

427. Action Memorandum From the Assistant Secretary of State for Inter-American Affairs (Enders) to Secretary of State Shultz¹

Washington, March 25, 1983

SUBJECT

Presidential Certification of Argentina

ISSUE FOR DECISION

When to initiate steps necessary to certify to the Congress that Argentina has made significant human rights progress, thereby restoring its eligibility for possible future arms sales and security assistance.

ESSENTIAL FACTORS

A. Certification and Human Rights Progress

Current security assistance legislation permits the resumption of arms transfers to Argentina if the President certifies that the Argentine Government has made significant human rights progress and that such transfers are in the U.S. national interest. (Text at Tab B.)²

There have been significant improvements in Argentina's human rights situation: no confirmed "disappearances" for over two years; almost no new detentions for political reasons; and an accelerated release of National Executive Power ("PEN") political prisoners. Most important, national elections are now scheduled for this October, with the new government to take office January 30, 1984. While a Congressional requirement on providing information on the "disappeared" will be difficult, the overall case that there has been significant human rights progress is strong. (Human rights summary at Tab C.)³

¹ Source: Department of State, Executive Secretariat, S/S Special Handling Restrictions Memos 1979-1983, Lot 96D262, ES Sensitive March 24-31 1983. Secret. Sent through Eagleburger. Drafted by N.S. Smith (ARA/SC); cleared by Brown (PM), Haass, Abrams, Bosworth, Kozak (L), Fox (H), and Schneider (T). Smith initialed for all the clearing officials with the exception of Schneider. A stamped notation at the top of the memorandum indicates that Shultz saw it. A typed notation at the top of the memorandum reads: "Original was not received in S/S-I." However, a notation in an unknown hand reads: "Treat as original."

² Attached but not printed are excerpts from the International Security and Development Cooperation Act of 1981.

³ Attached but not printed is an undated paper entitled "Human Rights Progress in Argentina."

B. Rationale for Certification

Failure to certify Argentina soon, given human rights progress, will be seen as a political slap at the Argentine military, severely estranged from us since the Falklands. Some argue we should delay certification until after the elections to reward the new civilian government. However, we have a major stake in the military in the years ahead. It will remain the principal arbiter of Argentine politics, a bastion of anti-Communism and essential to eventual peaceful resolution of the dangerous Falklands and Beagle Channel disputes. For the military, certification is the key to future cooperation with the U.S. Our national interests require that we try to establish a basis for working with them, which has proved difficult over the years.

C. Impact on Regional Peace

An important U.S. objective is to prevent hostilities between Argentina and Britain in the Falklands, or Argentina and Chile in the Beagle. Since the Falklands, Argentina has made major arms purchases from Western Europe (submarines and frigates from Germany; jet aircraft and missiles from France) and from Israel and Latin America. However, they are not adequate to support a major attack against the Islands. In the Beagle, Argentina retains a significant edge, but Chile's superior discipline, training and defensive mission would make Argentine adventurism potentially costly. The possibility of a significant armed encounter this year is remote.

Certification will not affect the military balance or increase the chances of war in either dispute. Argentina is unlikely to seek major U.S. purchases soon, except for spares, because of its recent major acquisitions elsewhere and its view that we are an "unreliable supplier." Certification does not mean we would approve or act quickly on Argentine requests. We will consider them carefully, case by case. We would not authorize destabilizing or threatening transactions.

D. Relations with the UK and Chile

U.K. Mrs. Thatcher, the leader of our closest friend in Europe, would react swiftly and negatively to any early certification. She argues that we should not give this benefit to a country still technically at war with Britain, and especially one led by a military dictatorship that is rearming as fast as possible. Mrs. Thatcher is well aware that we are asking HMG to help maintain European support on INF deployment, in the U.S.-E.C. trade dispute, and in several areas of the Caribbean. Coming on top of our continuing dispute over "extraterritoriality," differences on East/West trade and the likely anti-trust indictment of British airlines and HMG officials, certification of Argentina at this time will curdle an already souring atmosphere. We must keep in mind

that every opinion poll in the U.K. shows confidence in U.S. leadership at a post-war low. Certification would shrink even more the number of our hard-core supporters.

Elections will likely be held in the U.K. this year, and certification, at least before Argentina's October election, could make it an issue in the campaign, placing the Tories on the defensive for having supported the U.S. so consistently on security issues, such as INF. Certification following the Argentine elections would still provoke a negative public reaction by HMG, but the issue would be far more manageable. EUR, therefore, opposes certification prior to the Argentine elections, believing it would be a mistake to trade a notional improvement in our relations with Argentina for the certain deterioration in our relations with the U.K.

EUR believes the scenario suggested by this paper for certification without approval of major sales is faulty. Whatever goodwill we might gain from certifying Argentina will be quickly used up if we fail to deliver on specific weapons requests. Additionally, failure to approve sales will anger third country suppliers, i.e., Israel, who will wish to transfer U.S. origin military equipment to Argentina. Approval of sales will cause a strong negative reaction in Britain. EUR believes it would force the British to transfer more NATO committed forces to the Falklands, and diminish the chances for a negotiated solution. (ARA disagrees.)

Chile. A statutory U.S. arms export ban also applies to Chile. To certify Chile, the law requires both Chilean cooperation on the Letelier/Moffitt murders and significant human rights progress. Chilean certification is not now feasible given the lack of positive developments on either issue, and our investigation of military exports from the U.S. to Chile in violation of our laws. In light of Chile's poor performance, its certification would undermine our credibility and thus Congressional support for our Central America policy.

A decision to certify Argentina but not Chile would be a major blow to Pinochet, who has suffered a series of economic and foreign policy reverses in recent months. While he still retains a firm hold on the military, Pinochet has been undermined by the economic crisis and lost civilian backers. Nevertheless, there is little likelihood he would consider internal changes to demonstrate human rights progress to our Congress. His reaction to Argentine certification may be bitter. To ameliorate this, we propose a presidential message and special emissary to Pinochet to underline our desire for good relations and our wish to certify Chile when feasible. We would reaffirm the U.S. commitment to the Rio Treaty in the Beagle Channel dispute and the limited nature of U.S. arms sales to Argentina. We would propose actions to demonstrate publicly the closeness of our relations.

E. Congressional and Legal Issues

Argentina's announced elections and human rights progress have mitigated Congressional opposition to certification. There will be concern about selling arms after the Falklands War and dissatisfaction over the lack of information concerning the disappeared.⁴ Some will argue that we should wait to certify until after elections there. Congressman Barnes will introduce an amendment to withhold assistance or sales until the new government takes office.

Other relevant issues concern Argentine misuse of U.S. equipment during the Falklands War, a Customs investigation of possible illegal military exports from the U.S. to Chile and Argentina and GOA acquisition of nuclear reprocessing technology from Italy. We believe that the purposes of U.S. laws concerning use of U.S. equipment and exports of munitions list items can be fulfilled and Congressional concerns on these issues minimized by reaching appropriate understandings with the Argentines concerning their observance in the future. The nuclear issue is potentially more serious. If it were established that a transfer of such technology had occurred (which is the preliminary conclusion of a recent internal study), under U.S. law no U.S. economic or security assistance could be provided to Argentina although cash sales would not be precluded. Under these circumstances, Congressional concern could mount. Overall, however, although we may face an emotional and possibly strong reaction, we do not foresee a successful challenge to certification in the Congress.

F. Next Steps

Attached at Tab A is a memorandum for the President informing him of our certification plans.⁵ Tab E contains a scenario for diplomatic and Congressional discussions prior to certification.⁶ This scenario contemplates that certification would occur in July (following British parliamentary elections and prior to the Argentine election campaign). Any significant deliveries thus could not occur prior to the Argentine elections. Few, if any, would be received prior to installation of Argentina's new civilian government in January 1984. We would inform the Argentine Government that we are prepared to certify on the understanding that we would not face any "unpleasant surprises" involving incidents in the Falklands or Beagle Channel, no reversal of the return to democracy and that they observe applicable constraints on the use

⁴ Attached but not printed is an undated paper entitled "The Disappeared."

⁵ Attached but not printed.

⁶ Attached but not printed at Tab E is a paper entitled "Proposed Certification Scenario."

of U.S.-furnished equipment and U.S. munitions control laws. We would send a special emissary to discuss certification and bilateral relations with President Pinochet, offering to examine steps both countries could take to demonstrate our continued close relations and suggesting steps on human rights which Chile might take to permit future certification.

We would consult closely with the UK, reviewing our assessment of the limited nature of future transactions, our intention not to sell sophisticated weapons that could significantly increase the Falklands threat, our procedures for careful, case-by-case consideration of requests, and Argentine assurances on avoidance of future incidents. We would also engage in extensive Congressional consultations.

G. *Alternative Scenario*

HA believes that certification can be justified on human rights grounds, but, all issues considered, that we should not certify until October if the UK election does not occur until then.

The timing of certification depends on three difficult political judgments: how much damage will we suffer in Congress and public opinion if we certify before the Argentine election; how much damage will we suffer with the Argentine military if we do not certify until after the election; and how much damage will there be to US-UK relations if we do certify the military regime with which they recently fought a war.

HA believes that, if there is a June election in the UK, certification can be justified so long as it is not “unconditional,” for this would bring us needless trouble with Congress and indeed the UK. The “condition” we would propose is that there be no actual military deliveries until the change in government planned in January. This would mollify the UK and Hill critics of certification, retain the leverage on the military to complete the return to civilian government, and protect us should that return be halted. (If we certify and sell arms and the military halts the election or inauguration, we will have lots of egg on our face. It will be said that we gave the military what they wanted—certification—too soon, giving up our leverage for democracy and contributing to any military decision to interrupt the elections.) We need not “rub the Argentines’ nose” in this, and should say that the lengthy process of military contract negotiations makes deliveries for 1983 virtually impossible. But we must be willing to say that if the military does not permit the election and return to democracy, there will be no sales now, or we will be saying that the military *can* halt the election or inauguration and *still* get the same arms sales. This we cannot say, and we should be clear what our policy is.

If the UK election is not until October, we believe that it makes more sense to postpone certification until then. We will gain more at

home and in the UK than, in our view, we lose with the Argentine military. In HA's view, even certification in July is unlikely to produce a Golden Age in relations with the Argentine military, and the degree of resentment which the delay may cause is speculative.

Timing needs careful consideration. HA believes that we should not begin the process of Congressional consultations and other steps envisioned in the attached scenario until the Congress has finished dealing with the El Salvador and other Central American aid requests currently before it, which we expect would be the end of April.

Further HA believes that Congressional and public opposition to certification will focus on the issue of the failure of the Argentine Government to account for the disappeared. While little can be done for the disappeared who are dead, there are believed to be several hundred live children of the disappeared whose relatives are seeking their return. We believe that at the time we certify we must make a strong demarche to the Argentine Government—military or civilian—urging an accounting of those children.

RECOMMENDATIONS:

That you sign the memorandum for the President at Tab A; and that you approve the scenario for Argentine certification proposed at Tab E. (Favored by ARA, S/P, and PM)⁷

Alternatively

That the process not begin until Congress has completed action on the Central American aid requests (approximately early May), with certification to follow the British elections. Certification should be based clearly and publicly on the uninterrupted return to democracy. We would state publicly that any interruption of the democratization by the military process will lead us to refuse military sales and deliveries. (Favored by HA)⁸

Alternatively

That Argentina not be certified prior to its elections in October 1983. (Favored by EUR)⁹

⁷ Shultz neither approved nor disapproved the recommendation.

⁸ Shultz initialed his approval of this alternative on March 28. Next to the paragraph he wrote: "—wait + bring it up with me again before any movement. GPS."

⁹ Shultz neither approved nor disapproved this alternative.