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CLASSIFIED MESSAGE

CENTRAL INTELLIGENCE AGENCY

18 FEBRUARY 1953

SECRET

SECURITY INFORMATION

OUT 89830

ROUTING

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TO: BONN CS/STRA 3061

FROM: CURRENT INTELLIGENCE ROUTINE

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TO: SBONN FOR INFO: SFRAN FOR CITE: DIR

WE ARE TRYING TO CLARIFY OUR THINKING ON THE CONSTITUTIONAL COURT ISSUE SO AS TO BE PREPARED TO ATTEMPT AN INTERPRETATION OF COURT'S DECISION ON "DER TAG," ie 20 FEBRUARY.

FIRST ALTERNATIVE - SECOND SENATE OF COURT ACCEPTS ADENAUER'S PETITION. THIS COULD PUT ADENAUER OVER THE HUMP ON THE CONSTITUTIONAL ISSUE SINCE WE ARE TOLD THAT SECOND PANEL APPROVES OF TREATIES' SUBSTANCE ALTHOUGH TENDING TO THINK THAT BASIS OF GOVERNMENT'S REVISION PETITION WEAK. ACCEPTANCE OF PETITION WOULD SUGGEST A FAVORABLE DECISION IN A COUPLE OF WEEKS. WHETHER OR NOT FIRST SENATE WOULD INVOKE AUTHORITY TO FORCE A PLENUM DECISION (ARTICLE 16 PARA 1 OF CON. COURT LAW) IS A MATTER DEFYING ALL SPECULATION. HOWEVER IF FIRST SENATE DOESN'T DISPUTE DECISION, WAY IS CLEAR FOR BUNDESTAG, BUNDESRAT APPROVAL. VERY PROBABLY IN OUR OPINION, COURT WOULD REJECT SPD INJUNCTION TO PREVENT PRESIDENT FROM SIGNING TREATIES IF SECOND PANEL RENDERED FAVORABLE RULING, AND FIRST DID NOT DISPUTE DECISION.

7 SECOND ALTERNATIVE - SECOND PANEL REJECTS PETITION -- WE FEEL THAT IT IS 6 TO 4 THAT IT WILL. ADENAUER NOW HAS OPTION OF PROCEEDING WITH BUNDESTAG, BUNDESRAT READINGS OR ASKING FOR JOINT GUT-ACHTEN. ADENAUER HIMSELF HAS SAID THAT HE WILL PROCEED WITH READINGS ALTHOUGH WE ARE NOT CERTAIN THAT HE WILL BECAUSE (a) BUNDESRAT IS ON RECORD THAT APPROVAL NOT BE FORTHCOMING UNTIL COURT OPINION KNOWN, (b) ACCORDING TO ADENAUER'S OWN WAY OF THINKING, HE HAS BETTER CHANCE FOR FAVORABLE COURT RULING FROM PLENUM RATHER THAN FROM FIRST PANEL -- ADMITTEDLY WOULD BE EMBARRASSING TO RETURN TO 8 DEC SITUATION.

ALTHOUGH IS CONCEIVABLE THAT MAIER COULD BE INDUCED TO CHANGE HIS MIND ABOUT PRIOR RULING, CANNOT SEE ANY ADVANTAGE TO ADENAUER FOR IMMEDIATE PARLIAMENTARY ACTION UNLESS CHANCELLOR IS PRETTY WELL CONVINCED THAT EDC IS DEAD PIGEON AND IS MORE DESIROUS OF PLAUDITS

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FROM US FOR EFFORTS RATHER THAN REAL CONCERN OVER COURT ACTION SINCE FIRST PANEL WOULD PROBABLY RENDER EVENTUAL DECISION. IF JOINT GUTACHTEN ASKED, HOWEVER, NO NEED TO DISCUSS MATTER FURTHER HERE.

SHOULD ADENAUER PRESS AHEAD FOR PARLIAMENTARY APPROVAL, WE COULD ONLY HOPE THEN THAT SECOND PANEL WOULD FORCE PLENUM RULING IF FIRST PANEL MACERATES TREATIES. MEANWHILE, TREATIES ARE NOT PROMULGATED, AND WOULDN'T BE UNTIL CONSTITUTIONAL ISSUE CLARIFIED. VERY PROBABLY SUMMER; ELECTION CAMPAIGN WOULD BE ON BY THEN. VERY LONG CHANCE THAT NO COURT ~~RULE~~ RULING PRIOR TO ELECTIONS.

ACCEPTANCE OF ADENAUER PETITION ON 20 FEBRUARY WILL GIVE BIG SHOT IN ARM TO EDC IN GERMANY. REJECTION MEANS NO COURT CLARIFICATION FOR SEVERAL MONTHS, AND SOMEWHAT LESSENS PROSPECTS FOR FAVORABLE FINAL RULING. HOWEVER WE DO NOT RULE OUT EVENTUAL APPROVAL BY COURT . . . ALTHOUGH LITTLE VITALITY MAY BE LEFT IN TREATIES AS THEY ARE NOW FORMULATED BY TIME COURT RENDERS DECISION.

HAVE YOU SEEN BONN 3789, 3790, OF 12 FEB? WOULD APPRECIATE YOUR GUARDED VIEWS ON THESE CABLES.

ANY ADDITIONAL POINTS AND COMMENTS TO ALL THIS WOULD BE APPRECIATED. WE REALIZE THAT THIS IS EXCEEDINGLY SPECULATORY, BUT THAT IS IN PART OUR BUSINESS.

END OF MESSAGE

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