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File Folder PAKISTAN (1986) KARACHI TERRORISM

FOIA

F05-008

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ID Doc Type	Document Description	No of Pages	Doc Date	Restrictions
41064 MEMO	ABRAHAM SOFAER TO PETER WALLISON RE WAR POWERS (SAME TEXT AS 40493)	3		B1

The above documents were not referred for declassification review at time of processing

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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Intelligence Oversight Act and War Powers Act Reporting Requirements

UNCLASSIFIED

Some might argue that a strike on a terrorist installation is not a "significant and anticipated intelligence activity," per se, and therefore would not trigger congressional reporting requirements.

QUESTION: Would the use of intelligence community funds or personnel in a pre-emption or reprisal against terrorists require prior notification of Congress required in subchapter 3 of the Intelligence Oversight Act? If not prior notification, then ex post facto reporting?

ANSWER: DOD anticipates that missions against terrorist groups would be conducted by the Department as special operations assigned by the Secretary of Defense with the approval of the President. It is anticipated that these missions will not utilize either intelligence community funds or personnel but rather will be conducted in support of military objectives funded with operations and maintenance funds and employ U.S. special operations forces as appropriate.

However, this does not preclude the possibility of the President specifically directing DOD to undertake these missions as covert special activities (which to date he has never done) or to provide DOD resources to another agency which itself has been specifically tasked by the President to conduct the special activities. By definition, these covert special activities fall within the jurisdiction of the Intelligence Oversight Act and DOD would insure that the relevant reporting requirements of the Act, regarding DOD participation, were fulfilled.

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OASD (PA) DFOISR

UNCLASSIFIED

HOUSE SENATE	APPROPRIATIONS COMMITTEE	HOUSE SENATE	ARMED SERVICES COMMITTEE	HOUSE SENATE	OTHER
HEARING DATE May 1985	TRANSCRIPT PAGE NO. 71	LINE NO. 5	INSERT NO.		FRC JC Q-2

Intelligence Oversight Act and War Powers Act Reporting Requirements

UNCLASSIFIED

The Special Operations Forces of the DOD (i.e., the Army's Green Berets and Rangers and the Navy's SEALs) are undergoing an aggressive peacetime buildup. They are uniquely suited for Low Intensity Conflict, including counterterrorist actions.

QUESTION: Would the involvement of the Special Forces or the use of DOD funds in a counterterrorist action trigger the reporting requirements of the Intelligence Oversight Act or the consultation requirement of the War Powers Act which states:

"SEC. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations."

Do you envision any instances in which reporting requirements of either statute would be triggered?

ANSWER: DOD does not consider either Special Operations Forces or the conduct of counterterrorist operations to be part of or fall under the jurisdiction of the intelligence community. They are military assets and missions. With regard to the conduct of counterterrorist special operations in support of military missions, DOD does not consider that the use of DOD funds (e.g., O&M) triggers the reporting requirements of the Intelligence Oversight Act. However, when the President has specifically directed the use of DOD resources and/or the expenditure of DOD funds to conduct or support a covert special activity, pursuant to the authority of the Intelligence Oversight Act and Executive Order 12333, DOD must comply, or ensure compliance, with the reporting requirements of the Act.

The Executive Branch has long recognized the importance of keeping the Congress currently and accurately informed concerning its use of all U.S. Armed Forces and will continue to provide timely information and consult with Congress in this regard. DOD considers Congressional knowledge and support a vital pre-requisite to the conduct of any military operation in general and to special operations in particular in order to insure their ultimate success.

UNCLASSIFIED

FURTHER QUESTIONS REGARDING APPLICATION OF INTELLIGENCE OVERSIGHT ACT AND
WAR POWERS RESOLUTION TO POTENTIAL COUNTERTERRORIST ACTIVITIES

(1) As I read your response, your position is that whenever overt military assets (i.e., assets which will be acknowledged as DOD assets even when the mission is planned and/or executed in secret) are utilized in counterterrorist operations, then the War Powers Resolution but not the Intelligence Oversight Act is triggered.

- a) Is that correct?
- b) How would you define "military assets"?

(2) If an antiterrorist operation involves only military assets, and you are responding under the War Powers Resolution, would you expect to consult with Congress as Section 3 of the War Powers Resolution requires?

- a) With whom would you expect to consult?
- b) Has Congress given you any guidance in this regard?
- c) Are there any guidelines or directives in the Executive Branch for such consultation?
- d) Are there precedents?

(3) If an antiterrorist operation involves only military assets, do you expect to report to Congress under Section 4 of the War Powers Resolution?

(4) A counterterrorist operation might involve (a) a rescue effort, (b) a preemptive measure, or (c) a reprisal. Do you believe you can differentiate among such operations on a generic basis for determining what Congressional consultation or reporting requirements must be met?

- a) Please discuss each of these three types of operation.
- b) Can you envision rescue efforts, preemptive measures or reprisals which would utilize DOD assets but not fall under either the Intelligence Oversight Act or the War Powers Resolution? If so, please describe and explain the possible circumstances.

(5) If the President specifically directed DOD to undertake a counterterrorist activity as a covert or special activity, which you say he has to date never done, you indicate that you expect to respond to Congress under the Intelligence Oversight Act.

- a) Isn't it likely that some of these special activities would also meet the requirements for consultation and reporting (introduction of United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated) under the War Powers Resolution?
- b) In those instances wouldn't you have to respond to Congress under both statutes? Or do you read these laws as mutually exclusive? If so, what is the basis for that interpretation?
- c) If you are responding under the War Powers Resolution, would you respond under Section 3 or Section 4 or both?

(6) If DOD were providing resources to another agency which had been specifically tasked by the President to conduct or support a covert or special activity, you indicate that you expect to respond to Congress under the Intelligence Oversight Act.

- a) Isn't it likely that some of these special activities would also meet the requirements for consultation and reporting (introduction of United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated) under the War Powers Resolution?
- b) In those instances wouldn't you have to respond to Congress under both statutes? Or do you read these laws as mutually exclusive? If so, what is the basis for that interpretation?
- c) If you are responding under the War Powers Resolution, would you respond under Section 3 or Section 4 or both?

(7) Is it understood that the Director of Central Intelligence is the channel for consulting Congress when a special or covert activity is anticipated?

(8) Is the Director of Central Intelligence, in your opinion, also the channel for consultation if (a) the President directs DOD to undertake a counterterrorist activity as a covert or special activity or (b) DOD is providing resources to another agency which has been specifically tasked by the President to conduct or support a special or covert activity? Please respond to (a) and (b).

(9) When a counterterrorist activity utilizes only military assets (although it may be secretly planned and/or executed), what is DOD's understanding of the procedures and channels for consultation with the Congress?

(10) If Congress were to direct that Section 3 of the War Powers Resolution was to be interpreted to mean consultation with the Chairman and Ranking Member of the Armed Services and Foreign Relations/Foreign Affairs Committees and the Majority and Minority Leaders of each House, would this help the Department in complying with or acting in a manner consistent with Section 3 of the War Powers Resolution?

(11) At times when Congress is in recess or adjournment, what plans/procedures are there for rapid consultation with Congress regarding (a) totally unexpected events and (b) further developments in an on-going crisis or situation?

(12) Approximately how many people in the Executive Branch were involved in the planning of the Iranian rescue mission?

- a) In the attempted execution of the Iranian mission?
- b) Under established procedures, approximately how many people would be involved in the decision-making and planning of an operation such as the bombing of the Beirut runway?

(13) Can you envision circumstances under which it would not be possible because of time for Congress to be consulted regarding use of overt military assets? If so, please describe the circumstances.