U.S. Department of Justice

Office of Legal Counsel

CJC:BPP:mlb

cc: files
Sudol
Cooper
Gerson
Alito
Kmiec
Percival
Bennett
Retrieval

Office of the
Assistant Attorney General

Washington, D.C. 20530

JAN 13 1986

MEMORANDUM FOR FRED F. FIELDING
Counsel to the President

RE: War Powers Resolution and Military Action Against Libya

I have reviewed Abe Sofaer's January 7, 1986, memorandum to you on the War Powers Resolution. My brief comments follow.

1. The President has made clear that any potential military action would be directed against Libya itself, not against individual terrorist groups or locations within Libya. The use of American military forces in this context would surely trigger, as Abe Sofaer's memorandum points out, both the consulting and the reporting requirements of the War Powers Resolution.

2. In the unlikely event, however, that the President authorized military action against individual terrorists or terrorist groups in Libya, rather than against Libya itself, difficult questions would arise about the applicability and scope of the War Powers Resolution. As you know, this has been the subject of prior interagency memoranda and discussions, and has never been fully resolved. A review and analysis of this issue will be provided to you in a subsequent memorandum.

3. With respect to predeployment of American military forces (assuming the predeployment is for action directed against Libya itself), I agree with Abe Sofaer that the applicability of the reporting requirements of sections 4(a)(2) and (3) of the War Powers Resolution would depend largely on the particular facts of the predeployment (e.g., the number of personnel and the type of equipment being moved, the number of forces already in the foreign country). In addition to the points made in the Sofaer memorandum, it should be noted that a predeployment of even a relatively large military force might not fall within the

reporting requirements of sections 4(a)(2) and (3) of the War Powers Resolution if it could be characterized as the replacement of existing combat-ready forces in the foreign country. This and other issues relating to the use of American military forces in the fight against international terrorism are currently being studied by this office; our views will be provided in a subsequent memorandum.

Charles J. Cooper
Assistant Attorney General
Office of Legal Counsel

cc: Abraham Sofaer
Legal Adviser
Department of State

Leon Niederlehner
Acting General Counsel
Department of Defense