selected the Supreme Court magistrates for five year terms.

Political affiliation and family ties rather than professional competence have been the keys to appointment and reappointment. Legal disputes continue to be resolved based on money, power and influence. Whether a crime is even investigated still depends largely on the relative power of the victims and those responsible. Cases are often dismissed because of political or economic pressures — or threats. In other cases, defendants remain imprisoned — usually without trial — for long periods of time because of political pressure rather than evidence against them. Judges routinely acknowledged that they acted under serious constraints.

The negotiators recognized the need to increase judicial independence and improve criminal investigation, and reached agreement for Constitutional change in April 1991, which changed the procedures for selecting judges and magistrates at all levels.
Under the 1991 constitutional reforms, the Legislative Assembly will elect Supreme Court magistrates for staggered terms of nine years (instead of five), by a vote of two thirds of the deputies, from a list of candidates presented by the National Council on the Judiciary. According to the reform, half of the candidates should come from lawyers' professional associations and should include "the most relevant currents of legal thinking."

Under the reforms, all judicial nominations must come from the National Council on the Judiciary. The existing Council, established in the 1983 Constitution (article 187), was intended to professionalize only the selection of trial court and appellate judges. The Supreme Court's representatives on the Council were given decisive weight in the Council's determinations.

However, the 1991 Constitutional reforms established the "independence" of the Council and sought to broaden its composition and increase its mandate. Under the reforms, the members of the Council are to be elected by a vote of two thirds of the members of the Legislative Assembly.

The reforms provide that Justices of the Peace will be named by the Supreme Court based on lists of three names proposed by the National Council on the Judiciary. They must be Salvadoran lawyers — where available — who will be included within the judicial career. In exceptional cases, the National Council on the Judiciary may propose candidates who are not attorneys, whose terms will be reduced from two years to one.

Currently, many Justices of the Peace, appointed before the reforms, are local ARENA party leaders. Justices of the Peace should play an important role in the crucial early stages of criminal investigation, yet ONUSAL human rights observers have found that Justices are rarely in their offices. Instead, they leave their secretaries to exercise their functions. As an ONUSAL observer put it, "on rare occasions they do what they are supposed to, but even then they don't do it well....sometimes it's gross negligence."

The current 14-member Supreme Court was named by an ARENA-dominated legislature in 1989 and will serve until 1994. The negotiated Constitutional changes in its composition do not take effect until expiration of the current Court's term. Reforms in the remainder of the judicial system depend upon the formation of the new National Council on the Judiciary.

A new law implementing the Constitutional reform concerning the National Council on the Judiciary has not been approved by the ARENA dominated Assembly. As a result, new justices of the peace have not been selected, although the incumbents' term expired on May 31, 1992. The Legislative Assembly has twice extended the terms of these justices, in clear violation of the Constitution.

The peace Accords provided that COPAZ would prepare the draft bill for the National Council on the Judiciary which was to be enacted by April 30, 1992. Days after the peace agreement was signed, the Supreme Court presented its own draft bill. Two independent legal research centers, the Center for Legal Studies (Centro de Estudios Jurídicos, CEJ) and CESPAD (Center for the Study of the Application of Law) subsequently presented alternative proposals.

The Court's proposal would have given a majority of seats on the Council to representatives from the judicial branch (still including three Supreme Court magistrates) and the lawyers' associations. Since the judicial branch functions hierarchically (and the lawyers' associations are neither independent nor representative), the proposed reform would have guaranteed continued Supreme Court control.

The alternative proposals submitted by CESPAD and CEJ, excluded Supreme Court magistrates from the Council. CESPAD's proposal called participation of all lawyers licensed to practice in the country in the selection of the Council's practicing lawyers — not just those who are members of official lawyers' associations.

The Legislative Assembly established a technical subcommission in the Assembly to draft a joint proposal. Installed on July 15, the subcommission was composed of representatives of the political parties in the Assembly as well the Supreme Court, the Lawyers Federation, CESPAD and CEJ.
A majority of the subcommission agreed that the Council be fully independent from the Supreme Court as well as from the legislative and executive branches. Its seven members would not include representatives from the Supreme Court, although representatives of the second instance (appellate) magistrates and the first instance judges would be included. A subcommission majority also agreed on procedures for the selection of the candidates of the different groups to be included in the Council.44

The Supreme Court, unwilling to accept the subcommission’s majority decisions, ceased attending subcommission meetings, as did the Lawyers Federation representative.45 In late November the Political Commission of the Assembly sent COPAZ a revised draft that retains most of the Supreme Court’s control.

Under ONUSAL’s proposed revised schedule, the new law for the National Council on the Judiciary is to be approved by December 10, 1992. The new Council is to be chosen and installed by January 15, 1993. Meeting these new deadlines and complying with the terms of the constitutional reform will require that the Supreme Court, the Lawyers Federation and ARENA become more flexible; it may also require some concessions from the political opposition.

VI. The Land Conflict

In September ONUSAL described conflict over land as the chief obstacle blocking completion of the Accords. ONUSAL placed primary responsibility for the delay on the Salvadoran government.

The Chapultepec agreements established two different regimens for transferring land to peasants. For land outside of conflictive zones the Accords specified that the price would be based on market value, and the government was to make financing available at regular rates. Land available for transfer to peasants outside conflictive zones was either state-owned land or large estates in excess of the 245 hectare (605 acre) limit on individual holdings set by the 1983 Constitution.

The Accords stipulated that transfer of lands in excess of the 245 hectare limit was to begin immediately. Transfer of state-owned lands was to begin within 3 months. The Accords did not, however, specify completion deadlines for the land transfers.

In the months leading up to the signing of the Accords, and for some weeks following that, there was considerable maneuvering to assert control over land. Some peasant groups occupied abandoned or semi-abandoned properties. Some title-holders attempted to evict peasants who either recently occupied their land or who had been occupying it for some time. The latter was prohibited by the Accords. In a few instances title-holders attempted to sell lands previously unmarketable because they were in war zones to strangers, who discovered after paying their money that the land already contained long-standing residents.

The primary beneficiaries of the transfer of state-owned lands were supposed to be the ex-combatants on both sides. Lands within conflict
zones were to be treated differently from lands outside those zones. Most of these lands are occupied by tenants who took over properties abandoned by their owners because of the civil war. The Accords require the government to finance the sale of these lands to the current occupants if the titled owners are willing to sell. If the title-holder will not sell the government is obligated to move the tenants to other comparable lands in the same zones.

By June the two sides had agreed upon an inventory of 4666 conflict-zone properties, comprising 263,000 hectares or about 18% of the arable land in El Salvador.\(^6\) This agreement followed months of negotiations during which the FMLN pared back its inventory from an initial list of more than 12,000 properties and 350,000 hectares. The final agreed list retained the bulk of the largest properties in the FMLN inventory.

Following agreement on the list, 69 joint teams combining GOES, FMLN and ONUSAL representatives fanned out to verify the inventory (who is the titled owner, who are the occupiers, how big is the land?). The verification process was to take 3 months, but the transfer process could begin before the verification was complete. While the verification process was underway new disputes between the FMLN and the government further complicated the issues. The Accords specifically stated that both individuals and "associative" forms of ownership (e.g., cooperatives) could receive land titles, but the government insisted that the legislation setting up the Land Bank only permitted it to issue title to individuals. Moreover, it was clear that the money available to the Land Bank ($25 million from A.I.D.) was insufficient to meet the demand.

The impasse continued, and by mid-September no lands had been legally transferred. That was only six weeks before the date for final demobilization of the last FMLN military units, yet the timetable for implementing the Accords specified that the legalization of lands in conflict zones was to occur no later than six months after signing the Accords, which was more than three months before final demobilization.

A. The UN Land Proposal

ONUSAL decided to try to mediate the land dispute, and proposed a new timetable for carrying out the distribution of lands covered by the Accords. The government and the FMLN accepted the proposal, although the FMLN expressed some dissatisfaction with a few specifics. The UN proposal contained three key elements:

1. It placed 7500 FMLN combatants at the top of a list of 15,400 who were to receive lands that were (in theory) immediately available. These lands included state-owned land that was not occupied by squatters, lands which exceeded the 245 hectare limit that the state could expropriate quickly, and lands offered for sale to the Land Bank for which funding was available. The total amount of land involved in phase 1 is 53,000 hectares, of which about half is state-owned land or land exceeding the 245 hectare limit. The proposal included a complicated formula for determining how much land recipients could get, but it worked out to an average of 3.5 hectares per recipient. The first phase was to be completed by January 1993.

2. The second phase is to take place between January and April 1993. That phase is to benefit 4000 additional recipients, some of whom will be people currently occupying the land to be distributed. Land not currently occupied will be made available to ex-combatants of both the FMLN and the Salvadoran armed forces on an equal basis. This phase will require 14,000 additional hectares, and the UN is anticipating that funding for this phase will be provided by the European Economic Community using money already pledged for a comprehensive development plan in Usulutan.

3. Following the completion of the second phase, a third phase will provide land for the remaining 28,100 eligible recipients. This will require an additional 98,000 hectares at an estimated cost of $85 million, none of which is currently pledged. There is no deadline for completion of this phase.
B. Financing Transfers

Complicating the land issue is the problem of financing transfers to the beneficiaries. The Accords specify that land is to be sold to beneficiaries at "market value". The UN plan calculated an average price of $600 per hectare based on the actual transfer of land by the Land Bank since its inception. The United States has provided $25 million to the Land Bank to finance purchases, which should be sufficient for phase 1. The European Economic Community has pledged $10 million for an integrated development project including purchase of land in Usulutan, and the UN apparently is anticipating that the EEC will agree to make this money available for phase 2 purchases.

Since few of the campesinos expected to purchase lands have money, the Accords anticipate that the Land Bank will finance the purchases. Purchases outside the conflictive zones are to be financed at regular market interest rates (around 18% per annum). Purchases within conflictive zones are to be financed on the same terms as cooperatives who received land under the earlier agrarian reform—30 years at 6% interest.

At this point the third phase of the land agreement is very much a question mark. Although scheduled to begin in April 1993, none of the estimated $85 million needed to finance this phase is pledged. The bulk of the beneficiaries in phase 3 will be peasants currently occupying the land they hope to purchase, so the potential for protests and demonstrations demanding that the third phase be carried out is very high.

As of October there was no shortage of land-owners in conflictive zones willing to sell their land. There were, however, complaints from prospective sellers about the price set by the UN. These complaints underline the central problem in establishing "market value" for land in conflictive zones. There is no way of objectively determining market value, since there has been no market during the last eleven years of civil war.

The UN decision to set the price at $600 per hectare reflects the actual transfer price of land in recent months, but it also puts pressure on landowners to offer their land for sale sooner rather than later. That is because it is obvious that there is not sufficient funding for all three phases. Those who offer their lands now have a good chance of selling through the program, but those who offer to sell later may find that the Land Bank has run out of money to purchase. These sellers will have to gamble that they can find other purchasers willing to buy occupied land in conflictive zones. Many seem unwilling to risk that possibility.

C. Potential Problems

Without further infusion of funds, then, the following scenarios become possible:

- Title holders who are last in line at the Land Bank will not be able to sell their lands.
- Title holders may attempt to use the police powers of the state to enforce their claim. This would again raise the crucial issues of deployment of the civilian police and reform of the judiciary.
- Title holders may resort to direct action by hiring people to evict land users.
- Those using the land who are not able to buy may be subject to police pressure or private repression or threats.
- Landholders without title may not be able to get credit, assuming there is credit, if they do not have title.
- If title holders are awarded possession of "their" land, and the state can find no other land for the current users, the latter may resort to self help measures.
- If the ONUSAL inventory is now the complete list, several thousand parcels of land that were on the agreed upon inventory will no longer be subject to the Accords. Those who claim title may resort to self help; those who now use the land may resort to self defense.

In short the land problem is still very much up in the air, and it will be crucial to resolve as many of the disputes as possible before the beginning of the next plantin season in early April.
VII. The Obstacles Ahead

At the time of writing it appears likely that the demobilization of the last FMLN combat units and final dismantling of FMLN military structures will take place on December 15. It also appears likely that the discharge or transfer of Salvadoran army officers named in the Ad Hoc Commission report will take place by the end of 1992.

Assuming these actions occur, in less than one year El Salvador will have passed from a country at war to a country on the road to peace and reconciliation. That is cause for celebration, and there are plans to celebrate the end of the armed conflict on December 15, with participation by UN Secretary General Boutros Boutros-Ghali and other invited international guests.

But the absence of armed conflict does not guarantee the presence of peace. Peace and reconciliation require the redress of fundamental inequities in the institutional framework and social-economic structure of Salvadoran society that gave rise to the armed conflict in the first place.

The peace Accords do address some of those inequities in a number of provisions: reduction, restructuring and altered training of the armed forces; development of a civilian police force; reforms of the judicial system to establish an independent judiciary that can guarantee individual rights; resolving the inequities of land distribution and ownership; establishing a social-economic forum to seek broad national consensus on social and economic policies; and, modifications of the electoral system to better guarantee free and fair competition for political power.

All of these provisions will still be in the process of being implemented on December 15 and for a considerable time after that. There is a danger, however, that once the immediate threat of armed conflict is past the international support and domestic will needed to keep the peace process moving will diminish to the point that the process will stall.

That would be a tragedy not only for El Salvador but for all those who have invested so much in fostering a negotiated solution to civil war in that country. Nor would the consequences of that failure be long in coming. With elections scheduled for March, 1994 there are several pending issues that could endanger the credibility and viability of the electoral process as an essential part of national reconciliation. For example:

- If the National Civilian Police force is not fully and quickly deployed; if it is infiltrated by veterans of the disbanded security forces; or if it is made ineffective by lack of adequate resources and political support, then political conditions for civil society and democratic processes will be difficult to guarantee.

- If the PNC is ineffective, the government will be tempted to use the military for police functions, risking the re-establishment of the institutional imbalances the Accords seek to redress;

- If the provisions dealing with land and credit are not implemented soon, thousands of peasants (including many ex-combatants) will miss the beginning of the planting season. A bad economic situation will become worse, and political and economic instability is likely to follow.

The next two years will be as important as the last year has been in trying to move El Salvador from the path of war to the road toward peace. International observation and support during that period will be essential, if the investment and success of this first phase is not to be wasted.
End Notes

2 The National Commission for Consolidation of Peace (COPAZ) was created by an agreement between the GOES and FMLN in September 1991. COPAZ has responsibility for supervising implementation of many provisions of the Accords. Its membership is made up of two representatives each from the GOES and the FMLN plus one representative from each of the political parties represented in the Legislative Assembly.
3 During the first stage the FMLN’s forces were to be concentrated in 50 designated sites and the Salvadoran army in 100. During the second stage the FMLN was to concentrate its forces in 15 locations and the military in 62.
4 The members of the commission were Abraham Rodriguez, a prominent businessman and former personal adviser to ex-President Duarte; Eduardo Molina, a founding member of the Christian Democratic Party; and Reynaldo Galindo Pohl, legal counsel to the Osorio (military) government and one of the authors of the 1950 Salvadoran constitution. President Cristiani named two former Defense Ministers, Generals Eugenio Vides Casanova and Rafael Humberto Larios, to represent the military on the Commission.
5 The criteria listed in the Accords were:
   "the evaluation will take into account the record of each officer, including especially: 1) his history in terms of observing the legal order, with particular emphasis on respect for human rights, both in his personal conduct and the rigor with which he has corrected and sanctioned irregular acts, excesses or violations of human rights carried out under his command, especially if serious or systematic omissions are observed in this respect; 2) his professional competence; 3) his ability to adapt himself to the new reality of peace, within the context of a democratic society, and to promote democracy in the country, guarantee unrestricted respect for human rights and reuniify Salvadoran society, which is the common purpose agreed to by the parties in the Geneva Accord."
6 The Truth Commission was authorized to have an observer on the Ad Hoc commission.
7 Among the most thoroughly documented cases was the 1989 murder of six Jesuit priests and two women who worked with them. The judicial investigation, which included depositions of dozens of high-ranking Salvadoran officers, and the U.S. congressional investigation carried out by the "Moakley task force" yielded considerable information about those responsible for the crime itself and the extensive military cover-up.
9 See, Shirley Christian, "Planned Purge of Military Raises Salvadoran Tensions," New York Times, Sept. 21, 1992. - *People familiar with the work of the "Ad Hoc Commission" said they expected it to recommend the removal or reassignment of 60 to 80 officers, mostly colonels and lieutenant colonels and at least some of the five generals in the Salvadoran military.* See also, Douglas Farah, "Civilian Commission May Seek to Purge El Salvador’s Military," The Washington Post, Sept. 20, 1992; front page headline in Diario Latino, Sept. 23, 1992: "7 Generals Involved in Human Rights Violations according to the AD HOC Commission."
11 El Mundo, Oct. 2, 1992. Although it is unclear exactly who is behind this group, it has published a series of paid ads attacking the Ad Hoc Commission, the Truth Commission and ONUSAL.
14 Even after de Soto’s visit, Vice President Merino insisted that if there is an accusation against someone on the list that is not really proven, convicting him without allowing him to be heard at trial would violate his constitutional right as a citizen. Interview on TV 12, Buenos Dias, Nov. 11, 1992.
15 The Ad Hoc Commission began its work on May 16 1992 and was due to finish on August 19. Under this timetable, implementation would have been completed by October 18, days before the original date for the FMLN’s final demobilization. The one-month extension of the Commission’s mandate meant that this period would have fallen in November, weeks after the October 31 demobilization date.
17 Interview, July 28, 1992. Colonel Corado Figueroa is the leader of his tanda (1969), which follows three years behind the current top leadership of the armed forces (known as the "Tandona". Tanda refers to the cohort of officers from the same graduating class.)
18 Interview, June 14, 1992.
19 Interview, July 28, 1992.
20 The former Public Security Academy site near Ciudad Merliot comprises roughly 114 acres and is now being used by the military for training its officers. Only around 45 new cadets enter the military school each year, for a total student population of no more than 130. In contrast, the Academy will need to train over 2,000 students at a time.
22 The base of the Atlacatl Battalion could, for example, be made available for the First Infantry Brigade, which is currently squeezed into a barracks facility located in the middle of a densely populated neighborhood. The First Brigade barracks could then be used as a PNC headquarters. The former National Guard headquarters is now theoretically vacant and could be used either for the Academy or for other PNC needs.
23 The National Police has a minimal motor pool, a few patrol cars in San Salvador and pickup trucks, which will be significantly depreciated by the time the PNC is fully deployed. Much of the current weaponry of the PN consists of inappropriate automatic and semi-automatic assault rifles and carbines, and their short arms from the pre-war period are unlikely to be in good order. The PNC will likely need new armament and communications systems.
24 Of a budget estimated by the UNDP at $41,746,000, the U.S. has committed $10 million to the project, Spain has donated
$2,944,000 and Norway has already disbursed $300,000 for classroom materials and other needs of the academy. This leaves about a $15 million shortfall.

25Sixty of these are now being trained in Puerto Rico, fifteen others in Spain, and the remainder at the Academy.

26 Secretary General’s May 26 report, Section III A, paragraph 29.

27 During the PNC director’s review of the executive and senior level candidates presented by the PN, the ONUSAL observer refused to verify the review of former National Guard, Treasury Police, and Armed Forces candidates. This essentially stopped the process, leading to a compromise under which ONUSAL would only agree that it had verified the candidate’s conduct, and was not agreeing to the admissibility of non-PN candidates.

28 There appear to be serious administrative problems in the administration of the academy. Academy director Bolaños has no assistant director. He must respond to myriad operational details and can devote little attention to major policy decisions or to communication with the Academic Council and the COPAZ subcommission. Some members of the COPAZ sub-commission believe that Bolaños is deliberately circumventing ONUSAL and the sub-commission. Recently, a series of committees have been formed to develop policy on infrastructure, academic programming, budget, and discipline. The committees are made up of instructors, with a balance on each committee of Salvadoran, Chilean, and Spanish staff.

29 During the war, Army units often performed policing functions in their zones of responsibility. This function was eliminated by constitutional amendment, and Army forces are to remain concentrated in their barracks during the cease-fire.

30 Section III, Article 30, page 8.


32 The Commission currently receives $1.5 million in annual support from the United States.


34 Art. 13 - Under the functional direction of the Attorney General’s office, the Division of Criminal Investigation will be charged with investigating criminal acts and collecting the evidence that would serve to identify those responsible for committing them. It will also carry out the investigative steps or other acts under its jurisdiction that are requested by the State Counsel of the Republic (Procurador General de la Republica), the Human Rights Ombudsman, the Supreme Electoral Tribunal and the judges.


37 Constitution, article 186.


39 The decision to assign to the Assembly responsibility for electing Council members did not come from the negotiations, but was introduced by the Assembly itself. (and harshly criticized by the Supreme Court...) Further constitutional reforms sought to increase job stability for judges, create a genuine judicial career, and ensure adequate compensation for judges. The constitutional reform also assigned responsibility for the Judicial Training School to the Council to try to ensure that judges would be selected on more objective and competitive criteria.

40 As part of the effort to professionalize the judiciary and provide job stability, judges at all levels are now considered to have entered a “career” of service as judges, with guaranteed training, seniority provisions and opportunities for advancement. The existing constitutional provision only required that justices of the peace be Salvadorans over 21, and of known morality. Constitution of 1983, article 180.

41 Interview with ONUSAL legal observer, Oct. 1, 1992.

42 The Supreme Court’s proposed bill was presented to the Assembly on January 29, 1992.

43 Then Lawyers Federation President, Dr. Roberto Oliva, recognized that the Federation does not represent the majority of lawyers and stressed the need to seek other mechanisms to guarantee the full participation of members of the legal profession in the selection of qualified judges and magistrates.

44 Ibid.


46 About 650,000 acres.

47 As is evident from the rest of the report the state of the police powers, after years of pro landlord repression, is uncertain. In any event, with crime rampant, this is hardly the sort of problem to present the new Civilian Police Force when it finally moves into action next year.
HEMISPHERE INITIATIVES

Hemisphere Initiatives (HI) was formed in 1989 to report on the Central American peace process and efforts to establish and strengthen democratic institutions throughout the region. It monitored and reported extensively on the Nicaraguan electoral process from May 1989 through the February 1990 election.

HI is currently monitoring the implementation of the Salvadoran Peace Accords signed on January 16, 1992 and the impact of those Accords on processes of democratization in El Salvador. The terms of reference for HI's mission include monitoring the political and electoral process leading up to the 1994 elections to assess the extent to which the Accords help guarantee free and fair competition for votes to the entire Salvadoran political spectrum.

Members of HI's Board of Directors have visited the country three times (in April, June and November) to measure progress and to assess problems. They met with government and opposition leaders, with journalists, with academic experts and with independent observers. Last June HI established an in-country team of experts to monitor the principal areas covered by the Accords: de-mobilization and reforms to the military and security apparatus, the creation of a new National Civilian Police force under civilian control, human rights and reforms to the judicial system, the creation of a new electoral tribunal and new electoral code, and social/economic reforms including agrarian reform.

The principal authors of this preliminary report were Jack Spence and George Vickers, both members of HI's Board of Directors, and David Holiday, Margaret Popkin, William Stanley and Philip Williams, all members of HI's monitoring team. Some of the research on reforms to the judicial system was conducted by the Lawyers Committee for Human Rights. A more complete account of that study will be available from their office, 330 Seventh Avenue, N.Y., N.Y. 10001.

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