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## Articles

# Terror at the Emperor's Birthday Party: An Analysis of the Hostage-Taking Incident at the Japanese Embassy in Lima, Peru.

Dr. Ranee K. L. Panjabi\*

### I. Introduction

Does the end ever justify the means? This question confronts and haunts the student of modern terrorism and revolution. In the first part of this century, Mahatma Gandhi, leading India in a non-violent struggle against British imperial rule, argued eloquently that violent means are never justifiable, no matter how noble the end. He convinced Indians to struggle for independence non-violently on the basis that "[t]ruth never damages a cause that is just."<sup>1</sup> Leading this unique revolution, Gandhi provided a moral founda-

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1. MOHANDAS K. GANDHI, *NON-VIOLENCE IN PEACE AND WAR*, (1948), in *INTERNATIONAL THESAURUS OF QUOTATIONS* 70 (Rhoda Thomas Tripp ed., 1987).

tion for dissent by insisting that the methodology to be pursued in fighting injustice be as pure as the goal to be reached.

Living in the far more complicated second half of the twentieth century, rebels and rulers argue the reverse, that violence and even cruelty are acceptable in certain conditions. For dissenters, the logic of this position is that when there are no legitimate safety valves in society, resort to violence is the only answer. Those who form the establishment use the logic of law and order to justify their repression of such dissent. This collision of two opinions or ideologies leads to an escalation of violence and terror, which primarily afflicts the innocent. Unfortunately, the majority of twentieth century revolutions have been violent in nature; many of them have resulted in brutal and bloody civil wars and the creation of repressive totalitarian dictatorships. The history of this century has proven that violence breeds retaliatory violence, and such tainted means eventually corrupt the goal. It is imperative that at the end of this turbulent century we evaluate our recent past and ponder the age-old question of the connection between means and ends. When we view the end, we cannot but realize that it has been shaped, developed and formed by the means used, and hence, the means are as important as the ultimate goal to be achieved. Aristotle suggested that “[w]hen we deliberate it is about means and not ends.”<sup>2</sup>

There are no clear and easy answers to the political riddles of our time. The teacher of modern history confronts more dilemmas than solutions. A few years before the outbreak of the Second World War, Aldous Huxley criticized the mindset of his era in his book *Ends and Means*, saying: “We insist that ends which we believe to be good can justify means which we know quite certainly to be abominable; we go on believing against all the evidence, that these bad means can achieve the good ends we desire.”<sup>3</sup> In December 1996, these troubling riddles of modern life again perplexed the world as a group of Peruvian rebels, members of the Tupac Amaru, led by Nestor Cerpa Cartolini, seized the Japanese Ambassador’s residence in Lima, Peru, during a gala celebration of Japanese Emperor Akihito’s birthday and took a large number of international diplomats, Peruvian government officials and members of the press hostage. While most of the hostages were

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2. ARISTOTLE, NICHOMACHEAN ETHICS, Tr. J.A.K. Thomson, in THE INTERNATIONAL THESAURUS OF QUOTATIONS 393 (Rhoda Thomas Tripp ed., 1987).

3. ALDOUS HUXLEY, ENDS AND MEANS 28-29 (1937).

released over the next few days and weeks, the ordeal for approximately 70 men continued for 126 days. News of the violent end to the Emperor's birthday celebration reverberated across the world due largely to the extensive communications networks which now span our planet. The liberation of the hostages four months later was equally violent—Peruvian elite forces stormed the Embassy, killed all the hostage takers and rescued the dignitaries. Excluding the guerrillas, the death toll included one hostage and three soldiers.

This article will provide a detailed analysis of the events of the hostage-taking incident in Lima, along with some observations on the incident's impact both nationally in Peru and internationally with respect to world public opinion about this act of terrorism. Extensive research into primary sources revealed a complex human drama in which the rebel leader and the President of Peru were pitted against each other in a deadly confrontation, each individual totally committed to the rectitude of his position. Given the international composition of the hostages, both men played a dangerous game of brinkmanship for very high stakes. In the end, the President won insofar as the military operation was concerned. However, there is far more to this hostage-taking crisis than its military particulars.

This is also a human rights story exposing the appalling conditions of prisons in Peru and the inhuman treatment of political prisoners in that country. It is a tale of opposing causes and viewpoints, of different concepts of justice and governance. It is a classic saga of poverty against wealth, of dispossessed, alienated sections of society seeking a foothold within the established structures and being destroyed for having such expectations. It is, above all, a human tragedy. Journalist Linda Diebel aptly commented, "[I]t's a thriller, a love story about a rebel leader fighting to get his comrade wife out of jail and an international blockbuster about money, power and intrigue."<sup>4</sup>

## II. History

### A. *Peru: Brief Particulars*

Peru is a Pacific Ocean nation in South America, bordered on the north by Ecuador and Colombia, on the south by Chile, and on

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4. Linda Diebel, *Summit Tackles Nightmare*, THE TORONTO STAR, Jan. 31, 1997, at A19.

the east by Brazil and Bolivia. Approximately half of the citizens “live in poverty, 85 percent of workers do not have full-time jobs and an estimated 93 percent of children do not have access to school books.”<sup>5</sup> Census figures for 1993 showed a population that was 70.1 percent urban out of a total of 22,048,356.<sup>6</sup> The financial newspaper *Gestión* estimated in June 1997 that 19 percent of Peruvians suffer extreme poverty, “without sanitation, water, electricity or gas.”<sup>7</sup> In 1991, there were approximately 100,000 Peruvians of Japanese descent.<sup>8</sup> Lima, the venue of this hostage-taking crisis, is a city of approximately 8 million people.<sup>9</sup>

At the time of the hostage crisis, Peru was just recovering from a lengthy civil war during which about 27,500 people were killed and about 5000 “disappeared.”<sup>10</sup> The political impact of this civil war has been a reversion to authoritarian-style governance under democratically-elected President Alberto Fujimori, who came to power in 1990. Economically, the nation had been devastated by warfare between guerrilla insurgents and security forces backed by the Peruvian military.

Fujimori’s economic plans stabilized some sectors of the economy, provided huge prosperity for the wealthy, and demonstrated some benefit for the middle class. However, the result for the poor thus far has been unemployment, chronic hunger and severe deprivation. Overall, in terms of living conditions for the majority of the population, Peru has not fared very successfully, despite Fujimori’s much publicized reforms which include the rapid privatization of dozens of state enterprises.<sup>11</sup> Although the economy was booming for some time, the impact of the liberalization schemes on the poor was largely negative. In the early 1990’s, a conference of Peruvian bishops concluded that the economic

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5. Calvin Sims, *Peru’s Growth Leaves Poor Behind*, N.Y. TIMES, Dec. 29, 1996, at 1 [hereinafter Sims, *Peru’s Economic Plan*].

6. THE STATESMAN’S YEARBOOK 1996-97 1028, (Brian Hunter ed., 1996). Projected population figures for the year 2000 are 28 million. PERU: A COUNTRY STUDY, xvi (Rex. A. Hudson ed., 1993).

7. Diana Jean Schemo, *Peruvians May Have Had Enough of Fujimori*, THE GLOBE & MAIL (Toronto) June 11, 1997, at A7 [hereinafter Schemo, *Peruvians May Have Had Enough*].

8. THE STATESMAN’S YEARBOOK 1996-1997, *supra* note 6.

9. Linda Diebel, *225 Hostages Set Free by Peru Rebels*, THE TORONTO STAR, Dec. 23, 1966, at A1 [hereinafter Diebel, *225 Hostages Set Free*].

10. Linda Diebel, *Peru’s Rebels With a Cause*, THE TORONTO STAR, Dec. 28 1996, at A2 [hereinafter Diebel, *Peru’s Rebels*].

11. Alex Emery, *Hostage Hold Up Spotlights Social, Political Crises Facing Peru*, THE CHRISTIAN SCI. MONITOR, Dec. 23, 1996, at 6 [hereinafter Emery, *Hostage Hold Up*].

reforms had pushed an additional five million people into extreme poverty.<sup>12</sup> Governmental policies had “curbed runaway inflation and fuelled huge growth . . . but ha[d] so far failed to produce new jobs, higher wages or better social conditions for poor Peruvians.”<sup>13</sup> In 1996, “the legal minimum wage was only 71 percent of what it had been in 1990.”<sup>14</sup> This, coupled with the fact that 4 out of every 5 Peruvians lack steady employment,<sup>15</sup> had eroded the popularity of the government.

Despite the negative aspects of Peruvian economics, it must also be noted that when Fujimori took office in 1990, inflation was 7,650 percent.<sup>16</sup> By December 1996, it had fallen to a more respectable 10 percent.<sup>17</sup> The economic growth rate was 12 percent in 1994, the highest in the world that year.<sup>18</sup> It dropped to 7 percent in 1995,<sup>19</sup> and by 1996 had fallen to about 2 percent.<sup>20</sup>

The lack of adequate social services and basic facilities for the poor exacerbates their plight particularly since the trend in favor of privatization in the cause of economic efficiency has led to unemployment for hundreds of thousands of workers in both the public and private sectors. The cost of these reforms has been distributed very unequally, with the poor bearing the heaviest burden.<sup>21</sup> On the other side of the issue, it is also true that the economic maneuverability of the Peruvian government is fairly restricted with respect to public expenditure for social services, because Peru is one of the most indebted countries in Latin America.<sup>22</sup>

The poor in Peru have suffered not just economically, but also in terms of health. The infant mortality rate is one of the highest

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12. Bill Fairbairn, *One of the Worst Right Violators in the World*, THE GLOBE & MAIL (Toronto), Apr. 16, 1992, at A19.

13. Sims, *Peru's Economic Plan*, *supra* note 5.

14. Hugh O'Shaughnessy, *Name From the Past Haunts Peru's Rulers*, THE IRISH TIMES, Dec. 19, 1996, at 11.

15. Emery, *Hostage Hold Up*, *supra* note 11.

16. Sims, *Peru's Economic Plan*, *supra* note 5.

17. *Id.*

18. Paul Knox, *Crisis Masks Fujimori's Mistakes*, THE GLOBE & MAIL (Toronto), Feb. 24, 1997, at A12 [hereinafter Knox, *Crisis*].

19. *Id.*

20. *Id.*

21. Sims, *Peru's Economic Plan*, *supra* note 5. The unequal distribution was calculated by Pedro Sainz, an economist with the United Nations Economic commission on Latin America and the Caribbean. *Id.*

22. *Id.* In 1992, the foreign debt of Peru was U.S. \$21.6 billion. PERU: A COUNTRY STUDY, *supra* note 6, at xviii.

in the hemisphere, with 63 per 1000 live births.<sup>23</sup> The United Nations Development Program has estimated that the per capita daily calorie supply in Peru is among the lowest in the world.<sup>24</sup> In 1990-1991, approximately 1200 children died every week from malnutrition, which along with starvation is a leading cause of illness in Peru.<sup>25</sup>

*The Economist*, examining the plight of Latin America generally, commented incisively with language which is appropriate to define the situation in Peru:

Social realities remain much as they were: poor Latin Americans now have the right to vote but still, too many of them, not the right to eat, let alone to decent housing, health care or schools . . . the past ten years' swing to free-market economics, which promises to benefit both rich and poor, in the short term is widening the gap between them and indeed making some of the poor not just relatively but absolutely poorer than they were.<sup>26</sup>

#### B. *Terrorism and Terrorists in Peru*

The political, economic and social environment of Peru has for years been a breeding ground for revolt, terrorism and revolution. A wealthy minority controls the apparatuses of government and the economy and effectively subdues the economic expectations and aspirations of a large majority, part of which is reduced to living in stark and horrifying poverty. The resulting chasm in society, in conjunction with the lack of strong democratic safety valves for the venting of grievances by the disaffected, force the truly angry to express themselves in violence aimed at destroying the fabric of a system which by its very nature is exclusive rather than inclusive. Social alienation breeds terrorism, which in turn breeds a siege mentality among the privileged. The result is a nation rampant with human rights abuses and systemic violence practiced by both the State and by those opposed to it.

As in many other countries around the world, the trend toward economic liberalization has wrought havoc on those at the bottom of the social system while raising the overall efficiency of the economy. It will be some years before the emphasis on capitalism

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23. Bill Cormier, *Shantytowns Around Lima Held Hostage to Deep Poverty*, THE OTTAWA CITIZEN, Jan. 5, 1997, at A6.

24. Knox, *Crisis*, *supra* note 18.

25. PERU: A COUNTRY STUDY, *supra* note 6, at xvii.

26. *A Victory in Peru*, THE ECONOMIST, Apr. 26, 1997, at 15.

brings benefits which trickle down to the very poor elements of society. The witches' brew of political, economic and social injustice is poison to the survival of democratic institutions in states like Peru.

In Latin America, "despite the end of the cold war and strides toward democratization that have calmed the revolutionary fires, enough hot embers remain to remind the hemisphere that some of the conditions that feed extremist activities still exist."<sup>27</sup> It is a region "that has the worst rich-poor income gap in the world, flagrant discrimination against indigenous populations, and political restrictions that have continued despite democratic transitions."<sup>28</sup>

In the war against mainly Marxist rebel groups practicing terrorism, Latin American governments have had some success. Guerrilla groups in a number of Latin American countries have been neutralized, either through violent destruction by the ruling authorities or through legitimate incorporation into the political process. The effort in Peru to subdue guerrilla groups involved the authorities in a prolonged civil war which (estimates vary) took over 30,000 lives,<sup>29</sup> and caused \$25 billion in damage.<sup>30</sup> Peruvian rebels, though significantly weakened, continue to exist and strike sporadically at the establishment. Their survival despite brutal police and military efforts to destroy and eliminate them testifies to the determination motivating these rebels. The fact that they continue to recruit, particularly among the young, is very disturbing, for "[t]errorism has frequently been called the politics of desperation, the last refuge of the weak."<sup>31</sup>

The two most prominent Peruvian rebel groups in recent years have been Sendero Luminoso (Shining Path) and the MRTA (Movimiento Revolucionario Tupac Amaru<sup>32</sup>), also known simply as Tupac Amaru. Of these two groups, the Maoist Shining Path was generally considered more brutal, more assertive and more deadly

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27. Howard LaFranchi, *Rebel Groups Like Peru's Still Pester Latin America*, THE CHRISTIAN SCI. MONITOR, Dec. 20, 1996, at 1.

28. *Id.*

29. *Peru Rebels Raid Envoy's Home and Seize Hundreds of Hostages*, N.Y. TIMES, Dec. 18, 1996, at A1.

30. Emery, *Hostage Hold Up*, *supra* note 11.

31. Edward F. Mickolus, *Negotiating For Hostages: A Policy Dilemma*, in CONTEMPORARY TERRORISM 207, 217 (John D. Elliott & Leslie K. Gibson eds., 1978).

32. Allan Thompson, *Embassy Attackers Have Violent Past*, THE TORONTO STAR, Dec. 19, 1996, at A20.



in its policies, and reportedly included 10,000 fighters at its peak.<sup>33</sup> Tupac Amaru has never attracted as many followers as Shining Path and may have included only about 1000 guerrillas at its height,<sup>34</sup> although, again, estimates vary. However, the MRTA hacked out a nefarious history of terroristic activity which bred fear and intimidation throughout the country. Journalist Hugh O'Shaughnessy commented that "[t]he name of Tupac Amaru is enough to send a chill of fear into any Latin American government."<sup>35</sup> Because of the activities of guerrilla groups, the 1980's were "a tortured decade for Latin America."<sup>36</sup>

The Tupac Amaru derived its name from an Indian revolutionary, Jose Gabriel Condorcanqui,<sup>37</sup> who claimed Inca descent and who nearly overturned Spanish colonial rule in Peru.<sup>38</sup> He staged his uprising in 1780 and was executed by the Spaniards a year later.<sup>39</sup> His *nom de guerre*, Tupac Amaru II, was adopted from the last Inca ruler prior to the Spanish conquest.<sup>40</sup>

One of the "longest-surviving guerrilla groups in Latin America,"<sup>41</sup> the Tupac Amaru is ideologically indebted to the brand of Marxism popularized by Castro's Cuban revolution,<sup>42</sup> and inspired by the prominent Latin American revolutionary Ernesto (Che) Guevara.<sup>43</sup> The group is thought to have been formed by univer-

33. *Raid Marks Rebels' Comeback*, THE VANCOUVER SUN, Dec. 19, 1996, at A12.

34. Isabel Vincent, *Ending Democracy to Save Democracy*, THE GLOBE & MAIL (Toronto), Apr. 14, 1992, at A9. Clifford Krauss estimated that the number of members may have been 3000 during the late 1980's. See Clifford Krauss, *Peru Troops Rescue Hostages*, N.Y. TIMES, Apr. 23, 1997, at A6 [hereinafter Krauss, *Peru Troops*]. The Shining Path has been compared to Cambodia's Khmer Rouge in terms of its propensity to brutality. *Peru Rebels Raid Envoy's Home and Seize Hundreds of Hostages*, *supra* note 29.

35. O'Shaughnessy, *supra* note 14.

36. RICHARD CLUTTERBUCK, TERRORISM AND GUERRILLA WARFARE: FORECASTS AND REMEDIES 126 (1990).

37. Linda Diebel, *Peru's Tupac Amaru Rebels*, THE TORONTO STAR, Dec. 23, 1996, at A23 [hereinafter Diebel, *Peru's Tupac Amaru*].

38. O'Shaughnessy, *supra* note 14.

39. Thompson, *supra* note 32; and Roy Gutman, *Rebels Stage Horrifying Comeback*, THE TORONTO STAR, Dec. 20, 1996, at A29.

40. Gutman, *supra* note 39. Tupac Amaru translates to Royal Serpent in Quechua. Kevin Fedarko, *Gala at Gunpoint*, TIME, Dec. 30, 1996, at 67.

41. Clifford Krauss, *Diplomats in Peru Shuttle to Talks to Free Hostages*, N.Y. TIMES, Dec. 20, 1996, at A6 [hereinafter Krauss, *Diplomats*].

42. *Peru Rebels Raid Envoy's Home and Seize Hundreds of Hostages*, *supra* note 29.

43. James Brooke, *The Rebels and the Cause: 12 Years of Peru's Turmoil*, N.Y. TIMES, Dec. 19, 1996, at A1 [hereinafter Brooke, *The Rebels and the Cause*].

sity radicals in 1983.<sup>44</sup> Its recruits are drawn from the urban middle class and comprised the youth groups of various Marxist parties which joined ranks.<sup>45</sup>

Its main operational base is in the forested upper Huallaga Valley of Eastern Peru.<sup>46</sup> According to terrorism expert Richard Clutterbuck, Peru grows about half the planet's coca and in the early 1990's the Upper Huallaga Valley was "probably the world's biggest single source of cocaine."<sup>47</sup> This crop and the demand for it in North American cities would ironically become the economic wellspring of guerrilla activity in Latin America.

Taking up arms in 1984,<sup>48</sup> the Tupac Amaru allegedly raised funds from cocaine dealers in the region.<sup>49</sup> The group has allegedly also received financial assistance from Cuba and possibly Nicaragua and Libya.<sup>50</sup> It also built international ties with like-minded groups, joining Battalion America, "an umbrella group that included the M-19, one of Colombia's largest guerrilla groups."<sup>51</sup> The Tupac Amaru also developed links with the Sandinistas of Nicaragua and the FMLN of El Salvador.<sup>52</sup>

Beginning its violent criminal activities in 1984, the Tupac Amaru shot at the U. S. Embassy, attacked a guard post at the Lima Naval Hospital, seized a radio station and machine gunned the home of the former Minister of the Economy.<sup>53</sup> Tupac Amaru operations also deliberately targeted American businesses in Peru, such as the blowing up of two Kentucky Fried Chicken outlets and the bombing of Texaco Corp.<sup>54</sup> It also attacked Citibank and

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44. Gutman, *supra* note 39; Diana Jean Schemo, *A Born Revolutionary's Path to a Living 'Tomb' in Peru*, N.Y. TIMES, Jan. 4, 1997, at A1 [hereinafter Schemo, *A Born Revolutionary's Path*].

45. *Leftist Peruvian Terrorist Group Rooted in Revolution*, THE EDMONTON J., Dec. 19, 1996, at A4.

46. Calvin Sims, *Guerrillas in Peru Threaten to Kill Hostages*, N.Y. TIMES, Dec. 19, 1996, at A6 [hereinafter Sims, *Guerrillas in Peru*].

47. Clutterbuck, *supra* note 36, at 90-91.

48. *Peru Rebels Raid Envoy's Home and Seize Hundreds of Hostages*, *supra* note 29.

49. O'Shaughnessy, *supra* note 14.

50. Thompson, *supra* note 32, citing *Extremist Groups*, U. S. publication produced by the Office of International Criminal Justice.

51. Alex Emery, *Hostage Takers in Peru Seen as Vanishing Breed*, THE CHRISTIAN SCI. MONITOR, Dec. 30, 1996, at 1 [hereinafter Emery, *Vanishing Breed*]. In 1988, M-19 signed a peace treaty with the government and has since become a major political party. *Id.*

52. *Id.*

53. Mark Hume, *Rebel Group Rose From Ashes in Peru*, VANCOUVER SUN, Dec. 20, 1996, at A12.

54. *Id.*

Kodak.<sup>55</sup> According to Americas Watch, the Tupac Amaru also dynamited a Pizza Hut, several Mormon churches and the U. S. Peruvian institute.<sup>56</sup> The Tupac Amaru's attacks on American targets in Peru "imbued them with a mystique among some Peruvians somewhere between Robin Hood and Rambo."<sup>57</sup>

Clearly, their activities were "propaganda oriented."<sup>58</sup> Gordon McCormick, an expert on Peruvian guerrilla movements, commented on the theatricality of their actions. With respect to the chicken outlet he said: "First they would invade the place, scare off the patrons, shoot up the restaurant and then put a grenade in a chicken bucket and blow up the Colonel Sanders insignia. They took great joy in doing it, too."<sup>59</sup> They also delighted in distributing stolen food among the poor,<sup>60</sup> and termed themselves "social liberators" of Peru's poor population.<sup>61</sup> Their search for publicity motivated the dramatic aura surrounding these operations. Realistically, they were aware that their actions could not lead to the overthrow of the establishment, although they may have hoped to "act rather as the tiny prick of conscience to a society that is sometimes prone to forget how the great bulk of the population lives."<sup>62</sup>

Other Tupac Amaru activities include attacking Western embassies, robbing banks and kidnapping businessmen.<sup>63</sup> Tupac Amaru rebels assassinated Peru's Defence Minister General Enrique Lopez Albuja in January 1990.<sup>64</sup> Tupac Amaru "sullied its Robin Hood image when it staged several high-profile kidnappings, such as mining executive David Ballon Vera, who was later

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55. James Brooke, *For Revolutionary Group, an All-Out Offensive Turns Into Disastrous Defeat*, N.Y. TIMES, Apr. 23 1997, at A1 [hereinafter Brooke, *Disastrous Defeat*].

56. AMERICAS WATCH, INTO THE QUAGMIRE: HUMAN RIGHTS AND U.S. POLICY IN PERU 30 (Sept. 1991).

57. Todd Lewan, *Who Are Those Masked Rebels?*, WINNIPEG FREE PRESS, Jan. 6, 1997, at B3.

58. Federal Bureau of Investigation, *Terrorism at Home and Abroad: the U.S. Government View*, in THE POLITICS OF TERRORISM 356 (Michael Stohl ed., 1988).

59. Gutman, *supra* note 39.

60. Emery, *Vanishing Breed*, *supra* note 51.

61. Lewan, *supra* note 57.

62. Richard Gott, *Tupac Amaru Pricks the Conscience of a State Ignoring the Cost of Its Actions*, THE IRISH TIMES, Dec. 31, 1996, at 8.

63. *Leftist Peruvian Terrorist Group Rooted in Revolution*, *supra* note 45.

64. Tim Johnson, *Once Thought Wiped Out, Tupac Amaru Proves to Be Alive and Dangerous*, THE OTTAWA CITIZEN, Dec. 19, 1996, at A6 [hereinafter Johnson, *Once Thought Wiped Out*].

found starved to death and scarred by torture."<sup>65</sup> Their activities within Peru included the temporary take-over of towns and communities, although "these occupations consisted of locking up the local police in their barracks, convening community meetings and finally organizing soccer games, parties and dances with the residents."<sup>66</sup> They were also inclined to invite television crews to broadcast their victories across the nation.<sup>67</sup>

Tupac Amaru made vigorous efforts to distinguish itself from the Shining Path and the "two groups have often been at loggerheads."<sup>68</sup> In the colossal death toll provoked since the early 1980's by guerrilla violence and police reprisals, Amnesty International estimates that half of the over 35,000 deaths can be attributed to Shining Path. However, the Tupac Amaru has been connected to less than 300 deaths,<sup>69</sup> fitting the observation that "terrorists want a lot of people *watching*, not a lot of people *dead*."<sup>70</sup> The difference between the two groups is that "where the Tupac Amaru took hostages for ransom or publicity, the Maoists of the Shining Path simply shot their enemies. Where the Tupac Amaru invaded the Lima offices of foreign news agencies to force transmission of their manifestos, the Maoists killed journalists, either by stoning, shooting or garroting."<sup>71</sup>

However, prominent Peruvian author and former presidential candidate Mario Vargas Llosa was more critical of the Tupac Amaru, admitting that he may have been affected by a Tupac Amaru commando's attempt to assassinate him and his family during an election campaign. Vargas commented:

It is true that the Shining Path have killed many more people, but this is not because the MRTA are more benign—they are just not as numerous, and have a more limited capacity for destruction. Even so, the MRTA's record, since it was founded in 1983 to the present, is laden with innocent blood and corpses, assaults, kidnappings for ransom, all sorts of extortions, and an organic alliance with the drug traffickers of the Huallaga

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65. Emery, *Vanishing Breed*, *supra* note 51.

66. *Id.*

67. DEBORAH POOLE AND GERARDO RENIQUE, PERU: TIME OF FEAR 184 (1992).

68. Thompson, *supra* note 32.

69. Gutman, *supra* note 39.

70. B.M. Jenkins, *The Future Course of International Terrorism*, in CONTEMPORARY RESEARCH ON TERRORISM, 581, 583 (Paul Wilkinson & Alasdair M. Stewart eds., 1987).

71. Brooke, *The Rebels and the Cause*, *supra* note 43.

Valley—to whom, in return for substantial remuneration, they have been supplying armed protection for many years.<sup>72</sup>

Vargas Llosa asked a pertinent question: “If these people are the moderates of terror, what can the extremists be like?”<sup>73</sup>

However, in his enlightening analysis of hostage taking, Clive Aston argued the reverse, that “terrorists differ. By classifying all of them together, we run the risk of creating a self-fulfilling fallacy. It is as impossible for two terrorist groups, let alone two terrorists, to be as precisely the same in motivation as it would be for any two individuals.”<sup>74</sup>

President Fujimori had pledged to destroy the various Peruvian guerrilla groups and terminate the violence by the end of 1995, but he was only partially successful.<sup>75</sup> In the early 1990’s, the government managed to capture Abimael Guzman (alias Chairman Gonzalo<sup>76</sup>), leader of Sendero Luminoso, and sentenced him to life in prison.<sup>77</sup>

The Peruvian government had also captured Victor Polay Campos,<sup>78</sup> leader of Tupac Amaru, but he managed to escape in 1990,<sup>79</sup> with 48 guerrilla comrades who together dug a tunnel in Lima’s maximum security Canto Grande Prison<sup>80</sup> and used it to regain their freedom.

Victor Polay, now in his mid-forties, was re-captured by Peruvian forces in 1992, and is presently serving a life sentence in solitary confinement at a naval base just outside Lima.<sup>81</sup> He is

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72. Mario Vargas Llosa, *When Governments Try to Fight Fire with Fire*, INDEP., Dec. 28, 1996, available in 1996 WL 15215614, at \*15.

73. *Id.*

74. Clive C. Aston, *Hostage-Taking: A Conceptual Overview*, in CONTEMPORARY TERROR: STUDIES IN SUB-STATE VIOLENCE, 75, 80 (David Carlton & Carlos Schaerf eds., 1978).

75. LaFranchi, *Peru Crisis*, *supra* note 27.

76. O’Shaughnessy, *supra* note 14.

77. LaFranchi, *Peru Crisis*, *supra* note 27.

78. In his youth in Paris during the 1970’s, Victor Polay’s college roommate at the Sorbonne University was Alan Garcia. Emery, *Vanishing Breed*, *supra* note 51. Later, Garcia chose the route of political service and became President of Peru while Polay drifted into violent opposition to the established structures of Peruvian society. Sims, *Guerrillas in Peru*, *supra* note 46.

79. O’Shaughnessy, *supra* note 14.

80. Johnson, *Once Thought Wiped Out*, *supra* note 64. Audaciously, the rebels videotaped their escape. *Leftist Peruvian Terrorist Group Rooted in Revolution*, *supra* note 45. That daring and dramatic escape in July 1990 occurred days before Alberto Fujimori’s inauguration as President of Peru. Brooke, *The Rebels and the Cause*, *supra* note 43.

81. Calvin Sims, *New Attention to Harsh Conditions in Peru’s Prisons*, N.Y. TIMES, Dec. 31, 1996, at A3 [hereinafter Sims, *New Attention*].

reported to be in very poor physical and mental health and passes his days talking to himself.<sup>82</sup> Victor Polay has apparently lost 60 pounds in captivity and “has difficulty seeing as a result of spending nearly all his time in a dim cell.”<sup>83</sup> His mother has called him a “human ghost.”<sup>84</sup> His wife Rosa and their three children live in Europe.<sup>85</sup> His lieutenant-in-arms, Peter Cardenas, is similarly in prison.<sup>86</sup>

Hundreds of Tupac Amaru guerrillas surrendered to authorities under President Fujimori's amnesty program during the early 1990's.<sup>87</sup> Buoyed by his successes at capturing the guerrillas and persuading them to give themselves up, President Fujimori told a foreign journalist in 1993 that “[n]o one here in Peru any longer doubts that the M.R.T.A. will be defeated this year.”<sup>88</sup>

Following a 1995 police raid on a Tupac Amaru safehouse, it was widely assumed that the movement had been quelled. Twelve rebels were arrested at that time,<sup>89</sup> and one of the group's leaders, Miguel Rincon, surrendered.<sup>90</sup> Later, 13 more rebels were arrested.<sup>91</sup> The charges against the guerrilla group were based on an alleged plan to raid and capture the Congress building in Lima.<sup>92</sup> By early 1996, Fujimori described Tupac Amaru as “practically irrelevant.”<sup>93</sup>

Estimates placed the active armed membership of Tupac Amaru at a few hundred when the Japanese residence was attacked in December 1996.<sup>94</sup> Although small in numbers, the Tupac Amaru was able to mount its highly successful operation against the Japanese Ambassador's residence because its guerrillas—many between the ages of 16 and 20—had trained intensively for six

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82. *Id.*

83. Laurie Goering, *Torture Systematic in Peru's Jails*, THE EDMONTON J., Jan. 2, 1997, at H6 [hereinafter Goering, *Torture Systematic*].

84. *Id.*

85. Schemo, *A Born Revolutionary's Path*, *supra* note 44.

86. *Peru Rebels Raid Envoy's Home and Seize Hundreds of Hostages*, *supra* note 29.

87. *Id.*

88. Brooke, *The Rebels and the Cause*, *supra* note 43.

89. *Raid Marks Rebels' Comeback*, *supra* note 33.

90. Gutman, *supra* note 39.

91. Sims, *Guerrillas in Peru*, *supra* note 46.

92. *Rebels Raid Japanese Ambassador's Residence in Peru, Hold Hundreds Hostage*, *Facts on File*, Dec. 19, 1996, at 930.

93. Johnson, *Once Thought Wiped Out*, *supra* note 64.

94. *Peru Rebels Raid Envoy's Home and Seize Hundreds of Hostages*, *supra* note 29.

months in the jungles of the Amazon.<sup>95</sup> Peruvian anti-terrorist police sources indicated that the operation was financed with a \$1,000,000 fund, gained from part of a larger ransom after the kidnapping of a Bolivian businessman, Samuel Doria Medina, who was held by the Tupac Amaru for 46 days.<sup>96</sup> However, *The New York Times* reported that the ransom for Medina, who was a former Economy Minister, was only \$200,000.<sup>97</sup>

### C. Nestor Cerpa Cartolini

The leader of the 1996 operation to capture the residence of the Japanese Ambassador in Lima was Nestor Cerpa Cartolini. A textile union official during the 1970's, Cerpa<sup>98</sup> came from a working class family and enjoyed something of a mythic reputation in Peru for his ability to evade capture by the police.<sup>99</sup> His initial venture into active dissent began about two decades before the attack on the Japanese residence. In 1977, Cerpa, then a young union official, tried to prevent the closure<sup>100</sup> of the bankrupt Cromotex textile factory in Lima.<sup>101</sup> Cerpa and a number of employees at the doomed plant were led by a revolutionary guerrilla fighter named Huertas,<sup>102</sup> who was Cerpa's mentor.<sup>103</sup> Armed with sticks and stones, the unionists battled a well-armed police force; six workers, including Huertas, and a police captain died in that conflict.<sup>104</sup> Cerpa was thrown in prison for almost a

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95. *Minister Cleans Bathroom as Hostages Share Chores*, THE IRISH TIMES, Dec. 25, 1996, at 7.

96. *Ransom Cash Funded Rebel Raid: Police*, THE TORONTO STAR, Dec. 26, 1996, at A29.

97. Clifford Krauss, *Guerrillas in Peru Release One of Six Hostage Envoys*, N.Y. TIMES, Dec. 27, 1996, at A6 [hereinafter Krauss, *Guerrillas Release One of Six*].

98. *Rebel Leader Took Part in Past Standoff*, THE GLOBE & MAIL (Toronto), Apr. 23, 1997, at A12. Cerpa was born in August, 1953. *Id.*

99. Calvin Sims, *Peru's Rebel Leader: An Able Talker and Terrorist*, N.Y. TIMES, Dec. 23, 1996, at A1 [hereinafter Sims, *Peru's Rebel Leader*].

100. *Guerrilla Leader Surprised Experts*, THE IRISH TIMES, Dec. 24, 1996, at 9. According to another account, the year of the Cromotex uprising was 1978. See *Rebel Leader Took Part in Past Standoff*, *supra* note 98.

101. Linda Diebel, *Rebel Captivates World*, THE TORONTO STAR, Dec. 23, 1996, at A23 [hereinafter Diebel, *Rebel Captivates World*].

102. *Guerrilla Leader Surprised Experts*, *supra* note 100.

103. *Id.*

104. *Id.*

year.<sup>105</sup> After his release, he reportedly became a guerrilla fighter.<sup>106</sup>

His *nom de guerre* was Commandante Evaristo (also Commandante Huerta<sup>107</sup>) and he used his alias to make his demands known after capturing the hostages at the Japanese residence.<sup>108</sup> He was 43 years old at the time of the attack and described himself to one hostage as "an ordinary working man."<sup>109</sup>

The Peruvian police termed Cerpa a "vicious killer" who became a rebel because of frustration with his post as a union official.<sup>110</sup> Although police considered him "poorly educated," the hostages in the Japanese mansion found him "intelligent and well-informed."<sup>111</sup> Additionally, they noted that he did not appear villainous or mean.<sup>112</sup> He did not display unnecessary aggression and maintained a courteous but firm demeanor with the hostages.<sup>113</sup> One could argue, with a degree of cynicism, that because of his long participation in guerrilla warfare, Cerpa realized that the "most effective operations have often been the least violent."<sup>114</sup> Ramiro Validivia, one of the hostages released early in the ordeal, described Cerpa as "a very professional person."<sup>115</sup> One of the Canadian hostages, Kieran Metcalfe, an engineer, commented that Cerpa was very intelligent, dedicated and committed; in short, "an impressive personality."<sup>116</sup> Metcalfe also felt that social inequality was a major preoccupation of the Tupac Amaru rebels.<sup>117</sup>

Cerpa, who helped to found the Tupac Amaru and had previously served as its Military Commander, became leader of the group after Victor Polay was imprisoned by the government in 1992.<sup>118</sup> The authorities regarded him as the prime organizer of the numerous kidnappings of Peruvian and Western businessmen

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105. *Id.*

106. Sims, *Peru's Rebel Leader*, *supra* note 99.

107. Diebel, *Rebel Captivates World*, *supra* note 101.

108. Calvin Sims, *Rebel Leader Relies on Vanishing Act*, THE GLOBE & MAIL (Toronto), Dec. 23, 1996, at A12 [hereinafter Sims, *Vanishing Act*].

109. Diebel, *Rebel Captivates World*, *supra* note 101.

110. Sims, *Peru's Rebel Leader*, *supra* note 99.

111. *Id.*

112. Sims, *Vanishing Act*, *supra* note 108.

113. *Id.*

114. J. BOWYER BELL, TRANSNATIONAL TERROR 55 (1975).

115. *Rebel Leader Took Part in Past Standoff*, *supra* note 98.

116. Linda Diebel, *Canadians Tell of Hostage Hell*, THE TORONTO STAR, Dec. 24, 1996, at A25 [hereinafter Diebel, *Hostage Hell*].

117. *Id.*

118. Sims, *Vanishing Act*, *supra* note 108.



undertaken by the MRTA and held him responsible for the 1990 tunnel escape of the Tupac Amaru rebels, including leader Victor Polay.<sup>119</sup> Accordingly, Cerpa was the most wanted man in Peru long before he organized the attack on the Japanese party in December 1996.<sup>120</sup>

Nestor Cerpa also had a personal reason for undertaking this deadly operation. His wife, Nancy Gilvonio, has been imprisoned in one of Peru's most infamous jails, Yanomayo Prison, since 1995.<sup>121</sup> At the time of the hostage-taking incident, she was reported to be incarcerated in a "small cell, her lips blue with cold, her fingers bleeding."<sup>122</sup> Gilvonio and Cerpa reportedly have two children.<sup>123</sup> In an interview given to two Spanish newspapers, *El Pais* and *La Vanguardia*, Cerpa admitted that he had been motivated to seize the Japanese residence after his wife was sentenced to life in prison, saying, "I cannot deny that it was a great impulse, because I love her and I am aware that our children need their mother."<sup>124</sup> His two children are reported to be living in hiding<sup>125</sup> with Cerpa's mother in France.<sup>126</sup>

The successful attack on the Japanese residence was obviously the result of excellent intelligence about the party, extensive military training for the guerrillas and ample funding which enabled each rebel to be equipped with arms sufficient to hold off a much larger police force and ensure the compliance of the enormous number of hostages. All this was apparently accomplished by a rebel group that supposedly had breathed its last. Terrorism expert Brian Jenkins commented that "[it is] always perilous writing

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119. *Id.*

120. *Id.*

121. Diebel, *Summit Tackles Nightmare*, *supra* note 4.

122. Linda Diebel, *Japanese Tighten Screws on Peru's President*, THE TORONTO STAR, Feb. 2, 1997, at A14 [hereinafter Diebel, *Japanese Tighten Screws*].

123. Diebel, *Summit Tackles Nightmare*, *supra* note 4.

124. Peter Bate, *Fujimori Forced to Retreat From Earlier Optimism Over Siege*, THE IRISH TIMES, Feb. 3, 1997, at 11.

125. Sims, *Peru's Rebel Leader*; *supra* note 99.

126. *Slain Rebel Leader 'More Political Than Military'*, THE TORONTO STAR, Apr. 23, 1997, at A16. In a very revealing letter to his son, written on April 13, 1997, shortly before his death, Cerpa wrote: "you need her [Nancy Gilvonio—his wife] by your side and there is no other way of getting her out of jail." *Slain Rebel Leader Wrote to Son Before Dying*, THE TORONTO STAR, Apr. 30, 1997, at A21. He continued, "[a]nd if I ever leave this Japanese residence, it will be because I achieved what you are waiting for and dreaming of: having your mommy outside prison, being able again to see her, touch her, play with her and be surrounded by her arms." *Id.*

epitaphs for terrorist organizations."<sup>127</sup> Despite tough governmental measures to curb the impact of both Sendero Luminoso and Tupac Amaru, the groups have not been eliminated. Peruvian sociologist and terrorism expert Raul Gonzalez commented that Tupac Amaru "is proving that, despite government intelligence and tough action in the past against them, they are still able to mount a very well-planned and well-executed operation."<sup>128</sup>

#### D. Peruvian Prisons

This particular act of terrorism evoked and aroused a measure of understanding, if not sympathy, in the international media largely because it was partially motivated by an issue dear to the hearts of human rights activists worldwide. The treatment accorded to political prisoners is so severe and harsh in a number of countries that this issue has provoked complaints from human rights groups globally. Prison conditions are very much a human rights concern today and hence this article must consider the linkage between the instant hostage-taking situation and the 'cause' which was said to be the main reason for the terrorist attack on the Japanese Ambassador's mansion.

In a strongly-worded editorial, *The New York Times* commented that "[w]alking through a prison in Peru is like stepping into a Hieronymus Bosch triptych of hell," and explained that conditions are particularly harsh for those accused of political crimes.<sup>129</sup> The Editorial deplored the methods used by the guerrillas in the hostage taking incident but agreed that "their diagnosis of prison life in Peru is on the mark."<sup>130</sup>

Spittle rains down from the third-floor cells. Prisoners stick their arms and legs through the bars and beg by lowering bowls on strings. Inside the cells, the floors are covered with slime and filth. Men are crammed into the cells, sitting on the floor or on concrete bunk beds with no mattresses.<sup>131</sup>

Peruvian prison conditions have provoked complaints by international human rights activists for a number of years. There

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127. *Raid Marks Rebels' Comeback*, *supra* note 33.

128. LaFranchi, *Peru Crisis*, *supra* note 27.

129. Editorial, *Latin America's Inhumane Prisons*, N.Y. TIMES, Jan. 5, 1997, at 12.

130. *Id.*

131. *Id.*

are 22,210 inmates in Peruvian prisons.<sup>132</sup> Of these, approximately 4000 to 5000 were convicted or accused of terrorism.<sup>133</sup> Anne Manuel, Deputy Director of Human Rights Watch/Americas, commented that “[t]here is a unique punitive regimen for people accused of terrorism and treason, a charge which is very loosely defined in Peru.”<sup>134</sup> Many of the prisoners languish in jail awaiting trial.<sup>135</sup>

In a 1996 report on human rights conditions in Peru, the U.S. Department of State concluded that prisoners convicted of terrorism are exposed to “particularly inhuman treatment,” including “torture and brutal treatment of detainees.”<sup>136</sup> Although prisons are generally deplorable, conditions for alleged terrorists tend to be far worse than for regular criminals.<sup>137</sup> There are special jails for terrorists “where food is scarce and often inedible and clothing and blankets are not provided. Prisoners are given only a gallon of water a day to drink, wash and flush.”<sup>138</sup> Inmates are provided one meal per day mainly of rice or potatoes with a stew occasionally “flavored with chunks of rat meat, according to former prisoners.”<sup>139</sup> A bit of bread is provided twice a day.<sup>140</sup> Former prisoner, Magno Sosa, a journalist, vividly and gruesomely described his six month jail term in Peru and admitted to still becoming queasy as he remembered “the rodent’s head, ‘whiskers and all,’ and the tiny feet with claws mixed with the foul-smelling jailhouse slop” which guards made him eat.<sup>141</sup> Conditions in Peruvian prisons are so appalling that “prisoners are said to be trapping rats to feed themselves.”<sup>142</sup>

Following the MRTA attack on the Japanese residence in December 1996, Peruvian authorities inflicted further reprisals against Tupac Amaru prisoners. Family visits were restricted and the amount of food contribution families could provide for inmates

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132. Sims, *New Attention*, *supra* note 81.

133. *Id.*

134. David Aquila Lawrence, *In Latin America, Revolting Jail Life*, THE CHRISTIAN SCI. MONITOR, Apr. 14, 1997, at 6.

135. Sims, *New Attention*, *supra* note 81.

136. *Ex-Prisoner in Peru Tells of Being Forced to Eat Rat For Dinner*, THE VANCOUVER SUN, Mar. 3, 1997, at A7.

137. Sims, *New Attention*, *supra* note 81.

138. *Id.*

139. Goering, *Torture Systematic*, *supra* note 83.

140. *Id.*

141. *Ex-Prisoner in Peru Tells of Being Forced to Eat Rat For Dinner*, *supra* note 136.

142. Kevin Fedarko, *Gala at Gunpoint*, TIME, Dec. 30, 1996, at 66.

was halved.<sup>143</sup> Calvin Sims of *The New York Times* examined the plight of imprisoned rebels:

Conditions at Peru's terrorism prisons are notoriously harsh. Inmates live in cold, damp, concrete cells that have no running water or toilets except for a hole in the floor. Former prisoners have said that guards mistreated them and that they did not receive adequate nutrition, exercise or medical attention.<sup>144</sup>

The leaders of Peru's two terrorist groups are housed in isolation in a naval prison in Callao.<sup>145</sup> Their cells are 2 meters wide, with a 15 centimeter skylight for illumination.<sup>146</sup> Cerpa's wife, Nancy Gilvonio, is reported to be detained in Yanamayo Prison where the cells are unheated, windows have no glass and temperatures fall below freezing.<sup>147</sup>

Prisoners serving terms for terrorism are not allowed visitors for the first year of their incarceration.<sup>148</sup> Thereafter, they can see relatives for half an hour each month.<sup>149</sup> Imprisoned mothers are only allowed to see their children through a glass partition once every three months.<sup>150</sup> Female prisoners who give birth have their babies removed to state orphanages.<sup>151</sup> Exercise breaks last for only thirty minutes per day.<sup>152</sup> Medical treatment for the outbreaks of AIDS, tuberculosis and cancer are inadequate.<sup>153</sup> The prisoners are not allowed any newspapers, radios, television or even writing materials.<sup>154</sup>

Although the government has been inclined toward improvement of conditions, "[a]fter many years of harsh conditions inside terrorist prisons, many inmates try to commit suicide by repeatedly throwing themselves against iron bars and concrete floors. These inmates are typically kept heavily sedated."<sup>155</sup>

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143. Knox, *Crisis*, *supra* note 18.

144. Calvin Sims, *Growing Optimism For Peaceful End to Crisis in Peru*, N.Y. TIMES, Dec. 30, 1996, at A1 [hereinafter Sims, *Growing Optimism*].

145. *Ex-Prisoner in Peru Tells of Being Forced to Eat Rat for Dinner*, *supra* note 136.

146. *Id.*

147. *Id.*

148. Goering, *Torture Systematic*, *supra* note 83.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. Sims, *New Attention*, *supra* note 81.

154. Goering, *Torture Systematic*, *supra* note 83.

155. Sims, *New Attention*, *supra* note 81. The United States State Department specified in a report in 1995 that "hundreds of women detained in prisons and

There are allegations of torture. Susanna Villaran, Executive Secretary of Peru's National Co-ordinators of Human Rights, has condemned prison conditions as "very inhumane," and alleges that "[t]orture is very systematic but covered up."<sup>156</sup> Peruvian journalist Magno Sosa, a former prisoner, recounted "beatings by club-swinging guards who walked on the backs of naked prisoners lying face-down on cold concrete."<sup>157</sup> Peruvian Opposition Congressman Jose Barba Caballero commented during a legislative debate: "Unfortunately, we live in a country where evidence is often extracted by means of torture."<sup>158</sup>

It is interesting to note that not all prisoners involved in terrorism suffer so painfully. *The Christian Science Monitor* reported that "[P]olitically connected terrorists are spared Peru's hard-line. In 1994, a death squad connected to the military was convicted of murdering nine university students. They went to a comfortable jail for a short sentence."<sup>159</sup>

The Fujimori government was apparently compelled by a spate of internal and international condemnation of its human rights violations to free 110 prisoners in October 1996.<sup>160</sup> Eighty more prisoners were to be released in December 1996, a process which came to an abrupt halt with the Tupac Amaru attack on the

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military installations for terrorism had been raped in recent years." *Id.* The report detailed one tragic case of a fifteen year old girl who had unknowingly married a Tupac Amaru rebel. *Id.* A member of the Security Forces which captured and incarcerated her, raped her and infected her with AIDS. *Id.* Although she was eventually released, she received no medical treatment and her rapist was not punished. *Id.*

156. Goering, *Torture Systematic*, *supra* note 83. Journalist Paul Knox of THE GLOBE & MAIL vividly recounted the experience of one man caught in the Peruvian system of justice. See Knox, *Crisis*, *supra* note 18. Eugenio Bazan Ventura, a community leader in the village of Araqueda in Catamarca department had worked at a gold and silver mine before turning to farming and construction work. *Id.* In his spare time he coached a soccer team and assisted the villagers in obtaining a generator for electricity. *Id.* Peruvian police, searching for terrorists who had planted land mines, descended on the village and found some wire from the electrification project at Bazan's home. *Id.* Bazan was arrested, allegedly tortured and made a confession which he retracted when he was presented before a judge. *Id.* A year and a half after his arrest, he was sentenced by a 'faceless' judge to 30 years in prison. *Id.* He spent four years in jail, despite petitions from neighbors testifying to his innocence. *Id.* He was eventually pardoned but his criminal record remained. *Id.*

157. *Ex-Prisoner in Peru Tells of Being Forced to Eat Rat For Dinner*, *supra* note 136.

158. Knox, *Crisis*, *supra* note 18.

159. Lawrence, *supra* note 134.

160. Goering, *Torture Systematic*, *supra* note 83.

Japanese mansion.<sup>161</sup> Peruvian human rights activists complained that the hostage-taking at the Japanese Ambassador's residence in Lima had made it more difficult for them to pressure the government about its human rights violations.<sup>162</sup> Journalist Paul Knox explained the situation:

Under pressure from human-rights defenders inside and outside Peru, Mr. Fujimori last year acknowledged that some of the 4,000 people jailed in the anti-terrorism fight were innocent.

A commission composed of justice minister Carlos Hermoza Moya, ombudsman Jorge Santistevan and Hubert Lanssiers, a priest and long-time human-rights activist, was struck to investigate and propose action.

Of more than 1,800 claims received so far, 110 people have been freed by Mr. Fujimori on the commission's recommendation.<sup>163</sup>

However, after the December 17, 1996, MRTA attack on the Japanese residence, the commissioners held off "for fear that hard-liners in the military would draw a link between the freeing of innocents and the MRTA's demand for the release of its own prisoners."<sup>164</sup>

#### *E. Alberto Fujimori, The President of Peru*

Calvin Sims of *The New York Times* commented that "[p]ower in Mr. Fujimori's government is said to be concentrated in three factions: the President, the intelligence service, and the military."<sup>165</sup> President Fujimori, Mr. Vladimiro Montesinos (chief of security) and General Nicolas Hermoza Rios (head of the armed forces) constitute "Peru's governing 'triumvirate.'"<sup>166</sup> Together they have had a profound impact on Peru's political system, its economy and its social structures.

On the surface, the leader of the triumvirate is clearly the President, whose commanding personality has generated both praise and criticism among Peruvians. Alberto Fujimori's parents

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161. *Id.*

162. Knox, *Crisis*, *supra* note 18.

163. *Id.*

164. *Id.*

165. Calvin Sims, *As Peru Talks Begin, Fujimori Casts Some Blame*, N.Y. TIMES, Feb. 25, 1997, at A8 [hereinafter Sims, *Peru Talks Begin*].

166. Sally Bowen, *Uphill Task For Peru's Instant Hero*, FIN. TIMES, Apr. 24, 1997, at 10 [hereinafter Bowen, *Uphill Task*].

worked as farm laborers in Japan before migrating to Peru in 1934.<sup>167</sup> Although he is of Japanese descent, Alberto Fujimori is inappropriately nicknamed El Chino (or El Chinito<sup>168</sup>) by Peruvians but he is said to love the misnomer.<sup>169</sup> He reportedly likes to refer to himself as Peru's 'President-Manager,'<sup>170</sup> although his detractors refer to him as "Emperor."<sup>171</sup> A mathematician and agronomist by education, Fujimori served as a rector at an agrarian university before entering politics.<sup>172</sup> He also hosted a television program for two years which dealt with Peru's social and economic problems.<sup>173</sup>

In 1990, he entered politics with the catchy slogan, "honesty, technology and work."<sup>174</sup> In a race for the presidency, he defeated Peru's well-known author Mario Vargas Llosa who was backed by Peruvian conservatives<sup>175</sup> and whose expensive<sup>176</sup> campaign was expected to succeed.<sup>177</sup>

In 1990, when he assumed power, Fujimori lacked the support of a well-organized efficient political party and a parliamentary majority and therefore turned to the military.<sup>178</sup> This induced Diego Garcia Sayan, Executive Secretary of the Andean Commission of Jurists (a human rights group) to comment that the "government has gone for military control over society when what's needed is civilian control over the military."<sup>179</sup> The influence of the military increased dramatically under Fujimori's

167. Sebastian Rotella, *President Fujimori Reconquers Peru*, THE TORONTO STAR, Apr. 24, 1997, at A23 [hereinafter Rotella, *Fujimori Reconquers*].

168. Isabel Vincent, *Seeking Democracy Where None Exists*, THE GLOBE & MAIL (Toronto), Apr. 13, 1992, at A7.

169. Gabriella Gamini, *Hard Man of Lima Rejects Japanese Calls For Compromise With Guerrillas*, THE TIMES (London), Dec. 21, 1996, at 12 [hereinafter Gamini, *Hard Man*].

170. David Adams, *President Salvages Iron-Man Image in Dramatic Flourish*, THE TIMES (London), Apr. 24, 1997, at 17.

171. Vincent, *supra* note 168.

172. *Fujimori Remains Enigmatic as Ever*, THE IRISH TIMES, Dec. 24, 1996, at 9; and Calvin Sims, *Fujimori Again Proving Himself to Be Man of Iron Will*, THE GLOBE & MAIL (Toronto), Dec. 27, 1996, at A8 [hereinafter Sims, *Iron Will*].

173. Michael Reid, *Peru's Vote Seen as Victory For the Center*, THE CHRISTIAN SCI. MONITOR, Apr. 11, 1990, at 4.

174. *Fujimori Remains Enigmatic as Ever*, *supra* note 172. The slogan has also been cited as "Work, Technology, Honor." Reid, *supra* note 173.

175. Gott, *supra* note 62.

176. Sims, *Iron Will*, *supra* note 172.

177. *Fujimori Remains Enigmatic as Ever*, *supra* note 172.

178. Michael Reid, *Fujimori's Austerity Plan Shakes Peru's Populace*, THE CHRISTIAN SCI. MONITOR, Aug. 12, 1990, at 5.

179. *Id.*

regime. By the middle of 1991, 56 percent of the population and 42 percent of Peru's territory fell under emergency rule, which implied military control.<sup>180</sup> "In short, the situation under Fujimori was one of de facto military control, not just of the emergency zones, but of the areas of government that the military perceived to be its domain."<sup>181</sup>

While insisting that he is "100 percent Peruvian," Fujimori stressed his ability to encourage Japan to provide economic aid and investments to Peru.<sup>182</sup> His Japanese ancestry was emphasized as the unique asset which would assist Peru in resolving its financial woes. Richard Gott has analyzed Fujimori's early success:

When he came unexpectedly to power, Mr. Fujimori was a political orphan. He had no internal powerbase outside the ramshackle coalition that had elected him to keep out Mr. Vargas Llosa. He had no foreign friends. After years of guerrilla violence and government corruption, Peru was regarded by the international community as a basket case. So Mr. Fujimori turned to the Japanese for help . . . .

Japan became Mr. Fujimori's great trump card, providing him with the investment the country desperately needed, a channel of easy communication, and a way of dealing with bilateral relations quite unlike that of the United States—Peru's previous foreign godfather. Peru was not in Japan's backyard, and the Japanese had no sense of racial condescension.<sup>183</sup>

The President vigorously cultivated a tough image, and reinforced it in December 1996, when he showed no weakness facing the most serious crisis of his political career. His governing motto might well be his oft-repeated statement: "first you act, then you inform."<sup>184</sup> Although there have been notable successes in Peru since his take-over, his governing style has aroused some apprehension. Professor David Scott Palmer commented on "Fujimori's personalized approach to decision making and the democratic process."<sup>185</sup>

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180. Bill Fairbairn, 'One of the Worst Rights Violators in the World,' THE GLOBE & MAIL (Toronto), Apr. 16, 1992, at A19.

181. PERU: A COUNTRY STUDY, *supra* note 6, at 232.

182. Cameron W. Barr, *Peru Hostage Crisis Pits Japan Against West's Steadfastness*, THE CHRISTIAN SCI. MONITOR, Jan. 31, 1997, at 1.

183. Gott, *supra* note 62.

184. *Fujimori Remains Enigmatic as Ever*, *supra* note 172.

185. David Scott Palmer, 'Fujipopulism' and Peru's Progress, CURRENT HISTORY, Feb. 1996, at 75.



In April 1992, Fujimori suddenly staged an 'autogolpe' or 'self-coup' during which he dissolved Congress, revamped the judiciary and installed a "national rebuilding government."<sup>186</sup> Insisting that he needed special powers to deal with drug traffickers and terrorist groups, on April 5, 1992, Fujimori suspended the 1980 constitution,<sup>187</sup> imposed censorship and arrested members of the Peruvian opposition.<sup>188</sup> He dissolved the Court of Constitutional Guarantees.<sup>189</sup> The judicial system fell under his control and a "constitutional court" ensured that his laws could not be vetoed.<sup>190</sup> He "began to rule by decree."<sup>191</sup> Those accused of terrorism were deprived of the right to *habeas corpus* until after their trials.<sup>192</sup> A 1992 Apoyo Opinion y Mercado poll conducted in Lima showed a support of 71 percent for Fujimori's coup and 89 percent of Peruvians were in agreement with his judicial and constitutional changes.<sup>193</sup> A new constitution, approved by Peruvians in a referendum, was promulgated on December 29, 1993.<sup>194</sup> This document centralized power within the Executive branch of government.<sup>195</sup> The Executive continues to be the primary element of Peruvian government.

In the subsequent 1995 presidential elections, 64 percent of Peruvians supported Fujimori.<sup>196</sup> Following a vigorous program of deficit reduction, economic deregulation and privatization, the

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186. *Fujimori Remains Enigmatic as Ever*, *supra* note 172. The military leadership of Peru supported the self-coup and has been steadfastly loyal to the President. Calvin Sims, *Peruvian and Japanese Leaders to Meet to Discuss Hostage Crisis*, N.Y. TIMES, Jan. 30, 1997, at A11 [hereinafter Sims, *Leaders to Meet*]. However, the autogolpe was condemned by the Organization of American States and a number of nations including Canada suspended their government aid programs in Peru. Knox, *Crisis*, *supra* note 18.

187. THE STATESMAN'S YEARBOOK: 1996-1997, *supra* note 6, at 1029.

188. Linda Diebel, *The Leaders: Alberto Fujimori*, 58, THE TORONTO STAR, Jan. 31, 1997, at A19 [hereinafter Diebel, *The Leaders*].

189. AMERICAS WATCH, HUMAN RIGHTS IN PERU ONE YEAR AFTER FUJIMORI'S COUP, 1 (Apr. 1993).

190. Knox, *Crisis*, *supra* note 18.

191. AMERICAS WATCH, HUMAN RIGHTS IN PERU ONE YEAR AFTER FUJIMORI'S COUP, *supra* note 189.

192. *Id.* at 2.

193. Isabel Vincent, *Peruvians Support Fujimori Coup*, THE GLOBE & MAIL (Toronto), Apr. 9, 1992, at A6.

194. THE STATESMAN'S YEARBOOK 1996-1997, *supra* note 6, at 1028.

195. Knox, *Crisis*, *supra* note 18.

196. Gordon Barthos, *War-Wearry Peruvians Reject the Rebels' Cause*, THE TORONTO STAR, Jan. 10, 1997, at A21.

developed countries renewed their aid to Peru and foreign investment returned.<sup>197</sup>

Despite a dramatic reduction in guerrilla violence, the authoritarian legislation remained in place and human rights violations by agents of the state continued to mar President Fujimori's image of success. Carlos Basombrio, Director of Peru's Legal Defense Institute (a human rights group), commented: "The legacy of Mr. Fujimori's coup [1992] is that the Peruvian Army now has more autonomy than any military in Latin America, the judiciary is less independent and has more Draconian laws on the books, and there is no real political party system to speak of."<sup>198</sup> Basombrio grimly concluded: "Democracy before the coup was very weak in Peru . . . but [now] I am convinced it's even weaker."<sup>199</sup>

Americas Watch alleged that "[a]mong the victims of unfair terrorism and treason prosecutions have been journalists, human rights monitors, environmentalists, academics, peasant organizers, doctors, lawyers, and political opponents of the government, as well as individuals who have had minimal contact with guerrillas, or who provided some small collaboration under threat."<sup>200</sup> At the time of the guerrilla attack on the Japanese Ambassador's residence, about one-third of Peru was under emergency rule.<sup>201</sup>

The Peruvian President's measures against terrorism were met with mixed reviews, as the international press was quick to expose the extraordinary actions taken by Fujimori. When confronting guerrilla opponents, Fujimori's inclination is to crack down rather than conciliate.<sup>202</sup> He passed a law on June 16, 1995,<sup>203</sup> which virtually granted amnesty to members of the police and armed forces (as well as civilians<sup>204</sup>) who committed atrocities "during antiterrorism operations."<sup>205</sup> The amnesty which extended to personnel under investigation or imprisoned for human rights violations "emboldened the military and released members of the

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197. Knox, *Crisis*, *supra* note 18.

198. Calvin Sims, *In Fujimori's Peru, Economy Grows as a Democracy Is Left to Wither*, N.Y. TIMES, Apr. 6, 1997, at 14 [hereinafter Sims, *Fujimori's Peru*].

199. *Id.*

200. AMERICAS WATCH, HUMAN RIGHTS IN PERU ONE YEAR AFTER FUJIMORI'S COUP, *supra* note 189, at 2.

201. *Peru: Terror*, THE ECONOMIST, Dec. 21, 1996, at 52.

202. Barr, *supra* note 182.

203. Coletta Youngers and Bill Spencer, *After the Peruvian Crisis - Government Reform?* THE CHRISTIAN SCI. MONITOR, Feb. 7, 1997, at 18.

204. *Peru*, KEESINGS RECORD OF WORLD EVENTS, Vol. 42, (Reference Supp. 1996).

205. Knox, *Crisis*, *supra* note 18.

armed forces who participated in the country's most notorious death squad."<sup>206</sup> Normal legal guarantees were suspended, and within the justice system anonymous, faceless judges "observe defendants through one-way mirrors and speak through voice-distorting microphones."<sup>207</sup> An Editorial in *The Globe and Mail* outlined the conflicting reactions:

Mr. Fujimori's unyielding approach to terrorism is one of the reasons that Peru was able to attract foreign investment in the first place. After becoming President, he put a single general in charge of antiterrorism, built up the intelligence service and set up special 'faceless courts' to try suspected terrorists, thus protecting judges from intimidation. The campaign was sometimes brutal and often arbitrary; more than a few innocents were swept up in the antiterrorist dragnet.

But the results were impressive.<sup>208</sup>

According to David Scott Palmer, political violence in 1994 was only about 20 percent of 1990 levels.<sup>209</sup> The faceless military courts had a conviction rate for alleged terrorists of 97 percent.<sup>210</sup> However, referring to Peru's anti-terrorist legislation, Bill Fairbairn, South America Coordinator for the Inter-Church Committee on Human Rights in Latin America, commented that "[e]very international human rights organization has criticized Peru for this sweeping legislation."<sup>211</sup>

The harshness of Fujimori's anti-terrorist measures were somewhat mitigated by a government amnesty promised exclusively to guerrillas who laid down their arms and assisted in the capture of their comrades.<sup>212</sup> This combined carrot and stick approach certainly succeeded in diminishing the extent of terroristic violence in Peru. The repentance laws were in effect between 1992 and 1994 and resulted in the surrender of 5516 Senderistas and 814 Tupac Amaristas to the government.<sup>213</sup>

Fujimori's various anti-democratic measures were denounced by his political opponent, defeated presidential candidate Mario Vargas Llosa, who bluntly commented, "The fact is that when the

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206. Youngers and Spencer, *supra* note 203.

207. Knox, *Crisis*, *supra* note 18.

208. Editorial, *Peru Should Stand Firm*, THE GLOBE & MAIL (Toronto), Dec. 20, 1996, at A28.

209. Palmer, *supra* note 185, at 70.

210. *Peru: Terror*, *supra* note 201.

211. Diebel, *Summit Tackles Nightmare*, *supra* note 4.

212. Emery, *Hostage Hold Up*, *supra* note 11.

213. Palmer, *supra* note 185, at 73.

state adopts terrorist methods to combat terrorism, the terrorists are already the winners, for they have managed to impose the logic of their game, and have deeply wounded the institutions of democracy."<sup>214</sup>

One of President Fujimori's closest confidantes and most controversial advisors is Ivan Vladimiro Montesinos, who has allegedly played a crucial role in the destruction of guerrilla groups in Peru.<sup>215</sup> Mr. Montesinos administers Peru's intelligence services and "President Fujimori admits that he rarely makes major decisions without him."<sup>216</sup> Calvin Sims of the *New York Times* reported that, "Mr. Montesinos is said to have performed an important service during Mr. Fujimori's 1990 campaign by resolving tax-evasion charges that could have blocked Mr. Fujimori's election."<sup>217</sup> According to Clifford Krauss of the *New York Times*, Montesinos is a "cashiered army captain," and "former lawyer of drug barons."<sup>218</sup>

President Fujimori was quoted as stating that he would put his hand through the fire for his security chief and is reported to be guided in his hard-line approach by Montesinos.<sup>219</sup> Although it was thought that Montesinos was in trouble following the Tupac Amaru attack on the Japanese residence in December 1996, it was soon obvious that his political star had not waned.<sup>220</sup> Indeed, reports suggested that Montesinos had masterminded the successful military attack in April 1997 which liberated the hostages.<sup>221</sup> As if to emphasize his contribution, he made a rare public appearance at the Japanese compound after the attack.<sup>222</sup> Enrique Obando, a Peruvian expert on military matters, dubbed Montesinos "the man of the hour."<sup>223</sup>

The military wing of government is controlled by General Nicolas Hermoza, who enjoys "widespread support of the armed

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214. Llosa, *supra* note 72.

215. *Signs of Movement Seen in Hostage Crisis*, THE GLOBE & MAIL (Toronto), Dec. 31, 1996, at A2.

216. Gabriella Gamini, *Siege Rebels in 'Safe Passage' Talks With Lima*, THE TIMES (London), Jan. 10, 1997, at 15 [hereinafter Gamini, *Safe Passage*].

217. Sims, *Peru Talks Begin*, *supra* note 165.

218. Clifford Krauss, *Rescue's Architect: Fujimori's Shadowy Alter Ego*, N.Y. TIMES, Apr. 28, 1997, at A6 [hereinafter Krauss, *Rescue's Architect*].

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

forces,” and who has served as Army Commander since 1991.<sup>224</sup> News reports during the hostage crisis indicated that Mr. Fujimori wanted to replace General Hermoza but could not do so because of the Commander’s popularity with the military.<sup>225</sup> Opposition Congresswoman Lourdes Flores Nano of the Popular Christian Party commented wryly that “Fujimori and the military were partners in the coup d’etat—they made a pact to govern together and keep each other happy.”<sup>226</sup>

#### *F. The Japanese Target*

Since Fujimori’s election in 1990, the large Japanese immigrant and expatriate community in Peru has been singled out for terrorist attacks. During the 1990’s both the Tupac Amaru and the more violent Shining Path kidnapped and killed Japanese businessmen and aid technicians and targeted the Japanese embassy with a car bomb.<sup>227</sup> Writing two years before the Tupac Amaru attack on the Japanese Ambassador’s residence, Richard Clutterbuck commented that “Japanese business people overseas are . . . a popular target as ‘international capitalists’ for revolutionary movements in Latin America, especially in Peru.”<sup>228</sup>

The strong Japanese economic presence in Peru generated considerable hostility among Peruvian rebel groups and it is entirely possible that this was one reason for the selection by the Tupac Amaru of a Japanese diplomatic target for the 1996 raid. Cerpa and his band were quick to highlight their opposition to Japanese involvement in Peru and even made use of the hostages to publicize this message.<sup>229</sup> One of the hostages released soon after the attack brought out a message from the rebels.<sup>230</sup> This statement complained about the “constant meddling of the Japanese government in Peru.”<sup>231</sup> When asked by one of the guests at the party why the Japanese residence was targeted, rebel leader Nestor Cerpa Cartolini commented that this was an “‘extreme measure in protest at the constant interference of the

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224. Sims, *Peru Talks Begin*, *supra* note 165.

225. *Id.*

226. Sims, *Fujimori’s Peru*, *supra* note 198.

227. *Many Peruvians Feel Threatened*, N.Y. TIMES, Jan. 2, 1997, at A6.

228. RICHARD CLUTTERBUCK, TERRORISM IN AN UNSTABLE WORLD 12 (1994).

229. *Canadian Ambassador to Negotiate for Rebels*, THE EDMONTON J., Dec. 19, 1996, at A1.

230. *Id.*

231. *Id.*

Japanese government, which has supported neo-liberal economic policies and violations of human rights.”<sup>232</sup> Such rhetorical flourishes aside, the selection of a Japanese target occurred for a variety of reasons. The guerrillas had singled out the Ambassador's residence, “because Japan has been a staunch ally of Mr. Fujimori, whose family is part of a large Japanese immigrant community here.”<sup>233</sup> Further, Japan has exhibited a keen interest in furthering the political ambitions of President Fujimori. As journalist Paul Knox commented, “Alberto Fujimori is the only head of government of Japanese ancestry ever elected outside Japan.”<sup>234</sup>

President Fujimori had also been a frequent visitor to Japan,<sup>235</sup> and had met Japanese Prime Minister Hashimoto on various occasions. The latter's official visit to Peru in August 1996 netted the Fujimori government nearly \$600 million in loans from Japan.<sup>236</sup> Besides being Peru's second largest trading partner, Japan donates considerable foreign aid to Peru, partly because that nation has a large minority of Japanese descent.<sup>237</sup> Ironically, this generous foreign aid has provoked some hostility largely because of a perception that its benefits do not even reach the ordinary Peruvian citizen, much less the poorest and neediest of the slum-dwellers of Lima and the surrounding countryside.

Another factor of significance in the selection of the Japanese target was the Tupac Amaru's probable realization that Japan has a history of making deals with terrorists. In 1977, after a civilian airplane was hijacked, Japan released six leftist prisoners and paid a \$6 million ransom in exchange for the passengers.<sup>238</sup> Columnist and political analyst Gwynne Dyer bluntly stated that “Japan is chicken,” and continued to state that, “the country that nurtured

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232. Sally Bowen, *Everyone Inside Embassy Will Die If Demands Are Not Met, Rebels Warn*, THE IRISH TIMES, Dec. 19, 1996, at 11 [hereinafter Bowen, *Everyone Will Die*].

233. Sims, *Guerrillas in Peru*, *supra* note 46.

234. Paul Knox, *Incident Highlights Growing Japan-Peru Link*, THE GLOBE & MAIL (Toronto) Dec. 20, 1997, at A21 [hereinafter Knox, *Incident Highlights Link*].

235. *Tokyo Rushes to Deal With Crisis in Lima*, THE VANCOUVER SUN, Dec. 19, 1996, at A12. Fujimori had taken fourteen trips there by the time of the rebel attack. *Id.*

236. *Id.*

237. *Id.* At the time of the guerrilla attack, Japan was the “second largest provider of economic assistance to Peru behind only the United States.” *Id.* Between 1991 and 1994, Japan made 102 direct investments in Peru, totalling \$701 million. *Id.*

238. Nicholas D. Kristof, *In Tokyo, Speculation About Role For Castro*, N.Y. TIMES, Dec. 21, 1996, at 6 [hereinafter Kristof, *Role for Castro*].

kamikazes 50 years ago has become the most timid of all the major powers, preferring always to buy its way out of trouble rather than fight its way out.”<sup>239</sup> The selection of a ‘soft target’ like Japan may have appealed to the guerrillas, but they overlooked the obvious fact that their actual target in the instant hostage-taking was not so much Japan as the Peruvian government under Fujimori, and it would be inappropriate to accuse Fujimori of being soft on terrorism.

The Tupac Amaru therefore had a multiplicity of reasons to select the Japanese Ambassador’s mansion during that special birthday gala celebration. “It wasn’t just the list of important diplomats who were present, it was the Japanese connection that made the party irresistible.”<sup>240</sup>

### G. Previous Warnings

An eyewitness to the hostage-taking incident, journalist Sally Bowen commented that “Peruvian forces seemed ill-prepared for the attack.”<sup>241</sup> This lack of readiness for the assault was inexplicable in view of the numerous warnings to Peruvian authorities from a variety of sources concerning the imminence of a guerrilla operation.<sup>242</sup> These warnings came from captured documents which included plans for such a raid and word from informants in contact with guerrillas.<sup>243</sup> John Caro, former head of Peru’s anti-terrorism police, blamed the success of the raid on authorities who could have acted in time to prevent its occurrence, commenting: “The government’s intelligence-gathering has failed because this could have been prevented.”<sup>244</sup>

## III. The Attack on the Embassy

### A. The Party

Japanese ambassadors outdo themselves in celebration of their Emperor’s birthday each year. Ambassador Morihisa Aoki, stationed in Lima, was no exception. As journalist Kevin Fedarko

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239. Gwynne Dyer, *Peruvian Guerrillas’ Desperate Gamble Will End in Failure*, THE TORONTO STAR, Dec. 22, 1996, at B3.

240. *Tokyo Rushes to Deal With Crisis in Lima*, *supra* note 235.

241. Bowen, *Everyone Will Die*, *supra* note 232.

242. Calvin Sims, *Peru Received But Dismissed Warning of Terrorist Attack*, N.Y. TIMES, Dec. 20, 1996, at A1 [hereinafter Sims, *Peru Dismissed Warnings*].

243. *Id.*

244. *Id.*

commented: "In recent years, Aoki's receptions have enjoyed an enviable acclaim, thanks to the munificence of his banquet table and glitter of his guest lists."<sup>245</sup>

One could imagine the luxurious surroundings, the hospitable ambience and the warm reception which greeted guests as they assembled shortly after 7:00 p.m.<sup>246</sup> on December 17, 1996, at the home of Ambassador Aoki in the upscale San Isidro district<sup>247</sup> of Lima, Peru. A number of foreign embassies are located in this part of Lima.<sup>248</sup> Estimates on the number attending ranged as high as 600 guests of the 1200 invited,<sup>249</sup> although the Japanese Ambassador was reported to have said that there were actually 800 invitees.<sup>250</sup> Reportedly, "[a]t least 25 nations and prominent political figures [were] represented."<sup>251</sup> Sebastian Rotella of the *Los Angeles Times* indicated that the hostages represented a veritable "Who's Who of Lima's Latin American, Asian and European diplomats."<sup>252</sup> A special tent was erected in the gardens to house the overflow of guests.<sup>253</sup> Canadian Ambassador Anthony Vincent commented about both the guests and their captors, the guerrilla gate-crashers: "You could not conceive a richer, a more important catch of people than they managed."<sup>254</sup>

Among the throng of guests enjoying the food and champagne was John Illman, the British Ambassador, who was fortunate enough to leave shortly before the terrorists seized the building.<sup>255</sup> His colleague, Deputy Head of Mission Roger Church, was not that lucky and was taken hostage.<sup>256</sup> He was eventually released.<sup>257</sup> Ambassador Dennis Jett of the United States of

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245. Fedarko, *supra* note 142. The Japanese Mansion was modeled after the antebellum home in *GONE WITH THE WIND*. *Blitz Took Less Than Half-Hour*, *THE EVENING TELEGRAPH* (St. John's Newfoundland), Apr. 23, 1997, at 25.

246. Sims, *Guerrillas in Peru*, *supra* note 46.

247. *Attackers Seize Home of Diplomat*, *THE OTTAWA CITIZEN*, Dec. 18, 1996, at A6.

248. *Id.*

249. Sebastian Rotella, *Canadian Picked to Talk For Terrorists*, *THE OTTAWA CITIZEN*, Dec. 19, 1996, at A1 [hereinafter Rotella, *Canadian Picked*].

250. *Peruvian Rebels Seize Canadian Ambassador*, *THE EDMONTON J.*, Dec. 18, 1996, at A5.

251. Rotella, *Canadian Picked*, *supra* note 249.

252. *Id.*

253. *Id.*

254. Julian Beltrame, *Peru*, *THE SUNDAY J.* (Edmonton), Dec. 22, 1996, at A12.

255. Michael Binyon and Bill Frost, *Senior British Envoy is Held*, *THE TIMES* (London), Dec. 19, 1996, at 13.

256. *Id.*

257. *Id.*



America and his Deputy Chief of Mission were at the function but left just half an hour before the attack.<sup>258</sup> Also at the party and taken hostage were Anthony Vincent, Canadian Ambassador to Peru, and Herbert Woeckel, Ambassador for Germany.<sup>259</sup> These two diplomats were later released to play a significant role in the attempts to resolve the incident peacefully. Ambassadors of Brazil, Bolivia, Cuba, South Korea, Austria, Venezuela and various other nations were also in attendance, as were about six officers from the Embassy of the United States of America.<sup>260</sup>

Japan's close commercial and financial aid ties to Peru guaranteed that a large number of Peruvian dignitaries would attend this function. "Among the hostages were so many of Peru's senior diplomatic staff that the foreign ministry was left without top officials."<sup>261</sup> Peruvian Foreign Minister Francisco Tudela, Peru's Anti-terrorist Police Chief General Maximo Rivera, and State Security Director Guillermo Bobbio were among the guests at the Japanese residence.<sup>262</sup> Additionally, the Peruvian Minister of Agriculture,<sup>263</sup> several Peruvian legislators, justices and the President of the Peruvian Supreme Court were present.<sup>264</sup> President Fujimori was expected at the function but did not attend because he was delayed returning from a trip.<sup>265</sup> The President's family was represented by his mother, Matsue Inomoto,<sup>266</sup> his sister Juana<sup>267</sup> and his brother Pedro.<sup>268</sup> President Fujimori's mother and sister were released on the first day with all the other women<sup>269</sup> but his brother's ordeal as a hostage continued until the liberation assault 126 days later. According to a Peruvian government source, the rebels did not realize that they held the President's brother until ten days into the crisis when his name surfaced

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258. Bowen, *Everyone Will Die*, *supra* note 232.

259. *Peru Rebels Put Off Killings*, THE GLOBE & MAIL (Toronto), Dec. 19, 1996, at A16.

260. Sims, *Guerrillas in Peru*, *supra* note 46.

261. Gabriel Escobar, *490 Still Held Hostage at Embassy in Peru*, THE TORONTO STAR, Dec. 19, 1996, at A1.

262. Luis Jaime Cisneros, *Stand-off as Rebels Hold 490 Hostages*, THE IRISH TIMES, Dec. 19, 1996, at 1.

263. Sims, *Guerrillas in Peru*, *supra* note 46.

264. *Peru Rebels Put Off Killings*, *supra* note 259.

265. Cisneros, *supra* note 262.

266. *Id.*

267. *Peruvian Rebels Seize Canadian Ambassador*, *supra* note 250.

268. Diebel, *Rebel Captivates World*, *supra* note 101.

269. *Gunfire Heard at Site*, THE VANCOUVER SUN, Dec. 18, 1996, at A2C and *Peru Rebels Raid Envoy's Home and seize Hundreds of Hostages*, *supra* note 29.

in the local media as one of the captives.<sup>270</sup> President Fujimori insisted the fact that his own brother was a hostage was immaterial to his handling of the crisis: “Even if my brother is there, and my brother-in-law also is hostage,” he declared, “that doesn’t change . . . the approach.”<sup>271</sup>

It was inevitable that so important an occasion in Japan’s calendar would draw numerous Japanese residents of Peru. A large number of the celebrants were Japanese businessmen stationed in Peru by their corporations.<sup>272</sup> As Nicholas D. Kristof of the *New York Times* reported, “Peru has become one of the biggest recipients of Japanese foreign aid in Latin America, and 24 Japanese businesses have set up operations in the country. Many of their Lima-based executives are now hostages as well.”<sup>273</sup> The group of Japanese guests taken hostage included the three chief executives of Mitsubishi Peru as well as six employees of Mitsui Mining and Smelting Co.<sup>274</sup> Also present were executives from Ajinomoto Co., Toyota Motor Corporation, Nissan Motor Corporation and Matsushita Electric Co.<sup>275</sup>

#### B. *The Attack on the Ambassador’s Residence*

Attacks against foreign embassies were all too common a terrorist activity during the 1970’s,<sup>276</sup> but as diplomats became more expert in security and embassies became more fortified, these attacks diminished. Hence, the Tupac Amaru attack came as quite a shock to the world community and particularly to the Peruvian government. Terrorism expert Fernando Rospegleose commented that “[t]his is the most spectacular advance by terrorists in the history of Peru’s civil war. Not only did they capture the home of the Japanese, which are a major Fujimori ally, but look at the way they did it. They walked right through the front door,”<sup>277</sup>

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270. *Talks Resume in Lima Hostage Siege*, THE TORONTO STAR, Jan. 11, 1997, at A13.

271. Peter Bate, *Fujimori Forced to Retreat From Earlier Optimism Over Siege*, THE IRISH TIMES, Feb. 3, 1997, at 11.

272. Nicholas D. Kristof, *Anxious Japanese Appeal for Safety of Captives*, THE OTTAWA CITIZEN, Dec. 19, 1996, at A6 [hereinafter Kristof, *Anxious Japanese*].

273. *Id.*

274. *Japanese Firms Consider Steps to Counter Against Future Attacks*, THE WEEKEND SUN (Vancouver), Dec. 21, 1996, at A10.

275. Diebel, *Summit Tackles Nightmare*, *supra* note 4.

276. Jenkins, *supra* note 70, at 585.

277. Sims, *Guerrillas in Peru*, *supra* note 46.

launching what was aptly termed "possibly the single most audacious act in the history of terrorist hostage taking."<sup>278</sup>

Although the number of guerrilla fighters was initially thought to be large, the media eventually reported that there were approximately twenty Tupac Amaru revolutionaries involved in the operation.<sup>279</sup> Freed Canadian hostages estimated the number of rebels at fifteen, including two women.<sup>280</sup> However, it is significant that the Red Cross indicated on Christmas Day that it could not account for seven of a large group of 225 released hostages.<sup>281</sup> This led to speculation that some rebels may have slipped away during the release.<sup>282</sup> At the end of the ordeal, it was ascertained that there were 14 guerrillas involved in the operation.<sup>283</sup>

The Tupac Amaru rebels infiltrated the Japanese diplomatic celebration in the guise of waiters carrying champagne, food and flowers.<sup>284</sup> News reports indicated that the attack commenced at 8:05 p.m.<sup>285</sup> with one "large explosion and two minor ones as they took control of the embassy compound."<sup>286</sup> It was a two-pronged attack: infiltration as disguised waiters and a second front in which masked guerrillas dynamited a hole in a fence from an adjacent house.<sup>287</sup> Peruvian television later displayed a meter-wide hole utilized to gain entry to the house.<sup>288</sup> The guerrillas announced: "This is the Tupac Amaru Revolutionary Movement. Obey and nothing will happen to you."<sup>289</sup>

Lucie Vincent, wife of the Canadian Ambassador to Peru, "thought she was going to die when the attack started."<sup>290</sup> Mrs. Vincent explained in a later interview that at approximately 8:00 p.m. the guests heard a bomb, but given the realities of life in Lima, they thought little of it. She was in the garden talking to a

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278. Fedarko, *supra* note 142.

279. *Rebels Free 225 Hostages*, THE EDMONTON J., Dec. 23, 1996, at A1

280. Diebel, *Hostage Hell*, *supra* note 116.

281. *Hostages Allowed Christmas Services*, THE GLOBE & MAIL (Toronto), Dec. 26, 1996, at A1.

282. *Id.*

283. Diana Jean Schemo, *126 Days: Peruvian Hostage Crisis Became A Trip Into the Surreal*, N.Y. TIMES, Apr. 26, 1997, at 6 [hereinafter Schemo, *126 Days*].

284. *Peruvian Rebels Seize Canadian Ambassador*, *supra* note 250.

285. Sims, *Guerrillas in Peru*, *supra* note 46.

286. *Peruvian Rebels Seize Canadian Ambassador*, *supra* note 250.

287. Sims, *Guerrillas in Peru*, *supra* note 46.

288. *Hostages Jam-Packed, Standoff Continues*, THE EVENING TELEGRAM (St. John's, Newfoundland), Dec. 20, 1996, at 7.

289. Schemo, *126 Days*, *supra* note 283.

290. *Peruvian Rebels Seize Canadian Ambassador*, *supra* note 250.

lady when the shooting started and she immediately dove under a table.<sup>291</sup>

Another eye-witness account of those dramatic early hours was provided by Sally Bowen,<sup>292</sup> who wrote:

It promised to be a routine diplomatic reception. By 8 p.m., several hundred guests at the Japanese ambassador's residence in Lima were sipping pisco sours—the favourite local tipple—and crowding round the sushi buffet.

Suddenly a heavy explosion, possibly caused by a rocket hitting an outside wall, stopped the small talk. Moments later, heavy gunfire started up close to the marquee where guests had gathered to celebrate Emperor Akihito of Japan's birthday.<sup>293</sup>

Ms. Bowen continued to describe the ordeal: "The guests dropped to the ground. For the next 40 minutes we lay terrified as heavily armed guerrillas stalked among us, brandishing automatic rifles, pistols, shouting 'Don't lift your head or it'll be shot off.'"<sup>294</sup> The rebels exchanged a volley of gunfire with the police while the frightened guests lay on the ground, bullets flying overhead.<sup>295</sup> The wife of a Peruvian diplomat described her reaction: "I was shaking uncontrollably because I thought I was going to die."<sup>296</sup>

News reports stated that because of gunfire, "police and news crews were pinned down around the building."<sup>297</sup> A witness from a neighboring building reported seeing armed men near bushes in the ambassador's residence and guests lying face down on the floor.<sup>298</sup> News reports also indicated that two hostages and one rebel were wounded in the initial assault.<sup>299</sup> The police captured five rebels during the initial gun battle.<sup>300</sup>

Meanwhile inside the building, in those early moments of the assault, prominent dignitaries were ridding themselves of identification which might make them easy targets for the rebels.<sup>301</sup>

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291. *Id.*

292. *Rebels Raid Japanese Ambassador's Residence in Peru, Hold Hundreds Hostage*, *supra* note 92, at 929.

293. Bowen, *Everyone Will Die*, *supra* note 232.

294. *Id.*

295. Schemo, *126 Days*, *supra* note 283.

296. Sims, *Guerrillas in Peru*, *supra* note 46.

297. *Attackers Seize Home of Diplomat*, THE OTTAWA CITIZEN, Dec. 18, 1996, at A6.

298. *Id.*

299. *Peru Rebels Put Off Killings*, *supra* note 259.

300. Sims, *Guerrillas in Peru*, *supra* note 300.

301. Laurie Goering, *Peru's VIP Captives Sweat It Out*, CHI. TRIB., Dec. 20, 1996, at A1.

Fernando Andrade, Mayor of Miraflores, a section of Lima, managed to escape by climbing out of a washroom window.<sup>302</sup> He reported that identifications were being flushed down toilets by the guests inside.<sup>303</sup> Some officers ripped the stripes off their uniforms.<sup>304</sup> Manuel Torrado, a pollster by profession, said, “[E]ach one made himself a little less important than he was. I said I was a press attache. The dean of a university said he was a professor.”<sup>305</sup>

Ambassador Aoki, the host, was ordered by one of the rebels to use a megaphone and tell the police to hold their fire. “Please respect the integrity of my guests and stop shooting,” Aoki pleaded with the police.<sup>306</sup> In a further attempt to calm the situation, Aoki telephoned a Lima radio station to announce: “There are no injured, nothing, and we are safe.”<sup>307</sup> He added that for the moment he could not speak freely.<sup>308</sup> In a later telephone call to Japanese station NHK, the Ambassador explained that the rebels were “completely armed” and wanted to negotiate with President Fujimori about the conditions for the release of the hostages.<sup>309</sup> Ambassador Aoki also had a telephone discussion with his Foreign Minister, Yukihiko Ikeda.<sup>310</sup>

Widely admired for his skill as a negotiator, Ambassador Aoki requested the rebels to release all the hostages while retaining him alone in captivity.<sup>311</sup> “Let these people go,” he pleaded with the guerrillas and added, “They’ve got nothing to do with this. I, alone, am important enough for you to bargain with.”<sup>312</sup> Later, he was reported to have attempted to cheer his guests by stating repeatedly: “This is the longest cocktail party I’ve ever organized.”<sup>313</sup> Through the long 126-day ordeal which would follow his party, Ambassador Aoki exhibited remarkable generosity, grace and dignity. One of the Canadian hostages, Hubert Zandstra, an

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302. *Id.*

303. *Id.*

304. *id.*

305. Schemo, *126 Days*, *supra* note 283.

306. *Id.*

307. *Peru Rebels Raid Envoy's Home and Seize Hundreds of Hostages*, *supra* note 29.

308. *Id.*

309. *Id.*

310. *Id.*

311. Kristof, *Anxious Japanese*, *supra* note 272.

312. Schemo, *126 Days*, *supra* note 283.

313. *Hostage Release Raises Tension, Japanese PM Says*, *THE GLOBE & MAIL* (Toronto), Dec. 24, 1996, at A9.

agronomist, called Aoki "amazing," and added that the Ambassador shared his food, his liquor, his clothing, "absolutely everything."<sup>314</sup> Aoki remained positive throughout and attempted to impart cheer to his colleagues in captivity,<sup>315</sup> even singing for them, provoking loud cheering applause.<sup>316</sup>

### C. *The Demands of the Hostage-takers*

Nestor Cerpa Cartolini chose in the initial hours of the assault to use the alias "Commandante Huerta."<sup>317</sup> After taking the residence, he announced that his men had mined the grounds and stated, "What we are asking is the liberation of all of our comrades, who are being mistreated and tortured in the dungeons of the various prisons."<sup>318</sup> The entire operation was overtly aimed at the liberation of hundreds of Tupac Amaru guerrillas who were languishing in the horrifying terrorist prisons of Peru. However, there was considerable confusion about the precise number of Tupac Amaru prisoners being held by Peruvian authorities. The captors were said initially to have referred to about 400 to 500 such individuals.<sup>319</sup> It is conceivable that they were simply not certain about the numbers involved.

The guerrillas' plan was to exchange the guests at the party for the prisoners from Peruvian jails.<sup>320</sup> Ever mindful of the necessity for publicity in this operation, the hostage takers asked for a cameraman and made a video of their demands to be broadcast on television.<sup>321</sup> One of the rebels telephoned the demands to a local radio station: "We are clear: the liberation of all our comrades, or we die with all the hostages."<sup>322</sup> The rebels threatened to execute the hostages if the government did not give in.<sup>323</sup>

Also included in their demands was the release of Lori Helene Berenson, an American citizen from New York, jailed for life for treason related to alleged terrorist activities in Peru.<sup>324</sup>

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314. Diebel, *Hostage Hell*, *supra* note 116.

315. *Id.*

316. Joshua Hammer and Brook Larmer, *We're in No Rush: Marking Time as the Rebels, and Fujimori, Refuse to Bend*, NEWSWEEK, Jan. 13, 1997, at 48.

317. Diebel, *Rebel Captivates World*, *supra* note 101.

318. *Peru Rebels Raid Envoy's Home and Seize Hundreds of Hostages*, *supra* note 29.

319. Gutman, *supra* note 39.

320. Sims, *Guerrillas in Peru*, *supra* note 46.

321. *Id.*

322. *Peru Rebels Put Off Killings*, *supra* note 259.

323. *Id.*

324. Cisneros, *supra* note 262.

Berenson was convicted in 1995, by a secret military tribunal and jailed at the infamous Yanamayo Prison.<sup>325</sup> She was accused of assisting the Tupac Amaru with its abortive plan to raid the Peruvian Congress but “has maintained her innocence.”<sup>326</sup> Her parents, who are college professors,<sup>327</sup> indicated after visiting their daughter in jail that Berenson’s hands were “perpetually purple and swollen by the cold” because the mountain prisons have open windows.<sup>328</sup>

Also among the prisoners on the guerrillas’ agenda for release were 89 women,<sup>329</sup> including Nestor Cerpa’s wife, Nancy Gilvonio.<sup>330</sup> Once their jailed comrades were freed, the hostage-takers wanted to be able to return to their jungle hideouts in Peru.<sup>331</sup> Additional demands included economic programs to assist the poor in Peru and payment of a ‘war tax.’<sup>332</sup> The rebels expressed their dissatisfaction with the economic reforms instituted by President Fujimori and wanted to “change Peru’s free-market economic policy.”<sup>333</sup> Throughout the ordeal the Tupac Amaru reiterated its demand that the government improve the standard of living of Peru’s poor, who constitute almost half the population.<sup>334</sup> Despite a few news reports to the contrary throughout the crisis, the Tupac Amaru insisted that there was no ransom demand on their agenda.<sup>335</sup> On January 9, 1997, in response to government claims about possible monetary buy-outs, the Tupac Amaru posted a sign in a window of the residence stating: “Do not lie, Mr. Fujimori. Money does not interest us. The demand is freedom of our prisoners.”<sup>336</sup> The Tupac Amaru rebels also asked that their

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325. Sims, *Guerrillas in Peru*, *supra* note 46.

326. Sims, *Peru’s Rebel Leader*, *supra* note 99.

327. Lisa W. Foderaro, *Crisis Attracts Readers to Internet Site*, N.Y. TIMES, Dec. 21, 1996, at 6.

328. Goering, *Torture Systematic*, *supra* note 83.

329. Diebel, *Summit Tackles Nightmare*, *supra* note 4.

330. Diana Jean Schemo, *Peru Rules Out A Rebel ‘Suggestion’ in the Hostage Crisis*, N.Y. TIMES, Jan. 17, 1997, at A3 [hereinafter Schemo, *Rebel Suggestion*].

331. Cisneros, *supra* note 262.

332. *Rebels Raid Japanese Ambassador’s Residence in Peru, Hold Hundreds Hostage*, *supra* note 92.

333. *Canadian Ambassador to Negotiate for Rebels*, *supra* note 229.

334. Photo caption, N.Y. TIMES, Dec. 29, 1996, at 6.

335. *Guerrillas Deny They Want Ransom*, THE OTTAWA CITIZEN, Jan. 10, 1997, at A9.

336. *Id.*

“sympathizers in Bolivia’s jails be freed,” and held the Bolivian Ambassador to Peru as a hostage.<sup>337</sup>

It was clear that the rebels were prepared to wait for a resolution that would bring freedom to their imprisoned comrades. Cerpa apparently believed time was on his side; this would ultimately be his most tragic miscalculation. He underestimated his adversary, the Peruvian government, which utilized the time very effectively to prepare for a counter attack on the mansion. Cerpa probably had also calculated that long captivity would fray the nerves of the hostages and impel a settlement from the government. He reportedly told one hostage, “[W]e came physically and mentally prepared to stay for a long time. You all just came for a cocktail party.”<sup>338</sup>

The Peruvian perpetrator of this hostage-taking and his adversary, the Peruvian President, both had political and personal considerations in mind as they squared off against each other in the following long months of deadly confrontation. “The guerrilla leader [was] fighting for his movement and his wife, the president [was] fighting for his credibility and his brother.”<sup>339</sup>

#### *D. Criticism of Security at the Embassy*

In the wake of the successful take-over of the Japanese Embassy, severe criticism was levelled against the Japanese government and against Peruvian forces for allowing so dramatic an assault on a foreign diplomatic compound. Japanese journalists wondered about the lax security at the reception held in a building which in international law constitutes Japanese territory.<sup>340</sup> Professor Enrique Obando, one of Peru’s foremost authorities on terrorism and the military, complained that “[t]he security forces were sloppy and overconfident. This attack could have been prevented with the same measures that any airline takes when passengers go onto an airplane.”<sup>341</sup>

Japanese Ambassador Morihisa Aoki confirmed that although there were many security guards at the embassy, none had been posted at the back wall, over which some of the guerrillas apparent-

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337. David Marcus, *Range of Ways to End Peru Siege Studied*, THE WEEKEND SUN (Vancouver), Dec. 21, 1996, at A10.

338. Hammer & Larmer, *supra* note 316.

339. *Personal Pressures on Leaders Add to Hostage Standoff Tension*, THE VANCOUVER SUN, Jan. 31, 1997, at A15.

340. *Tokyo Rushes to Deal With Crisis in Lima*, *supra* note 235.

341. Sims, *Peru Dismissed Warnings*, *supra* note 242.



ly climbed into the compound.<sup>342</sup> However, the Foreign Minister of Japan insisted that "lax security was not to blame."<sup>343</sup>

The Japanese Ambassador's residence covered an entire block and was protected by a four and a half meter high concrete wall under a three meter electrical fence.<sup>344</sup> Inside, windows were protected by bars and thick wire mesh.<sup>345</sup> Normal security at the residence consisted of "three Japanese police officers, several guards from a Japanese security company, and two Peruvian police cars."<sup>346</sup> Ironically, the residence in Lima was the "most-guarded of Japanese diplomatic missions overseas" following damage to the building from car bombs in 1991 and 1992.<sup>347</sup> However, security was not increased for the party.<sup>348</sup>

On February 23, 1997, while the hostages were still in captivity, President Fujimori joined the chorus of condemnation against his intelligence and police services for their negligence in not preventing the attack by the Tupac Amaru.<sup>349</sup> The Peruvian President alleged that his agents were aware the guerrillas were transporting weapons from their jungle outposts to Lima—an indication of a major operation—but the police did not act on the information.<sup>350</sup> He indicated that a security investigation was underway and would result in action against police and intelligence officials who had been negligent.<sup>351</sup>

#### *E. The Release of Women and Elderly Hostages*

Apparently, it soon dawned on the rebels that they had captured too many hostages for a viable operation. Their obvious solution was to unburden themselves of the women and elderly guests as

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342. Bowen, *Everyone Will Die*, *supra* note 232.

343. *Peru Rebels Put Off Killings*, *supra* note 259.

344. *Id.*

345. *Minister Cleans Bathroom as Hostages Share Chores*, *supra* note 95.

346. Kristof, *Anxious Japanese*, *supra* note 272.

347. *Id.*

348. Sims, *Peru Dismissed Warnings*, *supra* note 242.

349. Sims, *Peru Talks Begin*, *supra* note 165.

350. *Id.*

351. *Id.* Indeed, after the crisis was over, Peru's military justice system took action against a number of police officers who were alleged to have been negligent in failing to provide adequate security for the Japanese residence. 'Secret Heroes' of Peru Rescue Missing, THE EVENING TELEGRAM (St. John's, Newfoundland), May 8, 1997, at 36.

quickly as possible. A little over two hours after the assault, the initial release of hostages began.<sup>352</sup>

Unfortunately, just as this beneficial action got underway, Peruvian police threw tear gas into the building.<sup>353</sup> This had no adverse impact on the guerrillas who were equipped with gas masks but caused considerable discomfort to the hostages "who choked and spluttered for half an hour."<sup>354</sup> They grabbed handkerchiefs and napkins while President Fujimori's mother, with a bowl of water in hand, walked from guest to guest to moisten the kerchiefs and ease the ill effects of the tear gas.<sup>355</sup> Ms. Lucie Vincent recalled that the burning in the hostages' eyes and the inability to breathe was "quite painful."<sup>356</sup>

This first release meant freedom for approximately 170 hostages.<sup>357</sup> Among this group was Rosa Elva, President of the Peruvian-Japanese Cultural Association.<sup>358</sup> She commented on the calm manner of the rebels who were laden with weapons and were apparently ready "to give up their lives."<sup>359</sup> The guerrillas were well-prepared with armaments for a long operation and came equipped with grenades, pistols, explosives and rifles with telescopic night vision sights.<sup>360</sup>

The deadly gun battle at the Japanese residence evoked horrifying memories for many Peruvians who had believed that such guerrilla terror was a nightmare of the past for their country. One Peruvian taxi driver told a reporter: "It's just like something out of a movie. Only Bruce Willis hasn't showed up to save us yet."<sup>361</sup>

Not all of the women were willing to be released. True to her journalistic instincts, Sally Bowen asked to stay but was refused by the guerrillas.<sup>362</sup>

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352. *Champagne and Hors d'Oeuvres, Then Dynamite and Hostages*, N.Y. TIMES, Dec. 19, 1996, at A12.

353. Bowen, *Everyone Will Die*, *supra* note 232.

354. *Id.*

355. Schemo, *126 Days*, *supra* note 283.

356. *You Hear the Shooting, You Think That's It*, THE TORONTO STAR, Dec. 19, 1996, at A1.

357. *Canadian Ambassador to Negotiate For Rebels*, *supra* note 229.

358. Gabriella Gamini, *Rebels Threaten to Start Killing Hostages Today*, THE TIMES (London), Dec. 21, 1996, at 12 [hereinafter Gamini, *Rebels Threaten*].

359. *Id.*

360. Michael Stott, *Rebels Free 225 Lima Hostages*, THE GLOBE & MAIL (Toronto), Dec. 23, 1996, at A12.

361. Goering, *Peru's VIP Captives Sweat It Out*, *supra* note 301.

362. Schemo, *126 Days*, *supra* note 283.

#### IV. Captivity

There was considerable confusion about the precise number of hostages in captivity after the initial release of women, elderly and ailing people and some diplomats freed by Cerpa to negotiate on behalf of the rebels. The Peruvian government initially estimated that there were between 200 and 300 hostages. However, in a faxed message to relatives signed by hostages, the figure stated was 490.<sup>363</sup> Ambassador Vincent estimated the number at about 400, commenting “[t]hey’re packed in.”<sup>364</sup> Cerpa must have realized that the size of the Japanese residence would not hold the large number of people he had captured. Although he gained much propaganda benefit from sporadic releases, it is possible that the real reason for freeing many of the dignitaries was to have a feasible number of captives that his small guerrilla band could safely handle.

The hostages were eventually separated on the basis of their professional status.<sup>365</sup> Hostages considered of greater significance, such as government officials, military officers, politicians and diplomats, were apparently housed on the second floor of the mansion with heavier security.<sup>366</sup> Journalists, businessmen and intellectuals were held on the first floor.<sup>367</sup>

A decision by the Peruvian government to cut off water and electricity to the residence created considerable difficulty for the hostages who found the heat inside a problem.<sup>368</sup> The cessation of electricity, telephone and water to the residence met with pleas from the hostages for return of these vital services.<sup>369</sup> “Neither handwritten signs thrust at a residence window requesting water, electricity and telephone service in four languages, nor reports of worsening health appeared to move President Alberto Fujimori.”<sup>370</sup> Hostage demands that services be restored were ig-

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363. *Canadian Ambassador to Negotiate for Rebels*, *supra* note 229.

364. *Canadian Works to Free Peru Hostages*, THE TORONTO STAR, Dec. 20, 1996, at A1.

365. Ian Lewis, *Terrorists Threaten Killing Today*, THE OTTAWA CITIZEN, Dec. 21, 1996, at A1.

366. Calvin Sims, *5 Hostages Freed By Peru Rebels Take on Mediation Role*, N.Y. TIMES, Dec. 22, 1996, at 10 [hereinafter Sims, *Hostages Take on Mediation Role*].

367. *Id.*

368. Krauss, *Diplomats*, *supra* note 41.

369. *Canadian Ambassador Announces the End of Envoys’ Humanitarian Mission*, THE WEEKEND SUN (Vancouver), Dec. 21, 1996, at A11.

370. *Id.*

nored.<sup>371</sup> On December 21, 1996, the Red Cross took the initiative of supplying two large water trucks for the hostages because the cramped environment had also become dirty.<sup>372</sup> Associated Press reported that power and water were eventually restored to the mansion but the power was cut off again.<sup>373</sup> The running water could not function without electricity,<sup>374</sup> and the hostages had to endure the discomfort of living without two of the most precious conveniences of modern life. President Fujimori's decision to deprive the compound of water, electricity and telephones "likely brought more discomfort to the hostages than to the jungle-trained rebels,"<sup>375</sup> who were accustomed to a more hardy existence.

As a result of the gunbattle on the first night, the once-luxurious mansion was now riddled with bullet holes.<sup>376</sup> Inside, living conditions were deplorable.<sup>377</sup> The four bathrooms were inadequate for such a large crowd<sup>378</sup> (without running water, the hostages were unable to bathe<sup>379</sup>) and there were no beds on which they could sleep.<sup>380</sup> Eventually, some mattresses were provided.<sup>381</sup> After he was released, Canadian hostage Andre Deschenes (Poverty Consultant with the Canadian International Development Agency) described the horror of eighty people using one bathroom without water or power.<sup>382</sup> Deschenes recounted

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371. Clifford Krauss, *Rebels in Peru Release 38 But Still Detain Over 300*, N.Y. TIMES, Dec. 21, 1996, at 6 [hereinafter Krauss, *Rebels Release 38*].

372. Sims, *Hostages Take on Mediation Role*, *supra* note 366.

373. Linda Diebel, *Gradual Freeing of Hostages Promised By Rebel Leader*, THE TORONTO STAR, Dec. 22, 1996, at A15 [hereinafter Deibel, *Gradual Freeing Promised*]. Water was restored on Dec. 21, 1996. Julian Beltrame, *Foreign Captives to Be Freed*, THE OTTAWA CITIZEN, Dec. 22, 1996, at A1 [hereinafter Beltrame, *Foreign Captives*].

374. *Rebels Free 225 Hostages*, *supra* note 279.

375. *Hostages Alter Elite Lifestyle in Captivity*, THE OTTAWA CITIZEN, Feb. 4, 1997, at A8.

376. Calvin Sims, *A Nightmare in Lima: Hostages in Squalor*, N.Y. TIMES, Dec. 21, 1996, at 1 [hereinafter Sims, *Nightmare in Lima*].

377. *Id.*

378. *Id.*

379. *Peru Sets Stage For Hostage Talks*, THE GLOBE & MAIL (Toronto), Dec. 20, 1996, at A1.

380. *Canadian Works to Free Peru Hostages*, *supra* note 364.

381. Calvin Sims, *Peru Crisis Takes Toll on Hostages' Health*, N.Y. TIMES, Feb. 15, 1997, at 6 [hereinafter Sims, *Crisis Takes Toll*].

382. Julian Beltrame, *Hostages Came to Respect Leader*, THE VANCOUVER SUN, Dec. 24, 1996, at A10.

that he had learned from an American hostage how to sleep standing up.<sup>383</sup>

After some time, rudimentary bathing arrangements using buckets of cold water were made available.<sup>384</sup> However, life continued to be uncomfortable, tedious and stressful. As Cecile Baux of the Red Cross wryly commented, “[I]t is no party.”<sup>385</sup>

Although physical discomfort was now the lot of diplomats and dignitaries used to a life of luxury, they adjusted with a remarkable degree of calm and strength of will. As one news service aptly commented: “Deprived of liberty, privacy and the authority and respect they normally command, the ambassadors and jurists and congressmen and businessmen being held hostage have been forced to focus on simple necessities.”<sup>386</sup>

The age of many of the hostages ranged between forty and sixty years.<sup>387</sup> Inevitably, there were requirements for daily medication and for other essentials of life. One hostage, Moises Pantojo, President of Peru’s Supreme Court, was said to suffer from severe heart trouble.<sup>388</sup> The Red Cross reported that some of the hostages were suffering from “diarrhea, diabetes, ulcers and heart problems.”<sup>389</sup> Francisco Sagasti, one of the hostages who was released after a few days, commented that sleep was difficult because “there were a few heavy snorers.”<sup>390</sup>

Some hostages clung desperately to normal routines to keep their spirits up. A hostage named Mr. Higashi recounted that he washed his face and donned a tie every morning as though he was going to work, all in an effort to ward off depression.<sup>391</sup>

True to professional form, the captive diplomats began to negotiate and hold their own discussions with the rebels, a sign that was perceived as positive in terms of an eventual resolution.<sup>392</sup> “Faced with what is expected to be a long standoff, ‘I think

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383. *Id.*

384. *Hostages Alter Elite Lifestyle in Captivity*, *supra* note 375.

385. *Id.*

386. *Rebels, Hostages Exercise Restraint*, THE OTTAWA CITIZEN, Dec. 20, 1996, at A1.

387. *Goering, Peru’s VIP Captives Sweat It Out*, *supra* note 301.

388. *Id.*

389. *Canadian Ambassador Announces the End of Envoys’ Humanitarian Mission*, *supra* note 369.

390. *Beltrame, Foreign Captives*, *supra* note 373.

391. *Schemo, 126 Days*, *supra* note 283.

392. *Goering, Peru’s VIP Captives Sweat It out*, *supra* note 387.

everyone is starting to get situated,' said one foreign diplomat in Lima."<sup>393</sup>

The outcome of these deliberations was beneficial. Physicians were allowed in to attend to the hostages and provide them with tranquilizers and other medication.<sup>394</sup> The list of hostage requirements expanded to toothbrushes and changes of clothing brought by their families.<sup>395</sup> The rebels also allowed messages between hostages and their families, and for the captives and their anxious relatives outside, these brief written messages became a psychological life-line during the long ordeal.

It was fortunate for all that the hostages were able to engage in this dialogue with their captors from an early stage of the crisis. Their mutual discussions may have softened the attitude of the rebels and may well have been pivotal in ensuring that the rebels did not execute any of them throughout the 126-day ordeal. Peruvian political commentator Francisco Sagasti, a critic of the Fujimori regime, was taken hostage and eventually freed during one of the releases.<sup>396</sup> He provided interesting insights into conditions at the residence during his captivity. Sagasti described the relationship between hostages and captors as "respectful and cordial."<sup>397</sup> He continued, "It was kind of unusual in that we were never beaten or mistreated and we could move around and speak to each other freely in the rooms where we were held."<sup>398</sup>

According to Sagasti, debates occurred between rebels and hostages.<sup>399</sup> There was an attempt by the guerrillas to convert the hostages but this was apparently unsuccessful.<sup>400</sup> However, Nestor Cerpa and Octavio Mavil, a leading Peruvian businessman, engaged in a two-hour debate on economic development.<sup>401</sup> The verbal exchange "included a lot of talking and laughing."<sup>402</sup> Hostages also engaged in seminars expounding on their areas of expertise "ranging from economics and polling to Andean and Japanese food. A Peruvian insurance executive held forth on the

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393. *Id.*

394. *Id.*

395. *Hostages Jam-packed, Standoff Continues, supra* note 288.

396. Sims, *Hostages Take on Mediation Role, supra* note 366.

397. *Id.*

398. *Id.*

399. *Id.*

400. *Id.*

401. *Id.*

402. Sims, *Hostages Take on Mediation Role, supra* note 366.

intricacies of a product that all of them found intensely interesting: kidnapping insurance."<sup>403</sup>

However, a more frightening account of their life was provided by hostage Congressman Gilberto Siura, a strong supporter of the military.<sup>404</sup> According to Siura, the rebels regularly pointed guns at the hostages and pretended to throw grenades in an effort to prepare and practice for a military attack on the mansion.<sup>405</sup>

As their captivity dragged into weeks and months, the medical condition of the hostages inevitably worsened. Physicians in regular attendance on them commented that almost all the hostages suffered "from ailments that require daily medications and regular monitoring, including hypertension, heart disease, digestive disorders and depression."<sup>406</sup> Fear of the possible violent outcome of this hostage situation exacerbated their medical problems. Supreme Court Judge Moises Pantoja complained in a letter to his family that his arthritis made it difficult to walk because his feet, hands and fingers had become hard.<sup>407</sup>

Although captivity was harsh and a real test of endurance for the hostages, most of whom came from privileged lifestyles as government officials, businessmen and diplomats, they adjusted with remarkable fortitude.<sup>408</sup> The hostages spent some of their long, boring days engaging in vigorous bouts of cleaning the mansion, particularly the bathrooms.<sup>409</sup> A released hostage, Jose Carlos Mariategui, an official in the Peruvian Foreign Ministry, provided vivid descriptions of the democratic job-sharing society which emerged among the hostages.<sup>410</sup> "We practiced a real democracy," he said and added that various duties were designated, a system of shift work was established and there were "no distinctions of rank, profession, nationality or race."<sup>411</sup> One of

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403. Hammer & Larmer, *supra* note 316.

404. Schemo, *126 Days*, *supra* note 283.

405. *Id.*

406. Sims, *Crisis Takes Toll*, *supra* note 381.

407. *Id.*

408. Ironically, they also got a taste of the lifestyle of a large portion of Peru's population. Father Leonard Rego, a Canadian Oblate brother who has worked in Peru for over two decades, voiced Peruvian popular opinion: "Maybe these people know now what it is to live without water, without lights, without sanitation, or even food, in hot little rooms with everybody packed in on top of each other . . . We do. We know what it's like." Diebel, *Peru's Rebels*, *supra* note 10.

409. *Minister Cleans Bathroom as Hostages Share Chores*, *supra* note 95.

410. *Id.*

411. *Id.*

the first to pull bathroom cleaning detail happened to be Peruvian Foreign Minister Francisco Tudela.<sup>412</sup> The almost spontaneous formation of a democratic society bred a strong team spirit among the hostages; after the ordeal was over, some of the freed captives commented about the camaraderie which had arisen among them. Congressman Carlos Blanco said that “there was never ever any altercation of any kind among the hostages.”<sup>413</sup> Indeed, they made a determined effort to create a social life within the confines of the mansion. Bolivian Ambassador Jorge Gumucio explained that on occasion the diplomat hostages “would visit the judges, or they would invite us for lunch and sometimes we [the diplomats] were invited by the police.”<sup>414</sup>

Hostages routinely awoke at daybreak to the blare of police sirens and the sound of staged military marches around the compound.<sup>415</sup> They received cigarettes but no alcohol.<sup>416</sup> They breakfasted on coffee, bread, jam and cheese.<sup>417</sup> Lunch and dinner consisted of cold Peruvian and Japanese food, all provided by the Red Cross.<sup>418</sup>

## V. Reactions to the Crisis

### A. *The Media and Fujimori's Reaction*

Political analyst Mirko Lauer commented that the “government is caught between a rock and a hard place.”<sup>419</sup> He added: “Setting free the MRTA prisoners would mean losing years of effort and would give a dangerous second wind to armed subversion.”<sup>420</sup> On the other hand, said Mr. Lauer, “[t]he murder of many or some hostages would put the country into irretrievable mourning.”<sup>421</sup> Journalist Kevin Fedarko explained that “Fujimori faced an appalling choice: confrontation or accommodation.”<sup>422</sup>

412. *Id.*

413. Julia Preston, *A Doomed Young Rebel's Change of Heart Saved the Lives of Hostages*, N.Y. TIMES, Apr. 24, 1997, at A12.

414. Jane Diaz-Limaco, *Military Strike Frees Lima Hostages*, GUARDIAN WEEKLY, May 4, 1997, at 3 [hereinafter Diaz-Limaco, *Military Strike*].

415. *Hostages Alter Elite Lifestyle in Captivity*, *supra* note 375.

416. *Id.*

417. *Id.*

418. *Id.*

419. Andrew Cawthorne, *Fujimori Under Big Pressure From Japan and Others to Avoid Bloodbath*, THE IRISH TIMES, Dec. 21, 1996, at 9.

420. *Id.*

421. *Id.*

422. Fedarko, *supra* note 142.



It was widely believed early in the crisis that President Fujimori would be unrelenting and unbending with respect to rebel demands. One Western diplomat was quoted as concluding that the Peruvian government would not "negotiate anything."<sup>423</sup> That President Fujimori's public persona had been badly damaged by the successful seizure of the Japanese embassy could not be denied in view of criticism both in Peru and internationally. As Alex Emery wrote in *The Christian Science Monitor*, "Fujimori, who succeeded in diminishing guerrilla violence as a result of Draconian antiterrorist measures, has seen his image as a winner badly shaken by this turn of events."<sup>424</sup>

In response to the crisis, President Fujimori convened his Cabinet in an emergency meeting.<sup>425</sup> He was reported to be in constant touch with his Cabinet over the next few days<sup>426</sup> but there was an alarming public silence from him about this crisis. There was no doubt that Fujimori faced "the most difficult choice of his political career."<sup>427</sup> His silence in the face of the hostage crisis was disconcerting and aggravating to Peruvians and more so to the hundreds of media representatives from around the world who rushed to Peru to cover the story and surrounded the besieged compound.<sup>428</sup> Peruvian political commentator Francisco Sagasti expressed the frustration: "We Peruvians deserve something more from our President than the silence he has given us on this most important event in the history of our nation. It is a clear case of lack of leadership on his part."<sup>429</sup>

Interestingly, Fujimori's first public statement on the crisis consisted of a letter to U.S. President Bill Clinton in which he said, "I want to assure your excellency that I am occupying myself permanently and jointly with my team to achieve a solution as soon as possible to this crisis, the principal objective being the safeguarding of the health and life of those who are inside."<sup>430</sup>

President Fujimori was on the horns of a dilemma so complex that it almost defied solution. Had he yielded to the rebel

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423. Goering, *Peru's VIP Captives Sweat It Out*, *supra* note 301.

424. Emery, *Hostage Hold Up*, *supra* note 11.

425. *Peru Rebels Raid Envoy's Home and Seize Hundreds of Hostages*, *supra* note 29.

426. Sibylla Brodzinsky and Sally Bowen, *400 Hostages Inside Lima Compound 'Treated Carefully'*, THE IRISH TIMES, Dec. 20, 1996, at 10.

427. Editorial, *Outrage in Lima*, THE IRISH TIMES, Dec. 19, 1996, at 15.

428. Sims, *Hostages Take on Mediation Role*, *supra* note 366.

429. *Id.*

430. *Hostages Jam-packed, Standoff Continues*, *supra* note 288.

demands, he could have resuscitated terrorism in Peru. As journalist Roy Gutman commented, by acceding to their demands, "he may give the rebel movement a new lease on life."<sup>431</sup>

Although some rebel groups in other Latin American countries had progressed to pacification and eventual incorporation into the legitimate political process, this fate, much desired by the Tupac Amaru, was not perceived as a realistic outcome. Peruvians saw the hostage crisis as an indication of a return to guerrilla violence and they wanted their government to ensure that this rebel mayhem was stamped out permanently. Despite the fact that the Tupac Amaru message highlighted the miserable conditions of the poor and dispossessed of Peru, the Tupac Amaru failed to garner public support within Peru for its actions. Hence, there was little public enthusiasm for the grant of concessions to the hostage-takers. Former U.N. Secretary-General, Javier Perez de Cuellar, summarized the views of his countrymen when he said of the Tupac Amaru: "They have just shown they're beyond the limits of democracy. It would be difficult for the MRTA to become a political party after what has happened."<sup>432</sup>

There were also inherent dangers for the Peruvian government in terms of public opinion. In the first place, Peruvians had considered such terrorist actions a thing of the past, unlikely in Fujimori's regime. As the crisis dragged on for days and weeks and months, Fujimori would take a political beating in terms of his popularity among Peruvians. The constant media barrage on this crisis ensured that the Tupac Amaru reaped the benefits of publicity and propaganda, but that same journalistic spotlight shone simultaneously and not too kindly on the government which had failed to prevent this crisis. Clive C. Aston, analyzing hostage-taking, had written perceptively that

[o]f all the tactics currently employed by political terrorists, none is as powerful or emotive as the taking of innocent hostages . . . . Hostage-taking, because of its sensational and dramatic nature, is a highly media-specific act which thereby guarantees an audience for the terrorist to intimidate. Nothing is more likely to polarize public opinion and potentially undermine confidence in a government as quickly or as penetratingly as the inability to cope with a 'hostage situation.'<sup>433</sup>

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431. Gutman, *supra* note 39.

432. Emery, *Hostage Hold Up*, *supra* note 11.

433. Aston, *supra* note 74, at 75.

The Peruvian stock market fell more than 4 percent on Dec. 18, reflecting the uncertainty caused by the fact that its ruling government was now "caught between competing political and economic pressures."<sup>434</sup>

Although the deed was done, Peruvian police belatedly made a huge effort to make up for their failure to prevent the guerrillas from seizing the diplomatic mansion. They literally besieged the Japanese Embassy, stationing approximately 900 officers around the residence to deal, if necessary, with the 15 or so heavily armed rebels inside.<sup>435</sup> Over the long months of the ordeal which followed the MRTA's attack on the Japanese residence, the police also established an elaborate system of electronic eavesdropping on the mansion.<sup>436</sup> Some indication of this was provided when police sources were cited in a Peruvian newspaper, *La Republica*, as providing particulars of verbal discussions inside the Ambassador's house.<sup>437</sup>

### B. *The Japanese Reaction*

The take-over of their Ambassador's residence in Lima "sent shock waves through the Tokyo government and business."<sup>438</sup> Japanese television provided extensive coverage of the story.<sup>439</sup> Emperor Akihito agreed to a suggestion by his Prime Minister, Ryutaro Hashimoto, that the celebration of the imperial birthday (including the banquet<sup>440</sup>) be canceled.<sup>441</sup> The monarch similarly canceled plans to open the grounds of his palace to his people and did not read a traditional birthday message to the Japanese public.<sup>442</sup> Instead the imperial palace released an official statement expressing Emperor Akihito's hope that the hostages would be released as soon as possible.<sup>443</sup>

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434. Krauss, *Diplomats*, *supra* note 41.

435. *Minister Cleans Bathroom as Hostages Share Chores*, *supra* note 95.

436. *Peru's Rebels Drill Hostages for Expected Police Attack*, THE VANCOUVER SUN, Apr. 9, 1997, at A16.

437. *Id.*

438. *Tokyo Rushes to Deal With Crisis in Lima*, *supra* note 235.

439. *Id.*

440. Juliet Hindell, *Japanese Tone Down Year-End Revelry*, THE OTTAWA CITIZEN, Dec. 23, 1996, at A7.

441. Nicholas D. Kristof, *Tokyo Takes Usual Path: Conciliation and Caution*, N.Y. TIMES, Dec. 20, 1996, at A14 [hereinafter Kristof, *Conciliation and Caution*].

442. *Japanese Emperor Cancels Birthday Fete*, THE GLOBE & MAIL (Toronto), Dec. 24, 1996, at A9.

443. *Id.*

The Japanese government was facing a dilemma created by its own vacillation in the face of previous terrorist attacks. "Japan's actions in the 1977 hijacking of a Japan Airlines jet at Dhaka brought a wave of international criticism because the government caved in to the terrorists' demands in exchange for the release of the hostages."<sup>444</sup> In August 1996, Sanyo Electric Company paid a ransom of \$2 million to free its officer, Mamoru Konno, who was kidnapped in Mexico.<sup>445</sup> Japan's dilemma was compounded by its adherence during the summer of 1996 to a Declaration by the Group of Seven [industrialized nations] to cooperate against terrorism.<sup>446</sup>

Prime Minister Hashimoto gave his full attention to the crisis, making twice-daily visits to the task force established at the Japanese Foreign Ministry.<sup>447</sup> Although the details of a ten minute phone conversation between Prime Minister Hashimoto and President Fujimori were not publicized, the Japanese government quoted its Prime Minister as having asked the Peruvian President for information because he was only receiving fragments of news.<sup>448</sup> Prime Minister Hashimoto reportedly told President Fujimori: "I trust you completely."<sup>449</sup>

The Japanese government stressed that the safety of the hostages was a top priority. Nicholas Kristof of the *New York Times* eloquently explained the Japanese dilemma:

As the crisis unfolds in their ambassador's residence in Lima, Japanese officials appear to be nervously looking over the shoulder of President Alberto Fujimori of Peru and calling for a priority on the lives of the hostages.

Japan's first instinct in similar incidents in the past has been to meet the demands of terrorists or kidnappers and win the freedom of hostages. So Japanese officials seem to be apprehensive about what to expect from Fujimori, who has made his reputation by being tough and unrelenting toward domestic terrorists.<sup>450</sup>

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444. *Nervous Japan Walking Tightrope*, THE WEEKEND SUN (Vancouver), Dec. 21, 1996, at A10.

445. Barr, *supra* note 182.

446. *Nervous Japan Walking Tightrope*, *supra* note 444.

447. *Japanese Emperor Cancels Birthday Fete*, *supra* note 442.

448. Nicholas D. Kristof, *For the Japanese, Hostages' Release Must Have Priority*, N.Y. TIMES, Dec. 19, 1996, at A1 [hereinafter Kristof, *Release Must Have Priority*].

449. *Id.*

450. Kristof, *Anxious Japanese*, *supra* note 272.

The policy preferred by the Japanese government has been to proceed carefully and “to negotiate as long as possible before resorting to other measures.”<sup>451</sup>

Japanese anger about the take-over of the diplomatic compound surfaced in the form of violent behavior against Peruvians in Isesaki, north of Tokyo.<sup>452</sup> Prime Minister Hashimoto roundly condemned his countrymen for stoning shops and cars belonging to some of the 15,000 Peruvians who live and work in Japan.<sup>453</sup> There were no injuries reported from these incidents.<sup>454</sup>

### C. *International Reaction*

World reaction was quick to condemn the hostage takers and to urge the government of Peru to remain firm. Journalist Howard LaFranchi of *The Christian Science Monitor* observed that “the Peruvian action is a jolting reminder that some Latin American countries are still ripe territory for extremist groups.”<sup>455</sup> “The hostage-taking brought international condemnation from the Security Council of the United Nations,<sup>456</sup> the Organization of American States, Canada, the US and the EU.”<sup>457</sup> Twelve nations dispatched teams of negotiators to Peru in the event there was a need for their services.<sup>458</sup>

U.S. President Bill Clinton offered assistance to the government of Peru, including the services of the renowned Delta Force hostage rescue team.<sup>459</sup> U.S. Secretary of State Warren Christopher confirmed his nation’s policy against making concessions to terrorists.<sup>460</sup> A team of American security advisors was dispatched by the State Department to Peru.<sup>461</sup> However, *The New York Times* reported on Dec. 22, 1996, that American offers of help had “been rebuffed by Mr. Fujimori who [was] closely keeping his own counsel.”<sup>462</sup> Journalist Clifford Krauss explained the

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451. *Tokyo Rushes to Deal With Crisis in Lima*, *supra* note 235.

452. *Harassment Condemned*, THE TIMES (London), Dec. 26, 1996, at 12.

453. *Id.*

454. *Id.*

455. LaFranchi, *supra* note 27.

456. Brodzinsky & Bowen, *supra* note 426.

457. Cisneros, *supra* note 262.

458. Brodzinsky & Bowen, *supra* note 426.

459. *Peru Rebels Put Off Killings*, *supra* note 259.

460. Brodzinsky & Bowen, *supra* note 426.

461. *Id.*

462. Clifford Krauss, *U.S. Takes Low Profile in Lima Hostage Talks*, N.Y. TIMES, Dec. 22, 1996, at 10 [hereinafter Krauss, *U.S. Takes Low Profile*].

situation between the United States and Peru by reference to "Mr. Fujimori's fiercely independent streak."<sup>463</sup> There was apparently some clandestine American assistance to Peruvian authorities.<sup>464</sup> Peruvian intelligence sources were reported in the press to have confirmed that a U.S. spy plane had flown over the Japanese residence in Lima, gathering information "in case an attack is planned on the guerrillas."<sup>465</sup>

Canadian Foreign Minister Lloyd Axworthy explained his country's policy with respect to terrorism: "To give in to those kinds of demands simply exacerbates or increases the problem."<sup>466</sup> However, in the Canadian media, there was an appreciation of the complexity of the crisis and the near-impossibility of a speedy resolution: "The stakes are enormous in the siege of the Japanese ambassador's residence . . . the options fraught with potential disaster."<sup>467</sup>

The government of the United Kingdom dispatched its SAS anti-terrorist forces and police negotiators to assist the Peruvian government.<sup>468</sup> Germany's counter-terrorist GSG9 organization was also monitoring the crisis.<sup>469</sup> The Pope utilized his weekly address in St. Peter's Square to criticize the guerrillas and to urge them to release the hostages, deeming their actions "deplorable."<sup>470</sup>

A somewhat different perspective was offered by Daniel Ortega, former revolutionary and Sandinista President of Nicaragua.<sup>471</sup> Ortega called the hostage incident a wake-up call for governments in Latin America which had to deal with the growing gap between rich and poor.<sup>472</sup>

The hostage incident also had a detrimental impact on tourism, which normally brings Peru \$700 million per year.<sup>473</sup> European, Mexican, Japanese and United States travellers canceled their plans

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463. *Id.*

464. Jeff Sallot, *Released Canadian No Stranger to Terrorism*, THE GLOBE & MAIL (Toronto), Dec. 19, 1996, at A16.

465. *Id.*

466. *Id.*

467. *Rebels, Hostages Exercise Restraint*, *supra* note 386.

468. Brodzinsky & Bowen, *supra* note 426.

469. Gamini, *Rebels Threaten*, *supra* note 358.

470. *Rome*, THE TIMES (London), Dec. 23, 1996, at 7.

471. *Rebels Declare There Will Be No Further Release of Hostages*, THE IRISH TIMES, Dec. 24, 1996, at 9.

472. *Id.*

473. Bloomberg, *Armed Siege Curtails Tourism*, THE WEEKEND SUN (Vancouver), Jan. 4, 1997, at A12.

to travel to Peru.<sup>474</sup> According to Gabriel Atudela, General Manager of Lima Tours S.A., “[a] terrorist attack has more negative impact on an underdeveloped country like Peru than it does in a place like Paris.”<sup>475</sup>

One serious consequence of this hostage-taking was that it appeared to be a revival of an earlier form of urban terrorism which had specifically targeted embassies and diplomatic personnel. Carol Elder Baumann’s analyses of these ‘diplonnappings’ highlighted the international legal implications with respect to “threats to the principles of diplomatic inviolability, state responsibility for protection, political asylum, and the right of extradition.”<sup>476</sup>

#### *D. The Involvement of the Red Cross*

The Red Cross became an active participant soon after the initial gun battle between the rebels and Peruvian police subsided. About an hour after the attack, Red Cross workers bravely entered the compound to verify the condition of the hostages.<sup>477</sup> As the drama unfolded from hours to days to weeks and months, the international reputation of the Red Cross soared.<sup>478</sup>

Although it was assumed that the Red Cross was undertaking a negotiating or mediating role, the Agency was quick to distance itself from that perception. Mr. Ruben Ortega, International Red Cross spokesman, informed the media from Geneva that the Agency had simply handed the Peruvian government a statement from the rebels.<sup>479</sup> The International Committee of the Red Cross confirmed that the Agency was “acting only as a neutral intermediary.”<sup>480</sup>

This tragic international drama produced some unexpected heroes. One of these was Swiss national Michel Minnig, the recently-arrived Senior Red Cross Representative in Peru.<sup>481</sup>

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474. *Id.*

475. Calvin Sims, *Hostage Crisis Imperils the Growth of Peru's Economy*, N.Y. TIMES, Jan. 5, 1997, at 8 [hereinafter Sims, *Crisis Imperils Economy*].

476. EDWARD F. MICKOLUS (Compiler), THE LITERATURE OF TERRORISM 30-44 (1974), citing Carol Elder Baumann, *The Diplomatic Kidnappings: An Overview*, INTERNATIONAL TERRORISM: PROCEEDINGS OF AN INTENSIVE PANEL AT THE 15TH ANNUAL CONVENTION OF INTERNATIONAL STUDIES ASSOCIATION.

477. Sims, *Guerrillas in Peru*, *supra* note 46.

478. Tim Johnson, *Red Cross Emerges Big Winner in Standoff*, THE OTTAWA CITIZEN, Dec. 31, 1996, at B2 [hereinafter Johnson, *Red Cross*].

479. *Id.*

480. Brodzinsky & Bowen, *supra* note 426.

481. Clifford Krauss, *Aid Worker Wins Fame in Cooling Peru Crisis*, N.Y. TIMES, Dec. 30, 1996, at A8 [hereinafter Krauss, *Aid Worker*].

Minnig was a guest at the Japanese reception; as soon as the attack began, he dodged gunfire and headed for the Tupac Amaru.<sup>482</sup> He quickly identified himself to the guerrillas, "went outside with his hands up and shouted at the police to stop shooting,"<sup>483</sup> and "began mediating with police outside."<sup>484</sup> Minnig was allowed to enter the compound on December 18, 1996, and the hostage takers later allowed Red Cross officials to provide the hostages with food and water as well as a portable x-ray machine for the benefit of the wounded.<sup>485</sup> Thereafter, Minnig played a pivotal role in carrying verbal and written messages between the rebels and the government of Peru.<sup>486</sup> When there were fears about a police raid on the mansion, Minnig spent a night with the hostages, offering himself as a human shield.<sup>487</sup> The mother of hostage Naval Captain Alberto Manuel Heredia Ugarte commended Minnig's efforts and said "they should build a monument to him."<sup>488</sup>

Caring for the welfare of the large group of hostages became an onerous task for the dedicated Red Cross workers who hauled not just food and water but essentials like portable toilets and toiletries<sup>489</sup> for the uncomfortable captives who were crowded into the few rooms of the residence. It was a volatile, dangerous situation and the Red Cross workers should be commended for risking their lives to provide some basic necessities for the hostages. On occasion, shots were fired, presumably by the rebels, while Red Cross officials ministered to the needs of the hostages inside the compound.<sup>490</sup> This sporadic gunfire surely added to the nerve-racking tension felt both inside and outside the Japanese compound.

During the weeks of this ordeal, the Red Cross continued to supply various items to ease the plight of the hostages, "canned meats, greens, fruit, toilet paper, disinfectant, cards, chess sets, dominoes and portable toilets."<sup>491</sup> Most important of all for the hostages was the Red Cross' delivery of messages from fami-

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482. *Id.*

483. Schemo, *126 Days*, *supra* note 283.

484. Sebastian Rotella, *Peru's Men in the Middle*, THE TORONTO STAR, Jan. 10, 1997, at A19 [hereinafter Rotella, *Men in the Middle*].

485. *Peru Rebels Put Off Killings*, *supra* note 259.

486. Krauss, *Aid Worker*, *supra* note 481.

487. Rotella, *Men in the Middle*, *supra* note 484.

488. Johnson, *Red Cross*, *supra* note 478.

489. Goering, *Peru's VIP Captives Sweat It Out*, *supra* note 301.

490. Brodzinsky & Bowen, *supra* note 426.

491. Diebel, *Gradual Freeing Promised*, *supra* note 373.



lies,<sup>492</sup> many of whom pleaded for their safety on Lima television while others (including mothers of the hostages<sup>493</sup>) demonstrated for their release outside the mansion.<sup>494</sup> The “march for peace” drew about 3000 Peruvians. In addition, churches held prayers for the captives.<sup>495</sup>

Eventually, the hostages were provided with blankets and pillows, and daily deliveries of fresh clothing, bottled water and food and messages from families.<sup>496</sup> None of this would have been possible without the intervention of the International Red Cross and the diplomatic tact of its representative Michel Minnig who exuded competence and inspired confidence among all parties.

## VI. Initial Negotiations

### A. *The Release of Ambassadors to Mediate*

The next prisoners' release came at 6:00 p.m. on December 18, 1996.<sup>497</sup> The Ambassadors of Canada, Greece, and Germany, and the Cultural Attache of France were conditionally released by the rebels to negotiate with the Peruvian government.<sup>498</sup> As they left the Japanese Embassy, the four diplomats made a joint statement explaining their situation: “We have been liberated . . . to serve as a bridge to the government and search for a negotiated solution without bloodshed.”<sup>499</sup> A Foreign Affairs spokesman for the Canadian government commented that it was “not a *carte blanche* release. They're out there to negotiate on behalf of the hostage-takers.”<sup>500</sup> The newly-freed Canadian Ambassador, Anthony Vincent, conveyed the welcome news to anxious families waiting outside the compound that there had been no physical violence against the hostages who were being well treated by their captors.<sup>501</sup> The ambassadors wanted to meet President Fujimori but were informed that the latter was too busy. According to journalist

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492. *Id.*

493. Beltrame, *Foreign Captives*, *supra* note 373.

494. Julian Beltrame, *Peru Offers Deal If Rebels Give Up Arms*, THE SUNDAY J., Dec. 22, 1996, at A1 [hereinafter Beltrame, *Peru Offers Deal*].

495. *Rebels Free 225 Hostages*, *supra* note 279.

496. Krauss, *Aid Worker*, *supra* note 481.

497. *Rebels Raid Japanese Ambassador's Residence in Peru, Hold Hundreds Hostage*, *supra* note 92, at 929.

498. *Id.*

499. Rotella, *Canadian Picked*, *supra* note 249.

500. *Canadian Ambassador to Negotiate For Rebels*, *supra* note 229.

501. Brodzinsky & Bowen, *supra* note 426.

Paul Knox of *The Globe & Mail*, “[e]ventually Mr. Vincent was told the government didn’t want mediators.”<sup>502</sup>

Canadian Ambassador Anthony Vincent had served as head of the international counterterrorism branch at the Department of External Affairs in Ottawa between 1988 and 1992.<sup>503</sup> Vincent became a pivotal figure as leader of the diplomatic negotiating team conducting discussions with both the rebels and with the Peruvian government.<sup>504</sup> He later served on a Guarantor Commission established to assist in the search for a peaceful resolution.

Although the diplomatic efforts at resolution were eventually terminated, he continued to return frequently to the Japanese Embassy for discussions with the hostages and with the rebels. After one such visit, on December 19, Vincent commented on the cordiality of discussions with the Tupac Amaru and indicated that the rebels and the hostages had behaved with restraint.<sup>505</sup> “People are behaving magnificently,” he said to reporters eager for any word on the condition of the captives.<sup>506</sup> Ambassador Vincent wryly added that the residence was in darkness when he entered early one morning, the hostages being asleep on the floor.<sup>507</sup> “The only sound I heard was of 400 men snoring,” commented the Canadian envoy.<sup>508</sup>

Vincent continued on his own initiative to involve himself in this situation because he was apprehensive about the fate of the hostages, many of whom were his personal friends. The rebels obviously trusted him because he was allowed to enter and exit the mansion freely throughout the crisis. Although the Peruvian government had ended the ambassadorial mediation mission,<sup>509</sup> he continued in an individual capacity to visit the hostages in an effort to cheer them up and buoy their flagging spirits.

Vincent was convinced that whether or not their cause was legitimate, the terrorist methods of the guerrillas were “utterly unacceptable,” and he remained committed to the policy of not

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502. Paul Knox, *Canadian Role in Peruvian Crisis Grows*, THE GLOBE & MAIL (Toronto), Feb. 17, 1997, at A7 [hereinafter Knox, *Canadian's Role*].

503. Jeff Sallot, *Canadian Diplomat Known as Cool*, THE GLOBE & MAIL (Toronto), Dec. 19, 1996, at A1.

504. *Ambassador Freed But Not Free*, WINNIPEG FREE PRESS, Dec. 19, 1996, at A1.

505. *Hostages Jam-Packed, Standoff Continues*, *supra* note 288.

506. *Id.*

507. *Id.*

508. *Id.*

509. Juliet O’Neill, *Ambassador Feels Personally Responsible For Disastrous End to His Cocktail Party*, THE VANCOUVER SUN, Jan. 3, 1997, at A12.

yielding to terrorist demands.<sup>510</sup> Commenting on the operation, he said: "I think it was painstakingly planned, well led, well disciplined and an utterly unacceptable way of trying to influence events in a country with a democratically elected government, which Peru is. But within the narrow context of a planned operation, it was certainly extremely effective."<sup>511</sup>

### B. *The Rebels Impose Deadlines*

"If I were a terrorist," said one Western diplomat, "I would set deadlines constantly and keep everyone on edge and push the negotiations."<sup>512</sup> The hostage-takers used this carrot/stick approach to generate a state of maximum tension both for the hostages and for the Peruvian authorities. The rebels "oscillated between threats to kill the hostages and promises to release them in exchange for medicine and other concessions."<sup>513</sup> *The New York Times* quoted an anonymous Western diplomat commenting on the youth of the hostage-takers and on their devotion to their cause, adding that the captors had "told the hostages that they are not afraid to shoot them."<sup>514</sup>

At 10:20 a.m. on December 18, 1996, the rebels contacted radio and television stations to threaten the execution of hostages if their comrades were not released from Peruvian prisons.<sup>515</sup> They threatened at noon that same day to commence the executions within twenty minutes, selecting Francisco Tudela, Peru's Foreign Minister, as the first victim.<sup>516</sup> However, the deadline passed without incident.<sup>517</sup> In fact, shortly after noon the guerrillas released two elderly Japanese male hostages.<sup>518</sup> That same day, hostages were allowed to make phone calls to their families on ten cellular phones delivered to the rebels.<sup>519</sup>

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510. *Id.*

511. *Id.*

512. Krauss, *Rebels Release 38*, *supra* note 371.

513. Rotella, *Canadian Picked*, *supra* note 249.

514. Krauss, *Diplomats*, *supra* note 41.

515. *Champagne and Hors d'Oeuvres, Then Dynamite and Hostages*, *supra* note 352.

516. *Id.*

517. *Peru Rebels Put Off Killings*, *supra* note 259.

518. *Champagne and Hors d'Oeuvres, Then Dynamite and Hostages*, *supra* note 352.

519. Goering, *Peru's VIP Captives Sweat It Out*, *supra* note 301.

### C. *The Appointment of a Peruvian Negotiator*

It became evident early in the crisis that the Peruvian government was ill-equipped to handle this type of situation. In fact, Peru lacked a trained military hostage rescue force and had in place no experienced Peruvian negotiating team to deal with the emergency.<sup>520</sup>

There was considerable consternation internationally at the selection by President Fujimori of Domingo Palermo as Chief Negotiator with the rebels. Mr. Palermo was regarded as a low-profile member of the Cabinet.<sup>521</sup> The concern was not so much a reflection on Mr. Palermo, who served at that time as Peru's Education Minister, as apprehension that the selection implied that President Fujimori was "contemplating a commando-style raid to free the hostages"<sup>522</sup> and was probably not overly serious about a negotiated solution. Mr. Palermo was known to have had no experience in dealing with terrorists.<sup>523</sup>

The guerrillas had initially demanded that the Peruvian President negotiate personally with them.<sup>524</sup> This demand was not acceptable to Fujimori, a fact which became clear within days of the terrorists' assault on the diplomatic compound.<sup>525</sup>

### D. *Arrival of Japanese Foreign Minister*

Japanese Foreign Minister Yukihiko Ikeda's arrival in Lima on December 19, 1996, provided further confirmation of just how seriously Tokyo viewed the invasion of their Ambassador's residence.<sup>526</sup> News reports indicated that he brought a delegation of over 100 people with him.<sup>527</sup> However, regardless of the timeliness of Mr. Ikeda's visit to Lima, some Japanese officials had misgivings about his trip. If Mr. Ikeda's mission was to persuade President Fujimori to yield to the rebels' demands, this was likely to play badly as an indication of Japanese weakness in both Lima and Washington.<sup>528</sup> Gabriella Gamini, writing for *The Times*

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520. Sims, *Peru Dismissed Warning*, *supra* note 242.

521. Cawthorne, *Fujimori Under Big Pressure*, *supra* note 419.

522. *Peru Rebels Put Off Killings*, *supra* note 259.

523. *Id.*

524. Brodzinsky & Bowen, *supra* note 426.

525. *Id.*

526. *Hostages Jam-Packed, Standoff Continues*, *supra* note 288.

527. *Id.*

528. Kristof, *Conciliation and Caution*, *supra* note 441.

(London) from Peru, stated that Ikeda “looked uneasy during an hour-long meeting with Senor Fujimori.”<sup>529</sup> Clifford Krauss of *The New York Times* deemed the Peruvian reception of Mr. Ikeda “tepid.”<sup>530</sup>

That there was a growing difference of opinion between Fujimori and the Japanese government became evident shortly after Foreign Minister Ikeda’s visit to Lima. “A top Japanese government official in Tokyo said . . . there was a ‘wide gap’ between the two countries on how to end the crisis.”<sup>531</sup> Although the disagreement was not confirmed by Foreign Ministry spokesmen either in Lima or in Tokyo, indications of a hardline by Fujimori seemed to emerge as a direct negative consequence to Foreign Minister Ikeda’s intervention in favor of a peaceful resolution. On December 20, 1996, the Peruvian Cabinet formally rejected the demand for the release of the imprisoned rebels.<sup>532</sup> Following a meeting with Ikeda, President Fujimori confirmed that same day that Peru would not yield to the demands of the rebels,<sup>533</sup> and said that “in Peru we have taken a tough stand against insurgents and will continue to do so.”<sup>534</sup>

The extent of Japanese private persuasion on Fujimori to exercise restraint is unknown. That there was some such pressure may be gauged by the fact that the Peruvian President waited until April 1997 to storm the compound. Of course, it could also be argued that he made effective use of the intervening period to order the training of an elite force for that operation. Seiroku Kajiyama, Chief Spokesman for the Japanese government, admitted to journalists that “Japan and Peru are very far apart on ideas” regarding the resolution of the crisis and that there would “be no major progress unless those differences are adjusted.”<sup>535</sup> Peruvian frustration with Japan was reflected in a December 20, 1996, headline in the Lima daily *Ojo*: “We Are Not a Colony of the Japanese.”<sup>536</sup>

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529. Gamini, *Hard Man*, *supra* note 169.

530. Clifford Krauss, *Peruvian Rebels’ Silence Seems to Heighten Deadlock*, N.Y. TIMES, Dec. 23, 1996, at A6 [hereinafter Krauss, *Peruvian Rebel’s Silence*].

531. *Peru Rebels Set a Deadline For Freeing of Their 400 Comrades*, THE IRISH TIMES, Dec. 21, 1996, at 1.

532. *Id.*

533. *Id.*

534. Gamini, *Hard Man*, *supra* note 169.

535. Lewis, *Terrorists Threaten Killing Today*, *supra* note 365.

536. Linda Diebel, *Rebels Free 38 Hostages*, TORONTO STAR, Dec. 21, 1996, at A1.

*E. More Releases*

On December 19, 1996, the rebels released four hostages on medical grounds.<sup>537</sup> One was a Red Cross official, one was identified as the Chairman of Nissan Co. in Peru, and the two others were Peruvians of Japanese origin.<sup>538</sup> Journalists reported that the men looked dazed and walked slowly.<sup>539</sup> A wheelchair had to be provided for one of the liberated captives.<sup>540</sup>

During the night of December 20, 1996, the rebels released an additional thirty-eight hostages.<sup>541</sup> This group included the Ambassadors of Brazil, South Korea and Egypt along with a number of Peruvian legislators.<sup>542</sup> Ian Lewis of Southam Newspapers reported that the "congressmen were apparently asked by hostages to represent them in talks with the government."<sup>543</sup> The Tupac Amaru rebels promised more releases in return for being allowed to talk to their imprisoned colleagues.<sup>544</sup>

Conditions in the residence were reported to be dismal. Ambassador Vincent explained the problem of "380 men of different nationalities . . . confined in an area in which six people normally live."<sup>545</sup>

On December 21, 1996, Nestor Cerpa informed a local television station via shortwave radio that there would be further releases in stages, explaining: "The majority [of the hostages] who are not tied to the politics of the government we are going to free gradually and [for] those who are connected to government functions everything will depend on the will of the government."<sup>546</sup>

Some released hostages provided particulars of an interesting facet of the rebel mindset. The former captives indicated that

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537. *Canadian Works To Free Peru Hostages*, *supra* note 364.

538. *Four More Released as Peruvian Drama Goes On*, THE VANCOUVER SUN, Dec. 20, 1996, at A1.

539. *Hostages Jam-Packed, Standoff Continues*, *supra* note 288.

540. *Id.*

541. *Peruvian Guerrillas Free More Hostages*, THE WEEKEND SUN (Vancouver), Dec. 21, 1996, at A1.

542. *Id.*

543. *Lewis, Terrorists Threaten Killing Today*, *supra* note 365.

544. *Canadian Ambassador Announces the End of Envoys' Humanitarian Mission*, *supra* note 369.

545. *Diebel, Rebels Free 38 Hostages*, *supra* note.

546. *Beltrame, Peru Offers Deal*, *supra* note 536.

commandos had expressed a willingness to "lay down their arms permanently if they could form a legal political party."<sup>547</sup>

*F. The Termination of the Ambassadorial Mediation Mission*

President Fujimori was "determined to end the parallel negotiating role being played by Vincent [Canadian Ambassador] and three other foreign ambassadors."<sup>548</sup> A diplomat corroborated this, stating that "The president is not pleased by this group. They were, after all, appointed by the terrorists rather than by his government and they are not within his system."<sup>549</sup> Accordingly, Ambassador Vincent announced during the evening of December 20 that the ambassadorial mission was now completed, adding that he remained "committed to the safety and well-being of the hostages."<sup>550</sup> Vincent had also commented about his perceptions of the rebels, stating "They are very determined people, very well-trained and, from what I saw, very well-disciplined."<sup>551</sup> Ambassador Vincent explained that the rebels had told him that "if bloodshed was necessary, it would occur, but that they did not kill unnecessarily."<sup>552</sup> Vincent also provided the world with his own acute insight into the rebel leader, Nestor Cerpa: "[Cerpa] is not your arch-typical South-American, intellectual revolutionary at all. He's calm, able to express himself in a not verbose way, he's obviously deeply committed to his cause, is prepared to risk his life and exerts full disciplinary control over his followers."<sup>553</sup>

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547. *Fujimori Takes Hard Line With Rebels Over Hostages*, THE IRISH TIMES, Dec. 23, 1996, at 13. This idea was not wildly unrealistic given the situation prevailing in neighboring Latin America countries. In Nicaragua, Sandinista rebels and guerrillas emerged from a violent background to form the government, even won elections and ruled the country for a decade. *Rebels May be Angling for a Political Role in Peru*, THE EDMONTON J., Dec. 23, 1996, at A4. In Colombia, the much-feared M-19 rebels decided in 1990 to form a political movement and participate in elections. *Id.* Members of Venezuela's MAS group—a former leftist guerrilla movement—wound up in the Cabinet as the rebels converted themselves into a legal political party. *Id.* The Tupamoros rebels of Uruguay formed part of the Broad Front leftist coalition and filled seats as congressmen, aldermen and members of municipal councils. *Id.* Mexico's Zapatistas deliberately created a civilian political front to further their agenda of reform for indigenous people. *Id.* Most recently after a brutal civil war, Guatemalan rebels made peace and joined the legitimate political process of their country.

548. *Canadian Ambassador Announces the End of Envoys' Humanitarian Mission*, *supra* note 369.

549. *Id.*

550. *Id.*

551. Diebel, *Rebels Free 38 Hostages*, *supra* note 536.

552. Beltrame, *Peru Offers Deal*, *supra* note 494.

553. Beltrame, *Peru*, *supra* note 254.

G. *The International Law Issue of Japanese Sovereignty Over Its Embassy*

Emphasizing the priority of human life in such terrorist situations, the Japanese continued to stress the need to save all the hostages and not sacrifice any lives in the pursuit of a military solution. The Japanese were also prompted by the fact that their compound in Peru is regarded in international law as sovereign Japanese territory. As such, the Peruvian government would legally require the consent of Japan before it could attack the building to free the hostages. Japanese analysts had estimated that the casualty rate among hostages would be high in any military attack<sup>554</sup> and hence the government of Japan favored a negotiated solution.

Interestingly, one of the compromise solutions surfacing in diplomatic circles during the crisis attempted to take advantage of Japan's position in international law. This solution was "an arrangement in which the Japanese government would exercise its sovereignty over the residence and would agree to transport the rebels to a safe country if they free[d] the hostages."<sup>555</sup>

An additional issue of international law concerns Peru's responsibility to protect the person and property of foreign diplomats stationed in that country. On a basis of reciprocity, such protection is theoretically perceived as part of diplomatic tradition and custom, although admittedly, in practice, it would be virtually impossible for any nation to provide round-the clock safety for every diplomat stationed within its borders. Terrorist kidnappings of diplomats pose a particular threat, not merely to the individuals victimized but to the very concept of diplomacy as it is exercised globally. Carol Baumann's incisive analysis of diplomatic kidnappings aptly summarized the legal dilemmas raised by such hostage-taking situations:

Legally, the kidnappings infringe upon the personal inviolability, privileges and immunities of diplomatic representatives and call into operation the indirect responsibility of states to provide special protection for them and to prevent such violations . . . .

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554. Calvin Sims, *Peru Officials Admit to Plan For Commando Raid on Embassy*, N.Y. TIMES, Feb. 17, 1997, at 3 [hereinafter Sims, *Officials Admit to Plan*].

555. Calvin Sims, *No Progress Is Reported in Peru Talks on Hostages*, N.Y. TIMES, Dec. 24, 1996, at A6 [hereinafter Sims, *No Progress*].



Politically, the kidnappings impair the normal conduct and flow of international diplomacy and diplomatic contacts between states upon which amicable and regularized international relations rest. Morally, they are repugnant to such human concepts as the freedom and dignity of life and liberty, the rule of law and order, and the belief in 'fair play.'<sup>556</sup>

#### H. *Offers of Asylum for the Rebels*

Baumann also suggested that historic practice in such incidents in Latin America has emphasized the concept of political asylum for the perpetrators as one facet of a resolution of such crises and indicated that the idea of asylum has its strongest advocates in Latin America.<sup>557</sup> On December 19, 1996, two days after the assault on the Japanese Embassy, Abdala Bucaram, the President of Ecuador expressed his readiness to offer asylum to the rebels.<sup>558</sup>

The possibility of providing a safe external haven for the rebels appeared fairly early as a peaceful and viable solution to the crisis. Ian Lewis of Southam newspapers wrote in a report published on December 21, 1996, that the rebels wanted transportation to either the Peruvian jungle or to "a Latin American country willing to guarantee they won't be turned over to Peruvian authorities."<sup>559</sup> In addition, the possibility of refuge in Cuba for the guerrillas had been proposed by the Japanese.<sup>560</sup> However, one of the freed hostages, Peruvian Congressman Javier Diaz Canseco, said that he did not think that Cuba would "pay the enormous political price" involved in providing refuge for the guerrillas.<sup>561</sup> Alejandro

556. CAROL ELDER BAUMANN, *THE DIPLOMATIC KIDNAPPINGS* 164 (1973).

557. *Id.* at 140.

558. *Canadian Works to Free Peru Hostage*, *supra* note 364.

559. Lewis, *Terrorists Threaten Killing Today*, *supra* note 365.

560. Krauss, *Rebels Release 38*, *supra* note 371.

561. *Cool Response to Yeltsin's Offer*, *THE IRISH TIMES*, Dec. 25, 1996, at 7. Cuba does, however, have a unique history of accepting left-wing rebels involved in terrorist activities. As Ross E. Butler commented, "Castro has repeatedly voiced his support for guerrilla warfare in Latin America." Ross E. Butler, *Terrorism in Latin America*, in YONAH ALEXANDER, *INTERNATIONAL TERRORISM: NATIONAL, REGIONAL AND GLOBAL PERSPECTIVES* 47 (1976). In 1980, the Colombian group M-19 attacked a party at the Dominican Embassy and took a number of hostages. Calvin Sims, *Peru Leader Says Castro Will Give Asylum to Rebels*, *N.Y. TIMES*, Mar. 4, 1997, at A10 [hereinafter Sims, *Castro*]. M-19 also demanded freedom for imprisoned comrades and a large ransom, but eventually settled for refuge in Cuba and a smaller monetary amount. *Id.* Earlier, in 1974, Nicaraguan Sandinista rebels stormed a Christmas party and took hostages. *Id.* The eventual resolution of that raid included refuge for the guerrillas in Cuba. *Id.*

Toledo, a former Peruvian presidential candidate and a freed hostage, recounted that the rebels had considered and mentioned the possibility of asylum in Denmark or Sweden; however, the Swedish government denied any knowledge of this idea.<sup>562</sup>

## VII. Searches for a Solution

### A. Fujimori Offers a Solution

On December 21 1996, President Fujimori, in his first public statement to his nation on the crisis, proposed what he called a "way out" for the guerrillas.<sup>563</sup> He indicated that if the rebels laid down their arms to a guarantor committee and freed all the hostages, he would not authorize the use of force against them.<sup>564</sup> Fujimori also condemned the guerrillas for wanting "a dialogue while putting an AK-47 to the necks of the hostages."<sup>565</sup> Journalist Julian Beltrame believed that the Peruvian government had "bowed to Japanese pressure by ruling out a commando raid to free the hostages."<sup>566</sup> However, with respect to the Tupac Amaru demand for the release of prisoners, President Fujimori made it very clear that "freeing people who commit murders and terrorist attacks is unacceptable."<sup>567</sup> Interestingly, Japanese Prime Minister Hashimoto supported Fujimori's firm stance and recalled Foreign Minister Ikeda to Tokyo.<sup>568</sup>

The same day, rebel leader Nestor Cerpa publicly announced that he would gradually free all captives not linked to the Peruvian government, stating: "The gentlemen connected to the government we will treat in the best conditions, within our possibilities. Their liberation will depend only on the willingness of the government to reach a solution that could possibly be a milestone in the political life of this country."<sup>569</sup> Cerpa also included Japanese diplomats

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Prominent among the rebels seeking haven with Castro was Daniel Ortega, who toppled his adversary from power and assumed the leadership of Nicaragua five years later. *Id.*

562. COOL RESPONSE TO YELTSIN'S PERU OFFER, THE IRISH TIMES, Dec. 27, 1996, at 7.

563. Beltrame, *Peru Offers Deal*, *supra* note 494.

564. *Id.*

565. Diebel, *Gradual Freeing Promised*, *supra* note 373.

566. Beltrame, *Foreign Captives*, *supra* note 373.

567. Gabriella Gamini, *Tough Fujimori Spurns Demands of Rebel Gunmen*, THE TIMES (London), Dec. 23, 1996, at 7 [hereinafter Gamini, *Tough Fujimori*].

568. *Id.*

569. Beltrame, *Foreign Captives*, *supra* note 373.

and Japanese corporate businessmen among those who would not be freed.<sup>570</sup>

True to his word, Cerpa released 225 hostages, including a number of foreign diplomats<sup>571</sup> just before 10:00 p.m. on Sunday, December 22, 1996.<sup>572</sup> Seven officials of the United States Embassy were included in the release, an action welcomed by President Clinton.<sup>573</sup> Some of the "tired and wan" liberated hostages smiled and waved as they left the residence.<sup>574</sup> This group of hostages "recounted an odd ending to their captivity, saying some guerrillas had given quick hugs to some of the departing hostages—a sense of shared experience felt by the captives, too."<sup>575</sup> Canadian mining engineer Kieran Metcalfe was among the released and commented that approximately half of the freed hostages shook hands with the rebels, many of them wishing them good luck.<sup>576</sup> He did not participate in this farewell.<sup>577</sup>

Among the hostages freed was Sando Fuente, former Labor Minister for Peru, who read a statement from Cerpa which defined the release as a "Christmas gesture" made despite the "confrontational remarks" of President Fujimori.<sup>578</sup> The statement reiterated the demand for the release of imprisoned members of the Tupac Amaru, making this the pivotal condition for the release of the Peruvian hostages.<sup>579</sup>

The Japanese Prime Minister expressed reservations about the consequences of the release.<sup>580</sup> Far from feeling relief, Hashimoto felt that the tension had now increased. "The fact that they've released two-thirds of the hostages means, in effect, that

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570. Diebel, *225 Hostages Set Free* note 9.

571. Stott, *supra* note 360.

572. *Id.*

573. Sims, *No Progress*, *supra* note 555.

574. *Rebels Free 225 Hostages*, *supra* note 279.

575. *Hostage Release Raises Tension, Japanese PM Says*, *supra* note 313. One could speculate that the relationship which grew between the hostages and their captors was some variant of the Stockholm Syndrome, a term coined to refer to the bond of identification that appears to develop in prolonged hostage situations between the captives and their kidnapers. Aston, *supra* note 74, at 83. A 1973 hostage-taking incident in a bank in Stockholm, Sweden, concluded with the victims expressing a "strong attachment to their captors, to the point of refusing to testify against them." Marshall D. Bell, *Hostage Negotiations*, in *CONTEMPORARY TERRORISM* 229-230 (John D. Elliott & Leslie K. Gibson eds., 1978).

576. *Hostage Release Raises Tension, Japanese PM Says*, *supra* note 313.

577. *Id.*

578. *Rebels Free 225 Hostages*, *supra* note 279.

579. Stott, *supra* note 360.

580. *Hostage Release Raises Tension, Japanese PM Says*, *supra* note 313.

they've pared it down to a number they can control," explained the Prime Minister.<sup>581</sup>

However, there were still approximately 140 Peruvian, Japanese and other hostages remaining in captivity.<sup>582</sup> Among the diplomats still being held were the Ambassadors of Japan, the Dominican Republic, Bolivia, Guatemala, Honduras, Uruguay and Malaysia.<sup>583</sup> Journalist Linda Diebel explained the political implications: "The Peruvians stand for a government the rebels despise, while the Japanese apparently represent a government that has pumped over \$2.6 billion to help President Alberto Fujimori keep Peru under a tight grip."<sup>584</sup> From the perspective of the rebels, while the Peruvians were "the real target," the Japanese hostages could counter and curb Fujimori's "instinct to attack the residence."<sup>585</sup>

The newly liberated hostages sadly described "the looks of wistful envy on the faces of those who remained captives."<sup>586</sup> These men, forced by either their nationality or their professional significance to continue as prisoners of the rebels, watched their colleagues leave the mansion and return to normal lives outside.

One of the hostages scheduled for release refused to leave and volunteered to remain behind.<sup>587</sup> Catholic priest Juan Julio Wicht, who normally works in a suburb of Lima, bravely offered his place among the freed to someone else.<sup>588</sup> Father Wicht remained in the residence throughout the long ordeal.<sup>589</sup>

### B. Hostages Appeal

For the rebels, one of the most politically significant catches in this treasure trove of hostages was Peruvian Foreign Minister Francisco Tudela. Ironically, this hostage crisis brought him world attention and admiration for his grace and dignity under pressure. Freed Canadian hostage Andre Deschenes described Tudela as "an

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581. *Id.*

582. Gabriella Gamini, *Rebels Free 225 Captives to Dig in for Long Siege*, THE TIMES (London), Dec. 24, 1996, at 7 [hereinafter Gamini, *Rebels Free 225*].

583. Sims, *No Progress*, *supra* note 555.

584. Diebel, *225 Hostages Set Free By Peru Rebels*, *supra* note 9.

585. Diebel, *Hostage Hell*, *supra* note 116.

586. *Hostage Release Raises Tension, Japanese PM Says*, *supra* note 313.

587. Linda Diebel, *Peru Prohibits Red Cross From Visiting Jailed Rebels*, THE TORONTO STAR, Dec. 27, 1996, at A4 [hereinafter Diebel, *Peru Prohibits Red Cross*].

588. *Id.*

589. *Id.*

inspiration to all of us. A courageous, wonderful personality who contributed greatly to our sense of well-being and to our confidence.”<sup>590</sup> Another hostage, Jose Diaz, Ambassador for the Dominican Republic, praised Tudela for his attitude and his courage and added that “[a]ll Peruvians should be proud of their foreign minister.”<sup>591</sup> On December 21, 1996, Lima television aired an appeal from Tudela for direct communication between his government and the rebels.<sup>592</sup> Ambassador Aoki also publicized his appeal for negotiations, emphasizing the “atrocious conditions” inside the mansion and the fact that there were “many seriously sick people” in his home.<sup>593</sup>

Efforts at mediation by several ambassadors who had been freed had failed.<sup>594</sup> As journalist Clifford Krauss aptly commented: “What appears to be emerging is something akin to a high-stakes chess game between Mr. Fujimori and Nestor Cerpa Cartolini, the Tupac Amaru rebel commander, with each countering the other with purposefully ambiguous moves.”<sup>595</sup>

### C. Two More Ambassadors Freed

The first country to come to amicable terms with the rebels in Peru was Uruguay, which literally bartered its ambassador’s freedom in exchange for two Tupac Amaru rebels who were incarcerated in that country.<sup>596</sup> Ambassador Tabare Bocalandro of Uruguay was freed from the Japanese mansion during the evening of December 24, 1996, a few hours after a judge in Uruguay ordered the release of two suspected Tupac Amaru guerrillas from a prison in Montevideo.<sup>597</sup> An infuriated President Fujimori recalled his Ambassador from Uruguay, commenting that “[i]t is despicable to give terrorists the idea that we are ready to make deals with them. Such impressions signify a setback in the crisis; I am not going to give in.”<sup>598</sup>

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590. Diebel, *Hostage Hell*, *supra* note 116.

591. Andrew Cawthorne, *Rebels Soften Stand on Hostages*, THE GLOBE & MAIL (Toronto), Dec. 30, 1996, at A10 [hereinafter Cawthorne, *Rebels Soften Stand*].

592. Gamini, *Tough Fujimori*, *supra* note 567.

593. *Id.*

594. Krauss, *Peruvian Rebels’ Silence*, *supra* note 530.

595. *Id.*

596. Gabriella Gamini, *Lima Hostages Pray as Talks Remain Stalled*, THE TIMES (London), Dec. 26, 1996, at 12 [hereinafter Gamini, *Hostages Pray*].

597. *Id.*

598. *Id.*

Fujimori's rage at this release was echoed in Peru's media which recalled that Uruguay was party to a Latin American declaration not to yield to terrorist demands.<sup>599</sup> Japan also criticized Uruguay for making a deal with the rebels.<sup>600</sup> Prime Minister Hashimoto expressed his apprehensions concerning the release of the remaining hostages and concluded that the "inevitable result [was] that negotiations [would] be even more difficult."<sup>601</sup>

However, Julio Sanguinetti, President of Uruguay, denied the existence of any negotiations with the Tupac Amaru and rejected the notion of a connection between the freeing of his Ambassador in Lima and the release of rebels in Uruguay, insisting that "[f]reeing the Peruvians was strictly a judicial ruling."<sup>602</sup> There was, however, a connection between the imprisoned rebels in Uruguay and the guerrillas holding the Japanese residence in Lima. The two released Tupac Amaru rebels were suspected of involvement in the kidnapping of a former Bolivian Cabinet Minister.<sup>603</sup> The politician was released after payment of a ransom allegedly negotiated for the Tupac Amaru by Nestor Cerpa.<sup>604</sup>

On December 26, 1996, the Ambassador of Guatemala, Jose Maria Argueta, was released by the rebels as a Tupac Amaru endorsement of the peace talks in Guatemala between the government and leftist forces.<sup>605</sup> This release came a few days before the signing of a historic accord between warring factions in Guatemala, an agreement which would end a bloody and brutal civil war which had raged for 36 years,<sup>606</sup> and brought death to at least 140,000 people.<sup>607</sup> The peace accord would bring former rebels in the Guatemalan National Revolutionary Unity movement into "normal political life."<sup>608</sup>

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599. Robert Russo, *Canada Might Get Role in Peru Standoff*, MONTREAL GAZETTE, Dec. 26, 1996, at B1.

600. Clifford Krauss, *Envoy Released in Peruvian Standoff*, THE VANCOUVER SUN, Dec. 27, 1996, at A12 [hereinafter Krauss, *Envoy Released*].

601. *Peruvian Rebels Free Guatemalan Ambassador*, THE GLOBE & MAIL (Toronto), Dec. 27, 1996, at A8.

602. *Id.*

603. Krauss, *Guerrillas Release One of Six*, *supra* note 97.

604. *Id.*

605. *Rebels Free Guatemalan Diplomat in Peru Siege*, THE IRISH TIMES, Dec. 25, 1996, at 1.

606. *Peruvian Rebels Release 225 Hostages From Japanese Ambassador's Residence*, FACTS ON FILE, Dec. 26, 1996, at 945.

607. *Peruvian Rebels Free Guatemalan Ambassador*, *supra* note 601.

608. *Rebels Free Guatemalan Diplomat in Peru Siege*, *supra* note 605.

In the Peruvian hostage crisis, some of the freed dignitaries told reporters that the guerrillas inside the residence had spoken to them "of longing to integrate into Peru's political system, the way the Guatemalan guerrillas and so many other rebel groups have done around Latin America in recent years."<sup>609</sup> The release of the Guatemalan Ambassador reflected that desire.<sup>610</sup> Peruvian journalist Gustavo Gorriti expressed his belief that "the objective of the rebels was to negotiate a new role in Peruvian society after years of military defeats and the capture of most of their leaders and members."<sup>611</sup> However, continued Gorriti, the guerrillas probably felt that before such a settlement could be reached, an act of force was necessary or no one would "concede them anything."<sup>612</sup>

There was also a reported attempt underway by the Malaysian government to free its Ambassador Ahmad Mokhtar Selat.<sup>613</sup> The rumors were reinforced by the sudden arrival in Lima on December 26, 1996, of the Malaysian Foreign Minister Abdullah Badawi.<sup>614</sup> Mr. Badawi's visit to Peru was very brief, and his Ambassador was released by the rebels shortly after his own departure from Lima.<sup>615</sup> However, "there was no immediate indication that a separate deal was reached between the rebels and the Malaysian government for his release."<sup>616</sup>

#### *D. International Offers of Help*

Although there were apparently no Russian hostages held in the Japanese Ambassador's residence,<sup>617</sup> Russian President Boris Yeltsin decided to become involved in the crisis by proposing in a series of letters that Russia and the Group of Seven (industrialized nations) send anti-terrorism security units to Peru if that govern-

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609. Krauss, *Guerrillas Release One of Six*, *supra* note 97.

610. Krauss, *Envoy Released*, *supra* note 600.

611. Krauss, *Guerrillas Release One of Six*, *supra* note 97. A violent explosion that same day, hours before the release of the Guatemalan ambassador, was thought to have been caused by an animal tripping on a land mine or booby trap planted in the garden by the guerrillas. Krauss, *Envoy Released*, *supra* note 600.

612. *Id.*

613. Clifford Krauss, *No Progress as Guerrillas in Peru Free A Captive*, N.Y. TIMES, Dec. 26, 1996, at A8 [hereinafter Krauss, *No Progress*].

614. Krauss, *Guerrillas Release One of Six*, *supra* note 97.

615. Clifford Krauss, *Peru Rebels Free 20 More Hostages; 83 Are Still Held*, N.Y. TIMES, Dec. 29, 1996, at 1 [hereinafter Krauss, *83 Are Still Held*].

616. *Id.*

617. Russo, *supra* note 599.

ment asked for assistance.<sup>618</sup> The intended purpose of such a multi-national force would be to liberate the hostages.<sup>619</sup> The proposal also included the establishment of a joint headquarters composed of the Group of Seven and Russia.<sup>620</sup> The letters were sent to President Fujimori and leaders of the United States, Great Britain, France, Germany, Italy, Japan and Canada.<sup>621</sup> Mr. Yeltsin stated that “[t]he situation in Lima requires that we should show in practice how we are able to act in order to help defenseless people who have become victims of terrorists.”<sup>622</sup>

The United States deemed the Russian proposal “inappropriate.”<sup>623</sup> The United Kingdom was cautious in its reaction because its two nationals taken hostage had already been released.<sup>624</sup> A spokesman for the British Foreign Office suggested that “[i]f the Russians feel they have something to contribute or to offer to the Peruvians, then it is a matter for them and the Peruvians.”<sup>625</sup> The Peruvian government did not officially respond to Yeltsin’s suggestion.<sup>626</sup>

It is rather hard to escape the conclusion that Yeltsin’s action was more an attempt to resume a key role internationally following his quintuple bypass surgery<sup>627</sup> than a well-thought out plan to resolve the crisis. The sudden arrival in Lima of crack anti-terrorist troops forming a multi-national force could have panicked the guerrillas inside the compound and provoked violent reprisals against the hostages. The situation in Lima was so delicate and fragile that such gestures of political grand-standing were extremely dangerous. Evidently, the Russian President was simply trying to take advantage of a tense stand-off to gain some world attention and publicity for himself.

Additional efforts to end the crisis were described by journalist Linda Diebel of *The Toronto Star*: “The Japanese newspaper Mainichi Shimbun reported yesterday [December 25] a group of countries, including Canada, were contacted by Cuba about

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618. *Cool Response to Yeltsin’s Peru Offer*, *supra* note 562.

619. *Id.*

620. *Id.*

621. *Id.*

622. Krauss, *No Progress*, *supra* note 613.

623. *Cool Response to Yeltsin’s Peru Offer*, *supra* note 562.

624. *Id.*

625. *Id.*

626. *Peruvian Rebels Stand Firm as World Pressure Grows*, *THE IRISH TIMES*, Dec. 28, 1996, at 6.

627. Krauss, *No Progress*, *supra* note 613.



participating to end the crisis."<sup>628</sup> However, the Canadian government denied any role in such a plan.<sup>629</sup> Exile for the guerrillas was being perceived as the only viable peaceful solution. Peruvian media suggested that the guerrillas could be escorted by a delegation of ambassadors to guarantee safe passage out of Peru.<sup>630</sup> Argentinean President Carlos Menem said: "I don't see any other way out," and suggested that a commission of nations guarantee "the life and exit from Peru of these subversives."<sup>631</sup>

The initiative for a resolution was soon taken over by Japan, and gained support from a number of nations. Japanese Foreign Minister Yukihiko Ikeda commented in letters to various governments that "[i]t is necessary for the international community to act as one to help resolve this crisis."<sup>632</sup> The Group of Seven and Russia condemned the hostage-taking, expressed support for the Peruvian government's efforts to resolve the crisis peacefully, and confirmed that there should be no concessions to terrorists.<sup>633</sup> The Group of Seven also expressed its readiness to assist the government of Peru in any appropriate manner.<sup>634</sup>

#### *E. Christmas in Captivity*

Sympathy for the plight of the hostages dominated the end-of-year festivities in Peru. A young Peruvian woman, Nancy Dulando, echoed the opinion of most of her countrymen when she told reporters that "[n]one of us in Peru can have a really happy Christmas until these poor people are free."<sup>635</sup>

Vigorous efforts were made to provide as cheerful a Christmas as possible for the men in captivity. A sumptuous repast was delivered to the Japanese residence by President Fujimori's daughter Keiko Sofia, honorary First Lady of Peru.<sup>636</sup> She arrived in an armored black Mercedes leading a fleet of vans from

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628. Linda Diebel, *Canada's Help Sought in Peru Crisis: Paper*, THE TORONTO STAR, Dec. 26, 1996, at A29 [hereinafter Diebel, *Canada's Help Sought*].

629. Robert Russo, *Canada Denies Role in Plan to Let Rebels Flee From Peru*, WINNIPEG FREE PRESS, Dec. 26, 1996, at A1 [hereinafter Russo, *Canada Denies Role*].

630. Russo, *Terrorism*, *supra* note 599.

631. Russo, *Canada Denies Role*, *supra* note 629.

632. Clifford Krauss, *Japan Enlists the Big Powers in Seeking End to Peru Crisis*, N.Y. TIMES, Dec. 28, 1996, at 2 [hereinafter Krauss, *Japan Enlists the Big Powers*].

633. *Id.*

634. *Id.*

635. Diebel, *Canada's Help Sought*, *supra* note 628.

636. *Id.*

which emerged 20 chefs.<sup>637</sup> Eight large turkeys, all the accompanying dishes, ample fruit and delicacies were sent inside.<sup>638</sup> The Peruvian daily newspaper *Ojo* complained in a headline that "The Poor Would Love To Dine Like The Hostages."<sup>639</sup> One Peruvian criticized Fujimori's "publicity stunt" to feed the hostages because a Christmas party for poor children at the presidential palace had to be canceled so that the palace chefs could take the food to the Japanese compound.<sup>640</sup>

Peruvians sang Christmas carols outside the compound and held silent prayers.<sup>641</sup> The hostages expressed their gratitude with a sign in Spanish posted in one of the residence windows.<sup>642</sup> It simply said: "Thanks brothers, Merry Christmas."<sup>643</sup>

That day the hostages were also visited for several hours by a leading Peruvian churchman, Archbishop Juan Luis Cipriani of Ayacucho. A former basketball star,<sup>644</sup> Cipriani is a well-known figure in Peruvian society. He is "viewed as a brave figure who stood up to terrorism and did not run and hide," commented one Western diplomat to journalist Calvin Sims of *The New York Times*.<sup>645</sup> It was in his city of Ayacucho, (200 miles southeast of Lima) that the infamous Shining Path terrorist movement first took hold.<sup>646</sup>

Monsignor Cipriani celebrated Christmas Mass with the hostages inside the residence and later departed, suggesting that a peaceful solution was possible.<sup>647</sup> Acknowledging that the rebels were wrong in their action, Archbishop Cipriani felt that the guerrillas also wanted a peaceful solution.<sup>648</sup> He said, "there is a seed of peace . . . . Solutions always have passed along the path of reconciliation."<sup>649</sup>

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637. *Id.*

638. *Id.*

639. Diebel, *Peru's Rebels*, *supra* note 10.

640. *Id.*

641. *Id.*

642. AP Photo: Photograph caption, WINNIPEG FREE PRESS, Dec. 26, 1996, at A2.

643. *Id.*

644. Rotella, *Men in the Middle*, *supra* note 484.

645. Sims, *Growing Optimism*, *supra* note 144.

646. *Id.*

647. *Peruvian Rebels Free Guatemalan Ambassador*, *supra* note 601.

648. *Id.*

649. *Id.*

Significantly, the Archbishop is a close friend and ally of President Fujimori,<sup>650</sup> a relationship which brought hope both to hostages and to their families that Cipriani might well find a way out of the crisis for everyone concerned. Although Archbishop Cipriani denied any mediating role for himself, one Western diplomat commented wryly of his visit:

“That was a long Mass all right.”<sup>651</sup>

### *F. Fujimori Gets Tough*

Both admirers and detractors of Fujimori have admitted to the strength of will he exhibits in crisis situations. The hostage crisis was no exception. He kept his own counsel through much of the ordeal, largely ignored the international media circus, and was seemingly impervious to criticism both in Peru and abroad about his apparent vacillation in the search for a speedy resolution.

The critics, however, failed to see the serious dilemma facing the Peruvian President. He had waged all-out war on terrorism. He had resorted to dictatorial methods to bring a savage civil war to an end. He had brought a measure of peace to Peru after long years of violence by terrorist groups. It simply would not do for Fujimori to appear weak in the instant crisis. Strength of will was the key to his public image. By ruling with a combination of force and selective brutality, he had attempted to make the case that his actions were valid on the basis that the ends justify the means.

The dispatch of an assault team against the residence would probably have been his initial and instinctive choice. That he did not engage in this response and waited and searched for a way out, negotiating with the rebels via Palermo, demonstrates two priorities in his mind. First, had a number of Japanese hostages been killed (especially the Japanese Ambassador) in a military assault, Fujimori would forever have lost a significant foreign ally and financial aid donor, Japan. Second, he may have had some lingering doubts about the international fall-out from such a raid, particularly when there were many Western aid workers, diplomats and others held captive in the residence. This leads to the interesting question: What if all the hostages had been Peruvian citizens from the beginning of the guerrilla attack? Would Fujimori then have struck

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650. Krauss, *Envoy Released*, *supra* note 600.

651. Krauss, *Guerrillas Release One of Six*, *supra* note 97. During the afternoon of Christmas Day, Kenji Hirata, a Japanese diplomat, was released by the guerrillas for medical reasons and taken away in an ambulance. Russo, *supra* note 599.

immediately with the military? Military analyst Enrique Obando speculated that Fujimori would not bargain with the Tupac Amaru in such circumstances "because he would sacrifice the Peruvian hostages" and suggested that Peruvians would support such a move.<sup>652</sup>

The seizure of the Japanese residence had unfortunate consequences for a large number of Peruvians. According to the Peruvian government Gazette, *El Peruano*, emergency powers were extended to security forces in Lima and the port of Callao for 60 days.<sup>653</sup> These powers would allow "soldiers and the police to enter homes without search warrants, to search cars at random and to detain people without charges."<sup>654</sup> President Fujimori had apparently taken the decision to extend such powers a day after the attack on the Japanese residence, but the decree took effect on December 27, 1996.<sup>655</sup> The police utilized these special powers to make about a dozen arrests.<sup>656</sup>

During the Christmas season, the Peruvian government displayed further evidence of hardening its position when it refused to allow the Red Cross further visits to imprisoned revolutionaries, among them the very Tupac Amaru rebels whom Nestor Cerpa was trying to free from prison.<sup>657</sup>

Fujimori's refusal to accede to rebel demands was supported by the Peruvian Congress which met in closed session to discuss the hostage crisis on December 27.<sup>658</sup>

In late December 1996, news reports mentioned the distinct possibility of an imminent attack by Peruvian forces against the guerrillas, alleging that "troops were training using a model of the residence in case the government ordered an assault."<sup>659</sup> The preparations for an attack by 200 Peruvian troops on the Japanese residence were reported to be completed by the end of December 1996.<sup>660</sup>

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652. Diana Jean Schemo, *Peru's Premier Foresees Peaceful End to the Hostage Crisis*, N.Y. TIMES, Dec. 31, 1996, at A3 [hereinafter Schemo, *Peru's Premier*].

653. Krauss, *Japan Enlists the Big Powers*, *supra* note 632.

654. *Id.*

655. *Fujimori Widens Emergency Powers in Peru*, THE WEEKEND SUN (Vancouver), Dec. 28, 1996, at A12.

656. Krauss, *83 Are Still Held*, *supra* note 615.

657. Diebel, *Peru Prohibits Red Cross*, *supra* note 587.

658. *Fujimori Widens Emergency Powers in Peru*, *supra* note 655.

659. *Id.*

660. *Peru's PM Confident of Safe Conclusion*, THE GLOBE & MAIL (Toronto), Dec. 31, 1996, at A2.

### G. Palermo Secures Freedom for More Hostages

All the doubts and misgivings about Domingo Palermo's lack of experience as a negotiator evaporated on December 28, 1996, when Nestor Cerpa ordered the release of 20 more hostages, including two ambassadors (Jose Ramon Diaz from the Dominican Republic and Ahmad Makhtar Selat from Malaysia).<sup>661</sup> The release followed on the heels of a discussion between Palermo and Cerpa inside the residence.<sup>662</sup> Palermo was accompanied to the meeting by Red Cross official Michel Minnig and by Monsignor Cipriani.<sup>663</sup> The Archbishop served as a witness during the meeting.<sup>664</sup> "Advances were made for a solution to this serious situation," said Palermo, but he provided no other details.<sup>665</sup> Most of this group of released hostages were Japanese businessmen and "low-level Peruvian diplomats."<sup>666</sup>

Minister Palermo apparently felt quite safe entering the compound. This was perceived as a positive development in the crisis. As Clifford Krauss of *The New York Times* commented: "The very fact that he did not fear being taken hostage himself demonstrated that the government and rebels had reached some kind of understanding, at least to talk."<sup>667</sup> As journalist Mary Beth Sheridan reported, "the start of a dialogue raised hopes in Peru that bloodshed would be avoided."<sup>668</sup>

This face-to-face meeting between the two negotiators also resulted in what appeared to be some flexibility in the position of the guerrillas. In a Tupac Amaru statement read by one of the freed hostages, the guerrillas did not refer to their demand for the liberation of their imprisoned colleagues, but insisted that conditions in Peruvian jails must be improved.<sup>669</sup> The rebels also showed a willingness to negotiate an exit from the Japanese residence.<sup>670</sup> The softening of their position was underscored by

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661. *20 More Hostages Freed in Peru*, THE EDMONTON J., Dec. 29, 1996, at A5.

662. Sims, *Growing Optimism*, *supra* note 144.

663. *Id.*

664. *Id.*

665. *20 More Hostages Freed in Peru*, *supra* note 661.

666. Krauss, *83 Are Still Held*, *supra* note 615.

667. *Id.*

668. Mary Beth Sheridan, *Hostage Siege*, THE OTTAWA CITIZEN, Dec. 29, 1996, at A2.

669. *20 More Hostages Freed in Peru*, *supra* note 661.

670. *Id.*

Isaac Velazco, international spokesman for the Tupac Amaru movement. Speaking from Hamburg, Germany, Velazco maintained an insistence on the liberation of the political prisoners but expressed some willingness to consider an intermediate solution.<sup>671</sup> Facets of this type of resolution appeared in a letter purportedly written by 16 hostages (including Foreign Minister Tudela) and published in Lima's newspaper *La Republica*.<sup>672</sup> The letter suggested exile for the rebels in a neutral country, a regrouping of all 400 Tupac Amaru prisoners in one institution supervised and controlled by the United Nations and the International Red Cross, and peace negotiations to enable the Tupac Amaru to lay down its arms and become a legal organization.<sup>673</sup> The Peruvian government had confirmed that there were 458 Tupac Amaru prisoners in its jails.<sup>674</sup>

Although there was no overt change in position between the government's insistence that all hostages be released and the guerrillas' demand that all Tupac Amaru prisoners be released, it was evident that "both sides seem[ed] less insistent and more flexible."<sup>675</sup> The more realistic appraisal of each other's positions by the two adversarial parties may well be credited both to the efforts of Michel Minnig of the Red Cross and, more directly, to Archbishop Cipriani, who returned continually to the Japanese compound, ostensibly to serve the religious needs of the hostages, but possibly also to continue to negotiate with Cerpa and the rebels.

The meeting between Palermo and Cerpa was a major breakthrough, both with respect to the ongoing hostage crisis and in terms of Peruvian official policy. Andrew Cawthorne of Reuters reported that "[w]ith the exception of several meetings in 1993 that Mr. Fujimori had with Abimael Guzman, the imprisoned leader of the Shining Path guerrilla movement, no government official had held direct talks with Peruvian insurgents in 16 years of conflict."<sup>676</sup>

Peruvian daily *La Republica* commented that the "danger of

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671. Cawthorne, *Rebels Soften Stand*, *supra* note 591.

672. Jane Diaz-Limaco, *Talks Between Peru Government and Rebels Make First Small 'Advances'*, THE IRISH TIMES, Dec. 30, 1996, at 10 [hereinafter Diaz-Limaco, *Talks*].

673. *Id.*

674. *Peru Prays Standoff Ends Without Gunfire*, THE TORONTO STAR, Dec. 30, 1996, at A13.

675. Sims, *Growing Optimism*, *supra* note 144.

676. Cawthorne, *Rebels Soften Stand*, *supra* note 591.

a violent way out is growing more distant.”<sup>677</sup> Another daily, *Expreso*, viewed the direct negotiations as “a gigantic step forward, which raises the prospect of a way out.”<sup>678</sup>

On December 30, 1996, the Prime Minister of Peru, Alberto Pandolfi, predicted an outcome which would preserve the lives of the hostages.<sup>679</sup> He based his assumption on the level of mutual understanding then existing between the government and the rebels.<sup>680</sup> Prime Minister Pandolfi indicated that the government was working “with prudence and dedication for the prompt release” of the hostages.<sup>681</sup>

Although there was still some confusion about the figures, it now appeared that the rebels had already freed over 450 hostages but still held onto over 80 dignitaries, including the Ambassadors of Japan, Honduras and Bolivia.<sup>682</sup> Also still in captivity were two Peruvian members of Cabinet, several judges, Congressmen and senior military and police officers.<sup>683</sup>

Prime Minister Hashimoto sounded a note of caution: “It is not time yet to get our hopes up, but reading the guerrillas’ demands, it seems possible to have a dialogue with the rebels.”<sup>684</sup> The Japanese Prime Minister was obviously anxious about the plight of the remaining hostages, many of them from his country. These Japanese diplomats and businessmen wrote to Hashimoto expressing their apprehensions about the danger they were facing: “If the situation, in which heavily armed soldiers keep a close watch on us lasts for a long time, it will become extremely difficult for us to keep the balance between mind and body.”<sup>685</sup>

On December 30, 1996, a bomb blasted the entrance of the Peruvian Embassy in Athens, Greece.<sup>686</sup> British Sky Television reported that the blast was apparently a demonstration of support for the Tupac Amaru rebels in Peru.<sup>687</sup> One woman passer-by was slightly injured.<sup>688</sup> The Tupac Amaru’s international spokes-

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677. *Id.*

678. *Id.*

679. Schemo, *Peru’s Premier*, *supra* note 652.

680. *Id.*

681. *Id.*

682. Krauss, *83 Are Still Held*, *supra* note 615.

683. *Id.*

684. Cawthorne, *Rebels Soften Stand*, *supra* note 591.

685. *Id.*

686. Johnson, *Red Cross*, *supra* note 478.

687. *Id.*

688. *Supporters of Lima Siege Claim Bomb Blast in Athens*, THE IRISH TIMES, Dec. 31, 1996, at 8.

man condemned the Athens bomb attack.<sup>689</sup> Isaac Velazco told Reuters that the Tupac Amaru rejected “this sort of display of solidarity, because it does not contribute to the solution of a crisis.”<sup>690</sup>

#### *H. The Tupac Amaru Press Conference*

The first assault on the beleaguered Japanese residence was made not by storm troopers but by news reporters. The prevailing mood of confidence and optimism in the Peruvian government was shattered when the guerrillas, in a bid for further international public attention, invited a crowd of reporters into the residence on December 31, 1996.<sup>691</sup> The two-hour news conference which followed had severe consequences with respect to the search for a peaceful resolution.<sup>692</sup> This “carefully staged propaganda coup” by the guerrillas ended any hope that the crisis might be resolved before the end of 1996.<sup>693</sup> As author J. Bowyer Bell indicated, “[t]here can be little doubt that the international communications net is for any potential terrorist a new asset guaranteeing propaganda on a scale far beyond the imagination of the nineteenth-century revolutionary anarchists.”<sup>694</sup>

The media circus around the Japanese compound became increasingly frustrating for all concerned. There was little newsworthy information on a crisis which still remained a front-page story in many parts of the world. The normally quiet and exclusive San Isidro district of Lima became “a jungle of trucks, ladders, tripods, cameras, cables and journalists, complete with generators that churn[ed] 24 hours a day.”<sup>695</sup> Some residents rented rooms and roofs to journalists who were seeking a good view of the Japanese compound.<sup>696</sup> The going rate was \$1000 per month per camera.<sup>697</sup>

On December 31, the Peruvian government allowed some

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689. *Signs of Movement Seen in Hostage Crisis*, *supra* note 215.

690. Schemo, *Peru's Premier*, *supra* note 652.

691. *Rebels' Demands Are 'Inflexible,'* THE TORONTO STAR, Jan. 1, 1997, at A1.

692. *Peruvian Hostage Standoff Continues*, FACTS ON FILE, Dec. 31, 1996, at 971.

693. *Rebels' Demands Are 'Inflexible,'* *supra* note 691.

694. Bell, *supra* note 114, at 19.

695. *The Other Hostages: Lima Residents in a Media Maze*, N.Y. TIMES, Jan. 4, 1997, at 4.

696. *Id.*

697. *Id.*



photographers to approach the residence from a closer vantage point to take a few pictures.<sup>698</sup> It was reported that this privilege of crossing police barriers and approaching the mansion was based on an agreement between the government and the guerrillas which was brokered by the Red Cross.<sup>699</sup> As they approached the mansion, the journalists noticed a banner in a window welcoming them inside.<sup>700</sup> The photographer for Japan's Kyodo News Service soon led a band of twenty journalists into the building.<sup>701</sup> Peru's government was so upset by this occurrence that it detained many of the journalists after they had departed from the residence.<sup>702</sup>

Peruvian intelligence agents disguised as journalists also attempted to enter the residence, but were denied entry by the Red Cross.<sup>703</sup> Michel Minnig was later reported to have been indignant because the entire group of photographers was only given permission to approach the building.<sup>704</sup> The media ignored police orders and swarmed into the residence where they were welcomed by the guerrillas.<sup>705</sup> In response to this infringement of their agreement, Minnig temporarily withdrew the Red Cross from the area, complaining that the lack of discipline by the media "just hardened the situation."<sup>706</sup>

Inside, the reporters met Nestor Cerpa, dressed in military gear, his face concealed by a red and white handkerchief.<sup>707</sup> During an interview with Reuters news agency, Cerpa had indicated that "the MRTA already had achieved its aim of drawing world attention to the bad conditions of Peruvian jails, and would now concentrate on obtaining the release of prisoners."<sup>708</sup> At the impromptu news conference, Cerpa reverted to his original demand for the release of imprisoned Tupac Amaristas and declared that

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698. *A Happy New Year as Seven Hostages Released*, THE EDMONTON J., Jan. 2, 1997, at A5.

699. *Id.*

700. *The Other Hostages: Lima Residents in a Media Maze*, *supra* note 695.

701. *Id.*

702. *Peruvian Hostage Standoff Continues*, *supra* note 692, at 971.

703. Jane Diaz-Limaco, *Hopes of Early End to Embassy Siege Dim as Guerrilla Leader Shows His Defiance*, THE IRISH TIMES, Jan. 1, 1997, at 12 [hereinafter Diaz-Limaco, *Hopes of Early End*].

704. Rotella, *Men in the Middle*, *supra* note 484.

705. *Id.*

706. *Id.*

707. *Rebels' Demands Are 'Inflexible,' supra* note 691.

708. *Id.*

the guerrillas were inflexible on that position.<sup>709</sup> “We are not going to back down,” Cerpa insisted.<sup>710</sup> He also rejected any option of leaving the country.<sup>711</sup>

Cerpa pleaded with journalists to visit Peruvian prisons and display the same concern for the inmates that they showed for the hostages.<sup>712</sup> Key hostages were displayed at the news conference.<sup>713</sup> Francisco Tudela, appearing relaxed, called for a peaceful solution.<sup>714</sup> Ambassador Aoki took responsibility and apologized for the seizure of his residence which he credited to his “lack of preparation and foresight.”<sup>715</sup>

Fujimori was said to be enraged with the publicity stunt pulled by the guerrillas.<sup>716</sup> Evidence of his anger emerged when Palermo was not sent to the Japanese residence on New Year's Day for further negotiations, despite the fact that Cerpa had announced that “the doors of the residence are open” to Palermo.<sup>717</sup> Fujimori “blamed the stalled negotiations” which followed on the news conference, because it led to the sudden derailment of mutually agreed-upon concessions.<sup>718</sup> Prime Minister Pandolfi provided details of the debacle.<sup>719</sup> The parties had apparently earlier agreed that the guerrillas would hold a news conference in exchange for a significant release of hostages.<sup>720</sup> This agreement collapsed as a result of the impromptu news conference.<sup>721</sup>

The Peruvian government then acted decisively to curb the enthusiasm of reporters eager to get a story. On January 7, 1996,<sup>722</sup> a Japanese journalist and his Peruvian interpreter were held for some days after “sneaking past the security for an

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709. *Id.*

710. Diaz-Limaco, *Hopes of Early End*, *supra* note 703.

711. *A Happy New Year as Seven Hostages Released*, *supra* note 698.

712. Diaz-Limaco, *Hopes of Early End*, *supra* note 703.

713. *Id.*

714. *Id.*

715. *Id.*

716. *A Happy New Year as Seven Hostages Released*, *supra* note 698.

717. *Id.*

718. *Peru's Rebels Deny They Want A Ransom*, THE EDMONTON J., Jan. 10, 1997, at A8.

719. Diana Jean Schemo, *Talks Resume Between Peru and Guerrillas*, N.Y. TIMES, Jan. 12, 1997, at 8 [hereinafter Schemo, *Talks Resume*].

720. *Id.*

721. *Id.*

722. *Mediation Agreed in Peru Hostage Crisis*, FACTS ON FILE, Jan. 16, 1997, at 19.

unauthorized interview.<sup>723</sup> The journalist's tape was confiscated and he was ordered out of Peru and the interpreter was forbidden from speaking to the press.<sup>724</sup>

The spontaneous news conference underscores a vital element of any guerrilla operation—the necessity for extensive media coverage. As author David E. Long has written, “[v]ictims, location, and timing of terrorist acts are all chosen with public exposure in mind. Because publicity is so important, the advent of mass and instant worldwide communications has influenced modern terrorism possibly even more than advances in modern weapons technology.”<sup>725</sup>

### *I. Further Releases of Hostages*

New Year's Eve brought freedom from captivity for two hostages, Ambassador Jose Eduardo Martell Mejia of Honduras and Consul General Juan Ibanez of Argentina.<sup>726</sup> The following day, seven more hostages were released, accompanied by Michel Minnig and Monsignor Cipriani.<sup>727</sup> This group included four Japanese businessmen from Mitsui Co. and Matsushita Electric, two Peruvians of Japanese descent working in the business and development fields, and Juan Assereto Duaret, Director of Peru's privatization program.<sup>728</sup>

New Year's Eve for the remaining hostages consisted of a candlelit mass and a dinner of Japanese salmon, sushi, and fruit delivered by the Red Cross.<sup>729</sup> The group, now down to 74 captives, included some Japanese businessmen, some senior Peruvian government officials, the Japanese Ambassador and Mr. Fujimori's brother, Pedro, as well as the Ambassador for Bolivia.<sup>730</sup>

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723. *Peru's Chief Negotiator Domingo Palermo Was Expected to Meet Marxist Rebels*, THE CHRISTIAN SCI. MONITOR, Jan. 13, 1997, at 2.

724. Diana Jean Schemo, *Peru Rebels Fire Guns From Residence, But No One Is Hurt*, N.Y. TIMES, Jan. 14, 1997, at A9 [hereinafter Schemo, *Rebels Fire Guns*].

725. DAVID E. LONG, THE ANATOMY OF TERRORISM 6 (1990).

726. Diaz-Limaco, *Hopes of Early End*, *supra* note 703.

727. *Rebels Free Seven on New Year's*, WINNIPEG FREE PRESS, Jan. 2, 1997, at B2.

728. *A Happy New Year as Seven Hostages Released*, *supra* note 698.

729. *Peruvian Rebels Release 7 as Call For Talks Ignored*, THE TORONTO STAR, Jan. 2, 1997, at A2.

730. *Top Peru Captives Lose Their Post as Standoff Continues*, THE IRISH TIMES, Jan. 4, 1997, at 9.

### J. Fujimori Replaces Captive Government Officials

In a possible attempt to minimize the significance to the guerrillas of some of the key hostages still in captivity, Fujimori made new appointments to their positions in his government. The President of the Supreme Court, Moises Pantoja (a hostage) was replaced by Victor Raul Castillo.<sup>731</sup> Similarly, the Chief of the anti-terrorist police and the Peruvian Security Chief (both in captivity) were replaced by new appointees.<sup>732</sup> "It was not clear whether the changes were routine or reflected official annoyance with the officials for security lapses which allowed the rebels to seize the residence," commented Reuters.<sup>733</sup>

In a speech delivered on January 2, 1997, Fujimori termed the Tupac Amaru "terrorists" and refused to alter his economic policies—one of the demands of the rebels.<sup>734</sup> The Tupac Amaru retaliated by hanging a banner outside the residence on January 4, 1996, which stated: "Mr. Fujimori, with arrogant declarations and without dialogue, there will never be a solution."<sup>735</sup>

### K. Stalemate

Negotiations between the two parties had ended abruptly following Cerpa's press conference inside the mansion. On January 6, 1997, the guerrillas announced that there would be no more releases until negotiations resumed.<sup>736</sup> International Spokesman Velazco said "[w]e have made too many gestures. We have released many people without receiving a single response from the government."<sup>737</sup>

The government's answer was to adhere to its no-concessions-to-terrorism policy and, in Fujimori's words, emphasize that the incident was "an isolated event" that would not detrimentally impact Peru's economy.<sup>738</sup> The President continued to hope for

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731. *Peruvian Leader Replaces Captive Officials*, THE TORONTO STAR, Jan. 3, 1997, at A14.

732. *Id.*

733. *Top Peru Captives Lose Their Posts as Standoff Continues*, *supra* note 730.

734. *Mediation Agreed in Peru Hostage Crisis*, FACTS ON FILE, Jan. 16, 1997, 19.

735. *Id.*

736. *No More Hostage Releases, Peruvian Rebels Say*, THE VANCOUVER SUN, Jan. 7, 1997, at A9.

737. *Id.*

738. *Top Peru Captives Lose Their Posts as Standoff Continues*, *supra* note 730.

a peaceful resolution.<sup>739</sup>

Meanwhile, calls for peace were coming from some unusual sources. A group of Andean witchdoctors colorfully clad in cloaks, ponchos and feathers descended on Lima to stage a vivid peace ceremony at the Japanese residence.<sup>740</sup> Their spells unfortunately had no effect on either the rebels or the government. It would take more than witchcraft to untangle this crisis.

#### *L. Rays of Hope*

The stalemate was finally broken on January 10, 1997, with the resumption of discussions between Palermo and Cerpa.<sup>741</sup> The conversation via two-way radio was "cordial," reported President Fujimori, who also announced that face-to-face talks could resume that weekend.<sup>742</sup>

Peru was making extensive efforts to locate a country which would accommodate the rebels once the terms of an accord had been worked out. The idea was to allow safe passage to the rebels in exchange for the release of all the hostages.<sup>743</sup> The Peruvian government had "acknowledged contact with third countries that could provide asylum to the rebels once they release the hostages."<sup>744</sup> Prime Minister Pandolfi also confirmed that the search was underway for an asylum country for the guerrillas.<sup>745</sup> Although the Tupac Amaru's international spokesman, Isaac Velazco, expressed gratitude for the offer of safe haven for his comrades, he reiterated the demand for the liberation of over 400 prisoners from Peruvian jails.<sup>746</sup>

The government was also working on the composition of a guarantor commission which would monitor any agreement between the parties.<sup>747</sup> Peru had proposed the inclusion of the Red Cross and of Archbishop Cipriani in the Commission.<sup>748</sup> Cerpa proposed the inclusion of representatives from the Guatema-

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739. Daphne Bramham, *Peru's Role in Hostage Crisis Gets Support*, THE VANCOUVER SUN, Jan. 8, 1997, at A8.

740. Reuter, *Witch Doctor Dance Gets No Response in Peru Crisis*, THE TORONTO STAR, Jan. 7, 1997, at A14.

741. *Talks Resume in Lima Hostage Siege*, *supra* note 270.

742. *Id.*

743. Gamini, *Safe Passage*, *supra* note 216.

744. Schemo, *Talks Resume*, *supra* note 719.

745. *Peru Resumes Contacts With Rebels Holding 74*, N.Y. TIMES, Jan. 11, 1997, at 2.

746. *Id.*

747. Schemo, *Talks Resume*, *supra* note 719.

748. Schemo, *Rebels Fire Guns*, *supra* note 724.

lan government and from a European country.<sup>749</sup> Peru refused the inclusion of a Guatemalan on the basis that this "would draw a false parallel between the MRTA members, who were considered terrorists by the Peruvian government and who lacked popular support, and the leftist rebels in Guatemala."<sup>750</sup>

The Japanese government reacted optimistically to the news of renewed contact.<sup>751</sup> However, while there was now hope, President Fujimori was cautious, informing *The Washington Post* in an interview that "he could imagine the siege continuing for another three months."<sup>752</sup>

This cautious optimism faded when Cerpa insisted as a precondition for talks that the government "proposal include provisions for the release of more than 400 members of the rebels' organization, the Tupac Amaru Revolutionary Movement, who are being held in Peruvian jails."<sup>753</sup>

#### M. Police Provocation

It was evident that the prolonged crisis was beginning to fray nerves. Associated Press reported that "rumors abound the military and police are eager to avenge their humiliation, even if it means sacrificing their captive commanders."<sup>754</sup> The police began to provoke the guerrillas by infringing the 110-yard established security perimeter around the residence.<sup>755</sup> The guerrillas responded with a volley of shots on January 13, 1997, which injured no one but caused considerable tension.<sup>756</sup> Cerpa accused the police of throwing sticks and stones into the compound in an obvious effort to provoke the Tupac Amaru.<sup>757</sup> Videocamera crews broadcast a police commando making obscene gestures at the residence.<sup>758</sup>

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749. *Mediation Agreed in Peru Hostage Crisis*, *supra* note 734, at 19.

750. *Id.*

751. Schemo, *Talks Resume*, *supra* note 719.

752. *Id.*

753. Diana Jean Schemo, *As Lima Talks Hit Snag, Some Ex-Hostages Are Complaining*, N.Y. TIMES, Jan. 13, 1997, at A5 [hereinafter Schemo, *Talks Hit Snag*].

754. *Personal Pressures on Leaders Add to Hostage Standoff Tension*, *supra* note 339.

755. *Id.*

756. *Gunfire Erupts Where Hostages Held in Lima*, THE EDMONTON J., Jan. 14, 1997, at A4.

757. Schemo, *Rebels Fire Guns*, *supra* note 724.

758. Tim Harper, *Toronto to Host Peru Summit*, THE TORONTO STAR, Jan. 30, 1997, at A1.

Police provocation continued as security forces threw debris over the residence walls and piloted a helicopter equipped with a machine gun over the compound.<sup>759</sup> The guerrillas responded with more gunfire.<sup>760</sup> The psychological scare tactics continued on January 22, 1997, with the arrival near the residence of SWAT teams, large numbers of police, and special military forces.<sup>761</sup> On January 24, 1997, in another show of force, the police drove armored cars past the mansion.<sup>762</sup> The guerrillas responded by chanting defiantly.<sup>763</sup> After one provocation, they shot at a police armored vehicle.<sup>764</sup> Peruvian police began marching around the compound to the tune of blaring martial music.<sup>765</sup> By the end of January 1997, the loud martial music was also accompanied by blasting sirens aimed at the residence.<sup>766</sup> President Fujimori insisted that the police activities were routine,<sup>767</sup> "not a prelude to an assault but a tightening of security prior to talks and a negotiated exit."<sup>768</sup>

In order to protect its workers, the Red Cross insisted that Peruvian forces stay behind a line drawn in the street.<sup>769</sup> The police agreed to refrain from such activity while Red Cross workers were undertaking their duties for the benefit of the hostages.<sup>770</sup> However, President Fujimori told reporters on January 25, 1997, that "security forces were under no obligation to respect a 'neutral' zone" delineated by the Red Cross.<sup>771</sup>

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759. Calvin Sims, *Gunfire in Residence Raises Tensions in Peru Hostage Crisis*, N.Y. TIMES, Jan. 23, 1997, at A13 [hereinafter Sims, *Gunfire in Residence*].

760. *Id.*

761. *Id.*

762. *Peruvian Police Irk Red Cross*, THE TORONTO STAR, Jan. 15, 1997, at A14.

763. *Id.*

764. Sims, *Leaders to Meet*, *supra* note 186.

765. Juliet O'Neill, *Peruvian, Japanese Leaders to Meet in Toronto on Hostage Standoff*, THE OTTAWA CITIZEN, Jan. 30, 1997, at A8.

766. *Peruvians Step Up Intimidation of Hostage-Takers*, N.Y. TIMES, Jan. 31, 1997, at A3.

767. Calvin Sims, *Peru Rebels Free An Ailing Hostage But No Sign of Talks Is Seen*, N.Y. TIMES, Jan. 27, 1997, at A9 [hereinafter Sims, *Ailing Hostage*].

768. *Stalled Peruvian Hostage Crisis to Be Discussed at Toronto Meeting*, THE IRISH TIMES, Jan. 30, 1997, at 11.

769. Calvin Sims, *Peru's Police Yield as Red Cross Draws a Line in Hostage Crisis*, N.Y. TIMES, Jan. 24, 1997, at A9 [hereinafter Sims, *Peru's Police Yield*]. Red Cross apprehensions were more than justified in view of the fact that in 1996, nine Red Cross workers were killed in various international conflicts (six in the Chechnya war), the highest number of casualties in that Agency's long history. *Id.*

770. *Id.*

771. Sims, *Ailing Hostage*, *supra* note 767. The Apoyo Polling Group of Peru found a 96 percent public approval rating for the manner in which the Red Cross

#### N. *Guerrillas Agree to Guarantor Commission*

On January 15, 1997, the Tupac Amaristas accepted the proposal for a Guarantor Commission which would guarantee the implementation of a negotiated solution.<sup>772</sup> Palermo had proposed that this group include one representative from the government, one from the guerrillas, one from the Red Cross, and one from the Catholic Church.<sup>773</sup> The roller-coaster of hope and despair was once again riding high. As one Western diplomat commented: "Cerpa and Fujimori aren't walking down the aisle yet, but it looks like they are ready to pick out the engagement ring."<sup>774</sup> The rebels wanted all outstanding items of negotiation, including freedom for their imprisoned comrades, on the agenda.<sup>775</sup>

Casting a contradictory note to the progress being made, Palermo continued to enforce the policy of allowing no visits to Tupac Amaru prisoners in Peruvian jails, thereby ensuring that there was no "outside monitoring of conditions and treatment."<sup>776</sup> This policy had been implemented since the beginning of the crisis and Cerpa had asked that outside visits be reinstated.<sup>777</sup>

Human rights activists continued their protests against Peruvian prisons. Bill Fairbairn, South America Coordinator for the Inter-Church Committee on Human Rights in Latin America visited several Peruvian prisons, and suggested that the hostage-taking incident offered "an opportunity to begin correcting prison abuses."<sup>778</sup>

#### O. *The Propaganda War*

Although the eventual outcome of this hostage-taking crisis would be tragic for the guerrillas, they gained significantly on the public relations front through the long months of the ordeal. Because of the disciplined and calm approach of the guerrillas, not

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was handling the hostage crisis in Peru. *Id.*

772. Calvin Sims, *Guerrillas in Peru Assent to Proposal to Seek Siege's End*, N.Y. TIMES, Jan. 16, at A1 [hereinafter Sims, *Guerrillas Assent*].

773. *Id.*

774. *Id.*

775. *Guerrillas Agree to Talks on Peru Crisis*, THE TORONTO STAR, Jan. 16, 1997, at A12.

776. Schemo, *Rebel 'Suggestion'*, supra note 330.

777. *Peru Considers Rebel Offers*, THE VANCOUVER SUN, Jan. 17, 1997, at A15.

778. Paul Knox, *Hashimoto, Fujimori Arrive to Consult on Hostage Crisis*, THE GLOBE & MAIL (Toronto), Feb. 1, 1997, at A11 [hereinafter Knox, *Hashimoto*].



a single hostage death has been clearly and unequivocally attributed to them. The physical discomfort of the hostages was soon perceived more as the fault of the Peruvian government (which cut off water, electricity and telephone service) than the responsibility of the rebels who had turned a routine social celebration into a 126-day ordeal. The rebels sought at every opportunity to cultivate the friendship of both the hostages and the world press. Journalists were invited into the building by Cerpa and his colleagues. Cordiality, courtesy and respect were shown to both Monsignor Cipriani and to Palermo, the government's negotiator. The continuing flow of hostage releases generated further favorable publicity, as freed hostages spoke positively of their treatment at the hands of the guerrillas. The rebels also kept up a war of banners and signs posted in windows of the building. These signs provided the media with the viewpoints, reactions, and bits of news which formed headlines in papers across the world. When Cerpa appealed for coverage of the miserable plight of Peruvian prisoners, the inhumane conditions in those jails were made known to people throughout the world.

In stark contrast to the obvious courting of the world's press by the rebels was the heavy-handed media approach taken by the Peruvian government. Peruvian authorities were clearly outraged by the rebels' impromptu news conference and had even detained a Japanese journalist for conducting an interview with the rebels. Unlike the publicity-oriented Cerpa, the Peruvian government did its utmost to "squench media coverage—keeping an icy silence and denying media access to the compound."<sup>779</sup> In late January 1997, the police also ordered photographers off their rooftop positions near the residence and forced them to remain several blocks away from the Japanese mansion.<sup>780</sup> Sally Bowen, head of the Foreign Press Club in Peru, commented that the "government lost a major opportunity to get its point across to the foreign press," which had swelled to 700 members.<sup>781</sup>

#### *P. Two Peruvians Released*

Luis Valencia Hirano, Chief of Operations of the Anti-Terrorism Police was released on January 17, 1997, for health

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779. Alex Emery, *From Pistols to PR: Peru Siege Shifts to Winning Over Public*, THE CHRISTIAN SCI. MONITOR, Jan. 17, 1997, [hereinafter Emery, *Pistols to PR*].

780. Sims, *Gunfire in Residence*, *supra* note 759.

781. Emery, *Pistols to PR*, *supra* note 779.

reasons.<sup>782</sup> On January 26, 1997, the Red Cross wheeled General Jose Rivas Rodriguez (Deputy Chief of the Peruvian National Police) out of the compound on a trolley.<sup>783</sup> He was also released on medical grounds.<sup>784</sup>

### *Q. Organization for Negotiations*

Anthony Vincent was proposed by the Peruvian government as an observer on the mediation panel which would explore solutions to the crisis.<sup>785</sup> Palermo made this announcement and added that Cerpa would be driven by the Red Cross to another neutral locale near the Japanese residence for the discussions.<sup>786</sup> In a significant gesture, President Fujimori indicated that "the issue of rebel prisoners 'may be taken up' by the commission."<sup>787</sup> He was quick to add, however, that the government could not approve of their liberation.<sup>788</sup> This point was underscored by Palermo, who insisted that liberation of prisoners was not contemplated.<sup>789</sup> Clearly the Peru's position was "to offer an olive branch in one hand and a club in the other."<sup>790</sup> It was also reported that the Canadian government was prepared to guarantee the safe exit of the rebels out of Peru.<sup>791</sup>

Although they accepted the selection of Ambassador Vincent as Observer, the Tupac Amaru complained in a radio statement about the government's refusal to consider their main demand for the release of Tupac Amaru prisoners and commented: "there is no possibility of starting conversations because in practice they are asking us beforehand to drop our request, which signifies a formal call to surrender which we will never accept."<sup>792</sup>

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782. *Peruvian Rebels Release One Further Hostage*, THE IRISH TIMES, Jan. 18, 1997, at 10; *Anti-Terrorist Official Freed By Peru's Rebels*, THE EDMONTON J., Jan. 18, 1997, at A4.

783. *Peru Rebels Release Policemen*, THE IRISH TIMES, Jan. 27, 1997, at 12.

784. *Id.*

785. *Canada Tabbed to Observe Peru's Hostage Talks*, THE TORONTO STAR, Jan. 18, 1997, at A14.

786. *Id.*

787. *Id.*

788. *Id.*

789. *Id.*

790. *Id.*

791. Gabriella Gamini, *Fujimori Hints at Talks on Prisoners*, THE TIMES (London), Jan. 18, 1997, at 17 [hereinafter Gamini, *Fujimori Hints*].

792. *Guerrillas Blame Peru For Delay in Negotiations*, THE TORONTO STAR, Jan. 19, 1997, at A12.

## VIII. Further Efforts Toward a solution

### A. Fujimori Garners External Support

Belatedly realizing the need for international support, particularly in view of the favorable media response to the guerrillas, President Fujimori became more accessible to the press. He travelled to Bolivia on January 23, 1996, and met President Gonzalo Sanchez de Lozada "to discuss ways the two countries could better coordinate their anti-terrorist efforts."<sup>793</sup> Bolivia's Ambassador to Peru remained a captive of the Tupac Amaru, and Bolivia had rejected the Peruvian guerrillas' demand that their comrades in Bolivian prisons be freed.<sup>794</sup>

### B. The Decision to Hold a Japan-Peru Summit

Fujimori's no-concessions approach was apparently causing a state of considerable anxiety in the higher echelons of the Japanese government. Had an assault occurred and had many hostages lost their lives, Prime Minister Hashimoto could expect severe condemnation on the home front. Furthermore, as the beleaguered mansion was Japanese territory, Japan had a considerable stake in ensuring a peaceful outcome to the crisis. Aside from the professional importance of the dignitaries whose lives were in potential danger, there may have been a perception in the Japanese government that Fujimori was an unpredictable wild card. It was widely known that some of Fujimori's military advisors were advocating an assault against the mansion to end the crisis once and for all, regardless of the cost.<sup>795</sup> It was the cost in human terms which weighed heavily on Prime Minister Hashimoto's mind, not least because such a carnage in a Japanese Ambassador's residence would have diplomatic and political repercussions for years to come. One-third of the remaining 72 hostages were Japanese.<sup>796</sup>

In a telephone call on January 28, 1997, Prime Minister Hashimoto reportedly said to President Fujimori: "We recognize the need to tighten the guard around the residence but want you

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793. Sims, *Peru's Police Yield*, *supra* note 769.

794. *Id.*

795. See Sims, *Leaders to Meet*, *supra* note 186.

796. Cameron W. Barr, *A Clash of Civilizations? Japan, Peru Debate Crisis*, THE CHRISTIAN SCI. MONITOR, Jan. 31, 1997, at 7.

to take sufficient care that nothing unexpected occurs.”<sup>797</sup> The Japanese leadership may have been more inclined to accept the inevitability of a bloody confrontation had the guerrillas executed a few hostages. In that circumstance, force would have been perceived as defensive, retaliatory and justifiable, both in Japan and throughout the world. However, Cerpa's relatively civilized nonviolent behavior towards all the hostages made the resort to official violence more difficult, at least from the Japanese perspective. While Fujimori could dismiss the rebels as terrorists, refuse any concessions and prepare for a military solution, the Japanese were clearly more reluctant to perceive the situation with that degree of stark clarity.<sup>798</sup> Although some journalists commented derisively about the vacillation and weakness of the Japanese in the face of terrorist threats, the issue was far more complex than such news reports indicated. In similar situations of life and death threats, the Japanese government had usually placed a high premium on human life; this priority by and large echoed the wishes of its people. The Japanese public would rather preserve life and part with monetary sums than sacrifice a human life by being overly dogmatic or pecuniary.

### C. *Joint Japan-Peru Summit*

The Peruvian government was also on the horns of a dilemma. To concede and yield to the somewhat milder Tupac Amaru could stir up the far more dangerous Shining Path terrorists whose rampaging acts of violence had caused havoc and mayhem for so many years. For Fujimori, the situation was a Pandora's box. Although he may have been inclined to want to save the hostages, could he afford the price in terms of the credibility and strength of his own regime and social order in Peru? He obviously felt that he simply could not afford the long-term risk involved in a short-term resolution which would cater to the guerrilla's demands.

These two differing perceptions dominated the tension-filled days, weeks, and months of the long hostage ordeal. In order to find some common ground, or at least a level of mutual understanding, the Japanese and Peruvian leaders decided to meet on

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797. *Stalled Peruvian Hostage Crisis to Be Discussed at Toronto Meeting*, THE IRISH TIMES, Jan. 30, 1997, at 11.

798. Whether this is weakness or rationalized prioritization is a matter for individual judgment.

neutral ground in Toronto, Canada.<sup>799</sup> It would be unwise to suggest that there was overt conflict between the differing viewpoints. The reality was that both governments were jointly and deeply involved in a complex drama. That Fujimori was ethnically Japanese was not particularly significant in this matter. Fujimori's perception of the entire crisis and his decisive action to resolve it were not at all in the tradition of Japanese governmental handling of such situations.

The Peruvian and Japanese leaders decided to meet on February 1, 1997, for discussions about the crisis in the hope of finding a peaceful resolution.<sup>800</sup> These discussions were apparently initiated by the Japanese.<sup>801</sup> It was mutually agreed that Canadian Ambassador Anthony Vincent would act as facilitator for the Summit.<sup>802</sup> On January 28, 1997, Fujimori and Palermo met with the international guarantor's committee (comprising Archbishop Cipriani, Mr. Minnig of the Red Cross and Ambassador Vincent).<sup>803</sup>

On the surface, Hashimoto seemed determined to insist on two points deemed crucial to his government. First, that there must be no yielding to terrorism and second, that President Fujimori ensure the safe and early release of all the hostages.<sup>804</sup> It was obvious that the second point was of greater priority, and that the first was thrown in to secure international approval. Within the context of the Peruvian hostage crisis, analysis would reveal that these two approaches could, in the course of implementation, become contradictory to one another.

Although this Japanese double-sided mantra was chanted and echoed for media and public consumption by numerous world leaders, no one could clearly explain precisely how President

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799. The Summit could not be held in either Lima or Tokyo because the diplomatic consequences would have further complicated this already tangled crisis. Journalist Linda Diebel explained that Peru was "highly sensitive to any hint that it's accepting orders from a colonial master in Tokoyo." Diebel, *Japanese Tighten Screws*, *supra* note 122. Canada was selected as the venue because of its easy accessibility from both Peru and Japan and conceivably, because it was perceived as a country with "no particular axe to grind." Harper, *supra* note 758.

800. *Id.*

801. *Id.* Interestingly, Mr. Hashimoto stated on Jan. 29, 1997, that President Fujimori had initiated the idea of a meeting in Toronto. *Peruvian, Japanese Leaders to Meet on Hostage Crisis*, THE DALLAS MORNING NEWS, Jan. 30, 1997, at A12.

802. Harper, *supra* note 758.

803. Bruce Cheadle, *Japan, Peru to Meet in Toronto*, THE EVENING TELEGRAM (St. John's, Newfoundland), Jan. 30, 1997, at 1.

804. Harper, *supra* note 758.

Fujimori was to pull off this kind of miraculous feat. Barring some dramatic change in the guerrillas' demands, the possibility of implementing both Japanese priorities simultaneously was remote. One could cynically suggest that world leaders were simply paying lip-service to the type of response their media and public expected to hear, leaving Fujimori to figure out the tedious details of precisely how this conflicting set of options could be implemented. That this caused some impatience in Peruvian governmental circles is evidenced by a statement made by one official that Fujimori's trip to Toronto was being made neither to apologize for police provocations at the compound nor to seek Japanese permission for an attack on their residence.<sup>805</sup>

Journalist Paul Knox of *The Globe & Mail* speculated about the motives for the Summit: "Although the most urgent issue appears to be Mr. Hashimoto's desire for restraint, it seems unlikely that the two leaders would get together without exploring possible offers to Tupac Amaru to end the crisis."<sup>806</sup> The final decision had to be taken by Fujimori; both the Japanese and the Peruvians understood this. Japanese spokesman Seiroku Kajiyama commented that the "meeting is not meddling with the Peruvian government but is a discussion."<sup>807</sup> As the Editor of *The Globe & Mail* explained, "Fujimori has to live with the consequences of a deal with the rebels, and the Japanese do not."<sup>808</sup>

#### D. *The Summit in Toronto*

Journalist Paul Knox of *The Globe and Mail* aptly described the situation confronting both President Fujimori and Prime Minister Hashimoto as they braved the rigors of a Canadian winter to hold the Summit in Toronto on February 1, 1997.<sup>809</sup> Knox commented: "Their decision to hold a summit on Canadian soil betrayed their desire to demonstrate independence from one another for domestic audiences, at the same time as they seek to iron out apparent differences over strategy."<sup>810</sup> The Summit would include the two leaders of Japan and Peru and their aides,

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805. *Id.*

806. Paul Knox, *Canada Host For Hostage Summit*, THE GLOBE & MAIL (Toronto), Jan. 30, 1997, at A1 [hereinafter Knox, *Canada Host*].

807. *Peruvians Step Up Intimidation of Hostage-Takers*, *supra* note 766.

808. Editorial, *Brokering An Out For Peru's Hostages*, THE GLOBE & MAIL (Toronto), Jan. 30, 1997, at A18.

809. Knox, *Hashimoto*, *supra* note 778.

810. *Id.*

with no Canadian officials present.<sup>811</sup>

Although Japan and Peru were overtly united on the crisis,<sup>812</sup> the very fact of holding such a discussion in a third country was indicative of the divergent positions and perceptions of the Japanese and Peruvian leadership. A Japanese government source commented that "Tokyo and Lima are divided over whether the time had come to give ground on the demand to release the Tupac Amaru prisoners."<sup>813</sup>

Calvin Sims of the *New York Times* referred to Peruvian government sources' comments that Fujimori had "requested the meeting with Mr. Hashimoto to personally assure the Japanese that Peru would not use force to end the crisis unless the rebels begin killing hostages or a hostage died in captivity."<sup>814</sup> If this was indeed the precondition for an attack on the Japanese residence, it is interesting to note that Fujimori did not later abide by his apparent assurance to the Japanese. There were no deaths of hostages at the hands of the rebels before Peruvian forces stormed the residence in April 1997. Therefore, this apparent assurance by Fujimori to Hashimoto, said to be the motivation for the Summit, would undergo a significant change after the two leaders met in Toronto.

As the Toronto Summit drew near, it became evident that although Fujimori was prepared to wait out the crisis, he would not "give in to the terrorists' demands."<sup>815</sup> He further declared, "as time goes by, the offers made by the government are being progressively reduced."<sup>816</sup>

There was obviously a chasm between the positions of Japan and Peru, with the former demonstrating increasing anxiety and a softening position while the latter appeared to become more rigid. Andrew Reding, Senior Fellow For Hemispheric Affairs at the World Policy Institute in New York, commented:

As the Japanese themselves are beginning to understand, just about the only thing Japanese about Mr. Fujimori is his appearance and surname. In every other respect, he is a classic Latin

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811. *Id.*

812. *Id.*

813. Chris Wattie, *Toronto Plays Host to Peru Hostage Talks*, THE EVENING TELEGRAM (St. John's, Newfoundland), Feb. 1, 1997, at 5.

814. Calvin Sims, *Fujimori Softens Tone Before Talks in Canada*, N.Y. TIMES, Feb. 1, 1997, at 3 [hereinafter Sims, *Fujimori Softens Tone*].

815. *Id.*

816. *Id.*

American dictator by plebiscite—a Peron or a Pinochet with an Asian face.<sup>817</sup>

In the short-term, the Japanese power of persuasion (grounded as it was in their financial commitment to Fujimori's liberalization of the Peruvian economy) had some impact on the Peruvian President. Equally, President Fujimori's strong will prevailed over the Japanese Prime Minister's wishes regarding freeing the Tupac Amaru rebels from prison. At the conclusion of their Summit, the two leaders expressed agreement on various points: first, Peru would not free imprisoned terrorists; second, Peru agreed to negotiate directly with the hostage-takers and utilize the assistance of Ambassador Vincent of Canada and the Guarantors Commission. The two leaders also admitted to discussing solutions such as allowing the guerrillas to seek refuge in a third country, possibly Cuba.<sup>818</sup> Ambassador Vincent commented that President Fujimori was amenable to discussions on improving the conditions in Peruvian prisons and allowing foreign observers at trials.<sup>819</sup> As a concession to Japanese anxiety, Fujimori also agreed that police outside the residence would no longer provoke the rebels.<sup>820</sup>

According to *The Toronto Star*, in the joint communique issued after the discussions, "Fujimori pledged to restrain from using force to end the standoff, as long as none of the hostages are hurt or suffer ill health."<sup>821</sup> President Fujimori was also quoted as stating, "to the extent that there is no harm to the hostages, no force will be used," adding that "[i]f a single hostage or several hostages are taken ill," or were not cared for physically and mentally, "that would not satisfy the conditions that I have set."<sup>822</sup> As it was widely known that most of the hostages were unwell and in need of medication on a continuing basis, the fact of ill-health as a precondition to an assault on the residence was now established. The statement was a noticeable strengthening of Fujimori's position from his earlier announcement not to use force unless a hostage was killed by the rebels or died in captivity.

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817. Andrew A. Reding, *Peru vs. Japan: When An Autocrat Meets A Democrat*, THE GLOBE & MAIL (Toronto), Feb. 1, 1997, at D2.

818. Allan Thompson, *Talks, Not Bloodshed Peru and Japan Agree*, THE TORONTO STAR, Feb. 2, 1997, at A1.

819. *Id.*

820. *Id.*

821. *Id.*

822. Anthony DePalma, *Peru and Japan Pledge Talks on Resolving Hostage Crisis*, N.Y. TIMES, Feb. 2, 1997, at 10.



One wonders whether the ninety-minute<sup>823</sup> secret discussions between the two leaders resulted in a mutual and confidential understanding that a forcible resolution would ultimately be needed. Fujimori did refer to the Summit as a “very important milestone for our next step” in resolving the siege.<sup>824</sup> Prime Minister Hashimoto was equally vague, saying, “Today we had a frank exchange of views. We pray that the launching of dialogue will bring about the earliest possible resolution of the crisis.”<sup>825</sup>

A careful study of the Joint Press Statement of the Japan-Republic of Peru Summit is more enlightening in terms of what is excluded than with respect to its actual contents. In their joint statement, the two leaders condemned the terrorist incident and “reaffirmed their determination not to give in to terrorism.”<sup>826</sup> They expressed an intent to intensify efforts toward a peaceful resolution securing the full release of all the hostages and placed “the highest priority on respect for human life.”<sup>827</sup> The statement outlined the plan for dialogue with the guerrillas to be “conducted in a manner consistent with full respect for the legal system of [the] Peruvian state, as well as for all the relevant and applicable principles of international law.”<sup>828</sup> Both leaders rejected the demand for the release of prisoners. Significantly, “[t]he Japanese government endorsed the position of the Peruvian government that the preservation of the hostages’ physical mental health was an indispensable element for the development of dialogue aimed at a peaceful resolution.”<sup>829</sup> The two leaders endorsed the efforts of the Commission of Guarantors and added Japanese Ambassador Terusuke Terada (who is fluent in Spanish and knowledgeable on Latin America<sup>830</sup>) as an official observer to the Commission. The Japanese Prime Minister announced his full confidence in the Peruvian handling of the incident and pledged Japan’s continuing support in serving the release of all the hostages.<sup>831</sup>

Any mention of Japan’s rights over the residence on the basis of international law principles and diplomatic practice common among all nations was excluded. There was no indication that Peru

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823. *Id.*

824. Thompson, *supra* note 818.

825. DePalma, *supra* note 822.

826. Joint Press Statement of the Japan-Republic of Peru Summit, Feb. 1, 1997.

827. *Id.*

828. *Id.*

829. *Id.*

830. Knox, *Canadian’s Role*, *supra* note 502.

831. *Id.*

would consult Japan or even inform Japan prior to launching an attack to liberate the hostages. If Japan was internationally perceived as the senior partner in any dealings with Peru because of its wealth and investment, this was not evident in the official version of the talks. Although it appeared on the surface that Peru had given in to Japanese persuasion by agreeing to talk to the guerrillas, in light of the April 1997 storming of the Embassy, it would appear more realistic to view Fujimori as the lead player and winner in these discussions.

The reaction of the Japanese government to the storming of their Ambassador's residence leads to further speculation concerning the precise nature of the talks held at Toronto and whether the actual agreement between the two close trading and diplomatic partners was really reflected in the official statement which was issued for international dissemination. Unfortunately, the actual content of the discussions remains a secret. It would, for instance, be interesting to know whether President Fujimori confided to Prime Minister Hashimoto his elaborate plans, then already underway (as will be discussed later), for an attack on the mansion via underground tunnels.

Following his meeting with the Japanese Prime Minister, President Fujimori travelled to Washington, D.C., for a twenty-minute discussion with President Clinton, who praised his handling of the crisis.<sup>832</sup> Fujimori confirmed that he was only prepared to make "very narrow" concessions to the rebels and explained that this "is very important, not only for Peru. This is important for America, for the world, because these kinds of crimes cannot be accepted."<sup>833</sup>

Fujimori was also eager to show that the crisis had not taken him hostage. After meeting President Clinton in Washington, he travelled to the Dominican Republic,<sup>834</sup> and prepared for a journey to London to attend a Latin American investment conference "to assure potential international investors that Peru's economy" was still stable.<sup>835</sup> He confidently asserted that "[m]y government is not paralysed because of the hostage crisis. I

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832. Steven Lee Myers, *Clinton Praises Peruvian Chief for Handling Hostage Crisis*, N.Y. TIMES, Feb. 4, 1997, at A10.

833. *Id.*

834. Diana Jean Schemo, *Panel Resumes Talks With Rebels Holding 72 Hostages*, N.Y. TIMES, Feb. 7, 1997, at A7 [hereinafter Schemo, *Panel Resumes Talks*].

835. Joanna Pitman, *Fujimori Woos Poor and Wins Bankers' Hearts*, THE TIMES (London), Feb. 8, 1997, at 15.

continue to function and I want to tell the world that this is an isolated case. It could happen anywhere.”<sup>836</sup>

*E. The Tupac Amaru Responds to the Summit*

Differences in opinion between Japan and Peru were not the crucial issue in this crisis. Any peaceful resolution of this tangled hostage-taking drama would occur not because of agreements (secret or overt) between Japan and Peru, but on the basis of an accord between the Peruvian President and the guerrilla leader holding the captives in the mansion. The real issue was that Fujimori and Cerpa had to reach an agreement on their basic differences. The rest was largely public relations and posturing for the media.

The essential demand of the guerrillas was freedom for their imprisoned comrades. However, this was also the issue on which Fujimori felt that he simply could not relent. Conceding on this demand would have destroyed Fujimori's political credibility and undermined his power base in Peru. It is extremely unlikely that the military—his strongest pillar of support—would have agreed to this type of concession. On the other hand, from Cerpa's perspective, yielding on the basic cause which had motivated the raid on the residence—the liberation of his wife and his comrades—would undermine Cerpa's own credibility and destroy any impression of idealism which might have justified the mission. It was a terrible tangle and there was apparently no one in the world who was gifted or talented or brave enough to tackle this enormous problem with an innovative solution which could enable both these leaders to save face, walk away with some confidence of having mutually won and achieve peace in the bargain.

The Tupac Amaru's International Spokesman, Isaac Velazco, insisted that the guerrillas would stick to their position regarding the liberation of Tupac Amaru prisoners, but agreed to negotiate on other issues, saying, “[i]n negotiation there have to be concessions. We are not trying to impose on the government but nor do we want the government to impose on us.”<sup>837</sup> This position was confirmed by Cerpa in a two-way radio interview with Worldwide Television News of Great Britain, during which he reiterated that the rebels had not dropped their key demand for the liberation of

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836. *Id.*

837. Bate, *supra* note 271.

their comrades.<sup>838</sup>

### F. Negotiations Resume

On February 6, 1997, Ambassador Vincent and Monsignor Cipriani, along with a Red Cross official, met with the rebels to arrange an agenda for talks.<sup>839</sup> The Peruvian prelate commented that the situation for all the hostages was "favorable."<sup>840</sup> Arrangements were being made for a venue for the talks at a house across the street from the Japanese residence.<sup>841</sup> Domingo Palermo would continue to represent the Peruvian government, while Roli Rojas Fernandez, Cerpa's second in command at the mansion, would negotiate for the Tupac Amaru.<sup>842</sup>

Rojas, alias El Arabe, was reported to be a 34 year-old former bus conductor who joined the guerrillas while studying sociology at university.<sup>843</sup> Police identification of Rojas as one of the rebels resulted in reprisals for his family. Two of his siblings lost their jobs.<sup>844</sup> Rojas, who came from a poor family, fit "a profile of educated people who become disenchanted with the system and susceptible to leftist dogma."<sup>845</sup> Peruvian authorities believed that Rojas' expertise was in explosives, specifically car bombs, and connected him to attacks on a police headquarters and a bank.<sup>846</sup>

Procedural matters between the parties were ironed out in a meeting on February 11, 1997, at the venue across the street. Rojas was driven to the house in a Red Cross vehicle for the first face-to-face discussions since December 28, 1996.<sup>847</sup> He was accompanied by Michel Minnig and Anthony Vincent.<sup>848</sup>

Both sides were aware of the fact that time was running out

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838. Schemo, *Panel Resumes Talks*, *supra* note 834.

839. *Canadian Envoy Meets Rebels*, THE EDMONTON J., Feb. 7, 1997, at A5.

840. *Mediators Meet Guerrillas in Peruvian Hostage Crisis*, THE VANCOUVER SUN, Feb. 7, 1997, at A17.

841. *Canadian Envoy Meets Rebels*, *supra* note 839.

842. Paul Knox, *Peru Prepares For Discussions With Leftist Rebels*, THE GLOBE & MAIL (Toronto), Feb. 11, 1997, at A11 [hereinafter Knox, *Peru Prepares*].

843. *Id.*

844. Calvin Sims, *Family Pays Price of A Rebel's Fervor*, N.Y. TIMES, Feb. 24, 1997, at A4 [hereinafter Sims, *Family Pays Price*].

845. *Id.*

846. *Id.*

847. Paul Knox, *Negotiators Agree on Rules For Talks in Hostage Crisis*, THE GLOBE & MAIL (Toronto), Feb. 17, 1997, at A14 [hereinafter Knox, *Negotiators Agree*].

848. *Talks Begin in Lima Hostage Crisis*, THE VANCOUVER SUN, Feb. 12, 1997, at A10.

for the prospect of a healthy safe conclusion for all the hostages. The physical condition of the hostages apparently prompted the Red Cross to increase its medical activities within the Japanese compound. Steve Anderson, spokesman for the Red Cross, commented that "the longer the crisis continues, the worse off the hostages will become physically and mentally."<sup>849</sup> All parties involved were aware that a "hostage death from medical problems would cause serious problems for both the government, which would come under pressure to use military force to resolve the crisis, and the guerrillas, who would be viewed as drawing the first blood in the conflict."<sup>850</sup>

Talks continued on February 15 to establish the agenda for negotiations.<sup>851</sup> However, three meetings failed to produce a mutually-acceptable agenda.<sup>852</sup> The Commission of Guarantors agreed to draw up a set of proposals "to keep a dialogue alive on setting the agenda for substantive talks."<sup>853</sup> The Guarantors' agenda was apparently accepted by both parties as a foundation for discussion, because Cerpa met with Palermo for the talks on February 28, 1997, at the house across the street from the besieged Japanese residence.<sup>854</sup> Ambassador Vincent commented that the "discussions took place in a constructive atmosphere," and dealt with a variety of important issues.<sup>855</sup> Cerpa's appearance at the talks was seen as a positive indication of serious negotiating and as a hopeful indicator that a peaceful resolution could still be found, despite the wide divergence in position between the Peruvian government and the guerrillas.<sup>856</sup>

President Fujimori's insistence that the ongoing discussions were not negotiations, but merely 'conversations,' only contributed to the hardening of positions.<sup>857</sup> The guarantors were "hobbled by Mr. Fujimori's refusal to acknowledge explicitly that negotia-

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849. Sims, *Crisis Takes Toll*, *supra* note 381.

850. Calvin Sims, *Alarm Raised Over Health of Hostages Held in Peru*, THE WEEKEND SUN (Vancouver), Feb. 15, 1997, at A9.

851. *Peru Continues Talks With Marxist Guerrillas*, N.Y. TIMES, Feb. 16, 1997, at 15.

852. Knox, *Canadian's Role*, *supra* note 502.

853. *Id.*

854. Calvin Sims, *Guerrilla Commander Joins Peru Hostage Talks*, N.Y. TIMES, Feb. 21, 1997, at A8 [hereinafter Sims, *Guerrilla Commander*].

855. *Id.*

856. *Id.*

857. Paul Knox, *New Questions in Hostage Crisis*, THE GLOBE & MAIL (Toronto), Apr. 4, 1997, at A8 [hereinafter Knox, *New Questions*].

tions were taking place.”<sup>858</sup> Fujimori also deemed Minister Palermo as an ‘interlocutor,’ rather than a negotiator, thereby implicitly demeaning the rebels as unfit to be bargained with on equal footing.<sup>859</sup> However difficult this made matters for Palermo, a poll demonstrated that 60 percent of Peruvians approved of Fujimori’s actions and 70 percent supported continuation of talks.<sup>860</sup> The siege at the Japanese residence had already set a record as the longest such ordeal in the history of Latin America.<sup>861</sup>

The discussions were a major boost for the Tupac Amaru, which had succeeded in bringing a government as tough as Fujimori’s to the point of talking face-to-face. Cerpa emphasized the significance of the event: “We believe that an organization, political and military like ours, needs not only military actions in the jungles and cities, and slogans and speeches, but for us it’s a very important experience to be at a negotiating table with the government.”<sup>862</sup>

### G. *External Asylum for the Tupac Amaru*

President Fujimori undertook another whirl of travelling in early March 1997, this time apparently to find a destination of refuge for the guerrillas. He flew on March 2, 1997, to the Dominican Republic and received a warm welcome from President Leonel Fernandez, but concluded that the country “might not be an acceptable destination for the rebels.”<sup>863</sup>

The next day, the Peruvian leader made a sudden trip to Cuba<sup>864</sup> “shopping for a country willing to grant asylum to the Tupac Amaru rebels.”<sup>865</sup> Fidel Castro reportedly agreed to take the rebels on condition that “the guerrillas and all other parties to the standoff formally requested it.”<sup>866</sup> Castro explained his

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858. *Id.*

859. Knox, *Candian's Role*, *supra* note 502.

860. *Longest Hostage Siege*, THE IRISH TIMES, Feb. 18, 1997, at 11.

861. *Hostage Record*, THE TIMES (London), Feb. 18, 1997, at 15.

862. Calvin Sims, *Rebels Holding Hostages in Peru Don't Rule Out Cuba Asylum*, N.Y. TIMES, Mar. 5, 1997, at A9 [hereinafter Sims, *Cuba Asylum*].

863. *Peru's President Departs For Talks on Hostage Crisis*, THE VANCOUVER SUN, Mar. 3, 1997, at A7; *Fujimori Discusses Asylum For Rebels*, WINNIPEG FREE PRESS, Mar. 3, 1997, at B1.

864. Sims, *Castro*, *supra* note 561. It was his first trip to Cuba as President of Peru. *Id.*

865. Reuter, *Havana Offers Asylum to Rebels*, THE IRISH TIMES, Mar. 4, 1997, at 11.

866. Sims, *Castro*, *supra* note 561.

position to reporters, saying “[i]t’s a moral duty, not a question of convenience . . . . What are we meant to do, stop helping when there are dozens of people’s lives in danger?”<sup>867</sup> Victor John Way, President of the Congress of Peru and a member of the ruling Change 90 party, commented that Peru was now “closer to a solution to the hostage siege.”<sup>868</sup>

Although there was definite hope, the two sides were still miles apart on their basic positions with respect to the freeing of Tupac Amaru prisoners. Even as optimism grew on one front—the search for a refuge for the rebels—hopes were dashed by indications that a major stumbling block remained. Cerpa failed to attend discussions on March 3, and no explanation was provided for his absence.<sup>869</sup> As one Western diplomat commented, “[t]he history of this crisis is one step forward, two steps back.”<sup>870</sup>

Meanwhile, the rebels had unfurled a banner over a wall of the mansion which proclaimed: “Surrender is not the way of the Tupac Amaru.”<sup>871</sup> The guerrillas had reiterated throughout the crisis that they were not particularly interested in living in another country offering them sanctuary.<sup>872</sup> Isaac Velazco, speaking from Spain, said that the Tupac Amaru was “not thinking about leaving Peru.”<sup>873</sup>

However, on March 4, 1997, Cerpa indicated that he had not ruled out the possibility of asylum in Cuba.<sup>874</sup> However, lest his position be misunderstood, Cerpa emphasized that the guerrillas preferred “not to make a statement in favor or against this offer now because of the respect we have for Commandante Fidel Castro, the Cuban government, his people, and his revolution.”<sup>875</sup> Cerpa rejected any notion of asylum in the Dominican Republic.<sup>876</sup>

Undaunted by the rebels’ reaction to his plans for a solution,

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867. Sims, *Cuba Asylum*, *supra* note 862.

868. Sims, *Castro*, *supra* note 561.

869. *Id.*

870. *Id.*

871. *At Hostage Site in Peru, Some Defiant Messages*, N.Y. TIMES, Mar. 2, 1997, at 13.

872. Calvin Sims, *Castro Offers Asylum to Peru’s Marxist Hostage-Takers*, THE VANCOUVER SUN, Mar. 4, 1997, at A1.

873. *Peru Rebels Offered Asylum But Hostage Crisis Unsolved*, THE EDMONTON J., Mar. 4, 1997, at A6.

874. Sims, *Cuba Asylum*, *supra* note 862.

875. *Id.*

876. *Peru Rebels Vow to Stay, Reject Offers of Asylum*, THE TORONTO STAR, Mar. 5, 1997, at A15.

President Fujimori announced on March 4, 1997, the preparation by his government of an "all-inclusive proposal" to end the siege.<sup>877</sup> The parties exchanged their proposals and agreed to further talks.<sup>878</sup>

### IX. The Crisis Escalates

On March 6, 1997, the Tupac Amaru announced its abandonment of negotiations because of a belief that the authorities were digging tunnels beneath the residence in preparation for a military attack.<sup>879</sup> Cerpa indicated that the rebels began to hear noises beneath the floor three days before; those sounds intensified on March 6.<sup>880</sup> Cerpa concluded from the sound that a military action was being planned and commented that "[w]e don't believe that it's correct for them on the one hand to speak of conducting a dialogue to resolve the crisis and on the other hand to engage in this type of activity."<sup>881</sup> Cerpa requested the Guarantor Commission to confirm his suspicions. The members visited the mansion but departed without comment.<sup>882</sup>

The media, hungry for a new angle on the story, responded with frenzy to Cerpa's allegation about a tunnel. Peruvian journalists reported seeing construction work at a house near the residence and being prevented by police from investigating the situation.<sup>883</sup> The Mayor of San Isidro was prevented by police from observing the construction work.<sup>884</sup> By March 7, despite police dismissal of Cerpa's allegations, journalists were confirming that "one or more tunnels had been dug beneath the besieged residence."<sup>885</sup> Peruvian newspapers reported that they had withheld

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877. *Hostage Proposal Prepared*, THE VANCOUVER SUN, Mar. 5, 1997, at A8.

878. *The Peruvian Government and Marxist Rebels*, THE OTTAWA CITIZEN, Mar. 6, 1997, at A7.

879. Calvin Sims, *Peru Rebels Abandon Talks, Saying Police Are Plotting Assault*, N.Y. TIMES, Mar. 7, 1997, at A10 [hereinafter Sims, *Rebels Abandon Talks*].

880. *Hostage-Takers in Peru Call Off Peace Talks*, THE EDMONTON J., Mar. 7, 1997, at A17.

881. Sims, *Rebels Abandon Talks*, *supra* note 879. Journalist Calvin Sims commented that "[i]f it is shown that the police are digging a tunnel underneath the residence, Fujimori will be hard pressed to explain why the government engaged in such an aggressive act while proclaiming publicly to be negotiating with the rebels." *Id.*

882. *Id.*

883. *Id.*

884. Diana Jean Schemo, *Despite Denial, Peru's Police Seem to Plan Hostage Rescue*, N.Y. TIMES, Mar. 8, 1997, at 1 [hereinafter Schemo, *Peru's Police*].

885. *Id.*



the information in order to protect a raid to liberate the hostages and explained that the loud music blared at the mansion and the tank maneuvers outside were all part of a cover to camouflage the noise of the digging.<sup>886</sup> Additionally, the police sought to distract the rebels by throwing stones at the residence and making obscene gestures at the guerrillas.<sup>887</sup> Journalists also saw truckloads of dirt being carted away from a neighboring house “night after night.”<sup>888</sup> *The New York Times* reported that the tunnel digging had begun in January as President Fujimori journeyed to Canada for his Summit meeting with Prime Minister Hashimoto.<sup>889</sup> Peruvian news sources indicated that the tunnel construction may have begun as early as late December 1996.<sup>890</sup>

The extent of Japanese knowledge of this plan to burrow under their diplomatic residence and forcibly liberate the hostages is unclear to this day. On the surface, Japanese officials expressed some irritation, claiming to have been promised that “they would be consulted before any police intrusion into the compound, which is legally regarded as Japanese territory.”<sup>891</sup> President Fujimori must have been aware of the repercussions to his close relationship with Japan should he embark on a military attack without some prior consultation. This of course raises some questions about the actual content of the secret discussions between Prime Minister Hashimoto and President Fujimori in Toronto. It seems unlikely that Fujimori would have risked his ties with Japan by storming a Japanese diplomatic compound without some prior mutual accord that such action may have to be taken.

The tunnel issue became a significant obstacle to the continuation of discussions between the government of Peru and the guerrillas. Cerpa was afraid to leave the mansion, lest the attack occur in his absence.<sup>892</sup>

Nerves already frayed by the fear of an imminent attack were further strained by reports that United States commandos would participate in the assault on the mansion. The United States Embassy vigorously denied the reports of any involvement in such

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886. *Id.*

887. *Id.*

888. *Id.*

889. *Id.*

890. Diana Jean Schemo, *Peru Officials Are Said to Try to Intimidate Foreign Journalists*, N.Y. TIMES, Mar. 9, 1997, at 14 [hereinafter Schemo, *Peru Officials*].

891. Schemo, *Peru's Police*, *supra* note 884.

892. *Id.*

an operation.<sup>893</sup>

The Peruvian government responded to this tunnel crisis with dogged dismissal of the matter,<sup>894</sup> a tactic which only rattled nerves further. President Fujimori made no public statements about the tunnels,<sup>895</sup> refusing either to confirm or deny their existence.<sup>896</sup> The crisis was also exacerbated by Peruvian governmental attempts to curb and control the media frenzy around the compound. Foreign reporters were threatened with sanctions for broadcasting interviews with Cerpa and one journalist, Miguel Real of Worldwide Television News of Britain,<sup>897</sup> was expelled from Peru for his role in the dissemination of the tunnel story.<sup>898</sup> At a news conference in Peru, Miguel Real said that he was threatened with arrest and that he had been told that he was being investigated on terrorism charges.<sup>899</sup> Some foreign news sources like *The New York Times* came under special attack from Peruvian authorities,<sup>900</sup> indicating that President Fujimori was unhappy with the international news coverage being accorded to the Tupac Amaru's viewpoint.

#### A. Guarantor Commission Acts to Avert Crisis

The explosive situation was now extremely dangerous for the hostages because the minimal bond of trust between the rebels and the government had dissolved with the confirmation that one or several tunnels were being constructed. In an effort to stave off imminent disaster, the Guarantor Commission met President Fujimori, while Michel Minnig of the Red Cross spent considerable time inside the besieged residence.<sup>901</sup> The Commission succeeded in obtaining a commitment from the Peruvian President to search for a peaceful solution.<sup>902</sup> These frantic efforts resulted in Cerpa's agreement to renew the talks on March 10, 1997.<sup>903</sup>

However, two days later, March 12, 1997, negotiations broke

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893. *Id.*

894. *Id.*

895. Schemo, *Peru Officials*, *supra* note 890.

896. *Peruvian Rebel Leader Reported to Be Ready For Negotiations*, THE VANCOUVER SUN, Mar. 10, 1997, at A6.

897. Schemo, *Peru Officials*, *supra* note 890.

898. Schemo, *Peru's Police*, *supra* note 884.

899. Schemo, *Peru Officials*, *supra* note 890.

900. *Id.*

901. Schemo, *Peru's Police*, *supra* note 884.

902. *Id.*

903. *Peruvian Guerrillas Meet With Independent Panel*, N.Y. TIMES, Mar. 10, 1997, at A7.

down again, "with both sides saying they had failed to reach agreement on important points."<sup>904</sup> Monsignor Cipriani called for a period of reflection, during which the Commission would engage in separate meetings to formulate a solution.<sup>905</sup> The same day, the United Nations Human Rights Commission, in a statement from Geneva, condemned the Tupac Amaru as "terrorist elements" and called the act of hostage-taking a violation of human rights.<sup>906</sup>

The passion for digging tunnels was contagious. On March 14, 1997, Peruvian police discovered a nearly completed escape tunnel built by Tupac Amaru guerrilla Leoncio Lopez Lazo and his comrades, who were being detained in a youth prison in Maranga, a district of Lima.<sup>907</sup> The abortive escape of the teenage rebels was apparently scheduled for March 15, 1997.<sup>908</sup>

### B. Japanese Efforts

The hostages had spent three months in captivity with no solution in sight and negotiations stalemated by the rebels' apprehensions about an imminent government assault against them. President Fujimori commemorated the ninetieth day of the crisis by lamenting the plight of the captives in a short speech.<sup>909</sup>

Meanwhile, the Japanese government renewed its efforts by sending Deputy Foreign Minister Masahiko Komura to Peru and other Latin American states on a mission "aimed at gingerly speeding a solution to the hostage crisis."<sup>910</sup> Komura met Fujimori and the Guarantor Commission on March 18, for discussions.<sup>911</sup> The fact that approximately 24 of the hostages were Japanese citizens imprisoned within a Japanese diplomatic compound in Peru was cause enough for concern on the part of the Japanese government.<sup>912</sup> News reports published around the

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904. Diana Jean Schemo, *Peruvian Hostage Talks Resume, Then Collapse*, N.Y. TIMES, Mar. 13, 1997, at A13 [hereinafter Schemo, *Collapse*].

905. *Id.*

906. *Peru and Rebels Restart Talks But Reach No Accord*, THE TORONTO STAR, Mar. 13, 1997, at A23.

907. *Police Find Escape Tunnel Near Lima Jail*, THE TORONTO STAR, Mar. 14, 1997, at A18.

908. *Id.*

909. *Peru Crisis Enters Day 91 as Talks Remain Stalled*, THE TORONTO STAR, Mar. 18, 1997, at A15.

910. *End to Hostage Crisis Sought*, THE VANCOUVER SUN, Mar. 19, 1997, at A10.

911. *Japanese Official Meets Fujimori on Hostages*, N.Y. TIMES, Mar. 19, 1997, at A5.

912. *Id.*

world about the tunnels had certainly made for a more complex situation as far as Japan was concerned. According to *The New York Times*, "Mr. Fujimori did not tell the Japanese that any tunnels were being dug . . . and has not publicly confirmed their existence."<sup>913</sup> Komura's visit was indicative of the anxiety felt within the Japanese leadership, not so much about Fujimori's next move, but about the possible repercussions at home and abroad should a number of those Japanese businessmen and diplomats die in a bloody gun battle between Peruvian forces and the rebels. Reuters reported that "Mr. Komura cautioned Peru's government against using force to end the siege and pressed for a speedy settlement to the crisis."<sup>914</sup>

Komura also visited Cuba officially to request asylum for the rebels in the event that a negotiated solution could be found.<sup>915</sup> He met with a favorable response there and fared similarly successfully with an asylum request made to the President of the Dominican Republic. In an apparent effort to keep some momentum going in the search for a solution, Prime Minister Hashimoto welcomed Cuba's offer of asylum for the rebels.<sup>916</sup>

With Peruvian efforts flagging, the Japanese probably felt that it was time to seize the initiative and revitalize the desperate situation. Komura's visit, however, only emphasized the very limited impact that Japan had on the resolution of the crisis.

### C. Family Solidarity

While both the government of Peru and the rebels stuck to their positions and made no moves, the desperate families and their supporters staged a loud protest outside the Japanese residence as a show of solidarity for their loved ones who were captives inside.<sup>917</sup> They tooted their car horns and sounded vehicle alarms, banged loudly on pots, pans and bottles, blew whistles, shouted, prayed and rang church bells to demonstrate moral support for the hostages.<sup>918</sup> Inside the besieged mansion, a few hostages were seen raising hands at a window and waving a white

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913. *Id.*

914. *Tokyo Aide in Cuba For Peru Hostage Talks*, N.Y. TIMES, Mar. 20, 1997, at A10.

915. *Id.*

916. *Peru Rebels Ignore Fresh Asylum Offer*, THE TORONTO STAR, Mar. 22, 1997, at A26, *Japanese Prime Minister Ryukaro Hashimoto*, THE OTTAWA CITIZEN, Mar. 21, 1997, at A8.

917. *Peru Crisis Enters Day 91 as Talks Remain Stalled*, *supra* note 909.

918. *Id.*

handkerchief in response to the demonstration outside.<sup>919</sup>

The plight of family members was serious indeed. The wives of the captives lived in constant terror of a violent denouement to the crisis. Additionally, the “demands of managing a household and children without their husbands” took “a physical and emotional toll.”<sup>920</sup> There were financial difficulties as family income declined.<sup>921</sup> The lack of communication from their own government was frustrating; many relied on each other and the news media for information about the fate of the hostages. They also found some mutual support in the shared activity of carrying laundry, toilet articles, medicines and letters for their husbands to the Red Cross Mission.<sup>922</sup>

#### D. Fujimori Remains Tough

Despite Japanese diplomatic activities, family demonstrations and the valiant efforts of the Guarantor Commission, it was obvious that only one individual would eventually decide the outcome of this crisis, and he remained firm on his position. Fujimori’s biographer, Luis Jochamowitz, said that “[a]ny kind of concession would be a first for Fujimori,” and added that “[h]e has never compromised with the opposition.”<sup>923</sup>

President Fujimori could have calculated that time was definitely on his side in this crisis. Time would enable him to prepare for a successful military assault; time might also serve to wear out the guerrillas. Carlos Chipoco, a Peruvian opposition Congressman, expressed his belief that the President was “playing the card of wearing them down by the passage of time.”<sup>924</sup>

On March 20, 1997, Fujimori reacted vigorously to a Japanese news report that he had decided to pardon the rebels, saying that he “vehemently, overwhelmingly and definitively” denied any such decision.<sup>925</sup> He added: “Since this incident does not end here, but will set a precedent for Peru and the international community,

919. *Id.*

920. Calvin Sims, *Wives of Hostages in Lima Embassy Fear Violent End to Crisis*, THE VANCOUVER SUN, Apr. 11, 1997, at A19 [hereinafter Sims, *Wives of Hostages*].

921. *Id.*

922. *Id.*

923. Paul Knox, *Many Peruvians Sought Negotiation*, THE GLOBE & MAIL (Toronto), Apr. 23, 1997, at A12 [hereinafter Knox, *Negotiation*].

924. Knox, *New Questions*, *supra* note 857.

925. Diana Jean Schemo, *Pact for Peru Hostage Crisis is Said to be on the Table*, N.Y. TIMES, Mar. 22, 1997, at 3 [hereinafter Schemo, *Pact*].

there can be no concessions to terrorists.”<sup>926</sup> He refused to release any convicted “terrorists” with proven cause and emphasized that Peruvian security preceded any other issue.<sup>927</sup> In an effort to explain the depth of his commitment to his position, the Peruvian President said:

‘The security of the country comes before any other interest. I’m sorry if that sounds hard. . . .

Perhaps for other countries this might not have so much meaning and they may seek solutions that don’t take this into account, but we Peruvians have suffered for 15 years and we’ve had 25,000 deaths.’<sup>928</sup>

### E. *A Proposal for Peace*

On March 24, 1997, Archbishop Cipriani was reported to have made an appeal to the international community for suggestions on a peaceful solution to the hostage crisis in his country.<sup>929</sup> At that time, talks had been stalled since March 12.<sup>930</sup> The Peruvian prelate expressed his conviction that the international community could help because it had “enough facts, enough moral strength.”<sup>931</sup>

Despite evidence of acute frustration with the political chasm which they were seeking desperately to bridge, the mediators continued their efforts to find a solution acceptable to both parties. Details of the carefully crafted agreement surfaced in the media before the parties had even commented publicly on the matter, indicating an attempt to gauge the validity of their efforts by world public opinion, rather than relying on the obduracy of Cerpa and Fujimori.

As early as March 21, 1997, correspondent Diana Jean Schemo of *The New York Times* reported on some particulars of the deal, citing an anonymous diplomatic source.<sup>932</sup> This agreement included exile for the rebels, freedom for the hostages, and early

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926. *Id.*

927. *Id.*

928. *Peru Rebels Ignore Fresh Asylum Offer*, *supra* note 916.

929. *Hostage Mediator Seeks Help*, THE EDMONTON J., Mar. 24, 1997, at A12; *A Mediator Between the Peruvian Government and Rebels*, THE OTTAWA CITIZEN, Mar. 24, 1997, at A8.

930. *Id.*

931. *Advice Sought on Peru Crisis*, THE VANCOUVER SUN, Mar. 24, 1997, at A8.

932. Schemo, *Pact*, *supra* note 925.

parole for some of the imprisoned Tupac Amaristas.<sup>933</sup> The tentative agreement would set the stage for review of the cases of non-violent Tupac Amaru rebels utilizing the judicial review panel which was already in existence.<sup>934</sup>

A few days later, on March 25, 1997, Associated Press reported details of the proposal: a) review of Tupac Amaru prisoners' cases and "freedom for those accused falsely;" b) improvement of prison conditions for Tupac Amaru guerrillas; c) a "multimillion-dollar payment" to the guerrillas; d) expenditures on behalf of poor people in Peru; e) asylum for the hostage-takers in Cuba or the Dominican Republic; f) a law of amnesty protecting the rebels from future prosecution.<sup>935</sup> The Peruvian newspaper *La Republica* reported that the proposal also included early release for some imprisoned Tupac Amaru guerrillas.<sup>936</sup> Kyodo News Agency of Japan indicated that Cuba would also benefit from the situation by receiving economic aid from Japan in exchange for accepting the rebels.<sup>937</sup>

Reuters reported on March 26, 1997, that the rebels had accepted the Cuban offer of asylum and could take some of the captives with them<sup>938</sup> to guarantee safe passage.<sup>939</sup> Bolivia's Acting Ambassador Eloy Avila told a local radio station: "We see flexibility on the part of the government and the MRTA."<sup>940</sup> The Bolivian Ambassador was still in captivity inside the Japanese residence.<sup>941</sup> President Fujimori indicated on March 27, 1997, that a negotiated solution was likely.<sup>942</sup> The hostages spent Easter listening to radio broadcasts about their fate and heard messages from their families.<sup>943</sup>

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933. *Id.*

934. Diana Jean Schemo, *Peru Hostage Crisis Nears End*, THE OTTAWA CITIZEN, Mar. 22, 1997, at A6.

935. *Proposal Being Drafted to End Lima's Hostage Crisis*, THE EDMONTON J., Mar. 25, 1997, at A13.

936. *Plan to End Hostage Crisis in Peru Includes Cash Payment*, THE VANCOUVER SUN, Mar. 25, 1997, at A10.

937. *Peruvian Leader Hopeful on Pact to Free Hostages*, N.Y. TIMES, Mar. 28, 1997, at A7.

938. *Peruvian Rebels Agree to Asylum*, THE OTTAWA CITIZEN, Mar. 26, 1997, at A7.

939. *Deal in Works With Peruvian Hostage-Takers*, THE TORONTO STAR, Mar. 26, 1997, at A18.

940. *Id.*

941. *Deal in the Works to Free Peru Hostages*, THE EDMONTON J., Mar. 26, 1997, at A17.

942. *Peruvian Leader Hopeful on Pact to Free Hostages*, *supra* note 937.

943. *Hostages*, THE OTTAWA CITIZEN, Mar. 29, 1997, at A10.

### F. Rejection

All the optimism notwithstanding, freedom for imprisoned Tupac Amaristas was still not guaranteed. As one diplomat explained: "The core issue now is what to do about the prisoners. That's the real area of contention."<sup>944</sup>

In an interview broadcast on Easter Sunday, March 30, 1997, President Fujimori reiterated his refusal to release the imprisoned guerrillas: "The framework in which we're working is the same. That is to say, to not accept the release of any of them."<sup>945</sup> Although the Guarantors had secured a compromise involving parole for some non-violent prisoners and improved conditions for the others, "as Peru's press got wind of this, many of Mr. Fujimori's supporters expressed outrage and the plan was scotched."<sup>946</sup> This indicated that Fujimori was under pressure, possibly from his military advisors, not to yield to the main demand of the guerrillas in any form. It seemed that the President's room for flexibility was minimal. Having forged an alliance with the army—now the most hawkish element with respect to the guerrilla crisis—to rule the country with a strong degree of law and order, he could hardly afford to alienate the one element on whose loyalty he knew he could depend. With respect to the hostage-taking crisis, opinion among Peruvians seemed to favor a strong governmental position, with over 80 percent of Peruvians polled opposing freedom for Tupac Amaru prisoners.<sup>947</sup>

Nestor Cerpa announced that he would not agree to asylum in another country while his comrades remained in jail.<sup>948</sup> He indicated that the hostage situation would continue as long as the government refused to free the prisoners.<sup>949</sup> However, there was some divergence in opinion among the hostage-takers, Cerpa being willing to yield on the main demand of freedom for the guerrillas, while two "middle-ranking Tupac Amaru guerrillas" remained committed to the original demand.<sup>950</sup> This information was

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944. *Deal in Works With Peruvian Hostage-Takers*, *supra* note 939.

945. *Rebels' Demands Rejected*, THE VANCOUVER SUN, Mar. 31, 1997, at A7.

946. *Peru: Still Waiting*, THE ECONOMIST, Apr. 12, 1997, at 42.

947. *Id.*

948. *See Peru Rebel Holds Firm*, SUNDAY FREE PRESS (Winnipeg), Mar. 30, 1997, at B14; and *Rebels' Demands Rejected*, *supra* note 945; and *Citizen News Service, The Three-Month-Old Hostage Deadlock*, THE OTTAWA CITIZEN, Mar. 30, 1997, at A6.

949. *Id.*

950. *Peruvian Rebels Divided*, THE VANCOUVER SUN, Mar. 27, 1997, at A12.



confirmed after the attack, when liberated hostage Ambassador Jorge Gumucio of Bolivia said that the guerrillas had “begun to bicker” in the final days, as Roli Rojas, Eduardo Cruz, and another guerrilla known as Salvador opposed Cerpa’s inclination to “accept less than the rebels’ main demand: freedom for more than 400 jailed comrades.”<sup>951</sup> Raul Gonzalez, a Peruvian author, gauged Cerpa’s strength and weakness very perceptively when he said that the rebel “‘knows how to get in [to the embassy residence] but he doesn’t know how to get out. He doesn’t know how to negotiate at the political level.’”<sup>952</sup>

While Cerpa drilled his small band of guerrillas in preparation for a military attack against the compound,<sup>953</sup> Fujimori travelled to Bolivia to discuss the crisis with President Gonzalo Sanchez de Lozada, whose Ambassador to Peru was still a hostage in the Japanese residence.<sup>954</sup>

Archbishop Cipriani spent April 14 and 15, 1997, in a frenetic round of meetings with both sides and with his colleagues on the Commission.<sup>955</sup> There was some indication that negotiations were underway concerning the specific prisoners to be freed.<sup>956</sup> However, it was more likely that the Archbishop, a personal friend of President Fujimori, may have had some inkling that the government was leaning in the direction of using force. The prelate was reported to have written to Prime Minister Hashimoto “urging him to press for a peaceful end to the crisis.”<sup>957</sup>

### G. Two Resignations and One Expulsion

Army General Juan Briones, Peru’s Interior Minister, resigned suddenly in April 1997, stating that he would assume responsibility for the hostage-taking incident.<sup>958</sup> Police Commander Lieutenant-General Antonio Ketin Vidal also resigned.<sup>959</sup> On April 20, days after these resignations, President Fujimori appointed “hard-liners”

951. *Raid Called ‘Slaughter,’* WINNIPEG FREE PRESS, Apr. 25, 1997, at B3.

952. *Rebel Leader Took Part in Past Standoff,* *supra* note 98.

953. *Peru’s Rebels Drill Hostages For Expected Police Attack,* THE VANCOUVER SUN, Apr. 9, 1997, at A16.

954. Knox, *New Questions,* *supra* note 857.

955. *Churchman in Shuttle Diplomacy to End Peru Crisis,* THE EVENING TELEGRAM (St. John’s, Newfoundland), Apr. 16, 1997, at 38.

956. *Id.*

957. Krauss, *Peru Troops,* *supra* note 34.

958. *Peru Hostage-Taking Brings Resignations,* THE VANCOUVER SUN, Apr. 21, 1997, at A8.

959. *Id.*

General Cesar Saucedo as Interior Minister and Fernando Dianderas as Police Chief.<sup>960</sup>

Certain conclusions can be drawn regarding the significance of these resignations and new appointments. It seems apparent now that with the changes in personnel, Fujimori had yielded to military persuasion to utilize the option of forcibly freeing the hostages. Further, the changes in the Cabinet demonstrated strains within the government.<sup>961</sup> The resignations also indicate frustration, both within the upper echelons of government and among the public in Peru, with the non-resolution of the crisis. The Lima polling firm Imasen found that only 44 percent of Peruvians supported their President's performance.<sup>962</sup>

A few days before the military attack on the residence, the Peruvian government expelled a Red Cross official from Peru, indicating Fujimori's apparent impatience with that agency's humanitarian efforts during the crisis.<sup>963</sup> On April 17, 1997, Jean-Pierre Schaerer, second in rank at the Peru Red Cross office, was ordered out of the country.<sup>964</sup>

## X. The Rescue

### A. *Cerpa Provides the Excuse for the Attack*

Given that Fujimori's actions indicated that he was determined to forcibly end the crisis, all that was needed was an excuse. Ironically, Cerpa unwittingly obliged, sealing his own fate and that of his small band of rebels. According to journalist Sheryl WuDunn, "the rebels . . . threatened to reduce medical checkups for the hostages from daily to weekly, and it is possible that this may have been interpreted as a threat to their safety."<sup>965</sup> Cerpa conveyed this information to Ambassador Vincent, who inferred

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960. *Fujimori Replaces Two Top Officials Blamed in the Hostage Crisis*, N.Y. TIMES, Apr. 21, 1997, at A4. After the liberation of the hostages, Clifford Krauss of the N.Y. TIMES reported that the two new appointees leading the police and Interior Minister "were believed to have pushed for the raid to demonstrate the government's resolve against terrorism." Krauss, *Peru Troops*, *supra* note 34.

961. *Fujimori Replaces Two Top Officials Blamed in the Hostage Crisis*, *supra* note 960. *Many Peruvians Sought Negotiation*, THE GLOBE & MAIL (Toronto), Apr. 23, 1997, at A12.

962. *Fujimori Replaces Two Top Officials Blamed in the Hostage Crisis*, *supra* note 960.

963. Knox, *Negotiation*, *supra* note 923.

964. Ronald Crelinsten, *The Forces Behind the End of Peru's Hostage Crisis*, THE GLOBE & MAIL (Toronto), Apr. 24, 1997, at A21.

965. Sheryl WuDunn, *From Japan's Leader, Words of Praise, None of Criticism*, N.Y. TIMES, Apr. 23, 1997, at A15 [hereinafter WuDunn, *Words of Praise*].

that the rebel leader was seeking to put more pressure on the Peruvian government.<sup>966</sup> As journalist Paul Knox commented, “[i]t was the opening for which Mr. Fujimori had been waiting.”<sup>967</sup> Fujimori said that he “interpreted Cerpa’s message as a threat” and decided to act on the assumption that the situation was deteriorating.<sup>968</sup> “With hindsight,” said former hostage and journalist Sally Bowen, “the MRTA may have dug its own grave. On top of his intransigent demands for the release of prisoners, the guerrilla commander, Nestor Cerpa, gave President Fujimori the pretext he sought.”<sup>969</sup>

### B. *Attack on the Residence*

Analysis of the military operation which rescued the hostages will likely go on forever, as historians, political scientists and experts on terrorism study and research this subject in years to come. That it was a brilliant military operation is obvious; that it was an extraordinarily lucky one is also clear. Its inevitability at that moment in time is debatable. Arguably, there was no middle ground between Fujimori and Cerpa and one of them had to give in to the other. For Fujimori, the end clearly justified the means.

A detailed study of the events of the fateful afternoon of April 22, 1997, raises some questions about the extent of violence used against the rebels and whether all the deaths were justifiable. However, these doubts aside, it was definitely “a military operation that was long in planning, precise in execution and remarkably fortunate in that almost nothing went awry.”<sup>970</sup>

About 18 days before the attack,<sup>971</sup> the bored young rebels had taken to playing *fulbito*,<sup>972</sup> a type of soccer, daily inside the

966. Paul Knox, *Guerrilla Handed Fujimori Reason to Attack*, THE GLOBE & MAIL (Toronto), Apr. 24, 1997, at A1 [hereinafter Knox, *Reason to Attack*].

967. *Id.*

968. ‘Deteriorating Situation’ Forced Action, THE EDMONTON J., April 24, 1997, at A4. After the successful attack on the residence, President Fujimori confirmed that his decision to attack the rebels was based on Cerpa’s threat to restrict medical visits for the hostage. *Id.* The President explained that “[w]e thought that the situation was deteriorating very quickly so that at any time anything could happen.” Calvin Sims, *A Signal, and Hostages Opened Door to Raid*, N.Y. TIMES, Apr. 24, 1997, at A12 [hereinafter Sims, *Signal*].

969. Bowen, *Uphill Task*, *supra* note 166.

970. *Hostages Tipped Off Before Raid*, THE VANCOUVER SUN, Apr. 24, 1997, at A10.

971. Douglas Farah, *Peru Drilled ‘Best of the Best’ to Free Hostages*, THE TORONTO STAR, Apr. 27, 1997, at A12.

972. Bruce W. Nelan, *How They Did It*, TIME, May 5, 1997, at 15.

mansion,<sup>973</sup> using a ball made of tape and cloth for their game.<sup>974</sup> This apparently harmless activity would be their undoing. They had developed the habit of playing this game in the afternoon, leaving the hostages lightly guarded.<sup>975</sup> This activity dictated the timing of the attack.<sup>976</sup> Many of the younger rebels, particularly the teenagers, had become increasingly frustrated at being confined inside the residence.<sup>977</sup> They had also become careless. Even Cerpa was playing soccer on the afternoon of the attack.<sup>978</sup> “The hostage-takers showed a terrible lack of appreciation of the danger they were facing,” commented William T. Corbett, a retired U.S. Army expert on anti-terrorism.<sup>979</sup> They were naively unaware that their activities inside the mansion were being tracked by sophisticated electronic monitoring equipment.<sup>980</sup>

Cerpa apparently concluded that the problem was outside, and totally underestimated his hostages, who were surreptitiously assisting Peruvian authorities from inside the mansion.<sup>981</sup> Listening devices were everywhere in the residence, inside a guitar, in a thermos, in a chess piece, inside a Bible and even in crutches supplied to rebel Eduardo Cruz, who was wounded in the initial assault.<sup>982</sup> Microphones were reportedly installed in buttons on clothing delivered to hostages.<sup>983</sup> Additionally, commandos used

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973. *Tupac Amaru Vow to Retaliate For Attack*, THE GLOBE & MAIL (Toronto), Apr. 23, 1997, at A12.

974. Paul Knox, *Canadian Envoy Faced Pitfalls in Peru Role*, THE GLOBE & MAIL (Toronto), Apr. 24, 1997, at A9 [hereinafter Knox, *Canadian Envoy*].

975. Gerardo Reyes, *The 10-Minute Warning*, THE EDMONTON J., Apr. 23, 1997, at A4.

976. *Id.*

977. *Peruvian Rebels Divided*, *supra* note 950.

978. Christopher Torchia, *How Peru Pulled Off its Amazing Rescue*, THE TORONTO STAR, Apr. 24, 1997, at A1.

979. Philip Shenon, *Raid Stuck to Rules With a Few Twists*, N.Y. TIMES, Apr. 24, 1997, at A13 [hereinafter Shenon, *Raid Stuck to Rules*]. Ambassador Vincent (the last outsider to talk to the rebels) even commented that discipline had begun to crumble among the rebels. Linda Diebel, *Last Man to Meet Rebels*, THE TORONTO STAR, Apr. 24, 1997, at A1 [hereinafter Diebel, *Last Man*]. He had urged Cerpa to take a realistic view so that a solution could be produced quickly. *Id.*

980. Knox, *Canadian Envoy*, *supra* note 974.

981. Joshua Hammer, *Liberated*, NEWSWEEK, May 5, 1997, at 39.

982. Knox, *Canadian Envoy*, *supra* note 974; Nelan, *supra* note 972.

983. Schemo, *126 Days*, *supra* note 283. It was later revealed that while providing health-related services, some of the physicians had simultaneously been involved in passing messages to the hostages and had even planted “a listening device behind a curtain.” *Id.* The Red Cross was quick to deny knowingly transporting any listening devices into the compound. *Id.* It was eventually revealed

periscopes to look into the first floor and received the assistance of a CIA spy plane in detecting the precise location of people and rebel-planted mines and booby traps in the compound.<sup>984</sup> Agents also sifted the garbage discarded from the mansion for indication of rebel plans.<sup>985</sup>

At approximately 3:30 p.m. on Tuesday, April 22, 1997, Operation Chavin de Huantar, named after a pre-Incan culture,<sup>986</sup> began when a crack Peruvian force of approximately 150 troops<sup>987</sup> (comprising officers<sup>988</sup> from army, navy and air force<sup>989</sup>) stormed the Japanese residence and succeeded in liberating all but one of the hostages. The hostage fatality was Supreme Court Judge Carlos Giusti Acuna,<sup>990</sup> who was reported to have been shot by a stray bullet<sup>991</sup> but later died in the hospital of a heart attack.<sup>992</sup> All the 14 rebels, including Cerpa and two teenaged girls, were killed.<sup>993</sup> Two soldiers, Commander Juan Valer Sandoval and Lieutenant Raul Jimenez Chaves,<sup>994</sup> were reported to have died,<sup>995</sup> and about six soldiers were wounded.<sup>996</sup> Both the dead soldiers were hailed as heroes, especially Valer, who was fatally wounded protecting Foreign Minister Francisco Tudela from a rebel.<sup>997</sup> A few days after the raid, one more commando died of his wounds.<sup>998</sup> About 25 of the hostages were slightly injured,

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that some of the visiting 'physicians' were actually Peruvian intelligence agents who used the opportunity to smuggle in the devices supplied to Peru by the CIA. Nelan, *supra* note 972.

984. Paul Haven, *Peru Officials Used Tiny Hidden Mikes to Spy on Guerrillas*, THE VANCOUVER SUN, Apr. 28, 1997, at A8.

985. *Id.*

986. Ian Lewis, *Hostages Freed in Bloody Raid*, THE OTTAWA CITIZEN, Apr. 23, 1997, at A1.

987. Shenon, *Raid Stuck to Rules*, *supra* note 979.

988. Farah, *supra* note 971.

989. Lewis, *Hostages Freed in Bloody Raid*, *supra* note 986.

990. *Blitz Frees Hostages*, WINNIPEG FREE PRESS, Apr. 23, 1997, at B1.

991. Sims, *Signal*, *supra* note 968.

992. Allan Thompson, *Right to Storm Compound: Chretien*, THE TORONTO STAR, Apr. 23, 1997, at A16.

993. Lynn Monahan, *Peruvian Troops Free Hostages*, THE GLOBE & MAIL (Toronto), Apr. 23, 1997, at A1; *71 Hostages Rescued in Peru as Troops Kill All 14 Rebels*, THE VANCOUVER SUN, Apr. 23, 1997, at A1.

994. *Hostages Tipped Off Before Raid*, *supra* note 970.

995. Clifford Krauss, *Peru Troops Rescue Hostages; Rebels Slain as Standoff Ends*, N.Y. TIMES, Apr. 22, 1997, at A1 [hereinafter Krauss, *Peru Troops Rescue Hostages*].

996. Lewis, *Hostages Freed in Bloody Raid*, *supra* note 986.

997. *Hostages Tipped Off Before Raid*, *supra* note 970.

998. Haven, *supra* note 984.

two quite seriously.<sup>999</sup> Tudela was reported to have been shot,<sup>1000</sup> and Ambassador Aoki's elbow was injured.<sup>1001</sup> In response to media queries whether he had ordered the commandos to take no prisoners, President Fujimori said his direction was "simply to free the hostages and keep as many of them alive as possible."<sup>1002</sup> Commenting on his decision to use force to resolve the crisis, Fujimori insisted that "there was no other way out,"<sup>1003</sup> as he surveyed the scene, standing on the roof of a car outside the Japanese residence.<sup>1004</sup> He explained in a speech after the attack that the guerrillas were "armed to the teeth, and we had to act to save the hostages."<sup>1005</sup>

The ordeal, which had begun in the middle of December and dragged on for over four months ended in less than half an hour "in a blur of exploding gunfire."<sup>1006</sup> A day later, details emerged about the brilliant rescue operation which apparently had been planned almost from the beginning of the hostage-taking incident.<sup>1007</sup>

A model of the Japanese mansion had been constructed on the outskirts of Lima, and there a force of carefully selected commandos practiced regularly for an assault against the rebels.<sup>1008</sup> Meanwhile, the perimeter around the actual mansion, which was guarded by military troops, was pushed back one block, allowing more space for the attackers.<sup>1009</sup> Hospitals operated by the police and army were made ready to receive casualties.<sup>1010</sup>

The role of the hostages would be pivotal in ensuring the success of the raid. A calculated gamble to provide them with advance warning paid off for the commandos and for the captives. Bolivian Ambassador Jorge Gumucio provided the details: "Ten minutes before the attack, the police gave us a sign, and one person among each group of hostages gave the order to get down on the

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999. *Peruvian Troops Free 71 Hostages*, THE TORONTO STAR, Apr. 23, 1997, at A1.

1000. *Hostages Tipped Off Before Raid*, *supra* note 970.

1001. *Soldiers Blasted Way Into Compound*, THE EVENING TELEGRAM (St. John's, Newfoundland), Apr. 23, 1997, at 2.

1002. Sims, *Signal*, *supra* note 968.

1003. Krauss, *Peru Troops Rescue Hostages*, *supra* note 995.

1004. *Peruvian Troops Free 71 Hostages*, *supra* note 999.

1005. *Id.*

1006. *Long Lull Suddenly Exploded*, N.Y. TIMES, Apr. 23, 1997, at A15.

1007. Sims, *Signal*, *supra* note 968.

1008. *Id.*

1009. *Id.*

1010. Reyes, *supra* note 975.

floor and don't move."<sup>1011</sup> Later reports indicated that the warning came just three minutes before the attack.<sup>1012</sup> The signal was relayed to Luis Giampetri Rojas, a retired Admiral<sup>1013</sup> who was a hostage and who had managed to conceal his two-way radio throughout the ordeal.<sup>1014</sup> The pre-warned hostages pretended to be napping, as they waited for the attack to begin.<sup>1015</sup> Ambassador Gumucio said those few minutes of waiting "seemed like forever."<sup>1016</sup>

Forty-five of the hostages were high-ranking members of the Peruvian Security forces, and had received particulars of the assault in family messages written in code.<sup>1017</sup> These messages stated that the loud playing of a marine anthem by a band stationed nearby would be the warning of the impending attack.<sup>1018</sup> Residents of San Isidro reported hearing the particular music shortly after 3:00 p.m.<sup>1019</sup>

Informed quietly about the impending raid, another hostage, Catholic priest Juan Julio Wicht, thought it was a joke.<sup>1020</sup> He had, however, noticed more military activity outside.<sup>1021</sup> Not all hostages received the advance warning; at least two Peruvian government Vice-Ministers were sitting on portable toilets when the attack came and Congressman Luis Chang Ching was sponging himself in the bathtub when the attack came.<sup>1022</sup>

Meanwhile a group of hostages imprisoned in Ambassador Aoki's bedroom had furtively opened a bullet-proof metal door to a balcony.<sup>1023</sup> This enabled the commandos to enter from the balcony, using ladders to reach the second floor in order to rescue the captives inside.<sup>1024</sup>

The final decision to attack was made by President Fujimori. He told reporters that he was testifying in a court case initiated

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1011. Sims, *Signal*, *supra* note 968.

1012. *Tipoff, Tunnel Were Keys to Hostage Rescue*, CHRONICLE-HERALD THE MAIL STAR (Halifax), Apr. 24, 1997, at A12.

1013. Knox, *Canadian Envoy*, *supra* note 974.

1014. Sims, *Signal*, *supra* note 968.

1015. *Id.*

1016. Torchia, *supra* note 978.

1017. Gabriella Gamini, *Sound of Martial Music Heralded Doom For Rebels*, THE TIMES (London), Apr. 24, 1997, at 16.

1018. *Id.*

1019. Reyes, *supra* note 975.

1020. Torchia, *supra* note 978.

1021. *Id.*

1022. Hammer, *supra* note 981.

1023. Sims, *Signal*, *supra* note 968.

1024. *Id.*

against him by his former wife when "he received a telephone call from his intelligence agency saying that listening devices planted in the residence indicated that most of the rebels were on the first floor playing their routine game of soccer."<sup>1025</sup> The President said, "At that second I knew the time was right and told them to proceed with the raid immediately."<sup>1026</sup>

A day after the raid, the Peruvian government finally confirmed the existence of a number of tunnels and provided particulars of how they were used in the operation.<sup>1027</sup> The digging of tunnels to the Japanese mansion began in January 1997, with "four-man teams working in four-hour shifts,"<sup>1028</sup> around the clock.<sup>1029</sup> As the miners worked, the police blared loud martial music to hide the sound of digging.<sup>1030</sup> One tunnel reportedly caved in, injuring several miners.<sup>1031</sup> The steel-braced tunnels led to three strategic exits in the Japanese compound: the main reception area, the kitchen, and under the tent erected in the garden for the Emperor's birthday party.<sup>1032</sup> One group of attacking commandos emerged from a tunnel dug under the garden.<sup>1033</sup>

The ventilated and lighted<sup>1034</sup> tunnels were four feet in diameter,<sup>1035</sup> three meters underground,<sup>1036</sup> and 170 meters in combined length.<sup>1037</sup> Inside the six-foot-high tunnels<sup>1038</sup> "troops could walk upright, two abreast,"<sup>1039</sup> on the carpeted floor.<sup>1040</sup> A month before the military operation, offices and

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1025. *Id.*

1026. *Id.*

1027. Farah, *supra* note 971. Indeed, the code name Chavin de Huantar was more than appropriate. This refers to a pre-Inca archeological site (situated in a remote area of the Andes region of Huaraz) which is about 3000 years old and consists of a sophisticated system of stone tunnels. Gabriella Gamini, *Pre-Inca Ruins 'Inspired' Lima Raid*, THE TIMES (London), Apr. 28, 1997, at 14 [hereinafter Gamini, *Pre-Inca Ruins*].

1028. *Tipoff, Tunnel Were Keys to Hostage Rescue*, *supra* note 1012.

1029. Farah, *supra* note 971.

1030. *Hostages Tipped Off Before Raid*, *supra* note 970.

1031. Bowen, *Uphill Task*, *supra* note 166.

1032. Nelan, *supra* note 972.

1033. Torchia, *supra* note 978.

1034. *Hostages Tipped Off Before Raid*, *supra* note 970.

1035. Sims, *Signal*, *supra* note 968.

1036. *Rebel Leader Executed in Lima Raid, Paper Says*, THE VANCOUVER SUN, Apr. 25, 1997, at A14.

1037. Farah, *supra* note 971.

1038. Gamini, *Pre-Inca Ruins*, *supra* note 1027.

1039. Nelan, *supra* note 972.

1040. Gamini, *Pre-Inca Ruins*, *supra* note 1027.



command units had been established inside the tunnels.<sup>1041</sup> After the military operation was over, President Fujimori (who was an engineering professor prior to becoming Peru's Head of State) explained that he had been inspired by the Chavin de Huantar ruins to devise and design a similar system of tunnels in San Isidro leading into the Japanese mansion.<sup>1042</sup>

A troop of commandos was stationed on April 20, 1997, in the tunnel under the living room floor.<sup>1043</sup> Upon receiving the signal to attack, they detonated a bomb under the living room on the first floor where about nine of the guerrillas were enjoying their soccer game.<sup>1044</sup> "With a boom, the floor suddenly buckled beneath the rebels."<sup>1045</sup> That bomb appears to have killed at least four rebels.<sup>1046</sup> Cerpa and other rebels grabbed their weapons and rushed toward the staircase to reach the second floor (where all the politically significant hostages were located).<sup>1047</sup> However, another troop of commandos entering via the open balcony door waylaid them after killing the few rebels guarding the top floor captives.<sup>1048</sup> Journalist Calvin Sims described the next moments graphically:

A gunfight ensued and the rebels retreated down the staircase where they were ambushed by more commandos who entered the residence through the hole blown in the floor, the front door, and holes blown in the windows on the left side of the residence. The government said that all the remaining guerrillas were killed in the ambush.<sup>1049</sup>

The fearful hostages lay on the floor, covering their faces so that the guerrillas could not identify the most important among them.<sup>1050</sup> Ambassador Aoki warned them, "Don't move, don't move."<sup>1051</sup> They choked as smoke from all the explosions filled the mansion.<sup>1052</sup> A second-floor room housing a number of captives "exploded in a blast of falling plaster, choking dust and

1041. *Id.*

1042. *Id.*

1043. Sims, *Signal*, *supra* note 968.

1044. *Id.*

1045. *Tipoff, Tunnel Were Keys to Hostage Rescue*, *supra* note 1012.

1046. *Id.*

1047. Sims, *Signal*, *supra* note 968.

1048. *Id.*

1049. *Id.*

1050. *Id.*

1051. *Id.*

1052. *Tipoff, Tunnel Were Keys to Hostage Rescue*, *supra* note 1012.

terrifying confusion.”<sup>1053</sup> Father Wicht, the 65-year-old priest who had voluntarily stayed on in captivity to comfort the hostages, told reporters later that “[i]t was incredible—the noise, the screaming, the bullets whizzing just past my head,” and added, “It was worse than anything I could possibly have imagined from anything I’d ever seen on TV.”<sup>1054</sup> The priest saw a soldier’s boots and heard a shout, “Go! Go! You’re free! You’re free!”<sup>1055</sup> On his hands and knees, Father Wicht followed the soldier’s boots to the door and out to freedom.<sup>1056</sup>

Meanwhile, other rescuers on the second floor were carefully leading the hostages to safety via the roof of the mansion.<sup>1057</sup> Some commandos “organized a parade of hostages on their hands and knees—like a trail of ants.” They crept to the balcony and down an exterior staircase to freedom.<sup>1058</sup> As they left, the commandos exchanged gunfire with rebels on this top floor and threw grenades at them.<sup>1059</sup> One hostage fled in his underwear, clutching his trousers.<sup>1060</sup>

Japanese hostage Akira Miyashita, a 55-year old businessman, rushed out to the balcony as soon as the attack began.<sup>1061</sup> Troops below urged him to jump.<sup>1062</sup> He did and broke his foot, but he was finally free and could only express his relief and his desire to return to Japan and be with his family.<sup>1063</sup>

Agriculture Minister Rodolfo Munante Sanguinetti had a narrow escape.<sup>1064</sup> He was lying on the floor of one of the second-floor bedrooms when a rebel rushed into the room.<sup>1065</sup> Mr. Munante later recounted that the rebel was going to shoot him but lowered his gun, turned and walked out of the room to his own death a few minutes later.<sup>1066</sup> “He could have done it. But he

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1053. Molly Moore, *Screaming Bullets Filled the Air, Freed Hostage Says*, THE TORONTO STAR, Apr. 24, 1997, at A14.

1054. *Id.*

1055. *Id.*

1056. *Id.*

1057. Knox, *Canadian Envoy*, *supra* note 974.

1058. Nelan, *supra* note 972.

1059. Knox, *Canadian Envoy*, *supra* note 974.

1060. *Tipoff, Tunnel Were Keys to Hostage Rescue*, *supra* note 1012.

1061. Moore, *supra* note 1053.

1062. *Id.*

1063. *Id.*

1064. *Trembling Rebel Decided Not to Kill Him, Freed Hostage Says*, THE GLOBE & MAIL (Toronto), Apr. 24, 1997, at A9.

1065. *Id.*

1066. *Id.*

didn't," said Minister Munante.<sup>1067</sup>

Counter-terrorism experts commented that this hostage rescue in Peru "would very likely be mentioned in future years in the same breath as the Israeli rescue of 105 hostages from a hijacked jet in Entebbe, Uganda, in 1976, and the West German rescue of 86 passengers and crew from an airliner in Mogadishu, Somalia, in 1977."<sup>1068</sup> The Peruvian rescue had followed most of the usual procedures in such situations<sup>1069</sup> but the use of tunnels was innovative, as was the judicious application of eavesdropping equipment.<sup>1070</sup> Video cameras filmed the military assault and broadcast the dramatic events immediately around the world.

#### XI. The Peruvian Reaction

Fernando Rospigliosi, an analyst for the Institute of Peruvian Studies in Lima, commented that this victory would "probably help . . . [Fujimori's] popularity ratings and allow him to cover up human rights abuses within the military."<sup>1071</sup> Indeed the President's ratings shot up right after the military operation. A poll taken on April 24, 1997, showed his approval rating at 67 percent, a considerable improvement on his rating of 38 percent before the raid.<sup>1072</sup> Eighty-four percent of 420 residents of Lima who were polled supported the decision to use force against the rebels and almost nine out of ten approved of the military's performance.<sup>1073</sup> Political analyst Alfredo Barnechea voiced the general Peruvian reaction when he said of his President: "Politically, this will give him a new lease on life."<sup>1074</sup> As journalist Sebastian Rotella explained, "in one stroke of brilliance and luck, Fujimori's image rocketed upward. He regained the mantle of the anti-terrorist

1067. *Id.*

1068. Shenon, *Raid Stuck to Rules*, *supra* note 979.

1069. *Id.* "Attack at a moment when terrorists are relaxing or asleep, send in large numbers of marksmen trained as snipers and use explosives in the early seconds of a raid to create chaos." *Id.*

1070. *Id.*

1071. Peter Grier and Alex Emery, *Peru's Raid on Terror*, THE CHRISTIAN SCI. MONITOR, Apr. 24, 1997, at 6.

1072. Anthony Faiola, *Suddenly, Peru's President Is Mr. Popularity*, THE VANCOUVER SUN, Apr. 25, 1997, at A23.

1073. *Trembling Rebel Decided Not Kill Him, Freed Hostage Says*, *supra* note 1064.

1074. Andres Oppenheimer, *Daring Raid in Peru Saved Fujimori Too*, THE OTTAWA CITIZEN, Apr. 23, 1997, at A6.

warrior who has brought order to Peru."<sup>1075</sup>

The military operation was clearly aimed as much at reinforcing Fujimori's popularity as at liberating the hostages. The military was reported for some time to have been prodding the President to take military action against the rebels and Correspondent David Adams, writing in *The Times* (London), explained that "[t]ime began to run out for the President. In the past two weeks, the Peruvian Army had been shaken by political and human rights scandals to the point that there were wide-spread rumors of a military coup in the making."<sup>1076</sup> The question which arises is whether Fujimori bowed to military pressure and undertook a spectacular operation which would simultaneously rehabilitate his flagging image and that of the military. More cynically, one could wonder whether he had much room to maneuver if his only viable options were either facing a military coup or staging a military raid on the Japanese compound.

Jorge Santistevan, Peru's Defender of the People, believed that the guerrilla's decision to restrict medical visits to the hostages had justified the use of force.<sup>1077</sup> Though saddened by the deaths, he viewed the outcome as positive.<sup>1078</sup> However, Carlos Tapia, a sociologist, commented that "real pacification is never achieved through military action."<sup>1079</sup>

Shortly after the raid had concluded, President Fujimori, protected by a bullet-proof vest, entered the Japanese compound "to congratulate his troops and proclaim victory."<sup>1080</sup> Peru's national anthem was played during the victory ceremony.<sup>1081</sup> Peruvian troops cheered loudly.<sup>1082</sup> Shaking hands with the freed hostages, Fujimori "beamed as befits a man who had slain a fearsome dragon, seen it rise again and strike at the center of his

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1075. Rotella, *Fujimori Reconquers Peru*, *supra* note 167. However, a cautionary note was struck by Peruvian political analyst Giguanna Pena Flor who did not view the surge in President Fujimori's popularity as a long-term gain and argued that it would take more to keep the people happy. Faiola, *supra* note 1072.

1076. David Adams, *President Salvages Iron-Man Image in Dramatic Flourish*, *THE TIMES* (London), Apr. 24, 1997, at 17.

1077. Sally Bowen & William Dawkins, *Embassy Hostages*, *THE FIN. TIMES*, Apr. 24, 1997, at 17.

1078. *Id.*

1079. Bowen, *Uphill Task*, *supra* note 166.

1080. Calvin Sims, *A Gamble Pays Off*, *N.Y. TIMES*, Apr. 23, 1997, at A1 [hereinafter Sims, *Gamble*].

1081. Krauss, *Peru Troops*, *supra* note 34.

1082. Knox, *Negotiation*, *supra* note 923.

claim to greatness, and then dispatched it once more."<sup>1083</sup> Carrying the Peruvian flag, the President joined two busloads of liberated hostages for a trip to a military hospital, saying "[w]e've received 72 friends alive and well."<sup>1084</sup>

On a later tour of some of Lima's slums, he told Peruvians: "I will protect you from the terrorist threat. Peru will not be at the mercy of terrorism and I mean to fight it with an iron fist. I will make this into a better and safer place to live."<sup>1085</sup>

Isaac Velazco threatened retaliation by the rebels, saying, "[t]here are economic and military targets that will be attacked."<sup>1086</sup> Velazco vowed to "continue the war against . . . a brutal system of repression."<sup>1087</sup> Another rebel was quoted by Reuters: "We are not afraid that our comrades have died. The MRTA is not going to die."<sup>1088</sup>

Although guerrilla violence in Peru since the hostage release has not been dramatic enough to excite world attention, the economic and political problems which breed hostility to established structures continue to haunt that nation. Until those problems are resolved or at least alleviated, the Peruvian government is permanently held hostage to the potential for guerrilla violence. Correspondent Robert Russo defined the essential problems facing Fujimori in the aftermath of his great victory: "poverty and the lack of basic services in many parts of the country are still his political Achilles' heel."<sup>1089</sup> Former opposition Congressman and lawyer Javier Valle-Riestra cautioned that "[a]t all costs, we must avoid triumphalism," and listed the priorities for Peru: "We have to make Peru more democratic, demilitarize the country and be more self-critical."<sup>1090</sup>

## B. *The Japanese Reaction*

The initial Japanese governmental reaction was relief, mingled

1083. *Id.*

1084. Lynn Monahan, et al., *Fujimori Greets Freed Hostages*, THE GLOBE & MAIL (Toronto), Apr. 23, 1997, at A12.

1085. Gabriella Gamini, *Fujimori Basks in Backing For Lima Attack*, THE TIMES (London), Apr. 25, 1997, at 19.

1086. Krauss, *Peru Troops*, *supra* note 34.

1087. *Revolutionaries to Fight on Web*, THE EDMONTON J., Apr. 24, 1997, at A4.

1088. *Tupac Amaru Vow Renewed Assaults to Avenge Comrades*, THE TORONTO STAR, Apr. 23, 1997, at A17.

1089. Robert Russo, *Canadian Ambassador Describes Last Meeting With Doomed Rebels*, THE VANCOUVER SUN, Apr. 24, 1997, at A7.

1090. Grier & Emery, *supra* note 1071.

with an attempt to distance itself from the military operation. Prime Minister Hashimoto emphasized that he had received no prior warning of the attack and called that "regrettable."<sup>1091</sup> Hashimoto said: "I told [President Fujimori] I understood his choice although I did inform him of my regret that we had no prior information."<sup>1092</sup> A Japanese government source suggested that the failure to inform Hashimoto in advance "means that maybe they [Peruvians] were afraid the Japanese side would not have given approval for military action."<sup>1093</sup> This view was also expressed by others: "It is widely believed that Peru did not alert Japan precisely because Mr. Hashimoto would have vetoed such an attack, as was its right under international law."<sup>1094</sup> In ordering the attack on the residence, Fujimori "acted on his own even though he had signed an agreement with the Japanese pledging to consult with them before taking any military action."<sup>1095</sup> There was no indication of any such agreement in the joint statements following the Japan-Peru leaders' Summit in Toronto on February 1, 1997. Japanese government spokesman Press Secretary Hiroshi Hashimoto of the Foreign Ministry publicly denied that there was any document signed between the Japanese Prime Minister and the Peruvian President at the Toronto meeting. According to the spokesman, "we expected that prior notification would be given if President Fujimori were to take military action; this was not the case. However, Prime Minister Hashimoto expressed his understanding of the situation where President Fujimori could not provide prior notification."<sup>1096</sup> With reference to the deaths of the MRTA guerrillas, the spokesman said bluntly, "they deserve to be killed."<sup>1097</sup>

After the raid, President Fujimori reportedly admitted to breaking a promise made to Prime Minister Hashimoto to warn Japan prior to a rescue operation.<sup>1098</sup> He admitted that Japan

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1091. WuDunn, *Words of Praise*, *supra* note 965.

1092. *Japan's PM Not Notified of Plan to Attack*, THE TORONTO STAR, Apr. 23, 1997, at A16.

1093. Sheryl WuDunn, *Tokyo Fears Nonviolence Is Invitation to Terrorists*, N.Y. TIMES, Apr. 24, 1997, at A13 [hereinafter WuDunn, *Nonviolence*].

1094. Barrie McKenna, *Muted Response Hints that Tokyo Changing Its Stance*, THE GLOBE & MAIL (Toronto), Apr. 24, 1997, at A9.

1095. Sims, *Gamble*, *supra* note 1080.

1096. Government of Japan document, *Press Conference by the Press Secretary*, Apr. 23, 1997, at 3.

1097. *Id.* at 2.

1098. Julia Preston, *Japanese Take Back Mansion, Ending Hostage Saga*, N.Y. TIMES, Apr. 26, 1997, at 6.

had demanded to be notified in advance of any resort to force, but said, "I did it because in a rescue of this nature, the factor of surprise is fundamental."<sup>1099</sup> However, Japan's daily newspaper *Yomiuri Shimbun* felt that Peru could not compromise the secrecy of the military operation by confiding in Japan.<sup>1100</sup> On the other hand, the non-consultation was perceived by some Japanese as humiliating for their country. Former Japanese government advisor Hideaki Kase commented that "[t]his affair will only perpetuate Japan's image as a country lacking a will to resist terrorists."<sup>1101</sup> *New York Times* correspondent Sheryl WuDunn reported after the military raid that "[a]lthough the government in Tokyo had received a promise from Peruvian officials that they would not use force, Japanese officials were also aware that force was ultimately a possibility."<sup>1102</sup>

Significantly, the Japanese newspaper *Asahi Shimbun* reported that a manual on crisis management circulating among senior government officials provided two options in the Peruvian hostage situation, and both contemplated the use of force by Peru against the rebels.<sup>1103</sup> In an analysis after the attack, journalist Sebastian Rotella commented: "Unless Fujimori received some sort of secret or tacit approval from Japanese officials, . . . he apparently decided the chances of a successful operation merited the risks."<sup>1104</sup>

For Japan, Fujimori had provided a highly satisfactory solution. Not only had he liberated the hostages and destroyed the rebels, but he had provided the Japanese government with a guilt-free conscience in the event that any Japanese hostages had been killed. Prime Minister Hashimoto received the marvelous gift of deniability. He could plead 'no prior knowledge' and leave Fujimori to live through either the blame or the adulation, depending on the outcome of the raid.

Japan also gained by jumping immediately on the Fujimori bandwagon in support of his strong move. It made the Japanese Prime Minister appear decisive to his own public and to a small extent, he could overcome the negative global reputation of Japan as being soft on terrorism and therefore an easy prey. One writer

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1099. *Freed*, THE EDMONTON J., Apr. 23, 1997, at A16.

1100. McKenna, *supra* note 1094.

1101. Robert Whyman, *Japanese Firms Were Set to Pay Ransom*, THE TIMES (London), Apr. 24, 1997, at 17.

1102. Sheryl WuDunn, *Japan Cheers Release of Captives*, THE OTTAWA CITIZEN, Apr. 23, 1997, at A6.

1103. McKenna, *supra* note 1094.

1104. Rotella, *Fujimori Reconquers*, *supra* note 167.

was highly critical of Japan's position during the crisis and speculated that the choice by the Tupac Amaru of a Japanese target might have been because the rebels "suspected that Japan, more than another adversary, would be willing to cut a deal."<sup>1105</sup> Another was more blunt, commenting that "Japan's reputation for pusillanimous capitulation to terrorism has won it little respect abroad."<sup>1106</sup>

The Japanese government likely calculated that with all Japanese lives intact, their most graceful reaction would be to ignore the violation of their diplomatic rights involved in the storming of their Ambassador's residence. Accordingly, Prime Minister Hashimoto supported the Peruvian President's decision to take military action and told journalists in Tokyo that "[t]here should be no one who can criticize President Fujimori for this decision."<sup>1107</sup> Mr. Hashimoto reportedly told Mr. Fujimori: "I might have done the same thing."<sup>1108</sup> He vowed in a message to the Japanese House of Representatives to "continue to battle terrorism in the future without ever yielding."<sup>1109</sup>

Prime Minister Hashimoto also dispatched Foreign Minister Yukihiko Ikeda to Peru to formally thank President Fujimori and to visit the former hostages.<sup>1110</sup> Ambassador Morihsa Aoki, enjoying freedom after 126 days of captivity, "praised the way the crisis was resolved."<sup>1111</sup> Even Japanese corporations, which have often been the victims of terrorist kidnappings and ransom demands, cautiously lauded Fujimori's bold stance.<sup>1112</sup>

Kosaku Inaba, Chairman of the Japanese Chamber of

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1105. Editorial, *Fujimori's Coup De Force*, THE GLOBE & MAIL (Toronto), Apr. 23, 1997, at A26.

1106. Editorial, *After the Siege*, THE TIMES (London), Apr. 24, 1997, at 23.

1107. Krauss, *Peru Troops Attack*, *supra* note 34.

1108. WuDunn, *Nonviolence*, *supra* note 1093.

1109. Government of Japan Document, *Report By Prime Minister Ryutaro Hashimoto on the Release of the Hostages Held at the Residence of the Japanese Ambassador to the Republic of Peru*, Apr. 24, 1997, Plenary Session of the House of Representatives, at 1.

1110. WuDunn, *Words of Praise*, *supra* note 965.

1111. Cameron W. Barr, *Japan Gains A Vicarious Victory—And Likes the Taste of It*, THE CHRISTIAN SCI. MONITOR, Apr. 24, 1997, at 6.

1112. William Dawkins, *Mixed Feelings Reign in 'Over-Caution' in Tokyo*, FIN. TIMES, Apr. 24, 1997, at 10. Dawkins examined the contrast between Japanese corporate support for the Peruvian military action with "Japanese companies' previous reluctance to confront terrorists, verbally or in any other way." *Id.* He concluded that "many in Japan now feel emboldened to take a less weak stance against terrorism rather than leave it to foreign governments to show an example." *Id.*



Commerce and Industry, considered the raid unavoidable.<sup>1113</sup> Japan's gratitude to Peruvian President Fujimori took tangible form a few days after the raid. On April 28, 1997, Peru received \$11.5 million in aid "as a good-will gesture" from the Japanese government.<sup>1114</sup> The money was directed to the improvement of medical care and facilities for the poor and the repair of rural hydroelectric plants.<sup>1115</sup>

Although many Japanese citizens were relieved that the crisis was over, they had qualms about the alleged executions of some of the young rebels who were apparently shot during the raid after they had surrendered. This action was perceived by Japanese television commentators as tainting the operation with vengefulness. Kazuo Ohgushi, a professor of Latin American politics at International Christian University near Tokyo, found such executions unacceptable.<sup>1116</sup> Professor Ohgushi wondered whether "enough was done to talk the hostages out of the rebels' clutches, rather than blast them out."<sup>1117</sup>

### C. *International Reaction*

Kofi Annan, Secretary General of the United Nations, regretted that force had to be used but applauded the "determined efforts by the government of Peru over past several months to find a negotiated solution."<sup>1118</sup> From Geneva, the Red Cross, which had played so effective a humanitarian role throughout the crisis, reacted with relief but deplored the loss of life involved in the attack.<sup>1119</sup> William Cohen, the Defense Secretary of the United States, commented that the Peruvians had "acted responsibly."<sup>1120</sup> Although the United States apparently knew that a raid was imminent, Defense Secretary Cohen denied American participation, insisting that it "was entirely a Peruvian government operation."<sup>1121</sup> Paul Bremer, former U.S. Ambassador-at-large for counterterrorism commented that the raid "was absolutely

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1113. Bowen & Dawkins, *supra* note 1077.

1114. *Mother Convinced Rebels Executed*, THE EVENING TELEGRAM (St. John's, Newfoundland), Apr. 29, 1997, at 7.

1115. *Id.*

1116. Cameron W. Barr, *After Initial Euphoria, Japanese Question Violent Peru Raid*, THE CHRISTIAN SCI. MONITOR, Apr. 30, 1997, at 7.

1117. *Id.*

1118. Sims, *Signal*, *supra* note 968.

1119. Bowen & Dawkins, *supra* note 1077.

1120. Krauss, *Peru Troops*, *supra* note 34.

1121. *Id.*

magnificent—a model.”<sup>1122</sup>

An editorial in the *New York Times* was more measured, calling the use of force legitimate and explaining the favorable international reaction as a reflection of the global attitude that “the security of diplomatic facilities is a unifying principle and a common responsibility.” However, cautioned the editorial, “Mr. Fujimori called the rescue a victory for democracy. He must be careful to insure that its aftermath continues to be so.”<sup>1123</sup> *The Christian Science Monitor* questioned whether Fujimori “persisted long enough in the peaceful hostage negotiations,” but concluded that “the deed is done, the time for healing is at hand.”<sup>1124</sup>

Canadian Foreign Affairs Minister Lloyd Axworthy expressed pleasure that the crisis was over, but said that he would have preferred to see a peaceful resolution.<sup>1125</sup> Canadian Ambassador Vincent, who played a pivotal role throughout the crisis, had visited the residence just 2 and 1/2 hours before it was stormed.<sup>1126</sup> After the raid he confirmed that he had no prior warning about the attack and had left the mansion about two hours before the operation began.<sup>1127</sup> He further stated that he had played no role in planning the military attack and, although he knew about the rebels’ routines, he had not divulged that information to the police.<sup>1128</sup> Vincent first heard about the attack from his wife, who saw the operation on television and was afraid that he was still inside the mansion.<sup>1129</sup>

Canadian press coverage of the liberation of the hostages was extensive. *The Globe & Mail*, in an editorial, lauded Fujimori’s “coup de force,” and commented that he had “set an example to other leaders,” by sending a “clear, discouraging message to prospective violent groups.”<sup>1130</sup> An editorial in *The Vancouver Sun* described the operation as “[b]rief, bloody and almost surgically perfect in taking down adversaries and sparing inno-

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1122. Shenon, *Raid Stuck to Rules*, *supra* note 979.

1123. Editorial, *A Justifiable Rescue*, N.Y. TIMES, Apr. 24, 1997, at A26.

1124. Editorial, *Peru's Opportunity Now*, THE CHRISTIAN SCI. MONITOR, Apr. 24, 1997, at 20.

1125. Lynn Monahan et al., *Fujimori Greets Freed Hostages*, *supra* note 1084.

1126. *Id.*

1127. Knox, *Canadian Envoy*, *supra* note 974.

1128. Juliet O'Neill, *Lima Raid A Surprise to Mediator*, THE EDMONTON J., Apr. 24, 1997, at A1.

1129. *Canadian Tried His Best*, WINNIPEG FREE PRESS, Apr. 24, 1997, at B3.

1130. *Fujimori's Coup De Force*, *supra* note 1105.

cents.”<sup>1131</sup> The Editor of *The Edmonton Journal* believed that Fujimori was justified in refusing to release imprisoned guerrillas, warning that “To do otherwise would have sent a dangerous message across the world and ultimately put other innocent lives at risk.”<sup>1132</sup>

The Editor of the *Financial Times* expressed concern about the arbitrariness of the Peruvian government and the weakness of democratic institutions and commented that Peru’s government, including its armed forces, needs modernization, transparency and democratic accountability. For all his excellent attributes, Mr. Fujimori does not seem interested in bringing this about . . . . Peru is still too much of a one-man show for comfort.”<sup>1133</sup> Lauding the military attack, *The Times* (London), called the operation “a masterpiece of meticulous planning, subterfuge and skillful execution.”<sup>1134</sup>

*The Economist* viewed the crisis as one in which violent liberation fighters/terrorists met a violent response and death, even for some who were ready to surrender, saying “In a better world that would not have happened. But it did, and in the real one it is hypocrisy to shed many tears: the guerrillas took to the sword and they perished by it.”<sup>1135</sup> It also concluded that “Mr. Cerpa’s folly ha[d] done Peru’s less-than-robust democratic institutions no good at all.”<sup>1136</sup>

Saul Carlos Menem, President of Argentina, praised Fujimori’s “spectacular courage,” and added that he himself would “have acted in the same way, the same manner.”<sup>1137</sup> However, President Gonzalo Sanchez de Lozada of Bolivia commented that the attack was “a highly risky operation which fortunately had a happy outcome.”<sup>1138</sup> His Ambassador to Peru had remained in captivity in the Japanese mansion until April 22, 1997.<sup>1139</sup>

Economically, the favorable outcome of the hostage crisis was seen as a justification for investor confidence in Peru. It was

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1131. Editorial, *A Brilliant Win in Peru*, THE VANCOUVER SUN, Apr. 24, 1997, at A12.

1132. Editorial, *Violent End Predictable For Tupac Amaru*, THE EDMONTON J., Apr. 25, 1997, at A18.

1133. Editorial, *Peru’s Relief*, FIN. TIMES, Apr. 24, 1997, at 15.

1134. Editorial, *After the Siege*, THE TIMES (London), Apr. 24, 1997, at 23.

1135. *A Victory in Peru*, THE ECONOMIST, Apr. 26, 1997, at 15.

1136. *Fujimori Wins*, THE ECONOMIST, Apr. 26, 1997, at 35.

1137. Sims, *Signal*, *supra* note 968.

1138. Bowen & Dawkins, *supra* note 1077.

1139. *Id.*

assumed that with the crisis behind him, President Fujimori could pursue his policy of economic reforms, including the privatization of electric-generating companies and a large bank. Rolando Davila, a senior executive with Industrial Papelera Atlas S.A., a leading pulp and paper manufacturer, felt that the "business community and more relevantly the government can now focus more attention on stimulating economic growth."<sup>1140</sup>

#### *D. Reaction of the Guarantor Commission*

Having shuttled for hours, days and weeks between the parties in a desperate effort to find some common ground between their disparate positions, the members of the Guarantor Commission must have had strong emotions about the entire matter. One of the most active of the Commission members was Canadian Ambassador Anthony Vincent. After the military raid, he reflected on the situation during those final days in which the rebels "forgot who they were, and what they were doing."<sup>1141</sup> Vincent explained that the Tupac Amaras lacked realism by sticking to a demand that the Peruvian government could not meet.<sup>1142</sup> Additionally, their strong sense of discipline crumbled after four months inside the mansion during which "the rebels gradually turned into hostages themselves."<sup>1143</sup> Vincent admitted that "[f]or those of us who knew them, the deaths of these people [rebels] is very distressing."<sup>1144</sup>

Archbishop Cipriani publicly showed his distress, weeping after reading a brief formal statement.<sup>1145</sup> "He begged God's mercy on the souls of those who had perished and pardon for Peru."<sup>1146</sup>

Ambassador Vincent acknowledged "that in hindsight, some believed that the commission of guarantors had served as little more than a cover to give the President time to put in place the physical and political elements for a raid."<sup>1147</sup> However, Mr. Vincent "believed that at the last stage, both sides were close to a settlement," because Cerpa had trimmed his demand considerably

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1140. Matt Moffett and Thomas T. Vogel, Jr., *Peru Looking Better to Investors*, THE GLOBE & MAIL (Toronto), Apr. 25, 1997, at B8.

1141. Diebel, *Last Man*, *supra* note 979.

1142. *Id.*

1143. *Id.*

1144. *Id.*

1145. Bowen & Dawkins, *supra* note 1077.

1146. *Id.*

1147. Schemo, *126 Days*, *supra* note 283.

and wanted only 20 of the Tupac Amaru prisoners to be released.<sup>1148</sup>

#### F. Criticism of the Raid

Correspondent Bruce Nelan of *Time* suggested that Fujimori “gave the negotiations a try, if only to mask preparations for the assault.”<sup>1149</sup> Nelan went on to report that Fujimori had contemplated a much earlier attack on the mansion, with February 15, 1997, being the initial date.<sup>1150</sup> This was canceled because people were shifting within the mansion.<sup>1151</sup> The next selected time was early in March, but this was postponed after Cerpa, hearing noises of tunnel construction, halted talks.<sup>1152</sup>

In a rather macabre spectacle to emphasize his victory, Fujimori, accompanied by television cameras toured the mansion, stopping briefly to see the body of his adversary, Nestor Cerpa, lying face up on the staircase.<sup>1153</sup> The corpses of the rebels were not covered when the television crews took their pictures.<sup>1154</sup> One of the rebels on the staircase appeared to be clad in his underwear.<sup>1155</sup> Grisly newsphotos showed the Peruvian President surveying the dead rebels inside the now-demolished Japanese mansion.<sup>1156</sup> There were indications that some of the corpses had been mutilated; one body lacked a head and arms.<sup>1157</sup> An army officer told *Time* that every time a commando passed one of the corpses, he “would pump another bullet into it to make sure,” figuring that “[e]ach terrorist must have had 500 bullets in him when it was over.”<sup>1158</sup>

There was some international criticism soon after the attack with respect to the degree of violence used by Peruvian military commandos against the guerrillas. Given the odds—140 to 150 crack troops from various branches of the armed services, ranged against 14 guerrillas, many of them teenagers, two of them

1148. *Id.*

1149. Nelan, *supra* note 972.

1150. *Id.*

1151. *Id.*

1152. *Id.*

1153. *Rebel Leader Executed in Lima Raid, Paper Says, supra* note 1036.

1154. *Id.*

1155. *Id.*

1156. See Photographs in THE TORONTO STAR, Apr. 25, 1997, at A3.

1157. Philip Shenon, *In Peru, A Brilliant Rescue Shines No Light on Terror*, N.Y. TIMES, Apr. 27, 1997, at 3 [hereinafter Shenon, *Brilliant Rescue*].

1158. Nelan, *supra* note 972.

teenaged girls—the outcome was inevitable. The great miracle was not that the soldiers won, but that only one hostage died.

The press speculated about the motivation for the death of all the guerrillas. Journalist Sally Bowen (who was at the Japanese party on December 17, and who managed to obtain the first interview with Cerpa) wryly commented that all 14 guerrillas were “polished off in the first minutes,” thereby “pre-empting problems with subsequent trials and sentencing.”<sup>1159</sup>

A few days after the raid, news reports around the world, including Peru, raised disturbing questions about whether the guerrillas were killed in combat or deliberately executed. Lima's *La Republica* said that Cerpa had died on the stairs of the mansion, his face and body riddled with bullets.<sup>1160</sup> Significantly, he also “had an execution-style bullet wound in his forehead.”<sup>1161</sup> The bodies of other rebels also showed similar wounds.<sup>1162</sup> Military sources reportedly acknowledged that the commandos were “under orders to take no prisoners.”<sup>1163</sup> Hence, each rebel was “given a final ‘coup de grace’ shot in the forehead” to ensure his death.<sup>1164</sup> However, President Fujimori stated that the overriding objective was “to free the 72 hostages, not one less.”<sup>1165</sup>

There was particular concern about the way the two young girl rebels died. *La Republica* asserted that the two girls had shouted “We surrender! We surrender!”<sup>1166</sup> They cowered in terror in a corner and according to “impeccable intelligence sources,” were shot a few seconds later.<sup>1167</sup>

The hostages provided pertinent information about the fate of other guerrillas. Japan's *Asahi Shimbun* quoted “unidentified hostages saying two rebels were killed after surrendering. One hostage said a guerrilla was shot dead as he raised his hands. ‘I saw a slaughter,’” was the comment of the hostage to the news

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1159. Bowen, *Uphill Task*, *supra* note 166.

1160. *Rebel Leader Executed in Lima Raid, Paper Says*, *supra* note 1036.

1161. *Id.*

1162. *Id.*

1163. *Raid Called ‘Slaughter,’ supra* note 951.

1164. *Id.*

1165. *Fujimori Denies Rebels Executed*, THE EVENING TELEGRAM (St. John's, Newfoundland), Apr. 26, 1997, at 9. THE ECONOMIST provided an interesting explanation for the deaths of all the rebels: “The troops had been ordered to take no prisoners; not, it seems, to make an example, or for the sake of later convenience, but for the speed and safety of the operation, in which it had widely feared that many of the hostages would die.” *Fujimori Wins*, *supra* note 1136.

1166. *Rebel Leader Executed in Lima Raid, Paper Says*, *supra* note 1036.

1167. *Raid Called ‘Slaughter,’ supra* note 951.

reporter.<sup>1168</sup> A Tupac Amarista in Lima told Reuters that, using a short-wave radio, he heard four of the youngest rebels (who were all in one room) surrendering because they were frightened.<sup>1169</sup> They were subsequently shot.<sup>1170</sup>

There was also some indication that at least one guerrilla was captured alive. A hostage claimed to have seen him being led away and "was surprised when he heard all the rebels were dead."<sup>1171</sup> The Peruvian Minister of Agriculture, Rodolfo Munante, was quoted by media to the effect that one rebel tried to surrender to the hostage judges but was gunned down along with other rebels in that room.<sup>1172</sup> Munante later denied the statement.<sup>1173</sup>

President Fujimori's response to the critics was to insist that "facing an armed terrorist, none of the commandos was going to leave himself exposed."<sup>1174</sup> As he told Kevin Whitelaw of *U.S. News & World Report*, "this was not an operation to rescue the captors. The target was to rescue the hostages . . . . The most dangerous people had to be eliminated from the beginning."<sup>1175</sup> He vigorously denied as "completely false" any allegations of executions.<sup>1176</sup> Associated Press reported that Fujimori had admitted that he had ordered that all the rebels be neutralized.<sup>1177</sup>

Unconvinced by the President's explanations, the Canadian Inter-Church Committee on Human Rights in Latin America and Amnesty International called for an impartial inquiry into the killings during the hostage crisis, including "the possible execution of two young female guerrillas who tried to surrender."<sup>1178</sup> Journalist Philip Shenon voiced international concern about the

1168. *Rebel Leader Executed in Lima Raid, Paper Says, supra* note 1036.

1169. *Raid Called 'Slaughter,' supra* note 951.

1170. *Id.*

1171. *Rebel Leader Executed in Lima Raid, Paper Says, supra* note 1036.

1172. *Raid Called 'Slaughter,' supra* note 951.

1173. Jane Diaz-Limaco, *Military Strike Frees Lima Hostages*, *GUARDIAN WEEKLY*, May 4, 1997, at 3.

1174. *Rebels Killed After Giving Up: Report*, *THE EVENING TELEGRAM* (St. John's, Newfoundland), Apr. 25, 1997, at 7.

1175. *How to Stare Down Terrorism*, Fujimori Interview with Kevin Whitelaw, *U.S. NEWS & WORLD REPORT*, May 26, 1997, at 41.

1176. *Peru's President Denies Rebels Executed in Raid*, *THE WEEKEND SUN* (Vancouver), Apr. 26, 1997, at A11.

1177. *Peruvian Police Arrest Wives of 2 Jailed Rebels*, *THE VANCOUVER SUN*, Apr. 29, 1997, at A10.

1178. *Southam Newspapers, Rights Groups Urge Probe of Killings*, *THE WEEKEND SUN* (Vancouver), Apr. 26, 1997, at A11.

rescue operation when he wrote: "Putting aside the obvious questions of human rights and the rule of law—can the execution of a surrendering criminal ever be justified?"<sup>1179</sup>

Arguably, the rebels knew the stakes were high and were probably prepared to some degree to die for their demands. On the other hand, many of them were very young. With the misplaced idealism of youth, they ventured with almost pathetic naivete into this tragic situation and lost their lives in the deadly game they initiated.

#### F. *Contrasting Funerals*

Peru paid glowing tribute to the judge and soldiers killed in the raid. Army Lt. Raul Jimenez and Naval Commando Juan Valer were buried side-by-side in a moving ceremony attended by President Fujimori and his son Kenji, who kissed Valer's coffin in farewell to his former bodyguard.<sup>1180</sup> The military read glowing tributes and families wept during the emotional funerals.<sup>1181</sup> Justice Giusti was similarly honored and lay in state at Peru's Palace of Justice as friends paid their final respects.<sup>1182</sup>

The contrast between these dignified farewells to the dead and the treatment of the rebels' bodies is indicative of the vengefulness which followed the guerrillas even after they were no longer a threat to the Peruvian authorities. Fujimori had initially stated that the bodies of the rebels would be returned to their families; Peruvian Ombudsman Jorge Santistevan had indicated that there would be governmental assistance to the families to help pay for their funerals.<sup>1183</sup> Despite these commitments, "[f]amilies of the rebels were not allowed to arrange funerals—or even open the coffins to see the bodies. They weren't allowed to authorize autopsies; for example, the family of Roli Rojas (the rebel who had negotiated for the MRTA in the initial days of talks) was not allowed to hold a Roman Catholic burial for him, and his mother barely had time to utter a brief prayer before the casket was placed in a chamber above ground."<sup>1184</sup>

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1179. Shenon, *Brilliant Rescue*, *supra* note 1157.

1180. 'We Surrender!' But Troops Kill Peru Rebels Sources Say, THE TORONTO STAR, Apr. 25, 1997, at A3.

1181. *Id.*

1182. *Id.*

1183. *Trembling Rebel Decided Not Kill Him, Freed Hostage Says*, *supra* note 1064.

1184. *Peru's President Denies Rebels Executed in Raid*, *supra* note 1176.



Cerpa was reportedly buried in a cemetery in the slum district of Lima.<sup>1185</sup> The gravedigger Alberto Vuocc said the casket was lowered into a trench in the presence of Cerpa's aunt, Irma Cartolini.<sup>1186</sup> However, according to one news report, none of Cerpa relations were allowed to see the body.<sup>1187</sup> The soldiers who carried the coffin joked that the body "was heavy from all the lead."<sup>1188</sup> They dropped the coffin into a trench and left after it was covered with dirt.<sup>1189</sup> Irma Cartolini said she had to fight to get her nephew's name scrawled on a small black cross.<sup>1190</sup> Other relatives were directed to the wrong cemetery by morgue officials.<sup>1191</sup>

The Pro Human Rights Association indicated that it would seek the exhumation of the bodies of guerrillas buried without prior identification by family members.<sup>1192</sup> Twelve of the fourteen dead rebels were interred in unmarked graves around Lima and police would not release particulars about the locations.<sup>1193</sup> The Peruvian government stationed armed guards and intelligence officers at the various cemeteries where the rebels were buried. Visitors to the gravesites were questioned by police. Fernando Rospigliosi, member of rights group Aprodeh, alleged that the police were attempting to frighten relatives away from visiting the gravesites.<sup>1194</sup> Two women who brought flowers to Cerpa's grave were arrested after they paid a condolence visit to the mother of Roli Rojas.<sup>1195</sup>

## XII. Epilogue

This analysis began with a question about the validity of using

1185. Preston, *supra* note 1098.

1186. *Id.*

1187. *Id.*

1188. *Peru's President Denies Rebels Executed In Raid*, *supra* note 1176.

1189. *Id.*

1190. *Fujimori Denies Rebels Executed*, *supra* note 1165, and *Peru's President Denies Rebels Executed in Raid*, *supra* note 1176.

1191. Preston, *supra* note 1098.

1192. *Id.*

1193. *Peruvian Police Arrest Wives of 2 Jailed Rebels*, *supra* note 1177.

1194. *Id.*

1195. Calvin Sims, *Kin of Peru Guerrillas Held After Trip to Leader's Grave*, N.Y. TIMES, Apr. 28, 1997, at A6. The two women, Rosa Cardenas (Cerpa's sister-in-law) and Susan Roque have family members in Peruvian prisons. *Id.* A relative termed them "simple housewives" who had no connection to terrorism. *Id.* The police insisted that they were being detained for distributing pamphlets calling for improved prison conditions. *Id.*

violence to achieve a particular goal. It has explored in detail a saga which began and ended in violence. Inevitably, any analyst of this hostage-taking must wonder whether the 126 day ordeal achieved any tangible gains for any of the participants. On the surface, the answer would have to be in the negative. Consider first the perpetrators, the Tupac Amaru. Already a spent force thanks to the loss of its leadership, it gambled all its remaining resources on this one large operation, in which it lost fourteen members. The demands for the liberation of their imprisoned comrades failed.

It could be argued that the Tupac Amaru experienced some success in a variety of ways, but these gains were made because they undertook quite deliberately to mitigate the damaging impact of their initial violent action. First, the guerrillas exhibited a degree of restraint, and even courtesy, toward the hostages, which won them considerable sympathy in the world press. Second, they brought the miserable conditions of Peruvian prisons to the attention of the entire world. Although they have died, the torch of that cause—prison reform—will be carried on by others both in Peru and outside. Third, they generated international awareness concerning the plight of the poor in Peru. It would be too much to suggest that they prodded the conscience of the world, but they did succeed in arousing sympathy for the poor and dispossessed of Peru. If they were perceived as being wildly unrealistic in their demand for the liberation of their comrades, they were equally viewed as being idealistic in risking their lives for that goal. While they could not be called martyrs, the impact of their message about economic deprivation and injustice cannot be underestimated. They evoked understanding of the nexus binding extreme poverty, gross injustice, human rights violations and retaliatory violence in a manner few terrorists/guerrillas have equalled.

Although they resorted to violent means to accomplish what they perceived as a laudable end, their behavior after the capture of the mansion evoked a remarkable degree of understanding. When the guerrillas could have killed hostages during the military attack, they refrained. Was it the famous Stockholm Syndrome in reverse? Had they identified so closely with their captives that they could not destroy them? We will never know.

On the public relations front, the Tupac Amaru won more understanding outside Peru than within that country. News reporters from Canada and the United States noted frequently the lack of Peruvian support for the Tupac Amaru. There can be little doubt that the joy in Peru and the applause for Fujimori after the

raid were very sincere. Ironically, the Tupac Amaru voiced the concerns of the poorest and most deprived of Peruvian society but failed to secure the respect and support of the very group whose cause they were championing. Although there may have been some sympathy for their cause, there was little regret about their death. Leaving aside fears of authoritarian reprisals, there was hardly any indication of popular support for the guerrillas. The various demonstrations outside the mansion were in support of the hostages and showed public solidarity with the captives. Clearly, for Peruvians, the rebels' violent means did not justify the end they sought.

The Tupac Amaru badly miscalculated Peruvian public opinion regarding the take-over of the Japanese residence. In appeals by radio and on handwritten banners hung down the residence walls, the Tupac Amaru made frequent references to their interest in advertising the misery of the poor. But the poor of Peru were not responsive to these appeals. Indeed, Peruvian history appears to demonstrate that although Fujimori's regime may not garner a great deal of support, there is scant sympathy for the type of violent dissent practiced by any terrorist or guerrilla groups. Christopher Dobson and Ronald Payne may have been commenting about Peru when, referring generally to Latin American politics, they observed:

It is one of the maxims of terrorism that if a government can be forced to overreact and impose anti-terrorist measures which are so draconian that the lives of ordinary citizens are made impossible, then those citizens will rise against the government, which will thus bring about its own downfall. Nowhere has that maxim been more vigorously pursued than in Latin America, and nowhere has it failed so signally—despite the area's historical addiction to revolution and guerrilla warfare.<sup>1196</sup>

However authoritarian the Peruvian system may be, there can be no doubt that had there been a wellspring of sympathy for the rebels, the numerous members of the world's media who were covering events in Peru would have caught the story and broadcast or published it immediately.

Accordingly, Peruvians, who have for years personally suffered the violence generated by guerrilla warfare, displayed little sympathy for the rebels and even exhibited severe anxiety about

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1196. CHRISTOPHER DOBSON & RONALD PAYNE, *WAR WITHOUT END: THE TERRORISTS: AN INTELLIGENCE DOSSIER* 208 (1986).

the likely breakdown in law and order which could follow on the heels of this crisis. If they wanted a negotiated peace, it was mainly to ensure the safety of the hostages, who garnered the lion's share of respect and public affection for enduring such a long ordeal so bravely. Were the Tupac Amaru in a frame of mind to learn from this debacle, the lesson might well be that in the long run, any amount of violence and criminal action does not generate public sympathy or support. The Editor of *The Vancouver Sun* commented that the small band of guerrillas were "[t]ragically confused idealists, as so often is the case, lured by the ever-false premise that ends justify means."<sup>1197</sup>

Some of the liberated hostages revealed that Cerpa desired above all to convert his guerrilla force into a legitimate political party and become a part of the established structure, rather than remain an outsider seeking forever to destroy the system. Although somewhat unrealistic in Fujimori's Peru, this aim was not altogether fantastic. While the hostage-taking ordeal was unfolding in Peru, Guatemala was implementing peace between its warring factions. The history of Nicaragua shows the Sandinista 'terrorists' becoming the government in power after a revolution in 1979. It is not unthinkable to assume that fringe groups could be incorporated within the ambit of a diverse political society.

However, in making this assumption, Cerpa did not reckon with his chief adversary. President Fujimori has built his entire reputation on the destruction of terrorism and on the reinforcement of strong governmental institutions. He believes that Peruvian democracy is too fragile to tolerate a multiplicity of opposing viewpoints from vastly different perspectives. The restrictive democratic system in Peru allows only for a limited range of dissent, and Fujimori's personal inclination is to perceive divergence of opinion as an inherent threat to social order. Until the democratic system in Peru matures sufficiently to allow for a more extensive range of public opinion, it will be virtually impossible for former guerrillas to don the mantle of respectability and become players within the process. The problem is circular. Dissent is viewed as threatening to the existing political system and is therefore repressed, often brutally. That very brutality and the accompanying human rights violations provoke violent opposition. The challenge in countries like Peru is to channel dissent into non-violent directions and to allow it latitude to utilize the tools of

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1197. *A Brilliant Win in Peru*, *supra* note 1131.

democracy—the media, the justice system, non-governmental lobby groups—to seek to effect change in society. Where governments are flexible enough to accept change gracefully and peacefully, there is little incentive for the formation of terrorist groups whose aim is to destroy the political system.

And what about President Fujimori? Again, on the surface, he played a deadly game of brinkmanship with Cerpa and won resoundingly. He did not blink in the face of the threat to kill the hostages, did not waver to placate his Japanese allies and ultimately pulled off one of the most successful military operations of this nature in history. Although his detractors have dubbed him dictatorial and arbitrary, his political methodology is far more complex and multi-faceted than one would imagine.

There is, for example, Fujimori the power-hungry politician, whose only apparent aim is reelection in the year 2000. To achieve that long-term goal, he has undertaken some notoriously undemocratic actions, and it seems likely that his wish for another term will be fulfilled, unless he has a falling-out with his military supporters.

However, for the immediate present, the dominant persona is the Fujimori who rules with the firm support and backing of the Peruvian military. A survey taken by Peruvian pollster Apoyo S.A. in July 1997, demonstrated that 53 percent of the population believe the military is the “real power in Peru. Only 38 percent said Mr. Fujimori holds the reins.”<sup>1198</sup> General Nicolas Bari de Hermoza, known to be a close advisor of the President, stated during a ceremony of military support for Fujimori: “Mr. President, you can be absolutely convinced that, in the armed forces and national police force, you have the firmest pillars to defend democratic and constitutional institutionality.”<sup>1199</sup> So close is Fujimori’s connection to the military that it is unclear who the senior partner is. If it is indeed Fujimori, then clearly the decisions to rule with an iron fist and to allow human rights violations spring from his personal methodology of governance. If, on the other hand, he is a front man for the military, then the range of his maneuverability is limited to what is acceptable to the armed forces and the police. Even were he inclined to remedy the human rights violations, he could do little, given that the perpetrators are alleged to be the military, police, and prison guards on whom he depends for support. Ironically, the more he bends to accommodate this

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1198. Andrew Cawthorne, *Protests Put Pressure on Peru's President*, THE GLOBE & MAIL (Toronto), July 18, 1997, at A8 [hereinafter Cawthorne, *Protests*].

1199. *Id.*

group, the more he alienates popular support throughout the country. A consequence is that the people of Peru then perceive him as a dictator, whereas he prefers the reputation of being a democratically-elected President who is in touch with his people.

This is the Fujimori who courts public opinion and who is said to be keenly aware of the rise and fall of his political persona in the polls. Before the military raid, his popularity ratings were abysmally low. After the attack, they soared. Some time later, when further political problems plagued his government, his popularity dropped again. If he learned anything from this hostage crisis and its aftermath, it could be that the public is at best quite fickle and will fluctuate as each new issue is brought to its attention. As Anthony Faiola of *The Washington Post* suggested, “[a]lthough he won the praise of Peruvians by ending a painful stalemate, his dealings with the even harsher problems of Peru, including unemployment and poverty, are more likely to be the ultimate gauge of his popularity.”<sup>1200</sup>

There is also Fujimori the President of contradictory policies. He maintains hellish prisons in which inmates are sentenced for years to a life of physical and psychological anguish. Then, he appoints a governmental commission to review penal cases and liberate innocent prisoners. On June 25, 1997, a little over two months after the conclusion of the hostage crisis, the government of Peru released 114 prisoners jailed on terrorism charges.<sup>1201</sup> The government also resumed the judicial review of hundreds of cases of imprisoned Peruvians.<sup>1202</sup> However, the inhumane prison conditions continue. Amnesty International USA alleged in late August 1997 that there are at least 600 innocent prisoners languishing in these jails. It also confirmed that secret military courts with anonymous judges hidden behind screens are the form of justice meted out to those who are brought to trial.<sup>1203</sup>

Although we have seen that President Fujimori rules with the extensive backing of the military and the secret service, he acted decisively in early August 1997, appointing a public prosecutor to investigate the secret service agents who had allegedly tapped the telephones of nearly two hundred businessmen, politicians, artists

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1200. Faiola, *supra* note 1072.

1201. *Peru Frees 114*, THE GLOBE & MAIL (Toronto), June 26, 1997, at A10.

1202. *Id.*

1203. *Amnesty USA Criticizes Peru*, THE GLOBE & MAIL (Toronto) Aug. 22, 1997, at A10.

and journalists.<sup>1204</sup> One prominent Peruvian who has accused the government of spying on him is Javier Perez de Cuellar, former Secretary-General of the United Nations. He revealed that the eavesdropping by government agents apparently occurred when he ran unsuccessfully for the Presidency of Peru in 1995. The story was reported on Peruvian television.<sup>1205</sup>

The President of Peru is a complex political personality who, like politicians in every country, perceives his survival in office as a primary goal and who directs his actions with that end in sight. Unlike the leaders of more mature democracies, he has to walk a tightrope between an aggressive, power-hungry military establishment which has nurtured his rule and the millions of Peruvians who want democratic rights and economic betterment.

The hostage-taking crisis demonstrated the degree of resistance to authoritarianism among the people of Peru. Although they had scant sympathy for the rebels, it was interesting to note how freely they communicated their distress about the economy, the military, the police and the government to outside reporters. Some of the most scathing revelations about the crisis emerged initially in Peruvian newspapers and were then carried by the international press. Peruvian television has not hesitated to reveal scandals involving the Fujimori government.<sup>1206</sup>

Although they inhabit what can at best be described as a struggling or fledgling democracy, the people of Peru have consistently displayed a remarkable and encouraging resilience in withstanding the authoritarian inclinations of their President and his military supporters. As Juan Jose Gorriti, Secretary-General of the General Workers' Confederation, said, "[i]t's a good thing there are Peruvians who have the dignity to reject all this ill-

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1204. *Phone-Spying Investigated*, THE GLOBE & MAIL (Toronto), Aug. 6, 1997, at A8.

1205. *Fujimori Regime Accused of Spying*, THE GLOBE & MAIL (Toronto), Aug. 5, 1997, at A8.

1206. *Peruvian Court Upholds Crackdown on Dissidents*, THE GLOBE & MAIL (Toronto), Aug. 16, 1997, at A13. Frecuencia Latina Television of Peru has exposed torture, corruption and illegal wiretapping of the government. *Id.* For displaying such audacious courage, its owner, Israeli-born Baruch Ivcher, was stripped in July 1997 of his Peruvian citizenship. *Id.* In a massive display of public support for their station, thousands of Peruvians regularly gathered outside the beleaguered television compound which was surrounded by soldiers. Calvin Sims, *TV Station Fears Fujimori's Heavy Hand*, THE GLOBE & MAIL (Toronto), July 23, 1997, at A10. Fujimori's popularity rating sank to approximately 20 percent. *Peruvian Court Upholds Crackdown on Dissidents*, *supra*. This low figure prompted him to offer wage hikes, a favorable ploy which raised his rating to nearly 36 percent. *Id.*

treatment from the Fujimori government.”<sup>1207</sup>

Their individual and collective courage has largely acted as a brake on the ambitions of the military of Peru. The tremendous success of the elite military force which stormed the Japanese residence was a boost to the flagging reputation of the military, but the goodwill dissipated soon after the euphoria had subsided. The rebels were hardly laid to rest when Fujimori's governmental apparatus was besieged with scandals and other crises. In July 1997, five Cabinet Members submitted their resignation.<sup>1208</sup> Prominent among those quitting the Cabinet was Foreign Minister Francisco Tudela, who inspired his fellow hostages with his courage and dignity during the long ordeal inside the Japanese mansion.<sup>1209</sup> On July 17, 1997, about 5000 Peruvians marched and protested outside the presidential palace shouting “Down with the dictatorship.”<sup>1210</sup> This two-hour protest was one of the largest since Fujimori assumed the Presidency in 1990 and was a response to “public anger over widespread poverty and allegations of corruption and rights abuses by his government and the security forces.”<sup>1211</sup>

Fujimori was also criticized when the government dismissed three judges who had attempted to bar him from running for a third term in 2000.<sup>1212</sup> The Peruvian constitution allows an individual to run only for two successive terms as President. One of the judges alleged: “They want to remove us because we are a political obstacle.”<sup>1213</sup> *The Economist* commented that “Mr. Fujimori, who could send in troops to deal with the Tupac Amaru hostage-takers, may find his new foes harder to winkle out. More widely supported too.”<sup>1214</sup>

Although initially relieved and excited by the successful liberation of almost all the hostages, Peruvians apparently soon concluded that when 140 crack troops attack 14 rebels—many of them teenagers—the odds are heavily in favor of the soldiers. The great victory soon lost its lustre and with this, Peruvians contem-

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1207. Cawthorne, *Protests*, *supra* note 1198.

1208. Calvin Sims, *Documents Threaten Fujimori Rule*, THE GLOBE & MAIL, July 25, 1997, at A10 [hereinafter Sims, *Documents*].

1209. Cawthorne, *Protests*, *supra* note 1198.

1210. *Id.*

1211. *Id.*

1212. Diana Jean Schemo, *Peruvians May Have Had Enough of Fujimori*, THE GLOBE & MAIL (Toronto), June 11, 1997, at A7.

1213. *Peru: Court Crisis*, THE ECONOMIST, May 24, 1997, at 35.

1214. *Id.*



plated another crisis—that their President may have misrepresented his Peruvian birth.

Opposition Congresswoman Lourdes Flores and journalist Cecilia Valenzuela alleged that they had discovered documents which raised doubts about President Fujimori's date and place of birth.<sup>1215</sup> The accusation was that Mr. Fujimori was not born in Peru and thus was not eligible to hold the office of Head of State.<sup>1216</sup> The documentary evidence consisted of a 1934 immigration form in which the President's mother stated that she was entering Peru with two children under the age of 10.<sup>1217</sup> Fujimori's birth certificate and his authorized biography date his birth on July 28, 1938, but indicate that he is the second of five children.<sup>1218</sup> However, "a 1948 baptismal certificate for Mr. Fujimori lists his birth date as Aug. 4, 1938, and in the space on the certificate marked birthplace there is a glaring alteration. In what appears to be different ink and different handwriting, the words Miraflores, Lima, were written over a visible erasure to the document."<sup>1219</sup> Calvin Sims of *The New York Times* explained that "[f]or years, rumors have circulated that the biggest skeleton in Mr. Fujimori's closet was that he was not Peruvian-born and that his closest adviser, Vladimiro Montesinos, who heads the intelligence agency, had skillfully concealed that fact." The Peruvian weekly *Caretas* concluded that Fujimori's claim to be Peruvian-born was highly dubious and that he was probably born in 1934 in Japan.<sup>1220</sup> So frenzied was the political storm when this news erupted publicly that Fujimori's mother gave a television interview to counter the allegation. She stated that she had come to Peru in 1934, months after marrying the President's father, and that Alberto Fujimori was born four years later.<sup>1221</sup> President Fujimori denied all the allegations and agreed to cooperate with an independent investigation. Political scientist, author, and professor Jorge G. Castaneda predicted that Fujimori "may either be forced to resign from office or see his current freefall in the polls and in

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1215. Sims, *Documents*, *supra* note 1208.

1216. *Id.*

1217. *Id.*

1218. *Id.*

1219. *Id.*

1220. Jorge G. Castaneda, *A Healthy Breath of Scandal Blows Over Three Politicians*, THE GLOBE & MAIL (Toronto), Aug. 23, 1997, at D4.

1221. *Mother Defends Fujimori*, THE GLOBE & MAIL (Toronto), Aug. 12, 1997, at A11.

political legitimacy dramatically accelerate."<sup>1222</sup>

It would also be useful before concluding to trace the post-hostage fate of two of the Ambassadors involved in this tragic drama. First, Anthony Vincent, the Canadian Ambassador who played a significant albeit unsuccessful role in negotiations between the Peruvian government and the guerrillas, was named Ambassador to Spain.<sup>1223</sup> He won international praise for his dedicated efforts on behalf of the hostages and for his courage in entering the besieged compound regularly in an effort to find a peaceful solution.

Unfortunately, Japanese Ambassador Morihisa Aoki did not fare as well with his government. Shortly after the crisis was over, the Japanese Foreign Ministry spokesman expressed appreciation for the fact that Aoki had "carried out his responsibility very successfully," and said, "we are happy that we have that kind of responsible, calm and confident ambassador."<sup>1224</sup> However, this praise was short-lived. Ambassador Aoki was subjected by his own government to an ordeal as terrible as the one he had endured in captivity. He faced a "hostile Japanese news media, a grilling by a parliamentary committee, an internal inquiry by his bosses at the ministry of foreign affairs and finally, . . . dismissal."<sup>1225</sup> He was made to bear the brunt for the security lapse which had enabled the guerrillas to gate-crash his party. While some nations would have given their diplomats medals of courage for behaving with grace, dignity and courage in the face of imminent death, this was not to be Aoki's fate. During the ordeal, he had become an inspiration to fellow hostages and was lauded as a hero in the news media, particularly in the countries of the West. However, his efforts to cheer up the hostages and to tell them jokes, frequently at his own expense, won him no respect in Japan. Journalist David Hamilton commented wryly that Aoki's dismissal "speaks volumes about the cultural divide that can lie between Japanese and Western perceptions of the same event."<sup>1226</sup>

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1222. Castaneda, *supra* note 1220.

1223. Jim Brown, *Former Grit, Independent MPs Get Diplomatic Posts*, THE EVENING TELEGRAM (St. John's, Newfoundland), July 12, 1997, at 7.

1224. Government of Japan Document, *Press Conference By the Press Secretary*, Apr. 23, 1997, at 3.

1225. David Hamilton, *Japanese Envoy to Peru Dismissed*, THE GLOBE & MAIL (Toronto), May 14, 1997, at A11.

1226. *Id.*

### XIII. Conclusion

Finally, the saga we have explored from so many angles and facets evokes a series of images, none more poignant than the moment of freedom for various groups of hostages, those released initially, the groups liberated later, and the captives who endured the entire ordeal and raced to freedom dodging bullets and grenades as they rushed out of the mansion. The ultimate philosophical questions about the crisis will reverberate for years to come. Were the guerrillas justified in taking these hostages to gain the freedom of their imprisoned comrades? This analysis would indicate an answer in the negative. However idealistic the goal, the means were criminal and unworthy. However restrained and civilized their behavior, they captured and held a large number of people against their will and exposed them to psychological trauma, if not physical abuse.

On the reverse side of the question, did Fujimori's use of force—the means—justify the end of freeing the hostages? Again, I must conclude negatively. First, Fujimori was clearly uncomfortable with negotiating his way out of the crisis, and he involved himself in this protracted dialogue largely to placate his Japanese allies and to buy time to prepare the assault. A military operation was more to his taste and more in line with his political image. Second, given this mindset, Fujimori did not negotiate in good faith, to free the hostages peacefully. While the discussions were proceeding, his corps of miners was feverishly tunnelling its way to the Japanese compound. It was Cerpa's suspicion about the tunnels which derailed the talks. In a situation which called for frank communication from both sides, Fujimori preferred the path of deceit and subterfuge and sacrificed the peaceful alternative.

It could, of course, be argued that the two sides were far apart on the issue of prisoner release. However, Ambassador Vincent had indicated that towards the end, Cerpa had whittled the demand from 450 prisoners to only 20. Had Fujimori really wanted a negotiated solution, there might have been the possibility of dispatching the rebels to Cuba and reviewing the cases of the most non-violent innocent prisoners (like family members of guerrillas) for early release and air tickets to Cuba. In response to apprehension that any negotiated deal involving release of prisoners would be anathema to Peruvians, one could argue that prior to the hostage-taking, the government had already released a number of innocent prisoners and has undertaken this activity since with no

public repercussions and no dramatic upsurge in guerrilla violence. To appease Fujimori's apprehension, Cerpa might have been persuaded by the Guarantor Commission to provide the President with a face-saving time period of some months to enable the prisoner release to be accomplished, not by the Executive, but by his duly appointed Commission in accordance with Peruvian law. By distancing himself from the release, Fujimori would not have demonstrated any degree of weakness to his military supporters. Had skilled, experienced negotiators been involved in this crisis, the finer points of a peaceful resolution might have been accomplished with a sufficient degree of face-saving for all involved parties. This is not to underestimate the efforts of the Guarantor Commission, which were noteworthy, but the Commission was hamstrung by Fujimori's adamant refusal to contemplate freedom for any prisoners and by Cerpa's negative reaction to all the alternate solutions they proposed to him. What the crisis desperately needed was the expertise to bridge the chasm between the sides and demonstrate the feasibility of a solution which would allow the government and the guerrillas each to feel that they had gained.

Regretfully, in this hostage crisis, neither the Peruvian government nor the guerrillas were over-concerned about the nexus between means and ends. It was their unfortunate task to find ways out of the ordeal, given a narrow range of possibilities and all the inherent baggage of ideology, political persona, prejudices and partialities which they bring to the fine art of decision-making. Both parties felt that their ultimate aims justified and even sanctioned the resort to violence. This contributed to the inflexibility of their positions and the inevitable denouement in a blaze of gunfire and explosions. So convinced were both Fujimori and Cerpa about the righteousness of their cause that methodology and means were secondary. The morality of 'means' was not an argument likely to impress either the President or the revolutionary.

However, those who analyze such crises and ultimately offer some assessment have to weigh the series of actions against some universal values. This is easier said than done. At the end of this century, we have been unable to find clear decisive answers to life's toughest questions. We can analyze, define, explain and assess issues from every angle and from every viewpoint, but finding appropriate ethical solutions with the easy confidence of a Gandhi is next to impossible today. We wish for clear ethical solutions to life's dilemmas and then remember that perhaps Cerpa and Fujimori, in less complex times, could also have had that same

longing. In such complicated times, it is worthwhile to remind ourselves of the words of another great thinker, Aldous Huxley, who wrote:

Our personal experience and the study of history make it abundantly clear that the means whereby we try to achieve something are at least as important as the end we wish to attain. Indeed, they are even more important. For the means employed inevitably determine the nature of the result achieved; whereas, however good the end aimed at may be, its goodness is powerless to counteract the effects of the bad means we use to reach it.<sup>1227</sup>

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1227. HUXLEY, *supra* note 3, at 59-60.