

ARTICLES

Hard Cash and Easy Money: Funding Authority for Security Force Assistance Brigades

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And though a man might prevail against one who is alone, two will withstand him—a threefold cord is not quickly broken.¹

I don't want no hard cash. I just want that easy money.²

I. THE “INDISPENSABLE NATION”³ DISPENSES WITH ILLUSIONS

Rumors about the “end of history”⁴ were greatly exaggerated.⁵ Where pundits and scholars once spoke in triumphant tones about America as the unipole in the

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1. Ecclesiastes 4:12 (English Standard Version).

2. This phrase is often attributed to (S-3s) at quarterly acquisition review boards. Alternatively, see BILLY JOEL, *Easy Money*, on INNOCENT MAN (Columbia Records 1983).

3. Former Secretary of State (SECSTATE), Madeleine Albright, is closely associated with this triumphalist formulation for the United States. See Interview by Matt Lauer with Madeleine Albright, Sec’y of State, in Columbus, Oh. (Feb. 19, 1998) <https://perma.cc/JG5F-ZKYS>; Micah Zenka, *The Myth of the Indispensable Nation*, FOREIGN POL’Y (Nov. 6, 2014, 3:48 PM), <https://perma.cc/WC83-AQ7Y> (recounting the origin of the term and explaining the distorting effect the ideas that stand behind it can have on American foreign policy).

4. See generally FRANCIS FUKUYAMA, THE END OF HISTORY AND THE LAST MAN (Macmillan ed., 1992) (predicting that the end of the Cold War heralded the end of history as a contest of competing conceptions of society and that Western-style liberal democracy would become universal).

5. The misquotation of Mark Twain, “The rumors about my death were greatly exaggerated,” remains popular, even internationally. See Erin Prater, *Putin Uses Mark Twain Misquote to Address*

international system,⁶ history and its attendant horrors have reasserted themselves with a vengeance.⁷ The most recent National Security Strategy (NSS) acknowledges that “the post-Cold War era is definitively over.”⁸ In its place is a period of great power competition (GPC), primarily with the People’s Republic of China (PRC) and Russia.⁹ Critically, the PRC and Russia are not engaging in episodic confrontation with the United States but persistent, long-term, strategic competition below the threshold of armed conflict.¹⁰

Even as security competition intensifies, there will be several important restraints on the Department of Defense’s (DoD’s) ability to respond. Other demands on the Federal budget promise to place downward pressure on defense spending.¹¹ Recruiting difficulties across the services raise serious questions about manning the force¹² and the continuing viability of the all-volunteer

Reports About His Health: ‘The rumors about my death were greatly exaggerated,’ FORTUNE (June 18, 2022, 1:23 PM), <https://perma.cc/NX42-6TB4>.

6. See, e.g., Charles Krauthammer, *The Unipolar Moment*, 70 FOREIGN AFFS., no. 1, 1990/1991, at 23 (positing that the end of the Cold War marked the beginning of a transitory unipolar world where the West, led by the United States, was the sole power center in the international system); Charles Krauthammer, *The Unipolar Moment Revisited*, NAT’L INT., no. 70, Winter 2002/2003, at 5, <https://perma.cc/7V8Y-9AU5> (arguing that the unipolar moment had proven more permanent than it first seemed). But see Justin Logan, *The Unipole in Twilight*, 26 INDEP. REV., no. 2, (2021), at 173 <https://perma.cc/V44P-QS39> (making the argument that foreign policy missteps had largely squandered the opportunities that post-Cold War dominance offered the United States).

7. The world is arguably the most violent it has been in a generation. Great power competitors and regional powers alike are engaging in or planning violence against American Allies and partners across the globe. See, e.g., Richard Kemp, *The Russia-Iran Axis is Fomenting War in the Middle East*, TELEGRAPH (Oct. 9, 2023, 11:42 AM), <https://perma.cc/QE4D-P25Q> (detailing the role both Russia and Iran played in the Hamas attack on Israel on 7 October 2023); *The Russian War in Ukraine Timeline*, U.S. DEP’T OF DEF. (July 29, 2024, 3:20 PM), <https://perma.cc/Y42U-TXPP>; Gordon G. Chang, *China Now Preparing to Invade Taiwan*, NEWSWEEK (May 9, 2022, 6:30 AM), <https://perma.cc/9WU2-2EVN> (discussing preparations by the People’s Republic of China’s (PRC) financial institutions to weather U.S. sanctions in the case that the PRC invades Taiwan).

8. THE WHITE HOUSE, THE NATIONAL SECURITY STRATEGY 6 (2022) [hereinafter NSS], <https://perma.cc/9N4X-E3WT>.

9. This assessment is one of the constants of U.S. strategic planning. *Id.* at 8-9; U.S. DEP’T OF DEF., 2022 NATIONAL DEFENSE STRATEGY 4-5 (Oct. 27, 2022), [hereinafter NDS], <https://perma.cc/JU8A-Q68T>; MARK MILLEY, 2022 NATIONAL MILITARY STRATEGY 2 (2022), [hereinafter NMS], <https://perma.cc/ZSK6-LR6Q>; MARK MILLEY & MARK ESPER, THE ARMY STRATEGY 2 (2018) [hereinafter ARMY STRATEGY 2018], <https://perma.cc/DM6R-NH6T>.

10. THE JOINT CHIEFS OF STAFF, JOINT CONCEPT FOR COMPETING iii (Feb. 11, 2023) [hereinafter JCC], <https://perma.cc/Q43F-6XUY>.

11. See *Threats and Risk from Deficits and Debt*, COMM. FOR RESPONSIBLE FED. BUDGET (July 14, 2022), <https://perma.cc/JF58-6T3J>. See also CONG. RSCH. SERV., R47582, FY2024 DEFENSE BUDGET REQUEST: CONTEXT AND SELECTED ISSUES FOR CONGRESS ii-iii (May 31, 2023) (explaining that Federal expenditures will continue to exceed Federal revenue for the foreseeable future and inviting Congress to consider whether that requires reducing funding for the Department of Defense (DoD)). Decades in the making, the worst implications of the expanding debt are now coming to the fore as interest rates elevate from historic lows. Aruni Soni, *U.S. Debt Interest Payments Surge Past \$1 Trillion Yearly Pace, Worsening Concerns About Massive Borrowing*, BUS. INSIDER (Nov. 7, 2023, 10:06 AM), <https://perma.cc/W2P3-U2GK>.

12. See Manuela López Restrepo, *The U.S. Army is Falling Short of Its Recruitment Goals. She Has a Plan for That*, NPR (Oct. 5, 2023, 4:22 PM), <https://perma.cc/8K4S-PQP3> (recounting an interview with

model.¹³ America's defense-industrial base faces challenges in developing¹⁴ and producing the material U.S. forces need.¹⁵ Perhaps most importantly, adversary investments in anti-access area denial (A2/AD) capabilities will require the U.S. military to rely more heavily on forces already in theater at the onset of a crisis.¹⁶ In short, in a world where time-honored but unfashionable realities about conflict are proving their continued relevance,¹⁷ the United States finds that it will likely not enjoy the advantages that brought it victory in the wars of the last century.¹⁸

To address the dilemma of increasing GPC in the face of growing constraints on the Joint Force, the DoD has turned to a concept of integrated deterrence.¹⁹ Integrated deterrence “generates warfighting advantages by synchronizing operations across warfighting domains, theaters, the spectrum of conflict, instruments

Secretary of the Army, Christine Wormuth, where she explains the impact of declining trust in the military and a shrinking recruiting pool on military recruiting).

13. Erin M. Staine-Pyne, *The Uncertain Future of the U.S. Military's All-Volunteer Force*, COUNCIL ON FOREIGN RELS. (July 18, 2023, 12:05 PM), <https://perma.cc/G5MZ-NNBD>.

14. See, e.g., Larry M. Wortzel, *Hypersonic Weapon Development in China, Russia and the United States: Implications for American Security Policy*, ASS'N OF THE U.S. ARMY (Mar. 23, 2022), <https://perma.cc/DT59-JFNP> (stating that both China and Russia are outpacing the United States in the development of hypersonic weapons).

15. The Department of Defense has been aware of the capacity issues with the defense industrial base for several years. See generally, OFF. OF THE UNDER SEC'Y OF DEF. FOR ACQUISITION & SUSTAINMENT & OFF. OF THE DEPUTY ASSISTANT SEC'Y OF DEF. FOR INDUS. POL'Y, ASSESSING AND STRENGTHENING THE MANUFACTURING AND DEFENSE INDUSTRIAL BASE AND SUPPLY CHAIN RESILIENCY OF THE UNITED STATES (Sept. 2018), <https://perma.cc/V35T-QAQA> (describing the various, systemic challenges to manufacturing the material required for the national defense). The difficulties America faces in producing sufficient quantities of defense material range from the exquisite to the mundane. See Marck Cancian et al., *U.S. War Surge Production Too Slow*, BREAKING DEF. (JAN. 18, 2021, 4:01 AM), <https://perma.cc/WY4F-KU9E> (explaining that it would take years for the United States to replace ships lost in combat and that production for tanks is only sufficient to maintain two brigades in a high intensity conflict); Haley Britzky et al., *Ukraine is Burning Through Ammunition Faster than the U.S. and NATO can Produce It. Inside the Pentagon's Plan to Close the Gap*, CNN (Feb. 17, 2023, 12:01 AM), <https://perma.cc/3WMY-QXGC> (describing the struggles U.S. industry has in keeping up with Ukrainian demand for, among other munitions, 155mm artillery shells). The contrast with our great power rivals is, in some cases, alarming. See e.g., Joseph Trevithick, *Alarming Navy Intel Slide Warns of China's 200 Times Greater Shipbuilding Capacity*, WARZONE (July 11, 2023, 1:25 PM), <https://perma.cc/P4UG-2G94>.

16. See HEADQUARTERS, DEP'T OF THE ARMY, ARMY MULTI-DOMAIN TRANSFORMATION: READY TO WIN IN COMPETITION AND CONFLICT, CHIEF OF STAFF PAPER #1, 1–2 (2021) [hereinafter CHIEF OF STAFF PAPER #1], <https://perma.cc/F9CE-YKGT> (describing the value of inside positions and forces to “[w]inning the first battle or preventing a *fait accompli* in crisis. . .”).

17. The enduring military value of sheer numbers is one such principle. Despite the promise of various technologies to do away with mass armies, the conflict in Ukraine, with its hundreds of thousands of casualties, demonstrates how hollow these promises were. See Andrew A. Mitcha, *Mass Still Matters: What the U.S. Military Should Learn from Ukraine*, ATLANTIC COUNCIL (Oct. 3, 2023), <https://perma.cc/HQ7L-P82E>. If the author may be permitted a literary detour, one might say this is a case of the “Gods of the Market Place” yielding to the “Gods of the Copybook Headings” once more. Rudyard Kipling, *The Gods of the Copybook Headings*, in EVERYMAN'S LIBRARY POCKET POETS 231 (Alfred A. Knopf ed., 2007).

18. China, and not the U.S., is now in the position of being able to supply weapons and munitions more rapidly than its potential adversaries. See Urban C. Lehner, *United States No Longer the Arsenal of Democracy*, ASIA TIMES (Dec. 13, 2022), <https://perma.cc/TZ8M-3AHU>.

19. NDS, *supra* note 9, at 8.

of national power, the interagency, private sector, and allies and partners.²⁰ This strategic approach places a particular emphasis on “[c]lose collaboration with” those same entities.²¹ The new Joint Concept for Competing (JCC) further emphasizes the importance of persistent and consistent engagement of the Joint Force with its foreign partners throughout all levels of the continuum of conflict.²² This joint emphasis on working “by, with[,] and through”²³ allied and partnered militaries finds its service-specific reflection in the Army’s doctrinal concept of multi-domain operations (MDO).²⁴ During competition, MDO calls upon the Army to “build[] relative positional advantage by cultivating a strong network of Allies and partners”²⁵ through continuous and meaningful engagement.²⁶ While this line of effort is multi-faceted, security force assistance (SFA) efforts by Army formations such as Special Forces (SF) and the newer Security Forces Assistance Brigades (SFABs) play a critical role.²⁷

Despite the key role that SFA efforts by SF and SFABs play in the larger Army strategy, recent SFAB operations indicate that a lack of appropriate fiscal authorities robs SFABs of their full potential.²⁸ A framework of spending authorizations for partner training and capacity building drafted with SF in mind,²⁹ to address the threat of global terrorism³⁰ or particular contingencies,³¹ has resulted in SFABs struggling with fiscal authorities that are ill-suited or completely unavailing.³² In short, the

20. NMS, *supra* note 9, at 3.

21. NDS, *supra* note 9, at 14.

22. JCC, *supra* note 10, at 32.

23. NDS, *supra* note 9, at 15–16.

24. HEADQUARTERS, DEP’T OF THE ARMY, FIELD MANUAL 3-0 OPERATIONS para 1–9 (Oct. 1, 2022) [hereinafter FM 3-0], <https://perma.cc/GPE5-A24W> (“Multidomain operations are the combined arms employment of joint and Army capabilities to create and exploit relative advantages that achieve objectives, defeat enemy forces, and consolidate gains on behalf of the joint force commander.”). Army doctrine is not consistent in how it renders the name of its current operational concept. *Compare id.* (using “multidomain operations”), with CHIEF OF STAFF PAPER #1, *supra* note 16, at 2 (using “multi-domain operations”). For the sake of consistency, this paper will use “multi-domain operations” throughout except where another form of that term appears in quoted material.

25. CHIEF OF STAFF PAPER #1, *supra* note 16, at 16. This network is known as the Global Landpower Network and is “DoD’s foundation for competition.” *Id.*

26. *Id.* This is a refinement of ideas in the most recent Army Strategy. ARMY STRATEGY 2018, *supra* note 9, at 10–11.

27. CHIEF OF STAFF PAPER #1, *supra* note 16, at 17. *See also* HEADQUARTERS, DEP’T OF THE ARMY, THE ARMY IN MILITARY COMPETITION, CHIEF OF STAFF PAPER #2, 22, 25–26 (2021) [hereinafter CHIEF OF STAFF PAPER #2], <https://perma.cc/8VHF-4F4Q> (providing examples of how Special Forces (SF) and Security Force Assistance Brigades (SFABs) enable Army contributions to the Joint Force in competition through security force assistance (SFA) and related activities).

28. *See, e.g.*, Spencer D. Propst, *The Lesson of the Security Force Assistance Brigade in Africa: Find the Authority to Compete and Win*, MIL. REV., Mar.–Apr. 2022, at 81, <https://perma.cc/V9T6-3JTB>.

29. *See, e.g.*, 10 U.S.C. § 322 (providing funding for SF training with friendly foreign forces).

30. *See, e.g.*, 10 U.S.C. § 127e (supporting special operations to combat terrorism).

31. For example, the Afghan Security Forces Fund (ASFF), as the name suggests, was specifically for the development of Afghan National Defense and Security Forces, an effort for which the DoD requested over three billion dollars in fiscal year 2022. *See* OFF. OF THE SEC’Y OF DEF., JUSTIFICATION FOR FY 2022 AFGHANISTAN SECURITY FORCES FUND (ASFF) 5 (2021), <https://perma.cc/6XHJ-7XGC>.

32. For example, authority under 10 U.S.C. § 331 only permits paying certain expenses of foreign military forces involved in ongoing military operations. *See* discussion *infra* Section III.C. Authority

Army's operational concept of holistic and persistent engagement with Allies and partners has outrun legal authorities that have failed to adjust to the new operating environment.³³ To align fiscal authorities and funding with our doctrine and force design concerning SFABs and enhance the ability of the United States to outcompete great power rivals, the Army should pursue new, persistent, and flexible fiscal authorities for SFA.

Part II of this paper establishes the necessary background of current Army SFA efforts and briefly looks at the history of the SFABs, the reasoning behind their creation, their mission and doctrine, and the fiscal authorities they used at the outset. Part III of this paper explores the most commonly used fiscal authorities that SFABs are using today. Treating these authorities in turn, the paper explores what each authority allows SFABs to accomplish and what they do not allow. Part IV looks at the fiscal authorities that SF use to conduct similar SFA activities. Finally, Part V discusses what a new, more flexible fiscal authority for SFABs might look like.

II. THE (SF)A TEAM

The Army defines SFA as “a set of DoD activities that support the development of the capacity and capability of foreign security forces and their supporting institutions.”³⁴ SFA is a subset of security cooperation (SC).³⁵ In turn, SC is “DoD interactions with foreign security establishments to build relationships that promote specific United States security interests, develop allied and partner military and security capabilities for self-defense and multinational operations, and provide United States forces with peacetime and contingency access to allies and partners.”³⁶ While many Army organizations engage in aspects of SFA, there are three primary avenues for this activity; SF, SFABs, and State Partnership Program.³⁷ Of these, the SFAB is the newest.³⁸ While these programs and organizations work towards common goals with overlapping mission sets, each brings a unique set of capabilities to

under 10 U.S.C. § 127e pertains only to SF and deals primarily with counter-terrorism training. See discussion *infra* Section IV.A.

33. The mismatch drove one SFAB brigade judge advocate to say “Sometimes, the unit has the mission authority, and we have the money, but we can't find an authority that will allow us to spend the money on our mission.” Telephone Interview with Lieutenant Colonel George R. Lavine, Brigade Judge Advocate, 4th SFAB & Sergeant First Class Jason A. Getz, Legal Noncommissioned Officer in Charge, 4th SFAB (Jan. 9, 2024). This interview centered on the issues with SFAB funding authorities from the perspective of the unit's assigned legal team.

34. HEADQUARTERS, DEP'T OF THE ARMY, ARMY TECHS. PUBL'N 3-96.1, SECURITY FORCE ASSISTANCE BRIGADE para. 2-5 (Sept. 2, 2020) [hereinafter ATP 3-96.1], <https://perma.cc/XR3D-BG2Z>. (citing JOINT CHIEFS OF STAFF, JOINT PUBL'N 3-20, SECURITY COOPERATION GL-6 (May 23, 2017) [hereinafter JP 3-20], <https://perma.cc/RE7E-69VJ>).

35. See JP 3-20, *supra* note 34, fig. B-3.

36. *Id.* at GL-5.

37. See Charles McEnany, *The U.S. Army's Security Forces Assistance Triad: Security Force Assistance Brigades, Special Forces, and the State Partnership Program*, ASS'N OF THE U.S. ARMY (Oct. 3, 2022), <https://perma.cc/4QF5-KWW9>. See also CHIEF OF STAFF PAPER #1, *supra* note 16, at 17.

38. SF trace their official lineage to establishment of the First Special Service Force on 9 July 1942. *Army Special Operations Forces Timeline*, ARMY SPECIAL OPERATIONS FORCES HIST., <https://perma.cc/8JYJ-U6E3>. The State Partnership Program dates back to 1991. *State Partnership Program: Partner Focused, Strategically Aligned*, NAT'L GUARD, <https://perma.cc/D7BV-PE3E>. The Army stood up its

the table. A complete examination of the activities of this SFA triad is beyond the scope of this paper.³⁹ However, a brief look at how SF fits in this space will provide a useful background when assessing the suitability of current SFAB funding authorities.

A. *Special Forces*

The SF community is perhaps the highest-profile actor in the SFA space.⁴⁰ Special Forces have a broad mission set, covering unconventional warfare, foreign internal defense, counterinsurgency, direct action, special reconnaissance, and counterterrorism.⁴¹ Security force assistance features prominently among these missions,⁴² and has been a definitional feature of SF since their inception.⁴³

It is important to grasp the distinction between the roles which are unique to SF and the SFA roles which overlap with conventional forces. Joint doctrine refers to irregular warfare as a core activity for SF.⁴⁴ Irregular warfare is “[a] form of warfare where states and non-state actors campaign to assure or coerce states or other groups through indirect, non-attributable, or asymmetric activities.”⁴⁵ Irregular warfare encompasses unconventional warfare which is the support SF provides to an insurgency against a foreign nation on the one hand, as well as foreign internal defense, counterinsurgency, and counterterrorism which support a friendly nation against an insurgency on the other.⁴⁶ These activities are distinct from SFA because they concern ongoing operations and SF conduct these activities with an eye towards maintaining a lower profile.

Each of the five active-duty SF groups is regionally aligned with a Geographic Combatant Command (GCC).⁴⁷ Each active duty SF group contains, at present, a

first SFAB in 2017. SEC. FORCE ASSISTANCE COMMAND, SECURITY FORCE ASSISTANCE COMMAND FACTBOOK 15 (2023) [hereinafter SFAC FACTBOOK], <https://perma.cc/P463-PX9C>.

39. For a more comprehensive look at this trio, see McEnany, *supra* note 37 (explaining the differences and comparative advantages of SF, SFABs, and the State Partnership Program in executing SFA).

40. See e.g., *Special Operations Forces Rise as Pop Culture Celebrities*, SOFX (Sept. 13, 2023, 4:09 AM), <https://perma.cc/2EGL-97BT>. An entire blockbuster series of video games rests on the innate appeal of SF to the popular imagination. See Walter Yeates, *Black Ops Cold War Retains Position as Top-Selling Game in May 2021*, SCREEN RANT (June 20, 2021), <https://perma.cc/PD5M-8WLU>. In the author’s limited experience, with even more limited success in multi-player, these games tend to focus more on the kinetic aspect of the SF mission set than SFA.

41. U.S. DEP’T OF ARMY, DOCTRINE PUB. 3-05, ARMY SPECIAL OPERATIONS, para. 2-1 (31 July 2019) (C1, 26 Aug. 2019) [hereinafter ADP 3-05].

42. *Id.*

43. See Tim Ball, *Replaced? Security Force Assistance Brigades vs. Special Forces*, WAR ON THE ROCKS (Feb. 23, 2017), <https://perma.cc/7LK5-D4G2> (detailing the long history of SF advising foreign security forces during the Vietnam War and across Latin America).

44. JOINT CHIEFS OF STAFF, JOINT PUB. 3-05, JOINT DOCTRINE FOR SPECIAL OPERATIONS, at II-1 (22 Sept. 2020) [hereinafter JP 3-05].

45. JOINT CHIEFS OF STAFF, JOINT PUB. 1 VOLUME 1, JOINT WARFIGHTING, at GL-3 (27 Aug. 2023).

46. JP 3-05, *supra* note 45, at fig. II-2.

47. McEnany, *supra* note 37. The alignment of active duty SF groups (SFGs) is as follows: 1st SF Group, based at Joint Base Lewis-McChord, Washington, is aligned to Indo-Pacific Command; 3d SFG, based at Fort Liberty, North Carolina, is aligned to Africa Command; 5th SFG, based at Fort Campbell, Kentucky, is aligned to Central Command; 7th SFG, based at Eglin Air Force Base, Florida, is aligned to

headquarters and headquarters company, a group support battalion, and four SF battalions.⁴⁸ In turn, the SF battalions contain a headquarters and headquarters detachment, a battalion support company, and three SF companies.⁴⁹ The SF companies are composed of a company headquarters, also known as an operational detachment-bravo or ODB, and six operational detachments-alpha or ODA.⁵⁰ The ODAs, composed of twelve Soldiers and led by a captain, are the principal unit of action in SF operations⁵¹ Extensive operator training permits the ODA to operate in denied areas.⁵² The ability to provide SFA in denied areas is one of the key differentiators between SF and SFABs.⁵³

While Army doctrine does identify SFA as a core activity of SF,⁵⁴ the Global War on Terror (GWOT) has precipitated a shift in emphasis away from SFA and towards unconventional warfare and direct action.⁵⁵ Where SF has conducted SFA, the perception is that they primarily work with foreign SF.⁵⁶ Special Forces' publications that identify SFA as a competency for the conventional Army reinforce this perception.⁵⁷ This shift of emphasis in SF missions during the GWOT is arguably responsible for the creation of SFABs in the first place.⁵⁸

Southern Command; and 10th SFG, based at Fort Carson, Colorado, is aligned to European Command. *Id.* Additionally, there are two SFGs in the National Guard: 19th SFG, headquartered in Draper, Utah, is aligned to Central Command and Indo-Pacific Command; and 20th SFG, headquartered in Birmingham, Alabama, is aligned to Southern Command. *Id.*

48. Joshua Skovlund, *MARSOC, Navy SEALs, and Army Rangers: SOF by the Numbers*, TASK & PURPOSE (Dec. 20, 2023), <https://perma.cc/KML3-AQDS>. As the Army reorients towards conventional warfare and faces severe recruiting issues, the service is considering significant cuts to SF force structure, although it is not currently clear how the cuts might affect unit organization. See Steve Beyon et al., *Army Special Operation Could be Cut 10% as Military Looks to Conventional Warfare*, MIL.COM (May 24, 2023), <https://perma.cc/8KFF-VP4L>.

49. Telephone interview with Major Ellis R. Cortez, former Deputy Judge Advocate, 7th Special Forces Grp. (Nov. 18, 2023).

50. *Id.*

51. *Id.* This number has fluctuated in a range of twelve to fifteen personnel since the inception of SF. See Troy J. Saquety, *The Evolution of the Special Forces Operational Detachment-Alpha*, 19 VERITAS, no. 1, 2023, at 23, 23, <https://perma.cc/5PYS-NKUD>.

52. Denied areas are areas “under enemy or unfriendly control in which friendly forces cannot expect to operate successfully within existing operational constraints and force capabilities.” ADP 3-05, *supra* note 42, at G-3.

53. See Christopher R. Thielienhaus, *Special Forces vs. SFAB: It's Not a Competition*, INFANTRY, Summer 2021 at 17, 19, <https://perma.cc/WX46-V96C>.

54. ADP 3-05, *supra* note 42 para. 2-1.

55. ADP 3-05, written during the Global War on Terror (GWOT), dedicates significantly more space to unconventional warfare and related activities than it does to SFA. See ADP 3-05, *supra* note 42, ch. 2 (covering SFA in less than a page). More specific SF doctrinal publications follow the same pattern. See *Army Techniques Publications*, ARMY PUBLISHING DIRECTORATE (Dec. 22, 2023) (containing manuals for SF direct action operations, unconventional warfare, and SF use of pack animals but no publications for SF conducting SFA operations), <https://perma.cc/H243-7ZMZ>.

56. See Ball, *supra* note 43.

57. *Id.* (citing U.S. ARMY SPECIAL OPERATIONS COMMAND, ARSOF 2022 11 (2014)).

58. See Ball, *supra* note 44.

B. Security Force Assistance Brigades

1. Genesis

The Army stood up SFABs to address an acute shortfall of advise and assist capability during the GWOT.⁵⁹ While SF played a key role in working with the Northern Alliance to overthrow the Taliban in 2001, and with the Kurds to attack Iraqi Army units in northern Iraq in 2003, SF largely concentrated its SFA efforts on Afghan and Iraqi SF.⁶⁰ This left conventional units to take up the role of training the new Afghan and Iraqi Armies.⁶¹ Solutions were often ad-hoc.⁶² As the GWOT progressed, the strain on conventional brigade combat teams (BCTs) mounted and then-Army Chief of Staff, General Mark Milley, made establishing purpose-built brigades a top priority.⁶³ The first SFAB stood up at Fort Benning, now Fort Moore, Georgia, in 2017.⁶⁴ Deployments to Afghanistan and Iraq followed soon after.⁶⁵ Additional SFABs stood up shortly afterwards and also contributed to training the Afghan and Iraqi Armies.⁶⁶

2. Mission and Organization

The SFAB mission bears the marks of its origins. As one might expect given the circumstances of their founding, the key institutional imperative SFABs remains protecting BCT readiness by taking on the SFA role for the conventional Army.⁶⁷ Reflecting the need to persistently compete, an SFAB “provides an advising force that is comprised of scalable, flexible, and adaptable advisor teams.”⁶⁸ While other U.S. Government organizations play important SFA roles, SFABs support SFA by placing advisor teams with foreign partners.⁶⁹ In armed conflict, SFAB doctrine envisions these organizations providing a liaison function with multi-national partners as well.⁷⁰

59. See Ball, *supra* note 43. By 2018, the Joint Force was only able to respond to about 50% of requests for SFA by Geographic Combatant Commands. Justin Johanson, SFAB Industry Day Breakout Brief 2021, at slide 4 (Apr. 2, 2021) (published PowerPoint presentation), <https://perma.cc/46W2-PQTY>.

60. See Ball, *supra* note 43.

61. *Id.* See also Joshua Risner, *To Build an Army: Military Transition Team Cornerstone to 6th Iraqi Army Success*, U.S. ARMY (Mar. 20, 2009) <https://perma.cc/3KKY-LY58>; ANDREW FEICKERT, CONG. RSCH. SERV., IF 10675, ARMY SECURITY FORCE ASSISTANCE BRIGADES (SFABs) 1 (2023) [hereinafter CONG. RSCH. SERV. 2023]; Meghann Myers, *Army Chief: SFABs Will Do a Completely Different Job than Special Forces*, ARMY TIMES (Oct. 31, 2017), <https://perma.cc/6UR5-5VCS>.

62. See C. Todd Lopez, *Security Force Assistance Brigades to Free Brigade Combat Teams from, Advise, Assist Mission*, U.S. ARMY (Sept. 19, 2017), <https://perma.cc/5JF4-TX25>.

63. *Id.* See also, Brian Hamilton, *Army Moves Closer to Establishing First Security Force Assistance Brigade*, U.S. ARMY (May 18, 2017), <https://perma.cc/Z6YW-WTVG>.

64. ANDREW FEICKERT, CONG. RSCH. SERV., IF 10675, ARMY SECURITY FORCE ASSISTANCE BRIGADES (SFABs) 1–2 (2020) [hereinafter CONG. RSCH. SERV. 2020].

65. *Id.*

66. *Id.*

67. Johanson, *supra* note 59. See also, ATP 3-96.1, *supra* note 34, para. 1-4.

68. ATP 3-96.1, *supra* note 34, para. 1-13.

69. *Id.* paras. 1-15 to 1-16.

70. *Id.* paras. 4-215 to 4-219.

Security Force Assistance Brigades have expanded rapidly since their start in the middle of the last decade.⁷¹ This is, at least in part, down to Army leadership's belief that these formations have a critical role to play in strategic competition.⁷² There are currently five active-duty brigades, each regionally aligned to a GCC, as well as one globally aligned brigade in the National Guard.⁷³ Security Force Assistance Command (SFAC) oversees the recruitment, training, and equipment of these formations for use by the GCCs.⁷⁴

Each brigade contains a headquarters and headquarters company, two infantry battalions, a cavalry squadron, an artillery battalion, an engineer battalion, and a support battalion.⁷⁵ The maneuver battalions each contain a headquarters and headquarters company and three maneuver companies.⁷⁶ Rather than platoons, each company in the SFAB is composed of advisor teams, a total of fifty-four in the brigade.⁷⁷ These teams are led by majors or captains and have twelve members.⁷⁸ Aside from the commander and the noncommissioned officer in charge, the advisor teams contain experts in the maneuver, medical, communications, mechanical, intelligence, and logistical fields.⁷⁹ The advisor teams from the maneuver battalions typically form the basis for task-organized advisor teams, with personnel from the artillery, engineer, and support battalions augmenting these teams.⁸⁰ These individual teams can advise forces at the company, battalion, or brigade level.⁸¹ The SFAB commander can combine these advisor teams to create six battalion advisor teams or two brigade advisor teams.⁸² These larger advisor teams can advise formations as large as a corps.⁸³ The ability to create a large number of task-organized advisor teams at various echelons means that the SFAB "can support a persistent SFA presence by providing rotational capability within the SFAB."⁸⁴ Like the SF groups, SFABs are not capable of conventional

71. See CONG. RSCH. SERV. 2023, *supra* note 61, at 1. The Army stood up all five active-duty SFABs and one SFAB in the National Guard in the period between August 2017 and May 2020. See SFAC FACTBOOK, *supra* note 38, 15–24 (detailing the foundation, mission focus, and recent engagements of the various SFABs).

72. McEnany, *supra* note 37 (explaining that along with the Multi-Domain Task Forces, SFABs are a "signature modernization formation").

73. SFAC FACTBOOK, *supra* note 38, at 13. These are 1st SFAB, based at Fort Moore, Georgia, aligned to Southern Command; 2d SFAB, based at Fort Liberty, North Carolina, aligned to Africa Command; 3d SFAB, based at Fort Cavazos, Texas, aligned to Central Command; 4th SFAB, based at Fort Carson, Colorado, aligned to European Command; 5th SFAB, based at Joint Base Lewis-McChord, Washington; and 54th SFAB of the National Guard, headquartered in Indiana, with a global focus. *Id.* at 14, 16, 18, 20, 22, 24.

74. *Id.* at 12.

75. ATP 3-96.1, *supra* note 34, para. 1-6.

76. *Id.*

77. *Id.* para. 1-7.

78. *Id.* at 1-15 to 1-16.

79. CONG. RSCH. SERV. 2020, *supra* note 64, at 1.

80. ATP 3-96.1, *supra* note 34, para. 1-75.

81. *Id.* para. 1-66.

82. *Id.* para. 1-7.

83. *Id.* para. 1-75.

84. *Id.* para. 1-17.

operations on their own.⁸⁵ The SFABs, however, can serve as the basis for new BCTs should the Army require additional combat formations.⁸⁶ The structure of the SFABs is very similar to that of the SF groups, sharing regional alignment of its largest components,⁸⁷ the ability to advise and liaise at multiple echelons,⁸⁸ and a focus on small teams composed of comparatively senior personnel.⁸⁹ Despite these similarities, however, the ways in which SFABs and SF fund their operations are very different.

3. Early Fiscal Authorities

The fiscal authorities that the SFABs used in their initial deployments were tightly wound up in the conflicts in Afghanistan and Iraq that spurred their creation. The inaugural deployment of an SFAB was the deployment of the 1st SFAB to Afghanistan in March of 2018 for a period of nine months.⁹⁰ As additional SFABs came on line, they tended to backfill the earlier SFABs on deployments to Afghanistan and Iraq.⁹¹ In fact, it was not until 2020 that the SFABs took on missions outside of Afghanistan and Iraq.⁹²

In these deployments to Afghanistan and Iraq, the SFABs found themselves operating in theaters that were well-established after nearly two decades of war. Each country had its own well-funded authorization that would cover SFA activities.⁹³ Security force assistance brigade operations in Afghanistan were covered by the Afghanistan Security Forces Fund (ASFF).⁹⁴ Between the fund's inception in 2005 and the collapse of the Afghan government in 2021, this fund disbursed over eighty-two billion dollars.⁹⁵ When dealing with SFA activities related to the fight against the Islamic State of Iraq and Syria (ISIS), while in Iraq or other countries, SFABs have been able to rely on funding from the Counter-ISIS Train

85. *Id.* para. 1-20.

86. *Id.* para. 1-19; CONG. RSCH. SERV. 2020, *supra* note 64, at 2.

87. Compare McEnany, *supra* note 37, with SFAC FACTBOOK, *supra* note 38, at 13.

88. Compare Sacquety, *supra* note 51, at 23-27, with ATP 3-96.1, *supra* note 34, paras. 1-75 to 1-77.

89. Compare Sacquety, *supra* note 51, at 23 (describing the operational detachment-alpha as the key unit in the SF group), with ATP 3-96.1, *supra* note 34, at 1-14 to 1-16 (explaining that “[a]dvisor teams are the primary SFAB organizations that influence foreign security forces through the execution of SFA tasks.”).

90. C. Todd Lopez, *Success of First SFAB in Afghanistan Proves ‘Army Got it Right,’ Commander Says*, U.S. DEP’T OF DEF. (May 8, 2019), <https://perma.cc/5MVC-8FJN>.

91. See *id.* (discussing the then-new 2d SFAB’s deployment to Afghanistan to replace the departing 1st SFAB). See also CONG. RSCH. SERV. 2020, *supra* note 64, at 1.

92. See Propst, *supra* note 28, at 84; CONG. RSCH. SERV. 2020, *supra* note 64, at 1.

93. See CHRISTINA L. ARABIA, CONG. RSCH. SERV., IN11728, THE COLLAPSE OF THE AFGHAN NATIONAL DEFENSE AND SECURITY: IMPLICATIONS FOR U.S. SECURITY ASSISTANCE AND COOPERATION 1 (2021) (discussing the ASFF); CHRISTOPHER M. BLANCHARD, CONG. RSCH. SERV., IF11930, SYRIA AND U.S. POLICY 2 (2023) (discussing the Counter-ISIS Train and Equip Fund (CTEF)).

94. See ARABIA, *supra* note 93, at 1; Propst, *supra* note 28, at 84.

95. ARABIA, *supra* note 93, at 1 (citing SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION, QUARTERLY REPORT TO THE UNITED STATES CONGRESS, JULY 30, 2021 (2021)).

and Equip Fund (CTEF).⁹⁶ The CTEF has provided over seven billion dollars in funds for counter-ISIS training and equipping efforts since 2014.⁹⁷ The ASFF and CTEF both provided the SFABs funds specifically for SFA.⁹⁸ This made the fiscal aspect of SFAB operations in Afghanistan and Iraq fairly straightforward. The scope and flexibility of the ASFF and CTEF enabled the SFABs to engage in SFA activities at a variety of levels and with persistence.⁹⁹ But after the wars in Afghanistan and Iraq wound down, the SFABs completed the regional alignment envisaged at their creation and found themselves conducting SFA activities all over the world.¹⁰⁰ As the SFABs left behind mature operational environments in Afghanistan and Iraq and took on more varied missions, the fiscal authorities they used to conduct SFA activities would also become more varied.¹⁰¹

III. HARD CASH AND EASY MONEY¹⁰²

With large-scale deployments to the Middle East behind them, the SFABs now make use of a variety of fiscal authorities under Title 10 of the U.S. Code for their SFA activities in various countries.¹⁰³ An important baseline consideration with these fiscal authorities is the primacy of the Department of State (DoS) when it comes to foreign assistance generally. The Foreign Assistance Act of 1961¹⁰⁴ provides that foreign assistance should occur under the policy guidance of the Secretary of State (SECSTATE).¹⁰⁵ Foreign assistance includes the SFA activities

96. See BLANCHARD, *supra* note 93, at 2.

97. Christopher M. Blanchard, CONG. RSCH. SERV., IN12309, IRAQ: ATTACKS AND U.S. STRIKES REOPEN DISCUSSION OF U.S. MILITARY PRESENCE (Sep. 10, 2024).

98. See, e.g., Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. C, tit. IX, 134 Stat. 1182, 1340 (2020) (appropriating \$3,047,612,000 for ASFF to, “provide assistance, with the concurrence of the Secretary of State, to the security of Afghanistan, including the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, construction, and funding.”); *id.* tit. IX, 134 Stat. at 1341 (appropriating \$710,000,000 for CTEF to “provide assistance, including training; equipment; logistics support, supplies, and services; stipends; infrastructure repair and renovation; construction for facility fortification and humane treatment; and sustainment, to foreign security forces, irregular forces, groups, or individuals participating, or preparing to participate in activities to counter [ISIS], and their affiliated or associated groups.”).

99. See, e.g., SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION, QUARTERLY REPORT TO THE UNITED STATES CONGRESS, 78–81 (JULY 30, 2018).

100. Regional alignment of the SFABs was the intent of the Army even before all SFABs were activated. See CONG. RESEARCH SERV. 2020, *supra* note 64, at 2; Rick Montcalm, *Six Months in Afghanistan: A Progress Report from 1st SFAB’s Inaugural Deployment*, MOD. WAR INST. (Aug. 16, 2018), <https://perma.cc/GF99-FYF3>. Today, that alignment is complete and SFABs conduct SFA activities in every geographic combatant command except Northern Command. See SFAC FACTBOOK, *supra* note 38, at 13.

101. It is worth mentioning that because 3d SFAB is regionally aligned to Central Command, to the extent it conducts SFA activities in support of the counter-ISIS mission, it would still have access to CTEF funds.

102. In truth, no one wants hard cash when they can have easy money. See Billy Joel, *Easy Money*, on INNOCENT MAN (Columbia Records 1983).

103. See, e.g., SFAC FACTBOOK, *supra* note 38, at 13; Propst, *supra* note 28, at 84.

104. Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424.

105. 10 U.S.C. § 2151(b).

that are the focus of this paper.¹⁰⁶ Because of the statutory requirement for foreign assistance to be within the policy guidance of SECSTATE, many of the fiscal authorities SFABs use for SFA activities require coordination with DoS.¹⁰⁷ Another byproduct of DoS primacy in the foreign assistance space is that many of the fiscal authorities dealt with in this section have tightly circumscribed purposes, providing specific rather than flexible funding to SFABs.¹⁰⁸ This section will evaluate some of the most commonly used authorities and how well they align with SFABs' role in GPC. For simplicity's sake, this paper will run down the selected fiscal authorities in the order in which they appear in the U.S. Code.

A. 10 U.S.C. 312 *Payment of Personnel Expenses Necessary for Theater Security Cooperation*

Congress passed 10 U.S.C. § 312 in 2016 as part of a broad effort to consolidate a large number of authorities scattered about Title 10.¹⁰⁹ This authority combines and repeals the African Cooperation, LATAM Cooperation: Payment of Personal Expense, Payment of Expenses to Attend Bilateral or Regional Conferences, and Payment of Foreign Nation Liaison Officer Expenses programs.¹¹⁰ To provide a sense of the scale of activity under this authority, expenditures under this fiscal authority in fiscal year 2023 were approximately¹¹¹ 76,289,000 USD.¹¹² This amount is set to increase to 105,014,000 USD in fiscal year 2024.¹¹³ Both DoD Operations and Maintenance (O&M) and O&M for the military departments are available for use under this authority.¹¹⁴

1. Key Features

Subject to a determination by SECDEF that paying such expenses is necessary for theater SC, Section 312 allows for the payment of personnel expenses for defense personnel of a friendly foreign government or, with SECSTATE

106. See Taylor P. White, *Security Cooperation: How it All Fits*, 72 JOINT FORCES Q., 1st Quarter 2014, at 107 (explaining that SFA is a subset of security cooperation, the DoD contribution the U.S. Government's foreign assistance activities).

107. See, e.g., discussion *infra* Section III.E.

108. See, e.g., *id.*

109. See National Defense Authorization Act (NDAA) for Fiscal Year 2017, Pub. L. No 114-328, § 1243, 130 Stat. 2000, 2514 (2016).

110. DEF. SEC. COOP. UNIV., SECURITY COOPERATION PROGRAMS 25 (2023).

111. Some lines in the President's budget justification for security cooperation activities by the DoD attribute amounts of funding for programs which cover multiple authorities – or possibly all of the authorities. OFF. OF THE SEC'Y OF DEF., FISCAL YEAR 2023 PRESIDENT'S BUDGET: JUSTIFICATION FOR SECURITY COOPERATION PROGRAM AND ACTIVITY FUNDING 48 (2022) [hereinafter PRESIDENT'S FY 23 BUDGET]. This is the case with funding for Section 312, which shares a budget line with funding for section 311. *Id.* at 48–49. This paper simply attributes the whole sum to Section 312 as the budget justification does not provide any means of discerning what the breakdown between these two might be.

112. *Id.* at 49.

113. OFF. OF THE SEC'Y OF DEF., FISCAL YEAR 2024 PRESIDENT'S BUDGET: JUSTIFICATION FOR SECURITY COOPERATION PROGRAM AND ACTIVITY FUNDING 48 (2023) [hereinafter PRESIDENT'S FY 24 BUDGET].

114. DEF. SEC. COOP. UNIV., *supra* note 110, at 25.

concurrence, those expenses of non-defense personnel, such as travel, subsistence, or medical support.¹¹⁵ For assignments of foreign personnel originating from a request by a combatant commander, the chiefs of staff of the various military departments may authorize the payment of expenses.¹¹⁶ By way of illustration, an archetypical case for using Section 312 authority would be funding the tuition and per diem of a student from a developing country that has been supportive of U.S. theater SC initiatives so that the student can attend advanced U.S. training.¹¹⁷

2. Limitations

On the face of the statute, the principal limitations come out of paragraph (e), which limits payment to what a comparable U.S. Service member would receive, and not more than 150,000 USD annually for any one officer.¹¹⁸ Despite this comparative lack of significant restraints,¹¹⁹ and the scope of activity under this authority, its suitability as a template for a fiscal authority enabling enhanced use of SFABs is minimal. This does not mean that Section 312 authority has no role to play in SFAB employment. It does mean that an authority that is primarily concerned with individual expenses, conferences, seminars, and similar meetings is ill-suited as a vehicle to facilitate SFABs' persistent, wide-ranging engagement with Allies and partners, as discussed in the NDS and other strategic documents.

B. 10 U.S.C. § 321 Training with Friendly Foreign Countries: Payment of Training and Exercise Expenses

Section 321 is one authority that covers a much broader scope of training. 10 U.S.C. § 321 was originally codified as 10 U.S.C. § 2010.¹²⁰ Passed in 1986,¹²¹ this authority came to be in a period when Congress was heavily scrutinizing SC activities by the DoD in the wake of the Ahuas Tara (Big Pine) II exercise in Honduras.¹²² A principal concern of Congress during this period was ensuring that the use of O&M funds for training with foreign forces only occurred subject to a specific statutory authority.¹²³ Section 321 provides this authority to conventional forces. The scale of training under this program is significant, with expenditures in fiscal year 2023 of nearly 104,000,000 USD¹²⁴ and projected expenditures

115. 10 U.S.C. § 312(a)–(b).

116. § 312(b)(3).

117. DEF. SEC. COOP. UNIV., *supra* note 110, at 26.

118. § 312(e).

119. Compare § 312 with § 127e (containing extensive Congressional notification and reporting requirements).

120. See NDAA for Fiscal Year 2017, Pub. L. No. 114-328, § 1244, 130 Stat. 2000, 2516 (2016) (renumbering 10 U.S.C. § 2010 as 10 U.S.C. § 321).

121. NDAA for Fiscal Year 1987, Pub. L. No. 99-661, § 1321(a)(1), 100 Stat. 3816, 3988 (1986).

122. Christopher B. Rich, Jr. et al, *By, With, and Through: Section 1202 and the Future of Unconventional Warfare*, 12 J. NAT'L SEC. L. & POL'Y 537, 556–61 (2022).

123. *Id.* at 558.

124. PRESIDENT'S FY 23 BUDGET, *supra* note 111, at 49.

in fiscal year 2024 of 214,571,000 USD.¹²⁵ DoD O&M,¹²⁶ as well as service O&M,¹²⁷ are available for this authority.

1. Key Features

Section 321 allows the armed forces to train with friendly foreign forces if SECDEF makes a determination that it is in the national security interests of the United States to do so.¹²⁸ By statute, the secretaries of the military departments or the commanders of the combatant commands may pay, or authorize the payment of a number of expenses.¹²⁹ These expenses include those costs incurred in training forces assigned to the command or the military or other security forces of a friendly country,¹³⁰ the costs of deploying those forces to the training,¹³¹ the incremental expenses of the foreign forces participating in the training or exercise,¹³² and small-scale construction¹³³ associated with the training.¹³⁴ The authority to approve requests for training with friendly foreign forces and to pay the expenses described above is currently delegable to the deputy combatant commanders of the GCCs, providing a great deal of flexibility.¹³⁵

2. Limitations

The first limitation in the statute constrains U.S. general purpose forces to training with the military forces of friendly foreign countries.¹³⁶ At first blush, this may not seem very consequential. After all, SFABs are composed of military members whose expertise is in military matters.¹³⁷ However, a country's security forces often include entities like a border patrol, a coast guard, or national police.¹³⁸ In countries with a tradition of heavily armed national police forces or gendarmerie, this puts an important element of a country's security forces beyond the reach of SFABs.¹³⁹ This limitation is even more severely felt in the handful of

125. PRESIDENT'S FY 24 BUDGET, *supra* note 113, at 48.

126. DEF. SEC. COOP. UNIV., *supra* note 110, at 27.

127. *See* 10 U.S.C. § 321(b)(permitting the secretaries of the military departments to authorize payment under this statute).

128. § 321(a)(1).

129. § 321(b).

130. § 321(b)(1).

131. § 321(b)(2).

132. § 321(b)(3)–(4).

133. For the purposes of Section 321, “small-scale construction” means “construction not to exceed \$1,500,000 for any project.” § 301.

134. § 321(b)(5).

135. Memorandum from John C. Rood, Under Sec’y of Def., to the Commanders of the Geographic Combatant Commands (Aug. 2, 2019) (on file with the author).

136. § 321(a)(2).

137. *See* discussion *supra* Section II.B.2.

138. *See, e.g.*, European Security & Defence, *Police And Policy Forces In France*, <https://perma.cc/P7PC-QUU6> (Dec. 13, 2019) (describing the functions of France’s three national law enforcement agencies).

139. For an excellent discussion of how gendarmeries fit in the broader security context, *see generally* FIEP, GENDARMERIES AND THE SECURITY CHALLENGES OF THE 21ST CENTURY (Hans Hovens

countries with no militaries at all.¹⁴⁰ Many of these countries have security agreements with neighboring countries, tending to mitigate the effect of having no military.¹⁴¹ Others have militaries in all but name.¹⁴² However, some countries' lack of military forces could potentially have far-reaching consequences for SFAB activities under Section 321. For example, Panama, sitting astride the critical Panama Canal, is one of the countries with no formal military forces.¹⁴³ Additionally, U.S. experience in both Iraq and Afghanistan, where the U.S. conventional forces worked extensively with national police forces, illustrates how important the ability to work with security forces outside of the military can be.¹⁴⁴

A second important limitation is the requirement that training support the mission-essential tasks of the U.S. forces engaged in the training and that those U.S. forces be the primary beneficiary of the training.¹⁴⁵ This requirement can prevent the U.S. forces involved from creating training in such a way that it maximizes benefit to the partner force.¹⁴⁶ Based on their unique role as units built for SFA, however, SFABs can mitigate the impact of this requirement by creating training events that focus on honing their own ability to advise, train, and assist the partner force.¹⁴⁷ As circular as it may seem to say that the purpose of the training is not advising the partner forces but training the advisors on advising,¹⁴⁸ the line of reasoning has a distinguished pedigree.¹⁴⁹ Special Forces employed exactly this reasoning to justify some of the training of Honduran forces in the Big Pine II exercise, and the Comptroller General agreed.¹⁵⁰ Nevertheless, a future fiscal

& Gemma van Elk eds., 2011) (Neth.), <https://perma.cc/M4KE-NPHV>. A large and expanding number of countries use gendarmeries for a broad variety of security roles. *Id.* at 10.

140. See Amanda M. Macias, *From Aruba to Iceland, these 36 Nations Have No Standing Military*, CNBC (Feb. 13, 2019), <https://perma.cc/FDG4-CDWZ>.

141. *Id.* (describing, among other nations, Spain's commitment to defend Andorra).

142. *Id.* (providing Costa Rica as an example of a country whose national police are "de facto military forces").

143. The constitution of the strategically critical nation of Panama prohibits that nation from having a military. PAN. CONST. tit. XII, art. 310. The potentially serious implications of this aspect of 321 with regards to America's employment of SFABs in Central America was brought to the author's attention by Lieutenant Colonel Brian D. Lohnes. Telephone Interview with Lieutenant Colonel Brian D. Lohnes, Deputy Legal Couns., Off. of the Legal Couns. to the Chairman of the Joint Chiefs of Staff (Nov. 27, 2023).

144. See generally ROBERT M. PERITO, *THE IRAQ FEDERAL POLICE: U.S. POLICE BUILDING UNDER FIRE* (2011) (detailing efforts on the part of the U.S. military to reform and train the Iraqi Federal Police); SPECIAL INSPECTOR GEN. FOR AFG. RECONSTRUCTION, *POLICE IN CONFLICT: LESSON FROM THE U.S. EXPERIENCE IN AFGHANISTAN* (2022) (describing U.S. assistance to the Afghan National Police).

145. 10 U.S.C. § 321(a)(3).

146. See Propst, *supra* note 28, at 86 (noting that the contribution to the military capabilities of the partner force in training under Section 321 are indirect).

147. *Id.*

148. *Id.* (noting that the approach might seem "disingenuous" but arguing that it is a legitimate use of the authority in Section 321).

149. See Rich, Jr. et al, *supra* note 122, at 559.

150. See *id.* (citing Honorable Bill Alexander, B-213137, 23 (Comp. Gen. Jan. 30, 1986) (unpublished), <https://perma.cc/63LJ-JAKM>).

authority might do well to steer clear of this clever justification and specifically authorize SFABs to conduct training for the benefit of the partner force.¹⁵¹

A third important limitation of the authority in Section 321 is the requirement for regular reports to Congress.¹⁵² Section 321's requirement is for quarterly reports to be sent to Congress in advance of any proposed training.¹⁵³ In practice, this requires the combatant commands to send requests to conduct training under Section 321 to the Defense Security Cooperation Agency ninety days or more before the start of that training.¹⁵⁴ While not as stringent as some reporting requirements,¹⁵⁵ the lead times associated with the reports can lead to training delays.¹⁵⁶ Despite these limitations, Section 321's lack of geographic or temporal restrictions, or restrictions in amount, combined with its focus on training, make it a potential template for a new fiscal authority enabling SFABs utilization at their full potential.

C. 10 U.S.C. § 331 Friendly Foreign Countries: Authority to Provide Support for Conduct of Operations

This statute shifts focus from training to operations. Congress originally passed this fiscal authority in 2006 as Section 127c.¹⁵⁷ Congress renumbered the authority twice before it took its current designation in 2016.¹⁵⁸ Despite the broad scope implied by the title to this authority, recent utilization of this statute has been rather modest compared to the preceding two authorities. The President's budget request for fiscal year 2023 only requested 5,442,000 USD.¹⁵⁹ This amount rose to 7,823,000 USD in the President's fiscal year 2024 budget request.¹⁶⁰

1. Key Features

10 U.S.C. § 331 permits SECDEF to provide non-reimbursable support to friendly foreign countries involved in ongoing military operations.¹⁶¹ Such support can include logistics support, supplies, and services for the security forces of a friendly foreign country conducting operations with U.S. forces, on their own if

151. Even the comptroller general seemed, "uncomfortable with the implications of his own analysis" with regards to the training of advisor forces and recommended that Congress provide an explicit authorization for the training of foreign forces. Rich, Jr. et al, *supra* note 122, at 559 (citing Honorable Bill Alexander, *supra* note 150, at 26).

152. 10 U.S.C. § 321(e).

153. *Id.*

154. Memorandum from John C. Rood, *supra* note 135, at 3.

155. Compare 10 U.S.C. § 321(e) with § 127e. See also discussion *infra* Section IV.A.2.

156. Memorandum from John C. Rood, *supra* note 135, at 3.

157. John Warner NDAA for Fiscal Year 2007, Pub. L. No. 109-364, § 1201(a), 120 Stat. 2083, 2410 (2006).

158. NDAA for Fiscal Year 2008, Pub. L. No. 110-181, § 1063(a)(1)(A), 122 Stat. 3, 321 (renumbering the authority as § 127d in 2008); NDAA for Fiscal Year 2017, Pub. L. No. 114-328, § 1245 (a), 130 Stat. 2000, 2518 (2016) (renumbering the authority as § 331 in 2016).

159. PRESIDENT'S FY 23 BUDGET, *supra* note 111, at 22.

160. PRESIDENT'S FY 24 BUDGET, *supra* note 113, at 19.

161. § 331(a)–(b). See also DEF. SEC. COOP. UNIV., *supra* note 110, at 29.

the operation is in the interest of the United States, to enhance interoperability with U.S. forces in anticipation of combined operations, or to a civilian agency of the foreign country if such support would benefit U.S. forces.¹⁶² The statute also permits the procurement of equipment for loan to the military forces of a friendly foreign country, training for the foreign personnel in connection with an operation, as well as small-scale construction supporting such an operation.¹⁶³

2. Limitations

The value of the support under this authority has a statutory cap of 450,000,000 USD.¹⁶⁴ Funds provided to enhance interoperability or to non-military agencies under this authority face a more stringent 5,000,000 USD cap.¹⁶⁵ Interestingly, these caps do not appear, at least on the face of the statute, to apply to the procurement of equipment for loan to the military forces of a friendly foreign country.¹⁶⁶ If support under this section is to go to an operation in which U.S. forces are not participating, SECDEF must jointly certify with SECSTATE that the operation is in the national security interest of the United States.¹⁶⁷ All support under this authority requires the concurrence of the SECSTATE.¹⁶⁸

Aside from these statutory limitations, the operational focus of the statute also makes it a poor template for a fiscal authority for SFABs. Both the JCC and the Army's strategy for military competition call for engagement with Allies and partners across the spectrum of competition, well before a crisis blooms into open hostilities.¹⁶⁹ Admittedly, the statute permits the provision of specialized training to foreign personnel in connection with an operation before those personnel deploy.¹⁷⁰ This still contemplates an ongoing operation, placing this authority too far to one side of the spectrum of competition on which SFABs seek to exert influence. Additionally, the fact that utilization of this authority remains at barely over one percent of the authorized total even as the DoD oversees billions in SC funds annually,¹⁷¹ raises questions about the overall suitability of the authority.

162. § 331(c)(1)–(2).

163. § 331(c)(3)–(5).

164. § 331(g)(1).

165. § 331(g)(2).

166. That support is provided pursuant to § 331(c)(3). § 331(g) applies caps to § 331(c)(1), (c)(2), (c)(4), (c)(5), but not (c)(3).

167. § 331(d)(1).

168. § 331(e).

169. See JCC, *supra* note 10, at 10; CHIEF OF STAFF PAPER #2, *supra* note 27, at 14–16.

170. 10 U.S.C. § 331(c)(4).

171. CHRISTINA L. ARABIA, CONG. RSCH. SERV., IF11477, DEFENSE PRIMER: DoD TITLE 10 SECURITY COOPERATION 1 (May 17, 2021) (placing total SC requests by DoD for fiscal year 2021 at \$7,591,400,000).

D. 10 U.S.C. § 332 Friendly Foreign Countries: International and Regional Organizations: Defense Institution Capacity Building

Congress passed Section 332 in 2016 as part of its larger effort to rationalize SC authorities.¹⁷² This authority is a permanent codification of fiscal authority to carry out the Ministry of Defense Advisor (MODA) Program.¹⁷³ The MODA program began in 2010 as an effort to address the need for institution-building in Afghanistan by placing members of the DoD's civilian workforce alongside Afghan counterparts in that country's Ministry of Defense and Ministry of the Interior.¹⁷⁴ By 2011, Congress had authorized global application of the program.¹⁷⁵ While the President's budget requests tend to group funding for activities under Section 332 with that for Section 333,¹⁷⁶ annual reports on the MODA program which 332 funds suggest the levels of expenditure are rather modest.¹⁷⁷

1. Key Features

This statute permits SECDEF, with the concurrence of SECSTATE to assign DOD civilians and members of the military to serve as advisors at ministries of defense or similar security agencies to provide advice and training.¹⁷⁸ The Secretary of Defense, again with the concurrence of SECSTATE, also has the authority under this statute to establish a program of training for personnel at foreign ministries of defense to, among other goals, assess organizational weaknesses, establish roadmaps for addressing those shortfalls, and enhance general or joint staff, or service level core management functions.¹⁷⁹

2. Limitations

Section 332 requires annual reports to Congress concerning activities carried out under this authority.¹⁸⁰ Additionally, Congress requires notification no later than fifteen days prior to assigning any civilian or Service member as an advisor under this section.¹⁸¹ However, the main reason this authority is not a good template for an SFAB fiscal authority is that the MODA program it exists to support does not align with the way SFABs operate. Security Force Assistance Brigades deploy as teams at a minimum.¹⁸² Once deployed, these teams assess, advise, and

172. See NDAA for Fiscal Year 2017, Pub. L. No. 114-328, § 1241(c)(1), 130 Stat. 2000, 2500 (2016).

173. See DEF. SEC. COOP. UNIV., *supra* note 110, at 30.

174. DEP'T OF DEF., MINISTRY OF DEFENSE ADVISORS PROGRAM ANNUAL REPORT: FISCAL YEAR 2014 (2014), [hereinafter MODA REPORT], <https://perma.cc/2G4R-EFDY>.

175. NDAA for Fiscal Year 2012, Pub. L. No. 112-81, § 1081, 125 Stat. 1298, 1599–1600 (2011).

176. *E.g.*, PRESIDENT'S FY 24 BUDGET, *supra* note 113, at 49.

177. See, *e.g.*, MODA REPORT, *supra* note 174, at 5 (putting the cost of placing an advisor in Kosovo at part of the program at \$121,000).

178. 10 U.S.C. § 332(a).

179. § 332(b).

180. 10 U.S.C. § 332(b)(2).

181. § 332(c).

182. ATP 3-96.1, *supra* note 34, para. 1-2.

assist partner forces units.¹⁸³ By contrast, MODA primarily facilitates the placement of individual civilians at ministry-level positions¹⁸⁴ and focuses on governance issues such as “enhancing civilian oversight” or creating “effective, transparent, and accountable defense institutions.”¹⁸⁵ Now, nothing in the statute itself limits its application to the MODA program and there is no statutory reason a group of SFAB advisors could not advise under this statute. With the ability to advise units as large as a corps,¹⁸⁶ SFAB advisors could conceivably advise at what would be a ministry-like level for a smaller military. The fact remains however that Section 332 is built around supporting a program that does not operate the way SFABs do.

E. 10 U.S.C. § 333 Foreign Security Forces: Authority to Build Capacity

Section 333 is the authority enabling what is, by some measures, one of the largest SC programs in the DoD.¹⁸⁷ Tracing its origins to the Bush-era Global Train and Equip pilot program,¹⁸⁸ Section 333 became a permanent authority in 2016.¹⁸⁹ The President’s budget for fiscal year 2023 requested 1,392,920,000 USD in funding for programs under this authority.¹⁹⁰ The President’s budget for fiscal year 2024 shows that Congress enacted 1,509,593,000 USD for this category of spending for fiscal year 2023.¹⁹¹ The request for fiscal year 2024 was 1,293,031,000 USD.¹⁹² The appropriation available to execute a program under this authorization is DoD O&M.¹⁹³

1. Key Features

Section 333 authorizes SECDEF to conduct or support programs providing training and equipment to the security forces of foreign countries.¹⁹⁴ These programs must support building partner capacity in one of nine enumerated types of

183. *Id.* paras. 1-14 to 1-18.

184. *See* § 332(a); MODA REPORT, *supra* note 174, at 5.

185. § 332(b)(1)(A).

186. *See* discussion *supra* Section II.B.2.

187. U.S. GOV’T ACCOUNTABILITY OFF., GAO-23-105842, BUILDING PARTNER CAPACITY: DoD AND STATE SHOULD STRENGTHEN PLANNING FOR TRAIN AND EQUIP PROJECTS Highlights (2023); ARABIA, *supra* note 172, at 1–2 (putting the SC expenditures for building partner capacity only behind ASFF and CTEF for fiscal year 2021).

188. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 187, at 5.

189. NDAA for Fiscal Year 2017, Pub. L. No. 114-328, § 1241(d)(1), 130 Stat. 2000, 2500–04 (2016).

190. PRESIDENT’S FY 23 BUDGET, *supra* note 111, at 50. While this line in the justification for the President’s budget request combines the totals for § 332 and § 333, expenditures for § 332 are so minor that attributing the total to § 333 presents an accurate picture. *See* discussion *supra* Section III.D. *See also* U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 187, at 10 (putting Section 333 expenditures at over one billion dollars annually in each fiscal year between 2018 and 2022); ARABIA, *supra* note 171, at 1–2 (putting “building capacity” funding in fiscal year 2021 at \$1,838,400,000).

191. PRESIDENT’S FY 24 BUDGET, *supra* note 113, at 23.

192. *Id.*

193. 10 U.S.C. §333(g)(1).

194. § 333(a).

operations.¹⁹⁵ This focus on building partner capacity and ensuring that the benefit accrues to the partner force differentiates this authority from other prominent SC statutes that require that the focus of training be on developing the participating U.S. forces.¹⁹⁶ This authority also permits the use of funds across fiscal years for ongoing programs.¹⁹⁷

2. Limitations

The first serious limitation in this fiscal authority confronts the reader in the very first paragraph of that statute. While this paragraph is an improvement over other authorities in that it permits training to focus on capacity building for the partner force, this paragraph is also something of a one-step forward, two-steps back affair because it proceeds to limit that training to nine specified areas.¹⁹⁸ Perhaps reflecting its outgrowth from a program conceived during the height of the Global War on terror, the nine focus areas omit the kind of operations that would form the bulk of military activity in a high-intensity conflict.¹⁹⁹

Another important limitation arises from the statute's required level of coordination with DoS. While many authorities require concurrence with DoS,²⁰⁰ Section 333 requires the joint development of programs under this authority, coordination by DoD with DoS concerning the implementation of those programs, and coordination by DoD with DoS whenever the DoD submits any of the notifications this statute requires to Congress.²⁰¹ While this level of coordination with DoS might, in theory, be desirable, it is a level of coordination that has proven difficult to achieve in practice.²⁰²

The statute also requires extensive reporting to Congress.²⁰³ No later than fifteen days prior to the initiation of activity under this authority, the DoD must provide notification to Congress covering nine specified topics of information describing the program.²⁰⁴ Congress also requires reports every six months concerning activities under this authority for the preceding six months.²⁰⁵ Again,

195. 10 U.S.C. § 333(a)(1)–(9). The permitted areas for capacity building are counterterrorism operations, counter-weapons of mass destruction operations, counter-illicit drug trafficking operations, counter-transnational organized crime operations, maritime and boarder security operations, military intelligence operations, air domain operations, operations or activities contributing to an ongoing international operation in that is in the national interest of the United States, cyberspace security and defensive cyberspace operations. *Id.*

196. *See, e.g.*, discussion *infra* Section IV.B.

197. “Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the second fiscal year thereafter.” § 333(g).

198. *See* § 333(a).

199. *See Id.*

200. *See, e.g.*, discussion *supra* Section III.D.

201. § 333(b)(2)–(4).

202. *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 187, at 15–23.

203. *See* § 333(e)–(f).

204. § 333(e).

205. § 333(f).

while this level of reporting may be desirable in the abstract, it has proven troublesome to pull off.²⁰⁶

An additional limitation of this statute arises out of what might be considered a positive feature. The very fact that Section 333 covers training, as well as the provision of defense articles, threatens, in the eyes of some, to cause programs under this authority to focus on high-expense platforms as opposed to enduring capabilities in partner forces.²⁰⁷ While the direst consequences of such predictions have not come to pass,²⁰⁸ this line of critique echoes the JCC's warning that policy-makers should not conceive of GPC as an on-or-off event characterized by high-intensity conflict but as an enduring condition that requires management.²⁰⁹ Reports by the Government Accountability Office concerning this authority also tend to suggest that platforms exert an unfortunate gravitational pull on the funds available under this authority, whether or not the platforms ultimately enhance partner force capabilities.²¹⁰

F. Temporary Authorities

In addition to the codified authorities above, there is currently a large collection of authorities Congress has passed in response to various exigencies, which it reauthorizes each year through the passage of the National Defense Authorization Act (NDAA) and the funds with corresponding appropriations act.²¹¹ These temporary authorities represent a significant portion of the DoD's total SC expenditures, often-times representing the largest SC expenditures in a given year.²¹² While a detailed examination of the various temporary authorities is beyond the scope of this paper,²¹³ a discussion of their limitations generally is worthwhile.

One of the primary issues with this type of funding is that it is, almost necessarily, a product of reactionary policymaking. The creation of ASFF postdates the

206. See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 187, at 24.

207. See Phil W. Reynolds, *Building Partner Capacity Is Great Power Competition: The Future of 333 Funds*, SMALL WARS J. (Feb. 6, 2021, 2:06 PM) (cautioning against the "seduction in the simplicity of big wars"), <https://perma.cc/KYA9-Y9P4>.

208. See *id.* (fearing that a fixation on high end platforms for high intensity conflict threatens to swallow funding for more routine SC activities).

209. JCC, *supra* note 10, at 6–7.

210. See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 187, at 23.

211. See, e.g., DEF. SEC. COOP. UNIV., *supra* note 110, at Table of Contents (displaying a variety of DoD authorities for SC, the first nine of which are temporary authorities).

212. See, e.g., SUSAN B. EPSTEIN & LIANA W. ROSEN, CONG. RSCH. SERV., R45091, U.S. SECURITY ASSISTANCE AND SECURITY COOPERATION PROGRAMS: OVERVIEW OF FUNDING TRENDS 12 (2018) (indicating that ASFF was the largest SC expenditure by DoD in every year between fiscal year 2006 and fiscal year 2017).

213. The Defense Security Cooperation Agency's 2023 compilation of SC programs, providing one- and two-page summaries of these and other statutory authorities, runs 168 pages. See generally DEF. SEC. COOP. UNIV., *supra* note 110.

beginning of the war in Afghanistan.²¹⁴ The Counter ISIS Train and Equip Fund came to be after ISIS declared a caliphate, and the world's first terror state, to the global community from a mosque in Mosul.²¹⁵ Section 1251 funding was a response to the Russian seizure of Crimea in 2014.²¹⁶ On the one hand, authorities crafted in response to a crisis can be ideally suited to a particular situation precisely because a crisis calls them into being. However, like a finger stuck in a breaking dam, such an authority is often so narrow as to do little more than respond to the precise situation that gave rise to it. Section 1251, for example, originating in a period where various NATO allies were clamoring for more exercises with U.S. forces in the aftermath of the Russian seizure of Crimea,²¹⁷ requires that U.S. forces participate in a multinational exercise in order to use the funding it authorizes.²¹⁸ In a certain sense, the very existence of these authorities reflects a failure to adequately anticipate SFA requirements or to address these requirements as part of an integrated strategy. This is a stark contrast to the call of documents, such as the NDS, which envision persistent engagement in advance of crisis or conflict.²¹⁹

Another structural limitation of these authorities is the very fact that Congress has not codified them. This lack of permanence means that Congress must renew these authorizations each year. On the one hand, the NDAA passes each year with comparatively little difficulty,²²⁰ providing a ready vehicle for renewing temporary authorities. On the other hand, the need to renew an authority annually exposes it to the uncertainty of Congressional politics, where what was once broadly agreed upon can become controversial overnight.²²¹

214. While the war in Afghanistan began in 2001, the ASFF did not begin until 2004. NDAA for Fiscal Year 2005, Pub. L. No. 108-375, § 1202, 118 Stat. 1811, 2078 (2004).

215. See Michael Safi, *Who was Abu Bakr al-Baghdadi and Why is His Death Important?*, GUARDIAN (Oct. 27, 2019, 9:58 AM), <https://perma.cc/7QZP-MQBV>. Congress created the CTEF in 2014. Carl Levin and Howard O. “Buck” McKeon NDAA for Fiscal Year 2015, Pub. L. No. 113-291, § 1236, 128 Stat. 3292, 3558–62 (2014).

216. NDAA for Fiscal Year 2016, Pub. L. No. 114-92, § 1251, 129 Stat. 726, 1070–71 (2015). Congress extended this authority in 2021. NDAA for Fiscal Year 2022, Pub. L. No. 117-81, § 1233, 135 Stat. 1541, 1974 (2021) (extending the authority to December 31, 2024).

217. This assertion is based on the author's professional experiences as an officer with the 173d Airborne Brigade and 7th Army Training Command from January 2012 to June 2016.

218. NDAA for Fiscal Year 2016, Pub. L. No. 114-92, § 1251(a)–(c). The requirement that the exercises be multinational can also be a significant limitation in providing the most acutely needed training to the partners most in need of it. Telephone interview with Major Jonathan G. Krug, Deputy Chief, Cont. & Fiscal L. Div., Headquarters, U.S. Army Eur.-Afr. (Nov. 16, 2023); Telephone Interview with Lieutenant Colonel George R. Lavine & Sergeant First Class Jason A. Getz, *supra* note 33.

219. See NDS, *supra* note 9, at 7–11; CHIEF OF STAFF PAPER #2, *supra* note 27, at 1–2.

220. See Rachel Looker, *Senate Passes \$886 Billion Defense Spending Plan with Pay Raises for Troops, Ukraine Aid*, USA TODAY (Dec. 15, 2023, 3:37 PM), <https://perma.cc/LPE2-ZL9K>.

221. See, e.g., Simon Moore, *March Government Shutdown Deadline Draws Closer*, FORBES (Feb. 14, 2024, 12:24 PM), <https://perma.cc/G9CV-H8W3>.

IV. GREENER (BERETS) ON THE OTHER SIDE?²²²

Not only do SF benefit from better equipment,²²³ and more realistic and demanding training than their conventional counterparts,²²⁴ but they also have their own unique fiscal authorities.²²⁵ This section will look at SF-specific fiscal authorities with an eye towards whether or not they could provide a template for a fiscal authority that aligns with the role SFABs are meant to play in the National Defense Strategy (NDS).

A. 10 U.S.C. § 127e Support of Special Operation to Combat Terrorism²²⁶

Congress created 10 U.S.C. § 127e to address the lack of appropriate fiscal authorities that SF faced when they sought to assist the Northern Alliance in combating the Taliban in late 2001 and early 2002.²²⁷ Passed initially as Section 1208 of the 2005 NDAA,²²⁸ Congress reauthorized this authority over a period of twelve years before codifying it as 10 U.S.C. § 127e.²²⁹ The fiscal year 2023 baseline for spending under this authority was 60,000,000 USD.²³⁰ The President's budget for the fiscal year 2024 requests a reduction in this amount of 5,700,000 USD.²³¹

1. Key Features

Section 127e authorizes the expenditure of 100,000,000 USD annually to support “foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating authorized ongoing military operation by United States special operations forces to combat terrorism.”²³² This is a broad array of appropriate

222. When 1st SFAB was in the process of activating, word that the new unit would have a beret similar to that worn by SF spurred a petition garnering more than 81,000 signatures to change it. General Mark Milley assured concerned netizens that the beret was “more of an olive brown” than green. See Montcalm, *supra* note 101.

223. See Miguel Ortiz, *Special Forces Gear that Regular Troops Have Now, Too, WE ARE THE MIGHTY* (Jan. 25, 2021, 12:21 PM), (explaining how SF equipment is typically several decades ahead of the equipment conventional forces use), <https://perma.cc/F5S8-ZL5L>. But see *SOF Truths*, U.S. SPECIAL OPERATIONS COMMAND (Feb. 27, 2024) (maintaining that it is the people, not the gear, that make the difference), <https://perma.cc/J28R-EDQC>.

224. See *Army Special Forces Training*, MIL.COM (Dec. 5, 2012), <https://perma.cc/FRC7-BHUK>.

225. See, e.g., 10 U.S.C. § 322.

226. The author found the scholarship of Major Matthew G. Wyatt extremely helpful in the writing of this section. Major Matthew G. Wyatt, *Special Operations Fiscal Authorities: Training, Supporting, and Building Partner Capacity Abroad* (2021) (L.L.M. thesis, The Judge Advocate General's Legal Center and School) (on file with the author).

227. Major Daniel W. Hancock, III, *Funding Surrogate Forces in the Fight Against Terrorism*, 228 MIL. L. REV. 22, 24–25 (2020) (citing Matthew R. Grant & Todd C. Huntley, *Legal Issues in Special Operations*, in U.S. MILITARY OPERATIONS: LAW, POLICY, AND PRACTICE 553, 565–66 (Geoffrey S. Corn, Rachel E. Van Landingham & Shane R. Reeves eds., 2015)).

228. Ronald W. Reagan NDAA for Fiscal Year 2005, Pub. L. No. 108-375, § 1208, 118 Stat. 1811, 2086–87 (2004).

229. Hancock, *supra* note 227, at 25.

230. U.S. SPECIAL OPERATIONS COMMAND, FISCAL YEAR 2024 BUDGET ESTIMATES 154 (2023).

231. *Id.*

232. 10 U.S.C. § 127e(a).

objects of SF support and stands in stark contrast to the much more limited authorities that are available to general-purpose forces.²³³ The statute specifies that funds used for this purpose will come from DoD O&M.²³⁴ In practice, the funds for executing training under this authority come out of Major Force Program 11, an SF particular funding source, managed by Special Operations Command.²³⁵ Another unique feature of this fiscal authority is that it does not require an assessment of the human rights record of the foreign force receiving the assistance, sometimes referred to as “Leahy vetting,”²³⁶ permitting more rapid execution of programs under this authority.²³⁷

2. Limitations

The primary limitation of this fiscal authority confronts the reader before even getting past the statute’s title. Whereas the Nation’s strategic planning documents emphasize that this is an era of GPC where the U.S. military must prepare itself and its Allies and partners for high-intensity conflict,²³⁸ Section 127e is a product of the “unipolar moment”²³⁹ and focuses on counterterrorism.²⁴⁰ Another important constraint is the requirement that the DoD receive “the concurrence of the relevant Chief of Mission” to expend the funds authorized.²⁴¹ Aside from its narrow purview and requirement for high-level coordination with DoS, Section 127e has a number of stringent reporting and notification requirements.²⁴² Subject to an exception for extraordinary circumstances, support for a military operation under Section 127e requires congressional notification no later than fifteen days before DoD makes the funds available.²⁴³ Significant changes to the monetary level of support to an operation, defined as a change of 1,000,000 USD or twenty

233. Compare § 127e(a) (permitting support to foreign forces, irregular forces, groups, and individuals) with § 321(a)(2) (limiting support by U.S. general purpose forces to partner nation military forces).

234. § 127e(b).

235. Hancock, *supra* note 227, at 30.

236. The statutory provision requiring “Leahy vetting” is 10 U.S.C. § 362. This statute establishes the baseline rule, applicable to all of the other authorities discussed in this paper, that the DoD cannot use its funding to provide “training, equipment, or other assistance” to any unit that committed “a gross violation of human rights.” § 362(a).

237. Hancock, *supra* note 228, at 31 (citing U.S. SPECIAL OPERATIONS COMMAND. DIR. 525-19, 1208 AUTHORITY—SUPPORT OF SPECIAL OPERATIONS TO COMBAT TERRORISM 4 (Oct. 13, 2016)).

238. See, e.g., NDS, *supra* note 9, at 4–5.

239. Charles Krauthammer, *The Unipolar Moment Revisited*, NAT’L INT., no. 70, Winter 2002/2003, at 5.

240. See § 127e (illustrating that the hint is often in the title).

241. 10 U.S.C. 127e(a). As a practical matter, this often means securing the concurrence of the ambassador for the country. Hancock, *supra* note 227, at 31.

242. It would be fair to say that after describing the funds available and the appropriate objects of support, the balance of the statute is a long list of triggers for Congressional notification. Compare § 127e(a) (providing \$100,000,000 annually for the support of forces combatting terrorism alongside SF) with § 127e(d) (outlining congressional notification in the event the funding level for an operations using this authority changes) and § 127e(e) (describing congressional notification required in the event that the DoD ceases support to military operation under this authority).

243. § 127e(d)(1).

percent of the funding, whichever is less, also require congressional notification.²⁴⁴ Termination or suspension of support to military operation under this section also requires congressional notification.²⁴⁵ A further limitation is that SECDEF may not delegate the authority that Section 127e provides to make funds available, a stark contrast with some of the authorities this paper discussed earlier.²⁴⁶ Further, Section 127e requires that DoD submit two reports annually concerning the operations receiving support under the statute.²⁴⁷

Given the limited purview of the authority, the lack of ability to delegate authority under the statute, and the requirements for congressional notification in advance of operations as well as reports following operations, this authority is, arguably, less flexible and more burdensome to utilize than some of the authorities for conventional forces that the last section of this article covered. At a minimum, it does not provide a promising template for a new fiscal authority for SFABs.

B. 10 U.S.C. § 322 Special Operations Forces: Training with Friendly Foreign Forces

The second principle SF-specific authority this paper will look at is 10 U.S.C. § 322. In many ways, Section 322 is the SF analog for Section 321.²⁴⁸ Section 322, formerly codified as 10 U.S.C. § 2011,²⁴⁹ dates back to 1991.²⁵⁰ Practitioners often refer to training under this authority as a Joint Combined Exchange Training, or JCET.²⁵¹ In the years since Congress enacted this authority, JECTs have grown to be one of the principal vehicles for SF training with foreign forces.²⁵² In fiscal year 2023, SF executed 144 JCETs at a cost of 55,053,000 USD.²⁵³ This number is set to expand to 155 in fiscal year 2024.²⁵⁴ Given the Nation's focus on the PRC as the "pacing challenge,"²⁵⁵ it is perhaps unsurprising that in recent years, more than half of all JCETs have taken place in the Indo-Pacific.²⁵⁶ These JCETs typically involve small groups of operators deploying to a foreign country for around a month to

244. *Id.*

245. § 127e(e).

246. Compare § 127e(f) (prohibiting delegation of the authority the statute provides); with Memorandum from John C. Rood, *supra* note 135, at 1 (delegating authority under Section 321 to the geographic combatant commanders).

247. § 127e(i).

248. See Propst, *supra* note 28, at 86 (comparing the two authorities and noting their similarities).

249. NDAA for Fiscal Year 2017, Pub. L. No. 114-328, § 1244(b), 130 Stat. 2000, 2518 (2016).

250. NDAA for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, § 1052(a)(1), 105 Stat. 1290, 1470 (1991).

251. DEF. SEC. COOP. UNIV., *supra* note 110, at 28.

252. See U.S. SPECIAL OPERATIONS COMMAND, *supra* note 230, at 145.

253. *Id.*

254. *Id.*

255. See, e.g., NSS, *supra* note 8, at 20.

256. See Gordon Richmond, *How to Fix the Joint Combined Exchange Training Program*, MOD. WAR INST. (Feb. 16, 2022) (citing Andrew White, *Joint/Combined Training with International Partners the SOCPAC Model*, DEF. MEDIA NETWORK (Nov. 22, 2021), <https://perma.cc/84Q2-MJVU>).

engage in a reciprocal exchange of tactical training.²⁵⁷ Similarly to Section 321, U.S. SF have to be the primary beneficiaries of the training.²⁵⁸ Special operations forces involved may also derive significant benefit from the language training and cultural immersion aspects of deploying to JCETs.²⁵⁹

1. Key Features

Turning to the statute itself, Section 322 authorizes combatant commanders to pay or authorize the payment of a number of expenses.²⁶⁰ First, the statute covers the expenses of special operations forces assigned to the command.²⁶¹ Secondly, Section 322 covers the expenses associated with bringing those special operations forces to the training.²⁶² Finally, Section 322 covers the incremental expenses²⁶³ of the forces of a developing country involved in the training.²⁶⁴ Similarly to funding available for activities under Section 127e, the combatant commander may make use of funds from DoD O&M as well as O&M for U.S. Special Operations Command.²⁶⁵ The availability of this SF-specific O&M tends to make training under this authority easier to execute than would otherwise be the case.²⁶⁶

2. Limitations

While Section 322, like its conventional force counterpart, Section 321, encompasses a broad scope of training, it also comes with a number of important restrictions and limitations. Firstly, there is the requirement that the primary purpose of the training be to train the special operations forces assigned to the combatant command.²⁶⁷ This requirement can be an obstacle to carrying out training tailored to the needs of the partner force.²⁶⁸ In light of an NDS that calls for leveraging the capabilities of Allied and partnered militaries,²⁶⁹ this is a significant limitation.

Secondly, Section 322, like many of the other fiscal authorities for SC, includes requirements for regular reports to Congress.²⁷⁰ There are important differences, however, between the reporting requirements for Section 322 and Section 321. Unlike the requirement in Section 321 for quarterly reports to Congress in advance

257. Richmond, *supra* note 256.

258. 10 U.S.C. § 322(b).

259. *See* DEF. SEC. COOP. UNIV., *supra* note 110, at 28.

260. § 322(a).

261. § 322(a)(1).

262. § 322(a)(2).

263. § 322(d)(2) defines “incremental expenses” as “the reasonable and proper cost rations, fuel, training ammunition, transportation, and other goods and services consumed by such country, except the term does not include pay, allowances, and other normal costs of such country’s personnel.”

264. § 322(a)(3).

265. *See* DEF. SEC. COOP. UNIV., *supra* note 110, at 28.

266. *See* discussion *supra* Section IV.A.

267. § 322(b).

268. While SF generally concentrates its training efforts on partner nation SF, the fact remains that the proficiency of the U.S. force and the partner force across various competencies are unlikely to be in perfect alignment.

269. *See* NDS, *supra* note 9, at 8.

270. § 322(e).

of proposed training,²⁷¹ the requirement in Section 322 is for an annual report to Congress detailing what occurred in the preceding year.²⁷² While still an administrative burden, the less frequent and retrospective nature of reports under Section 322 is an important distinction of this fiscal authority in comparison to Section 321.²⁷³

The last limitation concerns Section 322's limitation to special operations forces. While the loss to conventional forces is fairly straightforward, the inability to apply this authority to conventional forces is also a significant detriment to special operations forces. United States Special Operations Command considers the reliance of SF on non-SF support to be a critical enabler of successful SF operations.²⁷⁴ To maximize the effect of training, special operations forces should be able to train in the kinds of task-organized teams that they would employ in the real world.²⁷⁵ The failure of JCETs to allow for this not only diminishes the potential value of the training but deprives SF personnel of the development that comes with training with broader teams.²⁷⁶ In the final accounting, the limitation of the authority to SF arguably proves to be more a bug than a feature, even from the perspective of the supposed beneficiaries of this policy choice.

C. Takeaways from SF Authorities

In looking at the two authorities available only to SF, neither one provides, at least without modification beyond making such an authority available to SFABs, a suitable basis for an authority that would enable SFABs to fulfill the role laid out for them in the Nation's strategic documents. Section 127e is too narrowly focused and features the most stringent reporting and notification requirements of any authority this paper evaluates. Section 322 is much broader in scope, and its reporting scheme would constitute an improvement over that of its conventional counterpart, Section 321. So, while the evaluation of these authorities provided insights into what might make for a better SFA authority, neither provides a ready solution.

271. § 321(e).

272. § 322(e).

273. See Propst, *supra* note 28, at 86–87.

274. Richmond, *supra* note 256 (citing *SOF Truths*, U.S. SPECIAL OPERATIONS COMMAND, <https://perma.cc/JHJ2-9R2Q> (last visited Mar. 15, 2024)). Specifically, this truth holds that:

Most special operations require non-SOF support. The operational effectiveness of our deployed forces cannot be, and never has been, achieved without being enabled by our joint service partners. The support Air Force, Army, Marine and Navy engineers, technicians, intelligence analysts, and the numerous other professions that contribute to SOF, have substantially increased our capabilities and effectiveness throughout the world.

SOF Truths, U.S. SPECIAL OPERATIONS COMMAND, <https://perma.cc/JHJ2-9R2Q> (last visited Mar. 15, 2024).

275. Richmond, *supra* note 256 (citing ARMY FUTURE COMMAND, PAM. 71-20-4, ARMY FUTURES COMMAND CONCEPT FOR SPECIAL OPERATIONS 2028 para. 1-6 (Sep. 18, 2020)).

276. Richmond, *supra* note 256.

V. THE WAY FORWARD

With such a breadth of authorities available, an SFAB has many options to choose from when it comes to funding their SFA activities. As shown above, however, many of the authorities available to SFABs have narrow purposes, such as building capacity within a limited number of military capabilities,²⁷⁷ facilitating episodic military-to-military exchanges,²⁷⁸ or multinational exercises with a limited number of countries on one continent.²⁷⁹ While each of these authorities funds an aspect of what an SFAB might do, none of them makes possible all of what an SFAB might or should be able to do.²⁸⁰ This may be a result of many of the authorities originating before SFABs existed.²⁸¹ Whatever the cause, there is no authority that fully addresses the need for meaningful and persistent engagement with Allies and partner nations discussed in the national strategic documents.²⁸² Put another way, there is a misalignment of the doctrine, organization, and training of the SFABs and the policies, specifically, the fiscal authorities, that enable their operations.

A. Framework

What might a fiscal authority drafted with SFABs specifically in mind look like? Ideally, the fiscal authorities that SFAB uses for SFA would reflect the nature of the SFAB mission and the doctrine concerning SFAB employment. Looking back to the strategic planning documents discussed in the introduction, a few qualities that would inform the shape of a new authority stand out.

Firstly, the Nation's strategy recognizes that competition is "an enduring condition to be managed, not a problem to be solved."²⁸³ This condition persists before, during, and after any given crisis or conflict.²⁸⁴ Security force assistance activities, not just by SFABs but by the whole DoD, are a key part of this enduring competition.²⁸⁵ Accordingly, an ideal SFA authority would support persistent SFA activities. Concretely, this would mean that the new authority would not turn on discrete events such as multinational exercises.

Secondly, the Nation's strategic documents place a good deal of emphasis on competition across a broad "spectrum of conflict."²⁸⁶ The JCC, for example, even

277. See discussion *supra* Section III.

278. See, e.g., 10 U.S.C. § 164.

279. See, e.g., NDAA for Fiscal Year 2016, Pub. L. No. 114-92, § 1251, 129 Stat. 726, 1070-71 (2015).

280. Telephone Interview with Lieutenant Colonel George R. Lavine & Sergeant First Class Jason A. Getz, *supra* note 33.

281. See, e.g., *supra* notes 120-121 and accompanying text.

282. See, e.g., JCC, *supra* note 10, at iii (discussing the enduring rather than episodic nature of strategic competition); CHIEF OF STAFF PAPER #2, *supra* note 27, at 22-26 (providing examples of how SFABs facilitate competition).

283. JCC, *supra* note 10, at iii.

284. See CHIEF OF STAFF PAPER #2, *supra* note 27, at viii; NDS, *supra* note 9, at 12.

285. See NDS, *supra* note 9, at 14.

286. See JCC, *supra* note 10, at vii; NDS, *supra* note 9.

calls for expanding how the United States conceptualizes deterrence to facilitate broad-based competition.²⁸⁷ The JCC mentions increased engagement with Allies in particular as one way to enhance deterrence during competition.²⁸⁸ Security force assistance activities range across a broad array of Allies and partners, all in unique circumstances, and addressing the various security concerns those Allies and partners face will necessarily be varied. Additionally, as circumstances change, what SFA activities are appropriate in a given context will also change and, therefore, be difficult to accurately forecast in advance. An SFA authority then should encompass a broad array of SFAB and DoD activities and not be limited to discrete categories of assistance.

Third, while the Nation's strategic documents identify the PRC and Russia as the primary antagonists in GPC,²⁸⁹ they are also clear that this competition is global in nature.²⁹⁰ The Army's role in this competition requires the cultivation of a global network of Allies and partners to address security challenges in the land domain.²⁹¹ A model authority would also be global and not have geographic limitations.

Fourth, the preceding qualities point to a need for flexibility in a new authority. The events of the last three years make clear how rapidly the strategic outlook can change.²⁹² The ability to shift funding between activities, categories of support, partners, regions, and continents as the strategic situation calls for should be a key feature of a new authority.

Fifth, the Nation's strategy calls for a holistic application of all aspects of national power in strategic competition.²⁹³ Integrated deterrence requires coordination between the agencies in order to achieve a coherent strategy and make the best use of available resources.²⁹⁴ A new SFA authority might require the DoD to develop a coordinated SFA strategy with the DoS in order to ensure not just that DoS primacy in SC remains, but to ensure that DoD SFA activities are integrated effectively into a coherent foreign policy.²⁹⁵ There is some potential tension between a requirement for comprehensive integration and a need for flexibility in executing SFA activities. A requirement for department-level review of the SFA activities undertaken under the new authority would likely facilitate the appropriate coordination between DoD and DoS.

287. JCC, *supra* note 10, at 25–26.

288. *Id.* See CHIEF OF STAFF PAPER #2, *supra* note 27, at 16.

289. *See, e.g.*, NDS, *supra* note 9, at ch. II.

290. *Id.*

291. CHIEF OF STAFF PAPER #1, *supra* note 16, at 16.

292. *See* discussion *supra* Section I.

293. *See* NDS, *supra* note 9, at 14–16.

294. *Id.* at 8.

295. Consider 10 U.S.C. § 333 and its requirement for the joint development of programs for building partner capacity between DoD and State. *See* discussion *supra* Section III.E.

B. Proposed Solution

1. New Authority

While none of the authorities this paper has evaluated possess all of these qualities, one authority, Section 321, is close in many respects.²⁹⁶ Looking first at the need for persistence in SFA activities, Section 321 does not rely on discrete events like exercises.²⁹⁷ Looking next to scope, Section 321 has no limits on the topics of training with foreign forces it authorizes.²⁹⁸ Looking then to geographic reach, Section 321 is global in its application. This lack of limitations makes the authority very flexible. Concerning the need for integration, Section 321's notice requirements ensure Congressional oversight of SFA activities carried out under this authority.²⁹⁹ Additionally, the requirement for approval of Section 321 training activities by SECDEF ensures agency-level planning and coordination for SFA activities and facilitates coordination with DoS.³⁰⁰

Using Section 321 as a starting point,³⁰¹ building an authority with all five of the desired qualities described above requires a handful of amendments. For the sake of ease, this section will discuss the proposed amendments in the order they would appear in the text of the statute.

a. Scope of Training

The first group of amendments would expand the scope of authorized training. As discussed earlier, Section 321 limits the type of forces that U.S. forces can train with, going so far as to limit U.S. general purpose forces to training "only with the military forces of a friendly foreign country."³⁰² Depending on the particular country, this limitation could have significant impacts on SFAB activities.³⁰³ Deleting paragraph (a)(2) would address this concern.

In an earlier section, this paper discussed the limitations on activities under Section 321 caused by the requirement that training occurring under this section support the mission-essential tasks of the U.S. forces involved in the training.³⁰⁴ While SFABs having the mission of providing SFA tends to mitigate how restricting this provision is, the provision could still stand in the way of SFA

296. See Propst, *supra* note 28, at 86–87; see also Telephone Interview with Lieutenant Colonel Brian D. Lohnes, *supra* note 143.

297. Compare 10 U.S.C. § 321, with NDAA for Fiscal Year 2016, Pub. L. No. 114-92, § 1251, 129 Stat. 726, 1070–71 (2015).

298. Compare 10 U.S.C. § 321, with § 333(a).

299. See § 321(e).

300. See § 321(f)(2)(a). This language already points towards nesting §Section 321 activities within a broader strategy. Note, however, that this authority is delegated down to the Geographic Combatant Commanders. See Memorandum from John C. Rood, *supra* note 135, at 1.

301. Given their similarity, one could just as easily begin with § 322 and make it applicable to general purpose forces instead of SF exclusively. This paper begins with § 321 because it already applies to SFABs.

302. § 321(a)(2).

303. See *supra* notes 136–144 and accompanying text.

304. See *supra* notes 145–151 and accompanying text.

activities an SFAB would otherwise engage in.³⁰⁵ Deleting paragraph (a)(3) would address this concern. Similarly, Section 321 requires that the primary purpose of the training be to train U.S. forces.³⁰⁶ Deleting paragraph (c)(1) would allow SFABs to focus on the partner force. To remove any remaining ambiguity, the instance of “train with” in paragraph (a)(1) should become “train,” making clear that the authority’s main focus is training the partner force.³⁰⁷

A final amendment concerning the scope of permissible training addresses Section 321’s required elements of training. As currently written, Section 321 requires, to the extent practicable, training on human rights³⁰⁸ and respect for legitimate civilian authority.³⁰⁹ While these training goals are certainly laudatory, they are also a potential constraint on SFAB activities under this fiscal authority.³¹⁰ Deleting paragraph (a)(4) would address this concern.

b. Persistent Engagement

A second group of amendments concerns ensuring that the authority does not become tied up in discrete training events but facilitates persistent engagement by the SFABs with Allied and partner forces. The authority to pay certain incremental expenses of friendly forces, discussed in paragraph (b) of Section 321, only attaches to exercises.³¹¹ To ensure a broader scope for this authority and bring it in line with the need for persistent engagement discussed in strategic planning documents, the instances of “an exercise” in paragraphs (b)(4) and (b)(5) should be replaced with “training or exercises.”

c. Reporting Requirement

The final group of amendments concerns the timing of the reporting requirements.³¹² As currently written, Section 321 requires quarterly reports to Congress in advance of training under this fiscal authority.³¹³ As seen earlier, this is in contrast to the reporting requirements under fiscal authorities available to SF.³¹⁴ This comparison tends to understate the burden of the disparity for reporting between Section 321 and 322. Being retrospective, the notice contemplated in Section 322 is necessarily easier to compile than a report of planned activities. Additionally,

305. One consideration might be whether the SFAB unit in question already has the requisite proficiency in any given mission essential task even if supporting the partner force requires engaging in that task again.

306. § 321(c)(1).

307. This particular nuance of § 321 was brought to the author’s attention by Major Jonathan Krug. E-mail from Major Jonathan G. Krug, Deputy Chief, Cont. & Fiscal L. Div., Headquarters, U.S. Army Eur.-Afr., to author (Feb. 22, 2024, 5:28 PM) (on file with the author).

308. See § 321(a)(4)(A).

309. See § 321(a)(4)(B).

310. Other fiscal authorities for SFA activities do not have a similar requirement. See, e.g., § 322.

311. See § 321(b)(4).

312. See Propst, *supra* note 28, at 86–87 (discussing the notice requirements of Section 321 as opposed to the reporting requirements of § 321).

313. See § 321(e).

314. See *supra* notes 270–273 and accompanying text.

providing reports to Congress quarterly and in advance of training requires the SFABS and GCCs involved to provide training plans to DSCA at least ninety days in advance of training.³¹⁵ To provide additional flexibility, paragraph (e) of Section 321 should be amended to transform the reporting requirement from a quarterly requirement in advance of training to an annual report of training occurring in the past fiscal year. This would harmonize the reporting requirements for the authorities available to SFABs and other general purpose forces with the reporting requirements available to SF.

2. New Appropriation

The flexibility in funding for SFA activities called for in the national strategic documents requires flexibility in appropriations as well as authorities. Most of the authorities covered in this paper already have a fair degree of flexibility in this regard because they can make use of DoD or service component operations and maintenance funding.³¹⁶ However flexible this might be, the fact remains that many of these authorities ultimately rely on different sources of funding ranging from service O&M,³¹⁷ DoD O&M,³¹⁸ to specific appropriations targeted to a single authority.³¹⁹ Given how quickly SFA needs and priorities can change, this kind of siloed approach raises the possibility of finding too little money in the appropriate account in the middle of a crisis, even while other accounts are awash in funds, the proverbial case of going thirsty in an ocean.³²⁰

An appropriation that would prevent the DoD from finding itself wrong-footed by shifting SFA priorities would have to permit the shifting of funds between the various accounts at its disposal. While this kind of appropriation is not the norm, it is also not without precedent. Since 1989, Congress has funded counter-drug activities undertaken by the DoD by means of appropriations to a Counter-Drug Central Transfer Account.³²¹ The funds appropriated to this account are available for transfer to O&M appropriations, procurement appropriations, and research, development, test, and evaluation appropriations.³²² Money transferred out of the central transfer account takes on the period of availability and purpose of the appropriation the DoD transfers it to.³²³ Additionally, the DoD can return any

315. See Memorandum from John C. Rood, *supra* note 135, at 3.

316. See § 321, (utilizing service operations and maintenance (O&M) funding); see also Consolidated Appropriations Act of 2023, Pub. L. No. 117-328, 136 Stat. 4459, 4570–72 (2022) (making \$1,50,260,000 of DoD O&M available for SC programs and defining its period of availability as two years).

317. See Consolidated Appropriations Act, 136 Stat. at 4569-70.

318. See *Id.* at 4570.

319. See *Id.* at 4570–72.

320. See SAMUEL T. COLERIDGE, RIME OF THE ANCIENT MARINER l.121-22 (1798) (“Water, water everywhere, nor any drop to drink.”).

321. DEP’T OF DEF., DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES: FISCAL YEAR 2024 BUDGET ESTIMATES 5 (2023); Department of Defense Appropriations Act for Fiscal Year 1989, Pub. L. No. 100-463, 102 Stat. 2270-16 (1988).

322. See Consolidated Appropriations Act, 136 Stat. at 4583–84.

323. *Id.*

transfers that turn out not to be necessary to the central transfer account.³²⁴ As the budget request for the fiscal year 2024 appropriation to the Counter Narcotics Central Transfer account shows, the flexibility this kind of appropriation has provided allowed the DoD to execute counter-drug activities across all of the GCCs, across the active and guard component, as well as DoD wide programs.³²⁵ Creating an SFA appropriation based on the Counter-Drug Central Transfer Account would harmonize the flexibility in funding for SFA activities with the flexibility in an amended Section 321. Between the new fiscal authority and the new appropriation, the DoD would have the tools necessary to employ the SFABs on the persistent basis that they are designed for as well as the ability to maximize the SFABs' contribution to integrated deterrence in support of the NDS.³²⁶

C. Prudential Considerations

The above solution is a consideration of what an ideal authority might look like. However, the road from ideal to reality is rarely a straight one, and there are a number of potential hurdles such a solution might face.

First among these is the Congressional appetite for such a new authority. The solution proposed above would streamline authorities for SFA, reduce and rationalize reporting requirements, speed collaboration with DoS, and provide SFABs and the broader DoD with more flexibility in conducting SFA. The flip side of these qualities is, arguably, reduced congressional visibility of SFA activities as a result of reduced reporting, less opportunity for DoS to bring its expertise to bear on DoD interactions with foreign security forces, and less accountability. Congressional deference to DoD is at a recent low,³²⁷ providing an unfavorable background dynamic.

More specifically, in light of the collapse of Afghan security forces after twenty years of DoD efforts and the shocking retreat of Iraqi security forces in the face of ISIS in 2014, Congress has voiced skepticism about the effectiveness of DoD SC efforts.³²⁸ Accordingly, Congress may be reluctant to provide DoD with the latitude it enjoyed during the Global War on Terror. Additionally,

324. *Id.*

325. See DEP'T OF DEF., *supra* note 321, at 13-26 (detailing the various recipients of funds from the transfer account).

326. See NDS, *supra* note 9, at 14-16, for discussion on the NDS's focus on integrated deterrence.

327. See Jennifer Steinhauser, *Once in Thrall of 'the Generals,' Congress Now Gives the Orders on Military Issues*, N.Y. TIMES (June 18, 2021); see also Brad Dress, *Trust in U.S. Military Remains Below 50 Percent: Survey*, HILL (Dec. 1, 2022, 1:47 PM), THE HILL (Dec. 1, 2022), <https://thehill.com/policy/defense/3758148-trust-in-us-military-remains-below-50-percent-survey/#:~:text=Public%20trust%20in%20the%20U.S.%20military%20remains%20below,military%2C%20slightly%20up%20from%2045%20percent%20last%20year.>

328. *Examining U.S. Security Cooperation and Assistance: Hearing Before the S. Comm. on Foreign Rels.*, 117th Cong. 2 (2022) (statement of Sen. Robert Menendez, Chairman, S. Comm. on Foreign Rels.) ("It is clear that our security assistance and cooperation programs are not achieving their intended outcomes despite the billions spent and dedicated efforts of the Departments of State and Defense.").

Congress may take issue with the proposed new funding authority as representing a further shift away from DoS primacy in foreign assistance space.³²⁹

A second related concern would be whether DoD believes pursuing the new authority is worth the effort. There is always a risk that Congress might interpret a request to perfect a set of authorities as a tacit admission by DoD that the authorities do not permit activities the DoD is currently engaged in.³³⁰ With this in mind, there is a preference within the DoD to, in a sense, leave well enough alone.³³¹ In light of the flexibility that does exist within some of the current fiscal authorities, such as Section 321, the DoD may determine that even if a new authority is desirable in the abstract, the risk to existing authority is unacceptable.

This paper does not deny that these limitations are real and potentially serious. However, discussion about what improved fiscal authority might look like informs what the DoD might pursue if the opportunity arose. Congress took on a sweeping reorganization of SC authorities in the 2017 NDAA.³³² Should Congress move again to address SFA authorities or SC authorities more generally in a similar manner in the future, that would provide such an opportunity.

VI. CONCLUSION

The world is an increasingly dangerous place.³³³ America's great power competitors and regional adversaries are attempting to revise the post-World War II international order and are resorting to violence to do so.³³⁴ Despite global conflict and already being at levels not seen since the end of the Cold War,³³⁵ indications are that trends will likely worsen rather than improve in the near term.³³⁶ When combined with changes in the character,³³⁷ but not the nature, of war,³³⁸ this state of affairs promises to present the DoD with a demanding operating

329. *See id.* ("We see a return of great power competition where China and Russia compete with the United States for influence and position, offering their own versions of 'security assistance' to countries around the world with what seems fewer conditions or requirements.")

330. Telephone Interview with Lieutenant Colonel Brian D. Lohnes, *supra* note 143.

331. *Id.*

332. *See* NDAA for Fiscal Year 2017, Pub. L. No 114-328, § 1243, 130 Stat. 2000, 2514 (2016); *see also* ARABIA, *supra* note 171, at 2.

333. *See* NDS, *supra* note 9, at 4.

334. NSS, *supra* note 8, at 8-9.

335. *See generally id.* ("The risk of conflict between major powers is increasing. Democracies and autocracies are engaged in a contest to show which system of governance can best deliver for their people and the world . . . The scale of these changes grows with each passing year, as do the risks of inaction.")

336. *See* Matthew Kroenig, *International Relations Theory Suggests Great-Power War is Coming*, FOREIGN POL'Y (Aug. 27, 2022, 2:00 AM); *see also* Kristen Walker, Courtney Kube, Carol E. Lee & Andrea Mitchell, *Xi Warned Biden During Summit that Beijing Will Reunify Taiwan with China*, NBC NEWS (Dec. 25, 2023, 12:40 PM), <https://perma.cc/JMK6-XZR3>.

337. *See, e.g.*, T.X. Hammes, *Out of the Trenches*, FOREIGN AFFS., (Dec. 13, 2023) (explaining that the prevalence of cheap drones in the war in Ukraine is having an outsized impact on that conflict), <https://perma.cc/FX7B-Y4XH>.

338. General Mark A. Milley, *Strategic Inflection Point*, 110 JOINT FORCES QUARTERLY 6, 6 (3rd Quarter, July 2023).

environment.³³⁹ Facing these challenges as well as important limitations on its ability to respond, DoD must look to its foreign partners more than ever.³⁴⁰

Security force assistance and SFABs have a huge role to play in ensuring that the United States succeeds in this age of persistent competition. Security Force Assistance Brigades are organized and trained to provide the persistent partner engagement that MDO and the JCC call for. To realize the promise of these formations, Congress should update the fiscal authorities surrounding SFA to reflect the current strategic environment and enable persistent engagement with a broad range of international partners. Called to do more with less, the DoD and the nation simply cannot afford for SFABs to be employed at anything less than their full potential.

339. See ARMY FUTURE COMMAND, AFC PAM. 525-2, FUTURE OPERATIONAL ENVIRONMENT: FORGING THE FUTURE IN AN UNCERTAIN WORLD 2035-2050, <https://perma.cc/LUG8-2EVZ>. Army Futures Command updates this resource continuously. See also Maureen Thompson, *Rigorous Analysis of Future Operational Environment Informs Army Readiness*, U.S. ARMY (Feb. 1, 2024), <https://perma.cc/32RL-RZUP>.

340. See NDS, *supra* note 9, at 14 (discussing the importance of continuous engagement with Allies and partners in defense planning).
