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United States General Accounting Office

Fact Sheet for the Honorable
Charles B. Rangel, House of
Representatives

April 1991

PANAMA

Issues Relating to the U.S. Invasion



**National Security and
International Affairs Division**

B-242101

April 24, 1991

The Honorable Charles B. Rangel
House of Representatives

Dear Mr. Rangel:

As you requested, we obtained information on (1) the legal basis cited by the administration for the 1989 U.S. invasion of Panama, (2) the implications of the invasion for U.S. foreign policy in the Latin American region, and (3) the alleged unlawful acts that U.S. military personnel committed during the invasion.

Background

Following General Manuel Noriega's attempts to nullify the May 1989 election of Guillermo Endara and prolonged U.S. diplomatic attempts through the Organization of American States (OAS) to persuade Noriega to honor the election results, Noriega appointed, on September 1, 1989, a new provisional government headed by loyalists. An attempted coup to overthrow Noriega in October 1989 failed, and on December 15, 1989, his newly appointed government declared Panama to be in a "state of war" with the United States. After a U.S. Marine lieutenant was shot and killed, another lieutenant wounded, and other U.S. citizens detained, President Bush accused the Noriega government of instituting a pattern of harassment against U.S. citizens in Panama.

On December 20, 1989, President Bush ordered about 12,000 U.S. military personnel to Panama (augmenting the 13,600 troops already stationed there) in an invasion operation called Just Cause. The operation had four objectives: (1) to safeguard the lives of Americans in Panama, (2) to protect the democratic election process, (3) to apprehend Noriega and bring him to the United States to stand trial for drug trafficking, and (4) to protect the integrity of the Panama Canal Treaty. Following Noriega's arrest, President Bush announced that all four objectives of Operation Just Cause had been achieved.

Results in Brief

The basis under international law for the 1989 invasion of Panama as cited by the Department of State was the United Nations (UN) Charter, the Organization of American States (OAS) Charter, and the Panama Canal Treaty. A report on the invasion submitted by President Bush to the Congress further justified the U.S. action as a lawful exercise of presidential authority under the U.S. Constitution.

According to representatives from six Latin American countries, the U.S. invasion of Panama had little or no foreign policy implications for the United States in their region. Representatives of the six countries voiced the view that while they did not like to see the sovereignty of a nation violated, they realized that Panama was a special case and that we had exhausted all other means to rid Panama of General Noriega.

Nineteen U.S. military personnel were court-martialed for offenses committed during Operation Just Cause. Of the 19, 17 were convicted.

Legal Basis for Invasion

The Department of State provided essentially three legal bases for the U.S. military action in Panama: the United States had exercised its legitimate right of self-defense as defined in the UN and OAS charters, the United States had the right to protect and defend the Panama Canal under the Panama Canal Treaty, and U.S. actions were taken with the consent of the legitimate government of Panama. According to his report to the Congress on the invasion, President Bush ordered military action under his constitutional authority to conduct foreign relations and as commander-in-chief.

In a summary of the U.S. position provided to foreign embassies, the State Department justified the U.S. intervention first as an exercise of the right of self-defense, invoking article 51 of the UN Charter and article 21 of the OAS Charter. Article 51 of the UN Charter recognizes the right of self-defense if an armed attack occurs against a country. Article 21 of the OAS Charter prohibits the use of force against another country except in the case of self-defense in accordance with existing treaties. The State Department interpreted these clauses as allowing U.S. forces to take measures to deal with the threat or use of force against the territory of a state, its armed forces, or its nationals.

Some critics claimed that the invasion violated both UN and OAS Charter provisions prohibiting the use of armed force against a nation's territorial integrity and that the actions of the Noriega government did not amount to an "armed attack." Almost all Latin American nations either publicly condemned or expressed concern about the U.S. action. The OAS passed a resolution (by a vote of 20-1 with 5 abstentions) regretting military intervention, urging the immediate cessation of hostilities, and calling for the withdrawal of U.S. troops that were sent to Panama for the invasion. On December 29, 1989, the UN General Assembly adopted a resolution (by a vote of 75 in favor, 20 against, and 40 abstentions) that

protested the intervention as a violation of international law and demanded the withdrawal of U.S. forces.

News reports and polls taken by the U.S. Information Agency in April 1990 indicated that the Panamanian people welcomed U.S. intervention, even though it was condemned in resolutions passed by the UN and OAS. Most members of Congress also responded favorably to the action, although some opposed it. In February 1990, Congress lifted restrictions on aid and trade benefits for Panama and authorized money to help support the new government. In May 1990, Congress appropriated additional economic assistance for Panama.

The invasion was viewed by the State Department as a necessary and proportionate response to the threat that General Noriega posed to the United States. According to the State Department, the Panamanian National Assembly, at Noriega's urging, had declared that a state of war existed between the United States and Panama. The following day, on December 16, 1989, a U.S. Marine officer was killed, reportedly without justification, by Panama Defense Forces personnel. Further, a U.S. naval officer and his wife allegedly were unlawfully detained and physically abused by Panama Defense Forces personnel. The State Department attributed these acts to Noriega and his subordinates and claimed that these acts were done in a climate of aggression that jeopardized American lives and interests. Under these circumstances and after the exhaustion of other avenues, including political and economic sanctions, the administration believed that the United States had the right to use force to protect itself.

Second, State asserted that U.S. actions in Panama were a legitimate exercise of rights granted by the Panama Canal Treaty, which expressly

allows the United States to protect and defend the Panama Canal.¹ Some critics asserted, however, that the Panama Canal was never in danger of an armed attack or other action threatening its security that might have justified armed action under the Panama Canal Treaty.

Third, the State Department asserted that the United States did not violate the basic principle of nonintervention espoused by the Panama Canal Treaty and the UN and OAS charters because the United States acted with the support and cooperation of the "legitimate" government of Panama. The State Department reported that the legitimate government, headed by Guillermo Endara, had won the national election by a substantial margin. The U.S. government had advised Endara of U.S. plans to take a military offensive in Panama, and he reportedly cooperated fully in their implementation. The State Department further stated that Endara was chosen as president by the citizens of Panama and was widely accepted by the Panamanian people after the invasion. The State Department concluded that Endara had continuing legitimacy and the U.S. actions therefore did not compromise the territorial integrity or political independence of Panama; rather, these actions supported the legitimate government chosen by the Panamanian people.²

While the State Department provided the legal rationale for the invasion under international law, it did not discuss the President's authority to

¹The State Department cited articles I, III, and IV(2) of the Panama Canal Treaty in support of U.S. actions. Article I of the Treaty provides that the U.S. government has "the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the canal.... In view of the special relationship established by this Treaty, the United States of America and the Republic of Panama shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal."

Article III grants to the United States "the rights to manage, operate, and maintain the Panama Canal" and complementary installations, including the maintenance of the work force necessary to continue canal operations on an efficient basis.

Article IV(2) provides that the United States "shall have primary responsibility to protect and defend the Canal. The rights of the United States to station, train, and move military forces within the republic of Panama are described in the Agreement in implementation of this article...."

The Agreement in Implementation of Article IV of the Panama Canal Treaty grants various rights to the United States. The State Department cited article XV(1), which provides that vessels, aircraft, vehicles and equipment of U.S. forces may move freely through Panamanian territory, air space, and water when performing official duties, without charge or "any other impediment."

²Guillermo Endara was sworn into office on a U.S. base approximately 1 hour before the invasion took place. Prior to the invasion, the U.S. government had officially recognized Eric Arturo Delvalle as the legal president of Panama. Delvalle had been installed by Noriega as president in 1984 but was removed from office in February 1988 by the legislature after he attempted to dismiss Noriega as head of the Panama Defense Forces. This led to an executive order and Treasury regulations that froze Panama's dollar accounts and channeled its revenues into the Federal Reserve Bank.

order the invasion pursuant to U.S. law. On December 21, 1989, however, President Bush submitted to Congress a report in which he stated that the invasion was ordered in accordance with the President's authority under the U.S. Constitution to conduct foreign relations and as commander-in-chief. Under the War Powers Resolution (50 U.S.C. 1541-1548), enacted over presidential veto in 1973, Congress stated that the President may exercise his power to introduce U.S. armed forces into hostilities only pursuant to a declaration of war, specific statutory authorization, or a national emergency created by attack upon the United States, its territories, or its armed forces.

In his notification to Congress, the President noted that he was providing the report "consistent with the War Powers Resolution."

Implications of Invasion for U.S. Policy in the Region

Relations between the United States and the six Latin American countries included in our study are generally the same now as they were before the invasion of Panama. Although not pleased that the United States had violated a long-standing policy of nonintervention, country representatives recognized that diplomatic attempts to remove General Noriega from power had been exhausted. Also, they considered the invasion of Panama to be a special case because of the close U.S. involvement in the Panama Canal since 1903. In addition, representatives viewed Noriega as a corrupt official involved in drug trafficking and other illegal activities.

Country representatives expressed little concern about the use of U.S. military forces to stop drug trafficking or about the likelihood that the United States would use those forces to intervene in the affairs of sovereign countries. These representatives cited two reasons for this lack of concern. First, they believed that the United States had changed its policy on the drug problem by placing more emphasis on reducing the demand for drugs in the United States. Second, because the Cold War has ended, international relations have been reshaped. Representatives believed that the United States has recognized the importance of its special relationship with Latin America regarding such issues as migration, trade, and the environment.

Furthermore, the representatives believed that the current situation in Panama was of more consequence to the Central American region than the invasion. A stabilized political and economic base in Panama would have a positive effect on the region. In addition, a stable democracy in

Panama would help other Latin American countries as they move toward democratization.

Alleged Offenses Committed by U.S. Military Personnel During the Invasion

Four military commands held courts-martial for 19 U.S. Army personnel for alleged offenses committed during Operation Just Cause. The charges ranged from absent without leave to murder. Seventeen of these soldiers were convicted. No further courts-martial are pending. Table 1 shows the convening authority,³ the alleged offenses, and the disposition of the 19 cases.

Table 1: Courts-Martial for Alleged Offenses Committed During Operation Just Cause

| Convening authority | Alleged offense | Number of soldiers | Disposition |
|------------------------|---|--------------------|--|
| 82nd Airborne Division | Unpremeditated murder of a civilian Panamanian | 1 | Acquitted. |
| 82nd Airborne Division | Assault on another soldier | 1 | Acquitted. |
| 5th Infantry Division | Absent without leave | 1 | Bad conduct discharge, 9 months confinement, forfeiture of pay. |
| 5th Infantry Division | Assault | 2 | One received no punishment; the other received a reduction in rank and 60 days of hard labor. |
| U.S. Army South | Larceny | 1 | Dishonorable discharge, 3 years confinement, forfeiture of all pay and allowances. |
| U.S. Army South | Being off limits and consuming alcohol | 1 | Bad conduct discharge, 2 months confinement, and reduction in grade. |
| 7th Infantry Division | Communicating a threat and disobeying an order | 1 | Four months confinement, forfeiture of pay, and reduction in grade. |
| 7th Infantry Division | Accidental shooting of another soldier | 1 | Reduction in grade. |
| 7th Infantry Division | Killing a civilian and losing a weapon | 3 | All three received dishonorable or bad conduct discharges and forfeiture of pay. One received 20 months of confinement; one received 7 years confinement; one received 2 years of confinement. |
| 7th Infantry Division | Conspiracy to smuggle | 4 | Forfeiture of pay, reductions in grade, and confinement ranging from 1 month to 2 months. |
| 7th Infantry Division | Negligently discharging weapons and injuring a civilian | 2 | Confinement and reductions in grade. |
| 7th Infantry Division | Theft of equipment | 1 | Two years confinement, reduction in grade, and forfeiture of pay. |

³The command having the authority to hold a court-martial.

Scope and Methodology

As your office suggested, we discussed with embassy officials and local representatives from Bolivia, Colombia, El Salvador, Honduras, Mexico, and Venezuela their views on the foreign policy implications of the invasion for their region.

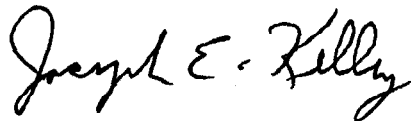
We reviewed pertinent reports and documents on the legal basis cited for the invasion. Also, we obtained information from the military services on the number of military personnel who were court-martialed for alleged offenses committed during Operation Just Cause.

We conducted our work between November 1990 and February 1991.

As requested, we did not obtain written agency comments on this fact sheet, but we discussed its contents with responsible agency officials, who agreed with the facts presented in the report. We are sending copies of this fact sheet to the Secretaries of Defense and State, the Director of the Office of Management and Budget, and other interested parties.

Please contact me on (202) 275-4128 if you or your staff have any questions on this fact sheet. The major contributors to this fact sheet were Charles A. Schuler, Assistant Director, and Doyle L. Reedy, Evaluator-in-Charge, Security and International Relations Issues; William Woods, Assistant General Counsel, and Nina Fantl, Attorney-Adviser, Office of General Counsel.

Sincerely yours,



Joseph E. Kelley,
Director, Security and International
Relations Issues

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