

August 15, 1990

To: Hon. Joe Moakley

From: Staff, Special Task Force on El Salvador

Re: Report on staff trip to El Salvador.

From August 7th to August 12th, a delegation of staff from the Moakley Task Force was in El Salvador to review progress in the Jesuits' case and to discuss related issues. Participants from the Task Force were Mike O'Neil (Speaker's Office); Nancy Agris (Foreign Affairs Committee); Jim McGovern (Moakley); John Plashal (Murtha); and Bill Woodward (Studds). Also on the trip, but whose views are not reflected in this report, were Louis Dupart (minority, House Intelligence) and Randy Scheunemann (minority, Foreign Affairs).

The staff met in El Salvador with a number of prominent Salvadorans including Mr. Ernesto Altschul, Deputy Minister of the Presidency; Gen. Humberto Larios, Minister of Defense; Attorney General Roberto Mendoza; Col. Emilio Ponce, the armed forces Chief of Staff; Lt. Col. Manuel Antonio Rivas, head of the Special Investigations Unit (SIU); Dr. Ricardo Zamora, the judge in the Jesuits' case; Col. Alfredo Benavides; Fr. Francisco Estrada, rector of the University of Central America (UCA); and Fr. Jose Maria Tojeira, the Jesuit Provincial.

The delegation also met with the members of the negotiating commission of the Salvadoran government regarding peace talks with the opposition FMLN, and with members of the Inter-parliamentary commission, a group from the various political parties working to develop proposals on electoral reform and other issues.

Finally, the delegation was briefed by members of the U.S. mission in El Salvador, including Ambassador William Walker. It

remains our view that the Embassy is working hard to encourage the Salvadoran government to conduct a thorough investigation in the Jesuits' case, and to encourage the armed forces to cooperate in that investigation.

1. The Jesuits' case.

A. Summary

Since the Task Force report was issued last April, slow but steady progress has been made in the case. This is due to the efforts of Judge Zamora to broaden the scope of his investigation and to call numerous military witnesses. The judge is confident that the case will go to trial. Obstacles to further progress include a lack of military cooperation; a defense motion for a change of venue; and various peculiarities of Salvadoran law.

Although the Minister of Defense is apparently cooperating in the case, the rest of the military is not. We believe that a concerted effort has been made by the armed forces, including the High Command, to contain the investigation; to avoid implicating any individual except those charged; and, almost certainly, to prevent the conviction of Col. Benavides.

We also find increasing evidence that some members of the armed forces believe that the High Command is responsible for the murders, for obstructing the investigation into them, and--as a result--for endangering future U.S. military aid.

A. Armed Forces

The Ministry of Defense and the armed forces have demonstrated a willingness to comply with specific requests from the judge for information and evidence in the case. Particularly high marks are given to the Minister of Defense, Gen. Larios. Unfortunately, there have also been examples (listed below) of destruction, falsification and withholding of evidence, and apparent perjury:

o Not a single member of the armed forces has come forward openly and voluntarily with information in the case. This is true despite the fact that literally hundreds of military personnel were deployed in the area around the University of Central America on the night of the crime.

o Logbooks showing, among other things, the comings and goings of vehicles from the Military school on the night of the murders were burned, apparently on the orders of a senior military officer.

o The officer who allegedly destroyed the logbooks, Lt. Col. Camilo Hernandez, was not among those originally detained for questioning in the case. This was true despite his position as second in command at the Military School, from which the murder operation was allegedly launched.

o Many members of the armed forces, including Lt. Col. Hernandez, have adopted a Watergate-style approach to testifying in the case, saying essentially that they do not recall seeing, hearing or knowing anything that happened on the night of the crimes.

o When the judge requested the presence of four cadets on duty at the Military School on the night of the crimes, the wrong four cadets were produced. When the right cadets were produced, they claimed not to have seen anything.

o Last January, extra-judicial confessions were made by seven soldiers whose ranks were lieutenant or below. According to the Salvadoran High Command, these statements resulted from an exhortation by senior officers that they tell the truth. It is curious, therefore, that no confession or detailed statement of any kind was made at the time by Col. Benavides. Since the arrests, all of those detained have proclaimed their innocence, but the lack of an extra-judicial confession from Col. Benavides makes the case against him far weaker than that against the junior officers.

o The Military Honor Board, which recommended the individuals to be arrested, initially--and falsely--denied it had written even the skimpy report it did prepare on the case, and has provided no other information about how confessions were obtained. This lack of an official record makes it impossible to discern whether discrepancies in the statements of various soldiers were adequately explored, whether potential leads were dismissed, and whether all the persons implicated in the crimes were charged.

o Two days before the murders, a search of the University was made by the military unit that allegedly carried out the murders. Several months into the investigation, it was learned that an officer from the Salvadoran military intelligence service accompanied the soldiers on that search. Initially, the officer said that he simply stumbled upon the soldiers and decided, on his own, to join them. Later, he said that he had been ordered to participate in the search by Captain Herrera Carranza. This past week, Captain Herrera testified that the order had originated with none other than the then-director of military intelligence, Col. Guzman Aguilar.

o It appears that President Cristiani's permission to conduct the search of the University was sought and obtained after, not before, the search took place.

o On the morning after the murders, Captain Herrera Carranza informed a meeting of fellow intelligence officers that the Jesuits had been killed. When asked by investigators how he knew of the murders, he replied that he had heard a report of the killings on commercial radio. This is not true, because Captain Herrera's announcement occurred before any commercial radio station had begun broadcasting the news.

o Col. Carlos Aviles, who reportedly told an American official last December that Col. Benavides had admitted his guilt in the case, recently testified that he barely knows the American. In fact, he worked side by side with that American for

months and specifically requested his assignment to El Salvador.

o A duty logbook from the Military school that was recently turned over by the armed forces to the judge is a suspected forgery.

o Nelson Arnolo Lazo, the employee of the Military School who was in charge of checking weapons in and out on the night of November 15th, has twice ignored a subpoena from Judge Zamora to testify.

When asked about these problems, Col. Ponce, chief of staff of the armed forces, replied that all members of the armed forces have been instructed to cooperate fully with the Court, but that the High Command has no control over a soldier when he testifies before the judge. Similarly, Defense Minister Larios said that, although irregularities had occurred all through the process, these were due to the actions of individuals and should not be considered to reflect badly on the armed forces as an institution.

(Following our trip, and Chairman Moakley's statement expressing dissatisfaction with the military's cooperation in the case, President Cristiani convened a meeting between the Judge and the High Command. Judge Zamora was reportedly pleased with the meeting, during which President Cristiani pledged 'total personal collaboration' with the investigation and plans were discussed for facilitating the flow of information requested by the Judge from the military).

B. The Investigators.

o Since the Task Force report was issued in April, Judge Zamora has begun conducting a broader investigation into the case and has solicited testimony from many senior military officers. As a result, he has identified the officer (Lt. Col. Camilo Hernandez) apparently responsible for destroying the logbooks

that indicated the comings and goings of vehicles from the Military school (where the crime was planned) on the night of the murders. The Judge is emphatic in his belief that he now has sufficient evidence to bring Col. Benavides to trial. Consequently, he rejects the idea that it will be necessary to drop charges against one of the lieutenants who has been arrested in return for the lieutenant's testimony against Benavides. Instead, he argues that Benavides' position as commander of the unit that allegedly carried out the murders is sufficient, along with a limited amount of other evidence against him, to bring the case to trial.

- o The new Attorney General, Roberto Mendoza, is publicly supporting an active investigation in the case although it remains to be seen how effective the efforts of his office will be. The Attorney General claims responsibility for suggesting that the U.S. Military Group Commander and an American Major who came forward with information in the case be asked to testify before the judge. (The US Embassy expects to be able to respond favorably to this request, but the request had not been formally received at the time of our visit).

- o The SIU is in the final stages of reporting to Judge Zamora on his request for information concerning the radio communications setup at the Military School on the night of the murders. Dozens of cadets have been interviewed to determine whether they monitored any conversations relevant to the case. Lt. Col. Rivas, the head of the SIU, did not appear optimistic that this part of the investigation would bear fruit.

C. New Developments/Issues

1. **Venue.** The defense lawyers have again made a motion to change venue in the case from San Salvador to Santa Tecla. The motion has been ruled out of order by Judge Zamora, but that ruling is subject to appeal. If the Judge is forced by the Appeals Court to rule on the merits of the motion, he will certainly deny it, but that ruling would also be subject to immediate and automatic

appeal. At that point, Judge Zamora would be required to turn over a copy of the entire file to the Appellate Court and would be prohibited from making any further investigations himself until the Appeals Court rules. It is possible, therefore, that the investigation could come to a halt for several months. President Cristiani's office has indicated, however, that if this happens, it will encourage the Appeals Court to rule as promptly as possible.

2. The Colonels and the Law. Under Salvadoran law, a Colonel may not be compelled to testify in person before a judge. Instead, Colonels are only required to answer written interrogatories. Thus, the opportunity for immediate followup to inconsistent or vague answers is lost. During their meeting with the High Command following our trip, the Judge and the head of the Supreme Court encouraged senior members of the armed forces to consider waiving this right.

3. From 47 to 9. It remains unclear exactly how Salvadoran authorities determined who to arrest in this case. On January 5, 47 soldiers were detained; eleven days later, 9 of those soldiers were arrested. How did the authorities separate the 9 alleged to be guilty from the rest?

Lt. Col. Rivas flat out denies that any soldier admitted guilt to the SIU prior to the extra-judicial confessions given to the National Police on January 14. He also denies that the SIU took any declarations of any kind from the soldiers after the Military Honor Board was established on January 5. In our judgment, there is no way either of these statements could be true.

o Col. Benavides and the others were detained on January 5 after ballistics and other evidence pointed to the involvement of the Atlacatl commando unit in the killings. That same day, a Military Honor Board was established to review evidence gathered by the SIU in the case. An SIU briefing to the Honor Board was given

that afternoon.

o Col. Benavides says that he appeared before the SIU on Jan. 6 to testify about the letter received by Col. Ponce from the American major. That letter refers to an alleged conversation between Lt. Col. Rivas and Col. Benavides in which Benavides is said to have admitted his responsibility for the killings (this is the first we have heard of any testimony from Benavides or before the SIU on the subject of the American Major's letter).

o Col. Benavides says that he was ordered on January 8th to remain at National Guard headquarters, because members of the Atlacatl unit had made extra-judicial statements implicating him in the murders. (presumably, these statements were made, despite Lt. Col. Rivas' denial, to the SIU).

o On January 13, President Cristiani announces the findings of the Military Honor Board, and identifies the 9 soldiers, including Col. Benavides, who are to be charged with the crimes. The Honor Board report indicates that the role of the Honor Board was to exhort soldiers to tell the truth when questioned by the SIU, and that statements were made to the SIU during this period.

o On January 13-14, formal extra-judicial statements were given by all the accused at the headquarters of the National Police.

o On January 16, statements were given to the judge.

The truth appears to be that the SIU investigation continued throughout the period during which the Honor Board was in operation, that statements were taken, and confessions received. If Col. Benavides is correct, the questioning in his case included the subject of the American major's letter. We do not understand why Lt. Col. Rivas and the members of the Honor Board have chosen to be so vague about this process.

4. The Search of the UCA.

A number of questions have arisen with respect to the search of the UCA on November 13th.

The original story was that a unit from the Atlacatl was ordered to search the UCA in order to verify information that guerrillas were firing from inside the university grounds. The story was that the search had been specifically authorized by the High Command and by President Cristiani. Nothing was found during the search, which took place some time between 5:30 and 8:30 p.m. on the 13th. No mention was made of any involvement in the search by members of Salvadoran military intelligence (DNI).

Based on the information we now have, we can construct the following chronology:

- o afternoon of Nov. 13th, Fr. Ellacuria returns to the UCA following a visit to Spain. He is questioned by soldiers.

- o Also on the 13th, the High Command orders the reassignment of a commando unit from the Atlacatl brigade to the Military School, under the command of Col. Benavides (Benavides says the unit did not come under his command until after the search of the UCA--and that he did not even know the unit searched the UCA until after the murders had occurred).

- o Late afternoon of the 13th, the High Command orders Lt. Espinosa, the leader of the commando unit, to search the UCA. The order was apparently transmitted by Col. Cerna Flores, then-chief of operations for the High Command.

- o Col. Guzman Aguilar, chief of DNI, orders a DNI officer to accompany the Atlacatl unit on the search.

- o The search begins sometime after 5:30 and ends before 8:30.

- o Sometime after 8:30, the High Command seeks and receives verbal authorization from President Cristiani to search the UCA and certain other religious and educational facilities.

5. Colonel Benavides

The staff delegation was granted permission by the Judge and the Defense Ministry to interview Col. Benavides.

Col. Benavides met with the delegation alone, without counsel and without any other Salvadoran military officials or guards present.

The Colonel's account of events is as follows:

- o a security command was established at the military school on the afternoon of the 13th;
- o the Atlacatl unit came under his command on the evening of the 13th, after the search of the UCA;
- o on Nov. 14th, a log book was opened to record the comings and goings of the units now under his command;
- o assignments were made to various units to protect potential targets in the sector; the Atlacatl was to be a reserve force.
- o no reports of a military operation involving the UCA were received on the night of the murders.
- o The Atlacatl unit was not authorized to leave the military school on the night of the crimes, and Col. Benavides believes that, in fact, it did not do so.
- o He learned of the murders on the morning of the 16th.
- o In early January, Col. Ponce informed Benavides that a letter had been received from an American major assigned to the U.S. Military Group alleging that Benavides had admitted responsibility for the murders. The letter was based on a conversation that the American major had had with Salvadoran Col. Carlos Avilez. Col. Ponce left Col. Avilez alone with Col.

Benavides to discuss the letter. Col. Aviles denied everything in the letter, and Col. Benavides says he told Aviles that he believed him.

o The chain of the command at the time of the killings was as follows:

- Major Miguel Castillo (operations command at the school);
- Lt. Col. Camilo Hernandez, head of general staff of the school;
- Col. Benavides;
- Col. Cerna Flores (chief of operations at the High Command);
- Col. Ponce (chief of staff).

Operations from the school could only be authorized by Col. Benavides or, in his absence, by Lt. Col. Hernandez. During the offensive, the two alternated shifts during the night. Col. Benavides does not recall, nor is there a record, of exactly who was on duty and when during the night of the murders.

o Benavides returned to the military school on the 15th following the meeting with the high command at about 10:00 p.m. He says he had no other high level meetings that day. He did not meet with any other senior officers at the military school. His primary contact with the DNI was with a security officer with whom he conferred about security at the DNI headquarters.

o The decision to re-assign the Atlacatl on the morning of the 16th was part of a prior agreement to return the unit to its main battalion. The Military school was to be reinforced by units from the countryside. A unit from the Belloso battalion was also reassigned that morning. In both cases, the order came from Col. Cerna Flores, the chief of operations.

2. Negotiations.

During our visit, the government was preparing for the most recent round of negotiations, which took place between August 20 and 22nd in San Jose, Costa Rica. The perception at that time was

that the issue of military reform holds to key to a successful peace settlement. Nothing happened in San Jose to alter that perception.

Attached to this memo are: 1) a 33 point proposal made by the government on military reform in July; and 2) an 18 point proposal submitted by the FMLN immediately prior to the August negotiation.

We will not attempt, in this memo, to analyze the negotiating position of the two parties. Other organizations have produced, and will be producing, regular updates on this subject. Instead, we will limit ourselves to a couple of basic impressions.

In our view, the government proposal reflects some movement in the direction of those who have argued for greater civilian control over the military, although clearly not enough to form a basis for an agreement. The FMLN position, however, reflects virtually no movement toward the government's position and seems, in fact, a step backward from earlier guerrilla proposals. In addition, it appears that the government has been more willing than the FMLN to encourage United Nations mediator Alvaro de Soto to develop a compromise proposal of his own. All of this raises a very real question in our minds about whether the FMLN is seriously interested in negotiating for peace.

During our trip, we discussed the issue of negotiations with officials from our Embassy, with members of the civilian political opposition, and with those representing the government in the negotiations. We believe that the government is approaching the negotiation in a serious and coordinated manner and without any apparent division between the civilian leadership and the leadership of the armed forces. The government's task has been made far easier by the divisions apparent within the FMLN, and by that organization's failure to put forward a serious proposal on military reform.

The civilian political opposition has an opportunity, through the

inter-party commission, to put forward its own ideas in the areas of military, judicial and electoral reform. Although its work has been hampered by a lack of cooperation from the governing ARENA party, the commission could play an important role--along with the UN mediator--in bridging the differences between the two sides.

The next round of negotiations is scheduled to begin in San Jose on September 13th. Failure to make substantial progress at that time will complicate gravely the prospects for peaceful and meaningful municipal elections scheduled for next February.