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E.O. 12356:OADR

TEXT
TAGS: CJAN, PHUM, PGOV, PREL, AR, IT

SUBJECT: ERICH PRIEBKE CASE: TO EXTRADITE OR NOT TO EXTRADITE?

REF: (A) BUENOS AIRES 6771 (B) BUENOS AIRES 4113
(C) BUENOS AIRES 3183 (D) BUENOS AIRES 3156

1. CONFIDENTIAL - ENTIRE TEXT.

2. THIS IS AN ACTION CABLE. SEE PARA 8.

3. SUMMARY: THE JUDGE INVOLVED IN THE PRIEBKE EXTRADITION CASE SAYS HE CAN FIND NO LEGAL GROUNDS TO APPROVE THE EXTRADITION, EVEN THOUGH HE IS FULLY AWARE OF THE NEGATIVE CONSEQUENCES OF SUCH A RULING. EMBASSY REQUESTS LEGAL ADVICE ON POSSIBLE PRECEDENTS UNDER INTERNATIONAL LAW WHICH MIGHT PROVIDE A BASIS FOR EXTRADITION. END SUMMARY.

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4. GERMAN MOLDES, THE JUDGE IN CHARGE OF THE PRIEBKE EXTRADITION CASE, TOLD EMBASSY CONSUL GENERAL THAT HE IS TORN ON THE QUESTION OF THE ITALIAN GOVERNMENT'S REQUEST FOR THE EXTRADITION OF FORMER **NAZI** SS OFFICER, ERICH PRIEBKE. ON ONE HAND, MOLDES SAID, THE PROVISIONS OF THE BILATERAL ARGENTINE-ITALIAN TREATY ARE NOT SUFFICIENT TO PERMIT PRIEBKE'S EXTRADITION. FURTHERMORE, DEPORTATION DOES NOT SEEM TO BE A VIABLE OPTION SINCE THE GOA HAS NO LEGAL PRETEXT TO EXPEL PRIEBKE. PRIEBKE ORIGINALLY CAME TO **ARGENTINA** UNDER HIS OWN NAME AND HE APPARENTLY DID NOT FALSIFY HIS ENTRY DOCUMENTS.

5. ON THE OTHER HAND, MOLDES UNDERSTANDS THE NEGATIVE INTERNATIONAL REPERCUSSIONS THAT WOULD HIT ARGENTINA WERE THE EXTRADITION BE DENIED. MOLDES WOULD LIKE TO FIND A LEGAL HOOK ON WHICH TO BASE THE EXTRADITION, BUT HE FEARS THAT THERE IS NONE (SEE REF C FOR ADDITIONAL DETAILS). MOLDES CONSIDERED BUT DOUBTED THAT AN EXTRADITION BASED ON THE GROUNDS OF A "HIGHER NATIONAL INTEREST" (AS THE PROSECUTOR HAS ARGUED) HAS FEASIBLE UNDER ARGENTINE LAW.

6. ANOTHER JUDGE SUBSEQUENTLY TOLD THE CONSUL GENERAL THAT MOLDES IS UNDER TREMENDOUS PRESSURE FROM THE HIGHER APPEALS COURT TO RULE AGAINST THE EXTRADITION. THE APPEALS COURT JUDGES BELIEVE THAT THERE ARE NO LEGAL GROUNDS FOR EXTRADITION BUT WANT MOLDES TO MAKE THIS RULING RATHER THAN HAVING TO TAKE THE HEAT THEMSELVES.

7. IN A SEPARATE CONVERSATION, THE EXECUTIVE DIRECTOR OF THE DELEGATION OF JEWISH ARGENTINE ASSOCIATIONS (DAIA), ALFREDO NEUBURGER, TOLD LABATT THAT MOLDES IS DOING WHAT HE CAN TO AVOID MAKING A DECISION. NEUBURGER SAID MOLDES HAS RULED THAT HE MUST HAVE A SPANISH TRANSLATION OF ITALIAN RECORDS ON PRIEBKE -- 26,000 PAGES. NEUBURGER ALSO SAID IT HAS JUDGE MOLDES WHO RULED AGAINST THE EXTRADITION OF ANOTHER EX-**NAZI**, ABRAHAM KIP THREE OR FOUR YEARS AGO.

8. COMMENT: UNDER THE BEST OF CIRCUMSTANCES, EXTRADITIONS REQUIRE TWO TO FOUR YEARS TO BE IMPLEMENTED IN **ARGENTINA**. ALTHOUGH **ARGENTINA** HAS RATIFIED MOST MAJOR HUMAN RIGHTS CONVENTIONS, INCLUDING THE GENOCIDE CONVENTION OF 1948, THESE DO NOT APPLY DUE TO EX POST FACTO NATURE OF THE CASE.

9. ACTION REQUESTED: MOLDES TOLD THE CONSUL GENERAL HE WOULD APPRECIATE ADVICE FROM U.S. LEGAL AUTHORITIES THAT MAY HELP HIM REACH A FAVORABLE DECISION. EMBASSY BELIEVES WE SHOULD PROVIDE HIM WHATEVER INFORMATION WE CAN TO MAKE IT MORE DIFFICULT FOR HIM TO BEND TO THE PRESSURE FROM ABOVE TO RULE AGAINST THE EXTRADITION. EMBASSY WOULD, THEREFORE, APPRECIATE COMMENTS AND

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SUGGESTIONS FROM L AND/OR THE DEPARTMENT OF JUSTICE
WHICH WE COULD PASS ON TO MOLDES REGARDING PRECEDENTS
IN INTERNATIONAL LAW FOR A POSITIVE EXTRADITION RULING.
CHEEK

ADMIN
END OF MESSAGE

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