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SECRET

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755

Serial: N0348
27 March 1978

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MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: Revised NSDM-3 - ACTION MEMORANDUM

Reference is made to the Secretary of State's letter of March 15, 1978, to the Secretary of Defense on revision of NSDM-3.

NSA considers that the wording and interpretation of the NSDM-3 revision proposed by the Department of State conflict with the authorities and responsibilities assigned to the Secretary of Defense by the President in Executive Order 12036 and in NSCID 6. Both documents designate the Secretary of Defense as the Executive Agent of the United States Government for signals intelligence. Further, E.O. 12036 provides the Secretary of Defense shall, i.a.,

a. direct, operate, control and provide fiscal management for the National Security Agency . . .;

b. conduct as the executive agent of the U.S. Government signals intelligence and communications security activities . . .;

c. conduct such administrative and technical support activities within and outside the United States as are necessary to perform (these) functions . . .

Also, E.O. 12036 charges the National Security Agency with the responsibility for establishing and operating an effective unified organization for signals intelligence activities and to control signals intelligence collection and processing activities. This charge cannot be carried out in an efficient and responsible manner if the overall direction, coordination, and supervision of all foreign aspects of the mission are to be assigned to a third authority.

EO 3.3b(3)

[redacted]

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These uniformed signals intelligence activities receive their overall operational direction and supervision from NSA, acting for the SECDEF in accordance with the directives and provisions of E.O. 12036 and NSCID 6. We do not believe it is appropriate or possible for SECDEF or NSA to transfer the overall direction, coordination and supervision of these activities to the Secretary of State as the revised NSDM-3 would appear to do, nor does P. L. 93-475 mandate such a result.

P. L. 93-475 provides that the United States Ambassador to a country shall have full responsibility for the activities of U.S. personnel in that country, excepting certain military forces. International law has traditionally considered an Ambassador to be the personal representative of the head of a state. It may be assumed that the latter concept formed the basis of President Carter's memorandum to the heads of agencies on 17 November 1977 in which he called attention to the role of "my ambassadors" (emphasis supplied). Neither the President's memorandum nor the statute refers to the role or responsibility of the Secretary of State. Yet Secretary Vance's memorandum to the Secretary of Defense proposes to substitute the Secretary of State for the Ambassador insofar as the statutory responsibilities of the Ambassador within a country are concerned. While we recognize, of course, that the Secretary of State is the principal foreign policy advisor to the President, the proposed revision of NSDM-3 would appear to bring about changes in the direction of U.S. Government operations abroad in ways not intended by the Congress or the President. With respect to NSA activities, this conclusion is supported by the Presidential reaffirmation in Executive Order 12036 just two months ago that the Secretary of Defense continued to be the Executive Agent of the Government for the activities assigned to NSA, without limitation as to geographic area or scope of responsibility.

The appropriate roles of the Secretary of State and the U.S. Ambassadors can properly be reflected by adopting the following proposed revision of NSDM-3:

"4. I have assigned to the Secretary of State authority and responsibility to the fullest extent permitted by law for the overall direction, coordination and supervision of the activities of the United States Government abroad except for activities of elements under the jurisdiction of the Secretary of Defense or of a United States area military commander. Those Defense elements which are directly subordinated to a United States diplomatic mission fall under the direction of the Ambassador and without exception, the Secretary of State and the United States Ambassador will be kept fully and currently informed with respect to all activities and operations of the United States Government within any foreign country."

The Secretary of State may be assured that the Director, National Security Agency/Chief, Central Security Service fully recognizes the responsibility to keep ambassadors currently informed on cryptologic operations in country, including the number and types of personnel involved, major program or facilities changes, and to seek the Department of State's and the Ambassador's review of any activities that might affect the conduct of U.S. foreign affairs.

B. R. INMAN
Vice Admiral, U. S. Navy
Director, NSA/Chief, CSS

Copy Furnished:
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[redacted] D/Chief, D4, 3083, 22 Mar 78, jsj

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