MEMORANDUM

June 23, 1986

TO: William C. Doherty, Jr.

FROM: Richard Hough

SUBJECT: Land Reform in El Salvador

I was in San Salvador, June 5-11, and was joined by José Estrada on June 8. The major purpose of our trip was to determine as best we could the reasons for the sharp downward movement in the number of Decree 207 beneficiaries still considered valid title claimants in the Phase III program. (As I noted to you in a recent memo, FINATA has disallowed 11,868 title claims by campesinos over the prior year or so, lowering the total number of beneficiaries from 63,668 to a new estimate of 51,500.)

We had discussions on the Salvadoran side with a representative group of the trade union and campesino organization leaders of UNOC, the presidents of ACOPAI and FINATA, and the President of the Republic; and on the U.S. side, with the Chief of, and Agrarian Reform Advisor in, the Rural Development Office of the USAID, and the Ambassador and the Labor Attache of the Embassy. A summary follows below of what we found out.

Discussions with Trade Union and Campesino Organization leaders

The principal reasons given for the drop in numbers under the Phase III program were: 1) excessive legalism in FINATA; 2) persistent local intimidation of beneficiaries (by landlords, local officials, army and paramilitary); 3) the substantial number of beneficiaries in conflicted zones that FINATA field offices simply could not get to; 4) continued ignorance and confusion among campesinos themselves as to the rules and procedures to follow.

There is nothing new about these reasons. The one which likely received the most emphasis was the legalism of FINATA. Although the leaders were quick to criticize, they did not appear to be particularly exercised by the constricting Phase III universe. I suspect that one of the reasons for this is that the number of Phase III beneficiaries which are within the organized constituency of the
campesino organizations is now rather small -- the latest estimate being that only about 13% belong to campesino organizations. These organizations have always preferred to do their membership/organizing work within the Cooperative setting where the larger numbers make the job initially easier than working with the more geographically diffused small farmers in the Phase III program. There is substantial organizing potential among these "Finateros ", but the pay-off is longer term.

The leaders were not opposed however to mounting a renewed effort to provide field support to 207 beneficiaries within the program implementation process; but some encouragement and the sparking of new interest by AIFLD will clearly be necessary. They did agree that greater efforts should be made on the publicity/propaganda front to counter the continuous public attacks of the extreme left and right on land reform; for example, the often-repeated refrain that land reform has been "un fracaso completo" in El Salvador.

Comments of the President of FINATA

Arevalo added considerably to what we had learned from UNOC and ACOPAI. He tended to focus on what he called the "legal problem" in FINATA's relations with the campesinos, and to downgrade somewhat the local intimidation factor. He said that much of FINATA's time is taken up with the issue of "pruebas" since approximately 75% of the legal proofs offered are oral in form. (This point has been made many times before by FINATA officials, but I had never heard a figure this high with respect to the percentage of oral proofs.) Thus -- though Arevalo did not quite say it this way -- the main reason for the sharp drop in beneficiaries appears to be FINATA staff throwing out title claims for lack of what they considered adequate "pruebas", particularly with respect to the proofs offered that the claimants had actually rented or farmed the individual parcels of land to which they had made claim.

Arevalo also added more specificity to the conflicted areas factor. He noted that there are about 2,000 properties with six to eight thousand eligible 207 beneficiaries that realistically must now be considered removed from the program for lack of access. However, what was not clear from his remarks, was how many of these six to eight thousand had made title applications to FINATA -- in other words were actually considered within the program at one time -- but because of the conflict had later left their parcels, or for a variety of reasons, FINATA has simply not been able to process the claims.

A further factor in the cutback which the President of FINATA shed some light on is the de facto 10 manzana retention limit. He noted that 15% of the drop from 63,000 to 51,000 was due to "disaffected" claims which otherwise would have been valid for parcels on farms of 10 manzanas or under. Given that FINATA is obligated to find other comparable parcels for these claimants, the question arises as to why the numbers should not reflect this rather than eliminating these eligibles from the wrack-up of total beneficiaries?
Arevalo also reiterated the point which he had made many times before while he was President of FINATA of the necessary role of the "promotores" in supporting the campesinos in the process of Phase III implementation. Obviously, the importance of this role is increased by the fact that so many campesinos have only oral proofs for their claims. Arevalo noted that the legal position of the campesino is substantially improved if he has a UCS or ACOPAI representative, supporting him, and vouching for him, with FINATA. He also was sensitive to the question of what happens politically in the country-side when campesino title claims are rejected, particularly when the numbers begin to mount as they now are, though his answer did not go much beyond the point that this is a "serious question" which we have to be aware of.

On the positive side, Arevalo noted that an estimated 3,000 Phase III farmers have now completely paid off their mortgages. This is indeed good news and reflects well on the essential soundness of the Phase III program, and the validity of its policy rationale.

Remarks of USAID Officials

The discussion with Ellis and Barrao was useful and provided further perspective on the causes of the cut-back. The major points made by one or the other include:

1. Criticism of the role, or non-role, of the Campesino Organizations as active "advocate groups" in the Phase III implementation process. UCS and ACOPAI have simply not effectively supported their campesino constituency within this process since the closing of the title application window. (See my comment on this point below.)

2. In the closing days of Phase III application-taking, FINATA accepted applications too indiscriminately -- from campesinos "getting off the bus." Many simply had to be rejected as having no legal basis. During these last days, the number of title applications climbed to over 90,000.

3. There are an estimated 6,200 Phase III ex-property owners. Only about 2,000 have been compensated.

4. The principal reason for the relative effectiveness of FINATA, as contrasted with ISTA, has been that the former has managed to stay largely "non-political." Both officers commended FINATA for its professionalism and felt that within the prescribed legal procedures, the staff was pro-land reform. (See my comment on this point below.)

5. There was confusion -- which I share -- on whether still eligible beneficiaries with prior rejected claims for parcels on farms under 10 manzanas are considered by FINATA in or out of the Phase III program.
6. The two were receptive to a follow-up message on the Phase III program that would focus on some of the more positive aspects, or successes of the program, as well as clarify the confusion on some of the numbers in the previous cable. In this regard, so as to extricate the GOES and ourselves from the present numbers game, FINATA's charter should be amended so that it has the authority to purchase and distribute land. This change would allow FINATA to evolve into a public sector agency for voluntary land transactions — inter alia, a land market facilitator for willing sellers and buyers.

Discussion with President Duarte

The major piece of additional information that the President provided was that he had in preparation a new "agrarian reform" program, the content of which he would announce before the end of this year. He indicated that he planned to build a land distribution program for campesinos around the "token" amount of Title II lands which would become available after December 1986, the lands in bank receivership, farm lands that the owners have offered to sale, and excess lands on Cooperatives. As this new program moves through its planning stages, one crucial issue to be determined will be modes of distribution and ownership; that is, the balance that will prevail between the Phase III approach of small family-size farms and the Phase I approach of state-run (at least initially) cooperatives. The evidence thus far with regard to performance in the reform sector indicates that the balance should clearly tilt toward the family farm approach. However from his remarks, the President remains to be convinced on this point.

Comments of the Ambassador

With regard to land reform issues, the Ambassador made a few significant points: 1) we should respect the numbers as they are, tell the truth and not get caught in later traps; 2) the GOES should be encouraged to follow a private sector (Phase III) approach to land distribution in its new contemplated program, while not giving the program high political visibility, for example as "Phase IV"; 3) greater attention should be given to publicizing, or providing the information to Washington, of some of the more outstanding results of land reform in El Salvador. In this regard, he supported the follow-on message on Phase III which we had discussed earlier with the USAID.

Overview

The major reason for the fall-off in Decree 207 beneficiaries has been the lack of adequate "pruebas" linked to a stricter interpretation of the rules establishing eligibility by FINATA, particularly over the time when the late Juan Pablo Mejias was the President of FINATA. I suggest that it was during this period that a more legalistic interpretation became entrenched. Colonel Torres, the previous President, whose strong and flexible leadership took the Phase III program through its most difficult times, had on occasions complained about and resisted this penchant for legalism
among FINATA staff without himself falling into the trap on the side of a lopsided predisposition in favor of the campesino claimant. Under the weaker leadership of Juan Pablo, I suspect that some of this flexibility, honoring the spirit of Decree 207 when the nature of the "pruebas" allows considerable room for judgement, has been lost.

How else to explain the steep drop in the numbers? No doubt the lack of countervailing pressures from the campesino organizations has also played a role. The USAID officials are right in pointing to the lack of vigorous advocacy by these groups in supporting the campesinos. I further feel that local intimidation continues to be a factor, perhaps with the active or passive approval of FINATA local offices in some instances. There has been so much hard evidence of this in the past that it does not seem credible that it would somehow disappear. However, FINATA's legal interpretation of the "pruebas" appears to be the principal factor. The remarks of the campesino organization leaders, FINATA and the USAID point in that direction.

In this regard, all of us would agree with the view of Mr. Ellis that one of the primary reasons that FINATA has been able to sustain effective performance is that it has remained "non-political" in its approach to implementing Decree 207, if non-political means prudent even-handedness and fairness, or not consciously taking sides. In saying that one should not lose sight however of the law's dominant political purpose of constructive politico-social change, in this case, giving the land to the many primary producers, or tillers.

Last, one has to ask what did we accomplish on this trip. I would summarily note three things of moment: 1) agreement within AIPLD to move ahead with UCS and ACOPAI with the reconstitution of a core group (20-25) of Phase III promotores as detailed in the new Cooperative Agreement; 2) a follow-on message from the U.S. Mission which hopefully will redress the balance somewhat from the previous message without distorting or violating the facts of the situation; and (3) agreement among all parties of the need of a media effort to project in a more favorable light the land reform programs in El Salvador.

Obviously, we can participate in various ways in the media effort. I suggest also that before we take any further action that we wait to see the content of the follow-on message, on the assumption that this will be soon.

RH: nw
cc. S. Haddad, J. Estrada, M. Donovan, J. Heberle, J. Hernández