



Department of State

TELEGRAM

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826 U.S. ATOMIC ENERGY
COMMISSION
RG _____
Collection <u>DOS McCraw</u>
Box <u>17</u> Job <u>1320</u>
Folder <u>MHS 3-9 (1968) February</u>
<u>Thule Incident</u>

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JOINT STATE DEFENSE MESSAGE

SUBJECT: SETTLEMENT OF CLAIMS ARISING FROM THULE B-52 ACCIDENT

- 1. FOLLOWING IS FOR EMBASSY'S INFORMATION ONLY AND IS NOT RPT NOT TO BE DISCUSSED WITH DANISH AUTHORITIES.
- 2. STATE AND DEFENSE HAVE FORMULATED PRELIMINARY VIEWS ON COURSE OF ACTION RESPECTING CLAIMS WHICH MAY ARISE AS RESULT ACCIDENT. PRIMARY OVERRIDING CONSIDERATION IS AND MUST BE RAPID, SMOOTH AND EQUITABLE SETTLEMENT OF CLAIMS IN MANNER CALCULATED ENSURE CLOSE DANISH-U.S. RELATIONSHIPS MAINTAINED SINCE ACCIDENT CONTINUE

CLASSIFICATION CANCELLED *
WITH DELETIONS
BY AUTHORITY OF DOE/OC

REVIEWED BY J. Diaz DATE 4/19/89
MEMO DOS TO DOE: OCTP
* 3/21/89
Bahn 4/21/89

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MEDICINE, HEALTH & SAFETY - 3-9 - Thule 1941 Incident

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UNIMPAIRED.

3. EXTENT AND NATURE OF CLAIMS CANNOT AS YET BE FORECAST. DANES, IN PARTICULAR, MAY WANT TO COMPLETE OWN STUDIES ON RADIATION AND OTHER MATTERS BEFORE TURNING TO DETAILED CONSIDERATION OF PROBLEM OF CLAIMS. WE PROBABLY CAN EXPECT CLAIMS BY OR ON BEHALF OF RESIDENTS IN THULE AREA FOR LOSS OF CLOTHING WHICH MAY HAVE BEEN CONTAMINATED AND FOR LOSS OF LIVELIHOOD, RESULTING FROM PROHIBITION AGAINST HUNTING SEAL AND WALRUS IN CRASH AREA. WE CAN POSSIBLY ALSO EXPECT DANISH GOVT SUBMIT CLAIM ON ITS OWN BEHALF FOR LOSS OF USE OF SHELTERS (GUEST HOUSES) ERECTED IN PROHIBITED AREA FOR ESKIMO HUNTING PARTIES. SUCH CLAIMS MAY INCLUDE COST OF ERECTING SIMILAR SHELTERS IN OTHER HUNTING AREAS, NOT DECLARED PROHIBITED AREAS. DANISH GOVT MAY WELL MAKE EARLY PRESENTATION REGARDING ALL FOREGOING TYPES OF CLAIMS, RESERVING RIGHT PRESENT OTHER CLAIMS LATER.

4. QUESTION WHICH CAN BE ADDRESSED AT PRESENT TIME IS THAT OF LEGAL FRAMEWORK WITHIN WHICH CLAIMS WOULD BE EXAMINED AND SETTLED. WE PERCEIVE FOLLOWING ALTERNATIVES:

A. APPLICATION OF NATO SOFA.

(1) UNDER ARTICLE VIII, GOD WOULD WAIVE ALL ITS CLAIMS AGAINST THE USG FOR DAMAGE ARISING OUT OF B-52 INCIDENT TO ANY PROPERTY OWNED BY DENMARK AND USED BY ITS ARMED FORCES. DENMARK WOULD ALSO WAIVE ANY CLAIM AGAINST USG ARISING OUT OF THIS INCIDENT FOR INJURY OR DEATH SUFFERED BY A MEMBER OF DANISH ARMED FORCES WHILE SUCH MEMBER WAS ENGAGED IN THE PERFORMANCE OF HIS OFFICIAL DUTIES. CLAIMS FOR DAMAGE CAUSED BY THE B-52 CRASH TO OTHER PROPERTY OWNED BY THE DANISH GOVT WOULD BE LEFT TO THE DETERMINATION OF AN ARBITRATOR (UNLESS THE TWO GOVERNMENTS AGREED OTHERWISE). THE ARBITRATOR WOULD BE SELECTED BY AGREEMENT BETWEEN THE TWO GOVERNMENTS FROM AMONG DANISH NATIONALS WHO HOLD OR HAVE HELD HIGH JUDICIAL OFFICES, AND IN THE EVENT THE TWO GOVERNMENTS COULD NOT AGREE ON AN ARBITRATOR WITHIN TWO MONTHS, EITHER SIDE COULD REQUEST THE "CHAIRMAN OF THE NORTH ATLANTIC COUNCIL DEPUTIES," (NOW, THE SECRETARY GENERAL OF NATO) TO SELECT A QUALIFIED PERSON. SINCE IN THIS CASE THE DAMAGE CAUSED BY THE B-52 INCIDENT IS THE SOLE RESPONSIBILITY OF THE USG, THE AMOUNT AWARDED WOULD BE SHARED IN THE PROPORTION OF 25 PERCENT BY DENMARK AND 75

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B- FOREIGN CLAIMS SETTLEMENT AUTHORITY.

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(1) UNDER FOREIGN CLAIMS ACT, 10 USC 2734, SECRETARY OF AIR FORCE MAY APPOINT USAF OFFICERS TO FOREIGN CLAIMS COMMISSION (HEREINAFTER "F.C.C.") TO SETTLE AND PAY MERITORIOUS CLAIMS UP TO \$15,000 PER INDIVIDUAL CLAIM. FOREIGN CLAIMS ACT AUTHORITY COVERS CLAIMS FOR DAMAGE OR LOSS TO REAL OR PERSONAL PROPERTY BELONGING TO GOD OR ANY OF ITS POLITICAL SUBDIVISIONS OR TO INHABITANTS OF DENMARK (GREENLAND), OR FOR PERSONAL INJURY OR DEATH OF ANY SUCH INHABITANT. EACH MERITORIOUS CLAIM IN EXCESS \$15,000 CAN BE CERTIFIED TO CONGRESS BY SECRETARY FOR PAYMENT. CLAIMS ARISING FROM 1966 PALOMARES ACCIDENT WERE SETTLED UNDER THIS AUTHORITY (NATO SOFA, OF COURSE, NOT APPLICABLE IN SPAIN.)

(2) WHILE F.C.C. PROCEDURE CAN RESULT IN RAPID AND EQUITABLE



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SETTLEMENT OF CLAIMS, IT PROVIDES OPENING FOR CHARGES (SUCH AS OCCURRED TO LIMITED DEGREE IN SPAIN) THAT DANISH SOVEREIGNTY IMPAIRED AND AMOUNT OF SETTLEMENT REDUCED SINCE CLAIMS WERE SETTLED EXCLUSIVELY THROUGH U.S. ADJUDICATION. TO MINIMIZE POSSIBILITY SUCH CHARGES, WE WOULD WORK IN CLOSE CONSULTATION WITH DANISH/GREENLAND AUTHORITIES IN ORDER TO ENSURE EQUITABLE AND FAIR TREATMENT TO ALL THOSE WHO MAY HAVE SUFFERED DAMAGE. THIS COULD INCLUDE AN ARRANGEMENT WHEREBY DANISH/GREENLAND AUTHORITIES, E.G., TRIBUNALS, COULD GATHER EVIDENCE AND PRESENT RECOMMENDATIONS ON AMOUNT OF SETTLEMENT TO F.C.C. ALTHOUGH F.C.C. WOULD CAREFULLY REVIEW SUCH RECOMMENDATIONS, IT COULD NOT RPT NOT BE BOUND BY THEM INASMUCH AS LEGISLATION REQUIRES FINAL DETERMINATION BE MADE ONLY BY F.C.C. CONSEQUENT INABILITY OF F.C.C. TO ACCEPT AUTOMATICALLY A DANISH TRIBUNAL'S RECOMMENDATION MIGHT ENTAIL POLITICAL RISK.

(3) FOREIGN CLAIMS ACT PROVIDES FOR TWO-YEAR PERIOD OF LIMITATIONS, (I.E., CLAIMS MUST BE PRESENTED WITHIN TWO YEARS AFTER DAMAGE BECOMES KNOWN), BUT THIS PERIOD WOULD NOT COMMENCE IN E.G., RADIATION DAMAGE CASES, UNTIL SUCH DAMAGE ACTUALLY DISCOVERED. FURTHER, WHILE FULL RELEASE IS REQUIRED FROM CLAIMANT IN SETTLEMENT OF CLAIM, SUCH RELEASE WOULD NOT RPT NOT BAR SUBSEQUENT CLAIM RELATED TO MATTERS NOT KNOWN AT TIME OF RELEASE. WHILE CERTAIN AMOUNT PAPERWORK REQUIRED OF CLAIMANT, WE ASSUME THIS CAN BE HANDLED BY LOCAL AUTHORITIES AS REPRESENTATIVES FOR ILLITERATE CLAIMANTS.

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C. FORMAL DIPLOMATIC CLAIM.

THROUGH DIPLOMATIC CHANNEL, GOD CAN ASSERT U.S. LIABILITY UNDER INTERNATIONAL LAW FOR DAMAGE RESULTING FROM ACCIDENT IN STATED AMOUNT AND REQUEST USG PAYMENT. IN CASE GOD REJECTS USE OF EITHER NATO SOFA ARTICLE VIII OR FOREIGN CLAIMS ACT, THERE IS PRESENTLY NO OTHER STATUTORY AUTHORITY UNDER WHICH SUCH A DIPLOMATIC CLAIM COULD BE PAID. CONSEQUENTLY, ONLY ALTERNATIVE WOULD BE TO OBTAIN SPECIAL CONGRESSIONAL APPROPRIATION (BUT NOT RPT NOT AUTHORIZATION) WHICH MIGHT CONSUME TIME AND CAUSE UNDESIRABLE PUBLICITY.

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6. REQUEST EMBASSY'S VIEWS ON ALL OF FOREGOING. IF DANISH
AUTHORITIES SHOULD TAKE INITIATIVE ON CLAIMS, REQUEST INSTRUCTIONS
FROM HERE BEFORE REPLYING. GP-3. RUSK

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