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Security Assistance and Cooperation: Shared Responsibility of the Departments of State and Defense

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Summary

The Department of State and the Department of Defense (DOD) have long shared responsibility for U.S. assistance to train, equip, and otherwise engage with foreign military and other security forces. The legal framework for such assistance emerged soon after World War II, when Congress charged the Secretary of State with responsibility for overseeing and providing general direction for military and other security assistance programs and the Secretary of Defense with responsibility for administering such programs. Over the years, congressional directives and executive actions have modified, shaped, and refined State Department and DOD roles and responsibilities. Changes in the legal framework through which security assistance to foreign forces—weapons, training, lethal and nonlethal military assistance, and military education and training—is provided have responded to a wide array of factors.

Legal Authorization and Funding

For most of the past half-century, Congress has authorized U.S. security assistance programs through Title 22 of the *U.S. Code* (Foreign Relations) and appropriated the bulk of security assistance funds through State Department accounts. DOD administers programs funded through several of these accounts under the Secretary of State's direction and oversight. Beginning in the 1980s, however, and increasingly after the terrorist attacks on the United States on September 11, 2001 (9/11), some policymakers have come to view the State Department authorities, or the funding allocated to them, as insufficient and too inflexible to respond to evolving and emerging security threats.

As a result, Congress has increasingly provided DOD with the means to offer security assistance under authorities in either Title 10 of the *U.S. Code* (Armed Services) or the annual National Defense Authorization Act (NDAA), both funded as part of the DOD budget. (These are collectively known as "Title 10" authorities and referred to by DOD as "security cooperation.")

- DOD security assistance and other security cooperation programs conducted under Title 10 authority and established prior to 9/11 include counternarcotics, counter-proliferation, humanitarian assistance, and assistance for training and equipping NATO forces. Title 10 statutes also provide authority for DOD to pay the expenses of foreign forces to enable them to participate in exercises, exchanges, and other military-to-military contacts.
- Post-9/11 DOD security cooperation authorities focus on counterterrorism assistance, and assistance to foreign forces in areas of conflict. Much of this assistance is for "building partner capacity" (BPC) to enable foreign forces to take greater responsibility for their own defense and for achieving mutual security goals in order to reduce U.S. costs. As part of the BPC effort, recent legislation provides DOD with authority to help strengthen foreign Ministries of Defense and related defense institutions. (Some of these DOD authorities require the concurrence [i.e., approval] of the Secretary of State.)
- Post-9/11 innovations include Congress's establishment through NDAA authority of two joint State Department-DOD authorities with a lead role for the Secretary of State: (1) an Afghanistan Infrastructure Fund established in FY2011 and (2) the Global Security Contingency Fund (GSCF), a pilot project established in FY2012 to address emerging threats. In FY2006, Congress created a DOD "joint formulation" BPC authority to address emerging counterterrorism threats, with DOD in the lead.

To some analysts, the increase of Title 10 authorities and funding to DOD for BPC support to foreign military and other security forces contributes to the perceived "militarization" of U.S. foreign policy. For others, the increase of Title 10 authorities emerged from perceived gaps in existing authorities but has resulted in a confusing, inefficient "patchwork" of authorities and coordination arrangements that are not sufficient to meet all needs.

Issues Covered in This Report

Since the late 1940s, Congress has played an active role in shaping the legal and institutional construct for security assistance activities. As Congress continues to consider legislation governing security assistance and cooperation, and to conduct oversight of such programs, some Members may seek new ways to improve program effectiveness and address inefficiencies in planning and implementation.

This report provides an overview of U.S. assistance to and engagement with foreign military and other security forces, focusing on Department of State and DOD roles. It lays out the historical evolution and current framework of the Department of State-DOD shared responsibility. It concludes with a brief overview of salient issues:

- how to assess effectiveness;
- whether and how to modify or change the statutory and institutional framework;
- how to reconcile institutional roles and available resources;
- how to provide appropriate transparency for oversight.

This discussion is relevant to current FY2017 NDAA proposals. S. 2943, the Senate Armed Services Committee (SASC) version of the FY2017 NDAA, contains broad proposals to consolidate many DOD security cooperation authorities under a new Title 10 chapter dedicated to security cooperation authorities, expanding some, and codifying some NDAA statutes. The House-passed version of that Act, H.R. 4909, would also consolidate a number of existing Title 10 and NDAA statutes under a new Title 10 chapter, but it does not expand existing nor propose new authority.

The appendixes provide information on the history of the State-DOD shared responsibility, as well as details of selected State Department and DOD security assistance and cooperation statutes.

Additional information on the DOD "Building Partner Capacity" programs and activities may be found in CRS Report R44313, *What Is "Building Partner Capacity?" Issues for Congress*, coordinated by Kathleen J. McInnis.

Contents

Introduction 1
Key Concepts and Terminology 2
Shared Responsibility 2
Multiple Purposes 3
Definitional Problems 4
Legal and Institutional Framework 5
The Development of the Shared Partnership Legal Framework 5
The Interagency Cooperation Framework 7
State Department and DOD Security Assistance Authorities 9
Issues for Congress 14
Assessing Effectiveness 15
Reconciling Foreign Policy and Security Concerns Through Statutory Reform 18
Expand or Modify State Department Security Assistance Programs and Funding 20
Expand the Use of the "Joint Formulation" Mechanism 21
Reform Title 10 Authorities 23
Considerations for Statutory Reform 24
Reconciling Institutional Roles and Available Resources 25
Providing Greater Transparency and Accountability? 26
Conclusion 27

Tables

Table 1. Title 22 Security Assistance 11
Table 2. Hybrid Authorities 12
Table 3. Selected "Title 10" Security Cooperation Authorities/Programs 12

Appendixes

Appendix A. Terminology 29
Appendix B. Historical Evolution of Roles and Responsibilities 33
Appendix C. Title 22 Department of State Authorities 43
Appendix D. Hybrid Department of State-Department of Defense (DOD) Authorities 48
Appendix E. Title 10 Authorities: Contingency Operations and Coalition Operational Support 50
Appendix F. Title 10 Authorities: Counterproliferation, Counter-drug, and Counterterrorism 52
Appendix G. Title 10 Authorities: Defense Institution Building 55
Appendix H. Title 10 Authorities: Exercises, Training, and Military-to-Military Contacts 57
Appendix I. Title 10 Authorities: Humanitarian Assistance and Defense Health Programs 58
Appendix J. Title 10 Multipurpose Authority: The Combatant Commander's Initiative Fund 60

Contacts

Author Information..... 60

Introduction[1]

Over the past decade, Congress has substantially increased Department of State and Department of Defense (DOD) efforts to train, equip, and otherwise engage with foreign military and other security forces. As these efforts have increased, congressional questions and concerns have multiplied. Such concerns range from broad to specific—for example, the perceived lack of an overarching strategy for such assistance or, more specifically, the utility of the current legal framework, appropriate State Department and DOD roles and modes of coordination, and program effectiveness.

The legal and institutional framework through which the State and Defense departments share responsibility for providing such assistance has evolved over time, creating what some have labeled a complex and confusing "patchwork" of authorities and arrangements. For most of the past half-century, Congress has authorized such assistance programs under Title 22 of the *U.S. Code* (Foreign Relations), specifically the Foreign Assistance Act of 1961, as amended (1961 FAA, P.L. 87-195), and the Arms Export Control Act, as amended (AECA, P.L. 90-629), and appropriated the bulk of funds to State Department accounts. A DOD agency has administered those funds under the Secretary of State's direction and oversight.

After the attacks on the United States of September 11, 2001 (9/11), policymakers have increasingly come to view the United States as facing new military threats and challenges to which the State Department authorities could not appropriately respond. As a result, Congress has increasingly provided DOD with the means to provide such assistance under its own Title 10 *U.S. Code* (Armed Services) and the annual National Defense Authorization Act (NDAA) authority and funding under the DOD budget. As U.S. assistance to foreign forces has risen, and increasingly been provided under DOD budgets, some policymakers have questioned the utility of such aid, as well as the efficacy of the legal and institutional framework under which it is provided.

Relevant Legislation

FY2017 National Defense Authorization Act as reported by the Senate Armed Services Committee (S. 2943) and passed by the House (H.R. 4909). See the "Issues for Congress" section for additional information.

Current State and DOD security assistance and engagement efforts involve a range of activities, including "traditional" programs transferring conventional arms for defense posture purposes, training and equipping regular and irregular forces for combat, conducting counterterrorism programs, and expanding education and training programs. Obama Administration officials have argued that such efforts are cost-effective in the long run, potentially generating considerable savings in U.S. defense costs. Some policymakers, however, look at the mixed record of success and question whether the expenditure of billions of dollars on such programs is justified. Some wonder whether reforming such programs may improve results.

[1] This report draws on several CRS reports and a variety of DOD publications. A primary CRS source is CRS Report RL34639, *The Department of Defense Role in Foreign Assistance: Background, Major Issues, and Options for Congress,* coordinated by Nina M. Serafino. This report has separate appendixes providing extensive background and detail on many of the programs discussed below. A useful DOD source is the Defense Institute for Security Assistance Management Security Cooperation Programs handbook, updated annually. The current edition is Defense Institute for Security Assistance Management, Security Cooperation Programs Fiscal Year 2016, Revision 16.0, 2016, at http://www.disam.dsca.mil/documents/pubs/security_cooperation_programs_160127.pdf. Hereinafter referred to as DISAM Security Cooperation Handbook.

> The "issues are whether the United States' approach is appropriately scoped and effective, achieves a set of well-defined goals that relate to the U.S. national interest, supports broader national objectives and is coordinated with other efforts to advance those interests, reflects a reasonably prioritized allocation of resources, is as rationally organized for decision, allocation of funding, management, implementation, and evaluation as is possible, and, in general, represents the best use of U.S. resources devoted to these efforts." International Security Board "Report on Security Capacity Building" (January 7, 2013, p. 2).

This report provides an overview of U.S. assistance to and engagement with foreign military and other security forces. It focuses on various aspects of the respective State Department and DOD roles, particularly their broad "shared responsibility" for security assistance.[2] It includes

- information on the historical evolution and current status of State Department and DOD responsibilities,
- an overview of current State Department, DOD, and joint State-DOD authorities, and
- a discussion of key oversight questions.

In the issues section, the report identifies certain questions Congress may wish to raise: How should security assistance/cooperation effectiveness be assessed? Should the current statutory and institutional framework be modified or changed? Are agencies provided sufficient resources to carry out their institutional roles? How might congressional oversight and public transparency be improved?

Key Concepts and Terminology

Two concepts merit emphasizing as they are key to understanding the legal and institutional framework governing U.S. assistance (i.e., weapons, supplies, training, and other support) to and engagement with foreign military and other security forces:

- U.S. assistance to and engagement with foreign forces is often a shared responsibility among two or more U.S. government agencies, principally between the State Department and DOD, but also with others.
- U.S. assistance to and engagement with foreign forces serves multiple purposes.

Several terms are often related to such assistance and engagement, but no standard government-wide terminology exists. This section briefly discusses those concepts and terms. For a fuller listing of terms and definitions, see **Appendix A**.

Shared Responsibility

Foreign military and other security assistance is a shared responsibility across the U.S. government. Although the State Department and DOD are the major players, other U.S. agencies also contribute to U.S. security assistance efforts, including the U.S. Agency for International

[2] The term "shared responsibility" was used by former Secretary of Defense Robert M. Gates on various occasions, including a 2010 article in *Foreign Affairs*. "The United States now recognizes that the security sectors of at-risk countries are really systems of systems tying together the military, the police, the justice system, and other governance and oversight mechanisms. As such, building a partner's overall governance and security capacity is a shared responsibility across multiple agencies and departments of the U.S. national security apparatus-and one that requires flexible, responsive tools that provide incentives for cooperation." Robert M. Gates, "Helping Others Defend Themselves: The Future of U.S. Security Assistance," *Foreign Affairs*, vol. 89, no. 3 (May/June 2010), p. 4. Hereinafter referred to as "Helping Others Defend Themselves."

Development (USAID), the Departments of Energy (DOE), Homeland Security (DHS), Justice, and Treasury, along with members of the intelligence community.

Conducting foreign relations is the State Department's responsibility, and the Secretary of State, as the President's primary foreign policy advisor, contributes to the development of the President's foreign policy and ensures its coherent implementation. Defending the country against foreign threats is the DOD's core mission. The State Department-DOD shared responsibility is a result of the overlap in these functions when assisting foreign militaries and other security forces for the mutual benefit of a foreign government and the United States.

The United States has long recognized that it may at times be required to act alone to deter or combat threats. Nevertheless, since the end of World War II, policymakers have asserted that U.S. long-term security also requires cultivating foreign governments as allies to counter potential mutual enemies (or the enemies that threaten U.S. allies). The State Department-DOD shared responsibility arises from the many decisions that must be made in providing allies' and partners' militaries and other security forces with the equipment and training necessary to combat those enemies. Determining what equipment and training a foreign government needs and can effectively utilize requires military expertise. Determining how the provision of that equipment will affect relations with a foreign government and its people (as well as the governments of neighboring countries) and regional/international balances of power requires diplomatic skills and international affairs expertise. Determining whether a country's economy can absorb the cost of maintaining adequate military forces, and acquiring and maintaining military equipment, is a judgment for economists and development specialists.

In recent years, some policymakers and analysts have expressed concern over what they identify as a growing imbalance between the departments with the growing DOD role, leading to the "militarization" of U.S. foreign policy.[3] Some contend that this trend stems from the substantial advantages of DOD personnel resources and Congress's provision of a growing number of new authorities to conduct security assistance missions. On the other hand, others perceive that weaknesses in the State Department's planning and implementation culture, limited personnel, and insufficient resources have compelled DOD to seek its own authorities and greater resources.

Multiple Purposes[4]

Foreign military and other security assistance serves multiple purposes, both for the U.S. government[5] and for recipient governments. As expressed in many documents since the immediate post-World War II period, foreign military assistance has been viewed as a means to foster international stability. U.S. security can be enhanced by spreading the burden for mutual defense, and by helping other governments deter or combat external aggression or internal subversion by countries or forces that may pose long-term risks to the United States.

For the U.S. government, foreign military aid may also be a diplomatic asset. Such assistance may be used to cultivate goodwill and, in some cases, to persuade foreign governments to take

[3] For a variety of perspectives on this topic, see Gordon Adams and Shoon Murray, eds., *Mission Creep: The Militarization of U.S. Foreign Policy?,* (Washington, DC: Georgetown University Press, 2014). Hereinafter referred to as *Mission Creep: The Militarization of U.S. Foreign Policy?*

[4] For a discussion of the multiple purposes of security assistance and of effectiveness by purpose, see CRS Report R44313, *What Is "Building Partner Capacity?" Issues for Congress*, coordinated by Kathleen J. McInnis.

[5] President Obama's presidential policy directive on U.S. Conventional Arms Transfer policy (PPD-27), issued on January 15, 2014, identifies 10 policy goals of U.S. arms transfers and 13 criteria that must be taken into account in arms transfer decisionmaking.

positions or measures that the United States believes beneficial to its own and allied interests, or to express support for such actions. In addition, DOD uses foreign military and other security assistance as a tool to develop institutional ties with foreign militaries, cultivating relations that may be useful in dealing with future crises and fighting together in future conflicts. "Building partner capacity" through security assistance has been highlighted in recent defense strategy and guidance as a key component of defense planning and a significant means of decreasing DOD budgets in the long run.[6]

On the receiving end, the governments, military and security forces, and populations of recipient countries may incur both benefits and costs from such assistance. Foreign governments and militaries may use such aid to help them deter or actively counter aggression from other states. At times, foreign governments may use such aid to help battle or suppress domestic foes. In some cases, however, this aid may, from a U.S. perspective, upset the political balance within a country, enabling powerful militaries to unduly influence, pressure, or oust fledgling democratic governments or to suppress democratic opposition or movements in ways that may include, on some occasions, the violation of human rights. Moreover, maintaining or sustaining military and security forces may harm a country's economic prospects by diverting scarce funds from economic development to military purposes. Although U.S. military assistance is potentially beneficial, unless it is carefully calibrated and monitored, such assistance may have unintended consequences affecting U.S. interests in and relations with a recipient country, as well as the surrounding region.

Definitional Problems

The discussion of U.S. assistance to foreign military and other security forces is complicated by the lack of a standard and adequate terminology. "Military assistance," "security assistance," "security cooperation," "security sector assistance," "security force assistance," and "defense articles and services" are all terms used in connection with the supply of weapons, equipment, supplies, and training to such forces and, in some cases, engagement with them. Some of these terms are defined by policy documents or in law (see **Appendix A**). Some authorities are labeled with two more informal terms—"build partner capacity" or "train and equip"—which are used in the discussion of specific authorities below.[7]

Terminology

The two terms most commonly used today for assistance to foreign military and security forces are "security assistance" and "security cooperation." Security assistance is the term most frequently used, regardless of the agency providing that assistance.

There is no State Department definition for security assistance. The annual State Department congressional budget justification (CBJ), however, lists six budget accounts under the heading "International Security Assistance." These accounts, with their underlying Title 22 authorities (the 1961 FAA and the AECA), are commonly regarded as the State Department's security assistance portfolio.

DOD formally defines security assistance as the group of State Department 1961 FAA and AECA programs that a DOD organization, the Defense Security Cooperation Agency (DSCA),

[6] See CRS Report R42146, *Assessing the January 2012 Defense Strategic Guidance (DSG): In Brief*, by Catherine Dale and Pat Towell.

[7] For a discussion of the term "build (or building) partner capacity," see CRS Report R44313, *What Is "Building Partner Capacity?" Issues for Congress*, coordinated by Kathleen J. McInnis.

administers. These include programs conducted under two of the State Department international security assistance accounts and attendant authorities, as well as programs conducted under four related 1961 FAA and AECA authorities.

DOD uses the overarching term "security cooperation" to denote the State Department security assistance administered by DSCA through which the U.S. government furnishes defense articles, military training, and other defense-related services, as well as all other DOD interactions with foreign defense establishments. The purposes of the interactions with foreign defense establishments defined as security cooperation are to "build defense relationships that promote specific U.S. security interests, develop allied and friendly military capabilities for self-defense and multilateral operations, and provide US forces with peacetime and contingency access to a host nation."[8]

Basic Terms Used in This Report

This report uses "security assistance" in its generic sense of assistance to foreign military and other security forces as the default term for assistance provided and activities conducted under *U.S. Code* Title 22 (Foreign Relations and Intercourse) and Title 10 (Armed Forces), as well as under provisions of an annual National Defense Authorization Act (NDAA) when both are discussed. (Assistance provided under both Title 10 and NDAAs are collectively referred to as "Title 10 authorities.")

When only Title 10 authorities are involved, the term "security cooperation" is used. Where possible, this report uses specific terms, for instance, "military assistance" for programs that involve only foreign military forces, or "humanitarian assistance" for DOD programs that provide disaster relief and other forms of humanitarian aid to foreign populations.

Legal and Institutional Framework

The current legal and institutional framework for assistance to foreign militaries and other security forces has its origins in congressional documents, legislation, and executive orders that, beginning in the late 1940s, established the respective roles and responsibilities of the Department of State and DOD. A lead oversight role for the Secretary of State has been a central and enduring feature for most of the time since then, as has been DOD's major role in administering many security assistance programs. Nevertheless, the legal and institutional basis for State Department influence and oversight has evolved over time.

The Development of the Shared Partnership Legal Framework[9]

The principle of civilian leadership, influence, and oversight of security assistance was a central feature of the first large-scale U.S. foreign assistance (including military assistance) programs during the post-World War II and early Cold War years. These early military and security force assistance programs were first instituted to help foreign governments build the capacity to defend against state-based foreign threats, principally the Soviet Union. This assistance started with the Greek-Turkish Aid Act, 1947, and the Mutual Defense Assistance Act of 1949, and continued through the Mutual Security Acts of the 1950s. For most of that period, program direction and oversight of funds authorized under these acts were vested in the Secretary of State by executive

[8] Department of Defense, *Department of Defense Dictionary of Military and Associated Terms (As Amended Through 15 February 2016)*, Joint Publication 1-02, November 8, 2010, p. 212, at http://dtic.mil/doctrine/new_pubs/jp1_02.pdf.

[9] See **Appendix B** for details on the historical evolution of State Department and DOD roles and responsibilities through legislation and executive orders.

orders, although for four years White House officials were in charge, and for some of this early period, U.S. ambassadors played a major role.

The Foreign Assistance Act of 1961 (1961 FAA), Section 622(c), fixed the Secretary of State's leadership role in statute for funds authorized by the act, charging the Secretary with responsibility, under the direction of the President, for the "continuous supervision and general direction" of foreign assistance, including military assistance, education, and training under the act. In 1968, Congress broadened the scope of this responsibility to include all military assistance, regardless of the source of authority. Under Section 623, Congress charged the Secretary of Defense with responsibility for administering the FAA-authorized military assistance programs (a function originally assigned to the Secretary of Defense under Mutual Security Acts of the 1950s). Through executive orders, the President delegated to the Secretary of State most of the foreign assistance authority assigned to him by the 1961 FAA, but retained the legislative mandate for State Department oversight and DOD administration regarding military assistance.

Beginning in the 1980s, Congress began providing DOD with authority in Title 10 of the *U.S. Code* and annual National Defense Authorization Acts (NDAAs) (often referred to collectively as "Title 10 authorities") to conduct a wide range of programs and activities funded by DOD appropriations. Congress began providing such authorities in the 1980s for counternarcotics and humanitarian assistance; authority for nonproliferation and counterterrorism programs was subsequently added in the 1980s and 1990s.

With the collapse of the Soviet Union in 1991, U.S. government assistance to and engagement with foreign militaries and security forces has been employed to counter new threats, including those from non-state actors. Many of the new authorities were provided to DOD, especially after the terrorist attacks on the United States of September 11, 2001 (9/11).

As the United States undertook military action in Afghanistan in 2001 and then in Iraq in 2005, Congress provided a number of DOD crisis and wartime authorities, some providing new global authority and some specific to those conflicts. Most recently, DOD statutes have been added regarding U.S. assistance to conflicts in Africa. The Defense Institute for Security Assistance Management (DISAM) catalogues approximately 80 Title 10 security cooperation programs and authorities;[10] RAND, using different criteria, identifies 106 "core" Title 10 security cooperation statutes.[11] Although not subject to 1961 FAA and AECA conditions, Title 10 security cooperation authorities may be subject to NDAA and DOD appropriations conditions, including conditions on human rights observance.[12]

After U.S. military action began in Afghanistan and Iraq, Congress provided several authorities for DOD to support partners in those efforts. One was a broad authority for coalition assistance not limited to those two conflicts. Others enabled assistance to (1) those countries providing military forces to participate in those conflicts and (2) bordering countries that providing assistance and other support for those operations. Congress also provided new authorities to support bilateral security assistance in Iraq and Afghanistan.

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[10] *DISAM Security Cooperation Handbook*.

[11] David E. Thaler, Michael J. McNerney, and Beth Grill, et al., *From Patchwork to Framework: A Review of Title 10 Authorities for Security Cooperation*, RAND Corporation, Santa Monica, CA, 2016, p. x, http://www.rand.org/content/dam/rand/pubs/research_reports/RR1400/RR1438/RAND_RR1438.pdf. Hereinafter referred to as *RAND: From Patchwork to Framework.*

[12] See CRS Report R43361, *"Leahy Law" Human Rights Provisions and Security Assistance: Issue Overview*, coordinated by Nina M. Serafino.

The growth of the Title 10 authorities has raised questions about the historical division of responsibility between the Secretary of State and the Secretary of Defense. About 50 of the 80 security cooperation statutes identified by DISAM specifically require the concurrence of the Secretary of State before the Secretary of Defense may exercise his authority. Some analysts state that this proliferation of Title 10 authorities has muddled the coherence of U.S. programs and policy and undermined the earlier clarity of 1961 FAA Section 622(c) Secretary of State oversight responsibility.[13] Other analysts question the extent to which the provision extends State Department oversight to noncombat aid and activities authorized by Title 10 and NDAAs.[14]

The Interagency Cooperation Framework

Since the 1950s, an elaborate structure for continuous interdepartmental collaboration has been in place, but it has changed significantly over time. As of March 1972, the interdepartmental coordination process, intended to integrate economic and military aid, consisted of five levels, which led from country-level program recommendation development to final recommendations to be submitted to the Secretary of State and then to the President.[15] Today, the mechanisms for State Department-DOD collaboration may be considered in some respects simpler, when dealing with State Department security assistance, and in other respects more complex, when dealing with DOD authorities.

DOD, through U.S. military personnel as well as DOD civilian employees and contractors, engages in a wide range of noncombat activities and contacts abroad. DOD sometimes

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[13] For example, a 2015 report published by the Center for a New American Security states, "With the glut of new authorities, policymakers have been using them in a piecemeal and disconnected fashion. In addition to the imbalance and the lack of coordination between State and DoD authorities, the connection between Title 10 and Title 22 authorities has been lost, and State's position as the lead agency in determining the strategy and direction of security assistance has been diluted." Dr. Dafna H. Rand and Dr. Stephen Tankel, *Security Cooperation and Assistance: Rethinking the Return on Investment*, Center for a New American Security, August 2015, p. 24. Hereinafter referred to as *"Security Cooperation and Assistance: Rethinking the Return on Investment."*

[14] Although the DOD Security Assistance Management Manual (SAMM), a DOD policy document, explicitly declares that 1961 FAA Section 622(c) applies to State Department assistance, that policy document does not make the same statement regarding DOD authorities. In Chapter 1, Point C1.1.2.2. states that all State Department security assistance programs "are subject to the continuous supervision and general direction of the Secretary of State to best serve U.S. foreign policy interests," whether administered by the Department of State or DOD. Point C1.1.2.1., however, states that "[b]y statute or Executive Order [DOD security cooperation programs] are sometimes required to be exercised in coordination with the Secretary of State," with no mention of Section 622(c)'s continuous supervision and general direction requirement http://www.samm.dsca.mil/chapter/chapter-1. The U.S. Army Operational Law Handbook, however, identifies many DOD "statutory authorizations and appropriations to conduct Foreign Assistance" (including security assistance in general and "Section 1206," now 10 U.S.C. 2282, in particular). Lt. Col. William Johnson and Lt. Commander David Lee, editors. The Judge Advocate General's Legal Center and School, U.S. Army, *Operational Law Handbook*, Charlottesville, VA, 2014, see pp. 228-248, at http://www.loc.gov/rr/frd/Military-Law/pdf/operational-law-handbook_2014.pdf.

[15] The interagency review process started with the Security Assistance Program Review Committee (SAPRC) consisting of State, DOD, Treasury, USAID, National Security Council staff, and Office of Management and Budget representatives to sort through country level proposals, agreements, and disagreements. The results of this review were sent to a steering group of the same offices, which considered proposals over a week or two in light of economic and political factors and refined program levels and policy issues. Its conclusions were referred back to the SAPRC, the Chairman of which then made recommendations to the Secretary of State. U.S. Congress, Senate, Senate Foreign Relations Committee, *Department of State Appropriations Authorization, Fiscal Year 1973*, 92nd Cong., 2nd sess., March 8, 9,10, 1972, (Washington: GPO, 1972), pp. 408-409). This process is somewhat more elaborate and holistic than the current interagency processes through which the embassy and geographic combatant command (COCOM) personnel, as well as State Department and DOD headquarters personnel, plan State Department Title 22 security assistance programs and programs conducted under DOD Title 10 authority.

implements or otherwise supports State Department programs or the programs of other civilian agencies. The State Department oversees DOD implementation of the military aid, education, and training programs funded through the State Department budget. At other times, DOD conducts programs under DOD authorities, sometimes in cooperation with civilian agencies. The White House, the State Department, and other agencies with a security sector assistance responsibility, such as the Departments of Justice and Homeland Security, and the United States Agency for International Development (USAID), work together at many levels to plan and implement military aid programs and activities.

Under State Department oversight and guidance, DOD plays a key role in the "traditional" Title 22 military assistance programs authorized by the 1961 FAA and the Arms Export Control Act (AECA). These are the Foreign Military Sales (FMS), Foreign Military Financing (FMF), and International Military Education and Training (IMET) programs, which provide military equipment and related assistance, along with military education and training. Oversight for these programs is provided by the State Department Bureau of Political-Military Affairs (PM). FMS, FMF, and IMET are administered by the DSCA, an agency under the Office of the Secretary of Defense, Policy.[16] In the field, primary responsibility for these programs rests with the Security Cooperation Organization (SCO) in each U.S. embassy, staffed with military personnel and directed by military officers reporting to both the U.S. ambassador and the geographic Combatant Commander (GCC), but nonetheless part of the embassy diplomatic mission.

DOD also cooperates with civilian agencies, playing what DOD terms a "supporting" role by providing assistance in conjunction with programs under the aegis of or implemented by the State Department or other agencies. For instance, DOD conducts counterproliferation programs under its own authority, but at the same time supports and cooperates on nonproliferation initiatives with the Departments of State and Energy under the Nonproliferation, Demining, and Related Programs (NADR) and Nonproliferation and Disarmament Fund (NDF). DOD also supports some State Department programs funded under the State Department peacekeeping operations (PKO) account.

In addition, DOD has long supported USAID by providing disaster and humanitarian relief to foreign populations for natural and manmade disasters. In crises, DOD responds under the direction of the USAID Administrator to provide food, shelter, supplies, logistical support, medical evacuations, refugee assistance, and search and rescue services. In other situations, DOD conducts activities often characterized as humanitarian or development assistance, but that may be undertaken primarily for other purposes, such as strengthening relations with other military forces, establishing relations with foreign local leaders and peoples in areas where U.S. military personnel are operating to legitimize their presence (e.g., by providing benefits such as clinics, wells, and schoolhouses), or providing training for U.S. forces. USAID representatives are detailed to the geographic combatant commands (COCOMs) to review and provide advice on humanitarian and civil action projects to ensure they conform to sound development practices. In 2005, USAID established an office at headquarters in Washington to coordinate with DOD, now named the Office of Civil-Military Cooperation.

Under its own Title 10 and NDAA authorities, DOD provides assistance to equip, train, and educate foreign military and other security forces, as well as to provide humanitarian relief and health assistance. Some of these authorities contain a specific provision requiring the "concurrence" (i.e., approval) of the Secretary of State. (Activities requiring concurrence are generally reviewed at the highest levels of the State Department.)

[16] For information on the Defense Security Cooperation Agency (DSCA), see its website at http://www.dsca.mil.

On occasion, geographic COCOM security cooperation personnel draw on multiple authorities and funding pots to develop bilateral or multilateral programs for foreign forces. In some cases, they draw on both Title 10 and Title 22 resources to assemble a coherent program. The types and modes of DOD-State collaboration will depend on the combination of authorities.

Title 10 activities are planned and implemented by the COCOMs and are in support of their Theater Security Cooperation Strategic Plans. Such activities (as well as activities and programs conducted under Title 22) must be justified as contributing to the U.S. Integrated Country Strategy for each country in which they are conducted. COCOMs also are expected to coordinate Title 10 activities with U.S. Embassy SCOs and secure Chief of Mission (COM) approval.

Special cooperative DOD-State Department arrangements were mandated beginning in 2005, first in the "Section 1206" Global Train and Equip" authority (subsequently codified under Section 2282 of Title 10) and then in two other "hybrid" programs where DOD and State are partners. (The hybrid authorities are the Global Security Contingency Fund and the Afghanistan Infrastructure Fund.) The modes of DOD and State Department collaboration differ for these authorities.

In April 2013, the Obama Administration issued Presidential Decision Directive 23 (PPD-23) mandating an overhaul of U.S. security sector assistance policy, including the framework for establishing a new interagency framework for planning, implementing, assessing, and overseeing security sector assistance (SSA) to foreign governments and international organizations. A PDD-23 fact sheet cites nine goals for the SSA framework, including consistency with broader national security goals, policy coherence, interagency collaboration, comprehensive strategies, better use of resources, and the need to respond to urgent crises, emergent opportunities, and changes in partner security environments, among others.[17] PPD-23 implementation is in progress.

State Department and DOD Security Assistance Authorities

The State Department and DOD "shared responsibility" for security assistance is exercised in diverse ways. The precise arrangements depend on the statutory authority and any relevant executive directives, as well as the arrangements that have been worked out between the two departments. This section provides information on how the two departments share responsibility for State Department security assistance programs and a representative sample of programs conducted under Title 10 authority.[18]

[17] White House fact sheet, "Fact Sheet: U.S. Security Assistance Policy," April 5, 2013, at http://www.whitehouse.gov/the-press-office/2013/04/05/fact-sheet-us-security-sector-assistance-policy.

[18] The State Department programs profiled in this report are the six State Department "International Security Assistance" programs conducted under the budget accounts of the same name, as well as the four related programs conducted under other 1961 FAA and AECA authorities. The Title 10 authorities selected in this report are those identified by three sources as foreign assistance, foreign assistance related, or security assistance. The first set of authorities are those that DOD selected to include as DOD "foreign assistance related" programs for the DOD agency page on the online U.S. government "Foreign Assistance Dashboard" as of 2012. The second set comprises those authorities selected for the "Section 1209" required report to Congress. The third set comprises those authorities selected for inclusion in the Section 1211, FY2015 NDAA (P.L. 113-291) required report to Congress. Although not a comprehensive list, these selected authorities provide a representational sample of the broad range of DOD security and other support and engagement activities identified, for the most part, as of major interest to Congress.

(Note: The Foreign Assistance Dashboard has been under renovation for several years. This report focuses on FY2012 programs (that are currently in effect) because that was the last year for which all data were attributed to a specific

The "traditional" State Department programs—and more recent counternarcotics, law enforcement, and peacekeeping programs—provide assistance, in the recent lexicon, to "build partnership capacity" by training and equipping foreign military and other security forces, and to otherwise aid foreign military and other security forces. As mentioned earlier, such programs are authorized under the 1961 FAA and the AECA. The DSCA administers[19] about half (by number) of the State Department programs. (These are FMS/FMF and related SDAF and leases, IMET, excess defense articles [EDA], and a portion of PKO programs.) The State Department administers programs conducted under its other security assistance authorities. These programs include those funded from three accounts—the International Narcotics Control and Law Enforcement (INCLE) account, Nonproliferation, Anti-Terrorism, Demining and Related Programs account (NADR), and the remaining PKO—or conducted under two drawdown authorities or the 1961 FAA Section 614 "special" authority expediting assistance. DSCA, the COCOMs, and the military services may provide varying levels of support to such programs.

Program descriptions and funding amounts for State Department bilateral and regional programs are provided annually in the State Department's congressional budget justification. The programs are funded through foreign operations appropriations. Many 1961 FAA and AECA programs are subject to a wide variety of conditions and exclusions.[20] (With certain exceptions, DOD authorities are subject only to restrictions in the statute itself.[21])

Table 1 lists State Department authorities in alphabetical order. It identifies whether a program is administered by DOD's DSCA or otherwise supported by DOD. Support may include direct

program; the current Dashboard [beta.foreignassistance.gov] attributes some data to DOD offices rather than programs.

The latest "Section 1209" report is entitled *Department of Defense Section 1209 and Section 1203(b) Report to Congress on Foreign-Assistance Related Programs for Fiscal Years 2008, 2009, and 2010, April 2012*, submitted in compliance with Section 1209 of the FY2008 NDAA [P.L. 110-181] as amended by Section 1203(b) of the FY2010 NDAA [P.L. 111-84].)

[19] DSCA administers six of the State Department's security assistance programs: "Administration" consists of managing and exercising overall responsibility for the conduct of a program. DSCA-administered programs are implemented on the ground by personnel sent by a military service or a geographic combatant command (COCOM), working in conjunction with SCO personnel at U.S. embassies.

[20] Among the conditions on U.S. security assistance authorized under the 1961 FAA are prohibitions on providing assistance to foreign security force units that engage in gross violations of human rights (Section 620(m)); countries that fail to comply, or make significant efforts to comply, with minimum standards for combating the trafficking of people (TIP) (P.L. 106-386, Section 110); countries that repeatedly provide support to international terrorists (Section 620(a)); countries that are engaged in illicit production or drug transiting and have failed to take adequate steps to curb those activities (Section 490(a)); and countries that recruit or use child soldiers, paramilitaries, militias, or civil defense forces (the Child Soldiers Protection Act, CSPA, P.L. 110-457, Part IV). These and other conditions are listed in the DISAM Green Book: Defense Institute of Security Assistance Management, *The Management of Security Cooperation*, "Green Book" Edition 34.1, Wright-Patterson Air Force Base, Ohio, August 2015, pp. 2-12–2-13, at http://www.disam.dsca.mil/pubs/DR/greenbook.htm.

[21] There are general exceptions, which apply broadly to many authorities, and exceptions that apply to specific authorities. An example of the first type is 10 U.S.C. 2249(e), the "DOD Leahy Law" human rights provision banning DOD training, equipment, and other assistance to foreign security units if the Secretary of Defense has credible information that the unit has committed gross violations of human rights applies to all types of DOD assistance, except disaster relief or other humanitarian or national security emergencies or in cases where the government has taken "all necessary corrective steps...." The DOD Leahy Law does not apply to training activities that are not deemed assistance; the DOD guidance of August 18, 2014, describes the training activities that are not assistance as " incidental familiarization, safety, and interoperability training," and "individual and collective interface activities," including military-to-military contacts, seminars, conferences and other activities where "the primary focus is interoperability or mutually beneficial exchanges and not training of foreign forces." An example of the second type is the CSPA, mentioned above, which bans assistance under specified authorities to countries harboring, recruiting, or supporting the use of child soldiers; specified authorities include certain 1961 FAA provisions, as well as 10 U.S.C. 2282 (also known as "Section 1206").

support through DOD contributions to State Department programs, or indirect support through coordination of DOD programs with State Department programs. **Appendix C** provides more detail on the State Department authorities.)

State Department input into DOD activities conducted under Title 10 security cooperation authorities varies widely. About 50 of the many Title 10 authorities require the Secretary of State's concurrence. The concurrence process generally entails review of a program by a high-level (i.e., congressionally confirmed) State Department officer, as may be delegated by the Secretary of State. Programs and activities conducted under authorities that do not require Secretary of State concurrence may be subject to State Department input through a number of other coordination mechanisms. In addition, DOD activities abroad may be subject by law or policy to "Chief of Mission" (COM) authority, which involves the approval of the ambassador at the relevant U.S. embassy abroad.[22] (Moreover, some military personnel implementing or participating in DOD activities may be subject to COM authority. Military personnel under the command of a GCC, for instance, those in country temporarily for a combined training exercise, are not subject by law to COM authority; however, those operating under the aegis of an embassy—SCOs or military personnel sent by one of the armed services—are subject to COM authority.[23])

Table 3 provides a quick reference to selected Title 10 authorities. They are described in more detail in Appendixes E through J. (**Appendix E**, Contingency Operations and Coalition Operational Support; **Appendix F** Counterproliferation, Counter-drug, and Counterterrorism; **Appendix G** Defense Institution Building; **Appendix H** Exercises, Training, and Military-to-Military Contacts; **Appendix I** Humanitarian Assistance and Defense Health Programs; and **Appendix J** Multipurpose Authority: The Combatant Commander's Initiative Fund.)

The three State Department-DOD joint or "hybrid" authorities are Title 10 statutes, as Congress authorized them in annual NDAAs. These are listed in **Table 2** and detailed in **Appendix D**.

Table 1. Title 22 Security Assistance

(see Appendix C)

Authority	DOD Role
Drawdown Special Authorities 22 U.S.C. 2318(a)(1) and 2318(a)(2), 1961 FAA Sections 506(a)(1) and 506(a)(2); 22 U.S.C. 2348a, 1961 FAA Section 552(c)	DOD Supports as Requested
Excess Defense Articles (EDA) 22 U.S.C. 2321j, 1961 FAA Sec. 516	DSCA Administers
Foreign Military Sales (FMS) 22 U.S.C. 2761, 2762, 2769, AECA Sections 21, 22 and 29; Foreign Military Financing (FMF) Program 22 U.S.C. 2763, AECA Section 23; and related Leases of Equipment 22 U.S.C. 2796, AECA Sections 61-65, and Special Defense Acquisition Fund, 22 U.S.C. 2795, AECA Section 51.	DSCA Administers
International Military Education and Training (IMET) 22 U.S.C. 2347, 1961 FAA Sections 541-543	DSCA Administers

[22] Some participants note that although a Chief of Mission may have the authority to adjust or cancel DOD activities, in some cases a proposed activity may not be presented to a Chief of Mission in such a way as to solicit his or her affirmative approval.

[23] CRS Report R43422, *U.S. Diplomatic Missions: Background and Issues on Chief of Mission (COM) Authority*, by Matthew C. Weed and Nina M. Serafino.

Authority	DOD Role
International Narcotics Control and Law Enforcement (INCLE) 22 U.S.C. 2291, 1961 FAA Sections 481-490	DOD Supports as Requested
Peacekeeping Operations (PKO) 22 U.S.C. 2348, 1961 FAA Sections 551-553	DOD Supports as Requested
Nonproliferation, Anti-Terrorism, Demining, and Related Programs (NADR) 22 U.S.C. 2349aa, 1961 FAA Sections 571-575 (Anti-Terrorism); 22 U.S.C. 2349bb, 1961 FAA Section 581 (Non-Proliferation)	DOD Supports as Requested
Special Authorities 22 U.S.C. 2364, 1961 FAA Section 614	DSCA Coordinates within DOD and with Congress. DOD Implements

Table 2. Hybrid Authorities

(see Appendix D)

Authority	DOS and DOD Roles
Afghanistan Infrastructure Fund (AIF) Section 1217, P.L. 111-383 (1)	DOD funding. Jointly conducted and implemented by DOS and DOD.
Build Partner Capacity10 U.S.C. 2282c (formerly Section 1206, P.L. 109-163) (1)(2)(3)	DOD funding. DOD leads. SecState concurrence required for any program. Joint program formulation. DSCA administers.
Global Security Contingency Fund (GSCF) Section 1207, P.L. 112-81, 22 U.S.C. 2151 note (3)	DOS and DOD funding merged to support programs. SecState leads. SecDef concurrence required for any program. Joint program formulation. DSCA administers. DOS and DOD funding for merged fund (i.e., DOD funding may be used for DOS programs).

Table 3. Selected "Title 10" Security Cooperation Authorities/Programs

Authority	DSCA Role?	SecState Concurrence Required by Legislation?
Contingency Operations and Related Coalition Support (See Appendix E)		
Afghanistan Security Forces Fund (ASFF) (3)	Yes	Yes
Commander's Emergency Response Fund (1)	No	No
Coalition Support Fund, Section 1233, P.L. 110-181 (2)(3)	Yes	Yes
Coalition Logistics Support, Section 1234, P.L. 110-181 (1)(3)	No	No

Authority	DSCA Role?	SecState Concurrence Required by Legislation?
Global Lift and Sustain, 10 U.S.C. 127d (2)	No	Yes
CounterProliferation, Counternarcotics, and Counterterrorism (See Appendix F)		
Build Partner Capacity 10 U.S.C. 2282, see Hybrid Authorities above. Section (a)(1)(A) relates to counterterrorism. (1)(2)(3)	Yes	Yes (and joint program formulation)
Cooperative Threat Reduction (1)	No (managed by DTRA)	Yes (in certain circumstances)
International Counterproliferation Program (1)	No (managed by DRTA)	No
Counternarcotics Colombia Support (1)	No	No
Counternarcotics Section 1004 (1)(2)(3)	No	No
Counternarcotics Section 1033 (1)(2)(3)	No	No
Regional Combating Terrorism Fellowship Program, 10 U.S.C. 2249c (1)(2)(3)	Yes	No
Defense Institution Building (See Appendix G)		
Defense Institution Legal Authority Capacity Building (DILLS, Section 1206, P.L. 113-291)(3)	Yes	Yes
Defense Institutional Reform Initiative (DIRI-Conducted under inherent DOD authority)(3)	Resources program execution through CCMR	No
Ministry of Defense Advisors (MODA Section 1081, P.L. 112-81 (3))	Provides management, training, and other support	Yes
Wales (formerly Warsaw) Initiative Fund (Activities conducted under 10 U.S.C. 168) (3)	Yes	Yes
Exercises, Training, and Military-to-Military Contacts (See Appendix H)		
Bilateral and Multilateral Combined Exercises 10 U.S.C. 2010 (3)	No	No (but SecState "consultation" required)
Joint Combined Exchange Training 10 U.S.C. 2011(3)	No	No
National Guard State Partnership Program, FY2014 NDAA, Section 1205 (32 U.S.C. 107 note) (3)	No	Yes
Humanitarian Assistance and Health Programs (See Appendix I)		
Defense Health Program (1)	No	No
Defense Health HIV/Aids Prevention Program (1)	No	No
Humanitarian and Civil Assistance 10 U.S.C. 401 (1)	Yes	Requires SecState approval[a]

Authority	DSCA Role?	SecState Concurrence Required by Legislation?
Humanitarian Assistance Program 10 U.S.C. 2561 (2)(3)	No	No
Multipurpose		
Combatant Commander Initiative Fund 10 U.S.C. 166a (1, entire Section 166 authority); (2 and 3, only Section 166a(b)(6))	No	No

Sources: 1961 FAA, AECA, *United States Code* (U.S.C); DISAM Security Cooperation Handbook. Numeric markings indicate source document that identified these authorities: (1) is DOD agency page on ForeignAssistance.gov (pre-Beta site with FY2012 data); (2) is Section 1209 Report; (3) is FY2015 NDAA P.L. 113-291, Section 1211 report.

Notes and Terms: SecState= Secretary of State; CCMR=Center of Civil-Military Relations at the Naval Post-Graduate School; CN = Congressional Notification (i.e., notification to specified congressional committees); COM = Chief of Mission; DTRA= Defense Threat Reduction Agency; FMT = Annual *Foreign Military Training and DOD Engagements of Interest* Report prepared pursuant to requirements of the 1961 FAA and the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2008 (P.L. 110-161); NA=Not Applicable.

a. 10 U.S.C. 401 states that the approval of the Secretary of State is required; although the term "concurrence" means approval, those statutes requiring "concurrence" are subject to high-level attention at the Department of State, whereas approval of activities under this authority occurs in the field.

Counterterrorism Partnerships Fund (CTPF)

Congress established the Counterterrorism Partnerships Fund (CTPF) in 2014 to provide a source of additional funding for counterterrorism and crisis response programs in U.S. Central Command (CENTCOM) and U.S. Africa Command (AFRICOM) areas of responsibility. In itself, CTPF legislation has no program authority; CTPF programs are intended to be conducted under other authorities. As of FY2016, DOD-appropriated CTPF funds have supported many Section 1206/10 U.S.C. 2282 programs. In FY2016, Congress appropriated $1.1 billion in DOD CTPF funding, but did not provide a dedicated State Department CTPF appropriation. (In the State Department FY2016 budget request, the Administration proposed that $390 million in Nonproliferation, Anti-Terrorism, Demining, and Related Programs (NADR) appropriations be allocated for the CTPF.) For FY2017, the Administration has requested $1.0 billion for the CTPF in DOD Overseas Contingency Operations (OCO) funds and $80 million in State Department funds, of which $59 million was requested under the Economic Support Fund enduring budget account and $21 million under the NADR OCO account.

Issues for Congress

Policymakers continue to grapple with four dilemmas that have been present almost since the beginning of the massive U.S. military assistance programs in the mid-20th century. As the scope and pace of security assistance and cooperation has grown since 9/11, these issues have become ever more pressing. They include the following:

- how to assess effectiveness;
- whether and how to modify or change the statutory framework to better reconcile foreign policy concerns with at times competing perceived security needs;
- how to reconcile institutional roles and available resources; and
- how to provide appropriate transparency for oversight.

These issues have arisen repeatedly over the past sixty-plus years. For most of this time, the context for U.S. security assistance was the Cold War when U.S. military assistance was intended

to bolster foreign allies defense capabilities against a single adversary—the Soviet Union or its proxies—or to aid in suppressing domestic revolutionary movements perceived as Soviet-inspired. The issues have risen in a new context in the post-Cold War era, as transnational terrorist groups have presented the United States with new challenges in a dramatically different threat environment. Threats from numerous and shifting non-state actors place a special premium on rapid organizational response and on flexibility in funding that did not exist previously. Some analysts believe that responding to such threats may benefit from new approaches. Nevertheless, the many obstacles to resolving these issues—notably organizational prerogatives and funding limitations—continue as before.

Assessing Effectiveness

A long-standing question has been: How effective are military and other security assistance (now including security cooperation) efforts, and how might they be improved? Given the multiple purposes and various types of security assistance and security cooperation activities, there is no simple answer. Recent disappointments with the results of training and equipping military forces around the world, particularly Iraqi and Afghan military forces over the past decade, have led many to look skeptically at such investments, judging that "efforts are too often wasted."[24] However, investments elsewhere, particularly for building counterterrorism/counterinsurgency capacity in the Philippines, have led some to assert that such efforts can be successful if carefully designed and properly implemented.

Recent studies, discussed below, point to a mix of strategic, political, economic, and military factors at play in determining and enhancing the potential success of large-scale "train and equip" efforts to build partner capacity. In addition, some analysts note that security assistance/cooperation activities may be used for a variety of purposes and may have collateral benefits other than building partner capacity. For example, engaging with foreign militaries and police forces may build goodwill, help cultivate relations, and improve access, even if measurable results in foreign force capacity are not achieved.

Examining the effectiveness of 20 security cooperation programs intended to build partner capacity in weak or failing states, a recent CRS report[25] found results varied depending on the program's primary strategic purpose. The programs examined were undertaken from 1947 to the present. Programs with the most success were those intended to build alliances, as well as interpersonal and institutional linkages. Programs to build international participation in military coalitions were effective in achieving that aim, but also placed significant operational burdens on U.S. military forces. Least effective were programs for which the primary purpose was to enable U.S. forces to withdraw by transferring the primary responsibility for ending a war to domestic security forces. Programs addressing three strategic purposes met with mixed success, i.e., programs undertaken to manage regional security challenges, indirectly strengthen a party to a regional conflict, and mitigate conflict.

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[24] Peter J. Munson, "The Limits of Security Cooperation," *War on the Rocks*, September 10, 2013; hereinafter referred to as "The Limits of Security Cooperation," at http://www.warontherocks.com/2013/09/the-limits-of-security-cooperation. Munson continues: "In a limited number of cases—predominantly with more elite units trained by special operations forces and in a few partner countries serious about developing their military—capacity building works well. In the remainder of cases, capacity building efforts are an exercise in futility as evinced by the numerous cases in which decades of SC [security cooperation] have yielded no perceptible change in the capabilities of partner militaries." Munson's biography describes him as a former Marine Corps officer.

[25] See CRS Report R44313, *What Is "Building Partner Capacity?" Issues for Congress*, coordinated by Kathleen J. McInnis.

Similarly, a 2013 RAND report found that effectiveness may vary depending on certain political, economic, and military factors. Attempting to identify ways to improve security assistance/cooperation efforts in general, whether under Title 22 or Title 10 authority, this report stated that effectiveness correlates with characteristics of the recipient country and with the level of U.S. and recipient commitment. It concluded that building partner capacity efforts have worked best in well-governed and economically sound countries that can efficiently use U.S. provided funds, invest their own funds to support or sustain capacity, and share U.S. interests.[26]

However, according to the report, this is not an ironclad rule: "BPC done well, done consistently, and matched to partner absorptive capacities and interests can be effective even when the partner is not particularly robust in any dimension at the outset."[27] In cases of both "ideal" and "suboptimal" partners, prospects for success improved (1) when specific BPC objectives align with specific partner interests (regardless of the alignment of broader interests), and (2) when efforts are well matched to partner baseline capabilities and absorptive capacity.[28] The report also stated that ministerial capacity (within the recipient ministries of defense and other relevant government institutions) is the foundation for other forms of capacity, and that "ministerial capacity building can, itself, improve a partner's absorptive capacity even when baseline absorptive capacity is low." Thus, it found that that increases in defense institution building "could enable future capacity building in other areas," and viewed these DIB as "central to the future BPC toolkit."

RAND found it neither "surprising nor problematic" that the primary objective of some BPC programs is to build a relationship or secure access, and pointed to a possible synergy between relationship building and BPC assistance, "with better relations making capacity building more effective and demonstrations of effectiveness in capacity building improving relations."[29]

An academic study published in 2012 of U.S. security assistance to Greece, Vietnam, and Lebanon during crucial historical periods found that training and equipping foreign forces is not enough. Programs "were more likely to succeed," it stated, "when the United States became deeply involved in the partner state military's sensitive affairs—influencing personnel and organization, but refraining from becoming a co-combatant—and when unhelpful external actors played a diminishing role."[30]

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[26] In this 2013 report, RAND looked at a broad range of activities that it labeled "Building Partner Capacity," or "BPC" in 29 countries over 20 years. In addition to the conditions on the recipient country, two conditions for success on the U.S. side were if a program (1) "is consistently funded and delivered, supported and sustained," and (2) if it is "well matched to partner capabilities and interests…." Because these conditions are not generally present in the Middle East or Africa, RAND found the most successful efforts to be in Latin America, the Asia/Pacific region, and Europe. Nevertheless, RAND made several observations about what could improve programs, including in partner nations without the prerequisite economic and governance conditions. "What Works Best When Building Partner Capacity and Under What Circumstances?" (Paul, Christopher, et al., The RAND Corporation. Santa Monica, CA, 2013), p. xvii. Hereinafter referred to as *RAND What Works Best When Building Partner Capacity?* The RAND findings on necessary conditions in recipient countries are similar to those expressed in a 1988 CRS report: "military assistance appears to be most effective when used to support more developed nations—ones with a stable political system and an industrial base and populace capable of readily absorbing the aid provided...[while problems] seem most likely when it is introduced into nations still coping with the pressures of political, economic, and social change created by the industrial age." Out-of-print CRS Report 880374, *An Overview of United States Military Assistance Programs*, by Richard F. Grimmett.

[27] RAND, *What Works Best When Building Partner Capacity?* p. 89.

[28] These capabilities and capacity included equipment, organizational characteristics, readiness, the extent of existing training, technological sophistication, education, language abilities, and doctrine.

[29] RAND, *What Works Best When Building Partner Capacity?* p. 4.

[30] Mara E. Karlin, "Training and Equipping is Not Transforming: An Assessment of U.S. Programs to Build Partner Militaries," (Ph.D. dissertation, John Hopkins University, 2012), p. 319. The author defines "unhelpful external actors"

An Open Society Foundations' overview of selected academic studies examining counterterrorism efforts stated that "no large-scale quantitative studies find a positive correlation between U.S. security assistance and a reduction in terrorism; however there are successes" (one of which it identified as the Philippines) as well as instances in which such assistance can be counterproductive.[31] This overview pointed to a number of nonmilitary factors influencing terrorism levels, including the extent to which governments discriminate against their minority groups, the existence of an independent judiciary, and spending on social welfare, including targeted aid for education, health, and civil society.

DOD and the State Department have evaluation and assessment mechanisms for some individual programs, but as yet there is no government-wide, standardized assessment processes or systems.[32] Two prominent examples of individual program assessment mechanisms are the DOD Section 1206 assessment methodology and the State Department's metrics and evaluation system for the Global Peace Operations Initiative. Under the April 5, 2013, Presidential Decision Directive 23 (PPD-23) on U.S. Security Sector Assistance Policy, the State Department Office of U.S. Foreign Assistance Resources ("F") is leading an effort to develop evaluation and assessment tools. Some analysts suggest that the Administration also take steps to develop a standard, strategic-level mechanism to measure results.

Congress may wish to take one or more approaches to examining the issue of security assistance effectiveness.

- One approach would be to examine the status and adequacy of existing U.S. government evaluation tools and mechanisms and efforts to further develop them. Given the difficulties of assessing individual activities,[33] some Members may wish to examine the feasibility of conducting broader assessments of overlapping interagency efforts. Others may wish to ascertain the extent to which tools and plans meet industry "best practices," and, if not, whether Congress might provide additional assistance to enable the Administration to meet private sector standards.
- Another approach would be to consider the appropriate criteria for determining the "success" or "failure" of a security assistance program. Some analysts state that while programs tend to be judged on whether they achieve the desired end-state of strategic goals.[34] Others argue that an assessment should also take into

as those who assist insurgents and terrorists in another state "by providing sanctuary, materiel, training, political, or simply verbal support, enabling those violent non-state actors to fight longer and with great lethality." p. 5.

[31] Matthew Saintsing, "Does Security Assistance Reduce Terrorism?," *SWJ Blog Post*, August 26, 2015, at http://smallwarsjournal.com/blog/does-security-assistance-reduce-terrorism. The blog hyperlinks the academic studies consulted for the article. The author is identified as a research assistant at the Open Society Foundations who served six years in the U.S. Army as a signals intelligence analyst and deployed twice to Iraq.

[32] The U.S. Department of the Army, however, in the February 2015 edition of its Army Security Cooperation Handbook, discusses assessment and evaluation. Its conclusion on the assessment process points to the difficulties of conducting assessments for individual programs or events: "Single SC activities are rarely able to achieve an objective. More often, multiple activities executed over time are required for SC activities to make progress toward an objective. Also, causal relationships are often difficult to discern, making it difficult to determine the extent to which a SC activity influenced a partner country. For these reasons, it will usually be more practical to evaluate the performance of an SC activity by an Army organization rather than its effectiveness in achieving our objectives with a partner country." Department of the Army, *Army Security Cooperation Handbook*, Department of the Army Pamphlet 11-31, Washington, DC, February 6, 2015, p. 15, at http://armypubs.army.mil/epubs/pdf/p11_31.pdf.

[33] See footnote 32.

[34] CRS Report R44313, *What Is "Building Partner Capacity?" Issues for Congress*, coordinated by Kathleen J.

account the effect on intermediate goals, such as enhancing the U.S. security position, or the contribution that security assistance and cooperation programs can make as one of several tools jointly used to achieve objectives.

- A third approach would be to study whether the United States is appropriately prioritizing its security assistance budget. The RAND study cited above indicates that the more successful programs are conducted in developed countries, but since 2006 the United States has increasingly prioritized security cooperation programs in less-developed countries and fragile states, especially where governments are combating terrorism. Given some analysts' perspective that certain types of nonmilitary aid may be more productive than security assistance in countering terrorism, related lines of inquiry would be whether and to what extent U.S. economic or development aid should supplement or in some cases supplant security assistance, and how to best integrate economic/development and security assistance programs.

Reconciling Foreign Policy and Security Concerns Through Statutory Reform[35]

Concerns about the current State Department-DOD relationship governing security assistance center on two perspectives of that relationship and the guiding statutory framework. Both perspectives stem from the growing number and specific nature of Title 10 authorities to assist foreign militaries and security forces, a trend that has made the statutory regime more complex. A core issue is how to reconcile foreign policy concerns with perceived urgent and at times competing security needs.

On one hand are concerns that the expansion of DOD authority has rendered the State Department unable to carry out its 1961 FAA Section 622(c) oversight responsibility of security assistance and cooperation activities to ensure a coherent foreign policy. Since 9/11, some analysts have perceived DOD as acting with growing autonomy, increasingly independent of State Department direction and supervision. The proliferation of DOD security cooperation authorities is viewed by some analysts as an element of the militarization of foreign policy, with GCCs disproportionately influencing the tenor of relations with countries in their theaters of operations.[36] This viewpoint reflects a broader perception that DOD's overwhelming advantage in personnel and funds allows it to evade State Department direction and oversight and to conduct

McInnis, identified seven strategic goals for building partner capacity program, arranged along a continuum from lower to higher possibilities of effectiveness: (1) victory in war/war termination; (2) managing regional security; (3) indirectly supporting a party to conflict; (4) conflict mitigation; (5) enhancing military coalition participation; (6) building institutional and interpersonal linkages; and (7) alliance building.

[35] Material in this section is drawn from a number of written sources, but perhaps more importantly on the author's interviews and other communication by the author with practitioners and analysts in the field over the past three years. In addition to the sources footnoted in this and related sections, including various RAND reports, written materials include various chapters in *Mission Creep: The Militarization of U.S. Foreign Policy?*

[36] Dana Priest, a *Washington Post* reporter, advanced this perspective in a series of three articles in 2000, the first of which was: Dana Priest, "A Four-Star Foreign Policy?," *The Washington Post*, September 28, 2000, p. A01. There are five U.S. geographic combatant commands (COCOMs) lead by geographic combatant commanders (GCCs). The COCOMs are responsible for planning and conducting all U.S. military operations and activities abroad authorized under Title 10 of the *U.S. Code* or an annual National Defense Authorization Act (NDAA). For more information on combatant commands, see CRS Report R42077, *The Unified Command Plan and Combatant Commands: Background and Issues for Congress*, by Andrew Feickert.

activities better carried out by civilians, which may be to the detriment of long-term U.S. interests.

As a result, some analysts and practitioners argue that Congress should "rebalance" the State Department-DOD division of labor by strengthening State Department input into and oversight of DOD security cooperation. One way to do so might be to streamline the modes of State Department-DOD cooperation, an effort that Administration officials state is underway. Another would be to expand State Department oversight resources, including new posts in State's Bureau of Political-Military Affairs, which oversees security assistance, and at U.S. embassies. Still another might be to reform the statutory framework, placing some or most DOD security assistance activities under existing or expanded Title 22 authority or conducting such activities under an existing or new State Department-DOD "joint formulation" authority.[37]

On the other hand, some policymakers state that DOD's ability to enhance U.S. national security by assisting and interacting with foreign militaries is constrained by the current structure of authorities and division of responsibilities. Three related perceptions seem central to this group of concerns:

- The complexity of the current Title 10 security cooperation framework, providing differing levels of State Department input and oversight for security cooperation activities through variety of mechanisms, impedes DOD's ability to conduct activities in a timely and efficient manner.
- The State Department does not possess the institutional inclination and capacity to lead or oversee the broad range of security cooperation activities that some analysts and practitioners view as necessary to meet national security demands.
- The existing Title 10 security cooperation authorities fall short of addressing national security needs.

From this perspective, some analysts and practitioners argue that Congress should reform the current Title 10 security cooperation framework. Some argue for broad reform to rationalize the statutory framework, part of which would include measures to address perceived problems with State Department input and oversight.

Policymakers' perspectives on the means to create a more efficient and effective division of labor between State and DOD diverge widely. The three approaches to statutory reform mentioned above are examined below.[38]

[37] The authors of *Security Cooperation and Assistance: Rethinking the Return on Investment* recommend that DOD and State "should develop a coordinated reform proposal that consolidates DoD's glut of new and overlapping authorities and transfers the appropriate authorities to State, even if administration remains under DoD's purview in certain cases," p. 24.

[38] Note that some policymakers would not favor statutory reform, for a variety of reasons. Some argue that the State Department is not the appropriate agency to oversee DOD security assistance and cooperation and to ensure coherence with the President's foreign policy. Such critics argue that responsibility for general direction and oversight should lie with the National Security Council, with staff work by the NSC staff. (See, for example, Gabriel Marcella, "National Security and the Interagency Process," in *Guide to National Security Policy and Strategy*, ed. J. Boone Bartholomees, Jr. (Carlisle Barracks, PA: U.S. Army War College, 2004), p. 253.) Some look to continued implementation of President Obama's Presidential Decision Directive on security sector assistance reform of April 2013 (PPD-23) to provide guidelines for future State Department, DOD, and NSC security assistance roles.

Expand or Modify State Department Security Assistance Programs and Funding

Some policymakers and analysts judge that the State Department Title 22 statutes should once again be the mainstay authority for providing defense articles and services and other U.S. government assistance to foreign militaries and other security forces. For those holding this position, the provision of defense articles and services and certain other support to foreign forces is foreign assistance and should fall under State Department, not DOD, authority. Policymakers who prefer the use of State Department authority view FMF, IMET, and PKO as providing ample authority to conduct many programs currently carried out under Title 10, and use of these authorities as the most expeditious means to ensure that security cooperation programs conform to U.S. foreign policy.

On the other hand, some policymakers assert that Title 10 assistance cannot be equated with Title 22 foreign assistance because it serves different purposes than the "traditional" 1961 FAA and AECA assistance. They view the primary purpose of State Department assistance, particularly FMF and IMET, as promoting U.S. relations and interests in foreign countries by helping foreign governments and militaries to meet their security needs as they perceive them. DOD assistance, on the other hand, is viewed as responding to needs identified by the U.S. government and primarily benefitting U.S. national security.[39] Proponents of using Title 22 authority for most DOD security cooperation authorities recognize that an expanded use of these authorities might require modifications to provide the utility, flexibility and speed that DOD seeks through Title 10 authority, as well as changes in traditional practices.

FMF is a particular source of concern because of perceived limitations on its use. As noted above, FMF funds have been generally used as a diplomatic or "political" tool for weapons and equipment desired by the recipient country (but not necessarily for weapons and equipment that DOD might think most appropriate). In some cases, this means that FMF funds continue even when this assistance is not being used to best advantage.[40] In addition, FMF traditionally has been used for bilateral rather than multilateral programs, and some view it as not suited to the regional programs DOD contemplates for areas such as maritime security. State Department officials state that bilateral use has been a matter of practice, not of law, and that FMF programs may be dedicated to regional programs as necessary.[41]

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[39] A decade ago, this argument was made in the context of Section 1206/10 U.S.C. 2282 assistance when that authority was enacted for FY2006. In 2009, pressing for the continuation of "Section 1206" authority that defense and military officials, including GCCs, had come to regard as vital to U.S. defense efforts, DOD officials distinguished Section 1206 from the State Department's Foreign Military Financing as a fund to meet the military needs determined by the GCCs "for tools to build capable, reliable, and interoperable partners as they prepare for—and seek to minimize the necessity for—military missions in the AORs [Areas of Responsibility]." In a letter to certain Members of Congress, DOD officials presented FMF as a political tool "critical ... for executing our foreign policy" and "key to improving bilateral relationships, encouraging behavior in the U.S. interest, increasing access and influence, and building capacity where host-nation and U.S. interests align." A copy of the letter was provided to CRS by DOD, with the permission of a congressional recipient. It is signed by the former Under Secretary of Defense for Policy Eric S. Edelman, who occupied that post as of the date of the letter, January 16, 2009.

[40] According to State Department officials, the department has taken steps to break the "entitlement mentality" of recipients who expect a certain level assistance regardless of their commitment to mutual objectives. The State Department has started a pilot FMF "challenge fund" to foster institutional reform, sustainability, and a commitment from partners.

[41] Recently, State Department officials announced that the State Department has created regional FMF funds that may be directed to the highest regional priority in the fiscal year of appropriation, subject to congressional notification.

Objections to using DOD funds to conduct programs under State Department authority have spanned a range of practical concerns. Some analysts question whether Title 22 authorities, even if modified, could provide the needed flexibility for quick responses as key Title 10 authorities are intended to do. (Others point out that the DSCA manages both State Department and some major DOD security cooperation authorities, and that acquisition and delivery speed depends on the priority given to the programs, and that processing times can be slower than desired even for DOD authorities intended to address emerging threats.)[42] In addition, some question the extent to which DOD can maintain control over the use of transferred funds, ensuring that they are used in accordance with DOD authorities.

Budgetary constraints pose an additional limitation. Some analysts question whether Congress would appropriate sufficient funds to the State Department to cover current DOD funded security cooperation activities.[43] Some policymakers would prefer to transfer DOD funds to State Department security assistance accounts for such DOD security cooperation activities conducted under State Department authority. Some analysts note that there are precedents for funding transfers from DOD to the State Department to conduct activities important to the missions of both agencies.[44] Some analysts also point out that the State Department transfers funds to DOD for DOD activities conducted under Title 22 authorities. In an era of stress on DOD budgets for personnel, readiness, and modernization needs, however, some policymakers judge that DOD appropriations should fund only activities that are clearly vital to its mission.

Expand the Use of the "Joint Formulation" Mechanism

For those who wish to enhance the possibilities for State Department control and oversight of Title 10 security cooperation activities, a DOD-State Department "joint formulation" mechanism provides a possible model. Two Title 10 security cooperation statutes provide that the State Department and DOD "shall jointly formulate" specified assistance programs,[45] although the

[42] See testimony of Melissa G. Dalton, a Center for Strategic and International Studies (CSIS) fellow and Chief of Staff of the CSIS International Security Program, before the Senate Armed Services Committee on March 9, 2016. She recommended that Congress mandate that acquisition and delivery systems for Title 10 authorities be made more responsive to crisis requirements. U.S. Congress, Senate Committee on Armed Services, Subcommittee on Emerging Threats and Capabilities, DOD Security Cooperation and Assistance Programs, 114th Cong., 2nd sess., March 9, 2016. Hereinafter referred to as SASC Security Cooperation Hearing. (A committee print of this hearing has not yet been published. For subscribers, a transcript is available through http://www.cq.com/transcripts/congressional?18.)

[43] For many years, some analysts have argued for substantially expanding the FMF budget to cover a full range of defense articles and services. FMF has long been used to provide foreign militaries with large and costly weapons systems and associated training desired by those militaries upon their request. (The provision of these weapons systems through FMS/FMF helps lower the unit costs of U.S. production lines.) Nevertheless, some analysts have argued that FMF funding is inadequate to cover other defense needs perceived by the U.S. military for mutual advantage. Among the other needs are surveillance and reconnaissance equipment and smaller arms that for the past decade have been provided under "Section 1206" to meet emerging counterterrorism threats. Some policymakers argue that such equipment is needed today for maritime security.

[44] For example, from FY2006 through FY2010, through an authority that has now expired, DOD transferred up to $100 million per year in DOD appropriations to the State Department to support security and stabilization activities carried out by the State Department and USAID to prevent or stabilize conflict situations abroad. Section 1207 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006, P.L. 109-163, authorized DOD to transfer to the State Department up to $100 million in defense articles, services, training or other support in FY2006 and again in FY2007 to use for reconstruction, stabilization, and security activities in foreign countries. This authority was subsequently extended through FY2010. Beginning in FY2011, Congress provided funding for such urgent needs through the Foreign Operations appropriations legislation's civilian "Complex Crisis Fund." Also, arguably, the joint State-DOD Global Security Contingency Fund (GSCF) constitutes a transfer of DOD funds to the State Department, as DOD has funded the lion's share of the costs of GSCF activities.

[45] 10 U.S.C. 2282(d) Formulation and Execution of Programs provides that "The Secretary of Defense and the

program development processes differ. One statute is DOD's premier building partner capacity authority, Section 1206/10 U.S.C. 2282, with DOD in the lead. This is implemented through a "bottom-up" process that starts at the field level with the COCOMs and the U.S. embassies.[46] The other statute is the GSCF, with the State Department in the lead. GSCF program development has largely been a "top down" process, with proposals originating at the State Department and DOD offices in Washington, DC. Both of these authorities are limited to contingency operations addressing emerging or urgent threats.

Some analysts argue that State Department oversight and its ability to integrate security assistance programs with foreign policy would be enhanced by extending the joint formulation concept—from emergent or urgent threat response to a broader spectrum of security cooperation missions. Such an extension could provide greater State Department oversight where coordination mechanisms are weak or nonexistent. In 2008, DOD described the Section 1206 joint formulation process as the "gold standard" for interagency planning and cooperation.[47] Similarly, when first enacted in 2011, GSCF authority was widely considered the vanguard of a new mode of State-DOD collaboration because of its unique blend of a State lead with close DOD collaboration.

More recent opinions on the utility of these joint formulation models vary. A 2013 RAND report depicted the Section 1206 mechanism as overly complex.[48] In addition, the difficulties encountered by the GSCF in planning and implementing programs has convinced some analysts that the GSCF is not a viable mechanism for conducting joint State-DOD security assistance and cooperation activities.[49] Some analysts argue, however, that the most recent GSCF programs have

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Secretary of State shall jointly formulate any program under subsection (a). The Secretary of Defense shall coordinate with the Secretary of State in the implementation of any program...." GSCF language (P.L. 112-81, Section 1207 as amended), states that "The Secretary of State and the Secretary of Defense shall jointly formulate assistance programs" to enhance the capabilities of a country's national military forces, and other national security forces that conduct border and maritime security, internal defense, and counterterrorism operations, as well as the government agencies responsible for such forces, for specified purposes. These assistance programs "shall be approved by the Secretary of State, with the concurrence of the Secretary of Defense, before implementation."

[46] CRS Report RS22855, *Security Assistance Reform: "Section 1206" Background and Issues for Congress*, by Nina M. Serafino, describes this process in detail. A truncated version of this description follows. "Early in the fiscal year, the DOD Joint Staff and the State Department's Bureau of Political-Military Affairs (PM) kick off the process with a call for proposals issued with identical guidance. Most recommendations originate at the field level, where COCOMs and U.S. embassy country teams jointly formulate proposals.... The relevant Ambassador and GCC each must personally sign off on a proposal."

"At the Pentagon and the State Department, staff conduct an extensive review process to prioritize the many proposals (they have numbered in the hundreds in recent years). The OSD Office of the Deputy Assistant Secretary of Defense for Special Operations Capabilities and Counterterrorism[46] takes the DOD lead.... At the State Department, the Bureau for Political-Military affairs consults with the Office of the Coordinator for Counterterrorism (S/CT), the regional bureaus, and the Office of the Director of U.S. Foreign Assistance (F), and then forwards proposals to the State Department legal and congressional liaison offices for vetting. The offices of the Deputy Secretaries of Defense and of State may also indicate their priorities."

"Once prioritized within each agency, the DOD and State lead offices convene a joint DOD-State review board to select those proposals that will be recommended to the Secretaries. Either Secretary can veto a project."

[47] *FY2009 DOD Summary Justification*, p. 103.

[48] A 2013 report described Section 1206 as "encumbered by a complex approval process ... [that] requires the involvement of both DoD and DoS [the State Department] including high-level approvals before funds are spent." Jennifer D.P. Moroney, David Thaler, and Joe Hogleer, *Review of Security Cooperation Mechanisms Combatant Command Utilize to Build Partner Capacity*, RAND, Santa Monica, CA, 2013, p. 27, at http://www.rand.org/pubs/research_reports/RR413.html. Hereinafter referred to as *RAND Review of BPC Security Cooperation Mechanisms*.

[49] In addition to many start-up problems, GSCF initial operations were severely hampered by the State Department's difficulties in providing its minimal 20% share of funding for each program, as Congress has not provided new appropriations for the fund, instead directing that funds for each operation be provided by transfers from other

been developed expeditiously. In testifying before Congress, one analyst stated that he found "a fair amount of consensus" that the joint formulation model reduced interagency tensions involved in coordinating programs.[50]

Reform Title 10 Authorities

Some policymakers and analysts argue that Title 10 security cooperation legislation should be reformed to simplify the existing myriad authorities and fill some gaps. DOD is engaged in an effort to reform the Title 10 authorities by consolidating similar authorities and identifying gaps. Part of this effort may well be to reexamine the degree and modes of State Department input. Other policymakers and analysts recommend changes that may be related to this effort, such as statutory reforms to enable planners to better mesh Title 22 and Title 10 authority and resources into coherent programs.[51]

A primary rationale for Title 10 security cooperation reform is to simplify the complex legal and bureaucratic regime—the plethora of very specific authorities with differing interagency collaboration requirement—which makes effective and timely planning difficult. (As explained earlier, the security cooperation authorities listed above were identified as foreign assistance or security assistance from the sources selected for this report, but many others exist, some of which are similar to the authorities catalogued here.[52]) For security cooperation planners, piecing together a program, often from multiple Title 22 and Title 10 authorities, entails navigating the various institutional arrangements through which the State Department reviews and provides input to DOD plans, and applying for funds from central, global pots of money.

A second rational for reform is what defense analysts describe as "filling gaps" in the Title 10 security cooperation framework. This could include expanding existing authorities or adding new authorities to provide DOD with the flexibility and funding to more readily assist partners in responding to a wider range of threats.[53] Some analysts argue, however, that expanding existing DOD authorities or adding new ones would only increase the overlap with existing State Department authority and further undermine Secretary of State oversight. In considering possible reforms, policymakers may weigh perceived time and resource constraints on DOD when it

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accounts, according to some analysts.

[50] Testimony of Jeffrey Eggers, a senior fellow at the New America Foundation, before the SASC Security Cooperation Hearing, March 9, 2016. Mr. Eggers stated that he found that "people are relatively pleased with... the utilization of Joint Authorities and getting away from the old mechanism...where...there was either a coordination [or]consultation requirement, which since they weren't well-defined could create tensions and lack of coordination between the agencies. But there was a fair amount of consensus that the innovation of using a joint mechanism for these type of authorities, while it obviously requires more work because two agencies have to come together...steps around a lot of the tension that was built up in the older model...."

[51] Robert L. Caslen, Jr., F. Dean Raab, and Geoffrey Adams, "Security Cooperation Doctrine and Authorities," *Joint Force Quarterly*, no. 71 (4th Quarter 2013), pp. 76-78.

[52] For one catalogue of such authorities, see the *DISAM Security Cooperation Handbook*.

[53] For instance, in 2015 DOD proposed that the Administration request a Title 10 maritime security authority. Its purpose would be to give DOD greater flexibility to help foreign military and coast guard forces monitor maritime spaces. DOD has assisted foreign maritime forces on occasion over the past decade through counternarcotics and "Section 1206" (now 10 U.S.C. 2282) counterterrorism authorities. DOD does not, however, possess broad authority to help foreign governments create and sustain maritime domain surveillance systems that could deter potential threats from other states. In executive branch deliberations, the State Department objected to a new Title 10 maritime security authority because it viewed such authority as duplicating existing FMF authority under which the State Department currently conducts maritime security programs in the Pacific region. Note that the South China Sea Initiative passed by Congress in the FY2016 NDAA (P.L. 114-92, Section 1263) is a similar, but more limited, authority.

conducts activities under Title 22 authority against a possible reduction of State Department oversight and control.

Proposals for DOD statutory reform range in scope. A 2016 RAND report recommends various ways to consolidate existing DOD statutes. It also recommends expanding existing DOD authorities or legislating new ones. RAND proposes creating consolidated "umbrella" authorities or other changes in several areas: counternarcotics, counterterrorism, humanitarian assistance, defense institution building, and maritime security, among others.[54] Other analysts propose more sweeping reform, consolidating and expanding existing DOD security cooperation authorities into one broad, comprehensive Title 10 authority. Some analysts assert Congress deliberately created the framework of narrow DOD authorities in order to exercise effective oversight and caution that consolidation may have inadvertent consequences, among them rendering DOD programs so broad that they will outstrip available State Department and Congressional resources to monitor them. Skeptics argue that such a consolidation may result in the duplication of authorities that already exist under Title 22.

Relevant Legislation

S. 2943, the Senate Armed Services Committee (SASC) version of the FY2017 NDAA, contains broad proposals to consolidate many DOD security cooperation authorities under a new Title 10 chapter dedicated to security cooperation authorities, expanding some, and codifying some NDAA statutes. A key feature of SASC's S. 2943 security cooperation reform proposal is the creation of a broad, global train and equip authority that the Secretary of Defense, with the concurrence of the Secretary of State, could use "to conduct or support a program or programs to provide training and equipment to the national security forces" of a country to enable the conduct of multiple types of operations. (Section 1251(d).) Specified types of operations are counterterrorism; counter-weapons of mass destruction; counter-illicit drug trafficking; counter-transnational organized crime; maritime and border security; and military intelligence. Also specified are operations or activities that contribute to an international coalition operation that is determined to be in the U.S. national interest, and national territorial defense of the foreign country concerned. Other reform provisions involve the DOD regional centers for security studies; payment of personnel and training and exercise expenses; reimbursement and exchange authorities; military-to-military exchanges; operational support; and the National Guard State Partnership Program, among others.

The House-passed version of the FY2017 NDAA, H.R. 4909, would also consolidate a number of existing Title 10 and NDAA statutes under a new Title 10 chapter, but it does not expand existing nor propose new authority.

Considerations for Statutory Reform

Proposals for statutory reform range span a wide gamut, and there are many possible implications from such reform. At one end of the spectrum, some analysts argue that Congress should revoke or let expire most DOD security assistance authorities and bring existing programs under Title 22 authority; at the other end of the spectrum some analysts propose creating a new, comprehensive Title 10 authority that encompass existing Title 10 authorities and more, and perhaps dispense with all or all but minimal State Department oversight requirements. In between are a number of less ambitious, but nonetheless significant reform proposals: revamping current practices for State Department authorities to make them more suitable for DOD programs; expanding the purposes of the hybrid, dual-key State Department-DOD authorities to encompass a wider variety of programs in non-urgent environments; or consolidating, revising, and possibly expanding existing Title 10 authorities. Desired benefits include greater efficiency in planning and implementing programs, greater program effectiveness, and lower costs to the U.S. government. Nevertheless, whatever the option, both proponents and opponents warn of possible risks and inadvertent consequences. These may include unintended budgetary consequences for either the State

[54] *RAND: From Patchwork to Framework,* Chapter 4.

Department, DOD, or both, and complications for interagency and Congressional input and oversight.

Reconciling Institutional Roles and Available Resources

The growth of Title 10 security cooperation authorities responds, in addition to perceived constraints on State Department assistance as discussed above, to evolving perceptions of DOD roles and missions. The adoption of security cooperation as a key military mission has not been accompanied by an increase in personnel and funding to enable the State Department and DOD to fulfill their respective roles.

Prior to 2005, DOD regarded assistance to foreign militaries as a secondary role, but DOD Directive 3000.05, issued late in that year, signaled a shift in the DOD concept of such noncombat missions. This directive elevated stability operations, defined as "military and civilian activities ... to establish or maintain order," to "a core U.S. military mission" to be "given priority comparable to combat operations." It noted that although many stability operations tasks abroad were "best performed by indigenous, foreign, or U.S. civilian professionals ... U.S. military forces shall be prepared to perform all tasks necessary to establish or maintain order when civilians cannot do so."

Soon thereafter, DOD made a number of institutional and policy changes to embrace noncombat missions, one of which was extending the mission of building partner capacity in foreign military forces, previously generally conducted in nonconventional warfighting situations by Special Operations Forces (SOF), to U.S. general purpose forces (GPF). In 2010, former Defense Secretary Robert M. Gates wrote: "Within the military, advising and mentoring indigenous security forces is moving from the periphery of institutional priorities, where it was considered the province of the Special Forces, to being a key mission for the armed forces as a whole."[55] Given the perceived necessity of these training and support missions, and the political improbability of funding them under the State Department rather than the DOD budget, the State Department supported, or at least did not stand in the way of, growing DOD security assistance authority as long as it required the concurrence of the Secretary of State.

A decade later, several concerns regarding appropriate State Department and DOD roles and resources again emerge. On the State Department side, the massive increase in DOD security assistance funding and activities under the Counterterrorism Partnership Fund (CTPF) in FY2015 and FY2016, along with DOD's desire for a peacetime global maritime security authority, have intensified some analysts' concerns that without additional resources, the State Department will not have the personnel to properly exercise its 1961 FAA Section 622(c) oversight function. Concerns also exist as to whether DOD has sufficient personnel, both at the Pentagon and in embassy SCOs, to adequately conduct its own implementation and oversight (such as end-use monitoring of defense articles) responsibilities.

Resources are also a matter of concern to some defense analysts. As U.S. military troops are drawn down and DOD budgets are tightened, some analysts favor prioritizing DOD resources for building U.S. combat capability. Others object that such a prioritization will significantly reduce available personnel and funding for security cooperation activities.

Members of Congress may wish to examine whether and what additional State Department and DOD personnel resources may be needed in response to DOD's substantially increased security cooperation portfolio, and whether additional funding is needed to hire, train, and retain qualified personnel, or to hire contractors to perform needed functions. Regarding personnel, on the State

[55] "Helping Others Defend Themselves," p. 3.

Department side, Congress may consider whether the State Department requires more personnel to oversee Title 10 security cooperation activities, or whether State Department oversight could be better managed with existing personnel through improved coordination mechanisms. (A related issue is whether Congress should legislate a greater role for the State Department in the on-the-ground development and execution of security assistance and cooperation programs, particularly as a means of ensuring appropriate resources are dedicated to those functions.) On the DOD side, Congress may wish to ascertain the extent to which GPF are used to train, advise, and mentor foreign military and other security forces, compared with SOF, the advantages and disadvantages of using GPF versus SOF for these missions, and the effect of the use of GPF on military readiness. A related inquiry may be whether DOD should create a security cooperation career path and assign general purpose forces to a dedicated security cooperation unit.

Relevant Legislation

S. 2943, the Senate Armed Services Committee (SASC) version of the FY2017 NDAA, contains a proposal to provide for DOD security cooperation workforce development (Section 1263) and a proposal to require the Secretaries of Defense and State to jointly issue regulations to "facilitate and streamline" coordination. (Section 1264)

Providing Greater Transparency and Accountability?

Although Congress receives many State Department and DOD reports on these agencies' security assistance and cooperation programs and expenditures, the expansion of DOD activities has prompted concerns that reporting requirements are not sufficient to provide a full and authoritative accounting of U.S. funding for security assistance activities around the world. DOD reporting on its security cooperation programs is a source of particular concern to some observers; for instance, DOD has not provided a bottom-line figure for its security cooperation activities, on either a global or a country-by-country basis.[56] Nevertheless, some analysts also perceive gaps in State Department reporting.

The State Department and DOD separately report their security assistance and cooperation activities and expenditures to Congress, usually through reports specifically required by individual statues. Congressional requirements are not consistent by agency or by statute; in the case of DOD, no reporting is required for several statutes (most of which concern military-to-military contacts).[57]

The State Department provides overview program descriptions and data for each bilateral aid recipient through its annual Congressional Budget Justification (CBJ), which is available online. While the CBJs provide data and descriptions on regional programs, information on regional programs is not broken down by country, making impossible a full account of State Department assistance to each country. Congressional notifications (CNs) and reports required by the AECA or other legislation provide detailed information to Congress, but they are not made available online.

The State Department and DOD jointly issue a two-volume annual report entitled *Foreign Military Training and DOD Engagement Activities of Interest*, which covers both Title 22 and Title 10 security assistance training (http://www.state.gov/t/pm/rls/rpt/fmtrpt). It contains

[56] See, for example, Lora Lumpe and Jeremy Ravinsky, "The Pentagon's secret foreign aid budget," *Politico*, March 8, 2016, at http://www.politico.com/agenda/story/2016/03/the-pentagons-foreign-aid-budget-needs-oversight-000060.

[57] For instance: 10 U.S.C. 1050, Latin American (LATAM) Cooperation Payment of Personnel Expenses; 10 U.S.C. 1050a, African Cooperation Payment of Personnel Expenses; and 10 U.S.C. 1051, Payment of Expenses to Attend Bilateral, Multilateral, or Regional Cooperation Programs.

extensive information on State Department and DOD training and other DOD nonsecurity assistance programs. State Department training includes that funded under FMS/FMF, IMET, INCLE, the PKO GPOI program, and 1961 FAA drawdowns. DOD training includes that funded under Section 1004 counter-drug authority, the CTFP, Section 1206/10 U.S.C. 2282, and funding for attendance at the DOD regional centers, as well as training funded under other non-security assistance programs. Most programs are documented down to the level of individual attendance. (The report does not track equipment or other non-training support.)

DOD has no public document comparable to the State Department's CBJ to provide information on security cooperation programs by country. Given the scattershot nature of sources of information available to Congress on Title 10 security cooperation, there is no way to account for DOD spending by country.

Congress obtains information on DOD programs through reports and CNs required by Title 10 legislation. Through the NDAA, Congress has periodically required reports on programs and spending on multiple authorities. In addition, Congress has affixed annual reporting requirements to many individual authorities. 10 U.S.C. 122a requires that the Office of the Assistant Secretary of Defense for Public Affairs post required reports "on a publically accessible Internet website." This office has posted a number of congressionally required reports on its website (http://www.defense.gov/News/Publications/almanac/asdpa), but they are scattered among many other types of publications. Another DOD website, open.defense.com, provides additional but limited information. Congress receives detailed information on spending for some DOD authorities through NDAA-required CNs. As with the State Department CNs, these are not available online.

Congress may wish to consider the extent to which reporting practices and requirements for security assistance and cooperation authorities facilitate or impede congressional oversight, in particular whether a public accounting of both State Department and DOD funding flows on a country-by-country basis may enhance congressional oversight of bilateral relations. While some policymakers and analysts argue for more information to provide transparency and improve accountability, others express concern that greater transparency regarding DOD assistance, in particular, may negatively affect U.S. relations with foreign governments, militaries, and security forces.

Relevant Legislation

S. 2943, the Senate Armed Services Committee (SASC) version of the FY2017 NDAA, contains proposals to a establish a central Security Cooperation Enhancement Fund for DOD security cooperation programs and activities (Section 1260), to consolidate and standardize DOD reporting on security cooperation authorities and programs in an annual report (Section 1261), and to require DOD to submit a consolidated annual budget for security cooperation programs and activities that would include specific amounts and specific countries or regions to the extent practicable (Section 1262).

Conclusion

Congress has long grappled with the problem of maximizing the benefits of security assistance, or at least minimizing its risks, by ensuring appropriate institutional structures, functions, and oversight. There are ample precedents for some of today's key challenges – addressing inefficiencies in State Department-DOD coordination is not new, nor are State-DOD disagreements about the use of available security assistance funds, or concerns about achieving the most effective use of those funds. The current threat environment, however, creates a special urgency about meeting those challenges. Statutory reform is widely seen as one key element of

improving security assistance efficiency and effectiveness, but advocates have proposed a wide range of options in that area. Given the herculean dimensions of broad statutory reform and possible inadvertent consequences of any such reform, Congress may also wish to examine a range of possible non-statutory fixes to the system, including Administration measures to improve interagency cooperation under the PPD-23 reform process. Several questions may provide guidance for congressional inquiry:

- To what extent, if any does the current threat environment require changes to the current statutory framework?
- To what extent may non-statutory changes alleviate perceived bottlenecks and obstacles to conducting efficient and effective security assistance programs?
- To what extent might a holistic approach to security assistance, integrating it with other types of assistance, increase effectiveness?
- In what ways might Administration and congressional oversight of security assistance programs be improved?

Appendix A. Terminology

This appendix discusses definitions for the following terms: military assistance, security assistance, security cooperation, security sector assistance, security force assistance, and foreign assistance.

Military Assistance

"Military Assistance" is the term used in the Foreign Assistance Act of 1961, as amended (1961 FAA, P.L. 87-195), for assistance to foreign security forces, but it is not specifically defined. At the time the 1961 FAA was written, it seems likely that military assistance meant the U.S. provision of defense articles and services to foreign militaries, as well as military education and training, which the 1961 FAA specifically identifies, along with civil (also known as civic) action, as military assistance. (See the text box below for the definitions of these terms.) Whether the term "military assistance" was originally meant to encompass assistance to other foreign security forces, including police, is not clear. It appears that, for clarity's sake, the term "security assistance" replaced "military assistance" in State Department documents.

Definitions: Defense Articles and Services, and Military Education and Training

The term "defense article" currently "includes—

- any weapon, weapons system, munition, aircraft, vessel, boat or other implement of war;
- any property, installation, commodity, material, equipment, supply, or goods used for the purposes of furnishing military assistance;
- any machinery, facility, tool, material supply, or other item necessary for the manufacture, production, processing repair, servicing, storage, construction, transportation, operation, or use of any article listed in this subsection; or
- any component or part of any article listed in this subsection; but shall not include merchant vessels or, as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), source material (except uranium depleted in the isotope 235 which is incorporated in defense articles solely to take advantage of high density or pyrophoric characteristics unrelated to radioactivity), by-product material, special nuclear material, production facilities, utilization facilities, or atomic weapons or articles involving Restricted Data. (1961 FAA, Section 644(d)) (22 U.S.C. 2403 (d))

Defense service "includes any service, test, inspection, repair, publication, or technical or other assistance or defense information used for the purposes of furnishing military assistance, but does not include military educational and training activities under part V of subchapter II of this chapter." (1961 FAA, Section 644(d)) (22 U.S.C. 2403(d))

Military education and training "includes formal or informal instruction of foreign students in the United States or overseas by officers or employees of the United States, contract technicians, contractors (including instruction at civilian institutions), or by correspondence courses, technical, educational, or information publications and media of all kinds, training aids, orientation, and military advice to foreign military units and forces." (1961 FAA, Section 644(n), 22 U.S.C. 2403(n))

Security Assistance and Security Cooperation

Today, "security assistance" is a term frequently used for assistance provided to foreign military and security forces, regardless of the agency providing that assistance. DOD, however, defines the term differently from its common usage.

There is no State Department-issued definition of security assistance. The annual State Department congressional budget justification (CBJ), however, lists six budget accounts under the heading "International Security Assistance," and these accounts, with their underlying Title 22

authorities, are commonly regarded as the State Department's security assistance portfolio. These accounts are Foreign Military Financing (FMF), International Counternarcotics and Law Enforcement (INCLE), International Military Education and Training (IMET), Nonproliferation, Anti-Terrorism, and Related Programs (NADR), Peacekeeping Operations (PKO), and the Special Defense Acquisition Fund.

DOD defines security assistance as the group of State Department programs authorized by the 1961 FAA and the Arms Export Control Act of 1976 (AECA) that are administered by the Defense Security Cooperation Agency (DSCA). These programs are FMF and IMET, as well as three others that do not require appropriations: (1) Foreign Military Sales (FMS), through which foreign governments purchase defense articles and services with their own funds, (2) the leases of equipment, and (3) the provision of excess U.S. defense articles.

DOD uses an overarching term, "Security Cooperation," to denote the State Department security assistance administered by DSCA as well as all other DOD "interactions with foreign defense establishments to build defense relationships." This term addresses the lack of common terminology for DOD's many noncombat activities and contacts, including not only the provision of defense articles and services, but also humanitarian assistance, exercises, and military-to-military contacts that benefit both U.S. and foreign forces. These "interactions" include programs to provide defense articles and services to foreign governments for which Congress provides DOD with specific authority, as well as programs and military exercises conducted under DOD's organic Title 10 authority.

Despite the formal DOD definition, personnel and entities within DOD use the term "security assistance" to include Title 10 assistance and activities. For instance, the name of the unit responsible for implementing Navy assistance and activities across the security cooperation spectrum is Naval Education and Training Security Assistance Field Activity (NETSAFA).

Some congressional documents do the same. For instance, Section 1211 of the FY2015 National Defense Authorization Act (NDAA, P.L. 113-291) requiring a biennial report on 19 Title 10 authorities or programs to train, equip, otherwise assist or reimburse foreign security forces refers to those authorities as security assistance.

DOD Definitions of Security Assistance and Security Cooperation

DOD's official dictionary defines "security assistance" as the group of programs authorized by the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act of 1976, as amended, and related statutes funded and authorized by the Department of State and administered by the Defense Security Cooperation Agency (DSCA). This dictionary defines "security cooperation" as all DOD "interactions with foreign defense establishments to build defense relationships that promote specific US security interests, develop allied and friendly military capabilities for self-defense and multinational operations, and provide US forces with peacetime and contingency access to a host nation."[58] This definition is reflected in the *Security Assistance Management Manual* (SAMM),[59] a DOD policy document. "Security assistance" is a narrow term denoting only State Department-funded programs implemented by DOD, and "security cooperation" is the generic term that encompasses the State Department programs and a full range of DOD noncombat activities and engagements with foreign forces.

The DOD Directive on security cooperation contains a similar definition for security assistance and a somewhat broader definition for security cooperation by including in the term DOD interactions with both military and non-military foreign security establishments. This directive defines security cooperation as DOD activities undertaken "to encourage and enable international partners to work with the United States to achieve strategic objectives. It includes all DoD interactions with foreign defense and security establishments, including all DoD-administered

[58] Department of Defense, *Department of Defense Dictionary of Military and Associated Terms (As Amended Through 15 February 2016)*, Joint Publication 1-02, November 8, 2010, p. 212, at http://dtic.mil/doctrine/new_pubs/jp1_02.pdf.

[59] Defense Security Cooperation Agency, *Security Assistance Management Manual*, points C1.1.1-C1.1.2.2, accessible through http://www.dsca.mil.

security assistance programs, that: build defense and security relationships that promote specific U.S. security interests, including all international armaments cooperation activities and security assistance activities; develop allied and friendly military capabilities for self-defense and multinational operations; and provide U.S. forces with peacetime and contingency access to host nations." (DOD Directive 5132.03, October 24, 2008, DoD Policy and Responsibilities Relating to Security Cooperation.)

Security Sector Assistance and Security Force Assistance

In Presidential Decision Directive 23, issued on April 5, 2013, the Obama Administration uses the term "Security Sector Assistance" to encompass assistance provided by all U.S. government agencies to both foreign defense and law enforcement forces. This inclusive term covers all the State Department security assistance programs, and most if not all DOD security cooperation programs, exercises, and engagements, as well as related activities of the U.S. Agency for International Development, the Justice Department, and other agencies. There may be different opinions, however, on whether the term includes all DOD humanitarian assistance authorities. This term is closely linked to "Security Sector Reform" (SSR), an internationally used term that refers to the broad span of programs and activities to improve the way a country provides safety, security, and justice through its police and other law enforcement and rule of law personnel, as well as its defense forces.

Presidential Policy Directive 23—Definition of Security Sector Assistance

"The security sector is composed of those institutions—to include partner governments and international organizations—that have the authority to use force to protect both the state and its citizens at home or abroad, to maintain international peace and security, and to enforce the law and provide oversight of those organizations and forces. It includes both military and civilian organizations and personnel operating at the international, regional, national, and sub-national levels. Security sector actors include state security and law enforcement providers, governmental security and justice management and oversight bodies, civil society, institutions responsible for border management, customs and civil emergencies, and non-state justice and security providers.

Security sector assistance refers to the policies, programs, and activities the United States uses to:

- Engage with foreign partners and help shape their policies and actions in the security sector;
- Help foreign partners build and sustain the capacity and effectiveness of legitimate institutions to provide security, safety, and justice for their people; and
- Enable foreign partners to contribute to efforts that address common security challenges."[60]

DOD uses the term "Security Force Assistance" in a similar manner, although it is a narrower term. DOD Instruction 5000.68 identifies SFA as a subset of Security Cooperation through which DOD contributes U.S. government efforts to strengthen and reform foreign security forces and their supporting institutions. The instruction states that such activities should be conducted "primarily to assist host countries to defend against internal and transnational threats to stability."[61] In addition, SFA may be used to help host counties defend against external threats, contribute to coalition operations, or organize, train, equip, and advise another country's security forces or supporting institutions. SFA does not include DOD activities with other sectors of a foreign government or population.

[60] White House, Office of the Press Secretary, *Fact Sheet: U.S. Security Sector Assistance Policy*, April 5, 2013, at https://www.whitehouse.gov/the-press-office/2013/04/05/fact-sheet-us-security-sector-assistance-policy.

[61] Department of Defense Instruction 5000.68, *Security Force Assistance (SFA)*, October 27, 2010, p. 18.

DOD Definition of "Security Force Assistance"

The DOD dictionary defines Security Force Assistance (SFA) as DOD "activities that contribute to unified action by the US Government to support the development of the capacity and capability of foreign security forces and their supporting institutions."

Is Title 10 Security Cooperation a Subset of Foreign Assistance?

The question of whether DOD Title 10 security cooperation programs and activities constitute foreign assistance is fraught with legal, policy, and practical implications. In the 1961 FAA, military assistance, including military education and training, is referred to as a subset of foreign assistance. The U.S. Army Operational Law Handbook, in its discussion of fiscal law limitations on the use of DOD funds for assisting foreign forces, describes military and related supplies and training to foreign forces as foreign assistance, with the exception of training for familiarization, interoperability, or safety purposes.[62] (It notes that whether the exception applies to training is also determined by the size, length, and purpose of training events.) In general, however, DOD has avoided referring to programs and activities to train, equip, or otherwise support or engage with foreign security forces under Title 10 authorities as foreign assistance, using instead the term "foreign assistance or security assistance related."

What Is Foreign Assistance?

The following definition is from Office of Management and Budget 2012 guidance for agencies on how to report their foreign assistance for inclusion on the online Foreign Assistance Dashboard (beta.foreignassistance.gov).

"Foreign assistance is... tangible or intangible resources (goods, services, and/or funds) provided by the USG to a foreign country or an international organization for the purpose of assistance to foreign entities or populations as authorized under the Foreign Assistance Act of 1961, as amended, or any other Act. These resources include, but are not limited to, any training, service, or technical advice; any item of real, personal, or mixed property; any agricultural commodity; and United States dollars and any foreign currency owned by the USG."

This guidance document is found at https://www.whitehouse.gov/sites/default/files/omb/bulletins/fy2012/b12-01.pdf.

DOD defines foreign assistance as follows: "Assistance to foreign nations ranging from the sale of military equipment to donations of food and medical supplies to aid survivors of natural and man-made disasters; that may be provided through development assistance, humanitarian assistance, and security assistance." (JP 3-29)

[62] The U.S. Army Operational Law Handbook states that "general rule" is that the State Department funds foreign assistance, including "Security Assistance to a foreign military or government," but notes that Congress has provided DOD with special authority to provide foreign assistance in certain cases and lists many DOD "statutory authorizations and appropriations to conduct Foreign Assistance" (including security assistance in general and Section 1206 in particular). Lt. Col. William Johnson and Lt. Commander David Lee, editors. The Judge Advocate General's Legal Center and School, U.S. Army, *Operational Law Handbook*, Charlottesville, VA, 2014, see pp. 228-248, at http://www.loc.gov/rr/frd/Military-Law/pdf/operational-law-handbook_2014.pdf.

Appendix B. Historical Evolution of Roles and Responsibilities[63]

The current legislative framework for security assistance and cooperation has its origins in the post-World War II military assistance statutes and programs, but it has evolved overtime. This appendix traces the laws and purposes of such assistance from the late 1940s to the present day.

Greek-Turkish Aid Act, 1947[64]

The strategic rationale for security assistance, and the origins of the Secretary of State's current primary role in providing it, date to 1947, when Congress bestowed on the President all authority to implement the Greek-Turkish Aid Act (P.L. 80-75, May 22, 1947). This act provided economic and military assistance to those two countries. In a statement to a joint session of Congress requesting the aid, President Truman tied U.S. national security to that of other free peoples living in a world of peace.[65] The President delegated his power and authority under the act to the Secretary of State through Executive Order (E.O.) 9857. That E.O. also charged the U.S. ambassadors to those countries with the responsibility to direct assistance activities within Greece and Turkey "under the guidance and instructions of the Secretary of State...." It instructed the Secretary of State to make "appropriate arrangements" with other departments, including the Department of the Navy and the Department of War, to enable ambassadors to fulfill their responsibilities under the act.[66]

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[63] This overview is compiled from unclassified, open-source materials available at the Library of Congress. National Archive and Record Administration (NARA) materials may well provide additional insight.

[64] For a case study on the effectiveness of assistance provided under the Greek-Turkish Aid Act, see CRS Report R44313, *What Is "Building Partner Capacity?" Issues for Congress*, coordinated by Kathleen J. McInnis.

[65] President Harry S. Truman, "Address of the President of the United States—Greece, Turkey, and the Middle East," Remarks to a Joint Session of Congress, *Congressional Record*, daily edition, vol. 93, part 2 (March 12, 1947), pp. H1980-H1981. The core rationales of this statement became as the "Truman Doctrine." In his 18- minute speech, President Truman stated, among other remarks:

> One of the primary objectives of the foreign policy of the United States is the creation of conditions in which we and other nations will be able to work out a way of life free from coercion....We shall not realize our objectives, however, unless we are willing to help free peoples to maintain their free institutions and their national integrity against aggressive movements that seek to impose upon them totalitarian regimes. This is no more than a frank recognition that totalitarian regimes imposed on free peoples, by direct or indirect aggression, undermine the foundations of international peace and hence the security of the United States.... I believe that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures.... If we falter in our leadership, we may endanger the peace of the world—and we shall surely endanger the welfare of our own Nation.

He noted, however, that he believed that U.S. assistance "should be primarily through economic and financial aid...." although the assistance package included the detail of American military personnel. Even though the principles underlying U.S. economic and military assistance outlined in the speech eventually because known as the "Truman Doctrine," a Truman biographer writes that there was no expectation at the time that such aid was to set a precedent and no general consensus on it within Congress. David McCullough, *Truman* (New York: Simon & Shuster Paperbacks, 1992), pp. 548-549.

[66] E.O. 9857 stated,

> Subject to such policies as the President may from time to time prescribe, the Secretary of State is hereby authorized, through such departments, agencies, and independent establishments of the government as he may designate, to exercise any power or authority conferred upon the President by the act, including expenditure of funds made available for the purposes of the act.... The Chief of

Mutual Defense Assistance Act, 1949

In its consideration of the Mutual Defense Assistance Act of 1949 (MDAA, P.L. 81-329, October 6, 1949) to assist the newly formed North Atlantic Treaty Organization (NATO),[67] Congress set the parameters of the current security assistance legal framework. Through this legislation, Congress established that foreign military assistance would be separate from the DOD budget and provided the first guidelines for the current division of responsibility between the State Department and DOD for military assistance. In a joint Senate Foreign Relations Committee and Senate Armed Services Committee hearing on the legislation, then Secretary of Defense Louis A. Johnson clarified that the Administration wanted to "keep foreign military assistance costs separate and distinct as an item so that you [Congress] can evaluate and the people of America can understand what we are doing, and not as a buried item in the budget bill of the Defense Department."[68]

Later, in a joint report, the Senate Foreign Relations Committee and the Senate Armed Services Committee stated their judgment that primary authority and responsibility for directing the foreign assistance program authorized by the act be "lodged in the President, and under him the Secretary of State," and that DOD's close participation in making program policies was necessary "because this is a military program aimed at increasing the national security."[69] In January 1950, through E.O. 10099, President Truman charged the Secretary of State with "responsibility and

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> Mission to Greece or Turkey appointed by the President ... shall, under the guidance and instructions of the Secretary of State, direct United States activities within Greece or Turkey, as the case may be, in furnishing assistance under the act. The Secretary of State may delegate to the Chief of Mission such powers or authority conferred by this order as he may deem necessary and proper to the effective carrying out of the provisions of the act....

Executive Order (E.O.) 9857, "Regulations for Carrying Out the Provisions of the Act Entitled 'An Act to Provide for Assistance to Greece and Turkey,'" 12 *Federal Register* 3331, May 24, 1947.

Assistance was delivered through normal channels, but field responsibility differed between the two countries. "Aid was supplied to Greece and Turkey through the allocation of appropriated funds by the State Department to the Government agency that normally handled the particular materials. In Greece, the chief of the aid mission had complete authority over all phases of the program," except the U.S. Ambassador controlled the negotiation of the aid agreement and general political matters concerning bilateral relations. "In Turkey, the U.S. Ambassador had direct formal charge of the aid program, though it was operated by American military missions." U.S. Congress, House, *U.S. Foreign Aid: Its Purposes, Scope, Administration, and Related Information*, prepared by Legislative Reference Service, Library of Congress, 86th Cong., 1st sess., June 11, 1959, H.Doc No. 116 (Washington: GPO, 1959), p. 33.

[67] The MDAA provided three types of grant military aid to member states of the North Atlantic Treaty Organization (NATO), which had been established months earlier, and to several other states that did not have the ability to pay for their defense needs. This act provided funds to European countries to enable them to increase the production of military items without disrupting their economic recovery. It also directly transferred military equipment to European countries, and provided them with assistance in producing and using military equipment and in training personnel.

[68] U.S. Congress, Senate Committee on Foreign Relations and Committee on, *Military Assistance Program*, Joint Hearings on S. 2388, 81st Cong., 1st sess., August 8, 1949 (Washington: GPO, 1949), pp. 61-62.

[69] The Senate Foreign Relations Committee and the Senate Armed Services Committee, which had jointly introduced the act, stated in a joint report their judgment that

> it is logical that the primary responsibility and authority for the direction of the foreign assistance program be lodged in the President and under him the Secretary of State. The fact that this is a military program aimed at increasing the national security, however, makes necessary close participation by the Department of Defense in the making of program policies. Furthermore, it is essential that military assistance be so handled as to avoid interference with the foreign economic recovery programs. Thus, the program also requires participation by the Economic Cooperation Administration.

S. Rept. 81-1068, pp. 2008-2009.

authority for the direction" of the MDAA program and authority to approve programs after consultation with the Secretary of Defense and the Administrator for Economic Cooperation.[70]

Mutual Security Act, 1951

With the Mutual Security Act of 1951 (1951 MSA, P.L. 82-165, October 10, 1951), Congress shifted primary responsibility for the direction and oversight of foreign assistance, including military assistance, to the White House. The 1951 MSA provided military, economic, and technical assistance to friendly countries, primarily in Western Europe, but also in the Near East, Africa, Asia, and the Pacific, "to maintain the security and to promote the foreign policy of the United States." Section 501 authorized the President "to appoint in the Executive Office of the President a Director for Mutual Security" who under the direction of the President "shall have primary responsibility for ... continuous supervision and general direction of the assistance program under this Act to the end that such programs shall be (A) effectively integrated both at home and abroad, and (B) administered so as to assure that the defensive strength of free nations of the world shall be built as quickly as possible on the basis of continuous and effective self-help and mutual aid."

Section 503 spelled out the Director's primary role with regard to military assistance.[71] Section 506(a) enumerated a list of the Secretary of Defense's responsibilities for administering military assistance and related technical assistance and advice that has endured, with minor changes, to this day (now as 1961 FAA Section 623, see below), to be exercised subject to the Director of Mutual Security's "coordination, direction, and supervision."[72]

In E.O. 10300[73] implementing the 1951 MSA, President Truman specified what on the surface appeared to be an accessory role for the Secretary of State: "The Secretary of State and the

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[70] E.O. 10099, "Providing for the Administration of the Mutual Defense Assistance Act of 1949," 15 *Federal Register* 449, January 27, 1950.

[71] Section 503 states, under the heading "Additional Duties of Director for Mutual Security," that

> the Director, on behalf of the President and subject to his direction, shall, in consultation with the Secretaries of State and Defense, continue to have primary responsibility for – (a) the development and administration of programs of assistance designed to sustain and increase military effort, including production, construction, equipment, and materiel in each country or in groups of countries which receive United States military assistance; (b) the provision of such equipment, materials, commodities, services, financial, or other assistance as he finds to be necessary for carrying out mutual defense programs....

[72] Section 506(a) listed these functions as (1) the determination of military end-item requirements; (2) the procurement of military equipment in a manner that permits its integration with service programs; (3) the supervision of end-item use by the recipient countries; (4) the supervision of the training of foreign military personnel; and (5) the movement and delivery of military end items. Section 506(b) stated that the Secretary of Defense would determine the establishment of priorities in the procurement, delivery, and allocation of military equipment, while the apportionment of funds between countries would be determined by the President.

In 1953, the Foreign Operations Administration (FOA) was established in the White House, replacing the Mutual Security Agency. Through E.O. 10476 (August 4, 1953), President Eisenhower vested the presidential authority conferred by the MDAA, the MSA 1951, and related acts in the FOA Director. The Secretary of Defense continued to exercise administrative responsibilities for military assistance, subject to the coordination, direction, and supervision of the FOA Director, as provided in E.O. 10476 (Section 102). Under Section1204, the Secretary of State, the FOA Director, and the Director of the U.S. Information Agency (USIA) were to "establish and maintain arrangements which will ensure" that FOA and USIA programs were "carried out in conformity with the established foreign policy of the United States."

[73] E.O. 10300, "Providing for the Administration of the Mutual Security Act of 1951 and Related Statutes," 16 *Federal Register* 61, January 4, 1951.

Director for Mutual Security shall establish and maintain arrangements which will insure that the programs included in the Mutual Security Act of 1951 shall be carried out in conformity with the established foreign policy of the United States." Nevertheless, that same year, an executive branch memorandum noted the

> fundamental premise that the State Department should exercise leadership, guidance, and in the final instance, control—subject only to Presidential determination if other interested Cabinet officers object—over all elements of the foreign policy of the United States and over the policies and principles to govern the operations of other agencies involved in overseas activities insofar as they affect Foreign Policy considerations.[74]

Mutual Security Act, 1954

By enacting the Mutual Security Act of 1954 (1954 MSA, P.L. 83-665, August 26, 1954), Congress set the scene for the return of the Secretary of State as a principal figure in military assistance, although with a somewhat reduced military assistance oversight role. The 1954 MSA bestowed authority for all foreign assistance on the President. At first, through E.O. 10575 (November 6, 1954),[75] President Eisenhower delegated that authority to the Foreign Operations Administration (FOA) Director, except for military assistance. President Eisenhower delegated that responsibility, including responsibility for determining recipients, to the Secretary of Defense, subject to "coordination" by the FOA Director.[76] Then, in mid-1955, the period of White House direct oversight of foreign assistance, which lasted almost four years, came to an end.

In an April 1955 letter to Secretary of State John Foster Dulles, President Eisenhower signaled his intent to shift responsibility for foreign assistance from the White House to the Secretary of State. "The Secretary of State, under the President," he wrote, "must be the official responsible for the development and control of foreign policy and all relations with foreign governments, to include policies affecting mutual security."[77] Through E.O. 10610 of May 1955,[78] President Eisenhower reestablished the Secretary of State's authority over foreign assistance, with the exception of most authority for military assistance. The President vested authority provided by the 1954 MSA for military assistance in the Secretary of Defense, subject to coordination by the Secretary of State. However, seemingly in line with the President's letter, E.O. 10610 (Section 202) charged the Secretary of State with determining the value of the military assistance program in each recipient country.

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[74] *Foreign Relations of the United States: Diplomatic Papers 1951.* Excerpted from *Memorandum by the Executive Group on Foreign Aid Presentation to the Under Secretary of State (Webb)*, p. 301.

[75] E.O. 10575, "Administration of Foreign-Aid Functions," 19 *Federal Register* 7249, November 9, 1954.

[76] For military assistance to the Far East and the Pacific, however, E.O. 10575, Section 103(a)(2), charged the Secretary of State with giving "the fullest assistance, as far as possible directly, to the free peoples in that area" to create a self-help and mutual cooperation designed to develop their economic and social well-being, to safeguard basic rights and liberties, and to protect their security and independence. Section525 of the 1954 MSA eliminated the FOA Director's responsibility to exercise continuous supervision and general direction of military assistance.

[77] Dwight D. Eisenhower, Letter to Secretary of State John Foster Dulles Regarding Transfer of the Affairs of the Foreign Operations Administration to the Department of State, April 17, 1955, available through the University of California at Santa Barbara American Presidency Project (http://www.presidency.uscb.edu). Responsibility was transferred on May 9, 1955, by E.O. 10610.

[78] E.O. 10610, "Administration of Mutual Security and Related Functions," 20 *Federal Register* 3179, May 11, 1955.

Draper Committee Recommendations, 1959

Throughout the 1950s, military assistance became increasingly controversial. In November 1958, President Eisenhower appointed a committee to study and recommend changes to U.S. foreign assistance programs, including the Military Assistance Program (MAP). Known as the "Draper Committee" after its president, William H. Draper, Jr.,[79] the committee recommended in August 1959 both that military assistance be appropriated in the DOD budget and that the ability of the Department of State "to provide foreign policy direction for, and to coordinate, the military and economic assistance programs should be strengthened."[80] The committee's stated reason for funding military assistance programs in the DOD budget was to ensure they would "come into competition for financial support with other activities and programs of the Department of Defense."[81]

The recommendation to place MAP under the defense budget did not imply a recommendation to reduce the State Department role, however. To the contrary, in its conclusions, the Draper Committee highlighted an interim report's description of the "key to success" of the MAP as ensuring "an effective working relationship" between the Departments of State and Defense.[82] The interim report discussed two elements to improve the working relationship: (1) "strengthening of the position of the State Department on the policy level of military assistance planning and an increased assurance of the conformity of the Military Assistance Program to foreign policy and to related assistance programs" and (2) "the focusing of responsibility on the Department of Defense for the planning, programming and execution of military assistance within the framework of policy guidance laid down in the National Security Council and by the Department of State."[83]

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[79] William H. Draper, Jr., a retired Army major general, had served as Under Secretary of War in 1947, Under Secretary of the Army, 1947-1949, and United States Special Representative in Europe, with rank of Ambassador, January 1952 to June 1953.

[80] U.S. Congress, House Committee on Foreign Affairs, *Conclusions Concerning the Mutual Security Program: Communication from the President of the United States*, Transmitting the Final Report of the President's Committee to Study the United States Military Assistance Program, with the Several Studies which are Annexes Thereto, 80th Cong., 1st sess., August 20, 1959, H. Doc. 215, Part I (Washington: GPO, 1959), p. 11. Hereinafter referred to as the "Draper Committee Report."

The report listed several criteria for judging whether DOD funds should be spent on U.S. troops or foreign military assistance programs: (1) the relatively low cost of allied forces compared to the cost of maintaining U.S. forces overseas; (2) "the desirable build-up of forces in strategic positions where the maintenance of United States forces is neither practical nor desirable"; (3) "the more equitable sharing of the human and material burdens of free world defense"; (4) "the increased confidence engendered within the countries concerned"; (5) "the closer ties thus developed with the United State"; and (6) "the increased unity and cohesiveness of purpose in the free world to which such a joint effort will contribute," p. 25.

[81] Draper Committee Report, p. 37. It is not clear whether any funds were appropriated for the Military Assistance Programs in subsequent DOD budgets, as the DOD appropriations bills for FY1960 and FY1961 show no such breakout. In any event, the Kennedy Administration, which took office in January 1961, received MAP funding through foreign assistance budgets beginning in FY1962.

[82] Draper Committee Report, p. 37.

[83] U.S. Congress, House Committee on Foreign Affairs, *Report on the Organization and Administration of the Military Assistance Program Submitted to the President on June 3, 1959*, Communication from the President of the United States, prepared by The President's Committee to Study the U.S. Military Assistance Program, 86th Cong., 1st sess., June 24, 1959, House Document No. 186 (Washington: GPO, 1959), p. 10. The interim report found fault with both departments (pp. 10-11.):

> There is a belief in the State Department that the Department has not been given adequate opportunity to furnish political and economic guidance and that the military objectives of the program, as defined by the Department of Defense, have not always been clearly explained.... On

The Foreign Assistance Act of 1961 (1961 FAA)

With the passage of the 1961 FAA, Congress provided the Secretary of State with authority over military assistance that drew on the authority provided the White House in the 1951 MSA. The 1961 FAA echoed provisions of the 1951 MSA in three ways: (1) in the wording of the oversight responsibility originally vested in the Director of Mutual Security, (2) in the stated purpose of Secretary of State oversight, and (3) in the listed responsibilities of the Secretary of Defense in administering the program.

As with previous foreign assistance, the 1961 FAA bestowed on the President the authority to carry out its provisions, which the President then delegated to department secretaries and key officials. Over time, the division of responsibility between the Secretary of State and the Secretary of Defense has been modified. For instance, through the first executive order governing the 1961 FAA, E.O. 10973,[84] President Kennedy delegated most presidential authority for furnishing military assistance to the Secretary of Defense, including Section 503(a) authority to identify countries or international organizations that "the President finds will strengthen the security of the United States and promote world peace." When President Carter issued a revised executive order to govern the 1961 FAA (E.O. 12163 revoking E.O. 10973), he reserved Section 503(a) authority to the President, with a note that the Secretary of State was authorized to make that finding in certain situations.[85] This arrangement continues to this day.

From the beginning, Congress explicitly provided the Secretary of State through the 1961 FAA with a strong oversight responsibility regarding military assistance. Under Section 622(c), Congress vested in the Secretary of State, under the direction of the President, responsibility for the "continuous supervision and general direction" of foreign assistance, with specific reference to "military assistance, including military education and training," provided under the 1961 FAA. Also under Section 622(c), Congress made the Secretary of State responsible "for determining whether there shall be a military assistance (including civic action) or a military education and training program for a country and the value thereof." Congress's intention for Secretary of State oversight, under that section, was "to the end that such programs are effectively integrated both at home and abroad and the foreign policy of the United States is best served thereby." Under Section 623, Congress charged the Secretary of Defense with responsibility for administering the military assistance program, enumerating tasks similar to those first assigned under the 1951 MSA.[86]

During the 1960s and 1970s, the 1961 FAA and related State Department accounts became the primary vehicle for U.S. military assistance, although significant assistance was provided under

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> the other hand, the State Department, when called upon to furnish political and economic guidance for the program, has not always done so in a timely and effective fashion. Also, there is a belief in the Defense Department that the State Department has invaded the operational area and ha not limited itself to foreign policy....

[84] E.O. 10973, "Administration of Foreign Affairs," 26 *Federal Register* 10469, November 3, 1961, revoked and replaced by E.O. 12163, "Administration of Foreign Affairs," 44 *Federal Register* 56673, September 29, 1979.

[85] E.O. 12163, "Administration of Foreign Affairs," 44 *Federal Register* 56673, September 29, 1979, Section 1-701(e)(1). A consolidated version of this E.O. is found as a note to 22 U.S.C. 2381.

[86] Section 623 of the 1961 FAA assigns "primary responsibility" to the Secretary of Defense for six functions: (1) determining military end-item requirements; (2) procuring military equipment in a manner which permits its integration with service programs; (3) supervising end-item use by recipient countries; (4) supervising the training of foreign military and related civilian personnel; (5) transport and delivery of military end-use items; and (6) within the Department of Defense, performing any other functions necessary to furnish military assistance, education, and training.

other accounts and authorities, especially for the Vietnam War effort. A notable exception was military services support funding for the conflict in Southeast Asia, which was authorized and funded under DOD legislation.[87] In the mid-1970s, after the Vietnam War had concluded, Congress amended the 1961 FAA to expand Secretary of State oversight responsibility. By deleting the words "in this Act" from the mandate to exercise "continuous supervision and general direction,"[88] Congress gave the Secretary of State (again under the direction of the President) oversight responsibility for all military assistance, regardless of the authority or budget under which it is provided. (This responsibility underpins Congress's current practice of making many Title 10 assistance authorities subject to the concurrence of the Secretary of State.)

Although the 1961 FAA gave the Secretary of State primary responsibility for security assistance, other responsibilities and the organization for implementing security assistance programs changed over time. At first, the Secretary of State delegated his responsibility for oversight to the U.S. Agency for International Development Administrator, and then divided that responsibility between two State Department officials.[89] The oversight responsibility—exercising continuous supervision and general direction of military assistance programs—was subsequently re-delegated to State's Director for Political-Military Affairs.

In 1963, the Secretary of Defense divided his implementation responsibilities and delegated those responsibilities among several DOD positions. In 1971, he made a number of subsequent organizational changes, including the creation of the Defense Security Assistance Agency (DSAA, now the Defense Security Cooperation Agency, DSCA), with responsibilities for program administration. (Before the DSAA was established, the distribution of defense articles and services appeared to be the responsibility of the geographic combatant commands (COCOMs.)

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[87] Mutual Security Act authorized MAP funding continued to be available for expenditure for some years after the 1961 FAA was enacted. More importantly, as conflict in Southeast Asia escalated, Congress decided to support the war effort there through the military services. From 1966 to 1973, Congress appropriated "military service support funding" in the DOD budget to assist Vietnam and, beginning in 1967, other "free world forces," principally Laos and Thailand, to counter communist military action in Southeast Asia.[87] (The appropriation of military grant assistance funds was transferred from 1961 FAA MAP appropriations to DOD appropriations because the sharp increase in military assistance for Vietnam represented "burgeoning needs [that] could not be met out of available MAP funds without a drastic scaling down of several other important county programs, such as Korea or Turkey. Also, it was felt that in an active combat situation requiring flexibility and speed, the established MAP procedures were too cumbersome to administer and too slow in responding to changing requirements." Out-of-print CRS Report 73-18, *International Security Assistance: An Analysis of Recent Developments in U.S. Government Organization and Management*, by David E. Lockwood, January 9, 1973, p. 6. Hereinafter cited as *CRS Report 73-18, International Security Assistance.* Earlier, during the Korean War, Congress had appropriated military assistance through the defense budget.) Civilian oversight was apparently provided by the White House, which closely managed all war efforts, and, at times, by U.S. ambassadors as well.

[88] International Security Assistance and Arms Export Control Act, P.L. 94-329, Section 106(b)(2)(B)). The Arms Export Control Act, which as of 1968 authorizes the FMS/FMF program, similarly mandates that the Secretary of State, under the direction of the President, be responsible for "the continuous supervision and general direction of sales, leases, financing, cooperative projects, and exports under this chapter." (P.L. 90-629, as amended, Chapter 1, Section 2(b), 22 U.S.C. 2752.)

[89] From the enactment of the 1961 FAA through 1967, the Secretary of State delegated his oversight and direction responsibilities to the Administrator of the U.S. Agency for International Development (USAID). In January 1968, in an attempt to strengthen the State Department's oversight and control, the Secretary of State re-delegated authority to two officials, with power to supervise and integrate both the economic assistance and military assistance programs within the context of U.S. foreign policy interests to the Under Secretary of State, and day-to-day responsibility for continuous supervision and direction of military assistance and sales to the Deputy Under Secretary of State for Political Affairs. *CRS Report 73-19, International Security Assistance*, pp. 17-18.

Continuing Evolution of the Legislative Framework

In keeping with changing needs and conditions since 1961, Congress has amended the 1961 FAA several times to incorporate additional security assistance authority. Congress has also enacted laws to provide new sources of Title 22 and Title 10 (as well as Title 50) security assistance authority.

Expansion of Title 22 Authority

The original 1961 FAA military assistance provisions were supplemented by numerous amendments, including five key security assistance authorities:

- International Narcotics Control authority (Part I, Chapter 8, Section 481), added in 1972[90] and subsequently amended;
- International Military Education and Training authority (Part II, Chapter 5, Sections 541-549), added in 1976[91] and subsequently amended;
- Peacekeeping Operations authority (Part II, Chapter 6, Section 551), added in 1978[92] and subsequently amended;
- Antiterrorism Assistance authority (Part II, Chapter 8, Section 572), added in 1983[93] and subsequently amended; and
- Nonproliferation and Export Control Assistance authority (Part II, Chapter 9, Sections 581-585), added in 2000[94] and subsequently amended.

Congress provided additional security assistance authority through other laws as well. The AECA, a major new Title 22 authority, was added in 1968.[95] The AECA provided new authority for cash arms sales (with associated training and equipment) through a Foreign Military Sales (FMS) program and for assistance in purchasing arms and associated training and equipment through a Foreign Military Financing (FMF) credit and grant authority. AECA authority overlaps with 1961 FAA security assistance provisions, which the AECA amended to provide congruent authority. Like the 1961 FAA, the AECA vests responsibility in the Secretary of State, under the direction of the President, for providing "continuous supervision and general direction" oversight, in this case for provisions of the act. Nonproliferation and similar assistance is another area where Congress legislated separate but related authorities under Titles 22, 10, and 50.[96]

Over the years, as Congress added new security assistance authority through amendments to the 1961 FAA and other legislation, the division of responsibility between the Secretaries of State and Defense for security assistance became more complex. As with the 1961 FAA, Title 22 legislation

[90] Foreign Assistance Act of 1971, P.L. 92-226, Section 109.

[91] International Security Assistance and Arms Export Control Act of 1976, P.L. 94-329, Section 106(a).

[92] International Security Assistance Act of 1978, P.L. 95-384, Section 12(a).

[93] International Security and Development Assistance Authorizations Act of 1983, P.L. 95-151, Section 101(b)(2) of Further Continuing Appropriations, 1984.

[94] Security Assistance Act of 2000, P.L. 106-280, Sections 301-305.

[95]The original 1968 legislation was the Foreign Military Sales Act (FMSA), P.L. 90-629. The FMSA was renamed the Arms Export Control Act and substantially amended by Title II of the International Security Assistance and Arms Export Control Act of 1976, P.L. 94-329.

[96] The legal framework and interagency arrangements for nonproliferation and export controls are complex and not dealt with in this report. See CRS Report RL31559, *Proliferation Control Regimes: Background and Status*, coordinated by Mary Beth D. Nikitin.

in general bestowed security assistance authority on the President. As a result, through executive orders, the President delegates most authority to the Secretaries of State, Defense, or, as appropriate, other agencies. He may reserve certain authorities for himself. As noted above, the current primary executive order governing the delegation of foreign assistance authority is E.O. 12163, issued by President Carter in 1979. Amended many times, E.O. 12163 delegates presidential authority contained in the 1961 FAA as well as numerous appropriations and other acts. For security assistance, the division of responsibility between the Secretaries of State and Defense under E.O. 12163 is supplemented by other orders. For instance, AECA authority bestowed on the President is delegated by E.O. 13637,[97] and presidential authority for nonproliferation assistance provided by the Freedom Support Act is delegated by E.O. 12884.

Under the regime established by these and related executive orders, the President's 1961 FAA and AECA responsibilities for foreign military sales and financing is divided between the Secretaries of State and Defense, with some responsibilities reserved to the President. As indicated above, AECA security assistance responsibilities are divided between the Secretaries of State and Defense. Four key 1961 FAA security assistance authorities added post-1961—counternarcotics (1972), peacekeeping operations (1978), antiterrorism (1983), and nonproliferation (2000)—are delegated to the Secretary of State.[98]

Nevertheless, sometimes multiple provisions affect the division of responsibility.[99] For example, in the area of counternarcotics, E.O. 12163 delegates to the Secretary of Defense the President's authority to provide military assistance and law enforcement assistance to Andean countries in the International Narcotics Control Act of 1990 (P.L. 101-623, Section 3 through the foreign military financing program). E.O. 12163, however, also provides that the Secretary of Defense shall exercise this function "in consultation with the Secretary of State." Moreover, the 1961 FAA counternarcotics provisions directly bestow oversight responsibility for all counternarcotics efforts on the Secretary of State. Section 481(b) of the 1961 FAA charges the Secretary of State with responsibility "for coordinating all assistance provided by the United States government to support international efforts to combat illicit narcotics production or trafficking."

Addition of Title 10 Security Cooperation Authority

Beginning in the 1980s, Congress expanded the scope and character of the statutory framework by authorizing DOD to directly train, equip, and otherwise assist foreign military and other security forces through new provisions in annual National Defense Authorization Acts (NDAA), some codified to Title 10 of the *U.S. Code* (Armed Services). Unlike Title 22 provisions, which generally bestow assistance authority on the President, most NDAA and Title 10 security cooperation authorities are specifically assigned to the Secretary of Defense. Counternarotics

[97] E.O. 13637, "Administration of Reformed Export Controls," 78 *Federal Register* 16129, March 8, 2013, revoking the original AECA executive order, E.O. 11958, 42 *Federal Register* 4311, June 18, 1977. A consolidated version of this E.O. is found as a note to 22 U.S.C. 2751.

[98] E.O. 12163 delegates 1961 FAA nonproliferation authority to the Secretary of State according to a State Department lawyer, even though E.O. 12163 Section 1-301-a appears to indicate it is delegated to the Secretary of Defense.

[99] In addition, Congress has sometimes provided in legislation for working groups or oversight bodies to coordinate activities in areas where there are overlapping statutory authorities. For instance, the National Defense Authorization Act for FY2013 (P.L. 112-239, Section 1605) established a Counterproliferation Program Review Committee consisting of the Secretaries of Defense (the chair), Energy, State, and Homeland Security, as well as the Director of National Intelligence and the Chairman of the Joint Chiefs of Staff to oversee the development and use of counterproliferation technologies and capabilities.

authorities were among the earliest DOD statutes, enabling the use of substantial military assets to curb narcotics production abroad and block exports to the United States.

Post 9/11, Congress has approved additional Title 10 statutes in response to perceptions that DOD would need new, flexible tools to meet the demands of a changing international security environment. In the new environment, challenges would be posed not only by peer competitors, but also, and perhaps more immediately, by the lawlessness and ungoverned spaces found in weak and failing states.[100] Many new statutes provide authority for DOD authorities build the capacity of foreign forces to work unilaterally or as partners with the United States to deter and counter threats. These included authorities responding to the increased demand for military resources as a result of U.S. interventions in Afghanistan and Iraq, and to military requests for greater flexibility to meet the challenges—actual and potential—posed by terrorists and other violent groups.

[100] The DOD 2006 Quadrennial Defense Review recommended new DOD capabilities and authorities to deal with the changed environment. Among other things, it stated that DOD needed "Broad, flexible authorities to enable the United States to rapidly develop the capacity of nations to participate effectively in disrupting and defeating terrorist networks." Department of Defense, *Quadrennial Defense Review*, February 6, 2006, p. 24, at http://www.comw.org/qdr/qdr2006.pdf. See CRS Report R44313, *What Is "Building Partner Capacity?" Issues for Congress*, coordinated by Kathleen J. McInnis.

Appendix C. Title 22 Department of State Authorities

This appendix provides information on Title 22, Department of State statutes. These include the State Department's three "traditional" security assistance programs: Foreign Military Sales (FMS), Foreign Military Financing (FMF), and the International Military Education and Training (IMET), including the "expanded-IMET defense civilian-oriented program component) programs. They also include the State Department's excess defense articles program and two Arms Export Control Act programs related to FMS/FMF: the equipment leasing program and the Special Defense Acquisition Fund (SDAF). These are all administered by the Department of Defense's Defense Security Cooperation Agency (DSCA). Other Department of State authorities and programs discussed here are the drawdown authorities, International Narcotics Control and Law Enforcement, Non-Proliferation, Anti-Terrorism, Demining, and Related Programs, Peacekeeping Operations, and Special Authorities. DOD participates in or otherwise may support the later programs. For these programs, administered and implemented by the State Department, DOD support may include personnel, equipment, and services such as transportation.

DSCA-Administered Title 22 State Department Programs

Excess Defense Articles

22 U.S.C. 2321j (1961 FAA Section 516) gives the President authority to transfer excess defense equipment (EDA) as part of military assistance programs, narcotics control programs, or activities that have been separately justified to Congress.[101] Supplies must be drawn from DOD existing stocks. DOD cannot spend funds available for procuring defense equipment for the transfer, and the transfer cannot have an adverse impact on U.S. military readiness or on the national technology and industrial base and potential such sales. Transfers on a grant basis are to be preferred to those on a sales basis "after taking into account the potential proceeds from, and likelihood of, such sales, and the comparative foreign policy benefits that may accrue to the United States as the result of a transfer on either a grant or sales basis." A 30-day advance notification is provided to Congress before any transfers of excess defense articles valued at more than $7 million (in terms of original acquisition costs). The aggregate value of excess defense articles transferred under this provision may not exceed $425 million in a fiscal year.

Foreign Military Sales (FMS), Foreign Military Financing (FMF) and Related AECA Provisions

FMS (AECA, Sections 21-22, 22 U.S.C. 2761-2762) is the U.S. government's main vehicle for selling weapons, equipment, and associated training to friendly foreign countries. Military weapons and equipment ranges from major weapons systems, such as sophisticated aircraft, to

[101] 22 U.S.C. 3257 (1961 FAA Sec. 607(c)(1)) states that agencies managing excess military supply transfers under Part 1 (economic/development assistance) of the 1961 FAA must provide written certification that there is a need for such property in the quantity requested and that such property is suitable for the purpose requested; that the designated end-user is responsible and able to effectively use and maintain such property; and that the residual value, serviceability, and appearance of such property would not reflect unfavorably on the image of the United States and would justify the costs of packing, crating, handling, transportation, and other accessorial costs, and that the residual value at least equals the total of these costs.

smaller items, such as patrol boats, night vision goggles, and military boots. Foreign governments may purchase such items directly from the private companies offering them, but many prefer to purchase through FMS because the U.S. government negotiates with those suppliers for packages of materiel and services on behalf of that government and monitors the procurement process through delivery. FMF grants and loans (AECA, Section 23, 22 U.S.C. 2763) are provided to selected foreign governments to purchase items through FMS. The State Department is primarily responsible for determining which nations are to receive military assistance from each program. The actual FMF expenditure for FY2015 was $5.9 billion in the enduring and OCO budgets, of which $4.4 billion was provided in the enduring budget to Israel ($3.1 billion) and Egypt ($1.3 billion). (For FY2016, total estimated FMF in the enduring and OCO budgets was $6.0 billion, but the State Department has not provided a by-country breakdown by country.) For FY2017, the State Department requested some $5.7 billion in the enduring and OCO budgets, with same dollar amounts as in FY2015 in the enduring budget for Israel and Egypt.

Under one related AECA provision, DOD defense articles may be leased rather than sold to eligible countries or international organizations (Leases of Equipment 22 U.S.C. 2796, AECA Sections 61-65). The President must first determine that there are compelling U.S. foreign policy and national security reasons to do so. Leases may not exceed five years, but they may be renewed.

In another related AECA provision, the Special Defense Acquisition Fund (SDAF, 22 U.S.C. 2795, AECA Section 51) supports an inventory of defense articles that may be used to meet the urgent needs of partner nations. First established in 1982 as a revolving fund and then discontinued in 1995 due to post-Cold War spending cuts, the SDAF was resurrected in FY2012. During its first 13 years of operation, it funded the stockpiling of "various defense articles ranging from arms and ammunition, to radars and radios and Night Vision Goggles, to major end items such as helicopters, small boats, tanks, vehicles, and missiles" for future sales to partner nations.[102] The SDAF was recapitalized in FY2012 (as recommended the previous year by a Security Cooperation Reform Task Force working on FMS/FMF reform) from FMF funds authorized for transfer to the account (P.L. 112-74, Section 7080), as well as from receipts from selected FMS sales.[103] Most stockpiled defense articles are sold to partner nations or provided to them through U.S. building partner capacity programs. The SDAF may also be used to purchase defense services.

International Military Education and Training (IMET) Program

IMET (1961 FAA Section 541-543, 22 U.S.C. 2347) provides grants to foreign military and foreign civilian defense personnel from all levels to attend U.S. professional military education institutions and operational training courses. Incorporated in 1976 in the 1961 FAA, IMET sends foreign personnel to the military service senior-level war colleges and the National Defense University, as well to military service Command and Staff Colleges, where they take basic and advanced officer training. In 1990, the program was expanded (E-IMET) to provide opportunities for foreign civilian defense and related personnel to attend educational programs fostering responsible defense resource management, among other purposes. IMET emphasizes longer training experiences in the United States to maximize student exposure to the American way of

[102] Susan McClure, "The Special Defense Acquisition Fund Revisited," *DISAM Online Journal*, at http://www.disamjournal.org/articles/the-special-defense-acquisition-fund-revisited. Hereinafter referred to as SDAF Revisited.

[103] SDAF Revisited.

life. In FY2016, estimated IMET funding totaled $108.1 million. The FY2017 request was $110.3 million. All IMET funding for those years is in the enduring budget.

State Department Administered Programs That DOD May Support

Drawdown Authorities

Defense articles in existing DOD stocks and military services may be provided under three 1961 FAA "drawdown" (meaning without a corresponding appropriation) provisions and, for FY2015, a special appropriations provision in the Further and Continuing Appropriations Act, 2015 (P.L. 113-235).

- 1961 FAA Section 506(a)(1) authorizes $100 million a year in military assistance from DOD stocks, services, and military training and education.
- 1961 FAA Section 506(a)(2) authorizes up to $200 million a year from any U.S. government inventory and military education and training, of which up to $75 million may be provided by DOD for five purposes, including counternarcotics and law enforcement, international disaster assistance, anti-terrorism assistance, nonproliferation, migration and refugee assistance, and support for cooperative efforts to locate and repatriate Vietnam War military or civilian personnel who have not been accounted for.
- 1961 FAA Section 552(c)(2) provides that up to $25 million per fiscal year may be provided for an unforeseen peacekeeping emergency from any U.S. government agency.
- For FY2015, Section 7047 of P.L. 113-235 authorizes up to $30 million of commodities and services to be provided to the U.N. War Crimes Tribunal for the former Yugoslavia.

Assistance under drawdown authorities is generally directed by a presidential determination and provided, with notification to Congress, when all other sources of assistance are exhausted.

International Narcotics Control and Law Enforcement (INCLE)

The International Narcotics Control and Law Enforcement (INCLE) account funds State Department law enforcement support programs and counternarcotics programs that focus on assisting foreign security forces. (Several other sources of funding for U.S. government counternarcotics programs focus on other aspects of the problem, including State Department Economic Support Funds [ESF], USAID development assistance, and the DOD authorities discussed below.) The FY2016 estimated INCLE expenditure was $1.2 billion, while the FY2017 request was $1.1 billion (both figures include enduring and OCO budget amounts).

State Department and USAID authority for counternarcotics programs is contained in several 1961 FAA provisions, including Chapter 8 of Part I, entitled "International Narcotics Control." In addition, 1961 FAA Section 481 vests the Secretary of State with responsibility "for coordinating all assistance provided by the United States Government to support international efforts to combat illicit narcotics production or trafficking." Although most DOD counternarcotics assistance to foreign forces is conducted under its own authority, DOD may play an additional role in INCLE-funded programs if defense articles or services are provided through the DSCA.

Nonproliferation, Anti-Terrorism, Demining and Related Programs (NADR)

The Nonproliferation, Anti-terrorism, Demining and Related Programs (NADR) account provides economic assistance for counterterrorism, nonproliferation, and export control equipment and training. It also provides programs to increase respect for human rights by sharing antiterrorism techniques and promotes multilateral nonproliferation activities. The FY2016 expenditures for this account were an estimated $885.5 million; the FY2017 request was $668.5 million (both figures include enduring and OCO budget amounts).

When deemed necessary, DSCA provides support for some NADR programs by providing defense articles and services through its delivery process. In addition, DOD may provide other support, including running DOD-funded programs in conjunction with NADR-funded programs. One example is the long-standing interagency Trans-Sahara Counterterrorism Partnership (TSCTP)[104] through which the State Department, DOD, and USAID work to thwart potential terrorist activity in 11 countries on the African continent.[105] (The TSCTP is primarily funded through the PKO account; see below.) In addition, DOD contributes to the State Department's eight regional interagency strategy groups to assess and counter the threats posed by terrorists. DOD contributions to the work of these groups are made though 10 U.S.C. 2282 (formerly known as "Section 1206") counterterrorism programs and the Regional Defense Combating Terrorism Fellowship Program (CTFP), described below.

Peacekeeping Operations (PKO)

The Peacekeeping Operations (PKO) account funds programs to provide articles, services, and training for countries participating in international peacekeeping operations, including United Nations and regional operations. PKO programs include efforts to diminish and resolve conflicts, address counterterrorism threats, and reform military establishments. In addition, PKO funds U.S. military participation in the Multilateral Force and Observers (MFO) in Sinai. PKO-funded programs are authorized under 1961 FAA Sections 551-553 (22 U.S.C. 2348). The FY2016 PKO estimated expenditure was $600.6 million, and the FY2017 request was $475.4 million (both figures include enduring and OCO budgets).

DOD sometimes provides its own funds to complement or otherwise assist with PKO-funded programs. As mentioned in the description of the NADR account, above, PKO funds are the primary vehicle for TSCTP's military assistance programs, most of which are implemented by DOD. DOD plays a similar role in TSCTP's East African counterpart, the Partnership for East Africa Counterterrorism (PREACT), which also provides counterterrorism training and equipment. In addition, DOD provides trainers, advisors, mentors, and transportation for the long-standing PKO-funded Global Peace Operations Initiative (GPOI) to train and equip and support deployment of foreign military troops and police for United Nations and regional peacekeeping missions, a major component of which is the Africa Contingency Operations Training Assistance

[104] For more information, see CRS Report RL34003, *Africa Command: U.S. Strategic Interests and the Role of the U.S. Military in Africa*, by Lauren Ploch Blanchard.

[105] The countries are Algeria, Burkina Faso, Cameroon, Chad, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, and Tunisia. Under a loose State Department lead, DOD has contributed to the program through Operation Enduring Freedom-Trans Sahara (OEF-TS, paid through the general DOD authority to spend Operations and Maintenance funds) and through the Section 1206 program (see below). DOD helps partner nations improve intelligence, regional coordination, logistics, border control, and targeting to counter various terrorist groups and reduce their ideological appeal. The State Department provides funding from NADR and country/regional funds, and USAID provides development assistance. In FY2013, planned funding totaled almost $100 million, with somewhat over 50% from DOD.

(ACOTA) program. (A representative from the Office of the Under Secretary of Defense, Policy, co-chairs the GPOI Coordinating Committee.) DOD also contributes to other PKO-funded missions, including maritime security and counterpoaching efforts, with DSCA and the combatant commands involved when defense articles and services are provided.

Special Authorities

The President may authorize (per 22 U.S.C. 2364, 1961 FAA Section 614) the expedited provision of foreign assistance provided under the 1961 FAA and AECA "when important to the security interests off the United States." The President may exercise this authority after consultation with and notification to specified congressional committees and leaders. Among the permitted uses are up to $750 million in AECA sales and up to $250 million for the furnishing of assistance through the AECA.

Appendix D. Hybrid Department of State-Department of Defense (DOD) Authorities

For three authorities, Congress has given the Department of Defense (DOD) and the State Department joint responsibility. All have been made law through the National Defense Authorization Act (NDAA). The global Build Partner Capacity authority (formerly known as "Section 1206) is now codified at 10 U.S.C. 2282. The Global Security Contingency Fund authority is a pilot project scheduled to expire in FY2017. The Afghanistan Infrastructure Fund authority has expired, although funds are still available to complete projects through FY2016.

"Section 1206"/10 U.S.C. 2282 Build Partner Capacity Authority[106]

Established by the FY2006 NDAA (P.L. 109-163, Section 1206) as a three-year pilot program, "Section 1206" (then titled the Global Train and Equip) has become a pillar of DOD security cooperation. The FY2015 NDAA codified Section 1206 as the Build Partner Capacity authority at 10 U.S.C. 2282. Section (a)(1)(A) of this authority enables DOD to train and equip foreign military and security forces to conduct counterterrorism operations; Section (a)(1)(B) enables DOD to train and equip foreign military forces to participate in or support ongoing allied or coalition military and stability operations that benefit the U.S. national security interest. The original stated purpose of the program was to enable quick turnaround train and equip assistance, with delivery within six months, although recently the time frame for delivery generally has ranged from 5 to 15 months.

Since FY2006, the counterterrorism component has been used primarily in the broader Middle East and Africa. Since FY2010, the military and stability operations component has been used to provide training, equipment, transportation, and other services to countries of eastern and central Europe to participate in NATO International Security Assistance Force (ISAF) coalition operations in Afghanistan. There is a current cap of $350 million on funding specifically appropriated for all 10 U.S.C. 2282 programs.

In addition, funds may be transferred from other accounts to be used for 10 U.S.C. 2282 purposes. For FY2015, $407.7 million in Counterterrorism Partnership Fund (CTPF) monies were allocated to programs conducted under 10 U.S.C. 2282 authority in eight sub-Saharan African countries and to Jordan, Lebanon, and Tunisia. Additional CTPF funds are being transferred in FY2016.

The Global Security Contingency Fund[107]

The Global Security Contingency Fund (GSCF), a Department of State-DOD authority, was established as a four-year pilot project by Section 1207 of the FY2012 NDAA (P.L. 112-81). Jointly funded by the State Department and DOD, the GSCF is used to pool money and expertise to provide near-to-mid-term assistance to address emergent challenges for purposes of border and maritime security, internal defense, counterterrorism, and in some cases justice sector programs. Decisions are jointly made by the Secretaries of State and Defense, with the Secretary of State in the lead. Special Operations Forces (SOF) conduct programs in Bangladesh, Hungary, Romania,

[106] For more information, see CRS Report RS22855, *Security Assistance Reform: "Section 1206" Background and Issues for Congress*, by Nina M. Serafino.

[107] For more information, see CRS Report R42641, *Global Security Contingency Fund: Summary and Issue Overview*, by Nina M. Serafino.

and Slovakia, Other programs are conducted in the Philippines, Ukraine, and West Africa (a regional counter-Boko Haram program). Two programs in Libya, one of them SOF, are suspended. Thus far, appropriations to the GSCF have been provided through transfers from other accounts. In the FY2016 Consolidated Appropriations Act, Congress provided up to $15 million for GSCF programs in Europe and Eurasia through transfers from the FMF account; there was no parallel DOD transfer authority.

The Afghanistan Infrastructure Fund

In Section 1217 of the FY2011 NDAA (P.L. 111-383), Congress gave the Secretaries of State and Defense authority to jointly develop and carry out water, power, and transportation infrastructure projects in Afghanistan, as well as other projects supporting the counterinsurgency strategy in Afghanistan funded by an Afghanistan Infrastructure Fund (AIF) in the DOD budget. The Secretary of State is responsible for implementing projects in coordination with the Secretary of Defense, except when the secretaries jointly determine that the Secretary of Defense should implement them. This authority expired at the end of FY2015, but through DOD FY2016 appropriations (P.L. 114-113, Division C), Congress made up to $50 million available for FY2016 for costs associated with existing AIF projects.

Appendix E. Title 10 Authorities: Contingency Operations and Coalition Operational Support

During the past decade, Congress provided the Department of Defense (DOD) with country-specific assistance authorities to support U.S. contingency operations in Iraq and Afghanistan; only those pertaining to Afghanistan are still in effect. Since 2003, Congress has also provided a number of authorities to reimburse or otherwise assist foreign governments for their support to U.S. military operations in Iraq and Afghanistan and other theaters of the U.S. "Global War on Terrorism" where U.S. troops were deployed in contingency operations. In addition, a Title 10-codified global logistics support authority provides logistics support to coalition partners worldwide.

Afghanistan Operational Support

The *Afghanistan Security Forces Fund (ASFF)* was established in 2005 to enable DOD to train and equip the security forces of Afghanistan. Current authority for this program is contained in the FY2008 National Defense Authorization Act (NDAA), P.L. 110-181, Section 1513, as amended. (The last amendment was Section 1531 of the FY2016 NDAA, P.L. 114-92.) FY2016 appropriations are $3.7 billion. The *Commanders' Emergency Response Program (CERP)* was developed in Iraq in 2003 to give "walking-around" money to commanders in the field to fund small-scale humanitarian relief and urgent reconstruction projects to assist military efforts. CERP was then extended to Afghanistan, which is the only country where it is now used under FY2012 NDAA (P.L. 112-81, Section 1201, as amended) authority. The FY2016 DOD Appropriations Act (P.L. 114-113, Division C) provides that up to $5 million from the DOD Operations and Maintenance account may be used to fund CERP activities.[108]

Coalition Support Fund (FY2008 NDAA, P.L. 110-181, Section 1233, as Amended)

This fund provides authority for DOD, with the concurrence of the Secretary of State, to reimburse key countries in Southwest Asia for support to U.S. military efforts in Afghanistan, such as for fuel or for the costs of stationing U.S. troops in their countries. It also provides authority to procure supplies and provide specialized training and equipment on a non-reimbursable basis to coalition forces supporting U.S. military operations in Afghanistan. (This part of the authority is referred to as the "Coalition Readiness Support Program," or CRSP). Available FY2016 funding is $1.16 billion, of which up to $1 billion may be provided to Pakistan under certain conditions. (FY2016 NDAA, P.L. 114-92, Section 1212).

Coalition Support for Logistics

As amended, the Coalition Support for Logistics statute (FY2008 NDAA, P.L. 110-181, Section 1234, as amended) authorizes up to $450 million in FY2016 for DOD, in accordance with AECA and other export control laws, to provide logistical support such as supplies, services, and transportation (including airlift and sealift) to coalition partners supporting certain U.S. military operations.

[108] CERP was first funded in the Emergency Supplemental Appropriations Act, FY2004, P.L. 108-106, Section 1100, and authorized in the FY2005 NDAA, P.L. 108-375.

Global Lift and Sustain

In 2006, Congress provided a new "Global Lift and Sustain" (10 U.S.C. 127(d)) authority, formally titled "Logistic Support for Allied Forces in Combined Operations." This authority enables DOD to fund logistics, supplies, and services to allied forces during coalition operations up to $105 million annually.[109] These funds may be used to provide logistics support in both active hostilities or noncombat situations, including the provision of humanitarian or foreign disaster assistance. Funds may also be used in a country stabilization or peace operation. DOD used this authority to provide logistics support to NATO forces during the 2011 operations in Libya.[110]

[109] These operations may include assistance during active hostilities or noncombat operations (including the provision of humanitarian or foreign disaster assistance), as well as for country stabilization or peace operations.

[110] Defense Institute for Security Assistance Management, *Security Cooperation Programs Fiscal Year 2016*, Revision 16.0, 2016, at http://www.disam.dsca.mil/documents/pubs/security_cooperation_programs_160127.pdf., p. 74.

Appendix F. Title 10 Authorities: Counterproliferation, Counter-drug, and Counterterrorism

The Department of Defense (DOD) has a variety of counterproliferation, counter-drug (or more narrowly, counternarcotics) and counterterrorism authorities, many of which are conducted in concert with related programs of the Department of State and other agencies. The following represent a sample of key authorities in these areas.

Counterproliferation

The Cooperative Threat Reduction program has been the core of DOD counterproliferation efforts since 1991. Other nonproliferation programs are conducted by DOD, the State Department, the Department of Energy, and the Department of Homeland Security.[111]

Cooperative Threat Reduction

Through Cooperative Threat Reduction (CTR) authority (as most recently set forth in the FY2015 National Defense Authorization Act [NDAA], P.L. 113-291, Sections 1301-1352), DOD conducts programs to help eliminate and control the possible misuse or spread of nuclear, chemical, biological, and other weapons and related materials, components, delivery vehicles, technology, and expertise. (The original Cooperative Threat Reduction authority was the Soviet Nuclear Threat Reduction Act of 1991, which was Title II of the Conventional Forces in Europe Treaty Implementation Act of 1991, P.L. 102-228, known as the "Nunn-Lugar Amendment" to the Arms Export Control Act. As such, it was a Title 22 [22 U.S.C. 2551 note] program funded and administered by DOD.) The CTR program is administered by the Defense Threat Reduction Agency. P.L. 113-291 authorized $365.1 million in FY2015 funds to be available in FY2015, FY2016, and FY2017. The FY2016 NDAA, P.L. 114-92, authorized $358.5 million in FY2016 funds to be available in FY2016, FY2017, and FY2018.

International Counterproliferation Program

The International Counterproliferation Program (ICPP) is designed to deter the proliferation and acquisition of weapons of mass destruction (WMD) by organized crime in Eastern Europe, the Baltics, and the states of the former Soviet Union. Its two components, one conducted jointly with the Federal Bureau of Investigations (FBI) and the other in consultation and cooperation with the Commissioner of Customs, were authorized during the 1990s by two NDAAs. Authority to establish the joint DOD-FBI program to train law enforcement personnel of countries from the specified regions was provided by the 1995 NDAA, P.L. 103-337, Section 1504(e)(3)(A). Authority to establish the program to work with customs and border guard officials was provided by the FY1997 NDAA, P.L. 104-201, Section 1424. (Although this program was established by an NDAA, it is not, strictly speaking, "Title 10," as it is codified at 50 U.S.C. 2333.) This program is now covered by Sections 1321 and 1322 of the P.L. 113-291 authority, although that legislation did not specifically repeal the earlier statutes. Funding for the ICPP is not available through public information.

[111] See CRS Report R43143, *The Evolution of Cooperative Threat Reduction: Issues for Congress*, by Mary Beth D. Nikitin and Amy F. Woolf.

International Counter-drug Program

DOD has multiple roles and responsibilities in the area of counternarcotics (CN) and more broadly, counter-drugs (CD). In addition to providing assistance to combat the production and trafficking of illicit narcotics abroad, DOD is the single lead federal agency for detecting and monitoring the aerial and maritime movement of illegal drugs toward the United States. In addition, DOD plays a key role in collecting, analyzing, and sharing intelligence on illegal drugs with U.S. law enforcement and international security counterparts. DOD's international CN program includes activities conducted under two principal multi-country authorities: "Section 1004" (FY1991 NDAA, P.L. 101-510, Section 1004, as amended) and "Section 1033" (FY1998 NDAA, P.L. 105-85, as amended)—and a Colombia-specific program. DOD also provides CN assistance through joint task forces using a Title 10 support to law enforcement authority (10 U.S.C. 374).[112] DOD efforts are subject to State Department oversight through 1961 FAA Section 481 (22 U.S.C. 2291), which vests responsibility for coordinating all U.S. counter-drug assistance with the Secretary of State.[113] These programs are funded from DOD drug interdiction and counter-drug appropriations (over $1 billion for FY2016), which is also used for other programs.

Section 1004

Under Section 1004, the Secretary of Defense is authorized to provide specified types of support for counter-drug activities of any foreign law enforcement agency, when requested by appropriate officials. These include the maintenance, repair, and upgrading of equipment made available by DOD; the transportation of personnel, supplies, and equipment; the establishment and operation of bases of operations or training facilities; counter-drug-related training of law enforcement personnel; aerial and ground reconnaissance, vehicles, and aircraft; and linguistic and intelligence analysis services. (In the FY2015 NDAA, P.L. 113-291, Section 1012, Congress extended this authority to include assistance to counter transnational organized crime.)

Section 1033

Through Section 1033, DOD provides a wide range of equipment to an increasing number of specified countries.[114] Permitted equipment includes nonlethal protective and utility personnel equipment (including navigation equipment), secure and non-secure communications equipment, radar equipment, night vision systems, vehicles, aircraft, and boats. Congress has capped funding for Section 1033 assistance at $125 million annually (FY2015 NDAA, P.L. 113-291, Section 1013.)

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[112] Through 10 U.S.C. 374 Maintenance and Operation of Equipment support to law enforcement, the Secretary of Defense may make DOD personnel available to assist foreign governments in certain types of law enforcement operations outside of the United States, including counternarcotics operations. Such assistance may include the transportation of civilian law enforcement personnel along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel, and the operation of a base of operations for civilian law enforcement and supporting personnel. This assistance is subject to joint approval by the Secretary of Defense, the Attorney General, and the Secretary of State.

[113] For more on DOD counterdrug authorities, see CRS Report RL34543, *International Drug Control Policy: Background and U.S. Responses*, by Liana W. Rosen.

[114] Forty-one countries are eligible for Section 1033 assistance through FY2017. These countries are Armenia, Afghanistan, Azerbaijan, Belize, Benin, Bolivia, Cape Verde, Chad, Colombia, Dominican Republic, Ecuador, El Salvador, The Gambia, Ghana, Guatemala, Guinea, Guinea Bissau, Honduras, Ivory Coast, Jamaica, Kazakhstan, Kenya, Kyrgyzstan, Liberia, Libya, Mali, Mauritania, Mexico, Nicaragua, Niger, Nigeria, Pakistan, Panama, Peru, Senegal, Sierra Leone, Tajikistan, Tanzania, Togo, Turkmenistan, and Uzbekistan.

Colombia Counternarcotics

DOD provides Colombia with counternarcotics assistance through authority provided in the FY2005 NDAA (P.L. 108-375, Section 1021, as amended). Counterterrorism assistance is also provided under this "Unified Counter-Drug and Counterterrorism Campaign" authority, which currently expires in FY2016. DOD, the State Department, and the NAS work closely in-country, with oversight from the U.S. Southern Command (SOUTHCOM), which endorses the program plans developed by the country team and the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD/SO-LIC), which approves them.

Counterterrorism

Two DOD security cooperation authorities are explicitly intended for counterterrorism activities. One, discussed in the "Hybrid" section above, is 10 U.S.C. 2282 Section (a)(1)(A), which enables DOD to train and equip foreign military and security forces to conduct counterterrorism operations. The other is the Regional Defense Combating Terrorism Fellowship Program (CTFP, 10 U.S.C. 2249(c)), described below.

Regional Defense Combating Terrorism Fellowship Program[115]

Known as the Combating Terrorism Fellowship Program (CTFP), 10 U.S.C. 2249c is an educational program established in 2002. CTFP funds enable mid- to senior-level foreign military officers and ministry of defense and government civilian security officials to attend nonlethal counterterrorism conferences and seminars, as well as U.S. professional military educational institutions and DOD regional security centers.[116] In addition, CTFP funds activities conducted through mobile education units or other education programs. Funding is currently capped at $35 million. In FY2015, some 2,900 military and security personnel from 122 countries were funded.[117]

[115] See Department of Defense Instruction, Number 2000.28, November 14, 2013, DOD Policy and Responsibilities Relating to the Regional Defense Combating Terrorism Fellowship Program (CTFP).

[116] As noted earlier, DOD's six regional security centers for security studies are the George C. Marshall European Center for Security Studies, the Asia-Pacific Center for Security Studies, the Center for Hemispheric Defense Studies, the Africa Center for Strategic Studies, and the Near East-South Asia Center for Strategic Studies.

[117] Department of Defense, *Regional Defense Combating Terrorism Fellowship Program*, Report to Congress Fiscal Year 2015, p. 4, at http://open.defense.gov/portals/23/Documents/foreignasst/FY15_Regional_Defense_Combating_Terrorism_Fellowship_Program_Report_to_Congress.pdf.

Appendix G. Title 10 Authorities: Defense Institution Building

The Department of Defense (DOD) conducts three specific programs to build the institutional capacity of foreign Ministries of Defense. One, the Ministry of Defense Advisors Program, is carried out under a specific statute. The other two are conducted using multiple authorities. Through the FY2015 National Defense Authorization Act (NDAA), P.L. 113-291, Section 1206, Congress provided DOD with authority, in concurrence with the Secretary of State, to conduct human rights training of foreign security forces and associated security ministries through FY2020. Although defense institution building (DIB) programs may be conducted under State Department IMET funding, the DOD DIB programs are intended to enable the department to conduct programs more quickly. In addition, the Wales Initiative Fund, which has carried out a number of activities to increase interoperability between NATO and developing partner forces, now focuses on defense institution building.

Wales (Formerly Warsaw) Initiative Fund

The Wales Initiative Fund (WIF, formerly the Warsaw Initiative Fund), which was renamed after the Wales NATO summit in September 2014, currently supports the participation of 16 developing countries in NATO's Partnership for Peace (PfP) program. (The State Department leads U.S. PfP support.) Activities funded by WIF are conducted using the authority of three statutes (10 U.S.C. 168, 10 U.S.C. 1051, and 10 U.S.C. 2010).[118]

As the Warsaw Initiative Fund, WIF was originally established as a DOD fund to train and equip countries engaged in the PfP program for the countries of Eastern Europe, but has subsequently been expanded to include all developing NATO partners.[119] WIF's purpose is to enhance partner capacity and advance democratic reform of defense establishments and military forces, in order to increase interoperability. Its current focus is on building defense institutions, according to the DSCA, which manages the program.

The Ministry of Defense Advisors Program

Initially designed for Afghanistan, the Ministry of Defense Advisors Program (MODA) was established as a global authority by the FY2012 NDAA (P.L. 112-81, Section 1081, as amended). MODA enables senior DOD civilian experts to advise their counterparts abroad on matters such as personnel and readiness, acquisition and logistics, strategy and policy, and financial management. The FY2015 NDAA expanded the statute's scope to include regional organizations with security missions. MODA is funded through the DSCA budget.

[118] These are 10 U.S.C. 168 Military to Military Contacts providing combatant commanders with authority to conduct military-to-military contacts; 10 U.S.C. 1051 Multilateral, bilateral, or regional cooperation programs: payment of personnel expenses, authorizing the Secretary of Defense to pay the incremental expenses of a developing country's participation in a bilateral, multilateral or regional conference, seminary or similar meeting; and 10 U.S.C. 2010, Participation of developing countries in combined exercises: payment of incremental expenses, authorizing the Secretary of Defense to pay the incremental costs of a developing country's participation in military exercises with the United States (combined exercises). The latter two require that the participation of the developing country be primarily to enhance U.S. security interests.

[119] These include the countries of Central Asia, the Mediterranean Dialogue, and the Istanbul Cooperation Initiative.

Defense Institution Reform Initiative

The Defense Institution Reform Initiative (DIRI) is conducted through the Office of the Secretary of Defense (OSD) Rule of Law program under 10 U.S.C. 168, military-to-military contacts authority, and 10 U.S.C. 1051, developing country participation in multilateral, bilateral, or regional events.[120] DIRI supports foreign defense ministries and related agencies by determining institutional needs and developing projects to meet them. Project areas are extensive: establish and improve functional capabilities to organize, train, equip, and sustain security forces under civilian control; develop defense policy, strategy, and planning capabilities; improve resource management, and logistics and acquisitions capabilities; and establish or enhance civilian defense capabilities, as well as civil-military relations and inter-ministerial coordination. DIRI both scopes out projects for execution under the MODA and conducts its own military-to-military informational engagements.

Defense Institute of International Legal Studies Legal Capacity Building

DOD's "Increasing Partner Capacity Building in Rule of Law Context" program is conducted by the Defense Institute of International Legal Studies (DIILS) under 10 U.S.C. 168. DIILS is DOD's lead agency in providing professional legal education, training, and rule of law programs (including human rights and international humanitarian law) for international military and related civilians globally. In addition, DOD draws on DIILS to impart human rights instruction in connection with other authorities; for instance, Section 1206/10 U.S.C. 2282 Build Partner Capacity programs have a DIILS-conducted human rights component.

[120] 10 U.S.C. 168, Military to Military Contacts, provides combatant commanders with authority to conduct military to military contacts, and 10 U.S.C. 1051, Multilateral, bilateral, or regional cooperation programs: payment of personnel expenses, authorizes the Secretary of Defense to pay the incremental expenses of a developing country's participation in a bilateral, multilateral, or regional conference; seminar; or similar meeting.

Appendix H. Title 10 Authorities: Exercises, Training, and Military-to-Military Contacts

The Department of Defense (DOD) has several authorities to train and otherwise engage with foreign military forces. Three global statutes are mentioned below. Other statutes are region-specific.

Bilateral and Multilateral Combined Exercises

10 U.S.C. 2010, entitled "Participation of developing countries in combined exercises: payment of incremental costs," and referred to in the biennial report as "Bilateral and Multilateral Combined Exercises," authorizes the Secretary of Defense, after consultation with the Secretary of State, to pay developing countries for incremental expenses incurred as a direct result of participating in a bilateral or multilateral military exercise. The exercise must be undertaken to enhance U.S. security interests, and the country's participation must be necessary to achieve exercise objectives. 10 U.S.C. 2010 defines incremental expenses as "the reasonable and proper cost of the goods and services that are consumed by a developing country as a direct result of that country's participation in a bilateral or multilateral military exercise with the United States, including rations, fuel, training ammunition, and transportation." Incremental expenses do not include pay, allowances, and other normal costs of such country's personnel. The statute does not set a funding limit.

Joint Combined Exchange Training Program (JCET)

Entitled "Special operations forces: training with friendly forces," 10 U.S.C. 2011 provides authority for the Joint Combined Exchange Training Program. It authorizes the commander of U.S. Special Operation Command (USSOCOM), as well as the commander of any other unified or specified combatant command, to pay or authorize payment, with prior approval of the Secretary of Defense, for three categories of expenses: (1) expenses of training special operations forces assigned to that command in conjunction with training, and training with, armed forces and other security forces of a friendly foreign country; (2) expenses of deploying such special operations forces for that training; and (3) for a friendly developing country, the incremental expenses incurred by that country as the direct result of such training. The primary purpose of such training, as specified by 10 U.S.C. 2011, is to train the U.S. special operations forces. The statute does not set a funding limit.

National Guard State Partnership Program

The National Guard State Partnership Program, established by the FY2014 National Defense Authorization Act (NDAA), Section 1205 (32 U.S.C. 107 note), provides for exchanges between U.S. National Guard personnel and foreign military, security, and other foreign government forces whose primary functions include disaster or emergency response. Secretary of State concurrence is required for proposed new partnerships as well as for existing partnership engagements that are not traditional military-to-military engagements. This authority stipulates that up to $10 million is available to cover the costs of foreign participation. It expires September 30, 2016.

Appendix I. Title 10 Authorities: Humanitarian Assistance and Defense Health Programs[121]

The following represent a sample of Department of Defense (DOD) humanitarian assistance programs. The Humanitarian Assistance and the Humanitarian and Civil Assistance programs are funded through the DOD Overseas Humanitarian and Disaster Assistance (OHDACA) account, which also funds programs under four other Title 10 statutes. [122]

Humanitarian Assistance Program

Humanitarian Assistance 10 U.S.C. 2561, added (as 2551) in 1992 (known as the Humanitarian Assistance Program, or HAP), authorizes funding for humanitarian relief and unspecified humanitarian purposes worldwide. HAP is used for both crisis missions and for routine humanitarian and civil action projects. In crisis missions, HAP provides humanitarian daily rations (sometimes referred to as "meals ready to eat," or MRES). In noncrisis environments, HAP funds are used for activities intended to promote good-will, such as building schools and digging wells. HAP authority also permits the transport of supplies to respond to or mitigate serious harm to the environment.

Humanitarian and Civil Assistance

Humanitarian and Civil Assistance (HCA, 10 U.S.C. 401) authority, added in 1986, permits DOD to carry out humanitarian and civic action activities abroad in conjunction with military operations. The primary purpose of these activities must be to train U.S. armed forces. The activities must not duplicate any other assistance and must meet the security interests of both the United States and the host country. HCA is partially funded from the OHDACA account and partially from military service funds.

Defense Health Programs

DOD has two health programs, neither of which has a specific statutory authority.

- The DOD HIV/AIDS Prevention Program (DHAPP) imparts HIV prevention education as part of U.S. training, exercises, and humanitarian activities, primarily in Africa. Programs are supported by DOD appropriations and transfers from the U.S. President's Emergency Plan for AIDS Relief (PEPFAR). Congress annually appropriates funds to DOD for this activity; FY2016 appropriations were $8 million.
- The Defense Health Program (DHP) supports emerging infectious disease prevention through partnerships among five DOD overseas laboratories, the

[121] For more on DOD humanitarian assistance, see CRS Report RL33769, *International Crises and Disasters: U.S. Humanitarian Assistance Response Mechanisms*, by Rhoda Margesson.

[122] In FY2016 DOD appropriations, Congress provided $103.3 million for the OHDACA account, available through FY2017. (Consolidated Appropriations Act, 2016 [P.L. 114-113], Division C, the Department of Defense Appropriations Act, 2016.) The programs funded from the OHDACA account are: Humanitarian Assistance (10 U.S.C. 2251); Humanitarian and Civil Assistance (HCA, 10 U.S.C. 401); 10 U.S.C. 402 humanitarian supplies transportation authority; Humanitarian Aid, 10 U.S.C. 2557, authorizing the transfer of nonlethal excess DOD supplies to the Secretary of State for distribution; 10 U.S.C. 404 International Disaster Assistance; and Humanitarian Demining, 10 U.S.C. 407.

military health system, and other U.S. and foreign agencies through the DOD Global Emerging Infections Surveillance and Response System (DOD-GEIS) of the Armed Forces Health Surveillance Center. Funding for this program serves U.S. and foreign interests; there is no breakout in DOD budget justification documents for the foreign component.

Appendix J. Title 10 Multipurpose Authority: The Combatant Commander's Initiative Fund

Several Title 10 authorities authorize or appropriate funds for Department of Defense (DOD) programs conducted under other authorities. For instance, the Wales Initiative Fund statute, listed above under **Appendix G**, provides funds to conduct programs for NATO-related purposes under programmatic authorities that are not region-specific. Similarly, the Counterterrorism Partnerships Fund, discussed above in a text box, provides funds for counterterrorism programs in Africa and the Middle East, to be conducted under other authority. The Combatant Commander's Initiative Fund is similar in that it provides funds to be used for other authorities. Unlike similar authorities to assist or engage with foreign security forces, however, the CCIF statute provides funds for a wide variety of purposes (some of which are for the benefit of U.S. forces), and the relatively modest funding is not limited by region.

Combatant Commander's Initiative Fund

The multipurpose Combatant Commander Initiative Fund (CCIF, 10 U.S.C. 166a) provides discretionary funding for combatant commanders to conduct various activities, especially in response to unforeseen contingencies. Some permitted uses are related to foreign assistance, including humanitarian and civic assistance, and include urgent and unanticipated humanitarian relief and reconstruction, as well as military education and training to military and related civilian personnel of foreign countries, including transportation, translation, and administrative expenses (up to $5 million per year). Up to $5 million per year may be spent to sponsor the participation of foreign countries in joint exercises. The statute itself authorizes the fund, but activities are carried out under other authorities. DOD FY2016 appropriations provided up to $15 million for the fund for all CCIF activities.

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