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Department of State

TELEGRAM

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E.O. 12958, as amended, Sect 3.5

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511

NLN 03-25/6 per HR. 11/28/08

By MLH

NARA, Date 5/6/2010

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82

ACTION SS 30

INFO /030 W

117640

RI 181810Z APR 69

FMI AMEMBASSY BONN

TO SECSTATE WASHDC 3064

USBERI BERLIN 4198

INFO USCINCEUR

DA WASHDC

OASD WASHDC

CGUSAMC WASHDC

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EXDIS: NOFORN

SUBJECT: US-FRG MUTUAL WEAPONS DATA EXCHANGE AGREEMENT

REF: PUHAN-FESSENDEN LETTER OF MARCH 26

1. SEPARATE MAAG MESSAGE TO INFO ADDRESSEES TRANSMITS GERMAN REQUEST FOR A LETTER OF OFFER FOR LARGER QUANTITIES OF CHEMICAL WARFARE AGENTS THAN HERETOFORE SHIPPED. INCREASED QUANTITY REQUEST IS RESULT US MILITARY SUGGESTION THAT FMOD CONSOLIDATE ALL REQUIREMENTS IN ONE SHIPMENT TO MINIMIZE TRANSPORTATION CHARGES INVOLVED, NOTING THAT SHIPMENTS MUST BE MADE VIA MILITARY AIRLIFT WITH ACCOMPANYING TECHNICAL ESCORT.
2. IN COURSE REVIEW DOCUMENTS RELATING THIS MATTER, QUESTION HAS ARISEN HERE AS TO BASIS ON WHICH CHEMICAL AGENTS HAVE BEEN DELIVERED TO FRG. WHILE DOCUMENTS REFER MWDDEA AND PROCEED ON ASSUMPTION THERE IS AUTHORITY FOR SUCH DELIVERY, AS EMBASSY UNDERSTANDS IT, RELEVANT DOCUMENTS ARE 15 OCTOBER 1962 MUTUAL WEAPONS DEVELOPMENT MASTER DATA EXCHANGE AGREEMENT (MWDDEA), PLUS TWO ANNEXES, ONE DATED JULY 2, 1965, THE SECOND DATED JANUARY 6, 1969.
3. THE THREE DOCUMENTS CITED REFER ONLY TO THE EXCHANGE OF INFORMATION. WE DO NOT READ THEREIN A BASIS FOR THE DELIVERY OF MATERIALS. OFFICIALS HERE WHO HAVE WORKED WITH THE PROGRAM ARE UNCERTAIN AS TO WHEN OR ON WHAT BASIS MATERIAL RATHER THAN

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SIMPLY INFORMATION WAS PASSED WITH THE MWDDEA CITED AS AUTHORITY.

4. ACCORDINGLY, THE EMBASSY WOULD APPRECIATE BEING ADVISED AS TO WHETHER THE DEPARTMENT HAS INTERPRETED THE MWDDEA MORE BROADLY THAN THE EMBASSY READS IT OR WHETHER THERE IS AN ADDITIONAL DOCUMENT OR DOCUMENTS WHICH SHOULD BE CONSIDERED THE BASIS FOR THE DELIVERY.

5. WISH FLAG ONE ADDITIONAL POINT. ANNEX TO MWDDEA DATED JANUARY 6, 1969, ENTITLED "DEFENSE AGAINST CHEMICAL AGENTS," LISTS FIRMA AUERGESELLSCHAFT A.G., BERLIN (W), NO. 65 AMONG GERMAN ESTABLISHMENTS AND AUTHORITIES "CONCERNED." EMBASSY NOT CLEAR WHAT "CONCERNED" SIGNIFIES, BUT WISHES POINT OUT POSSIBILITY VIOLATION CONTROL COUNCIL LAW 43 DEPENDING ON WHAT IS INVOLVED. WOULD APPRECIATE SUCH INFO AS DEPARTMENT AND BERLIN MAY HAVE REGARDING SIGNIFICANCE OF LISTING OF FIRM IN THIS ANNEX. IS AUERGESELLSCHAFT, FOR INSTANCE, ACTUAL OR POTENTIAL RECIPIENT OF MATTERS IN QUESTION?

6. APART FROM FOREGOING QUESTIONS, EMBASSY BELIEVE BASIC QUESTION IS WHETHER SUCH MATERIALS SHOULD BE MADE AVAILABLE TO FRG. BELIEVE FOLLOWING POSITIVE CONSIDERATIONS EXIST. A) WHETHER 1962 AGREEMENT ENVISAGED DELIVERIES OF MATERIAL OR NOT, GERMANS HAVE BEEN RECEIVING SUCH DELIVERIES AND PRESUMABLY ASSUME WE HAVE BEEN SO INTERPRETING AGREEMENT. IF WE DO NOT CONTINUE, WE WILL HAVE TO CLARIFY SITUATION. THIS COULD BE ACCOMPLISHED MOST CONVENIENTLY IN CONTEXT WE WILL RECOMMEND BELOW. B) PROVISION OF ADEQUATE TEST QUANTITIES PRESUMABLY PRECLUDES THE FRG RESORTING TO COVERT OR ILLEGAL RESEARCH AND DEVELOPMENT OF AGENTS TO SATISFY THEIR TESTING NEEDS. C) FRG PRESUMABLY REQUIRES SUCH AGENTS TO DEVELOP DEFENSIVE MEASURES AGAINST CHEMICAL AND BIOLOGICAL WARFARE. EMBASSY SAYS PRESUMABLY SINCE IT ASSUMES THIS IS END USE OF MATERIALS DELIVERED. D) BEING SOURCE OF MATERIAL FACILITATES AMERICAN ACCESS TO GERMAN RESEARCH IN THIS FIELD.

7. EMBASSY RECOGNIZES THAT THERE ARE A NUMBER OF SIGNIFICANT PROBLEMS INVOLVED IN DELIVERY OF MATERIALS OF THIS TYPE TO FRG. POTENTIAL DANGER OF EMBARRASSMENT WAS IMPLICIT IN CONNECTION WITH PETRAS DEFECTION. DEPARTMENT WILL RECALL FMOD STATEMENT OF DECEMBER 6, ADMITTING THAT THE FRG HAD RECEIVED SMALL AMOUNTS OF TEST MATERIALS FOR USE IN RESEARCH ON DEFENSIVE COUNTERMEASURES FROM ITS ALLIES, WHICH PROMPTED SOVIET AND FRENCH INQUIRIES.

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8. FURTHER, IT IS CONCEIVABLE THAT WE MIGHT BE ACCUSED OF ASSISTING GERMANS TO VIOLATE ARMS LIMITATIONS PROVISIONS OF WEU TREATY. WE BELIEVE THIS DIRECTLY INVOLVES QUESTION OF QUANTITY OF ANY SUCH MATERIALS WHICH MIGHT BE DELIVERED. EMBASSY DOES NOT HAVE RESOURCE MATERIALS INDICATING HOW WEU TREATY HAS BEEN INTERPRETED OR POSSIBLY MODIFIED BY SIGNATORIES BUT IT APPEARS THAT RELEVANT PROVISION WOULD BE PARA II OF ANNEX II OF PROTOCOL NO. III. IT APPEARS TO EMBASSY THAT A CHEMICAL SUBSTANCE IN SMALL QUANTITY MIGHT BE PERMISSIBLE UNDER PARA II (C) BUT IN LARGER QUANTITY WOULD BE BANNED UNDER PARA II (B). OUR UNDERSTANDING IS THAT CURRENT PROPOSAL FOR CONSOLIDATION OF SHIPMENT MIGHT HAVE PRECISELY THIS EFFECT.

9. EMBASSY BELIEVES THAT THE RISK OF FURTHER EMBARRASSMENT IN CONNECTION THIS MATTER IS HIGH. WE THEREFORE RECOMMEND FOR THE DEPARTMENT'S CONSIDERATION A MODIFIED CONTINUATION OF DELIVERIES AS FOLLOWS: WE WOULD INDICATE TO FRG THAT AS RESULT OF A GENERAL REVIEW OF THE SITUATION AS RESULT PETRAS CASE US BELIEVES DELIVERIES SHOULD BE ACCOMPLISHED IN SUCH MANNER AS TO AVOID EMBARRASSMENT SHOULD THEY BE PUBLICIZED. WE BELIEVE PROPER VEHICLE TO ACCOMPLISH THIS IS WEU. WE BELIEVE DESIRABLE ARRANGE APPROPRIATE WEU INSPECTION ON A BASIS ADEQUATE TO CONFIRM THAT QUANTITIES CHEMICAL SUBSTANCES IN POSSESSION FRG DO NOT CONTRAVENE LIMITATION IN PROTOCOL III.

10. TO EXTENT THAT EXPENSE OR ADMINISTRATIVE DIFFICULTIES INVOLVED IN SMALL TRANS-ATLANTIC SHIPMENTS ARE SERIOUS FACTOR, WE RECOMMEND THAT LARGER SHIPMENTS BE MADE TO A US CONTROLLED INSTALLATION IN FRG FOR GUARDED STORAGE FOR PERIODIC DELIVERY IN SMALL QUANTITIES AS NEEDED. THIS WOULD BE DONE WITH KNOWLEDGE OF WEU AND COMBINED WITH PROPOSED REGULAR INSPECTION SHOULD PROVIDE US WITH AS MUCH PROTECTION AS WE ARE LIKELY TO GET IN DEALING WITH SUCH SENSITIVE MATERIAL.

11. UNLESS DEPARTMENT CONSIDERS DELIVERY SUCH MATERIAL COVERED BY PRESENT AGREEMENT, END RESULT SUCH PROPOSAL WOULD BE, AS WE SEE IT, ADDITIONAL AGREEMENT WITH FRG SPECIFICALLY COVERING THIS TYPE OF MATERIAL. FESSENDEN

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