

U.S. Security Assistance to Egypt: Military Aid and Legislative Conditionality

Egypt Civil-Military Relations Conference Paper Series
Paper 1



Daniel L. Tavana



DCAF

a centre for security,
development and
the rule of law

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The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is a Swiss-based international organisation dedicated to assisting states – both developed and emerging democracies – in advancing good security sector governance, within a democratic framework and in respect of the rule of law. DCAF provides in-country advisory support and practical assistance programs to states that seek to strengthen governance of their security sector. DCAF works directly with national and local governments, parliaments, civil society, international organisations and defense and security forces.

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EXECUTIVE SUMMARY

The U.S. provides Egypt with roughly \$1.3 billion in security assistance annually, primarily in the form of Foreign Military Financing (FMF) grants. Since 2011, U.S. security assistance has come under increasing criticism. This paper analyzes U.S.-Egypt security cooperation in light of post-2011 developments. Following an overview of U.S. assistance, subsequent sections analyze the legal framework and relevant legislation, particularly in light of the July 2013 removal of President Morsi from office. Subsequently, an analysis of military training and legislative conditionality is presented,

with a view towards opportunities for reform. Concluding the paper, several policy recommendations are made for U.S. policymakers to more meaningfully support the development of balanced civil-military relations in Egypt and prioritize respect for human rights and the rule of law.

Keywords: Egypt, U.S., military aid, foreign assistance, military procurement, human rights, security cooperation, civil-military relations, Foreign Military Financing (FMF), security, governance.

1. THE ORIGINS OF U.S. ASSISTANCE TO EGYPT

U.S. assistance to Egypt began in earnest in 1975, shortly after the end of the October 1973 Yom Kippur War. President Sadat's interest in Western investment and assistance, coupled with efforts to restructure the Egyptian economy and the signing of a separation of forces agreement with Israel in January 1974, led President Nixon to request over \$250 million in economic assistance for Egypt in fiscal year (FY) 1975.¹ Shortly after the Camp David Accords and the subsequent peace treaty between Egypt and Israel in 1979, the U.S. began providing security assistance to Egypt in the form of grants, with no repayment requirement. This assistance was provided not as a legal obligation under the terms of the treaty, but as a strategic tool to cement the treaty's success by encouraging economic prosperity and military modernization.

U.S. assistance helped institutionalize the fragile peace between Egypt and Israel. At the same time, cooperation led to the development of a stronger bilateral partnership between the U.S. and Egypt, which the U.S. saw as a strategic victory over the Soviet Union. The Egyptian Armed Forces decreased their reliance on Soviet arms, instead opting for more advanced systems provided by U.S. defense contractors. Over time, the relationship became broader than a series of military sales: U.S. assistance helped turn Egypt into the Arab world's leading arms manufacturer.²

After the terrorist attacks of 11 September 2001, the close military relationship between the U.S. and Egypt became a centerpiece of the Bush Administration's "Global War on Terror." Broadly, the Bush Administration believed it could leverage

its relationship with a stable, strong partner to disrupt terrorist networks, and later, to fight wars in Afghanistan and Iraq. More specifically, Egypt served as a secure corridor for U.S. forces, granting expedited use of the Suez Canal and overflight permissions through Egyptian airspace. At present, the strategic interests driving U.S. assistance to Egypt include preserving the balance of power between Israel and Egypt, supporting counterterrorism exercises and activities, and retaining the aforementioned shipping and overflight privileges.³

1. Momani, Bessma (2003) Promoting Economic Liberalization in Egypt: From U.S. Foreign Aid to Trade and Investment, *Middle East Review of International Affairs*, vol. 7, no. 3, 2003.

2. United Press International (2011) Egypt's arms industry depends on U.S., http://www.upi.com/Business_News/Security-Industry/2011/02/15/Egypt-arms-industry-depends-on-US/UPI-47071297794481/ (accessed 28 March 2014).

3. Springborg, Robert (2013) US Should Reform, Not End Military Aid to Egypt, *Al-Monitor* <http://www.al-monitor.com/pulse/originals/2013/09/us-should-retool-military-aid-to-egypt-robert-springborg.html> (accessed 28 March 2014).

1.1 U.S. SECURITY ASSISTANCE IN NUMBERS

After its inception in 1979, U.S. security assistance to Egypt took the form of Foreign Military Financing (FMF) grants, loans, and funding to support the International Military Education and Training (IMET) program. In addition, Foreign Military Sales (FMS) play a significant role in the U.S.-Egypt security relationship.⁴ FMF supports the purchase of U.S. arms, defense equipment and services, and military and technical training. The IMET program is, generally, an exchange program for foreign military officers to study and train in the U.S. and affiliated regional centers.

The FMF and IMET programs have been the most consistent and largest sources of security assistance for Egypt. After an initial FMF loan of \$1.5 billion in 1979, and a reduction to \$550 million in 1981, it has stabilized since 1987 at around \$1.3 billion per year. Funding for IMET has fluctuated between \$200,000 and \$2 million annually, averaging roughly \$1.3 million a year. Though funding for these programs comes from separate accounts, FMF is sometimes used to help cover IMET expenses and to support other security assistance programs.⁵

Egypt also receives assistance from two other State Department sources: the Nonproliferation, Anti-terrorism, Demining, and Related Programs (NADR) account and the International Narcotics Control and Law Enforcement (INCLE) account. The NADR program includes anti-terrorism, arms control, and border security programs, while INCLE supports a police modernization program. Both accounts provide an average of more than \$2 million a year. Levels of funding for each account depend on congressional approval.

According to the Defense Security Cooperation Agency (DSCA), the Arms Export Control Act (AECA)

“...authorizes the President to finance procurement of defense articles and services for foreign countries and international organizations. FMF enables eligible partner nations to purchase U.S. defense articles, services, and training through either [Foreign Military Sales] or, for a limited number of countries, through Direct Commercial Contracts (DCC) channels.”

The DSCA lists the goals of IMET as:

“Train future leaders, create a better understanding of the United States, establish a rapport between US military and the country’s military to build alliances for the future, enhance interoperability and Capabilities for Joint Operation, focus on Professional Military Education, allow Countries to use their National Funds to receive a reduced cost for other DoD education and training, and provide English Language Training assistance.”

4. For a more in-depth discussion regarding FMF, FMS and IMET please read: Vogelsang, Susan S. (2011) ‘U.S.-Egypt Security Cooperation after Egypt’s January 2011 Revolution.’ U.S. Department of State.

5. The U.S. Department of State’s Background Note on Egypt states that: “under Foreign Military Financing (FMF) programs, the United States has provided F-4 jet aircraft, F-16 jet fighters, M-60A3 and M1A1 tanks, armored personnel carriers, Apache helicopters, anti-aircraft missile batteries, aerial surveillance aircraft, and other equipment.” For more information, see U.S. Department of State (2012) Egypt Background Note, <http://www.state.gov/outofdate/bgn/egypt/196332.htm> (accessed 28 March 2014).

The U.S. and Egyptian militaries also conduct Operation Bright Star, a biennial joint military exercise that involves “tactical air, ground, naval, and special operations forces field training.”⁶

The cumulative impact of these programs has created interdependencies between the two countries, a framework for joint cooperation in the future, and interoperability between defense systems. The more equipment Egypt procures, the more important the relationship becomes. Because many of Egypt’s most advanced systems rely on U.S. training, maintenance, and upgrades, it would be difficult for Egypt to diversify its security partnerships if it wanted to decrease its dependency on U.S. security assistance in any significant way.

6. Global Security (2013) Bright Star, <http://www.globalsecurity.org/military/ops/bright-star.htm> (accessed 28 March 2014).

1.2 THE DISBURSEMENT BUREAUCRACY

According to the U.S. Government Accountability Office (GAO), “[t]he review and approval process for FMF-funded purchases begins with the Egyptian military requesting the purchase of certain defense articles or services, and ends with a signed letter of offer and acceptance for those goods or services.” Once Congress approves the funds, the State Department instructs the Defense Security Cooperation Agency (DSCA), through the Defense Finance and Accounting Service (DFAS), to deposit Egypt’s total security assistance package into an interest bearing account in the Federal Reserve Bank of New York.⁷

The Egyptian military then spends funds in accordance with a uniquely opaque and convoluted process that begins when an Egyptian military department submits a “Letter of Request” (LOR) to the Egyptian Armament Authority (EAA). The EAA is an Egyptian government agency housed in the Ministry of Military Production. The EAA then forwards the LOR to the U.S. Office of Military Cooperation (OMC), based in the U.S. Embassy in Cairo. After consultations with State Department and DSCA personnel, the OMC makes a determination as to whether to approve or reject the request. Approved LORs are sent back to the EAA. The Egyptian Procurement Office, based in Washington, D.C., then forwards the request to the DSCA.⁸

The DSCA, along with relevant U.S. agencies and military departments, generates a Letter of Offer and Acceptance (LOA) and notifies Congress if necessary, depending on the size and nature of the request. On completion of this process,

the appropriate sum of money (based on the contractual obligation set forth in the LOA) is withdrawn from the Federal Reserve account and transferred to Egypt’s Foreign Military Sales (FMS) account, from which U.S. defense contractors are paid.⁹

Egypt enjoys two other privileges afforded by the disbursement bureaucracy. First, from fiscal years 2001 to 2011, the U.S. permitted “early disbursement” to the interest bearing account. This allowed Congress to deposit the full amount of aid into the Federal Reserve of New York bank account less than 30 days after congressional appropriation. These funds earned interest throughout the fiscal year, increasing the amount Egypt was able to spend. Second, the U.S. provides FMF assistance through a statutory “cash flow financing” arrangement that allows Egypt to make purchases in one year and pay for them in succeeding years with grants from future, anticipated, congressional appropriations.¹⁰

According to the GAO, this arrangement “allows the United States to enter into contracts in advance of – and in excess of – current FMF appropriations for Egypt. Specifically, Egypt is not required to pay the full amount of an LOA up front. Cash flow financing allows Egypt to pay only the amount that signed LOAs require in a given year for specified defense articles and services. The cash flow financing arrangement benefits Egypt in that it can receive more defense goods and services than it can under other financing arrangements. However, the program accumulated undisbursed funds because the agency refrained from making as many new commitments for goods and services

7. United States Government Accountability Office (2014) Security Assistance: State and DOD Need to Assess How the Foreign Military Financing Program for Egypt Achieves U.S. Foreign Policy and Security Goals, <http://www.gao.gov/new.items/d06437.pdf> (accessed 29 March 2014).

8. Ibid.

9. Ibid.

10. United States Government Accountability Office (2014) Security Assistance: State and DOD Need to Assess How the Foreign Military Financing Program for Egypt Achieves U.S. Foreign Policy and Security Goals, <http://www.gao.gov/new.items/d06437.pdf> (accessed 29 March 2014).

as the annual appropriation would have allowed, according to DSCA officials. The cash flow financing arrangement allows for significant commitments to be made based on anticipated appropriations." The credibility of this system rests on the faith that FMF funding will continue unchanged.



2. THE LEGAL FRAMEWORK FOR U.S. SECURITY ASSISTANCE

The cornerstone of U.S. foreign assistance legislation is the Foreign Assistance Act (FAA) of 1961. The FAA originally sought to outline the purpose and conditions of U.S. assistance by consolidating assistance legislation and clarifying the aims and conditions of different programs.¹¹

The FAA defines “gross violations of human rights” as including “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 person.”¹² Section 502B of the FAA outlines several democracy and human rights conditions for U.S. assistance. Generally, the Act directs the President to “formulate and conduct international security assistance programs of the United States in a manner which will promote and advance human rights and avoid identification of the United States, through such programs, with governments which deny to their people internationally recognized human rights and fundamental freedoms...” As such, the Secretary of State is obligated to submit a report to Congress every fiscal year for each country that receives security assistance, with respect to the country’s “practices regarding the observance of and respect for internationally recognized human rights.”¹³

Foreign assistance legislation can also be found in the annual Foreign Operations Appropriations bill passed by Congress. Appropriation bills and authorizing legislation often sharpen language found in the FAA, occasionally

clarifying eligibility requirements or stipulating other forms of conditionality. An illustrative and relevant example is Section 7008 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, or the “coup d’état” provision. The clause legally obligates the U.S. to cease assistance to a country whose “duly elected head of government” is deposed by a military coup or decree.¹⁴

The full text of Section 7008, as it appears in the FY2012 State Department and Foreign Operations Appropriations Law, reads:

“None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by military coup d’etat or decree or, after the date of enactment of this Act, a coup d’etat or decree in which the military plays a decisive role: Provided, That assistance may be resumed to such government if the President determines and certifies to the Committees on Appropriations that subsequent to the termination of assistance a democratically elected government has taken office: Provided further, That the provisions of this section shall not apply to assistance to promote democratic elections or public participation in democratic processes: Provided further, That funds made available pursuant to the previous provisos shall be subject to the regular notification procedures of the Committees on Appropriations.”

11. For more information, see: Rennack, Dianne E. & Chesser, Susan G. (2011) Foreign Assistance Act of 1961: Authorizations and Corresponding Appropriations, Congressional Research Service, <http://www.fas.org/sgp/crs/row/R40089.pdf> (accessed 19 March 2014).

12. Ibid.

13. Rennack, Dianne E. & Chesser, Susan G. (2011) Foreign Assistance Act of 1961: Authorizations and Corresponding Appropriations, Congressional Research Service, <http://www.fas.org/sgp/crs/row/R40089.pdf> (accessed 19 March 2014).

14. For more information, see Consolidated Appropriations Act, 2012 (PL 112-74, 23 December 2011).

2.1 POST-2011 PROCESSES

After Egypt's Supreme Council of the Armed Forces (SCAF) took power following President Mubarak's ouster in February 2011, Congress imposed new conditions on security assistance in its FY2012 budget. These conditions have led to greater congressional oversight of Egyptian security procurement. Because of these conditions, when foreign military sales to Egypt exceed a certain amount, the State Department is required to notify Congress.

In FY2012, for example, appropriations legislation required former Secretary of State Hillary Clinton to certify that *"the Government of Egypt is supporting the transition to civilian government including holding free and fair elections; implementing policies to protect freedom of expression, association, and religion, and due process of law."*¹⁵ In March 2012, however, Secretary Clinton announced publicly that the Administration would use a national security waiver to overlook the conditions and release FMF aid to Egypt.¹⁶ In May 2013, Secretary Kerry again waived the requirements, though not publicly.¹⁷

Less than two months later, the Egyptian Armed Forces removed President Morsi from office. Amidst pressure to suspend assistance under Section 7008, President Obama announced that he was directing "relevant departments and agencies to review the implications under U.S. law for our assistance to the Government

of Egypt."¹⁸ Though the Administration refused to publicly make a determination pursuant to Section 7008, the Pentagon halted a scheduled delivery of F-16 fighter planes the following day.¹⁹ After the crackdown on Islamists and Morsi supporters at Rabaa Al-Adawiya in August, the U.S. Administration cancelled Operation Bright Star. In October, the U.S. Administration further announced it would not deliver large-scale military items, such as AH-64 Apache helicopters, M1 Abrams tanks, and Harpoon anti-ship missiles, in addition to cancelling the planned transfer of economic aid.²⁰ It should also be noted that roughly \$585 million for FY2013 FMF funds were withheld, despite Secretary Kerry's waiver.

The January 2014 Consolidated Appropriations Act provided new conditions for FY2014 funds. More specific language prohibited the use of a national security waiver, but the conditions were substantially softer than those outlined in the FY2012 budget:

"... (A) up to \$975,000,000 may be made available if the Secretary of State certifies to the Committees on Appropriations that the Government of Egypt has held a constitutional referendum, and is taking steps to support a democratic transition in Egypt; and (B) up to \$576,800,000 may be made available if the Secretary of State certifies to the Committees on Appropriations that the Government of Egypt has held parliamentary and

15. Ibid.

16. Consolidated Appropriations Act, 2012 (PL 112-74, 23 December 2011). "The Secretary of State may waive the requirements of paragraphs (A) and (B) if the Secretary determines and reports to the Committees on Appropriations that to do so is in the national security interest of the United States: Provided, That such determination and report shall include a detailed justification for such waiver." To see Secretary Clinton's statement, see U.S. Department of State (2012) U.S. Support for Egypt, <http://www.state.gov/r/pa/prs/ps/2012/03/186709.htm> (accessed 29 March 2014).

17. Rogin, Josh (2013) Kerry's Secret Gift to Egypt, The Daily Beast, <http://www.thedailybeast.com/articles/2013/06/06/kerry-s-secret-gift-to-egypt.html> (accessed 29 March 2014).

18. Office of the Press Secretary (2013) Statement by President Barack Obama on Egypt, <http://www.whitehouse.gov/the-press-office/2013/07/03/statement-president-barack-obama-egypt> (accessed 29 March 2014).

19. Several vital items were kept to support the goals of "countering terrorism, countering proliferation, border security, ensuring security in the Sinai, working with peace with Israel, and includes things that include also spare parts, [and] replacement parts." For more information, see U.S. Department of State (2013) U.S. Assistance to Egypt, <http://www.state.gov/r/pa/prs/ps/2013/10/215258.htm> (accessed 29 March 2014).

20. Ibid.

presidential elections, and that a newly elected Government of Egypt is taking steps to govern democratically.”²¹

It should be noted that the language in section 7008 (the “coup d’état provision”) is consistent with previous iterations of the same section, stating that no funding shall be provided to any “government of any country whose duly elected head of government is deposed by military coup d’état or decree or, after the date of enactment of this Act, a coup d’état or decree in which the military plays a decisive role.”²²

It is worth noting that earlier conditionality focused on human rights situations and freedom of expression, while FY2014 conditionality focused on tangible and more easily attainable actions needed from the Government of Egypt.

There is no indication that congressional conditionality will change in subsequent appropriations legislation. Conditionality, in some form, will likely remain a part of Egypt’s FMF aid in the short-term.

21. Consolidated Appropriations Act, 2014 (PL 113-76, 2 December 2013).

22. Ibid. Section 7008 has never included a presidential waiver clause, though it is telling that the Obama Administration’s suggested edits to the FY15 State and Foreign Operations budget includes a national security waiver for this clause, to be used by the Secretary of State if the “provision of assistance is in the national interest of the United States.” For more information, see Office of Management and Budget (-) Budget of the United States Government, Fiscal Year 2015, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/sta.pdf>, p. 910. To see the entire ‘Budget of the United States Government, Fiscal Year 2015’ by the Office of Management and Budget, see <http://www.whitehouse.gov/omb/budget/Overview>.

2.2 FY2014 LANGUAGE AND SUBSEQUENT DEBATES

FY2014 language required the Secretary of State to certify to the Committees on Appropriations that Egypt “had held a constitutional referendum, and is taking steps to support a democratic transition in Egypt,” that presidential and parliamentary elections are held, and that “the newly elected Government of Egypt is taking steps to govern democratically.” In June 2014, the State Department announced it would disburse \$650 million of the total \$1.3 billion envisaged in the FMF, and deliver 10 Apache helicopters, to be used for counterterrorism operations in the Sinai. Secretary Kerry refused to certify whether the aforementioned conditions were met, instead announcing that aid was being transferred in accordance with Egypt’s security needs, the military’s commitment to the peace treaty with Israel, and the payment of defense contracts. The U.S. Congress agreed to release \$572 million, a sum that was \$78 million less than Secretary Kerry requested.

Senator Patrick Leahy (D-VT) soon placed a hold on the aid delivery, citing concerns over human rights abuses. Leahy eventually released this hold not long after Secretary of State John Kerry traveled to Egypt in June 2014. During his visit, Secretary Kerry assured the Egyptian Armed Forces that FMF aid would be disbursed and that a scheduled shipment of Apache helicopters would be coming “very, very soon.”²³ Egypt received the Apaches in December 2014, though other weapons systems continue to be withheld. The remaining \$728 million in FY2014 funds has not been dispersed: the Obama Administration has until September 2015 to do so.

The FY2015 Consolidated Appropriations Act, passed in December 2014, contains far more flexible language related

to the appropriation of FMF funds. It has markedly weaker formulations for conditionality when it comes to Egypt’s human rights record. Whereas FY2014 language conditioned funding on a referendum and free and fair elections, the FY2015 funds provide:

“...(A) up to \$725,850,000 may be made available only if the Secretary of State certifies to the Committees on Appropriations that the Government of Egypt-- (i) has held free and fair presidential and parliamentary elections; (ii) is implementing laws or policies to govern democratically and protect the rights of individuals; (iii) is implementing reforms that protect freedoms of expression, association, and peaceful assembly, including the ability of civil society organizations and the media to function without interference; (iv) it taking consistent steps to protect and advance the rights of women and religious minorities; (v) is providing detainees with due process of law; (vi) is conducting credible investigations and prosecutions of the use of excessive force by security forces; and (vii) has released American citizens who the Secretary of State determines to political prisoners and dismissed all charges against them; and (B) not less than 180 days after a certification and report under subparagraph (6)(A), up to \$725,850,000 may be made available only if the Secretary of State certifies and reports to the Committees on Appropriations that the requirements in subparagraph (6)(A) are being met.”²⁴

Subparagraph (C) introduces the language of the waiver:

“...(C) The Secretary of State may provide assistance, notwithstanding the certification requirements of

23. U.S. Department of State (2014) Secretary Kerry’s Remarks: Remarks With Egyptian Foreign Minister Shoukry After Their Meeting, <http://www.state.gov/secretary/remarks/2014/06/228234.htm> (accessed 1 August 2014).

24. Consolidated Appropriations Act, 2015 (PL 113-235, 16 December 2014).

subparagraphs 6(A) and (B) of this subsection or similar provisions of law in prior Acts making appropriations for the Department of State, foreign operations, and related programs, if the Secretary, after consultation with the Committees on Appropriations, certifies and reports to such Committees that it is important to the national security interest of the United States to provide such assistance: Provided, that such report, which may be in classified form if necessary, shall contain a detailed justification and the reasons why any of the requirements of subparagraphs 6(A) or (B) cannot be met.”²⁵

It is not yet clear how the Obama Administration plans to use either this new flexibility or the waiver to release FMF funds to the Government of Egypt. Relations between the U.S. and Egypt are tense, but conditioning the aid on serious, meaningful reform could lead to a change in behavior, as it has in the past. Congress set an important precedent in removing the national security waiver from the FY2014 Consolidated Appropriations Act, which existed in the FY2012 and FY2013 laws. But the inclusion of the waiver in the FY2015 Consolidated Appropriation Act risks legitimizing the reconstitution of autocracy in Egypt, and perhaps even greater repression. It is possible that the State Department’s transfer of some of the FY2014 aid (\$572 million) encouraged the Egyptian Armed Forces to interpret the funding as a proof of tacit support for the July 2013 coup.

Since 2011, mixed signals, and the absence of a clear, coherent policy have made it difficult for the U.S. Administration to articulate what Egypt must do to consistently meet the requirements of legislation. To many analysts, this has signaled a lack of seriousness in using conditional aid as leverage, leading to a missed opportunity in influencing the human rights situation and the rule of law in Egypt.

25. Ibid

3. REFORMING FOREIGN MILITARY TRAINING

From fiscal years 2000 to 2012, the U.S. spent over \$191 million to train 13,660 Egyptian military officers, or roughly a bit more than 1,000 officers per year. During this period, 80% of spending for training came from FMF grants. The remaining 20% was split evenly between IMET funds and other smaller training-related grants.

In an October 2011 report, the GAO reviewed training plans for the 29 IMET participant countries ranked “not free” by Freedom House. Only eight of 29 plans mentioned human rights as a programmatic objective. Egypt’s plan was not one of them. Human rights, rule of law, civil-military relations, and military justice were not listed as priorities in Egypt’s training plan.

This section examines the tools available to U.S. policymakers interested in more meaningfully integrating human rights principles into training for the Egyptian Armed Forces.

it was first produced in 1999, the State Department began to remove categories of information from the report (such as course locations and dates, and specific military units, services or government ministries to which trainees are assigned) – a move that was reversed in 2002. Congress has since sought to weaken the FMTR, often at the Executive’s request, through softer reporting requirements, though this practice has become less common.

The most significant effort to strengthen the FMTR came in April 2001, with the introduction of the “Foreign Military Training Responsibility Act” (H.R. 1594). The legislation attempted to force more serious disclosures of training activities into law through new reporting on police training, additional tracking of trainee careers, and a new task force to assess DOD’s mission in providing training activities.²⁶ The Act did not pass, but it still serves as a useful model for stronger legislation in the future.

3.1 LEGISLATION AND THE FOREIGN MILITARY TRAINING REPORT

Each year, the Department of State and the Department of Defense produce a joint report on all military training provided to foreign military personnel, known as the “Foreign Military Training Report” (FMTR). The report is presented pursuant to the FAA and corresponding appropriations law for the fiscal year. Two of the report’s three volumes are classified; the first volume is available publicly. The first report was produced for FY1998.

Historically, the FMTR’s record in allowing effective public and congressional oversight has been mixed. Shortly after

26. Foreign Military Training Responsibility Act (HR 1594, 26 April 2001).

3.2 “LEAHY LAW” HUMAN RIGHTS PROVISIONS

The “Leahy Law,” as it is commonly known, generally refers to an amendment to Section 620M of the FAA that prohibits the furnishing of defense goods and services “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.”²⁷ Assistance can be resumed if the government is “taking effective steps to bring the responsible members of the security forces unit to justice.”²⁸ The State Department tracks violations through the International Vetting and Security Tracking (INVEST) system. The Bureau for Democracy, Human Rights, and Labor (DRL) is the lead bureau responsible for vetting, with designated embassy personnel providing input.

Recent changes to the text, as well as moves to align Leahy provisions in the FAA with DOD appropriations language, have made it more difficult for the State Department and DOD to provide goods and services to individuals or units who commit human rights violations. However, two key challenges remain. First, and perhaps most relevant to Egypt, the State Department has provided “unclear guidance” on how to implement the “duty to inform” provision, which requires the Secretary of State to inform a foreign government of the basis for withholding assistance, and, where practical, help the government take measures to bring violators to justice.²⁹

Second, the law has recently come under increasing criticism from congressional and military leaders, prompting speculation that

the text could be weakened in subsequent legislation. In March 2013, the House Armed Services Committee’s Ranking Member, Adam Smith (D-WA), claimed “...the irony of the Leahy amendment is it forces you out at, perhaps, the time when you’re needed most.... Certainly, this was a difficulty in Mali where you weren’t allowed to train as much as you would have liked.” Congressman Smith’s comments were followed by Adm. William McRaven’s comments in November, regarding a potential training mission in Libya: “As we go forward to try and find a good way to build up the Libyan security forces so they are not run by militias, we are going to have to assume some risks,” McRaven said. “As a country, we have to say there is probably some risk that some of the people we will be training with do not have the most clean record. At the end of the day, it is the best solution we can find to train them to deal with their own problems.”³⁰

27. For more information on the Foreign Assistance Act, see Act for International Development of 1961 (PL 87-195, 4 September 1961). As stated above, the FAA defines “gross violations of human rights,” to include “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 person.” For more information, see: Rennack, Dianne E. & Chesser, Susan G. (2011) Foreign Assistance Act of 1961: Authorizations and Corresponding Appropriations, Congressional Research Service, <http://www.fas.org/sgp/crs/row/R40089.pdf> (accessed 19 March 2014).

28. Ibid.

29. United States Government Accountability Office (2013) Human Rights: Additional Guidance, Monitoring, and Training Could Improve Implementation of the Leahy Laws, <http://www.gao.gov/assets/660/658107.pdf> (accessed 29 March 2014).

30. Sterling, Joe & Starr, Barbara (2013) Commander: U.S. to help train Libyan forces, CNN, <http://www.cnn.com/2013/11/17/world/africa/libya-unrest/> (accessed 28 March 2014).

3.3 TRANSITIONING TO EXPANDED-IMET (E-IMET)

In 1990, Congress amended Section 541 of the FAA in an effort to expand IMET objectives to include more training relevant to civil-military relations, responsible defense management, and respect for human rights and the rule of law; this became known as “Expanded-IMET” training, or E-IMET. A certain percentage of each country’s IMET program must include E-IMET courses; DSCA has certified that 51% of the content in these courses addresses E-IMET objectives. E-IMET funding comes from an annual IMET appropriation: the “emphasis and preference is for a longer training experience in the United States that maximizes the students’ exposure to the American way of life.”³¹

Historically, the U.S. has leveraged E-IMET training to penalize recipient countries that have committed human rights violations. On at least three occasions, President

Clinton suspended IMET funding, forcing recipient countries to use the entirety of their IMET allocation for E-IMET courses. Following the 1991 Santa Cruz Massacre, Indonesia’s IMET funding was suspended. Eventually, in FY1996, IMET funding became available, though only for E-IMET courses. President Suharto wrote President Clinton and rejected E-IMET training, instead proposing the purchase of F-16 fighter jets. El Salvador’s IMET funding was restricted to E-IMET from FY1993 to FY1996, as was Guatemala’s in 1996. The E-IMET training figures for Egypt are not known. Analysts estimate that roughly 20% to 30% of a given country’s training plan includes E-IMET courses. Increasing this percentage for Egypt could signal a more serious commitment to human rights on the part of the U.S., while maintaining overall funding levels.

31. For more information, see: Grimmet, F. Richard (2004) International Military Education and Training Program, Congressional Research Service, <https://www.hsdl.org/?view&did=717523> (accessed 19 March 2014).

4. CONCLUSIONS AND POLICY RECOMMENDATIONS

On two occasions since 2011, the U.S. has used a national security waiver to evade legislative conditions on U.S. security assistance to Egypt. As described above, for FY2012 and FY2013, the Obama Administration could not certify that the Egyptian government was “supporting the transition to civilian government including holding free and fair elections; implementing policies to protect freedom of expression, association, and religion, and due process of law.”³² It is beyond the scope of this paper to provide an evaluation of whether or not aid conditionality, broadly defined, is effective. Instead, this section analyzes the effectiveness of extra-legal conditionality vis-à-vis the U.S. and Egypt, with a view towards integrating successes into appropriations legislation in the future.

4.1 AID, REFORM, AND HUMAN RIGHTS

Generally, the U.S. has been reluctant to use its close relationship with Egypt as leverage to support political reform and human rights. State Department and defense officials typically argue that suspending or conditioning aid will anger the Egyptian government, leading to a loss of leverage in the future. On three separate occasions, however, the U.S. has successfully conditioned aid. First, in August 2002, the Bush Administration withheld \$130 million in supplemental aid to Egypt over the imprisonment of Saad Eddin Ibrahim, an activist and dual U.S.-Egyptian citizen who was jailed for criticizing President Mubarak. This was the first time “the United States had linked the provision of aid to a human rights case in the Arab world.”³³ Ibrahim was acquitted and released shortly thereafter, in March 2003.

Second, during protests in February 2011, U.S. military officials made clear to their military counterparts that aid could not continue if there was a large-scale crackdown or any other violent dispersal of protestors in Tahrir Square. Especially after the protests gained momentum, the U.S. called for Mubarak’s removal, supporting a military-led political transition that would result in the election of new leadership. Mubarak later resigned, at least in part because of U.S. and international pressure, but more importantly due to the position of the Egyptian Armed Forces, demonstrated by their reluctance to attack protestors.

Third, in February 2012, U.S. officials warned their Egyptian counterparts that aid could be withheld if Egypt did not resolve a politically charged investigation into the activities of several non-governmental organisations (NGOs). The crisis began in December 2011, when Egyptian authorities imposed a travel ban on 36 Egyptians and 7 Americans after raiding the local Cairo offices of the National Democratic Institute (NDI), the International Republican Institute (IRI), and Freedom House. In February, Egypt’s judiciary announced it would put the individuals on trial, prompting criticism from the U.S. The military lifted the ban and allowed the Americans to leave, but not before the judges presiding over the trial stepped down.³⁴

32. Consolidated Appropriations Act, 2014 (PL 113-76, 2 December 2013) and Full Year Continuing Appropriations Act, 2013 (PL 113-6, 26 March 2013).

33. Hawthorne, Amy (2003) Can the United States Promote Democracy in the Middle East?, *Current History*.

34. POMED (2012) Update: The Campaign Against NGOs in Egypt, Project on Middle East Democracy, <http://pomed.org/wordpress/wp-content/uploads/2012/03/Egypt-NGO-Backgrounder-II.pdf> (accessed 29 March 2014).

4.2 POLICY RECOMMENDATIONS

Moving forward, there are several steps the U.S. can take to more meaningfully support the development of a military culture in Egypt that prioritizes respect for human rights, the rule of law, and improved civil-military relations. Given the strong dependency that Egypt has on U.S. security assistance, the U.S. has a significant opportunity to exert leverage through conditionality in its assistance. These recommendations are designed primarily for U.S. policymakers, though the international community (particularly international organizations operating in the fields of security sector reform and human security) can help.

- ***The U.S. should rethink the mechanisms through which it vets potential aid recipients guilty of gross violations of human rights, in accordance with Leahy Law provisions.*** Currently, the U.S. government does not adequately verify claims that violations have occurred, and the vetting system itself is not comprehensive. It is rare that the State Department finds that a violation has occurred, and when it does, it can take up to 10 months to process and implement. The Bureau of Democracy, Human Rights, and Labor (DRL) has recently broadened its outreach to human rights NGOs, in an effort to collect more reliable information about human rights violations.
- ***The Department of State should improve the mechanisms through which identified violations are communicated to the Egyptian government, and develop plans to work with the Egyptian government to bring perpetrators to justice.*** This is consistent with the Leahy Law's emphasis on the U.S. government's "duty to inform."
- ***Congress, with support and input from the Departments of State and Defense, should develop new, or amend existing, legislation in order to ensure greater transparency and accountability for training activities.*** The 2001 "Foreign Military Training Responsibility Act" (H.R. 1594) could serve as a useful template. It would be particularly useful to develop a task force, as the law originally described, to assess the Pentagon's mission in providing training activities to U.S. allies.
- ***Training efforts should focus on civil-military relations and human rights in training courses provided to the Egyptian government; this could include moving all of Egypt's IMET funding to E-IMET courses, or at least most of it.*** These courses would better inculcate democratic values among officers selected for training, and it could allow officers to spend more time in the United States. Most independent U.S. government assessments of foreign military training indicate that training in human rights and rule of law topics are at best secondary priorities at the moment.
- ***The U.S. must work closely with Egypt's government to fundamentally rethink the nature, and purpose, of U.S. security assistance.*** This should be done based on national security and defense strategies, documents that would need to be developed by Egyptian counterparts through a transparent process. Most of Egypt's military aid goes to the production of large-scale weapons systems. The M1 Abrams tank, in particular, is co-produced in Egyptian factories licensed by U.S. arms manufacturers. Egypt's preference for many of these goods and services are no longer reasonably consistent with the country's defense needs. Military aid could place greater emphasis on counterterrorism assistance, border security, and stability in the Sinai.

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U.S. Security Assistance to Egypt:

Military Aid and Legislative Conditionality

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