

AUTHORITY TO USE UNITED STATES MILITARY FORCES IN SOMALIA

The President, in his constitutional role as Commander in Chief and Chief Executive, might reasonably and lawfully determine that it was justified to use United States Armed Forces personnel to protect those engaged in relief work in Somalia. His authority extended to using U.S. military personnel to protect Somalians and other foreign nationals in Somalia.

December 4, 1992

The President
The White House
Washington, D.C. 20500

My Dear Mr. President:

You have asked for my views as to your authority to commit United States troops to support and secure the humanitarian assistance effort currently underway in Somalia. I am informed that the mission of those troops will be to restore the flow of humanitarian relief to those areas of Somalia most affected by famine and disease, and to facilitate the safe and orderly deployment of United Nations peacekeeping forces in Somalia in the near future. I understand that private United States nationals and military personnel are currently involved in relief operations in Somalia. I am further informed that the efforts of the United States and other nations and of private organizations to deliver humanitarian relief to those areas of Somalia are being severely hampered by the breakdown of governmental authority in Somalia and, in particular, by armed bands who steal relief commodities for their own use.

I conclude that in your constitutional role as Commander in Chief and Chief Executive, you may reasonably and lawfully determine that the protection of those engaged in relief work in Somalia, including member so the United States Armed Forces who have been and will be dispatched to Somalia to assist in that work, justifies the use of United States military personnel in this operation. I further conclude that you have authority to commit foreign nationals in Somalia. You have authority to troops overseas without specific prior Congressional approval "on missions of good will or rescue, or for the purpose of protecting American lives or property or American interests." 40 Op. Att'y Gen. 58, 62 91941) (Jackson, A.G.). See also 53 Dep't State Bull. 20 (1965) (President Lyndon Johnson ordered the United States military to intervene in the Dominican Republic "to preserve the lives of American citizens and citizens of a good many other nations"). As explained more fully in the enclosed opinion of the Office of Legal Counsel, your authority thus extends to the protection of the lives of United States citizens and others in Somalia.

Apart from your constitutional authority, I conclude that ample statutory authority exists for the use of the military to engage in the distribution of humanitarian relief in Somalia. E.g., 10 U.S.C. § 2251.

While not required as a precondition for Presidential action here, I also note that United Nations Security Council Resolution 794 authorizes the United States and other member nations to use "all necessary means" to establish a secure environment for humanitarian relief operations in Somalia and to provide military forces to that end. You may reasonably and lawfully conclude that it is necessary to use United States military personnel to support the implementation of Resolution 794 and other Security Council resolutions concerning Somalia.

Finally, I note that the proposed mission accords with the requirements of international law. United States forces will be acting consistent with Resolution 794, which has been adopted in accordance with Chapter VII, art. 42 of the Charter of the United Nations. Implementation of Resolution 794 will accord fully with the principal of non-intervention in matters that are "essentially within the domestic jurisdiction" of member States, enforcement measures under Chapter VII." Chapter I, art. 2(7) of the Charter of the United Nations. Resolution 794 makes it unnecessary to evaluate the proposed mission separately under principles of customary international law. I note, however, that given the urgent need for humanitarian assistance to Somalians and the breakdown of governmental authority in Somalia the operation appears fully consistent with those principles.

Please let me know if I may be of further assistance.

Respectfully,
William P. Barr
Attorney General