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[SUBCOMMITTEE PRINT]

APRIL 15, 1993

AMENDMENTS IN THE NATURE OF A SUBSTITUTE FOR S.J. RES. 45

(Strike out the preamble. Strike out all that follows the resolving clause and insert in lieu thereof the text shown below in *italics*. An amendment to the title of the resolution is shown on the last page below.)

103D CONGRESS
1ST SESSION**S. J. RES. 45**

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1993

Referred to the Committee on Foreign Affairs

JOINT RESOLUTION

Authorizing the use of United States Armed Forces in
Somalia.

- 1 *Whereas an estimated 200,000 Somalis reportedly have*
- 2 *died of hunger or as casualties of widespread violence*
- 3 *since the fall of Siad Barre in January 1991;*
- 4 *Whereas international relief agencies had been unable to*
- 5 *deliver adequate assistance to those most in need due*

1 (6) considerations which will affect whether
2 United States Armed Forces will be permitted to be
3 engaged as a portion of an international peacekeep-
4 ing force, including—

5 (A) United States command of United
6 States troops;

7 (B) equitable financial contributions of na-
8 tions so engaged; and

9 (C) the right of United States combat
10 forces to defend themselves throughout all levels
11 of conflict.

12 **SECTION 1. SHORT TITLE**

13 This joint resolution may be cited as the "Resolution
14 Authorizing the Use of United States Armed Forces in So-
15 malia".

16 **SEC. 2. CONGRESSIONAL FINDINGS.**

17 The Congress finds the following:

18 (1) An estimated 300,000 Somalis have died as
19 a result of hunger and widespread violence since the
20 fall of Siad Barre in January 1991.

21 (2) On December 3, 1992, the United Nations
22 Security Council adopted Resolution 794 in which the
23 Security Council—

24 (A) determined that "the magnitude of the
25 human tragedy caused by the conflict in Soma-

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1 lia, further exacerbated by the obstacles being
2 created to the distribution of humanitarian as-
3 sistance, constitutes a threat to international
4 peace and security", and

5 (B) acting under Chapter VII of the Charter
6 of the United Nations, authorized the use of "all
7 necessary means to establish as soon as possible
8 a secure environment for humanitarian relief op-
9 erations in Somalia".

10 (3) United States Armed Forces entered Somalia
11 on December 9, 1992, in response to Security Council
12 Resolution 794.

13 (4) The United Nations Secretary General con-
14 cluded in his report of March 3, 1993, that without
15 improved security throughout Somalia "the political
16 process cannot prosper and humanitarian relief oper-
17 ations will remain vulnerable to disruption".

18 (5) The Secretary General recommended in his
19 report that the United Nations Security Council
20 adopt a resolution effecting the transition from the
21 United States-led force in Somalia to a United Na-
22 tions-led force, with the formal date of transfer of
23 command to be May 1, 1993.

24 (6) The Secretary General's report envisioned a
25 United Nations-led force having a multinational mili-

1 tary component of 20,000 personnel, plus an addi-
2 tional 8000 personnel to provide logistic support.

3 (7) On March, 26, 1993, the United Nations Se-
4 curity Council, acting under Chapter VII of the Char-
5 ter of the United Nations, adopted Resolution 814 in
6 response to the Secretary General's report. This reso-
7 lution provides for the establishment of the United
8 Nations-led force in Somalia by expanding the size
9 and mandate of the original United Nations peace-
10 keeping force in Somalia (commonly referred to as
11 "UNOSOM") in accordance with the rec-
12 ommendations contained in the report of the Sec-
13 retary General.

14 (8) United States Armed Forces will participate
15 in the United Nations-led force in Somalia as part of
16 the multinational logistic support contingent, provid-
17 ing logistical, communications, and intelligence sup-
18 port.

19 (9) In addition to logistic forces, the United
20 States will make available a battalion-sized tactical
21 quick reaction force to respond to requests for emer-
22 gency assistance from the United Nations Force Com-
23 mander in Somalia. This quick reaction force will be
24 under United States operational control.

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1 (10) *The transfer of operations in Somalia from*
2 *the United States-led force to the United Nations-led*
3 *force will result in a substantial reduction in the*
4 *number of members of the United Armed Forces that*
5 *are deployed in Somalia and in the costs incurred by*
6 *the United States as a result of United Nations-au-*
7 *thorized operations in Somalia.*

8 (11) *The Congress should authorize any use of*
9 *United States Armed Forces to implement United Na-*
10 *tions Security Council Resolutions 794 and 814.*

11 (12) *By providing such an authorization, the*
12 *Congress will facilitate the transfer of operations in*
13 *Somalia from the United States-led force to the Unit-*
14 *ed Nations-led force.*

15 (13)(A) *The Congress does not anticipate that*
16 *United States Armed Forces will need to remain in*
17 *Somalia for more than 12 months after the date of*
18 *enactment of this joint resolution to implement Unit-*
19 *ed Nations Security Council Resolution 814.*

20 (B) *Given the importance of the mission of the*
21 *United Nations-led force in Somalia, however, the*
22 *Congress will give strong consideration to a request*
23 *by the President for an extension of the authorization*
24 *for the use of United States Armed Forces to imple-*
25 *ment Resolution 814 should such continued use be*

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1 *necessary to ensure the success of the United Nations-*
2 *led force in Somalia.*

3 **SEC. 3. SUPPORT FOR UNITED NATIONS EFFORTS IN SOMA-**

4 **LIA**

5 *The Congress supports United Nations efforts in*
6 *Somalia—*

7 *(1) to help provide a secure environment for*
8 *famine relief efforts;*

9 *(2) to prevent a resumption of violence;*

10 *(3) to help restore peace, stability, and order*
11 *through reconciliation, rehabilitation, and reconstruc-*
12 *tion of Somali society; and*

13 *(4) to help the people of Somalia create and*
14 *maintain democratic institutions for their own gov-*
15 *ernance.*

16 **SEC. 4. AUTHORIZATION FOR USE OF ARMED FORCES.**

17 **(a) IMPLEMENTATION OF SECURITY COUNCIL RESOLU-**
18 **TIONS.—***The President is authorized to use United States*
19 *Armed Forces to implement United Nations Security Coun-*
20 *cil Resolutions 794 (1992) and 814 (1993), including the*
21 *use of such Armed Forces—*

22 *(1) to carry out operations under the authorisa-*
23 *tion provided by United Nations Security Council*
24 *Resolution 794 (1992) until the transition to the*
25 *United Nations-led force in Somalia is completed;*

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1 (2) to provide logistic and related support for the
2 United Nations-led force in Somalia under the au-
3 thorization provided by United Nations Security
4 Council Resolution 814 (1993); and

5 (3) to serve as a tactical quick reaction force,
6 under United States operational control, to respond to
7 requests for emergency assistance from the United Na-
8 tions Force Commander in Somalia.

9 (b) **STATEMENTS OF INTENT REQUIRED BY WAR POW.**
10 **ERS RESOLUTION.**—Consistent with section 8(a)(1) of the
11 War Powers Resolution, the Congress declares that sub-
12 section (a) is intended to constitute specific statutory au-
13 thorization within the meaning of section 5(b) of the War
14 Powers Resolution to the extent that any United States
15 Armed Forces being used for the purposes described in sub-
16 section (a) are or become involved in hostilities or situations
17 where imminent hostilities is clearly indicated by the cir-
18 cumstances.

19 (c) **EXPIRATION OF AUTHORIZATIONS.**—The author-
20 izations provided by subsection (a) shall expire at the ear-
21 lier of—

22 (1) the end of the 12-month period beginning on
23 the date of enactment of this joint resolution, unless
24 the Congress finds that continued participation by the
25 United States Armed Forces is necessary to ensure the

1 *success of the United Nations-led force in Somalia*
2 *and extends the period of such authorizations; or*
3 *(2) the expiration of the mandate of the United*
4 *Nations-led force in Somalia.*

5 **SEC. 8. REPORTS REGARDING USE OF UNITED STATES**
6 **ARMED FORCES.**

7 **(a) PERIODIC REPORTS.—**

8 *(1) INFORMATION TO BE PROVIDED.—The Presi-*
9 *dent shall submit periodic reports to the Congress*
10 *with respect to United States Armed Forces partici-*
11 *pation in and support for the United Nations-led*
12 *force in Somalia. Each such report shall—*

13 *(A) specify the number of members of the*
14 *United States Armed Forces participating in the*
15 *United Nations-led force in Somalia or operat-*
16 *ing in support of that force;*

17 *(B) specify where United States Armed*
18 *Forces are deployed as part of the United Na-*
19 *tions-led force in Somalia and where United*
20 *States Armed Forces are deployed that are oper-*
21 *ating in support of that force;*

22 *(C) specify the functions being performed by*
23 *United States Armed Forces participating in the*
24 *United Nations-led force in Somalia;*

1 (D) specify the functions of United States
2 Armed Forces operating as a tactical quick reac-
3 tion force in support of the United Nations-led
4 force in Somalia, and describe any use of United
5 States Armed Forces as a quick reaction force;

6 (E) specify the command arrangements ap-
7 plicable with respect to United States Armed
8 Forces participating in the United Nations-led
9 force in Somalia or operating in support of that
10 force; and

11 (F) specify the anticipated duration of the
12 deployment of United States Armed Forces as
13 part of the United Nations-led force in Somalia
14 or in support of that force.

15 (2) **REPORTING DATES AND PERIOD COVERED BY**
16 **EACH REPORT.**—A report pursuant to this subsection
17 shall be submitted—

18 (A) not later than July 1, 1993, covering
19 the period since March 3, 1993; and

20 (B) not later than July 1, 1994, covering
21 the period since the preceding report pursuant to
22 this subsection.

23 (3) **WAR POWERS RESOLUTION REPORTING RE-**
24 **QUIREMENTS.**—The requirements of this subsection do

1 not supersede the requirements of section 4 of the War
2 Powers Resolution.

3 (b) *REPORT ON TRANSITION TO UN-LED FORCE.*—The
4 first report submitted pursuant to subsection (a) shall speci-
5 fy the number of members of the United States Armed
6 Forces, if any, remaining in Somalia as part of the United
7 States-led force in Somalia.

8 (c) *AGREEMENTS WITH UNITED NATIONS.*—The Presi-
9 dent shall transmit promptly to the Congress a copy of any
10 memorandum of understanding or other written agreement
11 entered into by the United States with the United Nations
12 Security Council, the Secretary General of the United Na-
13 tions (or his Special Representative), or the United Nations
14 Forces Commander in Somalia—

15 (1) regarding the participation of United States
16 Armed Forces in the United Nations-led force in So-
17 malia;

18 (2) regarding United States Armed Forces oper-
19 ating as a tactical quick reaction force in support of
20 that force or otherwise in support of that force; or

21 (3) otherwise regarding the availability to the
22 United Nations Security Council of United States
23 Armed Forces, assistance, or facilities to implement
24 Security Council Resolution 794 or 814.

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1 SEC. 6. REPORTS ON COSTS OF UNITED NATIONS-AUTHOR.

2 **IZED OPERATIONS IN SOMALIA**

3 (a) **REQUIREMENT FOR PERIODIC REPORTS.**—The
4 President shall submit to the Congress periodic reports re-
5 garding the costs of the United States-led force in Somalia
6 and the United Nations-led force in Somalia.

7 (b) **INFORMATION ON COSTS AND OTHER CON-**
8 **TRIBUTIONS.**—Each report pursuant to this section shall
9 specify (to the extent such information is available to the
10 United States)—

11 (1) the amount of the incremental costs incurred
12 by the United States as the result of its participation
13 in the United States-led force in Somalia or as the
14 result of its participation in or military operations
15 in support of the United Nations-led force in Soma-
16 lia;

17 (2) the amount of other in-kind or financial con-
18 tributions pledged, and the amount of such con-
19 tributions made, by each participating country to-
20 ward the costs associated with the United States-led
21 force in Somalia and the United Nations-led force in
22 Somalia, including contributions to the United Na-
23 tions Trust Fund for Somalia and excluding amounts
24 reported pursuant to paragraph (3);

25 (3) the amount assessed by the United Nations to
26 the United States and each other country for its con-

1 tributions to the costs associated with the United Na-
2 tions-led force in Somalia;

3 (4) the amount received by the United States
4 and each other country as reimbursement from the
5 United Nations, including reimbursements from the
6 United Nations Trust Fund for Somalia, as the result
7 of its participation in the United States-led force in
8 Somalia; and

9 (5) the amount received by the United States
10 and each other country as credit against an assess-
11 ment described in paragraph (3) from the United Na-
12 tions for costs that it incurred as the result of its par-
13 ticipation in or military operations in support of the
14 United Nations-led force in Somalia.

15 (c) *DESCRIPTION OF UNITED STATES EFFORTS TO*
16 *OBTAIN EQUITABLE COST SHARING.*—Each such report
17 shall also review all actions taken by the United States to
18 have in-kind United States contributions to the United Na-
19 tions-led force in Somalia counted against the amount of
20 the United States assessed contributions to the United Na-
21 tions for peacekeeping or other military operations in So-
22 malia carried out pursuant to resolutions of the Security
23 Council.

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1 (d) *REPORTING DATES AND PERIOD COVERED BY*
2 *EACH REPORT.*—A report pursuant to this section shall be
3 submitted—

4 (1) not later than 1 month after the date of en-
5 actment of this joint resolution, covering the period
6 ending on the last day of the penultimate month pre-
7 ceding the enactment of this joint resolution; and

8 (2) not later than 12 months and 24 months
9 after that date, covering the 12-month period fol-
10 lowing the period covered by the preceding report
11 pursuant to this section and also providing cumu-
12 lative information.

13 **SEC. 7. DEFINITIONS.**

14 *As used in this joint resolution—*

15 (1) the term "United Nations Force Commander
16 in Somalia" means the commander appointed by the
17 Secretary General of the United Nations to command
18 the United Nations-led force in Somalia;

19 (2) the term "United Nations-led force in Somalia"
20 means the expanded force (commonly referred to
21 as "UNOSOM II") authorized by paragraph 5 of
22 United Nations Security Council Resolution 814
23 (1993);

24 (3) the term "United Nations Trust Fund for So-
25 malia" means the trust fund established and main-

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- 1 *tained pursuant to United Nations Security Council*
2 *Resolutions 794 and 814; and*
3 *(d) the term "United States-led force in Soma-*
4 *lia" means the force (commonly referred to as the*
5 *"Unified Task Force" or "UNITAF") authorized by*
6 *United Nations Security Council Resolution 794*
7 *(1992).*

Amend the title of the joint resolution to read as fol-
lows: "Joint Resolution to authorize the use of United
States Armed Forces in Somalia to implement United Na-
tions Security Council Resolutions 794 (1992) and 814
(1993)."

Military Staff Committee to advise on all questions relating to the Security, for the maintenance of international peace and command of forces placed at the disposal of the United Nations, of armaments, and possible disarmament.

tee shall consist of the Chiefs of Staff of the Security Council or their representatives. Nations not permanently represented shall be invited by the Committee to be efficient discharge of the Committee's participation of that Member in its work.

Committee shall be responsible under the strategic direction of any armed forces Security Council. Questions relating to shall be worked out subsequently.

mittee, with the authorization of the
consultation with appropriate regional
sub-committees.

carry out the decisions of the Security
of international peace and security shall
of the United Nations or by some of
may determine.

carried out by the Members of the United Nations in their action in the appropriate inter-agency are members.

Nations shall join in affording mutual measures decided upon by the Security

If preventive or enforcement measures against any State are taken by the Security Council, any other State, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII. REGIONAL ARRANGEMENTS

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference to the Security Council.



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Office of the Attorney General
Washington, D.C. 20530

December 4, 1992

160p. OLC
6(1992)
(preliminary
print)

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 members of 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 use those military personnel to protect Somalis and other foreign nationals in Somalia. You have authority to commit 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 (1941) (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 principle of non-intervention in matters that are "essentially within the domestic jurisdiction" of member States, inasmuch as that principle does not "prejudice the application of 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.

Enclosure



Office of the
Assistant Attorney General

Washington, D.C. 20530

December 4, 1992

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Authority of the President to Use United States Military Forces for the Protection of Relief Efforts in Somalia

You have asked for our opinion whether the President has the legal authority to commit United States Armed Forces to assist the United Nations in ensuring the safe delivery of food, medicine and other relief to the population in affected regions of Somalia. We understand that the mission of those troops will be to restore as quickly as possible 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. We also understand that private United States nationals are currently involved in relief operations in Somalia and United States military personnel are engaged in humanitarian supply flights into Somalia. We further understand 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.¹

¹ We note at the outset that the deployment of troops to Somalia appears primarily aimed at providing humanitarian assistance, and will only involve combat as an incident to that humanitarian mission. Thus, the current situation poses two questions: is there legal authority for United States Armed Forces to perform humanitarian tasks, and if so, may the President authorize those troops to engage in more purely military actions, such as self-defense and the creation of safe corridors for the provision of aid. We understand from the General Counsel of the Department of Defense that there is clear statutory authority for the use of the Armed Forces to support and to perform humanitarian tasks in Somalia. *E.g.*, 10 U.S.C. § 2551; see also 22 U.S.C. §§ 2292, 2292¹. We conclude in this opinion that in these circumstances the President's constitutional authority to authorize the troops to engage in various related military actions is also clear. We do not address issues raised by the proposed operation under the War Powers Resolution.

In our opinion, the President's role under our Constitution as Commander in Chief and Chief Executive vests him with the constitutional authority to order United States troops abroad to further national interests such as protecting the lives of Americans overseas. Accordingly, where, as here, United States government personnel and private citizens are participating in a lawful relief effort in a foreign nation, we conclude that the President may commit United States troops to protect those involved in the relief effort. In addition, we believe that long-standing precedent supports the use of the Armed Forces to protect Somalians and other foreign nationals in Somalia. We also believe that the President, in determining to commit the Armed Forces to this operation, may lawfully look to the importance to the national interests of the United States of upholding the recent United Nations resolutions regarding Somalia. Finally, we note that Congress has expressed its tacit approval for the President's exercise of his constitutional authority in this matter.

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From the instructions of President Jefferson's Administration to Commodore Richard Dale in 1801 to "chastise" Algiers and Tripoli if they continued to attack American shipping, to the present, Presidents have taken military initiatives abroad on the basis of their constitutional authority. See A. Sofaer, War, Foreign Affairs and Constitutional Power 209-16 (1976); J. Emerson, "War Powers Legislation," 74 W. Va. L. Rev. 53, 88-110 (1971); J. Rodgers, World Policing and the Constitution 93-123 (1945); M. Offutt, The Protection of Citizens Abroad by the Armed Forces of the United States (1928). Against the background of this repeated past practice under many Presidents, this Department and this Office have concluded that the President has the power to commit United States troops abroad for the purpose of protecting important national interests. See, e.g., Training of British Flying Students in the United States, 40 Op. Att'y Gen. 58, 62 (1941) ("the President's authority has long been recognized as extending to the dispatch of armed forces outside of the United States, either on missions of good will or rescue, or for the purpose of protecting American lives or property or American interests") (Jackson, A.G.). As the Supreme Court noted in United States v. Verdugo-Urquidez, 494 U.S. 259, 273 (1990), "[t]he United States frequently employs armed forces outside this country -- over 200 times in our history -- for the protection of American citizens or national security."²

² See Dames & Moore v. Regan, 453 U.S. 654, 686 (1981) (historical practice provides important evidence of scope of constitutional powers).

At the core of this power is the President's authority to take military action to protect American citizens, property, and interests from foreign threats. See, e.g., Presidential Powers Relating to the Situation in Iran, 4A Op. OLC 115, 121 (1979) ("It is well established that the President has the constitutional power as Chief Executive and Commander-in-Chief to protect the lives and property of Americans abroad."); Presidential Power to Use the Armed Forces Abroad Without Statutory Authorization, 4A Op. OLC 185, 187 (1980) ("Presidents have repeatedly employed troops abroad in defense of American lives and property."); see also Memorandum of William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re: The President and the War Power: South Vietnam and the Cambodian Sanctuaries, 8 (May 22, 1970) (President as Commander in Chief has authority "to commit military forces of the United States to armed conflict . . . to protect the lives of American troops in the field"). In Durand v. Holling, 8 Fed. Cas. 111 (No. 4186) (C.C.S.D.N.Y. 1860), an American naval officer, under orders of the President and the Secretary of the Navy, bombarded Graytown, Nicaragua in retaliation for the Nicaraguan government's refusal to make reparations for attacks against United States citizens and property. In a suit brought against the naval officer, Justice Nelson held that the officer properly took this action, observing that such an attack on American citizens and property required the sort of swift and effective response that only the Executive could make:

Acts of lawless violence, or of threatened violence to the citizen or his property, cannot be anticipated and provided for; and the protection, to be effectual or of any avail, may, not unfrequently, require the most prompt and decided action.

Id. at 112. Justice Nelson also stated that whether the President had a duty to act to protect the citizens involved "was a public political question . . . which belonged to the executive to determine." Id. See also Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 645 (1952) (Jackson, J., concurring) ("I should indulge the widest latitude of interpretation to sustain [the President's] exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society.").

Applying these principles to the present case, we conclude that the President can reasonably determine that the proposed mission is necessary to protect the American citizens already in Somalia. We understand that these include private United States citizens engaged in relief operations, and United States military personnel conducting humanitarian supply flights. The United Nations has determined that existing conditions in Somalia pose a threat to the lives and safety of these individuals and of non-Americans also engaged in efforts to deliver food, medicine and

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other relief to over two million Somalians. See Security Council Resolution No. 794 (December 3, 1992) (determining that the Somali situation "constitutes a threat to international peace and security," and expressing alarm at "reports of violence and threats of violence against personnel participating lawfully in impartial humanitarian relief activities"); see also John M. Goshko, U.N. Chief Favors Use of Force in Somalia, Washington Post, Dec. 1, 1992, at A1.

It is also essential to consider the safety of the troops to be dispatched as requested by Resolution 794. The President may provide those troops with sufficient military protection to insure that they are able to carry out their humanitarian tasks safely and efficiently. He may also decide to send sufficient numbers of troops so that those who are primarily engaged in assisting the United Nations in noncombatant roles are defended by others who perform a protective function. See, e.g., Memorandum of William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re: The President and the War Power: South Vietnam and the Cambodian Sanctuaries, 8 (May 22, 1970).

Nor is the President's power strictly limited to the protection of American citizens in Somalia. Past military interventions that extended to the protection of foreign nationals provide precedent for action to protect endangered Somalians and other non-United States citizens. For example, in 1965, President Lyndon Johnson explained that he had ordered United States military intervention in the Dominican Republic to protect both Americans and the citizens of other nations. "An Assessment of the Situation in the Dominican Republic," 53 Dep't State Bull. 19, 20 (1965) ("to preserve the lives of American citizens and citizens of a good many other nations -- 46 to be exact, 46 nations"). During the 1900-01 Boxer Rebellion in China, President McKinley, without prior congressional authorization, sent about 5,000 United States troops as part of a multi-national contingent to lift the siege of the foreign quarters in Peking after the Chinese government proved unable to control rebels. J. Richardson, Compilation of the Messages and Papers of the Presidents 1789-1902 (Supp.) 113, 120 (1904).³

³ A case of intervention on behalf of a foreign national, one Martin Koszta, was cited approvingly by the Supreme Court in In re Neagle, 135 U.S. 1, 64 (1890), as an example of the legitimate exercise of Executive power "growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the government under the Constitution." Id. Although Koszta had expressed his intention of becoming naturalized, at the time of the events in question he was not an American citizen. He was seized by the Austrian government while in Smyrna and confined in an Austrian vessel. A
(continued...)

The United States has an additional important national interest arising from the involvement of the United Nations in the Somali situation. In a 1950 opinion supporting President Truman's decision to support the United Nations in repelling the invasion of South Korea, the State Department concluded that "[t]he continued existence of the United Nations as an effective international organization is a paramount United States interest." "Authority of the President to Repel the Attack on Korea," 23 Dep't State Bull. 173, 177 (1950). We adopt that conclusion. Here, too, maintaining the credibility of United Nations Security Council decisions, protecting the security of United Nations and related relief efforts, and ensuring the effectiveness of United Nations peacekeeping operations can be considered a vital national interest, and will promote the United States' conception of a "new world order." See, e.g., President's Address to the 46th Session of the United Nations General Assembly, 27 Weekly Comp. Pres. Doc. 1324, 1327 (Sept. 23, 1991).

In Resolution 794, which was adopted pursuant to Chapter V of the United Nations Charter, the Security Council has authorized the United States and other member States to use "all necessary means" to establish a secure environment for the delivery of essential humanitarian aid in Somalia.⁴ The President is entitled to rely on this Resolution, and on its finding that the situation in Somalia "constitutes a threat to international peace and security," in making his determination

³ (...continued)

United States naval officer demanded Koszta's surrender, and "was compelled to train his guns upon the Austrian vessel before his demands were complied with." *Id.* The Court noted that no Act of Congress sanctioned this armed intervention.

⁴ United Nations Security Council Resolution No. 794 (Sept. 3, 1992) ("Dismayed by the continuation of conditions that impede the delivery of humanitarian supplies to destinations within Somalia, and in particular reports of looting of relief supplies destined for starving people, attacks on aircraft bringing in humanitarian relief supplies, and attacks on the Pakistani (U.N. Operation in Somalia peacekeeping) [sic] contingent in Mogadishu"; "Noting the offer by member states aimed at establishing a secure environment for humanitarian relief operations in Somalia as soon as possible"; "CALLS on all member states, which are in a position to do so, to provide military forces"; "ENDORSES the recommendation by the Secretary-General in his letter that action under Chapter VII (authorizing use of force) of the Charter of the United Nations should be taken in order to establish a secure environment for humanitarian relief operations in Somalia as soon as possible").

that the interests of the United States justify providing the military assistance that Resolution 794 calls for. Moreover, American assistance in giving effect to this and other Security Council resolutions pertaining to Somalia would in itself strengthen the prestige, credibility and effectiveness of the United Nations -- which the President can legitimately find to be a substantial national foreign policy objective, and which will tend further to guarantee the lives and property of Americans abroad.

This conclusion accords with our prior opinions. During the Korean War, for example, we took the position that a Security Council resolution authorizing the use of force by member States to protect international peace and security could

furnish a new ground for a decision by the President to use troops abroad. . . .

In the presence of such a resolution the President is bound to consider what the interests of the United States require. He will necessarily weigh the nature of the breach of the peace which has occurred, what its consequences will be for the United Nations if it goes unchallenged, and what it foreshadows in the way of an ultimate threat to the vital interests of the United States. In the light of these and other considerations he will then make the decisions which he, as President, must make.

F. Pollak, *Power of the President to Send Troops Abroad*, 35 (Apr. 27, 1951).⁵

II

Finally, we note that the available evidence strongly suggests that Congress believes that the President's use of military force to assist United Nations relief and peacekeeping efforts in Somalia does not exceed his constitutional powers. In recent legislation, Congress appears to have recognized the President's authority to make use of military personnel, should he deem it necessary to carry out or protect humanitarian missions in Somalia. Section 3(b)(3) of the Horn of Africa Recovery and Food Security Act, Pub. L. No. 102-274, 106 Stat.

⁵ We do not conclude that a Security Council resolution calling on member States to provide troops to assist the United Nations by itself imposes any legal duty on the President to act in accordance with the resolution. But, as we explained in our 1951 memorandum, such a resolution can be an important factor on which the President may rely in determining whether national interests require such military action.

115 (1992), states that "[i]t is the sense of the Congress that the President should . . . ensure, to the maximum extent possible and in conjunction with other donors, that emergency humanitarian assistance is being made available to those in need"

Section 4(a)(1) of the Act states in part that U.S. policy should be "to assure noncombatants . . . equal and ready access to all food, emergency, and relief assistance," and section 4(b)(1) states that pursuant to the United States policy of "seeking to maximize relief efforts" the United States should "redouble its commendable efforts to secure safe corridors of passage for emergency food and relief supplies in affected areas." Moreover, in section 2(3), Congress explicitly found that the actions of the government and armed opposition groups in Somalia "erode[d] food security" in that country.

Thus, Congress appears to have contemplated that the President might find it necessary to make use of military force to ensure the safe delivery of humanitarian relief in Somalia, and to have assumed in such circumstances that the President possessed constitutional authority to do so.⁶ See also Dames & Moore, 453 U.S. at 678-79.

Please let us know if we may be of further assistance.


 Timothy E. Flanigan
 Assistant Attorney General
 Office of Legal Counsel

⁶ As noted above, the quoted provisions of the Act are part of a "sense of Congress" resolution. A "sense of Congress" resolution does not, of course, give the President authority he does not otherwise possess. Nonetheless, we believe that the Congressional views expressed in the quoted portions of the Act are evidence that Congress recognized that the President has authority to use military force to accomplish the goals of the Act.

and force shall be made by the Security Council and the Military Staff Committee.

The Military Staff Committee to advise the Security Council on all questions relating to the Security Council for the maintenance of international peace and command of forces placed at its disposal, armaments, and possible disarmament.

The Committee shall consist of the Chiefs of Staff of the Security Council or their representatives. Members of the United Nations not permanently represented shall be invited by the Committee to be present for the efficient discharge of the Committee's functions and participation of that Member in its work.

The Committee shall be responsible under the strategic direction of any armed forces of the Security Council. Questions relating to the Committee shall be worked out subsequently.

The Committee, with the authorization of the Security Council, shall consult with appropriate regional sub-committees.

The Security Council shall carry out the decisions of the Security Council. The maintenance of international peace and security shall be the primary concern of the United Nations or by some of its organs to determine.

Decisions shall be made out by the Members of the United Nations. The Security Council shall determine their action in the appropriate international relations.

The Security Council shall join in affording mutual assistance and shall decide upon by the Security Council.

Article 50

If preventive or enforcement measures against any State are taken by the Security Council, any other State, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII. REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference to the Security Council.



Office of the Attorney General
Washington, D.C. 20530

December 4, 1992

16 Op. OLC
6 (1992)
(preliminary
p. 1-1)

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 members of 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 use those military personnel to protect Somalis and other foreign nationals in Somalia. You have authority to commit 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 (1941) (Jackson, A.G.). See also 53 Dep't Stat 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 principle of non-intervention in matters that are "essentially within the domestic jurisdiction" of member States, inasmuch as that principle does not "prejudice the application of 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.

Enclosure



Office of the
Assistant Attorney General

Washington, D.C. 20530

December 4, 1992

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Authority of the President to Use United States Military Forces for the Protection of Relief Efforts in Somalia

You have asked for our opinion whether the President has the legal authority to commit United States Armed Forces to assist the United Nations in ensuring the safe delivery of food, medicine and other relief to the population in affected regions of Somalia. We understand that the mission of those troops will be to restore as quickly as possible 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. We also understand that private United States nationals are currently involved in relief operations in Somalia and United States military personnel are engaged in humanitarian supply flights into Somalia. We further understand 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.¹

¹ We note at the outset that the deployment of troops to Somalia appears primarily aimed at providing humanitarian assistance, and will only involve combat as an incident to that humanitarian mission. Thus, the current situation poses two questions: is there legal authority for United States Armed Forces to perform humanitarian tasks, and if so, may the President authorize those troops to engage in more purely military actions, such as self-defense and the creation of safe corridors for the provision of aid. We understand from the General Counsel of the Department of Defense that there is clear statutory authority for the use of the Armed Forces to support and to perform humanitarian tasks in Somalia. *E.g.*, 10 U.S.C. § 2551; see also 22 U.S.C. §§ 2292, 2292¹. We conclude in this opinion that in these circumstances the President's constitutional authority to authorize the troops to engage in various related military actions is also clear. We do not address issues raised by the proposed operation under the War Powers Resolution.

In our opinion, the President's role under our Constitution as Commander in Chief and Chief Executive vests him with the constitutional authority to order United States troops abroad to further national interests such as protecting the lives of Americans overseas. Accordingly, where, as here, United States government personnel and private citizens are participating in a lawful relief effort in a foreign nation, we conclude that the President may commit United States troops to protect those involved in the relief effort. In addition, we believe that long-standing precedent supports the use of the Armed Forces to protect Somalians and other foreign nationals in Somalia. We also believe that the President, in determining to commit the Armed Forces to this operation, may lawfully look to the importance to the national interests of the United States of upholding the recent United Nations resolutions regarding Somalia. Finally, we note that Congress has expressed its tacit approval for the President's exercise of his constitutional authority in this matter.

I

From the instructions of President Jefferson's Administration to Commodore Richard Dale in 1801 to "chastise" Algiers and Tripoli if they continued to attack American shipping, to the present, Presidents have taken military initiatives abroad on the basis of their constitutional authority. See A. Sofaer, War, Foreign Affairs and Constitutional Power 209-16 (1976); J. Emerson, "War Powers Legislation," 74 W. Va. L. Rev. 53, 88-110 (1971); J. Rodgers, World Policing and the Constitution 93-123 (1945); M. Offutt, The Protection of Citizens Abroad by the Armed Forces of the United States (1928). Against the background of this repeated past practice under many Presidents, this Department and this Office have concluded that the President has the power to commit United States troops abroad for the purpose of protecting important national interests. See, e.g., Training of British Flying Students in the United States, 40 Op. Att'y Gen. 58, 62 (1941) ("the President's authority has long been recognized as extending to the dispatch of armed forces outside of the United States, either on missions of good will or rescue, or for the purpose of protecting American lives or property or American interests") (Jackson, A.G.). As the Supreme Court noted in United States v. Verdugo-Urquidez, 494 U.S. 259, 273 (1990), "[t]he United States frequently employs armed forces outside this country -- over 200 times in our history -- for the protection of American citizens or national security."²

² See Dames & Moore v. Regan, 453 U.S. 654, 686 (1981) (historical practice provides important evidence of scope of constitutional powers).

At the core of this power is the President's authority to take military action to protect American citizens, property, and interests from foreign threats. See, e.g., Presidential Powers Relating to the Situation in Iran, 4A Op. OLC 115, 121 (1979) ("It is well established that the President has the constitutional power as Chief Executive and Commander-in-Chief to protect the lives and property of Americans abroad."); Presidential Power to Use the Armed Forces Abroad Without Statutory Authorization, 4A Op. OLC 185, 187 (1980) ("Presidents have repeatedly employed troops abroad in defense of American lives and property."); see also Memorandum of William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re: The President and the War Power: South Vietnam and the Cambodian Sanctuaries, 8 (May 22, 1970) (President as Commander in Chief has authority "to commit military forces of the United States to armed conflict . . . to protect the lives of American troops in the field"). In Durand v. Holling, 8 Fed. Cas. 111 (No. 4186) (C.C.S.D.N.Y. 1860), an American naval officer, under orders of the President and the Secretary of the Navy, bombarded Graytown, Nicaragua in retaliation for the Nicaraguan government's refusal to make reparations for attacks against United States citizens and property. In a suit brought against the naval officer, Justice Nelson held that the officer properly took this action, observing that such an attack on American citizens and property required the sort of swift and effective response that only the Executive could make:

Acts of lawless violence, or of threatened violence to the citizen or his property, cannot be anticipated and provided for; and the protection, to be effectual or of any avail, may, not unfrequently, require the most prompt and decided action.

Id. at 112. Justice Nelson also stated that whether the President had a duty to act to protect the citizens involved "was a public political question . . . which belonged to the executive to determine." Id. See also Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 645 (1952) (Jackson, J., concurring) ("I should indulge the widest latitude of interpretation to sustain [the President's] exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society.").

Applying these principles to the present case, we conclude that the President can reasonably determine that the proposed mission is necessary to protect the American citizens already in Somalia. We understand that these include private United States citizens engaged in relief operations, and United States military personnel conducting humanitarian supply flights. The United Nations has determined that existing conditions in Somalia pose a threat to the lives and safety of these individuals and of non-Americans also engaged in efforts to deliver food, medicine and

other relief to over two million Somalians. See Security Council Resolution No. 794 (December 3, 1992) (determining that the Somali situation "constitutes a threat to international peace and security," and expressing alarm at "reports of violence and threats of violence against personnel participating lawfully in impartial humanitarian relief activities"); see also John M. Goshko, U.N. Chief Favors Use of Force in Somalia, Washington Post, Dec. 1, 1992, at A1.

It is also essential to consider the safety of the troops to be dispatched as requested by Resolution 794. The President may provide those troops with sufficient military protection to insure that they are able to carry out their humanitarian tasks safely and efficiently. He may also decide to send sufficient numbers of troops so that those who are primarily engaged in assisting the United Nations in noncombatant roles are defended by others who perform a protective function. See, e.g., Memorandum of William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re: The President and the War Power: South Vietnam and the Cambodian Sanctuaries, 8 (May 22, 1970).

Nor is the President's power strictly limited to the protection of American citizens in Somalia. Past military interventions that extended to the protection of foreign nationals provide precedent for action to protect endangered Somalians and other non-United States citizens. For example, in 1965, President Lyndon Johnson explained that he had ordered United States military intervention in the Dominican Republic to protect both Americans and the citizens of other nations. "An Assessment of the Situation in the Dominican Republic," 53 Dep't State Bull. 19, 20 (1965) ("to preserve the lives of American citizens and citizens of a good many other nations -- 46 to be exact, 46 nations"). During the 1900-01 Boxer Rebellion in China, President McKinley, without prior congressional authorization, sent about 5,000 United States troops as part of a multi-national contingent to lift the siege of the foreign quarters in Peking after the Chinese government proved unable to control rebels. J. Richardson, Compilation of the Messages and Papers of the Presidents 1789-1902 (Supp.) 113, 120 (1904).³

³ A case of intervention on behalf of a foreign national, one Martin Koszta, was cited approvingly by the Supreme Court in In re Neagle, 135 U.S. 1, 64 (1890), as an example of the legitimate exercise of Executive power "growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the government under the Constitution." *Id.* Although Koszta had expressed his intention of becoming naturalized, at the time of the events in question he was not an American citizen. He was seized by the Austrian government while in Smyrna and confined in an Austrian vessel. A
(continued...)

The United States has an additional important national interest arising from the involvement of the United Nations in the Somalian situation. In a 1950 opinion supporting President Truman's decision to support the United Nations in repelling the invasion of South Korea, the State Department concluded that "[t]he continued existence of the United Nations as an effective international organization is a paramount United States interest." "Authority of the President to Repel the Attack on Korea," 23 Dep't State Bull. 173, 177 (1950). We adopt that conclusion. Here, too, maintaining the credibility of United Nations Security Council decisions, protecting the security of United Nations and related relief efforts, and ensuring the effectiveness of United Nations peacekeeping operations can be considered a vital national interest, and will promote the United States' conception of a "new world order." See, e.g., President's Address to the 46th Session of the United Nations General Assembly, 27 Weekly Comp. Pres. Doc. 1324, 1327 (Sept. 23, 1991).

In Resolution 794, which was adopted pursuant to Chapter VI of the United Nations Charter, the Security Council has authorized the United States and other member States to use "all necessary means" to establish a secure environment for the delivery of essential humanitarian aid in Somalia.⁴ The President is entitled to rely on this Resolution, and on its finding that the situation in Somalia "constitutes a threat to international peace and security," in making his determination

³(...continued)

United States naval officer demanded Koszta's surrender, and "was compelled to train his guns upon the Austrian vessel before his demands were complied with." *Id.* The Court noted that no Act of Congress sanctioned this armed intervention.

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that the interests of the United States justify providing the military assistance that Resolution 794 calls for. Moreover, American assistance in giving effect to this and other Security Council resolutions pertaining to Somalia would in itself strengthen the prestige, credibility and effectiveness of the United Nations -- which the President can legitimately find to be a substantial national foreign policy objective, and which will tend further to guarantee the lives and property of Americans abroad.

This conclusion accords with our prior opinions. During the Korean War, for example, we took the position that a Security Council resolution authorizing the use of force by member States to protect international peace and security could

furnish a new ground for a decision by the President to use troops abroad. . . .

In the presence of such a resolution the President is bound to consider what the interests of the United States require. He will necessarily weigh the nature of the breach of the peace which has occurred, what its consequences will be for the United Nations if it goes unchallenged, and what it foreshadows in the way of an ultimate threat to the vital interests of the United States. In the light of these and other considerations he will then make the decisions which he, as President, must make.

F. Pollak, *Power of the President to Send Troops Abroad*, 35 (Apr. 27, 1951).⁵

II

Finally, we note that the available evidence strongly suggests that Congress believes that the President's use of military force to assist United Nations relief and peacekeeping efforts in Somalia does not exceed his constitutional powers. In recent legislation, Congress appears to have recognized the President's authority to make use of military personnel, should he deem it necessary to carry out or protect humanitarian missions in Somalia. Section 3(b)(3) of the Horn of Africa Recovery and Food Security Act, Pub. L. No. 102-274, 106 Stat.

⁵ We do not conclude that a Security Council resolution calling on member States to provide troops to assist the United Nations by itself imposes any legal duty on the President to act in accordance with the resolution. But, as we explained in our 1951 memorandum, such a resolution can be an important factor on which the President may rely in determining whether national interests require such military action.

115 (1992), states that "[i]t is the sense of the Congress that the President should . . . ensure, to the maximum extent possible and in conjunction with other donors, that emergency humanitarian assistance is being made available to those in need" Section 4(a)(1) of the Act states in part that U.S. policy should be "to assure noncombatants . . . equal and ready access to all food, emergency, and relief assistance," and section 4(b)(1) states that pursuant to the United States policy of "seeking to maximize relief efforts" the United States should "redouble its commendable efforts to secure safe corridors of passage for emergency food and relief supplies in affected areas." Moreover, in section 2(3), Congress explicitly found that the actions of the government and armed opposition groups in Somalia "erode[d] food security" in that country.

Thus, Congress appears to have contemplated that the President might find it necessary to make use of military forces to ensure the safe delivery of humanitarian relief in Somalia, and to have assumed in such circumstances that the President possessed constitutional authority to do so.⁶ See also Dames & Moore, 453 U.S. at 678-79.

Please let us know if we may be of further assistance.


Timothy E. Flanigan
Assistant Attorney General
Office of Legal Counsel

⁶ As noted above, the quoted provisions of the Act are part of a "sense of Congress" resolution. A "sense of Congress" resolution does not, of course, give the President authority he does not otherwise possess. Nonetheless, we believe that the Congressional views expressed in the quoted portions of the Act are evidence that Congress recognized that the President has authority to use military force to accomplish the goals of the Act.