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JUSTICE FOR OSI, NEAL SHER

E.O. 12356: N/A

TEXT
TAGS: PREL, AU
SUBJECT: AUSTRIAN PROTEST ON WALDHEIM MATTER
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1. AUSTRIAN AMBASSADOR FRIEDRICH HOESS CAME IN TO THE DEPARTMENT DECEMBER 7 TO DELIVER A DIPLOMATIC NOTE TO DAS WILLIAM BODDE, CONCERNING RECENT DEVELOPMENTS IN THE WALDHEIM MATTER. HOESS MADE CLEAR THAT HE CAME UNDER INSTRUCTIONS. HE REITERATED HIS DESIRE TO DROP THE SUBJECT, BUT CLAIMED THAT THE PRESS STORIES ABOUT OSI DIRECTOR NEAL SHER'S DECEMBER LETTER TO GEN. COLLINS, OF THE HISTORIANS' COMMISSION, MADE IT NECESSARY TO PROTEST.

2. THE MAIN LINE OF HIS ORAL POINTS PARALLELED POINT NUMBER ONE IN THE NOTE (BELOW): THAT A CLAIM OF PERSONAL CULPABILITY FOR WALDHEIM, AS DISTINCT FROM BEING IN UNITS THAT WERE GUILTY OF "PERSECUTION", WAS A NEW CHARGE BY THE UNITED STATES GOVERNMENT AND DID NOT "SEEM TO BE IN CONFORMITY" WITH PREVIOUS USG STATEMENTS ABOUT THE CASE AGAINST WALDHEIM.

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3. WE CONFINED OURSELVES LARGELY TO HEARING OUT HOESS' COMPLAINT. WE PROMISED A COMPLETE AND CAREFULLY PREPARED ANSWER IN DUE COURSE, BUT DID MAKE THE IMMEDIATE POINT

THAT THE SUBSTANCE OF THE LETTER APPEARED TO BE NOTHING NEW. THE PHRASING WAS MORE POINTED THAN SOME EARLIER STATEMENTS, BUT THE SUBSTANCE FELL WELL INSIDE EXISTING LANGUAGE ABOUT THE WATCH LIST DECISION: THAT IS, THAT MERE MEMBERSHIP IN UNITS COULD SUFFICE TO PUT SOMEONE ON THE WATCH LIST, BUT THAT IN THE CASE OF WALDHEIM, AS WE HAD CLEARLY TOLD THE GOA ON SEVERAL OCCASIONS, THERE WAS ALSO AMPLE EVIDENCE TO CONCLUDE THAT WALDHEIM HIMSELF ASSISTED OR OTHERWISE PARTICIPATED IN PERSECUTORY ACTIVITIES COVERED BY THE HOLTZMAN AMENDMENT. FYI, WHEN WE RESPOND TO THE AUSTRIAN NOTE, WE INTEND TO CONCENTRATE ON THE ARGUMENT ABOVE, FIRMLY BUT UNCONTENTIOUSLY.

4. BEGIN TEXT OF GOA DECEMBER 7 NOTE:

THE EMBASSY OF AUSTRIA PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF STATE AND HAS THE HONOR TO REFER ONCE MORE TO THE DECISION OF THE U.S. ATTORNEY-GENERAL TO PLACE THE NAME OF THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA, DR. **KURT WALDHEIM**, ON THE SO-CALLED "WATCH LIST".

1. THE AUSTRIAN GOVERNMENT HAS LEARNED WITH GREAT DISMAY OF THE LETTER SENT BY THE U.S. JUSTICE DEPARTMENT'S OFFICE OF SPECIAL INVESTIGATIONS TO THE INTERNATIONAL COMMISSION OF MILITARY HISTORIANS ENTRUSTED WITH THE TASK OF EXAMINING THE ALLEGATIONS LEVELLED AGAINST PRESIDENT WALDHEIM IN CONNECTION WITH HIS COMPULSORY SERVICE IN THE GERMAN ARMY DURING WORLD WAR II. THE CONTENT OF THIS LETTER - PARTS OF WHICH WERE QUOTED IN THE PRESS - DOES NOT SEEM TO BE IN CONFORMITY WITH THE EXPLANATION PERSONALLY GIVEN TO THE AUSTRIAN SIDE BY ATTORNEY-GENERAL MEESE ON MAY 22, 1987, CONCERNING THE SO-CALLED "WATCH-LIST"-DECISION. THE U.S. ATTORNEY-GENERAL THEN HAD STATED THAT ACCORDING TO THE "HOLTZMAN AMENDMENT" IT SUFFICES FOR BEING PUT ON THE SO-CALLED "WATCH LIST" TO MERELY HAVE BELONGED TO A UNIT HAVING COMMITTED PERSECUTIONS FOR POLITICAL OR RACIAL REASONS AND THAT PERSONAL GUILT DID NOT HAVE TO BE PROVEN. THE AUSTRIAN GOVERNMENT IS THEREFORE SURPRISED THAT QUITE A DIFFERENT IMPRESSION IS NOW BEING CREATED BY A WRITTEN STATEMENT EMANATING FROM A SUBORDINATE OFFICE OF THE U.S. DEPARTMENT OF JUSTICE. IT SHOULD FURTHERMORE BE RECALLED THAT THE ATTORNEY-GENERAL ALSO HAD STRESSED THAT THE PERPETRATION OF WAR CRIMES BY PRESIDENT WALDHEIM HAD

NEVER BEEN ALLEGED NOR EVEN BEEN THE SUBJECT OF EXAMINATION IN THE COURSE OF THE "WATCHLIST"-PROCEDURE. THE U.S.-DELEGATION WHICH HAD BEEN SENT TO VIENNA SHORTLY BEFORE IN ORDER TO EXPLAIN THE REASONS FOR THE "WATCH-LIST" DECISION HAD MADE SIMILAR OBSERVATIONS.

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2. IN VIEW OF THE ASTONISHMENT OF THE AUSTRIAN GOVERNMENT THAT U.S.-DELEGATION REFERRED TO HAD REFUSED TO HAND OVER THE DOCUMENTS WHICH HAD CONSTITUTED THE BASIS FOR THE "WATCH-LIST" DECISION, ATTORNEY-GENERAL MEESE ALSO STATED THAT THE DOCUMENTATION IN QUESTION WAS NOT TRANSMITTED AS THIS WOULD PUT AUSTRIA IN THE POSITION OF A "JUDGE" REGARDING THAT DECISION OF THE U.S. JUSTICE DEPARTMENT AND WOULD CONSEQUENTLY ONLY PROLONG THE DISCUSSION REGARDING THE MATTER, THIS BEING NEITHER IN THE INTEREST OF THE UNITED STATES NOR OF AUSTRIA. PUBLIC DISCUSSION CONCERNING THIS ISSUED WHICH IS IN NO WAY CONDUCIVE TO THE FURTHER IMPROVEMENT OF RELATIONS BETWEEN THE UNITED STATES AND AUSTRIA IS, HOWEVER, BEING REFUELED BY THE PUBLICATION OF PARTS OF THE LETTER OF THE OFFICE OF SPECIAL INVESTIGATIONS TO THE INTERNATIONAL COMMISSION OF MILITARY HISTORIANS; THIS PUBLICATION SEEMS PARTICULARLY BEWILDERING IN THE THE LIGHT OF THE REFUSAL BY THE OFFICE TO TRANSMIT ALL AVAILABLE DOCUMENTATION TO THE COMMISSION WHICH IS WORKING WITH COMPLETE IMPARTIALITY AND IN STRICT CONFIDENTIALITY. ASO RECENT REMARKS ON THE IRREVOCABILITY OF THE OF THE SO-CALLED "WATCH LIST" DECISION BY A SENIOR OFFICIAL OF THE DEPARTMENT OF STATE VIS-A-VIS AN AUSTRIAN JOURNALIST IN THE CONTEXT OF A PRESS CONFERENCE CENTERING ON DISARMAMENT QUESTIONS ARE BY NO MEANS HELPFUL IN THIS CONTEXT.

3. REGARDING THE STATEMENT - AS QUOTED IN THE PRESS - BY THE DIRECTOR OF THE OFFICE OF SPECIAL INVESTIGATIONS, MR. NEAL SHER, THAT "THE BACKUP MATERIAL AGAINST MR. WALDHEIM COULD BE DISCLOSED IF THE AUSTRIAN PRESIDENT SOUGHT TO CHALLENGE THE BAN ON HIS ENTRY" IT SHOULD BE POINTED OUT THAT THE AUSTRIAN FEDERAL PRESIDENT WOULD NOT BE IN A POSITION TO AVAIL HIMSELF OF LEGAL PROCEDURES UNDER UNITED STATES LAW AS THIS WOULD ENTAIL ACCEPTANCE OF A FOREIGN JURISDICTION. THE VIEW OF THE AUSTRIAN FEDERAL GOVERNMENT HAS ALREADY OFFICIALLY BEEN COMMUNICATED TO THE UNITED STATES GOVERNMENT THAT STATES HAVE NO JURISDICTION OVER FOREIGN HEADS OF STATE DURING THEIR TERM OF OFFICE, THE SO-CALLED "WATCH LIST"-DECISION THUS BEING INCOMPATIBLE WITH INTERNATIONAL LAW.

4. IT MUST BE EMPHASIZED THAT THE AUSTRIAN FEDERAL MINISTER FOR FOREIGN AFFAIRS, VICE-CHANCELLOR DR. MOCK, WAS VERY APPRECIATIVE OF THE UNDERSTANDING EXPRESSED BY THE DEPUTY SECRETARY OF STATE, MR. JOHN WHITEHEAD, IN A CONVERSATION WITH HIM FOR THE SPECIAL GEOPOLITICAL SITUATION OF AUSTRIA - A SITUATION WHICH ALSO HAS TO BE BORN IN MIND IN THE PRESENT CONTEXT. THE AUSTRIAN PUBLIC IS SHOWING PARTICULAR SENSITIVITY FOR THE ISSUE CONCERNING THE AUSTRIAN HEAD OF STATE, DEMOCRATICALLY ELECTED WITH A CONVINCING MAJORITY. IN THE INTEREST OF THE COMMON ENDEAVOURS TO FURTHER IMPROVE THE BILATERAL RELATIONS BETWEEN THE UNITED STATES AND AUSTRIA IT SHOULD BE UNDERLINED ONCE MORE THAT STATEMENTS WHICH MIGHT CREATE NEW MISUNDERSTANDINGS SHOULD BE AVOIDED.

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THE EMBASSY OF AUSTRIA AVAILS ITSELF OF THIS OPPORTUNITY
TO RENEW TO THE DEPARTMENT OF STATE THE ASSURANCES OF ITS
HIGHEST CONSIDERATIONS.

WASHINGTON, D.C. DECEMBER 7, 1987. END TEXT.
SHULTZ

ADMIN
END OF MESSAGE

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