

CRS Report for Congress

Narcotics and the Use of U.S. Military Personnel: Operations in Bolivia and Issues for Congress

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July 29, 1986



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The Issue

On April 8, 1986, President Reagan reportedly signed a secret National Security Decision Directive that designates the international drug trade as a national security concern. The U.S. military's July 1986 support operations for anti-narcotics raids in Bolivia set a precedent for the possibility of expanded operations elsewhere, and raise a number of issues for Congress in connection with the implementation of this directive. These issues include: (1) the use of U.S. military personnel in counternarcotics operations; (2) implications for other U.S. foreign policy interests; and (3) the appropriate role for Congress.

Background

On July 14, 1986, six U.S. Army Black Hawk transport helicopters, with American pilots and approximately 160 support troops landed in Bolivia to help the Bolivian police conduct raids on cocaine processing facilities in the Beni province. The U.S. helicopters were used to ferry specially trained civilian Bolivian anti-drug strike force personnel to the site of these raids. The United States assisted in the operation at the request of the Bolivian Government.

Under the rules of engagement agreed upon with the Bolivian Government, American personnel are permitted to use weapons only if fired upon first.

American officials reportedly stated that the chance of U.S. casualties was slight, but that it was possible that Americans could be killed or wounded. ^{1/} As of July 28, 1986, U.S. troops had not drawn fire, and at least two cocaine processing labs had been seized.

White House spokespersons characterized U.S. troop involvement as a "support role" involving no participation in ground operations. They further stated that U.S. forces are in Bolivia on a temporary basis to support the Bolivian Government in the face of "narco-terrorism." Operations are expected to last at least 60 to 90 days during which time numerous raids are anticipated.

Congress, which has been supportive of the Bolivian operations, has become increasingly active in international narcotics control issues in recent years. The DOD authorization Act for FY 1982 (P.L. 97-86, Sec. 905), for example, contained provisions permitting military personnel to operate military equipment lent to civilian drug enforcement agencies. More recently, the DOD Authorization Act for FY 1986 (P.L. 99-145) contains provisions that would establish an Air Force Special Operations drug interdiction "Air Wing" with funding subsequently provided by the Continuing Resolution for FY 1986 (P.L. 99-140). Further, the International Security and Development Cooperation Act of 1985 (P.L. 99-83, secs. 607 et seq.) requires Jamaica, Peru, and Bolivia to demonstrate specified narcotics control accomplishments in order to receive the full amount of foreign assistance earmarked for those countries. Failure to demonstrate such tangible progress by Bolivia resulted in the U.S. withholding of \$7.2 million in aid in 1986.

^{1/} Brinkley, Joel. U.S. Sends Troops to Aid Bolivians in Cocaine Raids. New York Times, July 16, 1986. p. A1, A6.

While the use of U.S. forces in such a support capacity is not entirely new, the Bolivia operation represents a departure from past practices in several key ways. Since 1983, Air Force helicopters have been periodically used to transport Bahamian anti-drug personnel to narcotic strike sites. In addition, unconfirmed press reports, have stated that last February, U.S. Air Force helicopters ferried Colombian police to a strike staging site in Colombia.

Nevertheless, the Bolivian support operation appears to differ from previous ones because: (1) U.S. military forces are armed and carrying a full complement of weapons, including machine guns, for defensive purposes; (2) the number of troops involved is larger--160 as opposed to 12-15 in the Bahamian operation; and (3) the possibility of engagement is potentially higher since the targets are processing labs and not transshipment facilities as in the Bahamas. (Processing operations tend to require more personnel who may not have access to aircraft and the immediate means to escape.)

The Bolivian support operation is the first commitment of military personnel to a narcotics control mission on foreign soil since President Reagan reportedly signed a relevant secret national security decision directive on April 8, 1986. According to public sources, the directive provides that the international drug trade is a national security concern because of its ability to destabilize democratic institutions. Although a national security threat is not necessarily a military threat, the new directive provides the policy framework for an expanded role for U.S. military forces in supporting counter-narcotics efforts abroad and opens the door to the expansion of overseas operations to implement such a policy.

Major Issues

Implementation of the announced 1986 Presidential directive and increasing congressional attention to international narcotics control strategies raise a number of issues connected with the operation in Bolivia and possible future operations elsewhere, namely:

1. Should U.S. troops be used to aid law enforcement authorities of a foreign government under any circumstances?
2. From a foreign policy standpoint, is it wise for the United States to pursue such a strategy for international narcotics control?
3. Was the Administration remiss in not involving Congress more fully and effectively regarding the use of military units in the role of enforcing laws in foreign countries?

A pro-con analysis of these issues follows.

ISSUE No. 1: Should U.S. troops be used to aid civilian law enforcement authorities of a foreign government under any circumstances?

Widespread disagreement exists on this issue. Many feel that such activity is an appropriate role for the military while others contend that it should be the option of last resort. The latter group believes that inadequate consideration may have been given to use of other non-military alternatives such as increased DEA, or other civilian agency assistance. Others suggest as an alternative the creation of a special multinational regional anti-drug police force. In addition, some observers are worried about the establishment of precedents that may eventually lead military forces into heavy combat situations. Those who support the use of U.S. troops say:

- The U.S. military is the only existing U.S. organization with the resources to successfully counter powerful and well equipped multinational drug trafficking groups--groups that may also be linked to terrorist organizations.

- Such a mission is a military mission since trafficking organizations pose a threat to the security of foreign governments worldwide. In some instances, analysts suggest the threat posed may be greater than that of Communist-backed insurrection--not to mention the disruptive effect of foreign-source drug use on our own society. These activities offer the further advantage of providing operational training to American forces.
- The presence of U.S. military personnel is needed if such operations are to be effective. Assistance in the form of equipment alone would raise the possibility of misuse or require extensive training. Moreover, corrupt foreign personnel may hinder the effective use of such equipment, while U.S. military presence adds stability and an aura of incorruptibility to such operations.

Critics of such use of U.S. troops argue:

- Drug interdiction is a law enforcement mission and not a military mission. If given the proper funding, equipment, and training, U.S. civilian law enforcement agencies--or perhaps a multinational regional anti-narcotics police force--could provide effective alternatives to military involvement.
- Using the military for drug interdiction detracts from military readiness in other areas.
- Use of the military in civilian law enforcement activities runs contrary to a longstanding tradition which goes back to colonial times against the use of troops in an active or direct role for civilian law enforcement purposes. This tradition is codified in the Posse Comitatus Act (18 U.S.C. Sec. 1835 et seq.) which permits only passive or indirect military assistance to civilian law enforcement authorities, but does not specifically authorize such a role on foreign territory. Provisions contained in a 1981 law, expanding the specified exceptions to the Posse Comitatus Act (10 U.S.C. sec. 371 et seq.), do permit assistance by Department of Defense personnel to civilian law enforcement officials outside the United States in emergency circumstances. However, the Amendment does not specifically provide for such assistance to be rendered to foreign civilian law enforcement officials.
- Using the military sets a precedent for subsequent military use in other countries where the danger for U.S. personnel would be much higher. If U.S. forces were used in Colombia, for example, where M-19 guerrillas are reportedly linked to drug traffickers, the chance of military conflict and U.S. casualties would be much greater.

- Use of military may result in U.S. troops being placed in situations where their safety may be dependent on foreign police forces which may be penetrated by narcotics corruption.
- Such use of military personnel may in the long run detract from the current image of the military and adversely impact on recruitment. Will people enlist to be soldiers or policemen?

Issue No. 2: From a foreign policy standpoint, is it wise for the U.S. to pursue such an international narcotics control strategy?

Many feel that an expanded role for military involvement in counternarcotics operations is needed and long overdue. Others question the effectiveness of military involvement and fear that such involvement could adversely impact on other U.S. foreign policy goals.

Those who feel that this strategy offers advantages to U.S. foreign policy argue:

- International narcotics control is an important foreign policy objective. The power, corruption, and instability associated with multinational drug trafficking and drug abuse poses serious threats to various foreign governments. The use of military forces emphasizes the gravity of the threat, the intensity of response considered appropriate by the United States, and meets the scale of anti-governmental resources and violence.
- U.S. military support helps strengthen internally the position of the requesting government vis a vis the traffickers and demonstrates a commitment to friends on the issue of narcotics control.
- By reducing drug availability and disrupting supply routes and production facilities, such operations provide a public health service to countries with growing addict populations.

Observers who believe this strategy runs counter to broader U.S. foreign policy interests argue that:

- The presence of U.S. troops may have a disruptive effect on a country by provoking anti-American sentiments among the general population. Just as in the United States where there is concern over using military troops for domestic law

enforcement purposes, the citizens of other countries may have similar concerns. These concerns understandably escalate when the troops used are of foreign origin. United States assistance may be portrayed as a U.S. invasion, U.S. intervention, or a resurgence of U.S. imperialism. Foreign leaders under pressure of the threat of possible U.S. aid reductions may reluctantly accept offers of U.S. military assistance and then be portrayed as subservient to Uncle Sam.

- In order to be effective, a commitment of military assistance cannot be an isolated, one-shot affair from which the United States withdraws--leaving the host nation without the resources and support to pursue operations it has undertaken. Unless coupled with long-term, effective crop eradication programs (costing tens of millions of dollars), military involvement in small scale operations of a non-regional, non-continuing character do little to combat drug trafficking. At best it temporarily disrupts traffickers who may move elsewhere. Consequently, such military operations may have a disruptive regional impact as traffickers flee one country and set up in a neighboring state.
- The possibility exists of associating U.S. troops with armed forces and law enforcement agencies involved in human rights abuses. (e.g., Colombian armed forces, for example, have recently come under attack from human rights monitoring groups.)
- Given the multinational character of the international drug trade and reported links with terrorists, trafficking organizations might seek to "retaliate" against U.S. military personnel and other American targets worldwide, should the military counternarcotics role expand sufficiently to pose a serious threat to traffickers.

ISSUE No. 3: Was the Administration remiss in not involving Congress more fully and effectively regarding the use of military units in the role of enforcing law in foreign countries?

Many in Congress think that the President had full powers to carry out the operations in Bolivia, while observers outside the Congress have suggested that the actions in Bolivia trigger operation of the War Powers Resolution (P.L. 93-148) and are contrary to a longstanding tradition against military involvement in civilian law enforcement activity codified in the Posse Comitatus Act. Aside from the legal arguments, such outside observers maintain that Congress may not have been effectively consulted in this instance because

the ultimate success of operations may depend on congressional commitment of significant and long-term increases of aid for narcotics control programs in Bolivia. They suggest that Congress might seek to develop mechanisms which would require future consultation, or otherwise exert control over such operations.

Those who contend that the Administration was remiss in its dealings with Congress argue that:

- The operations in Bolivia set a precedent that might be cited by future presidents who do not wish to be subject to the requirements of the War Powers Resolution. The Resolution requires both formal congressional consultation and reporting in this instance since the use of U.S. military personnel appears to fall within the conditions set out in section 4 (a)(1) of the Resolution: introduction of troops "into situations where imminent involvement in hostilities is clearly indicated by the circumstances." At a minimum, the reporting requirement under section 4 (a)(2) is applicable--that of introduction "while equipped for combat." [Note: Department of Defense personnel familiar with the operation report that U.S. troops are carrying a "full complement of weapons." Arguably, since U.S. troops are operating hand in hand with a Bolivian combat unit, combined, they may constitute a combat unit.]
- The Posse Comitatus Act codifies a longstanding tradition of not using the military for civilian law enforcement in an active or direct role. As a policy matter, any deviation from such an established policy should be closely regulated and specifically authorized by Congress. [The 1981 amendments to the Act permit military help in an indirect role to civilian law enforcement officials outside the United States in an emergency circumstance, but does not specify that assistance to foreign law enforcement officials is permitted.]
- Notification to Congress of upcoming operations effectively presented Congress with a fait accompli. Members of Congress were first briefed on July 14--the day before press reports of the operation were publically carried, and the day before the U.S. Galaxy transport plane landed in Santa Cruz. Furthermore, subsequent reports indicated that the U.S. press had details of the operation days before notification was given to Congress. In light of the active congressional role in narcotics control policy towards Bolivia (e.g., recent cutback of some \$7.2 million in aid), consultation with Congress should have been sought at earlier stages of the operation.

Observers who believe the Administration acted responsibly in the involvement of Congress say:

- The War Powers Resolution does not apply in this situation because it applies only to military actions and not law enforcement activities such as support operations in Bolivia. Furthermore the danger of "imminent hostilities"--a requirement of the Act--is not present as U.S. forces reportedly have been instructed not to go near areas of imminent hostilities. Finally, troops assisting in Bolivia are not equipped for offensive combat in the traditional sense, but are merely serving as a taxi service in a temporary support capacity.
- Likewise, the Posse Comitatus Act does not apply here because the Act has generally been held to pertain only to direct military participation in law enforcement activity. The Bolivian operation is merely an indirect military support activity that does not involve the use of military force against civilians. Furthermore, the Act is a criminal statute and, like most U.S. criminal statutes, has never been held to apply outside the U.S.
- U.S. military support actions in Bolivia are fully authorized under existing law governing military cooperation with civilian law enforcement officials. The 1981 amendments to the Posse Comitatus Act [10 U.S.C. sec. 374 (a)] provide that the Secretary of Defense, upon the request of the head of an agency with jurisdiction to enforce the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import or Export Act, (21 U.S.C. 951 et seq.) may assign Department of Defense personnel to operate and maintain equipment made available to civilian law enforcement officials for law enforcement purposes. [Note: the provisions cited do not refer to foreign law enforcement officials.] In this instance statutory prerequisites for extraterritorial application have been complied with as both a representative of the Secretary of Defense (on July 10, 1986) and the Attorney General (on June 16, 1986) have signed a letter declaring that an emergency exists (posing a serious threat to U.S. interests), and that the scope of Bolivian drug trafficking poses a serious threat to U.S. interests. Consequently, military help to DEA in support of their mission in Bolivia is properly authorized.
- Congress was effectively notified in a timely manner of these operations. Operations were scheduled to begin July 18, 1986, and on July 14, 3-man briefing teams composed of personnel from the State Department, the Defense Department, and DEA briefed 15 key Members of Congress and appropriate staff on the impending operation. Committee Chairpersons and/or staff briefed included representatives of the

Appropriations Committees, the Armed Services Committees, the Foreign Relations and Foreign Affairs Committees, the Judiciary Committees, and the House Select Committee on Narcotics.

- Furthermore, operations such as those carried out in Bolivia are consistent with past congressional actions which have encouraged increased military cooperation and assistance to civilian law enforcement authorities.