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INTO
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May 5, 2005

The Honorable Christopher Shays
Chairman
Subcommittee on National Security, Emerging
Threats, and International Relations
U.S. House of Representatives
B-372 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman,

I have your letter of May 3, expressing your concern about "needless conflict" between the work of the Independent Inquiry Committee ("IIC") and Congressional investigations. At the same time, I must reject entirely that it is "reflexive secrecy or legalism" that is influencing our position with respect to demands that former IIC investigators respond to Congressional inquiries.

What is at stake is the ability of the IIC to go about its work effectively, maintaining the confidentiality and staff protection essential to investigatory activity. Indeed, I believe the principle of protecting confidentiality in work of this kind is clearly within the tradition of the American legal system. Courts have consistently held that Congressional staff members themselves are immune from subpoena about the manner in which a congressional report is prepared. As another example, the Freedom of Information Act, with its "Deliberative Process Privilege" exemption protects from disclosure the decision-making processes of government agencies.

The existence of these protections and the reliance upon them by a branch of government or an international entity should not, as you suggest, be perceived as part of a "culture of secrecy and self-dealing." Instead, these well-recognized principles exist to protect the integrity and independence of governmental and international institutions and most importantly the deliberative and communicative process by which decisions are made.

In particular, all investigations that confront serious allegations of fraud, corruption, misuse and mismanagement must enjoy a degree of secrecy as evidence is being gathered. Criminal justice systems throughout the world, including the US system, recognize this vital concept. These protections are no less vital in the conduct of our Inquiry. They go to the heart of our ability to follow investigative leads and develop investigative information.

In the present case, all IIC staff members have willingly agreed to strict confidentiality obligations. Such agreements are, of course, absolutely necessary to maintain the ability of investigators to assure their sources' confidentiality. It is also part and parcel of maintaining mutual confidence among staff members so that they can feel free to debate issues fully among themselves.

Moreover, staff members have the further protection of the privileges and immunities inherent in the United Nations itself, immunities supported by U.S. Law.

Both of these assurances were, in fact, essential to recruiting our international staff. The senior members of that staff have had experience in the offices of U.S. attorneys and are directly experienced in the need to and the ability to maintain confidentiality of investigations.

Staff members who have voluntarily assumed the privileges and responsibilities associated with work with the IIC cannot, in my judgment, reasonably and honorably unilaterally violate those pledges of confidentiality and acceptance of immunity at the expense of their former colleagues and the investigation itself.

I have indicated to you and others my understanding of the nature of the concerns of the former staff members.

By its nature, the IIC is intended to describe every relevant investigative lead. There has not been any question about the absence of evidence that the selection of Cotecna in 1998 was subject to any affirmative or improper influence of the Secretary General.

The question, so far as I am aware, revolves around a single point – what you cite as "an oddly muted and almost purposefully vague" finding of the Committee that evidence "was not reasonably sufficient" to show the Secretary General knew about the Cotecna bid.

In that connection, you should be aware "reasonably sufficient" was the standard adopted by the Committee at the beginning of its work to determine a finding. The conclusion reached by the Committee indeed was "muted" precisely for the reasons cited in the Report – the absence of definitive evidence.

The Report carefully and fully described and reviewed the evidence in this area. The reader can draw his own inferences and make his own judgment as to whether that evidence met the "reasonably sufficient" standard. The three

Committee members, who have the clear responsibility for making a finding, concluded the available evidence did not. The former staff members may have come to their own judgments.

I am ready to discuss further any questions you have.

Sincerely,

Paul A. Volcker

cc: Mr. Mark Malloch Brown

May 5, 2005

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