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File Folder [COUNTERTERRORISM/WAR POWERS RESOLUTION
MEETING SEPTEMBER 19, 1985]

FOIA

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SYSTEMATIC

97

| ID | Doc Type | Document Description | No of Pages | Doc Date | Restrictions |
|--------|----------|----------------------------|-------------|----------|--------------|
| 166667 | PAPER | RE: IRANIAN RESCUE MISSION | 2 | ND | 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.

THE WHITE HOUSE
WASHINGTON

September 17, 1985

MEMO FOR MARY BETH BAKKE

FROM: MERI LARSON *mx*

SUBJECT: FFF Meeting

I set up the meeting in your absence for 10:30 am Thursday, 9/19/85 in FFF's office. It has been confirmed by all parties.

Those attending the meeting are listed on the memo with the exception of RAH.

Any questions, please ask.

TOP SECRET DOCUMENTS ATTACHED

THE WHITE HOUSE

WASHINGTON

September 17, 1985

MEMORANDUM FOR ABRAHAM D. SOFAER (632-9598)
RALPH W. TARR (633-2051)
PAUL B. THOMPSON (x2562)
CHAPMAN B. COX (695-3341)

FROM: FRED F. FIELDING FFF/RAB
COUNSEL TO THE PRESIDENT

SUBJECT: Counterterrorism/War Powers Resolution

I have scheduled a meeting for Thursday, September 19, 1985 at 10:30 am to renew our discussion of this issue and to formulate an approach for responding to Congressional inquiries on this subject received since our last meeting.

In that regard, I have attached for your review and comment:

1. Senator Thomas Eagleton's letter of June 27, 1985 to Secretary Weinberger and the Defense Department's draft response; and
2. A July 29, 1985, letter from Senators Durenberger and Leahy to Secretary Weinberger.

Thank you.

TOP SECRET DOCUMENTS ATTACHED

(Without attachments, this document
is unclassified)

REQUEST FOR APPOINTMENTS

To: Officer-in-charge
Appointments Center
Room 060, OEOB

Please admit the following appointments on THURSDAY, SEPTEMBER 19, 19 85

for FRED F. FIELDING of COUNSEL TO THE PRESIDENT
(NAME OF PERSON TO BE VISITED) (AGENCY)

ABRAHAM D. SOFAER
RALPH D. TARR
CHAPMAN B. COX

RAH
PAUL THOMPSON

MEETING LOCATION

Building WEST WING

Room No. 2nd floor

Time of Meeting 10:30 am

Requested by MARY BETH BAKKE

Room No. 2nd fl Telephone X2632

Date of request September 18, 1985

Additions and/or changes made by telephone should be limited to five (5) names or less.

APPOINTMENTS CENTER: SIG/OEOB - 395-6046 or WHITE HOUSE - 456-6742

1050142-0071

W. D. DURENBERGER MINNESOTA CHAIRMAN
PATRICK J. LEAHY VERMONT VICE CHAIRMAN
J. B. BENTSEN TEXAS
SAM NUNN GEORGIA
THOMAS F. EAGLETON MISSOURI
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BILL BRADLEY NEW JERSEY
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SAM NUNN GEORGIA
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ERNEST F. HOLLINGS SOUTH CAROLINA
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ROBERT D. BENTSEN TEXAS
SAM NUNN GEORGIA
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ERNEST F. HOLLINGS SOUTH CAROLINA
DAVID L. BOREN OKLAHOMA
BILL BRADLEY NEW JERSEY

United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20510

IN REPLY PLEASE
REFER TO #85-2978

ROBERT DOLE KANSAS EX OFFICIO
ROBERT C. BYRD WEST VIRGINIA, EX OFFICIO

BERNARD F. McMAHON, STAFF DIRECTOR
ERIC D. NEWSOM, MINORITY STAFF DIRECTOR

September 9, 1985



Mr. Michael Matheson
Deputy Legal Adviser
Department of State
2201 C Street, NW (Rm 6419)
Washington, D.C. 20520

Dear Mr. Matheson,

On July 29, 1985, the Chairman and Vice Chairman of the Select Committee on Intelligence wrote to the Director of Central Intelligence and to the Secretaries of State and Defense concerning issues related to, but having implications beyond, congressional notification of covert action activities.

One major issue involves the possible employment of U.S. special military operations forces in a hostage rescue situation or in a preemptive or retaliatory counterterrorist operation. The Select Committee's letter of July 29 noted that such situations arguably could be subject to the reporting requirements of section 501 of the National Security Act, the consultative provisions of section 3 of the War Powers Resolution, both, or neither. Chairman Durenberger and Vice Chairman Leahy indicated their interest in reaching an understanding in this area that would reconcile executive concerns about timeliness and operational security with congressional concern about appropriate notification and consultation.

The Committee's letter of July 29 indicated that we planned to initiate informal discussions on this subject with appropriate executive branch representatives. An initial session will take place on Friday, September 27th at 10:00 a.m., in Room 219 of the Hart Senate Office Building; the Select Committee's secure hearing room, and we hope that you will be able to participate. This will be a very informal discussion, mainly among lawyers from key executive agencies and congressional committees. We are not, at this point, seeking the presentation of any official agency or committee positions.

OUT

1985 SEP 16 AM 7:57

Mr. Michael Matheson
September 9, 1985
Page 2

We plan to provide participants with some background material for ready reference at the meeting, and, in order to give initial focus to the discussion, we also will be forwarding some hypothetical scenarios. We will attempt to see if a consensus can be developed as to whether and how various situations might fit into the National Security Act and/or the War Powers Resolution framework. Please confirm your ability to attend the September 27th session with Linda Lawson (224-1730) or Susan Martin (224-1737) of the Intelligence Committee staff.

Sincerely,



Gary Chase
Chief Counsel



Daniel Finn
Minority Counsel

Dear Mr. Chairman:

I understand that you have raised with several agencies the question whether the employment of U.S. special military operations forces in a hostage rescue or counterterrorist situation would fall under the reporting requirements of section 501 of the National Security Act, the provisions of the War Powers Resolution, both, or neither. I am taking the liberty of writing to you on this question in the interest of providing you with a coordinated Executive Branch position, in which State, Defense, Justice, the CIA, and the NSC concur. In addition, I am including responses of DOD to Senator Eagleton on this subject, with respect to which all of the same agencies concur.

A special military operation of the type you describe may or may not fall within the statutory provisions you refer to, depending on the circumstances of the situation. For example, such an operation would fall within the provisions of section 501 of the National Security Act if it were carried out as a special intelligence activity pursuant to Presidential finding; and such an operation would fall within the consultation and reporting provisions of the War Powers Resolution if it involved the introduction of U.S. Armed Forces into hostilities with foreign armed forces.

By the same token, however, such operations might not, in a given situation, fall under either set of provisions. For

example, the contingency deployment of a special operations team during a terrorist incident, to a location where they are in no immediate danger, and where consultation is not possible without unacceptable risks, would fall under neither of these statutory regimes if it were carried out as a military deployment rather than a covert intelligence action, and if hostilities with foreign armed forces did not result. It is important to keep in mind that operations against terrorists are in many ways more akin to law enforcement actions than to the types of hostile action against foreign armed forces that were the focus of Congressional concern in enacting the War Powers Resolution.

We appreciate your desire to understand how the legislative and executive branches would work together in such a situation, and we would be happy to attend staff-level consultations which your staff has proposed for this purpose. Our view is that operations of this sort are so sensitive, however, and could involve such a variety of different circumstances, that no set of specific procedures would be appropriate in all such cases, and that we will have to deal with each situation in good faith as it arises. Obviously the overriding consideration in this area would be the security of our personnel and of any innocent persons who may be affected by terrorist actions. Public disclosure of a deployment would have potentially tragic consequences, in addition to disabling us from taking any action.

In the case of the Tehran rescue mission, no consultation or reporting under the War Powers Resolution occurred until after the failure of the mission, even though substantial deployments of U.S. combat forces into the region occurred during the days preceding the rescue attempt. To our knowledge, no challenge to the timing of President Carter's report to Congress was made in that case, and few legislators even raised doubts about his decision not to engage in prior consultations because of the extreme security requirements of the situation. If consultations do occur on this subject, we would insist that they be informed, as the staff members from each of the agencies involved will be unauthorized to take positions on issues of such seriousness.

We would be glad to hear your ideas and suggestions, and to do our best to accommodate your needs.

Sincerely,

Q. 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?

A. So far as War Powers reports are concerned, it is our understanding that, at those times when Congress is in recess or adjournment, provision is made in the adjournment resolution to provide for communication by the Executive with Congress, where established rules do not already so provide.

The occurrence of important events outside of the working hours of the Congress has sometimes complicated the conduct of consultations (e.g., in the Mayaguez incident and the planning for the Grenada rescue operation). In these situations, the Executive Branch has made efforts to contact appropriate members of Congress. How best to conduct consultations at times when Congress is in recess or adjournment, or at times otherwise outside its normal working hours, might be a particularly fruitful topic for discussions.

Q.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?

A. Not all counterterrorist activities would come within the scope of the WPR reporting and consulting requirements.

However, if DoD is conducting a counterterrorist operation reportable under Section 4(a)(1) of the WPR, the Department would anticipate that the President would consult with the Congress under section 3 of the Act, which provides for consultation "in every possible instance".

- a) The President will determine which members should be consulted. However, in past instances the leadership of both Houses and the appropriate chairmen were consulted whenever possible on the proposed mission; the ranking minority members were also typically consulted.
- b) The Executive Branch has kept the Congress fully and accurately informed on the deployments of U.S. Armed Forces through briefings of the leadership and the appropriate committee chairmen. It is our belief that

this system has worked exceedingly well and has the support of both Houses of Congress.

- c) No, apart from precedents and memoranda on specific incidents.
- d) Yes. In the case of the Iran rescue mission, President Carter determined that prior consultation with Congress was not possible due to the extreme security requirements of the mission. A report was provided to Congress within 48 hours after the entry of U.S. forces into Iranian airspace, after the incident had aborted. The Administration considers that the use of special operations forces to conduct a counterterrorist operation where no hostilities with foreign armed forces occur may differ, for purposes of the WPR, from the use of U.S. Armed Forces, armed for combat against the regular armed forces of another country. In this regard, as noted above, a thorough review of WPR applicability is made before a deployment. We will of course continue to consult with Congress whenever possible in the circumstances, in any case where national security interests may be affected, whether or not a War Powers consultation or report is required.

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

A. Every deployment of U.S. Armed Forces is reviewed on a case-by-case basis to determine potential WPR applicability. However, where military assets used in a counterterrorist operation include only defense articles and/or equipment loaned to another agency, the Department does not believe that the WPR would be applicable. Furthermore, we would not report a deployment of non-combat antiterrorist forces, in which no threat of hostilities existed, and where the report was impossible to make.

Q.4. A counter-terrorist 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.

A. We do not believe we can differentiate among these types of operations on a generic basis for determining applicability of the WPR reporting and consultation requirements. It is not possible without reference to specific facts and circumstances to determine whether consultation and reporting are required.

Q.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 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?

A.a. Regardless of the nature or type of the mission contemplated, where U.S. Armed Forces are deployed, a review is conducted by the DoD to determine potential applicability of the WPR.

b. If the President specifically designated the DoD to undertake a special activity, the Secretary of Defense would be required to ensure that a report is made to Congress under the Oversight Act and, if appropriate, the President will report in accordance with the WPR. If DoD provides significant support to another agency charged with the conduct of a special activity, this Department would expect the DCI to report under the Oversight Act.

c. If the President were responding consistent with the WPR in a situation involving the introduction of U.S. Armed Forces into hostilities or situations of imminent hostilities, we would consult in every possible instance and a report would be made. If a situation did not involve hostilities or imminent hostilities, no consultation would be required.

Q.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?

A.a. If U.S. Armed Forces are involved, then the Administration would review the circumstances to determine applicability of the WPR.

b. If DoD provides significant support to another Agency, this Department would expect the DCI to report under the Oversight Act. We do not read these laws as mutually exclusive.

c. See question five.

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

A. Yes

Q.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).

A. If DoD determines that a War Powers Report is required, the DoD, in consultation with the Department of State, would make a reporting recommendation to the President. DoD anticipates that all reports required under the Oversight Act, regardless of the extent of DoD participation, will be made by the DCI.

Q.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?

A. If the President determines that the WPR is applicable, Administration representatives will consult with Congressional members as directed by the President.

Q.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?

A. The Executive Branch has already identified these individuals as the most appropriate representatives of the Congress to be consulted upon the deployment of U.S. Armed Forces. A direction to this effort is unnecessary, and might be excessively constricting.

THE WHITE HOUSE

WASHINGTON

September 18, 1985

MEMORANDUM FOR FRED FIELDING

FROM:

RICHARD HAUSER *RHS*

SUBJECT:

Counterterrorism/War Powers Resolution
Meeting - September 19, 1985

The purpose of this meeting, as stated in the memorandum to participants, is (1) to renew the discussion of counterterrorism activities and the reporting requirements of the War Powers Resolution; and (2) to decide on an approach for responding to Congressional letters on this issue.

It will not be possible to develop precise language for responding to these inquiries at the meeting; therefore, you may wish to direct the discussion to the following topics:

- I. Assessment of Congressional Interest
 - How many inquiries received - formal and informal?
 - Any responses, discussions, or consultations to date relating to such inquiries?
 - Are hearings scheduled?
- II. Administration Position
 - Need for coordinated response.
 - Can Justice's views be reconciled with those of State and Defense?
- III. How Can Administration Seize Initiative?
 - e.g., Can the Vice President's Task Force on Terrorism, which has a legislative study component, provide a useful vehicle (the Task Force is scheduled to complete its work by the end of the year)?
 - Judge Sofaer to head strategy group.

The congressional letters received to date are attached at Tab A, and statutory reporting requirements on intelligence activities, 22 U.S.C. §2422 and 50 U.S.C. §413, are attached at Tab B. The pertinent provisions of Executive Order 12333 are also attached and highlighted.

TOP SECRET DOCUMENTS ATTACHED

THE WHITE HOUSE

WASHINGTON

September 17, 1985

MEMORANDUM FOR ABRAHAM D. SOFAER
RALPH W. TARR
PAUL B. THOMPSON
CHAPMAN B. COX

FROM: FRED F. FIELDING Original signed by RAH for FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Counterterrorism/War Powers Resolution

I have scheduled a meeting for Thursday, September 19, 1985 at 10:30 am to renew our discussion of this issue and to formulate an approach for responding to Congressional inquiries on this subject received since our last meeting.

In that regard, I have attached for your review and comment:

1. Senator Thomas Eagleton's letter of June 27, 1985 to Secretary Weinberger and the Defense Department's draft response; and
2. A July 29, 1985, letter from Senators Durenberger and Leahy to Secretary Weinberger.

Thank you.

~~TOP SECRET~~ DOCUMENTS ATTACHED

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ENCLOSURE(S)

dlb 3/31/15

100 JUL -2 PM 3:06

OFFICE OF
THE SECRETARY OF DEFENSE

United States Senate

WASHINGTON, D.C. 20510

June 27, 1985

Hon. Caspar W. Weinberger
Secretary of Defense
The Pentagon
Washington, D.C. 20301

Dear Secretary Weinberger:

On May 15, 1985 during a hearing on terrorism before the Senate Foreign Relations Committee, I submitted several questions regarding application of the Intelligence Oversight Act and the War Powers Resolution to potential counterterrorist activities. A copy of the questions and the Department's responses are attached.

The responses raise a number of additional questions (enclosed) to which I would appreciate having a response.

Thank you for your help in this matter.

Yours very truly,


Thomas F. Eagleton
United States Senator

TFE:cfw
Enclosure

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Q.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"?

A.a. DoD reviews the deployment of all U.S. Armed Forces, including special operations forces, for War Powers Resolution applicability. Not all such deployments, however, trigger the consulting or reporting provisions of the WPR. Unless the President has specifically designated the DoD to conduct or provide significant support for a special activity, the Intelligence Oversight Act is not triggered.

b. Military assets are U.S. Armed Forces and/or military articles or equipment used by U.S. Armed Forces in the accomplishment of a military mission.

Q.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?

A. Not all counterterrorist activities would come within the scope of the WPR reporting and consulting requirements. However, if DoD is conducting a counterterrorist operation reportable under section 4(a)(1) of the WPR, the Department would anticipate that the President would consult with the Congress under section 3 of the Act.

- a) The President will determine which members should be consulted. However, customary practice indicates that whenever possible the leadership of both Houses and the appropriate chairmen will be consulted on the proposed mission.
- b) The Executive Branch has kept the Congress fully and accurately informed on the deployments of U.S. Armed Forces through briefings of the leadership and the appropriate committee chairmen. It is our belief that this system has worked exceedingly well and has the support of both Houses of Congress.
- c) No.
- d) While there are no precedents relating specifically to a counterterrorist operation, the Administration considers that the use of special operations forces to

conduct a counterterrorist operation may differ, for purposes of the WPR, from the use of conventional U.S. Armed Forces against the regular armed forces of another country. In this regard, as noted above, a thorough review of WPR applicability is made before a deployment. It has been the policy of the Executive Branch to consult with Congress in those cases where national security interests may be affected, whether or not a War Powers Report is required.

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

A. Every deployment of U.S. Armed Forces is reviewed on a case-by-case basis to determine potential WPR applicability. However, where military assets used in a counterterrorist operation include only defense articles and/or equipment loaned to another agency, the Department does not believe that the WPR would be applicable.

Q.4. A counter-terrorist 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.

A. A rescue effort would encompass an operation designed to relieve U.S. or allied citizens, possibly including military personnel, involved in a life-threatening situation generated by international armed conflict, civil war or unrest, or by terrorism. On the other hand, an preemptive measure would involve an operation directed at a group planning or otherwise preparing to conduct terrorist operations against U.S. or allied citizens or property. Finally, a reprisal would involve an operation against a group in response to terrorist activity already carried out in order to dissuade them from doing so again. We do not believe we can differentiate among these types of operations on a generic basis for determining applicability of the WPR reporting and consultation requirements. It is not possible without reference to specific facts and circumstances to determine whether consultation and reporting are required. We would anticipate that in all proposed rescue efforts, preemptive measures or reprisals either the Intelligence Oversight Act or the War Powers Resolution will provide governing criteria for determining the basis for reporting and consulting.

Q.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 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?

A.a. Regardless of the nature or type of the mission contemplated, where U.S. Armed Forces are deployed, a review is conducted by the DoD to determine potential applicability of the WPR.

b. If the President specifically designated the DoD to undertake a special activity, the Secretary of Defense would be required to ensure that a report is made to Congress under the Oversight Act and, if appropriate, the President will report in accordance with the WPR. If DoD provides significant support to another agency charged with the conduct of a special activity, this Department would expect the DCI to report under the Oversight Act.

c. If the President were responding consistent with the WPR in a situation involving the introduction of U.S. Armed Forces into hostilities or situations of imminent hostilities, both consultation and a report would be made. If a situation did not involve hostilities or imminent hostilities, no consultation would be required.

Q.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?
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- c) If you are responding under the War Powers Resolution, would you respond under Section 3 or Section 4 or both?

A.a. If U.S. Armed Forces are involved, then the Administration would review the circumstances to determine applicability of the WPR.

b. If DoD provides significant support to another Agency, this Department would expect the DCI to report under the Oversight Act. We do not read these laws as mutually exclusive.

c. See question five.

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

A. Yes

Q.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).

A. If DoD determines that a War Powers Report is required, the DoD, in consultation with the Department of State, would make a reporting recommendation to the President. DoD anticipates that all reports required under the Oversight Act, regardless of the extent of DoD participation, will be made by the DCI.

Q.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?

A. If the President determines that the WPR is applicable, Administration representatives will consult with Congressional members as directed by the President.

Q. 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?

A. The Executive Branch has already identified these individuals as the most appropriate representatives of the Congress to be consulted upon the deployment of U.S. Armed Forces.

Q. 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?

A. It is our understanding that, at those times when Congress is in recess or adjournment, provision is made in the adjournment resolution to provide for communication by the Executive with Congress, where established rules do not already so provide.

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name

HAUSER, RICHARD: FILES

Withdrawer

DLB 4/1/2015

File Folder

[COUNTERTERRORISM/WAR POWERS RESOLUTION
MEETING SEPTEMBER 19, 1985]

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|-----------|---|------------------------------|-----------------|---------------------------------|
| 166667 | PAPER RE: IRANIAN RESCUE MISSION | 2 | ND | 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.