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RCertification for Argentina and Chile

The International Security and Development Cooperation Act of 1981 permits resumption of arms transfers and military assistance to Argentina and Chile only if the President certifies, with respect to each country, that there has been significant progress toward the protection of human rights and that certification is in the national interest of the United States. In the case of Argentina, consideration must be given to Argentina's efforts to provide information on "disappeared" persons and to release prisoners held without charges. With respect to Chile, we must also certify that Chile is not aiding or abetting terrorism and has taken "appropriate steps" to cooperate to bring to justice by "all legal means available" those indicted in the Letelier-Moffitt assassinations.

Ideally, our preference has been to certify both Argentina and Chile simultaneously. Joint certification would have put future arms sales to both countries in the context of U.S. efforts to preserve regional stability. Further, joint certification would be more acceptable to the British than certification only for Argentina.

The problem is that we believe Argentina meets the legal requirements for certification while Chile does not. Argentina has made significant progress toward democracy and in human rights. Elections will be held on October 30, and the new government will take power no later than the end of January. The GOA announced October 18 that it will soon begin releasing all remaining prisoners held without charges. And there has been some limited progress in accounting for the "disappeared," although a complete accounting will not and probably cannot ever be provided.

Given the progress toward democracy and improvements in human rights Argentina has made, failure to certify becomes increasingly interpreted in Argentina as a negative USG political act. The issue therefore is not whether, but when to certify. We are currently evaluating various timing scenarios, and will have a recommendation for the President in the very near future. We would, of course, consult with the British before approving any significant transfers. It should also be noted that we have reports that Argentina has received nuclear reprocessing technology under circumstances which would trigger Section 670 of the Foreign Assistance Act (the Glenn Amendment) and preclude any transfers of defense articles and services except commercial sales. This issue, while not a legal bar to certification, is likely to be used by opponents of certification to try to embarrass the Administration. In addition, we can expect lingering concerns over the Falklands to raise concerns on the Hill.

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As compared to Argentina, it is argued that Chile meets only two of the four legal requirements for certification: they are not now contributing to international terrorism and it is in the United States' interest to have a military sales and security relationship with Chile. Whether they meet the two other statutory criteria is subject to debate: improved human rights performance and cooperation on Letelier/Moffitt.

The language of the certification requirement (Section 726 of the International Security and Development Cooperation Act) is discretionary in the sense that the procedures for certification permit the President to certify based on his judgement of whether the statutory requirements have been met. The Government of Chile argues that the U.S., therefore, could certify now if it had the political desire and will to do so. Our Ambassador to Chile, Jim Theberge, agrees with this point of view and argues that the President should certify Chile and then be prepared to defend this decision in the face of inevitable political and legislative challenges.

Ambassador Theberge bases his argument for a political decision to certify on the undeniable thesis that it is in our national security interest. He also argues that certification will give us leverage to promote democracy in Chile. Chilean opposition groups argue strongly against certification now on the grounds that it would diminish the pressure on Pinochet to move forward toward a political opening. While there are substantive human rights concerns, especially continued credible reports of torture, the "democracy" criteria seems to have become a de facto certification requirement as a result of the transition to civilian rule in Argentina. The advanced state of Argentina's return to democracy has, by contrast to Chile's current political status, weakened the case for Chilean certification. Despite the political dialogue which has begun in Chile between the government and the opposition, Chile is far behind Argentina in terms of the return to civilian government. Looked at in terms of this de facto democracy criteria, it is argued that joint certification of Chile and Argentina would diminish the significance of Argentine certification as an expression of U.S. support for democracy.

A final element in the debate over whether we could certify Chile at this time if we wanted is the issue of whether Chile meets the Letelier/Moffitt criteria (whether Chile has "... cooperated to bring to justice by all legal means available in the United States and Chile those indicted") Those who argue that the U.S. could certify now base their case for "cooperation" on the GOC's deportation of Michael Townley and the GOC's willingness to lift Townley's oath of secrecy to permit him to testify.


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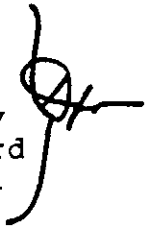
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The language of the certification requirement refers to "those indicted", i.e. it establishes a criteria of cooperation after the Townley deportation and subsequent to his grand jury testimony. In the post-extradition timeframe, Justice Department lawyers handling the case believe strongly that the GOC did not "cooperate" and, in fact, attempted to block the investigation, refused to conduct their own investigation and will not prosecute those Chilean citizens indicted in the U.S. on the basis of the evidence available in Chile. In arguing against certification, some believe that the Congress clearly intended for the statutory criteria to refer to the post-deportation timeframe and therefore that Chile does not now meet the statutory Letelier/Moffitt criteria.

Were Chile further advanced on the road to democracy, this could mitigate its continued refusal to prosecute or investigate the Letelier/Moffitt case. Alternatively, the Administration could seek Congressional approval to drop the requirement. In the absence of such progress, however, there is no basis for mitigating or deleting the Letelier/Moffitt requirement.

With regard to the human rights criteria, while Chile has greatly improved its human rights performance since 1977, in the period 1980-1983 there has been a notable resurgence of the use of torture and of internal exile. Our Embassy reports that certain indices of human rights violations were higher in 1983 than in 1982. While some of these violations are attributable to the process of political liberalization (demonstrations resulting in arrests, etc.), there remains a clear pattern of violations of the rights of the individual. There have been no cases of mysterious disappearances for political reasons since 1977. The judicial system, while showing some independence, remains subservient to the regime. Freedom of speech and freedom of the press were improved in the last year but remain abridged by transitory Article 24 of the constitution of 1980.


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Clearance: L/ARA:MMcLeod
HA:RSnyder
P:RPerry
ARA/SC:RMorley
ARA/SC:RBHoward
S/P:RBraibanti 

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