

August 23, 1985

INFORMATION

MEMORANDUM FOR W. ROBERT PEARSON

FROM: J. R. SCHARFEN *JRS*
SUBJECT: The 1984 Boland Amendment

Summation:

- The legislative intent of the Amendment is to end funding in support of paramilitary operations in Nicaragua.
- Diplomatic and intelligence gathering contacts with Contras are authorized.
- The Amendment does not define or identify agencies "involved in intelligence activities."
- The Administration contends the contacts with the Contras are legal under the Amendment.

Legislative History (Pages 1-2):

- 1982 Boland Amendment prohibition on use of public funds for purpose of overthrowing the Nicaraguan government. (P.L. 97-377).
- 1983 \$24 million cap for FY84 on use of public funds for support of paramilitary operations in Nicaragua. (P.L. 98-212 and 98-215).
- 1984 Boland Amendment full prohibition on use of public funds for support of paramilitary operations in Nicaragua subject to possible release of \$14 million if the President submits a request after February 28, 1985 and Congress approves by joint resolution. (P.L. 98-473 and 98-618).

Legislative Intent (Pages 2-4):

- The legislative intent of the Amendment is to end public funding for support of paramilitary operations in Nicaragua.
- The Amendment permits intelligence gathering and diplomatic contacts with the Contras.
- Agencies "involved in intelligence activities" are not identified or defined.

Reagan Administration's Position (Pages 4-5):

- Amendment is bad foreign policy.
- Administration contacts with Contras are legal under Boland Amendment.

Attachment: P.L. 98-473

Declassified/Released on 22 Mar 85
under provisions of E.O. 12356
by K. Johnson, National Security Council

UNCLASSIFIED

The 1984 "Boland Amendment" caps a series of restrictions that Congress placed on the Reagan Administration's policy of supporting the Nicaraguan rebels.

The Amendment, placed in the Further Continuing Appropriations Resolution for Fiscal Year 1985 (P.L.98-473), became law on October 12, 1984. The Amendment prohibits the use of public funds for direct or indirect support of military or paramilitary operations in Nicaragua. This prohibition is subject to a possible release of \$14 million if the President submits a post February 28, 1985 request certifying regional conditions and explaining foreign policy goals. Congress must approve the release of funds by joint resolution. The Amendment states:

Sec. 8066. (a) During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

(b) The prohibition concerning Nicaragua contained in subsection (a) shall cease to apply if, after February 28, 1985--

- (1) the President submits to Congress a report--
 - (A) stating that the Government of Nicaragua is providing material or monetary support to anti-government forces engaged in military or paramilitary operations in El Salvador or other Central American countries;
 - (B) analyzing the military significance of such support;
 - (C) stating that the President has determined that assistance for military or paramilitary operations prohibited by subsection (a) is necessary;
 - (D) justifying the amount and type of such assistance and describing its objectives; and
 - (E) explaining the goals of United States policy for the Central American region and how the proposed assistance would further such goals, including the achievement of peace and security in Central America through a comprehensive, verifiable and enforceable agreement based upon the Contadora Document of Objectives; and
- (2) a joint resolution approving assistance for military or paramilitary operations in Nicaragua is enacted.

(For full text, see Tab I).

UNCLASSIFIED

UNCLASSIFIED

2

Earlier attempts to prohibit U.S. support for military or paramilitary operations in Nicaragua failed. (For example, the bill (H.R.2760) to amend the Intelligence Authorization Act for year 1983.) However, between the referral of H.R.2760 to committee in 1983 and the passing of the Boland Amendment in 1984, the Senate support of the Administration's policy weakened. The mining of Nicaraguan harbors helped convince several Senators on the Intelligence Committee to oppose the Administration's policy of supporting the Contras. This in turn undermined the Senate's ability to block the House attempts to end the aid. Congress and Foreign Affairs, House Committee on Foreign Affairs 1984, p. 33-34.

Legislative Intent

The House and Senate Reports (H.R. No. 98-1030 and 98-1159, and S.R. No. 98-634) which accompany the Boland Amendment do not address ending U.S. funding of the Contras. The legislative intent must be inferred from the language of the amendment itself, from reports which accompanied earlier unsuccessful bills to cut off rebel aid, and from statements made on the floor of Congress.

The language of the Amendment explicitly prohibits the CIA and the DoD from expending funds in support of military or paramilitary operations in Nicaragua. The act also prohibits any "other agency or entity of the U.S. involved in intelligence activities" from making any similar expenditures. These "other" agencies or entities are not identified in the Amendment or elsewhere in the legislative history. Nor is "intelligence activities" defined.

The Amendment does not elaborate on the meaning of "supporting, directly or indirectly, military or paramilitary operations in Nicaragua." The legislators' intent is illuminated, however, by earlier House Reports accompanying H.R. 2760 (an unsuccessful attempt to terminate Contra aid which shared the same statutory language with the Boland Amendment). Statements made on the floor of the House illuminate the legislative intent as well.

House Report 98-122, Part 1 stresses Representative Boland's view that U.S. aid should go "openly" to friendly Central American nations to assist in interdicting clandestine arms shipments from Nicaragua. The language of the act was changed from "or against" to only "in Nicaragua" to allow the U.S. to support these nations in interdicting arms shipments through and into their countries. Representative Boland repeats throughout this report that aid to these countries would be overt and the recipients would be nations.

UNCLASSIFIED

UNCLASSIFIED

3

On the House Floor, Representative Boland said:

"It (the Boland Amendment) clearly prohibits any expenditure, including those from accounts for salaries and all support costs. The prohibition is so strictly written that it also prohibits transfers of equipment acquired at no costs...To repeat, the compromise provision clearly ends U.S. support for the war in Nicaragua...There are no exceptions to the prohibition." Congressional Record, October 10, 1984, H.11980.

The foregoing seems to require an end to all U.S. contacts with the Contras, although the Amendment's proponents never state this as such. Moreover, Representative Boland stresses the need for the Administration to pursue diplomatic negotiations. He also stresses that the termination of U.S. aid to the Contras does not prohibit the collection of intelligence about Nicaragua. House Report 98-122, page 8. Both diplomacy and intelligence gathering would seem to require close and continuing associations with the Contras.

Further evidence that the Committee's primary focus was on the termination of material aid is seen in the following two passages:

"These groups (Contras) are not controlled by the U.S. They constitute an independent force. The only element of control that could be exercised by the U.S., cessation of aid, is something that the executive branch has no intention of doing." House Report 98-122, page 11.

"Even indirect support, such as training, which is provided exclusively outside Nicaragua, but which is given in preparation for military or paramilitary activity in Nicaragua, is prohibited." House Report 98-122, page 15.

By arguing that manipulation of financial aid as the only means of control the U.S. exercises over the rebels, and by listing training as an example of indirect support, Representative Boland focuses his discussion of the Amendment on more direct forms of funding. He does not explicitly preclude all advice to or contact with the rebels.

Conclusion: The intent of the Boland Amendment is to prohibit strictly funding in support of the Contras in Nicaragua. Yet the language of the Amendment and its legislative history leaves room to argue that contact with and guidance to the Contras is legal.

UNCLASSIFIED

UNCLASSIFIED

Neither the act's language nor its legislative history identify which agencies ^{or entities} are "involved in intelligence activities," other than the CIA and the DoD.

Reagan Administration's Position

The Administration opposes the Boland Amendment and unsuccessfully tried to temper it with a bill based on "symmetry," that is: condition the fund cut-off to a change in the Sandinistas' conduct. The Administration objects to the amendment as an attempt to give Congress, in Representative Young's words, a "prior veto over covert activities." 1983 Congressional Quarterly Almanac, page 130.

In response to the reaction to a March 29, 1984 interview in the New York Times, President Reagan sent a letter to the U.S. Senate clarifying the Administration's goals in supporting the Contras. The President wrote that the "United States does not seek to destabilize or overthrow the Government of Nicaragua." Rather, the goal is to induce the Sandinistas to negotiate in good faith and stop intervening in neighboring countries. Congressional Record, April 4, 1984, S.3787.

President Reagan describes his Administration's goal in Nicaragua as:

"I want to emphasize that consistent with the 21 goals of the Contadoran process, the United States continues to seek: One, Nicaragua's implementation of its commitment to democracy made to the Organization of American States; two, an end to Nicaragua's aggression against its neighbors; three, a removal of the thousands of Soviet bloc, Cuban, PLO, Libyan, and other military and security personnel; and four, a return of the Nicaraguan military to a level of parity with their neighbors." Presidential remarks announcing the Central American Peace Proposal, April 4, 1985.

The Administration supports the Contra proposal for church mediated peace talks and internationally supervised elections. In lieu of cutting off all aid, or providing only humanitarian aid to the Contras (as passed on June 12, 1985 in the amount of \$27 million), the President favors the policy recommended by the National Bipartisan Commission on Central America. This policy would allocate 75% of all aid for economic assistance, allowing the remainder to go to military programs. New York Times, February 11, 1985.

UNCLASSIFIED

UNCLASSIFIED

5

The President spoke openly of the National Security Council's contacts with the Contras as early as May 21, 1985. The President described these contacts in a speech given before the Annual Conference for the Council of Americas:

"I might point something out here that's rather of interest. Our Bud McFarlane was in Central America not too long ago, and he was talking to the contra leaders there. And he asked them--he said, apropos of what the guerrillas are doing in El Salvador and the attacks that they're making on these vital structures--he said, "Why, if you're trying to put pressure on your government here--why don't you attack some of these vital, strategic targets?" And to show you the difference between the contras and the guerrillas, the contras said, "No, that would hurt the people, and we're of the people. We're not going to do that." I think they deserve our support."

The President's candid remarks indicate that the Administration does not regard the NSC contacts with the Contras as violating the Boland Amendment or any other U.S. law. Indeed, the President met with Contra leaders and spoke at the Nicaraguan Refugee Fund Dinner on April 15, 1985. White House Press Secretary Larry Speakes states the contacts between the NSC and the Contras are for "receiving information." New York Times, August 9, 1985, page 4.

Conclusion

The Administration has yet to specifically address the scope of the Boland Amendment. Nonetheless, the contacts, if for "receiving information," seem to fall within the intelligence gathering exception to the Boland Amendment.

UNCLASSIFIED