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(E4)

DENY

ORIGINAL DETERMINATION
INM-MR. LEVITSKY



JUL 1991
LSE
HAS SEEN

ORIGINALS OF LETTERS SIGNED BY
H/JANET MULLINS GIVEN DIRECTLY
TO H-JOHN MOSS FOR DISPOSITION.
7/30/91.

United States Department of State
Washington, D.C. 20520

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ACTION MEMORANDUM

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TO:

The Acting Secretary

THROUGH:

P - Mr. Kimmittrick
T - Mr. Bartholomew

FROM:

INM - Melvyn Levitsky
PM - Richard A. Clarke
HA - Richard Schifter
ARA - Bernard W. Aronson
H - Janet G. Mullins

SUBJECT:

Determination on Peru as Required by Section 4(a) of the International Narcotics Control Act of 1990

Issue for Decision

Whether to make a determination on Peru pursuant to Section 4(a) of the International Narcotics Control Act of 1990 (INCA) to enable provision of FY-91 FMF, ESF and Development Assistance related to counter-narcotics.

Essential Factors

The authority to make determinations required of the President by Section 4(a) of the INCA has been delegated to the Secretary by Presidential Determination No. 91-20, dated January 25, 1991.

Assistance that is subject to this requirement includes FMF, ESF and Development Assistance authorized to be appropriated by the 1990 INCA for counter-narcotics purposes and any transfer of excess defense articles to Peru, Colombia, Bolivia under Section 517 of the Foreign Assistance Act of 1961, as amended.

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The Secretary made determinations on Colombia, Bolivia and Ecuador on January 31, 1991. Supporting justifications accompanied the letters notifying Congress of the determinations.

At that time, we recommended that the Secretary defer making a determination on Peru, due to the lack of counter-narcotics progress, human rights problems, and an unclear sense of Peruvian narcotics policy direction.

On June 24, the Deputies Committee decided that once the Government of Peru signed all three follow-on annexes to the Narcotics Umbrella Agreement as well as committed to a major operation in Uchiza, it would be appropriate to make the determination to Congress. The follow-on annexes have now been signed. We have a commitment to the Uchiza operation, which we intend to reconfirm.

Although there continue to be serious problems with the Peruvian counter-narcotics effort, we believe that in the intervening five months, sufficient progress has been made to warrant a Section 4(a) determination (Tab 1).

No determination for Peru this year would not only cut off any significant USG military and economic funding, but would also collapse the Peruvian economic support group, co-chaired by the U.S. and Japan, which is the lever which the GOP is depending upon to make it acceptable to the IMF and World Bank for debt rescheduling and new loans. Moreover, it is clear that both Colombia and Bolivia support special consideration for Peru, since a trafficker- or insurgent-led collapse of the GOP would have repercussions for the Andean region as a whole.

Pursuant to Section 4(a) of the INCA (Tab 2) and PD 91-20, we recommend that you determine, with respect to Peru, that:

- 1) the GOP is implementing programs to reduce the flow of cocaine to the U.S. in accordance with a bilateral or multilateral agreement, to which the U.S. is a party, that contains specific qualitative and quantitative performance criteria with respect to these programs;
- 2) the Peruvian armed forces and law enforcement agencies are not engaged in a consistent pattern of gross violations of internationally recognized human rights, and the GOP has made significant progress in protecting internationally recognized human rights; and

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- 3) the GOP has effective control over police and military operations related to counter-narcotics and counterinsurgency activities.

Discussion

Despite our belief that a determination can be made, you should be aware of continuing problems with the program as exemplified by the following trends and incidents:

- Some Peruvian army units in the Upper Huallaga Valley (UHV), stationed in trafficking towns, accept trafficker bribes to provide airstrip security for traffickers and turn a blind eye toward lab sites in towns;
- Seized cocaine base has been tampered with, indicating internal narcotics corruption; and
- Human rights abuses by security forces continue, the most recent being the shooting of three teenagers in the port of Callao by police.

We have delayed making a determination because of incidents like those above and because of the time spent in negotiating the Umbrella Agreement and economic, law enforcement and military assistance follow on annexes. Those agreements have now been signed. The implications of disengaging from Peru and ignoring the pressures under which the Fujimori government is operating would be disastrous for U.S. interests in the region. At this time, we believe that the minimum accomplishments exist in all areas to make a determination. A detailed justification in support of the determination is attached at Tab 3.

Narcotics Performance: The USG and GOP signed a law enforcement agreement last year that contains a number of specific performance criteria, as required by the INCA. As outlined below, Peru is clearly doing more than in previous years to implement programs to reduce the flow of cocaine to the U.S., though there is much more that needs to be done.

In the latter half of 1990, with the Fujimori government at the helm, police counter-narcotics operations began to receive greater attention within the GOP, and the Santa Lucia base became the focal point of intensified GOP enforcement efforts to improve interdiction operations and produce results.

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In CY-90, the GOP fulfilled some of the performance criteria in the FY-90 agreement, destroying (in coca seedbeds) the equivalent of over 15,000 hectares of mature coca, dismantling 151 coca base labs, and completing the Santa Lucia narcotics base.

Since January of this year, operations have dismantled an additional 45 labs, eradicated the equivalent of over 4,000 hectares in mature coca and, for the first time, discovered a large cocaine (HCl) refinery and 250 kgs of cocaine. While more could have been done, we have taken into account the difficulties of operating with two violent insurgencies and a serious military and police narcotics corruption problem.

Human Rights: While there are serious human rights abuses, the situation does not rise to the level of a consistent pattern. HA has reviewed this issue in the context of the 502B human rights report to Congress. With respect to the required finding of significant progress in ensuring that flagrant denials of human rights do not occur, with the exception of disappearances, the level of serious abuses by the security forces has not changed noticeably, and investigation of those responsible for such abuse is rare.

Nevertheless, positive human rights initiatives by the GOP after one year in office include:

- ICRC access to all police detention facilities nationwide;
- the imminent appointment of a noted human rights activist to a presidentially-sponsored peace commission;
- continuing purges of police implicated in various crimes, including human rights abuses;
- reduced paramilitary activity by the security forces;
- revision of the penal code for the first time in 60 years; and
- a GOP invitation to the OAS's Inter-American Commission on Human Rights (IAHRC) to conduct an on-site visit in October.

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Moreover, during Assistant Secretary Schifter's visit to Lima on July 11 and 12, the military leadership accepted the U.S. Army Judge Advocate General Corps proposal to develop human rights training for its personnel and to amend their military code of justice to specifically prohibit human rights abuses. Given the Fujimori government's commitment to human rights improvements, HA considers these GOP initiatives to constitute significant progress. We should seek to develop further human rights objectives which we would urge the GOP to meet before we are called upon to make the next finding under Section 4(a)(2).

Government Control: Peru has traditionally had a problem with the military's commitment to the counter-narcotics effort, including an unwillingness to undertake directed missions, corruption, and in some cases, protection of traffickers. Although Fujimori made a decision to enlist the support of the Peruvian military against narcotics traffickers, implementation of this policy has been inconsistent in the field. Individual Peruvian Army units in key, often remote trafficking towns continue to protect trafficking operations--this includes allowing or providing security for trafficking aircraft landing at municipal airstrips. Radio intercepts detail Army officers discussing the location of counter-narcotics operations with traffickers.

While Fujimori may not be able to prevent irresponsible or corrupt acts in isolated field commands, he can remove and/or discipline them--demonstrating ultimate control. In addition, a list of immediate actions which we handed to President Fujimori and his advisors last year has been acted upon. For example, Fujimori ordered the Peruvian Air Force to assign Tucano interceptors to Santa Lucia, which have forced down several trafficker aircraft; combined military-police operations are now underway in the Junin area against traffickers, Shining Path and Tupac Amaru Revolutionary Movement (SL and MKTA); GOP pressure on the Peruvian Army has resulted in an unprecedented joint army/police major two-stage operation against the trafficking town of Uchiza; Peruvian Army mortars and security squads have been added at Santa Lucia; and a corrupt base commander was removed by his superiors.

These actions indicate that Fujimori has levered the military in a consistent way into the counter-narcotics arena, and we have no evidence to indicate that there is a pattern of insubordination that permeates the military in narcotics or insurgency operations. While the military has

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been slow to act at times, we believe this has more to do with the convoluted nature of the Peruvian military structure, than with a purposeful rejection of GOP authority. Overall, we believe that the GOP has assumed effective control of the military and police. Examples of directly ordered actions by Fujimori to his military are outlined at Tab 3.

Congressional factors:

While H shares ARA's, INM's and HA's reservations over not making this determination, making the determination will result in severe criticism from both Democrats and Republicans in the Congress. The determination and justification will be characterized as dishonest and in contravention of the will of Congress as expressed in the clear conditions included in the INCA. By our own admission, significant and frequent incidents of corruption and human rights violations continue. The law states that Peru must be making "significant progress" in ensuring that certain human rights abuses are "not practiced," and that the GOP must have "effective control" over police and military operations related to counter-narcotics and counterinsurgency activities. Our discussions on the Hill have made clear that key members of Congress who follow narcotics do not consider these criteria as met.

On a practical basis, the requirement in the INCA that all ESF and FMF for Peru be subject to notification procedures ensures that those Members of Congress most critical of our decision will be capable of indefinitely delaying obligation of some or all of the assistance this determination seeks to release. We already have soundings from several committees (Democrats and some Republicans) that they intend to place holds on notifications of FMF and ESF to Peru. If the Peru FMF appropriation is not obligated by September 30, it will revert back to Treasury. We have explored other options, such as a Section 614 waiver of the determination requirement; however, we would still have many of the same problems on the Hill. In addition, Section 614 places a \$50 million cap on total assistance that can be provided to any one country through use of the waiver in any fiscal year, unless that country is a victim of active communist or communist-supported aggression.

Should you decide to make this determination, high-level calls to key Members should coincide with delivery of the notification. While there is a reasonable chance of success in releasing ESF holds with high level calls, the FMF holds

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will be difficult, if not impossible, to dislodge before the funds must be reprogrammed elsewhere to avoid their reverting to the Treasury. President Fujimori's trip to Washington in September will help on ESF, but could make releasing the FMF more difficult--particularly given his hesitance to accept the FMF in the first place.

On balance, we believe that the justification and hence the determination with respect to Peru are correct and defensible, and that to delay the determination would cripple this year's (and future) implementation of the President's Andean Strategy. We recognize that this decision will receive a negative reaction in the Congress and are prepared to address that opposition.

Recommendation:

That you sign the determination at Tab 1.

Attachments:

- Tab 1 - Determination
- Tab 2 - 1990 INCA Section 4(a)
- Tab 3 - Report with Justification
- Tab 4 - Notification Letters to Congress

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Drafted: INM/P/SA - AKMatano *John*
WPPAKM345 7/18/91

Cleared: INM - PWBorg
INM/P - GMartin
ARA/AND - KKrueger
ARA - PMcLean
HA - MJacobson
PM - MCeurvorst
EB - BLowry
P - CKelly
T - KSheehan
AID/LAC - NParker
L/LEI - JOettinger
L - AKreczko
H - DDworkin
- SC Kish *(initials)*

John for

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