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20MAY82 – Holmes a Coles. Situación de Astiz.

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Foreign and Commonwealth Office

London SW1A 2AH

20 May, 1982

Dear John,

Lieutenant Commander Astiz

Nick Evans' letter to you of 18 May sets out the background to this case. I would add only that the International Red Cross (ICRC) have asked for access to Astiz, as they are entitled to do under the Geneva convention. They have said they are willing to wait a day or two while we decide about his movements.

As Nick Evans makes clear the Attorney General has confirmed that there can be no question of extraditing Astiz to France or Sweden or of compelling him to submit to interview. The Attorney General's view is that Astiz should be asked whether he would be willing to be questioned and if he declines he should, ideally, be repatriated as soon as possible. But he has added that if early repatriation is ruled out for some other reason, the retention of Astiz in custody until the cessation of hostilities would not in itself be a violation of the Geneva Convention, though we would have to be careful not to be drawn publicly on our reasons for treating him as an exceptional case.

The next step, in the continued absence of any response from Buenos Aires, is to ask Astiz himself whether he is willing to be interviewed. This could either be done in Ascension Island or in the UK. I take it from Nick Evans' letter that they would prefer Ascension. The question could be put by a senior British military officer. In our view it would be desirable for this to be done in the presence of a representative of the ICRC, thereby meeting their request for access to Astiz.

On the assumption that Astiz declines to be interviewed, the question of whether he is repatriated forthwith or continues to be held in military custody as an officer prisoner of war is essentially a political judgement. The Argentines have already protested to the ICRC about our decision not to release Astiz and have even said that unless we do release him fairly promptly they may well reciprocate by holding on to one or more British prisoners later on a similar basis. This is a threat we should take seriously, on the assumption that there is a reasonable likelihood that the Argentines will take further British prisoners of war. We must also reckon with the possibility that if Astiz were held in the UK he might make an application for habeas corpus in order to secure his release, although the Attorney General considers it unlikely that any such proceedings would succeed.

Since the decision to hold Astiz back while the French Government's request was under consideration, public opinion and press coverage have been favourable to HMG's position, while highlighting Astiz' alleged misdeeds. But we need to show that we have not gone to sleep on the issue, and we must expect press

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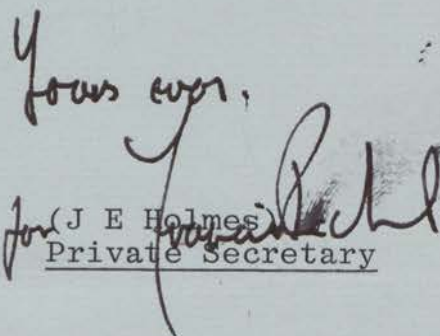
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and Parliamentary interest to persist. Opinion will probably be receptive to the need for HMG to respect obligations under the Geneva Convention on prisoners of war. But there will also be criticism if we now return him to Argentina without further ado, even if it is accepted that neither extradition nor compulsory interrogation is legally feasible. We know that the Argentines feel vulnerable to the bad image typified by Astiz and they may therefore be inhibited from pressing for his release too strongly. We also need to bear in mind the political implications of letting Astiz go while three prominent British journalists are still being held in Buenos Aires, even if the cases are in other respects quite different.

Having weighed these considerations, Mr Pym inclines to Mr Nott's view that we should repatriate him in accordance with our legal obligations, but with no great hurry. We shall in any case need to explain to the French and the Swedes the legal reasons which preclude further judicial recourse on their part. If the decision is to repatriate Astiz, we shall have to repeat these arguments publicly; and to make the most of the fact that Argentina and Astiz himself evidently could not face any approach on behalf of France or Sweden, even if arranged in the presence of a representative of the ICRC.

I am copying this to the Private Secretaries to the other members of ODSA, the Attorney General, Sir Robert Armstrong, and to Sir Michael Palliser.

Yours ever,

(J E Holmes)
Private Secretary

A J Coles Esq
Private Secretary
10 Downing Street

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