



Security Assistance Reform: “Section 1206” Background and Issues for Congress

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Summary

Section 1206 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006 provides the Secretary of Defense with authority to train and equip foreign military and foreign maritime security forces. The Department of Defense (DOD) values this authority as an important tool to train and equip military partners. Funds may be obligated only with the concurrence of the Secretary of State. Thus far, the Department of Defense (DOD) has used Section 1206 authority primarily to provide counterterrorism support. This authority expires in FY2011.

As of October 13, 2009, Section 1206 allocations total a little under \$1 billion for FY2006 through FY2009. Section 1206 allocations totaled some \$100 million for FY2006, \$274 million for FY2007, \$272 million for FY2008, and \$340 million for FY2009. (The amounts allocated are somewhat less than the amounts notified to Congress, which totaled over \$1 billion for FY2006-FY2009.)

For FY2010, DOD requested a \$400 million appropriation for Section 1206 programs, which would have required Congress to increase the Section 1206 authorized level. In their respective versions of the FY2010 NDAA (H.R. 2647, reported June 18, and S. 1390, reported July 2, respectively), neither the House Armed Services Committee nor the Senate Armed Services Committee appeared inclined to raise the authorized limit from its current \$350 million level. As reported by the House Appropriations Committee (July 16, 2009, H.Rept. 111-230) and passed by the House (July 22, 2009), the House version of the DOD appropriations act (H.R. 3326) would appropriate \$195 million for Section 1206 funding. The Senate version (reported September 10, 2009, S.Rept. 111-74, passed October 6, 2009) would appropriate \$345 million.

Through the use of FY2006 through FY2009 funds, Section 1206 has supported bilateral programs in 24 countries, 13 multilateral programs, and a global human rights program. Just over 40% of the FY2006-FY2009 Section 1206 funding has been obligated for three countries: Pakistan, Lebanon, and Yemen. Pakistan has been by far the largest recipient, receiving \$203.4 million or over 20% of total. About 20% has been allocated to bilateral programs in four countries: Bahrain, Indonesia, the Philippines, and Malaysia. Most of the Section 1206 funding to the latter three focuses on controlling the Celebes Sea that sits among them, as well as adjoining waters. Smaller allocations, i.e., those ranging from \$1 million to \$32 million, comprise close to 40% of the total.

Some Members are concerned with several issues related to Section 1206 authority, both narrow and broad. Specific current concerns include whether Section 1206 funds are being used appropriately and effectively, and whether the authority should be expanded to provide training not only military forces but also to a wide range of foreign security forces. (Currently, Section 1206 limits security force training to maritime security forces.) An overarching issue is whether Congress should place Section 1206 train and equip (T&E) authority under the State Department with other T&E authorities. (Members have thus far refrained from codifying Section 1206 in permanent law, as requested by DOD.) A related issue is whether Congress should grant the State Department its own security assistance contingency fund with purposes that overlap Section 1206, as provided in the House-passed FY2010-FY2011 Foreign Relations Authorization Act (H.R. 2410, Section 841). Finally, as the Obama Administration conducts an overall assessment of foreign assistance, including security assistance, some Members may wish to examine the status of Section 1206 in the context of broader security assistance reform.

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Among the issues related to U.S. assistance to foreign military and security forces, one of the most salient is the status of Section 1206 of the FY2006 National Defense Authorization Act (NDAA), P.L. 109-163, as amended. This authority, enacted in 2005, provides the Secretary of Defense with a new authority to train and equip foreign military forces and foreign maritime security forces for two purposes:

- To enable foreign military forces, as well as foreign maritime security forces, to perform counterterrorism (CT) operations. Nearly all Section 1206 assistance to date has been CT training and equipment, and
- To enable foreign military forces to participate in or to support military and stability operations in which U.S. armed forces are participating. (To date, the Department of Defense (DOD) has authorities other than Section 1206 authority to train and equip foreign militaries in conjunction with operations in Iraq and Afghanistan, although the use of Section 1206 for that purpose is permitted by law.)

Section 1206 is the first major DOD authority to be used expressly for the purpose of training and equipping the national military forces of foreign countries. For almost the past half-century, DOD generally has trained and equipped foreign military forces under State Department Title 22 authority and through State Department programs. On occasion, Congress has given DOD authority to train and equip specified countries, and over the years Congress has provided DOD with specific Title 10 authorities or DOD funding to provide foreign military forces with opportunities attend military schools, but Section 1206 is the first DOD global train-and-equip authority since the passage of the Foreign Assistance Act of 1961, which placed oversight for military assistance with the Secretary of State.

Congress' decision to grant DOD Section 1206 authority has been controversial. Some Members have stressed the need for a DOD authority that combatant commanders can use to respond to emerging threats that put the well-being of U.S. military personnel at risk. But others have questioned whether Section 1206 funds are being used appropriately and effectively, and, above all, whether providing DOD with its own train-and-equip (T&E) authorities undermines the Secretary of State's statutory responsibility to ensure coherence of U.S. foreign policy.

While no other single DOD security assistance authority has generated as much controversy as Section 1206, some analysts have been concerned with the addition of a few new security assistance authorities after the September 11, 2001 (9/11) terrorist attacks on the United States, as well as the perceived expansion of pre-9/11 DOD security assistance and other foreign assistance-type activities. Of particular concern to some Members is Section 1208 of the FY2005 NDAA, an authorization to provide support to "foreign forces, irregular forces, groups, or individuals" that assist or facilitate U.S. military operations conducted by special operations forces to combat terrorism.¹ Two other post 9/11 security assistance authorities of concern are the Regional Defense Counterterrorism Fellowship Program (CTFP), which funds foreign military officers and defense and security officials to attend U.S. military educational institutions, regional centers, and

¹ This authority was established by Section 1208 of the FY2005 NDAA, P.L. 108-375, entitled Support of Military Operations to Combat Terrorism, and is often referred to as "Section 1208" authority. The initial authorization extended from FY2005 through FY2007, with a \$25 million limit on funding. It was subsequently extended, first through FY2010, and then in 2008 through FY2013, with a spending limit of \$35 million and a requirement for Chief of Mission concurrence (Section 1208, FY2009 NDAA, P.L. 110-417). Information concerning this program is classified.

conferences and later made permanent law, and the Coalition Support Fund (CSF), which funds countries assisting in U.S. military operations. The former is viewed by some analysts as overlapping with the State Department International Military and Education Training (IMET) program, the latter is viewed as performing the same function as the State Department Economic Support Fund (ESF).²

This report provides background on the pre-Section 1206 status of security assistance authorities and the factors contributing to the enactment of Section 1206. It then sets out the purposes of the legislation and scope of its activities, restrictions on its use, the DOD-State Department planning process, and funding. It concludes with a discussion of issues for Congress. An appendix provides a descriptive legislative history of the bill and evolving Congressional committee attitudes towards the appropriate division of labor between the Department of Defense and the State Department regarding Section 1206 authority.

Background

For nearly 50 years, since the enactment of the Foreign Assistance Act of 1961, as amended (FAA), the Secretary of State has exercised the leadership role for foreign assistance, including military assistance, specifically military education and training.³ With the exception of a period from the mid-1960s to the mid-1970s inclusive of the Vietnam War, major foreign military assistance programs have been carried out under State Department authority, oversight and guidance,⁴ with a DOD agency responsible for implementation.⁵ “Traditionally the State Department plans, budgets and oversees security assistance programs and is the lead agency in charge of all U.S. foreign policy and global engagement,” according to a recent report co-sponsored by The American Academy of Diplomacy and the Henry L. Stimson Center. “The

² Other DOD foreign assistance-type accounts of concern are two post-9/11 authorities, the Commander’s Emergency Response Program (CERP), used by military commanders in Iraq, Afghanistan, and the Philippines for small-scale humanitarian or development projects, and the Security and Stabilization fund (“Section 1207”) through which DOD transfers funds to the State Department for stabilization and reconstruction activities, mostly outside of Iraq and Afghanistan.

³ As now stated in the FAA of 1961, as amended, Section 622(c) (22 U.S.C. 2382) states that the Secretary of State, under the direction of the President, “shall be responsible for the continuous supervision and general direction of economic assistance, military assistance, and military education and training programs, including but not limited to determining whether there shall be a military assistance (including civic action) or a military education and training program for a country and the value thereof, to the end that such programs are effectively integrated both at home and abroad and the foreign policy of the United States is best served thereby.”

⁴ Before the FAA, the Mutual Security Act of 1951 (P.L. 82-165, 65 Stat. 373) created a Mutual Security Agency in the Executive Office of the President, whose Director was responsible for the “continuous supervision, general direction, and coordination of all foreign aid—military, economic, and technical assistance.” U.S. Congress, House. *U.S. Foreign Aid: Its Purposes, Scope, Administration and Related Information*, prepared by the Legislative Reference Service, Library of Congress. 86th Congress, 1st Session, House Document No. 116, Washington: USGPO, June 11, 1959, p. 69. During part of the 1950s, DOD administered the military assistance programs under the White House’s policy direction and guidance. Congress subsequently moved responsibility for non-military aid to the State Department (P.L. 81-329, 63 Stat. 714). Two lower-ranking State Department officials were charged (consecutively) with coordinating with DOD regarding military aid before the responsibility was finally bestowed on the Secretary of State. For more detail on the further evolution of Military Assistance Authority, see CRS Report RL34639, *The Department of Defense Role in Foreign Assistance: Background, Major Issues, and Options for Congress*, coordinated by Nina M. Serafino.

⁵ The Defense Security Cooperation Agency (DSCA), under the DOD Under Secretary for Policy, and its predecessor agency. While the original language in 1961 applied specifically to assistance authorized under the FAA, a 1976 amendment deleted this restriction.

DOD has supported overall foreign and national security policy by implementing these programs. This relationship was designed to ensure that security assistance was aligned with general U.S. foreign policy goals.”⁶

For many years, DOD had little interest in security assistance activities, as they were regarded neither as a military mission nor as an activity of more than marginal value to ensuring national security. In particular, training foreign military forces was not considered a task for the general purpose military forces, and until recently limited training was most often conducted by U.S. military Special Operations Forces, often under State Department authority.⁷

DOD perspectives on training foreign military forces slowly began to change after the terrorist attacks on the United States of September 11, 2001 (9/11). Defense officials began to regard the defeat of terrorist groups in the countries where they train and prepare as essential to U.S. national security. But some realized that these groups could not be disrupted and defeated solely with U.S. forces employed under existing U.S. arrangements. U.S. military forces lacked the language, country knowledge and cultural sensitivity to conduct effective counterterrorist (CT) activities in many countries where threats could be expected to emerge. Some DOD officials realized that foreign military and security forces would have to take the lead in conducting such activities, and would need training to assume that role. At the same time, DOD officials considered the State Department as lacking the necessary expertise and capabilities to carry out an effective counterterrorism program. DOD officials also viewed the State Department’s planning and implementation processes under authorities for traditional T&E programs⁸ as too slow and cumbersome to meet emerging threats.

In the mid-2000s, DOD officials developed a proposal for a “Global Train and Equip” authority to increase U.S. support for foreign military and security forces in order to disrupt terrorist networks, to build the capacity of legitimate states to provide security within their sovereign territory to prevent terrorists from establishing footholds, and to build the capacity of legitimate states to participate in U.N., regional, and U.S. coalition military missions. This proposal called for a DOD lead, but also required State Department concurrence. Although this proposal was initially resisted by certain sectors at both DOD and the State Department, it won the support of Secretary of Defense Donald Rumsfeld and Secretary of State Condoleezza Rice, and the enthusiastic endorsement of geographic Combatant Commanders, according to one DOD official who promoted the legislation.⁹

⁶ The American Academy of Diplomacy and the Henry L. Stimson Center, *A Foreign Affairs Budget for the Future: Fixing the Crisis in Diplomatic Readiness*, Ambassador Thomas Boyatt, Project Chairman, October 2008, p. 22. Hereafter referred to as *A Foreign Affairs Budget for the Future*.

⁷ Special Operations Forces also train together with foreign troops under a DOD authority, Title 10 U.S.C. Section 2011, Special Operations Forces: training with friendly foreign forces. The primary purpose of the Joint Combined Exchange Training program, conducted under this authority, is to provide training for the U.S. forces.

⁸ State Department programs under which foreign military forces are trained are the International Military Education and Training (IMET) and the Expanded IMET (E-IMET) programs. Equipment is provided to foreign governments through the State Department Foreign Military Sales/Foreign Military Financing (FMS/FMF) programs. According to DOD, this “traditional security assistance takes three to four years from concept to execution,” while “Global Train and Equip authority allows a response to emergent threats or opportunities in six months or less.” U.S. Department of Defense, *Fiscal Year 2009 Budget Request Summary Justification*, February 4, 2008, p. 103. Hereafter referred to as *FY2009 DOD Summary Justification*.

⁹ Jeffrey (Jeb) Nadaner, former Deputy Assistant Secretary of Defense for Stability Operations.

At the same time, perspectives on the use of U.S. military forces to train foreign military forces began to evolve. Secretary of Defense Robert Gates has asserted that training foreign forces is a military mission for U.S. general purpose forces.¹⁰

In early 2005, DOD requested, and Congress granted, Section 1206 as a special contingency authority. Nevertheless, the armed services committees repeatedly expressed hesitation about conceding this authority to DOD and cautioned that it was to be regarded as a pilot program. (See the **Appendix** for a legislative history of Section 1206, FY2006-FY2009.)

In April 2008 testimony before the House Armed Services Committee that still stands as the DOD position on Section 1206, Secretary of Defense Robert Gates described this authority as “a means to fill longstanding gaps in an effort to help other nations build and sustain capable military forces ... ” Explaining DOD’s need to carry out such activities, Secretary Gates stated that after the terrorist attacks on the United States of September 11, 2001 (9/11), “building partner capacity is a vital and enduring military requirement” for DOD to fulfill its national security mission. The “security of America’s partners is essential to America’s own security,” according to Gates, and Section 1206 is a preventive tool through which the United States helps allies and partners to “confront extremists and other potential sources of global instability within their borders ... before festering problems and threats become crises requiring U.S. military intervention.” At the same time, Secretary Gates dismissed the idea that Section 1206 duplicates or could be viewed as a substitute for State Department Foreign Military Financing (FMF) programs.

The Obama Administration has opted to continue the program begun under the George W. Bush Administration. According to the Administration’s FY2010 Budget Request Summary Justification Document accompanying DOD’s May 2009 budget request, U.S. Combatant Commanders consider this the Section 1206 program “the single most important tool for the Department to shape the environment and counter terrorism.”¹¹ According to that document, the Section 1206 program is important because it allows the United States to train and equip foreign military forces to respond to “urgent and emergent threats,” and because it “provides opportunities to solve problems before they become crises....”¹²

Section 1206 In Action

Purpose, Scope, and Timeline of Current Activities

As noted above, Congress provided Section 1206 authority for two purposes. One is to enable foreign military forces, as well as foreign maritime security forces, to perform counterterrorism (CT) operations. The other is to enable foreign military forces to participate in or to support military and stability operations in which U.S. armed forces are participating. Despite Section 1206’s dual purpose, as of FY2009, nearly all Section 1206 funding has been used to provide

¹⁰ See, for instance: Robert M. Gates. *A Balanced Strategy: Reprogramming the Pentagon for a New Age*. Foreign Affairs, January/February 2009. In this article, Gates worries that the military personnel and promotions system is not able “to reflect the importance of advising, training, and equipping foreign troops—something still not considered a career-enhancing path for the best and brightest officers.”

¹¹ U.S. Department of Defense, *Fiscal Year 2010 Budget Request Summary Justification*, May 2009, pp. 1-13.

¹² *Ibid.*

counterterrorism equipment and related training. The types of equipment provided include radios and communications systems; surveillance and reconnaissance systems; trucks, ambulances, boats, and other vehicles; small arms and rifles; night vision goggles and sights; and clothing.

Through the use of FY2006 through FY2009 funds, Section 1206 has supported bilateral programs in 24 countries and 13 multilateral programs. The multilateral programs include 2 to 15 countries. In addition, a DOD organization, the Defense Institute of International Legal Studies (DIILS), has been provided funds for training foreign troops in human rights and respect for civilian authority. The cost for bilateral and multilateral projects has ranged from \$40,000 to \$30.6 million, with most between \$1 million and \$15 million. (See **Table 1**, below.)

Although a primary rationale for Section 1206 funding was that it would enable the U.S. government to respond more quickly to emerging needs than possible under the FMF process, the delivery of Section 1206 equipment has not always proved as expeditious as originally expected. Although DOD stated in a FY2009 budget request document that Section 1206 authority "allows a response to urgent and emergent threats or opportunities in six months or less,"¹³ the actual delivery time for much equipment is longer. A January 2009 DOD letter to certain Members of Congress states that "Section 1206 authority can provide training and equipment in one to two years, or less."¹⁴ State Department officials attribute the lag on some cases to multiple causes, most importantly the shortage of readily-available equipment in many cases due to the small number of U.S. producers. Some analysts also cite processing delays at the Defense Security Cooperation Agency (DSCA) as a factor.¹⁵

Section 1206 Recipients

Just over 40% of the \$986 million in allocated Section 1206 funds from FY2006 through FY2009 (as of October 13, 2009) has gone to three countries. Pakistan has been by far the largest recipient, receiving \$203.4 million or over 20% of total. It received almost twice as much as Lebanon, the second largest recipient at \$105.5 million. Yemen is the third largest recipient at \$97.3 million. Pakistan and Lebanon have received Section 1206 funds in each of the program's four fiscal years. Yemen has received funds in three fiscal years.

For *Pakistan*, Section 1206 has provided equipment and training to increase the government's ability to counter terrorism threats emanating from the Federally Administered Tribal Areas (FATA).

- A central feature has been helicopter support. In FY2006, Section 1206 assistance was first used to address spare part shortages that limited availability from Pakistan's "impressive inventory of helicopters."¹⁶ These

¹³ FY 2009 Budget Request Summary Justification, p. 103.

¹⁴ A copy of the letter was provided by DOD, with the permission of a Congressional recipient. It is signed by the former Under Secretary of Defense for Policy Eric S Edelman, who occupied that post as of the date of the letter, January 16, 2009. Hereafter referred to as *OSD letter of January 16, 2009 responding to Members of Congress*.

¹⁵ The DSCA is a defense agency (under the Under Secretary of Defense for Policy) that administers and implements a wide variety of security assistance programs, including Foreign Military Financing, Foreign Military Sales, International Military Education and Training, Excess Defense Articles, and drawdowns, as well as Section 1206. More information on the DSCA is available at <http://www.dsca.mil>.

¹⁶ CNA Corporation, *Assessments of the Impact of 1206-Funded Projects in Selected Countries: Lebanon, Pakistan, Yemen, Sao Tome and Principe*, by Eric Thompson and Patricio Asfura-Heim, CRM D0017988.A4/1Rev. July 2008, p. (continued...)

funds provided spare parts for Mi-17 and Cobra helicopters, as well as aviation body armor, night vision goggles, and limited visibility training for pilots. FY2008 and FY2009 funds also have provided the means, technical support, and training to repair, maintain, shelter, and operate Pakistan's helicopters for use in FATA operations. FY2009 funds supply four Mi-17 helicopters and spare parts for use along Pakistan's western border.

- Support to Pakistan's Special Services Group (SSG), a special forces unit, to operate more effectively in the FATA has included a variety of equipment in FY2007, FY2008, and FY2009. Equipment contracted during those fiscal years includes radios and other communications equipment, targeting systems, sniper rifles, ammunition, night vision goggles, global positioning systems units, lifesaver kits, body armor and other field gear. In FY2007 it included training for conducting nighttime raids from helicopters (FY2007). In FY2008, equipment was also provided to the Pakistan Army Aviation 21st reaction squadron.
- Additional FY2009 aid includes support to build a ground-based intelligence, surveillance, and reconnaissance capability for counterterrorism operations to support Pakistan Army counterterrorism operations in the FATA, and kits to assist the Pakistan Army and Navy effectively investigate improvised explosive devices (IEDs) and other explosives used in terrorism operations.

For *Lebanon*, Section 1206 assistance first focused on helping the Lebanese Armed Forces (LAF) to bring order to southern Lebanon and secure the country's northern border in the wake of the July 2006 Israel strikes against Hizbullah in Lebanon. FY2006 assistance bought spare parts for trucks, armored personnel carriers, and helicopters. FY2007 assistance purchased trucks, secure communications equipment, vehicles and helicopter spare parts, spare parts for guns, and soldier equipment, including night vision goggles and body armor. FY2008 and FY2009 assistance has focused on equipment for Lebanese special operations forces. FY2008 items include secure communications equipment, as well as vehicles, night vision sights, Global Positioning System (GPS) receivers, vehicles and ambulances, small arms, clothing, textiles, and individual equipment. FY2009 Urban Solider Equipment items are intended to help Lebanese force conduct CT operations in an urban environment. This package includes bulldozers, Humvee ambulances, tactical armor vests, rifles, and night vision device rifle scopes. FY2009 funds are also supplying four Cessna Caravan aircraft, as well as related spare parts and training.

For *Yemen*, Section 1206 assistance started in FY2006 with a relatively small package of equipment (small arms and ammunition, computers, radios and their installation, and light tactical vehicles) to aid the Yemeni Armed Forces in preventing cross-border arms trafficking. Significantly more FY2007 funds were devoted to enhance Yemen's border security CT capability, with vehicles of various types (as well as maintenance training and support), spare parts, crisis action center equipment, and transportation. Most Section 1206 assistance to Yemen is being provided with FY2009 funds. This assistance includes not only trucks, radio systems (with operation and maintenance training) and body armor to help the Yemeni Border Security Force deter, detect, and detain terrorists along the Yemen, Saudi Arabia, and Oman borders, but also equipment for the Yemeni Coast Guard (patrol boats and accessories, and shipboard radios),

(...continued)

25. [<http://www.cna.org/documents/D0017988.A4.pdf>.] Hereafter referred to as *CNA Corporation Assessments*.

and for the Yemeni Air Force (helicopter spare parts and surveillance cameras) to enhance CT capability. FY2009 funds also will support Yemen's Ministry of Defense with an explosive ordnance disposal program.

About 20% of the FY2006-FY2009 funding has been allocated to bilateral programs in these four countries: Indonesia (\$57.4 million), Philippines (\$55.1 million), Bahrain (\$50.3 million), and Malaysia (\$43.9 million). Most of the Section 1206 funding to Indonesia, the Philippines, and Malaysia focuses on controlling the Celebes Sea (also known as the Sulawesi Sea), which provides a water border for all three countries, as well as the adjoining Molucca Sea and Sulu Sea. Assistance to these countries has consisted of various coastal and maritime surveillance and detection systems and items, communications systems and equipment, aircraft equipment and training, and maritime interdiction packages. For Bahrain, Section 1206 focuses also on maritime assistance, providing coastal patrol crafts and related equipment and upgrading Bahrain's coastal surveillance system, as well as building the Bahrain Navy's special forces CT capability. Section 1206 assistance also helped to equip Bahrain's Defense Force special operations personnel for rapid deployment to rugged areas.

The remaining allocations, all under \$32 million and comprising close to 40% of the total, supported bilateral programs in 17 countries, 13 multilateral programs, and the DIILS program. Most of these programs focus on controlling adjacent maritime waters and on securing land and maritime borders. Some help military forces control their territories against terrorist threats. About 10% of these allocations is equally divided between bilateral and multilateral programs in Sub-Saharan Africa, much of it for surveillance and control of maritime and land borders.

Through FY2009, only a small part of Section 1206 allocations was provided to enhance the ability of partner nations to contribute to stability operations. FY2007 funds provided stability operations training and equipment to Kazakhstan and to a group of four countries (Albania, Macedonia, Georgia, and Ukraine) to enable their current and future participation in NATO and/or U.S. led stability operations.

Table 1, directly below, groups programs by magnitude of funding. For details, see **Table 2**, below.

Table I. FY2006-FY2009 Section 1206 Funding Allocations by Magnitude
 (\$ US millions, as of October 13, 2009)

Top Tier	Upper Middle Tier	Lower Middle Tier	Bottom Tier
Pakistan: \$203.4	Indonesia: \$57.4	Kazakhstan: \$31.8	Djibouti: \$16.4
Lebanon: \$105.5	Philippines: \$55.1	Kenya: \$25.9	Bangladesh: \$15.7
Yemen: \$97.3	Bahrain: \$50.3	Ethiopia: \$25.5	DR/Panama: \$14.4
	Malaysia: \$43.9	Caribbean Basin I: \$23.4	Mexico: \$13.9
		Kyrgyzstan: \$21.2	Albania: \$12.0
		Tunisia: \$18.6	Ukraine: \$12.0
		Sri Lanka: \$18.2	Caribbean Basin II: \$11.1
		EARSI: \$14.2	West Africa Maritime Capability: \$10.9
		Georgia: \$18.0	West & Central Africa Maritime Equip: \$9.8
			Caribbean Basin CT unit: \$9.3
			South East Africa Maritime Security: \$8.4
			Nigeria and Sao Tome: \$6.8
			Chad and Nigeria: \$6.2
			Africa Maritime Awareness/ Territorial Water Threat Response: \$5.8
			Mali: \$5.1
			TSCT Support: \$3.4
			Macedonia: \$3.0
			Nigeria: \$2.3
			DIILS: \$ 2.1
			Azerbaijan: \$1.7
			Chad: \$1.7
			Africa Intelligence Aid: \$1.1

Source: Based on data provided by the Office of the Secretary of Defense and compiled from more detailed information provided in **Table 2**, below.

Notes: DR = Dominican Republic. Sao Tome = Sao Tome and Principe. EARSI = East Africa Regional Security Initiative. TSCT = TransSahara Counterterrorism Partnership.

Recipients in groups are as follows: 5 in Caribbean Basin I (Bahamas, Dominican Republic, Honduras, Jamaica, and Nicaragua); 4 in EARSI (Djibouti, Ethiopia, Kenya, Tanzania); 4 in Caribbean Basin CT unit (Belize, Guyana, Honduras, and Suriname); 5 in West and Central Africa Maritime Capability (Cameroon, Gabon, Senegal, Sierra Leone); 6 in Caribbean Basin II (Bahamas, Belize, Dominican Republic, Honduras, Jamaica, and Panama); 8 in West & Central Africa Maritime Equip (Benin, Cameroon, Cape Verde, Gabon, Ghana, Sao Tome and Principe, Senegal, Togo); 15 in Africa Maritime Awareness/Response (Algeria, Benin, Cameroon, Cape Verde, Republic of the Congo, Gabon, Ghana, Gambia, Guinea, Liberia, Morocco, Mozambique, Senegal, Sierra Leone, Sao Tome and Principe); 4 in TSCT Support (Chad, Mauritania, Nigeria, and Senegal); and 8 in Africa Intelligence Aid (Algeria, Niger, Chad, Morocco, Senegal, Mauritania, Nigeria, and Mali).

Conditions on Section 1206 Programs

Section 1206 of the FY2006 NDAA requires that programs conducted under its authority observe and respect human rights, fundamental freedoms, and the "legitimate civilian authority within that country." The authority may not be used to provide any *type* of assistance that is otherwise prohibited by any provision of law. It also may not be used to provide assistance to any *country* that is otherwise prohibited from receiving such assistance under any other provision of law. The legislation also requires a 15-day advance notification to the congressional defense, foreign affairs, and appropriations committees before initiating each program. This notification must specify, among other things, the program country, budget, and completion date, as well as the source and planned expenditure of funds.

Joint DOD-State Department Approval Process

Section 1206 programs are developed and selected under a "dual-key" process that culminates with the signature of both the Secretary of Defense and the Secretary of State. As modified by the FY2007 John Warner NDAA, Section 1206 authority permits the Secretary of Defense to provide Section 1206 support with the "concurrence" of the Secretary of State. According to DOD and State Department officials, that term has been interpreted to mean the Secretary of State's approval. Section 1206 also requires both secretaries to jointly formulate any program and coordinate in its implementation. Coordination for the first year programs in FY2006 was reported to be spotty,¹⁷ but since then DOD and the State Department agencies have developed an extensive joint review process that some officials view as the "gold standard" for interagency planning and cooperation.¹⁸

Early in the fiscal year, the DOD Joint Staff and the State Department's Bureau of Political-Military Affairs (PM) kick off the process with a call for proposals issued with identical guidance. Most recommendations originate at the field level, where geographic Combatant Commands (COCOMs) and U.S. embassy country teams jointly formulate proposals, although the degree of collaboration may vary. For proposals originated by the military, the COCOM forwards the proposal to Joint Staff and the Office of the Secretary of Defense. For proposals originated in State Department channels, the Embassy forwards it to the State Department. The relevant Ambassador and Combatant Commander each must personally sign off on a proposal.

At the Pentagon and the State Department, staff conduct an extensive review process to prioritize the many proposals (they have numbered in the hundreds in recent years). The OSD Office of the Deputy Assistant Secretary of Defense for Special Operations Capabilities and Counterterrorism¹⁹ takes the DOD lead. It coordinates reviews for feasibility, political-military considerations, and legal status with OSD and Joint Staff regional and functional offices. At the State Department, the Bureau for Political-Military affairs consults with the Office of the Coordinator for Counterterrorism (S/CT), the regional bureaus, and the Office of the Director of U.S. Foreign Assistance (F), and then forwards proposals to the State Department legal and Congressional

¹⁷ U.S. Government Accountability Office, *Section 1206 Security Assistance Program—Findings on Criteria, Coordination, and Implementation*, GAO-07-416R, February 28, 2007. See p. 3.

¹⁸ *FY2009 DOD Summary Justification*, p. 103.

¹⁹ This office is located under the Under Secretary of Defense for Policy, Office of the Assistant Secretary of Defense for Special Operations/Low Intensity Conflict and International Cooperation (SO/LIC&IC).

liaison offices for vetting. The offices of the Deputy Secretaries of Defense and of State may also indicate their priorities. Selection criteria include the urgency of the threat, the ability of the host nation to address that threat from its own resources, the ability of the host nation to sustain the capability, either from its own resources or through FMF funding, and the risks of inaction.²⁰

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

Once program memoranda are signed by both secretaries, DOD sends Congressional notifications to the armed services, foreign affairs, and appropriations committees. No funds can be obligated until 15 days after these committees are notified and given the opportunity to review the projects.

Funding Provisions and Annual Obligations

Section 1206 programs are funded from the DOD operations and maintenance account. During the first two years of the program, DOD transferred funds from lower-priority missions to fund activities under Section 1206, according to the Office of the Secretary of Defense/Policy (OSD/P). For FY2008, Congress appropriated \$300 million for Section 1206 in the DOD Appropriations Act, 2008 (also known as the Consolidated Appropriations Act of 2008, P.L. 110-116). In its 2008 request for permanent Section 1206 authority, the Bush Administration requested that spending authority be increased to \$750 million, but in its FY2009 budget request asked for \$500 million in appropriations for that year.

Congress denied the Bush Administration's requested increases. In the FY2009 Duncan Hunter NDAA, Congress increased the authorized amount to \$350 million. In the same bill, Congress also provided authority for funds to be used in consecutive fiscal years (i.e., funds made available for a program begun in one fiscal year may also be used for that program in the next fiscal year).

As of October 13, 2009, Section 1206 allocations total a bit under \$1 billion for FY2006 through FY2009. Section 1206 allocations totaled some \$100 million for FY2006, \$274 million for FY2007, \$272 million for FY2008, and \$340 million for FY2009. (See Table 2 below.) The amounts allocated are somewhat less than the amounts notified to Congress, which totaled over \$1 billion for FY2006-FY2009.

FY2010 Administration Request and Congressional Action

For FY2010, the Obama Administration requested in its May 2009 budget submission a \$400 million appropriation for Section 1206 funding.²¹ This is \$50 million above the authorized spending limit of \$350 million. The Obama Administration's proposed National Defense

²⁰ Author's interviews with Department of State officials, September 2009, and e-mail exchanges with DOD and State Department officials, October and November 2009.

²¹ U.S. Department of Defense, *Fiscal Year 2010 Budget Request Summary Justification*, May 2009, p. 1-13.

Authorization Act (NDAA) for FY2010 did not contain a corresponding provision requesting that Congress increase the current authorized spending limit by \$50 million.

National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647, S. 1390, P.L. 111-84)

In action on the proposed FY2010 NDAA, HASC set forth its evolving views on whether Congress should move Section 1206 authority from DOD to the State Department and SASC proposed new stipulations on Section 1206 use. As signed into law in October 2009 (P.L. 111-34), the FY2010 NDAA retains the \$350 authorized funding level, but introduces a new funding provision by specifying that up to \$75 million could be used to train the military troops of coalition partners in each FY2010 and FY2011.

As marked up by the House Armed Services Committee (HASC) on June 10, and reported to the House on June 18 (H.R. 2647), the FY2010 NDAA would have authorized \$350 million for Section 1206, according to the HASC press release. The Committee report accompanying the bill (H.Rept. 111-166) noted that the bill contained Section 1206 funding, but did not specify the amount. The report also noted an evolution of the HASC position on Section 1206 funding.

In discussing Section 1206, HASC noted that while it previously had regarded Section 1206 "as part of the foreign assistance family of authorities that has traditionally resided within the Department of State's purview" in order to assist foreign countries meet their own security needs as part of a U.S. foreign policy framework, it now views Section 1206 is a "new type of authority" to meet the Secretary of Defense's assessment of a combatant commander's need to build certain capacity" as an important aspect of a combatant commander's theater engagement strategy." (p. 411) While not discounting the idea that the authority might better be placed at the Department of State than at DOD, HASC reflects that wherever the authority ultimately lies, the need for projects responding to a DOD-led assessment of U.S. national security needs means that the "Secretary of Defense must play a primary role in generating requirements." (p 412)

As reported July 2, 2009, the Senate Armed Services Committee version of the FY2011 NDAA (S. 1390) would have permitted the use of up to \$75 million (of the total \$350 authorized for Section 1206) on programs to build the capacity of foreign military forces to participate in or support military and stability operations in which the U.S. armed forces are a participant. This limitation would pertain to programs that begin on or after October 1, 2009, and be effective for FY2010 and FY2011. Previously there was no specification regarding the amount that could be spent for either of Section 1206's two stated purpose. (As noted elsewhere, little funding has been spent through FY2009 on building capacity other than counterterrorism capacity.)

As described by in the SASC report (S.Rept. 111-35), this limitation was made in response to DOD's request for new authorities to build the capacity of a foreign country's national military forces preparing to support a coalition operation conducted as part of Operation Iraqi Freedom (OIF) or Operation Enduring Freedom (OEF) in Afghanistan, or by the NATO International Security Assistance Force (ISAF) in Afghanistan; and to build the capacity of NATO and partner special operations forces to support NATO or coalition special operations conducted as part of OIF or OEF in Afghanistan, or by the NATO ISAF.

SASC stated that "both these activities can be conducted within the existing authority of section 1206" and that the committee "would be open to considering proposals to use the authority under

this section to help build the capacity of NATO and other coalition partners whose ability to contribute to ongoing military or stability operations in Iraq and Afghanistan would otherwise be limited. Nevertheless, SASC explains the cap as a means to ensure that Section 1206 funding serves its intended purpose (i.e., to provide a means to address emerging needs) and not as substitute for security assistance under the State Department's Foreign Military Financing (FMF) authority. As expressed in the report accompanying its bill, DOD's "stated desire to conduct sustained capacity building to prepare special operations to deploy for coalition operations suggests that it intends to establish multi-year programs with respect to certain recipient countries." The \$75 million limit is intended to reduce "the potential impact of such multi-year programs on the section 1206 program as a whole."

The SASC report emphasized the temporary nature of Section 1206 authority. It also urged the Obama Administration to review existing DOD and State Department security assistance authorities in order "to reconcile, de-conflict, and improve the effectiveness of these authorities."

The FY2010 NDAA conference report (H.Rept. 111-288) put in place an annual \$75 million limit on Section 1206 funds used to train military troops of coalition partners for FY2010 and FY2011. The President signed the bill into law on October 28, 2009 (P.L. 111-84).

Foreign Relations Authorization Act, Fiscal Years 2010 and 2011 (H.R. 2410)

Congressional concerns regarding the appropriate agency to exercise responsibility for security assistance programs emerged in House action the FY2010-FY2011 foreign relations authorization bill (H.R. 2410). In that bill, the House Foreign Affairs Committee proposed a new "Security Assistance Contingency Fund" for the State Department with purposes that would overlap with Section 1206. The House passed H.R. 2410 with that proposal intact in June 2009. No Senate action has occurred on H.R. 2410, received by the Senate Foreign Relations Committee (SFRC) on June 22, 2009. No corresponding Senate bill has been introduced.

H.R. 2410, Section 841, as reported to the House on June 4 (H.Rept. 111-136) and passed by the House on June 10, would authorize the Secretary of State "to conduct a program to respond to contingencies in foreign countries or regions by providing training, procurement, and capacity-building of a foreign country's military forces and dedicated counterterrorism forces in order for that country to (1) conduct counterterrorist operations; or (2) participate in or support military and stability operations in which the United States is a participant." Section 841 would authorize the appropriation of up to \$25 million in each FY2010 and FY2011 for these purposes, as well as the use of up to \$25 million in Foreign Military Financing funds for these purposes in each of those fiscal years. Funds would remain available until expended.

Like Section 1206, this authority could not be used to provide any type of assistance otherwise prohibited by law nor used to assist any foreign country otherwise prohibited from receiving such type of assistance under any provision of law. Unlike Section 1206, this authority would be exercised by the Secretary of State, with the only coordination requirement being that the Secretary "shall consult with the head of any other appropriate department or agency in the formulation and execution" of programs conducted under this authority. Section 841 would require a 15-day notification to congressional foreign affairs and appropriations committees before funds are obligated.

Department of Defense Appropriations Act, 2010 (H.R. 3326)

As reported by the House Appropriations Committee (July 16, 2009, H.Rept. 111-230) and passed by the House (July 22, 2009), the House version of the DOD appropriations act would appropriate \$195 million for Section 1206 funding. The Senate Appropriations Committee version (reported September 10, 2009, S.Rept. 111-74) would appropriate the full \$345 million requested by the Obama Administration; no change was made by the Senate in approving the bill on October 6, 2009. Both House and Senate versions of the bill would appropriate Section 1206 funds as part of the Operations and Maintenance, Defense-Wide budget, under the Defense Security Cooperation Agency account.

Issues for Congress

Congress established Section 1206 as a flexible funding mechanism in order to provide the U.S. government with a means to respond rapidly to emerging (and some would say urgent) threats to U.S. security, and in particular the security of U.S. military forces that would pose too great a risk if left unattended. Established as a "pilot program," Section 1206 authority is subject to continuous Congressional scrutiny. Issues range from the broad question of whether DOD should retain its own T&E authority, and whether it should be expanded or limited, to questions concerning Section 1206's utility and whether it should be reconsidered in the context of broader security assistance reform.

Should DOD Retain Section 1206 Train and Equip Authority?

Because Congress has bestowed responsibility on the Secretary of State for the oversight of all foreign assistance, including military education and training programs, and for ensuring foreign policy coherence,²² many analysts argue that Section 1206 authority should be transferred to the Department of State, perhaps as a subset of FMF authority. On the other hand, those who believe DOD should retain Section 1206 authority, and even that Congress should make it a permanent DOD authority under Title 10 (Armed Services) of the U.S. Code, argue that Section 1206 serves very different purposes than FMF or Title 22 (Foreign Assistance) military education and training.

Those who believe DOD should retain Section 1206 authority emphasize its perceived importance as a military tool, and differentiate the general purposes of Section 1206 and FMF. Over the past four years, defense and military officials, including geographic combatant commanders, have come to regard Section 1206 programs as vital to the U.S. defense efforts.²³

²² The Foreign Assistance Act of 1961, as amended (FAA), Section 622(c)(22 U.S.C. 2382), states that the Secretary of State, under the direction of the President, "shall be responsible for the continuous supervision and general direction of economic assistance, military assistance, and military education and training programs, including but not limited to determining whether there shall be a military assistance (including civic action) or a military education and training program for a country and the value thereof, to the end that such programs are effectively integrated both at home and abroad and the foreign policy of the United States is best served thereby." The Armed Export Control Act, which as of 1968 authorizes the FMS/FMF program, similarly mandates that the Secretary of State, under the direction of the President, be responsible for "the continuous supervision and general direction of sales, leases, financing, cooperative projects, and exports under this chapter..." (P.L. 90-629, as amended, Chapter 1, Section 2(b), 22 U.S.C. 2752).

²³ According to a DOD document, the "geographic Combatant Commanders consider global train and equip authority the Department's single most important tool for building partner operational capacity, shaping the environment, and countering terrorism outside Iraq and Afghanistan." *FY2009 Budget Request Summary Justification*, p. 102.

The January 2009 letter from the Under Secretary of Defense to Members of Congress (cited above) states that Section 1206 funds meet the military needs determined by the geographic Combatant Commanders “for tools to build capable, reliable, and interoperable partners as they prepare for—and seek to minimize the necessity for—military missions in the AORs [Areas of Responsibility].” Section 1206, according to the letter, is a flexible, *strategic* tool “to meet urgent and emergent threats and opportunities to build partner capacity... [and] ... to address critical counterterrorism needs as defined by the U.S. Government.”

In contrast, the DOD letter presents FMF as a *political* tool “critical ... for executing our foreign policy” and “key to improving bilateral relationships, encouraging behavior in the U.S. interest, increasing access and influence, and building capacity where host-nation and U.S. interests align.” While Section 1206 responds to needs identified by the U.S. government, FMF is often used to meet the security needs of foreign countries as perceived by their governments. “Because many countries rely on FMF as a major resource for their military procurement budgets,” FMF allocations are “affected by host-nation preferences and political engagement,” the letter states.

One indicator of the differing uses of Section 1206 and FMF assistance may be the relative size of funds spent in Sub-Saharan Africa, a region whose insecure borders and ungoverned spaces present, many argue, an ideal habitat for terrorist groups and thus a threat to U.S. military forces and U.S. national security. Estimated FY2009 FMF obligations in Africa are less than 2% of total obligations (\$8.3 million compared to \$4.6 billion overall). Section 1206 allocations for Africa are relatively greater, representing some 14% of total FY2009 allocations (\$48.7 million of \$339.9 million as of October 13, 2009).

In the letter, DOD denies that Section 1206 programs are “as some have claimed, programs historically conducted by the State Department....” The United States “has not conducted programs like this before.”

On the other hand, several foreign policy research institutions have advocated placing Section 1206 programs under State Department authority and the oversight of the Secretary of State. As argued in a report by the American Academy of Diplomacy and the Henry L. Stimson Center, “the Secretary of State has and should have responsibility for assuring that all foreign and security assistance is carried out in accord with U.S. foreign policy, including setting overall policy, approving countries to receive assistance, and setting the budget for such assistance.”²⁴ The authors of this report, drawing on a panel comprised of former Ambassadors and other State Department personnel, stated that to do otherwise would undermine the Secretary of State’s responsibility for the “fundamental direction of U.S. foreign policy.”²⁵ This sentiment is shared by some others. While recognizing Section 1206’s importance to DOD, the Center for Strategic and International Studies (CSIS) Task Force on Nontraditional Security Assistance voiced concern that Section 1206 “has the potential to impinge on State Department leadership in U.S. foreign policy and the authorities given the secretary of state under the Foreign Assistance Act (FAA).”²⁶

²⁴ *A Foreign Affairs Budget for the Future*, p. 23.

²⁵ *A Foreign Affairs Budget for the Future*, p. 12.

²⁶ Representative Robert Andrews and Representative Mark Kirk, co-chairs, *Integrating 21st Century Development and Security Assistance: Final Report of the Task Force on Nontraditional Security Assistance*, Center for Strategic and International Studies, January 2008, p. 7. (On the same page, the report further notes: “A number of legislators on Capitol Hill have expressed fear that Section 1206 could undermine the coherence of U.S. foreign policy, by allowing combatant commanders to assist foreign security forces without taking account of broader U.S. considerations at stake in bilateral and regional relationships.”) Hereafter referred to as *Integrating 21st Century Development and Security* (continued...)

A Massachusetts Institute of Technology (MIT) report expresses more concrete concerns regarding coherence, transparency, and fiscal discipline. Its authors, Cindy Williams and Gordon Adams, argue that authority for Section 1206 (as well as for other security assistance programs) should be vested in the State Department "in order to ensure that security assistance does not drive or conflict with overall U.S. international engagement."²⁷ They view Section 1206 and other recent security assistance authorities as generally parallel to or duplicating State Department's traditional security assistance programs.²⁸ "The risks in this parallel system of authorities and programs are that security assistance becomes more complex and confusing, that it is disconnected from overall, long-term U.S. diplomacy and national security strategy, and that money is wasted through overlapping, uncoordinated, or conflicting efforts," they wrote.²⁹

Critics of Section 1206 frequently cite it as one of a number of programs that signal the "militarization" of U.S. foreign assistance, a trend which is perceived as detrimental to U.S. relations with foreign governments and to its image with foreign populations. Despite this widespread perception, there does not appear to be concrete evidence regarding the effects of Section 1206 authority on U.S. foreign relations. Indeed, some may argue that there may be ways in which DOD-controlled Section 1206 assistance can benefit U.S. interests. For instance, recipients may perceive DOD assistance as representing a serious, enduring U.S. security interest in that country, facilitating military-to-military contacts.

Are Section 1206 Funds Being Used Appropriately?

Some Members of Congress have expressed concern that Section 1206 funds are being used in some countries for programs that would be funded more appropriately under FMF. These concerns were reflected in a Members' letter to Secretary Gates in October 2008. In that letter, the Chairmen and Ranking Members of the House Armed Services and Foreign Affairs committees expressed concern that the DOD and the State Department were requesting funds for projects that did not fit within Section 1206's stated purposes.³⁰ They expressed concern that some Section 1206 programs seemed to address general foreign policy and security concerns, rather than an identifiable link to a transnational terrorist movement or threat to the United States as required for Section 1206 funding.

In some cases, these Members stated that Section 1206 proposals appeared identical to FMF programs or substitutes for FMF where a country did not want to use FMF funds. The letter pointed specifically to Pakistan in this regard, stating that the helicopter maintenance provided by Section 1206 could not be considered an emerging need because the Pakistani government had

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Assistance.

²⁷ Cindy Williams and Gordon Adams, *Strengthening Statecraft and Security: Reforming U.S. Planning and Resource Allocation*, MIT Security Studies Program Occasional Paper, Massachusetts Institute of Technology, June 2008, p. 21. Hereafter referred to as *Strengthening Statecraft and Security*.

²⁸ Other DOD security assistance authorities specifically discussed in this report are Coalition Support Funds, the Commander's Emergency Response Program (CERP), and the Combating Terrorism Fellowship Program (CTFP).

²⁹ *Strengthening Statecraft and Security*, p. 70.

³⁰ Addressed to Secretary of Defense Robert M. Gates, the letter was dated October 8, 2008, and signed by Representatives Howard L. Berman, Chairman of the House Committee on Foreign Affairs (HFAC), Ike Skelton, Chairman of the House Committee on Armed Services (HASC), Ileana Ros-Lehtinen, HFAC ranking member, and Duncan Hunter, HASC ranking member.

requested such assistance in 2005. The letter also pointed to the provision of certain equipment to Kazakhstan as failing to meet "an identifiable terrorist threat," and noted that Indonesia had communicated that it would not use radar systems provided through Section 1206 primarily for CT purposes.

To clarify accepted purposes for Section 1206 funding and prioritize the requests that DOD presented to Congress, the Members requested that DOD provide "greater clarification as to the threshold test for the 'emerging threats' concept.... Absent sufficient metrics to evaluate an emerging threat, the 1206 program remains just as susceptible as FMF to be used as a political tool with foreign countries, not as a strategic tool to address critical U.S. counterterrorism needs." The Members stated that they believed Section 1206 "should be provided in cases where there is more than just a *potential* terrorist threat...."

As noted earlier, the outgoing Bush Administration responded to the Members with a three and one-half page defense of the program in a letter from the Under Secretary of Defense. In that letter, DOD not only differentiated between Section 1206's military and strategic purposes and FMF's political purposes (as discussed in the section above), but also stated that Section 1206 funds "can play a useful role in addressing security concerns before they develop into acute threats, and thereby mitigate the need for future U.S. military intervention."³¹

The letter did not specify criteria for a "threshold test" that would define and identify an emerging threat. It did, however, explain in general terms the basis on which Section 1206 programs are chosen. In addition to Section 1206 emphasis on *strategic* purposes (as discussed above), the letter states that the authority is used "proactively" to take the early steps necessary to counteract negative trends to forestall crises.

The letter also discusses the parameters within which Section 1206 funds are used. "There has been no attempt to ensure that all regions are provided assistance under this authority—or that all elements of a foreign military are provided with equipment," according to the letter. "To the contrary, Section 1206 programs are targeted at countries—and particularly military units within countries—where focused training and equipment will have the most significant impact in achieving the objectives of the Section 1206 authority." Programs are chosen "not only based on current threats, but also on the gap between these threats and partners' capacity to prevent or deter them, and the likelihood that this gap will grow without U.S. military support."

Addressing the Members' concerns about Section 1206 aid to Pakistan, the letter describes Section 1206 support for Pakistan's helicopter fleets as meeting U.S. military needs by supporting "security operations in Pakistan's border region that are critical to the *United States* [emphasis in the original] for success in Afghanistan." There is a separate five-year FMF with Pakistan that serves a different purpose: it was designed "to build our bilateral relationship and assist Pakistan as it procures the capabilities *it* sees as important for its own defense," according to the letter.

³¹ *OSD letter of January 16, 2009, responding to Members of Congress. op.cit.* Moreover, the letter notes that Secretary of State Gates "has argued consistently for increased funding for Title 22 programs—including FMF—because our diplomats need additional resources to advance U.S. interests."

Are Section 1206 Funds Being Used Effectively?

With the Section 1206 program in its fourth year, some policymakers and analysts have begun to question whether the program is effective. Some are troubled by the lack of criteria for determining the effects of Section 1206 programs. A July 2008 assessment of Section 1206 assistance to four countries was generally positive, citing improvements in operational capacity, greater information-sharing and cooperation, and troop morale, but also noting one country's lack of capacity to investigate warnings produced by sensors and another's inability to identify known or suspected terrorists.³² Some proponents note that establishing the outcomes of programs that are essentially preventive in nature is impossible, not unlike trying to prove a negative. Some, however, suggest that a possible indicator of utility would be an estimate of the cost to the U.S. military of compensating for the lack of the capability provided under Section 1206 or of carrying out that function itself. Two issues related to effectiveness are whether Section 1206 programs can be sustained and whether they can be carried out in a timely manner.

Sustainability

For Section 1206 CT programs to be effective, most believe that they must be sustained over the long-run. Some policymakers are concerned that recipient countries will not continue to fund Section 1206 programs when Section 1206 funding ends. (Because Section 1206 authority established to meet immediate needs, Section 1206 must cease when a threat is no longer "emerging," however that may be defined.) The HFAC-HASC letter of October 2008 stated that DOD and the State Department had not provided sufficient information on how recipient countries would sustain Section 1206-provided equipment. "We understand the Departments' plan to use FMF (or encourage a recipient country to use national funds) for this purpose, but this approach simply defers resource shortcomings by a few years." According to DOD's January 2009 letter, DOD and the State Department have determined that "Section 1206 authority could be used to begin critical programs, after which we would work with host nations to identify national funds or, failing that, include sustainment requirements in FMF requests." The ability of recipient governments to sustain programs is taken into account in program planning, and at times programs have been cut back to ensure a recipient government could sustain the program, according to the letter. In addition, Section 1206 programs all provide "two-year spare parts packages and training to operate and sustain equipment, including train-the-trainer support." This is intended to minimize future costs.

Timeliness

A major rationale for establishing Section 1206 authority was to provide an antidote to the long lead time required by FMF to supply equipment. As mentioned in a section above, some Section 1206 deliveries are taking longer than originally anticipated. State Department officials attribute the lag to multiple causes, most importantly the shortage of readily-available equipment due to the small number of U.S. producers. They also cite processing delays at the Defense Security Cooperation Agency (DSCA), attributed to an insufficient number of staff to handle the agency's

³² *CNA Corporation Assessments*. The countries are Lebanon, Pakistan, Yemen, and Sao Tome and Principe. The study was conducted in response to a request from the OSD Global Security Affairs Office. The report noted that in some cases it relied on secondary source reporting. See the Executive Summary, pp. 1-4.

workload and time-consuming procedures, as a factor. Some analysts point out that these same factors affect deliveries of FMF-provided equipment.

Should Congress Provide the State Department and DOD with Overlapping Section 1206-type Authorities?

As discussed above, Section 841 of the House version of the foreign relations authorization bill for FY2010 and FY2011 (H.R. 2410, H.Rept. 111-136) would create a new "Security Assistance Contingency Fund" for the State Department with purposes that would overlap with Section 1206 (i.e., for counterterrorism programs and for training foreign military and other security forces for participating in operations with U.S. forces). The bill would provide \$50 million in each FY2010 and FY2011, half by authorizing new appropriations and half by authorizing the use of FMF funds for these purposes.

There is no indication in the bill's report language that it is intended to replace Section 1206. As drafted, it seems designed as a complementary measure. The accompanying House Foreign Affairs Committee report states merely that the "authority is necessary for the Department of State to start stepping up to the responsibility to provide assistance to train and equip foreign military forces to support U.S. security operations and to better engage in counter-terror operations." (H.Rept. 111-136)

Some policymakers may regard such a contingency fund as a means to provide the State Department with funds for activities that it may regard as a higher priority than does DOD or the armed services committees. For instance, the State Department is interested in providing resources to train troops to participate in U.S. stability operations as a means to cultivate foreign relations.³³ This has not been a priority for DOD, and the Senate Armed Services Committee version of the FY2010 NDAA would cap funding for such purposes at \$75 million. In addition, some policymakers may view Section 841 as a means to provide the State Department with resources to provide follow-up to counterterrorism activities begun under Section 1206, rather than using FMF funds for that purpose.

However, some might question whether Section 841 would provide sufficient advantage over the existing FMF funding mechanism to justify creating a new authority. As Section 841 would not require consultation with DOD on the use of the funds, this authority may somewhat expedite decisionmaking within the State Department on counterterrorism funding. The amount of time that could be saved over the current three-year timeline for FMF funding decisions might well depend on the procedures developed by the State Department to process such funding, including coordination with DOD, and on possible reforms to the DSCA. Another factor would be whether Congress was willing to consider such funds in an expedited manner through Congressional committees, as it does for Section 1206 funding, rather than as part of the annual budget request as it does with FMF funding.

For some policymakers and analysts, Section 841 might fall far short of the ample reform that some advocate to address what they perceive as a serious imbalance between DOD and State Department resources and authorities, including in the security assistance area.³⁴ Some Members

³³ Author's interview with State Department officials, September 2009.

³⁴ *Integrating 21st Century Development and Security Assistance*. This report suggests an alternative to Section 1206 (continued...)

may not wish to create yet another flexible funding mechanism that puts funds beyond the oversight of Congress as a whole, although as Section 1206 specified congressional committees would exercise oversight before the State Department could obligate funds.³⁵ (Section 841 would require that the State Department notify the two foreign affairs committees and the two foreign operations appropriations subcommittees 15 days before obligation funds.)

Should Congress Broaden Section 1206 Authority to Include T&E for Security Forces?

For several years, DOD has argued for authority to train and equip a variety of counterterrorism security forces outside the military structure. DOD's original proposal included "armies, guard, border security, civil defense, infrastructure protection, and police forces," but the initial Section 1206 legislation restricted the use of funds to military forces. Subsequent requests by DOD (in 2007 and 2008) proposed expanding Section 1206 authority to include other security forces. DOD's FY2009 NDAA proposal requested that a wide range of police and security forces be included, specifically gendarmerie, constabulary, internal defense, infrastructure protection, civil defense, homeland defense, coast guard, border protection, and counterterrorism forces. In 2008, Congress amended Section 1206 authority to include only non-military maritime security forces, such as coast guards,³⁶ a category not named in the DOD request.

Because foreign counterterrorism units sometimes are configured as civilian forces under foreign Ministries of the Interior rather than as military forces, some analysts argue that the lack of authority to train and equip foreign security forces impedes the United States' ability to build foreign capacity for counterterrorism. In January 2008, the final report of the Task Force on Nontraditional Security Assistance at the Center for Strategic and International Studies (CSIS) recommended the expansion of 1206 authority to include non-military security forces because of "the operational necessity of working with foreign security forces to advance key counterterrorism objects...."³⁷

However, some analysts argue that Congress should reserve funding for civilian security force training to the State Department. Some argue that there are fundamental differences in training civilian and military personnel and U.S. military forces are suited solely for training the latter. Some stress that the use of U.S. military forces to train civilian police and other security forces conveys an undesirable blurring of police and military roles and functions, and puts a military

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would "simply be to build a larger State Department budget with increased and more flexible counterterrorism funding. In principle, there is no reason that the administration could not propose—and Congress fund—a contingency fund within the FMF account to respond rapidly to unforeseen contingencies by training security forces in counterterrorism and stability operations." (p. 11) It specifically recommends "the gradual phasing out of Section 1206 authority with the creation of a substantial, flexible contingency fund (notionally within FMF) to support current 1206 programs." (p. 39)

³⁵ Congress in general has resisted providing the executive branch with "blank checks" by creating contingency accounts. One often cited example is the standing Emergency Refugee and Migration Assistance (ERMA) emergency relief account, funded through foreign operations appropriations. This account is drawn on in urgent situations and is replenished automatically as needed. In establishing Section 1206 years later, Congress built in a higher level of Congressional review by requiring notification to specified committees.

³⁶ Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, P.L. 110-417, Section 1206.

³⁷ *Integrating 21st Century Development and Security Assistance*, p. 10.

face on U.S. assistance in a sensitive area, undermining the concept that civilians should be in the lead on internal security affairs.

Should Congress Consider Broader Security Assistance Reform?

Discussion about Section 1206 often takes place in the context of a perceived need for broad security assistance reform. Section 1206 represents a significant part of the security assistance package, but many analysts are concerned with the problems involving the whole gamut of security assistance programs under both State Department and DOD authorities.³⁸ Indeed, some relate the establishment of Section 1206, as well as perceived problems with it, to problems experienced with traditional State Department authorities: "The current [State Department] mechanisms, some of which reflect statutory requirements, are antiquated and slow to respond to changing security threats, one of the explanations for DOD's expanded assistance portfolio in recent years," according to one report.³⁹ Some analysts question whether Section 1206 authority would be needed at all if the systems carrying out traditional security assistance authorities were provided sufficient funds and personnel, and were reorganized to operate more efficiently.

Several recent reports have reviewed current security assistance programs, authorities, and resources, and recommended substantial reform. The MIT report mentioned in a section above advocates the creation of "a new architecture that is agile, flexible and adequately funded to deal with the new security challenges" and that "can and should make ample use of DOD's capabilities...."⁴⁰ Specific recommendations call for changes that would improve strategic planning, policy coherence, interagency coordination, budgeting procedures, transparency, and discipline, and Congressional oversight. Among their suggestions where Congress has a direct role are the following:⁴¹

- Restructure security assistance authorities by grouping State Department and DOD authorities to create new programs.
- Expand contingency authority for all security assistance, and provide multiyear funding in order to provide the State Department and DOD with broader discretion to reallocate and target funds as requirements change.
- Consolidate security assistance budgets, with the executive branch agencies presenting a single, multiagency, security assistance budget. (Some would emphasize the need for a single counterterrorism budget.)⁴²

³⁸ According to the report by the American Academy of Diplomacy and the Henry L. Stimson Center, one of "the most striking trends during the past two decades has been the growing role of the Defense Department in providing foreign assistance under its own statutory authorities....by the end of the 1990s ... DOD was directly managing 15 security assistance programs accounting for well over \$1 billion annually." *A Foreign Affairs Budget for the Future*, p. 22.

³⁹ *A Foreign Affairs Budget for the Future*, p. 23.

⁴⁰ *Strengthening Statecraft and Security*, p. 71. This recommendation would place the new architecture under State Department authority, however.

⁴¹ This section draws principally on specific recommendations made in three reports: *Strengthening Statecraft and Security*, *A Foreign Affairs Budget for the Future*, and *Integrating 21st Century Development and Security Assistance*, although other reports may have similar proposals. Related proposals are contained in *Beyond Assistance: The HELP Commission Report on Foreign Assistance Reform*, December, 2007, and *Project on National Security Reform, Forging a New Shield*, November 2008, as well as other publications.

⁴² See *Integrating 21st Century Development and Security Assistance*, p. 38, which recommends that "DOD, State and USAID present relevant Congressional committees with a joint CT security assistance budget as part of a broader effort (continued...)"

- Undertake reforms within the State Department to “right-size” the Bureau of Political Military (PM) Affairs, as well as the Office of the Director of Foreign Assistance, to enable the State Department to oversee budgeting for security assistance programs.⁴³
- Review the DSCA structure and processes to “to right-size its bureaucracy and reduce inflexibility.”⁴⁴
- Consider joint Congressional hearings on security assistance programs, involving both defense and foreign policy authorization and appropriations committees.⁴⁵

Recommendations for systemic reforms that are largely within the purview of the executive branch include:

- Provide White House oversight of security assistance by establishing a permanent interagency group under the National Security Council (NSC);⁴⁶ and
- Provide for stronger State/DOD joint strategic planning and coordination at the regional level.

(...continued)

to require executive branch transparency on how State, USAID, and DOD budgets fit together.” (p. 38)

⁴³ *Strengthening Statecraft and Security*, p. 73. In *A Foreign Affairs Budget for the Future*, the American Academy of Diplomacy and the Stimson Center also express concern about State Department staffing levels for security assistance, in particular the number of foreign service personnel who specialize in political-military affairs. (p. 23)

⁴⁴ *Strengthening Statecraft and Security* suggests creating three new programs: (1) a more flexible train and equip program combining FMF, Section 1206, and the State Department’s peacekeeping account (PKO); (2) a more coherent foreign military education program by combining IMET and the DOD Counterterrorism Fellowship Program; and (3) a revamped support program combining the coalition support and the economic support (CSF and ESF) funds. It also suggests redistributing responsibility for activities carried out under the Commander’s Emergency Response Program (CERP) and other DOD “foreign assistance” programs, assigning responsibility for longer-term governance and development programs to the State Department and USAID, and reserving to DOD responsibility for shorter-term, urgent projects closely related to combat needs or to operations in insecure areas. (p.74)

⁴⁵ *Strengthening Statecraft and Security*, p. 75.

⁴⁶ *Strengthening Statecraft and Security* recommends that this group be co-chaired by the Office of Management and Budget (OMB) in order to ensure “the integration of security assistance policies and programs into the broader national security strategy,” to resolve “policy and program disagreements between the Departments of State and Defense,” and to provide “overarching policy guidance to improve consistency with overall national security strategy... .” (pp. 72-73).

Table 2. Section 1206 Funding: FY2006-FY2009 Allocations

(as of October 13, 2009)

(\$ U.S. millions)

Recipient(s)	Program	FY2006	FY2007	FY2008	FY2009	Totals
General Human Rights/Respect for Civilian Authority (HR/RCA) Training						
Recipients unspecified. Funding to Defense Institute of International Legal Studies to conduct training.	HR/ RCA)Training	—	—	0.6	—	2.1
Recipients and trainer(s) unspecified.	Follow-on to FY2008 HR/RCA training for 35 countries	—	—	—	1.2	
Bangladesh, Guyana, Kyrgyzstan, Suriname, Indonesia are named recipients. Trainer(s) unspecified.	Follow-on to FY2008 HR/RCA training. (Notified Amount)	—	—	—	0.3	
Total HR/RCA Training		0	0	0.6	1.5	
AFRICA						
Chad	Tactical Airlift Capacity Training	—	1.7	—	—	1.7
Djibouti	Maritime Domain Awareness (MDA), Response, Interdiction, and Coastal Security Enhancement	—	8.0	—	—	16.4
	Counterterrorist (CT) Communications Package	—	—	5.1	—	
	CT Capabilities Package	—	—	—	3.3	
Ethiopia	CT Communications and Combat Engineering Capability	—	—	13.3	—	25.5
	Night Vision Capability Package	—	—	1.9	—	
	Regiment and Platoon CT Initiative	—	—	—	10.3	
Kenya	Border Security Initiative	—	—	4.1	—	25.9
	Border and Coastal Security Enhancement	—	—	6.6	—	
	Maritime Security Initiative	—	—	—	15.2	
Mali	Light infantry Equipment for CT (Redirected FY2007 Mauritania aid and additional storage and transportation costs charged in FY2009.)		4.5		0.6	5.1

Recipient(s)	Program	FY2006	FY2007	FY2008	FY2009	Totals
Nigeria	CT Capacity Building for Military Forces	—	—	—	1.5	2.3
	Light infantry Vehicles, Communications Equipment, and other equipment (Equipment redirected from Chad FY2007 program.)	—	—	—	0.8	
Tunisia	Suppressing Trans-Border Terrorist Activity	—	—	10.0	—	18.6
	Intelligence, Surveillance and Reconnaissance Capability to secure borders.	—	—	—	8.6	
Chad, Mauritania, Nigeria and Senegal	Civil-Military Operations Training in Support of the TransSahara CT Program	—	3.4	—	—	3.4
Djibouti, Ethiopia, Kenya, Tanzania	East Africa Regional Security Initiative	—	14.2	—	—	14.2
Nigeria and Sao Tome and Principe	Gulf of Guinea Regional Maritime Awareness Capability Aid	6.8	—	—	—	6.8
Chad and Nigeria	Multinational Information-sharing Network Aid	6.2	—	—	—	6.2
Algeria, Chad, Mali, Mauritania, Morocco, Niger and Senegal	Partner Nation Intelligence Capability Aid	—	1.1	—	—	1.1
Algeria, Benin, Cameroon, Cape Verde, Republic of the Congo, Gabon, Ghana, Gambia, Guinea, Liberia, Morocco, Mozambique, Senegal, Sierra Leone, and Sao Tome and Principe	MDA and Territorial Water Threat Response Capability Establishment	—	5.8	—	—	5.8
Benin, Cameroon, Cape Verde, Gabon, Ghana, Sao Tome & Principe, Senegal, Togo	West and Central Africa Maritime Equipment Package	—	—	9.8	—	9.8
Cameroon, Gabon, Senegal, Sierra Leone (Guinea deleted due to the Dec. 2008 coup d'etat.)	West Africa Maritime Security Capability Enhancement	—	—	10.9	—	10.9
Mozambique, Tanzania, Mauritius, Seychelles	South East African Maritime Security Initiative	—	—	—	8.4	8.4
Total Africa		13.0	38.7	61.7	48.7	162.1
GREATER EUROPE						
Albania	CT Capability Aid	—	6.7	—	—	12.0
	Maritime Coastal Patrol CT Capability Enhancement	—	—	5.3	—	

Recipient(s)	Program	FY2006	FY2007	FY2008	FY2009	Totals
Georgia	CT Capability Aid	—	6.5	—	—	18.0
	Special Forces T&E			11.5	—	
Macedonia	CT Capability Aid	—	3.0	—	—	3.0
Ukraine	CT Capability Aid	—	12.0	—	—	12.0
Total Greater Europe		—	28.2	16.8	0	45.0
ASIA AND THE PACIFIC (Including Central Asia)						
Indonesia	Integrated Maritime Surveillance System	18.4	—	—	—	57.4
	Eastern Fleet Regional Command Center	—	3.8	—	—	
	Eastern Fleet Maritime Equipment	—	7.3	—	—	
	Celebes Sea and Malacca Strait Network	—	6.1	—	—	
	Coastal Surveillance Stations	—	11.5	4.3	—	
	Western Fleet Command and Control (C2) Center and HQ	—	—	2.0	—	
	Command, Control, Communications and Computers (C4) Surveillance and Reconnaissance	—	—	4.0	—	
Kazakhstan	Coalition CT and Stability Operations Capacity Aid	—	19.3	—	—	31.8
	Caspian Security	—	—	12.5	—	
Kyrgyzstan	Increasing Armed Forces CT Capabilities	—	—	11.6	—	21.2
	CT Forces Support	—	—	—	9.6	
Malaysia	Eastern Sabah MDA Radars	—	13.6	—	—	43.9
	Strait of Malacca MDA Support	—	2.2	—	—	
	MDA Package	—	—	11.5	—	
	CENTRIX Stations	—	0.5		—	
	C2 Center for Joint Forces Sabah HQ	—	—	7.1	—	
	Maritime Interdiction Package	—	—	9.0	—	
Philippines	Maritime T&E for Interdiction Purposes	—	3.0	—	—	55.1
	Coast Watch South High Frequency Radios (FY07)/ Radars for Sulu Archipelago	—	1.8	11.1	—	

Recipient(s)	Program	FY2006	FY2007	FY2008	FY2009	Totals
	(FY08)					
	Maritime Interdiction Capability	—	6.4	—	—	
	Interdiction and Offensive Capabilities Improvement (of UH-1 Huey helicopters)	—	4.4	—	—	
	Border Control Interdiction	—	—	5.8	—	
	Coast Watch South (CWS) Radars for Eastern Mindanao and adjacent border surveillance	—	—	—	14.5	
	CWS Intelligence – Operations CT Capability	—	—	—	8.1	
Sri Lanka	Maritime Security T&E for Interdiction Purposes	10.8	—	—	—	18.2
	Aircraft C2 Integration	—	6.0	—	—	
	Maritime Security and Navy Interdiction Capability	—	1.4	—	—	
Total Asia and the Pacific		29.2	87.3	78.9	32.2	227.6
MIDDLE EAST AND SOUTH/SOUTHWESTERN ASIA						
Azerbaijan	Naval Commando CT Training	—	—	1.7	—	1.7
Bahrain	Patrol Boats (Value of equipment redirected from cancelled Thailand program)	5.3	—	—	—	50.3
	Coastal Patrol Capability Development	—	24.6	—	—	
	Defense Force Counterintelligence Analysis Center Development	—	0.04	—	—	
	Defense Force Special Operations T&E	—	—	4.3	—	
	Coastal Surveillance System Upgrade	—	—	—	16.1	
Bangladesh	Maritime Patrol and Interdiction Initiative	—	—	7.2	—	15.7
	Naval Special Forces CT T&E	—	—	—	8.5	
Lebanon	Military Assistance to Lebanese Armed Forces	10.5	30.6	—	—	105.5
	Special Operations Forces T&E	—	—	7.2	—	
	Secure Communications for	—	—	7.9	—	

Recipient(s)	Program	FY2006	FY2007	FY2008	FY2009	Totals
	Special Operations Forces					
	Urban Soldier Equipment	—	—	—	21.5	
	Cessna Caravan	—	—	—	27.8	
Pakistan	Border Area T&E/ Marines T&E	23.3	5.7	—	—	203.4
	Enhance Shared MDA and Cooperative Maritime Security Aid	—	8.1	—	—	
	Helicopter CT Capability	—	—	20.9	—	
	Special Services Group COIN Kick Start Initiative	—	—	14.9	—	
	Mi-17 Support	—	—	17.0	—	
	Mi-17 Helicopters	—	—	—	80.0	
	Aviation Maintenance Shelters in Federally Administered Tribal Areas	—	—	—	3.1	
	Army and Navy Capability Building to Investigate Explosives	—	—	—	0.6	
	Special Operations Forces CT Package	—	—	—	17.0	
	Ground-Based Intelligence S&R Capability	—	—	—	12.8	
Yemen	Cross Border Security and CT Aid	4.3	—	—	—	97.3
	Yemeni Special Operations Capacity Development to enhance border security	—	26.0	—	—	
	Air Force Aerial Surveillance Initiative	—	—	—	5.9	
	Coast Guard Maritime Security Initiative	—	—	—	29.9	
	Increased Border Security CT Initiative	—	—	—	25.4	
	Explosive Ordnance Disposal Initiative	—	—	—	5.8	
Total Middle East and South Asia		43.4	95.0	81.1	254.4	473.9
WESTERN HEMISPHERE						
Mexico	CT Capabilities (FY07)/ CT Capability Package (FY08)	—	1.0	12.9	—	13.9
Dominican Republic and Panama	Joint Maritime CT Capability Aid	14.4	—	—	—	14.4

Recipient(s)	Program	FY2006	FY2007	FY2008	FY2009	Totals
Bahamas, Dominican Republic, Honduras, Jamaica, and Nicaragua	Caribbean Basin Maritime Security Aid (radios and boats)	—	23.4	—	—	23.4
Bahamas, Belize, Dominican Republic, Honduras, Jamaica, and Panama	Caribbean Basin Capability Enhancements	—	—	11.1	—	11.1
Belize, Guyana, Honduras, and Suriname	CT Unit T&E for participation in Operation Enduring Freedom	—	—	9.3	—	9.3
Total Western Hemisphere		14.4	24.4	33.3	—	72.1
Additional Transportation Expenses for items obligated during FY06-FY08 but delivered later.		—	—	—	3.1	3.1
Totals		100.0	273.6	272.4	339.9	985.9

Source: Based on data provided by the Office of the Secretary of Defense. Allocations as of October 13, 2009. In one case, as noted, the figure is the amount notified to Congress.

Note: Totals may not add due to rounding.

Appendix. Evolution of Section 1206 Legislation

The George W. Bush Administration's proposed National Defense Authorization Act for FY2006 contained a provision for a new partnership capacity-building authority. As submitted to Congress, the DOD-proposed authorization legislation differed in several important respects from the "Section 1206" legislation that was eventually passed.

DOD's proposed authorization bill would have vested new authority with the President to "authorize building the capacity of partner nations' military or security forces to disrupt or destroy terrorist networks, close safe havens, or participate in or support United States, coalition, or international military or stability operations." The proposed legislation provided the Secretary of Defense the lead on implementation, but gave a veto power to the Secretary of State: "The Secretary of Defense may, with the concurrence of the Secretary of State, implement partnership security capacity building...." DOD could implement capacity building projects on its own, or by transferring DOD funds to the Department of State or to any other federal agency. The presidential and agency roles changed in subsequent versions.

DOD's proposed authorization language would have allowed assistance to build up foreign military and security forces for purposes similar to but more specific than those ultimately enacted into law (Section 1206, P.L. 109-163). The types of forces that could be assisted were much broader, and included "armies, guard, border security, civil defense, infrastructure protection, and police forces." The proposed annual cap on such assistance was \$750 million, much greater than that eventually approved.

DOD's proposed appropriations language would have provided for the appropriation of up to \$750 million of funds from operations and maintenance accounts to provide assistance to military or security forces in Iraq and Afghanistan, and provide assistance to other military forces in friendly nations in the nearby region to enhance their capability to combat terrorism and to support U.S. military operations in Iraq and Afghanistan. The Secretary of Defense could use those funds only with the concurrence of the Secretary of State.

Congressional Action in 2005

Congressional action in 2005 on the DOD proposals started with Senate approval of a floor amendment to the Senate version of the FY2006 NDAA (S. 1042). The legislation that emerged from conference committee action on the conference version of the bill (H.R. 1815) and was signed into law on January 6, 2006 (P.L. 109-163) differed significantly from the DOD proposals.

Not one of the armed services or appropriations committees included the DOD proposals for a global train and equip authority or appropriation in legislation they reported that year. Congressional action began when Senator Inhofe introduced a modified version of the DOD authorization proposal as a floor amendment (S.Amdt. 2432) to S. 1042. On November 8, 2005, the Senate approved an amended version of that amendment, supported by Senator Lugar. Both would provide authority for the purposes requested by DOD. Each version of the Inhofe amendment progressively strengthened the State Department role compared to the DOD proposal. Conference committee negotiators made further changes, however, strengthening the DOD role, diminishing the State Department role, restricting the types of forces that could be supported, and lowering the funding cap.

The Inhofe amendment introduced on November 4, 2005, was similar to the DOD authorization request in that it would have conferred authority on the President to build partnership security capacity of foreign military and security forces on the President and authorized the use of up to \$750 million a year in DOD funds for the same purposes as the original DOD authorization request. A major difference was the role of the State Department. The Inhofe amendment made a request by the Secretary of State to the Secretary of Defense the trigger to initiate DOD support, a seemingly stronger role than that of the DOD proposed legislation which required the Secretary of Defense to seek the concurrence of the Secretary of State for any support. Like the DOD proposal, however, the Inhofe amendment left DOD free to implement programs itself, or to transfer funds to the Department of State or any other federal agency for implementation. (These funds would remain available until expended.) In introducing the amendment, Senator Inhofe indicated that the purpose of the new authority was to expedite train and equip assistance, and expressed displeasure with then-current arrangements for train and equip programs conducted through the State Department. For instance, he noted that assistance to train and equip Georgia forces for counterterrorism required that "Seven different authorities for funding and sources ... be stitched together" in a process that took eight months.⁴⁷

The revised Inhofe amendment further strengthened the Secretary of State's role by making three changes. One change eliminated DOD's ability to implement proposals on its own. Another eliminated DOD's ability to transfer funds to any civilian agency other than the State Department. In short, the Secretary of Defense could provide partnership support *only* by transferring DOD funds to the Department of State. A third change made such support subject to the authorities and limitations in the Foreign Assistance Act of 1961, and the FY2006 Foreign Operations bill.

In a November 8, 2006 floor statement, Senator Lugar stated that "the amendment as now written leaves the authority for deciding which countries, and when, how, and why foreign assistance should be provided, in the hands of the Secretary of State. The amendment does not provide statutory authority to the Secretary of Defense to establish a new foreign aid program outside the purview of the Secretary of State. It does authorize the Secretary of Defense to provide funding to the State Department for a new train and equip foreign assistance program..."⁴⁸ At the same time, Senator Lugar acknowledged DOD concerns that the "State Department oversight of these kinds of programs [is] cumbersome and slow." He stated: "These obstacles need to be overcome. State Department procedures should be streamlined and the two Departments should develop plans to push these important programs forward efficiently and quickly." (Congressional Record, Senate, S12495.)

A distinct final version, as mentioned above, emerged from the conference committee. There were four important changes from the Senate version. First, the conference committee version of H.R. 1815 stripped the leadership role from the Secretary of State and bestowed it on the

⁴⁷ Senator James Inhofe, Senate, *Congressional Record*, daily edition, November 4, 2005, p. S12395.

⁴⁸ Senator Lugar further stated that "The Secretary of State should retain full authority over decisions as to which countries should receive assistance, the timing of its provision, and the way in which it should be provided. The Department of Defense should continue implementing train and equip programs under the purview of the Secretary of State." He concluded: "All foreign assistance programs need to take place within a foreign policy context, with consideration of the traditional concerns—the recipient country's treatment of its own people, potential reactions from neighboring states in the region, and the overall bilateral relationship with the recipient country, including the assistance in the war against terrorism. It is the Secretary of State's job to weigh such foreign policy issues and make recommendations to the President that strike the right balance for American interests. The amendment as now written meets the concerns I had and I would request that I be listed as a co-sponsor." (Congressional Record, Senate, S12495.)

Secretary of Defense. Section 1206 broadened DOD's role by providing authority for the President to direct the Secretary of Defense to conduct or support a program to build the capacity of a foreign military forces. It reduced the Secretary of State's role by providing that the Secretaries of Defense and State were to "jointly formulate any program directed by the President" and the Secretary of Defense was to "coordinate with the Secretary of State in the implementation of any program directed by the President...." Second, the conference committee version did not provide authority to assist security forces of any type. Third, it lowered the annual funding cap considerably, to \$200 million. And fourth, it broadened the purpose of the counterterrorism element of the assistance from enabling foreign forces to disrupt or destroy terrorist networks and to close safe havens to enabling them to conduct counterterrorist operations.

In their explanatory statement (H.Rept. 109-360, accompanying H.R. 1815), the conferees described Section 1206 as a two-year pilot program, which would be reviewed at the end of that period. They noted that "under current law, foreign military training programs are conducted exclusively under the authority of the Secretary of State. The conferees signaled the importance of ensuring that any changes in statutory authorities for foreign military assistance do not have unintended consequences for the effective coordination of U.S. foreign policy writ large, nor detract from DOD's focus on core responsibilities, particularly warfighting tasks.

Congressional Action for FY2006-2009

Congress made further changes to Section 1206 authority through amendments in subsequent NDAA's. Most important among them was the 2007 modification elevating the State Department's role while, at the same time, vesting authority for the program in the Secretary of Defense. Section 1206 of the John Warner NDAA for FY2007 (P.L. 109-364) amended Section 1206 by eliminating the President's role in directing the Secretary of Defense to conduct or support such programs. Instead, it authorized "the Secretary of Defense, with the concurrence of the Secretary of State" to conduct or support those programs. Other changes in that legislation raised the authorized amount to \$300 million, and it extended the authority through FY2008.⁴⁹

This amendment was the result of a conference committee compromise over a proposed Senate amendment that would have extended Section 1206 authority to combatant commanders. In their explanatory statement, the conferees stated that "the authorities provided in this section are provided in the spirit of a pilot program.... The conferees believe it will be important to demonstrate through experience that these expanded authorities can and will be exercised consistent with the effective coordination of U.S. foreign policy writ large. Furthermore, the conferees strongly believe that foreign assistance programs are more appropriately funded through the foreign assistance accounts, as administered by the Department of State, and urge the

⁴⁹ The DOD proposal for FY2007 NDAA authorization language had requested that authority to direct Section 1206 programs be vested in the Secretary of Defense, with the concurrence of the Secretary of State, rather than the President, in order to "increase responsiveness by relieving the President of having to approve each Section 1206 program personally, while preserving important roles of both the Secretary of Defense and the Secretary of State in authorizing capacity-building programs under this provision. This would enable the Department of Defense, with the concurrence of the Secretary of State, to pursue time-sensitive opportunities to build capacity of partner nations." DOD also requested the expansion of the types of forces that could be assisted to include security forces ("specifically gendarmerie, constabulary, internal defense, infrastructure protection, civil defense, border protection, and counterterrorism forces ..."), and an increase in the spending cap to \$750 million.

administration to request sufficient funding for foreign military assistance in those accounts in future years budget requests.”⁵⁰

Through the enactment of the Duncan Hunter NDAA for FY2009 (P.L. 110-417), Congress rejected the Bush Administration’s 2008 request to make Section 1206 authority permanent law under Title 10 (Armed Services) of the United States Code. Instead, it extended the temporary authority for three years (i.e., through FY2011). P.L. 110-417 also expanded Section 1206 authority to include the provision of assistance to maritime security forces,⁵¹ and raised the spending cap to \$350 million.

In their respective reports on the FY2009 NDAA, both the House and the Senate armed services committees expressed concern about whether Section 1206 funds were being appropriately used.

- The Senate Armed Services Committee report reiterated the committee’s earlier position that Section 1206 was intended as a pilot program, “not intended to duplicate or substitute for other foreign assistance authorities, nor ... intended to sustain train and equip programs over multiple years.” It expressed the committee’s concerns that Section 1206 funds were “being used for programs, particularly in countries where the terrorist threat is currently low, that primarily serve to build counter-narcotics capabilities.”⁵²
- The House Armed Services Committee report stated DOD had “pushed beyond the clearly articulated limits of this authority” in the case of Panama, raising concern “about the responsible execution of this authority in the future.” In the report, the committee expressed its belief “that capable foreign partners play a vital role in the international security environment but remain unconvinced that this authority should reside permanently with the Department of Defense. The committee expects that, over the long-term, these ‘train and equip’-type authorities, which appear to be migrating to the

⁵⁰ These changes were the result of a conference committee compromise on a Senate amendment to Section 1206 in S. 2766, its version of the FY2007 NDAA. See H.Rept. 109-702, the John Warner NDAA for Fiscal Year 2007, Conference Report to Accompany H.R. 5152.

The Senate amendment would have permitted the Secretary of Defense, with the concurrence of the Secretary of State, to authorize commanders of the geographic combatant commands “to respond to unanticipated changes in a security environment” within their area of responsibility (AOR) to spend up to \$50 million per year per commander for Section 1206 purposes, with total spending limited to \$200 million. In addition, the Senate Amendment would have permitted the Secretary of Defense to authorize geographic combatant commanders “to respond to urgent and unanticipated humanitarian relief or reconstruction requirements in a foreign country within the commander’s AOR” if the commander determined that such assistance would promote the security interest of the United States and the recipient country, up to a total of \$200 million “in any country in a fiscal year.” In response, the House, which had no similar provision, offered the amendment which was adopted. Although the proposed section to provide combatant commanders with funding for existing Section 1206 purposes was deleted, elsewhere in the bill the conferees included a provision to expand authority under the Combatant Commanders Initiative Fund to provide urgent and unanticipated humanitarian relief and reconstruction assistance.

⁵¹ As passed by the Senate, S. 3001 would have extended Section 1206 authority to security forces, specifically “a foreign country’s coast guard, border protection, and other security forces engaged primarily in counterterrorism missions in order for that country to conduct counterterrorism operations.” The Administration had requested authority to train and equip a wide spectrum of security forces, including gendarmerie, constabulary, internal defense, infrastructure protection, civil defense, homeland defense, coast guard, border protection, and counterterrorism forces.

⁵² S.Rept. 110-335 continued: “While recognizing a degree of overlap between counterterrorism and counternarcotics capabilities, the committee urges the Department of Defense to fund programs to build counter-narcotics capabilities using funds and authorities intended to support counter-narcotics activities, and if appropriate, seek any necessary modifications to existing counter-narcotics authorities to support these activities.” The committee also indicated that it viewed U.S. Africa Command AOR counterterrorism needs as a priority for Section 1206 assistance.

Department of Defense, might better remain within the Department of State's jurisdiction."⁵³

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⁵³ H.Rept. 110-652 also encouraged DOD "to use members of the United States military to conduct the training provided under this authority whenever possible."