

REPORT OF THE AD HOC INTERNATIONAL LAWYERS DELEGATION  
TO OBSERVE THE TRIAL OF ABIMAEI GUZMAN,  
LIMA, PERU

Sept. 30 - Oct. 9, 1992

Prepared by U.S. Delegates,  
Prof. Peter Erlinder and Leonard I. Weinglass, Esq.

(The delegation was organized under the auspices of the International  
Emergency Committee to Defend the Life of Abimael Guzman, London, England.  
Delegates came from the United States, France and Germany.)

Background to Formation of the Delegation

On September 12, 1992 the government of Peru arrested Dr. Abimael Guzman, the leader of the Communist Party of Peru, also known as the Sendero Luminoso, or "Shining Path". Dr. Guzman, popularly known as "Presidente Gonzalo", has been the leader of an armed rebellion that has been waged against a series of Peruvian governments over the past 12 years. Dr. Guzman, a former university philosophy professor, has been underground for much of that time and his capture was viewed as an event of major importance by the present government of Peru.

The seizure of Guzman occurred several months after Peruvian President Fujimori dismissed the legislature, dissolved the Constitution of Peru, declared martial law and began ruling by decree. At the time Fujimori took these actions, there were expressions of alarm and disapproval registered from a number of international sources and the actions were widely condemned both inside and outside of Peru.

The seizure of Guzman was widely publicized by the Government as an achievement of the state of emergency although the arrest occurred through normal investigative and surveillance measures. The arrest took place at the Lima home of a well-known Peruvian dancer where Guzman had been staying. No shots were fired during the arrest. No weapons or explosive devices were seized, but several associates of Dr. Guzman were arrested and information on activities of the Communist Party of Peru was seized.

When originally taken into custody, Dr. Guzman was held pursuant to warrants issued for his arrest in connection with acts of violence allegedly carried out by the Communist Party. He was under the jurisdiction of Peruvian civil courts pursuant to the standard practice in Peru. Shortly after his capture, Fujimori announced that Dr. Guzman would be tried by a military court, that he would be found guilty of treason on October 7, 1992, that he would receive a life sentence and that the appeals process would be over by Oct. 27.

The Delegation

Shortly after the arrest, representatives of the International Emergency Committee to Defend the Life of Abimael Guzman contacted lawyers organizations, individual lawyers and human rights groups in several countries for the purpose of organizing a delegation to observe the legal proceedings brought by

the Peruvian government against Dr. Guzman. These efforts resulted in a delegation of two attorneys from the United States, one attorney from Germany, one attorney from France and a representative of the U.S. based Committee to Support the Revolution in Peru. The lawyers agreed to work without compensation and travel expenses were paid by the International Emergency Committee.

The participants in the delegation were (in alphabetical order):

Peter Erlinder, President-Elect of the National Lawyers Guild, Professor of Law, Wm. Mitchell College of Law, St. Paul, Mn.\*

Martin Heimig, Attorney in private practice, representative of the Federation of German Lawyers, Hamburg

Heriberto Ocasio, M.D., translator, representative of the Committee to Support the Revolution in Peru, San Francisco, Cal.

Anne-Marie Parodi, Lawyer in private practice, known in France for her representation of political dissidents, Paris

Leonard Weinglass, Lawyer in private practice, known for his representation of political dissidents and a member of numerous delegations to observe political trials, New York, N.Y.\*

\* The lawyers from the United States were designated official representatives of the National Lawyers Guild by the Executive Committee of that organization on October 4, 1992.

#### The Events in Lima

The members of the delegation from the United States arrived in Lima airport on the afternoon of Wednesday, September 30, 1992 and proceeded directly to central Lima where we were to meet with the other members of the delegation. At the airport, the arrival of Dr. Ocasio, who is known in the United States as a supporter of the revolution in Peru, attracted the attention of the official who examined our passports. We were delayed briefly while the passport examiner conferred with other officials and questioned Dr. Ocasio about his purpose for coming to Peru and the name of his hotel. As a precautionary measure we checked into a different hotel.

We met the other members of the delegation at the Sheraton Hotel where we were joined by Dr. Alfredo Crespo, the attorney for Dr. Guzman, and a female attorney. Both she and Dr. Crespo are members of the Association of Democratic Lawyers of Peru. Dr. Crespo is the new president of the organization, replacing a former president who was assassinated, according to Dr. Crespo. Much of the information we received about the trial process and the treatment of Dr. Guzman and the other political prisoners was from Dr. Crespo and other members of the Association of Democratic Lawyers.

We learned that the Sunday before our arrival, September 27, 1992, the military had removed Dr. Guzman from the custody of the civil authorities and that Dr. Crespo had been unable to see or speak with Dr. Guzman for four days. Prior to the military assuming jurisdiction, Dr. Crespo had daily visits with his client. Dr. Crespo informed us that he had been summoned to appear the next morning, Thursday, October 1, at a proceeding before a military tribunal

on San Lorenzo Island, a military prison facility just off the coast near Lima. He was told he would be taken to the island by boat.

Dr. Crespo explained that he had filed pleadings in the Supreme Court of Peru challenging the jurisdiction of the military tribunal because such tribunals have never before been used for civilians. He provided us with a copy of the pleading. A translation of that document is attached. (See attachment 1.)

Dr. Crespo told us that it was unlikely that we would be able to attend the tribunal because even he had been unable to go to the island, or to be present at any pre-trial proceedings. He told us the only preparation he was allowed before being summoned to the island was a four hour period to examine the written file prepared by the military tribunal.

It was decided that attorneys Heiming and Parodi would accompany Dr. Crespo to the boat dock and attempt to go to the island to observe the proceedings. Other members of the delegation attempted to contact government officials and prepared for a press conference, in the event that we would be prevented from observing the proceedings. As predicted, Heiming and Parodi were turned away at the boat dock but a large press contingent was present to record the event and the presence of our delegation, and its purpose, was publicly announced for the first time.

Other members of the delegation, with the help of members of the ADL, presented a formal request to attend the military tribunal to the chief judge of the military courts. Others attempted to get an audience with the President of the Supreme Court. The request to attend the tribunal was denied by the military court. A representative of the President of the Supreme Court said that the President of the Court was unable to meet with members of the delegation.

Based upon research prepared by Prof. Francis Boyle, Professor of International Law at the University of Illinois, members of the delegation prepared a press statement which cited the violations of international law which we observed. A press conference was announced at the press room in the Ministry of Justice building, a site suggested by Dr. Crespo.

At the appointed time, two members of the delegation were able to enter the Ministry of Justice Building with members of the ADL. Within minutes the doors to the building were closed and soldiers prevented anyone from entering the building. Other members of the delegation were unable to enter the building and began giving a press conference in the street outside the Justice Ministry. Other members of the delegation and the press were expelled from the building under the pretense that a "bomb threat" had been received.

Members of the press stated that the bomb threat was a ruse to prevent the press conference from occurring. However, members of the delegation heard inmates in the building shouting when they learned that the delegation was in the building. The press conference was moved to the Sheraton Hotel where, after some initial resistance, we were given a suitable room.

The press conference was attended by approximately forty persons, most of whom seemed to be journalists. However, it was apparent that at least one person was not a journalist and may have been a provocateur, or government agent. He was asked to leave by both the Peruvian and international press in attendance.

Martin Heiming read the press statement in Spanish and the delegation took questions from the press. The press conference became quite heated and it was apparent that the presence of the delegation was viewed as "outside interference" by some members of the press. Others seemed interested in the content of the statement and seemed concerned about the secret trial. The text of that statement is as follows:

#### Statement of the Ad Hoc Legal Observation Delegation

We are a delegation of independent attorneys from Germany, France and the United States, who have come to Peru to observe and report on the trial of Abimael Guzman and six other political prisoners. We are the first delegation of interested observers and expect to be joined by others.

Members of our delegation have attempted to observe the trial of Dr. Guzman and have been refused entrance. We have met with attorneys familiar with the case, including Dr. Crespo, and have presented a formal request to observe the trial to representatives of the Fujimori Government and military. We have examined international treaties, portions of the Peruvian Constitution, recent decrees issued by the Fujimori Government and the documents submitted to the civil courts by Dr. Crespo. Based upon our initial investigation we have concluded that the military tribunal and trial of the seven accused is being conducted in flagrant violation of both Peruvian and international law.

The arguments based upon Peruvian law are presented in the petition filed by Dr. Crespo. Our conclusions are based upon existing international treaties and principles of international law.

1. A closed trial violates the right to a public trial guaranteed by the International Declaration of Human Rights, Article 10 and 11 and the American Convention on Human Rights.

2. The military trial violates the right to an independent judicial process guaranteed by Resolutions 40/32 and 40/146 of the United Nations.

3. The entire process violates Protocol II of the 1977 Addenda to the Geneva Treaty of 1949 to which Peru is a signatory and which, like other international treaties, has been recognized by the Fujimori Government in Decree 25418 which binds Peru to all existing international treaties. A copy of Protocol II is attached (omitted from this report). In particular, Protocol II is violated in the following respects:

A. The Protocol applies to all armed conflicts between the military and other domestic military forces. Conflict between the Peruvian government and the Sendero Luminoso, led by Dr. Guzman, falls within the

Protocol.

B. The Protocol prohibits "outrages on personal dignity, in particular humiliating and degrading treatment. (The display of Dr. Guzman in a cage, being subjected to verbal abuse was an apparent attempt to degrade him. This public degradation, broadcast worldwide, impelled some members of this delegation to come to Peru.)

C. The Protocol requires a hearing before an independent judiciary that is impartial. The military tribunal can be neither since it represents one party to the conflict. Moreover, the outcome has already been announced.

D. The Protocol requires that charges be laid with particularity and that all necessary rights and means of defense be afforded the accused. This has been violated by allowing Dr. Crespo only a brief meeting with Dr. Guzman and four hours to examine the case. There is apparently no right to present witnesses or other evidence. (Compliance with other fundamental juridical requirements is impossible to monitor due to the closed nature of the trial.)

E. The military trial and charges violate the Protocol by allowing charges and penalties that did not exist at the time the alleged acts were committed.

F. The presumption of innocence required by the Protocol can not exist because Fujimori has already announced the outcome of the trial and the sentence.

We, therefore, conclude that the current trial of Dr. Abimael Guzman and the six other political prisoners is being conducted in violation of international law to which Peru is bound and must be stopped at once. Any verdict or sentence in any resulting proceeding should be considered null and void as a matter of international law.

We call upon all signatory nations of the Geneva Conventions and Protocols to send diplomatic notes to Peru demanding that Dr. Guzman, and the other political prisoners be treated in accordance with Protocol II.

Signed:

Peter Erlinder      Martin Heiming

Anne-Marie Parodi      Leonard Weinglass

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Dr. Crespo arrived near the end of the press conference and reported that he had received a letter from the Bar Association stating he would be disbarred if he made any more statements to the press. He read the letter at the press conference and went on to answer questions about what had occurred on San Lorenzo Island.

He reported that he had been allowed to meet with Dr. Guzman for

approximately fifteen minutes prior to appearing before the tribunal and that he had been present during some 3-1/2 hours of the proceeding during which Dr. Guzman was interrogated by the court. The tribunal was conducted in a courtroom within the prison. Dr. Guzman wore a striped prison uniform and was kept in a cage during the proceeding. Three military officers wearing hoods acted as judges.

Dr. Crespo said that he was not allowed to call witnesses, to present evidence, or to cross-examine witnesses. According to Dr. Crespo, the questions directed to Dr. Guzman had to do with his political philosophy, the political philosophy of the Communist Party of Peru and his political leadership of that organization.

Dr. Crespo stated that none of the charges against Dr. Guzman were based on any particular acts in which Dr. Guzman was directly involved. There were no allegations that he ordered, or participated in, any acts of violence at all. He was charged with being the leader of the Communist Party of Peru and he freely admitted that he was the political leader of the Party. He made a statement in which he accepted full responsibility ideologically and politically for the Communist Party of Peru, he could not take responsibility for every one of the actions allegedly carried out by the movement.

According to Dr. Crespo, the only basis for the charge of "treason against the fatherland" was Dr. Guzman's political leadership of the Communist Party.

Dr. Crespo said that the other defendants also were being tried in the same fashion but that he was not able to tell us if the others had lawyers. He said that he had been hooded while being taken to and from the courtroom so that he was not able to see any other prisoners, or any other proceedings.

The press conference ended when the hotel management told us that the room was reserved for another group and that we must leave. Just as security personnel began to escort people out of the room the press conference ended.

The reaction to the delegation and the press conference was immediate. The delegation and the press conference were the major news item on television and in the Peruvian press on the evening of October 1. By Friday, October 2, Fujimori went on national television to denounce the delegation and to deny that the delegation had been prevented from observing the trial. The members of the delegation were well known enough to attract the attention of the DINCOPE, the anti-terrorist police, and to be recognized on the street by the general public.

When Erlinder and Weinglass went to the airport on Friday, October 2, they were stopped by plainclothes Security Police in the waiting area and subjected to questioning and a luggage search. Police paid particular attention to printed materials and accused them of being "lawyers for Guzman". They were allowed to leave after being detained for about 20 minutes.

The members of the delegation who remained in Lima, Heimling, Ocasio and Parodi, came under increasing pressure over the weekend. A crowd gathered in

front of the hotel and it was impossible for them to enter or leave without encountering a group of hostile individuals who identified themselves as representing the Peruvian press. However, Ocasio and Heiming also reported that they received many indications of approval and support from individuals on the street in Lima. Parodi reported that with one or two exceptions she was welcomed wherever she went.

On Sunday evening, October 4, the delegates were visited at their hotel by a representative of the Public Prosecutor who told them they were subject to being charged with the crime of being "Apologists for Terrorism" a crime that carries a 6 to 12 year sentence.

The civil courts denied Dr. Crespo's objection to the jurisdiction of the military courts and he was summoned back to San Lorenzo on October 7 to hear the sentence pronounced. The military tribunal found Dr. Guzman guilty of "treason against the fatherland" and a life sentence was pronounced. The verdict and the sentence were pronounced within 10 days of the military courts assuming jurisdiction. Dr. Crespo was present only on the two occasions mentioned above. The only appeal available was an appeal to another military panel which, according to Dr. Crespo, was merely a formality since Fujimori had already announced that Dr. Guzman would be found guilty and sentenced to life in prison.

Heiming and Parodi left Lima on October 7 and were also stopped and searched at the airport. Ocasio remained in Lima until October 9 when he was escorted to the airport by an attorney from the United States who went to Peru to assist him in leaving the country. They, too, were searched and questioned at the airport but were eventually allowed to board their flight.

#### Recent Developments

After the delegation left Lima, the Peruvian and international press reported that the appeal process was completed by October 12 and that Dr. Guzman and the other defendants would be kept in solitary confinement and would be allowed one visit with a family member per month. On October 15, 1992, Fujimori announced that Peru was withdrawing from the American Human Rights Convention, a Treaty to which Peru has been a bound for some ten years. Terms of that Treaty prohibit the death penalty. At the same time, Fujimori announced a new decree that makes captured "terrorist leaders" subject to the death penalty for acts allegedly committed by their organization after the leader has been imprisoned. ( See Legal Analysis section of this report.)

A second international delegation arrived in Lima on October 27. The entire delegation was arrested on October 28 after holding a press conference at their hotel. They were charged with being "apologists for terrorism", interrogated and expelled from the country. During the time they were in Peruvian custody, the U.S. State Department and Embassy told concerned callers that the delegates had been released and were in the Embassy awaiting departure.

Dr. Crespo has also reported that he and his family have received death threats that he takes seriously. He has publicly stated that he holds the

government responsible for any harm that may come to him or his family. He reports that he has not been able to see his client, Dr. Guzman, since October 7. Further, he has been informed by the government that he is no longer the lawyer on the case and that the government will not respond to any of his legal efforts on behalf of Dr. Guzman.

Dr. Crespo has appealed for assistance from lawyers and human rights organizations to challenge the actions of the Fujimori government in international juridical proceedings.

### The Political Conditions

The following is a summary of observations and impressions of the delegates from the United States, Prof. Erlinder and Mr. Weinglass. Since our stay was short and had a limited purpose, the following are merely impressions and not intended as a definitive description of the situation in Peru.

According to a 1992 report prepared by the Rand Corporation for the U.S. Defense Department, the Communist Party of Peru is leading an indigenous revolution that controls approximately 40 per cent of the country and that they may be in a position to seize power within a few years because of the appalling economic and social conditions facing a majority of the Peruvian people. (Gordon H. McCormick, From the Sierra to the Cities, The Urban campaign of the Shining Path, RAND CORP, 1992.) There is nothing we observed or heard in Peru that would lead to a contrary conclusion.

The taxi ride from the airport went through suburban areas with numerous makeshift buildings. We observed many people standing on the streets or sitting on the curb. There were many street vendors and frequent military patrols. Lima appears to be a very poor, somber city. Major buildings in downtown Lima are protected by armed members of the military and military vehicles are common on the streets in the capital. We were informed that a curfew on automobile travel was in effect during the evening hours but there appeared to be normal pedestrian and vehicular traffic on the streets during the daylight hours.

The economic and social conditions in Lima, if not desperate, reflect a society that is under extreme stress. Lima is a decaying city with thousands of people who appear to be unemployed or under employed. After dark the downtown streets have little pedestrian traffic and after midnight there are very few vehicles on the street. While the military presence is apparent, there are no roadblocks to or from the airport and none apparent on downtown streets during the day. After curfew, however, only vehicles with identification lights were on the streets. There were a few tourists from North America in the downtown hotels and several groups of North American men who seemed to be in Lima for business or professional reasons. All major government buildings and the Sheraton Hotel have military guards. At night we heard shots being fired on the streets but were unable to learn their source.

Leonard Weinglass had an opportunity to visit Miraflores, a section of Lima about twenty minutes from the center of the city, with a Peruvian family court judge who offered to show him "what the Shining Path had done".



According to Weinglass, the contrast between Lima and Miraflores was startling and extreme. Unlike the center of Lima, Miraflores was very modern, well-lit, with many upscale shops, restaurants and nightlife.

The judge showed Weinglass four sites that she said had been bombed by the Shining Path. The buildings were high rise office and commercial buildings. The roads in and out of Miraflores are protected with an obstacle course of barriers that makes rapid entry and exit impossible.

The judge told Weinglass that she had been in one of the buildings when it was bombed and that she and many of her friends were exploring other places to live outside of Peru. When asked if she thought the Shining Path was going to take power, she said she thought it was "possible".

In several other conversations with members of the Peruvian press and members of the upper and middle class who were at the hotel, it was apparent that the business and professional classes have a deep hatred for both Guzman and the Communist Party of Peru, but they do acknowledge that Guzman is the leader of a political movement.

There were frequent references to the 25,000 deaths in the civil war, without any attempt to differentiate between deaths resulting from government actions from those resulting from Shining Path actions.<sup>3</sup> The Peruvian media carries stories linking the Shining Path with banditry and drugs. However it is difficult to determine whether these reports are factually based or merely propaganda.

For example, in reporting on our delegation, elements of the press characterized us as a group of "lawyers for terrorists". The prosecutor's threat to prosecute members of the delegation as "apologists for terrorism" was widely reported. Dr. Ocasio was identified as the physician for "Saddam Hussein".

While in Lima, we learned that disappearances are increasing and the University has been occupied. The majority of the judiciary, including the majority of the Supreme Court, is being systematically replaced by persons hand-picked by Fujimori. The judge he met told Weinglass that the new judges were "stupid" and "knew nothing about the law" but that "they were loyal to Fujimori." Members of the Association of Democratic Lawyers have been arrested for defending members of the Shining Path and, at least three were murdered last May in the military attack on Canto Grande Prison.

There does seem to be some support for Dr. Guzman and the Shining Path in Lima. Wall graffiti in support of "Presidente Gonzalo", "Sendero Luminoso",

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<sup>3</sup> Recently a number of academic observers of the situation in Peru have reported that the Communist Party of Peru has been successful, at least in part, because of the contrast between the indiscriminate use of violence by the military and police and the more limited and focused use of violence by the Shining Path. See, Shining Path of Peru, David Scott Palmer, ed. (Hurst and Co., London) (1992).

"Revolucion" and "Socialismo" can be seen on the streets. However, there was also graffiti that appeared to be supportive of "Presidente Fujimori." The delegation experienced no apparent hostility from the hotel staff. As mentioned above, Dr. Ocasio reported that he was frequently approached and given signs of encouragement and support by people on the street and Ms. Parodi also reported that her interactions with Peruvians were generally positive.

We spoke with several educated professional persons in Lima who not only opposed the Fujimori dictatorship, but were supportive of the goals of the Shining Path. This was also confirmed by the circumstances of Dr. Guzman's arrest at the home of a well known member of the Lima cultural community. This also seemed to be true of some members of the press who attended the press conference, but this point of view is not reflected in the stories that appeared either in print, or in the electronic broadcast media. There is no question that, in Peru, the Shining Path is viewed as a political movement and that "Presidente Gonzalo" is viewed as the leader of that movement. It is also clear that the movement has mass support within the country and in Lima.<sup>4</sup>

It seems that the Fujimori government is poised between maintaining an image of openness and imposing even greater oppression. We were able to enter the country on tourist visas, we were not stopped at roadblocks or on the street, we were able to hold a press conference and we were able to leave. These facts were used by the government to demonstrate the openness of Peruvian society. However, it is clear that Peru is not an open society and that human rights and political rights exist only at the sufferance of the military. These abuses have been widely reported and are continuing.

Our presence was sufficiently threatening to the Fujimori Government to have us kept under surveillance by DINCOTE, to publicly deny that we had been prevented from observing the trial, to denounce the delegation on national television and to detain and search delegation members at the airport. Should the civil war continue, it seems likely that the Fujimori government will impose increasingly repressive measures to retain power.

Following our return to the United States, a number of human rights organizations and lawyers groups sent communications of protest to the Fujimori Government. Copies of some of the messages are attached. (See attachments.) These messages are a valuable first step, but the international community must take a more active role in investigating and making public the political situation in Peru to have any effect on the policies of the Fujimori government.

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<sup>4</sup> This observation is consistent with the Rand Corp. report to the U.S. Department of Defense:

"...the Shining Path's ability to operate on a military plane is a function of the strength, scope and diversity of its popular base...It is a movement, as suggested elsewhere, that clearly understands the value of political work. Armed actions, as a general rule succeed rather than precede the establishment of a secure political base." McCormick, From the Sierra to the Cities, p. 12.

The coup resulted in massive detentions of critics of the Fujimori government. The former President Alan Garcia fled to Columbia. Politicians, journalists and labor leaders were held without charges. The government dismissed thirteen Supreme Court judges, the entire Tribunal of Constitutional Guarantees and most of the judges and prosecutors in Lima and Callao. This effectively made the filing of habeas corpus petitions impossible.

Troops occupied both domestic and international newspapers. Reporters were warned not to criticize the regime. Magazines, newspapers and electronic media were occupied or shut down. These conditions eased following strong international reactions to the coup, but as recently as October 7, the Joint Military Command warned the press not to report "rumors" about military activities in Ayacucho, the base area of the Sendero. Press freedoms apparently remain tenuous at best.

Since the coup, Fujimori has issued a series of Decrees that have fundamentally altered the Peruvian legal system and which impose criminal liability for a range of acts that would not have been crimes before the coup. The following are some examples drawn from Decree 23475, issued on or about May 5, 1992:

- the definition of "Terrorism" was changed to eliminate the use of violence, or any physical act, as part of the definition. Ideas and writings may now be prosecuted as "terrorist acts";

- a new crime, "Apology for Terrorism" is created but not defined. This is the offense that was used to threaten members of the delegation on October 4;

- "terrorism" defendants may be held incommunicado for 15 days and may not consult with an attorney during that time and are subject to mandatory pre-trial detention;

- "terrorism" defendants are to be tried in secret trials by anonymous judges (See attached N.Y. Times article).

In addition, on August 31, 1992 Fujimori issued Decree 25659 which gave military tribunals jurisdiction over civilians charged with "treason against the fatherland". As discussed in Dr. Crespo's pleadings, this Decree is in direct contravention of the Peruvian Constitution which reserved military tribunals solely for members of the military and police.

Further, on September 10, 1992 Fujimori issued Decree 25708 which set out the procedures for military tribunals that have been applied to Dr. Guzman. Secret trials, with no right to present evidence and no right to confront or cross-examine witnesses, violate numerous international standards for due process as outlined in the press statement of the delegation. On October 7, Fujimori announced that these procedures would also be applied to Victor Polay Campos, political leader of the Tupac Amaru, another revolutionary political movement.

As discussed in the press statement, these procedures are in direct violation of international treaty obligations to which Peru is a signatory and which, until recently, Fujimori had pledged to uphold. At the time Dr. Guzman was captured, Presidential Decree 25418 was in effect. In that Decree, Fujimori specifically "ratifies and respects the treaties and conventions,

pacts, agreements, etc. subscribed to by the Peruvian Government and which, in agreement with article 101 of the Constitution, form part of the nation's law".

The right to a public trial before an impartial court are central to principles of due process recognized in domestic and international law. In addition, time to prepare for trial and to have a meaningful defense are central to are well recognized rights which the Fujimori government is obliged to respect. Perhaps most importantly, Protocol II recognizes the principle of individual penal responsibility and the necessity for an accused to know the precise nature of the charges against him. Dr. Guzman was tried and convicted for his role as political leader and ideological leader of the Communist Party, not because he authorized or took part in any actions carried out by the party.

In apparent recognition that it is violating its international obligations, and in anticipation of future even more egregious violations, as of October 15, 1992 the Fujimori Government has announced its intention to withdraw from the American Convention on Human Rights, to which Peru has been a signatory for over 10 years. According to Fujimori, Peru is obliged to withdraw from the Convention because it prohibits the use of the death penalty. (See attached articles). The stated purpose of the Fujimori Government is to apply the death penalty to prisoners for acts committed by others, after the prisoner has been incarcerated.

At the time of Dr. Guzman's trial, he was not charged with having committed any particular acts of violence or of conspiring to commit particular acts. He was convicted of being the ideological and political leader of an armed force engaged in a civil war. Even if he had been charged and convicted with an act of violence, he could not have been sentenced to death under Peruvian law.

It appears that the Peruvian Government intends to subject Dr. Guzman, and leaders of other political organizations to the death penalty for the "terrorist" acts of others, committed after the leaders have been convicted and imprisoned. This is particularly disturbing in light of the recent changes in Peruvian law, that permit a person to be convicted "terrorism" without the commission of any violent act. A "terrorist" is one who creates fear by any means. Had South Africa imposed a similar theory of penal responsibility, Nelson Mandela would have been subject to the death penalty for non-violent actions attributed to the ANC that occurred after he was imprisoned on Robben Island.

There is no internationally accepted theory of criminal liability that recognizes an offense of this type, much less that justifies the application of the death penalty. The use of such a theory of liability to justify the execution of Dr. Guzman is merely a pretext for premeditated politically motivated murder by the Fujimori government.

#### Conclusion

There is no dispute that the Fujimori government and its predecessors

have created conditions in Peru that have resulted in great suffering for the vast majority of the Peruvian population that pre-existed the formation of the Communist Party of Peru. There is general agreement that the success of the Shining Path in organizing armed resistance to the government of Peru would not have been possible without Peru's history of vast economic disparity and military repression.

If the reports of the Rand Corporation and other observers are correct, the Communist Party of Peru has been mischaracterized as an organization that relies on senseless violence to accomplish its objectives. Rather, the situation appears to be more accurately characterized as a peasant-based, popular insurrection which considers long term political organizing more important than military actions. Further, the success of the Shining Path seems to have been based on a more limited and targeted use of violence than the military governments they have opposed.

A number of observers of the situation in Peru, including America's Watch, have suggested that the measures of extreme repression imposed during the early days of the coup were withdrawn because of widespread international condemnation of the Fujimori government. The question is whether the international community will continue to pressure the Fujimori regime to prevent an increasingly desperate dictatorial regime from committing ever greater violations of basic human rights as it tries to cling to power.

The extraordinary treatment of Dr. Guzman is merely a sample of the treatment that those who oppose the Fujimori regime can expect in the future.

As has been observed by delegation member Leonard Weinglass, "The international community should be reacting very strongly to this because we haven't seen anything like this in decades. By 1992 there was a hope under international law that things such as this wouldn't occur, a prisoner exhibited in a cage, a clandestine summary proceeding, the President of the country announcing the sentence before the trial begins. This is clearly just an index of what life is like in Peru today..."

- end -