EXHIBIT D
KEY DOCUMENTS

Exhibit D

Key Documents

(Documents Listed are Attached, Other Documents May Be Found at Links Provided)

I. The Downing Street Minutes Materials:

A. Iraq: Options Paper (March 8, 2002)

B. Iraq: Legal Background Paper (Early March, 2002)

C. David Manning Memo (March 14, 2002)

D. The Meyer Memo (March 18, 2002)

E. The Ricketts Memo (March 22, 2002)

F. The Straw Memo (March 25, 2002)

G. The Cabinet Office Paper (July 21, 2002)

H. The Downing Street Minutes (July 23, 2002)

II. WMD Reports:

A. U.S. Senate Select Committee on Intelligence, Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq (July 2004), *available at* http://intelligence.senate.gov/iraqreport2.pdf

B. Comprehensive Report of the Special Advisor to the Director of Central Intelligence on Iraq's Weapons of Mass Destruction ("Duelfer Report") (September 30, 2004), *available at* www.cia.gov/cia/reports/iraq_wmd_2004/.

C. The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction ("Robb-Silberman Report") (March 31, 2005), *available at* http://www.wmd.gov/report/

D. Carnegie Endowment for International Peace, WMD in Iraq: Evidence and Implications (January 2004), *available at* www.carnegieendowment.org/npp/iraqintell/home.cfm

III. Key Letters and Memoranda

Letter from Richard L. Armitage, Richard Perle, Donald Rumsfeld, Paul Wolfowitz, et. al, to President William J. Clinton (Jan. 26, 1998).

Memorandum from Steve Radelet, Deputy Assistant Secretary of the Department of the Treasury, to Paul O'Neill, Secretary of the Department of the Treasury (Feb. 1, 2001).

Pentagon document entitled "Foreign Suitors For Iraqi Oilfield Contracts," (Mar. 5, 2001)

Memo from Frank Koza, Def. Chief of Staff (Regional Targets) re: "Reflections of Iraq Debate/Votes at UN-RT Actions" ("UN Bugging Memo") (Jan. 31, 2003)

Letter from Elizabeth Wilmshurst, Deputy Legal Adviser to Michael Wood, Legal Adviser re: Resignation (Mar. 20, 2003)

Letter from Stanley M. Moskowitz, Director of Congressional Affairs, CIA, to Representative Conyers (Jan. 30, 2004)

Memorandum from Jack Goldsmith, Assistant Attorney General, Office of Legal Counsel re: "Permissibility of Relocating Certain "Protected Persons" from Occupied Iraq" (March 19, 2004)

Letter from John Conyers to President George W. Bush re: The Downing Street Minutes (May 5, 2005)

IV. Other Documents

Joseph C. Wilson IV, Op-Ed., *What I didn't find in Africa,* N.Y. TIMES, July 6, 2003

The Niger Forgeries

United States v. Libby (D.D.C. Oct. 26, 2005) (grand jury indictment)

SECRET UK EYES ONLY

IRAQ: OPTIONS PAPER

SUMMARY

Since 1991, our objective has been to re-integrate a law-abiding Iraq which does not possess WMD or threaten its neighbours, into the international community. Implicitly, this cannot occur with Saddam Hussein in power. As at least worst option, we have supported a policy of containment which has been partially successful. However:

* Despite sanctions, Iraq continues to develop WMD, although our intelligence is poor. Saddam has used WMD in the past and could do so again if his regime were threatened, though there is no greater threat now than in recent years that Saddam will use WMD; and
* Saddam's brutal regime remains in power" and destablises the Arab and wider Islamic world.

We have two options. We could toughen the existing containment policy. This would increase the pressure on Saddamm. It would not reintegrate Iraq into the international community.

The US administration has lost faith in containment and is now considering regime change. The end states could either be a Sunni strongman or a representative government.

Thre three options for achieving regime change are:

* covert support to opposition groups to mount an uprising/coup;
* air support for opposition groups to mount an uprising/coup; and
* a full-scale ground campaign.

These are not mutually exclusive. Options 1 and/or 2 would be natural precursors to Option3. The greater investment of Western forces, the greater our control over Iraq's future, but the greater the cost and the longer we woul need to stay. The only certain means to remove Saddam and his elite is to invade and impose a new government" but this could involve nation building over many years. Even a representative government could seek to acquire WMD and build-up its conventional forces, so long as Iran and Israel retain their WMD and conventional armouries and there was no acceptable solution to Palestinian grievances.

A legal justification for invasion would be needed. Subject to Law Officers advice, none currently exists. This makes moving quickly to invade legally very difficult. We should therefore consider a staged approach, establishing international support," building up pressure on Saddam, and developing military plans. There is a lead time of about 6 months to a ground offensive.

SECRET UK EYES ONLY

CURRENT OBJECTIVES OF UK POLICY

1 Within our objectives of preserving peace and stability in the Gulf and ensuring energy security, our current objectives towards Iraq are:
* the reintegration of a law-abiding Iraq which does not possess WMD or threaten its neighbours, into the international community. Implicitly, this cannot occur with Saddam in power; and
* hence, as the least worst option, we have supported containment of Iraq, by constraining Saddam's ability to rearm or build up WMD and to threaten his neighbours.

2 Subsidiary objectives are:
* Preserving the territorial integrity of Iraq;
* improving the humanitarian situation of the Iraqi people;
* protecting the Kurds in Northern Iraq;
* sustaining UK/US co-operation, including, if necessary, by moderating US policy; and
* maintaining the credibility and authority of the Security Council.

HAS CONTAINMENT WORKED?

3 Since 1991, the policy of containment has been partially successful:
* Sanctions have effectively frozen Iraq's nuclear programme;
* Iraq has been prevented from rebuilding its conventional arsenal to pre-Gulf War levels;
* ballistic missile programmes have been severely restricted;
* Biological weapons (BW) and Chemical Weapons (CW) programmes have been hindered;
* No Fly Zones established over northern and southern Iraq have given some protection to the Kurds and the Shia. Although subject to continuing political pressure, the Kurds remain autonomous; and
* Saddam has not succeeded in seriously threatening his neighbours.

4 However:
* Iraq continues to develop weapons of mass destruction, although our intelligence is poor. Iraq has up to 20 650km-range missiles left over from the Gulf War. These are capable of hitting Israel and the Gulf states. Design work for other ballistic missiles over the UN limit of 150km continues. Iraq continues with its BW and CW programmes and, if it has not already done so could produce significant quantities of BW agents within days and CW agent within weeks of a decision to do so. We believe it could deliver CBW by a variety of means, including in ballistic missile warheads. There are also some indications of a continuing nuclear programme. Saddam has used WMD in the past and could do so again if his regime were threatened.

* Saddam leads a brutal regime, which impoverishes his people. While in power Saddam is a rallying point for anti-Western sentiment in the Arab and wider Islamic world, and as such a cause of instability; and
* despite UN controls over Iraq's oil revenue under Oil for Food, there is considerable oil and other smuggling.

5 In this context, and against the background of our desire to re-integrate a law-abiding Iraq into the international community, we examine the two following policy options:
* a toughening of the existing containment policy, facilitated by 11 September; and
* regime change by military means: a new departure which would require the construction of a coalition and a legal justification.

TOUGHENING CONTAINMENT

6 This would consist of the following elements:
* full implementation of all relevant UNSCRs, particularly 687 (1991) and 1284 (1999). We should ensure that the Goods Review List (GRL) is introduced in May and that Russia holds to its promise not to block. The signs are positive but continuing pressure is needed. (The GRL focuses sanctions exclusively on preventing shipments of WMD-related and other arms, while allowing other business without scrutiny. As such, it will greatly facilitate legitimate Iraqi commerce under Oil for Food.);
* encourage the US not to block discussions to clarify the modalities of Resolution 1284 once Russian agreement to the GRL has been secured. We should take a hard-line on each area for clarification - the purpose of clarification is not to lower the bar on Iraqi compliance; but
* P5 and Security Council unity would facilitate a specific demand that Iraq re-admit the UN inspectors. Our aim would be to tell Saddam to admit inspectors or face the risk of military action.
* push for tougher action (especially by the US) against states breaking sanctions. This should not discriminate between allies (Turkey), friends (UAE) and others (especially Syria). It would put real pressure on Saddam either to submit to meaningful inspections or to lash out;
* maintain our present military posture, including in the NFZs, and be prepared to respond robustly to any Iraqi adventurism; and
* continue to make clear (without overtly espousing regime change) our view that Iraq would be better off without Saddam. We could trail the rosy future for Iraq without him in a 'Contract with the Iraqi People', although to be at all credible, this would need some detailed work.

7 What could it achieve:

* There will be greater pressure on Saddam. The GRL will make sanctions more attractive to at least some of their detractors. Improving implementation of sanctions would reduce the regime's illicit revenues; and
* the return of UN weapons inspectors would allow greater scrutiny of Iraqi WMD programmes and of Iraqi forces in general. If they found significant evidence of WMD, were expelled or, in face of an ultimatum, not re-admitted in the first place, then this could provide legal justification for large-scale military action (see below).

8 But:
* Some of the difficulties with the existing policy still apply;
* those states in breach of sanctions will want compensation if they are to change tack;
* Saddam is only likely to permit the return of inspectors if he believes the threat of large scale US military action is imminent and that such concessions would prevent the US from acting decisively. Playing for time, he would then embark on a renewed policy of non co-operation; and
* although containment has held for the past decade, Iraq has progressively increased its international engagement. Even if the GRL makes sanctions more sustainable, the sanctions regime could collapse in the long-term.

9 Tougher containment would not re-integrate Iraq into the international community as it offers little prospect of removing Saddam. He will continue with his WMD programmes, destabilising the Arab and Islamic world, and impoverishing his people. But there is no greater threat now that he will use WMD than there has been in recent years, so continuing containment is an option.

US VIEWS

10 The US has lost confidence in containment. Some in government want Saddam removed. The success of Operation Enduring Freedom, distrust of UN sanctions and inspection regimes, and unfinished business from 1991 are all factors. Washington believes the legal basis for an attack on Iraq already exists. Nor will it necessarily be governed by wider political factors. The US may be willing to work with a much smaller coalition than we think desirable.

REGIME CHANGE

11 In considering the options for regime change below, we need to first consider what sort of Iraq we want? There are two possibilities:
* A Sunni military strongman. He would be likely to maintain Iraqi territorial integrity. Assistance with reconstruction and political rehabilitation could be traded for assurances on abandoning WMD

programmes and respecting human rights, particularly of ethnic minorities. The US and other militaries could withdraw quickly. However, there would then be a strong risk of the Iraqi system reverting to type. Military coup could succeed coup until an autocratic, Sunni dictator emerged who protected Sunni interests. With time he could acquire WMD; or
* a representative" broadly democratic government. This would be Sunni-led but," within a federal structure," the Kurds would be guaranteed autonomy and the Shia fair access to government. Such a regime would be less likely to develop WMD and threaten its neighbours. However, to survive" it would require the US and others to commit to nation building for many years. This would entail a substantial international security force and help with reconstruction.

OTHER FACTORS TO CONSIDER: INTERNAL

12 Saddam has a strong grip on power" maintained through fear and patronage. The security and intelligence apparatus, including the Republican and Special Republican Guard, who protect the regime so effectively are predominantly drawn from the Arab Sunni minority (20-25 per cent of the population); many from Tikrit like Saddam. They fear non-Sunni rule," which would bring retribution and the end of their privileges. The regime's success in defeating the 1991 uprising stemmed from senior Sunni officers looking into the abyss of Shia rule and preserving their interests by backing Saddam. In the current circumstances, a military revolt or coup is a remote possiblity.

13 Unaided, the Iraqi opposition is incapable of overthrowing the regime. The external opposition is weak, divided and lacks domestic credibility. The predominant group is the Iraqi National Congress (INC), an umbrella organisation led by Ahmad Chalabi, a Shia and convicted fraudster, popular on Capitol Hill. The other major group, the Iraqi National Accord (INA)," espouses moderate Arab socialism and is led by another Shia, Ayad Allawi. Neither group has a military capability and both are badly penetrated by Iraqi intelligence. In 1996, a CIA attempt to stir opposition groups ended in wholesale executions. Most Iraqis see the INC/INA as Western stooges.

14 The internal opposition is small and fractured on ethnic and sectarian grounds. There is no effective Sunni Arab opposition. There are 3-4m Kurds in northern Iraq. Most live in the Kurdish Autonomous Zone," established in 1991. The Kurds deploy at least 40,000 lightly armed militia but are divided between two main parties, the Patriotic Union of Kurdistan (PUK) and the Kurdistan Democratic Party (KDP). These groups have an interest in preserving the status quo" and are more interested in seeking advantage over the other than allying against Saddam. Divide and rule is easy; in 1996 the KDP

assisted the Iraqi Army's expulsion of the PUK and Iraqi opposition groups from Irbil.

15 The Kurds do not co-operate with the Shia Arabs who form 60 per cent of the population. The main Shia opposition group is the Supreme Council for the Islamic Revolution in Iraq (SCIRI), with 3-5,000 fighters, but it is tainted by Iranian support. Most Shia would like to have a greater say in Iraqi government, but not necessarily control: they do not want secession, Islamic autonomy or Iranian influence.

REGIONAL

16 Iraq's neighbours have a direct interest in the country's affairs. Iran and Turkey, in particular, are wary of US influence and oppose some opposition groups. Turkey, conscious of its own restive Kurdish minority, will do anything to prevent the establishment of an independent Kurdish state in northern Iraq, including intervention. Iran, also with a Kurdish minority, would also oppose a Kurdish state and is keen to protect the rights of its co-religionists in the south. (see FCO paper on P5, European and regional views of possible military action against Iraq, attached.)

17 We have looked at three options for achieving regime change (we dismissed assassination of Saddam Hussein as an option because it would be illegal):

OPTION 1: COVERT SUPPORT TO OPPOSITION GROUPS

18 The aim would be to bring down the regime byinternal revolt, aided by the defection or at least acquiescence of large sections of the Army. A group of Sunni generals probably from within the Republican Guard, might depose Saddam if they decided the alternative was defeat. This option could be pursued by providing covert intelligence, large scale financial and Special Forces support to opposition groups. The Kurds would be persuaded to unite and attack into northern Iraq, tying down some Iraqi forces. Simultaneously, in a greater threat to the regime, the Shia would rise up in the southern cities, and in Baghdad.

19 This option also has a very low prospect of success on its own. The external opposition is not strong enough to overthrow Saddam and would be rejected by most Iraqis as a replacement government. The Kurds could only mount a very limited offensive in the north. Mass uprisings in the south would be unlikely. The US failure to support the 1991 uprising remains vivid. The Republican Guard would move against any opposition and any wavering regular Army units. There would also be a high risk of US/ coalition forces being captured. The remaining elements of opposition could be eliminated, buttressing

Saddam and his reputation as Arab folk hero. On the other hand, this option has never been pursued in a concerted, single-minded way before and should not be dismissed, at least as a possible precursor to Options 2 and 3.

OPTION 2: AN AIR CAMPAIGN PROVIDING OVERT SUPPORT TO OPPOSITION GROUPS LEADING TO A COUP OR UPRISING

20 The aim would be to assist an internal revolt by providing strategic and tactical air support for opposition groups to move against the regime. Such support would disable Saddam's military and security apparatus. Suspected WMD facilities would also be targeted. Substantial numbers of aircraft and munitions would need to be built up in theatre over a period of months. Any campaign would take several weeks at least[11] probably several months. Pressure on the regime could be increased by massing ground and naval forces and threatening a land invasion.

21 This option has no guarantee of success. The build up of pressure might persuade other Sunnis to overthrow Saddam and his family, but there is no guarantee that another Sunni autocrat would be better. Comparisons with Afghanistan are misleading. Saddam's military and security apparatus is considerably more potent and cohesive. We are not aware of any Karzai figure able to command respect inside and outside Iraq. Arab states would only back the plan if they were sure Saddam would be deposed. At least the co-operation of Kuwait would be needed for the necessary military build-up. The Arab street would oppose an air attack against Iraq, but visibility of a popular uprising could calm Arab public opinion.

OPTION 3: A GROUND CAMPAIGN

22 The aim would be to launch a full-scale ground offensive to destroy Saddam]s military machine and remove him from power. A pro-Western regime would be installed which would destroy Iraq's WMD capability, make peace with Iraq's neighbours and give rights to all Iraqis, including ethnic minorities. As in the Gulf War[11] this would need to be preceded by a major air-offensive to soften up defences.

23 US contingency planning prior to 11 September indicated that such a ground campaign would require 200-400,000 troops. The numbers would be roughly half those of 1991 because Iraqi forces are now considerably weaker. Any invasion force would need to pose a credible threat to Baghdad in order to persuade members of the Sunni military elite that their survival was better served by deserting to the coalition than staying loyal to Saddam. Sufficient air assets would need three months and ground forces at least four-five months to assemble[11] so on logistical grounds a ground campaign is not feasible until autumn 2002. The optimal times to start action are early spring

Eid festival.

24 From a purely military perspective it would be very difficult to launch an invasion from Kuwait alone, carrier-based aircraft would not be enough because of the need for land-based air-to-air refuelling. To be confident of success, bases either in Jordan or in Saudi Arabia would be required. However, a wider and durable international coalition would be advantageous for both military and political reasons. Securing moderate Arab support would be greatly assisted by the promise of a quick and decisive campaign, and credible action by the US to address the MEPP.

25 The risks include US and others military casualties. Any coalition would need much tending over the difficult months of preparation for an actual invasion. Iran, fearing further US encirclement and that it will be invaded next, will be prickly but is likely to remain neutral. With his regime in danger, Saddam could use WMD, either before or during an invasion. Saddam could also target Israel as he did during the Gulf War. Restraining Israel will be difficult. It could try to pre-empt a WMD attack and has certainly made clear that it would retaliate. Direct Israeli military involvement in Iraq would greatly complicate coalition management and risk spreading conflict more widely.

26 None of the above options is mutually exclusive. Options 1 and/or 2 would be natural precursors to Option 3. All options have lead times. If an invasion is contemplated this autumn, then a decision will need to be taken in principle six months in advance. The greater investment of Western forces, the greater our control over Iraq's future, but the greater the cost and the longer we would need to stay. Option 3 comes closest to guaranteeing regime change. At this stage we need to wait to see which option or combination of options may be favoured by the US government.

27 But it should be noted that even a representative government could seek to acquire WMD and build-up its conventional forces, so long as Iran and Israel retain their WMD and conventional armouries.

LEGAL CONSIDERATIONS

28 A full opinion should be sought from the Law Officers if the above options are developed further. But in summary, CONTAINMENT generally involves the implementation of existing UNSCRs and has a firm legal foundation. Of itself, REGIME CHANGE has no basis in international law. A separate note by FCO Legal Advisors setting out the general legal background and the obligations in the relevant UN Resolutions is attached.

29 In the judgement of the JIC there is no recent evidence of Iraq complicity with international terrorism. There is therefore no justification for action against Iraq based on action in self-defence (Article 51) to combat imminent threats of terrorism as in Afghanistan. However, Article 51 would come into play if Iraq were about to attack a neighbour.

30 Currently, offensive military action against Iraq can only be justified if Iraq is held to be in breach of the Gulf War ceasefire resolution, 687. 687 imposed obligations on Iraq with regard to the elimination of WMD and monitoring these obligations. But 687 never terminated the authority to use force mandated in UNSCR 678 (1990). Thus a violation of 687 can revive teh authorisation to use force in 678.

31 As the ceasefire was proclaimed by the Security Council in 687, it is for the Council to decide whether a breach of obligations has occurred. There is a precedent. UNSCR 1205 (1998), passed after the expulsion of the UN inspectors, stated that in doing so Iraq had acted in flagrant violation of its obligations under 687. In our view, this revived the authority for the use of force under 678 and underpinned Operation Desert Fox. In contrast to general legal opinion, the US asserts the right of individual Member States to determine whether Iraq has breached 687, regardless of whether the Council has reached this assessment.

32 For the P5 and the majority of the Council to take the view that Iraq was in breach of 687:
* they would need to be convinced that Iraq was in breach of its obligations regarding WMD, and ballistic missiles. Such proof would need to be incontrovertible and of large-scale activity. Current intelligence is insufficiently robus to meet this criterion. Even with overriding proof China, France and Russia, in particular, would need considerable lobbying to approve or acquiesce in a new resolution authorising military action against Iraq. Concessions in other policy areas might be needed. However, many Western states, at least, would not wish to oppose the US on such a major issue; or
* if P5 unity could be obtained, Iraq refused to readmit UN inspectors after a clear ultimatum by the UN Security Council; or
* the UN inspectors were re-admitted to Iraq and found sufficient evidence of WMD activity or were again expelled trying to do so.

CONCLUSION

33 In sum, despite the considerable difficulties, the use of overriding force in a ground campaign is the only option that we can be confident will remove Saddam and bring Iraq back into the international community.

34 To launch such a campaign would require a staged approach:
* winding up the pressure: increasing the pressure on Saddam through tougher containment. Stricter implementation of sanctions and a military build-up will frighten his regime. A refusal to admit UN inspectors, or their admission and subsequent likely frustration, which resulted in an appropriate finding by the Security Council" could provide the justification for military action. Saddam would try to prevent this, although he has miscalculated beofre;
* careful planning: detailed military planning on the various invasion and basing options, and when appropriate force deployment;
* coalition building: diplomatic work to establish an international coalition to provide the broadest political and military support to a ground campaign. This will need to focus on China, France and particularly Russia who have the ability to block action in the UN Security Council and on the other Europeans. Special attention will need to be paid to moderate Arab states and to Iran;
* incentives: as an incentive guarantees will need to be made with regard to Iraqi territorial integrity. Plans should be worked up in advance of the great benefits the international community could provide for a post-Saddam Iraq and its people. These should be published.
* tackling other regional issues: an effort to engage the US in a serious effort to re-energise the MEPP would greatly assist coalition building; and
* sensitising the public: a media campaign to warn of the dangers that Saddam poses and to prepare public opinion both in the UK and abroad.

35 The US should be encouraged to consult widely on its plans.

OVERSEAS AND DEFENCE SECRETARIAT
CABINET OFFICE
8 MARCH "))"

IRAQ: LEGAL BACKGROUND

(i) Use of Force: (a) Security Council Resolutions
(b) Self-defence
(c) Humanitarian Intervention

(ii) No Fly Zones

(iii) Security Council Resolutions relevant to the sanctions regime

(iv) Security Council Resolutions relating to UNMOVIC

(i) Use of Force: (a) Security Council Resolutions relevant to the Authorisation of the Use of Force

1 Following its invasion and annexation of Kuwait, the Security Council authorised the use of force againsnt Iraq in resolution 678(1990); this resolution authorised coalition forces to use all necessary means to force Iraq to withdraw, and to restore international peace and security in the area. This resolution gave a legal basis for Operation Desert Storm, which was brought to an end by the cease-fire set out by the Council in resolution 687 (1991). The conditions for the cease-fire in that resolution (and subsequent resolutions) imposed obligations on Iraq with regard to the elimination of WMD and monitoring of its obligations. Resolution 687 (1991) suspended but did not terminate the authority to use force in resolution 678 (1990).

2 In the UK's view a violation of Iraq's obligations which undermines the basis of the cease-fire in resolution 687 (1991) can revive the authorisation to use force in resolution 678 (1990). As the cease-fire was proclaimed by the Council in resolution 687 (1991), it is for the Council to assess whether any such breach of those obligations has occurred. The US have a rather different view: they maintain that the

assessment of breach is for individual member States. We are not aware of any other State which supports this view.

3 The authorisation to use force contained in resolution 678 (1990) has been revived in this way on certain occasions. For example, when Iraq refused to cooperate with the UN Special Commission (UNSCOM) in 1997/8, a series of SCRs condemned the decision as unacceptable. In resolution 1205 (1998) the Council condemned Iraq's decision to end all co-operation with UNSCOM as a flagrant violation of Iraq's obligations under resolution 687 (1991), and restated that the effective operation of UNSCOM was essential for the implementation of that Resolution. In our view these resolutions had the effect of causing the authorisation to use force in resolution 678 (1991) to revive, which provided a legal basis for Operation Desert Fox. In a letter to the President of the Security Council in 1998 we stated that the objective of that operation was to seek compliance by Iraq with the obligations laid down by the Council" that the operation was undertaken only when it became apparent that there was no other way of achieving compliance by Iraq, and that the action was limited to what was necessary to secure this objective.

4 The more difficult issue is whether we are still able to rely on the same legal base for the use of force more than three years after the adoption of resolution 1205 (1998). Military action in 1998 (and on previous occasions) followed on from specific decisions of the Council; there has now not been any significant decision by the Council since 1998. Our interpretation of resolution 1205 was controversial anyway;

many of our partners did not think the legal basis was sufficient as the authority to use force was no explicit. Reliance on it now would be unlikely to receive any support.

USE OF FORCE: (B) SELF-DEFENCE

5 · The conditions that have to be met for the exercise of the right of self-defence are well-known:

i) There must be an armed attack upon a State or such an attack must be imminent;

ii) The use of force must be necessary and other means to reverse/ avert the attack must be unavailable;

iii) The acts in self-defence must be proportionate and strictly confined to the object of stopping the attack.

The right of self-defence may only be exercised until the Security Council has taken measures necessary to ensure international peace and security" and anythign done in exercise fo the right of self-defence must be immediately reported to the Council.

6 For the exercise of the right of self-defence there must be more than "a threat". There has to be an armed attack" actual or imminent. The development of possession of nuclear weapons does not in itself amount to an armed attack; what would be needed

would be clear evidence of an imminent attack. During the Cold War[1] there was certainly a threat in the sense that various States had nuclear weapons which they might, at short notice[1] unleash upon each other. But that did not mean the mere possession of nuclear weapons, or indeed their possession in time of high tension or attempt to obtain them[1], was sufficient to justify pre-emptive action. And when Israel attacked an Iraqi nuclear reactor, near Baghdad, on 7 June 1981 it was "strongly condemned" by the Security Council (acting unanimously) as a "military attack .... in clear violation of the Charter of the United Nations and the norms of international conduct".

USE OF FORCE: (C) HUMANITARIAN INTERVENTION

7 In the UK view[1] the use of force may be justified if the action is taken to prevent an overwhelming humanitarian catastrophe. The limits to this highly contentious doctrine are not clearly defined, but we would maintain that the catastrophe must be clear and well documented, that there must be no other means short of the use of force which could prevent it, and that the measures taken must be proportionate. This doctrine partly underlies the very limited action taken by allied aircraft to patrol the No Fly Zones in Iraq (following action by Saddam to repress the Kurds and the Shia in the early 90s), which involves occasional and limited use of force by those aircraft in self-defence. The application of this doctrine depends on the circumstances at any given time, but it is clearly exceptional.

(II) NO FLY ZONES (NFZs)

8. The NFZs over Northern and Southern Iraq are not established by UN Security Council Resolutions. They were established in 1991 and 1992 on the basis that they were necessary and proportionate steps taken to prevent a huminitarian crisis. Prior to the establishment of the Northern NFZ the Security Council had adopted resolution 688 (1991) on 5 April 1991 in which the Council stated that it was gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq,' including most recently in Kurdish populated areas, which had led to a massive refugee flow'' and that it was deeply disturbed by the magnitude of the human sufering involved. The resolution condemned that repression of the Iraqi civilian population and demanded that Iraq immediately end the repression. In our view the purpose of the NFZs is to moniter Iraqi compliance with the provisions of resolution 688. UK and US aircraft patrolling the NFZs are entitled to use force in self-defence where such a use of foce is a necessary and proportionate response to actual or imminent attack from Iraqi ground systems.

9 The US have on occasion claimed that the purpose of the NFZs is to enforce Iraqi compliance with resolutions 687 or 688. This view is not consisent with resolution 687, which does not deal with the repression of the Iraqi civilian population, or with resolution 688, which was not adopted under Chapter VII of the UN Charter'' and does not contain any provision for enforcement. Nor (as it is sometimes claimed)

were the current NFZs provided for in the Safwan agreement, a provisional agreement between coalition and Iraqi military commanders of 3 March 1991, laying down military conditions for the cease'lfire which did not contain any reference to the NFZs.

(III) SECURITY COUNCIL RESOLUTIONS RELEVANT TO THE SANCTIONS REGIME

10 The sanctions regime against Iraq was established by resolution 661 (1990) of 8 August 1990, which, following the invasion of Kuwait by Iraq, decides that all states shall prevent the import into their territories of any commodities originating in Iraq, the sale or supply to Iraq of any commodities other than medical supplies, and, in humanitarian circumstances, food stuffs, and that Iraqi funds and financial resources should be frozen. Resolution 661 remains in force. The major exception to the sanctions regime is the oil for food programme'l which was established by resolution 986 (1995) and permits oil exports (in unlimited amounts following resolution 1284 (1999)) by Iraq on condition that the purchase price is paid into an escrow account established by the UN Secretary-General, and the funds in that account are used to meet the humanitarian needs of the Iraqi people through the export of medicine, health supplies, foodstuffs and materials and supplies for essential civilian needs. The escrow account is also used to fund the Un Compensation Commission and to meet the operating costs of the UN, includign those of UNMOVIC (see below).

11 The oil for food programme is renewed by the Security Council at (usually) 6 monthly intervals, most recently by resolution 1382 (2001) of 29 November 2001.

Under that resolution the Council also decided that it would adopt, by 13 May 2002, procedures which would improve the flow of goods to Iraq, other than arms and other potential dual use goods on a Goods Review List. The US are currently reviewing the final details of the list with the Russians.

12 In resolution 687 (1991) the Council decided that the prohibition against the import of goods from Iraq should have no further force when Iraq has completed all the actions contemplated in paragraphs 8-13 of that resolution concerning Iraq's WMD programme. Iraq has still not complied with this condition. Under paragraph 21 of resolution 687, the Council decided to review the prohibition against the supply of commodities to Iraq every 60 days in the light of the policies and practices of the Iraqi government, including the implementation of all the relevant resolutions of the Council, for the purpose of determining whether to reduce or lift them. These regular reviews are currently suspended as a result of Iraqi non-compliance with the Council's demands.

13 The intention of the Council to act in accordance with resolution 687 on the termination of these prohibitions has been regularly reaffirmed, including in resolution 1284 (1999). Paragraph 33 of that resolution also contains a complex formula for the suspension of economic sanctions against Iraq for renewable periods of 120 days, if UNMOVIC and the IAEA report cooperation in all respects by Iraq in fulfilling work programmes with those bodies for a period of 120 days after a

reinforced system of monitoring and verification in Iraq becomes fully operational. Iraq has never complied with these conditions.

(iv) SECURITY COUNCIL RESOLUTIONS RELATING TO UNMOVIC

14 UNMOVIC was established by resolution 1284 (1999) to replace the UN Special Commission (UNSCOM) established under resolution 687 (1991) (the ceasefire resolution). UNMOVIC is to undertake the responsibilities of the former Special Commission under resolution 687 relating to the destruction of Iraqi CBW and ballistic missiles with a range of over 150 kilometres and the on-going monitoring and verification of Iraq's compliance with these obligations. Like the Special Commission, UNMOVIC is to be allowed unconditional access to all Iraqi facilities, equipment and records as well as to Iraqi officials. Under pragraph 7 of resolution 1284 UNMOVIC and the IAEA were given the responsibility of drawing up a work programme which would include the implementation of a reinforced system of ongoing monitoring and verification (OMV) and key remaining disarmament tasks to be completed by Iraq, which constitute the governing standard of Iraqi compliance. There are currently no UNMOVIC personnel in Iraq, and the reinforced OMV system has not been implemented because of IRaq's refusal to cooperate.

SECRET - STRICTLY PERSONAL

FROM: DAVID MANNING
DATE: 14 MARCH 2002

CC: JONATHAN POWELL

PRIME MINISTER

YOUR TRIP TO THE US

I had dinner with Condi on Tuesday; and talks and lunch with her and an NSC team on Wednesday (to which Christopher Meyer also came). These were good exchanges, and particularly frank when we were one-on-one at dinner. I attach the records in case you want to glance.

IRAQ

We spent a long time at dinner on IRAQ. It is clear that Bush is grateful for your support and has registered that you are getting flak. I said that you would not budge in your support for regime change but you had to manage a press, a Parliament and a public opinion that was very different than anything in the States. And you would not budge either in your insistence that, if we pursued regime change, it must be very carefully done and produce the right result. Failure was not an option.

Condi's enthusiasm for regime change is undimmed. But there were some signs, since we last spoke, of greater awareness of the practical difficulties and political risks. (See the attached piece by Seymour Hersh which Christopher Meyer says gives a pretty accurate picture of the uncertain state of the debate in Washington.)

From what she said, Bush has yet to find the answers to the big questions:

- how to persuade international opinion that military action against Iraq is necessary and justified;

- what value to put on the exiled Iraqi opposition;

- how to coordinate a US/allied military campaign with internal opposition (assuming there is any);

- what happens on the morning after?

Bush will want to pick your brains. He will also want to hear whether he can expect coalition support. I told Condi that we realised that the Administration could go it alone if it chose. But if it wanted company, it would have to take account of the concerns of its potential coalition partners. In particular:

- the UN dimension. The issue of the weapons inspectors must be handled in a way that would persuade European and wider opinion that the US was conscious of the international framework, and the insistence of many countries on the need for a legal base. Renwed refused by Saddam to accept unfettered inspections would be a powerful argument;

- the paramount importance of tackling Israel/Palestine. Unless we did, we could find ourselves bombing Iraq and losing the Gulf.

YOUR VISIT TO THE RANCH

No doubt we need to keep a sense of perspective. But my talks with Condi convinced me that Bush wants to hear you views on Iraq before taking decisions. He also wants your support. He is still smarting from the comments by other European leaders on his Iraq policy.

This gives you real influence: on the public relations strategy; on the UN and weapons inspections; and on US planning for any military campaign. This could be critically important. I think there is a real risk that the Administration underestimates the difficulties. They may agree that failure isn't an option, but this does not mean that they will avoid it.

Will the Sunni majority really respond to an uprising led by Kurds and Shias? Will Americans really put in enough ground troops to do the job if the Kurdish/Shi'ite stratagem fails? Even if they do[1] will they be willing to take the sort of casualties that the Republican Guard may inflict on them if it turns out to be an urban war, and Iraqi troops don't conveniently collapse in a heap as Richard Perle and others confidently predict? They need to answer these[1] and other tough questions, in a more convincing way than they have so far before concluding that they can do the business.

The talks at the ranch will also give you the chance to push Bush on the Middle East. The Iraq factor means that there may never be a better opportunityto get this Administration to give sustained attention to reviving the MEPP.

DAVID MANNING

CONFIDENTIAL AND PERSONAL

British Embassy Washington

From the Ambassador
Christopher Meyer KCMG

18 March 2002

Sir David Manning KCMG
No 10 Downing Street

IRAQ AND AFGHANISTAN: CONVERSATION WITH WOLFOWITZ

1 Paul Wolfowitz, the Deputy Secretary of Defense, came to Sunday lunch on 17 March.

2 On Iraq I opened by sticking very closely to the script that you used with Condi Rice last week. We backed regime change, but the plan had to be clever and failure was not an option. It would be a tough sell for us domestically, and probably tougher elsewhere in Europe. The US could go it alone if it wanted to. But if it wanted to act with partners, there had to be a strategy for building support for military action against Saddam. I then went through the need to wrongfoot Saddam on the inspectors and the UN SCRs and the critical importance of the MEPP as an integral part of the anti-Saddam strategy. If all this could be accomplished skilfully, we were fairly confident that a number of countries would come on board.

3 I said that the UK was giving serious thought to publishing a paper that would make the case against Saddam. If the UK were to join with the US in any operation against Saddam, we would have to be able to take a critical mass of parliamentary and public opinion with us. It was extraordinary how people had forgetten how bad he was.

4 Wolfowitz said that he fully agreed. He took a slightly different position from others in the Administration, who were forcussed on Saddam's capacity to develop weapons of mass destruction. The WMD danger was of course crucial to the public case against Saddam, particularly the potential linkage to terrorism. But Wolfowitz thought it indispensable to spell out in detail Saddam's barbarism. This was well documented from what he had done during the occupation of Kuwait, the incursion into Kurdish territory, the assault on the Marsh Arabs, and to hiw own people. A lot of work had been done on this towards the end of the first Bush administration. Wolfowitz thought that this would go a long way to destroying any notion of moral equivalence between Iraq and Israel. I said that I had been forcefully struck, when addressing university audiences in the US, how ready students were to gloss over Saddam's crimes and to blame the US and the UK for the suffering of the Iraqi people.

5 Wolfowitz said that it was absurd to deny the link between terrorism and Saddam. There might be doubt about the alleged meeting in Prague between Mohammed Atta, the lead hijacker on 9/11, and Iraqi intelligence (did we, he asked, know anything more about this meeting?). But there were other substantiated cases of Saddam giving comfort to terrorists, including someone involved in the first attack on the World Trade Center (the latest New Yorker apparently has a story about links between Saddam and Al Qaeda operating in Kurdistan).

6. I asked for Wolfowitz's take on the struggle inside the Administration between the pro- and anti- INC lobbies (well documented in Sy Hersh's recent New Yorker piece, which I gave you). He said that he found himself between the two sides (but as the conversation developed, it became clear that Wolfowitz was far more pro-INC than not). He said that he was strongly opposed to what some were advocating: a coalition including all outside factions except the INC (INA, KDP, PUK, SCIRI). This would not work. Hostility towards the INC was in reality hostility towards Chalabi. It was true that Chalabi was not the easiest person to work with. But he had a good record in bringing high-grade defectors out of Iraq. The CIA stubbornly refused to recognise this. They unreasonably denigrated the INC because of their fixation with Chalabi. When I mentioned that the INC was penetraded by Iraqi intelligence, Wolfowitz commented that this was probably the case with all the opposition groups: it was something we would have to live with. As to the Kurds, it was true that they were living well (another point to be made in any public dossier on Saddam) and that they feared provoking an incursion by Baghdad. But there were good people among the Kurds, including in particular Salih (?) of the PUK. Wolfowitz brushed over my reference to the absence of Sunni in the INC: there was a big difference between Iraqi and Iranian Shia. The former just wanted to be rid of Saddam.

7. Wolfowitz was pretty dismissive of the desirability of a military coup and of the defector generals in the wings. The latter had blood on their hands. The important thing was to try to have Saddam replaced by something like a functioning democracy. Though imperfect, the Kurdish model was not bad. How to achieve this, I asked? Only through a coalition of all the parties was the answer (we did not get into military planning).

CONFIDENTIAL AND PERSONAL

PR.121

FROM: P F RICKETTS
POLITICAL DIRECTOR

DATE: 22 MARCH 2002

CC: PUS

SECRETARY OF STATE

IRAQ: ADVICE FOR THE PRIME MINISTER

1 You invited thoughts for your personal note to the Prime Minister covering the official advice (we have put up a draft minute separately). Here are mine.

2 By sharing Bush's broad objective" the Prime Minister can help shape how it is defined, and the approach to achieving it. In the process, he can bring home to Bush some of the realities which will be less evident from Washington. He can help Bush make good decisions by telling him things his own machine probably isn't.

3 By broad support for the objective brings two real problems which need discussing.

4 First, the THREAT. The truth is that what has changed is not the pace of Saddam Hussein's WMD programmes, but our tolerance of them post-11 September. This is not something we need to be defensive about, but attempts to claim otherwise publicly will increase scepticism about our case. I am relieved that you decided to postpone publication of the unclassified document. My meeting yesterday showed that there is more work to do to ensuer that the figures are accurate and consistent with those of the US. But even the best survey of Iraq's WMD programmes will not show much advance in recent years ont he nuclear, missile or CW/BW fronts: the programmes are extremely worrying but have not, as far as we know," been stepped up.

5 US scrambling to establish a link between Iraq and Al Aaida is so far frankly unconvincing. To get public and Parliamentary support for military operations, we have to be convincing that:

- the threat is so serious/imminent that it is worth sending our troops to die for;

- it is qualitatively different from the threat posed by other proliferators who are closer to achieving nuclear capability (including Iran).

We can make the case on qualitative difference (only Iraq has attacked a neighbour'' used CW and fired missiles against Israel). The overall strategy needs to include re-doubled efforts to tackle other proliferators, including Iran, in other ways (the UK/French ideas on greater IAEA activity are helpful here). But we are still left with a problem of bringing public opinion to accept the imminence of a threat from Iraq. This is something the Prime Minister and President need to have a frank discussion about.

6 The second problem is the END STATE. Military operations need clear and compelling military objectives. For Kosovo'' it was: Serbs out, Kosovars back'' peace-keepers in. For Afghanistan, destroying the Taleban and Al Qaida military capability. For Iraq, "regime change" does not stack up. It sounds like a grudge between Bush and Saddam. Much better, as you have suggested, to make the objective ending the threat to the international community from Iraqi WMD before Saddam uses it or gives it to terrorists. This is at once easier to justify in terms of international law'' but also more demanding. Regime change which produced another Sunni General still in charge of an active Iraqi WMD programme would be a bad outcome (not least because it would be almost impossible to maintain UN sanctions on a new leader who came in promising a fresh start). As with the fight against UBL, Bush would do well to de''personalise the objective'' focus on elimination of WMD, and show that he is serious about UN Inspectors as the first choice means of achieving that (it is win/win for him: either Saddam against all the odds allows Inspectors to operate freelyk'' in which case we can further hobble his WMD programmes, or he blocks/hinders, and we are on stronger ground for switching to other methods).

7 Defining the end state in this way, and working through the UN, will of course also help maintain a degree of support among the Europeans, and therefore fits with another major message which the Prime Minister will watn to get across: the importance of positioning Iraq as a problem for the inernational community as a whole'' not just for the US.

PETER RICKETS

SECRET AND PERSONAL

PM/02/019
PRIME MINISTER

CRAWFORD/IRAQ

1 The rewards from your visit to Crawford will be few. The risks are high, both for you and for the Government. I judge that there is at present no majority inside the PLP for any military action against Iraq, (alongside a greater readiness in the PLP to surface their concerns). Colleagues know that Saddam and the Iraqi regime are bad. Making that case is easy. But we have a long way to go to convince them as to:

(a) the scale of the threat from Iraq and why this has got worse recently;

(b) what distinguishes the Iraqi threat from that of eg Iran and North Korea so as to justify military action;

(c) the justification for any military action in terms of international law; and

(d) whether the consequence of military action really would be a compliant, law abiding replacement government.

2 The whole exercise is made much more difficult to handle as long as conflict between Israel and the Palestinians is so acute.

THE SCALE OF THE THREAT

3 The Iraqi regime plainly poses a most serious threat to its neighbours, and therefore to international security. However, in the documents so far presented it has been hard to glean whether the threat from Iraq is so significantly

different from that of Iran and North Korea as to justify military action (see below).

WHAT IS WORSE NOW?

4 If 11 September had not happened, it is doubtful that the US would now be considering military action against Iraq. In addition, there has been no credible evidence to link Iraq with UBL and Al Qaida. Objectively, the threat from Iraq has not worsened as a result of 11 September. What has however changed is the tolerance of the international community (especially that of the US), the world having witnesses on September 11 just what determined evil people can these days perpetuate.

THE DIFFERENCE BETWEEN IRAQ, IRAN AND NORTH KOREA

5 By linking these countries together in this "axis of evil" speech, President Bush implied an identity betwen them not only in terms of their threat, but also in terms of the action necessary to deal with the threat. A lot of work will now need to be done to delink the three, and to show why military action against Iraq is so much more justified than against Iran and North Korea. The heart of this case – that Iraq poses a unique and present danger - rests on the facts that it:

* invaded a neighbour;
* has used WMD, and would use them again;

* is in breach of nine UNSCRS.

THE POSITION IN INTERNATIONAL LAW

6 That Iraq is in flagrant breach of international legal obligations imposed on it by the UNSC provides us with the core of a strategy, and one which is based on international law. Indeed" if the argument is to be won, the whol case

against Iraq and in favour (if necessary) of military action, needs to be narrated with reference to the international rule of law.

7 We also have better to sequence the explanation of what we are doing and why. Specifically, we need to concentrate in the early stages on:

* making operational the sanctions regime foreshadowed by UNSCR 1382;

* demanding the readmission of weapons inspectors, but this time to operate in a free and unfettered way (a similar formula to that which Cheney used at your joint press conference, as I recall).

8 I know there are those who say that an attack on Iraq would be justified whether or not weapons inspectors were readmitted. But I believe that a demand for the unfettered readmission of weapons inspectors is essential, in terms of public explanation, and in terms of legal sanction for any subsequent military action.

9 Legally there are two potential elephant traps:

(i) regime change per se is no justification for military action; it could form part of the method of any strategy, but not a goal. Of course, we may want credibly to assert that regime change is an essential part of the strategy by which we have to achieve our ends - that of the elimination of Iraq's WMD capacity: but the latter has to be the goal;

(ii) on whether any military action would require a fresh UNSC mandate (Desert Fox did not). The US are likely to oppose any idea of a fresh mandate. On the other side, the weight of legal advice here is that a fresh mandate

may well be required. There is no doubt that a new UNSCR would transform the climate in the PLP. Whilst that (a new mandate) is very unlikely, given the US's position, a draft resolution against military action with 13 in favour (or handsitting) and two vetoes against could play very badly here.

THE CONSEQUENCES OF ANY MILITARY ACTION

10 A legal justification is a necessary but far from sufficient pre[b] condition for military action. We have also to answer the big question - what will this action achieve? There seems to be a larger hole in this than on anything. Most of the assessments from the US have assumed regime change as a means of eliminating Iraq's WMD threat. But none has satisfactorily answered how that regime change is to be secured, and how there can be any certainty that the replacement regime will be better.

11 Iraq has had NO history of democracy so no-one has this habit or experience.

(JACK STRAW)

Foreign and Commonwealth Office
25 March 2002

The Sunday Times June 12, 2005 TIMESONLINE

Cabinet Office paper: Conditions for military action

The paper, produced by the Cabinet Office on July 21, 2002, is incomplete because the last page is missing. The following is a transcript rather than the original document in order to protect the source.

PERSONAL SECRET UK EYES ONLY

IRAQ: CONDITIONS FOR MILITARY ACTION (A Note by Officials)

Summary

Ministers are invited to:

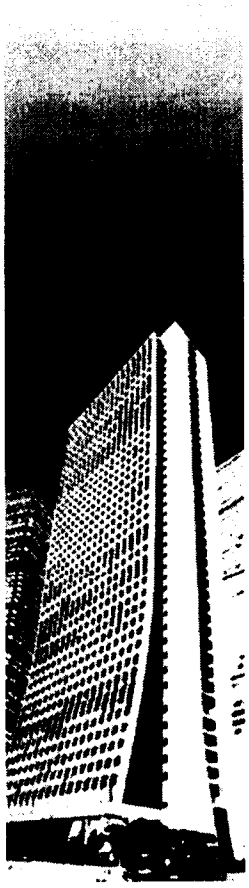
(1) Note the latest position on US military planning and timescales for possible action.

(2) Agree that the objective of any military action should be a stable and law-abiding Iraq, within present borders, co-operating with the international community, no longer posing a threat to its neighbours or international security, and abiding by its international obligations on WMD.

(3) Agree to engage the US on the need to set military plans within a realistic political strategy, which includes identifying the succession to Saddam Hussein and creating the conditions necessary to justify government military action, which might include an ultimatum for the return of UN weapons inspectors to Iraq. This should include a call from the Prime Minister to President Bush ahead of the briefing of US military plans to the President on 4 August.

(4) Note the potentially long lead times involved in equipping UK Armed Forces to undertake operations in the Iraqi theatre and agree that the MOD should bring forward proposals for the procurement of Urgent Operational Requirements under cover of the lessons learned from Afghanistan and the outcome of SR2002.

(5) Agree to the establishment of an ad hoc group of officials under Cabinet Office Chairmanship to consider the development



of an information campaign to be agreed with the US.

Introduction

1. The US Government's military planning for action against Iraq is proceeding apace. But, as yet, it lacks a political framework. In particular, little thought has been given to creating the political conditions for military action, or the aftermath and how to shape it.

2. When the Prime Minister discussed Iraq with President Bush at Crawford in April he said that the UK would support military action to bring about regime change, provided that certain conditions were met: efforts had been made to construct a coalition/shape public opinion, the Israel-Palestine Crisis was quiescent, and the options for action to eliminate Iraq's WMD through the UN weapons inspectors had been exhausted.

3. We need now to reinforce this message and to encourage the US Government to place its military planning within a political framework, partly to forestall the risk that military action is precipitated in an unplanned way by, for example, an incident in the No Fly Zones. This is particularly important for the UK because it is necessary to create the conditions in which we could legally support military action. Otherwise we face the real danger that the US will commit themselves to a course of action which we would find very difficult to support.

4. In order to fulfil the conditions set out by the Prime Minister for UK support for military action against Iraq, certain preparations need to be made, and other considerations taken into account. This note sets them out in a form which can be adapted for use with the US Government. Depending on US intentions, a decision in principle may be needed soon on whether and in what form the UK takes part in military action.

The Goal

5. Our objective should be a stable and law-abiding Iraq, within present borders, co-operating with the international community, no longer posing a threat to its neighbours or to international security, and abiding by its international obligations on WMD. It seems unlikely that this could be achieved while the current Iraqi regime remains in power. US military planning unambiguously takes as its objective the removal of Saddam Hussein's regime, followed by elimination if Iraqi WMD. It is however, by no means certain, in the view of UK officials, that one would necessarily follow from the other. Even if regime change is a necessary condition for controlling Iraqi WMD, it is certainly not a sufficient one.

US Military Planning

6. Although no political decisions have been taken, US military planners have drafted options for the US Government to undertake an invasion of Iraq. In a 'Running Start', military action could begin as early as November of this year, with no overt military build-up. Air strikes and support for opposition groups in Iraq would lead initially to small-scale land operations, with further land forces deploying sequentially, ultimately overwhelming Iraqi forces and leading to the

collapse of the Iraqi regime. A 'Generated Start' would involve a longer build-up before any military action were taken, as early as January 2003. US military plans include no specifics on the strategic context either before or after the campaign. Currently the preference appears to be for the 'Running Start'. CDS will be ready to brief Ministers in more detail.

7. US plans assume, as a minimum, the use of British bases in Cyprus and Diego Garcia. This means that legal base issues would arise virtually whatever option Ministers choose with regard to UK participation.

The Viability of the Plans

8. The Chiefs of Staff have discussed the viability of US military plans. Their initial view is that there are a number of questions which would have to be answered before they could assess whether the plans are sound. Notably these include the realism of the 'Running Start', the extent to which the plans are proof against Iraqi counter-attack using chemical or biological weapons and the robustness of US assumptions about the bases and about Iraqi (un)willingness to fight.

UK Military Contribution

9. The UK's ability to contribute forces depends on the details of the US military planning and the time available to prepare and deploy them. The MOD is examining how the UK might contribute to US-led action. The options range from deployment of a Division (ie Gulf War sized contribution plus naval and air forces) to making available bases. It is already clear that the UK could not generate a Division in time for an operation in January 2003, unless publicly visible decisions were taken very soon. Maritime and air forces could be deployed in time, provided adequate basing arrangements could be made. The lead times involved in preparing for UK military involvement include the procurement of Urgent Operational Requirements, for which there is no financial provision.

The Conditions Necessary for Military Action

10. Aside from the existence of a viable military plan we consider the following conditions necessary for military action and UK participation: justification/legal base; an international coalition; a quiescent Israel/Palestine; a positive risk/benefit assessment; and the preparation of domestic opinion.

Justification

11. US views of international law vary from that of the UK and the international community. Regime change per se is not a proper basis for military action under international law. But regime change could result from action that is otherwise lawful. We would regard the use of force against Iraq, or any other state, as lawful if exercised in the right of individual or collective self-defence, if carried out to avert an overwhelming humanitarian catastrophe, or authorised by the UN Security Council. A detailed consideration of the legal issues, prepared earlier this year, is at Annex A. The legal position would depend on the precise circumstances at the time. Legal bases for an

invasion of Iraq are in principle conceivable in both the first two instances but would be difficult to establish because of, for example, the tests of immediacy and proportionality. Further legal advice would be needed on this point.

12. This leaves the route under the UNSC resolutions on weapons inspectors. Kofi Annan has held three rounds of meetings with Iraq in an attempt to persuade them to admit the UN weapons inspectors. These have made no substantive progress; the Iraqis are deliberately obfuscating. Annan has downgraded the dialogue but more pointless talks are possible. We need to persuade the UN and the international community that this situation cannot be allowed to continue ad infinitum. We need to set a deadline, leading to an ultimatum. It would be preferable to obtain backing of a UNSCR for any ultimatum and early work would be necessary to explore with Kofi Annan and the Russians, in particular, the scope for achieving this.

13. In practice, facing pressure of military action, Saddam is likely to admit weapons inspectors as a means of forestalling it. But once admitted, he would not allow them to operate freely. UNMOVIC (the successor to UNSCOM) will take at least six months after entering Iraq to establish the monitoring and verification system under Resolution 1284 necessary to assess whether Iraq is meeting its obligations. Hence, even if UN inspectors gained access today, by January 2003 they would at best only just be completing setting up. It is possible that they will encounter Iraqi obstruction during this period, but this more likely when they are fully operational.

14. It is just possible that an ultimatum could be cast in terms which Saddam would reject (because he is unwilling to accept unfettered access) and which would not be regarded as unreasonable by the international community. However, failing that (or an Iraqi attack) we would be most unlikely to achieve a legal base for military action by January 2003.

An International Coalition

15. An international coalition is necessary to provide a military platform and desirable for political purposes.

16. US military planning assumes that the US would be allowed to use bases in Kuwait (air and ground forces), Jordan, in the Gulf (air and naval forces) and UK territory (Diego Garcia and our bases in Cyprus). The plans assume that Saudi Arabia would withhold co-operation except granting military over-flights. On the assumption that military action would involve operations in the Kurdish area in the North of Iraq, the use of bases in Turkey would also be necessary.

17. In the absence of UN authorisation, there will be problems in securing the support of NATO and EU partners. Australia would be likely to participate on the same basis as the UK. France might be prepared to take part if she saw military action as inevitable. Russia and China, seeking to improve their US relations, might set aside their misgivings if sufficient attention were paid to their legal and economic concerns. Probably the best we could expect from the region would be neutrality. The US is likely to restrain Israel from taking part in military action. In practice, much of the international community would find it difficult to stand in the way of the determined

course of the US hegemon. However, the greater the international support, the greater the prospects of success.

A Quiescent Israel-Palestine

18. The Israeli re-occupation of the West Bank has dampened Palestinian violence for the time being but is unsustainable in the long-term and stoking more trouble for the future. The Bush speech was at best a half step forward. We are using the Palestinian reform agenda to make progress, including a resumption of political negotiations. The Americans are talking of a ministerial conference in November or later. Real progress towards a viable Palestinian state is the best way to undercut Palestinian extremists and reduce Arab antipathy to military action against Saddam Hussein. However, another upsurge of Palestinian/Israeli violence is highly likely. The co-incidence of such an upsurge with the preparations for military action against Iraq cannot be ruled out. Indeed Saddam would use continuing violence in the Occupied Territories to bolster popular Arab support for his regime.

Benefits/Risks

19. Even with a legal base and a viable military plan, we would still need to ensure that the benefits of action outweigh the risks. In particular, we need to be sure that the outcome of the military action would match our objective as set out in paragraph 5 above. A post-war occupation of Iraq could lead to a protracted and costly nation-building exercise. As already made clear, the US military plans are virtually silent on this point. Washington could look to us to share a disproportionate share of the burden. Further work is required to define more precisely the means by which the desired endstate would be created, in particular what form of Government might replace Saddam Hussein's regime and the timescale within which it would be possible to identify a successor. We must also consider in greater detail the impact of military action on other UK interests in the region.

Domestic Opinion

20. Time will be required to prepare public opinion in the UK that it is necessary to take military action against Saddam Hussein. There would also need to be a substantial effort to secure the support of Parliament. An information campaign will be needed which has to be closely related to an overseas information campaign designed to influence Saddam Hussein, the Islamic World and the wider international community. This will need to give full coverage to the threat posed by Saddam Hussein, including his WMD, and the legal justification for action.

Timescales

21. Although the US military could act against Iraq as soon as November, we judge that a military campaign is unlikely to start until January 2003, if only because of the time it will take to reach consensus in Washington. That said, we judge that for climactic reasons, military action would need to start by January 2003, unless action were deferred until the following autumn.

22. As this paper makes clear, even this timescale would present

problems. This means that:

(a) We need to influence US consideration of the military plans before President Bush is briefed on 4 August, through contacts betweens the Prime Minister and the President and at other levels;

The Secret Downing Street Memo

SECRET AND STRICTLY PERSONAL - UK EYES ONLY

DAVID MANNING
From: Matthew Rycroft
Date: 23 July 2002
S 195 /02

cc: Defence Secretary, Foreign Secretary, Attorney-General, Sir Richard Wilson, John Scarlett, Francis Richards, CDS, C, Jonathan Powell, Sally Morgan, Alastair Campbell

IRAQ: PRIME MINISTER'S MEETING, 23 JULY

Copy addressees and you met the Prime Minister on 23 July to discuss Iraq.

This record is extremely sensitive. No further copies should be made. It should be shown only to those with a genuine need to know its contents.

John Scarlett summarised the intelligence and latest JIC assessment. Saddam's regime was tough and based on extreme fear. The only way to overthrow it was likely to be by massive military action. Saddam was worried and expected an attack, probably by air and land, but he was not convinced that it would be immediate or overwhelming. His regime expected their neighbours to line up with the US. Saddam knew that regular army morale was poor. Real support for Saddam among the public was probably narrowly based.

C reported on his recent talks in Washington. There was a perceptible shift in attitude. Military action was now seen as inevitable. Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy. The NSC had no patience with the UN route, and no enthusiasm for publishing material on the Iraqi regime's record. There was little discussion in Washington of the aftermath after military action.

CDS said that military planners would brief CENTCOM on 1-2 August, Rumsfeld on 3 August and Bush on 4 August.

The two broad US options were:

(a) Generated Start. A slow build-up of 250,000 US troops, a short (72 hour) air campaign, then a move up to Baghdad from the south. Lead time of 90 days (30 days preparation plus 60 days deployment to Kuwait).

(b) Running Start. Use forces already in theatre (3 x 6,000), continuous air campaign, initiated by an Iraqi casus belli. Total lead time of 60 days with the air campaign beginning even earlier. A hazardous option.

The US saw the UK (and Kuwait) as essential, with basing in Diego Garcia and Cyprus critical for either option. Turkey and other Gulf states were also important, but less vital. The three main options for UK involvement were:

(i) Basing in Diego Garcia and Cyprus, plus three SF squadrons.

(ii) As above, with maritime and air assets in addition.

(iii) As above, plus a land contribution of up to 40,000, perhaps with a discrete role in Northern Iraq entering from Turkey, tying down two Iraqi divisions.

The Defence Secretary said that the US had already begun "spikes of activity" to put pressure on the regime. No decisions had been taken, but he thought the most likely timing in US minds for military action to begin was January, with the timeline beginning 30 days before the US Congressional elections.

The Foreign Secretary said he would discuss this with Colin Powell this week. It seemed clear that Bush had made up his mind to take military action, even if the timing was not yet decided. But the case was thin. Saddam was not threatening his neighbours, and his WMD capability was less than that of Libya, North Korea or Iran. We should work up a plan for an ultimatum to Saddam to allow back in the UN weapons inspectors. This would also help with the legal justification for the use of force.

The Attorney-General said that the desire for regime change was not a legal base for military action. There were three possible legal bases: self-defence, humanitarian intervention, or UNSC authorisation. The first and second could not be the base in this case. Relying on UNSCR 1205 of three years ago would be difficult. The situation might of course change.

The Prime Minister said that it would make a big difference politically and legally if Saddam refused to allow in the UN inspectors. Regime change and WMD were linked in the sense that it was the regime that was producing the WMD. There were different strategies for dealing with Libya and Iran. If the political context were right, people would support regime change. The two key issues were whether the military plan worked and whether we had the political strategy to give the military plan the space to work.

On the first, CDS said that we did not know yet if the US battleplan was workable. The military were continuing to ask lots of questions.

For instance, what were the consequences, if Saddam used WMD on day one, or if Baghdad did not collapse and urban warfighting began? You said that Saddam could also use his WMD on Kuwait. Or on Israel, added the Defence Secretary.

The Foreign Secretary thought the US would not go ahead with a military plan unless convinced that it was a winning strategy. On this, US and UK interests converged. But on the political strategy, there could be US/UK differences. Despite US resistance, we should explore discreetly the ultimatum. Saddam would continue to play hard-ball with the UN.

John Scarlett assessed that Saddam would allow the inspectors back in only when he thought the threat of military action was real.

The Defence Secretary said that if the Prime Minister wanted UK military involvement, he would need to decide this early. He cautioned that many in the US did not think it worth going down the ultimatum route. It would be important for the Prime Minister to set out the political context to Bush.

Conclusions:

(a) We should work on the assumption that the UK would take part in any military action. But we needed a fuller picture of US planning before we could take any firm decisions. CDS should tell the US military that we were considering a range of options.

(b) The Prime Minister would revert on the question of whether funds could be spent in preparation for this operation.

(c) CDS would send the Prime Minister full details of the proposed military campaign and possible UK contributions by the end of the week.

(d) The Foreign Secretary would send the Prime Minister the background on the UN inspectors, and discreetly work up the ultimatum to Saddam.

He would also send the Prime Minister advice on the positions of countries in the region especially Turkey, and of the key EU member states.

(e) John Scarlett would send the Prime Minister a full intelligence update.

(f) We must not ignore the legal issues: the Attorney-General would consider legal advice with FCO/MOD legal advisers.

(I have written separately to commission this follow-up work.)

MATTHEW RYCROFT

(Rycroft was a Downing Street foreign policy aide)

January 26, 1998

The Honorable William J. Clinton
President of the United States
Washington, DC

Dear Mr. President:

We are writing you because we are convinced that current American policy toward Iraq is not succeeding, and that we may soon face a threat in the Middle East more serious than any we have known since the end of the Cold War. In your upcoming State of the Union Address, you have an opportunity to chart a clear and determined course for meeting this threat. We urge you to seize that opportunity, and to enunciate a new strategy that would secure the interests of the U.S. and our friends and allies around the world. That strategy should aim, above all, at the removal of Saddam Hussein's regime from power. We stand ready to offer our full support in this difficult but necessary endeavor.

The policy of "containment" of Saddam Hussein has been steadily eroding over the past several months. As recent events have demonstrated, we can no longer depend on our partners in the Gulf War coalition to continue to uphold the sanctions or to punish Saddam when he blocks or evades UN inspections. Our ability to ensure that Saddam Hussein is not producing weapons of mass destruction, therefore, has substantially diminished. Even if full inspections were eventually to resume, which now seems highly unlikely, experience has shown that it is difficult if not impossible to monitor Iraq's chemical and biological weapons production. The lengthy period during which the inspectors will have been unable to enter many Iraqi facilities has made it even less likely that they will be able to uncover all of Saddam's secrets. As a result, in the not-too-distant future we will be unable to determine with any reasonable level of confidence whether Iraq does or does not possess such weapons.

Such uncertainty will, by itself, have a seriously destabilizing effect on the entire Middle East. It hardly needs to be added that if Saddam does acquire the capability to deliver weapons of mass destruction, as he is almost certain to do if we continue along the present course, the safety of American troops in the region, of our friends and allies like Israel and the moderate Arab states, and a significant portion of the world's supply of oil will all be put at hazard. As you have rightly declared, Mr. President, the security of the world in the first part of the 21st century will be determined largely by how we handle this threat.

Given the magnitude of the threat, the current policy, which depends for its success upon the steadfastness of our coalition partners and upon the cooperation of Saddam Hussein, is dangerously inadequate. The only acceptable strategy is one that eliminates the possibility that Iraq will be able to use or threaten to use weapons of mass destruction. In the near term, this

means a willingness to undertake military action as diplomacy is clearly failing. In the long term, it means removing Saddam Hussein and his regime from power. That now needs to become the aim of American foreign policy.

We urge you to articulate this aim, and to turn your Administration's attention to implementing a strategy for removing Saddam's regime from power. This will require a full complement of diplomatic, political and military efforts. Although we are fully aware of the dangers and difficulties in implementing this policy, we believe the dangers of failing to do so are far greater. We believe the U.S. has the authority under existing UN resolutions to take the necessary steps, including military steps, to protect our vital interests in the Gulf. In any case, American policy cannot continue to be crippled by a misguided insistence on unanimity in the UN Security Council.

We urge you to act decisively. If you act now to end the threat of weapons of mass destruction against the U.S. or its allies, you will be acting in the most fundamental national security interests of the country. If we accept a course of weakness and drift, we put our interests and our future at risk.

Sincerely,

Elliott Abrams Richard L. Armitage William J. Bennett

Jeffrey Bergner John Bolton Paula Dobriansky

Francis Fukuyama Robert Kagan Zalmay Khalilzad

William Kristol Richard Perle Peter W. Rodman

Donald Rumsfeld William Schneider, Jr. Vin Weber

Paul Wolfowitz R. James Woolsey Robert B. Zoellick

BACK TO TOP HOME CONTACT US

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

February 1, 2001

INFORMATIO

MEMORANDUM FOR SECRETARY O'NEILL

FROM: Steve Radelet, Deputy Assistant Secretary SCR
(Africa, Middle East, and South Asia)

SUBJECT: Supplementary Materials for Briefing for Today's 3:00 p.m. NSC Principals Meeting on Gulf Policy

Please find attached supplementary background information on the enforcement of U.S. sanctions on Iraq by Treasury's Office of Foreign Assets Control (OFAC), for today's NSC meeting at 3:00 p.m.

cc: Kenneth Dam
Joe Engelhard
Mark Sobel

UNCLASSIFIED WITH SECRET ATTACHMENTS
DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JAN 3 1 2001

BRIEFIN

MEMORANDUM FOR SECRETARY O'NEILL

FROM: Mark Sobel, Acting Assistant Secretary, International Affairs

SUBJECT: Briefing for NSC Principals Meeting on Gulf Policy

DATE AND TIME: 3:00 p.m.-4:30 p.m., Thursday, February 1, 2001

LOCATION: White House Situation Room

PARTICIPANTS: Principals + 1

PURPOSE: To review the current state-of-play (including a CIA briefing on Iraq and to examine policy questions on how to proceed.

ATTACHMENTS:

Tab A: Agenda and Policy Questions (from NSC) -- **SECRET**
Tab B: Economic Background on Iraq (from Deutsche Bank)
Tab C: Executive Summary: Political-Military Plan for Post-Saddam Iraq Crisis (interagen working paper) – **SECRET**
Tab D: Summary of United States Sanctions on Iraq
Tab E: "Iraq Sanctions Regime," State Department, for use in public statements

cc: Kenneth Dam
Joe Engelhard
Steve Radelet

UNCLASSIFIED WITH SECRET ATTACHMENTS

Foreign Suitors for Iraqi Oilfield Contracts

as of 5 March 2001

Country	Firm	Iraqi Oil & Gas Projects	Comments/Status
Algeria	Sonatrach	Tuba	Discussions. PSC.
		Blocks 6 & 7	Collecting data.
Australia	BHP	Halfaya	Discussions. PSC.
		Block 6	Collected data.
Belgium	Petrofina	Ahdab	Technical/economic studies (China's CNPC awarded PSC).
		Block 2	Collected data.
Canada	Ranger	Block 6, other	Signed MOU with Baghdad.
	Bow Canada	Khurmala	Joint proposal w/Czech Republic's Strojexport
		Hamrin	Joint proposal w/Czech Republic's Strojexport
	Alberta Energy	Unidentified	None
	CanOxy	Ratawi	Discussions. PSC.
		Block 5	Collected data.
	Chauvco Res.	Ayn Zalah	Advanced talks by late 1996. Service contract for advanced oil recovery (gas injection project) in this aging field.
	Escondido	Ratawi	Discussions. PSC.
		Block 5	Collecting data.
	Talisman	Hamrin, E. Baghdad	Service contract negotiations October 1999.
	IPC	Hamrin	Discussions. Service contract.
	PanCanadian	Unidentified	None
China	CNPC	Ahdab	Production Sharing Contract (PSC) signed June 1997.
		Halfaya	Bid for $4 bn, 23-year PSC.
		Luhais & Subba	Discussions. Service contract.
		Block 5	Collected data, discussions.
	Norinco	Ahdab	PSC signed June 1997 (CNPC consortium partner).
		Rafidain	Discussions. PSC.
	Sinochem	Rafidain	Discussions. PSC.
Czech Republic	Strojexport	Hamrin	Joint project with Bow Canada. Sent team to Iraq in Sept 1997.
		Khurmala	Joint project with Bow Canada
Finland	Neste Oy	Unidentified	None
France	Total Elf Aquitaine	Majnoon	PSC "agreed in principle" January 1997.
	Forasol SA	Saddam	Feasibility study presented to Baghdad in 1997, updated in 1998.
	IBEX	Hamrin	Technical discussions.
	Perenco	Rafidain	Discussions. PSC.
	Total Elf Aquitaine	Nahr Umr	PSC "agreed in principle" January 1997.
Germany	Deminex	Block 1	Collected data.
	Preussag	Ahdab	Technical/economic studies (China's CNPC later awarded PSC).
		Block 2	Collected data
	Slavneft	N. Rumaylah	Subcontractor to Lukoil consortium.
Greece	Kriti	Gharraf	Discussions. PSC.
Hungary	Hanpetro	Block 3	Collected data.
India	ONGC	Tuba	Advanced contract talks in October 1999 (ONGC drilled at least four wells in Tuba in the 1980s). PSC.
		Halfaya	Discussions. PSC.
		Block 8	Collected data.
	Reliance	Tuba	Discussions.
Indonesia	Pertamina	Tuba	Finalized discussions for a PSC in late 1997.
		Block 3	Collected data
Ireland	Bula	Block 4	Discussions.
Italy	Agip	Nasiriya	PSC initialed Apr 97. $2 bn, 23-year project (w/partner Repsol).
		Iraq-Turkey gas pipeline	Discussions.
		Block 1	Collected data, discussions.
	Snamprogetti	Luhais & Subba	Discussions. Service contract.

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BBC NEWS

Wilmshurst resignation letter

Elizabeth Wilmshurst, deputy legal adviser to the Foreign Office, resigned in March 2003 because she did not believe the war with Iraq was legal. Her letter was released by the Foreign Office to the BBC News website under the Freedom of Information Act.

A minute dated 18 March 2003 from Elizabeth Wilmshurst (Deputy Legal Adviser) to Michael Wood (The Legal Adviser), copied to the Private Secretary, the Private Secretary to the Permanent Under-Secretary, Alan Charlton (Director Personnel) and Andrew Patrick (Press Office):

1. I regret that I cannot agree that it is lawful to use force against Iraq without a second Security Council resolution to revive the authorisation given in SCR 678. I do not need to set out my reasoning; you are aware of it.

[The following italicised section was removed by the Foreign Office but later obtained by Channel 4 News]

My views accord with the advice that has been given consistently in this office before and after the adoption of UN security council resolution 1441 and with what the attorney general gave us to understand was his view prior to his letter of 7 March. (The view expressed in that letter has of course changed again into what is now the official line.)

I cannot in conscience go along with advice - within the Office or to the public or Parliament - which asserts the legitimacy of military action without such a resolution, particularly since an unlawful use of force on such a scale amounts to the crime of aggression; nor can I agree with such action in circumstances which are so detrimental to the international order and the rule of law.

2. I therefore need to leave the Office: my views on the legitimacy of the action in Iraq would not make it possible for me to continue my role as a Deputy Legal Adviser or my work more generally.

For example in the context of the International Criminal Court, negotiations on the crime of aggression begin again this year.

I am therefore discussing with Alan Charlton whether I may take approved early retirement. In case that is not possible this letter should be taken as constituting notice of my resignation.

3. I joined the Office in 1974. It has been a privilege to work here. I leave with very great sadness.

Story from BBC NEWS:

Central Intelligence Agency

Washington, D.C. 20505

30 January 2004

The Honorable John Conyers, Jr.
Ranking Democratic Member
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Conyers:

Thank you for your letter of 29 September 2003 to the Director of Central Intelligence (DCI) regarding any contacts the Central Intelligence Agency (CIA) has had with the Department of Justice (DoJ) to request an investigation into the disclosure earlier that year of the identity of an employee operating under cover. The DCI has asked me to respond to your letter on his behalf.

Executive Order 12333 requires CIA to report to the Attorney General "possible violations of criminal law." In accordance with Executive Order 12333 on 24 July 2003, a CIA attorney left a phone message for the Chief of the Counterespionage Section of DoJ noting concern with recent articles on this subject and stating that the CIA would forward a written crimes report pending the outcome of a review of the articles by subject matter experts. By letter dated 30 July 2003, the CIA reported to the Criminal Division of DoJ a possible violation of criminal law concerning the unauthorized disclosure of classified information. The letter also informed DoJ that the CIA's Office of Security had opened an investigation into this matter. This letter was sent again to DoJ by facsimile on 5 September 2003.

By letter dated 16 September 2003, and in accordance with standard practice in such matters, the CIA informed DoJ that the Agency's investigation into this matter was complete, provided DoJ a memorandum setting forth the results of that investigation, and requested that the Federal Bureau of Investigation (FBI) undertake a criminal investigation of this matter. In a 29 September 2003 letter, DoJ advised that the Counterespionage Section of DoJ had requested that the FBI initiate an investigation of this matter.

The Honorable John Conyers, Jr.

I hope the information set forth in this letter provides the assistance you were seeking.

Sincerely,

Stanley M. Moskowitz
Director of Congressional Affairs

U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

March 19, 2004

MEMORANDUM TO:

William H. Taft, IV
General Counsel
Department of State

William J. Haynes, II
General Counsel
Department of Defense

John Bellinger
Legal Adviser for National Security

Scott Muller
General Counsel
Central Intelligence Agency

From: Jack Goldsmith
Assistant Attorney General
Office of Legal Counsel

Gentlemen:

Attached is a draft of an opinion, requested by Judge Gonzales, concerning the meaning of Article 49 of the Fourth Geneva Convention as it applies in occupied Iraq. I would appreciate any comments you may have at your earliest convenience. As always, it is important that you keep this draft opinion a very close hold. Thanks.

Attachment

cc: David Leitch

U.S. Department of Justice

Office of Legal Counsel

DRAFT

Office of the Assistant Attorney General — Washington, D.C. 20530

DRAFT 3/19/04

MEMORANDUM FOR ALBERTO R. GONZALES, COUNSEL TO THE PRESIDENT

Re: Permissibility of Relocating Certain "Protected Persons" from Occupied Iraq

Article 49 of the 1949 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 ("GC" or "Convention") prohibits "[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, . . . regardless of their motive."[1] This opinion elaborates on interim guidance provided in October 2003 concerning the permissibility under GC of relocating certain "protected persons" detained in occupied Iraq to places outside that country.[2] We now

[1] The entirety of article 49 is as follows:

> Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.
>
> Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.
>
> The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.
>
> The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.
>
> The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.
>
> The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

[2] While GC confers certain protections on "the whole of the populations of the countries in conflict," GC, art. 13; *see also id.* Part II (Title) ("General Protection of Populations against Certain Consequences of War"), it

conclude that the United States may, consistent with article 49, (1) remove "protected persons" who are illegal aliens from Iraq pursuant to local immigration law; and (2) relocate "protected persons" (whether illegal aliens or not) from Iraq to another country to facilitate interrogation, for a brief but not indefinite period, so long as adjudicative proceedings have not been initiated against them.

I. Removal of "Protected Persons" Who Are Illegal Aliens

We first consider whether removing a "protected person" who is an illegal alien from occupied territory constitutes a "deportation" or "forcible transfer" within the meaning of article 49(1)'s prohibition. We consider each term in turn.

We begin with "deportation." Under United States law, this term denotes the removal of an alien. *See, e.g.*, 8 U.S.C. 1227(a)(1)(B) ("Any alien who is present in the United States in violation of this chapter or any other law of the United States is deportable."). *Black's Law Dictionary* of 1951, two years after GC, confirms the point. It defines the term "[i]n American Law" as "[t]he removal or sending back of an alien to the country from which he came."[3] If this American law meaning of "deportation" were the meaning of the word in article 49, then that article would apply to the removal of "protected persons" who are illegal aliens from occupied territory.

But article 49(1) — or at least the core of it — represents a codification of the customary international law of armed conflict as it stood at the time the Convention was drafted. *See, e.g.*, Alfred M. De Zayas, *International Law and Mass Population Transfers*, 16 Harv. Int'l L. J. 207, 210 (1975) (asserting that article 49(1) "merely codifi[ies] the prohibition of deportations of civilians from occupied territories which in fact already existed in the laws and customs of war"). And in that body of law, "deportation" is a term of art with a quite different meaning that appears to be derived from Roman law. *Black's Law Dictionary* carefully contrasts the American law meaning of "deportation" with its meaning under Roman law: "A perpetual banishment, depriving the banished of his rights *as a citizen*." *Black's Law Dictionary* 526 (4th ed. 1951) (emphasis added); *see also id.* at 525 ("Deportatio. Lat. In the civil law. A kind of banishment, where a condemned person was sent or carried away to some foreign country, usually to an island ... *and thus taken out of the number of Roman citizens.*") (emphasis added). Under this

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limits most of its protections to a narrower class of "protected persons," *id.*, art. 4. *See generally* Memorandum for Alberto R. Gonzales, Counsel to the President, *Re: "Protected Persons" in Occupied Iraq* (Mar. 18, 2004). Among GC's provisions whose benefits are generally restricted to "protected persons" are those included in Part III, including Article 49. *See* Part III (Title) ("Status and Treatment of Protected Persons"). *See also* Jean S. Pictet, *Commentary on the Geneva Convention Relative to the Protection of Civilian Persons in Time of War* 278 (1958) (stating that article 49 "prohibits the forcible transfer or deportation from occupied territory *of protected persons*") (emphasis added); *id.* at 283 (describing "the meaning given them ["deportations" and "transfers"] in [article 49] paragraph 1, i.e., the compulsory movement of *protected persons* from occupied territory") (emphasis added).

[3] Black's Law Dictionary 526 (4th ed. 1951). Even in domestic Anglo-American law of that time, however, "deportation" was not strictly limited to the removal of aliens. *See, e.g., Co-Operative Comm. on Japanese Canadians v. Attorney-General for Canada*, 13 I.L.R. 23, 27 (Privy Council 1946) (translating deportation under Canadian war-related legislation of British and Canadian nationals; "deportation" is "not a word that is misused when applied to persons not aliens").

condemnation extended to the removal of such persons pursuant to local law, or that the customary law of war had evolved so significantly beyond the *Lieber Code*'s prohibition.

Furthermore, article 49 was written against the background of World War II, and it is the particular atrocities of that war that most directly inform the text. In World War II, Nazi-occupied countries were treated as "vast reservoirs of manpower," and deportations of civilians for purposes of forced labor and slave labor "assumed staggering proportions."[5] The Nazis also employed mass deportations to resettle from areas conquered or annexed by Germany indigenous non-German populations, such as "over 100,000 French who were expelled from Alsace-Lorraine into Vichy France and over one million Poles who were deported from the western parts of occupied Poland (*Warthegau*) into the so-called Government-General of Poland." Alfred De Zayas, *The Right to One's Homeland, Ethnic Cleansing, and the International Criminal Tribunal for the Former Yugoslavia*, 6 Crim. L.F. 257, 264 (1995). These roundly and universally condemned atrocities explicitly informed the drafting of Article 49. *See, e.g.*, 2A *Final Record*, at 664 (summarizing statement of the Chairman, which "noted that the Committee was unanimous in its condemnation of the abominable practice of deportation .... He suggested that deportations should, in the same way as the taking of hostages, be solemnly prohibited in the Preamble"); Jean S. Pictet, *Commentary on the Geneva Convention Relative to the Protection of Civilian Persons in Time of War* 278 (1958) ("There is doubtless no need to give an account here of the painful recollections called forth by the 'deportations' of the Second World War, for they are still present in everyone's memory .... The thought of the physical and mental suffering endured by these 'displaced persons', among whom there were a great many women, children, old people and sick, can only lead to thankfulness for the prohibition embodied in this paragraph, which is intended to forbid such hateful practices for all time.").

Here, again, however, there is no evidence that the outrage of the world extended to the removal of *illegal aliens* from occupied territory in accordance with local immigration law, and indeed there is no evidence that international law has ever disapproved of such removals. *Cf.* Awn Shawkat Al-Khasawneh, Special Rapporteur, *The Realization of Economic, Social and Cultural Rights: The human rights dimension of population transfer, including the implantation of settlers*, Progress report prepared for the Economic and Social Council, United Nations Commission on Human Rights, E/CN.4/Sub.2/1994/18, *available at* http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/c74e0bf, ¶ 51 (*citing* Guy Goodwin-Gill, *International Law and the Movement of Persons Between States* 262 (1978)) ("Among the grounds upon which the expulsion of aliens on an individual basis is justified in State practice are: entry in breach of law [and] breach of conditions of admission."). The ICRC's account illustrates the point. In summarizing the war-time events that were uppermost in the minds of the drafters as they framed article 49(1), the ICRC Commentary lamented, in particular, "that millions of human beings were torn *from their homes*, separated from their families and deported *from their country*, usually under inhumane conditions." Pictet, *supra*, at 278 (emphases added).

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[5] *See* Myres S. McDougal and Florentino P. Feliciano, *Law and Minimum World Public Order* 806 (1961). On June 30, 1943, the German Commissioner-General of Manpower declared that the number of foreign workers, including prisoners of war, engaged in the German war economy reached 12,100,000. *See id.*; *see also* John H.E. Fried, *Transfer of Civilian Manpower From Occupied Territory*, 40 Am. J. Int'l L. 305, 312-13 (1946); 1 Trial of the Major War Criminals Before the International Military Tribunal 244 (New York: Alfa Press, 1971).

And in discussing pre-Convention customary law (including the Nuremberg Trials), the ICRC Commentary remarks that a "great many . . . decisions" by the Nuremberg "and other courts" have "stated that the deportation of *inhabitants* of occupied territory is contrary to the laws and customs of war." Pictet, *supra*, at 279 n.3 (emphasis added).[5]

Accordingly, we conclude that the word "deportations" in article 49 bears the term-of-art meaning that it bore in Roman times and in international law from the Lieber Code through World Wars I and II and right up to the drafting of GC: removal of a person from a country where he has a legal right to be. *Cf., e.g., Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 739-40 (1989) (invoking the "well established" principle that "[w]here Congress uses terms that have accumulated settled meaning under . . . the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms"); *Air France v. Saks*, 470 U.S. 392, 399 (1985) (applying similar principles to treaty interpretation). Indeed, "deportation" continues to retain the same term-of-art meaning in the law of international armed conflict today. *See* Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9, reprinted in 37 I.L.M. 999 (1998) article 7(2)(d) (defining the "crime against humanity" of "deportation or forcible transfer of population" as "forced displacement of the persons concerned by expulsion or other coercive acts *from the area in which they are lawfully present*, without grounds permitted under international law") (emphasis added); *Prosecutor v. Krnojelac*, Case No.: IT-97-25, Appeals Chamber Judgement, 17 Sept. 2003, Separate Opinion of Judge Schomburg ¶ 15 ("[T]he actus reus of deportation is forcibly removing or uprooting individuals from the territory and the environment *in which they are lawfully present*.") (emphasis added); *Prosecutor v. Blaskic*, Case No. IT-95-14, Trial Chamber Judgement, 3 Mar. 2000, ¶ 234 ("The deportation or forcible transfer of civilians means forced displacement of the persons concerned by expulsion or other coercive acts from the area *in which they are lawfully present*, without grounds permitted under international law.") (emphasis added; internal quotation marks omitted). For all these reasons, it follows that article 49's prohibition on "deportations" does not bar the removal of "protected persons" who are illegal aliens from occupied territory pursuant to local immigration law.

Article 49 prohibits "forcible *transfers*" in addition to "deportations." We conclude that what has been said about the latter largely applies to the former. Passages from the ICRC Commentary and the negotiating record illustrate that the words "transfers" and "deportations" were used loosely and, at times, interchangeably to capture the atrocities practiced by the Nazis

[5] Again, we do not understand the word "inhabitants" to include illegal aliens. During Nuremberg trials that addressed the crime of "deporting civilians," the terms "citizens" and "inhabitants" were used somewhat loosely and interchangeably. For example, in the trial of Field Marshal Erhard Milch, the indictment defined the crime of deportation to involve "citizens," the prosecutor described the crime to involve "people who had been uprooted from their homes in occupied territories," the three-Judge Tribunal convicted the defendant for the crime as charged, Judge Musmanno's concurring opinion described the crime as extending to the occupied territory's "inhabitants," and the concurring opinion of Judge Phillips described it as extending to the "population" of occupied territory. *United States v. Milch*, 2 Trials of War Criminals Before the Nuremberg Military Tribunals 353, 491-93, 798, 879, 866 (1946-1949). We have found no evidence that any of these formulations were intended or understood to reflect an extension of the customary prohibition of deportations to reach illegal aliens. *See also The RuSHA Case*, 4 Trial of War Criminals Before the Nuremberg Military Tribunals 1, 610 (1949) (defendants charged with "[e]vacuating enemy *populations from their native lands*") (emphases added).

We conclude, accordingly, that article 49(1)'s prohibition on "forcible transfers," like its prohibition on "deportations," does not extend to the removal, pursuant to local immigration law, of "protected persons" who are illegal aliens.

This conclusion comports with common sense. It would be surprising if the Convention were a welcome mat to occupied territory, granting all who enter in violation of local law an instant and (during occupation) irrevocable right to stay. *Cf. Affo v. Commander Israel Defence Forces in the West Bank*, 83 I.L.M. 139, 153 (Isr. 1988) ("[O]ne should not view the content of Article 49 as anything but a reference to those arbitrary deportations of groups of nationals as were carried out during World War II for purposes of subjugation, extermination and for similarly cruel reasons. [One should reject an interpretation entailing that] A murderer who escaped to the occupied territory would have a safe haven, which would preclude his transfer to the authorized jurisdiction."). It is also consistent with the general presumption under customary international law, as reflected in Article 43 of the Regulations Respecting the Laws and Customs of War on Land, annexed to Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, art. 42(1), 36 Stat. 2277, 1 Bevans 631 ("Hague Regulations"), that an occupying power should maintain and enforce the domestic laws of the country occupied.[7] Article 43 of the Hague Regulations provides: "The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." The exigencies of "public order and safety" will not often "absolutely prevent[]" enforcement of local immigration laws. To the contrary, enforcement of such laws will usually prove essential to maintaining the security of the occupied territory. And while the occupying power may be "absolutely prevented" from enforcing local law by a requirement of the Geneva Conventions, *see* Memorandum for Alberto R. Gonzales, Counsel to the President, and William J. Haynes II, General Counsel of the Department of Defense, from Jay S. Bybee, Assistant Attorney General, *Re: Authority of the President Under Domestic and International Law To Make Fundamental Institutional Changes to the Government of Iraq* 15 (Apr. 14, 2003) ("*Fundamental Institutional Changes Memorandum*"), reading GC to require suspension of

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[7] Although GC incorporates by reference the Hague Regulations when applied to relations between "Powers who are bound by" the IV Hague Convention, *see* article 154, Iraq is not a party to the Hague Convention, and therefore cannot be considered bound by that Convention as a matter of treaty law. The United States is likewise under no treaty-based obligation to apply the Hague Regulations to the occupation of Iraq because Iraq is not a "Contracting Power" under the IV Hague Regulations. *See* Hague Convention art. 2, 36 Stat. 2290 ("The provisions contained in the Regulations referred to in Article 1, as well as in the present convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention."); Memorandum for Alberto R. Gonzales, Counsel to the President, and William J. Haynes II, General Counsel of the Department of Defense, from Jay S. Bybee, Assistant Attorney General, *Re: Authority of the President Under Domestic and International Law To Make Fundamental Institutional Changes to the Government of Iraq* 10 (Apr. 14, 2003) (stating that "the Hague Regulations do not expressly govern the U.S. conflict with Iraq"). The Hague Regulations are, however, generally taken to be declaratory of customary international law, and the United States may choose to comply with them on that basis. *See generally id.* at 10; *see also United States v. Yousef*, 327 F.3d 56, 92 (2d Cir. 2003) ("Principles of customary international law reflect the practices and customs of States in the international arena that are applied in a consistent fashion and that are generally recognized by what used to be called 'civilized states.'") For present purposes, however, the point is that GC should, as a general matter, be read to be consistent with the principles reflected in the Hague Regulations, whether or not those Regulations apply in a particular case.

local immigration law would put great and unjustifiable strain on the duty of the occupying power to "insure ... public order and safety."

Of course, even the broadest reading of article 49 would not work a complete suspension of local immigration law in Iraq. Rather, it would only suspend the provisions for deportation. Violators of Iraqi immigration law, however, are subject not only to deportation but also to imprisonment. *See* Iraqi Law No. 118 of 1978, article 24; *see also id.*, article 25. Under customary international law as reflected in article 43 of the Hague Regulations, then, the occupying power may be obliged to enforce Iraqi immigration law at least to the extent of imprisoning its transgressors. This requirement would flow not only from the obligation to "respect, unless absolutely prevented, the laws in force in the country," but also from the more general obligation to maintain "public order and safety" — which, whatever else it entails, would presumably include the arrest of law-breakers. *See* Iraqi Law No. 118 of 1978, article 25 ("The Director General [of Nationality] is vested with the penal authority under the Criminal Procedure Law which empowers him to detain the [illegal alien] in custody until he is deported or expelled from the territory of the Republic of Iraq."). The Convention itself makes this requirement explicit: "The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention." GC, art. 64. Under the broadest reading of the prohibitions in article 49(1), then, an occupier might be required to imprison illegal aliens, but forbidden from taking the milder step of escorting them to the border instead. It is doubtful that article 49's drafters intended such an implausible result.

In sum, historical context as well as common sense demonstrates that the terms "deportations" and "forcible transfers" in article 49 are terms of art that do not apply to the removal of "protected persons" in occupied territory who are present there in violation of current local law. We conclude, therefore, that the United States would not violate article 49(1) by removing "protected persons" who are illegal aliens from Iraq pursuant to local immigration law.[9]

II. Temporary Transnational Relocation of "Protected Persons" to Facilitate Interrogation

We next consider whether GC permits the United States to relocate "protected persons" (whether illegal aliens or not) from Iraq to another country temporarily, to facilitate interrogation. Because GC makes special provision for "protected persons" who have been

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[8] It is true that one might reverse the point and argue that the power to change local immigration law under article 43 of the Hague Regulations amounts to a power to eviscerate article 49's prohibition on "deportations" and "forcible transfers." And indeed the customs and practice of occupying powers have at times included "extensive changes" to the laws of an occupied territory, *Fundamental Institutional Changes Memorandum* at 11. But this power does not amount to a power to eviscerate article 49, because those changes may only be imposed in accordance with certain "enumerated purposes," such as the occupying power's need to maintain order and security, *id.* at 13, or in order to protect rights guaranteed by the Convention, *id.* at 15. It follows that an occupying power could not, for example, change local immigration law to render all citizens of the occupied territory illegal aliens.

[9] We recommend that if the choice is made to pursue this course, careful records should be maintained confirming the illegal status of each alien who is removed under current domestic law.

"accused of offenses," we consider such persons first. We then consider "protected persons" who have not been so accused.

A. "Protected Persons" Who Have Been Accused of an Offense

GC specifically provides that "[p]rotected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein." GC, art. 76(1). This provision is unambiguous: "protected persons" who have been "accused of offences" may not be removed from occupied territory either for pretrial detention or for postconviction imprisonment.

We need not attempt to ascertain the precise meaning of "accused" in this context, for the following can be said with some confidence. Once adjudicative proceedings have been initiated against a person, that person has been "accused" within the meaning of Article 76. The initiation of such proceedings may take any form. *Cf. Brewer v. Williams*, 430 U.S. 386 (1977) (noting that certain criminal procedure protections are triggered by initiation of judicial proceedings, "'whether by way of formal charge, preliminary hearing, indictment, information, or arraignment'"), *quoting Kirby v. Illinois*, 406 U.S. 682 (1972). On the other hand, mere suspicion of an offense would not constitute an accusation, nor would an interrogation based upon such suspicion. *Cf.* Wayne R. LaFave *et al.*, 3 Criminal Procedure, § 11.2(b) (1999) ("[The Supreme] Court [has] reaffirmed ... that a person does not become an accused for Sixth Amendment purposes simply because he has been detained by the government with the intention of filing charges against him"), *citing United States v. Gouveia*, 467 U.S. 180 (1984). Thus, if an occupying power merely detains a "protected person" for questioning — even if that person is strongly suspected of committing an offense — that person is not yet "accused" for purposes of article 76.[10]

In short, once adjudicative proceedings have been initiated against a "protected person," the person is "accused of an offense" for purposes of article 76, and may not be detained outside of occupied Iraq. But until that time, article 76 does not apply.

B. "Protected Persons" Who Have Not Been Accused of an Offense

Finally, we consider whether Article 49(1)'s prohibition of "forcible transfers" and "deportations" bars the United States from temporarily relocating (and detaining) a "protected

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[10] Iraqi law appears to draw a similar distinction, treating someone as a "suspect" during an investigation and as an "accused" once he has been charged in an indictment or summoned or named in a criminal arrest warrant. *See, e.g.*, Statute of the Iraqi Special Tribunal, art. 18(b)-(d) (Dec. 10, 2003) (available at http://www.cpa-iraq.org/human_rights/Statute.htm) (using the term "suspect" to describe person under investigation and "accused" to describe someone charged in an indictment); Iraqi Law on Criminal Proceedings (Law Number 23 of 1971) ¶¶ 54, 56 (available at https://www.jagnet.army.mil/JAGCNETInternet/Homepages/AC/CLAMO-Public.nsf/0/85256a1c006ec77385256d3400680b6/$file/Iraqi%20Criminal%20Procedure%20Code%20English.pdf?OpenElement) (referring to a complaint made against a "suspect" and questioning of "suspects" by examining magistrate during course of initial investigation); *id.* ¶¶ 87, 93 (providing for issuance of a summons to, or an arrest warrant for, an "accused"); *id.* ¶ 105 (referring to person subject to arrest warrant, or who may be arrested by someone who witnessed him committing an offense, as an "accused").

person" who has not been "accused of an offense" to a location outside of Iraq to facilitate interrogation.

It might be thought that the juxtaposition of the words "deportations" and "transfers" in article 49 reflects a dichotomy between permanent relocations, on the one hand, and temporary relocations, on the other. The word "deportation" does clearly connote permanence. *See Black's Law Dictionary* 526 (4th ed. 1951) (defining "deportation" in Roman law, as "[a] perpetual banishment"); *see also supra* Part I (concluding the meaning of "deportation" as a term of art in the international law of armed conflict flows from its meaning in Roman law). And the word "transfer," by contrast, does not necessarily have that same connotation. *See* XI Oxford English Dictionary 257 (1933) ("conveyance or removal from one place, person, etc. to another"). Were article 49 read in this manner, it would prohibit the United States from temporarily relocating a "protected person" from Iraq to facilitate interrogation.

While this dichotomy has some surface appeal, we ultimately reject it. The phrase "forcible transfers" and the word "deportations," when used as terms of art in the international law of armed conflict, *see supra* Part I, and especially when used in connection with each other, both convey a sense of *uprooting* from one's home. *See, e.g.*, Pictet, *supra*, at 278 (emphasis added) (recalling the "deportations" and "mass transfers" that had occurred during World War II, where "millions of human beings were *torn from their homes*, separated from their families and deported from their country, usually under inhumane conditions") (emphasis added); *United States v. Milch*, 2 Trials of War Criminals Before the Nuremberg Military Tribunals 353, 790 (1946-1949) (prosecutor's description of the crime of "deportation" as involving "people who had been *uprooted from their homes* in occupied territory") (emphasis added); *Prosecutor v. Krnojelac*, Case No.: IT-97-25, Appeals Chamber Judgement, 17 Sept. 2003, Separate Opinion of Judge Schomburg ¶ 15 ("[T]he actus reus of deportation is *forcibly* removing or *uprooting* individuals from the territory and the environment in which they are lawfully present.") (emphasis added). The concept of uprooting from one's home clearly *suggests resettlement*, and while it may include not only permanent, but also extended or at least indefinite resettlement, it cannot reasonably be expanded to encompass mere temporary absence, for a brief and definite period, from one's still-established home. *Cf.* Kurt René Radley, *The Palestinian Refugees: The Right to Return in International Law*, 72 Am. J. Int'l L. 586, 598 (1978) ("Article 49 forbids the forced and *permanent* removal of persons from territory to which they are native," (emphasis added)); 2A *Final Record*, at 664 (summarizing statement of Mr. Siamet (Netherlands) that "[i]n Indonesia, during the last war, numbers of women and children had been transferred to unhealthy climates and forced to build roads, and had died as a result"); *id.* at 664 (summarizing statement of Mr. Clattenburg (U.S.), which "quoted the case of part of the population of the little island of Wake who had been transferred to Japan"); GC Art. 49(2) (carving out an exception to Article 49(1)'s prohibition of forcible transfers or deportations to allow *evacuations*, including transnational evacuations, required to protect the security of the population or by imperative military reasons, provided that "[p]ersons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased").[11]

[11] For purposes of resolving the questions presented, we need not resolve the precise differences between "deportations" and "forcible transfers" under article 49. We presume that these concepts do not overlap entirely. *See Air France v. Saks*, 470 U.S. 392, 397-98 (1985) (where drafters use different terms in the same treaty, they are ordinarily presumed "to mean something different"). One possible distinction is that "deportation," unlike

other masses of the population as slave labor within the Reich." *The RuSHA Case*, 4 Trials of War Criminals Before the Nuernberg Military Tribunals, 125 (1949); *see also id.* at 610 (defendants charged with "[e]vacuating enemy populations from their native lands and resettling so-called 'ethnic Germans' (*Volksdeutsche*) on such lands").

Not only do articles 49(1) and 49(6) address related wartime practices, they both do so by prohibiting certain *transfers* and *deportations*. There is a strong presumption that the same words will bear the same meaning throughout the same treaty. *Cf., e.g., Air France v. Saks*, 470 U.S. 392, 398 (1985). This presumption is particularly strong when, as here, the words appear multiple times within the same article.

If "transfer" is understood throughout article 49 to entail — consistent with technical usage — permanent, extended, or at least indefinite resettlement, then the scope of article 49(6)'s prohibition closely corresponds to its intended purpose. By contrast, if "transfer" is understood throughout article 49 to mean any relocation, however brief, then article 49(6) would have a much broader scope and would prohibit an occupying power from placing any members of its civilian population in the occupied country even temporarily. While such a prohibition arguably might not extend to civilian adjuncts to the military occupation administration, it probably would at least extend to various employees of private contractors and non-governmental organizations. *Cf.* GC III, article 4(A)(4) (including as potential prisoners of war "[p]ersons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany"). Such a result is far removed from article 49(6)'s intended purpose and would work to the manifest disadvantage of the inhabitants of occupied territory. For these reasons, it seems very implausible that article 49(6)'s prohibition of deportations and transfers *into* occupied territory should be construed so expansively. *See Zicherman v. Korean Air Lines*, 516 U.S. 217, 221-222 (1996) (choosing from among different possible definitions of a treaty term the definition that avoided implausible results). It follows, therefore, that article 49(1)'s prohibition of forcible transfers and deportations *out of* occupied territory likewise should not be construed to extend to temporary transnational relocations of brief but not indefinite duration.[12]

Third, if article 49(1) banned all relocations out of occupied territory, no matter how brief, two different provisions of GC would be superfluous. Article 51 of GC, which makes provision for compelling the labor of "protected persons," provides: "The work shall be carried out only in occupied territory where the persons whose services have been requisitioned are." If article 49 forbade all relocations from occupied territory to another country, this portion of

[12] We note one significant textual difference between articles 49(1) and 49(6). While the former provision bars only *forcible* transfers (as well as deportations), the latter does not so limit the transfers that it prohibits. We do not read the absence of "forcible" from the latter provision to eliminate connotations of uprooting and resettlement, but rather to indicate that (unlike article 49(1)) article 49(6) prohibits voluntary as well as coercive resettlement. This interpretation is fully consistent with one of the principal purposes of article 49(6), as indicated by the ICRC Commentary quoted in the text — preventing an occupying power from colonizing occupied territory with its own civilian population. Colonization, of course, can be voluntary as well as forcible, but either way it entails uprooting and resettlement.

Congress of the United States
Washington, DC 20515

May 5, 2005

The Honorable George W. Bush
President of the United States of America
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

We write because of troubling revelations in the Sunday London Times apparently confirming that the United States and Great Britain had secretly agreed to attack Iraq in the summer of 2002, well before the invasion and before you even sought Congressional authority to engage in military action. While various individuals have asserted this to be the case before, including Paul O'Neill, former U.S. Treasury Secretary, and Richard Clarke, a former National Security Council official, they have been previously dismissed by your Administration. However, when this story was divulged last weekend, Prime Minister Blair's representative claimed the document contained "nothing new." If the disclosure is accurate, it raises troubling new questions regarding the legal justifications for the war as well as the integrity of your own Administration.

The Sunday Times obtained a leaked document with the minutes of a secret meeting from highly placed sources inside the British Government.[1] Among other things, the document revealed:

- Prime Minister Tony Blair chaired a July 2002 meeting, at which he discussed military options, having already committed himself to supporting President Bush's plans for invading Iraq.

- British Foreign Secretary Jack Straw acknowledged that the case for war was "thin" as "Saddam was not threatening his neighbours and his WMD capability was less than that of Libya, North Korea, or Iran."

- A separate secret briefing for the meeting said that Britain and America had to "create" conditions to justify a war.[2]

- A British official "reported on his recent talks in Washington. There was a perceptible shift in attitude. Military action was now seen as inevitable. Bush wanted to remove

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[1] *See* Attached Document, "Secret and strictly personal — UK eyes only," July 23, 2002.

[2] *See* Michael Smith, "Blair Hit By New Leak of Secret War Plan," *The Sunday Times-Britain*, May 1, 2005.

Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy."

As a result of this recent disclosure, we would like to know the following:

1) Do you or anyone in your Administration dispute the accuracy of the leaked document?

2) Were arrangements being made, including the recruitment of allies, before you sought Congressional authorization go to war? Did you or anyone in your Administration obtain Britain's commitment to invade prior to this time?

3) Was there an effort to create an ultimatum about weapons inspectors in order to help with the justification for the war as the minutes indicate?

4) At what point in time did you and Prime Minister Blair first agree it was necessary to invade Iraq?

5) Was there a coordinated effort with the U.S. intelligence community and/or British officials to "fix" the intelligence and facts around the policy as the leaked document states?

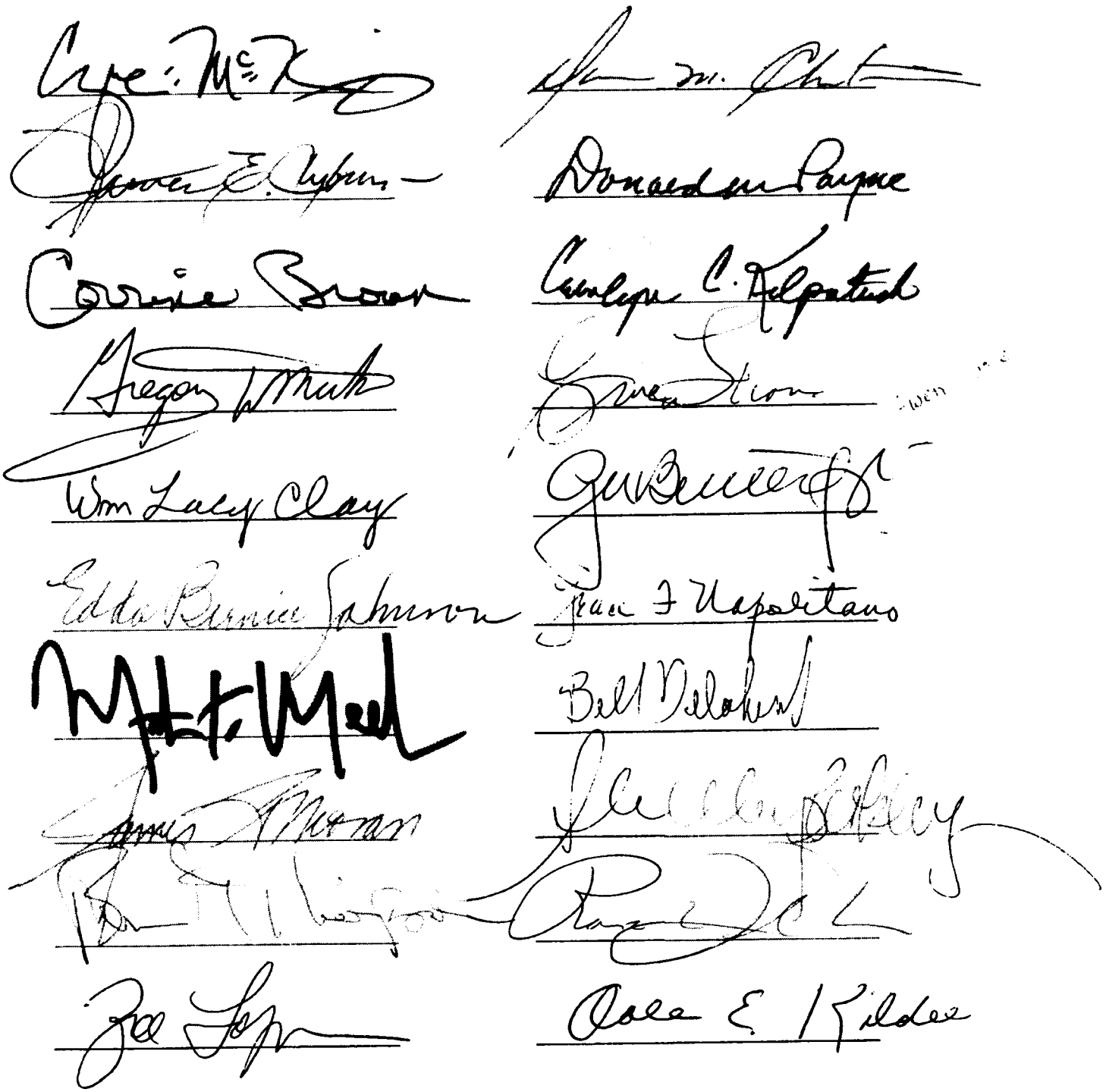
We have of course known for some time that subsequent to the invasion there have been a variety of reasons proffered to justify the invasion, particularly since the time it became evident that weapons of mass destruction would not be found. This leaked document – essentially acknowledged by the Blair government – is the first confirmation that the rationales were shifting well before the invasion as well.

Given the importance of this matter, we would ask that you respond to this inquiry as promptly as possible. Thank you.

Sincerely.

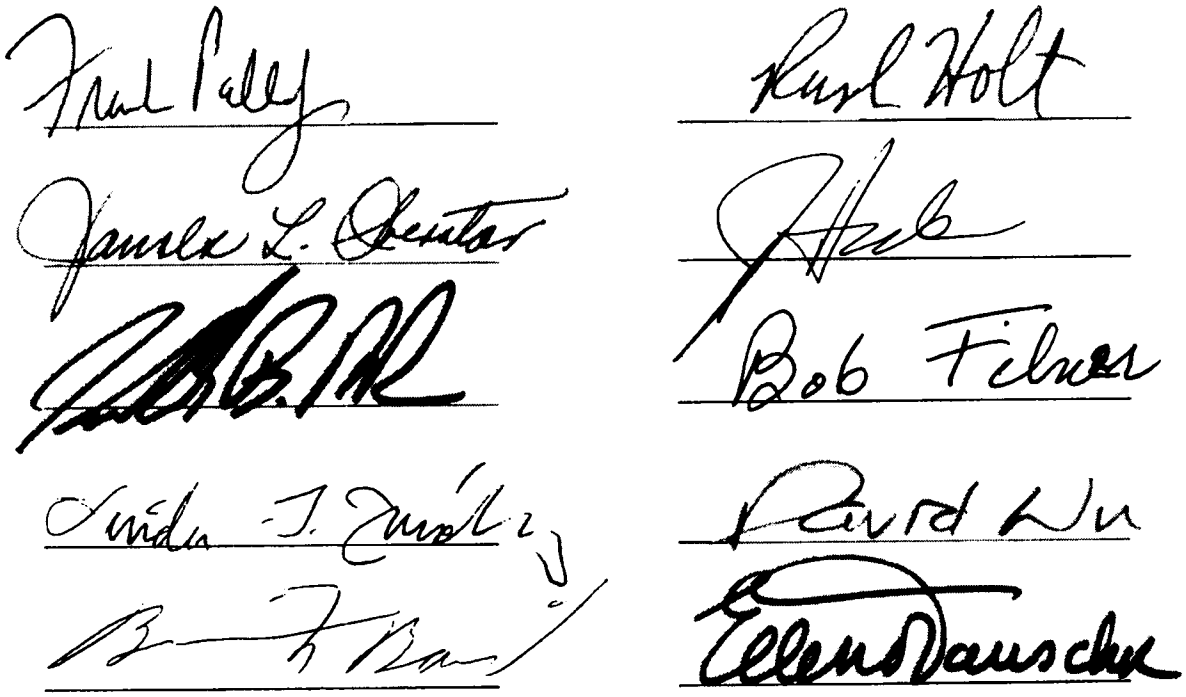
John Conyers, Jr.

Barney Frank



Lynn C Woolsey

George Miller



That's me.

In February 2002, I was informed by officials at the Central Intelligence Agency that Vice President Dick Cheney's office had questions about a particular intelligence report. While I never saw the report, I was told that it referred to a memorandum of agreement that documented the sale of uranium yellowcake -- a form of lightly processed ore -- by Niger to Iraq in the late 1990's. The agency officials asked if I would travel to Niger to check out the story so they could provide a response to the vice president's office.

After consulting with the State Department's African Affairs Bureau (and through it with Barbro Owens-Kirkpatrick, the United States ambassador to Niger), I agreed to make the trip. The mission I undertook was discreet but by no means secret. While the C.I.A. paid my expenses (my time was offered pro bono), I made it abundantly clear to everyone I met that I was acting on behalf of the United States government.

In late February 2002, I arrived in Niger's capital, Niamey, where I had been a diplomat in the mid-70's and visited as a National Security Council official in the late 90's. The city was much as I remembered it. Seasonal winds had clogged the air with dust and sand. Through the haze, I could see camel caravans crossing the Niger River (over the John F. Kennedy bridge), the setting sun behind them. Most people had wrapped scarves around their faces to protect against the grit, leaving only their eyes visible.

The next morning, I met with Ambassador Owens-Kirkpatrick at the embassy. For reasons that are understandable, the embassy staff has always kept a close eye on Niger's uranium business. I was not surprised, then, when the ambassador told me that she knew about the allegations of uranium sales to Iraq -- and that she felt she had already debunked them in her reports to Washington. Nevertheless, she and I agreed that my time would be best spent interviewing people who had been in government when the deal supposedly took place, which was before her arrival.

I spent the next eight days drinking sweet mint tea and meeting with dozens of people: current government officials, former government officials, people associated with the country's uranium business. It did not take long to conclude that it was highly doubtful that any such transaction had ever taken place.

Given the structure of the consortiums that operated the mines, it would be exceedingly difficult for Niger to transfer uranium to Iraq. Niger's uranium business consists of two mines, Somair and Cominak, which are run by French, Spanish, Japanese, German and Nigerian interests. If the government wanted to remove uranium from a mine, it would have to notify the consortium, which in turn is strictly monitored by the International Atomic Energy Agency. Moreover, because the two mines are closely regulated, quasi-governmental entities, selling uranium would require the approval of the minister of mines, the prime minister and probably the president. In short, there's simply too much oversight over too small an industry for a sale to have transpired.

(As for the actual memorandum, I never saw it. But news accounts have pointed out that the documents had glaring errors -- they were signed, for example, by officials who were no longer in government -- and were probably forged. And then

there's the fact that Niger formally denied the charges.)

Before I left Niger, I briefed the ambassador on my findings, which were consistent with her own. I also shared my conclusions with members of her staff. In early March, I arrived in Washington and promptly provided a detailed briefing to the C.I.A. I later shared my conclusions with the State Department African Affairs Bureau. There was nothing secret or earth-shattering in my report, just as there was nothing secret about my trip.

Though I did not file a written report, there should be at least four documents in United States government archives confirming my mission. The documents should include the ambassador's report of my debriefing in Niamey, a separate report written by the embassy staff, a C.I.A. report summing up my trip, and a specific answer from the agency to the office of the vice president (this may have been delivered orally). While I have not seen any of these reports, I have spent enough time in government to know that this is standard operating procedure.

I thought the Niger matter was settled and went back to my life. (I did take part in the Iraq debate, arguing that a strict containment regime backed by the threat of force was preferable to an invasion.) In September 2002, however, Niger re-emerged. The British government published a "white paper" asserting that Saddam Hussein and his unconventional arms posed an immediate danger. As evidence, the report cited Iraq's attempts to purchase uranium from an African country.

Then, in January, President Bush, citing the British dossier, repeated the charges about Iraqi efforts to buy uranium from Africa.

The next day, I reminded a friend at the State Department of my trip and suggested that if the president had been referring to Niger, then his conclusion was not borne out by the facts as I understood them. He replied that perhaps the president was speaking about one of the other three African countries that produce uranium: Gabon, South Africa or Namibia. At the time, I accepted the explanation. I didn't know that in December, a month before the president's address, the State Department had published a fact sheet that mentioned the Niger case.

Those are the facts surrounding my efforts. The vice president's office asked a serious question. I was asked to help formulate the answer. I did so, and I have every confidence that the answer I provided was circulated to the appropriate officials within our government.

The question now is how that answer was or was not used by our political leadership. If my information was deemed inaccurate, I understand (though I would be very interested to know why). If, however, the information was ignored because it did not fit certain preconceptions about Iraq, then a legitimate argument can be made that we went to war under false pretenses. (It's worth remembering that in his March "Meet the Press" appearance, Mr. Cheney said that Saddam Hussein was "trying once again to produce nuclear weapons.") At a minimum, Congress, which authorized the use of military force at the president's behest, should want to know if the assertions about Iraq were warranted.

I was convinced before the war that the threat of weapons of mass destruction in the hands of Saddam Hussein required a vigorous and sustained international

response to disarm him. Iraq possessed and had used chemical weapons; it had an active biological weapons program and quite possibly a nuclear research program -- all of which were in violation of United Nations resolutions. Having encountered Mr. Hussein and his thugs in the run-up to the Persian Gulf war of 1991, I was only too aware of the dangers he posed.

But were these dangers the same ones the administration told us about? We have to find out. America's foreign policy depends on the sanctity of its information. For this reason, questioning the selective use of intelligence to justify the war in Iraq is neither idle sniping nor "revisionist history," as Mr. Bush has suggested. The act of war is the last option of a democracy, taken when there is a grave threat to our national security. More than 200 American soldiers have lost their lives in Iraq already. We have a duty to ensure that their sacrifice came for the right reasons.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Legal (1LE33); United Nations (1UN54); Technology Law (1TE30); Economics & Trade (1EC26))

INDUSTRY: (Hazardous Waste (1HA81); Environmental Regulatory (1EN91))

REGION: (Central Africa (1CE37); Gabon (1GA21); Niger (1NI25); Americas (1AM92); North America (1NO39); Western Europe (1WE41); Middle East (1MI23); Europe (1EU83); USA (1US73); Africa (1AF90); West Africa (1WE48); Iraq (1IR87); Arab States (1AR46))

Language: EN

OTHER INDEXING: (Wilson, Joseph C 4th; Bush, George W (Pres); Owens-Kirkpatrick, Barbro (Amb); Hussein, Saddam (Pres)) (AFRICAN; AFRICAN AFFAIRS BUREAU; AMB BARBRO OWENS; BARBRO OWENS KIRKPATRICK; CENTRAL INTELLIGENCE AGENCY; INTERNATIONAL ATOMIC ENERGY AGENCY; NATIONAL SECURITY COUNCIL; OWENS KIRKPATRICK; STATE DEPARTMENT; STATE DEPARTMENT AFRICAN AFFAIRS BUREAU; UNITED NATIONS) (Bill Clinton; Bush; Cheney; Cominak; Dick Cheney; George H. W. Bush; Hussein; Saddam; Saddam Hussein; Seasonal; Somair) (United States Armament and Defense; United States International Relations; Uranium; Atomic Weapons; United States Foreign Service) (Op-Ed) (Iraq; Niger; Great Britain; Iraq; Iraq)

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7/6/03 NYT 49

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ANNEXE 1

La Direction des affaires juridiques du Ministère des Affaires Etrangères, dans la personne de S.E. Monsieur le Ministre et la tion du Ministère des Mines dans la personne de M. le Ministre en Charge, mis en assemblée ont déclaré ce qui suit:

- La Cour d'Etat, appelée à donner son avis conformément à l'article 20 de l'ordonnance n° 78-13 du 4 juillet 2000, portant organisation, composition, attribution et fonctionnement de la Cour d'Etat, s'est réunie en chambre du Conseil au Palais de ladite Cour le Mercredi 7 juillet 2000, à neuf Heure:

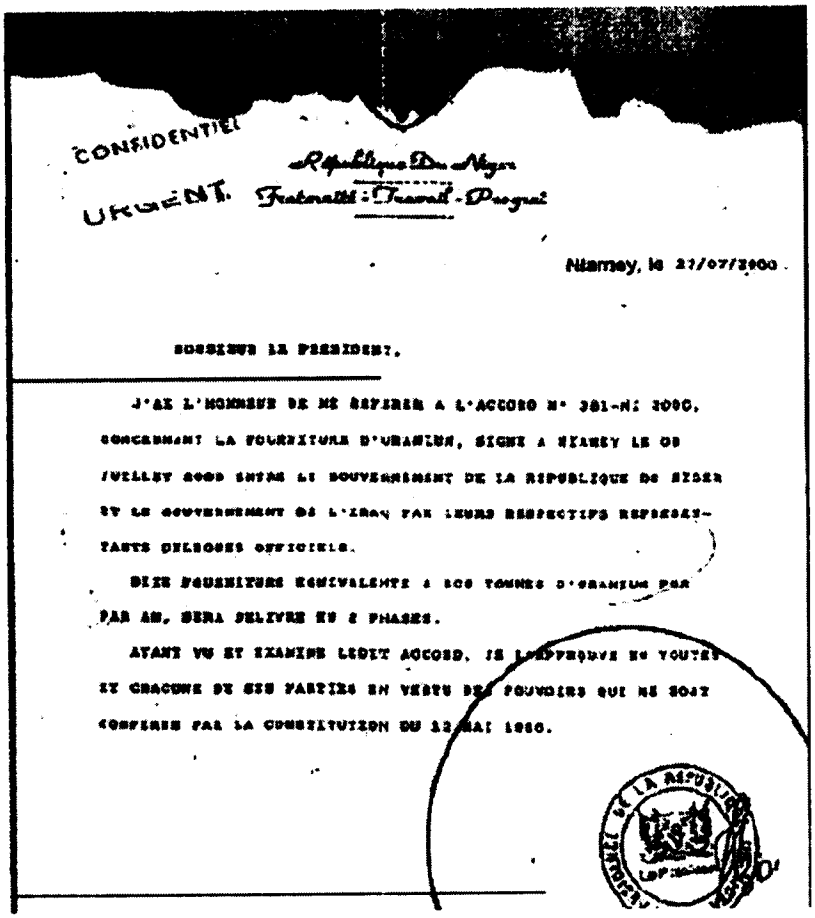
- Vu la lettre n° 488/MJ/30 du 3 juillet 2000 de M. le Ministre des Affaires Etrangères et de la Coopération:

demandant de solliciter l'avis favorable de la Cour d'Etat sur les points à savoir:

- D'une part si le Protocole d'Accord entre le gouvernement de la République du Niger et le Gouvernement de l'Iraq, relatif à la vente d'armes sur, signé le 4 juillet 2000 à Niamey est au droit interne de la République du Niger, et s'il constitue elle un engagement valable et obligatoire;

- D'autre part, s'il a été dûment signé et approuvé par l gouvernement d'Iraq conformément à toutes les normes administratives qui lui sont applicables et constituant ainsi pour el

Niger forgeries



CONFIDENTIEL

URGENT

République Du Niger
Fraternité - Travail - Progrès

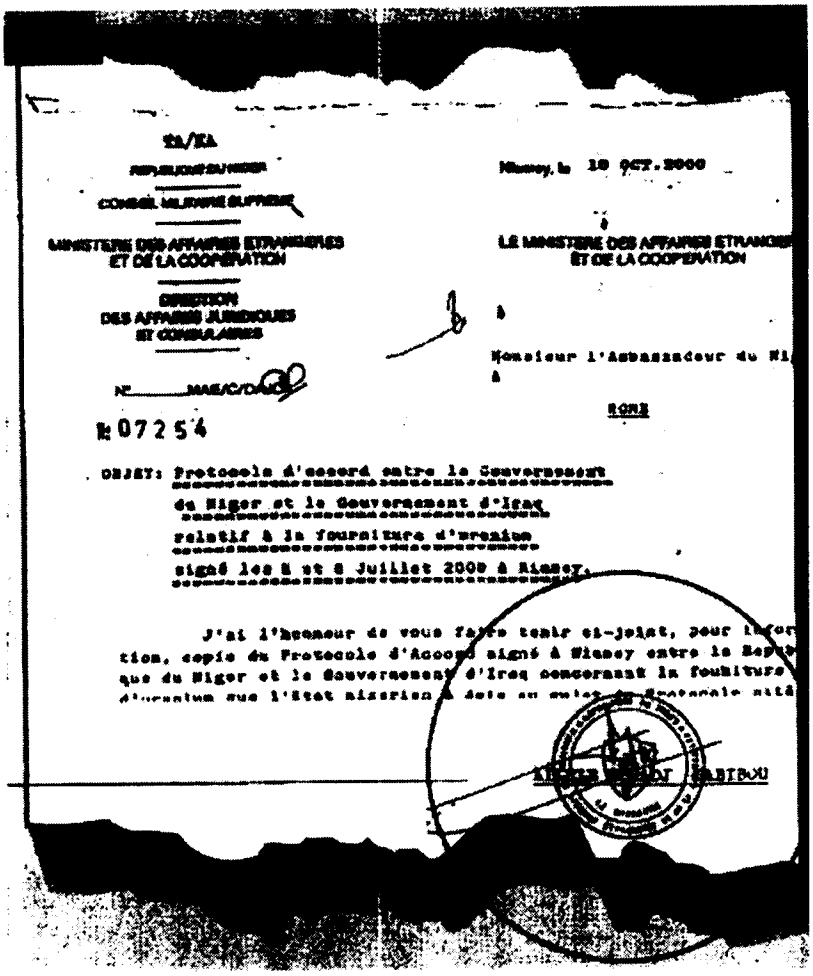
Niamey, le 27/07/2000

MONSIEUR LE PRESIDENT,

J'AI L'HONNEUR DE ME REFERER A L'ACCORD N° 381-N; 2000, CONCERNANT LA FOURNITURE D'URANIUM, SIGNE A NIAMEY LE 08 JUILLET 2000 ENTRE LE GOUVERNEMENT DE LA REPUBLIQUE DU NIGER ET LE GOUVERNEMENT DE L'IRAQ PAR LEURS RESPECTIFS REPRESENTANTS DELEGUES OFFICIELS.

DIX FOURNITURES EQUIVALENTES A 100 TONNES D'URANIUM PAR PAR AN, SERA DELIVRE EN 2 PHASES.

APRES VU ET EXAMINE LEDIT ACCORD, JE L'APPROUVE EN TOUTES ET CHACUNE DE SES PARTIES EN VERTU DES POUVOIRS QUI ME SONT CONFERES PAR LA CONSTITUTION DU 12 MAI 1999.



TA/EA

CONSEIL MILITAIRE SUPREME

MINISTERE DES AFFAIRES ETRANGERES
ET DE LA COOPERATION

DIRECTION
DES AFFAIRES JURIDIQUES
ET CONSULAIRES

N° MAE/C/DAJC

N: 07254

Niamey, le 10 OCT. 2000

LE MINISTERE DES AFFAIRES ETRANGERES
ET DE LA COOPERATION

A

Monsieur l'Ambassadeur du Ni
A

ROME

OBJET: Protocole d'accord entre le Gouvernement
du Niger et le Gouvernement d'Irak
relatif à la fourniture d'uranium
signé les 5 et 6 Juillet 2000 à Niamey.

J'ai l'honneur de vous faire tenir ci-joint, pour in
tion, copie du Protocole d'Accord signé à Niamey entre la Rép
que du Niger et le Gouvernement d'Irak concernant la fourniture
d'uranium sur l'Etat nigerien à date au vote de [illegible] natio

REPUBLIQUE DU NIGER

CONSEIL DE RECONCILIATION NATIONALE

MINISTERE DES AFFAIRES ETRANGERES ET DE L'INTEGRATION AFRICAINE

DIRECTION DES AFFAIRES JURIDIQUES ET CONSULAIRES

N° 2 - 05055 /MAE/IA/DAJC/DIR

Niamey, le 30 JUIL. 2003

URGENT

HONNEUR VOUS DEMANDER BIEN VOULOIR CONTACTER S.E. L'AMBASSADEUR D'IRAQ M. WISSAM AL ZAHAWIE POUR CONNAITRE REPONSE DE SON PAYS CONCERNANT FOURNITURE D'URANIUM SELON DERNIERS ACCORDS ETABLIS A NIAMEY LE 28 JUIN 2000.

PRIERE SUIVRE CE DOSSIER TRES CONFIDENTIEL AVEC TOUTE DISCRETION ET DILIGENCE.

to classified information. As a person with such clearances, **LIBBY** was obligated by applicable laws and regulations, including Title 18, United States Code, Section 793, and Executive Order 12958 (as modified by Executive Order 13292), not to disclose classified information to persons not authorized to receive such information, and otherwise to exercise proper care to safeguard classified information against unauthorized disclosure. On or about January 23, 2001, **LIBBY** executed a written "Classified Information Nondisclosure Agreement," stating in part that "I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government," and that "I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation."

The Central Intelligence Agency

c. The Central Intelligence Agency (CIA) was an agency of the United States whose mission was to collect, produce, and disseminate intelligence and counterintelligence information to officers and departments of the United States government, including the President, the National Security Council, and the Joint Chiefs of Staff.

d. The responsibilities of certain CIA employees required that their association with the CIA be kept secret; as a result, the fact that these individuals were employed by the CIA was classified. Disclosure of the fact that such individuals were employed by the CIA had the potential to damage the national security in ways that ranged from preventing the future use of those individuals in a covert capacity, to compromising intelligence-gathering methods and operations, and endangering the safety of CIA employees and those who dealt with them.

Joseph Wilson and Valerie Plame Wilson

e. Joseph Wilson ("Wilson") was a former career State Department official who had held a variety of posts, including United States Ambassador. In 2002, after an inquiry to the CIA by the Vice President concerning certain intelligence reporting, the CIA decided on its own initiative to send Wilson to the country of Niger to investigate allegations involving Iraqi efforts to acquire uranium yellowcake, a processed form of uranium ore. Wilson orally reported his findings to the CIA upon his return.

f. Joseph Wilson was married to Valerie Plame Wilson ("Valerie Wilson"). At all relevant times from January 1, 2002 through July 2003, Valerie Wilson was employed by the CIA, and her employment status was classified. Prior to July 14, 2003, Valerie Wilson's affiliation with the CIA was not common knowledge outside the intelligence community.

Events Leading up to July 2003

2. On or about January 28, 2003, President George W. Bush delivered his State of the Union address which included sixteen words asserting that "The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa."

3. On May 6, 2003, the *New York Times* published a column by Nicholas Kristof which disputed the accuracy of the "sixteen words" in the State of the Union address. The column reported that, following a request from the Vice President's office for an investigation of allegations that Iraq sought to buy uranium from Niger, an unnamed former ambassador was sent on a trip to Niger in 2002 to investigate the allegations. According to the column, the ambassador reported back to the CIA and State Department in early 2002 that the allegations were unequivocally wrong and based on forged documents.

4. On or about May 29, 2003, in the White House, **LIBBY** asked an Under Secretary of State ("Under Secretary") for information concerning the unnamed ambassador's travel to Niger to investigate claims about Iraqi efforts to acquire uranium yellowcake. The Under Secretary thereafter directed the State Department's Bureau of Intelligence and Research to prepare a report concerning the ambassador and his trip. The Under Secretary provided **LIBBY** with interim oral reports in late May and early June 2003, and advised **LIBBY** that Wilson was the former ambassador who took the trip.

5. On or about June 9, 2003, a number of classified documents from the CIA were faxed to the Office of the Vice President to the personal attention of **LIBBY** and another person in the Office of the Vice President. The faxed documents, which were marked as classified, discussed, among other things, Wilson and his trip to Niger, but did not mention Wilson by name. After receiving these documents, **LIBBY** and one or more other persons in the Office of the Vice President handwrote the names "Wilson" and "Joe Wilson" on the documents.

6. On or about June 11 or 12, 2003, the Under Secretary of State orally advised **LIBBY** in the White House that, in sum and substance, Wilson's wife worked at the CIA and that State Department personnel were saying that Wilson's wife was involved in the planning of his trip.

7. On or about June 11, 2003, **LIBBY** spoke with a senior officer of the CIA to ask about the origin and circumstances of Wilson's trip, and was advised by the CIA officer that Wilson's wife worked at the CIA and was believed to be responsible for sending Wilson on the trip.

8. Prior to June 12, 2003, *Washington Post* reporter Walter Pincus contacted the Office of the Vice President in connection with a story he was writing about Wilson's trip. **LIBBY** participated in discussions in the Office of the Vice President concerning how to respond to Pincus.

9. On or about June 12, 2003, **LIBBY** was advised by the Vice President of the United States that Wilson's wife worked at the Central Intelligence Agency in the Counterproliferation Division. **LIBBY** understood that the Vice President had learned this information from the CIA.

10. On June 12, 2003, the *Washington Post* published an article by reporter Walter Pincus about Wilson's trip to Niger, which described Wilson as a retired ambassador but not by name, and reported that the CIA had sent him to Niger after an aide to the Vice President raised questions about purported Iraqi efforts to acquire uranium. Pincus's article questioned the accuracy of the "sixteen words," and stated that the retired ambassador had reported to the CIA that the uranium purchase story was false.

11. On or about June 14, 2003, **LIBBY** met with a CIA briefer. During their conversation he expressed displeasure that CIA officials were making comments to reporters critical of the Vice President's office, and discussed with the briefer, among other things, "Joe Wilson" and his wife "Valerie Wilson," in the context of Wilson's trip to Niger.

12. On or about June 19, 2003, an article appeared in *The New Republic* magazine online entitled "*The First Casualty: The Selling of the Iraq War.*" Among other things, the article questioned the "sixteen words" and stated that following a request for information from the Vice President, the CIA had asked an unnamed ambassador to travel to Niger to investigate allegations that Iraq had sought uranium from Niger. The article included a quotation attributed to the unnamed ambassador alleging that administration officials "knew the Niger story was a flat-out lie." The article also was critical of how the administration, including the Office of the Vice President, portrayed intelligence concerning Iraqi capabilities with regard to weapons of mass destruction, and accused the administration of suppressing dissent from the intelligence agencies on this topic.

13. Shortly after publication of the article in *The New Republic*, **LIBBY** spoke by telephone with his then Principal Deputy and discussed the article. That official asked **LIBBY** whether information about Wilson's trip could be shared with the press to rebut the allegations that the Vice President had sent Wilson. **LIBBY** responded that there would be complications at the CIA in disclosing that information publicly, and that he could not discuss the matter on a non-secure telephone line.

14. On or about June 23, 2003, **LIBBY** met with *New York Times* reporter Judith Miller. During this meeting **LIBBY** was critical of the CIA, and disparaged what he termed "selective leaking" by the CIA concerning intelligence matters. In discussing the CIA's handling of Wilson's trip to Niger, **LIBBY** informed her that Wilson's wife might work at a bureau of the CIA.

The July 6 "Op Ed" Article by Wilson

15. On July 6, 2003, the *New York Times* published an Op-Ed article by Wilson entitled "What I Didn't Find in Africa." Also on July 6, 2003, the *Washington Post* published an article about Wilson's 2002 trip to Niger, which article was based in part upon an interview of Wilson. Also on July 6, Wilson appeared as a guest on the television interview show "*Meet the Press*." In his Op-Ed article and interviews in print and on television, Wilson asserted, among other things, that he had taken a trip to Niger at the request of the CIA in February 2002 to investigate allegations that Iraq had sought or obtained uranium yellowcake from Niger, and that he doubted Iraq had obtained uranium from Niger recently, for a number of reasons. Wilson stated that he believed, based on his understanding of government procedures, that the Office of the Vice President was advised of the results of his trip.

LIBBY's Actions Following Wilson's July 6 "Op Ed" Column

16. On or about July 7, 2003, **LIBBY** had lunch with the then White House Press Secretary and advised the Press Secretary that Wilson's wife worked at the CIA and noted that such information was not widely known.

17. On or about the morning of July 8, 2003, **LIBBY** met with *New York Times* reporter Judith Miller. When the conversation turned to the subject of Joseph Wilson, **LIBBY** asked that the information **LIBBY** provided on the topic of Wilson be attributed to a "former Hill staffer" rather than to a "senior administration official," as had been the understanding with respect to other information that **LIBBY** provided to Miller during this meeting. **LIBBY** thereafter discussed with Miller Wilson's trip and criticized the CIA reporting concerning Wilson's trip. During this discussion, **LIBBY** advised Miller of his belief that Wilson's wife worked for the CIA.

18. Also on or about July 8, 2003, **LIBBY** met with the Counsel to the Vice President in an anteroom outside the Vice President's Office. During their brief conversation, **LIBBY** asked the Counsel to the Vice President, in sum and substance, what paperwork there would be at the CIA if an employee's spouse undertook an overseas trip.

19. Not earlier than June 2003, but on or before July 8, 2003, the Assistant to the Vice President for Public Affairs learned from another government official that Wilson's wife worked at the CIA, and advised **LIBBY** of this information.

20. On or about July 10, 2003, **LIBBY** spoke to *NBC* Washington Bureau Chief Tim Russert to complain about press coverage of **LIBBY** by an *MSNBC* reporter. **LIBBY** did not discuss Wilson's wife with Russert.

21. On or about July 10 or July 11, 2003, **LIBBY** spoke to a senior official in the White House ("Official A") who advised **LIBBY** of a conversation Official A had earlier that week with columnist Robert Novak in which Wilson's wife was discussed as a CIA employee involved in Wilson's trip. **LIBBY** was advised by Official A that Novak would be writing a story about Wilson's wife.

22. On or about July 12, 2003, **LIBBY** flew with the Vice President and others to and from Norfolk, Virginia, on Air Force Two. On his return trip, **LIBBY** discussed with other officials aboard the plane what **LIBBY** should say in response to certain pending media inquiries, including questions from *Time* reporter Matthew Cooper.

23. On or about July 12, 2003, in the afternoon, **LIBBY** spoke by telephone to Cooper, who asked whether **LIBBY** had heard that Wilson's wife was involved in sending Wilson on the trip to Niger. **LIBBY** confirmed to Cooper, without elaboration or qualification, that he had heard this information too.

24. On or about July 12, 2003, in the late afternoon, **LIBBY** spoke by telephone with Judith Miller of the *New York Times* and discussed Wilson's wife, and that she worked at the CIA.

The Criminal Investigation

25. On or about September 26, 2003, the Department of Justice authorized the Federal Bureau of Investigation ("FBI") to commence a criminal investigation into the possible unauthorized disclosure of classified information regarding the disclosure of Valerie Wilson's affiliation with the CIA to various reporters in the spring of 2003.

26. As part of the criminal investigation, **LIBBY** was interviewed by Special Agents of the FBI on or about October 14 and November 26, 2003, each time in the presence of his counsel. During these interviews, **LIBBY** stated to FBI Special Agents that:

a. During a conversation with Tim Russert of *NBC News* on July 10 or 11, 2003, Russert asked **LIBBY** if **LIBBY** was aware that Wilson's wife worked for the CIA. **LIBBY** responded to Russert that he did not know that, and Russert replied that all the reporters knew it. **LIBBY** was surprised by this statement because, while speaking with Russert, **LIBBY** did not recall that he previously had learned about Wilson's wife's employment from the Vice President.

b. During a conversation with Matthew Cooper of *Time* magazine on or about July 12, 2003, **LIBBY** told Cooper that reporters were telling the administration that Wilson's wife worked for the CIA, but that **LIBBY** did not know if this was true; and

c. **LIBBY** did not discuss Wilson's wife with *New York Times* reporter Judith Miller during a meeting with Miller on or about July 8, 2003.

27. Beginning in or about January 2004, and continuing until the date of this indictment, Grand Jury 03-3 sitting in the District of Columbia conducted an investigation ("the Grand Jury Investigation") into possible violations of federal criminal laws, including: Title 50, United States Code, Section 421 (disclosure of the identity of covert intelligence personnel); and Title 18, United States Code, Sections 793 (improper disclosure of national defense information), 1001 (false statements), 1503 (obstruction of justice), and 1623 (perjury).

28. A major focus of the Grand Jury Investigation was to determine which government officials had disclosed to the media prior to July 14, 2003 information concerning the affiliation of Valerie Wilson with the CIA, and the nature, timing, extent, and purpose of such disclosures, as well as whether any official making such a disclosure did so knowing that the employment of Valerie Wilson by the CIA was classified information.

29. During the course of the Grand Jury Investigation, the following matters, among others, were material to the Grand Jury Investigation:

i. When, and the manner and means by which, defendant **LIBBY** learned that Wilson's wife was employed by the CIA;

ii. Whether and when **LIBBY** disclosed to members of the media that Wilson's wife was employed by the CIA;

iii. The language used by **LIBBY** in disclosing any such information to the media, including whether **LIBBY** expressed uncertainty about the accuracy of any information he may have disclosed, or described where he obtained the information;

iv. **LIBBY**'s knowledge as to whether any information he disclosed was classified at the time he disclosed it; and

v. Whether **LIBBY** was candid with Special Agents of the Federal Bureau of Investigation in describing his conversations with the other government officials and the media relating to Valerie Wilson.

LIBBY's Grand Jury Testimony

30. On or about March 5 and March 24, 2004, **LIBBY** testified before Grand Jury 03-3. On each occasion of **LIBBY**'s testimony, the foreperson of the Grand Jury administered the oath to **LIBBY** and **LIBBY** swore to tell the truth in the testimony he was about to give.

31. In or about March 2004, in the District of Columbia,

I. LEWIS LIBBY,
also known as "**SCOOTER LIBBY**,"

defendant herein, did knowingly and corruptly endeavor to influence, obstruct and impede the due administration of justice, namely proceedings before Grand Jury 03-3, by misleading and deceiving the grand jury as to when, and the manner and means by which, **LIBBY** acquired and subsequently disclosed to the media information concerning the employment of Valerie Wilson by the CIA.

32. It was part of the corrupt endeavor that during his grand jury testimony, defendant **LIBBY** made the following materially false and intentionally misleading statements and representations, in substance, under oath:

a. When **LIBBY** spoke with Tim Russert of *NBC News*, on or about July 10, 2003:

i. Russert asked **LIBBY** if **LIBBY** knew that Wilson's wife worked for the CIA, and told **LIBBY** that all the reporters knew it; and

ii. At the time of this conversation, **LIBBY** was surprised to hear that Wilson's wife worked for the CIA;

b. **LIBBY** advised Matthew Cooper of *Time* magazine on or about July 12, 2003, that he had heard that other reporters were saying that Wilson's wife worked for the CIA, and further advised him that **LIBBY** did not know whether this assertion was true; and

c. **LIBBY** advised Judith Miller of the *New York Times* on or about July 12, 2003 that he had heard that other reporters were saying that Wilson's wife worked for the CIA but **LIBBY** did not know whether that assertion was true.

33. It was further part of the corrupt endeavor that at the time defendant **LIBBY** made each of the above-described materially false and intentionally misleading statements and representations to the grand jury, **LIBBY** was aware that they were false, in that:

a. When **LIBBY** spoke with Tim Russert of *NBC News* on or about July 10, 2003:

i. Russert did not ask **LIBBY** if **LIBBY** knew that Wilson's wife worked for the CIA, nor did he tell **LIBBY** that all the reporters knew it; and

ii. At the time of this conversation, **LIBBY** was well aware that Wilson's wife worked at the CIA; in fact, **LIBBY** had participated in multiple prior conversations concerning this topic, including on the following occasions:

- In or about early June 2003, **LIBBY** learned from the Vice President that Wilson's wife worked for the CIA in the Counterproliferation Division;
- On or about June 11, 2003, **LIBBY** was informed by a senior CIA officer that Wilson's wife was employed by the CIA and that the idea of sending him to Niger originated with her;

- On or about June 12, 2003, **LIBBY** was informed by the Under Secretary of State that Wilson's wife worked for the CIA;

- On or about June 14, 2003, **LIBBY** discussed "Joe Wilson" and "Valerie Wilson" with his CIA briefer, in the context of Wilson's trip to Niger;

- On or about June 23, 2003, **LIBBY** informed reporter Judith Miller that Wilson's wife might work at a bureau of the CIA;

- On or about July 7, 2003, **LIBBY** advised the White House Press Secretary that Wilson's wife worked for the CIA;

- In or about June or July 2003, and in no case later than on or about July 8, 2003, **LIBBY** was advised by the Assistant to the Vice President for Public Affairs that Wilson's wife worked for the CIA;

- On or about July 8, 2003, **LIBBY** advised reporter Judith Miller of his belief that Wilson's wife worked at the CIA; and

- On or about July 8, 2003, **LIBBY** had a discussion with the Counsel to the Office of the Vice President concerning the paperwork that would exist if a person who was sent on an overseas trip by the CIA had a spouse who worked at the CIA;

b. **LIBBY** did not advise Matthew Cooper, on or about July 12, 2003, that **LIBBY** had heard other reporters were saying that Wilson's wife worked for the CIA, nor did **LIBBY** advise him that **LIBBY** did not know whether this assertion was true; rather, **LIBBY** confirmed to Cooper, without qualification, that **LIBBY** had heard that Wilson's wife worked at the CIA; and

c. **LIBBY** did not advise Judith Miller, on or about July 12, 2003, that **LIBBY** had heard other reporters were saying that Wilson's wife worked for the CIA, nor did **LIBBY** advise her that **LIBBY** did not know whether this assertion was true;

In violation of Title 18, United States Code, Section 1503.

COUNT TWO
(False Statement)

THE GRAND JURY FURTHER CHARGES:

1. The Grand Jury realleges Paragraphs 1-26 of Count One as though fully set forth herein.

2. During the course of the criminal investigation conducted by the Federal Bureau of Investigation and the Department of Justice, the following matters, among others, were material to that investigation:

a. When, and the manner and means by which, defendant **LIBBY** learned that Wilson's wife was employed by the CIA;

b. Whether and when **LIBBY** disclosed to members of the media that Wilson's wife was employed by the CIA;

c. The language used by **LIBBY** in disclosing any such information to the media, including whether **LIBBY** expressed uncertainty about the accuracy of any information he may have disclosed, or described where he obtained the information; and

d. **LIBBY**'s knowledge as to whether any information he disclosed was classified at the time he disclosed it.

3. On or about October 14 and November 26, 2003, in the District of Columbia,

I. LEWIS LIBBY,
also known as "**SCOOTER LIBBY,**"

defendant herein, did knowingly and willfully make a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the Federal Bureau of

Investigation, an agency within the executive branch of the United States, in that the defendant, in response to questions posed to him by agents of the Federal Bureau of Investigation, stated that:

> During a conversation with Tim Russert of *NBC News* on July 10 or 11, 2003, Russert asked **LIBBY** if **LIBBY** was aware that Wilson's wife worked for the CIA. **LIBBY** responded to Russert that he did not know that, and Russert replied that all the reporters knew it. **LIBBY** was surprised by this statement because, while speaking with Russert, **LIBBY** did not recall that he previously had learned about Wilson's wife's employment from the Vice President.

4. As defendant **LIBBY** well knew when he made it, this statement was false in that when **LIBBY** spoke with Russert on or about July 10 or 11, 2003:

a. Russert did not ask **LIBBY** if **LIBBY** knew that Wilson's wife worked for the CIA, nor did he tell **LIBBY** that all the reporters knew it; and

b. At the time of this conversation, **LIBBY** was well aware that Wilson's wife worked at the CIA;

In violation of Title 18, United States Code, Section 1001(a)(2).

COUNT THREE
(False Statement)

THE GRAND JURY FURTHER CHARGES:

1. The Grand Jury realleges Paragraphs 1 and 2 of Count Two as though fully set forth herein.

2. On or about October 14 and November 26, 2003, in the District of Columbia,

I. LEWIS LIBBY,
also known as "**SCOOTER LIBBY,**"

defendant herein, did knowingly and willfully make a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency within the executive branch of the United States, in that the defendant, in response to questions posed to him by agents of the Federal Bureau of Investigation, stated that:

> During a conversation with Matthew Cooper of *Time* magazine on July 12, 2003, **LIBBY** told Cooper that reporters were telling the administration that Wilson's wife worked for the CIA, but **LIBBY** did not know if this was true.

3. As defendant **LIBBY** well knew when he made it, this statement was false in that: **LIBBY** did not advise Cooper on or about July 12, 2003 that reporters were telling the administration that Wilson's wife worked for the CIA, nor did **LIBBY** advise him that **LIBBY** did not know whether this was true; rather, **LIBBY** confirmed for Cooper, without qualification, that **LIBBY** had heard that Wilson's wife worked at the CIA;

In violation of Title 18, United States Code, Section 1001(a)(2).

COUNT FOUR
(Perjury)

THE GRAND JURY FURTHER CHARGES:

1. The Grand Jury realleges Paragraphs 1-30 of Count One as though fully set forth herein.

2. On or about March 5, 2004, in the District of Columbia,

I. LEWIS LIBBY,
also known as "**SCOOTER LIBBY**,"

defendant herein, having taken an oath to testify truthfully in a proceeding before a grand jury of the United States, knowingly made a false material declaration, in that he gave the following testimony regarding a conversation that he represented he had with Tim Russert of *NBC News*, on or about July 10, 2003 (underlined portions alleged as false):

> . . . . And then he said, you know, did you know that this – excuse me, did you know that Ambassador Wilson's wife works at the CIA? And I was a little taken aback by that. I remember being taken aback by it. And I said – he may have said a little more but that was – he said that. And I said, no, I don't know that. And I said, no, I don't know that intentionally because I didn't want him to take anything I was saying as in any way confirming what he said, because at that point in time I did not recall that I had ever known, and I thought this is something that he was telling me that I was first learning. And so I said, no, I don't know that because I want to be very careful not to confirm it for him, so that he didn't take my statement as confirmation for him.
>
> Now, I had said earlier in the conversation, which I omitted to tell you, that this – you know, as always, Tim, our discussion is off-the-record if that's okay with you, and he said, that's fine.
>
> So then he said – I said – he said, sorry – he, Mr. Russert said to me, did you know that Ambassador Wilson's wife, or his wife, works at the CIA? And I said, no, I don't know that. And then he said, yeah – yes, all the reporters know it. And I said, again, I don't know that. I just wanted to be clear that I wasn't confirming anything for him on this. And you know, I was struck by what he was saying in that he thought it was an important fact, but I didn't ask him anymore about it because I

didn't want to be digging in on him, and he then moved on and finished the conversation, something like that.

3. In truth and fact, as **LIBBY** well knew when he gave this testimony, it was false in that:

a. Russert did not ask **LIBBY** if **LIBBY** knew that Wilson's wife worked for the CIA, nor did he tell **LIBBY** that all the reporters knew it; and

b. At the time of this conversation, **LIBBY** was well aware that Wilson's wife worked at the CIA;

In violation of Title 18, United States Code, Section 1623.

COUNT FIVE
(Perjury)

THE GRAND JURY FURTHER CHARGES:

1. The Grand Jury realleges Paragraphs 1-30 of Count One as though fully set forth herein.

2. On or about March 5, 2004 and March 24, 2004, in the District of Columbia,

I. LEWIS LIBBY,
also known as "**SCOOTER LIBBY**,"

defendant herein, having taken an oath to testify truthfully in a proceeding before a grand jury of the United States, knowingly made a false material declaration, in that he gave the following testimony regarding his conversations with reporters concerning the employment of Joseph Wilson's wife by the CIA (underlined portions alleged as false):

a. Testimony Given on or about March 5, 2004 Regarding a Conversation With Matthew Cooper on or About July 12, 2003:

Q. And it's your specific recollection that when you told Cooper about Wilson's wife working at the CIA, you attributed that fact to what reporters –

A. Yes.

Q. – plural, were saying. Correct?

A. I was very clear to say reporters are telling us that because in my mind I still didn't know it as a fact. I thought I was – all I had was this information that was coming in from the reporters.

. . . .

Q. And at the same time you have a specific recollection of telling him, you don't know whether it's true or not, you're just telling him what reporters are saying?

A. Yes, that's correct, sir. And I said, reporters are telling us that, I don't know if it's true. I was careful about that because among other things, I wanted to be clear I didn't know Mr. Wilson. I don't know – I think I said, I don't know if he has a wife, but this is what we're hearing.

b. Testimony Given on or about March 24, 2004 Regarding Conversations With Reporters:

Q. And let me ask you this directly. Did the fact that you knew that the law could turn, the law as to whether a crime was committed, could turn on where you learned the information from, affect your account for the FBI when you told them that you were telling reporters Wilson's wife worked at the CIA but your source was a reporter rather than the Vice-President?

A. No, it's a fact. It was a fact, that's what I told the reporters.

Q. And you're, you're certain as you sit here today that every reporter you told that Wilson's wife worked at the CIA, you sourced it back to other reporters?

A. Yes, sir, because it was important for what I was saying and because it was – that's what – that's how I did it.

. . . .

Q. The next set of questions from the Grand Jury are – concern this fact. If you did not understand the information about Wilson's wife to have been classified and didn't understand it when you heard it from Mr. Russert, why was it that you were so deliberate to make sure that you told other reporters that reporters were saying it and not assert it as something you knew?

A. I want – I didn't want to – I didn't know if it was true and I didn't want people – I didn't want the reporters to think it was true because I said it. I – all I had was that reporters are telling us that, and by that I wanted them to understand it wasn't coming from me and that it might not be true. Reporters write things that aren't true sometimes, or get things that aren't true. So I wanted to be clear they didn't, they didn't think it was me saying it. I didn't know it was true and I wanted them to understand that. Also, it was important to me to let them know that because what I was telling them was that I don't know Mr. Wilson. We didn't ask for his mission. That I didn't see his report.

> Basically, we didn't know anything about him until this stuff came out in June. And among the other things, I didn't know he had a wife. That was one of the things I said to Mr. Cooper. I don't know if he's married. And so I wanted to be very clear about all this stuff that I didn't, I didn't know about him. And the only thing I had, I thought at the time, was what reporters are telling us.
>
> . . . .
>
> Well, talking to the other reporters about it, I don't see as a crime. What I said to the other reporters is what, you know – I told a couple reporters what other reporters had told us, and I don't see that as a crime.

3. In truth and fact, as **LIBBY** well knew when he gave this testimony, it was false in that **LIBBY** did not advise Matthew Cooper or other reporters that **LIBBY** had heard other reporters were saying that Wilson's wife worked for the CIA, nor did **LIBBY** advise Cooper or other reporters that **LIBBY** did not know whether this assertion was true;

In violation of Title 18, United States Code, Section 1623.

A TRUE BILL:

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FOREPERSON

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PATRICK J. FITZGERALD
Special Counsel