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E.O. 12356: DECL:OADR

TEXT
TAGS: PREL, PGOV, AU
SUBJECT: AUSTRIA SAYS DECLARATION OF READMISSIBILITY
-- INVALID; ASKS USG TO REPEAL WALDHEIM DECISION

REF: (A) VIENNA 8915; (B) STATE 176117

1. SUMMARY: AUSTRIAN CHARGE PROSL DELIVERED TWO NOTES VERBALE TO ASSISTANT SECRETARY RIDGWAY ON JUNE 16. THE NOTES (1) ASK THAT WE RECONSIDER THE WALDHEIM DECISION ON GROUNDS THAT IT VIOLATED THE PRINCIPLE OF HEAD OF STATE IMMUNITY, AND (2) ANNOUNCE THAT AUSTRIA WILL NO LONGER RECOGNIZE ITS 1954 DECLARATION OF READMISSIBILITY. RIDGWAY RESPONDED THAT NO REVIEW OF THE WALDHEIM DECISION IS CONTEMPLATED, AND SHE REGRETTED THE GOA DECISION ON THE DECLARATION, WHICH THE USG STILL CONSIDERS VALID. END SUMMARY.

2. IN A MEETING JUNE 16 WITH EUR ASSISTANT SECRETARY RIDGWAY, AUSTRIAN EMBASSY CHARGE CHRISTIAN PROSL DELIVERED TWO NOTES VERBALE, CONCERNING KURT WALDHEIM AND MARTIN BARTESCH. PROSL PREFACED HIS PRESENTATION BY REMARKING THAT THE GOA IS UNDER PRESSURE TO DO SOMETHING ABOUT THE WALDHEIM AND BARTESCH AFFAIRS. PROSL SAID THE GOA BELIEVED THERE HAD BEEN SOME MOVEMENT ON THE WALDHEIM ISSUE, CITING U.S. STATEMENTS THAT WALDHEIM WAS NOT A WAR CRIMINAL. THE GOA, HE ADDED, RECOGNIZED THAT THE U.S.

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MUST OBEY ITS DOMESTIC LAWS. HOWEVER, HE SAID WE SHOULD ALSO EXAMINE THE INTERNATIONAL IMPLICATIONS OF OUR DECISION TO PLACE WALDHEIM ON THE WATCHLIST. HE ADDED THAT THE AUSTRIAN PRESIDENT IS NOT BOUND BY U.S. LAWS.

3. PROSL THEN HANDED OVER THE FIRST NOTE VERBALE (WE UNDERSTAND EMBASSY HAS THE TEXT), WHICH ASSERTS THAT STATES HAVE NO JURISDICTION OVER FOREIGN HEADS OF STATE DURING THEIR TERM OF OFFICE, AND THAT WALDHEIM, AS AUSTRIAN HEAD OF STATE, MAY NOT BE SUBJECTED TO AN EXECUTIVE DECISION OF A QUASI-JUDICIAL CHARACTER BY PUTTING HIS NAME ON THE WATCHLIST. IN PRESENTING THE NOTE VERBALE, WHICH REQUESTS THE U.S. TO REPEAL ITS DECISION TO PLACE WALDHEIM ON THE WATCHLIST, PROSL ASKED US TO RESPOND TO THE INTERNATIONAL LAW ASPECTS OF THE GOA'S ARGUMENT.

4. RIDGWAY REPLIED THAT OUR DECISION WAS CONSISTENT WITH STATUTORY REQUIREMENTS, AND BASED ON THE FACTS. IT WAS NO REFLECTION ON THE AUSTRIAN PEOPLE, AND WE REGRETTED ANY SUBSEQUENT STRAIN ON OUR BILATERAL RELATIONS. SHE STATED THAT THE USG DOES NOT CONTEMPLATE ANY REVIEW OF THE DECISION.

5. RIDGWAY ALSO POINTED OUT THAT THE RECOGNIZED CUSTOMARY INTERNATIONAL LAW PRINCIPLE OF HEAD OF STATE IMMUNITY WAS NOT IMPLICATED IN THE U.S. DECISION TO PLACE KURT WALDHEIM ON THE WATCHLIST. SHE CONTINUED BY SAYING THAT HEAD OF STATE IMMUNITY, LIKE THE RELATED DIPLOMATIC IMMUNITY, PREVENTS A STATE FROM EXERCISING ITS JURISDICTION OVER THE HEAD OF ANOTHER STATE. SHE STRESSED THAT THE U.S. HAS NOT ATTEMPTED TO EXERCISE ANY JURISDICTION OVER PRESIDENT WALDHEIM EITHER AS HEAD OF STATE OR AS AN INDIVIDUAL.

6. TURNING TO THE BARTESCH CASE, PROSL EXPRESSED THE GOA'S GREAT APPRECIATION FOR THE LETTER TO MOCK (REF B) AND SAID IT HAD BEEN VERY WELL RECEIVED IN VIENNA. PROSL THEN HANDED OVER THE SECOND NOTE VERBALE, WHICH CONTAINED THE GOA'S DECISION THAT THE 1954 DECLARATION OF READMISSIBILITY CEASED TO BE APPLICABLE, AND THAT AUSTRIA WILL NO LONGER CONSIDER ANY USG REQUEST TO READMIT PERSONS WHO EMIGRATED TO THE U.S. UNDER THE REFUGEE RELIEF PROGRAM.

7. THE GOA'S NOTE ARGUED THAT ITS DECISION WAS BASED ON THREE GROUNDS: (1) REFUGEES WHO BECAME U.S. CITIZENS

THE DECLARATION WAS VALID ONLY FOR EMIGRANTS RECEIVING U.S. VISAS BEFORE EXPIRATION OF THE REFUGEE PROGRAM IN 1956; (3) AUSTRIA'S OBLIGATION TO READMIT EMIGRANTS WHO DEPARTED BETWEEN 1954 AND 1956 EXPIRED FOR EACH PERSON AFTER TWO YEARS HAD ELAPSED. PROSL SAID HE UNDERSTOOD THAT NO CASES WERE PENDING, AND THE GOA HOPED THAT NONE WOULD ARISE TO TEST ITS NEW POLICY. HE EMPHASIZED THAT IN VIEW OF THE BARTESCH EXPERIENCE THE GOA WANTED TO MAKE CLEAR ITS POSITION ON THE DECLARATION.

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8. RIDGWAY EXPRESSED DISAPPOINTMENT WITH THE AUSTRIAN DECISION, NOTING THAT SECRETARY SHULTZ HAD WRITTEN FOREIGN MINISTER MOCK THAT WE WOULD USE THE EXISTING PROCESS (I.E., THE DECLARATION) IN FUTURE CASES SIMILAR TO BARTESCH. SHE STRESSED OUR VIEW THAT THE DECLARATION REMAINS VALID, BUT ASSURED PROSL THAT WE WOULD STUDY THE GOA'S POSITION.

9. PROSL EXPRESSED REGRET THAT THE BARTESCH/WALDHEIM AFFAIRS WERE PREVENTING US FROM CONCENTRATING ON OTHER ISSUES, AND LAMENTED THAT THE GOA WAS BEING PUSHED BY AUSTRIAN MEDIA TO TAKE TOUGH POSITIONS. RIDGWAY AGREED THAT IT WAS IMPORTANT TO MOVE BEYOND THE WALDHEIM/BARTESCH CASES AND IMPROVE OUR BILATERAL DIALOGUE.

10. PROSL WAS UNACCOMPANIED AT THE MEETING AND TOOK NO NOTES. EUR/CE DEPUTY DIRECTOR HABIB AND AUSTRIA DESK OFFICER MILLER ALSO PARTICIPATED IN THE MEETING. WHITEHEAD

ADMIN
END OF MESSAGE

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