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Security Cooperation: Comparison of Proposed Provisions for the FY2017 National Defense Authorization Act (NDAA)

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Summary

During the lame duck session, the 114th Congress is expected to consider various provisions in the annual defense authorization bill that address U.S. security sector cooperation. If enacted, the FY2017 National Defense Authorization Act (NDAA) could significantly alter the way in which the U.S. Department of Defense (DOD) engages and partners with foreign security forces.

Policy Debate in Context

Successive U.S. Administrations have emphasized the importance of strengthening foreign military partnerships to achieve shared security goals. Over time, the legal authorities underpinning some of these efforts have moved beyond the "traditional" suite of foreign assistance programs authorized in Title 22 (Foreign Relations) of the U.S. Code, which are overseen by the U.S. Department of State and often implemented by DOD. In support of such a shift, Congress has incrementally provided DOD with some 80 or more authorities, apart from those in Title 22, to interact with foreign security forces and defense ministries and respond to emerging threats.

These authorities, enacted through NDAAs and amendments to Title 10 (Armed Services) of the U.S. Code, have enabled DOD to pursue a wider range of direct engagements with foreign partners—collectively described by DOD as "security cooperation." These authorities, however, vary in scope, application, duration, and reporting requirements. Congress has also imposed limits based on country- or region-specific conditions and concerns.

Proposals in the FY2017 NDAA

In April 2016, DOD submitted 10 proposals to Congress, seeking to address what it describes as an unwieldy "patchwork" of security cooperation authorities. Responding to DOD's proposals, both the House and Senate versions of the FY2017 NDAA (H.R. 4909 and S. 2943, respectively) contain provisions intended to bring greater coherence to DOD's security cooperation enterprise.

Central to these proposals is a new chapter in Title 10 on "Security Cooperation." As part of the proposed changes, nearly 60 existing provisions in Title 10 or public law would be affected or modified. Proposals would also variously alter the statutorily required role of the State Department in overseeing and approving security cooperation programs. Some proposals would substantively change the scope of DOD's existing authorities by

- expanding the purposes for which security cooperation is authorized;
- expanding authorized activities;
- broadening the geographical scope of security cooperation;
- increasing the types of foreign personnel that can benefit from DOD engagement; and
- changing funding limits and related provisions.

S. 2943 contains some of the most far-reaching changes, particularly in its replacement of 10 U.S.C. 2282 ("Authority to Build the Capacity of Foreign Security Forces") with a broader authority. S. 2943 would additionally offer new provisions, including several that aim to enable DOD to better manage security cooperation through

- a new funding mechanism called the "Security Cooperation Enhancement Fund";
- improved workforce training through a "Security Cooperation Workforce Development Program";

- enhanced budgeting transparency and reporting requirements to Congress; and
- required assessment, monitoring, and evaluation.

Outlook

Some of the proposed provisions in the FY2017 NDAA have broad appeal, while others have emerged as flashpoints in a larger debate over DOD's role in security sector assistance. The FY2017 NDAA also raises questions over whether security cooperation policy architecture is adequately structured to meet current and evolving requirements and whether the mechanisms of congressional oversight are adequately tailored to current levels of activity.

The FY2017 NDAA went to conference on July 8, 2016. The conference report, while not yet public, is expected to be brought before both the House and Senate when the 114th Congress returns from recess in November 2016. Beyond the FY2017 NDAA, many analysts anticipate that security cooperation issues will continue to feature on the policymaking agenda in the next Administration and the 115th Congress.

For further reading on broader security sector assistance debates, see CRS Report R44444, *Security Assistance and Cooperation: Shared Responsibility of the Departments of State and Defense*; CRS Report R44602, *DOD Security Cooperation: An Overview of Authorities and Issues*; and CRS Report R44313, *What Is "Building Partner Capacity?" Issues for Congress*.

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Introduction

Security cooperation provisions in the FY2017 National Defense Authorization Act (NDAA) have escalated ongoing debates over U.S. security sector assistance to foreign countries and raised questions regarding whether existing authorities are able to meet current and evolving requirements.[1] As the 114th Congress winds down, Members of Congress are expected to reconcile remaining differences in the FY2017 NDAA. Policymakers and observers anticipate that the outcome of conference deliberations could significantly change the security cooperation and security sector assistance policy landscape.

Since World War II, the U.S. Department of State has served as the lead agency in guiding U.S. security assistance to foreign countries, with long-standing authorities codified in Title 22 (Foreign Relations) of the U.S. Code and funded through congressional appropriations to the State Department. Such engagements have been viewed by many, including in Congress, as a tool of foreign policy. The U.S. Department of Defense (DOD) implements some of these programs, but for many decades, it otherwise relegated the training, equipping, and assisting of foreign military forces as a secondary mission on its list of priorities, far below war-fighting.

Over time, however, and particularly since the terrorist attacks of September 11, 2001, Congress has granted DOD new authorities in annual NDAAs and in Title 10 (Armed Services) of the U.S. Code to engage in "security cooperation" with foreign militaries and other security forces—now considered by DOD to be an "important tool" for executing its national security responsibilities and "an integral element of the DOD mission."[2] This trend underlies a significant expansion of DOD direct engagements with foreign security forces and an accompanying increase in DOD's role in foreign policy decision-making. The incremental nature of Congress's adjustments to DOD's Title 10 authorities, however, has resulted in some 80 or more provisions that are described as an unwieldy "patchwork," which complicates the management, application, and oversight of such engagements.[3]

Congress enacted many of these DOD authorities to respond to emerging threats, but also imposed limits on their scope, application, and duration, sometimes based on country- or region-specific conditions and concerns.[4] For at least 15 years, DOD's security cooperation authorities (and funding) have grown with its counterterrorism responsibilities, involvement in overseas contingency operations, evolving national security priorities, and efforts to counter asymmetrical threats.[5] Some practitioners view today's mix of provisions as an obstacle to DOD's effective planning and execution of its objectives. Some also view the patchwork as problematic for State

[1] For further discussion of broader security sector assistance issues beyond the FY2017 National Defense Authorization Act (NDAA), see CRS Report R44444, *Security Assistance and Cooperation: Shared Responsibility of the Departments of State and Defense*.

[2] U.S. Department of Defense (DOD), *DOD Policy and Responsibilities Relating to Security Cooperation*, Directive 5132.03, October 24, 2008.

[3] See for example CRS Report R44602, *DOD Security Cooperation: An Overview of Authorities and Issues*. The RAND Corporation estimated that, of the more than 160 congressional statutes authorizing security cooperation, 123 apply to DOD. See David E. Thaler, et al., *From Patchwork to Framework: A Review of Title 10 Authorities for Security Cooperation*, RAND Corporation, 2016.

[4] Although authorities to conduct security sector assistance have evolved differently for DOD and the State Department, the congressional application of various conditions and limits to the allocation of funding is not unique to DOD or Title 10.

[5] See for example Derek S. Reveron, *Exporting Security: International Engagement, Security Cooperation, and the Changing Face of the U.S. Military*, second edition (Washington, DC: Georgetown University Press, 2016); and Neptune, *U.S. Security Cooperation Review*, February 2016.

Department coordination of foreign policy. While some legal restrictions appear to stem from congressional oversight concerns, those restrictions may also complicate congressional oversight efforts in practice.

In many respects, proposed provisions in the FY2017 NDAA seek to address existing concerns about how the security cooperation enterprise functions and to improve the ability of Congress to evaluate DOD's application of an expanded repertoire of security cooperation authorities. Provisions in the FY2017 NDAA, particularly those in the Senate-passed version of the bill (S. 2943), could also alter the way in which DOD conducts security cooperation programming, the relationship between DOD and the State Department on security cooperation and security sector assistance matters, and Congress's oversight of related funding and programming.

U.S. Engagement with Foreign Security Sectors: Terminology

"Security assistance" and "security cooperation" are two terms that refer to U.S. activities to train, equip, and otherwise assist foreign partners. Although there is no State Department-issued definition of "security assistance," DOD often refers to security assistance as the group of programs authorized by the Foreign Assistance Act (FAA) of 1961, the Arms Export Control Act (AECA) of 1976, and related statutes, which are administered by the State Department with funds appropriated to the State Department by Congress. Some of these are implemented by the Defense Security Cooperation Agency (DSCA).[6]

In 2008, DOD Directive 5132.03 described "security cooperation" to include not only security assistance, but also other DOD activities "to encourage and enable international partners to work with the United States to achieve strategic objectives."[7] According to this directive, such activities include

> all DOD interactions with foreign defense and security establishments, including all DOD-administered 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.

In 2013, the Obama Administration issued Presidential Policy Directive 23 (PPD-23), which described the "security sector" and defined "security sector assistance" as follows:

> 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.[8]

[6] See DOD, *Dictionary of Military and Associated Terms*, Joint Publication 1-02, November 8, 2010 (as amended through October 15, 2016).

[7] DOD Directive 5132.03, "DOD Policy and Responsibilities Relating to Security Cooperation," October 24, 2008.

[8] See White House, Office of the Press Secretary, *Fact Sheet: U.S. Security Sector Assistance Policy*, April 5, 2013.

The Senate-passed version of the FY2017 NDAA, S. 2943, adds to the security sector glossary to include a new definition for "security cooperation programs and activities of the Department of Defense" as follows:

> [A]ny program, activity (including an exercise), or interaction of the Department of Defense with the security establishment of a foreign country to achieve a purpose as follows: (A) To build relationships that promote specific United States security interests. (B) To build and develop allied and friendly security capabilities for self-defense and multinational operations. (C) To provide the armed forces with access to the foreign country during peacetime or a contingency operation.

For further discussion of related terminology see **Appendix A** of CRS Report R44444, *Security Assistance and Cooperation: Shared Responsibility of the Departments of State and Defense*.

Security Cooperation "Reform" Proposals in the FY2017 NDAA

In April 2016, following a review of its security cooperation authorities, DOD formally submitted 10 proposals for the FY2017 NDAA to Congress that would consolidate several authorities already located in Title 10 of the U.S. Code and codify other temporary authorities and reporting requirements into a new chapter within Title 10, entitled "Security Cooperation."[9] The proposals were sponsored by the Under Secretary of Defense for Policy and vetted and approved through the interagency process, including by the Office of Management and Budget and the State Department.

One of DOD's overarching goals in its proposals was to organize and consolidate existing authorities. Another goal was to standardize statutory language, in an effort to provide more clarity to security cooperation planners and improve their ability to use existing authorities more effectively. Although some existing authorities would remain unchanged in substance as part of the proposals, others would be modified. Five authorities would be repealed for lack of use or redundancy. DOD also proposed consolidating several congressional reporting requirements on certain security cooperation authorities.

The House and Senate responded to DOD's proposals in different ways. The House-passed version of the FY2017 NDAA, H.R. 4909, included some of DOD's proposals, but only those that make no or minor changes to existing authorities.[10] Recognizing calls for further security cooperation restructuring, but not incorporating major changes in the FY2017 NDAA, H.R. 4909 included a provision (§1206) that would require an "independent assessment" of DOD security cooperation programs.

The Senate-passed version of the FY2017 NDAA, S. 2943, would incorporate nearly all of DOD's proposals into a new security cooperation chapter in the U.S. Code.[11] Furthermore, S. 2943 proposed several new, interrelated measures intended to better align DOD's programs and funding with what authorizing committee members have advanced as current and evolving

[9] DOD, Office of Legislative Counsel, *DOD Legislative Proposals for Fiscal Year 2017, Fifth Package of Proposals Sent to Congress for Inclusion in the National Defense Authorization Act for Fiscal Year 2017* (including DOD's *Consolidated Section-by-Section Analysis of All Proposals Transmitted to Date*), April 12, 2016. DOD's review of its security cooperation authorities was informed by recommendations made by RAND. See Thaler, et al. (2016).

[10] Unless otherwise stated, all references to H.R. 4909 refer to the bill as passed by the House on May 18, 2016.

[11] Unless otherwise stated, all references to S. 2943 refer to the bill as passed by the Senate on June 14, 2016.

strategic requirements, while also seeking to address existing challenges associated with executing security cooperation activities.

In addition, S. 2943 offered provisions that would centralize all DOD security cooperation programs under a new funding mechanism; create a professionalized security cooperation workforce; support budgeting transparency; and require assessment, monitoring, and evaluation of security cooperation programs and activities. Proposals would also variously alter the statutorily required role of the State Department in overseeing security cooperation programs by changing existing requirements that the Secretary of State approve or jointly formulate certain existing DOD programs and activities.

The Senate Armed Services Committee's (SASC's) markup of the FY2017 NDAA, from which the security cooperation proposals of S. 2943 originate, explained its purpose and objectives:

> In an effort to respond to the complaints of our military commanders and the Department more broadly, the NDAA contains a major reform designed to modernize and streamline DOD's security cooperation enterprise.... Together these steps will substantially reduce the cumbersome patchwork of legal authorities and sources of funding and significantly improve operational outcomes, program management, congressional oversight, and public transparency. By breaking down existing stovepipes, these reforms will also enable the Department to better align security cooperation activities with strategic objectives.[12]

In July 2016, the FY2017 NDAA went to conference to resolve differences between the House- and Senate-passed versions, and the lame duck session beginning in November is expected to address the NDAA conference report. Security cooperation provisions in the conference report may differ substantively from proposals contained in H.R. 4909 and S. 2943, as passed by the House on May 18, 2016, and the Senate on June 14, 2016, respectively.

For an overview and comparison of provisions associated with the proposed enactment of a new chapter in Title 10 on security cooperation, see **Appendix A**.

Key Proposed Changes

As part of the proposed enactment of a new chapter in Title 10 of the U.S. Code devoted specifically to security cooperation, nearly 60 existing provisions in Title 10 or public law may variously be transferred, codified, modified, consolidated, repealed, or otherwise affected. Key proposed changes involve (1) changes to DOD's "global train and equip" authority, (2) changes to broaden the scope of existing DOD authorities, (3) changes to the State Department's role, (4) creation of a Security Cooperation Enhancement Fund (SCEF), and (5) changes to DOD's security cooperation management.

Changes to DOD's "Global Train and Equip" Authority

Among the proposed changes to the FY2017 NDAA, S. 2943 is the most far-reaching in extent, particularly in its proposal to replace 10 U.S.C. 2282 on "Authority to Build the Capacity of Foreign Security Forces" with a new permanent authority that is much broader. First granted on a temporary basis in the FY2006 NDAA, the existing authority allows DOD to train and equip foreign security forces to conduct counterterrorism operations or to participate in or support allied or coalition military or stability operations in the U.S. national security interest.

[12] Senate Armed Services Committee (SASC), *National Defense Authorization Act for Fiscal Year 2017*, markup summary, May 12, 2016.

S. 2943 would authorize DOD to train and equip foreign forces for additional purposes, authorizing new activities, removing geographic limitations, allowing the U.S. military to provide types of support to a potentially wider range of foreign entities, and changing the way funds are administered. This re-conceptualized "global train and equip" authority would be codified at 10 U.S.C. 333, within the proposed new security cooperation chapter.

S. 2943 would broaden the scope of authorized foreign capacity building to include training and equipping for

- counter-weapons of mass destruction (WMDs) operations;
- counter-illicit drug trafficking operations;
- counter-transnational organized crime (TOC) operations;
- maritime and border security operations;[13]
- military intelligence operations in support of lawful military operations;
- humanitarian and disaster assistance operations; and
- national territorial defense of the foreign country concerned.

As part of the expansions in the scope of authorized foreign capacity building, the proposed new Section 333 would also authorize provisions of lethal equipment on a global scale, which DOD is not currently authorized to provide under its existing counternarcotics, C-TOC, and humanitarian and disaster assistance programs and activities.[14] The authority would also provide specific authority for DOD to train and equip foreign forces for humanitarian and disaster assistance and to fund programs in support of foreign national territorial defense. S. 2943 would also newly authorize DOD to support the sustainment of previously provided equipment under Section 333 to foreign partners.[15] Moreover, S. 2943 would require human rights training, already a required element of 10 U.S.C. 2282, and defense institution building to be elements of all foreign capacity building conducted pursuant to its proposed new Section 333.[16]

Under 10 U.S.C. 2282, DOD programs are required to be "jointly formulated" with the State Department, allowing, at least in theory, both agencies a role in the design of the programs. Furthermore, 10 U.S.C. 2282 requires the Secretary of State's "concurrence" (approval) of such programs before they could be implemented. S. 2943 would retain the Secretary of State concurrence requirement and extend it to all engagements covered under the proposed new authority, but it would remove the requirement for joint formulation. It is not clear, however,

[13] As part of S. 2943's proposed changes, the Senate bill would repeal several country-specific authorities, including Section 1207 of the FY2014 NDAA (22 U.S.C. 2151 note) on border security specific to Jordan. A similar authority exists, however, pursuant to Section 1226 of the FY2016 NDAA (22 U.S.C. 2151 note), which is separately addressed in S. 2943 (§1272).

[14] For Afghanistan only, one of DOD's counternarcotics authorities, Section 1033 of the FY1998 NDAA, authorizes some lethal equipment.

[15] DOD has interpreted existing congressional guidance on the use of 10 U.S.C. 2282 to exclude sustainment support. Instead, sustainment of equipment provided under 10 U.S.C. 2282 has been provided through the State Department's Foreign Military Financing (FMF) account. According to DOD, this arrangement burdens the State Department's FMF account, hinders the State Department from using FMF more strategically, and leaves equipment provided under 10 U.S.C. 2282 "at risk of disrepair, misuse, and ultimately inoperability" because foreign recipients are unable to independently maintain the functionality of such equipment. See DOD, Office of Legislative Counsel, *DOD Legislative Proposals for Fiscal Year 2017, Consolidated Section-by-Section Analysis of All Proposals Transmitted to Date*, April 12, 2016.

[16] See also Section 1206 of the FY2015 NDAA (22 U.S.C. 2282 note) on "Training of Security Forces and Associated Security Ministries of Foreign Countries to Promote Respect for the Rule of Law and Human Rights."

whether the proposed elimination of a statutory requirement for joint formulation would alter, in practice, the State Department's role in providing input in the planning process.[17]

The SASC report accompanying S. 2943 (S.Rept. 114-255) explained its proposed new Section 333 authority and its relationship to State Department-led security assistance programs:

> [T]his consolidation is not intended to create a Department of Defense mission that competes with security assistance overseen by the State Department. Rather, a consolidated ''train and equip'' authority should enable the Department to meet its own defense-specific objectives in support of broader defense strategy and plans, as well as to better integrate title 10 security cooperation activities into the broader United States Government approach to security sector assistance.

The Senate provisions appear to seek a balance between expanding DOD's authorities and flexibility to train and equip foreign partners as needs emerge, maintaining some State Department role in the formulation and approval of new security cooperation programs, and creating more congressional tools to conduct oversight activities and funds.

In a move that could increase DOD's flexibility to train and equip foreign partners as needs emerge, S. 2943 would omit a current limitation in 10 U.S.C. 2282 that prohibits DOD from providing assistance to a "foreign country that is otherwise prohibited from receiving such... assistance under any other provision of law."[18] Reflecting a desire for increased transparency, S. 2943 would require quarterly reports to Congress on Section 333's use, as well as congressional notification at least 15 days prior to initiating authorized activities. S. 2943's proposal to establish the SCEF, discussed below, and authorize more than $2.1 billion in FY2017 for an expanded set of foreign capacity building efforts also represents a potentially significant change.

10 U.S.C. 2282 is also addressed in DOD's proposals and in H.R. 4909. DOD's proposals would also transfer the existing authority to a new proposed chapter on security cooperation in Title 10 of the U.S. Code, but limited proposed changes to newly authorizing additional sustainment of equipment provided by DOD and the extension of deadlines for expenditure of obligated funds. H.R. 4909, for its part, would not make substantive changes to the authority in 10 U.S.C. 2282 other than moving it to a new chapter of the U.S. Code.

[17] S. 2943 would additionally require DOD and the State Department to jointly issue regulations for the coordination of security cooperation and security assistance programs and activities—regulations that could conceivably increase State Department involvement in the formulation and execution of programs conducted under the proposed expansion of DOD's "global train and equip" authority. The bill also requires the Secretary of Defense to prescribe policy guidance on the roles, responsibilities, and processes involved in executing Section 333's envisioned foreign capacity building programs. In a Sense of Congress, S. 2943 additionally noted that DOD and the State Department "should work collaboratively in all matters relating to security sector assistance, including by undertaking joint planning to determine the best application of security sector assistance programs...."

[18] Through various provisions over time, Congress has restricted certain foreign countries from receiving security assistance, generally provided under the Foreign Assistance Act of 1961 (FAA) or Arms Export Control Act (AECA), as amended. For example, the Child Soldier Prevention Act of 2008 (22 U.S.C. 2370c et seq.) prohibits most forms of U.S. security assistance authorized in the FAA and AECA to countries identified by the Secretary of State, where governmental armed forces or government-supported armed groups recruit and use child soldiers. For a compilation of other country restrictions applicable to U.S. security assistance authorities, see Defense Security Cooperation Agency (DSCA), Defense Institute of Security Cooperation Studies, "Chapter 2: Security Cooperation Legislation and Policy," *Green Book*, Edition 1.0, July 2016, pp. 2-12, 2-13.

Implications for DOD's Counternarcotics and C-TOC Authorities

In S. 2943, the inclusion of counternarcotics-related authorities as part of what is proposed to be a centralized DOD security cooperation authority for building the capacity of security forces would, in several respects, broaden the scope of DOD's authorities to support foreign countries in combating drug trafficking and transnational organized crime (TOC). Two of DOD's primary authorities for such foreign support are Section 1004 of the FY1991 NDAA (10 U.S.C. 374 note) and Section 1033 of the FY1998 NDAA (P.L. 105-85, as amended).

- Section 1004 authorizes DOD to provide counternarcotics or counter-transnational organized crime (C-TOC) support to any other department or agency of the federal government or of any State, local, tribal, or foreign law enforcement agency. Section 1012 of the FY2015 NDAA extended this authority through FY2017. Section 1004 does not specify a role for the Secretary of State to be consulted in the execution of authorized programs and activities.
- Section 1033 enables the Secretary of Defense, with Secretary of State consultation, to provide certain additional support, not to exceed $125 million per fiscal year, for counternarcotics activities to 41 selected countries. For Afghanistan only, Section 1033 authorizes some lethal equipment.[19] Currently, DOD is authorized to provide Section 1033 assistance to these countries through FY2017.

S. 2943 would repeal Section 1033 and amend Section 1004. The domestic aspects of Section 1004 would be codified, but not in the proposed new security cooperation chapter of Title 10 (see §1006 of S. 2943). In their place, S. 2943 would incorporate counternarcotics and C-TOC foreign capacity building in its re-conceptualized "global train and equip" authority. In the process, S. 2943 would authorize, on a global scale, the provision of lethal assistance to foreign forces and require DOD to seek Secretary of State concurrence for any counternarcotics or C-TOC program or activity with foreign partners.[20]

The move would also have funding implications. DOD's counternarcotics and C-TOC activities are funded through a line item in annual DOD appropriations, particularly through the central transfer account for "Drug Interdiction and Counter-Drug Activities." S. 2943 would authorize the transfer a portion of this account to the SCEF ($258.3 million in FY2017). Section 1033 currently includes a cap on funding "not to exceed" $125 million for counterdrug support, which would be eliminated by S. 2943. Section 1033 also conditions the obligation or expenditure of such funds, based on submission to congressional committees of a counterdrug plan with assessment and evaluation components, as well as a written certification on end-user commitments and verification requirements.

Changes to Broaden the Scope of Existing DOD Authorities

In addition to proposed changes to DOD's "global train and equip" authority, other proposals, particularly those envisioned by DOD and S. 2943, would substantively expand the scope of DOD's existing authorities to conduct security cooperation program and activities in several respects. Examples of such changes include the following:

- **Expanding the purposes for which security cooperation is authorized.** S. 2943 would modify the purpose of DOD's Regional Centers for Security Studies (10 U.S.C. 184) to conduct training in lieu of "exchange of ideas"[21] and broaden

[19] For Afghanistan, Section 1033 authorizes individual and crew-served weapons of 50 caliber or less and ammunition for such weapons for counternarcotics and security forces.

[20] Appropriations for the State Department's INCLE account for FY2016 (P.L. 114-113) noted that "the provision of assistance by any other United States Government department or agency which is comparable to assistance that may be made under this heading, but which is provided under any other provision of law, should be provided only with the concurrence of the Secretary of State and in accordance with the provisions of section 481(b)... of the [FAA]." Section 481(b) of the FAA (22 U.S.C. 2291(b)) provides that "the Secretary of State shall be responsible for coordinating all assistance provided by the United States Government to support international efforts to combat illicit narcotics production or trafficking."

[21] S. 2943 also envisions a reduction in the total number of such regional centers to three (repealing authorization for the Africa Center for Strategic Studies and the Near East South Asia Center for Strategic Studies) and shifting their geographic focus. In the process, S. 2943 would direct the remaining centers to "prioritize within their respective areas

the purpose of the "Regional Defense Combating Terrorism Fellowship Program" (10 U.S.C. 2249c) by eliminating references that limit its current scope to counterterrorism.

- **Expanding authorized activities.** DOD's proposals and S. 2943 would expand 10 U.S.C. 127d to authorize the provision of operational support (i.e., logistic support, supplies, and services) not only to foreign countries participating in military or stability operations that benefit U.S. national interests, but also for such operations even if the United States is not participating.[22] In some instances, DOD's proposals and S. 2943 would additionally authorize up to $750,000 in small-scale construction per project.[23]
- **Broadening the geographical scope of security cooperation.** DOD's proposals and S. 2943 would globalize existing authorities to pay for certain personnel expenses (i.e., travel and subsistence expenses) for theater security cooperation.[24] In other instances, proposals would authorize support to more than just "developing" countries—instead authorizing support to "friendly foreign countries" (without defining the term).[25]
- **Increasing the types of foreign personnel that can benefit from DOD engagement.** DOD's proposals and S. 2943 would authorize reciprocal and non-reciprocal exchanges with non-military foreign personnel and representatives, including personnel of non-defense security ministries and international or regional security organizations.[26] In provisions to codify and modify an authority for U.S. general purpose forces to train with foreign military and other security forces, proposals differ on how to re-define the term "other security forces"

of focus the functional areas for engagement of territorial and maritime security, transnational and asymmetric threats, and defense sector governance." DOD's proposals and H.R. 4909 would also incorporate DOD's regional centers into their proposed new security cooperation chapter in Title 10, but would not change the total number of regional centers or their authorized purposes.

[22] 10 U.S.C. 127d on "Allied Forces Participating in Combined Operations: Authority to Provide Logistic Support, Supplies, and Services" currently authorizes the provision of operational support to allied forces in combined operations, but not in cases in which the United States is not a participant. As part of modifications to 10 U.S.C. 127d, DOD's proposals and S. 2943 would also authorize the procurement of equipment to be loaned to foreign countries participating in U.S.-supported operations.

[23] S. 2943 would newly authorize small-scale construction in its proposed consolidation of 10 U.S.C. 2010 on "Participation of Developing Countries in Combined Exercises: Payment of Incremental Expenses;" 10 U.S.C. 2011 on "Special Operations Forces: Training with Friendly Foreign Forces;" and Section 1203 of the FY2014 NDAA (10 U.S.C. 2011 note) on "Training of General Purpose Forces of the United States Armed Forces with Military and Other Security Forces of Friendly Foreign Countries." Small-scale construction would be authorized in a similar DOD proposal, which would consolidate 10 U.S.C. 2010 and Section 1203 of the FY2014 NDAA. DOD's proposals would additionally authorize small-scale construction as part of its changes to 10 U.S.C. 127d.

[24] DOD's proposals and S. 2943 would consolidate and revise existing authorities for the payment of personnel expenses that are specific for Latin American cooperation (10 U.S.C. 1050) and African cooperation (10 U.S.C. 1050a), among other changes.

[25] Current authorities that are limited to "developing" countries include: 10 U.S.C. 2010; 10 U.S.C 2011; Section 1203 of the FY2014 NDAA (10 U.S.C. 2011 note); and 10 U.S.C. 1051, which authorizes DOD to pay for personnel expenses of developing country representatives.

[26] Section 1082 of the FY1997 NDAA (10 U.S.C. 168 note) on defense exchanges and Section 1207 of the FY2010 NDAA (10 U.S.C. 168 note) on non-reciprocal exchanges both currently limit foreign exchanges to military or civilian personnel of defense ministries.

(including whether to authorize training with civilian police, including local police).[27]

- **Changing funding limits and related provisions.** DOD's proposals and S. 2943 include provisions to change existing funding caps, conditions on the availability of funds across fiscal years, and congressional notification requirements upon which funding is predicated. Such changes would affect authorities on operational support to foreign countries and the payment of incremental expenses associated with U.S. general purpose forces training with foreign forces.[28] With its proposed establishment of a Security Cooperation Enhancement Fund (SCEF), S. 2943 would additionally change the way funding for security cooperation would be administered.

Changes to the State Department's Role

The State Department's role in overseeing DOD's security cooperation engagements varies among existing Title 10 authorities. Beyond S. 2943's proposed changes to DOD's "global train and equip" authority, discussed above, several other proposals could change the Secretary of State's ability to play a decision-making role in DOD's use of certain security cooperation authorities.

With respect to authorities pertaining to the international exchange of defense personnel and the payment of certain foreign personnel expenses for theater security cooperation, DOD's proposals and S. 2943 would newly authorize the Secretary of Defense to include non-defense foreign personnel.[29] As part of such proposals, DOD proposes adding Secretary of State concurrence when the authorities apply to non-defense foreign personnel. S. 2943, on the other hand, would not.

In another instance, S. 2943 proposes to consolidate and modify three existing authorities that would, in combination, authorize U.S. special operations forces and general purpose forces to train and conduct military exercises with foreign forces.[30] One of these authorities currently requires Secretary of State concurrence, the second requires Secretary of State consultation, while

[27] Section 1203 of the FY2014 NDAA (10 U.S.C. 2011 note) on U.S. general purpose forces training with foreign forces, defines the term "other security forces" to mean "national security forces that conduct border and maritime security, but does not include civilian police." DOD's proposal, among other changes, would redefine this term to include national security forces that conduct counterterrorism operations and would clarify that the term does not include *local* civilian police. S. 2943 in contrast would omit a definition for the term "other security forces," leaving open the possibility that the term may be interpreted to include support to foreign law enforcement forces, among others.

[28] 10 U.S.C. 127d is currently capped at $100 million. As part of DOD's proposals, the Department prepared section-by-section analyses for Congress. In DOD's analysis of its proposed increase in funding for operational support, DOD explained that it arrived at $550 million by adding the $100 million currently authorized under 10 U.S.C. 127d and the $450 million authorized for logistical support to Iraq and Afghanistan (§1234 of the FY2008 NDAA, as amended). S.Rept. 114-255, accompanying S. 2943, additionally noted that Section 1256 of the bill would consolidate authorities in Section 1234 of the FY2008 NDAA, as amended, with 10 U.S.C. 127d. Both DOD's proposals and S. 2943 would omit a current cap on incremental expenses payable (not to exceed $10 million) under Section 1203 of the FY2014 NDAA (10 U.S.C. 2011 note) on U.S. general purpose forces training with foreign forces.

[29] On defense exchanges, see Section 1082 of the FY1997 NDAA (10 U.S.C. 168 note) and Section 1207 of the FY2010 NDAA (10 U.S.C. 168 note). On theater security cooperation, see 10 U.S.C. 1050, 1050a, 1051, and 1051a.

[30] The three affected authorities are 10 U.S.C. 2010 (Secretary of State consultation required), 10 U.S.C. 2011 (no State Department role specified), and Section 1203 of the FY2014 NDAA (10 U.S.C. 2011 note; Secretary of State concurrence required prior to a training event in or with a foreign country).

the third does not specify a State Department role. In consolidating the three authorities, S. 2943 would, among other changes, remove specific references to a State Department role.[31] A related DOD proposal to consolidate two of these provisions, would, in contrast, establish Secretary of State concurrence.

In one instance, S. 2943 would add a provision for Secretary of State concurrence, where none currently exists, while DOD's proposals and H.R. 4909 would not.[32]

Where proposed changes to DOD's security cooperation authorities would reduce requirements for State Department oversight, they have fueled broader debates over the DOD-State Department relationship and their respective roles in the development and execution of security cooperation programs.[33] Reacting to S. 2943 in a *Statement of Administration Policy*, the Obama Administration generally expressed a desire to strengthen the State Department's role.[34]

Similar sentiments have also been expressed by some Members of Congress. For example, before S. 2943 passed the Senate, Senate Foreign Relations Committee (SFRC) Chair Senator Bob Corker and Ranking Member Ben Cardin sought (but ultimately failed) to amend the bill by, among other changes, reinserting Secretary of State concurrence requirements (S.Amdt. 4420). Meanwhile, S. 3117, on FY2017 appropriations for the Department of State, Foreign Operations, and Related Programs, reiterates a Title 22 provision that identifies the Secretary of State as "responsible for the continuous supervision and general direction of... military assistance," including military education and training programs.[35] The committee report accompanying S. 3117 (S.Rept. 114-290) elaborates on its concerns over the lack of State Department oversight of DOD programs:

> [T]he failure... to adequately integrate and coordinate foreign and military policies to ensure more effective cooperation among and between U.S. Government departments and agencies, and the complex and dynamic nature of today's security threats, have created parallel and competing foreign assistance programs, particularly at the Department of Defense. Unless conducted in a whole-of-government manner under the direction of the President and the Secretary of State... assistance programs conducted by the Department of Defense without the concurrence of the Secretary of State—from program development through program execution—erodes the coherent, coordinated, and effective implementation of U.S. foreign policy.

[31] S. 2943 may offer two interpretations regarding whether Secretary of State concurrence would be required when general purpose forces train with foreign forces. S. 2943's re-conceptualized "global train and equip authority," which requires Secretary of State concurrence, identifies Section 1203 of the FY2014 NDAA (10 U.S.C. 2011 note) as among the provisions to be conformingly repealed.

[32] 10 U.S.C. 9415 on the "Inter-American Air Forces Academy" authorizes the U.S. Air Force to operate an education and training facility but does not currently require Secretary of State concurrence. In a move that would make authorities for the Inter-American Air Forces Academy consistent with those pertaining to a similar provision (§1268 of the FY2015 NDAA; 10 U.S.C. 9411 note) on the "Inter-European Air Force Academy," S. 2943 would additionally require Secretary of State concurrence for 10 U.S.C. 9415, as transferred into the proposed new security cooperation chapter of Title 10 of the U.S. Code.

[33] Such broader debates also address the viability of other models of DOD-State Department collaboration on security sector assistance, including the Global Security Contingency Fund (GSCF), which was established as a pilot project by Section 1207 of the FY2012 NDAA (22 U.S.C. 2151 note). GSCF is jointly funded and its security assistance programs require joint formulation. Its future, however, is tenuous as the authority expires on September 30, 2017, and, despite Administration requests to extend it through September 30, 2021, neither H.R. 4909 nor S. 2943 include such provisions in the FY2017 NDAA.

[34] Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy*, S. 2943 – National Defense Authorization Act for Fiscal Year 2017, June 7, 2016.

[35] See Section 622(c) of the FAA (22 U.S.C. 2382(c)).

Beyond the strict question of State Department concurrence, S. 2943 raises broader questions about the more intangible balance of powers between the departments in determining the scope and conditions of U.S. military engagement with foreign countries, as well as evaluating the impact of such engagements on U.S. foreign policy. In parts of the world where the State Department has historically devoted relatively little "traditional" Title 22 security assistance, such as sub-Saharan Africa, DOD's growing presence is particularly felt—not only in the form of increased DOD funding and activities with partner nations, but also in the form of greater DOD weight in interagency policymaking processes.[36] Such trends may also shift congressional oversight powers and responsibilities away from committees on foreign policy and foreign aid, and toward the defense committees.

Creation of a Security Cooperation Enhancement Fund (SCEF)

S. 2943 would establish a SCEF as the primary funding mechanism for DOD security cooperation programs and activities. The SCEF would be codified within the proposed new security cooperation chapter and obligated amounts in the SCEF would remain in the SCEF until expended. Up to 4% of amounts available in the SCEF per fiscal year would be additionally authorized to carry out

- the execution and administration of DOD security cooperation programs and activities;
- annual assessments, monitoring, and evaluations of DOD security cooperation programs and activities; and
- incremental expenses associated with the Senate-proposed security cooperation workforce development program within DOD.

Funds in the SCEF would be derived from existing accounts and sources of funding for programs and activities executed in accordance with any authorities transferred into the new security cooperation chapter in Title 10 of the U.S. Code (see **Table 1**). S. 2943 would authorize transfers out of and back to the SCEF from other DOD O&M accounts. In addition, it would authorize the Secretary of Defense to accept and retain contributions to the SCEF from outside entities and would require quarterly reports to congressional defense committees regarding SCEF obligations and expenditures.

Beginning in FY2018, all unobligated balances from the Afghanistan Security Forces Fund, the Iraq Train and Equip Fund, and the South China Sea Initiative (renamed elsewhere in S. 2943 as the Southeast Asia Maritime Security Initiative), along with other named accounts or funds for DOD security cooperation programs or activities, would be transferred into the SCEF. Beginning in FY2019, all security cooperation programs and activities authorized in the new security cooperation chapter in Title 10 of the U.S. Code would be executed through the SCEF.

Table 1. S. 2943: Proposed Allocations to the Security Cooperation Enhancement Fund (SCEF)

in US $ thousands

Account or Fund	FY2017 Authorization
Base Budget Subtotal	**673,100**

[36] For further discussion see CRS Report R44563, *Terrorism and Violent Extremism in Africa*; and CRS prepared statement by Lauren Ploch Blanchard, Specialist in African Affairs, on "U.S. Security Assistance in Africa," for a Senate Foreign Relations Subcommittee on Africa and Global Health hearing, June 4, 2015.

Account or Fund	FY2017 Authorization
• Transfer from Drug Interdiction and Counter-Drug Activities	[258,300]
• Transfer of Combatting Terrorism Fellowship Program	[26,800]
• Transfer of Defense Institute of International Legal Studies	[2,600]
• Transfer of Defense Institution Reform Initiative	[25,600]
• Transfer of Global Train and Equip Program	[270,200]
• Transfer of Ministry of Defense Advisors	[9,200]
• Transfer of Regional Centers	[58,600]
• Transfer of Wales Initiative Fund/Partnership for Peace	[21,800]
Overseas Contingency Operations Subtotal	**1,470,000**
• Transfer from Coalition Support Fund	[820,000]
• Transfer from Counterterrorism Partnership Fund	[650,000]
TOTAL AUTHORIZED FOR THE SCEF	**2,143,100**

Source: CRS summary of Sections 4501 and 4502 of S. 2943, as passed by the Senate.

Describing the SCEF, S.Rept. 114-255, accompanying S. 2943, explained:

> Like many observers, the committee has found it increasing [sic] difficult to oversee, monitor, and evaluate the array of military service and defense-wide funding sources for the Department's security cooperation programs and activities. The committee believes that, without any changes to this arrangement, the long-term prospects of the Department's security cooperation programs and activities, particularly its ''train and equip'' activities, are not sustainable. The committee believes that consolidating funding for the Department's security cooperation programs and activities will increase public transparency, flexibility, and congressional oversight.
>
> Further, and of particular importance, the committee also believes that a central fund will allow the Department's senior civilian and military leaders to make strategic choices with respect to the allocation of security cooperation resources against strategic priorities. For too long, the Department's activities in this area have been too diffuse and have lacked strategic coordination—both regionally and functionally. The committee notes that there are currently few nations in which the Department does not actively conduct security cooperation; some estimates have suggested that the Department is engaged in over 180 countries globally. The committee expects the Department to leverage a newly established central fund to prioritize engagements according to strategic imperatives and clearly identified objectives.

Changes to DOD's Security Cooperation Management

S. 2943 also proposes several innovations to fund DOD security cooperation and improve the execution and administration of such programs and activities—particularly newly requiring the following:

- Assignment of responsibility for the oversight of security cooperation strategic policy and guidance to a single official and office within DOD's Office of the Secretary of Defense and to the DSCA Director for the execution and administration of all DOD security cooperation programs and activities involving the provision of training, equipping, and other defense services (§1252(m)).

- Issuance of joint DOD and State Department regulations for the coordination of security cooperation and security assistance programs and activities (§1264).
- Submission by DOD to Congress of a consolidated annual budget for security cooperation programs and activities (§1262).
- Establishment of a program for DOD security cooperation workforce development (§1263).
- Maintenance of a program for assessment, monitoring, and evaluation (A, M & E) in support of its security cooperation programs and activities (§1252(m)).
- Consolidation of funding in a Security Cooperation Enhancement Fund (SCEF) to be used for the DOD security cooperation programs and activities (§1260).

Security Cooperation Workforce Development

A key provision within S. 2943 is the proposed creation of a dedicated work force development program, composed of civilian and uniformed personnel, that is specifically focused on the development, planning, execution, and evaluation of DOD's security cooperation activities with allied and partner countries. While DSCA has implementation and execution responsibility for a number of security cooperation programs, its focus has been on "traditional" security assistance programs (e.g., Foreign Military Sales (FMS) and Foreign Military Financing (FMF)) on behalf of the State Department. In order to cover administrative and other costs required to execute these programs, in addition to Title 10 programs for building partner capacity, DSCA applies an administrative surcharge per transaction. The vast majority of the security assistance workforce, including DSCA core staff, is funded by these overhead funds to manage arms sales processes.

The growth of DOD's range of security cooperation activities—and the evolution in DOD thinking about building foreign partner capability—has led some observers to conclude that a new, dedicated security cooperation workforce is necessary. Such a workforce could arguably enable the U.S. government to design and execute locally appropriate security cooperation programs that are tailored to a broad range of partner requirements. According to such views, arm sales are often desirable, but insufficient to build sustainable foreign security forces capacity, which may variously require defense institution capacity building support, including the development of new or reformed defense strategies, or a modern human resources system. The professionalization and adaptation of a DOD security cooperation workforce that can support such programs and activities, which are outside DSCA's areas of core security assistance competence, may enable DOD—and the U.S. government more broadly—to advance its strategic goals with foreign partner countries. Given restrictions associated with the 2011 Budget Control Act, as well as subsequent DOD headquarters staff reductions, S. 2943 proposes to allow upward of 4% of appropriations to the proposed SCEF (discussed below) to pay for the new work force.

Although many of the Senate proposals stem from a desire to modernize and streamline DOD's security cooperation enterprise, some practitioners and observers have raised questions over the feasibility of implementing the Senate's provisions within required timeframes and in the context of broader resource constraints affecting the Pentagon.[37] In particular, despite broad recognition that several of the Senate-proposed provisions could improve the execution and administration of security cooperation programs and activities, some indicate that the next Administration may require longer timeframes for (1) DOD and the State Department to develop regulations for the coordination of security cooperation and security assistance programs and activities, (2) DSCA to administer the changes envisioned by the security cooperation proposals, and (3) DOD to establish and use a central funding mechanism for building foreign security forces capacity through the SCEF.

[37] CRS interviews with DOD, the State Department, and non-governmental experts, conducted over multiple meetings between June 2016 and September 2016.

Preliminary Reactions

Some of the proposed security cooperation provisions in the FY2017 NDAA—including the Senate's proposed security cooperation workforce development program and its measures for improved budget transparency and program accountability—have broad appeal among analysts, policymakers, and practitioners. Others have emerged as flashpoints in a broader debate over DOD's role in security cooperation. This debate, which has been the focus of several hearings in the 114th Congress, pits those who believe that enhancing DOD's toolkit for security cooperation engagement and management is necessary for accomplishing U.S. strategic objectives, against those who caution against the "militarization" of U.S. foreign policy.[38] This perceived militarization entails perceived shifts in the balance of DOD and State Department funding, resources, and relative bureaucratic and policy influence.[39]

In its June 7, 2016 *Statement of Administration Policy* on S. 2943, the Obama Administration welcomed some of the Senate's proposals. In particular, the Administration approved of the Senate's incorporation of its own proposals. The Administration, however, cautioned against the risk of unintended harm to security cooperation and force readiness efforts, as well as the risk of undermining the State Department's lead role in foreign policy and security sector assistance. Where mechanisms already exist or were proposed in DOD's FY2017 package of security cooperation authority revisions, the Administration expressed a desire to maintain State Department oversight mechanisms, including Secretary of State concurrence and joint formulation of programs with DOD.[40]

Some Members and outside observers have publicly expressed similar sentiments, including questions about whether the proposed changes could negatively affect U.S. diplomacy and foreign policy, including with respect to U.S. promotion of human rights.[41]

- Representative Adam Smith, ranking member on the House Armed Services Committee (HASC), stated in an interview that the U.S. military's involvement in broad security development and stabilization activities is concerning because it is "not their area of expertise."[42]
- House Foreign Affairs Committee (HFAC) Chair Representative Ed Royce, who is a conferee on the FY2017 NDAA, stated to the media that he would resist any changes that would weaken the State Department's involvement in international

[38] See for example House Armed Services Committee (HASC), *Examining DOD Security Cooperation: When it Works and When it Doesn't*, hearing, October 21, 2015; and SASC, Subcommittee on Emerging Threats and Capabilities, *Department of Defense Security Cooperation and Assistance Authorities and Programs*, hearing, March 9, 2016.

[39] News articles report several examples where State Department views regarding human rights and other foreign policy concerns have been sidelined in order for DOD to engage or support activities. Other observers have described a lack of DOD-State Department policy coordination and reportedly wasteful and redundant programming. See Missy Ryan, "State Department and Pentagon Tussle Over Control of Foreign Military Aid, *Washington Post*, July 10, 2016; and Bryan Bender, "Pentagon Muscles out State Dept. on Foreign Aid," *Politico*, March 23, 2016.

[40] Apart from the *Statement of Administration Policy*, the State Department has not independently made public statements on the FY2017 NDAA security cooperation provisions. A news article, however, reported that Secretary of State John Kerry and Deputy Secretary of State Tony Blinken discussed their concerns over the FY2017 NDAA with Members of the Senate Foreign Relations Committee. See Bender (2016).

[41] Outside observers include those cited in Ryan (2016) and Rachel Stohl, "The Pitfalls of the Pentagon Taking the Lead on U.S. Security Assistance," *World Politics Review*, September 20, 2016.

[42] Rachel Oswald, "Senate's NDAA Language Sparks State, Pentagon Turf Battle," *CQ Roll Call*, July 14, 2016.

security programs and that he would advocate for the House's approach, as passed in H.R. 4909, as opposed to the proposals in S. 2943.[43]

- A news report described a closed SFRC hearing in June 2016 in which Member concerns were reportedly expressed that some existing DOD security cooperation programs and activities hamper broader foreign policy goals in the absence of sufficient State Department oversight.[44] SFRC Chair Senator Corker reportedly raised similar concerns with SASC Chair Senator John McCain.[45]
- In July 2016, Senators Patrick Leahy, Richard Durbin, ranking members of the State-Foreign Operations and Defense appropriations subcommittees, respectively, joined with Senators Corker and Cardin, chair and ranking member of SFRC, respectively, to write a letter to HASC and SASC regarding the security cooperation and assistance changes proposed in S. 2943. The Senators reportedly opposed provisions that would not strengthen statutory requirements for State Department coordination, consistent with its lead role in security assistance policy.[46]

In an effort to modify certain aspects of S. 2943's security cooperation provisions, Senators Corker and Cardin submitted an amendment (S.Amdt. 4420) to the bill. Although the amendment was ultimately tabled and no further action was taken prior to S. 2943's passage, it signaled several foreign policy concerns in the legislation.[47]

Proponents of security cooperation proposals in the FY2017 NDAA argue that changes are necessary to provide for flexible and robust DOD-led security cooperation authorities that will better serve U.S. strategic and military objectives than the current policy architecture.[48] DOD's Deputy Assistant Secretary of Defense for Security Cooperation, for example, has argued that defense security cooperation should be viewed as a core element of military strategy, as it

[43] Ibid.

[44] Joe Gould and Aaron Mehta, "Standoff Brews Over the Future of U.S. Security Assistance," *Defense News*, July 13, 2016.

[45] Senator Corker has also reportedly expressed concern over potential consequences of establishing process in which foreign countries that had been denied a certain type of security assistance by the State Department could seek out, in a process known as "forum shopping," U.S. military support directly from DOD. See Gould and Mehta (2016). In March 2016, a news article paraphrased Senator Corker's views as follows: both DOD and the State Department have roles in the delivery of security assistance, but the process for formulating and administering such assistance should reflect that such activity involves "fundamentally foreign policy decisions about advancing U.S. interests," and decisions associated with DOD security cooperation authorities "still must flow through the same process as cases initiated through the State Department and with the State Department's approval prior to congressional review." See Bender (2016).

[46] The letter was referred to in Rachel Oswald, "State's Culture Hampers Push for Security Aid, Experts Say," *CQ Roll Call*, October 24, 2016.

[47] Among other provisions, S.Amdt. 4420 sought to establish an expiration (September 30, 2020) for S. 2943's re-conceptualized "global train and equip" authority; require joint DOD and State Department formulation for programs and activities authorized under the proposed new Section 333; and require Secretary of State concurrence several other authorities that would be incorporated into the new security cooperation chapter of Title 10, including in all cases involving DOD engagements with foreign non-military personnel. S.Amdt. 4420 also sought to define the term "friendly foreign country" and require the President to identify such countries annually. The amendment also sought to insert the Senate Foreign Relations Committee (SFRC) and the House Foreign Affairs Committee (HFAC) as recipients of security cooperation-related congressional notifications and reporting requirements that are limited by S. 2943 to the congressional defense committees.

[48] Ryan (2016). See also Melissa Dalton, "Reforming Security Cooperation for the 21st Century: What the FY17 NDAA Draft Bill Gets Right, and the Challenges Ahead," *Commentary*, Center for Strategic and International Studies, June 9, 2016.

contributes specifically (1) to mitigating U.S. security risks by enabling partners to operate in coalition with the U.S. military or independently against shared objectives, (2) to deterring adversaries, and (3) to setting theater conditions that enable successful U.S. military operations.[49]

SASC has insisted, meanwhile, that its security cooperation provisions in S. 2943 are intended to improve DOD and State Department integration on security cooperation efforts.[50] According to SASC, S. 2943 could also address other critiques of DOD's current security cooperation programs and activities, through its provisions to professionalize the security cooperation workforce and provide more tools for DOD to manage its security cooperation programs, including multi-year funding and authority to sustain capacity-building efforts.

Outlook

On July 8, 2016, the FY2017 NDAA went to conference amid pressure from various stakeholders to reconcile disparate viewpoints on security cooperation reform. While the conference report is not yet released, it is expected to be brought before the House and Senate during the lame duck session.

The implementation of changes to DOD's security cooperation authorities may be affected by near-term appropriations decisions. Security cooperation programs and activities are currently funded through December 9, 2016, under the Continuing Appropriations Act, 2017 (P.L. 114-223). The House version of the FY2017 DOD appropriations (H.R. 5293), which passed the House on June 16, 2016, does not include reference to funding for S. 2943's SCEF or any additional changes to DOD's security cooperation authorities, programs or activities. The Senate version (S. 3000), which was reported out of committee on May 26, 2016, also does not include funding for the SCEF. It does, however, provide for a maximum of $850 million in O&M, Defense-wide funds to remain available until September 30, 2018 and "be available to provide support and assistance to foreign security forces or other groups or individuals to conduct, support or facilitate counterterrorism, crisis response, or Security Enhancement Activities in accordance with the National Defense Authorization Act for Fiscal Year 2017."

Beyond the FY2017 NDAA, broader efforts to review U.S. security sector assistance and explore models of interagency collaboration and alternative budgeting mechanisms, including transfer authorities between DOD and the State Department, are likely to persist.[51] Many anticipate that security cooperation policy questions will continue to challenge policymakers in the next Administration and the 115th Congress. Key policy questions include the following:

- Does the current statutory framework adequately reflect today's strategic environment? If not, would the proposed changes in the FY2017 NDAA meet the needs of existing and emerging threats? If gaps remain, what legislative proposals could be anticipated in future NDAAs?[52]

[49] Tommy Ross, "Leveraging Security Cooperation as Military Strategy," *Washington Quarterly*, Fall 2016, pp. 91-103.

[50] Gould and Mehta (2016).

[51] See for example, Gordon Adams, *A New Way Forward: Rebalancing Security Assistance Programs and Authorities*, Stimson Center, April 20, 2011; Dafna Rand and Stephen Tankel, *Security Cooperation and Assistance: Rethinking the Return on Investment*, Center for a New American Security, August 5, 2015; Adams and Richard Sokolsky, "Governance and Security Sector Assistance: The Missing Link-Part I and Part II," *Lawfare Blog*, July 12 and 19, 2015.

[52] See for example Thaler, et al. (2016). In this RAND report, the authors offer several additional proposals for security cooperation reform, particularly with respect to addressing emerging threats, such as cyber operations.

- How does security cooperation contribute to U.S. national security and foreign policy objectives? What are the national security implications of unsuccessful security cooperation programs and activities? How should the effectiveness of security cooperation programs and activities be measured and assessed?
- To what extent should security assistance be viewed as a tool to achieve U.S. military objectives (and thus, a potentially central DOD mission), versus a tool to further U.S. diplomatic partnerships with foreign nations (and thus, primarily a State Department function)? Can those two potentially competing objectives be harmonized? If so, how?
- What are the key differences between security assistance carried out under Title 22 (State Department) of the U.S. Code and security cooperation programs and activities carried out under Title 10 (DOD) authorities? What are the implications of potentially duplicative authorities?
- What challenges does the State Department face in meeting its responsibility of "continuous oversight and general direction" of military assistance, education, and training programs, among other features of the conduct of foreign affairs? What aspects of security sector assistance are a shared responsibility?
- How might changes in DOD's security cooperation authorities affect interagency relations, global perceptions of U.S. civil-military balance, and foreign government interactions on security sector issues?
- What is the appropriate role for DOD and the U.S. military to play vis-a-vis the domestic and/or civilian security forces, such as police, of foreign countries? In what contexts, if any, is DOD the agency best-placed to train and equip these forces? What risks may be associated with such engagements?
- How might proposals in the FY2017 NDAA change the scope of DOD's security cooperation mission and the distribution of funding among combatant commands? What are the implications of any such changes?
- If provisions in the Senate-passed version of the FY2017 NDAA were enacted, would it be feasible for DOD to implement those provisions within timeframes required by the legislation? What would be the implications of delays?
- How might reforms strengthen or weaken congressional policymaking control and oversight of security cooperation, including implications for committee jurisdiction over such matters?
- To what extent should Congress place limits (temporal, geographic, human rights-related, etc.) on DOD's ability to provide assistance to foreign security forces? To what extent do such restrictions support, or impede, congressional oversight?

In addition to appropriations decisions and funding constraints in the near-term, the next Administration's management and execution of security sector assistance could be affected by future national-level and agency-specific policy decisions. Further debate on this issue could inspire subsequent rounds of proposals for FY2018 and beyond.

Appendix A. Overview and Comparison of Security Cooperation Provisions in the FY2017 NDAA, as of November 1, 2016

Table A-1. Comparison of Security Cooperation Provisions Among DOD's Proposals, H.R. 4909, and S. 2943

Affected Current Law or Description of New Security Cooperation (SC) Provision	DOD's SC Proposals (§§1201-1209 & 1217)	SC Proposals in H.R. 4909, as passed (§§1261 & 1205)	SC Proposals in S. 2943, as passed (§§1251-1265)
Corresponding to the Proposed Subchapter on "Military-to-Military Engagements"			
10 U.S.C. 1051b on "Bilateral or Regional Cooperation Programs: Awards and Mementos to Recognize Superior Noncombat Achievements or Performance"	§§1201(b), 1201(l)	§§1261(c), 1261(p)	§§1252(b), 1252(n)
§1082 of the FY1997 NDAA (10 U.S.C. 168 note) on "Agreements for Exchange of Defense Personnel Between United States and Foreign Countries"	§1202		§1253
§1207 of the FY2010 NDAA (10 U.S.C. 168 note) on "Authority for Non-Reciprocal Exchanges of Defense Personnel Between the United States and Foreign Countries"	§1202	§1261(b); affected by rep't req. at §1205	§1253
10 U.S.C. 1050 on "Latin American Cooperation: Payment of Personnel Expenses;" **10 U.S.C. 1050a** on "African Cooperation: Payment of Personnel Expenses;" **10 U.S.C. 1051** on "Multilateral, Bilateral, or Regional Cooperation Programs: Payment of Personnel Expenses;" and **10 U.S.C. 1051a** on "Liaison Officers of Certain Foreign Nations; Administrative Services and Support; Travel, Subsistence, Medical Care, and Other Personal Expenses"	§1203		§1254
Corresponding to the Proposed Subchapter on "Training with Foreign Forces"			
§1203 of the FY2014 NDAA (10 U.S.C. 2011 note) on "Training of General Purpose Forces of the United States Armed Forces with Military and Other Security Forces of Friendly Foreign Countries"	§1204; affected by rep't req. at §1208	affected by rep't req. at §1205 *[not in SC proposals, but see also §1202]*	§§1252(d), 1255; indirectly affected by rep't req. at §1261 *[not in SC proposals, but see also rep't req. Δ at §1083]*
10 U.S.C. 2010 on "Participation of Developing Countries in Combined Exercises: Payment of Incremental Expenses"	§1204; affected by rep't req. at §1208	§§1261(d), 1261(p); affected by rep't req. at §1205	§1255; affected by rep't req. at §1261

Affected Current Law or Description of New Security Cooperation (SC) Provision	DOD's SC Proposals (§§1201-1209 & 1217)	SC Proposals in H.R. 4909, as passed (§§1261 & 1205)	SC Proposals in S. 2943, as passed (§§1251-1265)
10 U.S.C. 2011 on "Special Operations Forces: Training with Friendly Foreign Forces"	affected by rep't req. at §1208	affected by rep't req. at §1205 *[not in SC proposals, but see also rep't req. Δ at §1061]*	§1255; affected by rep't req. at §1261 *[not in SC proposals, but see also rep't req. Δ at §1082]*
Corresponding to the Proposed Subchapter on "Support for Operations and Capacity Building"			
10 U.S.C. 127d on "Allied Forces Participating in Combined Operations: Authority to Provide Logistic Support, Supplies, and Services"	§1205; affected by rep't req. at §1208	§§1261(e), 1261(p); affected by rep't req. at §1205 *[not in SC proposals, but see also rep't req. Δ at §1061]*	§1256; affected by rep't req. at §1261 *[not in SC proposals, but see also rep't req. at §1082]*
§1234 of the FY2008 NDAA on "Logistical Support for Coalition Forces Supporting Operations in Iraq and Afghanistan"	see DOD section-by-section justification of §1205; affected by rep't req. at §1208	affected by rep't req. at §1205 *[not in SC proposals, but see also §1201]*	see S.Rept. 114-255 on §1256; affected by rep't req. at §1261
§1081 of the FY2012 NDAA (10 U.S.C. 168 note) on "Defense Institution Capacity Building"	§1201(c); affected by rep't req. at §1208	§§1261(g); affected by rep't req. at §1205	§1252(c); affected by rep't req. at §1261 *[not in SC proposals, but see also rep't req. Δ at §1083]*
10 U.S.C. 2282 on "Authority to Build the Capacity of Foreign Security Forces"	§1207; affected by rep't req. at §1208	§1261(f), 1261(p) *[not in SC proposals, but see also rep't req. Δ at §1061]*	§1252(d); affected by rep't req. at §1261
§1204 of the FY2014 NDAA (10 U.S.C. 401 note) on "Authority to Conduct Activities to Enhance the Capability of Foreign Countries to Respond to Incidents Involving Weapons of Mass Destruction"	*[not in SC proposals, but see also §1218]*	*[not in SC proposals, but see also §1203]*	§1252(d); indirectly affected by rep't req. at §1261
§1207 of the FY2014 NDAA (22 U.S.C. 2151 note) on "Assistance to the Government of Jordan for Border Security Operations"			§1252(d); indirectly affected by rep't req. at §1261
§1004 of the FY1991 NDAA (10 U.S.C. 374 note) on "Additional Support for Counter-Drug Activities and Activities to Counter Transnational Organized Crime"	affected by rep't req. at §1208 *[not in SC proposals, but see also §1011]*	affected by rep't req. at §1205	§1252(d); affected by rep't req. at §1261 *[not in SC proposals, but see also §1006]*

Affected Current Law or Description of New Security Cooperation (SC) Provision	DOD's SC Proposals (§§1201-1209 & 1217)	SC Proposals in H.R. 4909, as passed (§§1261 & 1205)	SC Proposals in S. 2943, as passed (§§1251-1265)
§1033 of the FY1998 NDAA, as amended, on "Authority to Provide Additional Support for Counter-Drug Activities of Other Countries"	affected by rep't req. at §1208 *[not in SC proposals, but see also §1012]*	affected by rep't req. at §1205 *[not in SC proposals, but see also §1011]*	§1252(d); affected by rep't req. at §1261
Corresponding to the Proposed Subchapter on "Educational and Training Activities"			
10 U.S.C. 184 on "Regional Centers for Security Studies;" **§941(b) of the FY2009 NDAA (10 U.S.C. 184 note)** on "Temporary Waiver of Reimbursement of Costs of Activities for Nongovernmental Personnel;" **§1065 of the FY1997 NDAA (10 U.S.C. 113 note)** and **§1306 of the FY1995 NDAA (10 U.S.C. 113 note)** on "George C. Marshall European Center for Strategic Studies;" and/or **§8073 of the FY2003 Defense Appropriations Act (10 U.S.C. prec. 2161 note)** on "Daniel K. Inouye Asia-Pacific Center for Security Studies: Reimbursement Waiver for Personnel of Foreign Nations"	§§1201(d), 1201(l); affected by rep't req. at §1208	§§1261(h), 1261(p); affected by rep't req. at §1205	§§1252(e), 1252(n)
10 U.S.C. 2166 on "Western Hemisphere Institute for Security Cooperation"	§§1201(e), 1201(l)	§§1261(i), 1261(p) *[not in SC proposals, but see also rep't req. Δ at §1061]*	§§1252(f), 1252(n) *[not in SC proposals, but see also rep't req. Δ at §1082]*
10 U.S.C. 2350m on "Participation in Multinational Military Centers of Excellence"	§§1201(f), 1201(l)	§§1261(j), 1261(p)	§§1252(g), 1252(n); affected by rep't req. at §1261
10 U.S.C. 2249d on "Distribution to Certain Foreign Personnel of Education and Training Materials and Information Technology to Enhance Military Interoperability with the Armed Forces"	§§1201(g), 1201(l); affected by rep't req. at §1208	§§1261(k), 1261(p); affected by rep't req. at §1205	§§1252(h), 1252(n); affected by rep't req. at §1261 *[not in SC proposals, but see also rep't req. Δ at §1082]*
10 U.S.C. Chapter 905 on "Aviation Leadership Program"—**10 U.S.C. 9381** on "Establishment of Program;" **10 U.S.C. 9382** on "Supplies and Clothing;" and **10 U.S.C. 9383** on "Allowances"	§§1201(h), 1201(l); affected by rep't req. at §1208	§§1261(l), 1261(p); affected by rep't req. at §1205	§§1252(i), 1252(n)
10 U.S.C. 9415 on "Inter-American Air Forces Academy"	§§1201(i), 1201(l); affected by rep't req. at §1208	§§1261(m), 1261(p); affected by rep't req. at §1205	§§1252(j), 1252(n)
§1268 of the FY2015 NDAA (10 U.S.C. 9411 note) on "Inter-European Air Forces Academy"	§1201(j)	§§1261(n); affected by rep't req. at §1205	§1252(k) *[not in SC proposals, but see also rep't req. Δ at §1083]*

Affected Current Law or Description of New Security Cooperation (SC) Provision	DOD's SC Proposals (§§1201-1209 & 1217)	SC Proposals in H.R. 4909, as passed (§§1261 & 1205)	SC Proposals in S. 2943, as passed (§§1251-1265)
10 U.S.C. 4344, 6957, and 9344 on "Selection of Persons from Foreign Countries;" **10 U.S.C. 4345, 6957a, and 9345** on "Exchange Program with Foreign Military Academies;" and **10 U.S.C. 4345a, 6957b, and 9345a** on "Foreign and Cultural Exchange Activities"	§1206		§1259; rep't req. at §1261
10 U.S.C. 2249c on "Regional Defense Combating Terrorism Fellowship Program: Authority to Use Appropriated Funds for Costs Associated with Education and Training of Foreign Officials"	affected by rep't req. at §1208	affected by rep't req. at §1205 *[not in SC proposals, but see also rep't req. Δ at §1061]*	§1258; affected by rep't req. at §1261 *[not in SC proposals, but see also rep't req. Δ at §1082]*
§1205 of the FY2014 NDAA (32 U.S.C. 107 note) on "Department of Defense State Partnership Program"	affected by rep't req. at §1208	affected by rep't req. at §1205	§1257; affected by rep't req. at §1261
Corresponding to the Proposed Subchapter on "Limitations on Use of Department of Defense Funds"			
10 U.S.C. 2249a on "Prohibition on Providing Financial Assistance to Terrorist Countries"	§§1201(k), 1201(l)	§§1261(o), 1261(p) *[not in SC proposals, but see also §1081]*	§§1252(l), 1252(n)
10 U.S.C. 2249e on "Prohibition on Use of Funds for Assistance to Units of Foreign Security Forces that have Committed a Gross Violation of Human Rights"	§§1201(k), 1201(l)	§§1261(d), 1261(o), 1261(p) *[not in SC proposals, but see also rep't req. Δ at §1208]*	§§1252(l), 1252(n)
New Provisions			
On the enactment of a new chapter in Title 10 of the U.S. Code on Security Cooperation	§1201(a)	§1261(a)	§1252(a)
On "Sense of Congress on Security Sector Assistance"			§1251
On "Administrative Matters" pertaining to "Policy Oversight and Resource Allocation; Execution and Administration of Programs and Activities" and "Assessment, Monitoring, and Evaluation of Programs and Activities"			§1252(m)
On "Security Cooperation Enhancement Fund"			§1260
On "Requirement for Submittal of Consolidated Annual Budget for Security Cooperation Programs and Activities of the Department of Defense"			§1262
On "Department of Defense Security Cooperation Workforce Development"			§1263

Affected Current Law or Description of New Security Cooperation (SC) Provision	DOD's SC Proposals (§§1201-1209 & 1217)	SC Proposals in H.R. 4909, as passed (§§1261 & 1205)	SC Proposals in S. 2943, as passed (§§1251-1265)
Superseded, Obsolete, or Duplicative Provisions DOD Recommends for Repeal			
10 U.S.C. 168 on "Military-to-Military Contacts and Comparable Activities"	§1209; affected by rep't req. at §1208	affected by rep't req. at §1205	§1265; affected by rep't req. at §1261
10 U.S.C. 1051c on "Multilateral, Bilateral, or Regional Cooperation Programs: Assignments to Improve Education and Training in Information Security"	§1209		§1265
10 U.S.C. 2562 on "Limitation on Use of Excess Construction or Fire Equipment from Department of Defense Stocks in Foreign Assistance or Military Sales Programs"	§1209		§1265
10 U.S.C. 4681 and 9681 on "Surplus War Material: Sale to States and Foreign Governments"	§1209		§1265
Other Provisions			
10 U.S.C. 7307 on "Disposals to Foreign Nations"	§1217		
Provisions Affected by Proposed Security Cooperation Reform-Related Reporting Requirements			
§1211 of the FY2015 NDAA on "Biennial Report on Programs Carried Out by the Department of Defense to Provide Training, Equipment, or Other Assistance or Reimbursement to Foreign Security Forces"	§1208	§1205 *[not in SC proposals, but see also rep't req. Δ at §1061]*	§1261
10 U.S.C. 2561 on "Humanitarian Assistance;" **10 U.S.C. 401** on "Humanitarian and Civic Assistance Provided in Conjunction with Military Operations;" and/or **10 U.S.C. 166a(b)(6)** relating to humanitarian and civic assistance by the commanders of the combatant commands	affected by rep't req. at §1208	affected by rep't req. at §1205 *[not in SC proposals, but see also §1811 (only on10 U.S.C. 401) and rep't req. Δ at §1061 (only on 10 U.S.C. 401, 2561)]*	affected by rep't req. at §1261 *[not in SC proposals, but see also §829F and rep't req. Δ at §1082 (only on 10 U.S.C. 401, 2561)]*
§1206 of the FY2015 NDAA (10 U.S.C. 2282 note) on "Training of Security Forces and Associated Security Ministries of Foreign Countries to Promote Respect for the Rule of Law and Human Rights"	affected by rep't req. at §1208	affected by rep't req. at §1205 *[not in SC proposals, but see also rep't req. Δ at §1061]*	affected by rep't req. at §1261 *[not in SC proposals, but see also rep't req. Δ at §1083]*
§1532 of the FY2015 NDAA, as amended, on "Afghanistan Security Forces Fund"	affected by rep't req. at §1208 *[not in SC proposals, but see also §1223]*	affected by rep't req. at §1205	affected by rep't req. at §1261 *[not in SC proposals, but see also §1533]*

Affected Current Law or Description of New Security Cooperation (SC) Provision	DOD's SC Proposals (§§1201-1209 & 1217)	SC Proposals in H.R. 4909, as passed (§§1261 & 1205)	SC Proposals in S. 2943, as passed (§§1251-1265)
§1207 of the FY2012 NDAA (22 U.S.C. 2151 note) on "Global Security Contingency Fund"	affected by rep't req. at §1208 *[not in SC proposals, but see also §1225]*	affected by rep't req. at §1205	affected by rep't req. at §1261 *[not in SC proposals, but see also rep't req. Δ at §1083]*
§1233 of the FY2008 NDAA, as amended, on the "Reimbursement of Certain Coalition Nations for Support Provided to United States Military Operations"	affected by rep't req. at §1208 *[not in SC proposals, but see also §1229]*	affected by rep't req. at §1205 *[not in SC reform provisions, but see also §1212]*	affected by rep't req. at §1261 *[not in SC proposals, but see also §1212]*
§1534 of the FY2015 NDAA on "Counterterrorism Partnerships Fund"	affected by rep't req. at §1208	affected by rep't req. at §1205	affected by rep't req. at §1261 *[not in SC proposals, but see also §1532 and rep't req. Δ at §1083]*

Source: CRS summary of DOD, Office of Legislative Counsel, DOD Legislative Proposals for Fiscal Year 2017, Fifth Package of Proposals Sent to Congress for Inclusion in the National Defense Authorization Act for Fiscal Year 2017 (including Consolidated Section-by-Section Analysis of All Proposals Transmitted to Date), sent to Congress on April 12, 2016; H.R. 4909, as passed by the House on May 18, 2016; S. 2943, as passed by the Senate on June 14, 2016; and SASC report accompanying S. 2943 (S.Rept. 114-255), May 18, 2016.

Notes: With respect to DOD's proposals, the security cooperation "reform" provisions are located at Sections 1201-1209 and Section 1217. With respect to H.R. 4909, corresponding security cooperation provisions are located at Sections 1205 and 1261. With respect to S. 2943, provisions proposed to be incorporated into a new "security cooperation" chapter in Title 10 of the U.S. Code are located at Sections 1251-1265. In some cases, authorities affected by the security cooperation reform provisions are also addressed elsewhere in the FY2017 NDAA versions; those instances are noted in the table above (report-related provisions are also noted as distinct). Other provisions in the FY2017 NDAA may also address security cooperation, but are not included in proposals to establish a new security cooperation chapter in Title 10; correspondingly, these provisions are not included in the table above.

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