

- c. To visit any place or establishment freely and without prior notice;
- d. To hold its meetings freely anywhere in the national territory;
- e. To interview freely and privately any individual, group of individuals or members of bodies or institutions;
- f. To collect by any means it deems appropriate such information as it considers relevant.¹⁷¹

On the face of it these powers are comprehensive, but putting them into effect was limited by a number of operational constraints. As in other HROs, those constraints were both internal and external to the HRO and the UN operation itself.

The more problematic constraints are the external ones, the political and physical realities in the operational area. Just how freely can an HRO and the UN meet with groups and individuals?, or do those individuals become targets for victimization and even death merely by meeting with UN staff? What do you do if, as happens in MICIVIH, the government limits your access to detention centres, prisons, military barracks, and police stations, despite the agreed upon terms of reference? Formal written agreements or mandates are far from conclusive, and it is instructive to compare their application in both MICIVIH and ONUSAL.

To a large extent, the wording of the mandate for MICIVIH was modelled on that of ONUSAL. The Haitian military regime did insist on qualifying some of the proposed operation mandates, but on the face of it the operational powers of MICIVIH were substantially the same as ONUSAL. The attitude of the Haitian military regime however was not. They soon made it clear that they were not about to honour the letter or the spirit of the human rights agreements.

In El Salvador on the other hand, the two parties to the conflict had something to gain from negotiating and honouring most of the human rights agreements. As a result, ONUSAL was relatively successful, while "The problems the International Civilian Mission [MICIVIH] would experience arose less from weaknesses in the terms of reference, as drafted or as amended to secure [the Haitian government's] acquiescence, than from the absence of any good faith commitment to supporting their application in practice"¹⁷² by the Haitian armed forces. This was compounded by a failure of senior UN or OAS officials to denunciate Haitian government obstruction, and thus the military regime was emboldened and able to consistently hamper MICIVIH activities.

The Cambodia UN field operation was another example of political constraints that served to minimize the impact of monitoring. "UNTAC's human rights activities were thus undertaken against a background of low-level conflict, a failure to disarm any of the Cambodian factions,

¹⁷¹ San José Agreement on Human Rights, 26 July 1990, between the government and the FMLN; this was one of the early agreements of the El Salvadorean Peace Process, but is clearly the major human rights document of that process.

¹⁷² p.87, Ian Martin, *Paper versus Steel: The First Phase of the International Civilian Mission in Haiti*, in Henkin/Aspen, op.cit.