

- 1. Claimant: All Claimants
- 2. Name of Witness: S. Malik
- 3. No of Statement: 4
- 4. Exhibits: 4
- 5. Date: 12 July 2010

IN THE HIGH COURT OF JUSTICE

Claim No: HQ08X01180  
HQ08X01416  
HQ08X03220  
HQ08X01686

QUEEN'S BENCH DIVISION

BETWEEN

- (1) BISHAR AL RAWI
- (2) JAMIL EL BANNA
- (3) RICHARD BELMAR
- (4) OMAR DEGHAYES
- (5) BINYAM MOHAMMED
- (6) MARTIN MUBANGA

Claimants

- and -

- (1) THE SECURITY SERVICE
- (2) THE SECRET INTELLIGENCE SERVICE
- (3) THE ATTORNEY GENERAL
- (4) THE FOREIGN AND COMMONWEALTH OFFICE
- (5) THE HOME OFFICE

Defendants

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Exhibit 'SM21'

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This is the exhibit marked 'SM21' referred to in my fourth witness statement.

Signed 

Dated 12/07/10

34658  
 [REDACTED]  
 From Stuart Horlock  
 Terrorism & Protection Unit  
 6<sup>th</sup> Floor West Wing  
 [REDACTED]

cc John Warne  
 [REDACTED] Whalley

12 April 2001

Paul Oldfield

**JOHN GIEVE'S MEETING WITH SIR ANTHONY JAY -  
 DETAINEES AT GUATANAMO BAY**

You asked for briefing on this issue.

There have been no significant developments in these cases since a flurry of activity in mid March. We know of no issues of particular concern to FCO requiring immediate attention.

In mid-March a number of tricky issues were being considered.

Level of protection (by HMG) to be afforded to British citizens held

- British Embassy officials told Americans informally that it was possible that we would revert with formal (and public) requests for legal access. FCO had wanted to do this (and wanted to be seen to be doing it) but had been overruled by No.10.

Legal proceedings here

- An application for judicial review of HMG's role in assisting the Americans in detaining and interrogating one of the British detainees (ABASSI) was refused.

Military tribunals

- Regulation for the Military Commissions were published by the Americans. The presumption of innocence until proven guilty, standards of proof 'beyond reasonable doubt' and safeguards akin to those available to military court martials took some of the steam out of press and public criticism.
- Statements from President Bush referring to the detainees as "killers" on the same day that the regulations were published did not draw criticism here that minds had already been made up.

[REDACTED]

### Intelligence gathering

- British detainees have been interviewed by Security Service on two separate occasions. The detainees were co-operative and provided good information.
- SIS and the Security Service are now [REDACTED] interviewing other nationals [REDACTED]

### Return of detainees to UK

[REDACTED]

### Prosecutions here

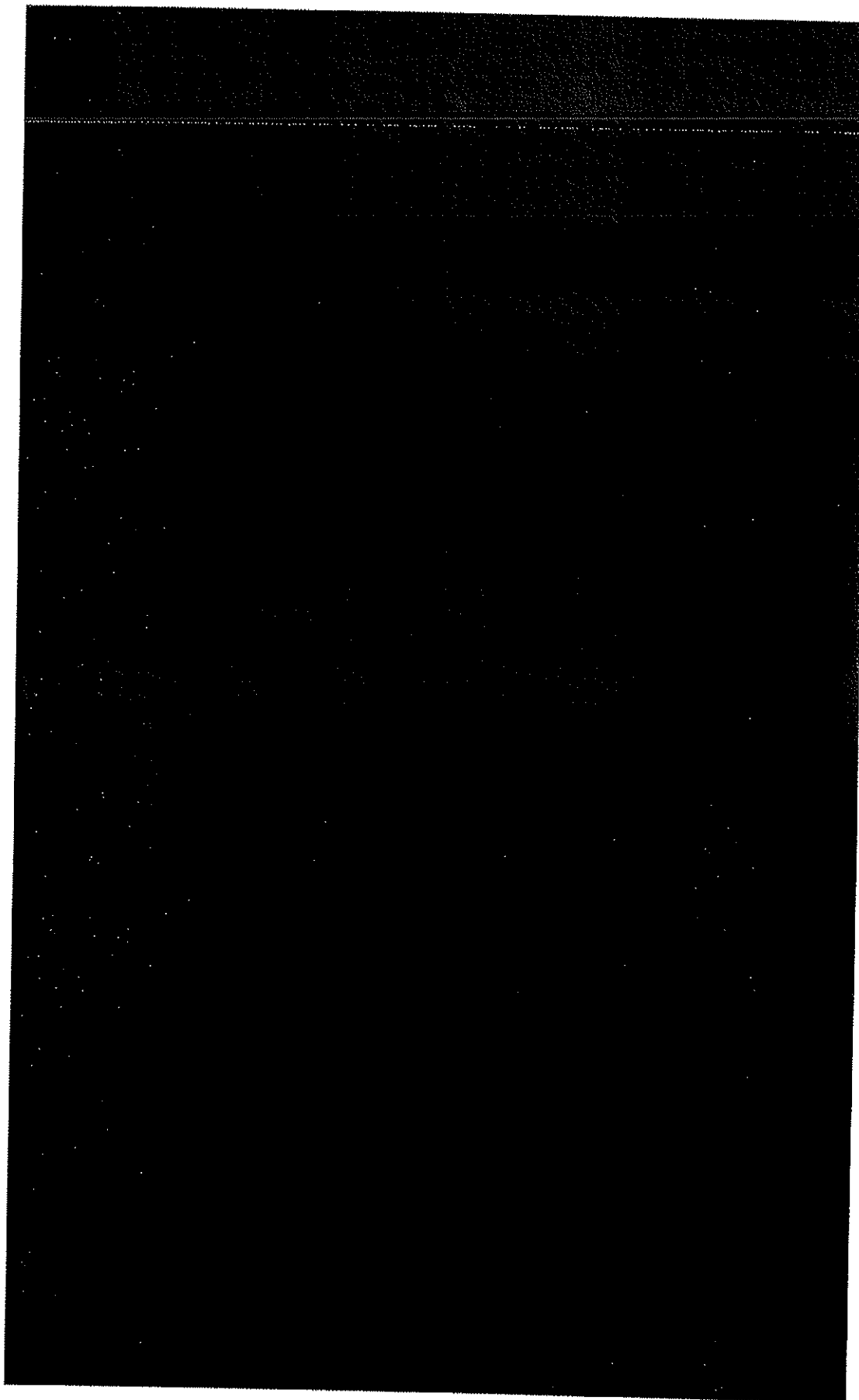
- [REDACTED] The Home Secretary felt there would also be questions about public interest in prosecuting young and ill-informed individuals who may have been manipulated by others.
- The Americans are prepared to assist the police here in compiling admissible evidence.

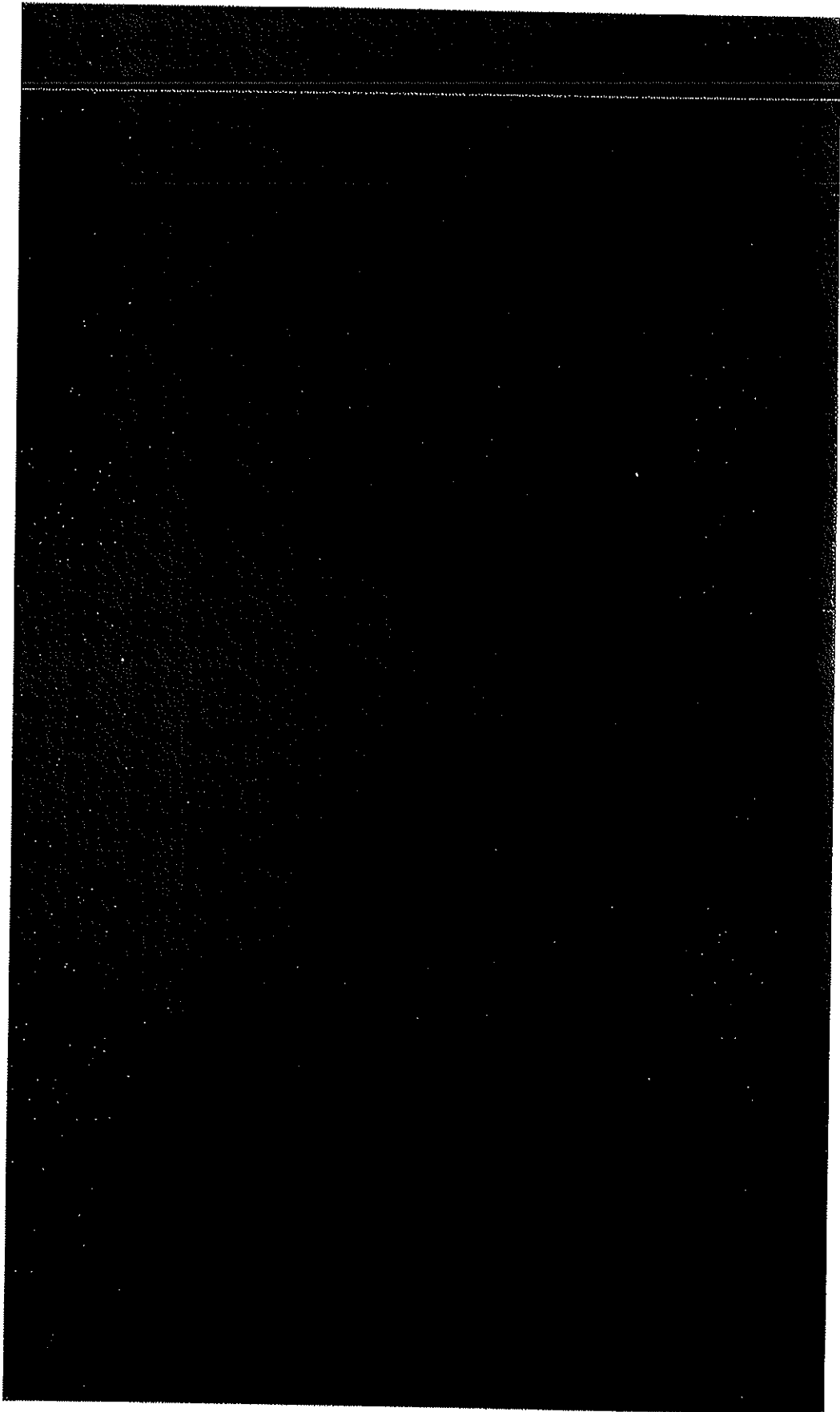
### Handling

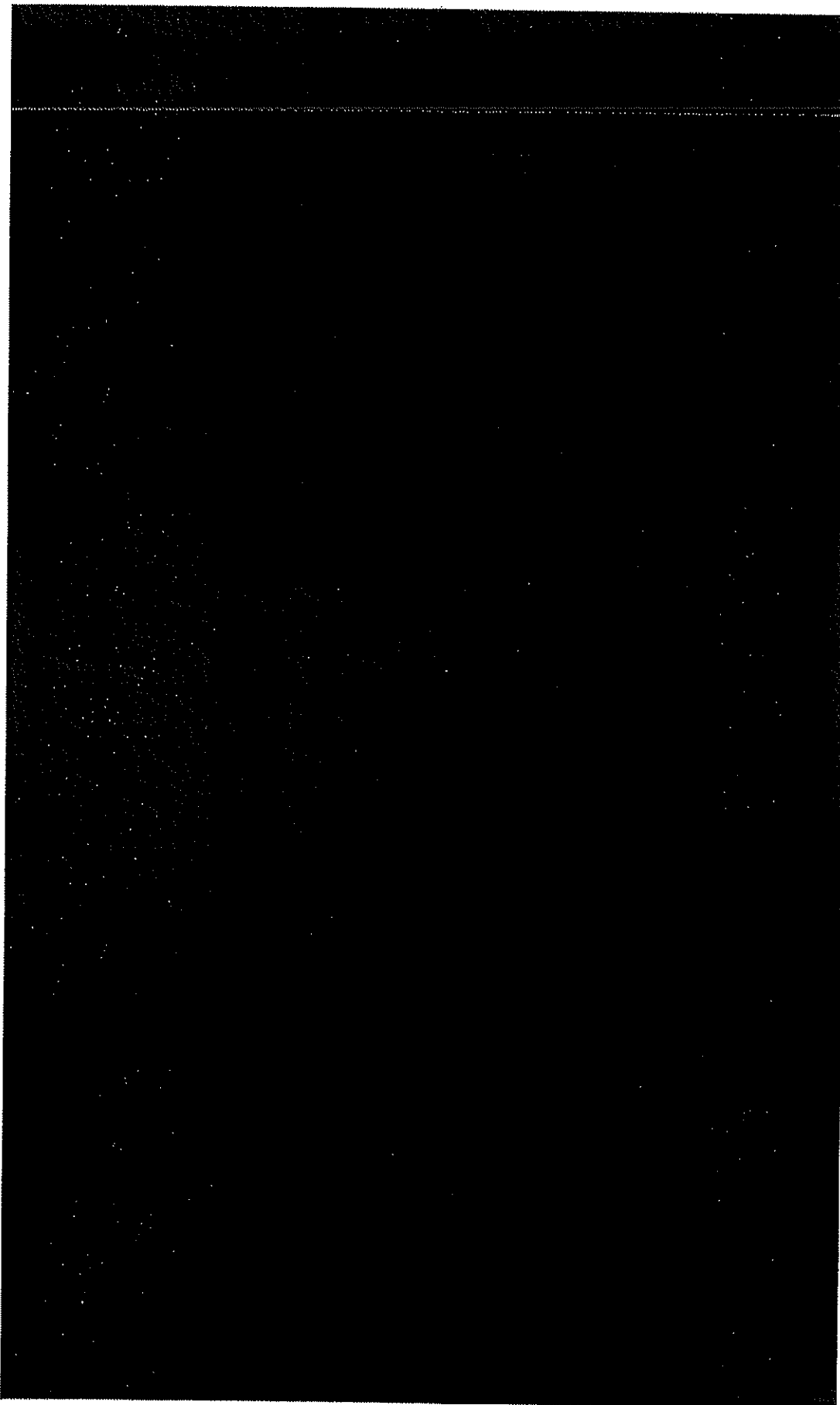
- No press coverage here during the last four weeks.

STUART HORLOCK

[REDACTED]







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Interpai Addressees

Action: [REDACTED]

Info: [REDACTED]

Date: 101748Z JAN 02

Originator: FCO

Telegram Number: 21

ADDRESSEES:

TO DESKBY 101800Z WASHINGTON  
INFO IMMEDIATE UKMIS NEW YORK, UKMIS GENEVA, KABUL , HAVANA  
INFO IMMEDIATE ISLAMABAD, TASKENT, ANKARA, NODOK, PJHQUK  
INFO IMMEDIATE CABINET OFFICE, [REDACTED] HOME OFFICE, [REDACTED]  
INFO IMMEDIATE RIYADH, SANAA, CANBERRA  
INFO PRIORITY EU POSTS, NATO POSTS

PROTECTIVE MARKING:

[REDACTED]

Subject: AFGHANISTAN; DETAINEES

SIC 198  
WASHINGTON TELNO 30  
PJHQ PLEASE FORWARD TO NCC CENTCOM  
CABINET OFFICE FOR [REDACTED] NC 10  
HEADS OF MISSION SECTION PLEASE PASS TO SIR C MEYER

SUMMARY

1. No objection to American plans to transfer UK detainees from Afghanistan to Guantanamo Bay. We hope that UK nationals will not be included in the first group of transfers. We should also insist on consular access and full information on future handling.

DETAIL


2. The UK approach on the repatriation and prosecution of UK nationals is still being considered. Nevertheless, we accept that the transfer of UK nationals held by US forces in Afghanistan to the US base in Guantanamo is the best way to meet our counter-terrorism objective by ensuring that they are securely held. However, a specialist team is currently in Afghanistan seeking to interview any detainees with a UK connection to obtain information on their terrorist activities and connections. We therefore hope that all those detainees they wish to interview will remain in Afghanistan and will not be among the first groups to be transferred to Guantanamo. A week's delay should suffice. UK nationals should be transferred as soon as possible thereafter.

[REDACTED]

[REDACTED]

m/lor

Vertical lines and dots at the bottom of the page.



4. We note that NSC were surprised by a reference to the Vienna Convention. We are taking a consular access approach because we believe that these rights and responsibilities apply under the bilateral UK/US Consular Convention irrespective of whether or not the detainee is being held as a POW under the Geneva Convention.

5. In response to any press enquiries about transfer to Guantanamo, we can say:

- We are aware of US plans to transfer detainees, including some UK nationals, to Guantanamo.
- It is for the US authorities to determine the details of how these prisoners should be handled. They have told us that they would be treated humanely.
- We have asked the Americans for full information on who will be transferred and what will happen to them. We are asking for consular access and reassurances that any trial and treatment will conform to international norms.

6. Please draw on these points in responding to State and NSC. Advice on wider policy issues will follow.

STRAW

KAMIAN 2491

NNNN



**HO Instructions Item 005**

Warriors 14/1

1. interview conditions could be beaten up
2. mil. police: but flawed
  - (i) circumstances of arrest
  - (ii) ill-treatment
  - (iii) SS interviews: intelligence battlefield  
planned attacks
  - (iv) take them back: (iv) access to solicitors]  
collusive deportation extradition  
voluntary return  
options to stay

Army Legal Service: status

5

Waris 14/1 (24) (5)

1. internal politics asked beaten up

2. mil. police: but flawed

(i) was for and

(ii) ill- treatment

(iii) SS atrocities - intelligence gathering  
- plan attacks:

(iv) take the base:

(iv) access to sea  
extensive  
colours in deposits:

Army of the future: status =

not. return:

optical body:

B

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From Stuart Horlock  
Terrorism & Protection Unit  
6<sup>th</sup> Floor West Wing  
[REDACTED]

cc John Gieve  
John Warne  
Bob Whalley

(59)  
(13)

26 February 2002

Emily Miles

UK NATIONALS HELD IN GUANTANAMO BAY

Bob Whalley mentioned to you that this issue was raised at TIDO(O) yesterday and said I would provide a short note in advance of the minutes.

- FCO said that despite Rumsfeld's comments and subsequent press coverage the American position remained unchanged and that no decisions had been taken in respect of the detainees. It was not expected that the Americans would decide to deport the British detainees quickly and certainly not without advance warning.
- Indeed, the Americans currently take the view that "the ball in the UK court" and wish to know from us how we would handle any returnees. TIDO(O) commissioned an outline of the process that could be passed to the Americans and I am to circulate a draft today. [REDACTED]
- The meeting agreed that UK should not be in any hurry to take back the detainees though FCO was quiet on the point.
- If the difficulties we face steers the Americans to make more use of military tribunals FCO will have some obvious problems of public presentation (which are already beginning to emerge) but these are likely to be preferable to those associated with the detainees being released in the UK.
- [REDACTED]

*Stuart Horlock*  
STUART HORLOCK

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