

AIRTEL  
20:49

CONTROL: 6074  
042048Z AUG 78

*Return Pol*  
INDICATE  
 COLLECT  
 CHARGE TO

# TELEGRAM

FROM AMEMBASSY BUENOS AIRES CLASSIFICATION LIMITED OFFICIAL USE

E.O. 11652:  
TAGS:  
SUBJECT:

N/A  
SHUM, AR, PINS  
GOA FACES DECISION IN TIMERMAN CASE

*(S) SP 7*

ACTION:

SECSTATE WASH DC

AMB 2  
DCM  
POL 3  
POLR  
ICA  
CONGEN  
CHRON  
RF

INFO: USCINCSO QUARRY HTS CZ

~~INFO:~~ AMEMBASSY MONTEVIDEO

LIMITED OFFICIAL USE BUENOS AIRES 6074

REF: BUENOS AIRES 5646  
SINCE

SUMMARY: ~~XXXXXX~~ THE RECENT SUPREME COURT DECISION

DIRECTING THE RELEASE FROM EXECUTIVE (PEN) DETENTION

OF FORMER LA OPINION PUBLISHER JACOBO TIMERMAN EXPLICITLY

AVOIDED THE ISSUE OF THE GOVERNMENT'S AUTHORITY TO CONTINUE

HIS DETENTION UNDER THE TERMS OF THE ACTA INSTITUTIONAL OF  
PLAN TO

JUNE 18, 1976, TIMMERMAN'S LAWYERS ~~XXXX~~/PLACE THIS ISSUE

INTO THE COURTS NEXT WEEK (AUGUST 7). TIMERMAN'S LEGAL

CASE APPEARS FAIRLY STRONG. TO DATE, THE GOVERNMENT

HAS NOT RESPONDED TO THE JULY 20TH SUPREME COURT ORDER.

IT IS FACED WITH A NUMBER OF SOLUTIONS WHICH WILL ~~BE~~ EITHER

UNPOPULAR WITHIN THE ARMED FORCES OR ~~WORLD~~ OPINION. THESE

RANGE ~~RANGES~~ FROM RELEASING TIMERMAN IN RESPONSE TO THE

DRAFTED BY  
POL:FAHarris/bv.

DRAFTING DATE  
8-2-78

TEL EXT.  
276

CONTENTS AND CLASSIFICATION APPROVED BY:  
POL:AGFreeman

CLEARANCES:  
DCM:MChaplin

LIMITED OFFICIAL USE

CLASSIFICATION

OPTIONAL FORM 153  
(Formerly FS-413)  
January 1975  
Dept of State

Classification

COURT'S ORDER TO ISSUING A NEW PEN DECREE CHARGING HIM ANEW WITH  
THE FAMILY'S GOA  
LINKS TO SUBVERSION. ~~THE~~ GUESS IS THAT THEY WILL ALLOW TIMERMAN TO CONTINUE  
TO LITIGATE HIS CASE AND POSTPONE THE DECISION. END SUMMARY.

1. SUPREME COURT'S DECISION -----

THE SUPREME COURT'S RECENT DECISION EXPLICITLY SKIRTED THE  
ISSUE REGARDING TIMERMAN'S DEPRIVATION OF LIBERTY UNDER  
THE ACTA INSTITUTIONAL. THE COURT FOCUSED ONLY ON THE  
REASONABLENESS OF TIMERMAN'S CONTINUED DETENTION UNDER THE  
PODER EJECUTIVO NACIONAL (PEN) DECREE UNDER WHICH HE WAS  
LEGALLY DETAINED IN APRIL 1977. THE COURT POINTED OUT IN  
ITS OPINION THAT THE EXPLANATION OFFERED BY THE MINISTRY OF  
INTERIOR FOR THE PEN DECREE AGAINST TIMERMAN REVOLVED AROUND  
THE INVESTIGATION UNDERTAKEN BY THE SPECIAL WAR COUNCIL OF  
DEALINGS,  
HIS CONNECTIONS WITH THE GRAIVER-MONTONERO/~~XXXXXXXXXX~~  
SUBSEQUENTLY, THE SPECIAL WAR COUNCIL PUBLICLY ANNOUNCED  
THAT AFTER A THOROUGH INVESTIGATION, IT HAD FOUND THAT MR.  
(AND SOME XX 25 OTHERS)  
TIMERMAN/HAD COMMITTED NO INDICTABLE OFFENSE. THE COURT  
STRESSED THAT IN ALL THE OTHER CASES WHICH HAD COME  
BEFORE IT ALLEGING ABUSES IN THE GOVERNMENT'S USE OF ITS  
EXECUTIVE DETENTION POWERS, THE GOVERNMENT HAD INFORMED  
THE COURT THAT IT CONSIDERED THAT THE PEN DETAINEE IN  
QUESTION WAS LINKED WITH SUBVERSIVE ACTIVITIES. HOWEVER,  
IN THE TIMERMAN CASE ~~XXXXXXXXXXXXXXXXXXXX~~ A SPECIAL  
MILITARY TRIBUNAL HAD PUBLICLY STATED THAT MR. TIMERMAN

LIMITED OFFICIAL USE

Classification

WAS NOT CONNECTED WITH ANY SUBVERSIVE ACTIVITIES. THEREFORE, IT DID NOT APPEAR TO A MAJORITY OF THE COURT THAT THERE WAS A REASONABLE BASIS UNDER THE SPECIAL CONSTITUTIONAL STATE OF SIEGE PROVISIONS FOR THE CONTINUED DETENTION OF TIMERMAN. THE COURT THUS GRANTED THE HABEUS CORPUS PETITION WITH RESPECT TO THE DEPRIVATION OF BASED ON MR. TIMERMAN'S LIBERTY /~~SUBSANTIVE~~ THE PEN DECREE ISSUED BY THE PRESIDENT ON APRIL 21, 1977.

2. THE ACTA INSTITUTIONAL OF JUNE 18, 1976 -----

IN THE ACTA INSTITUTIONAL, WHICH IN DE FACTO REVOLUTIONARY JURISPRUDENCE HAS THE EQUIVALENCE OF A CONSTITUTIONAL AMENDMENT, THE MILITARY JUNTA ASSUMED SPECIAL POWERS AND RESPONSIBILITIES /~~RESPONSIBILITIES~~ TO JUDGE THE CONDUCT OF PERSONS WHO HAVE CAUSED DAMAGE TO THE HIGHER INTERESTS OF THE NATION. UNDER THE TERMS OF THE ACTA, ONCE THE JUNTA HAS DECIDED THAT SUCH HAVE VIOLATIONS ~~WAS~~/BEEN COMMITTED, THE JUNTA ~~RESPONSIBLE~~ HAS THE PERSONS RESPONSIBLE THE RIGHT TO ISSUE RESOLUTIONS PLACING /~~THE PERSONS~~ UNDER THE ACTA AND APPLYING ANY OR ALL THE FOLLOWING MEASURES:

- A) DEPRIVATION OF POLITICAL AND LABOR RIGHTS;
- B) REVOCATION OF THE CITIZENSHIP OF NATIONALIZED ARGENTINES;
- C) EXPULSION OF FOREIGNERS OR NATURALIZED ARGENTINES FROM THE COUNTRY;
- D) PROHIBITION OF PERSONS FROM EXERCISING ANY PUBLIC DUTY, EMPLOYMENT OR COMMISSION

LIMITED OFFICIAL USE

Classification

E) CONFINEMENT OF PERSONS IN A PLACE TO BE DETERMINED  
 BY THE NATIONAL EXECUTIVE POWER (BEGIN UNDERLINING)  
WHILE THESE PERSONS ARE AT ITS DISPOSITION (END UNDERLINING)  
 AND PROHIBITING THE ADMINISTRATION OR DISPOSAL OF A PERSON'S  
 ASSETS UNTIL SUCH TIME AS THE LEGITIMACY OF THE ACQUISITION  
 OF THESE ASSETS HAS BEEN JUSTIFIED AND PROHIBITING A PERSON  
 FROM  
 PRACTICING THEIR ~~PROFESSIONS~~ LEGALLY LICENSED  
 PROFESSION.

PURSUANT TO JUNTA RESOLUTION No. 6 OF OCTOBER 11, 1977,  
 SUBSECTIONS (A), (D) and (E) WERE APPLIED TO JACOBO TIMERMAN.  
 AT THAT TIME, JACOBO TIMERMAN WAS UNDER EXECUTIVE DETENTION  
 PURSUANT TO THE APRIL 1977 DECREE.

3. TIMERMAN'S ARGUMENT -----  
 HAS INFORMED THE EMBASSY THAT HE  
 TIMERMAN'S LAWYER PLANS TO ARGUE THAT ~~SECTION E~~ SECTION E OF  
 THE ACTA INSTITUCIONAL IS NOT AN INDEPENDENT SOURCE OF  
 DEPRIVATION OF LIBERTY UNDER ARGENTINE LAW FOR TWO REASONS.  
 OF  
 FIRST, THE EXPRESS LANGUAGE SECTION E (SEE UNDERLINING)  
 GRANTS THE GOVERNMENT AUTHORITY TO INTERN A PERSON AT A  
 PLACE OF THE GOVERNMENT'S CHOOSING WHILE (REPEAT WHILE)  
 SUCH PERSON IS AT THE DISPOSITION OF THE PEN.  
 SECONDLY, GRANTING THE GOVERNMENT EXCEPTIONAL DETENTION  
 POWERS IS A SERIOUS ABRIDGEMENT OF ~~PERSONAL~~ RIGHTS AND MUST  
 HE WILL THEN CONCLUDE THAT,  
 STEM FROM A CLEAR CONSTITUTIONAL POWER. ~~SECTION E~~, ~~SEE~~  
 AS THE SUPREME COURT HAS FOUND THAT THERE IS NO REASONABLE  
 TIMERMAN  
 BASIS FOR THE CONTINUATION OF THE PEN DECREE AGAINST ~~HEM~~,

LIMITED OFFICIAL USE

Classification

Classification

THERE IS NO BASIS FOR THE GOVERNMENT TO CONTINUE TO DEPRIVE  
 TIMERMAN OF HIS LIBERTY UNDER SECTION E OF THE ACTA INSTITUTIONAL.

9 TIMERMAN'S LAWYER PLANS TO STRESS THAT THE GOVERNMENT'S RIGHT  
 TO DEPRIVE PERSONS OF LIBERTY IS AN EXCEPTIONAL POWER ~~DERIVED~~  
 DERIVED  
 OF THE CONSTITUTION.  
 ONLY FROM ITS STATE OF SIEGE POWERS UNDER ARTICLE 23. THE  
 GOVERNMENT HAS NO INDEPENDENT CONSTITUTIONAL BASIS FOR  
 DEPRIVING INDIVIDUALS OF THEIR LIBERTY BY ITS OWN EXECUTIVE  
 ORDER EXCEPT FOR THE AUTHORITY STEMMING FROM ITS STATE OF  
 SIEGE POWERS WHICH THE GOVERNMENT EXERCISES ONLY THROUGH PEN  
 DECREES. IN SHORT, TIMERMAN'S LAWYER ARGUES IF THE GOVERNMENT  
 HAS NO RIGHT TO HOLD A PERSON UNDER ~~THE~~  
 THE  
 PEN, IT HAS NO RIGHT TO  
 HOLD A PERSON UNDER THE ACTA.

4. COUNCIL ON PATRIMONIAL RESPONSIBILITY (CONAREPA)

PROCEEDINGS -----

THERE HAVE BEEN NO NEW DEVELOPMENTS REGARDING CONAREPA'S  
 ADMINISTRATIVE REVIEW OF TIMERMAN'S ASSETS. AS PREVIOUSLY  
 REPORTED, CONAREPA HAS REQUESTED ADDITIONAL FINANCIAL  
 RECORDS AND INFORMATION ON THE FIRMS IN WHICH TIMERMAN  
 HAD MAJOR FINANCIAL INTERESTS. COMPLETE FINANCIAL INFORMATION  
 HAS BEEN SUPPLIED ON THE LA OPINION NEWSPAPER AND ITS PRINTING  
 PLANT. BUT CONAREPA HAS REFUSED TO ACCEPT FINANCIAL  
 INFORMATION ON THE TIMERMAN BOOK PRINTING OPERATION AS IT  
 FORMALY  
 HAS NOT ~~FORMAL~~ REQUESTED THE DATA.

9 DURING RECENT LUNCH MEETING WITH DATI JUST AFTER SUPREME  
 COURT'S DECISION, SEVERAL CONAREPA BOARD AND SENIOR MEMBERS

LIMITED OFFICIAL USE

Classification

*Classification*

INDICATED THAT THEY STILL HAD MUCH MORE WORK TO DO REGARDING THE  
TIMERMAN MATTER.

9 TIMERMAN'S FAMILY IS CONFIDENT THAT THERE ARE NO IRREGULARITIES  
TO BE UNCOVERED AND CONTINUES TO PUSH FOR TIMERMAN'S RELEASE  
FROM DETENTION WHILE THE CONAREPA'S PROCEEDINGS CONTINUE.

THIS

LIMITED OFFICIAL USE

*Classification*

Classification

IS BEING DONE IN SEVERAL OTHER CASES AT PRESENT.

5. GOA REACTION -----

JACOBO TIMERMAN TOLD THE EMBASSY IN A TELEPHONE CONVERSATION

ON AUGUST 2ND THAT HE HAS RECEIVED NO WORD OF ANY GOVERNMENT  
(THIS WAS THE FIRST TIME WE HAVE EVEN GOTTEN THROUGH-TO TIMERMAN ON THE PHONE)  
REACTION TO THE SUPREME COURT DECISION PRIOR TO THE JULY 31ST

LAMBRUSCHINI BOMBING, DEPUTY NAVY SECRETARY GENERAL LUCHETTA  
TOLD POLOFF THAT ADMIRAL MASSERA PLANNED TO RAISE TIMERMAN'S  
CASE AT THE REGULAR JUNTA MEETING ON AUGUST 3. CLEARLY, THE  
GOVERNMENT HAS A HARD DECISION TO MAKE. TIMERMAN'S LEGAL  
CASE FOR HIS RELEASE AFTER THE SUPREME COURT'S DECISION IS  
EVEN STRONGER, ALTHOUGH ALL OBSERVERS AGREE THAT ANY DECISION  
REGARDING HIS RELEASE OR CONTINUED DETENTION WILL BE STRICTLY  
POLITICAL. WHETHER THE LAMBRUSCHINI BOMBING WILL HAVE AN  
EFFECT IS NOT CLEAR, BUT IT COULD MAKE A DECISION FAVORABLE  
TO TIMERMAN MORE DIFFICULT AT LEAST IN THE NEAR TERM.

6. PUBLIC REACTION -----

THE GENERAL PUBLIC REACTION TO THE SUPREME COURT'S DECISION  
HAS BEEN POSITIVE. THE OPTIMISTIC OBSERVERS BELIEVE THAT THE  
TIMERMAN DECISION SIGNALS A NEW ELEMENT OF STRENGTH IN THE  
SUPREME COURT. MORE REALISTIC OBSERVERS WHILE SEEING THE  
DECISION AS A DEFINITE PLUS, POINT OUT THAT THE TIMERMAN CASE  
WAS UNIQUE AS TIMERMAN IS THE ONLY DETAINED PEN PRISONER IN THE  
COUNTRY WHO HAS RECEIVED A CLEAN BILL OF HEALTH FROM A  
MILITARY TRIBUNAL. THE LATTER VIEW WAS STRENGTHENED ON AUGUST  
FIRST WHEN THE SUPREME COURT ANNOUNCED ITS SECOND REJECTION OF

LIMITED OFFICIAL USE

Classification

THE PERMANENT ASSEMBLY'S DIRECT APPEAL FOR THE JUDICIARY TO INTERVENE IN ESTABLISHING THE WHEREABOUTS OF OVER 100 PERSONS ILLEGALLY DETAINED (i.e. DISAPPEARED) PRESUMABLY BY THE EXECUTIVE.

7. EMBASSY COMMENT -----

WE DOUBT THAT THE TIMERMAN'S DECISION WILL BE OF VALUE LEGALLY TO THE OTHER PEN DETAINEES. NOR ARE WE OPTIMISTIC THAT THE GOA WILL COMPLY WITH THE COURT DIRECTIVE TO REMOVE TIMERMAN FROM PEN/ACTA DETENTION. THE MOST LIKELY SCENARIO IS FOR <sup>Extended</sup> LITIGATION WHILE THE NEW VIDELA ADMINISTRATION WORKS ITS WAY TOWARDS MAKING THE TOUGH POLITICAL DECISION TO ALLOW TIMERMAN TO LEAVE ARGENTINA. AT A CONVENIENT TIME, WE SHALL TRY TO GET A READING FROM HARGUINDEGUY.

8. ACTION REQUEST -- APPRECIATE IF DEPARTMENT WOULD BRIEF CONGRESSMEN CONTE AND GILMAN, RABBI ROSENTHAL OF ADL, STAFF MEMBERS IN THE OFFICES OF SENATORS HAYAKAWA AND CRANSTON REGARDING STATE OF PLAY OF TIMERMAN CASE.

CASTRO



Limited Official Use

Classification