

CRS Report for Congress

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Special Operations Forces (SOF) and CIA Paramilitary Operations: Issues for Congress

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Summary

The 9/11 Commission Report recommended that responsibility for directing and executing paramilitary operations should be shifted from the CIA to the U.S. Special Operations Command (USSOCOM). The President has directed the Secretary of Defense and Director of Central Intelligence to review this recommendation and present their advice by February 23, 2005.¹ This report will briefly describe special operations conducted by DOD and paramilitary operations conducted by the CIA and discuss the implications of the 9/11 Commission's recommendations. For additional information see CRS Report RS21048, *U.S. Special Operations Forces (SOF): Background and Issues for Congress*. This report will be updated as circumstances warrant.

The U.S. strategy in pursuing the war on international terrorism involves a variety of missions conducted by military and civilian intelligence personnel characterized as "special operations" or paramilitary operations. The separate roles of the Department of Defense (DOD) and the Central Intelligence Agency (CIA) are not always clearly reflected in media accounts and at times there has been considerable operational overlap. Proposals such as those made by the 9/11 Commission to change organizational relationships will, however, be evaluated on the basis of separate roles and missions, operating practices, and relevant statutory authorities.

What Are Special Operations and Paramilitary Operations?

DOD defines special operations as "operations conducted in hostile, denied, or politically sensitive environments to achieve military, diplomatic, informational, and/or

¹ On November 23, 2004, President Bush issued a letter requiring the Secretary of Defense and the Director of Central Intelligence to review matters relating to Recommendation 32 and submit their advice to him by February 23, 2005. This review directs the examination of all aspects including legal, funding, operational, and supporting infrastructure.

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 04 JAN 2005		2. REPORT TYPE		3. DATES COVERED 00-00-2005 to 00-00-2005	
4. TITLE AND SUBTITLE Special Operations Forces (SOF) and CIA Paramilitary Operations: Issues for Congress				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service, The Library of Congress, 101 Independence Avenue SE, Washington, DC, 20540-7500				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 6	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

economic objectives employing military capabilities for which there is no broad conventional force requirement.”²

DOD defines paramilitary forces as “forces or groups distinct from the regular armed forces of any country, but resembling them in organization, equipment, training or mission.” In this report, the term “paramilitary operations” will be used for operations conducted by the CIA whose officers and employees are not part of the armed forces of the United States. (In practice, military personnel may be temporarily assigned to the CIA and CIA personnel may temporarily serve directly under a military commander.)

In general, special operations are distinguishable from regular military operations by degree of physical and political risk, operational techniques, and mode of employment among other factors. DOD special operations are frequently clandestine — designed in such a way as to ensure concealment; they are not necessarily covert, that is, concealing the identity of the sponsor is not a priority. The CIA, however, conducts covert and clandestine operations to avoid directly implicating the U.S. Government.

Roles and Mission of CIA and SOF

USSOCOM was established by Congress in the Defense Authorization Act of 1987 (PL 99-661) and codified into law as part of Title 10, U.S. Code, Section 167. USSOCOM’s stated mission is to plan, direct and execute special operations in the conduct of the War on Terrorism in order to disrupt, defeat, and destroy terrorist networks that threaten the United States.³

The CIA was established by the National Security Act of 1947 (P.L. 80-253) to collect intelligence through human sources and to analyze and disseminate intelligence from all sources. It was also to “perform such other functions and duties related to intelligence affecting the national security as the President or the National Security Council may direct.” This opaque phrase was, within a few months, interpreted to include a range of covert activities such as those that had been carried out by the Office of Strategic Services (OSS) during World War II. Although some observers long maintained that covert actions had no statutory basis, in 1991 the National Security Act was amended (by P.L. 102-88) to establish specific procedures for approving covert actions and for notifying key Members of Congress.

The statutory definition of covert action (“activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly. . . .”) is broad and can include a wide range of clandestine efforts — from subsidizing foreign journals and political parties to participation in what are essentially military operations. In the case of paramilitary operations, there is a clear potential for overlap with activities that can be carried out by DOD. In general, the CIA would be designated to conduct operations that are to be wholly covert or disavowable.

² Definitions are taken from Joint Publication 1-02, “Department of Defense Dictionary of Military and Associated Terms,” April 12, 2001 as amended through October 7, 2004.

³ Taken from *United States Special Operation Forces Posture Statement 2003-2004*, U.S. Special Operations Command, pp. 4-10.

In practice, responsibilities for paramilitary operations have been assigned by the National Security Council on a case-by-case basis.

Brief History of CIA and SOF Paramilitary Operations

CIA. In addition to acquiring intelligence to support US military operations from the Korean War era to Iraq today, the CIA has also worked closely alongside DOD personnel in military operations. On occasion it has also conducted clandestine military operations apart from the military. One example was the failed Bay of Pigs landing in Cuba in 1961. Especially important was a substantial CIA-managed effort in Laos in the 1960s and 1970s to interdict North Vietnamese resupply efforts. The CIA was directed to undertake this effort in large measure to avoid the onus of official U.S. military intervention in neutral Laos. The CIA's paramilitary operations in Afghanistan in 2001 have been widely described; CIA officers began infiltrating Afghanistan before the end of September 2001 and played an active role alongside SOF in bringing down the Taliban regime by the end of the year. According to media reports, the CIA has also been extensively involved in operations in Iraq in support of military operations.⁴

SOF. SOF have reportedly been involved in clandestine and covert paramilitary operations on numerous occasions since the Vietnam War. Operations such as the response to the TWA 847 and Achille Lauro hijackings in 1985, Panama in 1989, Mogadishu in 1993, and the Balkans in the late 1990s have become public knowledge over time but other operations reportedly remain classified to this day.⁵ SOF units such as the Army's Special Forces ("Green Berets"), Rangers, the Navy's SEALs (Sea, Air, and Land Teams) and Air Force Special Operations aviation and special tactics units have been involved in a variety of sensitive but acknowledged military operations. Others outside of DOD speculate that covert paramilitary operations would probably become the responsibility of a number of unacknowledged special operations units believed to exist within USSOCOM.⁶

9/11 Report Recommendations⁷

Recommendation 32 of the 9/11 Commission report states: "Lead responsibility for directing and executing paramilitary operations, whether clandestine or covert, should shift to the Defense Department. There it should be consolidated with the capabilities for training, direction, and execution of such operations already being developed in the Special Operations Command." The 9/11 Commission's basis for this recommendation appears to be both performance and cost-based. The report states that the CIA did not sufficiently invest in developing a robust capability to conduct paramilitary operations

⁴ See Barton Gellman and Dafna Linzer, "Afghanistan, Iraq: Two Wars Collide," *Washington Post*, October 22, 2004, p. A1; Bob Woodward, *Plan of Attack* (New York: Simon & Schuster, 2004), especially pp. 301-306, 373-376.

⁵ Colonel John T. Carney, Jr. and Benjamin F. Schemmer, *No Room for Error: The Covert Operations of America's Special Tactics Units from Iran to Afghanistan*, 2002, pp. ix - x.

⁶ Jennifer D. Kibbe, "The Rise of the Shadow Warriors," *Foreign Affairs*, March/April 2004, Volume 83-Number 2, p. 110.

⁷ Taken from *The 9/11 Commission Report* (Washington: GPO, 2004) pp. 415 - 416.

with U.S. personnel prior to 9/11, and instead relied on improperly trained proxies (foreign personnel under contract) resulting in an unsatisfactory outcome. The report also states that the United States does not have the money or people to build “two separate capabilities for carrying out secret military operations,” and suggests that we should “concentrate responsibility and necessary legal authorities in one entity.”

Some observers question whether procedures are in place to insure overall coordination of effort. Press reports concerning an alleged lack of coordination during Afghan operations undoubtedly contributed to the 9/11 Commission’s recommendation regarding paramilitary operations.⁸ Although such accounts have been discounted by some observers, the recently enacted Intelligence Reform and Terrorism Prevention Act (P.L. 108-458) includes a provision (Section 1013) that requires DOD and CIA to develop joint procedures “to improve the coordination and deconfliction of operations that involve elements” of the CIA and DOD. When separate missions are underway in the same geographical area, the CIA and DOD are required to establish procedures to reach “mutual agreement on the tactical and strategic objectives for the region and a clear delineation of operational responsibilities to prevent conflict and duplication of effort.”

Potential Impacts

Diminished CIA Intelligence Capabilities. Some observers suggest that a capability to plan and undertake paramilitary operations is directly related to the Agency’s responsibility to obtain intelligence from human sources. Some individuals and groups that supply information may also be of assistance in undertaking or supporting a paramilitary operation. If CIA were to have no responsibilities in this area, however, certain types of foreign contacts might not be exploited and capabilities that have proven important (in Afghanistan and elsewhere) might erode or disappear.⁹

Additional Strain on SOF. Some question if this proposed shift in responsibility will place additional strains on SOF who are extensively committed worldwide and are also experiencing retention difficulties amongst senior, retirement-eligible non-commissioned officers. Others argue that SOF lack the experience and requisite training to conduct covert operations.¹⁰ They suggest that if SOF do undertake covert operations training, that it could diminish their ability to perform their traditional missions such as hostage rescue, close-quarters combat, and weapons of mass destruction counterproliferation operations.

⁸ See, for instance, Jonathan Weisman, “CIA, Pentagon Feuding Complicates War Effort,” *USA Today*, June 17, 2002, p. 11. Another account cites CIA claims that the DOD command process is “bureaucratic and slow-rolling because of an execution-by-committee process;” as well as complaints by DOD officials that in past conflicts little information acquired by CIA “could be used by the military for strike activities because it disappeared into the black hole of the intelligence universe.” See David A. Fulghum, “CIA Trigger Men Trouble Military,” *Aviation Week & Space Technology*, November 26, 2001, p. 39.

⁹ See U.S. Congress, 104th Congress, 2d session, House of Representatives, Permanent Select Committee on Intelligence, *IC21: Intelligence Community in the 21st Century*, Staff Study, April 9, 1996, pp. 201-202.

¹⁰ Kibbe, p. 113.

A Reduction in Flexibility. The 9/11 Report notes the CIA’s “reputation for agility in operations,” as well as the military’s reputation for being “methodical and cumbersome.”¹¹ Some experts question if DOD and SOF are capable of operating in a more agile and flexible manner. They contend that the CIA was able to beat SOF into Afghanistan because they had less bureaucracy to deal with than did SOF, which permitted them to “do things faster, cheaper, and with more flexibility than the military.”¹² Some are concerned that if SOF takes over responsibility for clandestine and covert operations that they will become less agile and perhaps more vulnerable to bureaucratic interference from defense officials.

SOF Funding Authority. Section 1208 of PL 108-375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, permits SOF to directly pay and equip foreign forces or groups supporting the U.S. in combating terrorism. Although not a recommendation in the 9/11 Commission’s report, many feel that this authority will not only help SOF in the conduct of unconventional warfare, but could also be a crucial tool should they become involved in covert or clandestine operations. In Afghanistan, SOF did not have the authority to pay and equip local forces and instead had to rely on the CIA to “write checks” for needed arms, ammunition, and supplies. Supporters of this legislation believe that this will provide SOF with greater flexibility and agility when trying to raise and maintain irregular forces and also permit them to pay for crucial information.¹³

Issues for Congress

Is This Change Necessary? Congress may choose to review past or current paramilitary operations undertaken by the CIA and might also choose to assess the extent of coordination between the CIA and DOD. P.L. 108-458 requires that a report be submitted to defense and intelligence committees by June 2005 describing procedures established in regard to coordination and deconfliction of CIA and DOD operations. That report could indicate that initiatives by the executive branch have resolved all issues or it could provide the basis for legislative action in the future.

There are a variety of views on this possible change. Former acting Director of Central Intelligence John McLaughlin reportedly stated that “I think we have a perfect marriage now of CIA and military capabilities. CIA brings to the mix agility and speed. Military brings lethality.”¹⁴ The military has also expressed its reservations with Chairman of the Joint Chiefs of Staff General Richard Meyers suggesting that “there is not a lot of enthusiasm at this point for that kind of change.”¹⁵ Some suggest that the major source of friction between the CIA and SOF — the ability to fund resistance groups

¹¹ *The 9/11 Commission Report*, p. 416.

¹² Kibbe, p. 112.

¹³ Ann Scott Tyson, “Do Special Forces Need Special Funding,” *The Christian Science Monitor*, May 24, 2004.

¹⁴ John L. Lumpkin, “CIA, Pentagon Officials Fight Proposal to Merge Covert Forces,” *Associated Press*, August 30, 2004.

¹⁵ *Ibid.*

— has been corrected by congressional action and that both organizations have since improved their planning and coordination of operations.

CIA has not maintained a sizable paramilitary force “on the shelf.” When directed, it has built paramilitary capabilities by using its individuals, either U.S. or foreign, with paramilitary experience under the management of its permanent operations personnel in an entity known as the Special Activities Division. The permanent staff would be responsible for planning and for maintaining ties to former CIA officials and military personnel and individuals (including those with special language qualifications) who could be employed should the need arise. Few observers doubt that there is a continuing need for coordination between the CIA and DOD regarding paramilitary capabilities and plans for future operations. Furthermore, many observers believe that the CIA should concentrate on “filling the gaps,” focusing on those types of operations that DOD is likely to avoid. Nevertheless, they view this comparatively limited set of potential operations to be a vitally important one that should not be neglected or assigned to DOD. There may be occasions when having to acknowledge an official U.S. role would preclude operations that were otherwise considered vital to the national security; the CIA can provide the deniability that would be difficult, if not impossible, for military personnel.¹⁶

What Are the Legal Considerations of this Change? Some experts believe that there may be legal difficulties if SOF are required to conduct covert operations. One issue is the legality of ordering SOF personnel to conduct covert activities that would require them to forfeit their Geneva Convention status to retain deniability.¹⁷ In order to operate covertly and with deniability, SOF could be required to operate without the protection of a military uniform and identification card which affords them combatant status under the Geneva Convention if captured. Another issue is that covert operations can often be contrary to international laws or the laws of war and U.S. military personnel are generally expected to follow these laws.¹⁸

Congressional Oversight. Some suggest that if this recommendation is adopted, that congressional oversight may need to be re-evaluated and perhaps modified. Traditionally, the public text of intelligence legislation has included few provisions regarding paramilitary operations; levels of funding and other details are included in classified annexes which are understood to have the force of law. The House and Senate Intelligence Committees do have considerable influence in supporting or discouraging particular covert actions. In a few cases Congress has formally voted to deny funding to ongoing covert operations. Special Forces, however, fall under the House and Senate Armed Services Committees, and it is unclear how Congress would handle oversight if covert operations are shifted to SOF as well as how disputes between the intelligence and armed services committees would be dealt with.

¹⁶ See U.S. Congress, 102nd Congress, 1st session, Senate, Select Committee on Intelligence, *Authorizing Appropriations for Fiscal Year 1991*, S.Rept. 102-85, June 19, 1991, pp. 42-48.

¹⁷ These and a variety of other related legal issues are covered more extensively in Colonel Kathryn Stone’s *All Necessary Means - Employing CIA Operatives in a Warfighting Role Alongside Special Operations Forces*, U.S. Army War College Strategy Research Project, July 4, 2003, p. 13.

¹⁸ Ibid.