



Department of State TELEGRAM

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ACTION L-01

INFO OCT-01 SS-14 ISG-00 EUR-08 NSC-05 NSCE-00 IO-06 PM-03
SP-02 DMA-02 DPM-01 INR-05 CIAE-00 ACDA-10 DES-02
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FM USMISSION NATO
TO SECSTATE WASHDC PRIORITY 941
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INFO AMEMBASSY BONA PRIORITY
AMEMBASSY LONDON
AMEMBASSY OTTAWA
AMEMBASSY PARIS
USMISSION GENEVA
USMISSION USUN NEW YORK
JCS WASHDC

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LINCOLN

E.O. 11652: GDS
TAGS: NATO PFOR PARM ICRC
SUBJECT: NATO CONSIDERATION OF DRAFT PROTOCOL ON INTERNATIONAL
LAW IN ARMED CONFLICT

REF: A. USNATO 7013 DTG 231843Z DEC 76 NOTAL
B. STATE 308066 DTG 212034Z DEC 76 NOTAL
C. USNATO 6893 DTG 171148Z DEC 76 NOTAL

SUMMARY: WE QUESTION THE DECISION THAT A NATO MILITARY
COMMITTEE STUDY OF THE IMPLICATIONS FOR NATO'S DEFENSE POSTURE
OF PROTOCOL I SHOULD BEGIN ONLY AFTER COMPLETION OF THE PROTOCOL.
IT SEEMS TO US THAT THE STRATEGY OUTLINED IN REF B POINTS TOWARD
INITIATING SERIOUS NATO WORK ON THIS ISSUE TOO LATE. A PROMPT
START WOULD INCREASE THE LIKELIHOOD THAT NATO STUDY WILL BE

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RELEVANT TO ALLIED POSITIONS ON THE PROTOCOL AND ITS SIGNATURE.

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WE WOULD APPRECIATE WASHINGTON'S COMMENTS ON THE POINTS AND QUESTIONS IN PARA 3 BELOW, AND HOPE THAT ALLIED SENSITIVITIES WILL BE FULLY CONSIDERED ALONG WITH THE LEGAL AND TECHNICAL ISSUES POSED BY THE PROTOCOL. ACTION REQUESTED: GUIDANCE, IF POSSIBLE, BY JANUARY 4. END SUMMARY.

1. WE NOTE THAT THE QUESTION OF NATO SUTYO OF THE DRAFT PROTOCOL WAS WORKED OUT IN RESTRICTED EXPERT GROUP AND THAT THE ISSUE IS BEING BROUGHT TO THE ATTENTION OF ALL NATO ALLIES AT A RELATIVELY LATE STAGE. THE RESULT, IN THE EYES OF SOME OF THE ALLIES, MAY BE THE IMPRESSION OF YET ANOTHER RESTRICTED CONSULTATION BY MAJOR ALLIES REGARDING AN ISSUE IN WHICH ALL HAVE AN INTEREST. FRG POLAD TOLD US, DEC 23, THAT THE DUTCH ALREADY HAVE WIND OF THE MEETING AT BONN AND HE ASSUMED THAT OTHER DELEGATIONS AT NATO MAY ALSO HAVE LEARNED ABOUT IT.

2. WE APPRECIATE JCS EFFORTS TO KEEP USDELMC INFORMED ABOUT THE MEETING AT BONN, AND THE DECISIONS TAKEN THERE ON NATO ACTION. MORE PROMPT AND FULLER FRONT CHANNEL REPORTING WOULD HAVE BEEN USEFUL, HOWEVER, IN KEEPING THIS MISSION INFORMED ABOUT DISCUSSIONS OF CONCERN TO US AND THE ALLIES. AS IT WAS, WE WERE FINALLY TOLD WHAT WAS GOING ON ONLY AFTER WE GOT A PARTIAL READ-OUT INDIRECTLY FROM FRG MILITARY OFFICERS (REF C).

3. THE LOGIC BEHIND THE DECISION (REF.B) THAT THE MILITARY COMMITTEE STUDY SHOULD BEGIN ONLY AFTER COMPLETION OF THE PROTOCOL IS NOT OBVIOUS TO US:

A. IF MC STUDY AND NATO CONSIDERATION OF IMPLICATIONS FOR THE ALLIANCE ARE TO BE RELEVANT TO THIS EXERCISE, IT IS ADVISABLE, INDEED URGENT, THAT THIS PROJECT BE CARRIED FORWARD AS EXPEDITIOUSLY AS POSSIBLE, WITH THE HOPE THAT ALLIES COULD PLACE ON RECORD, DURING THE FINAL NEGOTIATIONS, CONSISTENT INTERPRETATIONS AND RESERVATIONS REGARDING ANY TROUBLESOME ASPECTS OF THE PROTOCOL. SUCH ACTION WOULD HELP BUILD A RECORD FOR SUBSEQUENT LEGISLATIVE CONSIDERATION AND FOR DEALING WITH PUBLIC PRESSURES FOR EARLY

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SIGNATURE THAT SOME ALLIES MAY ENCOUNTER.
B. THE LATER WE START, THE MORE DIFFICULT IT WILL BE TO DEVELOP A CONSISTENT ALLIED POSITION TOWARD SIGNATURE. IT OCCURS TO US THAT THE NORWEGIANS, DUTCH, AND DANES MAY WISH TO SIGN THE PROTOCOL AS EARLY AS POSSIBLE, AND THAT THERE MAY BE PRESSURES NOT TO DELAY OR CREATE OBSTACLES TO SIGNATURE.
C. WE NOTE THE EXPECTATION (PARA 3, REF B) THAT THE PROTOCOL

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WOULD NOT BE OPEN FOR SIGNATURE BEFORE SEPTEMBER. RECALLING THE US EXPERIENCE WITH THE GENEVA PROTOCOL OF 1925, WHAT ARE THE PROSPECTS OF A UNGA RESOLUTION THIS FALL THAT COULD BRING THE ALLIES UNDER PRESSURE ON SIGNATURE AND INTERPRETATIONS? D. WE APPRECIATE NEED FOR SPECIALISTS' CONTRIBUTIONS TO A NATO STUDY, THAT SPECIALISTS WILL BE BUSY WITH THE UPCOMING CONFERENCE UNTIL ITS CONCLUSION, AND THAT IT WOULD BE DIFFICULT TO PREPARE CONTRIBUTIONS PROMPTLY. HOWEVER, IF KEY ARTICLES OF CONCERN TO THE FRG ARE NOT LIKELY TO BE CHANGED AT THE NEXT SESSION OF THE CONFERENCE (PARA 2, REF B), THEY WOULD APPEAR TO PROVIDE A BASIS FOR AT LEAST BEGINNING THE STUDY.

4. WE BELIEVE WE SHOULD MOVE PROMPTLY TO CONSULT ON THIS MATTER WITH ALL THE ALLIES SO THAT WE CAN LEARN WHAT THEIR VIEWS ARE ON NATO ACTION AND A POSSIBLE MC STUDY, AND THAT WE SHOULD NOT BE DETERRED FROM MAKING OUR VIEWS KNOWN TO POLADS AND PERPREPS BY ANY REMAINING DIFFERENCES AMONG THE US, FRG, AND OTHERS WHO PARTICIPATED IN THE BONN MEETING. ON THE QUESTION OF WHO SHOULD MAKE THE INITIAL PRESENTATION TO OTHER ALLIES, WE BELIEVE WE SHOULD TAKE THE LEAD.

5. IN REVIEWING THIS MATTER, WE HOPE WASHINGTON WILL BEAR IN MIND THAT THE PROCESS OF PRODUCING AN AGREED NATO STUDY AND ALLIED CONSENSUS ON AN ISSUE OF THIS COMPLEXITY CAN BE SLOW, CUMBERSOME, AND DELAYED BY UNFORESEEN SNAGS. A SLOW PACE IS PARTICULARLY LIKELY IF WE DO NOT BEGIN UNTIL THE SUMMER SEASON AS PROPOSED REF B. WE BELIEVE THAT POSSIBLE FRG SENSITIVITIES SHOULD ALSO BE CONSIDERED, EVEN IF THE CONCLUSIONS DRAWN BY FRG DEFENSE MINISTRY LAWYERS ABOUT THE PROTOCOL APPEAR UNSOUND.

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FRG POLAD TOLD US DECEMBER 23 THAT A MEMORANDUM ON THE SUBJECT HAS BEEN PREPARED IN BONN FOR CONSIDERATION AT MINISTERIAL LEVEL.

6. AMBASSADOR STRAUZ-HUPE REVIEWED THIS MATTER AND CONCURRED IN THE SUBSTANCE OF THIS MESSAGE PRIOR TO HIS DEPARTURE. PEREZ

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