

@CHAPTER = PANAMA

In the early morning hours of December 20, the Bush administration dispatched tens of thousands of U.S. troops to oust Panamanian head-of-state General Manuel Antonio Noriega, who days before had declared that a state of war existed with the United States. Guillermo Endara, whose apparent victory in Panama's May 7 elections was stolen when the elections were annulled on May 10, was inaugurated president at a U.S. military base about 45 minutes before the first troops landed. The fighting was intense for a few days, and U.S. forces tried to capture Noriega, who went into hiding. On December 24, General Noriega entered the premises of the Apostolic Nunciature (the Embassy of the Vatican) in Panama City, and was granted protection. At year's end, the United States had requested that Noriega be turned over to U.S. forces, and intense diplomatic negotiations were under way. Cuba and Peru had offered to grant Noriega asylum.

The administration offered several reasons to launch an armed invasion of a sovereign country, including danger to U.S. citizens and interests, as well as rights allegedly created by the Panama Canal Treaty. Also high on the list of reasons were the drug-running charges against Noriega pending in U.S. federal court. It is beyond the mandate of Human Rights Watch as an organization that monitors the observance of human rights to assess the validity of these justifications under international law.

During the year before the December invasion, the Bush administration's statements and actions on human rights in Panama raised our concern that this administration, like the Reagan administration before it, was suffering from a myopic focus on the fate of one man: General Noriega. The overwhelming message sent by President Bush throughout the year, like that sent by his predecessor, was that the United States wanted cosmetic change in Panama, and that it was satisfied with removing Noriega but leaving intact his main source of power, the Panamanian Defense Forces ("PDF"). In our view, the troubling human rights situation in Panama would not change meaningfully with a change of faces at the top, and should be addressed by means of a broad assault on the excessive influence of the military on all aspects of Panamanian government and society.

As a series of crises kept Panama in U.S. headlines in 1989, Bush administration officials went out of their way to express their support for the status quo in Panama -- minus General Noriega. In a May 11 statement issued one day after Panama annulled the elections apparently won by the opposition, President Bush affirmed his conviction that "[a] professional Panamanian Defense Force can have an important role to play in Panama's democratic future." Similarly, U.S. Ambassador to Panama Arthur Davis stated, "I do not want my words of condemnation of Noriega<%-20> <%0>.<%-20> <%0>.<%-20> <%0>.<%-20> <%0>to denote condemnation of the entire Panama Defense Forces<%-20> <%0>.<%-20> <%0>.<%-20> <%0>.<%-20> <%0>.<%-20> <%0>." More to the point, President Bush said on May 13: "The problem is Noriega. If Noriega were to leave, we'd have good relations with the Panamanian people and the PDF." The President reiterated this point the day after the U.S. invasion: "We have no continuing axe to grind with the institution the PDF."

These words of reassurance to the Panamanian military reflected the Bush administration's desire that the PDF organize the ouster of Noriega. They understated the depth of the human rights problems in Panama and, we fear, set the stage for a short-term change of administration rather than a long-term development of democratic institutions and the rule of law. Among the endemic problems that are not addressed by simply ousting General Noriega are the *de facto* subordination of the executive and judiciary to the military; severe restrictions on freedom of expression; and the lack of judicial review over

administrative-law courts and other judicial-like powers of the executive branch.

In addition, the PDF has been directly involved in serious abuses which ought to dim Washington's enthusiasm for it. The PDF crackdown on the civic opposition movement which sprouted in June 1987 included beating, jailing and deporting of opposition leaders, destroying their personal property, shutting down the opposition press, firing birdshot into crowds, and releasing tear gas in enclosed spaces. When opposition forces appeared to have won the May 1989 general elections, the PDF and allied paramilitary groups launched an even tougher response, arresting dozens of oppositionists, killing a foreign cleric and an opposition bodyguard, and badly beating the opposition candidates for president and vice president. The PDF also killed a university student during an August protest.

Repression worsened following an unsuccessful October 3 coup attempt by Major Moisés Giroldi Vega, formerly a close supporter of General Noriega. Although the government reported only ten deaths -- which it asserted were combat deaths of rebels -- and 37 arrests, these figures are believed to understate the scope and nature of the violations. Days after the coup attempt, *The New York Times* reported that only three or four rebels were actually killed in the fighting, while the others -- including coup leader Giroldi -- were tortured and executed hours after combat ceased.<\$FMark Uhlig, "Noriega Reportedly Orders Executions of Coup Figures," *The New York Times*, October 9, 1989.> Later analyses cited far greater numbers of executions: the U.S. Southern Command in Panama reportedly estimated that from 70 to 100 rebel officers and soldiers were killed,<\$FAssociated Press, "Noriega Reportedly Executed 100 Rebels," reprinted in *The Washington Post*, November 22, 1989.> while the Panamanian Human Rights Committee has alleged that 233 military men were executed and 600 arrested.

The December invasion resulted in the formal destruction of the PDF, and at year's end, U.S. troops were exercising police functions in Panama. However, Endara has created a new military and police force, called the Public Security Force ("PSF"), and has called on members of the PDF to join it.

The first appointments to senior leadership positions in the PSF are hardly encouraging. Colonels Roberto Armijo and Eduardo Herrera Hassan, two former high-ranking PDF officers, were named the top- and second-ranking commanders of the PSF. Herrera Hassan had been a member of Noriega's inner circle until he lost out to Noriega in an internal power struggle. He participated in one of several botched covert attempts to dislodge Noriega, sponsored by the U.S. government, and then spent the few months before the December invasion in exile in Florida. He was flown to Panama by U.S. military forces to take up his new job. Two other high-ranking appointments have fallen on Armando Palacio Góndola, a close Noriega associate implicated in serious abuses in the 1970's, and Lieutenant Colonel Moisés Correa, who was the head of the notorious Modelo prison until he fell out of grace with Noriega on account of the failed October 3 coup attempt. The Bush administration has shown no interest in exploring the responsibilities of these officers for past violations committed by the PDF. As one senior U.S. embassy official commented, the PSF "is basically the same officers, the same men, the same structure" as the PDF "except that they say they support democracy where before they said they supported Noriega."<\$FLarry Rother, "It May Prove Difficult to Let Panama Get on With Its Life," *The New York Times*, December 31, 1989.>

These appointments are consistent with the administration's prior actions toward Panama. Despite the history of PDF violations, human rights have not been the driving force behind the Reagan and Bush administrations' hostility toward the Noriega regime. Washington turned a blind eye to abuses in Panama

for many years until concern over drug trafficking prompted indictments of the general by two grand juries in Florida in February 1988. Noriega's drug trafficking was known to the U.S. government for a long time while he was still acting as an asset of the Central Intelligence Agency ("CIA") (he is said to have served in that capacity for twenty years, including the period when the CIA was directed by George Bush) and more recently while he assisted the White House's covert efforts to arm and finance the Nicaraguan *contras*.

The pre-invasion campaign to oust Noriega included maintenance of Reagan-era economic sanctions prohibiting payments of Panamanian taxes owed by U.S. companies, as well as blocking the payment of fees from U.S. government agencies and the \$10 million annual fee payable to Panama under the Panama Canal treaty; dozens of exceptions to the sanctions were permitted, however. The Bush administration announced a tightening of the sanctions on November 30, 1989, stating that beginning on February 1, 1990, Panama-flagged ships would be banned from U.S. ports. The sanctions policy sparked considerable controversy, as it was opposed by the Catholic Church and opposition leaders in Panama for ruining the economy and causing tremendous hardship to the population, without diminishing Noriega's power. With Endara's inauguration, the sanctions have been lifted, paving the way for release of nearly \$300 million escrowed in the United States.

The Bush administration also undertook several covert actions designed to remove Noriega before launching an invasion. The administration sought to support the opposition in Panama's May 7 elections through the reported provision by the CIA of \$10 million to finance opposition activities, including clandestine radio broadcasts, printing, and other election expenses. A second \$10 million installment of election-related funds was not released because some of the initial funds had reportedly gone to a Panamanian suspected of corrupt activities. Although Human Rights Watch has not taken a position on foreign funding of local parties as such, we opposed the CIA's secret aid to the Panamanian opposition during the elections as susceptible to misuse by virtue of being hidden and unaccountable. We are also opposed to foreign funding of political parties if it is in violation of local law, as it is, for example, in the case of the funding of U.S. political parties.

After the Panamanian government annulled the elections, the Bush administration began sending loud signals that it wanted the PDF to revolt against its commander. An attempt by dissident PDF officers and soldiers was launched and quashed on October 3. In response to a rebel request, U.S. troops blocked two roads by which troops loyal to General Noriega were expected to pass. However, the loyalist troops took another route, and their arrival caused the coup to fail.

Blame for the failure of the effort to remove Noriega was debated on the front pages of U.S. newspapers, and lawmakers and editorial writers lambasted the Bush administration for failing to intervene more heavily on the side of the plotters. In its defense, the administration pointed to an executive order which provided that "[n]o person employed by or acting on behalf of the United States Government shall engage, or conspire to engage, in assassination." Administration officials claimed that this order, originally issued in 1976 by the Ford Administration, prevented the Bush administration from supporting the plotters because the plotters might have killed Noriega.

In the debate over the executive order, the administration failed to address the important distinction under the laws of war between assassination and combat-related killing. The laws of war prohibit violence against persons taking no active part in hostilities, including one-time combatants who are no longer engaged in combat because they have been captured or injured. The laws

of war also require combatants to distinguish between civilian and military targets and, even when firing upon military targets, to make every effort to minimize civilian casualties. Thus, while engaging in violence against combatants may well be consistent with U.S. obligations under the laws of war, assassination of noncombatants is clearly prohibited.

Within six weeks of the failed coup, a secret memorandum relaxing the interpretation of the executive order was approved by the White House and the House and Senate Intelligence Committees. Under the new interpretation -- the text of which is classified -- the CIA is reportedly permitted to assist some operations in which the killing of foreign leaders is a possibility, so long as the killing is not an explicit purpose of the plotters. A presidential finding consistent with the new interpretation of the Executive Order was reportedly approved by President Bush, authorizing the CIA to spend up to \$3 million to recruit Panamanian military officers and exiles to overthrow General Noriega.<\$FMichel Wines, "U.S. Plans New Effort to Oust Noriega," *The New York Times*, November 17, 1989; David Ottaway & Don Oberdorfer, "Administration Alters Assassination Bar," *The Washington Post*, November 4, 1989.>

We are concerned by this new interpretation, which appears, judging from news accounts, to weaken the ban on assassinations. Without regard to the advisability of U.S. entanglement in coup attempts, CIA involvement in or support for assassinations, whether they be the stated or covert purpose of plotters, violates international law. In addition, we fear that the "reinterpretation" of the assassination ban signals to coup plotters around the world that Washington is not genuinely opposed to assassinations.

The laws of war are also applicable to the U.S. invasion of December 20. Preliminary news accounts of the fighting in Panama indicate that scores of civilians died. To what extent U.S. troops and Panamanian forces may have engaged in violations of the laws of war remains unclear at year's end. The occupying forces had produced abundant material for the press on military aspects of the operation and on the generally sympathetic response of the Panamanian population, but there was still no count of civilian casualties or any serious exploration of the circumstances in which civilians died. Great destruction of civilian homes is clearly observable, and yet there has been no serious inquiry into whether aerial, artillery and ground fire was directed strictly at military targets and, if so, whether the firing was in accordance with the duty to minimize collateral civilian casualties.

U.S. troops apprehended as many as 5,000 persons. News photographs showed them being interrogated while blindfolded. By year's end, officials said that some 1,300 remained in detention. But there had been no effort to provide full lists of those captured, and despite earlier requests, the International Committee of the Red Cross was not given access to prisoners until December 31. According to some reports, civilian officials of the old Panamanian government have been arrested by U.S. troops. Apart from stating that these arrests had been carried out on the request of the new Panamanian government, the United States had offered no explanation of the reasons for the arrest of non-combatants, or under what legal authority those arrests were ordered.

It was too soon at year's end to tell what shape the new Panamanian government would take and what role the Bush administration would play in encouraging the government to respect human rights. However, the role played by the Bush administration in setting up that government gives it an extraordinary responsibility to press for full respect for human rights, rather than settling for a simple change of administration. The Bush administration should begin to fulfill that responsibility immediately, by providing full and open access to all information available about the manner in which the December military

operations were conducted.