



United States Department of State  
Washington, D. C. 20520

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January 13, 1990

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INFORMATION MEMORANDUM  
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TO: P - Mr. Kimmitt  
FROM: L - Elizabeth R. Rindskopf, Acting *ew*  
SUBJECT: Pakistan Nuclear - New Trial for Pervez

SUMMARY

Following Arshad Pervez's conviction in December 1987 for illegal procurement on behalf of Pakistan's nuclear weapons program, President Reagan invoked but then waived "Solarz" amendment sanctions against Pakistan. Under a later Supreme Court decision Pervez has just been granted a new trial. This development does not require any new actions under the Solarz amendment; defense counsel, however, is now demanding any State Department correspondence with Pakistan about its role in the Pervez procurement for the retrial.

BACKGROUND

The Solarz Amendment (Section 670(a)(1) of the Foreign Assistance Act) prohibits most forms of assistance to any country that attempts to export items of nuclear explosives significance illegally from the United States if the President determines the items were to be used in manufacturing nuclear explosives. On December 17, 1987, Arshad Z. Pervez, a Canadian with Pakistani ties, was convicted by a Philadelphia jury on five of eight counts relating to efforts to illegally export specialty steel and beryllium to Pakistan's nuclear program. He was given a five year sentence with first eligibility for parole in November of this year. On January 15, 1988, President Reagan applied the Solarz amendment sanctions against Pakistan; at the same time he exercised his statutory authority to waive the sanctions in view of Pakistan's subsequent efforts to halt illegal procurement from the U.S. and over-all U.S. national security and non-proliferation interests.

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REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

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In a case decided after Pervez's conviction, the Supreme Court ruled that criminal defendants are entitled to plead entrapment even while denying elements of an offense, so long as a jury instruction on entrapment is supported by the evidence (Mathews v. United States). Pervez did argue entrapment at trial on some of the counts (his arrest was the result of a joint U.S.-Canadian sting operation), but he was required to concede the elements of these offenses. In lengthy court proceedings which concluded on December 18, 1989, Pervez has now been granted a new trial on all counts of his conviction under the Mathews rule. He remains in jail because bail has not been granted.

The Department of Justice has informed us that the U.S. Attorney's Office in Philadelphia intends to retry Pervez, with proceedings set to begin March 5th. Justice has also provided us Pervez's demand through counsel for any State Department material reflecting Pakistani denials of involvement with Pervez and his attempted exports.

Next Steps

The reversal of Pervez's conviction does not require any further actions under the Solarz amendment. Although the decision to impose sanctions was based heavily on Pervez's original conviction, which has now been vacated, President Reagan waived the sanctions, so they have no present legal effect. There is no need to consider what actions would be appropriate if the sanctions were still being applied.

With respect to Pervez's retrial, Justice has informed us that its normal practice is to retry defendants whose convictions have been vacated and that in this case they believe a retrial will further a number of important law enforcement interests. We are consulting with Justice about Pervez's document request. Classified and/or deliberative material may need to be reviewed jointly to determine whether it is responsive, and, if so, whether it is discoverable under the federal rules.

We do not see a need to raise any of these matters with the Government of Pakistan at this time. However, if Pakistani officials inquire about the Pervez situation, you can state that our understanding is that he is scheduled for retrial in March, that he remains in prison because of the risk of flight, and that no action to revisit President Reagan's invocation and waiver of the Solarz amendment is necessary or under consideration. If the discovery request is raised, you can say that we have not yet had time to evaluate it.

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