

## 7. CONCLUSIONS AND RECOMMENDATIONS

The most viable approach to deterring coca production is not titling. This method advocated by ILD does not consider that coca producers neither want nor need title, and that they are not motivated by legal formality but by economic interest. Further, the ILD plan does not properly account for: (1) titling and registration efforts already in place; (2) the dynamic of land markets and coca production in the region; and (3) the complex role of *Sendero Luminoso*.

A multifaceted economic approach (consisting at present of repression, eradication, economic incentives, infrastructure, land titling, and efforts to curb demand) is probably still the best way to deter illicit production. To achieve this goal, however, will take continued, comprehensive, and expensive efforts. Among these should be a package of incentives for the UHV. In the meantime, all the best attempts to discourage coca production might still fail if demand continues to drive the economic situation toward maintaining supply.

As we work to diminish the supply and demand for coca, we should continue to explore other options for combating the coca problem. The ILD titling notion, while an ingenious and positive contribution, is not sufficient to deal with the complexity of the UHV. Yet, debate should be encouraged as we struggle against the enemy in the drug war. To succeed, further study and dedication will be needed, and solutions will not be easy.



## ENDNOTES

1. See, for example, Richard L. Fricker, "The Abello Conspiracy," *ABA J.*, Dec. 1990, at 55. President Bush is not the first to declare "war" on drugs. President Nixon did so in 1973. See Jerald W. Cloyd, *Drugs and Information Control* 88 (1982) (hereinafter referred to as Cloyd). The Harrison Act, passed in 1914, in all likelihood actually began the effort. See Cloyd at 55.
2. Executive Order, 5 Dec. 1990.
3. Convenio entre los Estados Unidos de América y el Perú sobre la Política de Control de Drogas y Desarrollo Alternativo, entered into 14 May 1991.
4. Prepared Statement of James H. Michel, Assistant Administrator, Latin America and the Caribbean Bureau, Agency for International Development, before the Subcommittee on Foreign Operations, Committee on Appropriations, US Senate, Washington, DC, 23 April 1991.
5. Latin America and Caribbean Bureau Objectives, Article III-A (1990).
6. Fred Strasser, "Crime Has No Borders, So Countries Close Ranks," 12 *N.L.J.* 1 (No. 8, 30 Oct. 1989).
7. The most direct statement of the US strategy may be the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, Section 2005, 100 Stat. 3207, 61-63 (1986).
8. See, for example, *Skinner v. Railway Labor Executives' Association*, 489 US 602, 103 L.Ed. 2d 639, 109 S.Ct. 1402 (1989), which upheld drug testing of railroad employees to discourage their consumption of drugs.
9. A United Nations Convention, adopted in December 1988, regarding Illicit Traffic in Narcotic Drugs and Psychotropic Substances, has led to new US-style money-laundering laws in many countries.
10. For example, Washington's Mayor Marion Barry was arrested on 18 January 1990 on drug charges. Another celebrated case of official corruption is the case of Manuel Noriega.
11. The search and seizure laws are a good example of where the influence of antinarcotic policy has changed privacy law. See, for example, *Alabama v. Rose White*, 496 US \_\_\_, 110 L.Ed. 2d 301, 110 S.Ct. \_\_\_ (1990); *California v. Hodari D.*, 499 US \_\_\_, 113 L.Ed. 2d 690, 111 S.Ct. \_\_\_ (1991). The impact is probably best seen in cases involving airports, such as *United States v. Sokolow*, 490 US 1, 104 L.Ed. 2d 1, 109 S.Ct. 1581 (1989).
12. In *US v. Verdugo-Urquidez*, 856 F. 2d 1214 (1988), the court of appeals suppressed the search by Mexican authorities of a suspect's two homes in Mexico to provide evidence for a DEA case against the suspect. This was reversed by the Supreme Court, effectively cutting back on the 4th Amendment rights we enjoy in the US and allowing for operations abroad by foreign governments.

13. "The Extraterritorial War on Cocaine: Perspectives from Bolivia and Colombia," 12 *Suffolk Transnat. L.J.* 39 (1988) at 45, notes that United States Strategy has focused on the origin of illegal narcotics, citing "Narcotics Control Strategy Report Released," 86 *Dep't St. Bull.* 80, 80-81 (Apr. 1986). And, with respect to cocaine, the key to US policy has been reduction in the supply of the coca leaf, citing J. Whitehead, "US International Narcotics Control Programs and Policies," 86 *Dep't St. Bull.* 37, 39 (Oct. 1986).

14. The UHV accounts for about 68,000 hectares (58%) of the total illegal area (117,500 ha) in Peru (1 hectare = 2.47 acres). Source: NAU, January 1990. Other coca-producing regions include Ucayali and the central selva and Convención. Agency for International Development, Lima Mission, Special Projects Office, *The Upper Huallaga Valley* (1991) at 4.

15. In the preparation of this report, I met with the following individuals: (1) William A. Binns, Esau Hidalgo Murrieta, and Dennis del Castillo, each of USAID/Lima (26-28 June, 1 July 1991); (2) Julio A. Echevarria, USAID/Lima (1 July 1991); (3) Carlos E. Aramburú, Consejo Nacional de Población, Regional Vice-president of the Pathfinder Fund, and former AID advisor in the UHV, Lima (27 June 1991); (4) Manuel Cristobal Nuñez, Director of the Titling and Cadastral Program, Ministry of Agriculture, and Carlos Mendoza Mejía, also of the Ministry of Agriculture, Government of Peru, Lima (28 June 1991); (5) José Corbera Vilcarromero, former Agrarian Reform Director, and Director of Colonization, Government of Peru, and now an AID contractor, Lima (26 June 1991); (6) Carlos Mora Bernasconi, President, Centro de Investigación y Promoción Amazónica (CIPA), Lima (28 June 1991); (7) Albert Forsyth and Mariano Cornejo B. of the *Instituto Libertad y Democracia* (ILD), Lima (27 June 1991); (8) Erhardt Rupprecht, AID/Lima, Peru (28 June 1991); (9) Rudolfo Griego, Chief, Office of Food and Agriculture, USAID/Lima, Peru (27 June 1991); (10) Frank Record, Minority Senior Staff Consultant, Committee on Foreign Affairs, Washington, DC (22 July 1991); (11) Henry Dietz, Department of Government, University of Texas (6 April 1991); and (12) Susana Lobatón, *Cooperación Técnica, Embajada Suiza*, Lima, and Carlos Camacho of IDEA, Lima (27 June 1991) [Carlos Camacho was again consulted on 19 July 1991 in a telephone conversation].

Also in preparation of this report, I examined, among other documents, the following: (1) Notarial and Public Registry Legislation; (2) Agrarian Procedural Legislation; (3) Civil Procedure Code of Peru; (4) Commercial Code of Peru; (5) Peru's new Civil Code; (6) Peru's new Penal Code; (7) relevant original Agrarian Reform Legislation; (8) recent decrees 009-91-AG (31 March 1991) and 018-91-AG (5 May 1991); and other laws, documents, and reports, as deemed necessary.

16. This land is mainly arid or semi-arid. It is roughly 10 to 100 miles wide and has widespread irrigation.

17. The Sierra lies in the Andes. Indigenous people engaged in subsistence agriculture live in this region. Climate varies from temperate to very cold. These lands are well-watered, covering 27% of the country's territory.

18. The Selva contains high and low tropical jungle lands. It is mainly undeveloped, though it has the potential for a number of commercial crops. Water is plentiful.

19. Ley 8687 (1 July 1938) and its accompanying *reglamento*.

20. Ibán de Rementarfa, "La sustitución de cultivos como perspectiva," in *Coca, Cocaína y Narcotráfico*, ed. Diego García-Sayán (1989) at 361, 369; meeting with Carlos Mora Bernasconi, President, Centro de Investigación y Promoción Amazónica, Lima (28 June 1991).

21. Before the 1970s, coca was produced mainly for traditional consumption and legally for medical purposes. Edmundo Morales, *Cocaine: White Gold Rush in Peru* (1989) at 67.
22. José Corbera V., *Patrones de Asentamiento en Selva* (1990) at 59.
23. Interview with William Binns, US Agency for International Development, Lima Mission, 29 June 1991.
24. Bruno Lesevic R., "Dinámica demográfica y colonización en la selva alta peruana: 1940-1981," in *Población y Colonización en la Alta Amazonia Peruana*, ed. Centro de Investigación y Promoción Amazónica (1984) at 28.
25. Ibán de Rementarfa, "La sustitución de cultivos como perspectiva," in *Coca, Cocaína y Narcotráfico*, ed. Diego García-Sayán (1989) 361, 370.
26. Meeting with Carlos Mora Bernasconi, President, Centro de Investigación y Promoción Amazónica, Lima (28 June 1991).
27. The guerrillas are sometimes referred to as the *turucos*.
28. José E. Gonzales Manrique, "Perú: Sendero Luminoso en el Valle de la Coca," in *Coca, Cocaína y Narcotráfico*, ed. Diego García-Sayán (1989) at 207, 210. *Sendero* killed the mayor of Tingo María, Tito Jaime, in the process of moving into the UHV. See Ibán de Rementarfa, "La sustitución de cultivos como perspectiva," in *ibid.*, at 361, 372.
29. Meeting with Ing. Manuel Cristobal Nuñez, Program Director for Cadastres and Titling, Department of Agriculture, Office of Titling, UHV, and Ing. Carlos Mendoza Mejía, also of the Peruvian Department of Agriculture, Office of Titling, UHV (28 June 1991).
30. *Ibid.*
31. "US Narcotics Control Programs Overseas: An Assessment," Committee on Foreign Affairs, US House of Representatives, 99th Congress, 1st Session (22 Feb. 1985) at 13.
32. Eduardo Bedoya Garland, *Las Causas de la Deforestación en la Amazonía Peruana: Un Problema Estructural* (1991) at 113.
33. There are usually up to eight "middlemen" between the grower and the Colombian purchaser. By making coca paste, the grower can cut out some of these people and thus increase his/her profit. Meeting with Ing. Manuel Cristobal Nuñez, Program Director for Cadastres and Titling, Department of Agriculture, Office of Titling, UHV, and Ing. Carlos Mendoza Mejía, also of the Peruvian Department of Agriculture, Office of Titling, UHV (28 June 1991).
34. Humberto Campodónico, "La política del avestruz," in *Coca, Cocaína y Narcotráfico*, ed. Diego García-Sayán (1989) 225, 254-5.
35. Meeting with Carlos E. Aramburú, Consejo Nacional de Población, Lima (27 June 1991). See also, Comments by Hernando de Soto, in *Toward a Peaceful Revolution: Report on the First Annual Program Review Conference*, ed. Instituto Libertad y Democracia (28 Jan. 1991) at 5. De Soto

claims, "When we talk about coca growers, we are talking about 200,000 farmers. With their families, they represent one million persons. When we talk about drug traffickers, we are talking about 500 criminals. Programs to solve the drug problem must distinguish between these two classes of individuals. Any initiative that does not make the distinction will only give the terrorists and drug traffickers one million additional supporters."

36. Comment by Mariano Cornejo, in a meeting with Albert Forsyth and Mariano Cornejo B. of the Instituto Libertad y Democracia, and William Binns, Special Projects Officer, Agency for International Development, Lima (27 June 1991).

37. Meeting with Ing. Manuel Cristobal Nuñez, Program Director for Cadastres and Titling, Department of Agriculture, Office of Titling, UHV, and Ing. Carlos Mendoza Mejía, also of the Peruvian Department of Agriculture, Office of Titling, UHV (28 June 1991).

38. The motorbike driver is referred to as a *mochila*.

39. Meeting with Ing. Manuel Cristobal Nuñez, Program Director for Cadastres and Titling, Department of Agriculture, Office of Titling, UHV, and Ing. Carlos Mendoza Mejía, also of the Peruvian Department of Agriculture, Office of Titling, UHV (28 June 1991).

40. Carlos Aramburú, "La economía parcelaria y el cultivo de coca: el caso del Alto Huallaga," in *Pasta Básica de Cocaína: Un Estudio Multidisciplinario*, by Frederico R. Leon (1989) 231, 254.

41. Meeting with William A. Binns, Special Projects Officer, Agency for International Development, Lima (26 June 1991).

42. Carlos Aramburú, "La economía parcelaria y el cultivo de coca: el caso del Alto Huallaga," in *Pasta Básica de Cocaína: Un Estudio Multidisciplinario*, by Frederico R. Leon (1989) at 254.

43. Decreto-Ley 22095 originally made coca production illegal. Now, this provision is included among the felonies against public health in the revised Penal Code. Possession of drugs, as a crime, must have trafficking as its purpose. The law establishes how to determine if the drug is held simply for personal consumption. See "Exposición de motivos," Art. 10 of the Código Penal, Decreto Legislativo No. 635 (1991) at 9; Penal Code, Second Book, Title XII, Chapter III, Section II, "Tráfico ilícito de drogas," Arts. 296 through 303. Decreto Ley No. 122 (12 June 1981), Art. 55, imposes penalties for coca production in certain cases. See also, Carlos Aramburú, "La economía parcelaria y el cultivo de coca: el caso del Alto Huallaga," in *Pasta Básica de Cocaína: Un Estudio Multidisciplinario*, by Frederico R. Leon (1989) at 55. Coca production in protected lands could also be punished using Art. 310 of the Penal Code's Second Book, Title XIII, Sole Chapter, which forbids the destruction or damage of forest lands legally protected. The punishment for violation is not less than one year, and not more than three years, of imprisonment.

44. Decreto Supremo 040-83-AG (Art. 112 of the Decreto Supremo 147-81-AG).

45. Meeting with Ing. Manuel Cristobal Nuñez, Program Director for Cadastres and Titling, Department of Agriculture, Office of Titling, UHV, and Ing. Carlos Mendoza Mejía, also of the Peruvian Department of Agriculture, Office of Titling, UHV (28 June 1991).

46. Meeting with Carlos Mora Bernasconi, President, Centro de Investigación y Promoción Amazónica, Lima (28 June 1991).
47. Ibid.
48. Agency for International Development, Lima Mission, Special Projects Office, *The Upper Huallaga Valley* (1991) at 3.
49. Ibid.
50. Ibid., at 2.
51. Meeting with Ing. Manuel Cristobal Nuñez, Program Director for Cadastres and Titling, Department of Agriculture, Office of Titling, UHV, and Ing. Carlos Mendoza Mejía, also of the Peruvian Department of Agriculture, Office of Titling, UHV (28 June 1991); Agency for International Development, Lima Mission, Special Projects Office, *The Upper Huallaga Valley* (1991) at 3.
52. Meeting with Carlos E. Aramburú, Consejo Nacional de Población, Lima (27 June 1991).
53. Carlos Aramburú, "La economía parcelaria y el cultivo de coca: el caso del Alto Huallaga," in *Pasta Básica de Cocaína: Un Estudio Multidisciplinario*, by Frederico R. Leon (1989) at 253.
54. Edmundo Morales, *Cocaine: White Gold Rush in Peru* (1989) at 52.
55. Agency for International Development, Lima Mission, Special Projects Office, *The Upper Huallaga Valley* (1991) at 3.
56. Mahmoud A. El Sohly, Rudolf Brenneisen, and Alan B Jones, "Coca Paste: Chemical Analysis and Smoking Experiments," 36 *J. of Forensic Sciences* 93 (1991).
57. Ibán de Rementarúa, "La sustitución de cultivos como perspectiva," in *Coca, Cocaína y Narcotráfico*, ed. Diego García-Sayán (1989) 361, 380.
58. Bruno Lesevic R., "Dinámica demográfica y colonización en la selva alta peruana: 1940-1981," in *Población y Colonización en la Alta Amazonia Peruana*, ed. Centro de Investigación y Promoción Amazónica (1984) at 32.
59. Meeting with Ing. Manuel Cristobal Nuñez, Program Director for Cadastres and Titling, Department of Agriculture, Office of Titling, UHV, and Ing. Carlos Mendoza Mejía, also of the Peruvian Department of Agriculture, Office of Titling, UHV (28 June 1991).
60. Meeting with William A. Binns, Special Projects Officer, Agency for International Development, Lima (26 June 1991).
61. "US Narcotics Control Programs Overseas: An Assessment," Committee on Foreign Affairs, US House of Representatives, 99th Congress, 1st Session (22 Feb. 1985) at 20.
62. Rensselaer W. Lee III, *The White Labyrinth: Cocaine and Political Power* (1989) at 37.

63. Agency for International Development, Lima Mission, Special Projects Office, *The Upper Huallaga Valley* (1991) at 6.

64. *Ibid.*, at 6-7.

65. Meeting with Carlos E. Aramburú, Consejo Nacional de Población, Lima (27 June 1991).

66. No fertilizer is available for sale at the "official" government price. Meeting with William A. Binns, Special Projects Officer, Agency for International Development, Lima (26 June 1991).

67. There is not a great deal of heavy labor involved with coca. Children can grow it. Traditional crops require much more work.

68. See also, Eduardo Bedoya Garland, *Las Causas de la Deforestación en la Amazonía Peruana: Un Problema Estructural* (1991) at 83.

69. Agency for International Development, Lima Mission, Special Projects Office, *The Upper Huallaga Valley* (1991) at 6.

70. Interview with William Binns, Special Projects Officer, Agency for International Development, Lima (27 June 1991) [hereinafter referred to as Binns, 27 June].

71. Meeting with Carlos E. Aramburú, Consejo Nacional de Población, Lima (27 June 1991).

72. *Ibid.*

73. Bruno Lesevic R., "Dinámica demográfica y colonización en la selva alta peruana: 1940-1981," at 32, and Alvaro Salazar Pereira, "Situación actual de los proyectos especiales de selva," at 264-268, both in *Población y Colonización en la Alta Amazonia Peruana*, ed. Centro de Investigación y Promoción Amazónica (1984).

74. Edmundo Morales, *Cocaine: White Gold Rush in Peru* (1989) at 152.

75. Meeting with Ing. Manuel Cristobal Nuñez, Program Director for Cadastres and Titling, Department of Agriculture, Office of Titling, UHV, and Ing. Carlos Mendoza Mejía, also of the Peruvian Department of Agriculture, Office of Titling, UHV (28 June 1991).

76. Meeting with Carlos E. Aramburú, Consejo Nacional de Población, Lima (27 June 1991).

77. "Conclusiones y recomendaciones del seminario: 'Población y colonización en la alta Amazonia peruana,'" in *Población y Colonización en la Alta Amazonia Peruana*, ed. Centro de Investigación y Promoción Amazónica (1984) at 275.

78. Alejandro Camino, "Coca: del uso tradicional al narcotráfico," in *Coca, Cocaína y Narcotráfico*, ed. Diego García-Sayán (1989) at 91, 103.

79. Eduardo Bedoya Garland, *Las Causas de la Deforestación en la Amazonía Peruana: Un Problema Estructural* (1991) at 109, notes that in 1986 alone, coca was responsible for the deforestation of 150 thousand hectares. Somewhere between 100 and 150 thousand hectares of land



were devoted to coca production in 1987 and 1988, according to Bedoya. In short, 10% of all deforestation during this century in the Peruvian Amazon has been due to coca production. Bedoya at 110.

80. Alejandro Camino, "Coca: del uso tradicional al narcotráfico," in *Coca, Cocaína y Narcotráfico*, ed. Diego García-Sayán (1989) at 103.

81. *Ibid.*

82. *Ibid.*, at 104.

83. Eduardo Bedoya Garland, *Las Causas de la Deforestación en la Amazonía Peruana: Un Problema Estructural* (1991) at 81.

84. *Ibid.*

85. *Ibid.*, at 83.

86. *Ibid.*, at 84.

87. *Ibid.*

88. Instituto Libertad y Democracia, *ILD-IN Brief* (Nov. 1990) at 2.

89. Interview with José Corbera, former director of the agrarian reform from 1978 to 1981 (26 June 1991). An alternative to titling would be some sort of registration of possession, so that the grower would feel that he was recognized and that the state was interested in helping him. *Id.*

90. Eduardo Bedoya Garland, *Las Causas de la Deforestación en la Amazonía Peruana: Un Problema Estructural* (1991) at 86.

91. *Ibid.*

92. *Ibid.*, at 114. Translation from Spanish is my own.

93. Juan del Aguila, "Titulación y regulación en la tenencia de tierras," in *Población y Colonización en la Alta Amazonia Peruana*, ed. Centro de Investigación y Promoción Amazónica (1984) at 151.

94. *Ibid.*

95. For statistics on the number of parcels adjudicated under the colonization and land reform programs, among others, see Juan del Aguila, "Titulación y regulación en la tenencia de tierras," in *Población y Colonización en la Alta Amazonia Peruana*, ed. Centro de Investigación y Promoción Amazónica (1984) at 152-165.

96. *Ibid.*, at 158.