

EL SALVADOR: MEXICO PEACE AGREEMENTS— PROVISIONS CREATING THE COMMISSION ON TRUTH

*(Mexico City, April 27, 1991)**

...Agreement has been reached to establish a Commission on the Truth, which shall be composed of three individuals appointed by the Secretary-General of the United Nations after consultation with the Parties. The Commission shall elect its Chairman. The Commission shall be entrusted with the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth. The Commission shall take into account:

- a) The exceptional importance that may be attached to the acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise; and
- b) The need to create confidence in the positive changes which the peace process is promoting and to assist the transition to national reconciliation.

The characteristics, functions, and powers of the Commission on the Truth and other related matters are set forth in the corresponding annex.

Annex

Commission on the Truth

The Government of El Salvador and the Frente Farabundo Marti para la Liberación Nacional (hereinafter referred to as "the Parties"),

Reaffirming their intention to contribute to the reconciliation of Salvadorian society;

Recognizing the need to clear up without delay those exceptionally important acts of violence whose characteristics and impact, and the social unrest to which they gave rise, urgently require that the complete truth be made known and that the resolve and means to establish the truth be strengthened;

Considering that, although the need to put an end to impunity was raised in the discussion on the item on the armed forces of the Agenda for the negotiations adopted at Caracas on 21 May 1990, the means of investigation which the Parties themselves have been prepared to set up are addressing situations whose complexity warrants independent treatment;

Agreeing on the advisability of fulfilling that task through a procedure which is both reliable and expeditious and may yield results in the short-term, without prejudice to the obligations incumbent on the Salvadorian

* U.N. Doc. S/25500 (April 1, 1993).

courts to solve such cases and impose the appropriate penalties on the culprits;

Have arrived at the following political agreement:

1. There is hereby established a Commission on the Truth (hereinafter referred to as "the Commission"). The Commission shall be composed of three individuals appointed by the Secretary-General of the United Nations after consultation with the Parties. The Commission shall elect its Chairman.

Functions

2. The Commission shall have the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth. The Commission shall take into account:

- (a) The exceptional importance that may be attached to the acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise; and
- (b) The need to create confidence in the positive changes which the peace process is promoting and to assist the transition to national reconciliation.

3. The mandate of the Commission shall include recommending the legal, political or administrative measures which can be inferred from the results of the investigation. Such recommendations may include measures to prevent the repetition of such acts, and initiatives to promote national reconciliation.

4. The Commission shall endeavour to adopt its decisions unanimously. However, if this is not possible, a vote by the majority of its members shall suffice.

5. The Commission shall not function in the manner of a judicial body.

6. If the Commission believes that any case brought to its attention does not meet the criteria set forth in paragraph 2 of this agreement, it may refer the case to the Attorney-General of the Republic, should it deem appropriate, for handling through the judicial channel.

Powers

7. The Commission shall have broad powers to organize its work and its functioning. Its activities shall be conducted on a confidential basis.

8. For the purposes of the investigation, the Commission shall have the power to:

- (a) Gather, by the means it deems appropriate, any information it considers relevant. The Commission shall be completely free to use whatever sources of information it deems useful and reliable. It

shall receive such information within the period of time and in the manner which it determines.

- (b) Interview, freely and in private, any individuals, groups or members of organizations or institutions.
- (c) Visit any establishment or place freely without giving prior notice.
- (d) Carry out any other measures or inquiries which it considers useful to the performance of its mandate, including requesting reports, records, documents from the Parties or any other information from State authorities and departments.

Obligation of the Parties

9. The Parties undertake to extend to the Commission whatever cooperation it requests of them in order to gain access to sources of information available to them.

10. The Parties undertake to carry out the Commission's recommendations.

Report

11. The Commission shall submit a final report, with its conclusions and recommendations, within a period of six months after its establishment.

12. The Commission shall transmit its report to the Parties and to the Secretary-General of the United Nations, who shall make it public and shall take the decisions or initiatives that he deems appropriate.

13. Once the report has been handed over, the Commission's mandate shall be considered terminated and the Commission shall be dissolved.

14. The provisions of this agreement shall not prevent the normal investigation of any situation or case, whether or not the Commission has investigated it, nor the application of the relevant legal provisions to any act that is contrary to law.

EL SALVADOR: REPORT OF THE COMMISSION ON TRUTH

*From Madness To Hope
The 12-Year War in El Salvador**

I. Introduction

Between 1980 and 1991, the Republic of El Salvador in Central America was engulfed in a war which plunged Salvadorian society into violence, left it with thousands and thousands of people dead and exposed it to appalling crimes, until the day—16 January 1992—when the parties, reconciled, signed the Peace Agreement in the Castle of Chapultepec, Mexico, and brought back the light and the chance to re-emerge from madness to hope.

Violence was a fire which swept over the fields of El Salvador; it burst into villages, cut off roads and destroyed highways and bridges, energy sources and transmission lines; it reached the cities and entered families, sacred areas and educational centres; it struck at justice and filled the public administration with victims; and it singled out as an enemy anyone who was not on the list of friends. Violence turned everything to death and destruction, for such is the senselessness of that breach of the calm plenitude which accompanies the rule of law, the essential nature of violence being suddenly or gradually to alter the certainty which the law nurtures in human beings when this change does not take place through the normal mechanisms of the rule of law. The victims were Salvadorians and foreigners of all backgrounds and all social and economic classes, for in its blind cruelty violence leaves everyone defenceless....

On the long road of the peace negotiations, the need to reach agreement on a Commission on the Truth arose from the Parties' recognition that the communism which had encouraged one side had collapsed, and perhaps also from the disillusionment of the Power which had encouraged the other. It emerged as a link in the chain of reflection and agreement and was motivated, ultimately, by the impact of events on Salvadorian society, which now faced the urgent task of confronting the issue of the widespread, institutionalized impunity which had struck at its very heart: under the protection of State bodies but outside the law, repeated human rights violations had been committed by members of the armed forces; these same rights had also been violated by members of the guerrilla forces....

The Commission on the Truth was so named because its very purpose and function were to seek, find and publicize the truth about the acts of violence committed by both sides during the war.

The truth, the whole truth and nothing but the truth, as the oath goes. The overall truth and the specific truth, the radiant but quiet truth. The

* Excerpted from *From Madness to Hope: The 12-Year War in El Salvador*, Report of the Commission on the Truth for El Salvador (United Nations Publication, S/25500, 1993).

whole and its parts, in other words, the bright light shone onto a surface to illuminate it and the parts of this same surface lit up case by case, regardless of the identity of the perpetrators, always in the search for lessons that would contribute to reconciliation and to abolishing such patterns of behaviour in the new society.

Learning the truth and strengthening and tempering the determination to find it out; putting an end to impunity and cover-up; settling political and social differences by means of agreement instead of violent action: these are the creative consequences of an analytical search for the truth.

C. The Mandate

Furthermore, by virtue of the scope which the negotiators gave to the agreements, it was understood that the Commission on the Truth would have to examine systematic atrocities both individually and collectively, since the flagrant human rights violations which had shocked Salvadorian society and the international community had been carried out not only by members of the armed forces but also by members of the insurgent forces.

The peace agreements were unambiguous when, in article 2, they defined the mandate and scope of the Commission as follows: "The Commission shall have the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth". Article 5 of the Chapultepec Peace Agreement gives the Commission the task of clarifying and putting an end to any indication of impunity on the part of officers of the armed forces and gives this explanation: "acts of this nature, regardless of the sector to which their perpetrators belong, must be the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found responsible".

It is clear that the peace negotiators wanted this new peace to be founded, raised and built on the transparency of a knowledge which speaks its name. It is also clear that this truth must be made public as a matter of urgency if it is to be not the servant of impunity but an instrument of the justice that is essential for the synchronized implementation of the agreements which the Commission is meant to facilitate.

D. "Open-Door" Policy

From the outset of their work, which began on 13 July 1992 when they were entrusted with their task by the Secretary-General of the United Nations, the Commissioners could perceive the skill of those who had negotiated the agreements in the breadth of the mandate and authority given to the Commission. They realized that the Secretary-General, upon learning from competent Salvadorian judges of the numerous acts of violence and atrocities of 12 years of war, had not been wrong in seeking to preserve the Commission's credibility by looking beyond considerations of sovereignty and entrusting this task to three scholars from other countries, in contrast to what had been done in Argentina and Chile after the military dictatorships there had ended. The commissioners also saw a glimmer of hope dawn in

the hearts of the Salvadorian people when it became clear that the truth would soon be revealed, not through bias or pressure but in its entirety and with complete impartiality, a fact which helped to restore the faith of people at all levels that justice would be effective and fitting. Accordingly, in their first meeting with the media upon arriving in El Salvador, the Commissioners stated that they would not let themselves be pressured or impressed: they were after the objective truth and the hard facts.

The Commissioners and the group of professionals who collaborated with them in the investigations succeeded in overcoming obstacles and limitations that made it difficult to establish what had really happened, starting with the brief period of time—six months—afforded them under the Chapultepec Agreement. Given the magnitude of their task, this time-frame, which seemed to stretch into Kafkaesque infinity when they embarked upon their task, ultimately seemed meagre and barely sufficient to allow them to complete their work satisfactorily.

Throughout its mandate and while drafting its report, the commission consistently sought to distance itself from events that had not been verified before it reached any conclusions. The whole of Salvadorian society, institutions and individuals familiar with acts of violence were invited to make them known to the Commission, under the guarantee of confidentiality and discretion provided for in the agreements. Paid announcements were placed in the press and on the radio and television to this end, and written and oral invitations were extended to the Parties to testify without restriction. Offices of the Commission were opened in various departmental capitals, including Chalatenango, Santa Ana and San Miguel. Written statements were taken, witnesses were heard, information from the sites of various incidents (e.g. El Calabozo, El Mozote, Sumpul river and Guancorita) was obtained. The Commission itself went to various departments with members of the professional team, occasionally travelling overland but more often in helicopters provided promptly and efficiently by ONUSAL. As the investigation moved forward, it continued to yield new pieces of evidence: anyone who might have been involved was summonsed to testify without restriction as to time or place, usually in the Commission's offices or in secret locations, often outside El Salvador in order to afford witnesses greater protection.

The Commission maintained an "open-door" policy for hearing testimony and a "closed-door" policy for preserving confidentiality. Its findings illustrate the horrors of a war in which madness prevailed, and confirm beyond the shadow of a doubt that the incidents denounced, recorded and substantiated in this report actually took place. Whenever the Commission decided that its investigation of a specific case had yielded sufficient evidence, the matter was recorded in detail, with mention of the guilty parties. When it was determined that no further progress could be made for the time being, the corresponding documentation that was not subject to secrecy was delivered to the courts or else kept confidential until new information enabled it to be reactivated.

One fact must be squarely denounced: owing to the destruction or concealment of documents, or the failure to divulge the locations where