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SCSL-2003-07-PT
(3258-3321)

3258

SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before:	**Judge Robertson QC, President** **Judge King, Vice President** **Judge Ayoola,** **Judge Winter.**
Registrar:	**Robin Vincent**
Date:	**3 December 2003**

PROSECUTOR –v- Kallon and others

Case no. SCSL – 2003 - 07 – PT

AUTHORITIES CITED IN WRITTEN SUBMISSIONS OF MORRIS KALLON:

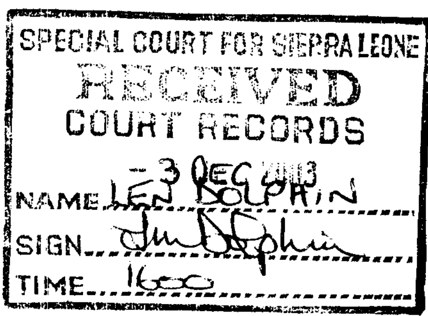
PRELIMINARY MOTION BASED ON LACK OF JURISDICTION: AMNESTY PROVIDED BY LOME ACCORD

Office of the Prosecutor:

Mr Desmond de Silva QC
Mr Walter Marcus-Jones
Mr Christopher Staker
Mr Abdul Tejan-Cole

Counsel for Morris Kallon:

Mr James Oury
Mr Steven Powles
Mr Melron Nicol-Wilson



1. On 28 November 2003, the Defence for Mr Kallon filed 'Further Written Submissions on Behalf of Morris Kallon – Preliminary Motion Based on Lack of Evidence Abuse of Process: Amnesty Provided by Lome Accord'. Such Written Submissions were filed in Response to the 'Further Written Submissions on Behalf of the Redress Trust & Others' filed 21 November 2003.

2. The Defence now file, for the assistance of the Appeals Chamber, the various documents cited in the Written Submissions. Documents cited that were provided to the Appeals Chamber during the course of legal argument are not provided now.

3. The following documents are attached:

(i) *US v Klein* (1871) 80 US 13 Wall 128

(ii) *Murphy v Ford* 390 F Supp 1372

(iii) *The Federalist* no 74 (1788) (Bourne Edition, 1947) p. 79

(iv) Transcript of interview with UK Foreign Minister Jack Straw.

(v) UK Prime Ministers Questions – Hansard: House of Commons Debates for 19 March 2003. Column 936.

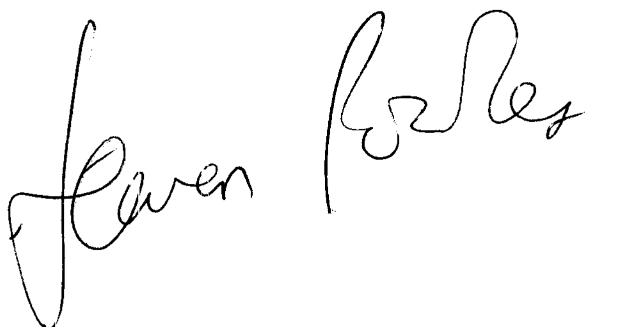
(vi) *Peace Agreement Between the Government of Liberia, LURD, MODEL* 18 August 2003

(vii) *'UN Says No Amnesty for War Crimes After 8 October 2003'* UN Integrated Regional Information Networks, 12 November 2003.

JAMES OURY

STEVEN POWLES

MELRON NICOL-WILSON



ANNEX 1

distinction exists, and must be marked ases arise. Till they do arise, it might ature to state any rule as being universal plication. It is sufficient for the present generally, that when the importer has upon the thing imported that it has become corporated and mixed up with the mass erty in the country, it has, perhaps, lost nctive character as an import, and has subject to the taxing power of the State; le remaining the property of the im- n his warehouse, in the original form or e in which it was imported, a tax upon plainly a duty on imports to escape the ion in the Constitution." 12 Wheat.,

at case it was also held that the author- en to import, necessarily carried with it a sell the goods in the form and condition, in the bale or package, in which they ported; and that the exaction of a license permission to sell in such case was not alid as being in conflict with the con- al prohibition upon the States, but also terference with the power of Congress ate commerce with foreign nations.

easons advanced by the *Chief Justice* not mmend themselves, by their intrinsic all minds, but they have received rec- and approval by this court in repeated es. *Mr. Chief Justice* Taney, who was me eminent at the Bar, as he was after- minent on the Bench, argued the case lf of the State of Maryland, and in the cases, 5 How., 575, he referred to his and observed that, at the time, he pur- himself that he was right, and thought decision of the court restricted the pow- e State more than a sound construction onstitution of the United States would "But farther and more mature reflec- e great judge added "has convinced the rule laid down by the Supreme a just and safe one, and perhaps the could have been adopted for preserv- right of the United States on the one nd of the States on the other, and pre- collision between them. The question, lready said, was a very difficult one for cial mind. In the nature of things the ivision is, in some degree, vague and in- and I do not see how it could be drawn curately and correctly, or more in har- ith the obvious intention and object of ision in the Constitution. Indeed, goods d, while they remain in the hands of the r, in the form and shape in which they ught into the country, can, in no just regarded as a part of that mass of prop- e State usually taxed for the support ate Government." See, also, *Almy* v. How., 169 [65 U. S., XVI., 644]; v. *Parham*, 8 Wall., 123 [75 U. S., 82]; *Hinson* v. *Lott*, 8 Wall., 148 [75 U. , 387].

upreme Court of California appears, opinion, to have considered the present excepted from the rule laid down in *The State of Maryland*, because the tax not directly upon imports as such and, ently, the goods imported are not sub- any burden as a class, but only are in- s part of the whole property of its citizens which is subjected equally to an *ad valorem* tax. But the obvious answer to this position is found in the fact, which is, in substance, expressed in the citations made from the opinions of Marshall and Taney, that the goods imported do not lose their character as imports, and become incorporated into the mass of property of the State, until they have passed from the control of the importer or been broken up by him from their original cases. Whilst retaining their character as imports, a tax upon them in any shape, is within the constitutional prohibition. The question is not as to the extent of the tax, or its equality with respect to taxes on other property, but as to the power of the State to levy any tax. If, at any point of time between the arrival of the goods in port and their breakage from the original cases, or sale by the importer, they become subject to state taxation, the extent and the character of the tax are mere matters of legislative discretion.

There are provisions in the Constitution which prevent one State from discriminating injuriously against the products of other States, or the rights of their citizens, in the imposition of taxes, but where a State, except in such cases, has the power to tax, there is no authority in this court, nor in the United States, to control its action, however unreasonable or oppressive. The power of the State, except in such cases, is absolute and supreme. *Woodruff* v. *Parham*, 8 Wall., 123 [75 U. S., XIX., 382]; *Hinson* v. *Lott*, 8 Wall., 148 [75 U. S., XIX., 387].

The argument for the tax on the wines in the present case, that it is not greater than the tax upon other property of the same value held by citizens of the State, would justify a like tax upon securities of the United States, in which form probably a large amount of the property of some of her citizens consists; yet it has been repeatedly held that such securities are exempted from state taxation, whether the tax be imposed directly upon them by name or upon them as forming a part in the aggregate of the property of the taxpayer. *Bk. Com.* v. *N. Y. City*, 2 Black, 620 [67 U. S., XVII., 451]. The rule is general that whenever taxation by a State is forbidden, or would interfere with the full exercise of a power vested in the Government of the United States over the same subject, it cannot be imposed. Imports, therefore, whilst retaining their distinctive character as such, must be treated as being without the jurisdiction of the taxing power of the State.

It follows that the judgment of the Supreme Court of California must be reversed; and it is so ordered.

Cited—3 Wood, 411.

UNITED STATES, *Appt.*,
v.
JOHN A. KLEIN, Surviving Admr., of VICTOR F. WILSON, Deceased.

(See S. C., 13 Wall., 128-150.)

Titles in insurgent States, when devested—captured and abandoned property—proceeds of—President's pardon—conditions of—void proviso in Act.

NOTE.—*The effect of pardons.* See *note* to Armstrong's Foundry v. U. S., 73 U. S., XVIII., 882.

1. By the Abandoned and Captured Property Act, no titles were devested in the insurgent States, unless in pursuance of a judgment rendered after due legal proceedings, except of property used in actual hostilities.
2. The Government constituted itself the trustee for those who were, by that Act, declared entitled to the proceeds of captured and abandoned property, and for those whom it should thereafter recognize as entitled.
3. The title to the proceeds of the property which came to the possession of the Government by capture or abandonment, with the exception above stated, was in no case devested out of the original owner.
4. It was for the Government itself to determine whether or not these proceeds should be restored to the owner.
5. The President could annex to his offer of pardon any conditions or qualifications he should see fit; but after those conditions and qualifications had been satisfied, the pardon and its connected promises took full effect.
6. The restoration of the proceeds became the absolute right of the persons pardoned, on application within two years from the close of the war.
7. The proviso in the general Appropriation Act of 1870, which annuls the effect of the President's pardon, in claims in the Court of Claims and prescribes a rule of decision for that court in such cases, was inadvertently inserted in said Act, and can have no such effect.

[No. 17.]

Argued Apr. 21, 1871. Decided Jan. 29, 1872.

APPEAL from the Court of Claims.

This was a claim for the proceeds of captured and abandoned property, brought into the Court of Claims under the Act of Mar. 12, 1863. The property claimed consisted of 664 bales of cotton, taken into the possession of the agents of the Treasury, in the summer of 1863, sold, and the proceeds paid into the Treasury, the net amount being $125,300. The intestate was the owner at the time of this seizure. Suit was brought after his decease, in 1866, by his administrators, by the survivor of whom it is now prosecuted.

The Court of Claims rendered judgment in favor of the claimant.

In the supplemental findings which make a part of the transcript of record in this case, it appears that the intestate Wilson, in the years 1862 and 1863, signed, as surety, two official bonds of military officers in the Confederate army, one of a brigade quartermaster, and the other of an assistant commissary.

This fact was shown to and found by the Court of Claims, in the hearing upon a motion made in behalf of the United States for a new trial, which motion the court overruled notwithstanding the above finding, upon the ground that the taking (Feb. 15, 1864) by the intestate, of an amnesty oath under President Lincoln's Proclamation of pardon to all who had participated in the rebellion, dated Dec. 8, 1863, relieved him from any charge of disloyalty on account of his having become security as aforesaid.

A motion to dismiss the case was made in this court based upon a proviso in the Act making appropriations for the legislative, executive and judicial expenses of the Government for the year ending June 30, 1871.

The following is the material portion:

And provided, further, that whenever any pardon shall have heretofore been granted by the President of the United States to any person bringing suit in the Court of Claims for the proceeds of abandoned or captured property, under the said Act approved March 12, 1863, and the Acts amendatory of the same, and such pardon shall recite in substance that such person took part in the late rebellion against the Government of the United States, or was guilty of any act of rebellion against or disloyalty to the United States; and such pardon shall have been accepted in writing by the person to whom the same issued, without an express disclaimer of, and protest against, such facts of guilt contained in such acceptance, such pardon and acceptance shall be taken and deemed in such suit in the said Court of Claims, and on appeal therefrom, conclusive evidence that such person did take part in and give aid and comfort to the late rebellion, and did not maintain true allegiance or consistently adhere to the United States; and on proof of such pardon and acceptance, which proof may be heard summarily, on motion or otherwise, the jurisdiction of the court in the case shall cease, and the court shall forthwith dismiss the suit of such claimant. Pamphlet 1869, '70, p. 235.

Messrs. **A. T. Akerman,** *Atty-Gen., T. H. Talbot* and **B. H. Bristow,** *Solicitor-Gen.*, for the United States:

The motion to dismiss is made under the provisions of an enactment of July 12, 1870.

The suits in the Court of Claims which these motions aim to have dismissed, are brought under the authority of the Act of March 12, 1863, sec. 3, 12 Stat. at L., 820.

Without the provisions of that statute, no such suits could be maintained.

The collection of "abandoned property" and the payment of its proceeds into the National Treasury, as prescribed by this Act of Mar. 12, 1863, being within the lawful authority of Congress, it inevitably follows that the disposing of those proceeds in any manner is within the unlimited discretion of Congress; that is, unlimited by any judicial right of supervision, there being no constitutional method of drawing money from the Treasury of the United States, except in consequence of appropriations made by law. Art. 1, sec. 9, par. 6, Const. U. S.

At least if the above statement were held too broad, Congress is, without doubt, authorized to regulate at its discretion the manner in which such proceeds shall be restored to owners entitled to such restoration.

It may provide for such restoration directly from the Treasury, or directly from Congress, or from any other officer, commission or board, including the Court of Claims, upon which it may see fit to confer this authority. *Springfield* v. *Com'rs*, 6 Pick., 508.

This is all that Congress has attempted to do in the legislation of last summer. It merely enacts that certain persons shall not recover such proceeds by judgment of the Court of Claims. These persons are not thereby excluded from the privilege of an application for such proceeds, direct to Congress, or to any other officer who may be authorized by Congress to act upon such applications.

This Statute of Mar. 12, 1863, is not a bill of attainder nor of pains and penalties, nor one in any way providing for the punishment of any persons, as the word "punishment" is understood in law, in the Constitution, or in courts of justice.

Two provisions of the statute make this characteristic very obvious. They are these:

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Messrs. **Bartley** *& Care*
D. Lincoln, J. M. Carli
for appellee:
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1862, section 13, and by the

(1) A proviso to the 1st section excludes from being subject to the statute "Any kind or description (of property) which has been used or which was intended to be used for waging or carrying on war against the United States."

The property thus excluded had, by a previous statute (Aug. 6, 1861, 12 Stat. at L., 319) been made lawful subject of capture and prize, of seizure, confiscation and condemnation in the District or Circuit Court of the United States, upon judicial proceedings instituted by the law officers of the United States. With this statute thus providing, to some extent at least, for punishment of the crime of rebellion, this Act, to provide for the collection of abandoned property and for the prevention of fraud in insurrectionary districts, did not interfere.

(2) By the 7th section of this statute it was enacted:

That none of the provisions of this Act shall apply to any lawful maritime prize by the naval forces of the United States.

Here it is made clear that the statute shall not touch even that extraconstitutional jurisdiction, quite on the extreme borders of the domain of punishment, which in time of war is exercised by prize courts.

Thus far, it has been unnecessary to discuss the question, whether Congress can limit the effect of a pardon. The affirmative of that question is not necessary to the maintenance of the constitutionality of the enactment of July 12, 1870, now in question.

But it is maintained that incidental consequences which the law has attached to the pardon, the law making power, may detach therefrom. The Legislature, in its authority over the rules of evidence, may prevent a person, once guilty of a disqualifying offense, from being subsequently qualified by a pardon to give testimony. Greenl. Ev., sec. 378, and *n.*, with cases there cited.

Also, the power which controls the elective franchise may exclude from the exercise of that franchise all criminals, pardoned as well as unpardoned.

If there be any limit to the above principle, it must be found only in this: that those incidents which the common law, at the time of the adoption of the Constitution, annexed to a pardon cannot, by subsequent legislation, be taken away from a pardon authorized by that Constitution.

But this limitation will not avail against the constitutionality of the enactment of July 12, 1870; for the right to recover proceeds of enemy's property captured in war was not an effect of a pardon in 1789, nor was any right to sue the United States in any Court of Claims.

The right here asserted by the respondents to this motion to be beyond the power of Congress to take away or modify, it is to be noticed, is a mere statute right to sue in a statute court; both the tribunal and the right to sue therein, being alike unknown to the common law and to the Constitution of the United States.

Messrs. **Bartley** *& Carey, R. W. Corwine,* **T. D. Lincoln, J. M. Carlisle** and *McPherson,* for appellee:

This Act of July 12, 1870, nullifies the amnesty and deprives the claimant of his damages and benefits promised by the Act of July 17, 1862, section 13, and by the Proclamation; and that, too, after the terms have been distinctly accepted, and the conditions and requirements faithfully performed and observed.

The Constitution, in express terms, vests the executive authority of this Government in the President. It also specifically gives him "power to grant reprieves and pardons for offenses against the United States.

In speaking of this power, the Supreme Court of the United States in *Ex parte Garland,* 4 Wall., 380 (71 U. S., XVIII., 370) says:

"This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions."

In the same case the court says, speaking of the effect of the pardon: "It is to relieve him from all penalties and disabilities attached to to the offense of treason committed by his participation in the rebellion. So far as that offense is concerned, he is thus placed beyond the reach of punishment of any crime. It is not within the constitutional power of Congress thus to inflict punishment beyond the reach of executive clemency."

The same effect is attributed to a pardon by *Chief Justice* Marshall in *U. S.* v. *Wilson,* 7 Pet., 150; by *Mr. Justice* Wayne, in *Ex parte Wells,* 18 How., 315 (59 U. S., XV., 425); 2 Sharsw. Bl. Com., 402; Plowd., 401; Bish. Cr. L., sec. 713; *Perkins* v. *Stevens,* 24 Pick., 280; *Cope* v. *Com.,* 4 Casey, 297; *Armstrong's Foundry,* 6 Wall., 766 (73 U. S., XVIII., 882); *U. S.* v. *Padelford,* 9 Wall., 543 (76 U. S., XIX., 792); *St. Louis Street Foundry,* 6 Wall., 770 (73 U. S., XVIII., 884).

To sustain this law, it must be held that instead of Congress and the President being each independent and co-ordinate branches of government; the latter is but a dependent and subordinate appendage to the supreme and sovereign power of Congress. If his acts are liable to be controlled, modified, annulled or defeated by Congress, the division of powers in this Government is a chimera and a delusion.

The second general proposition which we shall endeavor to maintain is, that this Act is unconstitutional, because it is *ex post facto* in altering the evidence necessary to convict after the commission of the alleged offense.

It will possibly be contended that, this being a civil proceeding, the doctrine of *ex post facto,* which relates only to crime, does not apply. But this cannot be maintained, for the very same point was expressly overruled by the Supreme Court in *Ex parte Garland,* (*supra*), and in *Cummings* v. *Mo.,* 4 Wall., 277 (71 U. S., XVIII., 356).

The Act of July 12, 1870, is void, because it is in the nature of a bill of pains and penalties, and because it deprives the claimant of his property without due process of law. *Cummings* v. *Mo.* (*supra*).

In the discussion of this subject, we must keep in mind the *status* and position of claimant's intestate to these questions at the date of the passage of these enactments, and especially the Act of July 12, 1870. He had a pardon, the validity and regularity of which are not assailed. The legal effect of that pardon was to place him in precisely the same position as if

he had never committed the alleged condoned offense. All his civil disabilities were removed. All his guilt was absolved. All punishment of every grade and kind was remitted. In the language of *Mr. Chief Justice* Chase in *U. S.* v. *Padelford* [*supra*]: "The sufficient answer is that, after the pardon, no offense connected with the rebellion can be imputed to him." The law makes the proof of a pardon a complete substitute for proof that he gave no aid or comfort to the rebellion.

See, 2 Story, Com. Const.,sec. 1, 789; 2 Kent, Com., 12, 13.

This Act is unconstitutional, because it is a legislative usurpation of the separate powers and functions of the judiciary.

That judicial power which should be exercised by the courts, under and according to the ever changing and variable will of popular assemblies would, of all things, be the most uncertain, unstable and unjust in its judgments and decrees. Instead of being, as the framers of this Government intended it should be, an independent and co ordinate branch of the Government, the judiciary would then shrink into the mere instrument of Congress, to perform such subordinate duties as should be directed and imposed by the superior dominant power of the Legislature. And this was evidently the view of the author and framer of this law. For it not only undertakes to circumscribe and restrict the jurisdiction of this court, where the Constitution has conferred it without limitation, but it specifies and directs what particular construction it shall give to certain prior enactments and the precise judgment it shall render in particular and enumerated cases.

Congress can neither exercise judicial power themselves, nor refuse to vest it in the courts.

Martin v. *Hunter*, 1 Wheat., 304; Story, Const., sec. 1590; 2 Elliott's Debates, 380; Federalist, No. 81.

This is the case arising under the Constitution and laws of the United States, and in which express jurisdiction is given to this court by the Constitution.

Osborn v. *Bk.*, 9 Wheat., 738; *Cohens* v. *Va.*, 6 Wheat., 264; *Bk.* v. *Halstead*, 10 Wheat., 51; *The St. Lawrence*, 1 Black, 532 (66 U. S., XVII., 184); *State* v. *Fleming*, 7 Humph., 152; *Lewis* v. *Webb*, 3 Me., 326; *Lanier* v. *Gallatas*, 13 La. Ann., 185; *Holden* v. *James*, 11 Mass., 396; *Sanborn* v. *Comrs.*, 9 Minn., 279; *Merrill* v. *Sherburne*, 1 N. H., 203; *De Chastellux* v. *Fairchild*, 15 Pa., 18.

Mr. Chief Justice **Chase** delivered the opinion of the court:

The general question in this case is: whether or not the proviso relating to suits for the proceeds of abandoned and captured property in the Court of Claims, contained in the Appropriation Act of July 12, 1870 (16 Stat. at L., 235), debars the defendant in error from recovering, as administrator of Victor F. Wilson, deceased, the proceeds of certain cotton belonging to the decedent, which came into the possession of the agents of the Treasury Department as captured or abandoned property, and the proceeds of which were paid by them according to law into the Treasury of the United States.

The answer to this question requires a consideration of the rights of property, as affected by the late civil war, in the hands of citizens engaged in hostilities against the United States.

It may be said in general terms that property in the insurgent States may be distributed into four classes:

(1) That which belonged to the hostile organizations or was employed in actual hostilities on land.

(2) That which at sea became lawful subject of capture and prize.

(3) That which became the subject of confiscation.

(4) A peculiar description, known only in the recent war, called captured and abandoned property.

The first of these descriptions of property, like property of other like kind in ordinary international wars, became, wherever taken, *ipso facto*, the property of the United States. Halleck's Int. L.

The second of these descriptions comprehends ships and vessels with their cargoes belonging to the insurgents or employed in aid of them; but property in these was not changed by capture alone but by regular judicial proceeding and sentence.

Accordingly it was provided in the Abandoned and Captured Property Act of March 12, 1863 (12 Stat. at L., 820), that the property to be collected under it "shall not include any kind or description used or intended to be used for carrying on war against the United States, such as arms, ordnance, ships, steamboats and their furniture, forage, military supplies or munitions of war."

Almost all the property of the people in the insurgent States was included in the third description, for after sixty days from the date of the President's Proclamation of July 25, 1862 (12 Stat. at L., 1266), all the estates and property of those who did not cease to aid, countenance and abet the rebellion became liable to seizure and confiscation, and it was made the duty of the President to cause the same to be seized and applied, either specifically or in the proceeds thereof, to the support of the army. 12 Stat. at L., 589. But it is to be observed that tribunals and proceedings were provided, by which alone such property could be condemned, and without which it remained unaffected in the possession of the proprietors.

It is thus seen that, except to property used in actual hostilities, as mentioned in the 1st section of the Act of March 12, 1863, no titles were devested in the insurgent States unless in pursuance of a judgment rendered after due legal proceedings. The Government recognized to the fullest extent the humane maxims of the modern law of nations, which exempts private property of non-combatant enemies from capture as booty of war. Even the law of confiscation was sparingly applied. The cases were few, indeed, in which the property of any not engaged in actual hostilities was subjected to seizure and sale.

The spirit which animated the Government received special illustration from the Act under which the present case arose. We have called the property taken into the custody of public officers under that Act a peculiar species, and it was so. There is, so far as we are aware, no similar legislation mentioned in history.

The Act directs the officers of the Treasury

Department to take into their possession and make sale of all property abandoned by its owners or captured by the national forces, and to pay the proceeds into the National Treasury.

That it was not the intention of Congress that the title to these proceeds should be devested absolutely out of the original owners of the property, seems clear upon a comparison of different parts of the Act.

We have already seen that those articles which became, by the simple fact of capture, the property of the captor, as ordnance, munitions of war, and the like, or in which third parties acquired rights which might be made absolute by decree, as ships and other vessels captured as prize were expressly excepted from the operation of the Act; and it is reasonable to infer that it was the purpose of Congress that the proceeds of the property for which the special provision of the Act was made, should go into the Treasury without change of ownership. Certainly such was the intention in respect to the property of loyal men. That the same intention prevailed in regard to the property of owners who, though then hostile, might subsequently become loyal, appears probable from the circumstance that no provision is anywhere made for the confiscation of it; while there is no trace in the statute book of intention to devest ownership of private property not excepted from the effect of this Act, otherwise than by proceedings for confiscation.

In the case of *Padelford*, we held that the right to the possession of private property was not changed until actual seizure by proper military authority, and that actual seizure by such authority did not devest the title under the provisions of the Abandoned and Captured Property Act. The reasons assigned seem fully to warrant the conclusion. The Government constituted itself the trustee for those who were by that Act declared entitled to the proceeds of captured and abandoned property, and for those whom it should thereafter recognize as entitled. By the Act itself it was provided that any person claiming to have been the owner of such property might prefer his claim to the proceeds thereof and, on proof that he had never given aid or comfort to the rebellion, receive the amount after deducting expenses.

This language makes the right to the remedy dependent upon proof of loyalty, but implies that there may be proof of ownership without proof of loyalty. The property of the original owner is in no case absolutely devested. There is, as we have already observed, no confiscation, but the proceeds of the property have passed into the possession of the Government, and restoration of the property is pledged to none except to those who have continually adhered to the Government. Whether restoration will be made to others, or confiscation will be enforced, is left to be determined by considerations of public policy subsequently to be developed.

It is to be observed, however, that the Abandoned and Captured Property Act was approved on the 12th of March, 1863 (12 Stat. at L., 820), and on the 17th of July, 1862, Congress had already passed an Act—the same which provided for confiscation—which authorized the President, "at any time hereafter, by Proclamation, to extend to persons who may have participated in the existing rebellion in any State or part thereof, pardon and amnesty, with such exceptions and at such time and on such conditions as he may deem expedient for the public welfare." The Act of the 12th of March, 1863, provided for the sale of enemies' property collected under the Act, and payment of the proceeds into the Treasury, and left them there subject to such action as the President might take under the Act of the 17th of July, 1862. What was this action?

The suggestion of pardon by Congress, for such it was, rather than authority, remained unacted on for more than a year. At length, however, on the 8th of December, 1863 (13 Stat. at L., 737), the President issued a Proclamation, in which he referred to that Act, and offered a full pardon, with restoration of all rights of property, except as to slaves and property in which rights of third persons had intervened, to all, with some exceptions, who, having been engaged in the rebellion as actual participants, or as aiders or abettors, would take and keep inviolate a prescribed oath. By this oath the person seeking to avail himself of the offered pardon was required to promise that he would thenceforth support the Constitution of the United States and the union of the States thereunder, and would also abide by and support all Acts of Congress and all Proclamations of the President in reference to slaves, unless the same should be modified or rendered void by the decision of this court.

In his annual message, transmitted to Congress on the same day, the President said: "The Constitution authorizes the Executive to grant or withhold pardons at his own absolute discretion." He asserted his power "to grant it on terms as fully established" and explained the reasons which induced him to require applicants for pardon and restoration of property to take the oath prescribed, in these words: "Laws and Proclamations were enacted and put forth for the purpose of aiding in the suppression of the rebellion. To give them their fullest effect, there had to be a pledge for their maintenance. In my judgment they have aided, and will further aid, the cause for which they were intended. To now abandon them, would not only be to relinquish a lever of power, but would also be a cruel and astounding breach of faith. * * * For these and other reasons, it is thought best that support of these measures shall be included in the oath, and it is believed the Executive may lawfully claim it in return for pardon and restoration of forfeited rights, which he has clear constitutional power to withhold altogether or grant upon the terms which he shall deem wisest for the public interest."

The Proclamation of pardon, by a qualifying Proclamation issued on the 26th of March, 1864 (13 Stat. at L., 741), was limited to those persons only who, being yet at large and free from confinement or duress, shall voluntarily come forward and take the said oath with the purpose of restoring peace and establishing the national authority.

On the 29th of May, 1865 (13 Stat. at L., 758), amnesty and pardon, with the restoration of the rights of property except as to slaves, and that as to which legal proceedings had been instituted under laws of the United States, were

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again offered to all who had, directly or indirectly, participated in the rebellion, except certain persons included in fourteen classes. All who embraced this offer were required to take and subscribe an oath of like tenor with that required by the first Proclamation.

On the 7th of September, 1867 (15 Stat. at L., 699), still another Proclamation was issued, offering pardon and amnesty, with restoration of property, as before and on the same oath, to all but three excepted classes.

And finally, on the 4th of July, 1868 (15 Stat. at L., 702), a full pardon and amnesty was granted, with some exceptions, and on the 25th of December, 1868 (15 Stat. at L., 711), without exception, unconditionally and without reservation, to all who had participated in the rebellion, with restoration of rights of property as before. No oath was required.

It is true that the section of the Act of Congress which purported to authorize the Proclamation of pardon and amnesty by the President was repealed on the 21st of January, 1867, but this was after the close of the war, when the Act had ceased to be important as an expression of the legislative disposition to carry into effect the clemency of the Executive, and after the decision of this court that the President's power of pardon "is not subject to legislation;" that "Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders." It is not important, therefore, to refer to this repealing Act further than to say that it is impossible to believe, while the repealed provision was in full force, and the faith of the Legislature as well as the Executive was engaged to the restoration of the rights of property promised by the latter, that the proceeds of property of persons pardoned, which had been paid into the Treasury, were to be withheld from them. The repeal of the section in no respect changes the national obligation, for it does not alter at all the operation of the pardon, or reduce in any degree the obligations of Congress under the Constitution to give full effect to it, if necesssary, by legislation.

We conclude, therefore, that the title to the proceeds of the property which came to the possession of the Government by capture or abandonment, with the exceptions already noticed, was in no case devested out of the original owner. It was for the Government itself to determine whether these proceeds should be restored to the owner or not. The promise of the restoration of all rights of property decides that question affirmatively as to all persons who availed themselves of the proffered pardon. It was competent for the President to annex to his offer of pardon any conditions or qualifications he should see fit; but after those conditions and qualifications had been satisfied, the pardon and its connected promises took full effect. The restoration of the proceeds became the absolute right of the persons pardoned, on application within two years from the close of the war. It was, in fact, promised for an equivalent. "Pardon and restoration of political rights" were "in return" for the oath and its fulfillment. To refuse it would be a breach of faith not less "cruel and astounding" than to abandon the freed people whom the Executive had promised to maintain in their freedom.

What, then, was the effect of the provision of the Act of 1870 (16 Stat. at L., 235) upon the right of the owner of the cotton in this case? He had done certain acts which this court (*U. S.* v. *Padelford*, 9 Wall., 531 [76 U. S., XIX., 788] has adjudged to be acts in aid of the rebellion; but he abandoned the cotton to the agent of the Treasury Department, by whom it has been sold and the proceeds paid into the Treasury of the United States; and he took, and has not violated, the amnesty oath under the President's Proclamation. Upon this case the Court of Claims pronounced him entitled to a judgment for the net proceeds in the Treasury. This decree was rendered on the 26th of May, 1869; the appeal to this court made on the 3d of June, and was filed here on the 11th of December, 1869.

The judgment of the court in the case of *Padelford*, which, in its essential features, was the same with this case, was rendered on the 30th of April, 1870. It affirmed the judgment of the Court of Claims in his favor.

Soon afterwards the provision in question was introduced as a proviso to the clause in the general appropriation bill, appropriating a sum of money for the payment of judgments of the Court of Claims, and became a part of the Act, with perhaps little consideration in either House of Congress.

This proviso declares in substance that no pardon, acceptance, oath, or other act performed in pursuance, or as a condition of pardon, shall be admissible in evidence in support of any claim against the United States in the Court of Claims, or to establish the right of any claimant to bring suit in that court; nor, if already put in evidence, shall be used or considered on behalf of the claimant, by said court, or by the appellate court on appeal. Proof of loyalty is required to be made according to the provisions of certain statutes, irrespective of the effect of any executive Proclamation, pardon or amnesty or act of oblivion; and when judgment has been already rendered on other proof of loyalty, the Supreme Court, on appeal, shall have no further jurisdiction of the cause, and shall dismiss the same for want of jurisdiction. It is further provided that, whenever any pardon granted to any suitor in the Court of Claims, for the proceeds of captured and abandoned property, shall recite in substance that the person pardoned took part in the late rebellion, or was guilty of any act of rebellion or disloyalty, and shall have been accepted in writing without express disclaimer and protestation against the fact so recited, such pardon or acceptance shall be taken as conclusive evidence in the Court of Claims, and on appeal, that the claimant did give aid to the rebellion; and on proof of such pardon or acceptance, which proof may be made summarily on motion or otherwise, the jurisdiction of the court shall cease, and the suit shall be forthwith dismissed.

The substance of this enactment is that an acceptance of a pardon, without disclaimer, shall be conclusive evidence of the acts pardoned, but shall be null and void as evidence of the rights conferred by it, both in the Court of Claims and in this court on appeal.

It was urged in argument that the right to sue the Government in the Court of Claims is a matter of favor; but this seems not entirely ac-

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curate. It is as much the duty of the Government as of individuals to fulfill its obligations. Before the establishment of the Court of Claims claimants could only be heard by Congress. That court was established in 1855 (10 Stat. at L., 612), for the triple purpose of relieving Congress, and of protecting the Government by regular investigation, and of benefiting the claimants by affording them a certain mode of examining and adjudicating upon their claims. It was required to hear and determine upon claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States. 10 Stat. at L., 612. Originally it was a court merely in name, for its power extended only to the preparation of bills to be submitted to Congress.

In 1863 the number of judges was increased from three to five, its jurisdiction was enlarged and, instead of being required to prepare bills for Congress, it was authorized to render final judgment, subject to appeal to this court and to an estimate by the Secretary of the Treasury of the amount required to pay each claimant. 12 Stat. at L., 765. This court being of opinion that the provisions for an estimate was inconsistent with the finality essential to judicial decisions, Congress repealed that provision. *Gordon* v. *U. S.*, 2 Wall., 561 [69 U. S., XVII., 921], 14 Stat. at L., 9. Since then the Court of Claims has exercised all the functions of a court, and this court has taken full jurisdiction on appeal. 14 Stat. at L., 44.

The Court of Claims is thus constituted one of those inferior courts which Congress authorizes, and has jurisdiction of contracts between the Government and the citizen, from which appeal regularly lies to this court.

Undoubtedly, the Legislature has complete control over the organization and existence of that court and may confer or withhold the right of appeal from its decisions. And if this Act did nothing more, it would be our duty to give it effect. If it simply denied the right of appeal in a particular class of cases, there could be no doubt that it must be regarded as an exercise of the power of Congress to make "such exceptions from the appellate jurisdiction" as should seem to it expedient.

But the language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny to pardons granted by the President the effect which this court had adjudged them to have. The proviso declares that pardons shall not be considered by this court on appeal. We had already decided that it was our duty to consider them and give them effect, in cases like the present, as equivalent to proof of loyalty. It provides that, whenever it shall appear that any judgment of the Court of Claims shall have been founded on such pardons, without other proof of loyalty, the Supreme Court shall have no further jurisdiction of the case and shall dismiss the same for want of jurisdiction. The proviso further declares that every pardon granted to any suitor in the Court of Claims and reciting that the person pardoned has been guilty of any act of rebellion or disloyalty, shall, if accepted in writing without disclaimer of the fact recited, be taken as conclusive evidence in that court and on appeal, of the Act recited; and on proof of pardon or acceptance, summarily made on motion or otherwise, the jurisdiction of the court shall cease and the suit shall be forthwith dismissed.

It is evident from this statement that the denial of jurisdiction to this court, as well as to the Court of Claims, is founded solely on the application of a rule of decision, in causes pending prescribed by Congress. The court has jurisdiction of the cause to a given point; but when it ascertains that a certain state of things exists, its jurisdiction is to cease and it is required to dismiss the cause for want of jurisdiction.

It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power.

The court is required to ascertain the existence of certain facts and thereupon to declare that its jurisdiction on appeal has ceased, by dismissing the bill. What is this but to prescribe a rule for the decision of a cause in a particular way? In the case before us, the Court of Claims has rendered judgment for the claimant and an appeal has been taken to this court. We are directed to dismiss the appeal, if we find that the judgment must be affirmed, because of a pardon granted to the intestate of the claimants. Can we do so without allowing one party to the controversy to decide it in its own favor? Can we do so without allowing that the Legislature may prescribe rules of decision to the Judicial Department of the Government in cases pending before it?

We think not; and thus thinking, we do not at all question what was decided in the case of *Pennsylvania* v. *Wheeling Bridge Company*, 18 How., 429 [59 U. S., XV., 436]. In that case, after a decree in this court that the bridge, in the then state of the law, was a nuisance and must be abated as such, Congress passed an Act legalizing the structure and making it a post-road; and the court, on a motion for process to enforce the decree, held that the bridge had ceased to be a nuisance by the exercise of the constitutional powers of Congress, and denied the motion. No arbitrary rule of decision was prescribed in that case, but the court was left to apply its ordinary rules to the new circumstances created by the Act. In the case before us no new circumstances have been created by legislation. But the court is forbidden to give the effect to evidence which, in its own judgment, such evidence should have, and is directed to give it an effect precisely contrary.

We must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power.

It is of vital importance that these powers be kept distinct. The Constitution provides that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress shall from time to time ordain and establish. The same instrument, in the last clause of the same article, provides that in all cases other than those of original jurisdiction "the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Congress has already provided that the Su-

preme Court shall have jurisdiction of the judgments of the Court of Claims on appeal. Can it prescribe a rule in conformity with which the court must deny to itself the jurisdiction thus conferred, because and only because its decision, in accordance with settled law, must be adverse to the Government and favorable to the suitor? This question seems to us to answer itself.

The rule prescribed is also liable to just exception as impairing the effect of a pardon, and thus infringing the constitutional power of the Executive.

It is the intention of the Constitution that each of the great co ordinate departments of the Government—the Legislative, the Executive and the Judicial—shall be, in its sphere, independent of the others. To the Executive alone is intrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offense pardoned and removes all its penal consequences. It may be granted on conditions. In these particular pardons, that no doubt might exist as to their character, restoration of property was expressly pledged; and the pardon was granted on condition that the person who availed himself of it should take and keep a prescribed oath.

Now, it is clear that the Legislature cannot change the effect of such a pardon any more than the Executive can change a law. Yet this is attempted by the provision under consideration. The court is required to receive special pardons as evidence of guilt, and to treat them as null and void. It is required to disregard pardons granted by proclamation on condition, though the condition has been fulfilled, and to deny them their legal effect. This certainly impairs the executive authority, and directs the court to be instrumental to that end.

We think it unnecessary to enlarge. The simplest statement is the best.

We repeat that it is impossible to believe that this provision was not inserted in the appropriation bill through inadvertence; and that we shall not best fulfill the deliberate will of the Legislature by *denying the motion to demiss and affirming the judgment of the Court of Claims; which is accordingly done.*

Mr. Justice **Miller,** dissenting:

I cannot agree to the opinion of the court just delivered in an important matter; and I regret this the more because I do agree to the proposition that the proviso to the Act of July 12, 1870, is unconstitutional, so far as it attempts to prescribe to the judiciary the effect to be given to an act of pardon or amnesty by the President. This power of pardon is confided to the President by the Constitution, and whatever may be its extent or its limits, the legislative branch of the Government cannot impair its force or effect in a judicial proceeding in a constitutional court. But I have not been able to bring my mind to concur in the proposition that, under the Act concerning captured and abandoned property, there remains in the former owner, who had given aid and comfort to the rebellion, any interest whatever in the property or its proceeds when it had been sold and paid into the Treasury or had been converted to the use of the public under that Act. I must construe this Act, as all others should be construed, by seeking the intention of its framers, and the intention to restore the proceeds of such property to the loyal citizen, and to transfer it absolutely to the Government in the case of those who had given active support to the rebellion, is to me too apparent to be disregarded. In the one case the Government is converted into a trustee for the former owner; in the other it appropriates it to its own use as the property of a public enemy captured in war. Can it be inferred from anything found in the statute that Congress intended that this property should ever be restored to the disloyal? I am unable to discern any such intent. But if it did, why was not some provision made by which the title of the Government could at some time be made perfect, or that of the owner established? Some judicial proceeding for confiscation would seem to be necessary if there remains in the disloyal owner any right or interest whatever. But there is no such provision, and unless the Act intended to forfeit absolutely the right of the disloyal owner, the proceeds remain in a condition where the owner cannot maintain a suit for its recovery, and the United States can obtain no perfect title to it.

This statute has recently received the attentive consideration of the court in two reported cases.

In the case of *The U. S.* v. *Anderson*, 9 Wall., 65 [76 U. S., XIX., 617], in reference to the relation of the Government to the money paid into the Treasury under this Act, and the difference between the property of the loyal and disloyal owner, the court uses language hardly consistent with the opinion just read. It says that Congress, in a spirit of liberality, constituted the Government a trustee for so much of this property as belonged to the faithful Southern people, and while it directed that all of it should be sold and its proceeds paid into the Treasury, gave to this class of persons an opportunity to establish their right to the proceeds. Again, it is said, that "the measure, in itself of great beneficence, was practically important only in its application to the loyal Southern people, and sympathy for their situation, doubtless, prompted Congress to pass it." These views had the unanimous concurrence of the court. If I understand the present opinion, however, it maintains that the Government, in taking possession of this property and selling it, became the trustee of all the former owners, whether loyal or disloyal, and holds it for the latter until pardoned by the President, or until Congress orders it to be restored to him.

The other case which I refer to is that of *United States* v. *Padelford*, 9 Wall., 531 [76 U. S., XIX., 788]. In that case the opinion makes a labored and successful effort to show that Padelford, the owner of the property, had secured the benefit of the amnesty Proclamation before the property was seized under the same statute we are now considering. And it bases the right of Padelford to recover its proceeds in the Treasury on the fact that before the capture his *status* as a loyal citizen had been restored, and with it all his rights of property, although he had previously given aid and comfort to the rebellion. In this view I concurred with all my brethren. And I hold

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now that as long as the possession or title of property remains in the party, the pardon or the amnesty remits all right in the Government to forfeit or confiscate it. But where the property has already been seized and sold, and the proceeds paid into the Treasury, and it is clear that the statute contemplates no further proceeding as necessary to devest the right of the former owner, the pardon does not and cannot restore that which has thus completely passed away. And if such was not the view of the court when *Padelford's* case was under consideration, I am at a loss to discover a reason for the extended argument in that case, in the opinion of the court, to show that he had availed himself of the amnesty before the seizure of the property. If the views now advanced are sound, it was wholly immaterial whether Padelford was pardoned before or after the seizure.

Mr. Justice **Bradley** concurred in the foregoing dissenting opinion.

Cited—13 Wall., 155; 16 Wall., 152; 20 Wall., 470; 22 Wall., 94; 92 U. S., 194; 95 U. S., 153; 19 Blatchf., 568, 569.

LEMUEL W. MASON, *Appt.*,

v.

EDWARD A. ROLLINS, Comr. of Int. Rev., et al.;

PARKER R. MASON, *Appt.*,

v.

S. S. MANN, Deputy-Coll. of Int. Rev.,

and

PARKER R. MASON, *Appt.*,

v.

R. W. HART, Deputy-Coll. of Int. Rev.

(See S. C., 13 Wall., 602, 603.)

Averments of citizenship, when necessary—repeal of Act.

When the averments of citizenship in bills are not sufficient to give the Circuit Court jurisdiction under the Judiciary Act of 1789, and if, when the suits were brought, the special Act giving jurisdiction without regard to citizenship was repealed, the bills will be dismissed.

[Nos. 79, 80, 81.]

Argued, No. 79, Nov. 21, 1871, and Nos. 80, 81, Nov. 23, 1871. Decided Jan. 29, 1872.

APPEAL from the Circuit Court of the United States for the Northern District of Illinois.

The cases are sufficiently stated by the court.

Mr. **E. H. Roby,** for appellants.

Messrs. **Akerman,** *Atty-Gen.*, and *B. H. Bristow, Solicitor-Gen.*, for appellees.

Mr. Chief Justice **Chase** delivered the opinion of the court:

The records in these cases are of proceedings in equity against the defendants. The first bill describes the plaintiff as a citizen of the State of Illinois, and the defendant, Rollins, as of the District of Columbia, and a citizen of the State of ——, and the defendants, Wm. B. Allen and Duncan Ferguson, as citizens of the State of Illinois.

The second bill describes the plaintiff as a citizen of the State of Illinois and the defendants, S. S. Mann, William B. Allen and Duncan Ferguson, as citizens of the State of Illinois; and the defendant, Columbus Delano, as Commissioner of Internal Revenue, without averring that he be a citizen of any State.

The third bill describes the plaintiff as a citizen of the State of Illinois, and does not aver that any of the defendants are citizens of any other State.

It is manifest that the averments of citizenship in neither of the bills are sufficient to give the Circuit Court jurisdiction under the Judiciary Act of 1789; and all were filed subsequently to the 13th of July, 1866, when the Act of 1833, which gave jurisdiction to the courts of the United States of suits under the Internal Revenue Act against the collectors and others, without regard to citizenship, was repealed.

Ins. Co. v. *Ritchie*, 5 Wall., 544 (72 U. S., XVIII., 542).

When these suits were brought, therefore, there was no Act in force giving jurisdiction, in cases such as those made by the records, to the courts of the United States. The Circuit Court was obliged, therefore, to dismiss the bill in each case for want of jurisdiction, *and the judgment of the court in the several cases must be affirmed.*

NOEL BYRON BOYDEN et al., *Plffs. in Err.*,

v.

UNITED STATES.

(See S. C., 13 Wall., 17-25.)

Robbery of public moneys, no defense to action on receiver's bond—liability of receiver.

1. Where a receiver of public moneys has given bond for the faithful performance of his duties as required by law, proof that he has been robbed of the public money received by him, is no defense to a suit on such bond.

2. His liability is to be measured by his bond, and where that binds him to pay the money, a cause which renders that impossible is of no importance.

[No. 4.]

Submitted Oct. 16, 1871. Decided Feb. 5, 1872.

IN ERROR to the Circuit Court of the United States for the District of Wisconsin.

This was a suit commenced in the court below, against Boyden and his sureties, on his official bond, as receiver of public moneys for the district, of lands subject to sale, at Eau Claire, Wisconsin. The bond was given pursuant to the 6th section of the Act of May 10, 1800, 2 Stat., 75, and has the condition that,

Note.—*Liability of bailee, for loss by theft or robbery.*

A warehouseman is not liable for goods stolen by his servant, without negligence on his part. Schmidt v. Blood, 9 Wend., 268; S. C., 24 Am. Dec., 143.

If a thing let to hire perishes or is stolen without any neglect or want of care of the hirer, the latter will not be responsible for the loss. Williams v.

ANNEX 2

F. Gregory MURPHY, Plaintiff,

v.

Gerald R. FORD, as President of the United States, Defendant.

Civ. A. No. M-74-141.

United States District Court,
W. D. Michigan, N. D.

March 28, 1975.

Attorney brought action against the President of the United States seeking declaration that the President's unconditional pardon of his predecessor in office was void and of no effect. Plaintiff filed a motion to join the special prosecutor as a party defendant and the United States Attorney, as amicus curiae, moved to dismiss. The District Court, Fox, Chief Judge, held that in view of fact that public clamor over the predecessor's alleged misdeeds in office had not immediately subsided on his resignation and that on taking office the successor found the country in the grip of an inflationary spiral and energy crisis of unprecedented proportions, it was not unreasonable for the successor to conclude that positive steps were necessary to end the division caused by the scandal and to shift the focus of attention to the present social and economic problems and, hence, defendant acted within the letter and spirit of the presidential pardoning power in attempting to restore the tranquility of the commonwealth by a well-timed offer of pardon and that fact that the former President had been neither indicted nor convicted of an offense against the United States did not affect the validity of the pardon.

Case dismissed.

1. Pardon and Parole ⚷4

In view of the fact that public clamor over former President's alleged misdeeds in office had not immediately subsided on his resignation and that at the same time the country was in grips of apparently uncontrollable inflationary spiral and an energy crisis of unprecedented proportions, it was not unreasonable for the successor to the office to conclude that the public interest required that positive steps be taken to end the division caused by the scandal and to shift the focus of attention to the more pressing social and economic problems; thus, by pardoning the former President the successor was acting in accord with the letter and spirit of his constitutional power to grant pardons, since he was taking steps to restore the tranquility of the commonwealth by a well-timed offer of pardon. U.S.C.A.Const. art. 2, § 2.

2. Pardon and Parole ⚷4

Constitutional power of the President to grant reprieves and pardons for offenses against the United States is unlimited, except in cases of impeachment; want of an indictment or conviction does not affect the validity of a presidential pardon. U.S.C.A.Const. art. 2, § 2.

Shumar & Murphy, Marquette, Mich. (Peter H. Shumar, Marquette, Mich., of counsel), for plaintiff.

Frank S. Spies, U. S. Atty., Grand Rapids, Mich., for defendant.

OPINION

FOX, Chief Judge.

The plaintiff, F. Gregory Murphy, is an attorney residing in Marquette, Michigan. The defendant is Gerald R. Ford, President of the United States.

The plaintiff seeks a declaratory judgment that the unconditional pardon of Richard M. Nixon by President Ford on September 8, 1974, is void and of no effect. The plaintiff contends, among other things, that the pardon could not be validly granted to a person who had never been indicted or convicted and who had therefore never been formally charged with an offense against the United States. The plaintiff also alleges that the pardoning of Mr. Nixon created a system of unequal enforcement of the laws and has substantially increased the

likelihood of non-compliance with the criminal justice system.

The plaintiff has filed a motion to join the special prosecutor as a party defendant in this case.

The United States Attorney, as amicus curiae, has moved the Court to dismiss the case.

The court observes that the Pardoning Power is in the same section of the Constitution which makes the President Commander-in-Chief of the armed forces.

Article II, Section 2, of the United States Constitution provides, "The President . . . shall have Power to *grant* Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." (Emphasis supplied.)

In granting a pardon to Mr. Nixon, President Ford was not presuming to end the impeachment proceeding then pending in Congress. That was exclusively a Congressional affair. The impeachment exception to the Pardoning Power does not apply here.

[1, 2] The main issue is, did President Ford have the constitutional power to pardon former President Nixon for the latter's offenses against the United States?

In The Federalist No. 74, written in 1788 in support of the proposed Constitution, Alexander Hamilton explained why the Founding Fathers gave the President a discretionary power to pardon: "The principal argument for reposing the power of pardoning . . . [in] the Chief Magistrate," Hamilton wrote, "is this: in seasons of insurrection or rebellion, there are often critical moments, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquillity of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall." [1]

Few would today deny that the period from the break-in at the Watergate in June 1972, until the resignation of President Nixon in August 1974, was a "season of insurrection or rebellion" by many actually in the Government. Since the end of 1970, various top officials of the Nixon Administration at times during this period deliberately and flagrantly violated the civil liberties of individual citizens and engaged in criminal violations of the campaign laws in order to preserve and expand their own and Nixon's personal power beyond constitutional limitations. When many illegal activities were threatened with exposure, some Nixon Administration officials formed and executed a criminal conspiracy to obstruct justice. Evidence now available suggests a strong probability that the Nixon Administration was conducting a covert assault on American liberty and an insurrection and rebellion against constitutional government itself, an insurrection and rebellion which might have succeeded but for timely intervention by a courageous free press, an enlightened Congress, and a diligent Judiciary dedicated to preserving the rule of law.[2]

1. At 79 (E. Bourne ed. 1947).

2. (a) Egil Krogh, a former member of the White House "Plumbers' Unit," was sentenced November 30, 1973 by Judge John Sirica. At that time he told Judge Sirica: "The sole basis for my defense was to have been that I acted in the interest of national security. However, upon serious and lengthy reflection, I now feel that the sincerity of my motivation cannot justify what was done and that I cannot in conscience assert national security as a defense.

. . . . .

"I feel that what was done in the Ellsberg operation was in violation of what I perceive to be a fundamental idea in the character of this country, the paramount importance of the rights of the individual . . . .

. . . The victims of this crime in California, Dr. Fielding and Dr. Ellsberg, both of them, were deprived of rights to which they were entitled . . . .

Dr. Fielding . . . always cherished his privacy, which because of this act, he lost. The American people, many of them, have been confused; many have been disturbed by what took place in 1971; and it has raised many doubts, many questions about what the country represents and what it means. Those doubts and those questions probably never

Certainly the summer and early fall of 1974 were a period of popular discontent, as the full extent of the Nixon Administration's misdeeds became known, and public trust in government virtually collapsed. After Mr. Nixon's resignation in August, the public clamor over the whole Watergate episode did not immediately subside; attention continued to focus on Mr. Nixon and his fate. When Mr. Ford became President, the executive branch was foundering in the wreckage of Watergate, and the country was in the grips of an apparently uncontrollable inflationary spiral and an energy crisis of unprecedented proportions.

Under these circumstances, President Ford concluded that the public interest required *positive steps to end the divisions caused by Watergate and to shift the facus of attention from the immediate problem of Mr. Nixon to the hard social and economic problems which were of more lasting significance.*

By pardoning Richard Nixon, who many believed was the leader of a conspiratorial insurrection and rebellion against American liberty and constitutional government, President Ford was taking steps, in the words of Alexander Hamilton in The Federalist, to *"restore the tranquillity of the commonwealth"* by *a "well-timed offer of pardon"* to the putative rebel leader. President Ford's pardon of Richard M. Nixon was thus within the letter and the spirit of the Presidential Pardoning Power granted by the Constitution. It was a prudent public policy judgment.

The fact that Mr. Nixon had been neither indicted nor convicted of an offense against the United States does not affect the validity of the pardon. Ex parte Garland, 4 Wall. (71 U.S.) 333, 18 L.Ed. 366 (1867). In that case the Supreme Court considered the nature of the President's Pardoning Power, and the effect of a Presidential pardon. Mr. Justice Field, speaking for the court, said that the Pardoning Power is *"unlimited,"* except in cases of impeachment. "[The Power] extends to every offense known to the law, and may be exercised *at any time after its commission, either before legal proceedings are taken,* or during their pendency, or after conviction and judgment . . . . The benign prerogative of mercy reposed in [the President] cannot be fettered by any legislative restrictions.

"Such being the case, the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both

would have been raised but for this action in California, which I approved.

"I also would like to tell you how serious I feel the action which took place was. In contrast to Watergate and other political activities, the actions of the Special Investigations Unit, the Plumbers, represented official Government action. As official Government action, as I have come to see it, it struck at the heart of what that Government was established to protect, which is the individual rights of each individual."

(b) Charles Colson, former advisor to President Nixon, on June 3, 1972, before Judge Sirica sentenced him, told Judge Sirica: "Your Honor's words from the bench . . . , that if this is to be a government of laws and not of men, then those men entrusted with enforcing the law, whatever their motives, must be held to have intended the natural and probable consequences of their acts, had a profound effect on me.

My motives and my purpose in seeking to disseminate derogatory and adverse information about Dr. Ellsberg and his lawyer was to neutralize Dr. Ellsberg as an anti-war spokesman in Vietnam. It did not matter to me that Dr. Ellsberg was facing serious criminal charges . . . .

. . . .

. . . I now know what it is like to be a defendant in a celebrated criminal case . . . .

I have come to believe in the very depths of my soul and my being that official threats to those rights such as those charged in this case must be stopped."

(c) The prosecution of persons, in and out of government, involved in "Watergate" related cases, is so notorious that any court can take judicial notice that 66 persons, including a Vice President, three Cabinet officers, two highly positioned aides in the Oval Office, presidential assistants, and others, were convicted by jury verdicts or pleas of guilty of high crimes and misdemeanors against the United States, and that the era of the immediate past President and his men was indeed a "season of insurrection and rebellion."

Cite as 390 F.Supp. 1375 (1975)

the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, ... If granted before conviction, it prevents any of the penalties and disabilities consequent from conviction from attaching; . . .

"There is only this limitation to its operation: it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment." Id. at 380–381. (Emphasis supplied.)

However, " . . . as the very essence of a pardon is forgiveness or remission of penalty, a pardon implies guilt; *it does not obliterate the fact of the commission of the crime and the conviction thereof; it does not wash out the moral stain; as has been tersely said; it involves forgiveness and not forgetfulness.*" Page v. Watson, 140 Fla. 536, 192 So. 205, 208. (Emphasis supplied.)

For the above-stated reasons, plaintiff's motion to add the special prosecutor as a party defendant is denied.

The United States Attorney's amicus curiae motion to dismiss this action is hereby granted.

LOYOLA FEDERAL SAVINGS AND LOAN ASSOCIATION, Plaintiff,

v.

UNITED STATES of America, Defendant.

Civ. No. 70–773–H.

United States District Court, D. Maryland.

March 20, 1975.

Domestic savings and loan association brought suit against the United States to recover income taxes and interest paid by the association. The District Court, Alexander Harvey, II, J., held that domestic savings and loan association improperly included in its bad debt reserves for 1963 and 1964 all of those amounts held in construction loan trustee accounts and not disbursed to borrowers during the years in question as no loans occurred for the purposes of deductions for additions to bad debt reserves until funds held by trustees were in the hands of or otherwise under the control of the borrowers.

Judgment for defendant.

1. Internal Revenue ⚷658

Domestic savings and loan association improperly included in its bad debt reserves for 1963 and 1964 all of those amounts held in construction loan trustee accounts and not disbursed to borrowers during those years as no loans occurred for the purposes of deductions for additions to bad debt reserves until funds held by trustees were in the hands of or otherwise under the control of the borrowers. 26 U.S.C.A. (I.R.C.1954) §§ 593, 593(e)(1).

2. Internal Revenue ⚷129

Internal Revenue Code provisions pertaining to lending institutions' reserves for losses on qualifying real property loans and deduction for bad debts must be interpreted together in the light of their ultimate purpose. 26 U.S.C.A. (I.R.C.1954) §§ 166, 593, 593(b)(1), (1)(A), (c)(3)(A), (4), (d), (d)(1, 2), (e)(3).

3. Internal Revenue ⚷658

Where construction loans held by trustees for disbursement during construction could not possibly become bad debts or result in loss to domestic savings and loan association during taxable year, they would not constitute "loans" made that year within the meaning of statute providing for reserves for losses on qualifying real property loans. 26 U.S.C.A. (I.R.C.1954) §§ 593, 593(e)(1).

4. Internal Revenue ⚷658

The term "loan," within statute relating to reserves for losses on loans of

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ANNEX 3

what they would with eagerness rush into, if no such external
impediments were to be feared.

This qualified negative, as has been elsewhere remarked, is
in this State vested in a council, consisting of the governor,
with the chancellor and judges of the Supreme Court, or any
two of them. It has been freely employed upon a variety of
occasions, and frequently with success. And its utility has
become so apparent that persons who, in compiling the Con-
stitution, were violent opposers of it, have from experience
become its declared admirers.[1]

I have in another place remarked that the convention, in
the formation of this part of their plan, had departed from the
model of the constitution of this State in favour of that of
Massachusetts. Two strong reasons may be imagined for
this preference. One is that the judges, who are to be the inter-
preters of the law, might receive an improper bias, from having
given a previous opinion in their revisionary capacities; the
other is, that by being often associated with the Executive,
they might be induced to embark too far in the political views
of that magistrate, and thus a dangerous combination might by
degrees be cemented between the executive and judiciary depart-
ments. It is impossible to keep the judges too distinct from
every other avocation than that of expounding the laws. It is
peculiarly dangerous to place them in a situation to be either
corrupted or influenced by the Executive. PUBLIUS.

From the New York Packet, Tuesday, March 25, 1788

THE FEDERALIST. No. LXXIV
(HAMILTON)

To the People of the State of New York:

The President of the United States is to be "commander-in-
chief of the army and navy of the United States, and of the
militia of the several States *when called into the actual service* of
the United States." The propriety of this provision is so
evident in itself, and it is, at the same time, so consonant to
the precedents of the State constitutions in general, that little
need be said to explain or enforce it. Even those of them which
have, in other respects, coupled the chief magistrate with a

[1] Mr. Abraham Yates, a warm opponent of the plan of the convention,
is of this number.—PUBLIUS.

council, have for the most part concentrated the military
authority in him alone. Of all the cares or concerns of govern-
ment, the direction of war most peculiarly demands those
qualities which distinguish the exercise of power by a single
hand. The direction of war implies the direction of the common
strength; and the power of directing and employing the common
strength forms a usual and essential part in the definition of the
executive authority.

"The President may require the opinion, in writing, of the
principal officer in each of the executive departments, upon any
subject relating to the duties of their respecitve officers." This
I consider as a mere redundancy in the plan, as the right for
which it provides would result of itself from the office.

He is also to be authorised to grant "reprieves and pardons
for offences against the United States, *except in cases of impeach-
ment.*" Humanity and good policy conspire to dictate that the
benign prerogative of pardoning should be as little as possible
fettered or embarrassed. The criminal code of every country
partakes so much of necessary severity that without an easy
access to exceptions in favour of unfortunate guilt, justice
would wear a countenance too sanguinary and cruel. As the
sense of responsibility is always strongest, in proportion as it is
undivided, it may be inferred that a single man would be most
ready to attend to the force of those motives which might plead
for a mitigation of the rigour of the law, and least apt to yield to
considerations which were calculated to shelter a fit object of
its vengeance. The reflection that the fate of a fellow-creature
depended on his *sole fiat* would naturally inspire scrupulousness
and caution; the dread of being accused of weakness or con-
nivance, would beget equal circumspection, though of a dif-
ferent kind. On the other hand, as men generally derive confi-
dence from their numbers, they might often encourage each other
in an act of obduracy, and might be less sensible to the appre-
hension of suspicion or censure for an injudicious or affected
clemency. On these accounts, one man appears to be a more
eligible dispenser of the mercy of government than a body of
men.

The expediency of vesting the power of pardoning in the
President has, if I mistake not, been only contested in relation
to the crime of treason. This, it has been urged, ought to have
depended upon the assent of one, or both, of the branches of the
legislative body. I shall not deny that there are strong reasons
to be assigned for requiring in this particular the concurrence

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of that body, or of a part of it. As treason is a crime levelled at the immediate being of the society, when the laws have once ascertained the guilt of the offender, there seems a fitness in referring the expediency of an act of mercy towards him to the judgment of the legislature. And this ought the rather to be the case, as the supposition of the connivance of the Chief Magistrate ought not to be entirely excluded. But there are also strong objections to such a plan. It is not to be doubted that a single man of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives which may plead for and against the remission of the punishment, than any numerous body whatever. It deserves particular attention, that treason will often be connected with seditions which embrace a large proportion of the community; as lately happened in Massachusetts. In every such case, we might expect to see the representation of the people tainted with the same spirit which had given birth to the offence. And when parties were pretty equally matched, the secret sympathy of the friends and favourers of the condemned person, availing itself of the good-nature and weakness of others, might frequently bestow impunity where the terror of an example was necessary. On the other hand, when the sedition had proceeded from causes which had inflamed the resentments of the major party, they might often be found obstinate and inexorable when policy demanded a conduct of forbearance and clemency. But the principal argument for reposing the power of pardoning in this case to the Chief Magistrate is this: in seasons of insurrection or rebellion there are often critical moments when a well-timed offer of pardon to the insurgents or rebels may restore the tranquillity of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall. The dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction to the measure, would frequently be the occasion of letting slip the golden opportunity. The loss of a week, a day, an hour, may sometimes be fatal. If it should be observed that a discretionary power, with a view to such contingencies, might be occasionally conferred upon the President, it may be answered in the first place that it is questionable whether, in a limited Constitution, that power could be delegated by law; and in the second place, that it would generally be impolitic beforehand to take any step which might hold out the prospect of impunity. A proceeding of this kind, out of the usual course, would be

likely to be construed into an argument of timidity or of weakness, and would have a tendency to embolden guilt.

Publius.

For the Independent Journal

THE FEDERALIST. No. LXXV

(HAMILTON)

To the People of the State of New York:

The President is to have power, "by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur."

Though this provision has been assailed, on different grounds, with no small degree of vehemence, I scruple not to declare my firm persuasion that it is one of the best digested and most unexceptionable parts of the plan. One ground of objection is the trite topic of the intermixture of powers: some contending that the President ought alone to possess the power of making treaties; others, that it ought to have been exclusively deposited in the Senate. Another source of objection is derived from the small number of persons by whom a treaty may be made. Of those who espouse this objection, a part are of opinion that the House of Representatives ought to have been associated in the business, while another part seem to think that nothing more was necessary than to have substituted two thirds of *all* the members of the Senate, to two thirds of the members *present*. As I flatter myself the observations made in a preceding number upon this part of the plan must have sufficed to place it, to a discerning eye, in a very favourable light, I shall here content myself with offering only some supplementary remarks, principally with a view to the objections which have been just stated.

With regard to the intermixture of powers, I shall rely upon the explanations already given in other places, of the true sense of the rule upon which that objection is founded; and shall take it for granted, as an inference from them, that the union of the Executive with the Senate, in the article of treaties, is no infringement of that rule. I venture to add, that the particular nature of the power of making treaties indicates a peculiar propriety in that union. Though several writers on the subject of government place that power in the class of executive authorities, yet this is evidently an arbitrary disposition; for if we attend carefully to its operation, it will be found to partake

ANNEX 4

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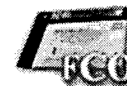
UK Mission
to the United Nations



Saddam's options for a peaceful resolution of Iraq crisis

Edited transcript of an interview for BBC 2's Newsnight programme, by the Foreign Secretary, Jack Straw, 20 January 2003

INTERVIEWER:
Well a little earlier I spoke to the Foreign Secretary who is attending a meeting of Foreign Ministers at the United Nations in New York. Does he support what Donald Rumsfeld called a fair trade to avoid war, exile for Saddam?

FOREIGN SECRETARY:
Well we think it is a sensible suggestion, one that should certainly be looked at if and when there is a clear prospect of Saddam Hussein deciding that the game really is up and is willing, to quote Donald Rumsfeld, to go in to exile. And I think that most members of the British public, faced with that choice between removal of Saddam by peaceful means, albeit with some kind of offer of impunity, would swallow hard if it meant that we could resolve this crisis as a result by peaceful means. And after all we, the United States, the international community have always sought a peaceful end to this crisis which is one of Saddam Hussein's own choosing.

INTERVIEWER:
So it could be immunity from prosecution of war crimes if that indeed was the price to pay for peace?

FOREIGN SECRETARY:
Well if it were the price. I mean we are a very long way off this and there is sadly no prospect of Saddam Hussein complying in this way. What we know, however, is that as the pressure is piled on him, normally just before the hour, hopefully not after the hour, he makes rather more sensible decisions. The best favour he could do for his people and for international security is to relinquish his office.

INTERVIEWER:

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So that might include immunity from prosecution, yes?

FOREIGN SECRETARY:
Well it might do, and I say, I mean it, the world is imperfect but I think that given that kind of choice as I have just said, people would swallow hard and think well is it better to provide some degree of immunity if it meant that we can resolve this peacefully? The Iraqi people could then put in a far better regime which in due course could turn in to a representative government.

INTERVIEWER:
Would you be prepared to set a date for that briefly?

FOREIGN SECRETARY:
No, I am not going to speculate about dates. The only clear date we have got is next Monday, the 27th, when Doctor Blix and El Baradei will be making their report on their first 60 days of inspection.

INTERVIEWER:
Now the pressure was ratcheted up today of course, with the announcement of the amount of British troops who are going to be heading to the Gulf. Did you realise the Gulf would be as big as this? Is this a new phase?

FOREIGN SECRETARY:
Well it is a new phase in the sense that we are now actively deploying some thousands of troops into the potential theatre. But, as Geoff Hoon said in the House of Commons earlier today, no decisions about military action have been taken and war is not inevitable. However, to pick up on a conversation that I had here in New York with members of the Security Council over a lunch, what we have had to do throughout this is to back effective and active diplomacy with a credible threat of force. And if you are making a credible threat of force, then one of the things you have to do is to actually ratchet up that credible threat otherwise it becomes no threat at all.

INTERVIEWER:
But you can't send this many troops and have them sitting there for say four or five months without doing anything because you don't have the level of troops or the type of troops to replace them. So presumably if it is going to be war it is going to be soon?

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FOREIGN SECRETARY:
Well I am not going to speculate about that but it is for the military commanders to decide how long troop levels can be sustained at these particular numbers. I just repeat the fact that no decisions have been made about military action and war is not inevitable.

INTERVIEWER:
Well this is the maximum number of people you could have sent. Has George Bush asked for as many troops?

FOREIGN SECRETARY:
I am not going to go in to detail about the discussions that have taken place between us and the United States military. But it is a very important contribution that we are making, both with our naval, air force and land forces and they are very good forces too.

INTERVIEWER:
At the same time Hans Blix is negotiating a new ten point plan with the Iraqis to have further co-operation and indeed the Iraqis are talking about carrying out their own inspections, which is a kind of bizarre notion. If Hans Blix says to you we need to pursue this into March, will you and the Americans give him that time?

FOREIGN SECRETARY:
Well let's wait and see what Doctor Blix and Doctor El Baradei from the Atomic Energy Agency themselves say. So far as this ten point plan is concerned, well it is better news that it is there rather than not there but no one should be taken in by this. These are obligations which Saddam is now seeking to negotiate which are non negotiable. They were laid down by the international community in resolution 1441. And they have been there on him ever since he entered disastrously into the Gulf War by invading Kuwait and then had resolutions and obligations imposed on him by the Security Council in 1991 and 1992. And it is typical of this tyrant who runs Iraq, that he doesn't know when to stop pushing his luck. This is what he has got to do, he has got to stop seeking to trade or seeking to play hide and seek with the international community. He has now got to recognise that time is running out. And although different members of the Security Council may have different time phases in their heads, none of them are in any doubt that there has to be a limit on this kind of behaviour by Saddam Hussein.

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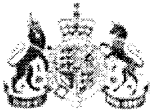
INTERVIEWER:
Finally can you conceive of any circumstance in which Saddam Hussein is able to remain in power?

FOREIGN SECRETARY:
Yes I can and indeed we have talked about that. President Bush spoke about that in an important speech he made in Cincinnati last Autumn, where he said that if there was a full disarmament of Saddam Hussein of his weapons of mass destruction, then the regime itself of Saddam Hussein would have changed albeit that the personalities have not done so. And the objective of 1441 is the disarmament of Saddam Hussein's weapons of mass destruction. That is the reason why the resolution was passed and there has always been an option, a choice there for Saddam Hussein. But the time for him to exercise that option is running out and that is not any fault of the international community but because of appalling choices which he has made for himself up to now and for his country.



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ANNEX 5

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19 Mar 2003 : Column 927—continued

Terrorism

5. **Mr. David Heath (Somerton and Frome):** What discussions he has had with (a) the National Assembly for Wales and (b) local authorities in Wales on contingency planning for a terrorist attack on nuclear installations in the Bristol channel. [102972]

The Parliamentary Under-Secretary of State for Wales (Mr. Don Touhig): The lead responsibility for counteracting terrorism lies with my right hon. Friend the Home Secretary. However, security at civil nuclear facilities is a matter for the Department of Trade and Industry. The UK's civil nuclear sites apply stringent security measures, regulated by the DTI's Office for Civil Nuclear Security.

19 Mar 2003 : Column 928

Both the Wales Office and the Assembly are involved in national arrangements for dealing with the effects of any civil emergency. Within Wales the Assembly works jointly with local authorities to maintain a state of preparedness.

Mr. Heath : I am grateful to the Minister for that reply. Is he aware that 15 years ago, when we were fighting proposals for the Hinkley C pressurised water reactor, we were told that the chances of an aircraft hitting a nuclear installation were so negligible as to be irrelevant? Few people would take that view now, so is the Minister satisfied with the contingency arrangements for nuclear installations, which, on Severnside, are the most concentrated in the country? Is he satisfied with the resources for the National Radiological Protection Board and is he sure that the emergency services on both sides of the Bristol channel are able to cope with a catastrophic emergency?

Mr. Touhig: The companies operating civil nuclear installations have always been required to have in place robust, detailed and well-rehearsed plans to respond to any radiological release. The plans involve emergency services and local authorities in the surrounding area and are regulated by the nuclear industry's inspectors, as the hon. Gentleman is probably aware. The arrangements were significantly enhanced following the Chernobyl disaster in 1986. Contingency plans were tested against the threat posed by a major incident in a live exercise at Bradwell on 10 May last year. The hon. Gentleman is right to say that we must always continue to maintain very high vigilance and a very high regard for those installations and ensure that they are properly cared for and properly protected, and I believe that we are doing the right thing in that respect.

Llew Smith (Blaenau Gwent): Does the Minister accept that the best long-term defence against terrorist attacks on nuclear installations is to rid Britain of its civil and military nuclear roles? What can we learn from the disaster at Chernobyl, as a result of which not only that community but even farms throughout Wales were devastated?

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Mr. Touhig: No, I do not agree with the points that my hon. Friend makes.

Mr. James Gray (North Wiltshire): Until yesterday, the right hon. Member for Southampton, Itchen (Mr. Denham) was responsible for homeland defence. Who is now in charge of that?

Mr. Touhig: Those matters are, of course, ultimately the responsibility of the Home Secretary.

Climate Change Levy

6. **Andrew Selous (South-West Bedfordshire):** What recent representations he has received about the effects of the climate change levy on manufacturing industry in Wales.

19 Mar 2003 : Column 929

The Parliamentary Under-Secretary of State for Wales (Mr. Don Touhig): My right hon. Friend the Secretary of State has received a number of representations from individual companies and groups representing business, including the CBI.

Andrew Selous : Will the Minister confirm that, on its introduction, the Treasury said that the climate change levy would be broadly neutral for business, that manufacturing has, in fact, suffered a £90 million net tax hit, that Wales is particularly hard hit with 28 per cent. of its gross domestic product dependent on manufacturing and, furthermore, that the Engineering Employers Federation's counter-proposals would lead to greater reductions in energy use and a lower cost to business in Wales and elsewhere? *[Interruption.]*

Mr. Speaker: Order. The House is far too noisy.

Mr. Touhig: The Government are committed to making Britain one of the most competitive business environments in the world. That has been demonstrated by the fact that our tax burden on business and industry is the lowest of all our major competitors, but we recognise, too, that business and industry must make a contribution to improve and protect our environment. I mentioned in my initial answer to the hon. Gentleman that my right hon. Friend the Secretary of State recently met representatives of the CBI. The director of the CBI in Wales fully understands the Government's position; nevertheless, my right hon. Friend took on board the points made by the director with regard to the climate change levy and, as a result, he is in discussion with my right hon. Friend the Chancellor of the Exchequer.

Alan Howarth (Newport, East): Does my hon. Friend accept that the climate change levy has been a problem for Corus? He will be acutely conscious, as I am, of the difficulties currently facing Corus. Will he join me in praising the achievements and spirit of the whole work force at Llanwern? Will he undertake to examine urgently, with colleagues in Wales and Whitehall, whether any aspect of public policy unnecessarily disadvantages Corus in doing its business? If he identifies one, will he act swiftly to deal with it?

Mr. Touhig: My right hon. Friend the Secretary of State for Wales has been involved in detailed discussions with the management of Corus and other Ministers about the company's concerns. He carried on that job of work from the former Secretary of State for Wales, who also played an important part in helping to secure a package when Corus announced its job losses. The Government will work in partnership with colleagues in the Assembly and with Corus in every way possible to avoid any further job losses at Llanwern.

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Adam Price (East Carmarthen and Dinefwr): Will the Minister specifically consider offering further concessions to the steel industry in relation to the climate change levy and take into account the industry's concerns about the effect of the landfill tax? Can he confirm that the UK Government have sought approval from the Commission for emergency state aid on a contingency basis, which the Dutch Government have already done?

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Mr. Touhig: I can tell the hon. Gentleman that the Government have made available £30 million a year in incentives for organisations that volunteer to take part in the UK emissions trading scheme. We are working with the industry and colleagues in the European Union to ensure that we are doing the right thing and that that does not impact adversely on business and industry in Wales. I think that we are doing a good job in that respect.

PRIME MINISTER

The Prime Minister was asked—

Engagements

Q1. [103487] **Mr. David Rendel (Newbury):** If he will list his official engagements for Wednesday 19 March.

The Prime Minister (Mr. Tony Blair): This morning, I had meetings with ministerial colleagues and others. In addition to my duties in the House, I will have further such meetings later today.

Mr. Rendel: Now that it seems inevitable that, sadly, there will be immense destruction in Iraq over the next few weeks, and given that the Select Committee on International Development reported earlier this year that less than half the necessary funds for the reconstruction of Afghanistan had been contributed, can the Prime Minister assure the House that he, the Chancellor of the Exchequer and the Secretary of State for International Development will ensure that sufficient funds for the reconstruction of Iraq are provided swiftly?

The Prime Minister: First, I should say to the hon. Gentleman that the purpose of the reconstruction programme post conflict in Iraq is not, in fact, primarily to do with the consequences of any military conflict, but is actually to do with reconstructing the country after the years of Saddam Hussein and his rule. Secondly, I would say to him that, yes, we will ensure that the funds are available—indeed, funds have already been earmarked for the purpose—and the Secretary of State for International Development, the Ministry of Defence and the Treasury are doing all that they can to make sure that we co-ordinate with American allies and also with other UN partners to ensure that the funds are available and also that the programme is available, so that in the post-conflict situation in Iraq, the people of Iraq are given the future that they need.

Mr. Stuart Bell (Middlesbrough): Will the Prime Minister note that, at the present time in the Gulf, we have 37 Army chaplains, 12 RAF chaplains and 19 to 20 Royal Navy chaplains? Does that not reflect the great support of the churches for our armed services at this time? Should that not be reflected not only in this House, but in the country?

The Prime Minister: I know that my hon. Friend, because of his special responsibilities and interests in this matter, is deeply knowledgeable about the armed forces chaplains. They do an excellent job for our

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armed forces. Particularly, at this moment, the thoughts of the

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whole House, no matter what position we take on Iraq and the conflict, will be with our armed forces wishing them well and wishing them safety.

Mr. Iain Duncan Smith (Chingford and Woodford Green): Following last night's vote, does the Prime Minister agree that British forces serving in the Gulf should know that, irrespective of how individual MPs or even parties voted, the whole House of Commons backs them and wishes them Godspeed and a safe return?

The Prime Minister: I am sure that the whole House will endorse those sentiments. Whatever positions people have taken—and we understand the reasons for that—I know that everyone in this House wishes our armed forces well, wishes that, if there is conflict, it will be over as quickly and as successfully as possible and would like to pay tribute to their dedication and commitment on behalf of this country.

Mr. Duncan Smith: As Saddam Hussein has rejected every single offer to disarm or leave the country, is it now a reality that the removal of Saddam Hussein has become an explicit war aim?

The Prime Minister: It is the case that if the only means of achieving the disarmament of Iraq of weapons of mass destruction is the removal of the regime, then the removal of the regime of course has to be our objective. It is important that we realise that we have come to this position because we have given every opportunity for Saddam voluntarily to disarm, but the will not only of this country, but of the United Nations, now has to be upheld.

Mr. Duncan Smith: Given the Prime Minister's answer, the whole House also will have heard the statement by President Bush that any Iraqi commander who commits a war crime will be prosecuted. Will he confirm that that dictum goes right to the top and, despite some reports of immunity, includes Saddam Hussein himself?

The Prime Minister: There was a possibility, if Saddam Hussein was prepared to leave voluntarily, quit Iraq and spare his people the conflict, that we could have ensured that that happened. The circumstances in relation to any immunity might then have been different, but it is reasonably clear, I think, that that will not happen. I think that it is very important that those in senior positions of responsibility in Saddam Hussein's regime realise that they will be held accountable for what they have done.

Mr. Duncan Smith: When I asked the Prime Minister in the past about his plans for post-conflict Iraq, he was, quite legitimately and understandably, reluctant to give full answers because he would not have wanted to give the impression that conflict was inevitable. Now that war is looming and Saddam Hussein's days are clearly numbered, will he tell us what plans there are to put in place a civilian representative Government in Iraq?

The Prime Minister: We are in discussion now with not just the United States, but other allies and the

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United Nations. We want to ensure that any post-conflict authority in Iraq is endorsed and authorised by a new United Nations resolution, and I think that that will be an important part of bringing the international community back together again.

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We have set out a vision statement for Iraq and the Iraqi people, and it might help if I highlight one or two of its aspects. First, we will support the Iraqi people in their desire for

> "a unified Iraq within its current borders",

and we will protect their territorial integrity. Secondly, we will protect their wealth, and I repeat again that any money from Iraqi oil will go into a UN-administered trust fund for the benefit of the Iraqi people. There should be freedom in

> "an Iraq which respects fundamental human rights, including freedom of thought, conscience and religion and the dignity of family life",

and there should be freedom from the fear of arbitrary arrest. There should also be an

> "Iraq respecting the rule of law, whose government reflects the diversity and choice of its population",

and who help to rebuild Iraq, for the Iraqi people, on the basis of unifying the Iraqi people. Those principles of peace, prosperity, freedom and good government will go some way toward showing that if there is a conflict and Saddam Hussein is removed, the future for the Iraqi people will be brighter and better as a result.

Mr. Marsha Singh (Bradford, West): Now that the Prime Minister has received a mandate for war, will he take this opportunity to reassure the world that it is a war against Saddam Hussein, and not the Iraqi people and Muslims? Will he also reassure our Muslim communities that he will not allow them to be scapegoats for anything that might happen in the Gulf?

The Prime Minister: I thank my hon. Friend for what he said because I know that it will be heard and considered closely by people in this country and abroad. Let me make it quite clear that our quarrel is not with the Iraqi people because the Iraqi people are the principal victims of Saddam Hussein. Our quarrel is with Saddam. He is the person who has been responsible for killing thousands—indeed, hundreds of thousands—of Muslim people both in his wars and through his internal repression. I know that the vast majority of the Muslim community in this country are good, law-abiding people who contribute an immense amount to our country, and we are proud of our country as a multicultural and multiracial society.

Mr. Charles Kennedy (Ross, Skye and Inverness, West): As, of course, the whole House will associate itself with the expressions of support for our armed forces and their families at home, may I ask the Prime Minister about the related issue arising from the past few days: the middle east road map? What is the status of that in the eyes of the British Government, given that the Israelis seem to feel that it can be altered as it progresses?

The Prime Minister: Our commitment is total to the middle east peace process and to the road map being published. That is the clear commitment that has been

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given not only on our behalf, but on behalf of the President of the United States. Of course, both the Palestinian Authority and the Israeli Government can make their comments, but the road map is not

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simply a set of principles, but a detailed process for reaching the point of establishing a viable Palestinian state and an Israel that is confident of its security and recognised by all its neighbours. We are totally committed to ensuring that the road map is fulfilled.

Mr. Kennedy: Will the Prime Minister also reassure the House that he will maintain pressure, as he has already, on the American Administration to ensure that they continue to back the momentum for that process?

The Prime Minister: It is worth quoting what the President of the United States said last Friday on that subject because it indicates the degree of commitment that he has given. He said:

> "The government of Israel, as the terror threat is removed and security improves, must take concrete steps to support the emergence of a viable and credible Palestinian state, and to work as quickly as possible toward a final status agreement."

He went on to say:

> "We expect . . . a Palestinian Prime Minister will be confirmed soon. Immediately upon confirmation, the road map for peace will be given to the Palestinians and the Israelis."

He then said:

> "America is committed, and I am personally committed, to implementing our road map toward peace."

That is his commitment and my commitment, and we will work hard to ensure that it is delivered.

Mrs. Alice Mahon (Halifax): It is widely reported in today's newspapers that the United States intends to use a new bomb that will melt the Iraqi communications systems. Will this bomb also melt the equipment that is used in hospitals and that runs the water and electricity supplies in Baghdad? Will the Prime Minister assure us that it does not melt people?

The Prime Minister: In any military conflict, we will operate in accordance with international law. Any weapons or munitions that are used will be in accordance with international law. I assure my hon. Friend that we will do everything that we can to minimise civilian casualties and, indeed, to maximise the possibilities of a swift and successful conclusion to any conflict.

Q2. [103488] **Mr. Andrew Rosindell (Romford):** While our thoughts and prayers are with our brave servicemen in the Gulf, will the Prime Minister reflect on one thing? Given the disgraceful and spineless attitude of the French Government, is it not highly dangerous and irresponsible to contemplate tying British defences into a European common defence and security policy?

The Prime Minister: If that was a bid for the Foreign Office badge of diplomacy, it somewhat failed. I simply say to the hon. Gentleman that it is important that we make sure that we participate fully in any debates about European defence. The purpose of our participation is to make sure that European defence is fully compatible with our membership of NATO. I appreciate that there

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is a disagreement between us and the Opposition, but I genuinely believe that the worst thing that we could do in any debate about European defence is to leave the chair empty. If I can put it more diplomatically than the hon. Gentleman, those who might oppose our vision of how European defence matures over years would then be strengthened.

Q3. [103489] **Mr. Martin Caton (Gower):** International humanitarian law prohibits military attack that fails to discriminate between combatants and non-combatants or that disproportionately impacts on civilians. Can my right hon. Friend assure me that, in the war on Iraq that the House sanctioned last night, we will not be employing cluster bombs and that electricity, transport and water infrastructure will not be targeted?

The Prime Minister: I simply say in relation to any weapons or munitions that we use that we will only use those that are in accordance with international law and with the Geneva convention. That is the responsibility of the Government and is the commitment of this Government and has been of other British Governments in the past. We will do everything that we can to minimise civilian casualties. The reason why, in respect of any military action that we take, we get legal advice not merely on the military action itself but on the targeting is to make sure that that happens. Of course, I understand that, if there is conflict, there will be civilian casualties. That, I am afraid, is in the nature of any conflict, but we will do our best to minimise them. However, I point out to my hon. Friend that civilian casualties in Iraq are occurring every day as a result of the rule of Saddam Hussein. He will be responsible for many, many more deaths even in one year than we will be in any conflict.

Mr. Peter Robinson (Belfast, East): Can the Prime Minister tell the House anything of his plans in terms of the state of readiness for homeland defence? What state of a war footing is the United Kingdom on in the now more likely event of international terrorism?

The Prime Minister: We have made detailed preparations for the possibility of any terrorist attack, as I am sure the hon. Gentleman knows. We have also spent several hundred million pounds ensuring that we have both the equipment and the planning in place. I will not go into the details of each part of that, but I assure him that we are well aware of the risk that this country—indeed, all countries—suffer and face at the moment. We are doing everything that we can to prepare against it.

Q4. [103490] **Chris Ruane (Vale of Clwyd):** The UK, along with dozens of other nations, stood shoulder to shoulder with the US over Afghanistan and now Iraq. That loyalty has been rewarded by the Bush Administration with the imposition of steel tariffs, the withdrawal from test ban treaties, the introduction of farm subsidies in America, and contempt for the International Criminal Court. The President rubbished and reneged on the Kyoto and Johannesburg treaties, and scuppered my right hon. Friend's attempts to open dialogue with the Palestinians in January. Can my right

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hon. Friend use his now legendary powers of persuasion to convince President Bush to develop a world vision worthy of his great nation?

The Prime Minister: I gather from my hon. Friend's remarks that he is not a total fan of President Bush. There are important things that President Bush has agreed to, and it is as well to balance my hon. Friend's remarks with those. First, President Bush took the case of Iraq to the United Nations. He was asked to do so and did so, and he agreed resolution 1441. I say and say again that it was not he who walked away from that deal.

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Secondly, in respect of the middle east peace process, my hon. Friend will have heard the words that I spoke a moment or two ago, quoting President Bush and his commitment to that. He is the first American President to commit himself to the two-state solution of a state of Israel and a viable Palestinian state.

We are working closely on a new UN resolution in relation to reconstruction.

There are disagreements about trade, but those are familiar disagreements, not merely with the present American Administration, but with previous American Administrations. A couple of years ago, under the previous Administration of a Democrat President, I spent a large part of my time dealing with the issue of cashmere sweaters. Those things happen, and America is not the only country with which we have the odd trade disagreement. I understand what my hon. Friend is saying. It is important that we use our influence to develop that global agenda, and I believe that we can do so.

Mr. Iain Duncan Smith (Chingford and Woodford Green): Does the defeat of the Government's asylum legislation in the Court of Appeal yesterday make the achievement of the Prime Minister's target of halving asylum applications by September more or less likely?

The Prime Minister: I am pleased to say that because we won on the legal principle, that is not affected.

Mr. Duncan Smith: The Prime Minister is the only person who can claim defeat in the Court of Appeal as a triumph. The asylum organisations have all said that the policy is now in tatters. Surely this is the latest setback for a Government who introduced vouchers, then scrapped them; scrapped the white list, then re-introduced it; and have been forced by the courts almost weekly to change their policy. Small wonder that last Friday the United Nations High Commissioner for Refugees published a report that shows that for the second year running, Britain has the worst record of all the industrialised nations. Is it not true that under the present Prime Minister we have become the asylum capital of the world?

The Prime Minister: First, the right hon. Gentleman is wrong about the judgment. The judgment supported the principle that if people do not claim in time, they do not get their benefit. There are changes to the procedures in individual cases that we can make without disturbing that basic principle. Of course, the right hon. Gentleman will hold me to account on the pledge and

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commitment that we have given. If he looks carefully at the asylum figures for the end of last year, once the new asylum legislation came into effect, he will see that there was already a 25 per cent. drop in asylum claims. I am pleased to say that, as will become apparent in due course, that progress has continued well.

Q5. [103491] **Lynne Jones (Birmingham, Selly Oak):** Saddam Hussein has been offered immunity from prosecution if he leaves Iraq. On what authority was that offer made, what message does it send to other corrupt regimes, and what is my right hon. Friend's strategy for a return to a world order in which decisions are taken lawfully through the UN, rather than by the world's superpower? Or is it too late? With his help, has the foundation stone for the pax Americana already been laid?

The Prime Minister: First, the reason why we were prepared to offer such a possibility was to avoid war, which is, after all, what I thought my hon. Friend wanted. If she was saying that President Bush had been too soft and should have said that we would remove Saddam Hussein in any event, I could

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understand that. We wanted to try to avoid conflict by having him voluntarily disarm. Then, if he refused to do so, we were prepared to give a further chance to resolve the matter peacefully by getting him to leave the country. Now we are faced with the prospect of leaving him in place without disarming him, or making sure that we remove him from power. I earnestly ask my hon. Friend to consider this.

If we remove Saddam from power, as I believe that we will have to because it is the only way of disarming Iraq of weapons of mass destruction, the people who will rejoice most will be the Iraqi people who will be free of a murderous tyrant who has done nothing but damage to his country. If she wants to know what Iraq could be like, she should talk to the people in northern Iraq who, because of British and American pilots in the no-fly zone, have been able to build something of their country, and she will see that the true impulse of the Iraqi people is for greater freedom, democracy, prosperity and the rule of law.

Q6. [103492] **Mr. John Randall (Uxbridge):** What lessons does the Prime Minister think could be learnt for a post-war Iraq from the current situation in Kosovo?

The Prime Minister: First, I would say that people in Kosovo, as people in Afghanistan, whatever the difficulties, are infinitely better for being removed from the rule of brutal dictators, whether Milosovic or the Taliban. Secondly, we must stay in for the long term. It will be easier over time, but in Kosovo, as in Afghanistan, we cannot make a short-term commitment. We must make a long-term commitment to reconstruction and rebuilding those countries. But for all the difficulties in the Balkans at the moment, most obviously after the appalling assassination of the Serbian Prime Minister recently, the Balkans is at a point where it is a better prospect for peace and prosperity than probably at any time in the past 100

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years. That is because we were prepared to take military action in order to remove the regime that was preventing that prosperity from coming about.

Phil Hope (Corby): The Prime Minister will be aware that it was this Government who introduced the historic national minimum wage in the teeth of fierce opposition from the Conservative party. On behalf of temporary workers, particularly in my Corby constituency, may I thank the Government for the announcement today that the national minimum wage is to rise by three times the rate of inflation? But will my right hon. Friend consider lowering the adult rate so that 18-year-olds can qualify for the higher rate and applying a youth rate to 16 and 17-year-olds to prevent exploitation of young people in the workplace?

The Prime Minister: The point that my hon. Friend makes about young people is one that is often made. Our concern has always been to ensure that we do nothing to disturb the employment prospects of young people, but we keep the matter under review. I am pleased to say that we have published the fourth report from the independent Low Pay Commission and, as he rightly says, it will mean that the minimum wage for adults rises from the present £4.20 to £4.50 in October, and then to £4.85 in October 2004. More than 1 million people are now benefiting from the minimum wage, many of them low-paid women workers, and when we combine that with the working families tax credit, literally thousands of families throughout the country in every constituency are benefiting from this Labour Government's drive towards greater equality.

Q7. [103493] **Chris Grayling (Epsom and Ewell):** During the next few weeks our humanitarian response to the Iraqi crisis will be as important as our military one. Given the monumental mess that the Secretary of State for International Development has made this week of her own position, what

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confidence can we have that she is now the right person to do that job?

The Prime Minister: We can have the confidence of the experience over many years in which that Department has gained a reputation throughout the world for the humanitarian assistance that it has given. That is as a result of the co-operation that has taken place not just between that Department and other Departments, but with the United Nations and with the American Government. I can assure the hon. Gentleman that we will put every effort into the humanitarian assistance that is required, and we will make sure, in particular, that as military action develops we are able to take care of the Iraqi people in a way that Saddam Hussein has not been able to do.

Q8. [103494] **Mr. Gordon Marsden (Blackpool, South):** The Prime Minister, in his powerful speech yesterday and again in his response to the Leader of the Opposition this lunchtime, has confirmed that it is crucial that any post-war settlement for Saddam Hussein's Iraq involves the UN in the administration and control of the oil revenues. We all know that during the next few weeks the logistical pressures on the Government, particularly on the Prime Minister, will be enormous, so can he reassure the House that he will talk

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to the Foreign Secretary to insist that the detail of that arrangement is pursued with utmost vigour with the Americans and involving the EU partners, both prospective from the enlargement countries and those that we have at the moment, including those who did not agree with the Government at the Security Council?

The Prime Minister: There are two aspects. The first is the humanitarian relief that is necessary as military action gets under way, on which the Department for International Development, the Foreign Office and the Ministry of Defence are working closely, obviously, with our military allies, particularly the US. Indeed, I took a meeting on that issue this morning. The second aspect will be humanitarian assistance in the post-conflict situation, which should be done under a UN resolution, as in relation to the administration, and of course we want to involve as many countries as possible.

Q9. [103495] **Mr. Mark Oaten (Winchester):** Does the Prime Minister believe that the United Nations needs to reform? If so, in what way should it reform, and what role will he have in that?

The Prime Minister: There are issues, obviously, in relation to the UN Security Council and reform of it, which we will have to discuss with others, but the issue is not really institutional; it is whether we can construct a sufficiently strong partnership between Europe and America and a global agenda around which people can unite. If they cannot unite politically, no amount of institutional tinkering will help us resolve those problems. That is why, at the end of this, we need a period of reflection to see how we put that partnership back together, and how we construct the global agenda that would bring in a lot more people to our way of thinking. That, whatever the institutional arguments in the UN, is what is essential.

Mr. Frank Cook (Stockton, North): Now that military units are moving into what was previously the demilitarised zone in Kuwait and Iraq, will my right hon. Friend offer the House an assurance today that correct records and registers of inoculations, medication administered and weapons used in different sectors will be kept so that the parents of serving men and women can be assured that the right kind of inquiries can be made in the event of any condition arising akin to that which is called Gulf war syndrome?

The Prime Minister: I am sure that my hon. Friend's point is justified. I know that procedures are

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already in place to do that, and, if he will allow me, I will write to him setting those out in detail. His point, however, is obviously important for the security and safety of our armed forces personnel.

Q10. [103496] **Mr. James Gray (North Wiltshire):** Despite what the Prime Minister said to my hon. Friend the Member for Romford (Mr. Rosindell) a moment ago, the fact is that a common European defence policy is central to the new draft constitution for Europe. Why

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will he not allow the people of Britain the right to have a referendum so that they can have their say on the matter?

The Prime Minister: Probably for the same reason that the Conservatives did not have one on Maastricht—*[Interruption.]* I know that they have changed a little bit in the meantime—[Hon. Members: "Oh."] May I ask Conservative Members to please sort this matter out among themselves, and come back later? The purpose of European defence is in relation to circumstances in which NATO does not want to undertake an operation but European defence has the capability of doing so.

Mr. Gray *indicated dissent.*

The Prime Minister: The hon. Gentleman shakes his head, but that is true. The best example of that is Bosnia in the early 1990s. Because, at that point, America did not want to become engaged, we did not have the capability of protecting people in Bosnia. As a result of that, thousands of people died, and we are still in Bosnia more than 10 years later.

Mr. Tam Dalyell (Linlithgow): Were cathedrals such as Durham, Lincoln or Wells to be damaged, what

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would we feel? What precautions are being taken about Kerbala, Najaf, Ur, Hatra and the other great sites? That will be difficult, given that, as at Samarra last time, Saddam may place military objects near the ancient sites.

The Prime Minister: I am glad that my hon. Friend recognises the propensity towards total irresponsibility of Saddam. I assure him that we are fully committed to the protection of cultural property. That is not merely the Government's position: we are also committed to that under the Geneva conventions. I understand that the Foreign Secretary has talked to him about that, and we will do everything that we can to make sure that sites of cultural or religious significance are properly and fully protected.

Q11. [103497] **Lembit Öpik (Montgomeryshire):** On a domestic matter, does the Prime Minister support in principle the devolution of student funding arrangements to the Welsh Assembly, given that the Labour-Liberal Democrat partnership has requested that?

The Prime Minister: The Secretary of State for Wales informs me that discussions about the issue are under way.

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ANNEX 6

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Email this document

Source: Govt. Lib/LURD/MODEL/PP
Date: 18 Aug 2003

Peace Agreement between Govt. of Liberia, LURD, MODEL and Political Parties

Peace Agreement between the Government of Liberia (GOL), The Liberians United for Reconciliation and Democracy (LURD), The Movement for Democracy in Liberia (MODEL) and the Political Parties Accra, Ghana, 18th August 2003

We, the Government of The Republic of Liberia, The Liberians United for Reconciliation and Democracy (LURGD), The Movement for Democracy in Liberia (MODEL) and the Political Parties

Having met in Akosombo and Accra, Ghana, from 4 June, 2003 to 18th August 2003, to seek a negotiated settlement of the crisis in Liberia, within the framework of the ECOWAS Peace Process for Liberia, under the auspices of the current Chairman of ECOWAS, His Excellency John Agyekum Kufuor, President of the Republic of Ghana, and the mediation of General Abdulsalami Abubakar, former Head of State of Nigeria;

Gravely concerned about the current civil war that has engulfed our country leading to loss of innumerable lives, wanton destruction of our infrastructure and properties and massive displacement of our people;

Recalling earlier initiatives undertaken by the Member States of ECOWAS and the International Community, aimed at bringing about a negotiated settlement of the conflict in Liberia;

Moved by the imperative need to respond to the ardent desire of the people of Liberia for genuine lasting peace, national unity and reconciliation;

Reaffirming the objective of promoting better relations among ourselves by ensuring a stable political environment in which our people can live in freedom under the law and in true and lasting peace, free from any threat against their security;

Determined to concert our efforts to promote democracy in the sub-region on the basis of political pluralism and respect for fundamental human rights as embodied in the Universal Declaration on Human Rights, the African Charter on Human and People's Rights and other widely recognised international instruments on human rights, including those contained in the Constitution of the Republic of Liberia;

Guided by the principles of democratic practice, good governance and respect for the rule of law enunciated in the ECOWAS Declaration on Political Principles of 1991 and the ECOWAS Protocol on Democracy and Good Governance adopted in 2001;

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Committed to promoting an all inclusive participation in governance and the advancement of democracy in Liberia, as well as promoting full respect for international humanitarian law and human rights;

Concerned about the socio-economic well being of the people of Liberia;

Determined to foster mutual trust and confidence amongst ourselves and establish mechanisms which will facilitate genuine healing and reconciliation amongst Liberians;

Also Determined to establish sustainable peace and security, and pledging forthwith to settle all past, present and future differences by peaceful and legal means and to refrain from the threat of, or use of force;

Recognising that the Liberian crisis also has external dimensions that call for good neighbourliness in order to have durable peace and stability in the Mano River Union States and in the sub-region;

Re-committing ourselves to the scrupulous observance of the Ceasefire and Cessation of Hostilities Agreement signed at Accra, Ghana on 17th June, 2003, which constitutes an integral part of this Peace Agreement and is thereby appended as Annex I to the present Agreement;

Re-calling the establishment in 2002, of an International Contact Group on Liberia to support the efforts of ECOWAS in bringing durable peace to Liberia;

Committed to the establishment of an orderly transition process, to prevent the outbreak of future civil conflict in Liberia and the consequences of conflicts;

Desirous of seeking international assistance and support in restoring peace and stability to Liberia;

HEREBY AGREE AS FOLLOWS:

PART ONE

ARTICLE I

DEFINITIONS

For the purpose of this Agreement:

"AU" means the African Union;

"Ceasefire Agreement" means the Ceasefire and Cessation of Hostilities Agreement signed by the GOL, the LURD and the MODEL on 17th June 2003;

"CMC" means the Contracts and Monopolies Commission;

"DDRR" means Disarmament, Demobilization, Rehabilitation and Reintegration;

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"ECOWAS" means the Economic Community of West African States;

"EU" means the European Union;

"GOL" means the present Government of Liberia;

"GRC" means the Governance Reform Commission;

"ICGL" means the International Contact Group on Liberia;

"ICRC" means the International Committee of the Red Cross;

"IMC" means the Implementation Monitoring Committee;

"INCHR" means Independent National Commission on Human Rights established under Article XII of this Agreement;

"Irregular Forces" mean all forces that are not established in accordance with the Constitution and laws of the Republic of Liberia

"Interposition Force" means the ECOWAS Mission in Liberia which will be part of the ISF;

"ISF" means the International Stabilisation Force established under paragraph 7 of the Ceasefire Agreement;

"JMC" means The Joint Monitoring Committee established under paragraph 6 of the Ceasefire Agreement;

"JVT" means the Joint Verification Team established under paragraph 3 of the Ceasefire Agreement;

"LNP" means the Liberian National Police;

"LURD" means Liberians United for Reconciliation and Democracy;

"MODEL" means Movement for Democracy in Liberia;

"NCDDRR" means the National Commission for Disarmament, Demobilization, Rehabilitation and Reintegration established under Article VI of this Agreement;

"NEC" means the National Electoral Commission;

"NTGL" means the National Transitional Government of Liberia;

"NTLA" means National Transitional Legislative Assembly;

"Parties" means the Parties to this Agreement;

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"Political Parties" means Political Parties registered under the laws of the Republic of Liberia.

"The Agreement" means this Comprehensive Peace Agreement;

"Chairman" means the Head of the NTGL;

"Vice-Chairman" means the Deputy Head of the NTGL;

"TRC" means Truth and Reconciliation Commission established under Article XIII of this Agreement;

"UN"means the United Nations Organization;

"UNCIVPOL" means the United Nations Civil Police Component of the United Nations Stablisation Force;

"UNICEF" means United Nations Children Fund;

"UNHCR" means the United Nations Office of the High Commissioner for Human Rights;

"UNDP" means the United Nations Development Programme.

PART TWO. CESSATION OF HOSTILITIES

ARTICLE II. CEASEFIRE

The armed conflict between the present Government of Liberia (GOL), the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) is hereby ended with immediate effect. Accordingly, all the Parties to the Ceasefire Agreement shall ensure that the ceasefire established at 0001 hours on 18th June, 2003, results in the observation of a total and permanent cessation of hostilities forthwith.

ARTICLE III. CEASEFIRE MONITORING

1. The Parties call on ECOWAS to immediately establish a Multinational Force that will be deployed as an Interposition Force in Liberia, to secure the ceasefire, create a zone of separation between the belligerent forces and thus provide a safe corridor for the delivery of humanitarian assistance and free movement of persons.

2. The mandate of the ECOWAS Interposition Force shall also include the following:

a. Facilitating and monitoring the disengagement of forces as provided under Article V of this Agreement;

b. Obtaining data and information on activities relating to military forces of the parties to the Ceasefire Agreement and coordinating all military movements;

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c. Establishing conditions for the initial stages of Disarmament, Demobilisation and Reintegration (DDR) activities;

d. Ensuring respect by the Parties for the definitive cessation of hostilities and all other aspects of the Ceasefire Agreement;

e. Ensuring the security of senior political and military leaders;

f. Also ensuring the security of all personnel and experts involved in the implementation of this Agreement in collaboration with all parties;

g. Monitoring the storage of arms, munitions and equipment, including supervising the collection, storage and custody of battlefield or offensive armament in the hands of combatants;

3. The Joint Monitoring Committee (JMC) established under the terms of the Ceasefire Agreement, and composed of representatives of ECOWAS, the UN, AU, ICGL and Parties to the Ceasefire Agreement shall continue to supervise and monitor the implementation of the Ceasefire Agreement. ;

4. Prior to the deployment of the International Stabilisation Force, a representative of ECOWAS shall chair the JMC.

5. The JMC shall:

a. Resolve disputes concerning implementation of the Ceasefire Agreement, including the investigation of any alleged violation and also recommend remedial action for confirmed ceasefire violations.

b. Submit for approval, its recommendations to the Implementation Monitoring Committee (IMC) referred to under Article XXVIII(2) and (3) in this Agreement which is seized with the responsibility of monitoring the implementation of this Peace Agreement.

6. The Parties shall provide the JMC with any relevant information on the organisation, equipment and locations of their forces, and such information will be kept confidential.

ARTICLE IV. INTERNATIONAL STABILIZATION FORCE

1. The GOL, the LURD, the MODEL and the Political Parties agree on the need for the deployment of an International Stabilization Force (ISF) in Liberia. Accordingly, the Parties hereby request the United Nations in collaboration with ECOWAS, the AU and the ICGL to facilitate, constitute, and deploy a United Nations Chapter VII force in the Republic of Liberia to support the transitional government and to assist in the implementation of this Agreement.

2. The ECOWAS Interposition Force is expected to become a part of the International Stabilisation Force.

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3. The Parties request the ISF to assume the following mandate:

a. Observe and monitor the ceasefire;

b. Investigate violations of the security aspects of this Agreement and take necessary measures to ensure compliance.

c. Monitor disengagement and cantonment of forces of the Parties and provide security at disarmament/cantonment sites;

d. Collect weapons at disarmament sites and elsewhere and ensure that the weapons so collected are properly accounted for and adequately secured;

e. Assist in the coordination and delivery of humanitarian assistance to displaced persons, refugees, returnees and other war-affected persons;

f. Facilitate the provision and maintenance of humanitarian assistance and protect displaced persons, refugees, returnees and other affected persons;

g. Verify all information, data and activities relating to the military forces of the Parties;

h. Along with ECOWAS and the International Contact Group on Liberia, provide advice and support to the Transitional Government provided for in this Agreement on the formation of a new and restructured Liberian Army;

i. Assist with security for elections;

j. Take the necessary means whenever the need arises and as it deems within its capabilities, to protect civilians, senior political and military leaders under imminent threat of physical violence;

k. Coordinate with ECOWAS in the implementation of this Agreement;

4. The Parties expect that units of the ISF shall be selected from countries acceptable to all the Parties to the Ceasefire Agreement.

5. The Parties to this Agreement call on the ISF to remain in place until otherwise determined by the UN Security Council and the elected Government of Liberia.

ARTICLE V. DISENGAGEMENT

1. There shall be immediate disengagement of forces of the Parties to the Ceasefire Agreement in line with the principles of that Agreement.

2. Disengagement of forces shall mean the immediate breaking of tactical contact between opposing military forces of the GOL, the LURD, and the MODEL, at places where they are in direct contact or within range of direct fire weapons.

3. Immediate disengagement at the initiative of all military units shall be limited to

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the effective range of direct fire weapons. Further disengagement to pull all weapons out of range shall be conducted under the guidance of the ISF. The Parties to the Ceasefire Agreement undertake to remain in their disengagement positions until the conclusion of cantonment plans by the International Stabilisation Force and the NCDDRR established under Article VI(8) of the Agreement. They are also responsible for armed groups operating within their territories.

4. Where immediate disengagement is not possible, a framework and sequence of disengagement shall be agreed upon by all parties to the Ceasefire through the Joint Monitoring Committee (JMC).

5. Wherever disengagement by movement is impossible or impractical, alternative solutions requiring that weapons are rendered safe shall be designed by the ISF.

PART THREE

ARTICLE VI. CANTONMENT, DISARMAMENT, DEMOBILIZATION REHABILITATION AND REINTEGRATION (CDDRR)

1. The Parties commit themselves to ensuring the prompt and efficient implementation of a national process of cantonment, disarmament, demobilization, rehabilitation and reintegration.

2. The ISF shall conduct the disarmament of all combatants of the Parties including paramilitary groups.

3. Following disengagement, all forces shall withdraw from combat positions to cantonment locations in accordance with the withdrawal and cantonment plan to be published by the International Stabilisation Force and the NCDDRR, no later than thirty (30) days after installation of the NTGL. The current Armed Forces of Liberia shall be confined to the barracks, their arms placed in armouries and their ammunition in storage bunkers.

4. All arms and ammunition shall be placed under constant surveillance by the ISF.

5. The JMC shall verify the reported data and information provided by the GOL, the LURD and the MODEL about their forces. All forces shall be restricted to the declared and recorded locations and all movements shall be authorized by the JMC and the ISF.

6. All combatants shall remain in the declared and recorded locations until they proceed to reintegration activities or training for entry into the restructured Liberian armed forces or into civilian life.

7. The ISF is requested to deploy to all disarmament and demobilization locations in order to facilitate and monitor the program of disarmament.

8. There shall be an interdisciplinary and interdepartmental National Commission for Disarmament, Demobilization, Rehabilitation and Reintegration (NCDDRR), to coordinate DDRR activities.

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9. The NCDDRR shall comprise representatives from relevant NTGL Agencies, the GOL, LURD, MODEL, ECOWAS, the United Nations, the African Union and the ICGL.

10. It shall oversee and coordinate the disarmament, demobilization, rehabilitation and reintegration of combatants, working closely with the ISF and all relevant international and Liberian institutions and agencies.

11. Upon the signing of the present Agreement, the Transitional Government provided for in this Agreement, shall request the International Community to assist in the implementation of the Cantonment, Disarmament, Demobilization, Rehabilitation and Reintegration program through the provision of adequate financial and technical resources.

PART FOUR. SECURITY SECTOR REFORM

ARTICLE VII. DISBANDMENT OF IRREGULAR FORCES, REFORMING AND RESTRUCTURING OF THE LIBERIAN ARMED FORCES

1. The Parties agree that:

a. All irregular forces shall be disbanded.

b. The Armed Forces of Liberia shall be restructured and will have a new command structure. The forces may be drawn from the ranks of the present GOL forces, the LURD and the MODEL, as well as from civilians with appropriate background and experience. The Parties request that ECOWAS, the UN, AU, and the ICGL provide advisory staff, equipment, logistics and experienced trainers for the security reform effort. The Parties also request that the United States of America play a lead role in organising this restructuring program.

2. The following Principles shall be taken into account in the formation of the restructured Liberian Armed Forces:

a. Incoming service personnel shall be screened with respect to educational, professional, medical and fitness qualifications as well as prior history with regard to human rights abuses;

b. The restructured force shall take into account the country's national balance. It shall be composed without any political bias to ensure that it represents the national character of Liberia;

c. The Mission of the Armed Forces of Liberia shall be to defend the national sovereignty and in extremis, respond to natural disasters;

d. All Parties shall cooperate with ECOWAS, the UN, the AU, the ICGL and the United States of America.

3. All Parties together shall organise Information, Education and Communication (IEC) programs to sensitise the Liberian public as to the mission and activities of the

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restructuring plan.

ARTICLE VIII. RESTRUCTURING OF THE LIBERIAN NATIONAL POLICE (LNP) AND OTHER SECURITY SERVICES

1. There shall be an immediate restructuring of the National Police Force, the Immigration Force, Special Security Service (SSS), custom security guards and such other statutory security units. These restructured security forces shall adopt a professional orientation that emphasizes democratic values and respect for human rights, a non-partisan approach to duty and the avoidance of corrupt practices.

2. The Special Security Units including the Anti-Terrorist Unit, the Special Operations Division (SOD) of the Liberian National Police Force and such paramilitary groups that operate within organisations as the National Ports Authority (NPA), the Liberian Telecommunications Corporation (NTC), the Liberian Refining Corporation (LPRC) and the Airports shall be disarmed and restructured.

3. Until the deployment of newly trained national police, maintenance of law and order throughout Liberia shall be the responsibility of an interim police force.

4. The Parties call on the United Nations Civil Police components (UNCIVPOL) within the ISF to monitor the activities of the interim police force and assist in the maintenance of law and order throughout Liberia.

5. The Parties also call on UNCIVPOL and other relevant International Agencies to assist in the development and implementation of training programs for the LNP.

6. The interim police force will only be allowed to carry side arms.

7. All large calibre weapons shall be turned over to the ISF.

PART FIVE. RELEASE OF PRISONERS AND ABDUCTEES

ARTICLE IX. RELEASE OF PRISONERS AND ABDUCTEES

All political prisoners and prisoners of war, including non-combatants and abductees shall be released immediately and unconditionally by the Parties.

ARTICLE X. ASSISTANCE TO THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND RELEVANT NATIONAL AND INTERNATIONAL AGENCIES

All Parties shall provide the International Committee of the Red Cross (ICRC) and other relevant national and international agencies with information regarding their prisoners of war, abductees or persons detained because of the war, to enable the ICRC and other relevant national and international agencies visit them and verify any details regarding their condition and status before their release.

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The Parties call on the ICRC and such other relevant national and international agencies to give all the necessary assistance to the released persons, including re-location to any part of Liberia.

PART SIX. HUMAN RIGHTS ISSUES

ARTICLE XII. HUMAN RIGHTS

1a. The Parties agree that the basic civil and political rights enunciated in the Declaration and Principles on Human Rights adopted by the United Nations, African Union, and ECOWAS, in particular, the Universal Declaration of Human Rights and the African Charter on Human and People's Rights, and as contained in the Laws of Liberia, shall be fully guaranteed and respected within Liberia.

b. These basic civil and political rights include the right to life and liberty, freedom from torture, the right to a fair trial, freedom of conscience, expression and association, and the right to take part in the governance of one's country.

2a. The Parties agree on the need for the establishment of an Independent National Commission on Human Rights (INCHR).

b. The INCHR shall monitor compliance with the basic rights guaranteed in the present Peace Agreement as well as promote human rights education throughout the various sectors of Liberian society, including schools, the media, the police and the military.

3. The INCHR shall work together with local Liberian human rights and civil society organizations, international human rights organisations and other relevant U.N. agencies to monitor and strengthen the observance of human rights in the country.

4. Technical, financial and material assistance may be sought by the INCHR from the U.N. Office of the High Commissioner for Human Rights (UNHCR), the African Commission on Human and People's Rights and other relevant international organizations.

ARTICLE XIII. TRUTH AND RECONCILIATION COMMISSION

1. A Truth and Reconciliation Commission shall be established to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences, in order to get a clear picture of the past to facilitate genuine healing and reconciliation.

2. In the spirit of national reconciliation, the Commission shall deal with the root causes of the crises in Liberia, including human rights violations.

3. This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.

4. Membership of the Commission shall be drawn from a cross-section of Liberian society. The Parties request that the International Community provide the necessary

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financial and technical support for the operations of the Commission.

PART SEVEN. HUMANITARIAN ISSUES

ARTICLE XIV. HUMANITARIAN RELIEF

1a. The Parties re-affirm the commitment made in the Ceasefire Agreement, to provide security guarantees for safe and unhindered access by all humanitarian agencies to vulnerable groups throughout the country, in order to facilitate the delivery of humanitarian assistance in accordance with international conventions, principles and norms governing humanitarian operations.

b. Accordingly, the Parties agree to guarantee the security and movement of humanitarian personnel, that of their properties, goods transported, stocked or distributed, as well as their projects and beneficiaries.

2. The Transitional Government provided for in this agreement shall ensure the establishment of effective administrative and security infrastructure to monitor and support the implementation of these guarantees contained in sub-paragraph 1b of the present Article XIV.

3. The said Transitional Government shall request the International Community to assist in providing humanitarian assistance for those in need, including internally displaced persons, refugees and returnees.

4. The Parties shall ensure the presence of security guarantees for the safe return and resettlement of refugees and internally displaced persons and the free movement of persons and goods.

ARTICLE XV. INTERNATIONAL HUMANITARIAN LAW

The Parties undertake to respect as well as encourage the Liberian populace to also respect the principles and rules of International Humanitarian law in post-conflict Liberia.

PART EIGHT. POLITICAL ISSUES

ARTICLE XVI. ESTABLISHMENT OF A GOVERNANCE REFORM COMMISSION

1. A Governance Reform Commission is hereby established. The Commission shall be a vehicle for the promotion of the principles of good governance in Liberia.

2. The mandate of the Commission shall be to:

a. Review the existing program for the Promotion of Good Governance in Liberia, with the objective of adjusting its scope and strategy for implementation;

b. Develop public sector management reforms through assessment, reforms, capacity building and performance monitoring;

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c. Ensure transparency and accountability in governance in all government institutions and activities, including acting as the Public Ombudsman;

d. Ensure subsidiarity in governance through decentralisation and participation;

e. Ensure a national and regional balance in appointments without compromising quality and integrity;

f. Ensure an enabling environment which will attract private sector direct investment;

g. Monitor, assess and report to the NTLA on the implementation and impact of activities undertaken to encourage the practice of good governance in Liberia.

3. The Structure of the Commission shall be as follows:

a. The Commission shall be established as an independent Commission with seven (7) permanent members appointed by the Chairman and confirmed by the NTLA, from a list provided by civil society organisations. It shall have a chairperson who must be from the civil society. Its membership shall include women.

b. The members must have experience in one or more of the following: Public Sector Management, Corporate Law, Finance and Auditing Regulations, Trade Policies and NGO activities. They must be men and women of known integrity with national and/or international experience.

4. The Commission shall submit quarterly reports directly to the NTLA who shall make recommendations thereon to the Chairman for action.

5. The NTGL calls on the UNDP, relevant international organisations and the ICGL to provide financial, logistics and technical support for the Commission.

ARTICLE XVII CONTRACT AND MONOPOLIES COMMISSION (CMC)

1. A Contract and Monopolies Commission is hereby established in Liberia to oversee activities of a contractual nature undertaken by the NTGL.

2. Its mandate shall include:

a. Ensuring that all public financial and budgetary commitments entered into by the NTGL are transparent, non-monopolistic and in accordance with the laws of Liberia and internationally accepted norms of commercial practice;

b. Ensuring that public officers will not use their positions to benefit from any contract financed from public funds;

c. Publishing all tenders in the media and on its own website to ensure maximum competition and transparency. The Commission shall also publish on its website the result of tenders as well as a record of all commercial entities that have participated and succeeded in reviewing contracts;

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d. Ensuring the formulation and effective implementation of sound macro-economic policies that will support sustainable development goals;

e. Collaborate with the international institutions to provide finance to Liberia in carrying out its functions

3. a. The Commission shall consist of five (5) members appointed by the Chairman, on the approval of the NTLA, from the broad spectrum of civil society, who may or may not be technocrats.

b. The members shall be persons of sound judgement and integrity who are independent of the commercial sector. The members must have sufficient experience to be able to review contract documents and procedures to ensure that public funds are used without favour and with complete transparency.

c. The members of the CMC shall be assisted by independent national and international experts.

ARTICLE XVIII. ELECTORAL REFORM

1. The Parties agree that the present electoral system in Liberia shall be reformed.

2a. In this regard and amongst other measures that may be undertaken, the National Elections Commission (NEC) shall be reconstituted and shall be independent. It shall operate in conformity with UN standards, in order to ensure that the rights and interests of Liberians are guaranteed, and that the elections are organized in a manner that is acceptable to all.

b. Appointments to the NEC shall be made by the Chairman with the advice and consent of the NTLA within three months from the entry into force of this Agreement. It shall be composed of men and women of integrity.

ARTICLE XIX. ORGANISATION OF ELECTIONS

1. The Parties agree that, given the present circumstances, and until appropriate conditions are met, the Presidential and General elections scheduled for October, 2003 shall be postponed.

2. National elections shall be conducted not later than October, 2005.

3. In order to create appropriate conditions for elections, a re-demarcation of constituencies shall be carried out in order to take account of newly created Counties.

4a. The Parties agree that the Transitional Government provided for in this Agreement shall request the United Nations, the African Union, ECOWAS and other members of the International Community as appropriate, to jointly conduct, monitor, and supervise the next elections in the country.

b. Voters education and registration programs shall be organized by the newly reconstituted NEC, in collaboration with other national and International

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organisations under the supervision of the United Nations.

ARTICLE XX. INTERIM PERIOD

1a. With the exit of the President Charles Taylor of the Republic of Liberia, the GOL shall be headed by the Vice President for an interim period. b. The Vice President shall assume the duties of the current President for a period not beyond 14th October 2003, whereupon the Transitional Government provided for in this Agreement shall be immediately installed.

ARTICLE XXI. ESTABLISHMENT OF A TRANSITIONAL GOVERNMENT

1. An all-inclusive Transitional Government to be called the National Transitional Government of Liberia, (NTGL), is hereby established to replace the present Government of Liberia.

2. The NTGL shall be inaugurated and fully commence operations by 14th October, 2003 and its mandate shall expire on the third Monday of January 2006 when the next elected Government of Liberia shall be inaugurated.

3. Immediately upon the installation of the NTGL in Liberia, all cabinet Ministers, Deputy and Assistant Ministers, heads of autonomous agencies, commissions, heads of public corporations and State-owned enterprises of the current GOL shall be deemed to have resigned. This does not preclude re-appointment according to the appropriate provisions of this Agreement.

4. The authority of the NTGL shall be established and recognised throughout the territory of the Republic of Liberia, immediately upon its installation in Monrovia. The NTGL shall have control over the entire territory of Liberia.

5. The LURD, MODEL, and all irregular forces of the GOL shall cease to exist as military forces, upon completion of disarmament.

6. There shall be no restriction on members of the LURD and MODEL to engage in national politics through the formation of political parties or otherwise, save and except those restrictions imposed on all parties and associations by the relevant laws of Liberia.

ARTICLE XXII. MANDATE OF THE NATIONAL TRANSITIONAL GOVERNMENT OF LIBERIA

1. The primary responsibility of the NTGL shall be to ensure the scrupulous implementation of this Peace Agreement.

2. In addition to normal State functions, its mandate shall include the following:

a. Implementation of the provisions of the Ceasefire Agreement;

b. Overseeing and coordinating implementation of the political and rehabilitation programs enunciated in this Peace Agreement;

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c. Promotion of reconciliation to ensure the restoration of peace and stability to the country and its people;

d. Contribution to the preparation and conduct of internationally supervised elections in October 2005, for the inauguration of an elected Government for Liberia in January 2006.

ARTICLE XXIII. STRUCTURE OF THE NTGL

The NTGL shall consist of three branches, namely:

i. The National Transitional Legislative Assembly (NTLA);
ii. The Executive; and
iii. The Judiciary.

ARTICLE XXIV. THE NATIONAL TRANSITIONAL LEGISLATIVE ASSEMBLY (NTLA)

1. There is hereby established a National Transitional Legislative Assembly (NTLA) in Liberia which shall reflect a broad spectrum of the Liberian society.

2. The NTLA shall be unicameral in nature and shall replace, within the transitional period, the entire Legislature of the Republic of Liberia.

3. The NTLA shall have a maximum of Seventy-six (76) members who shall come from the following entities:

a. Each of the fifteen (15) Counties.

b. The present Government of Liberia, the LURD, MODEL, the Political Parties, Civil Society and Interest Groups including the National Bar Association, the Liberian Business Organisations, Women Organizations, Trade Unions, Teachers Union, Refugees, the Liberians in the Diaspora/America and the Youth.

4. The formula for the composition of the NTLA shall be as follows:

GOL -12 seats LURD -12 seats MODEL -12 seats Political Parties -18 seats Civil Society and Special Interest Groups -7 seats Counties -15 seats

5 a. Selection of members of the NTLA shall be carried out in Liberia and shall be subject to internal consultations amongst the different entities identified in paragraphs 3 and 4 above.

b. The Mediation Committee from the Accra Peace Talks may be present during consultations for the selection of members of the Legislative Assembly and shall ensure that the members of the Assembly meet the criteria prescribed in Appendix 1 to Annex 2

6 a. The NTLA shall elect a Speaker to head the Assembly as well as one (1) Deputy Speaker.

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b. Guidelines for the elections are defined under Annex 2 which is attached to this Agreement and is an integral part of the Peace Agreement.

c. The Speaker and Deputy Speaker within the NTGL shall not contest for any elective office during the 2005 elections.

7. The NTLA shall have responsibility for the following:

a. Assuming responsibility for the country's legislative functions;

b. Approving the policies and programs of the NTGL for implementation by the Cabinet;

c. Encouraging and supporting the emergence of a new democratic space, particularly in the areas of human rights and freedom of expression.

8. Two-thirds (2/3) of members of the NTLA shall form the quorum for meetings of the Assembly.

9. The decisions of the NTLA shall require the approval of at least 51% of the entire membership of the NTLA.

10. The NTLA shall adopt rules of procedure for the conduct of its proceedings.

ARTICLE XXV. THE EXECUTIVE

1. The NTGL shall be headed by a person to be called the Transitional Chairman. The Transitional Chairman shall be assisted by a Transitional Vice-Chairman.

2. Selection of the Transitional Chairman and Vice-Chairman shall be by consensus arising from a process of consultations undertaken by the accredited delegates and observers to the Peace Talks. The selection procedure is defined in Annex 2 to this Agreement.

3. The positions of Chairman and Vice-Chairman shall be allocated to the Political Parties and the Civil Society.

4. The Chairman and Vice-Chairman, as well as all principal Cabinet Ministers within the NTGL shall not contest for any elective office during the 2005 elections to be held in Liberia.

ARTICLE XXVI. THE CABINET

1. The NTGL shall maintain the profile and structure of the Executive Branch of the present Government of Liberia.

2. In addition to the Commissions established by this Agreement, all existing public corporations and autonomous Agencies/Commissions shall operate under the present transitional arrangement, excluding the existing Commissions that have already been referred to under Articles XII and XIII of this Agreement.

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3. The ministers, deputy and assistant ministers, heads of autonomous agencies, commissions, public corporations and state-owned enterprises, who should preferably be technocrats, shall be representatives of a broad cross-section of the Liberian society.

4. Allocation of ministerial positions, deputy and assistant ministerial positions, headship of autonomous agencies, commissions, public corporations and state-owned enterprises shall be made to the Parties to this Agreement through a process of negotiation. The allocations as agreed to by the Parties are contained in Annex 4 attached to the Agreement. Annex 4 is an integral part of this Agreement.

5a. The Parties shall forward to the Transitional Chairman within a period of seven (7) days, the name of one nominee for each position allocated to them.

b. The Transitional Chairman shall within a three (3) day period, forward from the individual list of nominees from the Parties, the candidate for each position, to the NTLA. The NTLA shall, within seven (7) days, confirm or reject the candidate from each of the Parties' list for each position.

c. Where the NTLA is unable to confirm a candidate from any of the Parties' list so submitted, the Chairman shall, following the same procedure as in ëbí above and within three (3) days of receiving notification of non-confirmation from the NTLA, submit other name(s) which shall be obtained for the relevant Parties to the NTLA. The NTLA shall thereafter, within the same seven (7) day period, make a final selection thereon.

6. The mandate of the Cabinet shall include:

a. Implementation of the decisions of the NTGL.
b. Conduct of the usual activities of government ministries.
c. Initiation of policies and recommendation of same to the Transitional Chairman for approval.

7. The Parties call on the United Nations, the ECOWAS, the AU, the International Monetary Fund, the World Bank, African Development Bank and other international institutions in a position to do so, to assign trained personnel and international experts for the purpose of providing technical support and assistance to the NTGL, especially for the functioning of its ministries and parastatals.

ARTICLE XXVII. THE JUDICIARY

1. The Judiciary shall be the third organ of the NTGL. Its structure shall remain unchanged.

2. Immediately upon the installation of the NTGL, all members of the Supreme Court of Liberia i.e. the Chief Judge and all its Associate Justices shall be deemed to have resigned.

3. Under the NTGL, all new judicial appointments shall be made by the Chairman of the NTGL and approved by the NTLA. Nominations for such judicial appointments

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shall be based on a shortlist of candidates for each position recommended by the National Bar Association, including the female lawyers.

4. The Chief Justice and all Associate Justices within the NTGL shall not contest for any elective office during the 2005 elections to be held in Liberia.

ARTICLE XXVIII. NATIONAL BALANCE

The Parties shall reflect national and gender balance in all elective and non-elective appointments within the NTGL.

PART NINE. POST-CONFLICT REHABILITATION AND RECONSTRUCTION

ARTICLE XXIX. INTERNATIONAL ASSISTANCE

1. In view of the recent appointment of the UN Secretary-General's Special Representative in Liberia, the Parties call for the urgent establishment of a consolidated United Nations Mission in Liberia that will have the resources to facilitate the implementation and coordination of the Political, Social, Economic and Security assistance to be extended under this Agreement.

2. The Parties also call on ECOWAS, in collaboration with the UN, AU, EU and ICGL, to set up a monitoring mechanism in the form of an Implementation Monitoring Committee (IMC) in Monrovia that will ensure effective and faithful implementation of the Peace Agreement by all the Parties.

3. The Parties agree on the need for regular joint meetings between this Implementation Monitoring Committee and representatives of the NTGL, in order to assess implementation of the provisions of this Agreement and agree on recommendations for enhanced implementation.

4. The Parties also agree on the need for ECOWAS, in collaboration with the UN, AU and International Community, to organise periodic donor conferences for resource mobilisation for post-conflict rehabilitation and reconstruction in Liberia.

ARTICLE XXX. REFUGEES AND DISPLACED PERSONS

1a. The NTGL, with the assistance of the International Community, shall design and implement a plan for the voluntary return and reintegration of Liberian refugees and internally displaced persons, including non-combatants, in accordance with international conventions, norms and practices.

b. Refugees or internally displaced persons, desirous of returning to their original Counties or permanent residences, shall be assisted to do so.

c. The Parties commit themselves to peaceful co-existence amongst returnees and non-returnees in all Counties.

ARTICLE XXXI. VULNERABLE GROUPS

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1a. The NTGL shall accord particular attention to the issue of the rehabilitation of vulnerable groups or war victims (children, women, the elderly and the disabled) within Liberia, who have been severely affected by the conflict in Liberia.

b. With the support of the International Community, the NTGL shall design and implement a program for the rehabilitation of such war victims.

2a. The NTGL shall, in addition, accord special attention to the issue of child combatants.

b. It shall, accordingly, mobilize resources with the assistance of the International Community, especially in cooperation with the Office of the U.N. Special Representative for Children in Armed Conflict, UNICEF, the African Committee of Experts on the Rights and Welfare of the Child and other relevant agencies, to address their special demobilization and re-integration needs.

3. The NTGL, in formulating and implementing programs for national rehabilitation, reconstruction and development, for the moral, social and physical reconstruction of Liberia in the post-conflict period, shall ensure that the needs and potentials of the war victims are taken into account and that gender balance is maintained in apportioning responsibilities for program implementation.

PART TEN. IMPLEMENTATION OF THE PEACE AGREEMENT

ARTICLE XXXII. RESPONSIBILITY OF THE PARTIES

1. The Parties to this Peace Agreement undertake that no effort shall be spared to effect the scrupulous respect for and implementation of the provisions contained in this Peace Agreement, to ensure the successful establishment and consolidation of lasting peace in Liberia.

2. The Parties shall ensure that the terms of the present Peace Agreement and written orders requiring compliance, are immediately communicated to all of their forces and supporters.

3. The terms of the Agreement shall concurrently be communicated to the civilian population by radio, television, print, electronic and other media. An Implementation Timetable for the Agreement is hereby attached as Annex 3

ARTICLE XXXIII. ROLE OF THE INTERNATIONAL COMMUNITY

The Parties call on ECOWAS, the UN, the African Union and the International Contact Group on Liberia (ICGL), to use their good offices and best efforts to ensure that the spirit and content of this Peace Agreement are implemented in good faith and with integrity by the Parties.

ARTICLE XXXIV. AMNESTY

The NTGL shall give consideration to a recommendation for general amnesty to all persons and parties engaged or involved in military activities during the Liberian civil

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conflict that is the subject of this Agreement.

ARTICLE XXXV. SPECIAL PROVISIONS

1a. In order to give effect to paragraph 8(i) of the Ceasefire Agreement of 17th June 2003 signed by the GOL, the LURD and the MODEL, for the formation of a Transitional Government, the Parties agree on the need for an extra-Constitutional arrangement that will facilitate its formation and take into account the establishment and proper functioning of the entire transitional arrangement.

b. Accordingly, the provisions of the present Constitution of the Republic of Liberia, the Statutes and all other Liberian laws, which relate to the establishment, composition and powers of the Executive, the Legislative and Judicial branches of the Government, are hereby suspended.

c. For the avoidance of doubt, relevant provisions of the Constitution, statutes and other laws of Liberia which are inconsistent with the provisions of this Agreement are also hereby suspended.

d. All other provisions of the 1986 Constitution of the Republic of Liberia shall remain in force.

e. All suspended provisions of the Constitution, Statutes and other laws of Liberia, affected as a result of this Agreement, shall be deemed to be restored with the inauguration of the elected Government by January 2006. All legal obligations of the transitional government shall be inherited by the elected government.

PART ELEVEN

ARTICLE XXXVI. SETTLEMENT OF DISPUTES

Any dispute within the NTGL, arising out of the application or interpretation of the provisions of this Agreement shall be settled through a process of mediation to be organised by ECOWAS in collaboration with the UN, the AU and the ICGL.

ARTICLE XXXVII. ENTRY INTO FORCE

The present Peace Agreement shall enter into force immediately upon its signature by the Parties.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have signed this Agreement.

Done at Accra, this 18th day of the month of August, 2003, in three original texts in the English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF LIBERIA (GOL)
FOR LIBERIANS UNITED FOR RECONCILIATION & DEMOCRACY (LURD)
FOR THE MOVEMENT FOR DEMOCRACY IN LIBERIA (MODEL)
FOR NATIONAL PATRIOTIC PARTY

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FOR UNITY PARTY
FOR LIBERIAN PEOPLE'S PARTY
FOR NATIONAL REFORMATION PARTY
FOR LABOR PARTY
FOR LIBERIA UNIFICATION PARTY
FOR LIBERIAN ACTION PARTY
FOR PEOPLE'S DEMOCRATIC PARTY
FOR NATIONAL DEMOCRATIC PARTY
FOR FREE DEMOCRATIC PARTY
FOR REFORMATION ALLIANCE PARTY
FOR ALL-LIBERIAN COALITION PARTY
FOR TRUE WHIG PARTY
FOR UNITED PEOPLE'S PARTY
FOR LIBERIA NATIONAL UNION
FOR EQUAL RIGHTS PARTY
FOR PROGRESSIVE PEOPLES PARTY
FOR NEW DEAL MOVEMENT

AS WITNESSES:

FOR INTER-RELIGIOUS COUNCIL FOR LIBERIA (IRCL)

FOR THE MANO RIVER WOMEN PEACE NETWORK (MARWOPNET)

FOR LIBERIAN BAR ASSOCIATION

FOR LIBERIANS IN DIASPORA

FOR LIBERIA LEADERSHIP FORUM

FOR CIVIL SOCIETY ORGANISATIONS IN LIBERIA

THE MEDIATOR

FOR ECOWAS

FOR UNITED NATIONS

FOR THE AFRICAN UNION

FOR THE EUROPEAN UNION
CO-CHAIR OF THE INTERNATIONAL
CONTACT GROUP ON LIBERIA

FOR THE REPUBLIC OF GHANA
CO-CHAIR OF THE INTERNATIONAL
CONTACT GROUP ON LIBERIA

Annexes 1 - 4 (pdf* format - 405 KB)

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ANNEX 7

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"Excellent, inexpensive reference work..." AFRIC 2003

UN Says No Amnesty for War Crimes After 8 October

UN Integrated Regional Information Networks
NEWS
November 12, 2003
Posted to the web November 12, 2003
Monrovia

The deputy head of the United Nations Mission in Liberia (UNMIL) said on Wednesday that he had warned the country's warring factions that violations of the August peace agreement would not be tolerated and there would be no amnesty for war crimes committed after 8 October.

The UN deputy Special Representative of the Secretary General to Liberia, Souren Seraydarian, told a news conference: "We want to make it very clear that violations of the Accra peace accord will not be tolerated."

Seraydarian said the warning had been delivered at a meeting of the Joint Monitoring Committee (JMC) on Tuesday, attended by UN Force Commander General Daniel Opande, which discussed ceasefire violations.

The JMC includes representatives of the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) rebel groups, the armed forces of the former government of Charles Taylor and UNMIL. It is mandated to oversee the ceasefire between the warring factions.

Seraydarian warned the belligerents that there would be no amnesty for crimes against humanity committed after October 8 when Liberia ratified the convention on the International Criminal Court.

"The Accra agreement calls for the Truth and Reconciliation Commission.. which is absolutely necessary to maintain peace in the country. However, there will no amnesty for war crimes, for crimes against international humanitarian laws...to which Liberia is a signatory".

He added: "General Opande made it clear to the JMC that if there is a ceasefire violation which leads to violations of international humanitarian law, rape, looting, killing of civilians, those responsible can be brought to the international court."

Last week, heavy skirmishes took place between the remnants of Taylor's army and MODEL rebels in Nimba county, northern Liberia, causing at least 10,000 persons to flea their homes and seek refuge in the town of Saclepea.

Seraydarian told reporters that UNMIL had decided to increase in patrols in northern Liberia to prevent further skirmishes.

He said UNMIL which has only 5,000 troops at the moment, hoped to deploy its soldiers throughout Liberia by February. The force expects to reach its full strength of 15,000 peacekeepers in March.

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