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Decentralization and institution building: Emergence and development of the Consejos Departamentales de Alcaldes in El Salvador

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**IEE
Working Papers**

Andrea Kramer

**DECENTRALIZATION
AND INSTITUTION BUILDING**
**Emergence and Development of the Consejos
Departamentales de Alcaldes in El Salvador**



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Andrea Kramer

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Emergence and Development of the Consejos Departamentales
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Acronyms

ACDAU	Association of the Departmental Mayors' Council of Usulután (<i>Consejo Departamental de Alcaldes de Usulután</i>)
ARENA	National Republican Alliance (<i>Alianza Republicana Nacionalista</i>)
CDA	Departmental Mayors' Council (<i>Consejo Departamental de Alcaldes</i>)
CDC	Departmental Development Council (<i>Consejo Departamental de Desarrollo</i>)
CDCC	Departmental Council for Joint Coordination (<i>Comité Departamental de Coordinación Conjunta</i>)
CDM	Coordinating Commission of the Process of Decentralization and Municipal Development (<i>Comisión Coordinadora del Proceso de Descentralización y Fomento Municipal</i>)
CECADE	Centre for Training and Promotion of Democracy (<i>Centro de Capacitación y Promoción de la Democracia</i>)
CED	Special Departmental Committee (<i>Comité Especial Departamental</i>)
CND	National Commission of Development (<i>Comisión Nacional de Desarrollo</i>)
COAMSS	Mayors' Council for the Metropolitan Zone of San Salvador (<i>Consejo de Alcaldes de la Zona Metropolitana de San Salvador</i>)
CODERA	Departmental Committee for the Reconstruction of Areas (<i>Comité Departamental para la Reconstrucción de Áreas</i>)
CONARA	National Commission for the Reconstruction of Areas (<i>Comisión Nacional para la Reconstrucción de Áreas</i>)
COMURES	Association of Municipalities of the Republic of El Salvador (<i>Corporación de Municipalidades de la República de El Salvador</i>)
DIAKONIA	Swedish Ecumenical Action
D.O.	Official Gazette (<i>Diario Oficial</i>)
ENDL	National Strategy for Local Development (<i>Estrategia Nacional de Desarrollo Local</i>)
FESPAD	Foundation for the Studies of the Application of the Law (<i>Fundación de Estudios para la Aplicación del Derecho</i>)
FISDL	Social Investment Fund for Local Development (<i>Fondo de Inversión Social para el Desarrollo Local</i>)
FMLN	Marabundi Martí Front for National Liberation (<i>Frente Marabundi Martí para la Liberación Nacional</i>)
FODES	Municipal Development Fund (<i>Fondo para el Desarrollo Económico y Social de los Municipios</i>)
FSNL	Sandinista Front for National Liberation (<i>Frente Sandinista para la Liberación Nacional</i>)
FUNDAMUNI	Foundation for the Support of Municipalities in El Salvador (<i>Fundación de Apoyo a Municipios de El Salvador</i>)
FUNDAUNGO	Dr. Guillermo Ungo Foundation (<i>Fundación Dr. Guillermo Ungo</i>)
GTZ	German Agency for Technical Cooperation (<i>Deutsche Gesellschaft für technische Zusammenarbeit</i>)
IDB	Inter-American Development Bank
ISAM	Salvadoran Institute for Municipal Administration (<i>Instituto Salvadoreño de Administración Municipal</i>)
ISDEM	Salvadoran Institute for Municipal Development (<i>Instituto Salvadoreño de Desarrollo Municipal</i>)
MIPLAN	Ministry for Planning and Coordination of Economic and Social Development (<i>Ministerio de Planificación y Coordinación del Desarrollo Económico y Social</i>)
MEA	Municipalities in Action (<i>Municipalidades en Acción</i>)
PCN	National Party of Reconciliation (<i>Partido Nacional de Conciliación</i>)
PDC	Christian Democratic Party (<i>Partido Demócrata Cristiano</i>)

PNUD	United Nations Development Programme (<i>Programa de las Naciones Unidas para el Desarrollo</i>)
PROMUDE	Advisory Programme for Municipal Strengthening and Decentralization (<i>Programa de Asesoramiento en el Fomento Municipal y la Descentralización</i>)
PSBI	Programme of Integrated Basic Services (<i>Programa de Servicios Básicos Integrados</i>)
RTI	Research Triangle Institute
SACDEL	Advisory and Training System for Local Development (<i>Sistema de Asesoría y Capacitación para el Desarrollo Local</i>)
S.A. de C.V.	Incorporated Company of Variable Capital (<i>Sociedad Anónima de Capital Variable</i>)
SASO	Mayors' Society of the Department of Sonsonate (<i>Sociedad de Alcaldes del Departamento de Sonsonate</i>)
SIDA	Swedish International Development Cooperation Agency
SRN	National Secretariat for Reconstruction (<i>Secretaría de Reconstrucción Nacional</i>)
TZ	Technical Cooperation (<i>Technische Zusammenarbeit</i>)
UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Emergency Fund
U.S.	United States of America
USAID	U.S. Agency for International Development
VAT	Value Added Tax

1. Introduction

This paper¹ analyses the emergence and development of a new institution at the departmental or intermediate² state level in El Salvador, the **Consejos Departamentales de Alcaldes, CDAs** (Departmental Councils of Mayors).

The CDAs are departmental prolongations of the National Corporation of Municipalities COMURES.³ COMURES is a representative association with the aim to foster and defend municipal autonomy and competencies. It revived in 1986 after more than 40 years of inactivity. Together with the 86' reforms of the legal regime ruling on the municipalities, the revival reflected the increased importance of local governments in Salvadoran politics. The CDAs that consist of all mayors of one department appeared for the first time in the reformed statutes of the Corporation in 1991. Their emergence coincided with the beginning of official decentralization policies of the Salvadoran Government.

In the first years of their existence, the CDAs received increasing attention from the national government. Official documents designated the CDAs as a possible intermediate state level, forming part of the public administration and carrying out sovereign tasks, such as imposing a property tax. Meanwhile, however, the interest of the government in these institutions has vanished; the latest official decentralization strategies make no reference to the CDAs.

The current by-laws of COMURES define the CDAs as "the basic institution of cooperation and solidarity between the municipalities, and the direct link between the Corporation and the municipal councils for the development of the objectives of COMURES".⁴ In practice, their tasks differ, reaching from the discussion of thematic positions of COMURES, to the setting up of development plans for the departments or the establishment of commercial societies for the maintenance of country lanes.

However, not all CDAs fulfil the same functions. Since they came into existence, they developed differently. Hence, up to four types of CDAs can be identified nowadays, ranging from CDAs with a permanent organisational structure and financial independence to CDAs that only meet when summoned by COMURES in order to discuss representative issues. Consequently, the further institutional development of the CDAs, especially with respect to their role and functions, is subject to an intensive debate inside the Corporation. In addition, external actors such as USAID and the GTZ are heavily engaged in these debates, trying to define their own and exclusive field of action.

Institution building and strengthening is not a new field of action for development cooperation. In the 1980s, it played a major part in official development aid.

¹ This paper is based on the MA thesis (in Development Management) that the author submitted at the Institute of Development Research and Development Policy, Ruhr-University of Bochum in 2002.

² El Salvador is divided into 14 administrative subdivisions called "*departamentos*". Within the scope of this study, the terms "intermediate" and "departmental" will be used interchangeably.

³ *Corporación de Municipalidades de la República de El Salvador*. In the following, COMURES will also be referred to as "the national corporation" or only "the Corporation".

⁴ Art. 35 Statutes of COMURES. (This wording as well as all other original law texts and other official government documents have been translated from Spanish into English by the author.)

Institutions were seen as core elements of development and the policy of “institutional development” was designed to help countries to establish and strengthen public and private institutions. In this context, “institutions” stood for specific organisations (for instance ministries), but also in a broader and more fundamental sense for financial markets, land tenure, and legal institutions (USAID 1983).

Despite its “age”, the topic is still relevant today. Though officially no longer called “institutional development”, the strengthening of institutions remains a key objective in development policies, and is incorporated into broader strategies. With respect to decentralization and local government, USAID, for example, aims at the formulation of integrated strategies for building government and civil society at the local level. This approach includes “providing the local actors with the skills and *institutions* that will allow them to practice self-governance”.(USAID 2001).

In El Salvador, institution building has been one of the central areas of development assistance directed at fostering the decentralization process and strengthening the municipalities. Among other activities, donor agencies engaged in the revival of COMURES, and were involved in the emergence of the CDAs. Meanwhile, the assistance has shifted to the organisational development of COMURES and the institutional development of the CDAs. In this context, it is worth mentioning that donor involvement has varied between the departments and still does so today.

In light of the on-going presence of “institutional development” on the development policy agenda and the involvement of donor agencies in the emergence and change of the CDAs, these institutions are an interesting subject for research. Literature explicitly dealing with this topic is scarce. A few (unpublished) consultancy reports deal with the institutional development of COMURES; however, they mostly concentrate on the future development of the Corporation. Even when they recognise the differences of the CDAs, they do not explore the reasons. Instead, final recommendations are often based either on a single CDA taken as a model or the normative basis, i.e. the statutes of COMURES. Academic work concerning the CDAs does not exist at all – neither from a socio-political nor from a legal point of view. Thus, this research fills a gap in the scientific landscape of El Salvador.

Considering that donor agencies are heavily involved in the institutional development of the CDAs, research on this topic should also have a practical impact. The paper explores the possibility to shape an institution, and can thereby contribute to the design of further strategies for the institutional development of the CDAs in El Salvador. Such strategies do not only include political action, but also legal reforms. Institution building also consists of the search for an adequate legal framework within which an institution operates. Imprecise norms can constrain the activities of an institution and thus hinder development. In the case of the CDAs, their legal character as well as their legal capacities are subject to debate. The disputes imply that the emergence and development of the CDAs cannot be looked at only from a socio-political point of view. Instead, complementary legal analysis is necessary.

This paper is divided into six parts. Chapter II that follows this introduction presents some theoretical aspects on legal and political approaches of institution-building. As the emergence and development of the CDAs was closely related to decentralization in El Salvador, chapter III explores the role of municipalities and departments in

Salvadoran politics and gives an overview of the decentralization process. Chapter IV analyses the emergence and initial development of the CDAs at the beginning of the 1990s, focussing in particular on their legal basis. It further examines the socio-political causes of the incorporation of the CDAs into the legal norms. First conclusions with respect to the relevance of the theoretical assumptions are presented at the end of this chapter. The study of the development of the CDAs in Chapter V starts with an analysis of the legal changes. Subsequently, the actual differences in their development are illustrated by four case-studies of different departments. These case-studies also serve to explore the factors causing the differences in the institutional development. Such as the previous, this chapter also finishes with a linkage of the theoretical framework with the empirical findings. Finally, the current challenges of the CDAs are presented and the framework for their future institutional development is explored.

2. Theoretical Framework and Methodology

2.1. Legal Analysis

The paper starts from the following facts: an institution has emerged at the departmental state level, whose political role and legal capacities are unclear and subject to debate. There are two possible approaches to this problem, namely a legal and a political.

First, a legal analysis can be undertaken, characterising the institution in legal terms, exploring its legal basis, and detecting potential loopholes or contradictions in the norms. The CDAs are formed by municipalities. The latter are state bodies that belong to the public administration. The principle of supremacy of law, being one of the elements of the concept of rule of law, demands that all state bodies are bound by existing legislation and requires that they follow and apply it.⁵ Hence, the municipalities are bound by the law; i.e. they cannot neglect legal norms, neither when they act alone nor when they act in an associated form. The CDAs themselves could also be state entities. However, being formed by municipalities does not necessarily imply such a character. Municipalities can also form private associations. Without exploring these questions in more detail, the considerations already demonstrate that legal aspects can affect the framework, in which an institution operates. A further example of law related aspects is the legal personality of an institution. Holding own rights and duties demands legal personality. The capacities of the CDAs, therefore, depend on their legal character. Only a legal study can determine whether such a personality is given. Thus, this paper includes an analysis of the CDAs' legal character as well as their capacities. This analysis consists of an interpretation of the respective legal norms, i.e. the laws, regulations, and statutes ruling on the CDAs. The methods of interpretation include an analysis of the wording, the context, the historical background of the norm, and its purpose.

However, this kind of normative analysis is likely to miss parts of the reality. Particularly in developing countries, norms often differ from practice. For the context of institution building, this difference has far-reaching consequences. It has already been stated, that the international development cooperation participates in the search for an adequate legal framework for the CDAs. Without knowing the reasons for the emergence of the institution, or the real scope of action, any kind of norm setting will most probably not fulfil its expectations, and, in the worst case, bring about even more legal problems instead of solving them. Under these circumstances, the benefits of linking the analysis of the development of an institution from an empirical point of view with legal questions become obvious. Before setting new norms, a socio-political study has to be conducted.

⁵ This principle also exists in Spanish/Salvadoran legal theory, see, for example, García Pelayo (1992): "(E)l Estado legal de derecho (...) se caracteriza por el principio de legalidad, es decir, por la afirmación de la primacía de la ley sobre los restantes del Estado, hecha efectiva por el funcionamiento de unos tribunales destinados a garantizar la legalidad de la acción de la Administración estatal." In El Salvador, it finds its legal basis in Art. 86 of the Constitution.

Political science provides for different theoretical approaches that aim at explaining the birth and change of political institutions. For the CDA being a political institution, this discipline complements the legal theoretical framework of the paper.

2.2. Institutionalism in Political Science

The focus of political scientists on institutions is not a new phenomenon. Classical political theory had put political institutions in the centre of its study, trying to ascertain which political institutions produce the best type of society and individual behaviour.⁶ When political science emerged as a modern academic discipline (early 20th century), this classical tradition still had great impact. The analysis of institutions continued to be a normative study, primarily owing to the close connection between political science and jurisprudence. During the post-war era, behavioural and group-theoretic approaches gained importance. Because of the tendency to reduce the explanation of political processes to social, economic or cultural variables, formal political institutions were of minor importance in these new theories. For the new approaches, the institutional and organisational forms of political life made little or no difference (Thibaut 1986).

The importance of political institutions was rediscovered in the 1980s. Different approaches called "new institutionalism" developed in reaction to the behavioural perspectives that were influential during the 1960s and 1970s. All approaches seek to elucidate the role institutions play in the determination of political and social outcomes (Hall/Taylor 1996). "Institutionalism" today refers to the following three different, but interrelated questions:

"Which institutions are best suited for creating 'good' government and societal relations? What explains the enormous variation in institutional arrangements? And what difference those differences make for political behaviour, political power, and the outcome of the political process?" (Rothstein 1998, 35)

These questions include two different fields of research. Firstly, when asking for the impact of differences in institutional settings on the political outcome, institutions are conceptualised as the independent variable. Hence, in the first case, institutions are seen as explaining factors. Secondly, by contrast, institutions can also be perceived as the dependent variable, i.e. as something to be explained. The questions underlying this approach are, how and why institutions evolve and change. In particular, it is asked whether the structures are inherently the product of an evolutionary process, and if so, which factors explain that process. Or are institutions amenable to design and manipulation? In this paper, the second option is dealt with. We ask for the reasons behind the emergence and differences in development of a specific institution in El Salvador, the CDAs. The findings are crucial for development cooperation. Only if institutions are amenable, assistance directed at institution building makes sense.

Within new institutionalism different schools highlight different analytical approaches,

⁶ Plato's "Republic" e.g. is largely a comparison of different forms of government; Aristotle's "Politics" continues this discussion about political institutions asking e.g. what is the ideal form of government, what type of constitution is most suitable; see Rothstein (1998).

the most important being rational choice institutionalism and historical institutionalism.⁷ The application of rational choice institutionalism to a specific empirical case results in the explanation of the emergence or development of a new institution through its functions. As *Moe* puts it, "(i)f we are to appreciate why political institutions look (and perform) as they do, we need to pay attention to the interests they are intended to serve, and thus to the roles that different types of actors play" (Moe 1990, 232). For the case analysed here, this concept implies that the interests and roles of the actors involved can explain why the CDAs emerged, and why they changed. Actors designed the CDAs in order to pursue precise objectives. They believed that this institutional setting was going to produce specific results. Thus, the assumed functional consequences of the CDAs for their actors can explain their emergence and development. If this theoretical approach holds true, different actors with different interests must have been engaged especially in the processes of institutional change. Otherwise, the differences in development of the CDAs could not be explained.

The approach of historical institutionalism leads to a broader empirical research. In this context, not only the interests and roles of the actors involved have to be considered. Instead, a more comprehensive analysis of the political processes leading to the establishment of the CDAs is necessary. The concept of path-dependency contradicts a purely functionalist explanation of the emergence and development of the CDAs. Already existing institutions constrain the realisation of interests by the actors and thereby direct the process of institutional development. When explaining the differences in development of the CDAs, the historical institutionalist approach presumes that next to a variance of interests, other variables such as other institutions or structures must vary in the different departments of El Salvador. This concept of institutional legacy takes into consideration the historical developments of the different departments, which, for example, could include previous municipal institutions, infrastructure such as the existence of a port in one department, or the impact of civil war.

Despite the differences of the two approaches, the theoretical framework for the study of the emergence and development of the CDAs does not require an "either-or perspective". Indeed, the author even considers a combination of both types of institutionalism as more useful. The influence of actors' interests and the path-dependency of development can both have explanatory power for a certain institutional outcome. Thus, the empirical analysis of this paper includes a detailed assessment of the interests and preferences of the actors involved in the emergence of the CDAs and their developments in different departments, and complements it with an exploration of the historical processes and already existing institutional settings.

2.3. Setting of the Study

Most of the data for this study were obtained during a 10-week field research in El Salvador from July to September 2001. The research was carried out in close cooperation with the GTZ in El Salvador. Since 1995, the GTZ runs a programme called "*Programa de Asesoramiento en el Fomento Municipal y la Descentralización*",

⁷ For lack of space it is impossible to deal with these approaches and their differences in this paper. See Pierson (2000) and Hall/ Taylor (1996) for an overview.

PROMUDE,⁸ aimed at strengthening the municipalities and fostering decentralized democratic structures in El Salvador. The programme has four components, (1) a "*Componente de Descentralización*" consisting of support for establishing the legal framework for decentralization, (2) a "*Componente de Asesoría Técnica*" consisting of support for capacity-building in the municipalities to promote, steer, and control local development, (3) a "*Componente Gremial*" consisting of support for democratic processes at the local level in order to improve the representation of the interests of the local population, and (4) a "*Componente de Desarrollo Local Sostenible*" directed at the promotion of sustainable local development through a cooperation with a national social investment fund. It is currently in its second phase.

COMURES is the partner organisation for the "gremial" or representative component. In its first phase, this component focused more on the local level with the explicit aim of fostering popular participation in decision-making processes. Since 1999, the focus has shifted. Presently, the component emphasises the organisational and political-representative development of the Corporation including the CDAs. Project activities are carried out in San Salvador (where the head office of COMURES is located) and in four departments.⁹ The research for this paper, however, was not limited to these departments since they do not wholly represent the different types of CDAs that exist. Instead, the departments of San Miguel, San Vicente, Sonsonate, and Usulután were selected as case studies, following the criteria of geographical representation and apparent differences in the organisational structure as well as functions. In addition, the analysis is not limited to the role of the GTZ in the process of institutional development of the CDAs, but also includes other donors such as USAID.

2.4. Methods of Data Collection

Most of the legal analysis was based on intensive review (text exegesis) of different legal norms, including legislative and executive decrees, the statutes of COMURES, and the internal regulation of the CDAs. In addition, interviews were held with the head of the legal department of COMURES, a former member of this department, and a lawyer working in the field of international legal cooperation.

The political analysis was also based on thorough literature review, including official government documents, publications on decentralization and municipal development in El Salvador, magazines and press releases of COMURES, (unpublished) project materials, and consultancy reports. Most of the written material was in Spanish and translated into English by the author. The same applies to the legal texts referred to above. Open and semi-structured interviews were held with mayors, management and staff of COMURES, representatives of the programme PROMUDE/GTZ, representatives of other aid agencies, state entities, research institutions, NGOs, and a member of the Commission of Municipal Affairs of the Salvadoran Parliament.¹⁰ Finally, participative observations were made by attending five CDA meetings in different departments and

⁸ Advisory Programme for Municipal Strengthening and Decentralization.

⁹ These departments are Cuscatlán, Morazán, La Unión, and La Paz.

¹⁰ See full list of interviewees in the appendix.

internal meetings of the management of COMURES, as well as by participating in various other events organised by the Corporation.¹¹

The processes this paper aims to analyse have started more than 10 years ago. In consequence, it was rather difficult to obtain data concerning the political interests and constellations prevailing at the beginning of these processes. A culture of taking minutes does barely exist in El Salvador. In addition, some original documents were no longer available. Consequently, much of the research had to rely on the memories of individuals, who often did not remember what exactly had happened or why they had acted in a specific way. Thus, the author encountered problems of information dearth (for example, concerning the reasons why the statutes of 1991 of COMURES were formulated the way they were), and of contradictory information that could hardly be validated. Finally, the legal situation appears to be unclear. Contradicting norms and diverging opinions with respect to legal questions inhibit a concluding legal analysis. The lack of in-depth knowledge of the Salvadoran legal system reinforced some of these problems.

From a practical point of view, the heavy earthquakes that hit El Salvador in January and February of 2001 caused problems. In some departments, the earthquakes had destroyed the infrastructure of the CDAs (offices, equipment etc.). Consequently, their performance suffered and the meetings observed were not necessarily representative. Further, the agenda of some CDAs had changed, since the reconstruction work played a predominant role, particularly in the departments most affected by the earthquakes.

Notwithstanding these limitations, the emergence and development of the CDAs was analysed as thoroughly as possible. The large amount of interviews held and the participation in different CDA meetings as well as other events with mayors and staff of COMURES, compensated most of the limitations encountered. Hence, a good overview of the general situation of the CDAs was obtained, which made it possible to answer the research questions comprehensively.

¹¹ These events were, for instance, a regional CDA meeting in the central zone of El Salvador, a seminar about decentralization organised together with the legislative assembly, or a seminar for representatives of the media dealing with municipal affairs.

3. The Context of the Emergence and Development of the CDAs: Decentralization in El Salvador

3.1. Country Information

El Salvador is 21,476 km² in size and has a population of roughly 6.2 million (1999). This makes it not only the smallest country in Central America, but also the one with the highest population density in Latin America of 258 inhabitants per square kilometre. El Salvador has a republican constitution promulgated in 1983¹² and a democratic regime type with a presidential form of government.

The country struggled through a 12-years civil war that caused approximately 75,000 deaths and about 7,000 "disappearances". A peace accord signed in the Chapultepec Castle in Mexico City in January 1992 finally settled the conflict. The peace process was accompanied by the transformation of the former revolutionary forces of the left-wing guerrilla movement "*Frente Farabundo Martí para la Liberación Nacional*", FMLN, into a political party. In 1994, the FMLN for the first time participated in the presidential, parliamentary, and municipal elections. The last presidential race took place in 1999 and was won by Francisco Flores of the Nationalist Republican Alliance (ARENA). In the following 2000 parliamentary elections, the FMLN became the strongest party for the first time, gaining 36.9% of the vote. Since the end of the civil war, multi-partisanship has developed in El Salvador's political system. However, the system is characterized by polarised competition threatening the consistence and stability of politics (PNUD 2001).¹³

With respect to the political-administrative structure of the country, Art. 200 of the Constitution of 1983 divides the territory of the republic into departments. The executive nominates a governor for each department.¹⁴ According to the *Ley del Régimen Político* of 1879, there are fourteen departments. Originally, these were further subdivided into 39 districts.¹⁵ Meanwhile, these districts have virtually no legal or administrative authority, even though the law establishing them was never formally derogated.¹⁶ However, the constitution provides for an additional level of local government consisting of municipalities that are economically, technically, and administratively autonomous.¹⁷ Today, the total number of municipalities in El Salvador

¹² Constitución de la República de El Salvador, decreed by the Constituent Assembly on the 15.12.1983.

¹³ The term "polarised pluralism" means that the voting electorate tends to align with the extremes of the ideological spectrum.

¹⁴ See Art. 200 of the Constitution: "For the political administration the territory of the country is divided in departments whose number and limit will be determined by law. In each one there will be a proprietary governor and a substitute, appointed by the Executive and whose attributions will be determined by law."

¹⁵ See Art. 1 of the Law on the Political Regime of 1879: "The territory of El Salvador is divided for its administration in fourteen departments, thirty nine districts and two hundred and fifty nine municipal demarcations..."

¹⁶ Interview with Erfried Neubauer, San Salvador, 25.09.2001.

¹⁷ Art. 202 Constitution: "For the Local Governance, the Departments are divided into Municipalities..." and Art. 203 Constitution: "The Municipalities will be autonomous in the economic, technical, and administrative (field) ...".

is 262. The intermediate or departmental level of El Salvador is little developed. The governor has lost his importance as the functions assigned to him by the 1879 Law reflected the political context at the end of the 19th century rather than the contemporary needs. Further, many of his functions were entrusted to other state organs either by laws or by the Constitution of 1983 itself (FESPAD 2001). A secondary law, that according to Art. 200 of the Constitution shall determine the attributions of the governors, was never approved, and the (mostly representative) competencies assumed by the governors are based upon their personal opinions rather than on specific legal norms (Idrovo-Murillo/Orellana 1999). Some ministries and autonomous organisations have established deconcentrated offices in the departments. Their work, however, exhibits a lack of coordination since they do not tune their activities amongst themselves. Besides, they do not coordinate their activities with the municipalities either, and the governor fails to fulfil his potential coordinating role (Torres 1995).

El Salvador's 262 municipalities have an average population of 24,415.¹⁸ Given the high population density, this means that the territorial size of the country's municipalities is exceptionally small (average 80 km²). Their human and financial resources are extremely limited.

Tab.1: *Distribution of the population of the municipalities 2001*

Estimated population	N° of municipalities	Percentage of total N° of municipalities
Less than 1 000	3	1 %
1 001 – 5 000	58	22 %
5 001 – 10 000	67	26 %
10 001 – 20 000	62	24 %
20 001 – 30 000	24	9 %
30 001 – 40 000	9	3 %
40 001 – 50 000	12	5 %
50 000 – 100 000	16	6 %
More than 100 000	11	4 %
Total	262	100 %

Source: "Proyecciones de Población, Dirección General de Estadísticas y Censos", in: Cerritos/Rodríguez (2001)

¹⁸ These numbers of inhabitants per municipality are among the lowest in Latin America, the average being 32,000 (Bye 1999).

3.2. History of the Decentralization Process¹⁹ with special Emphasis on the Intermediate Level

Until very recently, El Salvador was a strongly centralised state where any kind of sub-national level hardly played a role. During the colonial era, the municipalities primarily served as administrative units for the Spanish Crown. With independence from Spain (1821), the municipalities that had turned into strong opposition to the Crown obtained some political autonomy. But already in the 1930s, the new authoritarian government of General Hernández Martínez, who came to power after a military coup, abolished even this limited autonomy and centralised all political and economic power (Medina 2000). From 1931 to 1984, an uninterrupted succession of harsh military regimes ruled the country. Political parties were practically nonexistent and local governments played only an insignificant role (Nickson 1995).

Regarding the territorial organisation of the state directly after its independence, El Salvador was divided into three zones (occidental, central, oriental) and four departments.²⁰ Each department had a governor. Within his jurisdiction, he dictated to the municipalities the directives that had been enacted by the executive. In 1875, the number of departments was raised to fourteen. This was accompanied by increased political-administrative importance of the departments since the central administration started being deconcentrated (Idrovo-Murillo/Orellana 1999a). In this system, the governor served as a bridge between the ministries and the deconcentrated sectoral services.

From the 1950s onwards, the government structured its growing public sector following a sectoral rather than a territorial logic. The ministries were organised horizontally, leading to the creation of regional dependencies. "At the same time, International Financial Institutions demanded the establishment of autonomous entities" (Torres 1995, 24). These were supposed to determine the destination of credits and guarantee the efficiency of the services offered by them, such as water, energy, etc. To the detriment of a territorial organisation, from then onwards emphasis was placed on a sectoral organisation of the state. The governors stopped being the channel for transmitting directives of sectoral character. Each ministry and autonomous entity fulfilled its task independently. The municipalities were still seen as purely

¹⁹ The term "*decentralization*" is often used to describe many different phenomena; one single definition does not exist. In this study, the terminology of the Salvadoran government will be used as a reference, which follows the definitions of Cheema/Rondinelli (1983). Hence, "decentralization" is defined as "the process by which competences, resources and decision making capacity are transferred between different organizational levels of the national government or between this and other entities or other levels of government." It embraces the following three modalities: *deconcentration* (redistribution of decision making authority and financial management responsibilities among different levels of the central government), *delegation* (total or partial transfer of functions, resources and decision making authority from the national government to other entities not wholly controlled by the central government, but ultimately accountable to it) and *devolution* (definite transfer of authority from the central government to the local governments for providing services, obtaining resources and deciding independently). See Gobierno de El Salvador / Secretaría Técnica de la Presidencia de la República - Unidad de Modernización (2000).

²⁰ The three zones corresponded to the geographical division of the country: occidental, central, and oriental. The occidental and oriental zones were each composed of one department, the central zone of two. See Torres (1995).

administrative units.²¹ Even if the 1950 Constitution did provide them with some autonomy, specifically with respect to the execution of their functions, in practice the state maintained its centralism and its paternalistic attitude towards the municipalities. (Morales Ehrlich et al 1995).

Changes came with the civil war, which “served as a catalyst that placed decentralization on the political agenda” (Nickson 1995, 178). The new constitution promulgated in 1983 was the first step towards a more favourable context for reforms in the municipal sector through the formal recognition of municipal autonomy.²² In addition, the Christian Democratic government elected in 1984 shifted its attention to the local level. It “rejected the previous harsh counterinsurgency strategy against the revolutionary forces of the FMLN and instead sought to win the ‘hearts and minds’ of the rural population by demonstrating the benefits of a democratic system of local government in contrast to the allegedly authoritarian system the FMLN applied to the local administration of areas under their control” (Nickson 1995, 178).

Consequently, a new Municipal Code was passed in 1986. It regulates in detail the rights and duties of the municipalities.²³ According to Art. 2, the municipality is “the primary political-administrative unit in the state (...) that guarantees popular participation in the conduction and construction of the local society”. The extensive autonomy of the municipality foreseen in Art. 3 and 4 of the new law sets the legal basis for comprehensive territorial decentralization.²⁴ The new municipal code “broke the umbilical cord between the executive organ and the municipal governors, and ended the trusteeship that (...) had been exercised by the central government via the governors, based on the 1879 law on the political regime” (Morales Ehrlich et al 1995, 37). This law established an explicit subordination of the municipalities to the governors. It still regulates the role and function of the governors as far as the municipal subject matter is not concerned. The combination of this outdated law with the lack of any secondary legislation that specifies the role of the governors contributes to the (legal) uncertainty and confusion whether any kind of intermediate territorial level still has significance within the state organisation of El Salvador.

3.3. Recent Developments: Decentralization in the 1990s

The idea of implementing an explicit decentralization policy in the country arose for the first time in 1991. The ministry for planning, MIPLAN,²⁵ promoted decentralization as

²¹ See Art. 105 Constitution of 1950: “The law will determine the attributions of the municipalities, that will be purely of economic and administrative character.” Cited after Morales Ehrlich et al. (1999).

²² Art. 203 Constitution: “The municipalities will be economically, technically, and administratively autonomous.”

²³ “Código Municipal”, decreed in the Decreto Legislativo N° 274 del 30.01.1986, published in the Diario Oficial N° 23, Tomo N° 290 of the 05.02.1986.

²⁴ *Territorial decentralization* stands for transferring competencies to territorial entities, i.e. legal persons of public law that come up with a determined territory as one of their essential elements. In contrast, *functional decentralization* means transferring competencies to certain legal entities of public law of an institutional type that do not have a territory, but that develop their activities within one territory. See Morales Ehrlich et al. (1995).

²⁵ *Ministerio de Planificación y Coordinación del Desarrollo Económico y Social.*

part of a comprehensive strategy for modernising the public sector.²⁶ Financed by UNDP, the ministry studied the weaknesses of the public sector and documented the results in the "Decentralization and Municipal Strengthening Strategy" in 1993. The study identified enormous institutional diversity and heterogeneity: 45 autonomous entities were listed in addition to numerous deconcentrated offices that lacked any kind of coordination. To overcome these problems, the study proposed "to restructure the organisation of the public administration, focusing on two levels: the *national government*, being responsible for normative and strategic tasks as well as the definition of national policy, and the *municipalities*, charged with the implementation of public policies as well as the administration and operation of services" (Orellana 1997, 13).²⁷

In September 1994, just after the inauguration of President Calderón Sol, the Secretariat of National Reconstruction, SRN,²⁸ formulated a "Policy of Local Socio-Economic Development and Operative Strategy".²⁹ It explicitly included decentralization and for the first time recognised the limitations of the municipal system. According to the SRN, the decentralization should ideally be directed to the municipalities, but "given their restrictions in capacities, the lack of economic and administrative infrastructure (...), it is recommended to initiate the process under conditions of viability, less costs and effort that secures the success (of this process) in terms of a better and efficient supply of services" (Gobierno de la República de El Salvador 1994, 45). In this context, the subject of this paper appears for the first time on the official political agenda of the central government: as a means to initiate the decentralization process, the SRN proposes to strengthen the **Consejos Departamentales de Alcaldes**. According to the SRN, the CDAs could administer, operate, and supervise the delivery of decentralized services until the municipalities were financially and technically able to assume these tasks. However, this strategy was never implemented effectively. Instead, the focus of the national government shifted to the functional decentralization of public services in the following years. For example, a series of pilot projects in the educational and water sectors were carried out.³⁰

In 1997, President Calderón Sol created the National Commission of Development (CND³¹) entrusting it with the task of elaborating a "National Plan".³² In January 1998,

²⁶ "Programa Modernización de la Administración Pública en El Salvador MIPLAN/PNUD"; for a detailed analysis of this programme see Morales Ehrlich et al. (1995).

²⁷ Without analysing this concept in detail, the author only wants to draw attention to its apparent lack of conceptual clarity. The execution of all public policies would overtax the municipalities even in administratively more developed countries, and a series of political tasks (such as those belonging to the foreign policy) can inherently be executed only by the central state.

²⁸ *Secretaría Nacional de Reconstrucción*. This secretariat emerged from the CONARA (*Comisión Nacional de Reconstrucción de Areas*) in 1992, a semi-autonomous institution established in 1983 that was responsible for the coordination of the reconstruction of the zones most affected by the armed conflict. See USAID/El Salvador (1994).

²⁹ Gobierno de la República de El Salvador: *Política de Desarrollo Socio Económico Local y Estrategia Operativa*. Propuesta sujeta a Discusión. Septiembre de 1994.

³⁰ For instance, the EDUCO Programme that transfers the administration of rural schools to parents in the school districts or the project TETRALOGÍA that delegates the administration of potable water to a society composing six local governments in association with private businessmen. For more details see Orellana, Víctor A. (1997).

³¹ *Comisión Nacional de Desarrollo*.

³² *Plan de Nación*.

this commission submitted its report called "Basis for a National Plan." According to this document, the atomised scheme of administration consisting of governmental centralism and a dispersion of local governments is no longer adequate. Hence, it was found that the country needs a fundamental decentralization of the public administration, and a thorough modification of the political-administrative division of the country (CND 1998). Municipal associations, often promoted as a means of providing the local governments with the necessary level of efficiency and functionality, are not considered as sufficient. Instead, a total revision of the political-administrative structure of the country is deemed to be necessary, which implies the abolition of some of the smaller municipalities.

In 1999 and 2000, the CND further developed its proposals in two other documents.³³ These identified the creation and promotion of "Development Regions" as the best strategy for restructuring the administration of the country. The CND suggested to create five regions according to criteria such as natural resources, demographic density, and physical infrastructure. According to the coordinator of the CND, these regions might replace the departmental structure of the country one day.³⁴

The latest development of El Salvador's decentralization policy was the "Local Development Strategy", ENDL,³⁵ assumed by the Flores administration in December 1999. It is closely related to the transformation of the Social Investment Fund for Local Development, FISDL,³⁶ from a project executing agency into a normative entity that promotes and finances local development. The new strategy elaborated by the FISDL and a "Consulting Group"³⁷ shall "achieve the reorientation and integration of the efforts of all actors that participate in the local development to foster a process of integral and balanced development in the whole territory" and will serve as the basis for channelling funds to the local governments (Grupo Consultivo/FISDL 1999, 10). One of the components of the ENDL is the reorganisation of the institutional and territorial frame of local development. A national decentralization policy is one of the actions mentioned in this context and linked to the promotion of free associations of municipalities. The ENDL and the proposal of a "National Plan" with its "Actions" do not totally coincide with each other. The two processes have run parallel and have led to different concepts for the future of local development and the decentralization process. So far, it is unclear which of them, if any, will be implemented.

Summing up, the current situation of the municipalities and the intermediate state level can be characterised in the following way: In spite of the formal division of the

³³ CND: *Acciones Iniciales del Plan de Nación* (1999) and CND: *Acciones Territoriales del Plan de Nación* (2000).

³⁴ Interview with Sandra de Barraza, San Salvador, 13.09.2001.

³⁵ *Estrategia Nacional de Desarrollo Local (ENDL)*.

³⁶ *Fondo de Inversión Social para el Desarrollo Local*. The FISDL developed in 1996 out of the Fondo de Inversión Social (FIS) and has the mandate to support the Salvadoran municipalities with the financing of local investment projects. Up to June 1999, the Fund was merely an executing agency. Under the new administration it was changed into a supervision and steering entity now being the political authority responsible for local development. Cf. Interview with Rafael Góchez, San Salvador, 22.08.2001.

³⁷ This group consists of representatives of the Secretaría Técnica de la Presidencia, COMURES, ISDEM, and various national non-governmental organisations. In addition, representatives of international agencies also participate as observers (PNUD 2001).

territory into 262 municipalities and fourteen departments, the latter have virtually no legal or administrative authority. The government tends to deal directly with the municipalities although nearly half of them has less than 10.000 inhabitants. The small size usually means that their administrative capacities are too small and that they lack sufficient funds to meet their inhabitants' needs effectively.³⁸ Even though the problem of inefficiency of having 262 municipalities has long been recognised and is included in the political rhetoric promoting political-administrative reorganisation, hardly any measures were taken to address this situation. The whole decentralization debate of the last decade has been characterised by ample rhetoric, but little progress: most of the proposals formulated have remained paper work and only a few pilot projects of a sectoral character were undertaken.

3.4. Involvement of External Actors in the Decentralization Process

Within the previous summary of the process of decentralization, the issue of external influence has hardly been mentioned. Much of the aforementioned rhetoric, however, may be explained by the involvement of external actors. According to a recent evaluation report of USAID

“perhaps (the) most important set of players in the decentralization debate are international donors and financial institutions. As the democracy and modernization agendas have achieved greater currency among these institutions, increasing numbers of projects have been developed which either seek to increase the capacity and capabilities of local governments or which seek to increase momentum toward decentralization. For instance, most, if not all of the impetus for decentralization of water services which is frequently cited as one of the most promising areas for decentralization, has come from USAID and from the IDB. Much of the interest in and funding for improving local government capabilities has come from USAID, GTZ, and the UNDP. It should also be pointed out that much of the work of the (national) NGO (working in this field) is also funded by the donors.” (USAID/EI Salvador 2000, 11 f.).

³⁸ In El Salvador, most municipalities hardly generate any own income. Instead, they depend on transfers from the central government. The most important instrument is the Municipal Development Fund FODES (*Fondo para el Desarrollo Económico y Social*) that channels funds of the national budget to the municipalities following the criteria of population, equity, poverty, and territorial extension. See Aghón/Espitia (2000).

4. Origin and Initial Development of the CDAs

4.1. Revival of COMURES

The CDAs are departmental prolongations of the National Corporation of Municipalities, COMURES. Their emergence is directly interrelated with the revival and development of COMURES since 1986. Therefore, an assessment of the CDAs has to start with a brief analysis of the corporation itself.

4.1.1. Legal Foundation and Legal Character of COMURES

The foundation of COMURES in El Salvador translated the resolutions of the 1st Pan-American Congress of Municipalities (celebrated in Havana/Cuba in 1938) into action. Convinced that only the municipalities could guarantee democracy, a national association was expected to strengthen the role of the municipalities in the country (Alfaro/Pinto 2001).

In 1940, the Salvadoran mayors celebrated the "First Mayors' Congress" in San Salvador, where they agreed upon the foundation of an "Corporation of Municipalities of the Republic of El Salvador (COMURES)" and promulgated its first statutes. One year later, the executive approved these norms and conferred legal personality to the Corporation.³⁹ COMURES was established as a "*corporación de utilidad pública*",⁴⁰ based on Art. 540 of the Civil Code. This civil law base of COMURES speaks for a civil character of the Corporation.

Astonishingly, there also exists a legislative decree promulgated by the parliament that "creates" COMURES.⁴¹ According to Art. 1 of this law, "the local councils of the republic, in the name of their respective municipalities, shall form an association in charge of watching over their general interests that will be called 'Corporation of Municipalities of the Republic of El Salvador'." Art. 2 then states that the activities of the Corporation will be ruled by its own statute after having been approved by the executive.

In consequence, the legal character of COMURES remains uncertain: The existence of a legislative decree may contradict a civil character as Art. 541 Civil Code states that "judicial persons in the sense of the civil code are not the corporations, which have been established by a law or a decree of the executive". As a result, in case of COMURES – after having been created by a law – Arts. 540 would not be applicable and the Corporation would not be ruled by civil, but by public law. The problem

³⁹ Acuerdo Ejecutivo No. 1343 del 16.09.1941, published in the Diario Oficial No. 205 Tomo 131 of the 16.12.1941: "Having seen the (...) statutes of the 'Corporation of Municipalities of the Republic of El Salvador', founded in this capital, and not containing in the 60 articles anything against the public order, the laws or the good customs, in conformity with Art. 543 of the Civil Code, the Executive Power agrees: to approve them in all parts and confer to this entity the character of a judicial person."

⁴⁰ Corporation of public utility.

⁴¹ Decreto Legislativo No. 66 of the 06.11.1941, published in the Diario Oficial No. 131 of the 13.11.1941: "*Decreto de Creación de la Corporación de Municipalidades de la República de El Salvador (COMURES)*".

described is typical for El Salvador: existing and valid legal norms contradict each other and thus create legal uncertainty.

However, there are two arguments in favour of a civil character of the Corporation. First, the legal principle "*lex posterior derogat legi priori*" speaks for the validity of the presidential decree approving the statutes.⁴² Second, a general *opinio iuris* exists confirming the civil character of COMURES. For example, the Vice-Ministry of Transport that hands out registration plates for vehicles has never given official plates to COMURES. If the Corporation had public character, it could not have been assigned private registration plates.⁴³ Hence, the legal department of COMURES stresses the civil nature of the Corporation.⁴⁴ With the aim of finally dispelling any existing doubts regarding the legal character of COMURES, the last modification of its statutes agreed upon in 2000, but not in force yet, has explicitly incorporated the legal nature of the Corporation.⁴⁵

For the purpose of this study this problem shall not be analysed any further. It has been shown that some uncertainty exists with respect to the legal character of COMURES, but that more arguments speak for the civil nature of the Corporation.⁴⁶ For the CDAs as subdivisions of COMURES this argumentation *prima facie* implies a civil character as well.

4.1.2. Rebirth of COMURES in 1986

In the 40 years following its foundation, the Corporation remained inactive. It was only in 1986 that a number of mayors, predominantly of the governing Christian Democratic Party (PDC), decided to revitalize COMURES. Their objective was to take advantage of the already existing legal personality and bring the municipal councils together in order to promote decentralization and strengthen municipal competencies.⁴⁷ This activity has to be regarded in the context of national politics: as stated above, the Christian Democratic Government elected in 1984 had shifted its focus to the local level. The revival of COMURES corresponded with the increased role of the municipalities in the country.

⁴² "The later law derogates the earlier law". Assuming that both norms enter into force the day after their publication and applying the *lex posterior* rule, the presidential decree would have priority since it was published after the legislative decree.

⁴³ This and other examples are cited in a statement of the legal department of COMURES concerning the legal nature of the Corporation. See COMURES (n.d.).

⁴⁴ Interview with Pablo Portillo, San Salvador, 24.08.2001.

⁴⁵ Art. 1 of the Statutes of COMURES will be substituted by the following: " The Corporation ... is an Entity of Private Law, of public utility, non governmental, with non profit-making and non partisan aims, with recognised own legal personality and with statutes based on Art. 543 of the Civil Code ..." The statutes still need to be approved by the executive and published in the Diario Oficial.

⁴⁶ One final remark has to be made with regard to the legal character of COMURES: In 1996, a new legal regime was established for associations and foundations without profit-making intentions (*Ley de Asociaciones y Fundaciones sin Fines de Lucro*) that according to its Art. 94 replaces the Arts. 540 ff. of the Civil Code. According to its Art. 93, judicial persons that before the entrance in force of the new law had been approved with the character of a corporation of public utility will be subject to the new regime. As a result, COMURES is now ruled by the law of associations and foundations without profit-making intentions, however not changing its private character. Cf. interview with Rommell Sandoval, San Salvador, 06.09.2001.

⁴⁷ Interview with José Antonio Morales Ehrlich, San Salvador, 13.08.2001.

In addition, the Salvadoran Institute for Municipal Development (ISDEM⁴⁸) was created by the national government in 1987. The ISDEM's task was to offer technical, administrative, and legal advice to the municipalities.⁴⁹ At the end of 1988, the ISDEM started functioning "in the shade of COMURES" (Morales Ehrlich et al 1995, 45). In the following years, the two institutions practically operated together, occupying the same location and sharing the same administration. Donations by USAID provided financing for COMURES during that period (Buller/Palesch 1993).

4.2. Legal Origin of the CDAs: The Reformed Statutes of 1991/92

4.2.1. Reform of the Statutes in 1991/92

In 1991, after the municipal elections, 28 recently elected mayors – with the support of USAID – took the initiative to work on a substantial reform of the statutes of COMURES (Idrovo-Murillo 1999). These reforms aimed at separating COMURES from ISDEM, clarifying the mission and objectives and establishing an independent and neutral "gremial" agenda. The National Mayors' Congress, which according to the statutes is the highest organ of the Corporation, approved the initiative.⁵⁰ However, it took until 1992 for the reforms to enter into force.⁵¹ According to the new by-laws of the Corporation, the "purpose of COMURES is the defence of municipal autonomy and competencies through the promotion of the democratic and participative principles of '*municipalismo*' and the effective representation of the municipalities in front of the political, economic, and normative organisms of the state and other institutions close to the municipalities". More specifically, Art. 4 of the statutes lists three areas of action: (1) the political area that aims at the promotion and consolidation of the decentralization process, (2) the legal area that includes the elaboration of law proposals, which improve the legal situation of the municipalities, and (3) the "gremial" or representative field of action. In this context, the CDAs appear for the first time.⁵²

4.2.2. Incorporation of the CDAs into the New Statutes

Art. 4 (2) N° 2 of the new statutes cites as one of the activities in the representative area, that the Corporation "consolidates the formation and operation of the *Consejos Departamentales de Alcaldes*, as Associations of Public Law with effective participation in the planning, coordination, and execution of the economic and social development of the departments, through inter-municipal cooperation".

According to Art. 29 (1) of the Statutes, "the *Consejos Departamentales de Alcaldes* constitute the organ of election and deliberation; being the basic instance of the

⁴⁸ *Instituto Salvadoreño de Desarrollo Municipal.*

⁴⁹ Art. 1 and 4 Ley Orgánica del ISDEM (Decreto No. 616 del 4 de Marzo de 1987, published in Diario Oficial No. 52 Tomo 294 of the 17.03.1987).

⁵⁰ The congress is composed of all Salvadoran municipalities represented by their respective mayors.

⁵¹ New Statutes of COMURES approved in the Presidential Decree Acuerdo Ejecutivo No. 76 of the 18.12.1991, published in the Diario Oficial No. 92, Tomo 315 of the 21.05.1992.

⁵² An organisational chart of the Corporation following the reforms of 1993 is presented in the annex.

Corporation and municipal solidarity.” Art. 32 specifies the relation between the Corporation and the CDAs as follows: “The CDAs constitute the direct link between the Corporation and the municipalities composing them for the development of the objectives of COMURES”. All municipalities of one department make up a CDA, in which they are represented by the respective mayors (Art. 29 (2)). A pluralistic board of directors presides the CDAs (Art. 29 (2)). According to Art. 30, an internal regulation specifies their internal organisation as well as their tasks.

4.2.3. Tasks of the CDAs according to the Legal Norms

The tasks of the CDAs are listed in the first internal regulation of the CDAs. This regulation reproduces in general terms the objectives and attributions of the national corporation as those of the CDAs and adds the following tasks (Buller/Palesch 1993):⁵³

- Promote common projects of departmental or inter-municipal character that because of their costs and size exceed the particular possibilities of each local government.
- Stimulate and promote the community organisation through popular participation.
- Enter into cooperative agreements for the realisation of projects and activities with international agencies, government institutions, NGOs, dealing with the municipal development of the department.
- Support the national government in the process of economic, administrative, and functional decentralization that converts municipality and department into managers of their own development.
- Identify, propose, and evaluate the programmes of technical assistance and training provided by the ISDEM, for the purpose of proposing means for improvement and rectification in order to secure their greater effectiveness at the departmental level.

4.2.4. Legal Character of the CDAs

As seen above, the legal character of COMURES is in dispute but more arguments can be found which are in favour of its civil character. Consequently, one would assume that the CDAs as organs of the Corporation share this legal character. Nevertheless, in the reformed statutes, the CDAs appear as “Associations of **Public Law**”.

Associations of public law assume competences that correspond to the executive of the state. As such, the CDAs would belong to the public administration, i.e. they would be part of the state. Their attribution to support the national government in the decentralization process as it is laid down in the internal regulation confirms the concept of a CDA that is closely related to the state. Apparently, the statutes do not perceive the CDAs as bodies that represent the interests of the municipalities **against** the central state. However, this was one of the reasons for the revival of COMURES in 1986. As the former mayor of San Salvador who was involved in the revival of the Corporation stated, the mayors thought of COMURES as a “syndicate of

⁵³ The data needed for validating whether these functions were carried out in practice by the different CDAs in the country, or in more general terms, to find out when and how the CDAs started operating, were unavailable.

municipalities".⁵⁴ According to the director of the legal department of COMURES, the first statutes were "badly edited".⁵⁵ Associations of public law "are something else" since they are created by law, and they form part of the state.⁵⁶ The CDA, however, find their basis in the statutes of COMURES which are of civil law nature.

The contradictions contained in the norms cannot be resolved. Statutes are no state laws and, as a result, cannot create associations of public law. For the following developments of the CDAs, however, it is important to keep in mind that in 1991/92, the CDAs were perceived as institutions, which were linked to the public administration of the state.

4.3. Institutional Contexts

The CDAs emerged in a context of already existing institutions and structures in the departments. Thus, this section analyses the historical development of coordinating bodies previously existing at the departmental level.

4.3.1. Former Experiences with Coordinating Bodies at the Departmental Level

Coordinating Committees at the departmental level already existed at the beginning of the 1980s. The **CODERAs**⁵⁷ (Departmental Committees for the Reconstruction of Areas) were part of the CONARA programme. The National Commission for Area Reconstruction, CONARA, was created in 1983 as a semi-autonomous institution under the Ministry of Planning (USAID EL Salvador 1994). According to the former director of the CONARA, "the commission started as a counterinsurgency institution".⁵⁸ It was responsible for the coordination of the reconstruction of those zones that were most affected by the civil war. CONARA aimed at organising the population in order to make them participate in the discussion and implementation of projects that each ministry was planning to carry out. This kind of participation was supposed to re-establish the confidence of the local population in official state entities. At departmental level, the ministries were coordinated through the CODERAs. They took the final decision, which projects were going to be carried out. In the CODERAs, the military – in form of the departmental major – played a prevailing role. They only acted *de facto*, i.e. without any kind of legal base.⁵⁹

In 1986, USAID began to support CONARA. This is when the so-called "MEA Project"⁶⁰ commenced that channelled funds to local governments for building small infrastructure projects. To promote popular support for the government, all projects had to be identified at an open town or village meeting, then ranked in priority and selected by the municipal council. CONARA finally transferred the funds for eligible

⁵⁴ Interview with José Antonio Morales Ehrlich, San Salvador, 13.08.2001

⁵⁵ Interview with Pablo Portillo, San Salvador, 24.08.2001.

⁵⁶ Ibid.

⁵⁷ *Comités Departamentales para la Reconstrucción de Áreas*.

⁵⁸ Interview with Norma de Dowe, San Salvador, 01.09.2001.

⁵⁹ Interview with Maura de Montalvo, San Salvador, 14.08.2001.

⁶⁰ Social Stabilization and Municipal Development Strengthening Project, called "MEA Project", see USAID/El Salvador (1994). MEA abbreviates *Municipalidades en Acción*.

projects to the mayors. The reason for the MEA project can be found in the broader context of U.S. American–Salvadoran relations at that time. The influence of the United States traditionally had been very strong in the region. After the fall of the Somoza regime through the revolutionary *Frente Sandinista de Liberación Nacional* (FSNL) in Nicaragua in 1979, the U.S. government wanted to prevent any kind of similar revolutions in neighbouring countries. In the midst of the Cold War, the Soviet Union should not gain more influence in areas so close to the own territory (Fischer-Bollin 1999). Consequently, the US supported the Salvadoran State in its fight against the guerrilla with various means, particularly in the form of military aid. In addition, development assistance was provided, however, always under the concept of counterinsurgency. The MEA funds that enabled mayors to carry out projects at the local level were meant to improve the relations between the local government and the population, thereby strengthening state structures, and at the same time preventing the population from joining the opposing guerrilla troops.⁶¹

In 1988, CONARA was restructured. Departmental offices of CONARA were created to support the municipalities in the implementation of projects. In addition, the existing CODERAs were transformed into **CDCCs**⁶² (Departmental Councils for Joint Coordination). They were composed of the departmental civil servants of the different line ministries, autonomous and semi-autonomous entities, the governor, the departmental major, mayors, and representatives of CONARA itself. Their function was the execution of projects that exceeded the amount assigned by the MEA to single municipalities (Morales Ehrlich et al 1995). Like the CODERAs before, the CDCCs only acted *ipso facto*, i.e. lacked any kind of formal legal basis.

The restructuring process of CONARA continued after the presidential election in 1989 that had led to a change of government from the Christian Democratic to the ultra-conservative ARENA party. Under a new leadership, the influence of the military in the institution vanished.⁶³ This loss of influence reflects a general tendency of decreasing importance of the armed forces in the country. Two events contributed to this situation: First, the collapse of the Soviet Union and the disappearance of the East-West ideological dimension of internal conflicts in El Salvador and Nicaragua led to a shift in U.S. foreign policy, away from military confrontation toward a graceful exit from the region's wars. Second, a counterinsurgency unit murdered six Jesuit priests, their housekeeper and her teenage daughter in November 1989. This crime sent shock waves around the world, and isolated the Salvadoran government and especially the armed forces, battering their prestige (Arnson 1999). The consequence was not only that the U.S. drastically reduced their military aid,⁶⁴ but also a change of national politics, namely the loss of influence of the armed forces.

This development also had its impact on the departmental structure of CONARA. In 1990, the **CEDs**⁶⁵ (Special Departmental Committees) were created, that substituted

⁶¹ Interview with José Antonio Morales Ehrlich, San Salvador, 13.08.2001.

⁶² *Comités Departamentales de Coordinación Conjunta*.

⁶³ Interview with Norma de Dowe, San Salvador, 01.09.2001.

⁶⁴ After the murder, the U.S. Congress adopted a 50% cut in aid to the Salvadoran army in 1990. See Arnson (1999).

⁶⁵ *Comités Especiales Departamentales*.

the CDCCs. They were composed of all mayors of one department and the departmental governor. Hence, the military majors did not participate anymore. The same holds for the line ministries, which stopped being represented in the departmental committees. The functions, however, did not change. The CED still decided upon public works projects carried out in the department and financed by the CONARA.

After the signing of the peace accords, a National Reconstruction Plan was developed in 1992. Under this plan, CONARA was renamed "Secretaría de Reconstrucción Nacional", SRN, and was charged with directing the reconstruction effort. The CEDs continued as a programme of the SRN for selecting and managing development projects in the department under the auspices of USAID (COMURES 1993). In the context of the MEA project, USAID set up three funds in 1992: two specific municipal funds⁶⁶ and a third fund available only to the CEDs. The purpose of the latter was to encourage two or more municipalities to jointly develop projects with a broader geographic impact.

Apart from the departmental committees linked to the MEA process and the reconstruction work, another institution, the **COAMSS**, has to be mentioned. In 1986, a heavy earthquake hit El Salvador. In order to be able to manage the reconstruction of the area, the mayors of the metropolitan area of San Salvador decided to establish the "Mayors' Council of the Metropolitan Zone of San Salvador", COAMSS.⁶⁷ In 1987, the constitutive act was signed that established the COAMSS as a decentralized and autonomous entity.⁶⁸ The thirteen municipalities located in the metropolitan zone of the capital formed this council.⁶⁹

Summarising the developments so far, it can be stated that coordinating bodies at the departmental level had been established primarily for the planning and coordination of infrastructure projects. Apart from the COAMSS, they functioned as *ad hoc* bodies without a formal legal base and received their funds from the central government. Finally, they were composed of all mayors of one department and the political governor.

4.3.2. Relationships between CDAs and CEDs

The experiences of coordinating activities at the level of the department had an impact on the revived association of municipalities. In 1989 and 1990, the idea of adopting

⁶⁶ These were a *Municipal Incentive Fund* rewarding municipalities with additional projects and a *Municipal Strengthening Fund* aiming at an improvement of the municipalities' financial and management capabilities. For a more detailed analysis see USAID/El Salvador (1994).

⁶⁷ *Consejo de Alcaldes de la Zona Metropolitana de San Salvador*. Cf. interview with Antonio Morales Ehrlich, San Salvador, 13.08.2001.

⁶⁸ Acta No. 1 del 4 de julio de 1987, published in the Diario Oficial No. 129, Tomo 296, of the 14.07.1987. The establishment of the COAMSS was based on the Arts. 14 to 16 of the Municipal Code. It still exists as a municipal association and has established a special planning office for the metropolitan zone. Cf. interview with Oscar Ortíz, Nueva San Salvador, 24.09.2001.

⁶⁹ Two of the municipalities belong to the department of La Libertad, the rest to the department of San Salvador.

such a departmental structure for COMURES arose.⁷⁰ In 1991, the new statutes of the Corporation were established. In these norms, the CDAs appeared for the first time. The functions of the former departmental bodies, primarily the coordination and implementation of projects, can explain why the CDAs were designed as “associations of public law” in the statutes. The tasks fulfilled by these bodies belonged to the field of public administration. This led to a “functional” conception of the CDAs where the idea of representing and defending the interests of the municipalities played a minor role.

In legal terms, two departmental institutions existed alongside each other during the first years after the incorporation of the CDAs into the statutes of COMURES: the CEDs as a programme of CONARA, later SRN, for the coordination of projects in the department, and the CDAs as part of COMURES.⁷¹ Both were composed of all mayors of one department. The political governor, though, was a member of the CED only.

In practice, however, the distinction between the CEDs and the CDAs was sometimes blurred. In its “Conclusions and Agreements”, the 8th National Mayors’ Congress resolved to “strengthen the **Consejos Departamentales de Alcaldes**”. In order to reach this goal, the congress defined as one of the tasks of the Corporation “that COMURES coordinates the advice and training for the **CEDs**; establishes an internal regulation, and unifies criteria of the different political institutions for a better functioning of the **CEDs**”.⁷² Apparently, in this context the terms CDA and CED are used as synonyms. At another occasion, the president of the CDA of San Miguel declared during a CDAs meeting in 1994 that “one should not confuse a CDA with a CED that is a programme of the SRN”, but that a “CED only complies with one of the multiple functions of a CDA”.⁷³

The two examples cited above show that, in practice, the “CDAs functioned as CEDs” (Buller/Palesch 1993, 61) – or vice versa. In their reunions at the departmental level, the mayors carried out a double role: *gremial* or representative as members of the CDAs of COMURES and *functional* as participants of the CEDs. Nevertheless, one contradiction persists: the political governor never was a member of the CDA. For lack of data the involvement of the governor in the CDAs could not be clarified.

4.3.3. Government Proposals regarding the Development of the CDAs

In the first years after the incorporation of the CDAs into the statutes of COMURES, the Salvadoran government accorded them an important role in the decentralization process. Two documents of national entities explicitly dealt with the CDAs. Their content shows that the national government conceptualised the CDAs as part of the public administration and that it did not differentiate between CDA and CED either.

⁷⁰ Interview with José Leonidas Rivera Chávez, José Jeremia Villalobos and Sandra de Orellana, San Salvador, 25.09.2001.

⁷¹ Interview with Víctor Antonio Orellana, San Salvador, 22.08.2001.

⁷² Conclusiones Generales, Compromisos y Acuerdos del VIII Congreso Nacional de Alcaldes, celebrated in the city of San Salvador between the days of 22 and 24 of September of 1993. Published in COMURES (1993).

⁷³ Saúl Riveras, President of the CDA of San Miguel and Director of COMURES 1994 to 1997 during the first CDA meeting after the municipal elections in 1994; cited in COMURES (1994, 8).

As stated above, in 1994, the SRN formulated a "Policy of Local Socio-Economic Development and Operative Strategy" that explicitly included a decentralization component.⁷⁴ According to the SRN, decentralization should ideally direct itself towards the municipalities. Considering the shortcomings of many local governments, however, the policy suggests to strengthen the "intermediate municipal institutions at the departmental level, the so-called CDAs". The SRN further states that "these organisations have worked in an associated form during the last two and a half years carrying out inter-municipal infrastructure projects for their communities". Since it were the CEDs that were responsible for carrying out public works, and not the CDAs as part of COMURES, it becomes obvious that the SRN did not differentiate between CED and CDA. The terms are also used as synonyms.

According to the strategy, the CDAs should carry out the following activities:

- Serve as valid operators of the public services being decentralized, administering, operating, and supervising the delivery of these services.
- Formulate strategic development plans.
- Create funds for financing local development.
- Coordinate and articulate the social demands for the human promotion.
- Collect funds coming from the property tax.

The last task was further specified in a law proposal elaborated by the SRN.⁷⁵ This draft clearly defines the way of levying the property tax as well as its calculation and employment. Art. 6 establishes that "the imposition of the property tax will be entrusted to the Consejos Departamentales de Alcaldes". It further "legally recognises the legal personality of the CDAs, giving them the faculties that this law confers upon them." Consequently, the CDAs are perceived as state entities since levying taxes is an act of sovereignty. This concept corresponds with the formulation of the statutes of 1991/92, in which the CDAs are described as associations of public law. According to the former director of the SRN, as a permanent intermediate authority of the state, the CDAs should be responsible for the coordination of the departmental development having their own income based on a property tax.⁷⁶

Another state entity that included the CDAs in its decentralization concepts was the "Coordinating Commission of the Process of Decentralization and Municipal Development" (CDM⁷⁷). The CDM proposed to strengthen the CDAs and to transform them into so-called Departmental Development Councils (CDCs⁷⁸). These councils should then be responsible for the coordination of the development of the department. According to the proposal, they would be "subject to public law, have their proper legal

⁷⁴ Gobierno de la República de El Salvador: Política de Desarrollo Socio Económico Local y Estrategia Operativa. Propuesta sujeta a Discusión. Septiembre de 1994.

⁷⁵ SRN: Anteproyecto de Ley del Impuesto Predial, Diciembre de 1994.

⁷⁶ Interview with Norma de Dowe, San Salvador, 01.09.2001.

⁷⁷ *Comisión Coordinadora del Proceso de Descentralización y Fomento Municipal*. This Commission had been established in 1993 by the government and was formed by the President of ISDEM, the General Manager of COMURES, the Planning Ministry, and the Secretary General of the SRN while USAID, the GTZ and UNDP formed part of a Consultancy Committee to the Commission. See USAID/El Salvador (1994).

⁷⁸ *Consejos Departamentales de Desarrollo*.

personality in order to be able to acquire rights and duties, could have a treasurer's office that receives payments and makes contributions, and would be controlled by the auditing court of the Republic" (CDM 1993, 21).

As can be observed, the concept of the CDM does not differ much from the proposal of the SRN. Both entities consider the CDAs as important institutions in charge of the coordination of development activities at the departmental level. They are perceived as part of the public administration of the state and need further technical assistance and a proper legal personality in order to fulfil their functions properly. The representative function of the CDAs, i.e. the task of representing the interests of the municipalities and defending their competences and autonomy, did not play a role in spite of being embodied in the statutes.

In the end, none of the proposals was ever implemented. Early in 1995, President Calderón Sol communicated publicly his compromise with representative private business organisations not to approve the property tax as one of the concessions for having them approve the increase of the VAT to 13% (Torres 1995). Since the collection of this tax had been one of the major tasks designated for the CDAs as well as their source of financing, the official interest in these institutions declined.⁷⁹

4.4. Interests and Strategies of the Main Actors Involved

The following section explores the different interests of the most important actors involved in the development processes since the first appearance of coordinating committees in the departments. The analysis helps to understand why the CDAs emerged and why they were conceptualised primarily as functional institutions in charge of coordinating development processes at the departmental level.

Originally, the **national government** promoted the establishment of departmental committees for the reconstruction of infrastructure destroyed during the civil war. The CONARA channelled its funds for public works to the mayors through the above mentioned CODERAs, CDCCs, and then CEDs. However, the actual reason for creating these bodies was the strategy of counterinsurgency: CONARA aimed at involving the population in the implementation of projects in order to improve the image of the local government, strengthen its role, and at the same time prevent the population from supporting the guerrilla.

After the peace accords, these interests changed. Then, the effectiveness of the reconstruction came to the fore. Since the departmental structures had proven their ability to effectively coordinate larger infrastructure projects, the SRN continued to channel funds through the departmental bodies. Apparently, no real distinction was made between the CEDs and the CDAs. Simultaneously, the concept of decentralization changed. The focus shifted from the local level to the departments.⁸⁰ Instead of transferring competencies and resources to the municipalities, the focus turned to the departmental bodies. According to the former director of the SRN, the government

⁷⁹ Until now, a property tax has not been introduced, and lobbying for its implementation remains a mayor point on the political agenda of COMURES.

⁸⁰ Interview with José Antonio Morales Ehrlich, San Salvador, 13.08.2001.

thought of the CDA as "an instrument for regional development and not a representative or political institution."⁸¹

Another key actor in the development of departmental structures was **USAID**. During the war, its interests coincided with those of the Salvadoran government, namely counterinsurgency. The most important objective of U.S. foreign policy at that time was to prevent the emergence of a "second Nicaragua", and development aid was subordinated to this goal. When the civil war came to an end, the interests of USAID changed. However, the reconstruction of the infrastructure destroyed during the conflict remained an objective of U.S. development aid. Since the MEA process had been a success, USAID still considered channelling the funds directly to the mayors as the best modality. Apart from providing financial means for infrastructure projects, USAID also technically and financially supported the revival of COMURES. It considered the Corporation as a means for strengthening the municipal capacities needed for an effective participation in the reconstruction work (Idrovo-Murillo 1999). The reform of the statutes of COMURES in 1991 was also supported by USAID. However, it was not possible for the author to finally determine who raised the idea of incorporating the CDAs into the statutes.

Another actor who may have influenced the emergence of the CDAs is the **mayor of San Salvador**. Before the separation of ISDEM and COMURES, the mayor of San Salvador presided over both institutions. In the metropolitan zone, experiences with the COAMSS had been made, and one of the factors leading to the incorporation of the CDAs into the statutes might have been the personal influence of the president of COMURES. Unfortunately, it was not possible to confirm this hypothesis with corresponding data.

Finally, the interest of the **mayors** have to be taken into account. Participation in the departmental committees established by the national government provided the mayors with the possibility to acquire funds for carrying out projects in their municipalities. It can be assumed that the availability of funds was their main motive for taking part in the CDCC and similar bodies. When the CDAs were incorporated into the statutes of COMURES, this project-coordinating function still played a predominant role. Consequently, the promotion of common projects of departmental or inter-municipal character that exceeded the particular possibilities of each local government was introduced into the legal norms as one of the tasks of the CDAs.

4.5. Summary

With respect to the **legal analysis**, two important results can be stated. They concern the legal character and the tasks of the CDAs. Firstly, the CDAs first appeared in the 1991/92' statutes of COMURES. These by-laws designed the CDAs as associations of public law. However, COMURES itself is a private association of municipalities. Its statutes belong to private law, and hence cannot create entities, which belong to the public administration of the state. Obviously, the legal situation is characterised by contradictions in the norms. As a result, the legal character of the first CDAs cannot be

⁸¹ Interview with Norma de Dowe, San Salvador, 01.09.2001.

finally determined. Secondly, summarising the tasks of the CDAs as established in the original by-laws, their functional character has to be stressed. The main focus laid upon the promotion and implementation of projects in the departments and the support of the national government in the decentralization process. These functions could be assumed by an intermediate state level and therefore correspond with the conception of the CDAs as associations of public law.

The **socio-political study** of the evolution of the CDAs led to the following results: Coordinating bodies at the departmental level existed already before the CDAs evolved. Since the mid 1980s, infrastructure projects were coordinated and implemented by departmental committees. At the beginning, they were composed of mayors and a variety of state actors including the military; in the end, only of mayors and the political governor of the department. When the statutes of COMURES were reformed in 1991/92, the already existing departmental structures were adapted to the Corporation leading to an incorporation of the CDAs into the norm system. The fact that the CDAs and the CEDs as the last coordinating committees (belonging to the state) practically functioned together in the first years after the legal creation of the CDAs demonstrates that the experiences with former departmental bodies had a direct impact on the emergence of this new institution. They can explain why the norms established the promotion and implementation of projects as one of the main activities of the CDAs.

The evolution of the CDAs therefore can be traced back to a contingent historical process. Former coordinating bodies at the departmental level evolved into a new institution. The institutional legacies were thus important, but the interests of two main actors (the national government, USAID) were equally of prime importance for the emergence of the CDAs.

The first departmental committees were established as part of a counter-insurgency strategy. The Salvadoran government, supported by USAID, created these institutions in order to improve its relations with the local population in the war-torn regions and strengthen the role of the local government. Hence, the functional consequences expected by the actors can explain the emergence of the predecessors of the CDAs. After the war, the interests of both actors changed. Their focus shifted to the efficiency of reconstruction activities in the departments. The CDAs were expected to coordinate and implement public works projects efficiently. In addition, a lack of an intermediate state level had been identified. The CDAs were thought of as a possible pillar for the construction of an institution that fills this void in the state organisation. Accordingly, the original norms design the CDAs as associations of public law that support the government in the decentralization process. A closer analysis of the interests thus allows to explain why the statutes of COMURES designed the CDAs as associations of public law. More generally speaking, this correlation between actors and the emergence of an institution demonstrates the close relation between law and its socio-political context.

5. Development of the CDAs

In 1994, the 9th National Mayors' Congress decided a reform of the statutes. However, it took until January 1996 for these new statutes to enter into force after having been approved by the executive and published in the Official Gazette (*Diario Oficial*).⁸² They contained substantial changes with respect to the CDAs that are analysed in the first part of this chapter. Then, the actual developments of the CDAs are explored. This is done in form of a comparative analysis of four case studies. Finally, the reasons for their different development are identified.

5.1. Legal Analysis

5.1.1. Statutes

The statutes refer to the CDAs in various sections. Apart from a specific part dealing exclusively with the CDAs (Arts. 35 to 37), they are also mentioned in relation with the organisational structure of the Corporation and its overall objectives.

Art. 3 contains the three main objectives of the Corporation as a whole: "(1) To contribute ...to the defence and strengthening of municipal autonomy ...; (2) to promote and consolidate the (...) reforms that lead to financial, economic, political, functional, and administrative decentralization of the State; and (3) to provide the municipalities (...) with an updated juridical framework." As a means for achieving these goals, Art. 4 lists as an activity **"to promote and support the Consejos Departamentales de Municipalidades."**⁸³

Art. 35 defines the CDAs as "the *órgano gremial* of the Corporation at the departmental level and (as) the basic instance of municipal cooperation and solidarity; as well as the direct link between the municipal councils and the Corporation for the development of the objectives of COMURES". As to membership, the same article establishes in its second paragraph that "the CDAs are formed in a voluntary manner by the municipalities being members of the Corporation of the same department, represented by their proprietary or functional mayors."

According to Art. 36 "the CDAs are economically, technically, and administratively autonomous, ruled by their regulation as well as by the present statutes as far as they are applicable, and are presided by a board of directors."

Art. 37 finally establishes that "the CDA (...) is a deliberate and analytical forum for the problems of the department related to the municipal task, and its objective is to contribute to the creation of the necessary conditions for achieving the economic, social, political, and cultural development of the department."

⁸² *Nuevos Estatutos de la Corporación de Municipalidades de la República de El Salvador*, agreed upon in the IX. Congreso Nacional de Alcaldes between the 27 and 30 September of 1994, approved by Executive in the Decreto Ejecutivo N° 102, published in the Diario Oficial N° 6 Tomo 330 of the 10.01.1996.

⁸³ According to Art. 9 of the Statutes, the terms "Consejo Departamental de Municipalidades", "Consejo Municipal de Alcaldes" and "C.D.A." will be used synonymously in the statutes.

5.1.2. Internal Regulation

The internal regulation of the CDAs details their organisation, functioning, and exercise of their autonomous faculties.⁸⁴ Art. 5 of the regulation states that a general assembly is the highest authority of the CDA. It is composed of all municipalities of one department that are members of COMURES. A board of directors presides the CDA, which consists of a president, a vice-president, a secretary, and a treasurer (Art. 11). In addition, a CDA shall set up four permanent commissions (for political, legal, representative, and environmental affairs) as well as special commissions according to the necessities of the department (Art. 27). Ordinary meetings of the CDA take place once a month; extraordinary sessions whenever the mayors consider it necessary (Art. 17). Its assets are made up of monthly membership fees of municipalities, contributions of the state and other national or international sources as well as own incomings (Art. 28).

Amongst others, Art. 8 lists the following attributions of the general assemblies of the CDA:

- Analyse and carry out the *Agenda Gremial*⁸⁵ of COMURES within the departmental scope.
- Support and contribute to the thematic positioning of COMURES.
- Coordinate and carry out common actions of the municipalities designed to strengthen and defend the municipal autonomy and competence.
- Design a national and international managerial strategy for the support and implementation of projects in the departmental constituency, in coordination with the management of COMURES.
- Seek to establish, at the request of the municipalities composing the CDAs, coordination with private or public investment institutions of the departmental constituency and its surrounding areas.
- Study and elaborate law drafts or reform proposals that are conducive to the municipalities of the country, and propose them to the corresponding institution.

5.1.3. Legal Analysis

Before entering into a detailed analysis of single norms, a general observation can be made with respect to the role and functions of the CDAs. The new by-laws stress the political-representative character of the CDAs attributing to them corresponding tasks such as the defence of municipal autonomy, the contribution to thematic positions, and the elaboration of law reforms related to municipal affairs. Hence, the functional tasks carried out by the CDAs in the first years of their existence (above all the coordination and execution of infrastructure projects) have lost significance. Consequently, the

⁸⁴ *Reglamento de Organización y Funcionamiento de los Consejos Departamentales de Municipalidades C.D.A., Abril del 2000.*

⁸⁵ The *Agenda Gremial* of COMURES specifies the objectives and activities of the Corporation. The current agenda (2000-2003) contains seven fields of action: financial strengthening of the municipalities; strengthening of municipal autonomy; modernisation of the local governments; construction of safe municipalities; institutional strengthening; popular participation and reconstruction. See COMURES (2001).

CDAs are not defined as “associations of public law” anymore, but as representative organs of the Corporation. The doubts regarding their legal character seem to have disappeared – as an organ, they share the civil law nature of COMURES.

Nevertheless, the reforms gave rise to new doubts. As an organ, a CDA is one of the elements that constitute the Corporation. It is not identical with it, but part of the legal person COMURES. However, Art. 36 of the statutes confers a comprehensive autonomy to the CDA. This poses the question as to the meaning of “autonomía”. In the strict sense of the word, autonomy means independence,⁸⁶ i.e. the CDAs would be economically, technically, and administratively independent of COMURES. This creates a peculiar situation since an organ cannot be part of the organisation and be independent of it at the same time.

Besides, Art. 21 N° 12 Statutes ascribes the approval of the Internal Regulation of the CDAs to the board of directors of the whole association. If the CDAs were administratively autonomous, though, each of them could decide upon its internal organisation itself. Thus, the term “autonomía” has to be interpreted restrictively. It does not mean total independence of COMURES, but shall enable the CDAs to give priority to their actions according to the necessities of the respective department.

A problem closely related to the “autonomy” of the CDA concerns their legal personality. If the CDAs were independent from the Corporation, one might argue that this status comprises an own legal personality. Then, they could hold their own rights and duties. However, if the CDAs are dependent organs of the legal person COMURES, they can only act as agents for this other legal person and as such enter in contracts. Legally bound by these contracts, though, are not the respective CDAs but the represented legal person, i.e. COMURES. In other words, as an organ of COMURES the CDA does not possess own legal personality.

This conclusion has far-reaching practical implications, which might be illustrated by the following example. The CDA of Sonsonate “owns” a car. However, the municipal council of the city of Sonsonate uses it. It was argued that the CDA cannot legally hold rights and therefore, not own property. When this topic was discussed at a CDA meeting, the municipal advisor of COMURES⁸⁷ informed the mayors that “the CDAs can legally count with own wealth and manage own funds” (Monge 2001). In the next CDA meeting attended by the author,⁸⁸ a letter of the national auditing court was handed out to the mayors stating that the CDAs “have the legal capacity to receive and manage own funds”.⁸⁹ The reasons given in this letter refer to the statutes and internal regulation of the CDAs; however, it dates back to 1995 when the statutes had not

⁸⁶ The official definition according to the Dictionary of the Spanish Language published by the Royal Spanish Academy “autonomía” stands for “Libertad e independencia de cualquier entidad o individuo”. (VOX 1993).

⁸⁷ COMURES employs so-called “*asesores municipales*” that advise the CDAs and the municipalities on a departmental basis. They find their legal basis in Art. 39 of the internal regulation of the CDAs, which establishes that each CDA has a technical advisor appointed by the executive management of COMURES. They take part at the CDA meetings, coordinate the agenda of these meetings together with the respective president of the CDAs, channel information between the Corporation and the mayors, and assist the mayors in different areas linked to the field of action of COMURES.

⁸⁸ CDA meeting in Nahuizalco, Department of Sonsonate, 03.09.2001.

⁸⁹ Statement of the Corte de Cuentas de la República to the President of the CDA of Sonsonate, written on the 07.11.1995.

been reformed yet.⁹⁰ After the promulgation of the new by-laws, this statement can hardly serve as a point of reference.

Summarising the legal characteristics of the CDA, it can be stated that these institutions are dependent organs of the national corporation. They have a certain degree of liberty in prioritising their actions as long as these concur with the objectives of COMURES. The CDAs do not possess their own legal personality, but can act as agents of the Corporation. In practice, however, the CDA do sometimes act as if they had plain autonomy, for example, own property or open bank accounts.

5.2. Actual Developments: Four Case Studies

According to a classification made by the coordinator of the "*componente gremial*" of the GTZ programme PROMUDE, today, the CDAs in El Salvador fall into **four different categories** (Idrovo-Murillo n.d.):

CDA-Association with legal personality.

CDA with a basic permanent organisation and relative financial independence, linked to municipal companies for the maintenance of country lanes.

CDA of regular functioning, but without structures of technical-administrative support.

CDA that only meet on behalf of the national Corporation.

In order to evaluate the different development of the CDAs and understand the factors that led to these differences, the CDAs of Usulután, Sonsonate, San Vicente, and San Miguel were selected as case studies.

Usulután is the department with the largest extension of the country (2,168 km²) and the 6th largest in population (338,000 inhabitants). It is divided into 23 municipalities. The CDA of Usulután occupies a special position as it is the only one that drafted its own statutes. The norms that were approved by the Ministry of the Interior in 1997⁹¹ established the so-called "*Asociación Consejo Departamental de Alcaldes de Usulután*", ACDAU, as an association without profit-making purposes (Art. 65 of the Ley de Asociaciones y Fundaciones sin Fines de Lucro). The ACDAU has its own legal personality and is of civil character.⁹²

According to Art. 5 of its statutes, all 23 municipalities of the department of Usulután are members of the ACDAU. In 2001, a reform of the statutes was being planned. The aim is to enable two municipalities of the neighbouring department San Miguel to become a member of the ACDAU because geographically, they are "closer" to Usulután

⁹⁰ The old legal norms designed the CDAs as associations of public law, and the corresponding internal regulation explicitly contained the capacity to enter into cooperative agreements.

⁹¹ *Estatutos de la Asociación Consejo Departamental de Alcaldes de Usulután*, approved by the Ministry of the Interior in the Acuerdo N° 270 del 28.04.1997, published in the Diario Oficial Tomo N° 336 of the 13.08.1997.

⁹² In this context, it is worth remembering that COMURES was also established according to civil law procedures. As has been explained above, the respective norms of the civil code are not applicable anymore to associations of public utility without profit-making purposes. As a result, now COMURES is ruled by the *Ley de Asociaciones y Fundaciones sin Fines de Lucro* as well.

and share more common characteristics with this department.⁹³ However, the reform plans cause tensions, particularly between the ACDAU and COMURES. So far, the departments have served as the basis for the organisational structure of the Corporation, even though they do no longer play an important role in terms of administrative units of the state. Single changes, therefore, might challenge the adequacy of the current organisational structure of COMURES.

The ACDAU has its own office and a permanent staff including a manager. It is financially self-sufficient. One part of the ACDAU's funds comes from development cooperation. Furthermore, the municipalities used to divide their "1% of the FODES funds" destined for guild associations into one part for COMURES and another one for the ACDAU.⁹⁴ In 2001, a new financing proposal was made which should guarantee that all of the 1% be transferred to COMURES. However, discussion of this proposal was postponed as the aftermath of the earthquakes shifted priorities.⁹⁵

The main objectives of the ACDAU are listed in Art. 3 of its Statutes: a) Strengthening municipal autonomy in the economic, functional, and administrative field, b) Promotion of common projects of departmental or inter-municipal character; c) Promotion of cooperative agreements for the realisation of public works and municipal activities with international agencies, government institutions, and NGOs, d) Promotion of legislative proposals that aim at an improvement of the municipal legislation, e) Coordination of actions of the municipalities in harmony with departmental development and planning, f) Channelling technical assistance and advice in the administrative areas to the municipalities.

Most of these objectives are congruent with those of the national association. Differences, however, can be found with respect to the promotion of projects in the department. Art. 4 lit b) of the Statutes of the ACDAU states that one of the functions of the ACDAU is to "support, promote, and approve the realisation of projects that strengthen the department". This activity was only mentioned in the first internal regulation of the CDAs. The same holds for the conclusion of cooperative agreements. Presently, the by-laws of the national corporation do no longer provide for the possibility of the CDAs to conclude contracts. Since the CDAs do not possess legal personality, they cannot enter into legally binding agreements. The ACDAU, however, does have a contracting power because of its own legal personality.

⁹³ Interview with Antonio Mazariego, Nueva San Salvador, 05.09.2001. The distance to (the department capital) Usulután is much shorter than to the city of San Miguel and direct roads only exist to Usulután.

⁹⁴ Art. 207 (3) of the Constitution stipulates the creation of a fund for the economic and social development of the municipalities. In fulfilment of this constitutional order, the FODES (Fondo para el Desarrollo Económico y Social) was created in 1988, being managed by the ISDEM and channelling funds to the municipalities. In 1997, the amount of the national budget transferred to the FODES was increased to 6%. According to Art. 10 of the Reglamento de la Ley de Creación del FODES, up to 1% of the funds channelled to the municipalities through the ISDEM can be used to pay guild memberships and subscriptions. See *Ley de Creación del Fondo para el Desarrollo Económico y Social de los Municipios*, Decreto Legislativo N° 74 of the 08.09.1988, published in the Diario Oficial N° 176, Tomo 300 of the 23.09.1988; *Reformas al Decreto Legislativo N° 74*, Decreto Legislativo N° 217 of the 22.01.1998, published in the Diario Oficial N° 14, Tomo 338 of the 11.02.1998; *Reglamento de la Ley de Creación del Fondo para el Desarrollo Económico y Social para las Municipalidades*, Decreto Ejecutivo N° 35 of the 25.03.1998, published in the Diario Oficial N° 62, Tomo 338 of the 31.03.1998.

⁹⁵ Interview with Miguel Coreas, Usulután, 21.09.2001.

The acquisition of an own normative foundation by the ACDAU raises the question of the relationship of ACDAU and CDA. Contradictory opinions can be found in this respect: According to the manager of the ACDAU, there does not exist any difference. He argues that the ACDAU is only a special legal form for the CDA.⁹⁶ The legal department of COMURES, by contrast, states that two separate institutions exist in the department of Usulután: the ACDAU and the CDA.⁹⁷ To a certain degree this opinion is supported by the formulation of the statutes of the ACDAU. These stipulate that **all** municipalities of the department are members. The membership of the CDA, however, is linked to a voluntary membership in COMURES. As a result, in theory, the membership between ACDAU and CDA could differ. This possible difference could confirm the existence of two institutions. In addition, the statutes of the ACDAU do not refer in any point to COMURES. Nevertheless, according to the municipal advisor of COMURES in the department of Usulután, the mayors do not distinguish between the two institutions. For them, the ACDAU and the CDA are just two different names for the same body, namely the departmental prolongation of the national association of municipalities.⁹⁸

In spite of this finding, representative functions play only a small role within the field of action of the CDA of Usulután.⁹⁹ The manager of the ACDAU emphasised that the CDA/ACDAU is not "only" an "*oficina gremial*", but an institution for the promotion of the local development in the department.¹⁰⁰ Thus, the CDA establishes strategic development plans for the department and organises the process of "micro-regionalization", i.e. the establishment of municipal associations called micro-regions.¹⁰¹

Sonsonate, situated in the west of El Salvador, covers a size of approximately 1,225 km² and has a population of roughly 450,000 inhabitants. The department is divided into 16 municipalities that make up the CDA of Sonsonate. About 75% of the mayors are generally present in the meetings.¹⁰² The CDA of Sonsonate established an inter-municipal society for the maintenance of country lanes, the "Sociedad de Alcaldes del Departamento de Sonsonate S.A. de C.V." or short "SASO".¹⁰³ The society owns machines and equipment for the construction, improvement, and conservation of country lanes and lends them to the municipalities. Today, there is a clear division between the CDA and the SASO. In spite of being formed by the same persons

⁹⁶ Interview with Miguel Coreas, Usulután, 21.09.2001.

⁹⁷ Interview with Pablo Portillo, San Salvador, 24.08.2001.

⁹⁸ Interview with Eunice Orellana, San Salvador, 14.09.2001.

⁹⁹ Interview with Eunice Orellana, San Salvador, 14.09.2001.

¹⁰⁰ Interview with Miguel Coreas, Usulután, 21.09.2001.

¹⁰¹ The terms "micro-region" or "inter-municipal association" stand for the contractual joining together of various municipalities with the purpose to reach a common goal, such as the promotion of ecotourism or the provision of drinking water. They find their basis in the Municipal Code and usually consist of 3 to 4 municipalities, however, are not limited to this number. Cf. interview with Per Huber, San Salvador, 21.08.2001.

¹⁰² Interview with Rigoberto Monge, San Salvador, 29.08.2001.

¹⁰³ S.A. de C.V. stands for *Sociedad Anónima de Capital Variable*. It is the abbreviation for an incorporated company with variable capital according to the Salvadoran Commercial Code. In legal terms, not the CDA founded the company, but the municipalities that compose the CDA. It was established in 1995. In the same year, two similar companies were created in two other western departments of El Salvador (Santa Ana and Ahuachapán).

(mayors), the company has its own board of directors that meets independently of the CDA.¹⁰⁴ However, the division has not always been that clear. When the company was established, its board of directors automatically consisted of the board of directors of the CDA. Further, the SASO that had rented its own offices shared these with the CDA. The company covered the costs for the rent.¹⁰⁵ According to the mayor of Nahuizalco, in general, SASO funds were used for the CDA.¹⁰⁶

Some recent activities of the CDA Sonsonate include statements about current political issues linked to municipal competences such as the maintenance of country lanes and identity cards.¹⁰⁷ The CDA also coordinates the reconstruction work after the earthquakes. For example, it decided, which were the most affected municipalities and established contacts with international and national funding agencies.¹⁰⁸ As a result, seven municipalities will receive assistance from the Italian development cooperation and UNDP.

San Vicente is located in the central zone of El Salvador. It possesses a territorial extension of 1,184 km² and has a population of approximately 161,000 inhabitants. The department is divided into 13 municipalities that compose the CDA. Usually, the majority of the mayors take part in its meetings.¹⁰⁹ The CDA used to have its own office, but the earthquakes of 2001 destroyed it. For its financing, the mayors agreed that each municipality contributes 50 Colones per month.¹¹⁰ According to the responsible municipal advisor of COMURES, though, not even this amount is paid.¹¹¹ In August and September 2001, the CDA was negotiating with the "*Comunidad de Madrid*" about financial assistance for the department and a micro-region. A special committee established by the CDA dealt with the Spanish proposal and suggested to channel more funds to the CDA for the creation of a technical unit (consisting of a manager and a secretary).¹¹²

According to its president, the functions of the CDA are identical with those of the entire Corporation.¹¹³ It defends municipal competences and autonomy through the support of political statements of COMURES, the discussion of law projects, and through the emission of its own statements. The CDA is also conducive to the development of the department, since it is the platform for coordinating common projects, which exceed the capacity of one municipality alone.¹¹⁴ In addition, the CDA promotes the creation of micro-regions in the department. Until September 2001, two inter-municipal associations had been established with the support of the CDA. The

¹⁰⁴ Interview with Rigoberto Monge, San Salvador, 29.08.2001.

¹⁰⁵ The situation changed at the beginning of 2001, when the earthquakes destroyed the premises of the SASO. At present, neither institution has its own location.

¹⁰⁶ Interview with José Carlos Estrada Hernández, Nahuizalco, 03.09.2001.

¹⁰⁷ Interview with Rigoberto Monge, San Salvador, 29.08.2001.

¹⁰⁸ Interview with Douglas Feliciano Galicio Hernández, Nahuizalco, 03.09.2001.

¹⁰⁹ Interview with Daysi Álvarez, San Salvador, 31.08.2001.

¹¹⁰ Equivalent to 5,71 US \$.

¹¹¹ Interview with Daysi Álvarez, San Salvador, 31.08.2001.

¹¹² This information was achieved through participative observations at the CDA meeting in San Ildefonso, 10.09.2001.

¹¹³ Interview with Maria Julia Constanza, San Ildefonso, 10.09.2001.

¹¹⁴ Interview with José Ovidio Alvarado Martínez, San Ildefonso, 10.09.2001.

CDA also used to be a meeting place for state entities such as the auditing court or the civil police with the municipalities. In the CDA meeting the author attended, the new military major of the department presented himself. However, according to a representative of COMURES, this "linkage function" between the central state and the municipalities has decreased due to a tendency to re-centralise within the state entities. The reason for this tendency is the fear that the municipalities become too strong, resulting in a loss of power and influence of the central state entities.¹¹⁵

The department of **San Miguel**, situated in the eastern part of El Salvador, has a size of 2,077 km² and a population of roughly 480,000 inhabitants. It is divided into 20 municipalities that make up the CDA of San Miguel. In different interviews undertaken, San Miguel was mentioned as the "classical example for a CDA that does not work."¹¹⁶ The mayors' presence at the meetings often does not exceed 50%, the CDA does neither possess its own office nor – at least up to September 2001 – its own bank account. With respect to the financing of the CDA, a formal agreement exists that of the 1% of the FODES funds allocated to representative memberships, 500 Colones¹¹⁷ are subtracted for the CDA. However, not all municipalities comply with this formal agreement.¹¹⁸

Participating mayors view the coordination of infrastructure projects as a major task of the CDA.¹¹⁹ Further, the CDA should channel information about financial sources to the municipalities and engage in the maintenance of country lanes.¹²⁰ These aspects were mentioned as future objectives for the CDA; however, they have not been carried out yet. Instead, the CDA discusses the issues brought up by the municipal advisor of COMURES, for instance legislative drafts elaborated by the national association or the modalities for paying out the FODES funds.¹²¹ Judging from own observations and various interviews, the author would argue that these discussions initiated by the staff member of COMURES make up the largest part of the CDA activities in San Miguel.

The case studies confirm the existence of four different types of CDAs. Their main characteristics can be summarised as follows:

The first type of CDA is linked to the legal form of an "association without profit making purposes". It has formulated its own statutes and achieved proper legal personality. It is financially self-sufficient, has its own offices, and employs a permanent technical staff that operationalises the agreements of the CDA. Its main tasks belong to the "functional" field, i.e. coordinating, managing, and supporting local

¹¹⁵ Interview with Daysi Álvarez, San Salvador, 31.08.2001.

¹¹⁶ Cf., for example, interview with José Leonidas Rivera Chávez, José Jeremia Villalobos and Sandra de Orellana, San Salvador, 25.09.2001. This opinion could be confirmed by personal observations in the CDA meeting in San Miguel (19.09.2001) when the mayors entered into a longer discussion why their CDA did not work properly.

¹¹⁷ Equivalent to 57,47 US \$.

¹¹⁸ Information obtained at the CDA meeting attended in San Miguel, 19.09.2001.

¹¹⁹ Interview with José Wilfredo Salgado and Baltasar Lobo, San Miguel, 19.09.2001.

¹²⁰ Interview with Wilfredo Salgado and Baltasar Lobo, San Miguel, 19.09.2001.

¹²¹ Own observations at the CDA meeting in San Miguel, 19.09.2001.

development processes in the department. Political-representative matters play a less important role.

The next type of CDA is linked to municipal companies owning equipment for the maintenance of country lanes. Despite the legal independence of the company from the CDA, there is not always a clear division in practice – particularly regarding the funds. The CDA is perceived as an institution that provides services for the municipalities (for example lending machines). Equally, it politically represents the municipalities in the department through the emission of statements and the negotiation with national or international entities on behalf of its members.

The third type of CDA has neither created a municipal company nor promulgated own statutes, but fulfils a series of tasks laid down in the statutes of COMURES. It meets regularly, deals with issues on the political agenda of the national corporation (e.g. discussion of law proposals or political statements), and at the same time promotes the development of the department, for instance through the establishment of strategic development plans or the acquisition of funds for common projects from national or international agencies.

The fourth type of CDA does not have any “functional” tasks. It does neither provide services to its member municipalities nor does it take part in the planning of the departmental development. At its meetings, the topics discussed have usually been brought onto the agenda by the representative of the national corporation, whereas specific departmental issues do not play a predominant role. Many discussions tend to be influenced by party politics and often relate to national topics. The presence at the meetings is fairly low and mayors themselves argue that they do not see any reason for attending, as they do not benefit from it.¹²²

5.3. Explaining the different development of CDAs

The variance in development of the CDAs calls for an analysis of the reasons behind these differences. Three main categories of influencing factors have been identified: **structures** that are linked to the legal situation of the CDAs, **actors** that pursued different objectives through the CDAs, and finally, **institutional legacies** in the sense of path-dependent developments of the CDAs.

5.3.1. Structures

The case of Usulután (ACDAU) shows that the legal structures of the CDAs differ. Only the ACDAU is based on own statutes, conferring upon it its own legal personality. This legal character enables the ACDAU to enter into own contracts with donor agencies and other national organisations. Thus, it can obtain funds and assistance more easily. According to the manager of the ACDAU, the legal personality has been one of the most important factors that helped to strengthen the CDA.¹²³

¹²² Interview with Rafael Benavides, San Salvador, 16.09.2001.

¹²³ Interview with Miguel Coreas, Usulután, 21.09.2001.

In addition, the internal structure of the CDAs is a matter of importance. Particularly in case of Usulután, a technical unit helped to operationalise the agreements of the CDA. This, in turn, enabled the mayors to recognise the outcome of their cooperation and served as an incentive to continue in the same direction. Furthermore, such a permanent unit is independent of electoral changes and thus, guarantees continuity and institutional memory.¹²⁴

5.3.2. Interests and Strategies

When the decentralization process started, the **national government** considered the CDAs as a potential intermediate level of public administration, which could coordinate development activities in the departments and receive decentralized competencies. As a result, model departments were chosen and pilot projects implemented. These included direct assistance to some CDAs that aimed at qualifying these institutions for their role as promoters of the departmental development.

For example, USAID and the Salvadoran government agreed upon the implementation of a Municipal Development Project in 1993. Usulután and Sonsonate became model departments in the pilot phase of this project (Cerritos/Rodríguez 2001). In correspondence with the "Policy of Local Socio-Economic Development and Operative Strategy" of the SRN, which designed the CDAs as promoters of the decentralization process, the CDA of Usulután was addressed by project activities. These activities included "technical assistance and limited cost commodities" to the CDA "to provide an organized departmental response to central government decentralization activities."¹²⁵ Thus, the national government expected the CDA of Usulután to receive decentralized competencies.

Meanwhile, however, the conception of the CDAs has changed. First, the focus has shifted back to the municipalities, which implies that the government no longer plans to create a new intermediate level.¹²⁶ Instead, official government strategies such as the ENDL promote the association of municipalities in terms of the Municipal Code. In addition, the government further explores the future role of the governors.¹²⁷ Second, the government does no longer perceive the CDAs as entities belonging to the public administration. According to the director of the FISDL's research and development department, "the CDAs do not form part of the state. Hence, they cannot assume

¹²⁴ Municipal elections are held every three years. The electoral system is not based on proportionate representation. Instead, voting is done by closed lists, and the party winning the largest number of votes automatically takes possession of all council seats. With respect to the composition of a CDA, this voting modality implies an eventual change of the majority of its members every three years and as such a loss of institutional memory.

¹²⁵ Amendment No. 4 for the Municipal Development and Participation Project between The Republic of El Salvador and The Corporation of Municipalities of the Republic of El Salvador and The United States of America (1996): "Examples of targets of opportunities to be financed by the Project include: (4) technical assistance and limited cost commodities to Departmental Councils of Mayors (CDAs) to provide an organized departmental response to central government decentralization activities, serve as an advocate of municipal concerns and assist in the identification and resolution of problems common to municipalities they represent."

¹²⁶ Interview with Tom Hawk, San Salvador, 04.09.2001.

¹²⁷ The decentralization component of PROMUDE/GTZ recently carried out a study on the future role and functions of the departmental governors. Cf./ Interview with Erfried Neubauer, San Salvador, 25.09.2001.

functions that correspond to the state.”¹²⁸ Instead, the CDAs are clearly identified with COMURES. The national Corporation of municipalities is headed by a new president since the last local elections of 2000, who belongs to the oppositional FMLN party. As a result, COMURES is often seen as a synonym for opposition in the context of national politics.¹²⁹ Since this impression is extended to the CDAs, today, the national government does not have a particular interest in strengthening the CDAs.

The processes that led to different developments in the four departments are further characterised by a variance in development assistance provided by **external actors**. With respect to the institutional development of the CDAs, *Cerritos and Rodríguez* state that often “institutions external to the territory stimulated the initiative, facilitated studies, project files and workshops technically, and in some cases financed the creation of technical offices” (Cerritos/Rodríguez 2001, 121). In Usulután, for example, USAID began its activities under the above-mentioned Municipal Development Project, agreed between USAID and the Salvadoran government in 1993. With the support of this project, an office for the CDA was equipped and funds for a technical unit including a manager were provided.¹³⁰ In addition, the American consultancy Research Triangle Institute RTI (contracted by USAID) assisted the CDA technically. Under the auspices of RTI, a workshop took place for the formulation of an operative plan for 1995. As an activity, this plan included “to elaborate statutes for the CDA and obtain legal personality” (CDA Usulután 1995). According to the head of the legal department of COMURES, the “requirement for obtaining funds were own statutes and an own legal personality”,¹³¹ i.e. the special legal status of the CDA Usulután can be put down to the conditioning of funds from the donor’s side.

Another project that started in the department of Usulután in 1994, was the “Programme of Integrated Basic Service, PSBI”¹³² executed by UNICEF, which then became known as the “Municipal Strengthening Programme COMURES/UNICEF”.¹³³ Some of its project activities were directed at the strengthening of the CDA. For example, the CDA received technical and economic support for the realisation of a workshop for the formulation of a strategic development plan in 1995 (CDA Usulután 1998). In the last years, the CDA of Usulután has received direct support in the fields of technical assistance and capacity-building. In addition, its own initiatives were accompanied by many different national and international institutions, such as the CND, Nación 21/PNUD, and the non-governmental organisations SACDEL,¹³⁴ CECADE,¹³⁵ and Ayuda en Acción (Cerritos/Rodríguez 2001).

Sonsonate also became a model department within the Municipal Development Project

¹²⁸ Interview with Rafael Góchez, San Salvador, 22.08.2001.

¹²⁹ This impression was gained in various interviews with representatives of government agencies. For example, the executive director of the FISDL stated that “in this moment, the government does not have the impression that COMURES represents the municipalities.” Cf. interview with Tom Hawk, San Salvador, 04.09.2001.

¹³⁰ Interview with Antonio Mazariego, Nueva San Salvador, 05.09.2001.

¹³¹ Interview with Pablo Portillo, San Salvador, 24.08.2001.

¹³² *Programa de Servicios Básicos Integrados*.

¹³³ *Programa de Fortalecimiento Municipal COMURES/UNICEF*.

¹³⁴ *Sistema de Asesoría y Capacitación para el Desarrollo Local*.

¹³⁵ *Centro de Capacitación y Promoción de la Democracia*.

of USAID. Compared to Usulután, however, the process did not march with the same rhythm and direction. In Sonsonate, the main emphasis was the problem of maintenance of country lanes. In light of the necessity to repair country lanes and the impossibility to achieve support from the Ministry of Public Works, the idea to engage in this field had already arisen in 1992. A group of consultants recommended a project to finance machines in an associated form to the mayors of the western region (Sonsonate, Santa Ana, Ahuachapán). The legal regime as well as the organisational structure for the companies to be established was defined by the SRN and USAID, as the financing entity (RTI n.d.). In 1995, the company was formalised and USAID provided funds to each of the three CDAs for the acquisition of shares by the municipalities and the purchase of machines and equipment. The establishment of a profit-oriented municipal company ruled by the commercial code was a requirement of USAID for paying out the funds.¹³⁶

The question arises, why such municipal companies were only set up in the western departments, since roads and country lanes were (and still are) in poor condition in the whole country. A final answer cannot be given, but the following factors can explain the geographical bias at least to some degree: The civil war displaced much of the population to the south and the west. At the end of the war, two-third's of the country's population lived in its south-west quadrant, including greater San Salvador. Hence, the need for transportation had increased. In addition, economic interests concentrated on the west. Most of the country's coffee plantations can be found in this area, and the only international port of the country is located in Acajutla, Sonsonate. The region has the largest amount of *maquila* plants¹³⁷ as well as other factories, also leading to an increased demand for road transport. Finally, the area borders with Guatemala, which is an important trading partner of El Salvador. In sum, an interest in improved means of transportation particularly in the western departments can be ascertained both of the national government and of the United States, which maintain close trading relations with El Salvador.¹³⁸

In San Vicente, external actors also engaged in various development activities. Some of their projects directly addressed the CDA. So did, for example, the GTZ programme PROMUDE that started its first phase in San Vicente. An agreement was subscribed by the CDA and PROMUDE/GTZ in 1995. Amongst other activities, the cooperation contained the assistance of a municipal advisor working with the CDA.¹³⁹ When the GTZ stopped its programme activities in San Vicente, the advisor continued its work in the department, now hired by COMURES. Direct cooperation for the institutional development of the CDA was also obtained through Swedish – Salvadoran cooperation in form of the project "CDA – DIAKONIA" (COMURES 2000). The last international actor that appeared in the context of the CDA San Vicente, was the "*Comunidad de*

¹³⁶ Interview with Pablo Portillo, San Salvador, 24.08.2001.

¹³⁷ "*Maquilas*" are textile assembly plants. Cloths are imported and processed in factories being located in special free zones. The final products are exported again. *Maquila* goods have led the growth in the export sector, and have made an important contribution to the Salvadoran economy in the last years. See U.S. Department of State (2000).

¹³⁸ In 1999, for example, 64% of Salvadoran exports went to the U.S. and 51.7% of the imports were supplied by the U.S. See U.S. Department of State (2000).

¹³⁹ Interview with Roxana de Castillo, San Salvador, 21.08.2001.

Madrid' with its project proposal to support the CDA and a micro-region in the department. With funding from this project, a technical unit for the CDA is to be established.

In San Miguel, external actors did not play a significant role. The eastern departments of El Salvador, in general, had been neglected by international development cooperation for many years. Accordingly, the CDA did not enter into any cooperative agreements with donor agencies. At the same time, it belongs to the fourth category of CDAs, i.e. neither complies with the by-laws of the Corporation nor fulfils other relevant activities related to the development of the department. Hence, this example confirms the supposition that the involvement of external actors is an important element, which can explain the different developments of the CDAs.

Nowadays, diverging strategies of different donors can be identified with respect to role and character of the CDAs: USAID, for example, considers the CDAs as mechanisms for coordinating and negotiating the development of the department. According to a representative of USAID, the CDAs are not perceived as "COMURITOS", i.e. small COMURES at the departmental level that serve specific representative purposes of the national corporation.¹⁴⁰ Consequently, the donor plans to support the establishment of technical units that are to be in charge of promoting departmental development.¹⁴¹ In this context, some discrepancy exists between the donor and COMURES. At least the executive director of the Corporation stated that the technical units of the CDAs were meant to strengthen the national corporation at the departmental level, i.e. for political-representative reasons.¹⁴²

The programme PROMUDE/GTZ focuses on the representative character of the CDAs. According to the coordinator of the programme, they "always have to be seen in connection with COMURES since they form part of the Corporation".¹⁴³ In its first phase, the COMURES component of the programme had still focused on increasing popular participation at the local level. Since 1999, the institutional and political-representative development of the Corporation has come to the fore. In this context, the CDAs play an important role in the validation of thematic positions of the national Corporation at the departmental level. They are regarded as instruments for the transmission of concepts to the municipalities that are related to the democratisation process. Finally, they are perceived as forums for analysis and deliberation of the problems of each department and coordination of the actions undertaken. Hence, strategies of the component include the clarification of the functions and organisation of the CDAs, capacity-building for its members, and the installation of offices.¹⁴⁴

As a third group of actors, **single personalities** mattered in the development of the

¹⁴⁰ Interview with Ana Luz de Mena, San Salvador, 22.08.2001.

¹⁴¹ USAID plans to finance technical units in 10 departments for a period of 3 years, covering 100% in the first, 80% in the second, and 50% in the third year. The concept relies on the assumption that within this period the CDAs manage to maintain the units alone. Cf. Ana Luz de Mena, San Salvador, 22.08.2001.

¹⁴² Interview with Carlos Pinto, San Salvador, 24.09.2001.

¹⁴³ Interview with Erfried Neubauer, San Salvador, 25.09.2001.

¹⁴⁴ Summary of the information obtained in various discussions with the coordinator of the component as well as from internal project documents. A proposal for the future organisational structure of the CDAs elaborated by the component is contained in the appendix.

CDAs. The case of Usulután illustrates their influence. An example is the manager of the ACDAU, who holds this position since 1995. He drafted the actual statutes of the ACDAU and is responsible for the elaboration of strategic development plans, the mobilisation of funds, and administrative tasks.¹⁴⁵ According to a former USAID consultant working with COMURES, "the manager of the ACDAU and the forward-looking president of the CDA influenced the developments to a large extent".¹⁴⁶

The advisor of COMURES in the department considers the coordinator of the project COMURES/UNICEF as another key person in the development of the CDA/ACDAU, who stood in a close relationship with the manager of the ACDAU.¹⁴⁷ Thus, the Spanish proverb "*La gerencia hace la diferencia*"¹⁴⁸ proved to be true in the case of the CDAs. Leadership qualities and capabilities of single persons, be it manager, mayor, or municipal advisor, can explain some of the differences in development.

The CDAs are composed of **mayors** who represent their municipalities. Their reasons for participating in the CDAs cannot be neglected when analysing the actors involved in the developments of this institution. However, one can hardly speak of "the interests" of the mayors, since there are many different expectations and reasons for their participation in the CDAs. First, personal interests have to be distinguished from expected benefits for their municipalities. On the personal level, interests are rather linked to the general membership in COMURES. For example, the Corporation regularly organises events and once a year a national congress in the capital.¹⁴⁹ Mayors are enabled to take part in these events. In addition, study visits to other countries are realised that give some mayors the possibility to travel abroad.¹⁵⁰ Since the CDAs are the departmental prolongations of COMURES that channel information (for example, concerning travel options) to the mayors, personal advantages constitute one of the motives for attending CDA meetings.

More important, however, are the expected benefits for the municipalities.¹⁵¹ In short, mayors participate in the CDAs because they expect that this institution contributes to the local development of their own municipality. Whether or not the CDA realises these functional expectations, is a key element in the further institutional development of the CDA. The case of Usulután helps to explain this argument: With the support of the Municipal Development Project of USAID, the CDA was able to actively engage in the development of the department. For example, it established strategic development plans and acquired funds for the realisation of these plans. Hence, the mayors were

¹⁴⁵ Interview with Miguel Coreas, Usulután, 21.09.2001.

¹⁴⁶ Interview with Donald Bryan, San Salvador, 05.09.2001.

¹⁴⁷ Interview with Eunice Orellana, San Salvador, 14.09.2001.

¹⁴⁸ "The Management makes the difference." Stated by Sandra de Barraza during an interview as the explanation for different developments of CDAs, San Salvador, 13.09.2001.

¹⁴⁹ At the CDA meeting in San Ildefonso, San Vicente, attended by the author on the 11.09.2001, for example, the agenda of the next national congress (18./19.10.2001) was discussed. Amongst other aspects, the discussion dealt with the modalities of the final dinner and the handing over of a present to each mayor attending the congress.

¹⁵⁰ PROMUDE/GTZ, for example, organised a study visit to Ecuador for 18 persons, including mayors, in December 2001.

¹⁵¹ The qualification of "more" important is owed to statements of different mayors in the interviews held when asked for the reasons why they participated in the CDAs. Only reasons linked to the municipalities were mentioned.

able to recognise a direct impact of their work in the CDA. This motivated them to continue in the same direction.¹⁵² The opposing example is San Miguel. This CDA has hardly contributed to the local development in the department. As a consequence, various interviewees stated that many mayors of San Miguel did not see any reason for attending the meetings. For them, it meant “a waste of time” since they would not benefit from it.¹⁵³ The low rate of attendance in the CDA meetings also confirms this.

The CDAs are organs of the national corporation, which leads to close relations between **COMURES** and the CDAs. Thus, the Corporation itself is the last actor that needs to be explored. More specifically, two different actors have to be considered: the management of COMURES and the municipal advisor of COMURES. The municipal advisor directly assists the CDA. For example, he or she channels information from the Corporation to the municipalities and vice versa, gives legal advice, and coordinates the agenda with the presidents of the CDAs. In the CDA meetings observed, topics such as a proposal for reforming the modalities of paying out the FODES funds or law drafts elaborated by the legal department of COMURES were introduced into the agenda by the respective municipal advisor.¹⁵⁴ Thus, COMURES can influence the CDA meetings through its representative in the department. According to the current municipal advisor of San Vicente, personality and leadership of this person have an important impact on the development of the CDA and can explain to some degree the differences between the departments.¹⁵⁵

The management of COMURES, by contrast, usually does not become involved at the departmental level and thus, hardly influences the developments of a specific CDA. However, that does not imply a lack of interest in the CDAs. To the contrary, the management of COMURES does pursue its own strategies with respect to the development of the CDAs. Above all, it aims at implementing the *Agenda Gremial* of the Corporation. The CDAs play an important role in this process. They are the direct link between the municipalities and the Corporation, and are intended to serve as a forum for the validation of thematic positions of the Corporation. According to the president of COMURES, “the CDAs have a strictly political-representative objective, which distinguishes them from municipal associations or micro-regions. It is true that some CDAs do assume tasks of municipal associations, but this is only transitional.”¹⁵⁶ The main question asked by COMURES is, how the CDAs can serve the Corporation.¹⁵⁷ Thus, the CDAs are regarded as instruments for the achievement of the goals set in the *Agenda Gremial*. As a result, the executive director of COMURES defines the

¹⁵² The manager of the ACDAU explains the development of Usulután particularly with the fact, that many mayors in the department were highly motivated. They drove the processes forward. Cf. interview with Miguel Coreas, Usulután, 21.09.2001.

¹⁵³ Interview with Alberto Romero, La Unión, 20.09.2001; interview with Wilfredo Salgado and Baltasar Lobo, San Miguel, 19.09.2001.

¹⁵⁴ For example, CDA meeting in San Miguel, 19.09.2001. or CDA meeting in La Unión, 20.09.2001.

¹⁵⁵ Interview with Daysi Álvarez, San Salvador, 31.08.2001.

¹⁵⁶ Interview with Oscar Ortiz, Nueva San Salvador, 24.09.2001: “*Los CDAs ... tienen un objetivo estrictamente gremial ...*”

¹⁵⁷ This question was formulated to the author by Edmundo Chinchilla, the *gerente técnico* (technical manager) of COMURES, during a discussion with the management on the 05.09.2001.

technical units of the CDA planned at the moment as a means for strengthening the Corporation at the departmental level.¹⁵⁸

These interests conflict to some degree with the interests of the mayors. Even though many mayors consider the CDAs as very important for reaching political consensus inside COMURES, nowadays, most mayors consent that the CDAs should be more than just a discussion forum. Particularly in the eastern departments, mayors stated that attending pure discussion meetings did not “make sense”.¹⁵⁹ This statement shows that mayors are often interested in more than political lobbying. They expect the CDAs to be an active player in departmental development processes. Some of the possible operative tasks they wish the CDA to carry out include the acquisition of funds, the establishment of contacts with donor agencies, and the coordination and implementation of projects.

5.3.3. Institutional Legacies

Already in the 1980s, CONARA set up the first coordinating bodies at the departmental level, the CODERAs. For testing the new methodology, CONARA implemented **pilot activities** in Usulután and San Vicente. They served as a laboratory for the work with the newly established committees (Morales Ehrlich 1995). Today, the CDAs of these two departments are active players in departmental development processes. The comparison with other CDAs where no pilot activities were carried out gives rise to the assumption that already the first CODERA experiences paved the way for the following developments of the CDAs.

Next to precise projects, the broader **socio-economic context** of the departmental developments has to be considered. A comparison of San Miguel in the East and Sonsonate in the West demonstrates its relevance. Trading relations with Guatemala and the existence of an international port in Sonsonate, for example, led to a concentration of aid activities in the western region of El Salvador, which included the CDAs. Thus, it can be argued that the socio-economic factors shaped the future developments of the CDAs, or in other words, opened paths that constrained the development of the new institution. Some interviewees mentioned the **geographical situation** of the department as another element that constrained the development of the CDA in San Miguel.¹⁶⁰ The department borders with Honduras in the north and with the Pacific Ocean in the south. The municipalities in the north have more in common with neighbouring municipalities of Morazán than with those of the south of San Miguel. However, the CDA meeting observed by the author could not confirm this hypothesis. The eleven municipalities that participated, represented all parts of the department reaching from San Antonio in the far north to the most southerly municipality of Chirilagua.¹⁶¹

Next to external factors, **developments inside the institutions** once initiated can impact the further institutional development. For example, the creation of municipal

¹⁵⁸ Interview with Carlos Pinto, San Salvador, 24.09.2001.

¹⁵⁹ Interview with Wilfredo Salgado and Baltasar Lobo, San Miguel, 19.09.2001.

¹⁶⁰ Interview with Sandra de Barraza and David Mena, San Salvador, 13.09.2001.

¹⁶¹ CDA meeting in the city of San Miguel, 19.09.2001.

companies influenced the further development of the CDAs. In Sonsonate, the establishment of the SASO had the following effects: It opened a common path and vision for the mayors and united them. Thereby, it also produced institutional sustainability of the CDA.¹⁶² By the same token, processes initiated inside the CDA of Usulután shaped its future development. Setting up a technical unit made the operationalisation of the agreements of the CDA possible. This, in turn, motivated the mayors to continue the common work and – more important – increase their contributions to the CDA. The financial self-sufficiency achieved then enabled the CDA to carry out more activities etc. Hence, dynamic processes inside the CDAs influence their further development. Once created, they may take “a life of their own” and generate processes that were not necessarily foreseen by their actors.

Considering the **conflictive past** of El Salvador and the regional disparities of its intensity,¹⁶³ one could assume that these are reflected in the different performance of the CDA. The persistence of conflicts between mayors from opposing parties in the CDAs could be a consequence of the former clashes, thus inhibiting an effective cooperation in the pluralistic CDAs. However, a causal relation in the sense “the more conflictive in the past, the more difficult the cooperation at present” does not hold for El Salvador. The examples of San Vicente and Cabañas illustrate this.¹⁶⁴ Both departments were heavily affected by the civil war. Cabañas remained conflictive after the peace accords and the project PROMUDE/GTZ stopped its collaboration with the CDA because of the persistence of an extreme political polarisation within the institution that inhibited any common work. The cooperation within the CDA of San Vicente, in contrast, was not disrupted by the conflictive past and is regarded as one of the successful cases in terms of fulfilling the tasks attributed to it by the statutes of COMURES.

5.3.4. Summary

The legal analysis of the CDAs leads to the conclusion that the norms ruling them are characterised by contradictions and loopholes. The statutes design the CDAs as organs of the Corporation, however, at the same time they declare these organs as autonomous. As organs, the CDAs do not possess own legal personality. Nevertheless, in practice, many CDAs behave as if they had. Further, the acting of the CDAs with respect to their internal organisation and their functions often does not correspond with the norms. Some CDAs do not fulfil the tasks laid down in the norms, others carry out functions that go beyond the legal basis.

As far as the actual development of the institution is concerned, it is possible to identify different interests of actors that to a large extent caused the different trajectories of the CDAs. External actors were heavily involved in their institutional development. They expected them to efficiently coordinate the reconstruction after the civil war and to promote local development in the departments. Because of these

¹⁶² Interview with José Leonidas Rivera Chávez, José Jeremias Villalobos, Sandra de Orellana, San Salvador, 25.09.2001.

¹⁶³ The civil war affected the northern departments more than the rest of the country.

¹⁶⁴ Example given by Erfried Neubauer in an interview in San Salvador, 25.09.2001.

expectations, the CDAs received technical assistance as well as funding. However, donor engagement varied between the departments. The case studies reveal that these differences can to a large degree account for the different performance of the CDAs today. Further, leadership qualities and capabilities of individuals involved in the CDAs mattered. The manager of the ACDAU was often cited as an example. This case demonstrates that single personalities can influence the development of institutions. Another important actor in the development of the CDAs was the national government. It created the institution with the purpose to develop it into an intermediate state level. As a means for reaching this development, the government began to support some CDAs in pilot projects. Correspondingly, these CDAs commenced to carry out functions that are normally attributed to the state. The differences existing today between the CDAs of the former model departments and the others can be explained in part by the different support of the national government. The interests of COMURES, on the other side, mainly reside in effective lobbying for municipal affairs. As a result, the CDAs began to engage in the political-representative field, i.e. represent their members against the national government and lobby for a strengthening of the municipalities. In consequence, the government has now lost its interest in the CDAs as a potential intermediate state level.

Interests of different actors, therefore, can explain to a large degree the development of the CDAs. Thus, the rational choice approach of institutionalism has explanatory power not only for the emergence, but also for the (different) developments of the CDAs. However, some developments can hardly be explained with interests of actors alone. The withdrawal of the government from the CDAs may serve as an example. Despite the withdrawal of one of the main players involved in the creation of the institution, the CDAs did not disappear. Neither did the withdrawal cause a change in the scope of action of those CDAs that previously had received increased attention of the national government. The processes that had been initiated inside the CDAs such as the establishment of a commercial society or a technical unit acquired their own dynamics and generated different developments. Hence, institutions, once created, can take "a life of their own" – independently of the interests of those actors that created them.

Additional structural variables identified by the case studies are legal aspects and socio-economic differences. The own legal personality of the ACDAU made the conclusion of cooperative agreements possible as well as the acquisition of own funds. It thereby contributed to the achievement of financial sustainability of this particular CDA. A comparison of CDAs in western departments and eastern departments identified differences in trade activities, infrastructure, and industry as contexts that determined the development of the institution. Further, previous relations between the departments and the central state level, for example expressed in the definition of model departments, had its influence on the CDAs.

6. Conclusions and Outlook

This paper analysed the emergence and development of departmental subdivisions of the National Corporation of Municipalities COMURES, the **Consejos Departamentales de Alcaldes** or CDAs. The political context of the CDAs' emergence and development illustrated a close interrelation with the decentralization process in El Salvador. The inexistence of an intermediate state level was identified as a main problem for the effective implementation of decentralization policies. Despite the formal division of the territory into fourteen departments, these administrative units barely have any significance. At the same time, most of the municipalities lack the funds as well as the capacities to adequately meet their inhabitants' needs. The CDAs occupy a strategic position at the departmental level. This position provides them with the potential to take an active role in the decentralization process. In order to fully assess this potential, the CDAs' origin and development needed to be explored.

The institution was introduced into the by-laws of COMURES by a reform of its statutes in 1991/92. Since that time, the CDAs have changed. A reform of the statutes in 1996 led to modifications in their legal character as well as competences. In practice, the fourteen CDAs have developed very differently. At present, it is thus possible to identify four different types of CDAs (see above 5.2.). The institutionalist approach of the paper highlighted both the role of interests of different actors as well as the institutional path-dependency for the origin and subsequent development of the CDAs. The findings demonstrate that former experiences with coordinating bodies at the departmental level resulted in the emergence of the CDAs. Consequently, the original tasks of the CDAs equalled those of the predecessors. Predominantly, these tasks consisted in the coordination of infrastructure projects in the departments. The emergence of these former bodies, though, can be traced back to the interests of the main actors, i.e. the national government and USAID, which had created them for the purpose of counterinsurgency. Expectations of actors also account for the origin of the CDAs themselves. They were thought to be an effective means for the implementation of reconstruction projects after the end of the civil war.

The legal basis of the CDAs reflected these expectations. The original statutes delineated the CDAs as associations of public law, which mirrored the interest of the national government to transform them into a public institution at the intermediate state level. At present, the CDAs are no longer designed as associations of public law. However, notwithstanding the legal reforms, character and competencies of the CDAs remain unclear. Contradictions in the norms still persist. In addition, the CDAs often act as if they had legal personality although the by-laws do not confer them this legal status.

Aside from legal differences, the paper analysed the actual functioning of the CDAs. Four case studies served to explore the factors that led to the CDAs' different outlook. It was possible to confirm the role of legal differences such as an own legal personality of the CDAs as well as different institutional legacies (for instance, the socio-economic context or dynamics inside the CDAs). The explanatory power of geographical features and of the civil war, though, could not be affirmed. Furthermore, it was shown that many of the different developments can only be explained by divergent interests of actors involved in the CDAs' developments in the departments.

For the context of development assistance, the findings have important consequences. They show that institutions are amenable to design, i.e. that actors can shape institutional settings in order to achieve specific functionalist outcomes. However, once set in place, these institutions can take their own life, and possibly proceed into a direction not foreseen by the actors. By the same token, their development depends on the institutional environment such as macro-level structures and the interactions between actors and institutions, which usually cannot be changed by external actors. Hence, institution building is possible, but can only be successful if the institutional context is considered.

The starting-point for the study was the current engagement of donors in the institutional development of the CDAs. Particularly USAID and the GTZ try to contribute to the definition of character, role, and functions of the CDAs. As a last point, therefore, this paper addresses some of the major challenges the CDAs are currently facing. In particular, the CDAs' relation with COMURES, their internal organisation, and legal issues have to be tackled within a comprehensive strategy for the CDAs' future institutional development.

I. First, the **relation between the CDAs and the national corporation** needs to be clarified. More specifically, this question refers to the significance of the "autonomía" of the CDAs. On the one hand, the CDAs are perceived as dependent organs of the Corporation. Their "independence" is understood as the possibility to determine the departmental agenda, to set up respective working commissions, etc. An own legal character, by contrast, is not considered necessary. This opinion, predominantly held by COMURES, corresponds with an emphasis of the political-representative functions of the CDAs. The CDAs channel information between the municipalities and the Corporation. In the CDA meetings, mayors discuss political issues affecting the municipalities and reach consensus on common actions at the departmental level. Positions of COMURES are first approved by the CDAs before the Corporation publishes them. Hence, the CDAs are the interface between the municipalities and COMURES, guaranteeing that the Corporation represents the interests of all its members, and not only of those, which are represented in its board of directors.¹⁶⁵ From the perspective of the national corporation, accordingly, the CDAs are the basis needed for effective political lobbying. "Autonomía", therefore, cannot imply a complete independence of the CDAs in the sense of endowing them with the freedom of choice whether or not they remain inside the organisational structure of the Corporation.

On the other hand, some interviewees stated that the CDAs should become entirely autonomous.¹⁶⁶ Two possibilities exist for such an entire autonomy: first, the promulgation of own statutes with the acquisition of legal personality, however, remaining inside the structure of the national association of municipalities, or second, the total withdrawal from the Corporation. Such a broader concept of autonomy provides advantages for the functional-operative tasks that some CDAs carry out. As

¹⁶⁵ The board of directors of COMURES is formed by 28 mayors. Its composition represents proportionally the votes that each political party obtained in the last municipal elections (cf. Art. 17 of the Statutes of COMURES).

¹⁶⁶ See, for example, interview with Tom Hawk, San Salvador, 04.09.2001.

soon as their functions go beyond a pure coordination of actions and, for instance, engage in the implementation of projects, the CDAs are required to manage their own funds. However, only an own legal personality enables the CDAs to do so. In other words, if the CDAs are to assume a proactive role in the departmental development processes, possibly taking up municipal competences, the current structure of most of the CDAs is not adequate.¹⁶⁷ The underlying question is: Can the CDAs assume both political-representative and operative functions? If the answer is affirmative, this poses the question as to the structure needed for carrying out those functions. Two points have to be taken into account: the character of COMURES as an interest group and legal constraints.

Firstly, the implications of a potential autonomy of the CDAs on the national corporation have to be considered. COMURES fears a disintegration if the CDAs become independent, since they could step out of the structure of the Corporation. "COMURES has (...) an important level of legitimacy amongst its members and before the principal actors of the political system" (USAID El Salvador 2000, 18). The CDAs are the linkage between the corporation and its members. If the CDAs leave the organisational structure of the corporation, its representative legitimacy may decrease, and thus its political power. However, this argument does not yet impede an engagement of the CDAs in the functional field. The CDAs could acquire their independence, respectively their legal personality, in order to fulfil functional tasks, and still remain inside the structure of COMURES. In this case, the unity (and political power) of the corporation is not affected.

More important, though, is the way COMURES views itself, namely as an interest group or syndicate of the municipalities. The Corporation regards itself as a private representative organisation that defends the rights of the municipalities against the national government and lobbies for a decentralization of competencies towards its members. The CDAs as organs of the Corporation share this character, and thus watch over municipal rights and competencies at departmental level. Some of the operative tasks of the CDAs such as the establishment of companies for the fulfilment of municipal attributions, however, may contrast the "gremial" character. This poses the question as to whether such (public) functions can and shall be assumed by a (private) interest group.

At least from a legal point of view, strong arguments speak against such a construction, which leads us to the second point stated above: the legal constraints. Currently, the municipalities cannot transfer competencies to the CDAs.¹⁶⁸ Neither the municipal code nor any other law provides the possibility to transfer competencies to a private association of municipalities. Instead, the municipal code enables the municipalities to establish inter-municipal associations.¹⁶⁹ Subsequently, the existing

¹⁶⁷ The ACDAU in Usulután may be considered as an exception since the promulgation of its own statutes conferred it with legal personality. (Cf. section 5.2)

¹⁶⁸ This also holds for the ACDAU since it was established as an association without profit making purposes, i.e. also is of private character.

¹⁶⁹ The Municipal Code enables the municipalities to create "decentralized entities" (Art. 14) as well as "foundations, associations, or companies" (Art. 17) for the realisation of municipal interests. The statutes agreed by the municipalities can confer "autonomy" in the sense of own legal personality to these inter-municipal associations, and assign them specific tasks. Autonomous institutions manage their own funds and are subject to the control of the national auditing court.

institutional structure of the CDAs could be complemented with the creation of inter-municipal associations. Following the example of Usulután, the CDAs could draft their own statutes, however, not in the framework of the *Ley de Asociaciones y Fundaciones sin Fines de Lucro*, but the municipal code. The associations established would then be ruled by public law, could possess their own legal personality, thus manage their own funds, and fulfil some of the municipalities' attributions. As part of the public administration, eventually they could also receive decentralized competencies. The CDAs as part of COMURES could exist alongside these inter-municipal associations, still in charge of the political-representation of its members.¹⁷⁰

A further challenge with respect to the relation between the CDAs and COMURES concerns the political-representative character of the CDAs. The CDAs are the interface between the Corporation and its members. However, the analysis of their functioning demonstrated that the CDAs do not necessarily maintain a close relation with the Corporation.¹⁷¹ From the perspective of COMURES, this rises the question as how to strengthen the "gremial character" of the CDAs or, in other words, how to intensify the relations between the Corporation and its departmental prolongations.¹⁷² Two possibilities are presented in this context: The selection of the members of the board of directors of COMURES and the "Consejo Directivo Ampliado".

The *Consejo Directivo* (board of directors) of COMURES consists of 28 mayors. Its composition represents the results of each political party in the last municipal elections. Hence, after the municipal elections, each party determines a certain number of directors that correlates with the percentage of votes obtained in all constituencies.¹⁷³ In order to improve the interlocution between the CDAs and the Corporation, it was suggested to reform the recruitment system for the directors. Thus, the CDAs would first elect their own board of directors. Then the parties would determine their candidates for the officials on the board of COMURES, having to choose from the board members of the CDAs.¹⁷⁴ Advantages of the new modality lie in the territorial embedding of COMURES.¹⁷⁵ It is to assume that the identification of the mayors with the national corporation increases if they indirectly elected its board. A direct link

¹⁷⁰ A change of the CDAs into departmental associations of own right could correspond with a change of character of COMURES into a Federation of these departmental associations, which voluntarily adhere to the umbrella organisation. (For a similar idea see Idrovo-Murrillo 1999.)

¹⁷¹ See section 5.2. for the case of Usulután as an example, where it was stated that representative functions only play a minor role in the field of action of the ACDAU.

¹⁷² The president of COMURES identified the lack of "gremial consciousness" of the mayors as one of the core problems of the Corporation. In order to strengthen COMURES and secure its institutional sustainability, therefore, the Corporation presently aims at increasing this consciousness. Cf. interview with Oscar Ortíz, Nueva San Salvador, 24.09.2001.

¹⁷³ Interview with Donald Bryan, San Salvador, 05.09.2001.

¹⁷⁴ Interview with Donald Bryan, San Salvador, 05.09.2001. For a slightly different proposal see Bryan (2000, 8): "*Si los CDA se reconocen como instancias intermedias entre el Congreso (Nacional) y Consejo (Directivo), esto se debería reflejar en los estatutos, conformándose los CDA antes de que se conforme el Consejo, y formando la mitad del Consejo los Presidentes de los CDA.*"

¹⁷⁵ Different comments of mayors made at CDA meetings observed point out that the present selection modality does not favour the flow of information between the board of directors of COMURES and the CDAs. For instance, mayors criticised that they did not know what their membership fees were spent for, that the directors of COMURES were not accountable to the CDAs, that often these directors did not even attend the CDA meetings, and that apart from the assistance of the municipal advisor they did not receive anything from the corporation. (Cf. own minutes of the CDA meetings in Nahuizalco (03.09.), San Ildefonso (11.09.), and San Miguel (18.09.))

between the board of directors of the CDAs with that of COMURES may also influence the agenda of the corporation since the directors would put those topics on the agenda that arise in the departments. Thus, one could "territorialize the Consejo Directivo and integrate the 'gremial' function into the CDAs."¹⁷⁶

The so-called "extended board of directors" (*Consejo Directivo Ampliado*) is another means to link the CDAs with the national level of the Corporation. It enlarges the board of directors of COMURES by including the presidents and vice-presidents of the CDAs. In 2001, regular meetings of this *Consejo Ampliado*, for instance, prepared the national mayors' congress. Alternatively to a reform of the national board's composition, an institutionalisation (including the incorporation into the statutes) of the *Consejo Ampliado* as well as its expansion could also improve the flow of information and feedback between CDAs and COMURES. Hence, it is another possibility to foster the political-representative character of the CDAs.

II. An additional challenge concerns the **internal organisation of the CDAs**. As mentioned before, technical units are being planned at the moment. However, the tasks of these units still await clarification. Their potential assignments could either be related to the "gremial" field of the CDAs, aiming at a strengthening of the CDAs' political-representative character, or they could be related to the functional field, facilitating the CDAs' operative tasks. Both possibilities were mentioned in the interviews.¹⁷⁷ In light of the expectations of the mayors and the existence of a municipal advisor working on behalf of COMURES, the author recommends a concentration on the functional-operative tasks, following the example of the management of the ACDAU.¹⁷⁸ The municipal advisors of COMURES should closely cooperate with the technical units, and continue to interface the CDA with the Corporation and its *Agenda Gremial*.

The main problem concerning the technical units, however, is their financial sustainability. It remains unclear how the units will be financed when the donors reduce their funds.¹⁷⁹ So far, most of the CDAs hardly generate any own income, and in most cases, the municipalities do not even comply with the membership fees agreed upon in the CDAs. This situation reflects a general problem of the whole decentralization process in El Salvador. The financial situation of most municipalities does not even allow for fulfilling the tasks attributed to them by the municipal code. Only few of the municipalities are able to finance their needs through own efforts, while the majority depends on the national government. As long as the financial

¹⁷⁶ Interview with Donald Bryan, San Salvador, 05.09.2001.

¹⁷⁷ Furthermore, differences were detected between COMURES and the donor (USAID). Whereas COMURES stresses the "gremial" character of the technical units, USAID perceives them (similar to the CDAs in general) as instruments for fostering local development in the departments.

¹⁷⁸ Miguel Coreas listed his tasks as manager of the ACDAU as follows: elaboration of a strategic development plan for the department, administrative functions, inter-institutional coordination, for instance with technological institutions, mobilization of funds, establishment of a centre for geographic documentation for the department. Cf. Interview with Miguel Coreas, Usulután, 21.09.2001.

¹⁷⁹ According to the current plans, external funds will be reduced to zero within three years.

situation of the municipalities does not improve, they will hardly be able to provide more funds to the CDAs.¹⁸⁰

III. Finally, **legal queries** constitute further challenges to the CDAs. Most of them are caused by contradictions and loopholes in the rules, such as their designation as “organs of the Corporation” by the Statutes, however, at the same time being “autonomous”. Consequently, the legal capacities of the CDAs are vague. It remains disputable whether, under the present legal regime, the CDAs can hold own rights and duties. This question is closely related to the field of action of the CDAs. Carrying out operative tasks such as the implementation of projects requires the ability to manage own funds. However, it is doubtful whether the current legal basis provides for this ability. In addition, the promulgation of own statutes by the CDA of Usulután may have an effect on the relation between this CDA and COMURES – particularly, if the current reform of the ACDAU’s statutes leads to the incorporation of two municipalities of the neighbouring department.

Hence, the legal situation of the CDAs is ambiguous. Legal reforms are necessary that clarify the role and character of the CDAs. This holds for the internal character of the CDAs as well as for its external relations. Since legal uncertainties can restrain the activities of the CDAs, development cooperation aiming at institution building should not focus on technical or financial matters, or the political role of the CDAs alone. Legal aspects have to be included into the strategies.

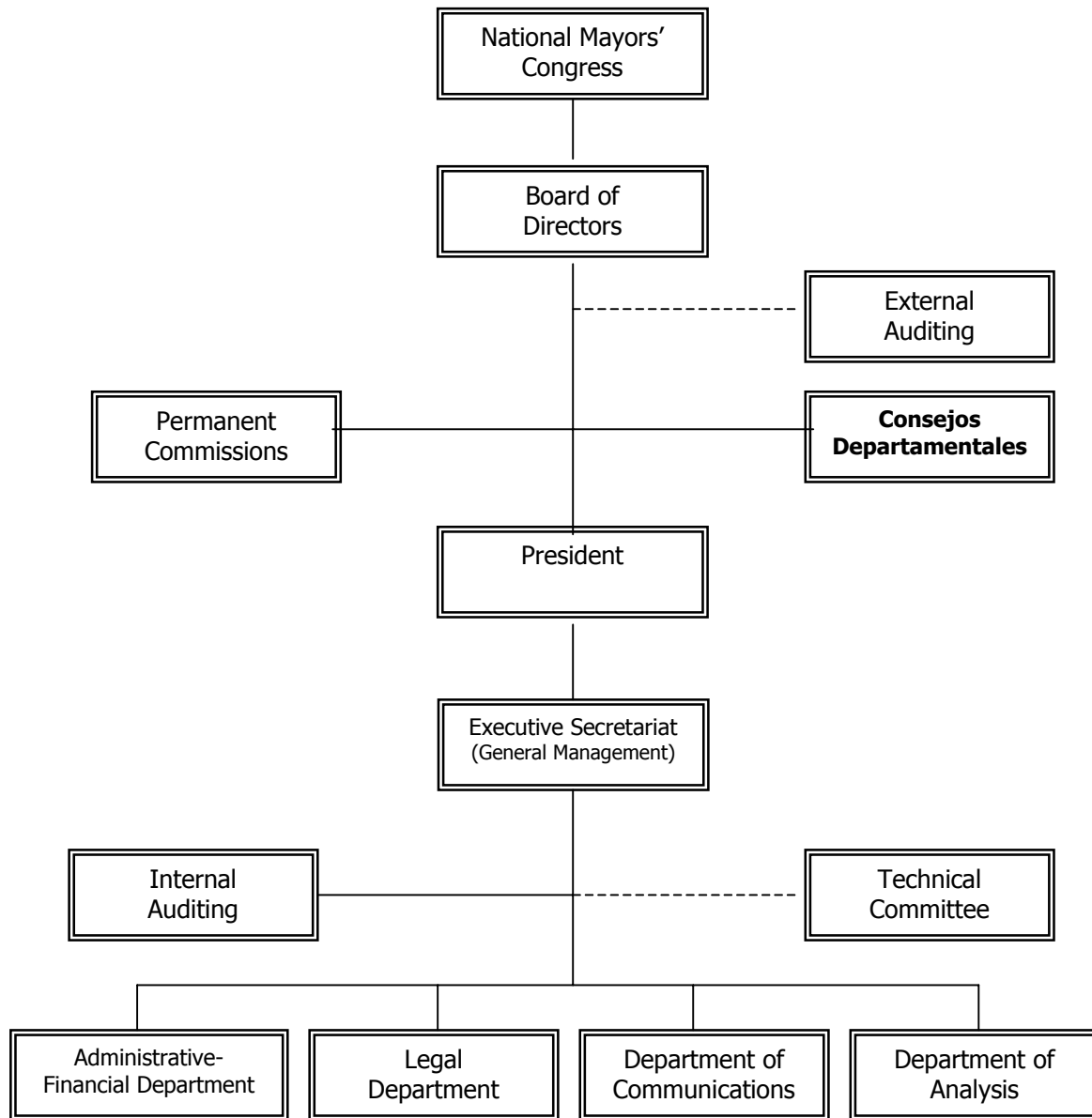
¹⁸⁰ In this context, the financial situation of the municipalities cannot be analysed in more detail. For a comprehensive description as well as recommendations for reforms see Aghon/Espitia (2000).

APPENDIX

I. Map of El Salvador

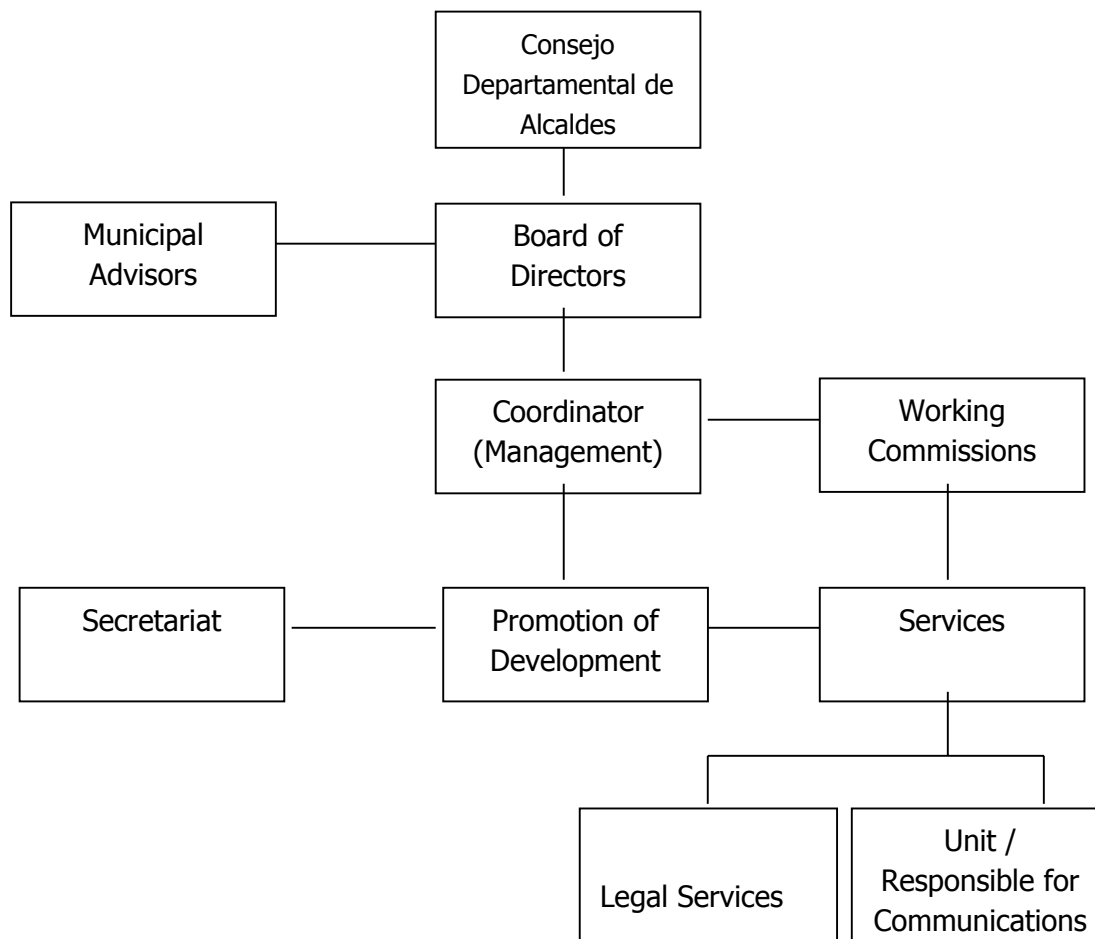


Source: <http://www.un.org/Depts/Carto-graphic/map/profile/elsalvad.pdf>

II.**Organisational Chart of COMURES 1993**

Source: Buller / Palesch (1998)

III. Proposal of PROMUDE/GTZ for a Basic Structure of the CDAs



Preconditions for the Strengthening:

Physical space for an office / meeting room	Equipment: Computer, printer, and vehicle	Plan for institutional strengthening	Proactive inter-municipal cooperation	Sufficient funding
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Source: PROMUDE/GTZ (2000)

IV. List of Interviewees

1. COMURES / Mayors

ALVARADO MARTÍNEZ, José Ovidio; Mayor of San Lorenzo, (ARENA); Vice-President of the CDA San Vicente, (San Ildefonso, 10.09.2001).

ÁLVAREZ, Daysi, COMURES, Municipal Advisor for San Vicente and Cabañas, (San Salvador, 31.08.2001).

CONSTANZA, María Julia, Mayor of San Ildefonso, (PCN); President of the CDA San Vicente, (San Ildefonso, 10.09.2001).

COREAS, Miguel; Manager of the ACDAU, (Usulután, 21.09.2001).

ESTRADA HERNÁNDEZ, José Carlos ; Mayor of Nahuizalco, (FMLN); Member of the Board of Directors of COMURES, (Nahuizalco, 03.09.2001).

GALICIO HERNÁNDEZ, Douglas Feliciano; Mayor of Sonsonate, (FMLN); President of the CDA of Sonsonate, (Nahuizalco, 03.09.2001).

GÓMEZ, André Alonso; Mayor of San Alejo, (PCN), (La Unión, 20.09.2001)

HERNÁNDEZ, Guadalupe de; Manager of Community Development at Save the Children El Salvador; formerly Legal Department of COMURES (San Salvador, 29.08.2001).

LETONA, Mario; COMURES, Municipal Advisor for Cuscatlán and San Salvador, (San Salvador, 13.08.2001).

LOBO, Baltasar; Mayor of Nuevo Guadalupe, (FMLN); Vice-President of the CDA San Miguel, (San Miguel, 19.09.2001).

MONGE, Rigoberto; COMURES, Municipal Advisor for Sonsonate and Ahuachapán, (San Salvador, 29.08.2001).

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Decentralization and Institution Building

The Emergence and Development of the *Consejos Departamentales de Alcaldes* in El Salvador

The *Consejos Departamentales de Alcaldes* (CDAs) are departmental extensions of the National Corporation of Municipalities (COMURES) and emerged as new institutions in the decentralization process in El Salvador. Their organisational structure and function, as well as future role in the decentralization process is currently under intense debate.

The paper places special emphasis on the role of external actors or, more specifically, agencies of development assistance such as the United States Agency for International Development (USAID) or the German Agency for Technical Cooperation (GTZ). Building and strengthening institutions plays a predominant role in development cooperation and the question whether institutions are amenable to design is of utmost importance to donor agencies. In this light, the paper contributes to the ongoing debate on designing policies for institution building.

The paper explores the origin and development of the CDAs. Based on theoretical concepts of new institutionalism, the study analyses the reasons for their emergence as well as the explanatory factors for their contrasting developments in El Salvador's different departments. The analysis is linked to a legal assessment of the nature and competencies of the CDAs. Furthermore, the paper outlines some of the main challenges the CDAs are facing today.

The study concludes that the emergence of the CDAs (in 1991) can be traced back to roughly congruent interests between USAID and the Salvadoran Government, which created coordinating bodies at departmental level for the purpose of counterinsurgency. As far as the development of the CDAs is concerned, the case studies undertaken in four different departments of El Salvador illustrate that many of the differences today can only be explained by the divergent interests of the actors involved. However, the analysis also reveals that institutions, once set in place, can take their own life, and possibly proceed into a direction not foreseen by their creators. By the same token, their development depends on the institutional environment such as macro-level structures, which usually cannot be changed by external actors. Correspondingly, the paper finds that institution building is possible, but can only be successful if the institutional context is given due consideration.

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