

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
011b. legal brief	re: Possible Extradition of Victor Butt (2 pages)	10/12/2000	P5 1276
011c. paper	re: Proposed Extradition - Victor Bout (3 pages)	10/18/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Gayle Smith et al (African Affairs)
OA/Box Number: 3061

FOLDER TITLE:

Byrne - Victor Butt

Jimmie Purvis
2006-0684-F
jp1829

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

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



OFFICE OF THE CHIEF STATE LAW ADVISER (INTERNATIONAL LAW)
DEPARTMENT OF FOREIGN AFFAIRS

Route ca:000 Hatfield Court, 1052 Arcadia Street, HATFIELD, 0083
Private Bag X152, Pretoria, 0001 Tel: +27 12 351 0857 Fax: +27 12 351 0884

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Ms Laura Joyce
Route bzz002

POSSIBLE EXTRADITION OF VICTOR BUTT

1. Your request for a legal opinion of 12 October 2000, bears reference.
2. Extradition has been defined as "the delivery of an accused or a convicted individual to the state where he is accused of, or has been convicted of a crime, by the state on whose territory he happens for the time to be" (Dugard, J, *International Law: A South African Perspective*, 2000, p 155). It is consequently required that the person to be extradited, is accused of a crime in the state requesting extradition, in other words, it is required that the requesting state has jurisdiction over the crime the person is accused of.
3. It is not clear from the information provided whether Victor Butt has committed an act/s that have been criminalised in South African law and which falls within the jurisdiction of South Africa. However, if his activities in supplying arms to states in Africa have included the exportation of armaments from South Africa, or the conveyance of arms through the Republic from any place outside the Republic to any other place without a permit from the Minister of Defence, he will be guilty of an offence (Sections 4C and 4E of the *Armaments Production and Development Act*, Act No 57 of 1968). Furthermore the *Regulation of Foreign Military Assistance Act*, Act No 15 of 1998, *inter alia*, prohibits the provision of "foreign military assistance" to any state or organ of state, group of persons or other entity or person in a state in armed conflict without the permission of the National Conventional Arms Control Committee. "Armed conflict" as well as "foreign military assistance" have been widely formulated: "armed conflict" includes international wars between the armed forces of states, as well as conflict between the armed forces of a state and dissident armed forces/ groups within the state (like is the case in Angola). "Foreign military assistance" means military services or military-related services, or any attempt, encouragement, incitement or solicitation to render such services, to a party to an armed conflict, in the form of:
 - advice or training;
 - personnel, financial, logistical, intelligence or operational support;
 - personnel recruitment;
 - medical or para-medical services; or

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• the procurement of equipment.

4. We are of the opinion that the acts by Butt and his companies described in the documents provided, will be criminalised by these provisions of the Act, provided that jurisdiction does exist. The Act provides for extraterritorial jurisdiction, and defines a "person" as "a natural person who is a citizen of or is permanently resident in the Republic, a juristic person registered or incorporated in the Republic and any foreign citizen who contravenes any provision of this Act within the borders of the Republic". It follows that if Butt, according to our knowledge a Russian citizen, acted wholly outside the Republic, no jurisdiction, and consequently no basis for extradition, will exist.
5. There is no general duty to extradite in international law (Dugard, *op cit*) and consequently states enter into agreements obligating them to extradite. In the absence of an agreement, a state can extradite in terms of domestic legislation, but such action would then be discretionary. It is consequently important to establish whether an extradition treaty exists between the Republic and the state that Butt finds himself in. A requirement for extradition, also often incorporated into extradition agreements, is the principle of double criminality, which requires that the conduct claimed to constitute an extraditable offence should constitute a crime in both the requesting and requested states. This may present a problem with regard to acts in terms of the *Regulation of Foreign Military Assistance Act*, as this act is fairly unique in the world.
6. As far as we are aware, NICOC has established a subcommittee to focus on the implementation of this Act. The National Prosecuting Agency makes the final decision on whether a prosecution is likely to be successful.

ANDRE STEMMET
SENIOR STATE LAW ADVISER (IL)

PRETORIA
12 OCTOBER 2000

