



T-DOJ

Department of Justice

FTIC

FOR IMMEDIATE RELEASE
MONDAY, APRIL 27, 1987

OPA
(202) 633-2007

Director of Public Affairs Terry Eastland today issued the following statement:

"The Department of Justice and the Department of State are announcing today that the Department of Justice has determined that a prima facie case of excludability exists with respect to Kurt Waldheim as an individual, and his name is being placed on the 'Watchlist.' This determination was based on United States law prohibiting entry to any foreign national who assisted or otherwise participated in activities amounting to persecution during World War II.

"Both Departments emphasize that this decision deals with Mr. Waldheim as an individual for past activities.

"Relations between the people and Government of the United States and the people and Government of Austria have traditionally been close and friendly. We share a fundamental commitment to democracy, human rights and the rule of law. We highly value our relationship with Austria and we will work to strengthen our friendship."

Attachment

91F25085, 843

STATEMENT CONCERNING THE STATUS OF KURT WALDHEIM

1. Under United States law, the Attorney General is required to determine whether any alien brought to his attention is ineligible for entry into the United States, inter alia because, between March 23, 1933, and May 8, 1945, under the direction of the Nazi Government of Germany, he "ordered, initiated, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion." 18 U.S.C. Sec. 1182(a)(33).

2. The practice in implementing this law has been to place on an appropriate list ("Watchlist") the names of all persons concerning whom a prima facie case of ineligibility is found to exist for the reasons described above. Many thousands of persons have been placed on the list who have never actually sought entry into the United States, and without regard to whether they intend ever to seek such entry.

3. The standards applied in placing persons on the Watchlist do not require a finding of having engaged in "war crimes" or "crimes against humanity." The statutory standard is met if a person assisted or participated in any material manner in any form of proscribed persecution. Such cases are frequently based upon a person's membership in an organization listed as

91F25,255/343

"inimical" because of its particularly heinous activities, or upon a person's playing a role in an organization or operation that provides a reliable basis for inferring the proscribed assistance or participation. Efforts by a person to hide or otherwise distort potentially improper activities have routinely been regarded as significant in determining whether a prima facie case exists.

4. The Office of Special Investigations, Department of Justice, collected and analyzed evidence pertaining to the activities of Kurt Waldheim, between 1942 and 1945. Careful consideration was given to this matter, and a full opportunity was afforded to Mr. Waldheim and his attorney to provide information and to comment on issues. The evidence collected satisfies the applicable statutory standards, in that it establishes a prima facie case that Kurt Waldheim assisted or otherwise participated in the persecution of persons because of race, religion, national origin, or political opinion.

5. The Department of Justice has therefore ordered, as required by law, that Kurt Waldheim's name be added to Watchlist. The Department of State has also, therefore, ordered that his name be added to the Automated Visa Lookout System, to alert consular officers as to his prima facie ineligibility for a visa to enter the United States.

6. These determinations are without prejudice to any consideration of an application to enter the United States based on special authority.

####

Gestatten Sie mir, daß ich meine Ausführungen mit der Erwähnung eines Themas abschließe, das unsere Gemüter in letzter Zeit heftig bewegt hat. Ich meine damit die Herrn Dr. Waldheim betreffende amerikanische Entscheidung und ihre Auswirkungen auf die bilateralen Beziehungen zwischen den Vereinigten Staaten und Oesterreich. Dieses Thema ist offensichtlich so groß und komplex, daß meine kurze Bemerkungen - sozusagen in Form einer Fußnote - ihm kaum gerecht werden können. Dennoch möchte ich hier vor allen meinen oesterreichischen Freunden und Kollegen unterstreichen, daß in jeder wesentlichen Hinsicht die Beziehungen zwischen Oesterreich und Amerika weiterhin auf gesunden Grundlagen beruhen. Diese Beziehungen sind fest etabliert, und ich sehe kein Anzeichen dafür, daß sie sich verschlechtert haben oder sogar zusammenbrechen könnten. Es ist dies eine Beziehung, die ihre Kraft aus der Tatsache schöpft, daß wir zur selben Familie der Nationen gehören und uns von denselben demokratischen und pluralistischen Idealen leiten lassen. An der hohen Achtung, die Amerika für Oesterreich und die Oesterreicher empfindet, hat sich nichts geändert.

Die amerikanische "Watchlist"-Entscheidung war legal, dem Gesetz der Vereinigten Staaten entsprechend, und sollte aus dieser Perspektive betrachtet werden. Wir sind gerade dabei, Ihrer Regierung die sachliche und gesetzmäßige Grundlage für diese Entscheidung zu erläutern. Ich möchte daher meine Ausführungen auf ein paar Bemerkungen beschränken. Erstens: Die Herrn Dr. Waldheim betreffende Entscheidung steht im Einklang mit dem amerikanischen Gesetz und entsprang einer gesetzlichen Verpflichtung. Diese Untersuchung war noch vor Herrn Dr. Waldheims Wahl begonnen worden und führte schließlich zu einem Beschluß anhand der uns zur Verfügung stehenden Unterlagen. Er stützte sich auf das Gesetz, das die Einreise in die Vereinigten Staaten regelt und das jedem Ausländer die Einreise verbietet, der während des Zweiten Weltkriegs Verfolgung ausübt hatte oder an derartigen Tätigkeiten sonstwie beteiligt gewesen war. Die Normen, die bei der Einreihung von Personen in diese Liste gelten, erfordern nicht, daß eine Beteiligung an "Kriegsverbrechen" oder an "Verbrechen gegen die Menschlichkeit" nachgewiesen werden muß. Die Bestimmungen dieses Gesetzes gelten dann, wenn eine Person auf irgendeine wesentliche Weise die mit diesem Gesetz geahndeten Verfolgungen gefördert hatte oder an ihnen beteiligt gewesen war.

War Crimes Disclosure Act
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Das Team, das am Freitag in Oesterreich eintreffen wird, wird diese Frage eingehender behandeln und der österreichischen Regierung die Grundlage für die amerikanische Entscheidung erläutern. Auch wenn viele Oesterreicher von diesem Beschluß schmerzlich berührt worden sind, sollte uns das nicht davon abhalten, das Gemeinsame zwischen unseren beiden Ländern und Völkern zu bekräftigen. Wir teilen viele unserer Werte und Bestrebungen. Im kommenden Monat werden wir den 40. Jahrestag des Marshallplanes feiern, als Symbol der positiven Bemühungen auf beiden Seiten des Atlantiks um eine gesunde und demokratische westliche Welt. Sie wird unser Ziel bleiben, und wir rechnen mit Oesterreich als Partner der Vereinigten Staaten und anderer westlichen Länder, heute und in der Zukunft, ebenso wie dies schon in der Vergangenheit der Fall gewesen war.

WITHDRAWAL NOTICE

RG: 59

Box: 00018 Folder: 0001 Document: 25

Series:

Copies: 0 Pages: 3

ACCESS RESTRICTED

The item identified below has been withdrawn from this file:

Folder Title: FT 1 of 1

Document Date:

Document Type: Report

From:

To:

Subject: Die Grundlagen der "Watchlist"-Entscheidung

In the review of this file this item was removed because access to it is restricted. Restrictions on records in the National Archives are stated in general and specific record group restriction statements which are available for examination.

NND: 37364

Withdrawn: 10-22-2004 by: Ira Kirshenbaum

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AMEMBASSY BONN

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PAGE 01

BONN 018858

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RUFHVI / AMEMBASSY VIENNA PRIORITY 5464
BT

CLASS: [REDACTED]
CHRG: PROG 06/24/87
APPR: PF: OGROBEL
DRFTD: PE: HSI-MON: /W1364
CLEAR: POL: RBRADTKE
DISTR: POL
ORIGIN: WNG ID: 01364 FB

BONN 18858

E. O. 12356: DECL: OADR
TAGS: PREL, GE, AU
SUBJECT: RESPONDING TO CORRESPONDENCE REGARDING KURT
WALDHEIM

1. [REDACTED] - ENTIRE TEXT.

2. THE EMBASSY IN CONTINUING TO RECEIVE NUMEROUS
INQUIRIES FROM THE GERMAN PUBLIC AND RANKING GERMAN
FIGURES CONCERNING THE U. S. DECISION TO PLACE KURT
WALDHEIM ON THE "WATCH LIST". IN RESPONDING TO THESE
INQUIRIES, IT WOULD BE VERY HELPFUL TO DRAW UPON THE
DEPARTMENT'S AND EMBASSY VIENNA'S RESPONSES TO SIMILAR
REQUESTS FROM THE PUBLIC FOR A JUSTIFICATION OF OUR
DECISION IN THE WALDHEIM CASE. THIS WOULD INCLUDE THE
SPECIFIC LEGAL GROUNDS FOR OUR ACTION AND EVIDENCE OF
WALDHEIM'S ACTIVITIES WHICH CAN BE CITED.

3. ACTION REQUESTED: EMBASSY WOULD APPRECIATE RECEIVING
LATEST TEXTS/GUIDANCE ON WALDHEIM CASE TO RESPOND TO
GERMAN PUBLIC INQUIRES.

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DISTR: POL
ORIGIN: OCR

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E.O. 12356: DECL: OADR
TAGS: PREL, GE, AU
SUBJECT: WHAT TO TELL THE GERMANS ABOUT KURT WALDHEIM

REF: (A) BONN 20589; (B) STATE 209536; (C) VIENNA 9698;
(D) BONN 18858

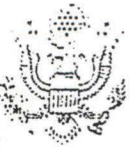
1. ~~CONFIDENTIAL~~ - ENTIRE TEXT.

2. THE US DECISION TO PLACE KURT WALDHEIM ON THE "WATCH LIST" KEEPS RECURRING IN OUR DISCUSSIONS WITH SENIOR GERMAN OFFICIALS. IN ORDER TO PROPERLY REPRESENT US INTERESTS IN THIS MATTER, WE REQUEST THAT THE DEPARTMENT SUPPLY US WITH INFORMATION ON THE FACTUAL BASIS FOR THE DECISION TO EXCLUDE WALDHEIM, FOR OUR OWN BACKGROUND USE AND, AS APPROPRIATE, FOR USE WITH OUR GERMAN INTERLOCUTORS. WE ARE GRATEFUL FOR THE PUBLIC AFFAIRS MATERIAL ALREADY PROVIDED (REFS B-D), WHICH EXPLAINS THE PROCEDURAL BASIS FOR THE WALDHEIM DECISION, BUT WE BELIEVE THIS IS INSUFFICIENT FOR ADDRESSING THE CONCERNS THAT HAVE BEEN EXPRESSED TO THE AMBASSADOR, SENIOR US VISITORS AND OTHER EMBASSY STAFF.

3. MANY OF OUR GERMAN INTERLOCUTORS BEGIN FROM THE PRESUMPTION THAT WALDHEIM WAS LITTLE MORE THAN AN ORDINARY WEHRMACHT JUNIOR INTELLIGENCE OFFICER IN A UNIT WHICH, LIKE MANY OTHERS, HAD OCCUPATION AND INTERNAL SECURITY RESPONSIBILITIES -- IN SHORT, THAT WALDHEIM'S WARTIME RECORD WAS INDISTINGUISHABLE FROM THAT OF THOUSANDS OF GERMANS WHO SERVED IN THE MILITARY DURING THE WAR. THEY HENCE REGARD THE US EXCLUSION OF WALDHEIM AS AN EXTRAORDINARY STEP, ONE BASED LESS ON THE NATURE OF HIS WARTIME ACTIVITIES THAN ON NOTORIETY DUE TO HIS UN SERVICE AND HIS LONG-MAINTAINED DECEPTION ABOUT HIS PAST. WE OF COURSE REBUT THIS VIEW BY EXPLAINING HOW THE USG WENT ABOUT DECIDING TO PUT WALDHEIM ON THE WATCH LIST. WE NEED HOWEVER TO SUPPLEMENT THESE ESSENTIALLY PROCEDURAL POINTS WITH MORE FACTUAL PRESENTATION, INDICATING THE PERSONAL ACTS FOR WHICH WALDHEIM IS RESPONSIBLE AND WHICH LED TO HIS BEING PUT ON THE WATCH LIST, AND IF POSSIBLE SHOWING HOW THESE ACTS DISTINGUISH HIS CONDUCT FROM THAT OF OTHER FORMER GERMAN OFFICERS AGAINST WHOM WE HAVE NOT TAKEN SUCH STEPS.
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Embassy of the United States of America

(FT3C)

ENGLISH TRANSLATION

Mr. Gerhard Reddemann, MdB
Vizepraesident der Parlamentarischen
Versammlung des Europarats
Bundeshaus
5300 Bonn 1

Nazi War Crimes Disclosure Act
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Dear Mr. Reddemann:

Thank you for your letter of May 21, concerning the placing of Mr. Waldheim on the United States "watchlist".

Your letter addresses an important issue relating not only to the use of evidence in United States immigration and border control procedures, but relating also to the policy of the United States government to take steps to signal the United States commitment to the protection of human rights. It is important that the United States not ignore any opportunity to remind the world that a holocaust must never take place again. With the attention of the world drawn to Mr. Waldheim's past and with a further review of the evidence, it was felt necessary to make such a statement.

As I am sure you know, the issue under U.S. law considered by the Justice Department was whether Mr. Waldheim, during his World War II service in the Balkans, "assisted or otherwise participated in" the persecution of people "because of race, religion, national origin, or political opinion". It is standard practice for the Justice Department to place an individual on a "watchlist" maintained by the Immigration and Naturalization Service if a prima facie case exists to show that the individual has engaged in any of the activities mentioned above.

I fully understand your interest in the reasons which led the United States Government to take the decision it did with regard to Mr. Waldheim, and hope that you and your colleagues will work to increase understanding for the United States point of view on this issue.

Sincerely,

Richard Burt
Ambassador

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ACTION PF3-02

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RUEKJCS/ SECDEF WASHDC IMMEDIATE 0985

RUEHGV/USMISSION GENEVA IMMEDIATE 9394

RUEHMO/AMEMBASSY MOSCOW IMMEDIATE 4193

RUEHLN/AMCONSUL Leningrad IMMEDIATE 4385

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EUR DAILY PRESS GUIDANCE 4/27/87

1. THE FOLLOWING PRESS ANNOUNCEMENTS AND CONTINGENCY PRESS GUIDANCES WERE PREPARED FOR USE BY THE DEPARTMENT SPOKESMAN ON APRIL 27, 1987. IN ADDITION TO THE STATE DEPARTMENT ANNOUNCEMENT, ONLY THE GUIDANCE IN SECTION 2 WAS USED IN TODAY'S BRIEFING.

2. (PRESS ANNOUNCEMENT) PRESIDENT WALDHEIM

THE DEPARTMENT OF JUSTICE HAS DETERMINED THAT A PRIMA FACIE CASE OF EXCLUDABILITY EXISTS WITH RESPECT TO KURT WALDHEIM AS AN INDIVIDUAL, AND HIS NAME IS BEING PLACED ON THE "WATCHLIST." THIS DETERMINATION WAS BASED ON UNITED STATES LAW PROHIBITING ENTRY TO ANY FOREIGN NATIONAL WHO ASSISTED OR OTHERWISE PARTICIPATED IN ACTIVITIES AMOUNTING TO PERSECUTION DURING WORLD WAR II.

THE DEPARTMENT OF STATE, THEREFORE, ORDERED THAT HIS NAME BE ADDED TO THE AUTOMATED VISA LOOKOUT SYSTEM, TO

ALERT CONSULAR OFFICERS AS TO HIS PRIMA FACIE INELIGIBILITY FOR A VISA TO ENTER THE UNITED STATES.

BOTH JUSTICE AND STATE EMPHASIZE THAT THIS DECISION DEALS WITH MR. WALDHEIM AS AN INDIVIDUAL AND HIS PAST ACTIVITIES.

RELATIONS BETWEEN THE PEOPLE AND GOVERNMENT OF THE UNITED STATES AND THE PEOPLE AND GOVERNMENT OF AUSTRIA HAVE TRADITIONALLY BEEN CLOSE AND FRIENDLY. WE SHARE A FUNDAMENTAL COMMITMENT TO DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW. WE VALUE OUR RELATIONSHIP WITH AUSTRIA HIGHLY AND WILL WORK TO STRENGTHEN OUR FRIENDSHIP. (END ANNOUNCEMENT)

Q: WILL THIS DECISION HARM OUR RELATIONS WITH AUSTRIA?

A: -- WE DESIRE GOOD RELATIONS WITH THE GOVERNMENT AND PEOPLE OF AUSTRIA AND WILL CONTINUE TO WORK TOWARD THAT GOAL. CHANCELLOR VRANITZKY IS THE HEAD OF THE AUSTRIAN GOVERNMENT. OUR NORMAL DAY-TO-DAY CONTACTS ARE WITH THE CHANCELLOR AND HIS MINISTERS. WE HOPE THAT THIS DECISION WOULD NOT AFFECT THOSE CONTACTS OR THE FRIENDLY, COOPERATIVE RELATIONSHIP WE ENJOY WITH THE PEOPLE AND GOVERNMENT OF AUSTRIA.

Q: AS HEAD OF STATE, CAN PRESIDENT WALDHEIM VISIT THE U.S.?

A: -- WE ARE NOT AWARE OF ANY PLANS BY PRESIDENT WALDHEIM TO VISIT THE U.S. IF HE WERE TO REQUEST PERMISSION TO DO SO, THE REQUEST WOULD BE CONSIDERED BY THE PRESIDENT AND SECRETARY OF STATE.

3. (JUSTICE DEPARTMENT ANNOUNCEMENT) STATEMENT CONCERNING THE STATUS OF KURT WALDHEIM (NOT READ)

-- UNDER UNITED STATES LAW, THE ATTORNEY GENERAL IS REQUIRED TO DETERMINE WHETHER ANY ALIEN BROUGHT TO HIS ATTENTION IS INELIGIBLE FOR ENTRY INTO THE UNITED STATES, INTER ALIA BECAUSE, BETWEEN MARCH 23, 1933 AND MAY 8, 1945, UNDER THE DIRECTION OF THE NAZI GOVERNMENT OF GERMANY, HE "ORDERED, INITIATED, ASSISTED, OR OTHERWISE PARTICIPATED IN THE PERSECUTION OF ANY PERSON BECAUSE OF RACE, RELIGION, NATIONAL ORIGIN, OF POLITICAL OPINION." 18 U.S.C. SEC 1182 (A) (3).

-- THE PRACTICE IN IMPLEMENTING THIS LAW HAS BEEN TO PLACE ON AN APPROPRIATE LIST ("WATCHLIST") THE NAMES OF

ALL PERSONS CONCERNING WHOM A PRIMA FACIE CASE OF INELIGIBILITY IS FOUND TO EXIST FOR THE REASONS DESCRIBED ABOVE. MANY THOUSANDS OF PERSONS HAVE BEEN PLACED ON THE LIST WHO HAVE NEVER ACTUALLY SOUGHT ENTRY INTO THE UNITED STATES, AND WITHOUT REGARD TO WHETHER THEY INTEND EVER TO SEEK SUCH ENTRY.

-- THE STANDARDS APPLIED IN PLACING PERSONS ON THE

WATCHLIST DO NOT REQUIRE A FINDING OF HAVING ENGAGED IN "WAR CRIMES" OR "CRIMES AGAINST HUMANITY." THE STATUTORY STANDARD IS MET IF A PERSON ASSISTED OR PARTICIPATED IN ANY MATERIAL MANNER IN ANY FORM OF PROSCRIBED PERSECUTION. SUCH CASES HAVE FREQUENTLY BEEN BASED UPON A PERSON'S MEMBERSHIP IN AN ORGANIZATION LISTED AS "INIMICAL" BECAUSE OF ITS PARTICULARLY HEINOUS ACTIVITIES, OR UPON A PERSON'S PLAYING A ROLE IN AN ORGANIZATION OR OPERATION THAT PROVIDES A RELIABLE BASIS FOR INFERRING THE PROSCRIBED ASSISTANCE OR PARTICIPATION. EFFORTS BY A PERSON TO HIDE OR OTHERWISE DISTORT POTENTIALLY IMPROPER ACTIVITIES HAS ROUTINELY BEEN REGARDED AS SIGNIFICANT IN DETERMINING WHETHER A PRIMA FACIE CASE EXISTS.

-- THE OFFICE OF SPECIAL INVESTIGATIONS, DEPARTMENT OF JUSTICE, COLLECTED AND ANALYZED EVIDENCE PERTAINING TO THE ACTIVITIES OF KURT WALDHEIM, BETWEEN 1942 AND 1945. CAREFUL CONSIDERATION WAS GIVEN TO THIS MATTER, AND A FULL OPPORTUNITY WAS AFFORDED TO MR. WALDHEIM AND HIS ATTORNEY TO PROVIDE INFORMATION AND TO COMMENT ON ISSUES. THE EVIDENCE COLLECTED SATISFIES THE APPLICABLE STATUTORY STANDARDS, IN THAT IT ESTABLISHES A PRIMA FACIE CASE THAT KURT WALDHEIM ASSISTED OR OTHERWISE PARTICIPATED IN THE PERSECUTION OF PERSONS BECAUSE OF RACE, RELIGION, NATIONAL ORIGIN, OR

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POLITICAL OPINION.

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-- THE DEPARTMENT OF JUSTICE HAS THEREFORE ORDERED, AS REQUIRED BY LAW, THAT KURT WALDHEIM'S NAME BE ADDED TO THE WATCHLIST. THE DEPARTMENT OF STATE HAS ALSO, THEREFORE ORDERED THAT HIS NAME BE ADDED TO THE AUTOMATED VISA LOOKOUT SYSTEM, TO ALERT CONSULAR OFFICERS AS TO HIS PRIMA FACIE INELIGIBILITY FOR A VISA TO ENTER THE UNITED STATES.

-- THESE DETERMINATIONS ARE WITHOUT PREJUDICE TO ANY CONSIDERATION OF AN APPLICATION TO ENTER THE UNITED STATES BASED ON SPECIAL AUTHORITY. (END ANNOUNCEMENT)

4. AUSTRIA-PRESIDENT WALDHEIM VISA?

Q: DOES PRESIDENT WALDHEIM HAVE A VALID VISA? COULDN'T HE USE IT?

A: PRESIDENT WALDHEIM COULD STILL HAVE A VALID VISA ISSUED FOR EARLIER VISITS TO THE U.S. IF SO, THIS VISA WOULD BE INVALID FOR ADMITTANCE AS THE RESULT OF TODAY'S ACTION BY THE DEPARTMENT OF JUSTICE.

5. WALDHEIM (TAKEN QUESTION)

Q: ARE THERE NOW ANY RESTRICTIONS ON CONTACTS -- SOCIAL/OFFICIAL -- BETWEEN U.S. DIPLOMATS IN AUSTRIA AND KURT WALDHEIM?

A: -- WE HAVE HANDLED AND WILL CONTINUE TO HANDLE ALL INVITATIONS ON A CASE-BY-CASE BASIS BEARING IN MIND OUR RESPECT FOR THE AUSTRIAN PRESIDENCY AS AN INSTITUTION.

6. AUSTRIA: AMBASSADOR RECALLED (TAKEN QUESTION)

Q: WHAT IS THE DEPARTMENT'S REACTION TO THE DECISION OF THE AUSTRIAN FOREIGN MINISTRY TO RECALL AMBASSADOR KLESTIL FOR CONSULTATIONS?

A: -- WE REGRET THE DECISION TO RECALL AMBASSADOR KLESTIL FOR CONSULTATION. WE HAVE STRESSED OUR DESIRE FOR CONTINUING GOOD RELATIONS WITH THE PEOPLE AND GOVERNMENT OF AUSTRIA. WE STILL CONTINUE TO WORK TOWARD THE GOAL.

7. MOSCOW EMBASSY SECURITY (WEEKEND GUIDANCE)

POLISH GOVERNMENT RELEASES PRISONERS

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E.O. 12356: N/A

SUBJECT: RESPONSE TO WALDHEIM INQUIRIES

REF: BONN 18858 (NOTAL)

1. EMBASSY VIENNA HAS RECEIVED A NUMBER OF GUIDANCE CABLES
ON THIS SUBJECT, INCLUDING:

USIA PUBLIC AFFAIRS 87-32 OF MAY 14, 1987 (USIA 31837-C)

STATE 31305

STATE 125757

WE BELIEVE BONN TO HAVE BEEN AN ADDRESSEE ON THE FIRST TWO;
SUGGEST YOU REQUEST RETRANSMISSION OF STATE 125757

2. IN ADDITION, DRAWING ON STATE AND JUSTICE DEPARTMENT
SOURCES, VIENNA HAS DEVELOPED SEVERAL BACKGROUND PAPERS
WHICH WE ARE INCLUDING WITH OUR RESPONSES TO LETTERS ON
WALDHEIM. THESE TEXTS FOLLOW. PLEASE ADVISE IF YOU NEED
GERMAN VERSIONS AND WE WILL TRANSMIT.

3. WE ARE RESPONDING TO LETTERS AND OTHER INQUIRIES ON
WALDHEIM WITH SHORT LETTERS WHICH BASICALLY INTRODUCE THE
BACKGROUND PAPERS. SHOULD YOU WISH TO RECEIVE THESE LETTER
TEXTS (ONE FOR NEGATIVE INQUIRIES, ONE FOR POSITIVE)
PLEASE ADVISE AND WE WILL ALSO TRANSMIT.

4. HERewith THE ENGLISH TEXTS OF THE BACKGROUND
MATERIAL:

A) WALDHEIM DECISION
U.S. IMMIGRATION LAWS SPECIFY AS EXCLUDABLE A NUMBER
OF CATEGORIES OF PERSONS WHOSE BACKGROUNDS ARE DEEMED
TO RENDER THEM INELIGIBLE FOR ENTRY INTO THE UNITED
STATES. ONE OF THESE CATEGORIES (8 USC 1182 (A)
(3)) MAKES EXCLUDABLE ANY ALIEN WHO:

"DURING THE PERIOD BEGINNING ON MARCH 23, 1933,
AND
ENDING ON MAY 8, 1945, UNDER THE DIRECTION OF, OR IN
ASSOCIATION WITH --

(A) THE NAZI GOVERNMENT OF GERMANY,

(B) ANY GOVERNMENT IN ANY AREA OCCUPIED BY THE
MILITARY FORCES OF THE NAZI GOVERNMENT OF
GERMANY,

(C) ANY GOVERNMENT ESTABLISHED WITH THE
ASSISTANCE OR
COOPERATION OF THE NAZI GOVERNMENT OF GERMANY, OR

(D) ANY GOVERNMENT WHICH WAS AN ALLY OF THE NAZI
GOVERNMENT OF GERMANY, ORDERED, INCITED,
ASSISTED, OR

OTHERWISE PARTICIPATED IN THE PERSECUTION OF ANY
PERSON

BECAUSE OF RACE, RELIGION, NATIONAL ORIGIN, OR
POLITICAL OPINION."

(THIS SECTION OF THE STATUTE IS COMMONLY REFERRED TO
AS THE "HOLTZMAN-AMENDMENT," AFTER THE CONGRESSWOMAN
WHO PROPOSED IT IN 1978. IT BECAME LAW IN 1979,
SIMULTANEOUS WITH THE CREATION OF THE JUSTICE
DEPARTMENT'S OFFICE OF SPECIAL INVESTIGATIONS, WHICH
CONDUCTS INVESTIGATIONS AND BRINGS CASES UNDER THE
LAW.)

THIS STATUTE DOES NOT ADDRESS "WAR CRIMES," AND NO
ATTEMPT HAS BEEN MADE BY THE U.S. TO DETERMINE
WHETHER MR. WALDHEIM MAY HAVE COMMITTED SUCH
OFFENSES. THE ONLY ISSUE RELEVANT UNDER U.S. LAW AND
CONSIDERED BY THE JUSTICE DEPARTMENT WAS WHETHER MR.
WALDHEIM, DURING HIS WORLD WAR II SERVICE IN THE
BALKANS, "ASSISTED OR OTHERWISE PARTICIPATED IN" THE
PERSECUTION OF PEOPLE "BECAUSE OF RACE, RELIGION,
NATIONAL ORIGIN, OR POLITICAL OPINION."

THE U.S. CONGRESS CHOSE TO DESIGNATE THOSE WHO
ENGAGED IN PERSECUTION UNDER THE NAZI REGIME IN
GERMANY AS BEING AN EXTRAORDINARY CLASS OF PEOPLE FOR
WHOM SPECIAL TREATMENT WAS WARRANTED BECAUSE OF THE
HORROR OF THE CRIMES AND ACTS OF PERSECUTION
COMMITTED AGAINST HUMANITY UNDER THAT REGIME. THE

VALIDITY OF THE CONGRESSIONAL ACTION HAS BEEN UPHELD
BY U.S. COURTS.

TO ENFORCE OUR EXCLUSIONARY LAWS IT IS STANDARD
PRACTICE FOR THE JUSTICE DEPARTMENT TO PLACE AN
INDIVIDUAL ON LISTS (COMMONLY REFERRED TO AS THE
"WATCHLISTS") MAINTAINED BY THE IMMIGRATION AND
NATURALIZATION SERVICE AND THE STATE DEPARTMENT IF A
PRIMA FACIE CASE EXISTS TO SHOW THAT THE INDIVIDUAL
FITS INTO ONE OF THE CATEGORIES ENUMERATED IN THE
STATUTE.

DECISIONS REGARDING IMMIGRATION STATUS ARE NOT MADE
IN THE SAME WAY, NOR ARE THEY SUBJECT TO THE SAME
STANDARDS, AS AN ORDINARY CRIMINAL PROCEEDING.
INDIVIDUALS ARE NOT BEING TRIED FOR CRIMES; THEY ARE
BEING DESIGNATED AS INELIGIBLE TO ENTER THE U.S. FOR
ONE OF A VARIETY OF REASONS BASED ON A PRIMA FACIE
CASE OF EXCLUDABILITY UNDER U.S. LAW.

WITH REFERENCE TO THE NAZI PERSECUTION PROVISIONS,
JUDICIAL PRECEDENT MAKES CLEAR THAT IT IS NOT
NECESSARY FOR AN INDIVIDUAL TO HAVE SERVED IN A
COMMAND ROLE IN ORDER TO BE FOUND EXCLUDABLE. COURTS
HAVE UPHELD THE DENATURALIZATION AND DEPORTATION OF
INDIVIDUALS FROM THE U.S. WHO WERE FOUND SIMPLY TO
HAVE SERVED AS INTERPRETERS, GUARDS, CLERKS AND IN
OTHER LOW-LEVEL POSITIONS IN UNITS KNOWN TO HAVE
ENGAGED IN PERSECUTION. MOREOVER, IN THESE
DEPORTATION AND DENATURALIZATION CASES THE GOVERNMENT
CARRIES A HEAVY BURDEN OF PROOF, AS OPPOSED TO THE
ISSUE OF "EXCLUDABILITY" WHERE THE ALIEN HAS THE

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BURDEN OF REBUTTING THE PRIMA FACIE CASE FOUND BY THE GOVERNMENT.

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UNDER ESTABLISHED U.S. LAW "ASSISTANCE AND PARTICIPATION IN PERSECUTION" HAS BEEN BROADLY DEFINED. UNITED STATES COURTS HAVE RULED THAT ACTIVE MEMBERSHIP IN UNITS ENGAGED IN PROSCRIBED PERSECUTION RENDERS AN INDIVIDUAL DEPORTABLE, AND HENCE EXCLUDABLE, UNDER THE HOLTZMAN AMENDMENT. IN THE WALDHEIM CASE, THE JUSTICE DEPARTMENT HAS CONCLUDED THAT THERE IS AN AMPLE EVIDENTIARY BASIS TO CONCLUDE THAT WALDHEIM'S UNITS - IN WHICH HE HELD RESPONSIBLE POSITIONS - AND WALDHEIM HIMSELF ASSISTED OR OTHERWISE PARTICIPATED IN PERSECUTORY ACTIVITIES COVERED BY THE HOLTZMAN AMENDMENT.

THERE IS NO PROVISION IN U.S. LAW ALLOWING AN EXCEPTION TO THESE RULES BECAUSE OF EXEMPLARY POST-WAR ACTIVITIES, OR ANY OTHER EXTENUATING CIRCUMSTANCE. WALDHEIM MUST BE TREATED LIKE ANY OTHER INDIVIDUAL UNDER THE LAW. THE U.S. MAY PERMIT HIM TO ENTER THE COUNTRY UNDER A PROVISION EXEMPTING FOREIGN HEADS OF STATE AND OTHERS WITH DIPLOMATIC STATUS SO LONG AS HE HOLDS SUCH A POSITION. BUT HIS STATUS AS A PRIVATE CITIZEN IS LIFELONG, AND IS NOT SUBJECT TO WAIVER.

ALTHOUGH THE SPECIFIC LAW INVOLVED IN THE WALDHEIM CASE IS RELATIVELY NEW (1979), IT HAS ANTECEDENTS DATING BACK TO THE IMMEDIATE POST-WAR YEARS. A 1948 LAW RULED INELIGIBLE FOR A VISA TO ENTER THE U.S. ANY PERSON WHO COULD BE SHOWN "TO HAVE ASSISTED THE ENEMY (I.E., THE THIRD REICH) IN PERSECUTING CIVIL POPULATIONS OF COUNTRIES..."

THE DECISION REACHED BY THE GOVERNMENT FOLLOWED AN IN-DEPTH ANALYSIS BY THE OFFICE OF SPECIAL INVESTIGATIONS OF AVAILABLE DOCUMENTATION FROM A NUMBER OF SOURCES AS WELL AS THE LENGTHY SUBMISSIONS AND DOCUMENTS SUBMITTED BY MR. WALDHEIM. THOSE FINDINGS WERE REVIEWED WITHIN THE DEPARTMENTS OF JUSTICE AND STATE. THE DETERMINATION WAS MADE BY ATTORNEY GENERAL MEESE IN CONSULTATION WITH, AND THE CONCURRENCE OF, SECRETARY OF STATE SHULTZ.

BY STATEMENT BY U.S. AMBASSADOR RONALD LAUDER ON THE OCCASION OF THE VISIT TO VIENNA BY U.S. JUSTICE DEPARTMENT

AND STATE DEPARTMENT OFFICIALS IN REGARD TO THE WALDHEIM DECISION (MAY 15, 1987)

1. AS YOU KNOW, THE FEDERAL CHANCELLOR AND THE VICE CHANCELLOR HAVE REQUESTED THAT THE U.S. GOVERNMENT EXPLAIN THE LEGAL BASIS FOR ITS DECISION REGARDING DR. WALDHEIM.

2. THE VISIT OF THE U.S. EXPERT TEAM TO VIENNA IS AN EARNEST OF OUR DESIRE TO BE RESPONSIBLE TO THE AUSTRIAN GOVERNMENT'S REQUEST TO BE INFORMED OF THE BASIS OF THE U.S. DECISION. IT IS, TO BE SURE, AN EXTRAORDINARY AND UNPRECEDENTED ACTION ON THE PART OF MY GOVERNMENT TO PRESENT TO ANY FOREIGN GOVERNMENT THE BASIS FOR AN INTERNAL DECISION.

3. WE HAVE BROUGHT TO VIENNA THE PEOPLE WHO HAVE BEEN WORKING ON THE CASE THROUGHOUT THE PAST YEAR: DEPUTY ASSISTANT ATTORNEY GENERAL MR. MARK RICHARD; THE DIRECTOR OF THE JUSTICE DEPARTMENT'S OFFICE OF SPECIAL INVESTIGATIONS, MR. NEAL SHER; AND MRS. MARY MOCHARY, DEPUTY LEGAL ADVISOR TO THE SECRETARY OF STATE.

THESE INDIVIDUALS ARE KNOWLEDGEABLE ABOUT THIS MATTER AND

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THEY ARE NOW OR WILL BE SHARING RELEVANT INFORMATION WITH FEDERAL MINISTER OF JUSTICE FOREGGER AND THE GROUP OF EXPERTS SELECTED BY THE AUSTRIAN GOVERNMENT.

4. THIS INFORMATION WILL NOT BE MADE PUBLIC HERE BY THE AMERICANS. IT WILL BE UP TO THE AUSTRIAN GOVERNMENT TO DECIDE WHAT TO DO WITH THAT INFORMATION.

C) STATEMENT BY THE HONORABLE RONALD S. LAUDER (APRIL 27, 1987)

I HAVE TODAY INFORMED CHANCELLOR VRANITZKY THAT THE DEPARTMENT OF JUSTICE HAS DETERMINED THAT A PRIMA FACIE CASE OF EXCLUDABILITY EXISTS WITH RESPECT TO KURT WALDHEIM AS AN INDIVIDUAL, AND HIS NAME IS BEING PLACED ON THE "WATCH-LIST". THIS DETERMINATION WAS BASED ON UNITED STATES LAW PROHIBITING ENTRY TO ANY FOREIGN NATIONAL WHO ASSISTED OR OTHERWISE PARTICIPATED IN ACTIVITIES AMOUNTING TO PERSECUTION DURING WORLD WAR II.

THIS DECISION DEALS WITH MR. WALDHEIM AS AN INDIVIDUAL AND HIS PAST ACTIVITIES.

RELATIONS BETWEEN THE PEOPLE AND GOVERNMENT OF THE UNITED STATES AND THE PEOPLE AND GOVERNMENT OF AUSTRIA HAVE TRADITIONALLY BEEN CLOSE AND FRIENDLY. WE SHARE A FUNDAMENTAL COMMITMENT TO DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW. WE VALUE OUR RELATIONSHIP WITH AUSTRIA HIGHLY AND WILL WORK TO STRENGTHEN OUR FRIENDSHIP.

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4. COMMENT: THE WALDHEIM DECISION IS STILL TOO FRESH TO FULLY ASSESS THE EVOLVING POLITICAL REPERCUSSIONS HERE IN WHICH THE TEAM'S VISIT PLAYS SOME ROLE--BUT ONLY SOME. PROVISIONALLY, OUR CONCLUSIONS ARE AS FOLLOWS: THE FACT THAT WE RESPONDED TO THE AUSTRIAN REQUEST TO BE INFORMED OF THE BASIS OF THE U.S. DECISION WILL CONTINUE THE DIALOGUE WHICH THE AUSTRIAN AUTHORITIES SAY THEY WANT. IN THAT SENSE, THE SENDING OF THE TEAM TO AUSTRIA WAS A CONSTRUCTIVE POLITICAL ACT IN ITSELF, AND ACCOMPLISHED ITS MAJOR PURPOSE. BEYOND, HOWEVER, IT WILL NOT MODERATE THE AUSTRIAN REACTION TO OUR DECISION, AND MAY FORCE DIVISIVE DIFFERENCES WITHIN THE COALITION ITSELF.

5. FOR THE MOMENT, THE SOCIALISTS ARE QUIET. WE KNOW FROM SEVERAL AUTHORITATIVE SOURCES, THAT VRANITZKY WANTS TO DISTANCE HIMSELF FROM WALDHEIM AND IS LOOKING FOR AN OPPORTUNITY AND MEANS TO DO SO. THE SOCIALISTS ARE CLEARLY UNCOMFORTABLE WITH THE WALDHEIM ISSUE. VRANITZKY'S PROBLEM IS THAT WALDHEIM IS A POLITICAL TARBABY INVOLVING NOT ONLY THE AUSTRIAN NATIONAL IMAGE BUT POTENTIALLY THE QUESTION OF THE INTEGRITY OF THE COALITION ITSELF. THE TEAM'S VISIT, WE BELIEVE, HAS ENCOURAGED THE SOCIALISTS' RESOLVE AGAINST WALDHEIM. BUT THAT IN ITSELF MAY MAKE LIFE WITHIN THE COALITION LESS COMFORTABLE, AS WELL AS THE PUBLIC MANAGEMENT OF THE WALDHEIM ISSUE MORE DIFFICULT AND RISKY. THE SOCIALISTS SEEM--IN THE WAKE OF THE TEAM'S VISIT--TO BE DELIBERATING ABOUT THEIR NEXT MOVE.

6. FOR THE PEOPLE'S PARTY (OVP) THERE IS NO SUCH RETICENCE. ITS REACTION HAS BEEN SWIFT AND VITUPERATIVE. KLESTIL IS REPORTED AS SAYING THAT HE HAD THOUGHT TO INTERRUPT THE TEAM'S PROCEEDINGS BECAUSE OF HIS DISAPPOINTMENT WITH THE LACK OF SUBSTANCE FROM THE U.S. SIDE.

7. OVP'S SECRETARY GENERAL, THE INTEMPERATE MICHAEL GRAFF--WHO AUTHORED THE WALDHEIM CAMPAIGN--AGGRESSIVELY ATTACKED THE U.S. HE STATED ON TODAY'S MID-DAY NATIONAL NEWS BROADCAST THAT IT WAS NOW CLEAR THAT THE U.S. HAD "NOT A SHADOW OF PROOF AGAINST WALDHEIM" AND THAT THE WHOLE U.S. MOVE IS NOW REVEALED OPENLY AS NOTHING MORE THAN AN ACT OF "POLITICAL REVENGE." IT WAS A BLOW AGAINST HUMAN RIGHTS AND AGAINST 40-YEARS OF U.S.-AUSTRIAN FRIENDSHIP. HE WENT ON TO CHARGE A WORLD JEWISH CONGRESS-DOJ CONSPIRACY, MOTIVATED BY POLITICAL CALCULATIONS TIED TO THE UPCOMING U.S. ELECTIONS.

8. GRAFF REPRESENTS THE INJUDICIOUS BUT NONETHELESS INFLUENTIAL, END OF THE SCALE ON THE WALDHEIM ISSUE. THE PRESS HAS BEEN MORE MODERATE IN ITS REACTION TO THE TEAM'S VISIT BUT NONETHELESS CRITICAL. TAKING ITS LEAD FROM THE OVP, THE MAJOR DAILIES REJECT THE U.S. DECISION AS UNFOUNDED. THE ISSUE, AS PRESENTED TO THE AUSTRIAN PUBLIC, IS ONE IN WHICH THE U.S. HAS UNFAIRLY TREATED WALDHEIM--BY CONDEMNING HIM WITHOUT PROOF OF "PERSONAL CULPABILITY."

9. FOR THE MOMENT--WITH THE SOCIALISTS SILENT--THERE SEEMS TO BE UNITY IN SUPPORT OF WALDHEIM AND IN REJECTION OF THE U.S. DECISION. BUT THIS UNITY IS FRAGILE, RESTING AS IT DOES ON HYPE AND POLITICS RATHER THAN ON CONVICTION AND BELIEF. WE BELIEVE WE ARE ENTERING A PERIOD OF UNUSUAL POLITICAL AND PSYCHOLOGICAL FERMENT HERE. SUBSTANTIAL CHANGES WITHIN AUSTRIA IN DEALING WITH WALDHEIM (AND ITS PAST) ARE POSSIBLE. VRANITZKY'S POSITION IS A DIFFICULT ONE, BUT WE DO NOT FORECLOSE GREATER SOCIALIST COURAGE ON WALDHEIM. THE U.S. SIDE OF THE STORY IS BEING DISTORTED IN PUBLIC AND IS COMING

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USMISSION BERLIN FOR ASEC RIDGWAY
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E.O. 12356: DECL: OADR

TAGS: PREL, AU

SUBJECT: WALDHEIM: U.S. TEAM PRESENTATION TO AUSTRIAN AUTHORITIES--POLITICAL REACTIONS

REF: STATE 137881 (NOTAL)

1. ENTIRE TEXT.

2. SUMMARY: THE WALDHEIM BRIEFING TEAM MET WITH SENIOR GOA OFFICIALS ON FRIDAY, MAY 15, FOR 2 1/2 HOURS TO PRESENT THE LEGAL AND FACTUAL BASIS FOR THE U.S. DECISION TO EXCLUDE WALDHEIM FROM THE U.S. UNDER PROVISIONS OF THE IMMIGRATION AND NATIONALITY ACT. WHILE CHANCELLOR VRANITZKY HAD ORIGINALLY INDICATED HE WOULD RECEIVE THE TEAM HE DEMURRED FROM DOING SO, PRESUMABLY TO KEEP SOME POLITICAL DISTANCE FROM THE TEAM AND THE NECESSITY TO RESPOND TO ITS PRESENTATION. THE CHANCELLOR, INSTEAD, WAS REPRESENTED BY MINISTER OF JUSTICE EGMONT FOREGGER. FOREGGER WELCOMED THE TEAM, INDICATING THAT THE GOA WAS WAITING TO HEAR THE "EVIDENCE" AGAINST WALDHEIM--AND STRESSED HE WAS REPRESENTING THE GOA SINCE THE AMERICANS WERE FROM THE U.S. DEPARTMENT OF JUSTICE (DOJ).

3. AFTER ABOUT THIRTY MINUTES INTO THE U.S. PRESENTATION OF THE LEGAL BASIS OF THE U.S. DECISION, THE PROCEEDINGS WERE STOPPED BY A FRACTIONOUS EXCHANGE WITH KLESTIL, WHO DISMISSED THE U.S. LEGAL PRESENTATION, NOTING AUSTRIA HAD COMPLETE UNDERSTANDING OF THE U.S. LAW AND ITS APPLICABILITY IN THIS CASE, BUT THAT THE ISSUE FOR THE AUSTRIANS WAS POLITICAL. THE MEETING RESUMED, WITH SOLE CONCENTRATION ON THE FACTUAL BASIS OF THE DECISION. THE U.S. SIDE METICULOUSLY DETAILED THE LEGITIMACY OF EXCLUDING WALDHEIM UNDER U.S. LAW, AND MADE THE FURTHER POINT THAT THIS DECISION WAS NOT REVERSIBLE. END SUMMARY.

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UNDER SUBSTANTIAL ATTACK HERE. WE NEED TO ASK OURSELVES WHETHER OR NOT IT WOULD SERVE OUR INTERESTS TO RESPOND TO THESE WIDESPREAD DISTORTIONS--AND IF SO, HOW WE DO SO MOST EFFECTIVELY. IT WILL BE DESIRABLE TO OBSERVE HOW FURTHER REACTION TO THE TEAM'S VISIT EVOLVES, AND WHAT VRANTIZKY WILL SAY AFTER TUESDAY'S MINISTERIAL COUNCIL MEETING. WE WILL BE PROVIDING SOME OBSERVATIONS AND RECOMMENDATIONS IN A FOLLOWING SEPTEL. END COMMENT.

10. COMPOSITION OF THE AUSTRIAN AND AMERICAN SIDES:

THE GROUP THAT MET ON MAY 15 CONSISTED OF THE FOLLOWING PARTICIPANTS:

FOR THE U.S.:

AMBASSADOR LAUDER
MARK RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL,
CRIMINAL DIVISION, DEPARTMENT OF JUSTICE
NEAL SHER, DIRECTOR, OFFICE OF SPECIAL INVESTIGATIONS,
CRIMINAL DIVISION, DEPARTMENT OF JUSTICE
MARY MOCHARY, DEPUTY LEGAL ADVISOR, DEPARTMENT OF STATE
FELIX S. BLOCH, DEPUTY CHIEF OF MISSION
MICHAEL STERNBERG, POLITICAL COUNSELOR

FOR THE AUSTRIAN SIDE:

AMBASSADOR THOMAS KLESTIL, SECRETARY GENERAL, MFA
DR. EVA NOWOTNY, FOREIGN POLICY ADVISOR TO THE CHANCELLOR
AMB. HELMUT TIERKE, HEAD, MFA INTERNATIONAL LAW DIVISION
GERHART HOLZINGER, HEAD OF THE CONSTITUTIONAL SERVICE
OF THE FEDERAL CHANCELLERY
DR. OKRAZEK, CONSTITUTIONAL SERVICE OF THE FEDERAL
CHANCELLERY.

11. THE PRESENTATION:

THE PROCEEDINGS WERE OPENED BY AUSTRIAN MINISTER OF JUSTICE EGMONT FOREGGER, WHO TOLD THE AMERICAN SIDE THAT THE MINISTRY OF JUSTICE HAD BEEN ENTRUSTED WITH THE TASK OF WELCOMING THE AMERICAN VISITORS ON BEHALF OF THE GOA. HE NOTED THAT IT WAS THE U.S. DEPARTMENT OF JUSTICE DECISION AND THE AUSTRIAN REQUEST FOR DOCUMENTATION WHICH HAD PROMPTED THIS MEETING. AFTER THE DECISION OF THE ATTORNEY GENERAL, SAID FOREGGER, THE DEPARTMENT OF JUSTICE DECLARED ITSELF READY TO MAKE AVAILABLE TO THE GOA THOSE MATERIALS WHICH HAD BEEN THE BASIS FOR THE U.S. DECISION. AS A CONSEQUENCE OF THAT DECLARATION, THE AUSTRIAN JUSTICE MINISTRY ASKED FOR THE RELEVANT DOCUMENTATION LEADING TO THE AMERICAN DECISION.

12. FOREGGER WENT ON TO OBSERVE THAT THE AMERICAN GROUP WAS MADE UP OF DEPARTMENT OF STATE AND DEPARTMENT OF JUSTICE REPRESENTATIVES WHO HAD ARRIVED PERSONALLY TO PUT "DOCUMENTS AT THE DISPOSAL OF THE GOVERNMENT OF AUSTRIA." FOR THIS, FOREGGER SAID, HE THANKED US ON BEHALF OF HIS GOVERNMENT. HE CONCLUDED BY OBSERVING THAT THERE WOULD BE NO FORMAL AGENDA FOR THIS MEETING AND IT WAS ENTIRELY UP TO THE AMERICAN SIDE ON HOW TO CONDUCT THE MEETING.

13. FOREGGER'S INTRODUCTION LASTED ABOUT TWO MINUTES, AFTER WHICH HE LEFT THE MEETING. (COMMENT: SUBSEQUENTLY, ON T.V., FOREGGER IMPLIED THAT HE HAD BEEN PRESENT FOR THE ENTIRE ("THREE HOUR") DURATION OF THE MEETING. HE CHARACTERIZED THE MEETING AS FRIENDLY, HELPFUL AND CORRECT.)

14. AMBASSADOR LAUDER THEN OFFERED BRIEF INTRODUCTORY

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REMARKS. HE INTRODUCED THE AMERICAN SIDE, NOTING THAT THE EXCEPTIONAL RESPONSE OF THE AMERICAN GOVERNMENT IN SENDING THIS EXPERT GROUP TO AUSTRIA WAS AN EARNST OF THE U.S. DESIRE TO MEET THE AUSTRIAN REQUEST FOR INFORMATION ON THE DECISION ON WALDHEIM NEEDED TO CONTINUE A CONSTRUCTIVE DIALOGUE WITH THE U.S.

15. THE AUSTRIAN POSITION:

AMBASSADOR KLESTIL, SPEAKING FOR THE AUSTRIAN SIDE, THEN DELIVERED HIS OPENING REMARKS. HE TOLD THE U.S. SIDE THAT HE WANTED TO STATE UNEQUIVOCALLY HIS CONCERN ABOUT THE POLITICAL CONSEQUENCES AND NEGATIVE EFFECT OF THE U.S. DECISION ON AUSTRIA'S RELATIONS WITH THE U.S. AND AUSTRIA'S STANDING IN THE WORLD. HE WENT ON TO SAY THAT "THE GOVERNMENT OF AUSTRIA MAKES CLEAR THAT YOUR (U.S.) DECISION IS UNACCEPTABLE IN TERMS OF HUMAN RIGHTS." "I UNDERSTAND," CONTINUED KLESTIL, "YOUR LAW." "BUT THE AUSTRIAN PUBLIC DOES NOT. IT SEEMS TO AUSTRIANS AS A VERDICT ON WALDHEIM'S CONDUCT." THE AUSTRIAN POSITION, ASSERTED KLESTIL, IS VERY DIFFERENT FROM THAT OF THE U.S. KLESTIL CONCLUDED HIS REMARKS BY STATING THAT IN VIEW OF THE LONG-STANDING RELATIONSHIP BETWEEN AUSTRIA AND THE U.S., HE HOPED "YOU CAN GIVE US DOCUMENTS SUPPORTING YOUR DECISION, CONCRETE EVIDENCE, FINDINGS AND CONCLUSIONS. IF ALL YOU CAN GIVE US IS WHAT IS IN ACCORDANCE WITH U.S. LAW, THE PROBLEM, FROM OUR POINT OF VIEW, CANNOT BE RESOLVED."

16. U.S. RESPONSE:

DEPUTY LEGAL ADVISOR MARY MOCHARY RESPONDED TO KLESTIL, TELLING HIM THAT THE U.S. SIDE WAS HERE BECAUSE THE AMBASSADOR AND ATTORNEY GENERAL AND SECRETARY OF STATE HAD AGREED TO THIS UNUSUAL STEP OF SENDING SUCH A GROUP TO AUSTRIA IN ORDER TO AFFIRM

THE CLOSE RELATIONSHIP BETWEEN THE TWO COUNTRIES. MOCHARY ASSERTED THAT THE U.S. WANTED A CONSTRUCTIVE DIALOGUE TO REPAIR THE HARM TO THE BILATERAL RELATIONS. THE TEAM WAS HERE AT THE BEHEST OF THE AUSTRIAN GOVERNMENT, WHICH WANTED SOME EXPLANATION OF THE U.S. DECISION. SENDING A LEGAL TEAM WAS INDEED A VERY UNUSUAL STEP. MOCHARY WENT ON TO OBSERVE THAT SHE DID NOT KNOW IF AUSTRIA WOULD EVER ACCEPT THE FACT THAT THE DECISION WAS A NECESSARY ONE, MADE UNDER U.S. LAW. IT WAS THE RESPONSIBILITY OF THE JUSTICE DEPARTMENT TO ADMINISTER THAT LAW FAIRLY, AND IT HAD DONE SO IN THE CASE OF WALDHEIM.

17. MOCHARY WAS FOLLOWED BY DEPUTY ASSISTANT ATTORNEY GENERAL MARK RICHARD, WHO EXPLAINED HIS ROLE AND THE ROLE OF THE OFFICE OF SPECIAL INVESTIGATIONS (OSI) IN THE CASE. HE NOTED THE EXTENT OF EXPERTISE ON THE OSI STAFF. OSI HAD BROUGHT TO JUSTICE 40 OR 50 CASES WITHIN THE U.S. OF PERSONS WHO HAD ENGAGED IN ACTIVITIES WHICH MAY HAVE BARRED THEIR ENTRY INTO THE COUNTRY. HE DESCRIBED THE DIFFICULT AND PAINSTAKING PROCEDURES FOR REVIEWING THE CITIZENSHIP OF SUCH INDIVIDUALS AND WENT ON TO ASSERT THAT THE U.S. HAD A RESPONSIBILITY TO PREVENT THE ENTRY OF INDIVIDUALS IF THERE IS REASON TO BELIEVE THEY HAD ENGAGED OR BEEN ASSOCIATED WITH WARTIME PERSECUTION.

18. RICHARD TOLD THE AUSTRIANS THAT THE PROCESS THAT HAD BEEN EMPLOYED IN REGARD TO WALDHEIM HAD BEEN EXTRAORDINARY. IT HAD LASTED OVER 12 MONTHS, IN WHICH CAREFUL ANALYSIS OF VOLUMINOUS MATERIALS, INCLUDING MATERIAL SUBMITTED BY WALDHEIM'S LAWYERS AND SON, HAD BEEN ANALYZED. AFTER THIS EXTENSIVE ANALYSIS OF COPIOUS

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DOCUMENTS, THE U.S. HAD CONCLUDED THAT IN ACCORDANCE

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WITH U.S. LAWS, WALDHEIM HAD ASSISTED AND ENGAGED IN ACTIVITIES EXCLUDABLE UNDER THE PROVISIONS OF THE U.S. IMMIGRATION ACT. RICHARD WENT ON TO ENUMERATE THE ACTIVITIES:

--TRANSFER OF CIVILIAN PRISONERS TO THE SS FOR EXPLOITATION AND SLAVE LABOR.

--UTILIZATION OF ANTI-SEMITIC PROPAGANDA.

--THE DEPORTATION OF CIVILIANS TO CONCENTRATION AND DEATH CAMPS.

--REPRISALS DIRECTED AGAINST HOSTAGES AND CIVILIANS.

--DEPORTATION OF JEWS FROM VARIOUS GREEK ISLANDS.

--MISTREATMENT OF ALLIED PRISONERS.

RICHARD CONCLUDED THAT ANY SINGLE ITEM FROM THE ABOVE LIST WOULD BE SUFFICIENT TO EXCLUDE ANY PERSON UNDER U.S. LAW, AND THAT WALDHEIM HAD BEEN FOUND EXCLUDABLE UNDER ALL OF THE ITEMS ENUMERATED ABOVE. TO APPRECIATE HOW WE ARRIVED AT THESE CONCLUSIONS, ONE MUST APPRECIATE THE SCOPE OF U.S. LAW.

19. MOCHARY THEN BEGAN A DESCRIPTION OF THE SPECIFIC PROVISIONS OF 212 (A) 33, THE HOLTZMAN AMENDMENT. SHE STATED THAT THE U.S. HAD CONFINED ITS INVESTIGATION TO WALDHEIM'S WARTIME SERVICE AND THE QUESTION OF WHETHER HE HAD ASSISTED OR OTHERWISE ENGAGED IN PERSECUTION OF CIVILIANS. SHE NOTED THAT THE PARTICULAR LAW WHICH HAD BEEN APPLIED HAD BEEN REVIEWED BY THE COURTS ANY NUMBER OF TIMES AND THE LEGISLATION UPHOLD AS CONSTITUTIONAL. SHE EMPHASIZED THAT A CASE BROUGHT UNDER THE IMMIGRATION ACT IS CIVIL AND NOT CRIMINAL IN NATURE. WALDHEIM HAD NOT BEEN TRIED FOR CRIMES. THE WALDHEIM DECISION HAD BEEN BASED ON A PRIMA FACIE CASE UNDER 212 (A) 33.

20. MOCHARY WENT ON TO DESCRIBE THE APPLICATION OF THAT LAW. A PERSON DOES NOT HAVE TO HAVE SERVED IN A COMMAND ROLE TO BE EXCLUDED. IT WOULD BE SUFFICIENT FOR AN INDIVIDUAL TO HAVE BEEN IN A UNIT WHICH ENGAGED IN PERSECUTION. FURTHERMORE, THERE WERE NO PROVISIONS FOR WAIVER OF THE EXCLUSION FROM THE U.S. AND, SHE TOLD OUR AUSTRIAN INTERLOCUTORS, IT WAS LIFE LONG.

21. THERE THEN FOLLOWED A LONG EXPLICATION OF VARIOUS CASES IN WHICH THE LAW HAD BEEN APPLIED. AT THIS POINT, AMBASSADOR KLESTIL INTERRUPTED THE PRESENTATION. HE TOLD THE AMERICAN SIDE THAT HE OBJECTED TO THE PRESENTATION AS IT WAS BEING CONDUCTED, AND PARTICULARLY TO THE PRESENTATION OF SPECIFIC ILLUSTRATIVE CASES. HE AND OTHERS ON THE AUSTRIAN SIDE FULLY WELL UNDERSTOOD U.S. LAW. HE STATED THAT FROM THE AUSTRIAN VIEW, ONE COULD NOT PUT WALDHEIM IN THE SAME CATEGORY "AS MR. MILLER." HE IS THE PRESIDENT OF AUSTRIA. FURTHERMORE, HE SAID, HE HAD REASON TO OBJECT TO THE APPLICATION OF THAT PART OF THE LAW IN WHICH "REASON TO BELIEVE" WAS ENOUGH TO EXCLUDE WALDHEIM FROM THE U.S. HE ASSERTED THAT THERE WAS A NEED TO PROVE THE U.S. CASE. KLESTIL CONTINUED: HE WAS A DIPLOMAT AND HE WAS HERE TO LOOK INTO THE POLITICAL DIMENSIONS OF THE CASE. HE HAD HOPED THAT THE U.S. WOULD BRING WITH IT PROOF, A PIECE OF EVIDENCE--PROOF OF WHAT THE WORLD PUBLIC UNDERSTANDS TO BE THE CHARGES AGAINST WALDHEIM.

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22. MOCHARY RESPONDED THAT THE QUESTIONS POSED IN THE CASE AGAINST WALDHEIM WERE NOT ONES OF WAR CRIMES. THE U.S. WAS TRYING TO CONVEY AN UNDERSTANDING OF ITS POSITION TO THE AUSTRIANS, WHICH WOULD ONLY BE POSSIBLE FOR THE AUSTRIANS TO UNDERSTAND IF THEY WERE PREPARED TO UNDERSTAND U.S. LAW. SHE OBSERVED THAT THE U.S. HAD NEVER LOOKED INTO THE QUESTION OF WAR CRIMES SINCE THIS WAS NOT THE CHARGE AGAINST WALDHEIM. IT WOULD BE UNREASONABLE TO ASK FOR PROOF OF CHARGES THAT THE U.S. HAD NEVER MADE.

23. AMBASSADOR LAUDER THEN TRIED TO BRIDGE THE GAP BY STATING THAT BOTH POINTS OF VIEW WERE LEGITIMATE. IT WAS NOT A QUESTION OF WALDHEIM BEING A WAR CRIMINAL BUT, AT THE SAME TIME, KLESTIL SHOULD APPRECIATE THAT WALDHEIM WAS NOT JUST ANOTHER MEMBER OF THE WEHRMACHT.

DEPUTY LEGAL ADVISOR MOCHARY ATTEMPTED TO BRING THE PROCEEDINGS BACK ON TRACK AGAIN, SAYING THAT SHE BELIEVED IT WOULD BE USEFUL TO HEAR THE U.S. SIDE OUT SO THAT THE AUSTRIANS COULD UNDERSTAND THE U.S. POSITION.

24. AMBASSADOR KLESTIL ANGRILY RESPONDED THAT CONSIDERING THE IMPORTANCE OF THE ISSUE, HE HAD BEEN INSTRUCTED BY THE CHANCELLOR AND VICE CHANCELLOR THAT UNLESS THE U.S. COULD OFFER PROOF OF WHAT HAD HAPPENED, IT WOULD BE BEST FOR HIM TO LEAVE AND TO BRING IN LEGAL EXPERTS. HE REITERATED THAT HE WAS NOT IN A POSITION TO REVIEW THE LEGAL CASE. HE WAS A POLITICAL EXPERT AND WOULD PREFER TO TALK ABOUT THE POLITICAL DIMENSIONS OF THE CASE. HE SUGGESTED HE BRING IN THE ERMACORA GROUP WHO HAD JUST RETURNED FROM BELGRADE AND WAS WAITING OUTSIDE IN ORDER TO REVIEW THE DOCUMENTS. HE, SAID KLESTIL, THOUGHT THAT THE FIRST PART OF THE MEETING WOULD BE SO SENSITIVE THAT THE ERMACORA COMMISSION SHOULD BE EXCLUDED. BUT THAT APPARENTLY WAS NOT THE CASE AND THEY SHOULD LISTEN TO THIS LEGAL EXPLANATION.

25. AT THAT POINT, MOCHARY OBSERVED THAT IF THE AUSTRIAN COMMISSION WERE BROUGHT IN, THE U.S. SIDE COULD ONLY EXPLAIN ITS LAW, NOTHING MORE. THERE WAS THEN A SHORT BREAK FOR CONSULTATIONS, AFTER WHICH THE TWO SIDES RECONVENED. KLESTIL THEN ASKED WHETHER THE U.S. COULD GIVE THE BACKGROUND ON THE SPECIFIC CHARGES AGAINST WALDHEIM. NOWOTNY INTERJECTED BY ASKING WHETHER WE COULD ELABORATE THE SIX CHARGES BROUGHT UP BY RICHARD (PARA 17). SHE NOTED THAT THE AUSTRIAN SIDE HAD SPENT MUCH TIME UNDERSTANDING THE AMERICAN LAW AND THAT, GIVEN WHAT WAS BEING PRESENTED NOW, FELT THAT CONCENTRATION ON THE FACTUAL BASIS OF OUR DECISION WOULD BE MOST PRODUCTIVE.

26. THERE THEN BEGAN A LENGTHY (APPROXIMATELY 1 1/2 HOUR) TEAM PRESENTATION OF THE FACTUAL BASIS. IT WAS BEGUN BY RICHARD, WHO INTRODUCED THE PRESENTATION BY NOTING THAT THE FACTUAL BASIS WAS DRAWN TOGETHER LIKE A MOSAIC. FOR U.S. PURPOSES, WE LOOK AT THE PERSON'S ASSIGNMENT AND THE UNITS' ACTIVITIES DURING A SPECIFIC TIME PERIOD. WHAT HE WOULD PRESENT WAS THE INFORMATION BEARING ON WALDHEIM'S UNIT'S ACTIVITIES AND WALDHEIM'S ROLE. RICHARD WENT ON TO SAY THAT HIS FOCUS WAS ON WALDHEIM'S ACTIVITIES IN THE BALKANS IN 1942 AND 1943 AND NO OTHER ALLEGATIONS. THERE THEN FOLLOWED A POINT BY POINT REVIEW OF WALDHEIM'S BALKAN SERVICE.

27. HE CITED THE DATES, PLACES AND UNITS OF WALDHEIM'S SERVICE IN THE BALKANS AND DESCRIBED THE VARIOUS MILITARY OPERATIONS IN WHICH WALDHEIM'S UNITS HAD BEEN ENGAGED. EVIDENCE WAS LAID OUT OF DESTRUCTION OF TOWNS, DEPORTATIONS OF CIVILIANS TO SLAVE LABOR AND OF JEWS TO

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CONCENTRATION CAMPS, EXECUTION OF CAPTURED PARTISANS,
INTERROGATIONS OF PRISONERS, ETC., IN WHICH WALDHEIM'S
UNITS HAD EITHER DIRECTLY ENGAGED OR WHICH THEY HAD
SUPPORTED. THERE WAS ALSO DISCUSSION BY THE U.S. SIDE
OF WHAT IS KNOWN TO HAVE BEEN THE ACTUAL ROLE PLAYED AT
THAT TIME BY OFFICERS PERFORMING THE SAME FUNCTIONS AS
WALDHEIM DID AND OF WHAT, THEREFORE, HAD TO BE INFERRED
ABOUT WALDHEIM'S LIKELY ACTIVITIES.

28. IT WAS ALSO STRESSED BY THE U.S. TEAM THAT IN THE
COURSE OF THE OSI INVESTIGATION OF HIS CASE, WALDHEIM
HAD BEEN OFFERED A "UNIQUE" OPPORTUNITY TO MAKE SUB-
MISSIONS TO THE DOJ ABOUT THE RELEVANT PERIODS OF HIS
MILITARY SERVICE. IT WAS ALSO NOTED THAT WALDHEIM HAD
HAD THE ADVANTAGE OF "VERY COMPETENT AMERICAN COUNSELORS"
THOROUGHLY FAMILIAR WITH THE U.S. LAWS INVOLVED AND WITH
THE NATURE OF THE PROCEEDING AGAINST HIM. MOREOVER,
WALDHEIM HAD AVAILED HIMSELF OF THIS OPPORTUNITY TO MAKE
NUMEROUS SUBMISSIONS, THE CONTENT OF WHICH INDICATED
HIS CLEAR UNDERSTANDING OF THE MATTERS AT ISSUE. SOME
OF THE MATERIALS THUS SUPPLIED IN WALDHEIM'S DEFENSE
HAD SERVED TO CLEAR UP CERTAIN ISSUES IN HIS FAVOR;
OTHERS, HOWEVER, HAD BEEN INCUPLATORY RATHER THAN
EXCULPATORY.

29. AT THAT POINT, AMBASSADOR KLESTIL, TO REMOVE ANY
DOUBT ON THE ISSUE, ASKED HOW EXTENSIVE THE DIALOGUE HAD
BEEN BETWEEN THE DOJ AND WALDHEIM AND WHETHER WALDHEIM
HAD BEEN INFORMED OF THE CHARGES AGAINST HIM. IN
RESPONSE, THE DATES OF WALDHEIM'S NUMEROUS SUBMISSIONS
WERE CITED. AND, IT WAS NOTED, ALTHOUGH WALDHEIM WAS
NOT INFORMED OF ANY CHARGES AS SUCH, HE WAS ASKED FOR
INFORMATION ON SPECIFIC DATES, PLACES AND MILITARY
OPERATIONS. TO ILLUSTRATE THE POINT, THE RELEVANT
PORTIONS OF A DOJ LETTER TO WALDHEIM WERE READ VERBATIM
TO THE AUSTRIANS.

30. IN ADDITION TO THE EXTENSIVE EVIDENCE THAT THERE
WAS REASON TO BELIEVE THAT WALDHEIM, BY VIRTUE OF HIS
POSITION ON THE DATES IN QUESTION, HAD "ASSISTED IN
PERSECUTION," ETC., THE U.S. TEAM NOTED THAT THE
PATTERN OF EVASION IN WALDHEIM'S RESPONSES WAS A
STRONG, ADDITIONAL REASON FOR SUSPICION. BECAUSE OF
THE U.S. CONSTITUTIONAL PROTECTION AGAINST SELF-
INCRIMINATION, OUR LEGAL SYSTEM HELD SUBMISSIONS THAT
WERE MADE BY AN INDIVIDUAL TO VERY HIGH STANDARDS OF
CREDIBILITY. IN WALDHEIM'S CASE, THERE WAS A CONSISTENT
RECORD OF DENIAL WHICH, WHEN CHALLENGED BY HISTORICAL
FACT, WAS THEN REVISED BY WALDHEIM TO GRUDGING ADMISSION.
FROM HIS MEMOIRS AND THE OBVIOUSLY MISLEADING REPLY HE
GAVE IN 1980 TO A VERY SPECIFIC QUESTION ON HIS MILITARY
SERVICE (PUT BY CONGRESSMAN SOLARZ) TO THE WRITTEN
SUBMISSIONS GIVEN TO THE DOJ, WALDHEIM HAD, AGAIN AND
AGAIN, SOUGHT TO MISLEAD.

31. AFTER TWO AND A HALF HOURS THE AUSTRIAN SIDE
INDICATED THAT THEY FELT THE DISCUSSION SHOULD BE ENDED.
AMB. KLESTIL NOTED THAT HE HAD BEEN HANDED A NOTE INFORMING
HIM HE WOULD HAVE TO REPRESENT AN AILING FM MOCK AT
THE FOREIGN MINISTER'S MEETING IN CYPRUS. HE THANKED
THE AMERICANS FOR "INFORMING US OF THE BASIS ON WHICH
YOU REACHED YOUR DECISION." THE PROBLEM, IN KLESTIL'S
VIEW, WAS STILL HOW THE SITUATION WOULD BE PERCEIVED BY
THE AUSTRIAN PUBLIC. IN PASSING, HE NOTED THAT AUSTRIA
HAD SIMILAR VISA LAWS AND REGULATIONS TO KEEP OUT
UNDESIRABLE PERSONS WHERE THE BURDEN OF PROOF WAS ON
THE APPLICANT, NOT ON THE GOVERNMENT. NONETHELESS,
KLESTIL WAS CAREFUL TO NOTE IN CLOSING THAT "I HAVE TO
REFER TO THE (AUSTRIAN) GOVERNMENT POSITION ... (UNDER
WHICH) THIS (THE AMERICAN CASE AGAINST WALDHEIM) IS NOT

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ACCEPTABLE TO US." IN RESPONSE TO AMB. LAUDER'S BRIEF
REVIEW OF WHAT HE CHARACTERIZED AS AN EVEN STRONGER
U.S. CASE THAN HE HAD EXPECTED, KLESTIL SAID HE THANKED
THE TEAM BUT WOULD "NOT WANT TO QUALIFY (I.E.
CHARACTERIZE) THE INFORMATION AS YOU (I.E. AMB. LAUDER)
HAVE."

32. THE U.S. SIDE SAID THAT IT WAS WILLING TO CONTINUE
TO "CLARIFY" THE U.S. DECISION AND TO ANSWER ANY
QUESTIONS, "EITHER NOW OR DURING CHANCELLOR VRANITZKY'S
VISIT TO WASHINGTON." IF FURTHER INFORMATION WAS
DESIRED BY THE AUSTRIAN SIDE, AN OPPORTUNE TIME TO RAISE
THE MATTER WOULD BE THE CHANCELLOR'S MEETING WITH
ATTORNEY GENERAL MEESE. AS A FINAL FOOTNOTE, MR. SHER
SAID THAT, ALTHOUGH THE QUESTION BEFORE THEM WAS NOT
ONE OF WAR CRIMINALTY, AND THEY HAD NO JURISDICTION
TO LOOK INTO THAT QUESTION, IT WAS HIS PERSONAL,

UNOFFICIAL BELIEF THAT, UNDER THE NUREMBERG STATUTES,
WALDHEIM'S ACTS COULD BE INTERPRETED AS WAR CRIMES.

33. THE MEETING ENDED ON A FRIENDLY NOTE DESPITE
STATEMENTS WHICH INDICATED WE CONTINUED TO BE FAR
APART IN OUR PERCEPTIONS OF THE SITUATION.

34. THIS CABLE HAS BEEN CLEARED BY MARY MOCHARY,
DEPUTY LEGAL ADVISER. LAUDER UNQUOTE LAUDER
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ACTION US19-05

INFO AMB-01 CPU-01 DCM-01 AMBW-01 HAMB-01 PF2-02 STUT-01
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TO ALL PRINCIPA. POSTS IMMEDIATE

RUTADD/AMCONSUL DOUALA IMMEDIATE

RUEHCR/AMEMBASSY MAPUTO IMMEDIATE

RUEHCR/AMEMBASSY PARAMARIBO IMMEDIATE

RUDKBR/AMCONSUL BARCELONA IMMEDIATE

RUFHOLB/AMCONSUL DUSSELDORF IMMEDIATE

RUFHROA/AMCONSUL FLORENCE IMMEDIATE

RUFHOLC/AMCONSUL HAMBURG IMMEDIATE

RUDKRW/AMCONSUL KRAKOW IMMEDIATE

RUFHROD/AMCONSUL PALERMO IMMEDIATE

RUEHNT/AMCONSUL THESSALONIKI IMMEDIATE

RUEHCR/AMCONSUL TORONTO IMMEDIATE

RUFHROB/AMCONSUL GENOA IMMEDIATE

RUEHCR/AMCONSUL DURBAN IMMEDIATE

RUHQAQA/USCINCPAC HONOLULU HI IMMEDIATE

RUDKRW/AMCONSUL POZNAN IMMEDIATE

ALL POLADS POSTS

RUEADWW/NSC WASHDC

RUEADWW/WHITE HOUSE WASHDC

RUEHC/SECSTATE WASHDC

RUEHDT/USMISSION USUN NEW YORK 2219

XMT AMCONSUL VANCOUVER

VOA /PHILIPPINE RELAY STATION TINANG

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WHITE HOUSE FOR HOWARD AND NSC BENIS;

FT BRAGG FOR USIA ADVISOR AND MBFR FOR STEWART; PARIS

ALSO PASS ARS AND OECD; USUN FOR HOTTELET; OTHER

MILITARY ADDEES FOR PUBLIC AFFAIRS AND POLADS

EO 12356 N/A

SUBJECT: PUBLIC AFFAIRS GUIDANCE 87-32: PLACEMENT OF KURT
WALDHEIM ON THE WATCH LIST
THE FOLLOWING TALKING POINTS ARE PROVIDED TO PAO'S REGARDING
THE PLACEMENT OF KURT WALDHEIM ON THE WATCH LIST.

TALKING POINTS FOR USIA POSTS

1. FOREIGN MEDIA REACTION TO THE U.S. DECISION TO PLACE
KURT WALDHEIM ON THE "WATCH LIST" SUGGESTS AN
UNFAMILIARITY WITH THE VERY SPECIFIC AND CAREFULLY
FOCUSSED U. S. LAW UNDER WHICH THE ACTION WAS TAKEN.
2. U.S. IMMIGRATION LAWS SPECIFY AS EXCLUDABLE A NUMBER OF
CATEGORIES OF PERSONS WHOSE BACKGROUNDS ARE DEEMED TO
RENDER THEM INELIGIBLE FOR ENTRY INTO THE UNITED
STATES. ONE OF THESE CATEGORIES (8 USC 1182 (A) (3))
MAKES EXCLUDABLE ANY ALIEN WHO:

"DURING THE PERIOD BEGINNING ON MARCH 23, 1933,
AND ENDING ON MAY 8, 1945, UNDER THE DIRECTION OF, OR IN
ASSOCIATION WITH --

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on send to

- (A) THE NAZI GOVERNMENT OF GERMANY,
- (B) ANY GOVERNMENT IN ANY AREA OCCUPIED BY THE
MILITARY FORCES OF THE NAZI GOVERNMENT OF GERMANY,
- (C) ANY GOVERNMENT ESTABLISHED WITH THE ASSISTANCE
OR COOPERATION OF THE NAZI GOVERNMENT OF GERMANY, OR
- (D) ANY GOVERNMENT WHICH WAS AN ALLY OF THE NAZI
GOVERNMENT OF GERMANY;

ORDERED, INCITED, ASSISTED, OR OTHERWISE PARTICIPATED IN
THE PERSECUTION OF ANY PERSON BECAUSE OF RACE, RELIGION,
NATIONAL ORIGIN, OR POLITICAL OPINION."

(THIS SECTION OF THE STATUTE IS COMMONLY REFERRED TO AS
THE "HOLTZMAN AMENDMENT," AFTER THE CONGRESSMAN WHO
PROPOSED IT IN 1978. IT BECAME LAW IN 1979,
SIMULTANEOUS WITH THE CREATION OF THE JUSTICE
DEPARTMENT'S OFFICE OF SPECIAL INVESTIGATIONS, WHICH
CONDUCTS INVESTIGATIONS AND BRINGS CASES UNDER THE LAW.)

3. THIS STATUTE DOES NOT ADDRESS "WAR CRIMES," AND NO
ATTEMPT HAS BEEN MADE BY THE U.S. TO DETERMINE WHETHER
MR. WALDHEIM MAY HAVE COMMITTED SUCH OFFENSES. THE ONLY
ISSUE RELEVANT UNDER U.S. LAW AND CONSIDERED BY THE

JUSTICE DEPARTMENT WAS WHETHER MR. WALDHEIM, DURING HIS WORLD
WAR II SERVICE IN THE BALKANS, "ASSISTED OR OTHERWISE
PARTICIPATED IN" THE PERSECUTION OF PEOPLE "BECAUSE OF RACE,
RELIGION, NATIONAL ORIGIN, OR POLITICAL OPINION."

4. THE U.S. CONGRESS CHOSE TO DESIGNATE THOSE WHO ENGAGED
IN PERSECUTION UNDER THE NAZI REGIME IN GERMANY AS BEING
AN EXTRAORDINARY CLASS OF PEOPLE FOR WHOM SPECIAL
TREATMENT WAS WARRANTED BECAUSE OF THE HORROR OF THE
CRIMES AND ACTS OF PERSECUTION COMMITTED AGAINST
HUMANITY UNDER THAT REGIME. THE VALIDITY OF THE
CONGRESSIONAL ACTION HAS BEEN UPHOLD BY U.S. COURTS.

5. TO ENFORCE OUR EXCLUSIONARY LAWS IT IS STANDARD PRACTICE
FOR THE JUSTICE DEPARTMENT TO PLACE AN INDIVIDUAL ON
LISTS (COMMONLY REFERRED TO AS THE "WATCHLISTS")
MAINTAINED BY THE IMMIGRATION AND NATURALIZATION SERVICE
AND THE STATE DEPARTMENT IF A PRIMA FACIE CASE EXISTS TO
SHOW THAT THE INDIVIDUAL FITS INTO ONE OF THE CATEGORIES
ENUMERATED IN THE STATUTE.

6. DECISIONS REGARDING IMMIGRATION STATUS ARE NOT MADE IN

THE SAME WAY, NOR ARE THEY SUBJECT TO THE SAME STANDARDS, AS
AN ORDINARY CRIMINAL PROCEEDING. INDIVIDUALS ARE NOT BEING
TRIED FOR CRIMES; THEY ARE BEING DESIGNATED AS INELIGIBLE TO
ENTER THE U.S. FOR ONE OF A VARIETY OF REASONS BASED ON A
PRIMA FACIE CASE OF EXCLUDABILITY UNDER THE U.S. LAW.

7. WITH REFERENCE TO THE NAZI PERSECUTION PROVISIONS,
JUDICIAL PRECEDENT MAKES CLEAR THAT IT IS NOT NECESSARY
FOR AN INDIVIDUAL TO HAVE SERVED IN A COMMAND ROLE IN
ORDER TO BE FOUND EXCLUDABLE. COURTS HAVE UPHOLD THE
DENATURALIZATION AND DEPORTATION OF INDIVIDUALS FROM THE
U.S. WHO WERE FOUND SIMPLY TO HAVE SERVED AS
INTERPRETERS, GUARDS, CLERKS AND IN OTHER LOW-LEVEL
POSITIONS IN UNITS KNOWN TO HAVE ENGAGED IN
PERSECUTION. MOREOVER, IN THESE DEPORTATION AND
DENATURALIZATION CASES THE GOVERNMENT CARRIES A HEAVY
BURDEN OF PROOF, AS OPPOSED TO THE ISSUE OF
"EXCLUDABILITY" WHERE THE ALIEN HAS THE BURDEN OF
REBUTTING THE PRIMA FACIE CASE FOUND BY THE GOVERNMENT.

8. UNDER ESTABLISHED U.S. LAW "ASSISTANCE AND PARTICIPATION
IN PERSECUTION" HAS BEEN BROADLY DEFINED. UNITED STATES
COURTS HAVE RULED THAT ACTIVE MEMBERSHIP IN UNITS ENGAGED IN
PROSCRIBED PERSECUTION RENDERS AN INDIVIDUAL DEPORTABLE, AND
HENCE EXCLUDABLE, UNDER THE HOLTZMAN AMENDMENT. IN THE
WALDHEIM CASE, THE JUSTICE DEPARTMENT HAS CONCLUDED THAT
THERE IS AN AMPLE EVIDENTIARY BASIS TO CONCLUDE THAT
WALDHEIM'S UNITS - IN WHICH HE HELD RESPONSIBLE POSITIONS -
AND WALDHEIM HIMSELF ASSISTED OR OTHERWISE PARTICIPATED IN
PERSECUTORY ACTIVITIES COVERED BY THE HOLTZMAN AMENDMENT.

9. THERE IS NO PROVISION IN U.S. LAW ALLOWING AN EXCEPTION

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TO THESE RULES BECAUSE OF EXEMPLARY POST-WAR ACTIVITIES, OR ANY OTHER EXTENUATING CIRCUMSTANCE. WALDHEIM MUST BE TREATED LIKE ANY OTHER INDIVIDUAL UNDER THE LAW. THE U.S. MAY PERMIT HIM TO ENTER THE COUNTRY UNDER A PROVISION EXEMPTING FOREIGN HEADS OF STATE AND OTHERS WITH DIPLOMATIC STATUS SO LONG AS HE HOLDS SUCH A POSITION. BUT HIS STATUS AS A PRIVATE CITIZEN IS LIFELONG, AND IS NOT SUBJECT TO WAIVER.

10. ALTHOUGH THE SPECIFIC LAW INVOLVED IN THE WALDHEIM CASE IS RELATIVELY NEW (1979), IT HAS ANTECEDENTS DATING BACK TO THE IMMEDIATE POST-WAR YEARS. A 1948 LAW RULED INELIGIBLE FOR A VISA TO ENTER THE U.S. ANY PERSON WHO COULD BE SHOWN "TO HAVE ASSISTED THE ENEMY (I.E., THE THIRD REICH) IN PERSECUTING CIVIL POPULATIONS OF COUNTRIES..."

11. THE DECISION REACHED BY THE GOVERNMENT FOLLOWED AN IN-DEPTH ANALYSIS BY THE OFFICE OF SPECIAL INVESTIGATIONS OF AVAILABLE DOCUMENTATION FROM A NUMBER OF SOURCES AS WELL AS THE LENGTHY SUBMISSIONS AND DOCUMENTS SUBMITTED BY MR. WALDHEIM. THESE FINDINGS WERE REVIEWED WITHIN THE DEPARTMENTS OF JUSTICE AND STATE. THE DETERMINATION WAS MADE BY ATTORNEY GENERAL MEESE IN CONSULTATION WITH, AND THE CONCURRENCE OF, SECRETARY OF STATE SHULTZ.

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VIENNA 291724Z MAY 87/0AAA020
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ACTION PF3-03

INFO CPU-01 DCM-01 EMIN-01 AMBW-01 OCA-01 AMB3-03
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29-MAY-87 TOR: 18:23
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CHRG: PROG
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ADD:

VIENNA 7768

FOR AMBASSADOR BURT

FOLLOWING VIENNA 7768 SENT 19 MAY 87 TO SECSTATE WASHDC
REPEATED HEREIN FOR YOUR INFO:

QUOTE:

SECTION 01 OF 02 VIENNA 07768

E.O. 12456: DECL: OADR

TAGS: PREL, AU

SUBJECT: WALDHEIM: MANAGEMENT OF AN EVOLVING ISSUE

REF: (A) FBIS AU181410; (B) VIENNA 7727; (C) VIENNA 7635

1. CONFIDENTIAL-ENTIRE TEXT.

2. SUMMARY: THIS IS AN ACTION MESSAGE. DETAILED U.S. CHARGES AGAINST WALDHEIM HAVE APPEARED IN A LEADING AUSTRIAN WEEKLY, CLEARLY LEAKED FROM AN AUTHORITATIVE AUSTRIAN SOURCE. AT THE SAME TIME, THE INNER AUSTRIAN DEBATE OVER WALDHEIM HAS INCREASED IN INTENSITY, WITH THE PEOPLE'S PARTY (OVP) AND THE SOCIALISTS (SPO) UNDER VRANITZKY ON A DIVERGENT COURSE. THE OVP WANTS A STRONG PUBLIC DEFENSE OF WALDHEIM, WHILE THE SPO WANTS A DECOROUSLY PACED DISASSOCIATION OF THE GOVERNMENT AND NATION FROM THEIR PRESIDENT. MANAGEMENT OF THIS ISSUE FOR VRANITZKY IS VERY TROUBLESOME, AND HE HAS ASKED FOR OUR UNDERSTANDING AND ASSISTANCE IN HELPING HIM. RECOMMENDATIONS ARE CONTAINED IN PARA 11 BELOW. END SUMMARY.

3. U.S. CHARGES AGAINST WALDHEIM AND OTHER ELEMENTS OF THE U.S. BRIEFING TEAM'S PRESENTATION TO THE AUSTRIAN AUTHORITIES ON MAY 15 ARE CARRIED IN THE MAY 18 EDITION OF THE WIDELY READ AUSTRIAN WEEKLY, "PROFIL." THE ARTICLE'S ("SEARCH FOR THE LOST TIME") DETAIL AND ACCURACY CAN ONLY BE SOURCED TO A SENIOR AUTHORITATIVE "LEAK" ON THE AUSTRIAN SIDE (TRANSLATION TRANSMITTED TO THE DEPARTMENT UNDER REF A). THE QUESTION FOR US IS HOW TO RELATE TO THIS INFORMATION WHICH IS NOW IN THE PUBLIC ARENA. EVEN WITHOUT THIS EVENT, WE WOULD HAVE TO CONSIDER, GIVEN THE PLAY THE WALDHEIM ISSUE IS RECEIVING HERE, WHETHER OR NOT TO TAKE AN INITIATIVE IN SETTING THE RECORD STRAIGHT AND, IF SO, HOW WE WOULD WANT TO DO IT.

4. AS THE DEPARTMENT IS AWARE, THERE HAS BEEN WIDESPREAD DISTORTION OF THE U.S. POSITION. REF B OUTLINES MEDIA AND PUBLIC REACTION BOTH TO THE TEAM'S VISIT AND THE LARGER GENERAL QUESTION OF WALDHEIM'S RESPONSIBILITY

FOR ACTS DURING WORLD WAR II. IN A NUTSHELL, THE PUBLIC HAS BEEN MISINFORMED REGARDING THE NATURE OF THE CHARGES AGAINST WALDHEIM AND THE TEAM'S PRESENTATION. THE PEOPLE'S PARTY (OVP)--AND IN PARTICULAR ITS SECRETARY GENERAL, MICHAEL GRAFF--ARE TAKING A TOUGH STANCE IN MAKING POLITICAL HAY OUT OF THE VISIT. CHARGES EMANATING FROM THIS GROUP ALLEGE A VENGEFUL AMERICAN POLICY DIRECTED AGAINST AN INNOCENT WALDHEIM. THEY POINT TO THE LACK OF EVIDENCE AND FURTHER ASSERT THAT THE U.S. HAS RENEGED ON PROVIDING DOCUMENTATION (WHICH WE HAD NEVER PROMISED). THESE ARGUMENTS ARE CONDITIONING PUBLIC OPINION AND SOURING ATTITUDES TOWARD THE U.S.

5. VRANITZKY HAS STEERED THE GOVERNMENT TO TAKE A MORE BALANCED POSITION. HE WOULD LIKE FOR POLITICAL AND ETHICAL REASONS TO INCH AUSTRIA AWAY FROM THE INCUBUS OF WALDHEIM. IN A PRIVATE CONVERSATION WITH THE CHANCELLOR'S FOREIGN POLICY ADVISER, EVA NOWOTNY, WE WERE TOLD THAT THE CHANCELLOR WAS "STUNNED" TO LEARN OF THE NATURE OF THE CHARGES AND EVIDENCE AGAINST WALDHEIM IN A REPORT WHICH DR. NOWOTNY GAVE TO HIM ON THE TEAM'S VISIT. SHE RELATED THAT THE CHANCELLOR'S FACE FELL WHEN HE HEARD HER ACCOUNT OF THE MEETING. HE TOLD HER THAT HE HAD NO IDEA OF THE EXTENT OF THE CHARGES AND WHAT THE U.S. TEAM HAD DONE WAS CONVINCING.

6. NEVERTHELESS, VRANITZKY IS OF THE VIEW THAT AS A GOVERNMENT THEY CAN NOT DRAMATICALLY DISASSOCIATE THEMSELVES FROM WALDHEIM, ALBEIT THE SOCIALIST PARTY ITSELF HAS BEGUN TO DO SO. VRANITZKY, WE ARE TOLD, FEELS THAT THE ISSUE IS SO POTENTIALLY DIVISIVE THAT ANY DRAMATIC STAND WOULD NOT ONLY SPLIT HIS GOVERNMENT BUT WOULD CAUSE GREAT CONFUSION AND FISSURES WITHIN AUSTRIA ITSELF. RATHER, HIS POLICY IS TO ATTEMPT TO LEAD PUBLIC OPINION AWAY FROM WALDHEIM AND TO HAVE THE GOVERNMENT'S POLICY MATCH THIS MOVEMENT. (COMMENT: IN THIS REGARD, WE BELIEVE THAT THE CONTENT OF THE "PROFIL" ARTICLE WAS LEAKED BY THE CHANCELLOR'S OFFICE, PERHAPS WITH HIS CONSENT. END COMMENT.)

7. IT IS CLEAR THAT VRANITZKY AND MOCK ARE LOCKING HORNS POLITICALLY (ALTHOUGH THEY REMAIN ON GOOD PERSONAL TERMS) OVER THE WALDHEIM ISSUE, BUT BOTH WANT TO AVOID THE POTENTIAL THREAT TO THE COALITION. NOWOTNY DESCRIBED SERIOUS DISAGREEMENTS BETWEEN THE CHANCELLOR AND VICE CHANCELLOR OVER HOW TO HANDLE THE WALDHEIM ISSUE AND AUSTRIA'S RELATIONS WITH THE U.S. VICE CHANCELLOR MOCK, FOR EXAMPLE, INSISTED THAT VRANITZKY NOT REPORT THE FACTUAL BASIS OF THE U.S. CASE TO THE MINISTERIAL COUNCIL MEETING TODAY, MAY 19, AT WHICH THE WALDHEIM ISSUE WAS DISCUSSED. THE TWO LEADERS HAD ALSO DISAGREED ON WHETHER OR NOT TO PRESENT A NOTE VERBALE TO THE U.S., PROTESTING ITS TREATMENT OF WALDHEIM. FURTHERMORE, THERE ARE CLEARLY UNSETTLED DISAGREEMENTS BETWEEN THE TWO ON WHAT VRANITZKY IS OBLIGATED TO DO FOR WALDHEIM. MOCK INSISTS THAT VRANITZKY OBEY A PARLIAMENTARY DECISION AND TAKE A STRONG VISIBLE POSITION WITH THE U.S. IN DEFENSE OF THE AUSTRIAN PRESIDENT. AT THIS POINT, VRANITZKY HAS HAD HIS WAY. APPARENTLY, HE HAS RELATED THE FACTUAL BASIS OF THE WALDHEIM CASE TO THE MINISTERIAL COUNCIL AND HAS INSISTED THAT THE GOA WOULD NOT PRESENT A NOTE VERBALE TO THE U.S.

8. AT THE SAME TIME, NOWOTNY CAUTIONED US THAT THE GOVERNMENT COULD NOT DISASSOCIATE ITSELF FROM THE PRESIDENT. RATHER, IT WOULD ATTEMPT TO RENDER THE MINIMUM DUE HIM. WHAT VRANITZKY HOPES, IS TO CONTAIN THE WALDHEIM ISSUE AS AN AUSTRIAN ONE, AND TO

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AVOID DEBATE WITH THE U.S. FURTHERMORE, THE CHANCELLOR
WOULD LIKE OUR HELP IN DRAWING DISTINCTION BETWEEN OUR
CONDEMNATION OF WALDHEIM THE MAN AND OUR RECOGNITION
OF WALDHEIM IN HIS OFFICIAL CAPACITY.

9. VRANITZKY TOLD THE CHARGE' IN A BRIEF AIRPORT
MEETING PRIOR
TO HIS DEPARTURE FOR THE U.S. THAT HE REALLY "HAD A
PROBLEM" TRYING TO RIGHT THE DAMAGE OF THE WALDHEIM
AFFAIR. "PEOPLE," HE SAID, "STILL DO NOT SEEM TO
UNDERSTAND THE U.S. DISTINCTION BETWEEN THE PERSON
OF WALDHEIM AND WALDHEIM AS PRESIDENT. THEY FEEL
THAT AUSTRIA HAS BEEN PUT ON THE WATCH LIST."

10. THE CHANCELLOR WENT ON TO SAY THAT HE WOULD ASK
THE SECRETARY IF THE U.S. COULD NOT GIVE SOME KIND OF
SIGNAL THAT WOULD PUT SUBSTANCE INTO THE DISTINCTION
WHICH THE U.S. HAD DRAWN. WHEN QUERIED AND TOLD THAT
HIS VISIT AND THE LEVEL OF HIS RECEPTION WAS SUCH A
SIGNAL, THE CHANCELLOR RESPONDED THAT IT WAS BY ITSELF
NOT ENOUGH. HOWEVER, HE OFFERED NO CONCRETE IDEAS AS
TO WHAT THAT "SIGNAL" MIGHT BE.

11. RECOMMENDATIONS--SUBJECT TO CONCURRENCE BY AMBASSADOR
LAUDER IN WASHINGTON:

(A) THAT WE ESTABLISH A STANDING U.S. POLICY OF
CONDUCTING NORMAL DIPLOMATIC AND SOCIAL RELATIONS WITH
WALDHEIM WHEN ACTING IN HIS CAPACITY AS PRESIDENT OF
AUSTRIA.

(B) THAT WE AVOID ANY PUBLIC STATEMENTS ON THE
WALDHEIM QUESTION, TO HELP CONTAIN THIS ISSUE AND KEEP IT
WITHIN THE AUSTRIAN ARENA.

(C) HOWEVER, IF ASKED, THAT WE CONFIRM IN WASHINGTON
THE FACTUAL CASE AGAINST WALDHEIM--AND ITS BACKGROUND--
ALREADY MADE PUBLIC IN "PROFIL." (THE GOA IS AWARE THAT
IF WE ARE ASKED ABOUT INFORMATION IN THE PUBLIC ARENA,
WE CANNOT OBFUSCATE OR DENY THE VALIDITY OF ACCURATE
REPORTS.)

12. COMMENT: DESPITE THE GOVERNMENT'S DESIRE TO
HANDLE THE WALDHEIM ISSUE AT A MEASURED PACE, IT IS NOT
TOTALLY IN CONTROL OF EVENTS. TONIGHT WALDHEIM WILL
APPEAR ON TV WITH A PERSONAL DECLARATION--UNPRECEDENTED
FOR AN AUSTRIAN PRESIDENT. THE PEOPLE'S PARTY ITSELF
AND THE MEDIA HAVE SHOWN LITTLE INCLINATION TO TAKE
THE HEAT OUT OF THIS ISSUE. WE CAN EXPECT FURTHER
FIREWORKS. INTERESTINGLY ENOUGH, NO PAPERS HAVE YET
PICKED UP ON THE "PROFIL" ARTICLE, BUT THE WIDELY-VIEWED
NIGHTLY TV NEWS ROUNDUP PRESENTED FULLY THE ("PROFIL")
WALDHEIM CHARGES. WE SEE THE GOA'S HAND BEHIND THIS
INITIATIVE AND EXPECT THAT IT WILL BE PICKED UP BY
THE PRESS IN THE COMING DAYS AND INSPIRE CONSIDERABLE
DEBATE. IN RESPECT TO THESE EVENTS, WE BELIEVE, AT
LEAST FOR THE TIME BEING, OUR BEST POLICY IS ONE OF
QUIET AND, IF POSSIBLE, DEMONSTRABLE SUPPORT FOR
VRANITZKY. BLOCH UNQUOTE LAUDER

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