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RUFHFT/AMCONSUL FRANKFURT 6473
RUFHOLC/AMCONSUL HAMBURG 2524
RUFHMU/AMCONSUL MUNICH 4949
RUFHOLD/AMCONSUL STUTTGART 2508
RUFHJA/USMISSION USBERLIN 2594
INFO RUFHEB/AMEMBASSY EMBBERLIN 9429
RUFHVI/AMEMBASSY VIENNA 0623
RUFHRN/AMEMBASSY BERN 4613
RUFHVIS/AMCONSUL SALZBURG 0571
RUFHGV/USMISSION GENEVA 2750
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TEXT

TAGS: PREL, GE, AU
SUBJECT: RESPONDING TO CORRESPONDENCE ON KURT WALDHEIM
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REF: (A) BONN 18858; (B) VIENNA 9698

1. FOLLOWING IS THE SUBSTANTIVE PORTION OF A DEPARTMENT-
APPROVED LETTER FOR CONGRESSIONAL AND OTHER INQUIRIES
CONCERNING THE USG DECISION TO PLACE WALDHEIM ON THE
WATCHLIST. IN DRAFTING THE TEXT, DEPARTMENT DREW FROM

NAZI WAR CRIMES DISCLOSURE AC
2000

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USIA POST GUIDANCE; THUS IT IS SIMILAR TO THE LANGUAGE IN REF B. POSTS SHOULD DRAW ON THIS TEXT IN RESPONDING TO INQUIRIES.

2. BEGIN TEXT: 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) (33)), THE SO-CALLED HOLTZMAN AMENDMENT, MAKES ANY ALIEN EXCLUDABLE WHO, UNDER THE DIRECTION OF THE NAZI GOVERNMENT OF GERMANY OR ANY GOVERNMENT ASSOCIATED WITH 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.

3. THIS STATUTE DOES NOT ADDRESS "WAR CRIMES," AND THE U.S. HAS MADE NO ATTEMPT TO DETERMINE WHETHER MR. WALDHEIM MAY HAVE COMMITTED SUCH OFFENSES. THE ONLY ISSUE RELEVANT UNDER U.S. LAWS 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 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. U.S. COURTS HAVE UPHELD THE VALIDITY OF THAT CONGRESSIONAL ACTION.

5. U.S. 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 DECIDED THERE IS AMPLE EVIDENCE TO CONCLUDE THAT MR. WALDHEIM'S UNITS -- IN WHICH HE HELD RESPONSIBLE POSITIONS -- AND MR. 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.

6. I WOULD LIKE TO EMPHASIZE THAT THE U.S. GOVERNMENT DECISION ON MR. WALDHEIM WAS IN NO WAY DIRECTED AGAINST THE OFFICE OF THE AUSTRIAN PRESIDENCY OR THE AUSTRIAN PEOPLE. END TEXT. SHULTZ

ADMIN
END OF MESSAGE

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