



11. Congress's Extraterritorial Investigative Powers

Overview

Enforcement of committee subpoenas for testimony and documents has been accomplished through criminal and civil court actions since 1935. Reliable judicial assistance, however, has not been readily available where sought-after individuals and information are in foreign jurisdictions. The two vehicles by which U.S. courts may request assistance from foreign countries in obtaining evidence, including witness testimony, are mutual legal assistance treaties and letters rogatory (requests by domestic courts to foreign courts to take evidence from certain witnesses). Most such treaties are either expressly unavailable to assist legislative investigations or have been so construed. Similarly, although U.S. law authorizes courts to transmit letters rogatory to foreign courts (and to receive them as well), principles of international comity are often trumped by judicial determinations that compliance will not be reciprocated. As a consequence, special congressional investigating committees which have been authorized to obtain letters rogatory, and to seek other means of international assistance in gathering information in foreign countries, have in some instances had to resort to informal methods—including imaginative improvisations—to obtain the information they need.

A. The Dilemma of Congressional Subpoena Enforcement in Foreign Countries

1. Letters Rogatory: Law and Practice

A letter rogatory, also known as a letter of request, is a formal request from a court in one country to the competent authority in another country asking that authority to serve process on an individual or entity located there, or to order the testimony of a witness or the production of documents or other evidence. Sections 1781 and 1782 of Title 28, United States Code, provide the current statutory framework for transmitting and receiving international requests for legal assistance and/or testimony for use in appropriate proceedings. These sections were revised in 1964 to facilitate equitably resolving litigation resulting from an increase in the 1950s of international commerce and the proliferation of multinational corporations. The 1964 legislation was designed to clearly authorize the State Department to both transmit and receive letters rogatory for, among other matters, obtaining evidence and testimony abroad for use in proceedings in the United States. Section 1781 makes clear, however, that a court may transmit or receive letters rogatory without the involvement of the State Department if such a procedure is acceptable to the requested country.¹

Section 1782 provides the basis for foreign and international tribunals to obtain discovery from individuals or entities located in the United States for use in foreign proceedings. Subsection (a) vests exclusive subject matter jurisdiction in the district court in which “a person” resides (or is found) to order the person to give testimony or to produce documentary evidence for use in a foreign tribunal. In 2004, the Supreme Court, in *Intel Corp. v. Advanced Micro Devices, Inc.*,² ruled that since the underlying purpose of Section 1782 is to encourage foreign countries to provide similar accommodations to U.S. courts, judicial assistance under the statute is not dependent on foreign courts’ reciprocity. But the court went on to

1. See, e.g., S. REP. NO. 88-1580 (1964); H.R. REP. NO. 88-1052 (1963).

2. 542 U.S. 241 (2004).

emphasize that Section 1782 “authorizes, but does not require, a federal district court to provide assistance to a complainant,” allows “a district court [to] condition relief on that person’s reciprocal exchange of information,” and sets forth factors to guide a district court’s determination of whether assistance under Section 1782 is appropriate.³ Among the factors noted is the ability of a court to “take into account the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal court judicial assistance.”⁴

Important for present purposes is a principal requirement of Section 1782(a) that the requested discovery be “for use in a *proceeding* in a foreign or international *tribunal*, including criminal investigations conducted before accusation.”⁵ The terms “tribunal” and “proceeding” are inextricably related. The legislative history of the current version of Section 1782, enacted in 1964, makes it clear that the term “tribunal” was meant to include any official government body exercising *adjudicatory* functions. The 1964 amendments substituted the word “tribunal” for the word “court.” The change, the Senate and House reports explain, was made in order to clarify that assistance under the statute is not confined to proceedings before conventional courts; it is equally available in connection with proceedings before foreign administrative and quasi-judicial agencies. But a governmental body whose primary function is to conduct investigations unrelated to judicial or quasi-judicial controversies, or which merely reports its findings to another governmental entity, would not qualify as a “tribunal.”

Appeals courts have consistently followed this understanding.⁶ In one instance involving a request for assistance under Section 1782 by a Canadian commission of inquiry, which was authorized to investigate and make recommendations, the court observed:

The legislative history [of the 1964 revisions] does not indicate, however, that it was the purpose of Congress or the Administration to broaden the scope of international cooperation beyond activities of the courts and other quasi-judicial entities to encompass bodies whose primary functions are investigative...[N]othing in the foregoing [quotations from the House and Senate reports] indicates a congressional intent to include institutions whose purpose is to investigate and report to the executive or legislative branches of government. Rather, the crucial requirement is that the foreign body exercise adjudicative power with adjudicative purpose.⁷

The *Intel* court confirmed this reading of the congressional intent to cover only tribunals that engage in binding adjudicatory functions.

As recast in 1964, Section 1782 provided for assistance in obtaining documentary and other tangible evidence as well as testimony. Notably, Congress deleted the words “in any judicial proceeding pending in any court in a foreign country,” and replaced them with the phrase “in a proceeding in a foreign or international tribunal.” ... While the accompanying Senate report does not account discretely for the deletion of the word “pending,” it explains that Congress introduced the word “tribunal” to ensure that “assistance is not confined to proceedings before conventional courts” but extends to “administrative and quasi-judicial proceedings.” S. Rept. No. 1580, 88th Cong., 2d. Sess., p. 7 (1964); see H.R. Rept. No. 1052, 88th Cong., 1st Sess., p. 9 (1953)(same). Congress further amended Section 1782 (a) in 1996 to add, after the reference to “foreign or international tribunal,” the words “including criminal investigations conducted before formal accusation.”⁸

3. 542 U.S. at 255, 262, 264-66.

4. *Id.* at 264.

5. Emphasis supplied.

6. *See, e.g.*, *In re Letters Rogatory Issued by the Director of Inspection of the Government of India*, 385 F.2d 1017 (2d Cir. 1967) (Section 1782 permits assistance only for proceedings before adjudicative forums; tax collector conducting a tax assessment with no adjudicative proceedings as a result is denied assistance); *Fonseca v. Blumenthal*, 620 F.2d 322 (2d Cir. 1980) (The Columbian Superintendent of Exchange Control is charged with protecting the country’s balance of payments and is empowered to determine whether a violation has occurred and has an institutional interest in a particular result. “This interest is inconsistent with the concept of an imperial adjudication intended by the term ‘tribunal.’”); *In re letters Rogatory to Examine Witnesses from the Court of Queen’s Bench for Manitoba, Canada*, 488 F.2d 511 (9th Cir. 1973) (Canadian Commission of Inquiry is a governmental body whose purpose is to conduct investigations unrelated to judicial or quasi-judicial controversies and is denied Section 1782 assistance.).

7. *In re Letters of Request to Examine Witnesses*, 59 F.R.D. 625, 628, 629 (1993), *aff’d* 488 F.2d 511 (9th Cir. 1994).

8. *Intel Corp.*, 542 U.S. at 248-9.

The *Intel* court took great pains to scrutinize the decisional processes of the governmental bodies involved, assuring itself that those bodies had connections with the exercise of adjudicative power or had adjudicative purposes before it accepted their argument that “[w]hen the Commission acts on DG-Competition’s final recommendation ... the investigative function blur[s] into decisionmaking.” The court concluded: “We have no warrant to exclude the European Commission, to the extent that it acts as a first-instance decisionmaker, from Section 1782(a)’s ambit.”⁹ As yet, Congress has not seen fit to broaden by law the use of letters rogatory for use in aid of a legislative investigation. As a consequence, letters rogatory are seen as a measure of last resort and are generally utilized when no legal assistance treaty exists.¹⁰

2. Mutual Legal Assistance Treaties

Buttressing the absence of any apparent congressional intent to cover legislative investigations in its letters rogatory legislation, major international service conventions to which the United States is a party either expressly preclude their use by legislative entities or imply preclusion by their silence. For example, the United States and the United Kingdom have a mutual legal assistance treaty which provides for various forms of assistance in criminal investigations and prosecutions, including serving documents, transferring persons in custody for testimony, and, in some cases, compelling testimony.¹¹ Invocation of the treaty would likely be the method by which a U.S. court would seek assistance from the United Kingdom for evidence. Article 19 of the treaty defines the “proceedings” to which it applies. Specifically, it applies to a proceeding “related to criminal matters,” including “any measure or step taken in connection with the investigation or prosecution of criminal offenses.” In addition, it allows relevant officials, in their discretion, to “treat as proceedings for the purpose of this treaty such hearings before or investigations by any court, administrative agency or administrative tribunal with respect to the imposition of civil or administrative sanctions.” Although this language might appear on its face to apply to congressional civil or contempt proceedings, the relevant proceeding would likely be considered the underlying congressional testimony rather than the contempt proceeding before a court. As such, British officials may not view the congressional committee hearing as a “proceeding” covered by the treaty.

Similarly, the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, entered into by the United States in 1975, provides in Article 1 that “[a] letter [of request] shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.”¹² Also, the Inter-American Convention on Letters Rogatory, entered into in 1995, provides in Article 2 that it “shall apply to matters held before the appropriate or other adjudicatory authority of the States Parties to this convention, that have as their purpose...[t]he taking of evidence and the obtaining of information abroad, unless a reservation is made in this respect.”¹³

B. Illustrative Informal Actions Taken By Special Investigative Committees to Obtain Information Abroad

Since 1974 ten special congressional investigating committees have been vested with the authority to request the judicial assistance of U.S. courts in taking depositions or accessing information in foreign jurisdictions through the vehicle of

9. *Id.* at 257-58.

10. See U.S. DEP’T OF STATE, *Preparation of Letters Rogatory*, <https://travel.state.gov/content/travel/en/legal-considerations/judicial/obtaining-evidence/preparation-letters-rogatory.html> (“Letters rogatory may be used in countries where multi-lateral or bilateral treaties on judicial assistance are not in force to effect service of process or to obtain evidence if permitted by the laws of the foreign country.”).

11. Treaty on Mutual Legal Assistance, U.S.-U.K., Jan. 6, 1994, T.I.A.S. No. 96-1202.

12. Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, art. 1, March 18, 1970, 23 U.S.T. 2555, 847 U.N.T.S. 231.

13. Inter-American Convention on Letters Rogatory, Jan. 30, 1975, 1438 U.N.T.S. 288.

letters rogatory, as well as the authority to seek other means of international assistance in gathering information in foreign countries.¹⁴ It was well understood that the committees and their staffs were not being enabled to set up shop in foreign countries and begin subpoenaing foreign nationals or government officials to testify under oath or supply documents. Rather, such grants were designed to provide the committees with the necessary imprimatur of authority to utilize formal judicial and international treaty processes and to call on the Departments of State and Justice to provide their good offices in support of such efforts. The grants were also meant to give legitimacy to less formal ventures to obtain necessary information. Utilization of the currently available formal means under statutes or treaties has proven problematic. Resort to informal methods has been more successful, but such *ad hoc* actions provide no precedential certainty.

In light of the foregoing legal analysis, the effect of a simple one-house resolution is unlikely to be seen by a foreign court as providing the lawful, reciprocal authority to invoke that court's cooperation with a U.S. court's letter rogatory. What little evidence there is about attempts by these panels to obtain judicial assistance does not engender much confidence in the efficacy of this route. But a close examination of the experiences of several of these inquiries indicates that a combination of persistence, artful negotiation and imaginative improvisation provided some measures of success.

1. Iran-Contra¹⁵

The Iran-Contra investigation illustrates the difficulties that committees may encounter in securing judicial assistance in obtaining information from abroad, and it provides a unique view of the use of unconventional tactics. The House and Senate select committees investigating the Iran-Contra matter were faced with formidable obstacles from the outset: a relatively short time frame to complete the inquiry; the parallel independent counsel investigation competing for the same evidence; witnesses and evidence in foreign countries with strict secrecy laws; and a hostile administration that would not cooperate in facilitating any possible diplomatic accommodations.

The independent counsel was qualified under Section 1782 and under a Swiss treaty with the U.S. to seek judicial assistance in his criminal investigation, and he did so. But the letters rogatory and treaty processes are time-consuming and, as it turned out, could not provide the independent counsel all that he needed.¹⁶ The committees sought a sharing agreement with the independent counsel, but he was reluctant to jeopardize his arrangements under the treaty with the Swiss government. Doubting whether they could use Section 1782, the committees abandoned that route.

Instead, the committees attempted to get key documentary evidence by compelling a witness to sign a consent to production which would allow them to access Swiss bank accounts. A district court found the tactic an unconstitutional attempt to compel a witness to incriminate himself. The Senate committee appealed, but the appeal was dismissed when the committees got the desired documents by other means (described below). Ironically, a year later the Supreme Court upheld the tactic as valid because it was deemed not testimonial in nature.¹⁷

As a last resort, the committees decided that in order to obtain the critical financial information, they had to grant use immunity to a principal target of the investigation in return for the records. The witness was hiding in Paris, however, and would not subject himself to U.S. jurisdiction. In order to establish their own investigative legitimacy and satisfy the witness as to the authoritativeness of the immunity grant, the committees cloaked their chief counsel with the maximum amount of congressional authority by obtaining an order from a federal district court under Rule 28 of the Federal Rules of Civil Procedure, empowering him to obtain evidence in another country and bring it back. Finally, the House committee issued the chief counsel a commission, much like a subpoena in format, to further document his official status. Ultimately

14. Nixon Impeachment Proceedings, H.R. RES. 803, 93d Cong. (1974); House Assassinations Inquiry, H. RES. 222, 95th Cong. (1974); Church Committee, S. RES. 21, 94th Cong. (1974); Koreagate, H.R. RES. 252 and H.R. RES. 95th Cong. (1977); ABSCAM, H.R. RES. 67 97th Cong. (1981); Iran-Contra, H.R. RES. and S. RES. 23, 100th Cong. (1987); October Surprise, H.R. RES. 258, 102d Cong. (1991); Senate Whitewater, S. RES. 120, 104th Cong. (1995); House Campaign Finance, H.R. RES. 167, 105th Cong. (1997); and Select Committee on National Security Commercial Concerns, H. RES. 463 105th Cong. (1998).

15. The factual and legal background of the Iran-Contra committees' difficulties and successes is ably described in George W. Van Cleve & Charles Tiefer, *Navigating the Shoals of Use Immunity and Secret International Enterprises In Major Congressional Investigations: Lessons of the Iran-Contra Affair*, 55 Mo. L. REV. 43 (1990). The authors were minority chief counsel and special deputy chief counsel, respectively, of the House select committee. See also Louis Fisher, *Investigating Iran-Contra*, Part II *infra*.

16. Van Cleve & Tiefer, *supra* note 15, at 75-77.

17. See *Doe v. United States*, 488 U.S. 201 (1988).

the witness turned over the financial documents and aided in deciphering and understanding them.¹⁸ Though its legal sufficiency was never tested, the tactic proved effective and provided a major breakthrough in the inquiry.

2. House Select Committee on Assassinations

The House of Representatives Select Committee on Assassinations was established in 1976 to investigate the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr. and was given broad investigative powers, including the authority to gather information internationally.¹⁹ The select committee made numerous applications through the courts for orders requesting international judicial assistance in various countries. It filed for letters rogatory to take the testimony of several Canadian citizens, but the Canadian government declined to honor them, asserting that it did not believe the applicable statutes empowered a congressional committee to seek them. But the Canadian government did arrange informal interviews with most of the Canadian citizens whose testimony was sought.²⁰ Also, one judge signed a committee request for a letter rogatory to the “appropriate official in Portugal” to assist in the conduct of a deposition of a witness with respect to the assassination of Dr. Martin Luther King.²¹ There is no indication in the record of whether the Portuguese government complied.

3. October Surprise

The October Surprise Task Force (Task Force), investigating allegations that there was a conspiracy to delay the release of Americans held hostage in Iran until President Carter left office, received significant cooperation from a number of countries without resort to formal processes. Only one country was totally uncooperative.

Government agencies in Great Britain and France from which the Task Force sought assistance generally complied with Task Force requests for documents, but many of the records sought could not be found. The government of Iran, contacted on numerous occasions through its permanent mission to the United Nations, denied the Task Force’s request to travel to Iran to conduct interviews. Although the Task Force was able to contact several Iranian nationals while they were traveling outside of Iran, the inability to travel to Iran prevented access to many individuals who might have had knowledge relevant to the allegations.

The government of Israel also declined to allow the Task Force to travel to Israel to interview current and former government officials. The government of Israel did, however, appoint a special investigator to act as a liaison with the Task Force. The special investigator, an Israeli general, interviewed certain individuals on the Task Force’s behalf. The Task Force also sought certain documents from Israel. The special investigator submitted the results of his investigation to the Task Force, and the Israeli government gave the Task Force permission to utilize these findings in its report.

The government of Germany permitted the Task Force to conduct interviews and depositions in Germany and made available its former foreign minister, Hans-Dietrich Genscher, who had played a critical role in the hostage negotiations.

The government of Algeria also provided valuable assistance to the Task Force. It invited the Task Force to Algiers and arranged for interviews. The Task Force noted in its final report that the Algerians were scrupulous in maintaining their discretion and neutrality while being generous with their time and insight. Algerian assistance was particularly useful in understanding the crucial last few months of the negotiations that ended the hostage crisis.

The Task Force—with the assistance of Spain, Interpol, Spanish police authorities, and the FBI’s legal attaché in Madrid—was able to obtain important hotel records. Similar cooperation was obtained directly from hotels in Paris.²²

18. Van Cleve & Tiefer, *supra* note 15 at 78-80.

19. See H.R. RES. 222, *supra* note 14.

20. Appendix to Hearings before the Select Committee on Assassinations, 95th Cong., 2d Sess. Vol. II, 122 (1998).

21. *Id.* at 134-35.

22. See JOINT REPORT OF THE OCTOBER SURPRISE TASK FORCE, H. REPT. NO. 102-1102, 25-26 (1993).

4. Koreagate

Of course, not all committee investigations enjoy the cooperation that the October Surprise Task Force received. One contrasting example is the investigation by the House Committee on Standards of Conduct into efforts by the Government of the Republic of Korea (ROK) to persuade members of Congress to reverse President Nixon's decision to withdraw troops from South Korea. Notwithstanding the obstacles it faced, the committee persevered and ultimately achieved a measure of accountability.

The lead ROK operative was a Korean businessman, Tongsun Park, who was to funnel bribes and favors to the congressmen. His chief contact was Rep. Mark Hanna. An important key to the investigation was the role played by one witness, Kim Dong Jo, a former ROK official who was not subject to compulsory committee process. In addition to the ROK government's reluctance to make the witness available, the committee encountered difficulties with the Justice and State departments, through which formal communications and negotiations with the ROK government had to be channeled. Those agencies had been dealing with aggravated political relations as a result of public revelations of the ROK government's alleged attempt to corrupt our political processes.

Over a period of a year, the committee, with the assistance of the House leadership, engaged in public education, congressional pressure, negotiations, and, finally, congressional reprisal. Ultimately, an agreement was reached to submit written questions to the witness, which were delivered by the U.S. ambassador to the ROK minister of foreign affairs. The responses were returned by the minister to the U.S. ambassador. The committee noted that the "procedure [was] designed to assure [the witness'] ability to falsify his answers with impunity and to preclude the committee from having any ability to expose his lack of candor." The committee recounts its efforts to obtain the testimony in its final report.²³

Similar difficulties arose with respect to the U.S. government's request for the extradition of Tongsun Park by South Korea. Park came to the United States in April 1978 to testify before the House committee, for which he was given full immunity. At the hearing, Park admitted to disbursing cash to 30 members of Congress. Ten members were seriously implicated. Three were censured and reprimanded by the committee; one was found not guilty after a trial for bribery, conspiracy, illegal gratuities, and tax evasion; one was found guilty of bribery; and four resigned their offices before punitive committee action could be taken.

5. The Investigation of the United Nations' Oil-for-Food Program

If the Iran-Contra investigation can be deemed a successful exercise in "imaginative improvisation," the committee actions respecting inquiries into the United Nations' Oil-for-Food program scandal might be viewed as an example of "recognizing and taking advantage of opportunities."²⁴

The Oil-for-Food program arose as part of a U.N. effort to address humanitarian concerns about the impact on the Iraqi people of the comprehensive economic sanctions that were imposed on Iraq following its invasion of Kuwait in 1990. From 1996 to 2003, the program allowed Iraq to sell oil, to have the proceeds of the oil sales deposited into a U.N.-controlled account, and to use funds in that account to purchase food and other civilian goods. The program ended in 2003 with the invasion of Iraq that led to the deposing of Saddam Hussein. By 2004 numerous reports surfaced concerning corruption and other irregularities in the inception and administration of the program. Some of the issues raised concerned the conduct of U.N. Secretary-General Kofi Annan, particularly the propriety of an award of a large contract to a goods inspection company that employed Annan's son. In April 2004 Annan created an Independent Inquiry Committee (IIC), headed by former Federal Reserve Board Chairman Paul A. Volcker, to conduct an investigation of the management and administration of the program.

23. See H.R. REP. No. 95-1817, at 88-94 (1978).

24. The facts and circumstances that follow are essentially derived from the complaint and accompanying documents in the legal action styled *United Nations on Behalf of the Independent Inquiry Committee into the United Nations Oil-for-Food Program v. Parton*, No. 1 05CV00917RMU (D.D.C., May 9, 2005), and the Memorandum Agreement dated September 12, 2005 settling the litigation. Other fact sources will be separately noted.

The IIC was structured to ensure independence from the U.N. while preserving the confidentiality, privileges and immunities attached to U.N. staff and documents. In particular, under the International Organization Immunities Act, 22 U.S.C. 288a (b)-(c), the archives of the United Nations are “inviolable” and the property and assets of the U.N. “wherever located and by whomsoever held, shall be immune from search...and confiscation.” Similarly, the Convention on the Privileges and Immunities of the United Nations provides that “[t]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has waived its immunity.”²⁵ Under Article VI of the convention, “experts on mission” “shall be accorded... inviolability for all papers and documents.” Staff members of the IIC were designated by the U.N. as “experts on mission” and thus were immune from legal process during the course of their employment and after the termination of their employment relation.

Coincident with the establishment of the IIC, three congressional committees commenced inquiries into the Oil-for-Food program: the House International Relations Committee; the House Committee on Government Reform’s Subcommittee on National Security, Emerging Threats, and International Relations; and the Senate Committee on Homeland Security and Governmental Affairs’ Permanent Subcommittee on Investigations. The IIC and the congressional committees soon developed antagonistic relations, particularly over questions relating to Mr. Annan’s personal culpability and the degree of access the committees should be given to U.N. documents and personnel as part of their probes.²⁶

In August 2004 the IIC hired Robert Parton, a former FBI agent, as a senior investigation counsel, with particular responsibilities for matters relating to the U.N.’s selection of certain contractors to conduct inspection and banking services for the Oil-for-Food program. Parton had access to most of the electronic records obtained in the IIC’s inquiry. On March 29, 2005, the IIC issued its second interim report, which focused on Annan and the selection of the company that employed his son—a matter within the scope of Parton’s responsibility. Two weeks later he resigned his position. During the separation process, Parton averred that he had complied with the IIC’s stringent confidentiality requirements, memorialized in a confidentiality agreement he had signed, and that he had not retained any documents. In fact, he had secreted a huge cache of documents. Shortly after he left he publically acknowledged that his departure was the result of his disagreement with the findings of the second interim report with respect to Secretary-General Annan’s culpability.

Parton hired a prominent Washington attorney who began negotiations with the House International Relations Committee. Those negotiations resulted in a “friendly” subpoena being issued by the committee on April 29 and an immediate turnover of the documents. The IIC was not informed of the subpoena until May 4. Upon public disclosure of the subpoena service and document turnover, the House National Security Subcommittee and the Senate Permanent Subcommittee on Investigations issued and served subpoenas on Parton for the same documents. The House International Relations Committee was fully aware of the import of its actions. This is reflected in a May 4 agreement between the committee and Parton, which gave the committee custody of the documents and allowed Parton and his attorney to access separate, redacted, responsive, and non-responsive documents. Having custody of the documents assured that no legal action could be filed directly against the committee for the return of the documents.²⁷

The IIC responded immediately, suing Parton to enjoin him from complying with the new House and Senate subcommittee subpoenas.²⁸ The court issued a temporary restraining order against compliance. All the parties commenced settlement negotiations, which concluded on September 12 with a memorandum agreement. The agreement allowed Parton to access the documents turned over to House International Relations and to select those that supported his disagreement with the IIC’s Interim Report findings about Mr. Annan’s culpability, as well as other matters that caused him to resign. Those documents, after being shared with the House and Senate subcommittees, would be presented at a closed-door joint interview of Parton by the three committees, which would be transcribed. IIC would be allowed to rebut in a subsequent joint interview without Parton or in a written rebuttal. Parton would be allowed to see a transcript of the

25. 21 U.S.T. T.I.A.S. No. 6900, art. II, sec. 2 (signed Feb. 13, 1946, and ratified by the U.S. Senate on April 29, 1970).

26. See Yochi J. Dreazen, *Intrigue Envelopes Competing U.N. Probes—Subpoenas. Leaks Allegations Mark Tensions Between Separate Oil-for-Food Investigations*, WALL STREET JOURNAL, May 26, 2005, at A4.

27. See *Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408 (D.C. Cir. 1995).

28. The suit raised no Speech or Debate issues since it was a third party suit against the presumed holder of the subpoenaed documents and not against a congressional committee. See *United States v. AT&T Co.*, 567 F.2d 121, 130 (D.C. Cir. 1977).

rebuttal but would not be able to publically reveal it. Once all the committees had issued their final reports, which could be no later than January 15, 2006, all documents in the possession of the committees had to be returned to the IIC. Some materials could be used in the final committee reports subject to possible redaction by the IIC. Until all the documents were returned, each committee was to safeguard the confidentiality of the subpoenaed documents. Upon signing the settlement, the House and Senate subcommittees agreed to withdraw their subpoenas.

The settlement produced the information the committees thought necessary for substantiating maladministration at the U.N. It also likely avoided an embarrassing legal determination that the House and Senate subcommittee subpoenas were unenforceable because of the statutory and treaty immunities granted to the U.N. and its designated "experts on mission." Finally, the settlement also coincided with the IIC's final report five days prior, which effectively muted much of the substantive dispute. The report delivered a scathing rebuke of Annan's management of the humanitarian operation, but it essentially spread the blame generally to the U.N. Security Council and Annan's senior advisors. It found no evidence that Annan interceded on behalf of his son, but it revealed that the son may have obtained privileged business information from his father's personal assistant.²⁹

C. Concluding Observations

The authority to obtain letters rogatory and to seek international assistance in obtaining evidence from foreign countries serves two important congressional purposes: It provides a committee with necessary authority to utilize formal judicial and international treaty processes, and it gives legitimacy to less formal ventures to obtain needed information.

Under the current state of the law, however, it is far from clear whether a foreign court would honor a request for international judicial assistance issued by a U.S. court. Because reciprocity appears to be a major element in a foreign court's decision whether or not to honor such a request, our country's court decisions evidencing a uniform unwillingness to enforce foreign requests that go beyond the context of judicial or quasi-judicial proceedings is likely to be insurmountable. That, combined with mutual assistance treaties that do not cover legislative requests and the absence of the cooperation or assistance of the State or Justice Departments, means that committees are often left to their own devices. A study of the efforts of the Iran-Contra committees in using subpoenas and immunity grants to obtain information disclosures; the tenacious and artful negotiations of the October Surprise Task Force; and the opportunism of congressional committees probing the U.N.'s administrative effectiveness could be instructive in appropriate future situations.

For illustrations of some of the oversight powers, tools, principles, and obstacles discussed in this chapter, see the following case study in Part II:

Louis Fisher: *Investigating Iran-Contra*

29. See Colum Lynch, *Oil-for-Food Panel Rebukes Annan, Cites Corruption*, WASH. POST, Sept. 8, 2005, <http://www.washingtonpost.com/wp dyn/content/article/2005/09/07/AR2005090701646.html>.