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Use of Federal Troops to Protect Embassies

This is in response to your memorandum of November 10, 1972 requesting our views as to whether a Proclamation and Executive Order would be necessary in a situation where heavily armed terrorists had taken over a foreign embassy and the use of troops was thought to be necessary to aid in liberating the embassy and the personnel. If by liberating, you mean a physical assault upon embassy, we think it is highly questionable that troops could be used without invoking ch. 15 of Title 10, U.S.C.

In a memorandum dated October 16, 1967, this office took the position that Federal troops could be used to protect, for example, cordon off, Federal property and that such use did not require a Proclamation or Executive Order. At the same time we indicated that if troops were to be used for "affirmative purposes of suppressing rioting or other general law enforcement" a Proclamation and Order should be used. In a subsequent memorandum dated May 11, 1970, we took the position that troops could also be used to protect foreign embassies in the United States. That memorandum, however, was written in the context of providing cordons around embassies rather than actual law enforcement. Indeed, it commented that troops should not be used to perform police functions at the embassies.

We adhere to the view that troops may be used without a Proclamation to protect foreign embassies in the sense of placing cordons around them and performing such safety functions as bomb deactivation. The matter of "liberating" embassies, however, presents another question. It suggests

that troops might be used to storm the buildings and capture those inside. This is basically a police function and if this is what is contemplated we think an Executive Order and Proclamation would be necessary. Admittedly, it is a close question for the line between protection and law enforcement is a thin one. At the same time it must be remembered that members of the Armed Forces used in law enforcement functions in violation of the Posse Comitatus Act have been held to be personally liable in damages. Wrynn v. United States, 200 F. Supp. 457 (E.D. N.Y. 1961). In light of this, it is our view that use of troops in the manner indicated without Executive Order or Proclamation would be of questionable legality and extremely unwise.