

## ARTICLE

### **Starving the Beast: A New Vetting Model to Prevent Corruption in International Security Sector Assistance**

*Nahal Kazemi\**

## CONTENTS

I.	INTRODUCTION .....	3
II.	NATURE OF THE PROBLEM .....	8
A.	Seriousness of the Problem .....	9
B.	Flaws in Our Historical Approach to the Problem .....	11
C.	Examples of the Problem: Case Studies of Corruption in Security Sector Assistance Recipients .....	13
1.	Afghanistan .....	16
2.	Nigeria .....	22
3.	Iraq .....	26
4.	Ukraine .....	30
D.	Leveraging the Case Studies to Address the Problem .....	35
III.	THE UNITED STATES STRATEGY ON COUNTERING CORRUPTION: STRENGTHS, WEAKNESSES, AND GAPS .....	36
A.	Proposals in the National Strategy .....	36
B.	Weaknesses in the National Strategy .....	39
C.	Without Congressional Action, the Executive Branch Is Unlikely to Fill the Void .....	42
IV.	PROPOSAL FOR CONGRESSIONAL ACTION: LEAHY-STYLE VETTING .....	46
A.	How Leahy Vetting Works .....	47
B.	Examples of Successes in Leahy Vetting .....	49
C.	Why Leahy Vetting Is the Right Model .....	51
V.	ADAPTING LEAHY VETTING FOR CORRUPTION .....	54
A.	Address Information Gaps to Implement Leahy Style Vetting for Corruption .....	55
B.	Exceptions and Waivers Should Be Limited and Require Adherence to Clear Criteria .....	57
C.	Terminology and Standards Should Be Clarified .....	59

---

\* Assistant Professor, Chapman University Fowler School of Law. I would like to thank Sarah Chayes, Jodi Vittori, Lan Cao, Wayne Sandholtz, David Glazier, Christopher Whytock, Jonathan Miller, Deepa Badrinarayana, Amy Gaudion, Asaf Lubin, Rachel Van Landingham, Kibrom Teweldebirhan, Kel McLennahan, and Kyle Shen for their invaluable input into this article; the staff of the State Department's Office of the Global Coordinator for Anticorruption and Bureau of Political Military Affairs for their willingness to discuss the ideas presented in this Article; Sophie Jeltrema for excellent research support; and Nico Moscoso, Kyra Du, and the rest of the staff at the Harvard National Security Journal for their hard work in preparing this article for publication. This Article was supported by a summer research grant from the Fowler School of Law.

VI.	ADDRESSING COUNTERARGUMENTS AND CHALLENGES .....	61
A.	Vetting Foreign Forces Is Complex .....	61
B.	The Challenges of Emergent Crises .....	63
C.	How Much Leverage Does the United States Really Have?.....	64
D.	Will Leahy Vetting Be Undermined by Political Expedience?.....	66
E.	Does This Plan Unnecessarily Limit Presidential Authority?.....	67
VII.	CONCLUSION.....	70

*In 2021, the United States government identified countering corruption as a core national security interest for the first time. However, corrupt police and military forces supported by the United States in countries including Iraq, Afghanistan, and Nigeria, actively undermine security and reveal a profound weakness in the previous administration's strategic anti-corruption priorities.<sup>1</sup> Where the recipient government lacks the will to combat corruption, traditional anti-corruption tools are ineffective.*

*Experts on combating international corruption, from government, the academy, and civil society agree on the importance of focusing anti-corruption efforts on first, not contributing to the problem. This focus has largely resulted in proposals for increased vetting of potential private sector vendors and contractors and understanding the absorptive capacity of recipient nations for foreign assistance. These proposals have not sufficiently focused on the difference between recipient states that lack the capacity to combat corruption in the security sector and those that lack the will to do so. Successive U.S. administrations have identified the problem of lack of political will and recognized the critical threat it poses to security, but they have not adopted a comprehensive approach for addressing it. The Biden national strategy to combat global corruption did not clearly address the problem.*

*This Article argues for a novel approach, calling for legislation to require that the U.S. government vet potential recipients of security sector assistance (SSA) and prohibit cooperating with corrupt units. The Article establishes that the Leahy*

---

<sup>1</sup> The Trump administration's pause on foreign assistance in January 2025, including not only development assistance through USAID but also military assistance to partner nations other than Egypt and Israel, raises significant questions about how the United States will prioritize its assistance efforts going forward. See Humeysa Pamuk & Daphne Psaledakis, *US Issues Broad Freeze on Foreign Aid After Trump Orders Review*, REUTERS (Jan. 24, 2025), <https://www.reuters.com/world/us/trump-pause-applies-all-foreign-aid-israel-egypt-get-waiver-says-state-dept-memo-2025-01-24/> [<https://perma.cc/U63C-9X4Y>]. Combating corruption in foreign assistance should not, however, be a partisan issue. Moreover, the U.S. military views security cooperation with partners, including assistance to partner nations, as essential to achieving U.S. security objectives. See generally ROBERT SCHAFER, ET AL., U.S. ARMY, UNDERSTANDING SECURITY COOPERATION (2024), <https://api.army.mil/e2/c/downloads/2024/10/17/faf2497c/no-25-01-768-understanding-security-cooperation-oct-24.pdf> [<https://perma.cc/SK6A-L988>]. The recommendations in this article thus remain relevant, notwithstanding the Trump administration's stated priorities.

*Amendments are the appropriate model from which to design such legislation. By adopting a Leahy-based approach, Congress can ensure that combating corruption does not recede as a national security priority. A vetting requirement would create clear, consistent guidelines for determining what constitutes prohibited corruption and how governments can remediate their corruption risk to make barred units eligible for assistance again. Finally, a codified process for identifying specific and limited exceptions to the prohibition in exigent circumstances would require Executive Branch agencies to clearly articulate when certain priorities require precedence over corruption concerns, instead of allowing various agencies to work at cross-purposes to each other.*

## I. INTRODUCTION

In recent years, the United States has provided \$18-20 billion annually in security sector assistance (SSA) to other nations' military, paramilitary, and police forces.<sup>2</sup> The objective of this assistance is to build capable and professional partner forces that can provide security and reduce the need for U.S. intervention.<sup>3</sup> But a substantial portion of this assistance has been directed to countries with serious corruption issues, including in Iraq, Afghanistan, Nigeria, and Ukraine.<sup>4</sup>

Sending SSA to corrupt countries has several deleterious effects. The United States severely damages its reputation in target countries when it actively supports corrupt security forces, as local populations believe the U.S. is endorsing that corruption and the abuses that routinely go with it. In the target countries themselves, hollowed-out militaries comprising paper units and ghost soldiers are

---

<sup>2</sup> Emily Cole & Calin Trenkov-Wermuth, *To Consolidate Democracy, Change U.S. Security Assistance*, U.S. INST. OF PEACE (Dec. 16, 2021), <https://www.usip.org/publications/2021/12/consolidate-democracy-change-us-security-assistance> [<https://perma.cc/35FW-RZTE>].

<sup>3</sup> Press Release, The White House, Fact Sheet: U.S. Security Sector Assistance Policy (Apr. 5, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/04/05/fact-sheet-us-security-sector-assistance-policy> [<https://perma.cc/4W5K-Q4DQ>] [hereinafter SSP Fact Sheet].

<sup>4</sup> For more information on the basis for concluding that all four of these countries suffer significant corruption in their security sectors, see *Government Defence Index: Nigeria*, TRANSPARENCY INT'L DEF. & SEC., <https://ti-defence.org/gdi/countries/xdnigeria/> [<https://perma.cc/JL54-73BK>] [hereinafter TI Defense Nigeria]; Transparency, *Government Defence Index: Iraq*, TRANSPARENCY INT'L DEF. & SEC., <https://ti-defence.org/gdi/countries/iraq/> [<https://perma.cc/A7KM-YF64>] [hereinafter TI Defense Iraq]; *Government Defence Index: Ukraine*, TRANSPARENCY INT'L DEF. & SEC., <https://ti-defence.org/gdi/countries/ukraine/> [<https://perma.cc/2K9C-2LFW>]; SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION (SIGIR), *LEARNING FROM IRAQ* (2013) [hereinafter SIGIR, 2013 Report]; SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION, *CORRUPTION IN CONFLICT: LESSONS FROM THE U.S. EXPERIENCE IN AFGHANISTAN* (2016) [hereinafter SIGAR, *CORRUPTION IN CONFLICT*]; HUMAN RIGHTS WATCH, *EVERYONE'S IN ON THE GAME* (2010), <https://www.refworld.org/reference/countryrep/hrw/2010/en/74697> [<https://perma.cc/99VG-RBVQ>]; Sarah Chayes, *How Corruption Guts Militaries: The Ukraine Case Study*, CARNEGIE ENDOWMENT FOR INT'L PEACE (May 16, 2014), <https://carnegieendowment.org/posts/2014/05/how-corruption-guts-militaries-the-ukraine-case-study?lang=en> [<https://perma.cc/UAE6-DPS4>].

incapable of providing security. Corrupt officers and senior officials steal funds meant to provide salaries and equipment to forces, leaving those forces unpaid, untrained, and unequipped. Instead of providing security, corrupt forces often extort and abuse the populations they are meant to protect. In the most extreme cases, the population actively embraces the terrorist groups or insurgencies the U.S. government intend to counteract. As this parade of consequences demonstrates, corrupt police and military forces present profound challenges to international peace and security.

In 2021, the United States government identified countering corruption as a core national security interest for the first time, noting that “corruption threatens United States national security, economic equity, global antipoverty and development efforts, and democracy itself.”<sup>5</sup> In its subsequent national strategy, the Biden administration laid out its priorities for combating corruption, including: “building political will and recognizing when it is absent; and consistently pursuing accountability through a combination of diplomatic engagement, foreign assistance, and enforcement actions.”<sup>6</sup>

Although the recognition of corruption as a national security challenge is a step in the right direction, the Biden administration’s anticorruption priorities suffered from a profound weakness: they failed to account for the reality that traditional anticorruption tools are ineffective when the recipient government lacks the will to combat corruption.<sup>7</sup> No amount of training auditors, judges, and prosecutors on how to battle corruption will address corruption if the government wishes to persist in behaving corruptly and refuses to bring corruption cases. In the realm of security assistance, aiding corrupt foreign security forces that have no intention of addressing their corruption problems can seriously undermine U.S. security objectives. In Iraq, Afghanistan, and Nigeria, for example, the corruption within each country’s security forces not only renders them less capable of achieving important security objectives but also alienates them from the populations they are meant to secure. Further, on the U.S. domestic side, concerns about corruption in Ukraine have steadily weakened support for U.S. assistance to that country as well, consequences that evidence the threat corruption ultimately poses to the U.S.’s ability to uphold and execute its international commitments.<sup>8</sup>

---

<sup>5</sup> Memorandum from the White House on Establishing the Fight Against Corruption as a Core United States National Security Interest to the Heads of Executive Departments and Agencies, (June 3, 2021), <https://www.govinfo.gov/content/pkg/DCPD-202100467/pdf/DCPD-202100467.pdf> [<https://perma.cc/Q644-ARM4>] [hereinafter Anticorruption NSSM].

<sup>6</sup> THE WHITE HOUSE, UNITED STATES STRATEGY ON COUNTERING CORRUPTION 8 (2021), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf> [<https://perma.cc/QYE9-3RU9>] [hereinafter NATIONAL STRATEGY].

<sup>7</sup> SARAH CHAYES, THIEVES OF STATE: WHY CORRUPTION THREATENS GLOBAL SECURITY 195 (2016).

<sup>8</sup> Brian Man, *Rural Voters Shaping the GOP Presidential Primary Turn Against U.S. Aid to Ukraine*, NPR (Aug. 18, 2023), <https://www.npr.org/2023/08/18/1193874620/rural-voters-shaping-the-gop-presidential-turn-against-u-s-aid-to-ukraine> [<https://perma.cc/L79A-YKRG>]; Dan de Luce & Syedeh Ashgar, *Luxury Yachts and Other Myths: How Republican Lawmakers Echo*

Experts on combating international corruption, from government, the academy, and civil society, have not offered a comprehensive solution. They agree on the importance of focusing anticorruption efforts first on not contributing to the problem.<sup>9</sup> This focus has largely resulted in proposals for increased vetting of potential private sector vendors and contractors and understanding the absorptive ability of recipient nations for foreign assistance.<sup>10</sup> These proposals, as well as calls to build the capacity of our partners to fight corruption, are reflected in the United States Strategy on Countering Corruption.<sup>11</sup> And like the National Strategy, these prescriptions do not reflect the important difference between recipient states that lack the ability to combat corruption in the security sector and those that lack the will to do so.<sup>12</sup>

Determining when a country's corruption problem stems from a lack of ability to address it versus a lack of will is exceedingly difficult because what a country says about corruption does not necessarily reflect its actual policies. In Nigeria and Iraq, for example, both countries' governments have repeatedly identified corruption as a major threat to their wellbeing and security and have created anti-corruption institutions ostensibly meant to tackle the problem.<sup>13</sup> But in both countries, there is scant evidence of improvement.<sup>14</sup> The Afghan government, meanwhile, created anticorruption infrastructure that became yet another conduit for corruption.<sup>15</sup> And the Afghan government used charges of corruption as a political cudgel: it attacked the regime's enemies as corrupt but evinced no commitment to combating corruption within the regime.<sup>16</sup>

---

*Russian Propaganda*, NBC NEWS (Apr. 14, 2024), <https://www.nbcnews.com/politics/luxury-yachts-myths-republican-lawmakers-echo-russian-propaganda-rcna147293> [https://perma.cc/823T-2K8X].

<sup>9</sup> CHAYES, *THIEVES OF STATE*, *supra* note 7, at 44–46; Alexander Cooley, John Heathershaw & J.C. Sharman, *The Rise of Kleptocracy: Laundering Cash, Whitewashing Reputations*, 29 J. OF DEMOCRACY 39, 43–46 (2018); BEN JUDAH, NAT'L ENDOWMENT FOR DEMOCRACY, *FIGHTING KLEPTOCRACY IN AN ERA OF GEOPOLITICS* 4 (2024); MATTHEW PAGE & JODI VITTORI, NAT'L ENDOWMENT FOR DEMOCRACY, *KLEPTOCRATIC ADAPTATION* 4, 16 (2023); Anticorruption NSSM, *supra* note 5.

<sup>10</sup> See USAID, *ANTICORRUPTION POLICY* 37–38 (2022), <https://www.usaid.gov/anticorruption/policy> [https://perma.cc/VK47-K6FR]; U.S. DEP'T OF STATE, *IMPLEMENTING THE U.S. STRATEGY ON COUNTERING CORRUPTION* 24, 34 (2023), <https://www.state.gov/implementing-the-u-s-strategy-on-countering-corruption/> [https://perma.cc/9NXE-MCR6] [hereinafter U.S. DEP'T OF STATE, *Implementation Plan*]; SIGAR, *CORRUPTION IN CONFLICT*, *supra* note 4, at 50.

<sup>11</sup> See NATIONAL STRATEGY, *supra* note 6 at 4–5.

<sup>12</sup> See *id.* at 29–30 (focusing on building partner capacity).

<sup>13</sup> See TI Defense Nigeria, *supra* note 4; TI Defense Iraq, *supra* note 4.

<sup>14</sup> See TI Defense Nigeria, *supra* note 4; TI Defense Iraq, *supra* note 4.

<sup>15</sup> SIGAR, *CORRUPTION IN CONFLICT*, *supra* note 4, at 56.

<sup>16</sup> *Is Karzai Purging Government of Corruption or Opposition?*, ABC NEWS (Nov. 23, 2009), <https://abcnews.go.com/WN/Afghanistan/karzai-purging-government-corruption/story?id=9155308> [https://perma.cc/CU3Z-H9K9].

In working with our partners facing major security challenges, the U.S. government has tended to treat corruption as secondary to security issues.<sup>17</sup> As a result, U.S. administrations were traditionally reluctant to threaten cutting off assistance to corrupt partners and reducing cooperation with corrupt actors.<sup>18</sup> Instead, they have tended to focus on stabilizing the security situation, assuming corruption could be addressed once security was achieved.<sup>19</sup> But this approach gets the causal link between corruption and security exactly backward. Corruption is a key driver of insecurity<sup>20</sup> and thus must be addressed before the security situation can improve.<sup>21</sup> Understanding the causal link between corruption and insecurity can help the U.S. government distinguish between corruption problems created by lack of capacity versus those created by a lack of will, so long as the U.S. government is willing to use its leverage over SSA. It may be possible to determine if a partner has the will to combat corruption by refusing to work with partners that do not successfully address their corruption problem.

Given the above identified issues, Congressional action is needed. It is unrealistic to expect the Executive Branch to properly address corruption concerns in foreign assistance without legislative direction. The Executive Branch, under pressure to demonstrate progress on security issues, influenced by general bureaucratic incentives to prioritize objectives that are most readily achievable, and reinforced by the specific Department of Defense (“DoD”) bias toward action over inaction,<sup>22</sup> has downgraded anticorruption efforts *even after identifying corruption as the key obstacle to peace and stability in the partner country*.<sup>23</sup> Even with the prioritization of corruption as a national security threat, the often overwhelming imperative to show progress in fighting terrorism or combating insurgencies causes national security decision makers to treat corruption as a lower level concern.<sup>24</sup>

Moreover, recent Supreme Court decisions, including *Loper Bright* and *West Virginia v. EPA* strongly suggest that Executive Branch action in this area without explicit Congressional direction is imprudent.<sup>25</sup> These decisions signal the

---

<sup>17</sup> CHAYES, THIEVES OF STATE, *supra* note 7, at 43.

<sup>18</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 53–54, 67–68, 78; CHAYES, THIEVES OF STATE, *supra* note 7, at 203; U.S. INST. OF PEACE, ELITE CAPTURE AND CORRUPTION OF SECURITY SECTORS 28–29 (2023), <https://www.usip.org/sites/default/files/2023-02/20230217-elite-capture-corruption-security-sectors.pdf> [<https://perma.cc/YS3D-KPT8>] [hereinafter ELITE CAPTURE]; Matthew T. Page, *Improving U.S. Anticorruption Policy in Nigeria*, COUNCIL ON FOREIGN RELATIONS (July 11, 2016), <https://www.cfr.org/report/improving-us-anticorruption-policy-nigeria> [<https://perma.cc/5DRM-5ESK>].

<sup>19</sup> CHAYES, THIEVES OF STATE, *supra* note 7, at 43.

<sup>20</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 67.

<sup>21</sup> CHAYES, THIEVES OF STATE, *supra* note 7, at 43.

<sup>22</sup> See, e.g., U.S. MARINE CORPS, FLEET MARINE FORCE MANUAL 1, WARFIGHTING 3–22 (1997), <https://www.marines.mil/News/Publications/MCPPEL/Electronic-Library-Display/Article/899837/mcdp-1/> [<https://perma.cc/2X59-MULZ>].

<sup>23</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 78.

<sup>24</sup> *Id.* at 20, 43, 47, 53–54.

<sup>25</sup> See generally *Loper Bright v. Raimondo*, 603 U.S. 369 (2024); *West Virginia v. EPA*, 597 U.S. 697 (2022). There is an ongoing debate as to whether there is a “foreign affairs exception” to the

Supreme Court's suspicion of agency interpretations of law that do not appear to be supported by clear and unambiguous guidance from the legislature.<sup>26</sup> Without Congressional legislation, courts may hold that federal agencies lack the authority to tie specifically appropriated assistance to meeting anti-corruption goals.

Leahy Vetting is an existing legislative model that can be applied to this context to address the problem of determining whether the failure to tackle corruption is a problem of capacity or a problem of will. Under the Leahy Vetting Laws, Congress requires the State Department and DoD to engage in unit-by-unit vetting of any security forces receiving U.S. assistance for gross human rights violations.<sup>27</sup> Units credibly accused of such violations are barred from receiving assistance unless and until the partner country resolves the human rights issue.<sup>28</sup> The goal is not merely to prevent U.S. assistance from going to gross violators of human rights, but to help governments remediate human rights concerns so units can regain eligibility.<sup>29</sup> A unit credibly accused of gross human rights violations can become eligible for U.S. assistance again by showing that the perpetrators of the violations have been brought to justice.<sup>30</sup> The law directs the Secretary of State to assist, to the maximum extent practicable, countries that are willing to bring perpetrators to justice but need technical assistance in doing so.<sup>31</sup> As a result, the Leahy Vetting framework helps identify which partners principally lack the means to improve their human rights records (those who can be assisted in remediating their problems and then follow through on the remediation) and those that lack the will to do so (those who decline assistance or do not follow through on it). Congress could mandate similar vetting based on specific risk factors for corruption and pair that with requirements for progress in partner nation's defense institution building and reform to ensure U.S. support does not fuel corruption in foreign security sectors and ultimately undermine U.S. security objectives.

Other scholars and agencies have identified vetting as a useful tool in combating corruption in foreign assistance.<sup>32</sup> This Article explains how Leahy

---

Major Questions Doctrine, *see generally*, Timothy Meyer & Ganesh Sitaraman, *The National Security Consequences of the Major Questions Doctrine*, 122 MICH. L. REV. 55 (2023); Curtis Bradley & Jack Goldsmith, *Foreign Affairs, Nondelegation, and the Major Questions Doctrine*, 172 U. PA. L. REV. 1473 (2024). As this Article relates to Leahy Vetting, which is a delegation of power to the Secretaries of State and Defense to manage funds authorized and appropriated by Congress for military assistance that does not mention corruption, even if there is a "foreign affairs exception" to the major questions doctrine, it remains unclear such an exception would apply here. *See infra* Part IV.C.

<sup>26</sup> *See generally* *Loper Bright*, 603 U.S. 369; *West Virginia v. EPA*, 597 U.S. 697.

<sup>27</sup> 22 U.S.C. § 2378d; 10 U.S.C. § 362.

<sup>28</sup> 22 U.S.C. § 2378d; 10 U.S.C. § 362.

<sup>29</sup> Patrick Leahy, Remarks to the United States Institute of Peace (Mar. 29, 2015), <https://www.usip.org/publications/2015/03/human-rights-violations-us-foreign-aid-accountability-and-prevention> [<https://perma.cc/E67N-XYAU>].

<sup>30</sup> 22 U.S.C. § 2378d(b); 10 U.S.C. § 362(b).

<sup>31</sup> 22 U.S.C. § 2378d(b).

<sup>32</sup> Abigail Bellows, *Regaining U.S. Global Leadership on Anticorruption* 11 (Carnegie Endowment for Int'l Peace, Working Paper 2020), <https://carnegieendowment.org/files/Bellows->

Vetting could serve as a model for such a vetting system, be adapted to the anticorruption framework, and be revised to address key shortfalls in the existing Leahy Vetting framework, including a lack of clarity in key terms, discrepancies between the laws governing the State Department and DoD, and confusion over the requirements for implementing Leahy Vetting.<sup>33</sup> This vetting requirement would also include clear, consistent guidelines for determining what constitutes prohibited corruption and how countries could remediate that corruption risk in order to become eligible for assistance again. Finally, it would establish a codified process for identifying specific and limited exceptions to the vetting process, requiring the interagency as a whole (the Executive Branch departments and independent agencies tasked with coordinating their efforts to address specific national priorities) to articulate when certain priorities require precedence over corruption concerns, instead of allowing various Executive Branch agencies to work at cross-purposes to each other – a troubling development recounted in Special Inspector General reports from Afghanistan.<sup>34</sup>

Model legislation to this effect is included as the appendix to this Article. By adopting such legislation, Congress can ensure that combating corruption does not fade to a low-priority concern. Codifying the approach to preventing corruption in SSA will (1) ensure assistance promotes peace and stability; (2) starve bad actors of a significant source of funding; (3) prevent defense materiel from falling into enemy hands; (4) enhance the reputation of the United States as committed to good governance; and (5) safeguard U.S. taxpayer funds.

In Part II, this Article introduces the problem of corruption in partner nations' security sectors and why it presents a significant national security concern, using examples from Afghanistan, Ukraine, Nigeria, and Iraq to describe the scope of the problem. Part III considers the Biden National Strategy and describes the weakness in the proposed implementation of the strategy as it relates to corruption in foreign military and security forces. Part IV proposes a new vetting program modeled on Leahy Vetting,<sup>35</sup> and Part V addresses how Leahy Vetting would need to be adapted to address corruption. Part VI considers and responds to expected criticisms of this approach to combating corruption. The Article concludes that unit-level vetting for foreign recipients of security assistance remains the best option for addressing the serious national security risk created when providing training and assistance to corrupt security forces in partner nations.

## II. NATURE OF THE PROBLEM

---

US\_Anticorruption1.pdf [<https://perma.cc/PEC6-RC3G>]; USAID, USAID GUIDE TO COUNTERING CORRUPTION ACROSS SECTORS 20 (2022), [https://www.usaid.gov/sites/default/files/2023-01/USAID\\_Guide\\_to\\_Countering\\_Corruption\\_Across\\_Sectors\\_0.pdf](https://www.usaid.gov/sites/default/files/2023-01/USAID_Guide_to_Countering_Corruption_Across_Sectors_0.pdf) [<https://perma.cc/33VA-9PHD>].

<sup>33</sup> See, e.g., Nandor F.R. Kiss, *Leahy: Sharpening the Blade*, 31 PACE INT'L L. REV. 499 (2019).

<sup>34</sup> See SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 43.

<sup>35</sup> 22 U.S.C. § 2378d; 10 U.S.C. § 362e; see, e.g., Kiss, *supra* note 33.

Traditional analysis of public corruption tends to focus on its effects on economic efficiency – corruption both diverts public funds for private gain and distorts decision making about public projects.<sup>36</sup> Focusing solely on these problems does not adequately capture the political or security dimensions of public corruption. This Part considers the seriousness of public corruption, particularly in the security sector. It then considers why the U.S.’s historical approach to this problem has failed and concludes with a series of case studies of countries with significant corruption threats in their security sector which have nonetheless received substantial Western assistance.

### *A. Seriousness of the Problem*

A June 2021 National Security Study Memorandum—the precursor to the Biden Administration’s National Strategy<sup>37</sup>—laid out the policy problem with corruption in blunt terms:

Corruption corrodes public trust; hobbles effective governance; distorts markets and equitable access to services; undercuts development efforts; contributes to national fragility, extremism, and migration; and provides authoritarian leaders a means to undermine democracies worldwide. When leaders steal from their nations’ citizens or oligarchs flout the rule of law, economic growth slows, inequality widens, and trust in government plummets.<sup>38</sup>

The National Strategy itself recognizes the specific risk of worsening corruption by providing assistance to corrupt actors. One of the Five Pillars of the National Strategy is devoted specifically to improving the use of diplomatic engagement and foreign assistance to ensure assistance is not diverted to corrupt purposes and does not reinforce existing corrupt power structures.<sup>39</sup> Within this pillar, Strategic Objective 5.5 singles out security assistance<sup>40</sup> as an area of focus for anticorruption efforts.<sup>41</sup>

As described in Part II.C., *infra*, corruption in the security sector can take the form of target countries’ security personnel selling weapons or supplies for personal gain, signing up individuals with no intention of serving so that the

---

<sup>36</sup> See, e.g., Paolo Mauro, *Why Worry About Corruption?*, 6 IMF ECON. ISSUES 1 (1997).

<sup>37</sup> See generally NATIONAL STRATEGY, *supra* note 6.

<sup>38</sup> Anticorruption NSSM, *supra* note 5.

<sup>39</sup> NATIONAL STRATEGY, *supra* note 6, at 13–14.

<sup>40</sup> A nation’s security sector includes its “armed forces, police, border guards, customs, and [related] officials.” *Security Sector Reform*, U.N. DIRECTORATE OF PEACEKEEPING OPERATIONS, <https://peacekeeping.un.org/en/security-sector-reform> [<https://perma.cc/YTT3-THB5>]. The Obama administration defined Security Sector Assistance to involve helping shape a partner nation’s security policies; enhancing the capacity and effectiveness of its security forces; and enabling the partner to contribute to efforts addressing common security challenges. See SSP Fact Sheet, *supra* note 3.

<sup>41</sup> NATIONAL STRATEGY, *supra* note 6, at 13–14.

commanders can pocket their salaries, diverting budgets meant to train and equip troops for personal profit, and extorting the public through illegal checkpoints and protection rackets. These patterns of bad conduct can give rise to the unauthorized transfer of defense articles (sometimes to terrorists, insurgents, or other criminal bad actors); fake arms deals used to divert defense budgets to government officials, their family, and friends; ghost units or soldiers (meaning troop strength and capabilities may be wildly overstated, giving a false sense of the nation's ability to defend itself and provide security); unprofessional, underequipped, and untrained units that cannot perform their basic functions; and human rights abuses that alienate the public from the security forces and make them less likely to be cooperative. These abuses can result in a collapse in public support for the government as well as increased support for (or at least tolerance of) terrorist organizations or criminal gangs that target the government.

The U.S.'s prioritization of combating foreign corruption is not just an expression of concerns about good governance generally but also the product of specific national security policy setbacks<sup>42</sup> and failures<sup>43</sup> caused largely by corruption in partner nations. Afghanistan provides the starkest example, where a thoroughly corrupt government and its security forces collapsed just days after the U.S. withdrawal from that country.<sup>44</sup> And ongoing debates over national security priorities, like continued support for Ukraine, are plagued with questions about whether corruption in that country will make Ukraine "another Afghanistan."<sup>45</sup>

Examples from the four case studies this Article considers (Iraq, Afghanistan, Ukraine, and Nigeria) demonstrate how corrupt actors undermine shared security objectives by diverting SSA from its aim of strengthening partner nation security forces. The knock-on effects of this corruption include fueling insurgencies,<sup>46</sup> alienating the host nation's population from the government,<sup>47</sup> leading to human rights abuses,<sup>48</sup> convincing the population that the United States

---

<sup>42</sup> See, e.g., SIGIR, 2013 Report, *supra* note 4.

<sup>43</sup> See, e.g., SIGAR, CORRUPTION IN CONFLICT, *supra* note 4.

<sup>44</sup> Amy Kazmin, Benjamin Parkin & Katrina Manson, *Low morale, no support, and bad politics: why the Afghan army folded*, FIN. TIMES (Aug. 15, 2021), <https://www.ft.com/content/b1d2b06d-f938-4443-ba56-242f18da22c3> [<https://perma.cc/W8VD-XTCP>].

<sup>45</sup> At a news conference before a White House meeting on January 17, 2024, about continued support for Ukraine in its war against Russia, Speaker Mike Johnson said his message to the White House would be the same as it had been for months: "What is the end game and the strategy in Ukraine? How will we have accountability for the funds? We need to know that Ukraine would not be another Afghanistan." Paul Kane, *Mitch McConnell Pushes Ukraine-Border Plan Despite Johnson Doubt*, WASH. POST (Jan. 18, 2024), <https://www.washingtonpost.com/politics/2024/01/18/ukraine-border-security-deal/> [<https://perma.cc/5ET5-HVBR>].

<sup>46</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 31.

<sup>47</sup> ABDULRAZZAQ AL-SAIEDI ET. AL., HARVARD HUMANITARIAN INITIATIVE, NEVER FORGET: VIEWS ON PEACE AND JUSTICE WITHIN CONFLICT-AFFECTED COMMUNITIES IN NORTHERN IRAQ 29 (2020) [hereinafter HHI Study].

<sup>48</sup> HUMAN RIGHTS WATCH, *supra* note 4, at 16.

is intentionally supporting corruption,<sup>49</sup> and degrading U.S. domestic support (both public and Congressional) for continuing assistance to partner nations.<sup>50</sup>

### ***B. Flaws in Our Historical Approach to the Problem***

Understanding how to combat corruption in a partner nation begins with determining whether the partner *cannot* combat corruption or *will not* combat corruption. In significant cases, U.S. policy has been undermined by a failure to do so.<sup>51</sup> In a state without the will to combat corruption, it is common to see high-level officials sell government positions to individuals who then turn around and engage in demanding bribes and extorting the population, not only to line their own pockets, but to pass a portion of the proceeds up the chain all the way to the country's senior-most leaders.<sup>52</sup> In such states, failures to combat corruption are not the result of incompetence or lack of ability.<sup>53</sup> Corruption is not impeding these governments from performing their essential functions. Corruption is the essential function.<sup>54</sup>

A state that has the will to combat corruption—one that does not wish to divert public monies for private gains—is a prime target for capability building measures aimed at reducing corruption because such measures can actually address the reasons the country suffers from a corruption problem.<sup>55</sup> States without the will to combat corruption (either because senior officials personally benefit from corruption or because combating corruption is not a priority) are unlikely to see meaningful improvements from foreign investments in capability building.<sup>56</sup> Determining whether a country's corruption problem is due to a lack of will or a lack of ability is exceedingly difficult, given the tendency of states that lack the will to combat corruption to pay lip service to anti-corruption goals.<sup>57</sup>

---

<sup>49</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 143.

<sup>50</sup> Program on Int'l Policy Attitudes, *Americans on Foreign Aid and World Hunger: A Study of U.S. Public Attitudes* 4 (Feb. 2, 2001), <https://api.drum.lib.umd.edu/server/api/core/bitstreams/1eb7d8f7-089d-49ca-8b78-a15f3e939bf4/content> [<https://perma.cc/9BWJ-XCZK>]; Timothy S. Rich, Tani Washington & Erike Puhakka, *Ask the Public: Who Is the Most Deserving of U.S. Foreign Aid?*, NAT'L INTEREST (Aug. 4, 2021), <https://nationalinterest.org/blog/buzz/ask-public-who-most-deserving-us-foreign-aid-191095> [<https://perma.cc/C643-6EU5>].

<sup>51</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 53–56.

<sup>52</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 58–59.

<sup>53</sup> NATIONAL STRATEGY, *supra* note 6, at 8, 11, 13, 14, 24, 26, 28–30, 32, 34, 36, 38.

<sup>54</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 63.

<sup>55</sup> *Anti-Corruption Agency Strengthening Initiative*, TRANSPARENCY INT'L., <https://www.transparency.org/en/projects/anti-corruption-agency-strengthening-initiative> [<https://perma.cc/3Y3R-86BL>] (This is the theory animating TI's Anticorruption Agency Strengthening Initiative); *see also* NATIONAL STRATEGY, *supra* note 6, at 8 (describing U.S. objectives to increase partner nations' will to combat corruption while implementing the above-mentioned strategies).

<sup>56</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 58 (discussing Afghan government's lack of political will to prosecute corruption cases); CHAYES, THIEVES OF STATES, *supra* note 7, at 195.

<sup>57</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 56.

Another impediment to combating corruption is the failure to understand how high-level and low-level corruption interact. Corruption is typically divided into “petty” or “administrative” corruption and “grand corruption. Transparency International (“TI”) defines petty corruption as “everyday abuse of entrusted power by public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.”<sup>58</sup> “Grand” corruption is defined as “the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society. It often goes unpunished.”<sup>59</sup> Traditional analyses tend to treat these two forms of corruption as distinct.<sup>60</sup>

In countries facing systemic corruption, however, the two forms of corrupt behavior can be closely interconnected.<sup>61</sup> All corruption may be part of a vertically-integrated criminal endeavor,<sup>62</sup> which renders the distinction between the types of corruption meaningless.<sup>63</sup> For example, high ranking officials give out government jobs not just as spoils to their supporters or kinsmen to reward and reinforce loyalty, but to make sure that money continues to flow upward from the recipients of those jobs to the high ranking officials. As a result, the “petty corruption” of low-level officials feeds into an organized structure that enriches higher levels of government, fueling “grand corruption.”<sup>64</sup>

In states lacking the means to combat corruption, but with at least some degree of willingness to do so, corruption has a negative impact on achieving shared strategic security objectives.<sup>65</sup> At the other end of the spectrum, where a state has no will to combat corruption, our efforts to provide SSA risk make the security situation worse *and* can result in the local perception that the United States is responsible for the country’s corruption, undermining the entire purpose of security assistance.<sup>66</sup>

---

<sup>58</sup> *Petty Corruption*, TRANSPARENCY INT’L, <https://www.transparency.org/en/corruptionary/petty-corruption> [<https://perma.cc/53JN-JLF3>].

<sup>59</sup> *Id.*

<sup>60</sup> Adam Graycar, *Corruption: Classification and Analysis*, 34 POL’Y & SOC’Y 87, 88 (2015); *see also* NATIONAL STRATEGY, *supra* note 6, at 6.

<sup>61</sup> *See* SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 3.

<sup>62</sup> *Id.* at 4; *see also* CHAYES, THIEVES OF STATES, *supra* note 7, at 58–59.

<sup>63</sup> *See* SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 3.

<sup>64</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 58–59.

<sup>65</sup> *See infra* Section I.C.

<sup>66</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 143; *see also* LT. COLONEL DAVE ALLEN ET. AL., TRANSPARENCY INT’L DEF. & SEC., THE BIG SPIN: CORRUPTION AND THE GROWTH OF VIOLENT EXTREMISM 2 (2017), <https://ti-defence.org/publications/the-big-spin/> [<https://perma.cc/AB5K-REYF>].

### ***C. Examples of the Problem: Case Studies of Corruption in Security Sector Assistance Recipients***

This section will review four case studies of countries which have received U.S. SSA and where corruption concerns are high: Afghanistan, Nigeria, Iraq, and Ukraine. Iraq and Afghanistan were chosen as case studies because they lie at the extreme end of SSA; the U.S. wars in Afghanistan and Iraq resulted in regime change, massive reconstruction projects, and the complete rebuilding of the militaries of these countries.<sup>67</sup> Ukraine and Nigeria were chosen as other significant recipients of SSA with well-documented corruption concerns, but from different geographic regions, demonstrating corruption problems in the security sector are unlikely to be driven by unique cultural factors.

The four case studies demonstrate differing levels of corruption. The Afghanistan case study shows that before the return of the Taliban, that nation could be described as a pure kleptocracy,<sup>68</sup> where corruption was a central function of the state, despite high institutional support from foreign donors to build capabilities. As the case studies below demonstrate, Iraq and Nigeria present systemic corruption problems, with kleptocratic features; even if the heads of government in these states are serious about cleaning up corruption, too many powerful elements of government have an interest in undermining that goal for their personal benefit. As a result, at least some portion of the government behaves according to kleptocratic principles – where leadership seeks to stay in power for the purpose of extracting value from the country to enrich itself. In both Iraq and Nigeria, systems of corruption persist despite ostensible government attempts to dismantle them. The Ukraine case study demonstrates that nation has seen meaningful progress in both its ability and will to combat corruption since 2014, though more progress is clearly necessary.

These case studies also illustrate the spectrum of negative consequences of corruption in the security sector. At the least concerning end, some fraction of security assistance and defense spending were siphoned off, rendering defense investments inefficient (seen in more recent events in Ukraine). At the other extreme, substantial portions of defense expenditures went directly or indirectly toward supporting enemy forces, while government forces were systematically starved of resources (seen in Afghanistan). These incapable security forces either failed to perform when called upon to provide protection or engaged in extortion, protection rackets, or other forms of depredation that undermined the state's legitimacy and made insurgent groups more appealing.

---

<sup>67</sup> See, e.g., SIGIR, 2013 Report, *supra* note 4; SIGAR, CORRUPTION IN CONFLICT, *supra* note 4.

<sup>68</sup> *Kleptocracy*, OXFORD ENGLISH DICTIONARY, [https://www.oed.com/dictionary/kleptocracy\\_n?tab=meaning\\_and\\_use](https://www.oed.com/dictionary/kleptocracy_n?tab=meaning_and_use) [<https://perma.cc/YN36-LBDL>] (meaning “rule by thieves” or a “government by people who use their power to steal their country’s resources”).

These examples demonstrate the error in subordinating the fight against corruption to other geopolitical priorities, such as combating terrorism or building partner capacity to deliver security.<sup>69</sup> The case studies also showcase the criteria that can be used to identify and combat corruption risks. Part V of this Article will address how to integrate these criteria into transnational security priorities.

The case studies focus on six criteria for identifying corruption risks: unauthorized or fraudulent arms deals; ghost units/soldiers (troops that exist on payrolls only); unprofessional, underequipped, and untrained units; direct assistance to bad actors (terrorists, insurgents, anti-government militias); extortion or abuse by security forces; and collapse of public support for government and related potential increase in support for or tolerance of bad actors. While corrupt governments and security forces often go to significant lengths to obscure their corrupt behavior,<sup>70</sup> audits and investigations focused on these well-defined criteria can aid in assessing the corruption risk in partner countries.

While some prominent indices for corruption look at public perceptions of corruption,<sup>71</sup> these six criteria were selected because they provide a more objective standard of corrupt behavior that plagues security forces. Further, they can be identified through public reporting as well as audits. Each of these criteria reflects a serious and concrete harm to a state's security from corruption. Additionally, four of the six align with problems stemming from corruption identified by the U4 Anticorruption Resource Centre of the Christian Michelsen Institute.<sup>72</sup> Unauthorized or fraudulent arms transfers (including purchases made of weapons never delivered, inflated contracts for shoddy materiel, or transfers/acquisitions that do not follow basic procurement rules) make up one of the most prominent examples of security sector corruption.<sup>73</sup> "Ghost soldiers" are frequently enticed to enlist in exchange for a single payment or a portion of their salary.<sup>74</sup> Commanders then pocket the bulk of their salary (plus any allotments for equipment).<sup>75</sup>

---

<sup>69</sup> See SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 20–23 (asserting that insufficient appreciation for the corruption threat, and instead prioritizing security, political stability, and immediate reconstruction needs, contributed to the growing power divide between Afghan leaders and citizens).

<sup>70</sup> See, e.g., *id.* at 56 (describing the Afghan government's effort to demonstrate that it could pass an audit by centralizing audit authority in a weak entity and removing audit authorities from the more capable Ministry of Finance).

<sup>71</sup> See, e.g., *Corruption Perception Index*, TRANSPARENCY INT'L, <https://www.transparency.org/en/cpi/2023> [<https://perma.cc/M28T-TC5Q>] (The CPI ranks 180 countries and territories around the globe by their *perceived* levels of public sector corruption, scoring on a scale of 0 (highly corrupt) to 100 (very clean)) (emphasis added).

<sup>72</sup> See Catherine Mann, *Corruption in justice and security*, TRANSPARENCY INT'L 6 (2011), <https://www.u4.no/publications/corruption-in-justice-and-security.pdf> [<https://perma.cc/5TG8-VLXN>].

<sup>73</sup> See *Defense Procurement Standards*, TRANSPARENCY INT'L DEF. & SEC., <https://ti-defence.org/what-we-do/industry-integrity/defence-procurement-standards/> [<https://perma.cc/M52D-H3K5>]; HUMAN RIGHTS WATCH, *supra* note 4, at 45.

<sup>74</sup> See HUMAN RIGHTS WATCH, *supra* note 4, at 45.

<sup>75</sup> See *id.*

Commanders also enrich themselves by diverting funds meant to train and equip their units, leaving their troops untrained, underequipped and therefore incapable of effectively providing security.<sup>76</sup> While not as dramatically obvious a problem as the tens of thousands of ghost soldiers who do not exist, troops that are inadequately trained, equipped, and provisioned can do little to effectively provide security. Corrupt leaders and units may also directly sell or otherwise transfer arms to the same bad actors they are meant to fight.<sup>77</sup> Additionally, corrupt security forces may set up illegal checkpoints or engage in extrajudicial arrests and detentions to extort money from the populations they are meant to protect.<sup>78</sup> The last criterion, collapse of public support for the government and security forces, can stem from the perception of corruption in the government and security forces.<sup>79</sup> It frequently manifests as increased tolerance or support of anti-government forces.<sup>80</sup> These factors together showcase the human toll on individuals in target countries that have corruption problems, as well as the broader security concerns corruption can foment.

Three of the four case studies demonstrate all six of the criteria assessed. Four of six were observed in Ukraine, where the post-Soviet government systematically slashed the Ukrainian military budget,<sup>81</sup> sold its equipment,<sup>82</sup> and then attempted to force the military to become financially self-sufficient,<sup>83</sup> leading to a distinct but still prominent corruption profile. Figure 1 identifies which of these criteria are present in each of the four case studies. At the end of each case study is an assessment of the country's willingness and capability to combat corruption, to the extent they can be determined based on the country's performance across the criteria. This assessment is based on the state's public pronouncements about corruption, the resources it commits to fighting corruption, and the results of those efforts.

---

<sup>76</sup> ELITE CAPTURE, *supra* note 18, at 40.

<sup>77</sup> *How Islamic State Got its Weapons*, AMNESTY INT'L U.K. (Jan. 12, 2018), <https://www.amnesty.org.uk/how-isis-islamic-state-isil-got-its-weapons-iraq-syria> [https://perma.cc/K44N-JQBE]. Additionally, when security forces are themselves bad actors, security assistance may be provided directly to them. *See generally* STAFF OF H. SUBCOMM. ON NAT'L SEC. AND FOREIGN AFFS., WARLORD, INC.: EXTORTION AND CORRUPTION ALONG THE U.S. SUPPLY CHAIN IN AFGHANISTAN (2010).

<sup>78</sup> HUMAN RIGHTS WATCH, *supra* note 4, at 17–18.

<sup>79</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 122.

<sup>80</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 33–34.

<sup>81</sup> Adrian Bonenberger, *Ukraine's Military Pulled Itself Out of the Ruins of 2014*, FOREIGN POL'Y (May 9, 2022), <https://foreignpolicy.com/2022/05/09/ukraine-military-2014-russia-us-training/> [https://perma.cc/U6FF-TUZM].

<sup>82</sup> *Id.*

<sup>83</sup> *See* Chayes, *How Corruption Guts Militaries*, *supra* note 4.

Figure 1

	Afghanistan <sup>84</sup>	Nigeria	Iraq	Ukraine
Unauthorized or fraudulent arms deals	✓	✓	✓	✓
Ghost Units/Soldiers (troops that exist on payroll only)	✓	✓	✓	
Unprofessional, underequipped, and untrained units	✓	✓	✓	✓
Direct assistance to bad actors (terrorists, insurgents, anti-government militias)	✓	✓	✓	✓
Extortion/abuse by security forces	✓	✓	✓	✓
Collapse of public support for government and related potential increase in support for or tolerance of bad actors	✓	✓	✓	

### 1. Afghanistan

The length of the United States' involvement in Afghanistan, along with its wholesale propping up of the Afghan National Security Forces (ANSF) and the Government of the Islamic Republic of Afghanistan (GIROA)<sup>85</sup> make it particularly appropriate to study. In no other country in recent years has the United States invested so much with such poor results. The United States provided approximately \$90 billion in SSA to the ANSF.<sup>86</sup> However, within days of the United States' departure from Afghanistan, the ANSF essentially dissolved, with most units

<sup>84</sup> The analysis for Afghanistan pertains specifically to the time period ending in the summer of 2021 when the U.S.-backed government fell to the Taliban. Corruption under the Taliban is not included here.

<sup>85</sup> Lindsay Maizland, *The Legacy of the U.S. War in Afghanistan in Nine Graphics*, COUNCIL ON FOREIGN RELATIONS (Aug. 17, 2021), <https://www.cfr.org/article/afghanistan-war-taliban-us-legacy-graphics> [<https://perma.cc/2LA7-924V>].

<sup>86</sup> CHRISTINA ARABIA, CONG. RSCH. SERV., IN11728, *THE COLLAPSE OF THE AFGHAN NATIONAL DEFENSE AND SECURITY FORCES: IMPLICATIONS FOR U.S. SECURITY ASSISTANCE AND COOPERATION* 1 (2021).

surrendering or fleeing rather than fighting the Taliban.<sup>87</sup> Afghanistan is now in humanitarian crisis, the Taliban has reinstituted gender apartheid,<sup>88</sup> and the economy remains entirely dependent on much-reduced foreign aid.<sup>89</sup>

By 2009, the United States government was aware of the serious risk corruption posed to Afghanistan's stability.<sup>90</sup> In 2011, a DoD-organized anticorruption task force was targeting known bad actors to be "named and shamed" while simultaneously supporting Afghan anticorruption efforts.<sup>91</sup> These efforts were thoroughly undermined, principally by the Afghan government (which shielded bad actors from prosecution), but also by elements of the U.S. Intelligence Community, which were dependent on access and influence within the Afghan government to fulfill their counter-terrorism missions.<sup>92</sup> Having determined that certain corrupt warlords and government officials were vital to the fight against Al Qaeda, the U.S. Intelligence Community apparently continued to fund them and assist them in avoiding prosecution for corruption.<sup>93</sup> At the same time, the United States continued to funnel significant amounts of money to the Afghan government and contractors controlled by or aligned with the government, creating unprecedented opportunities for corruption.<sup>94</sup>

a. Unauthorized or Fraudulent Arms Deals

In Afghanistan, where DoD did much of the procurement for the ANSF,<sup>95</sup> improper transfers often took the form of soldiers deserting and taking equipment with them, as well as corrupt sales of equipment to unauthorized persons.<sup>96</sup> In 2008, there were multiple reports that Afghan National Police personnel and a battalion commander in the Khost province sold weapons to anti-coalition forces.<sup>97</sup> Afghan

---

<sup>87</sup> Kazmin, Parkin & Manson, *supra* note 44.

<sup>88</sup> AMNESTY INT'L, *Global: Gender Apartheid Must Be Recognized in International Law* (June 17, 2024), <https://www.amnesty.org/en/latest/news/2024/06/gender-apartheid-must-be-recognized-international-law/> [<https://perma.cc/ZX6N-5SZD>].

<sup>89</sup> SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION, QUARTERLY REPORT TO THE UNITED STATES CONGRESS 15, 19 (2023).

<sup>90</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 1.

<sup>91</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 51.

<sup>92</sup> *Id.* at 51–53.

<sup>93</sup> *Id.*

<sup>94</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 19; CHAYES, THIEVES OF STATES, *supra* note 7, at 44.

<sup>95</sup> The fact that DoD handled much of the procurement was not a guarantee against fraudulent arms deals, where DoD-contracted vendors provide inadequate or dangerous material at inflated prices. See C.J. Chivers, *Supplier Under Scrutiny on Arms for Afghans*, N.Y. TIMES (Mar. 27, 2008), <https://www.nytimes.com/2008/03/27/world/asia/27ammo.html> [<https://perma.cc/9V6K-TRJE>]. The events described in this article were later dramatized in the film, WAR DOGS (Warner Bros. Pictures 2016), and demonstrate that even the most sophisticated defense procurement systems can suffer from fraud, waste, and abuse when strict internal controls are not enforced.

<sup>96</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-09-267, AFGHANISTAN SECURITY: LACK OF SYSTEMATIC TRACKING RAISES SIGNIFICANT ACCOUNTABILITY CONCERNS ABOUT WEAPONS PROVIDED TO AFGHAN NATIONAL SECURITY FORCES 23 (2009).

<sup>97</sup> *Id.*

National Police Chief Logistical Officer for the Paktika province refused, despite repeated requests, to produce a list of serial numbers for weapons on hand, which investigators considered as an attempt to conceal inventory discrepancies.<sup>98</sup> Poorly safeguarded and inventoried weapons provided other opportunities for theft as well as unauthorized transfers.<sup>99</sup>

b. Ghost Units or Soldiers

The problem of ghost soldiers was particularly acute in Afghanistan.<sup>100</sup> Thousands of ghost soldiers and police officers meant none of the ANSF units were up to authorized strength in 2016.<sup>101</sup> A survey found that there were allegedly about 130,000 ghost servicemen on the payroll.<sup>102</sup> Though the Afghan government disputed that number, it did acknowledge that ghost soldiers were an issue.<sup>103</sup> Ghost policemen or unfilled positions comprised up to 70% of Afghan Local Police authorized strength in some areas, with the real number of the ALP in its entirety estimated at half its reported strength.<sup>104</sup> In its quarterly report delivered on April 30, 2017, the Special Inspector General for Afghanistan Reconstruction (SIGAR) reported that “neither the United States nor its Afghan allies know how many Afghan soldiers and police actually exist, how many are in fact available for duty, or, by extension, the true nature of their operational capabilities.” Rather than providing salaries for ANSF soldiers, the United States and other donor countries enriched corrupt commanders and ultimately failed to achieve their objective of creating professional and capable security forces.<sup>105</sup> After the precipitous fall of the GIRoA, Afghanistan’s ex-finance minister told the BBC that most of the country’s 300,000 troops and police did not actually exist.<sup>106</sup>

c. Unprofessional, Underequipped, and Untrained Units

The ANSF’s structure favored commander networks existing at the time of the U.S. invasion and solidarity lines based on tribes and kinship, organized toward

---

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 26.

<sup>100</sup> See Alexander Smith, *Not Fighting ISIS: How Iraq's 50,000 'Ghost Soldiers' Run Their Scam*, NBC NEWS (Dec. 28, 2014), <https://www.nbcnews.com/storyline/isis-uncovered/not-fighting-isis-how-iraqs-50-000-ghost-soldiers-run-n267261> [<https://perma.cc/NDT4-KT8D>].

<sup>101</sup> ALI A. JALALI, U.S. INST. OF PEACE, *AFGHANISTAN NATIONAL DEFENSE AND SECURITY FORCES: MISSION, CHALLENGES, AND SUSTAINABILITY* 15 (2016), [https://www.govinfo.gov/content/pkg/GOVPUB-Y3\\_P31-PURL-gpo83790/pdf/GOVPUB-Y3\\_P31-PURL-gpo83790.pdf](https://www.govinfo.gov/content/pkg/GOVPUB-Y3_P31-PURL-gpo83790/pdf/GOVPUB-Y3_P31-PURL-gpo83790.pdf) [<https://perma.cc/HD7N-UGC4>].

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 16.

<sup>105</sup> SIGAR, *CORRUPTION IN CONFLICT*, *supra* note 4, at 48 (“Training and equipping the ANSF to combat the insurgency was a key part of the U.S. exit strategy...”).

<sup>106</sup> *Afghanistan's Ghost Soldiers Undermined Fight Against Taliban - Ex-Official*, BBC (Nov. 10, 2021), <https://www.bbc.com/news/world-asia-59230564> [<https://perma.cc/BM6K-MS87>].

generating profit instead of protecting citizens.<sup>107</sup> Despite efforts to take down these networks and institute a merit-based system of appointment, the Afghan government subverted these reforms,<sup>108</sup> making it difficult to weed out incompetent or abusive commanders.<sup>109</sup> In 2006, senior Afghan officials protected commanders deemed incompetent or corrupt by UN assessments from being fired.<sup>110</sup>

Because political connections trumped competency when it came to success in the security forces, systematic embezzlement absorbed resources from the ANSF, leaving many forces without food, weapons, ammunition, and other basic provisions.<sup>111</sup> Troops on the front lines were not only deprived of pay and food, they often had to bribe medical personnel to get care if they were wounded and pay for their own medical supplies out of pocket.<sup>112</sup> If they were killed in action, their widows would not receive their pensions unless they paid bribes.<sup>113</sup> Under these conditions, the government could not hire, supply, train, and retain a competent security force.<sup>114</sup> After the U.S. withdrawal, Afghan forces still willing to fight were left isolated with no hope of obtaining the supplies they would need to continue to resist the Taliban.<sup>115</sup>

#### d. Direct Assistance to Bad Actors (Terrorists, Insurgents, Anti-Government Militias)

In the late 2000s, the United States became wary that American money was flowing to the insurgency via corruption.<sup>116</sup> The White House's Afghan Threat Finance Cell (ATFC) found that there was an interdependent network of corruption across the Afghan government, drug traffickers, transnational criminals, and insurgent and terrorist groups.<sup>117</sup> Further, a 2010 report concluded that the U.S. supply chain to Afghanistan provided warlords with security, that those warlords ran a "protection racket," and "protection payments for safe passage [we]re a

<sup>107</sup> ELITE CAPTURE, *supra* note 18, at 39.

<sup>108</sup> *Id.* Afghanistan is a "personalistic" society. See Vanda Felbab-Brown, *Afghanistan's Deep Challenges and Transition Opportunities*, BROOKINGS INST. (Mar. 1, 2014), <https://www.brookings.edu/articles/afghanistans-deep-challenges-and-transition-opportunities/> [<https://perma.cc/D7D7-J8W4>]. Personalistic societies are where tribal, ethnic, or kinship relationships create the expectation that individuals with any sort of power will favor their own over outsiders and thus exacerbate the corruption problem. See Eric Chang & Miriam A. Golden, *Sources of Corruption in Authoritarian Regimes*, 91 SOC. SCI. Q. 1, 2 (Mar. 2010).

<sup>109</sup> ELITE CAPTURE, *supra* note 18, at 39.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 40.

<sup>112</sup> Jodi Vittori, *Corruption and Self-Dealing in Afghanistan and Other U.S.-Backed Security Sectors*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Sept. 9, 2021), <https://carnegieendowment.org/posts/2021/09/corruption-and-self-dealing-in-afghanistan-and-other-us-backed-security-sectors?lang=en> [<https://perma.cc/G7VX-S227>].

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> SIGAR, CORRUPTION IN CONFLICT *supra* note 4, at 34.

<sup>117</sup> *Id.*

significant potential source of funding for the Taliban.”<sup>118</sup> The U.S. government was therefore paying groups aligned with the Taliban to serve as security for U.S. projects and for protecting convoys of materiel entering Afghanistan.<sup>119</sup> As a result, U.S. security assistance was providing the Taliban with needed capital to continue its fight against the GIRoA.

The collapse of the ANSF led to \$24 billion worth of U.S. provided equipment from small arms to aircraft falling into Taliban hands.<sup>120</sup> Conflict between the Islamic State in Khorasan (IS-K) and the Taliban in Afghanistan often involved the use of American weapons.<sup>121</sup>

#### e. Extortion/Abuse by Security Forces

The ANSF routinely engaged in abuses of the local population that were antithetical to the purpose of SSA.<sup>122</sup> Militias and their commanders—enjoying protection from their political leadership against accountability—engaged in a variety of abuses, such as torture, theft, racketeering, and extortion from the population.<sup>123</sup> As Vanda Felbab-Brown of the Brookings Institution testified before the House Armed Services Committee in August 2012, “Murder, extortion, and land theft have gone unpunished, often perpetrated by those in the government. At the same time, access to jobs, promotions, and economic rents has depended on being on good terms with the local strongman, instead of merit and hard work.”<sup>124</sup> The Afghan Local Police (ALP) was reportedly well-known for engaging in harassment and extortion of the population as well as war crimes.<sup>125</sup> In Northern Afghanistan in particular, the ALP were considered nothing more than thugs in uniforms, who routinely engaged in everything from unlawful land grabs and illegal taxation to extrajudicial killings, kidnappings, rape, and arson.<sup>126</sup>

#### f. Collapse of Public Support for Government and Related Potential Increase in Support for or Tolerance of Bad Actors

---

<sup>118</sup> STAFF OF H. SUBCOMM. ON NAT’L SEC. AND FOREIGN AFFS., WARLORD, INC., *supra* note 77, at 3.

<sup>119</sup> *Id.* at 34.

<sup>120</sup> A. Trevor Thrall & Jordan Cohen, *Afghanistan and the Danger of Small Arms Transfers*, CATO INST. (Nov. 2, 2021), <https://www.cato.org/commentary/afghanistan-danger-small-arms-transfers> [<https://perma.cc/SDD7-C272>].

<sup>121</sup> *Id.*

<sup>122</sup> ELITE CAPTURE, *supra* note 18, at 40.

<sup>123</sup> *Id.*

<sup>124</sup> Vanda Felbab-Brown, *Testimony before the House Armed Services Committee*, BROOKINGS INST. (Aug. 2, 2012), <https://www.brookings.edu/articles/afghan-national-security-forces-afghan-corruption-and-the-development-of-an-effective-fighting-force/> [<https://perma.cc/9GFW-KZCN>].

<sup>125</sup> ELITE CAPTURE, *supra* note 18, at 44.

<sup>126</sup> *Id.* at 44–45.

In Afghanistan, the corruption and interconnected human rights violations by the ALP had destabilizing effects and led to increased Taliban recruitment and control in some areas.<sup>127</sup> Former Interior Minister Ali Jalali opined that abusive behavior by ALP commanders was the main reason for Taliban growth in 2010.<sup>128</sup> Corruption was reportedly a motivating factor for Afghans joining the insurgency,<sup>129</sup> and the Taliban's annual proclamations highlighting government corruption doubled as recruiting tools.<sup>130</sup>

The collapse of the ANSF in 2021 also led indirectly to a substantial transfer of skills and material to bad actors. After the fall of the GIROA, former members of the ANSF, including U.S.-trained intelligence service members and special forces, joined the Islamic State in Khorasan (IS-K), most likely in an attempt to avoid capture by the Taliban.<sup>131</sup> In doing so, they brought their critical intelligence-gathering and tactical military skills to the employ of a terrorist organization.<sup>132</sup> Others have joined the Taliban and are training Taliban fighters on how to use U.S.-provided equipment.<sup>133</sup>

#### g. Willingness and Capability to Fight Corruption

Afghanistan showed a very low level of *willingness* to combat corruption, with the government evincing a strong interest in protecting kleptocratic systems between 2010 and 2021.<sup>134</sup> Afghanistan's *capability* to combat corruption, however, was more substantial than might be expected, thanks to the resources, technical assistance, and intelligence provided by the United States to achieve anticorruption goals.<sup>135</sup> Several key anticorruption investigations and prosecutions were initiated with U.S. assistance and swiftly shut down by the central government.<sup>136</sup> The U.S.'s failure to account for the GIROA's lack of willingness to combat corruption led to the significant wasting of resources attempting to build a capacity the government had no intention of using.

---

<sup>127</sup> *Id.* at 45.

<sup>128</sup> *Id.*

<sup>129</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 152.

<sup>130</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 11, 31, 34. It is important to note that Afghanistan under the Taliban appears to remain extremely corrupt, but because there is a lack of access to anti-corruption experts in the country, it is difficult to obtain detailed and accurate information. See *Afghanistan*, TRANSPARENCY INT'L, <https://www.transparency.org/en/countries/afghanistan> [<https://perma.cc/3P8N-FHMS>].

<sup>131</sup> Yaroslav Trofimov, *Left Behind After U.S. Withdrawal, Some Former Afghan Spies and Soldiers Turn to Islamic State*, WALL ST. J. (Oct. 31, 2021), <https://www.wsj.com/articles/left-behind-after-u-s-withdrawal-some-former-afghan-spies-and-soldiers-turn-to-islamic-state-11635691605?page=1> [<https://perma.cc/HU5E-WPQ8>].

<sup>132</sup> *Id.*

<sup>133</sup> Thrall & Cohen, *supra* note 120.

<sup>134</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 55–61; SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 36–37.

<sup>135</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 41–42, 52, 55–56.

<sup>136</sup> *Id.* at 43–44.

## 2. Nigeria

Nigeria is a significant recipient of U.S. SSA aimed at improving the country's ability to execute counter-terrorism operations against violent Islamist movements in its northeastern regions, particularly Boko Haram and Islamic State - West Africa.<sup>137</sup> Nigeria's substantial oil revenues allow it to self-fund most of its security needs.<sup>138</sup> Nigeria purchases a significant portion of its defense hardware from the United States through Foreign Military Sales (FMS)<sup>139</sup> and Direct Commercial Sales (DCS).<sup>140</sup> While U.S. taxpayer-funded support to Nigeria is relatively modest compared to other countries discussed in this article,<sup>141</sup> Nigeria still receives millions of dollars in U.S.-funded assistance, including through the export of excess defense articles, International Military Education and Training (IMET) funding, special counter-terrorism and peacekeeping operations funding, and Foreign Military Financing (FMF).<sup>142</sup> Additionally, Nigeria benefits from a robust defense cooperation relationship with the United Kingdom.<sup>143</sup> It also purchases weapons and systems from both China and Russia.<sup>144</sup>

Despite substantial investments in its military and security apparatus, Nigeria's security sector is plagued by poor performance, corruption, and systematic human rights abuses.<sup>145</sup> Transparency International's Defense and Security Project ranks Nigeria at a high, very high, or critical risk of corruption in

---

<sup>137</sup> Bureau of Political-Military Affairs, *U.S. Security Cooperation with Nigeria*, U.S. DEP'T OF STATE (Jan. 20, 2025), <https://www.state.gov/u-s-security-cooperation-with-nigeria/> [https://perma.cc/J5ZN-PR6M].

<sup>138</sup> *Nigeria: Country Commercial Guide*, INT'L TRADE ADMIN. (June 5, 2023), <https://www.trade.gov/country-commercial-guides/nigeria-market-overview> [https://perma.cc/NWP3-HXL8] ("Oil revenue remains a crucial source of government revenue, constituting 29% of total government revenues in the first half of 2022.").

<sup>139</sup> See *Foreign Military Sales vs. Direct Commercial Sales*, NAT'L DEF. INDUS. ASS'N, <https://www.ndia.org/policy/issues/international/fms-vs-dcs> [https://perma.cc/5YQR-DQ5Q]. In an FMS transaction, the United States government arranges and negotiates the procurement of defense articles from the supplier for the purchasing nation or delivers the equipment from the U.S. government's own stockpiles, but the purchasing nation pays with its own money. See *id.*

<sup>140</sup> See *id.* In a DCS transaction, the purchasing nation arranges and negotiates the procurement from the supplier directly without involvement of the United States government, except to obtain export licenses. *Id.*

<sup>141</sup> *Arms Sales*, CTR. FOR INT'L POL'Y, <https://internationalpolicy.org/programs/sam/arms-sales/> [https://perma.cc/2PTS-WL7G].

<sup>142</sup> Bureau of Political-Military Affairs, *supra* note 137.

<sup>143</sup> Vicky Ford, *UK-Nigeria Security & Defence Partnership Inaugural Dialogue Communiqué*, MINISTRY OF DEF., (Feb. 2, 2023) (UK), [https://assets.publishing.service.gov.uk/media/61fb0f778fa8f53894502179/UK\\_and\\_Nigeria\\_Security\\_and\\_Defence\\_Dialogue\\_-\\_Final\\_Communique\\_.pdf](https://assets.publishing.service.gov.uk/media/61fb0f778fa8f53894502179/UK_and_Nigeria_Security_and_Defence_Dialogue_-_Final_Communique_.pdf) [https://perma.cc/V8FP-TMSW].

<sup>144</sup> TOMÁS F. HUSTED, CONG. RSCH. SERV., R47052, NIGERIA: OVERVIEW AND U.S. POLICY 11–12 (2023), <https://crsreports.congress.gov/product/pdf/R/R47052/> [https://perma.cc/2HHT-2JGY].

<sup>145</sup> *Id.*

its various security sector metrics.<sup>146</sup> In particular, Nigeria receives TI's worst possible ranking of "critical" in the subcategories of operations and procurement.<sup>147</sup>

a. Unauthorized or Fraudulent Arms Deals

As of 2017, an estimated \$15 billion were lost in Nigeria due to fraudulent arms procurement deals alone.<sup>148</sup> In 2014, the government awarded a half-billion-dollar contract for refurbished helicopters to a friend of President Goodluck Jonathan. The contract price was wildly inflated and the delivered helicopters were unsuitable for combat operations and never deployed.<sup>149</sup> Also in 2014, Nigerian officials siphoned off \$8.9 million in funds meant to purchase military equipment to combat Boko Haram. Those assets were moved to banks account in Jersey held by shell companies masking the beneficial owners, family members of Nigeria's former ruling party.<sup>150</sup> Those funds were only recovered in January of 2024.<sup>151</sup>

b. Ghost Units or Soldiers

Multiple reports in 2013 indicated that some Nigerian units were filled with ghost soldiers.<sup>152</sup> A 2017 report found that there were a number of soldiers supposedly on the front lines who did not exist and whose salaries generated payments for commanders.<sup>153</sup> The issue of "ghost" employees extends well beyond the military in Nigeria and is considered an endemic problem in the civil service.<sup>154</sup>

---

<sup>146</sup> See TI Defense Nigeria, *supra* note 4, at 7. These rankings are based on a detailed assessment of each country's relevant laws and policies governing its security sector. *Methodology*, TRANSPARENCY INT'L DEF. & SEC., <https://ti-defence.org/gdi/methodology/> [<https://perma.cc/3B62-GAJA>].

<sup>147</sup> TI Defense Nigeria, *supra* note 4, at 7.

<sup>148</sup> Salem Solomon, *Report: Corruption in Nigerian Military Benefits Boko Haram*, VOICE OF AM. (May 19, 2017), <https://www.voanews.com/a/corruption-nigeria-military-boko-haram-report/3862196.html> [<https://perma.cc/78QY-TGQV>].

<sup>149</sup> EVA ANDERSON & MATTHEW T. PAGE, TRANSPARENCY INT'L DEF. & SEC., *WEAPONISING TRANSPARENCY: DEFENCE PROCUREMENT REFORM AS A COUNTERTERRORISM STRATEGY IN NIGERIA* 15 (2017), [https://ti-defence.org/wp-content/uploads/2017/05/Weaponising\\_Transparency\\_Web.pdf](https://ti-defence.org/wp-content/uploads/2017/05/Weaponising_Transparency_Web.pdf) [<https://perma.cc/E633-QMCS>] (An unnamed source cited in the report stated for the price of each of the refurbished helicopters purchased, the army could have obtained "seven top grade brand new military helicopters.").

<sup>150</sup> *A Good Day for Asset Recovery: \$8.9 Million from Arms Procurement Corruption to Be Returned to Nigeria*, TRANSPARENCY INT'L DEF. & SEC. (Jan. 18, 2024), <https://ti-defence.org/nigeria-news-jersey-bank-account-seized-boko-haram-corruption/> [<https://perma.cc/Z94C-XR45>].

<sup>151</sup> *Id.*

<sup>152</sup> See LT. COLONEL DAVE ALLEN ET. AL., TRANSPARENCY INT'L DEF. & SEC., *supra* note 66, at 26.

<sup>153</sup> Solomon, *supra* note 148.

<sup>154</sup> See William Clowes, *Exorcising 'Ghost Workers' Saves Nigerian State Millions of Dollars*, BLOOMBERG NEWS (Dec. 6, 2019), <https://www.bloomberg.com/news/articles/2019-12-06/exorcising-ghosts-saves-nigerian-state-millions-of-dollars> [<https://perma.cc/2P5P-JSSS>].

c. Unprofessional, Underequipped, and Untrained Units

From 2013 to 2015, following over a hundred attacks by Boko Haram, then-Prime Minister Jonathan proclaimed a state of emergency and sent over 2,000 troops to the north to dislodge the insurgency.<sup>155</sup> Poorly equipped and lacking the motivation to fight, Nigerian forces were unable to effectively address the insurgency, despite the fact that Nigeria had an annual defense budget of approximately \$6 billion.<sup>156</sup> In 2013, it was reported that about 50% of soldiers' allowances were stolen by commanders, while soldiers were living in poor conditions and rarely had access to ammunition and arms.<sup>157</sup> Soldiers also had to cover their own uniform and medical expenses.<sup>158</sup>

d. Direct Assistance to Bad Actors (Terrorists, Insurgents, Anti-Government Militias)

The corrupt practices among more senior officials often leave Nigerian troops with no choice but to sell what weapons they do have to insurgents.<sup>159</sup> In addition to purchasing weapons from the Nigerian military, Boko Haram also stole them. A 2014 report indicated most of Boko Haram's weapons were stolen from the Nigerian military.<sup>160</sup> During the same time period, 25 senior security officials were prosecuted and convicted for treason for aiding Boko Haram.<sup>161</sup>

e. Extortion/Abuse by Security Forces

Nigeria's police (its largest security force) is viewed as the most corrupt institution in the country.<sup>162</sup> Nigerian police forces are known to subject citizens to extortion and bribery at checkpoints, blocking roadway access until paid or threatening harm if they refuse.<sup>163</sup> In 2008, police in one state alone collected an estimated \$4.5 million in illegal tolls at checkpoints.<sup>164</sup> Nigerian police are also known to engage in violence, torture, arbitrary arrests, and detention for days or weeks to extort bribes.<sup>165</sup> Because of vertically-integrated corrupt structures in the police force, local police collect bribe money and then siphoned it upwards to

---

<sup>155</sup> LT. COLONEL DAVE ALLEN ET. AL., TRANSPARENCY INT'L DEF. & SEC., *supra* note 66, at 25.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 26.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 27.

<sup>161</sup> *Id.*

<sup>162</sup> HUMAN RIGHTS WATCH, *supra* note 4, at 12.

<sup>163</sup> *Id.* at 2–3.

<sup>164</sup> *Id.* at 26.

<sup>165</sup> *See id.* at 20–21, 32.

superiors in what are known as “returns.”<sup>166</sup> This need to provide “returns” creates further incentives for low-level bribery and extortion.<sup>167</sup>

f. Collapse of Public Support for Government and  
Related Potential Increase in Support for or  
Tolerance of Bad Actors

Transparency International credits corruption in Nigeria for the rise of Boko Haram.<sup>168</sup> Boko Haram capitalized on the suffering of poorer Muslim civilians in northern Nigeria due to high levels of government corruption and the failure to provide adequate security.<sup>169</sup> When Boko Haram’s attacks are directed toward government forces (as opposed to civilians), they are largely tolerated by the population due to the extreme antipathy felt toward the police.<sup>170</sup> The corruption in the Nigerian police force also led some communities to form vigilante groups, which often engage in gross violations of human rights.<sup>171</sup>

g. Willingness and Capability to Fight Corruption

Nigeria has demonstrated a selective willingness to combat corruption. While Nigeria’s official policy is that corruption is not tolerated, the military lacks a doctrine on anticorruption and provides neither guidance on how to prevent corruption nor an assessment of how corruption may impact operations.<sup>172</sup> Nigeria’s National Defence Policy identifies endemic corruption as a strategic issue which affects national security, but operational guidelines contained no reference to corruption risk.<sup>173</sup> Defense procurement is exempt from standard oversight rules.<sup>174</sup>

In 2015, then-candidate Muhammadu Buhari promised to defeat corruption swiftly.<sup>175</sup> Many Nigerians supported Buhari because of his anticorruption platform, but, despite his efforts, the problem only worsened.<sup>176</sup> While his

---

<sup>166</sup> *Id.* at 76.

<sup>167</sup> *See id.* at 76–80.

<sup>168</sup> LT. COLONEL DAVE ALLEN ET. AL., TRANSPARENCY INT’L DEF. & SEC., *supra* note 66, at 23.

<sup>169</sup> *Id.*

<sup>170</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 122.

<sup>171</sup> HUMAN RIGHTS WATCH, *supra* note 4, at 43.

<sup>172</sup> *Nigeria: Operational Risk Q51*, TRANSPARENCY INT’L DEF. & SEC., <https://ti-defence.org/gdi/countries/nigeria/?risk=operational&single-question=7033#sub-12642> [<https://perma.cc/B8G9-5UM7>].

<sup>173</sup> *Id.*

<sup>174</sup> *Nigeria: Procurement Risk Q57*, TRANSPARENCY INT’L DEF. & SEC., <https://ti-defence.org/gdi/countries/nigeria/?risk=procurement&single-question=7031#sub-12640> [<https://perma.cc/3SWD-J465>].

<sup>175</sup> Tobore Ovuorie, *Nigeria’s Hopeless Fight Against Corruption*, DEUTSCHE WELLE (May 27, 2022), <https://www.dw.com/en/nigerias-hopeless-fight-against-corruption/a-61946896> [<https://perma.cc/FKE5-Q7DE>].

<sup>176</sup> *Id.*

government's anticorruption efforts resulted in the return of looted funds, corrupt politicians who had re-styled themselves as anticorruption crusaders enriched themselves with those recovered assets.<sup>177</sup> This pattern suggests President Buhari's stated intentions to fight corruption are not widely shared in the government. And despite the government's strong anti-graft rhetoric, Nigeria's ranking on Transparency International's Corruption Perception Index has actually worsened.<sup>178</sup> It is difficult to determine based on the available evidence whether Nigeria's poor performance on corruption indicators is attributable to a lack of will across the elite to combat corruption, or a continuing lack of capability despite a renewed effort at the top to address corruption.<sup>179</sup>

### 3. Iraq

Like Afghanistan, Iraq was a major recipient of U.S. SSA for over a decade, aimed at completely remaking the Iraqi security forces.<sup>180</sup> Moreover, the Iraqi government also faced numerous credible reports of fraud and corruption in procurement and contracting in the security sector.<sup>181</sup> This corruption was of the same kind as systemic corruption across all spheres of government action in Iraq.<sup>182</sup> The flow of foreign assistance money sustained and encouraged sectarian violence as different factions of Iraqi society fought a zero-sum game over the spoils of a corrupt patronage model of governance.<sup>183</sup>

After the U.S. withdrawal in 2011, Iraq was forced to confront the threats posed by ISIS and the raging Syrian civil war on its border. The poor performance of Iraqi security forces in addressing these challenges in the early days of the war demonstrated the gap between Iraq's security needs and its security forces' abilities.<sup>184</sup> Corruption played a critical role in exacerbating this problem.<sup>185</sup> More

---

<sup>177</sup> *Id.*

<sup>178</sup> *Nigeria*, TRANSPARENCY INT'L, <https://www.transparency.org/en/countries/nigeria> [https://perma.cc/LGP7-Y9FD].

<sup>179</sup> The proposed vetting method, styled on Leahy Vetting, described *infra* would provide tools to American decision makers to help determine whether the problem is a lack of capability that can be addressed, or a fundamental adherence to corruption within the Nigerian government that the United States is unlikely to change.

<sup>180</sup> SIGIR, 2013 Report, *supra* note 4, at viii.

<sup>181</sup> Maxime Agator, *Iraq: Overview of Corruption and Anti-corruption*, TRANSPARENCY INT'L 5 (2013), [https://knowledgehub.transparency.org/assets/uploads/helpdesk/374\\_Iraq\\_overview\\_of\\_corruption\\_and\\_anticorruption.pdf](https://knowledgehub.transparency.org/assets/uploads/helpdesk/374_Iraq_overview_of_corruption_and_anticorruption.pdf) [https://perma.cc/DP8M-2TAC].

<sup>182</sup> SIGIR, 2013 Report, *supra* note 4, at 11.

<sup>183</sup> ELITE CAPTURE, *supra* note 18, at 21, 26.

<sup>184</sup> Karolina MacLachlan, *Corruption and Conflict: Hand in Glove*, NATO REV. (Dec. 6, 2018), <https://www.nato.int/docu/review/articles/2018/12/06/corruption-and-conflict-hand-in-glove/index.html> [https://perma.cc/7D26-PXWY] ("In Iraq, corruption in army recruitment and promotions, the existence of ghost soldiers, and theft of weapons and supplies rendered the army – superior on paper – ill-armed, under-manned, and ultimately unable to halt the rise of ISIS/Daesh.").

<sup>185</sup> *Id.*

than twenty years after the U.S.-led invasion of Iraq, Iraqi Prime Minister Mohammad Al-Sudani declared corruption to be one of the biggest challenges facing the nation, describing it as “no less serious than the threat of terrorism.”<sup>186</sup> Polling strongly indicates that the Iraqi public shares this sentiment.<sup>187</sup> Iraq currently receives “critical” or “very high” rankings across almost all criteria in TI’s Defense and Security Project rankings.<sup>188</sup>

a. Unauthorized or Fraudulent Arms Deals

Defense procurement contracts are one of Iraq’s largest sources of corruption, both in terms of the number of fraudulent contracts and the sheer dollar amount involved.<sup>189</sup> Iraq’s highest anticorruption office, the Board of Supreme Audit, estimated that \$1.4 billion was lost to fraud and corruption in the Ministry of Defense in 2005 alone.<sup>190</sup> Iraqi investigators discovered over \$1 billion in weapons deals arranged by middlemen who either reneged on the deals or took huge kickbacks in a scheme linked to senior U.S.-backed officials in the Ministry of Defense.<sup>191</sup> Weapons deals with Pakistan, Poland, and several other foreign governments and foreign companies involved contracts for items purchased at highly inflated prices as well as contracts for items that were never delivered; some contracts were outright fraudulent.<sup>192</sup>

b. Ghost Units or Soldiers

In 2014, Iraqi Prime Minister Haider al-Abadi reported that an audit of the military’s human resources records revealed that there were approximately 50,000 ghost soldiers in Iraq.<sup>193</sup> This was likely an underestimate of the problem, which cost the Iraqi military \$380 million a year.<sup>194</sup> In 2013, an investigation into the ghost soldier issue found no regulations aimed at combating the phenomenon.<sup>195</sup> The audit determined that the size of security units on paper grossly overrepresented the number of soldiers in reality.<sup>196</sup>

---

<sup>186</sup> Reva Dhingra & Marsin Alshamary, *Corruption Is the Forgotten Legacy of the Iraq Invasion*, BROOKINGS INST. (Apr. 3, 2023), <https://www.brookings.edu/articles/corruption-is-the-forgotten-legacy-of-the-iraq-invasion/> [https://perma.cc/UGH5-336U].

<sup>187</sup> *Id.*; ARAB BAROMETER VII, IRAQ REPORT 2, 4 (2022), [https://www.arabbarometer.org/wp-content/uploads/ABVII\\_Iraq\\_Country\\_Report-ENG.pdf](https://www.arabbarometer.org/wp-content/uploads/ABVII_Iraq_Country_Report-ENG.pdf) [https://perma.cc/6KZ8-X8QD].

<sup>188</sup> TI Defense Iraq, *supra* note 4.

<sup>189</sup> See Agator, *supra* note 181, at 5.

<sup>190</sup> *Id.*

<sup>191</sup> *Widespread Fraud Alleged in Iraq's Defense Ministry*, NPR (Aug. 12, 2005), <https://www.npr.org/templates/story/story.php?storyId=4797972> [https://perma.cc/GTD7-VVUY].

<sup>192</sup> *Id.*

<sup>193</sup> LT. COLONEL DAVE ALLEN ET. AL., TRANSPARENCY INT’L DEF. & SEC., *supra* note 66, at 20.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

c. Unprofessional, Underequipped, and Untrained Units

Iraqi officers frequently pocketed funds meant for military forces, leaving units undermanned, underfed, and under-equipped.<sup>197</sup> Senior officers were responsible for provisioning their troops<sup>198</sup> but left inadequate rations to soldiers and skimmed soldiers' salaries.<sup>199</sup> Troops were left to purchase food, water,<sup>200</sup> and spare parts<sup>201</sup> on the civilian market, further demoralizing the force and undermining its effectiveness.<sup>202</sup> Officers report their troops have not even received the most rudimentary training; many had not received any instruction or practice at a firing range.<sup>203</sup>

d. Direct Assistance to Bad Actors (Terrorists, Insurgents, Anti-Government Militia)

The report *Taking Stock: The Arming of Islamic State*, found a close match between the weapons of the Iraqi military and those in ISIL's hands.<sup>204</sup> Such weapons include U.S.-manufactured arms, including M16 rifles.<sup>205</sup> The report found that "a substantial portion of IS' current military arsenal comprises weapons and equipment captured or illicitly traded" from Iraqi weapons stores.<sup>206</sup> A fifth of a sample of 1,775 cartridges of ammunition collected from northern Iraq were manufactured in the United States.<sup>207</sup>

Amnesty International cited the free flow of weapons into Iraq and "[s]lack controls over Iraqi military stockpiles and endemic corruption by successive Iraqi governments" as factors contributing to the problem.<sup>208</sup> The failure to install oversight mechanisms over weapons during the U.S.-led occupation created the conditions under which the Islamic State was able to seize weapons ranging from

---

<sup>197</sup> *Id.* at 21.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> Yasir Abbas & Dan Trombly, *Inside the Collapse of the Iraqi Army's 2nd Division*, WAR ON THE ROCKS (July 1, 2014), <https://warontherocks.com/2014/07/inside-the-collapse-of-the-iraqi-armys-2nd-division/> [<https://perma.cc/EU6B-QDL4>].

<sup>201</sup> Ned Parker & Missy Ryan, *Iraqi Military Breakdown Fueled by Corruption, Politics*, REUTERS (June 13, 2014), <https://www.reuters.com/article/world/iraqi-military-breakdown-fueled-by-corruption-politics-idUSKBN0EO2FK/> [<https://perma.cc/VYV4-NGER>].

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> Amnesty Int'l, *Taking Stock: The Arming of Islamic State*, at 11, AI Index MDE 14/2812/2015 (2015), <https://www.amnesty.org/en/documents/mde14/2812/2015/en/> [<https://perma.cc/Z83S-ZW5W>].

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at 13.

<sup>208</sup> *How Islamic State Got its Weapons*, AMNESTY INT'L U.K. (Jan. 12, 2018), <https://www.amnesty.org.uk/how-isis-islamic-state-isil-got-its-weapons-iraq-syria> [<https://perma.cc/UWN2-5RKQ>].

portable air defense systems to armored fighting vehicles and M16 rifles when it obtained control over large parts of Iraq, because inventories of the weapons were never audited and never secured.<sup>209</sup> Without proper control over the weapons, hundreds of thousands of which went missing,<sup>210</sup> it would have been impossible for the Iraqi military to remove or destroy them to prevent them from falling into ISIS's hands. Amnesty linked those weapons to the Islamic State's horrific and widespread human rights abuses in Iraq.<sup>211</sup>

e. Extortion/Abuse by Security Forces

Because senior officers underfed their units and pocketed soldiers' salaries for themselves, Iraqi troops frequently resorted to extorting civilians.<sup>212</sup> They did so by demanding bribes and imposing checkpoints on civilians, detaining those who did not pay. These civilians were then later forced to pay for their own release from the arbitrary detentions.<sup>213</sup> Further, the extortion of bribes by Iraqi policemen is also common practice.<sup>214</sup> In 2011, 64% of Iraqis who interfaced with police claimed they had to pay a bribe.<sup>215</sup>

f. Collapse of Public Support for Government and  
Related Potential Increase in Support for or  
Tolerance of Bad Actors

NATO credits the rise and successes of ISIS/Daesh to corruption in Iraq.<sup>216</sup> ISIS garnered support from citizens by claiming it was an alternative to the corrupt government.<sup>217</sup> Thirty eight percent of residents of Mosul and 42% residing outside the city in Northern Iraq noted corruption as a root cause of ISIL's rise to power.<sup>218</sup> This examples demonstrates plainly the problem with approaching SSA with a "build security first, fight corruption later" mindset.<sup>219</sup>

---

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> LT. COLONEL DAVE ALLEN ET. AL., TRANSPARENCY INT'L DEF. & SEC., *supra* note 66, at 21.

<sup>213</sup> *Id.*

<sup>214</sup> Agator, *supra* note 181, at 5.

<sup>215</sup> *Id.*

<sup>216</sup> See MacLachlan, *supra* note 184 ("In Iraq, corruption in army recruitment and promotions, the existence of ghost soldiers, and theft of weapons and supplies rendered the army – superior on paper – ill-armed, under-manned, and ultimately unable to halt the rise of ISS/Daesh.").

<sup>217</sup> LT. COLONEL DAVE ALLEN ET. AL., TRANSPARENCY INT'L DEF. & SEC., *supra* note 66, at 6, 8 ("Central to ISIS's appeal is the contention that it can govern well and provide services for citizens.").

<sup>218</sup> HHI Study, *supra* note 47, at 29.

<sup>219</sup> In response to the argument that corruption cannot be successfully curtailed because it is inherent in certain cultures, it is important to note how many of these societies have changed over time. Iraq, for example, had very low levels of corruption during most of Saddam Hussein's rule. Since that regime's downfall, corruption has been a persistent problem for Iraq for decades, spanning multiple different governments, which have promised to address it and have largely not succeeded. See Robert F. Worth, *Inside the Iraqi Kleptocracy*, N.Y. TIMES (May 27, 2021),

#### g. Willingness and Capability to Fight Corruption

Like in Nigeria, the current government of Iraq publicly recognizes corruption as a serious threat to national security and the country's well-being,<sup>220</sup> but such statements are not reliable evidence of a willingness to combat corruption. Despite vowing to return corruptly seized funds and establishing the Supreme Commission for Combating Corruption, Prime Minister Sudani must contend with the fact that his government depends on the political support of elites who have personally benefited from corruption and are unlikely to reform.<sup>221</sup> In April 2024, Sudani traveled to Washington to meet with President Biden. Sudani and Biden discussed Iraq's efforts to prevent the corrupt smuggling of U.S. dollars from Iraq to Iran and Syria.<sup>222</sup> Less than two weeks later, Iraq's Federal Board of Supreme Audit exposed a \$600 million corruption scandal involving the fraudulent exchange of Iraqi dinars for dollars by political elites. While this example is outside the security sector, it demonstrates the persistence of corruption as an ongoing problem and suggests that the will to combat the problem is far from uniform within government leadership.<sup>223</sup>

#### 4. Ukraine

Ukraine presents a somewhat different picture from the other three countries in that it was not a recipient of significant amounts of Western SSA during the time it suffered from the most intense instances of corruption in its security sector.<sup>224</sup> While corruption remains a critical threat to Ukraine's security, the Ukrainian government had already begun fighting corruption before it started receiving substantial SSA.<sup>225</sup>

Ukraine's government seems to have realized that its continued receipt of assistance is contingent on demonstrating progress in tackling corruption in its

---

<https://www.nytimes.com/2020/07/29/magazine/iraq-corruption.html> [<https://perma.cc/U2YD-2P97>]

<sup>220</sup> Renad Mansour, *Can Iraq's New Government Reform the Corrupt System?*, CHATHAM HOUSE (Nov. 30, 2022), <https://www.chathamhouse.org/2022/11/can-iraqs-new-government-reform-corrupt-system> [<https://perma.cc/7E92-XYKQ>].

<sup>221</sup> *Id.*

<sup>222</sup> *Joint Statement by President Biden and Prime Minister Muhammad Shia' al-Sudani of Iraq*, THE AM. PRESIDENCY PROJECT (Apr. 15, 2024), <https://www.presidency.ucsb.edu/documents/joint-statement-president-biden-and-prime-minister-muhammad-shia-al-sudani-iraq> [<https://perma.cc/MFU7-37W5>].

<sup>223</sup> Dana Taib Menmy, *Iraq's Federal Board of Supreme Audit Exposes US\$600 Million Corruption Scandal Involving 'Ghost Travellers'*, THE NEW ARAB, (Apr. 24, 2024), <https://www.newarab.com/news/iraq-audit-exposes-600m-corruption-ghost-travellers> [<https://perma.cc/9A9A-HBBN>].

<sup>224</sup> See *infra* Part II § (4)(b).

<sup>225</sup> See *infra* Part II § (4)(e).

security sector.<sup>226</sup> Yet despite its recent anticorruption efforts, in January 2024, the United States and Ukraine admitted that over a \$1 billion in aid provided by the United States could not be accounted for. The equipment was supposed to be subject to enhanced end-use monitoring by the United States,<sup>227</sup> and included weapons and systems that integrated sensitive technology, were particularly vulnerable to diversion or misuse, or whose diversion or misuse could have significant consequences. Weapons provided to Ukraine subject to enhanced end-use monitoring included night vision devices and javelin missiles.<sup>228</sup> While it is not clear any of this assistance was diverted for corrupt purposes,<sup>229</sup> the failure of accountability in a country with a long and notorious history of corruption remains troubling. Incidents such as this one, compounded by false propaganda from Russia accusing Zelensky and his government of spectacular corruption,<sup>230</sup> likely undermined domestic support in the United States for continued assistance to Ukraine.<sup>231</sup>

#### a. Unauthorized or Fraudulent Arms Deals

In January 2024, Ukraine's Security Service, the SBU, discovered a corruption scheme involving the purchase of over 100,000 mortar rounds for its Armed Forces, amounting to nearly \$40 million.<sup>232</sup> The funds were paid to an arms supplier, Lviv Arsenal, but the ammunition was never received.<sup>233</sup> The

---

<sup>226</sup> Maria Kostenko, Alex Stambaugh & Christian Edwards, *Ukraine Says It Uncovered \$40 Million Corruption Scheme in Weapons Procurement*, CNN (Jan. 28, 2024), <https://www.cnn.com/2024/01/28/europe/ukraine-weapons-procurement-corruption-shell-intl/index.html> [https://perma.cc/364B-YZPR]; Victoria Butenko & Olga Voitovych, *Zelensky Says All Officials in Charge of Military Recruitment Offices Dismissed Amid Corruption Scandal*, CNN (Aug. 11, 2023), <https://www.cnn.com/2023/08/11/europe/zelensky-military-corruption-scandal-intl/index.html> [https://perma.cc/5A6Z-MWTN].

<sup>227</sup> OFF. OF THE INSPECTOR GEN., U.S. DEPT. OF DEF., EVALUATION OF THE DoD'S ENHANCED END-USE MONITORING OF DEFENSE ARTICLES PROVIDED TO UKRAINE 15 (2024), [https://media.defense.gov/2024/Jan/11/2003374323/-1/-1/1/DODIG-2024-043-EEMU\\_REDACTED%20SECURE.PDF](https://media.defense.gov/2024/Jan/11/2003374323/-1/-1/1/DODIG-2024-043-EEMU_REDACTED%20SECURE.PDF) [https://perma.cc/4QQK-9PLJ].

<sup>228</sup> *Id.* at 2.

<sup>229</sup> See *id.* at i; see also Ellen Knickmeyer, *The US Failed to Track More Than \$1 Billion in Military Gear Given Ukraine, Pentagon Watchdog Says*, ASSOCIATED PRESS (January 11, 2024), <https://apnews.com/article/ukraine-weapons-audit-watchdog-us-congress-biden-9abecd14528b9551ff4ddb6786ad7fda> [https://perma.cc/H6AT-KR9P].

<sup>230</sup> Steven Lee Meyers, *Spate of Mock News Sites With Russian Ties Pop Up in U.S.*, N.Y. TIMES (March 3, 2024), <https://www.nytimes.com/2024/03/07/business/media/russia-us-news-sites.html> [https://perma.cc/UG63-HU9S]; Kathrin Wesolowski, *Fact Check: Russian Fake News Targets Ukraine's Zelenskyy*, DEUTSCHE WELLE (Feb. 23, 2024), <https://www.dw.com/en/fact-check-russian-fake-news-targets-ukraines-zelenskyy/a-68346906> [https://perma.cc/3FCC-RL6B].

<sup>231</sup> Olga Robinson, Shayan Sardarizadeh & Mike Wendling, *How Pro-Russian 'Yacht' Propaganda Influenced U.S. Debate over Ukraine Aid*, BBC NEWS (Dec. 20, 2023), <https://www.bbc.com/news/world-us-canada-67766964> [https://perma.cc/JFA2-KQDX].

<sup>232</sup> Maria Kostenko, Alex Stambaugh & Christian Edwards, *Ukraine Says It Uncovered \$40 Million Corruption Scheme in Weapons Procurement*, CNN (Jan. 28, 2024), <https://www.cnn.com/2024/01/28/europe/ukraine-weapons-procurement-corruption-shell-intl/index.html> [https://perma.cc/364B-YZPR].

<sup>233</sup> *Id.*

investigation into this scheme unveiled the involvement of high-ranking defense officials.<sup>234</sup> Not long before, a senior defense ministry official was reportedly detained for allegedly embezzling \$40 million via an artillery shells contract.<sup>235</sup> And, in 2023, President Zelensky's administration carried out efforts to remove corrupt military officials. The officials implicated were allegedly connected to illegal procurement of war-time supplies, illegally obtaining funds, and illegally transporting persons liable for military service.<sup>236</sup>

#### b. Ghost Units or Soldiers

This criterion was not observed in Ukraine. The lack of ghost soldiers and units may be due to the high public support of Ukraine's defensive war against Russia and the citizenry's understanding of the conflict as an existential struggle.

#### c. Direct Assistance to Bad Actors

In the late 1990s and early 2000s, the Ukrainian government was suspected of engaging in significant illegal arms-dealing, including arms contracts exceeding \$100 million in value to Iraq, in violation of a U.N. arms embargo.<sup>237</sup> "A Ukrainian parliamentary inquiry concluded that between 1992 and 1998, Ukraine lost \$32 billion in military assets, in part through theft, discount arms sales, and lack of oversight. (In comparison, Ukraine's spending on legal arms for defense in 1999 is estimated to have been \$500 million.)"<sup>238</sup> Many of these weapons made their way into the hands of buyers across the globe, including in Sierra Leone and Croatia during their civil wars, as well as international criminal networks that sold arms in violation of international arms embargoes and sanctions regimes.<sup>239</sup> Corruption was one of the causes of the flow of illegal weapons from Ukraine.<sup>240</sup> The corrupt culture fostered during this earlier period continues to hamstring Ukraine's security sector and remains a concern today.<sup>241</sup>

---

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> See Victoria Butenko & Olga Voitovych, *Zelensky Says All Officials in Charge of Military Recruitment Offices Dismissed Amid Corruption Scandal*, CNN (Aug. 11, 2023), <https://www.cnn.com/2023/08/11/europe/zelensky-military-corruption-scandal-intl/index.html> [<https://perma.cc/5A6Z-MWTN>].

<sup>237</sup> See Dave Gilson, *Ukraine: Cashing in on Illegal Arms*, FRONTLINE/WORLD (2002), <https://www.pbs.org/frontlineworld/stories/sierraleone/context.html> [<https://perma.cc/W36A-8F9F>].

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> See Adrian Karatnycky, *How Deep Does Corruption Run in Ukraine?*, FOREIGN POL'Y (Mar. 6, 2024), <https://foreignpolicy.com/2024/03/06/ukraine-corruption-reforms-russia-war/> [<https://perma.cc/U2G2-H64G>].

d. Unprofessional, Underequipped, and Untrained Units

Stripping the military of funding and turning it into a profit center had left the Ukrainian army's equipment substantially depleted in 2014.<sup>242</sup> Military officers sold off equipment, arms, and military-owned land.<sup>243</sup> As a result, helicopters and vehicles were left immobile due to a lack of fuel and missing parts.<sup>244</sup> Even the Deputy Defense Minister in Ukraine acknowledged that the Ukrainian army had been "systematically destroyed and disarmed."<sup>245</sup> As described below, corrupt and abusive conduct by security forces rarely resulted in investigations or discipline. Even when units with troubling records of unprofessionalism were disbanded, many of their members remained in the security forces.

e. Extortion/Abuse by Security Forces

While Ukraine's army struggled with a lack of funding, its police force, including the Berkut anti-riot force, gained power.<sup>246</sup> Corruption has been a major problem in policing since the Soviet era.<sup>247</sup> Extortion of businesses, the covering up of crimes in exchange for bribes, patronage and nepotism in promotions, lack of transparency in security-related public tenders, and police harassment of journalists who cover corruption are all concerns that date back to the 1990s but remained serious problems long after Yanukovich government's ouster in 2014.<sup>248</sup>

In 2012, there were 114,474 complaints of police misconduct filed by Ukrainian citizens, but only 320 investigations were opened.<sup>249</sup> In 2013, the "EuroMaidan Revolution" protests were a significant example of excessive police violence toward civilians.<sup>250</sup> The Ukrainian riot police encircled the protestors, beat them, and fired on them, killing 100.<sup>251</sup> The Ukrainian government has attempted police reform through the disbanding of the most corrupt and abusive units and the creation of new units, but the old guard has fought hard against these reforms and many dismissed police officers have been reinstated.<sup>252</sup>

---

<sup>242</sup> Chayes, *How Corruption Guts Militaries*, *supra* note 4.

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *See id.*

<sup>247</sup> Halyna Kokhan, *Police in Ukraine: Corruption Versus Reform*, CHRISTIAN MICHELSEN INST. (2020), <https://www.cmi.no/publications/7312-police-in-ukraine-corruption-versus-reform> [<https://perma.cc/XHC2-LH2T>].

<sup>248</sup> *Id.*

<sup>249</sup> Amnesty Int'l UK, *Ukraine: Make The Police Accountable and Stamp Out Torture*, (Apr. 11, 2013) <https://www.amnesty.org/en/latest/press-release/2013/04/ukraine-make-police-accountable-and-stamp-out-torture/> [<https://perma.cc/B4MW-42AN>].

<sup>250</sup> Alisa Sobolieva, *EuroMaidan Revolution*, KYIV INDEP. (Aug. 24, 2022), <https://kyivindependent.com/euro-maidan-revolution/> [<https://perma.cc/WPM5-3ABB>].

<sup>251</sup> *Id.*

<sup>252</sup> Kokhan, *supra* note 247.

f. Collapse of Public Support for Government and  
Related Potential Increase in Support for or  
Tolerance of Bad Actors

This corruption indicator is essentially absent in Ukraine. The fact that the government remains popular is what sets Ukraine apart from the other three examples among the case studies. The Taliban, ISIS, and Boko Haram all appealed to the public by highlighting governmental corruption and promising to stamp it out. Meanwhile, Russia could not credibly claim that it would replace the Ukrainian government with a non-corrupt one, particularly since the new Ukrainian government arose out of free and fair elections held after Yanukovich, who was widely viewed as a corrupt Russian puppet, fled the country. While Ukrainian corruption did not altogether undermine its security—as there is neither greater popular support for the government’s enemies nor significant diversion of military materiel to enemy forces—Ukraine’s history of corruption left its forces badly unprepared to resist the 2014 invasion of eastern Ukraine and the annexation of Crimea.<sup>253</sup> The legacy of corruption has also plagued the readiness of Ukrainian forces despite their dramatic improvement over the last decade and has undermined partner confidence in Ukraine.<sup>254</sup>

g. Willingness and Capability to Fight Corruption

While corruption remains a major concern in Ukraine today, it is important to differentiate between corruption under the Yanukovich regime, which more closely resembled the model of kleptocracy described above, and regimes under the leadership of Petro Poroshenko and Volodymyr Zelenskyy, who both showed some initiative in stamping out corruption, with mixed success. Since 2014, corruption problems in Ukraine appear to be the result primarily of capability issues and, while problems remain, the government has moved aggressively to fire and prosecute corrupt officials.<sup>255</sup> Additionally, anti-corruption efforts are stymied by Russia’s invasion, which has made it difficult for the United States to conduct the sorts of audits and controls that identify corruption.<sup>256</sup>

Beginning in 2015, the government of Petro Poroshenko undertook a number of reforms aimed at curbing corruption, including the passage of

---

<sup>253</sup> Chayes, *How Corruption Guts Militaries*, *supra* note 4.

<sup>254</sup> See *Ukraine Military Procurement Fraud Poses Significant Threat to Safety and Security of Ukrainian People*, TRANSPARENCY INT’L (Feb. 2, 2024) <https://ti-defence.org/ukraine-military-corruption-defence-procurement-fraud-investigation/> [<https://perma.cc/G4DN-LCZB>].

<sup>255</sup> Julian Hayda, *President Zelenskyy Shakes Up Ukraine’s Cabinet Amid Corruption Allegations*, NPR (Jan. 24, 2023), <https://www.npr.org/2023/01/24/1150943435/president-zelenskyy-shakes-up-ukraines-cabinet-amid-corruption-allegations> [<https://perma.cc/72H9-6FXX>].

<sup>256</sup> OFF. OF THE INSPECTOR GEN., U.S. DEPT. OF DEF., *supra* note 227, at 14, 15.

legislation,<sup>257</sup> the creation of an anticorruption court,<sup>258</sup> the implementation of a transparent, public procurement system,<sup>259</sup> and the establishment of the National Anti-Corruption Bureau.<sup>260</sup> But corruption remains a substantial concern. In January 2023, Zelenskyy's government dismissed six deputy ministers and five regional administrators, including the deputy defense minister, apparently for reasons related to corruption.<sup>261</sup> More dismissals of senior officials, including the defense minister, followed throughout 2023, again due to corruption.<sup>262</sup>

#### ***D. Leveraging the Case Studies to Address the Problem***

As described above, combating the problems associated with corruption in SSA requires both the will and the capability to treat corruption as a serious governance risk and address it accordingly. Neither countries' statements about corruption nor their creation of legal frameworks nor institutions to combat it are sufficient to accurately quantify the state's ability and willingness to combat corruption. While capacity and will are distinct, they are not unrelated; a state with a low willingness to combat corruption is not likely to expend significant resources to create the necessary capability to combat corruption.

As will be described in Part IV.C, *infra*, unit-by-unit vetting for security assistance, modeled on Leahy Vetting, would ameliorate the difficulties in distinguishing between problems created by a lack of ability versus those created by a lack of will. Vetting can address the question of will and capacity by properly incentivizing and aiding recipient states to remediate corruption in security forces. A state which is incentivized to combat corruption by the promise of further U.S. assistance and provided with the tools to do so and still fails to make necessary

---

<sup>257</sup> *Biden Commends Poroshenko For Anticorruption Efforts*, RADIO FREE EUROPE/RADIO LIBERTY (Feb. 19, 2016), <https://www.rferl.org/a/us-vp-biden-commends-poroshenko-for-ukrainian-anticorruption-efforts/27561327.html> [https://perma.cc/M7ZD-MY39].

<sup>258</sup> *Ukraine's President Creates Anticorruption Court*, RADIO FREE EUROPE/RADIO LIBERTY (Apr. 11, 2019), <https://www.rferl.org/a/ukraine-s-president-poroshenko-creates-anticorruption-court/29875480.html> [https://perma.cc/FUZ7-CEZJ].

<sup>259</sup> Julian Hayda, *Ukraine's Fight Against Corruption Isn't New. It's Still Trying*, NPR (Jan. 27, 2023), <https://www.npr.org/2023/01/27/1151326940/ukraine-anticorruption-efforts> [https://perma.cc/NC5T-UXPU].

<sup>260</sup> Yuras Karmanau, *Ukraine's Anticorruption Agency Faces Strong Resistance*, AP (Dec. 11, 2017), <https://apnews.com/general-news-4ce07970f5b743a0a79e8c57ae4bd52b> [https://perma.cc/N65U-33F4].

<sup>261</sup> Hayda, *President Zelenskyy Shakes Up Ukraine's Cabinet*, *supra* note 255.

<sup>262</sup> Ilia Novikov, *Ukraine Fires 6 Deputy Defense Ministers as Heavy Fighting Continues in the East*, AP (Sept. 18, 2023), <https://apnews.com/article/ukraine-russia-deputy-defense-ministers-fired-ab8f88ff31f26ae29b35bd14406e62f3> [https://perma.cc/KPQ7-4QJN]; Victoria Butenko & Olga Voitovych, *Zelensky Says All Officials in Charge of Military Recruitment Offices Dismissed Amid Corruption Scandal*, CNN (Aug. 11, 2023), <https://www.cnn.com/2023/08/11/europe/zelensky-military-corruption-scandal-intl/index.html> [https://perma.cc/9JBH-N6ZW]; Hanna Arhrova & Yuras Karmanau, *Ukraine's Defense Minister Resigns Following Zelenskyy's Announcement of His Replacement*, PBS NEWS HOUR (Sept. 4, 2023), <https://www.pbs.org/newshour/world/ukraines-defense-minister-resigns-following-zelenskyys-announcement-of-his-replacement> [https://perma.cc/3UR6-W2BY].

progress on the six corruption measures analyzed here can be considered to lack the will to do so. The proposed model legislation at the Appendix explains how to measure these six corruption factors to identify partners that present the most risk and target efforts at reform where possible.

### III. THE UNITED STATES STRATEGY ON COUNTERING CORRUPTION: STRENGTHS, WEAKNESSES, AND GAPS

The 2021 National Strategy focused on corruption's effects on American national security and foreign policy objectives.<sup>263</sup> It sought to elevate corruption as a national security concern and address its negative impact on America's security interests. The strategy comprised five pillars, each containing several strategic objectives. This Part first summarizes the proposals in the National Strategy and then identifies weaknesses in those proposals as they relate to SSA. This Part then explains why the executive branch is not well-positioned to address those weaknesses and, finally, argues that legislative action is necessary.

#### A. *Proposals in the National Strategy*

The National Strategy established five pillars of combating corruption: “Modernizing, Coordinating, and Resourcing U.S. Government Efforts to Better Fight Corruption;” “Curbing Illicit Finance; Holding Corrupt Actors Accountable;” “Preserving and Strengthening the Multilateral Anticorruption Architecture;” and “Improving Diplomatic Engagement and Leveraging Foreign Assistance Resources to Advance Policy Goals.”<sup>264</sup> Within each of these pillars are a number of strategic objectives that support the pillar, such as enhancing the ability of foreign partners to address corruption.<sup>265</sup> The National Strategy requires a “whole-of-society” approach<sup>266</sup> to the problem, expecting coordination among numerous federal agencies, state and local governments, the domestic private sector, foreign governments, multilateral organizations, transnational NGOs, and foreign civil society groups and populations.<sup>267</sup>

The five pillars and their supporting strategic objectives can be reorganized into a three-sided approach to combating corruption categorized by where the effort is directed:

---

<sup>263</sup> NATIONAL STRATEGY, *supra* note 6, at 1.

<sup>264</sup> *Id.* at 5.

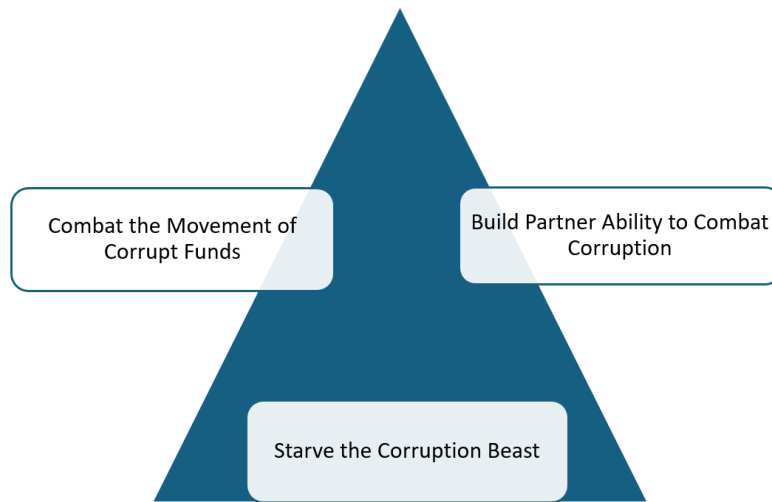
<sup>265</sup> *See id.* at 2–3.

<sup>266</sup> *Id.* at 25. According to the OECD, a “‘whole-of-society’ approach to public integrity requires companies, civil society organizations and individuals to ensure that their engagement with the public sector respects the shared ethical norms, principles and values of society.” Organisation for Economic Co-Operation and Development, *OECD Public Integrity Handbook*, at 78 (May 20, 2020), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/05/oecd-public-integrity-handbook\\_598692a5/ac8ed8e8-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/05/oecd-public-integrity-handbook_598692a5/ac8ed8e8-en.pdf) [<https://perma.cc/4KDR-9EZY>].

<sup>267</sup> *See* NATIONAL STRATEGY, *supra* note 6, at 4 (offering “a comprehensive approach for how the United States will work domestically and internationally, with governmental and non-governmental partners, to prevent, limit, and respond to corruption and related crimes.”).

- Combat the Movement of Corrupt Funds (and Corrupt Actors)
- Build Partner Ability to Combat Corruption
- Starve the Corruption Beast

Figure 2



The first leg of this triangle (Combat the Movement of Corrupt Funds) seeks to prevent the U.S. from facilitating the movement of corrupt actors and their funds. It focuses on modifying U.S. laws to reduce the attractiveness of the U.S. as a destination for kleptocrats, oligarchs, and their money.<sup>268</sup> These efforts include enhancing financial intelligence gathering and data sharing,<sup>269</sup> effectively using financial and visa sanctions against foreign bad actors to prevent them or their ill-gotten gains from coming to the United States,<sup>270</sup> and enhancing transparency in U.S. banking, real estate, and financial markets.<sup>271</sup>

The second leg of the triangle targets assistance to partners abroad, whether that be journalists and lawyers exposing corruption, multilateral agencies seeking to globalize anticorruption efforts, or foreign governments attempting to enhance their capabilities to prevent and punish corruption.<sup>272</sup> These efforts are aimed at shaping, directing, and assisting the behavior of like-minded foreign state and non-states actors so they are better able to fight corruption. These efforts include both

---

<sup>268</sup> *Id.* at 11, 18, 25.

<sup>269</sup> *Id.* at 18.

<sup>270</sup> *Id.* at 25.

<sup>271</sup> *Id.* at 11.

<sup>272</sup> *Id.* at 8, 11–14.

sharing information with foreign partners to help combat corruption<sup>273</sup> and supporting partner country's efforts to reform defense institutions.<sup>274</sup>

The base of the triangle, starving the beast, is focused on ensuring U.S. assistance does not unwittingly worsen transnational corruption. It specifically targets U.S. conduct abroad. The National Strategy stresses the importance of understanding partner countries' absorptive capacity for assistance to safeguard aid dollars, assessing the potential impact of U.S. development assistance on corruption dynamics, and mitigating the risks of exacerbating corruption through development assistance.<sup>275</sup> It also includes vetting of assistance contractors and suspension and debarment of bad actors, paired with monitoring and oversight to prevent diversion of assistance to corrupt actors.<sup>276</sup> Finally, it calls for robust enforcement of the Foreign Corrupt Practices Act to prevent U.S.-listed companies from paying bribes in foreign countries.<sup>277</sup>

The State Department's U.S. Strategy on Countering Corruption Implementation Plan ("Implementation Plan") provides guidance for how to operationalize the elements of the National Strategy with a transnational dimension.<sup>278</sup> To do so, the State Department has tasked its Bureau of Political-Military Affairs ("PM") with integrating the following considerations into security cooperation and assistance plans: assess corruption risk before starting SSA activities, including an analysis of the partner's political will to combat corruption; develop mitigation measures for corruption risks and do a cost-benefit analysis for proceeding with SSA where significant corruption risks are identified; focus on security sector governance as part of SSA programs; and enhance anticorruption training in SSA programming<sup>279</sup>

The State Department has also incorporated Defense Institution Building (DIB), into its program to counter corruption.<sup>280</sup> PM's Global Defense Reform Program "seeks to improve security sector governance and institutional capacity of select U.S. partners at the service, ministerial, and national levels."<sup>281</sup> DIB

---

<sup>273</sup> *Id.* at 11.

<sup>274</sup> *Id.* at 32.

<sup>275</sup> *Id.* at 14.

<sup>276</sup> USAID, ANTICORRUPTION POLICY, *supra* note 10, at 37.

<sup>277</sup> NATIONAL STRATEGY, *supra* note 6, at 28. Current enforcement activity of the Foreign Corrupt Practices Act (FCPA) is near a ten-year low. See STANFORD LAW SCHOOL, 2023 FCPA YEAR IN REVIEW (2023), <https://fcpa.stanford.edu/fcpac-reports/2023-fcpa-year-in-review.pdf> [<https://perma.cc/M3QU-8SGE>]. The Trump administration recently announced it would freeze enforcements of the FCPA. *Trump Freezes U.S. Law Banning Bribery of Foreign Officials*, CBS NEWS (Feb 12, 2025), <https://www.cbsnews.com/news/trump-fcpa-anti-bribery-law-executive-order/> [<https://perma.cc/W7ZY-2WPE>].

<sup>278</sup> U.S. DEP'T OF STATE, Implementation Plan, *supra* note 10, at 4–5.

<sup>279</sup> See Mira K. Resnick, *Fighting Corruption and Revitalizing Security Partnerships Worldwide*, U.S. DEP'T OF STATE (May 5, 2022), <https://2021-2025.state.gov/fighting-corruption-and-revitalizing-security-partnerships-worldwide/> [<https://perma.cc/6SGR-D4D9>].

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

incorporates high-level reforms aimed at changing the culture of institutions toward transparency and accountability while building the capability to implement these culture changes.<sup>282</sup> It does so by providing “strategic advisory support to partner nations” in areas such as: “planning, budget, and financial management,” “human resources management,” “oversight, accountability, and interagency coordination,” and “procurement and acquisitions.”<sup>283</sup> In this way, the State Department’s policy actions directly reinforce the second leg of the triangle: building partner capacity to combat corruption.

### ***B. Weaknesses in the National Strategy***

The approach intended to implement the third leg of the triable has a critical weakness. As the case studies demonstrate,<sup>284</sup> corruption can divert assistance in partner nations that lack the will to address corruption. In kleptocratic states, where the principal function of government is to enrich the ruling class, SSA can turbocharge corruption while actively undermining security objectives.<sup>285</sup> While the State Department’s PM Bureau was tasked with doing a cost-benefit analysis of proceeding with SSA in partners that present significant corruption risk, no criteria for determining when or how to cut a partner off from assistance due to corruption concerns appear to have been established.<sup>286</sup> Without such guidance, it is unclear why we should expect different results from what occurred in Afghanistan where the United States government recognized how serious the corruption threat was but was unwilling to threaten the termination of assistance as leverage to gain compliance.<sup>287</sup>

To address the problem of security sector corruption in kleptocratic states, it is necessary to replace the conventional understanding of corruption as merely an economic inefficiency<sup>288</sup> or ordinary criminal behavior.<sup>289</sup> Under the conventional approach, corruption is like a small hole in a bucket that needs to be filled. Until a reasonable patch can be located to fix the hole, the bucket will never be full without

---

<sup>282</sup> See, e.g., NATO, *NATO Building Integrity Program* (2016) [https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/2021/3/pdf/1612-BI-Policy-en.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/2021/3/pdf/1612-BI-Policy-en.pdf) [<https://perma.cc/UUH2-7UPV>].

<sup>283</sup> Resnick, *supra* note 279.

<sup>284</sup> See *supra* Part II.

<sup>285</sup> See e.g., SIGAR, *CORRUPTION IN CONFLICT*, *supra* note 4, at 26 (describing how Afghan President Karzai made fourteen police appointments, all with connections to criminal networks, which severely undermined the reform program at the Ministry of Interior and virtually undid U.S. reform efforts); see also *id.* at 50 (describing the Commission on Wartime Contracting in Iraq and Afghanistan’s 2011 report to Congress which argued that corruption sapped dollars from what otherwise might be a successful project and created huge amounts of waste).

<sup>286</sup> See Resnick, *supra* note 279.

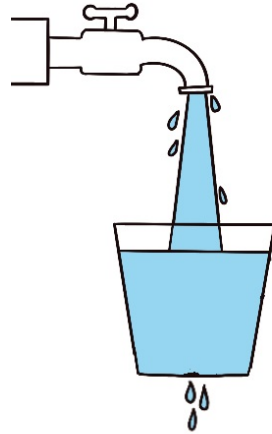
<sup>287</sup> SIGAR, *CORRUPTION IN CONFLICT*, *supra* note 4, at 68.

<sup>288</sup> Bellows, *supra* note 32, at 2.

<sup>289</sup> SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION, *WHAT WE NEED TO LEARN: LESSONS FROM TWENTY YEARS OF AFGHANISTAN RECONSTRUCTION* 73 (2021), <https://www.sigar.mil/Portals/147/Files/Reports/Lessons-Learned/SIGAR-21-46-LL.pdf> [<https://perma.cc/HX8J-WYGW>].

the continuous introduction of more water—in this case, additional resources. While some resources will be lost, the assisting state can simply increase assistance to account for the loss. In Afghanistan, where the key metrics of progress were often “how much money was spent?” and “how many projects were completed?” the incentive to continue injecting more and more money into the system was particularly strong.<sup>290</sup>

Figure 3 – a conventional view of the impact of corruption



In reality, additional resources can actively worsen the problems created by corruption by strengthening bad actors, incentivizing the harm they visit on the population, alienating ordinary society from government, and giving insurgents a powerful recruiting tool.<sup>291</sup> A vertically-integrated model of state corruption is often present in a kleptocracy like Afghanistan, where grand and petty corruption reinforce one another and the purpose of the state is to extract wealth, not to govern. In such a system, corruption is not merely an inefficient drag on economic behavior.<sup>292</sup> Rather, kleptocratic behavior should be understood as a large-scale diversion of resources and the concomitant distortion of policy.<sup>293</sup> It is *not* a problem to be overcome by simply applying more resources.

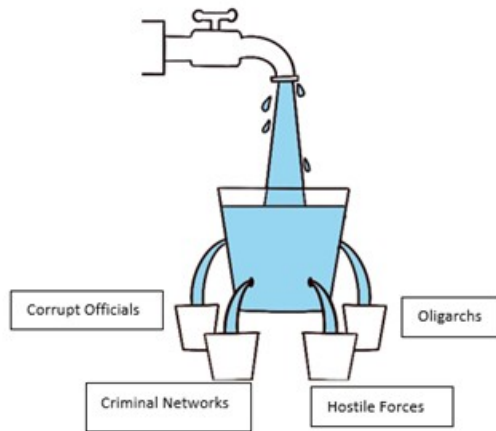
<sup>290</sup> *Id.* at 44.

<sup>291</sup> See, e.g., SIGAR, CORRUPTION IN CONFLICT *supra* note 4, at 36 (veteran diplomat Richard Holbrooke noted in 2009 that corruption provided a “huge recruiting opportunity for the Taliban.”).

<sup>292</sup> See CHAYES, THIEVES OF STATES, *supra* note 7, at 43.

<sup>293</sup> Judah, *supra* note 9, at 3, 5; see also SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 51–52 (discussing the “absorptive capacity” of Afghanistan and the spillover of over \$100 billion in reconstruction assistance to corruption and other adverse effects).

Figure 4 – kleptocratic corruption



The proposed lines of effort in SSA, discussed in both the National Strategy and the Implementation Plan, are necessary but insufficient to address corruption in this sector because there are no concrete policy proposals to differentiate between partners that lack the will to combat corruption and those that merely lack the means.<sup>294</sup> As a result, the strategy follows the inefficiency model of corruption which, as demonstrated by the case studies of Afghanistan, Iraq, and Nigeria, has not yielded positive results. Instead of ensuring that assistance does not go to bad actors, the Strategy and Implementation Plan each contemplate technical advising and training as part of a security sector reform strategy that assumes the target country has the will to fight corruption but lacks the means to do so.<sup>295</sup> This approach is predicated on an assumption that the target country intends to have an effective and “clean” government but is hampered by a lack of control, which is, in turn, exploited by a limited number of internal bad actors. The Strategy thus ignores the reality of “vertically-integrated criminal syndicates” that use governance as a front for their true business of kleptocracy.<sup>296</sup>

Treating partners that embrace corruption as though they simply need more tools to fight corruption will not work. Anticorruption measures must include ways to measure a partner’s commitment to fight corruption, with consequences for failure to do so. The current proposals in the National Strategy, such as vendor vetting and increased support for DIB (including the PM Bureau’s Global Defense Reform Program),<sup>297</sup> do not create clear, consistent, and meaningful consequences for misappropriation of security sector assistance for improper uses because they

<sup>294</sup> NATIONAL STRATEGY, *supra* note 6, at 34–38; U.S. DEP’T OF STATE, Implementation Plan, *supra* note 10, at 34–40.

<sup>295</sup> See NATIONAL STRATEGY, *supra* note 6, at 34–38; U.S. DEP’T OF STATE, Implementation Plan, *supra* note 10, at 34–40.

<sup>296</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 58–59, 148.

<sup>297</sup> Resnick, *supra* note 279.

lack enforcement mechanisms and clear standards for when assistance should be terminated.

The lack of clear consequences for failing to address corruption plague the specific implementation measures as well as the general strategy. The State Department's tasking to PM to integrate anticorruption concerns into security cooperation and assistance does not determine whether State will continue supporting a corrupt partner, but rather calls on PM to "weigh the costs and benefits of proceeding with assistance in such cases."<sup>298</sup> PM describes its efforts in this area as a "work in progress."<sup>299</sup> But the taskings to PM described above closely resemble the objectives of both U.S. Government anticorruption task forces that operated in Afghanistan beginning in 2009.<sup>300</sup> For numerous reasons, including a lack of buy-in for the mission on the part of the Intelligence Community,<sup>301</sup> active sabotage of even minor anticorruption cases by the Karzai government,<sup>302</sup> and a reluctance on the part of senior policymakers to use leverage over the Afghan government to force reform, those task forces failed to have a meaningful impact.<sup>303</sup>

### *C. Without Congressional Action, the Executive Branch Is Unlikely to Fill the Void*

The National Strategy tasked Executive Branch agencies with a number of responsibilities to carry forward anticorruption.<sup>304</sup> There are, however, several major challenges to an agency-led approach to solving this problem. First, all elements of national security decision-making may wrongly assume worst case scenarios if the U.S. government were to cut off assistance to a bad actor. Executive Branch agencies may also downplay the evidence that systemic corruption could make it extremely difficult for the United States to achieve its U.S. strategic objectives.<sup>305</sup> Second, senior Executive Branch officials are often under significant pressure to demonstrate progress on key national security deliverables. This will often result in turning focus toward outcomes that are measurable or more easily achieved. If a partner shows no willingness to make progress on anticorruption metrics, the issue can often fall off senior leadership's list of priorities in favor of objectives that seem more obtainable.<sup>306</sup>

---

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 137; SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 94–97 (listing objectives including improving audit capacity to prevent corruption as well as training and mentoring judges and prosecutors handling corruption cases).

<sup>301</sup> See CHAYES, THIEVES OF STATES, *supra* note 7, at 51–52.

<sup>302</sup> See SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 58; CHAYES, THIEVES OF STATES, *supra* note 7, at 55–57.

<sup>303</sup> See SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 67–69.

<sup>304</sup> See NATIONAL STRATEGY, *supra* note 6, at 4–5.

<sup>305</sup> See e.g., SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 19–20.

<sup>306</sup> *Id.* at 53–54.

The case studies strongly suggest Executive Branch agencies have not been effective at combating corruption in partner security forces. Neither State nor DoD has a consistent framework for identifying objective corruption risks through vetting.<sup>307</sup> Neither has demonstrated an institutional commitment to prioritizing anticorruption efforts.<sup>308</sup> Other organs of national security, including the Intelligence Community (“IC”), have a history of actively *undermining* anticorruption efforts.<sup>309</sup> The IC, which typically privileges access and influence with key foreign interlocutors over clean governance, may financially support and protect bad actors in order to maintain access to valuable sources of intelligence despite interagency decisions to cut them off.<sup>310</sup>

Additionally, ingrained DoD preference for action over inaction can create improper pressure to continue with cooperation despite evidence of corruption. This preference is known as “bias for action” in military leadership doctrine<sup>311</sup> and is perhaps best captured in the quote attributed to General George Patton: “A good plan... executed now is better than a perfect plan executed next week.”<sup>312</sup> Vetting efforts that slow down or limit cooperation with partners are thus likely to be

---

<sup>307</sup> Vetting of partner country recipients of Security Sector Assistance is currently limited to human rights concerns pursuant to the Leahy Amendments, which do not address corruption. *See* 10 U.S.C. § 362; 22 U.S.C. § 2378d.

<sup>308</sup> State’s Office of the Coordinator for Global Anticorruption was not established until 2022, following adoption of the National Strategy. Before the establishment of that office, State lacked a high-level official dedicated solely to the promotion of anticorruption efforts. DoD has failed to monitor weapons delivered to Ukraine. DoD may suffer from unique challenges in this regard as it had not audited itself until 2018, the last federal department or agency to submit to an audit. Since then, DoD has failed every single yearly audit performed. Noah Robertson, *Pentagon fails sixth audit, with number of passing grades stagnant*, DEFENSE NEWS (Nov. 15, 2023), <https://www.defensenews.com/pentagon/2023/11/16/pentagon-fails-sixth-audit-with-number-of-passing-grades-stagnant/> [<https://perma.cc/Z25Z-B8MJ>].

<sup>309</sup> *See* CHAYES, THIEVES OF STATES, *supra* note 7, at 51–52; SIGAR, CORRUPTION IN CONFLICT *supra* note 4, at 60–61.

<sup>310</sup> *See* SIGAR, CORRUPTION IN CONFLICT *supra* note 4, at 60–61; CHAYES, THIEVES OF STATES, *supra* note 7, at 51–52.

<sup>311</sup> *See* Liz Benecchi, Air Force Kessel Run, *Culture at our Core* (Nov. 22, 2022), <https://kesselrun.af.mil/news/KR-Culture-at-Our-Core.html> [<https://perma.cc/D9BM-YMUJ>]; Col. Scott Blanchard, *A Fighting Stance: Preparedness Proves Key for Indo-Pacific Forces*, ASS’N OF THE U.S. ARMY (Jan. 2, 2024), <https://www.ansa.org/articles/fighting-stance-preparedness-proves-key-indo-pacific-forces> [<https://perma.cc/7NE5-KWY4>]; Maj. Timothy Trimailo, *Epic Fail: Why Leaders Must Fail to Ultimately Succeed*, MIL. REV., Nov–Dec. 2017, <https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/November-December-2017/Epic-Fail-Why-Leaders-Must-Fail-to-Ultimately-Succeed/> [<https://perma.cc/K9C9-3YCB>]; Capt. David Tyler, *Make Morale Our First Priority*, PROCEEDINGS, Nov. 2016, <https://www.usni.org/magazines/proceedings/2016/november/leadership-forum-make-morale-our-first-priority> [<https://perma.cc/9ELH-GUMQ>]; Memorandum from Dean Peters on NAVAIR Commander’s Intent to NAVAIR Teammates, (Aug. 2018), [https://www.navair.navy.mil/sites/g/files/jejdrs551/files/2018-12/NAVAIR\\_Cmdrs\\_Intent\\_final.pdf](https://www.navair.navy.mil/sites/g/files/jejdrs551/files/2018-12/NAVAIR_Cmdrs_Intent_final.pdf) [<https://perma.cc/VP7C-2E77>].

<sup>312</sup> U.S. MARINE CORPS, *supra* note 22, at 4–18.

resisted by the military, as has been the case with vetting in the human rights context.<sup>313</sup>

Moreover, military doctrine treats “speed [as] a weapon.”<sup>314</sup> Any anticorruption policies that could slow down the accomplishment of objectives like delivering assistance or training up partner forces run counter to this philosophy.<sup>315</sup> Complicating this matter further is an ends and means mismatch between an absolutist goal (destruction of a terrorist force) with voluntarily adopted constraints on U.S. forces’ conduct.<sup>316</sup> By telling our forces they cannot assist partner forces because of corruption fears, we are taking away a significant tool that would normally be used to achieve the maximalist policy objective.

Bias for action, combined with speed, boldness, and a willingness to tolerate mistakes to foster initiative,<sup>317</sup> create what can be referred to as a “kinetic theory of problem solving,” reflecting military decision-making in a dynamic operational environment. A thorough, methodical process to reduce the impact of corruption on our operational objectives is unlikely to spring up organically in this environment. Nor is it clear that within the Executive Branch, a preference for elevating anticorruption goals would be sufficient to carve out an exception to this form of military decision-making, which is inculcated through training and doctrine.<sup>318</sup> Indeed, anticorruption expert and retired Air Force Lieutenant Colonel Jodi Vittori notes that the military has thus far failed to achieve already numerous requirements stemming from the Arms Export Control Act and the Global Fragility Act of 2019 to prevent the diversion of security resources to corrupt and destabilizing purposes.<sup>319</sup> Enhancing DoD’s anticorruption efforts will require an increase in personnel and resources focused on this issue, as well as a clear commitment to making anticorruption a priority.<sup>320</sup>

This review of military doctrine and its potential effects on adopting anticorruption as a strategic priority is not meant to absolve the State Department of its own failings. Unlike DoD’s bias for action, State has developed a reputation

---

<sup>313</sup> Eric Schmitt, *Military Says Law Barring U.S. Aid to Rights Violators Hurts Training Mission*, N.Y. TIMES (June 20, 2013), <https://www.nytimes.com/2013/06/21/us/politics/military-says-law-barring-us-aid-to-rights-violators-hurts-training-mission.html> [<https://perma.cc/FS8B-U7RX>].

<sup>314</sup> See *id.* at 40.

<sup>315</sup> See, e.g., CARL VON CLAUSEWITZ, *ON WAR* 17 (Oxford Classics 2007) (1976) (describing the concept of “friction” in military endeavors and the importance of eliminating it).

<sup>316</sup> See *id.* at 20–21; U.S. MARINE CORPS, *supra* note 22, at 2–4 (“When the policy motive of war is extreme, such as the destruction of an enemy government, then war’s natural military tendency toward destruction will coincide with the political aim, and there will tend to be few political restrictions on the military conduct of war.”); *id.* at 2–5 (“At the highest level, war involves the use of all the elements of power that one political group can bring to bear against another. These include, for example, economic, diplomatic, military, and psychological forces.”).

<sup>317</sup> See U.S. MARINE CORPS, *supra* note 22, at 2–19–2–23.

<sup>318</sup> *Id.* at 1–5–1–6.

<sup>319</sup> Interview with Jodi Vittori, Professor of the Practice and Concentration Co-Chair for Global Politics and Security, Georgetown University (July 15, 2024).

<sup>320</sup> *Id.*

for the sort of *inaction* that could jeopardize the integration of new strategic priorities.<sup>321</sup> Additionally, the placement of anticorruption concerns into a singular office outside of State's powerful regional bureaus may just as easily keep anticorruption a niche policy concern, rather than mainstreaming it among key decision makers.<sup>322</sup>

Furthermore, recent Supreme Court decisions advancing the “Major Questions Doctrine,” including *West Virginia v. EPA*<sup>323</sup> and *Biden v. Nebraska*,<sup>324</sup> as well as the overruling of *Chevron* in *Loper Bright Enterprises v. Raimondo*<sup>325</sup> mean that the courts may well strike down any effort by federal agencies to implement Leahy-Style Vetting for corruption absent a clear congressional mandate through legislation. While it is unclear whether a “foreign affairs exception” to the Major Questions Doctrine exists,<sup>326</sup> if the Major Questions Doctrine would be applied to Congressional appropriations (as opposed to authorizations),<sup>327</sup> or if the decision to withhold Congressionally appropriated military assistance even constitutes a “major question,”<sup>328</sup> Executive Branch agencies should be cautious about creating new requirements that could prevent spending money Congress has appropriated.<sup>329</sup>

Nothing in the existing Leahy Laws directs the State Department or DoD to consider corruption when determining eligibility for receiving security assistance.<sup>330</sup> Corruption has not generally been considered a “gross violation[] of

---

<sup>321</sup> See William Burns, *Ten Parting Thoughts for America's Diplomats*, FOREIGN POL'Y (Oct. 23, 2014), <https://foreignpolicy.com/2014/10/23/10-parting-thoughts-for-americas-diplomats/> [<https://perma.cc/D8MK-WUQC>] (Deputy Secretary Burns describes the Department's tendency to “admire the problem” rather than attempt to solve it); see also UZRA ZEYA & JON FINER, COUNCIL ON FOREIGN RELATIONS, REVITALIZING THE STATE DEPARTMENT AND AMERICAN DIPLOMACY 18–21 (2020), [https://cdn.cfr.org/sites/default/files/report\\_pdf/csr89\\_final.pdf?http://perma.cc/46TY-XMAN](https://cdn.cfr.org/sites/default/files/report_pdf/csr89_final.pdf?http://perma.cc/46TY-XMAN)].

<sup>322</sup> Ivo H. Daalder & James M. Lindsay, *How to Revitalize a Dysfunctional State Department*, BROOKINGS INST. (Mar. 1, 2001), <https://www.brookings.edu/articles/how-to-revitalize-a-dysfunctional-state-department/> [<https://perma.cc/L4WE-JQTX>].

<sup>323</sup> 597 U.S. 697 (2022).

<sup>324</sup> 600 U.S. 477 (2023).

<sup>325</sup> 603 U.S. 369, 412 (2024).

<sup>326</sup> See generally Meyer & Sitaraman, *supra* note 25; see also Bradley & Goldsmith, *supra* note 25.

<sup>327</sup> *West Virginia*, 597 U.S. at 723 (allowing Executive Branch agencies to make decisions with major political or economic consequences only when there is a “clear congressional authorization.”).

<sup>328</sup> Jody Freeman & Matthew C. Stephenson, *The Anti-Democratic Major Questions Doctrine*, 2022 SUP. CT. REV. 1, 27 (2022) (“In short, the Court has failed to provide anything resembling reasonably definite criteria for distinguishing “major” questions from ordinary questions, and the factors it has offered are highly subjective and inconsistently applied.”).

<sup>329</sup> In addition to concerns that creating new requirements may be inconsistent with the Supreme Court's interpretations on agency authority, it may also run the risk of violating the Impoundment Control Act. 2 U.S.C. §§ 683(a), 684(a).

<sup>330</sup> 10 U.S.C. § 362; 22 U.S.C. § 2378d.

internationally recognized human rights”<sup>331</sup> and thus agencies may not have the power to consider it under the existing Leahy Laws since it is unlikely the courts will conclude that Congress intended this term to encompass corruption. Nor are courts likely to defer to an agency interpretation of the law that identifies corruption as a “gross violation[] of internationally recognized human rights.” No other portions of the Foreign Assistance Act or the Arms Export Control Act can be read to explicitly grant the relevant agencies broad power to determine whether to provide assistance on the basis of anticorruption efforts.<sup>332</sup> Even the tendency of the Court to grant more leeway to the Executive Branch on matters of foreign affairs<sup>333</sup> is unlikely to justify unilateral executive action here, particularly in cases where Congress has appropriated specific funds for assistance to foreign militaries.<sup>334</sup> Further, efforts by the Executive to withhold specifically appropriated funding based, not tied to any authority delegated by Congress, could run afoul of the Impoundment Control Act, which prevents the President from refusing to spend monies appropriated by Congress unless Congress rescinds those funds upon presidential request.<sup>335</sup> Complying with the Impoundment Control Act to withhold aid on the basis of corruption is likely to be cumbersome and to produce inconsistent results, given that each decision will be subject to a congressional impoundment review process whose results ultimately bind the Executive.<sup>336</sup> Any effort by Executive Branch agencies to condition aid on meeting anticorruption benchmarks without an explicit legislative mandate remains vulnerable to challenges that it exceeds the executive branch’s authority.

In addition to avoiding questions of Executive Branch overreach, Congressional action has the added benefit that it can make anticorruption a policy priority despite changes in administrations. A future president may choose to deprioritize anticorruption efforts and deploy scarce resources elsewhere for a variety of reasons, such as a preference for an approach to foreign policy with fewer constraints. Without legislative action directing the Executive Branch to take specific measures to combat corruption in SSA, there is no guarantee that future administrations will make anticorruption a priority.

#### IV. PROPOSAL FOR CONGRESSIONAL ACTION: LEAHY-STYLE VETTING

---

<sup>331</sup> See 22 U.S.C. § 2304.

<sup>332</sup> See 22 U.S.C. § 2304 et seq; 22 U.S.C. § 2751 et seq. The Freedom Support Act of 1992 allows the Executive to consider corruption in providing assistance to former Soviet Republics, but not to other parts of the world. 22 U.S.C. § 5801 et seq.

<sup>333</sup> See *Zivotofsky v. Kerry*, 576 U.S. 1 (2015); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

<sup>334</sup> See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring) (analyzing presidential power to be at its lowest ebb when it is at odds with the expressed will of Congress).

<sup>335</sup> 2 U.S.C. §§ 683(a), 684(a).

<sup>336</sup> U.S. GOV’T ACCOUNTABILITY OFF., GAO-06-251, THE IMPOUNDMENT CONTROL ACT OF 1974 1 (June 29, 1978) (statement of Paul G. Dembling before the Budget Process Task Force of the House of Representative’s Committee on the Budget).

Unit-level vetting of partner security forces for corruption, coupled with support for DIB, can better operationalize a commitment to countering foreign security sector corruption than the current approach.<sup>337</sup> Vetting of this type should be modeled on Leahy Vetting, a Congressionally-mandated process designed to prevent the provision of military assistance to foreign units that have been credibly accused of gross violations of human rights.<sup>338</sup> Leahy Vetting serves the dual purpose of both preventing the diversion of U.S. assistance to engage in human rights violations and encouraging partner countries to make the reforms necessary to prevent their forces from engaging in human rights violations. Such rehabilitation renders those units eligible to receive U.S. assistance again.<sup>339</sup> In advancing these dual purposes, Leahy Vetting creates incentives and assistance to help those partners with the will to reform their forces and prevent human rights abuses, while blocking security assistance to those nations that do not have the will to accomplish that goal.<sup>340</sup> A vetting program to identify military units exhibiting signs of corruption and excluding them from eligibility for assistance could operate to similar effect.

### A. *How Leahy Vetting Works*

The U.S. disburses foreign military assistance through a complicated process involving both the State Department and DoD. Many programs are within the State Department's authorities but require both State and DoD agreement before the transfer of equipment or training. Some assistance programs reside entirely within the Department of Defense's authorities.<sup>341</sup>

Passed in 1997, the Leahy Amendments apply to all forms of security assistance provided pursuant to the Foreign Assistance Act ("FAA") of 1961<sup>342</sup> and the Arms

<sup>337</sup> See Bellows, *supra* note 32, at 1; CHAYES, THIEVES OF STATES, *supra* note 7, at 196.

<sup>338</sup> 10 U.S.C. § 362; 22 U.S.C. § 2378d.

<sup>339</sup> See Leahy, *supra* note 29.

<sup>340</sup> Leahy Vetting is undoubtedly not a perfect tool. Until 2014, Leahy Vetting for DoD-funded programs only applied to training, not arms or equipment, which exempted most aid to Afghanistan from vetting. Even with new requirements to apply Leahy Vetting to most Afghanistan assistance, Congress created a new "out" for the DoD in the form of a "notwithstanding" clause that kept Afghan units eligible for assistance despite Leahy prohibitions. Erica Gaston, *The Leahy Law and Human Rights Accountability in Afghanistan: Too little, too late or a model for the future?*, AFGHANISTAN ANALYSTS NETWORK (Mar. 5, 2017), <https://www.afghanistan-analysts.org/en/reports/international-engagement/the-leahy-law-and-human-rights-accountability-in-afghanistan-too-little-too-late-or-a-model-for-the-future/> [<https://perma.cc/LF5T-7DLZ>].

<sup>341</sup> For examples of programs within each of State and DoD's authorities, see CONG. RSCH. SERV., R45901, U.S. SECURITY ASSISTANCE AND SECURITY COOPERATION PROGRAMS: OVERVIEW OF FUNDING TRENDS, App'x. A, B (2018), <https://crsreports.congress.gov/product/pdf/R/R45091> [<https://perma.cc/6KE9-BYH9>].

<sup>342</sup> Security Assistance under the FAA consists of: military assistance (Part II); economic support fund assistance (Part IV); military education and training (Part V); peacekeeping operations assistance (Part VI); antiterrorism assistance (Part VIII); sales of defense articles or services; extensions of credits (including participations in credits); and guaranties of loans under the Arms Export Control Act; and any license in effect with respect to the export to or for the armed forces,

Export Control Act,<sup>343</sup> as well as all training, equipment, or other assistance provided through DoD appropriations.<sup>344</sup> There are two versions of the Leahy Amendments, one for State and the other for DoD.<sup>345</sup> The wording of the two amendments differs<sup>346</sup> but both prohibit the transfer of security assistance to any foreign “unit” for which there is “credible information” that the unit engaged in “gross violations of human rights.” “Unit,” “credible information,” and “gross violations of human rights,” are not explicitly defined in the Amendments, but the State Department has developed working definitions of each of these terms.<sup>347</sup>

The State Department bears most of the responsibility for implementing the Leahy Laws, including vetting the units, making determinations of whether a unit is ineligible for assistance, informing the partner nation of ineligibilities (to the extent possible), and assisting partner nations with remediation (to the maximum extent practicable).<sup>348</sup> Typically, the Department of Defense identifies potential recipients of assistance for the State Department. State then vets all potential

---

police, intelligence, or other internal security forces of a foreign country regarding defense articles or defense services controlled by the Armed Export Control Act (AECA) or the Commerce Control List. *See* 22 U.S.C. § 2304.

<sup>343</sup> The AECA places limitations on the sale and financing of arms to foreign countries to require that such transfer be consistent with U.S. foreign policy aims. 22 U.S.C. § 2751.

<sup>344</sup> CONG. RSCH. SERV., R43361, “LEAHY LAW” HUMAN RIGHTS PROVISIONS AND SECURITY ASSISTANCE: ISSUE OVERVIEW 1 (2014), <https://sgp.fas.org/crs/row/R43361.pdf> [<https://perma.cc/U44L-NQZL>] [hereinafter CRS Leahy Law Report].

<sup>345</sup> 22 U.S.C. § 2378d; 10 U.S.C. § 362.

<sup>346</sup> The FAA version, which governs the State Department, reads in part: “No assistance shall be furnished under this chapter or the Arms Export Control Act [22 U.S.C. § 2751 et seq.] to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.” 22 U.S.C. § 2378d(a). The corresponding portion governing the DoD reads: “Of the amounts made available to the Department of Defense, none may be used for any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights... The Secretary of Defense shall, in consultation with the Secretary of State, ensure that prior to a decision to provide any training, equipment, or other assistance to a unit of a foreign security force full consideration is given to any credible information available to the Department of State relating to human rights violations by such unit.” 10 U.S.C. § 362.

<sup>347</sup> State relies on another portion of the FAA to define “gross violations of human rights” as “torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of a person.” 22 U.S.C. § 2304. “Credible information” means information that is “deserving of confidence as a basis for decision-making”; it does not need to be admissible in a court of law. U.S. DEPT. OF STATE, INTRODUCTION TO LEAHY VETTING POLICY 13, [https://www.state.gov/wp-content/uploads/2020/06/PP410\\_INVEST\\_v2.1.pdf](https://www.state.gov/wp-content/uploads/2020/06/PP410_INVEST_v2.1.pdf) [<https://perma.cc/8ZNA-6ZFY>]. Credible information can come from NGOs or press reports and is ideally corroborated by multiple sources (although that is not necessary if the quality of the source is sufficiently credible). *See id.* State treats a “unit” for purposes of vetting “as the smallest operational group in the field that has been implicated in the reported human rights violation.” *Id.* at 15. Examples of the smallest units that can be considered an “operational group in the field” are: a battalion (Army), a squadron (Air Force), a ship or boat (Navy), and a sub-unit, SVU, or squad (police forces). *Id.*

<sup>348</sup> 22 U.S.C. § 2378d.

recipients (regardless of whether the assistance is being provided under State or DoD authorities), and provides the results of that process to DoD.<sup>349</sup> Vetting is accomplished through a combination of investigation and review of information by personnel at U.S. Embassies and Consulates and additional screening and investigation led by the State Department's Bureau for Democracy, Human Rights, and Labor (DRL) in Washington, D.C.<sup>350</sup> Third parties are able to submit reports of alleged human rights abuses (including anonymously) through a State Department website called the Human Rights Reporting Gateway.<sup>351</sup>

Importantly, by vetting on a unit-by-unit basis, the Leahy Amendments bar cooperation with only those units credibly accused of gross human rights violations rather than the entire partner nation.<sup>352</sup> Partners with systemic levels of human rights abuses, however, may find that all or almost all of their security forces are barred from assistance.<sup>353</sup> The bar on cooperation with a unit can be lifted if the partner nation takes the necessary remedial steps, such as removing commanders who order or tolerate human rights abuses as well as charging and trying those credibly accused of abuse.<sup>354</sup> The State Department is in fact directed by the FAA to notify the recipient government (to the extent possible) of the basis for ineligibility and to offer assistance to that government in accomplishing remediation.<sup>355</sup>

By limiting the punishment to those who are culpable for abuse and giving partner countries the opportunity to re-establish a unit's eligibility, the Leahy Amendments incentivize partner nations to prevent, detect, and punish human rights abuses.<sup>356</sup> The result is a vetting system that not only prevents U.S. assistance from going to gross violators of human rights, but also promotes and encourages the partner nation to remediate those human rights concerns so that units can regain eligibility. States that are willing to reform their human rights practices can gain access to U.S. funds and equipment. Those that are not, do not.

### *B. Examples of Successes in Leahy Vetting*

The evidence demonstrates the Leahy Laws are effective in both ending cooperation with bad actors and encouraging those actors to reform. The Leahy Amendments were instrumental in helping end thousands of extrajudicial

---

<sup>349</sup> U.S. DEPT. OF STATE, INTRODUCTION TO LEAHY VETTING POLICY, *supra* note 347, at 7.

<sup>350</sup> CRS Leahy Law Report, *supra* note 344, at 7.

<sup>351</sup> *Human Rights Reporting Gateway*, U.S. DEPT. OF STATE, [https://hrshr.state.gov/\[https://perma.cc/5MBZ-JRR5\]](https://hrshr.state.gov/[https://perma.cc/5MBZ-JRR5]).

<sup>352</sup> See CRS Leahy Law Report, *supra* note 344, at 3.

<sup>353</sup> See *infra* Part IV.B., discussing the examples of Colombia and Honduras.

<sup>354</sup> CRS Leahy Law Report, *supra* note 344, at 5.

<sup>355</sup> *Id.* at 12; 22 U.S.C. § 2370, 22 U.S.C. § 2378d.

<sup>356</sup> Leahy, *supra* note 29.

executions by the Colombian Army.<sup>357</sup> U.S. Embassy Bogota reportedly conducted vetting on an average of 30,000 and 35,000 individuals and 1,400 security force units a year.<sup>358</sup> At first, few Colombian military units could pass vetting, but as of 2014 many units were eligible for U.S. support, thanks to improved cooperation between the U.S. and Colombian governments in the vetting process, better adherence to human rights laws by the Colombian military and police, and greater accountability for Colombian officials.<sup>359</sup> And while human rights issues still exist, the State Department determined that vetting made a clear contribution to the improvements in Colombia.<sup>360</sup>

Another instance of cutting off aid to partner forces accused of abuse occurred in 1999, when the U.S. government imposed restrictions on assistance to the Indonesian Special Forces unit, Kopassus, due to allegations of human rights abuses in East Timor.<sup>361</sup> Indonesia removed the abusive commanders, implemented human rights training with the ICRC, and punished unit members for subsequent wrongdoing.<sup>362</sup> In 2019, the Trump administration announced it would resume training Kopassus, beginning with non-lethal training focused on combat-medical skills.<sup>363</sup>

Leahy Vetting and its threat of revoking assistance appears to impact recipient states' willingness to impose accountability on bad actors as well. In 2011, the DoD resumed military aid after a Guatemalan court convicted four members of the Kabiles, a Special Forces unit in the Guatemalan army, of killing civilians in the Dos Erres massacre of 1982.<sup>364</sup> In Honduras, when it was revealed in 2012 that Honduran national director of police, Juan Carlos Bonilla, had ordered extrajudicial killings a decade earlier, he resigned his position.<sup>365</sup> His resignation was attributed to the fear that the United States would be forced to cut off all security assistance to the Honduran police.<sup>366</sup> Particularly in Latin America, human rights groups and other non-governmental actors share information about the Leahy Amendments to help ensure those aware of human rights abuses can document and report them to the State Department, increasing the information available to the U.S. government in vetting candidates.<sup>367</sup> Third-parties' willingness to provide information into the

---

<sup>357</sup> Lisa Haugaard, *The Law That Helps the U.S. Stop Heinous Crimes by Foreign Militaries*, OPEN SOC'Y FOUNDATIONS (May 22, 2015), <https://www.opensocietyfoundations.org/voices/law-helps-us-stop-heinous-crimes-foreign-militaries> [<https://perma.cc/A7H4-Q6GQ>].

<sup>358</sup> CRS Leahy Law Report, *supra* note 344, at 15.

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

<sup>361</sup> See John McBeth, *Abusive Indonesian Unit Back in America's Good Graces*, ASIA TIMES (June 14, 2019), <https://asiatimes.com/2019/06/abusive-indonesian-unit-back-in-americas-good-graces/> [<https://perma.cc/N79G-WTQR>].

<sup>362</sup> See *id.*

<sup>363</sup> See *id.*

<sup>364</sup> Haugaard, *supra* note 357.

<sup>365</sup> *Id.*

<sup>366</sup> *Id.*

<sup>367</sup> See generally SECURITY ASSISTANCE MONITOR, APPLYING THE LEAHY LAW TO U.S. MILITARY AND POLICE AID (2014) [hereinafter SAM Guide].

vetting process reinforces the incentive for states to hold their personnel accountable.

### C. *Why Leahy Vetting Is the Right Model*

There are four main reasons to implement Leahy-style vetting to anticorruption efforts: (1) the relationship between corruption and gross human rights violations; (2) the targeted rather than blanket approach to eligibility; (3) the incentives provided to remediate bad conduct; and (4) Leahy Amendments establish legal requirements, not mere messaging, which enhance the consistency of U.S. government decision making.

First, there is growing international consensus that human rights and serious corruption are inextricably linked.<sup>368</sup> In 2021, the UN General Assembly adopted a political declaration against corruption, recognizing its effects on access to basic government services and its role in facilitating crime.<sup>369</sup> The link between human rights abuses and corruption in the security sector can be partly attributed to the fact that vertically-integrated criminal syndicates will likely select for security personnel comfortable engaging in illegal behavior and violating the rights of others.<sup>370</sup> Additionally, in contested spaces where different organizations are fighting for control of the state and its resources, those who are willing to use extreme violence to protect their own access to public resources for corrupt purposes are likely to prevail.<sup>371</sup>

The case studies included numerous instances in which corrupt security forces engaged in serious human rights abuses. In Afghanistan, Iraq, and Nigeria, security forces ran violent protection rackets and used illegal checkpoints to extort bribes from the public. Those who failed to pay were often subjected to serious rights violations, including unlawful detention, beatings, torture, sexual assault, and even

---

<sup>368</sup> E.g., *Fighting Corruption Globally: The Link with Human Rights*, EUR. PARL. (May 2021), [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690625/EPRS\\_ATA\(2021\)690625\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690625/EPRS_ATA(2021)690625_EN.pdf) [<https://perma.cc/JAF7-NALA>]; CTR. FOR CIV. & POL. RTS., IMPROVING THE HUMAN RIGHTS DIMENSION OF THE FIGHT AGAINST CORRUPTION: HOW UN TREATY BODIES ADDRESS THE ISSUE OF CORRUPTION, [https://ccprcentre.org/files/media/CCPR\\_Improving\\_the\\_Human\\_Rights\\_Dimension\\_of\\_the\\_Fight\\_Against\\_Corruption\\_FINAL.pdf](https://ccprcentre.org/files/media/CCPR_Improving_the_Human_Rights_Dimension_of_the_Fight_Against_Corruption_FINAL.pdf) [<https://perma.cc/9RXA-EHSW>]; Transparency Int'l Def. & Sec., *The Common Denominator: How Corruption In The Security Sector Fuels Insecurity In West Africa* (Feb. 25, 2021), [https://ti-defence.org/wp-content/uploads/2021/02/SSR\\_in\\_WA\\_ENG\\_Policy\\_Paper\\_v1.2.pdf](https://ti-defence.org/wp-content/uploads/2021/02/SSR_in_WA_ENG_Policy_Paper_v1.2.pdf) [<https://perma.cc/ZFH7-49ZE>]; Joanna Drewert & Kaustuv Banerjee, *Linking Human Rights And Anticorruption Compliance*, U.N. GLOBAL COMPACT (2016), [https://d306pr3pise04h.cloudfront.net/docs/issues\\_doc%2Fhuman\\_rights%2FHuman\\_Rights\\_and\\_Anti\\_Corruption\\_Compliance+.pdf](https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fhuman_rights%2FHuman_Rights_and_Anti_Corruption_Compliance+.pdf) [<https://perma.cc/6TXF-GVJW>].

<sup>369</sup> G.A. Res. A/S-32/L.1 (May 28, 2021), <https://baselgovernance.org/sites/default/files/2021-06/UNGASS%20Corruption%202021%20Political%20Declaration.pdf> [<https://perma.cc/AHY8-HHH3>].

<sup>370</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 62–63.

<sup>371</sup> ELITE CAPTURE, *supra* note 18, at 21, 26.

extrajudicial killings.<sup>372</sup> In Ukraine before the collapse of Yanukovich's regime, corrupt security officers operated with impunity.<sup>373</sup> During the EuroMaidan protests, security forces killed over one hundred civilian protesters.<sup>374</sup> Additionally, states use security forces to target and abuse journalists and activists who report on governmental corruption.<sup>375</sup>

These connections between serious corruption and gross violations of human rights could create synergies between efforts to vet potential partner forces for both issues. Indicators of serious human rights abuses could signal an increased risk of corruption and vice versa, and units that have previously been banned for human rights abuses may warrant closer scrutiny for corruption concerns. It will also be more efficient to address the corruption risk in security assistance using an already existing vetting mechanism and adding new criteria for review, as opposed to creating a new system to attempt to vet partner forces. Adding corruption as a risk to vet against could reinforce our efforts to prevent aiding human rights abusers as well. The U.S. government should take advantage of the demonstrated efficacy of Leahy vetting's stick and carrot approach of withholding aid from bad actors, but restoring it to those who remediate.

Second, as described above, Leahy Vetting bars assistance to only those units credibly accused of gross violations of human rights, preventing an "all or nothing" approach that could more significantly and unnecessarily impede U.S. security objectives. The history of Leahy Vetting demonstrates that it is normally individual units, not entire partner country militaries that are barred from receiving assistance.<sup>376</sup> Units that have done nothing wrong are not punished and can continue to benefit from security cooperation. U.S. security efforts that require partner cooperation can thus be directed to "clean" units.

In the corruption context, it may be necessary, however, to define "unit" differently based on the different types of concerns. While the State Department defines "unit" for Leahy Vetting to be the smallest operational element of military forces capable of acting independently in the field (usually a battalion for ground forces),<sup>377</sup> for the purposes of corruption, this may be too low because units at that level may not have responsibility for their own equipment procurement or inventories and may not have control over the assignment of personnel to them.<sup>378</sup> If these functions are performed at the brigade level, evidence of corruption at the

---

<sup>372</sup> HUMAN RIGHTS WATCH, *supra* note 4, at 26–27; ELITE CAPTURE, *supra* note 18, at 40.

<sup>373</sup> Chayes, *How Corruption Guts Militaries*, *supra* note 4.

<sup>374</sup> *Id.*

<sup>375</sup> U.S. DEPT. OF STATE, AFGHANISTAN 2020 HUMAN RIGHTS REPORT 20, <https://www.state.gov/wp-content/uploads/2021/03/AFGHANISTAN-2020-HUMAN-RIGHTS-REPORT.pdf> [<https://perma.cc/2TDR-CS5F>].

<sup>376</sup> CRS Leahy Law Report, *supra* note 344, at 12 (finding that denials of assistance occur in about 1% of vetted cases, with suspensions occurring in 9% of cases, often due to a need for more information).

<sup>377</sup> U.S. DEPT. OF STATE, INTRODUCTION TO LEAHY VETTING POLICY, *supra* note 347, at 15.

<sup>378</sup> Interview with Jodi Vittori, *supra* note 319.

battalion level, for example, may only be a symptom of higher-level corruption the battalion cannot control.

Third, because units can be rehabilitated upon a showing of appropriate remediation, Leahy Vetting creates powerful incentives for reform. Nations can restore a unit to eligibility to receive foreign assistance through actions such as the removal of identified abusers, removal of commanders who tolerate or encourage abuse, and trial of those credibly accused of abuse. And the Leahy Laws are designed to assist partners in accomplishing those remediation tasks.<sup>379</sup>

For governments with the will to address a problem, but which may lack the means to do so, this provision calling for the supplying of information and technical assistance (such as training for investigators, prosecutors, and judges). The examples provided above from Colombia and Honduras demonstrate the effectiveness of the Leahy Amendments' provisions.<sup>380</sup> While this incentive structure is unlikely to impact the decision making of kleptocratic governments in the corruption context, this should be considered a feature, not a bug; a kleptocratic state's failure to address corruption is a strong indicator of a lack of will to address the problem and should lead the U.S. government to assess the risks of continuing to cooperate with the regime. Ideally, no security assistance should be provided to kleptocratic states because of the risks they pose to U.S. security interests. At the very least, decision makers at the highest level should have to sign off on any waivers to provide security assistance to such regimes with full knowledge of the risks and options for mitigating those risks to the extent possible. Waivers to provide assistance to such regimes should be clearly limited and repeated usage of such waivers should trigger a requirement of congressional authorization for future assistance.

Fourth, the Leahy Amendments create legal obligations, not policy suggestions. The Leahy Amendments evolved from Section 2304 of the Foreign Assistance Act of 1961, which was enacted in an effort to ensure that human rights would be a focus of foreign policy.<sup>381</sup> The 1973 law prohibited any security assistance to governments that engaged "in a consistent pattern of gross violations of internationally recognized human rights."<sup>382</sup> Section 2304 was Congress's first legislation on the subject of human rights and security assistance.<sup>383</sup> From the beginning, the legislation was openly disregarded by the Nixon and Ford administrations.<sup>384</sup>

---

<sup>379</sup> 22 U.S.C. § 2378d(c)(2).

<sup>380</sup> See *supra* Part IV.B.

<sup>381</sup> Jess Hunter-Bowman, *To the People: Enhancing Leahy Law Human Rights Enforcement Through a Private Right of Action*, 51 VAL. U.L. REV. 831, 837 (2017).

<sup>382</sup> 22 U.S.C. § 2304(a)(2).

<sup>383</sup> Stephen B. Cohen, *Conditioning U.S. Security Assistance on Human Rights Practices*, 76 AM. J. INT'L L. 246, 249–50 (1982).

<sup>384</sup> *Id.*

In 1997, Congress adopted the Leahy Amendments, which narrowed the ban from entire countries to only those units credibly accused of gross violations of human rights. Unlike Section 2304, the Leahy Amendments also provide standards for determining when a unit should not be eligible for assistance. The standard of credible accusation (which is well below “preponderance of the evidence standard”)<sup>385</sup> makes it more difficult for the Executive Branch to avoid enforcing the law based on disputes as to whether a unit is actually barred.

While there remains room for improvement in Leahy Vetting,<sup>386</sup> it is hard to dispute that it has been far more successful than its predecessor, Section 2304, both in preventing U.S. assistance to gross violators of human rights and in remediating those abuses.<sup>387</sup> Section 2304 was routinely ignored by the Executive Branch.<sup>388</sup> The Leahy Amendments, on the other hand, have been used by presidents of both parties on numerous occasions to bar assistance to thousands of units and individuals across a broad range of countries.<sup>389</sup> The Leahy Vetting example strongly suggests that a broader or less well-defined approach to barring assistance to corrupt actors would be less effective, in no small part because the Executive Branch may ignore it as inconsistent with national security imperatives.

## V. ADAPTING LEAHY VETTING FOR CORRUPTION

While Leahy Vetting provides an extremely promising model for designing a new approach to countering corruption in SSA, it has several drawbacks that should

<sup>385</sup> Kiss, *supra* note 33, at 517 n. 79 (describing credible information as a “low evidentiary standard.”).

<sup>386</sup> See generally MICHAEL J. MCNERNEY, ET AL., RAND CORPORATION, IMPROVING IMPLEMENTATION OF THE DEPARTMENT OF DEFENSE LEAHY LAW (2017), [https://www.rand.org/pubs/research\\_reports/RR1737.html](https://www.rand.org/pubs/research_reports/RR1737.html) (identifying concerns such as the lack of definitions for key terms in the Leahy laws and opportunities for better training of vetting staff among concerns with the Leahy Amendments) [<https://perma.cc/4YJD-NZEW>].

<sup>387</sup> See SAM Guide, *supra* note 367, at 4.

<sup>388</sup> Cohen, *supra* note 383, at 264.

<sup>389</sup> Winifred Tate, *U.S. Human Rights Activism and Plan Colombia*, 69 COLOMBIA INTERNACIONAL 50, 66 (2009); Lora Lumpe, *What the Leahy Law Means for Human Rights*, OPEN SOCIETY FOUNDATIONS (Apr. 24, 2014), <https://www.opensocietyfoundations.org/voices/what-leahy-law-means-human-rights> [<https://perma.cc/6RHM-HAGL>]. The Clinton, Bush, Obama, and Trump administrations have all employed Leahy Vetting. See, e.g., CONG. RSCH. SERV., RL33222, U.S. FOREIGN AID TO ISRAEL 36 (2022); Letter from Julia Frifield, Assistant Secretary of State for Legislative Affairs, to Representative Henry C. Johnson (Apr. 18, 2016), <https://www.politico.com/f/?id=00000154-7c2f-d905-a357-7c7f04750000> [<https://perma.cc/33G8-CUP4>]; Eric Schmitt, *Military Says Law Barring U.S. Aid to Rights Violators Hurts Training Mission*, N.Y. TIMES (Jun. 20, 2013), <https://www.nytimes.com/2013/06/21/us/politics/military-says-law-barring-us-aid-to-rights-violators-hurts-training-mission.html> [<https://perma.cc/QL25-EB4U>] (during Obama administration, in 2011, about 200,000 cases of Leahy vetting were conducted, with 1,766 individuals and units denied assistance); Andreas Harsono, *The US Should Not be Rehabilitating Indonesia's Abusive Special Forces*, HUMAN RIGHTS WATCH (Jan. 26, 2018), <https://www.hrw.org/news/2018/01/26/us-should-not-be-rehabilitating-indonesias-abusive-special-forces> [<https://perma.cc/CC96-L5KM>] (starting in 1999, the U.S. government imposed restrictions on assistance to the Indonesian special forces unit, Kopassus, under the Leahy Law).

be remedied when it is translated to the SSA context. First, the U.S. government will need to fill information gaps to thoroughly vet for corruption risk. Second, the Leahy Amendments for State and DoD use different terminology and have different exceptions, which have added to confusion about the application of the law.<sup>390</sup> As they currently stand, the Leahy Amendments' exceptions and waivers are not well defined and could theoretically be used as exceptions that swallow the rule.<sup>391</sup> Third, Leahy Vetting suffers as a result of undefined terms (such as what constitutes "assistance" and what constitutes an "emergency" or the "national security interests of the United States" that would justify waivers of the law) and insufficient training and guidance for those conducting the vetting.<sup>392</sup> Finally, in the corruption context, unit vetting must be paired with DIB in order to ensure durable improvements in the anticorruption efforts of the partner government.

#### *A. Address Information Gaps to Implement Leahy Style Vetting for Corruption*

Leahy Vetting benefits from the fact that human rights have been identified as a foreign policy priority since the 1970s.<sup>393</sup> A broad and deep architecture of human rights advocacy has since been developed, including multilateral institutions, non-governmental organizations, think tanks, legal services groups, and university centers, as well as government-endorsed entities like the Helsinki Commission. These institutions frequently collect and disseminate information used to perform Leahy Vetting.<sup>394</sup> Additionally, since the 1970s, the State Department has produced a Human Rights Report annually about each foreign country.<sup>395</sup> All of this information can be incorporated into the Leahy Vetting process, along with reports made through the Department's Human Rights Reporting Gateway,<sup>396</sup> to enhance State's vetting process. International attention has not been focused on corruption for nearly as long and the network of organizations dedicated to combating corruption is not as robust.<sup>397</sup> In order to make sound determinations about the corruption risk of security partners, the U.S. government will need both a quantitative understanding of how partners use and account for their security

---

<sup>390</sup> CRS Leahy Law Report, *supra* note 344, at 17–18; Kiss, *supra* note 33, at 507–11.

<sup>391</sup> Kiss, *supra* note 33, at 548.

<sup>392</sup> See CRS Leahy Law Report, *supra* note 344, at 19; MCNERNEY, ET AL., RAND CORPORATION, *supra* note 386, at 43.

<sup>393</sup> 22 USC § 2304; Jimmy Carter, President of the United States, Inaugural Address (Jan 20, 1977).

<sup>394</sup> See SAM Guide, *supra* note 367, at 2–3; *Human Rights Vetting: Nigeria and Beyond: Hearing Before the Subcomm. on Afr., Glob. Health, Glob. Human Rights, and Int'l Orgs. of the H. Comm. on Foreign Affairs*, 113th Cong. 31 (2014) (statement of Mr. Stephen Rickard, Director, Washington Office, Open Society Foundations).

<sup>395</sup> See 22 U.S.C. § 2151n(d).

<sup>396</sup> *Human Rights Reporting Gateway*, *supra* note 351.

<sup>397</sup> While the first international agreement on universal human rights dates to 1948, the UN Convention Against Corruption, the only legally binding international instrument for fighting corruption, was not adopted until 2003. Transparency International, the leading international NGO dedicated to combating corruption, was founded in 1993.

resources as well as a qualitative understanding of the political and cultural risks that create the conditions for corruption to flourish.<sup>398</sup>

To address these challenges, the State Department and DoD will need to develop new capabilities for gathering relevant information about partners' acquisition, maintenance, and use of security resources, including new auditing capabilities focused on the key corruption risks described above. These risks include evidence of:

- misspent or missing defense articles;
- ghost units/soldiers;
- improperly diverted security funding;
- complaints of security forces establishing illegal checkpoints or protection rackets to engage in extortion;

The ability to engage in such audits would require that recipient partners participate in joint audits of defense assistance to allow the U.S. government to validate the partner's own assessments of its defense programs. Given the risks corruption poses and the tendency of corrupt states to hide corruption, it would not be sufficient to rely on the partner country's own audit of its programs. Audit partnership could be modeled on existing cooperation done as part of the State Department and Department of Defense's obligation to engage in end-use-monitoring of certain sensitive defense equipment provided to partners to ensure such articles are not used improperly or transferred to those not authorized to receive them.<sup>399</sup> Conducting such audits with partners who are actively engaged in hostilities and experiencing a high rate of exhaustion of defense articles will be challenging, as the current situation in Ukraine has demonstrated.<sup>400</sup> Policymakers should look to establish minimum audit standards to apply in such situations.

In addition to new audit capabilities to obtain relevant information about potential partners' risk of corruption, a number of federal departments and agencies should be tasked with collecting information pertaining to such corruption, including the State Department, DoD, Treasury Department (whose Office of Foreign Asset Control identifies corrupt foreign actors and their financial networks,

---

<sup>398</sup> For example, a failure to understand the ethnic and tribal divisions in Afghanistan, as well existing power structures, hamstrung American efforts to root out corruption. *See* SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 8, 24.

<sup>399</sup> *End Use Monitoring*, DEF. SEC. COOP. AGENCY, <https://samm.dsca.mil/chapter/chapter-8> [<https://perma.cc/72F6-SB3Z>].

<sup>400</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO 24-106289, DOD SHOULD IMPROVE DATA FOR BOTH DEFENSE ARTICLE DELIVERY AND END-USE MONITORING 27–28 (2024), <https://www.gao.gov/assets/gao-24-106289.pdf> [<https://perma.cc/5AEG-JQDM>] [hereinafter GAO DOD Report] (noting the DoD has substantially relaxed its monitoring and control over articles provided to the Ukrainians, largely because of the inadequate staffing at Embassy Kyiv, poor visibility of the situation in the conflict zone, the high rate of use of munitions by Ukrainian forces, and the extraordinary pace at which the Pentagon has been transferring arms to the Ukrainians).

as well as implements sanctions against them),<sup>401</sup> and the IC. At U.S. embassies, military and diplomatic personnel<sup>402</sup> should be tasked with gathering and reporting on the state of corruption in the security sector (including military and police units from the highest levels down to the command and unit levels). Embassy personnel can collect local news reports as well as information from think tanks, academic institutions, activists, and alleged victims of corruption as part of their routine duties for inclusion in the vetting process. As with human rights monitoring and reporting, this process will benefit from increased attention from NGOs and activists in order to spread knowledge that the United States considers anticorruption when making decisions about whether to support potential partners.<sup>403</sup> As part of the coordinated Implementation Plan,<sup>404</sup> grants can be provided to NGOs and researchers who focus on corruption in the security sector to improve the quality of reporting and information in this field as it relates to public perceptions of corruption and the impacts of corruption on popular support for the government and anti-governmental forces.

Numerous experts on transnational corruption have also called for the IC to make corruption a priority for intelligence collection.<sup>405</sup> Unless corruption is treated like a collection priority, these powerful organs of the national security apparatus are unlikely to gather and share this information with the rest of the interagency. Indeed, to date, the IC appears to have worked at cross-purposes to the government's anticorruption priorities, particularly in places like Afghanistan, where corrupt warlords were allegedly on the CIA's payroll and protected by it against investigations and accountability.<sup>406</sup> Making corruption a collection priority is the first step in de-conflicting the IC's priorities with the stated national strategy to counter corruption.

### ***B. Exceptions and Waivers Should Be Limited and Require Adherence to Clear Criteria***

The current Leahy Amendments have separate and distinct exception and waiver provisions for State and DoD, which are not well-defined or limited. The current laws allow for exceptions where (1) the partner government has shown sufficient remediation of the human rights problem; or when (2) assistance is necessary to address a humanitarian crisis or protect the United States' national

---

<sup>401</sup> See U.S. DEPARTMENT OF THE TREASURY, OFFICE OF FOREIGN ASSET CONTROL, <https://ofac.treasury.gov> [<https://perma.cc/F566-KTXR>].

<sup>402</sup> U.S. Embassy staffs typically include numerous subject matter experts who could work on these issues, such as members of the DoD Offices of Security Cooperation (which coordinate the delivery of security assistance) and Defense Attaché Offices, as well as State Political-Military Affairs officers.

<sup>403</sup> See, e.g., SAM Guide, *supra* note 367, at 4.

<sup>404</sup> U.S. DEP'T OF STATE, Implementation Plan, *supra* note 10, at 37–38.

<sup>405</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 189; Bellows, *supra* note 32, at 1; Vittori, *supra* note 112.

<sup>406</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 51–52, 54; SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 60–61.

security.<sup>407</sup> The text of the law indicates that the Secretary of State can unilaterally determine the first grounds for the exception exist, but requires reporting of the partner country's efforts to bring the responsible members of the security forces to justice.<sup>408</sup> The Secretary of Defense, in consultation with the Secretary of State, can determine that either exception exists.<sup>409</sup> Additionally, an exception for the national security interest of the United States can be read broadly to allow many transfers the Leahy Amendments appear intended to prohibit. The Secretary of Defense has separate authority to *waive* Leahy prohibitions when, in consultation with the Secretary of State, he or she determines extraordinary circumstances warrant a waiver of the requirement.<sup>410</sup> Not later than 15 days after exercising either an exception or a waiver, the Secretary of Defense must submit a report to the appropriate committees of Congress stating the grounds for the exception or waiver.<sup>411</sup> The waiver clause has never been invoked<sup>412</sup> and it is unclear what would constitute an "extraordinary circumstance" justifying waiver.<sup>413</sup>

Personnel tasked with vetting also note that there is a lack of clarity in terms of what constitutes sufficient remediation to reinstate a unit. DoD vetters complain that there are no remediation standards or that those applied by the State Department are extremely difficult to meet, even for units with no human rights violations in over a decade and complete personnel turnover.<sup>414</sup> A vetting program for corruption should incorporate clear and specific criteria for exceptions for remediation, such as whether removal of bad actors is sufficient, or if prosecutions are required, and in the event all known bad actors have been removed, how long is sufficient for a unit to go without allegations of bad conduct before it can be considered rehabilitated. Criteria for demonstrating sufficient remediation should be incorporated into training for vetting staff.<sup>415</sup>

In addition to clarifying the standard for exceptions for remediation, exceptions for the national security interest should require an interagency decision-making process to ensure all relevant evidence is considered and the national security imperative is understood and agreed on. In order to prevent rubber stamping of exceptions, the Executive Branch should have to report the basis upon which it makes the determination that a national security exception applies to Congress. To ensure that the exception provision is not being abused, after two consecutive exceptions for the same unit, the Executive Branch should be required to report the

---

<sup>407</sup> 10 U.S.C. § 362(b).

<sup>408</sup> 22 U.S.C. § 2378(d)(b).

<sup>409</sup> 10 U.S.C. § 362(b).

<sup>410</sup> 10 U.S.C. § 362(c).

<sup>411</sup> 10 U.S.C. § 362(e).

<sup>412</sup> CRS Leahy Law Report, *supra* note 344, at 19.

<sup>413</sup> Kiss, *supra* note 33, at 543 n. 173.

<sup>414</sup> MCNERNEY, ET AL., RAND CORPORATION, *supra* note 386, at 30–31.

<sup>415</sup> *Id.* at 55, 63–64; Daniel R. Mahanty, *The "Leahy Law" Prohibiting US Assistance to Human Rights Abusers: Pulling Back the Curtain*, JUST SECURITY (June 27, 2017), <https://www.justsecurity.org/42578/leahy-law-prohibiting-assistance-human-rights-abusers-pulling-curtain/> [<https://perma.cc/U565-XYQE>].

progress that has been made in addressing corruption concerns with that unit. Further assistance to the unit should require congressional approval. In addition, the IC, which tends to value access and influence much more highly than anticorruption goals,<sup>416</sup> should not be permitted to continue supporting corrupt actors the vetting process has identified as ineligible for assistance absent interagency agreement that such support is in the national interest.<sup>417</sup>

### *C. Terminology and Standards Should Be Clarified*

Differences between the language of the DoD and Department of State Leahy Laws has created the potential for confusion, leading to successive amendments to the laws in an attempt to harmonize them.<sup>418</sup> Nonetheless, ambiguities in the meaning of “credible information” sufficient to justify disqualification, and in the meaning of “assistance” remain. The “credible information” standard has caused significant confusion as to the type of information that can be considered and whether that information would need to be admissible in court.<sup>419</sup> This standard should be replaced with the probable cause standard as used in criminal law, for which there is much greater interpretive guidance that can be used to train vetting staff.<sup>420</sup>

Another problematic term used in the Leahy Laws is “assistance.” The Executive Branch interprets “assistance” subject to Leahy Vetting to only include training and equipment paid for by U.S.-appropriated funds and thus excludes weapons and training a partner nation purchases from U.S. sources with its own money.<sup>421</sup> This interpretation is not without both political and legal criticism. By excluding weapons a partner country pays for with its own money, the U.S. continues to risk arming gross violators of human rights. A 2017 ABA assessment provided to Congress relating to the sale of arms to Saudi Arabia determined the Executive Branch’s interpretation of assistance was too narrow and inconsistent with the intent of the amendments.<sup>422</sup> The sales of the weapons proceeded,

---

<sup>416</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 154; SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 60, 77.

<sup>417</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 77.

<sup>418</sup> CRS Leahy Law Report, *supra* note 344, at 4. For example, the DoD law has been changed to mirror the State law language by changing “gross violations” of human rights to “gross violation,” changing “effective measures,” to “effective steps,” and “credible evidence” to “credible information.” *Id.*

<sup>419</sup> CRS Leahy Law Report, *supra* note 344, at 4. State interprets “credible information” to mean information that “should be deserving of confidence as a basis for decision-making” and that admissibility in court is not a requirement. *See* U.S. DEPT. OF STATE, INTRODUCTION TO LEAHY VETTING POLICY, *supra* note 347, at 13. Nonetheless, implementers of Leahy Vetting noted concerns about how credible information is defined and interpreted. MCNERNEY, ET AL., RAND CORPORATION, *supra* note 386, at 39–40.

<sup>420</sup> Kiss, *supra* note 33, at 522–24.

<sup>421</sup> 2024 CRS Report, *supra* note **Error! Bookmark not defined.**, at 2.

<sup>422</sup> Michael Newton, *Assessment of the Legality of Arms Sales to the Kingdom of Saudi Arabia in the Context of the Conflict of Yemen* 9–14 (Vanderbilt Law Research Paper No. 17-26, 2017).

nonetheless.<sup>423</sup> The Leahy Amendments' definition of "assistance" should be broadened in the corruption context to include Foreign Military Sales and Direct Commercial Sales not paid for by U.S. appropriated funds to ensure that weapons sales are not fueling corruption.<sup>424</sup> As there is likely to be significant political opposition to such a requirement, it may only be possible to implement this type of measure for sensitive equipment where the corruption concern includes the risk of fraudulent transfers of sensitive materiel described in Part II. C. above.

Unit-level vetting of forces for corruption risk is essential, but it is not a substitute for addressing higher-level risks in a partner nation's institutions, which can only be addressed through DIB. Corruption is often a top-down phenomenon.<sup>425</sup> The most effective means of addressing it will combine identifying corruption and its impacts at the operational level with removing from positions of authority those leaders who encourage and benefit from operational corruption in vertically-integrated corruption networks. Even for partners that have the will but not the means to eradicate corruption, identifying and disqualifying corrupt units will not lead to remediation if the partner lacks the tools necessary to remediate the problem with corrupt higher-ups.

The State Department's Implementation Plan incorporates defense institution building efforts through PM's Global Defense Reform Program described in Part III, *supra*.<sup>426</sup> The program seeks to assist partners in developing and implementing policies to combat "corruption, fraud, abuse, waste, and overall poor management" across a broad range of governance functions in the defense and security sector.<sup>427</sup> The program's focus is on improved training, enhanced transparency, and effective control procedures.<sup>428</sup> For partners that wish to combat corruption, reform at both the institutional and operational levels are equally important. Defense Institution Building necessarily requires State to assess both the "grand corruption" and "petty corruption" ends of the spectrum in a partner country in order to assist it in identifying and implementing necessary reforms. A corollary of this process is that State will be able to collect the information necessary to determine whether the partner is committed to fighting corruption and if not, what the strategic costs may be of continuing to support it.

The changes suggested in this Part to adapt Leahy vetting will result in a significantly improved process for identifying and addressing corruption risk. Part

---

<sup>423</sup> Mark Landler, Eric Schmitt & Matt Apuzzo, *\$110 Billion Weapons Sales to Saudis has Jared Kushner's Personal Touch*, N.Y. TIMES (May 18, 2017), <https://www.nytimes.com/2017/05/18/world/middleeast/jared-kushner-saudi-arabia-arms-deal-lockheed.html> [https://perma.cc/M7ZD-P97E].

<sup>424</sup> The argument for expanding the application of the Leahy Amendments to direct arms sales is just as strong if not stronger in the human rights context, given the importance placed on preventing U.S. complicity in gross violations of human rights.

<sup>425</sup> CHAYES, THIEVES OF STATES, *supra* note 7, at 58–59.

<sup>426</sup> Resnick, *supra* note 279.

<sup>427</sup> *Id.*

<sup>428</sup> *Id.*

VI, *infra*, addresses the challenges that remain in using Congressionally-mandated vetting to confront this problem.

## VI. ADDRESSING COUNTERARGUMENTS AND CHALLENGES

We can anticipate numerous possible objections to this approach. The most trenchant counterarguments and challenges presented by the proposal to use unit-by-unit vetting alongside defense institution building efforts to counter corruption in Security Sector Assistance include:

- Concerns about the complexity of vetting foreign forces;
- The difficulty in vetting in the middle of an emergent crisis, as seen in Ukraine;
- The risk partners will go elsewhere for assistance (particularly when Russia and China have no interest in conditioning assistance on anticorruption);
- Failures of Leahy Vetting to prevent transfers to implicated units for political reasons that undermine the efficacy of the policy; and
- Concerns about whether such a proposal will improperly constrain presidential authority, either legally or politically.

As discussed below, the concerns regarding the difficulty of vetting can be addressed by improving information collection efforts. Arguments that the policy unreasonably constrains policy choices fail to reflect the reality that not vetting for corruption has actively undermined our security priorities. Moreover, well-defined criteria and processes for granting exceptions provides sufficient flexibility to prevent this policy from stymying key security efforts. And while the risk of losing partners to Russia or China is real, these fears tend to overstate the ease with which security partners can re-orient their alliances.

### A. *Vetting Foreign Forces Is Complex*

Accessing information about partner security forces' corruption is extremely challenging. Corrupt actors often go to significant lengths to conceal their corrupt behavior.<sup>429</sup> That is true whether the cause of limited information is government processes and records that are so opaque as to defeat accountability, or because a society does not have a robust anticorruption movement that could expose corrupt conduct, or because conflict or state collapse makes obtaining accurate information almost impossible. Regardless of the cause, vetting for corruption in environments where the United States has limited access to information difficult.<sup>430</sup>

Nigeria, for example has no publicly available data on the assets that have been recovered in corruption cases inside or outside the country, making it impossible to

---

<sup>429</sup> NATIONAL STRATEGY, *supra* note 6, at 7.

<sup>430</sup> MCNERNEY, ET AL., RAND CORPORATION, *supra* note 386, at 40.

accurately understand who the culprits are, what they took, and what was done with what was recovered.<sup>431</sup> Additionally, Nigeria exempts defense procurement from public tender regulations meant to prevent corruption, again making it difficult to determine whether contracts are inflated or are being directed to state-aligned persons.<sup>432</sup> Ongoing war and instability in numerous countries also hamper information gathering.<sup>433</sup>

The fact remains that even if vetting has not prevented *all* abusive units from receiving assistance, it has prevented *thousands* of abusive units from receiving assistance.<sup>434</sup> It has also caused some countries to change their policies to become eligible to receive U.S. assistance and has forced some bad actors out of positions of authority. It is also credited with reducing extrajudicial killings by security forces.

Just as activists and NGOs now educate others about the importance of Leahy Vetting and how it can be used to combat impunity resulting in more firsthand reporting of human rights abuses into the Leahy vetting system,<sup>435</sup> a new U.S. program on corruption vetting could itself help initiate change in how civil society tracks and reports security sector corruption. Increased U.S. attention on this issue will make clear to anti-corruption NGOs that the information they are collecting has an impact on policy, increasing the incentive to focus on this issue.<sup>436</sup> Additionally, making corruption a collection priority for the IC<sup>437</sup> can help fill in

---

<sup>431</sup> Joseph Amenaghawon & Udo Jude Ilo, *In Nigeria, Many Anticorruption Policies – and Lots of Corruption, Too*, OPEN SOC'Y FOUNDATIONS (June 29, 2016), <https://www.opensocietyfoundations.org/voices/nigeria-many-anticorruption-policies-and-lots-corruption-too> [https://perma.cc/TKD2-U883].

<sup>432</sup> *Report on Nigeria Procurement Risk*, TRANSPARENCY INT'L DEF. & SEC., <https://ti-defence.org/gdi/countries/nigeria/?risk=procurement> [https://perma.cc/7XXY-A92Y].

<sup>433</sup> For example, TI does not have affiliates in many countries, including Iraq and Afghanistan. *Our Work in Iraq*, TRANSPARENCY INT'L, <https://www.transparency.org/en/countries/iraq> [https://perma.cc/H7D3-VNEM]; *Afghanistan*, TRANSPARENCY INT'L, <https://www.transparency.org/en/countries/afghanistan> [https://perma.cc/3P8N-FHMS]. Anticorruption activists, journalists, and government officials are often at serious risk, which discourages reporting of abuses. *"We Might Call You in at Any Time": Free Speech Under Threat in Iraq*, HUMAN RIGHTS WATCH, (June 15, 2020), <https://www.hrw.org/report/2020/06/15/we-might-call-you-any-time/free-speech-under-threat-iraq> [https://perma.cc/KF8C-G693]; *Iraqi Anticorruption Police Officer Assassinated in South*, THE NATIONAL (June 22, 2021), <https://www.thenationalnews.com/mena/iraq/iraqi-anticorruption-police-officer-assassinated-in-south-1.1246334> [https://perma.cc/ZNK6-KD2S]; David Corn, *Judge Radhi Testifies on Iraqi Corruption – GOPers Attack – Update*, THE NATION (Oct. 5, 2007), <https://www.thenation.com/article/archive/judge-radhi-testifies-iraqi-corruption-gopers-attack-update/> [https://perma.cc/2NDZ-EP9F]. And in Ukraine, the security situation has resulted in reduced vetting and monitoring efforts, in part because of reduced embassy staffing. GAO DOD Report, *supra* note 400, at 27.

<sup>434</sup> See *supra* Part IV. B.

<sup>435</sup> E.g., SAM Guide, *supra* note 367.

<sup>436</sup> Civil society groups that track corruption in the security sector are, however, very poorly funded and would need a significant increase in resources. Interview with Jodi Vittori, *supra* note 319.

<sup>437</sup> *Supra* Part V. B.

the gaps in open source reporting on corrupt behavior. That a law does not eliminate a problem but only reduces it should not be sufficient to block its implementation. Even if the conditions in some countries will make corruption vetting difficult, in other instances, there will still be opportunities to use vetting to achieve positive effects.

### ***B. The Challenges of Emergent Crises***

Another counterargument leveled against Leahy-style vetting for corruption notes how difficult it will be to implement such a program with a partner that is in the middle of a security crisis, like an active war against a foreign adversary or an insurgency capable of challenging the state for territorial and political control. In a war, performing inventory is simply more difficult, as is tracking the equipment and ammunition used or destroyed in combat. A nation at war may de-prioritize combating corruption to meet the immediate challenge. It could also be devastating for such a country to lose vital military assistance based on nothing more than “probable cause” that a unit engaged in corrupt behavior.

The example of Ukraine, however, reveals the holes in this argument against the vetting process. Of course, vetting should be implemented wherever possible *before* there is an urgent security crisis.<sup>438</sup> But the willingness of Ukraine’s government to dismiss senior-ranking military commanders during a war of existential stakes indicates just how serious a threat to security corruption can be.<sup>439</sup> And as stated above, a plan to implement anticorruption vetting should not allow the perfect to become the enemy of the good.

Additionally, the proposed Leahy-style vetting system would include exceptions and waivers (albeit with clearer guidelines for invoking them)<sup>440</sup> that could allow the Secretaries of State and Defense to determine that vital national security interests require continued support to military units that might otherwise

<sup>438</sup> CHAYES, *THIEVES OF STATES*, *supra* note 7, at 203.

<sup>439</sup> Hayda, *President Zelenskyy Shakes Up Ukraine’s Cabinet*, *supra* note 255; Ilia Novikov, *Ukraine Fires 6 Deputy Defense Ministers as Heavy Fighting Continues in the East*, ASSOCIATED PRESS (Sept. 18, 2023), <https://apnews.com/article/ukraine-russia-deputy-defense-ministers-fired-ab8f88ff31f26ae29b35bd14406e62f3> [<https://perma.cc/9V7K-3RPZ>]; Victoria Butenko & Olga Voitovych, *Zelensky Says all Officials in Charge of Military Recruitment Offices Dismissed Amid Corruption Scandal*, CNN (Aug. 11, 2023), <https://www.cnn.com/2023/08/11/europe/zelensky-military-corruption-scandal-intl/index.html> [<https://perma.cc/Z3CH-3TMR>]; Hanna Arhirova & Yuras Karmanau, *Ukraine’s Defense Minister Resigns Following Zelenskyy’s Announcement of his Replacement*, PBS NEWSHOUR (Sept. 4, 2023), <https://www.pbs.org/newshour/world/ukraines-defense-minister-resigns-following-zelenskyy-s-announcement-of-his-replacement> [<https://perma.cc/M3VP-WRE4>]. Additionally, Ukraine’s need for assistance appears to have made it particularly receptive to calls to continue its anticorruption reforms. See Olena Konoplia & Pavlo Buldovych, *From Prosecution to Open Data Services: What Progress Has Ukraine Made in the Fight Against Corruption Over the Past 10 Years*, WAR UKRAINE (Jun. 20, 2024), <https://war.ukraine.ua/articles/from-prosecution-to-open-data-services-what-progress-has-ukraine-made-in-the-fight-against-corruption-over-the-past-10-years/> [<https://perma.cc/BNJ8-HWXS>].

<sup>440</sup> *Supra* Part V. C.

be ineligible for foreign security assistance. By creating a default position of not supporting corrupt units and requiring justification for exceptions, however, Leahy-style vetting would result in greater integration of anticorruption considerations into decisions about supporting security partners. The example from Leahy-vetting indicates that this will result in actual substantive changes in U.S. security policy.<sup>441</sup>

### C. *How Much Leverage Does the United States Really Have?*

A third argument against implementing a new vetting program questions whether the United States actually has the necessary leverage to compel compliance with our anticorruption priorities. This is particularly true for partners who may view China and Russia as perfectly good alternatives for security cooperation.<sup>442</sup> Indeed, kleptocratic regimes may *favor* working with another kleptocratic state such as Russia because it will not attempt to impose transparency, accountability, or end-use monitoring requirements on purchasers of systems.<sup>443</sup> These accountability requirements are meant to prevent diversion of military assets to corrupt or abusive ends, as well as to prevent the transfer of arms to bad actors.<sup>444</sup> If partners purchase platforms from adversaries because they do not want to subject themselves to American demands for accountability and transparency, that creates other problems for the United States. Turkey's purchase of S-400 surface to air missile batteries demonstrates what happens when a partner buys Russian-made weapons systems. All other NATO allies blocked that system from being connected to NATO networks for operational security reasons.<sup>445</sup> An air defense system that should have strengthened NATO's overall defensive posture (if it had consisted of technology built by a NATO ally country) instead became a security liability.

If pressing our anti-corruption concerns causes partners to abandon us for Russia or China, does that justify sidelining anticorruption concerns? The evidence suggests the United States has more leverage than it believes.<sup>446</sup> Many of our partners and allies purchase U.S. weapons systems or seek training with U.S. military forces because of the United States military's unparalleled superiority and the cutting-edge nature of U.S. military equipment.<sup>447</sup> They also do so in order to ensure their forces and systems can interoperate with America's and those of other

---

<sup>441</sup> Lora Lumpe, *What the Leahy Law Means for Human Rights*, OPEN SOC'Y FOUNDATIONS (Apr. 24, 2014), <https://www.opensocietyfoundations.org/voices/what-leahy-law-means-human-rights> [<https://perma.cc/6RHM-HAGL>].

<sup>442</sup> Judah, *supra* note 9, at 13.

<sup>443</sup> *Id.*

<sup>444</sup> *Id.*

<sup>445</sup> PAGE & VITTORI, *supra* note 9, at 20; Omer Taspinar, *Turkey's Purchase of Russian Missile-Defense System Will Be 'Paradigm Shifting' for its Relations with the US*, BROOKINGS INST. (Apr. 3, 2019), <https://www.brookings.edu/articles/turkeys-purchase-of-russian-missile-defense-system-will-be-paradigm-shifting-for-its-relations-with-the-us/> [<https://perma.cc/8UZH-UR3T>].

<sup>446</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 68.

<sup>447</sup> David Vergun, *Officials Describe How Arms Sales Benefit the U.S., Partners*, DoD NEWS (Dec. 4, 2020), <https://www.defense.gov/News/News-Stories/Article/Article/2435951/officials-describe-how-arms-sales-benefit-the-us-partners/> [<https://perma.cc/C3PM-HGFJ>].

allies.<sup>448</sup> The uneven performance of Russian forces in Ukraine<sup>449</sup> and the poor performance of Chinese arms exports<sup>450</sup> creates a major risk for countries to change their security strategies to rely on these competitors instead of the United States. Additionally, a partner's ability to diversify away from U.S. equipment (including equipment that is jointly developed with other countries, like the F-35) is limited. For example, the United States responded to Turkey's decision to purchase a Russian air defense system by sanctioning its NATO ally and cutting it out of the F-35 program, despite Ankara's assurances the Russian equipment would not be networked with U.S. and NATO systems.<sup>451</sup> In Afghanistan, it was the failure to treat corruption as a strategic priority that prevented the United States from successfully using its leverage to force the Afghan government to change course.<sup>452</sup>

Current U.S. security partners are likely to discover that a security relationship with China or Russia presents less palatable tradeoffs than continuing to remain aligned with the United States, given Russia and China's territorial ambitions<sup>453</sup> and their views of their spheres of influence.<sup>454</sup> The Philippines is a prime example of a partner that downgraded its relationship with the United States in order to seek a better security relationship with China, only to perform an about face in response to China's efforts to establish dominance in the South China Sea.<sup>455</sup> The extent of Chinese influence over smaller countries in which it has invested significantly for geostrategic reasons also suggests that relying on China's investment to avoid foreign interference in domestic affairs may not work, as China also seeks to

---

<sup>448</sup> *Interoperability: Connecting Forces*, NATO (Apr. 11, 2023),

[https://www.nato.int/cps/en/natohq/topics\\_84112.htm](https://www.nato.int/cps/en/natohq/topics_84112.htm) [<https://perma.cc/7VM9-P7H8>].

<sup>449</sup> Murray Brewster, *Ravaged by War, Russia's Army is Rebuilding with Surprising Speed*, CBC NEWS (Feb. 23, 2024), <https://www.cbc.ca/news/politics/russia-army-ukraine-war-1.7122808> [<https://perma.cc/DXS3-Q955>].

<sup>450</sup> Cindy Zheng, *Countries Buy Defective Chinese Military Equipment. Why?*, RAND CORP. (June 8, 2023), <https://www.rand.org/pubs/commentary/2023/06/countries-buy-defective-chinese-military-equipment.html> [<https://perma.cc/44TX-DU99>].

<sup>451</sup> Taspinar, *supra* note 445.

<sup>452</sup> SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 78.

<sup>453</sup> Andrew Michta, *Putin's 'Eurasian' Fixation Reveals Ambitions Beyond Ukraine*, ATLANTIC COUNCIL (May 4, 2023), <https://www.atlanticcouncil.org/blogs/new-atlanticist/putins-eurasian-fixation-reveals-ambitions-beyond-ukraine/> [<https://perma.cc/H2RB-MU8R>]; Edward Sing Yue Chan, *China's Misunderstood South China Sea Ambitions*, ASIA TIMES (Dec. 18, 2023), <https://asiatimes.com/2023/12/chinas-misunderstood-south-china-sea-ambitions/> [<https://perma.cc/4HCM-FXBD>].

<sup>454</sup> Alexander Cooley, *Whose Rules, Whose Sphere? Russian Governance and Influence in Post-Soviet States*, CARNEGIE ENDOWMENT FOR INT'L PEACE, (June 30, 2017), <https://carnegieendowment.org/posts/2017/06/whose-rules-whose-sphere-russian-governance-and-influence-in-post-soviet-states?lang=en> [<https://perma.cc/989B-6PJN>]; Matthew Lee, *US and Philippines Step Up Strategic Partnership as China Threats Loom in South China Sea*, ASSOCIATED PRESS (Apr. 12, 2024), <https://apnews.com/article/united-states-philippines-china-b8110edc6e2555190eeac4e07485d3f0> [<https://perma.cc/DX2K-MWNP>].

<sup>455</sup> Lee, *supra* note 454.

influence the domestic affairs of these countries, albeit in ways different from the United States.<sup>456</sup>

If the United States remains reticent to use its leverage despite the clear preference of most of its partners and allies to continue interoperating with the United States, that reticence is likely to result in fostering corruption and human rights abuses. Such abuses can fuel insurgency and anti-government violence, resulting in U.S.-funded equipment ending up in the possession of terrorist groups, as occurred in both Afghanistan and Iraq.<sup>457</sup> As such, declining to use our leverage will result in Pyrrhic victories. We may not lose a partner to China, but the partnership itself may end up harming U.S. security interests. As noted anticorruption practitioner and expert Sarah Chayes warns, “the United States cannot out-China China. Let’s make our values an asset; we have a value proposition that is principles-based. Allying with corrupt forces undermines that.”<sup>458</sup>

#### ***D. Will Leahy Vetting Be Undermined by Political Expedience?***

There is no question that the U.S. government has circumvented Leahy Vetting when other policy considerations outweigh human rights concerns.<sup>459</sup> Examples of abuse and exceptions to the Leahy Laws suggest they are not as effective as they should be. These issues can be resolved, however, by carefully crafting the legislation.

Waiver rules for corruption vetting should be more clearly defined and limited than the what the current Leahy Law rules provide.<sup>460</sup> Even if they are not, however, and a new corruption vetting model incorporates the same loopholes, the example of Leahy Vetting shows that the law still has a substantial net benefit in the form of thousands of ineligible units being denied assistance, even if it has not been applied

---

<sup>456</sup> ALEX VINES, CREON BUTLER & YU JIE, CHATHAM HOUSE, THE RESPONSE TO DEBT DISTRESS IN AFRICA AND THE ROLE OF CHINA 20 (2022), <https://www.chathamhouse.org/sites/default/files/2022-12/2022-12-15-africa-china-debt-distress-vines-et-al.pdf> [<https://perma.cc/2JE4-FNPQ>].

<sup>457</sup> See *supra* Part II. C. 1, 3.

<sup>458</sup> Interview with Sarah Chayes (July 15, 2024).

<sup>459</sup> See, e.g., Charles Blaha, *Israel and the Leahy Law*, JUST SECURITY (June 10, 2024), <https://www.justsecurity.org/96522/israel-leahy-law/> [<https://perma.cc/ZB6J-UVMN>] (regarding evidence that Israeli units are not subject to the same level of scrutiny as other forces for potential human rights abuses); Mahanty, *supra* note 415 (describing the legal workaround for providing assistance to Afghan security forces); Jeff Stein, *Inside the CIA's Syrian Rebels Vetting Machine*, NEWSWEEK (Nov. 10, 2014), <https://www.newsweek.com/2014/11/21/moderate-rebels-please-raise-your-hands-283449.html> [<https://perma.cc/88BG-TAPY>]; *Is Credible Vetting of the Syrian Opposition for Human Rights Abuses Possible?*, HUMAN RIGHTS WATCH (Sept. 24, 2014), <https://www.hrw.org/news/2014/09/24/credible-vetting-syrian-opposition-human-rights-abuses-possible> (describing the difficulty in attempting to vet non-state forces in Syria) [<https://perma.cc/3SC5-X2BN>].

<sup>460</sup> *Supra* Part V.C.

with perfect consistency.<sup>461</sup> We should not reject an imperfect solution that will result in some progress on a key concern, particularly when the perfect solution seems politically unattainable.<sup>462</sup>

### *E. Does This Plan Unnecessarily Limit Presidential Authority?*

The final set of arguments against adopting Leahy-style vetting for corruption address whether such a mechanism would improperly infringe on the President's constitutional authority, either as a legal matter (arrogating to Congress a power the Constitution vests in the presidency) or a political one (creating unwise and unnecessary political costs for the exercise of a core constitutional power). The Constitution imbues the President of the United States with the Commander-in-Chief power,<sup>463</sup> which is understood as placing the President at the apex of the military chain of command as well as ensuring that the President exercises the superintending authority of civilian control over the military.<sup>464</sup> Early Congresses also treated the Presidency as having clear primacy over foreign relations.<sup>465</sup>

But this is not to say there is no debate between Congress and the Presidency over presidential claims of sole authority over military matters.<sup>466</sup> The Nixon and Ford administrations treated Leahy Vetting's precursor as an infringement of the Commander-in-Chief power.<sup>467</sup> But the Leahy Amendments have not faced this type of Executive Branch pushback, as administrations of both parties have complied with Leahy vetting and reporting requirements for 25 years.<sup>468</sup>

---

<sup>461</sup> *Supra* Part IV.B.

<sup>462</sup> “[The] best we can often do is to put forward partial proposals and focus on minimizing their flaws, in the hope that, flaws and all, they will nevertheless represent an incremental improvement over where things stand today.” Alan Z. Rozenshtein, *Wicked Crypto*, 9 U.C. IRVINE L. REV. 1181, 1210 (2019).

<sup>463</sup> U.S. CONST. art. II, § 2, cl. 1.

<sup>464</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 641 (1952) (Jackson, J., concurring) (“The clause on which the Government next relies is that ‘The President shall be Commander in Chief of the Army and Navy of the United States. . . .’ These cryptic words have given rise to some of the most persistent controversies in our constitutional history. Of course, they imply something more than an empty title. But just what authority goes with the name has plagued presidential advisers who would not waive or narrow it by nonassertion, yet cannot say where it begins or ends. It undoubtedly puts the Nation's armed forces under presidential command. . .”).

<sup>465</sup> *Report of S. Comm. on Foreign Relations on Article 2, Section 2, Clauses 2 and 3* (Feb. 15, 1816), [https://press-pubs.uchicago.edu/founders/documents/a2\\_2\\_2-3s29.html](https://press-pubs.uchicago.edu/founders/documents/a2_2_2-3s29.html) [<https://perma.cc/8B8Y-LQD4>] (calling the President, “the constitutional representative of the United States with regard to foreign nations.”) (citing Sen. Rep. Vol. 8, at 24 (1816)).

<sup>466</sup> *See, e.g.*, 50 U.S.C. § 1541 et seq.; MATTHEW C. WEED, CONG. RSCH. SERV., R42699, THE WAR POWERS RESOLUTION: CONCEPTS AND PRACTICE 1 (2019), <https://www.congress.gov/crs-product/R42699> [<https://perma.cc/5HN3-CP7U>].

<sup>467</sup> Cohen, *supra* note 383, at 249–50.

<sup>468</sup> *See e.g.*, *Public Release of Foreign Security Forces Units Ineligible for Assistance Under the Foreign Assistance Act of 1961 and Arms Export Control Act Pursuant to the State Leahy Law: Calendar Year 2022*, U.S. DEPARTMENT OF STATE (2022), <https://www.state.gov/wp-content/uploads/2023/12/Leahy-Make-Public-List-CY-2022.pdf> [<https://perma.cc/Q65J-RKS4>]; *Public Release of Foreign Security Forces Units Ineligible for Assistance under the Foreign*

The Leahy Amendments fall squarely within Congress's power over authorizing expenditures and making appropriations for such expenditures.<sup>469</sup> The provisions for exceptions for national security requirements<sup>470</sup> prevent any arguable conflict with the President's Commander-in-Chief power. The provisions of a Leahy-style vetting requirement for corruption would hew closely to the substance of the Leahy Amendments in this regard, but with a proposed modification to require vetting for purchases of equipment made by a partner nation using its own funds, rather than U.S.-appropriated funds.<sup>471</sup> This provision, however, would fall squarely within Congress's authority to regulate the sale of sensitive defense articles to foreign purchasers, which Congress has exercised in the Arms Export Control Act.<sup>472</sup> Leahy-style vetting should therefore present no improper infringement on the legal authorities of the Executive Branch.

Opponents of this proposal are likely to argue Leahy-style corruption vetting unnecessarily constrains the President *politically*. Such political constraints could include exposing the President to claims of hypocrisy when assisting partners with poor corruption records or claims of fecklessness for failing to assist faithful partners in dire need because of secondary concerns like corruption. As with the Leahy Amendments, the corruption vetting proposal incorporates exception and waiver principles that should be sufficient to provide appropriate flexibility to the Executive Branch, while still promoting greater consistency in U.S. policy. Without legislative action, on the other hand, the executive is likely to prioritize flexibility over consistency.<sup>473</sup> The Leahy Amendments struck an effective and pragmatic balance between consistency and flexibility—giving force to the notion that human rights should be considered as part of American security cooperation policies, while still allowing cooperation with a wide variety of partners. Progress in improving the human rights records of partners due to Leahy vetting has taken years, and sometimes decades.<sup>474</sup> As with human rights abuses, we should not expect to see overnight improvement in partners' anticorruption efforts. It is important to have consistency in U.S. policy over a longer period of time than a single presidential term, which only Congressional action will guarantee. Codifying the policy against abetting corruption will create some constraints on Executive Branch action, but these should be viewed as a feature, not a bug, of this proposal.

---

*Assistance Act of 1961 and Arms Export Control Act Pursuant to the State Leahy Law: Calendar Year 2019*, U.S. DEPARTMENT OF STATE (2019), <https://www.state.gov/wp-content/uploads/2023/01/Leahy-Make-Public-List-CY-2019.pdf> [<https://perma.cc/ZKY4-L48A>].

<sup>469</sup> U.S. CONST. art. I, § 9, cl. 7.

<sup>470</sup> 10 U.S.C. § 362.

<sup>471</sup> See *supra* Part V. D.

<sup>472</sup> 22 U.S.C. Ch. 39.

<sup>473</sup> Kel B. McClanahan, *It's Time for Congress to Protect the Classified Records of Former Presidents and Vice-Presidents Because They Won't*, LAWFARE (Mar. 1, 2024), <https://www.lawfaremedia.org/article/it-s-time-for-congress-to-protect-the-classified-records-of-former-presidents-and-vice-presidents-because-they-won-t> [<https://perma.cc/E2SB-Z3EQ>].

<sup>474</sup> See, e.g., *supra* Section III.B., regarding improvements in Colombia.

Additionally, the constraints the law would impose on Presidential action may counter-intuitively strengthen the Executive Branch's leverage with foreign partners.<sup>475</sup> Congress's willingness to defer to the Executive in foreign policy matters remains high, but it has recently exercised its prerogative to legislate in this domain more than it has previously.<sup>476</sup> By bringing the Executive Branch and the Congress into alignment in making countering corruption a national security priority, the government will signal to foreign counterparties that the President and Congress are united on the issue, which can strengthen a President's hand in negotiating with foreign powers.<sup>477</sup>

Similarly, making countering corruption a declared Congressional priority could lessen the salience of conditioning military assistance on anticorruption principles as a domestic political issue,<sup>478</sup> particularly if successive administrations of both parties adhere to the law, as has been the case with Leahy vetting.<sup>479</sup> The Executive Branch would be on firmer footing in prioritizing anticorruption efforts in SSA if an act of Congress supported such decision making.<sup>480</sup>

---

<sup>475</sup> See Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT'L ORG. 427, 427–60 (1988). If domestic politics is aligned behind the anticorruption goal, that narrows the “win-set” in international negotiations for the United States to only those outcomes that advance the anticorruption agenda. The narrowed “win-set” enhances the United States' bargaining power with the opposing state, encouraging it to concede more for the negotiations to be successful. As an example, one reason SIGAR found that the United States did not use its leverage with the Afghan government to combat corruption was the *political* pressure to demonstrate progress on the priorities that Congress had budgeted for. SIGAR, CORRUPTION IN CONFLICT, *supra* note 4, at 20. This would broaden the United States' “win-set” in negotiating with the Afghan government and allow the GIRoA to rebuff U.S. efforts to force reform successfully.

<sup>476</sup> EDWARD CORWIN, THE PRESIDENT: OFFICE AND POWERS 1787-1957 201 (New York University Press, 5<sup>th</sup> rev. ed. 1984) (“The Constitution, considered only for its affirmative grants of power capable of affecting the issue, is an invitation to struggle for the privilege of directing American foreign policy.”).

<sup>477</sup> See Letter from President George H.W. Bush to Congressional Leaders on the Persian Gulf Crisis (Jan. 8, 1991), <https://www.presidency.ucsb.edu/documents/letter-congressional-leaders-the-persian-gulf-crisis> [<https://perma.cc/8ED3-SEFS>].

<sup>478</sup> By contrast, President Obama, for example, was seriously constrained by what he could do in response to Syria's use of chemical weapons because Congress declined to approve the requested authorization to use military force against Syria. Peter Baker & Jonathan Weisman, *Obama Seeks Approval by Congress for Strike in Syria*, N.Y. TIMES (Sept. 1, 2013), <https://www.nytimes.com/2013/09/01/world/middleeast/syria.html> [<https://perma.cc/KK5W-AQEX>].

<sup>479</sup> See, e.g., *Public Release of Foreign Security Forces Units Ineligible for Assistance under the Foreign Assistance Act of 1961 and Arms Export Control Act Pursuant to the State Leahy Law: Calendar Year 2022*, *supra* note 468; *Public Release of Foreign Security Forces Units Ineligible for Assistance under the Foreign Assistance Act of 1961 and Arms Export Control Act Pursuant to the State Leahy Law: Calendar Year 2019*, *supra* note 468.

<sup>480</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

## VII. CONCLUSION

Corruption is a real but not insurmountable challenge in the SSA space. Meaningful reform must include preventing the United States from contributing to the problem of corruption. And it requires an understanding that corruption is not a second order concern that can be addressed after more important security problems are resolved. Indeed, continuing to pour resources into corrupt security partners actively undermines our security objectives and exacerbates the very security problems we are trying to address while potentially creating new challenges.

To reduce America's contribution to corruption in partner security forces, Congress should require systematic vetting of potential recipients of assistance, with limitations on transfers to corrupt actors. Exceptions to this requirement should be limited and clearly spelled out to prevent the exceptions from swallowing the rule. Such a proposal would introduce some constraints on Executive Branch authority, but those constraints would, on the whole, strengthen America's hand in combating corruption as a national security problem.

The change in administration may well mean that foreign corruption is deprioritized as a concern. In its first few weeks in office, the Trump administration halted all foreign assistance programs except military assistance to Egypt and Israel.<sup>481</sup> This action suggests the top priority in foreign assistance may be to cut as much of it as possible, not improve how it is disbursed. Nonetheless, Congress should push forward on keeping combating corruption a national security concern by creating a legislative requirement for anticorruption vetting of partner forces.

---

<sup>481</sup> Pamuk & Psaledakis *supra* note 1.

## Appendix: Model Legislation

## (a) IN GENERAL

No assistance shall be furnished under this chapter [the Foreign Assistance Act of 1961, as amended, under any amounts made available to the Department of Defense, or under the Arms Export Control Act [22 U.S.C. 2751 et seq.], to any unit of the security forces of a foreign country, or member of such unit, nor shall any sale of U.S. defense equipment or training (whether completed through the United States Government Foreign Military Sales Program or as Direct Commercial Sale) occur if the Secretary of State has determined there is probable cause that such unit has engaged in significant acts of corruption.

Nor shall the Central Intelligence Agency nor any other entity of the Intelligence Community provide any funding or assistance to any unit of the security forces of a foreign country or any member of such a unit if the Secretary of State has determined there is probable cause that such unit has engaged in significant acts of corruption.

## (b) EXCEPTIONS

(1) The prohibition in subsection (a) shall not apply if the Secretary determines and reports to the appropriate congressional committees that the government of such country is has taken all necessary corrective steps to:

- A. punish the perpetrators of significant acts of corruption through appropriate criminal, civil, and/or administrative means;
- B. remove any commanders who ordered, facilitated, assisted, profited from, or allowed the significant acts of corruption;
- C. require disgorgement of any improperly obtained benefits from perpetrators of significant acts of corruption; and/or
- D. implement remediation measures to prevent future significant acts of corruption;

(2) The prohibition in subsection (a) shall not apply if the Secretary of Defense, in consultation with the Secretary of State, determines the equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.

In the event of an exception due to national security emergency, Secretary of Defense shall provide to the appropriate congressional committees within ten days of the invocation of the exception, a report delineating the specific national security emergency and stating the grounds for providing assistance to the unit. Should the national security emergency persist beyond 90 days, the Secretary of Defense shall provide an updated report to the appropriate congressional committees every 90 days until the end of the emergency. Should the national security emergency continue to exist beyond two years, any further assistance to those units for which there is probable cause to suspect significant acts of corruption must be specifically authorized and appropriated by Congress, unless and until the Secretary of State certifies that the recipient has taken all necessary remedial measures as described in Section (b)(1) above.

## (c) WAIVER

(1) The President may waive the prohibition in Section (1)(a) for extraordinary circumstances. In the event of such a waiver, the Secretary of Defense shall provide to the appropriate congressional committees within ten days of the invocation of the waiver, a report describing:

- (A) the information relating to the significant acts of corruption;
- (B) the extraordinary circumstances that necessitate the waiver;
- (C) the purpose and duration of the training, equipment, or other assistance; and

(D) the United States forces and the foreign security force unit involved.

(2) A waiver pursuant to this section shall be in effect for no longer than one year.

The President may renew the waiver for one additional one-year period.

Following the second one-year waiver, any further assistance to those units for which there is probable cause to suspect significant acts of corruption must be specifically authorized and appropriated by Congress, unless and until the Secretary of State certifies that the recipient has taken all necessary remedial measures as described in Section (b)(1) above.

(d) DUTY TO INFORM AND ASSIST

(1) If assistance to a foreign security force is provided in a manner in which the recipient unit or units cannot be identified prior to the transfer of assistance, the Secretary of State shall regularly provide a list of units prohibited from receiving assistance pursuant to this section to the recipient government and the appropriate congressional committees and, such assistance shall only be made available subject to a written agreement that the recipient government will comply with such prohibition.

(2) If the recipient government withholds assistance from a unit pursuant to this section, the Secretary shall inform the appropriate congressional committees and shall, to the maximum extent practicable, assist the foreign government in bringing the responsible members of the unit to justice and assist the recipient government in improving its capabilities to prevent, detect, and punish corruption in the security forces.

(e) PROBABLE CAUSE

The Secretary shall establish, and periodically update, procedures to—

- (1) ensure that for each country the Department of State has a current list of all security force units receiving United States training, equipment, or other types of assistance, whether paid for through U.S.-appropriated funding or not;
- (2) facilitate receipt by the Department of State and United States embassies of information from individuals and organizations outside the United States Government about significant acts of corruption by security force units;
- (3) require recipient governments of U.S. security sector assistance to participate in U.S. government audits of U.S.-funded security assistance provided to the recipient government as a condition of receiving that aid;
- (4) routinely request and obtain such information from the Department of Defense, the Central Intelligence Agency, the Department of Justice, the Department of the Treasury, and other United States Government sources;
- (5) ensure that such information is evaluated and preserved;

(6) ensure that when an individual is designated to receive United States training, equipment, or other types of assistance the individual's unit is vetted as well as the individual;

(7) seek to identify the unit involved when probable cause of significant acts of corruption exists but the identity of the unit is lacking; and

(8) make publicly available, to the maximum extent practicable, the identity of those units for which no assistance shall be furnished pursuant to subsection (a).

(f) ANNUAL REPORT

(1) In general. – Not later than March 31 of each year, the Secretary of State, after consultation with the Secretary of Defense, shall submit to the appropriate committees of Congress a report setting forth for the preceding fiscal year the following:

(A) The total number of cases submitted for vetting for the purposes of this section, and the total number of such cases approved, or suspended or rejected for significant acts of corruption, administrative reasons, or other non-corruption reasons.

(B) In the case of units rejected for non-corruption reasons, a detailed description of the reasons relating to the rejection.

(C) A description of the interagency processes that were used to evaluate compliance with requirements to conduct vetting.

(D) Such other matters with respect to the administration of this section, as the Secretary considers appropriate.

(2) Secretary of Defense's Report. Not later than March 31 of each year, the Secretary of Defense shall submit to the appropriate committees of Congress, a report of any comments by the commanders of the combatant commands about the impact of this section on their theater security cooperation plan.

Form.–Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

(g) DEFINITIONS

(1) For the purposes of subsection (d)(7), the term “to the maximum extent practicable” means that the identity of such units shall be made publicly available unless the Secretary of State, on a case-by-case basis, determines and reports to the appropriate congressional committees that public disclosure is not in the national security interest of the United States and provides a detailed justification for such determination, which may be submitted in classified form.

(2) For the purposes of this section, “appropriate congressional committees” means the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate, and the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

(3) For the purposes of this section, “significant acts of corruption” means any of the following:

- (a) Unlawful or unauthorized sale or transfer of defense articles with combined value of no less than \$100,000, whether purchased with U.S.-appropriated funds or otherwise, for the personal gain of any individual(s);

- (b) Unexplained and unjustified expenditure, loss, or destruction of defense articles with a combined value of no less than \$100,000, if purchased with U.S.-appropriated funds;
  - (c) Unlawful or unauthorized sale or transfer of any restricted defense articles to any person or entity not entitled to receive them whether or not done for the personal gain of any individual;
  - (d) Funding or assets with a combined value of no less than \$100,000 designated for training, arming, or equipping troops was diverted from these purposes for the personal gain of any individual(s);
  - (e) Maintenance of falsely inflated records of troop or unit strength for the purpose of diverting expenditures of salaries or other disbursements for said forces to the personal gain of any individual(s);
  - (f) Acts of extortion, solicitation of bribes, or racketeering conducted under color of authority;
- (4) For the purposes of this section, “probable cause” shall have the same meaning and definition as it does in the Fourth Amendment to the United States Constitution, as interpreted by federal case law.
- (5) For the purposes of this section, “national security emergency” means an event or condition that poses a significant risk of serious harm to the national security of the United States, including, but not limited to:
- (a) Imminent acts of terrorism;
  - (b) The use or threatened use of weapons of mass destruction; or
  - (c) War or civil unrest threatening significant U.S. government interests or U.S. persons.
- (6) For the purposes of this section, “extraordinary circumstances” means an event or condition that poses a significant risk of serious harm to the national security of the United States and for which the President determines it is necessary to provide assistance to an otherwise prohibited unit in order to properly address or mitigate the risk, meaning there are no reasonable alternatives to providing such support consistent with defending the national security interests of the United States. For a waiver under “extraordinary circumstances” to apply, the President must make a determination based on particularized information that the benefit of assisting the prohibited unit outweigh the potential costs of such assistance.
- (7) For the purposes of this section, “unit” shall mean smallest grouping of forces responsible for its own staffing and maintaining its own inventories of materiel that has been implicated in the significant acts of corruption. The prohibition of a unit under this chapter extends to all members of that unit unless and until such time that the Secretary of State has determined that the partner country has taken all necessary corrective steps to render the unit eligible for assistance.
- Partner forces may have organizational structures which differ from U.S. military forces, requiring determination of what constitutes the smallest such organizational grouping of forces capable of exercising control over its personnel or resources. Significant acts of corruption within a unit will not taint the commands or larger organizations to which that unit belongs unless the Secretary determines there is probable cause that significant acts of corruption have been committed by other forces within those larger organization.