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 ACTION ARA-01

INFO	LOG-00	ACDA-17	AID-01	AMAD-01	CIAE-00	C-01	OASY-00
	EB-01	HA-09	H-01	INM-02	TEDE-00	INR-00	IO-19
	L-03	ADS-00	NSAE-00	OIC-02	OMB-01	PA-01	PM-02
	PRS-01	P-01	SIL-00	SNP-00	SP-00	SR-00	SS-00
	STR-17	TRSE-00	T-00	USIE-00	RPE-01	/082W	

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O 202244Z APR 93 ZDK CTG URSVC RUEHCB 0972 SVC
 FM AMEMBASSY LIMA
 TO SECSTATE WASHDC IMMEDIATE 7634
 INFO AMEMBASSY QUITO
 AMEMBASSY BOGOTA
 AMEMBASSY LA PAZ
 AMEMBASSY SANTIAGO
 USMISSION GENEVA
 USCINCSO QUARRY HEIGHTS PM
 DIA WASHDC
 SECDEF WASHDC
 NSC WASHDC

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SOUTHCOM ALSO FOR POLAD

E.O. 12356: DECL: OADR
 TAGS: PHUM, PGOV, PE
 SUBJECT: LA CANTUTA DISAPPEARANCES;
 MILITARY COURT OPENS PROCEEDINGS

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REFS: A) LIMA 4372, B) LIMA 4004

1. (C) SUMMARY: IN A SURPRISE MOVE, THE SUPREME COUNCIL OF MILITARY JUSTICE HAS OPENED A LEGAL CASE AGAINST UNIDENTIFIED OFFICERS IMPLICATED IN THE JULY 1992 DISAPPEARANCE OF STUDENTS AND A PROFESSOR FROM "LA CANTUTA" UNIVERSITY. ALTHOUGH THE MOVE WAS WELCOMED BY THE HEAD OF THE SPECIAL CONGRESSIONAL COMMITTEE ALSO INVESTIGATING THE DISAPPEARANCES, HUMAN RIGHTS GROUPS ARE APPREHENSIVE AND VIEW THE MOVE

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AS A POSSIBLE END RUN AROUND CONGRESS. THE SUDDEN APPEARANCE OF A MILITARY COURT CASE JUST AFTER A DOCUMENT WHICH PURPORTEDLY LINKS HERMOZA AND OTHER SENIOR OFFICERS TO THE DISAPPEARANCES PARALLELS PAST PRACTICE OF PREEMPTING CIVIL CASES BY OPENING MILITARY CASES ON MAJOR ABUSES. END SUMMARY.

MILITARY OPENS PROCEEDINGS IN LA CANTUTA CASE

2. (U) ON APRIL 16, THE SUPREME COUNCIL OF MILITARY JUSTICE (CSJM) OPENED PROCEEDINGS AGAINST UNIDENTIFIED MILITARY PERSONNEL FOR THEIR ROLE IN THE JULY 1992 "LA CANTUTA" UNIVERSITY DISAPPEARANCES- ABDUCTION CASE. THE SURPRISE ANNOUNCEMENT STATED THAT THE DEFENDANTS WILL BE TRIED FOR "CRIMES AGAINST LIFE AND ABUSE OF AUTHORITY." THE CASE WAS OPENED ON THE
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 "EXPRESS INSTRUCTIONS" OF ARMY COMMANDING GENERAL NICOLAS HERMOZA.

3. (U) THE CHAIRMAN OF THE SPECIAL CONGRESSIONAL COMMITTEE INVESTIGATING THE "LA CANTUTA" DISAPPEARANCES, ROGER CACERES VELASQUEZ, SAID HE WAS PLEASED BY THE OPENING OF THE MILITARY PROCEEDINGS. THE MILITARY'S LEGAL PROCESS DID NOT MEAN THE CONGRESSIONAL INVESTIGATION WOULD NOT PROCEED, CACERES ASSURED REPORTERS. HE ALSO SAID ARMY COMMANDER GEN. HERMOZA HAD BEEN REQUESTED TO APPEAR BEFORE THE COMMITTEE ON APRIL 20 -- HERMOZA HAS FAILED TO SHOW UP ON TWO PREVIOUS OCCASIONS. OTHER EMBASSY CONTACTS REMINDED US THAT CACERES ALSO HEADED UP THE CONGRESSIONAL INVESTIGATION INTO THE NOVEMBER 1991 "BARRIOS ALTOS" MASSACRE, THAT LED NOWHERE.

AN ARMY END RUN

4. (C) CONTACTS AT THE LEGAL DEFENSE INSTITUTE (IDL) VOICED CONCERNS THAT THE SURPRISE CSJM PROCEEDINGS WERE ONLY A MILITARY ATTEMPT TO END

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RUN CONGRESS AND POSSIBLY SHORT-CIRCUIT AN OPEN, CIVILIAN INVESTIGATION AND TRIAL. BY OPENING PROCEEDINGS, HERMOZA COULD NOW REFUSE TO ANSWER CONGRESSIONAL QUESTIONS ON THE GROUNDS THAT THE MATTER WAS UNDER LEGAL INVESTIGATION. BASED ON THE SAME ARGUMENTS, THE MILITARY COULD REFUSE TO

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RELEASE DETAILS ABOUT THE STATUS OF THE INVESTIGATION AND THE IDENTITY OF THOSE INVOLVED UNTIL THE TRIAL IS COMPLETE -- WHICH COULD INVOLVE LONG DELAYS. AS IN PREVIOUS HUMAN RIGHTS CASES, THE MILITARY COURTS COULD ALSO DECIDE THE CASE ANY WAY THEY SAW FIT AND ESSENTIALLY VOID ANY PARALLEL CASES IN CIVILIAN COURTS UNDER "DOUBLE JEOPARDY" RULES. ALSO TROUBLING IS THAT THE CRIME OF "HOMICIDE" IS NOT COVERED UNDER THE CODE OF MILITARY JUSTICE; THE MILITARY CASES ARE BASED ON LESSER CHARGES SUCH AS "ABUSE OF AUTHORITY." THESE ALTERNATIVE CHARGES CARRY LOWER PENALTIES, WHILE DOWNGRADING

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DIA WASHDC
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C O N F I D E N T I A L SECTION 02 OF 02 LIMA 04491

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 THE SEVERITY OF THE OFFENSE. THE IDL TAKES THE
 POSITION THAT THE CRIME WAS MURDER AND IT SHOULD
 BE TRIED OPENLY, IN CIVILIAN COURTS.

5. (U) ON THE BRIGHT SIDE, ACCORDING TO IDL,
 CURRENT JUDICIAL RULES ONLY ALLOW JUDGES
 INCLUDING MILITARY JUDGES) TO OPEN A CASE IF
 THEY HAVE IDENTIFIED INDIVIDUAL SUSPECTS OF A
 SPECIFIC CRIME. ALSO, THE CSJM TRADITIONALLY
 ONLY GETS DIRECTLY INVOLVED AT THE BEGINNING OF
 A CASE IF THE SUSPECTS ARE SENIOR MILITARY
 OFFICERS. HOWEVER, WARNED OUR CONTACT, THERE IS
 NO HARD INFORMATION AS YET TO SUPPORT THESE
 SUPPOSITIONS.

6. (C) JOURNALISTS COVERING THE CASE TOLD
 POLCOUNS THAT THE MILITARY JUDGES' ROLE WAS NOT
 NECESSARILY BAD. POSSIBLY FUJIMORI WOULD USE
 THE MILITARY COURTS TO PUNISH SOME OF THOSE
 INVOLVED AT LOWER LEVELS. THEY STRESSED THAT
 OVERALL CIVIL & MILITARY RELATIONS WOULD DICTATE
 FUJIMORI'S APPROACH.

7. (C) COMMENT: WE, TOO, ARE APPREHENSIVE
 ABOUT THE CSJM'S SURPRISE OPENING OF A LEGAL
 CASE IN THE "LA CANTUTA" CASE. IN THE PAST, THE
 MILITARY HAS USED THE MILITARY JUSTICE SYSTEM TO
 MANAGE HUMAN RIGHTS CASES AND PROTECT ITS OWN,
 RATHER THAN HELPING JUSTICE ALONG. WHILE THE
 MILITARY COURTS DID, FOR THE FIRST TIME, PUNISH
 MILITARY OFFICERS GUILTY OF "MY LAY" TYPE

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KILLINGS, SELECTIVE DISAPPEARANCES ALLEGEDLY
APPROVED AT HIGH LEVELS ARE A DIFFERENT MATTER.
THE SUDDENESS WITH WHICH THE MILITARY OPENED ITS
PROCESS, SOON AFTER THE REVELATION OF THE
DOCUMENT (REFTELS) THAT LINKS HERMOZA AND OTHER
SENIOR OFFICERS TO THE DISAPPEARANCES, MEANS THE
MANEUVRE COULD BE A PRELUDE TO A COVER-UP. THE
ALLEGATIONS OF HERMOZA'S OWN INVOLVEMENT MEAN
THAT FUJIMORI'S RELATIONS WITH THE ARMY ARE A
CRITICAL PART OF THE EQUATION.
BRAYSHAW

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