A PROPOSAL FOR THE REVISION OF THE LEAHY LAWS TO ALIGN HUMAN RIGHTS AND SECURITY COOPERATION POLICIES WITH NATIONAL STRATEGY

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Abstract:

The United States has long paired human rights and security cooperation policies to meet national strategic objectives. The 2021 Interim National Security Strategy called for an increase in security partnerships with like-minded nations while also continuing support for human rights efforts abroad. The Leahy Laws and other policies constructed in and after the Cold War have prevented human rights abusers from receiving US military aid. However, once a US partner commits a human rights violation the entire unit is suspended from receiving US military aid and faces a daunting remediation process before it can resume security cooperation with the US. Suspending military aid indefinitely no longer supports national strategy but looking past human rights abuses also stands to ruin the moral leadership role the United States has in global politics. This proposal reviews standing policies that affect security cooperation and human rights and evaluates how they now obstruct US national strategy. The proposal recommends reforming Leahy Laws by adding human rights training to the remediation process of the Leahy Laws to expedite the stagnant remediation process and ensure partners are not lost to adversaries who are indifferent toward human rights.

Advised by: Professor Paul J. Weinstein, Jr.
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1. Action Forcing Event:

The US Central Command (CENTCOM) Commander, General Kenneth McKenzie, met with the Egyptian Minister of Defense to discuss the Biden Administration’s recent decision to cut $130 million in military aid over US concerns of human rights violations in Egypt. While this appears to be a strong stance on human rights, it represents a 1% reduction in aid and follows an announcement of a new $2.5 billion US package for military aid to Egypt.¹

2. Problem Statement:

The decision to simultaneously cut and increase aid amid undisclosed allegations of human rights violations is representative of the misalignment of US security cooperation and human rights policies. The US uses numerous policy tools to support its security cooperation programs (often called security assistance), including foreign arms sales and loans, advise and assist missions, educational exchanges, training engagements, and multi-national exercises. The US also pairs many of these programs with human rights initiatives or laws, such as the Leahy Laws and the Arms Export Control Act (AECA), in conjunction with executive guidance, Department of Defense (DOD) policy, and national strategy documents. These policy tools are executed via economic and diplomatic sanctions, arms embargoes, and training or arms sales.

restrictions. Nonetheless, the problem remains that current US foreign policy is misaligned when security cooperation and human rights objectives are paired. This misalignment damages US foreign relations and foreign perceptions of the US commitment to human rights during a new era of Strategic Competition with the People's Republic of China (PRC) and Russia.

Enforcement of human rights initiatives will often damage relations when the US finds that a foreign partner has violated them and then imposes military aid restrictions or sanctions on the guilty units or nations. The issue is compounded when the US does not hold states equally accountable to the US code on foreign aid and policy standards. Until recently, many US embassies did not share vetting results with partner nations, despite legal requirements to share the data with the host nation to avoid damaging relationships.² As of 2017, the DOS publishes an annual list of suspended units on its website.³ This year, an advisor to the Supreme Court of Bangladesh disclosed that the country is debating whether it should follow procedures established by the Leahy Laws that would remediate Bangladeshi units sanctioned from receiving aid, noting that Bangladesh would then go to the PRC for support. The advisor identified inconsistencies in how the US administered its human rights policies to close allies such as Israel, Saudi Arabia, and others.⁴ The US must stand up for human rights abroad but must evenly enforce a policy that does not damage relations, ultimately preventing the US from influencing partners to adhere to human rights concepts.

The US has imposed sanctions on partners such as Turkey, Indonesia, Egypt, Bangladesh, and the Philippines. According to data from the Stockholm International Peace Research Institute (SIPRI), following US sanctions for human rights abuses in Egypt, Bangladesh, and Turkey all increased arms imports from Russia. Similarly, the PRC has exploited US sanctions against human rights abuses in Bangladesh and Indonesia.\(^5\) Beyond arms transfers, reports indicate that the long-term cancelation or reduction in security cooperation due to the US inability to remediate human rights abuses damaged sentiment toward the US by the populations of Turkey, Egypt, Indonesia, and the Philippines.\(^6\) US human rights policies and their effects on security cooperation can negatively impact foreign relations.

The US laws that enforce human rights policy within security cooperation programs are loosely written and outdated. Title 10 of US code section 321 states

"Any training conducted [with a foreign force] shall, to the maximum extent practicable, include elements that promote-(A) observance of and respect for human rights and fundamental freedoms; and (B) respect for legitimate civilian authority within the foreign country concerned."

While this law describes civic themes that should be included in a training engagement, it does not provide much other detail, and there is little policy within the DOD to explain how to train foreign forces on civic themes. A single hour of classroom training amidst a six-week training program can meet the criteria in the law. Furthermore, most US service members lack the training to provide this instruction at an adequate level.


The Leahy Laws are found in Title 10, section 362, and Title 22, section 2378d of the US Code but are not comprehensive enough for consistent application. The Leahy Laws require the DOD and the Department of State (DOS) to vet “foreign security forces” before delivering training or extending the benefit of US funds. There are numerous definitional issues with the laws that create confusion and inconsistency. The confusion of terms has been so significant that the Congressional Research Service (CRS) and the DOS training for vetting officials provide guidelines on understanding specific terms. CRS highlighted that “foreign security forces” is not defined in its summary of the Leahy Laws for the 115th Congress. The DOS highlights training issues such as what constitutes a gross violation of human rights (GVHR), what qualifies as credible reporting, and what a unit is. The RAND Corporation conducted a procedural evaluation of the program in 2017 and found numerous issues, highlighting the ineffectiveness of the law. Issues include the inconsistency in how embassies administered vetting, how the system used to vet individuals (the International Vetting and Security Tracking System, or INVEST) does not maintain legacy data to demonstrate the effectiveness of the program, that numerous units avoid vetting, and that the remediation process for units and individuals sanctioned by the Leahy Laws is cumbersome and unclear. While the Leahy vetting process has over a 90% approval rate for clearing units and training participants, foreign partners are held to inconsistent standards.

There are ways for partner nations to remediate individuals and units that commit GVHR, but the remediation process is cumbersome and unclear. The remediation policy is not

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included in the law, but the law states that the US is to "assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice." The DOD and DOS created a joint policy for remediation in 2017 to rectify the matter, but it has seen little success. The standing remediation policy between the DOS and DOD requires partners to adequately adjudicate GVHR and expel violators before the remediation process can begin. Foreign partners find the remediation process following adjudication confusing and are hesitant to initiate the process believing that the process will be long and unlikely to clear the unit or individuals.\(^{10}\) Furthermore, many of the forces accused of GVHR do so within their borders during police activities or counter-terrorism operations. These units, such as the Rapid Action Battalion (RAB) in Bangladesh or the Komando Pasukan Khusus (Indonesian Army Special Forces, or KOPASSUS) in Indonesia, are composed of elite soldiers the host nation has invested heavily in to train and are unlikely to be expelled from their units to satisfy the US. Untrained, irregular units, such as the militias which fought Boko Haram in Nigeria, have also been subject to Leahy Laws. Remediating a unit that lacks an official roster prevented the US from providing more assistance during an emergency.\(^{11}\) The arduous remediation procedure practically eliminates the forces from receiving corrective training that a nation needs for legitimacy or to provide much-needed security. As a consequence of the poorly written remediation policy, the US limits stabilization forces from receiving the requisite training and aid, which further subjects the civilian population to forces untrained in human rights concepts and practices.

The 2021 US National Security Strategy (NSS) identified the PRC and Russia as its primary adversaries and recognized that the US is in a new era of Strategic Competition.\(^{12}\) The

\(^{10}\) Baul.


PRC and Russia have demonstrated that they will provide no-strings-attached security assistance to any nation regardless of human rights records. Critics warn that the US must avoid a "race to the bottom" for influence with the PRC and Russia as it attempts to provide security cooperation at a higher volume and lower cost without jeopardizing its human rights objectives worldwide. Many US human rights policies, such as the 1997 Leahy Law, were created during the Cold War or the Unipolar Moment. The current Strategic Competition environment exacerbates the misalignment of US security cooperation policy and human rights objectives. The US must court new security cooperation partners and strengthen existing relationships without compromising its commitment to human rights.

The 2021 NSS highlights partnership for many reasons as a matter of national strategy. Partnership is not just a matter of limiting allies and partners to our adversaries but of building a team of nations to deter the PRC and Russia from changing the world order, address other common challenges, and promote liberal democratic ideals and values. NATO and other existing US allies already share similar ideals, but the US must find new partners that are willing to consider its agenda rather than the agendas of the PRC or Russia. The NSS strives to build new partnerships and restore US leadership by looking beyond existing relationships. The US must persuade potential partners to share its ideals and work with the US on shared problems as part of the new national strategy.

15 2021 Interim NSS, 9-11.
3. History/Background:

Correctly combining human rights and security cooperation policies requires a close analysis of the history of both policies and how they have interacted with US national strategy. Federal law has developed over recent decades, which has shaped the US approach to protecting human rights abroad and has capitalized on security cooperation relationships. Similarly, national strategy has changed over the decades as US objectives and threats to national security have changed. For most of the 20th and 21st centuries, security cooperation and human rights policies have supported national strategy. It is not until the last decade that the two policies diverged from strategy.

The US has mixed its security cooperation policy with its human rights policy since the mid-20th century. The Foreign Assistance Act of 1961 (FAA) and the 1976 AECA created baselines to prevent foreign arms sales and exports to states that pose potential risks to their citizens and the citizens of other countries. The FAA codified the difference between military and non-military aid, establishing guidelines for aid distribution and establishing the US Agency for International Development (USAID).\(^{16}\) AECA established a requirement for the President of the United States to ensure that weapons transfers to a foreign state are used in accordance with their original intention of internal security or self-defense.\(^{17}\) Since their introduction, Congress has maintained these two laws but frequently amended and updated them to reflect lessons learned over time. These Cold War-era regulations are representative of US policy concerns of their time and demonstrate a distinction between the US and its adversaries which were not concerned with protecting human rights.


\(^{17}\) Arms Export Control Act, I-A § (1976).
Following the Cold War, regulations were introduced which were indicative of the Unipolar Moment; the US could be more stringent in its desire to see international partners adhere to human rights imperatives because there were few alternatives to US aid. In 1996 Title 20, Section 2785, also known as the End-Use Monitoring of Articles and Defense Services, built upon AECA by establishing a program that monitors the weapons sold or transferred to foreign states and ensures that sensitive technologies are not transferred abroad so the US maintained its competitive edge. In the mid-1990s, the US also imposed economic sanctions on Nigeria, Iraq, Burma, and Cuba for human rights violations and restricted arms sales to those nations to ensure arms could not be used for human rights abuse by regimes with questionable records. In US foreign policy in the 20th and 21st centuries paired both legislative and executive actions to deter human rights abuse and carefully monitor arms transfers.

In 1997, Senator Patrick Leahy (D-VT) introduced a bill requiring the US to vet partners for human rights violations before receiving counter-narcotics training. At that time, the vetting requirement only applied to the DOS. The bill rapidly changed form and became central to US security cooperation affecting both the DOD and DOS. Following human rights violations by Unit 81 of the KOPASSUS in East Timor and by the Indonesian Police in Aceh Province, Leahy Laws dramatically reduced arms transfers to all the Indonesian military. In addition to the police and KOPASSUS, sanctions were applied to the Indonesian Navy and Air Force, which were dependent on US replacement parts for equipment Indonesia had already purchased from the US. Even though Unit 81 perpetrated the GVHR, all of the KOPASSUS units and soldiers were banned from participating in US Special Operations Forces exchanges, including a 2008 counterterrorism (CT) conference in the United States, which the KOPASSUS commander could not attend because he

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was a member of a unit with a GVHR. Even though the Secretary of State cleared KOPASSUS in 2005 to participate in training exchanges, they could not conduct an exchange until 2020. 19 The Leahy Laws have been a critical aspect of US security cooperation and human rights policies and have been included in all annual appropriations acts since 1999. 20

The Leahy Laws are necessary regulations within security cooperation policy. First, they promote human rights adherence for US partners and allies. Second, they encourage partner nations to administer justice on behalf of victims of human rights abuses by officials of their defense apparatus. Most importantly, it ensures that the US maintains a principled stance on human rights by not contributing to known human rights abusers' crimes. The Leahy Laws have had significant success in that they have caused Turkey, Colombia, and Indonesia to make human rights reforms. 21 Nonetheless, the Leahy Laws have required frequent amendments and modifications.

Security cooperation and US military aid decreased temporarily following the September 11th Attacks in 2001 as part of a downward defense trend but resumed an upward trend in 2003. During this time, US security cooperation took a different shape in supporting CT operations across the globe. As part of the Global War on Terror, the US began training with partners and allies worldwide, specifically in CT, and increasing arms transfers as part of a broader CT strategy. The creation of the Leahy Laws in 1997 was thus well-timed to ensure that US partners adhered to human rights principles as operations became more kinetic and the US

became a closer security partner to nations around the world. Leahy Laws kept the US from security cooperation relationships with human rights abusers as it increased arms transfers and training with foreign allies.

In 2010, INVEST was introduced to enhance the Leahy Vetting process. INVEST allows DOS representatives to input biographical data of recipients of training and equipment from either the DOD or DOS in a single online repository. While this was a significant advancement in the vetting process, it has not developed with the current need. The program does not maintain legacy data, nor does it track the impacts of vetting on training events or equipment transfers, creating problems with measuring the effectiveness of Leahy Laws.23 If INVEST maintained data and could analyze it, DOS and DOD officials could identify what caused a security event to be

22 Author’s note: SIPRI uses the Trend Indicator Value (TIV) to describe the value of an arms transfer or sale. The TIV represents an amalgamation of the dollar value of the production cost of materials, the type of materials exchanged, the quality of the material, amongst other inputs. TIV allows a more precise value of an exchange as other services and bargaining points can alter the actual dollar value of an exchange.

23 McNerney, 23.
approved, delayed, canceled, or suspended due to GVHR. INVEST remains the program of record for Leahy Vetting and contributes to the months it can take for Leahy Vetting to conclude.

In 2011, amendments to the Leahy Laws made whole units ineligible for training if the units had members on their rosters previously accused of GVHR. Current Leahy Law training defines "unit" as an army battalion, an air force squadron, a naval ship or vessel, or a police squad. Therefore, a unit of one-thousand personnel can be suspended from a highly important, multi-national training event because it was unaware that an alleged human rights violator was reassigned to their unit. The entire ten-thousand person Cambodian Gendearmie was recently suspended from US security cooperation despite the DOS guidelines. Furthermore, the training requires vetting officials to review a unit when vetting an individual. This procedure can jeopardize an individual who had no part in a GVHR event and is not participating in training with a suspended unit. This clause prevented the KOPASSUS from training with US Special Forces for over two decades and the commander from attending the CT conference despite a complete personnel turnover in the unit.

A Government Accountability Office (GAO) report from 2013 identified significant issues with the execution and enforcement of Leahy Laws and vetting at embassies worldwide. The report identified significant inconsistencies in understanding the laws, which caused each embassy to generate its standard operating procedure (SOP). Embassy staffs were unsure of what events or exchanges required Leahy Vetting and what level of detail they should evaluate. The DOS Bureau of Democracy, Human Rights and Labor (DRL) guidance concerning vetting and

26 “Introduction to Leahy Vetting Policy Version 2.1”
SOP development by embassies was categorically ignored. The report also identified that vetting officials were under-trained, which led to many discrepancies. Finally, the GAO report identified that DOS was failing in its 'duty to inform' the host nation that funds were withheld on account of human rights violations.\textsuperscript{27} As a result, DRL created a handbook describing best practices to help embassy staff better understand the program and began publishing the list of banned units in 2017.

During Boko Haram’s emergence in Nigeria in 2014, Congress held a hearing on the Leahy Laws. Nigerian security forces and militias were found guilty of GVHR against Boko Haram, making the US partnerless in the conflict.\textsuperscript{28} Experts and human rights advocates testified at the hearing providing their views on the Leahy Laws. While critics and defense experts highlighted the flaws in the Leahy Laws, Congress and advocates supported a continuation of the policy but advocated for changes made in 2015.

Significant advances were made in 2015 to clarify stalemates created by Leahy Laws. First, the 2015 National Defense Authorization Act (NDAA) authorized the DOD to conduct training that promotes respect for the rule of law and human rights, including with units formerly suspended by the Leahy Law. Offering training on human rights and the rule of law was a largely symbolic action, though, as few training exchange programs deliberately provide opportunities for US units to teach liberal civic topics. Furthermore, it is doubtful that a nation would send its forces, especially ones facing allegations of human rights violations, to training that does not increase their functional effectiveness without incentivizing the training.

\textsuperscript{27} Charles Michael Johnson et al., \textit{Government Accountability Office} (Government Accountability Office, September 2013).
\textsuperscript{28} Christopher Smith, 2.
Also in 2015, the DOS and DOD established a joint policy on unit remediation so that nations that have taken effective measures to address human rights violations can resume training and equipment transfers with the US. The policy, which amended a 2014 memorandum, is still in effect and helps DOS and DOD officials determine how suspended units can regain eligibility, what constitutes a 'new' unit, and how to define that a unit is ‘fundamentally different from its predecessor.’ In order to restore a unit’s eligibility, the host nation must investigate, administer appropriate judicial or administrative adjudication, and conduct appropriate sentencing or comparable administrative actions. Finally, the policy establishes the proceedings, timeline, and composition of a Remediation Review Panel and a Senior Remediation Review Panel. Without a secretary-level waiver which only extends the timeline indefinitely, the remediation process as written can take up to three months and require high-level officials from nine national agencies and offices. The policy fails to elaborate on or define the term 'appropriate' in either use, therefore, failing to eliminate the ambiguity to foreign nations.

Consistent with the 2011 amendment, the joint DOS/DOD policy reiterates that new units may not have members formerly implicated in a GVHR. While this prevents a partner nation from simply reflagging a unit under a different name, it can make entirely new units immediately ineligible for assistance when needed most. This policy endangers new units established under the new Section 333 of Title 10, which allows US forces to help a partner nation create a new unit to build partner capacity.

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29 Chuck Hagel, “Additional Guidance on Implementation of Section 8057(b), DoD Appropriations Act, 2014 (Division C of Public Law 113-76) (‘the DoD Leahy Law’) and New or Fundamentally Different Units,” Additional Guidance on Implementation of Section 8057(b), DoD Appropriations Act, 2014 (Division C of Public Law 113-76) ("the DoD Leahy law") and New or Fundamentally Different Units § (2015), p1, Annex 1.
30 Ibid, 3.
The 2015 policy also addresses pardons under transitional justice. This policy element intended to aid partner nations to move on following a civil war, a regime change, or after a nation quelled a resistance element. The policy requires a partner nation to undergo the same remediation processes for forces following a civil war, even if the nation has pardoned resistance members. Remediation following an extended period of civil unrest can delay eligibility for years and prevent national reunification when a partner nation needs US support and training. Although the policy was crafted a decade after the Tatmadaw permitted greater civil control of Myanmar and four years after the Junta dissolved, most units in Myanmar would have still been ineligible for US assistance given this policy. Instead of capitalizing on a moment of opportunity when Myanmar was becoming more democratic, the US hamstrung itself from assisting a developing nation emerging from years of isolation and conflict. Despite the Tatmadaw's reservations about the PRC and Russia, it receives more military and non-military aid from the PRC and Russia than anyone else since neither is concerned with human rights records.31

The RAND study found that the joint DOD and DOS policy indicate that it did not erase the confusion it was meant to eliminate.32 Remediation is still a daunting task that few units have overcome since 2017. This joint policy is intended to clarify policy hurdles and restore eligibility to units long waiting for US assistance. By restricting past GVHR violators carte blanche and requiring the same procedure for remediation following civil unrest, the policy made aspects of remediation clearer but more arduous. Foreign partners can punish and expel human

32 McNerney, xii-xvi.
rights abusers and still not be eligible for remediation if the review panels can not reach a consensus of opinion.

The 2017 National Security Strategy (NSS) changed the US outlook toward geopolitics. CT remained a significant aspect of US strategy; however, the US declared the PRC its primary threat. It also recognized Iran, North Korea, and Russia among US adversaries. Despite the change in posture, the US continued to treat human rights policy within security cooperation as if the US remained in the Unipolar Moment; that the US was without a peer threat to US national interests. By this time, the PRC had already begun the Belt and Road Initiative and was nearly a decade into the international arms sales and security cooperation industry.

Congress enacted two new laws in 2017 that directly impacted security cooperation via human rights violations, which affected foreign relations. The Global Magnitsky Human Rights Accountability Act gave the President new sanction authority to address foreign human rights violations as part of the 2017 NDAA. The 2017 NDAA also established the 333 program and required comprehensive human rights training to be taught at the beginning of the training.\(^\text{33}\) The 115\(^{\text{th}}\) US Congress also passed the Countering America’s Adversaries Through Sanctions Act of 2017 (CAATSA). CAATSA allows the US government to sanction certain US adversaries’ activities and other supporting entities which work closely with our adversaries.\(^\text{34}\) CAATSA could result in sanctions on our partners, such as Egypt, who look for alternatives to US training and equipment following human rights suspensions.\(^\text{35}\)


\(^{35}\) Lewis.
The 2021 Interim NSS shifted the US strategy away from CT, fully embracing the era of Strategic Competition. The Biden Administration pledged multiple times in the Interim NSS and elsewhere to renew human rights efforts. The strategy repeatedly emphasized the need to build and improve partnerships with nations across the globe.36

Senator Patty Murray (D-WA) and Representative Sara Jacobs (D-CA53) introduced bills this year that, if passed, will significantly inhibit US objectives during the current moment of Strategic Competition. As they were submitted to the senate and house, the bills, collectively known as the Values in Arms Export Act of 2022 (VAEA), hold an entire country responsible for human rights violations. VAEA states that it makes "a country's respect for compliance with internationally recognized principles of human rights and the law of war central" in a country's purchase of defense articles. In addition to GVHR, a nation can be suspended from purchasing defense articles if it does not adhere to principles of proportionality, displays "egregious patterns of destruction" of civilian and medical infrastructure, denies humanitarian relief, or displays gross corruption. It deliberately excludes NATO members, New Zealand, Australia, Japan, South Korea, and Israel from such sanctions.37 This bill can significantly impact nations attempting to stabilize themselves. Eradicating corruption can require significant US aid. Furthermore, US adversaries can exploit the bill by claiming a partner denies humanitarian relief when it attempts to deliver articles of war to resistance elements in humanitarian convoys, as Russia has done in eastern Ukraine. It also provides credibility to those who claim the US inequitably administers sanctions for human rights violations by creating an exclusionary list.

VAEA holds whole nations responsible for the actions of individuals and units and will likely decrease partnerships rather than build them in accordance with the 2021 Interim NSS. This bill

36 2021 Interim NSS, 1.
is demonstrative of the current misalignment of security cooperation policy and human rights policy with national strategy.

The US has coupled human rights with security cooperation since the mid-20th century. For most of this period, the pairing of human rights policy with security cooperation aligned with national strategy. During the Cold War, the US monitored arms sold to ensure that the US distributed arms responsibly. During the Unipolar Moment, the US took advantage of its status as hegemon to advance human rights through security cooperation by creating more policies that ensured the US would not inadvertently facilitate human rights abuses. During the Global War on Terror, the US continued its actions and modified human rights laws pertaining to security cooperation as it helped foreign nations defeat internal terrorism threats. In the era of Strategic Competition, human rights and security cooperation policies diverge from national strategy, which risks the strategic partnerships the US needs.

The US has used economic and diplomatic sanctions, arms embargoes, withholding training, and arms sales restrictions to discourage bad behavior over the past seventy years. Except for the new 333 program of 2017, which provides US funding to build partner capacity, there are currently limited incentives for partner nations to train on human rights. The US can align human rights policies and security cooperation while incentivizing both.

4. Policy Proposal

Human rights and security cooperation need not compete when fulfilling national strategy. The US can maintain its principled defense of human rights while enhancing existing defense partnerships or building new defense relationships in previously off-limits countries by amending the Leahy Laws. This policy, known as the Synchronization of Human Rights and
Security Cooperation Policy (SHRASC), would restore the US' reputation as a defender of human rights and a fair judge of conflict.

The goal of SHRASC is to reduce the number of units banned from training with the US military due to human rights violations by 25% over a decade and renew relations with previously closed nations that have recently allied themselves with US adversaries as Myanmar has with both the PRC and Russia. SHRASC intends to help improve human rights records by punishing poor behavior and incentivizing progress. SHRASC also intends to increase security cooperation engagements and reduce the impact of reporting human rights abuses by allowing units and countries to regain good standing.

SHRASC will be an amendment to the Leahy Laws, which will detail a more straightforward remediation process that partner nations can understand instead of the internal DOS and DOD joint policy by streamlining events after human rights abusers are held accountable. The current remediation process by the DOS and DOD is highly subjective, relying on the consensus of opinion of multiple panels, and does not make exceptions for reconciliation following civil conflicts. The DOS and DOD determine if the partner nation's adjudication was sufficient after punishing violators. It is only clear from the policy that violators cannot be retrained or be in a unit receiving security assistance, but it is not clear what adjudications and punishments are adequate enough to regain good standing. Furthermore, the existing Leahy Laws cut ties with units accused of human rights violations for the actions of individuals, leaving developing countries to find aid elsewhere. While the Leahy Laws do not apply to arms transfers and sales, SHRASC would tie human rights violations to the privilege of arms transfers and sales, increasing the severity of human rights violations on foreign units guilty of violations by

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38 DOD and DOS joint policy on remediation.
restricting any arms transfers from the USG to units which have committed GVHR. SHRASC would maintain ties with units and nations with human rights violations by requiring human rights training to renew relations with the US and regain full security cooperation privileges. SHRASC is not meant to restrict non-military aid provided by the US Agency for International Development or other entities.

Remediation will occur in phases, as the VAEA proposes, and will include human rights retraining as a critical step. The remediation process will be authorized by the local US Embassy rather than leaving remediation approval to officials in Washington, D.C. While the VAEA is too strict in punishing a whole nation for the crimes of a few individuals, it employs the appropriate incentive for progress and punishment for lapses in performance by only holding the individuals involved in a GVHR accountable while allowing the remainder of the unit to continue security cooperation with the US. The SHRASC Leahy Law revision should punish units and countries with poor records in human rights by reducing their privileges but incentivizing corrective action. SHRASC will incentivize remediation by renewing military training, loans, and aid by partner nation units after conducting human rights retraining under DOS and DOD trainers. Countries and units which undergo DOS and DOD combined training in human rights can reopen units to training with US forces in events subject to Sections 321, 322, and 333 of Title 10.

After the partner unit completes training and maintains a positive human rights records for one year, the respective US Embassy can reopen non-lethal equipment loans to the unit. If the unit has maintained a clean record for five years, the unit is eligible for lethal equipment loans of small arms (weapons designed for individual defense), and after ten years, the unit regains full eligibility for military aid transfers and purchases. The country team should celebrate entry into each new phase by praising its progress and publicizing remediation instead of just
suspension as is DRL’s current practice. Relapses in human rights abuses will result in the unit being banned from US aid entirely for five years after a Remediation Review Panel (as described in the DOS and DOD joint policy on remediation) has determined the unit has adequately punished human rights abusers and unit leaders which did not stop the violations. Just as the Leahy Laws allow national-level secretaries to make exceptions, under SHRASC, the Secretary of Defense, with concurrence from the Secretary of State, will have the authority to accelerate or slow the process. Neither Secretary can override the timeline until after they notify Congress. This process will retrain units with issues without ending the partnership and open new units previously banned from US aid in other nations. However, the intention of SHRASC is not to look past human rights violations but rather to rid units of violators and retrain the salvageable members of the unit to maintain relations with the US.

The remediation training outlined in SHRASC should focus on both unit leadership and the action arms of the units, as well as high-level national military leaders. Training should educate the units and national military leadership on the consequences of human rights abuses and the failure to adjudicate them rapidly. DOS trainers should primarily teach the ethical considerations of human rights and discuss the fiscal and relationship costs that the amendment imposes during the training. The action elements (units of action similar to a US Army or Marine Corps company size) should be trained on the ethical considerations by the DOS and include hands-on, non-lethal training by the DOD or law enforcement elements for detainee operations, evidence collection, and proportionality while also including role-playing to build empathy. Training participants should be registered and tracked in INVEST to validate the quality of the instruction and the program’s success. The DOS and DOD should build the training plan, but Congress should approve the program of instruction every five years. Data collected in INVEST will help Congress change the curriculum if necessary.
During SHRASC retraining, the trainers will need to assess the baseline environment around the unit to prepare the environment to renew standard security cooperation; thus, the amendment should authorize participants to survey the area. Authorizations should be explicit, and surveys should be thorough, allowing the following units to return to the region with as much information as possible to cooperate with retrained units. The trainers should survey logistical infrastructure, living arrangements, wireless and cellular networks, training sites, and surrounding businesses and contractors which offer critical life support. It will also reduce costs by reducing the need for predeployment site surveys to be conducted later by having the DOS and DOD human rights training trainers conduct some of the area assessment training units often must conduct.

While Congress will require the change by amending the Leahy Laws, elements of the DOS and DOD will need to implement the policy change. The DOS's DRL will need to coordinate the training with rotational trainers from across the DOD. The DRL will need to hire instructors who train the respective DOD unit selected for each engagement and the partner nations’ units. SHRASC will require an $8 million budget increase per annum for the DRL to pay for additional employees and operational costs.\(^3\) This will be a significant increase in the DRL budget since the DRL budget in 2014 was only $26.8 million.\(^4\) Benefits opened in each phase will be funded by existing security cooperation programs. SHRASC’s verbiage should detail that funding for US military personnel conducting the retraining engagement will come from the DRL.

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\(^3\) This figure was calculated estimating the average DOS employee salary to be $60,000 and anticipating 20 new hires. The calculation estimated 120 days deployed per year for 5 person teams at $5,000 per person per trip for per diem, lodging, and travel costs. DOD trainers’ were estimated at 80 days for a 12-person team. These calculations came to $6,300,000. $1,000,000 was added to account for regional surveys and progress ceremonies and was rounded up.

Congress can initiate SHRASC this session during negotiations over the annual NDAA. Once approved by Congress and signed by the President, Congress should permit the DRL fifteen months overall to hire and train new employees, design the program of instruction, identify potential partner units to train, and train the first DOD units to conduct the training before conducting the inaugural human rights retraining course. The program should be evaluated and amended for effectiveness within five years and reevaluated in ten years before determining the future of the program.

INVEST must be updated to support the evaluation of SHRASC and other programs that require human rights vetting according to the Leahy Laws. INVEST should be updated to maintain legacy data, track the impacts of vetting on training events and arms transfers and sales such as delaying training, canceling training due to violations, or approving it; track individual and unit records regarding human rights, and validate human rights violations. INVEST can become a critical component of multiple regulations, programs, and policies by providing programmatic evaluations and research data.

During the initial five-year period, the DOD should recommend previously banned units to remediate to test the process and curriculum. US ambassadors should nominate countries that do not have security cooperation relationships with the US to progress their country plans. The DOD should consult respective ambassadors prior to requesting a unit be permitted to begin human rights retraining to ensure remediation supports the integrated country plan.

SHRASC must be initiated by legislation because the current laws do not support national strategy. SHRASC would synchronize human rights and security cooperation with national strategy, and subordinate departments and offices would subsequently have to change their policies to support the new legislation.
5. Policy Analysis

SHRASC has both strengths and weaknesses, which policymakers must evaluate before determining if it will likely be successful. SHRASC ought to be broken into several sub-components for better analysis, which are its ability to reduce banned units by 25% over the next decade, the utility of the phasing approach, the procedural exemption offered to the Secretary of Defense and Secretary of State, the nature of retraining both units of action and high-level leaders, the preparation of the environment which accompanies retraining, and SHRASC's ability to address the problem. It is also critical to evaluate the aspects of the problem which SHRASC does not address and which portions of human rights and security cooperation policy may remain at odds with national strategy.

This policy would meet the goal of reducing the banned units by 25% because it offers incentives for positive human rights records following violations and allows the US to maintain relations rather than cut them with units that have had human rights violations. According to the DRL’s public releases, Leahy Vetting has suspended fifty-eight units in the three years of records available.\textsuperscript{41} Estimating that the DRL will employ four teams of five personnel each, teams will be able to retrain and remediate twelve units per year, resulting in one-hundred and twenty units over the decade, which is well within 25% if Leahy Vetting suspensions maintain the current trajectory. This deployment rate may cause retention issues on DRL teams.

US military training has worked to change the behavior of other nations. Recent US maritime security training with African Security has led several African countries to initiate their

\textsuperscript{41} Department of State Public Release.
maritime security programs.\textsuperscript{42} Cooperation between the DOS and DOD to enforce Leahy Laws in Colombia has increased human rights observation in Colombia, causing numerous units to be remediated under the current system. HOWEVER, the US Country Team in Colombia has maintained its workforce and its Leahy Vetting expertise.\textsuperscript{43} US security cooperation can change the attitudes and behaviors of US partners.

SHRASC’s phased approach is both a strength and a weakness of the proposal. A 2013 opinion article in Lawfare by Stephen Tankel and Melissa G. Dalton entitled "How to Improve Return on Investment for Security Assistance" described how the US should leverage security assistance with partner nations. In the article, Tankel and Dalton argue that programs ought to address a partner nation’s interests instead of being unilateral, ought to use positive and not just negative conditionality and that the US should follow through with established conditions when the partner nation fails to meet their obligations. The phasing of SHRASC meets all of those criteria by meeting partner nations’ needs through incentivizing combined training and arms transfers and by helping partners overcome GVHR as the laws require by making the training automatic after a GVHR.

During the first phase of human rights retraining, US trainers will inform the partner nation’s senior leaders and units of action of US policies concerning human rights and their impacts on security cooperation addressing their interests. SHRASC uses both positive and negative conditionality by rewarding positive rights records by opening up more security cooperation options while also cutting off aid and assistance if a unit has an additional issue.


\textsuperscript{43} Serafino, 15-16.
Furthermore, SHRASC incentivizes reform so that formerly unreachable nations can begin
relations with the US expecting that a partner nation will reform to receive benefits within its
interests.\textsuperscript{44} Bringing units and leaders into the process will increase the chances of success and
their commitment to reform.\textsuperscript{45}

Because the US Embassy initiates remediation, DOS will have a more significant role in
foreign policy. The US Country Team can also advise local governments on crafting regulations
to promote human rights and keep abuses accountable. SHRASC's phased approach may not
correct a lack of human rights incident reporting, though. Daniel Mahanty, a former DRL staff
member who helped craft the DOS and DOD joint remediation policy, stated that many in the US
government 'self-censor' their reporting to avoid creating issues with human rights vetting
before a security cooperation event.\textsuperscript{46} Foreign units also self-censor, as well, and will withdraw
from training events to avoid vetting.\textsuperscript{47} Repeat human rights violations in the same unit will
rescind a unit's eligibility for security cooperation under SHRASC, and it will have to begin
human rights retraining anew after adjudication of the human rights violations. Thus, units with
first offenses may be weary of self-reporting until remediation is complete and all rights are
restored. While SHRASC streamlines remediation of existing problems, it will be difficult to
reduce GVHR incidents and improve human rights observation if units avoid training and
country teams avoid reporting.

\textsuperscript{44} Tankel.
\textsuperscript{45} Stephen Watts, Alexander Noyes, and Gabrielle Tarini, “U.S. Security Governance and Competition
Objectives in Africa,” RAND Corporation, January 18, 2022,
\textsuperscript{47} Andrew M. Leonard, “Getting the Leahy Law Right,” Foreign Affairs, June 29, 2017,
The timeline may also be challenging for units and nations needing immediate assistance in national emergencies. Units that face an unforeseen foreign invasion, such as the Nagorno-Karabakh War or the Russian Invasion of Ukraine this year, would be ineligible to receive aid if they previously were ineligible for conducting a human rights violation in the conflict. However, just as in the Leahy Law, the Secretary of Defense and Secretary of State can make exemptions to the procedures outlined in SHRASC in such emergencies. Exemption by the Secretary of Defense and Secretary of State can create a poor optic of favoritism or inequity, providing data points for government watchdogs, foreign adversaries, and partner nations to denigrate US policy.

Unlike the Leahy Laws, SHRASC requires training of high-level leaders above the unit of action and the units of action responsible for adhering to human rights practices. This approach allows the leaders to understand the stipulations of US security cooperation while also ensuring that the units themselves receive adequate training. The training recommended by SHRASC would be hands-on and tactical, though non-lethal, and in the classroom to promote interest in the training by the unit. The drawback to this approach is that the DOD or law enforcement elements would provide hands-on training to a unit still in questionable status. The partner unit could misunderstand the training to explain how to exploit loopholes in US human rights and security cooperation policies. Many experts familiar with security cooperation point out that leaders of coups in Chad, Guinea, and Mali all received US training, which included instruction on support for civilian authority over the military. The US could sustain similar damage if units participating in this training violate human rights a second time. Furthermore, the leaders this

\[48\] Cole.
training targets may be disinterested in conducting this training and may be intentionally unavailable to participate, therefore stalling progress toward remediation.

The preparation of the environment conducted during the retraining may seem superfluous but is essential to increasing cost and time efficiency as part of SHRASC. DOD personnel conducting the human rights retraining alongside DRL personnel can establish a baseline overview of the unit, bases for future training, community logistical resources, and US personnel security concerns. Expressly conducting the baseline survey in conjunction with the human rights retraining SHRASC eliminates a repeat engagement at a similar cost, saving DOD elements thousands of dollars in already constrained budgets. This type of permission must be explicit for DOD elements to execute. An openly stated, unclassified authorization will reduce host nation suspicions of trainers' activity outside of the human rights training. Preparation as part of SHRASC enables follow-up training that may be executed in conjunction with Title 10, sections 321 and 322. Section 322 authorizes US forces to pay for

"...incremental expenses, with respect to a developing country, means the reasonable and proper cost of rations, fuel, training ammunition, transportation, and other goods and services consumed by such country, except that the term does not include pay, allowances, and other normal costs of such country's personnel."

Preparation of the environment authorized by SHRASC allows US forces to begin planning for the next phase of the program.

Preparation of the environment can have drawbacks within the execution of human rights retraining and partner nation relations. A partner nation may become suspicious of travel seemingly disassociated with the primary training. Additionally, those executing the training can misprioritize preparation of the environment over their attendance at the retraining, which can similarly reduce the success of the retraining.
The functionality of the policy must also be compared to its ability to solve the problem the policy intends to address. SHRASC is likely to address the current problem of misaligned policies with strategy, correct some deficiencies in Leahy Law and human rights vetting as they currently exist, and increase partnerships across the globe as the PRC and Russia are attempting to improve their security partnerships. Despite the likelihood of meetings its objectives, the analysis below will also consider some of the inefficiencies of the policy in solving those problems in their entirety.

US human rights policy and security policy can align through SHRASC. SHRASC can extend liberal values into partner nations and enhance foreign partnerships through security cooperation. Former Deputy Executive Director at Amnesty International, Frank Januzzi, stated that the Leahy Laws caused reforms in Turkey, Colombia, and Indonesia. Therefore, SHRASC, which uses both the negative conditionality of the Leahy Laws to deny military aid and the positive conditionality of incentives, is likely to lead partners to positive change in human rights adherence. SHRASC intends to increase security cooperation and partnership by providing other nations the means to remediate units ineligible to train with US forces or receive other forms of aid. A 2018 study by the CATO Institute, which evaluated US arms sales since 2002, considered nations like the Philippines and Egypt as risky to provide arms to as Afghanistan. The study identified that Congress had not used its authority to impede an arms agreement since the 1976 Arms Export Control Act was signed. The study recommended increased end-use monitoring and tying arms transfers to strategic benefits for the US. SHRASC will improve end-use monitoring by increasing US presence in a foreign country and tie behavioral and policy adherence.

49 Januzzi.
changes to arms transfers for otherwise risky actors. As a consequence of changes made by partner units, the security of citizens of partner nations is likely to increase, and partner nations are likely to see greater civilian control over security forces.

Many critics may see this policy as part of the "race to the bottom" for security cooperation partnerships, as the US will no longer summarily cut ties with units or nations with human rights abuses. The human rights community recently condemned Australia for providing humanitarian assistance training to Burmese forces in Australia. If the US adopts SHRASC, it may send the wrong signal to human rights watch groups and foreign nations that the US is loosening its Leahy Law restrictions. It may appear that the US is compromising its values to compete with the PRC and Russia. However, the director for Democracy for the Arab World Now (DAWN), Sarah Whitson, identified earlier this year that human rights and security cooperation do not need to be exclusive from one another. SHRASC can tie the two together, but it will take careful messaging on behalf of the DOD and DOS to ensure that the policy's purpose is not misconstrued.

SHRASC can make corrections to the current issues with Leahy Laws and other laws, but it will not address all of the problems identified by the GAO report or the RAND process review. SHRASC will correct inconsistencies in human rights vetting at embassies by increasing the staff at the DRL who provide training to embassy staff. The policy will also clarify the remediation process through the retraining process, which will restore eligibility to units that had human

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rights violators in their formations. The program will employ better-trained personnel from the DOD and DOS to provide retraining that was otherwise not provided by Leahy Law and enhance the ability of the USG to monitor equipment transferred to foreign partners in accordance with the Arms Export Control Act of 1976 and the End-Use Monitoring of Defense Articles and Defense Services Act of 1996. It will also ensure that civic themes mentioned in Title 10, Section 321 are taught where they are needed most. SHRASC employs information and recommendations from the 2013 GAO report as well as defense and human rights experts.

SHRASC is also more likely to encourage human rights violation reporting because the means to regain eligibility is clearer. Leahy Law-related human rights vetting causes a lack of reporting by partner nations and even USG officials because they believed there was no way to regain eligibility even after the joint DOD and DOS policy was issued.53 It may not stop units from avoiding vetting by canceling the training, but it may begin a conversation. Foreign partners are likely to see SHRASC as a road map to a restored relationship with US security cooperation.

SHRASC will not correct other systemic problems with existing laws and programs. SHRASC will be unable to solve problems created by legal definitions related to human rights vetting for critical terms such as 'credible reporting,' 'gross violations of human rights,' and 'unit,' which the DRL and the Congressional Research Service have difficulty clarifying.54 While SHRASC will use INVEST, INVEST will need a separate budget for modifications not covered in SHRASC. Without access to INVEST's program schematics, it will not be easy to estimate the cost

53 Mahanty.
of updating the software and providing retraining to DRL and embassy personnel on INVEST. Updating INVEST will increase the policy’s overall cost by an unknown amount.55

Ultimately, SHRASC will likely increase partnerships as part of the US national strategy. SHRASC is designed to reopen relationships. The VAEA would likely decrease partnership by cutting off whole nations for human rights violations and increasing accusations of US inequity. It excludes NATO, Japan, Australia, New Zealand, the Republic of Korea, and Israel.56 SHRASC is more likely to maintain relationships and appear more equitable. By standardizing a US-directed remediation process, partner nations are more likely to undergo the process. SHRASC does not exempt any partners from retraining and is more likely to be perceived as equitable.

6. Political Analysis

Despite the likelihood of the policy working, the likelihood of the policy drawing support must be evaluated. The political analysis of SHRASC indicates largely favorable political conditions in Idaho for Senator Risch, within the US government, and with like-minded foreign policy allies. However, there may be resistance from some policy experts and critics and human rights organizations that tend to seek draconian repercussions to anyone they can apply the label ‘human rights abuser’ to.

Senator Risch faces little opposition to reelection in 2026 to the Senate if he chooses to run again. Idaho is solidly Republican, with each state executive office and congressional seat currently owned by the Republican Party. In 2014 Senator Risch defeated his challenger from

56 Value in Arms Export Act of 2022.
the Democratic Party 65% to 35%. In 2020, Senator Risch ran unopposed in his party during the primary election and beat his closest challenger 62% to 25% in the general election.57

Human rights and security cooperation are common themes in legislation Senator Risch regularly sponsors. Senator Risch's November 2020 victory followed his sponsorship of the Caesar Syria Civilian Protection Act of 2019 alongside Senators Marco Rubio (R-FL), Robert Menendez (D-NJ), and Todd Young (R-IN). The bill passed via incorporation in the 2020 NDAA. The Caesar Syria Civilian Protection Act increased sanctions on individuals who committed or authorized human rights abuses in the ongoing Syrian Civil War, including Syrian forces, Russians, and other individuals from third countries. Similar to the expected impacts of SHRASC and the current impacts of the AECA, the Caesar Syria Civilian Protection Act prevents technology or arms from being transferred into the conflict zone to prevent them from supporting further human rights abuses.58 Senator Risch also sponsored a resolution with co-sponsors Senators Christopher Todd (D-DE) and Richard Durbin (D-IL), which requested that the upcoming 2022 US-Africa Leaders' Summit agenda address human rights and security.59 SHRASC is in line with Senator Risch's political brand and therefore maintains his popularity with his constituency. Voters in Idaho are likely to see SHRASC as a continuation of Senator Risch's legislative agenda.

Similarly, supporting SHRASC aligns with the current bipartisan policy Senator Risch is sponsoring with Senator Menendez, supporting DOS primacy in security cooperation. Defense

News recently published an article describing the bipartisan perspective that the DOD’s current leadership in security cooperation efforts gives it undue influence on the US government in foreign policy matters. Members of the DOS and Congress, including Senator Risch, would like to see the DOS take the lead in security cooperation as part of broader foreign policy planning.

DOS has recently put a proposal forward to increase human rights programming and create new, more attractive finance options for defense purchases. The assistant secretary of state for political-military affairs, Jessica Lewis, detailed the need for DOS to increase funding for the DOS to improve the workforce and work closely with the DOD.60 Menendez’s support for this policy is significant because he recently blocked a $1 billion aid package to Nigeria over human rights concerns and fear that the Nigerian government is becoming more autocratic.61 SHRASC is in line with the policy goals described in the article; it places renewed emphasis on human rights training, it will increase the DOS budget to improve its workforce, it gives DOS a more substantive role in security cooperation and human rights policy. It will also bring the DOS and DOD closer together through human rights training of foreign partners.

The 117th Congress is currently debating similar policies to SHRASC. The VAEA similarly addresses problems with security cooperation and human rights policy but is absolute in disqualifying whole nations from security cooperation with the US based on their human rights records. The VAEA would suspend all aid to a country with a negative human rights record.62 Representative Gregory Meeks (D-NY5) and seventeen other democratic cosponsors introduced

62 Values in Arms Export Act of 2022
the Safeguarding Human Rights in Arms Exports (SAFEGUARD) Act of 2021 to the House of Representatives. SAFEGUARD falls largely in line with existing policies. This bill, if passed, would prohibit arms sales to countries committing war crimes or genocide, would require an evaluation of the arms recipients' human rights and democratic practices, and enhance Congressional oversight of arms transfers in countries where human rights violations are considered.\(^{63}\) SAFEGUARD only mildly tightens US restrictions on arms transfers with alleged human rights abusers, but it is indicative of the current atmosphere in the 117\(^{th}\) Congress. Although the sponsors of VAEA would believe that SHRASC does not go far enough, eighteen Democrats in the House of Representatives and the partners whom Senator Risch is currently working with will support SHRASC. The current Congress's political environment seeks to change how the US government couples human rights and security cooperation policies.

Other government agencies also are likely to support a revision to existing human rights policies and related policies on security cooperation. The DOS recognized the deficiency in remediation enough to generate a joint policy with the DOD in 2017. In a 2017 article on JustSecurity.org, the author of the joint policy, Daniel Mahanty, acknowledged the importance and effectiveness of the Leahy Laws but recommended that the policy be updated.\(^{64}\) In 2013, Admiral William McRaven, the former commander of the US Special Operations Command, stated in regards to the Leahy Laws,

"We absolutely want to ensure that the forces we're working with understand and appreciate their requirement to maintain appropriate human rights...Unfortunately, it has restricted us in a number of countries across the globe in our ability to train units that we think need to be trained."\(^{65}\)


\(^{64}\) Mahanty.

\(^{65}\) Schmitt.
Other senior defense officials and defense experts share this concern, adding that the partner units prevented from training are likely to need human rights training the most. A US Army Foreign Area Officer highlighted the need to modify human rights vetting restrictions. He underscored that complications created by existing laws had prevented units from receiving aid ahead of international peacekeeping operations and have wrongfully disqualified a unit from training with US forces for a substantial period. The DOS and DOD agree on the necessity of human rights limitations on security cooperation but that the regulations as they stand need substantial revision.

Experts and critics in both the foreign policy and human rights fields agree that they prefer Congress to oversee arms transfers and enforce human rights policy. Congress can implement human rights policy and stop arms transfers to abusers through several existing laws, including the Arms Export Control Act and the End-Use Monitoring of Defense Articles and Defense Services. Nonetheless, Congress has never used these regulations to stop the executive branch from completing an arms transfer, even when human rights were an issue. Policy commentators from The Cato Institute and the Hill believe that Congress should be required to approve arms sales, not just to deny them under the AECA. Foreign Policy Magazine advocates that Congress generate objective laws which can constrain the impacts of human rights.

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67 Leonard.
69 Thrall.
violations, such as ones that automatically turn off aid to nations or forces which conduct particular violations.\textsuperscript{71} One foreign policy commentator suggests that "extra scrutiny [of human rights abusers] would enhance US interests by creating better incentives for prospective [military aid] recipients to improve their record of governance."\textsuperscript{72} Academics, critics, experts, and advocates seek greater congressional oversight of arms transfers and human rights policy. Only Congress can enact SHRASC, which will give Congress a greater role in security cooperation as it takes a definite stance on what standards a suspended unit must reach to resume working with the US after a GVHR.

US allies support increased action against human rights abusers, which could lead to mixed opinions in international affairs. In December of 2021, the European Union, the United Kingdom, and Canada joined the US in sanctioning Burmese military actors in addition to three PRC officials for actions taken against the Uighur minority in Xinjiang, two prison administrators at the Akrestsina Detention Center in Belarus for torture, the former commander of the RAB in Bangladesh, and a major general from Uganda, also for torture.\textsuperscript{73} Japan recently unilaterally condemned the PRC for its actions in Xinjiang against the Uighur minority. The Government of Japan feels so strongly against the Chinese actions in Xinjiang that it prompts the Diet to craft a "substantive and solid political document" to guide Japan's human rights diplomacy.\textsuperscript{74} The global

\textsuperscript{71} Whitson.
\textsuperscript{72} Homestead.
theme is to condemn human rights abusers and create distance from them. Considering international sanctions and condemnation, SHRASC may appear to other nations that the US is cooperating with human rights abusers rather than rehabilitating them. Members of Congress and the President must carefully discuss SHRASC as a proactive policy to curb human rights abuses through incentives if the policy is adopted.

The most significant political risk will come from human rights groups that tend to be absolute in their recommendation to restrict military aid to any unit or country with human rights violations. Human Rights Watch (HRW) consistently recommends holding whole nations accountable for human rights abuses of individuals. HRW advocates for a suspension of military aid to solve numerous problems. In October of 2021, HRW urged the US, the EU, and the UK to cut military aid to El Salvador, Guatemala, and Nicaragua due to allegations against those governments for various undemocratic practices.75 Few of the articles' accusations involved the militaries of those countries, yet HRW advocated for suspending military aid to them. HRW made multiple accusations against several nations and recommended the same strategy for the EU, the UK, and the US. HRW will likely take issue with SHRASC as it does not entirely cut relationships with governments with human rights abusers in their security forces. If SHRASC is adopted, the US government can expect HRW to produce hostile media as well as to lobby against SHRASC.

Amnesty International also tends to request absolute punishments and treatment of those who commit human rights abuses and those nations that maintain

relations with them. In 2018, Amnesty International demanded that Australia stop working with the Myanmar military on training programs which amounted to $400,000 – a minimal sum in security cooperation terms. Without describing the training venue, the partner unit, or the type of training, Amnesty International accused the Australians of training the same forces accused of committing crimes against humanity in the northern Rakhine State. The statement also demanded that Australia and ASEAN countries cease all relations with Myanmar due to the ongoing conflict in the Rakhine State. Amnesty International disapproved of almost any diplomatic activity neighboring nations could have with Myanmar. Amnesty International will likely disapprove of SHRASC as it attempts to remediate units with human rights abuses. Human rights organizations will likely fail to see how SHRASC could incentivize human rights practices and build liberal values at the highest and lowest military ranks.

Senator Risch and any cosponsors should also evaluate how SHRASC may impact the executive branch and the current administration’s legacy. Currently, numerous experts and critics are accusing the Biden Administration of not doing enough to meet campaign promises of keeping human rights central to his foreign policy goals. HRW published an open letter to President Biden in November 2021 to express their disappointment in the Biden Administration for not just failing to promote human rights but undermining human rights in the Middle East. The executive director of HRW, Kenneth Roth, cited military aid amidst alleged human rights abuses in Egypt, Saudi Arabia, and Israel; expressed concern over the National Security Advisor's meeting with

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Mohammed Bin Salman despite Salman’s connection to the death of Jamal Khashoggi, and condemned any action that could be seen as normalization of relations with Syria.\textsuperscript{77} The libertarian Cato Institute has posited that the Biden Administration does not care about human rights and cited ongoing arms deals with Egypt to prove the administration’s misalignment of campaign promises and policy.\textsuperscript{78} Cato even uses President Biden's request for diplomatic assistance from the PRC to stop Russian aggression in Ukraine and increased oil imports from Venezuela to help curb fuel prices as evidence that the Biden Administration has no issues working with human rights abusers.\textsuperscript{79} Both sides of the political spectrum have criticized the Biden Administration for failing to keep human rights at the center of its foreign policy.

Republicans in Congress can take advantage of the perception that the Biden Administration is falling short in meeting its campaign promises regarding human rights policy in two potential ways. First, Republicans can choose not to act on human rights policy and allow the administration to take the blame for not holding human rights abusers accountable. However, failing to act on human rights would cede the moral high ground to the Democrats and fail to deliver justice to human rights victims. Conversely, Republicans can choose to be proactive in crafting legislation that prioritizes human rights. SHRASC aims to align the Biden Administration’s National Security Strategy with security cooperation and human rights policies. Republican adoption of SHRASC may


give the administration much-needed political success, or it may credit Republicans with leadership on the issue where the administration failed to take action. The political victory for the administration may be helpful in other policy matters later for the Republican minority.

Even though SHRASC may not draw support from human rights groups, adopting SHRASC will likely be more politically advantageous than the contrary. SHRASC is a continuation of Senator Risch’s policies and will suit his political brand despite the extended time to his next campaign in 2026. SHRASC is amenable to Republicans and Democrats in the house and the senate and has strong potential for adoption. Critics and experts in foreign policy and human rights want Congress and the DOS to take a more significant leadership role in security cooperation and human rights policy.

7. Recommendation

Senator Risch should sponsor SHRASC. As the ranking member of the US Senate Committee on Foreign Relations, Senator Risch is an established leader in foreign policy and security cooperation, while his legislative efforts make him an authority on human rights. SHRASC will align human rights and security cooperation policies with national strategy, improve human rights worldwide, build partnerships back for the US military by 25% over the next decade, and correct issues with existing policies. Furthermore, SHRASC will restore primacy to DOS and Congress’s foreign policy leadership over the DOD and the executive branch, respectively.

Until recently, US human rights and security cooperation policies were in line. The current Era of Strategic Competition requires the US to reevaluate its policies that force partners to choose whom they will work with if units or whole nations are cut off from US military aid,
under existing policies, suspension can last an indeterminate amount of time. Suspended partners are as likely to request assistance from Russia or the PRC as they are to make the reforms the US requests. SHRASC alleviates the choice and allows units and nations to actively remediate themselves to restore security cooperation privileges while training on human rights. SHRASC will enhance partnerships and build liberal ideals in developing countries.

Policy experts and defense and policy practitioners agree that the Leahy Laws and related regulations are generally good but require significant revision. SHRASC incorporates comments from the 2013 GAO study and the 2017 RAND study on the implementation of the Leahy Laws. The most significant problem with the Leahy Laws is that the remediation process following adjudication was unclear. SHRASC clarifies the remediation policy by outlining a phased approach once a nation has punished and ejected violators. SHRASC also calls for modifications to the INVEST software, leading to a better data set to evaluate SHRASC and other government policies. SHRASC increases the number of DRL vetting trainers by increasing the size of the office. SHRASC also joins the DOS and DOD closer by administering the required training. Enhancing the joint nature of the policy will allow both departments to understand the other better.

Undoubtedly SHRASC will have its detractors who will see the policy as a means to lower the standard of human rights diplomacy. Sponsors and supporters of SHRASC must carefully and consistently message that SHRASC is a new approach to incentivize better performance in human rights through security cooperation. SHRASC is a proactive policy that will allow the US to help developing partners realize democratic ideals they could not reach independently. If supporters do not message SHRASC carefully, human
rights organizations and foreign allies will not support it, believing that the US has compromised its values.

SHRASC is more equitable than existing policy, allowing units and nations suspended from security cooperation with the US due to human rights issues to restore security cooperation privileges. Once units and nations have adjudicated human rights abuses and removed rights abusers from their formations, their full privileges can be restored following retraining so long as they maintain a favorable human rights record.

The current political atmosphere calls for the type of change that this policy will bring. Policy experts and the DOD acknowledge that the DOD is doing more than it should in executing and administering the foreign policy. Critics of Congress believe that Congress should challenge the Executive branch to assist with arms sales and transfers and greater oversight of security cooperation. Critics of the current administration believe that the Biden Administration has not done enough to prioritize human rights in its foreign policy. SHRASC gives the DRL within the DOS greater involvement in executing security cooperation. Action by Congress in enacting SHRASC will give Congress greater oversight of security cooperation through liberal civic training programs with foreign militaries. Republicans can help the Biden Administration reach several of its objectives which will be beneficial for the upcoming mid-term elections for Republicans and can be used in future negotiations with the President. Overall, SHRASC is the right policy to adopt to align security cooperation and human rights policy with national strategy and support justice for human rights abuse victims.