

CRS Report for Congress

Congress and International Narcotics Control

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CONGRESS AND INTERNATIONAL NARCOTICS CONTROL

SUMMARY

1988 was a year for major reevaluation of drug control policy by the 100th Congress. A number of factors contributed to a high level of congressional involvement and interest in drug control policy and its foreign policy aspects during this period. Generally, it may be said that the political climate and timing was ripe for active congressional involvement. Congress had been consistently expanding its role in the foreign policy arena since the early 1970's and narcotics control was widely seen by the public as an area where the executive branch was not doing enough. By enactment of the Anti-Drug Abuse Act of 1986 (P.L. 99-570) Congress had seized the initiative in the drug policy field, but by 1988 it was clear that drug policies which focused on the supply side were not achieving desired results.

U.S. international drug policy has traditionally been oriented toward supply reduction, stopping drugs at the source. An underlying assumption appeared to be that one could decrease the Nation's drug problems by cutting off its supply. Analysts stressed the relative ease and cost effectiveness of seizing or destroying drugs at the source, where they are more concentrated and thus easier to locate, before being divided into thousands of tiny packets on city streets. As a result of this national focus on supply reduction policies, much of congressional international anti-drug activity focused on source or transit countries.

Drugs in 1988 were a high visibility, election issue. The public demanded that something be done. The backdrop for congressional activity was a highly polarized policy debate on legalization on one hand versus sealing off the borders and bringing in the military on the other. Further complicating the debate was the fact that foreign and domestic drug policy are inextricably intertwined. The major components of the drug problem may be viewed as a symbiotic relationship between supply and demand for cocaine, heroin, and the other drugs supplied to U.S. consumers from foreign sources.

The congressional role in foreign narcotics policy in 1988 reflected five major themes:

- continuing to focus on supply reduction in international policy
- seeking to reduce fragmentation of executive branch policymaking
- using bilateralism but seeking multilateralism to reduce supply
- using sanctions but seeking positive incentives to reduce supply
- using the military to implement policy

Congress acted on these themes through passage of three major pieces of legislation: the Anti-Drug Abuse Act of 1988 (P.L. 100-690), the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1989 (P.L. 100-461), and the National Defense Authorization Act, FY 1989 (P.L. 100-456).

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NOTE

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CONGRESS AND INTERNATIONAL NARCOTICS CONTROL

CONGRESSIONAL RESPONSE TO THE PROBLEM

PATTERNS OF CONGRESSIONAL ACTIVITY IN THE 1980s

In 1988, Congress took a leading role in the evaluation and formulation of international drug control policy. Areas of major congressional concern and scrutiny during this period included: (1) allocating resources between reduction of supply measures and reduction of demand measures; (2) coordinating U.S. anti-drug policy and centralizing executive branch functions to facilitate this; (3) facilitating a more multilateral approach to anti-drug initiatives; (4) balancing anti-drug sanctions with positive incentives as a foreign drug policy tool; and (5) enhancing the military's role in anti-drug activities.

Congressional involvement in shaping foreign drug policy in 1988 may be viewed within the historical context of congressional anti-drug activity during the 1980s. During this decade there were three phases and levels of congressional anti-drug activity. Phase I ended early in 1986, prior to enactment of the 1986 Anti-Drug Abuse Act.¹ This phase was characterized

¹ The Anti-Drug Abuse Act of 1986 (P.L. 99-570) set the stage for congressional involvement in foreign anti-drug policy in 1988. Prior to enactment of the 1986 Act, the President was charged with the responsibility of determining whether a major illicit drug transit or drug producing country should be denied foreign aid for lack of cooperation on narcotics issues.

The 1986 Anti-Drug Act, however, represented a major policy shift which assured Congress an active role in international narcotics policy. In the 1986 Act, Congress amended Section 481 of the Foreign Assistance and added new sections to the Trade Act of 1974 (P.L. 93-618) whereby Congress determined that aid would be suspended to all major illicit producing and transit countries and not restored unless the President made an exception, by "certifying" a country. The 1986 Act further gave Congress the right to override Presidential determinations by joint resolution, in a process similar to the congressional role in disapproving major foreign arms sales.

These new provisions reversed the roles previously played by Congress and the President in the denial of assistance to certain drug producing or drug transit countries. Under previous legislation, the initiative rested with the President to make the initial determination that certain countries would not be eligible for foreign assistance. Under the 1986 law, Congress was to make the determination that certain categories of countries would not receive aid, reducing the President's role to enforcing the terms of, or seeking exceptions

by relatively limited congressional activity and focus. During this period, drugs were not a top priority for the Congress and no comprehensive "omnibus" legislation was enacted. Phase II began in 1986, included enactment of the 1986 drug act, and continued until early 1988. This period was characterized by a focus on foreign supply reduction. During this period questioning of past policy began as it became evident that past international drug policies were not successful in stemming the flood of drugs into the United States, and the public put intense pressure on Congress to produce results.

Phase III began in early 1988 and resulted in enactment of the 1988 Anti-Drug Abuse Act. Congress sought to reevaluate policy--while maintaining a drug policy leadership role--by requiring the executive branch to submit to Congress a coordinated and consolidated anti-drug strategy to serve as the basis of congressional scrutiny and oversight. During this period, a new "drug czar" was required by law to consult with Congress.

These patterns of legislative activity reflected initially limited public awareness of the seriousness of the drug problem (Phase I); heavy public pressure for immediate congressional action and solutions (Phase II); and increasing public and congressional disillusionment with government policies (Phase III). The high level of congressional activity throughout the latter two phases has resulted in greater congressional understanding of the many complex international aspects of the drug problem and its implications for U.S. foreign policy.

Congress in 1988 played a leading role in the formulation and oversight of international narcotics policy. In response to public perceptions of an escalating drug problem in the United States, Congress began an extensive reevaluation of U.S. drug policy. In both chambers, passage of a new anti-drug bill was considered an election year necessity.² The Senate and House followed different approaches, but the processes culminated with the enactment of the Anti-drug Abuse Act of 1988 by large majorities.

SENATE ACTION BASED ON TASK FORCE PROPOSALS

In June and July of 1988, a Senate Democratic congressional task force (chaired by Senators Daniel Moynihan and Sam Nunn) and a Senate Republican congressional task force (chaired by Minority Leader Robert Dole)

to, this congressional determination.

² Congressional Quarterly, October 22, 1988, p. 3032.

produced concept papers addressing the drug problem with proposals for an omnibus drug bill.³

Both the Democratic and Republican proposals emphasized: (1) increased allocation of resources; (2) increased centralization of policy planning and implementation; (3) increased emphasis on demand reduction measures; and (4) increased reliance on international cooperation.

The Senate Democratic proposal suggested increasing funding of drug-related programs by roughly \$3 billion per year, and a more comprehensive approach under what would amount to a "drug czar" with responsibility for coordination and direction of all federal efforts. It also suggested that resources be proportioned roughly between 60% for demand reduction and 40% for supply reduction. At the time approximately 75% of all federal anti-drug money was used for supply reduction activities. It noted that this "major imbalance in supply/demand efforts may help to explain the apparent failure of past anti-drug efforts." The Democratic proposal suggested additional funding for crop eradication and increased reliance on international cooperation. It cautioned, however, that expectations of eradication effectiveness should be realistic.

The Republican paper proposed increasing anti-drug funding by \$2.3 billion dollars per year. Emphasis on demand reduction and user accountability were major components of the proposal which also advocated the creation of a position of a drug control director. The Republican proposal also encouraged funding for weapons to arm aircraft involved in narcotics interdiction, and for pilot and aircraft maintenance training. It called for the establishment of an international drug force to apprehend major traffickers, and for the President to convene an "International Conference on Combatting Illegal Drug Production, Trafficking, and Use in the Western Hemisphere." It suggested prohibiting foreign assistance to countries which fail to take steps to prevent and punish drug related corruption. Finally, it added criteria which the President should consider in determining whether countries are fully cooperating with the United States in narcotics control activities.⁴

The task force proposals provided a conceptual basis for a bipartisan effort to write a new, comprehensive drug bill. On October 3, 1988, Senator

³ See Epidemic: A Concept Paper by the Democratic Substance Abuse Working Group (Co-Chaired by Senators Moynihan and Nunn), June 3, 1988; 1988 Omnibus Anti-Drug Bill [Proposal], released June 6, 1988 by a Senate Republican drug task force led by Minority Leader Robert Dole; Dewar, Helen, Differing National Antidrug Proposals Unveiled; and Isikoff, Michael, Washington Post, July, 1, 1988, p. A7., and Senate Republicans Offer Anti-Drug Proposal; Congressional Quarterly, July 9, 1988, p. 1936.

⁴ Section 481 (h)(3) of the Foreign Assistance Act of 1961.

Nunn and 50 Democratic and Republican cosponsors introduced the results of the effort, the Omnibus Anti-Substance Abuse Act of 1988 (S. 2852).

The bill was not referred to any committees. To deal with the numerous amendments proposed, the Senate leadership established a bipartisan panel consisting of Senators Warren Rudman and Phil Gramm, Republicans, and Senators Sam Nunn and Patrick Moynihan, Democrats. Non-controversial amendments and more controversial amendments which were discussed and agreed to by the panel were considered as a non-amendable package and approved by voice vote in the Senate. Those on which the panel members did not agree could be appealed to Senators Byrd and Dole, and if they did not agree the amendment could be rejected. Some controversial amendments were debated under time limits.⁶

Under this procedure, on October 14 the Senate passed H.R. 5210 with the contents of S. 2852 as amended, by a vote of 87 to 3.

HOUSE APPROACH BASED ON COMMITTEE ACTION

Meanwhile the House followed the same approach it had used with the 1986 Omnibus Drug Act, bringing many committees into writing the legislation. On May 9 Speaker Wright announced that Majority Leader Thomas Foley would coordinate legislation in which each section would be drafted by the ten committees of jurisdiction. The committees held hearings and mark-ups during June, and submitted their sections.

On August 11 House Majority Leader Thomas Foley introduced a comprehensive Anti-Drug Abuse Act of 1988 (H.R. 5210). The bill had ten titles, and each title was referred to a different committee, with the section on international narcotics control going to the Foreign Affairs Committee, which had established a special task force on narcotics control in the 98th Congress. Other House committees to which parts of the bill were referred were the Committees on Banking, Finance, and Urban Affairs; Education and Labor; Government Operations; Interior and Insular Affairs; Judiciary; Merchant Marine and Fisheries; Public Works and Transportation; Ways and Means; and Energy and Commerce.

Debate over the 1988 drug bill's provisions centered not on its international narcotics control and foreign policy provisions, but rather on volatile domestic issues and--to a lesser extent--the overall question of funding. Major domestic issues included the questions of whether: (1) to add the death penalty for those who commit murder during a drug felony; (2) to change the

⁶ Congressional Quarterly, October 15, 1988, p. 2978.

exclusionary rule to make it easier to convict drug offenders; and (3) to require a waiting period prior to purchase of a handgun.⁶

After three weeks of debate on the bill and its amendments, on September 22 the House passed H.R. 5210 by a vote of 375-30.

PASSAGE OF ANTI-DRUG ABUSE ACT OF 1988

In the pressure to complete action and because of the large number of committees involved, a formal conference was not held. After House and Senate negotiators in a less formal group seemed not to be moving fast enough, on October 19 a bicameral leadership group was formed. Comprised of Senator Nunn and House Majority Leader Foley, Democrats, and Senator Warren Rudman and Minority Leader Robert Michel, Republicans, the group heard appeals from Members, ironed out disputes, and reached agreement just before adjournment. On October 21, as one of the last acts of the 100th Congress, both houses approved the Anti-Drug Abuse Act of 1988, as it had been amended, the House by a vote of 346 to 11 and the Senate by voice vote. The measure was signed into law on November 18, 1988 (Public Law 100-690).

In the 1988 Anti-Drug Abuse Act, Congress acted to secure a clear definition of national and international drug control goals and objectives, but without itself clearly defining them. The 1988 Act required the director of the Office of National Drug Control Policy to establish policies, objectives and priorities. And it gave the President 180 days after confirmation of his "drug czar" to promulgate a national drug control strategy, including long term goals and short term measurable objectives.

The Act authorized additional federal anti-drug expenditures for fiscal year 1989 of \$2.7 billion, bringing total U.S. fiscal year 1989 drug control budget authority under the Act to \$5.5 billion. Of the total funds appropriated under the Act for fiscal year 1989, 56 percent went for supply reduction and 44 percent for demand reduction.

Title IV of the Act authorized \$101 million for international narcotics control programs in FY 1989, a total of \$2.5 million over the previous year's appropriation level.

OTHER LEGISLATION

Meanwhile, many of the concepts discussed in the Senate task forces and House Committees were incorporated into the Foreign Operations, Export

⁶ See Lawrence, Christine C., Partisan lines Drawn for Debate on Drug Bill. Congressional Quarterly, Sept. 3, 1988, p. 2463-65.

Financing and Related Programs Appropriations Act, 1989 (P.L. 100-461), approved October 1, 1988. This legislation appropriated and set conditions for funds for international narcotics programs under the Foreign Assistance Act of 1961 and amended that act. P.L. 100-461 had intensification of interdiction and eradication of illegal narcotics as major themes, and called for increased emphasis on international cooperation in narcotics enforcement.

The role of the military in narcotics interdiction was addressed separately in the National Defense Authorization Act for 1989 (P.L. 100-456), approved September 29, 1988. This Act established the Department of Defense as the lead agency for detecting and monitoring of aerial and maritime transit of illicit drugs into the United States.

Five major trends in international narcotics control policy became evident in the three legislative enactments described above. A discussion and analysis of these themes follow.

FOCUSING ON SUPPLY REDUCTION

U.S. international narcotics control policy has focused primarily on supply reduction because the supply of both cocaine and heroin, the Nation's foremost problem drugs, come from abroad. Crop eradication and interdiction are the traditional pillars of U.S. international narcotics supply reduction policies. This supply reduction emphasis is integrally woven into the three major pieces of international drug legislation enacted in 1988.

THE ANTI-DRUG ABUSE ACT OF 1988

Although much of the Anti-Drug Abuse Act of 1988 (P.L. 100-690) showed new emphasis on reducing demand in the United States, the international section of the Act was dominated by supply reduction measures. Many of these measures amended the Foreign Assistance Act of 1961 and dealt with the process by which the President certifies that a major illicit drug producing or transit country is eligible to receive United States foreign assistance. For example, one provision expanded the criteria for the President to consider when making a certification by adding additional criteria indicative of law enforcement cooperation.

Title IV of the Act revised the certification process by:

- requiring the Secretary of State to establish numerical standards and guidelines for determining which countries are major illicit drug transit nations, and to notify Congress each October 1st of the final

list of countries likely to be determined to be major drug-producing or drug-transit countries;⁷

- giving Congress 45 (instead of 30 days) of continuous session to decertify countries certified by the President as exempt from trade and aviation sanctions;⁸
- requiring the President, when making certifications under the Act, also to consider whether the government has: (1) taken the necessary steps to eliminate (to the maximum extent possible) narcotics related bribery and public corruption; (2) facilitated narcotics production or distribution; (3) had any of its senior officials involved in the drug trade; (4) investigated aggressively cases in which U.S. drug enforcement agents have suffered violence with the complicity of foreign law enforcement officers and sought to bring such perpetrators to trial; (5) responded with reasonable cooperation to U.S. requests to assist Drug Enforcement Agency activities, including requests for aerial hot pursuit; (6) made necessary changes in legal codes to effectively combat narcotics traffickers (i.e. new conspiracy laws and asset seizure laws.); (7) expeditiously processed U.S. extradition requests relating to narcotics trafficking; and (8) refused to give safe haven to known traffickers in addition to expeditiously processing narcotics related extradition requests of other countries.⁹

In addition, Title IV of the Act contained a series of country specific certification provisions designed to increase congressional control and influence over narcotics policy and supply reduction programs in key producing and transshipment countries in Latin America and Asia. Many of these country-specific provisions further reduced the flexibility of the President to release aid to these countries.

Some of these country-specific provisions focused on Bolivia, a major coca producing country. Such provisions conditioned foreign assistance on Bolivian enactment of legislation making coca production illegal and initiation of a program of forced eradication if voluntary eradication goals are not being met. In addition, development assistance for Bolivia's Chapare development

⁷ Ibid., secs 4405 and 4401.

⁸ Ibid., sec., 4408

⁹ Ibid., secs. 4407 and 4408. The law retains requirements of sec. 481 (h) of the Foreign Assistance Act of 1961 that the President shall also consider whether a country has taken maximum legal and law enforcement steps: (1) to eliminate illicit drug cultivation, production and trafficking, and (2) to eliminate drug related money laundering.

project was conditioned upon the project area being kept free of illicit coca cultivation.¹⁰

Special supply reduction requirements for receipt of foreign assistance were also established for Peru, the major coca producing country. These provisions (1) required the President, when evaluating Peru's certification, to consider progress made in meeting eradication targets of the previous year, and (2) conditioned U.S. development assistance to Peru for the Upper Huallaga Valley Project upon the project's effectiveness in reducing coca production, distribution and marketing.¹¹

Colombia, home of the cocaine cartels and major cocaine processing and distribution center, was also the subject of special provisions designed to reduce illicit drug supply. The 1988 Anti-Drug Abuse Act: (1) authorized \$15 million in fiscal year 1989 for defense equipment for Colombia, and \$5 million to protect officials and members of the press against narco-terrorist attacks, (2) permitted more than 6 members of the U.S. armed forces to be assigned to Colombia to carry out U.S. international security assistance programs there, and (3) exempted Colombia from prohibitions on training or financial support to foreign police forces.¹²

Many in Congress contended that Mexico, a major marijuana and opium producing country as well as transshipment point for illicit drugs, could do more to cooperate with the United States on narcotics interdiction and to root out narcotics-related corruption. The 1988 Anti-Drug Abuse Act (1) directed the President (when making fiscal year 1989 certifications) to consider Mexico's response to U.S. proposals to establish joint agreements on border air apprehension and surveillance activities, (2) limited narcotics control assistance to Mexico to \$15 million, (3) urged the Government of Mexico to cooperate fully with the United States in drug law enforcement matters (including prosecution and trial of those involved in the murder of Drug Enforcement Agency Agent Enrique Camarena Salazar and the torture of Agent Victor Cortez), and (4) encouraged the Government of Mexico to furnish banking information to facilitate U.S. prosecution of narco-terrorists who use Mexican financial institutions to launder profits.¹³

The 1988 Anti-Drug Abuse Act also contained supply reduction measures aimed at countries in Asia. These measures: (1) required the President to consider the extent to which Pakistan (a) destroyed illicit laboratories and

¹⁰ Ibid., sec. 4302(a), (b), and (c).

¹¹ Ibid., sec. 4303(a), and (b).

¹² Ibid., sec. 4305. See also, sec. 660 of the Foreign Assistance Act of 1961.

¹³ Ibid., sec. 4303 and 4304.

prosecuted their owners/operators; (b) put major traffickers out of business; and (c) changed legal codes to permit more effective prosecution of traffickers (by such measures as new conspiracy and asset seizure laws),¹⁴ (2) required periodic reports on: (a) the involvement of government officials of Laos in the illicit drug trade; and (b) any assistance other governments in the region provide in the distribution of illicit drugs from Laos,¹⁵ (3) urged the U.S. Government to "press" the Government of Afghanistan (and to work with the Mujahadeen) to reduce production and trafficking in areas under their control.¹⁶

The 1988 Act set up special supply reduction/certification requirements for major drug producing or transit countries which are major producers of licit opium.¹⁷ These requirements, which did not single out certain countries by name, would in effect apply to India and Turkey. Specifically, they required that fiscal year 1989 certification for such countries be contingent upon whether the government has taken steps: (1) to prevent significant diversion of its licit opium crop into the illicit market, (2) to reduce its opium stockpile, and (3) to eliminate illicit cultivation and production.¹⁸

Concern existed that both India and Turkey, major licit opium producers, were increasingly becoming major transit centers for illicit narcotics and that Turkey served as a processing center for illicit drugs. Turkey, however, seemed clearly exempted from potential de-certification, as it apparently met custom tailored exclusionary criteria of: (1) not being a money laundering

¹⁴Ibid., sec. 4306.

¹⁵ Ibid., sec. 4309.

¹⁶ See section 481(h)(2)(E) of the Foreign Assistance Act of 1961 and Sec. 802 of the Trade Act of 1974 as amended by secs. 4407 and 4408 of the Anti-Drug Abuse Act of 1988.

¹⁷ Ibid. See 4408(E).

¹⁸ Anti-Drug Abuse Act of 1988, P.L. 100-690, sec. 4406 provides that the ban on aid to a major transit country shall not apply in fiscal year 1989 to such a country if the President certifies to Congress: (1) that drug money laundering concerns do not apply to the particular country; (2) that the country was a major producer which has effectively eliminated illicit production within the past two years; and (3) that the country is fully cooperating with U.S. anti-narcotics efforts, or has taken adequate steps on its own to: (a) satisfy the goals agreed to in a bilateral narcotics agreement or comparable multilateral agreement; (b) prevent drug transshipments to the United States; and (c) prevent and punish narcotics related bribery and public corruption.

center; (2) having effectively eliminated illicit production; and (3) cooperating, generally, with the United States.¹⁹

THE FOREIGN ASSISTANCE APPROPRIATIONS ACT FOR 1989

Supply reduction was also strongly reflected in the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1989 (P.L. 100-461). The Act provided for increased emphasis by the Department of State on supply reduction oriented programs and policies to (1) intensify efforts aimed at interdiction and eradication of illicit narcotics and (2) seek international cooperation on narcotics enforcement matters in such areas as extradition treaties, mutual legal assistance to combat money laundering, and sharing of evidence. Title II of the Act, entitled "Bilateral Economic Assistance," contained a section under Department of State Appropriations entitled: "International Narcotics Control" which appropriated \$101 million for international narcotics control activities (\$7 million of which were earmarked for Latin America regional programs).

In addition, Section 578 of the Act:

- provided Economic Support Funds totaling \$61 million for narcotics control programs in Bolivia, Ecuador, Jamaica, and Peru (with a \$25 million limit on funds for any one country);
- provided Military Assistance Funds totalling \$16.5 million for narcotics control programs in Bolivia, Ecuador, Jamaica, and Colombia (with a \$5 million limit for any one country).
- waived the existing statutory prohibition that foreign assistance funding for international narcotics control shall not be made available for the procurement of weapons or ammunition for Bolivia, Peru, Columbia, Ecuador, or the newly authorized Latin American regional air wing;²⁰
- provided for the reallocation of unused funds from countries which have not taken adequate steps to halt illicit drug production or trafficking to countries which have met their illicit drug eradication targets, or have otherwise taken significant steps to halt illicit production or trafficking.

¹⁹ P.L. 100-456. See U.S. Department of State, Bureau of International Narcotics Matters, International Narcotics Control Strategy Reports, March 1989, chapters on India and Turkey.

²⁰ For text of restriction, see: Foreign Assistance Act of 1961, Public Law 87-195 as amended, sec. 482(b).

The Administration objected to the earmarking of funds by Congress for international narcotics control programs such as the \$7 million earmarked for Latin American regional programs. The Department of State saw such efforts as an attempt by Congress to micro-manage its programs in an unproductive manner, reducing the flexibility of the State Department to sub-allocate resources to meet changing conditions. A Department of State analysis of the House and Senate versions of the omnibus drug bills prepared October 4, 1988 and circulated on the Hill noted: "The Department of State opposed all earmarks of funds . . . "²¹

THE NATIONAL DEFENSE AUTHORIZATION ACT FOR 1989

The theme of supply reduction measures was also reflected in the drug related provisions of the National Defense Authorization Act for Fiscal Year 1989. The Act complemented programs and provisions of the 1988 Anti-Drug Abuse Act by enhancing the role and contributions made by the military in the Nation's anti-drug campaign. The provisions of this Act and 1988 congressional initiatives to involve the military more actively in anti-drug activities are treated later in this chapter in the section entitled "Use of the Military to Implement Policy."

SEEKING TO REDUCE FRAGMENTATION OF EXECUTIVE BRANCH POLICYMAKING

A second major focus of congressional international drug policy in 1988 was to reduce fragmentation of executive branch policy making. The problem of international narcotics control is a multifaceted one. It may be approached as a problem of foreign relations, law enforcement, border security, banking, intelligence, terrorism, family and health, judicial rules and practices, resource allocation, defense and national security, agricultural and foreign trade, or science and technology. The many facets of the drug problem have resulted in many executive branch agencies being involved in carrying out drug policy.

During 1988 many in Congress argued that the executive branch structure for formulating and implementing U.S. international narcotics control policy was inadequate in that it promoted fragmented policies. Approximately fifty federal agencies, departments, bureaus, and other executive entities exercise jurisdiction over some aspect of federal drug control policy. Many in Congress were critical of the performance and leadership of the National Drug Policy Board which had been established by the

²¹ Department of State, Bureau of International Narcotics Matters, Comparison of House and Senate Drug Bills, October 4, 1988, p. 1.

Comprehensive Crime Control Act of 1984 (P.L. 98-473).²² They argued that the Board left many interagency disputes unsolved, ignored its budget responsibilities, and overstated its accomplishments; and that power relationships of the Board members were not clearly defined. In addition, many argued that the Board's complex bureaucratic structure was inappropriate to the task at hand; that its cabinet-style format resulted in the Board achieving its goals at the lowest possible levels that depended on the consensus of its members to implement its decisions. Many, therefore, suggested that study should be given to the appointment of a single individual to coordinate and implement Federal drug policies--a so-called "drug czar." Such an individual, the argument went, would have the authority and clout to elevate the foreign policy priority of international narcotics control over other more traditional national interests, if and when the national interest so required.

Congress, in the Anti-Drug Abuse Act of 1988, tried to address these concerns. The Act abolished the National Drug Policy Board and established an Office of National Drug Policy in the Executive Office of the President, headed by a cabinet-level Director of National Drug Control Policy, subject to confirmation by the advice and consent of the Senate. The "drug czar" position, as enacted, was a compromise between those in Congress who favored creation of a position with strong centralized authority and those who favored a more loosely structured coordinating structure. The newly created Director would serve as the principal adviser to the National Security Council on drug control policy and attend and participate in meetings of the Council. Among the responsibilities of the Director were: (1) establishing policies, objectives, and priorities for the national drug control program; (2) promulgating annually a national drug control strategy; (3) coordinating and overseeing implementation of agency policies, objectives, and priorities; and (4) developing (with advice from individual agencies) a consolidated national drug control program budget proposal. In addition, individual agencies were required to provide the Director with the information needed for drug control.

The overall effectiveness of the new policy coordinating structure and whether it would have sufficient authority to ensure desired implementation of its policies, programs, and priorities remained uncertain at the end of 1988.²³

Meanwhile, the issue also raised an important question of whether congressional organization was adequate for a successful war on drugs.

²² The House Government Operations Committee issued a report on October 6, 1988, entitled, "The National Drug Policy Board: Fighting the War Without a Battle Plan." H. Rept 100-1063, which had been established by the Comprehensive Crime Control Act of 1984 (P.L. 98-473).

²³ William J. Bennett was confirmed by the Senate for the "drug czar" position on March 10, 1989.

During 1988, 74 House committees and subcommittees had jurisdiction over writing or overseeing drug control legislation.²⁴ Each chamber coped in a different way with the Anti-Drug Abuse Act of 1988. While such measures as multiple referrals and forming task forces helped coordinate the actions of the various committees, no congressional committee had overall centralized responsibility for drug policy formulation and oversight.

USING BILATERALISM AND SEEKING MULTILATERALISM TO IMPLEMENT POLICY

Essentially all elements of U.S. international narcotics control strategy require international cooperation. The United States has used both bilateral and multilateral diplomacy to encourage and assist nations to reduce cultivation, production, and trafficking in illicit drugs. Bilateral agreements and international conventions have thus far been largely ineffective in reversing the growth of international narcotics trafficking, however, in part because existing multilateral conventions lack strong enforcement mechanisms and are not uniformly interpreted by member nations.

U.S. narcotics control strategy also relies on international cooperation to promote coordinated border operations to interdict traffickers. To this end, the U.S. Government has provided technical assistance to coordinated multinational operations in Colombia, Peru, and Ecuador. The United States also has participated in multilateral assistance programs through the U.N. Fund for Drug Abuse Control (UNFDAC) and enlisted the aid and support of other governments for narcotics control projects. In 1988, UNFDAC assisted 25 developing countries through development, law enforcement, education, treatment, and rehabilitation programs. The 1988 UNFDAC budget totaled \$60 million, which was derived from voluntary contributions. For FY88, the United States provided \$3 million for the U.S. voluntary contribution to UNFDAC.

Multilateral mechanisms were regularly emphasized in the 1988 Anti-Drug Abuse Act (P.L. 100-690) which urged formation of regional anti-narcotics forces, a regional anti-narcotics training center, and an integrated regional plan to fight the international cocaine trade. With strong bipartisan support in both chambers; the Act

- called upon the President to seek the views of members of the Organization of America States (OAS) on the creation of a Latin

²⁴ U.S. Library of Congress, Congressional Research Service, House and Senate Standing Committees and Subcommittees with Jurisdiction over National Drug Abuse Policy, 100th Congress, by Carol Hardy, Sept 27, 1988. Report no. 88-634 GOV.

American regional anti-narcotics force and to explore the concept of similar forces in other regions of the world;²⁵

- called upon the President and the United Nations to pursue establishment of an international drug force;²⁶
- called upon the President to begin international discussions relating to establishment of an international criminal court to try drug traffickers and others who commit international crimes;²⁷
- called upon the President to convene an international conference on combatting illicit drug production, trafficking, and use in the Western Hemisphere;²⁸
- called upon the Secretary of State to consult with heads of U.S. agencies and governments of other Western Hemisphere nations concerning creation of a comprehensive, integrated, multinational plan to combat the international cocaine trade;²⁹
- called upon the Department of State to establish a regional anti-narcotics training center in the Caribbean;³⁰
- authorized \$3 million for U.S. contributions to multilateral and regional drug abuse programs (\$2 million for UNFDAC and \$600,000 for OAS sponsored projects);³¹
- urged the Secretary of the Treasury to negotiate with foreign finance ministers to establish an international currency control agency which would: (1) serve as a central database for international drug enforcement agencies; (2) collect and analyze currency transaction reports filed by member countries; and (3) encourage adoption by

²⁵ Anti-Drug Abuse Act of 1988, P.L. 100-690, sec. 4101.

²⁶ Ibid., secs. 3102 and 4103.

²⁷ Ibid., sec. 4108.

²⁸ Ibid., sec. 4104.

²⁹ Ibid., sec. 4105.

³⁰ Ibid., sec. 4106.

³¹ Ibid., sec. 4107.

member countries of uniform cash transaction and money laundering statutes.³²

Nevertheless, despite publicly avowed goals of a multilateral policy and much rhetoric espousing such a policy, U.S. international narcotics control policy has remained heavily bilateral and often unilateral in nature. The Foreign Operations, Export Financing, and Related Programs Appropriations Act for FY 1989 (P.L. 100-461), for example, funded a series of programs primarily bilateral in nature. Although \$7 million was earmarked for Latin America regional programs, many of these "regional" programs are primarily bilateral in nature.

The certification process, as another example, is by its very nature a unilateral U.S. determination based on congressionally mandated evaluation criteria which emphasize levels of bilateral cooperation and are applied on a country by country basis. Similarly, the National Defense Authorization Act for 1989 (P.L. 100-456) authorized unilateral activities by the U.S. armed forces and national guard.

USING SANCTIONS AND SEEKING POSITIVE INCENTIVES TO IMPLEMENT POLICY

Congress has generally emphasized the "stick" rather than "carrot" approach to promoting anti-drug cooperation with foreign nations. Like the 1986 Anti-Drug Abuse Act, the international section of the 1988 Anti-Drug Abuse Act stressed sanctions as evidenced by its numerous provisions to strengthen the certification process by which the President certifies a country as eligible for U.S. aid. Of particular importance in the Act were provisions: (1) requiring numerical standards and guidelines for determining which countries are major illicit drug transit nations;³³ (2) establishing additional criteria indicative of law enforcement cooperation;³⁴ and (3) applying special criteria to Bolivia, Mexico, Pakistan and Peru.³⁵

Many Members of Congress have also perceived shortcomings in the certification process since its inception in 1986. Through 1988, Congress had not decertified, i.e., overridden the President's certification of any country to be eligible to receive foreign assistance under the criteria contained in the Foreign Assistance Act of 1961 and the Trade Act. In 1987, resolutions to disapprove certification were introduced against the Bahamas, Panama, and

³² Ibid., sec. 4701.

³³ Ibid., secs. 4401 and 4405.

³⁴ Ibid., sec. 4407(E)(3)

³⁵ Ibid., secs. 4302, 4303, 4306.

Mexico³⁶. Of these, the resolution to decertify Panama, which was passed by the Senate on April 3, 1987, was the only one to pass either house of Congress. Similarly in 1988, no country was decertified by the full Congress for narcotics non-cooperation. In 1988, resolutions were introduced to decertify the Bahamas, Bolivia, Mexico, Paraguay, and Peru³⁷. Of these the one to decertify Mexico, which passed the Senate on April 14, 1988, was the only one to pass either chamber of Congress.³⁸

The Senate debate over decertifying Mexico provided important insight into the viewpoints of the Administration and Congress. In a letter to the Foreign Relations Committee, Acting Secretary of State John Whitehead, stressed the negative effects decertification might have on United States-Mexican relations:

Should the Congress overturn the President's certification of full cooperation, the political impact this would have in Mexico could be devastating to U.S. interests. I feel certain, for example, that Mexico would terminate U.S. ties to their aerial eradication program and reject the \$14.5 million in direct U.S. anti-drug assistance that these ties involve. The ability of the DEA to operate effectively within Mexico might also be impaired.³⁹

Senator Pell noted the dilemma of the law, which required "full cooperation" from a country to permit certification and left "little room for nuance."⁴⁰ In the end, however, Senator Pell agreed with the Administration

³⁶ 100th Congress, 1st. Session, H.J. Res. 202, S.J. Res. 90, S.J. Res. 91, and S.J. Res. 92.

³⁷ 100th Congress, 2nd. Session, H.J. Res. 202, H.J. Res. 493, S.J. Res. 268, H.J. Res. 495, 497, and 498.

³⁸ The Senate vote on the resolution concerning Mexico, S.J. Res. 268, was 63 in favor of disapproval, 27 against. Note that at this time (March 1988), Panama was not certified by the President. In addition, Congress, in December 1987, had already passed legislation restricting U.S. assistance to Panama, prohibiting funds for joint military exercises, and prohibiting Panamanian sugar exports until the U.S. President certifies a number of items including Panamanian progress in assuring civilian control of the armed forces, and until freedom of the press and other constitutional rights are guaranteed. See: P.L. 100-202, secs. 570, 571. See: P.L. 100-461, sec. 564 for similar language for fiscal year 1989. See also chapter on Congress and U.S. policy toward Central America in 1988.

³⁹ Congressional Record, Senate, April 14, 1988, p. S 3983 and 3984.

⁴⁰ Ibid., p. S 3981.

position that in light of constraints facing the Mexican government, they had indeed "fully cooperated."⁴¹

A contrary viewpoint was expressed by Senator Helms who insisted that the standards of the law be strictly and literally applied.⁴² Senator Helms quoted a February 23, 1988 letter from Customs Commissioner Von Raab, that:

There is corruption among senior level Mexican enforcement officials and corruption is pervasive throughout the law enforcement and military system. . . .

This corruption has effectively precluded our working with Mexican authorities on narcotics interdiction and inordinately increased the level of resources we are forced to commit to the Southwest border.⁴³

Some Members in 1988 also found fault with a previous shortcoming in the language of the law which did not clearly define a "major illicit drug transit country" in terms of the quantities of drugs which must transit a country for it to be thus classified.⁴⁴ In addition, "transit" was not clearly defined. If the destination of the drugs transiting a country were ultimately Europe or Cuba, and not the United States, should the country be placed on the list requiring certification?

In 1988, a Senate resolution was introduced to place Haiti on the list of major illicit and/or trafficking countries, thereby making it subject to certification requirements.⁴⁵ This resolution passed the Senate on April 18, 1988 and was not acted on in the House.

⁴¹ Ibid., p. S3982-83.

⁴² Ibid., p. S3982.

⁴³ Ibid., p. S3982.

⁴⁴ See sections 481(i)(2) and (5) of the Foreign Assistance Act of 1961. Current law specifies numerical standards for major illicit narcotics producing countries (500 tons of marijuana or coca leaf, or 5 metric tons of opium). See U.S. Congress, Committee on Foreign Affairs, International Narcotics Control Act of 1988, House report No. 100-720, part 1, p. 16. Note, however, that sec. 4405 of the Anti-Drug Abuse Act of 1988 requires the President to set quantitative guidelines for determining major illicit drug transit countries. See also sec. 4401 of the 1988 Act.

⁴⁵ 100th Congress, 2d. Session, S.J. Res. 285.

Nevertheless, Congress has slowly added positive incentives to supplement the "stick" approach of the certification process. One such provision in the 1988 Anti-Drug Abuse Act provided for the reallocation of funds from countries not certified to those countries that are fully cooperating with U.S. drug control efforts. Another provision added Colombia to the list of countries in the Foreign Assistance Act authorized to have more than six members of the armed forces assigned for military assistance. The foreign aid appropriations bill for fiscal year 1989 also provides similar "carrots" by earmarking \$77.5 million dollars of assistance which may be made available for narcotics control programs in Bolivia, Colombia, Ecuador, Jamaica, and Peru.⁴⁶

The House Appropriations Committee justified the latter expenditures as an incentive for countries to expand their drug control efforts. The Committee reported that the "case was made that if economic support is not continued, governments could not continue their narcotics control programs, and the possibility would increase that governments not interested in drug control could be put in power".⁴⁷

USING THE MILITARY TO IMPLEMENT POLICY

During the 1980s Congress enacted legislation that gradually expanded the role of the armed forces in assisting civilian law enforcement agencies in their efforts to curb the flow of illegal narcotics into the United States. The idea of using the military is not novel. Outside the United States, military personnel have been involved in training and transporting foreign anti-narcotics personnel since 1983. In July 1986, six U.S. Army Black Hawk transport helicopters, with American pilots and approximately 160 support troops, landed in Bolivia to help the Bolivian police conduct raids on cocaine processing facilities in the Beni province. Periodically, there have been calls for multilateral military strikes against trafficking operations, as well as increased use of U.S. elite forces in preemptive strikes against drug fields and trafficker enclaves overseas.

Increasingly in 1988, Congress and the public began to perceive drug trafficking as a threat to national security. Frustrated by the inability of law enforcement agencies to curb this national security threat and to stem the illicit flow of drugs into the United States, many Members of Congress sought to more actively involve the Department of Defense. To expand the role of

⁴⁶ See the Foreign Operations, Export Financing, and Related Programs Appropriations Act for Fiscal Year 1989, sec. 578, P.L. 100-461 [H.R. 4637] 100th Congress, 2nd Session.

⁴⁷ U.S. Congress, House, Committee on Appropriations, Foreign Operations, Export Financing, and Related Programs Appropriations Bill, 1989, Report No. 100-641 [to accompany H.R. 4637], May 19, 1988, p. 17.

the Department of Defense in drug interdiction, Senators Pete Wilson and Alfonse D'Amato and Rep. William L. Dickinson supported by Rep. Duncan Hunter introduced separate amendments to the 1989 Defense authorization bills (H.R. 4264 and S. 2355). While both amendments called for (1) increased funding, (2) increased surveillance, (3) more active involvement of military personnel in making arrests, and (4) increased use of Reserve and National Guard forces, there were important differences.

The Dickinson-Hunter amendment, passed by the House on May 5, 1988, authorized the military to seize any planes or vessels transporting illegal narcotics and arrest the crews while in "hot pursuit". It required the President, by utilizing the armed forces, to "substantially halt" within 45 days airborne and seaborne narcotics trafficking coming into the United States.

The Wilson-D'Amato amendment, passed by the Senate on May 13, 1988, permitted Navy personnel to pursue, intercept, and arrest suspected drug-smugglers outside U.S. territorial waters if Coast Guard personnel were present, and required the President, within 30 days, to choose a lead agency to coordinate federal anti-drug surveillance and interdiction responsibilities.

Some Members and other observers objected to the proposals on grounds they called for action without full study of the consequences. "This is posturing even for an election year," said Senator Lowell Weicker, one of six Senators to vote against the amendment; Senator John Glenn, who also voted against the amendment, said that it reflected not careful thought but "a great hysteria from all of us that nobody is going to out anti-drug me."⁴⁸ A Washington Post editorial entitled "Drugmanship" said, "The House did a true Tarzan Act on the issue--lots of vigorous chest-pounding, loud yodeling and swinging on vines."⁴⁹

The Administration opposed mandating an expanded Department of Defense role in drug interdiction. The Office of the Secretary of Defense commissioned a study by the RAND Corporation on the effects of increased military participation in drug interdiction. The resulting study concluded: "Increased drug interdiction efforts are not likely to greatly affect the

⁴⁸ See "Drugmanship", The Washington Post, May 17, 1988, p. A 22.

⁴⁹ Ibid. Time Magazine also found the Senate Amendment's provisions more sobering than those of the House. "Deliberating under the less hallucinatory guidance of Georgia's Sam Nunn, the Senate approved a more realistic role for the military," wrote one commentator (Magnuson, Ed. A New Mission Impossible: Seal the Border in 45 Days" Time Magazine, May 30, 1989, p. 19). Other commentators on the Hill suggested privately at the time that the House had gone overboard on this issue, knowing that the Senate would then be forced into the position of dampening the enthusiasm and zeal of their congressional colleagues.

availability of cocaine in the United States".⁵⁰ This questioning of the ultimate value of interdiction as a primary drug policy tool became a major force in driving drug policy makers to seek a comprehensive reevaluation of U.S. anti-drug policy and programs, and in shifting policy focus from reduction of supply measures toward reduction of demand measures.

On June 7, 1988, the Defense Policy Panel of the Investigations Subcommittee of the House Armed Services Committee sponsored a seminar entitled *Narcotics Interdiction and Use of the Military: Issues for Congress*. It focused on the central questions facing both chambers: (1) What is an appropriate role for the military in the war on drugs?; (2) How should such a role be funded and should the Defense Department be the lead agency?; and (3) How effective can the military be in such a role? Lt. General Stephen Olmstead, Deputy Assistant Secretary of Defense for Drug Policy and Enforcement, stressed:

What I find is, as one of my colleagues alluded to, "let's make the Army the scapegoat. We don't know the answer to the drug problem, so let's assign it to the Army and let them try and solve it." I would ask, are we trying to assign these new missions to the military because the law enforcement agencies have failed? I don't think they [the agencies] have. I think that Customs and Coast Guard have done a superb job. When they are given the proper assets, they are the people to do the job.⁵¹

On June 8th and 14th, 1988, the House and Senate Armed Services Committees held joint hearings on the role of the Department of Defense in drug interdiction concurrently with a House-Senate conference to reconcile differences between amendments to the National Defense Authorization Act for 1989. Senator Sam Nunn said in his opening statement, "In recent years, the question of the appropriate role for the military in the drug arena has become the subject of an increasingly heated debate, but not necessarily one in which all the facts are known or even focused on."⁵²

⁵⁰ Reuter, Peter; Crawford, Gordon; and Cave, Jonathan; *Sealing the Borders: The Effects of Increased Military Participation in Drug Interdiction*. RAND Corporation, Santa Monica, California, January 1988, p. xi.

⁵¹ U.S. Congress. House, Committee on Armed Services. *Narcotics Interdiction and the Use of the Military: Issues for Congress*. Proceedings of a seminar held by the Congressional Research Service, June 7, 1988; report of the Defense Policy Panel and Investigations Subcommittee of the Committee on Armed Services, House of Representatives, 100th Congress, 2nd session. Washington, G.P.O., 1988. p. 13.

⁵² U.S. Congress. Senate. Committee on Armed Services. *Role of the Department of Defense in drug interdiction*. Hearings before the Committee on Armed Services, United States Senate, 100th Congress, 2nd session and a

Dr. Peter Reuter from RAND Corporation compared an enhanced military role in the drug war to the military situation in Viet Nam:

The military problem here is unfortunately similar to that faced by the United States when attempting interdiction against North Vietnamese supply routes into South Vietnam There are no large fixed targets whose destruction makes a difference. Smuggling organizations also show decentralization, adaptability and capacity to camouflage themselves in civilian traffic and population that made the Viet Cong such an elusive target.⁵³

Secretary Carlucci opposed the assignment of a law enforcement mission to the Department of Defense. He said:

The historical tradition which separates military and civilian authority in this country has served both to protect civil liberties of our citizens and to keep our Armed Forces militarily focused at a high state of readiness. Further, our equipment assets are designed for war-fighting and not law enforcement. They are therefore of doubtful cost effectiveness in a law enforcement role.⁵⁴

The conference report on the National Defense Authorization Bill made clear that the conferees had not endorsed proposals ordering the military to seal borders, or to engage in hot pursuit and arrest suspected drug traffickers. But on an overall role of increased military support to civilian agencies for drug interdiction the conferees agreed.⁵⁵

On the issue of further involving the military in making arrests, the conferees noted that they did not believe it appropriate to make such a radical break with the historic separation between military and civilian functions without clear and compelling evidence that such an action would result in a substantial reduction of the drug problem. They concluded that the "overwhelming weight of the evidence is that no such change would come from giving the military police powers."⁵⁶

joint hearing before the Committee on Armed Services, House of Representatives, 100th Congress, 2nd session. June 8, 14, and 15, 1988. Washington, G.P.O., 1989. p. 1-2.

⁵³ Ibid., p 86.

⁵⁴ Ibid., p. 266-67.

⁵⁵ U.S. Congress. House. National Defense Authorization Act, Fiscal Year 1989, Conference Report to accompany H.R. 4264, July 7, 1988. p. 455.

⁵⁶ Ibid., p. 445.

The final outcome was Title XI, "Drug Interdiction and Law Enforcement Support" of the National Defense Authorization Act for 1989 (P.L. 100-456) signed into law on September 29, 1989. The legislation:

- established the Department of Defense as the "lead agency" for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States;
- required the Department of Defense to promptly provide civilian law enforcement agencies with relevant drug related intelligence;
- charged the President to direct that command, control, communications, and technical intelligence assets dedicated to drug control be integrated by the Defense Department into an effective network;
- permitted Defense Department personnel (with the approval of the Secretaries of Defense, State, and the Attorney General) to transport civilian law enforcement personnel outside the land areas of the United States in connection with law enforcement operations;
- permitted increased use of the National Guard in drug interdiction activities; and
- authorized the Defense Department an additional \$210 million for drug interdiction activities.⁵⁷

The provisions continued a trend to enhance direct military involvement in the Nation's anti-drug campaign as well as military support for civilian anti-drug enforcement activities.

⁵⁷ These funds were appropriated in Title VII of the Department of Defense Appropriations Act, 1989 (P.L. 100-463, approved October 1, 1988).

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