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30 September 1981

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

MEMORANDUM FOR: The Secretary of State
The Secretary of Defense
Director, National Security Agency

FROM : John H. Stein
Deputy Director for Operations

SUBJECT : [REDACTED] Report

1. Enclosed is a [REDACTED] report. For convenience of reference by NFIB agencies, the codeword [REDACTED] has been assigned to the product of certain extremely sensitive agent sources of CIA's Directorate of Operations. The word [REDACTED] is classified [REDACTED] and is to be used only among persons authorized to read and handle this material.

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John H. Stein

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Distribution:

The Secretary of State
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Intelligence Information Special Report

COUNTRY Poland

FIRDB-312/03008-81

DATE OF INFO. Sept 1981

DATE Sept 1981

SUBJECT

Justification of the Draft Decree on Martial Law

SOURCE Documentary

Summary:

This report is a translation of a Polish SECRET document entitled "Rationale for the Draft Decree on Martial Law." It is a summary of the decree and a justification for its promulgation, and claims to provide sufficient legal grounds. Various responsibilities, obligations, and duties of Polish citizens, as well as restrictions on freedom of movement and work conditions are discussed, with reference to the appropriate article and paragraph of the draft decree.

Note: For text of the draft decree, see FIRDB-312/03007-81.

End of Summary

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RATIONALE FOR THE DRAFT DECREE ON MARTIAL LAW

Under our present system of laws, matters related to martial law are governed solely by the provisions contained in article 33, paragraph 2 of of the PPR Constitution, which empowers the Council of State to declare martial law in a part of or the entire territory of the Polish Peoples Republic insofar as such action is required for reasons of national defense or security. However, neither these nor any other provisions of the PPR Constitution define the format of declaring martial law or the impact of such a declaration on the rights and duties of citizens and on the operations of the state administration and national economy. Neither is anything said about this in the provisions of other statutes, which only in rare instances contain regulations that could be applied in a general way if it were necessary to ascertain the impact of a declaration of martial law.

Under these circumstances, with a view to laying the legal foundation for the necessary restriction of civil rights and for the operation of organs of state administration and organizational units of the national economy under special conditions during a state of martial law, while also bearing in mind the necessity of adhering to principles set forth in article 8 of the PPR Constitution compelling national governmental organs to observe the rules of due process, it is advisable to proceed toward the drafting of an act of law, with the force of a statute, that will lay down a comprehensive set of standards governing the whole range of basic consequences arising out of a declaration of martial law. However, considering the fact that the way the present situation is evolving or the scenario adopted to deal with this situation may make it impossible to call the PPR Sejm into session for the purpose of passing an appropriate law, a draft version of a decree of the Council of State was drawn up which, having the force of law, with some exceptions could regulate matters which belong exclusively to the subject matter of statutory laws. It is indeed true that the agreed upon substantive scope of this decree does exceed, to whatever extent is necessary, the bounds of the legislative powers of the Council

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of State, but in so doing it provides sufficient legal grounds for lawful action associated with the definition of and compliance with the consequences of a declaration of martial law.

It is in this context that the provisions of this decree formalize primarily the preconditions for a declaration of martial law (article 1), the format in which the Council of State will make such a declaration (article 2), and the means by which the public will be informed of its consequences (article 3).

In order to enable the Council of State to make adjustments in the legal system in a manner that conforms to requirements which arise during a state of martial law this decree also empowers it to issue decrees with the force of law during intervals when the Sejm is not in session and obligates it to submit these decrees to the Sejm at its next session for ratification.

Anticipating the possibility that military actions might make it considerably more difficult for organs of state administration to function normally, the decree empowers the Council of State in time of war to designate certain parts of the country as war zones [strefy dzialan wojennych] and to lay down rules that are to regulate the operations of state organs within these zones (article 8).

Considering the strong probability that an internal security threat might be transformed into an external threat to national defense, thus admitting the possibility that a violation of the public tranquility, law, and order might escalate into a situation where the nation's sovereignty and independence are placed in jeopardy, the decree identifies the effects of a declaration of martial law with reference to both their internal security and national defense implications and at the same time enumerates the specific consequences of such action on both of these counts (article 53, paragraph 1), in which connection several of these consequences would be enforced in time of war, considering the provisions of international agreements to which the PPR is a party or due to the unusual nature of changes being made.

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The decree makes the general assumption that during a state of martial law, both for reasons of national security and national defense, existing laws which antedate the declaration of martial law, together with amendments and additions essential in order to provide improved safeguards for national security and defense interests, will continue to be enforced (article 54). It is for this reason also that the provisions of this decree envision the possibility of imposing the following obligations and restrictions:

- 1) in the area of the rights and duties of citizens:
 - a) restrictions on freedom of movement (article 9, article 13),
 - b) mandatory possession of documents to prove one's identity (article 10),
 - c) stricter enforcement of registration obligations (article 11, article 12),
 - d) stricter supervision and monitoring of public assemblies and meetings, artistic and entertainment performances, and sports events (article 14),
 - e) stricter supervision and monitoring of associations, trade unions, and other social organizations (article 16),
 - f) suspension of the right of employees to strike (article 15) and the activities of workers self-management bodies in state enterprises (article 17),
 - g) stricter supervision and monitoring of the dissemination of literary works and news reports and the use of printing facilities (article 18), and also introduction of censorship of mail and telecommunications, and monitoring telephone conversations (article 19),
 - h) confiscation of radio transmitters (article 20), and arms, ammunition, and explosives (article 22),

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- 1) prohibiting the taking of still photographs and the making of films (article 21) and imposing a ban on the wearing of decorations and uniforms (article 23);
- 2) in the area of state administration and national economy:
 - a) general work obligation and modification of working conditions (article 30),
 - b) special services on behalf of the food economy (article 31) and government regulation of the distribution of food supplies to the public (article 32),
 - c) leasing of premises and buildings on the strength of an administrative allocation ruling and amendment of the terms of lease agreements and rules governing the expropriation of real property (article 33),
 - d) changes in the scope of and rules governing tax liabilities, saving accounts, and personal and property insurance policies (article 34),
 - e) simplified rules governing the recording of vital statistics (article 35),
 - f) stricter supervision and monitoring of the activities of churches and religious associations (article 36),
 - g) restrictions on the operation of communications facilities and communications services (article 37), and restrictions on the transportation of passengers and freight (article 38),
 - h) restrictions on air, water, and motor vehicle traffic (article 39),
 - i) increased security along national borders (article 12, article 13, article 39, article 40, paragraph 1),
 - j) restrictions on foreign nationals residing on Polish territory (article 40, paragraph 2),

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- k) requisitioning of transport vehicles belonging to enemy nations (article 41).

The discretionary nature of the legal provisions allowing for the possibility of the implementation of the above responsibilities and restrictions, which normally authorize the Council of Ministers or an individual government minister or provincial governor (or the president of a city with provincial status) with appropriate jurisdiction to promulgate the bans and injunctions sanctioned by these provisions, permits the selective enforcement of the respective consequences of declaration of martial law, and it also makes it possible to escalate this enforcement process depending on developments in the country's sociopolitical situation. At the same time, the accepted format of this decree permits the enforcement of its provisions both in the event that martial law is declared throughout PPR territory, and also if it is declared only in certain parts of the country--within bounds conforming to the jurisdictions of individual provincial and basic political-administrative subdivisions (article 53, paragraph 2).

The provisions of this decree also lay down more strictly defined principles governing criminal liability for violations of obligations and restrictions in connection with designating specific offenses as crimes and misdemeanors (article 47, and article 49), the establishment of stricter legal penalties for certain crimes and misdemeanors (article 48 and article 50), and introducing accelerated proceedings in criminal and misdemeanor cases (article 43 and article 44). In addition, this decree introduces the practice of interning persons against whom a reasonable suspicion exists that, by remaining at liberty, they may engage in activities which pose a threat to the interests of the national security or national defense (article 42).

Finally, the decree also sets forth rules governing the use of close-formation Citizens Militia units and subunits and other formations and organizations called into being in order to preserve law and order and protect public property, as well as the use of direct force (incapacitating chemical agents, water-spraying devices, and firearms) in cases where direct threats are posed to the life, health, and liberty of citizens,

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public and private property, installations which are important to the national security and defense, and important governmental and economic installations, as well as mass public acts of violence during a state of martial law (article 24, article 29).

This decree acknowledges the principle that its provisions are applicable to all Polish citizens and foreign nationals residing within the boundaries of a political-administrative subdivision in which martial law has been declared and to all property situated within these boundaries (article 5), while making allowances for necessary exceptions.

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