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C O N F I D E N T I A L

CWG083 29/0417 148B5098

FOR CWG

ROUTINE 281100Z MAY 82

FROM COMMCEN FCO LONDON
TO MODUK
CINCFLEET

C O N F I D E N T I A L
SIC A3A/A2N/19F

CONFIDENTIAL

FM FCO 281100Z MAY 82

TO PRIORITY PARIS

TELEGRAM NUMBER 308 OF 28 MAY

INFO UKMIS GENEVA, BRASILIA, STOCKHOLM, MODUK (DS11 AND DS15)

YOUR TELNO 550: ASTIZ

1. THE FRENCH ARE TAKING A NARROW VIEW IN ARGUING THAT THERE IS NOTHING IN THE GENEVA CONVENTION STATING THAT PRISONERS OF WAR CANNOT BE INTERROGATED IN RELATION TO CRIMES COMMITTED BEFORE THE OUTSET OF HOSTILITIES, SINCE THIS POSSIBILITY APPEARS NOT TO HAVE BEEN ENVISAGED WHEN THE CONVENTION WAS DRAFTED. NEVERTHELESS IT IS QUITE CLEAR THAT INTERROGATION FOR PURPOSES UNCONNECTED WITH THE CONFLICT WOULD BE CONTRARY TO THE OBJECTS AND PURPOSES OF THE CONVENTION. ARTICLE 17 ESTABLISHES THAT POWS HAVE A PROTECTED STATUS. PRISONERS ARE REQUIRED TO GIVE THEIR NAME, RANK, NUMBER AND DATE OF BIRTH, AND NO OTHER INFORMATION. THEY SHOULD NOT BE EXPOSED TO ANY FORM OF COERCION TO SECURE FROM THEM ANY KIND OF INFORMATION WHATEVER. PRISONERS WHO REFUSE ANSWERS MAY NOT BE EXPOSED TO QUOTE UNPLEASANT OR DISADVANTAGEOUS TREATMENT OF ANY KIND UNQUOTE.

2. AS HAS BEEN EXPLAINED TO THE FRENCH EMBASSY, ATTEMPTS TO ACQUIRE INFORMATION ABOUT ASTIZ'S PAST MISDEMEANOURS WOULD UNDOUBTEDLY BE PRESENTED BY THE ARGENTINES AS COERCION, AND THIS COULD HAVE UNDESIRABLE CONSEQUENCES FOR BRITISH PRISONERS. THIS IS NOT JUST AN FCO VIEW BUT HAS BEEN ENDORSED BY THE ATTORNEY GENERAL. IT WAS THEREFORE DECIDED THAT THE ARGENTINES, AND ASTIZ HIMSELF, SHOULD BE ASKED WHETHER HE WAS PREPARED TO ANSWER QUESTIONS SO THAT IT COULD NOT BE ARGUED THAT WE HAD COERCED HIM IN WAYS PROHIBITED BY THE ARTICLE. SINCE HE HAS NOW REFUSED, WE CANNOT SEE HOW THE MATTER CAN BE PURSUED FURTHER WITHOUT VIOLATING OUR OBLIGATIONS UNDER THE CONVENTION. PARTICULARLY SINCE ASTIZ BASED HIS REFUSAL ON THE CONVENTION, THERE IS NO REASON TO SUPPOSE THAT HE WOULD BE MORE COOPERATIVE IF WE PERMITTED THE FRENCH TO REOPEN THE ISSUE, EITHER BY INTERVIEWING HIM THEMSELVES, OR INDIRECTLY THROUGH US.

3. THERE IS A FURTHER ISSUE WHICH COULD CAUSE DIFFICULTY

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FROM THE STRICTLY LEGAL ANGLE, NAMELY THE PROVISION IN ARTICLE 16 WHICH PROVIDES THAT QUOTE '... ALL PRISONERS OF WAR SHALL BE TREATED ALIKE BY THE DETAINING POWER, WITHOUT ANY ADVERSE DISTINCTION BASED ON RACE, NATIONALITY, RELIGIOUS BELIEF OR POLITICAL OPINIONS, OR ANY OTHER DISTINCTION FOUNDED ON SIMILAR CRITERIA.' UNQUOTE. ASTIZ HAS BEEN TREATED DIFFERENTLY FROM THE OTHER ARGENTINE POWS WHOM WE REPATRIATED ON 13 MAY. WHILST IT IS TRUE THAT WE ARE UNDER NO OBLIGATION TO REPATRIATE HIM OR ANY OTHER POW UNTIL THE END OF HOSTILITIES, THERE IS LITTLE DOUBT THAT ARGENTINA WOULD HAVE STRONGER GROUNDS FOR COMPLAINT IF WE WERE TO CONTINUE TO HOLD ASTIZ EXPLICITLY FOR REASONS COMPLETELY UNRELATED TO PRESENT CONFLICT (ALL THE MORE SINCE WE HAVE NOW BEEN FORMALLY ASKED TO RETURN HIM).

4. ON THE QUESTION OF EXTRADITION, THE POSITION IS ABSOLUTELY CLEAR CUT: HE CANNOT BE EXTRADITED EITHER TO FRANCE OR SWEDEN UNDER THE EXISTING TREATIES, SINCE THE ALLEGED CRIMES WERE COMMITTED IN ARGENTINA, AND NOT FRANCE OR SWEDEN.

5. THE FRENCH ARGUMENT THAT ARTICLE 85 IS RELEVANT TO THE CASE IS VERY WEAK. THIS READS: QUOTE 'POWS PROSECUTED UNDER THE LAWS OF THE DETAINING POWER FOR ACTS COMMITTED PRIOR TO CAPTURE SHALL RETAIN, EVEN IF CONVICTED, THE BENEFITS OF THE PRESENT CONVENTION.' UNQUOTE. THE PURPOSE OF THE ARTICLE IS CHIEFLY TO PROTECT POWS WHO ARE CHARGED WITH WAR CRIMES. ALTHOUGH IT COULD ALSO APPLY TO ACTS COMMITTED PRIOR TO HOSTILITIES, IT ONLY DEALS WITH THE SITUATION WHERE THE DETAINING POWER (THE UK) PROSECUTES A POW. THE ARTICLE DOES NOT AUTHORISE, OR EVEN RECOGNISE THE POSSIBILITY OF, A THIRD COUNTRY PROSECUTING A POW FOR OFFENCES UNCONNECTED WITH THE HOSTILITIES.

6. THE ICRC LEGAL EXPERTS SHARE OUR VIEW OF THE CASE.

PYM
BT

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