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CONTROLS

C O N F I D E N T I A L BUENOS AIRES 00767

E.O. 12356: DECL: OADR

TEXT

TAGS: PHUM, PREL, NL, GE, AR
SUBJECT: ARGENTINA AND WAR CRIMINAL EXTRADITIONS:
- EVOLVING TOWARDS GREATER COOPERATION

REFS: (A) 88 BUENOS AIRES 6959
- (B) 88 BUENOS AIRES 12573
- (C) 88 THE HAGUE 10156 (NOTAL)

1. CONFIDENTIAL - ENTIRE TEXT.

2. SUMMARY. SINCE 1945, ARGENTINA HAS ACQUIRED A PARTIALLY DESERVED REPUTATION AS A HAVEN FOR SECOND WORLD WAR CRIMINALS. FOR A VARIETY OF REASONS -- MILITARY SYMPATHY WITH THE AXIS, CONFRONTATION WITH WESTERN ALLIES, ANTI-SEMITISM, MILITARY GOVERNMENTS' CONCERN WITH THEIR LIABILITY, INEFFICIENT LEGAL SYSTEM,

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ARGENTINE CITIZENSHIP -- GOA HAS NEVER EXTRADITED A WWII FUGITIVE. THE SCHWAMMBERGER (FRG) AND OLIJ (NETHERLANDS) CASES IN 1988 SUGGEST A CHANGE IN GOA ATTITUDE. LOCAL EMBASSY REPRESENTATIVES FOUND GOA COMPLETELY COOPERATIVE ON THE EXTRADITION REQUESTS. NEW ATTITUDE DRIVEN BY SEVERAL FACTORS, MOST IMPORTANT OF WHICH IS DEMOCRATIC GOVERNMENT'S DETERMINATION TO ALTER ITS DOMESTIC AND INTERNATIONAL IMAGE. LEGAL SYSTEM CONTINUES AS OBSTACLE TO SPEEDY EXTRADITION, PARTICULARLY ON QUESTION OF EXTRADITING NATURALIZED ARGENTINE CITIZENS. SCHWAMMBERGER CASE SUGGESTS EVEN LEGAL OBSTACLES CAN BE OVERCOME, HOWEVER, WITH ENOUGH POLITICAL WILL BY GOA. LOCAL SOURCES INDICATE A MAXIMUM OF EIGHT POSSIBLE WWII FUGITIVE CASES STILL IN ARGENTINA (TWO DUTCH, SIX GERMAN). GIVEN AGES OF CURRENT SUSPECTS, NEW ARGENTINE ATTITUDE TOWARDS WAR CRIMES EXTRADITIONS MAY SOON BE A MOOT POINT. END SUMMARY.

3. **ARGENTINA'S REPUTATION AS A HAVEN FOR WAR CRIMINALS**

THE JANUARY 19-20 VISIT TO **ARGENTINA** BY DUTCH FOREIGN MINISTER VAN DEN BROEK AND HIGH PROFILE TREATMENT GIVEN TO HIS REQUEST FOR EXTRADITION OF THREE FORMER **NAZIS** HAS FOCUSED PUBLIC ATTENTION ON **ARGENTINA'S** CHECKERED PAST CONCERNING FUGITIVE WAR CRIMINALS. SINCE 1945, ACCORDING TO SECRETARY OF JUSTICE PAIXAO, **ARGENTINA** HAS NOT EXTRADITED A SINGLE INDIVIDUAL TO STAND TRIAL FOR WAR CRIMES. RIGHTLY OR WRONGLY, IT HAS DEVELOPED A REPUTATION AS A REFUGE FOR FORMER **NAZIS**, A SANCTUARY SAFE FROM DEPORTATION. THERE HAS NEVER BEEN A CLEAR FIX ON THE NUMBER OF WWII FUGITIVES WHO ESTABLISHED RESIDENCE IN **ARGENTINA**. THEY OBVIOUSLY TRY NOT TO DRAW ATTENTION TO THEMSELVES. THE SECRETARY OF JUSTICE SUGGESTS THERE MAY BE AS FEW AS TEN OVER THE PAST 44 YEARS; LOCAL B'NAI B'RITH EXECUTIVE DIRECTOR BURKMAN ESTIMATES AS MANY AS 200. VIRTUALLY ALL OBSERVERS AGREE THAT SOME FUGITIVE **NAZIS** FOUND THEIR WAY TO **ARGENTINA** IN THE EARLY YEARS AFTER THE WAR.

4. **OBSTACLES TO EXTRADITION**

OVER THE YEARS, SEVERAL FACTORS WORKED AGAINST EXTRADITIONS FROM **ARGENTINA** OF SUSPECTED WAR CRIMINALS:

-- BARELY CONCEALED PREFERENCE OF THE 1943-45 MILITARY GOVERNMENT AND SUBSEQUENT PERON ADMINISTRATION FOR THE AXIS POWERS DURING THE WAR.

-- CONFRONTATIONAL POSTURE OF THE PERON GOVERN-

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MENT TOWARDS THE USG AND, BY EXTENSION, ITS
WARTIME ALLIES, IN THE YEARS FOLLOWING THE WAR.

-- STRONG CURRENT OF ARGENTINE ANTI-SEMITISM IN
THE POST-WAR YEARS AND FACT THAT MOST FUGITIVE
WAR CRIMINALS WERE ACCUSED OF ATROCITIES AGAINST
EUROPEAN JEWS.

-- DIFFICULTIES IN LOCATING AND IDENTIFYING
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SUSPECTS IN HIDING.

-- ARCHAIC AND INEFFICIENT ARGENTINE LEGAL SYSTEM
SUSCEPTIBLE TO MANIPULATION.

-- CONCERN OF ARGENTINE MILITARY GOVERNMENTS OF
1943, 1955, 1966, AND 1976 ABOUT THEIR OWN
LIABILITY FOR EXTRA-CONSTITUTIONAL ACTS AND
CONSEQUENT LACK OF SYMPATHY FOR EFFORTS TO TRY
FORMER AXIS OFFICIALS FOR EXCESSES.

-- MOST FUGITIVES HAD NATURALIZED AS ARGENTINES
BY THE 1950S AND LEGAL TRADITION WORKED AGAINST
EXTRADITION OF ONE'S OWN CITIZENS.

5. BREAKTHROUGH IN 1988?

FOR THE FIRST TIME SINCE THE WAR, IN 1986 THE
ARGENTINE GOVERNMENT ARRESTED A SUSPECTED WAR
CRIMINAL FOR POSSIBLE EXTRADITION. AT THE
REQUEST OF THE FRG, ARGENTINE POLICE ARRESTED
A MAN IDENTIFIED BY THE GERMANS AS WALTER
KUTSCHMANN. THE SUSPECT DIED OF NATURAL CAUSES
BEFORE HIS IDENTITY WAS ESTABLISHED (HE CLAIMED
TO BE SPANISH; FRG CLAIMED THE SPANIARD OF THAT
IDENTITY DIED IN 1938), BUT THE GERMAN EMBASSY
NOTED TO US THAT THE GOA WAS GENUINELY HELPFUL
IN PROCESSING AN EXTRADITION REQUEST. IN 1988,
ALSO FOR THE FIRST TIME, AN ARGENTINE FEDERAL
COURT ORDERED EXTRADITION OF A SUSPECTED WAR
CRIMINAL TO WEST GERMANY. LEO SCHWAMMBERGER
APPEALED THE LOWER COURT RULING, BUT ONCE AGAIN
THE FRG WAS PLEASED WITH THE COOPERATIVE ATTITUDE
SHOWN BY ARGENTINE FOREIGN MINISTRY, POLICE,
AND JUDICIARY. SHORTLY AFTER THE SCHWAMMBERGER
DECISION, FEDERAL POLICE ARRESTED ANOTHER
NATURALIZED ARGENTINE, JAN OLIJ, AT DUTCH REQUEST.
OLIJ REMAINS IN DETENTION PENDING JUDICIAL
RESOLUTION OF THE DUTCH EXTRADITION REQUEST
FOR WAR CRIMES.

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6. NEW GOA ATTITUDE TOWARDS WAR CRIMES AND FUGITIVES?

THE FRG AND DUTCH EMBASSIES IN BUENOS AIRES, WHO HAVE DEALT MOST FREQUENTLY WITH THE GOA ON WAR CRIMINAL EXTRADITIONS, ARE CONVINCED GOA HAS TURNED A NEW LEAF. WHERE BEFORE THEY ENCOUNTERED LEGAL OBSTACLES, DELAYS IN PROCESSING OFFICIAL REQUESTS, AND DISAPPEARING SUSPECTS CLEARLY TIPPED OFF BY SOMEONE IN THE GOVERNMENT, THEY NOW FIND COOPERATION. THE GERMAN DCM DESCRIBED HIS ARGENTINE INTERLOCUTORS AS SINCERE, INTERESTED, AND RELIABLE IN THE KUTSCHMANN AND SCHWAMMBERGER CASES. THE DUTCH CONSUL FELT ARGENTINE COOPERATION IN THE OLIJ CASE WAS "IMPECCABLE." HE RESERVED HIS FRUSTRATIONS FOR DUTCH PARLIAMENTARIANS AND PRESS WHO HE CONSIDERED RESPONSIBLE FOR ANOTHER SUSPECT DISAPPEARING PRIOR TO ARREST. LOCAL B'NAI B'RITH DIRECTOR EXPRESSED TO POLOFF HIS DOUBTS ABOUT SINCERITY AND PERMANENCE OF GOA CHANGE OF ATTITUDE, BUT CONCEDED THAT GOA COOPERATION ON WAR CRIMES EXTRADITIONS WAS UNPRECEDENTED. JUSTICE SECRETARY PAIXAO TOLD US SEVERAL TIMES OVER THE LAST TWO YEARS THAT WAR CRIMES EXTRADITIONS ARE A HIGH PRIORITY FOR FEDERAL PROSECUTORS.

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7. WHY THE NEW ATTITUDE?

ARGENTINA'S NEW ATTITUDE DATES FROM RETURN OF CONSTITUTIONAL GOVERNMENT IN LATE 1983. THE ALFONSIN GOVERNMENT FELT NEITHER SYMPATHY FOR NOR KINSHIP WITH PAST AXIS OFFICIALS. IN FACT, ALFONSIN'S CAMPAIGN PLEDGE TO BRING THE LATE MILITARY GOVERNMENT TO ACCOUNT FOR ABUSES IN
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THE "DIRTY WAR" MESHED NICELY WITH A POLICY OF DEPORTING WAR CRIMINALS FROM AN EARLIER ERA. ARGENTINA'S OWN JEWISH POPULATION -- THE LARGEST IN LATIN AMERICA -- BROUGHT ITS NOT INSIGNIFICANT POLITICAL INFLUENCE TO BEAR ON THE GOA TO COOPERATE IN EXTRADITIONS. THE LEGAL SYSTEM ADDRESSED THE DIFFICULT ISSUE OF EXTRADITING NATURALIZED CITIZENS WHEN IT SAW OTHER NATIONS SUCH AS THE UNITED STATES AND AUSTRALIA RESOLVING THE SAME ISSUE. THE FOREIGN MINISTRY, CONCERNED THAT ARGENTINA'S ACTIVIST THIRD WORLD POLICY WAS DIVIDING IT FROM THE WEST, SUPPORTED EXTRADITIONS AS

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A LOW COST POLICY TO REDUCE SUCH TENSIONS. MOST IMPORTANT, HOWEVER, WAS ARGENTINE CONCERN FOR ITS DEMOCRATIC IMAGE. THE ALFONSIN GOVERNMENT IS WELL AWARE OF THE DOMESTIC AND INTERNATIONAL PRICE ARGENTINA PAID FOR MORE THAN 40 YEARS FOR ITS IMAGE AS A NAZI SANCTUARY AND IS DETERMINED TO ALTER THE IMAGE.

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8. LEGAL SYSTEM: CONTINUING OBSTACLE

WHILE THE POLITICAL ATTITUDE TOWARDS EXTRADITION MAY HAVE CHANGED, THE ARGENTINE LEGAL SYSTEM REMAINS THE SAME. IT IS ARCHAIC, INEFFICIENT, AND HEAVILY DEPENDENT UPON THE WRITTEN RECORD. IT IS FILLED WITH JUDICIAL PROCEDURES AND REGULATIONS BY WHICH A SKILLED DEFENSE ATTORNEY CAN DELAY EXTRADITION FOR YEARS. AT HIS DEATH NEARLY A YEAR AFTER ARREST, THE SUSPECTED MR. KUTSCHMANN'S IDENTITY HAD NOT EVEN BEEN RULED UPON BY THE TRIAL COURT, FAR LESS HIS EXTRADITION. PAST LEGAL PRACTICE REQUIRES A SEPARATE JUDICIAL DECISION STRIPPING A NATURALIZED ARGENTINE OF HIS CITIZENSHIP (NORMALLY A TWO OR THREE YEAR PROCESS) BEFORE EXTRADITION CAN EVEN BE CONSIDERED. BY THAT TIME, THE STATUTE OF LIMITATIONS MAY HAVE EXPIRED. THE TRIAL COURT FOUND A WAY AROUND THIS PRACTICE IN THE SCHWAMMBERGER CASE BY RULING ON CITIZENSHIP AND EXTRADITION SIMULTANEOUSLY, BUT THERE IS NO ASSURANCE THIS DECISION WILL STAND ON APPEAL. THE FRG HAS NO EXTRADITION TREATY WITH ARGENTINA. NATIONS THAT DO, SUCH AS THE NETHERLANDS, MAY FIND THE TREATY MORE HINDRANCE THAN HELP. THE 1893 DUTCH-ARGENTINE TREATY, FOR EXAMPLE, PRECLUDES EXTRADITION OF ONE'S OWN CITIZENS. THUS, IT WILL BE LEGALLY IMPOSSIBLE TO EXTRADITE OLIJ TO THE NETHERLANDS UNTIL AN ARGENTINE COURT HAS STRIPPED HIM OF HIS NATIONALITY.

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9. OTHER PENDING CASES

EXCLUDING SCHWAMMBER AND OLIJ, THERE APPEARS TO BE NO MORE THAN EIGHT POTENTIALLY SOLID FUGITIVE WAR CRIMINAL CASES IN ARGENTINA. THE FRG EMBASSY TOLD US IN CONFIDENCE THEY MAY HAVE THREE MORE GERMAN WWII FUGITIVES IN COUNTRY, BUT THEY DO NOT KNOW CURRENT WHEREABOUTS. UNTIL THEY DO, THEY WILL NOT ASK FOR PREVENTIVE DETENTION OR ANNOUNCE NAMES. THE DUTCH, ON THE OTHER HAND, HAVE ANNOUNCED PUBLICLY THAT THEY ARE SEARCHING FOR TWO OTHER FUGITIVES --

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ABRAHAM KIPP AND A. RIPHAGEN. KIPP DISAPPEARED AFTER PRESS LEAKS THAT THE DUTCH GOVERNMENT WAS ABOUT TO ASK FOR HIS EXTRADITION; RIPHAGEN, ACCORDING TO THE CONSUL GENERAL, WAS NEVER DEFINITELY LOCATED. THE LOCAL B'NAI B'RITH CHAPTER CLAIMED TO POLOFF THAT THERE ARE SIX MORE GERMAN WAR CRIMINALS HIDING IN ARGENTINA. WHEN PRBSSED, HOWEVER, THEY ADMITTED TO FIRM LEADS ON ONLY THREE, CONCEIVABLY THE SAME THREE MENTIONED BY THE GERMAN EMBASSY.

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10. COMMENT. THERE IS AN UNDENIABLE CHANGE IN THE GOA'S POLITICAL ATTITUDE TOWARDS EXTRADITION OF SUSPECTED WORLD WAR II CRIMINALS. THE ALFONSIN GOVERNMENT IS DETERMINED TO ALTER **ARGENTINA'S** IMAGE AS A HAVEN FOR FORMER **NAZIS**. THE LEGAL SYSTEM WORKS AGAINST SPEEDY EXTRADITION, BUT THE FRG'S EXPERIENCE IN THE SCHWAMMBERGER CASE SUGGESTS THAT EVEN JUDICIAL OBSTACLES CAN BE OVERCOME WITH THE RIGHT DOSAGE OF POLITICAL WILL. THE EXTENT TO WHICH THIS GOA ENTHUSIASM WILL CONTINUE AFTER THE ALFONSIN GOVERNMENT IS AN OPEN QUESTION. GIVEN THE AGES OF THE SUSPECTS (THE YOUNGEST ARE NOW IN THIER 70S), HEALTH AND NATURAL DEATH MAY MAKE THE QUESTION MOOT BEFORE LONG ANYWAY.

SERVICE

ADMIN
END OF MESSAGE

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