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O 102318Z FEB 94  
FM AMEMBASSY LIMA  
TO SECSTATE WASHDC IMMEDIATE 4798  
INFO AMEMBASSY BOGOTA  
AMEMBASSY LA PAZ  
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AMEMBASSY OTTAWA  
AMEMBASSY TOKYO  
USEC BRUSSELS  
DIA WASHDC  
USMISSION GENEVA  
USCINCSO QUARRY HEIGHTS PM

*Please additional*  
RELEASED IN PART  
1.5(D), B1

C O N F I D E N T I A L SECTION 01 OF 05 LIMA 01292

USCINCSO ALSO FOR POLAD

E.O. 12356: DECL: OADR  
TAGS: PHUM, PGOV, KJUS, KDEM, PE  
SUBJECT: GOVERNMENT DEFIES OPPOSITION AND  
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PAGE 02 LIMA 01292 01 OF 05 102319Z  
PROMULGATES LA CANTUTA JURISDICTION  
LAW

REF: A) LIMA 1247, B) LIMA 1210

1. (C) SUMMARY: IGNORING A BURST OF CRITICISM,  
THE GOVERNMENT FEB 10 PROMULGATED THE LA CANTUTA  
JURISDICTION LAW. SEVEN OPPOSITION GROUPS IN  
CONGRESS ANNOUNCED THEY WILL BOYCOTT SESSIONS OF  
THE BODY'S EXECUTIVE COMMITTEE IN A PARTICULARLY  
HARSH AND BITTER LETTER TO CCD PRESIDENT JAIME

DEPT OF STATE APPEALS REVIEW PANEL (ARP)

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FOIA/PA	Mandatory Denial
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Exemptions B1  
ARP Action Cert. love Date 07/08/02

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YOSHIYAMA. GOVERNMENT-PARTY SPOKESMAN OSWALDO SANDOVAL DISMISSED THE OPPOSITION THREAT SAYING THAT NON-PARTICIPATION IS THEIR DECISION AND THAT THE GOVERNMENT MAJORITY WILL CONTINUE CONDUCTING BUSINESS IN THE COMMITTEE WHICH REPRESENTS THE CCD BETWEEN PLENARY SESSIONS. THE NEXT LEGAL MOVE COULD BE UP TO THE SUPREME COURT AND/OR AN ATTEMPT TO BLOCK THE LAW'S APPLICATION TO THE LA CANTUTA CASE BY MEANS OF AN AMPARO. OPPOSITION WILL ASK THE COURT TO IGNORE THE LAW. WHILE THE LIKELIHOOD THAT THOSE RESPONSIBLE FOR THE LA CANTUTA KILLINGS WILL BE PUNISHED IS CLEARLY AN IMPROVEMENT OVER PAST PRACTICE, FUJIMORI'S DECISION TO ABUSE THE JUDICIAL SYSTEM IS A MAJOR STEP BACKWARDS AND WILL RAISE QUESTIONS IN MANY MINDS HERE ABOUT HIS WILLINGNESS TO ABIDE BY OTHER RULES, ESPECIALLY THOSE THAT GOVERN THE 1994-95 ELECTION CAMPAIGN.

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2. (C) WHILE THERE IS EVIDENCE TO SUGGEST THAT FUJIMORI MADE AN EFFORT TO STEER THE CASE TOWARDS A CIVILIAN VENUE, MILITARY PRESSURE -- AND THE PROSPECT OF A LONG, DIVISIVE, UNCONTROLLED AND EMBARRASSING WRANGLE IN CIVILIAN COURTS -- SEEMS TO HAVE SEALED THE FATE OF THIS CASE. THAT FUJIMORI WAS OBLIGED TO RESORT ULTIMATELY TO SUCH A BLATANT DEVICE SUGGESTS THAT MILITARY PRESSURES MAY HAVE BEEN MORE INTENSE AND LESS GENTEEL THAN PREVIOUSLY THOUGHT. AT THE SAME TIME, FUJIMORI MAY HAVE CONCLUDED THAT HE NEEDED TO SPARE WHAT LEVERAGE HE HAS ON THE MILITARY FOR OTHER PURPOSES WHICH COULD BE, IN HIS EYES, MORE IMPORTANT. END SUMMARY.

~~B1,15(D)~~

LAW PROMULGATED  
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3. (U) SIGNED BY PRESIDENT FUJIMORI AND COUNTERSIGNED ONLY BY JUSTICE MINISTER FERNANDO VEGA, THE GOP FEBRUARY 9 PROMULGATED THE BILL PASSED BY THE CONSTITUENT CONGRESS (CCD) FEBRUARY 7 (REFTELS) DESIGNED TO ENSURE THE LA CANTUTA CASE REMAINS IN THE MILITARY COURT

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SYSTEM. "LAW NUMBER 26291" WAS PUBLISHED IN THE  
FEBRUARY 10 EDITION OF THE OFFICIAL GOVERNMENT  
GAZETTE, EL PERUANO, AND HAS IMMEDIATE EFFECT.

4. (C) THE PROMULGATION IS A SIGNIFICANT STEP  
BACKWARD FOR BOTH HUMAN RIGHTS AND,  
PARTICULARLY, THE CONCEPT OF AN INDEPENDENT  
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JUDICIARY IN PERU. IT APPEARS TO REFLECT THE  
POWER OF THE MILITARY TO PROTECT HIGH-RANKING  
OFFICERS AND INTELLIGENCE ADVISOR VLADIMIRO  
MONTESINOS FROM HAVING TO FACE SUBPOENAS TO  
APPEAR AT A PUBLIC TRIAL IN A CIVILIAN COURT  
DESPITE ALMOST UNANIMOUS OPPOSITION FROM PERU'S  
POLITICAL, MEDIA, LEGAL AND HUMAN RIGHTS  
COMMUNITIES.

GOVERNMENT IGNORES OPPOSITION REQUEST FOR DELAY  
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5. (U) THE FUJIMORI ADMINISTRATION IGNORED  
OPPOSITION CALLS TO DELAY PROMULGATING THE LAW

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O 102318Z FEB 94  
FM AMEMBASSY LIMA  
TO SECSTATE WASHDC IMMEDIATE 4799  
INFO AMEMBASSY BOGOTA  
AMEMBASSY LA PAZ  
AMEMBASSY QUITO

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AMEMBASSY OTTAWA  
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C O N F I D E N T I A L SECTION 02 OF 05 LIMA 01292

USCINCSO ALSO FOR POLAD

E.O. 12356: DECL: OADR  
TAGS: PHUM, PGOV, KJUS, KDEM, PE  
SUBJECT: GOVERNMENT DEFIES OPPOSITION AND  
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WHILE IT SOUGHT A RECONSIDERATION OF THE BILL,  
THUS RENDERING IRRELEVANT THE OPPOSITION'S  
PARLIAMENTARY MANEUVER. ENRIQUE CHIRINOS SOTO  
(RENOVATION), WHO USUALLY SIDES WITH THE  
GOVERNMENT, HAD TOLD REPORTERS FEBRUARY 9 HE WAS  
"CONFIDENT" PRESIDENT FUJIMORI WOULD RETURN THE  
BILL TO THE CONSTITUENT CONGRESS FOR  
RECONSIDERATION. MANUEL D'ORNELLAS, EDITOR OF  
THE PRO-GOVERNMENT "EXPRESO," IN HIS FEBRUARY 10  
EDITORIAL COLUMN ALSO CALLED ON THE GOVERNMENT  
TO DELAY PUBLISHING THE BILL IN THE FACE OF  
ALMOST UNANIMOUS CRITICISM OF ITS INTENT AND  
CONTENT. FORMER ATTORNEY GENERAL GONZALO ORTIZ  
DE ZEVALLOS ADDED HIS OPINION THAT THIS MOST  
RECENT ACTION WILL "WEAKEN THE THE DEMOCRATIC  
SYSTEM AND DO MUCH DAMAGE TO THE COUNTRY'S IMAGE  
VIS-A-VIS OTHER NATIONS AND INTERNATIONAL  
ORGANIZATIONS."

6. (U) OPPOSITION ATTACKS CONTINUED TO FOCUS ON  
THE ELEMENTS OF RETROACTIVENESS AND SPECIFICITY  
IN THE LAW. ATTORNEYS CONTINUE TO POINT OUT  
THAT THE LAW APPEARS IN CLEAR VIOLATION OF  
CONSTITUTIONAL PROHIBITIONS AGAINST RETROACTIVE  
LAWS, INTERFERING WITH A CASE CURRENTLY IN THE  
COURTS, AND LAWS DESIGNED TO INFLUENCE THE  
OUTCOME OF A SPECIFIC CASE BEFORE THE COURTS.

7. (U) WHILE COLLEAGUE CHIRINOS WAS QUESTIONING  
THE BILL'S CONSTITUTIONALITY, RENOVATION FOUNDER

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AND LEADER RAFAEL REY SEEMED TO BE BACKING OFF  
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EARLY TENTATIVE CRITICISM OF THE GOVERNMENT'S  
ACTION. HE TOLD THE PRESS THAT DOING JUSTICE  
WAS MORE IMPORTANT THAN WHO DID IT. THERE WERE  
MANY REASONS, HE CONTINUED, FOR KEEPING THE LA  
CANTUTA CASE WITHIN THE MILITARY COURT SYSTEM.

OPPOSITION ANNOUNCES BOYCOTT  
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8. (U) REPRESENTATIVES OF SEVEN OPPOSITION  
PARTIES IN THE CCD FEBRUARY 10 SENT A  
PARTICULARLY HARSHLY WORDED AND BITTER LETTER TO  
CCD PRESIDENT JAIME YOSHIYAMA ANNOUNCING A  
BOYCOTT OF THAT BODY'S INTER-SESSIONAL GOVERNMENT  
BODY, THE "EXPANDED DIRECTIVE COUNCIL." THE  
LETTER WAS SIGNED BY REPRESENTATIVES FROM THE  
POPULAR CHRISTIAN PARTY (PPC), THE DEMOCRATIC  
COORDINATOR (CODE), FRENATRACA, THE INDEPENDENT  
AGRICULTURAL MOVEMENT (MIA), SOLIDARITY AND  
DEMOCRACY (SODE), THE DEMOCRATIC LEFT (MDI), AND  
THE FIM (INDEPENDENT MORALIZATION FRONT).

9. (C) OSWALDO SANDOVAL, CHAIRMAN OF THE  
FOREIGN RELATIONS COMMITTEE AND THE GOVERNMENT  
PARTY'S SPOKESPERSON ON THE BILL, DOWNPLAYED THE  
OPPOSITION'S ATTACKS ON THE LEGISLATION. "THEY  
ARE TRYING TO MAKE A BIG ISSUE OUT OF SOMETHING  
WHICH IS REALLY QUITE SIMPLE," HE EXCLAIMED  
SOMEWHAT IMPATIENTLY. ASKED ABOUT THE  
OPPOSITION BOYCOTT, SANDOVAL TOLD POLITICAL  
OFFICER FEBRUARY 10 THAT "IF THE OPPOSITION

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DOESN'T WANT TO PARTICIPATE IN (EXECUTIVE  
SESSIONS), THAT'S THEIR PROBLEM. BUSINESS," HE  
CONTINUED, "WILL GO ON, WITHOUT OR WITHOUT THEM."

10. (U) THE CCD'S EXECUTIVE COMMITTEE (CONSEJO  
DIRECTIVO), WHICH INTER ALIA RESOLVES DISPUTES  
OVER PARLIAMENTARY PROCEDURES, MET FEBRUARY 9

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AND IGNORED THE RECONSIDERATION REQUEST BECAUSE THERE WAS NO ONE FROM THE OPPOSITION PRESENT TO MAKE THE MOTION. FOLLOWING THE MEETING, OSWALDO SANDOVAL HELD A PRESS CONFERENCE IN WHICH HE CRITICIZED THE OPPOSITION FOR EXHORTING OTHER COUNTRIES AND INTERNATIONAL ORGANIZATIONS "TO DEPRIVE PERU OF THE ASSISTANCE IT SHOULD RECEIVE."

OPPOSITION DENOUNCES YOSHIYAMA, ANNOUNCES BOYCOTT

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O 102318Z FEB 94  
FM AMEMBASSY LIMA  
TO SECSTATE WASHDC IMMEDIATE 4800  
INFO AMEMBASSY BOGOTA  
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C O N F I D E N T I A L SECTION 03 OF 05 LIMA 01292

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11. (U) IN THE LETTER, A COPY OF WHICH WAS  
OBTAINED BY POLOFF, THE OPPOSITION:

-- ACCUSED YOSHIYAMA OF "TOTAL LACK OF RESPECT  
FOR THE EXISTING RULES OF THE GAME IN THIS  
CONGRESS."

-- CHARGED THAT "IN THE FACE OF ORDERS ARRIVING  
FROM THE (PRESIDENTIAL) PALACE OF THE MILITARY  
COMMAND, YOU (THE GOVERNMENT MAJORITY) DO NOT  
HESITATE TO BREAK YOUR OWN RULES."

-- ACCUSED THE GOVERNMENT MAJORITY OF  
EXERCISING A "DICTATORIAL ATTITUDE" WHICH IS AT  
THE SAME TIME INFLEXIBLE, SUBMISSIVE, AND  
ARROGANT.

-- REMINDED THE CCD PRESIDENT THAT RULES ARE  
NOT DESIGNED TO PROTECT THE MINORITY BUT RATHER  
TO DEFEND THE RIGHTS OF CITIZENS AND THAT LAWS  
AFFECTING CITIZENS OUGHT NOT TO BE RUSHED  
THROUGH BETWEEN MIDNIGHT AND DAWN.

-- CHARGED THAT "UNDER YOUR ADMINISTRATION" THE  
CONGRESS HAS CEASED TO BE A DEMOCRATIC  
INSTITUTION BUT HAS BEEN CONVERTED INTO AN  
AUTHORITARIAN VEHICLE FOR MAJORITY ABUSE OF THE  
MINORITY AND SUBJECTING THE MINORITY TO ABUSE  
"UNACCEPTABLE IN ANY PARLIAMENT."

-- ACCUSED THE MAJORITY OF VIOLATING ITS OWN  
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NORMS AND LAWS WHICH THE OPPOSITION HAD TAKEN AS  
A POINT OF DEPARTURE FOR CONSTRUCTING A  
DEMOCRATIC ORDER.

-- CONCLUDES THAT THE PARTIES SIGNING THE  
LETTER WILL NOT PARTICIPATE IN FUTURE SESSIONS  
OF THE EXECUTIVE COMMITTEE UNTIL THE GOVERNMENT  
CORRECTS THE "OFFENSE" WHICH WAS PERPETRATED  
FEBRUARY 8.

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YOSHIYAMA'S LOSS OF CREDIBILITY

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12. (C) WHILE NOT THE FIRST SUCH BOYCOTT OF CONGRESSIONAL PROCEEDINGS BY THE OPPOSITION, THE OPPOSITION ATTACK ON JAIME YOSHIYAMA ACCUSING HIM OF BLINDSIDING THE OPPOSITION IS PARTICULARLY HARSH AND PERSONAL. IN THE PAST THE OPPOSITION HAS QUIETLY RETURNED TO PARTICIPATION KNOWING THAT IN A QUASI-PARLIAMENTARY SYSTEM IN THEIR ABSENCE THE GOVERNMENT MAJORITY COULD PASS EVEN MORE OBJECTIONABLE LEGISLATION. HOWEVER, ONE OF THE BIGGEST CASUALTIES OF THIS LATEST ACTION MAY BE YOSHIYAMA'S REPUTATION AS AN OPEN-MINDED MEDIATOR.

B1, 1.5(D)

13. (C) YOSHIYAMA REMAINS ON THE OUTSIDE OF FUJIMORI'S INNER DECISION-MAKING CIRCLE -- PARTICULARLY IN THE WAKE OF HIS MISMANAGEMENT OF THE REFERENDUM CAMPAIGN. HE HAS FREQUENTLY BEEN UNABLE TO DELIVER ON PROMISES OF DIALOGUE,

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OPENNESS AND MODERATION IN THE PAST. HIS INVOLVEMENT IN THE PASSAGE OF THE LA CANTUTA JURISDICTION BILL MAY DOOM HIS CREDIBILITY AND EFFECTIVENESS WITH THE OPPOSITION.

TOLD US THAT THE COORDINADORA'S BOARD WOULD MEET FEBRUARY 11 TO DECIDE WHAT TO DO. HE NOTED THAT THE HUMAN RIGHTS ORGANIZATION HAD DECIDED PREVIOUSLY TO PULL OUT OF ITS DIALOGUE WITH THE GOVERNMENT IF THE LA CANTUTA CASE WINDS UP UNDER MILITARY COURT JURISDICTION. HOWEVER, HE ADDED, PROMULGATION OF THE LAW WAS A BIG STEP IN THE WRONG DIRECTION AND COULD LEAD TO A DECISION TO

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O 102318Z FEB 94  
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C O N F I D E N T I A L SECTION 04 OF 05 LIMA 01292

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END THE DIALOGUE TOMORROW.

*f. 218 225*

B1,1.5(D)

OPPONENTS TRY TO FILE CHARGES AGAINST CCD MEMBERS  
-----

15. (U) A GROUP OF OPPOSITION, PRESS AND HUMAN RIGHTS FIGURES CALLING THEMSELVES THE "CIVIC COMMITTEE FOR DEMOCRACY" ON FEBRUARY 9 TRIED TO FILE CHARGES AGAINST THE 45 CCD MEMBERS WHO VOTED FOR THE LAW. ACCORDING TO THEIR COMPLAINT, THE CCD MEMBERS HAD COMMITTED THE CRIMES OF OBSTRUCTING AN INVESTIGATION,

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OBSTRUCTING THE ADMINISTRATION OF JUSTICE, AND TRYING TO COVER-UP FOR PEOPLE WHO DIRECTED AND COMMITTED MULTIPLE HOMICIDE. THE DISTRICT ATTORNEY ON DUTY REFUSED TO ACCEPT THE COMPLAINT. HOWEVER, LATER IN THE DAY, ATTORNEY GENERAL BLANCA NELIDA COLAN PUBLICLY REITERATED HER POSITION THAT THE LA CANTUTA CASE SHOULD BE TRIED IN CIVILIAN COURT.

WHAT NEXT?  
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16. (C) AS LIMA BAR ASSOCIATION HEAD JORGE AVENDANO NOTED (REFTEL), AND AS OTHER LAWYERS HAVE SIMILARLY CONCLUDED, THE SUPREME COURT HAS THE AUTHORITY TO IGNORE THE LAW BECAUSE THE CONSTITUTION PROHIBITS LEGISLATION THAT WOULD IMMEDIATELY AFFECT ANY PENDING JUDICIAL DECISION. TECHNICALLY, THE COURT COULD CONTINUE  
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THE PROCEDURE USED UNDER ITS ORGANIC REGULATIONS TO DECIDE JURISDICTION. ADDITIONALLY INTERESTED PARTIES COULD FILE A NOTICE OF AMPARO TO HALT APPLICATION OF THE LAW TO THE LA CANTUTA CASE. HOWEVER, SUPREME COURT PRESIDENT LUIS SERPA HAS REPEATEDLY REFUSED OVER THE LAST TWO DAYS TO COMMENT ON WHETHER OR NOT THE COURT WOULD APPLY THE LAW TO THE LA CANTUTA JURISDICTION DECISION.

17. (U) IF THE SUPREME COURT DECIDES TO CONTINUE THE PROCESS, JUSTICE CARLOS ERNESTO GIUSTI WILL HEAR EACH SIDES' ARGUMENTS FEBRUARY 11. A RECUSATION AGAINST HIM FILED BY THE MILITARY PROSECUTOR (REF B) WAS REJECTED BY THE CRIMINAL LAW CHAMBER FEBRUARY 9.

COMMENT  
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18. (C) IN 1992 NO ONE BELIEVED THAT ANYONE WOULD BE IDENTIFIED AS RESPONSIBLE FOR LA CANTUTA. PUNISHMENT BY THE MILITARY COURTS, WHICH NOW SEEMS LIKELY, WAS A PIPE DREAM. THE INTERPLAY BETWEEN SEVERAL FORCES ADVANCED THE PROCESS: INTRA-MILITARY TENSIONS THAT PRODUCED

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INCRIMINATING EYEWITNESS TESTIMONY, TENACIOUS  
PRESS AND OPPOSITION USE OF LIMITED POLITICAL  
SPACE, AND UNENDING USG INTEREST AND CONSTANT  
USG PRESSURE -- BOTH PUBLIC AND PRIVATE. THE  
RESULT IS THAT THE GOP HAS BEEN FORCED TO  
PROMISE PUBLICLY THAT THE MILITARY COURTS WILL  
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PUNISH SOME 7-8 MILITARY PERSONNEL. WHILE THIS  
COULD UNRAVEL, IT IS MUCH MORE THAN ANYONE DARED  
HOPE FOR 18 MONTHS AGO.

19. (C) THE BAD NEWS IS THAT FUJIMORI, FEELING  
BOXED IN, CHOSE TO VIOLATE THE INDEPENDENCE OF  
THE JUDICIAL SYSTEM, WHICH THE GOP, UNDER USG  
AND OPPOSITION PRESSURE, HAD NURTURED  
SUCCESSFULLY IN LATE 1993. THIS IS NOT TOTALLY  
SURPRISING -- FUJIMORI PROBABLY HAD APPROVED THE  
APRIL 1993 "TANCAZO" AGAINST THE CCD TO PREVENT  
FURTHER INVESTIGATION OF LA CANTUTA -- BUT IT IS  
A MAJOR BACKWARD STEP IN WHAT HAD BEEN A SLOW,  
BUT UP TO NOW APPARENTLY SINCERE, RETURN TOWARD  
THE SEPARATION OF POWERS AND JUDICIAL  
INDEPENDENCE.

20. (C) THIS MOVE ALSO RAISES QUESTIONS IN THE  
MIND OF THE PERUVIAN POLITICAL CLASS ABOUT

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TO SECSTATE WASHDC IMMEDIATE 4802  
INFO AMEMBASSY BOGOTA  
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AMEMBASSY QUITO  
AMEMBASSY OTTAWA  
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C O N F I D E N T I A L SECTION 05 OF 05 LIMA 01292

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FUJIMORI'S WILLINGNESS TO ABIDE BY OTHER "RULES  
OF THE GAME," ESPECIALLY THOSE THAT WILL GOVERN  
THE 1994-95 ELECTION CAMPAIGN. WHAT LITTLE TRUST  
THE GOP HAD EARNED ON THIS SCORE WITH THE  
OPPOSITION IS GONE. THE OPPOSITION WILL LOOK TO  
THE USG TO BE VIGILANT AND PRESSURE FUJIMORI AS  
NEEDED TO PERMIT A TRANSPARENT ELECTION PROCESS.  
WE AGREE THAT THE 1994-95 CAMPAIGN WILL BE A TEST  
OF PERU'S RETURN TO DEMOCRACY. WE CAN HAVE AN  
IMPACT ON THIS PROCESS, BUT WE WILL HAVE TO HAVE  
POSITIVE AS WELL AS NEGATIVE REINFORCEMENT IF WE  
ARE TO SUCCEED. WE WILL BE WATCHING HOW THE  
HANDLING OF THIS CASE AFFECTS PUBLIC OPINION AND  
ITS VIEWS OF FUJIMORI. NOTWITHSTANDING THE VIEW  
OF THE UNITED STATES AND POLITICIZED PERUVIANS,  
IT IS POSSIBLE THAT THIS EPISODE MAY NOT MOVE  
THE PERUVIAN MASSES TO THE POINT AT LEAST WHERE  
FUJIMORI WOULD CHANGE COURSE. ADAMS

CONFIDENTIAL

NNNN

UNCLASSIFIED

Current Class: CONFIDENTIAL

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