

Managing U.S. Security Partnerships

A Toolkit for Congress

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Since 9/11, the United States has increasingly come to rely on foreign allies and partners to accomplish shared security objectives. But as the U.S. trains and advises partner militaries, sells arms to partner countries, and deploys its own forces alongside partner forces, policymakers in Congress have sought tools to make U.S. security cooperation more effective--and to rein in these security partners when they act contrary to U.S. interests.

Congress has a surprising variety of tools and authorities at its disposal to hold security partners accountable, shift their behavior, or restructure partnerships. This report describes authorities, funding, and other legislation related to U.S. security training and assistance programs, arms sales, and the use of force. While serving different purposes, these authorities and programs are all tools the U.S. government can use to enhance the security of critical partners and also leverage to change a security partners' behavior when it does not align with U.S. strategic interests.

We provide three sets of recommendations for Congress:

1. Increase Transparency Via Reporting Requirements and Hearings

Congress can write reporting requirements into legislation that direct the relevant agency to submit reports to Congress on specific issues or questions. While reporting requirements do not directly alter how these authorities and programs are implemented, they can provide Congress and the public with important information about the management and effectiveness of U.S. security cooperation. Congress can also hold public hearings about the implementation and effectiveness of security assistance programs to elevate these issues and bring them to public attention. These hearings, requests for information, and other mechanisms of informal influence can help Congress to more transparently define the costs and benefits of U.S. relationships with security partners, and to identify where these relationships are not serving U.S. national security interests effectively.

More specifically, Congress can:

- **Include Reporting Requirements for Acquisition and Cross Servicing Agreements (ACSAs):** ACSAs allow the Department of Defense (DoD) to transfer military supplies and logistics support to partner country militaries. The United States provided aerial refueling to Saudi-led coalition aircraft in Yemen under an ACSA, for example, although DoD later said that refueling occurred for at least a year before an ACSA with Saudi Arabia was formally in place. While partners are required to reimburse the United States for the supplies and services they receive via ACSAs, a Government Accountability Office (GAO) report found that DoD has not obtained reimbursement from security partners for “thousands of orders... valued at more than \$1 billion as of November 2019.” Congress should include reporting requirements around ACSAs and reimbursement.
- **Require Funding for Assessment, Monitoring, and Evaluation (AM&E) and Clear Definitions of Effectiveness:** Policymakers have associated a wide variety of objectives with security force assistance. These priorities are often overly-broad, and the success of these programs is difficult to measure. Congress could require relevant agencies to clearly lay out what objectives their programs are intended to achieve and a set of corresponding metrics of effectiveness. Congress could also include funding in each program’s budget that is explicitly earmarked for AM&E based on these effectiveness metrics.
- **Increase Transparency Around Arms Sales Notifications and Place Holds:** Congress receives informal and formal notifications of arms sales to foreign countries above certain threshold dollar amounts. Congress can place a hold on arms sales and work with the State Department to resolve any concerns. Holds allow members of Congress and their staff time to gather information, build public awareness, and either negotiate the terms of a sale with the State Department or gather enough momentum to hold a vote to block the sale.
- **Require Pre-Delivery Notification on Arms Sales:** Congress does not typically receive notifications before the actual delivery of equipment once a sale has been formally notified and the contract finalized. The chair and ranking members of the Senate Foreign Relations Committee (SFRC) and the House Foreign Affairs Committee (HFAC) can request notification before delivery. This is important because Congress can vote to block an arms sale at any point during the process, not just during the formal notification period.

- **Require Reporting on Title 10 Train and Assist Deployments:** U.S. forces that are deployed under Title 10 training and assistance authorities could become engaged in hostilities, even if their primary mission is to train and assist foreign militaries. In these cases, Congress usually receives a presidential notification of a deployment under Title 10 train and assist authorities, but does not have a significant chance to offer input or authorize the use of force, even in situations where force may become necessary. Congress can require additional reporting from the Pentagon on U.S. forces who may become engaged in hostilities. The House and Senate Armed Services Committees can use investigatory tools, including reporting requirements and hearings, to determine whether it has received complete and reliable information regarding these train and assist deployments.

2. Use the Power of the Purse

Congress can use the power of the purse to place restrictions on the accounts it funds and may fund certain accounts while defunding others.

- **Place Conditions and/or Restrictions on Security Assistance:** Congress can restrict or place conditions on how U.S. security assistance is used by allies and security partners. Such conditions can discourage allies or security partners from pursuing certain policies.
- **Defund the Authorizations for the Use of Force (AUMFs):** Congress has the discretion to appropriate funding for deployments related to AUMFs. Congress has appropriated more than \$2 trillion in funding for operations in Afghanistan and Iraq as well as other operations related to the Global War on Terror (GWOT) through emergency supplemental bills since 9/11, namely the Overseas Contingency Operations (OCO) fund, which is operated jointly by the DoD and State Department on top of their annually appropriated base budgets.
- **Increase Funding for End-Use Monitoring Programs:** Recipients of U.S. defense articles and services must agree to use them only for their intended purposes, to not transfer the title without the written consent of the U.S. government, to provide the same degree of physical security to the articles as the U.S. government does, and to allow U.S. officials to verify compliance with these terms. Congress appropriates funding for end-use monitoring programs to ensure that U.S. defense articles are used according to the terms of the transfer agreement. Congress can increase funding for end-use monitoring programs to monitor whether weapons are used for agreed-upon purposes or are transferred to unauthorized actors.

- **Condition Future Arms Sales on Past Behavior:** Congress could informally commit to condition future arms sales on the past behavior of recipient countries. For example, Congress could block sales to regimes that have been credibly found to commit violations of international humanitarian law or of end-use agreements. A robust end-use monitoring system could also expose violations of transfer agreements, providing Congress with leverage to hold security partners to the terms of end-use monitoring agreements and to potentially limit or block future arms sales.
- **Shift Focus from Equipment to Training:** While building partner capacity is a primary goal of U.S. security assistance, U.S. policy tends to emphasize arms sales and the provision of materiel over training. Training may be relatively more effective in professionalizing partner militaries and ensuring that they actually have the technical capability to use the weapons they acquire effectively, as well as discouraging human rights violations. In order to shift emphasis towards training, Congress can appropriate more funding to International Military Education and Training (IMET) rather than Foreign Military Financing (FMF), and can include line-items in appropriations bills requiring assistance to be non-lethal or focused on training.

3. Invoke Existing Legislation

Several pieces of existing legislation provide an expedited route to holding a vote on a new bill, or otherwise serve as focal points to pass new legislation or repeal existing legislation.

- **Use Section 502B of the Foreign Assistance Act (FAA) and the Leahy Law to Enforce Human Rights Provisions:** Section 502B of the FAA provides an expedited route for Congress to request reporting on human rights violations from the State Department. Section 502B(c) authorizes either the House or Senate, or SFRC or HFAC, to request a report laying out a country's record on human rights and the steps the United States has taken to promote human rights in the

country. After receiving such a report, Congress could "adopt a joint resolution terminating, restricting, or continuing security assistance" for the country. Congress can write the restrictions in this legislation as broadly or narrowly as it likes. This legislation is "privileged", meaning it comes up through the relevant committees for a vote on the floor more expeditiously.

- **Invoke the War Powers Resolution (WPR) in Legislation:** Congress can pass legislation regarding specific conflict contexts invoking the WPR, legislation passed in 1973 that reasserts Congress's role in use of force decisions.
- **Vote to Block Problematic Arms Sales:** Under the Arms Export Control Act (AECA), Congress can vote to block an arms sale via joint resolution. Joint resolutions to block arms sales are also considered privileged.
- **Limit Use of the Presidential Emergency Waiver in Arms Sales:** In May 2019, Secretary of State Mike Pompeo invoked a rarely-cited emergency waiver to circumvent Congress and push through a \$8.1 billion weapons sale with Saudi Arabia, the UAE, and Jordan. Congress can pass legislation limiting how the president may use this emergency provision in the future, helping to prevent the executive branch attempting to cut Congress out of the arms sales process.
- **Repeal (and Replace) the AUMFs:** Critics have argued that the 2001 AUMF, has been stretched well beyond its original intent. Any replacement AUMF should include sunset provisions limiting the expansion of the authorization over time, and/or requirements that the authorization must be periodically affirmed via legislation in Congress in order to remain in force.