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ACTION ARA-01

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	T-00	USIE-00	RPE-01	/062W			

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FM AMEMBASSY LIMA
TO SECSTATE WASHDC IMMEDIATE 4762
INFO AMEMBASSY BOGOTA
AMEMBASSY LA PAZ
AMEMBASSY QUITO
AMEMBASSY OTTAWA
AMEMBASSY TOKYO
USEC BRUSSELS
DIA WASHDC
USMISSION GENEVA
USCINCSO QUARRY HEIGHTS PM

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USCINCSO ALSO FOR POLAD

E.O. 12356: DECL: OADR
TAGS: PHUM, PGOV, KJUS, PE
SUBJECT: REACTION TO PERUVIAN
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- CONGRESS'S "MIDNIGHT LA CANTUTA
- BILL"

REF: LIMA 1210 (NOTAL)

1. (C) SUMMARY: PUBLIC OPPOSITION TO THE
CONGRESS'S BILL ALTERING SUPREME COURT RULES IN
JURISDICTION DECISIONS (REFTEL) HAS BEEN SWIFT
AND VOCAL. THE COORDINADORA DECLARED THAT IT
WOULD WITHDRAW FROM ITS DIALOGUE WITH THE GOP IF
THE LEGISLATION FORCES THE LA CANTUTA CASE TO BE
TRIED IN MILITARY COURT. LIMA BAR ASSOCIATION

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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: OSCAR J. OLSON
DATE/CASE ID: 7 AUG 2001 200003853

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PRESIDENT LIKENED THE LEGISLATION TO FUJIMORI'S APRIL 1992 AUTO-COUP, AND CALLED IT THE THIRD VIOLATION OF THE NEW CONSTITUTION ALREADY THIS YEAR. ALSO, PRO-GOVERNMENT DAILY EXPRESSO CARRIED AN EDITORIAL HIGHLY CRITICAL OF THE BILL. JULIO CHU, WHO DRAFTED THE BILL, CLAIMED HE HAD DONE SO ONLY IN THE INTERESTS OF PROTECTING A SUPREME COURT JUSTICE FROM ATTACK; ANOTHER OPPOSITION CONGRESSMAN, HOWEVER, ACCUSED CHU OF PROPOSING THE BILL ON BEHALF OF THE INTELLIGENCE SERVICE. OPPOSITION MEMBERS OF CONGRESS HAVE SUBMITTED A CALL FOR RECONSIDERATION OF THE BILL ON THE GROUNDS THAT IT IS UNCONSTITUTIONAL AND THE VOTE VIOLATED THE CONGRESS'S INTERNAL RULES. THE GOP HAS LARGELY REFRAINED FROM FURTHER COMMENT, WHICH MEANS FUJIMORI MAY DECIDE TO VETO OR AMEND THE LAW. FOLLOWING A LARGE PUBLIC CEREMONY FEBRUARY 9 TO OPEN TO PUBLIC ACCESS THE NATIONAL REGISTRY, THE

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 AMBASSADOR STRESSED IN REMARKS TO THE PRESS THE IMPORTANCE IN U.S. POLICY OF CONSTITUTIONALITY, SEPARATION OF POWERS AND JUDICIAL AUTONOMY (WITHOUT, HOWEVER, COMMENTING DIRECTLY ON THE BILL'S SUBSTANCE). HE IS TRYING TO SEE THE PRIME MINISTER AND CCD PRESIDENT YOSHIYAMA TO MAKE SIMILAR POINTS. END SUMMARY.

COORDINADORA THREATENS WITHDRAWAL FROM DIALOGUE

2. (U) THE NATIONAL COORDINATING COMMITTEE FOR HUMAN RIGHTS (COORDINADORA) HELD A PRESS CONFERENCE THE AFTERNOON OF FEBRUARY 8 IN REACTION TO THE BILL PASSED BY CONGRESS THAT WOULD HAVE THE EFFECT OF GRANTING JURISDICTION IN THE LA CANTUTA CASE TO THE MILITARY COURTS (REFTEL). AT THE PRESS CONFERENCE, THE COORDINADORA ISSUED A COMMUNIQUE NOTING: "WHAT HAPPENS IN THE LA CANTUTA CASE IS DECISIVE FOR THE FUTURE OF HUMAN RIGHTS AND DEMOCRACY IN THIS COUNTRY. TO DO JUSTICE NECESSARILY IMPLIES THAT THE GUILTY BE SANCTIONED UNDER THE COMPETENCE OF THE CIVILIAN COURT SYSTEM. THE MILITARY JUSTICE SYSTEM IS NOT ONLY INCOMPETENT TO TRY THIS TYPE

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OF CRIME, BUT THROUGH THE YEARS HAS SERVED AS A
GUARANTEE OF IMPUNITY FOR HUMAN RIGHTS VIOLATORS."

3. (U) THE STATEMENT GOES ON TO CHARACTERIZE
THE CONGRESS'S BILL AS "UNACCEPTABLE
INTERFERENCE" IN THE ADMINISTRATION OF JUSTICE,

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"AS WELL AS A FLAGRANT VIOLATION OF THE NEW
CONSTITUTION, THE JUDICIAL BRANCH'S ORGANIC LAW,
INTERNATIONAL TREATIES TO WHICH PERU IS A PARTY,
AND BASIC LEGAL PRINCIPLES." IF THE LA CANTUTA
CASE WINDS UP IN THE MILITARY COURT SYSTEM, THE
COMMUNIQUE WARNS, THE COORDINADORA WILL WITHDRAW
FROM ITS DIALOGUE WITH THE GOVERNMENT. THE
COMMUNIQUE GOES ON TO COMPLAIN THAT THE GOP HAS
NEVER DEMONSTRATED ANY WILL TO RESOLVE THE
SERIOUS HUMAN RIGHTS PROBLEMS IN PERU, AND THIS
LATEST DEVELOPMENT ONLY SERVES TO CONFIRM THAT
"THE POLITICAL DECISION TO GUARANTEE IMPUNITY
HAS ALREADY BEEN TAKEN."

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TO SECSTATE WASHDC IMMEDIATE 4763
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USEC BRUSSELS
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 4. (U) THE PRO-HUMAN RIGHTS ASSOCIATION AND THE ANDEAN COMMISSION OF JURISTS ALSO ISSUED PRESS RELEASES STRONGLY CRITICIZING THE CONGRESS'S ACTION AS AN ATTEMPT TO IMPEDE "A FAIR AND IMPARTIAL TRIAL." THE ANDEAN COMMISSION CALLED ON PRESIDENT FUJIMORI NOT TO SIGN THE BILL INTO LAW. EVEN THE PRESIDENT OF THE PEACE COUNCIL, THE HUMAN RIGHTS "QUASI-NGO" ESTABLISHED BY THE (PRE-1992) CONGRESS, CRITICIZED THE LEGISLATION HARSHLY AND DECLARED THAT THE MILITARY COURT SYSTEM "WILL NOT CLARIFY THE LA CANTUTA CASE."

OPPOSITION PRESENTS CALL FOR RECONSIDERATION

5. (U) ON FEBRUARY 8, THE CONGRESSIONAL OPPOSITION PRESENTED TO THE CONGRESS'S EXECUTIVE BOARD A RESOLUTION THAT THE MEASURE BE RECONSIDERED ON THE BASIS THAT IT IS UNCONSTITUTIONAL AND WAS VOTED ON IN A WAY THAT VIOLATED THE CONGRESS'S OWN PROCEDURES. UNDER PARLIAMENTARY RULES, THE EXECUTIVE BOARD WILL HAVE TO STUDY THE RECONSIDERATION AND PUT IT TO A VOTE BEFORE THE PLENARY. MEANWHILE, SUPREME COURT PRESIDENT LUIS SERPA TOLD THE PRESS THAT THE COURT WOULD HAVE NO ALTERNATIVE BUT TO ADHERE TO ANY LAW PASSED BY THE CONGRESS AND APPROVED BY THE PRESIDENT. MEANWHILE, HE SAID THAT IN THE ABSENCE OF A NEW LAW, HE WAS PROCEEDING UNDER THE CURRENT LEGAL PROVISIONS. HE REFUSED TO COMMENT DIRECTLY ON THE EFFECT THE
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 LAW WOULD HAVE ON THE LAW CANTUTA CASE.

BAR ASSOCIATION PRESIDENT: ALMOST A COUP

6. (C) JORGE AVENDANO, PRESIDENT OF THE LIMA BAR ASSOCIATION AND TITULAR SPOKESPERSON FOR PERU'S LAWYERS, TOLD POLITICAL OFFICER FEBRUARY 8 THAT HE CONSIDERS THE LAW RAMMED THROUGH THE CCD BY THE GOVERNMENT IN THE EARLY MORNING HOURS OF FEBRUARY 7 AS THE "WORST THREAT TO PERUVIAN DEMOCRACY SINCE PRESIDENT FUJIMORI'S APRIL 5 COUP." AVENDANO SAID HE WAS "SHOCKED AND APPALLED" WHEN HE WOKE UP TUESDAY MORNING AND HEARD THE NEWS REPORTS OF WHAT HAD HAPPENED. LATER IN A TELEVISION INTERVIEW, AVENDANO CHARACTERIZED THE LAW'S PASSAGE AS "AN EXTREMELY GRAVE ACTION."

THIRD VIOLATION IN THIRTY-EIGHT DAYS

7. (C) AVENDANO WAS CLEARLY UPSET BY THE GOVERNMENT'S ACTION. IT WAS, HE DECLARED, "THE THIRD TIME IN THIRTY-EIGHT DAYS THAT THE (NEW) CONSTITUTION HAS BEEN VIOLATED BY THE GOVERNMENT." HOW COULD ANYONE HAVE CONFIDENCE, HE ASKED RHETORICALLY, IN FUJIMORI ADMINISTRATION CLAIMS TO RESPECT THE INDEPENDENCE OF THE JUDICIARY WHEN IN THE CONSTITUTION'S FIRST MONTH OF EXISTENCE THE

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 GOVERNMENT HAS:

- IMPOSED AN ATTORNEY GENERAL.
- IMPLEMENTED DECREE 776 RESTRUCTURING THE MUNICIPAL FUNDING.
- INTERFERED IN A PENDING MATTER BEFORE THE SUPREME COURT.

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8. (C) GIVEN THE PRECEDENT SET BY THE "LA CANTUTA" LAW, AVENDANO SAID HE WOULD NOT BE SURPRISED IF THE ADMINISTRATION USED THE SAME LOGIC TO ANNUL THE UPCOMING NATIONAL ELECTIONS IN APRIL 1995 "IF THE RESULTS WERE NOT TO ITS LIKING."

SHOWS THE POWER OF THE MILITARY

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USEC BRUSSELS
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 9. (C) AVENDANO REJECTED SUGGESTIONS THAT THE LAW HAD BEEN DRAFTED BY JUSTICE MINISTER FERNANDO VEGA OR IN THE PRESIDENTIAL PALACE. THE BILL WAS SO BADLY WRITTEN, HE SAID REFERRING TO THE RETROACTIVITY CLAUSE (ARTICLE 2), THAT HE WOULD HAVE EXPECTED MORE FROM EVEN ONE OF HIS POORER LAW STUDENTS. HE BELIEVED THE BILL HAD BEEN WRITTEN BY THE MILITARY "TO PROTECT GENERAL HERMOSA" AND THIS SHOWED THAT THE MILITARY REMAINED THE REAL POWER IN PERU.

10. (C) ASKED ABOUT A CONSTITUTIONAL EXIT TO THE PROBLEM, AVENDANO SAID THE ONLY SOLUTION, ONCE THE LAW WAS PROMULGATED, WAS FOR THE SUPREME COURT TO IGNORE THE LAW AND DECLARE THE CONSTITUTION SUPERIOR. HE DOUBTED, HOWEVER, THAT SUPREME COURT PRESIDENT LUIS SERPA WOULD TAKE SUCH A BOLD STEP IN DEFIANCE OF THE GOVERNMENT. (COMMENT: SERPA HAS, HOWEVER, ALREADY SAID THE SUPREME COURT WILL CONTINUE TO REVIEW THE CASE SINCE THE LAW HAS NOT GONE INTO EFFECT.)

CHU DEFENDS BILL

11. (C) IN A SEPARATE CONVERSATION WITH POLITICAL OFFICER, THE BILL'S NOMINAL AUTHOR, CONGRESSMAN JULIO CHU, DEFENDED THE BILL. HE ADMITTED HAVING HAD EXTENSIVE ASSISTANCE IN DRAFTING THE LEGISLATION. CHU JUSTIFIED THE
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 SPEED WITH WHICH THE BILL HAD BEEN PASSED, AND THE BY-PASSING OF NORMAL LEGISLATIVE PROCEDURE INCLUDING COMMITTEE CONSIDERATION, BY SAYING THAT PROMPT ACTION WAS NEEDED. HE VEHEMENTLY DENIED OPPOSITION CHARACTERIZATIONS OF THE BILL AND THE WAY IN WHICH IT WAS PASSED AS DICTATORIAL. PERU "IS A DEMOCRATIC COUNTRY," HE DECLARED, "NOT LIKE CHILE (UNDER PINOCHET)."

12. (C) THE BILL, INSISTED CHU, WAS A "PRACTICAL" LAW AIMED AT RESOLVING AN IMMEDIATE CRISIS SITUATION: THE THREATS AGAINST SUPREME

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COURT JUSTICE CARLOS ERNESTO GIUSTI, WHO MIGHT PROVIDE THE DECISIVE VOTE IN DETERMINING WHETHER THE LA CANTUTA CASE WOULD CONTINUE UNDER MILITARY JURISDICTION OR PASS TO THE CIVILIAN COURTS.

13. (U) THE NEXT DAY, HOWEVER, CONGRESSMAN FERNANDO OLIVERA, HEAD OF THE "FIM" PARTY THAT EXPELLED CHU, DECLARED TO THE PRESS THAT CHU HAD TOLD HIM THAT THE NATIONAL INTELLIGENCE SERVICE HAD GIVEN CHU THE PROPOSAL. OLIVERA NOTED THAT THERE HAD BEEN NO THREAT AGAINST GIUSTI BY THE TIME CHU CLAIMS TO HAVE DRAFTED THE BILL ON FEBRUARY 4, SO CHU'S ASSERTION THAT HE WROTE THE LEGISLATION TO PROTECT GIUSTI WAS SPURIOUS.

14. (C) COMMENT: OPPOSITION TO THE BILL HAS BEEN QUICK AND VOCAL; EVEN THOSE NORMALLY ALLIED WITH THE GOVERNMENT HAVE CRITICIZED IT. IN

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 ADDITION, THE AMBASSADOR TOLD SANTIAGO FUJIMORI WE HAD STRONG RESERVATIONS ABOUT THE LAW'S UNDERMINING OF JUDICIAL AUTONOMY (REFTEL). THIS PRESSURE APPEARS TO MAKE IT VERY DIFFICULT FOR PRESIDENT FUJIMORI TO NOW SIGN THE BILL DESPITE HAVING CAREFULLY ENGINEERED ITS MIDNIGHT PASSAGE. THE FACT THAT THE BILL REMAINS UNSIGNED, AND THAT THE GOP HAS NOT DEFENDED THE BILL PUBLICLY, IS A SIGNAL THAT FUJIMORI IS REVIEWING HIS OPTIONS. WHILE HE NO DOUBT WILL SEEK A SOLUTION THAT WILL STEER LA CANTUTA TO A MILITARY VENUE, HE COULD BACKTRACK AND VETO THE LAW OR AMEND PARTS OF IT. AMBASSADOR WILL SEEK TO SPEAK TO PRIME MINISTER BUSTAMANTE AS WELL AS CCD PRESIDENT YOSHIYAMA FEBRUARY 9 TO REITERATE OUR DEEP CONCERNS.
 ADAMS

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