

**URGENT**

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United States Department of State

Washington, D.C. 20520



RELEASED IN FULL

September 4, 1987

UNCLASSIFIED  
w/SECRET Attchmt

TO: NEA - Mr. Peck  
P - Mr. Eastham  
OES/NEP - Mr. McGoldrick  
S/NP - Mr. Samore  
L/LEI - Mr. Stewart  
EUR/CAN - Mr. Gray  
ACDA/NWC - Ms. Ward

FROM: L/N - Ted A. Borek *TAB*

SUBJECT: Draft Note to Canadians on Pervez Documents

I spoke with Dwight Mason at Embassy Ottawa and alerted him to expect a redraft of the proposed Embassy note transmitted in Ottawa's 07389 (attached). Attached for clearance or comment at your earliest possible convenience is a first cut at same. In the interest of time I am sending this around as I continue to edit it further. This should go out today if we are to resolve the issue once and for all early next week. I can be reached at x71043.

Thanks in advance.

Attachment:

As stated.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

cc: L - Mr. Kozak

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INCOMING

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PAGE 01 OTTAWA 07389 00 OF 02 031842Z 9907 SSOB234  
03/1919Z

INFO SS-01 EUR-01 NEA-01 10-01 L-01 X-01 /006 A4 LCJ  
ALERTED T. BOREK, L/UNA FOR PICKUP

ACTION SS-00

INFO LOG-00 COPY-01 ADS-00 SSO-00 /001 W  
115112 031844Z /47 38

O 031824Z SEP 87  
FM AMEMBASSY OTTAWA  
TO SECSTATE WASHDC IMMEDIATE 8461

SECRET OTTAWA 07389

DECAPIONED

EXDIS

PLZ ALERT TED BOREK L/UNA X71U43 IMMEDIATELY FOR PICKUP

E.O. 12356: DECL: OADR  
TAGS: PREL, MNUC, PK, CA  
SUBJECT: ACCESS TO CANADIAN DOCUMENTS ON PERVEZ CASE

REF: (A) STATE 264902, (B) OTTAWA 7137, (C) STATE 270161

- SECRET/EXDIS (ENTIRE TEXT).
- EXSTAFF CALLED US LATE SEPTEMBER 2 TO SAY THAT GOC WAS IN PRINCIPLE WILLING TO GRANT ACCESS TO PERVEZ DOCUMENTS PROVIDED WRITTEN REQUEST STATING WHAT DOCUMENTS NEEDED, FOR WHAT PURPOSE, AND WHO WOULD HAVE ACCESS WAS MADE BY NOTE.
- DRAFT NOTE FOLLOWS:  
-- SECRET//IN CONFIDENCE

-- THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF EXTERNAL AFFAIRS AND HAS THE HONOR TO REQUEST ACCESS FOR THE DEPARTMENT OF STATE TO CERTAIN CANADIAN DOCUMENTS RELATING TO THE UNITED STATES' PROSECUTION OF ARSHAD PERVEZ ON CHARGES STEMMING FROM AN ALLEGED EFFORT TO EXPORT NUCLEAR-RELATED MATERIALS FROM THE UNITED STATES TO PAKISTAN.

-- THE DOCUMENTS FOR WHICH ACCESS IS REQUESTED ARE THOSE WHICH THE GOVERNMENT OF CANADA PROVIDED TO THE UNITED STATES DEPARTMENT OF JUSTICE THROUGH LAW ENFORCEMENT CHANNELS AND WHICH ARE NOW IN THE HANDS OF THE UNITED STATES ATTORNEY IN PHILADELPHIA. (COPIES OF THOSE DOCUMENTS ARE ALSO AT THE DEPARTMENT OF JUSTICE IN WASHINGTON.)

-- THE PURPOSE OF THIS REQUEST IS TO ASSIST THE DEPARTMENT OF STATE TO MAKE A FULLY INFORMED RECOMMENDATION TO THE PRESIDENT OF THE UNITED STATES AS TO WHETHER OR NOT THE "SOLARZ AMENDMENT" (22 U.S.C. 2429A) HAS BEEN TRIGGERED AS A RESULT OF THIS CASE. THE DEPARTMENT OF STATE IS THE AGENCY REQUIRED BY LAW TO ADVISE THE PRESIDENT ON THIS POINT. AMONG THE ELEMENTS WHICH THE DEPARTMENT OF STATE MUST CONSIDER IN MAKING THIS RECOMMENDATION ARE WHETHER OR NOT AN ILLEGAL EXPORT OR ATTEMPT TO EXPORT HAS OCCURED; THE DEGREE OF FOREIGN GOVERNMENT RESPONSIBILITY, IF ANY, FOR THE ILLEGAL EXPORT; THE TECHNICAL SIGNIFICANCE OF THE COMMODITIES IN QUESTION FOR THE RECIPIENT COUNTRY'S ABILITY TO MANUFACTURE A NUCLEAR EXPLOSIVE DEVICE; AND WHETHER OR NOT THOSE COMMODITIES WERE IN FACT INTENDED TO BE USED IN THE MANUFACTURE OF A NUCLEAR DEVICE.

PAGE 01 OTTAWA 07389 00 OF 02 031842Z 9907 SSOB234  
THE DEPARTMENT OF STATE NEEDS TO REVIEW ALL AVAILABLE EVIDENCE PERTAINING TO THE PERVEZ CASE.

-- THE DEPARTMENT'S NEED FOR ACCESS WOULD BE SATISFIED BY AN EXAMINATION OF THE CANADIAN-SUPPLIED MATERIAL NOW IN THE POSSESSION OF THE UNITED STATES ATTORNEY IN PHILADELPHIA OR IF COPIES OF THOSE DOCUMENTS ALSO EXISTING IN WASHINGTON. THE DEPARTMENT OF STATE DOES NOT NEED A SET OF THESE DOCUMENTS FOR ITSELF.

-- THE RECOMMENDATION SENT TO THE PRESIDENT (AND MEMORANDA RELATING TO THAT RECOMMENDATION) WILL BE CLASSIFIED AND CLOSELY HELD WITHIN THE UNITED STATES GOVERNMENT. COPIES OF CANADIAN-SUPPLIED DOCUMENTS WILL NOT BE ATTACHED. IN THE EVENT THAT THE PRESIDENT DECIDED THAT IT WAS NECESSARY TO INVOKE THE SOLARZ AMENDMENT, HIS DETERMINATION WOULD BE UNCLASSIFIED BUT WOULD NOT DISCUSS NOR CITE FROM ANY OF THE EVIDENCE IN THE CASE, AND THE UNITED STATES DOES NOT ANTICIPATE ANY NEED TO REFER PUBLICLY TO THE SPECIFIC SOURCES OR NATURE OF THAT EVIDENCE IN THAT FINDING.

-- THE EMBASSY IS ALSO INSTRUCTED TO POINT OUT THAT THE OUTCOME OF THIS ASSESSMENT IS NOT A FOREGONE CONCLUSION, AND THERE MAY WELL BE NO PUBLIC PRESIDENTIAL DETERMINATION RESULTING FROM THIS CASE.

-- THE PARTY FOR WHOM ACCESS IS REQUESTED WILL BE SMALL AND WILL WORK UNDER THE DIRECT SUPERVISION OF THE LEGAL ADVISOR OF THE DEPARTMENT JUDGE ABRAHAM SOFAER.

-- UNDER NORMAL CIRCUMSTANCES, THIS REQUEST WOULD NOT HAVE BEEN MADE UNTIL THE CONCLUSION OF THE JUDICIAL PROCEEDINGS AGAINST PERVEZ, BUT THE POLITICAL IMPORTANCE OF THIS CASE AND THE EXTREME TIME PRESSURES

CREATED BY THE EXPIRATION OF THE STATUTORY AUTHORITY FOR THE UNITED STATES SECURITY ASSISTANCE PROGRAM FOR PAKISTAN ON SEPTEMBER 30, 1987, MEANS THAT THE DEPARTMENT OF STATE MUST MAKE ITS RECOMMENDATION TO THE PRESIDENT SO THAT HE WILL HAVE TIME TO MAKE HIS DETERMINATION ON THE SOLARZ AMENDMENT BEFORE SEPTEMBER 30, 1987.

-- END DRAFT.

NILES

BEST COPY AVAILABLE

REVIEW AUTHORITY: Sharon Ahmad, Senior

EXDIS