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ACTION MEMORANDUM  
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MAR 25 1983

TO: The Secretary  
THRU: P - Ambassador Eagleburger  
FROM: ARA - Tom Enders  
SUBJECT: Presidential Certification of Argentina



TREAT  
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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.)

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.)

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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

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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

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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.

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#### 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. 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. Tab E contains a scenario for diplomatic and Congressional discussions prior to certification. 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 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

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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,

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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)

APPROVE: \_\_\_\_\_ DISAPPROVE: \_\_\_\_\_

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)

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APPROVE: 1/13 \_\_\_\_\_ DISAPPROVE: \_\_\_\_\_

Alternatively

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

APPROVE: \_\_\_\_\_ DISAPPROVE: \_\_\_\_\_

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Attachments:

- Tab A - Memorandum for the President
- Tab B - Excerpts from the International Security and  
Development Cooperation Act of 1981
- Tab C - Human Rights Situation
- Tab D - The Disappeared
- Tab E - Proposed Scenario

Drafter: ARA/SC:NSSmith;jgm

Clearances:

- PM - Mr. Brown *LB*
- EUR - Mr. Haass *RH*
- HA - Mr. Abrams *EA*
- S/P - Amb. Bosworth *SB*
- L - Mr. Kozak *ENK*
- H - Mr. Fox *EF*
- T - Mr. Schneider

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THE SECRETARY OF STATE  
WASHINGTON

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MEMORANDUM FOR: THE PRESIDENT

FROM: George P. Shultz

SUBJECT: Argentine Certification

We believe we should move soon on Congressional certification for Argentina. The Government's human rights record has greatly improved and we see no immediate threat of renewed Falklands hostilities. Elections are scheduled this October for a civilian government which is to take office next January. Most important, we should signal the Argentine military, a bastion of anti-Communism and a continuing political force, that we are prepared to remove the stigma of the U.S. law prohibiting arms sales. We want to remove any temptation of future Argentine military purchases from the Soviet Union.

We do not foresee large U.S. sales. The Argentines have bought heavily in Europe and would seek from us mostly spare parts. But it would be an important symbolic step for a nation now on the road back to democracy. Implementation of any significant sales would not occur until after the October elections. We anticipate Congressional opposition but do not foresee a successful challenge to our action, absent new negative factors. In this connection, we will warn Argentina to avoid provocation in the Falklands and not to turn back on electoral plans. We also will follow closely the possibility of nuclear reprocessing transfers from Italy to Argentina which, if a preliminary study is confirmed, would preclude future U.S. economic or military assistance, although not FMS cash sales.

The UK opposes certification before Argentina formally ends hostilities but HMG officials have indicated that following the October Argentine elections it would be less offensive. HMG is concerned about Argentine efforts to rearm, but Mrs. Thatcher also fears that certification will become an election issue in Britain. She will be most unhappy with our certification and probably will seek to delay it if she cannot reverse it. The British attitude toward cooperation with us on trans-Atlantic and Caribbean problems would be soured. President Pinochet of Chile also will be disturbed. We plan to send a special emissary to reaffirm to him our strong desire for close relations, even though we cannot now certify Chile. Once these pieces are in place, and following Congressional consultations, we will seek your formal approval for Argentine certification.

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TAB B

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INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT  
OF 1981

Sec. 725. (a) Section 620B of the Foreign Assistance Act of 1961 is repealed.

(b) <sup>20</sup> Notwithstanding any other provision of law, assistance may be provided to Argentina under chapter 2, 4, 5, or 6 of part II of the Foreign Assistance Act of 1961, credits (including participations in credits) may be extended and loans may be guaranteed with respect to Argentina under the Arms Export Control Act, defense articles and defense services may be sold to Argentina under the Arms Export Control Act, and export licenses may be issued to or for the Government of Argentina under section 38 of the Arms Export Control Act, only if the President has submitted to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate a detailed report certifying that --

(1) the Government of Argentina made significant progress in complying with internationally recognized principles of human rights; and

(2) the provision of such assistance, credits, loan guarantees, defense articles, defense services, or export licenses is in the national interests of the United States.

(c) The Congress welcomes the actions of the Government of Argentina to adjudicate numerous cases of those detained under the national executive power of the Argentine Government, and the Congress hopes that progress will continue, especially with regard to providing information on citizens listed as "disappeared" and prisoners remaining at the disposition of the national executive power. In the process of making the determination required in paragraph (1) of subsection (b), among other things, the President shall consider --

(1) efforts by the Government of Argentina to provide information on citizens identified as "disappeared"; and

(2) efforts by the Government of Argentina to release or bring to justice those prisoners held at the disposition of the national executive power (PEN).

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TAB C

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HUMAN RIGHTS PROGRESS IN ARGENTINA

There have been significant improvements in Argentina's human rights situation since the 1981 legislation requiring certification was passed. The change is most dramatic in the area of political rights where the Government has committed itself to elections in October 1983 and a transfer of power to an elected government by January 1984. Political activity is now intense as political parties and labor unions organize, inscribe voters and hold public rallies in advance of internal party elections scheduled for June/July. Despite some media restrictions, the press is considerably more open than in 1981, with criticism of the government now reflected amply in most newspapers.

Given Argentina's political history, one can not rule out the possibility of a military coup to prevent the democratic transition. All available evidence indicates, however, that such an action is unlikely to occur, certainly over the next 6-12 months. While the military will continue to be a major force, exercising considerable influence over Argentina's political future, the military as an institution appears ready to return to the barracks in order to rebuild military professionalism and recover lost national prestige. President Bignone and Army Commander Nicolaidis seem firmly committed to the political transition and have held the military successfully to that course since July 1982.

In the area of individual rights, there have been no confirmed long-term disappearances for over two years, almost no new detentions for national security or political reasons, greatly reduced charges of torture or serious mistreatment of political prisoners and the accelerated release of PEN prisoners during the past 10 months. The state of siege, in effect since 1974, will be lifted before the elections and all remaining PEN prisoners will be released or brought to trial before the end of the year.

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TAB. D

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THE DISAPPEARED

The issue of the disappeared in Argentina is the most controversial and sensitive human rights issue remaining. During the "Dirty War" against subversion an undetermined number of individuals were detained and later disappeared. Responsibility for the disappearances is attributed to security and paramilitary forces, although some disappearances were probably the work of leftists. The number of the disappeared is still in dispute. Some claim that they run between 10,000 and 20,000. Most human rights groups say that recorded disappearances are between 6-7,000. Some 6,600 families have petitioned the government for information concerning the fate of relatives.

In the past two years, there have been no long term disappearances. Some individuals have temporarily disappeared, and three politically related murders occurred in 1982. Human rights groups argue that even temporary disappearances show a readiness of the military to revert to old practices.

The vast majority of the disappeared are now dead. The 1981 certification legislation requires that the President "consider" GOA efforts to "provide information" on the disappeared. We were informed by the Argentine Ministry of Interior that it had provided information (ie. reported deaths) to families in 1,426 cases. This was stated in the 1982 Human Rights Report.

Human rights organizations, such as America's Watch, and Congress have pressed the Department for clarification of its information on the disappeared. America's Watch argues that the information has not been verified by the Embassy or by human rights groups in Argentina. They also argue that the GOA will not produce any real accounting for the disappeared, let alone judicial action against those responsible, and that the military will protect itself by passing an amnesty law thus making any accounting impossible. They conclude that the certification requirement has not been met.

There is no easy solution. In the event of certification it can be shown that disappearances have ceased, but the problems of accounting for the disappeared remain. We will press the GOA for fuller information, but we should realize when making the certification decision, that it is unlikely that the GOA will alter its position on the disappeared to meet our certification requirements.

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TAB E

### Proposed Certification Scenario

The following scenario is proposed prior to formal certification of Argentina:

- Inform Argentine Government and seek assurances to enable us to certify;
- Consult Congressional leadership;
- Consult with the UK; and
- Send special emissary to Chile to review this issue and bilateral relations.

Shortly before the certification announcement we would consult more broadly in Congress and brief the media.

Argentina. We would make clear to the President and the Military Junta that we are prepared to issue certification in a specific time frame: (a) to establish a basis for improved political and security relations; (b) to recognize the important role of the Armed Forces and our support for the political and economic objectives of the Bignone government; and (c) to recognize improvements in Argentina's human rights situation.

We would take such actions on the understanding that the USG would not face any "unpleasant surprises" in the event of certification: no Falklands or Beagle Channel raids and no reversal of the political opening, either of which would seriously embarrass the Administration and prevent authorization of military sales. Similarly, we would seek assurances at an appropriate time that Argentina would live up to the terms of our bilateral assistance agreement.

In publicly supporting certification, we would note the importance of the return to democracy. Authorization of future military sales would be based on a careful, case-by-case review. The GOA should not be led to expect immediate sales of major weapons systems. If certification is announced in July, we would not expect significant arms transfers to occur before the October elections and probably not before 1984.

Congress. Initial consultations would involve Senate and House leadership, Chairmen of Foreign Relations and Foreign Affairs committees and the subcommittees responsible for Latin America. Broader consultations shortly prior to announcement would involve calls on a key list including inter alia all members of the two Foreign Affairs committees. Media briefings would also be based upon a key list, to be prepared by PA and ARA.

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United Kingdom. We would consult on timing of the certification announcement and on the question of future U.S. arms supply to Argentina. We would inform HMG that:

- We do not anticipate sizable early sales; the most likely requests will be for spare parts for U.S. origin ships and aircraft;
- There may be some non-lethal requests during the first 6-12 months following certification (e.g., Rockwell International's bids on four or five communications and airport management systems, total value over \$100 million; these contracts probably would go to Germans or Italians if we do not furnish);
- We intend to review very carefully all GOA requests and would not approve sales such as advanced fighter aircraft or missiles, that would increase significantly the threat of armed attack against the Falklands or represent a significant destabilization of the Argentina-Chile military balance;
- We will not authorize third country transfers (e.g., Israeli A-4s) except on the same terms that we would authorize sales from the U.S.;
- At the same time, we note a continuation of business and large sales by West Germany, France, Italy and other NATO allies (including UK components ordered previously whose sale was authorized after the Falklands conflict). We do not intend to enter any form of arms race that would affect the military balance in the area; but we must be aware of important U.S. commercial interests and our competitive position vis a vis other allied suppliers for routine or normal transactions.

These clarifications of U.S. policy, coupled with an understanding that Argentina will not engage in threatening behavior and that major U.S. arms transfers will not occur before the restoration of civilian government (unlike the UK's European allies) should help to keep this issue manageable in our relationship. However, we should be prepared for a high-level response as occurred in last fall's UN vote on the Falklands/Malvinas issue.

Chile. We will make a concerted effort to reduce the adverse impact in Chile of U.S. certification of Argentina prior to any public announcement. We are reviewing measures to offset a negative reaction and will make specific proposals by separate memorandum. A significant political/diplomatic effort

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will be necessary to avoid a serious deterioration. Potential steps include: (a) a presidential message and special emissary to Pinochet to reaffirm our desire to certify Chile as soon as that becomes feasible; (b) to reaffirm also our commitment to the Rio Treaty in the Beagle Channel dispute; and (c) to offer to review carefully future U.S. arms sales to Argentina so as not to contribute to regional military imbalance. In addition we would discuss: (d) a stepped up program of "working group" consultations to demonstrate the importance we attach to Chile; (e) active support in helping overcome Chile's foreign debt problems; and (f) high level visits during the course of 1983 to underline the closeness of our relations.

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