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PAGE 01 STATE 025174 081520Z
ORIGIN EUR-00

RELEASED IN PART
B1, 1.4(B), 1.4(D), B5, B6

INFO LOG-00 TEDE-00 SSO-00 SS-00 SAS-00 /000R

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SOURCE: KODAKC.008025

DRAFTED BY: EUR:CPRIES -- 02/08/02 7-6402

APPROVED BY: EUR:CPRIES

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FM SECSTATE WASHDC

TO AMEMBASSY TBILISI IMMEDIATE

AMEMBASSY MINSK IMMEDIATE

AMEMBASSY CHISINAU IMMEDIATE

AMEMBASSY BAKU IMMEDIATE

AMEMBASSY ASHGABAT IMMEDIATE

AMEMBASSY TASHKENT IMMEDIATE

AMEMBASSY ALMATY IMMEDIATE

AMEMBASSY DUSHANBE IMMEDIATE

AMEMBASSY BISHKEK IMMEDIATE

AMEMBASSY YEREVAN IMMEDIATE

AMEMBASSY ATHENS IMMEDIATE

AMEMBASSY LJUBLJANA IMMEDIATE

AMEMBASSY WARSAW IMMEDIATE

S E C R E T STATE 025174

OFFICIAL INFORMAL

E.O. 12958: DECL: 2/9/12

TAGS: AMGT

SECRET

PAGE 02 STATE 025174 081520Z
SUBJECT: OFFICIAL-INFORMAL FOR EUR/CACEN POSTS

CLASSIFIED BY EUR P/DAS CHARLES P. RIES FOR REASONS 1.5 B
AND D.

1. (U) FEBRUARY 7 1800

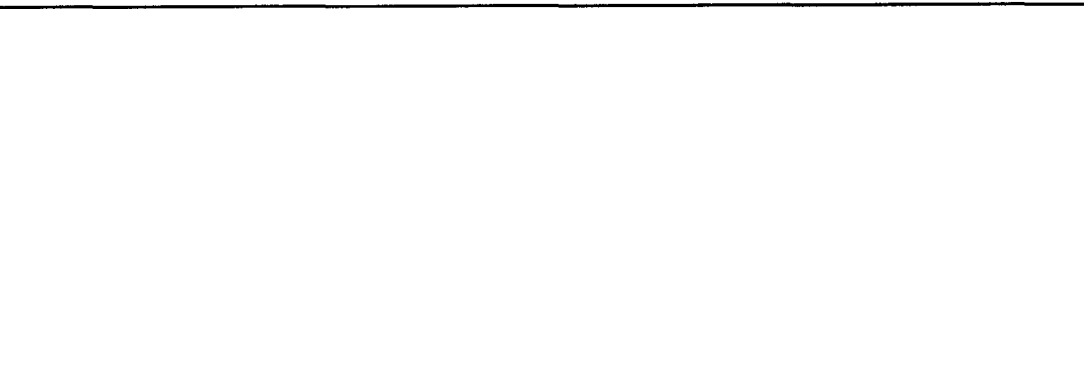
ALL: FOR INFORMATION ONLY

2. (U) I KNOW I SAID I'D CUT BACK TO THREE DAYS A WEEK,

Current Class: SECRET

Page: 1

BUT IN VIEW OF THE LAPSE IN THE SERIES LAST WEEK AND MONDAY, AND SOME BREAKING NEWS TODAY, I THOUGHT I'D SEND THIS OFF TONIGHT.



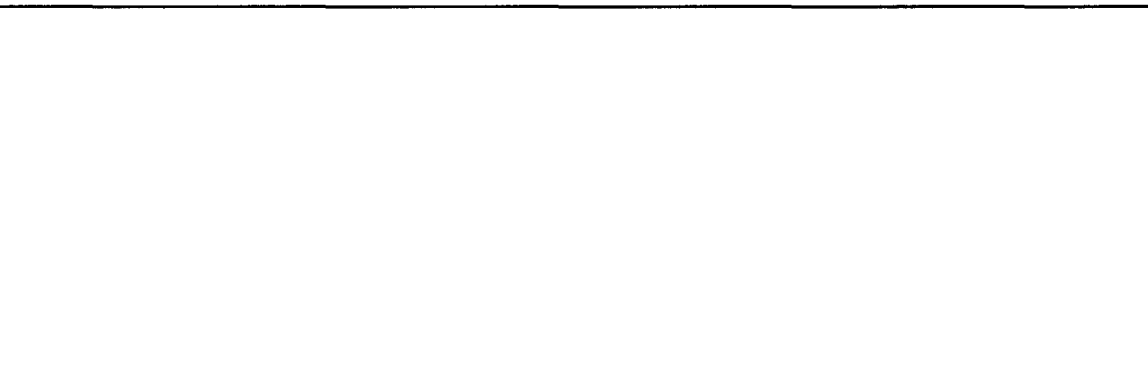
B5

4. (C) GENEVA CONVENTION AND TALIBAN DETAINEES: AS FORESHADOWED LAST NIGHT, ALL WILL HAVE SEEN THE ACCOUNTS OF THE WHITE HOUSE ANNOUNCEMENT OF THE PRESIDENT'S DECISION ON APPLICATION OF GENEVA CONVENTION (AND TOMORROW MORNING YOU EVEN MAY HAVE THE ALDAC THAT L IS STRAINING TO SECRET

PAGE 03 STATE 025174 081520Z
GET OUT TONIGHT). IN SHORT, GENEVA APPLIES TO THE TALIBAN BECAUSE AFGHANISTAN IS A PARTY TO GENEVA AND THE TALIBAN MAY HAVE BEEN THE GOVERNMENT, BUT THE TALIBAN DETAINEES STILL DO NOT MERIT POW STATUS BECAUSE THEY DON'T MEET THE TESTS OF THE CONVENTION AS ARMED FORCES OF A GOVERNMENT.

B1

[REDACTED] A TRIBUNAL TO MAKE DETERMINATIONS IN INDIVIDUAL CASES IS NOT REQUIRED. AL QAIDA DETAINEES OF COURSE ARE NOT COVERED BY GENEVA CONVENTION BECAUSE THEY ARE AN INTERNATIONAL TERRORIST GROUP NOT ASSOCIATED WITH A STATE. AS PREVIOUSLY ANNOUNCED, WE HAVE MADE A POLICY DECISION TO TREAT BOTH SETS OF DETAINEES IN A MANNER CONSISTENT WITH THE PRINCIPLES OF THE GENEVA CONVENTIONS.



B1

[REDACTED]

6. (U) I REPEAT HERE THE TEXTS OF THE MORE INTERESTING OF THE WHITE HOUSE PRESS OFFICE Q'S AND A'S ASSOCIATED WITH THIS DECISION (I WOULDN'T BE SURPRISED TO SEE THE WHOLE BATCH IN THE ALDAC):

SECRET

PAGE 04 STATE 025174 081520Z

Q. WHAT'S THE BASIS FOR THE PRESIDENT'S DECISION?

A. AL-QAIDA IS NOT A STATE PARTY TO THE GENEVA CONVENTION; IT IS A FOREIGN TERRORIST GROUP. ITS MEMBERS ARE THEREFORE NOT ENTITLED TO THE PROTECTIONS OF THE GENEVA CONVENTION.

IN CONTRAST, AFGHANISTAN IS A PARTY TO THE GENEVA CONVENTION. ALTHOUGH THERE ARE GROUNDS TO CONCLUDE THAT AFGHANISTAN WAS A FAILED NATION STATE AT THE OUTSET OF THE CONFLICT, THE PRESIDENT HAS DECLINED TO DETERMINE THAT THE TALIBAN ARE NOT COVERED BY THE TREATY. HOWEVER, THE TALIBAN DETAINEES ARE NOT ENTITLED TO POW STATUS UNDER THE TERMS OF THE CONVENTION.

Q. WHY DON'T THE TALIBAN DETAINEES QUALIFY AS POWS UNDER THE CONVENTION?

A. THE GENEVA CONVENTION ON PRISONERS OF WAR WAS INTENDED TO PROTECT ONLY THOSE PEOPLE WHO QUALIFY AS PRISONERS OF WAR -- HENCE ITS NAME. ARTICLE 4 OF THE CONVENTION SPECIFIES THE CATEGORIES OF PEOPLE WHO FALL INTO THE HANDS OF THE ENEMY WHO ARE ENTITLED TO BE TREATED AS POWS. THE COMMENTARY TO THE GENEVA CONVENTION EXPLAINS THAT "ARTICLE 4 IS IN A SENSE THE KEY TO THE CONVENTION, SINCE IT DEFINES THE PEOPLE ENTITLED TO BE TREATED AS PRISONERS OF WAR." THE TALIBAN DETAINEES DO NOT FIT INTO ANY OF THESE CATEGORIES.

THEY ARE NOT THE REGULAR ARMED FORCES OF ANY GOVERNMENT.

SECRET

PAGE 05 STATE 025174 081520Z

RATHER THEY ARE AN ARMED GROUP OF MILITANTS WHO HAVE OPPRESSED AND TERRORIZED THE PEOPLE OF AFGHANISTAN AND HAVE BEEN FINANCED BY, AND IN TURN SUPPORTED, A GLOBAL TERRORIST NETWORK. THEY DO NOT MEET THE CRITERIA UNDER WHICH MEMBERS OF MILITIAS CAN RECEIVE POW STATUS EITHER. TO QUALIFY AS POWS, MILITIA MUST SATISFY FOUR CONDITIONS:

Current Class: SECRET

Page: 3

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THEY MUST BE PART OF A MILITARY HIERARCHY; THEY MUST WEAR UNIFORMS OR OTHER DISTINCTIVE SIGN VISIBLE AT A DISTANCE; THEY MUST CARRY ARMS OPENLY; AND THEY MUST CONDUCT THEIR OPERATIONS IN ACCORDANCE WITH THE LAWS AND CUSTOMS OF WAR. THE TALIBAN HAVE NOT EFFECTIVELY DISTINGUISHED THEMSELVES FROM THE CIVILIAN POPULATION OF AFGHANISTAN. MOREOVER, THEY HAVE NOT CONDUCTED THEIR OPERATIONS IN ACCORDANCE WITH THE LAWS AND CUSTOMS OF WAR; INSTEAD, THEY HAVE KNOWINGLY ADOPTED AND PROVIDED SUPPORT TO THE UNLAWFUL TERRORIST OBJECTIVES OF AL-QAIDA.

THE TALIBAN DO NOT QUALIFY UNDER ARTICLE 4(A)(3) WHICH COVERS "MEMBERS OF REGULAR ARMED FORCES WHO PROFESS ALLEGIANCE TO A GOVERNMENT OR AN AUTHORITY NOT RECOGNIZED BY THE DETAINING POWER" BECAUSE THE CONVENTION APPLIES ONLY TO REGULAR ARMED FORCES WHO POSSESS THE ATTRIBUTES OF REGULAR ARMED FORCES, I.E. DISTINGUISH THEMSELVES FROM THE CIVILIAN POPULATION AND CONDUCT THEIR OPERATIONS IN ACCORDANCE WITH THE LAWS AND CUSTOMS OF WAR.

Q. WHY NOT TREAT ALL THE DETAINEES AS POWS? WHO CARES?

A. SEVERAL REASONS. FIRST, THERE IS AN IMPORTANT PRINCIPLE AT STAKE. THE GENEVA CONVENTION HAS ESTABLISHED CRITERIA FOR POW STATUS. ONE OF THE REASONS IT DOES IS TO
SECRET

PAGE 06 STATE 025174 081520Z
ENSURE THAT ONLY MEMBERS OF LEGITIMATE ARMED FORCES RECEIVE POW PRIVILEGES, NOT OTHER GROUPS WHO TAKE UP ARMS UNLAWFULLY AND DO SO OBSERVE THE LAWS AND CUSTOMS OF WAR. IF ALL CAPTURED COMBATANTS WERE PROVIDED POW PRIVILEGES, THAT WOULD ELIMINATE ONE DISINCENTIVE TO TERRORISM OR OTHER TYPES OF UNLAWFUL COMBAT.

SECOND, WE WANT TO INCENTIVIZE THE ARMED FORCES OF OTHER COUNTRIES TO CONDUCT THEMSELVES SO AS TO BE ELIGIBLE FOR POW STATUS. THIS MEANS WEARING UNIFORMS THAT DISTINGUISH THEMSELVES FROM CIVILIANS AND REQUIRING THEM NOT TO INVOLVE THE CIVILIAN POPULATION IN A CONFLICT IN WAYS THAT SUBJECT CIVILIANS TO RISK. INSISTING THAT THE CRITERIA FOR POW STATUS ARE MET PROTECTS CIVILIANS BY MAINTAINING A SHARP DISTINCTION BETWEEN COMBATANTS AND NON-COMBATANTS.

THIRD, WE TAKE OUR TREATY OBLIGATIONS SERIOUSLY AND WE BELIEVE IN APPLYING THE TERMS OF THE CONVENTION. THE GENEVA CONVENTION FOR GOOD REASON CLEARLY DIFFERENTIATES BETWEEN THOSE ENTITLED TO POW STATUS AND THOSE WHO ARE NOT.

Current Class: SECRET

Page: 4

FINALLY, MANY PRIVILEGES GIVEN TO POWS UNDER THE CONVENTION ARE SIMPLY INAPPROPRIATE IN THE CURRENT SITUATION. SOME OF THE SPECIFIC TREATMENT CONDITIONS PROVIDED TO POWS BY THE GENEVA CONVENTION WERE SUITABLE FOR REGULAR SOLDIERS IN 1949 BUT ARE NOT APPROPRIATE FOR TERRORISTS IN 2002. SOME TREATMENT CONDITIONS ARE NOT COMPATIBLE WITH THE EXTRAORDINARY SECURITY RISK POSED BY THESE DETAINEES, WHO ARE EXTREMELY VIOLENT AND DANGEROUS AND POSE A THREAT TO THE U.S. FORCES WHO ARE GUARDING THEM

SECRET


PAGE 07 STATE 025174 081520Z
AND TO EACH OTHER

FOR EXAMPLE, WE DO NOT PLAN TO INSTALL CANTEENS WHERE DETAINEES MAY PURCHASE FOOD, SOAP, AND TOBACCO. WE WILL NOT BE GIVING THE DETAINEES AT GUANTANAMO A MONTHLY ADVANCE OF PAY, OR ALLOW THEM TO HAVE AND CONSULT PERSONAL FINANCIAL ACCOUNTS. DETAINEES WILL NOT BE ALLOWED TO RECEIVE SCIENTIFIC EQUIPMENT, MUSICAL INSTRUMENTS, OR SPORTS OUTFITS.

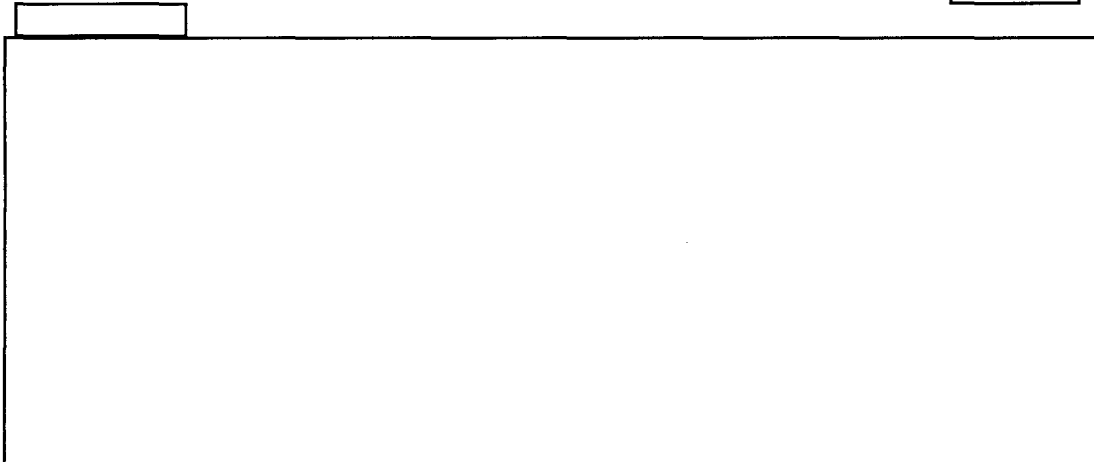


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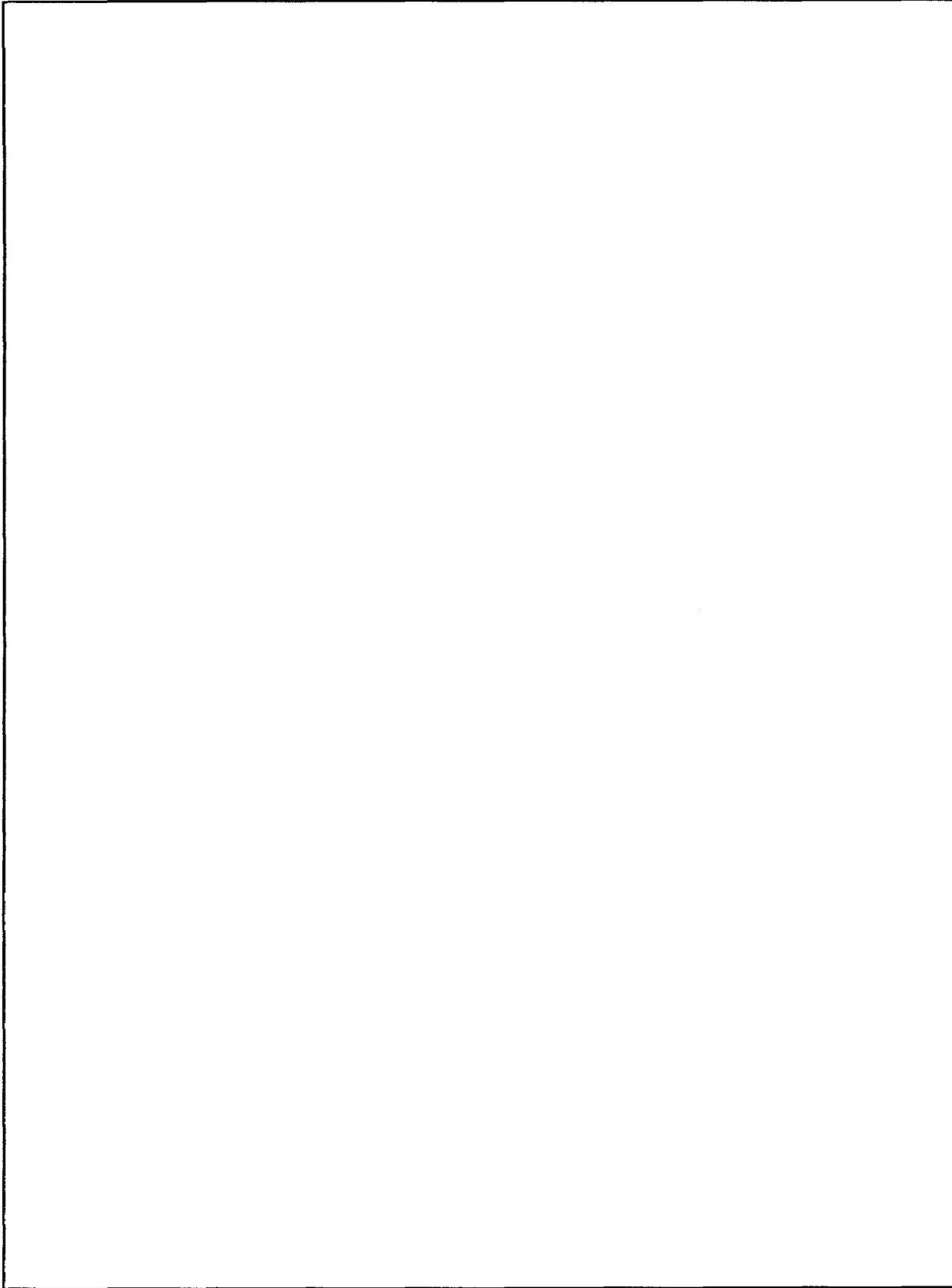
[BEGIN READOUT:]

8. (U) HERE IS QUICK AND DIRTY READOUT ON US-UK BILATERAL TODAY ON BUILDING AFGHAN ARMY/POLICE AND EXTENDING ISAF MISSION AND MANDATE. STATE/DOD DELEGATION LED BY JIM DOBBINS. UK COUNTERPART DEL LED BY FCO 

B6



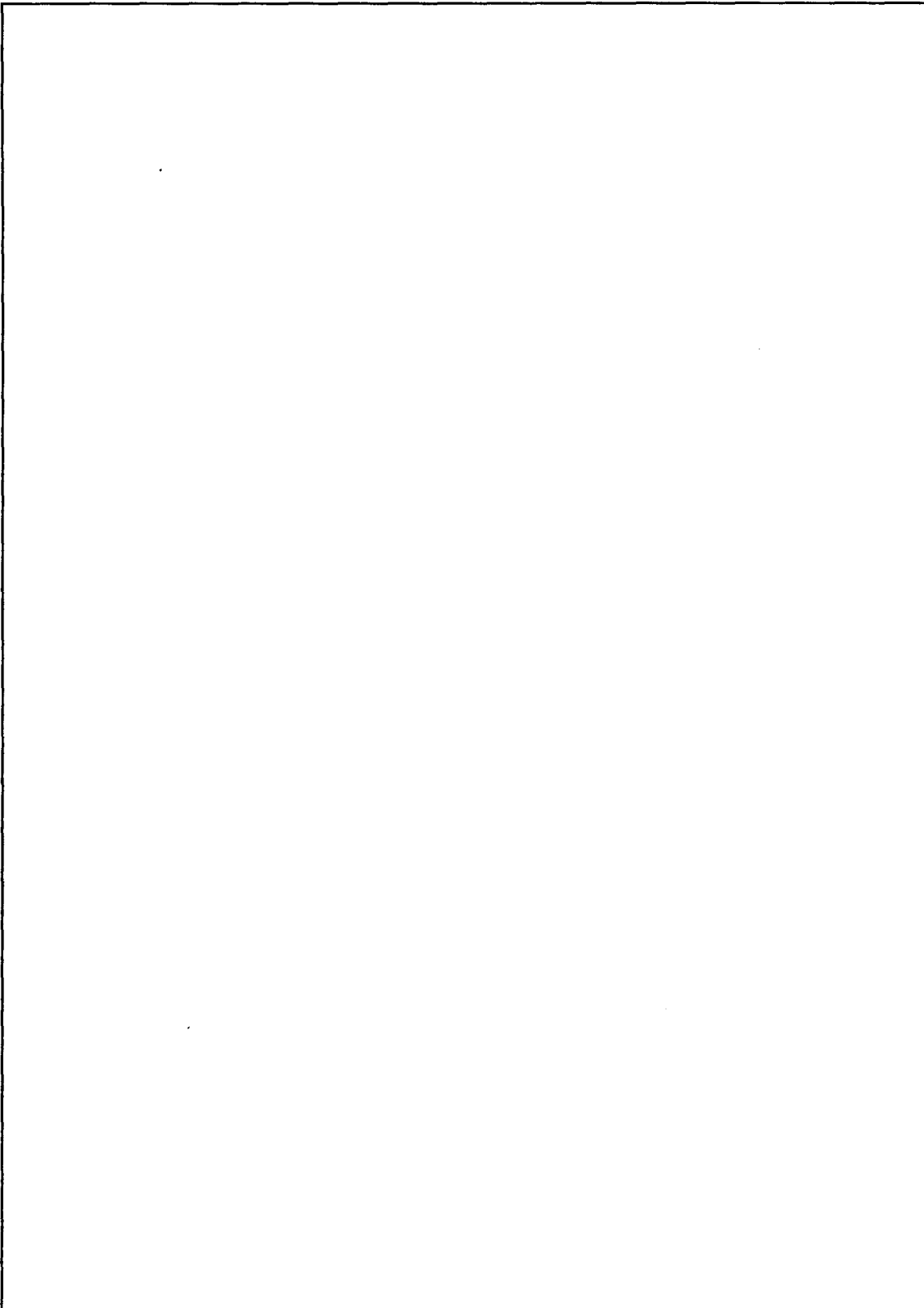
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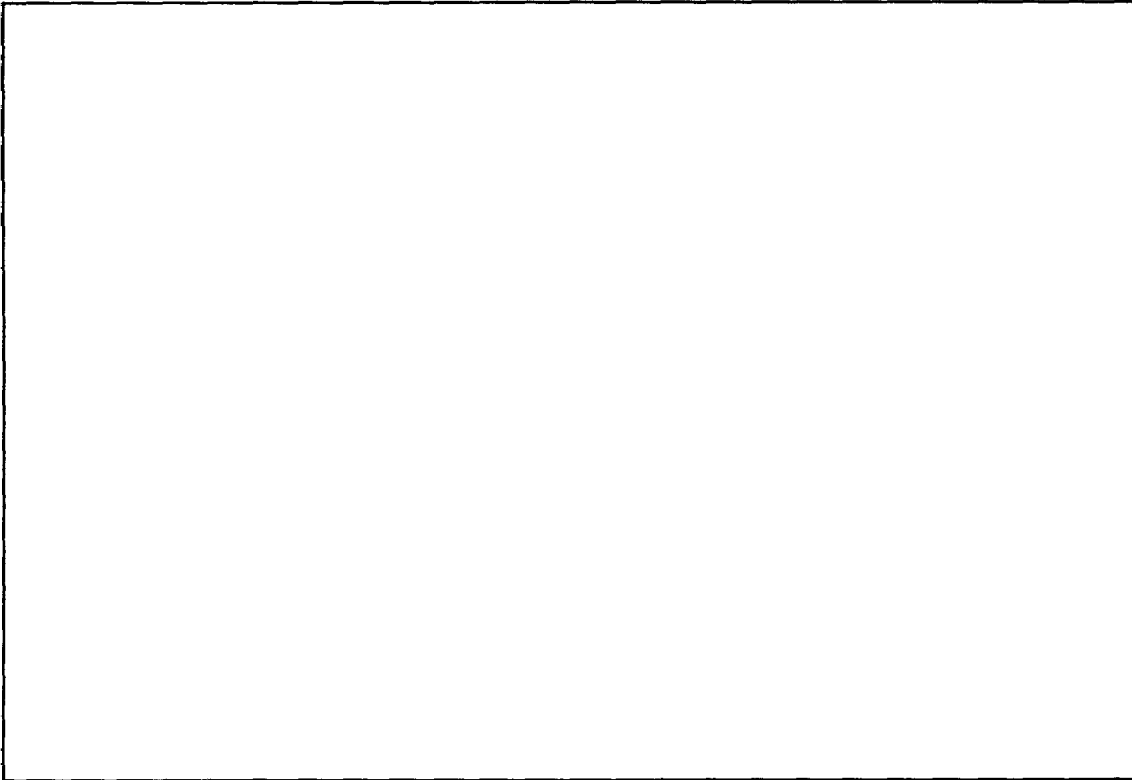




PAGE 11

STATE 025174 081520Z





[END]

21. (U) GOOD STUFF, NO? C

MINIMIZE CONSIDERED.
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