# Topicality---GDS 2022

**Resolved**

**Resolved = Law**

**‘Resolved’ means to enact a policy by law**

**Words and Phrases 64** (Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

**Determination reached by voting**

**Webster’s 98** (Revised Unabridged, Dictionary.com)

Resolved: 5. To express, as an opinion or determination, by resolution and vote; to declare or decide by a formal vote; -- followed by a clause; as, the house resolved (or, it was resolved by the house) that no money should be apropriated (or, to appropriate no money).

### Resolved = Immediate

**‘Resolved’ implies immediacy**

**Random House 6** (Unabridged Dictionary, http://dictionary.reference.com/browse/resolve)

re·solve thinsp [Audio Help](http://dictionary.reference.com/help/audio.html)   /rɪˈzɒlv/ Pronunciation Key - Show Spelled Pronunciation[ri-zolv] Pronunciation Key - Show IPA Pronunciation verb, -solved, -solv·ing, noun

–verb (used with object)

1. to come to a definite or **earnest** decision about; determine (to do something): I have resolved that I shall live to the full.

### AT: Resolved = Immediate

**‘Resolved’ doesn’t require immediacy**

**PTE 9** – Online Plain Text English Dictionary 2009

(http://www.onelook.com/?other=web1913&w=Resolve)

Resolve: “To form a purpose; to make a decision; especially, to determine after reflection; as, to resolve on a better course of life.”

### Resolved = Certain

**Firm decision**

Merriam-**Webster’s 19** Online Dictionary, “resolved”, https://www.merriam-webster.com/dictionary/resolved

5 : to reach a firm decision about

resolve to get more sleep

resolve disputed points in a text

**Specific course of action**

**AHD 6** (American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

INTRANSITIVE VERB:1. To reach a decision or make a determination: resolve on a course of action. 2. To become separated or reduced to constituents. 3. Music To undergo resolution.

**AT: Resolved = Certain**

**‘Resolved’ doesn’t require certainty**

Merriam-**Webster’s 19** Online Dictionary, “resolved”, https://www.merriam-webster.com/dictionary/resolved

: to become separated into component parts

also : to become reduced by dissolving or analysis

2 : to form a resolution : DETERMINE

3 : CONSULT, DELIBERATE

## Colon

**Colon = Meaningless**

**The colon is meaningless---everything after it is what’s important**

**Webster’s 2k** – Webster’s Guide to Grammar and Writing, <http://ccc.commnet.edu/grammar/marks/colon.htm>

Use of a colon before a list or an explanation that is preceded by a clause that can stand by itself. Think of the colon as a gate, inviting one to go on… If the introductory phrase preceding the colon is very brief and the clause following the colon represents the real business of the sentence, begin the clause after the colon with a capital letter.

**The colon just elaborates on what the community was resolved to debate**

**Encarta 7** World Dictionary, “colon”, [http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861 598666](http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861598666)

co·lon (plural co·lons)

noun

Definition:

1. punctuation mark: the punctuation mark (:) used to divide distinct but related sentence components such as clauses in which the second elaborates on the first, or to introduce a list, quotation, or speech. A colon is sometimes used in U.S. business letters after the salutation. Colons are also used between numbers in statements of proportion or time and Biblical or literary references.

## The

**The = Whole**

**‘The’ indicates reference to a noun as a whole**

Merriam **Webster’s 19** Online Dictionary, https://www.merriam-webster.com/dictionary/the

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

**‘The’ means all parts**

**Encarta 9** World English Dictionary, “the”, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861719495

2. indicating generic class: used to refer to a person or thing considered **generically** oruniversally  
bullettransExercise is good for the heart.  
bullettransShe played the violin.  
bullettransThe dog is a loyal pet.

**The = Need Spec**

**‘The’ requires specification**

**AHD 19** American Heritage Dictionary Online, ‘the’, https://www.ahdictionary.com/word/search.html?q=the

a. Used before singular or plural nouns and noun phrases that denote particular, **specified** persons or things: the baby; the dress I wore.

**Requires specification**

**Random House 6** Unabridged Dictionary, http://dictionary.reference.com/browse/the)

(used, esp. before a noun, with a **specifying** or **particularizing** effect, as opposed to the indefinite or generalizing force of the indefinite article *a* or *an*): the book you gave me; Come into the house.

### The = Marks Proper Noun

**Indicates a proper noun**

**Random House 6** Unabridged Dictionary, http://dictionary.reference.com/browse/the)

(used to mark a proper noun, natural phenomenon, ship, building, time, point of the compass, branch of endeavor, or field of study as something well-known or unique): the sun; the Alps; the Queen Elizabeth; the past; the West.

### The = Interpret Generally

**Means the noun must be interpreted generically**

Merriam-**Webster’s 9** Online Dictionary, “the”, http://www.merriam-webster.com/dictionary/the)

3 a—used as a function word before a **singular noun** to indicate that the noun is to be understood **generically** <the dog is a domestic animal> b—used as a function word before a singular substantivized adjective to indicate an abstract idea <an essay on the sublime>

## USFG

**US = USA**

**‘United States’ is a proper noun referring to the USA**

Oxford Dictionaries Online, **Oxford 19**, ‘United States’, https://www.lexico.com/en/definition/united\_states

PROPER NOUN

A country occupying most of the southern half of North America and including also Alaska and the Hawaiian Islands; population 321,800,000 (estimated 2015); capital, Washington, DC. Full name **U**nited **S**tates of **A**merica.

**It’s short form for the United States of America**

Collins Dictionary Online, **Collins 19**, ‘United States’, https://www.collinsdictionary.com/dictionary/english/united-states

proper noun [the N]

The **U**nited **S**tates of **A**merica is the official name for the country in North America that consists of fifty states and the District of Columbia. It is bordered by Canada in the north and Mexico in the south. The **form** United States is also used.

**‘United States’ means the USA**

**Collins 14** Collins English Dictionary, “United States”, http://www.collinsdictionary.com/dictionary/english/united-states

plural noun

the United States = **U**nited **S**tates of **A**merica1

**US = Country**

**‘United States’ refers to the country as a whole**

**AHD 9** – American Heritage Dictionary, “United States”, http://www.thefreedictionary.com/United+States

United States or United States of America Abbr. U.S. or US or U.S.A. or USA

A country of central and northwest North America with coastlines on the Atlantic and Pacific oceans. It includes the noncontiguous states of Alaska and Hawaii and various island territories in the Caribbean Sea and Pacific Ocean. The area now occupied by the contiguous 48 states was originally inhabited by numerous Native American peoples and was colonized beginning in the 16th century by Spain, France, the Netherlands, and England. Great Britain eventually controlled most of the Atlantic coast and, after the French and Indian Wars (1754-1763), the Northwest Territory and Canada. The original Thirteen Colonies declared their independence from Great Britain in 1776 and formed a government under the Articles of Confederation in 1781, adopting (1787) a new constitution that went into effect after 1789. The nation soon began to expand westward. Growing tensions over the issue of Black slavery divided the country along geographic lines, sparking the secession of the South and the Civil War (1861-1865). The remainder of the 19th century was marked by increased westward expansion, industrialization, and the influx of millions of immigrants. The United States entered World War II after the Japanese attack (1941) on Pearl Harbor and emerged after the war as a world power. Washington, D.C., is the capital and New York the largest city. Population: 302,000,000.

**US = Includes FG**

**‘United States’ includes the federal government**

**National Atlas 13** – “Government of the United States”, 1-14, http://www.nationalatlas.gov/government.html

Introduction

The United States of America is a democracy, which means it is governed by the will of its people. Its government provides a system of management for American citizens. Established in 1789, the **U**nited **S**tates is a federal republic, with a strong democratic tradition. Its legal system is based on English common law. The government is divided into separate governing units. At the top level is the Federal Government, which provides functions that are best managed by a centralized government, such as defense, currency regulation, and foreign relations. Its capital city is Washington, D.C.

Federal Government

At the Federal level, there are three branches of government: executive, legislative, and judicial. These branches work in concert under a set of checks and balances that ensure a relatively even distribution of authority and power.

**USFG = National Government**

**‘Federal government’ means the national government**

Lumen Learning, **Lumen 19**, “The Division of Powers”, https://courses.lumenlearning.com/openstax-americangovernment/chapter/the-division-of-powers/

Modern democracies divide governmental power in two general ways; some, like the United States, use a combination of both structures. The first and more common mechanism shares power among three branches of government—the legislature, the executive, and the judiciary. The second, federalism, apportions power between two levels of government: national and subnational. In the **U**nited **S**tates, the term federal government refers to the government at the national level, while the term states means governments at the subnational level.

**They’re synonyms**

Commonwealth of **Virginia 19** Department of Education, “Virginia State and Local Civic Education Module – Civic Education – Federalism”, http://www.civiceducationva.org/federalism2.php

Did You Know? Federalism is a system of government in which power is divided between a national government and other regional political structures such as states or provinces. While the United States has a federal system of government, it is important to remember that the term “federal government” is used as a synonym for the national government. Other governmental power structures that exist are unitary and confederal (confederation). In a unitary system of government, the power to govern (and delegate administrative authority) is held by a national (central) government. In a confederal system of government, typically a union or league of independent states retain their sovereignty/power but may delegate a central government or administrative unit to work on common issues or concerns for the benefit of all members.

**‘Federal government’ means the national government**

**Black’s Law 99** Dictionary, Seventh Edition, p. 703

The U.S. government—also termed national government

**‘Federal government’ means the national government, not the states or localities**

**Black’s Law 99** (Dictionary, Seventh Edition, p.703)

A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national political matters

**USFG = USA**

**‘Federal government’ means the government of the United States of America**

**Ballentine's 95** (Legal Dictionary and Thesaurus, p. 245)

the government of the **U**nited **S**tates of **A**merica

**USFG = 3 Branches**

**‘Federal’ government is all three branches**

**Black’s Law 90** Dictionary, p. 695

“[*Government*] In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments.”

**USFG = Excludes States**

**‘Federal’ means the political unit created by the states, not the states themselves**

**OED 89** (Oxford English Dictionary, 2ed. XIX, p. 795)

b. Of or pertaining to the political unity so constituted, as distinguished from the separate states composing it.

**‘Federal’ is the central government not the states**

**AHD 92** (American Heritage Dictionary of the English Language, p. 647)

federal—3. Of or relating to the central government of a federation as distinct from the governments of its member units.

**‘Federal’ refers to a government in which states form a central government**

**AHD 92** (American Heritage Dictionary of the English Language, p. 647)

federal—1. Of, relating to, or being a form of government in which a union of states recognizes the sovereignty of a central authority while retaining certain residual powers of government.

### USFG = Not Monolithic

#### “The federal government” is not monolithic

Chicago Manual No Date (University of Chicago Manual of Style, “Capitalization, Titles”,http://web.archive.org/web/20061125021652/http://www.chicagomanualofstyle.org/CMS\_FAQ/CapitalizationTitles/CapitalizationTitles29.html)  
  
A. The government of the United States is not a single official entity. Nor is it when it is referred to as the federal government or the U.S. government or the U.S. federal government. It’s just a government, which, like those in all countries, has some official bodies that act and operate in the name of government: the Congress, the Senate, the Department of State, etc.

## Should

**Should = Mandatory**

**‘Should’ is mandatory**

Judge Henry **Nieto 9**, Colorado Court of Appeals, 8-20-2009 People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009)

"Should" is "used . . . to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (2002). Courts [\*\*15] interpreting the word in various contexts have drawn conflicting conclusions, although the **weight of authority** appears to favor interpreting "should" in an **imperative, obligatory sense**. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and **could not be misunderstood** by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [\*\*16] have also found that the word conveys to the jury a sense of duty or obligation and **not discretion**. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as **synonymous with the word "must"** and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the **same meaning**. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [\*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey **duty** or **obligation**. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

**‘Should’ means must, opposed to ‘could’, which means mere capability or ‘might’**

Judge **Eager 69**, Supreme Court of Missouri, Division One, 6-9-1969, Burrell v. Mayfair-Lennox Hotels, Inc., 442 S.W.2d 47 (Mo. 1969)

In the briefs both parties rely largely upon definitions, both from dictionaries and cases. We refrain from quoting [\*\*21] or discussing these specifically. In **ordinary parlance** the word "should" imports an idea of **obligation**; it is the past tense of "shall" which implies "owes, ought to, must" (Webster's 3rd Internat. Dict.). Defendant's counsel seem to recognize this meaning. They further concede that "**could"** denotes **mere "capability"** and is often used as meaning **"might."** The dictionary generally confirms the meaning as denoting a mere ability to do or make. Counsel further argue that the use of "should" thus imposed a greater burden upon the defendant. We wholly fail to follow that argument. The instruction, as we see it, required the plaintiff to demonstrate to the jury by its evidence that defendant was obligated to know of the defective condition, and not merely to demonstrate that it would have been possible (or within its ability) to do so. Thus, in the common-sense meaning of the language used, the plaintiff and not the defendant bore a greater burden from the deviation. It seems possible that defendant thinks that the instruction tells the jury that defendant was obligated to know of the defect. Such is not true. It simply told the jury that before it could find [\*\*22] for the plaintiff it must find that, under the circumstances, defendant was obligated to know of it. Our view as to where the additional burden was cast seems to be confirmed in the case of Thompson v. Quincy, O. & K.C.R. Co., Mo., 18 S.W.2d 401.

**‘Should’ means must---its mandatory**

**Foresi 32** Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, 7-14, Lexis

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they should acquit, the word 'should' is **not used in an advisory sense** but has the force or meaning of 'must', or 'ought to' and carries [\*\*\*8] with it the sense of [\*313] obligation and duty equivalent to **compulsion**. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

**‘Should’ means must**

**Words & Phrases 6** Permanent Edition 39, p. 369

C.D.Cal. 2005. “Should,” as used in the Social Security Administration’s ruling stating that an ALJ should call on the services of a medical advisor when onset must be inferred, means “must.”—Herrera v. Barnhart, 379 F.Supp.2d 1103.—Social S 142.5.

**Should = Not Mandatory**

**‘Should’ isn’t mandatory**

**Duarte 19 –** Development Code of the City of Duarte, California, Municipal Code, “ARTICLE 1 - ENACTMENT, APPLICABILITY, AND ENFORCEMENT”, 1/10/2019,

https://library.municode.com/ca/duarte/codes/development\_code?nodeId=ART1ENAPEN\_CH19.02PUAPDECO

B. *Terminology*. When used in this title, the following rules apply to all provisions of this Development Code:

1. *Language*. When used in this Development Code, the words "shall," "must," "will," "is to," and "are to" are always mandatory. "Should" is **not mandatory** but is strongly **recommended**; and "may" is permissive.

**‘Should’ does not require certainty---in policy contexts, it means action in most cases, with possibility for exceptions**

**COR 15** County of Riverside, February 2015, Draft General Plan Amendment No. 960, http://planning.rctlma.org/Portals/0/genplan/general\_plan\_2015/GPA%20960/General%20Plan%20Elements/Ch01\_Intro.pdf

For a policy to be useful, it must be clear. However, not all policies are the same; they differ in terms of expected results, commitment of resources, and indication of importance or urgency. Therefore, it is important to simplify the language used in the General Plan and understand the distinctions between the different levels of policy. The following **definitions** of terms provide **guidance in interpreting** the **policy language** of the General Plan:

Ÿ Shall: Policies containing the word **“shall”** indicate that an action **must be taken in all cases**. This represents **absolute commitment** to the policy, and the expectation is that the policy will **always be carried out**.

Ÿ Should: Policies containing the word **“should”** indicate that an action will be taken in **most cases**, but **exceptions are acceptable for good reason**.

**It isn’t mandatory**

**Words & Phrases 6** Permanent Edition 39, p. 369

C.A.6 (Tenn.) 2001. Word “should,” in most contexts, is precatory, **not mandatory**. –U.S. v. Rogers, 14 Fed.Appx. 303. –Statut 227.

**Strong admonition---not mandatory**

Michael **Taylor 5**, Resources for the Future and Julie Howard, Partnership to Cut Hunger and Poverty in Africa, “Investing in Africa's Future: U.S. Agricultural Development Assistance for Sub-Saharan Africa”, 9-12, http://www.sarpn.org.za/documents/d0001784/5-US-agric\_Sept2005\_Chap2.pdf

Other legislated DA earmarks in the FY2005 appropriations bill are smaller and more targeted: plant biotechnology research and development ($25 million), the American Schools and Hospitals Abroad program ($20 million), women’s leadership capacity ($15 million), the International Fertilizer Development Center ($2.3 million), and clean water treatment ($2 million). Interestingly, in the wording of the bill, Congress uses the term *shall* in connection with only two of these eight earmarks; the others say that USAID *should* make the prescribed amount available. The **difference** between *shall* and *should* may have **legal significance**—one is clearly **mandatory** while the other is a **strong admonition**—but it makes little practical difference in USAID’s need to comply with the congressional directive to the best of its ability.

**It’s permissive**

**Words and Phrases 2** Vol. 39, p. 370

Cal.App. 5 Dist. 1976. Term “should,” as used in statutory provision that motion to suppress search warrant should first be heard by magistrate who issued warrant, is used in regular, persuasive sense, as **recommendation**, and is thus **not mandatory** but **permissive**. West’s Ann.Pen Code, § 1538.5(b).---Cuevas v. Superior Court, 130 Cal. Rptr. 238, 58 Cal.App.3d 406 ----Searches 191.

**Desirable or recommended, but not mandatory**

**Words and Phrases 2** Vol. 39, p. 372-373

Or. 1952. Where safety regulation for sawmill industry providing that a two by two inch guard rail should be installed at extreme outer edge of walkways adjacent to sorting tables was immediately preceded by other regulations in which word “shall” instead of “should” was used, and word “should” did not appear to be result of inadvertent use in particular regulation, use of word “should” was intended to convey idea that particular precaution involved was **desirable** and **recommended**, but **not mandatory**. ORS 654.005 et seq.----Baldassarre v. West Oregon Lumber Co., 239 P.2d 839, 193 Or. 556.---Labor & Emp. 2857

**‘Should’ isn’t binding**

George **Dvorsky 15**, Gizmodo, A Single Typo Nearly Killed the Paris Climate Accord, 12/14/15, gizmodo.com/a-single-typo-nearly-killed-the-paris-climate-accord-1747908970

Hours before the historic Paris climate accord was to be ratified in a final vote, someone noticed that a word had been changed in the final draft of the text—a **single word** that threatened to derail the entire deal. As reported in the Washington Post, someone changed the word “should” to “shall.” Now, it seems like a little thing, but given that the words were in reference to sweeping new legal and financial obligations, **it mattered. A lot.** When it comes to **legally binding terminology**, there’s a **big difference** between “should” and “shall.” Whereas “should” is a kind of wishy-washy call to action, the word “shall” implies an obligation, and this is why Secretary of State John Kerry could not abide the unexpected change. The New York Times reports: Throughout the process, the longer and **less binding** “should” was a **deliberate** part of the international agreement, put there to establish that the richest countries, including the United States, felt obligated to pony up money to help poor countries adapt to climate change and make the transition to sustainable energy systems. “Shall” meant something altogether different, American officials said. When “shall” was spotted in the document on Saturday, Secretary of State John Kerry called his French counterpart and made it clear that unless a switch was made, France could not count on American support for the agreement. “I said: ‘We cannot do this and we will not do this. And either it changes, or President Obama and the United States will not be able to support this agreement,’ ” Mr. Kerry told reporters after delegates had accepted the deal by consensus Saturday night, amid cheering and the celebratory stamping of feet. Thankfully, cooler heads prevailed, and within hours the wording within the 31-page text was reverted back to the original “should.” A subsequent vote affirmed the Paris Accord, and all was saved.

**‘Should’ means desirable---this does not have to be a mandate**

**AC 99** Atlas Collaboration, “Use of Shall, Should, May Can,” http://rd13doc.cern.ch/Atlas/DaqSoft/sde/inspect/shall.html

shall

'shall' describes something that is mandatory. If a requirement uses 'shall', then that requirement \_will\_ be satisfied without fail. Noncompliance is not allowed. Failure to comply with one single 'shall' is sufficient reason to reject the entire product. Indeed, it must be rejected under these circumstances. Examples: # "Requirements shall make use of the word 'shall' only where compliance is mandatory." This is a good example. # "C++ code shall have comments every 5th line." This is a bad example. Using 'shall' here is too strong.

should

'should' is weaker. It describes something that might not be satisfied in the final product, but that is desirable enough that any noncompliance shall be explicitly justified. Any use of 'should' should be examined carefully, as it probably means that something is not being stated clearly. If a 'should' can be replaced by a 'shall', or can be discarded entirely, so much the better. Examples: # "C++ code should be ANSI compliant." A good example. It may not be possible to be ANSI compliant on all platforms, but we should try. # "Code should be tested thoroughly." Bad example. This 'should' shall be replaced with 'shall' if this requirement is to be stated anywhere (to say nothing of defining what 'thoroughly' means).

**‘Should’ doesn’t require certainty**

**Black’s Law 79** Black’s Law Dictionary – Fifth Edition, p. 1237

Should. The past tense of shall; ordinarily implying duty or obligation; although usually no more than an obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from “ought.” It is not normally synonymous with “may,” and although often interchangeable with the word “would,” it **does not ordinarily express certainty** as “will” sometimes does.

**Should = Immediate**

**‘Should’ means ‘must’ and requires immediate legal effect**

Justice **Summers 94**, Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13

4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn16)

[FOOTNOTE]

[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as **more** than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) *In praesenti*means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or ***immediately effective***, as opposed to something that *will* or *would* become effective ***in the future*** *[in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

**AT: Should = Not Immediate**

**‘Should’ doesn’t mean immediate**

**Random House 19** Dictionary Online, https://www.dictionary.com/browse/shall

should    /ʃʊd/ Show Spelled[shood] Show IPA –auxiliary verb 1. pt. of shall. 2. (used to express condition): Were he to arrive, I should be pleased. 3. must; ought (used to indicate duty, propriety, or expediency): You should not do that. 4. would (used to make a statement less direct or blunt): I should think you would apologize. Use should in a Sentence See images of should Search should on the Web Origin: ME sholde, OE sc ( e ) olde; see shall —Can be confused:  could, should, would (see usage note at this entry ). —Synonyms 3. See must1 . —Usage note Rules similar to those for choosing between shall and will have long been advanced for should and would, but again the rules have had little effect on usage. In most constructions, would is the auxiliary chosen regardless of the person of the subject: If our allies would support the move, we would abandon any claim to sovereignty. You would be surprised at the complexity of the directions. Because the main function of should in modern American English is to express duty, necessity, etc. ( You should get your flu shot before winter comes ), its use for other purposes, as to form a subjunctive, can produce ambiguity, at least initially: I should get my flu shot if I were you. Furthermore, should seems an affectation to many Americans when used in certain constructions quite common in British English: Had I been informed, I should (American would ) have called immediately. I should (American would ) really prefer a different arrangement. As with shall and will, most educated native speakers of American English do not follow the textbook rule in making a choice between should and would. See also shall. Shall –auxiliary verb, present singular 1st person shall, 2nd shall or ( Archaic ) shalt, 3rd shall, present plural shall; past singular 1st person should, 2nd should or ( Archaic ) shouldst or should·est, 3rd should, past plural should; imperative, infinitive, and participles lacking. 1. plan to, *intend* to, or expect to: I shall go later.

**Should = Future Oriented**

**‘Should’ means future action**

**AHD 2k** – American Heritage Dictionary Online

should    ( P )  [Pronunciation Key](http://dictionary.reference.com/help/ahd4/pronkey.html)  (shd)  
aux.v. Past tense of shall

**‘Should’ is future-oriented---context is key**

Douglas **Russell 8** Appellate Judge for the State of Iowa, IN THE MATTER OF THE ESTATE OF CLYDE L. GUTHRIE, Deceased, JAMES GUTHRIE, CLARA LUTZ, AND DORIS DAUBER, Plaintiffs-Appellees, vs. KAITLYN BUSCH, a minor, AND BROCK BUSCH, Defendants-Appellants. No. 8-093 / 07-1427 COURT OF APPEALS OF IOWA 2008 Iowa App. LEXIS 287 May 14, 2008, Filed, lexis

Clyde's will provides, "in the event any of my children should predecease me leaving issue who survive me, then the share of such predeceased child shall go in equal shares to his or her issue who survive me, per stirpes." We find no error in the district court's conclusion  [\*6] that an intent to avoid the application of the antilapse statute is not "clear and explicit" from the terms of the will. The will states "in the event" Clyde was predeceased by a child, when in fact Clyde had been predeceased by two of his children at the time the will was written. If the will was referring to the children who had already predeceased Clyde, there would be no need to say "in the event." By stating "in the event" it is clear Clyde was looking ahead to possible future events, when one of his children who were alive when the will was written might predecease him.

Brock and Kaitlyn look to the word "should" in the phrase "in the event any of my children should predecease me" and claim the district court improperly found the word looked to the future. They claim the word should be interpreted as the past tense of "shall" to imply a duty or obligation. See Black's Law Dictionary 1379 (6th ed. 1990). Looking at the **phrase as a whole**, however, rather than at a single word, we determine the phrase is considering possible future events. See In re Estate of Grulke, 546 N.W.2d 626, 627 (Iowa Ct. App. 1996) (noting HN6we must ascertain a testator's intent from the entire will).

**Should = Obligation/Expectation**

**‘Should’ means an obligation or duty**

**AHD 92** – AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—1. Used to express obligation or duty: *You should send her a note*.

**‘Should’ expresses an expectation of something**

**AHD 92** – AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—2. Used to express probability or expectation: *They should arrive at noon*.

**‘Should’ expresses conditionality or contingency**

**AHD 92** – AHD, American Heritage Dictionary of the English Language, 1992 (4ed); Pg. 1612

Should—3. Used to express conditionality or contingency: *If she should fall, then so would* *I*.

**‘Should’ expresses duty, obligation, or necessity**

**Webster’s 61** – Webster’s Third New International Dictionary 1961 p. 2104

Used in auxiliary function to express duty, obligation, necessity, propriety, or expediency

**Substantially**

**Substantially = 2%**

**“Substantially increase” means beyond 2%**

**Dangerfield 18** – National Online Journalist, Global News

Katie Dangerfield, "Donald Trump says NATO members will ‘substantially’ increase defence spending," Global News, 7-12-2018, https://globalnews.ca/news/4327001/donald-trump-nato-members-defence-spending/

U.S. President Donald Trump said NATO members have agreed to substantially increase spending on their own defence.

Speaking at a media conference after the NATO summit in Brussels on Thursday, Trump said his commitment to the decades-old military alliance “remains very strong,” adding allies had made unprecedented commitments to increase spending “beyond two per cent.”

**‘Substantial’ must be at least 2%**

**Words & Phrases 60**

'Substantial" means "of real worth and importance; of considerable value; valuable." Bequest to charitable institution, making **1/48** of expenditures in state, held exempt from taxation; such expenditures constituting "substantial" part of its activities. Tax Commission of Ohio v. American Humane Education Soc., 181 N.E. 557, 42 Ohio App. 4.

**Substantially = 10%**

**Less than 10% is ‘insubstantial’**

Alissa **Mickels 8**, JD Candidate – Hastings College of Law, “Summary of Existing US Law Affecting Fourth Sector Organizations”, 7-17, [http://www.fourthsector.net/attachments/7/original/Summary\_of\_US\_Law\_Affecting\_ FS.pdf?1229493187](http://www.fourthsector.net/attachments/7/original/Summary_of_US_Law_Affecting_FS.pdf?1229493187)

**Substantial v. insubstantial**: Modern courts consider competition with commercial firms as “strong evidence of a substantial nonexempt purpose.” Living Faith, Inc. v. Comm’r, 60 T.C.M. 710, 713 (1990). Although the tax court has held that the definition of insubstantial is **fact specific**, it has found that **less than ten percent** of a charity’s total efforts is **“insubstantial”**, World Family Corp. v. Comm’r, 78 T.C. 921 (1982), where as unrelated business activity generating one-third of an organizations revenue does not qualify for tax-exempt status. Orange County Agric. Soc’y, Inc. v. Comm’r, 55 T.C.M. 1602, 1604 (1988), aff’d 893 F.2d 647 (2d Cir. 1990). However, this may be changing after an increasing emphasis on commensurate test.

**Substantially = 33%**

**‘Substantially’ means 33 percent**

Larry **Maples 7**, “Pitfalls in Preserving Net Operating Losses”, The CPA Journal, 3-1, Lexis

If a new loss corporation has substantial nonbusiness assets, the value of the old loss corporation must be reduced by the amount of the nonbusiness assets less liabilities attributable to those assets. "Substantial" is defined as **one-third** of total assets. This is a difficult provision to interpret. IRC section 382(1)(4) provides that a value reduction in the old loss corporation is required if, just after an ownership change, the new loss corporation has substantial nonbusiness assets. This language seems odd because the purpose of IRC section 382 is to prevent loss trafficking, so it would seem that the asset test ought to apply to the old loss corporation.

**Substantially = 40%**

**‘Substantially’ means 40%---strict quantification avoids vagueness**

Arthur **Schwartz 4**, Lawyer at Schwartz + Goldberg, 2002 U.S. Briefs 1609, Lexis

In the opinion below, the Tenth Circuit suggested that a percentage figure would be **a way to avoid vagueness issues**. (Pet. App., at 13-14) Indeed, one of the Amici supporting the City in this case, the American Planning Association, produced a publication that actually makes a recommendation of a percentage figure that should be adopted by municipalities in establishing zoning  [\*37]  regulations for adult businesses. n8 The APA's well researched report recommended that the terms **"substantial" and "significant" be quantified at 40 percent** for floor space or inventory of a business in the definition of adult business. n9 (Resp. Br. App., at 15-16)

**Substantially = 50%**

**‘Substantial increase’ must be at least 50%**

**UNEP 2** United Nations Environmental Program, 10-2, www.unep.org/geo/geo3/english/584.htm

Change in selected pressures on natural ecosystems 2002-32. For the ecosystem quality component, see the explanation of the Natural Capital Index. Values for the cumulative pressures were derived as described under Natural Capital Index. The maps show the relative increase or decrease in pressure between 2002 and 2032. 'No change' means less than 10 per cent change in pressure over the scenario period; small increase or decrease means between 10 and 50 per cent change; **substantial increase** or decrease **means 50 to 100 per cent** change; strong increase means more than doubling of pressure. Areas which switch between natural and domesticated land uses are recorded separately.

**Less than 50% is ‘insubstantial’**

**Legal experts agree**

**Davignon v. Clemmey 1** (Davignon v. Clemmey, 176 F. Supp. 2d 77, Lexis)

The court begins the lodestar calculation by looking at the contemporaneous billing records for each person who worked on the plaintiff's case. The absence of detailed contemporaneous time records, except in extraordinary circumstances, will call for a substantial reduction in any award or, in egregious cases, disallowance. **What is a "substantial reduction"? Fifty percent is a favorite among judges.**

**Substantially = 90%**

**‘Substantially’ means at least 90%**

**Words & Phrases 5** 40B, p. 329

N.H. 1949. -The word "substantially" as used in provision of Unemployment Compensation Act that experience rating of an employer may transferred to' an employing unit which acquires the organization, -trade, or business, or "substantially" all of the assets thereof, is 'an elastic term which does not include a definite, fixed amount of percentage, and the transfer does not have to be 100 per cent but **cannot be less than 90 per cent** in the ordinary situation. R.L c. 218, § 6, subd. F, as added by Laws 1945, c. 138, § 16.-Auclair Transp. v. Riley, 69 A.2d 861, 96 N.H. l.-Tax347.1.

**Quantitative Defs Good**

**‘Substantial’ must be assigned quantitative meaning**

Debra **Bernes 7**, Then Judge on the Georgia Court of Appeals, Pomerance v. Berkshire Life Ins. Co. of Am., 288 Ga. App. 491, 494-95, 654 S.E.2d 638, 640-42,2007 (Westlaw)

Bearing these principles in mind, we must first determine whether the policy language **\*\*641** at issue is clear and unambiguous.2 We conclude that it is not. As noted, the Policies defined total disability as “the inability to perform thematerial and substantial duties of [the insured's] occupation.” On the one hand, “substantial” can have a **qualitative** meaning and be defined as “important” or “essential.” See Merriam-Webster's Online Dictionary, [http://www.merriam-webster](http://www.merriam-webster/). com /dictionary/substantial. On the other hand, “substantial” can have a **quantitative** meaning and be defined as “considerable in quantity” or “significantly great” in amount. See id. Because “substantial” is susceptible of two alternative meanings, the definition of total disability is rendered ambiguous. Under one reading, an insured is totally disabled if he cannot perform his important and material duties; however, under the alternative reading, an insured is totally disabled if he cannot perform a significantly great amount of his material duties.

6 As such, we must apply the rules of contract construction in an effort to resolve the ambiguity. See Hurst, 266 Ga. at 716(4), 470 S.E.2d 659. If “substantial” is treated as qualitative in meaning and thus is defined as “important” or “essential,” its meaning would be interchangeable with the meaning of “material,” a term that also is used in the definition of “total disability” under the Policies. See Black's Law Dictionary (6th ed. 1990), p. 1428 (pointing out that “substantial” can be “[s]ynonymous with material”); Merriam-Webster's Online Dictionary,[http://www.merriam-webster](http://www.merriam-webster/). com/dictionary/material (defining “material” as “having real importance or great consequences”). But, it is a cardinal rule of contract construction “that a court should, if possible, construe a contract so as not to render any of its provisions meaningless” and in a manner that gives effect to all of the contractual terms. VATACS Group v. HomeSide Lending, 276 Ga.App. 386, 389(1), 623 S.E.2d 534 (2005). See also Tyson v. McPhail Properties, 223 Ga.App. 683, 689(6), 478 S.E.2d 467 (1996) (finding that the contract “would not have used two different terms in two sequential paragraphs to describe the same thing”). As such, in order to avoid rendering the term “material” as mere surplusage, we **must construe** \*495 the term “substantial” as having the quantitative meaning of “considerable in quantity” or “significantly great” in amount. See Merriam-Webster's Online Dictionary, [http://www.merriam-webster](http://www.merriam-webster/). com /dictionary/substantial.  
7 When “substantial” is treated as distinct from the term “material” and thus as qualitative in meaning, it is clear that an insured is totally disabled under the Policies when he is unable to perform a significantly great amount (i.e., most or a vast majority) of the material duties of his occupation. Notably, this interpretation of the total disability definition comports with that of several foreign jurisdictions that have interpreted insurance policies containing similar language. See Giddens v. Equitable Life Assurance etc., 445 F.3d 1286, 1296-1301(II)(D)(2) (11th Cir.2006); Dowdle v. Nat. Life Ins. Co., 407 F.3d 967, 970(II) (8th Cir.2005); Gladstone v. Provident Life, etc., Ins. Co., No. 1:05-CV-2868-CC, 2007 U.S. Dist. LEXIS 63233 ([N.D.Ga](http://n.d.ga/" \t "_blank). Aug. 17, 2007); Gross v. UnumProvident Life Ins. Co., 319 F.Supp.2d 1129, 1136(III)(A) (C.D.Cal.2004).3  
\*\*642 8 In reaching this conclusion, we reject Berkshire's argument that the residual disability rider, when read in conjunction with the total disability provision, requires that total disability be defined as the inability of the insured to perform all of the material duties of his occupation. Rather, we conclude that the language of the rider can be read in a manner consistent with the definition of total disability as the inability to perform ***most* or a *vast majority*** of the material duties of the insured's occupation. The rider defines residual disability as the “inability to do one or more of [the insured's] important daily business or professional duties.” The rider, when read in conjunction with the definition of total disability, creates “a continuum of disability.”

**---AT: Arbitrary**

**‘Substantially’ isn’t precise, but still must be given meaning. The most objective way to define it contextually.**

Paul **Devinsky 2**, Partner in the Law Firm of McDermott Will & Emery LLP, “Is Claim "Substantially" Definite?  Ask Person of Skill in the Art”, IP Update, Volume 5, Number 11, November, http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object\_id/c2c73bdb-9b1a-42bf-a2b7-075812dc0e2d.cfm

In reversing a summary judgment of invalidity, the U.S. Court of Appeals for the Federal Circuit found that the district court, by failing to look beyond the intrinsic claim construction evidence to consider what a person of skill in the art would understand in a "technologic context," **erroneously concluded** the term "substantially" made a claim fatally indefinite.  Verve, LLC v. Crane Cams, Inc., Case No. 01-1417 (Fed. Cir. November 14, 2002). The patent in suit related to an improved push rod for an internal combustion engine.  The patent claims a hollow push rod whose overall diameter is larger at the middle than at the ends and has "substantially constant wall thickness" throughout the rod and rounded seats at the tips.  The district court found that the expression "substantially constant wall thickness" was not supported in the specification and prosecution history by a sufficiently clear definition of "substantially" and was, therefore, indefinite.  The district court recognized that the use of the term "substantially" may be definite in some cases but ruled that in this case it was indefinite because it was not further defined. The Federal Circuit reversed, concluding that the district court erred in requiring that the meaning of the term "substantially" in a particular "technologic context" be found solely in intrinsic evidence:  "While reference to intrinsic evidence is primary in interpreting claims, the criterion is the meaning of words as they would be understood by persons in the field of the invention."  Thus, the Federal Circuit instructed that "resolution of any ambiguity arising from the claims and specification may be aided by extrinsic evidence of usage and meaning of a term in the context of the invention."  The Federal Circuit remanded the case to the district court with instruction that "[t]he question is not whether the word 'substantially' has a fixed meaning as applied to 'constant wall thickness,' but how the phrase would be understood by persons experienced in this field of mechanics, upon reading the patent documents."

**‘Substantially’ needs to be given a quantitative meaning---any other interpretation is more arbitrary**

Merriam **Webster’s 19** Online Dictionary, ‘substantial’, https://www.merriam-webster.com/dictionary/substantial

Main Entry: sub.stan.tial

b : considerable in **quantity** : significantly great

earned a substantial wage

**Make the best determination available. ‘Substantially’ must be given meaning.**

**Words and Phrases 60** Vol. 40, State – Subway, p. 762

“Substantial” is a relative word, which, while it must be used with **care and discrimination**, **must nevertheless be given effect**, and in a claim of patent allowed considerable latitude of meaning where it is applied to such subject as thickness, as by requiring two parts of a device to be substantially the same thickness, and cannot be held to require them to be of exactly the same thickness. Todd. V. Sears Roebuck & Co., D.C.N.C., 199 F.Supp. 38, 41.

**Using context removes the arbitrariness of assigning a fixed percentage to ‘substantial’**

Pilar **Viscasillas 4**, Professor at the Universidad Carlos III de Madrid, “Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG)”, CISG Advisory Council Opinion No. 4, 10-24, <http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146>)  
2.8. Legal writers who follow the economic value criterion have generally quantified the term "substantial part" by comparing Article 3(1) CISG (substantial) with Article 3(2) CISG (preponderant): substantial being less than preponderant. In this way, legal writers have used the following percentages to quantify substantial: 15%,[[14]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#14) between 40% and 50%,[[15]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#15) or more generally 50%.[[16]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#16) At the same time, other authors, although they have not fixed any numbers in regard to the quantification of the term "substantial" have declared that "preponderant" means "considerably more than 50% of the price" or "clearly in excess of 50%".[[17]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#17) Thus it seems that for the latter authors, the quantification of the term "substantial" is placed above the 50% figure. Also, some Courts have followed this approach.[[18]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#18)

2.9. To consider a fixed percentage might be **arbitrary** due to the fact that the particularities of each case ought to be taken into account; that the scholars are in disagreement; and that the origin of those figures is not clear.[[19]](http://cisgac.com/default.php?ipkCat=128&ifkCat=146&sid=146#19)

Therefore, it does not seem to be advisable to quantify the word "substantial" *a priori* in percentages. **A case-by-case analysis is preferable** and thus it should be determined on the basis of an overall assessment.

**Contextual definitions of ‘substantial’ solve arbitrariness**Barry **Tarlow 2k**, Nationally Prominent Criminal Defense Lawyer Practicing in Los Angeles, CA, Frequent Author and Lecturer on Criminal Law, Former Prosecutor in the United States Attorney's Office and Member of The Champion Advisory Board, The Champion January/February, Lexis

In *Victor*, the trial court instructed that: "A reasonable doubt is an actual and substantial doubt . . . as distinguished from a doubt arising from mere  [\*64]  possibility, from bare imagination, or from fanciful conjecture." Victor argued on appeal after receiving the death penalty that equating a reasonable doubt with a "substantial doubt" overstated the degree of doubt necessary for acquittal. Although the court agreed that the instruction was problematic given that "substantial," could be defined as "that specified to a large degree," it also ruled that **any ambiguity was removed by reading the phrase in the context** of the sentence in which it appeared. Finding such an explicit distinction between a substantial doubt and a fanciful conjecture was not present in the *Cage* instruction, it held that the context makes clear that "substantial" was used in the sense of existence rather than in magnitude of the doubt and, therefore, it was not unconstitutional as applied. [*Id. at 1250*](http://www.lexisnexis.com.proxy.lib.umich.edu/lnacui2api/mungo/lexseestat.do?bct=A&risb=21_T11113058883&homeCsi=154153&A=0.08807382399355024&urlEnc=ISO-8859-1&&citeString=114%20S.%20Ct.%201239,at%201250&countryCode=USA).

**Even if a ‘substantial increase’ isn’t precise --- you should still exclude their Aff for being tiny. Even judges can make a gut check.**

Judge **Hartmann 7**, Hong Kong (IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE, 8/20, http://legalref.judiciary.gov.hk/lrs/common/ju/ju\_frame.jsp?DIS=58463&currpage=T

 The word ‘substantial’ is not a technical term nor is it a word that lends itself to a precise measurement.  In an earlier judgment on this issue, that of S. v. S. [2006] 3 HKLRD 251, I said that it is not a word —

“… that lends itself to precise definition or from which precise deductions can be drawn.  To say, for example, that ‘there has been a substantial increase in expenditure’ does not of itself allow for a calculation in numerative terms of the exact increase.  It is a statement to the effect that it is certainly more than a little but less than great.  It defines, however, a significant increase, one that is weighty or sizeable.”

**Substantially = All**

**‘Substantial’ means totality of circumstances**

**US First Circuit Court of Appeals ’98**

In Re Richard Lamanna, Debtor.first Usa, et al., Appellees, v. Richard Lamanna, AppellantUnited States Court of Appeals, First Circuit. - 153 F.3d 1Heard July 27, 1998.Decided Aug. 25, 1998 <http://www.swlearning.com/blaw/cases/court_uses.html>

Decision Affirmed. The court joins other circuits in adopting the **"totality of the circumstances"** test as the measure of substantial abuse under the Bankruptcy Code. This is a flexible standard adopted by Congress to allow bankruptcy courts to consider the factors involved in each case and to prevent abuse of Chapter 7 filings. When there is evidence that the consumer can pay their debts, there is likely to be found substantial abuse.

**Substantially = Considerable**

**Substantial is considerable---NOT quantitative**

**SEC 5** Investment Company Act of 1940 -- Section 3(a)(1)(A), 3(a)(1)(C), 3(c)(3), 2(a)(5), 7(d), 3(a)(10) -- Rule 3a-6(b), 3a-6, 3a-6(a), 3a-6(b)(2), 6c-9, 3-16 of Regulation S-X, 902 of Regulation S, lexis

You contend further that the **ten percent** test is consistent with the plain meaning of the **word "substantial":** **"Belonging to substance;** actually **existing**; **real**; not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal." n7 You also contend that foreign banks that meet the ten percent test view their deposit-taking and credit extension activities as substantial due in part to the resources that must be extended to engage in those activities. In addition, you assert that the relevant foreign financial authorities view these activities as substantial, as evidenced by their specific regulation of such activities. In determining whether a foreign bank derives "a substantial portion of its business from ... extending commercial and other types of credit, and accepting demand and other types of deposits," for purposes of rule 3a-6, we are **not inclined** to provide an **interpretation** based **on particular minimum percentages** of either the bank's liabilities (in the case of deposits) or assets or revenues (in the case of credit extensions). This conclusion [\*9] is based, in part, on the fact that the Commission, when adopting this standard, **chose not to define it by reference to minimum percentages**. Although we are not willing to set forth such minimum percentages, we recognize that **various percentages** could demonstrate that a foreign bank derives a **substantial portion** of its business from extending commercial and other types of credit and accepting demand and other types of deposits.

**‘Substantial’ means of considerable amount---not some contrived percentage**

Judge **Prost 4** United States Court of Appeals for the Federal Circuit, “Committee For Fairly Traded Venezuelan Cement v. United States”, 6-18, http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C).  In fact, they merely suggest, without disqualifying other alternatives, a “clearly higher/substantial proportion” approach.  Indeed, the SAA specifically mentions that no “precise mathematical formula” or “‘benchmark’ proportion” is to be used for a dumping concentration analysis.  SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30.  Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a “case-by-case basis.”  SAA at 860.  Finally, the definition of the word “substantial” undercuts the CFTVC’s argument.  The word “substantial” generally means “considerable in amount, value or worth.”  Webster’s Third New International Dictionary 2280 (1993).  **It does not imply a specific number or cut-off**.  What may be substantial in one situation may not be in another situation.  The very breadth of the term “substantial” undercuts the CFTVC’s argument that Congress spoke clearly in establishing a standard for the Commission’s regional antidumping and countervailing duty analyses.  It therefore supports the conclusion that the Commission is owed deference in its interpretation of “substantial proportion.”  The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

**This is the usual and customary meaning**

**Words and Phrases 2** (Volume 40A, p. 458)

D.S.C. 1966. The word “substantial” within Civil Rights Act providing that a place is a public accommodation if a “substantial” portion of food which is served has moved in commerce must be construed in light of its **usual and customary meaning**, that is, something of real worth and importance; of considerable value; valuable, something worthwhile as distinguished from something without value or merely nominal

**That’s best because it’s not a term of art**

David **Arkush 2**, JD Candidate at Harvard University, “Preserving "Catalyst" Attorneys' Fees Under the Freedom of Information Act in the Wake of Buckhannon Board and Care Home v. West Virginia Department of Health and Human Resources”, Harvard Civil Rights-Civil Liberties Law Review, Winter,   
37 Harv. C.R.-C.L. L. Rev. 131

Plaintiffs should argue that the term "substantially prevail" is not a term of art because if considered a term of art, resort to Black's 7th produces a definition of "prevail" that could be interpreted adversely to plaintiffs. [99](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=16&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all#n99) It is commonly accepted that words that are not legal terms of art should be accorded their ordinary, not their legal, meaning, [100](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=16&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all#n100) and ordinary-usage dictionaries provide FOIA fee claimants with helpful arguments. The Supreme Court has already found favorable, temporally relevant definitions of the word "substantially" in ordinary dictionaries: "Substantially" suggests "considerable" or "specified to a large degree." See Webster's Third New International Dictionary 2280 (1976) (defining "substantially" as "in a substantial manner" and "substantial" as "considerable in amount, value, or worth" and "being that specified to a large degree or in the main"); see also 17 Oxford English Dictionary 66-67 (2d ed. 1989) ("substantial": "relating to or proceeding from the essence of a thing; essential"; "of ample or considerable amount, quantity or dimensions"). [101](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=16&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all#n101)

**‘Substantial’ means considerable in amount or value**

**Words and Phrases 2** (Volume 40A) p. 453

N.D.Ala. 1957. The word “substantial” means considerable in amount, value, or the like, large, as a substantial gain

**‘Substantial’ means having worth or value**

**Ballentine's 95** (Legal Dictionary and Thesaurus, p. 644)

having worth or value

**Substantially = Real**

**‘Substantial’ means actually existing, real, or belonging to substance**

**Words and Phrases 2** (Volume 40A) p. 460

Ala. 1909. “Substantial” means “belonging to substance; actually existing; real; \*\*\* not seeming or imaginary; not elusive; real; solid; true; veritable

**‘Substantial means having substance or considerable**

**Ballentine's 95** Legal Dictionary and Thesaurus, p. 644

having **substance**; considerable

**Substantially = In the Main**

**‘Substantial’ means in the main**

David S. **Becker 14**, Partner in the Litigation and Intellectual Property Practice Groups at Freeborn & Peters, LLP, J.D. from DePaul University College of Law, & John C. Hammerle, Associate in the Litigation Practice Group

at Freeborn & Peters, LLP, J.D. from DePaul University College of Law, “The Trouble With “Substantial Completion” in Construction Projects”, Committee News, Winter 2014, https://freeborn.com/assets/the\_trouble\_with\_substantial\_completion\_in\_construction\_projects-aba\_winter\_2014\_newsletter.pdf

3 See, e.g., Kinetic Builder’s, Inc. v. Peters, 226 F.3d 1307, 1315 (Fed. Cir. 2000); Ocean Winds Corp. v. Lane, 556 S.E.2d 377, 379 (S.C. 2001) (citing statutory definition of substantial completion as “that degree of completion of a project, improvement, or a specified area or portion thereof . . . upon attainment of which the owner can use the same for the purpose for which it was intended”) (internal citations and emphasis omitted); Daugherty v. Bruce Realty & Dev., Inc., 892 S.W.2d 332, 335 (Mo. Ct. App. 1995) (“a building is substantially complete . . . when it has reached the state of its construction so that it can be put to the use for which it was intended, even though comparatively minor items remain to be furnished or performed to conform to the plans and specifications of the completed building”); E.R. Stone v. City of Arcola, 181 Ill. App. 3d 513, 526 (Ill. App. Ct. 1989) (acknowledging that a project is “substantially complete” at a given date where “it could be used for the purpose for which it was intended on that date”). See also Sorenson v. Dager, 601 N.W.2d 564, 570 (Neb. Ct. App. 1999) (\*fix this parenthetical); Evans & Assocs. v. Dyer, 246 Ill. App. 3d 231, 239 (Ill. App. Ct. 1993) (“Substantial performance . . . . means performance in all the essential elements necessary to the accomplishment of the purpose of the contract. ‘Substantial’ means in substance; **in the main**; essential, including material or essential parts.”)..

**Yes**

Daniel B. **Meyer 3**, JD from DePaul University College of Law, Attorney in the Law Firm of EimerStahl, Klevorn, & Solberg, BA from Perdue University, Illinois Construction Law, p. 91

“Substantial completion,” as used in the preceding paragraph, is another term of art; it has a meaning, in the construction industry, separate and apart from that as understood by laypersons. The Illinois Supreme Court defines “substantial completion” or “substantial performance” as:

performance in all the essential elements necessary to the accomplishment of the purpose of the contract. “Substantial" means in substance; **in the main**; essential, including material or essential parts. It has been said by this court that “in building contracts a literal compliance with the specifications is not necessary to a recovery by the contractor. A substantial performance in good faith is sufficient.”90

**Yep**

**Words and Phrases 2** (Volume 40A, p. 469)

Ill.App.2 Dist. 1923 “Substantial” means in substance, in the main, essential, including material or essential parts

**Substantially = Without Material Qualification**

**‘Substantial’ is without material qualification**

Lorne **Slotnick 15**, Chair of the Arbitration Board, Labour Arbitration Awards has issued the following decision: IN THE MATTER OF AN ARBITRATION BETWEEN: St. Joseph’s Healthcare Hamilton -and- Canadian Union of Public Employees Local 786, Labour Arbitration Awards: St. Joseph’s Healthcare Hamilton v Canadian Union of Public Employees, Local 786, 2015 CanLII 18978 (ON LA), 2015

The union points to the definition of “similar” in the online Oxford English Dictionary as “having a marked resemblance or likeness; of a like nature or kind,” and in Black’s Law Dictionary as “nearly corresponding; resembling in many respects; somewhat like; having a general likeness, although allowing for some degree of difference.” In addition, **“substantially**” is defined in the **O**xford **E**nglish **D**ictionary as “in **all** essential characters or features; in essentials, **to all intents and purposes**, **in the main**,” and in **Black’s [Law** Dictionary] as “**essentially**; **without material qualification**; **in the main**; in substance; **materially**; in a substantial manner.” The fact that the collective agreement uses both words together must mean that the two shift rotations have to be essentially corresponding or resembling each other in all essential respects for the conditions to be met, the union argues.

**Substantially is without material qualification**

**Black’s Law 91** (Dictionary, p. 1024)

Substantially - means essentially; without material qualification.

**Substantially = Durable**

**‘Substantial’ means durable**

**Ballantine’s 94** (Thesaurus for Legal Research and Writing, p. 173)

substantial [sub . *stan* . shel] *adj*. abundant, consequential, durable, extraordinary, heavyweight, plentiful (“a substantial supply”); actual, concrete, existent, physical, righteous, sensible, tangible (“substantial problem”); affluent, comfortable, easy, opulent, prosperous, solvent.

**Substantially = Mandate**

**‘Substantial’ requires a certain mandate**

**Words and Phrases 64** (40W&P 759)

The words" outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; **certain**: absolute: **real at present time**, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

**Substantially = Not Covert**

**‘Substantial’ means not covert**

**Words & Phrases 64** (40 W&P 759)

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean **not concealed**; **not hidden**; **exposed to view**; **free from concealment**, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

**Reasonability Good**

**Reasonability is uniquely applicable to determining whether an aff is substantial**

Linda **Stadler 93** “NOTE: Corrosion Proof Fittings v. EPA: Asbestos in the Fifth Circuit--A Battle of Unreasonableness ” Tulane Environmental Law Journal Summer, 1993 6 Tul. Envtl. L.J. 423

n3 Matthew J. McGrath, Note, Convergence of the Substantial Evidence and Arbitrary and Capricious Standards of Review During Informal Rulemaking, 54 GEO. WASH. L. REV. 541, 546 n.30 (1986), (quoting H.R. REP. NO. 1980, 79th Cong., 2d Sess. 45 (1945)), reprinted in ADMINISTRATIVE PROCEDURE ACT LEGISLATIVE HISTORY, S. DOC. NO. 248, 79th Cong., 2d Sess. 11, 233, 279 (1945). The substantial evidence standard does however possess some ambiguity as to the definition of "substantial." See, e.g., Chemical Mfrs. Ass'n v. EPA, 899 F.2d 344, 359 (5th Cir. 1990) (stating that "'substantial' is an inherently imprecise word"). However, 'substantial' is generally held to a reasonableness standard, i.e., would a reasonable mind accept it as adequate to support a conclusion. E.g., Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938).

**Context Key**

**‘Substantially’ is a relative term---context is key**

**Words and Phrases 64** (Vol. 40, p. 816)

The word “substantially” is a **relative term** and should be interpreted **in accordance with the context** of claim in which it is used. Moss v. Patterson Ballagh Corp. D.C.Cal., 80 P.Supp. C10, 637.

**It must be gauged in context**

**Words and Phrases 2** (Volume 40A, p. 464)

Cal. 1956. “Substantial” is a **relative term**, its measure to be **gauged by all the circumstances surrounding** the matter in reference to which the expression has been used

**Context is key---'substantially’ has no exact meaning**

**Words and Phrases 2** (Volume 40A, p. 483)

The word “substantial” is susceptible to different meanings according to the circumstances, and is variously defined as actual, essential, material, fundamental, although **no rule of thumb can be laid down fixing its exact meaning**

**‘Substantially’ should be defined on a case-by-case basis**

Aaron **Edlin 2**, Professor of Economics and Law at the University of California Berkeley School of Law, January, 111 Yale L.J. 941

Might price reductions of less than twenty percent qualify as substantial? In some markets they should, and it would be **reasonable to decide substantiality on a case-by-case basis**. One advantage of a bright-line rule is that it would let incumbents know where they stand. Monopolies that price only slightly above their average cost would be insulated from the entry of higher-cost entrants if they could credibly convey a willingness to price below the entrants' cost after entry, as illustrated in Part III. However, these monopolies do consumers little harm and may enhance market efficiency.

**Must Give Meaning**

**‘Substantially’ must be given meaning**

**Words and Phrases 60** (Vol. 40, State – Subway, p. 762)

“Substantial” is a relative word, which, while it must be used with care and discrimination, **must** nevertheless be **given effect**, and in a claim of patent allowed considerable latitude of meaning where it is applied to such subject as thickness, as by requiring two parts of a device to be substantially the same thickness, and cannot be held to require them to be of exactly the same thickness. Todd. V. Sears Roebuck & Co., D.C.N.C., 199 F.Supp. 38, 41.

**Increase**

### ---Aff---

**Increase = No Pre-Existence**

**‘Increase’ doesn’t require pre-existence**

Stephen **Reinhardt 5**, U.S. Judge for the United States Court of Appeals for the Ninth Circuit, Jason Ray Reynolds; Matthew Rausch, Plaintiffs-Appellants, v. Hartford Financial Services Group, Inc.; Hartford Fire Insurance Company, Defendants-Appellees, Lexis

Specifically, we must decide whether charging a higher price for initial insurance than the insured would otherwise have been charged because of information in a consumer credit report constitutes an "increase in any charge" within the meaning of FCRA. First, we examine the definitions of "increase" and "charge." Hartford Fire contends that, limited to their ordinary definitions, these words apply only when a consumer has previously been charged for insurance and that charge has thereafter been increased by the insurer. The phrase, "has previously been charged," as used by Hartford, refers not only to a rate that the consumer has previously paid for insurance but also to a rate that the consumer has previously been quoted, even if that rate was increased [\*\*23] before the consumer made any payment. Reynolds disagrees, asserting that, under [\*1091] the ordinary definition of the term, an increase in a charge also occurs whenever an insurer charges a higher rate than it would otherwise have charged because of any factor--such as adverse credit information, age, or driving record 8 --regardless of whether the customer was previously charged some other rate. According to Reynolds, he was charged an increased rate because of his credit rating when he was compelled to pay a rate higher than the premium rate because he failed to obtain a high insurance score. Thus, he argues, the definitions of "increase" and "charge" encompass the insurance companies' practice. Reynolds is correct.

“Increase" means to make something greater. See, e.g., OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("The action, process, or fact of becoming or making greater; augmentation, growth, enlargement, extension."); WEBSTER'S NEW WORLD DICTIONARY OF AMERICAN ENGLISH (3d college ed. 1988) (defining "increase" as "growth, enlargement, etc[.]"). "Charge" means the price demanded for goods or services. See, e.g., OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("The price required or demanded for service rendered, or (less usually) for goods supplied."); WEBSTER'S NEW WORLD DICTIONARY OF AMERICAN ENGLISH (3d college ed. 1988) ("The cost or price of an article, service, etc."). Nothing in the definition of these words implies that the term "increase in any charge for" should be limited to cases in which a company raises the rate that an individual has previously been charged.

**‘Increase’ doesn’t require preexistence**

**Words and Phrases 8** Words and Phrases Permanent Edition, “Increase,” Volume 20B, p. 263-267 March 2008, Thomson West

Wahs. 1942. The granting of compensation to any officer after he has commenced to serve the term for which he has been chosen, when no compensation was provided by law before he assumed the duties of his office, is an “increase” in salary or compensation within the constitutional provision prohibiting an increase of the compensation of a public officer during his term of office. Const. art, 2, 25; art. 11, 8. – State ex rel. Jaspers v. West 125 P.2d 694, 13 Wash.2d 514. Offic 100(1).

**One can ‘increase’ from zero**

**Words and Phrases 7** Cumulative Supplementary Pamphlet, 2007 vol. 20a, 07, 76

Increase: Salary change of from zero to $12,000 and $1,200 annually for mayor and councilmen respectively was an “increase” in salary and not merely the fixing of salary. King v. Herron, 243 S.E.2d36, 241 Ga. 5.

**Increase = Mandate**

**‘Increase’ refers to a mandate, not a result**

Higher Education Funding Council, **HEFC 4**, <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtchar/1> 67/167we98.htm# n43

9.1 The Draft Bill creates an obligation on the principal regulator to do all that it "reasonably can to meet the compliance objective in relation to the charity".[ 45] The Draft Bill defines the compliance objective as "to increase compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity".[ 46] 9.2 Although the word "increase" is used in relation to the functions of a number of statutory bodies,[47] such examples demonstrate that "increase" is used in relation to considerations to be taken into account **in the exercise of a function**, rather than an **objective** in itself. 9.3 HEFCE is concerned that an obligation on principal regulators to "increase" compliance per se is **unworkable**, in so far as it does not **adequately define the limits** or nature of the statutory duty. Indeed, the obligation could be considered to be ever-increasing.

**Increase = Net Increase**

**‘Increase’ means a net increase**

**Rogers 5** Judge for the State of New York, et al., Petitioners v. U.S. Environmental Protection Agency, Respondent, NSR Manufacturers Roundtable, et al., Intervenors, 2005 U.S. App. LEXIS 12378, \*\*; 60 ERC (BNA) 1791, 6/24, Lexis

[\*\*48]  Statutory Interpretation. [HN16](http://www.lexis.com/research/retrieve?_m=1fe428155fdfc9074f3623f0dae9d78a&docnum=14&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=0ebd338d6a7793de8561db53b915effd&focBudTerms=term%20increase&focBudSel=all#clscc16)While the CAA defines a "modification" as any physical or operational change that "increases" emissions, it is silent on how to calculate such "increases" in emissions. [42 U.S.C. § 7411(a)(4)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=103&_butInline=1&_butinfo=42%20U.S.C.%207411&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=1f89a0e47b1996a5400e8d865d8da08a). According to government petitioners, the lack of a statutory definition does not render the term "increases" ambiguous, but merely compels the court to give the term its "ordinary meaning." See Engine Mfrs.Ass'nv.S.Coast AirQualityMgmt.Dist., 541 U.S. 246, 124 S. Ct. 1756, 1761, 158 L. Ed. 2d 529(2004); [Bluewater Network, 370 F.3d at 13](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=105&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b370%20F.3d%201%2cat%2013%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=78fdfe9d48c7b91d7659b90c0198707e); [Am. Fed'n of Gov't Employees v. Glickman, 342 U.S. App. D.C. 7, 215 F.3d 7, 10 [\*23]  (D.C. Cir. 2000)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=106&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b342%20U.S.%20App.%20D.C.%207%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=fb18ff0b92931ac00621d88dae997e67). Relying on two "real world" analogies, government petitioners contend that the ordinary meaning of "increases" requires the **baseline** to be calculated from a **period immediately preceding** the change. They maintain, for example, that in determining whether a high-pressure weather system "increases" the local temperature, the relevant baseline is the temperature immediately preceding the arrival of the weather system, not the temperature five or ten years ago. Similarly,  [\*\*49]  in determining whether a new engine "increases" the value of a car, the relevant baseline is the value of the car immediately preceding the replacement of the engine, not the value of the car five or ten years ago when the engine was in perfect condition.

**‘Increase’ means net increase**

**Words and Phrases 8** v. 20a, p. 264-265

Cal.App.2 Dist. 1991. Term “increase,” as used in statute giving the Energy Commission modification jurisdiction over any alteration, replacement, or improvement of equipment that results in “increase” of 50 megawatts or more in electric generating capacity of existing thermal power plant, refers to **“net increase”** in power plant’s total generating capacity; in deciding whether there has been the requisite 50-megawatt increase as a result of new units being incorporated into a plant, **E**nergy **C**ommission **cannot ignore decreases** in capacity caused by retirement or deactivation of other units at plant. West’s Ann.Cal.Pub.Res.Code § 25123.

### ---Neg---

**Increase = Pre-Existence**

**‘Increasing’ means to make greater and requires pre-existence**

Jeremiah **Buckley 6**, Attorney, Amicus Curiae Brief, Safeco Ins. Co. of America et al v. Charles Burr et al, <http://supreme.lp.findlaw.com/supreme_court/briefs/06-84/06-84.mer.ami.mica.pdf>

First, the court said that the ordinary meaning of the word “increase” is “to make something greater,” which it believed should not “be limited to cases in which a company raises the rate that an individual has previously been charged.” 435 F.3d at 1091. Yet the definition offered by the Ninth Circuit compels the opposite conclusion. Because “increase” means “to **make something greater**,” there must necessarily have been an **existing** premium, to which Edo’s actual premium may be compared, to determine whether an “increase” occurred. Congress could have provided that “ad-verse action” in the insurance context means charging an amount greater than the optimal premium, but instead chose to define adverse action in terms of an “increase.” That def-initional choice must be respected, not ignored. See Colautti v. Franklin, 439 U.S. 379, 392-93 n.10 (1979) (“[a] defin-ition which declares what a term ‘means’ . . . excludes any meaning that is not stated”). Next, the Ninth Circuit reasoned that because the Insurance Prong includes the words “existing or applied for,” Congress intended that an “increase in any charge” for insurance must “apply to all insurance transactions – from an initial policy of insurance to a renewal of a long-held policy.” 435 F.3d at 1091. This interpretation reads the words “exist-ing or applied for” in isolation. Other types of adverse action described in the Insurance Prong apply only to situations where a consumer had an existing policy of insurance, such as a “cancellation,” “reduction,” or “change” in insurance. Each of these forms of adverse action presupposes an already-existing policy, and under **usual canons of statutory construction** the term “increase” also should be construed to apply to increases of an **already-existing** policy. See Hibbs v. Winn, 542 U.S. 88, 101 (2004) (“a phrase gathers meaning from the words around it”) (citation omitted).

**---Ext**

**‘Increase’ means to enlarge something already in existence, not to initiate something new---especially in the context of this resolution, which says ‘increasing’, suggesting continuing action**

Mark T. **Boonstra 14**, Mark J. Cavanagh, and E. Thomas Fitzgerald, Judges on the Court of Appeals of Michigan, Hughes v. Dep't of Envtl. Quality, 2014 Mich. App. LEXIS 250, 2/11/2014, Lexis

Rule 324.102(x) is unambiguous. A guiding principle of statutory construction (and thus construction of administrative rules) is that each word be given meaning. See Gillie v Genesee Co Treasurer, 277 Mich App 333, 345; 745 NW2d 137 (2007). "This Court must consider both the plain meaning of the critical words or phrases, as well as their placement and purpose . . . ." Id. Rule 324.102(x) refers to "the purpose of increasing the recovery of hydrocarbons." The word "increase" means "to add [\*10] something to or enlarge something **already in existence**." Gwynn v McKinley, 30 Cal App 381, 389; 158 P 1059 (1916). A **newly constructed** frack well does **not** add to or enlarge the recovery of hydrocarbons. Rather, it **initiates** the recovery of hydrocarbons when recovery was **nonexistent**. Further, the use of the word **"increasing"** presupposes that the recovery of hydrocarbons **already exists**, as **words that end in "-ing"** suggest **continuing action**. See Verizon New Jersey, Inc v Hopewell Borough, 26 NJ Tax 400, 417 (2012). In other words, for a well to be categorized as an "injection well" under the contested language of Rule 324.102(x), the well must be used for the purpose of recovering hydrocarbons before and after the injection of fluid. Here, however, it is not disputed that the frack wells at issue are not used for the purpose of recovering hydrocarbons before the injection of fluid. Had Rule 324.102(x) been intended to encompass all recovery of hydrocarbons, not only the increased recovery of hydrocarbons, it could have simply read in relevant part, "the purpose of the recovery of hydrocarbons" or "the purpose of recovering hydrocarbons."

**‘Increase’ requires pre-existence**

**Brown 3** – US Federal Judge on the District Court of Oregon, “Elena Mark and Paul Gustafson, Plaintiffs, v. Valley Insurance Company and Valley Property and Casualty, Defendants”, 7/17/2003, Lexis

FCRA does not define the term "increase." The plain and ordinary meaning of the verb "to increase" is to make something greater or larger. 4 Merriam-Webster's [\*\*22] Collegiate Dictionary 589 (10th ed. 1998). The "something" that is increased in the statute is the "charge for any insurance." The plain and common meaning of the noun "charge" is "the price demanded for something." Id. at 192. Thus, the statute plainly means an insurer takes adverse action if the insurer makes greater (i.e., larger) the price demanded for insurance.

An insurer cannot "make greater" something that did not exist previously. The statutory definition of adverse action, therefore, clearly anticipates an insurer must have made an initial charge or demand for payment before the insurer can increase that charge. In other words, an insurer cannot increase the charge for insurance unless the insurer previously set and demanded payment of the premium for that insured's insurance [\*\*23] coverage at a lower price.

**‘Increase’ requires evidence of the preexisting condition to determine a net increase**

**Ripple 87** Circuit Judge, Emmlee K. Cameron, Plaintiff-Appellant, v. Frances Slocum Bank & Trust Company, State Automobile Insurance Association, and Glassley Agency of Whitley, Indiana, Defendants-Appellees, 824 F.2d 570; 1987 U.S. App. LEXIS 9816, 9/24, Lexis

Also related to the waiver issue is appellees' defense relying on a provision of the insurance policy that suspends coverage where the risk is increased by any means within the knowledge or control of the insured. However, the term "increase" connotes change. To show change, appellees would have been required to present evidence of the condition of the building at the time the policy was issued. See 5 J. Appleman & J. Appleman, Insurance Law and Practice, § 2941 at 4-5 (1970). Because no such evidence was presented, this court cannot determine, on this record, whether the risk has, in fact, been increased. Indeed, the answer to this question may depend on Mr. Glassley's knowledge of the condition of the building at the time the policy was issued, see 17 J. Appleman & J. Appleman, Insurance Law and Practice, § 9602 at 515-16 (1981), since the fundamental issue is whether the appellees contemplated insuring the risk which incurred the loss.

**---Statutory Construction !**

**Accurate application of statutory canons is the biggest impact---it’s the only way to determine the purpose and intent of writing**

R. Perry **Sentell 91** Jr., Talmadge Professor of Law at the University of Georgia and LLM from Harvard University, “The Canons of Construction in Georgia: "Anachronisms" in Action”, Georgia Law Review, Winter, 25 Ga. L. Rev. 365, Lexis

CONCLUSION  
Because the consideration of written communication is the cornerstone of the judicial process, the technique involved in that consideration has intrigued the ages. That technique, judicial interpretation, [\*434]  attempts a highly delicate balance. On the one hand, it acknowledges the legendary imprecision of language. On the other hand, it seeks to glean from that language the elusive signals of purpose, meaning and intent. A "science" so inexact incessantly craves a semblance of constants -- conventions assisting to **impose order** upon understanding.  
Roman law, and subsequently the English common-law system, sought to appease this insatiable desire by offering up the canons of construction. The canons, **fundamental maxims of** compositional **meaning**, have proved both vulnerable and venerable. Their existence has provided an irresistible historic target for a labyrinth of denigrating commentary. Yet the courts, the construers themselves, have claimed the canons as their own, affording them a **determinative role** in judicial decisionmaking which transverses the spectrum of litigation. Accordingly, the critics are left with little choice but to concede the canons' existence and shaping influence, while pleading for caution in their invocation.  
From the canonical mass, the most popular and powerful maxims of meaning are perhaps the three here selected for treatment: Noscitur a sociis, Ejusdem generis and Expressio unius est exclusio alterius. Although different, the three precepts are also similar -- they counsel an analysis of associating what is present with what is to be determined. The writer, they presume, meant something by what he expressed; that expression, or at least a portion of it, they insist, offers the **best hope** for resolving the ambiguity at hand. As they occasionally broaden, frequently constrict and sometimes exclude, the maxims operate to propel the interpreter toward an intent, meaning or purpose that will decide the controversy.

**Increase = Quantitative**

“**Increase” means to become bigger or larger in quantity**

**Encarta 7** World English Dictionary, 7 (“Increase”, 2007, <http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861620741>)

Increase

transitive and intransitive verb  (past and past participle in·creased, present participle in·creas·ing, 3rd person present singular in·creas·es)

Definition:

make or become larger or greater: to become, or make something become, larger in number, quantity, or degree

**---Baselines Key**

**‘Increase’ requires a baseline to which change can be compared**

Mark R. **Hornak 18**, United States District Judge on the United States District Court for the Western District of Pennsylvania, “United States District Court for the Western District of Pennsylvania”, 2018 U.S. Dist. LEXIS 197482, 11/20/2018, Lexis

The Court will not construe this term to have its plain and ordinary meaning, as Mylan proposes, because the word "increase," [\*62] though it has a plain meaning, must be read in the context of the claims and specification of the '997 Patent. To determine if there has been an "increase" in dynamic capacity, there **must be** some **initial** dynamic capacity to which the new dynamic capacity can be **compared**. This comparator is not within the plain language of the claim, but it is apparent when the term is read in the context of the entire patent. As explained, the Court concludes that a skilled artisan would understand that an "increase" in the dynamic capacity for the protein when using a claimed salt pair would be in reference to the dynamic capacity of the protein when a single salt is utilized. However, the Court does not believe that the intrinsic evidence supports the conclusion that a skilled artisan would necessarily understand that each salt in the salt pair would be provided at a lower concentration than a single salt, as Amgen proposes. Thus, an intermediate construction is warranted. See Exxon Chem. Patents, 64 F.3d at 1555. For the foregoing reasons, the Court construes "such that the dynamic capacity of the column is increased for the protein" as "such that the dynamic capacity of the hydrophobic interaction chromatography column for the protein that [\*63] is achieved by using a combination of a first salt and a second salt is greater than the dynamic capacity of the column for the protein that is achieved by using a single salt."

**Before-and-after numbers are necessary to determine whether an ‘increase’ has occurred**

Marilyn Jean **Kelly 10**, Judge on the Supreme Court of Michigan, “Adair v. State”, 486 Mich. 468, 7/14/2010, Lexis

MCL 141.422a(4) further provides: "'Budget' means a plan of financial operation for a given period of time, including an estimate of all proposed expenditures from the funds of a local unit and the proposed means of financing the expenditures." Thus, in the case of a mandated *increased* activity or services, a POUM plaintiff that has its claim heard before actual increased expenses have been incurred need simply present evidence explaining how much it is **currently** spending to perform the service or activity and how much extra, i.e., the projected amount of "increase," it anticipates it will have to spend carrying out the increased level of service or activity. And in the case of mandated new activities or services, a plaintiff need only present evidence that it currently spends no money on the service or [\*\*\*61] activity, but anticipates incurring specific necessary costs that are not de minimis once the mandate becomes effective. Given that estimates of increased expenses are ordinarily [\*510] quantified in budgets, it is reasonable to conclude that a witness can summarize and provide a reasonable estimate of an anticipated increase in necessary costs. 21 Ideally, a POUM claim will be decided before the projected necessary cost increases become actual increases. But in situations such as the case at bar, where plaintiff school districts had been complying with the mandates for several years before trial, actual necessary increased costs, if they exist, should not be difficult, much less insurmountable, to establish. In any event, proof of specific necessary increased costs, projected or actual, is essential in order to verify the legitimacy of a POUM claim. 22

[FOOTNOTE]

To be sure, plaintiffs may have established [\*\*\*62] that the new requirements are burdensome and require additional staff time. However, this is not the equivalent of the considerably more specific, and rigorous, requirements of our constitution. The majority is mistaken when it asserts that Const 1963, art 9, § 29 does not suggest that POUM plaintiffs must prove how much their costs increased. To reiterate, the word "increase" clearly implies the **necessity** of **before-and-after numbers**. By providing such numbers, a POUM plaintiff can satisfy the constitutional requirement that it show how much its necessary costs have increased.

**Increase =/= Net Increase**

**“Increase” means SOLELY to “grow larger”—That excludes tradeoffs, because it’s DISTINCT from “change” or “net increase”**

**Chavez 17**

Opinion by Chavez, Acting P. J., Court of Appeal of California, Second Appellate District, Division Two, Mallano v. Chiang, 2017 Cal. App. Unpub. LEXIS 2366

As discussed, during the times relevant to this action, section 68203 provided [\*13] for mandatory annual increases in judicial salaries by "the amount that is produced by multiplying the then current salary of each justice or judge by the average percentage salary increase for the current fiscal year for California state employees." (§ 68203, subd. (a).) Defendants contend the phrase "average percentage salary increase for the current fiscal year for California State employees" as used in section 68203 must be construed to include not only salary increases but also effective salary decreases caused by mandatory furloughs imposed during fiscal years 2008-2009 through 2011-2012.

A. The plain language of section 68203 does not support defendants' interpretation

Defendants' interpretation is inconsistent with the plain language of the statute. "The plain meaning of **'increase'** is to **grow larger** in size or amount. [Citation.]" (Guillen v. Schwarzenegger (2007) 147 Cal.App.4th 929, 940, 55 Cal. Rptr. 3d 87; Mirriam-Webster online dict., <https://www.mirriam-webster.com/dictionary/increase>.) "When a statute refers to an 'increase' occurring '[i]n any fiscal year' [citation], it is logical to construe 'increase' as meaning an increase **over the previous year**." (Guillen, at p. 940.) The plain meaning of the words "salary increase" as used in section 68203, subdivision (a) is the amount by which a salary is made larger.

As the trial court noted in its statement of decision, when the Legislature has [\*14] **intended** to use the phrase increase or decrease, or terms that denote deductions or decreases, such as **net increase**, or **change**, it has **clearly done so**. (See, e.g., § 31870.01, subd. (a) [county employees retirement benefits shall be "increased or decreased to nearest one-tenth of 1 percent, by 40 percent of the annual increase or decrease in the cost-of-living as of January 1st of each year" (italics added)]; Welf. & Inst. Code, § 7289.1, subd. (b) ["for computation of the percentage change in the cost of living . . . [t]he product of any percentage increase or decrease in the average index and the amount set forth in Section 7289 shall be the adjusted amount" (italics added)]; § 12406 ["Appointments to these exempt positions shall not result in any net increase in the expenditures of the Controller" (italics added)].) Section 68203, subdivision (a) does not include such terms.

Subdivision (a) of section 68203 includes an express proviso limiting judicial salary increases: "[I]n any fiscal year in which the Legislature places a dollar limitation on salary increases for state employees the same limitation shall apply to judges in the same manner applicable to state employees in comparable wage categories." There is no similar provision limiting judicial salary increases during fiscal years in which state employee salaries are effectively [\*15] decreased, and we decline to read one into the statute. (California Teachers Assn v. San Diego Community College Dist. (1981) 28 Cal.3d 692, 698, 170 Cal. Rptr. 817, 621 P.2d 856 [if words of the statute are **clear**, the court **should not add to or alter them** to accomplish a purpose that does not appear **on the face** of the statute].)

The language of subdivision (b) of section 68203 further reinforces the interpretation that "average percentage salary increase" as used in subdivision (a) includes only salary increases, and not decreases. Subdivision (b) states: "For the purposes of this section, salary increases for state employees shall be those increases as reported by [CalHR]." Subdivision (b) refers only to salary increases, and it identifies CalHR as the source of information for such increases. It does not mention salary decreases, nor does it identify CalHR or any other agency as the source of information for salary decreases. Subdivisions (a) and (b) of section 68203, read together, unambiguously provide that only state employee salary increases reported by CalHR are to be considered in calculating judicial salary increases.

B. The legislative history does not support defendants' interpretation

Defendants urge us to reject the **plain meaning** of the word "increase" as used in section 68203 based on the statute's legislative history, which they claim evinces an [\*16] intent to tie judicial salary increases to the percentage salary increase, if any, from the average of all state employees, and not just those few employees whose salaries were increased. They rely on an analysis prepared by the Assembly Committee on the Judiciary in connection with a 1979 amendment to the statute:6Link to the text of the note

"SB 53 changes the method of granting judges' annual salary increases by tying the increase to the annual average salary increases granted to California State employees up to a maximum of 5%. Thus, if the average salary increase received by state employees is 3%, the judges would be entitled to a 3% increase. If state employees do not receive an increase in any year, the judges would not be entitled to an increase for that year. [¶] . . . [¶] By providing that judges would receive the same pay hikes as state workers . . . SB 53 presents an equitable alternative to the annual pay increases judges now receive."

(Assem. Com. on Judiciary, analysis of Sen. Bill No. 53 (1979-1980 Reg. Sess.).)

There is **nothing** in the legislative history that indicates that the average percentage salary increase for state employees in any given fiscal year was intended to include effective salary [\*17] **decreases** **as well as** increases. The analysis cited by defendants simply states that judges are not entitled to a salary increase in any year in which state employees do not receive an increase. CalHR calculated a 0.00 percent average percentage salary increase for state employees in fiscal years 2011-2012 and 2012-2013, and plaintiffs do not dispute that they were not entitled to any salary increase in those years.

**Increase =/= Change**

**‘Increase’ can’t mean change, because that would include its antonym, ‘decrease’**

Donna S. **Shroud 18**, Judge on the North Carolina Appeals Court, “City of Charlotte v. Univ. Fin. Props., LLC”, 818 S.E.2d 116, 7/3/2018, Lexis

The language in the statute is clear — the condemnor may amend its complaint and notice of taking and may increase [\*\*33] the deposit, but it may not amend a deposit to decrease the amount. We cannot read the word "increase" to mean "change" since a change could include a "decrease." Increase is the **opposite** of decrease. We construe the statute using its plain meaning. See Wilkie, 370 N.C. at 547, 809 S.E.2d at 858. And HN22 the statute plainly allows the condemnor only to increase its deposit "at any time while the proceeding is pending[.]" See N.C. Gen. Stat. § 136-103(d). In addition, the next phrase gives the landowner "the same rights of withdrawal of this additional amount" as it had for the initial deposit. Id. The statute contemplates only an increase in the deposit and provides for the landowner to withdraw the additional amount. Id. There is no provision for a decrease in the deposit while the action is pending. And as discussed above, the action is no longer "pending" after defendant's filing of a voluntary dismissal under Rule 41(a). Thus, the existence of a deposit does not change the result under Rule 41(a) in this case. Even if we assume that a deposit could be increased after a landowner takes a voluntary dismissal — although we cannot imagine [\*129] why that would ever happen — the statute does not allow an amendment to decrease the deposit at all, so plaintiff's motion here to decrease [\*\*34] the deposit does not change our analysis of the Rule 41(a) dismissal issue.

### ---Either/Or---

**Increase = Make Greater**

**‘Increasing’ is to become greater in amount or intensity**

Merriam-**Webster’s 19** Online Dictionary, ‘increase’, https://www.merriam-webster.com/dictionary/increase

increased; increasing

Definition of increase (Entry 1 of 2)

intransitive verb

1 : to become progressively greater (as in size, amount, number, or intensity)

2 : to multiply by the production of young

**‘Increase’ does not mean to decrease**

**Webster’s 1913** Dictionary. 1913 ("Increase", http://machaut.uchicago.edu/cgi-bin/WEBSTER.sh?WORD=increase)

In\*crease" (?), v. i.

To become greater or more in size, quantity, number, degree, value, intensity, power, authority, reputation, wealth; to grow; to augment; to advance; -- opposed to *decrease*.

**‘Increase’ is the opposite of decrease**

**Cambridge 8** Cambridge Dictionary, “increase”, 2008, http://dictionary.cambridge.org/define.asp?key=increase\*1+0&dict=A

increase

[[Show phonetics]](http://dictionary.cambridge.org/define.asp?dict=A&key=increase*1+0&ph=on)

verb [I/T]

to become or make (something) larger or greater

The opposite of increase is [decrease](http://dictionary.cambridge.org/define.asp?key=decrease*1+0&dict=a).

**‘Increase’ means to make greater**

Merriam **Webster 9** (Merriam Webster Online Dictionary, “Increase”, [http://www.merriamwebster.com/dictionary/increase[1](http://www.merriam-webster.com/dictionary/increase%5b1)])

*intransitive verb*1: to become progressively greater (as in size, amount, number, or intensity)2: to multiply by the production of young*transitive verb*1: to make greater : [augment](http://www.merriam-webster.com/dictionary/augment)2*obsolete* : [enrich](http://www.merriam-webster.com/dictionary/enrich)

**Increase = Progressive Growth**

**‘Increase’ means progressive growth**

Louis **Philips 2**, United States Bankruptcy Judge, IN RE Lawrence d. Goldberg, Debtor; Dwayne M. Murray, Trustee, Plaintiff versus Mae M. Stacy Trust and F. Eugene Richardson, Defendants, 5/1, lexis) (emphasis in the original)

In determining the plain meaning of the phrase "increases the obligor's insolvency," the Court initially notes that this phrase makes no reference whatsoever [\*\*50] to a "reasonably equivalent value" test 26 or even to the "fair consideration" test of the Section 3 of the UFCA. 27 Instead, Article 2036 of the Civil Code merely uses the word "increases," and the absence of "reasonably equivalent value" language or "fair consideration" language rings loudly in the Court's judicial ear. Accordingly, the Court will focus on the plain meaning of the term "increases." Taking note from one of the dictionaries of choice of the United States Supreme Court, 28 the Court finds that the definition of the word "increase" in Webster's Ninth New Collegiate Dictionary reads as follows:

[\*270] To become ***progressively*** greater (as in size, amount, number, or intensity). . . . to make greater: AUGMENT. . . . INCREASE, ENLARGE, AUGMENT, MULTIPLY mean to make or become greater. INCREASE used intransitively implies *progressive* growth in size, amount, intensity; used transitively it may imply simple not necessarily progressive addition. . . ***the act or process of increasing***: as . . . addition or enlargement in size, extent, quantity.

Webster's Ninth New Collegiate Dictionary 611 (1990) (emphasis added).

As Webster's Dictionary states, the word "increase" means a progressive growth, that is, an incremental [\*\*52] growth. Such progressive and incremental growth implies that when Article 2036 was drafted, the codifiers used the simple and easily-understood word "increase" because they meant to imply a "dollar-for-dollar" increase in the obligor's insolvency, rather than a "reasonably equivalent value" increase. Otherwise, the codifiers would not have chosen to use the word "increase" with no obvious limitation on its meaning. Moreover, since Article 2036 was crafted in 1984, well after the UFCA, which was enacted in 1918, the drafters of Article 2036 must have been well aware of the "fair consideration" requirement in Section 3 of the UFCA, and chose not to adopt such a limitation. Therefore, the Court may reasonably conclude that HN19Go to this Headnote in the case.the plain meaning of "increases the obligor's insolvency" means a "dollar-for-dollar," incremental growth, rather than insolvency as measured by a "reasonably equivalent value" standard.

As of this stopping place, the Court has performed its task under the Louisiana Civil Code: to ferret out the plain meaning of Article 2036 of the Louisiana Civil Code from the words of the article, itself, if possible. However, the Court will resort to other modes of statutory construction [\*\*53] in support of its "plain meaning" analysis, primarily to assure ourselves that the apparently groundless arguments of the defendants really are so.. Positing for argument purposes only (of course) that the phrase "increases the obligor's insolvency" is susceptible of more than one meaning (i.e., a "reasonably equivalent value" meaning), analysis of the purpose of the Louisiana revocatory action and of its legislative history is now offered.

**Its**

**Its = Exclusive Possessive**

**‘Its’ refers to the U.S. and is possessive**

W.C. **Updegrave 91**, “Explanation of ZIP Code Address Purpose”, 8-19, <http://www.supremelaw.org/ref/zipcode/updegrav.htm>

More specifically, looking at the map on page 11 of the National ZIP Code Directory, e.g. at a local post office, one will see that the first digit of a ZIP Code defines an area that includes more than one State. The first sentence of the explanatory paragraph begins: "A ZIP Code is a numerical code that identifies areas within the United States and its territories for purposes of ..." [cf. 26 CFR 1.1-1(c)]. Note the **singular possessive** pronoun "its", not "their", therefore carrying the implication that it relates to the "**U**nited **S**tates" as a corporation domiciled in the **D**istrict of **C**olumbia (in the singular sense), not in the sense of being the 50 States of the Union (in the plural sense). The map shows all the States of the Union, but it also shows D.C., Puerto Rico and the Virgin Islands, making the explanatory statement literally correct.

**‘Its’ is exclusive**

Douglas F. **Brent 10,** Attorney, 6/2/2010, “Reply Brief on Threshold Issues of Cricket Communications, Inc.,” http://psc.ky.gov/PSCSCF/2010%20cases/2010-00131/20100602\_Crickets\_Reply\_Brief\_on\_Threshold\_Issues.PDF Italics in the original

AT&T also argues that Merger Commitment 7.4 only permits extension of “any given” interconnection agreement for a single three year term. AT&T Brief at 12. Specifically, AT&T asserts that because Cricket adopted the interconnection agreement between Sprint and AT&T, which itself was extended, Cricket is precluded from extending the term of its agreement with AT&T. Id

This argument relies upon an inaccurate assumption: that the agreement (contract) between Sprint and AT&T, and the agreement (contract) between Cricket and AT&T, are one and the same. In other words, to accept AT&T’s argument the Commission must conclude that two separate contracts, i.e. the interconnection between Sprint and AT&T in Kentucky (“Sprint Kentucky Agreement”) and the interconnection between Cricket and AT&T in Kentucky (“Cricket Kentucky Agreement”), are one and the same.

Upon this unstated (and inaccurate) premise AT&T asserts that “*the ICA* was already extended”; id. at 14, and “*the ICA* Cricket seeks to extend was extended by Sprint . . . .”; id. at 15, and, finally, “Cricket cannot extend *the same ICA* a second time . . . .” Id. (emphasis added in all). Note that in the quoted portions of the AT&T brief (and elsewhere) AT&T uses vague and imprecise language when referring to either the Sprint Kentucky Agreement, or the Cricket Kentucky Agreement, in hopes that the Commission will treat the two contracts as one and the same.

But it would be a mistake to do so. The contract governing AT&T’s duties and obligations with Sprint is a legally distinct and separate contract from that which governs AT&T’s duties with Cricket. The Sprint Kentucky Agreement was approved by the Commission in September of 2001 in Case Number 2000-00480. The Cricket Kentucky Agreement was approved by the Commission in September of 2008 in Case Number 2008-033 1.

AT&T ignores the fact that these are two separate and distinct contracts because it knows that the merger commitments apply to *each* agreement that an individual telecommunications carrier has with AT&T. Notably, Merger Commitment 7.4 states that “AT&T/BellSouth ILECs shall permit *a requesting telecommunications carrier* to extend *its* current interconnection agreement . . . . As written, the commitment allows any carrier to extend “*its*” agreement. Clearly, the use of the pronoun “its” in this context is possessive, such that the term “its” means - *that* particular carrier’s agreement with AT&T (and **not any other carrier’s agreement**). Thus, the merger commitment applies to each agreement that an individual carrier may have with AT&T. It necessarily follows then, that Cricket’s right to extend its agreement under Merger Commitment 7.4 is separate and distinct right from another carrier’s right to extend its agreement with AT&T (or whether such agreement has been extended).

**It's a term of exclusion that can’t mean synchronized action**

Judge **Frey 28**, Supreme Court of Missouri, Supreme Court of Missouri, 320 Mo. 1058; 10 S.W.2d 47; 1928 Mo. LEXIS 834, Lexis

In support of this contention appellant again argues that when any ambiguity exists in a will it is the duty of the court to construe the will under guidance of the presumption that the testatrix intended her property to go to her next of kin, unless there is a strong intention to the contrary. Again we say, there is intrinsic proof of a  [\*1074]  strong intention to the contrary. In the first place, testatrix only named two of her blood relatives in the will and had she desired [\*\*\*37]  them to take the residuary estate she doubtless would have mentioned them by name in the residuary clause. In the second place, if she used the word "heirs" in the sense of blood relatives she certainly would have dispelled all ambiguity by stating whose blood relatives were intended. Not only had  [\*\*53]  she taken pains in the will to identify her own two blood relatives but she had also identified certain blood relatives of her deceased husband. Had it been her intention to vest the residuary estate in her blood relatives **solely**, she would certainly have used the **possessive pronoun** "my" instead of the indefinite article "the" in the clause, "the above heirs."its is geographical.

**‘Its’ means possessed by the USFG**

Merriam-**Webster’s 19** Online Dictionary, ‘its’, https://www.merriam-webster.com/dictionary/its

: of or relating to it or itself especially as **possessor**, agent, or object of an action

going to its kennel

a suite with its own private bathroom

its final enactment into law

**The word can only refer to the USFG because that is the noun immediately preceding ‘its’ in the resolution---any other interpretation wrecks predictability**

**Manderino, 73** Justice for the Supreme Court of Pennsylvania, Sigal, Appellant, v. Manufacturers Light and Heat Co., No. 26, Jan. T., 1972, Supreme Court of Pennsylvania, 450 Pa. 228; 299 A.2d 646; 1973 Pa. LEXIS 600; 44 Oil & Gas Rep. 214, Lexis

On its face, the written instrument granting easement rights in this case is ambiguous. The same sentence which refers to the right to lay a 14 inch pipeline (singular) has a later reference to "said lines" (plural). The use of the plural "lines" makes no sense because the only previous reference has been to a "line" (singular). The writing is additionally ambiguous because other key words which are "also may change the size of its pipes" are dangling in that the possessive pronoun "its" before the word "pipes" does not have any **subject preceding**, to which the possessive pronoun refers. The dangling phrase is the beginning of a sentence, the first word of which does not begin with a capital letter as is customary in normal English [\*\*\*10]  usage. Immediately preceding the "sentence" which does not begin with a capital letter, there appears a dangling  [\*236]  semicolon which makes no sense at the beginning of a sentence and can hardly relate to the preceding sentence which is already properly punctuated by a closing period. The above deviations from accepted grammatical usage **make difficult, if not impossible, a clear understanding** of the words used or the intention of the parties. This is particularly true concerning the meaning of a disputed phrase in the instrument which states that the grantee is to pay damages from ". . . the relaying, maintaining and operating said pipeline. . . ." The instrument is ambiguous as to what the words ". . . relaying . . . said pipeline . . ." were intended to mean.

**‘Its’ is possessive and refers to the party preceding its use—the USFG**

**US District Court 7** United States District Court for the District of the Virgin Islands, Division of St. Thomas and St. John, “AGF Marine Aviation & Transp. v. Cassin, 2007 U.S. Dist. LEXIS 90808,”

The Court inadvertently used the word "his" when the Court intended to use the word "its." The possessive pronoun was intended to refer to the party preceding its use--AGF. Indeed, that reference is consistent with the undisputed facts in this case, which indicate that Cassin completed an application for the insurance policy and submitted it to his agent, Theodore Tunick & Company ("Tunick"). Tunick, in turn, submitted the application to AGF's underwriting agent, TL Dallas. (See Pl.'s Mem. of Law in Supp. of Mot. for Summ. J. 5.)

**Its = Singular**

**‘Its’ means the object belongs to the singular USFG and can’t be plural---the grammatical distinction is important**

**Benchmark 19**, Benchmark Writer’s Workshop Informational Reports, “Use the Singular Possessive Pronoun Its”, http://writingresources.benchmarkeducation.com/pdfs/Gr4\_U3\_Mini15.pdf

Explain Using the Singular Possessive Pronoun Its

Say: Writers of informational reports write about many different topics. Sometimes they write about people. Sometimes they write about places. Sometimes they write about groups or organizations. Writers must be **careful** to choose the **correct possessive pronouns** to refer to these groups. Choosing the correct pronouns will make your **writing clearer**, so that your readers **understand** the information you are giving. Today I’m going to show you how to use the correct pronoun when you are referring to an organization, group, or country.

Model Using the Possessive Pronoun Its

Display the modeling text on chart paper or using the interactive whiteboard resources.

1. FIFA decided to hold its first World Cup competition in Uruguay in 1930.

2. Uruguay was chosen to host the event because its team had won Olympic gold medals in 1924 and 1928.

Modeling Text

Ask students to listen for pronouns and their antecedents as you read the text aloud.

Say: This passage describes the history of the World Cup.

After sentence 1. Say: FIFA is a noun in this sentence. FIFA is a soccer organization. It is a group, not a person. It has no gender. It is not male or female, so the writer uses the possessive pronoun its in this sentence: “FIFA decided to hold its first World Cup . . .” When you refer to a **singular** object, group, or institution, you use the possessive pronoun its. **We can’t use the pronoun their because FIFA is a singular noun**. FIFA refers to one organization.

**‘Its’ refers to the singular USFG---the topic would say ‘their’ if it was plural**

Jane **Watson 18**, Ontario Training Network, “Grammar Tip – Its Versus Their”, https://ontariotraining.net/grammar-tip-its-versus-their/

Susan’s question: “Please tell me the **difference** between its and their. For example, would I write ‘ABC Enterprises offered all its employees a bonus’ or ‘ABC Enterprises offered all their employees a bonus?”

BizWritingTip response: As ABC Enterprises is considered a singular noun, you would have to use the **personal pronoun** “its.”

Example

ABC Enterprises offered all its employees a bonus. (Its is replacing the company’s name.)

You would **only** use “their” when the noun it is replacing is **plural**.

**Its = Associated With**

**‘Its’ means associated with**

**Oxford 19** English Dictionary Online, “it’s”, https://en.oxforddictionaries.com/definition/us/its

Belonging to **or associated with** a thing previously mentioned or easily identified.

‘turn the camera on its side’

‘he chose the area for its atmosphere’

More example sentences

**Its = Relating To**

**‘Its’ means relating to**

MacMillan Online Dictionary, **MacMillan 19**, ‘its’, https://www.macmillandictionary.com/dictionary/american/its

belonging or **relating to** a thing, idea, place, animal, etc. when it has already been mentioned or when it is obvious which one you are referring to

**Its = Ownership**

**‘Its’ is a possessive pronoun showing ownership**

**GEG 5** Glossary of English Grammar Terms, http://www.usingenglish.com/glossary/possessive-pronoun.html

Mine, yours, his, hers, its, ours, theirs are the possessive pronouns used to substitute a noun and to show possession or ownership.

EG. This is your disk and that's mine. (Mine substitutes the word disk and shows that it belongs to me.)

## Security Cooperation

### Standards---Not Much Lit

#### Security coop receives little attention

Nathan L. Fenell 11, Operations/Administration Management Professional and Military Veteran with over 20 years of experience in the United States Marine Corps, “Security Cooperation Poorly Defined,” University of San Francisco, 12/12/11, <https://repository.usfca.edu/cgi/viewcontent.cgi?article=1020&context=thes>

The literature review will establish the premise that security cooperation as an academic area of study receives little attention.17 The paucity of literature on the subject contributes to the current misunderstanding of the definition as well as its improper strategic utilization. Authors who participate in scholarly conversation on the topic fall into one of two categories, doctrinal use or modern misconception.18 The contradictory nature of the literature further supports my hypothesis that the definition of security cooperation is frequently not applied in Afghanistan.

### AFF Perm---vs DoD PICs

#### AFF---DOD only is only because it’s a DOD internal definition---the universal one is agent-agnostic, limited only based on goals

Colonel Albert Zaccor 5, 2004-2005 United States Army Senior Fellow at the Atlantic Council of the United States and is currently Director for Southern Europe in the Office of the Secretary of Defense, International Security Policy – NATO/Europe, “Security Cooperation and Non-State Threats: A Call for an Integrated Strategy,” The Atlantic Council of the United States, August 2005, https://www.files.ethz.ch/isn/46290/2005\_08\_Security\_Cooperation\_and\_Non-State\_Threats.pdf

Defining Security Cooperation28 [FOOTNOTE 28 BEGINS] 28 The former term used was “engagement.” When the first Bush administration took office in 2001, the Department of Defense changed the term. The new defense leadership indicated that they believed that Engagement had not been sufficiently focused or disciplined and had not achieved specific measurable outcomes. The new approach aimed to avoid “engagement for engagement’s sake” and focused on tying Security Cooperation activities to specific measurable objectives. [FOOTNOTE 28 ENDS]

Security Cooperation is a Department of Defense (DOD) term that refers to “…all DOD interactions with foreign defense establishments to:

• Build defense relationships that promote specific U.S. security interests;

• Develop allied and friendly military capabilities for self-defense and coalition operations, including allied transformation;

• Improve information exchange and intelligence sharing to harmonize views on security challenges; and

• Provide U.S. forces with peacetime and contingency access and en route infrastructure.”29

Security Cooperation is not the same as Security Assistance. The latter term refers only to programs such as Foreign Military Financing (FMF), Foreign Military Sales (FMS), the International Military Education and Training Program (IMET), and other programs governed by the Foreign Assistance Act and managed by the Defense Security Cooperation Agency. The Department of State plays a key role in providing policy direction for Security Assistance programs. Security Cooperation is a much broader term that, in addition to Security Assistance, includes such categories of activities as combined exercises, combined training, combined education, military-to-military contacts, humanitarian assistance, and information operations.30 It also refers to the planning process DOD organizations use to implement these activities.

In essence, the Security Cooperation planning process is a systematic method for translating strategic guidance into programmatic objectives. The Office of the Secretary of Defense issues annual Security Cooperation Guidance (OSD SCG) to guide the planning and activities of Unified and Specified Commands, the military services, and other DOD agencies and actors.31 The SCG promulgates strategic objectives based on security themes derived from the National Security and Defense strategies. It also provides regional and country priorities, objectives, and measures of effectiveness for assessment.32 The Unified and Specified Commands, the services, and other DOD players develop subordinate plans to execute Security Cooperation activities in support of OSD’s objectives. The Unified Commands, for example, develop regional strategies and country plans to guide the implementation of security cooperation activities in their Areas of Operation.33

It is an oft-repeated mantra that in order to defeat transnational terrorism, and by extension other related non-state threats, the United States must apply all the elements of national power, including diplomatic, informational, military, and economic.34 The OSD SCG directs that DOD Security Cooperation “will be integrated with other elements of national power…in order to achieve national security, defense, and foreign policy objectives.”35 This formulation, while helpful, obscures two key facts. First, Security Cooperation includes activities that by their very nature involve the simultaneous application of more than one element of national power. Security Cooperation at a minimum requires the combination of diplomatic relations, military assistance, military-to-military contacts, and public diplomacy. In other words, Security Cooperation is itself an application of at least three of the classic elements of national power.36 Second, DOD is not the only entity in the USG that interacts with foreign governments to achieve the stated objectives: relationships, capabilities, information and intelligence, and access. The Department of State, the Intelligence Community, and to a lesser extent, other departments and agencies, conduct activities aimed at the accomplishment of these objectives, broadly understood. There is, however, no common USG, or interagency, definition or concept of Security Cooperation.37 We will return to this issue in the final section of this paper. For the purposes of the present discussion, this paper offers the following working definition of Security Cooperation:

Security Cooperation refers to all USG assistance provided to foreign law enforcement, security, and defense establishments in support of national defense, security, and foreign policy objectives.38

This expanded definition of Security Cooperation will help us to see how the USG may leverage its programs and activities to fight terrorism and related non-state threats.

The role of Security Cooperation in countering non-state threats is clearly reflected in U.S. strategy. The NSS states that the U.S. will cooperate with nations to counter terrorism and WMD proliferation, assisting those that are willing but unable, and persuading those that are able but not willing.39 The National Military Strategy (NMS) develops the concept of forward defense, or “Countering Threats Close to Their Source.”40 This is the recognition that the United States’ first line of defense is abroad, and that it is necessary to “patrol strategic approaches” and extend U.S. defensive capabilities beyond our borders to create an active “defense in depth.”41 In this context, Security Cooperation is best understood as a set of tools that can shape the strategic battlespace by creating the conditions necessary to accomplish U.S. security and defense objectives.42 As the NMS’s focus on forward defense indicates, these activities are by their nature anticipatory, preparatory, and defensive.43 They are best used as part of a long-term comprehensive strategy to put in place the relationships, capabilities, information and intelligence, and access to facilitate future offensive and defensive actions to counter non-state, as well as more traditional, threats.

Security Cooperation Goals

Before turning to a detailed discussion of the contribution that Security Cooperation can make to fighting non-state threats, let’s briefly examine the four main goals of security cooperation in that context.

Relationships

Fighting strategic criminals will require the cooperation of a variety of governments, including those outside our established alliance relationships. We are not capable of compelling the kind of “willing and competent cooperation” that we need.44 Security cooperation provides powerful tools to persuade foreign governments to work with the U.S. in support of common objectives. Senior U.S. commanders, notably current and former Geographic Combatant Commanders, regularly stress the critical contribution that Security Cooperation activities make to building the kinds of relationships with foreign leaders that set the stage for successful U.S. operations. The example most often cited is the role that US Central Command (CENTCOM) Security Cooperation activities played in persuading Central Asian leaders, notably in Uzbekistan and Kyrgyzstan, to support U.S. military operations in Afghanistan by granting access to bases and overflight rights.45 In addition to granting access, good relationships aid in building a common threat perception, which is a necessary precondition for any substantial cooperation. Relationships with foreign defense leaders can also provide the U.S. with influence over the policy direction of key partner states, including efforts at defense reform and the shape of force structure changes. Finally, good relationships make it more likely that foreign governments will share information with the U.S., including, in the extreme case, early warning of potential attack.46

Intelligence and Information Sharing

Relationships built on trust and mutual interests are also necessary to obtain cooperation from foreign governments in the area of Intelligence and Information. It is useful to separate the distinct, but related, issues of Intelligence Sharing and Intelligence Security Cooperation. Intelligence Sharing is a critical element in the fight against non-state threats, or strategic crime. By its nature, however, such sharing involves sensitive sources, methods and arrangements, normally in the context of a bilateral relationship. Its sensitivity requires delicate handling in highly restrictive channels. Intelligence sharing, in practice, falls outside the scope of Security Cooperation. Intelligence Security Cooperation, on the other hand, involves the development of interoperable and cooperative intelligence systems and processes designed to enhance the ability of one partner to work with one or several other partners. The core activities in Intelligence Security Cooperation are analytical and expertise exchanges, familiarization, training, and traditional Security Assistance. Both Intelligence Sharing and Intelligence Security Cooperation are mutually supporting. It is clear that the quality and reliability of intelligence we get from our partners depends on the competence, capability, professionalism, and trustworthiness of their national intelligence services and how compatible their operations are with ours. Intelligence Security Cooperation provides the tools to develop long-range relationships with foreign partners to improve both the quality of the intelligence we share and our ability to work together.

Access

The National Defense Strategy stresses the requirement to secure strategic access and retain global freedom of action for U.S. forces.47 This includes obtaining permanent and deployment basing and overflight. Security Cooperation directly supports access by developing relationships with foreign partners based on trust and mutual interests. Senior officer and other official visits contribute to this by demonstrating U.S. commitment to a defense relationship and staying abreast of host nation priorities, concerns, and requirements. Some Security Cooperation activities directly support access by improving host nation infrastructure, notably airbases, ports, and troop facilities, to support U.S. forces during operational and training deployments. Other activities improve host nation capabilities through training, equipping, and exercises. The NMS recognizes that access has an informational dimension that goes beyond the purely physical access to a partner’s territory, facilities or airspace:

“…theater security activities with multinational partners provide access to information and intelligence critical to anticipating and understanding new threats.”48

This insight is important in determining the contribution Security Cooperation can make to countering non-state threats. While DOD and the military services remain understandably focused on the physical dimension of access and its support to current and future operations, the fight against strategic criminals requires that we pay greater attention to securing strategic access to information and information networks controlled by our partners, allies, and adversaries. In some cases “virtual access” to databases, data flows, raw and finished intelligence, sensor data, and other forms of information may be more critical to the success of military operations than the ability to access an airfield, port or overflight corridor. Security Cooperation tools can also support the attainment of this non-traditional form of access.

Capabilities Development as the Core Activity

“...merely coordinating the existing capabilities of the United States to counter catastrophic terrorism is not adequate...”49

In this author’s view, the goal of developing allied and friendly military capabilities for selfdefense and coalition operations is the first among equals of the four Security Cooperation goals.50 The sophisticated nature of the network of non-state threats compels us to recognize that the national security of the United States may very well depend on the capabilities of our partners and allies every bit as much as on our own. It is no exaggeration to say that the competence, professionalism, and honesty of a border guard in Georgia or Kazakhstan may be more important to the goal of keeping WMD out of the hands of terrorists, than the effectiveness of any U.S. organization or surveillance regime. The U.S. has a direct interest in ensuring that its partners and allies have “the military law enforcement, political, and financial tools” to fight terrorists and other strategic criminals.51 The National Strategy for Combating Terrorism notes that, “constructive engagement, with sustained diplomacy and targeted assistance will be used to persuade…regimes to become more willing, and eventually able, to meet their international obligations to combat terrorism (emphasis added).”52 Increasing partner capabilities is the central task of Security Cooperation.53

The centrality of capability-building in Security Cooperation is due, in part, to the nature of the tools themselves. Most DOD and other Security Cooperation programs or tools aim at increasing the capability of our partners and allies to rise to U.S. standards and/or to develop systems, tactics, techniques, and procedures that are compatible or interoperable with ours. Traditional Security Assistance (FMF/FMS, IMET, etc.) provides foreign partners with equipment, training, advice, and education that directly support military reform and modernization. Exercises develop the ability of partners to work with the U.S. and with one another. Military contact programs provide U.S. policy advice, support defense reform, and assist in harmonizing threat perceptions and security or defense doctrines. Other assistance programs provide humanitarian assistance to support civil-military relations and furnish material assistance. Targeted programs support the development and/or improvement of counter-terrorism, counter-drug, and counter-proliferation regimes. Put simply, developing partner capabilities is what Security Cooperation does best.

Developing partner capabilities directly supports the other three Security Cooperation goals as well. The willingness to focus policy attention and devote resources to develop partner capabilities may be a powerful incentive for foreign nations to cooperate with U.S. goals and policies. There is no better way to establish a stable relationship with a partner than to work with that partner to establish or improve a key component of its own security infrastructure. Partners will be more likely to share intelligence and information with the United States if they perceive that the U.S. is willing to assist in the modernization of their national security establishments. As noted above, direct investments in the intelligence capabilities of a partner through Intelligence Security Cooperation will result in more reliable and higher quality intelligence obtained in intelligence sharing arrangements. Capability-building supports access both indirectly and directly. For example, developing partner capabilities builds the goodwill and trust necessary for a foreign country to agree to allow the U.S. to use its airspace, transportation infrastructure, or facilities (indirectly); and it may be necessary to assist a partner in improving its host nation support capabilities to support U.S. presence or transit (directly).

Security Cooperation, is a powerful tool, but a limited one. While Security Cooperation may increase the likelihood that foreign partners will support overall U.S. policy goals, it cannot guarantee such broad support and may be more suited to attaining specific, more narrowly construed objectives. There is little direct evidence that a robust Security Cooperation relationship will ensure foreign nation support for major U.S. policy decisions.54 The decision of countries such as Germany and Turkey not to support the U.S. invasion of Iraq demonstrates that other strategic or political factors may outweigh even extensive and longstanding defense and security relationships. While garnering support for major policy initiatives like Operation Iraqi Freedom must remain an objective of Security Cooperation activities, it may be more productive to focus on specific, critical objectives that directly support U.S. security in other ways. While formal allies and other close partners may be willing to follow the U.S. lead on strategic matters, other countries require more direct incentives to cooperate with the U.S. security agenda. For example, during the late 1990’s NATO aspirant countries seeking U.S. support for entry into the alliance were highly receptive to U.S. advice on everything from force structure to foreign policy. The incentive of alliance membership obviated the need for more specific incentives to implement policies that met U.S. approval. Many current partners, such as in the Caucasus and Central, South, and Southwest Asia have no prospects, or desires, for near-term entry into a defense alliance with the U.S. and will likely need more targeted inducements to support U.S. policy objectives.

A focus on building partner capabilities for their own sakes, therefore, may be more likely to yield definable and measurable benefits than a focus on broader policy goals. A direct offer of U S. assistance to develop a partner capability is highly likely to result in agreement with specific U.S. objectives tied to that capability. For example, a partner is more likely to agree to share data on foreign cargo traffic if it has received direct U.S. assistance in improving its capability to track foreign maritime traffic. In fact, investing in partner capabilities lends itself very well to this quid pro quo approach. This method works best when the USG identifies specific capabilities that fulfill partners’ security requirements and specific “payoffs” it seeks from that investment. This is more likely to net tangible, reliable, routine cooperation from partners than a less targeted approach.

Focusing on building partner capabilities will also support wider public diplomacy objectives. A key task for the U.S. is to build broad support for U.S. security policies among foreign publics and opinion leaders. Foreign governments and citizens will only support U.S. policies, initiatives, and (where applicable) presence, if they perceive the U.S. supports the security, sovereignty, and territorial integrity of their countries. In this, actions speak louder than words. An effective strategy will include a focus on building the kinds of capabilities, such as crisis response and consequence management or anti-trafficking, that demonstrate U.S. concern for foreign public safety, in addition to more traditional military or security structures. As we will see below, these capabilities are critical to the struggle against strategic crime. The U.S. willingness to invest in foreign partners’ security also helps to counter foreign fears that the U.S. is a “hyperpower” pursuing its foreign policy and security objectives without concern for other nations’ interests.

As we have seen, Security Cooperation provides the USG with powerful tools to enable partners to meet their obligations to contribute to the global struggle against our common adversaries. The next section explores how we should apply these tools in light of our understanding of the threats we face.

A Network of Friendly States

“To be effective, the United States will need to build its own international network to combat international terrorist networks.”55

The United States needs a sophisticated strategy to deal with the complex and dangerous threat environment posed by terrorists and other strategic criminals.56 The international component of this strategy must look beyond established alliances, bilateral relationships, and limited regional partnerships to construct a “powerful coalition of nations maintaining a strong, united international front…”57 Such a strategy must be holistic, recognizing the interconnected nature of the non-state threats we face.

Our current strategic approach to non-state threats does not entirely meet this test. First, rather than having a comprehensive strategy to deal with the disorder, lawlessness, and insecurity caused by strategic crime, we have a series of potentially complementary strategies for counter-terrorism, counter-proliferation, counter-narcotics, and Homeland Security. Second, because each of these strategies is associated with a separate bureaucracy, funding stream, and set of organizational priorities, the result is a fragmented effort and de facto competition for policy attention and resources (We will return to this issue in the final section).

As the epigraph to this section states, the task before the United States is to build an international network to counter the opposing network of strategic criminals that plague us and our allies. Phil Williams states in the preface to Non-State Threats and Future Wars, that the United States and its allies need to innovate organizationally and doctrinally, “notably by building new mechanisms for interagency, inter-service, multi-jurisdictional and transnational cooperation.” He also restates the oft-repeated and generally accepted assertion that hierarchies have great difficulty in fighting networks, and that it takes networks to fight networks.58 The building of what this paper will call a “Network of Friendly States” (NOFS) is a sufficiently complex and sophisticated strategy to address the threats of transnational terrorism and related non-state threats.

For such a strategy to be successful, it must meet the criteria for what has been called a “competitive strategy.”59 A competitive strategy is one that pits allied strengths against adversaries’ weaknesses.60 It must also be long-term, based on enduring strengths, with costs that can be sustained indefinitely. The chief weakness of strategic criminals is their need to operate without being detected by competent authority. This includes the requirement to communicate secretly, organize and train in safe havens, and move people, money, and things (e.g., weapons) internationally.61 To do this they use the global transportation and information infrastructure, as discussed above, and exploit weak or failing states. Any successful strategy would have to mobilize U.S. and allied capabilities to prevent strategic criminal networks from communicating, moving, and hiding free from allied detection.62 The building of a global network to fight strategic crime is clearly a long-term effort, and one that would need to be maintained over an extended period of time (several U.S. presidential administrations, for example) in order to show appreciable benefits. In order for the costs of such a strategy to be sustained indefinitely, a high degree of international cooperation and burden sharing will be required.

A Network of Friendly States implies a more permanent arrangement than a “coalition of the willing,” but does not go as far as suggesting the establishment of a NATO-style defense alliance on a global scale. The nature and scope of the international cooperation necessary to wage a long-term struggle against strategic crime implies complex arrangements for systematic cooperation and information sharing. This network would constitute an enduring partnership of like-minded states bound by mutual interests. To be effective, however, it would need to partially break out of the typical “state-centric paradigm”63 that characterizes traditional state-state relationships in the international system. The network paradigm captures the interdependence of international partners and the overlapping security concerns presented by the threat of strategic crime to global order and international peace and security. The network concept provides for and depends on U.S. leadership, but does not require U.S. orchestration or domination. Rather, it relies on broad and voluntary support, thereby distributing risks and burdens among the network’s members. According to Leon Fuerth, “American policy must be directed toward creating a sense of commonwealth and collective responsibility for its management with other democracies.”64

A comprehensive USG Security Cooperation effort, using the foreign assistance resources of the entire USG, could enable a global Network of Friendly States by providing its members a system of incentives to fulfill their obligations and cooperate with one another. The following section will explore in greater detail the desirable characteristics of a Network of Friendly States. At a minimum, it is clear that the willingness to share information and cooperate in the detection, interdiction, apprehension, or neutralization of strategic criminals should be the non-negotiable price of membership in this network. The willingness to give token political support to U.S. policy, or even support of discrete U.S. efforts such as Operations Enduring Freedom or Iraqi Freedom, should not be sufficient to enjoy the benefits of membership in a truly global network to fight strategic crime. It is an open question whether countries that refuse to cooperate fully in fighting strategic crime deserve to be called allies in the global coalition against terrorism.65 Our Security Cooperation tools and programs give us a way simultaneously to reward those who cooperate66 and to build up the overall capabilities of the network.

#### Isn’t exclusively DOD even if it includes them

Derek S. Reveron 10, professor of national security affairs and the EMC Informationist Chair at the US Naval War College and faculty affiliate at the Belfer Center for Science and International Affairs at Harvard University, “Demilitarizing Combatant Commands,” Exporting Security: International Engagement, Security Cooperation, and the Changing Face of the U.S. Military, Georgetown University Press, 2010, pp. 79–100

Deﬁning Security Cooperation

Security cooperation refers to all Department of Defense interactions that are carried out with foreign militaries and defense establishments.21 Security cooperation is “the ability for DOD to interact with foreign defense establishments to build defense relationships that promote specific U.S. security interests, develop allied and friendly military capabilities for self-defense and coalition operations, includ- ing allied transformation, improve information exchange, and intelligence shar- ing to help harmonize views on security challenges, and provide U.S. forces with peacetime and contingency access and en route infrastructure.”22 Security cooperation falls under the purview of the overall geographic combatant commander, but his strategy and activities are executed at the country level through his secu- rity assistance officer, who is the combatant commanders’ direct in-country rep- resentative and is a member of the country team at the U.S. Embassy working for the U.S. ambassador. Although not in all countries, the security assistance officer is one of the ambassador’s favorite staff members since military assistance pro- grams can create secure environments for development programs.

The overall goals of security assistance include creating favorable military bal- ances of power (e.g., selling weapons and training to Saudi Arabia to balance Iran), advancing areas of mutual defense or security arrangements (e.g., collaborating with Japan on missile defense technology), building allied and friendly military capabilities for self-defense and multinational operations (e.g., training Georgian forces, the third-largest troop contributor in Iraq in 2008), and preventing crisis and conflict (e.g., facilitating Colombia’s success against the decades-old Revolu- tionary Armed Forces of Colombia [FARC] insurgency). As noted in doctrine, there are six categories of security cooperation activity: military contacts, includ- ing senior official visits, counterpart visits, conferences, staff talks, and personnel and unit exchange programs; nation assistance, including foreign internal defense, security assistance programs, and planned humanitarian and civic assistance activ- ities; multinational training; multinational exercises; multinational education; and arms control and treaty monitoring activities.23 Underlying all of these activities is the clear intent to achieve U.S. national security objectives. It is important to remember that states must manage the risks of abandonment and entrapment by its friends and allies.24 The United States does this by building a partner country’s military and developing professional relationships across militaries.

These activities are increasingly enshrined in doctrine and are defined as “the ability to improve the military capabilities of our allies and partners to help them transform and optimize their forces to provide regional security, disaster pre- paredness and niche capabilities in a coalition.”25 For example, Commander Naval Forces Europe has been developing a capability for maritime domain awareness throughout Europe and Africa and has been working with NATO allies and Afri- can partners to develop a regional capability to protect trade, natural resources, and economic development. This work includes establishing maritime domain awareness through the automated identification system, an array of coastal radar systems, and through improved command and control of a naval reaction force. Inherent in these activities is the need to develop enduring relationships. In the Near East, for example, long-term relationships have produced trust and access for the United States to have forward operating bases in Qatar, Kuwait, United Arab Emirates, and Bahrain. Additionally, weapons are prepositioned in other countries, including Oman. While partners benefit from these programs, programs like these also support broader U.S. foreign policy objectives of global influence.

Security cooperation also includes security sector reform, which is an area of increasing importance. It focuses on improving civil–military relations, promoting collaboration among regional partners, and fostering cooperation within partners’ governments. The United States has learned that contemporary security challenges often require whole-of-government solutions and regional coop- eration. Consequently, it seeks to foster this same approach around the world. Programs support legislative reform (e.g., providing legal advice used to write laws to seize assets from drug traffickers in Colombia), enhancing cooperation between police and defense forces (e.g., building bridges among bureaucratic rivals in Jamaica), and managing the legacy of past human rights abuses by mili- taries (e.g., integrating human rights training in programs in Latin America and Africa). Further, it considers the internal health and welfare of partners’ military forces by combating HIV/AIDS in militaries, promoting noncommissioned officer development, and providing educational opportunities for officers.

The Department of Defense traditionally implements these international military assistance programs funded through the Department of State. Financed under Title 22 (Account 150), the international assistance budget was $27.3 billion in FY2009 (see table 5.1). Fifteen different programs are included in the Account 150, but only six programs can be considered related to security.

[TABLE 5.1 OMITTED]

These include foreign military financing (FMF), international military educa- tion and training (IMET), international narcotics control and law enforcement (INCLE), peacekeeping operations, the Andean Counterdrug Program, and Nonproliferation, Anti-Terrorism, Demining and related programs. While security assistance programs are substantial, nonsecurity assistance programs exceed them by at least two to one. And there are substantial differences across regions too. In Africa, for example, nonsecurity programs are the dominant approach to international assistance. In the Near East, however, the opposite is true because of military assistance to Egypt and Israel.

#### Isn’t exclusively DOD even if it includes them

Derek S. Reveron 10, professor of national security affairs and the EMC Informationist Chair at the US Naval War College and faculty affiliate at the Belfer Center for Science and International Affairs at Harvard University, “Demilitarizing Combatant Commands,” Exporting Security: International Engagement, Security Cooperation, and the Changing Face of the U.S. Military, Georgetown University Press, 2010, pp. 79–100

In addition to the general missions assigned, some geographic combatant commanders have specific responsibilities. For example, Southern Command is responsible for defending the Panama Canal and the surrounding area. North- ern Command is responsible for homeland defense, supporting civil authorities, planning for responses to pandemic influenza, and providing support to partner countries in the event of a catastrophic attack. And Africa Command is focused on building partners’ operational and institutional capacity with no emphasis placed on fighting wars in Africa. Evident in the sixteen assigned responsibilities and specific missions listed above is that combatant commands do much more than fight wars. Instead, military commands support broader U.S. government efforts during peacetime through security cooperation. This is a major effort and requires high levels of cooperation among the military services, U.S. gov- ernment departments, nongovernmental organizations, other governments, and international organizations. Generating unified action is not easy, but there are lessons from the military services’ efforts to create jointness that are informing those efforts.

### AFF Perm---vs DoD PICs---AT: Serafino

#### Serafino concludes ‘security coop’ is imprecise AND one of many terms of art in the field

Nina M. Serafino 16, Specialist in International Security Affairs at the Congressional Research Service, “Security Assistance and Cooperation: Shared Responsibility of the Departments of State and Defense,” Congressional Research Service, 4/4/16, <https://apps.dtic.mil/sti/pdfs/AD1013554.pdf>

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

### AFF Perm---vs Chain of Command CPs

#### Includes all DOD international programs and every level of the chain of command

Douglas M. Faherty 12, Lt. Col., United States Army, “Harnessing International Relations Theory to Security Cooperation Program Design,” United States Army War College, Strategy Research Project, 3/22/12, https://apps.dtic.mil/sti/pdfs/ADA561640.pdf

The Chairman of the Joint Chiefs, Service Chiefs, and the GCC Subordinate Component Commands are deliberately excluded from the triad because they are primarily concerned with training, manning, and equipping forces for global readiness. Focused inward, they all may see security cooperation activities as vehicles to best execute these tasks, but they should not be setting the direction for bilateral activities between states. The Defense Security Cooperation Agency draws attention that “the broad definition of security cooperation to include all DOD international programs… has significantly increased the playing field within DOD. Now it reaches far beyond the Secretary of Defense to the GCC, the in-country [Defense Attaché Office] DAO, and the [Security Cooperation Office] SCO. Every community within DOD has a role to play in security cooperation and its use in achieving U.S. foreign policy and national security objectives.”34 This is a noble goal, but applies to program execution more than to program design. In practice, the design of security cooperation engagements remains under the purview of the triad. Major Combatant Command liaisons to foreign countries, such as the Army‟s Training and Doctrine Command network, are responsible to coordinate their activities as part of the Country Team through the Senior Defense Official. National Guard or Active troops visiting or training in a foreign country must obtain country clearance approval from the Geographic Combatant Command and the local American Embassy. Enough statutory controls exist that it serves to acknowledge the duties and authorities of the actors in the triad and recognize them as the supported effort when designing, executing, an evaluating security cooperation programs.

### Includes Arms Sales

#### It includes arms sales and coordination by the DOS

Lt. Col. Robert D. Reighard 6, United States Air Force, “Security Cooperation: Integrating Strategies to Secure National Goals,” US Army War College, 3/15/6, https://apps.dtic.mil/sti/pdfs/ADA449543.pdf

Security Cooperation is sometimes confused with Security Assistance. The latter term falls under the umbrella of Security Cooperation, but it focuses more on programs such as Foreign Military Finance (FMF), Foreign Military Sales (FMS), the International Military Education and Training Program (IMET), and other programs authorized by the Foreign Assistance Act and managed by the Defense Security Cooperation Agency. However, the Department of State is responsible for providing policy direction for Security Assistance programs.14

### Includes Arms Sales---‘Security Assistance’

#### Security cooperation includes security assistance

Daniel Mahanty 21, Director of the US Program for the Center for Civilians in Conflict (CIVIC), spent 16 years in the US Department of State, where he created and led the Office of Security and Human Rights, “Human Rights and Civilian Harm in Security Cooperation: A Framework of Analysis,” in Remote Warfare: Interdisciplinary Perspectives, ed. Alasdair Mckay, Abigail Watson & Megan Karlshøj-Pedersen, 2021, pp 132-151

A note on terminology: While security cooperation and security assistance have different definitions in sources of US Government guidance, this paper will use the term ‘security cooperation’ to include security assistance activities for purposes of simplicity.

The case of support to Saudi demonstrates one way in which the United States Government may encounter a policy obstacle, in the form of public scrutiny, that results from harmful policies and practices of a partner over which it has little or no control. But civilian harm and human rights violations committed by America’s partners can also undermine progress toward the security interests that security cooperation is intended to achieve in more fundamental ways. For example, human rights abuses by a partner can counteract joint efforts to counter terrorism by eroding the public’s trust in the legitimacy of the partner state (and by extension, the United States), or even by increasing the number of the disaffected who may turn to violence in response to state-sponsored abuse (UNDP 2017, 5, 80). Meanwhile, providing security assistance in fragile states, where such harms may be more likely or prevalent, can also aggravate conflict, undermine stabilization, or counteract peacebuilding efforts (Kleinfeld 2018, 282–285). Finally, human rights abuse or civilian harm may be symptomatic of larger institutional deficits or structural phenomena (e.g. corruption) that greatly diminish the likelihood that security cooperation will ever achieve its desired outcomes.

Having a sounder understanding of risks specific to human rights and civilian harm could, at minimum, allow the US government to optimise the desired returns on security cooperation with fewer attendant costs. This chapter sets out a summary of a framework developed by Center for Civilians in Conflict, by which the US – and even other states or institutions – might assess the human rights and civilian harm risks involved with undertaking security cooperation activities with particular partners. It also presents a selection of factors to consider in the design of the partnership to ensure ‘interoperable’, i.e. compatible, approaches to risk mitigation. As such, the US Government might use the framework in one of three ways: 1) ex ante policy analysis of its partners to help formulate security cooperation strategies; 2) ongoing analysis of risks that can be used to head off significant problems arising from harm or to monitor progress or improvements; and 3) a means of designing and customizing risk mitigation measures specific to, and appropriate for, partnerships of vastly different character.

Scope of application

For purposes of this analysis, security cooperation can include a variety of activities along a spectrum of involvement, from partnered operations involving both countries in the military or security operations, to the provision of advice, operational or logistical support, arms sales, and training and education (Knowles and Watson 2018, 3). While partnership with civilian law enforcement may be implicated by this framework, and certain analytical criteria may apply to police activities, the analysis is primarily geared toward application to cooperation between, and with, military forces.

### Excludes Episodic Cooperation

#### Security cooperation must be infrastructural, not episodic---e.g., building up systems for intelligence sharing, rather than individual acts of intelligence sharing

Colonel Albert Zaccor 5, 2004-2005 United States Army Senior Fellow at the Atlantic Council of the United States and is currently Director for Southern Europe in the Office of the Secretary of Defense, International Security Policy – NATO/Europe, “Security Cooperation and Non-State Threats: A Call for an Integrated Strategy,” The Atlantic Council of the United States, August 2005, https://www.files.ethz.ch/isn/46290/2005\_08\_Security\_Cooperation\_and\_Non-State\_Threats.pdf

It is an oft-repeated mantra that in order to defeat transnational terrorism, and by extension other related non-state threats, the United States must apply all the elements of national power, including diplomatic, informational, military, and economic.34 The OSD SCG directs that DOD Security Cooperation “will be integrated with other elements of national power…in order to achieve national security, defense, and foreign policy objectives.”35 This formulation, while helpful, obscures two key facts. First, Security Cooperation includes activities that by their very nature involve the simultaneous application of more than one element of national power. Security Cooperation at a minimum requires the combination of diplomatic relations, military assistance, military-to-military contacts, and public diplomacy. In other words, Security Cooperation is itself an application of at least three of the classic elements of national power.36 Second, DOD is not the only entity in the USG that interacts with foreign governments to achieve the stated objectives: relationships, capabilities, information and intelligence, and access. The Department of State, the Intelligence Community, and to a lesser extent, other departments and agencies, conduct activities aimed at the accomplishment of these objectives, broadly understood. There is, however, no common USG, or interagency, definition or concept of Security Cooperation.37 We will return to this issue in the final section of this paper. For the purposes of the present discussion, this paper offers the following working definition of Security Cooperation:

Security Cooperation refers to all USG assistance provided to foreign law enforcement, security, and defense establishments in support of national defense, security, and foreign policy objectives.38

This expanded definition of Security Cooperation will help us to see how the USG may leverage its programs and activities to fight terrorism and related non-state threats.

The role of Security Cooperation in countering non-state threats is clearly reflected in U.S. strategy. The NSS states that the U.S. will cooperate with nations to counter terrorism and WMD proliferation, assisting those that are willing but unable, and persuading those that are able but not willing.39 The National Military Strategy (NMS) develops the concept of forward defense, or “Countering Threats Close to Their Source.”40 This is the recognition that the United States’ first line of defense is abroad, and that it is necessary to “patrol strategic approaches” and extend U.S. defensive capabilities beyond our borders to create an active “defense in depth.”41 In this context, Security Cooperation is best understood as a set of tools that can shape the strategic battlespace by creating the conditions necessary to accomplish U.S. security and defense objectives.42 As the NMS’s focus on forward defense indicates, these activities are by their nature anticipatory, preparatory, and defensive.43 They are best used as part of a long-term comprehensive strategy to put in place the relationships, capabilities, information and intelligence, and access to facilitate future offensive and defensive actions to counter non-state, as well as more traditional, threats.

Security Cooperation Goals

Before turning to a detailed discussion of the contribution that Security Cooperation can make to fighting non-state threats, let’s briefly examine the four main goals of security cooperation in that context.

Relationships

Fighting strategic criminals will require the cooperation of a variety of governments, including those outside our established alliance relationships. We are not capable of compelling the kind of “willing and competent cooperation” that we need.44 Security cooperation provides powerful tools to persuade foreign governments to work with the U.S. in support of common objectives. Senior U.S. commanders, notably current and former Geographic Combatant Commanders, regularly stress the critical contribution that Security Cooperation activities make to building the kinds of relationships with foreign leaders that set the stage for successful U.S. operations. The example most often cited is the role that US Central Command (CENTCOM) Security Cooperation activities played in persuading Central Asian leaders, notably in Uzbekistan and Kyrgyzstan, to support U.S. military operations in Afghanistan by granting access to bases and overflight rights.45 In addition to granting access, good relationships aid in building a common threat perception, which is a necessary precondition for any substantial cooperation. Relationships with foreign defense leaders can also provide the U.S. with influence over the policy direction of key partner states, including efforts at defense reform and the shape of force structure changes. Finally, good relationships make it more likely that foreign governments will share information with the U.S., including, in the extreme case, early warning of potential attack.46

Intelligence and Information Sharing

Relationships built on trust and mutual interests are also necessary to obtain cooperation from foreign governments in the area of Intelligence and Information. It is useful to separate the distinct, but related, issues of Intelligence Sharing and Intelligence Security Cooperation. Intelligence Sharing is a critical element in the fight against non-state threats, or strategic crime. By its nature, however, such sharing involves sensitive sources, methods and arrangements, normally in the context of a bilateral relationship. Its sensitivity requires delicate handling in highly restrictive channels. Intelligence sharing, in practice, falls outside the scope of Security Cooperation. Intelligence Security Cooperation, on the other hand, involves the development of interoperable and cooperative intelligence systems and processes designed to enhance the ability of one partner to work with one or several other partners. The core activities in Intelligence Security Cooperation are analytical and expertise exchanges, familiarization, training, and traditional Security Assistance. Both Intelligence Sharing and Intelligence Security Cooperation are mutually supporting. It is clear that the quality and reliability of intelligence we get from our partners depends on the competence, capability, professionalism, and trustworthiness of their national intelligence services and how compatible their operations are with ours. Intelligence Security Cooperation provides the tools to develop long-range relationships with foreign partners to improve both the quality of the intelligence we share and our ability to work together.

### Excludes NATO Exercises

#### Reads good but is kinda a nonsense definition

#### Security cooperation is when the US directly partners with country, different than using the NATO architecture to directly do stuff with NATO assets

Nathan L. Fenell 11, Operations/Administration Management Professional and Military Veteran with over 20 years of experience in the United States Marine Corps, “Security Cooperation Poorly Defined,” University of San Francisco, 12/12/11, <https://repository.usfca.edu/cgi/viewcontent.cgi?article=1020&context=thes>

Background and Need for the Study

The precise use of words by Department of Defense officials is critical to formulating and executing military strategy.11 When developing a plan of action, loosely defined military terms can affect planners’ abilities to properly understand the actual capabilities resident in a proposed course of action.12 In Afghanistan, the misapplication of the military term security cooperation fostered a climate that caused the Department of Defense and State to underestimate the significant role of SC in fostering the diplomatic relationships that contribute to international peace and stability.

As a major in the Marine Corps, I planned and participated in a security cooperation exercise with Estonia. It was important to the United States European combatant commander and the commanding general Estonian Self Defense Force that communication with the media specifically addressed our operation as a security cooperation exercise. Eighteen countries participated in the exercise, to include the United States and Estonia, and sixteen other countries that are part of the North Atlantic Treaty Organization (NATO). However, this exercise, named BALTIC OPERATIONS, was not officially a NATO exercise.

This distinction between security cooperation exercise and NATO exercise may seem like nothing more than semantics. However a misunderstanding of the semantic nuances had potential negative strategic consequences. Estonia shares a border with Russia and former Soviet military forces occupied Estonia prior to the 1991 Singing Revolution. Diplomatic tensions between Estonia and Russia remain tense and Estonia is constantly defending its territorial waters in the Baltic Sea against Russian naval vessels. During the exercise a Russian frigate and a Russian submarine attempted to violate Estonia’s territorial water. In response, Estonia deployed a small portion of its Navy to block the Russian vessels and force a return to internationally recognized neutral waters shared by countries bordering the Baltic Sea. This level of international tension between Estonia and Russia is constant. If the participants of a security cooperation exercise were to describe the event as a NATO exercise, it would be interpreted by Russia as a signal that NATO forces, led by the United States, were rehearsing air, land, and sea strategies in the Baltic Sea that would support an amphibious assault against the Russian city of St. Petersburg. This instance and many others like it demonstrate that the improper use of military terminology can have unintended negative consequences.

### Excludes Secret Programs

#### Security cooperation excludes classified programs---examples like support for counter-terror SOF and counter-narcotics aren’t topical

Office of the Secretary of Defense 20, “Fiscal Year (FY) 2021 President’s Budget; Justification for Security Cooperation Program and Activity Funding,” April 2020, https://open.defense.gov/Portals/23/Documents/Security\_Cooperation/Budget\_Justification\_FY2021.pdf

This budget exhibit displays the $7.59 billion requested by the Department for FY 2021 to conduct security cooperation programs and activities. All funding presented is in the Department’s Title 10 funding request. It primarily focuses on the funding requested for programs and activities that will be executed under the authorities in Chapter 16 of Title 10, U.S. Code. It also includes funding requests for non-Chapter 16 programs and activities that are consistent with the security cooperation definition, including the Coalition Support Funds, the Indo-Pacific Maritime Security Initiative (MSI), Ukraine Security Assistance Initiative (USAI), Afghanistan Security Forces Fund (ASFF), and the Counter-Islamic State of Iraq and Syria (ISIS) Train and Equip Fund (CTEF). This exhibit excludes classified programs, such as programs authorized under Section 127e of Title 10, U.S. Code, “support of special operations to combat terrorism.” The budget display also excludes Drug Interdiction and Counter-Drug activities authorized under Section 284(c) of Title 10, U.S. Code, “Support for counterdrug activities and activities to counter transnational organized crime.”

### Excludes Wartime

#### Has to be peacetime / preventative

Derek S. Reveron 10, professor of national security affairs and the EMC Informationist Chair at the US Naval War College and faculty affiliate at the Belfer Center for Science and International Affairs at Harvard University, “Military Engagement, Strategy, and Policy,” Exporting Security: International Engagement, Security Cooperation, and the Changing Face of the U.S. Military, Georgetown University Press, 2010, pp. 31–54

The 2007 maritime strategy declares that “preventing war is as important as winning wars.” And the 2008 U.S. Marine Corps Strategy and Vision notes that “our future Corps will be increasingly reliant on naval deployment, preventive in approach,” to achieve national objectives.62 In practice, preventive military engagements take the form of security cooperation, which is the ability of militaries to interact together to build defense relationships that promote specific security interests, develop allied and friendly military capabilities for self-defense and coalition operations, and provide foreign forces peacetime and contingency access. These activities are in part funded by the State Department to “promote the principles of democracy, respect for human rights, and the rule of law.”63 Chapters 4 and 5 trace the evolution of the military’s concepts and doctrine to support these operations, but it is worth exploring how engagement became a central feature of U.S. defense strategy and policy.

#### It is peacetime, not wartime, must be by-invitation, and precise use of language is very important

Nathan L. Fenell 11, Operations/Administration Management Professional and Military Veteran with over 20 years of experience in the United States Marine Corps, “Security Cooperation Poorly Defined,” University of San Francisco, 12/12/11, <https://repository.usfca.edu/cgi/viewcontent.cgi?article=1020&context=thes>

Security cooperation: Security cooperation involves all [Department of Defense] interactions with foreign defense and security establishments to build defense relationships that promote specific US security interests, develop allied and friendly military and security capabilities for internal and external defense for and multinational operations, and provide US forces with peacetime and contingency access to the [host nation]. Developmental actions enhance a host government’s willingness and ability to care for its people. Security cooperation is a key element of global and theater shaping operations. [Geographic combatant commanders] shape their [areas of responsibility] through security cooperation activities by continually employing military forces to complement and reinforce other instruments of national power. The [geographic combatant commander’s] security cooperation strategy provides a framework within which [combatant commanders] engage regional partners in cooperative military activities and development. Ideally, security cooperation activities lessen the causes of a potential crisis before a situation deteriorates and requires coercive US military intervention. 1 [emphasis mine]

Introduction

Ten years after commencing military operations in Afghanistan, and seven years after then-President George W. Bush declared, “Mission accomplished!” from the flight deck of the USS Lincoln, the United States continues to engage Afghanistan in a long and costly military operation while simultaneously attempting to withdraw all of it military forces from the country of Iraq. Billions of dollars have been spent and thousands of lives have been lost during the Afghan conflict that, as yet, has no end in sight; and, in recent years, a complex and growing insurgency has threatened to destabilize reconstruction efforts, complicating efforts to craft a viable exit strategy.

At the conclusion of combat operations in Iraq, the United States military experienced significant domestic turmoil in and around the Sunni Triangle due to the disbanding of the Iraqi military and the “de-baathification” process that removed essentially all Baath Party officials loyal to Saddam Hussein. In the wake of massive unemployment that followed the purging of Baath Party loyalists an insurgency movement formed and took root as a challenge to the United States occupation of Iraq. In response to the growing insurgency, the U.S. military resurrected and re-purposed a doctrine designed to combat insurgents and gave it the name COIN or counter-insurgency doctrine. One of the key components to COIN is the civil-military relationship developed between the host nation and the U.S.; this relationship was given the label Provincial Reconstruction Teams and anointed as the process by which the United States would transition civil authority to the newly developing Iraqi government and gracefully exit the Iraq War. The strategy of employing Provincial Reconstruction Teams was also adopted in Afghanistan as the means to achieve military success and set the stage for the United States to withdraw from Afghanistan.

The self identified requirement of the United States to reconstruct both Iraq and Afghanistan, after the conclusion of hostilities, as the precursor to the successful withdraw of military forces, demanded a strategy capable of meeting these self-imposed restrictions. The Bush Administration developed and employed a reconstruction plan that used Provincial Reconstruction Teams as a bridge to re-establish the Iraqi and Afghan infrastructure destroyed during the invasion and occupation of both countries. Constitutional limitations prevented the re-election of President Bush and limited his ability to follow through on the implementation of his reconstruction plans. President Obama’s successful presidential election was in part linked to his promise of ending the war in Iraq. As the newly elected leader of the U.S., President Obama had to distinguish himself from the Bush Administration and one of the ways he did so was in the development of his 2010 National Security Strategy.

The 2010 National Security Strategy adopted the philosophy of defensive liberalism to define the way that the United States would attempt to influence international events. One on the strategies that President Obama articulated in this document was security cooperation; a strategy that was intended to rebuild the damaged infrastructure of a country, serve as the means to remove military forces from Iraq, and establish the conditions necessary to end military operations in Afghanistan. Unfortunately the use of security cooperation as a strategic tool for reconstruction that ultimately supports a military withdraw from post-conflict countries is in direct contradiction with its doctrinal definition. Security cooperation by definition is a strategic military tool intended to be used during times of peace in an effort to prevent future conflict. The faulty terminological use of security cooperation to described a U.S. exit strategy from the Iraq and Afghan wars created a false impression of what a strategy of security cooperation is capable of achieving.

Security cooperation is a compilation of financial, educational, and material resources, that at their foundation are supported by the United States, in particular the Department of Defense, and are used to support the peaceful development of democracies in foreign countries. The resources provided by the Department of Defense are available to foreign countries after the host nation requests the peaceful assistance of the U.S. military in response to systemic deficiencies in the bureaucratic management of a nation state or when a nation state recognizes that its military limitations prevent it from properly defending its geographic borders. The host nation’s request for support from the U.S. is typically an effort by the foreign country to develop its internal capacity to protect its people and limit internal or external threats. The security cooperation exercise Baltic Operation, held in Estonia, is an example of a foreign country using the resources provided by the United States to improve its national defense capabilities in direct response to a perceived threat to its sovereign borders. In this scenario Estonia is attempting to develop its military capabilities and project an image of strength in an effort to maintain the freedom it earned, from Russia, at the conclusion of the Singing Revolution in 1992 and prevent a future Russian incursion across its borders. In contrast to this appropriate use and definition of security cooperation as a strategy to prevent conflict, the Obama Administration is using the term security cooperation as a way to define a national exit strategy from a two front war, a strategy that at its heart is based on the reconstruction of a damaged infrastructure. The false labeling of reconstruction operations as security cooperation is the foci of this thesis project.

Statement of the Problem

Provincial Reconstruction Teams (PRTs) form the backbone of the reconstruction effort in Afghanistan. PRTs are composed of U.S. military, U.S. State Department, and USAID officials who collaborate with local Afghan leaders to identify and initiate the most needed reconstruction projects at the provincial level. Current events and recent literature suggest, however, that policy-makers and military planners, alike, are struggling to distinguish between security cooperation and the role of the PRT. The failure to properly differentiate security cooperation from stability and reconstruction operations detracts from the capabilities of security cooperation and limits its capabilities as a tool to promote and maintain peace.2 A particularly concerning trend is the growing propensity of planners to conflate the post-hostilities reconstruction role of the PRT with the pre-hostilities strategy of security cooperation (SC).3 In an effort to provide clarity on the subject, Assistant Secretary of Defense Robert England drafted a Department of Defense directive that defined security cooperation.

security cooperation. Activities undertaken by the Department of Defense 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 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.4

The directive was published in order to establish a baseline understanding of security cooperation as a mission. A common understanding of Department of Defense expectations with regard to security cooperation ideally would help planners use the strategy in ways that are consistent with the official definition.

This is an issue that has garnered little attention from those whose job it is to employ the strategy of SC, primarily because those same planners are the ones perpetuating the mistake. 5 The conflation of reconstruction efforts with SC is understandable given that both are strategic tools embedded into the medium of stability operations. Stability operations is an overarching term that spans the breadth of military operations used in peacetime security cooperation missions, crisis response activities, and combat operations.6 Stability operations exist in a variety of forms. The chart below taken from Joint Publication 3-0, Joint Operations, illustrates the variety of operational tasks included in stability operations.7

[FIGURE V-4 OMITTED]

A broad spectrum of operational environments exists in Afghanistan, ranging from the relatively friendly provinces of Panjshir and Bamyan where the Taliban has historically been unwelcome to the Taliban dominated provinces of Helmand and Ghazni. Operational environments that are peaceful and stable like Panjshir and Bamyan could support security cooperation activities if the whole of Afghanistan were at peace. In a stable environment, it would be appropriate to use security cooperation activities that reinforce host nation security efforts to minimize Taliban influence in the region. Provinces such as Helmand and Ghazni, however, where violent Taliban insurgencies continue to take American lives in large numbers, are operational environments that are not conducive to security cooperation and negate the use of SC as a viable strategy to quell the insurgency.8

Despite the difficulty of simultaneously managing a variety of strategies in the complex medium of stability operations, planners must guard against misunderstanding and misapplying military strategies. SC holds great potential as a tool of military diplomacy that can help to build trust in international relationships where trust has been at a deficit.9

Yet lack of understanding and misapplication of the term among policy makers and military planners threatens to reduce the effectiveness of security cooperation as a strategy which could potentially strengthen relationships between the United States and host nations, and reduce the possibility that the U.S. may be drawn into armed conflict.

China is questioning the value of Washington's plan to strengthen military cooperation with Australia and update its defense treaty with the Philippines. Chinese Foreign Ministry spokesman Liu Weimin called for discussions about the boosting of American troop deployment in East Asia, questioning just how cooperation would benefit the international community.

In Beijing, Chinese foreign ministry spokesman Liu Weimin expressed reservations about the measures. He questioned how the United States will justify the expense of its East Asia military expansion in the face of what he described as the sluggish global financial situation. He also questioned the benefits of such cooperation, saying any "outside interference" would affect the peace, stability and development that both Washington and Beijing say they want. 10

It is, therefore, important to identify how the issues associated with the inconsistent and inappropriate applications of the term, security cooperation in the conflict in Afghanistan has raised concerns with potential adversaries such as China.

In summary, the problem that motivated this thesis is the recognition that there is confusion in the definition and recent application of security cooperation in Iraq and Afghanistan, and concerns that the confusion will lead this valuable strategy to be dismissed before it is properly articulated. This problem will be addressed by describing a research based and effective application of security operations that supports host nation autonomy and minimizes the possibility of the United States being drawn into armed conflict.

Background and Need for the Study

The precise use of words by Department of Defense officials is critical to formulating and executing military strategy.11 When developing a plan of action, loosely defined military terms can affect planners’ abilities to properly understand the actual capabilities resident in a proposed course of action.12 In Afghanistan, the misapplication of the military term security cooperation fostered a climate that caused the Department of Defense and State to underestimate the significant role of SC in fostering the diplomatic relationships that contribute to international peace and stability.

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This distinction between security cooperation exercise and NATO exercise may seem like nothing more than semantics. However a misunderstanding of the semantic nuances had potential negative strategic consequences. Estonia shares a border with Russia and former Soviet military forces occupied Estonia prior to the 1991 Singing Revolution. Diplomatic tensions between Estonia and Russia remain tense and Estonia is constantly defending its territorial waters in the Baltic Sea against Russian naval vessels. During the exercise a Russian frigate and a Russian submarine attempted to violate Estonia’s territorial water. In response, Estonia deployed a small portion of its Navy to block the Russian vessels and force a return to internationally recognized neutral waters shared by countries bordering the Baltic Sea. This level of international tension between Estonia and Russia is constant. If the participants of a security cooperation exercise were to describe the event as a NATO exercise, it would be interpreted by Russia as a signal that NATO forces, led by the United States, were rehearsing air, land, and sea strategies in the Baltic Sea that would support an amphibious assault against the Russian city of St. Petersburg. This instance and many others like it demonstrate that the improper use of military terminology can have unintended negative consequences.

According to the authors of a paper written for USAID, the reconstruction strategy in Afghanistan, is often mislabeled as security cooperation, and designed to support the withdraw of United States military forces from Afghanistan.13 This example demonstrates the tendency to confuse Afghan reconstruction with SC. SC is a prehostilities strategy to effectively and peacefully resolve emerging problems prior to the eruption of violence and the need to commit U.S. forces to a contingency operation.14 This is contrasted with reconstruction, a term that describes aid provided during and after military conflict. This contrast highlights the need to protect the integrity of the SC and the importance of identifying operations where SC is confused. Indeed one of the basic assumptions under which I will proceed with this thesis is that SC, properly defined, occupies a critical role in the overall strategy to prevent the United States from entering into armed conflict rather than a strategy employed after hostilities have commenced.

Military doctrine, national strategy, and specialized dictionaries for military professionals and government policy makers, present a precise definition of and specific criteria for the strategic application of security cooperation.15 Yet a review of case studies by organizations like the United States Agency for International Development and the Woodrow Wilson School of Public and International Affairs that focus on Provincial Reconstruction Teams in Afghanistan, demonstrates that the current application of security cooperation is inconsistent with its doctrinal definition.16 Moreover, my professional military experience with the doctrinal application of security cooperation and Provincial Reconstruction Teams provides a first hand account that reinforces the observation that doctrinal definition and contemporary practical application of Security cooperation are inconsistent.

The literature review will establish the premise that security cooperation as an academic area of study receives little attention.17 The paucity of literature on the subject contributes to the current misunderstanding of the definition as well as its improper strategic utilization. Authors who participate in scholarly conversation on the topic fall into one of two categories, doctrinal use or modern misconception.18 The contradictory nature of the literature further supports my hypothesis that the definition of security cooperation is frequently not applied in Afghanistan.

The history of security cooperation provides an unambiguous storyboard that details the inception and proper application of the foreign relations strategy. Current events in Afghanistan and elsewhere appear to reflect a distorted image of historical precedent for security cooperation. However, the evidence will show this distortion not only to be the fault of a poor understanding and application of security cooperation by planners, but also to be the fault of United States foreign policy that compounds the problem of achieving clarity because it confounds the doctrinal definition and implementation of security cooperation. 19

Indeed, actions taken by the Department of Defense in an effort to shorten the duration of the war in Afghanistan, coupled with foreign policy statements made by the Secretary of State, demonstrate the extent to which misunderstanding and a misapplication of the term has permeated the vested departments of the government. I will attempt to illustrate how far the Department of Defense and State Department planners and policy makers have wandered from the precepts developed at the strategy’s inception by providing examples of case studies that depict an unvarnished execution of security cooperation strategy when it is properly centered on its seminal concepts.20 Additionally, I will reinforce the critical concept that security cooperation was devised as a powerful tool meant to promote international peace and to prevent the necessity of the United States entering into armed conflict.

Purpose of the Study

Words have meaning and the unique ideas that are transmitted through the use of military vocabulary demand that the author and the orator communicate with specificity and clarity. In the case of security cooperation, my research indicates that military professionals, government officials, and academics appear to be equally guilty of failing to limit their use of the term to its correct context. Most egregiously, the term is being improperly used as an important element that describes the United States exit strategy from Afghanistan.21 An example of the recent comments made by the Secretary of State as she described the current state of affairs in Washington, D.C. and Afghanistan, that the State Department convened an interagency team, including DOD, USAID, and the NSC and held discussions that resulted in an agreement that included strong commitments on economic/social development, democratic institution-building, human rights, anticorruption, and other important long-term reforms. Mrs. Secretary follows up on this statement by saying; “Ambassador Crocker and General Allen are still working through some of the security cooperation issues with President Karzai”.22 To place these comments into context, the Honorable Mrs. Clinton was incorrectly describing the peace process in Afghanistan and the withdraw of U.S. forces as security cooperation.

Doctrinally, security cooperation is unrelated to a military withdraw from a country at the conclusion of armed conflict.23 I was caught by surprise; therefore, to discover that despite the efforts of the Department of Defense to accurately articulate its professional lexicon via a dictionary of military terms and doctrine, basic concepts and their associated framework of action were being misused. 24 Initially I thought that I was encountering isolated instances of misuse, but further reading led me to believe that the misapplication of this particular term was wide spread. 25

#### It is peacetime, not wartime, must be by-invitation

Nathan L. Fenell 11, Operations/Administration Management Professional and Military Veteran with over 20 years of experience in the United States Marine Corps, “Security Cooperation Poorly Defined,” University of San Francisco, 12/12/11, <https://repository.usfca.edu/cgi/viewcontent.cgi?article=1020&context=thes>

Policy that expresses the cooperative philosophy of defensive liberalism and a strategy of security cooperation are complementary. The United States could use security cooperation as a means to export its democratic ideals peacefully and distance itself from the improper use of security cooperation as a tool for reconstruction in Afghanistan. To begin with, realistic expectations of SC capabilities must be formed during key leader engagements. During key leader engagements both the Department of Defense and State Department could participate in conversations with political leadership from the host nation on policy and strategy. During these executive level meetings the expectations of what SC can achieve are discussed, policy expectations are presented as goals, and resources from both countries are allocated to achieve agreed upon goals. During these engagements leadership from both countries are developing a shared vision on the future of the host nation. Importantly the U.S. has been invited to participate in the realization of the host nation’s vision. Key leader engagements ultimately manage the expectations of both countries and define agreed upon realistic and achievable goals. The U.S. policy and strategy toward Afghanistan does not achieve this and results in the current unrealistic expectation that security cooperation will achieve the goal of reconstructing Afghanistan.

Two basic tenets of a SC strategy are voluntary participation and Phase 0 implementation. A country that voluntarily participates in a SC strategy with the U.S. is deliberately choosing to invest its resources in achieving common goals that benefit both the U.S. and the host nation. Implementing a SC strategy prior to the onset of conflict allows both the U.S. and the participating country to focus on agreed upon goals instead of conflict. Vested interest on behalf of a host nation is critical to the success of SC, when a country acts as equal partner with the U.S. and is not distracted by the fall out of conflict it is reasonable to expect common desires shared between two countries will be achieved. Estonia and Philippines are two examples of successful voluntary participation in U.S. SC strategies that were implemented during phase 0. The current Afghanistan reconstruction plan and the establishment of the Office of Security Cooperation-Iraq that are paraded around as SC does not meet either one of these basic tenets.

The strategy of SC was foisted onto Afghanistan. The people of Afghanistan did not ask to be invaded by the U.S. and the North Atlantic Treaty Organization (NATO). The reconstruction obligation placed on the U.S., as a result of its invasion, forces Afghanistan to participate in a process it does not embrace. The U.S. has placed Afghanistan in a dilemma. Afghanistan can reject current U.S. policy and use its sovereignty to eject the U.S. and all countries participating in the International Security Assistance Force (ISAF) mission. This course of action may be emotionally satisfying to the Islamic Republic however logically it would cause a power vacuum to form and the country would revert to a state of civil and tribal war. Alternatively Afghanistan can prevent a power vacuum by allowing the U.S. and ISAF to remain in Afghanistan. By continuing to support the current U.S. policy Afghanistan tacitly allows the U.S. to apply the wrong strategic resources in an effort to achieve the policy goals identified by Secretary Clinton. Based on the current situation it appears that Afghanistan will allow the U.S. and ISAF to remain in Afghanistan and execute its faulty SC strategy.

Given the choice between allowing Afghanistan to fall into chaos or allow the U.S. to stubbornly continue on a wrong strategic course of action the political leadership in Afghanistan truly has no choice at all. The government of Afghanistan has little if any input into the policy and strategy described by the Secretary of State. The U.S. has shackled Afghanistan to its strategy and denied the political leadership any opportunity to freely participate in the misidentified SC strategy to reconstruct Afghanistan. At its very core the current policy and strategy that identifies SC as the way to successfully reconstruct Afghanistan is antithetical to the accurate definition of SC.

Accepting the fact that both Iraq and Afghanistan were wars engaged in as a result of offensive liberalism and using the tools of reconstruction to put an end to the current conflicts will best preserve the potential good that can emerge from a properly employed strategy of security cooperation. Ending the wars in Iraq and Afghanistan provide the National Security Council an opportunity to redraft the National Security Strategy and employ security cooperation as it was intended. Policy rooted in the philosophy of defensive liberalism could be used to peacefully export the ideals of democracy through security cooperation activities. As a strategy that is properly aligned with policy goals, security cooperation is an effective method of promulgating friendly international relationships that are mutually beneficial to the host nation and the United States, and has the potential to prevent war.

#### That includes arms sales and transfers, but only as long as they’re preventative.

Thomas S. Szayna et al. 4, political scientists at the RAND Corporation, “U.S. Army Security Cooperation: Toward Improved Planning and Management,” RAND Corporation, 2004, https://apps.dtic.mil/sti/pdfs/ADA426628.pdf

The number and complexity of peacetime security cooperative activities undertaken by the U.S. armed forces with other countries and mihtaries increased steadily during the 1990s. During the 1990s, these activities were collectively termed "engagement." Beginning with the 2001 Quadrennial Defense Review (QDR), they have been referred to as "security cooperation." Although security cooperation activities further both service and national goals, the Army plays a prominent role as the executive agent for many, if not most, of them. The Army programs and activities that fall under the rubric of security cooperation are referred to as Army International Activities (AIA).

However, Headquarters Department of the Army (HQDA) does not possess a comprehensive understanding and appreciation of the extent of the Army's activities in security cooperation. This is partly attributable to shortcomings in security cooperation management processes and policies at the national and Department of Defense (DoD) levels, but it equally stems from weaknesses in the Army's own approach to AIA. Indeed, there is no effective linkage between the execution of security cooperation missions and the provision of accurate planning information as HQDA develops its Program Objective Memorandum (POM). This leaves HQDA with limited means to understand fully the PERSTEMPO and resources implications ofAIA, let alone effective measures to influence resource planning and management for these activities. This study sought to help the U.S. Army improve its ability to assess future demand for Army resources devoted to security cooperation and to evaluate the impact ofthese demands upon the resources available to the Army.

Data collection and almost all of the research on the project were conducted prior to the attacks on the United States on September 11, 2001. A draft report was submitted to the sponsor in mid-2002. It was revised and updated selectively to include the major developments in security cooperation policy up through the beginning of 2004.

The first step in the research was a review of the guidelines for security cooperation planning in the 1990s, which revealed a lack of definitional clarity within DoD as to what constituted "engagement." The definitional ambiguity impeded a better institutional understanding of, and management over, ALA. activities. From the perspective of bringing greater specificity to the Army's peacetime activities with other countries and armed forces, the replacement of the vague term "engagement" with a more focused and better defined "security cooperation" has been a step in the right direction. As of the completion of this monograph, there remains in place a mixture of the former "engagement" planning mechanisms and a new set of goals, tied more specifically to military missions and focusing more on established allies and partners.

The unified combatant commanders (UCCs) are the primary demanders for AIA, and given that they are not responsible for providing resources for AIA, their demand is theoretically infinite. The existing UCC-level security cooperation planning systems often lack concrete measures of effectiveness and do not incorporate fully both cost and benefit information with respect to security cooperation. The institutional providers ofsecurity cooperation (such as the Department of the Army, as provider ofAIA activities) do not have clear visibility into the payoffstemming from security cooperation activities. Even though the UCCs, component commands. Defense Security Cooperation Agency, and embassy teams all have excellent systems of informal communication to oversee the execution and management ofsecurity cooperation (and specifically security assistance), they are not formalized and the planning process is subject to ad hoc decisionmaking.

A review of the resourcing processes and trends in recent (since fiscal year 1995) Army expenditures on AIA shows that the Army's budgeting system is not well structured to account for basic AIA expenditures. We were able to arrive at an aggregate level of the direct Army costs associated with AIA for the period 1995-2001 (and make estimates until 2005). Since 1995, the direct costs have fluctuated largely in the $400-$5 00 million range annually. The AIA resource management problem is compounded by the lack of both a definitive list of activities and a mechanism that links unofficial AIA categories with official Army and DoD resourcing categories. In addition, the Army is not properly accounting for many personnel costs related to security cooperation and, in some cases, is missing an opportunity to increase the amount of administrative costs charged directly to the customer. As a result of the disjointed nature of AIA programming and budgeting, HQDA is currently incapable of capturing the many hidden costs associated with AIA. The situation precludes HQDA from making fully informed policy and resource decisions with regard to security cooperation programs.

In an overall sense, the existing security cooperation planning process is exceedingly complex, involving a multitude of actors, problematic incentive systems, incomplete information exchange, and no reliable measures of effectiveness. Virtually all of the stakeholders understand only certain aspects ofthe process and/or have only partial visibility into the process. The drivers and demanders ofAIA tend to have an incomplete understanding of the resourcing problems and the tradeoffs involved in making AIA choices. In turn, HQDA (the supplier ofAIA resources) has an incomplete understanding of the benefits ofAIA, and the Army's own resourcing tools are not easily amenable to an in-depth understanding of the resources it commits to AIA. Fundamentally, demand for AIA is predicated upon the amount of AIA supply provided by the Department of the Army, as opposed to the latter being the product of policy, strategy, and resource guidance. Indeed, incrementalism and continuity, rather than policy and strategy, have been the principal driving agents in the development ofAIA resource priorities.

The 2003 Army International Activities Plan (AIAP) has established the policy framework for a strategy-driven AIA management process, but deep institutional issues within DoD and the Army must be addressed before the AIA management process matches the vision ofthe AIAP.

In the post-September 11 security environment, the planning system of AIA needs greater flexibility and efficiency as a crucial component of the global war on terrorism. The need for flexibility and adaptability in security cooperation—to accommodate shifting priorities (new partners, different mix of activities) and to seize opportunities that may be short-lived—has made essential the reform of the security cooperation planning and implementation process.

Recommendations

The premise for our recommendations is that even though some of the deeply embedded problems in the security cooperation planning process will remain, steps can be taken to lessen the divergences and inefficiencies stemming from the different incentive systems ofthe main actors.

As the security cooperation planning process is reformed, an important goal will be to eliminate the definitional ambiguities that have plagued security cooperation planning during the 1990s. HQDA has a strong interest in ensuring that the official definition of "security cooperation" accurately reflects the U.S. Army's extensive activities in this area.

Given the Army's extensive benefits from, and involvement in, security cooperation, HQDA needs to encourage, and take a leading role in, the reform of the theater security cooperation planning system. It follows then that the Army Staff should be intimately involved in the development ofthe new planning methodology in order to ensure that its program and management activities are properly and sufficiently covered in defense resource planning.

The decision to disestablish DUSA-IA may open a policy and budget void in HQDA that will need to be filled by DAMO-SS. DAMO-SS is the logical division within G-3 (ODCSOPS) to provide HQDA policy guidance for, and establish priorities in, the development of Army capabilities to support national theater security cooperation strategy. Importantly, an administrative and resource vehicle is needed to link AIA strategy clearly to resources. The revision of the AIAP is ideally suited to this requirement. The revised document should provide clear guidance and priorities to MACOMs that would enable those commanders to develop theater security cooperation supporting activities and relevant POM program elements that are in conformance with HQDA policy. Improved policy and resource planning systems will also have the important benefit of preparing Army component commanders to manage more effectively UCCs' demand for AIA.

The Army's approach to security assistance (a category of security cooperation that includes primarily the provision of equipment and training to other militaries) needs to be reformed, if not thoroughly reengineered. HQDA needs to initiate this effort. The current system, as a general observation, is not optimally set up to meet customer requirements; nor does the Army, institutionally, see security assistance as an opportunity to capitalize on potential financial advantages. A potential starting point is through a basic review of how the Army delivers security assistance and the development ofArmy-specific metrics to enable HQDA to better manage and monitor the benefits (and accurate reimbursement) ofindividual programs.

### Must Be DoD

#### Security assistance is the generic term for working with a foreign country on security issues. It is agent-agnostic. Security cooperation is a subset of security assistance that uses only DoD.

Nina M. Serafino 16, Specialist in International Security Affairs at the Congressional Research Service, “Security Assistance and Cooperation: Shared Responsibility of the Departments of State and Defense,” Congressional Research Service, 4/4/16, <https://apps.dtic.mil/sti/pdfs/AD1013554.pdf>

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.

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.

The “issues are whether the United States’ approach is appropriately scoped and effective, achieves a set of welldefined 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 governmentwide 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 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 Purposes4

Foreign military and other security assistance serves multiple purposes, both for the U.S. government5 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 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), 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.

#### You can do basically whatever you want but it has to be the DoD

Ken Callahan 12, Lt. Col., USAF, “Enhancing National Security Cooperation Policy with Remotely Piloted Aircraft,” Air War College, 2/17/12, https://apps.dtic.mil/sti/pdfs/AD1018693.pdf

Security Cooperation

Joint Publication 3-0, Joint Operations discusses security cooperation and military engagement activities together as the means by which the Department of Defense interacts with other nations to ensure security, deter conflict, and enable future contingency operations. Joint Publication 3-0 defines security cooperation as:

All DOD interactions with foreign defense and security establishments to build defense relationships that promote specific US security interests, develop allied and friendly military and security capabilities for internal and external defense and for multinational operations, and provide US forces with peacetime and contingency access to the HN [host nation].”10

Likewise, Joint Publication 3-0 states, “Military engagement occurs as part of security cooperation, but also extends to interaction with domestic civilian authorities.”11 For simplicity, throughout this discussion, the term security cooperation will include interactions with both military and domestic civilian authorities.

Joint Publication 3-22, Foreign Internal Defense Figure I-4 lists fifteen activities with the last being “other programs and activities,”12 implying some leeway. However, despite the multiple number of activities that can occur under the umbrella of security cooperation, all of the activities can be grouped under four broad categories: stability operations, preparing for coalition operations, information and intelligence sharing, and strategic access.13 Grouping all the security cooperation activities into these four broad categories is non-doctrinal, but forms a good framework for consideration.

|  |  |  |  |
| --- | --- | --- | --- |
| Security Cooperation Activities | | | |
| Stability Operations | Preparing for Coalition Ops | Information and Intelligence Sharing | Strategic Access |
| * Counter-narcotics assistance * Counter/Non-Proliferation * Defense Support to Public Diplomacy * International Armaments Cooperation * Security Assistance * Humanitarian Assistance | * Multinational Education * Multinational Exercises * Multinational Experimentation * Multinational Training | * Intelligence Cooperation * Information Sharing | * Defense & Military Contacts * Facilities & Infrastructure Projects |

#### Military has to do it, it includes security assistance

Captain James R. R. Van Eerden 20, recently graduated from the Expeditionary Warfare School, Marine Corps University, where he completed a prestigious fellowship program and graduated first in his Class, currently works with the National Security Agency filling a variety of positions: deputy director, chief operations officer, and Marine detachment officer-in-charge, “Seeking Alpha in the Security Cooperation Enterprise: A New Approach to Assessments and Evaluations,” Journal of Advanced Military Studies, vol. 11, no. 1, 07/15/2020, pp. 113–126

Security Cooperation Defined

Security Cooperation, Joint Publication (JP) 3-20, provides the following definition of security cooperation: Security cooperation (SC) encompasses all Department of Defense (DOD) interactions, programs, and activities with foreign security forces (FSF) and their institutions to build relationships that help promote U.S. interests; enable partner nations (PNs) to provide the U.S. access to territory, infrastructure, information, and resources; and/or to build and apply their capacity and capabilities consistent with U.S. defense objectives.5

The Fiscal Year (FY) 2019 President’s Budget: Security Cooperation Consolidated Budget Display outlines seven categories of security cooperation activity, including military-to-military engagements, support to operations, and humanitarian and assistance activities, among others.6 The security cooperation framework traditionally includes security assistance (SA), security force assistance (SFA), and some aspects of foreign internal defense (FID).7 In the context of this article, the term security cooperation refers primarily to military-to-military engagements, where the U.S. military engages in training partner forces under the auspices of Title 10 and Title 22 authorities.

#### It broadly includes military-to-military contacts, it excludes excludes wartime operations

Lt. Col. Robert D. Reighard 6, United States Air Force, “Security Cooperation: Integrating Strategies to Secure National Goals,” US Army War College, 3/15/6, https://apps.dtic.mil/sti/pdfs/ADA449543.pdf

Background: Theater Security Cooperation

Security cooperation has been a part of the U.S. Armed Forces for many years. In fact, historians reveal that the U.S. military has always engaged in security cooperation with other countries and their military forces. However, the term used to designate such activities is now “Security Cooperation,” a term that has evolved conceptually through various programs over the years. During the 1990s, the terms “engagement” and “shaping” were used without sufficient specificity; they were often used interchangeably, resulting in confusion that led to problems in both planning and execution. DOD thus adopted “Security Cooperation” in 2001. It included a broad range of military-to-military activities, but it also clarified roles and responsibilities.

The term Security Cooperation thus describes a broad range of activities used by the Department of Defense in peacetime operations. These activities refer to all DOD interactions that are carried out with foreign defense establishments, such as combined exercises, combined training, combined education, military-to-military contacts, humanitarian assistance, and information operations.

### Title 10 & Title 22

#### The core definition of security cooperation is anything done with another country during times of peace to enhance security. Some of its activities are authorized under Title 10, others under Title 22. Broad interpretations are best for reasons of conceptual clarity.

Douglas M. Faherty 12, Lt. Col., United States Army, “Harnessing International Relations Theory to Security Cooperation Program Design,” United States Army War College, Strategy Research Project, 3/22/12, https://apps.dtic.mil/sti/pdfs/ADA561640.pdf

Refining the Scope of Security Cooperation

The US Armed Forces have peacefully interacted with other militaries through much of their history, but the mechanisms of security cooperation have changed. A brief examination is in order, as the relevancy of international relations theory will not become apparent without first understanding what security cooperation activities are.

A Cold War era commentator established that “the purpose of U.S. military and security aid is to apply American power internationally by: first, strengthening the defensive capabilities of states in the American alliance structure; second, helping friendly nations quell internal political or military disturbances; and third, assisting friendly nations in buying breathing space and, with luck, in regaining or retaining stability.”2 America‟s post-Cold War identity, once described by former Secretary of State Madeline Albright as the “indispensible nation,” 3 has done little to alter these objectives. American military assistance continues to strengthen our global security posture by protecting American interests, supporting our partners, and postponing security challenges whenever possible.

Currently, the US Armed Forces are charged with shaping the geostrategic environment in coordination with foreign partners in four of the five missions described in the Strategic Guidance document of January 2012.4 When not in actual combat, the military does this every day when it conducts activities abroad. Security assistance programs are controlled under Title 22 (Foreign Assistance) of the US Code, while other military cooperation tasks fall under Title 10 (Defense) and are directly tasked to the Defense Department. Security cooperation, however, is identified in the Joint lexicon as “all DOD interactions with foreign defense establishments to build defense relationships that promote specific U.S. security interests, develop allied and friendly military capabilities for self-defense and multinational operations, and provide U.S. forces with peacetime and contingency access to a host nation.”5 This essay accepts this inclusive list, and defines security cooperation as all military to military relationships, activities, and exchanges conducted outside of a zone of conflict or during times of peace. It will include all State Department funded Title 22 activities as well as all interactions with foreign armed forces financed by the Defense Department, the individual Armed Services, or the worldwide Geographic Combatant Commands. Since all these activities affect military to military relationships, and consequently shape the geostrategic environment, they should be addressed together to better synergize their effects.

#### This is the official definition of the term.

Christina L. Arabia 21, Analyst in Security Assistance, Security Cooperation and the Global Arms Trade, “Defense Primer: DOD “Title 10” Security Cooperation,” Congressional Research Service, 5/17/21, https://sgp.fas.org/crs/natsec/IF11677.pdf

Security Cooperation (SC) Overview

The Department of Defense (DOD) uses the term security cooperation (SC) to refer broadly to DOD interactions with foreign security establishments. SC activities include

 the transfer of defense articles and services;

 military-to-military exercises;

 military education, training, and advising; and

 capacity building of partner security forces.

SC programs are intended to encourage and enable partner nations (PNs) to work with the United States to achieve strategic objectives. They are considered a key tool for achieving U.S. national security and foreign policy objectives. These activities are executed through both DOD-administered SC programs (authorized under Title 10, U.S.C.) and DOD-implemented State Department (DOS) security assistance (SA) programs (authorized under Title 22, U.S.C). Beyond grant-based programs, SC encompasses the Foreign Military Sales program and enables U.S. and PN collaboration on defense articles. The following sections focus on DOD “Title 10” activities.

SC: Policy and Objectives

SC activities aim to achieve particular objectives in support of U.S. national security and defense strategies. Specifically, SC may build defense relationships that promote U.S. security interests, enhance military capabilities of U.S. allies and partners, and provide the United States with access to PNs. Under the overarching goal of furthering U.S. national security and foreign policy interests, SC emphasizes partnerships, aiming to be mutually beneficial for the United States and its partners. SC activities aim to develop and strengthen a PN’s ability to provide internal security, contribute to regional security efforts, combat shared threats, and increase military interoperability with the United States.

The 2018 National Defense Strategy (NDS) signaled the Trump Administration’s intention to shift SC activities from nearly two decades of prioritizing counterterrorism toward “great power competition” (GPC) with Russia and China. The shift raised questions as to how SC should be realigned to meet this objective and what the implications could be for scaling down counterterrorism-focused SC activities in Africa and the Middle East, especially as Russia and China increase their influence. Some DOD officials and defense analysts have suggested that rather than a shift, counterterrorism, as well as irregular warfare, should remain priorities within GPC. The Biden Administration has yet to release a new NDS; however, its Interim National Security Strategic Guidance broadly identifies authoritarianism and strategic competition as priority threats that require coordination and cooperation with allies and partners.

SC: Roles and Responsibilities

Many SC activities require DOD to coordinate with multiple DOD components and other federal departments, primarily DOS. Some DOD SC activities require varying levels of coordination with DOS. Within DOD, the Undersecretary of Defense for Policy (USD[P]) exercises overall direction, authority, and control over SC matters.

The Defense Security Cooperation Agency (DSCA) represents the interests of the Secretary of Defense and USD(P) in SC matters and is tasked with directing, administering, and executing many SC programs, developing SC policy, and providing DOD-wide SC guidance. DSCA is also DOD’s main interlocutor between the PNs, implementing agencies, and the defense industry. The Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD-SO/LIC) oversees and approves some SC training activities that are managed by DSCA. U.S. Special Operations Command (SOCOM) coordinates those SC activities executed by special operations forces (SOF). DOS leads U.S. foreign aid and has final say on SA. DOS’s Bureau of Political-Military Affairs (PM) is the principal link to DOD and ensures that SA is integrated with other U.S. policies and activities at the country, regional, and global levels. PM also determines PN eligibility, appropriate SA programs, and which defense articles and equipment are permitted for transfer.

[FIGURE 1 OMITTED]

[TABLE 1 OMITTED]

Title 10 SC Reforms from the FY2017 NDAA

The post-9/11 period saw the rapid and piecemeal expansion of DOD SC activities, mainly as temporary authorities that required annual renewal in the National Defense Authorization Act (NDAA). The FY2017 NDAA (P.L. 114-328) consolidated and codified existing Title 10 SC authorities into 10 U.S.C. §§301-386. Other provisions aimed to make improvements to the SC programs and themselves, as well as improvements in the management and oversight of those programs. Key reforms from the FY2017 NDAA included requirements for the following:  A consolidated DOD budget request for Title 10 SC programs and activities (10 U.S.C. §381); the first was released for FY2019.

 Harmonized congressional notification requirements for most DOD train and equip programs (10 U.S.C. §333).

 Institutional capacity building programs to strengthen partner defense institutions (10 U.S.C. §332).

 A DOD SC Workforce Development Program to manage a professional workforce in support of SC programs and activities (10 U.S.C. §384).

 A program of assessment, monitoring, and evaluation (AM&E) to be informed and supported by strategic evaluations on initial PN assessments, monitoring of implementation, and the efficiency and effectiveness of SC programs and activities (10 U.S.C. §383).

Congressional Role

Congress provides the authority and funding for SC programs. Title 10 SC activities fall under the jurisdiction of the armed services committees, while Title 22 (DOS) SA activities are under the jurisdiction of the Senate Foreign Relations and House Foreign Affairs committees. Although the armed services committees are responsible for the authorizing legislation for Title 10 SC programs, both committees exercise oversight of SC activities and the management of SC policy, including the level of coordination between DOD and DOS. Funding for Title 10 SC programs and activities is provided through annual appropriations bills, which originates in the appropriations committees, specifically the defense subcommittees.

Primarily (but not solely) through these six committees, Congress plays critical roles in the design and oversight of SC programs and in ensuring that SC activities are aligned with and meeting U.S. national security and foreign policy objectives. Pursuant to statutory authorities, the executive branch must notify relevant committees on a regular basis about some, but not all, SC activities. Congress can exercise oversight roles in numerous ways, including determining how the executive branch makes decisions for the export of military and dual-use items, using annual authorizing legislation to establish temporary authorities or modify the U.S. Code on an enduring basis, reviewing proposed arms transfers and planned SC/SA activities and funding obligations, mandating reports, and holding relevant hearings. The Senate also influences SC through its advice and consent to the ratification of relevant treaties.

DOD’s FY2021 SC Budget Request, Authorizations, and Appropriations

The final FY2021 NDAA (P.L. 116-283) mostly maintained funding levels from DSCA’s FY2021 SC budget request, although some provisions identify SC priority areas. In establishing the Pacific Deterrence Initiative (PDI), the NDAA requires DOD activities, including SC, to prioritize the Indo-Pacific region. The creation of PDI also indicates that the Indo-Pacific will remain a priority for years to come. Other NDAA provisions include a requirement for DOD to identify ways to enhance SC in African countries, as well as amplify SC requirements from the Women, Peace, and Security Act of 2017. The bill also amended DOD’s main train and equip program (10 U.S.C. §333) to add “air domain awareness operations” and “cyberspace security and defensive cyberspace operations” as authorized areas for support.

The final FY2021 Defense Appropriations bill (P.L. 116- 260) increased funds for DSCA’s base budget and slightly decreased its Overseas Contingency Operations budget. The bill provides significant increases for SC in both Africa Command’s and Southern Command’s areas of responsibility (funds for both have declined since FY2017) and cuts funding to both CTEF and ASFF (see Table 1).

Potential Questions for Congress

 What is the implementation status of key FY2017 NDAA-mandated SC reforms? In what ways have the reforms been successful? What reforms remain outstanding? What improvements can be made to address SC reforms that have not been implemented?

 Are the required congressional notifications and reports sufficient for Congress for oversight of SC activities? How can Congress determine the implications of the money it appropriates on SC programs? How does DOD evaluate the effectiveness of SC programs?

 How are SC programs contributing to or furthering U.S. foreign policy goals and strategic objectives? How do SC activities align with GPC? What impact is the Coronavirus Disease 2019 (COVID-19) pandemic having on U.S. security partnerships and SC programs?

### Title 10 & Title 22---DOD & DOS

#### It is a shared effort between DOD and DOS. DOS considers it a subset of foreign assistance. It is super broad.

Nicholas R. Simontis 13, Major, US Army, “Security Cooperation: An Old Practice for New Times,” School of Advanced Military Studies, United States Army Command and General Staff College, Fort Leavenworth, January 2013, https://apps.dtic.mil/sti/pdfs/ADA589722.pdf

DEVELOPMENT OF THE SECURITY COOPERATION STRUCTURE

The concept of security cooperation in the U.S. originated during the American Revolution and was a key to the success of the early colonists in that war. Since that time, the term has evolved and expanded into its present form. In order to appreciate the present meaning and associated complexity of security cooperation, it is important to understand how the concept and structures that form it developed into their present form.

Origins of U.S. Security Cooperation

The first recorded security cooperation actions undertaken in the U.S. were the diplomatic missions to France conducted by Silas Deane and Benjamin Franklin in 1775 and 1776.6 The goal of these missions was to secure French support to defeat the British. The French responded with military and materiel support, which ultimately tilted the scales in favor of the colonists. By the end of the Revolutionary War, the U.S. received over $9 million in foreign aid from European countries.7 Although the U.S. was the recipient of this assistance, it nevertheless represented a relationship established with foreign powers in support of U.S. security interests, which is the essence of security cooperation. In this instance, France was building U.S. capability. The U.S. would return the favor in years to come.

Evolution of Security Cooperation

As the United States grew physically and economically, so did its security interests. Prior to actual entry into World War I, the U.S. limited its aid to Europe to relief assistance, financial credits and loans in an effort to maintain neutrality. The U.S. took a decidedly more active role with the outbreak of World War II, beginning with the repeal of the Neutrality Act in 1939.8 With the neutrality question put to rest, the U.S. began shipping military equipment to its allies. Over the course of World War II, the U.S. provided 37,000 tanks, 43,000 aircraft, 792,000 trucks, and 1.8 million rifles. The value of these supplies was in excess of $40 billion (in 1940s dollars).9 While U.S. efforts during the war focused on military equipment for our allies, after the war the U.S. focused on building the capacity of its allies.

In the aftermath of World War II, Europe’s industrial base was largely in ruins, it was unable to feed itself, and demobilizing armies resulted in massive unemployment. The U.S. recognized that under these conditions, Europe was vulnerable to influence from the Soviet Union. The U.S. sought to rebuild Europe’s economies through the Marshall Plan. From 1948 to 1952, the U.S. provided $13 billion in economic assistance to Europe, Greece, and Turkey.10 While not solely responsible for Europe’s recovery from the war, the plan did significantly aid European economies, and markedly assisted Germany’s reintegration into Europe. More importantly, the Marshall Plan significantly strengthened economic ties between the U.S. and Europe, which served to reinforce the military ties forged during the war. The tenets of the Marshall Plan would reemerge in legislation nearly ten years after its conclusion.

In 1961, the U.S. Congress passed the Foreign Assistance Act (FAA). The act restructured the foreign assistance programs in existence at that time, separating military from non-military assistance programs, and established the United States Agency for International Development (USAID) to administer the non-military assistance programs.11 Additionally, the act provided that the Secretary of State “shall be responsible for the continuous supervision and general direction of economic assistance, military assistance, and military education and training programs.”12 Although the intent of this law was to simplify security cooperation organization and clarify responsibilities within the DOS, its effect in years to come would be the opposite.

The Defense Reform Initiative established the term security cooperation in 1997, and reorganized many international assistance programs administered by the DOD under the Defense Security Assistance Agency (DSAA). In 1998, DOD redesignated the DSAA as the Defense Security Cooperation Agency (DSCA).13 Although many U.S. government agencies share roles in security cooperation, the net effect of the legislative acts described above is that DOS and DOD share the two key roles.

Current Security Cooperation Structure

While security cooperation is a shared effort between DOD and DOS, DOD has, by a significant margin, the preponderance of personnel and organizational structure that comprise the security cooperation infrastructure. DOD defines security cooperation as “all DOD interactions with foreign defense and security establishments to build defense relationships that promote specific US security interests, develop allied and friendly military and security capabilities for internal and external defense and multinational operations, and provide U.S. forces with peacetime and contingency access to the HN [host nation].”14 It is important to note that the DOD definition includes developmental and humanitarian assistance activities focused on enhancing foreign governments’ abilities to care for their people. The goal of all these activities is to reduce or eliminate factors leading to a crisis or conflict that requires U.S. intervention.15 Security assistance activities are a subset of security cooperation and deal principally with foreign military financing (FMF), foreign military sales (FMS), and international military education and training (IMET) activities. The Deputy Undersecretary of Defense for Policy has overall responsibility for the execution of DOD’s security cooperation activities, which DSCA administers.

The geographic combatant commands (GCC) form the regional level of DOD security cooperation, and are responsible for planning, executing, and administering security cooperation activities within their respective regional areas. These activities typically include military-tomilitary engagements, training exercises, and humanitarian assistance when so directed.

The DOS defines security cooperation along the lines of the DOD definition, but often refers to it under the umbrella of foreign assistance. The Assistant Secretary of State for Political Military affairs is responsible for the DOS slice of security cooperation and the Bureau for Political-Military Affairs serves as the primary link with DOD. Their mission statement provides a useful illustration of their definition of security cooperation: “Political-Military Affairs integrates diplomacy and defense, and forges strong international partnerships to meet shared security challenges.”16

DOS has no organization for security cooperation at the regional level comparable to the GCC. The next level for DOS is the country level, the locations of U.S. Missions or Embassies abroad. Led by the Ambassador or Chief of Mission, each mission is responsible for supervising and coordinating all U.S. programs in foreign countries. Each mission staff has a Security Assistance Office with a small staff of DOD personnel who work in coordination with the embassy staff to execute security cooperation activities.

## With

### With = Participant in Arrangement

**With indicates a participant in an arrangement**

**Merriam-Webster ND**

Merriam-Webster, "Definition of WITH," Merriam-Webster, accessed 6/19/2022, https://www.merriam-webster.com/dictionary/with

2

a—used as a function word to indicate a participant in an action, transaction, or arrangement

works with his father

a talk with a friend

got into an accident with the car

b—used as a function word to indicate the object of attention, behavior, or feeling

get tough with him

angry with her

c: in respect to : so far as concerns

on friendly terms with all nations

d—used to indicate the object of an adverbial expression of imperative force

off with his head

e: OVER, ON

no longer has any influence with them

f: in the performance, operation, or use of

the trouble with this machine

## NATO

### ---Aff---

### NATO = Alliance

**NATO is a military alliance that provides collective defense and engages in crisis management**

**MOFA 20** – Ministry of Foreign Affairs of Japan

MOFA, "Chapter 2: Japan's Foreign Policy that Takes a Panoramic Perspective of the World Map," Diplomatic Bluebook 2020, Ministry of Foreign Affairs of Japan, 2020, https://www.mofa.go.jp/policy/other/bluebook/2020/html/chapter2/c020403.html

(1) Cooperation with the North Atlantic Treaty Organization (NATO)

As a military alliance aimed at providing collective defense for its 29 member countries, NATO provides collective defense for its member countries, and engages in crisis management inside and outside of the region that could pose a direct threat to the security of the territories and peoples of NATO member countries, including security-keeping operations in Kosovo, support in Afghanistan, and counter-terrorism efforts. At the NATO Summit held in December in London, together with reaffirming the commitment to Article 5 of the North Atlantic Treaty concerning collective defense, there were discussions in NATO for the first time about opportunities and challenges brought about by the growing influence of China.

**It’s a defense organization**

**Gallis 97** – Specialist in European Affairs, Foreign Affairs and National Defense Division

Paul E. Gallis, "NATO: Article V and Collective Defense," Congressional Research Service, 7-17-1997, https://www.everycrsreport.com/files/19970717\_97-717\_c1327f1928fb952a50b4dea74717965c15420124.pdf

Article V

A collective security organization settles disputes among its members. In contrast, a collective defense organization assists a member state under attack by an outside country. NATO is a collective defense organization. Article V states that NATO members must consider coming to the aid of an ally under attack. However, it does not guarantee assistance. Article V is the Treaty's key provision and the linchpin binding the United States to its NATO allies. It states, in part, that "an armed attack against one or more [allies] shall be considered an attack against them all." Additional language makes clear that the commitment to assist an ally is not unconditional. Rather, each signatory will assist the ally under attack with "such action it deems necessary, including the use of armed force...."1 Since the early 1990s, NATO has begun to adopt "new missions," such as crisis management and peacekeeping, sometimes referred to as "non-Article V missions." Current members and candidate states, however, believe collective defense, as expressed in Article V, remains the core of the alliance, a view likely to endure as long as the possibility of a nationalistic, aggressive Russia remains.

### NATO = Structural

**NATO is made of a civilian and military structure**

**Nauta 17** – Ph.D (1976), is a legal adviser in the North Atlantic Treaty Organization. He has published various articles on international law aspects of military operations.

David Nauta, "Chapter 4: Current Institutional Framework of NATO and NATO’s Decision Making Process," in The International Responsibility of NATO and Its Personnel During Military Operations, Brill, 12-01-2017, https://brill.com/view/book/9789004354647/B9789004354647\_004.xml

4.2 Current Institutional Framework of NATO

4.2.1 Introduction

NATO consists of two main types of institutional structures: a civilian structure and a military structure. The civilian structure is responsible for policy- and decision-making which provides for the functioning of the Organization both internally and externally.

The military structure is involved in the planning and execution of military operations. All NATO operations are decided upon by the civilian structure and carried out by military structure. It means that both parts of NATO participate in the initiation, planning and execution of NATO operations.

### AT: NATO Defined by Attributes

**NATO is an entity**

**Cuccia 10** – Director of European Studies in the Regional Strategy Department of the Strategic Studies Institute.

Phillip R. Cuccia, "Implications of a Changing NATO," Strategic Studies Institute, May 2010, https://www.files.ethz.ch/isn/116551/pub990-1.pdf

Potential Threats to NATO.

Threats to NATO can be conceptualized as two types. The first, external, are nations or a collection thereof which threaten war or at least ill will toward the NATO nations. Another external threat is instability of a nonmember state which challenges NATO members directly (Afghanistan), or indirectly (Kosovo), or potentially destabilizes an area of concern (Sudan). The second type, internal, comes from an event, political decision, or series of these which threatens the integrity of the Alliance. This second type is a much more serious threat. NATO out-of-area stability operations are debated within the Alliance. The question is what level of force is NATO willing to engage to conduct these operations? NATO has had its problems with caveats and the level of kinetic force it is willing to employ. It is time that the member states accept that NATO is an entity of 28 nations where decisions are based on consensus. NATO has to acknowledge that there is little political will in many member states to use kinetic force in these out-of-area operations. NATO can agree, however, that it can contribute much in the area of humanitarian assistance in these operations.

**An entity exists independently from its attributes**

**Merriam-Webster ND**

Merriam-Webster, "Definition of ENTITY," accessed 6-19-2022, https://www.merriam-webster.com/dictionary/entity

Definition of entity

1 a: BEING, EXISTENCE

especially : independent, separate, or self-contained existence

b: the existence of a thing as contrasted with its attributes

### AT: NATO = Member States

**NATO is an entity**

**Cuccia 10** – Director of European Studies in the Regional Strategy Department of the Strategic Studies Institute.

Phillip R. Cuccia, "Implications of a Changing NATO," Strategic Studies Institute, May 2010, https://www.files.ethz.ch/isn/116551/pub990-1.pdf

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**Entities are separate from their members**

**Merriam-Webster ND**

Merriam-Webster, "Definition of ENTITY," accessed 6-19-2022, https://www.merriam-webster.com/dictionary/entity

Definition of entity

1 a: BEING, EXISTENCE

especially : independent, separate, or self-contained existence

b: the existence of a thing as contrasted with its attributes

2: something that has separate and distinct existence and objective or conceptual reality

3: an organization (such as a business or governmental unit) that has an identity separate from those of its members

**It’s entirely distinct**

**Nauta 17** – Ph.D (1976), is a legal adviser in the North Atlantic Treaty Organization. He has published various articles on international law aspects of military operations.

David Nauta, "Chapter 4: Current Institutional Framework of NATO and NATO’s Decision Making Process," in The International Responsibility of NATO and Its Personnel During Military Operations, Brill, 12-01-2017, https://brill.com/view/book/9789004354647/B9789004354647\_004.xml

4.5 Conclusions

This chapter has described the institutional framework of NATO. Member States are represented in the North Atlantic Council (NAC), which is the highest political organ of the Alliance. Decisions on NATO operations are taken by the Council through consensus. The Secretary General of the Alliance is responsible for steering this process of consultation and has several tools at its disposal to achieve consensus, in particular the so-called ‘silence procedure’. Consensus and the silence procedure show that NATO enjoys a degree of autonomy from its member States, as the Alliance can function even without full agreement of all of the members.

The NAC, its supporting International Staff and the civilian agencies constitute the civilian structure of the Alliance. The military structure consists of the Military Committee, supported by the International Military Staff, the two Supreme Commands and international military headquarters subordinate to them. Supreme Allied Commander Europe commands NATO operations. SACEUR has “operational command and control” over the military forces assigned to him by the Troop Contributing Nations, which could either be member States or States that are not member to NATO (Non-NATO Contributing Nations, or NNCN). Two aspects are relevant to note here. First, States that participate in NATO-led operations transfer a significant degree of control over military forces to NATO. Chapter 7 will examine in more detail whether the degree of control transferred to NATO by States equates to ‘effective control’. If NATO does have effective control over conduct of forces placed at its disposal, the conduct can be attributed to NATO. Secondly, it is relevant to note that the participation of NNCN in NATO-led operations show that NATO is a separate entity from its member States. NNCN do not take part in the decision-making process at the political level and neither have operational command and control over their forces once they are placed under the authority of SACEUR. This illustrates that NATO can act separately from its member States and enjoys a high degree of autonomy. This feature – further examined in Chapter 5 – speaks in favour of the existence of international legal personality of NATO.

### ---Neg---

### NATO = No Partners

**Partners with whom NATO cooperates with are not part of NATO**

**NATO 20** – North Atlantic Treaty Organization

NATO, "Partners," North Atlantic Treaty Organization, 3-27-2020, https://www.nato.int/cps/en/natohq/51288.htm

Partners

NATO cooperates with a range of international organisations and countries in different structures. Below is a list of these partners with links to web pages on their relations with NATO as well as links to their information servers.

**They are distinct entities**

**NATO 21** – North Atlantic Treaty Organization

NATO, "Partnerships: projecting stability through cooperation," North Atlantic Treaty Organization, 8-25-2021, https://www.nato.int/cps/en/natohq/topics\_84336.htm

The Allies seek to contribute to the efforts of the international community in projecting stability and strengthening security outside NATO territory. One of the means to do so is through cooperation and partnerships. Over than 25 years, the Alliance has developed a network of partnerships with non-member countries from the Euro-Atlantic area, the Mediterranean and the Gulf region, and other partners across the globe. NATO pursues dialogue and practical cooperation with these nations on a wide range of political and security-related issues. NATO’s partnerships are beneficial to all involved and contribute to improved security for the broader international community.

* Partners are part of many of NATO’s core activities, from shaping policy to building defence capacity, developing interoperability and managing crises.
* NATO’s programmes also help partner nations to develop their own defence and security institutions and forces.
* In partnering with NATO, partners can:
* share insights on areas of common interest or concern through political consultations and intelligence-sharing;
  + gain access to advice and support as they reform and strengthen defence institutions and capacities;
  + participate in a rich menu of education, training and consultation events (over 1,200 events a year are open to partners through a Partnership Cooperation Menu);
  + prepare together for future operations and missions by participating in exercises and training;
  + contribute to current NATO-led operations and missions;
  + share lessons learned from past operations and develop policy for the future;
  + work together with Allies on research and capability development.
* Through partnership, NATO and partners also pursue a broad vision of security:
  + integrating gender perspectives into security and defence;
  + fighting against corruption in the defence sector;
  + enhancing efforts to control or destroy arms, ammunition and unexploded ordnance;
  + advancing joint scientific projects.
* Partnership has evolved over the years, to encompass more nations, more flexible instruments, and new forms of cooperation and consultation.

### NATO = Group of Countries

**NATO is a group of 30 countries**

**NATO 22** – North Atlantic Treaty Organization

NATO "10 things you need to know about NATO," North Atlantic Treaty Organization, 5-10-2022, https://www.nato.int/cps/en/natohq/126169.htm

10 things you need to know about NATO

1. Collective defence: The North Atlantic Treaty Organization (NATO) was founded in 1949 and is a group of 30 countries from Europe and North America that exists to protect the people and territory of its members. The Alliance is founded on the principle of collective defence, meaning that if one NATO Ally is attacked, then all NATO Allies are attacked. For example, when terrorists attacked the United States on 9/11 2001, all NATO Allies stood with America as though they had also been attacked.

**That means the aff must cooperate with all of the NATO member states**

**NATO 22** – North Atlantic Treaty Organization

NATO, "Member countries," NATO, 6-8-2022, https://www.nato.int/cps/en/natohq/topics\_52044.htm

At present, NATO has 30 members. In 1949, there were 12 founding members of the Alliance: Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom and the United States. The other member countries are: Greece and Türkiye (1952), Germany (1955), Spain (1982), the Czech Republic, Hungary and Poland (1999), Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia (2004), Albania and Croatia (2009), (2017) and North Macedonia (2020).

### ---AT: Separate Entity

**NATO is not a separate entity from its member states**

**Camporini 17** – Vice-President of the Istituto Affari Internazionali, former Chief of Staff of the Italian Air Force and of the Italian Defence General Staff

Vincenzo Camporini, "European Preference, Strategic Autonomy and European Defence Fund: An Operational Point of View," Armament Industry European Research Group, November 2017, https://www.clingendael.org/sites/default/files/2017-11/Ares-22-Report-Nov-2017.pdf

Unlike it happened with other political statements which had only symbolic effects, as soon as the Global Strategy was issued work started on identifying concrete measures to implement principles and remedy the shortfalls and now with the definition of the European Defence Fund (EDF) an instrument has been created to stimulate defence industries in the EU countries, with possible far reaching effects on the political willingness to integrate in a more effective and efficient way individual military instruments.

From the operational point of view, the first thing to achieve is the identification of the overall capabilities the Union needs, starting from the question “What for?”, and the answer cannot be just the updating, once more, of the HHG, since this was specifically designed against the so called Petersberg Missionsi, leaving the task of common defence to NATO, as if NATO is an entity separated from its member states.

### NATO =/= EUCOM

**NATO is an alliance of signatories to the Washington Treaty---that’s distinct from EUCOM**

**McInnis and McGarry 20** – Specialist in International Security; Analyst in U.S. Defense Budget

Kathleen J. McInnis and Brendan W. McGarry, "United States European Command: Overview and Key Issues," Congressional Research Service, 8-4-2020, https://www.everycrsreport.com/files/2020-08-04\_IF11130\_7950e2958307e5d6c95115f758882cf2b61fbdb0.pdf

European Command and NATO

EUCOM and NATO, while strategically interconnected, are different organizations with different missions. NATO is an alliance of 30 nations that are signatories to the 1949 Washington Treaty; the United States is a NATO member. U.S. European Command, by contrast, is the focal point for the United States military’s presence in Europe. Only some of EUCOM’s activities support NATO’s operations and activities; the remainder advance U.S. objectives with individual countries, across the region, and across the Middle East and Africa, though they do generally reinforce NATO as well. The complementary nature of these dual roles and missions is one of the rationales behind dualhatting the Commander of U.S. European Command as NATO’s Supreme Allied Commander, Europe.

## In One or More of the Following Areas

### ---Aff---

### One = Divisible

**One is divisible absent hard limits**

Timothy **Clarke 18**. Ph.D., Yale University. 2018. “Physics I.2.” https://philosophy.berkeley.edu/file/1028/Physics\_1.2.pdf. DOA: 10-6-2020. kyujin

In order to rescue the argument we should take Aristotle to be suggesting that continuity is a way in which what is might be one. Some objects are one by being continuous: what makes them one object, rather than many, is that each of their parts shares a boundary or a limit with some other part.27 But suppose that the Eleatics are entity monists. Then we can easily understand why (in Aristotle’s view) they cannot consistently say that what is is one in this way. If the Eleatics’ one entity is continuous, then it is divisible into infinitely many parts, in which case there are many entities, not one. The ‘way of being one’ reading therefore gives Aristotle a good objection, whereas the ‘sense of “one”’ reading does not.

### Area = Outer Scope

#### Area indicates outer scope

Merriam Webster https://www.merriam-webster.com/dictionary/area

Definition of area

1 : the surface included within a set of lines

specifically : the number of unit squares equal in measure to the surface — see METRIC SYSTEM TABLE, WEIGHTS AND MEASURES TABLE

2 : the scope of a concept, operation, or activity : FIELD

**In the Area = Part**

**In the area means a part**

**CED 9** (Collins English Dictionary, http://dictionary.reference.com/browse/area)

area (eəriə ) Word forms: plural areas 1. countable noun An area is a particular part

of a town, a country, a region, or the world. ...the large number of community groups in the area.

**In = Within**

#### “In” means within, not “throughout”

**Cullen 52** – Cullen, Court of Appeals of Kentucky, 52, Commissioner, Court of Appeals of Kentucky, November 13, 1952 Riehl et al. V. Kentucky unemployment compensation commission; the judgment is affirmed. Rehearing denied; COMBS, J., and SIMS, C. J., dissenting. <http://ky.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19521113_0040095.KY.htm/qx>

We do not find any ambiguity in KRS 341.070(1). It is our opinion that the key word in the statute is the word 'in,' preceding the words 'each of three calendar quarters', and if the word is accorded its ordinary and common meaning, the statute does not require simultaneous employment. According to Webster's New International Dictionary, the word 'in,' used with relation to a period of time, means 'during the course of.' The same meaning, expressed in another way, would be 'within the limits or duration of.' Employing this meaning, the statute says that an employer is subject to the Act if, during the course of, or within the limits or duration of each of three calendar quarters, he had in covered employment four or more workers, to each of whom the required amount of wages was paid. This clearly means that the employment need not be simultaneous. **Obviously, the word 'in' does not mean 'throughout'** or 'for the entire period of,' because then there would be no point in adding the requirement of the payment of a minimum of $50 in wages. In these times, no worker employed for a full calendar quarter would be paid less than $50 in wages. The appellant seeks to read into the statute the words 'at the same time,' following the words 'had in covered employment'. There is no justification for this, unless the word 'in' means 'during any one period of time in.' We are not aware of **any authority** for ascribing such a meaning to the word 'in'.

**In is defined as the inclusion within a set of limits**

Black’s Law Dictionary ‘68

(Black’s Law Dictionary, most widely used law dictionary in the United States, “Black’s Law Dictionary”, Moorish Directory, 1968, http://moorishdirectory.com/wp-content/uploads/2015/01/Blacks-Law-4th-edition-1891.pdf)

IN. In the law of real estate, this preposition has always been used to denote the fact of seisin, title, or possession, and apparently serves as an elliptical expression for some such phrase as "in possession," or as an abbreviation for "intitled" or "invested with title." Thus, in the old books, a tenant is said to be "in by lease of his lessor." Litt. § 82.

An elastic preposition in other cases, expressing relation of presence, existence, situation, inclusion, action, etc.; inclosed or surrounded by limits, as in a room; also meaning for, in and about, on, within, etc., according to context. Ex parte Perry, 71 Fla. 250, 71 So. 174, 176. Rester v. Moody & Stewart, 172 La. 510, 134 So. 690, 692.

**In is defined as an object being within a specific set of boundaries**

**Merriam Webster ‘05**

(Merriam Webster, publishes reference books including dictionaries, “Definition of In”, Merriam Webster, December 26, 2005, <https://www.merriam-webster.com/dictionary/in>)

used as a function word to indicate inclusion, location, or position within limits.

**In means within**

**Encarta World English Dictionary, 7** (“In (1)”, 2007, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861620513)

in [ [in](http://encarta.msn.com/encnet/features/dictionary/Pronounce.aspx?search=in) ] CORE MEANING: a grammatical word indicating that something or somebody is within or inside something.

**in means within the limits of**

**Merriam Webster Online Dictionary, 06** (<http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=in>)

Main Entry: **1in**

Pronunciation: 'in, &n, &n

Function: *preposition*

Etymology: Middle English, from Old English; akin to Old High German *in* in, Latin *in,* Greek *en*

**1 a** -- used as a function word to indicate inclusion, location, or position within limits <*in* the lake> <wounded *in* the leg> <*in* the summer>

**“In” indicates within a place or limits**

**Random House Dictionary 2012**

1. (used to indicate inclusion **within** space, a **place**, or **limits**): walking in the park.

2. (used to indicate inclusion within something abstract or immaterial): in politics; in the autumn.

3. (used to indicate inclusion within or occurrence during a period or limit of time): in ancient times; a task done in ten minutes.

4. (used to indicate limitation or qualification, as of situation, condition, relation, manner, action, etc.): to speak in a whisper; to be similar in appearance.

5. (used to indicate means): sketched in ink; spoken in French.

6. (used to indicate motion or direction from outside to a point within) into: Let's go in the house.

7. (used to indicate transition from one state to another): to break in half.

8. (used to indicate object or purpose): speaking in honor of the event.

**“In” indicates a position within the limits or boundaries**

**Merriam-Webster Dictionary 2012** (http://www.merriam-webster.com/dictionary/in)

1 a —used as a function word to indicate inclusion, location, or position **within limits** <in the lake> <wounded in the leg> <in the summer>

b : into 1 <went in the house>

**Of = Belonging To**

**Belonging to**

**Collins 10** (Collins English Dictionary, “of”, http://www.collinslanguage.com/results.aspx?context=3&reversed= False&action=define&homonym=-1&text=of)

[of](http://www.collinslanguage.com/results.aspx?context=3&reversed=False&action=define&homonym=0&text=of) prep   
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### ---Neg---

### In the Area = Whole Area

**“In the area” means all of the activities.**

**UN 13**. United Nations Law of the Sea Treaty. http://www.un.org/depts/los/convention\_agreements/texts/unclos/part1.htm.

PART I INTRODUCTION Article 1

Use of terms and scope 1. For the purposes of this Convention: (1) "Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction; (2) "Authority" means the International Seabed Authority; (3) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;

### ---Ext

**“In the area” extends to the whole**

**5th Circuit Court of Appeals 68** [“The DAY COMPANIES, Inc., Appellant, v. Claud T. PATAT, Jr., et al., Appellees,” https://bulk.resource.org/courts.gov/c/F2/403/403.F2d.792.26093\_1.html]

Considering the challenge as to the territory prerequisite, was this covenant reasonable and definite as to the area involved here? The limitation in the covenant as to territory in the case at hand is found in the phrase **'in the area** presently operated in by Farris'. The cases from the Georgia Courts seem to permit restraints which extend throughout the territory covered by a transferred business. As was observed by Judge Jenkins of the Georgia Supreme Court in Kutash v. Gluckman, 193 Ga. 805, 20 S.E.2d 128 'a contract which affords a fair **protection** to the party in whose favor it is made, and is not injurious to the public \* \* \* **may extend to all the territory** covered by the business the good will of which has been sold \* \* \*.' We agree with the Court below that the standard of area is met in the agreement in question.

### ---In = Throughout

**“In” means “throughout”**

**Words and Phrases 8**

(Permanent Edition, vol. 20a, p. 207)

Colo. 1887. In the Act of 1861 providing that justices of the peace shall have jurisdiction “in” their respective counties to hear and determine all complaints, the word “in” should be construed to mean “throughout” such counties. Reynolds v. Larkin, 14, p. 114, 117, 10 Colo. 126.

### ---One = Indivisible

**“One” is indivisible.**

**Jakubowicz 99** – PhD in Philosophy (The Trouble With Touching: A Problem In Aristotle's Continuity Theory, Proquest Dissertations)

The other possibility, and in my view the more reasonable one, stems from the idea seen earlier that a unit is the measure of number dong with the idea that units must be of the same kind. hnas claims that what is meant by 'unit' here is whatever is counted as 'one'. Prior to measuring, we must have a unit of meas~rernent.~~ As well, lengths are measured in units of length, weights of weight. etc? A unit is regarded as indivisible for counting, though it may be divisible in other arenas.32 For example, we see in Metaphysicu A that Aristotle writes But the one is not the same in all classes. For here it is a quartertone, and there it is the vowel or the consonant; and there is another unit of weight and another of movement. But everywhere the one is indivisible either in quantity or in kind."

**---Of = Whole**

**‘Of’ means whole**

CJS 78 Corpus Juris Secundum, 67, p. 200

Of: The word "of" is a preposition. It is a word of different meanings, and susceptible of numerous different connotations. It may be used in its possessive sense to denote possession or ownership. It may also be used as a word of identification and relation, rather than as a word of proprietorship or possession. "Of" may denote source, origin, existence, descent, or location, or it may denote that from which something issues, proceeds, or is derived. The term may indicate the **aggregate** or **whole of** which the limited word or words denote a part, or of which a part is referred to, thought of, affected, etc.

**‘Of’ means wholly or almost wholly**

**Words & Phrases 5**, V 29 Cumulative Annual Pocket Part, 2005, p. 287

Cust.Ct. 1969. In item of tariff schedules providing for flexible articles of polyurethane, term “of’,’ as used in such context, is ellipsis for complete phrase- **“wholly or almost wholly of,”** contained- in’ superior heading. Tariff Schedules, Item 770.40, 19 U.S.C.A. § 1202.—United Mineral & Chemical Corp. v. u: S., 307 F.Supp. 347.— Cust Out 17.

### ---Area = All Within

**Area means all within**

**Tawes 61** [J Millard, “Session Laws, 1961,” http://aomol.net/000001/000654/html/am654--1131.html]

(b) The word "Area" means **all** of the **territory** located within the boundary lines of Baltimore City and Baltimore County with the exception of the Fifth, Sixth, Seventh and Tenth Election Districts of Baltimore County., and such additional political subdivisions of the State or the Counties as may be provided by law, from time to time hereafter.

### ---AT: Ambiguous

**Even if “in the area” is ambiguous, err on the side of a clear and explicit meaning**

**Saunders 8** [John D. Saunders, Judge for the 3rd Circuit Court of Appeals, Louisiana. Dissenting opinion in Crooks v. Placid Oil Co., 981 So. 2d 125. Decided April 9, 2008. Lexis]

The determination of what the parties intended the phrase **"in the area"** is the **seminal issue** that must be decided by this court and the court below. "In the area" is [Pg 2] not defined in the Agreement. The contract before us **refers to an "area,"** but it is **silent** to **what that "area" entails**.

Because we are **given no guidance** from the instrument as to what "in the area" might be, we should first look to La.Civ.Code 2045 arts. and 2046 to determine if there is a **clear and explicit meaning** of the language that **does not lead** to **absurd consequences**. I think the majority's finding that the words in the provision were clear and explicit as to the source of the saltwater and materials leads to the absurd consequence of allowing saltwater and other materials to be shipped in and injected [\*\*21] into the well from anywhere on Earth or even beyond. Thus, I think that "in the area" is ambiguous as used in the provision. As such, I would reverse the trial court's ruling and remand the case for further proceedings.

**Of = Exclusive**

**‘Of’ is a term of limitation**

**Ellis 53** Judge Advocate in the United States Army, “United States. v. Private Frank Taylor, Jr.”, United States Army Board of Review, 11 C.M.R. 428; 1953 CMR LEXIS 1428, 7-31, Lexis

Appellate defense counsel argued orally that many facts indicated the United States was not at war, for example: there has been no declaration of war; the Coast Guard is still under the supervision of the Treasury Department instead of the Navy Department as it usually is during war; here in the United States, Armed Forces personnel are allowed to wear civilian clothes during off-duty hours; it is not the policy to try Department of the Army civilians serving with the Army in the field in the United States by courts-martial; the various Army posts throughout the United States are still open to public visitation; many reservists and National Guard units are not on active service; and the Table of Maximum Punishments had not been suspended for offenses committed in the United States. He contended that the ratio of the cases cited in support of the war status of the United States was limited to the locale of the hostilities, Korea and its adjacent [\*\*6]  waters, and was inoperative on offenses committed in the United States. Finally, he anchored his argument on the interpretation to be given the language in Article 43f(1) (post) of the Code. He conceded arguendo that the offense at bar fell within the purview of this language, being a fraud against a United States agency, the Army, but reasoned that the subject language contemplated and embraced only "hostilities as proclaimed by the President or by a Joint Resolution of Congress." With this interpretation the board of review cannot agree. The preposition "of" before the word "hostilities" shows plainly that the phrase "of hostilities" is **adjectival**, **qualifying** and **limiting** the word "termination". The phrase "termination of hostilities" is in turn modified by the participial phrase "as proclaimed." In our interpretation it is the "termination of hostilities" that must be proclaimed, and such proclamation provides the initial date of a three-year period in which the suspension of the statute of limitations continues to operate rather than determines the date of the beginning of the original suspension (emphasis supplied).

**‘Of’ is exclusive**

**Words and Phrases 74** (v. 29)

Word of Exclusion

A deed describing a line as running within four rods of a brook excludes the stread, and means from the side of the stream, and not from the center of it. The word “of”, as well as the word “from”, is used as a **term of exclusion**. Haight v. Hamor, 22 A. 369, 372, 83 Me. 453.

**This is a term of exclusion**

Dorothy W. **Nelson 9**, Circuit Judge in the Ninth Circuit of the United States Court of Appeals, “Doe 1, Doe 2, and Kasadore Ramkissoon, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs-Appellants, v. AOL LLC, Defendant-Appellee”, 552 F.3d 1077; 2009 U.S. App. LEXIS 875, 1-16, Lexis

OVERVIEW: The ISP made publicly available the internet search records of more than 650,000 of its members. Under a service agreement, all customers agreed to a forum selection clause that designated the "courts of Virginia" as the fora for disputes between the ISP and its customers. The ISP contended, and the district court agreed, that the clause permitted plaintiffs to refile their consumer class action in state or federal court in Virginia, but the customers contended the forum selection clause limited them to Virginia state court, where a class action remedy was unavailable; this violated California public policy favoring consumer class actions and rendered the forum selection clause unenforceable. The court held that the use of the preposition "of"--rather than "in"--was determinative and that the forum selection clause referred to the state courts of Virginia only, not the federal courts in Virginia. California had declared by judicial decision the same forum selection clause contravened a strong public policy of California--as applied to California residents who brought claims under California statutory consumer law in California state court.

### ---Other---

### One or More

**“One or more” is synonymous with “any” and means an undetermined number**

**Merriam-Webster ND**

Merriam-Webster, "Definition of ANY," Merriam-Webster, accessed 6/19/22, https://www.merriam-webster.com/dictionary/any

Definition of any

1: one or some indiscriminately of whatever kind:

a: one or another taken at random

Ask any man you meet.

b: EVERY —used to indicate one selected without restriction

Any child would know that.

2: one, some, or all indiscriminately of whatever quantity:

a: one or more —used to indicate an undetermined number or amount

Do you have any money?

b: ALL —used to indicate a maximum or whole

He needs any help he can get.

c: a or some without reference to quantity or extent

I'd be grateful for any favor at all.

### Following = Next

**Following means listed next**

**Merriam-Webster ND**

Merriam-Webster, "Definition of FOLLOWING," Merriam-Webster, accessed 6/19/22, https://www.merriam-webster.com/dictionary/following

1: being next in order or time

the following day

2: listed or shown next

trains will leave at the following times

## Artificial Intelligence

### ---Aff---

### Aff Definition Top

**AI refers to information tech with the means to reason in pursuit of a goal-oriented task**

**DIB 19** – Defense Innovation Board, an independent federal advisory committee that provides advice and recommendations to DoD senior leaders

Defense Innovation Board, "AI Principles: Recommendations on the Ethical Use of Artificial Intelligence by the Department of Defense," Defense Innovation Board, 2019, https://media.defense.gov/2019/Oct/31/2002204458/-1/-1/0/DIB\_AI\_PRINCIPLES\_PRIMARY\_DOCUMENT.PDF

Defining AI. Artificial intelligence is an extremely broad discipline, defined in many different ways for many different purposes.13

For clarity and to guide this project, we use the term to mean a variety of information processing techniques and technologies used to perform a goal-oriented task and the means to reason in the pursuit of that task. When referring to the wider range of considerations, we use the term artificial intelligence (AI); however, where we specifically address machine learning (ML) systems, we refer to ML. Furthermore, we use the term “AI system” to mean systems that have an AI component within an overall system or a system of systems.14

We use this definition of AI because it comports with how DoD has viewed, developed, and deployed AI systems over the past 40 years. It permits us to make finer-grained distinctions between legacy systems and newer ones such as those using ML. The use of this term allows us to reinforce that the earlier and important AI work achieved by DoD took place within DoD’s existing ethics framework outlined below.

### ---Predictable

**It’s predictable---the DIB made the report for the DoD and included numerous experts**

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A Diversity of Views. To aid the Department in this challenge, DoD leadership tasked the DIB to engage a broad set of audiences to deliver recommendations on possible AI ethics principles for DoD and how those principles might be integrated into the existing ethics framework under which the Department executes its mission.

The DIB conducted a 15-month study designed to be robust, inclusive, and transparent. The process involved collecting public commentary both online and in person; holding two public listening sessions at major universities; and facilitating three expert roundtable discussions with dozens of subject matter experts in academia, industry, civil society, and the Department. Roundtable participants included Turing Award-winning AI researchers, retired four-star generals, human rights attorneys, political theorists, arms control activists, tech entrepreneurs, and others.11 Additionally, the Department formed an informal DoD Principles and Ethics Working Group, including government officials from close partner nations, to assist the DIB in gathering information and promoting cooperation. The DIB also held a classified “red team” session and a Table Top Exercise to pressure-test the principles in realistic policy scenarios and against current intelligence about potential applications of AI in warfare. After thoughtful consideration of the input of more than 100 internal and external experts, reflecting a wide range of perspectives and almost 200 pages of submitted public comments,12 the DIB developed this set of proposed AI Ethics Principles and accompanying recommendations for consideration by the Secretary of Defense. These principles – which are intended to be specific to AI – nest within the context of the existing ethical, legal, and policy frameworks the Department uses to guide its activities.

#### Our definition is most in line with the understanding of AI as an umbrella term

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Appendix I: Definitions

- Algorithm: a method or set of rules or instructions to be followed in calculations or other problem solving operations, particularly by a computer.

- Algorithmic Bias: Systematic bias in an AI system’s outputs. Can be due to biased input or training data, a statistically biased estimator in the algorithm, off-label use, incorrect assumptions, or misinterpretation.

- Autonomy:

- a) DDoD 3000.09 autonomous weapon system definition: “a weapon system that, once activated, can select and engage targets without further intervention by a human operator. This includes human-supervised autonomous weapons systems that are designed to allow human operators to override operation of the weapon system, but can select and engage targets without further human input after activation.”

- b) Defense Science Board definition: ““The capability to independently compose and select among different courses of action to accomplish goals based on its knowledge and understanding of the world, itself, and the situation.”

- Artificial Intelligence: an umbrella term that covers a variety of information processing techniques and information communication technologies utilized to perform a goal-oriented task and possesses the requisite means to pursue and complete that task.

### AT: NDAA Def

**Their definition was limited to a single section of law that was intended to be replaced**

**P.L. 115-232 ND** – 115th Congress Public Law 232

P.L. 115-232, "John S. McCain National Defense Authorization Act for Fiscal Year 2019," U.S. Government Publishing Office, No Date, https://www.govinfo.gov/content/pkg/PLAW-115publ232/html/PLAW-115publ232.htm

(f) Delineation of Definition of Artificial Intelligence.--Not later than one year after the date of the enactment of this Act, the Secretary shall delineate a definition of the term ``artificial intelligence'' for use within the Department.

(g) Artificial Intelligence Defined.--In this section, the term “artificial intelligence'' includes the following:

(1) Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets.

(2) An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action.

(3) An artificial system designed to think or act like a human, including cognitive architectures and neural networks.

(4) A set of techniques, including machine learning, that is designed to approximate a cognitive task.

(5) An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision making, and acting.

#### Using the NDAA definition is unwieldy and impossible to apply

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B. What is AI?

The FY2019 National Defense Authorization Act stipulates that within one year, the Secretary of Defense “shall delineate a definition of the term ‘artificial intelligence’ for use within the Department.”11 Furthermore, for working purposes, the Act maintains that AI includes:

(1) Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from its experience and improve performance when exposed to data sets.

(2) An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication or physical action.

(3) An artificial system designed to think or act like a human, including cognitive architectures and neural networks.

(4) A set of techniques, including machine learning, that is designed to approximate a cognitive task.

(5) An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision-making, and acting.

However, each definition individually carries with it policy and ethical challenges, and attempting to incorporate them all yields an unwieldy definition of AI. If we define “AI” too narrowly or too broadly, we risk limiting the scope of AI capabilities or failing to specify the unique capacity that AI systems will have, respectively.

The NDAA, while not committed to any one of these five definitions, does explicitly favor “human-like” capacities, as well as human-like “thinking” or action (2, 3, 4, 5). This move, however, may be limiting in scope for AI capabilities, for some systems may require nonhuman like capabilities, such as sonar, various electromagnetic sensing abilities, and other capabilities that exceed human performance on a variety of tasks. Limiting AI to cognitive tasks (4) may also limit various uses of AI for physical task completion, where the repetitive physical task requires very little cognitive abilities. Additionally, “acting rationally” (5) may unjustifiably limit a definition of AI to prior arguments and assumptions about what constitutes rationality.12 For example, classic Enlightenment thought takes a more robust approach to this, whereas economists take a more minimal approach bordering on means-ends reasoning. Yet, this is often contradicted by behavioral economics.

For (1), this definition appears to conflate autonomous systems and AI systems, while also leaving open questions pertaining to systems that are not dynamic in their design and architectures or non-learning systems. It also does not make any indications as to systems that may learn in a supervised setting, but then after development and training are “frozen” and not permitted to continually learn (i.e. life-long learning). Furthermore, the definition also seems to require AI to be performing tasks without “significant” human oversight, but this move seems to unnecessarily marry the definition to a rather contentious view of autonomy.

### AT: Requires Human Intelligence

**AI includes technologies that don’t meet a human intelligence benchmark**

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Defining AI. Artificial intelligence is an extremely broad discipline, defined in many different ways for many different purposes.13

[[Begin FN 13]]

The 2018 DoD Strategy on AI defines AI to be: “the ability of machines to perform tasks that normally require human intelligence – for example, recognizing patterns, learning from experience, drawing conclusions, making predictions, or taking action – whether digitally or as the smart software behind autonomous physical systems.” Our definition does not preclude the DoD AI Strategy’s approach, but allows for a wider range of AI applications that do not require a human intelligence benchmark. We have an extended discussion of the various definitions for AI in several policy documents in the Supporting Document.

[[End FN 13]]

For clarity and to guide this project, we use the term to mean a variety of information processing techniques and technologies used to perform a goal-oriented task and the means to reason in the pursuit of that task. When referring to the wider range of considerations, we use the term artificial intelligence (AI); however, where we specifically address machine learning (ML) systems, we refer to ML. Furthermore, we use the term “AI system” to mean systems that have an AI component within an overall system or a system of systems.14

We use this definition of AI because it comports with how DoD has viewed, developed, and deployed AI systems over the past 40 years. It permits us to make finer-grained distinctions between legacy systems and newer ones such as those using ML. The use of this term allows us to reinforce that the earlier and important AI work achieved by DoD took place within DoD’s existing ethics framework outlined below.

#### They arbitrarily warp what AI means

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The NDAA, while not committed to any one of these five definitions, does explicitly favor “human-like” capacities, as well as human-like “thinking” or action (2, 3, 4, 5). This move, however, may be limiting in scope for AI capabilities, for some systems may require nonhuman like capabilities, such as sonar, various electromagnetic sensing abilities, and other capabilities that exceed human performance on a variety of tasks. Limiting AI to cognitive tasks (4) may also limit various uses of AI for physical task completion, where the repetitive physical task requires very little cognitive abilities. Additionally, “acting rationally” (5) may unjustifiably limit a definition of AI to prior arguments and assumptions about what constitutes rationality.12 For example, classic Enlightenment thought takes a more robust approach to this, whereas economists take a more minimal approach bordering on means-ends reasoning. Yet, this is often contradicted by behavioral economics.

### ---AT: DoD Def

#### The DoD definition is far too simplistic and ignores alternative, non-human modes of intelligence

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The 2018 Department of Defense Strategy on Artificial Intelligence defines AI as: “the ability of machines to perform tasks that normally require human intelligence – for example, recognizing patterns, learning from experience, drawing conclusions, making predictions, or taking action – whether digitally or as the smart software behind autonomous physical systems.”

Much like the NDAA’s proffered approaches, the DoD AI Strategy also privileges “human intelligence” as the foundation or benchmark by which to measure non-natural computational systems,13 though the types of tasks demarcated in the DoD AI Strategy are not solely in the domain of human experience or expertise. Additionally, as written, there is no difference between the objects in the final clause because software runs on digital information.

The general tasks of pattern recognition, learning, offering probabilistic predictions or estimations, or “taking action” are only a small subset of abilities that a variety of nonhuman organic entities, such as higher-order mammals but also distributed complex organic systems like bees and ants, can perform. Mammals, birds, insects, and reptiles all appear to be able to have varying capacities of planning (as a function of episodic memory), causal reasoning, and deceptive capabilities, while others display transitive inference, and teaching/imitation. The important point is that there are a variety of natural minds in the world that display various degrees of these same capabilities, and they are in no way limited to human beings, or that humans have the monopoly on them. The differences between human and animal cognition may be down to the ways in which their brains function, and as we have no full comprehension of how a machine mind functions, it would be premature to attempt to 1) emulate human brains in computational systems and 2) expect that the computational system will “think” like a human. There is danger in anthropomorphizing the system, in both how humans interact with it, but also how we “expect” it to behave.14

### AT: AI = Value Laden

**AI doesn’t have a particular value associated with it**

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Finally, AI is neither inherently positive nor negative.16 It is an enabling capability, akin to electricity, the internal combustion engine, or computers, and as such, it is the decisions of human beings that will determine whether AI will advance or undermine our efforts to make the world safer and more prosperous.

### AT: AI = Full Autonomy

**Autonomy is not synonymous with AI**

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For clarity and to guide this project, we use the term to mean a variety of information processing techniques and technologies used to perform a goal-oriented task and the means to reason in the pursuit of that task. When referring to the wider range of considerations, we use the term artificial intelligence (AI); however, where we specifically address machine learning (ML) systems, we refer to ML. Furthermore, we use the term “AI system” to mean systems that have an AI component within an overall system or a system of systems.14

We use this definition of AI because it comports with how DoD has viewed, developed, and deployed AI systems over the past 40 years. It permits us to make finer-grained distinctions between legacy systems and newer ones such as those using ML. The use of this term allows us to reinforce that the earlier and important AI work achieved by DoD took place within DoD’s existing ethics framework outlined below.

We also distinguish and make clear that AI is not the same thing as autonomy. While some autonomous systems may use AI in their software architectures, this is not always the case. For example, DoD Directive 3000.09 addresses autonomy in weapons systems, but it neither addresses AI as such nor AI capabilities not pertaining to weapon systems.15

[[Begin FN 15]]

15 See DoD Directive 3000.09, which defines an autonomous weapon system as “a weapon system that, once activated, can select and engage targets without further intervention by a human operator. This includes humansupervised autonomous weapons systems that are designed to allow human operators to override operation of the weapon system, but can select and engage targets without further human input after activation.”

[[End FN 15]]

#### It's an unnecessary and harmful conflation

**DIB 19** – Defense Innovation Board, an independent federal advisory committee that provides advice and recommendations to DoD senior leaders

Defense Innovation Board, "AI Principles: Recommendations on the Ethical Use of Artificial Intelligence by the Department of Defense: Supporting Document," Defense Innovation Board, 2019, https://media.defense.gov/2019/Oct/31/2002204459/-1/-1/0/DIB\_AI\_PRINCIPLES\_SUPPORTING\_DOCUMENT.PDF

For (1), this definition appears to conflate autonomous systems and AI systems, while also leaving open questions pertaining to systems that are not dynamic in their design and architectures or non-learning systems. It also does not make any indications as to systems that may learn in a supervised setting, but then after development and training are “frozen” and not permitted to continually learn (i.e. life-long learning). Furthermore, the definition also seems to require AI to be performing tasks without “significant” human oversight, but this move seems to unnecessarily marry the definition to a rather contentious view of autonomy.

#### Autonomous weapons can exist with or without AI

**DIB 19** – Defense Innovation Board, an independent federal advisory committee that provides advice and recommendations to DoD senior leaders

Defense Innovation Board, "AI Principles: Recommendations on the Ethical Use of Artificial Intelligence by the Department of Defense: Supporting Document," Defense Innovation Board, 2019, https://media.defense.gov/2019/Oct/31/2002204459/-1/-1/0/DIB\_AI\_PRINCIPLES\_SUPPORTING\_DOCUMENT.PDF

What is different about AI

In some respects, AI is different in degree, rather than kind. Some of the aspects noted below exist for other technologies but carry with them ethical ambiguities or risks that their technological forerunners do not. Notwithstanding, there are direct benefits from using AI that other systems cannot achieve. These benefits include increased situational awareness, higher quality data for decision-making, increased speed for decision making and planning, streamlining business processes, and increasing safety and reliability of DoD equipment through predictive maintenance and advances in material sciences. What counts as a benefit or a risk, however, depends on the maturity of the technology, its testing and evaluation, the context of its use, and various design features, such as user interfaces. Therefore, what is new about AI is the following:

Augments or replaces human judgment. AI is an information-processing technology that can augment or substitute for human cognition and abilities.24 For moral and legal purposes, the use of force requires human deliberation, and it is DoD policy that autonomous weapons systems – with or without AI – will ensure appropriate human judgment and not replace it. However, for other AI use cases, such as the use of ML for personnel decisions, logistics planning, or predictive maintenance, the system may replace as well as augment human judgment in various aspects of a task.

#### They also define autonomy too narrowly

**DIB 19** – Defense Innovation Board, an independent federal advisory committee that provides advice and recommendations to DoD senior leaders

Defense Innovation Board, "AI Principles: Recommendations on the Ethical Use of Artificial Intelligence by the Department of Defense: Supporting Document," Defense Innovation Board, 2019, https://media.defense.gov/2019/Oct/31/2002204459/-1/-1/0/DIB\_AI\_PRINCIPLES\_SUPPORTING\_DOCUMENT.PDF

We should also make clear that AI is not the same thing as autonomy. While some autonomous systems may utilize AI in their software architectures, this is not always the case. The interaction between AI and autonomy, even if it is not a weapon system, carries with it ethical considerations. Indeed, it is likely that most of these types of systems will have nothing to do with the application of lethal force, but will be used for maintenance and supply, battlefield medical aid and assistance, logistics, intelligence, surveillance and reconnaissance, and humanitarian and disaster relief operations. Various ethical dimensions may arise depending upon the system and its domain of use, and those will change depending upon context.

DoD’s policy regarding autonomy in weapons systems comes from the 2012 DoD Directive (DoDD) 3000.09. There, DoD defines an autonomous weapons system (AWS) as:

“a weapon system that, once activated, can select and engage targets without further intervention by a human operator. This includes human-supervised autonomous weapons systems that are designed to allow human operators to override operation of the weapon system, but can select and engage targets without further human input after activation.”15

Here autonomy is limited to the ability of a system to act without direction and intervention by a human during target engagement. A human may watch or supervise a system, but that system can carry out a commander’s intent and its task without any further guidance. How it does so is not specified; it is the behavior that is autonomous. Thus, DoDD 3000.09 does not explicitly address AI as such, but the Directive is broad enough to cover autonomous systems run on AI.16

Another approach to autonomy comes from the 2016 Defense Science Board’s (DSB) “Summer Study on Autonomy.” Here, the focus was on autonomy as such, and not its particular application in weapons systems. The DSB defines autonomy to be:

“The capability to independently compose and select among different courses of action to accomplish goals based on its knowledge and understanding of the world, itself, and the situation.”17

Further, the Study also importantly notes that:

“Autonomy results from the delegation of a decision to an authorized entity to take action within specific boundaries.”18

What is crucial to note in the Directive’s approach to autonomy is the requisite feature that a weapons system can independently “select and engage” a target. What ultimately constitutes “selection” as opposed to “detection” is open for discussion. However, this approach to defining autonomy is narrow.

If, however, one takes existing DoD policy as determining which weapon systems are autonomous and which are not, then this opens the aperture quite wide to include many systems that can function without intervention of a human operator, and those may or may not have AI as part of that system. The way in which the Directive circumscribes this wide aperture is that it excludes a wide variety of types of systems that would still ontologically fit the definition.19 For instance, the Directive excludes “unarmed, unmanned platforms; unguided munitions; munitions manually guided by the operator (e.g., laser- or wireguided munitions); mines; or unexploded explosive ordnance.”20 Thus systems like the U.S. Army Claymore mine, the U.S. Navy MK-60 CAPTOR mine, and the U.S. Navy Quickstrike Mine family (MKs 62, 63, and 65) are excluded. However, systems such as the U.S. Air Force CQM-121A Pave Tiger and the YGCM-121B Seek Spinner, both unmanned aerial vehicles with anti-radar munitions, would constitute autonomous weapons (per the Directive) without AI.21 A deployed contemporary of Pave Tiger and Seek Spinner would be the Israeli Harpy and Israeli Harop anti-radar loitering munitions.

### Definitions Arbitrary

**There is no agreed upon definition of AI**

**Hoadley and Saylor 20** – report originally written by Daniel S. Hoadley, U.S. Air Force Fellow; report updated by Kelley M. Saylor, analyst in Advanced Technology and Global Security

Daniel S. Hoadley and Kelley M. Saylor, "Artificial Intelligence and National Security," Congressional Research Service, 11-10-2020, https://www.everycrsreport.com/files/2020-11-10\_R45178\_62d6238caecf6c02ddf495be33b3439f09eed744.pdf

AI Terminology and Background5

Almost all academic studies in artificial intelligence acknowledge that no commonly accepted definition of AI exists, in part because of the diverse approaches to research in the field. Likewise, although Section 238 of the FY2019 National Defense Authorization Act (NDAA) directs the Secretary of Defense to produce a definition of artificial intelligence by August 13, 2019, no official U.S. government definition of AI yet exists. 6 The FY2019 NDAA does, however, provide a definition of AI for the purposes of Section 238:

1. Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets.

2. An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action.

3. An artificial system designed to think or act like a human, including cognitive architectures and neural networks.

4. A set of techniques, including machine learning that is designed to approximate a cognitive task.

5. An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision-making, and acting.7

### ---Neg---

### Requires Human Intelligence

**AI refers to machines that performs tasks that require human intelligence**

**DoD 19** – U.S. Department of Defense

"Summary of the 2018 Department of Defense Artificial Intelligence Strategy: Harnessing AI to Advance Our Security and Prosperity," Department of Defense, 2-11-2019, https://media.defense.gov/2019/Feb/12/2002088963/-1/-1/1/SUMMARY-OF-DOD-AI-STRATEGY.PDF

Artificial intelligence (AI) is one such technological advance. AI refers to the ability of machines to perform tasks that normally require human intelligence – for example, recognizing patterns, learning from experience, drawing conclusions, making predictions, or taking action – whether digitally or as the smart software behind autonomous physical systems.

### ---Ext

**Governmental definitions all center around human-like capabilities**

**Hoadley and Saylor 20** – report originally written by Daniel S. Hoadley, U.S. Air Force Fellow; report updated by Kelley M. Saylor, analyst in Advanced Technology and Global Security

Daniel S. Hoadley and Kelley M. Saylor, "Artificial Intelligence and National Security," Congressional Research Service, 11-10-2020, https://www.everycrsreport.com/files/2020-11-10\_R45178\_62d6238caecf6c02ddf495be33b3439f09eed744.pdf

AI Terminology and Background5

Almost all academic studies in artificial intelligence acknowledge that no commonly accepted definition of AI exists, in part because of the diverse approaches to research in the field. Likewise, although Section 238 of the FY2019 National Defense Authorization Act (NDAA) directs the Secretary of Defense to produce a definition of artificial intelligence by August 13, 2019, no official U.S. government definition of AI yet exists. 6 The FY2019 NDAA does, however, provide a definition of AI for the purposes of Section 238:

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3. An artificial system designed to think or act like a human, including cognitive architectures and neural networks.

4. A set of techniques, including machine learning that is designed to approximate a cognitive task.

5. An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision-making, and acting.7

**It’s defined by intelligence and ability to solve real-world problems**

**Harris 17** – Analyst in Science and Technology Policy

Laurie A. Harris, "Overview of Artificial Intelligence," Congressional Research Service, 10-24-17, https://www.everycrsreport.com/files/2017-10-24\_IF10608\_9e2c3abba86ea0ab2d0e580378ae333ae56bb105.pdf

The use of artificial intelligence (AI) is growing across a wide range of sectors. Stakeholders and policymakers have called for careful consideration of strategies to influence its growth, reap predicted benefits, and mitigate potential risks. This document provides an overview of AI technologies and applications, recent private and public sector activities, and selected issues of interest to Congress.

AI Technologies and Applications

Though definitions vary, AI can generally be thought of as computerized systems that work and react in ways commonly thought to require intelligence, such as solving complex problems in real-world situations. According to the Association for the Advancement of Artificial Intelligence (AAAI), researchers broadly seek to understand “the mechanisms underlying thought and intelligent behavior and their embodiment in machines.”

The field of AI encompasses many methodologies and areas of emphasis, such as machine learning (ML), deep learning, neural networks, robotics, machine/computer vision (image processing), and natural language processing. Advances in these areas, in information processing and hardware technology generally, and in the availability of large-scale data sets, have all contributed to recent progress in AI.

**It involves replicating human cognition**

**Craig 19** – MD, JD, Department of Pathology, University of Mississippi Medical Center

Allen, Timothy Craig, "Regulating Artificial Intelligence for a Successful Pathology Future," Arch Pathol Lab Med 143 (10): 1175–1179., 7-3-2019, https://meridian.allenpress.com/aplm/article/143/10/1175/420703/Regulating-Artificial-Intelligence-for-a

Artificial intelligence (AI), a set of techniques aimed at approximating some aspect of human cognition using machines,1 promises to provide pathologists a tool to improve inefficiencies and inaccuracies in diagnosis and laboratory testing, and to facilitate an anticipated decreasing number of pathologists’ ability to serve an increasing number of patients with timely diagnoses, even as those diagnoses exhibit an increasingly complicated molecular complexity.2–4 Pathology has long examined the use of AI in pathologic diagnosis5 and is already using AI. Papanicolaou test imaging, approved by the US Food and Drug Administration (FDA) for screening purposes, is now fully, if not widely, used.6,7 Other areas of cytopathology are investigating the use of AI for diagnosis,8 and AI will undoubtedly play a strong and central role in its continuing progress toward becoming fully automated.9–11 Artificial intelligence in pathology promises to outperform human beings in their assessment of the specific characteristics necessary for pathologic and radiologic diagnosis.9,12 Despite the initial hysteria,13–16 it is now clear that AI will be, at least for the foreseeable future, a tool for pathologists, not a replacement for pathologists, and it is evident that although AI’s use will fundamentally alter pathology practice, it is perhaps pathologists’ greatest opportunity to invest themselves more fully in their patients’ care.3,7 Pathologists’ success with AI, however, will depend to a large degree on the successful implementation of efficient AI governance and regulation.

**Specific to a military context**

**Ware 19** – MA in security studies from Georgetown University and an MA (Hons) in international relations and modern history from the University of St Andrews

Jacob Ware, "Terrorist Groups, Artificial Intelligence, and Killer Drones," War on the Rocks, 9-24-2019, https://warontherocks.com/2019/09/terrorist-groups-artificial-intelligence-and-killer-drones/

Terrorist groups are increasingly using 21st-century technologies, including drones and elementary artificial intelligence (AI), in attacks. As it continues to be weaponized, AI could prove a formidable threat, allowing adversaries — including nonstate actors — to automate killing on a massive scale. The combination of drone expertise and more sophisticated AI could allow terrorist groups to acquire or develop lethal autonomous weapons, or “killer robots,” which would dramatically increase their capacity to create incidents of mass destruction in Western cities. As it expands its artificial intelligence capabilities, the U.S. government should also strengthen its anti-AI capacity, paying particular attention to nonstate actors and the enduring threats they pose. For the purposes of this article, I define artificial intelligence as technology capable of “mimicking human brain patterns,” including by learning and making decisions.

### Requires Human or Animal Intelligence

**AI are machine technologies that approximate human or animal cognition**

**Calo 17** – Lane Powell and D. Wayne Gittinger Associate Professor, University of Washington School of Law

Ryan Calo, "Artificial Intelligence Policy: A Primer and Roadmap," UC Davis Law Review, Vol. 51:399, 2017, https://lawreview.law.ucdavis.edu/issues/51/2/Symposium/51-2\_Calo.pdf

I. BACKGROUND

A. What Is AI?

There is no straightforward, consensus definition of artificial intelligence. AI is best understood as a set of techniques aimed at approximating some aspect of human or animal cognition using machines. Early theorists conceived of symbolic systems — the organization of abstract symbols using logical rules — as the most fruitful path toward computers that can “think.”18 But the approach of building a reasoning machine upon which to scaffold all other cognitive tasks, as originally envisioned by Turing and others, did not deliver upon initial expectations. What seems possible in theory has yet to yield many viable applications in practice.19

### No AI Systems/AI-Enabled Systems

**AI is distinct from AI systems or AI-enabled systems**

**DIB 19** – Defense Innovation Board, an independent federal advisory committee that provides advice and recommendations to DoD senior leaders

Defense Innovation Board, "AI Principles: Recommendations on the Ethical Use of Artificial Intelligence by the Department of Defense," Defense Innovation Board, 2019, https://media.defense.gov/2019/Oct/31/2002204458/-1/-1/0/DIB\_AI\_PRINCIPLES\_PRIMARY\_DOCUMENT.PDF

Defining AI. Artificial intelligence is an extremely broad discipline, defined in many different ways for many different purposes.13

For clarity and to guide this project, we use the term to mean a variety of information processing techniques and technologies used to perform a goal-oriented task and the means to reason in the pursuit of that task. When referring to the wider range of considerations, we use the term artificial intelligence (AI); however, where we specifically address machine learning (ML) systems, we refer to ML. Furthermore, we use the term “AI system” to mean systems that have an AI component within an overall system or a system of systems.14

[[Begin FN 14]]

14 Some documents prefer the phrase, “AI-enabled systems,” but for our purposes, an AI system or an AI-enabled system would be the same.

[[End FN 14]]

## Biotechnology

### ---Aff---

### Aff Definition Top

**Biotech is any technology that uses biological systems for modification**

**CBD 92** – Convention on Biological Diversity

CBD, "Convention on Biological Diversity," United Nations, drafted 5-22-92, effective 12-29-93, https://www.cbd.int/doc/legal/cbd-en.pdf

Article 2. Use of Terms

For the purposes of this Convention:

"Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.

"Biological resources' includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

"Biotechnology" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

### ---NATO Context

#### NATO publications agree

**Cummings et al. 21** – Christopher L. Cummings, North Carolina State University; Kaitlin M. Volk and Anna A. Ulanova, US Army Corps of Engineers, Environmental Laboratory, Engineer Research and Development Center; Do Thuy Uyen Ha Lam, Genome Institute of Singapore (GIS), Agency for Science, Technology and Research; Pei Rou Ng, Wee Kim Wee School of Communication and Information, Nanyang Technological University

Christopher L. Cummings, Kaitlin M. Volk, Anna A. Ulanova, Do Thuy Uyen Ha Lam, and Pei Rou Ng, "Chapter 2: Emerging Biosecurity Threats and Responses: A Review of Published and Gray Literature," in *Emerging Threats of Synthetic Biology and Biotechnology*, NATO Science for Peace and Security Series C: Environmental Security, 2021, https://link.springer.com/content/pdf/10.1007%2F978-94-024-2086-9.pdf

2.1 Introduction

The field of biotechnology has been rigorously researched and applied to many facets of everyday life. Biotechnology is defined as the process of modifying an organism or a biological system for an intended purpose. Biotechnology applications range from agricultural crop selection to pharmaceutical and genetic processes (Bauer and Gaskell 2002). The definition, however, is evolving with recent scientific advancements. Until World War II, biotechnology was primarily siloed in agricultural biology and chemical engineering. The results of this era included disease resistant crops, pesticides, and other pest-controlling tools (Verma et al. 2011). After WWII, biotechnology began to shift domains when advanced research on human genetics and DNA started. In 1984, the Human Genome Project (HGP) was formerly proposed, which initiated the pursuit to decode the human genome by the private and academic sectors. The legacy of the project gave rise to ancillary advancements in data sharing and open-source software, and solidified the prominence of “big science;” solidifying capital-intensive large-scale private-public research initiatives that were once primarily under the purview of governmentfunded programs (Hood and Rowen 2013). After the HGP, the biotechnology industry boomed as a result of dramatic cost reduction to DNA sequencing processes. In 2019 the industry was globally estimated to be worth $449.06 billion and is projected to increase in value (Polaris 2020).

### ---Coop Context

**The CBD definition is best in the biotechnology and cooperation context**

\*\*\*Also NATO context\*\*\*

**Pearson 0** – Department of Peace Studies, University of Bradford

Graham S. Pearson, "The Prohibition Of Chemical And Biological Weapons," in *Verification of the Biological and Toxin Weapons Convention*, Proceedings of the NATO Advanced Study Institute on New Scientific and Technical and Aspects of Verification of the Biological and Toxin Weapons Convention, 2000, https://link.springer.com/content/pdf/10.1007/978-94-017-3643-5.pdf

The Convention on Biological Diversity (CBD) was opened for signature at the Rio Summit and entered into force in December 1993. Article I of the CBD states that:

"The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding."

Several sections of the Convention are directly relevant to the peaceful uses of microbiology and biotechnology. Biotechnology is defined broadly in Article 2 as:

"Biotechnology means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use."

whilst Article 16 Access to and Transfer of Technology requires that:

"I. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of the Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting parties of technologies .... "

and goes on to say that:

"2. Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided and/or facilitated under fair and most favorable terms ... .In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights ...

3. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that Contracting parties, in particular those that are developing countries, .... are provided access to and transfer of technology .. .including technology protected by patents and other intellectual property rights .... "

It is thus apparent that there is considerable potential for overlap between the CBD and the BTWC. In addition, there are other CBD initiatives - the clearing house and the biosafety protocol - which are relevant to Article X of the BTWC which are being progressed satisfactorily under the auspices of the CBD. As the BTWC is primarily a security treaty, it would seem appropriate to utilize the CBD as the primary treaty to promote biotechnology transfer for peaceful purposes. As an aside, it is worth noting that the UK Government has mounted the Darwin Initiative in which about £3M a year is made available to British institutions to work with developing countries to help the developing countries meet their obligations under the Convention on Biological Diversity. This would appear to be a model that might with advantage be considered further in addressing how States Parties to the BTWe might be assisted in meeting their obligations to a strengthened BTWe.

### ---Broad Good

**Most influential organizations use broad definitions**

**BIO ND** – Biotechnology Innovation Organization, world's largest trade association representing biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations

BIO, "What is Biotechnology?" Biotechnology Innovation Organization, No Date, https://www.bio.org/what-biotechnology

What is Biotechnology?

At its simplest, biotechnology is technology based on biology - biotechnology harnesses cellular and biomolecular processes to develop technologies and products that help improve our lives and the health of our planet. We have used the biological processes of microorganisms for more than 6,000 years to make useful food products, such as bread and cheese, and to preserve dairy products.

### ---Neg---

### Must be DNA Tech

**Biotechnology refers to DNA techniques to alter organisms**

**Cowan 15** – Analyst in Natural Resources and Rural Development

Tadlock Cowan, "Agricultural Biotechnology: Background, Regulation, and Policy Issues," Congressional Research Service, 7-20-2015, https://www.everycrsreport.com/files/20150720\_RL32809\_e4c1dec6c4c51de14b8315e0ccc8b2bb9df05b85.pdf

Summary

Biotechnology refers primarily to the use of recombinant DNA techniques to genetically modify or bioengineer plants and animals. Most crops developed through recombinant DNA technology have been engineered to be tolerant of various herbicides or to be pest resistant through having a pesticide genetically engineered into the plant organism. U.S. soybean, cotton, and corn farmers have rapidly adopted genetically engineered (GE) varieties of these crops since their commercialization in the mid-1990s. Over the past 15 years, GE varieties in the United States have increased from 3.6 million planted acres to 173 million acres in 2013. Worldwide, 27 countries planted GE crops on approximately 433 million acres in 2013. GE varieties now dominate soybean, cotton, and corn production in the United States, and they continue to expand rapidly in other countries, particularly in Latin America.

### ---AT: CBD Definition

**It’s reasonable and predictable to define biotechnology either way, so prefer a limited definition**

**FAO 0** – Food and Agriculture Organization

FAO, "FAO Statement on Biotechnology," United Nations, March 2000, https://www.fao.org/biotech/fao-statement-on-biotechnology/en/#:~:text=FAO%20recognizes%20that%20genetic%20engineering,food%20to%20feed%20their%20people.

Biotechnology provides powerful tools for the sustainable development of agriculture, fisheries and forestry, as well as the food industry. When appropriately integrated with other technologies for the production of food, agricultural products and services, biotechnology can be of significant assistance in meeting the needs of an expanding and increasingly urbanized population in the next millennium.

There is a wide array of "biotechnologies" with different techniques and applications. The Convention on Biological Diversity (CBD) defines biotechnology as:

*"any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use".*

Interpreted in this broad sense, the definition of biotechnology covers many of the tools and techniques that are commonplace in agriculture and food production. Interpreted in a narrow sense, which considers only the new DNA techniques, molecular biology and reproductive technological applications, the definition covers a range of different technologies such as gene manipulation and gene transfer, DNA typing and cloning of plants and animals.

### ---Core of Topic

**It’s the core controversy of biotechnology in the security context**

**Biberman ND** – associate professor of political science at Skidmore College, a fellow at West Point’sModern War Institute, and a nonresident senior fellow at the Atlantic Council’s South Asia Center

Yelena Biberman, "The Technologies and International Politics of Genetic Warfare," Strategic Studies Quarterly, Fall 2021, https://www.airuniversity.af.edu/Portals/10/SSQ/documents/Volume-15\_Issue-3/Biberman.pdf

The US security establishment is also beginning to take the promises and perils of the biotechnology revolution seriously, and there have been calls for a national strategy.6 The US intelligence community’s (IC) 2016 worldwide threat assessment singled out genome editing: “Research in genome editing conducted by countries with different regulatory or ethical standards than those of Western countries probably increases the risk of the creation of potentially harmful biological agents or products.”7 The IC predicted, however, that researchers will “continue to encounter challenges to achieve the desired outcome of their genome modifications, in part because of the technical limitations that are inherent in available genome editing systems.”8

## Cybersecurity

### ---Aff---

### Cybersec = Sec of Cyberspace

**Cybersecurity is the security of cyberspace---there is no agreed upon definition, so prefer a broad, policy-oriented definition**

**Jaikaran 20** – Analyst in Cybersecurity Policy

Chris Jaikaran, "Cybersecurity: A Primer," Congressional Research Service, 12-15-2020, https://www.everycrsreport.com/files/2020-12-15\_IF10559\_1d7e5206bb579bce86b7889e28a8ae293466a517.pdf

The Nature of Cybersecurity

The term “cyber” is frequently attached to a variety of security issues, underscoring that issues surrounding the management of cyberspace and its security are big and complicated.

As an example, consider a single smartphone. An American company may have designed the device, but the device may be built by a different company abroad using material from yet another country. The phone runs on software built by one company but modern operating systems borrow code from other companies and developers. Once a user has the device it will likely be connected to a variety of networks such as a home wireless network, a corporate network, and a cellular network. Each of these networks has its own infrastructure, but also share common internet infrastructure. The user will also install applications that contain code and use infrastructure by yet other myriad companies. Imagining users at the center, one can see large and intricate systems on one side and the other to create these devices and ensure those devices work.

To highlight how complicated it is, consider that the federal government does not have a single definition of cyberspace or cybersecurity. Recently, the Cyberspace Solarium Commission—defined “cyber” as

Relating to, involving, or characteristic of computers, computer networks, information and communications technology (ICT), virtual systems, or computer-enabled control of physical components.

While this definition may be suitable for a broad discussion about information technology, it does not account for relevant policymaking considerations concerning cybersecurity. Essentially, cybersecurity is the security of cyberspace.

When users go online they might work with their bank, get their email, conduct business, or get the news by accessing services. But those services don’t exist independently. Those services rely on a common infrastructure of servers and switches, miles of cabling, wireless spectrum, and routers. That same infrastructure is used by other services too, such as utilities and shipping to ensure products arrive as intended—or by businesses to develop new products more efficiently and manage their operations. The entire infrastructure and all those services that are part of cyberspace exist to deliver an experience to a user, a human.

Thus, from a policymaking standpoint cybersecurity can be considered the security of cyberspace—which includes the devices, infrastructure, data, and users that make it up. To support cybersecurity policymaking, adjacent fields also need consideration. Education, workforce management, investment, entrepreneurship, and research and development are necessary to get a product to market. Developers, law enforcement, intelligence, incident response, and national defense are necessary to respond when something goes awry in cyberspace.

### ---Ext

**Cybersecurity is the ability to protect the use of cyberspace**

**Barrett et al. 20** – Matt Barrett and Jeff Marron, Applied Cybersecurity Division, Information Technology Laboratory; Victoria Yan Pillitteri, Jon Boyens, and Stephen Quinn, Computer Security Division, Information Technology Laboratory; Greg Witte, and Larry Feldman, Huntington Ingalls Industries

Matt Barrett, Jeff Marron, Victoria Yan Pillitteri, Jon Boyens, Stephen Quinn, Greg Witte, and Larry Feldman, "Approaches for Federal Agencies to Use the Cybersecurity Framework," National Institute of Standards and Technology Interagency Report 8170, U.S. Department of Commerce, March 2020, https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8170-upd.pdf

Appendix B—Glossary

Agency

See Executive Agency

Chief Information Officer [PL 104-106, Sec. 5125(b)]

Agency official responsible for:

(i) Providing advice and other assistance to the head of the executive agency and other senior management personnel of the agency to ensure that information technology is acquired and information resources are managed in a manner that is consistent with laws, Executive Orders, directives, policies, regulations, and priorities established by the head of the agency;

(ii) Developing, maintaining, and facilitating the implementation of a sound and integrated information technology architecture for the agency; and

(iii) Promoting the effective and efficient design and operation of all major information resources management processes for the agency, including improvements to work processes of the agency.

Chief Information Security Officer

See Senior Agency Information Security Officer

Common Control [NIST SP 800-37]

A security control that is inherited by one or more organizational information systems. See Security Control Inheritance.

Common Control Provider [NIST SP 800-37]

An organizational official responsible for the development, implementation, assessment, and monitoring of common controls (i.e., security controls inherited by information systems).

Cybersecurity [CNSSI 4009]

The ability to protect or defend the use of cyberspace from cyber attacks

### ---Cyberspace = Complex Environment

**Cyberspace is the complex environment of fully digital interactions**

**Hogan and Newton 15** – NIST editors. Information Technology Laboratory. Report prepared by the International Cybersecurity Standardization Working Group of the National Security Council’s Cyber Interagency Policy Committee

Michael Hogan and Elaine Newton, "Supplemental Information for the Interagency Report on Strategic U.S. Government Engagement in International Standardization to Achieve U.S. Objectives for Cybersecurity," National Institute of Standards and Technology Interagency Report 8074 Volume 2, U.S. Department of Commerce, December 2015, https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8074v2.pdf

Annex A – Terms and Definitions

For the purposes of this document, the terms and definitions in this Annex apply. Note that, in some instances, more than one definition is provided to highlight that authoritative sources may develop different explanations for the same term.

Base Standards18 define fundamentals and generalized procedures. They provide an infrastructure that can be used by a variety of applications, each of which can make its own selection from the options offered by them.

Conformity Assessment19 is activity that provides demonstration that specified requirements relating to a product, process, system, person or body are fulfilled.

Cyber refers to both information and communications networks. [SOURCE: This report]

Cybersecurity is defined as the prevention of damage to, unauthorized use of, exploitation of, and—if needed—the restoration of electronic information and communications systems, and the information they contain, in order to strengthen the confidentiality, integrity and availability of these systems. [SOURCE: This report]

Cyberspace20 is the complex environment resulting from the interaction of people, software and services on the Internet by means of technology devices and networks connected to it, which does not exist in any physical form.

### ---Cyberspace = Domain of Operations

**Cyberspace is a domain of operations**

**NATO 22** – North Atlantic Treaty Organization

NATO, "Cyber defence," North Atlantic Treaty Organization, 3-23-2022, https://www.nato.int/cps/en/natohq/topics\_78170.htm

Cyber threats to the security of the Alliance are complex, destructive and coercive, and are becoming ever more frequent. NATO will continue to adapt to the evolving cyber threat landscape. NATO and its Allies rely on strong and resilient cyber defences to fulfil the Alliance’s core tasks of collective defence, crisis management and cooperative security. The Alliance needs to be prepared to defend its networks and operations against the growing sophistication of the cyber threats it faces.

* Cyber defence is part of NATO’s core task of collective defence.
* NATO Allies have affirmed that international law applies in cyberspace.
* NATO's main focus in cyber defence is to protect its own networks, operate in cyberspace (including through the Alliance’s operations and missions), help Allies to enhance their national resilience and provide a platform for political consultation and collective action.
* In July 2016, Allies reaffirmed NATO’s defensive mandate and recognised cyberspace as a domain of operations in which NATO must defend itself as effectively as it does in the air, on land and at sea.

**Cyberspace is a domain in which warfighting occurs**

**DoD 18** – Department of Defense

DoD, "Summary: Department of Defense Cyber Strategy," U.S. Department of Defense, 2018, https://media.defense.gov/2018/Sep/18/2002041658/-1/-1/1/CYBER\_STRATEGY\_SUMMARY\_FINAL.PDF

Strategic Competition In Cyberspace

The United States’ strategic competitors are conducting cyber-enabled campaigns to erode U.S. military advantages, threaten our infrastructure, and reduce our economic prosperity. The Department must respond to these activities by exposing, disrupting, and degrading cyber activity threatening U.S. interests, strengthening the cybersecurity and resilience of key potential targets, and working closely with other departments and agencies, as well as with our allies and partners.

First, we must ensure the U.S. military’s ability to fight and win wars in any domain, including cyberspace. This is a foundational requirement for U.S. national security and a key to ensuring that we deter aggression, including cyber attacks that constitute a use of force, against the United States, our allies, and our partners. The Department must defend its own networks, systems, and information from malicious cyber activity and be prepared to defend, when directed, those networks and systems operated by non-DoD Defense Critical Infrastructure (DCI)1 and Defense Industrial Base (DIB)2 entities. We will defend forward to halt or degrade cyberspace operations targeting the Department, and we will collaborate to strengthen the cybersecurity and resilience of DoD, DCI, and DIB networks and systems.

### ---AT: No OCOs

**Forward military operations preserve security in cyberspace**

**DoD 18** – Department of Defense

DoD, "Summary: Department of Defense Cyber Strategy," U.S. Department of Defense, 2018, https://media.defense.gov/2018/Sep/18/2002041658/-1/-1/1/CYBER\_STRATEGY\_SUMMARY\_FINAL.PDF

The Department must take action in cyberspace during day-to-day competition to preserve U.S. military advantages and to defend U.S. interests. Our focus will be on the States that can pose strategic threats to U.S. prosperity and security, particularly China and Russia. We will conduct cyberspace operations to collect intelligence and prepare military cyber capabilities to be used in the event of crisis or conflict. We will defend forward to disrupt or halt malicious cyber activity at its source, including activity that falls below the level of armed conflict. We will strengthen the security and resilience of networks and systems that contribute to current and future U.S. military advantages. We will collaborate with our interagency, industry, and international partners to advance our mutual interests.

**NATO considers offensive cyber operations to be part of defense**

**Baldor 21** – Writer for the AP

Lolita C. Baldor, "US to offer cyberwar capabilities to NATO allies," Associated Press, 4-24-2021, https://apnews.com/article/north-america-russia-ap-top-news-international-news-asia-pacific-292c4d08912c4e3f8ae29973e0ecfbbc

“Russia is constantly pushing its cyber and information operations,” said Wheelbarger, adding that this is a way for the U.S. to show its continued commitment to NATO.

NATO Secretary-General Jens Stoltenberg told reporters on Wednesday that the inclusion of offensive cyber operations in alliance missions “is just one of many elements in our strengthened NATO cyber defenses.” And he said that it’s important to have cyber capabilities that can be used against the Islamic State group to destroy the networks they use for recruiting, financing and communicating.

**OCOs are defensive and protect against threats in cyberspace**

**Arts 18** – program officer for security and defense policy at The German Marshall Fund of the United States

Sophie Arts, "Offense as the New Defense: New Life for NATO’s Cyber Policy," German Marshall Fund of the United States, 12-13-2018, https://www.gmfus.org/news/offense-new-defense-new-life-natos-cyber-policy

Until recently, NATO and member states, including the United States, have relied on strictly defensive cyber tools to protect their infrastructure. However, given that this approach has done little to discourage hostile actors, the strategic value of incorporating offensive cyber operations has long been discussed. In late 2017, Stoltenberg announced that NATO would integrate cyber weapons of its members into military operations to deter and defend against threats, marking the “biggest overall policy shift in decades,” according to officials.[22]

The U.S. decision to commit offensive and defensive capabilities to NATO follows on the heels of this move. The addition of offensive cyber tools to the defense and deterrence toolbox is not only new for NATO, it also tracks a recent shift in the U.S. posture. The White House authorized the use of offensive cyber weapons to deter foreign adversaries in September with the publication of the Department of Defense’s 2018 Cyber Strategy.[23] The strategy also incorporates a new mission of “defending forward” as a means to “disrupt or halt malicious cyber activity at its source, including activity that falls below the level of armed conflict.”[24] While defending forward is, as the name suggests, defensive in nature, it entails targeting foreign cyberspace infrastructure to pre-empt incoming attacks through offensive cyber operations.

### AT: Cybersec = Cyber

**Definitions of “cyber” don’t cut it---ignores policymaking-specific considerations**

**Jaikaran 20** – Analyst in Cybersecurity Policy

Chris Jaikaran, "Cybersecurity: A Primer," Congressional Research Service, 12-15-2020, https://www.everycrsreport.com/files/2020-12-15\_IF10559\_1d7e5206bb579bce86b7889e28a8ae293466a517.pdf

To highlight how complicated it is, consider that the federal government does not have a single definition of cyberspace or cybersecurity. Recently, the Cyberspace Solarium Commission—defined “cyber” as

Relating to, involving, or characteristic of computers, computer networks, information and communications technology (ICT), virtual systems, or computer-enabled control of physical components.

While this definition may be suitable for a broad discussion about information technology, it does not account for relevant policymaking considerations concerning cybersecurity. Essentially, cybersecurity is the security of cyberspace.

### AT: Cybersec = Defensive

**Offensive cyber operations are a part of cybersecurity---they prevent cyberattacks**

**M.W. 21** – regularly writes about technology, business continuity, compliance and project management. He's worked with companies such as Canva.com, EnergyCentral.com, and Citibank

Stephen M.W., "The dangers of offensive cybersecurity," TechGenix, 4-14-2021, <https://techgenix.com/dangers-of-offensive-cybersecurity/#:~:text=Also%20known%20as%20hacking%20back,systems%20or%20penetrate%20cyber%2Ddefenses>.

\*\*\*we do not endorse ableist language\*\*\*

Governments and corporations have realized that a passive, defensive approach to cybersecurity has limited success. Instead, there is growing recognition of the need for persistent engagement that infiltrates and degrades an attacker’s systems and infrastructure. Also known as hacking back, offensive cybersecurity operations refer to the proactive attack on hackers to cripple or disrupt their operations and deter future attacks. Offensive cybersecurity has the advantage of stopping or preempting cyberattacks before they impair target systems or penetrate cyber-defenses. The operations can also introduce uncertainty in an attacker in addition to influencing their behavior.

Despite its merits, offensive cybersecurity is not without significant risks. Before developing and executing an offensive cybersecurity strategy, it is essential you recognize the different ways things can go wrong.

### AT: Cybersec = Privacy

**Cybersecurity should not be conflated with privacy**

**Fischer 14** – Senior Specialist in Science and Technology

Eric A. Fischer, "Cybersecurity Issues and Challenges: In Brief," Congressional Research Service, 12-16-2014, https://www.everycrsreport.com/files/20141216\_R43831\_acbefaafacb64f97fd77df976c469127afdd9308.pdf

Cybersecurity is also sometimes conflated inappropriately in public discussion with other concepts such as privacy, information sharing, intelligence gathering, and surveillance. Privacy is associated with the ability of an individual person to control access by others to information about that person. Thus, good cybersecurity can help protect privacy in an electronic environment, but information that is shared to assist in cybersecurity efforts might sometimes contain personal information that at least some observers would regard as private. Cybersecurity can be a means of protecting against undesired surveillance of and gathering of intelligence from an information system. However, when aimed at potential sources of cyberattacks, such activities can also be useful to help effect cybersecurity. In addition, surveillance in the form of monitoring of information flow within a system can be an important component of cybersecurity.4

### AT: Cybersec = Info/Intel Gathering/Surveillance

**Cybersecurity should not be conflated with info sharing or intel gathering**

**Fischer 14** – Senior Specialist in Science and Technology

Eric A. Fischer, "Cybersecurity Issues and Challenges: In Brief," Congressional Research Service, 12-16-2014, https://www.everycrsreport.com/files/20141216\_R43831\_acbefaafacb64f97fd77df976c469127afdd9308.pdf

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### AT: Cybersec = Data Security

**Data security is only one part of cybersecurity**

**Kosseff 18** – Assistant Professor of Cybersecurity Law, United States Naval Academy. J.D., Georgetown University Law Center; M.P.P., B.A., University of Michigan

Jeff Kosseff, "Defining Cybersecurity Law," 103 Iowa L. Rev. 985 , 2018, https://ilr.law.uiowa.edu/print/volume-103-issue-3/defining-cybersecurity-law/#:~:text=Cybersecurity%20law%20promotes%20the%20confidentiality,economic%20interests%2C%20and%20national%20security.

Cybersecurity often is conflated, particularly in legal circles, with data security. Although data security is an important part of cybersecurity, it is only one part. Cybersecurity focuses not only on the protection of data, but also on the systems and networks of the public and private sector. In other words, cybersecurity involves more than merely the protection of data.

Consider, for example, the 2016 Distributed Denial of Service (“DDOS”) attack on Dyn, a relatively obscure but exceptionally important company that provides a large portion of the domain name system that directs traffic on the Internet. A DDOS attack floods a targeted server with traffic from multiple sources, causing a slowdown in traffic or a complete shutdown. Due to the DDOS attack on Dyn, Netflix, Twitter, and other popular online services were unavailable for the majority of a day. Although the attack resulted in some data being unavailable, it would not be characterized as a traditional data security compromise. Instead, it was an attack that compromised an entire network. Laws focused exclusively on data—rather than networks and systems—will do little to prevent and remediate harms such as the Dyn attack.

To be sure, data security is a vital component of cybersecurity. For instance, the attack on Sony compromised a significant amount of the company’s valuable data, including confidential emails and unreleased movies. That aspect of the attack attracted a great deal of publicity. However, Sony also suffered great business harm due to the unavailability of its systems and networks. The attack on Sony, in other words, was not merely an attack on the company’s data security. It was a comprehensive attack on Sony’s cybersecurity. The attack compromised more than just the confidentiality of Sony’s information, though it certainly had that effect as well. The attack compromised the fundamental ability of Sony to carry out its routine business operations.

### ---Neg---

### Cybersec = Process

**Cybersecurity is an ongoing process---that’s distinct from a cybersecurity event, which is a one-off change**

**Ross et al. 21** – Ron Ross and Victoria Pillitteri, Computer Security Division, National Institute of Standards and Technology; Richard Graubart, Deborah Bodeau, Rosalie McQuaid, Cyber Resiliency and Innovative, Mission Engineering Department, The MITRE Corporation

Ron Ross, Victoria Pillitteri, Richard Graubart, Deborah Bodeau, Rosalie McQuaid, "Developing Cyber-Resilient Systems: A Systems Security Engineering Approach," NIST Special Publication 800-160, Volume 2, Revision 1, U.S. Department of Commerce, December 2021, https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-160v2r1.pdf

cybersecurity

[NIST CSF]

The process of protecting information by preventing, detecting, and responding to attacks.

[CNSSI 4009]

Prevention of damage to, protection of, and restoration of computers, electronic communications systems, electronic communications services, wire communication, and electronic communication, including information contained therein, to ensure its availability, integrity, authentication, confidentiality, and nonrepudiation.

cybersecurity event

[NIST CSF]

A cybersecurity change that may have an impact on organizational operations (including mission, capabilities, or reputation).

### ---Ext

**Cybersecurity is a continual process of identifying, protecting from, detecting, responding to, and recovering from cyber threats**

**Jaikaran 19** – Analyst in Cybersecurity Policy

Chris Jaikaran, "Federal Cybersecurity: Background and Issues for Congress," Congressional Research Service, 9-29-2019, https://www.everycrsreport.com/files/2021-09-29\_R46926\_9d122cf49d9917ed78eaeab67c08ce1a1ad4eff5.pdf

Federal Cybersecurity: Background and Issues for Congress

Federal agencies are responsible for collecting, processing, storing, and disposing of a large amount of digital information related to individuals, businesses, and sensitive matters. Managing that data and the systems using the data in a secure way requires undertaking planning, implementing processes, and conducting programming on behalf of the agency—commonly referred to as cybersecurity.

Cybersecurity is a risk management process rather than an end-state. It involves continuous work to (1) identify and (2) protect against potential cybersecurity incidents; and to (3) detect; (4) respond to; and (5) recover from actual cybersecurity incidents. Agencies may choose to evaluate their information technology (IT)risks by understanding the threats they are susceptible to, the vulnerabilities they have, and the consequences a successful attack might have for their mission and their customers.

### Cybersec = Defensive

**Cybersecurity refers to the prevention of damage to, protection of, or restoration of electronic systems**

**OMB 16** – Office of Management and Budget

OMB, "Managing Information as a Strategic Resource," Circular No. A-130, Office of Management and Budget, 2016, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/OMB/circulars/a130/a130revised.pdf

10. Definitions

a. The following definitions are applicable within this policy:

1) ‘Accessibility’ means information technology products or services that are in full compliance with the standards of section 508 of the Rehabilitation Act of 1973.62

2) ‘Adequate security’ means security protections commensurate with the risk resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of information. This includes ensuring that information hosted on behalf of an agency and information systems and applications used by the agency operate effectively and provide appropriate confidentiality, integrity, and availability protections through the application of cost-effective security controls.

3) ‘Agency’ means any executive agency or department, military department, Federal Government corporation, Federal Government-controlled corporation, or other establishment in the Executive Branch of the Federal Government, or any independent regulatory agency.

4) ‘Agency Strategic Plan’ means a plan that provides general and long-term goals that the agency aims to achieve, the actions the agency will take to realize those goals, the strategies planned, how the agency will deal with challenges and risks that may hinder achieving results, and the approaches it will use to monitor its progress.63

5) ‘Agile Development’ means a development methodology that uses an iterative approach to deliver solutions incrementally through close collaboration and frequent reassessment.

6) ‘Authorization to Operate’ means the official management decision given by a senior Federal official or officials to authorize operation of an information system and to explicitly accept the risk to agency operations (including mission, functions, image, or reputation), agency assets, individuals, other organizations, and the Nation based on the implementation of an agreed-upon set of security and privacy controls. Authorization also applies to common controls inherited by agency information systems.

7) ‘Authorization boundary’ means all components of an information system to be authorized for operation by an authorizing official. This excludes separately authorized systems to which the information system is connected.64

8) ‘Authorization package’ means the essential information that an authorizing official uses to determine whether to authorize the operation of an information system or the use of a designated set of common controls. At a minimum, the authorization package includes the information system security plan, privacy plan, security control assessment, privacy control assessment, and any relevant plans of action and milestones.

9) ‘Authorizing official’ means a senior Federal official or executive with the authority to authorize (i.e., assume responsibility for) the operation of an information system or the use a designated set of common controls at an acceptable level of risk to agency operations (including mission, functions, image, or reputation), agency assets, individuals, other organizations, and the Nation.

10) ‘Binding Operational Directive’ means a compulsory direction from the Department of Homeland Security to an agency that is for the purposes of safeguarding Federal information and information systems from a known or reasonably suspected information security threat, vulnerability, or risk; shall be in accordance with policies, principles, standards, and guidelines issued by the Director of the Office of Management and Budget; and may be revised or repealed by the Director if the direction issued on behalf of the Director is not in accordance with policies and principles developed by the Director (44 U.S.C. § 3552).

11) ‘Business Continuity Plan’ means a plan that focuses on sustaining an organization’s mission or business processes during and after a disruption, and may be written for mission or business processes within a single business unit or may address the entire organization’s processes.65

12) ‘Chief Information Officer’ means the senior official that provides advice and other assistance to the head of the agency and other senior management personnel of the agency to ensure that IT is acquired and information resources are managed for the agency in a manner that achieves the agency’s strategic goals and information resources management goals; and is responsible for ensuring agency compliance with, and prompt, efficient, and effective implementation of, the information policies and information resources management responsibilities, including the reduction of information collection burdens on the public.

13) ‘Chief Information Officers Council’ means the Council codified in the E-Government Act of 2002 (44 U.S.C § 101).

14) ‘Common control’ means a security or privacy control that is inherited by multiple information systems or programs. 66

15) ‘Controlled Unclassified Information’ means information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government-wide policies, excluding information classified under Executive Order 13526 of December 29, 2009, or the Atomic Energy Act, as amended.

16) ‘Critical infrastructure’ means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health safety, or any combination of those matters (42 U.S.C. § 5195c(e)).

17) ‘Cybersecurity’ means prevention of damage to, protection of, and restoration of computers, electronic communications systems, electronic communications services, wire communication, and electronic communication, including information contained therein, to ensure its availability, integrity, authentication, confidentiality, and nonrepudiation.

### ---Context Usage

**There is a distinction between offensive cyber operations and cybersecurity---they inherently trade off and the controversy is clear**

**Edgar 22** – senior fellow at the Watson Institute at Brown University, lecturer at Harvard Law School, and former White House National Security staffer under President Barack Obama

Timothy H. Edgar, "Forget Cyberwar: We Need Cybersecurity First," The National Interest, 3-19-2022, https://nationalinterest.org/blog/techland-when-great-power-competition-meets-digital-world/forget-cyberwar-we-need-cybersecurity

Russia’s invasion of Ukraine has shattered many illusions. One of them is the idea that skill in offensive cyber operations can ever be a substitute for reliable computer and information systems.

There are lessons for the United States. Cybersecurity is not about who can do the flashiest hacks but about how to keep our networks safe. This is difficult because it requires powerful interests in the government and the private sector to invest resources and make trade-offs they would rather not make. An offense-based strategy that appears “tough” hides these trade-offs while actually making U.S. cybersecurity worse.

Illusions of deterrence

Cyberwar strategists have described cyber conflict as a kind of asymmetric warfare that puts advanced societies at a strategic disadvantage. Offense is easy, while defense is hard. The United States is in a uniquely tough position. Multiple skilled adversaries—Russia, China, North Korea, Iran— are ready to attack the United States’ modern, internet-dependent society. Meanwhile, U.S. political and economic culture is hostile to the regulation and public spending that are needed to stop data breaches, protect online privacy, and make networks safe.

**They are two completely different approaches**

**Carmack and Ellis 21** – Research Fellow in Technology Policy in the Center for Technology Policy, of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation; Visiting Fellow for Technology and Law in the Edwin J. Meese Center III for Legal and Judicial Studies, of the Institute for Constitutional Government, at The Heritage Foundation

Dustin Carmack and Michael Ellis, "For Cybersecurity, the Best Defense Is a Good Offense," The Heritage Foundation, 11-10-2021, https://www.heritage.org/technology/report/cybersecurity-the-best-defense-good-offense

Conclusion

In short, although the Administration should continue to make use of diplomacy, sanctions, and law enforcement actions to reduce the threat of cyberattacks, these efforts are not sufficient. Similarly, efforts to improve the cybersecurity of U.S. critical infrastructure are likely to fall short in the face of attacks sponsored by nation-states. The Administration and Congress should instead continue and expand President Trump’s approach by using offensive cyber operations to degrade adversaries’ capabilities and create credible deterrence. The Administration should disclose more information about these operations to discourage adversaries from attacking, and Congress should consider structural changes to improve the efficiency and effectiveness of U.S. offensive cyber operations.

### Cybersec = Strengthen Areas

**Cybersecurity must strengthen the confidentiality, integrity, and availability of electronic systems**

**Hogan and Newton 15** – NIST editors. Information Technology Laboratory. Report prepared by the International Cybersecurity Standardization Working Group of the National Security Council’s Cyber Interagency Policy Committee

Michael Hogan and Elaine Newton, "Supplemental Information for the Interagency Report on Strategic U.S. Government Engagement in International Standardization to Achieve U.S. Objectives for Cybersecurity," National Institute of Standards and Technology Interagency Report 8074 Volume 2, U.S. Department of Commerce, December 2015, https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8074v2.pdf

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**That requires ensuring information authenticity, protecting personal information, and ensuring reliable access to info**

**Hogan and Newton 15** – NIST editors. Information Technology Laboratory. Report prepared by the International Cybersecurity Standardization Working Group of the National Security Council’s Cyber Interagency Policy Committee

Michael Hogan and Elaine Newton, "Supplemental Information for the Interagency Report on Strategic U.S. Government Engagement in International Standardization to Achieve U.S. Objectives for Cybersecurity," National Institute of Standards and Technology Interagency Report 8074 Volume 2, U.S. Department of Commerce, December 2015, <https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8074v2.pdf>

Security27 refers to information security. Information security means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide:

A. Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

B. Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

C. Availability, which means ensuring timely and reliable access to and use of information.

### ---Ext

**Cybersecurity must ensure availability, integrity, and confidentiality of electronic systems**

**Bartock et al. 21** – Michael Bartock and Suzanne Lightman, Computer Security Division, Information Technology Laboratory; Joseph Brule, National Security Agency; Ya-Shian Li-Baboud, Software Systems Division, Information Technology Laboratory; James McCarthy, Applied Cybersecurity Division, Information Technology Laboratory; Doug Northrip, Arthur Scholz, and Theresa Suloway, The MITRE Corporation

Michael Bartock, Joseph Brule, Ya-Shian Li-Baboud, Suzanne Lightman, James McCarthy, Karen Reczek, Doug Northrip, Arthur Scholz, and Theresa Suloway, "Foundational PNT Profile: Applying the Cybersecurity Framework for the Responsible Use of Positioning, Navigation, and Timing (PNT) Services," National Institute of Standards and Technology Interagency or Internal Report 8323, U.S. Department of Commerce, February 2021, https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8323.pdf

Cybersecurity: Prevention of damage to, protection of, and restoration of computers, electronic communications systems, electronic communications services, wire communication, and electronic communication, including information contained therein, to ensure its availability, integrity, authentication, confidentiality, and nonrepudiation. For example, PNT data is generated by cyber systems. Protection of the devices and systems used to generate PNT data should be considered part of cybersecurity. [NIST SP 800-53]

### ---AT: Cybersec = Security Increase

**Security is also defined as increasing confidentiality, integrity, and availability of information**

**Hogan and Newton 15** – NIST editors. Information Technology Laboratory. Report prepared by the International Cybersecurity Standardization Working Group of the National Security Council’s Cyber Interagency Policy Committee

Michael Hogan and Elaine Newton, "Supplemental Information for the Interagency Report on Strategic U.S. Government Engagement in International Standardization to Achieve U.S. Objectives for Cybersecurity," National Institute of Standards and Technology Interagency Report 8074 Volume 2, U.S. Department of Commerce, December 2015, https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8074v2.pdf

Security28 may also be defined as the preservation of confidentiality, integrity and availability of information. NOTE In addition, other properties, such as authenticity, accountability, nonrepudiation, and reliability can also be relevant.

A. Integrity, property of protecting the accuracy and completeness of assets;

B. Confidentiality, property that information is not made available or disclosed to unauthorized individuals, entities, or processes;

C. Availability, property of being accessible and usable upon demand by an authorized entity.

### ---AT: Cybersec = Info Security

**Information security must provide confidentiality, integrity, and availability of information**

**Hogan and Newton 15** – NIST editors. Information Technology Laboratory. Report prepared by the International Cybersecurity Standardization Working Group of the National Security Council’s Cyber Interagency Policy Committee

Michael Hogan and Elaine Newton, "Supplemental Information for the Interagency Report on Strategic U.S. Government Engagement in International Standardization to Achieve U.S. Objectives for Cybersecurity," National Institute of Standards and Technology Interagency Report 8074 Volume 2, U.S. Department of Commerce, December 2015, https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8074v2.pdf

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