

# **APPENDIX**

# **Appendix A**

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### Viewing cable 06ROME1590, ITALY: NEW UNDERSECRETARY TO THE PM CALLS

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| Reference ID | Created          | Released         | Classification | Origin       |
|--------------|------------------|------------------|----------------|--------------|
| 06ROME1590   | 2006-05-24 15:43 | 2011-08-30 01:44 | SECRET         | Embassy Rome |

VZCZCXRO6257  
OO RUEHFL RUEHNP  
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ZNY SSSS ZZH  
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FM AMEMBASSY ROME  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 4905  
INFO RUEHXP/ALL NATO POST COLLECTIVE PRIORITY  
RUEHFL/AMCONSUL FLORENCE PRIORITY 1430  
RUEHML/AMCONSUL MILAN PRIORITY 7148  
RUEHNP/AMCONSUL NAPLES PRIORITY 1500  
RUEKJCS/SECDEF WASHDC PRIORITY  
RUEKJCS/JOINT STAFF WASHDC PRIORITY  
RHMFISS/HQ USEUCOM VAIHINGEN GE PRIORITY  
RHMFISS/HQ USCENTCOM MACDILL AFB FL PRIORITY

S E C R E T SECTION 01 OF 02 ROME 001590  
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DEPT. FOR EUR/WE, NEA, SA  
E.O. 12958: DECL: 05/23/2016  
TAGS: PREL NATO MOPS IZ IN IT  
SUBJECT: ITALY: NEW UNDERSECRETARY TO THE PM CALLS  
RELATIONSHIP WITH U.S. "ESSENTIAL;" SAYS ITALY WILL BE  
SUPPORTIVE ON ISRAEL, WILL STICK WITH EU ON IRAN  
Classified By: AMBASSADOR RONALD SPOGLI. REASONS 1.4 B AND D.

#### Summary

¶1. (C) Ambassador paid an introductory call May 23 on the new Undersecretary to the Prime Minister Enrico Letta (nephew of Berlusconi U/S Gianni Letta). Letta, a 1988 IV grantee and VP of Aspen Italy, has a very positive view of the U.S. and said he considers Italy's relationship with the U.S. essential. Letta told the Ambassador he thought Italy would be supportive of U.S. positions on Israel and the Palestinians, that on Iran Italy would adhere to the EU position, and that he believed U.S. basing in Italy was a positive factor. On the economic side, he was interested in the Ambassador's ideas on a partnership for growth. End Summary.

¶2. (C) On May 23, Ambassador paid an introductory call on Undersecretary to the Prime Minister Enrico Letta. Letta told the Ambassador that he and Prime Minister Prodi both considered former Defense Minister Andreatta their mentor, and this common bond was a basis for their extremely good relationship. Letta visited 10 U.S. states in 1988 during the presidential election campaign on a USIS International Visitor program, and serves as Vice President of the Aspen Institute's Italy chapter. He has attended the Institute's August program in Aspen each of the past few years. He described himself as very pro-U.S. and said he considered the U.S.-Italy relationship essential. He and the Ambassador agreed to remain in close contact.

#### Warrants

¶3. (S) In the context of keeping our excellent bilateral relationship on sound footing, the Ambassador explained to Letta that nothing would damage relations faster or more seriously than a decision by the GOI to forward warrants for arrests of the alleged CIA agents named in connection with the Abu Omar case. This was absolutely critical. Letta took note of this and suggested the Ambassador discuss the matter personally with Justice Minister Mastella, who Letta suggested should be invited to Washington for an early meeting with the Attorney General.

Iraq, Iran, Israel

¶4. (C) Turning to Iraq, the Ambassador told Letta, as he had told FM D'Alema, that PM Prodi's statements on Iraq before

the senate last week had become a serious point of contention in Washington. The U.S. was moving forward, not looking back at what happened three years ago. To harken back to 2003 as a grave error, as Prodi did last week, damaged the good will that had been built up by the Amato visit to Washington and the Volker visit to Rome. The Ambassador urged that senior Italian leaders think carefully about their words and avoid such confrontational language if possible. Letta agreed that they should make an effort to do so.

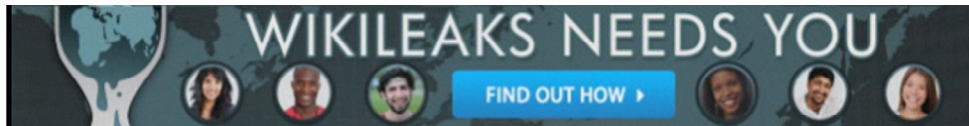
¶5. (C) The Ambassador asked Letta, given Italy's significant economic interests with Tehran, where he thought Italy would stand regarding sanctions if the international discussion of the Iran situation headed in that direction. The Ambassador added that the U.S. would count on Italy to take a firm position against Iranian intransigence. Letta replied that Italy would stick with the EU position on Iran. The Ambassador also noted that we would look to Italy to stand with us on the Israel-Palestinian conflict. Letta replied he thought Italy would be supportive.

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Labor and Economics  
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¶6. (C) Letta said that the PM's office had been "getting heat" from the far left about labor disputes at Camp Darby (a ROME 00001590 002 OF 002 military base near Pisa where the U.S. Army is currently conducting a RIF of local employees). Letta said that he and many others believe the U.S. basing presence in Italy is a force for good, and suggested that anything the Ambassador could do to soften the blow of the RIFs at Camp Darby would be welcome.

¶7. (C) Letta, an economist by profession, described himself as one of the few in the new government trying to preserve what labor flexibility there was in the Italian system. He expressed interest in the Ambassador's ideas on a partnership for growth and welcomed future contact with the Embassy on this matter.

SPOGLI



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### Viewing cable 06MADRID2657, SPAIN: UPDATE ON KEY TERRORISM-RELATED CASES

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| Reference ID | Created          | Released         | Classification | Origin         |
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| 06MADRID2657 | 2006-10-20 12:58 | 2011-08-30 01:44 | CONFIDENTIAL   | Embassy Madrid |

VZCZCXRO5703  
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ZNY CCCCC ZZH  
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FM AMEMBASSY MADRID  
TO RUEAWJA/DEPT OF JUSTICE WASHDC IMMEDIATE  
RUEHC/SECSTATE WASHDC IMMEDIATE 1094  
INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY  
RUEHLA/AMCONSUL BARCELONA PRIORITY 2166  
RUEAIIA/CIA WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 03 MADRID 002657

SIPDIS

SIPDIS

E.O. 12958: DECL: 10/19/2016  
TAGS: PHUM PREL PTER SP  
SUBJECT: SPAIN: UPDATE ON KEY TERRORISM-RELATED CASES

REF: A. MADRID 1914  
B. MADRID 1799  
C. MADRID 2374

MADRID 00002657 001.2 OF 003

Classified By: A/DCM Kathleen Fitzpatrick for Reasons 1.4 (B) and (D)

¶1. (C) Summary: In advance of the October 24 visit to Madrid of US Attorney General Alberto Gonzalez, Post presents a brief update on several of the most important pending or recently completed terrorism or criminal cases in the Spanish judicial system. Spain has made great strides in disrupting terrorist cells and frustrating would-be terrorist plots and we remain pleased with Spain's counter-terrorism cooperation. However, its national prosecutors continue to have difficulty building cases that can stand up in the courts and recent Spanish Supreme and national court decisions freeing alleged Al-Qaeda suspects are an important factor to consider as we pursue improved judicial cooperation with Spain. End Summary.

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High-profile Al-Qaeda Suspects  
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¶2. (SBU) Spain's National Court on October 11 acquitted Lahcen Ikassrien after finding insufficient evidence that he was a member of either Al-Qaeda or of the Abu Dahdah terror cell in Spain, or that he fought alongside the Taliban in Afghanistan. Ikassrien is a Moroccan national and former Guantanamo detainee transferred to Spanish custody in July ¶2005. The court refused to admit any prosecution evidence that was obtained during his detention in Guantanamo or any information gleaned from intercepted phone calls in Spain. Post advised in Reftel A that this might occur, due to the unfortunate similarities the Ikassrien case had with that of accused terrorist Hamed Abderrahaman Ahmed, known in the media as the "Spanish Taliban." As reported in Reftel A, the Spanish Supreme Court announced on July 24 that it had annulled the six-year prison sentence handed down to Abderrahaman in September 2005 by Spain's national court. The court found that Spanish prosecutors could not use any evidence collected during their interrogation of Abderrahaman while he was being held at Guantanamo under conditions the court termed, "impossible to explain, much less justify." The Spanish prosecutor in the Ikassrien case had sought an eight-year jail sentence for the accused and tried unsuccessfully to build a case against Ikassrien that

excluded evidence obtained in Guantanamo, noting publicly that Spanish authorities had obtained more than enough evidence of Ikassrien's membership in the Abu Dahdah terror cell prior to his stay in Guantanamo. It is unclear whether Ikassrien can be tried on any other terror-related charges.

¶3. (SBU) In a separate case, Spanish authorities on October 3 released Taysir Alony, who in September 2005 was sentenced to seven years in prison for membership in Al-Qaeda, for humanitarian reasons stemming from a serious heart problem. The Spanish Ministry of Interior is forcing Alony to wear a locator bracelet and monitoring his activities.

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CIA Flights and Prisons  
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¶4. (SBU) Despite President's Bush recent announcement that there are no longer any terrorist suspects held in "secret prisons," this issue continues to dominate press headlines in Spain. On the front page of its October 15 edition, leading Spanish daily El Pais reported that the founder of Al-Qaeda in Spain has been in a "secret CIA prison" for a year. Sensational headlines in the Spanish press continue to claim that Syrian-born Spanish national named Mustafa Setmariam was turned over to the US by Pakistan authorities at the end of ¶2005. The press reporting claims that Setmariam sowed the seeds of Jihad in Spain during the 1980s, but that the Spanish national court cannot request his extradition because he has not been officially arrested.

¶5. (SBU) Along similar lines, and as we reported in REFTELS B and C, the CIA flights inquiry remains a hot discussion topic in Spain. On October 9, German national Khaled al-Masri testified for three hours in a Spanish national court and claimed that he was kidnapped and tortured by CIA officers during five months in 2004. He said he was taken from Macedonia to Kabul on a flight that he believed could have stopped in Palma de Mallorca. Al-Masri said he would not be able to identify any members of the crew on board the flight from Macedonia, but he would be able to recognize some of those who interrogated him in Kabul. As noted in Reftel C, post continues to be concerned that Judge Moreno, the

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Spanish judge involved in this case, as part of Spain's highly independent judiciary, may determine that Spanish law allows him to claim "universal jurisdiction" on cases involving alleged torture and abuse. Such a determination may provide him the authority to adjudicate events that transpired in a third country if it is proven that related events occurred in Spain. Spanish government officials, including President Zapatero, continue to maintain their firm public stance that the flights did not violate any Spanish laws. However, Foreign Minister Moratinos expressed concern in front of the EU Parliament last month that, "our territory could have been used not to commit any offense, but as a stop-over to commit them in other countries." Moratinos has also urged the European Union to more vigorously investigate the presence of secret CIA prisons in other European countries. Spanish press reports that Judge Moreno in the near future will allow the national prosecutor to call other witnesses, including the airport authorities of Palma de Mallorca and the aircraft handling services.

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Madrid Train Bombings  
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¶6. (C) Despite the passage of more than two and a half years since the Madrid train bombings occurred on March 11, 2004, and the near universal acceptance by the Spanish public and terrorism experts that they were perpetrated by Al-Qaeda sympathizers with the goal to punish Spain for its participation in the Iraq War, a segment of the opposition Popular Party (PP) and the newspaper El Mundo continue to allege a Socialist party conspiracy and cover up and claim that the Basque terrorist group ETA had some link with the March 11 attacks. The highly-charged political clash over the Madrid bombing investigation has heightened the climate of bad blood between the opposition PP and the ruling Socialist government and has greatly hindered the pace of the government's prosecution of the attacks. Spain is currently holding 29 individuals for their alleged connection to the bombings and prosecutors plan to charge these individuals with 191 counts of murder and 1,755 counts of attempted murder. The Spanish National Court has recently rejected various appeals from the accused and said that the trials, scheduled to begin in February 2007, may proceed. The National court in late September asked the Spanish Ministry

of Justice to send an extradition request to Italy to bring Rabei Osman el-Sayed, known as "Muhammad the Egyptian," temporarily to Spain to face trial in connection with the Madrid bombings.

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The Detergent Command  
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¶7. (SBU) In a separate case pending before Spanish courts, the national prosecutor will seek a total of 142 years in prison for six Islamists arrested in January 2003 in Barcelona and Girona. These individuals are known in the press as "The Detergent Command," due to their possession of large quantities of detergents that police believe were to serve as ingredients for explosive devices. According to the prosecutor, these individuals were preparing a terrorist attack against a military base in the south of Spain, which may have been the base at Rota that the US shares with the Spanish navy and air force. The prosecutor will seek 32 years for Muhammad Tahraoui, alleged leader of the Detergent Command, and 22 years each for his alleged accomplices, Muhammad Amine BenaMoura, Ali Kaouka, Ismail Boudjelthia, Muhammad Nebbar and Shuil Kouka.

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The Couso Case  
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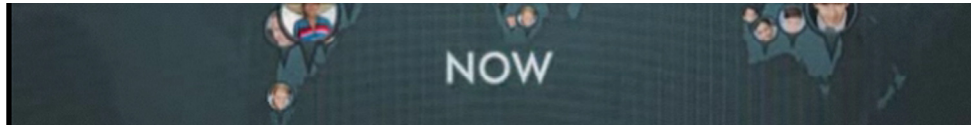
¶8. (SBU) Although not related to terrorism, the case of Jose Couso--the Spanish television cameraman killed in Baghdad in April 2003 during a firefight between US forces and Saddam's army--may return to national prominence after a British inquest earlier this month implicated US soldiers in the death of a British journalist in southern Iraq in March 2003. Couso's death sparked protests in a country that was vehemently against the Iraq invasion and friends and relatives of Couso have tried for years to bring a wrongful death case against the US soldiers of the Third Infantry Division involved in the firefight. The Spanish national court in March 2006 claimed it had no jurisdiction and refused to hear the case, but Couso supporters appealed to the Spanish Supreme Court the following month and we are still awaiting the high court's ruling. Although we have yet to see any Spanish reaction to the findings of the British

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inquest, there is a possibility that Couso's family and their supporters will increase pressure on the Spanish Supreme Court to allow charges to be brought against the US soldiers.

¶9. (C) Comment: Spain is a serious and committed partner in our global war on terror and we remain pleased with the efforts of Spanish law enforcement, intelligence and judicial organizations to combat the Islamic extremist threat. However, Spanish police, prosecutors, and magistrates building legal cases against disparate and amorphous terror cells are struggling to develop evidence sufficient enough to meet the high threshold set by the Spanish courts. Spain has a highly independent judiciary that carefully guards this independence (a major achievement of the post-Franco era), and this is an important factor to consider as we pursue increased judicial cooperation with Spain in terrorism cases. Nonetheless, some of the recent Supreme and national court decisions can clearly be seen as a criticism of US detainee policies in Guantanamo that are highly unpopular among the Spanish. Embassy Madrid looks forward to using next week's visit of Attorney General Gonzalez and his delegation to engage Spanish government officials on a range of important legal and judicial issues to encourage them to take an even more active role in the fight against global terrorism.  
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### Viewing cable 06BERLIN3296, NGO FILES ANOTHER LEGAL COMPLAINT AGAINST SENIOR

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FM AMEMBASSY BERLIN  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 6084  
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DEPT FOR EUR/AGS AND L/LEI (KPROPP)  
DOJ FOR THE OFFICE OF THE ATTORNEY GENERAL (BSWARTZ)  
E.O. 12958: DECL: 11/14/2016

TAGS: KJUS KMDR PREL GM

SUBJECT: NGO FILES ANOTHER LEGAL COMPLAINT AGAINST SENIOR  
U.S. OFFICIALS

REF: 05 BERLIN 2311 AND PREVIOUS

Classified By: Deputy Chief of Mission John M. Koenig for Reasons 1.4 ( b) and (d)

¶1. (C) Summary. The Justice Ministry confirmed that a German lawyer for the Center for Constitutional Rights (CCR), a New York-based NGO, filed a 380 page legal complaint via email November 14 with the German Federal Prosecutor General in Karlsruhe. The complaint requests the Federal Prosecutor indict Defense Secretary Rumsfeld, Attorney General Gonzales, former DCI Tenet, and other senior U.S. officials for alleged "war crimes" at Abu Ghraib and Guantanamo. The action by the CCR, the International Federation for Human Rights (FIDH) and the Republican Attorney's Association is, according to the CCR release, being brought on behalf of 11 Iraqis reportedly mistreated in Abu Ghraib prison and a Saudi detained in Guantanamo. The Ministry of Justice official said the length of the document, plus the additional materials a German attorney filed in support of the complaint, mean that it will take the Prosecutor General's office considerable time to review it and that the Prosecutor is not likely to be able to comment publicly on it for at least four weeks. As reported in reftels, CCR has previously filed complaints with the German Federal Prosecutor, who dismissed all of them. Emboffs have spoken with Chancellery and Foreign Ministry officials as well to alert them to the issue and to express our concerns. End Summary.

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PROSECUTOR TO REVIEW CCR COMPLAINT  
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¶2. (C) Edgar Radziwill, Ministry of Justice Office Director for Law Relating to Crimes against the State, Law of Immunity, and Military Commission Law, confirmed to Emboff November 14 that the Federal Prosecutor in Karlsruhe received a 380-page legal complaint from CCR via email through CCR's German attorney Wolfgang Kaleck. Radziwill said CCR informed the Federal Prosecutor that CCR was sending via regular mail a printed version of the legal complaint along with additional supporting documents. Radziwill added Kaleck had been involved in CCR's previous efforts to seek indictments of senior U.S. military and government officials. Radziwill said the Federal Prosecutor would have no public reaction to the CCR filing for at least four weeks. He stated that numerous factors account for the length of time the Federal

Prosecutor will require, including the number of pages CCR submitted, the wait before the arrival of the supporting documents, and the fact that some of the documents are in English and will need to be translated. Commenting on the issues CCR raises in its documents, Radziwill said the allegations over possible actions in Abu Ghraib were not new and that the Federal Prosecutor had already thoroughly reviewed them in connection with the previous (and failed) initial motions. Radziwill indicated it appeared CCR also had made allegations regarding Guantanamo, but it was unclear whether they were new.

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 CCR CLAIMS NEW INFORMATION, NEW CIRCUMSTANCES IN NEW COMPLAINT  
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¶3. (SBU) According to the CCR's website, they will argue several new developments merit the German Federal Prosecutor's reconsideration of their request for an indictment, notwithstanding the Federal Prosecutor's previous rejection of CCR petitions (rejections which German courts subsequently agreed were appropriate use of the Prosecutors' discretion whether or not to proceed with an investigation and indictment). The CCR claims the Military Commissions Act of 2006 grants immunity to U.S. officials, thereby undercutting the German Federal Prosecutor's previous statement that the U.S. justice system was conducting investigations. The CCR also claims they have new defendants, new evidence -- including the testimony of former U.S. Brigadier General Janis Karpinski -- and that Secretary Rumsfeld's resignation announcement lifts his sovereign immunity.

¶4. (U) The CCR lists the following as "defendants in the case"

- Donald Rumsfeld, Secretary of Defense
- George Tenet, Former CIA Director
- Dr. Stephen Cambone, Undersecretary of Defense for Intelligence
- Lieutenant General Ricardo Sanchez
- Major General Walter Wojdakowski
- Major General Geoffrey Miller
- Colonel Thomas Pappas
- Alberto R. Gonzales, Attorney General and Former Chief White House Counsel
- General Jay Bybee, Former Assistant Attorney
- John Yoo, Former Deputy Assistant Attorney General
- William James Haynes, II, General Counsel of the Department of Defense
- David S. Addington, Vice President Chief Counsel

¶5. (C) The DCM spoke with the Chancellery's North America Director, Geza von Geyr, to express concern over the proceedings. EMIN also contacted the MFA's North America Director to express concern. The MFA Director said he had already been in contact with the MFA's legal department and that they were aware of the issue. The initial MFA sense was that, while "anyone can file," the U.S. has full rule of law and an advanced legal system. The public prosecutor, he continued, would likely find the group could file a complaint and receive justice in the U.S and there is no need to file in Germany. His informal sense was that the NGO, which has connections to the U.S., was "court-shopping" in coming to Germany. We noted, however, that while there was a body of precedent, that did not guarantee that the judiciary would proceed the same way this time and so we continued to see reasons for concern.

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 BACKGROUND  
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¶6. (SBU) The German Federal Code of Crimes against International Criminal Law (CCAIL), enacted on June 30, 2002 is the German domestic legislation implementing the Rome Statute establishing the International Criminal Court. The CCAIL codifies genocide, crimes against humanity, and war crimes in domestic German criminal law. It also permits prosecutions in Germany for these crimes regardless of the nationality of the accused and/or the place of the alleged crime. German courts have invoked -- rarely -- the concept of universality for crimes such as genocide, trafficking in persons, drug trafficking, and forgery. The CCAIL expands the category of offenses with no connection to Germany that may be prosecuted in Germany. The Federal Prosecutor leads investigations and decides whether or not to indict in cases of alleged crimes under the CCAIL. Individuals or groups can send legal complaints to the Federal Prosecutor to seek an indictment. These complaints can trigger a preliminary investigation. The "legality principle" requires the Federal Prosecutor to conduct an objective investigation to fully develop facts and evidence and to determine if sufficient evidence exists to indict. The Federal Prosecutor has some discretion in making a decision:

- The CCAIL allows the Prosecutor to decline to prosecute a non-German national for an offense if the crime was committed in a foreign country and if the accused is not residing, nor expected to reside, in Germany. This measure is designed to limit the broad universal jurisdiction of the CCAIL.

- The Federal Prosecutor can use discretion not to indict in cases that affect German "national interests."

- The Federal Prosecutor, even if initially agreeing to pursue the complaint, may decide to drop the complaint for lack of evidence.

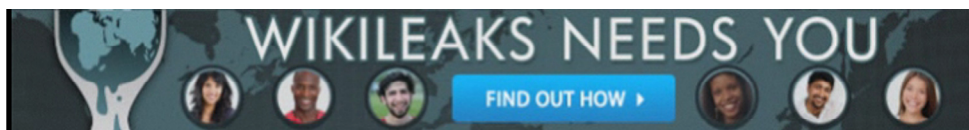
- The Federal Prosecutor may decide not to indict if the accused is currently being tried by an international court, by the state in which the offense was committed, or by the state of citizenship of the accused, or if the transfer of the case to an international court or extradition to the prosecuting state is permissible and is intended.

¶7. (SBU) The Federal Prosecutor formally is part of the executive branch and under the general oversight of the Federal Justice Minister. In reality, the Minister does not direct the activities of the Federal Prosecutor and the German public regards the Prosecutor as independent. Also, even if the Federal Prosecutor chooses not to indict, complainants can challenge the Federal Prosecutor's decision in court.

¶8. (SBU) Individuals and groups in past years have filed numerous complaints under the CCAIL with the Federal Prosecutor seeking the indictment of prominent U.S. and German officials, including President Bush and former Chancellor Schroeder and members of their cabinets. Recent complaints against U.S. officials centered around the war in Iraq; complainants also alleged German officials "aided and abetted" U.S. actions. The Federal Prosecutor has dismissed all these complaints. Complainants have gone to court to force the Federal Prosecutor to open an indictment, but in all cases German courts have upheld the Federal Prosecutor's decision not to indict.

¶9. (SBU) Mission will remain focused on the proceedings and report any developments. The Ambassador is scheduled to meet Justice Minister Zypries November 17 and the DCM will meet Justice Ministry State Secretary Diwell November 22. We intend to raise the legal complaint and ask how the German Government will handle the situation.

TIMKEN JR



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### Viewing cable 06MADRID3104, SPAIN/CIA FLIGHTS: PLAINTIFFS DEMAND 13 USG

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| Reference ID | Created          | Released         | Classification | Origin         |
|--------------|------------------|------------------|----------------|----------------|
| 06MADRID3104 | 2006-12-28 14:01 | 2011-08-30 01:44 | CONFIDENTIAL   | Embassy Madrid |

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TO RUEHC/SECSTATE WASHDC PRIORITY 1521  
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RUEHBUL/AMEMBASSY KABUL PRIORITY 0058  
RUEHSQ/AMEMBASSY SKOPJE PRIORITY 0128  
RUEHLA/AMCONSUL BARCELONA PRIORITY 2314

C O N F I D E N T I A L SECTION 01 OF 02 MADRID 003104

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E.O. 12958: DECL: 12/27/2016  
TAGS: PGOV PREL PTER SP  
SUBJECT: SPAIN/CIA FLIGHTS: PLAINTIFFS DEMAND 13 USG  
OFFICIALS BE NAMED AS SUSPECTS

REF: A. MADRID 02657

ⓑ. MADRID 02374

ⓒ. MADRID 01799

MADRID 00003104 001.2 OF 002

Classified By: DCM Hugo Llorens; reason 1.4 (D)

¶1. (U) The Mallorcan "Free Association of Attorneys" and a group of Mallorcan professionals filed a motion calling upon National Court Judge Ismael Moreno to name 13 presumed USG officials as suspects in connection with the transit of a CIA flight that stopped in Palma de Mallorca in January 2004. The attorney's association and the Mallorcan professionals are the plaintiffs in a suit alleging torture, kidnapping, and illegal detention on the part of the CIA (Refs A, B, and C). (NOTE: Under Spanish law, an association of individuals can file charges against a defendant in a criminal case even if they were not directly affected by the actions of the defendant. For example, the "Association of Victims of Terrorism" has routinely used this mechanism to press charges against figures connected to ETA terrorist acts. END NOTE).

¶2. (U) The plaintiffs drew the names from a report prepared by Spain's Civil Guard in 2005 regarding the occupants of a Boeing 737 with tail number N313P. The Civil Guard investigation was requested by the local court in Mallorca where the plaintiffs originally filed their case. The plaintiffs claim that this particular aircraft participated in the extraordinary rendition of German national Khaled el Masri in Macedonia after departing from Spanish territory. The names of the alleged occupants include:

- James Fairing
- Jason Franklin
- Michael Grady
- Lyle Edgard Lumsden III
- Eric Fair
- Bryam Charles
- Kirk James Bird
- Walter Richard Gressbore
- Patricia Rilroy
- Jane Payne
- James O'Hale
- John Decker
- Hector Lorenzo

¶3. (U) Press reports indicate that at least five of the

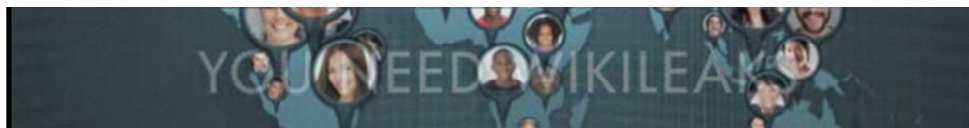
persons named in the suit held U.S. diplomatic passports. In order for the plaintiff's demand to proceed, it must be supported by National Court Prosecutor Vicente Gonzalez Mota and approved by Judge Moreno. Gonzalez has not yet indicated whether he will support the plaintiff's request. He and Judge Moreno previously denied plaintiff's demands that the National Court request a report on the CIA flights from the U.S. Embassy in Madrid or other USG authorities. However, Judge Moreno has already entered into evidence the October 9 testimony of Khaled el Masri as well as telephone logs from the Gran Melia Victoria hotel and the Marriot Son Antem in Palma de Mallorca where the crew of the aircraft in question stayed during their stopovers in Mallorca. (NOTE: el Masri testified before the National Court that he was kidnapped and tortured by the CIA for five months in 2004, but acknowledged that could not identify the individuals who transported him from Macedonia to Afghanistan, nor could he demonstrate that the aircraft that transported him was the same the same aircraft identified in the Mallorca suit. END NOTE). The National Court has also requested the testimony of prosecutors from Milan and Munich regarding the kidnapping of el Masri in Macedonia and Egyptian national Abu Omar in Italy.

//COMMENT//

¶4. (C) It is possible that this case could eventually result in an official request to the USG by the National Court for information related to this aircraft and the personnel on the aircraft. While the Spanish Government has maintained that no crimes were committed in Spanish territory, the Spanish courts, including Judge Moreno, have asserted universal jurisdiction in cases involving torture, including in third countries. The National Court Prosecutor in this case, Vicente Gonzalez, is well known to us as Spain's liaison to the Embassy for the work of the Bilateral Counter Terrorism Experts Working Group. We find him to be an engaging and helpful colleague and anticipate that he will be sensitive to the Spanish Government's preference that this case not proceed. However, we have already seen in similar cases that Spanish judges fiercely guard their independence and are willing to break new ground on issues of jurisdiction. If Judge Moreno were to determine that there was sufficient

MADRID 00003104 002.2 OF 002

evidence that a crime had been committed and that perpetrators could be identified, he would forward the case to a panel of trial judges. We will continue to track and report on developments in this case.  
AGUIRRE



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### Viewing cable 07BERLIN242, AL-MASRI CASE -- CHANCELLERY AWARE OF USG CONCERNS

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| Reference ID | Created          | Released         | Classification | Origin         |
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| 07BERLIN242  | 2007-02-06 17:48 | 2011-08-30 01:44 | SECRET//NOFORN | Embassy Berlin |

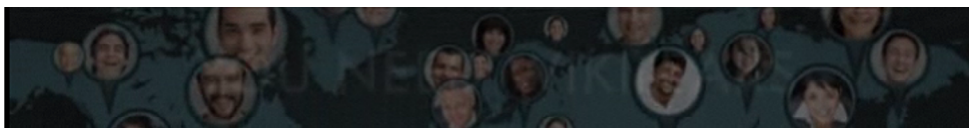
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TO SECSTATE WASHDC IMMEDIATE 6940

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E.O. 12958: DECL: 02/06/2017  
TAGS: KJUS PTER PREL PGOV GM  
SUBJECT: AL-MASRI CASE -- CHANCELLERY AWARE OF USG CONCERNS  
REF: A. BERLIN 230  
B. BERLIN 200

Classified By: DCM John M. Koenig for Reasons 1.4 (b) and (d)  
¶1. (S/NF) In a February 6 discussion with German Deputy National Security Adviser Rolf Nickel, the DCM reiterated our strong concerns about the possible issuance of international arrest warrants in the al-Masri case. The DCM noted that the reports in the German media of the discussion on the issue between the Secretary and FM Steinmeier in Washington were not accurate, in that the media reports suggest the USG was not troubled by developments in the al-Masri case. The DCM emphasized that this was not the case and that issuance of international arrest warrants would have a negative impact on our bilateral relationship. He reminded Nickel of the repercussions to U.S.-Italian bilateral relations in the wake of a similar move by Italian authorities last year.  
¶2. (S/NF) The DCM pointed out that our intention was not to threaten Germany, but rather to urge that the German Government weigh carefully at every step of the way the implications for relations with the U.S. We of course recognized the independence of the German judiciary, but noted that a decision to issue international arrest warrants or extradition requests would require the concurrence of the German Federal Government, specifically the MFA and the Ministry of Justice (MOJ). The DCM said our initial indications had been that the German federal authorities would not allow the warrants to be issued, but that subsequent contacts led us to believe this was not the case.  
¶3. (S/NF) Nickel also underscored the independence of the German judiciary, but confirmed that the MFA and MOJ would have a procedural role to play. He said the case was subject to political, as well as judicial, scrutiny. From a judicial standpoint, the facts are clear, and the Munich prosecutor has acted correctly. Politically speaking, said Nickel, Germany would have to examine the implications for relations with the U.S. At the same time, he noted our political differences about how the global war on terrorism should be waged, for example on the appropriateness of the Guantanamo facility and the alleged use of renditions.  
¶4. (S/NF) Nickel also cited intense pressure from the Bundestag and the German media. The German federal Government must consider the "entire political context," said Nickel. He assured the DCM that the Chancellery is well aware of the bilateral political implications of the case, but added that this case "will not be easy." The Chancellery would nonetheless try to be as constructive as possible.  
¶5. (S/NF) The DCM pointed out that the USG would likewise have a difficult time in managing domestic political implications if international arrest warrants are issued. He reiterated our concerns and expressed the hope that the Chancellery would keep us informed of further developments in the case, so as to avoid surprises. Nickel undertook to do so, but reiterated that he could not, at this point "promise that everything will turn out well."  
TIMKEN JR





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### Viewing cable 07ROME710, ITALY: FM D'ALEMA ON KOSOVO, AFGHAN NGO DETAINEE,

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| Reference ID | Created          | Released         | Classification | Origin       |
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| 07ROME710    | 2007-04-06 10:09 | 2011-08-30 01:44 | SECRET//NOFORN | Embassy Rome |

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RUEHGG/UN SECURITY COUNCIL COLLECTIVE PRIORITY  
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TAGS: PREL NATO UNSC EUN IT  
SUBJECT: ITALY: FM D'ALEMA ON KOSOVO, AFGHAN NGO DETAINEE,  
MEPP, LEBANON, IRAN SANCTIONS, GUANTANAMO AND ABU OMAR  
REF: A. STATE 36991  
B. STATE 37005  
C. STATE 41871  
D. STATE 42573  
E. ROME 625  
F. ROME 702  
Classified By: AMBASSADOR RONALD SPOGLI, REASONS 1.4 B AND D.

#### SUMMARY

¶1. (C/NF) Amb. Spogli got FM D'Alema's agreement to make a clear statement in support of the Athisaari plan for Kosovo and was told that the FM did not think he could or should control an Italian NGO threatening to close its hospitals in Afghanistan unless one of its employees was released by the Afghan Government. During an April 5 tour d'horizon, the Ambassador and FM also discussed Iran sanctions (D'Alema said Italy was applying the rules thoroughly), the Middle East peace process (D'Alema worried the Israelis and Palestinians would miss an opportunity for progress), Lebanon (where everything but UNIFIL is at an impasse, according to the FM), and the Abu Omar case. The Ambassador briefed D'Alema on the request that Italy consider taking some Guantanamo detainees to help speed the closure of the facility. D'Alema said trying to close Guantanamo was a noble step and that if Italy could help, it would try to do so (see also septel on Guantanamo). End Summary.  
Afghanistan and Emergency Now

¶2. (C/NF) On April 5, Ambassador Spogli and Foreign Minister D'Alema discussed key issues on the foreign policy agenda. The Ambassador raised concerns about the statements of Gino Strada, head of the Italian NGO Emergency Now, who was



threatening to close his hospitals in Afghanistan unless the Afghan Government released one of his staff being held for possible terrorist affiliations. The Amb. said such an unwelcome step would be punishing the Afghan people and asked if D'Alema could help get Strada to stop making threats. D'Alema replied that he had spoken with Strada, who told him that if his employees are going to be arrested in Afghanistan, he would move his operations to a country that doesn't arrest his staff. D'Alema told the Amb. that all sides needed to show flexibility and that if the Afghan Government had evidence against the individual being held, it should be shared. D'Alema noted that Italy was grateful to the U.S. Embassy in Kabul for helping secure Red Cross access to the detained individual. Then, somewhat exasperated, he said, "Strada is who he is. He runs an NGO. He is not part of the Italian Government. He says they cannot work in Helmand without having contact with the Taliban. He thinks the Taliban have the legitimate support of the people there. We have urged him to be prudent. But we do not control him and he feels threatened." D'Alema then said that during the Mastrogiacomo kidnapping the Taliban cell phones that were traced all had Pakistani numbers, and that if terror bosses could live carefree in a Pakistan that could not be reproached because of its alliance with the U.S., we would not win this war.

Kosovo - Firm Support for Status

¶3. (C/NF) The Ambassador noted that the Italian position on the Athisaari plan for Kosovo had generated some confusion and that a clear statement of support would be very helpful. D'Alema emphatically insisted that Italy supported the Athisaari plan's core status provisions ("they should not be touched"). Italy continued to believe that some non-status issues, like protection of religious sites and minority rights, however, could still be improved. He said there were two unacceptable outcomes: continuing the status quo and a unilateral declaration of independence by Kosovo. The latter would tear Europe apart and pull the legal legs out from under the European mission to Kosovo. He argued that a UNSCR was needed that would help soften the Russian position, and a proposal needed to be crafted for Serbia - something conditional with flexible rewards - that could be offered to Belgrade when Serbia inevitably rejects Kosovar independence. Without these elements, the region could be destabilized, he said. He added that Italy had been clear in its talks with Russia and everywhere else that it would absolutely support Athisaari's core status proposal without prolonging talks and without new negotiations. The Ambassador asked if D'Alema could make a public statement to that effect. D'Alema agreed to do so.

Iran Sanctions - Italy in Compliance

¶4. (C/NF) The Ambassador asked how Iran sanctions were proceeding for Italy, and noted our disappointment that when action was taken against Bank Sepah in Italy all funds had already been moved. D'Alema said the Iranians knew it was coming and were a step ahead, as they had been elsewhere. He added that when he had spoken with Larijani early in the week to urge the release of the UK sailors, Larijani had protested vigorously about the action against Bank Sepah. D'Alema asserted "we are applying the sanctions rules. We are in compliance. But Italy is also the victim of the sanctions and is excluded from negotiations with Iran and from the group with primary responsibility for decisions on Iran, despite being a UNSC member."

Israel-Palestine: About to Miss an Opportunity?

¶5. (C/NF) The Ambassador thanked D'Alema for his recent helpful comments insisting that Palestinian leaders accept the three Quartet conditions before Italian officials would meet with them. The FM said he feared a moment of opportunity was being lost. Abu Mazen was stronger than before but needed to find a way to get results out of his dialogue with Olmert. Both sides, he said, need to be pushed and encouraged. Without progress the risk of violence would increase. He suggested what was needed now was a confidence building phase with limited ambition focusing on releasing prisoners, improving Palestinian quality of life, granting more freedom of access/movement and getting credible security assurances for Israel. The Palestinians, he said, would never accept an independent state within provisional borders, because they believe this means they will never get final status issues resolved. He envisions an eventual regional final status conference, but not until the open final status questions have been resolved by the two sides. He said with both sides weak and lacking strategies to reach solutions, the international community needed to step in and offer hope for positive movement. Europe should press the Palestinians and the U.S. should press the Israelis in a coordinated division of labor, he suggested, adding that the Palestinians

needed to hear the message that when the time comes, the U.S. would be willing to push Israel to resolve the final status issues. He informed the Amb. that Abu Mazen would be in Rome in the coming weeks.

Lebanon - D'Alema Concerned  
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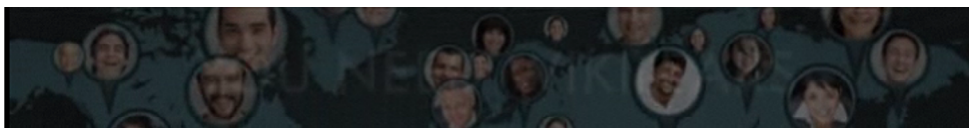
¶6. (C/NF) Turning to Lebanon, D'Alema said he was very concerned because the only thing working there was UNIFIL. Everything else was totally blocked. Parliament was not meeting. Reconstruction was at a standstill. The economy was in danger. There was no progress on the arms embargo or Sheba Farms. He said the Lebanon Contact Group meeting in London had been a good step and hoped that the group would meet at the political level to help bolster UN action. He also said some way had to be found to get Syrian buy-in or the embargo would never work.

Guantanamo Detainees - Closure a Noble Idea  
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¶7. (C/NF) The Ambassador briefed D'Alema on the request for Italy to consider taking some of the 25 releasable Guantanamo detainees who could not be returned to their countries of origin. D'Alema said it was a delicate issue, but the idea of trying to close Guantanamo was noble, and if Italy could find a way to help, it would. The devil would be in practicalities of whether Italy could take any of the detainees. (See septel for PM and Min. of Interior views on taking Guantanamo detainees.)

Abu Omar - Pre-emptive Letters  
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¶8. (S/NF) D'Alema closed the hour-long meeting by noting that he had asked the Secretary if the Department could send something in writing to him explaining that the U.S. would not act on extradition requests in the Abu Omar case if tendered. This, he explained, could be used pre-emptively by the GOI to fend off action by Italian magistrates to seek the extradition of the implicated Americans. D'Alema said he understood that L had discussed this with the Italian Ambassador in Washington. Amb. Spogli explained that we were waiting for the constitutional court to decide on the merits of the case before deciding on our next steps, because Min. of Justice Mastella had suspended action until that court rendered a decision. The FM noted that there was still the risk of action by the magistrates at any time. The Ambassador agreed that we should work to avoid having extradition requests forwarded.  
SPOGLI



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TAGS: PREL NATO UNSC EUN IT  
SUBJECT: ITALY: FM D'ALEMA ON KOSOVO, AFGHAN NGO DETAINEE,  
MEPP, LEBANON, IRAN SANCTIONS, GUANTANAMO AND ABU OMAR  
REF: A. STATE 36991  
B. STATE 37005  
C. STATE 41871  
D. STATE 42573  
E. ROME 625  
F. ROME 702  
Classified By: AMBASSADOR RONALD SPOGLI, REASONS 1.4 B AND D.

#### SUMMARY

¶1. (C/NF) Amb. Spogli got FM D'Alema's agreement to make a clear statement in support of the Athisaari plan for Kosovo and was told that the FM did not think he could or should control an Italian NGO threatening to close its hospitals in Afghanistan unless one of its employees was released by the Afghan Government. During an April 5 tour d'horizon, the Ambassador and FM also discussed Iran sanctions (D'Alema said Italy was applying the rules thoroughly), the Middle East peace process (D'Alema worried the Israelis and Palestinians would miss an opportunity for progress), Lebanon (where everything but UNIFIL is at an impasse, according to the FM), and the Abu Omar case. The Ambassador briefed D'Alema on the request that Italy consider taking some Guantanamo detainees to help speed the closure of the facility. D'Alema said trying to close Guantanamo was a noble step and that if Italy could help, it would try to do so (see also septel on Guantanamo). End Summary.  
Afghanistan and Emergency Now

¶2. (C/NF) On April 5, Ambassador Spogli and Foreign Minister D'Alema discussed key issues on the foreign policy agenda. The Ambassador raised concerns about the statements of Gino Strada, head of the Italian NGO Emergency Now, who was

threatening to close his hospitals in Afghanistan unless the Afghan Government released one of his staff being held for possible terrorist affiliations. The Amb. said such an unwelcome step would be punishing the Afghan people and asked if D'Alema could help get Strada to stop making threats. D'Alema replied that he had spoken with Strada, who told him that if his employees are going to be arrested in Afghanistan, he would move his operations to a country that doesn't arrest his staff. D'Alema told the Amb. that all sides needed to show flexibility and that if the Afghan Government had evidence against the individual being held, it should be shared. D'Alema noted that Italy was grateful to the U.S. Embassy in Kabul for helping secure Red Cross access to the detained individual. Then, somewhat exasperated, he said, "Strada is who he is. He runs an NGO. He is not part of the Italian Government. He says they cannot work in Helmand without having contact with the Taliban. He thinks the Taliban have the legitimate support of the people there. We have urged him to be prudent. But we do not control him and he feels threatened." D'Alema then said that during the Mastrogiacomo kidnapping the Taliban cell phones that were traced all had Pakistani numbers, and that if terror bosses could live carefree in a Pakistan that could not be reproached because of its alliance with the U.S., we would not win this war.

Kosovo - Firm Support for Status

¶3. (C/NF) The Ambassador noted that the Italian position on the Athisaari plan for Kosovo had generated some confusion and that a clear statement of support would be very helpful. D'Alema emphatically insisted that Italy supported the Athisaari plan's core status provisions ("they should not be touched"). Italy continued to believe that some non-status issues, like protection of religious sites and minority rights, however, could still be improved. He said there were two unacceptable outcomes: continuing the status quo and a unilateral declaration of independence by Kosovo. The latter would tear Europe apart and pull the legal legs out from under the European mission to Kosovo. He argued that a UNSCR was needed that would help soften the Russian position, and a proposal needed to be crafted for Serbia - something conditional with flexible rewards - that could be offered to Belgrade when Serbia inevitably rejects Kosovar independence. Without these elements, the region could be destabilized, he said. He added that Italy had been clear in its talks with Russia and everywhere else that it would absolutely support Athisaari's core status proposal without prolonging talks and without new negotiations. The Ambassador asked if D'Alema could make a public statement to that effect. D'Alema agreed to do so.

Iran Sanctions - Italy in Compliance

¶4. (C/NF) The Ambassador asked how Iran sanctions were proceeding for Italy, and noted our disappointment that when action was taken against Bank Sepah in Italy all funds had already been moved. D'Alema said the Iranians knew it was coming and were a step ahead, as they had been elsewhere. He added that when he had spoken with Larijani early in the week to urge the release of the UK sailors, Larijani had protested vigorously about the action against Bank Sepah. D'Alema asserted "we are applying the sanctions rules. We are in compliance. But Italy is also the victim of the sanctions and is excluded from negotiations with Iran and from the group with primary responsibility for decisions on Iran, despite being a UNSC member."

Israel-Palestine: About to Miss an Opportunity?

¶5. (C/NF) The Ambassador thanked D'Alema for his recent helpful comments insisting that Palestinian leaders accept the three Quartet conditions before Italian officials would meet with them. The FM said he feared a moment of opportunity was being lost. Abu Mazen was stronger than before but needed to find a way to get results out of his dialogue with Olmert. Both sides, he said, need to be pushed and encouraged. Without progress the risk of violence would increase. He suggested what was needed now was a confidence building phase with limited ambition focusing on releasing prisoners, improving Palestinian quality of life, granting more freedom of access/movement and getting credible security assurances for Israel. The Palestinians, he said, would never accept an independent state within provisional borders, because they believe this means they will never get final status issues resolved. He envisions an eventual regional final status conference, but not until the open final status questions have been resolved by the two sides. He said with both sides weak and lacking strategies to reach solutions, the international community needed to step in and offer hope for positive movement. Europe should press the Palestinians and the U.S. should press the Israelis in a coordinated division of labor, he suggested, adding that the Palestinians

needed to hear the message that when the time comes, the U.S. would be willing to push Israel to resolve the final status issues. He informed the Amb. that Abu Mazen would be in Rome in the coming weeks.

Lebanon - D'Alema Concerned  
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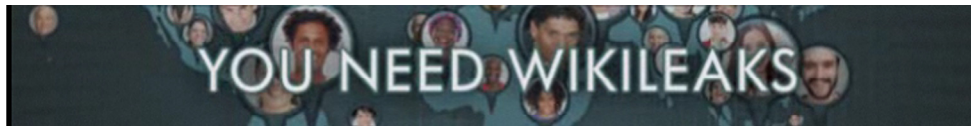
¶6. (C/NF) Turning to Lebanon, D'Alema said he was very concerned because the only thing working there was UNIFIL. Everything else was totally blocked. Parliament was not meeting. Reconstruction was at a standstill. The economy was in danger. There was no progress on the arms embargo or Sheba Farms. He said the Lebanon Contact Group meeting in London had been a good step and hoped that the group would meet at the political level to help bolster UN action. He also said some way had to be found to get Syrian buy-in or the embargo would never work.

Guantanamo Detainees - Closure a Noble Idea  
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¶7. (C/NF) The Ambassador briefed D'Alema on the request for Italy to consider taking some of the 25 releasable Guantanamo detainees who could not be returned to their countries of origin. D'Alema said it was a delicate issue, but the idea of trying to close Guantanamo was noble, and if Italy could find a way to help, it would. The devil would be in practicalities of whether Italy could take any of the detainees. (See septel for PM and Min. of Interior views on taking Guantanamo detainees.)

Abu Omar - Pre-emptive Letters  
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¶8. (S/NF) D'Alema closed the hour-long meeting by noting that he had asked the Secretary if the Department could send something in writing to him explaining that the U.S. would not act on extradition requests in the Abu Omar case if tendered. This, he explained, could be used pre-emptively by the GOI to fend off action by Italian magistrates to seek the extradition of the implicated Americans. D'Alema said he understood that L had discussed this with the Italian Ambassador in Washington. Amb. Spogli explained that we were waiting for the constitutional court to decide on the merits of the case before deciding on our next steps, because Min. of Justice Mastella had suspended action until that court rendered a decision. The FM noted that there was still the risk of action by the magistrates at any time. The Ambassador agreed that we should work to avoid having extradition requests forwarded.  
SPOGLI



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### Viewing cable 07BERLIN865, GERMAN PROSECUTOR DROPS LEGAL COMPLAINT AGAINST

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| Reference ID | Created          | Released         | Classification | Origin         |
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| 07BERLIN865  | 2007-04-27 18:15 | 2011-08-30 01:44 | UNCLASSIFIED   | Embassy Berlin |

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FM AMEMBASSY BERLIN  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 8115  
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INFO RHMFISS/CDRUSAREUR HEIDELBERG GE PRIORITY  
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UNCLAS SECTION 01 OF 02 BERLIN 000865  
SIPDIS  
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E.O. 12958: N/A  
TAGS: KJUS KLIIG PTER GM  
SUBJECT: GERMAN PROSECUTOR DROPS LEGAL COMPLAINT AGAINST  
SENIOR USG OFFICIALS  
REF: A. 06 BERLIN 3296  
B. 06 BERLIN 3424 AND PREVIOUS  
¶1. (U) Summary. German Federal Prosecutor decided April 27 not to pursue a full investigation into senior U.S. officials for alleged "war crimes" at Abu Ghraib and Guantanamo. As first reported in ref A, the New York-based Center for Constitutional Rights, acting through German attorney Wolfgang Kaleck, filed a legal complaint November 14, 2006 against former Defense Secretary Rumsfeld, Attorney General Gonzales, former DCI Tenet, and other senior U.S. civilian and military officials. The Prosecutor, according to his press release, based his decision on legal provisions that grant the Prosecutor discretion to decide not to investigate those with no connection to Germany. In addition, the Prosecutor said it would be virtually impossible to conduct a thorough investigation and said Germany did not want to encourage "forum shopping" by complainants bringing criminal charges wherever local law allows. End Summary.  
¶2. (U) According to the Prosecutor's press release, the legal basis for not continuing the investigation is Section 153(f) of the Federal Criminal Procedure Code. Section 153(f) provides the Prosecutor with discretion to refrain from an investigation and to limit cases under the universal jurisdiction of the German Code of Crimes against International Law (CCAIL). According to Section 153 (f) (I) (1) the Prosecutor may refrain from investigating an alleged crime under the CCAIL if the alleged crime was committed outside of Germany and if the suspect neither resides in nor is expected to reside in Germany in the future. The Prosecutor stated in his press release that no crime was committed in Germany. None of the named individuals resided in Germany or were expected to reside in Germany in the future, the Prosecutor wrote. The mere theoretical possibility of an entry of persons into Germany did not indicate that an individual "expected to reside in Germany in the future," according to the Prosecutor.  
¶3. (U) The Prosecutor continued there was no way for German law enforcement authorities to investigate the case. While on one hand international crimes should be investigated worldwide, the Prosecutor wrote, complainants should not engage in "forum shopping" by picking states, namely Germany, that have no connection whatsoever to the alleged crime, simply because its laws permit the filing of such complaints. The Prosecutor wrote that German authorities should not need to conduct time-consuming but fruitless investigations.

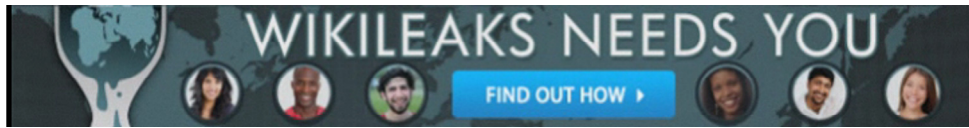
Furthermore, for the complaint to continue, German authorities would have to conduct investigations in the countries where the alleged crimes took place. Since Germany has no executive power in these countries, the Prosecutor wrote, German authorities would be obliged to use legal assistance channels. The Prosecutor continued that the legal and security situation in Iraq meant that such efforts would be futile. Therefore German authorities would not be able fully to investigate, leaving the prospect of only a symbolic effort. The Prosecutor wrote that the CCAIL did not intend to engender mere symbolic investigations. In conclusion, the Prosecutor wrote that the investigation of any alleged violations of law in Guantanamo or in connection with the Iraq war falls within U.S. responsibility.

- - - - -  
NEXT STEPS  
- - - - -

¶4. (U) The Prosecutor referred to a previous legal complaint filed in 2004 against senior U.S. officials, also alleging misconduct in connection with Abu Ghraib. In that instance, the Prosecutor also decided against an investigation, a decision which the complainant appealed in an effort to force the Prosecutor to conduct an investigation. In the press release, the Prosecutor referred to this previous court decision and wrote that his efforts focused on new information the complainant provided that was not in the previous complaint. By referring to the previous decision and his willingness to consider new information, the Prosecutor acknowledged the complainant's ability again to try to sue the Prosecutor to overturn today's decision not to investigate the alleged crimes.

BERLIN 00000865 002 OF 002

¶5. (U) Embassy is seeking the full text of the decision and will forward its analysis septel.  
KOENIG



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### Viewing cable 07MADRID863, SPAIN: LEGAL SUIT AGAINST FORMER SECRETARY RUMSFELD

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| Reference ID | Created             | Released            | Classification                      | Origin         |
|--------------|---------------------|---------------------|-------------------------------------|----------------|
| 07MADRID863  | 2007-05-10<br>17:20 | 2011-08-30<br>01:44 | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Embassy Madrid |

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INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY  
RUEHGB/AMEMBASSY BAGHDAD PRIORITY 0164  
RUEHLA/AMCONSUL BARCELONA PRIORITY 2676  
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY  
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RUEKJCS/JOINT STAFF WASHDC PRIORITY  
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L/LEI FOR JOHNSON, PROPP, AND KULISH  
E.O. 12958: N/A  
TAGS: PGOV PREL MARR SP  
SUBJECT: SPAIN: LEGAL SUIT AGAINST FORMER SECRETARY RUMSFELD  
¶1. (U) The AFP news wire service reported April 30 that the left-wing Spanish NGO "Seville Social Forum" had filed war crimes charges against former Secretary of Defense Rumsfeld in an Andalusian court for his role in the war in Iraq and for the abuse of detainees at Abu Ghraib prison. The lawyer for the Seville Social Forum said the suit was directed against former SecDef Rumsfeld, but could be extended to other "military or civilian officials in the United States who played a role in the decision to invade Iraq." The Seville Social Forum filed the suit in February at a local court in Seville, but the case was transferred to Spain's National Court, which has jurisdiction in cases of this nature.  
¶2. (SBU) Spanish media did not pick up the AFP story, so there was no additional public information regarding this case. The Embassy legal adviser in the Consular Section contacted the National Court prosecutor's office on May 4 to determine the veracity of the AFP report. National Court prosecutor Vicente Mota confirmed that the case was assigned to Central Examining Court Number 6 (the court of Magistrate Juan del Olmo, who investigated the March 11, 2004 Madrid train bombings). On March 28, the National Court prosecutor presented a report to Judge del Olmo requesting that the case be closed due to lack of evidence. Legat followed up on May 7 with Judge del Olmo, who said that he expected to close the case shortly as there was no evidence to substantiate the charges presented by the Seville Social Forum. (NOTE: Legat accompanied Judge del Olmo on a visit to the US the week of May 14-18; the visit will include a meeting with the FBI Director. END NOTE).  
¶3. (SBU) The DCM also raised the Seville Social Forum charges against former SecDef Rumsfeld in a conversation with Secretary of State for Justice (Vice Minister level) Julio SIPDIS  
Perez Hernandez on May 10, noting that this matter had raised concerns in Washington regarding the use of Spanish courts for political purposes by various groups. The DCM said that the USG understood that there was disagreement in Spain and in other EU countries regarding the war in Iraq, just as there was a political debate in the U.S. on the same issues. However, nobody in the U.S. political establishment or public would support war crimes charges against USG officials in connection with the war, and there was concern that this case could cause considerable bilateral friction if it were to progress. Perez Hernandez said that he was completely unaware of the charges against Rumsfeld. He expressed appreciation for the DCM's raising the matter with him and



said he would investigate.

//COMMENT//

¶4. (SBU) While we expect the Seville Social Forum case to be terminated soon (a similar war crimes charge against former Spanish President Aznar has already been dismissed), the Spanish courts remain easily available to individuals and groups seeking to use legal pretexts for political purposes. The National Court Magistrates in particular seem ready to test the limits of universal jurisdiction, which is especially problematic since these magistrates have broad discretion and little oversight in exercising their judicial duties. This will remain a challenging aspect of our judicial relations with Spain.  
Aguirre

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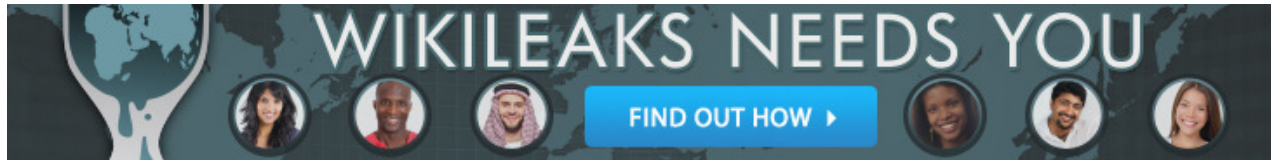
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"All of them, those in power, and those who want the power, would pamper us, if we agreed to overlook their crookedness by wilfully restricting our activities." — "Refus Global", Paul-Émile Borduas

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| <b>Reference id</b>   | 07MADRID1428 <small>aka Wikileaks id #115995 ?</small>  |
| <b>Subject</b>        | SPANISH ATTORNEY GENERAL REVIEWS CT AND JUDICIAL COOPERATION WITH AMBASSADOR  |
| <b>Origin</b>         | Embassy Madrid (Spain)  |
| <b>Cable time</b>     | Thu, 19 Jul 2007 16:48 UTC  |
| <b>Classification</b> | CONFIDENTIAL  |
| <b>Source</b>         | <a href="http://wikileaks.org/cable/2007/07/07MADRID1428.html">http://wikileaks.org/cable/2007/07/07MADRID1428.html</a>                               |
| <b>History</b>        | <a href="#">First published on Thu, 1 Sep 2011 23:24 UTC</a> (original)<br><a href="#">Modified on Thu, 8 Sep 2011 13:29 UTC</a> (diff from original) |
| <b>Extras</b>         | ? Comments  |

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 TAGS: PGOV [\[Internal Governmental Affairs\]](#), PREL [\[External Political Relations\]](#), SP [\[Spain; Balearic Islands; Canary Islands; Mallorca\]](#), VZ [\[Venezuela\]](#)  
 SUBJECT: SPANISH ATTORNEY GENERAL REVIEWS CT AND JUDICIAL COOPERATION WITH AMBASSADOR  
 Classified By: Ambassador Eduardo Aguirre for reasons 1.4 b & d.  
 ¶1. (C) SUMMARY: Spanish Attorney General Candido Conde-Pumpido told the Ambassador on July 18 that he sees positive signs that most or all of the twenty-nine people charged in the 2004 Madrid train bombings will be convicted. Conde-Pumpido said that US-Spain cooperation on counterterrorism and counternarcotics is excellent and productive, pointing out that Spain should soon have a legal attache in Washington to further strengthen ties. He said that he would invite AG Gonzales to a conference of Latin American attorneys-general in Madrid at the end of October.  
 END SUMMARY.  
 -- GOOD SIGNS IN MADRID TRAIN BOMBINGS TRIAL --  
 ¶2. (C) During a lunch meeting with the Ambassador, Conde-Pumpido said that, while the judges won't deliver their verdicts until mid-October, his analysis of the judges' actions points to conviction for most or all of the twenty-nine defendants in the Madrid train bombing case. He said that, under the Spanish judicial system, once the trial arguments are completed, judges typically release on bail any defendants who they are likely to find not guilty. Conde-Pumpido said that it is a good sign in this case that

the court has not released any defendants.

-- STRONG JUDICIAL COOPERATION --

¶3. (C) Conde-Pumpido said that bilateral cooperation on counterterrorism, counternarcotics, and other judicial issues is excellent. He expressed satisfaction that plans are moving ahead for the placement of a Spanish legal attache in Washington and noted that he had raised the issue with AG Gonzales when he visited Madrid last October. Conde-Pumpido said that the Spanish legatt in Washington will be unusual for Spain but important, and should further improve communication on key issues. He also said that he would host a meeting of all Latin American attorneys-general in Madrid at the end of October and would invite AG Gonzales.

-- CURRENT SPANISH CASES INVOLVING THE US --

¶4. (C) The Ambassador raised US concerns about a number of ongoing Spanish legal cases. He told Conde-Pumpido that the arrest of Monzer al-Kasser was an important step and that the US is working closely with the investigating judge on the extradition process. Regarding the Couso case, in which a Spanish journalist was killed by a US tank shell during the invasion of Baghdad in April 2003, Conde-Pumpido said that he continues to do what he can to get the case dismissed, despite public pressure from the family, leftist group, and the press. On the CIA flights issue, he said that the case is moving forward at its own pace, but is unlikely to provide any surprises. The Ambassador also raised the Carrascosa child custody case and the Rosalini contract case, but Conde-Pumpido demurred, reminding the Ambassador that his job is different from that of the US Attorney General and that he does not have any authority over the issues raised in those cases.

-- LATIN AMERICA --

¶5. (C) Conde-Pumpido had just returned from a trip to Latin America, where he had looked at rule of law programs. He said that in several Latin American countries including Colombia, Spanish experts are working with the host governments to help build strong independent judiciaries. Conde-Pumpido also reported that Spanish Ambassador in Caracas Morodo had complained to him that the GOS seems to be taking a harder line against Hugo Chavez in an attempt to please the US. The Ambassador replied that the GOS is more likely taking a harder line against Chavez out of concern about Chavez's increasingly worrisome actions.

AGUIRRE

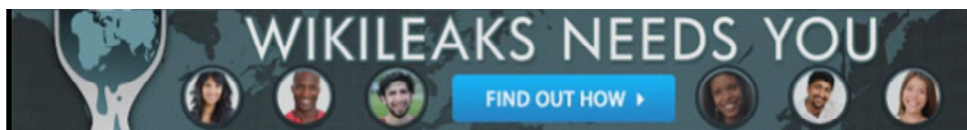
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Wednesday, 01 April 2009, 17:01  
C O N F I D E N T I A L SECTION 01 OF 04 MADRID 000347  
SIPDIS  
EUR/WE FOR ELAINE SAMSON AND STACIE ZERDECKI,  
L/LEI FOR KEN PROPP AND CLIFF JOHNSON  
CA/OCS FOR PPLATUKIS AND MBERNIER-TOTH  
INR FOR JANICE BELL  
S/CT FOR MARC NORMAN  
EMBASSY ROME FOR MOLLY PHEE  
PASS TO NSC'S TOBY BRADLEY  
PASS TO DOJ'S BRUCE SWARTZ AND DOJ/OIA/PAT REEDY  
EO 12958 DECL: 03/31/2019  
TAGS AORC, PREL, CASC, CJAN, PTER, PGOV, PHUM, PINS, SOCI,  
KCRM, KJUS, KISL, Klig, SP  
SUBJECT: SPAIN: PROSECUTOR WEIGHS GTMO CRIMINAL CASE VS.  
FORMER USG OFFICIALS  
REF: A. OSC EUP20090329950015 B. OSC EUP20090330950017 C. 06 MADRID 1914 D. 07  
MADRID 2282 E. 08 MADRID 409 F. 07 MADRID 911 G. 07 MADRID 863 H. OSC  
EUP20080828085019  
MADRID 00000347 001.2 OF 004  
Classified By: ADCM William H. Duncan for reasons 1.4 (b), and (d)  
¶1. (C) SUMMARY: A Spanish NGO has requested that the National Court indict six  
Bush Administration officials for creating a legal framework that allegedly  
permitted torture. The NGO is attempting to have the case heard by Investigating  
Judge Baltasar Garzon, internationally known for his dogged pursuit of "universal  
jurisdiction" cases. Garzon has passed the complaint to the prosecutor's office  
for them to determine if there is a legitimate case. Although he seemed displeased  
to have this dropped in his lap, Chief Prosecutor Javier Zaragoza told us that in  
all likelihood he would have no option but to open a case. He said he did not  
envision indictments or arrest warrants in the near future. He will also argue  
against the case being assigned to Garzon. MFA and MOJ contacts have told us they  
are concerned about the case, but have stressed the independence of the Spanish  
judiciary. They too have suggested the case will move slowly. END SUMMARY.  
The Accused  
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¶2. (U) The six accused are: former Attorney General Gonzales; David Addington,  
former chief of staff and legal adviser to the Vice President; William Haynes,  
former DOD General Counsel; Douglas Feith, former Under Secretary of Defense for  
Policy; Jay Bybee, former head of the DOJ Office of Legal Counsel; and John Yoo, a  
former member of Bybee's staff.  
¶3. (SBU) The NGO that filed the criminal complaint is the Association for the  
Dignity of Spanish Prisoners. According to Spanish press reports, a team of four  
lawyers worked on the complaint. This team also brought a case for a different  
Spanish NGO in January 2009 against Ehud Barak and six senior Israeli military  
officials for alleged war crimes in Gaza in 2002. (Note: In early 2009, the press  
reported that FM Moratinos had told the GOI Spain would revise its universal  
jurisdiction laws to prevent such cases; we cannot corroborate this. End note.)  
Gonzalo Boye Tucet is one of the four lawyers behind the current lawsuit and is  
taking the lead with the media. Open source material identifies Boye as a Chilean-

born lawyer who is a former member of the International Revolutionary Movement. He served eight years in a Spanish prison as part of a 14-year sentence he received for his role in the 1988 kidnapping of a Spanish businessman, a plot which reportedly was financed in part by ETA.

¶4. (C) The NGO is emphasizing that Spain has a duty to investigate because five Guantanamo detainees are either Spanish citizens or were/are Spanish residents. However, the NGO does not claim to be representing these individuals. Their names are: Hamed Abderrahman Ahmed (known in the media as "The Spanish Taliban"); Lahcen Ikassrien (aka Chaj Hasan); Reswad Abdulsam; Jamiel Abdul Latif al Bana (aka Abu Anas); and Omar Deghayes.

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¶5. (C) The NGO has attempted to steer this case directly to National Court Investigating Judge Baltasar Garzon. For two decades, Garzon has generated international headlines with high profile cases involving Spanish politicians, ETA, radical Islamic terrorists, and crimes against humanity. Perhaps his most famous case was his attempt to bring to trial in Spain former Chilean ruler Augustin Pinochet. Garzon has a reputation for being more interested in publicity than detail in his cases. The NGO's argument for Garzon taking the case is that he investigated some of the individuals named in paragraph four as part of an investigation of al Qaeda cell in Spain. Garzon has passed the NGO's complaint to the prosecutor's office for them to determine if there is a legitimate case. The Complaint

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¶6. (U) Post has forwarded the 98-page complaint to L. In sum, it alleges that the accused conspired with criminal intent to construct a legal framework to permit interrogation techniques and detentions in violation of international law. The complaint describes a number of U.S. documents, including: a December 28, 2001, memorandum regarding U.S. courts' jurisdiction over Guantanamo detainees; a February 7, 2002, memorandum saying the detainees were not covered by the Geneva Convention; a March 13, 2002, memorandum on new interrogation techniques; an August 1, 2002, memorandum on the definition of torture; a November 27, 2002, memorandum recommending approval of 15 new interrogation techniques; and a March 14, 2003, memorandum providing a legal justification for new interrogation techniques. The complaint also cites a 2006 U.S. Supreme Court case which it says held the February 2002 memo violated international law and President Obama's recent Executive Order on ensuring lawful interrogations.

¶7. (C) The complaint asserts Spanish jurisdiction by claiming that the alleged crimes committed at Guantanamo violated the 1949 Geneva Convention and its Additional Protocols of 1977, the 1984 Convention Against Torture or Other Cruel, Unusual or Degrading Treatment or Punishment, and the 1998 Rome Statute. The GOS is a signatory to all three instruments. The complaint cites Article 7 of the 1984 Convention Against Torture, which states that if a person accused of torture is not extradited to the nation that is bringing a case against him or her, then the competent authorities in the country where the person is should bring a case against him or her. There is media speculation that one of the NGO's goals may be to encourage the U.S. to begin judicial proceedings on this matter.

¶8. (U) The complaint does not specifically call for arrest warrants. Rather, it ends with a call for the Spanish courts to take statements from the accused and to request information from the USG about the various internal documents cited in the complaint (declassification dates and authorities, an official report about the legal nature of memoranda such as the ones cited in the complaint, and an official report on the legal nature and binding force of Executive Orders).

Contacts with Spanish Authorities

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¶9. (C) On April 1, POLOFF and Embassy FSN Legal Adviser met National Court Chief Prosecutor Javier Zaragoza, who said

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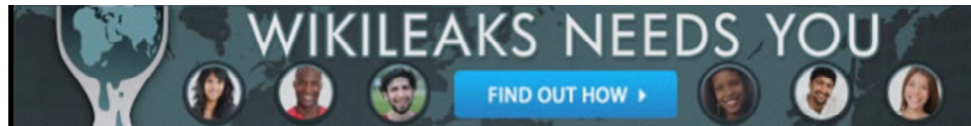
that he personally will decide whether to open a criminal case. There is no statutory timeframe for his decision. Zaragoza said the complaint appears well-documented and in all likelihood he will have no option but to open a case (the evidence was on his desk in four red folders a foot tall). Visibly displeased with this having been dropped in his lap, Zaragoza said he was in no rush to proceed with the case and in any event will argue that the case should not be assigned to Garzon. Zaragoza acknowledged that Garzon has the "right of first refusal," but said he will recommend that Garzon's colleague, Investigating Judge Ismael Moreno, should be assigned the case. Zaragoza said the case ties in with Moreno's ongoing investigations into alleged illegal "CIA flights" that have transited Spain carrying detainees to Guantanamo. Zaragoza said that if Garzon disregards his recommendation and takes the case, he will appeal. Zaragoza added that Garzon's impartiality was very suspect, given his public criticism of Guantanamo and the U.S. war on terror (we note that, among other things, Garzon narrated a documentary in 2008 that was extremely critical of the U.S. involvement in Iraq and Afghanistan and its approach to fighting terrorism) and his August 2008 public statements that former President Bush should be tried for war crimes.

¶10. (C) Zaragoza noted that Spain would not be able to claim jurisdiction in the case if the USG opened its own investigation, which he much preferred as the best way forward and described as "the only way out" for the USG. He cited the complaint against Israeli officials mentioned above and said he would request the investigating judge close that case once he had formal notice that the Israelis had opened their own investigation.

¶11. (C) On March 31 and April 1, the Acting DCM discussed the case separately with FM Moratinos' Chief of Staff Agustin Santos, and MOJ Director General for International Judicial Cooperation Aurora Mejia. Santos said the case was worrisome. He noted that the Spanish judiciary was independent, but he opined that these universal jurisdiction cases often sputtered out after the initial burst of publicity. He also noted that they tended to move very slowly through the system. Mejia also stressed that the judiciary was independent, and added that the MOJ had no official information regarding the case and knew nothing about it beyond what the media had reported. She said privately that the reaction to the complaint in the MOJ was "horror." A/DCM stressed to both that this was a very serious matter for the USG and asked that the Embassy be kept informed of any developments.

Comment

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¶12. (C) Given Spain's reputation for liberally invoking universal jurisdiction, this may not be the last such case brought here (nor is it the first -- in 2007, a different Spanish NGO brought a complaint against former SECDEF Rumsfeld for crimes against humanity based on the Iraq war and Abu Ghraib. Zaragoza told us that case was quietly dismissed although he could not recall the grounds). The fact that this complaint targets former Administration legal officials may reflect a "stepping-stone" strategy designed to pave the way for complaints against even more senior officials. Both the media and Post's FSN Legal Advisor suspect the complaint was prepared with the assistance of lawyers outside Spain, perhaps in the U.S., and perhaps in  
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collaboration with NGO's such as Human Rights Watch or Reprieve. It appears to have been drafted by someone who understands the U.S. legal system far better than the average Spanish lawyer. For all the publicity universal jurisdiction cases excite (Garzon's attempt to extradite Pinochet from the UK comes to mind), we only know of one case ever tried here (involving a former member of Argentina's military junta). Based on what Zaragoza told us, we suspect the case will eventually be referred to the National Court for investigation, although that step may not come for some time. Once it reaches the National Court, these cases seem to move slowly, periodically generating publicity as new evidence is taken (as with Moreno's investigation into so-called Guantanamo flights). Whether this case will end up with Garzon, Moreno, or some other judge, we cannot say. Garzon, despite his penchant for publicity and criticism of certain aspects of U.S. policy, has worked well with the U.S. on more routine criminal matters (although we think a direct approach to him on this case could well be counter-productive). Moreno, while his reputation as a judge stands higher among legal insiders, has been cooler in his dealings us. We suspect the Spanish Government, whatever its disagreements with the policies of the Bush Administration, will find this case inconvenient. Despite the pro forma public comment of First Vice President Fernandez de la Vega that the GOS would respect whatever decision the courts make in this matter, the timing could not be worse for President Zapatero as he tries to improve ties with the U.S. and get the Spanish public focused on the future of the relationship rather than the past. That said, we do not know if the government would be willing to take the risky step of trying behind the scenes to influence the prosecutor's recommendation on this case or what their reaction to such a request would be. CHACON



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### Viewing cable 09MADRID383, CODEL GREGG'S APRIL 13 MEETING WITH FM MORATINOS

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C O N F I D E N T I A L MADRID 000383  
SIPDIS  
E.O. 12958: DECL: 04/15/2019  
TAGS: PREL PGOV SP EU  
SUBJECT: CODEL GREGG'S APRIL 13 MEETING WITH FM MORATINOS  
Classified By: Charge d'Affaires Arnold A. Chacon for reasons 1.4 (b) a  
nd (d).

¶1. (C) On April 13, Senator Judd Gregg, accompanied by the Charge d'Affaires and poloff, met with Spanish Foreign Minister Miguel Angel Moratinos. Moratinos said he was pleased to receive the Senator and appreciated his efforts in engaging with Spanish counterparts and learning what Spain is trying to accomplish in these challenging times. Moratinos lamented that he would not be able to also meet with Senator Martinez, arriving in Spain April 14, as he will be traveling to Israel to meet with Israeli Prime Minister Netanyahu ("with whom I have good relations") to discuss the new realities on the ground.

¶2. (C) Senator Gregg thanked Moratinos for Spain's commitment in Afghanistan. President Zapatero announced April 4 that Spain will contribute an additional 9 million euros to Afghan development, 4 million of which would be allotted for Afghan National Army training and 5 million to support the Afghan elections. Moratinos said that Spain will be "extremely committed in Afghanistan," primarily in training of Afghan forces and with economic reform. He shared that President Obama requested extra efforts from Spain during his April 5 meeting with President Zapatero in Prague and reported that after studying GOS capabilities, he (Moratinos) would report Spain's formal commitment to Secretary Clinton. Moratinos opined that President Obama's and President Zapatero's April 5 meeting "closed the vacuum" in Spain/U.S. relations and marked the beginning of a new productive relationship wherein we can share our concerns and efforts on issues such as Afghanistan, Iraq, the Middle East, Latin America, and climate change. He added that Zapatero committed Spain to work with the United States in an intensified manner.

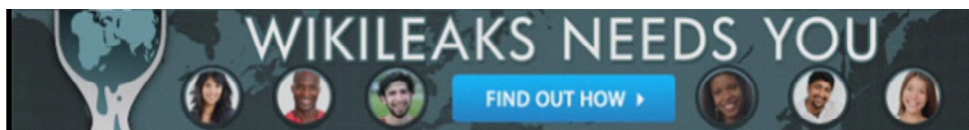
¶3. (C) Senator Gregg added that Spain's support for Turkey's EU accession was another important issue on which we agreed and inquired as to France and Germany's reluctance. Moratinos responded that France and Germany were indeed a problem, "but we will convince them," he added. He agreed with Senator Gregg that Turkey provides a unique opportunity - the inclusion and development of a moderate Islamic community which could potentially turn other Muslim countries in the right direction.

¶4. (C) Senator Gregg inquired as to Moratinos' planned trip to Israel. Moratinos agreed that jump-starting the Middle East Peace Process (MEPP) would not be easy, adding that an important concern is Iran's counterproductive behavior. "It is imperative to look at how to contain Iran while giving Iran responsibility in the region as well," he said. On this, he added, we must remain "united, clear, and firm."

¶5. (C) In post-meeting side conversation with MFA Director General Policy Director for North America and Europe Luis Felipe Fernandez de la Pena, Senator Gregg expressed his concern and dismay about reported Spanish judiciary desire to indict six former Bush administration officials for allegedly creating a legal framework that permitted torture. Fernandez de la Pena lamented this development, adding that judicial independence notwithstanding, the MFA disagreed with efforts

to apply universal jurisdiction in such cases.  
¶6. (U) Senator Gregg was unable to clear this cable prior to  
departure.  
CHACON





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TO RUEHC/SECSTATE WASHDC IMMEDIATE 0523  
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Friday, 17 April 2009, 06:07  
C O N F I D E N T I A L SECTION 01 OF 03 MADRID 000392  
SIPDIS  
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EO 12958 DECL: 04/16/2019  
TAGS AORC, PREL, CASC, CJAN, PTER, PGOV, PHUM, PINS, SOCI,  
KCRM, KJUS, KISL, KLIIG, SP  
SUBJECT: SPAIN: ATTORNEY GENERAL RECOMMENDS COURT NOT  
PURSUE GTMO CRIMINAL CASE VS. FORMER USG OFFICIALS  
REF: A. MADRID 383 B. MADRID 347  
MADRID 00000392 001.2 OF 003  
Classified By: Charge D'Affaires Arnold A. Chacon for reasons 1.4 (b) and (d)  
¶1. (C) SUMMARY. On April 16, Candido Conde Pumpido, Spain's Attorney General (AG), publicly stated that prosecutors will "undoubtedly" not support a criminal complaint, filed by a Spanish NGO with the National Court, to investigate six former USG officials, including former AG Alberto Gonzalez, for creating a legal framework that allegedly permitted torture. During a Q&A session of a previously scheduled public address, Conde Pumpido responded to a question on the issue by stating that he will not support the criminal complaint because it is "fraudulent," and has been filed as a political statement to attack past USG policies. The AG noted that the GOS could not pursue a complaint that targeted USG advisors while a similar suit against the Defense Secretary Rumsfeld (see REF B) had failed. While Conde Pumpido defended the GOS's investigation of universal jurisdiction cases to defend human rights, he said that the policy will not be used as a toy or a tool to force the GOS into investigating the decisions of another government. The AG added that if there is evidence of criminal activity by USG officials, then a case should be filed in the United States. Addressing next steps, the AG's press chief subsequently told the media that the Prosecutor's office will deliver the AG's recommendation to the National Court, where it will be up to investigating judge Baltasar Garzon - an outspoken critic of the Guantanamo detention facility who has publicly stated that former President Bush should be tried for war crimes - to decide whether to pursue the case or not. As reported in REFTELs, Conde Pumpido's public announcement follows outreach to GOS officials to raise USG deep concerns on the implications of this case. END SUMMARY.  
//BACKGROUND ON THE CASE//  
¶2. (C) As reported in REF B, a Spanish NGO - Association for the Dignity of Spanish Prisoners - in March 2009 requested that the National Court indict six former U.S. officials for creating a legal framework that allegedly permitted torture. The six accused are: former AG Alberto Gonzales; David Addington, former chief of staff and legal adviser to the Vice President; William Haynes, former DOD General Counsel; Douglas Feith, former Under Secretary of Defense for Policy; Jay Bybee, former head of the DOJ Office of Legal Counsel; and John Yoo, a former member of Bybee's staff. The NGO claimed that Spain had a duty to open a "universal jurisdiction" case because five Guantanamo detainees are either Spanish

citizens or were/are Spanish residents. Although he seemed displeased to have this dropped in his lap, Chief Prosecutor Javier Zaragoza on April 1 privately told Embassy officials the complaint - at first glance - appeared well-documented and in all likelihood he would have no option but to open a case.

//ANNOUNCEMENT FOLLOWS INTENSIVE USG OUTREACH//

¶3. (C) Following revelations by the Spanish press that the complaint had been filed, the Acting DCM on March 31 and April 1 phoned FM Moratinos' Chief of Staff Agustin Santos, and MOJ Director General for International Judicial Cooperation Aurora Mejia about the matter. Both expressed their concern at the case but stressed the independence of the Spanish judiciary. The A/DCM stressed to both that this was a very serious matter for the USG and asked that the Embassy be kept informed of any developments.

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¶4. (C) As reported in REF A, Senator Judd Gregg, accompanied by the Charge d'Affaires, raised the issue with Luis Felipe Fernandez de la Pena, Director General Policy Director for North America and Europe during a visit to the Spanish MFA on April 13. Senator Gregg expressed his concern about the case. Fernandez de la Pena lamented this development, adding that judicial independence notwithstanding, the MFA disagreed with efforts to apply universal jurisdiction in such cases.

¶5. (C) Zaragoza on April 14 called Embassy Madrid's FSN Legal Adviser and informed her that a more thorough study had revealed that the complaint was targeted against legal advisors with no executive authority and that it was legally difficult to establish what type of offense the six had committed and the degree to which they participated in the alleged offenses. Zaragoza said the complaint lacked details and was directed against USG policy rather than a specific perpetrator. He said he would ask Conde Pumpido to review whether Spain has jurisdiction in this case and indicated that he hoped the Spanish AG would draft a clear set of rules on how and when Spain should prosecute universal jurisdiction complaints.

¶6. (C) As reported in SEPTTEL, Senator Mel Martinez, accompanied by the Charge d'Affaires, met Acting FM Angel Lossada during a visit to the Spanish MFA on April 15. Martinez and the Charge underscored that the prosecutions would not be understood or accepted in the U.S. and would have an enormous impact on the bilateral relationship. The Senator also asked if the GOS had thoroughly considered the source of the material on which the allegations were based to ensure the charges were not based on misinformation or factually wrong statements. Lossada responded that the GOS recognized all of the complications presented by universal jurisdiction, but that the independence of the judiciary and the process must be respected. The GOS would use all appropriate legal tools in the matter. While it did not have much margin to operate, the GOS would advise Conde Pumpido that the official administration position was that the GOS was "not in accord with the National Court." Lossada reiterated to Martinez that the executive branch of government could not close any judicial investigation and urged that this case not affect the overall relationship, adding that our interests were much broader, and that the universal jurisdiction case should not be viewed as a reflection of the GOS position.

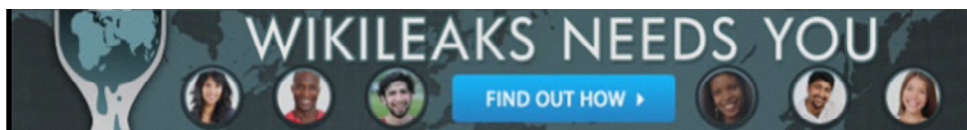
¶7. (C) Meanwhile, the Embassy has been involved in DOJ-led talks to have Zaragoza - who attended the April 16 press conference - lead a four-person team of GOS officials to Washington for a possible meeting with U.S. Deputy AG David Ogden or AG Eric Holder during the week of May 18. Zaragoza's wife, who is Conde Pumpido's chief of staff, would reportedly be one of the four.

//COMMENT//

¶8. (C) Although not legally binding on the National Court, Conde Pumpido's announcement puts pressure on crusading judge Garzon, who has not yet accepted the case, not to proceed with the investigation. As described in REF B, Zaragoza has indicated to Post - and reconfirmed this in his April 14 phone call in Para 3 - that he would argue that the case should not be assigned to Garzon and instead would recommend that Garzon's colleague, Investigating Judge Ismael Moreno, should be assigned the case. Zaragoza said the case ties in with Moreno's ongoing investigations into alleged illegal "CIA flights" that have transited Spain carrying detainees to Guantanamo. Zaragoza acknowledges that Garzon has the "right of first refusal," but has told Post that if Garzon

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disregards his recommendation and takes the case, the prosecutor will appeal. When a judge disagrees with the prosecutor on how or what to investigate, then the prosecutor has the right to appeal to a higher court, in this case the National Court's Criminal Chamber, led by Javier Gomez Bermudez. During this period in which the jurisdiction of the case is in question, Garzon could still proceed with the case, including preparing MLATs to question to the accused, formally naming the accused as defendants, and issuing arrest warrants against them. Investigating judges in Spain, including and especially Garzon, have used this tactic frequently, particularly when these actions are popular with sizable segments of the Spanish population. This worst-case scenario remains a possibility at this point. Zaragoza has also told us that if a proceeding regarding this matter were underway in the U.S., that would effectively bar proceedings in Spain. We intend to further explore this option with him informally (asking about format, timing, how much information he would need, etc.) while making it clear that the USG has not made a decision to follow this course of action. CHACON



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C O N F I D E N T I A L SECTION 01 OF 04 MADRID 000393  
SIPDIS  
DEPARTMENT FOR EUR/WE, L/LEI  
E.O. 12958: DECL: 02/28/2019  
TAGS: MOPS OREP PGOV PREL SP  
SUBJECT: SPAIN: SENATOR MEL MARTINEZ MEETINGS WITH DEPUTY  
FM LOSSADA AND MOD SECGEN CUESTA  
REF: A. (A) MADRID 383  
B. (B) MADRID 392  
MADRID 00000393 001.2 OF 004  
Classified By: Charge D'Affaires Arnold Chacon for reasons 1.4 (b) and (d)  
¶1. (C) SUMMARY. Senator Martinez met with Acting Foreign Minister Angel Lossada and MOD Secretary General of Defense Policy Luis Cuesta on Wednesday, April 15. Interlocutors confirmed Spain's plan to send a 450-member battalion to help support the Afghan August elections, contribute 5 million euros to elections funding, contribute a one-time four million payment to the ANA trust fund, and send 40 Guardia Civil to assist with police training, along with other types of assistance. Lossada said that Spain was still exploring the legal questions to determine what was possible under Spanish law with regard to transfer of Camp X-Ray detainees. With regard to the Spanish National Court's universal jurisdiction case against six former U.S. officials, Lossada said that the GOS advised through its Attorney General that it did not support the proceedings, but that given the independence of the court, the executive branch could not close the case. Cuesta said that Spain was developing specific proposals for adjustments to the U.S.-Spain Agreement on Defense Cooperation (ADC) to be discussed during high-level talks on the margins of Defense Minister Chacon's meeting with Secretary Gates in June. END SUMMARY.  
¶2. (U) Senator Mel Martinez, accompanied by Charge and Poloff, met with Acting Foreign Minister Angel Lossada and MOD Secretary General of Defense Policy Luis Cuesta on Wednesday, April 15. With Deputy FM Lossada, Martinez discussed his work to ensure the continuing progress of the U.S.-Spain Council and increase the participation level.  
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AFGHANISTAN  
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¶3. (C) Asked about Spain's renewed commitment to Afghanistan, Lossada said that Spain recognized the importance of the international community pulling together in a multilateral effort. Stressing that Afghan "ownership" of solutions was the key to future stability, Lossada said that backsliding on security gains was a real concern. He said that Spain believed it was critically important that Afghan public opinion evolve to a different perception of international involvement. According to Lossada, more effort needed to go into community liaison with localities and village administrators to counter perceptions that foreign troops were "invaders" imposing their will. To that end,

Spain would emphasize development cooperation and shared ideas that linked civilian-military-economic-social development goals in combination. Recognizing that the August elections were essential to achieve credible political representation, Lossada said that Spain would send a battalion of 450 troops for the elections period. He also said that Spain would send 40 Guardia Civil, noting that Spain believed the police training should focus on rural areas. Lossada confirmed that Spain would contribute 5 million euros for the Afghan elections and 4 million euros for the ANA trust fund. Lossada said Spain would also provide agricultural support for Afghanistan, with an emphasis on crop substitution.

¶4. (C) Cuesta confirmed the details shared by Lossada. He also said the Spanish were impressed by the explanation of the U.S. strategy review at the Strasbourg Summit, noting that Spain had pressed for many of the points during the last three years -- "Afghanization", more comprehensive plans focused on sustainable development, better coordination among the international community and more involvement by the neighbors. Spain had appointed a Special Envoy to Afghanistan and Pakistan, Rafael Mendivil Peydro, as Ambassador Holbrooke's counterpart. Cuesta specifically called for strong "political" control of NATO operations to ensure that, "military operations don't destroy the good will of the local population and derail our ultimate strategic goals." He also said that Spain would work with allies to set achievable targets, adding that it was important to

MADRID 00000393 002.2 OF 004

involve Iran. Cuesta said that Iran's interest in narcotics interdictions created an opportunity for cooperation. He believed Iran might consider allowing NATO to transfer forces or equipment across Iranian territory and it was ready to be, "part of the solution rather than part of the problem." Senator Martinez agreed that the situation in Pakistan was problematic and a comprehensive approach offered the best chance of success. He emphasized that the allies needed to be realistic about the need to ensure a long-term security presence to support Afghan development, adding that "everyone needs to contribute generously to the combined effort."

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UNIVERSAL JURISDICTION CASE AGAINST U.S OFFICIALS  
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¶5. (C) Senator Martinez and Charge conveyed our deep concern over a universal jurisdiction case in which a Spanish NGO requested that the Spanish National Court indict six Bush Administration officials for creating a legal framework that allegedly permitted torture. Martinez noted that the prosecutions would neither be understood nor accepted in the U.S. and would have an enormous impact on the bilateral relationship. Martinez also asked if the Spanish government had thoroughly considered the source of the material on which the allegations were based to ensure the charges were not based on misinformation or factually wrong statements.

Lossada said that, as he discussed with Deputy Secretary Steinberg during their April 7 meeting, President Zapatero was focused on intensified cooperation with the U.S. Moreover, Zapatero envisioned a close, personal relationship with President Obama in the future. Lossada explained that the National Court had broad jurisdiction for universal justice and that there was no political influence on the judicial process. The only input from the Zapatero administration was to have the Attorney General advise the courts of the government position. While the government was not supportive of the universal jurisdiction case, it had no authority, the final decision rested with the presiding judge.

¶6. (C) Lossada noted that many countries including Rwanda, China, Argentina, El Salvador, Israel and Guatemala had faced similar investigations. Asked by the Charge about comments reportedly made to the Israelis that the Spanish government planned to curtail via legislation universal jurisdiction, Lossada said that a change was "being reflected upon," but that there was no immediate action planned -- a broad range of Spanish interests were involved and the consensus-building process would take much time. Senator Martinez noted that the case appeared to be politically motivated, as well as built on inaccuracies and misinformation; where were the checks and balances of Spanish governance to ensure that one judge could not express personal opinion through the judicial process? Lossada responded that the GOS recognized all of the complications presented by universal jurisdiction, but that the independence of the judiciary and the process must be respected. The GOS would use all appropriate legal tools in the matter. While it didn't have much margin to operate, it would advise the Attorney General that the official administration position was that the GOS was "not in accord with the National Court." He reiterated that the executive branch of government could not close any judicial investigation. Lossada urged that this case not affect the overall relationship, adding that our interests were much broader, and that the universal jurisdiction case should not

be viewed as a reflection of the GOS position. NOTE: During an April 16 public address, Spanish Attorney General Conde-Pumpido said that his office would not support the judicial action. See reftel B for more details. END NOTE.

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 CAMP X-RAY DETAINEE TRANSFERS  
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¶7. (U) Thanking Lossada for Spain's willingness to consider the transfer of detainees from Guantanamo's Camp X-Ray, Martinez asked about next steps. Lossada said that Spain was MADRID 00000393 003.2 OF 004 exploring the legal questions to determine what was possible under Spanish law. Pursuant to Lossada's meeting with Deputy Secretary Steinberg when Lossada seemed unclear about specific provisions, Charge shared another copy of information provided to EU officials detailing answers to 18 questions about detainee transfer and release.

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 MILITARY COOPERATION  
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¶8. (C) Secretary General of Defense Policy Cuesta expressed satisfaction with "excellent overall military relations" noting that Spain had steadfastly supported U.S. operations in Spain since 1953. Cuesta suggested that the U.S. benefitted rather more than Spain from the bilateral Agreement on Defense Cooperation (ADC) given the heavy use the U.S. made of Spanish bases at Rota and Moron, but noted this could be balanced by other political factors. He expressed some doubt as to whether the benefits of the ADC to the U.S. were fully appreciated in the U.S. and noted that Spain was developing specific proposals for minor adjustments to the ADC to be discussed during high-level talks on the margins of Defense Minister Chacon's meeting with Secretary Gates in June. Senator Martinez said he would be sure to highlight Spain's contributions to his colleagues on the Senate Armed Services Committee and that there was no U.S. intention to overlook Spain's importance -- perhaps the overall smooth functioning of the relationship meant that defense cooperation might not be front page news, but it was never taken for granted. Martinez also told Cuesta that he hoped to see Defense Minister Chacon when she visited Washington and that if she was interested, he could organize a meeting with his Senate colleagues.

¶9. (C) Cuesta also told Martinez that Spain wanted to ensure that the U.S. maintained full transparency in the U.S. Air Force aerial refueling tanker procurement process. Senator Martinez said there had been tremendous oversight to ensure transparency and that decisions would be driven by cost and price. He also noted that the DOD procurement process was being revised and that Cuesta could expect a refueling tanker solution in the next few months. He also noted that a new littoral combat ship under consideration might be an asset adaptable to asymmetrical threats encountered by the Spanish and other allies.

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 MISSILE DEFENSE  
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10 (C) When Senator Martinez asked his views on missile defense, Cuesta said that Spain viewed NATO security as indivisible, but that defense systems must be coordinated in a transparent manner with Russia, despite Russian recalcitrance. He also said that Spain's participation in expensive missile defense systems would need to be rationalized. The architecture of any defensive shield would need the flexibility that some nations could contribute with existing resources or means other than financial inputs. Citing Poland and the Czech Republic as examples, Cuesta said that any new NATO members would need to be security providers since, "we don't need to import any more problems," According to Cuesta, "the Cold War is over and those countries are still fighting over old Cold War issues." Martinez noted that proliferation concerns go beyond the interests of any one country and that Russian ambitions and attempts to maintain old spheres of influence were a continuing threat- as evidenced by Georgia. Russia was dragging the past into the future through aggression.

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 CUBA  
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¶11. (C) Lossada was interested in Senator Martinez' review of recent U.S. policy changes regarding Cuba. Juan Carlos Sanchez, MFA Director General for IberoAmerica, who accompanied Lossada along with MFA Deputy Director General for North America Fernando Prieto, agreed that in Cuba, there MADRID 00000393 004.2 OF 004 were no clear prospects for near term change. He said that Spain would continue to engage in modest cooperation projects geared at fomenting change over the long term. Senator Martinez noted that Cuba had a window of opportunity to respond in a positive manner to U.S. openings. Martinez also noted that under the new Spanish "Historic Memory Law" that allows descendants of Spanish citizens who fled during the

Civil War to apply for citizenship, a significant number of Cubans would be eligible. Lossada agreed and said that yes, a large number of applications were anticipated and the GOS would work to implement the law as enacted, regardless of the numbers - an eligible citizen was an eligible citizen regardless of where they had been living most recently."

¶12. (U) Senator Martinez cleared this cable.  
CHACON



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### Viewing cable 09MADRID440, GARZON OPENS SECOND INVESTIGATION INTO ALLEGED

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| Reference ID | Created             | Released            | Classification                      | Origin         |
|--------------|---------------------|---------------------|-------------------------------------|----------------|
| 09MADRID440  | 2009-05-05<br>15:34 | 2011-08-30<br>01:44 | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Embassy Madrid |

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UNCLAS SECTION 01 OF 02 MADRID 000440  
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AND PAT REEDY  
E.O. 12958: N/A  
TAGS: AORC PREL CASC CJAN PTER PGOV PHUM PINS SOCI  
KCRM, KJUS, SP  
SUBJECT: GARZON OPENS SECOND INVESTIGATION INTO ALLEGED  
U.S. TORTURE OF TERRORISM DETAINEES  
REF: A. MADRID 392  
    ¶B. MADRID 393  
    ¶C. 08 MADRID 1280  
MADRID 00000440 001.2 OF 002  
¶1. (SBU) Summary: Spanish National Court (Audiencia Nacional) investigating judge Baltasar Garzon has announced he will pursue an investigation into allegations the U.S. tortured terrorism detainees at Guantanamo. He has yet to name any targets of his investigation. This comes days after he was forced to give up a related complaint filed by an NGO against six Bush Administration officials (ref a). At the urging of Spanish prosecutors, the earlier case was reassigned to another National Court judge who now appears to be trying shelve the case. The Chief Prosecutor for the National Court tells us he will also fight Garzon's latest move. Nevertheless, we suspect Garzon will wring all the publicity he can from the case unless and until he is forced to give it up. End summary.  
¶2. (U) Garzon bowed to arguments by Spanish prosecutors and April 17 forwarded to National Court docketing authorities a case recently filed against six Bush Administration officials (ref a). That case was duly assigned to investigating judge Eloy Velasco. We learned May 5 that Velasco has declined to process that case saying that before moving forward the USG should be asked if proceedings are underway in the U.S. He also offered to transfer the proceedings to the U.S. under the MLAT. We are waiting for a copy of Velasco's ruling and will advise further when we receive it. Meanwhile, Garzon announced April 29 that he was commencing a separate investigation into alleged U.S. torture of terrorism detainees.  
¶3. (SBU) LEGATT and Embassy FSN Legal Advisor met May 4 with National Court Chief Prosecutor Javier Zaragoza (protect) to discuss Garzon's latest move. Zaragoza said he had challenged Garzon directly and personally on this latest case, asking if he was trying to drum up more speaking fees. Garzon replied he was doing it for the record only and would let it die. Zaragoza opined that Garzon, having gotten his headline, would soon drop the matter. In case he does not, Zaragoza has a strategy to force his hand. Zaragoza's strategy hinges on the older case in which Garzon investigated terrorism complaints against some Guantanamo detainees. In connection with those earlier investigations, Garzon ordered the Spanish police to visit Guantanamo and collect evidence against the suspected terrorists. Zaragoza reasons that he can use this fact to embarrass Garzon into dropping this latest case by suggesting Garzon in some sense

condoned the U.S. approach to detainee issues circa 2004. Garzon took no action in 2004 when the suspects returned to Spain and reported to him their alleged mistreatment. Zaragoza said that if Garzon could not be shamed into dropping the case, then he would formally recommend Garzon do so and appeal if Garzon ignored him.

¶4. (SBU) Key to Zaragoza's plans is the fact that there is yet another Guantanamo-related case underway in the National Court. That case relates to so-called CIA flights carrying detainees to Guantanamo via Spain and is being heard by investigating Judge Ismael Moreno (ref c). The police officers whom Garzon sent to Guantanamo years ago are expected to testify before Moreno this month, and Zaragoza hopes their testimony will put on record Garzon's role in the earlier cases. (Note: In opening his most recent Guantanamo investigation, Garzon asked that Moreno turn his detainee flights case over to him; Zaragoza thought there was no chance Moreno would agree to do so. End note.) Zaragoza is also banking on the fact that Garzon is already in hot water over his excessive zeal in another case. A few months ago, Garzon opened an investigation into Spanish civil war atrocities. Garzon persisted in his investigation in the face of all advice to the contrary from prosecutors. The case was finally wrestled away from Garzon, but there is now a criminal complaint against him in the Supreme Court, alleging abuse of authority. That complaint has the support of Spanish prosecutors. Zaragoza doubts Garzon will risk a second such complaint.

¶5. (SBU) As we have reported, with respect to the earlier complaint against six Bush Administration officials, Zaragoza has repeatedly suggested that a USG affirmation that the U.S. is investigating the torture issue could help dispose of MADRID 00000440 002.2 OF 002 Spanish judicial inquires into the subject. In that regard, the Spanish press reported today that National Court investigating judge Fernando Andreu, who is handling a case against Israeli officials accused of war crimes in Gaza in 2002, has refused to drop the case despite a request from prosecutors. The prosecutors had argued that Israel was investigating the matter. In refusing to close the case, Andreu argued that Gaza was not part of Israel and thus Israeli authorities were not the ones who should be investigating crimes allegedly committed there. The press reports that the President of the Supreme Court and Spain's Judicial Council (Consejo General del Poder Judicial), Carlos Divar, is arguing for reforming the jurisdiction of the National Court to avoid having it turned into the "judicial police of the world." Zaragoza has commented to us that while many talk about limiting Spain's universal jurisdiction rules, it is unlikely politicians will act to do so.

Comment

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¶4. (SBU) We believe Zaragoza is acting in good faith and playing a constructive role. Certainly he knows Garzon better than we do, having sparred with him before. Nevertheless, we do not share his optimism that this problem will go away anytime soon. Having started, it is hard for us to see why the publicity-loving Garzon would shut off his headline-generating machine unless forced to do so. And forcing him to do so could take months. We also fear Garzon -- far from being deterred by threats of disciplinary action -- may welcome the chance for martyrdom, knowing the case will attract worldwide attention. In any event, we will probably be dealing with this issue for some time to come. Zaragoza will be in Washington in early June for LEGATT-organized consultations on CT cooperation. L and DOJ may wish take that opportunity to discuss these cases with him directly at that time.

CHACON



# **Appendix B**

## **Index of Cables: Couso Case**

1. 04MADRID2804, 23. July 2004, "Spain: Letter from Secretary Powell to FM Moratinos"
2. 05MADRID3694, 21. October 2005, "Spanish Ministers Working to Challenge Arrest Warrants"
3. 06MADRID722, 22. March 2006, "Vice President on Syria, Africa, Bilateral Relations"
4. 07MADRID82, 16. January 2007, "Spain/Couso Case: Judge Issues Detention Order Against Three U.S. Servicemen"
5. 07MADRID101, 18. January 2007, "Spain/Couso Case: Meeting with Chief Prosecutor"
6. 07MADRID141, 26. January 2007, "Spain/Couso Case: Ambassador Meet with Attorney General"
7. 07MADRID215, 8. February 2007, "Spain/Couso Case: Judge Threatens to Obstruct US-Spain Judicial Cooperation"
8. 07MADRID800, 27. April 2007, "Spain/Couso Case: Judge Charges US Servicemen with „Crimes Against International Community"
9. 07MADRID899, 11. May 2007, "Spain/Couso Case: Update; Conversations with Key Spanish Leaders"
10. 07MADRID910, 14. May 2007, "Spain/Couso Case: Prosecutor Appeals Charges Against US Servicemen"
11. 07MADRID911, 14. May 2007, "Scenesetter for US-Spain High Level Defense Talks"
12. 07MADRID1021, 25. May 2007, "Scenesetter for Secretary Rice's June 1 Visit to Madrid"
13. 08MADRID542, 14. May 2008, "Spain/Couso Case: National Court Dismisses Charges Against Three U.S. Servicemen"
14. 09MADRID496, 22. May 2009, "Couso Case: Judge Reinstates Charges Against U.S. Soldiers"

CABLE REFERENCE ID: #04MADRID2804

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"All of them, those in power, and those who want the power, would pamper us, if we agreed to overlook their crookedness by wilfully restricting our activities." — "Refus Global", Paul-Émile Borduas

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| <b>Reference id</b>   | <input type="text" value="04MADRID2804"/> aka Wikileaks id #19029 ?   |
| <b>Subject</b>        | SPAIN: LETTER FROM SECRETARY POWELL TO FM MORATINOS   |
| <b>Origin</b>         | Embassy Madrid (Spain)  |
| <b>Cable time</b>     | Fri, 23 Jul 2004 08:24 UTC  |
| <b>Classification</b> | <b>CONFIDENTIAL</b>   |
| <b>Source</b>         | <a href="http://wikileaks.org/cable/2004/07/04MADRID2804.html">http://wikileaks.org/cable/2004/07/04MADRID2804.html</a> |
| <b>History</b>        | First published on Thu, 1 Sep 2011 23:24 UTC (original)<br>Modified on Thu, 8 Sep 2011 13:29 UTC (diff from original)   |
| <b>Extras</b>         | ? Comments  |

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C O N F I D E N T I A L MADRID 002804  
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SECDEF PLEASE PASS TO ODS: AJTORRES AND JCS: SYIKE  
E.O. 12958: DECL: 07/22/2014  
TAGS: PREL [\[External Political Relations\]](#), SP [\[Spain; Balearic Islands; Canary Islands; Mallorca\]](#), ODP  
SUBJECT: SPAIN: LETTER FROM SECRETARY POWELL TO FM  
MORATINOS  
REF: STATE 154176  
Classified By: CHARGE D'AFFAIRES J. ROBERT MANZANARES FOR REASONS 1.4 (B) AND (D)  
¶1. (C) Charge Manzanares July 22 delivered to acting foreign minister Bernardino Leon Secretary Powell's letter to FM Moratinos (Reftel). The Secretary's letter responded to Moratinos' letter of June 4 on the case of Spanish journalist Couso, who was killed in the Palestine Hotel incident in Iraq last year. Leon thanked Charge for the response, noting that the Moratinos letter had been sent in an attempt to respond to a request to the Spanish government from the Couso family. Leon expected no further action on this issue from the GOS.  
¶2. (C) Charge took the opportunity to convey our concerns (using talking points in reftel) about the dormant, but possibly still pending, Spanish court case on the Couso incident, noting our desire to avoid a situation in which US soldiers could be indicted by a foreign court. In the event of any indictments, Charge urged the MFA to issue a strong "friend of the court" type of brief clearly expressing opposition to such a development. Leon was unaware of the pending court case, and undertook to look into the matter. He emphasized, however, the completely independent nature of the Spanish judiciary and the lack of ability of the government to influence decisions on court cases. Charge noted that if such indictments occurred, USG would go back to MFA to again raise the matter and urge a strong statement of opposition from the GOS.  
MANZANARES

#### MEDIA

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## COMMENTS

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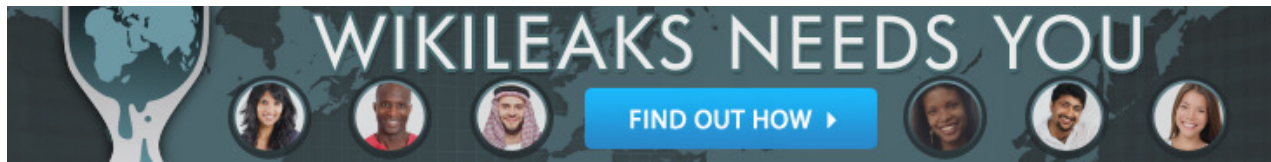
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| <b>Reference id</b>   | <input type="text" value="05MADRID3694"/> aka Wikileaks id #43323 ?   |
| <b>Subject</b>        | SPANISH MINISTERS WORKING TO CHALLENGE ARREST WARRANTS  |
| <b>Origin</b>         | Embassy Madrid (Spain)  |
| <b>Cable time</b>     | Fri, 21 Oct 2005 15:56 UTC  |
| <b>Classification</b> | CONFIDENTIAL  |
| <b>Source</b>         | <a href="http://wikileaks.org/cable/2005/10/05MADRID3694.html">http://wikileaks.org/cable/2005/10/05MADRID3694.html</a> |
| <b>History</b>        | First published on Thu, 1 Sep 2011 23:24 UTC (original)<br>Modified on Thu, 8 Sep 2011 13:29 UTC (diff from original)   |
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C O N F I D E N T I A L MADRID 003694  
SIPDIS

E.O. 12958: DECL: 10/21/2015

TAGS: PREL [[External Political Relations](#)], PGOV [[Internal Governmental Affairs](#)], SP [[Spain; Balearic Islands; Canary Islands; Mallorca](#)], American - Spanish Relations

SUBJECT: SPANISH MINISTERS WORKING TO CHALLENGE ARREST WARRANTS

Classified By: DCM Robert Manzanares for reasons 1.4 (b) & (d).

¶1. (C) SUMMARY. Soon after a Spanish judge announced arrest warrants on October 19 for three US soldiers associated with the 2003 death of a Spanish cameraman in Iraq, both the Justice Minister and the Foreign Minister reached out to Ambassador Aguirre to let him know that the GOS is doing everything in its power to challenge the Judge's decision. The chief Spanish prosecutor announced that he has contested the warrants, questioning the judge's jurisdiction over the case and citing procedural faults. FM Moratinos told the Ambassador that VP Fernandez de la Vega is also engaged and that the government supports challenging the warrants on procedural grounds, and then moving to appeal to higher courts if necessary. END SUMMARY.

¶2. (SBU) On October 19, Spanish Judge Santiago Pedraz of the National Court ordered the arrest and extradition of three US soldiers associated with the death of Spanish cameraman Jose Couso. Couso died in April 2003 when US forces shelled a Baghdad hotel. A subsequent CENTCOM investigation of the incident found that the US forces had acted properly and in accordance with their Rules of Engagement. CENTCOM made a comprehensive summary of its investigation available to the executive branch of the GOS in August 2003. USDOJ and DOD are still discussing possible responses to the judge's two MLAT requests. Judge Pedraz said that the US has not replied to his two MLAT requests for assistance with his investigation of the journalist's death. He said that he had to issue the international warrants because he has no other way to ensure the testimony of the accused soldiers. He cited the "nonexistent judicial cooperation" of US authorities as a reason for his action.

¶3. (C) Justice Minister Lopez Aguilar called the Ambassador on October 19 to tell him that the GOS will make every effort

to challenge the judge's decision on technical grounds. FM Moratinos told the Ambassador in a separate call that Vice President Fernandez de la Vega is involved in the case. Moratinos said that if the judge fixes the technical flaws the Government would move to appeal. In public, both ministers expressed "respect" for the decision of the independent judge. Justice Minister Aguilar pointed out that the order is not yet final because it can be appealed. He also said that the US and Spain cooperate closely on judicial issues related to terrorism and international crime issues.

¶4. (SBU) On October 20, Attorney General Candido Conde-Pumpido publicly announced that the prosecutors who practice before the National Court have challenged the warrant for lack of jurisdiction in the death of a Spanish citizen during a foreign war and the lack of a pre-existing indictment against the soldiers. Normally in Spain requests for extradition are only based on pre-existing arrest warrants

¶5. (C) COMMENT. Top ministers moved quickly to let us know that the Government is working to resolve this situation. The Government must act carefully as it tries to influence Spain's fiercely independent judiciary. In order to avoid aggravating the situation, GOS leaders must publicly show their respect for the independent workings of the courts (just as we've asked them to respect the independence of our courts in cases like Posada Carriles.) We continue to reiterate that this matter has been fully investigated, the government has been fully informed, and that the soldiers' actions were justified.

AGUIRRE

#### MEDIA

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CABLE REFERENCE ID: #06MADRID722

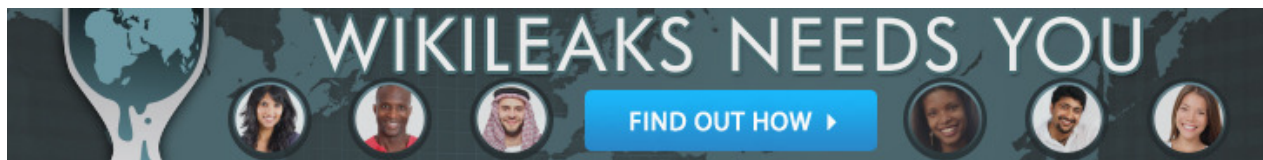
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|-----------------------|---|---|
| <b>Reference id</b>   | 06MADRID722   | aka Wikileaks id #57678 ?                             |
| <b>Subject</b>        | VICE PRESIDENT ON SYRIA, AFRICA, BILATERAL RELATIONS OF IMPENDING TRUCE |   |
| <b>Origin</b>         | 06MADRID611 (Spain)   | MADRID TRAIN BOMBING INVESTIGATION NEARING COMPLETION |
| <b>Cable time</b>     | Wed, 22 Mar 2006 17:33 UTC  |   |
| <b>Classification</b> | CONFIDENTIAL  |   |
| <b>Source</b>         | http://wikileaks.org/cable/2006/03/06MADRID722.html                     |   |
| <b>References</b>     | 06STATE40904  | SPAIN QUESTIONS HUMAN RIGHTS REPORT FORMAT            |
| <b>History</b>        | 06MADRID746   | VICE PRESIDENT ON SYRIA, AFRICA, BILATERAL RELATIONS  |
|                       | 06MADRID749   | SPAIN ON ARAB LEAGUE SUMMIT                           |
|                       | 06MADRID749   | RETURN AUTHORIZATION REQUEST                          |
|                       | 06MADRID750   | SPAIN ON ARAB LEAGUE SUMMIT                           |
| <b>Extras</b>         | 06MADRID766   | ETA CEASEFIRE: MAJOR POLITICAL VICTORY FOR ZAPATERO   |
|                       | 06MADRID779   | SPAIN: AMBASSADOR,S MEETING WITH FM MORATINOS         |

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FM AMEMBASSY MADRID

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C O N F I D E N T I A L SECTION 01 OF 02 MADRID 000722

SIPDIS

SIPDIS

E.O. 12958: DECL: 03/21/2016

TAGS: PREL [External Political Relations], PGOV [Internal Governmental Affairs], SP [Spain; Balearic Islands; Canary Islands; Mallorca]

SUBJECT: VICE PRESIDENT ON SYRIA, AFRICA, BILATERAL RELATIONS

REF: A. STATE 40904

B. STATE 41315

Classified By: DCM Bob Manzanares; reasons 1.4 (B) and (D).

¶1. (C) Summary. The Ambassador met with Vice President Maria Teresa Fernandez de la Vega on March 21 to review key bilateral issues and to relay USG messages on Syria, Venezuela, and Libya. On Syria, the Ambassador reviewed USG concerns regarding FM Moratinos' travel to Damascus and urged Spain to adhere to the international consensus on high-level contacts with Syria. Regarding Venezuela, the Ambassador said the USG was very concerned by reports that aircraft maker EADS CASA was looking for substitutes for U.S. components in order to complete its proposed sale of twelve planes to Venezuela. On Libya, the Ambassador noted news reports that Spain planned to refurbish four Chinook helicopters and explained that Libya remained on the U.S. list of State Sponsors of Terrorism, creating a legal barrier to transfers of U.S. military components to Libya. Vice President de la Vega thanked the Ambassador for the USG's

response to a Spanish request for judicial cooperation in the case of Jose Couso, the Spanish news cameraman killed by U.S. fire during the takeover of Baghdad in 2003. De la Vega, who recently returned from a visit to Subsaharan Africa, stressed the growing importance of Africa for Spanish security and urged strong USG engagement in the region. This meeting underscored the importance of maintaining a good channel to Vice President de la Vega, who clearly acts as the "CEO" of the Zapatero government. End Summary.

¶2. (C) The two-hour meeting at the Ambassador's residence was warm and relaxed throughout. Vice President de la Vega said she believed bilateral relations were on a positive track and underlined President Zapatero's strong interest in "normal" relations with the U.S. (NOTE: She did not raise the issue of high-level visits in either direction. END NOTE). She expressed the Spanish government's appreciation for the USG response to the Spanish request for judicial cooperation in the Jose Couso case. De la Vega said Attorney General Conde Pumpido had briefed her on the excellent cooperation he had enjoyed from the Embassy and U.S. authorities in helping bring this case to a conclusion. She suggested establishing regular meetings with the Ambassador every 45 days to ensure full communication on important issues.

//SYRIA//

¶3. (C) Vice President de la Vega asked for Ambassador's views on the state of bilateral relations. The Ambassador said that relations were good, but that there were some areas of concern on the U.S. side. In particular, there was significant concern regarding FM Moratinos' recent visit to Damascus and plans to make an official visit in April, which appeared to break an international consensus restricting high-level exchanges with the Syrian government. The Ambassador reviewed REF A and B points and explained that the USG was providing its views on the planned visit to Syria at FM Moratinos' request. Vice President de la Vega said that there had been no change in Spanish policy towards Syria, but also said Moratinos had "good ideas" on how to alleviate tensions in the region. The Ambassador replied that, while the USG appreciated FM Moratinos' expertise and good intentions, his visit to Damascus sent the wrong message and undermined efforts to win Syrian cooperation with UNSC resolutions. He noted that the Embassy was seeking a meeting with Moratinos (who is on travel) in order to relay these views directly to him.

//ARMS SALES//

¶4. (C) Turning to Venezuela, the Ambassador said the USG was concerned by reports that Spanish aircraft maker EADS CASA planned to find substitutes for U.S. components in its aircraft in order to complete a sale of twelve planes to Venezuela. The Ambassador noted that he and other U.S. officials would attend the March 22-23 rollout of an EADS CASA model being produced for the U.S. Coast Guard; it would be unfortunate to have this positive deal overshadowed by an EADS CASA deal with Venezuela on which the USG had already made its views known. Vice President de la Vega did not respond to the Ambassador's comments on this issue.

¶5. (C) The Ambassador said press reports of plans for a large Spanish weapons sale to Libya had also caught the USG's attention, particularly reports that the plans included MADRID 0000722 002 OF 002

refurbishment of four Chinook helicopters by the Spanish division of Eurocopter. The Ambassador explained that the USG and Libya were working towards an improved relationship, but that Libya remained on the list of State Sponsors of Terrorism, which created legal barriers to the transfer of U.S. military technology to Libya. Vice President de la Vega said she was not aware of a possible sale to Libya and urged the Ambassador to relay any concerns to Minister of Defense Bono.

//AFRICA//

¶6. (C) De la Vega reviewed her recent trip to Mozambique and



Kenya, as well as her visit to a migrant holding facility in the Canary Islands. She said it was becoming ever more apparent that Africa would represent a significant security challenge for Spain for some time to come and that much needed to be done to improve social conditions in order to ease migration pressures. De la Vega urged strong USG engagement in the region. The Ambassador reviewed for the Vice President U.S. support for Africa through the Millenium Challenge Account and the Africa Growth and Opportunity Act, as well as USG funding to counter AIDS, malaria, and other health threats. De la Vega said there was room for increased U.S.-EU cooperation in this area.

//COMMENT//

¶7. (C) We remain impressed by Vice President de la Vega's ability to manage the broad range of domestic and international interests of the Zapatero government. She acts as the "CEO" of the administration, personally handling the most sensitive projects and carrying out the difficult job of maintaining internal discipline. De la Vega is a tough-minded, but reliable interlocutor and we are well served by strengthening our level of communication with her.  
AGUIRRE

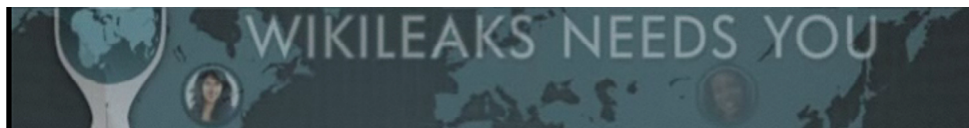
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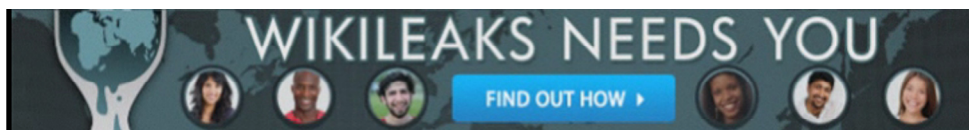
#### Viewing cable 07MADRID82, SPAIN/COUSO CASE: JUDGE ISSUES DETENTION ORDER

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| Reference ID | Created             | Released            | Classification                      | Origin         |
|--------------|---------------------|---------------------|-------------------------------------|----------------|
| 07MADRID82   | 2007-01-16<br>17:09 | 2011-08-30<br>01:44 | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Embassy Madrid |

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P 161709Z JAN 07  
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E.O. 12958: N/A  
TAGS: PREL MARR SP  
SUBJECT: SPAIN/COUSO CASE: JUDGE ISSUES DETENTION ORDER  
AGAINST THREE U.S. SERVICEMEN  
REF: A. MADRID 26  
    ¶B. 2006 MADRID 3013  
    ¶C. 2005 MADRID 4308  
¶1. (U) National Court Examining Magistrate Santiago Pedraz issued international detention orders on January 16 against three U.S. servicemen, Sgt. Thomas Gibson, Captain Philip Wolford, and Lt. Col. Philip de Camp, accused of murder and violating international law in the death of Spanish cameraman Jose Couso during the April 2003 capture of Baghdad. This action, taken at the request of the plaintiffs in the case (the Couso family) effectively reopens the case following a December 2006 ruling by the Spanish Supreme Court that Spanish courts have jurisdiction to try the matter (REF A). As noted in REF A, this swift action by the magistrate was widely anticipated. However, Santiago Pedraz also agreed to a request from the plaintiffs to order the National Court prosecutors to prepare a report advising whether it would be legally permissible to "embargo" (i.e. freeze) assets in order to compel compliance with the civil elements of the Couso family's case. The National Prosecutors assigned to the case have the option to appeal this request from the Examining Magistrate, but since they carried out a previous instruction by the magistrate to file the international detention order and the Spanish Supreme Court found that the order should be issued (REF A), we anticipate that the prosecutors will comply shortly.  
//EMBASSY FOLLOW UP//  
¶2. (SBU) The Mission has been engaged with Spanish authorities on this issue at various levels, from the Ambassador with the Vice President and Interior Minister to action officers in contact with judicial officials. We intend to follow up with National Court Chief Prosecutor Javier Zaragoza as soon as possible to determine the full range of possibilities in this case. With regard to the issue of freezing of assets, there are conflicting reports as to whether the plaintiffs intend to pursue the assets of the accused or the USG's assets and we are actively seeking clarification on this point. Post will report as soon as we have collected additional information.  
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| 07MADRID101  | 2007-01-18<br>17:39 | 2011-08-30<br>01:44 | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Embassy Madrid |

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DE RUEHMD #0101 0181739  
ZNR UUUUU ZZH  
P 181739Z JAN 07  
FM AMEMBASSY MADRID  
TO RUEHC/SECSTATE WASHDC PRIORITY 1666  
INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY  
RUEHGB/AMEMBASSY BAGHDAD PRIORITY 0132  
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E.O. 12958: N/A  
TAGS: PREL MARR SP  
SUBJECT: SPAIN/COUSO CASE: MEETING WITH CHIEF PROSECUTOR  
REF: A. MADRID 82  
B. MADRID 26  
C. 2005 MADRID 4308

¶1. (SBU) Embassy officials from Legat, the Consular Section, and the Political Section met with National Court Chief Prosecutor Javier Zaragoza on 1/18 to review developments in the Spanish court case charging three U.S. servicemen with murder and war crimes in the April 2003 death of Spanish cameraman Jose Couso during the takeover of Baghdad (REFS A and B). Poloff noted that they were not acting under instruction and simply wanted to meet informally with Zaragoza to review a case of great sensitivity to the USG. Emboffs noted the rapid decision of Examining Magistrate Santiago Pedraz to re-issue international detention orders against the three accused servicemen (REF B) and asked whether Spanish authorities intended to submit bilateral extradition requests to the U.S. as well for the three servicemen.

¶2. (SBU) Zaragoza said that he was not yet in a position to determine whether or not bilateral extradition requests would be filed because he had not reviewed the case himself sufficiently to establish the best course of action (Zaragoza was not working at the National Court at the time the Couso case was reviewed and dismissed). He noted that the Couso case had moved swiftly at a time when he was preoccupied with the recent handover of ETA terrorist suspects to Spain by French authorities, which involved new legal ground for the Spanish authorities. However, Zaragoza said that he was aware of Spanish Attorney General Candido Conde Pumpido's interest and involvement in the case (REF C) and assured Emboffs that his office would carefully study all aspects of the case and would proceed at a deliberate pace. He said that the existence of a U.S. investigation of the incident was understood to be an important consideration, but left open the possibility that the Prosecutor's Office would seek additional information from USG authorities.

¶3. (SBU) The Consular Section's legal adviser asked Zaragoza whether he could confirm news reports that the Examining Magistrate had requested that his office prepare a report on whether U.S. assets could be embargoed (frozen) as part of a civil component of the Couso family's suit against the U.S. servicemen. Zaragoza scanned the Examining Magistrate's request and said that the magistrate's order merely transmitted this request by the plaintiffs; the National Prosecutor's office had to undertake a careful review of

Spanish case law before responding to the request.

//COMMENT//

¶4. (SBU) Our objective in this initial meeting with Zaragoza was to sensitize him to the USG's concerns in this case, since he had no involvement in this case when it first came before the National Court. Zaragoza is a seasoned prosecutor with a clear understanding of the political implications of this case and we anticipate that he will proceed as carefully as he said he would. As soon as Zaragoza informs us how he intends to proceed, we will convey this information to interested Washington agencies. We will also follow up at higher levels in the Spanish Government to reinforce the implications of this case for bilateral relations and on international law.  
Aguirre

CABLE REFERENCE ID: #07MADRID141

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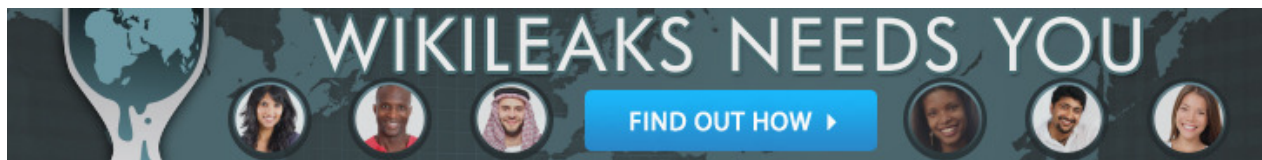
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| <b>Reference id</b>   | 07MADRID141 <small>aka Wikileaks id #94177 ?</small>  |
| <b>Subject</b>        | SPAIN/COUSO CASE: AMBASSADOR MEET WITH ATTORNEY GENERAL   |
| <b>Origin</b>         | Embassy Madrid (Spain)  |
| <b>Cable time</b>     | Fri, 26 Jan 2007 13:51 UTC  |
| <b>Classification</b> | CONFIDENTIAL  |
| <b>Source</b>         | <a href="http://wikileaks.org/cable/2007/01/07MADRID141.html">http://wikileaks.org/cable/2007/01/07MADRID141.html</a> |
| <b>References</b>     | 07MADRID101, 07MADRID82   |
| <b>Referenced by</b>  | 07MADRID215, 07MADRID800  |
| <b>History</b>        | First published on Thu, 1 Sep 2011 23:24 UTC (original)<br>Modified on Thu, 8 Sep 2011 13:29 UTC (diff from original) |
| <b>Extras</b>         | ? Comments  |

VZCZXR09639  
PP RUEHAG RUEHROV  
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INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY  
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C O N F I D E N T I A L SECTION 01 OF 03 MADRID 000141  
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TAGS: PREL [[External Political Relations](#)], MARR [[Military and Defense Arrangements](#)], SP [[Spain; Balearic Islands; Canary Islands; Mallorca](#)]  
SUBJECT: SPAIN/COUSO CASE: AMBASSADOR MEET WITH ATTORNEY GENERAL  
REF: A. [MADRID 101](#)  
B. [MADRID 82](#)  
C. [MADRID 26](#)  
D. [2006 MADRID 3013](#)  
E. [2005 MADRID 4308](#)

Classified By: DCM Hugo Llorens; reasons 1.4 (B) and (D)  
¶1. (C) Summary. The Ambassador and DCM met with Spanish Attorney General Candido Conde Pumpido on January 25 to review the USG's concerns with the direction of the Jose Couso case and to inquire how the Spanish Government plans to respond to recent judicial developments (REFS A, B, C, D). The Ambassador underscored that the primary motivation of his inquiry was to protect the rights of the three U.S. servicemen named in the Couso case, since the matter had already been properly investigated by the USG. Among other

issues, the Ambassador raised a January 22 fax from the magistrate handling the Couso case to the Embassy's Consular Section requesting the Embassy's assistance in obtaining "complete identifying" information regarding the three U.S. servicemen named in the case. The magistrate's fax, which did not come in the required format for a Mutual Legal Assistance (MLAT) request, was leaked by "judicial sources" just hours after it was sent to the Embassy. Press coverage indicates the magistrate's request was intended to help him win Interpol's agreement to publish the Spanish international detention order. The Ambassador told Conde Pumpido that the Embassy did not intend to respond to the magistrate's fax.

¶2. (C) Attorney General Conde Pumpido (strictly protect) emphasized that while there was nothing the Spanish Government could do to control the actions of the judiciary, the National Court prosecutors would continue to oppose the detention orders against the three U.S. servicemen, as well as any effort to embargo USG assets in connection with the case (REF B). Conde Pumpido warned that he expected the magistrate to continue to issue requests to the USG and to seek media coverage of his efforts, but said he expected the case to "go nowhere." He said he understood that the USG did not intend to respond to Spanish judicial requests with additional information, but suggested that even a perfunctory reply would undermine the magistrate's contention that the USG had been unresponsive to his requests. Conde Pumpido confirmed that the magistrate could not independently issue a bilateral request to the USG for the extradition of the three U.S. servicemen, since such a request would have to be approved by the Spanish Government. Separately, Legal Attache Madrid has learned of reluctance at Interpol to publish the Spanish detention order (Red Notice) for the U.S. servicemen named in the Couso case, based on Interpol provisions barring involvement in activities of a "political, military, religious, or racial character." Our sense is that there is still far to go in this matter and that the Spanish Government will search for a way to quietly terminate the case on technical grounds, while hoping to avoid a direct confrontation with the Couso family. End Summary.

//MAGISTRATE WORKING THE MEDIA//

¶3. (SBU) On the morning of January 22, the Locally Employed Legal Adviser in the Consular Section received a fax from National Court Examining Magistrate Santiago Pedraz requesting the Embassy's assistance in obtaining identifying data for the three servicemen named in the Couso case (a copy of this document was e-mailed to L and EUR/WE). It did not come through the official channels for an MLAT request and did not make clear precisely what information was being requested. Mission personnel opted not to respond to the fax, nor seek clarification from Judge Pedraz or request that he send his request through appropriate channels. Later on January 22, a press article in the wire service "Europa Press" citing judicial sources reported that Judge Pedraz had sent this request to the Embassy in order to help him meet an Interpol requirement that he provide "complete identifying data" for the accused in order for his Red Notice requests to be published by Interpol. Post's analysis is that Judge Pedraz sent this request without the expectation of a USG response, but with the intention of demonstrating in the media that he was acting expeditiously in this case.

¶4. (SBU) An unofficial translation of Judge Pedraz's fax follows:

MADRID 00000141 002 OF 003

BEGIN TEXT

Prior Correspondence 99/2003-10

To: Maria Angeles Sebastian, Legal Advisor to the Embassy of the United States of America in Spain

This Court is undertaking judicial actions to investigate the circumstances and suspects in the death of Spanish journalist Jose Couso Permuy on 8 April 2003 in Baghdad, (and) as part of this investigation it has been decided to send you this

note in order to obtain through your channels the complete identification of the following U.S. servicemen:

- Sergeant THOMAS GIBSON, member of Company "A" of the 64th Armored Regiment, Third Armored Infantry Division of the United States Army;
- Captain PHILIP WOLFORD, in command of Company "A" Armored Unit of the 64th Armored Regiment, Third Armored Infantry Division of the United States Army;
- Lt. Colonel PHILIP DE CAMP, in command of the 64th Armored Regiment, Third Armored Infantry Division of the United States Army.

Madrid, Monday 22 January, 2007  
Magistrate Santiago Pedraz Gomez  
END TEXT.

//MEETING WITH ATTORNEY GENERAL//

¶5. (C) Attorney General Conde Pumpido accepted the Ambassador's invitation to meet informally on January 25 to discuss a range of bilateral issues. The Ambassador thanked Conde Pumpido for his visit in late 2005 (REF E) to suggest an approach that would allow the National Court to dismiss the case. He noted that it had been difficult for the USG to comply with the suggestion but that we respected Conde Pumpido's advice and were pleased by the dismissal of the case by the National Court. Now that the case had been remanded by the Spanish Supreme Court, the Ambassador said that he wanted to learn from Conde Pumpido the full range of possible outcomes in this case, with the understanding that the USG's primary motivation was the protection of the three U.S. servicemen unjustly accused of murder and war crimes. The Ambassador said that the USG report on the incident, which had been shared with the Spanish Government as early as August 2003, demonstrated that a thorough investigation had been undertaken by the USG and that the matter was closed. He said that the USG was also puzzled by Judge Pedraz's fax to the Consular Section and by its immediate release to the media, which suggested that Judge Pedraz did not intend to deal seriously with this sensitive case. The Ambassador said that the Embassy did not intend to respond to Judge Pedraz's fax, nor did we seek for his request to be reissued through proper MLAT channels.

¶6. (C) Conde Pumpido emphasized that the Spanish judiciary was entirely independent and that the decision by the Supreme Court and the actions of Judge Pedraz were beyond the ability of the Spanish Government to control. The prosecutors now had no choice but to deal with the case. However, he said that the National Court prosecutors remained convinced that Spain did not have jurisdiction to try this case and that the elements of the case should not lead to a trial. He expressed the conviction that the case "would go nowhere." Conde Pumpido drew attention to the request by Judge Pedraz to the National Court prosecutors to examine the possibility of placing an embargo (freeze) on USG assets as part of any civil component to the Couso case. He said the prosecutors would oppose any such request to embargo USG assets.

(COMMENT: This implies that the prosecutors would appeal Judge Pedraz's motions to the appellate section of the National Court, which is the body that dismissed the Couso case in March 2005. END COMMENT). With regard to the unusual fax from Judge Pedraz, Conde Pumpido said that it was his understanding that it was related to Pedraz's efforts to comply with Interpol's technical requirements- ut said h did nnt thifk0tHa4 the Nthonal Coert 0rosecutors were even MADRID 00000141 003.2 OF 003 aware of the fax.

¶7. (C) Conde Pumpido cautioned that his experience with Judge Pedraz led him to believe that the magistrate would continue to issue judicial requests and demands to the Embassy, and that he would probably continue dealing with the press. Conde Pumpido reiterated that there was nothing the Government could do to rein in Pedraz. He suggested that it might be advisable for the Embassy to transmit a perfunctory

response to undermine the magistrate's contention that the USG was being unresponsive to Spanish judicial requests. Asked whether Pedraz had the ability to directly issue a bilateral request to the USG for the extradition of the three U.S. servicemen, Conde Pumpido said that Pedraz could not do so because any such request would have to go through the Government (COMMENT: Conde Pumpido did not guarantee that the Spanish Government would deny an extradition request, so we will remain attentive to this possibility. END COMMENT).

//RELUCTANCE BY INTERPOL TO ISSUE DETENTION NOTICE//

¶8. (C) Separately, Legat Madrid learned through informal inquiries that there is great reluctance at Interpol to publish the Red Notices for the three U.S. servicemen, as requested by Judge Pedraz. The Interpol contact said that the Secretary General was aware of the request and would do his best not to publish the request on the grounds that it would violate Article 3 of the Interpol Constitution and General Regulations, which states that "It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious, or racial character." He indicated that if the requests were to go forward, Interpol would bring together the Spanish and U.S. representatives for consultations and that the matter would be voted upon by the Interpol Executive Committee, and then by the Interpol General Assembly. (COMMENT: This information is reassuring, but we remain concerned that Judge Pedraz could frame his request in a manner that makes it more difficult for Interpol to reject, or that he could simply go around Interpol and distribute the detention orders internationally on his own. END COMMENT).

//COMMENT//

¶9. (C) This appears to be the start of a lengthy process, and one that will be increasingly politically sensitive for the Zapatero Government. Spanish judicial officials do not/not believe this case will prosper based on the available evidence and they not want this case to obstruct increasing cooperation between USG and Spanish judicial officials. However, it is clear from discussions with both the Attorney General and the Chief Prosecutor of the National Court that the prosecutors not entirely certain how to proceed not that Spanish jurisdiction has been established by Spain's Supreme Court. Our sense is that they will continue to seek procedural/technical grounds for getting the case dismissed, without having to directly and publicly challenge the Couso family (which has already accused prosecutors of working to defend USG interests). Our objective remains the dismissal of this case so that the three U.S. defendants will no longer face prosecution for a matter that has already been investigated and brought to a conclusion by the USG.  
Aguirre

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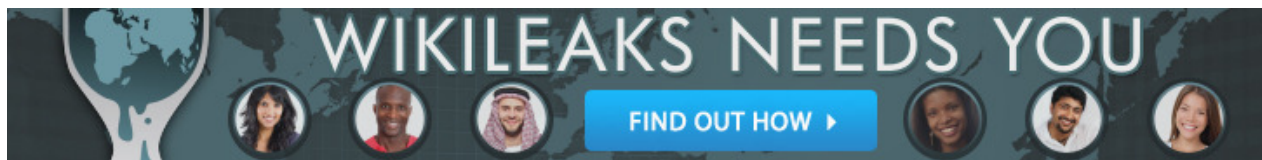
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"All of them, those in power, and those who want the power, would pamper us, if we agreed to overlook their crookedness by wilfully restricting our activities." — "Refus Global", Paul-Émile Borduas

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| <b>Reference id</b>   | 07MADRID215   | aka Wikileaks id #95857 ?   |
| <b>Subject</b>        | SPAIN/COUSO CASE: JUDGE THREATENS TO OBSTRUCT US-SPAIN JUDICIAL COOPERATION |   |
| <b>Origin</b>         | Embassy Madrid (Spain)  | SCENESETTER FOR SECDEF VISIT TO SPAIN                                       |
| <b>Cable time</b>     | Thu, 8 Feb 2007 18:12 UTC   | SPAIN: EU CONSTITUTION HELPS THOSE WHO HELP THEMSELVES                      |
| <b>Classification</b> | CONFIDENTIAL  | SPAIN: ZAPATERO'S DECISION ON AFGHANISTAN FIRM                              |
| <b>Source</b>         | http://wikileaks.org/cable/2007/02/07MADRID215.html                         |   |
| <b>References</b>     | 07MADRID196   | SPAIN/COUSO CASE: JUDGE THREATENS TO OBSTRUCT US-SPAIN JUDICIAL COOPERATION |
| <b>Referenced by</b>  | 07MADRID141   | SPAIN COUNTRY CLEARANCE FOR S/GAC BRITISH ROBINSON                          |
| <b>History</b>        | 07MADRID224   | SPAIN ADVISED OF TRAVEL AND DOCUMENTATION PLANS FOR PROTECTED CUBAN MIGRANT |
| <b>Extras</b>         | 07MADRID225   | SPAIN ORPHANAS FATIHA AGREEMENT ON NATIONAL UNITY GOVERNMENT                |
|                       | 07MADRID226   | SPAIN COUNTRY CLEARANCE FOR AMBASSADOR SUSAN MCCAW                          |
|                       | 07MADRID227   | SPAIN'S VIEWS IN ADVANCE OF FEBRUARY 12 GAERC                               |

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 E. 2006 MADRID 3013

MADRID 00000215 001.2 OF 004  
 Classified By: DCM Hugo Llorens; reasons 1.4 (B) and (D)  
 1. (U) Summary. Spanish media reported February 5 that National Court Examining Magistrate Santiago Pedraz has threatened to request the suspension of US-Spain judicial

cooperation agreements because the USG has not responded to his out of channel January 22 request for "complete identifying information" for the three U.S. servicemen named in the **Couso** case (REF A). The reports made clear that Judge Pedraz required specific identifying data in order to process international detention orders through Interpol. Judge Pedraz instructed Spanish National Police and the Civil Guard to work with Interpol to determine the full identities of the accused servicemen. In response to a media inquiry on Judge Pedraz's request, the Embassy Spokesperson stated that the USG had undertaken an investigation of the incident in 2003 and that the results of that investigation had been shared with the appropriate Spanish authorities. Separate news reports covered the February 5 meeting of the **Couso** family with Minister of Justice Aguilar, who promised to adhere to legal norms and to National Court orders related to the case.

The **Couso** family urged the Spanish Government to pressure the USG to respond to Mutual Legal Assistance (MLAT) requests related to the **Couso** investigation. In a more positive development, Judge Pedraz agreed with a National Court prosecutor's report that USG assets in Spain could not/not be frozen as part of the civil component of the **Couso** family suit against the three U.S. servicemen.

¶2. (C) Since regaining control of the investigation in December, Judge Pedraz has elected to draw as much media attention as possible to his actions in the case and appears determined to keep this matter on the front burner. Our assessment is that Judge Pedraz is driven in part by his frustration with USG refusal to recognize his jurisdiction in the matter, and in part by his desire to avoid blame for his inability to successfully prosecute this case. This assessment is bolstered by the comment of a "Reporters Without Borders" contact, who told the Embassy Media Relations Officer of rumors in the NGO community that Judge Pedraz had sent the request to the Embassy for the identities of the U.S. servicemen purely as a "publicity stunt." Although we are undergoing a period of tension with Spanish judicial authorities stemming from friction over unrelated judicial cooperation cases, we do not anticipate that Spanish officials will give any consideration Pedraz's suggestion to suspend bilateral cooperation. In this message, we consider possible USG responses to developments in the **Couso** case and request the Department's guidance as to how the Mission should proceed with Spanish authorities on this issue. End Summary.

//JUDGE THREATENS TO OBSTRUCT JUDICIAL COOPERATION//

¶3. (U) Spanish daily "El Pais" reported February 5 that the USG had "refused to provide the National Court the identities of the U.S. soldiers who killed (Spanish cameraman) Jose **Couso**." The story indicated that, as a result of the USG's "refusal," Judge Pedraz intends to ask the Criminal Section of the National Court and the main administrative body of the Spanish courts to suspend implementation of Spain's bilateral Mutual Legal Assistance Treaty with the U.S. The El Pais story confirmed earlier reports that Judge Pedraz required the "complete identities" of the three accused servicemen in order to obtain Interpol's approval of his international detention orders for the three servicemen. The El Pais story reported that Judge Pedraz had issued a "written request" to the Embassy ten days earlier for the identities of the accused (REF A) and claimed that a clerk in Pedraz's court had followed up with a phone call to the Embassy on January

¶31. (COMMENT: Pedraz's "written request" did not come in the MADRID 0000215 002.2 OF 004

proper format for a judicial cooperation request, but rather as an informal fax to the Consular Section. We have no knowledge of a second contact by Pedraz's staff in relation to this case. END COMMENT). Judge Pedraz also ordered the National Police and the Civil Guard to work through Interpol to obtain the identities of the U.S. servicemen, a strange request given that Interpol asked Judge Pedraz to provide

that very same information. An El Pais reporter had contacted the Embassy Media Relations Officer on January 31 to inquire about Judge Pedraz's request. Per previous guidance in the Couso case, the Embassy Spokesperson responded that the USG had undertaken an investigation of Jose Couso's death in 2003, concluded that the U.S. personnel involved had acted within the rules of engagement, and conveyed its report on the incident to the appropriate Spanish authorities.

¶4. (SBU) Judge Pedraz told El Pais that, in the absence of a response from the USG, he would "study the possibility" of recommending to the National Court and to the administrative body that oversees the Spanish judicial system (Consejo General del Poder Judicial) that Spain suspend implementation of U.S.-Spain bilateral judicial cooperation agreements. However, Judge Pedraz subsequently told another news service that he did not intend to make such a recommendation "for the moment." In the El Pais article, an unidentified Spanish judge asserted that Spanish judges "respond cordially and with alacrity" to "dozens" USG MLAT requests on issues ranging from narcotics traffickers to Nigerian fraud rings and that the lack of a USG response in this case was unacceptable. (COMMENT: Legat has sought for some time, without success, to convince Judge Pedraz to treat the hundreds of ongoing Nigerian fraud cases involving Amcits as organized crimes cases rather than as individual cases of common crime, since it would simplify prosecution to treat fraud perpetrators as members of a crime ring. END COMMENT).  
//REPORTERS WITHOUT BORDERS" CLOSELY TRACKING COUSO CASE//

¶5. (SBU) A representative of the NGO "Reporters Without Borders" (RSF) contacted the Embassy Media Relations Officer on February 7 to inquire about the El Pais story and about the direction of the Couso case. The RSF representative pointedly asked whether Judge Pedraz had made his request to the Embassy for the identities of the three U.S. servicemen through the correct channels, or by some informal means. She said, with a note of irritation, that it was RSF's understanding from unspecified sources that Judge Pedraz had sent the request to the Embassy as a "publicity stunt" and was not handling the Couso case as a serious judicial matter.

Emboff responded that we were not aware of any formal MLAT request for the full identities of the U.S. servicemen and added that bilateral judicial cooperation remained healthy and was working to the benefit of both countries.  
//JUDGE PEDRAZ DISCOUNTS FREEZING OF USG ASSETS//

¶6. (U) In a separate decision, Judge Pedraz accepted the conclusions of a report he had commissioned from the National Court prosecutors regarding the viability of freezing U.S. Department of Defense assets in Spain as part of the civil component of the Couso case (REF B). Pedraz agreed with the prosecutors that such assets "cannot be embargoed (frozen) because they are inextricably linked" to the USG's implementation of its foreign policy and that seeking to freeze these assets would constitute "interference in the sovereign actions of another state." He cited the prosecutors' finding that U.S. diplomatic and consular assets in Spain were similarly immune from being embargoed. Judge Pedraz added that the freezing of Department of Defense assets would also violate bilateral judicial assistance agreements between the U.S. and Spain.  
//PLAINTIFFS MEET WITH MINISTER OF JUSTICE//

¶7. (U) Also on February 5, the family of Jose Couso met with outgoing Minister of Justice Juan Fernando Lopez Aguilar to MADRID 0000215 003.2 OF 004 request a "firm gesture" on the part of the Spanish Government in response to the "attitude demonstrated by the U.S. Administration" regarding this case. The Couso family suggested that the Spanish Government call in Ambassador Aguirre to demand an explanation of the USG's actions in this case. Lopez Aguilar assured the family that the Spanish Government would "respect the law and any decisions rendered

by the National Court." In subsequent comments to the media, Javier Couso, brother of Jose Couso, said that the family took the Minister's response to indicate that the Spanish Government would support a bilateral extradition request to the U.S. for the three accused servicemen if such a request were submitted by a National Court judge. Post previously inquired about the possibility of a bilateral extradition request in a meeting with the Chief Prosecutor of the National Court, who said the Spanish Government has not taken a position as yet regarding whether it would support a bilateral extradition request (REF B).

//FRICTION ON OTHER CASES//

J8. (C) We do not believe Spanish officials will contemplate disrupting bilateral judicial cooperation over the Couso matter, but note that this threat is being raised in the context of Spanish Ministry of Justice displeasure regarding a perceived lack of USG cooperation on recent unrelated Spanish judicial assistance requests. In the Carrascosa parental abduction case, in which a Spanish citizen mother is being held on contempt charges by a New Jersey state court, Spanish judicial authorities believe U.S. and New Jersey court officials have not given sufficient weight to a determination in the case by a Spanish judge. Separately, MOJ officials believe the USG was not helpful in responding to detention requests in the case of former Guatemalan Interior Minister Donaldo Alvarez, who resided illegally in the U.S. for several years and who faces criminal charges in Spain. While delays and miscommunications on judicial cooperation cases are caused primarily by differences in the Spanish and U.S. legal systems, delayed U.S. responses on MLAT requests or rejection of MLAT requests on technical grounds generates a sense among Spanish officials that the USG is not fully committed to a reciprocal cooperative relationship.

J9. (C) These factors are not directly relevant to the Couso case, in which we do not recognize the Spanish court's jurisdiction, but they do color public discussion of the Couso case, where the absence of a USG response to the Spanish court is portrayed as a case of U.S. disrespect for the Spanish legal system. Complicating the issue further is the intense disapproval by the Spanish public of the U.S. invasion of Iraq, which for some makes the indictment of the three U.S. servicemen in the Couso case an indictment of the "illegal" war itself. The plaintiff's attorneys are aware of this dynamic and charge that the lack of a USG response to judicial requests is a further indication of USG "arrogance," requiring a strong official response by Spanish authorities. The challenge for the Spanish Government and the prosecutors is to appear both responsive to the plaintiffs and Judge Pedraz (and respectful of the victim, Jose Couso) while avoiding a confrontation with the USG over a case that has a very weak legal basis.

//NEXT STEPS//

J10. (C) As noted in previous reporting, the Mission's goal is dismissal of this case to ensure that the three U.S. servicemen are not negatively affected by ongoing Spanish judicial actions. A mere suspension of the case in the absence of the accused (a politically palatable solution for both the judges and the Government) would be insufficient as it would leave the servicemen open to future legal action in Spain or internationally. We would appreciate the Department's views on the following range of options for USG actions in this case:

- We could continue to ignore requests from Judge Pedraz, and MADRID 0000215 004.2 OF 004 refuse to recognize his fax of January 22 requesting assistance in identifying the three servicemen.
- The Embassy could respond to Judge Pedraz with a fax from the Embassy, stating either that any judicial assistance request should go through official channels, or referring Pedraz to the Ministry of Justice for the official USG

response on this case. We are aware that informing Judge Pedraz to present requests through normal channels could trigger a formal MLAT requesting the identities of the three U.S. servicemen; the Ambassador has made clear to the Attorney General that we would not welcome such an MLAT request.

- The Ambassador could raise this to higher political levels (Minister of Justice and/or Vice President Maria Teresa Fernandez de la Vega) and reiterate that no further USG response will be forthcoming. As in past communications on this issue with Spanish authorities, we would engage on an informal basis to avoid any public perception that we are exerting pressure on the Zapatero Government on this issue or encouraging them to interfere in the judicial process.

- The Department could raise this case in Washington with the Spanish Embassy to convey concern regarding the press reports that Judge Pedraz is threatening to recommend the suspension of legal cooperation with the USG over this matter.

¶11. (C) A final alternative is to do nothing for the moment and await further developments. The Spanish Government is aware of our position and we do not believe that the courts or the Government would seriously consider disrupting judicial cooperation over this matter. However, as noted above, Judge Pedraz appears motivated to keep this case in the public eye -- or at least to avoid blame for the eventual failure of the case to progress -- so we anticipate further efforts by him to force a USG response to his requests. Among the next logical steps would be a bilateral request by Judge Pedraz for the extradition of the three accused servicemen, at which point the National Court prosecutors would have to choose between processing the extradition requests and risking a dispute with the USG, or appealing the extradition requests at the cost of accusations that they were acting to protect USG interests. The Criminal Section of the National Court dismissed the **Couso** case in March 2006 on jurisdictional grounds and expressed skepticism regarding the merits of the case, but there is no guarantee that they would render a favorable verdict again if the case is appealed for their determination.

Aguirre

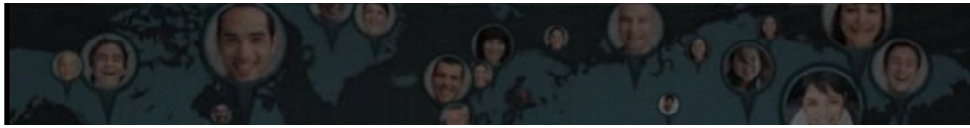
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### Viewing cable 07MADRID800, SPAIN/COUSO CASE: JUDGE CHARGES US SERVICEMEN WITH

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| Reference ID | Created             | Released            | Classification                      | Origin         |
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SUBJECT: SPAIN/COUSO CASE: JUDGE CHARGES US SERVICEMEN WITH
"CRIMES AGAINST INTERNATIONAL COMMUNITY"
REF: A. MADRID 215
     B. MADRID 141
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     D. MADRID 42
     E. MADRID 26
MADRID 00000800 001.2 OF 003
¶1. (SBU) Summary. National Court Judge Santiago Pedraz issued formal charges of murder and "crimes against the international community" against the three US servicemen named in the legal case filed by family members of Spanish cameraman Jose Couso, who was killed by US fire during the capture of Baghdad in April 2003 (refuels). The most serious charges are punishable by 10-15 year imprisonment. According to press reports, Judge Pedraz transmitted a Mutual Legal Assistance (MLAT) Request to "US authorities" in connection with this charging document, with the MLAT evidently intended to advise the servicemen of these charges rather than requesting action on the part of the USG to extradite them to Spain. The charging document indicates that if the three servicemen were brought before the court, they would be required to present a one million Euro bond to meet their potential civil liability in the case. The National Court prosecutors have three working days to appeal the charges; if there is no appeal, the case will move forward. The indictment is notable for the absence of any acknowledgement that there were ongoing military operations during the incident in Baghdad and for the use of alleged statements to the media by the defendants to justify the charges against them. The DCM contacted Julio Perez Hernandez, Secretary of State for Justice (equivalent to an Undersecretary) to discuss Pedraz's presentation of charges, noting the USG's respect for Spanish judicial independence, but also the USG's disappointment with this development in light of the extensive USG report on the incident which was shared Spanish authorities. Perez Hernandez said he would contact the National Court Chief Prosecutor to ascertain how the Prosecutor's Service would handle this case. Spanish law does not permit trial in absentia, so it is possible that the case could be archived if the defendants do not appear in a Spanish court. However, this is an unacceptable outcome since it will leave charges pending against the three servicemen; we will continue to press for dismissal of the charges. End Summary.
//THE CHARGES//
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¶2. (SBU) In a document filed by the National Court the afternoon of April 27 (immediately prior to a major Spanish holiday weekend), Judge Pedraz formally charged US servicemen Lt. Colonel Philip de Camp, Captain Philip Wolford, and Sergeant Thomas Gibson with "crimes against the international community" and "aggravated murder" in connection with the death of Spanish cameraman Jose Couso on April 8, 2003 during the US capture of Baghdad. The indictment was broken down into three parts: a background of the case, a discussion of the judicial aspects of the case, and the Judge's presentation of charges against the three servicemen. Post is preparing an informal translation of the indictment to be transmitted to the Department and to DOJ, but a summary of the document follows below:

-- Background:

Judge Pedraz discusses key elements of the invasion of Iraq and notes that the majority of the international media transferred from the "Rashid Hotel" to the "Palestine Hotel" at the recommendation of US forces. He then describes the killing of Couso from the impact of a tank round fired by a US tank situated 1.5 kilometers from the Palestine Hotel. According to the indictment, Lt. Colonel Philip de Camp of the 64th Armored Regiment, 3rd Infantry Division ordered Captain Philip Wolford, commander of the unit that fired the tank round, to fire a round at the hotel. The shot was allegedly fired by the third serviceman, Sergeant Thomas Gibson. Judge Pedraz's charging document states that "The (US) military forces, including the three aforementioned individuals, knew that the Palestine Hotel was located in a civilian area, and that it was occupied by journalists. There is no evidence that a "sniper" nor of gunfire from any part of the Palestine Hotel against (US) forces."

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-- Judicial Discussion:

Judge Pedraz indicates that the events related in the summary could constitute a "violation against the international community," as described in Article 611.1 of the Spanish Penal Code, which mandates a 10-15 year prison term for those who, "without prejudice to the harm occasioned by their conduct, in the event of an armed conflict undertake or order to be undertaken indiscriminate or excessive attacks or make the civilian population the target of attacks, reprisals, or acts or threats of violence with the intent of generating terror." Judge Pedraz cites Article 608.3 of the Penal Code, which describes protected persons as "the civilian population and persons protected under the IV Geneva Convention of 12 August 1949 and by Additional Protocol I of 8 June 1977." He then adds a charge of "aggravated murder" against the three servicemen and concludes that there exist "rational indicators" that the actions of the servicemen constituted criminal acts.

-- Judge Pedraz asserts that (unspecified) comments in the media by one of the accused of the circumstances of the incident confirmed the existence of "an order, authorization of that order, and the firing of a tank round," a sequence Judge Pedraz says was further supported by the USG "report" (Judge Pedraz's quotes) on the incident. Judge Pedraz then discusses the recommendation by "the Pentagon" for foreign journalists to move to the Palestine Hotel, indicates that the "media" reported to "Embassies, the Pentagon, and Washington" the GPS coordinates of the Hotel, indicates that US military forces were advised not to target the Palestine Hotel, and claims that "Secretary of State Colin Powell acknowledged that it was known that the Palestine Hotel was full of journalists."

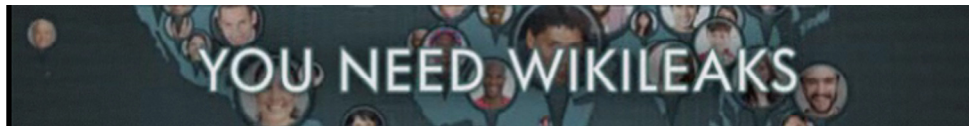
-- Pedraz disputes the conclusion of the USG investigation that the servicemen responded appropriately and within the rules of engagement to the suspected threat of a sniper or enemy spotter at the Palestine Hotel, because USG forces should have known that the Palestine Hotel was a civilian facility and that the "flash" seen by USG forces could have been the reflection of a camera lens or a camera flash.

Judge Pedraz further notes attacks by US aircraft against Al-Jazeera and other media facilities near the Palestine Hotel, implying that USG forces were deliberately targeting the international media. Pedraz alleges that there is sufficient evidence to warrant charges the shot fired by the US tank that killed Couso, "without evidence of any threat whatsoever... constitutes an "attack, reprisal, act, or threat of violence with the objective of terrorizing" journalists, as indicated by the attacks the same day against Al Jazeera and Abu Dhabi TV." On this basis, Judge Pedraz orders the "provisional arrest" of the named US servicemen.

Charges:  
Judge Pedraz orders the indictment of the three US servicemen and instructs the notification of the three defendants via an MLAT to US authorities. Further Judge Pedraz indicates that "once the (subjects) are at the disposition of (Spanish courts)," they should provide a bond of one million Euros (\$1.37 million) to cover potential civil liability as a result of the criminal investigation and trial. Under Spanish law, the National Court prosecutor has three working

days to present an appeal to Judge Pedraz's indictment.  
//DCM CONTACTS MINISTRY OF JUSTICE//  
¶3. (SBU) The DCM contacted Secretary of State for Justice (Undersecretary equivalent) Julio Perez Hernandez on April 27 to draw his attention to the USG's concerns regarding this case. The DCM noted the USG's respect for the independence of the Spanish judiciary but emphasized our disappointment with the issuance of this indictment after the USG had provided a comprehensive report demonstrating that we had already fully investigated the circumstances of Couso's death. Perez Hernandez (who only recently assumed his position) said that he knew the general outlines of the Couso case but was unaware of both this indictment and of the latest actions by Judge Pedraz. However, Perez Hernandez MADRID 00000800 003.2 OF 003 said that he would try to make contact with National Court Chief Prosecutor Javier Zaragoza to determine how the prosecutors intended to respond.  
¶4. (SBU) Shortly after the DCM's conversation with Perez Hernandez, MOJ Director General for International Relations Cristina Latorre called him to say report that the MOJ had been unable to contact Chief Prosecutor Zaragoza. Latorre said that Judge Pedraz's actions had come as a complete surprise to the MOJ, noting that she agreed that there were no grounds for war crimes or murder charges and had worked with prosecutors in 2006 to get the case dismissed.  
//MEDIA INQUIRIES//  
¶5. (SBU) This is a major development in the Spanish context and we expect to receive many questions from local media regarding the USG response. As we have throughout this case, the Embassy will deploy the previously approved guidance below, last used in response to media inquiries on January 16, 2007:  
"On behalf of the Government of the United States, we reiterate our profound sympathy for the death of the Spanish journalist and of the Reuters correspondent Taras Protsyuk in the Palestine Hotel in Baghdad. The US authorities undertook a detailed investigation of the incident. We shared the results of the investigation with Spanish authorities. The investigation concluded that US military forces acted within the rules of engagement in that zone of armed conflict."  
//COMMENT//  
¶6. (SBU) Legat confirmed with DOJ that DOJ has not received the MLAT which Judge Pedraz instructed be delivered in connection with this indictment. It is our understanding that transmittal of the MLAT will take several weeks to make its way from the Spanish Ministry of Justice to DOJ. If the USG does not acknowledge a Spanish MLAT or otherwise cooperate in this case, it is possible that the case could be suspended or archived, since Spanish law does not provide for trial in absentia. However, this would leave the charges against the US servicemen pending. Respected figures in the Ministry of Justice and Interior and within the Zapatero Administration have told us that they agree with the USG view on the legal validity of this case and have assured us that the case was so weak that it would eventually crumble. Clearly Judge Pedraz (considered a difficult judge in the judicial community) is of another mind and intends to aggressively pursue this case. We will continue to engage at a high level with Spanish Government officials to press the case for the dismissal of the charges against the US servicemen.  
Aguirre





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### Viewing cable 07MADRID899, SPAIN/COUSO CASE: UPDATE; CONVERSATIONS WITH KEY

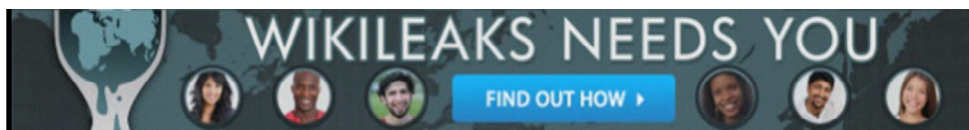
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INFO RUEKJCS/JOINT STAFF WASHDC IMMEDIATE  
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EUR/WE FOR ALLEGRONE, CLEMENTS AND CERVETTI, L/LEI FOR PROPP, KULISH AND JOHNSON  
E.O. 12958: N/A  
TAGS: MARR PGOV PREL SP  
SUBJECT: SPAIN/COUSO CASE: UPDATE; CONVERSATIONS WITH KEY SPANISH LEADERS  
REF: A. MADRID 0800 AND PREVIOUS  
B. LLORENS-ALLEGRONE E-MAIL OF APRIL 30  
C. 2007  
¶1. (SBU) DCM Llorens met with Spanish State Secretary for Justice (Deputy Minister-equivalent) Julio Perez Hernandez on May 10 to express USG's strong concern about the formal charges filed in Spain against the three US servicemen named in the legal case filed by family members of the Spanish camaraman Jose Couso, who was killed by US fire during the capture of Baghdad in April 2003 (ref A). DCM was following up on the April 30 discussion between US Ambassador to Spain Aguirre and Spanish First Vice President Maria Teresa Fernandez de la Vega (ref B), in which de la Vega said she was following the case carefully, had reviewed the the documents filed by Judge Pedraz on April 27 and had found no new material in the material or evidence included in the decision nor in the Judge's conclusions. In response to the Ambassador's strong pitch for the government to seriously consider appealing the decision, she said that an appeal was among the options being weighed, but cautioned that the government had to tread carefully in dealing with Spain's independent judiciary. She assured the Ambassador that she was deeply involved in following the case and that it had the attention of the highest levels of the Spanish government.  
¶2. (SBU) In his conversation with the DCM, Perez-Hernandez said that there was still some time available for an appeal (despite information last week that the appeal deadline had passed) because the timeline did not start precisely when the case was filed. He said that he understood that the Spanish National Court Chief Prosecutor Javier Zaragoza was considering an appeal. (Perez-Hernandez said that his office was checking on the precise timeline). He said his government shared the USG's concern about this case and said he would follow the case every step of the way and stay in touch with the Embassy. He noted that the government does not control the judiciary and it might be counter-productive to launch a formal government approach, but that the GOS would work with the US to assist in the process. DCM reiterated the USG's deep concern about the case, noting that the USG had conducted a thorough investigation, shared these results with the Spanish government and that the results were clear that the three US servicemen had committed no crime. Our sympathies remained with the families but there was no cause to ruin the lives of the three US servicemen, who were

not criminals. DCM vowed to remain in close contact with  
Perez-Hernandez and his office on the case, and  
Perez-Hernandez welcome close coordination.  
Aguirre



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### Viewing cable 07MADRID910, SPAIN/COUSO CASE: PROSECUTOR APPEALS CHARGES

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L/LEI FOR PROPP, KULISH, AND JOHNSON  
E.O. 12958: N/A  
TAGS: PREL PGOV MARR SP  
SUBJECT: SPAIN/COUSO CASE: PROSECUTOR APPEALS CHARGES  
AGAINST US SERVICEMEN  
REF: A. MADRID 899  
B. MADRID 800 AND OTHERS

(SBU) National Court Chief Prosecutor Javier Zaragoza contacted the DCM on May 14 to report that on May 11 he had appealed the decision by National Court Magistrate Santiago Pedraz to file formal charges against the three US servicemen named in the case filed by relatives of Spanish cameraman Jose Couso (reftels). This case now proceeds to the appeals body within the National Court ("Sala de lo Penal de la Audiencia Nacional"). This is the same appeals tribunal that dismissed the Couso case in 2006 on the grounds that Spain did not have jurisdiction to try the case. The Supreme Court overturned the decision of the National Court and ruled that Spain did have jurisdiction, but did not rule on the substance of the Couso case. Zaragoza told the DCM that, while he was sympathetic towards the Couso family and there was strong political pressure related to the Couso legal case, his job was to make a technical/legal evaluation. Zaragoza said that his review of the facts led him to conclude that the killing of Jose Couso by the US servicemen was not intentional, therefore the servicemen could not be charged with war crimes or murder. Post will seek a copy of Zaragoza's appeal to share with the Department.  
Aguirre

CABLE REFERENCE ID: #07MADRID911

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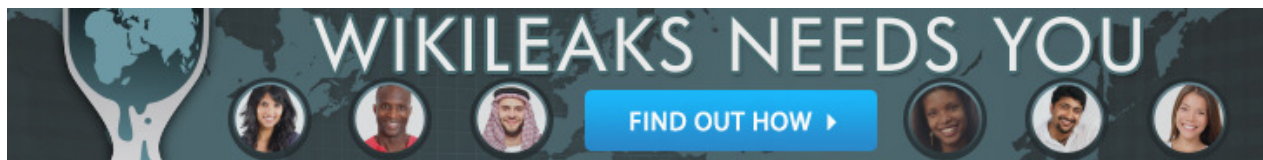
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**Reference id**  aka Wikileaks id #108143 ?

**Subject** SCENESETTER FOR US-SPAIN HIGH LEVEL DEFENSE TALKS

**Origin** Embassy Madrid (Spain)

**Cable time** Mon, 14 May 2007 17:44 UTC

**Classification** CONFIDENTIAL//NOFORN

**Source** <http://wikileaks.org/cable/2007/05/07MADRID911.html>

**Referenced by** 09MADRID346, 09MADRID347

**History** [First published on Tue, 30 Nov 2010 12:01 UTC \(original\)](#)  
[Modified on Thu, 1 Sep 2011 23:24 UTC \(diff from original\)](#)  
[Modified on Thu, 8 Sep 2011 13:29 UTC \(diff from original\)](#)

**Extras** ? Comments, 1 media item

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 E.O. 12958: DECL: 05/14/2017  
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 SUBJECT: SCENESETTER FOR US-SPAIN HIGH LEVEL DEFENSE TALKS  
 Classified By: Ambassador Eduardo Aguirre for reasons 1.4 b & d.  
 ¶1. (C/NF) Dan, welcome back to Spain. I appreciate your patience and efforts to finally resolve the NCIS/OSI issue and I'm glad that you've made this High-Level Defense Committee (HLDC) meeting a priority. Now that the Permanent Committee is back on track, handling routine issues at the staff level, we can use the HLDC forum to share views and set strategic direction on key international policy issues like Afghanistan, Kosovo, the Couso case, missile defense, the NATO Summit in 2008, and future US use of Moron and Rota military bases. As we've discussed before, Spain can at times be a difficult partner, but never more so than when it feels ignored. This meeting, along with Secretary Rice's visit in a few weeks, should reassure the GOS that we take it seriously, but while reminding MOD that we have high expectations of such important partners.  
 -- US USE OF SPANISH BASES --  
 ¶2. (C/NF) The DCM, the Embassy's political-military team, and I travel regularly to Rota and Moron, the Spanish bases where

nearly 3000 US troops and dependents live and work. With each successive visit, I am more impressed by the important activities and outstanding working-level cooperation at the bases. The Czech Deputy Prime Minister, planning for the possibility of US missile defense installations in his country, recently visited Rota in order to understand how the US military behaves as a tenant. Perhaps on your next trip you'll be able to travel to southern Spain to get a better idea of the key role that the bases play in US efforts in Iraq, Afghanistan, and other operations. As you know, it is taking MOD longer than we expected to implement its new interagency process for reviewing proposed Naval Criminal Investigative Service and USAF Office of Special Investigations activities. We continue to press them to speed the process so that we can begin to implement the agreement and our investigators can get back to work.

-- AFGHANISTAN --

¶3. (C/NF) Despite the limitations imposed by Spanish domestic politics, which are foremost in every minister's mind, due to nationwide local/regional elections in two weeks and national elections within the year, Spain remains a stalwart ally in Afghanistan. Though not currently in a position to increase the 690-soldier troop ceiling that Parliament set, the GOS insists that it is committed to maintain current levels for the long haul. Your primary interlocutor, MOD Secretary General for Policy Luis Cuesta, recently spent a week in Kabul and Herat with his counterpart from MFA. They both returned relatively optimistic that NATO-ISAF is making progress but understanding more clearly than ever that NATO won't be able to leave anytime soon. Top MOD leaders have also told us privately that CHOD General Sanz has initiated discussions in Brussels regarding the possibility that Spain would staff the core of the ISAF HQ in summer 2008, after Spanish elections. We continue to press the GOS to increase its public diplomacy efforts, and to consider doing more when it is able.

¶4. (C/NF) While the GOS has lately complained about the lack of coordination between ISAF and Operation Enduring Freedom -- specifically the airstrikes in Herat province that killed civilians as well as Taliban -- Spain remains active on the security and reconstruction fronts. The Spanish Provincial Reconstruction Team (PRT) is well regarded for involving local Afghans in its efforts to provide basic services and critical infrastructure to the people of Badghis province, but MFA officials note that there is no sign of the central government or national security forces in the province. While carefully complying with its caveat, Spanish troops supported NATO-ISAF's Operation Achilles earlier this spring by sealing the southern border of their zone. Regarding its Sevilla Ministerial commitments, MOD sources say that two Spanish military training teams (OMLTs) will arrive in Afghanistan in early June to begin training Afghan National Army troops. They have told us that these 30-50 soldiers will be in addition to the 690 troops that are already deployed. The Spanish Army is also proceeding with its purchase of tactical UAVs, and expects to have them in the field later this year.

-- KOSOVO --

¶5. (C/NF) In the Balkans, where its troops have served for more than 15 years, Spain has shown its ability to maintain troops for the long-term. Right now, however, we need keep MADRID 00000911 002 OF 003 making our case to keep troops in Kosovo. For domestic political reasons and fear of provoking Russia, Spain is ambivalent about the current direction of Kosovo policy. So long as there is a UN resolution authorizing the Ahtissari plan, Spain will maintain its troops in KFOR. If the UN fails to agree on a new resolution, Spain has said that it would have to seriously consider pulling its troops out, but has emphasized that it would do this only in extremis and only in careful consultation with allies. We need to keep the pressure on, reminding Spain that NATO has a critical role

and that we can't let the Russians drive a wedge between the US and Europe on issues like this.

-- MISSILE DEFENSE --

¶6. (C/NF) Though initially tentative about the US missile defense (MD) plan, Spain listened carefully to the Missile Defense Agency Deputy Director BG O'Reilly's presentation in March, asked some tough questions, and has taken the position that so long as the US attends to Russian and is willing to discuss the issue in NATO, it won't stand in the way. MOD said that it will soon announce support for the development of a NATO study on the issue. MOD has asked to see a simulation of how well the proposed MD system would cover Spain, though it says that it doesn't currently see a particular threat from Iran and is willing to support the US's plan primarily as a show of solidarity among allies. While we need to continue to inform and engage MOD on this issue, we don't see Spain causing problems on missile defense.

-- NATO --

¶7. (C/NF) On 2008 NATO Summit issues of enlargement and partnership, Spain believes that NATO should keep an open door to European applicants who can qualify. MOD says that the Balkans should be treated as a single unit, despite their different stages of development, because it will be important to future Balkans stability to eventually get them all around the NATO table. Regarding Ukraine and Georgia, Spain is not opposed to the idea that they would eventually join NATO, but says that the best thing at the moment is to wait and see what direction they choose to go. Spain is a big fan of NATO partnerships, especially the Mediterranean Dialogue, which it believes should be strengthened for the sake of fighting terrorism in North Africa and supporting the current governments and militaries against extremists. MOD says that the Med Dialogue countries know that they aren't going to someday join NATO, but that they should be invited to observe exercises, included in training, and given other opportunities to deepen ties and cooperate with NATO.

-- CRITICAL SIDEBAR ISSUES --

¶8. (C/NF) A couple of other key issues will be in the air, if not actually on the agenda. For our side, it will be important to continue to raise the Couso case, in which three US servicemen face charges related to the 2003 death of Spanish cameraman Jose Couso during the battle for Baghdad. While we are careful to show our respect for the tragic death of Couso and for the independence of the Spanish judicial system, behind the scenes we have fought tooth and nail to make the charges disappear. I raised this issue with Vice President de la Vega on April 30. She was supportive but uncertain that direct GOS involvement would be productive. DCM spoke late last week with the Deputy Justice Minister, and we continue to prod the GOS to appeal. We were informed Monday morning that the Chief Prosecutor of Spain's National Court has indeed filed an appeal, which will go to the same court which originally dismissed the case (in 2006) on procedural grounds. The Deputy DIGENPOL in MOD told the Embassy last week that MOD completely supports the US position, and said that he would raise with his superiors the possibility of making a statement to the court or otherwise demonstrating support. The Deputy Justice Minister also said the GOS strongly opposes a case brought against former Secretary Rumsfeld and will work to get it dismissed. The

SIPDIS judge involved in that case has told us he has already started the process of dismissing the case.

¶9. (C/NF) An issue that MOD may raise with you is their perception of "imbalance" in the defense industrial relationship. The HLDC is not the most appropriate forum for a discussion of this issue, especially since Al Volkman, Director of International Cooperation for acquisitions, will be in Madrid at the same time as you precisely for the long-scheduled 17th US-Spain Defense Industrial Cooperation Committee meeting and the 4th US-Spain Declaration of

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Principles meeting. Nonetheless, Spanish Defense Ministry officials have seen you with Secretary Gates, and may raise the issue with you in hopes of getting it top-level attention. Defense Minister Alonso has raised the issue in public speeches and his people have raised it in meetings. They point to Spanish purchases like 24 Tomahawk missiles and US AEGIS combat systems for its F-100 frigates and S-80 subs, which the GOS made over the protests of European allies like France and Germany, and say that while MOD plans to continue a strong relationship with the US defense industry and knows that it is getting the best when it buys US, it would appreciate a "gesture" from the US so that it can show domestic audiences that Spain gets something out of the relationship. While we continue to push Spain to buy into the Joint Strike Fighter program, we know that Spain is very anxious to learn whether Spanish company EADS-CASA will get the Joint Cargo Aircraft contract. We try to remind MOD that while there may be a dollar imbalance in the defense relationship, Spain benefits from the relationship in other ways, not only getting the best technology for its military, but also being able to sell products that include US technology to third countries.

J10. (C/NF) We want to use the HLDC to further strengthen the Permanent Committee and are pleased that EUCOM will propose the joint working group as a means to increase EUCOM involvement on Spanish military issues. Direct and ongoing communication between MOD and EUCOM at the staff level can only help us to avoid minor problems that have the potential to escalate, like NCIS/OSI.  
Aguirre

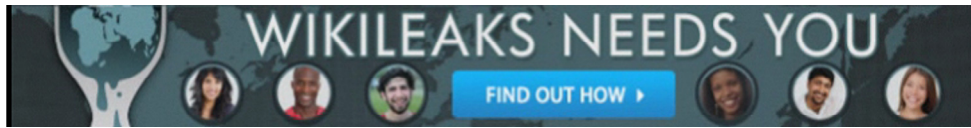
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C O N F I D E N T I A L SECTION 01 OF 05 MADRID 001021

SIPDIS

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TO THE SECRETARY FROM AMBASSADOR EDUARDO AGUIRRE; ALSO FOR  
EUR DAN FRIED, E-ES, KEN MERTEN, EUR/WE

E.O. 12958: DECL: 06/30/2016

TAGS: OTRA PREL SP

SUBJECT: SCENESETTER FOR SECRETARY RICE'S JUNE 1 VISIT TO  
MADRID

Classified By: Ambassador Eduardo Aguirre for reasons 1.4 b & d.

Summary

¶1. (C) Dear Secretary Rice: I welcome you to Spain on behalf of our 367 American and Spanish colleagues serving the United States at Mission Spain. Your visit is a milestone in our work, together with you, to overcome the differences over Iraq with the Spanish government and convince them that further strengthening cooperation coincides with Spain's national interest. At the same time, your visit can serve as a catalyst to encourage Spain to become an even more active )- but responsible -- member of a Transatlantic partnership, marked by cooperative efforts on our shared values, including counter-terrorism and promoting democracy, freedom and human rights throughout the world. This means that you will need to speak frankly to the Spanish government about Cuba, despite their desire to avoid the issue. The issue need not be the central one in a rich agenda on a wide variety of fronts in which we work closely with Spain; however, Cuba must be an element of your discussions on democracy, and Spain's own special responsibility as a democracy leader that has successfully undergone the transition from dictatorship to thriving democracy. Your discussions will also include Kosovo, Afghanistan, Spain's OSCE Chairmanship, Russia, Iran, Iraq, Latin America and the Middle East. Moratinos will raise a thorny child-custody case involving a Spanish woman currently jailed for contempt of court in New Jersey. Your interview with the Spanish press will provide an opportunity to reach out to the Spanish people and underscore the significant value of our alliance and convey our views on issues on which we differ. We see this visit as a great opportunity to advance our relations with Spain, and the Spanish government shares this view. END SUMMARY

¶2. (C) The Spanish government has long awaited your first visit as Secretary of State and views it as a sign of the importance of strong U.S.-Spain relations. They will use your visit to counter criticism that the Zapatero government has shattered the transatlantic relationship. Per the Spain strategy you approved two years ago, we have sought to move this government away from visceral and reflexive anti-U.S. policies and sentiments, carving out areas in which Zapatero,s government can offer support for the President,s broad global agenda. We have made clear to the Zapatero government that the price of our willingness to publicly promote good bilateral relations is real contributions on world issues. While we have made some positive headway, the Zapatero government has not hesitated on occasion to pursue



an agenda counter to our own when deemed in the Socialist party,s domestic political interest. Your visit should encourage Spain to be an even more active member of a transatlantic partnership that works cooperatively in pursuit of shared values on freedom, democracy, human rights and development.

#### What is Working

¶3. (C) On the positive side over the past two years, Spain contributed \$22 million to the Basrah Children,s Hospital and offered a further \$28 million in new money at the recent Iraq Compact meeting. The Zapatero government established a robust presence in Afghanistan that includes allowing the Spanish military to lead a PRT and co-lead a Forward Support Base in Western Afghanistan. Spain has contributed some 150 million Euros in Afghan reconstruction funds. Spain also has 1100 troops deployed along the Lebanon-Syria-Israel border as part of UNIFIL. The government allowed a sale of military aircraft to Venezuela to die. They support Turkey,s membership in the EU and have said that they will not pose problems on Missile Defense. We have superb two-way cooperation on counter-terrorism, counternarcotics, non-proliferation and military issues. This includes the use of two vital bases in southern Spain near the Straits of Gibraltar, where we maintain over 2000 personnel that serve as major logistical hubs for the flow of troops and materiel into the Iraq and Afghanistan theaters. The GOS also very much appreciates US coordination with Spain on Western Sahara, since Spain sees near-by North Africa as vital to its national security interests.

¶4. (C) In addition, our economic relationship with Spain is strong and mutually beneficial. The Spanish economy has boomed in the last decade as a result of structural reforms, EU aid, and membership in the Euro zone. The commercial relationship is dominated by a very strong U.S. direct investment presence, although two-way trade remains a relatively minor percentage of each country,s exports and imports. Many of the U.S. Fortune 100 firms are present and

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doing well. The American Chamber of Commerce estimates that about five percent of Spain,s annual GDP comes from U.S. investment. In recent years, U.S. portfolio investors have bought significant shares in major Spanish firms. Spanish firms have rediscovered America and are now investing in the United States, especially in the banking and renewable energy sectors, and Spanish construction companies have also won important contracts in the U.S.

¶5. (C) Spain cooperates closely with the United States in the fight against terrorism finance, co-chairing the Financial Action Task Force with us. Following intensive intervention by the USG and private industry, the Spanish government is giving increased attention to intellectual property rights issues. Other areas where we work closely with the Spanish include NASA,s Deep Space Network, and close partnerships in port security programs such as Megaports and the Container Security Initiative.

#### What Still Needs Work

¶6. (C) However, our challenge has been to channel the efforts of a unpredictable Spanish Foreign Minister who portrays himself as a self-styled &bridge& between the U.S. and difficult world players--such as Syria, Cuba, Iran and some Palestinian elements. Additionally, President Zapatero plays to a largely leftist, pacifist support base, and uses foreign policy to win domestic political points rather than giving attention to core foreign policy priorities or embracing broader strategic goals.

¶7. (C) This has lent an erratic &zig-zag& quality to the bilateral relationship. Moratinos, recent visit to Cuba highlighted the difficulty of maintaining a smooth and stable pattern as did his earlier outreach to Syria and Iran. Zapatero,s reversal of his Defense Minister,s commitment to deploy 150 troops to staff the ISAF XI headquarters reflects PSOE,s increasing sensitivity to Spanish public concerns about growing dangers in Afghanistan during this highly charged political season here ) with local/regional elections May 27 and national elections by March 2008. Kosovo independence is a sensitive issue for the GOS, which maintains troops in KFOR, because of concern about the impact of such an evolution on Spain,s own complex federal vs. regional struggle. For this reason, a UNSC Resolution explicitly authorizing independence will be essential for Spain to maintain its troops there.

## Proposed policy agenda

¶8. (C) We want to challenge the Zapatero government to do better in the U.S.-Spain relationship as a result of your visit. In your meetings with King Juan Carlos, Zapatero and Moratinos, we suggest you frame our goals with Spain over the following months along several interrelated themes that make clear the need to act responsibly in NATO, Latin America and the Middle East in order to be seen as a reliable partner. We suggest the following themes:

--Spain should work more closely in coordination with us in Europe and around the world on the freedom or democracy agenda. Spain has achieved a remarkable transformation since the end of dictatorship 30 years ago. It is one of the leading democracies in Europe and has the 8th largest economy in the world. Spain is now an active player in Europe, Latin America and the Middle East, including Iran. But Spain needs to act in concert with the EU, NATO and the U.S. on key issues. There is too much at stake for Spanish freelancing, as in the Middle East, Cuba and Russia. The transatlantic community needs Spain,s support on Kosovo, Missile Defense, NATO transformation, and Iran. The price of leadership and respect, which Spain seems to desire, is the willingness to devote the resources, assume responsibility, share burdens and act jointly with other powers. We welcome Spain,s commitment to stay the course in the pivotal struggle in Afghanistan. We know it is a delicate political issue in this electoral season but it is the right thing to do and a responsible policy. Spain,s OSCE chairmanship is important on all of these issues and we want to ensure close consultations so that Russian attempts to weaken key OSCE functions are curtailed.

--Spain needs to help in countering anti-Americanism by publicly emphasizing cooperation. The U.S. and Spain cooperate on a myriad of issues that matter to the Spanish people, including the fight against terrorism and international organized crime, Middle East, North Africa, human rights and support for democracy. We urge the Spanish government to work with us to allay anti-American sentiments

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in Spain, not just cooperate with us behind the scenes. Spain,s changing population and proximity to North Africa make it a prime target of Islamic extremism regardless of its relationship with the U.S. It is essential that we emphasize our shared values of democracy, human rights, freedom and opportunity for immigrants. Furthermore, during this difficult election period, we do not want our bilateral relations to become a casualty of the political crossfire. We understand electoral politics, but not at our expense.

--Spain should capitalize on its role as a democratic leader. The U.S. welcomes Spain,s contributions on Afghanistan and Iraq, defense ties and counter-terrorism; these form the basis of our good bilateral relations. Spain,s success in the transition from dictatorship to thriving democracy makes it a worldwide leader in the areas of democracy-building and institution-building. Spain should deploy that expertise more actively in concert with our shared goals. Our respect for Spain,s exemplary democratic transition makes it all the more perplexing and disconcerting that Spain has embarked upon a policy of outreach to the Raul Castro regime, validating his succession with no clear message about the need for democratic transition. Nevertheless, we want to continue working with Spain in support of human rights and market-based economic policies in Latin America, including Cuba, and we urge Spain,s leadership to act in more positive ways and to demonstrate publicly Spain,s own values.

¶9. (C) We believe that folding our concerns about recent Spanish foreign policy moves into a broader, positive agenda can help advance our goals as we navigate the waters of a very difficult and volatile political season in Spain.

## The Political Environment

¶10. (C) You arrive just after the May 27 regional and local elections. Current polls show that the results will likely provide momentum for both Zapatero,s Socialist Party and Mariano Rajoy,s Popular Party going into national elections by March 2008. In the regional elections, the Socialists could gain seats and join in coalition governments in three current PP regions. With Socialist victories in several regions last year, Zapatero could have a strong base of support going into the national elections. However, the PP is expected to strengthen its support in its traditional regional strongholds. On the national level, while support for Zapatero has diminished since its peak after the March

2004 elections, Rajoy has not been able to capitalize and his ratings remain low and are falling.

#### Assessment of Zapatero

¶11. (C) Though polls show Zapatero,s support down from the high just following the March 2004 elections and considerable concern about his ETA policies, he stands a good chance of surviving national elections in early 2008, albeit with some of his support drifting to smaller, leftist parties in the Parliament.

¶12. (C) Zapatero focuses almost exclusively on domestic policy; his foreign policy instincts are governed by the exigencies of their domestic political impact. With a largely left of center, pacifist public which is strongly opposed to the Iraq war, the Aznar government and Bush Administration policies, Zapatero loses nothing by taking the U.S. to task on key issues. However, Zapatero now recognizes that the Spanish public believes that Spain,s leaders must maintain good relations with the U.S. After his first volatile year in office, he has sought to improve the tenor and substance of U.S.-Spain relations while still maintaining the politically acceptable policy of offering criticism of U.S. policies as part of the role of what he calls a ¶loyal ally.8 We suggest you encourage Zapatero to continue to view a positive agenda with the U.S. as a necessary element of his political strategy and emphasize that the U.S. will not keep silent when his government pursues policies that run counter to our shared values and interests.

#### Rajoy as PP leader

¶13. (C) Your meeting with PP leader Mariano Rajoy will be interpreted in Spain as a symbol of continued U.S. ties with a partner that supports U.S. foreign policy goals. However, we need to make clear to Rajoy that the U.S. will continue to work with the current government as long as it is in power because of our major long-term interests in Spain, including in the war on terrorism and in Afghanistan. The Spanish media will scrutinize the length of your meeting with Rajoy in comparison with your session with Zapatero for signs of

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any political signals we are trying to send.

¶14. (C) Recent polls indicate that Rajoy thus far has not been able to galvanize support for his candidacy for Spain,s Presidency, despite some very meaty issues that could be developed to the PP,s advantage. One of the most crucial of these controversial issues is Zapatero,s policy toward the Basque terrorist group ETA, which the PP viscerally opposes and which has driven hundreds of thousands of protesters into the streets. The PP points to the December 30 attack at the Madrid airport which killed two Ecuadorian citizens as proof that ETA will not renounce violence. The PP remains strong in its traditional strongholds, however, and the ETA issue has become increasingly worrisome to a number of Spaniards. However, recent polls show that Rajoy himself has not galvanized support for his candidacy for Spain,s Presidency. If PP turns out a large number of voters for the regional and local elections, Rajoy nonetheless will come to your meeting buoyed with the hope of a strong challenge to Zapatero in the national elections. Bitterness over the March 11 terrorist attacks and the Aznar government,s handling of the issue, however, remains a liability for Rajoy, and Spanish politics at the national level are bitter and divided.

#### Role of the King

¶15. (C) Your meeting with King Juan Carlos will demonstrate U.S. respect for the Spanish state and its people. Though prohibited from playing a direct role in foreign policy, Juan Carlos has helped behind the scenes. For example, he helped smooth relations with the U.S. after tensions in the months following the 2004 Spanish elections. In November of that year, President and Mrs. Bush invited the King and Queen for a pre-Thanksgiving lunch at Crawford, which was widely interpreted here as a sign of respect for the Spanish state. Juan Carlos is well versed on foreign policy issues and will welcome your review of the key issues you plan to discuss with Zapatero and Moratinos. He should also hear our strong concerns on issues like Cuba and Syria. On a personal note, you might congratulate the King on the birth of Crown Prince Felipe,s second daughter, Sofia, born on April 29, 2007.

#### Dealing with Moratinos

¶16. (C) We no longer hear last year,s rumors of Moratinos,

imminent departure from his post as Foreign Minister and he seems entrenched in his position. He seeks a role on the world stage and tries to capitalize on his old ties in the Middle East, as well as Spain's presence in Lebanon and Afghanistan, to play a role on Israel-Palestinian issues, Lebanon, Syria and Iran. We have sought to find ways to keep Moratinos in contact with senior USG officials on a range of issues as a means to help channel his efforts. Spain's chairmanship of the OSCE puts Moratinos in the unusual position of having a voice and interest in core transatlantic issues related to Central and Eastern Europe, Russia and the Caucasus. Moratinos, penchant for trying to mediate needs to be tamed as Russia issues come to the fore; we have already seen evidence of Spain's willingness to try to excuse or mitigate Russia's recent threats to cut off CFE. Moratinos has denied that his comments that he supports Missile Defense discussion in the OSCE, but Russian Embassy contacts have told us that Moratinos supports the idea.

¶17. (C) Moratinos' recent trip to Cuba is one of the most prominent of Moratinos' miscalculations with the U.S. In addition to private protestations, I published an op-ed in Spain's leftist daily newspaper El Pais, laying out U.S. goals for democracy in Cuba. He has pushed the Human Rights dialogue promised during his visit so that it could take place just before your visit to Madrid. Moratinos will argue this justifies his Cuba policy. However, your visit should make clear to Moratinos the harm his trip has done to this effort, an objective he and Zapatero continually claim they share with us. Moratinos wants your brief bilateral before the working luncheon to be kept to a small group, where he wants to corral the issues of Cuba, Kosovo and Afghanistan (his proposal for an international neighbors conference). These are the three issues he deems most sensitive from the Spanish side. In your working luncheon, issues will include US-Spain bilateral relations (including excellent counter-terrorism, defense, non-proliferation cooperation); Transatlantic issues, including Spain's Chairmanship of the OSCE, Russia and Moscow's proposals for OSCE to discuss Missile Defense, to Russia (Missile Defense); and finally, Latin America, Iran, Iraq, Lebanon and the Middle East peace process. Iran will be in the Spanish news during your visit; while you are here, Larijani may be meeting with Solana at a

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location organized by the Spanish. Moratinos will also want to discuss the way forward on Western Sahara, and he is pleased at our cooperation in security the latest MINURSO resolution calling for direct talks between Morocco and the Polisario.

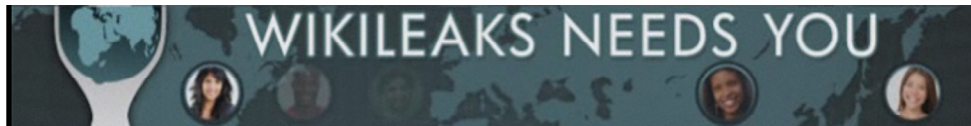
¶18. (C) Two important bilateral issues fall in the judicial area. Moratinos has said he will raise with you the child custody involving Spanish citizen Maria Jos Carrascosa who is currently jailed for contempt of court in Bergen County, New Jersey for failure to return her child to the US as required by a New Jersey court decision. During this political season in Madrid, the case has become a cause celebre, with pictures of Carrascosa ) viewed as a mother separated from her child - in handcuffs entering the New Jersey prison. The GOS agrees that this is a case for the courts and both governments agree that mediation of the dispute is the appropriate response. However, Moratinos for political reasons has to show the government is doing something about the case. On our side, you should note continued USG concern about the court case against the three US servicemen charged with alleged war crimes in the case of the death of Spanish TV cameraman Jose Couso in the Palestine Hotel in Baghdad in 2003. The GOS has been helpful behind the scenes in getting the case appealed by the Spanish Prosecutor. The case now moves to the appeals tribunal of the National Court, which will rule on the substance of the charges. We want continued vigilance and cooperation by the GOS until the case is dropped.

¶19. (C) Moratinos holds you in very high regard and values the contacts that he has had with you. Your efforts and those of other senior USG officials, along with mine, to help guide Moratinos on key issues such as handling Russia in the OSCE and on the full range of Middle East issues, can prove effective. The more outreach the better, as we try to play to his desire to have a role on major issues while helping to direct some of these efforts toward policies that work to support US global objectives.

¶20. (U) You may want to congratulate Moratinos on the upcoming celebration of the 50th anniversary of the Commission for Cultural, Educational and Scientific Exchange between the United States and Spain (the Fulbright Commission) and express how you look forward to hearing more

about the events planned to take place in Washington to commemorate this major milestone. The Spanish Fulbright Commission, the second largest in Europe, is a truly binational organization with the majority of funding provided by the Spanish central government, as well as regional autonomous communities and private sector entities.

¶21. (C) In all, you will find a rich agenda with Spain, which your visit can advance substantially. Again, welcome to Madrid. We are looking forward to your visit on June 1.  
AGUIRRE



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### Viewing cable 08MADRID542, SPAIN/COUSO CASE: NATIONAL COURT DISMISSES CHARGES

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| Reference ID | Created             | Released            | Classification                      | Origin         |
|--------------|---------------------|---------------------|-------------------------------------|----------------|
| 08MADRID542  | 2008-05-14<br>17:11 | 2011-08-30<br>01:44 | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Embassy Madrid |

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PP RUEHAG RUEHDF RUEHIK RUEHLZ RUEHROV  
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TAGS: PREL PGOV MARR SP  
SUBJECT: SPAIN/COUSO CASE: NATIONAL COURT DISMISSES CHARGES  
AGAINST THREE U.S. SERVICEMEN  
REF: A. 2007 MADRID 1000  
B. 2007 MADRID 26

¶1. (SBU) On May 13, Judge Javier Gomez Bermudez, President of the Criminal Division of the National Court, and Javier Zaragoza, Chief Prosecutor of the National Court, phoned Charge Llorens and informed him that earlier in the day the National Court handed down a decision dismissing the case against three U.S. servicemen charged with war crimes in the June 2003 death in Baghdad of Spanish television cameraman Jose Couso. Press reports appeared later in the day confirming the 3-1 ruling of the four-judge panel, and the Embassy was able to obtain a copy of the legal decision in Spanish (electronic copy forwarded to L). On May 14, the Charge spoke again with Judge Gomez Bermudez, who emphasized the Spanish judiciary's commitment to rule on this case based on the facts and the law and not on the prevailing "political and media winds." The Judge said the red notices and arrest warrants against the servicemen were no longer in force. He also clarified for the Charge that the court's ruling "provisionally" archiving the case (rather than giving it a "permanent" filing) is actually to our benefit because it precludes the case being appealed to the Spanish Supreme Court. The Charge also spoke with Chief Prosecutor Zaragoza, who reiterated that he never thought the Spanish judiciary had legal jurisdiction over this (very weak, in his words) case and was disappointed when the Supreme Court ruled otherwise in late 2006 (REFTEL B).

¶2. (SBU) Our Embassy legal advisor has briefly reviewed the case and agrees with Judge Gomez Bermudez' conclusions that further appeals are not possible. She said that the ruling is described as a "preliminary dismissal" (sobreseimiento provisional). Such a ruling applies when one of the following situations occurs: 1) A judge rules that it has not been duly proven that an offense has been committed or 2) When a crime is judged to have been committed but there is no evidence to accuse a specific person. Under the Spanish Criminal Code, this type of dismissal has no further appeals. Although we will have a better understanding of the ramifications of the decision after more careful review, yesterday's ruling appears to be good news and hopefully is one of the final steps needed to bring this long saga to a close. The ruling states that the ultimate decision to dismiss the case must now come from the examining magistrate. According to the Embassy's legal advisor, unless the magistrate can find specific intent on the part of the

servicemen to "terrorize" (a requirement of the Spanish Criminal Code to judge a crime of war), he will have to close the case. The family of Jose Couso announced after the ruling that they still plan to press forward and will try to appeal to the Supreme Court. They also said they have unidentified "new witnesses" who will soon come forward to testify and hopefully reopen the case.

//COMMENT//

¶3. (SBU) The Couso family is understandably very emotionally attached to this case, and they are supported by a variety of left wing causes and organizations in Spain. It is not likely that yesterday's ruling, however legally devastating it may have been to their side, will convince them to give up. All indications from our contacts within the Spanish judiciary and Embassy's legal advisor suggest that this case can go no further; the indictments have been revoked and the arrest warrants invalidated. We will report further as warranted on Couso family efforts to try and keep this case open. It would also be useful to confirm that Interpol and Europol diffusions on the three individuals have been removed, allowing them once again to travel freely.  
Llorens



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### Viewing cable 09MADRID496, COUSO CASE: JUDGE REINSTATES CHARGES AGAINST U.S.

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| 09MADRID496  | 2009-05-22<br>13:16 | 2011-08-30<br>01:44 | UNCLASSIFIED//FOR OFFICIAL USE ONLY | Embassy Madrid |

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INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE  
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E.O. 12958: N/A  
TAGS: KLIQ PREL SP CJAN  
SUBJECT: COUSO CASE: JUDGE REINSTATES CHARGES AGAINST U.S.  
SOLDIERS  
REF: 08MADRID542  
¶1. (SBU) SUMMARY: May 21 Spanish National Court Judge Santiago Pedraz issued new indictments against three U.S. soldiers in connection with the death in Iraq of Spanish journalist Jose Couso in 2003. The charging document introduces new, recently obtained evidence, including statements from former Minister of Defense Frederico Trillo and former Foreign Minister Ana Palacio. Judge Pedraz argues that the new evidence contradicts the U.S. position that the soldiers were responding to hostile fire when their tank shot at the hotel in Baghdad. Issuance of international arrest warrants is probable. END SUMMARY.  
¶2. (SBU) Background: Jose Couso died in April 2003 when a U.S. tank fired on the Palestine Hotel in Baghdad. In May 2003 the Couso family presented a criminal complaint before the Spanish National Court against members of the Third Infantry Division of the U.S. Army, accusing them of murder and war crimes. The case was dismissed by the Criminal Division of the National Court on May 13, 2008 (reftel). The court agreed with the National Prosecutor's Office that the investigating judge had not presented sufficient evidence to support the allegations. This ruling, however, did not close the case, but rather left open the option for additional evidence to be obtained.  
¶3. (SBU) New Evidence: In the charging document, significantly better drafted than the original complaint according to post's legal advisor, Judge Pedraz provides the following new evidence: expert opinion testimony from a Guardia Civil General on humanitarian law, testimony from former Minister of Defense Trillo, testimony from former Foreign Minister Palacio, additional testimony from three journalists present at the Palestine Hotel the day of the incident, testimony of former U.S. military intelligence officer Adrienne Kinne obtained during a May 13, 2009, interview with the television program "Democracy Now," Spanish military expert opinion on the use of arms and tanks, and aerial photographs of the hotel and surrounding area. Pedraz has not been successful in obtaining permission to travel to Baghdad or the testimony of foreign reporters at the Al Jazeera and Abu Dhabi television buildings in Baghdad also hit the same day allegedly by U.S. fire.  
¶4. (SBU) Allegations: The judge charges the three soldiers with murder and crimes against humanity. In the charging document, Judge Pedraz argues that the accused violated Geneva Convention provisions, failing to use appropriate care in distinguishing between military and civilian targets. He states that based upon his evidence, the U.S. military knew that the hotel was where many foreign journalists were



staying. Pedraz argues that according to other journalists in the hotel at the time, the tank had not come under fire before shooting at the Palestine Hotel. Judge Pedraz also points out that he has not received sufficient information from the USG on the U.S. investigation into the matter.

¶5. (SBU) Comment: The case continues to generate significant media interest. According to post's Spanish legal advisor, the National Prosecutor's Office is likely to appeal the indictment, as it did in 2005, arguing that the evidence is insufficient to support the charges. Judge Pedraz, reportedly close to the Couso family and passionate about the case, may be waiting then for the charges to be confirmed by the Criminal Division of the National Court before issuing arrest warrants. Given the efforts apparently made to present more compelling evidence and legal arguments, however, it is likely that arrest warrants are imminent. This is another subject Washington might wish to raise with National Court Prosecutor Zaragoza during his upcoming visit there.

DUNCAN