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# Core Limiting Terms

## \*\*Security Cooperation\*\*

### SC = Any Agency

#### “Security cooperation” includes any part of the USFG – the resolution’s list of activities solves any impact to limits

Zaccor 5 Colonel Albert Zaccor, Director for Southern Europe in the Office of the Secretary of Defense, International Security Policy – NATO/Europe, U.S. Army Senior Fellow at the Atlantic Council, MA area studies, University of Michigan, BA political science, Hofstra University, “Security Cooperation and Non-State Threats: A Call for an Integrated Strategy,” Atlantic Council, Occasional Paper, August 2005, <https://www.files.ethz.ch/isn/46290/2005_08_Security_Cooperation_and_Non-State_Threats.pdf> /GoGreen!

Defining Security Cooperation28

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.

**[FOOTNOTE 38]**

38 The application of the Security Cooperation paradigm to the entire USG requires a precise definition of security. Defined too broadly, Security Cooperation would simply be a surrogate for foreign policy. Limiting the objectives to specific enumerated defense and security objectives and assistance to foreign establishments playing a role in national security or defense is necessary to circumscribe the issue adequately.

### SC = DoD Everything

#### Congress defines “security cooperation” as authorized, funded AND administered by DoD – agencies each have their own, contradictory interpretations

Quinn 19 Major Jason A. Quinn, Judge Advocate, United States Army, assigned as Assistant General Counsel, National Geospatial-Intelligence Agency, LLM Judge Advocate General’s School, JD George Mason University School of Law, “Other Security Forces Too: Traditional Combatant Commander Activities Between U.S. Special Operations Forces and Foreign Non-Military Forces,” Military Law Review, 225(4), 2019, <https://tjaglcs.army.mil/other-security-forces-too-traditional-combatant-commander-activities-between-u.s.-special-operations-forces-and-foreign-non-military-forces> /GoGreen!

A. “Security Sector Assistance” as an Umbrella Term

The foundational and initial task of defining “security sector assistance” and the related terms “security assistance” and “security cooperation” is not simple, with different branches and agencies of the U.S. government defining and applying the terms differently. This can make it difficult to coherently discuss the respective responsibilities of the various executive agencies or identify where TCA ends and statutory authorities begin.

As a starting point, presidential policy, defined “security sector assistance” as any U.S. Government “policy, program, [or] activity” used to:

Engage with foreign partners and help shape their policies and actions in the security sector;

Help foreign partners build and sustain the capacity and effectiveness of legitimate institutions to provide security, safety, and justice for their people; [or],

Enable foreign partners to contribute to efforts that address common security challenges. 129

Under this definition, “security sector assistance” includes the relevant policies, programs, or activities of any executive agency. Complicating matters, though, Congress has considered a proposed definition for “security sector assistance” that, in contrast to the presidential policy definition, 130 encompasses DoS programs, but not DoD or other executive agency programs. 131 In addition, Congress has defined “security cooperation” as DoD specific, 132 but it has not defined “security assistance.”

The DoD adheres to the presidential policy definition and further defines “security cooperation” as all its relationship building and foreign partner development activities, including “security assistance,” which the DoD defines as a subset of security cooperation that is funded and authorized by the DoS and administered by the Defense Security Cooperation Agency. 133 The DoS, on the other hand, uses the term “security assistance” in a manner that contradicts the DoD’s definition, employing it to describe any DoS or DoD assistance to foreign military or other security forces. 134

To synthesize these definitions, and consistent with presidential policy, this article uses the term “security sector assistance” to mean: (1) DoS approved, funded, and administered “security assistance;” (2) DoD approved, funded, and administered “security cooperation;” and (3) hybrid security assistance/cooperation, approved and funded by the DoS, but administered by the DoD. 135

#### “Security cooperation” excludes activities not led by DoD

Gwinn 22 Jeremy Gwinn, U.S. Army infantry officer currently in the Office of Security Cooperation – Iraq, multiple tours in Afghanistan and Iraq conducting counter-insurgency and security force assistance as well as teaching economics in the Department of Social Sciences at West Point, PhD international relations, Fletcher School of Law and Diplomacy, Tufts University, “Sweeter Carrots and Harder Sticks: Rethinking U.S. Security Assistance,” War On The Rocks, 4-19-2022, <https://warontherocks.com/2022/04/sweeter-carrots-and-harder-sticks-rethinking-u-s-security-assistance/> /GoGreen!

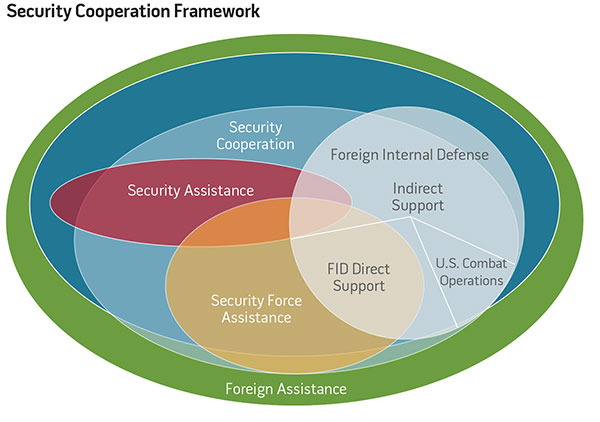
The What, Why, and How of Security Assistance

“Security assistance” refers to a specific set of programs authorized by the Foreign Assistance Act and Arms Export Control Act. These programs are overseen by the State Department in cooperation with the Department of Defense. “Security cooperation” describes separately authorized Defense Department-led activities such as “global train and equip” programs. The Ukraine Security Assistance Initiative, which has provided military aid to that country since 2016, is one such example of these programs run by the Pentagon. I will use the more common term here, security assistance, in reference to either type. When security assistance works well, it gives partner nations the tools to address internal instability and deter and defend against external adversaries, reducing the likelihood that direct U.S. intervention will be called for in the future. It also helps to ensure that the United States maintains access, basing, and overflight privileges, strengthens interoperability, and accrues the less tangible benefit of military-to-military personal relationships.

#### It excludes other agencies

White 14 Taylor P. White, Major, USMC, Joint Doctrine Development Officer with the Joint Staff J7, “Security Cooperation: How It All Fits,” Joint Force Quarterly 72, 1-1-2014, <https://ndupress.ndu.edu/JFQ/Joint-Force-Quarterly-72/Article/577493/security-cooperation-how-it-all-fits/> /GoGreen!

Department of Defense (DOD) security cooperation activities support or are combined with other assistance programs and often are a part of nation assistance. This often occurs in a manner that may appear confusing or convoluted to the joint warfighter. This article portrays how the programs and activities converge. Although the various terms and activities in show in the accompanying figure appear to have simple names and meanings, they in fact have strict definitions based on funding and authorities. While some of the activities directly support one another, others have distinct boundaries between their definitions and functions. The joint community is beginning to address the framework of security cooperation in a new joint doctrine publication, Joint Publication (JP) 3-XX, Security Cooperation. It is important to embark with clear definitions and understanding of the complex relationship among these terms to facilitate understanding by the joint force.



Security cooperation is referred to in both joint professional military education programs and joint staffs as a tool to be employed by combatant commands. However, in other settings, it is a set of programs managed by the Defense Security Cooperation Agency. Extensive review of joint doctrine and policy reveals that the definition of security cooperation appears to encompass these areas and more. After expanding our understanding of security cooperation, other terms such as security force assistance, foreign internal defense, and security assistance provide additional specificity for the tasks being conducted, yet some of these actions fall outside security cooperation. Even though security cooperation spans the range of military operations and is inclusive of large-scale operations conducted in support of foreign nations, it is not all-encompassing of security related support from U.S. agencies other than DOD.

Nation assistance is support rendered by foreign forces within another nation’s territory based on mutual agreements.1 While this term is used to describe the comprehensive approach to assisting other nations, the definition associated with nation assistance has two limitations: it does not encompass support to regional organizations, and it is only assistance by foreign forces. A better, broader term is foreign assistance, which is assistance to foreign nations ranging from the sale of military equipment to donations of food and medical supplies to aid survivors of natural and manmade disasters.2 When examining the current definitions for foreign assistance and nation assistance, we find significant overlap:

Foreign assistance to foreign nations [ranges] from the sale of military equipment to donations of food and medical supplies to aid survivors of natural and man-made disasters. U.S. foreign assistance takes three forms: development assistance, humanitarian assistance, and security assistance.3

This term is likely to resonate with the State Department, which has an Office of U.S. Foreign Assistance and a designated foreign assistance budget.

Nation assistance—assistance rendered to a nation by foreign forces within that nation’s territory based on agreements mutually concluded between nations.4

The term nation assistance is not often used in policy or strategy. For example, the current National Security Strategy mentions foreign assistance three times but does not use the term nation assistance. The first opportunity to create some clarity is to replace the term nation assistance with foreign assistance in the upcoming revisions of JP 3-0, Joint Operations, and JP 3-22, Foreign Internal Defense.

If foreign assistance were to replace nation assistance in joint doctrine, the definition would include that portion of security cooperation that falls outside the realm of nation assistance in figure 1. Foreign assistance then encompasses all of security cooperation and reduces some of the ambiguity. Security cooperation then focuses strictly on the DOD contribution to foreign assistance and encompasses all DOD interactions with foreign defense establishments to build both national and regional 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 host nations.5

Having addressed the larger constructs, it is possible to review and clarify the relationships between other programs and activities that occur within them. First is security assistance with a specific definition in relation to both DOD and State. It refers to a group of programs authorized by the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act of 1976, as amended. These programs are funded and authorized by State to be administered by DOD through the Defense Security Cooperation Agency.6 This is the process by which the United States provides defense articles, military training, and other defense-related services. That portion of security assistance outside of security cooperation in figure 1 reflects State and other civilian agency involvement.

#### It means whatever DoD does with countries or organizations

Dyekman 7 Gregory J. Dyekman, Colonel, U.S. Army, Chief of Effects Assessment and Targeting in the Strategic Operations Directorate, MultiNational Force Iraq., Master of Strategic Studies, Army War College, MS Management, Troy State University, “SECURITY COOPERATION: A KEY TO THE CHALLENGES OF THE 21st CENTURY,” Strategic Studies Institute, November 2007, <https://www.files.ethz.ch/isn/46879/1107_SecurityCoop.pdf> /GoGreen!

Current doctrine states: “Security cooperation is the means by which the Department of Defense encourages and enables countries and organizations to work with us to achieve strategic objectives.”16 The experience in the Global War on Terrorism (GWOT) makes clear that the transnational nature of the challenges the United States faces precludes achieving our strategic objectives without the cooperation of allies and partners. To achieve unity of effort, the 2006 Quadrennial Defense Review (QDR) proposes that, “Whenever possible, the United States works with or through others: enabling allied and partner capabilities, building their capacity, and developing mechanisms to share the risks and responsibilities of today’s complex challenges.”17 No one country can solve GWOT problems; partnerships and cooperation with friendly nations are essential to winning a “Long War” on terror.

**[ENDNOTE 16]**

16. Joint Publication 5-0, p. I-3.

### SC = DoD Adminstration

#### “Security cooperation” includes DoD-administered DoS security assistance

DoD 16 U.S. Department of Defense, DoD Directive 5132.03, “DoD Policy and Responsibilities Relating to Security Cooperation,” 12-29-2016, <https://open.defense.gov/portals/23/Documents/foreignasst/DoDD_513203_on_Security_Cooperation.pdf> /GoGreen!

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purposes of this issuance.

**country-specific security cooperation section**. A section of the theater campaign plan in which the GCCs articulate their intent to apply time, money, and effort through security cooperation programs in a specific country to further U.S. defense objectives or set the theater for a potential contingency in their campaign plan. Country-specific security cooperation sections serve as the core organizing documents for articulating DoD country-level objectives for the application of security cooperation at the country level, and inform and are informed by corresponding Integrated Country Strategies.

**Integrated Country Strategy**. Defined in Presidential Policy Directive 23.

**international agreements**. Agreements binding under international law that facilitate defense and security cooperation with allied and partner nations and international organizations.

**defense institution building**. Defined in DoDD 5205.82.

**SCOs**. DoD organizations permanently located in foreign countries and assigned responsibilities for carrying out security cooperation management functions in accordance with Section 515 of the Foreign Assistance Act of 1961. SCOs may include military assistance advisory groups, military missions and groups, and Offices of Defense and Military Cooperation, designated to perform security cooperation functions. SCOs do not include units, formations, or other ad hoc organizations that conduct security cooperation activities, such as mobile training and education teams, or operational units.

**senior defense official/defense attaché**. The chief of mission’s principal military advisor on defense and national security issues, or the senior diplomatically accredited DoD military point of contact for all DoD matters involving the embassy or DoD elements assigned to or working from the embassy. The senior defense official/defense attaché in the U.S. Mission can be the defense attaché or the chief of the SCO, as designated by the Secretary of Defense.

**security assistance**. Group of programs authorized by the Foreign Assistance Act of 1961 and the Arms Export Control Act of 1976 or other related statutes by which the United States provides defense articles, military training, and other defense-related services by grant, loan, credit, or cash sales in furtherance of national policies and objectives. Security assistance is one element of security cooperation, which is funded and authorized by the Department of State and administered by the DSCA.

security cooperation. All DoD interactions with foreign defense establishments to build defense relationships that promote specific U.S. security interests, develop allied and partner nation military and security capabilities for self-defense and multinational operations, and provide U.S. forces with peacetime and contingency access to allied and partner nations. This also includes DoD-administered security assistance programs.

**security sector assistance**. Defined in Presidential Policy Directive 23.

#### Title 10 of U.S. Code confirms the DoD definition

DoD 21 Defense Security Cooperation University, Defense Security Cooperation Agency, U.S. Department of Defense, “Chapter 1 Introduction to Security Cooperation,” Security Cooperation Management (aka DSCU Green Book), Edition 41.0, May 2021, <https://www.dscu.edu/documents/publications/greenbook/01_Chapter.pdf> /GoGreen!

Introduction

The term security cooperation was first introduced in 1997 by the Defense Reform Initiative (DRI). At that time, the Defense Security Assistance Agency (DSAA) already had day-to-day management responsibilities of many security assistance programs authorized by the Foreign Assistance Act (FAA) and the Armed Export Control Act (AECA). The DRI proposed that DSAA also manage certain Department of Defense (DoD)-funded international programs along with their personnel and associated resources. In order for U.S. government (USG) agencies, the private sector, and foreign governments to better understand DSAA’s enlarged mission and diverse functions beyond security assistance (SA), DoD re-designated DSAA as the Defense Security Cooperation Agency (DSCA), effective 1 October 1998.

In recent years, DSCA has absorbed management responsibilities for many DoD international programs while also leading the wider USG security cooperation enterprise. However, many security cooperation programs continue to be managed by other elements of the Office of the Secretary of Defense (OSD), the combatant commands (CCMDs), or the military departments (MILDEPs). Further complicating the management of security cooperation was the in-country point of contact between the USG and the host nation. This point of contact was either the Defense Intelligence Agency (DIA)- sponsored Defense Attaché Office (DAO) or the DSCA-sponsored Security Cooperation Office (SCO). These two spigots of security cooperation within a country required a broad knowledge and skill baseline of the very different international programs that are initiated, funded, and managed throughout the DoD, its agencies and the MILDEPs. Most disconnects regarding SCO-DAO coordination of in-country security cooperation were generally resolved with the establishment of the Senior Defense Officials/Defense Attaché (SDO/DATT) having oversight over both the SCO and DAO organizations.

On 9 June 2004 that DoD published a formal, yet still very broad, definition of security cooperation in Joint Pub 1-02:

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.

DODD 5132.03, DoD Policy and Responsibilities Relating to Security Cooperation, 29 December 2016, further defines security cooperation with assigned responsibilities:

All DoD interactions with foreign defense establishments to build defense relationships that promote specific U.S. security interests, develop allied and partner nation military and security capabilities for self-defense and multinational operations, and provide U.S. forces with peacetime and contingency access to allied and partner nations. This includes DoD-administered security assistance programs.

According to Title 10 U.S. Code Section 301, the term “security cooperation programs and activities of the Department of Defense” means any program, activity (including an exercise), or interaction of the DoD with the security establishment of a foreign country to achieve a purpose as follows: (A) To build and develop allied and friendly security capabilities for self-defense and multinational operations. (B) To provide the armed forces with access to the foreign country during peacetime or a contingency operation. (C) To build relationships that promote specific United States security interests. Other DoD policy statements identify DoD-managed or administered security assistance programs as components of security cooperation.

The purpose of this first chapter is to provide definitions of the various programs within security assistance and the broader area of security cooperation.

#### Who administers, NOT who oversees, is the bright-line

Kerr 18 Alexandra Kerr, Institute for National Strategic Studies, National Defense University, “Defense Institution Building in the U.S. Context,” Connections, 17(3), Summer-Fall 2018, pp.23-38, JSTOR /GoGreen!

Finally, in the U.S. government, “security cooperation” and “security assistance”—which are the chief lines of effort in the U.S. toolkit to help partners bolster their security and work with the United States to support common security objectives—are overlapping but not necessarily interchangeable. The distinction between “security cooperation” and “security assistance” activities has to do with the agency administering the program: in simplest terms, it is either an activity of the Department of Defense (security cooperation) or the Department of State (security assistance).

DOD and the Department of State (DOS) have shared responsibility for engaging with foreign partner militaries since the mid-twentieth century, with the bulk of congressional security assistance funding allocated to DOS. Any security assistance administered by DOD—whether funded under Title 10 (Armed Services) or Title 22 (Foreign Affairs) of the U.S. Code—is a “security cooperation” activity.21 After the terrorist attacks on September 11, 2001, the legal framework for the funding and administration of such activities evolved in response to emerging threats. Congress increasingly granted funding and authorities directly to DOD under Title 10 for security cooperation.22 Therefore, while DOS security assistance programs can include DIB components, the majority of DIB-specific programming is currently funded under and implemented by the Department of Defense and is thus considered security cooperation.

#### Independent review of both cooperation and assistance authorities agrees

GAO 17 U.S. Government Accountability Office, “Building Partner Capacity: Inventory of Department of Defense Security Cooperation and Department of State Security Assistance Efforts,” GAO-17-255R, 3-24-2017, <https://www.gao.gov/assets/gao-17-255r.pdf> /GoGreen!

House Armed Services Committee Report 114-102, accompanying the National Defense Authorization Act (NDAA) for Fiscal Year 2016 (H.R.1735), includes a provision for us to report on an inventory of DOD security cooperation programs intended to build partner security capabilities.3 DOD defines these programs as including DOD-administered State security assistance activities. According to DOD and State officials, no sanctioned U.S. government inventory of security cooperation and security assistance efforts exists.4 In this report, we provide a fiscal year 2016 inventory of DOD security cooperation and State security assistance efforts that may be used by the U.S. government to build foreign partners’ capacity to address security-related threats, including each effort’s name, description, associated legal authorities, and agency involvement as required by the associated authorities. This inventory includes efforts that have building partner capacity (BPC) to address security-related threats as a primary goal as well as efforts that may have BPC as an ancillary goal or effect.

**[FOOTNOTE 4]**

4 Various government and nongovernment entities have compiled lists of security cooperation efforts, including security assistance efforts administered by the Defense Security Cooperation Agency (DSCA), but none of the lists are sanctioned by the Office of the Under Secretary of Defense for Policy as both current and complete.

**[/FOOTNOTE 4]**

To develop an inventory of BPC security cooperation and security assistance efforts, we reviewed data, documents, and reports from DOD, State, RAND, and the Congressional Research Service (CRS); conducted searches of laws; and reviewed prior GAO reports. We interviewed DOD, State, RAND, and CRS officials about their research on, and listings of, security cooperation and security assistance efforts used for BPC and the efforts’ associated authorities; the methodologies they used; and the limitations they encountered. The efforts we selected for our inventory comprise what our sources referred to as “programs,” “subprograms,” “tools,” “funding accounts,” “authorities,” or “activities.” We used “efforts” as the most inclusive possible term, because the DOD and DOD-sponsored sources we consulted used undefined and varying terminology—for example, sometimes using terms such as “programs” and “activities” interchangeably and sometimes including funds and the names of authorities—and because these sources and DOD officials did not provide DOD-sanctioned definitions of the program and subprogram levels for security cooperation programs. We broadly defined building partner capacity to include efforts that were intended solely to build partner security capacity as well as those that could have a partial or ancillary effect on partner security capacity. For example, we included military exercises, training, and equipment as well as BPC-related personnel exchanges and military contacts. To focus our inventory on BPC efforts to address security-related threats, we excluded efforts whose sole purpose was humanitarian, health, disaster, or development assistance. To eliminate duplicative and expired efforts, we compared the data we obtained from these sources and reviewed associated authorities. We worked with DOD and State officials to resolve any discrepancies, to add additional efforts, and to group subefforts with overall efforts when the officials made such information available. See enclosure I for further information about our objective, scope, and methodology.

We conducted this performance audit from July 2015 to March 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

#### So do contractors

Neptune 16 Neptune, veteran owned and operated strategy and advisory firm, “U.S. Security Cooperation Review,” February 2016, <http://neptuneasc.com/site/wp-content/uploads/2015/05/Neptune-Whole-of-Government-U.S.-Security-Cooperation-Review-20160208.pdf> /GoGreen!

TERMINOLOGY

Discussions of U.S. Security Sector Assistance are often hampered by confusion over definitions and terminology. This misunderstanding is improving, however, and a simple set of terms that is becoming increasingly utilized and accepted follows:

• Security Sector Assistance (SSA) is a modern umbrella term, codified by Presidential Policy Directive 23 (PPD-23, below), which captures aspects of both security assistance (State-led programs) and security cooperation (Defense-led or -implemented) programs.

• Building Partner Capacity (BPC) is a modern term that refers to U.S. efforts to enhance or create important capabilities within the military and civilian institutions of a partner government. This term is broader than security assistance, in that it can refer to non-security assistance, but it is also narrower than security assistance, in that it refers only to assistance designed to build real capability, which is a subset of all security assistance.

• Security assistance is a group of State-led programs authorized by the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act of 1976, as amended, or other related statutes by which the United States provides defense articles, military training, and other defense-related services by grant, loan, credit, or cash sales in furtherance of national policies and objectives.

• Security cooperation refers to activities undertaken by the Department of Defense to encourage and enable international partners to work with the United States to achieve strategic objectives, which includes all DoD interactions with foreign defense and security establishments, including all DoD-administered security assistance programs, that build defense and security relationships and that promote specific U.S. security interests, including all international armaments cooperation activities and security assistance activities.

• Foreign internal defense is an older term referring to participation by civilian and military agencies of a government in any of the action programs taken by another government or other designated organization to free and protect its society from subversion, lawlessness, insurgency, terrorism, and other threats to its security.

• Security force assistance is a doctrinal term referring to DoD activities that contribute to unified action by the USG to support the development of the capacity and capability of foreign security forces and their supporting institutions.

Of note, the U.S. military is updating its formal lexicon via a new volume “JP 3-XX: Security Cooperation” in the Joint Pub series. Joint Staff J7 and J5 are leading an effort to revise this doctrine, however the work is reported to be well intentioned but struggling.

#### It includes all DoD interactions with foreign militaries

Lopez 21 C. Todd Lopez, writer and editor at the U.S. Department of Defense, **internally quoting Heidi Grant, Director, and Jedidiah P. Royal, Deputy Director, of the Defense Security Cooperation Agency**; “DOD Recognizes 50 Years of Security Cooperation,” DOD News, 9-3-2021, <https://www.defense.gov/News/News-Stories/Article/Article/2764407/dod-recognizes-50-years-of-security-cooperation/> /GoGreen!

There have been relations between America's military and the militaries of other nations since the United States first became a country. However, it wasn't until 1971 that the Defense Department created the Defense Security Assistance Agency — later renamed the Defense Security Cooperation Agency — to make security cooperation a formal function of the Defense Department.

Now a half century later, as DSCA turns 50 years old, it is still focusing on its original mission to build enduring partnerships between U.S. and partner nation militaries, making both participants stronger.

There have been many changes over the past five decades, but the value of Security Cooperation, or SC, to achieve our strategic goals has endured, according to DSCA Director Heidi Grant, the first permanent SES civilian to lead the agency. "Senior leaders across the U.S. government turn to the SC enterprise for solutions to help solve the most pressing U.S. defense and foreign policy challenges. In this era of renewed strategic competition, DSCA must play a leading role, guiding the SC enterprise into a new age of transformation and innovation," she added.

Security cooperation involves all the DOD interactions, programs and activities carried out with foreign security forces and their institutions. This includes exercises, training, armaments cooperation, information sharing, collaboration, foreign military sales, ministry advising and humanitarian assistance.

"Security cooperation is one of the most potent tools we have to affect U.S. national security interests and to influence the trajectory of the security environment around the world," said Jedidiah P. Royal, the deputy director of the Defense Security Cooperation Agency. It is DSCA that integrates activities across the entire security cooperation enterprise, Royal said.

"Security cooperation is our business," he said. "That manifests in a lot of different ways. But in particular, what we want to make sure is that for any objective that we have with an ally or partner nation or group of ally partner nations, that on a pragmatic, practical level, we are servicing what we have committed to."

That, he said, includes weapons sales, follow-on training and material support. DSCA facilitates a lot of weapons and equipment sales to foreign allies and partner nations. But those sales don’t just materially benefit those nations who buy American equipment — that's only part of the plan.

"I've been really pleased to see just how much growth there has been on doctrine level and on strategy development level, on the absorption of logistics and sustainment for these various pieces of equipment that we might be supporting our allies with, building their institutional capacity," Royal said. "In the past, it may have just been a little bit more focused on individual pieces of equipment. Now we're really looking at a relationship, a long-term relationship, and making sure that we attract allies and partners through not only a piece of equipment, but for a full spectrum approach."

Education for partner nation military personnel is a big part of what DSCA does, Royal said, and in fiscal year 2020 there were more than 27,000 students in the Defense Department's international military education and training program — helping the service members of foreign militaries develop their own skills, while at the same time learning how the U.S. military itself does business.

"We want the individuals in the loop that are making decisions from a strategy perspective or from a tactical perspective to be familiar with the way the United States incorporates our values into our national security enterprise," Royal said. "We want to see them doing the same things."

DSCA isn't just facilitating training and development for officers and leaders within the militaries of partner and allied nations. It's also working to ensure development of enlisted personnel, said Air Force Chief Master Sgt. Daniel Simpson, the senior enlisted advisor to the director at DSCA.

While the United States military has a strong noncommissioned officer corps, that isn't always the case with the militaries of other nations. A stronger NCO corps is something DSCA would like to help allied and partner nations develop for themselves as well, Simpson said.

"The enlisted corps forms the backbone of any military force," Simpson said. "You can't fly the planes, you can't operate the tanks, you can't operate any of the systems unless you have trained professionals to maintain, sustain, and in many cases employ them."

In the U.S., he said, those trained professionals are most often enlisted personnel. DSCA works to develop the enlisted forces or allied and partner nations through professional military education as well as through training and exercises, where the U.S. military services work face-to-face with allied and partner nation militaries on things like doctrine development, operations, maintenance and sustainment, said Simpson.

Another thing DSCA does is work to help partner and allied nations build their human resources capacity to better support a professional enlisted corps, Simpson said.

When it was first stood up on Sept. 1, 1971, the then-DSAA included the Foreign Military Sales Credit Program, the Military Assistance Program; the International Military Education and Training Program; and the Foreign Military Sales Program. Back then, the new agency had only 90 employees dedicated to security cooperation.

Today, DSCA has grown to more than 1,000 employees. And in 2019, DSCA stood up the Defense Security Cooperation University as well — a huge milestone not just for the agency, but for the 20,000 security cooperation professionals across the security cooperation enterprise. DSCU and DSCA, have played a critical role in educating and professionalizing the broader security cooperation workforce and enterprise.

DSCA schoolhouses, the Defense Institute of International Legal Studies and the Institute for Security Governance now fall under DSCU. DIILS serves as the lead U.S. defense security cooperation resource for professional legal engagement with international defense sector personnel. ISG was established as an international schoolhouse focused on strengthening civilian control of the armed forces and democratic governance, with particular emphasis on emergent democracies worldwide. The realignment of these institutions under DSCU enhances DSCA's Institutional Capacity Building programs.

"The vision of the university is to bring the entire education element and professionalization element of [the] security arm of the U.S. government under a single entity," Royal said.

The university concept, he said, among other things, provides rigor to security cooperation education and ensures more efficient and complementary relationships between once stand-alone security cooperation school houses.

Standing up DSCU, he said, was a "significant, inspired vision."

Today, to further enhance development and professionalization of the security cooperation workforce, Royal said DSCA is revising curriculum at the university and looking to also incorporate concepts from the Department of State as well.

"We're trying to bring them in more to be able to speak to those national security objectives ... and look for linkages between the diplomatic arm of the U.S. government and the security cooperation arm," he said.

Going forward, for the next 50 years, Royal said the agency is working on a strategic transformation to further enhance how the U.S. military does security cooperation.

"How we're moving forward is to focus our security cooperation efforts on a full spectrum, whole-of-nation approach with allies and partners, while simultaneously strengthening a diverse, certified, adaptable and resilient security cooperation workforce," he said. "I think that's really the driving thought behind us looking both externally and making sure that we are the tangible manifestation of the security interests from the White House on down, but also making sure that we're continuing to improve the overall workforce and our ability to meet those objectives."

#### Long version of a card above – clarifies it’s “all DoD international activities” (at the bottom) – and provides a comprehensive list of all SC, SA, and SFA

DoD 21 Defense Security Cooperation University, Defense Security Cooperation Agency, U.S. Department of Defense, “Chapter 1 Introduction to Security Cooperation,” Security Cooperation Management (aka DSCU Green Book), Edition 41.0, May 2021, <https://www.dscu.edu/documents/publications/greenbook/01_Chapter.pdf> /GoGreen!

Introduction

The term security cooperation was first introduced in 1997 by the Defense Reform Initiative (DRI). At that time, the Defense Security Assistance Agency (DSAA) already had day-to-day management responsibilities of many security assistance programs authorized by the Foreign Assistance Act (FAA) and the Armed Export Control Act (AECA). The DRI proposed that DSAA also manage certain Department of Defense (DoD)-funded international programs along with their personnel and associated resources. In order for U.S. government (USG) agencies, the private sector, and foreign governments to better understand DSAA’s enlarged mission and diverse functions beyond security assistance (SA), DoD re-designated DSAA as the Defense Security Cooperation Agency (DSCA), effective 1 October 1998.

In recent years, DSCA has absorbed management responsibilities for many DoD international programs while also leading the wider USG security cooperation enterprise. However, many security cooperation programs continue to be managed by other elements of the Office of the Secretary of Defense (OSD), the combatant commands (CCMDs), or the military departments (MILDEPs). Further complicating the management of security cooperation was the in-country point of contact between the USG and the host nation. This point of contact was either the Defense Intelligence Agency (DIA)- sponsored Defense Attaché Office (DAO) or the DSCA-sponsored Security Cooperation Office (SCO). These two spigots of security cooperation within a country required a broad knowledge and skill baseline of the very different international programs that are initiated, funded, and managed throughout the DoD, its agencies and the MILDEPs. Most disconnects regarding SCO-DAO coordination of in-country security cooperation were generally resolved with the establishment of the Senior Defense Officials/Defense Attaché (SDO/DATT) having oversight over both the SCO and DAO organizations.

On 9 June 2004 that DoD published a formal, yet still very broad, definition of security cooperation in Joint Pub 1-02:

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.

DODD 5132.03, DoD Policy and Responsibilities Relating to Security Cooperation, 29 December 2016, further defines security cooperation with assigned responsibilities:

All DoD interactions with foreign defense establishments to build defense relationships that promote specific U.S. security interests, develop allied and partner nation military and security capabilities for self-defense and multinational operations, and provide U.S. forces with peacetime and contingency access to allied and partner nations. This includes DoD-administered security assistance programs.

According to Title 10 U.S. Code Section 301, the term “security cooperation programs and activities of the Department of Defense” means any program, activity (including an exercise), or interaction of the DoD with the security establishment of a foreign country to achieve a purpose as follows: (A) To build and develop allied and friendly security capabilities for self-defense and multinational operations. (B) To provide the armed forces with access to the foreign country during peacetime or a contingency operation. (C) To build relationships that promote specific United States security interests. Other DoD policy statements identify DoD-managed or administered security assistance programs as components of security cooperation.

The purpose of this first chapter is to provide definitions of the various programs within security assistance and the broader area of security cooperation.

Security Assistance

Over the years, security assistance has included programs authorized by the FAA or AECA. According to the FAA, as amended, the term “Security Assistance” means military assistance, economic support funding, military education and training, peacekeeping operations, anti-terrorism assistance, sales of defense articles or services, export to or for the armed forces, police, intelligence, or other international security forces of a foreign country. While many of these programs are administered by the DoD, specifically by DSCA, they remain under the general control of the Department of State (DoS).

**Foreign Military Sales**

The foreign military sales (FMS) program is a non-appropriated program administered by DSCA through which eligible foreign governments purchase defense articles, services, and training from the USG. The purchasing government pays all costs associated with a sale. There is a signed governmentto-government agreement, normally documented in a Letter of Offer and Acceptance (LOA), between the USG and a foreign government. Each LOA is commonly referred to as a “case” and is assigned a unique case identifier for accounting purposes. Under FMS, military articles and services, including training, may be provided from DoD stocks (Section 21, AECA) or from new procurement (Section 22, AECA). If the source of supply is new procurement, based on an LOA accepted by the foreign government, the USG agency or MILDEP assigned cognizance for this case is authorized to enter into a subsequent contractual arrangement with U.S. industry to provide the article or service requested.

FMS is a large program with the final FMS total for FY 2020 being $50.8 billion. This includes $2.69 billion in Title 10 grant assistance programs.

**Foreign Military Construction Services**

Foreign Military Construction Services (FMCS) is a non-appropriated program administered by DSCA and authorized by Section 29, AECA, which designates the President to sell design and construction services to any eligible foreign country or international organization. The construction sales agreement and sales procedures generally parallel those of FMS and are usually implemented by the MILDEP civil engineering agencies.

**Foreign Military Financing Program**

The Foreign Military Financing Program (FMFP) is an appropriated program administered by DSCA that has undergone a variety of substantive and terminological changes over the years. At present, the program consists of congressionally appropriated grants and loans, which enable eligible foreign governments to purchase U.S. defense articles, services, and training generally through FMS, or direct commercial sales (DCS) for select countries. Foreign military sales credit (FMSCR) is authorized under the provisions of Sections 23 and 24, AECA, and originally served to provide credit (loans) as an effective means for easing the transition of foreign governments from grant aid, e.g., Military Assistance Program (MAP) and International Military Education and Training (IMET), to cash purchases.

Prior to FY 1989, the USG variously identified this financing program as the Foreign Military Sales Credit Program or the Foreign Military Sales Financing Program. In the FY 1989 Foreign Operations Appropriations Act (FOAA), Congress introduced a new title, the FMFP, and further identified the forgiven loan/forgiven credit component of the program as FMFP grants to distinguish them from repayable direct FMFP loans. Additionally, the terms non-repayable loans or non-repayable credits are often used by various security assistance organizations (including DSCA) in place of the term “FMFP grants.”

Beginning in FY 1992, the Federal Credit Reform Act of 1990 (P.L. 101-508) changed the method of accounting and budgeting for all government loans, including FMFP loans issued under the AECA. This legislation provides a more accurate portrayal of the true cost of loans by providing new budget authority only for the subsidy element of the loan program and is the basis for the establishment of two new financial accounts:

• The first contains only the FMFP grant portion of the program administrative costs.

• The second account provides the budget authority needed to fund the subsidy element of the proposed loan programs.

While there are previously authorized FMFP loans still being repaid to the USG, the FMFP grant element (no repayment) has become the norm.

Over the past several years, per the Presidential Policy Directive 23 of April 2013 (PPD 23), new FMF pilot programs have been established under the authority of Section 23 of the AECA—the Foreign Military Financing Challenge Fund (FMFCF) and Foreign Military Financing Regional Funds (FMFRF). The FMFCF is intended to provide one-time investments for special projects for a partner nation that has demonstrated political will to pursue reform efforts, contribute to common goals, and build lasting, self-sustaining capabilities. The FMFRF provides flexibility and responsiveness in implementing portions of the FMF program based upon geographic region. For example, in FY 2016, $5 million was provided for the FMF European Security Assistance Fund (ESAF). Through a competitive proposal system, these FY 2016 ESAF funds are available for countries in Europe and Eurasia that have received bilateral FMF within the five fiscal years prior to submission.

FMFP funding for FY 2020 was $6.15 billion. FMFP appropriations are generally grants repayable or non-repayable loans.

**Leases**

Chapter 6, AECA, authorizes the President to lease defense articles to friendly governments or international organizations for up to five years (renewable). This non-appropriated program is administered by DSCA. The law allows the lease of defense articles only for compelling foreign policy or national security reasons, and stipulates the recipient, with some exceptions, must bear the full cost of the lease. Furthermore, the U.S. must not need the leased articles during the lease period, and the U.S. retains the right to terminate the lease at any time. For the recipient country, leases may be cheaper than purchasing the article outright, and they provide a convenient vehicle for obtaining defense articles for temporary use. Leases are executed through a lease agreement, with an associated FMS case to cover repair, training, supply support and/or transportation, if required.

**Military Assistance Program**

In FY 1990, the Military Assistance Program (MAP) was formally merged with the FMFP as Congress adopted an administration proposal for integrating all MAP grant funding into the appropriations account for the FMFP. DSCA administered this appropriated program. However, Congress has not appropriated MAP funds for subsequent fiscal years, and there is no interest in seeking any such funds for the future. Therefore, this legislative charge had the dual effect of causing existing MAP-funded programs to lose their former identity and become FMFP-funded programs and establishing the FMFP as the major U.S. financing program for the acquisition of U.S. defense articles and services by foreign governments.

MAP remains a current security assistance program because MAP-provided articles remain throughout the world. As such, these articles retain their End-Use Monitoring (EUM) requirements: their return to the USG when no longer needed and the return to the USG any proceeds from scrapping or sale to a third country.

**International Military Education and Training**

The International Military Education and Training (IMET) program provides grant financial assistance for training in the U.S. and, in some cases, in overseas facilities to selected foreign military and civilian personnel. In earlier years, grant aid training of foreign military personnel was funded as part of the MAP appropriation. Starting with FY 1976, a separate authorization for IMET was established in Section 541, FAA. DSCA administrates this appropriated program. Although historically a relatively modest program in terms of cost, both the President and Congress attach significant importance to this program. The recipient countries, likewise, rely heavily on this grant program and, in many cases, serve as the only method to receive training from the U.S. military.

At a time of competition for resources, IMET advances U.S. objectives globally at a relatively small cost. In many countries, having a core group of well-trained, professional leaders with firsthand knowledge of America will make a difference in winning access and influence for our diplomatic and military representatives. Thus, a relatively small amount of IMET funding will provide a return for U.S. policy goals, over the years, far greater than the original investment.

In 1980, Section 644(m)(5), FAA, was amended to authorize IMET tuition costing in terms of the additional costs that the USG incurs in furnishing such assistance. Section 21(a)(1)(C), AECA, was also amended to allow IMET recipients to purchase FMS training on an additional cost basis. The practical effect of these changes was to reduce tuition costs substantially for IMET-funded students, thereby increasing the amount of training an eligible country can obtain by using both national funds for FMS purchases and alloted IMET grant funds.

**Expanded IMET**

The FY 1991 Foreign Operations Appropriation Act (FOAA) introduced an IMET initiative via a Senate-proposed earmark of $1 million to be used exclusively for expanded IMET courses for foreign officers. Congress later allowed this initiative to include civilian managers and administrators of defense establishments. The focus of such training is on developing professional-level management skills, with emphasis on military justice systems, codes of conduct, and the protection of human rights. Congress amended Section 541, FAA to permit non-Ministry of Defense civilian government personnel to be eligible for this program, if such military education and training would do the following:

• Contribute to responsible defense resource management

• Foster greater respect for and understanding of the principle of civilian control of the military

• Contribute to cooperation between military and law enforcement personnel with respect to counter-narcotics law enforcement efforts

• Improve military justice systems and procedures in accordance with internationally recognized human rights

In FY 1993, Congress further extended this expanded IMET (E-IMET) program to also include participation by national legislators who are responsible for oversight and management of the military. Through P.L.104-164, Congress again amended the E-IMET program authority in 1996 to also include non-governmental organization personnel.

In the 2019 Consolidated Appropriations Act, Congress appropriated $111 million for IMET for 2019. In FY 2020, $112 million was appropriated and $113 million in FY 2021 by the Further Consolidation Appropriations Act of 2021.

**Drawdowns and Special Presidential Waiver Authority**

During a crisis, Section 506, FAA, authorizes the President to provide USG articles, services, and training to friendly countries and international organizations at no cost, to include transportation and spares. There is a $100 million ceiling per fiscal year on articles, services, and training provided for military purposes and another fiscal year ceiling of $200 million for articles, services, and training required for non-military purposes such as disaster relief, nonproliferation, anti-terrorism, counternarcotics, refugee assistance, and Vietnam War-era prisoners of war/missing in action (POW/MIA) location and repatriation. When emergency support for peacekeeping operations is required, Section 552(c)(2), FAA, separately authorizes the President to drawdown up to $25 million per fiscal year in USG articles and services from any agency. Special drawdown authorities have been annually legislated in the State Department and Foreign Operations Appropriation Acts (S/FOAA). When the USG avails DoD defense articles, services, or training via drawdowns, DSCA administers these nonappropriated authorities.

**Economic Support Fund**

The Economic Support Fund (ESF) is authorized by Chapter 4 of Part II of the FAA. ESF is an appropriated program administered by the U.S. Agency for International Development (USAID). Congress established this fund to promote economic and political stability in areas where the U.S. has special political and security interests and where the U.S. has determined that economic assistance can be useful in helping to secure peace or to avert major economic or political crises. ESF is a flexible economic instrument available on a grant basis for a variety of purposes, including balance of payments support, infrastructure, and other capital and technical assistance development projects in addition to funding a variety of programs to enhance political stability. In earlier years, the ESF program included concessional (i.e., low interest rate) loans as well as grants; recently, all ESF funds receive allocation as grant assistance. While a substantial amount of these ESF grants are used to provide balance of payments, the ESF also provides for programs aimed at primary needs in health, education, agriculture, and family planning. Where long-term political and economic stability is the primary concern, ESF finances projects that meet the basic needs of the poor.

In the 2019 Consolidated Appropriations Act, Congress appropriated $2.5 billion for ESF for 2019. The FY 2020 appropriations were $3 billion but decreased in FY 2021 to $2 billion.

**Peacekeeping Operations**

Peacekeeping Operations (PKO) is an appropriated program authorized by Chapter 6 of Part II of the FAA. For several years, PKO provided funds for the Multinational Force and Observers (MFO), which implemented the 1979 Egyptian-Israeli peace treaty and the U.S. contribution to the United Nations Force in Cyprus (UNFICYP). Subsequent funding has been provided to support peacekeeping efforts in the Balkans, East Timor, sub-Saharan Africa, and the Darfur region of the Sudan, South Sudan, and Somalia.

**Global Peace Operations Initiative**

Global Peace Operations Initiative (GPOI), which has become the principal PKO program, was originally a Presidential initiative in coordination with other G-8 countries to increase the capacity of selected countries to deploy in support of international peacekeeping operations. It was envisioned as a five-year program (FYs 2005–2009) to train seventy-five thousand troops worldwide, with emphasis in the Africa region and building an African command headquarters capability. GPOI supports the deployment of peacekeepers by providing equipment, transportation, training, and sustainment in the field. A DoS program requiring DoD support, GPOI subsumed the previous SA-funded PKO Africa Contingency Operations Training and Assistance (ACOTA) program and the FMFP- funded Enhanced International Peacekeeping Capabilities (EIPC) program. The ACOTA term is still used when referring to the Africa training component of GPOI.

In the 2019 Consolidated Appropriations Act, Congress appropriated $163 million for PKO for 2019. The FY 2020 Act appropriated $457 million. In FY 2021, this number decreased to $441 million. All PKO appropriations are grants managed by the DoS.

**International Narcotics Control and Law Enforcement**

The International Narcotics Control and Law Enforcement (INCLE) program is an appropriated grant program which the DoS administers. Authorized by Section 481, FAA, INCLE is intended to suppress the worldwide illicit manufacture and trafficking of narcotic and psychotropic drugs, money laundering, and precursor chemical diversion, and the progressive elimination of the cultivation of any crops from which such drugs are derived. Recently, the elimination of related narco-terrorism has been included. This program can include the purchase of defense articles, services, and training. This is similar to the authorized and funded programs within DoD and the Departments of Justice and Homeland Security.

The 2019 Consolidated Appropriations Act appropriated $1.49 billion for INCLE. The FY 2020 appropriations were slightly reduced to $1.39 billion. The FY 2021 appropriations were further reduced to $1.38 billion.

**Nonproliferation, Antiterrorism, Demining, and Related Programs**

The DoS administers a series of appropriated grant programs collectively known as the Nonproliferation, Antiterrorism, Demining, and Related (NADR) programs. Part II, Chapters 8 and 9 of the FAA and Section 504 of the FREEDOM Support Act authorize NADR. Additionally, Section 23, AECA, for NADR focuses on demining activities, the clearance of unexploded ordnance, the destruction of small arms, border security, and related activities. Related defense articles, services, and training can be provided through this program. U.S. funding support for the International Atomic Energy Agency and the Comprehensive Nuclear Test Ban Treaty Preparatory Commission is provided through this program. The DoD role in this program is that DoS can purchase demining, unexploded ordnance clearance, and anti-terrorism systems with this funding.

In the 2018 Consolidated Appropriations Act, Congress appropriated $655 million for NADR for 2018. The FY 2019 appropriation was for $864 million. In FY 2020, Congress appropriated $895 million. In FY 2021, Congress appropriated $889 million.

**Direct Commercial Sales**

Direct Commercial Sales (DCS) are commercial exports of defense articles, services, and training licensed under the authority of Section 38, AECA, made by U.S. defense industry directly to a foreign government. Unlike the procedures employed for FMS, DoD does not administer DCS transactions, and a DCS sale does not normally include a government-to-government agreement. Rather, the DoS Directorate of Defense Trade Controls (PM/DDTC) implements the required USG controls through licensing. The International Traffic in Arms Regulations (ITAR) [22 CFR 120-130] contains the dayto-day rules and procedures for Direct Commercial Sales.

The DoS grants regulatory approval for over $136 billion worth of sales requests per year. Of note, not all license approvals will result in signed contracts and actual deliveries. Like FMS, DCS deliveries are likely to take place years after U.S. industry obtains the export license from PM/DDTC and the interested parties sign the commercial contract.

**Other Security Assistance Programs**

***Excess Defense Articles***

Excess defense articles (EDA) identified by the MILDEP or DoD agency are authorized for sale using the FMS authority in Section 21, AECA, and FMS processes identified within the Security Assistance Management Manual (SAMM) for property belonging to the USG. Prices range from 5 to 50 percent of original acquisition value, depending on the condition of the article.

Additionally, Section 516, FAA, authorizes the President to transfer EDA on a grant basis to eligible countries (annually identified within a joint DoD/DoS letter to Congress). While EDA can be transferred at no cost, the recipient must typically pay for any transportation or repair charges. Under certain circumstances, transportation charges may be waived, with the cost absorbed by DoD-appropriated funds.

***Third-Country Transfers***

Section 3(d), AECA, authorizes the President to manage and approve the transfer of U.S.-origin defense articles from the original recipient country to a third country. Requests for third-country transfers are normally approved if the USG is willing to conduct a direct transfer to the third country. Countries must obtain third-country transfer authority in writing from the DoS in advance of the proposed transfer. This applies to all U.S.-origin defense articles regardless of the method of original transfer from the USG or U.S. industry. More can be found on this subject in the chapter on End-Use Monitoring and Third-Party Transfers.

Security Cooperation

While all of the programs previously mentioned are authorized under 22 U.S.C (Title 22), and are under the general control of the Department of State (DoS), the Department of Defense (DoD) administers many of them. Title 10 U.S. Code Section 301 defines security cooperation programs and activities of DoD as any program or interaction of U.S.C. with the security establishment of a foreign country to build capabilities, provide access or build relationships. As such, many of the previously described FAA and AECA-authorized security assistance programs administered by the DoD, in accordance with the SAMM, fall under the broad definition of security cooperation. The following is a categorization of programs, and a brief explanation, based upon a partial list presented in the 2016 DoD Guidance for Security Cooperation. For more detail on the different programs that can be found under each category, access and download the Security Cooperation Programs book found on the DSCU website or use the SC Programs Viewer on the Security Assistance Network Web (SANweb).

**Train and Equip/Security Cooperation: DoS Administered Title 22**

This category includes security assistance programs previously identified and described, and these programs are normally implemented and managed by DoS, USAID, or both. While under the authority of DoS, DoD provides material assistance and related training to partner nations to develop specific capabilities and/or capacities. These programs are authorized by either the Foreign Assistance Act (FAA) (22 U.S.C. 2151, et. seq.) or the Arms Export Control Act (AECA) (22 U.S.C. 2751, et. seq.):

• Direct Commercial Sales (DCS)

• Drawdowns

• Economic Support Fund (ESF)

• Global Peace Operations Initiative (GPOI)

• International Narcotics Control and Law Enforcement (INCLE)

• Nonproliferation, Antiterrorism, Demining, and Related Programs (NADR)

• Peacekeeping Operations (PKO)

• Third-Country Transfers

**Train and Equip/Security Assistance: DoD-Administered Title 22**

This category includes security assistance programs previously identified and described. While under the authority of DoS, DoD provides materiel assistance and related training to partner nations to develop specific capabilities and/or capacities. These programs are also authorized by either the Foreign Assistance Act (FAA) (22 U.S.C. 2151, et. seq.) or the Arms Export Control Act (AECA) (22 U.S.C. 2751, et. seq.):

• Excess Defense Articles (EDA)

• Foreign Military Financing Program (FMFP)

• Foreign Military Sales (FMS)

• Foreign Military Construction Services (FMCS)

• International Military Education and Training (IMET)

• Leases

• Military Assistance Program (MAP)

**Train and Equip/Security Cooperation: Title 10 Programs**

Under the authority of Title 10, Chapter 16, and/or the current National Defense Authorization Act, DoD provides material assistance and related training to partner nations to develop specific capabilities and/or capacities. This is normally done using DoD Operations and Maintenance (O&M) funding, but, in some instances, Congress appropriates additional funding for DoD to conduct these programs. Although it is DoD funding, these programs, and all security cooperation, must be coordinated with DoS. Security Cooperation practitioners refer to these programs as Building Partner Capacity (BPC) programs and execute them using a pseudo Letter of Offer and Acceptance. All BPC programs require congressional notification. Below are just a few examples. Examples with four digits in quotes represent temporary authorities whose authorizations can be found in various National Defense Authorizations Acts.

• “1022” Authority to Provide Counterdrug (CD)-Funded Support to Law Enforcement Agencies

• “1206” Training of Security Forces and Associated Security Ministries of Foreign Countries to Promote Respect for the Rule of Law and Human Rights

• “1226” Support to Certain Governments for Border Security Operations

• 333, Foreign Security Forces: Authority to Build Capacity

• Afghanistan Security Forces Fund (ASFF)

• European Deterrence Initiative (EDI)

• Iraq Security Forces Fund (ISFF)

• Counter ISIS Train and Equip Fund (CTEF)

• Indo-Pacific Maritime Security Initiative (MSI)

***Operational Support***

Operational support assistance programs are designed to enable partner countries to participate in coalition operations by developing specific capabilities needed for said operations. Alternately, they might focus on enhanced interoperability among partner countries and sustain partner operations in cases where partner countries cannot sustain operations on their own. These are normally done using DoD O&M funding and congressionally appropriated funds. These programs, and all security cooperation, must be coordinated with DoS. Below are just a few examples:

• “1234” Logistics Support for Coalition Forces Supporting Certain U.S. Military Operations

• “1207” Cross Servicing Agreements for Loan of Personnel Protection and Personnel Survivability Equipment in Coalition Operations

• “1233” Coalition Support Fund (CSF)

• 331, Friendly Foreign Countries: Authority to Provide Support for Conduct of Operations

• Acquisition and Cross-Servicing Agreement (ACSA)

• Coalition Readiness Support Program (CRSP)

***Defense Institution Building (DIB)***

DIB, as per the 27 January 2016 DoD Directive 5205.82, is the development and capacity building of partner nation defense institutions, normally at the ministerial or chief of defense level, in support of U.S. foreign policy and security cooperation goals. According to this directive, DIB attempts to promote principles vital to the establishment of defense institutions that are effective, accountable, transparent, and responsive to national political systems, especially regarding good governance, oversight of security forces, respect for human rights, and the rule of law.

Some areas of focus for DIB are defense institutions, organizations and processes that can ensure effective oversight, management, and execution of logistics, personnel, budgets, policy, strategy, and doctrine for effective development, employment, and sustainment of defense capabilities.

DIB is authorized and funded under Title 10, Section 332, Friendly Foreign Countries; International and Regional Organizations: Defense Institution Capacity Building to bring into the Partner Nation (PN) both full-time resident advisors and long-term, episodic Subject Matter Expert teams. Funding from other programs can also be used for DIB related training, education, and professional development.

***International Armaments Cooperation***

International Armaments Cooperation (IAC) can best be described as U.S. bilateral and multilateral agreements with partner countries focused on three cooperative areas. First, to share the costs associated with the cooperative research, development, test, evaluation, and production of mutually required weapons systems or components, defense technologies, systems, or equipment; second, to foster joint production and follow-on support of defense articles or equipment; and, third, to procure foreign technology, equipment, systems or logistics support. Over time, a variety of names have been applied to this area of cooperation to include Armaments Cooperation, International Armaments Cooperation (IAC), International Armaments Cooperation Programs (IACP), and Defense Cooperation in Armaments (DCA). Chapter 13 of this book provides more information on this topic. Below are just a few examples:

• Information Exchange Program (IEP)

• 311, Exchange of Defense Personnel Between United States and Friendly Foreign Countries

• Test and Evaluation Program (TEP)

• Foreign Comparative Testing (FCT) Program

• Cooperative Research, Development, and Acquisition Programs

• Defense Trade

• Cooperative Logistics

***Humanitarian Assistance***

Humanitarian assistance consists of a group of security cooperation programs designed to improve DoD access, visibility, and influence in a partner nation (PN) or region and to build the capacity of the PN government while addressing a humanitarian need. Combatant commands (CCMDs) may carry out activities funded by Overseas Humanitarian, Disaster and Civic Aid (OHDACA) across respective Unified Command Plan (UCP) theaters, offering DoD another tool to promote regional stability and security. Requests for OHDACA funds for any of these programs are generally initiated by the in-country SCO. The CCMD then consolidates and prioritizes before forwarding to DSCA for any required coordination with DoS/USAID and the military departments. It should be noted that the DoS has parallel programs generally managed by USAID in response to any requests by the affected U.S. embassy responding to country requirements. DoS and USAID annually receive even more funding for overseas humanitarian, disaster, and migration assistance programs. Below are just a few examples:

• Center for Excellence in Disaster Management & Humanitarian Assistance (CFE-DM)

• Commander’s Emergency Response Program (CERP)

• Excess Property as Humanitarian Relief

• Foreign Disaster Relief (FDR)

• Humanitarian Assistance Transportation Program (HATP)

• Humanitarian and Civic Assistance (HCA) during Military Operations

• DoD Humanitarian Assistance (HA)

• Humanitarian Daily Rations (HDR)

• Humanitarian Mine Action (HMA)

• Space-A Transport of NGO Relief

***Education***

There are many security cooperation programs that provide education opportunities to PN military and civilian personnel. Training can take place in the U.S., in the PN’s country and in some cases in a third country. Training can include professional military education, tactical training, and/or technical skills training when they acquire new equipment from the U.S. Below are just a few examples:

• “1206” Training of Security Forces and Associated Security Ministries of Foreign Countries to Promote Respect for the Rule of Law and Human Rights

• 342, Regional Centers for Security Studies (RCSS)

• 345, Regional Defense Combating Terrorism and Irregular Warfare Fellowship Program (CTIWFP)

• 346, Distribution to Certain Foreign Personnel of Education and Training Material and Information Technology to Enhance Military Interoperability with the Armed Forces

• 347, International Engagement Authorities for Service Academies

• 348, Aviation Leadership Program (ALP)

• Attendance at the USCG Academy

***Exercises***

Combined exercises are exercises between the U.S. forces and those of one or more countries. It is common error to refer to these exercises as multinational, coalition, or joint operations, but this is doctrinally incorrect. It should be noted that the term “joint” refers to two or more services, e.g., Army and Air Force. Exercises can be both joint and combined, while most combined exercises are singleservice combined exercises. The primary purpose of combined exercises is the training of U.S. forces, emphasizing interoperability and capability building, though the host nation also benefits from the training as well. There are three types of exercises that may fall under this title:

• Field Training Exercises (FTX): These are the most realistic of exercises, taking the form of actual forces in the field, thus allowing all the moving parts to be tested. These are also the most resource intensive in money, manpower, material, and preparation time.

• Command Post Exercises (CPX): An exercise in which the forces are simulated, involving the commander, the staff, and communications/coordination among the participating headquarters.

• Table Top Exercises (TTX): Tabletop exercises are the least resource-intensive of these three types, ranging from a formal, detailed planning process to a simple discussion. TTXs are excellent when senior leaders want to explore a number for possible scenarios or possible futures.

Below are just a few examples of security cooperation exercise programs and related activities:

• “1251” Training for Eastern European National Security Forces in the course of Multilateral Exercises

• 321, Training with Friendly Foreign Countries: Payment of Training and Exercise Expenses

• 322, Special Operations Forces: Training with Friendly Foreign Forces

• Defense Health Program

• Exercise-Related Construction (ERC)

• Joint Exercise Program

***Contacts***

There can be some confusion about the definition of contact events and/or Military-to-Military (M2M) events. In the past, Section 168 of Title 10 provided authorization for contact events and/ or Mil-to-Mil events. However, part of NDAA 2017, Section 168, was repealed, and these types of events are now authorized under Chapter 16 of Title 10, specifically Subchapter II Military-to-Military Engagements. One of the most important things to remember is that events conducted under this authority should not cross into the training realm. They should be designed to enable defense and military leaders to engage with partner countries for discussions, exchanges of tactics, planning, and other purposes that encourage democratic orientation of defense establishments and military forces of other countries; but not training. Contacts are largely conducted between U.S. military and civilian defense personnel and the military and civilian defense personnel of a partner country but may also include non-defense personnel of partner countries who play key security roles. Events, normally, but not always, fall into one of these categories:

• Traveling contact teams

• Familiarization visits

• Military liaison teams

• Seminars and conferences held primarily in a theater of operations

• Distribution of publications primarily in a theater of operations

• Personnel expenses of DoD personnel as they relate to above activities

Below are just a few examples of the authorities under which DoD conducts contact events:

• 311, Exchange of Defense Personnel between United States and Friendly Foreign Countries: Authority

• 312, Payment of Personnel Expenses Necessary for Theater Security Cooperation

• 342, Regional Centers for Security Studies (RCSS)

• 344, Participation in Multinational Military Centers of Excellence

An organization that might be involved in supporting contact events is the National Guard, which is part of the Department of Defense State Partnership Program (SPP), which is authorized under 10 USC 341 (Title 10, Chapter 16, subchapter V). More on this later in this chapter.

***Exchanges***

There are a variety of options for conducting exchanges of military and civilian defense personnel with partner countries that may be used to develop familiarity with partner country systems, processes, interoperability, and technical expertise. There can be exchanges of civilian or military personnel between DoD and ministries of defense. There can be exchanges of military personnel between units of U.S. armed forces and foreign armed forces. There can also be exchange of personnel on a nonreciprocal basis. Below are just a few examples of the authorities under which DoD conducts exchanges:

• 311, Exchange of Defense Personnel Between United States and Friendly Foreign Countries: Authority

• Reciprocal, No-charge Flight Training School

• Reciprocal, No-charge Professional Military Education (PME) Student Exchanges

• Reciprocal, No-charge Unit Exchanges

Security Force Assistance

Lessons learned from the combat activities and subsequent foreign government reconstitution efforts in Southwest Asia drove the Department of the Army (HQDA) and U.S. Special Operations Command (USSOCOM) to develop a new concept of operations titled Security Force Assistance (SFA). HQDA FM 3-07.1, “Security Force Assistance,” May 2009 (superseded by FM 3-22, Army Support to Security Cooperation, 22 January 2013), is the first document to define SFA as the unified action to generate, employ, and sustain local, host-nation or regional security forces in support of a legitimate authority. The following year, Department of Defense Instruction (DODI) 5000.68 of 27 October 2010 titled “Security Force Assistance” established DoD policy for SFA and assigned responsibilities. The directive restated the definition of SFA to be DoD activities that contribute to the unified action by the USG to support the development of the capacity and capability of foreign security forces (FSF) and their supporting institutions.

Moving from tactical to strategic levels, SFA is engagement at the tactical and operational level, Defense Institution Building (DIB), as part of Institutional Capacity Building (ICB), is engagement at the operational (ministerial) level and Security Sector Assistance (SSA) is engagement at the strategic, whole-of-government level.

According to the April 2013 Presidential Policy Directive 23 (PPD 23), strategic-level SSA aims to strengthen the ability of the U.S. to help allies and partner nations build their own security consistent with the principles of good governance and the rule of law across their government. The DoS has the lead on SSA and convenes the Interagency SSA Oversight Board, which they co-chair with DoD. SSA objectives with a PN should reflect the objectives of the respective U.S. embassy’s Integrated Country Strategy (ICS). In this respect, SSA is a coordinated USG effort focused on helping countries fight alongside U.S. forces countering terrorist and international criminal networks, participate in international peacekeeping operations, and maintain law and order in their respective countries.

SFA encompasses all of the activities required to develop a FSF, identifying and generating needed functions from the leadership level of the PN ministry of defense down to the entry-level private. The FSF and the broader terms of the security sector encompass the military, paramilitary, police, intelligence forces, border police, coast guard, customs officials, prison guards, and correctional personnel that provide security for a partner nation and its relevant population or support a regional security organization’s mission. U.S. DoD civilians, contractors, conventional, and Special Operations Forces can be the providers of SFA. As a subset of DoD security cooperation, SFA draws from multiple security cooperation programs to include security assistance (Title 22) for resources.

That said, there are parameters for what SFA is and, more clearly, what does not qualify as SFA. 3-07.1 states that (1) the mere provision of defense articles without related training is not SFA, (2) military exchange programs are not SFA, (3) humanitarian assistance and civic action are not SFA, and (4) joint exercises are not SFA. Combined operations must include U.S. forces as advisors, mentors, partners, or augmenters within FSF units to be SFA, and not U.S. units conducting independent operations alongside FSF.

In summary, as part of security cooperation activities, SFA, DIB, and SSA all work together at their respective levels with our partner nations toward strengthening their FSF capabilities while also supporting U.S. national security goals and achieving DoD security cooperation end states.

Department of Defense State Partnership Program (SPP)

As previously mentioned, Section 341, Department of Defense State Partnership Program (SPP) allows the National Guard of U.S. states and territories to interact and exchange personnel with civil, military, and emergency/disaster response personnel of friendly partner nations. Many of these same partner nations will have an assigned Bilateral Affairs Officer (BAO) from the National Guard state partner leading and managing the SPP effort and coordinating other mil-to-mil events. The National Guard partner may also conduct humanitarian assistance and training events when authorized.

The National Guard’s involvement reflects an evolving international affairs strategy using the unique civil-military nature of the National Guard to interact with both civil and defense personnel of foreign countries. The state partners actively participate in a host of engagement activities, e.g., bilateral familiarization and training events, emergency management, environmental remediation exercises, fellowship-style internships, educational exchanges, and civic leader visits. All activities are coordinated through the CCMD and the U.S. Ambassador’s country team, and other agencies, as appropriate, to ensure that National Guard support is tailored to meet both U.S. and country objectives. Table 1-1 illustrates the partnerships.

All state National Guards have an SPP coordinator who manages the program from the state National Guard headquarters. This program also includes the exchange of authorized National Guard personnel with military forces, security forces, or other government organizations of a country whose primary functions include disaster or emergency response.

Typically, funding of SPP activities is not availed unless the activity is jointly approved by the applicable combatant command and chief of mission/ambassador. The National Guard members must be on active duty to use these funds. National Defense Authorization Acts (NDAAs) issue annual changes, and it is imperative to check with respective CCMDs for the latest guidance.

**[Table 1-1 OMITTED]**

Summary

Security assistance has been part of our nation’s history ever since the Revolutionary War. Since World War II, the USG has progressively institutionalized and leveraged security assistance as a tool to advance U.S. interests in a global environment.

The term security assistance itself is subject to differing interpretations. The relatively recent development and use of the term security cooperation, which incorporates DoD-managed security assistance programs, has become the standard to describe all DoD international activities.

If the past is any predictor of the future, security cooperation will be in existence for many years to come. In this regard, the words of former Deputy SecDef, William P. Clements, Jr., are as appropriate today as when they were spoken years ago:

Many contend that such a program [as security assistance] has outlived its usefulness and is an anachronism in these days of a trend towards détente. To do so is not only to misread the history of the past twenty-five years but to misinterpret the signs of the times. The record is open to all who care to consult it. That record fully substantiates the conclusion that the world situation in which we currently find new hope for the future would not exist if the people of the United States had earlier refused to concern themselves with the common defense of the Free World. Had we not become involved and, for more than two decades, supported and encouraged the efforts of allied and friendly countries to protect themselves against threats to their territorial integrity and internal security, the complexion of the globe might be dangerously different today, and the international climate far more hostile. [Commander’s Digest, July 12, 1973]

The above 1973 historical quote highlights the evolution of SC and underscores the extraordinary changes to SC issued by the FY 2017 NDAA. The increasing scope of SC activities to include all DoD international programs and those FAA/AECA-authorized programs administered by DSCA is testament to increased DoD policy responsibilities and the imperative to develop the SC workforce. Execution of foreign policy in terms of SC reaches from the Secretary of Defense through DSCA to the CCMD, and finally to the in-country SDO/DATT, DAO, and SCO. Increasingly, almost every community within DoD and its respective leadership is recognizing the role they play in SC and the pivotal role SC plays in achieving U.S. foreign policy and national security objectives.

### SC = Title 10

#### “Security cooperation” refers to programs authorized under Title 10

Epstein 18 Susan B. Epstein, Coordinator, Specialist in Foreign Policy, Congressional Research Service; and Liana W. Rosen, Specialist in International Crime and Narcotics, Congressional Research Service; “U.S. Security Assistance and Security Cooperation Programs: Overview of Funding Trends,” CRS Report for Congress, R45091, 2-1-2018, <https://sgp.fas.org/crs/natsec/R45091.pdf> /GoGreen!

**Interagency Terminology**

Discussion of military and related assistance to foreign countries is sometimes hindered by a lack of a standard terminology.9 The following terms are frequently used to describe assistance to foreign governments, security services, and militaries:

* Security Assistance (Title 22). Although not defined in Title 22 of U.S. Code, the term security assistance is commonly used to refer to the six budget accounts for which the State Department requests international security assistance appropriations and whose underlying authorities reside in the Foreign Assistance Act of 1961 (FAA, P.L. 87-195) and Arms Export Control Act in 1976 (AECA, P.L. 90-629), as amended.10

**[FOOTNOTES 9-10]**

9 Some of the terms used by U.S. government officials and defense observers include military assistance, security assistance, security cooperation, security force assistance, train and equip, and building partner capacity. Definitions of the respective terms may be found in legislation, policy and guidance documents, and statements made by U.S. government officials. The lack of standard terminology has implications for oversight over U.S. security assistance programs. A recent U.S. Government Accountability Office (GAO) report noted that, according to DOD officials, it is “not feasible” for “DOD to provide the individual program amount and total amount of funding for all DOD security cooperation programs intended to build partner security capabilities due to “(1) the lack of agreed-upon definition and listing of these programs and (2) the difficulty in identifying funding for programs that do not have a direct line of funding.” GAO, Building Partner Capacity: Inventory of Department of Defense Security Cooperation and Department of State Security Assistance Efforts, GAO-17-255R, March 24, 2017.

10 Security assistance is also used as a generic term used throughout the U.S. government to describe assistance provided to foreign military and security forces, regardless of the agency providing that assistance. The annual State Department congressional budget justification (CBJ) identifies six budget accounts under the heading “International Security Assistance,” which are commonly referred to as the State Department’s security assistance portfolio.

DOD also uses the term security assistance to refer specifically to a group of State Department programs authorized by the Foreign Assistance Act of 1961(FAA) and Arms Export Control Act (AECA), funded by State Department appropriations and managed by the Defense Security Cooperation Agency (DSCA), an agency under the Office of the Secretary of Defense for Policy (OSD)(P).

**[/FOOTNOTES 9-10]**

* Security Cooperation (Title 10). DOD uses the term security cooperation to refer to activities authorized by provisions in Title 10 and National Defense Authorization Acts (NDAAs). The FY2017 NDAA defines security cooperation as “any program, activity (including an exercise), or interaction of the Department of Defense with the security establishment of a foreign country to achieve a purpose as follows:
* To build and develop allied and friendly security capabilities for self-defense and multinational operations.
* To provide the armed forces with access to the foreign country during peacetime or a contingency operation.
* To build relationships that promote specific United States security interests.”11
* **Security Sector Assistance**. In April 2013, the Obama Administration issued Presidential Decision Directive 23 (PPD-23). The directive called for an overhaul of U.S. security sector assistance policy and for the creation of a new interagency framework for planning, implementing, assessing, and overseeing security sector assistance. The term security sector assistance refers to all State Department security assistance programs and virtually all DOD security cooperation programs, exercises, and engagements, as well as related activities of the USAID, DOJ, and other agencies.12

**[FOOTNOTE 11]**

11 Section 1241(a), FY2017 NDAA (P.L. 114-328). For the official DOD definition of security cooperation, see DOD Directive 5123.03, “DOD Policy and Responsibilities Relating to Security Cooperation,” December 29, 2016.

#### It’s consistent with usage

Serafino 16 Nina M. Serafino, Specialist in International Security Affairs, Congressional Research Service, “Security Assistance and Cooperation: Shared Responsibility of the Departments of State and Defense,” CRS Report for Congress, R44444, 5-26-2016, <https://sgp.fas.org/crs/natsec/R44444.pdf> /GoGreen!

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

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

Legal and Institutional Framework

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

The Development of the Shared Partnership Legal Framework9

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

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

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

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

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

**[FOOTNOTE 10-11]**

10 DISAM Security Cooperation Handbook.

11 David E. Thaler, Michael J. McNerney, and Beth Grill, et al., From Patchwork to Framework: A Review of Title 10 Authorities for Security Cooperation, RAND Corporation, Santa Monica, CA, 2016, p. x, http://www.rand.org/content/ dam/rand/pubs/research\_reports/RR1400/RR1438/RAND\_RR1438.pdf. Hereinafter referred to as RAND: From Patchwork to Framework.

**[/FOOTNOTE 10-11]**

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

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

#### Caselist Included

Epstein 18 Susan B. Epstein, Coordinator, Specialist in Foreign Policy, Congressional Research Service; and Liana W. Rosen, Specialist in International Crime and Narcotics, Congressional Research Service; “U.S. Security Assistance and Security Cooperation Programs: Overview of Funding Trends,” CRS Report for Congress, R45091, 2-1-2018, <https://sgp.fas.org/crs/natsec/R45091.pdf> /GoGreen!

Appendix B. Major DOD Security Cooperation Authorities/Programs23

This appendix describes DOD security cooperation programs:

* Afghanistan Security Forces Fund (ASFF). ASFF permits the Secretary of Defense to provide assistance to the security forces of Afghanistan, which may include provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, and construction and funding. It also authorizes the Secretary of Defense to accept contributions to the ASFF from non-U.S. government sources, and to transfer ASFF funds to other accounts. ASFF is authorized by Section 1513 (FY2008 NDAA, P.L. 110-181), as amended.
* Afghanistan Infrastructure Fund (AIF). AIF allows the Secretary of Defense and Secretary of State jointly to develop and carry out infrastructure projects in Afghanistan. The authority expired on September 30, 2015, but FY2017 appropriations legislation (P.L. 115-31) makes funds appropriated to the Afghanistan Security Forces Fund (ASFF) available for additional costs associated with existing projects funded under AIF. AIF was authorized by Section 1217 (FY2011 NDAA, P.L. 111-383).
* Building Capacity of Foreign Security Forces. Commonly described as DOD’s “Global Train and Equip” authority, the Secretary of Defense may build the capacity of a foreign country’s national military forces to enable such forces to conduct counterterrorism operations or to support or participate in military, stability, and peace support operations that benefit U.S. national security interests. The Secretary may also authorize activities to enable a foreign country’s maritime or border security forces, and other national-level security forces with counterterrorism responsibilities, to conduct counterterrorism operations.
* DOD’s global train and equip activities were originally authorized by Section 1206 (FY2006 NDAA, P.L. 109-163), as amended. Section 1206 was the first major DOD authority to be used expressly for the purpose of training and equipping the national military forces of foreign countries worldwide. The authority was later codified as 10 U.S.C. 2282 in the FY2015 NDAA (P.L. 113- 291). Activities permitted under 10 U.S.C. 2282 have been incorporated into a new, broader global train and equip authority established by Section 1241(c) of the FY2017 NDAA: 10 U.S.C. 333.24
* Commander’s Emergency Response Program (CERP). CERP authorizes U.S. military commanders in Afghanistan to carry out small-scale projects to address urgent humanitarian relief or urgent reconstruction needs within their areas of responsibility. CERP is authorized by Section 1201 (FY2012 NDAA P.L. 112- 81), as amended.
* Combatant Commanders Initiative Fund (CCIF). CCIF provides discretionary funding for combatant commanders to conduct various activities, especially in response to unforeseen contingencies. A few permitted uses are related to foreign assistance. These include humanitarian and civic assistance, urgent and unanticipated humanitarian relief and reconstruction. Permitted activities also include force training, contingencies, selected operations, command and control, joint exercises, military education and training for military and related civilian personnel of foreign countries, including transportation, translation, and administrative expenses (up to $5 million per year). Up to $10 million per year may be spent to sponsor the participation of foreign countries in joint exercises. 10 U.S.C. 166a authorizes the fund, but activities are carried out under other authorities.
* Cooperative Threat Reduction (CTR). The purpose of CTR is to (1) facilitate the elimination and safe and secure transport and storage of chemical, biological, or other weapons (and weapons components, related materials, and delivery vehicles), and (2) facilitate the safe and secure transport and storage of nuclear weapons, nuclear weapons-usable or high-threat radiological materials, nuclear weapons components, and delivery vehicles, as well as the elimination of nuclear weapons, components, and delivery vehicles. CTR also authorizes the Secretary to prevent the proliferation of nuclear, chemical, and biological weapons, components, and related materials, technology, and expertise, as well as of weapons of mass destruction-related materials. The FY2017 NDAA authorized $325.6 million to be available for obligation in FY2017, FY2018, and FY2019. CTR is authorized by Sections 1301-1352 (FY2015 NDAA, P.L. 113-291), as amended.
* Counterterrorism Partnerships Fund (CTPF). CTPF provides support and assistance to foreign security forces or other groups or individuals to conduct, support, or facilitate counterterrorism and crisis response activities pursuant to Section 1534 of the FY2015 NDAA. Section 1534 of FY2015 NDAA stipulates that funds may be transferred to other accounts for use under existing DOD authority established by “any other provision of law.” DOD may conduct CTPF activities only in areas of responsibility of the U.S. CENTCOM and AFRICOM, unless the Secretary of Defense determines that authority needs to be applied elsewhere to address threats to U.S. national security.25 Section 1510 (FY2016 NDAA, P.L. 113-235), as amended, authorizes the appropriation of funds for CTPF.
* Coalition Support Fund (CSF). CSF Authorizes the Secretary of Defense to reimburse key cooperating countries for logistical, military, and other support, including access, to or in connection with U.S. military operations in Iraq, Afghanistan, or Syria and to assist such nations with U.S. funded equipment, supplies and training. Aggregate amount of reimbursements may not exceed $1.1 billion between October 1, 2016, and December 31, 2017. Additional reimbursement restrictions apply to Pakistan for certain counterterrorism activities and activities along the Afghanistan-Pakistan border region. CSF is authorized by Section 1233 (FY2008 NDAA, P.L. 110-181), as amended.
* Defense Institutional Reform Initiative (DIRI). The Defense Institution Reform Initiative (DIRI) is conducted through the Office of the Secretary of Defense (OSD) Rule of Law program under 10 U.S.C. 168, military-to-military contacts authority, and 10 U.S.C. 1051, developing country participation in multilateral, bilateral, or regional events. DIRI supports foreign defense institutions and related agencies by determining institutional needs and developing projects to meet them. DIRI both scopes out projects for execution under the MODA and conducts its own military-to-military informational engagements.26
* European Reassurance Initiative (ERI). ERI permits the Secretary of Defense to provide assistance to reassure NATO allies and improve the security and capacity of U.S. partners. ERI permits an increased U.S. military presence in Europe, additional exercises and training with allies and partners, improvements to infrastructure to enhance responsiveness, prepositioning U.S. equipment in Europe, and increasing efforts to build partner capacity for new NATO members and other partners. ERI is authorized by Section 1535 (FY2015 NDAA, P.L. 113- 291).
* Iraq Train and Equip Fund (ITEF). ITEF authorizes the Secretary of Defense to provide up to $630 million in assistance to Iraq and partner nations to defend against the Islamic State and its allies, which may include training, equipment, logistics support, supplies, services, stipends, facility and infrastructure repair, renovation, and sustainment. ITEF is authorized by Section 1236 (FY2015 NDAA, P.L. 113-291), as amended.
* Logistic Support for Allied Forces in Combined Operations: 10 U.S.C. 127d (Global Lift and Sustain) authorizes the Secretary of Defense to provide logistics, supplies, and services to allied forces participating in a combined operation with the United States, as well as to a nonmilitary logistics, security, or similar agency of an allied government if it would benefit U.S. armed forces.27
* Ministry of Defense Advisors Program (MODA). The MODA program allows the Secretary of Defense to assign civilian Department of Defense employees as advisors to foreign ministries of defense or security agencies serving a similar defense function to provide advice and other training and to assist in building core institutional capacity, competencies, and capabilities. MODA is authorized by Section 1081 (FY2012 NDAA, P.L. 112-81), as amended.28
* Regional Centers for Security Studies (RCSS). DOD Regional Centers for Security Studies function to provide bilateral and multilateral research, communications, and exchange of ideas involving military and civilian participants. 10 U.S.C. 184 authorizes the administration of Regional Centers. 29
* Regional Defense Combating Terrorism Fellowship Program (CTFP). The program allows the Secretary of Defense to use funds appropriated to DOD to pay any costs associated with the education and training of foreign military officers, ministry of defense officials, or security officials at military or civilian educational institutions, regional centers, conferences, seminars, or other training programs conducted under the Regional Defense Combating Terrorism Fellowship Program. The total amount of funds spent under this authority may not exceed $35 million per fiscal year. The program is authorized by 10 U.S.C. 2249c.
* Southeast Asia Maritime Security Initiative (MSI). MSI permits the Secretary of Defense to increase maritime security and maritime domain awareness of specific foreign countries along the South China Sea by providing assistance and training to national military or other security forces whose functional responsibilities include maritime security missions.
* Ukraine Security Assistance Initiative (USAI). The USAI permits the Secretary of Defense to provide up to $300 million in FY2016 and $350 million in FY2017 for security assistance and intelligence support, including training, equipment, logistics support, and supplies and services to military and other security forces of Ukraine. USAI is authorized by Section 1250 (FY2016 NDAA, P.L. 114-92), as amended.
* Wales (formerly Warsaw) Initiative Fund (WIF). The WIF was formerly named the Warsaw Initiative Fund, but was renamed after the Wales NATO summit in September 2014. It supports the participation of 16 developing countries in the State Department-led Partnership for Peace Program. This fund has enabled a wide range of assistance, including equipment and training, but is currently used primarily for defense institution building, according to DSCA officials. Activities funded by WIF are conducted using the authority of three statutes (10 U.S.C. 168, 10 U.S.C. 1051, and 10 U.S.C. 2010).30

#### Caselist Excluded

Epstein 18 Susan B. Epstein, Coordinator, Specialist in Foreign Policy, Congressional Research Service; and Liana W. Rosen, Specialist in International Crime and Narcotics, Congressional Research Service; “U.S. Security Assistance and Security Cooperation Programs: Overview of Funding Trends,” CRS Report for Congress, R45091, 2-1-2018, <https://sgp.fas.org/crs/natsec/R45091.pdf> /GoGreen!

Appendix A. DOS/USAID Security Assistance Programs20

This appendix describes the security assistance programs funded through the Department of State, Foreign Operations, and Related Programs (SFOPS) appropriations:

* International Narcotics and Law Enforcement (INCLE). The INCLE account funds international counter-narcotics activities, anti-crime programs, and antihuman trafficking programs. In addition, activities conducted under INCLE include rule of law programs, such as law enforcement support and justice sector capacity building. For example, funds support efforts to enhance bilateral and regional cooperation to combat drug trafficking and organized crime in Mexico, drug interdiction and alternative development in Colombia and the Andean region, and judicial system reform and counter-narcotics activities in Afghanistan. Although programs authorized under INCLE generally provide nonmilitary support, DOD may play a role if defense articles or services are provided through the Defense Security Cooperation Agency (DSCA). State Department authority for counter-narcotics programs is contained in Chapter 8 of Part I of the FAA (22 U.S.C. 2291 et seq.).
* Nonproliferation, Anti-terrorism, Demining, and Related Programs (NADR). The NADR account funds a variety of State Department-managed activities aimed at countering proliferation of weapons of mass destruction, supporting anti-terrorism training and related activities, and promoting demining operations in developing countries. Programs conducted include border security activities and may involve law enforcement and military personnel. If necessary, DOD, through DSCA, may provide defense articles and services for some NADR programs. DOD may also provide other support, including conducting DOD-funded programs in conjunction with NADR-funded programs.21 NADR is authorized by several provisions of law (Part I, §301, and Part II, Chapters 8-9, of the FAA; §23 of AECA; §504, FREEDOM Support Act (FSA) of 1992 [P.L. 102- 511]).
* Peacekeeping Operations (PKO).The PKO account funds programs to provide articles, services, and training for countries participating in international peacekeeping operations, including United Nations (U.N.) and regional operations. Most support under PKO is provided to foreign militaries. PKO programs include efforts to diminish and resolve conflicts, address terrorism threats, and reform military establishments. In addition, PKO funds U.S. military participation in the Multilateral Force and Observers (MFO) in the Sinai.
* DOD sometimes uses its own funds to complement or assist PKO-funded programs. In addition, DOD provides support to the Global Peace Operations Initiative (GPOI) to train, equip, and support the deployment of foreign military troops and police for U.N. and regional peacekeeping missions. DOD, through DSCA, may also contribute defense articles and services to other PKO-funded missions such as maritime security and counter-poaching activities. PKO programs are authorized by FAA Sections 551-553 (22 U.S.C. 2348).
* Andean Counterdrug Initiative (ACI). The ACI account provided assistance from FY2002-FY2008 (although some obligations continue to flow) to Colombia, Bolivia, Brazil, Ecuador, Panama, Peru, and Venezuela to address drug trafficking and economic development issues. ACI was authorized by 22 U.S.C. 2291a-j (Chapter 8, Part I, §§481-490, FAA, as amended).
* International Military Education and Training (IMET). IMET provides grant financial assistance to selected foreign military and civilian personnel for training and education on U.S. military practices and standards, including democratic values. For example, IMET sends foreign personnel to the military service senior-level war colleges and the National Defense University, as well as to military service Command and Staff Colleges, where they take basic and advanced officer training. In 1990, the program was expanded (E-IMET) to provide opportunities for foreign civilian defense and related personnel to attend educational programs promoting responsible defense resource management, in addition to other purposes. The State Department controls the funds and has policy authority; DOD, through DSCA, administers this program. IMET is authorized by FAA Sections 541-543 (22 U.S.C. 2347).
* Foreign Military Financing (FMF). The FMF program provides financing of the purchase of defense articles, services, and training (usually on a grant basis) through the Foreign Military Sales (FMS) system—the U.S. government’s conduit for selling, weapons, equipment, and associated training to friendly foreign countries—or through Direct Commercial Sales (DCS). The State Department is primarily responsible for determining which nations are to receive military assistance. DOD, through the Defense Security Cooperation Agency (DSCA), implements this program. FMF is authorized by Section 23 of the AECA (22 U.S.C. 2763).
* Pakistan Counterinsurgency Capability Fund (PCCF). Section 1224 (NDAA FY2010, P.L. 111-84), as amended, authorized the Pakistan Counterinsurgency Fund (PCF) and permitted the Secretary of Defense, with Secretary of State concurrence, to provide assistance for Pakistan’s security forces to bolster their counterinsurgency efforts. Title III of the Supplemental Appropriations Act, 2009 (P.L. 111-32) appropriated $400 million for PCF. After authorization expired, the Secretary of State assumed responsibility in subsequent fiscal years under the name Pakistan Counterinsurgency Capability Fund with funding from State, Foreign Operations and Related Programs appropriations. PCCF was authorized by 22 U.S.C. 2291, 22 U.S.C. 2311, 22 U.S.C. 2347, 22 U.S.C. 2348, 22 U.S.C. 2349aa, and 22 U.S.C. 2763.
* Global Security Contingency Fund (GSCF). GSCF is a joint DOD-DOS fund to provide assistance to enhance the capabilities of a country’s military or other national security forces to conduct border and maritime security, internal defense, and counterterrorism operations, or participate in military, stability, or peace support operations. It is also authorized to support the justice sector in countries where conflict or instability challenges the capacity of civilian providers. The GSCF authority provides authority for DOD to transfer up to $200 million per fiscal year to the fund, but caps DOD contributions to each project at 80% of the cost. GSCF is authorized by Section 1207 (NDAA FY2012, P.L. 112-81), as amended. GSCF authority expired on September 30, 2017. 22

#### Existing Security Cooperation Title 10 Authorities

Thaler 16 (David E. Thaler, Senior International/Defense Researcher at RAND, MIA International Security Policy/Middle East, Columbia University; Michael J. McNerney, Acting Director, International Security and Defense Policy Center, and Senior International/Defense Researcher, at RAND, Affiliate Faculty at Pardee RAND Graduate School, MA international relations, University of Maryland; Beth Grill, Senior Policy Analyst at RAND, MA Middle Eastern Studies and Economics, Johns Hopkins University School of Advanced International Studies; Jefferson P. Marquis, Adjunct Political Scientist at RAND, PhD U.S. diplomatic and military history, Ohio State University, MA international security affairs, Columbia University; and Amanda Kadlec, RAND; “From Patchwork to Framework: A Review of Title 10 Authorities for Security Cooperation,” RR1438, RAND Corporation, 2016, https://www.rand.org/content/dam/rand/pubs/research\_reports/RR1400/RR1438/RAND\_RR1438.pdf)

APPENDIX A

List of Existing SC Authorities

The following is an extensive list of Title 10 and other authorities and relevant Public Laws that are categorized as activity-based, mission-based, or partner-based and divided into subcategories based on their primary purpose. This list is current as of the FY 2016 NDAA. The list differentiates core authorities (in regular font) from supporting statutes (in italicized font), as described in Chapter Four. At the end of the categorized authorizations is a list of key SC programs that originate in appropriations and not authorization legislation.

Although the focus of our study is on Title 10 authorities, we include SC-related Title 22, Title 50, and Title 6 authorities in brackets at the end of each relevant subcategory of activities.

Existing Activity-Based Authorities

• Military-to-Military Engagements

– U.S. Code, Title 10, Section 168, Military-To-Military Contacts and Comparable Activities1

– U.S. Code, Title 10, Section 1050, Latin American Cooperation: Payment of Personnel Expenses

– U.S. Code, Title 10, Section 1050a, African Cooperation: Payment of Personnel Expenses

– U.S. Code, Title 10, Section 1051, Bilateral or Regional Cooperation Programs: Payment of Personnel Expenses

– U.S. Code, Title 10, Section1051a, Liaison Officers of Certain Foreign Nations; Administrative Services and Support; Travel, Subsistence, Medical Care, and Other Personal Expenses

– Public Law 104-201, Section 1082, Exchange of Defense Personnel Between the United States and Foreign Countries

– Public Law 111-84, Section 1207, Authority for Nonreciprocal Exchanges, amended by Public Law 114-92, Section 1204, Extension of Authority for Nonreciprocal Exchanges of Defense Personnel Between the United States and Foreign Countries

– Public Law 112-239, Section 1275, U.S. Participation in Headquarters Eurocorps

– Public Law 113-291, Section 1203, Enhanced Authority for Provision of Support to Foreign Military Liaison Officers of Foreign Countries While Assigned to the Department of Defense

– [U.S. Code, Title 22, Section 2151, Congressional Findings and Declaration of Policy, U.S. Development Cooperation Policy]

– [U.S. Code, Title 22, Section 2767, Authority of President to Enter Into Cooperative Projects with Friendly Foreign Countries]

– [U.S. Code, Title 22, Section 2396g(2), Availability of Funds: Distinguished Visitor Orientation Tours]

– [Public Law 113-66, Section 1205, Authorization of National Guard State Partnership Program, as amended by Public Law 114-92, Section 1203, Redesignation, Modification, and Extension of National Guard State Partnership Program (Title 32 authority)]

• Exercises

– U.S. Code, Title 10, Section 153, Chairman: Functions

– U.S. Code, Title 10, Section 166a, Combatant Commands: Funding Through the Chairman of Joint Chiefs of Staff (CCIF) (for combined exercises, military education, and training)

– U.S. Code, Title 10, Section 2010, Participation of Developing Countries in Combined Exercises: Payment of Incremental Expenses

– U.S. Code, Title 10, Section 2011, Special Operations Forces: Training with Friendly Foreign Forces

– U.S. Code, Title 10, Section 2805, Unspecified Minor Construction

– Public Law 113-66, Section 1203, Training of General Purpose Forces of the U.S. Armed Forces with Military and Other Security Forces of Friendly Foreign Countries

• Individual Education / Technical Training2

– U.S. Code, Title 10, Section 184, Regional Centers for Security Studies

– U.S. Code, Title 10, Chapter 905, Aviation Leadership Program

– U.S. Code, Title 10, Section 2111b, Senior Military Colleges: Department of Defense International Student Program

– U.S. Code, Title 10, Section 2103, Eligibility for Membership Senior Reserve Officers’ Training Corps

– U.S. Code, Title 10, Section 2114, Uniformed Services University of the Health Sciences Students: Selection; Status; Obligation

– U.S. Code, Title 10, Section 2166, Western Hemisphere Institute for Security Cooperation

– U.S. Code, Title 10, Section 2249c, Regional Defense Combating Terrorism Fellowship Program: Authority to Use Appropriated Funds for Costs Associated with Education and Training of Foreign Officials

– U.S. Code, Title 10, Section 2249d, Distribution to Certain Foreign Personnel of Education and Training Materials and Information Technology to Enhance Military Interoperability with the Armed Forces

– U.S. Code, Title 10, Section 2350m, Participation in Multinational Military Centers of Excellence

– U.S. Code, Title 10, Section 4344, Foreign Cadets Attending the Military Academy

– U.S. Code, Title 10, Section 4345, Military Academy Exchange Program with Foreign Military Academies

– U.S. Code, Title 10, Section 4345a, Military Academy Foreign and Cultural Exchange Activities

– U.S. Code, Title 10, Section 6957, Foreign Midshipmen Attending the Naval Academy

– U.S. Code, Title 10, Section 6957a, Naval Academy Exchange Program with Foreign Military Academies

– U.S. Code, Title 10, Section 6957b, Naval Academy Foreign and Cultural Exchange Activities

– U.S. Code, Title 10, Section 7046, Officers of Foreign Countries: Admission to Naval Postgraduate School

– U.S. Code, Title 10, Section 7234, Submarine Safety Programs: Participation of NATO Naval Personnel

– U.S. Code, Title 10, Section 9344, Selection of Persons from Foreign Countries, Air Force Academy

– U.S. Code, Title 10, Section 9345, Exchange Program with Foreign Military Academies

– U.S. Code, Title 10, Section 9345a, Foreign and Cultural Exchange Activities

– U.S. Code, Title 10, Section 9415, Inter-American Air Forces Academy

– Public Law 113-291, Section 5530, Authorized Duration of Foreign and Cultural Exchange Activities at Military Service Academies

– Public Law 113-291, Section 1268, Inter-European Air Forces Academy

– [U.S. Code, Title 22, Section 2347, International Military Education and Training]

– [U.S. Code, Title 22, Section 2347c, Exchange Training: Reciprocity Agreement]

– [U.S. Code, Title 22, Section 8422a, Authorization of Assistance: International Military Education and Training]

– [U.S. Code, Title 32, National Guard]

• Unit Train And Equip

– U.S. Code, Title 10, Section 2282, Authority to Build the Capacity of Foreign Security Forces, as amended by Public Law 114-92, Section 1206, One-Year Extension of Funding Limitations for Authority to Build the Capacity of Foreign Security Forces; Public Law 112-81, Section 1207, Global Security Contingency Fund, as amended by Public Law 113-291, Section 1201

– U.S. Code, Title 10, Section 408(C), Equipment and Training of Foreign Personnel to Assist in Department of Defense Accounting for Missing United States Government Personnel

– Public Law 110-417, Section 943, Authorization of Nonconventional Assisted Recovery Capabilities, as amended by Public Law 114-92, Section 1271, Two-Year Extension and Modification of Authorization for Nonconventional Assisted Recovery Capabilities

– [U.S. Code, Title 22, Section 2349aa-10, Antiterrorism Assistance]

– [U.S. Code, Title 22, Section 8422b, Authorization of Assistance: Foreign Military Financing Program]

• Equipment and Logistics Support

– U.S. Code, Title 10, Section 127d, Allied Forces Participating in Combined Operations: Authority to Provide Logistic Support, Supplies, and Services (Global Lift and Sustain)

– U.S. Code, Title 10, Section 2249e, Prohibition on Use of Funds for Assistance to Units of Foreign Security Forces That Have Committed a Gross Violation of Human Rights

– U.S. Code, Title 10, Section 2341, Authority to Acquire Logistic Support, Supplies, and Services for Elements of the Armed Forces Deployed outside the United States

– U.S. Code, Title 10, Section 2342, Cross-servicing Agreements

– U.S. Code, Title 10, Section 2350c, Cooperative Military Airlift Agreements: Allied Countries

– U.S. Code, Title 10, Section 2350d, Cooperative Logistic Support Agreements: NATO Countries

– U.S. Code, Title 10, Section 2350f, Procurement of Communications Support and Related Supplies and Services

– U.S. Code, Title 10, Section 2539b, Availability of Samples, Drawings, Information, Equipment, Materials, and certain services

– U.S. Code, Title 10, Section 2562, Limitation on Use of Excess Construction or Fire Equipment From Department of Defense Stocks In Foreign Assistance or Military Sales Programs 3

– U.S. Code, Title 10, Section 2667, Leases: Non-Excess Property of Military Departments and Defense Agencies

– U.S. Code, Title 10, Section 4681, Surplus War Material: Army Sale to States and Foreign Governments

– U.S. Code, Title 10, Section 7227, Foreign Naval Vessels and Aircraft: Supplies and Services

– U.S. Code, Title 10, Section 7307, Disposals of Naval Vessels to Foreign Nations

– U.S. Code, Title 10, Section 9626, Aircraft Supplies and Services: Foreign Military or Other State Aircraft

– U.S. Code, Title 10, Section 9681, Surplus War Material: Air Force Sale to States and Foreign Governments

– Public Law 109-163, Section 1208, Reimbursement of Certain Coalition Nations for Support Provided to U.S. Military Operations, as amended by Public Law 114-92, Section 1212, Extension and Modification of Authority for Reimbursement of Certain Coalition Nations for Support Provided to U.S. Military Operations

– Public Law 110-252, 122 Stat. 2398, Coalition Readiness Support Program, as amended by Public Law 113-291, Section 1222

– Public Law 110-181, Section 1233, Coalition Support Fund, as amended by Public Law 113-291, Section 1222

– Public Law 110-181, Section 1234, Logistical Support for Coalition Forces Supporting Operations in Iraq and Afghanistan, as amended by Public Law 113-291, Section 1223, One-Year Extension of Logistical Support for Coalition Forces Supporting Certain United States Military Operations,4 as amended by Public Law 114-92, Section 1201

– Public Law 111-383, Section 1234, Report on Department of Defense Support for Coalition Operations

– Public Law 112-239, Section 1276, Department of Defense Participation in European Program on Multilateral Exchange of Air Transportation and Air-to-Air Refueling and Other Exchange Services (ATARES)

– Public Law 113-291, Section 1207, Cross Servicing Agreements for Loan of Personnel Protection and Personnel Survivability Equipment in Coalition Operations

– Public Law 113-291, Section 1210, Provision of Logistic Support for the Conveyance of Certain Defense Articles (in Afghanistan) to Foreign Forces Training with the U.S. Armed Forces

– Public Law 113-291, Section 1211, Biennial Report on Programs Carried Out by the Department of Defense to Provide Training, Equipment, or Other Assistance or Reimbursement to Foreign Security Forces5

– Public Law 114-92, Section 1202, Strategic Framework for Department of Defense Security Cooperation

– Public Law 114-92, Section 1207, Authority to Provide Support to National Military Forces of Allied Countries for Counterterrorism Operations in Africa

– [U.S. Code, Title 22, Section 2761, Sales from Stocks]

– [U.S. Code, Title 22, Section 2751, Need for International Defense Cooperation and Military Export Controls]

– [U.S. Code, Title 22, Section 2762, Procurement for Cash Sales]

– [U.S. Code, Title 22, Section 2302, Utilization of Defense Articles and Defense Services]

– [U.S. Code, Title 22, Section 2318, Special Authority (Drawdown)]

– [U.S. Code, Title 22, Section 2321h, Stockpiling of Defense Articles for Foreign Countries]

– [U.S. Code, Title 22, Section 2321i, Overseas Management of Assistance and Sales Programs]

– [U.S. Code, Title 22, Section 2321j, Authority to Transfer Excess Defense Articles]

– [U.S. Code, Title 22, Section 2753, Eligibility for Defense Services or Defense Articles]

– [U.S. Code, Title 22, Section 2763, Credit Sales]

– [U.S. Code, Title 22, Section 2767, Authority of President to Enter Into Cooperative Projects with Friendly Foreign Countries]

– [U.S. Code, Title 22, Section 2769, Foreign Military Construction Sales]

– [U.S. Code, Title 22, Section 2770a, Exchange of Training and Related Support]

– [U.S. Code, Title 22, Section 2776, Reports and Certifications to Congress on Military Exports]

– [U.S. Code, Title 22, Section 2796, Leasing Authority]

– [U.S. Code, Title 22, Section 8422b, Authorization of Assistance: Foreign Military Financing Program]

• Research, Development, Test, and Evaluation (RTD&E)

– U.S. Code, Title 10, Section 2350a, Cooperative Research and Development Agreements: NATO Organizations; Allied and Friendly Foreign Countries

– U.S. Code, Title 10, Section 2350l, Cooperative Agreements for Reciprocal Use of Test Facilities: Foreign Countries and International Organizations

– U.S. Code, Title 10, Section 2358, Research and Development Projects

– U.S. Code, Title 10, Section 2360, Research and Development Laboratories: Contracts for Services of University Students

– U.S. Code, Title 10, Section 2365, Global Research Watch Program

– U.S. Code, Title 10, Section 2531, Defense Memoranda of Understanding and Related Agreements

– [U.S. Code, Title 22, Section 2796d, Loan of Materials, Supplies, and Equipment for Research and Development Purposes]

• Intelligence Sharing and Exchange6

– U.S. Code, Title 10, Section 443, Imagery Intelligence and Geospatial Information: Support for Foreign Countries

– U.S. Code, Title 10, Section 454, Exchange of Mapping, Charting, and Geodetic Data with Foreign Countries, International Organizations, Nongovernmental Organizations, and Academic Institutions

Existing Mission-Based Authorities

• Humanitarian Assistance/Health

– U.S. Code, Title 10, Section 401, Humanitarian and Civic Assistance (HCA) Provided in Conjunction with Military Operations

– U.S. Code, Title 10, Section 402, Transportation of Humanitarian Relief Supplies to Foreign Countries

– U.S. Code, Title 10, Section 404, Foreign Disaster Assistance

– U.S. Code, Title 10, Section 407, Humanitarian Demining Assistance: Authority; Limitations

– U.S. Code, Title 10, Section 2557, Excess Nonlethal Supplies: Availability for Homeless Veteran Initiatives and Humanitarian Relief

– U.S. Code, Title 10, Section 2561, Humanitarian Assistance

– U.S. Code, Title 10, Section 182, Center for Excellence in Disaster Management and Humanitarian Assistance

– U.S. Code, Title 10, Section 2649, Civilian Passengers and Commercial Cargoes: Transportation on DoD Vessels, Vehicles, and Aircraft, as amended by Public Law 111-383, Section 352, Revision to Authorities to Transportation of Civilian Passengers and Commercial Cargoes by DoD When Space Unavailable on Commercial Lines

– Public Law 114-92, Section 1205, Monitoring and Evaluation of Overseas Humanitarian, Disaster, and Civic Aid Programs of the Department of Defense

– [Public Law 108-25, United States Leadership Against HIV/ AIDS, Tuberculosis and Malaria Act of 2003 (Title 22, for the President’s Emergency Program for AIDS Relief)]

• Defense Institution Building

– Public Law 112-81, Section 1081, Authority for Assignment of Civilian Employees of the Department of Defense as Advisers to Foreign Ministries of Defense, as amended by Public Law 113-66, Section1094

– Public Law 113-291, Section 1047, Inclusion of Regional Organizations in Authority for Assignment of Civilian Employees of DoD Advisers to Foreign Ministries of Defense

– Public Law 114-92, Section 1055, Authority to Provide Training and Support To Personnel of Foreign Ministries of Defense

– Public Law 113-291, Section 1206, Training of Security Forces and Associated Security Ministries of Foreign Countries to Promote Respect for the Rule of Law And Human Rights

• Counternarcotics

– U.S. Code, Title 10, Section 124, Detection and Monitoring of Illegal Drugs

– [U.S. Code, Title 22, Section 2291, International Narcotics Control]

– Public Law 101-510, Section 1004, Support for Counterdrug Activities, most recently amended by Public Law 113-291, Section 1012, Extension and Modification of DoD Authority to Provide Support for Counterdrug Activities and Other Governmental Agencies

– Public Law 105-85, Section 1033, Additional Support for Counterdrug Activities, amended by Public Law 111-84, Section 1014, Support for Counterdrug Activities of Certain Foreign Governments and Public Law 113-291, Section 1013, Additional Support for Counterdrug Activities of Certain Governments

– Public Law 108-375, Section 1021, Use of Funds for Unified Counterdrug and Counterterrorism Campaign in Colombia, most recently amended by Public Law 113-291, Section 1011, Unified Counterdrug & Counterterrorism Campaign in Colombia, Extension of Authority

– Public Law 108-136, Section 1022, Authority for Joint Task Forces to Provide Support to Law Enforcement Agencies Conducting Counterterrorism Activities, amended by Public Law 113-291, Section 1014, Extension of Joint Task Force to Support Law Enforcement Agencies

• Cooperative Threat Reduction and Nonproliferation

– Public Law 113-66, Section 1204, Authority to Conduct Activities to Enhance the Capability of Foreign Countries to Respond to Incidents Involving Weapons of Mass Destruction (to Respond to Syrian WMD), as amended by Public Law 114-92, Section 1273, Extension of Authorization to Conduct Activities to Enhance the Capability of Foreign Countries to Respond to Incidents Involving Weapons of Mass Destruction

– Public Law 113-291, Section 1321, Authority to Carry Out Department of Defense Cooperative Threat Reduction Program (No Expiration)

– [U.S. Code, Title 22, Section 5901, Demilitarization of Independent States of Former Soviet Union]

– [U.S. Code, Title 22, Section 5952, Authority for Programs to Facilitate Cooperative Threat Reduction]

– [U.S. Code, Title 22, Section 5853, Nonproliferation and Disarmament Activities in Independent States]

– [U.S. Code, Title 22, Section 5854, Nonproliferation and Disarmament Fund]

– [U.S. Code, Title 22, Section 2349bb-2a, International Nonproliferation Export Control Training]

– [U.S. Code, Title 22, Section 2301, Nonproliferation and Export Control Assistance: Authorization of Assistance]

– [U.S. Code, Title 50, Section 2333, International Border Security]

– [U.S. Code, Title 50, Section 2334, Interdiction of Weapons of Mass Destruction and Related Materials: Training Program]

– [U.S. Code, Title 50, Section 353, Matters Relating to the International Materials Protection, Control, and Accounting Program of the Department of Energy]

– [U.S. Code, Title 50, Section 2562a, Initiative for Proliferation Prevention Program]

– [U.S. Code, Title 50, Section 2569, Acceleration of Removal or Security of Fissile Materials, Radiological Materials, and Related Equipment at Vulnerable Sites Worldwide]]

– [U.S. Code, Title 50, Section 2912, Authority to Provide Assistance to Cooperative Countries]

– [U.S. Code, Title 50, Section 3711, Authority to Carry Out Department of Defense Cooperative Threat Reduction Program]

– [Public Law 111-84, Section 3101, National Nuclear Security Administration]

– [Public Law 104-201, Section 1501b, Specification of Cooperative Threat Reduction Programs, as amended by Public Law. 113-291, Section1301, Specification of Cooperative Threat Reduction Programs]

• Counterterrorism

– Public Law 108-375, Section 1208, Support of Special Operations to Combat Terrorism, as amended by Public Law 114-92, Section 1274, Modification of Authority for Support of Special Operations to Combat Terrorism7

– Public Law 113-291, Section 1510, Counterterrorism Partnership Fund

• Cooperative Ballistic Missile Defense

– U.S. Code, Title 10, Section 223, Ballistic Missile Defense Programs: Program Elements

– Public Law 105-85, Section 233, Cooperative Ballistic Missile Defense Program

– Public Law 105-261, Section 233, Limitation on Funding for Cooperative Ballistic Missile Defense Programs

• Maritime Security

– [U.S. Code, Title 6, Section 945, Container Security Initiative]

– Public Law 114-92, Section 1263, South China Sea Initiative

– [Public Law 107-295, Maritime Transportation Security Act of 2001]

• Cybersecurity

– U.S. Code, Title 10, Section 1051c, Multilateral, Bilateral, or Regional Cooperation Programs: Assignments to Improve Education and Training in Information Security, Established by Public Law 112-81, Section 951, Activities to Improve Multilateral, Bilateral, and Regional Cooperation Regarding Cybersecurity

Existing Partner-Based Authorities

– Public Law 110-181, Section 1513, Afghanistan Security Forces Fund, as amended by Public Law 113-291, Section 1532

– Public Law 111-383, Section 1216, Authority to Use Funds for Reintegration Activities in Afghanistan, as amended by Public Law 113-291, Section 1232, One-Year Extension

– Public Law 111-383, Section 1217, Authority to Establish a Program to Develop and Carry Out Infrastructure Projects in Afghanistan, Public Law 113-66, Section 1215, OneYear Extension and Modification of Authority for Program to Develop and Carry Out Infrastructure Projects in Afghanistan

– Public Law 112-239, Section 1222, Authority To Transfer Defense Articles And Provide Defense Services to the Military and Security Forces of Afghanistan; as amended by Public Law 113-291, Section 1231, as amended by Public Law 114-92, Section 1215, Extension of Authority to Transfer Defense Articles and Provide Defense Services to the Military and Security Forces of Afghanistan

– Public Law 109-163, Section 1202, Commanders’ Emergency Response, as amended by Public Law 114-92, Section 1211, Extension and Modification of Commanders’ Emergency Response

– Public Law 113-291, Section 1236, Authority to Provide Assistance to Counter the Islamic State of Iraq and the Levant (Known as Iraq Train and Equip Fund), as amended by Public Law 114-92, Section 1223, Modification of Authority to Pro- vide Assistance to Counter the Islamic State of Iraq and the Levant

– Public Law 112-81, Section 1215, Authority to Support Operations and Activities of the Office of Security Cooperation in Iraq, as amended by Public Law 113-291, Section 1237, Extension and Modification of Authority to Support Operations and Activities of the Office of Security Cooperation in Iraq

– Public Law 113-59, Section 1209, Authority to Provide Assistance to the Vetted Syrian Opposition, as amended by Public Law 114-92, Section 1225, Matters Relating to Support for the Vetted Syrian Opposition

– Public Law 113-66, Section 1207, Assistance to the Government of Jordan for Border Security Operations

– Public Law 113-272, Section 6, Ukraine Freedom Support Act of 2014, Increased Military Assistance for the Government of Ukraine

– Public Law 114-92, Section 1250, Ukraine Security Assistance Initiative

– Public Law 114-92, Section 1251, Training for Eastern European National Military Forces in the Course of Multilateral Exercises

– Public Law 113-291, Section 1535, European Reassurance Initiative (Transfer of Funding for Specific Activities)

– Public Law 111-172, Lord’s Resistance Army Disarmament and Northern Uganda Recovery Act of 2009 (amends Title 22)

– Public Law 113-66, Section 1206, United States Security and Assistance Strategies in Africa

– Public Law 113-66, Section 1208, Support for Foreign Forces Participating in Counter-LRA Operations

– Public Law 113-291, Section 1253, Military-to-Military Engagement with the Government of Burma

– Public Law 114-92, Section 1261, Strategy to Promote United States Interests in the Indo-Asia-Pacific Region

– Public Law 114-92, Section 1279, United States–Israel AntiTunnel Cooperation

– [U.S. Code, Title 22, Section 2271, Central America Democracy, Peace, and Development Initiative]

– [U.S. Code, Title 22, Section 2295, Support for Economic and Democratic Development of the Independent States of the Former Soviet Union]

– [U.S. Code, Title 22, Section 8422d, Authorization of Assistance: Exchange Program Between Military And Civilian Personnel of Pakistan and Certain Other Countries]

Existing SC Programs Introduced Through Appropriations Legislation or Other Means (27 Programs)

• Africa Deployment Assistance Partnership Team

• Africa Maritime Law Enforcement Partnership

• Africa Maritime Security Initiative

• Africa Military Education Program

• African Union-led International Support Mission in the Central African Republic

• Asia Maritime Security, Public Law 113-235, Section 70438

• Asia Pacific Regional Initiative, Public Law 111-118, Section 8094, amended by Public Law 113-235, Section 8087

• Caribbean Basin Security Initiative

• Central America Regional Security Initiative, Public Law 113-81

• Cooperative Biological Engagement Program

• Counterterrorism Preparedness Program

• Defense Environmental International Cooperation

• Defense Environmental International Cooperation (DEIC)

• Defense Health Programs, Public Law 113-235, Title III

• Defense Institution Reform Initiative

• Global Peace Operations Initiative, U.S. Code, Title 22, Section 2348

• International Counter Proliferation Program

• International Narcotics Control and Law Enforcement, U.S. Code, Title 22, Section 2291

• Missile Defense Agency

• Pacific Pathways Initiative

• Pandemic Response Program

• Partnership for Integrated Logistics Operations and Tactics

• Partnership for Regional East Africa Counterterrorism, Public Law 113-235, Section 7042

• President’s Emergency Program for AIDS Relief

• Proliferation Security Initiative

• Trans-Sahara Counterterrorism Partnership, Public Law 113-235, Section 7042

• Wales Initiative Fund (formerly Warsaw Initiative Fund)

### SC = AT: Lists

#### The lists of programs do NOT intend to exclude

GAO 17 U.S. Government Accountability Office, “Building Partner Capacity: Inventory of Department of Defense Security Cooperation and Department of State Security Assistance Efforts,” GAO-17-255R, 3-24-2017, <https://www.gao.gov/assets/gao-17-255r.pdf> /GoGreen!

House Armed Services Committee Report 114-102, accompanying the National Defense Authorization Act (NDAA) for Fiscal Year 2016 (H.R.1735), includes a provision for us to report on an inventory of DOD security cooperation programs intended to build partner security capabilities.3 DOD defines these programs as including DOD-administered State security assistance activities. According to DOD and State officials, no sanctioned U.S. government inventory of security cooperation and security assistance efforts exists.4 In this report, we provide a fiscal year 2016 inventory of DOD security cooperation and State security assistance efforts that may be used by the U.S. government to build foreign partners’ capacity to address security-related threats, including each effort’s name, description, associated legal authorities, and agency involvement as required by the associated authorities. This inventory includes efforts that have building partner capacity (BPC) to address security-related threats as a primary goal as well as efforts that may have BPC as an ancillary goal or effect.

**[FOOTNOTE 4]**

4 Various government and nongovernment entities have compiled lists of security cooperation efforts, including security assistance efforts administered by the Defense Security Cooperation Agency (DSCA), but none of the lists are sanctioned by the Office of the Under Secretary of Defense for Policy as both current and complete.

**[/FOOTNOTE 4]**

To develop an inventory of BPC security cooperation and security assistance efforts, we reviewed data, documents, and reports from DOD, State, RAND, and the Congressional Research Service (CRS); conducted searches of laws; and reviewed prior GAO reports. We interviewed DOD, State, RAND, and CRS officials about their research on, and listings of, security cooperation and security assistance efforts used for BPC and the efforts’ associated authorities; the methodologies they used; and the limitations they encountered. The efforts we selected for our inventory comprise what our sources referred to as “programs,” “subprograms,” “tools,” “funding accounts,” “authorities,” or “activities.” We used “efforts” as the most inclusive possible term, because the DOD and DOD-sponsored sources we consulted used undefined and varying terminology—for example, sometimes using terms such as “programs” and “activities” interchangeably and sometimes including funds and the names of authorities—and because these sources and DOD officials did not provide DOD-sanctioned definitions of the program and subprogram levels for security cooperation programs. We broadly defined building partner capacity to include efforts that were intended solely to build partner security capacity as well as those that could have a partial or ancillary effect on partner security capacity. For example, we included military exercises, training, and equipment as well as BPC-related personnel exchanges and military contacts. To focus our inventory on BPC efforts to address security-related threats, we excluded efforts whose sole purpose was humanitarian, health, disaster, or development assistance. To eliminate duplicative and expired efforts, we compared the data we obtained from these sources and reviewed associated authorities. We worked with DOD and State officials to resolve any discrepancies, to add additional efforts, and to group subefforts with overall efforts when the officials made such information available. See enclosure I for further information about our objective, scope, and methodology.

We conducted this performance audit from July 2015 to March 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### SC = Encompasses SA

#### “Security cooperation” encompasses “security assistance”

Cooper 21 R. Clarke Cooper, nonresident senior fellow with the Atlantic Council, former assistant secretary at the Department of State, and US Army combat veteran, “American security cooperation needs an ‘integrity check’,” New Atlanticist, The Atlantic Council, 9-3-2021, <https://www.atlanticcouncil.org/blogs/new-atlanticist/american-security-cooperation-needs-an-integrity-check/> /GoGreen!

Since World War II, US presidents have understood the tremendous value of security cooperation, prompting them to invest in alliances and partnerships. These are, after all, significant components of US national security, and as President Joe Biden recently noted, “America’s alliances are our greatest asset.”

Yet successful security cooperation—which includes arms transfers, training, security assistance, treaties, or agreements—is built around two key principles: trust and integrity of commitment, both of which are at risk today thanks to the haphazard US withdrawal from Afghanistan.

#### It encompasses “security assistance” – here is a diagram

Army 11 Headquarters, Department of the Army, “Foreign Internal Defense ,” Field Manual, FM 3-05.2 (FM 3-05.137/FM 3-05.202), September 2011, <https://info.publicintelligence.net/USArmy-ForeignInternalDefense.pdf> /GoGreen!

1-22. Security cooperation is 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 HN. Security cooperation, security assistance, and FID are closely related. DOD Directive 5132.03, DOD Policy and Responsibilities Relating to Security Cooperation, sets the policy and assigns responsibilities under the GEF, 10 USC, 22 USC, Executive Orders, Guidance for the Development of the Force, and policies relating to the administration of security cooperation, to include security assistance. Chairman of the Joint Chiefs of Staff (CJCS) Instruction 3141.01D, Management and Review of Campaign and Contingency Plans, states that “The Joint Staff Director for Strategic Plans and Policy, (DJ-5), is responsible for developing recommendations on strategy, strategic concepts, and political-military matters to include security cooperation, security assistance, and stability, security, transition, and reconstruction operations.”

1-23. The GEF consolidates and integrates DOD planning guidance into an overarching document that supersedes security cooperation guidance. The GEF transitions DOD planning from a contingency-centric approach to a strategy-centric approach with a broader theater emphasis on the regional ends as opposed to the means. The GEF places emphasis on steady-state activities to achieve end states and objectives that reflect the centrality of security cooperation activities listed in national strategy documents. The centerpiece of the GEF is the requirement for combatant commanders to develop joint campaigns that translate national and theater strategy into “joint” operational concepts to ensure steady-state activities and operations are integrated and synchronized for achieving and attaining the regional or functional end states specified in the GEF (JP 5-0, Joint Operation Planning). Joint operation planning includes all activities that must be accomplished to develop courses of action (COAs) for contingency or anticipated operations—the mobilization, deployment, employment, sustainment, redeployment, and demobilization of forces. Planners recommend and commanders define criteria for the termination of joint operations, and they link these criteria to the transition to stabilization and achievement of the end state (JP 3-05, Special Operations). The Joint Operation Planning and Execution System (JOPES) process and the joint operation planning process promote coherent planning across all levels of war and command echelons, easing the transition to crisis action planning. Joint planning integrates military actions with those of other instruments of national power (diplomatic, informational, military, and economic) and multinational partners in time, space, and purpose to achieve a specified end state. The military’s contribution to national strategic planning consists of joint strategic planning and its three subsets—

 Security cooperation planning.

 Joint operation planning.

 Force planning.

1-24. The GEF provides goals and activities for specific regions and provides the overarching framework for many FID-related activities. Security cooperation tools and resources are as follows:

 Multinational education.

 Multinational exercises.

 Multinational experimentation.

 Multinational training.

 Counternarcotics assistance.

 Counter/nonproliferation.

 Defense and military contracts.

 Defense support to public diplomacy.

 Facilities and infrastructure projects.

 Humanitarian assistance.

 Intelligence cooperation.

 Information sharing.

 International armaments cooperation.

 Security assistance.

 Other programs and activities.

1-25. Security assistance is a group of programs authorized by the FAA of 1961 (as amended), and the Arms Export Control Act (AECA) of 1976 (as amended), or other related statutes by which the United States provides defense articles, military training, and other defense-related services by grant, loan, credit, or cash sales in furtherance of national policies and objectives. Figure 1-3, page 1-12, depicts the relationship of security cooperation, security assistance, and FID. Security assistance is an element of security cooperation funded and authorized by DOS to be administered by DOD and DSCA.

1-26. Security assistance is a principal instrument in the U.S. FID effort. Like FID, security assistance is a broad, encompassing topic and includes efforts of civilian agencies, as well as those of the military. Security assistance provides defense materiel, military training, and other defense-related services by grant, loan, credit, or cash sales. The express goal of the USG security assistance is the expansion of U.S. national policies and objectives by enhancing the ability of lesser-developed nations to remain secure from primarily external, but also internal threats. The post-Cold War paradigm in security assistance is for nations supported by the program to have regional parity to maintain balances of power and internal stability. Overall, only a portion (in terms of both numbers of programs and budgets) of the security assistance effort encompasses FID, but that portion is a large part of the overall FID effort. The FAA of 1961 (as amended) and the AECA of 1976 (as amended) authorize the security assistance program. The program is under the supervision and general direction of the DOS. Figure 1-3 shows security assistance as a complete subset of security cooperation.

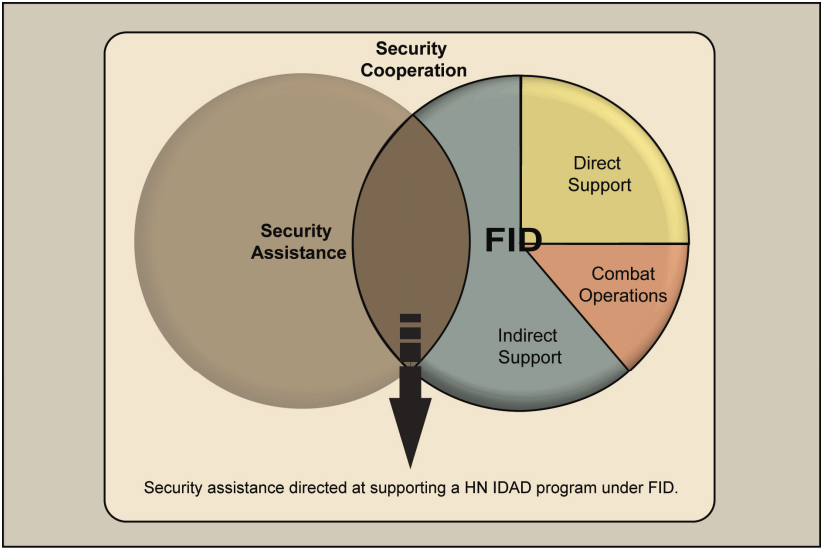


Figure 1-3. Relationship of security assistance and foreign internal defense

1-27. The military component of security assistance is implemented by DOD under the DSCA policy guidance and in conjunction with the DOS. DOD Manual 5105.38-M, Security Assistance Management Manual (SAMM), and Army Regulation (AR) 12-1, Security Assistance, Training, and Export Policy, describe the programs in detail. The major types of DOD Army security assistance programs and activities are—

 FMS.

Note: FMS are either funded by the customer or through a foreign-military financing arrangement, credit, or guaranteed loan.

 Foreign military construction services.

 FMS credit.

 Leases.

 Military Assistance Program.

 IMET.

 Drawdown.

The major types of DOS security assistance programs are—

 Economic support fund.

 Peacekeeping operations.

 International narcotics control and law enforcement.

 Nonproliferation, antiterrorism, demining, and related programs.

 Commercial export sales licensed under the AECA of 1976 (as amended).

1-28. The DOS provides financial support to international peacekeeping operations, a subset of peace operations, through a peacekeeping operations fund. These components, combined with the economic support fund and commercial sales licensed under the AECA, are security assistance tools that the United States can use to further its national interests and support the overall FID effort.

#### “Cooperation” encompasses “assistance”

Serafino 16 Nina M. Serafino, Specialist in International Security Affairs, Congressional Research Service, “Security Assistance and Cooperation: Shared Responsibility of the Departments of State and Defense,” CRS Report for Congress, R44444, 5-26-2016, <https://sgp.fas.org/crs/natsec/R44444.pdf> /GoGreen!

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

### SC = Includes Treaties

#### “Security cooperation” includes treaties

Cooper 21 R. Clarke Cooper, nonresident senior fellow with the Atlantic Council, former assistant secretary at the Department of State, and US Army combat veteran, “American security cooperation needs an ‘integrity check’,” New Atlanticist, The Atlantic Council, 9-3-2021, <https://www.atlanticcouncil.org/blogs/new-atlanticist/american-security-cooperation-needs-an-integrity-check/> /GoGreen!

Since World War II, US presidents have understood the tremendous value of security cooperation, prompting them to invest in alliances and partnerships. These are, after all, significant components of US national security, and as President Joe Biden recently noted, “America’s alliances are our greatest asset.”

Yet successful security cooperation—which includes arms transfers, training, security assistance, treaties, or agreements—is built around two key principles: trust and integrity of commitment, both of which are at risk today thanks to the haphazard US withdrawal from Afghanistan.

### SC = Peacetime

#### “Security cooperation” is only peacetime activities

Szayna 4 Thomas S. Szayna, senior political scientist and former director of RAND's Defense and Political Sciences Department at RAND, MA international relations, Claremont Graduate School; Adam Grissom, senior political scientist at RAND; Jefferson P. Marquis, senior political scientist and former manager of the International and Security Policy Group at RAND; Thomas-Durell Young, Brian Rosen, and Yuna Huh, research assistants at RAND; website description of the Monograph: “U.S. Army Security Cooperation Toward Improved Planning and Management,” RAND Corporation, 2004, https://www.rand.org/pubs/monographs/MG165.html /GoGreen!

In the realm of security cooperation — peacetime activities undertaken by the U.S. armed services with other armed forces and countries — the U.S. Army’s current planning process is exceedingly complex, involving a multitude of actors, problematic incentive systems, an incomplete information exchange, and a lack of effective measures of effectiveness. Even some of the stakeholders understand only certain aspects of the process and/or have only partial visibility into it. The drivers and demanders of peacetime cooperative activities undertaken by the U.S. Army with other countries and militaries (Army International Affairs, or AIA) tend to have an incomplete understanding of the resourcing problems and the tradeoffs involved in making AIA choices. In turn, Headquarters, Department of the Army (HQDA) — the supplier of AIA resources — has an incomplete understanding of the benefits of AIA, and the Army’s own resourcing tools are not easily amenable to an in-depth understanding of the resources it commits to AIA. The demand for AIA is fundamentally predicated on the amount of AIA supply provided by HQDA, as opposed to the latter being the product of policy, strategy, and resource guidance. Indeed, incrementalism and continuity, rather than policy and strategy, are the principal driving agents in the development of AIA resource priorities. 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 to have flexibility and adaptability in security cooperation, and to seize opportunities that may be short-lived, has made reform of the security cooperation planning and implementation process essential.

### SC = Unlimiting

#### It includes any security-related activity for any purpose

Mazarr 22 Michael J. Mazarr, senior political scientist at the RAND Corporation, former professor and associate dean of academics at the U.S. National War College, former special assistant to the Chairman of the Joint Chiefs of Staff and senior defense aide on Capitol Hill, PhD public policy, University of Maryland, MA security studies, Georgetown University; with Nathan Beauchamp-Mustafaga, Jonah Blank, Samuel Charap, Michael S. Chase, Beth Grill, Derek Grossman, Dara Massicot, Jennifer D. P. Moroney, Lyle J. Morris, Alexander Noyes, Stephanie Pezard, Ashley L. Rhoades, Alice Shih, Mark Stalczynski, Melissa Shotak, David E. Thaler, and Dori Walker, all at the RAND Corporation; “Security Cooperation in a Strategic Competition,” RRA650-1, RAND Corporation, 2022, https://www.rand.org/content/dam/rand/pubs/research\_reports/RRA600/RRA650-1/RAND\_RRA650-1.pdf /GoGreen!

Definitions and Scope

To pursue this analysis, we first had to define the bounds of what we would assess. Official U.S. government definitions of security cooperation are very broad. One definition from the Defense Security Cooperation Agency states that security cooperation

comprises all activities undertaken by the Department of Defense (DoD) 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 (SA) programs, that build defense and security relationships; promote specific U.S. security interests, including all international armaments cooperation activities and SA 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.3

Such definitions clearly include almost any security-related activity for any purpose. To scope the focus of the study, we reviewed official state documents and strategies and the literature on security cooperation to identify 11 types of activities:

1. military aid, which includes funding through the Foreign Military Financing (FMF) program, the Excess Defense Articles program, and other grants and loans

2. arms sales and transfers,4 such as U.S. arms sales through the Foreign Military Sales (FMS) and Direct Commercial Sales (DCS) programs

3. military capacity-building, such as U.S. activities under Section 1206 of the annual National Defense Authorization Act and Sections and 2282 and 333 of U.S. Code, Title 10 (the train and equip authority)

4. education and training, including international military education and training (IMET), professional military education (PME), and regional centers

5. personnel exchanges, such as U.S. activities under the Military Personnel Exchange Program and the State Partnership Program

6. military exercises, both bilateral and multilateral and those that involve foreign partners

7. access-related agreements, such as status of forces agreements (SOFAs) and agreements related to base access and information-sharing

8. armament-related agreements, such as those for co-development of systems and for research, development, test, and evaluation activities

9. sustainment of donor-nation equipment by the donor, the partner, or third parties

10. institutional capacity–building to strengthen the partner institutions that support security services

11. humanitarian assistance and disaster relief (HA/DR), which offers support for efforts to relieve suffering.

These categories offered a consistent template for gathering data across our various study components. A major challenge was that reliable and consistent data on each of the 11 categories were not available for all the competitors—not even for the United States. Especially at the unclassified level, there is simply no comprehensive roster of security cooperation activities by the United States, and neither China nor Russia publishes inclusive data sets of its programs. An additional challenge was that, in some cases, the different countries define the categories somewhat differently, so we could not develop data on entirely comparable sets of security cooperation activities.

### SC = Imprecise

#### There is no official nor precise meaning

Lenze 17 Major Anthony V. Lenze, Judge Advocate, United States Army, assigned as Associate Professor, Contract and Fiscal Law Department, The Judge Advocate General’s Legal Center and School, LLM Contract and Fiscal Law Specialty, JD University of Dayton School of Law, “Traditional Combatant Commander Activities: Acknowledging And Analyzing Combatant Commanders' Authority To Interact With Foreign Militaries,” Military Law Review, 225(3), 2017, <https://tjaglcspublic.army.mil/traditional-combatant-commander-activities> /GoGreen!

C. Evolving Terminology for Peacetime Engagements

Military operations of any scale require precise language to communicate information efficiently.[82] Common sense dictates that terms and concepts applicable to a joint environment are standard and well-known between the services in order to foster efficient communication. Confusion and general misunderstandings result when military terms are used improperly or when their evolving definitions outpace doctrine. The DoD recognizes the importance of standardizing its terminology by instructing the military departments to identify, delete, modify, and incorporate standard definitions.[83] Nonetheless, the misuse and misunderstanding of key terms within security cooperation is pervasive.[84]

Security cooperation is now a term that encompasses “any program, activity (including an exercise), or interaction of the [DoD] with the security establishment of a foreign country to achieve a [strategic] purpose . . . [.]”[85] The DoD assigns such strategic importance to security cooperation that, with the help of Congress, it created the Defense Security Cooperation Agency (DSCA) to direct and guide the execution of all DoD security cooperation programs.[86] The DSCA helps administer security cooperation, now a multi-billion dollar industry within the annual Defense appropriation.[87] With all the money and strategic brainpower pouring into security cooperation, newcomers to the field may presume fully-vetted, standardized terms and definitions. However, this could not be further from reality.

Members of the DoD frequently mischaracterize security cooperation or outright disagree with respect to its doctrinal definition.[88] For example, the 2010 National Security Strategy (NSS) used the term security cooperation to include rebuilding damaged infrastructure and establishing conditions necessary to end military operations in Afghanistan.[89] With the exception of combat operations, it would seem that almost any military action could fit under the 2010 NSS’s version of security cooperation.[90] Nevertheless, if security cooperation is in fact an evolving term in the DoD, making sense of the authorities under which the military executes security cooperation events is even more troublesome.[91] This is especially true when authorities are based upon a set of specific terms. Hence, with doctrine lagging behind and accompanied by undefined terminology, no authority in the realm of security cooperation is more ambiguous than the authority for military-to-military contacts.[92] With ambiguity surrounding military-to-military contacts, planners and lawyers should defer to commanders to decide the best way to employ these strategic interaction events. The fate of 10 U.S.C. §168 and its ultimate repeal is illustrative of this point.

## \*\*With\*\*

### With = Participation

#### “With” requires participation

Merriam-Webster.com Dictionary, No Date, “With,” <https://www.merriam-webster.com/dictionary/with> /GoGreen!

Definition of with

1 a: in opposition to : AGAINST

had a fight with his brother

b: so as to be separated or detached from

broke with her family

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

#### “With” requires a direct connection to NATO

Gregory 15 Gregory, Circuit Judge, with Harris, Circuit Judge, and Hamilton, Senior Circuit Judge, delivering the Opinon of the United States Court of Appeals, Fourth Circuit, in United States of America v. Bollinger, 798 F.3d 201, No. 14–4086, decided 8-19-2015, <https://caselaw.findlaw.com/us-4th-circuit/1710959.html> /GoGreen!

The second textual limitation—the fact that commerce must be “with foreign Nations”—requires a nexus between the United States and a foreign country. See Goodno, supra, at 1202 (observing that dictionaries contemporary to the Constitutional Convention defined “with” as “noting the means” or “noting connection” (internal quotation marks omitted)). The use of the word “with” in the foreign clause, instead of the word “among” as used in the interstate clause, merely suggests the obvious: Congress cannot regulate commerce “among” foreign nations because other nations do not submit their sovereignty to our regulatory powers.

### With = Whole

#### “With” references the whole

OED 89 Oxford English Dictionary, Second Edition, “with, prep., (adv., conj.),” 1989, <https://www.oed.com/oed2/286283> /GoGreen!

24. a. Accompanied by; having as an addition; having in one's company. Often connecting the two ns. or prons.: = ‘and in addition’, ‘and besides’, or simply ‘and’. Occas. in compound place-names: = cum. †with the mare (Sc. obs.): = and more, and something over: see more B. 4d.

c1200 Ormin 14792 Faraon wiþþ all hiss ferd comm affterr~warrd. a1300 E.E. Psalter ciii. 27 [civ. 25] Bestes smaller with þe mare. 1370–80 Visions St. Paul 247 in O.E. Misc. 230 Þer as was wepyng wiþ muche vnseeþe. c1380 Wyclif Sel. Wks. I. 205 Þe Sixte, wiþ Clementyns, done myche harm to Goddis lawe, and enfeblen bileve. 1432–50 tr. Higden (Rolls) I. 367 The water was so habundante that hit pereschede þe woman with here childe. 1494 Acta Audit. (1839) 205/2 Alexander‥tuk fra him out of his maling vxx of ȝowis with the may. 1502 Reg. Privy Seal Scot. I. 112/2 Half a ȝere, with the mare, befor the date hereof. 1563 T. Wilson Logic 54 Beauuis with Alexander are comprehended vnder manne, as their kinde and speciall. a1706 Evelyn Hist. Relig. (1850) I. 410 The permitting female slaves to be corrupted by their masters, with the like. 1719 De Foe Crusoe i. (Globe) 296 We readily agreed to follow him, as did also twelve other Gentlemen, with their Servants. 1859 Geo. Eliot A. Bede xviii, These grey pews, with the buff-washed walls, gave a very pleasing tone to this shabby interior. 1911 Act 1 & 2 Geo. V c. 6 §1 Imprisonment with or without hard labour.

in attrib. phr. 1898 Westm. Gaz. 17 May 8/1 To inaugurate some with-profit scheme.

b. Comprising in the whole number or total; including.

c1250 Gen. & Ex. 86 Til ihesus crist fro helle nam His quemed wid eue and adam. 1836 Dickens Sk. Boz, Tuggs's at Ramsgate, ‘What's the terms?’‥‘Five guineas a week, ma'am, with attendance.’ Mod. ‘How many were there in the party?’ ‘I should say about twenty, with the children.’

c. Accompanied by (favourable wind, weather, etc.); having the advantage of.

1536 in Sel. Pleas Crt. Admiralty (1894) I. 58 Goyng from the porte of London at a full see with a full wynde. 1600 Fairfax Tasso xv. xlv, This evening (if you make good speed) To that hils foote with day-light might you passe. 1686 tr. Chardin's Trav. Persia 75 We put again to Sea with fair Weather.

### With = Association

#### “With” only requires association

Merriam-Webster.com Dictionary, No Date, “With,” <https://www.merriam-webster.com/dictionary/with> /GoGreen!

Definition of with

1 a: in opposition to : AGAINST

had a fight with his brother

b: so as to be separated or detached from

broke with her family

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

## \*\*NATO\*\*

### NATO = Institution

#### “NATO” is exclusively its institutional organizations, NOT its member states

Johnston 19 Seth A. Johnston, Fellow of the Project on Europe and the Transatlantic Relationship at the Belfer Center for Science and International Affairs at the Harvard Kennedy School, former chief of international security cooperation for intelligence at the U.S. Army Europe, former Task Force Commander in NATO’s Resolute Support mission in Afghanistan, PhD international relations, MA comparative politics, Oxford University, “NATO’s Lessons from Afghanistan,” Parameters, The US Army War College Quarterly, Autumn 2019, <https://www.belfercenter.org/publication/natos-lessons-afghanistan> /GoGreen!

Today’s North Atlantic Treaty Organization is no Cold War alliance. Few developments illustrate NATO’s capacity for adaptation more than its 21st century role in Afghanistan.1 NATO allies invoked the collective defense provision—Article 5—of its founding treaty for the first and only time just one day after the September 11, 2001, terrorist attacks.2 Few present at the signing of the North Atlantic Treaty in 1949 could have imagined it would be invoked by European countries and Canada seeking to support the United States or that the Alliance’s largest and longest military operation would occur in central Asia. Fewer still might have predicted NATO allies would agree to the mission so soon after the US-led invasion of Iraq in 2003, a crisis the then US ambassador to NATO described as a “near death experience” for the Alliance.3 Yet NATO assumed control of the International Security Assistance Force (ISAF) in 2003 and has remained in Afghanistan for the better part of two decades.

As the United States has begun negotiating a political settlement to the Afghanistan conflict with a view to the eventual withdrawal of international forces there, an assessment from the overall NATO perspective will complement the national initiatives.4 This effort will also support ongoing efforts to reassess NATO’s priorities in the face of other security challenges.5

Although NATO has undertaken formal studies of its activities in Afghanistan, recent scholarship by Heidi Hardt, Jörg Noll, and Sebastiaan Rietjens cast doubt on the efficacy of formal lessons learned processes in international organizations generally and in NATO specifically.6 This article offers an external and an unofficial assessment of the Alliance’s efforts and provides initial suppositions. In sum, NATO’s impact in Afghanistan may not have been enough to mitigate national shortcomings or to achieve victory on its own, but it was significant and positive. The Alliance’s adaptability and highly institutionalized character are at the root of these contributions.

Moreover, the mission in Afghanistan affected NATO in ways that promoted allied political cohesion, organizational effectiveness, and military interoperability. The chief implications of these findings are that while national political leadership and strategy formulation remain paramount in war, NATO remains a proven and effective instrument of organizing and implementing coordinated multinational efforts. The most important lesson learned from NATO in Afghanistan may therefore be about NATO’s more general value to the United States and other members.

NATO: Alliance and International Organization

In contrast to national assessments, this analysis focuses on the formal institutions of the Alliance. NATO is unique among alliances in that it is not only a treaty-based agreement among member states, but also an international organization—and a highly institutionalized one at that. Since its early years, NATO has been comprised of a permanently staffed formal political headquarters supported by a network of military and civilian organizations. Particularly noteworthy is NATO’s integrated joint multinational military structure, a unique innovation without equivalent among other alliances or international organizations.

This integration, capped by the Supreme Headquarters Allied Powers Europe (SHAPE) in Belgium, extends through various echelons and included the ISAF headquarters and other NATO structures in Afghanistan.7 Thus, for this article, “NATO” refers to the various formal institutions and not the group of allied countries. Likewise, the focus is on the collaborative conduct and not that of the United States, other allies or partners, the government of Afghanistan, or other regional actors. Nor does the article address the efficacy of counterinsurgency warfare.

International relations theory would emphasize the formal institutions of NATO have very weak independent power and agency.

But although NATO consists of such formal institutions, the Alliance remains an alliance among states. All decisions at NATO Headquarters are taken by consensus among member states (which will soon number 30). Politics among those countries happens, and the relative influence of individual member states is closely associated with their power. NATO’s institutions matter chiefly because of how they facilitate and structure the relations among the states. Like any other international organization, states may derive value from such institutions because they provide benefits such as establishing predictable structures and routines for decision-making; increasing information sharing; improving efficiency and reducing transaction costs; and defining roles, status, and identity. The most important questions for NATO in the context of assessing its role in the Afghanistan conflict is whether and how well it has performed these functions.

#### That excludes bilateral cooperation

Tsuruoka 10 Michito Tsuruoka, Senior Research Fellow, Regional Studies Department, National Institute for Defense Studies, “Japan–Europe Security Cooperation: How to “Use” NATO and the EU,” English translation from the original Japanese version with the same title published in Boei Kenkyusho Kiyo, 13(1), October 2010, <http://www.nids.mod.go.jp/english/publication/kiyo/pdf/2011/bulletin_e2011_3.pdf> /GoGreen!

The first section will examine the value of NATO as a security partner for Japan from the following four perspectives: 1) a political partner; 2) an operational partner; 3) as a means of cooperation with the US; and 4) a multilateral school. The second section will use a similar method to examine the significance of security cooperation with the EU, viewing it from the following three perspectives: 1) a political partner; 2) an operational partner; and 3) as a “non-American” partner.

There are two things to be mentioned before going into substantial discussions below. First, from the perspective of “mutually using the other,” it would be necessary to examine the value of Japan as a partner for Europe. However, it goes beyond the scope of this article, which is focused on the Japanese side of the story. That said, it needs to be mentioned that it is necessary for Japan to be prepared and willing to be used by Europe as long as Japan wants to use Europe and that letting Europeans understand the value of Japan as a partner is in Japan’s interest.

Second, this article focuses on cooperation with NATO and the EU; however, that by no means implies that security cooperation with individual countries such as the UK, France, and Germany is insignificant. For a long time, the majority of dialogue and cooperation between Japan and Europe in the areas of foreign policy, security, and defense have been conducted under bilateral frameworks with major European countries. As a result, the accumulation of knowledge and experience in Japan with regard to cooperation with NATO and the EU remain shallow compared to bilateral relations with individual countries. Against this backdrop, this article will focus on NATO and the EU.

1. NATO’s transformation and the development of Japan–NATO cooperation: How to use NATO9

(1) NATO as a political partner

From a Japanese perspective, NATO can be seen, first, as a political partner, meaning a partner with which to have political dialogue. When visiting NTO and addressing the North Atlantic Council (NAC), both Foreign Minister Taro Aso (May 2006) and Prime Minister Shinzo Abe (January 2007) spent a great deal of time talking about the security environment in Asia, including the abduction and other issues of North Korea as well as China’s military buildup.10 Abe directly requested the understanding and support of NATO members concerning Japan’s stance on the North Korean abduction and other issues. This illustrates the fact that, for Japan, dialogue with NATO is a new venue to acquire understanding and support from Europe for its position on problems related to politics and security in Asia.

With regard to political and security dialogue between Japan and Europe, in addition to traditional bilateral frameworks between Japan and major European countries like the UK, France and Germany, there is now a channel between Japan and the EU (to be discussed later). Dialogue with NATO provides a new venue for discussion. In addition to Prime Minister and ministeriallevel visits to NATO (meetings with the NATO Secretary General and the NAC) and dialogue with the NATO Secretary General during his visits to Japan, at the officials’ level there is the annual Japan –NATO High-Level Consultation. Moreover, in addition to dialogue with NATO officials —the International Staff and the International Military Staff— ad hoc meetings are held from time to time between Japanese officials and representatives of the member states’ delegations to NATO in the context of the Political Committees (PC), Policy Cooperation Groups (PCG), and other frameworks depending on the topics to be discussed, such as the security situation in East Asia, Central Asia, and missile defense. In recent years, the NAC and the Secretary General have issued statements condemning North Korea’s nuclear and missile tests, which Japan appreciates a lot, showing one aspect of NATO’s value as a political partner.11 NATO is a forum suitable for Japan to discuss Asian security and other security-related issues mainly because many security experts, both civilian and military, are assembled and deal with various security problems on a daily basis.

Japan is not alone in seeing NATO as a political partner. NATO is often described as the strongest and the most successful military alliance in history and encompassing all major powers from North America and Europe. Thus, NATO inevitably carries a unique weight in international security and world politics. That weight may even be heavier than NATO itself is aware.12 In fact, demand from non-members to conduct political dialogue with NATO has been increasing. At the same time, countries that do not necessarily have positive perceptions of NATO or that do not share fundamental values with the Alliance often see the strengthening of relations between NATO and non-members with concern and suspicion. For instance, Russia and China often react with vigilance when Japan and NATO cooperate. This partly comes from their genuine concerns over the strengthening of concrete military cooperation between Japan and NATO, but it also has to do with their recognition of NATO’s political weight. Moreover, these countries view Japan–EU and Japan –NATO cooperation differently. Put simply, they react more negatively to the latter than the former. This fact demonstrates that NATO carries a distinctive profile as a political actor that differs from that of the EU.

Nevertheless, it goes without saying that NATO is a military alliance based on collective defense. NATO is not supposed to be aiming to expand its political and diplomatic influence as a political actor in international relations. This is how NATO differs from the EU, which has been trying to construct a common foreign, security, and defense policy. At the same time, however, NATO is not an alliance that concerns military affairs alone. NATO has long labeled itself a politicalmilitary alliance, and even its founding North Atlantic Treaty emphasizes political and economic cooperation among the Allies (Parties).13

(2) NATO as an operational partner

NATO today can be characterized as an “alliance in action.” In addition to large-scale operations in Kosovo (KFOR) and Afghanistan (ISAF), NATO is currently conducting an antiterrorism operation in the Mediterranean (OAE), antipiracy measures off the coast of Somalia, and a training mission in Iraq (NTM-I). Furthermore, from March to October 2011, NATO conducted an operation over Libya. Many non-NATO countries, as well as NATO Allies, are contributing troops to those operations and missions. In the case of ISAF, for instance, in addition to all of the 28 NATO countries, a total of around 20 non-members are participating as Non-NATO Troop Contributing Nations (NNTCNs). The presence of non-member contributors has grown considerably in the context of ISAF over the past several years.14 In the past, Australia and New Zealand had contributed troops to NATO-led operations in the former Yugoslavia, such as in Bosnia in the 1990s. However, the current level of non-members’ involvement in NATO-led operations is truly a new phenomenon. One reason behind this is the expansion of NATO’s operational commitments beyond the capacity of its members. In other words, it is impossible for the Alliance to conduct all the operations alone as a self-sufficient entity. At the same time, as most former communist countries in Europe have already become members of the Alliance, the weight of the countries outside the Euro–Atlantic region that used to be referred to as contact countries —Japan, Australia, Republic of Korea, New Zealand, etc.— is increasing instead. From NATO’s point of view, cooperation with new partners is in essence an “import of support” 15 and NATO naturally welcomes countries with the will and capabilities to contribute to the operations that it leads.

On the other hand, operational cooperation with NATO is often an effective means for nonmembers in terms of enhancing their efforts in international peace and security, not least in the context of international peace operations. Most of these operations today are conducted multilaterally. What is more, looking at global trends in international peace operations, it is clear that the weight of United Nations-led peacekeeping operations (PKO) has been relatively decreasing in recent years. In its place is a growing presence of peace operations led by regional organizations such as NATO, the EU, and the African Union (AU).16 While the activities of the AU are limited to intra-regional operations on the African continent, NATO and EU operations (other than territorial defense mission by NATO) are basically assumed to take place outside of their member states.17

As a result of the expanding operational engagements of NATO and the EU outside of Europe, other countries including Japan often find themselves in a situation where they need to cooperate with NATO and the EU whether they like it or not. When the ISAF operation in Afghanistan was launched at the end of 2001, it was commanded on a half-year rotation by countries with the will and capacity to command. However, due to cost and complexities related to the establishment and maintenance of the headquarters, NATO took over command in August 2003.18 Furthermore, ISAF later expanded its area of responsibility and came to cover the whole country. As a result, those who were deploying troops in Afghanistan had no choice but to cooperate with NATO as long as they wanted to continue their engagement. Seen from a different angle, it can also be said that countries can use NATO as a framework through which to participate in international efforts. Without such a framework, small to medium-sized countries may not able to make contributions.

Nevertheless, there are various ways to pursue operational cooperation with NATO. Potential contributors could complete official procedures, including concluding a participation agreement with NATO, become a troop-contributing country, and then deploy troops under the ISAF command, or they could cooperate locally via individual arrangements made with other countries already active in the area (without having official relations with NATO).19 Theoretically, at least, it is even possible for those countries to conduct a completely independent operation on its own in Afghanistan. However, regardless of how self-contained the activities are, the necessity to coordinate on issues such as the division of roles with ISAF will of course come up, and it is practically impossible to assume that the countries that endeavor to send troops to Afghanistan could conduct its own activities without relying on the capabilities and various infrastructure of ISAF at all, including in extremis support and security information. Furthermore, even assuming it is feasible, it will not be the most efficient way to use the limited amount of resources available. In sum, it is not only in NATO’s interest, but also non-NATO troop contributors’ interest to cooperate with each other. Former NATO Secretary General Jaap de Hoop Scheffer succinctly pointed out that, “NATO is a framework that they [nonmembers] can use to make their own efforts more effective.” 20 Furthermore, if a country completes official procedures with NATO and takes position as an official ISAF troop contributing nation, they can participate in various levels of ISAF meetings, receive more information, and get more involved in policy-shaping.

For a number of constitutional, legal and domestic political reasons, it is very difficult for the SDF to operate under the command of NATO.21 Short of coming under NATO’s command, however, various options are conceivable for the SDF to work with NATO in the areas where it operates. At the same time, operational cooperation with NATO does not need to be limited to the military domain alone. In Afghanistan, since 2007 Japan has provided humanitarian and reconstruction assistance in cooperation with PRTs, and since 2009 has dispatched development experts (civilian assistance teams) to the Lithuania-led PRT in Chaghcharan, Ghor province.22 Assistance from Japan was of great value for Lithuania, a country which does not have much funding and experience in development assistance. From a Japanese point of view, the importance of this scheme comes from the fact that it enables Japan to expand the geographical reach of its development assistance beyond those areas where an Embassy or the Japanese aid agency (JICA) are already present. Without the cooperation of the Lithuania-led PRT, it is easy to imagine that Japan would not have been able to operate in a remote province like Ghor. Moreover, Japan and NATO concluded a security agreement in June 2010, which allows Japan and NATO to share classified information with each other.23 This is expected to be a foundation for deeper dialogue and practical cooperation between Japan and NATO.24

(3) NATO as another venue of cooperation with the United States

The comparative advantage that cooperation with NATO offers Japan, as opposed to bilateral cooperation with major European countries and with the EU, is the fact that the US, Japan’s only formal ally, is part of NATO. For all NATO Allies excluding the US, what NATO means is essentially an alliance with the US. When NATO was founded within the context of the Cold War, it was primarily seen as a means to secure US commitment to defend Western Europe. Moreover, for former communist nations that joined NATO after the end of the Cold War, the NATO membership was synonymous with receiving a commitment from the US for collective defense, exemplified by Article 5 of the North Atlantic Treaty. For those reasons, NATO is usually conceived in the context of policy toward the US in many countries.

### NATO = Members

#### “NATO” refers to member countries – the “North Atlantic Council” is the institution

Masters 22 Jonathan Masters, Deputy Managing Editor, Council on Foreign Relations, MA social theory, the New School, BA political science, Emory University, “What Is NATO?” Council on Foreign Relations Backgrounder, last updated 5-4-2022, <https://www.cfr.org/backgrounder/what-nato> /GoGreen!

Established during the Cold War, NATO is a transatlantic security alliance composed of thirty member countries, including the United States.

NATO has focused on deterring Russian aggression in recent years, but it has also conducted security operations in Afghanistan, Iraq, Kosovo, and Somalia.

Amid Russia’s 2022 offensive in Ukraine, many NATO allies are providing Kyiv with extraordinary quantities of military supplies, and the alliance could expand to include Finland and Sweden.

Introduction

Founded in 1949 as a bulwark against Soviet aggression, the North Atlantic Treaty Organization (NATO) remains the pillar of U.S.-Europe military cooperation. An expanding bloc of NATO allies has taken on a broad range of missions since the close of the Cold War, many well beyond the Euro-Atlantic region, in countries such as Afghanistan and Libya.

Russia’s unprovoked invasion of Ukraine, a nonmember, in early 2022 has shaken Europe’s security architecture and prompted a major reevaluation of NATO members’ foreign policies and defense commitments. The threat from Russia has generated the greatest tensions with the alliance in the post-Cold War era. It is driving up defense spending and pushing some longtime NATO partners, namely Finland and Sweden, to seek formal membership, which would mark another historic expansion of the alliance.

A Post–Cold War Pivot

After the demise of the Soviet Union in 1991, Western leaders intensely debated the direction of the transatlantic alliance. Some in the Bill Clinton administration initially opposed expanding NATO, wary it would upset relations with President Boris Yeltsin’s fragile government in Russia and complicate other U.S. foreign policy objectives, such as nuclear arms control. Others favored expansion as a way to extend NATO’s security umbrella to the east and consolidate democratic gains in the former Soviet bloc.

European members were also split on the issue. The United Kingdom feared NATO’s expansion would dilute the alliance, while France believed it would give NATO (and the United States) too much influence. Paris hoped to integrate former Soviet states via European institutions.

As a first step, Clinton chose to develop a new NATO initiative called the Partnership for Peace (PfP), which would be open to all former Warsaw Pact members, as well as non-European countries. Seeing this nonmembership framework as a means to allay some of Russia’s concerns about alliance expansion, NATO launched PfP at its annual summit in 1994. More than two dozen countries, including Georgia, Russia, and Ukraine, joined in the following months.

However, Clinton soon began speaking publicly [PDF] about expanding NATO’s membership, saying in the Czech Republic just days after the launch of PfP that “the question is no longer whether NATO will take on new members but when and how.” Yeltsin warned Western leaders at a conference later that year that “Europe, even before it has managed to shrug off the legacy of the Cold War, is risking encumbering itself with a cold peace.”

Beyond Collective Defense

Many U.S. officials felt that a post–Cold War vision for NATO needed to look beyond its core defense commitments—Article V of the North Atlantic Treaty states that “an armed attack against one or more [member states] in Europe or North America shall be considered an attack against them all”—and focus on confronting challenges outside its membership. “The common denominator of all the new security problems in Europe is that they all lie beyond NATO’s current borders,” said influential U.S. Senator Richard Lugar in a 1993 speech.

The breakup of Yugoslavia in the early 1990s and the onset of ethnic conflict tested the alliance on this point almost immediately. What began as a mission to impose a UN-sanctioned no-fly zone over Bosnia and Herzegovina evolved into a bombing campaign on Bosnian Serb forces that many military analysts say was essential to ending the conflict. In April 1994, during Operation Deny Flight, NATO conducted its first combat operations in its forty-year history, shooting down four Bosnian Serb aircraft.

NATO's Structure

Headquartered in Brussels, NATO is a consensus-based alliance in which decisions must be unanimous. However, individual states or subgroups of allies can initiate action outside NATO’s auspices. For instance, the United States, France, and the United Kingdom began policing a UN-sanctioned no-fly zone in Libya in early 2011 and, within days, transferred command of the operation to NATO once Turkey’s concerns had been allayed. Member states are not required to participate in every NATO operation; Germany and Poland declined to contribute directly to the campaign in Libya.

NATO’s military structure comprises two strategic commands: the Supreme Headquarters Allied Powers Europe, located near Mons, Belgium, and the Allied Command Transformation, located in Norfolk, Virginia. The supreme allied commander Europe oversees all NATO military operations and is always a U.S. flag or general officer; U.S. Air Force General Tod D. Wolters currently holds this position. Although the alliance has an integrated command, most forces remain under their respective national authorities until NATO operations commence.

NATO’s secretary-general, Norwegian politician Jens Stoltenberg, is serving a second four-year term as the bloc’s chief administrator and international envoy. However, NATO leaders extended his service for one additional year (until September 2023) amid the war in Ukraine. The alliance’s principal political body is the North Atlantic Council, which is composed of high-level delegates from each member state.

#### It’s a group of countries

Jacobson 12 Alice Jacobson, member of Task Force 2012, The Henry M. Jackson School of International Studies, University of Washington, “Human Rights Watch & the Arab Spring,” Chapter 13.3, *Can NATO React to the Arab Spring? Democracy, Human Rights, & the Rule of Law*, 2-27-2012, <https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/19668/J+Jones+Task+Force+Final+Report.pdf?sequence=1> /GoGreen!

Human rights violations as outlined in broad terms in the 2011 World Report, and pressure from organizations such as Human Rights Watch most certainly add to the international pressure on NATO to intervene. This has led to the discovery that military power may not be a useful instrument in dealing with specific country by country issues in the region. NATO is a group of democratic countries who in turn each have an individual agenda when dealing in the Middle East and North Africa, and are tied to the region by their oil dependency; but protection of human rights as justification for military intervention must be across the board or not at all. Military intervention in Libya was completed swiftly based largely on the economic incentives of NATO’s democratic powers, whereas in Syria, NATO has been immobilized as more people die everyday.

#### Contextual usage

Alanis 22 Kaitlyn Alanis, McClatchy National Real-Time Reporter, graduate in journalism and agricultural communications, Kansas State University, “What is NATO, and what role will it play in Russia’s attack on Ukraine? 5 facts to know,” Miami Herald, 2-25-2022, <https://www.miamiherald.com/news/nation-world/article258743163.html> /GoGreen!

WHAT IS NATO?

NATO is a group of 30 member countries that agree to work together to ensure the security of the Northern Atlantic area.

“NATO’s purpose is to guarantee the freedom and security of its members through political and military means,” according to its website. Politically, the alliance promotes democracy, and it allows its members to “consult and cooperate on defence and security-related issues to solve problems, build trust and, in the long run, prevent conflict.”

## \*\*In\*\*

### In The Area = Throughout

#### “In…the…area” means all of the activities of that area

UN No Date United Nations Convention on the Law of the Sea, “Part I Introduction,” <http://www.un.org/depts/los/convention_agreements/texts/unclos/part1.htm> /GoGreen!

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;

#### “In” means throughout

Words and Phrases 4 Judicial and Statutory Definitions of Words and Phrases, vol.4, St. Paul West, 1904, p.3465, Google Book //GoGreen!

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

### In The Area = Within

#### “in” means within a boundary

Merriam-Webster.com Dictionary, **No Date**, “in,” https://www.merriam-webster.com/dictionary/with /GoGreen!

Definition of in (Entry 1 of 11)

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 sense 1

went in the house

#### “area” sets the outer boundary

Merriam-Webster.com Dictionary, **No Date**, “area,” https://www.merriam-webster.com/dictionary/area /GoGreen!

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

the whole area of foreign policy

#### Our dictionary definition is more predictable and legally precise – the Law of the Sea Treaty capitalized “Area” to distinguish what they meant from our resolution

Myron H. Nordquist 91 Senior Fellow at the Center for National Security Law and Associate Director and Editor of the Center for Oceans Law and Policy, *United Nations Convention on the Law of the Sea, 1982: A Commentary*, p.753

The use of the word “Area” with an upper case A in this context is distinguished from “area” with a lower case a, used in its dictionary sense. This usage is followed in the English, French, Russian and Spanish texts of the Convention. In Arabic, which does not distinguish between upper and lower case letters, two different words are used, and in the Chinese text special arrangements have been made to indicate the distinction. The word “area” with a lower case a appears frequently throughout the Convention, it having been found impossible to remove it entirely. In some cases, however, the Drafting Committee was able to replace “area” with something else in the English text, with corresponding changes in the other languages. In these Commentaries, every effort has been made to avoid use of the word “area” with a lower case a, but it has not been found possible to dispense with it entirely.

#### Our dictionary definition is more predictable and legally precise – Words and Phrases is only speaking to jurisdiction throughout an area of responsibility, NOT an action taken

Cullen 52 Cullen, Commissioner, Court of Appeals of Kentucky, delivering the Opinion in *Riehl v. Kentucky Unemployment Compensation Com'n*, 11-13-1952, <https://casetext.com/case/riehl-v-kentucky-unemployment-compensation-comn-1> /GoGreen!

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".

## \*\*Artificial Intelligence\*\*

### AI = Broad

#### “AI” broadly includes any machine capable of performing tasks previously requiring humans, whether as code or an autonomous system

DoD 18 U.S. Department of Defense, “Summary of the 2018 Department of Defense Artificial Intelligence Strategy,” 2018, <https://media.defense.gov/2019/Feb/12/2002088963/-1/-1/1/SUMMARY-OF-DOD-AI-STRATEGY.PDF> /GoGreen!

The U.S. Department of Defense (DoD) protects our nation by deterring war and winning the nation’s wars when deterrence fails. In fulfilling this mission, we have always been at the forefront of technological advances to ensure an enduring competitive military advantage against those who threaten our security and safety.

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.

AI is poised to transform every industry, and is expected to impact every corner of the Department, spanning operations, training, sustainment, force protection, recruiting, healthcare, and many others. With the application of AI to defense, we have an opportunity to improve support for and protection of U.S. service members, safeguard our citizens, defend our allies and partners, and improve the affordability and speed of our operations.

#### Prefer predictability – it’s the most commonly used – and there is no other official definition

Danzig 22 Richard Danzig, Senior Fellow at the Johns Hopkins University Applied Physics Laboratory, Director of the Center for a New American Security, recent member of the President’s Intelligence Advisory Board, and the Secretary of Defense’s Defense Policy Board, former Secretary of the Navy, “Machines, Bureaucracies, and Markets as Artificial Intelligences,” CSET Issue Brief, January 2022, <https://cset.georgetown.edu/wp-content/uploads/Machines-Bureaucracies-and-Markets-as-Artificial-Intelligences.pdf> /GoGreen!

What do prevalent definitions of artificial intelligence illuminate and what do they hide? The most common approach is defining intelligence as what human beings do when they reason cognitively. This conceptual strategy distinguishes between human (or human and animal) activities and the activities of machines— calling the latter “artificial.” It then leans the concepts of artificiality and intelligence against one another, apparently in the hope that combining one confusing concept with another confusing concept will result in a clear concept. For example, the U.S. Department of Defense defines artificial intelligence as “the ability of machines to perform tasks that normally require human intelligence.”8 Similarly, a highly regarded professional publication on the “State of AI” defines AI as:

A broad discipline with the goal of creating intelligent machines, as opposed to the natural intelligence that is demonstrated by humans and animals. It has become a somewhat catch all term that nonetheless captures the long-term ambition of the field to build machines that emulate and then exceed the full range of human cognition.9

**[FOOTNOTE 8]**

8 U.S. Department of Defense, Summary of the 2018 Department of Defense Artificial Intelligence Strategy (Washington, DC: Department of Defense, 2018), https://media.defense.gov/2019/Feb/12/2002088963/-1/-1/1/SUMMARY-OFDOD-AI-STRATEGY.PDF. The Congressional Research Service observes, “Although there is no official U.S. government definition of artificial intelligence (AI), AI generally refers to a computer system capable of human-level cognition.” Kelley M. Sayler, “Defense Primer: Emerging Technologies” (Congressional Research Service, updated June 8, 2021), <https://crsreports.congress.gov/product/pdf/IF/IF11105>.

#### It does NOT require full autonomy – NOR AGI – humans are always in the loop

Jensen 16 Benjamin Jensen, Major in the US Army Reserve, serving as Fellow in the Office of the Chief of Staff of the Army, Strategic Studies Group, Chair and Director of the Brute Krulak Center at the Marine Corps University; and Ryan Kendall, Lieutenant Colonel in the US Army, serving in the Chief of Staff of the Army, Strategic Studies Group; “Waze For War: How The Army Can Integrate Artificial Intelligence,” War On The Rocks, 9-2-2016, <https://warontherocks.com/2016/09/waze-for-war-how-the-army-can-integrate-artificial-intelligence/> /GoGreen!

What is Artificial Intelligence?

Artificial intelligence is commonly defined as the theory and development of computer systems able to perform tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages. It can range from weak forms, such as narrow artificial intelligence, that processes big data to answer basic questions and generate predictions (e.g., think of Waze helping you drive home or ad placements online) to strong forms such as “Artificial General Intelligence” and “Artificial Super Intelligence” that exceed human intelligence, creativity, and adaptability. Military applications range from finding optimal human-machine symbiosis, the centaur Deputy Secretary of Defense Robert Work speaks about, to using increased computer processing power to replace people on the battlefield with autonomous attack swarms.

Short of the promise of driverless cars and robot servants, narrow forms of artificial intelligence like machine learning are starting to change sectors ranging from healthcare to logistics. With respect to public health, Flowminder, a Swedish NGO, uses narrow artificial intelligence to predict the spread of diseases. In logistics, machine learning is helping companies make supply chain adjustments, optimize delivery routes, and design warehouse systems. Vehicle developers, such as Volvo, apply artificial intelligence to improve predictive maintenance. Volvo collects data with smart sensors on their vehicles and applies machine learning techniques to conduct diagnostics that reduce down time for services and better inform the resupply.

Artificial Intelligence for the Military

While many commercial applications of artificial intelligence are based on identifying patterns and trends using big data, most military applications focus on autonomous systems. Existing artificial intelligence programs in the Department of Defense include Navy unmanned undersea and aerial vehicle programs such as the Low-Cost Unmanned Aerial Vehicle Swarming Technology (LOCUST), and Air Force/DARPA ventures such as the Gremlin anti-surface-to-air missile drone program. The Gremlin program involves launching a large number of unmanned systems from a transport plane that swarm to attack hard targets such as mobile SAM platforms and C4ISR nodes. Within the Army, labs are using artificial intelligence to experiment with autonomous vehicles. Concepts range from larger logistics convoys composed of one manned vehicle and a large number of autonomous vehicles to combat formations mixing manned and unmanned platforms.

While the private sector focuses on narrow artificial intelligence applications that aid decision making and optimize business models, the military’s focus on autonomy arises from a technological bottleneck. A more advanced version of artificial intelligence than exists today is likely a necessary development before the military can field autonomous systems able to adapt to complex, changing environments. This evolution is especially important for land forces. Ground platforms have more variables to address than air or naval systems. Jets and submarines do not have to dodge potholes or jaywalkers. An autonomous system operating in a future megacity would have to do both under fire. The result is that autonomous combat vehicles will likely emerge in the air and maritime domain faster than the ground domain. Yet, that should not stop continued investment in and experimentation with artificial intelligence by the Army.

The Army needs apps like Waze, the popular driving program, for war. Instead of primarily focusing on artificial intelligence for autonomy, the Army should position itself to leverage commercial applications that optimize staff processes. Beyond self-driving convoys, which will take longer than predicted due to legal and safety concerns, the Army could use machine learning applications across its existing warfighting functions. Image recognition software could help intelligence analysts examine video feeds to identify IEDs and establish patterns of life. Analysis of data sets describing past enemy operations could provide probabilistic forecasts of enemy behavior. Software agents could anticipate supply bottlenecks before they occur and recommend mitigation options. Data already resident in the operational environment from both commercial repositories and data collected by platforms within Army formations (e.g. weather data from drones) offers opportunities to examine factors that may affect operations. Natural language processing programs could filter social media and local news outlets to identify common themes and messages. Many administrative functions could be automated to improve record keeping and medical readiness. In the extreme, artificial intelligence could produce a robot general staff capable of recommending an operational approach, options for allocating resources against different lines of effort, and ways to deceive the enemy.

Note that none of these functions would completely remove humans from the loop. Rather, the goal would be to super-empower soldiers. The increase in capability would mean that the Army could alter its staff organizations and force structure, producing an increase in combat power despite a decrease in the number of personnel. Smaller, streamlined staffs with new billets for data scientists could replace large organizations.

## \*\*Biotechnology\*\*

### Biotech = Military Applications

#### “Biotechnology,” in the context of the topic, is exclusively military applications

Nicklin 1 Dr. Steve Nicklin, Senior Fellow at the Defence Science and Technology Laboratory, Ministry of Defence, UK, PhD Immunology, University of Bristol, “Medical Issues: The Future Impact of Biotechnology on Human Factors,” NATO Research and Technology Organization Meeting Proceedings 77, paper presented at the NATO RTO Human Factors and Medicine Panel Specialists’ Meeting, held in Paris, France, June 11-13, 2001, <https://apps.dtic.mil/sti/pdfs/ADA403342.pdf> /GoGreen!

Biotechnology within the military context can be defined as the “the exploitation and manipulation of biological systems to benefit overall military capability”. Recent years have witnessed a massive advance in scientific knowledge and capability mainly through the advent of molecular biology and genetic engineering techniques. These techniques have already led to considerable military benefits in the form of new countermeasures to chemical and biological warfare agents, novel sensors for the detection of explosives and equipment for bioremediation and environmental clean-up. In the future it is envisaged that advances in biotechnology will continue to provide advances particularly in the field of autonomous sensing systems and new and unique products and materials.

#### Best functional limits – it’s a ripe controversy in NATO SC, with a variety of AFFs and coherent NEG ground

Melson 3 Ashley R. Melson, JD, RPT, “Bioterrorism, Biodefense, and Biotechnology in the Military: A Comparative Analysis of Legal and Ethical Issues in the Research, Development, and Use of Biotechnological Products on American and British Soldiers,” 2003, <https://law.bepress.com/cgi/viewcontent.cgi?article=1117&context=expresso> /GoGreen!

Also affected on a global scale and, perhaps, ever-so-evident with the recent threats of bioterrorism, are the opportunities biotechnology presents in the military context,20 which is defined as “the exploitation and manipulation of biological systems to benefit overall military capability”21. According to a recent report by the Information Assurance Technology Analysis Center (IATAC), “history has shown that an infusion of technology can provide a significant military advantage to the side that first realizes its potential and exploits it.”22 However, the historical examples described, namely invention of the tank, development of U.S. naval aviation capabilities, and technologies emerging from the Information Revolution, fail to invoke the legal and ethical complexities presented by biotechnological research, development, and use in the military. Such concerns become particularly relevant in light of the history of abuse of civilians and service member subjects in research conducted or sponsored by the militaries of both the U.S.23 and its European Ally, the United Kingdom (U.K.).24, 25

Although legal and ethical requirements for human subject research technically do not exclude military entities, statutory and judicial “loopholes” have emerged in the U.S.,26 while the U.K. has been slow to develop binding legal safeguards for non-military, much less military, research subjects27. As recently demonstrated by the joint U.S.-U.K. support for an invasion of Iraq,28 these two countries are strong Allies. Their respective domestic laws and policies,29 as well as international treaties,30 call for collaboration in major military matters ranging from scientific R&D to the interoperability of forces.

However, collaboration presents controversy in the context of biotechnology. Concerning biotech R&D, which inherently involves techniques such as stem cell research31 and somatic cell nuclear transfer,32 questions arise as to how the U.S., with its limit of federal funding to only existing stem cell lines33 and potential for banning any funding of therapeutic cloning,34 can effectively collaborate with the U.K., which already funds these techniques35. Considering the extent of federal funding allotted to military research36 in light of the collaboration required by both domestic and international instruments,37 compliance with the proposed U.S. restrictions becomes, at best, illusory.

Moreover, joint operability of U.S. and U.K. forces presumably requires the use of jointly operable equipment and supplies, including biotech products. Even if these products go through testing and development in the more “liberal” U.K., they would, in practice, be used on both British and American soldiers38. Oftentimes, military matters demand the use of any product that could provide even a potential advantage over the adversary, regardless of whether the product has been fully tested.39 Possible side effects of usage, especially long-term, are of little consequence in the face of a present and pressing enemy.40

Beyond research, development, and use issues surrounding biotechnology in the military are related and equally complex privacy issues invoked by, for example, the collection and storage of DNA samples from individual service members41. Although knowledge of each soldiers’ genetic make-up may be relevant, if not crucial, to present mission success,42 that same knowledge could later prove disastrous for the individual service member if revealed outside the military context43. Allied collaboration efforts further hamper confidentiality by allowing not only a service member’s own country, but potentially many foreign nations, access to the most detailed information, health-related and other, regarding individual service members.

Despite the legal and ethical concerns raised, biotechnology has, and will continue, to offer countless opportunities for enhancing military capabilities. As such, the research, development and utilization of biotech products are present realities in the U.S. and abroad, both within and outside of the defense context. However, testing and usage, as well as effective collaboration between Allies, calls for the resolution of complex and pressing issues presented by this intersection of science, technology, and human lives. Resolutions must take into account the history of abuses in military research, existing domestic and international legal and ethical safeguards, and a special respect for those serving to protect their country. In the present global “war on terrorism,”44 the U.S. and its Allies should heed this caution:

The military enterprise is at once ethical and unethical. Ethical from “our” point of view because the nation is protected from aggressors, defended when attacked, determined to win at all costs. Unethical, especially as seen through the adversary’s eyes, because anything goes. The victimization of noncombatants, misinformation and disinformation, clever feints, deception and other ploys of elaborate trickery, are the stock-in-trade of the “other” side. “We”, of course, resort to the same (and often more) to preserve the power position, strategic balance, operational gain, or tactical advantage. Might makes right, in other words, and hopefully for our team, righter yet. Not only does anything go; everything goes. The ‘un-morality’ of war rubs off on, and too often guides, those charged with researching and developing new and more effective weapons systems.45

**[FOOTNOTES 20-21]**

20 E.g., IATAC REPORT, supra note 11, at 89-99 app. C, 101-111 app. D (including, but not limited to, the following Exemplars: Advanced Military Medicine, including advanced vaccines and immune enhancements for expeditionary warfare and homeland security, accelerated wound healing, and stasis for critical warfighter casualties; Human Performance Enhancement, including 24x7 operations, enhanced environmental endurance for the warfighter, and enhanced cognition for improved warfighter performance). The Report also contains legal position papers favorable to the following uses of biotechnology by DoD: genetic screening for missions selection; transitory genome altering enhancements; permanent genome altering enhancements. Id. at 73-88 app. B. See also NRC REPORT, supra note 12, at 2 tbl. ES-1 (containing the following “Prospective Army Applications” [of biotech products] and their respective descriptions:

Camouflage and concealment - Biomaterials with stealth characteristics; nonilluminating paints and coatings.

Combat identification – Biological markers to distinguish friendly soldiers.

…

Functional foods – Additives to improved nutrition, enhance digestion, improved storage characteristics, enable battlefield identification, reduce detectability; edible vaccines; . . .

Health monitoring – Devices to provide feedback on soldier status, enable remote triage, and augment network of external sensors to provide intelligence on chemical, biological, or environmental agents.

. . .

Lightweight armor – Protection for soldiers and combat systems; systems with living characteristics, such as self-repairing body armor.

Novel materials – Biologically inspired materials; . . . ; genetically engineered proteins; . . .

Performance enhancement – Cortical implants; computer input and display interfaces; prostheses control; sensory enhancement; antidotal implants; gene-expression monitoring; performanceenhancing drugs.

. . .

Sensing battlefield environments – Laboratories-on-a-chip to detect and identify chemical, biological, and environmental threat molecules on the battlefield; coupling of diagnostic and therapeutic functions.

. . .

Soldier therapeutics – Drugs to counteract shock; genomics-based, directed therapies; optimized responsiveness to vaccines.

. . .

Vaccine development – Reduced development and production times for small-scale requirements to respond to disease encountered in exotic locales. Wound healing – Engineered skin, tissue, and organs; wound dressings and treatments to curtail bleeding and accelerate healing.).

21 Dr. Steve Nicklin, Medical Issues: The Future Impact of Biotechnology on Human Factors, in NATO RESEARCH & TECH. ORG., RTO MEETING PROCEEDINGS 77: HUMAN FACTORS IN THE 21ST CENTURY, RTO-MP-077 AC/323(HFM-062)TP/38 19-1 (June 11-13, 2001) (pub’d May 2002), http://www.rta.nato.int/Abstracts.asp?RestrictPanel=HFM.

### Biotech = Infectious Disease

#### “Security cooperation in…biotechnology” refers to natural and engineered infectious disease surveillance and response

Gronvall 18 Dr. Gigi Kwik Gronvall, Senior Scholar, Johns Hopkins Center for Health Security, Associate Professor, Johns Hopkins Bloomberg School of Public Health, “Ensuring Biosafety and Security,” Chapter 3 in Building a Smart Partership for the Fourth Industrial Revolution, Snowcroft Center for Strategy and Security, Atlantic Council, April 2018, <https://www.atlanticcouncil.org/wp-content/uploads/2018/04/Building-A-Smart-Partnership-for-the-Fourth-Industrial-Revolution-WEB-min.pdf> /GoGreen!

The United States and South Korea should expand their security cooperation in biotechnology in the areas of global health, gene synthesis, and medical and pharmaceutical research.

There is an opportunity to expand security cooperation between the United States and South Korea on issues related to biotechnology, to focus on both deliberate and natural biological threats. The United States and South Korea have been demonstrated leaders in taking on the challenges of disease threats. They have participated in biosecurity scenarios (e.g., Able Response, a whole-of government exercise); both countries contributed resources and considerable financial assistance to end the Ebola epidemic in West Africa; and they participate in the Global Health Security Agenda, which aims to reduce global disease risks and supports the International Health Regulations (2005).

Boosting the security quotient of the Global Health Security Agenda. Since its inception in 2014, the GHSA has incorporated a multilateral and multisectoral approach towards strengthening global capacity and nations’ abilities to prevent, detect, and adequately respond to infectious diseases.33 The Ebola epidemic demonstrated how a lack of adequate public health infrastructure could lead to an international crisis, in spite of the International Health Regulations (2005), which call for nations to provide for adequate public health infrastructure. To date, the GHSA has focused on self-assessments (called Joint External Evaluations, or JEE) and there is an opportunity to focus donor country attention where it is most needed.

An unusual aspect of the GHSA—for an initiative that is largely focused on public health—is that from its inception it has included the need to prepare for deliberate threats. Nonetheless, this aspect of the GHSA has not moved forward as much as was initially hoped; while some nations include their departments of defense in GHSA activities, most do not, and in the JEE, biosafety and biosecurity are somewhat mixed together. There is an opportunity for South Korea and the United States to collaborate on efforts that encourage more countries to take a more multisectoral approach through a variety of means, such as holding military-military conferences with other nations from Southeast Asia or developing a JEE supplement with a military focus.

Biosecurity implications of gene synthesis. In the field of biotechnology, DNA synthesis is a valuable research tool for many applications—from medicine to manufacturing—but as with many powerful technologies, it is vulnerable to misuse. One common fear is that DNA synthesis technologies could be used by nefarious actors to procure the genetic material of a variety of pathogens from a commercial supplier, or acquire the capability to do that themselves.34 Once synthesized, the genetic material could be “booted up” like a computer program, becoming actively infectious. “That many viruses can be made from scratch has been demonstrated repeatedly, including in the construction of poliovirus, 1918 influenza virus, and most recently, the virus that causes horsepox,” which is a close cousin to the smallpox virus.35

Over the past decade, measures have been taken to reduce the likelihood of misuse.36 Several gene-synthesis commercial suppliers formed the International Gene Synthesis Consortium to develop protocols designed to allow “individual companies to screen ordered sequences as well as to verify customers.”37 Not all international gene-synthesis companies are members of an industry organization that agrees to either customer screening or sequence screening. There are opportunities for the United States and South Korea to encourage other nations to promote industry-wide screening standards, champion a common code of conduct for suppliers of DNA, and develop mechanisms so that more of the gene-synthesis market performs screening, and has a place to report suspicious orders. There is also the potential for research in this area, as there is no publicly available data about how valuable the sequence screening can be in stopping misuse, or whether screening could be improved.38

Advanced development of pharmaceuticals and other medical countermeasures. There is a memorandum of understanding (MOU) between the US Department of Health and Human Services, US National Institutes of Health, South Korea’s Ministry of Health and Welfare, and the Korea National Institute of Health in which all parties “signed a letter of intent (2015) to enhance biomedical research collaboration, personnel exchange and training cooperation in fields of mutual interest.”39 This can be applied towards the development of vaccines and therapies for biosecurity and health security concerns, from early research and development stages through manufacturing.

For example, there could be joint research projects and funding streams to study a virus that is of mutual concern to the United States and South Korea. Middle East respiratory syndrome coronavirus (MERS-CoV), a respiratory virus that caused a serious outbreak in South Korea in 2015, could be a suitable candidate. Under the MOU, multiple vaccine candidates could be tested in a collaborative fashion, or research tools to help advance MERS-CoV research could be developed and jointly shared between the United States and South Korea.

## \*\*Cybersecurity\*\*

### Cybersec = Excludes Offense

#### “Cybersecurity” excludes offensive operations

Sternstein 11 Aliya Sternstein, Senior Correspondent at Nextgov, reports on cybersecurity and homeland security systems, has covered technology for more than a decade at National Journal's Technology Daily, Federal Computer Week and Forbes, formerly reported for Congressional Quarterly, “Auditors: Pentagon Cyber Budget Has Fuzzy Numbers,” Nextgov, 8-2-2011, <https://www.nextgov.com/cybersecurity/2011/08/auditors-pentagon-cyber-budget-has-fuzzy-numbers/54736/> /GoGreen!

Federal auditors have told Pentagon officials to define "cybersecurity" so the military services adopt the same terminology, and by extension, calculate their cyber spending plans in comparable ways. With a clear definition, the department could avoid having to redo the math on its cyber budget, something it was forced to do twice this year.

The order follows the disclosure of fuzzy math in the Defense Department's cyber budget. After Nextgov questioned why the Air Force's $4.6 billion 2012 budget request for cybersecurity was $2.3 billion more than Defense's service-wide spending proposal, Pentagon officials upped their total figure from $2.3 billion to $3.2 billion.

Eventually, a Pentagon spokesperson explained that the service's estimate differed dramatically because the Air Force included "things" that are not typically considered information assurance or cybersecurity.

A Government Accountability Office letter to the House Armed Services Committee on Friday reveals Defense officials provided Congress with a rejiggered sum on yet another occasion.

"During February and March 2011, DOD provided Congress with three different views of its cybersecurity budget estimates for fiscal year 2012 ($2.3 billion, $2.8 billion, and $3.2 billion, respectively) that included different elements of DOD's cybersecurity efforts," wrote Davi M. D'Agostino, GAO director for Defense Capabilities and Management, and Gregory C. Wilshusen, information technology director.

The source of confusion seems to be the department's narrow view of cybersecurity. GAO officials found that the budget excludes offensive operational costs such as computer network exploitations, or the infiltration of adversaries' systems for intelligence gathering and computer network attacks, which is the disruption of enemy networks. In addition, the military has no agreed-upon definitions for all cyber activities.

"In the absence of such definitions, there are differing perspectives on the elements that constitute cyberspace operations in DOD," the GAO officials wrote.

The Pentagon currently is unable to centrally round up information from the services to calculate a single cyber budget estimate. "DOD has operationally merged defensive and offensive cyberspace operations with the creation of U.S. Cyber Command in October 2010, but the department still does not have a designated focal point or methodology for collecting and compiling budget information," the pair added.

In responding to draft findings, Defense officials said they would define what activities are cyber operations and establish a means of accounting for all such activities.

### Cybersec = Broad

#### “Cybersecurity” means prevention, protection, and restoration of damage to computers, networks, and information on them

DAU No Date Defense Acquisition University, “Cybersecurity and Risk Management Framework,” <https://www.dau.edu/tools/se-brainbook/Pages/Management%20Processes/Cybersecurity-Risk-Management-Framework.aspx> /GoGreen! **\*\*the path I took to confirm this is the formal definition in its original document is labyrinthine, and adds nothing to comprehension, but: DoDI 8500.01 is here:** https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/850001\_2014.pdf **– and that will point you to the Committee on National Security Systems Glossary here:** <https://rmf.org/wp-content/uploads/2017/10/CNSSI-4009.pdf> **– which does contain this definition as written**

Cybersecurity Defined

The official definition of cybersecurity is, “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.” – DoDI 8500.01

Mission Prevent damage, protect, restore

Cyber Items Computers, electronic communications and services, wire communications, electronic communication info

To Ensure Confidentiality, integrity, availability (non-repudiation and authentication)

DoDI 5000.90 requires that program protection planning include cybersecurity. It also identifies two cybersecurity activities, Assess and Authorize, that are applicable within the Defense Acquisition System. DoDI 8500.01, Cybersecurity, 14 Mar 2014, defines cybersecurity and describes types of DoD IT. The DoD IT descriptions are used to determine the scope and applicability of the two cybersecurity activities identified by DoDI 5000.82, the Cybersecurity Strategy and the Cybersecurity Risk Management Framework (RMF) for DoD Information Technology (IT).

A Cybersecurity Strategy is required for all acquisitions of systems containing IT and is included as an appendix to the Program Protection Plan (PPP). The Cybersecurity RMF is required for all acquisitions containing IT. DoDI 8510.01, Risk Management Framework (RMF) for DoD Information Technology, details policies and procedures for implementing the RMF for DoD IT.

Foundational Pillars of Cybersecurity

Cybersecurity has five foundational pillars. The key triad is known as “CIA” – Confidentiality, Integrity, and Availability.

Confidentiality Information is not disclosed to system entities (users, processes, devices) unless they have been authorized to access the information.

Integrity The property whereby an entity has not been modified in an unauthorized manner.

Availability Being accessible and usable upon demand by an authorized entity.

Non-Repudiation Assurance that the sender of information is provided with proof of delivery and the recipient is provided with proof of the sender's identity, so neither can later deny having processed the information.

Authentication Verifying the identity or other attributes claimed by or assumed of an entity (user, process, or device), or to verify the source and integrity of data.

#### That does NOT limit the means employed – includes physical protection, civilian stakeholder engagement AND offensive operations

Sherman 13 Commander Darren C. Sherman, United States Navy, Master of Strategic Studies candidate, United States Army War College, “U.S. Cybersecurity Defense Assessment,” MSS thesis, March 2013, <https://apps.dtic.mil/sti/pdfs/ADA589433.pdf> /GoGreen!

In order to effectively apply national cybersecurity defense measures against these cyberspace attacks, the term cybersecurity defense must be clearly defined. For example, at each level of government – political, strategic, operational, and tactical, differing points of view exist regarding strategic level cybersecurity defense.5 These varying perspectives influence how cybersecurity defense is defined and how national cybersecurity strategy is interpreted and implemented. Moreover, the terms national cybersecurity and cybersecurity defense are used synonymously in U.S. policy discussions, which further complicates classifying cybersecurity defense. This is an important distinction because different definitions of cybersecurity have significant implications on the actions or operations of cybersecurity defense agencies and impacts the cybersecurity defense roles adopted by various levels of government during national policy and strategy formulation.

Analyses of twenty different cybersecurity strategies in the North Atlantic Treaty Organization’s (NATO) National Cyber Security Framework Manual6 reveal that diverging variations of cybersecurity defense definitions are common. This manual advocates that government organizations differentiate their cybersecurity defenses activities based upon national cybersecurity perspective, unique network capabilities, and or Federal agency partnerships.7 For example, several cybersecurity strategies contained in this manual8 propose the integration of multi-dimensional cyber security efforts in which government, society, and influential stakeholders work together in cooperation to provide adequate levels of cybersecurity defense.9 Exacerbating this situation, many of the cybersecurity defense processes developed to support cybersecurity definitions hinder generic government collaboration internally. However, to what end is not so clearly identified and different cybersecurity strategies are based uniquely upon different cybersecurity definitions. Within the complex conceptual framework of cybersecurity defense, the United States has established the following three definitions used interchangeably throughout the cybersecurity defense strategy formulation process.

One cybersecurity defense paradigm embraced by the U.S. Department of Defense (DOD) is characterized as organizational actions required to ensure “security of information in all its forms – electronic and physical, and the security of the systems and networks where information is stored, accessed, processed, and transmitted, including precautions taken to guard against crime, attack, sabotage, espionage, accidents and failures.”10 This definition is especially useful for DoD operations, as it does not limit the departments’ actions in mitigating potential cyber threats. Another cybersecurity defense classification is utilized by the U.S. military services and integrates a Joint Operations point of view. This definition advocates the use of Computer Network Defense (CND) actions to include “protecting, monitoring, analyzing, detecting, and responding to unauthorized activity within Department of Defense (DoD) information systems and computer networks.”11 Again the premise behind this classification is freedom to maneuver regarding cybersecurity defensive actions. Lastly, U.S. Cyber Command (USCYBERCOM) uses a strictly operational taxonomy to describe cybersecurity defensive operations – “direct and synchronized actions to detect, analyze, counter and mitigate cyber threats and vulnerabilities; to out maneuver adversaries taking or about to take offensive actions; and to otherwise protect critical missions that enable US freedom of action in cyberspace.”12 While all of the actions contained in these definitions are fundamental to the successful defense of critical national and federal network systems, the USCYBERCOM explanation is the most directive in implying a position of offensive action.

# Other Limiting Terms

## \*\*Its\*\*

### Its = USFG / Must be Federal Action

#### “Its” refers to the United States Federal Government and is possessive

Updegrave 91 (W.C., “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 "United States" as a corporation domiciled in the District of Columbia (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.

#### Voter for limits and ground --- allows any combo of states affs and strips the neg of the only functional limiting mech on the topic

### Its = Possession

#### “its” – requires ownership

Merriam-Webster Learner's Dictionary, No Date, “its,” https://www.learnersdictionary.com/definition/its

its /ˈɪts/ /əts/ adjective

Learner's definition of ITS

possessive form of it

always used before a noun

: relating to or belonging to a certain thing, animal, etc.

the dog in its kennel

The landscape is beautiful in its own unique way.

Each region has its own customs.

#### ‘Its’ is possessive

English Grammar 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](http://www.usingenglish.com/glossary/pronoun.html) used to substitute a [noun](http://www.usingenglish.com/glossary/noun.html) 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.)

#### Grammatically, this refers solely to U.S. policy

Manderino 73 (Justice – 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.

#### It’s a term of exclusion

Frey 28 (Judge – 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.

#### It’s exclusive

Brent 10 (Douglas F. Brent, attorney, “Reply Brief on Threshold Issues of Cricket Communications, Inc.,” 6-2-2010, <http://psc.ky.gov/PSCSCF/2010%20cases/2010-00131/20100602_Crickets_Reply_Brief_on_Threshold_Issues.pdf>)

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).

### Its = Done By

#### “its” – requires USFG implementation

Merriam-Webster Learner's Dictionary, No Date, “its,” https://www.learnersdictionary.com/definition/its

its /ˈɪts/ /əts/ adjective

Learner's definition of ITS

possessive form of it

always used before a noun

: relating to or belonging to a certain thing, animal, etc.

the dog in its kennel

The landscape is beautiful in its own unique way.

Each region has its own customs.

: made or done by a certain thing, animal, etc.

The company is hoping to increase its sales.

— compare it's

## \*\*Substantially\*\*

### Substantial Protection = 50% From Baseline

#### Substantial increase in protection must be at least 50% increase in baseline coverage

Sims 19 --- Katharine R. E. Sims et al, Departments of Economics and Environmental Studies, Amherst College, “Assessing the local economic impacts of land protection”, Conservation Biology, Volume 33, No. 5, 1035–1044, 2019, https://par.nsf.gov/servlets/purl/10128102

Given the estimation model, these coefficients can be interpreted as elasticities. For the employment outcome, this means that a 1% increase in the percentage of protected land in a town or city was associated with an approximate 0.03% increase in the number of people employed. For example, for a town with 20,000 people employed, a substantial increase in protection, from 10% protected to 15% protected (or a 50% increase), would lead to an approximately 1.5% increase (0.03 × 50) in people employed or 300 additional people employed. By comparison, the peak-to-trough changes in employment for the economic expansion from 2003 to 2008 and recession from 2008 to 2010 were >6% nationally (Goodman & Mance 2011).

**Substantial = 2%**

**“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.

**Substantial = 10%**

**Less than 10% is insubstantial**

**Mickels 8** (Alissa, 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.

**Substantial = 33%**

**“Substantial” means 33 percent**

**Maples 7** (Larry, “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.

**Substantial = 40%**

**“Substantial” means 40% --- strict quantification avoids vagueness**

**Schwartz 4** (Arthur, Lawyer – 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)

**Substantial = 50%**

**Less than 50% is insubstantial**

**Brown 94** (Mark R., Professor of Law – Stetson University College of Law, “The Demise of Constitutional Prospectivity: New Life for Owen?”, Iowa Law Review, January, 79 Iowa L. Rev. 273, Lexis)

n241 I am assuming here that "foreseeable" means "probable," as in "more probable than not." This appears to be a safe assumption given the proliferance of cases granting immunity to officials who offend the Constitution. If this definition is correct, deterrence only works and liability should only attach if one's conduct, viewed ex ante, is more likely illegal than legal: the risk of illegality must be more than fifty percent. In other words, one cannot face deterrence, and liability will not attach, if the risk of illegality is less than fifty percent. (When viewed in this fashion, one might perceive a risk of illegality but still not be deterrable because the risk is **not substantial, i.e., not greater than fifty percent**.). Lawful conduct, of course, need not be probably lawful. That is what risk is about. Situations might arise where the objective risk is that conduct is unlawful, but ex post it is lawful. Lest judicial reasoning be completely askew, a fairly strong correlation exists, however, between action that is ex ante probably lawful and that which is lawful ex post in the courts. If this is not true, then courts are reaching objectively improbable conclusions, and the whole idea of reliance is illusory.

**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.**

**Substantial = Considerable**

**"Substantial" means of real worth or considerable value --- this is the USUAL and CUSTOMARY meaning of the term**

**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

**“Substantial” means considerable or to a large degree --- this common meaning is preferable because the word is not a term of art**

**Arkush 2** (David, JD Candidate – 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 “of considerable amount” – not some contrived percentage**

**Prost 4** (Judge – 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.

**"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

**Substantial = 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 is the MAIN part --- determined by context**

GARRISON 93 --- PHILLIP R. GARRISON, Judge for the Court of Appeals of Missouri (Blackburn v. Richardson, 849 S.W.2d 281, Court of Appeals of Missouri, Southern District, Division Two March 11, 1993, Accessed on Lexis

The question then becomes whether the intended construction would violate the restrictive covenant by "substantially" blocking the view of the lake from plaintiffs' home. The term "substantial" is defined in Webster's Third New International Dictionary as: "being of moment: important, essential"; "considerable in amount . . ."; "being that specified to a large degree or in the main"; and "of or **relating to the main part of something**." Its meaning, however, is not easily applied. As said in 83 C.J.S. Substantial, page 762:

The word "substantial" is a relative, and not an exact, term. It has been said to be as illusive a word as the English language contains, and is of varied meaning, and is susceptible of different meanings according to the circumstances of its use, and [\*\*12] in considering the word it must be examined in **its relation to the context**, and its meaning is to be gauged by all the circumstances surrounding the transaction with respect to which it has been used.

**"Substantial" means in the main**

**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 = 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.

**Substantial = Without Material Qualifications**

**Substantially is without material qualification**

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

Substantially - means essentially; without material qualification.

## \*\*Increase\*\*

### Increase = Net

#### “Increase” must be net NOT gross

Words and Phrases ‘8 [Words and Phrases; 2008; English language dictionary; 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, Energy Commission cannot ignore decreases in capacity caused by retirement or deactivation of other units at plant. West’s Ann.Cal.Pub.Res.Code § 25123.

### Increase = Gross

#### “Increase” is gross NOT net

Goldberg 19 Mitchell S. Goldberg, Judge, delivering the Opinion of the United States District Court for the District of Delaware, Shire ViroPharma, Inc. v. CSL Behring LLC, 2019 U.S. Dist. LEXIS 198992, 11-18-2019, NexisUni /GoGreen!

**[FOOTNOTE 14]**

Defendants' citation to AstraZeneca AB v. Dr. Reddy's Laboratories, Ltd., No. 05-5553, 2010 U.S. Dist. LEXIS 48844, 2010 WL 11414548, at \*13 (D.N.J. May 18, 2010) is inapposite. In that case, the court construed the term "increased average plasma levels (AUC) per dosage unit" to mean "greater blood levels of (-)-omeprazole . . . compared to the typical or usual blood levels for omeprazole." 2010 U.S. Dist. LEXIS 48844, [WL] at \*13. The court found such a construction necessary because the claim term "increased average plasma levels" provided no point of reference on which to determine what were "increased average plasma levels." Id.

By contrast here, the claim language provides a point of reference regarding what the term "increase" means by noting that the level of active C1 esterase in the blood must "increase" to "at least about 0.4 U/mL" regardless of where the C1-INH level started. Contrary to Defendants' argument, Plaintiff's refusal to accord any additional meaning to the term "increases" does not violate any well-settled canons of claim construction.

### Increase = Pre-existing

#### “Increase” means to make greater and requires pre-existence

**Buckley 6** (Jeremiah, 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).

#### Plan creates new types of restrictions --- voting issue:

### Increase Excludes Creation Ext

#### “Increase” requires pre-existence

**Brown 3** – US Federal Judge – District Court of Oregon (Elena Mark and Paul Gustafson, Plaintiffs, v. Valley Insurance Company and Valley Property and Casualty, Defendants, 7-17, 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.

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

Sentell 91 (R. Perry Jr., Talmadge Professor of Law – University of Georgia and LLM – 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 = Mandate / Not Result

#### “Increase” refers to a mandate, not a result

HEFC 4 (Higher Education Funding Council, <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 = Make Greater

#### “Increase” means to become larger or greater in quantity

Encarta 6 – Encarta Online Dictionary. 2006. ("Increase" http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861620741)

in·crease [ in krss ]  
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  
noun  (*plural* in·creas·es)

#### “Increase” does not mean to decrease

Webster’s 13 – Webster’s 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, 8 (“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

Webster’s 9 – 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 = Quantitative

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

Encarta 7 – Encarta 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

# T For Competition / Theory / Misc.

**Resolved**

**Resolved = Certain**

**Resolved requires certainty**

**Dafoe 12** --- Allan Dafoe A dissertation submitted in partial satisfaction of the requirements for the degree of Doctor of Philosophy in Political Science in the Graduate Division of the University of California, Berkeley, “Resolve, Reputation, and War: Cultures of Honor and Leaders’ Time-in-Oce”, Spring 2012, <http://digitalassets.lib.berkeley.edu/etd/ucb/text/Dafoe_berkeley_0028E_12255.pdf> (BJN)

Furthermore, based on my reading of historical crises, I believe that concern for reputation is a substantively critical determinant of resolve, and perhaps the most interesting component, analytically and for policy. To see this, it is helpful to look at how the term resolve, and synonyms, are actually used. The Oxford English Dictionary5 defines resolve as follows (I only list the more common usages): 1.a. The fact of having resolved upon a course of action, stance, etc.; a firm intention. Also in pl. in same sense (now somewhat arch.). 1.b. An act of resolving to do something; a resolution. 2. Firmness or steadfastness of purpose; determination; an instance of this... And OED defines “resolved” as (I only list usages related to human behavior): 1.a. Of the mind, etc.: **freed from doubt or uncertainty**; settled. Obs. 1.b. Of a person: convinced, satisfied, or certain of something. Obs. 1.c. Of doctrine: adopted or accepted after careful deliberation. Obs. 2.a. Of a person: that has resolved to do something; having fixed intention; determined, decided. 2.b. Of an action, state of mind, etc.: fully determined upon, deliberate. 2.c. Of a person: staunch, dedicated; committed, confirmed; that is thoroughly committed to the specified or implied course of action, practice, religious belief, doctrine, etc. 3. Of a person, the mind, etc.: characterized by determination or firmness of purpose; resolute. 4. That has been decided or resolved on or upon. As is clear from these definitions, the term resolve is often understood as referring to the result of a process of deliberation, decision, and commitment. One resolves to do something. In this sense, resolve is not simply a byproduct of a weighing of the pros and cons of escalating, but is instead a decision that one makes and then **commits to.** When Pericles sought to persuade the Athenians to reject the Spartan ultimatum, he argued that the decision over whether to make even a trivial concession under coercion was a “test of your resolution” (The Peloponnesian War , p. 1.140.5; under Warner translation, “proof of your determination”). It was common knowledge that the final Spartan demand—rescinding of a minor piece of economic statecraft known as the Megarian Decree—was extremely modest and of little material consequence to the Athenians. Pericles and other Athenians were not concerned that they would get a reputation for having a particular set of interests, such as not caring about the Megarian Decree. It is, after all, largely futile for a democracy, such as Classical Athens, to try to build a reputation for having certain interests since the preferences of various groups are readily observed through their democratic process of public deliberation. As Pericles pointed out, what was at stake was Athens’ reputation for committing to its position, which in this case was the principle that Athens and Sparta should treat each other as equals and overcome disputes through arbitration. A reputation for resolve is not a reputation for wanting to fight over many issues, but a reputation for being willing to fight for those issues that one commits to.

**Resolved is a definite course of action**

**Collins 3** Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003 http://www.thefreedictionary.com/resolved

resolved [rɪˈzɒlvd] adj fixed in purpose or intention; determined

**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.

**Resolved = Neither Certain Nor Immediate**

**“resolved” is a motion - doesn’t denote certainty or immediacy in this context**

General Henry M. **Robert**, Chief Engineer of the Army, “Robert’s Rules of Order Revised”, 19**51**, Page 34

**A motion** is a proposal that the assembly take certain action, or that it express itself as holding certain views. It is made by a member’s obtaining the floor as already described and saying, “I move that” (which is equivalent to saying, **“I propose that”),** and then stating the action he proposes to have taken. Thus a member “moves” (proposes) that a resolution be adopted, **or amended**, or referred to a committee, or **that a vote of** thanks be **extended**, etc.; or “That it is the sense of this meeting (or assembly) that industrial training,” etc. Every resolution should be in writing, and the presiding officer has a right to require any main motion, amendment, or instructions to a committee to be in writing. When a main motion is of such importance or length as to be in writing it is usually written in the form of a **resolution**; that is, beginning with the words, “**Resolved**, That,” the word “Resolved” being underscored (printed in italics) and followed by a comma, and the word “That” beginning with a capital “T.” If the word “Resolved” were replaced by the words “I move,” the resolution would become a motion. A resolution is always a main motion. In some sections of the country the word “resolve” is frequently used instead of “resolution.” In assemblies with paid employees, instructions given to employees are called “orders” instead of “resolutions,” and the enacting word, “Ordered” is used instead of “Resolved.”

**“Resolved” doesn’t require certainty**

**Webster’s 9** – Merriam Webster 2009

(http://www.merriam-webster.com/dictionary/resolved)

# Main Entry: 1re·solve # Pronunciation: \ri-ˈzälv, -ˈzȯlv also -ˈzäv or -ˈzȯv\ # Function: verb # Inflected Form(s): re·solved; re·solv·ing 1 : to become separated into component parts; also : to become reduced by dissolving or analysis 2 : to form a resolution : determine 3 : consult, deliberate

**Or 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 = USFG**

**Resolved means to establish by law**

**West Publishing Company**, Judicial and Statutory Definitions of Words and Phrases, Volume 7, **1905**, Page 6174

"Resolved," as used at the head of a bill by the Legislature, is as potent to declare the legislative will as the word "enacted," and a resolution may or may not take the force of law. depending on the occasion and object of its use, and resolutions may be re- sorted to as vehicles to convey the opinions and wishes of the Legislature, without prescribing any rule of conduct to be observed; but whenever a general resolution does undertake to Iay down a rule of conduct, it becomes a law, and will take effect such, notwithstanding the word "resolved" was used in Its title, instead of the word "enacted" Swann v. Buck, 40 Miss. 268, 293. The fifth definition of the word "re- solve," given by Webster, is "to express an opinion or determination by resolution or vote; us '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**; to perform or effect; to decree." In re Senate File No. 31. 41 N. W. 1M, 984. Neb. 864'.

**Resolved before a colon requires a formal resolution**

**USACAC 04** --- United States Army Combined Arms Center, Army Officer School 2004, <http://usacac.army.mil/cac2/wocc/ColonSemicolon.asp> (BJN)

The colon introduces the following: A list, but only after "as follows," "the following," or a noun for which the list is an appositive: Each scout will carry the following: (colon) meals for three days, a survival knife, and his sleeping bag. The company had four new officers: (colon) Bill Smith, Frank Tucker, Peter Fillmore, and Oliver Lewis. A long quotation (one or more paragraphs): In The Killer Angels Michael Shaara wrote: (colon) You may find it a different story from the one you learned in school. There have been many versions of that battle [Gettysburg] and that war [the Civil War]. (The quote continues for two more paragraphs.) A formal quotation or question: The President declared: (colon) "The only thing we have to fear is fear itself." The question is: (colon) what can we do about it? A second independent clause which explains the first: Potter's motive is clear: (colon) he wants the assignment. After the introduction of a business letter: Dear Sirs: (colon)Dear Madam: (colon) The details following an announcement For sale: (colon) large lakeside cabin with dock **A formal resolution**, after the word "**resolved:"** Resolved: (colon) That this council petition the mayor. The words of a speaker in a play: Macbeth: (colon) She should have died hereafter.

**The**

**The = 3 Branches**

**“The” indicates reference to a noun as a whole**

**Webster’s 5** (Merriam Webster’s Online Dictionary, http://www.m-w.com/cgi-bin/dictionary)

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

**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” 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.

**Means the noun must be interpreted generically**

**Webster’s 9** (Merriam-Webster’s 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>

**United States federal government**

**USFG = Central Government**

**"Federal Government" means the national government, not the states or localities**

**Thomson 7** Alex Thomson, A Glossary of US Politics and Government 2007 p 72

federal government The term used to refer to the central, national government of the United States, based primarily in Washington DC. The federal government differs from the fifty state governments in that it has a national jurisdiction, and it governs in separate policy areas from those of the states.

**Includes agencies**

**Words & Phrases 4** (Cumulative Supplementary Pamphlet, v. 16A, p. 42)

N.D.Ga. 1986. Action against the Postal Service, although an independent establishment of the executive branch of the federal government, is an action against the “Federal Government” for purposes of rule that plaintiff in action against government has right to jury trial only where right is one of terms of government’s consent to be sued; declining to follow Algernon Blair Industrial Contractors, Inc. v. Tennessee Valley Authority, 552 F.Supp. 972 (M.D.Ala.). 39 U.S.C.A. 201; U.S.C.A. Const.Amend. 7.—Griffin v. U.S. Postal Service, 635 F.Supp. 190.—Jury 12(1.2).

**A2: USFG = The People**

**Federal government refers to the central government – distinct from what composes it**

**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**.

**Should**

**Should is Immediate**

**“Should” means “must” and requires immediate legal effect**

**Summers 94** (Justice – 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)

[CONTINUES – TO 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).

**Should is Mandatory**

**“Should” is mandatory**

**Nieto 9** – Judge Henry Nieto, 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 – 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 isn’t Mandatory**

**Should 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**

**Taylor and Howard 5** (Michael, Resources for the Future and Julie, 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.

**“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**.

**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**

**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 Immediate**

**Should doesn’t mean immediate**

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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.