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TEXT
TAGS: PREL, AU
SUBJECT: U.S. RESPONDS TO AUSTRIAN NOTE VERBALE
-- ON WALDHEIM AND HEAD OF STATE IMMUNITY

FOR COORDINATION WITH STATE

REF: STATE 186895

1. ON JULY 8 EUR/CE DIRECTOR GILMORE HANDED OVER TO AUSTRIAN EMBASSY CHARGE PROSL THE USG RESPONSE TO THE AUSTRIAN NOTE VERBALE (REFTEL) THAT HAD ASKED THE U.S. TO REVERSE THE DECISION TO PLACE KURT WALDHEIM ON THE WATCHLIST ON THE GROUNDS THAT THE DECISION WAS A VIOLATION OF SO-CALLED "HEAD OF STATE IMMUNITY." GILMORE ALSO TOLD PROSL THAT WE PLANNED TO REPLY IN THE NEAR FUTURE TO THE GOA NOTE ON THE BARTESCH CASE. (FYI: OUR RESPONSE WILL BE DELAYED SOMEWHAT, AS PROSL HAS AGREED TO OUR REQUEST THAT HE TRY TO OBTAIN MORE CONCRETE INFORMATION REGARDING THE STATEMENT IN THE NOTE THAT AUSTRIA INFORMED US "AS EARLY AS 1961" THAT THE GOA DID NOT REGARD THE DECLARATION AS A "PERMANENT OBLIGATION.")

2. AFTER RECEIVING THE NOTE, PROSL, EMPHASIZING THAT HE WAS SPEAKING PERSONALLY AND NOT FOR THE RECORD, EXPRESSED CONCERN OVER RECENT LEAKS IN VIENNA OF OUR DIPLOMATIC EXCHANGES TO THE AUSTRIAN MEDIA, WHICH HE CHARACTERIZED AS SELECTIVE IN ITS REPORTING. HE INQUIRED WHETHER WE

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INTENDED TO RELEASE THE TEXT OF OUR RESPONSE TO THE AUSTRIAN NOTE. GILMORE ASSURED HIM THAT WE HAVE NO PLANS TO RELEASE IT. PROSL APPEARED RELIEVED, AND SAID HE WOULD REPORT THE MEETING TO VIENNA BUT SEND THE TEXT OF THE NOTE VIA DIPLOMATIC POUCH INSTEAD OF TELEFAX.

3. PROSL (PROTECT) SAID IT WAS HIS PERSONAL VIEW THAT ONE SHOULD LOOK BEYOND THE WALDHEIM CASE, AND ADDED THAT HE IS TRYING TO FOCUS ATTENTION ON THE POSITIVE ASPECTS OF U.S.-AUSTRIAN RELATIONS, E.G., CULTURAL (AUSTRIAN VISITORS TO THE U.S.) AND ECONOMIC MATTERS (TECH TRANSFER TALKS AND SEPTEMBER VISIT BY ROBERT GRAF).

BEGIN TEXT:

4. THE DEPARTMENT OF STATE ACKNOWLEDGES THE RECEIPT OF THE NOTE VERBALE FROM THE EMBASSY OF AUSTRIA OF JUNE 16, 1987, REGARDING THE DECISION OF THE GOVERNMENT OF THE UNITED STATES TO PLACE MR. KURT WALDHEIM'S NAME ON THE SO-CALLED "WATCHLIST".

5. THE VIEW OF THE GOVERNMENT OF THE UNITED STATES DIFFERS FROM THE VIEW OF THE GOVERNMENT OF AUSTRIA AS EXPRESSED IN THE NOTE VERBALE ON A NUMBER OF IMPORTANT POINTS RELATING TO THAT DECISION. FIRST, THE DECISION TO PLACE MR. WALDHEIM'S NAME ON THE "WATCHLIST" WAS MADE IN ACCORDANCE WITH A DOMESTIC LAW OF THE UNITED STATES. THE VALIDITY OF THE APPLICABLE LAW UNDER OUR CONSTITUTION HAS BEEN TESTED AND UPHELD IN SEVERAL CASES. FURTHERMORE, THIS LAW ALLOWS FOR NO DISCRETION OR WAIVER ONCE THE NECESSARY FACTS HAVE BEEN ESTABLISHED TO THE SATISFACTION OF THE ATTORNEY GENERAL. THE FACT THAT MR. WALDHEIM HAS BEEN ELECTED PRESIDENT OF AUSTRIA DID NOT AND COULD NOT HAVE HAD ANY BEARING UPON THE DECISION IN QUESTION.

6. SECOND, THE UNITED STATES BELIEVES THAT THIS DECISION IS ENTIRELY CONSISTENT WITH INTERNATIONAL LAW. THE DECISION TO PLACE MR. WALDHEIM'S NAME ON THE "WATCHLIST" IN NO WAY IMPLIES AN ATTEMPT TO EXTEND JURISDICTION OVER HIM. IT IS A DECISION ENTIRELY INTERNAL TO THE UNITED STATES GOVERNMENT THAT IS CONSISTENT WITH THE MAXIM OF INTERNATIONAL LAW THAT NO STATE IS OBLIGED, ABSENT SPECIFIC INTERNATIONAL OBLIGATIONS TO THE CONTRARY (E.G. SECTION 11 OF THE UNITED NATIONS HEADQUARTERS AGREEMENT), TO ADMIT TO ITS TERRITORY ANYONE OTHER THAN ONE OF ITS OWN NATIONALS. TO HOLD OTHERWISE WOULD BE TO IMPLY A RIGHT ON THE PART OF A HEAD OF STATE TO ENTER THE TERRITORY OF ANOTHER STATE OVER THE OBJECTIONS OF THAT STATE'S GOVERNMENT. THIS WOULD BE INCONSISTENT WITH

INTERNATIONAL PRACTICE AND NORMS.

7. UNDER ARTICLE 4 OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS AMBASSADORS MUST OBTAIN THE AGREEMENT OF THE RECEIVING STATE BEFORE TAKING UP THEIR DUTIES, WHICH MAY BE DENIED WITHOUT A REASON BEING STATED. ONCE THEY TAKE UP THEIR DUTIES, AMBASSADORS ARE IMMUNE FROM THE RECEIVING STATE'S CRIMINAL AND CIVIL JURISDICTION,

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BUT THIS IS WITHOUT PREJUDICE TO THE RIGHT OF THE RECEIVING STATE TO DENY THEM ENTRY INTO ITS TERRITORY OR TO EXPEL THEM AT ANY TIME. WHILE INTERNATIONAL LAW WITH RESPECT TO DIPLOMATIC AGENTS HAS BEEN CODIFIED IN THE VIENNA CONVENTION, HEAD OF STATE IMMUNITIES ARE STILL THE SUBJECT OF CUSTOMARY INTERNATIONAL LAW. THE REGIME APPLIED TO HEADS OF STATE DOES NOT DIFFER IN SUBSTANCE FROM THAT APPLIED TO AMBASSADORS IN THIS RESPECT.

8. IN VIEW OF THE CONSIDERATIONS SET OUT ABOVE, THE DECISION OF THE ATTORNEY GENERAL TO PLACE MR. WALDHEIM'S NAME ON THE "WATCHLIST" WAS IN ACCORDANCE WITH UNITED STATES AS WELL AS INTERNATIONAL LAW AND THE UNITED STATES IS NOT IN A POSITION TO REVERSE THAT DECISION. DEPARTMENT OF STATE, WASHINGTON, JULY 6, 1987. END TEXT. SHULTZ

ADMIN
END OF MESSAGE

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