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SUBJECT: AMNESTY LAW IN PERU: ANALYSIS
AND RECOMMENDATIONS

1. (S/NF) SUMMARY: WHILE THE MILITARY/POLICE AMNESTY LAW IS GENERAL IN SCOPE, THE ONLY ACTIVE HUMAN RIGHTS CASE AGAINST MILITARY/INTELLIGENCE OFFICERS, AND THE MOST SIGNIFICANT CONVICTIONS AGAINST THE MILITARY, INVOLVED THE "COLINA" GROUP CONVICTED FOR LA CANTUTA. COLINA WAS STAFFED BY ARMY INTELLIGENCE PERSONNEL AND ALSO HAD WITH

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UNITED STATES DEPARTMENT OF STATE
CLASSIFIED BY DEPT. OF STATE, F. MACHAK, DAS, A/RPS
REVIEW AUTHORITY: NORMAN M. BOUTON
DATE/CASE ID: 10 JAN 2002 200003849
CLASSIFICATION: CONFIDENTIAL REASON: 25X1, 25X6

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LINKS TO THE NATIONAL INTELLIGENCE SERVICE (SIN). THE MAJOR BENEFICIARIES, THEREFORE, ARE THE MEMBERS OF THESE GROUPS AND THOSE IN THE ARMY AND INTELLIGENCE HIERARCHIES WHO SUPPORTED THEM, INCLUDING MONTESINOS AND HERMOZA. FUJIMORI SIGNED THE BILL JUNE 14, AND IT WAS PUBLISHED AND PROMULGATED JUNE 15. FUJIMORI CLEARLY APPROVED IT IN ADVANCE. WE BELIEVE THAT THE DEPARTMENT SHOULD CALL IN PERUVIAN AMBASSADOR LUNA TO REGISTER OUR DISAPPOINTMENT THAT THE GOP HAS UNDERMINED ITS COMMITMENT TO ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS. THE DEPARTMENT SHOULD EXPRESS PUBLICLY THE SAME POINTS. (WE UNDERSTAND THAT BOTH ACTIONS WERE TAKEN JUNE 15.)

TO BE EFFECTIVE, WE SHOULD PASS THE SAME MESSAGE [REDACTED]

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[REDACTED] TO MONTESINOS AND DOD TO HERMOZA, AS WELL AS TO PRESIDENTIAL ADVISER SANTIAGO FUJIMORI AND CONGRESS PRESIDENT YOSHIYAMA. ANY U.S. CRITICISM OF THE AMNESTY WILL JEOPARDIZE THE POST-APRIL 1995 IMPROVEMENTS IN BILATERAL RELATIONS. WHILE MUCH DISAPPOINTED BY THE SUBSTANCE AND THE MANNER IN WHICH THE LAW WAS APPROVED (AND WHAT THIS SAYS ABOUT EFFECTIVE LEGISLATIVE ROLE IN GOVERNANCE), OUR REACTION NEEDS TO BE CONSCIOUS OF THE DIVERSITY OF OUR INTERESTS HERE INCLUDING FUJIMORI'S

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IMPORTANT COMMITMENT TO DEAL CONCLUSIVELY WITH COUNTERNARCOTICS IN THE NEXT FIVE YEARS. NO ONE -- LEAST OF ALL THIS MISSION -- UNDERESTIMATES THE DIFFICULTY OF DEALING WITH FUJIMORI, AND HIS PENCHANT FOR SUDDEN MOVES BASED ON A COLD-EYED CALCULATION OF WHAT HE SEES AS OVERRIDING STATE INTERESTS. HOWEVER MUCH WE ARE TROUBLED BY THIS "IN YOUR FACE" ATTITUDE TOWARDS OUR VIEWS ON HUMAN RIGHTS AND THE LEGISLATIVE ROLE, THE FACT REMAINS THAT HE RETAINS OVERWHELMING SUPPORT FROM A PUBLIC WHICH CARES LITTLE ABOUT THESE MATTERS. IT IS ALSO A REALITY -- ALBEIT UNCOMFORTABLE -- THAT WE HAVE A MASSIVE NATIONAL SECURITY PROBLEM -- DRUGS -- WHICH AT THIS POINT REQUIRES HIS COOPERATION TO EASE, IF NOT RESOLVE. END SUMMARY.

WHY DID THE GOP PASS THIS AMNESTY AT THIS TIME, AND IN THIS WAY?

2. (C) WE BELIEVE THAT GIVEN THE INTERESTS AT STAKE, THIS AMNESTY MUST HAVE BEEN PROPOSED TO FUJIMORI BY EITHER NATIONAL INTELLIGENCE SERVICE (SIN) CHIEF VLADIMIRO

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MONTESINOS OR ARMY COMMANDER GEN. HERMOZA. WE DO NOT BELIEVE ANYONE PRESSURED FUJIMORI ON THIS. WHILE THE DECISION TO MOVE ON IT -- AND ITS TIMING -- WAS FUJIMORI'S, WE BELIEVE THE INSPIRATION MAY WELL HAVE COME FROM THE SIN OR THE ARMY. THE ANSWER TO THE PROCEDURAL QUESTION, I.E. WHY PASS IT WITH NO WARNING, WITH MINIMUM DEBATE, AND IN THE WEE HOURS OF THE MORNING IS THAT THAT IS THE PRESIDENT'S PREFERRED OPERATING MANNER. ONCE THE PRESIDENT MAKES A DECISION, HE COMMUNICATES IT TO CONGRESS FOR EXECUTION. WE SAW THE GOP USE SIMILAR METHODS IN THE

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LAST MONTH TO INTERVENE IN THE STATE UNIVERSITIES, TO INCREASE THE SIGNATURES NEEDED FOR POLITICAL PARTIES TO REGISTER FOR ELECTIONS, AND TO SEND BACK TO COMMISSION THE OMBUDSMAN LAW. THIS TIME, HOWEVER, AS MANY AS SIX GOP CONGRESSMEN VOTED AGAINST THE BILL, INCLUDING CONGRESS VICE-PRESIDENT CARLOS TORRES Y TORRES, USUALLY A GOP STALWART, A REFLECTION OF THE AMNESTY'S LEVEL OF CONTROVERSY. ACCORDING TO THE JUNE 15 PRESS, THERE WAS ALSO CONSIDERABLE DEBATE ABOUT THE LAW IN THE JUNE 14 CABINET MEETING THAT APPROVED THE BILL. CLEARLY THE GOP WENT ALL OUT TO PASS THIS BILL QUICKLY.

WHY NOW?

3. (C) THERE ARE THREE POSSIBILITIES, NONE OF WHICH ARE CONTRADICTORY. AS WE REPORTED IN FEBRUARY-MARCH 1994, THERE WAS CONSIDERABLE SPECULATION THAT THE PRESIDENT MADE A DEAL WITH THE LA CANTUTA DEFENDANTS THAT IN EXCHANGE FOR THEIR SILENCE, THEY WOULD SERVE ONLY A SMALL PART OF THEIR SENTENCE, AND THEN BE AMNESTIED, POSSIBLY BEFORE THE PRESIDENT'S (EXPECTED) SECOND TERM. WE CAN SPECULATE THAT THIS AMNESTY MIGHT REPEAT MIGHT BE PART OF THE PRESIDENT'S PLANS FOR EVENTUAL CHANGES IN THE ARMY COMMAND AND DEFENSE MINISTRY (WHETHER THESE ARE ON JULY 28 OR AT YEAR'S END); CONCEIVABLY THE EXISTENCE OF A BLANKET AMNESTY COULD MAKE

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IT MORE ACCEPTABLE FOR GENERALS TO RETIRE. OR, POSSIBLY THE PRESIDENT SIMPLY HAD THE CONCEPT OF AN AMNESTY ON HIS LIST OF ITEMS TO DO FOLLOWING RE-ELECTION AND SIMPLY DECIDED TO CHECK IT OFF. FINALLY, THE RECENT ACCUSATIONS AGAINST NOMINAL NATIONAL INTELLIGENCE SERVICE (SIN) CHIEF GEN. JULIO SALAZAR MONROE AND THE "COLINA" GROUP WERE A POTENTIAL NUISANCE TO MONTESINOS, HERMOZA, AND THE PRESIDENT. AMONG THEIR CONCERNS, WE SPECULATE, MIGHT HAVE BEEN A FEAR THAT UNLESS THE COLINA/CANTUTA GROUP WAS RELEASED SOON, ITS MEMBERS WOULD BE TEMPTED TO TAKE

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ADVANTAGE OF THE JUDICIAL PROCESS AGAINST GENERAL SALAZAR TO THREATEN DAMAGING LEAKS TO THE PRESS AND OPPOSITION ON THE BARRIOS ALTOS CASE.

WHO GAINS FROM THIS AMNESTY?

4. (C) IN THEORY THE AMNESTY BENEFITS ALL THOSE WHO COMMITTED HUMAN RIGHTS VIOLATIONS DURING THE LAST 15 YEARS OF THE INSURGENCY (NARCOTICS OFFENSES ARE NOT AMNESTIED). GIVEN THE WIDESPREAD AND SYSTEMATIC USE OF EXECUTIONS, DISAPPEARANCES, AND TORTURE BY THE ARMED FORCES AND POLICE, PARTICULARLY BETWEEN 1983 AND 1992, THERE ARE A LOT OF POTENTIAL BENEFICIARIES -- IN THEORY. IN PRACTICE, HOWEVER, THE ONLY ACTIVE HUMAN RIGHTS CASE BEING INVESTIGATED NOW BY THE PROSECUTORS OR THE PRESS IS BARRIOS ALTOS (WHICH WAS CARRIED OUT, WE BELIEVE, LARGELY BY THE SAME GROUP THAT CARRIED OUT LA CANTUTA). THERE ARE

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NO OTHER CASES OUT THERE AGAINST THE MILITARY OR POLICE THAT SHOWED POTENTIAL TO ADVANCE. (THERE ARE, HOWEVER, A SMALL NUMBER OF MOSTLY POLICE, AND SOME ARMY, PERSONNEL CONVICTED OF OTHER EXTRAJUDICIAL KILLINGS WHO WILL BENEFIT.) THUS THE GENERAL NATURE OF THE AMNESTY SERVES TO OBSCURE THE FACT THAT IT BENEFITS PRIMARILY THE COLINA GROUP AND THOSE PERSONS IN THE INTELLIGENCE AND MILITARY INSTITUTIONS THAT WERE LINKED TO COLINA, OR WHO WERE CONSIDERED POLITICALLY RESPONSIBLE FOR THEIR ACTS. BECAUSE OF THEIR POSITIONS, MONTESINOS AND HERMOZA ARE THE BIGGEST BENEFICIARIES.

GENERAL SALINAS

5. (C) THE BILL ALSO COVERS GEN. SALINAS AND THE OTHER OFFICERS ARRESTED FOR COUP-PLOTTING IN NOVEMBER 1992. GEN. SALINAS, HOWEVER, IS ALSO CONVICTED OF A CORRUPTION CHARGE, WHICH MEANS HE APPARENTLY WILL REMAIN IN PRISON. THEIR IMPRISONMENT HAD BEEN A SORE POINT IN SOME SMALL SECTORS OF THE ARMED FORCES. ALSO READY TO BENEFIT ARE GEN. MAURICIO AND GEN. LEDESMA, WHO HAD BEEN CONVICTED RECENTLY FOR MAKING STATEMENTS ON THE BORDER CONFLICT WITH ECUADOR THAT HARMED PERU. THEIR CASES, WHILE ARGUABLY VIOLATIONS OF THE FREEDOM OF SPEECH, WERE NOT VIEWED WITH

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MUCH SYMPATHY BY MOST OF THE ARMY. THEIR RELEASE WILL RELIEVE THE GOP OF A MINOR INTERNATIONAL PUBLIC RELATIONS NUISANCE, BUT NOTHING MORE. WE BELIEVE THE INCLUSION OF THESE TWO GROUPS OF DETAINED MILITARY OFFICERS IN THE AMNESTY WAS DONE PRIMARILY TO GIVE COVER FOR THE AMNESTY OF THOSE INVOLVED IN LA CANTUTA AND BARRIOS ALTOS.

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HERMOZA AND MONTESINOS

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6. [REDACTED] A SECRET MILITARY COURT INVESTIGATED GEN. HERMOZA AND MONTESINOS FOR LA CANTUTA AND BARRIOS ALTOS AND FOUND THEM INNOCENT. WHILE WE BELIEVE THIS CONCLUSION -- BY SUBORDINATES OF HERMOZA -- WAS SIMPLY A PAPER TRAIL, IT DOES SHOW THAT HERMOZA AND MONTESINOS WERE INTERESTED IN ASSURING FREEDOM FROM EVENTUAL CIVILIAN PROSECUTION FOR BARRIOS ALTOS AND LA CANTUTA. ALTHOUGH MONTESINOS AND HERMOZA WERE LEGALLY FOUND INNOCENT BY THIS MILITARY COURT, ITS SECRET SENTENCE WOULD NOT HAVE THE SAME CREDIBILITY AS A GENERAL AMNESTY.

7. (C) THE SECRET TRIAL, HOWEVER, DID NOT ADDRESS TWO OTHER ISSUES. THE FIRST WAS THE RUMORED DEAL WITH THE OFFICERS AND NCOs CONVICTED FOR LA CANTUTA, IN WHICH THE GUILTY REPORTEDLY AGREED TO REMAIN SILENT IN RETURN FOR DECENT TERMS OF CONFINEMENT AND AN AMNESTY. THE SECOND WAS THE APRIL 1995 INVESTIGATION OF NOMINAL SIN CHIEF GEN. SALAZAR AND COLINA FOR BARRIOS ALTOS. SALAZAR IS EXPENDABLE, BUT ANY ACCUSATION OF THE SIN LEADERSHIP IS PERCEIVED IN PERU AS AN ACCUSATION OF MONTESINOS. WHILE THE END RESULT OF SUCH A TRIAL WAS KNOWN -- THE SUPREME

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COURT WOULD LIKELY VOTE AS IT HAD IN 1994 FOR A MILITARY VERSUS CIVILIAN VENUE -- THERE COULD HAVE BEEN A SERIES OF EMBARRASSING MEDIA INVESTIGATIONS OF THE ACCUSATIONS THAT COULD HAVE AFFECTED MONTESINOS AND HERMOZA.

8. [REDACTED] SOURCES REPORT PRESIDENT FUJIMORI HIMSELF PROPOSED THE AMNESTY LAW WITH NO PRESSURE FROM THE MILITARY OR INTELLIGENCE ORGANIZATIONS OR ANY OFFICIALS THEREIN. FUJIMORI IS REPORTEDLY UNCONCERNED ABOUT THE REACTION OF THE U.S. GOVERNMENT OR THE REST OF THE INTERNATIONAL COMMUNITY. AS NOTED ABOVE, WE PREVIOUSLY REPORTED THAT MONTESINOS AND HERMOZA, AMONG OTHERS, WERE FOUND INNOCENT BY A MILITARY COURT OF ANY INVOLVEMENT IN EITHER THE "LA CANTUTA" OR THE BARRIOS

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ALTOS KILLINGS. ALTHOUGH SOME INDIVIDUALS QUESTION THE LEGAL PROCESS USED TO CLEAR THE OFFICIALS, THE PERUVIAN GOVERNMENT APPARENTLY REGARDS THE TRIAL AND ITS RESULTS AS AUTHENTIC. FOR THIS REASON, THERE WAS NO REASON FOR THE GOVERNMENT TO PROPOSE AN AMNESTY LAW FOR THEIR BENEFIT--THEY ALREADY WERE EXCULPATED. THE RECENT ACCUSATIONS AGAINST SIN CHIEF JULIO SALAZAR MONROE COULD PARTIALLY EXPLAIN THE AMNESTY LAW. DESPITE THE FACT THAT SALAZAR HAD NEVER BEEN IMPLICATED IN THE BARRIOS ALTOS KILLINGS PRIOR TO THE JANUARY ACCUSATIONS AND THAT TO DATE THERE IS NO EVIDENCE OF HIS INVOLVEMENT, THE ISSUE REMAINED A THORN IN THE GOVERNMENT'S SIDE.)

WHAT U.S. CONCERNS ARE AT STAKE?

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9. (C) THE AMNESTY IS WORRISOME FROM SEVERAL ANGLES:

-- FIRST, IT TURNS BACK THE CLOCK ON THE CONCEPT OF MILITARY/POLICE ACCOUNTABILITY FOR THE WORST AND LEAST DEFENSIBLE OF THE KILLINGS COMMITTED DURING THE COUNTERINSURGENCY. TO THE EXTENT THAT SUCH ACCOUNTABILITY IS UNDONE, IT ALSO IS A SETBACK TO THE PRINCIPLE OF MILITARY SUBORDINATION TO THE LAW AND HENCE TO CIVILIAN CONTROL. (WE DO NOT, HOWEVER, BELIEVE THIS MEASURE WAS THE RESULT OF MILITARY PRESSURE ON FUJIMORI, BUT RATHER THE RESULT OF THE FACTORS DISCUSSED IN PARAS 3 AND 4.)

-- SECOND, THE HURRIED WAY IN WHICH THE BILL WAS INTRODUCED AND PASSED REFLECTED NO INTEREST IN BUILDING CONSENSUS OR PERMITTING MORE THAN A FEW HOURS' DEBATE; ONCE AGAIN, FUJIMORI'S USE OF THE CONGRESS PROJECTS AN IMAGE OF CONGRESSIONAL DOCILITY AND SUBMISSION. INDEED, FROM THE POINT OF VIEW OF THE INTEGRITY OF THE LEGISLATIVE FUNCTION, IT WOULD HAVE BEEN BETTER IF FUJIMORI HAD NOT RAMMED THIS THROUGH THE CCD, BUT UNILATERALLY PARDONED INDIVIDUALS AS AN EXECUTIVE ACTION.)

-- THIRD, THE FACT THAT FUJIMORI TOOK THIS STEP KNOWING FULL WELL WHAT THE U.S. REACTION WOULD BE SUGGESTS HE CARES LITTLE FOR U.S. OR OTHER FOREIGN OPINION ON THIS SUBJECT. (THE GOP WAS EXPECTING A STRONG U.S. REACTION; WHEN THE AMBASSADOR IMMEDIATELY REQUESTED AN APPOINTMENT

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WITH CONGRESS PRESIDENT YOSHIYAMA JUNE 14, YOSHIYAMA'S REACTION WAS TO EXPRESS CONCERN OVER A "CONFRONTATION".)

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-- FOURTH, THE LENGTHS THAT THE GOP HAS GONE TO PROTECT THE LA CANTUTA AND BARRIOS ALTOS DEFENDANTS SUGGESTS THAT THE GOP INDEED FEARED ADDITIONAL DAMAGING DISCLOSURES OF HIGHER-LEVEL INVOLVEMENT IN THOSE CRIMES.

OUR OPTIONS

10. (C) IF THE U.S. WEIGHS IN AGAINST THE AMNESTY, PUBLICLY OR PRIVATELY, WE RISK BEING PERCEIVED AS INEFFECTIVE (SINCE THE GOP WILL NOT RETREAT) AND AS OVERLY INVOLVED IN PERU'S INTERNAL AFFAIRS. THE RESULT COULD ALLOW FUJIMORI TO FOCUS PUBLIC ATTENTION ON SOVEREIGNTY ISSUES AND NOT THE SUBSTANCE OF THIS ACTION. DEPENDING ON THE LEVEL OF OUR CRITICISMS, WE COULD PUT AT RISK THE STEADY IMPROVEMENT IN BILATERAL RELATIONS SINCE THE APRIL ELECTIONS, INCLUDING THE FUJIMORI'S COMMITMENT TO DEAL CONCLUSIVELY WITH COUNTERNARCOTICS IN THE NEXT FIVE YEARS. IN THIS REGARD, WE BELIEVE THAT THE RECENT PERU IWG RECOMMENDATIONS ON U.S.-PERU RELATIONS SHOULD NOT BE CHANGED. HOWEVER, THE DEPARTMENT AND NSC MAY WISH TO CONSIDER THE EFFECT OF THE AMNESTY DECISION ON WHO PRECISELY WE SEND TO FUJIMORI'S INAUGURATION AND THE TIMING OF AN INVITATION FOR A WORKING VISIT TO WASHINGTON.

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11. (C) IF WE SAY NOTHING, HOWEVER, FUJIMORI WILL INTERPRET THIS AS A SIGN THE U.S. APPROVES OF THE MEASURE, OR AT LEAST DOES NOT CARE ENOUGH ABOUT THE ISSUE TO HARM BILATERAL RELATIONS, OR IS TOO CONCERNED ABOUT OTHER INTERESTS TO CRITICIZE THE AMNESTY. TO BE EFFECTIVE, WE MUST SEND ANY MESSAGE NOT ONLY THROUGH THE FOREIGN MINISTRY, BUT ALSO TO MONTESINOS AND HERMOZA, AS WELL AS TO SANTIAGO FUJIMORI AND CONGRESS PRESIDENT YOSHIYAMA. OTHERWISE, THE GOP MAY PERCEIVE WE ARE JUST GOING THROUGH THE MOTIONS.

12. (S/NF) WE RECOMMEND THAT WASHINGTON DO THE FOLLOWING:

A. CALL IN AMBASSADOR LUNA, AND EXPRESS DISAPPOINTMENT THAT THE PRINCIPLE OF ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS THAT WAS SO HARD-FOUGHT (E.G. LT. TELMO HURTADO WHO KILLED 60 PLUS VILLAGERS IN ACCOMARCA IN 1985, THE SANTA BARBARA CASE OF 1990, THE COLINA GROUP THAT KILLED THE LA CANTUTA STUDENTS IN 1992). THERE WAS NO NEED TO

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INCLUDE THESE EGREGIOUS CASES OF ASSASSINATION IN A GENERAL AMNESTY BILL. COUNTER WHAT WE ANTICIPATE WILL BE LUNA'S RESPONSES:

-- THIS IS STRICTLY AN INTERNAL MATTER;

-- THIS IS A MATTER OF RECONCILIATION (WE NOTE THE WAR HAS NOT ENDED; NOR, UNLIKE OTHER COUNTRIES IN THE REGION, THERE WAS NO REAL PUBLIC DEBATE ON THIS PRIOR TO PASSING

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THE LAW), NOR ANY PUBLIC CLAMOR FOR A GENERAL AMNESTY, NOR ANY EXPRESSION OF REGRET FOR THE USE, OFTEN INDISCRIMINATE, OF ASSASSINATION AND TORTURE BY THE SECURITY FORCES);

-- THIS WAS A CONGRESSIONAL RATHER THAN AN EXECUTIVE INITIATIVE.

B. WASHINGTON SHOULD CONSIDER HAVING OTHER AGENCY REPRESENTATIVES EXPRESS OUR VIEWS ON THIS MATTER TO APPROPRIATE SENIOR PERUVIAN GOVERNMENT OFFICIALS.

C. ISSUE A PUBLIC STATEMENT IN WASHINGTON THAT DRAWS UPON THE POINTS IN (A) ABOVE.

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