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CONTROLS
CONFIDENTIAL STATE 141274

EXDIS

E.O. 12356: DECL:OADR

TEXT
TAGS: PREL, AU
SUBJECT: REQUEST FOR DOCUMENTS USED IN WALDHEIM DECISION
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REF: (A) STATE 137881 (B) VIENNA 7261

1. CONFIDENTIAL-ENTIRE TEXT.
2. THE TIMING OF THE PROPOSED VISIT OF THE DOJ/STATE TEAM TO VIENNA HAS VERY LITTLE FLEXIBILITY. RICHARD AND MOCHARY HAVE A LONG STANDING, FORMAL COMMITMENT TO THE BRITISH GOVERNMENT TO PARTICIPATE IN NEGOTIATIONS MAY 11, 12, AND 13. IN RESPONSE TO THE EMBASSY'S REQUEST, THEY NOW PLAN TO ARRIVE IN VIENNA IN THE EARLY AFTERNOON OF MAY 14. SHER WILL ARRIVE SEPARATELY DIRECT FROM WASHINGTON AT APPROXIMATELY THE SAME TIME. HE, TOO, IS UNABLE TO ARRIVE SOONER. EMBASSY SHOULD EXPLAIN TO THE GOA THAT THE TEAM HAS MADE EVERY EFFORT AT SHORT NOTICE TO BE RESPONSIVE TO THEIR DESIRE FOR INFORMATION ON THE U.S. DECISION MAKING PROCESS. THIS IS THE BEST WE CAN DO. THE AUSTRIAN EMBASSY INFORMS US THAT THE CHANCELLOR HAS DECIDED TO DELAY HIS DEPARTURE TO THE U.S. UNTIL MAY 19. THIS SHOULD RELIEVE SOME OF THE TIME PRESSURE ON HIM.

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3. ON THE DOCUMENTS. THERE ARE LITERALLY THOUSANDS. JUSTICE TELLS US THAT THEY HAVE AMASSED APPROXIMATELY TEN FILE DRAWERS OF DOCUMENTS, RANGING FROM GENERAL HISTORICAL INFORMATION TO DOCUMENTS SPECIFIC TO WALDHEIM. WE DO NOT PROPOSE TO OFFER ALL OF THIS MATERIAL TO THE GOA. JUSTICE WILL SELECT THOSE DOCUMENTS BELIEVED TO BE PERTINENT AND IMPORTANT TO THE VARIOUS CHARGES AGAINST KURT WALDHEIM TO INCLUDE AS PART OF WHAT IS ENVISAGED AS PRIMARILY AN ORAL PRESENTATION. THE PRESENTATION WILL FOCUS ON WHY WALDHEIM'S WARTIME ACTIVITIES MAKE HIM INELIGIBLE TO ENTER THE U.S. UNDER THE TERMS OF U.S. LAW. WE WILL NOT GET INTO A DEBAT ON THE NATURE AND EXTENT OF THE DOCUMENTATION. THE PROCESS OF SELECTING THE PERTINENT DOCUMENTS HAS JUST BEGUN. SHER PLANS ON BRINGING THEM WIT HIM TO VIENNA. THE TEAM WILL THEN NEED TO REVIEW THEM BEFORE THEY MEET WITH GOA OFFICIALS. THERE IS NO WAY THAT THEY COULD BE MADE AVAILABLE BEFORE MAY 15.

4. THERE IS ANOTHER PROBLEM WE SEE WITH THE APPARENT DISTRACT ATTENTION FROM THE MAIN ISSUE--THAT KURT WALDHEIM IS INELIGIBLE TO ENTER THE U.S. BECAUSE HIS WARTIME ACTIVITIES BRING HIM UNDER THE TERMS O SECTION 212 A (33) OF THE INA. IT IS THE LAW AND ITS INTERPRETATION WHICH IS IMPORTANT, NOT THE NUMBER, ORIGIN OR DATE OF DISCOVERY OF ANY PARTICULAR DOCUMENT. ALTHOUGH THE JUSTICE DEPARTMENT MADE A THOROUGH INVESTIGATION AND AMASSED THOUSANDS OF DOCUMENTS IN THE COURSE OF THAT INVESTIGATION, THERE MAY BE MORE DOCUM NS NOT AS YET UNCOVERED. WE HAVE DETERMINED, HOWEVER, THAT THERE IS ENOUGH INFORMATION TO SATISFY THE TERMS OF U.S. LAW. THIS IS THE MESSAGE THE TEAM WILL DELIVER TO THE GOA. THE GOA SHOULD UNDERSTAND THAT THE U.S. TEAM IS NOT COMING TO PROVE ITS CASE TO THE GOA. THE U.S. GOVERNMENT HAS ANALYZED THE INFORMATION AND HAS DRAWN ITS CONCLUSIONS. THESE CONCLUSIONS WILL NOT BE RE-EXAMINED DURING THE VISIT, THEY WILL ONLY BE EXPLAINED. WE CONSIDER THAT ONLY THE USG AND THE US JUCICIARY INTERPRETS U.S. LAW.

5. FOR THE REASONS MENTIONED ABOVE AND BECAUSE THE AUSTRIANS THEMSELVES HAVE ACCESS TO THE SAME SOURCES WE DO, WE DO NOT WANT TO BE PUT IN THE POSITION OF HAVING TO SATISFY THE GOA'S DESIRE FOR WHAT IT CONSIDERS SUFFICIENT DOCUMENTATION. THEIR DEFINITION MAY BE QUITE DIFFERENT FROM OURS.

6. THE TEAM AGREES WITH THE EMBASSY'S RECOMMENDATION THAT IT MEET WITH THE AMBASSADOR AND OTHER EMBASSY OFFICERS PRIOR TO ANY MEETINGS WITH THE GOA. THEY LOOK FORWARD TO THE EMBASSY'S COUNSEL ON THIS VERY DELICATE ISSUE.

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7. MARY MOCHARY HAS HAD THE STATE DEPT ACTION RESPONSIBILITY ON THIS ISSUE. EMBASSY SHOULD RELY ON HER GUIDANCE ON ANY LEGAL OR FACTUAL ISSUES THAT MAY COME UP DURING THE TEAM'S VISIT.

8. WE UNDERSTAND THAT THE AUSTRIAN PRESS IS ALREADY REPORTING THAT THE TEAM WILL VISIT AUSTRIA. WE ARE SIMPLY CONFIRMING THAT WE HAVE OFFERED TO SEND SUCH A TEAM. WE ARE SENSITIVE TO THE INTENSE MEDIA INTEREST THIS VISIT WILL GENERATE. WE AGREE THAT COMMENTS BY THE TEAM MEMBERS AND OTHER USG OFFICIALS SHOULD BE CAREFUL AND MEASURED. BASED ON THE EMBASSY'S SUGGESTION (PARA 11, REFTEL B), WE HAVE DECIDED ON THE FOLLOWING PRESS LINE FOR NOW: THE TEAM, CONSISTING OF THREE SENIOR U.S. OFFICIALS, WILL BRIEF GOA OFFICIALS ON THE FACTUAL AND LEGAL BASIS FOR THE DECISION TO DECLARE PRESIDENT WALDHEIM INELIGIBLE TO VISIT THE UNITED STATES. THEY ARE COMING TO VIENNA AT THE REQUEST OF AUSTRIAN GOVERNMENT.

9. RICHARD AND MOCHARY WILL COMMUNICATE THEIR ARRIVAL TIMES TO THE EMBASSY DIRECTLY FROM LONDON. WE WILL CABLE YOU SHER'S ARRIVAL TIME EARLY NEXT WEEK. MOCHARY HAS MADE PRIVATE ARRANGEMENTS FOR ACCOMODATIONS. RICHARD AND SHER DESIRE A CONVENIENT, MODESTLY-PRICED HOTEL SUCH AS THE STRUDLEHOF.

10. UNDER THE CIRCUMSTANCES, WE WOULD APPRECIATE THE EMBASSY MEETING THE TEAM MEMBERS AT THE AIRPORT AND DISCUSSING WITH GOA OFFICIALS APPROPRIATE SECURITY MEASURES FOR THEIR PERSONAL SAFETY WHILE IN VIENNA. WHITEHEAD

ADMIN
END OF MESSAGE

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