'YES' TO THE WAR ON DRUGS, BUT EASY DOES IT

During debate on the FY'86 Defense Authorization bill in the Senate and House of Representatives, the most visible and highly charged aspects of the debate was the proposal to involve the U.S. military in the war on drug trafficking.

The Senate and House adopted somewhat different approaches to the challenge. However, there was wide, bipartisan, and nonideological agreement that the flow of illegal drugs across our borders from Mexico, Colombia and the southern U.S. would have to be confronted and halted, if possible. Advocates from conservative Republican to liberal Democrat asserted that the situation represented a violation of U.S. borders akin to an invasion. They said the military services were the only appropriate force to deal with this invasion.

Illegal drug trafficking does represent one of the most serious, and certainly one of the most visible, evils in the United States today. As the plague of cocaine and "crack" has increased, so too has the illegal drug trade over the past several years. Local officials and police agencies are discovering that they have to do more than respond to blocks and neighborhoods in their cities. Areas in many major cities are literally controlled by drug traffickers who dominate them with firepower and weaponry that challenge and sometimes overwhelm the police and which certainly dominate and intimidate the unfortunate residents of those neighborhoods.

Notwithstanding the conclusion, agreed to by most everyone, that drug trafficking is a growing menace to American society, several questions arise from the recent congressional debate on this question. One, of course, centers on the Posse Comitatus Act of 1878, which—quite simply—prohibits federal military forces from enforcing civil laws without the presidential declaration of a state of emergency.

A second major question involves money. Who is going to pay for the use of these military forces in the war on drug trafficking?

A third question involves readiness. When a military unit is diverted from its normal training schedule to guard the border, spot drug traffickers at night or pursue suspected criminals, the unit's military training suffers. How is this to be ameliorated? Or isn't it?

Finally, what about our citizen-soldiers? It goes almost without saying that the Department of Defense is required to utilize military forces to staunch the flow of drugs across our borders, the National Guard will participate as a part of the Total Force. Any limitations to this would involve the part-time aspect of the Guard and Reserve. Our soldiers and airmen have civilian jobs, family obligations and private lives. Taking these questions in order.

One, the Posse Comitatus Act is a century-old law that should not be thrown out or tampered with without some serious reflection. It stemmed from the Founding Fathers' well-justified fear of a large standing Army, which was reflected in the Militia Act of 1792 prohibiting the use of the regular Army to enforce laws. However, federal authorities learned to circumvent this prohibition by utilizing members of the regular Army as a posse comitatus, or of 'power of the county,' or as a sheriff's posse. This process was particularly prevalent in the South after the Civil War when appointed sheriffs were often bribed to enforce the laws of Reconstruction. Thus, the use of federal troops to enforce local laws has become politically very unpopular, so unpopular that it led to the enactment of Posse Comitatus. However, the Posse Comitatus Act never applied to the National Guard in its state status.

It is true, of course, that the Congress could change or repeal the Posse Comitatus Act if it wishes. However, the whole American philosophy of civilian control of the military is brought into some question if Congress should change this century-old statute. Utilizing the military to enforce drug or immigration or smuggling laws may have some merit if it is confined to sealing our borders. Utilizing the regular military forces to enforce civil laws beyond this limited role should be reviewed very carefully before any decisions are made.

Two, four years ago, when the National Governors Association began a study of what to do about drug trafficking, the Guard and the NGA were asked for help and assistance. What was quickly discovered was that all hands wanted to use the Guard to stop the drug smugglers, but no one had much money. The National Guard Bureau did not have these kinds of resources. Neither does the states. Eyes naturally turn toward DoD, which is widely viewed as having great sums.

This is both true and not true. Defense budgets are necessarily large because the requirements of national defense are large. However, the money involved goes to pay for personnel, weapons, equipment and training. This does not include drug enforcement or even the detection of law breaking in the community.

Three, every AWACS of F-16s sent up to utilize its radar to detect illegal aerial drug trafficking probably would be diverted from training that might impact on readiness. Even military police or infantry battalion sized units sent to border duty, to enforce the laws of Reconstruction. Thus, the use of federal troops to enforce local laws has become politically very unpopular, so unpopular that it led to the enactment of Posse Comitatus. However, the Posse Comitatus Act never applied to the National Guard in its state status.

It is true, of course, that the Congress could change or repeal the Posse Comitatus Act if it wishes. However, the whole American philosophy of civilian control of the military is brought into some question if Congress should change this century-old statute. Utilizing the military to enforce drug or immigration or smuggling laws may have some merit if it is confined to sealing our borders. Utilizing the regular military forces to enforce civil laws beyond this limited role should be reviewed very carefully before any decisions are made.

Two, four years ago, when the National Governors Association began a study of what to do about drug trafficking, the Guard and the NGA were asked for help and assistance. What was quickly discovered was that all hands wanted to use the Guard to stop the drug smugglers, but no one had much money. The National Guard Bureau did not have these kinds of resources. Neither does the states. Eyes naturally turn toward DoD, which is widely viewed as having great sums.

This is both true and not true. Defense budgets are necessarily large because the requirements of national defense are large. However, the money involved goes to pay for personnel, weapons, equipment and training. This does not include drug enforcement or even the detection of law breaking in the community.

Three, every AWACS of F-16s sent up to utilize its radar to detect illegal aerial drug trafficking probably would be diverted from training that might impact on readiness. Even military police or infantry battalion sized units sent to border duty, to enforce the laws of Reconstruction. Thus, the use of federal troops to enforce local laws has become politically very unpopular, so unpopular that it led to the enactment of Posse Comitatus. However, the Posse Comitatus Act never applied to the National Guard in its state status.

It is true, of course, that the Congress could change or repeal the Posse Comitatus Act if it wishes. However, the whole American philosophy of civilian control of the military is brought into some question if Congress should change this century-old statute. Utilizing the military to enforce drug or immigration or smuggling laws may have some merit if it is confined to sealing our borders. Utilizing the regular military forces to enforce civil laws beyond this limited role should be reviewed very carefully before any decisions are made.