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# AIR WAR COLLEGE

## RESEARCH REPORT

THE PROPER ROLE OF THE UNITED STATES MILITARY  
IN COMBATTING DRUG SMUGGLING

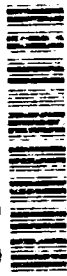
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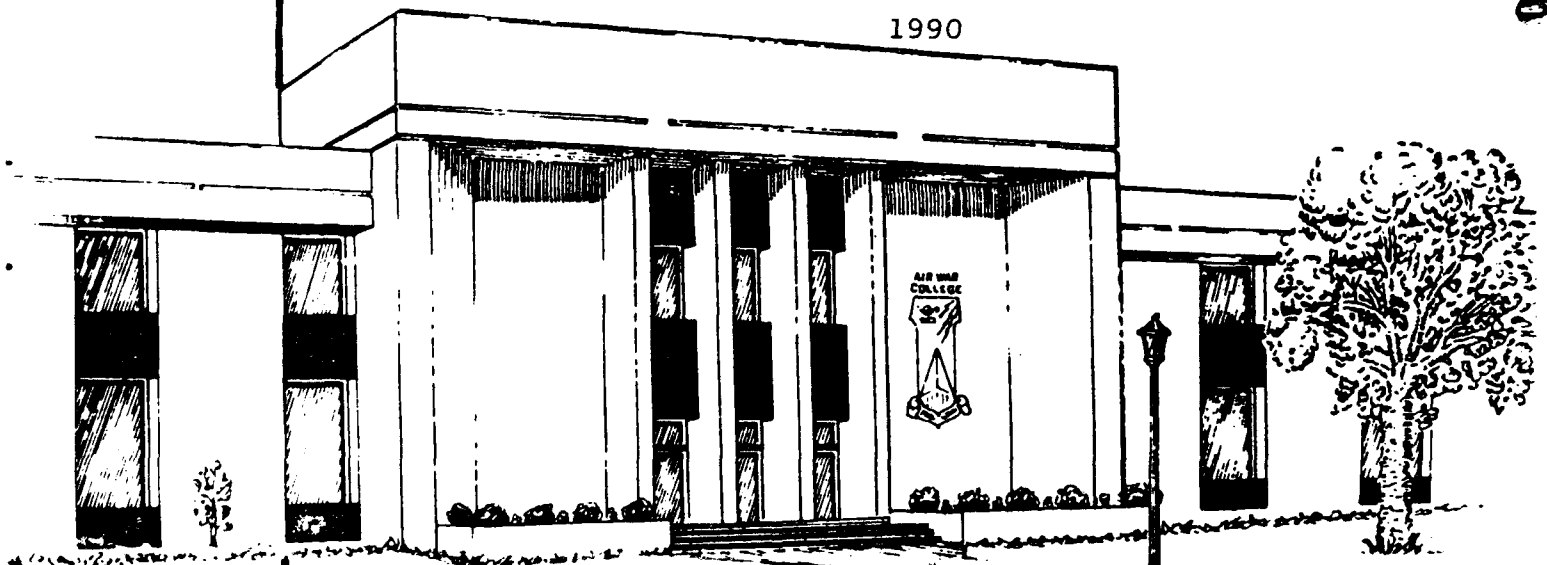
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THE PROPER ROLE OF THE UNITED STATES MILITARY  
IN COMBATting DRUG SMUGGLING

by

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A DEFENSE ANALYTICAL STUDY SUBMITTED TO THE FACULTY

IN

FULFILLMENT OF THE CURRICULUM

REQUIREMENT

Advisor: Lt Col Paul J. Smith

MAXWELL AIR FORCE BASE, ALABAMA

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## EXECUTIVE SUMMARY

The United States military has become increasingly involved in law enforcement operations aimed at combatting illegal drugs. The military's direct participation in this effort has two perspectives.

From the political perspective, American tradition opposes military intrusion into civil affairs. As a result, direct military participation in enforcing drug laws has legal and political limits. The military is most restricted when operating within the United States, but less so when operating outside the United States.

From an operational perspective, military support to civil law enforcement has improved interdiction of drug smuggling. Nevertheless, the national effort to stop illegal drug smuggling has failed as more drugs than ever before are entering the United States. The problem is one of demand.

Nonetheless, law enforcement, supported by the military, must continue to attack the supply side of illegal drugs while the demand side is brought under control. Civil law enforcement agencies must remain responsible for combatting illegal drugs, but the military has an important role in support. A number of recommendations are offered at the end of this study. These recommendations are politically acceptable and will improve the effectiveness of the military's participation in combatting illegal drugs.

In the final analysis, however, the war on drugs is a civil law enforcement operation and must remain the responsibility of civil law enforcement agencies. Moreover, law enforcement alone, no matter how well supported by the military, cannot solve the nation's drug problem. The military should avoid any suggestion that it can take over and win the fight against illegal drugs.

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## **PART I**

### **INTRODUCTION**

**The United States has declared "war on drugs", a rhetorical device intended to convey the United States' commitment to use the full range of its resources to combat illegal drugs in the United States. This "war" has been largely fought by civil authorities. But as success eluded them, the nation has turned increasingly to its military to support civil law enforcement.**

**Military support to civil law enforcement is of two kinds: indirect and direct. The military indirectly supports civil law enforcement when it provides equipment, material, training, bases, maintenance services, and intelligence collected incident to military missions. The military directly participates in law enforcement operations when it detects, tracks, intercepts, or pursues drug smugglers. The military also directly participates in law enforcement operations when it locates or destroys illegal drug sources in the United States or in foreign countries.**

**The military's indirect support to civil law enforcement is relatively noncontroversial. What is controversial, however, is the military's direct participation in civil law enforcement. This study analyzes what role the military should have in directly participating in civil law enforcement operations aimed at intercepting drug smugglers and at eliminating illegal drug sources in the United States and in foreign countries.**

The Department of Defense (DOD) is in the process of trying to fit the armed forces into the nation's law enforcement strategy on combatting illegal drugs. The goal is to achieve a forward-leaning posture that will cut off the flow of drugs into the United States. The principal DOD mission is to conduct operations to detect and monitor aircraft and vessels "suspected" of smuggling illegal drugs across the borders of the United States. DOD also directly participates, on a limited basis, in operations aimed at eliminating drug sources in foreign countries and in the United States.

This study is in six parts. Following this introduction, part II analyzes the legal and political issues involved when the military directly participates in enforcing civil law. The purpose of this part is to determine what direct military participation in combatting illegal drugs is legally and politically acceptable. No military course of action should be undertaken, no matter how effective or feasible, if it is not politically acceptable. As Clausewitz points out, wars are instruments of policy and cannot be divorced from their political objectives. (1:86-89)

Part III analyzes the military's operational effectiveness in intercepting drug smugglers. It examines the role played by the United States military in combatting illegal drugs. It takes into consideration new directives given to DOD in the national drug strategy and the lead role

assigned to the military to detect and monitor aerial and maritime transit of illegal drugs into the United States and to coordinate effective communications. The emphasis in this part is on the DOD assets that are key to DOD's execution of its principle mission to detect and monitor aerial and maritime drug traffic into the United States. What DOD resources are available to detect and monitor illegal drug traffic? What DOD resources have been used in drug interdictions in the past and with what success? Is it likely that past efforts in drug interdiction can be improved by modernizing existing systems or by adding more systems, especially radar? Can drug interdiction be made more effective by improving coordination of effort among the Federal agencies, military and civilian?

Part IV analyzes the overall effectiveness of the United States' efforts, civilian and military, to suppress drug smuggling and to eliminate drug sources in foreign countries. As will be seen, these efforts have failed, and the reasons for this failure are examined in this part.

The conclusions of this study are presented in Part V.

Part VI closes this study with recommendations for the military's direct participation in law enforcement operations aimed at combatting illegal drugs. These recommendations are offered within the framework of what is legally and politically acceptable and operationally effective as developed in Parts II-IV of this study.

As this study will show, the military can aid in intercepting aircraft, vessels, vehicles, and persons clandestinely entering the United States for the purpose of smuggling drugs. The military can also assist in inspecting aircraft, vessels, and vehicles crossing into the United States at legal ports of entry. Nevertheless, not even increased military participation in the war on drugs will eliminate the supply of drugs for sale on the streets. There are too many sources of drugs, foreign and domestic, and too many ways to smuggle drugs into the United States.

In the final analysis, the military, despite its impressive resources, is not likely to be a cure-all for the war on drugs. This appears to have been largely overlooked by the national drug strategists and the public. This perspective needs to change. As Clausewitz declared in On War,

"The...supreme...judgement that the statesman and commander have to make is to establish the kind of war on which they are embarking.... (1:88)

The statesman, the commander, and the public, need to understand the nature of the war on drugs and what the military can and cannot do, legally, politically and operationally.

**PART I**  
**LEGAL AND POLITICAL IMPLICATIONS OF USING THE**  
**MILITARY TO ENFORCE CIVIL LAW**

**Introduction**

This part examines the legal and political issues involved when the military directly participates in enforcing civil law. It will describe the Constitutional and legislative background, and in due course, analyze the principal legal issues:

- What standard has Congress established for determining when the military may be used to enforce civil law?
- Do Congressional constraints on using the military to enforce civil law apply outside the territorial limits of the United States?
- Do these constraints apply to the Navy and Marine Corps?
- Does the Constitution limit Congress' power to authorize use of the military to execute civil law?

Understanding the legal issues is important for several reasons. First, what is Constitutionally permissible defines the outer parameters of the military's role in civil law enforcement. Secondly, what the statutes permit and

\*  
The "military" includes Defense Department military plus the Coast Guard. In this article, however, military refers only to DOD military. If inclusion of the Coast Guard is intended, that will be expressly stated.

prohibit needs to be known to determine the statutory changes required if a broader role is proposed for the military in combatting illegal drugs. Lastly, but most importantly, the Constitutional and statutory provisions, to a large extent, express the underlying themes for what military role in enforcing civil law is politically acceptable in the United States.

This part closes with an analysis of the political aspects of using the military to suppress drug smuggling and to eliminate drug sources in the United States and in foreign countries. The focus is on what direct military participation in law enforcement operations is politically acceptable and what is not. Political acceptability is examined not only from the United States' perspective, but also from the perspective of foreign countries. The latter is obviously important when the United States military operates in foreign countries. The importance of political acceptability must not be underestimated. No matter how effective, the military should not undertake any role in combatting illegal drugs unless that role is politically acceptable to the American public.

#### The Constitutional Background

As a Constitutional matter, Congress has the power to authorize the military to enforce civil law and to prescribe how and when.

The term "military", used interchangeably with "armed forces", refers to the land and naval forces of the United

States: the Army, Navy, Air Force, Marine Corps, and Coast Guard. (2) When the Constitution was adopted, the United States military did not include the militia of the several States. That is only partly true now because by law the militia, when in the service of the United States, is part of the United States military. (3)

The Constitution expressly provides that Congress has the power to authorize calling the militia to Federal service for the purpose of enforcing Federal law. Article I, section 8, of the Constitution, grants Congress the power "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions." Without this clause, Congress could not provide for calling the militia into Federal service, at least not without the consent of the States. The militia are armed forces of the several States. They exist independently of the Constitution, as guaranteed by the Second Amendment. (4:4-5) No Constitutional provision authorizes Congress to establish the militia. Instead, Article I, section 8, grants to Congress the power to organize, arm, and discipline the militia and to provide "for governing such Part of them as may be employed in the Service of the United States...."

The Constitution also grants to Congress the power to authorize the United States military to enforce civil law. Under Article I, section 8, Congress is authorized to establish "Armies" and "a Navy" and to make the Rules for

[their] "Government and Regulation...." Section 8 also grants to Congress the power

To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Two "Powers" vested by the Constitution in the United States government or in an officer of the government are relevant. Article II, section 2, vests the executive power in the President, and section 3 charges the President to "take Care that the Laws be faithfully executed...." Article IV, section 4, requires the United States to "guarantee to every State ... a Republican Form of Government" and to "protect each of them against ... domestic Violence."

Thus, Congress is empowered to establish and "make the Rules for the Government and Regulation" of the United States military. Moreover, Congress has the power to make all laws necessary and proper for the President to execute the laws and to protect the States against domestic violence. Thus, Congress' power to authorize the military to enforce civil law is provided for within these Constitutional provisions.

The Constitution is not as specific in empowering Congress to authorize using the military to enforce civil law as it is in the case of the militia. But this is because a specific clause was needed to empower Congress to call the armed forces of the States into Federal service.

No similar clause is required for the armed forces of the United States as they are already in Federal service.

The Constitution does not expressly place any limits on Congress' power to authorize the military to execute civil law. Are limits to be implied, as some have suggested? For example, may Congress authorize military members to arrest drug smugglers after the smugglers have entered the United States? This issue will be addressed, but before doing so, Congressional legislation pertaining to military enforcement of civil law will be examined.

#### Military Enforcement of Civil Law. 1789 - 1878

From the adoption of the United States Constitution in 1789 until 1878, when the Posse Comitatus Act was enacted, military forces often enforced civil law when requested by civil law enforcement authorities. Much of this activity was pursuant to statutory authority.

A series of Congressional Acts authorized the President to use the militia, and beginning in 1807, the military as well, to enforce Federal law whenever civil authorities were incapable of doing so. (5) President Washington, for example, acted under the authority of the 1792 Act in using the militia to suppress the Whisky Rebellion in 1793. (6:157-58)

In 1871, Congress authorized the President to use the militia and military to suppress, among other things, unlawful combinations or conspiracies that opposed or obstructed execution of Federal law. Unlike, earlier legislation, the 1871 legislation did not condition use of

the militia or military on the inability of civil authorities to execute Federal law. (7)

More far-reaching legislation, however, as interpreted, was the Judiciary Act of September 24, 1789. (8) Section 27 of that Act authorized a United States marshal to "command all necessary assistance in the execution of his duty." Civil and military officials interpreted Section 27 as authorizing marshals to summon military forces as a posse to assist marshals in serving judicial process, and this authority was used in many cases. (9:866-87; 10:87-90, 92-95). Thus, as interpreted, the scope for military enforcement of civil law under Section 27 was considerably broader than under other legislation authorizing military enforcement of civil law. This was because under Section 27, any marshal or deputy marshal could summon the military to enforce Federal law. Other legislation authorizing military enforcement of Federal law required the President's personal approval before the military could act.

From 1789 to 1878, the military was often used to enforce civil law, sometimes pursuant to Congressional authorization and sometimes not. By 1878, it had become a common practice for military officers to respond to requests for aid to enforce laws from every marshal and deputy marshal. (10:87-90, 92-95; 11:3849) Congress was dissatisfied with this state of affairs, and in 1878, adopted legislation to end it.

The Posse Comitatus Act, 18 U.S.C. 1385

The Posse Comitatus Act, originally enacted in 1878, and amended in 1947 to apply to the Air Force, prohibits using the Army or Air Force to enforce civil law:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

Congress intended by this post reconstruction legislation to end the use of the Army to intervene in the internal affairs of the former Confederate states, especially elections.

(10:93-96) The immediate practical effect of the Act, as Congress intended, was to prohibit United States marshals and their deputies from summoning the Army to execute civil law. (9:867) This is because the Judiciary Act of 1792 does not expressly authorize using the military to enforce civil law. That had been an implied interpretation of the Judiciary Act.

The Posse Comitatus Act, however, did not affect using the Army to enforce civil law under statutes expressly authorizing use of the military. For example, because expressly authorized by statute, the President may use the military to enforce Federal law when the statutory conditions have been met as previously described. In fact, many statutes expressly authorize using the military to enforce civil law in special circumstances, such as in enforcing neutrality laws. (12)

In the absence of express statutory authority, however, the Army and Air Force may not be used to enforce civil law, at least within the territorial jurisdiction of the United States. How then is using the Army or Air Force as a posse comitatus or to execute the law interpreted? Classic law enforcement activities, such as arrests and searches and seizures, obviously amount to execution of the law. But what about interrogating suspects, interviewing witnesses, or acting as an undercover agent? Or supplying equipment, flying aerial reconnaissance, or giving expert advice on how to conduct law enforcement operations? These questions and others were addressed administratively and in judicial decisions, but the answers and rationale were often different.

A notable example of disagreement arose out of the 1973 civil disorder at Wounded Knee when an armed group of the American Indian Movement confronted Federal law enforcement agents. At the request of Federal officials, the Army provided equipment, maintenance for that equipment, expert advice on how to handle the disorder, and aerial reconnaissance. Four Federal District Courts considered arguments that the Army involvement violated the Posse Comitatus Act. On the same facts, two found a violation, and two found no violation. The two courts finding no violation differed on rationale. (13:194; 14:924-25; 15:368; 16:1375)

A detailed analysis of these court decisions, however, is not required, for in 1981 Congress undertook to clarify what the Posse Comitatus Act meant in prohibiting the Army and the Air Force from enforcing civil law. As shall be shown, Congress succeeded in part. But the 1981 legislation also created new confusion which subsequent amendments did nothing to resolve.

10 U.S.C. secs. 371-380. Military Support for  
Civilian Law Enforcement Agencies

The 1981 legislation, as amended, authorizes the military to participate indirectly in enforcing civil law. In addition, this legislation authorizes certain types of direct participation when enforcing drug, immigration, or customs laws.

Congress enacted the 1981 legislation to state clearly what support the Army, Navy, Air Force, and Marine Corps could provide to civilian law enforcement officials. Congress intended to clarify the meaning of the Posse Comitatus Act. (17:3; 18:148) What the Posse Comitatus Act prohibited, according to the Senate Report accompanying the legislation, was the military's direct participation in civil law enforcement. Indirect assistance was permitted. The 1981 legislation, with one exception, said the Senate Report, was intended to reaffirm this basic principle of the Posse Comitatus Act. (18:148)

The 1981 legislation, as amended, expressly states this basic principle. Section 374(c) provides:

The Secretary of Defense may ... make Department of Defense personnel available to ... civilian law enforcement agenc[ies] for purposes other than described in paragraph (2) only to the extent that such support does not involve direct participation by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law. (Emphasis added)

And, Section 375 prohibits direct participation by a military member in a search and seizure, an arrest, or other similar activity unless participation is otherwise lawful.

This "direct participation" standard has been accepted by many courts. (14:924-25; 19:114) However, several judicial decisions have used a different standard to express what the Posse Comitatus Act means. The first case to use this other standard was United States v. McArthur.

Rejecting the "direct participation" standard as too mechanical, McArthur declared:

The Posse Comitatus Act prohibits using Army or Air Force members in such a way that "military personnel subjected ... citizens to the exercise of military power which was regulatory, proscriptive, or compulsory in nature, either presently or prospectively." (13:194)

McArthur was decided before the 1981 legislation.

Nevertheless, two cases decided after 1981 have used the "regulatory, proscriptive, or compulsory" standard to decide whether military involvement in civil law enforcement violated the Posse Comitatus Act. (20:895; 21:1390)

No difficulty is presented if the two standards have the same meaning and, when applied to the same situation,

reach the same result. McArthur and Red Feather, for example, both arose out of the 1973 confrontation at Wounded Knee, and both concluded that no violation of the Posse Comitatus Act had occurred. Nor is there any difficulty if the two standards are joined as was done in United States v. Yunis:

[No violation of the Posse Comitatus Act is shown where military] participation and involvement did not embrace nor did it extend to such regulatory, proscriptive, or compulsory military powers as contemplated under the Act. The facts ... show ... at most a passive role which indirectly aided the execution of United States laws. (20:891)

The difficulty, however, is that the two standards do not necessarily mean the same thing. True, military participation in a law enforcement activity will always be direct when that participation subjects citizens to regulatory, compulsory, or proscriptive military power. The reverse, however, is not always true. Not every direct involvement in a law enforcement activity will "compel, regulate, or proscribe" because some law enforcement activity, such as a covert operation, is unknown to the citizen.

In any event, the ultimate standard must be the "direct involvement standard." That is the statutory standard established by the 1981 legislation, as amended, and it controls the interpretation of the Posse Comitatus Act as well. (22:526-35)

Specific Military Activities to Support  
Civil Law Enforcement

Under 10 U.S.C. secs. 371-374, the following indirect military participation in civil law enforcement activities is authorized:

- Furnishing information collected during the normal course of military training or operations (sec. 371).
- Furnishing equipment (including associated supplies or spare parts) and base and research facilities (sec. 372).
- Training civil law enforcement officials to operate and maintain equipment (sec. 373(1)).
- Providing expert advice relevant to the purposes of sections 371-380 (sec. 373(2)). This is discussed below.
- Maintaining equipment (sec. 374(a)).

These matters were considered a codification of administrative practice under the Posse Comitatus Act and intended no change to existing law that the military could provide indirect assistance. (17:7; 18:148-49; 23:119-20)

The 1981 legislation did, in one instance, change existing law. This "modest and conditional departure" authorized military members to operate equipment to monitor and communicate the movement of air and sea traffic when aiding civil authorities to enforce drug, immigration, or customs laws. (17:15; 24) This modest expansion in the

authority of the military to participate directly in enforcing civil law was deemed necessary for effective enforcement of drug laws. (17:12; 23:120) The 1981 legislation was in fact prompted in large part by Congress' desire that the military play a larger role in supporting the nation's efforts against illegal drug activity, especially drug smuggling. (17:1; 18:148)

The 1981 legislation has been amended several times with significant changes made by the 1986 and 1988 amendments. These amendments have steadily expanded the military's authority to participate directly in civil law enforcement and reflect Congress' increasing concern to curb illegal drug activity. (25:447)

Under the current version of 10 U.S.C. sec. 374(b), military members may operate equipment for certain purposes when requested by a Federal law enforcement agency which enforces Federal drug, immigration, or customs laws. Equipment operation must relate to (1) a criminal violation of Federal drug, immigration, or customs laws; or (2) aid that Federal agency is authorized to furnish to a State, local, or foreign government involved in enforcing similar laws. Military members are authorized to participate in the following law enforcement activities:

-- Detecting, monitoring, and communicating the movement of air and sea traffic. The legislation enacting the 1988 amendments to 10 U.S.C. secs. 371-380 also designated the Department of Defense as the single lead agency for

detecting and monitoring aerial and maritime transit of illegal drugs into the United States. (26)

-- Conducting aerial reconnaissance over land.

According to the Conference Report accompanying the 1988 legislation, this authority is for reconnaissance of property, not surveillance of people. (25:451)

-- Intercepting vessels or aircraft detected outside the land area of the United States. Interception is limited to communicating with aircraft or vessels to direct them to go to a location designated by civilian officials. The Conference Report states that physically interrupting passage is still prohibited. (25:451,452)

-- Pursuing vessels or aircraft into the land area of the United States when interception occurs outside the land area of the United States.

-- Operating equipment to facilitate communications.

-- Operating a base of operations and transporting civilian law enforcement officials to support a law enforcement operation outside the land area of the United States. This requires approval of the Secretaries of Defense and State and the Attorney General.

The authority to transport civilian law enforcement officials should be understood as authorizing direct military participation in a law enforcement activity. In many cases, transporting law enforcement officials is indirect participation and should not require approval of the Secretaries of State and Defense and the Attorney

General. (27:1179) For example, transporting law enforcement officials from Miami to Bogota, Columbia, is indirect participation. But a military helicopter crew who flies law enforcement officials to a drug processing laboratory in the jungle is directly participating in a law enforcement operation.

The 1981 legislation, as amended, expressly prohibits military members from participating in searches and seizures, arrests, and other similar activities (sec. 375). Other similar activities include interrogating suspects, interviewing witnesses, acting as informants or undercover agents, and pursuing escaped prisoners. (17:8; 14:924; 28:373-76; 29:465)

Thus, 10 U.S.C. secs. 371-379 was intended to reaffirm the basic principle of the Posse Comitatus Act that the military could provide indirect assistance to civil law enforcement agencies. In addition, certain types of direct participation were authorized in enforcing drug, custom, and immigration laws.

Equally important, this legislation was not intended to remove existing authority to use the military to enforce civil law. Section 378, a nonpreemption provision, provides that nothing in sections 371-380 is to be construed as prohibiting what was lawful prior to December 1, 1981 (when these provisions were first enacted).

The 1981 legislation, as amended, did not resolve all problems that had arisen under the Posse Comitatus Act and

created some of its own. These issues will now be addressed.

### Collecting Information

The 1981 legislation, as amended, authorizes military members to conduct two types of information collection when related to enforcing drug, immigration, or customs laws.

(30) The first is aerial reconnaissance of property. The second is detecting and monitoring the movement of air and sea traffic. These activities may be conducted anywhere, including within the territorial limits of the United States.

In addition, as discussed below, no Constitutional nor statutory provision prohibits military members from conducting law enforcement operations outside the territorial limits of the United States. Nor does any such provision prohibit the Navy or Marine Corps from conducting law enforcement operations anywhere. Thus, the Navy and Marine Corps, anywhere, and the Army and Air Force, when operating outside the United States, may conduct information collection for any civil law enforcement purpose.

In the United States, however, and unless involving one of the two types of information collection permitted when enforcing drug, immigration, or custom laws, members of the Army and Air Force are prohibited from collecting information solely for civil law enforcement purposes. The McArthur and Red Feather cases that arose out of the Wounded

Knee disorder reached a different conclusion, but those cases on this point were wrong.

In the Wounded Knee disorder, the Air Force, at the request of civil authorities, flew aerial photographic reconnaissance. The McArthur and Red Feather cases found no violation of the Posse Comitatus Act. Red Feather concluded this was indirect assistance. (14:925) McArthur reasoned that the military could lend highly skilled pilots in a helicopter in the same manner it could lend equipment. (13:194) Flying aerial reconnaissance solely for a civil law enforcement purpose, however, is indirect aid only if collecting information is itself not regarded as a law enforcement activity. But collecting information solely for a law enforcement purpose, by definition, is a law enforcement activity. And, a military pilot who flies aerial reconnaissance solely to collect information for a law enforcement activity directly participates in a law enforcement operation. Moreover, lending a pilot is not the same as lending equipment. The Posse Comitatus Act prohibits using Army and Air Force members, not their equipment, a distinction reaffirmed by the 1981 legislation and its amendments. (30)

Other provisions of the 1981 legislation and its amendments support the conclusion that to collect information for a law enforcement purpose is to participate directly in enforcing civil law. As previously stated, 10 U.S.C. sec. 374(b) authorizes military members, when

enforcing drug, immigration, or customs laws, to conduct aerial reconnaissance and to detect and monitor maritime and air transit. Further, 10 U.S.C. sec. 371, authorizes the Department of Defense to provide information to civil law enforcement agencies when that information has been collected incident to military training or operations. These provisions would have been unnecessary if collecting information for law enforcement purposes was regarded merely as indirect assistance.

#### Furnishing Advice

10 U.S.C. sec. 373 authorizes military members to provide expert advice relevant to the purposes of sections 371-380. May military members provide expert advice not relevant to the purposes of sections 371-380? In the Wounded Knee disorder, an Army officer advised Federal civil authorities on rules of engagement to use in handling the disorder. McArthur and Red Feather found no violation of the Posse Comitatus Act. Red Feather simply concluded that this was indirect assistance. (14:925) McArthur's reasoning was more elaborate. In its view, lending experts to provide advice was no different from lending equipment. The court also distinguished advice from decisions. (13:194-95)

These opinions are in error. A military member who advises law enforcement officials how to handle law violators in a specific situation is directly participating in that law enforcement operation. In such a situation, the military member is furnishing advice to influence civil

authorities' decisions in a specific law enforcement situation. The legislative history of the 1981 and 1988 legislation shows that Congress understood such activity to be directly participating in civil law enforcement operations. (17:103; 23:119; 25:451)

These restrictions on providing expert advice do not apply to the Navy or Marine Corps, nor do they apply to any military member providing advice outside the United States. The reason for this is addressed in the next two sections.

#### The Navy and Marine Corps

The Posse Comitatus Act applies to the Army and Air Force. It does not apply to the Navy or Marine Corps. The Department of Defense, by regulation, has extended the policy of the Posse Comitatus Act to the Navy and Marine Corps, but permits the Secretary of the Navy to authorize exceptions in individual cases. (31:4-6) Thus, members of the Navy and Marine Corps may enforce civil law, and could do so without authorization by the Secretary of the Navy if the Department of Defense changed its regulation. Or could they?

Unlike the Posse Comitatus Act, the 1981 legislation and its amendments do apply to the Navy and Marine Corps. Under 10 U.S.C. sec. 374(c), "Department of Defense personnel" are prohibited from directly participating in civilian law enforcement operations unless otherwise authorized by law. Section 375 prohibits members of the "Army, Navy, Air Force, and Marine Corps" from directly participating in arrests,

searches and seizures, and similar activities, unless otherwise authorized by law. Do these provisions impose a statutory prohibition on the Navy and Marine Corps similar to that which the Posse Comitatus Act imposes on the Army and Air Force? The answer is "no." This is because direct participation by the Navy and Marine Corps in civil law enforcement, including arrests, searches and seizures and similar activities, is otherwise authorized by law.

The 1981 legislation and amendments includes a nonpreemption provision. Under 10 U.S.C. sec. 378, nothing in sections 371-380 is to be "construed to limit the authority of the executive branch to use military personnel or equipment for civilian law enforcement purposes beyond that provided by law before December 1, 1981." Before that date, the Navy and Marine Corps could be used to enforce civil law as the Posse Comitatus Act only applied to the Army and Air Force. Thus, as a result of the nonpreemption provision, the prohibitions in sections 374(c) and 375 against military enforcement of civil law do not apply to the Navy and Marine Corps unless extended to these services by regulation.

This conclusion is supported by legislative history. The Conference Report accompanying the 1981 legislation states that section 378's nonpreemption provisions ensure that the restrictions in sections 371-379 do not apply to the Navy or Marine Corps. (23:122)

Two judicial decisions also support this conclusion. In United States v. Roberts, (32:565) the court ruled that the lawfulness of using the Navy to enforce civil law is a matter for executive regulation. In that case, a Navy vessel with Coast Guard members intercepted a ship in the Pacific Ocean. A Navy regulation had extended the policy of the Posse Comitatus Act to the Navy, but provided for the Secretary of the Navy to authorize exceptions. The Secretary had done so, authorizing Navy assistance to the Coast Guard in drug interdiction operations, but only for the Atlantic Ocean. On these facts, the court held that the Navy's interception of the vessel in the Pacific Ocean violated 10 U.S.C. sec. 375. The court agreed that section 378's nonpreemption provision rendered lawful any use of the Navy for civil law enforcement purposes that was lawful before December 1, 1981. But the court held that the Navy's interception in this case was unlawful because it violated a Navy regulation. Thus, the lawfulness of using the Navy or Marine Corps to enforce civil law hinges on executive regulation.

The other case to consider this issue is United States v. Del Prado-Montero. (33:113) In that case, a Navy vessel with Coast Guard members pursued and used disabling shots to bring a civilian vessel to a stop. The court found no violation of the Posse Comitatus Act, pointing out that Navy regulations permitted the type of assistance the Navy provided to the Coast Guard.

This type of assistance has also received Congressional approval. In 1986, Congress added 10 U.S.C. sec. 379 requiring Coast Guard members to be assigned to appropriate surface naval vessels at sea in drug interdiction areas to perform law enforcement functions.

#### Extraterritorial Application

The Posse Comitatus Act is a criminal statute. The leading case on whether a criminal statute applies outside the territorial jurisdiction of the United States is the Supreme Court's decision in United States v. Bowman. Whether a criminal statute applies extraterritorially, stated the court, depends on the "purpose of Congress as evinced by the description and nature of the crime and upon the territorial limitations upon the power and jurisdiction of a government to punish crime under the law of nations." (34:97-98; 35:85-120) The jurisdiction of Congress to punish those who use United States military forces to execute the laws overseas is not questioned. Thus, the issue is whether Congress intended the Posse Comitatus Act to apply extraterritorially. The language of the Act does not expressly state it applies extraterritorially. Nevertheless, such an intent may be inferred from the "description and nature of the crime."

In Bowman, the court distinguished crimes against private individuals or their property from crimes that obstructed or defrauded the government. The former would not be given extraterritorial effect absent an express

declaration of Congress. But criminal statutes in the latter category would be given extraterritorial effect if to limit application to United States territory would "greatly curtail the scope and usefulness of the statute and leave open a large immunity for frauds [and obstructions] as easily committed by citizens on the high seas and in foreign countries as at home." (34:98)

A review of Congress' purpose in enacting the Posse Comitatus Act establishes that limiting its effect to United States territory would not affect the "scope and usefulness" of the statute. That purpose was to end domestic use of the Army in enforcing laws. (14:921-23)

The courts that have considered the issue have held that the Posse Comitatus Act does not apply extraterritorially. (36:936; 37:772-73; 38:351) These cases did involve special circumstances -- use of military forces occurred overseas during the occupation of a foreign country. Nevertheless, available judicial opinion supports the conclusion, based on analysis using the Bowman criteria, that the Posse Comitatus Act does not apply extraterritorially.

That does not end the issue about using military members to enforce the law overseas. Unlike the Posse Comitatus Act, the 1981 legislation and its amendments do apply overseas. And, two provisions, 10 U.S.C. secs. 374(c) and 375, prohibit military members from directly participating in civilian law enforcement operations,

including arrests, searches and seizures, and similar activities, unless otherwise authorized by law. Yet, despite the extraterritorial application of these provisions, they do not prohibit military members outside the United States from directly participating in civilian law enforcement operations, including arrests and searches and seizures. This is because such participation is otherwise authorized by law in the same manner that Navy and Marine Corps participation in civil law enforcement is otherwise authorized by law.

The nonpreemption provision of 10 U.S.C. sec. 378 renders lawful military participation in civil law enforcement that was lawful before December 1, 1981. Before that date, military members could be used to enforce civil law outside the United States because the Posse Comitatus Act does not apply extraterritorially. Thus, as a result of the nonpreemption provision, the prohibitions in sections 374(c) and 375 against military enforcement of civil law do not apply to military conduct outside the United States.

This conclusion does not render unnecessary the provisions of section 374(b) authorizing certain direct law enforcement activity outside the land area of the United States. These provisions are needed for waters within the territorial jurisdiction of the United States.

### The Constitutional Dimension Revisited

When first addressing this issue, the conclusion reached was that the Constitution does not prohibit using the military to enforce civil law, but leaves this matter to Congress. Having examined Congressional legislation on this subject, the Constitutional issue is further analyzed. This is an important issue because many continue to call for increased military participation in the drug "war." And, already, civilians are being subjected to military power that is regulatory, compulsive, and proscriptive. Interdiction of vessels and aircraft and their pursuit are examples. So is the Navy's firing of disabling shots to force a vessel to stop.

Several court decisions have stated that the Constitution places limits on using military members to enforce civil law. The most comprehensive discussion is Bissonette v. Haig. (21:1384-91) This case cites four Constitutional provisions. Two provisions establish civilian control over the military: Article I, section 8, grants Congress the power to govern the armed forces; and Article III, section 2, makes the President Commander in Chief of the armed forces. In addition, Article I, section 8, limits appropriations for the Army to two years, and the Third Amendment prohibits involuntary quartering of soldiers in houses during peacetime. None of these provisions, however, can be understood to prohibit Congress from authorizing military enforcement of civil law.

Moreover, as earlier discussed, Congress has from the earliest times in this nation's history, authorized military enforcement of civil law and prescribed how and when. In addition to other laws discussed earlier, 14 U.S.C. secs. 2 and 89 authorize members of the Coast Guard, a military service, to enforce civil law. They are expressly authorized to conduct arrests and searches and seizures.

Bissonette v. Haig also cited other reasons for a Constitutional limit on using military members to enforce civil law:

Civilian rule is basic to our system of government. The use of military forces to seize civilians can expose civilian government to the threat of military rule and the suspension of constitutional liberties. On a lesser scale, military enforcement of the civil law leaves the protection of vital Fourth and Fifth Amendment rights in the hands of persons who are not trained to uphold these rights. It may also chill the exercise of fundamental rights, such as the rights to speak freely and to vote, and create the atmosphere of fear and hostility which exists in territories occupied by enemy forces. (21:1387)

These matters do suggest that there should be limits on using military members to execute civil law. They do not, however, imply Constitutional limits on Congress' authority to decide what those limits will be.

#### Domestic Political Implications

As a Constitutional matter, the military may be used to enforce civil law within limits established by Congress. This does not answer, however, what is politically acceptable in the United States. Reference to Congressional legislation does not provide a complete answer either. Legislation can

be changed. Moreover, as previously discussed, this legislation restricts the Army and Air Force from directly participating in law enforcement operations within the United States. Restrictions on the Navy and Marine Corps and on military activities outside the United States are imposed by executive regulation. Thus, as a legal matter, there is considerable room for direct military participation in enforcing civil law. Whether this would be politically acceptable is another question and the issue under discussion.

The United States military exists principally to defend the United States against foreign enemies. Crime is for the police. When the military undertakes to act as police, it enters the civil arena, sometimes with unwelcome consequences. As pointed out by the Supreme Court, there is "a traditional and strong resistance of Americans to any military intrusion into civilian affairs." (39:15) This tradition is reflected in the Declaration of Independence, the Constitution, Congressional legislation, and Supreme Court decisions. (21:1387-91) For the military routinely to enforce civil law would jeopardize the rights of the civilian community and the nonpolitical professionalism of the military services. (17:179).

This tradition should not be taken lightly nor overlooked in the search for ways to combat illegal drugs. Correct or not, military enforcement of civil law is perceived as threatening constitutional government. The

nation cannot afford for its military to be viewed with distrust, fear, or hostility by United States citizens.

The military, however, does have a role in enforcing civil law that is consistent with the tradition against military intrusion in civil affairs and thus is politically acceptable. That role, in many respects, is defined in the Congressional statutes on the subject. In terms of combatting illegal drugs, the most important are the Posse Comitatus Act and 10 U.S.C. secs. 371-380. These latter statutes, when considered in light of the American tradition against military intrusion in civil affairs, express the underlying themes of what is politically acceptable in the United States and what is not:

(1) Operations wholly within the United States. The military may directly participate in law enforcement operations as long as military members do not directly confront civilians nor act as undercover agents. Thus, 10 U.S.C. sec. 374(b) authorizes military members to detect and track aircraft and vessels, but not to communicate, intercept, or pursue aircraft or vessels. Aerial reconnaissance of property to locate growing marijuana, authorized by 10 U.S.C. sec. 374(b), also meets this nonconfrontation test. So would any other inspection of property if military members were subordinate to civilian law enforcement agents who were the only civilians present.

(2) Operations outside the land area of the United States, or within the land area of the United States if the

operation began outside the land area of the United States. The military may directly participate in law enforcement operations. But confrontation between military members and civilians must be reduced to the extent possible by subordinating military members to civilian law enforcement officials who alone conduct arrests, interviews, interrogations, and searches and seizures of persons. Naval support to the Coast Guard meets this test. Shots to disable a vessel directly confronts civilians. So does an Air Force aircraft which pursues a civilian aircraft. But in each case military members are subordinate to civilian law enforcement officials who alone conduct arrests, searches and seizures of persons, and similar activities.

It is also important that most of the military's direct participation in law enforcement concerns control of United States borders where military members have traditionally operated. Also, when control of United States borders is involved, Congress has practically unlimited authority. The Fourth Amendment, for example, allows unrestricted searches -- no probable cause required -- of persons and property entering the United States. (40:1349)

Moreover, military enforcement of civil law intrudes in civil affairs least when it occurs outside the land area of the United States. This is reflected in not applying the Posse Comitatus Act to the Navy or extraterritorially and in using the Coast Guard, a military service, to enforce the law in United States and international waters. Also,

although subject to Congressional control, matters occurring outside United States territory have traditionally been considered matters for the executive and military forces.

#### Foreign Political Implications

United States military involvement in foreign countries to suppress illegal drugs generates its own problems concerning political acceptability. The foreign countries involved resent what they see as United States interference in their internal affairs. They would oppose military involvement even more. United States efforts aimed at cocaine trafficking in Latin American illustrate this situation.

Most of the cocaine used in the United States is made from coca leaves grown in Peru and Bolivia and manufactured in Columbia. This cocaine trade is the source of livelihood for as many as 1.5 million people in Latin American countries. (41:71; 42:26) In Peru, coca leaf exports earn more foreign exchange than any other export. Bolivian exports of coca leaves exceed all other exports combined. (41:71; 42:34) In Columbia, the value of cocaine exports is \$2 to \$4 billion dollars compared to \$5.25 billion in legal exports. (41:71) Not surprisingly, the many people engaged in the Latin American cocaine industry oppose any efforts to deprive them of their livelihood. These large segments of the populations of Peru, Bolivia, and Columbia automatically resent United States efforts to suppress the Latin American cocaine industry. This situation is exacerbated by the

United States' failure to support legal industries in these countries such as coffee production. (42:32-34)

Those who resent United States efforts to suppress cocaine trafficking are not limited, however, to those engaged in the cocaine trade. Public opinion polls in Columbia show the unpopularity of United States efforts aimed at suppressing cocaine. According to these polls, most Columbians oppose extradicting Columbian drug traffickers to the United States. (43:13A)

Latin American resentment against the United States' efforts to attack cocaine is fueled by their perception that the United States itself is responsible for the drug problem. Latin Americans point to the United States' demand for drugs as the real problem. Moreover, they cite the United States' unwillingness to restrict weapons production, to control export of chemicals used to process cocaine, or to attack American banks that launder cocaine profits. (42:33) In short, Latin American countries believe they are being asked to endure the hardships in the effort to solve the United States' drug problem. (43:13A)

In Columbia, the hardships have not been light. Drug traffickers have corrupted government officials, civilian and military, with bribes. (42:32) When bribes failed, drug traffickers have used terror, murdering government officials and others and bombing planes, schools, and public buildings. (43:13A) This combination of corruption and terror has weakened the Columbian institutions of

government. (42:32) Not unnaturally, the Columbian populace traces this corruption, terror, and undermining of their government directly to the United States. The United States' demand for cocaine, in their view, is the reason for a drug problem. And, they believe that the United States' insistence that the Columbian government crackdown on cocaine trafficking is the cause of the violence and corruption inflicted on Columbians.

The situation in Peru also shows the adverse effects of the United States' efforts to suppress the cocaine industry. There too, drug traffickers have corrupted the police and judiciary. (41:72) Equally troublesome is the connection between coca farmers and "Shining Path", an insurgency whose goal is to destroy the Peruvian government. Its methods include extreme terrorist measures. Shining Path has undertaken to protect coca-growing peasants from the government's efforts to eradicate coca growing. (41:72) For example, in March 1989, at United States insistence, the Peruvian government sprayed herbicide on small parts of Peru's coca-growing areas. Shining Path retaliated by capturing a government garrison and shooting its officers. Shining Path has since used the Peruvian government's proposal to spray herbicide to turn coca growers against the Peruvian government. (41:74) Thus, the Peruvian government finds itself in a dilemma. To effectively fight the Shining Path insurgency, the government must win the loyalty of the Indian farmers who supply the insurgents with

food, recruits, and supplies. Efforts to eradicate coca growing, however, alienates this same group. And, through all of this, as in Columbia, the populace of Peru, whether engaged in drug trafficking or not, see the United States as the cause of the problem.

If Latin American countries resent United States efforts to suppress drug trafficking, they would resent direct participation by the United States military even more. Columbia, for example, is unlikely to ask for direct United States military involvement. (42:32) Most recently, the Colombian government strongly objected to the United States' proposal to station a carrier task force off the Colombian coast to interdict drug traffic. American military intervention would actually hurt the drug suppression effort because Columbians would join the drug traffickers against the United States. Public opinion in these Latin American countries is important because the drug suppression effort in these countries cannot succeed without the support of local populations. (43:13A)

In summary, the political acceptability of direct participation by United States military in combatting illegal drugs is important. Acceptability to the United States public is critical. Next in importance is acceptability to foreign countries. This study now turns to military operations conducted against illegal drugs and the effectiveness of these operations.

### PART III

#### OPERATIONAL INVOLVEMENT OF DOD IN THE WAR ON DRUGS

The purpose of this section is to analyze and assess the operational involvement of DOD in the war on drugs. In particular, the DOD assets which are key to the execution of its mission to detect and monitor airborne drug traffic into the US will be discussed.

##### Air Force Interdiction from 1977 to 1989

The operational involvement of the USAF in the war on drugs covers a period of approximately 12 years, from 1977 through 1989. The role of the USAF has been one of support--detecting and monitoring airborne drug traffic. The level of operational support has evolved from incidental participation in the late 1970s and early 1980s toward sustained participation in the late 1980s. The assets which have been used in the war on drugs include radar aircraft and fixed, land based radar systems.

USAF Radar Aircraft. In this category, the key detecting and monitoring asset of the USAF has been its force multiplier, the E-3 AWACS.

The AWACS has a flexible, survivable and jamming-resistant surveillance and command, control and communications (C3) system capable of all weather, long range, high- or low-level surveillance of all air vehicles, manned or unmanned and above all kinds of terrain. (44:139) However, the unique attribute

of the system which makes it a powerful source of detection of drug smuggling is its radar-look-down capability, a feature which made possible all altitude surveillance over land or water. To date, the AWACS is considered one of the best platforms for drug interdiction operations. The aircraft is stationed at Tinker AFB, Oklahoma, and it has been used in a detecting and monitoring support role in the National Drug Enforcement Program since 1977. (45:1)

The use of E-3s as an extended source for the detection of airborne drug smuggling was first suggested in 1977 by the head of Air Operations for Anti-Drug Smuggling. (45:1) Late in that same year the United States Customs Service (USCS) and the USAF entered into an over-the-shoulder agreement to co-operate in anti-drug operations as long as the operations remained incidental to the basic AF training mission. In 1978 a Joint USCS/USAF program was approved. Upon evaluating the Joint USCS/AWACS program in 1981, the USCS was dissatisfied with the results for a number of reasons: the E-3A radar setting was not set for slow speed, smuggler-type aircraft; the AWACS was not allowed to fly special orbits which would meet USCS surveillance needs; tracking smuggler aircraft to their destinations through the use of flexible orbits was prohibited; and 1000 hours of AWACS flight time (with an Air Officer on board) had resulted in only one detection and arrest. One therefore concludes that the early AWACS support role in detecting airborne drug traffic was a planned exercise

in failure--a prime example where the rules of engagement benefited the smugglers and not the organizations for anti-drug smuggling.

In a February 1982 memorandum, the Vice President tasked DOD to provide AWACS surveillance coverage in support of the war on drugs when the Navy's aircraft, the E2-C, was not available. (46:7) Accordingly, in 1983 special AWACS orbits were designed, through coordination with the 552nd Wing, Tinker Air Force Base, Oklahoma and the National Narcotic Border Interdiction System, to allow for designated Customs sorties. These orbits permitted maximum training while also allowing Customs watch. All joint operations between AWACS and USCS were coordinated by the US Customs National Aviation Center (CNAC), established in Oklahoma City, OK. In October 1988 a letter of agreement between CNAC and the 552nd AWACS Wing laid out the duties of the AWACS aircrews and the USCS's detection system specialists (DSS). From 1983 through the 1st quarter of 1989, AWACS had flown a total 335 dedicated missions and 2,301 watch missions--20,569 flying hours and 18 credited arrests--in support of the USCS. (45:1)

E-3 AWACS participation in monitoring and detecting activities increased by over 700 percent between 1988 and 1989. (47:34) An equivalent of 13.3 dedicated AWACS have been allocated, one of which is on one hour alert 100 percent of the time. There are six scheduled designated missions and an average of 40 watch sorties per month at a cost of approx-

imately 9 to 10 thousand dollars per flying hour. All missions will be directly coordinated with USCS, and DSS are programmed to fly on 75 percent of all customs watch sorties that are staged from Tinker AFB. With the projected down time for the aerostats along the southern border of the US AWACS participation in the war on drugs is likely to continue. These aerostats are part of a network or "radar fence" for the purpose of closing off the southern border of the US to drug traffic.

When the total hours flown by AWACS between 1983 and 1989 in support of the drug program is correlated with the number of credited drug-related arrests--an average of one arrest per 1,142 flying hours--the statistics are not impressive. With improved C3 and intelligence, however, queing should improve and with improved queuing AWACS should become more effective.

Further, the currently proposed AWACS Radar System Improvement Program (RSIP), if funding is maintained, should dramatically improve the detection of low level, slow-moving, small radar cross section targets--the type often presented by drug smugglers. (48:1) In addition to making radar maintenance consoles more user friendly, RSIP will entail improving radar sensitivity, radar reliability and maintainability. Overall, RSIP is projected to double current detection range against small aircraft (and cruise missiles) and to restore performance to operational requirements into the 21st century. It is the only on-going program (fully operational capable

within five years) to counter small radar cross-section (RCS) targets. The Office of the Secretary of Defense (OSD) has zeroed the RSIP program several times. The program, however, has been restored to the budget each time by the Defense Resources Board (DRB) because of its support by all the CINCS. The support of this program is consistent with the recommendation of the Defense Science Board to spend more DOD dollars in research and development on anti-drug detection weapon systems.

U-2 and RF-4C aircraft have been used to provide photographic reconnaissance missions in support of counterdrug operations. U-2 flights, in the California and Oregon area, have provided photographs of marijuana fields for use in eradication efforts. The aircraft is capable of taking photos of remote areas in mountains and forests where growers believe they are safe from observation. The RF-4C with its side looking airborne radar (SLARS) has been used to detect boats moving near the coast at night. (49:52)

The AC-130 has also made contributions to counterdrug operations, particularly in the Florida Panhandle, near its training range. Its sensors too can detect, track, and identify targets at night.

The B-52s, WC-130s, and C-141s have had a limited involvement in counterdrug operations. During routine training missions these aircraft were tasked to report to the Coast Guard the position, heading, and description of potential

smuggling vessels or aircraft. B-52s became heavily involved in these types of operations when they perform joint training with the Navy for their offensive antisurface warfare mission. (49:52)

Aerostats. Aerostat based radars were first deployed in an air defense role to monitor low altitude air space between Cuba and the United States. These aerostats are lighter-than-air, unmanned, helium-filled radar balloons, the hulls of which have two chambers. The upper chamber is filled with helium which enables the aerostat to lift the payload to altitude. (50:1.3)

After a mig was flown from Cuba to Homestead AFB undetected, an aerostat based radar system was established in 1983 in Cudjoe Key, FL. The system consisted of an aerostat tethered to a ground support facility--the aerostat carrying a low altitude surveillance radar, telemetry, command and communications, pressurization, and power distribution subsystems. (50:1.1) The system's capacity for low altitude surveillance made it an ideal resource with which to detect and monitor suspected airborne drug traffickers. Accordingly, the site at Cudjoe Key was used to relay information to the Customs Service on aircraft suspected of bringing drugs into the United States. A second and third aerostat-based radar system was subsequently located at Cape Canaveral, Florida and in the Grand Bahamas respectively, to aid in the pick-up of incoming drug traffic. Operationally, the Cudjoe Key and Cape

Canaveral sites had a complement of Customs and Coast Guard personnel who assisted the Air Force in detecting and monitoring aircraft.

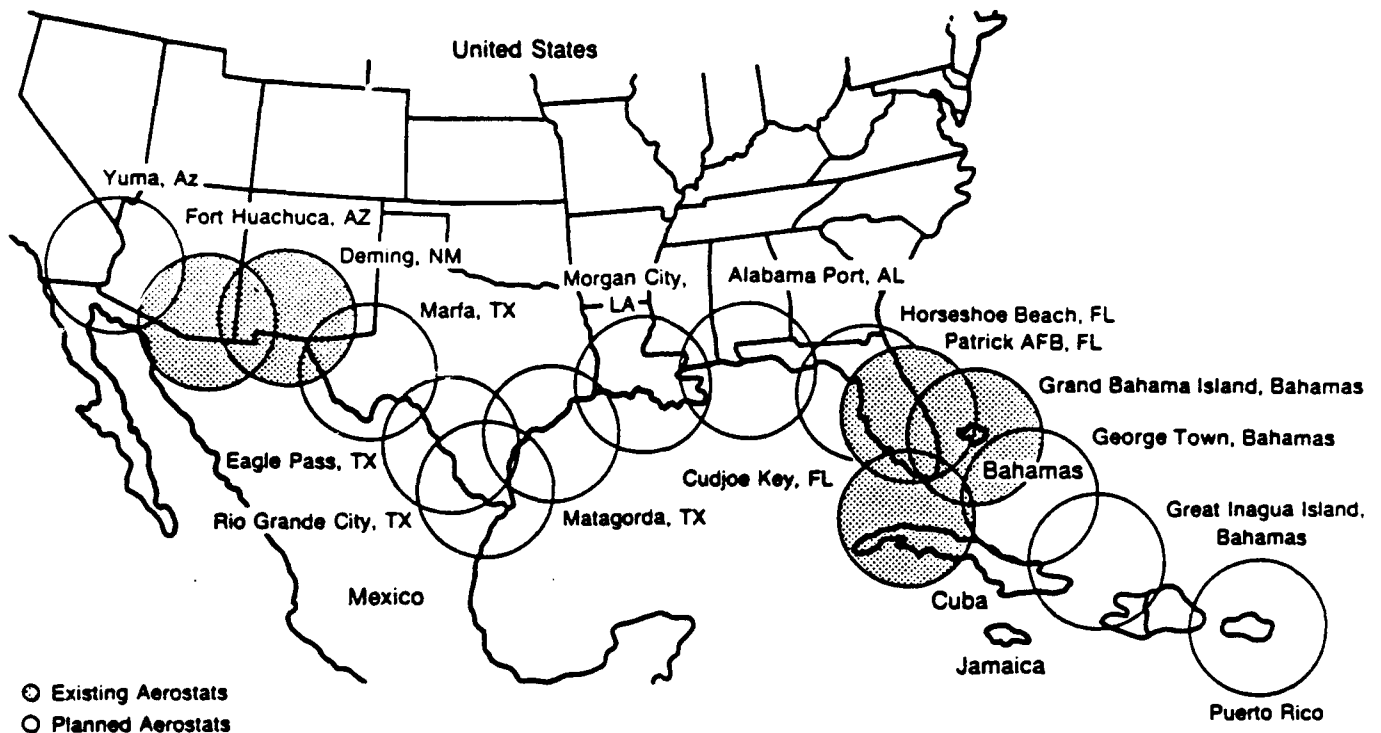
The aerostat based-radar system became favored over other types of ground based radars not only because of its capacity for low altitude surveillance coverage but also because of its detection range. Aerostat-based radars operating at an altitude of 15,000 feet could detect an air smuggler transiting at an altitude of 100 feet at a range of 165 nautical miles. By comparison, a ground based radar system would have a detection range of only 20 nautical miles under similar conditions.

(51:3)

The effectiveness of the aerostat systems in closing off the Florida coasts to airborne drug traffic prompted Congress to mandate in the 1986 Omnibus Drug Act the development of a complete aerostat based radar network. The plan is to establish a radar fence along the southern border of the CONUS (Figure 1). The act directed the USAF to fund procurement and the US Customs Service to procure, operate, and maintain aerostat radar systems to support the drug interdiction mission. A memorandum of agreement between the AF and Customs Services was consequently developed establishing the Aerostat Joint Program Office for program management and acquisition of aerostat radar systems. (50:1.2)

By the time of its completion in mid to late 1990, each System in the aerostat network will be connected via comuni-

Figure 1. Planned Aerostat Network

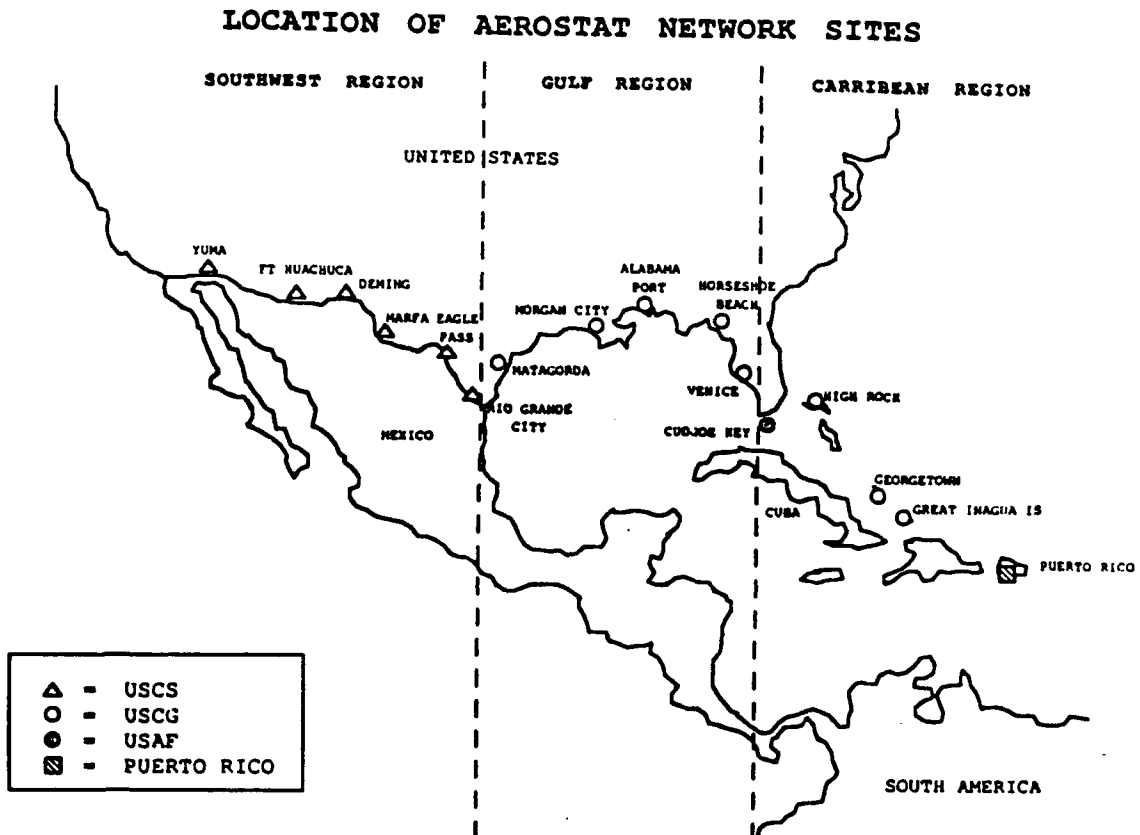


Source: GAO Report, June 1989

communications links to NORAD's Sector Operational Control Centers SOCCs) and Regional Operational Control Centers (ROCCs) facilities. It is expected that all participating agencies will be able to receive radar data which can be used to detect, monitor, track, intercept, and apprehend drug smugglers (50:1.2) The network consists of sixteen aerostats and will be divided into three regions; the Southwest, the Gulf region, and the Caribbean region. (Figure 2) The sites in the Southwest Region will be under the control of the Customs Service, and those in the Gulf Region will be under the control of the Coast Guard. The Cudjoe Key site in the Caribbean region of the network will be under the auspices of TAC (USAF), and the remaining four sites will be under the control of the Customs Service. There are no future plans, to date, to extend aerostat surveillance coverage to areas other than the southern perimeter of the US.

A problem with aerostat based-radars is that they are susceptible to high winds--60 knots and above--and to thunderstorms that contain lightening. Under these conditions the systems have to be recovered. Overall, the required 4 hours of maintenance per week plus the projected down-time due to high winds and thunderstorms, indicate that aerostats would be available for their surveillance mission about 55 to 65 percent of the time. While aerostat based-radars are not perfect, they are projected to provide a cost-effective alternative for closing the gaps in low altitude radar coverage

Figure 2.

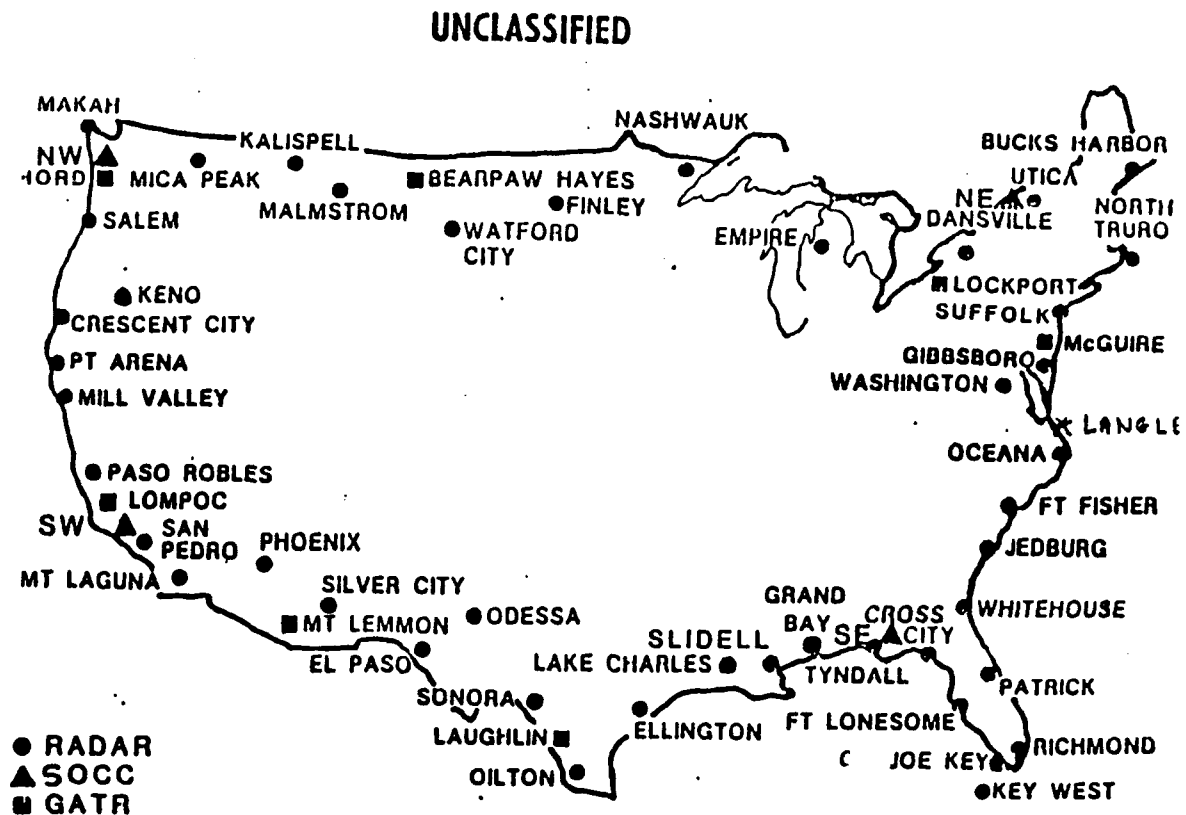


Source: Logistic Support Plan for the Aerostat Radar Network

across the southern border of the CONUS. (50:1.3) When these systems are down due to maintenance and bad weather the plan is to fill-in the gaps in coverage using radar aircraft such as the USAF's AWACS aircraft and the Navy's E2-C. (47:32) Joint Surveillance System (JSS). Originally the Air Staff granted the Federal Aviation Administration (FAA); Headquarters Tactical Air Command, USAF (TAC); and the US Customs Service, access to the 45 JSS radars on the CONUS. (46:8) Through the then Southeast Region Operations Control Center at Tyndall AFB FL, a component of the JSS infrastructure, the Air Force provided information on drug smuggling suspects to the Customs Command, Control, Communications (C3) facility in Miami, FL. Basically, whenever the Air Force was unable to identify a slow moving aircraft, Customs was notified and given the same information provided Air Force interceptors on unidentified aircraft.

The JSS is a network of land based radars that provide essentially continuous medium to high altitude surveillance coverage around the perimeter of the US and Canada. (Figure 3) The entire system consists of 63 sensors, 45 of which are on the CONUS (four under military control and 41 under joint use with the Federal Aviation Administration (FAA)); 14 are in Alaska (13 under military control and 1 under joint use) and 4 are along Canada's coastline. It was originally designed to detect and negate bomber and cruise missile carriers beyond their weapons employment range; it is a NORAD asset. (52:34)

Figure 3. CONUS NORAD Radar and ROCC



OPR: HQ USAF, XOORC

Operationally, radar returns from the JSS sensors are fed into the SOCCs/Customs, then to the ROCC, and on to the Cheyenne Mountain Complex. There are 6 SOCCs, one each at Tyndall AFB, FL; Griffiss AFB, NY; McChord AFB, WA, March AFB, CA; and two at North Bay Canada. There are three ROCCs: one each at Langley AFB, VA and Elmendorf AFB, AK and one at North Bay, CN. (53:1)

Any slow-moving traffic, flying on known drug routes and not using a transponder for identification, was classified as a suspected drug smuggler. Through coordination with the Air Force, USCS would then launch interceptors for identification. However, because targets of the type presented by drug smugglers were not consistent with the hostile threat profile, and because of the law, DOD's lead air defense command (i.e. NORAD) essentially ignored the slow moving traffic detected by the JSS in the pass. (46:8)

In the 1990's it is projected that the JSS will be a key asset in combatting airborne drug traffic coming into the United States. When the southern border of the US is effectively sealed off to illegal drug traffic by the aerostat network, the sensors of the JSS along the flanks and the North Warning System (NWS) across northern Canada will provide the first line of defense against airborne drug traffic. The need for the JSS was highlighted in General Kelly's testimony to Congress on 17 October 1989. (47:38)

A problem with the JSS is that it was not designed to provide low level altitude surveillance coverage to the surface; therefore, the system's inherent capacity to detect and to monitor airborne drug traffic is severely limited. Drug traffickers often evaded detection by flying beneath its coverage. Unless the sensors in the system are updated, the JSS will not provide a credible deterrence to airborne drug traffic.

A solution to this dilemma can be found in the North American Air Defense Master Plan (NAADM), a plan to enhance the detection and surveillance systems in the United States and Canada. One component of this radar improvement package is the update to the JSS through the FAA/AF Radar Replacement (FAAR) program. (54:10) Although the NAADM modernization is designed primarily to counter the air breathing threat of bombers and cruise missiles, they will also be key to USAF efforts in detecting and monitoring airborne drug traffic.

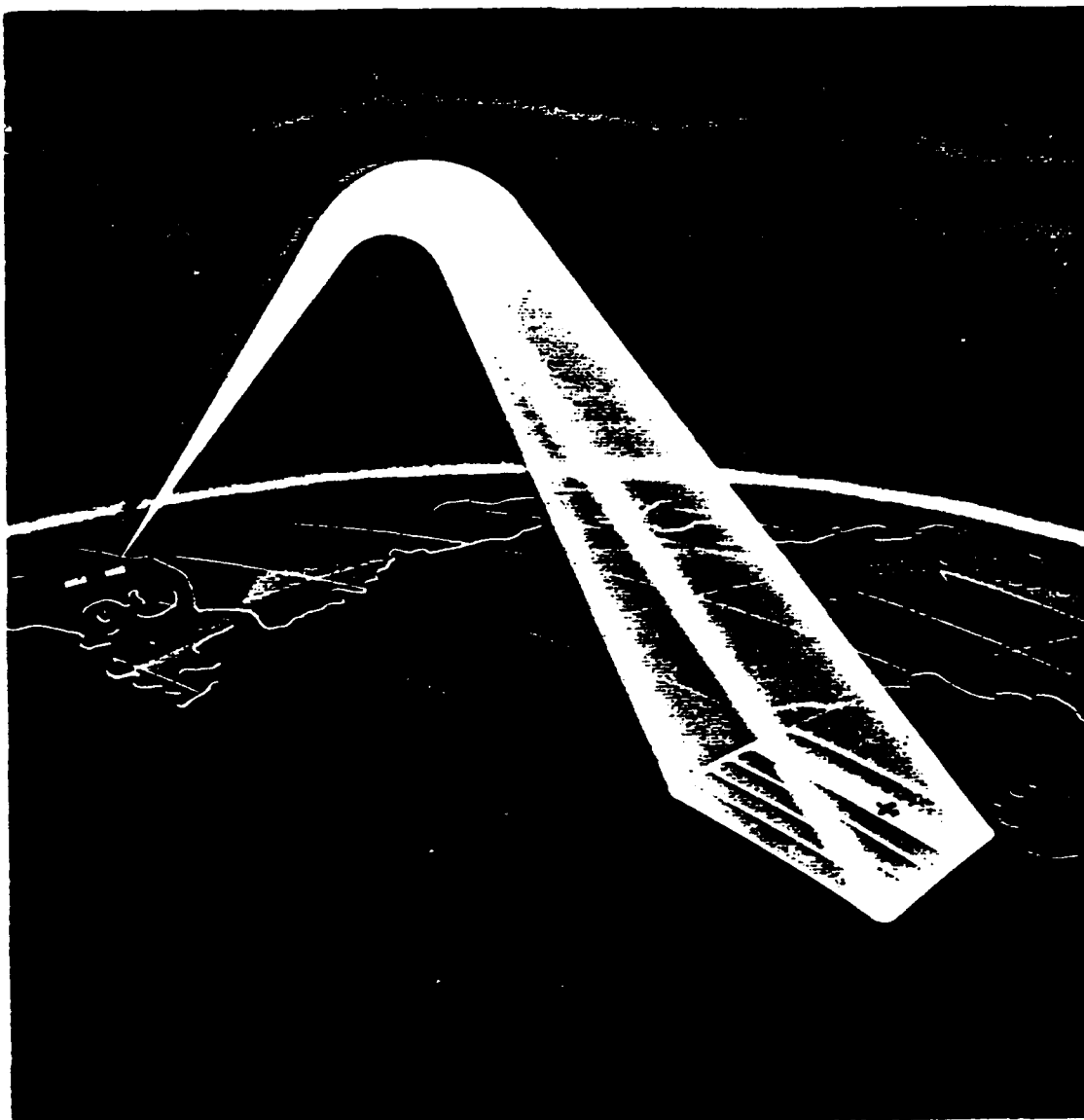
Under the FAAR program, the FAA has agreed to pay 50 percent of the cost to replace 45 obsolete radars in the JSS with state-of-the-art three dimensional radars; the AF has allocated over 250 million toward the modernization project. The FAA will operate and maintain the system. (This is a large operation and maintenance (O&M) savings to the AF.) Data from the radars will feed, as before, to the NORAD's sector and regional operational control centers and Customs drug agents. North Warning System. Regarding any potential airborne drug threats from the north, the JSS in conjunction with the North

Warning System will provide an adequate first line of defense.

This system of 13 long range radars (LLR) and 39 unmanned, short range radars (SRR) will complete the enclosure of the United States and Canada by a radar fence capable of detecting small radar cross section targets of the type presented by drug smugglers; it will interface with the northern JSS and ROCCs. This low level altitude capable surveillance system replaces the DEWLINE and CADEN/PINETREE--systems which have provided surveillance since 1950. (55:30) This modernization program is another component of NAADM; its cost will be shared between Canada and the United States respectively, on a 40/60 basis.

Over the Horizon Backscatter Radar System. The OTH-B system is the newest NORAD asset which will have a tremendous impact on the war against drugs. (56:16) The system consists of a series of long-range radars capable of providing all-altitude, all-weather surveillance coverage of aircraft approaching North America at ranges out to 1800 nautical miles. (57) In particular the system can detect low flying aircraft at a range almost 10 times greater than that which can be accomplished by conventional air surveillance radars. The system operates in the high frequency band where its radar energy is reflected back to earth by the ionosphere into regions that were previously inaccessible to conventional line-of-site microwave radars (58:5); it was designed to support NORAD's early warning mission (Figure 4).

**Figure 4. AN/FPS-118. Over-The-Horizon Backscatter Radar**



**Source: General Electric Company Radar Department  
Syracuse, New York 13221**

The OTH-B system was originally planned with 12 sectors; however, due to budgetary constraints, two sectors will be deleted. Sectors 1, 2, and 3 and sectors 4, 5, and 6 on the east coast and west coast respectively, will be operational in the early 1990's. (59) Sectors 7 and 8 in the central region and sectors 9 and 10 in Alaska will be operational by the mid 1990s. The system costs approximately 1.5 billion dollars.

In regard to the mission to detect and to monitor the airborne drug threat, the OTH-B was originally designed for long range surveillance. The system appears to have an inherent capability to detect small radar cross section targets such as ALCMs and SLBMs and the Cessna 150 aircraft--a favorite aircraft of drug smugglers. The latter was confirmed in tests that were conducted by the Air Force. Accordingly, a limited preplanned program improvement (P3I) was set up for the purpose of further developing the small target detection capability of the OTH-B system.

Due to budgetary constraints, DOD has deleted the P3I program and slowed procurement of OTH-B sectors from 2 sectors per year to 1 per year. This indicates a probable delay in the completion of long and short range, low level surveillance coverage on the nation's flanks well into the 1990s--a vitally needed capability, once the southern border of the US is effectively closed off to drug traffic by the aerostat based radar network (i.e. early to mid 1990). Further, the deletion of the P3I program means that OTH-B will not be used to its

fullest potential, in particular regarding its pick up of small RCS targets. This suggests a continued need for radar aircraft to fill in the gaps in low level surveillance coverage well into the 1990s. This is a very expensive option in a budget constrained environment. (52:44)

#### Navy Air Interdiction from 1982 to 1989

US Navy Radar Aircraft. Navy radar aircraft previously used in support of detecting and monitoring airborne drug traffic include the E-2C, P-3, and S-3.

The E-2C is very similar to the E-3 AWACS in regard to its capability to detect small radar cross section targets. In a 24 February 1982 memorandum, the Vice President tasked the DOD to provide E2-C surveillance 12 hours per day, seven days a week to detect aircraft entering Florida illegally. (46:7) Since this time, the E-2C has provided varying levels of aerial surveillance coverage for the US Customs Service--in the Caribbean, the Gulf of Mexico, the offshore waters of Florida and California, and along the Mexican border. Its mission was to search for aircraft not conforming to airways and demonstrating an erratic flight profile, or any other characteristic which might make a target suspect. (60:6)

Of all the aircraft that have been used for radar tracking in counterdrug missions, Customs Service officials believe that the E-2C is the most effective. This is largely due the E-2C's analog radar system and the proximity of its bases to

areas that must be patrolled. The analog radar system is better for tracking drug smugglers than some of the more sophisticated digital radars because it will allow tracking of the smaller, slower type aircraft. Many digital radars lose small, slow moving targets due to the use of masking to decrease clutter.

Navy P-3 and S-3 aircraft have assisted in the detecting and monitoring mission by flying long-range surveillance tracks throughout the Gulf of Mexico, the Caribbean, and coastal Atlantic and Pacific Ocean areas. "The shorter range S-3's fly from San Diego, CA to provide coverage in California, New Mexico, and Arizona." (60:6)

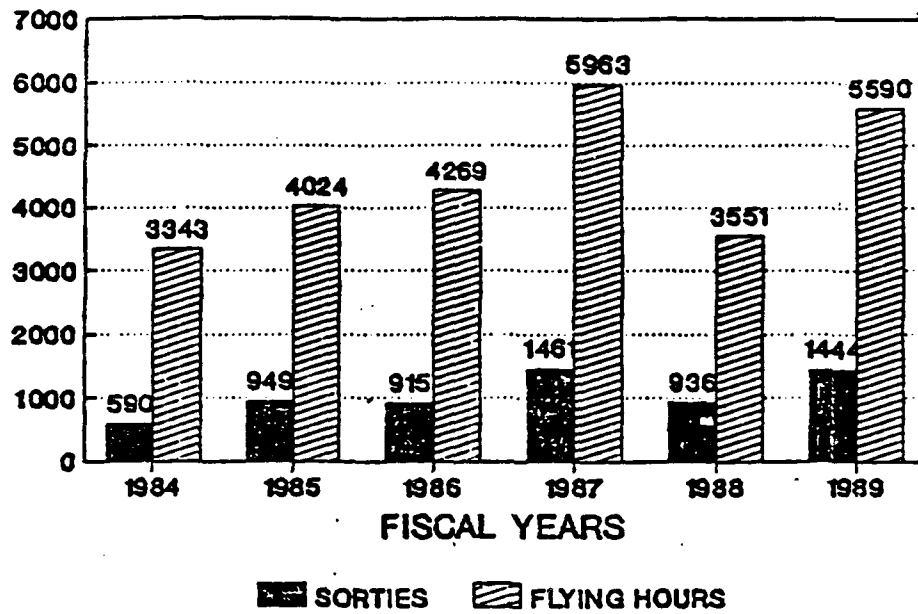
Between 1984 and 1989 Navy aircraft have flown 6265 sorties for a total 26,740 flying hours in support of drug interdiction. (Figure 5 ) (61) "Due to cracks in the wings of its E-2C aircraft, the Navy has not been able to contribute as many E-2 flights for drug interdiction surveillance during the past year as it had previously." (52:41)

#### Navy Sea Interdiction

The Navy's role in sea drug interdiction is largely limited to surveillance in support of the Coast Guard which has the primary responsibility for patrolling US coastlines. With over 12,000 miles of coastline and more than 1.5 million square miles in the Gulf of Mexico and Caribbean alone, the interdiction problem at sea is immense. (62:320) The Customs Service estimates that 84,000 freighters carrying 5.5 million

Figure 5.

### MILITARY AIRCRAFT SURVEILLANCE MISSIONS IN SUPPORT OF DRUG INTERDICTION



Source: Briefing; Commander-in-Chief,  
U.S. Atlantic Fleet Support of Antidrug Operations, 1989

shipments and over 125,000 private yachts enter the US every year. (63:3) The Coast Guard has a total of 80 seagoing vessels in the Atlantic and an additional 44 in the Pacific for the interdiction mission. (64:36) These vessels are used in conjunction with patrol aircraft in identifying and apprehending marine offenders.

The Navy's contribution to drug interdiction has largely been determined by the number of ships it could provide. Most of the Navy's training operations in the West Atlantic and Caribbean did not fit conveniently with marine drug interdiction choke and entry points. Thus, it is difficult for the Navy to provide significant numbers of effectively available platforms dedicated to drug interdiction/detection and yet continue effective mission training.

One of the Navy's most successful contributions to drug interdiction resulted from the Defense Authorization Act of 1982. This act authorized Coast Guard Law Enforcement Detachments (LEDETs) to ride aboard Navy ships and to exercise Coast Guard authority from those ships in and beyond US territorial waters. The specially trained 4-6 man detachments are assigned to Naval ships to interdict suspected drug traffickers and conduct searches, seizures, and arrests. If the detachment wants to board a suspected vessel, the Naval ship hoists the Coast Guard ensign notifying of its intent. The Navy ship is authorized to give complete support including gunfire to stop a vessel or to protect a boarding party.

After some limited successes in marijuana seizures, the LEDET concept was used in the 1984 Operation Wagonwheel. This joint maritime strategy extended defensive efforts in the transit and arrival zones to offensive efforts in the departure zones especially around Columbia. . The surprise operation used Coast Guard cutters plus LEDETs on Navy frigates, destroyers, hydrofoil missile boats, and oilers. Seizures included 37 vessels and 169 tons of marijuana while Colombian ground forces destroyed 300 tons ashore. (64:77) Additional operations off the Colombian coast were accomplished during the 1985-86 large scale multi-agency Hat Trick Operations during which LEDET teams on US Naval ships contributed to the seizure of 151,000 pounds of marijuana. (65:87) Coast Guard officials have stated that the Navy cannot designate enough ships for drug interdiction to use all of the original 300 funded LEDET positions. Thus, the Coast Guard puts approximately 75% of its West coast LEDET teams on Navy ships of opportunity. This method has not proven very effective with only one known seizure. (62:36) If however, the Coast Guard has evidence of a suspected drug vessel in a Navy transit area, the Navy will direct its ship to deviate from its planned course to interdict the vessel.

The Navy's commitment to the anti-drug mission has been growing over the years. In 1985, the Navy provided 347 ship days including the use of its hydrofoil fleet stationed at Key West, FL. (66:2) In 1986, 1,097 ship days and over 2,500 in

both 1987 and 1988 were provided to the LEDET program. The 1987 effort resulted in 20 vessel seizures, 110 arrests and over 550,000 pounds of marijuana and almost 550 pounds of cocaine seized at a total cost of \$1.3 million to the Coast Guard and \$27 million to the Navy. (62:158) But the statistics for sea interdiction do not show huge overall successes. Of the total 8,000 to 10,000 annual Coast Guard ship boardings, the entire average is roughly 200 busts every 365 days. (67:14) Only one in eight (12%) of the vessels boarded, with prior intelligence indicating the possibility of drugs, turned out to be carrying drugs. Only 4% of the vessels boarded had drugs when no prior intelligence was involved. (62:xiii) DOD resources may be able to help increase the number of potential targets through identification assistance, but the Coast Guard is already able to board only a small number of those identified which is a small number of those detected. With hours required to search each vessel, economical use of DOD assets is difficult to implement.

An example of an interdiction operation in the Caribbean was conducted from 9-25 May 1988. The Navy had four destroyer and frigate ships plus two helicopters and an oiler. The group had 571 surface radar contacts and boarded 35 suspect vessels resulting in one seizure. The five ship operation cost \$6.5 million. The one seizure amounted to \$405,000 worth of marijuana. To improve effectiveness, the Navy estimates that it would have required 17 ships conducting four times the number

of suspect vessel boardings. The operation was similar to searching for a needle in a haystack. (62:320)

Other seaborne naval contributions include training, logistics, radar sites, and towing capabilities which are all put to use in a joint effort against smugglers. Interdiction games are also played at the Naval War College Gaming Center to test strategies and tactics on adversaries before committing resources.

The Marine Corps also contributes to the drug interdiction mission by providing OV-10 Bronco aircraft with forward looking infrared radar (FLIR) plus ground radar equipment and operators to track potential smugglers. They have also flown RF-4 Phantoms for photo reconnaissance. (68:62)

#### Army CONUS Interdiction

Army anti-drug operations have provided some successes in the CONUS. An ongoing training program called Operation Groundhog is an end of course comprehensive test developed by the Army Intelligence Center and School at Fort Huachuca, AZ. The operation uses Army operated ground surveillance radars to detect and track targets crossing the US-Mexico border. Typical intrusions closely approximate the efforts of enemy forces infiltrating lines or crossing defended boundaries. Direct communications are maintained with drug law enforcement authorities. In 1987, Operation Groundhog was conducted 20 times with 518 targets detected, resulting in 176 drug related

apprehensions by civilian law enforcement. (62:7)

Another Army operation called Operation Hawkeye demonstrates how a slight modification in existing helicopter training routes can enhance drug and law enforcement efforts. The operation is part of the training mission for students at Fort Huachuca, AZ. It is conducted along the Mexican border area during which selected target areas are imaged with the OV-1 Mohawk helicopter's camera system. The Patrol Division of the Customs Service provides imagery and photography for the intelligence data base and coordinates the flight paths. Additionally, all aircraft crews are being trained to identify suspect low-flying aircraft penetrating US airspace. (68:54)

In addition to the above examples of active CONUS participation, the Army has over \$75 million worth of equipment on loan to drug enforcement agencies. Loaned equipment includes 26 UH-1s to the State Department, 15 UH-60s and 6 C-12s to the Coast Guard, and 17 OH-6As to the US Border Patrol. The Army UH-60 Blackhawk helicopters are the principal Coast Guard apprehension aircraft and are modified with high intensity searchlights, additional communications systems, and additional fuel tanks. The Blackhawks maneuverability, size, and speed provide the Coast Guard with the capability to respond to clandestine landing sites rapidly with larger law enforcement teams to better execute arrests and drug seizures. (69:3) Other Army equipment loans include ground surveillance radios, night vision goggles, and various ground transporta-

tion assets. A total of 28 Army support personnel are provided to the Office of National Drug Control Policy, Defense Support Activity Centers, Drug Enforcement Agency, Department of Justice, and to the Coast Guard. The 28 Army personnel consist of seven officers (four of which are lawyers), four senior noncommissioned officers, and 17 soldiers. (70:6)

The Army also contributes to training for Drug Enforcement Agency and other drug law enforcement personnel in such areas as survival skills, map reading, firearms, equipment operations, and foreign languages. Various agency participation in South American counter-narcotics programs has been greatly improved by new training initiatives in jungle operations and land and water navigation, (71:114)

The Army also provides two land sites for aerostats; Fort Huachuca, AZ, and Yuma Proving Grounds, AZ. The US Customs Service operates the aerostat systems which provide approximately 15,000 square miles of coverage with detection of air targets to 80 NM and ground targets to 35 statute miles. The Army also currently operates one small Aerostat Surveillance System Vessel in SOUTHCOM. The semi-submersible sea-based platform provides mobile counternarcotic detection and monitoring operations. (72:2-3)

#### National Guard Interdiction

The National Guard first became involved in drug enforcement support in 1977 in Hawaii with Operation Green Harvest. This continuing ambitious project combines various local and state

agencies to annually eradicate marijuana which was fast becoming a billion dollar business.

The concept for Operation Green Harvest is for the Governor to order Hawaii Army Guard elements to State active duty. The operation uses Guard helicopters to locate and eradicate marijuana plants. In addition to supplying excellent training for support personnel and aviators, the operation destroyed \$229.2 million worth of cannabis from 1977-85 at a total cost to the State of less than \$1 million. (73:25)

It was not until 1982, when a panel of governors at a governors' conference urged Congress to allow militia participation nationally, that the National Guard became the focus of military support in the war on drugs. National Guardsmen were familiar with operating within the confines of state law enforcement jurisdictions and were not limited by the 19th century statute, posse comitatus, which prohibited the military from carrying out domestic law enforcement when under federal jurisdiction. Therefore, the National Guard could operate under the governor's jurisdiction in a state mission. It could apprehend and detain, but could not arrest. (74:9)

In 1983, four states reported missions using National Guard forces plus eight utilizing loans of equipment to support the drug enforcement effort. The National Guard assumed a greater role in the Southwest US after the signing of memorandums of understanding (MOU) with California in 1983, Texas and New Mexico in 1984, and Arizona in 1985. The MOUs facilitated

procedures for state and local law enforcement agencies to obtain assistance from the National Guard. In California's 1983 Operation Camp, the National Guard flew nearly 800 hours contributing to the seizure and confiscation of over 218,000 pounds of marijuana. (65:87)

The role of the National Guard continued to grow in the 1980s as 14 states requested mission support in 1984 and growing to 25 in 1987, 32 in 1988, and 50 in 1989. Mandays provided have grown from 2,366 in 1984 to over 107,000 in FY 89 utilizing 6,796 volunteer guardsmen conducting over 18,000 flying missions. National Guard contributions have resulted in the destruction of \$260 million worth of drugs in 1985. This value has grown to \$ 1.3 billion in 1987 and remained at \$1.3 billion in 1988. (75:17-20) A rise from 8,883 mandays in 1987 to over 50,000 in 1988 without a corresponding rise in drug values destroyed is probably due to an increased awareness by the drug traffickers.

The National Guard Operation Autumn Harvest, conducted in 1987, illustrates a major effort that did not produce tangible results. The National Guard Adjutant of Arizona initiated the operation in which the Guard deployed four ground based radar systems and personnel establishing a radar network covering 84% of the Arizona-Mexico border. The around-the-clock 30 day operation detected and identified suspect targets and reported them to Customs aircraft to intercept, track, and apprehend suspected smugglers. National Guard radar units identified 93

suspect targets meeting the Custom's drug smuggling profile of which Custom's aircraft attempted to identify and intercept 33. Only six targets were actually intercepted and none were carrying drugs. The operation involved Guard units from Arizona, Utah, Missouri, and Wisconsin and cost a total of \$881,000. (76:5-6)

Although Operation Autumn Harvest did not meet its primary objective of interdicting drug smugglers, it did provide valuable wartime readiness training and the operation may have helped deter drug smuggling across the border for a limited time. Reasons given for the lack of success were that the element of surprise was virtually eliminated when the National Guard Bureau released information on the operation during its first week. Officials also cited lack of planning between Customs, Guard officials, and the National Narcotics Border Interdiction System. (76:5-6)

Prior to FY 89, the National Guard support to drug enforcement operations was conducted either incidental to training or in state active duty status. Congressional funding for FY 89 authorized the National Guard to conduct missions supporting law enforcement agencies during drug operations in Title 32 training status (above and beyond normal training) and state active duty (federally funded). During FY 89, 53 state jurisdictions conducted operations in support of drug enforcement agencies. Examples of the types of missions that the National Guard conducted in 1989 include helicopter operations to

transport law enforcement personnel and confiscated illegal drugs; military police to search commercial cargo at ports and land border entry points; special operations forces to identify ground and air traffic; fixed wing and RF-4 jet aircraft for photo reconnaissance; loan of night vision devices to law enforcement agencies; and providing training to law enforcement agencies in first aid, repelling, night vision equipment, wilderness, land navigation, and sensors. (75:20)

Although it is difficult to accurately measure success in Drug enforcement operations, the street value dollars or pounds seized can at least give indications. South Carolina National Guard helicopters used in aerial searches have resulted in the destruction of over 10,000 marijuana plants valued at over \$20 million between April and July 1989. Their assistance to the US Customs Service in cargo and ship board searches yielded seizures of cocaine valued in excess of \$60 million in June and July of 1989. (77:2) The final statistics for California's Operation Border Ranger II yielded total arrests of 569 and seizures of 972 pounds of cocaine and 2,257 pounds of marijuana. (77:2) Virginia National Guard conducted two support missions lasting 17 and 7 days respectively, yielding over \$9 million of marijuana at a cost of \$114,000 to the state. (75:24)

Indications are that all of the previously listed National Guard missions have contributed to readiness training. The least desirable mission is inspection of bulk cargo containers

at border and port entry points. The unpacking and packing of containers doesn't enhance any particular military skill but inspection officials at Miami say that with Guard assistance they are now able to inspect 40% of containers entering the port compared with about 7% previously. Credits for drug seizures including 1000 pounds of cocaine in one shipment exist, however, critics argue that using \$45,000 per year Guardsmen to uncrate boxes is not wise utilization. (78:60)

In FY 89, the National Guard received \$40 million to conduct anti-drug support operations in accordance with states' plans submitted by the governors and approved by SECDEF. FY 90 allocation to DOD is \$450 million of which \$70 million is for National Guard support of the state's plans. An additional \$40 million is identified for procurement of specialized Guard equipment to enhance mission capabilities such as improved ground based radar, forward looking infrared radars, and commercial communications equipment to net the law enforcement agencies. (75:10)

Fifty-three states/territories have submitted plans for utilizing the Guard in fighting drugs during FY 90. The plans have been approved by the SECDEF and are comprised of various combinations of 25 generic missions most of which have been described in this paper and are similar to the FY 89 missions. Aerial and ground transport and surveillance continue to be the Guard's largest contribution plus training coordination and cargo inspection. There is no doubt that the National

Guard has made and can continue to make valuable contributions in fighting the war on drugs.

#### DOD Overseas Interdiction

Ninety-five percent of the illicit drugs consumed in the US originate outside of its borders with foreign sources accounting for all of the cocaine and heroin and 85% of the US-consumed marijuana. The Andean countries of Peru, Bolivia, and Columbia account for most of the cocaine produced for US import. The largest foreign sources of marijuana are Columbia, Mexico, and Jamaica. (79:1) The use of US military resources in these foreign countries to stop the flow of drugs at the source is an option which has been attempted before, although with little success.

The first use of US military assets in a foreign country to support an anti-drug interdiction operation was in the Bahamas. US Air Force helicopters were used for rapid insertion of Bahamian drug enforcement teams on apprehension missions during Operation Bat. This operation also used Army Blackhawk helicopters and in 1987 flew over 1400 hours of support. (62:7)

The use of these military assets overseas were governed by President Reagan's 11 April 1986 National Security Decision Directive (NSDD) on Narcotics and National Security. The directive stated that direct involvement of US military forces in an interdiction role overseas must be: 1) invited by the host government, 2) directed by US government agencies and,

3) limited to a support function. (80:36)

It was not long after the NSDD was issued that the Government of Bolivia asked the US for support in eliminating cocaine processing and storage sites. In view of the serious threat that drug trafficking in Bolivia affected the US, the Attorney General and the Deputy Secretary of Defense jointly declared the existence of an emergency situation and ordered Operation Blast Furnace to begin in July 1986. (81:9)

Operation Blast Furnace was the first publicized employment of US Army combat forces on sovereign soil of another country to conduct combined counterdrug operations. The US Army support consisted of approximately 170 aircrew and logistics personnel for Blackhawk helicopters to provide quick insertions of Bolivian National Police and US Drug Enforcement Agency (DEA) agents into cocaine production sites. The six Army helicopters flew 1200 hours in support of 170 operational missions in a four month period. The US Air Force provided 537 hours of airlift using C-5 and C-130 aircraft. Upon completion of the operation, six UH-1H helicopters were transferred for use by the Bolivians with US military training and maintenance teams still remaining deployed with DEA agents in support of the Bolivian endeavor. (62:299)

Although Operation Blast Furnace did not seize any cocaine or make any arrests, the operation could be considered successful. Some 22 cocaine labs were discovered and drug production in Bolivia was severely disrupted while the US mili-

tary was in country. However, production quickly resumed to near normal after the US Army departed. (82:95) A reason for the limited success was that news of the deployment was leaked to the press before it started, thus eliminating the possibility of surprise. Another reason was the US's limited deployment of assets to conduct the operation, plus the obvious corruption within the Government of Bolivia as demonstrated by its hampering of the approval process to destroy confiscated drug assets. It is unlikely that another larger scale US military operation like Blast Furnace will take place again for several reasons. It is very expensive for the relatively small return and it is unlikely that any country will ask the US for military assistance again because of the heavy political price. (82:104)

Currently, US military contributions to foreign countries in support of anti-drug operations consists of manpower for advisory and training positions and transfers of equipment. Special Operations forces and training teams from the Army, Air Force, and Navy, assigned to CINCSOUTH, are actively committed to cooperative anti-drug efforts with several South and Central American countries. These countries include Guatemala, Honduras, El Salvador, Costa Rica, Panama, Columbia, Ecuador, Peru, Brazil, Bolivia, Paraguay, Uruguay, and Argentina. (83:14) Problems encountered by US forces stationed in these countries include being caught in a conflict of shifting alliances and feuds among guerrillas, drug

lords, renegade military and civilians, and knowing who is on whose side.

Major US military equipment transfers to foreign governments include helicopters to Bolivia and the Bahamas plus the recent transfer ordered by President Bush of equipment to Columbia. This transfer of \$65 million worth of equipment is known as Operation Pour Over. The transfer was completed in December 1989 and consisted of two AC-130B and eight A-37 aircraft with rockets, machine guns and bombs for the kind of war that the Colombians have to fight. Twelve UH-1H helicopters plus flack jackets, jeeps, river patrol boats, communications, sidearms, explosives, and numerous other military equipment items giving them the capability to take on what is really an alien force in Columbia. Colombian forces already have eight T-37Cs plus five UH-60A helicopters used as counterinsurgency aircraft. (47:36)

The Chairman of the Joint Chiefs of Staff, General Powell, recently stated to a Senate Committee that the US military would use surgical strikes against drug cartels in South America if drug traffickers attack Americans. In spite of this assertion, it is unknown if the US would commit significant military forces to fight the drug war in foreign lands at this time. (84:4) Overall, President Bush's national drug strategy is to help any government that wants US help. The goal however, is to assist primarily through the transfer of resources so that these governments can fight and win the war on drugs

themselves. (85:4)

CINC's Taskings in the 1990s

DOD's role in the war against drugs will be greatly expanded in the 1990s. While the role of DOD will not change significantly in terms of its mission to detect and monitor drug traffic coming into the US, its level of commitment will increase from limited assistance to taking the lead in detecting and monitoring airborne drug traffic. (86:6) More of its resources (personnel, duty hours, equipment) will be tasked to detect and monitor drug traffic. The goal is to achieve a "forward-leaning" posture that will cut off the flow of drugs into the country.

In addition to conducting operations to detect and monitor aircraft and surface vessels suspected of smuggling illegal drugs into the United States, the DOD is also tasked to effectively integrate into the anti-drug C3I network, and to provide better communications and intelligence cooperation among agencies of the federal government in fighting the drug problem. (86:6; 56:16) To that end, Atlantic Command has been given the responsibility of preparing a Caribbean Counternarcotics task force with appropriate planes and ships to help reduce the flow of drugs from Latin America. Forces Command will deploy appropriate forces to complement and support the US law enforcement agencies and cooperating foreign governments in their counternarcotics work; the target area is the southern border with Mexico. Southern and Pacific

Commands will combat the production and trafficking of illegal drugs in conjunction with cooperating host countries in their area of responsibility. NORAD will increase its detecting and monitoring of illegal drug traffic to the US. (56:16)

NORAD. In accordance with the new drug policy SECDEF has tasked NORAD to participate in the war on drugs. (56:16)

While the mission remains the air defense against hostile threats, the concept of "hostile threat" has evolved to include airborne drug traffic. Accordingly, the anti-drug mission has become "the most immediate operational priority, second in overall importance only to NORAD's mission of Warning and Assessment of aerospace attack against North America. (87:3) NORAD's strategy is to deny the enemy use of North American airspace for the illegal trafficking of narcotics." The strategy calls for the employment of a four phased operational campaign: Phase 1, focus on southwest CONUS border; Phase 2, focus on entire southern CONUS border; Phase 3, focus on entire periphery of Canada and the United States; and Phase 4, focus on entire North American continent. (87:3) The assets with which these plans will be implemented will include the JSS, NWS, and OTH-B radar systems.

NORAD has also created an intelligence center with 12 people (10 military and two civilians) at Cheyenne Mountain AFB, CO to collect and analyze data for the drug-related air surveillance mission. (56:16) Additionally, a Customs liaison officer and specialists from the Federal Aviation Administra-

tion and Air National Guard will work out of NORAD headquarters at Peterson AFB, CO. (56:16) Both of these actions are in support of the SECDEF-directed missions to (1) effectively integrate DOD into the anti-drug C3I network and to (2) make DOD the lead agency in coordinating the detection and monitoring activities of all federal agencies participating in the war on drugs.

Atlantic, Southern, Pacific, and Forces Commands. Planned antidrug interdiction activities for these commands are classified and cannot be used as a part of this study.

**PART IV**  
**EFFECTIVENESS OF UNITED STATES EFFORTS**  
**IN COMBATTING ILLEGAL DRUGS**

The military's direct participation in the war on drugs has principally focused on intercepting drugs being smuggled into the United States. The military has also supported efforts attacking drug sources in foreign countries although direct participation has been limited. Domestically, the military's direct participation in enforcing civil law consists principally of aerial reconnaissance to discover growing marijuana.

United States efforts attacking foreign sources of illegal drugs and drug smuggling have steadily increased from 1981 to 1988. In fiscal year 1981, nonDOD agencies spent \$372 million on interdiction. That figure grew to \$732 million for fiscal year 1987. In the same period, DOD costs for interdiction increased from \$1 million to \$204 million, not including the cost for acquiring new equipment. In fiscal year 1988, DOD's interdiction costs were \$211 million. (68:48-49, 65)

Latin American countries, with strong encouragement from the United States, have also increased their efforts in attacking illegal drug sources. Over the past ten years, Columbia has arrested suppliers, seized tons of cocaine, and confiscated property of drug traffickers. (42:26) In August 1988 following the murder by drug barons of a leading Columbian statesman and candidate for president, Columbia

declared its own war on drugs and arrested 12,000 persons involved in drug trafficking. (88:10; 89:30)

Unfortunately, these efforts by the United States and Latin American countries have had little effect on stopping the flow of illegal drugs into the United States. True enough, seizures of illegal drugs are up. From 1981 to 1986, seizures of cocaine grew from 2 metric tons to 25 metric tons. (68:66) From January to August 1989, cocaine seizures in Columbia exceeded seizures for all of 1988. (42:26). Not only are the quantities of drugs seized up, but interdiction rates are also up. It is estimated that in 1986 law enforcement officials seized 16-23% of the cocaine being smuggled into the United States, up from 2-4% in 1981. (68:76)

Measuring the success of the United States' interdiction program by quantities or percentages of drugs seized, however, is a highly misleading measure of the effectiveness of that program. It is analogous to using body counts to measure success in Vietnam. The fact is that more cocaine is being grown, processed, and smuggled into the United States than ever before. In 1980, an estimated 40 to 48 metric tons of cocaine were smuggled into the United States. That figure climbed to 350 to 400 metric tons in 1988, a tenfold increase. (41:70; 43:13A) This huge increase in availability of cocaine in the United States drove prices down proportionately. In 1980, cocaine cost \$60,000 per kilogram (2.2 pounds) on the street. That figure fell to

\$10,000 per kilogram in 1988. Even the efforts of the Colombian government in 1989 only served to drive up cocaine street prices to \$11,000 per kilogram. (43:13A)

Not only has cocaine become more available at far cheaper prices, but the purity of cocaine is way up from 12% in 1980 to 60-80% in 1988. (41:70) And, although casual cocaine users have dropped, the number of cocaine addicts has doubled over the past few years. (88:10).

Where do these increased quantities of cheaper, purer cocaine come from? The same place since 1980: Peru, Bolivia, and Columbia. The number of acres used to grow coca has grown from 220,000 acres in 1980 to 520,000 acres in 1988. (41:70) The quantity of coca now produced is seven times more than United States users can absorb. (43:13A)

In short, the effort, with increased military support, to interdict cocaine smuggling and to eliminate sources in foreign countries has completely failed. Why is this?

First, because of a huge demand by United States users willing to pay high prices, large segments of Peruvian, Bolivian, and Columbian societies are engaged in the cocaine trade. An estimated 10 million American cocaine users, a fourth of the world's drug users, spend \$20 to \$25 billion dollars annually on cocaine. That is equivalent to the combined gross national products of Columbia, Peru, and Bolivia and serves to employ many people in Latin America. (41:71) Law enforcement is hard pressed to suppress an

activity engaged in by large parts of societies and economies. (41:72,74)

The huge size of the area involved and its terrain further complicates law enforcement efforts. Larger than Texas, New Mexico, and Louisiana combined, this area consists largely of jungles and mountains. (42:32) Finally, to the extent law enforcement or military efforts succeed, cocaine traffickers will move their operations elsewhere. Evidence exists that some cocaine labs have already moved into Brazil. (42:33)

There is no reason to believe that United States military forces would be any more successful than local national forces in attacking illegal drug sources. Successful law enforcement requires accurate intelligence and security for law enforcement operations. But United States military members are positioned less favorably than local nationals to obtain intelligence. (42:33) Further, whether United States military members are better at protecting security of operations is debatable, and in any event irrelevant as local nationals will necessarily be involved. In operation "Blast Furnace", for example, United States military forces airlifted Bolivian agents to cocaine laboratories. But security of the operation was compromised, and the traffickers were gone before the Bolivian agents arrived. (89:30).

The huge quantity of purer, cheaper cocaine entering the United States demonstrates that United States efforts to

interdict cocaine smuggling States has been no more successful than foreign government efforts to eliminate cocaine sources. The failure of the interdiction effort is a result of two factors: the vast expanse of United States borders and the small size of cocaine. One cargo plane could carry enough cocaine to satisfy United States demand for one year. (68:123-24)

Much of the military support to help interdict cocaine smuggling is directed at identifying and tracking vessels and aircraft entering the United States illegally. It is a questionable proposition that the military could detect and track every aircraft and vessel attempting a clandestine entry into the United States. But that is not the only problem. More importantly, lack of resources prevents stopping and searching many of the ships and aircraft detected. The Coast Guard can board only a small percentage of ships identified. (68:129) The impact of inadequate resources for searching ships and aircraft also applies to ships and aircraft which enter the United States legally. These ships carry a substantial part of the cocaine smuggled into the United States. (68:67)

Efforts to reduce marijuana being smuggled into the United States have also failed, although not as spectacularly as efforts involving cocaine. It is estimated that the quantity of marijuana imports into the United States has remained constant, about 8-12,000 metric tons per year, as has the price per pound. But purity is up, and the

amount seized has dropped, from 4,000 tons in fiscal year 1981 to 2,000 tons in fiscal year 1986. (68:67,74,81)

Marijuana is easier to interdict than cocaine because marijuana is much bulkier. Unfortunately, the foreign source of marijuana has shifted to Mexico who accounts for 22% of the marijuana consumed in the United States. Interdicting marijuana smuggled from Mexico is more difficult because of the short period of time required for smuggling. (68:125) Moreover, a more potent domestic source of marijuana has increased over the past few years and supplies more and more of the marijuana consumed in the United States. (90:2694) In short, United States efforts to curb marijuana imports have only served to prevent the quantity of marijuana smuggled into the United States from increasing while larger domestic production has met the rising demand for the drug.

## **PART V**

### **CONCLUSIONS**

The United States military, since 1981, has increased its direct participation in law enforcement operations aimed at suppressing drug smuggling. Also, on a limited basis, the military has directly participated in law enforcement operations attacking drug sources in foreign countries and in the United States.

The military's direct participation in law enforcement operations has improved the nation's effort to interdict drug smuggling. Both the quantity of drugs seized and the interdiction rate are substantially higher now than they were in the past. Nevertheless, there are several areas where the military, either by adding resources or improving equipment, could improve its interdiction of drug smuggling. An especially important area concerns lack of radar capable of tracking low level, small radar cross section targets.

Despite improvements in interdiction, the national effort to stop illegal drug smuggling has failed as more drugs than ever before are entering the United States. The problem is one of demand.

The failure of past United States efforts to stop the flow of illegal drugs into the United States does not mean the United States should abandon these efforts. If for no other reason, drug traffickers must risk arrest and prosecution. The United States must also continue its counter drug efforts to demonstrate to Latin American

countries the seriousness of the United States' commitment. This is needed to encourage Latin American countries to continue their efforts against illegal drugs. Moreover, as previously stated, United States efforts, with direct military participation, are seizing more and higher percentages of drugs being smuggled into the United States.

Direct military participation in civil law enforcement operations must be politically acceptable. To be consistent with the American tradition against military intrusion in civil affairs, military members, when operating within the United States, must not confront civilians. Outside the United States, such confrontation should be avoided to the extent possible, leaving arrests, searches and seizures, and similar activities to civil law enforcement officials.

Thus, United States law enforcement, supported by the military, must continue to attack the supply side of illegal drugs while the demand side is brought under control. Civil law enforcement agencies should remain responsible for combatting illegal drugs, but the military has an important role in supporting civil law enforcement agencies. This is especially the case where the military can provide specialized equipment and trained members. In the next section, recommendations are offered which will improve military support in combatting illegal drugs.

## PART VI

### RECOMMENDATIONS

The United States military' direct participation in law enforcement operations has significantly improved the nation's effort attacking the supply side of drugs. The military's contribution, however, can be improved. The following recommendations are offered to make the military's direct participation in combatting illegal drugs more effective.

Increased Detection and Tracking and Equipment Improvement. The Department of Defense should increase the assets dedicated to detecting, tracking, and pursuing aircraft and vessels clandestinely entering the United States.

Particularly important, DOD must improve its ability to track low level, slow moving, small radar targets. DOD's primary asset in detecting and monitoring airborne drug traffic is radar. While shortcomings exist in radar technology regarding the detection of low level, slow moving, small radar cross section targets, such as those presented by drug smugglers, there are programs for some of the radar systems in operation which can, if funded, significantly improve small target detection capability. RSIP is one such program. This program for AWACS should remain fully funded and quickly brought to operational capability. Also, all NAADM sensors (FAAR, NWS, aerostats) should be brought to operational status as soon as possible.

The two OTH-B sectors removed should be put back in the program, and the P3I program should be funded. Smugglers facing difficulties on the southern border of the United States will turn to east, west, and northern borders of the United States. A complete OTH-B system with an enhanced small target capability (that the P3I program could provide) would aid in intercepting smugglers crossing United States borders clandestinely. Finally, DOD should increase its research and development for radar equipment with small target detecting and monitoring capability and look for smarter ways, such as the Space Base Radar system, to detect and monitor the airborne drug threat.

#### Inspecting Property Entering the United States

Legally. Trained military members should be made available to inspect property entering the United States legally. This will require an amendment to 10 U.S.C. sec. 374(b).

Political acceptability requires that these military members be subordinate to civilian law enforcement officials who would be the only civilians present during inspections. Thus, military members need not confront civilians.

Military members are currently authorized to detect and track aircraft and vessels and to conduct aerial reconnaissance of property. Inspecting property under the conditions proposed involves the same minimal intrusion into civil affairs.

As previously discussed, a substantial part of the illegal drugs being smuggled into the United States are

smuggled in aircraft, ships, and vehicles entering the United States at legal ports of entry. Civil law enforcement agencies lack the necessary resources to inspect these conveyances and their cargo. National Guard members, when not in Federal service, are already engaged in such inspections, but more needs to be done. Trained military members, especially drug dog teams, would add significantly to the number of inspections that could be made at legal ports of entry.

Detecting and Tracking Vehicles and Persons. Military members should be authorized to detect and track vehicles and persons clandestinely entering the United States by land. Under this authority, military members could set up observation and listening posts and patrol United States land borders to detect and track drug smugglers.

This will also require an amendment to 10 U.S.C. sec. 374(b). For political acceptability, military members will operate subordinate to civil law enforcement officials and will not be authorized to pursue or communicate with persons and vehicles tracked. In this way, direct confrontation between military members and civilians is avoided.

Detecting and tracking vehicles and persons illegally entering the United States by land is no more an intrusion into civil affairs than detecting and tracking aircraft and vessels which is currently authorized. The military is also currently authorized to communicate with and pursue aircraft and vessels detected outside the land area of the

United States. It is not recommended, however, that the military be given similar authority with respect to vehicles and persons crossing United States borders by land. The political acceptability of such operations is questionable, and the likelihood of confrontation is higher.

Increased efforts at intercepting drug smugglers who cross United States land borders is required. Drug smugglers, finding entry by sea and air more difficult, will switch to entry over land, at least in part. Moreover, the military can make a major contribution to detecting and tracking vehicles and persons crossing United States land borders clandestinely. The military has sophisticated equipment and trained members capable of detecting difficult to find intruders. Some military units have already engaged in these operations when incident to military training. But more should be done. Military units should be permanently assigned to this type of operation. This will permit systematic training for and planning and execution of such operations.

Intelligence. A particularly significant area where the military can contribute to drug interdiction efforts involves intelligence gathering. The Department of Defense needs to do two things. First, intelligence collection assets need to be dedicated to collecting intelligence on drug sources outside the United States and on drug smuggling. Simply collecting intelligence incident to military operations does not systematically collect the

intelligence needed to counter drug smuggling and foreign sources of drugs. Secondly, and equally important, a system to expeditiously provide DOD intelligence data to drug enforcement officials is needed. This will require streamlining of procedures that protect classified information. Procedures must be developed to remove sensitive information involving sources so that the resulting product can be quickly passed to appropriately cleared civilian law enforcement officials.

Shaping military intelligence networks to assist in detecting and monitoring drug traffic will greatly aid United States efforts at interdicting drug smuggling. Accurate intelligence is the key to reducing illegal drug smuggling. Using Department of Defense assets and personnel to detect and monitor through the use of satellites, reconnaissance aircraft, and other sophisticated monitoring tools, can provide civilian authorities the information needed to arrest drug traffickers. In effect, accurate intelligence is a force multiplier. It greatly increases the effectiveness of military and law enforcement assets positioned to interdict drug carriers.

Single Operational Commander. DOD has been appointed the lead agency to detect and monitor the aerial and maritime transit of illegal drugs into the United States and to coordinate an effective communications network. But civil law enforcement authorities are responsible for establishing detection and monitoring requirements. This

division of responsibility with no clear single authority needs to end. As Clausewitz has stated, unity of command is essential because it ensures unity of effort under one responsible commander. (1:209) It is recommended that an operational commander be appointed with authority to direct all aspects of interdicting drug smuggling. At present, there is no single operational commander. Instead, many agencies are involved, each with its own leader and own mission. The result is friction and a less than fully coordinated effort. An operational commander could curb interagency competition among DEA, US Customs, the Coast Guard, DOD, and the over forty other Federal agencies and ensure a unified effort.

Foreign Sources. In terms of eradicating foreign drug sources, the United States military, in a supporting role to United States civil authorities, should limit its activities to providing advice, training, equipment, supplies, and intelligence. There is no direct law enforcement role for the United States military in eradicating foreign drug sources because Latin American countries are not amenable to United States military forces operating in their countries in that manner. Nor should the United States want to undertake such operations because that would undermine the legitimacy of Latin American governments in the eyes of their own populations. Moreover, the effectiveness of operations aimed at eliminating foreign

sources of drugs depends on the willingness and ability of local national forces to attack the problem.

Domestic Aerial Reconnaissance. The military should increase its aerial reconnaissance to locate marijuana fields in the United States. The military can contribute equipment and services of a specialized nature that are likely to be beyond the resources of civil authorities. Moreover, persuading other countries to attack drugs in their countries will be difficult if the United States is unwilling to dedicate reasonable efforts to destroy its own drug sources. Finally, more aerial reconnaissance increases the likelihood of discovering marijuana so that it can be destroyed and those responsible caught and prosecuted. This by itself is a worthwhile result.

These recommendations are politically acceptable and will improve the effectiveness of the military's contribution to the nation's counter drug effort. In the final analysis, however, this effort must remain the principal responsibility of civil law enforcement. The war on drugs is not a war; it is a law enforcement operation. Moreover, law enforcement alone will not eliminate the United States' drug problem. That will require a concentrated effort using the full range of the nation's resources. For these reasons, the military should avoid any suggestion that increased military participation is the solution to winning the war on drugs. It is not a war, and it cannot be won solely by attacking the supply of drugs.

The nation's fight against illegal drugs is a long term effort. The military role is limited, but important, and is required for the long term. Law enforcement agencies, supported by the military, must hold the line against illegal drugs until the demand side of the drug problem is brought under control.

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