

Message Text

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ACTION PM-04

INFO OCT-01 EUR-12 ISO-00 CIAE-00 H-02 INR-07 L-03 NSAE-00

NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 ERDA-05

ACDA-07 OMB-01 /072 W

----- 017489

R 271547Z AUG 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC 1378

CINC USNAVEUR LONDON

INFO CNO WASHDC

CHINFO WASHDC

NAV INTCOM WASHDC

CINC LANT NORFOLK

COMSUBLANT NORFOLK VA

COMSUBLANTREP NORTHWOOD UK

COMSUBRON SIX

COMSUBRON FOURTEEN

C O N F I D E N T I A L SECTION 01 OF 02 BONN 14342

E.O. 11652: GDS

TAGS: MARR, MNUC, GW

SUBJECT: FRG PORT VISIT OF USS FLYING FISH; NPW

VISITS TO FRG

REFS: (A) CINCUSNAVEUR LONDON DTG 171529Z JUL 76

(B) AMEMB BONN 07308 DTG 301727Z APR 76

(C) AMEMB BONN 04140 DTG 111819Z MAR 76

1. BY EMB DAO COMMUNICATION DATED JULY 20, 1976, FRG FMOD WAS ASKED FOR PERMISSION FOR A VISIT OF USS FLYING FISH--SSN 673--TO BREMERHAVEN, ETA OCT 4, ETD OCT 8, 1976. EMB PROVIDED INFORMAL COPY OF ABOVE NOTIFICATION TO RUMPF OF LEGAL SECTION FRG FONOFF TO ASSIST EFFORTS OF FONOFF IN RESOLVING THE GENERAL QUESTION OF NPW VISITS DISCUSSED REFS B AND C (NOTAL).

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2. BY RUMPF LETTER OF AUGUST 18, EMB WAS NOTIFIED

THAT FRG FONOFF HAD BEEN INFORMED BY FRG FMOD THAT PROPOSED VISIT POSED NO PROBLEMS TO FEDERAL GOVERNMENT AS THE FMOD HAD ONCE AGAIN PUT UP FUNDS FROM ITS DEFENSE BUDGET TO MEET THE LIABILITY COVERAGE REQUIRED BY BREMEN LAND LAW. FORMAL FMOD RESPONSE TO EMB DAO COMMUNICATION OF JULY 20 NOT YET RECEIVED. UPON RECEIPT, ADDRESSEES AND USS FLYING FISH WILL BE NOTIFIED.

3. RUMPF LETTER CONTINUES THAT OFFICIAL PROVISION OF CONGRESSIONAL JOINT RESOLUTION OF DECEMBER 6, 1974 (P.L. 93-513) TO FEDERAL GOVERNMENT THROUGH VISIT OF EMB DCM CASH TO FONOFF ON MARCH 10, 1976 (REF C), HAD PROVIDED USEFUL HELP TO THE FEDERAL GOVERNMENT IN SEEKING A BETTER AND PERMANENT SOLUTION FOR THE LIABILITY PROBLEM. THE FONOFF HAD COME UPON A POSSIBLE SOLUTION. QUOTING ARTICLE VIII, PARA 5(H) OF THE NATO SOFA, RUMPF'S LETTER SUGGESTS THAT THIS PARA MAY MEAN THAT THE DISPOSITION OF DAMAGE CLAIMS PROVIDED IN THE NATO SOFA, WHEN APPLIED TO THE QUESTION OF LIABILITY FOR POSSIBLE DAMAGE CONNECTED WITH THE VISIT OF A NUCLEAR POWERED VESSEL, IS NOT APPLICABLE. ACCORDING TO RUMPF THIS RAISES THE QUESTION WHETHER IT WOULD NOT BE POSSIBLE AND EVEN USEFUL TO AGREE ON AN INTERPRETATION OF ARTICLE VIII, PARA 5(H), TO THE EFFECT THAT NPW DAMAGE CLAIMS (PRESUMABLY ONLY THOSE FROM NUCLEAR REACTOR INCIDENT) WOULD NOT BE TREATED AS CONNECTED WITH THE NAVIGATION OR OPERATION OF A SHIP BUT RATHER WOULD BE CONSIDERED DAMAGE CLAIMS IN CONNECTION WITH THE OPERATION OF A NUCLEAR REACTOR. (COMMENT: AS EMB UNDERSTANDS IT, THIS INTERPRETATION WOULD REMOVE DAMAGE CAUSED IN FRG TO THIRD PARTIES BY NPW NUCLEAR REACTOR INCIDENT FROM CLAIMS TO BE DEALT WITH BY FRG.)RUMPF LETTER CONTINUES THAT SHOULD THE AMERICAN GOVERNMENT BE ABLE TO AGREE WITH THE FRG ON SUCH AN INTERPRETATION, IT WOULD BE USEFUL FOR BOTH SIDES BECAUSE THERE WOULD BE A CONTRACTUAL OBLIGATION WHICH WOULD PROVIDE A SOUND LEGAL BASIS FOR THE AMERICAN CONGRESS AS WELL AS THE FRG PARLIAMENT AND THE GOVERNMENTS OF THE GERMAN LAENDER. RUMPF CONFIDENTIAL

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CLOSED BY STATING THAT HE WOULD BE GRATEFUL IF THE EMB COULD SEEK GUIDANCE WHETHER SUCH AN INTERPRETATION MIGHT BE FEASIBLE FOR THE USG. HE MENTIONED THAT HE WOULD NEED TO RESERVE JUDGMENT ON THE QUESTION OF CONSULTATION WITH OTHER PARTIES TO THE NATO SOFA WITH RESPECT TO SUCH AN INTERPRETATION.

4. AT A MEETING WITH AN EMBOFF ON ANOTHER MATTER ON

AUGUST 23, RUMPF REFERRED TO PAST FONOFF INTEREST IN EARLY SETTLEMENT OF LIABILITY QUESTION RAISED BY THE LAENDER LAW. HE STATED THAT FURTHER EXAMINATION OF THIS MATTER HAD RAISED NEW DIFFICULTIES EVEN WITHIN THE FONOFF. FONOFF OFFICIALS KNOWLEDGEABLE IN COMMERCIAL MARITIME MATTERS HAD POINTED OUT THAT IT WAS GENERALLY THE STATE OF REGISTRY OF A VESSEL WHICH MUST OBLIGATE ITSELF TO COMPENSATE FOR DAMAGES

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CAUSED BY THE VESSEL IN PORT STATE. HE MENTIONED THAT THE FRG NUCLEAR VESSEL "OTTO HAHN" WAS NOT ADMITTED TO ANY US PORT BECAUSE THE US HAS REQUIREMENT THAT THE SHIP'S OWNER PROVIDE A SECURITY BOND FOR (HE THOUGHT) \$500 MILLION. THIS RAISED THE QUESTION IN

THE MINDS OF FONOFF OFFICIALS WHY THE FRG GOVERNMENT SHOULD ASSUME LIABILITY IN CONNECTION WITH A VISIT IN THE FRG OF US NPW'S. RUMPF REFERRED TO THE LIMITATIONS OF PL 93-513. BEFORE USG WOULD BE IN A POSITION TO PAY FOR ANY DAMAGE CAUSED BY AN NPW-RELATED NUCLEAR INCIDENT, THE PRESIDENT WOULD NEED TO ASK THE CONGRESS FOR THE REQUISITE APPROPRIATION, AND CONGRESS WOULD NEED TO APPROVE IT. THIS LEFT THE FRG HOLDING THE BAG AT LEAST IN THE INTERIM, AND PERMANENTLY SHOULD CONGRESS NOT ACT
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FAVORABLY.

5. AS A SECOND POSSIBILITY TO THE ONE DESCRIBED IN PARA 3 ABOVE, RUMPF WONDERED WHETHER THE NORMAL EMB NOTIFICATION TO FRG FMOD OF PROPOSED NPW VISIT TO FRG PORT MIGHT NOT INCLUDE A PROVISION TO THE EFFECT THAT IN VIEW OF PL 93-513, USG ASSUMES LIABILITY IN THE IMPROBABLE EVENT OF AN NPW-RELATED NUCLEAR INCIDENT. HE SAID THAT WITH SUCH A PROVISION THE FRG FEDERAL GOVERNMENT COULD NOT BE LEFT WITH ULTIMATE LIABILITY.

6. EMBOFF INFORMED RUMPF THAT HE COULD NOT RESPOND TO THESE NEW CONSIDERATIONS BUT WOULD REPORT REASSESSMENT BY FRG FONOFF OF ITS ATTITUDE ON THIS MATTER AND RUMPF'S TWO PROPOSALS.

7. COMMENT: HOPED-FOR PROGRESS ON THIS MATTER APPEARS TO BE HELD UP NOT ONLY BY FRG LAENDER AND INTERIOR MINISTRY INERTIA BUT NOW ALSO BY STATED FONOFF MISGIVINGS IN VIEW OF US POSITION ON LIABILITY RE NUCLEAR POWERED MERCHANT VESSELS. IN THIS CONNECTION DEPT SHOULD BE AWARE THAT RUMPF IS NOT NORMALLY INVOLVED IN NUCLEAR VESSEL LIABILITY QUESTIONS AND THUS HAS LITTLE BACKGROUND ON US EFFORTS TO ENSURE THAT BRUSSELS NUCLEAR SHIP LIABILITY CONVENTION IS NOT CONSIDERED APPLICABLE TO NPW'S.

8. EMB BELIEVES THAT RUMPF'S RAISING OF MERCHANT VESSEL LIABILITY QUESTION IN CONNECTION WITH THIS NPW LIABILITY MATTER AND HIS TWO PROPOSALS NEED EXAMINATION IN WASHINGTON AND USG REACTION THERETO BEFORE FRG PROGRESS ON NPW LIABILITY QUESTION CAN BE ACHIEVED. IN MEANTIME, NPW VISITS CAN PROBABLY BE CONTINUED THROUGH MAKE-SHIFT FMOD JEOPARDIZING OF ITS DEFENSE BUDGET TO COVER LIABILITY REQUIREMENTS OF LAENDER LAW, PROVIDED NPW VISITS ARE NOT SCHEDULED LATE IN CALENDAR YEAR.

9. EMB REQUESTS GUIDANCE FOR APPROPRIATE RESPONSE TO
RUMPF'S PROPOSALS , WITH BACKGROUND MATERIAL AND
ARGUMENTATION.

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CASH

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