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*Prime Minister ①*

PRIME MINISTER

ARGENTINA: ARMS SALES AND BANK LENDING

At your meeting on 22 December, you asked me to consider whether a general instruction could be issued by the Bank forbidding lending by UK banks to a country in a state of hostilities with the UK.

I have now looked further into this question and can advise that in principle a recommendation (and a direction to give effect to it) could be issued by the Bank along these lines without being in conflict with s.4(3)(a) of the Bank of England Act 1946, which provides as follows:

"The Bank, if they think it necessary in the public interest, may request information from and make recommendations to bankers, and may, if so authorised by the Treasury, issue directions to any banker for the purpose of securing that effect is given to any such request or recommendation; provided that no such request or recommendations shall be made with respect to the affairs of any particular customer of a banker."

There are however important qualifications to be made to this advice:

(1) It is for the Bank, and not for the Treasury, to determine whether a recommendation is "necessary in the public interest". We know that the Bank have received legal advice that "if the dominant factor in the public interest is political rather than financial, it would not be apt for recommendations to be made by the Bank under s.4(3)". This advice was based on the view that the only public interest with which the Bank were concerned was financial. It is therefore improbable that the Bank would make a recommendation in circumstances where the public interest was considered by them to be political. We cannot require the Bank to issue a recommendation.





(2) If the recommendation, and the direction to give effect to it, were to be issued in general terms at a time when they could in fact apply only to a specific Government with which a banker had a banker/customer relationship (which might well be held to exist if at the material time there was an outstanding loan with Argentina, or negotiations were in train in relation to a new loan), there is a substantial risk that the banker might obtain a declaration from the courts that the direction was ultra vires.

(3) On the technical level, there will have to be:

- (a) a definition of "state of hostilities";
- (b) an opportunity given to the bankers to make representations;
- (c) an order made under s.4(6) of the 1946 Act declaring who are bankers for the purposes of the section. We shall have to explain why we are making this order.

I am copying this minute to the Chancellor of the Exchequer and the Foreign Secretary.

*Richard Rayner*

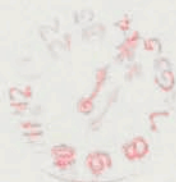
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Law Officers' Department  
Royal Courts of Justice

Rec'd  
Incl. address,  
BT-7



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