

4.10 Reckoning for Past Wrongs: Truth Commissions and War Crimes Tribunals

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As discussed in the previous section, when communities have been victimized by the government or by another group during a conflict, underlying feelings of resentment and the desire for revenge cannot be alleviated unless the group is allowed to mourn the tragedy and senses that wrongs have been acknowledged, if not entirely vindicated. In an environment where there is no acknowledgement of or accountability for past violent events, tensions among former disputants persist. Hence, confronting and reckoning with the past is vital to the transition from conflict to democracy. This section addresses two mechanisms to achieve this accounting: truth commissions and war-crime tribunals.

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During protracted periods of authoritarian rule and violent conflict, support for democratic mechanisms and the rule of law can atrophy. It is important to rebuild confidence in democratic government and eliminate such practices as political killings and ethnic cleansing in order to facilitate the transition to a civil society. The transformation can also be hindered by lingering feelings of injustice and mistrust on the part of the population against the government and other ethnic groups. In addition, the prospects for sustaining the peace process after a settlement

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may be prejudiced if perpetrators of atrocities remain in positions of power or are seen to be continuing to act with impunity in the country or in their own communities.

Truth Commissions

4.10.1 Description

A truth commission is a body established to investigate human rights violations committed by military, government, or other armed forces under the previous regime or during a civil war. Truth commissions are not courts of law. Their primary purpose is to provide an accurate record of who was responsible for extra-judicial killings, such as assassinations and “disappearances”, massacres, and grievous human rights abuses in a country's past, so that the truth can be made part of a nation's common history and the process of national reconciliation can be facilitated.

Truth commissions also address the demand for justice by victims and their families by providing a forum for victims to relate their stories as well as an official public record. By acknowledging the truth and assigning responsibility for violations to certain individuals, both the violators and the victims can come to terms with the past. Truth commissions do not focus on a specific event, but look at violations committed over a broad period of time. Truth commissions are usually established immediately after a peace settlement has been reached, since at this point the new regime is generally strong in relation to the military and other segments of society. A commission usually exists temporarily; its mandate usually ceases with the submission of a report of its findings. It is not intended as a prosecutorial body, but its findings may be used in separate judicial proceedings.

The legacy of brutal internal conflict or authoritarianism is often a lingering sense of injustice and mistrust of the government on the part of the citizens and thus a lack of confidence in new democratic mechanisms. A truth commission can enhance the process of national reconciliation by reducing the population's fear and mistrust of the government and demonstrating the new regime's commitment to democratic ideals, thus facilitating change in the public's perception of the government. Accepting responsibility for past violations displays respect for the rights of individuals and rule of law, which enhances the legitimacy of the new regime. Truth commissions can also be especially beneficial in “buying time” during the period of transition from the temporary political arrangements established by a peace process to the establishment of permanent judicial institutions.

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Box 11

EXAMPLES OF TRUTH COMMISSIONS

Truth commissions have become a widely used tool in the transition from conflict or oppression to democracy, especially in Central and South America and Africa.

- **Chile's National Commission for Truth and Reconciliation.** In 1990, at the urging of non-governmental organizations, the president of Chile established a "National Commission for Truth and Reconciliation" to investigate violations committed over the previous 17 years of military rule. This commission worked for nine months, with a staff of over 60 people, and was able to thoroughly investigate each of the 3,400 cases submitted. Most notable in the Chilean example is that, following the commission's suggestion, the government created a mechanism for the implementation of the commission's recommendations.
- **Commission on the Truth for El Salvador.** In the case of El Salvador, the creation of the "Commission on the Truth for El Salvador" was written into the peace settlement ending the 12-year civil war in that country. Given the fragile foundation of the El Salvador settlement and the highly polarized nature of the country, the truth commission did not include any Salvadorans. Instead, the UN appointed three highly respected international figures to the commission. The mandate granted the commission six months to complete its investigation and submit a report, although it was later granted a two-month extension.
- **The South African Truth and Reconciliation Commission.** In South Africa, three commissions have been created. In 1992, Nelson Mandela created a "Commission of Enquiry" to investigate treatment of prisoners at African National Congress (ANC) detention camps. This is a rare example of a political party organization establishing a commission to investigate its own abuses. The findings of this commission were criticized for being biased and Mandela named a new commission consisting of three commissioners, from South Africa, Zimbabwe and the US. In December 1995 the Government set up a two-year "Truth and Reconciliation Commission" composed of 17 members and chaired by Archbishop Desmond Tutu. The commission's task included investigation of crimes committed by both the Government and the opposition during the struggle against apartheid, as well as consideration of amnesty for perpetrators and reparations to victims.

4.10.2 Tasks and activities

Truth commissions have performed the following functions:

- Investigation of past human rights violations committed over a given period of time by the government, military or other armed forces.
- Reporting of the commission's findings to government. Such reports can publicly identify individual perpetrators of human rights violations and recommend action to be taken by the government against these individuals. They can also include recommendations covering military and police reform, judicial reform, and ways of strengthening democratic institutions. In some cases, such as in South Africa, the report can also include recommendations on how to apportion reparations among victims.
- As part of their investigations, commissions can gather information on victims, locate victims' remains for their families, and search for persons who still may be alive.
- Examination of the context under which abuses occurred and analysis of what made such events possible, in order to lessen the likelihood of their recurrence.
- Education of the public on human rights through media reports and publications of the commission's findings.
- Granting of amnesty to those perpetrators who have fully confessed their crimes. This was the case in the South African Truth and Reconciliation Commission, where an amnesty committee, staffed primarily by judges, heard applications for amnesty.

4.10.3 Strengths and limitations

Truth commissions are often the result of a negotiated compromise between parties in conflict. As a result, they can be handicapped from the beginning depending on the political climate in which they take place. For example, they may place more emphasis on truth and pardon and less on justice, thus potentially leading to disappointment in the long term. In evaluating the efficacy of a commission at a later stage, therefore, it is important to remember that at the time the commission was negotiated, parties' options may have been limited and that the mere formation of a truth commission may, in itself, have played a valuable role in the transition process.

Can maintain peace during transition. Truth commissions can play an integral part in the maintenance of the peace process

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during the early stages of transition from conflict to a permanent legitimate government by representing one of the first visible manifestations of the transition to the new democratic order. Truth commissions provide an impartial mechanism by which the current regime can display respect for individual rights, which helps to enhance their legitimacy. This in turn can help build confidence in democratic mechanisms.

Truth commissions are limited in implementing recommendations. The mandate of truth commissions usually prevents them from playing an active role in the implementation of their recommendations. If there is no real commitment on the part of the government to reform, many of the commissions' recommendations can go unheeded.

They are not a substitute for criminal justice. Truth commissions are separated from the formal judicial process and, though it can lead to such a process, actual prosecution of individuals responsible for abuses has been rare.

They cannot investigate the current situation. As the purpose of a truth commission is to bring a nation to terms with its past, it cannot investigate the current situation. Therefore, abuses by the new regime are often overlooked. An example of this can be seen in El Salvador, where death squads continued to operate after the peace settlement was in place. If there is no group monitoring the current regime, victims are often hesitant to testify for fear of reprisal. A truth commission does not take the place of a permanent human rights monitoring body.

4.10.4 Organization

Establishment, personnel and structures

The executive branch, parliament or international organizations such as the UN have created truth commissions. Once the commission has been created, the establishing body then appoints individuals to serve as commissioners. The number of commissioners can vary, ranging anywhere from three to 30. The commissioners should comprise well-respected individuals representing a cross-section of society, such as politicians, lawyers, judges, and human rights personnel. In some cases where the country is extremely polarized, as in El Salvador, the commissions may be made up entirely of foreign citizens.

An executive secretary or chairperson, often appointed by the establishing body, heads the commissions. Personnel should include administrative and technical support staff.

Resources needed

The main resources needed for an effective commission include: financing, appropriate information, a venue, modes of transportation, and skilled staff. In most cases, funding for the commissions has come from the government. In some instances, funding has come from international foundations, NGOs, foreign governments, or, as in El Salvador, from the United Nations.

Access to files of human rights cases from the country's courts or from human rights organizations is especially beneficial. Commissions also need the physical infrastructure necessary to conduct their investigations. This includes access to transportation in order to address complaints throughout the country as well as adequate office space, where victims and witnesses can come to give testimony. Among the staff required may be human rights specialists, social workers and forensics experts.

Links to other mechanisms

Truth commissions work quite effectively in conjunction with war crimes tribunals. A tribunal is endowed with the actual judicial and prosecutorial powers lacked by truth commissions. Yet tribunals often cannot be established until later in the peace process, after judicial reforms have taken place. Truth commission investigations can begin immediately and serve to fill in this time gap, thereby allowing time for establishment of a tribunal.

Also, as mentioned above, as truth commissions are not mandated to investigate current human rights abuses, a permanent human rights monitoring body should also be established.

DESIGNING A TRUTH COMMISSION

Truth Commission: *A body established to investigate human rights violations committed by military, government, or other armed forces under the previous regime or during a civil war. Truth commissions are not courts of law. Their primary purpose is to provide an accurate record of who was responsible for extra-judicial killings such as assassinations, “disappearances” and other human rights abuses.*

DESIGN FACTORS

Impartial and transparent. The appointment and composition of the commission must be both impartial and transparent; its members must be capable of acting independently and professionally.

Sufficient authority. The commission must be vested with sufficient authority to collect information and to maximize the impact of its recommendations. The commission established in Chad was authorized by presidential decree to collect documentation, take testimony, and confiscate material as necessary. The commission in South Africa was highly successful in its investigations due to its powers of subpoena, and search and seizure.

Flexible mandate. The commission must be given a flexible mandate to decide what types of abuses to investigate.

Realistic timeframe. The commission should have a mandate of limited duration, but one that provides a realistic timeframe or includes mechanisms for extension.

IMPLEMENTATION FACTORS

Sufficient funding and staff. The most successful commissions have had a large support staff. The “National Commission for Truth and Reconciliation” in Chile had over 60 staff members and was therefore able to investigate each case brought before it. In the Philippines, however, the commission did not have staffing levels to investigate the overwhelming volume of complaints received.

Perceived impartiality of the commissioners. The South African Government selected commissioners by committee rather than governmental appointment.

Confidential investigations. Confidential investigations can overcome witnesses' fear of granting testimony. Investigations may be conducted privately if fairness can be guaranteed and the findings are made public. In El Salvador, information was kept confidential until publication of the commission's report.

CONTEXTUAL REQUIREMENTS

Real commitment on the part of the government to respect individual rights and democratic mechanisms.

Strong civilian government in relation to the military. It is difficult for a truth commission to recommend action against members of the military, if the government cannot enforce it.

Impartial media. The existence of impartial media to broadcast commission's findings.

CHALLENGES AND PITFALLS

Threats to commission personnel and/or potential witnesses. Some commissions have reported an unwillingness by victims to testify for fear of reprisals.

Too short or too long a timeframe for the commission's operation. Most truth commissions have been granted a six- to nine-month mandate, but this short a timeframe may limit a commission attempting to investigate and document thousands of cases. Yet setting no deadline for completion of the commission's work is even more problematic. The truth commission in Uganda has been operating for nine years and has lost the confidence of much of the population.

Politicization. Commissions are often used as a political tool to enhance a regime's popularity without a true commitment to reform. The government's claimed commitment is often belied by its tendency to grant amnesty to the perpetrators of violations.

Limited mandate. A truth commission's mandate should be broad enough to allow for the investigation of all forms of abuse. If the commission's mandate is limited in scope, the full truth is not made public and the feelings of injustice and mistrust among the population remain.

Claims of denial of due process. Although truth commissions do not have prosecutorial powers, their allegations against those who have committed human rights violations are often perceived as a guilty verdict. For this reason, commissions have been criticized for denying due process to those accused. The argument over due process versus exposing the truth has arisen in debates over whether or not to identify perpetrators of abuses or victims in commission reports. To address this issue, many commissions have established processes by which those accused have the opportunity to present evidence in their defence.

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War Crimes Tribunals

4.10.5 Description

A war crimes tribunal is a judicial body created to investigate and prosecute individuals accused of violations of human rights or humanitarian law in the wake of violent conflict. Such violations include crimes against humanity and other crimes outlined in the Fourth Hague Convention and the Geneva Conventions. By placing the responsibility for human rights violations on specific individuals, rather than a social or ethnic group, a war crimes tribunal can help to defuse ethnic tensions. Actual prosecution of these individuals fulfils the victims' needs for justice, which is necessary for the process of reconciliation. Finally, setting a precedent of accountability for human rights violations ends the notion of impunity and works to deter future perpetrators.

Box 12

EXAMPLES OF WAR CRIMES TRIBUNALS

A tribunal is generally an international body, although national courts can carry out similar functions. Although war crimes tribunals have not been widely used since the Nuremberg trials of Nazi officials after World War II, two prominent recent cases can serve as examples.

- **International Criminal Tribunal for the Former Yugoslavia (ICTY).** In 1993 the United Nations Security Council Resolution 827 created the International Criminal Tribunal for the Former Yugoslavia (ICTY). The ICTY was mandated to prosecute individuals allegedly responsible for violations of international humanitarian law during armed conflict in the territory of the former Yugoslavia from 1 January 1991 until a date to be determined after the restoration of peace.
- **International Criminal Tribunal for Rwanda (ICTR).** In 1994 the United Nations Security Council adopted Resolution 955, which established the International Criminal Tribunal for Rwanda (ICTR). Similar to the ICTY, the tribunal in Rwanda was tasked with prosecuting individuals responsible for genocide and crimes against humanity committed in Rwanda between 1 January, and 31 December, 1994. The ICTR also has jurisdiction for prosecuting Rwandan citizens who committed such violations in neighbouring states.

The purpose of war crimes tribunals is to restore peace and deter future violations by enforcing the norms they uphold. The key difference between a truth commission (as discussed above) and a war crimes tribunal is that a tribunal has the ability to prosecute those persons accused of human rights violations. A tribunal provides the accused with a fair trial and opportunity to defend oneself.

4.10.6 Tasks and activities

War crimes tribunals undertake the following tasks:

- Investigate, prosecute and sentence persons allegedly responsible for violations of international humanitarian law and human rights abuses.
- Provide victims the opportunity to testify in public or have their testimony recorded.
- Educate the public on humanitarian norms and human rights.

4.10.7 Strengths and limitations

A war crimes tribunal holds the potential for taking strong, concrete steps toward building a society based on the rule of law through a process that is seen to be fair and law-based. The criticism of the post-World War Two Nuremberg trials – that they imposed retroactive norms and victors’ justice on the accused – no longer applies. In the intervening years, the notion of individual responsibility for war crimes has become internationally accepted. Additionally, as with Rwanda and Yugoslavia, an international tribunal under the UN need not be controlled by “victors” and therefore cannot be accused of seeking revenge. The effectiveness of a war crimes tribunal is hampered, however, by four main factors.

No consensus on penalties. Although individual accountability for war crimes has become an accepted norm in the international arena, there is no corresponding consensus on the penalties to be imposed for those crimes. The international community highlighted this situation in the Rwanda case where the punishment under Rwandan national law for some crimes differs greatly from the penalties endorsed. If different judicial bodies mete out different punishments for the same crimes, it can undermine the sense of justice that the tribunal is meant to instil.

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Lack of an enforcement mechanism. Tribunals have the power to issue arrest warrants for war criminals, but do not have the police authority to apprehend those who have been indicted. In this effort, tribunals are reliant upon the co-operation of the local government and of other relevant international bodies in tracking down and capturing war criminals. Yet, as seen with NATO in Yugoslavia, these bodies may resist performing this portion of their mandate because it may place peace-keepers at risk of retaliation. But lack of enforcement may severely hinder the effectiveness of tribunals, thereby eroding public confidence in their usefulness.

Cannot stop a conflict in progress. Although tribunals may begin their work before hostilities completely cease (as in Yugoslavia), they cannot themselves stop a conflict that is in progress. In fact, it is possible that the naming of particular individuals who still have the ability to carry on the conflict may harden their resistance to ending it and provide further motivation to continue the struggle. This problem can be alleviated to the extent that tribunals are established before a war arises, such as would be the case were there to be, as some have advocated, a permanent international criminal court. This kind of established tribunal could have a deterrent effect on future violations.

Scope of prosecution depends on whether the conflict is internal or international. Under the Geneva Conventions, if a conflict is internal, a perpetrator can only be prosecuted for genocide or crimes against humanity, but not for grave breaches of the Geneva Conventions on humanitarian law or other war crimes. Genocide and crimes against humanity have stricter definitions and are more difficult to prove than war crimes. The war in Yugoslavia was deemed an international conflict, therefore the ICTY has the ability to prosecute war crimes and grave breaches of the Geneva Convention, as well as genocide and crimes against humanity. As the conflict in Rwanda is an internal matter, the ICTR's jurisdiction only covers the latter. Thus, when used to adjudicate internal conflict, the jurisdiction of a tribunal is limited.

4.10.8 Organization

Establishment, personnel, and structures

The United Nations Security Council created the ICTY and the ICTR. In both cases the UN adopted a series of reso-

lutions calling first for the establishment of a commission to investigate violations of humanitarian law and then, upon recommendation of the commission, the establishment of a tribunal to prosecute those guilty of violations. The time-frame and territory covered by each tribunal was established upon their creation.

In the case of Rwanda, the question arose as to whether to create an international or national mechanism for prosecution. An international tribunal was preferred on the basis that it would be less biased, have a wider jurisdiction, and have more resources at its disposal. However, it was argued that a national tribunal would serve to enhance the legitimacy of the new regime and would be more sensitive to the local community's needs. In Ethiopia, a war crimes court conducted proceedings regarding the acts of officials of the Dergue ruling group under the dominance of President Haile Mariam Mengistu. Currently, the ICTR is based in Tanzania, and it is working in conjunction with Rwandan national courts to prosecute war criminals, although the Tribunal has primacy over national courts.

Both tribunals have the same three-section structure. The three arms are the Judges' Chambers, the Offices of the Prosecutor, and the Registry. The judges are divided into two trial courts of three judges each and a five-judge appeals chamber. The judges are responsible for issuing indictments and hearing and deciding cases. The UN General Assembly elects the judges serving on the tribunals. The Office of the Prosecutor has the responsibility for investigating alleged crimes, framing indictments, and prosecuting cases. The chief prosecutor is appointed by the UN Security Council and is assisted by a deputy prosecutor and other staff. The Registry is the administrative division of the tribunal and performs a wide array of functions including recommending protective measures for witnesses, providing counselling for victims, and handling appointment of defence counsel. Although the ICTY and the ICTR are separate entities, they do share some of the same personnel, such as the five appellate judges and the chief prosecutor.

Resources

An international tribunal needs substantial financial, personnel and infrastructure resources.

The ICTY has sought \$US 70,000,000 from the United Nations to cover operating costs for 1998. Funding for the tri-

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bunals has come primarily from the United Nations, although some funding is received from voluntary contributions. A large staff is necessary for conducting investigations and administering the tribunal. Approximately 400 people staff the ICTY. A tribunal should have access to computer and storage facilities for court records, testimony and evidence.

Another important resource is legal and investigatory expertise. In order to maintain credibility, a tribunal must conduct thorough and fair investigation and trials. To this end, evidence must be carefully gathered, documented, and preserved, and prosecution and defence attorneys must be highly competent. Many non-governmental organizations have contributed volunteers and conducted training programs for tribunal staff.

Links to other mechanisms

As discussed above, the work of war crimes tribunals is closely related to that of truth commissions. Both fulfil investigatory functions to seek the truth and hold individuals accountable for violations of human rights. War crimes tribunals can utilize information gathered by commissions, which have investigated human rights abuses. Also, as seen in the Rwanda case, international tribunals can work in conjunction with national courts by dividing the workload.

4.10.9 Conclusion

Transitional justice remains one of the most widely debated aspects of post-conflict reconciliation and democracy building. The type of transitional mechanisms discussed in this section are attracting increasing attention in many different jurisdictions. Two prominent but still uncertain cases of democratic transition – Bosnia and Indonesia – have both been accompanied by calls for the establishment of local truth and reconciliation commissions, for example. Despite the very different circumstances in which these two countries find themselves – post-war reconstruction under the auspices of the international community in Bosnia, and an uncertain transition from authoritarian rule in Indonesia – the attraction of some mechanism to address wrongs committed in the past remains strong. This illustrates the potential perceived utility of such mechanisms for delivering justice, even under very different circumstances.

The possible establishment of a permanent international criminal court to prosecute war criminals and perpetrators of genocide is another illustration of the emerging international consensus on the issue of transitional justice. Such a court would effectively supplant the temporary mechanisms used since World War Two to prosecute crimes against humanity, such as the Nuremberg and Tokyo war crimes tribunals and the ad hoc United Nations tribunals for Rwanda and the former Yugoslavia. The court may have jurisdiction over the most serious crimes of concern to the international community, such as genocide, crimes against humanity and war crimes. It would not supersede national courts but rather play a complementary role. The court would particularly play a role when national institutions are unable to act – such as where existing institutions have collapsed due to internal conflict, or where a state is unwilling to act to try its own nationals. In sum, it appears that post-conflict societies may well soon have a permanent international forum from which to seek justice.

DESIGNING A WAR CRIMES TRIBUNAL

War Crimes Tribunal: *A judicial body created to investigate and prosecute individuals accused of violations of human rights or humanitarian law in the wake of violent conflict. The purpose of a war crimes tribunal is to restore peace and deter future violations by enforcing the norms it upholds. The key difference between it and a truth commission is that a war crimes tribunal has the ability to prosecute persons accused of human rights violations.*

DESIGN FACTORS

Staff. Ample staff with appropriate expertise.

Placement. Situated in a location where it will have the most public impact on the society affected, as a visible image of justice.

IMPLEMENTATION FACTORS

Credibility. Maintenance of credibility by investigating and prosecuting all sides of a conflict equally and precluding in absentia trials.

Use of accepted rules of procedure and standards of evidence. The ICTY and the ICTR utilize the same set of rules in order to avoid questions of fairness.

Number of defendants. Reduction of the number of defendants to a manageable range by focusing prosecutorial efforts on the central core of individuals who planned and organized the systematic violations of humanitarian law, as opposed to everyone who may have committed abuses.

CONTEXTUAL REQUIREMENTS

- Co-operation from relevant international bodies in the apprehension and enforcement of indictments.
- Support of local government and its participation in the proceedings.

CHALLENGES AND PITFALLS

Lack of evidence. It can be difficult to gather enough evidence to support convictions. In the case of senior officers it can be especially difficult to link the perpetrator with the crime. These difficulties can be enhanced when a tribunal can only prosecute crimes against humanity or genocide. Under these conditions, the tribunal must prove a systematic attempt to destroy an ethnic group.

Compliance. States are often reluctant to co-operate in the apprehension of indicted war criminals. States can actively inhibit apprehension by granting immunity to the alleged criminals. Kenya and Zaire have both harboured individuals indicted by the ICTR.

Timing. Tribunals cannot begin operation immediately, as they first must have a trained staff and infrastructure in place. These delays can lead to frustration and a lack of support on the part of the population. This can hamper a tribunal's effectiveness in achieving its goals of building confidence in democracy and the rule of law.

Security concerns. As with truth commissions, potential witnesses may fear reprisals and therefore may be deterred from testifying.

Lack of resources. Shortage of funding and/or trained personnel can erode the effectiveness of a tribunal.

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Case Study

GUATEMALA



Case Study: Guatemala

GUATEMALA

Overview

The December 1996 signing of a final peace agreement between the Government of Guatemala and the Guatemalan National Revolutionary Unity officially ended a 36-year civil war and was the culmination of a series of 14 previous accords. The Guatemalan peace process was noteworthy in several important respects:

- the accords covered a wide range of democratization, human rights, and socio-economic issues, the resolution of which would radically change Guatemala's governing processes and social relations; but agreement on these issues preceded, rather than followed, a formal cease-fire;
- rather than the settlements leading to elections and creating a new democracy, the peace process was fostered to some extent by electoral and democratic processes that preceded the war by several years (but these processes became more vigorous and significant as they were brought into the peace process);
- the negotiations deliberately solicited and incorporated views expressed by the business community and other elements of civil society; and
- implementation of certain accords was handed over to special national commissions and forums devised and run primarily by Guatemalans, rather than to organs and representatives of the UN and the international community.

But despite the inclusiveness of the peace process and the breadth of the settlement, a significant gap still persists between the main protagonists in the negotiations and the interests of ordinary Guatemalans. Thus, if the various implementation mechanisms prove unable to overcome the influence of entrenched corporate and military interests, many of which are represented in the Congress, they will fail to alter relations between various interests, which is needed to progressively attain the accords' far-reaching goals.

The Conflict

Reacting to a history of diplomatic and military intervention in Central America by the United States and Britain on behalf of foreign commercial interests, a nationalist movement emerged in the 1940s which elected two reformist presidents who were determined to modernize Guatemala economically, expand its social services, and bring about land reform. But this "Guatemala Revolution" was thwarted in 1954 by the US Central Intelligence Agency. An invasion force was launched, providing the pretext for a *coup d'état* in the capital: a more authoritarian government was installed, which repealed agrarian reform policies and clamped down on political opposition.

Until the mid-1980s, Guatemala was ruled by military-dominated governments that were repressive and variously corrupt. They suspended democratic institutions

and the rule of law, banned political parties and trade unions, and engaged in illegal repression through “disappearances”, extra-judicial killings, torture, and other human rights violations. The communist party organized a Marxist-Leninist resistance movement that received support from the Cuban Government and adopted the guerrilla tactics of the day. Its nucleus was former military personnel opposed to Guatemala being used as a base for the April 1961 Bay of Pigs invasion in Cuba. The first phase of the conflict ended, however, when the army essentially defeated these forces by the end of the 1960s.

The second phase began with the emergence of two new resistance organizations in the mid-1970s, operating primarily out of the indigenous areas of the country. The Government continued to ban and persecute all leftist organizations, to perpetrate torture and extra-judicial killings, and to conduct rural scorched-earth campaigns. Thus, the armed conflict constituted a struggle between, on the one hand, a rural-based insurgency and populist urban democratic opposition movement, and on the other hand, a corporate and military-controlled government. With competing Cold War ideologies also at stake, both sides had external suppliers of money and weaponry. The indigenous Indian populations were especially hard-hit by the war. *Campesinos* were recruited to fight as guerrillas or in government-led “civil patrols”, and the Government in particular targeted thousands of innocent indigenous Indian communities in rural areas suspected of harbouring guerrillas. Thirty years of war left 100,000 to 150,000 civilians dead or “disappeared”, over one million displaced persons and refugees, and over 400 villages completely destroyed. Overall, the Government and paramilitary forces were estimated to have been responsible for 80 per cent of the non-combatant deaths and for 50,000 disappearances, giving Guatemala the reputation as Central America’s worst human rights violator.

In 1982, an alliance of guerrilla forces and leftist and populist forces formed the Guatemalan National Revolutionary Unity (URNG). By the mid-1980s, the URNG had garnered wide support in Guatemalan society, including many Catholic priests, as well as foreign sympathy; a degree of military stalemate had set in. For its part, the military saw the need by 1985 to begin to return to democracy. Multi-party democracy was formally restored, and since then elections have been regularly held.

However, participation in the elections remained low, coup attempts remained a threat, and the Government did little to address economic issues or social inequalities. Military-influenced governments continued to take advantage of a weak judicial system and corrupt police force to maintain power. Criminal violence and drug trafficking flourished.

Ultimately, the military and the main business interests supporting it realized they could not achieve economic growth through foreign investment and aid unless peace was restored. In addition, the labour unions and other opposition groups, who had reorganized themselves into the Union and Popular Action Movement

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(UASP) in 1988, began to advocate pragmatic social and economic reforms that could make headway in negotiations. By the early 1990s, the Guatemalan conflict had shifted to a primarily political struggle over issues of representation and public policies. Widening support for meaningful democracy was evident.

The Negotiation Process

As the Cold War drew to a close and several other Central American governments held democratic elections, two regional peace efforts also provided the impetus for specific negotiations. The Contadora group, composed of Colombia, Venezuela, and Panama and led by Mexico, came close to mediating an agreement in 1985. In 1986, Guatemalan President Cerezo convened a summit meeting of the five Central American presidents in Guatemala, where they committed themselves to negotiations to achieve peaceful settlements of the three ongoing wars, to further democratization and development, and notably, to the role of the United Nations rather than the Organization of American States as facilitator and mediator. In Guatemala, a National Commission on Reconciliation was created with Bishop Toruno of Zacapa as chair.

Toruno initiated informal consultations among representatives of different sectors of civil society: the legal political parties, business people, priests and lay church leaders, unions, and academics. The result was agreement on the need for constitutional reform, more popular participation in government, respect for human rights, and improved social welfare.

Toruno then facilitated direct negotiations between the Government and the URNG in 1991. This produced an agreement on democratization principles, international verification, an agenda and procedures for further discussion, and the role of a UN mediator, but made little progress regarding civil rights. Further talks in 1993 produced a framework agreement that then led to four accords on human rights, refugees, a truth commission and indigenous rights.

Five further accords were signed in 1996 regarding socio-economic and agrarian issues, civilian power and the military, a cease-fire, constitutional reform, and re-integration and reconciliation of former combatants. By late 1996, no less than 15 accords, including the final peace agreement in December 1996, had been negotiated over five years between the URNG and three successive governments.

Although these accords were fostered and mediated by regional leaders, domestic leaders, and particularly the UN, the progress of the peace process in Guatemala can be attributed more to the changes occurring in Guatemalan politics than to the tutelage of the UN and the international community. A confluence of pressures came from several directions: a populist-oriented armed insurgency; modernizing rightwing governments; a strengthening of civilian politicians vis-à-vis the military; the rising influence of civil society (initially the economic interests of the emerging Guatemalan business class but increasingly labour and other mass-based groups); and the influence of reformism within the military itself.

The Settlements

The human rights accord of March 1994 pledged the Government to end impunity for human rights violations and illegal security structures, and foresaw the creation of professional security forces, the protection of human rights workers, and the immediate establishment of MINIGUA, a UN verification body. MINIGUA's tasks were to investigate and publicize human rights violations, ensure follow-up in addressing them, and assist others in promoting protection against human rights violations and in creating a culture of respect for human rights. The resettlement accord of June 1994 called for improving local conditions and services to allow the return of uprooted people, expediting the processing of their return, and for legal changes to encourage return of land to original owners or their compensation. Another June accord created a three-member commission to document past human rights violations since the beginning of the conflict. This truth commission has the power to determine institutional responsibility for violations of human rights, but not to name names or bring cases for prosecution.

The indigenous population, composed of Mayan, Xinca, and Garifuna peoples, was not represented in any peace negotiations. But the need to address their interests was clearly recognized. Thus, the rights of the indigenous population were explicitly addressed in a sweeping agreement in 1995. This accord affirmed the Government's intention to address discrimination against the majority indigenous population, by reforming the municipal code, decentralizing the educational system, promoting media rights for indigenous peoples, and recognizing the need for communal ownership of land. All 22 linguistic groups in Guatemala were accorded official status, and the Government committed itself to support the use of their languages. But the details were left to the implementation process, through the work of the designated commissions.

A definitive cease-fire was agreed between the Government and the URNG in May 1996, along with a socio-economic accord that included agrarian issues. The accord addressed taxes, expenditures on health, housing and education; citizen participation in decision-making; a land bank, and access to land for *campesinos*. But it did not require tax reform and said little about land reform. The peace process culminated in the September 1996 accord, which required reforms in the legislative, judicial and executive branches. The role of the military was redefined, and its size reduced by a third. The existing police force would be transformed into a professional civilian body, the civil defense patrols that had fought guerrillas in the highlands were abolished, and internal security was given to a civilian intelligence agency. Subsequent accords addressed the details of the cease-fire, created an electoral commission, and reincorporated the URNG into the normal legal life of the country.

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Implementation

The accords pointed toward a major restructuring and transformation of Guatemalan society. But the accords did not themselves require structural changes; their specific meaning was left to be settled by new implementation mechanisms that were created or envisioned by the accords. These mechanisms can be divided into international and domestic mechanisms for carrying out various agreements, and the actual changes in the ways of government itself, some of which resulted from the accords and some of which occurred apart from the formal negotiations process.

MINIGUA implemented the human rights provisions of the March 1994 accord by setting up offices throughout the country to take complaints on violations and promote local capacity for human rights. This deterred violations and thus enabled the 1995 elections to proceed peacefully.

National-level institutional innovations involved representatives of domestic interests in the complex issues and responsibilities of effecting a durable peace. These included commissions on the identity and rights of indigenous peoples, judicial reform and modernization, the displaced, civil-military relations, incorporation of the URNG, etc.

One of the most unusual processes was the Assembly of Civil Society (ASC), mandated by the January 1994 accord with Bishop Toruno in the chair. For eight months in 1994, a broad array of social, labour, women's, and religious groups, along with major political parties, met and developed consensus positions on all aspects of the peace process agenda. All sectors except the business community were involved. Their recommendations were then forwarded to the UN moderator of the talks. Subsequent agreements between the Government and the URNG were then to be submitted to the ASC for ratification, thus giving them the character of national commitments. The ASC gave opposition groups an opportunity to work together in developing concrete policy proposals.

Other changes occurred completely apart from any specific accord, but were obviously spurred by it. To show good intentions toward the peace process as well as to obtain international legitimacy, the military abolished forced conscription in mid-1994 and the system of military commissioners in 1995, and it demobilized the civil defense patrols in 1996, even before the peace accord required it.

Prospects

There is little immediate likelihood of a renewed war in Guatemala, because the URNG and Government have come to control their militant flanks. But violence and intimidation continue and re-escalation remains possible. The military continues to play a role in public security, and thus behind the scenes in politics as well, in part because of increased crime, kidnappings, and drug trafficking and because the dismantling of the civil defense patrols has left a security vacuum in the coun-

tryside where disputes over land are arising. But the military itself has yet to be held to a significant accounting of past human right abuses because of its continued political influence and the weakness of the judiciary system. A Public Prosecutor's Office has been established and the new code on criminal procedure is in effect, but justices still have difficulty rendering decisions independently. The police force, moreover, is insufficiently staffed and continues to have links to some of the militarized groups. The truth commission has only operated since 1997, and its limited powers make it unclear whether it will strike a balance that adequately alleviates the deep grievances felt by the many victims of past offenses.

The least advanced aspect of the accords is the removal of discrimination against indigenous peoples and the transformation of rural society and local decision-making. It is being assumed that more equitable social policies and higher social spending will be possible when efficiency is gained from economic reforms, economic growth stabilizes, and state revenues increase. And yet the Congress continues to be dominated by groups that represent more established and better-off national interests, who seem committed to fighting against implementation of the accords.

The Guatemalan parties have gone to the international community to pay for over half of the \$US 2.6 billion needed to implement the accords from 1997 to 2001. But it is the broad-gauged and intersecting processes that have been set in motion in Guatemala that will mainly determine whether, over the long term, the country will leave the traditional patterns of governance clearly behind. Although large business interests predominate, Guatemala's politics overall are fragmented, and the channels for the participation of hitherto excluded groups of citizens are only beginning to have influence.

In spite of its implementation problems, the Guatemalan peace process has demonstrated the value of giving detailed attention to issues of process and consultation, even though it may be argued that there has been insufficient progress on core issues such as social inequalities. Questions of how truly participative the process has been in terms of including affected groups from outside the major parties (such as indigenous communities, trade unions, etc.) have also been raised. The initial credibility and legitimacy of the democratization experiment may not last long without attention to these issues, and meaningful progress on the widespread social changes envisaged in the peace settlement.

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