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OSD 5 U.S.C. § 552(b)(2)

Bremer, Paul

From: Charles Allen [REDACTED]
Sent: Saturday, May 17, 2003 11:15 AM
To: [REDACTED]
Cc: Charles Allen
Subject: FW: 11:20 Draft [UNCLASSIFIED, Record]

Office of the Secretary of Defense **5 U.S.C. § 552**
Chief, RDD, ESD, WHS
Date: **13 Jan 2016** Authority: EO 13526
Declassify: _____ Deny in Full: _____
Declassify in Part: _____
Reason: **5 U.S.C. § 552(b)(2)(G)**
MDR: **11-M-2191**



Iraq -- Sanctions
Lift (Final ...

~~CONFIDENTIAL WITH ATTACHMENT~~

----- Forwarded by Charles Allen/LEGAL/OSD/OUSDP on 05/17/03 02:12 PM -----

This Message: ~~CONFIDENTIAL WITH ATTACHMENT~~

Charles Allen

To: Mark Esper/NP/ISP/OUSDP@OUSDP,

Sally Horn/NPP/NP/ISP/OUSDP@OUSDP, [REDACTED]

05/17/03 01:30

[REDACTED]/PAG/PS/OUSDP@OUSDP, Joseph

Collins/SO/SOLIC/OUSDP@OUSDP, David
PM

Tarantino/SO/SOLIC/OUSDP

cc: Patrick

McCarthy/LEGAL/OSD/OUSDP@OUSDP, [REDACTED]/LEGAL/OSD/OUSDP@OUSDP,

Ryan

Henry/PDUSDP/USDP/OUSDP@OUSDP, Charles

Allen/LEGAL/OSD/OUSDP@OUSDP,

[REDACTED]/USDP/OUSDP@OUSDP,

Subject:

FW: 11:20 Draft [UNCLASSIFIED, Record]

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There's a SVTC on this at 2:30. Chuck

----- Forwarded by Charles Allen/LEGAL/OSD/OUSDP on 05/17/03 01:26 PM -----

This Message:

"Bellinger John
B."

To: [REDACTED]

cc: [REDACTED]

Subject:

FW: 11:20 Draft [UNCLASSIFIED, Record]

05/17/03 12:17
PM

OSD 5 U.S.C. § 552(b)(2)

Jane: Here is the proposed final version.

Chuck: This is slightly revised from the version I sent you at 11:00.

Jane/Chuck: I would also suggest changing the PP on the non-occupying powers to read

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11M-2191

"Noting that other countries, who are not occupying powers, are now or may in the future work with and under the Authority;"

-----Original Message-----

From: Rostow, Nicholas [REDACTED]

Sent: Saturday, May 17, 2003 11:16 AM

To: Swigert, James W; Cunningham, James B USUN; Bellinger John B.

Cc: Negroponte, John

Subject: 11:20 Draft

Importance: High

OSD 5 U.S.C. § 552(b)(2)

Attached is a revised "final" draft. It incorporates changes in pp 13 and ops 9, 10bis, and 19. Note that, as discussed with John B., I have replaced "Authority" in the reporting role in 10bis with the UK and US.

When I figure out how I can use different colors for changes in different drafts I'll do it.

<<Iraq -- Sanctions Lift (Final Draft).doc>>

(See attached file: Iraq -- Sanctions Lift (Final Draft).doc)

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5/17/03 11:20

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DRAFT (FINAL) RESOLUTION

The Security Council,

Recalling all previous relevant resolutions of the Council,

Reaffirming the sovereignty and territorial integrity of Iraq,

Reaffirming the importance of the disarmament of Iraqi weapons of mass destruction and of eventual confirmation of the disarmament of Iraq in this regard.

Stressing the right of the Iraqi people freely to determine their own political future and control their own natural resources, *welcoming* the commitment of concerned parties to support the creation of an environment in which they may do so as soon as possible, and *expressing* resolve that the day when Iraqis govern themselves must come quickly,

Encouraging efforts by the people of Iraq to form a representative government based on the rule of law that affords equal rights and justice to all Iraqi citizens without regard to ethnicity, religion, or gender, and in this connection, stresses the importance of giving special attention to the situation of women and girls, consistent with resolution 1325 (2000) of 31 October 2000.

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Welcoming the first steps of the Iraqi people in this regard, and noting in this connection the 15 April 2003 Nasiriyah statement and the 28 April 2003 Baghdad statement,

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engaged in humanitarian assistance and reconstruction activities in Iraq, coordinating with the Authority, and assisting the people of Iraq through:

(a) coordinating humanitarian and reconstruction assistance by UN agencies and between UN agencies and non-governmental organizations;

(b) promoting the safe, orderly, and voluntary return of refugees and displaced persons;

(c) working intensively with the Authority, the people of Iraq, and others concerned to advance efforts to restore and establish national and local institutions for representative governance, including by jointly facilitating a process leading to an internationally recognized representative government of Iraq;

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(d) facilitating the reconstruction of key infrastructure, in cooperation with other international organizations;

(e) promoting economic reconstruction and the conditions for sustainable development, including through coordination with national and regional organizations, as appropriate, civil society, donors and the international financial institutions;

(f) encouraging international efforts to contribute to basic civilian administration functions;

(g) promoting the protection of human rights;

(h) encouraging international efforts to rebuild the capacity of the Iraqi civilian police force; and

(i) encouraging international efforts to promote legal and judicial reform.

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(j) participating in the international advisory board noted in paragraphs 11 and 17 below;

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DRAFT (FINAL) RESOLUTION

The Security Council,

Recalling all previous relevant resolutions of the Council,

Reaffirming the sovereignty and territorial integrity of Iraq,

Reaffirming the importance of the disarmament of Iraqi weapons of mass destruction and of eventual confirmation of the disarmament of Iraq in this regard,

Stressing the right of the Iraqi people freely to determine their own political future and control their own natural resources, *welcoming* the commitment of concerned parties to support the creation of an environment in which they may do so as soon as possible, and *expressing* resolve that the day when Iraqis govern themselves must come quickly,

Encouraging efforts by the people of Iraq to form a representative government based on the rule of law that affords equal rights and justice to all Iraqi citizens without regard to ethnicity, religion, or gender, and, in this connection, stresses the importance of giving special attention to the situation of women and girls, consistent with resolution 1325 (2000) of 31 October 2000,

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Resolved that the United Nations should play a vital role in humanitarian relief, the reconstruction of Iraq, and the restoration and establishment of national and local institutions for representative governance,

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Noting the statement by the Group of Seven Industrialized Nations in which the members recognized the need for a multilateral effort to help rebuild and develop Iraq and for the need for assistance from the International Monetary Fund and the World Bank in these efforts,

Welcoming the resumption of humanitarian assistance and the continuing efforts of the Secretary-General and the specialized agencies to provide food and medicine to the people of Iraq,

Welcoming the appointment by the Secretary-General of his Special Advisor on Iraq,

Affirming the need for accountability for crimes and atrocities committed by the previous Iraqi regime,

Stressing the need for respect for the archaeological, historical, cultural, and religious heritage of Iraq, and for the continued protection of archaeological, historical, cultural, and religious sites, museums, libraries, and monuments,

Noting the letter of 8 May 2003 from the Permanent Representatives of the United States of America and the United Kingdom to the President of the Security Council (S/2003/538) and recognizing the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command (the "Authority"),

Noting further the responsibilities of others, which are not occupying powers, working now or in the future with and under the Authority,

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Welcoming the willingness of Member States to contribute to stability and security in Iraq by contributing personnel, equipment, and other resources under the Authority,

Concerned that many Kuwaitis and Third-State Nationals still are not accounted for since 2 August 1990,

Determining that the situation in Iraq, although improved, continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Appeals* to Member States and concerned organizations to assist the people of Iraq in their efforts to reform their institutions and rebuild their country, and to contribute to conditions of stability and security in Iraq;

2. *Calls upon* all Member States in a position to do so to respond immediately to the humanitarian appeals of the United Nations and other international organizations for Iraq and to help meet the humanitarian and other needs of the Iraqi people by providing food, medical supplies, and resources necessary for reconstruction and rehabilitation of Iraq's economic infrastructure;

3. *Appeals* to Member States to deny safe haven to those members of the previous Iraqi regime who are alleged to be responsible for crimes and atrocities and to support actions to bring them to justice;

4. [old para. 6] *Calls upon* the Authority, consistent with the Charter of the United Nations and other international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people may freely determine their own political future;

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5. [old para. 7] *Calls upon* all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907;

6. [old para 4] *Calls upon* the Authority and relevant organizations and individuals to continue efforts to locate, identify, and repatriate all Kuwaiti and Third Country Nationals or the remains of those present in Iraq on or after 2 August 1990, as well as the Kuwaiti archives, that the previous Iraqi regime failed to undertake; and in this regard, *directs* the High Level Coordinator, in consultation with the International Committee of the Red Cross and the Tripartite Commission and with the appropriate support of the people of Iraq and in coordination with the Authority, to take steps to fulfill his mandate with respect to the fate of Kuwaiti and Third-Country national missing persons and property;

7. [old para. 5] *Decides* that all Member States shall take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 2 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed, and *calls upon* the United Nations Educational, Scientific, and Cultural Organization, INTERPOL, and other international organizations, as appropriate, to assist in the implementation of this paragraph;

8. *Requests* the Secretary-General to appoint a Special Representative for Iraq whose independent responsibilities shall involve reporting regularly to the Council on his activities under this resolution, coordinating activities of the United Nations in post-conflict processes in Iraq, coordinating among UN and international agencies

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engaged in humanitarian assistance and reconstruction activities in Iraq, coordinating with the Authority, and assisting the people of Iraq through:

(a) coordinating humanitarian and reconstruction assistance by UN agencies and between UN agencies and non-governmental organizations;

(b) promoting the safe, orderly, and voluntary return of refugees and displaced persons;

(c) working intensively with the Authority, the people of Iraq, and others concerned to advance efforts to restore and establish national and local institutions for representative governance, including by jointly facilitating a process leading to an internationally recognized representative government of Iraq;

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(d) facilitating the reconstruction of key infrastructure, in cooperation with other international organizations;

(e) promoting economic reconstruction and the conditions for sustainable development, including through coordination with national and regional organizations, as appropriate, civil society, donors and the international financial institutions;

(f) encouraging international efforts to contribute to basic civilian administration functions;

(g) promoting the protection of human rights;

(h) encouraging international efforts to rebuild the capacity of the Iraqi civilian police force; and

(i) encouraging international efforts to promote legal and judicial reform.

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(j) participating in the international advisory board noted in paragraphs 11 and 17 below;

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9. *Supports* the formation, by the people of Iraq with the help of the Authority and working with the Special Representative, of an Iraqi interim administration as a transitional administration run by Iraqis, until an internationally recognized representative government is established by the people of Iraq at which time the Authority will be deemed to have discharged its responsibilities under this resolution;

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10. *Decides* that, with the exception of prohibitions related to the sale or supply to Iraq of arms and related materiel other than those arms and related materiel required by the Authority to serve the purposes of this and other related resolutions, all prohibitions related to trade with Iraq and the provision of financial or economic resources to Iraq established by resolution 661 (1990) and subsequent relevant resolutions, including resolution 778 (1992) of 2 October 1992, shall no longer apply;

10bis. *Reaffirms* that Iraq must meet its disarmament obligations, invites the United Kingdom of Great Britain and Northern Ireland and the United States of America to keep the Council informed of their activities in this regard, and underlines the intention of the Council to review the mandates of the UN Monitoring and Verification Commission and the International Atomic Energy Agency as set forth in resolutions 687 (1991) of 3 April 1991, 1284 (1999) of 17 December 1999, and 1441 (2002) of 8 November 2002 on receipt of a final report to the Council by the United Kingdom of Great Britain and Northern Ireland and the United States of America on disarmament of Iraq; [UK argues we need to go further and mention UNMOVIC and the IAEA in this context in order to win over enough UNSC Members];

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11. *Notes* the establishment of a Development Fund for Iraq to be held by the Central Bank of Iraq and to be audited by independent public accountants approved by the international advisory and monitoring board of the Development Fund for Iraq and looks forward to the early meeting of that international advisory and monitoring board, whose

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members shall include duly qualified representatives of the Secretary General, of the Managing Director of the International Monetary Fund, of the Director-General of the Arab Fund for Social and Economic Development, and of the President of the World Bank;

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12. *Notes* further that the funds in the Development Fund for Iraq shall be disbursed at the direction of the Authority, in consultation with the Iraqi interim administration, for the purposes set out in paragraph 13 below;

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13. *Underlines* that the Development Fund for Iraq shall be used to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the non-military costs of the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq;

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14. *Calls upon* the international financial institutions to assist the people of Iraq in the reconstruction and development of their economy and to facilitate assistance by the broader donor community, and welcomes the readiness of creditors, including those of the Paris Club, to seek a multilateral [or bilateral] <= Bulgaria, PRC, and many others solution to Iraq's sovereign debt problems;

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15. *Requests* the Secretary-General, in coordination with the Authority, to continue the exercise of his responsibilities under Security Council resolution 1472 (2003) of 28 March 2003 and 1476 (2003) of 24 April 2003, for a period of six months following the adoption of this resolution, and to terminate within this time period, in the most effective manner, <=PRC, Russia, & UK the ongoing operations of the "Oil-for-Food" Programme (the "Programme"), both at headquarters level and in the field, transferring responsibility for the administration of any remaining activity under the Programme to the Authority and the Iraqi interim administration, including by taking the following necessary measures:

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(a) to facilitate as soon as possible the shipment and authenticated delivery of priority civilian goods as identified by the Secretary-General and representatives designated by him, in coordination with the Authority and the Iraqi interim administration, under approved and funded contracts previously concluded by the previous Government of Iraq, for the humanitarian relief of the people of Iraq, including, as necessary, negotiating adjustments in the terms or conditions of these contracts and respective letters of credit as set forth in paragraph 4 (d) of resolution 1472 (2003);

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(b) to review, in light of changed circumstances, in coordination with the Authority and the Iraqi interim administration, the relative utility of each approved and funded contract with a view to determining whether such contracts contain items required to meet the needs of the people of Iraq, and to defer the performance of those contracts determined to be of questionable utility and the respective letters of credit until an internationally recognized representative government of Iraq is in a position to make its own determination as to whether such contracts shall be honored;

(c) to provide the Security Council within 21 days following the adoption of this resolution, for the Security Council's review and consideration, an estimated operating budget based on funds already set aside in the account established pursuant to paragraph 8 (d) of resolution 986 (1995), identifying:

(i) all known and projected costs to the UN required to ensure the continued functioning of the activities associated with implementation of the present resolution, including operating and administrative expenses associated with the relevant UN agencies and programs responsible for the implementation of the Programme both at headquarters and in the field;

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(ii) all known and projected costs associated with termination of the Programme;

(iii) all known and projected costs associated with restoring blocked Government of Iraq funds that were provided by Member States to the Secretary General as requested in paragraph 1 of resolution 778 (1992) of 2 October 1992; and,

(iv) all known and projected costs associated with the Special Representative and the qualified representative of the Secretary General identified to serve on the international advisory board, for the time period defined above;

(d) to consolidate into a single fund the accounts established pursuant to paragraphs 8 (a) and 8 (b) of resolution 986 (1995);

(e) to fulfill all remaining [legal and <= France] financial obligations related to the termination of the Programme, including negotiating any necessary settlement payments [in the most cost effective manner <= France] with those parties that previously have entered into contractual obligations with the Secretary-General under the Programme, and to determine, in coordination with the Authority and the Iraqi interim administration, the future status of contracts undertaken by the UN and related UN agencies under the accounts established pursuant to paragraphs 8 (b) and 8 (d) of resolution 986 (1995);

(f) to provide the Security Council, 30 days prior to the termination of the Programme, with a comprehensive strategy developed in close coordination with the Authority and the Iraqi interim administration that would lead to the delivery of all relevant documentation and the transfer of all operational responsibility of the Programme to the Authority;

16. *Calls* on the Secretary General to transfer as soon as possible to the Development Fund for Iraq 1 billion **United States** dollars from unencumbered funds in the accounts established pursuant to paragraphs

8 (a) and 8 (b) of resolution 986 (1995), and *decides* that, after deducting all relevant UN expenses associated with the shipment of authorized contracts, and to cover costs to the Programme, outlined in paragraph 15 (c) above, including residual obligations, all surplus funds in the escrow accounts established pursuant to paragraphs 8 (a), 8 (b), 8 (d), and 8 (f) of resolution 986 (1995) shall be transferred at the earliest possible time to the Development Fund for Iraq;

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____ 16bis. *Decides* to terminate effective the date of adoption of this resolution the functions related to the observation and monitoring activities undertaken by the Secretary General under the Programme, including the monitoring of the export of petroleum and petroleum products from Iraq;

____ 16ter. *Decides* to terminate the Committee established pursuant to paragraph 6 of resolution 661 (1990) at the conclusion of the period called for in paragraph 15 above and *further decides* that the Committee shall identify individuals referred to in paragraph 20 below;

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17. *Decides* that all export sales of petroleum, petroleum products, and natural gas from Iraq following the date of the adoption of this resolution shall be made consistent with prevailing international market best practices, including maximum transparency, to be audited by independent public accountants reporting to the international advisory and monitoring board referred to in paragraph 11 above, and *decides further* that, except as provided in paragraph 18 below, all proceeds from such sales shall be deposited into the Development Fund for Iraq, until such time as an internationally recognized representative government of Iraq is properly constituted;

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18. *Decides further* that 5 percent of the proceeds referred to in paragraph 17 above shall be deposited into the Compensation Fund established in accordance with resolution 687 (1991) of 3 April 1991 and subsequent relevant resolutions and that, unless UK prefers: "the Council decides otherwise" an internationally recognized

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representative government of Iraq and the Governing Council of the United Nations Compensation Commission, in the exercise of its authority over methods of ensuring that payments are made into the Compensation Fund, decide otherwise, this requirement shall be binding on a properly constituted, internationally recognized, representative government of Iraq and any successor thereto;

19. *Further decides* that, until December 31, 2006, unless the Council decides otherwise, petroleum, petroleum products and natural gas originating in Iraq, and proceeds of sales thereof, shall be immune until title passes to the initial purchaser from legal proceedings against them and not be subject to any form of attachment, garnishment, or execution and that all Member States shall take any steps that may be necessary under their respective domestic legal systems necessary to assure this protection and that proceeds and obligations arising from sale thereof and the Development Fund for Iraq shall enjoy immunities and privileges equivalent to those enjoyed by the United Nations, except that the above mentioned immunities will not apply to those responsible under international law for damages caused by an oil spill or by other ecological accidents;

20. *Decides* that all Member States in which there are:

(1) funds or other financial assets or economic resources of the previous Government of Iraq or its state bodies, corporations, or agencies, located outside Iraq as of the date of this resolution, or

(2) funds or other financial assets or economic resources that have been removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction,

~~Deleted: an internationally recognized representative government of Iraq is properly constituted and the debt-restructuring process referred to in paragraph 14 above is completed.~~

~~Deleted: all funds of the Development Fund for Iraq.~~

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~~Deleted: proceeds of sales thereof including indebtedness incurred in connection with such sales, shall be immune from judicial, administrative, arbitration or any other proceedings (including any prejudgment or post-judgment~~

~~Deleted: or other action to satisfy a judgment) arising in relation to claims, of whatever kind and whenever accrued, against Iraq or any instrumentality or agents thereof (or the Authority, or its participating states or their instrumentalities or agents), and that~~

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shall freeze without delay and immediately cause the transfer of those funds or other financial assets or economic resources to the Development Fund for Iraq, its being understood that, at an appropriate time, States may present private claims, not being otherwise addressed, to the internationally recognized, representative government of Iraq; and decides further that all such funds or other financial assets or economic resources shall enjoy the same immunities and protections as provided under paragraph 19;

21. Requests the Secretary General to report to the Council at regular intervals on the work of the Special Representative, with respect to the implementation of this resolution and on the work of the international advisory and monitoring board and invites the United Kingdom of Great Britain and Northern Ireland and the United States of America periodically to inform the Council of their efforts under this resolution;

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22. Calls upon Member States and international and regional organizations to contribute to the implementation of this resolution;

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23. Decides to remain seized of this matter.

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