



Washington, D.C. 20520

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October 17, 1991

MEMORANDUM

TO: AID/LAC/SAM - Norma J. Parker
ARA/PPC - Faye Armstrong
FROM: HA/PP - Amy L. Schwartz MS
SUBJECT: Follow-up on Peru

As you suggested at our meeting earlier this month, this memo sets forth HA's thoughts about the direction of an AOJ program for Peru. In sum, our proposal is that given the seriousness of the problems facing Peru's legal system as a whole, it would make sense, both from a human rights perspective and from a programmatic perspective, to concentrate U.S. assistance efforts on discrete portions of the legal system directly bearing on drug trafficking and terrorism.

From HA's perspective, the deficiencies in the civilian justice system are a significant cause of the human rights abuses committed by the Peruvian military and security forces. Despite command level concerns about human rights abuses, officers in the field believe with good reason that the civil justice system cannot effectively restrain or punish captured terrorists or drug traffickers. Under the stresses of a near combat situation, human rights standards are then neglected.

Because Peru's civilian legal system is riddled with so many problems, no easy overall fix is possible, regardless of our assistance efforts. Significant advantage could be gained, however, by focusing assistance efforts on specialized components of the legal system aimed at terrorists and narco-traffickers. In particular:

- o By carving out a distinct area for intensive, priority assistance, it will be easier to obtain measurable improvements.
o Creating an effective segment of the legal system for handling drug and terrorist offenses will assure security forces of an effective alternative way of handling captured drug traffickers and Sendero members.

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- o Achievements in a discrete area of the legal system can serve as a model for improving other aspects of the civilian justice system.
- o Facilitating human rights progress in the near term is consistent with demonstrated Congressional preferences.

Specific Programmatic Content

As I understand your plans, activities under the current Administration of Justice project would include: (1) facilitating prosecutorial access to detention centers; (2) assistance in creating a central register for detainees; and (3) continued ICITAP courses, as requested, using \$500,000 of supplemental FY 91 funds. Simultaneously, efforts would be initiated to create a private sector non-profit Peruvian group to take the lead on the Peruvian side, in view of the lack of significant success of the Administration of Justice Program to date. When the new NGO is constituted and ready to move ahead, a new 5-year AID project would begin (pursuant to a PID that is still in the drafting stage). A bridge grant could cover any gap between the old and new project. Other activities to be undertaken under one or the other project could include: review of high visibility cases; advice on reassessing the current laws on terrorism; and judicial and witness protection.

HA's proposed targeted approach is consistent with the approach you outlined. As a general matter, your strategy for handling the AID project documents and creating a new Peruvian organization strikes us as useful. Regardless which project is in effect, we strongly recommend that U.S. assistance efforts be focused on creating and strengthening a special corps of legal system personnel to focus on drug and terrorism cases. Specifically:

- o Police: Concentrate ICITAP training efforts on encouraging the development and training of a special cadres of narcotics/terrorism police. This could include not only the existing forensic training, but also more general training on human rights and on effective policing techniques. ICITAP could also draw in more FBI resources to enhance training efforts. Given the interest of the Spanish in helping reform the Nicaraguan police, we could explore whether their assistance for Peru might be possible as well.
- o Prosecution: A special cadre of prosecutors for drug and terrorist cases should be identified and made the priority focus of enhanced ICITAP training courses including both the current curriculum and additional skills training drawing in DOJ prosecutors. This might be done through the Public Ministry's training academy.

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- o Judges: The Peruvian government should be encouraged to commit the necessary resources (beyond the doubling of base salaries currently employed) to draw top caliber judges to specialized work on drug and terrorism cases. U.S. judges can be utilized to advise and train this elite cadre of judges, perhaps in connection with Peru's existing judicial academy. (We understand that the academy, which may be in need of some internal reforms, currently holds quarterly programs but would be interested in programs on a monthly basis.) As you know, we have identified a Spanish-speaking U.S. judge who would be prepared to devote significant time to this effort. Existing case management improvement efforts could focus first on administrative improvements to assist the drug and terrorism judges. It may be possible to get assistance from the Japanese Government in supplying computer equipment and other technology to assist in judicial administration improvements.
- o Judicial Protection: Assistance from ICITAP (and/or the Marshal's Service or other sources) could be employed to train the Peruvians in judicial protection, focused initially on protection for the cadre of drug and terrorism judges. The Peruvians should be encouraged to commit additional resources toward the establishment of four secure court buildings around the country for use in trying these cases. (Since identifying and securing four courthouses may take longer than the other elements of a targetted strategy, we should start on this aspect right away.)
- o Prisons: ICITAP could draw in the Bureau of Prisons to provide assistance to the Peruvian government on creating a specialized maximum security prison sufficient to restrain Sendero and drug prisoners safely. (Absent enactment of pending legislation that would permit direct assistance, this would need to be done through ILANUD or another regional organization.)
- o Criminal Law Reform: Apart from the new criminal procedure code due to take effect in May, other criminal law reform may be worth study to facilitate prosecution and conviction of drug and terrorism offenders. A working group (drawing on both Peruvian and U.S. legal experts) could be formed to study terrorism, drug, evidence, and conspiracy laws. The American Bar Association has expressed interest in becoming involved in legal reform efforts in Latin America; this might be an area particularly suited for ABA assistance.

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- o Human rights cases: In addition to the above, we would propose to continue current efforts to devote training and other assistance resources to those in the Peruvian legal system who focus on apprehending, prosecuting, and convicting human rights offenders (including those believed involved in the list of nine cases on which Congress now expects progress).

The above proposals should be recognized as somewhat tentative, as we have not yet seen the AID-funded legal system assessment recently completed by Catholic University. Also, these elements of an AOJ program would need to be supplemented by separately funded military-military exchanges focused on: (1) human rights training; and (2) training on military-civilian cooperation, including how military officials can develop evidentiary dossiers that can be transferred to the civilian justice system to document cause for prosecution and conviction.

From HA's perspective, moving ahead quickly with a concerted strategy of this type (building on the measures that are already underway) could be a substantial step towards addressing Peru's human rights situation.

Please let me know what the next steps are and what HA can do to help.

cc: Ambassador Schifter
Michael Jacobsen

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