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TO USMISSION USNATO IMMEDIATE

C O N F I D E N T I A L STATE 050654

E.O. 11652: GDS

TAGS: NATO, PARM, UK, FR

SUBJECT: HUMANITARIAN LAW IN ARMED CONFLICT PROTOCOLS TO
1944 GENEVA CONVENTIONS

REFS: (A) USNATO 1979; (B) USNATO 1729; (C) USNATO 2738
(D) STATE 291033

1. APPRECIATE YOUR REPORT OF FEBRUARY 23 POLADS DISCUSSION. WE WILL, OF COURSE, BE PREPARED TO CONSIDER AND COMMENT ON ANY PROPOSALS FOR ORGANIZATION AND MANDATE OF WORKING GROUPS WHICH UK, FRG OR OTHERS MAY PRESENT AT FEBRUARY 28 POLADS OR SUBSEQUENTLY. YOU SHOULD SUGGEST THAT ALL SUCH PROPOSALS SHOULD BE STUDIED CAREFULLY IN CAPITALS BEFORE FURTHER ACTION IS TAKEN. YOU MAY ALSO DRAW UPON FOLLOWING POINTS IF APPROPRIATE.
2. IN GENERAL, WE DO NOT BELIEVE THAT NATO CONSIDERATION OF UK AND FRG CONCERNS ABOUT PROTOCOL I REQUIRES ELABORATE SPECIAL MACHINERY IN BRUSSELS. RELEVANT ARTICLES OF PROTOCOL I ARE LARGELY CODIFICATION OF EXISTING CUSTOMARY LAW, AND WE DO NOT BELIEVE THAT SUBSTANTIVE PROBLEMS RAISED BY PROTOCOL ARE NEARLY AS SERIOUS AS FRG ASSERTS. (FYI: FRG MINISTRY OF DEFENSE HAS NEVER SUPPORTED PROVISION OF PROTOCOL I ON MEANS AND METHODS OF WARFARE AND IS PROBABLY PROPOSING ELABORATE NATO INTERPRETIVE EXERCISE, AT LEAST IN PART, TO INHIBIT ITS ENTRY INTO FORCE. END FYI). THEREFORE, WE ARE INCLINED TO THINK THAT ANALOGY TO MBFR MACHINERY IS INAPPROPRIATE, GIVEN RELATIVE SIGNIFICANCE OF MBFR ISSUES AND MUCH GREATER NATO HQ EXPERTISE AND SUBSTANTIVE CONCERN, AND THAT CREATION OF NATO GROUP ALONG MBFR LINES WOULD BE EXCESSIVE FOR THIS PURPOSE. HOWEVER, WE AGREE THAT MILITARY COMMITTEE SHOULD PLAY AN IMPORTANT ROLE IN ANY CONSIDERATION OF FRG PROPOSALS TO FORMULATE DETAILED GUIDANCE FOR DEVELOPMENT OF COMBAT RULES.
3. WITH RESPECT TO UK PROPOSAL FOR COORDINATION OF SUBSTANCE AND TIMING OF RATIFICATION, DEPARTMENT CONCURS IN PROPOSAL THAT EACH ALLY SHOULD CONSULT THROUGH THE POLITICAL COMMITTEE WHEN IT IS READY TO SUBMIT THE PROTOCOLS TO ITS PARLIAMENT FOR RATIFICATION. WE WOULD PREFER TO DEFER ESTABLISHING ANY WORKING GROUP (INCLUDING LEGAL GROUP) OR HOLDING FURTHER EXPERTS MEETINGS ON THIS SUBJECT UNTIL JUNE, WHEN WE WILL START MAKING OUR OWN PREPARATIONS FOR THE SUBMISSION OF THE PROTOCOLS TO THE SENATE. (FYI: THE NEED FOR IMPLEMENTING LEGISLATION WITH RESPECT TO THE PENAL PROVISIONS AND POSSIBLY OTHER MATTERS MAKES IT UNLIKELY THAT US RATIFICATION CAN BE EXPECTED IN LESS THAN 3 YEARS. END FYI.)

4. WE PREFER TO WITHHOLD JUDGMENT ON FRG PROPOSALS FOR DETAILED CONVENTIONAL COMBAT RULES UNTIL WE HAVE STUDIED THE DRAFTS THEY PLAN TO SUBMIT IN MID-MARCH.

5. DEFENSE ADVISES THAT THE LAW OF WAR MANUALS WILL INCLUDE EXPLANATIONS OF THE PRINCIPLES AND RULES OF THE PROTOCOLS IN ACCORDANCE WITH US UNDERSTANDINGS DEVELOPED AT THE DIPLOMATIC CONFERENCE. THESE WILL BE IN CONSONANCE WITH THE RECOMMENDATION OF THE MILITARY COMMITTEE STUDY AND WILL INCLUDE SUFFICIENT PRACTICAL EXAMPLES TO FACILITATE UNDERSTANDINGS. THEY WILL NOT, HOWEVER, PROVIDE DETAILED RULES FOR THE EMPLOYMENT OF EACH WEAPON SYSTEM OR FOR ALL TACTICAL SITUATIONS. THE PROCESS OF DEVELOPING DOCTRINAL LITERATURE ON EMPLOYMENT OF DIFFERENT CONVENTIONAL WEAPON SYSTEMS AND THE TACTICS OF THE DIFFERENT SERVICES WOULD PRECLUDE ANY EARLY CONCLUSION OF THE PROPOSED FRG STUDY. IT MAY, HOWEVER, BE FEASIBLE TO MEET SOME FRG REQUIREMENTS THROUGH DEVELOPMENT OF ACE OR AFCENT RULES OF ENGAGEMENT OR STANDING OPERATING PROCEDURES (SEE NATO DEFINITIONS) FOR CERTAIN MILITARY OPERATIONS IN PARTICULAR COUNTRIES. SUCH A DEVICE APPEARS TO BE SUITABLE FOR DEVELOPING GUIDANCE ON PRECAUTIONARY MEASURES FOR THE PROTECTION OF CIVILIANS AND FRIENDLY MILITARY PERSONNEL IN THE USE OF LAND MINES.

6. WITH RESPECT TO UNDERSTANDINGS ON NUCLEAR WEAPONS, YOU MAY DRAW UPON GUIDANCE IN REFTEL D. VANCE



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