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## DEFENDING THE NEW FULDA GAP: DETECTING RUSSIAN AGGRESSION AGAINST THE BALTIC STATES THROUGH FISCAL LEGISLATION

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*THE UNITED STATES HAS AN ESSENTIAL INTEREST IN KEEPING EUROPE AS A VITAL, VIGOROUS, AND VIVID PARTNER AND ALLY; AN ALLY THAT IS CAPABLE AND WILLING TO HELP AMERICA PROTECT AND PROMOTE THE PRINCIPLES OF FREEDOM AND DEMOCRACY. AND EUROPE HAS A CORE INTEREST IN MAINTAINING AN AMERICAN COMMITMENT TO TRANSATLANTIC ECONOMIC AND SECURITY COOPERATION.*<sup>1</sup>

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<sup>1</sup> ANDERS FOGH RASMUSSEN, *THE WILL TO LEAD: AMERICA'S INDISPENSABLE ROLE IN THE GLOBAL FIGHT FOR FREEDOM* 151 (2016). Rasmussen is the former Secretary-General of the North Atlantic Treaty Organization (NATO). *Id.* at ix.

## I. Introduction

The fall of the Soviet Union ushered in a two-decade long era of relative peace and stability in Europe.<sup>2</sup> The North Atlantic Treaty Organization (NATO or the Alliance) appeared to have successfully fulfilled its mission to defend Europe from Russian aggression and began to reinvent itself in the wake of growing threats from Islamic terrorism.<sup>3</sup> However, in 2014, Russia illegally invaded and annexed the Crimean peninsula in the Ukraine.<sup>4</sup> Very suddenly, an emboldened and more militant Russia challenged the security of NATO, forcing the Alliance to “return to its roots: deterring and defending against Russian aggression.”<sup>5</sup>

Nowhere is the specter of Russian hostility more apparent, and problematic to U.S. national security interests, than in the Baltic States of Estonia, Latvia, and Lithuania.<sup>6</sup> The combination of a greatly diminished American force in Europe,<sup>7</sup> the decrease in defense spending across NATO,<sup>8</sup> and the modest defense capacity of each of the Baltic States,<sup>9</sup> made these former-Soviet satellites and newly-

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<sup>2</sup> See DOUGLAS E. SCHOEN WITH EVAN ROTH SMITH, PUTIN’S MASTER PLAN: TO DESTROY EUROPE, DIVIDE NATO, AND RESTORE RUSSIAN POWER AND GLOBAL INFLUENCE 29 (2016) [hereafter SCHOEN].

<sup>3</sup> See *id.*

<sup>4</sup> *Id.* at v.

<sup>5</sup> *Id.* at 29.

<sup>6</sup> See Ashley Deeks & Benjamin Wittes, *We’re Worried About the Baltics: What does Trump’s Election Portend for these Tiny U.S. Allies?*, LAWFARE (Nov. 17, 2016), <https://www.lawfareblog.com/were-worried-about-baltics-what-does-trumps-election-portend-these-tiny-us-allies> [hereinafter Deeks & Wittes].

<sup>7</sup> Having peaked during the Cold War at 277,000 soldiers, U.S. Army Europe (USAREUR) downsized to 29,000 in the summer of 2013. Major Craig A. Daniel & Robin T. Dothager, *Resetting the Theater to Equip Rotational Forces in Europe*, ARMY SUSTAINMENT MAG. 36, 38 (May-June 2016), <http://www.alu.army.mil/alog/2016/mayjun16/pdf/mayjun2016.pdf>.

<sup>8</sup> Since 2009, NATO defense expenditures have decreased from nearly \$1.1 trillion to an estimated \$890 billion in 2016 (using 2010 prices) [hereinafter NATO Defense Expenditures]. *Defence Expenditures of NATO Countries (2009-2016)*, NATO (July 4, 2016),

[http://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2016\\_07/20160704\\_160704-pr2016-116.pdf](http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_07/20160704_160704-pr2016-116.pdf) [hereinafter NATO Defense Expenditures].

<sup>9</sup> See CHRISTOPHER S. CHIVVIS ET AL., RAND, NATO’S NORTHEASTERN FLANK—EMERGING OPPORTUNITIES FOR ENGAGEMENT: AN OVERVIEW 4 (2016), [http://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1400/RR1467z1/RAND\\_RR1467z1.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RR1400/RR1467z1/RAND_RR1467z1.pdf) [hereinafter CHIVVIS ET AL.].

minted NATO members<sup>10</sup> especially vulnerable to an existential threat from their eastern neighbor.<sup>11</sup> Russia acquired capabilities ranging from “strategic systems to anti-access/area denial to . . . a growing adeptness at operating . . . just short of traditional military conflict that is posing a significant threat in the future.”<sup>12</sup> Under NATO’s current defense posture, war gaming scenarios predict it would take Russian forces no more than sixty hours to reach the outskirts of Tallinn, Estonia, and Riga, Latvia, the capitals of the two NATO allies closest to Moscow.<sup>13</sup> Russian President Vladimir Putin ominously claimed, “if I wanted, in two days I could have Russian troops not only in Kiev, but also in Riga, Vilnius, Tallinn, Warsaw, and Bucharest.”<sup>14</sup>

This tension harkens back to the Cold War, when many military leaders spoke of the strategic vulnerability of the Fulda Gap in western Germany, considered a primary objective for Soviet advances into NATO territory.<sup>15</sup> The Baltic States, vulnerable to attack from Russia due

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<sup>10</sup> See *id.* at 1. Estonia, Latvia, Lithuania, Poland, Czech Republic, Hungary, Slovakia, Bulgaria, Croatia, Romania, and Slovenia are current NATO members that were previously part of the Soviet Union or Warsaw Pact. See OFFICE OF THE HISTORIAN, DEP’T OF STATE, THE WARSAW TREATY ORGANIZATION 1955, <https://history.state.gov/milestones/1953-1960/warsaw-treaty> (last visited Feb. 12, 2019). The German Democratic Republic (East Germany) was also aligned with the Soviet Union before it merged with West Germany. See *id.*

<sup>11</sup> Lisa Ferdinando, *Breedlove: Russia, Instability Threaten US, European Security Interests*, DoD NEWS, (Feb. 25, 2016), <https://dod.defense.gov/News/Article/Article/673338/breedlove-russia-instability-threaten-us-european-security-interests/>.

<sup>12</sup> National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 5301 (as passed by Senate, June 21, 2016) [hereinafter FY17 NDAA] (quoting Major General James Marrs, Director for Intelligence in the Joint Staff).

<sup>13</sup> DAVID A. SHLAPAK & MICHAEL W. JOHNSON, RAND, REINFORCING DETERRENCE ON NATO’S EASTERN FLANK 1 (2016), [http://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1200/RR1253/RAND\\_RR1253.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RR1200/RR1253/RAND_RR1253.pdf) [hereinafter SHLAPAK & JOHNSON]. Estonia, Latvia, and Lithuania are collectively known as the Baltic States. See *id.* The report concludes that “such a rapid defeat would leave NATO with a limited number of options, all bad.” *Id.*

<sup>14</sup> SCHOEN, *supra* note 2, at 13.

<sup>15</sup> See Konstantin von Hammerstein, *NATO Struggles to Recover after Years of Budget Cuts*, SPIEGEL ONLINE (May 24, 2016), <http://www.spiegel.de/international/world/nato-struggles-to-prepare-for-potential-threat-from-russia-a-1093358.html> [hereinafter Hammerstein]; Associated Press, *Fulda Gap is Key Point in NATO Defense Against Soviet Forces*, L.A. TIMES (Mar. 1, 1987), [http://articles.latimes.com/1987-03-01/news/mn-6926\\_1\\_fulda-gap](http://articles.latimes.com/1987-03-01/news/mn-6926_1_fulda-gap) (explaining the Fulda Gap was “the only area in the world where large numbers of U.S. and Soviet soldiers [were] lined up so close to each other” on opposite sides of a border and where “NATO planners ha[d] pinpointed . . . as a likely invasion route into Western Europe for Soviet Bloc forces”). The Fulda Gap has

to geographic proximity and cultural ties, are the likely flashpoint in this new era of Russia-NATO conflict.<sup>16</sup> The great disparity between the Baltic States and Russia in terms of defense capability creates a metaphoric gap with the same strategic implications. The clear analogy of the Baltic States to the Fulda Gap has forced NATO to reverse years of defense cuts in order to combat this new strategic threat.<sup>17</sup> The graveness of this situation caused many experts, including the Chairman of the Joint Chiefs of Staff, General Joseph Dunford, to believe the threat from Russia is once again the greatest threat to the national security of the United States.<sup>18</sup>

To ensure NATO is capable of deterring or repressing an attack from Russia, it is imperative for all members to build their individual and collective security capabilities. Increased defense spending is the most obvious method of building capacity, but money alone is no silver bullet; “no amount of defense spending constitutes a panacea for maintaining Alliance cohesion.”<sup>19</sup> Promoting interoperability between member states requires trust, which is difficult to achieve without the establishment of a baseline capability. NATO members, specifically the Baltic States, must improve their respective defense capabilities to maximize the effect the U.S. military can have in deterring a Russian advance in Eastern Europe.

In its position as the first among equals in NATO, the United States must determine what it is willing to commit to Europe. Commitments of such magnitude are inherently political and rhetoric often obscures reality.

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become an oft-used metaphor for any strategic chokepoint vulnerable to armed conflict and was recently used to describe Arctic Ocean naval passages and straits in the Indian Ocean. See, e.g., Robbie Gramer, *Russia's Ambitions in the Atlantic*, FOREIGN AFFAIRS (Sept. 9, 2016), <https://www.foreignaffairs.com/articles/2016-09-09/russias-ambitions-atlantic>; Robert D. Kaplan, *Center Stage for the 21st Century*, FOREIGN AFFAIRS (Mar./Apr. 2009), <https://www.foreignaffairs.com/articles/east-asia/2009-03-01/center-stage-21st-century>.

<sup>16</sup> See Lincoln Mitchell, *Opinion: Is NATO Still Relevant?*, OBSERVER (Feb. 10, 2015), <https://observer.com/2015/02/natos-relevance-the-view-from-georgia/> (quoting Anders Fogh Rasmussen, “[t]here is a high probability that [Mr. Putin] will intervene in the Baltics to test NATO’s Article 5”); CHIVVIS ET AL., *supra* note 9, at 3.

<sup>17</sup> Hammerstein, *supra* note 15; SHLAPAK & JOHNSON, *supra* note 13, at 3.

<sup>18</sup> Dan Lamothe, *Russia is Greatest Threat to the U.S., Says Joint Chiefs Chairman Nominee Gen. Joseph Dunford*, WASH. POST (July 9, 2015), <https://www.washingtonpost.com/news/checkpoint/wp/2015/07/09/russia-is-greatest-threat-to-the-u-s-says-joint-chiefs-chairman-nominee-gen-joseph-dunford/>.

<sup>19</sup> See Alexander Mattelaer, *Revisiting the Principles of NATO Burden-Sharing*, 46 PARAMETERS 25, 31 (2016) [hereinafter Mattelaer].

A major concern is how financially reliant NATO is on the United States.<sup>20</sup> Because the United States's interests are inextricably linked to the fate of its NATO allies, it is in the national interest of the United States to ensure Russian aggression, as seen in Crimea, does not extend into NATO territory. Nowhere is the risk more pronounced than in the most vulnerable NATO states: Estonia, Latvia, and Lithuania. Accordingly, the United States should invest in closing the defense capabilities gap in Eastern Europe and seek to immediately bolster NATO's deterrence strategy to counter Russian aggression.

This strategic problem requires a fiscal solution. With its constitutional prerogative to provide for the "common defense,"<sup>21</sup> Congress is the linchpin in implementing a U.S.-led deterrence strategy in Eastern Europe. Ensuring a combined force is trained and equipped to deter Russian aggression requires clear and flexible fiscal authorities and accessible funding. However, the current legislative framework of ambiguous and overly restrictive authorizations and non-earmarked appropriations cannot adequately address the defense gap between Russia and the Baltic States. The defense gap risks the security of the Alliance and tempts a potentially catastrophic escalation of force. Without clear fiscal authorities and accessible funding for the NATO mission in Europe, as well as security cooperation programs aimed at building defense capacity in the Baltic States, even the best deterrence strategy would remain hollow. Compounding this problem is Congress's self-inflicted wound of rigid budget control measures that limits flexibility in planning future operations. Given the severity of the threat posed by Russian aggression in NATO territory to U.S. national security interests, it is imperative that Congress improve upon its current legislative efforts by clarifying current fiscal authorities, providing adequate funding to enable mission success, and influencing NATO members to improve their own defenses.

Congress can help defend the Baltic States from Russian aggression by: (1) understanding NATO funding systems and the challenges in implementing combined defense strategy in order to maximize the effect of each defense dollar spent by the United States and its NATO allies; (2) removing unnecessary obstacles from the budget process that hamper defense planning; (3) passing fiscal legislation that provides clear, flexible authority and earmarked appropriations to ensure prioritization of funding

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<sup>20</sup> See discussion *infra* Section III.

<sup>21</sup> U.S. CONST. Art. I, § 8.

for programs that will build partner capacity and improve interoperability between U.S. forces and NATO allies, similar to the Afghanistan Security Forces Fund (ASFF); and, (4) crafting legislation that provides fiscal incentives to influence NATO allies to boost their defense spending.<sup>22</sup>

Section II provides an overview of NATO's primary efforts in implementing its deterrence strategy in response to Russia's aggressive posture in Eastern Europe. Section III describes how NATO operations are funded and the efforts to increase defense spending and interoperability within the European contingent of the Alliance. Section IV analyzes current United States contributions to the common defense of NATO and the fiscal mechanisms enabling, or limiting, such contributions. This section focuses on efforts to build the defense capabilities of the Baltic States, including recent developments in security cooperation, and recommends how the United States can best leverage its fiscal resources through existing and new fiscal authorities. Finally, Section V recommends that Congress remove unnecessary barriers to effective defense planning, clarify funding sources to prevent confusion and under-utilization of current fiscal authorities, and carefully draft future legislation to maximize the United States' influence in improving NATO's defense capability.

## II. NATO and the Russian Threat

Founded on 4 April 1949, NATO is an alliance to safeguard freedom and promote stability in the North Atlantic area through collective defense.<sup>23</sup> Originally twelve members, NATO expanded to twenty-eight, with most of the expansion occurring after the fall of the Soviet Union.<sup>24</sup> Despite numerous geopolitical shifts since its

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<sup>22</sup> This article assumes the national security strategy vis-à-vis Russia will ultimately continue under President Trump. While the Trump administration may decide to diverge from the previous administration's support of NATO, current defense and foreign relations policy show the goal of NATO and the United States is the same: preserve peace by deterring Russian aggression in Europe to avoid triggering an Article 5 conflict. See discussion *infra* Section II.

<sup>23</sup> North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 [hereinafter North Atlantic Treaty].

<sup>24</sup> See Fred Dews, *Making Sense of NATO on the US Presidential Trail*, POLICY (Aug. 2, 2016), <https://thepolicy.us/making-sense-of-nato-on-the-us-presidential-campaign-trail-f25f3ec6e0f0>.

inception, NATO is still the “cornerstone of transatlantic security cooperation and the guarantor of peace and stability in Europe.”<sup>25</sup> Under Article 5 of the North Atlantic Treaty, NATO members are committed to collective self-defense.<sup>26</sup> Thus, an attack against any NATO member is considered an attack on all NATO members, whereby, in the exercise of the right to individual or collective defense under Article 51 of the United Nations Charter, each member will assist the member attacked, including the use of armed force, to “restore and maintain the security of the North Atlantic area.”<sup>27</sup>

Although Article 5 was not triggered when Russia invaded Crimea because Ukraine is not a NATO member, the prospect of a Russian attack on a NATO member, such as Estonia or Latvia, reinvigorated the concept of collective self-defense under Article 5. This was invoked only once in the Alliance’s history after the terrorists attacks on September 11, 2001.<sup>28</sup> At the 2014 Wales Summit, NATO members agreed to respond to Russia and “pledged to stop cuts and increase defense spending to two percent of GDP [Gross Domestic Product] within a decade,” leading many NATO allies to reverse years of defense spending cuts.<sup>29</sup> In 2016, spending cuts stopped across Europe and Canada for the first time in years and a three percent increase in defense spending is expected.<sup>30</sup> In addition to a pledge to increase defense spending, NATO set out plans to increase readiness and responsiveness in Eastern Europe, called the Readiness Action Plan (RAP).<sup>31</sup> The United States’ role in the RAP became known as Operation Atlantic Resolve; led by the United States European Command (EUCOM).<sup>32</sup> In 2016, both EUCOM and NATO

<sup>25</sup> H.R. REP. NO. 114-840, at 1217 (2016).

<sup>26</sup> See North Atlantic Treaty, *supra* note 23, 63 Stat. at 2241, 34 U.N.T.S. at 243.

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

<sup>28</sup> Sylvain Fournier & Sherrod Lewis, *Article 5 of The North Atlantic Treaty: The Cornerstone of the Alliance*, 34 NATO LEGAL GAZETTE 17 (July 2014), [http://www.act.nato.int/images/stories/media/doclibrary/legal\\_gazette\\_34a.pdf](http://www.act.nato.int/images/stories/media/doclibrary/legal_gazette_34a.pdf).

<sup>29</sup> Jens Stoltenberg, Opinion, *Now is Not the Time for the U.S. to Abandon NATO—Nor Should its European Allies Go it Alone*, GUARDIAN (Nov. 12, 2016), <https://www.theguardian.com/commentisfree/2016/nov/12/us-must-not-abandon-nato-europe-go-alone-jens-stoltenberg?>. Stoltenberg is the current NATO Secretary General.

<sup>30</sup> Jens Stoltenberg, NATO Sec’y Gen., Speech at the German Marshall Fund of the United States: A Strong Transatlantic Bond in Uncertain Times (Nov. 18, 2016).

<sup>31</sup> NATO, READINESS ACTION PLAN, <https://lawfas.hq.nato.int/RAP/SitePages/Home.aspx> (lasted visited Nov. 14, 2016) (on file with author).

<sup>32</sup> See U.S. MISSION TO THE NATO, ASSURANCE MEASURES, <https://nato.usmission.gov/our-relationship/policy-history/assurance-measures-commitment-to-european-security/> (last visited Feb. 12, 2019). Despite its name,

significantly expanded their collective efforts to counter Russian aggression by adding deterrence-based measures to the mission of Operation Atlantic Resolve and the RAP.<sup>33</sup> At the Warsaw Summit in July 2016, NATO leaders determined the strategy to respond to Russia's growing Anti-Access/Area Denial (A2/AD) capability in the Baltics was to increase its forward presence in the Baltics significantly.<sup>34</sup> The United States, along with NATO partners Germany, Canada, the United Kingdom, and France, began the largest buildup of forces in Europe since the Cold War, adding an armored brigade combat team (ABCT) supported by air assault forces into seven nations stretching along the eastern flank of NATO from Estonia to Bulgaria in January 2017.<sup>35</sup>

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Operation Atlantic Resolve is not a declared contingency operation. *See* 10 U.S.C. § 101(a)(13) (2016) (defining a contingency operation as a military operation “designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force”); *see also*, BARBARA SALAZAR TORREON, CONG. RESEARCH SERV., R42738, INSTANCES OF USE OF UNITED STATES ARMED FORCES ABROAD, 1798-2016, at 1, 30-34 (Oct. 7, 2016) (explaining that the list includes only instances when the U.S. used military forces abroad, not for participation in mutual security organizations; the list does not include Operation Atlantic Resolve). U.S. efforts in Eastern Europe are officially designated as European Reassurance Initiative (ERI) and, as of Fiscal Year 2017, European Deterrence Initiative (EDI). *See* discussion *infra* Section IV(B)(2). Nonetheless, NATO and United States European Command (EUCOM) refer to the U.S. participation in the Readiness Action Plan as Operation Atlantic Resolve.

<sup>33</sup> U.S. EUROPEAN COMMAND, OPERATION ATLANTIC RESOLVE 2016 FACT SHEET 1 (Apr. 15, 2016), [www.eucom.mil/doc/35204/operation-atlantic-resolve-fact-sheet-april-15-2016](http://www.eucom.mil/doc/35204/operation-atlantic-resolve-fact-sheet-april-15-2016) [hereinafter OPERATION ATLANTIC RESOLVE] (on file with author); NATO, WARSAW SUMMIT COMMUNIQUÉ ¶ 6 (July 9, 2016), [http://www.nato.int/cps/en/natohq/official\\_texts\\_133169.htm?selectedLocale=en](http://www.nato.int/cps/en/natohq/official_texts_133169.htm?selectedLocale=en) [hereinafter WARSAW SUMMIT]. In 2016, the United States added a rotational combat brigade while NATO added four multinational battalions, rotating in the Baltic States and Poland. Kristina Daugirdas & Julian Davis Mortenson, eds., *Russia Argues Enhanced Military Presence in Europe Violates NATO-Russia Agreement; United States Criticizes Russian Military Maneuvers over the Baltic Sea as Inconsistent with Bilateral Treaty Governing Incidents at Sea*, 110 AM. J. INT'L L. 562, 563-64 (July 2016).

<sup>34</sup> Alexander Vershbow, NATO Dep. Sec'y Gen. Amb., Speech, NATO Post-Warsaw: Strengthening Security in a Tough Neighborhood (Aug. 29, 2016).

<sup>35</sup> *See* David Frum, *Trump Will Inherit the Biggest NATO Buildup in Europe Since the Cold War*, ATLANTIC (Jan. 10, 2017), <https://www.theatlantic.com/international/archive/2017/01/trump-nato-europe-russia/512648/> [hereinafter Frum]. Frum speculates that this enhanced NATO presence so close to Russia was “one of the motives that impelled Vladimir Putin to intervene in the U.S. presidential election with a view to weakening the pro-NATO Hillary Clinton and helping the NATO-skeptical Trump.” *Id.* Whether that speculation is true, this supposition underscores the counterargument to this article: the Russia-NATO tension is



The Obama administration demonstrated its intent to shift United States strategy from “reassurance” to “deterrence” as it requested to quadruple the funding for the European Reassurance Initiative (ERI) for Fiscal Year 2017.<sup>36</sup> In pursuit of a capable deterrent force, the United States, in its informal role as military leader in NATO, has delineated five lines of effort: increased rotational presence of air, land, and sea forces; additional bilateral and multilateral exercises and training to improve overall readiness and interoperability; repositioning of U.S. equipment to enhance rapid response capabilities in Europe; improve infrastructure to increase flexibility and readiness; and build the capacity of allies and partners in Central and Eastern Europe.<sup>37</sup>

Despite the renewed emphasis on security within the European contingent of NATO, the United States would face a disproportionate burden within the Alliance, both militarily and financially, if Russia launches an attack across its western border in order to defend what some may consider a minor ally in Estonia or Latvia.<sup>38</sup> Although the Obama administration affirmed the United States’ obligation under Article 5 to come to the defense of any NATO member, he stated that the rest of NATO must build its defense capacity to ease the burden on the United States, leading to doubts among European leaders.<sup>39</sup> President Donald Trump is even less reassuring than his predecessor was. He has indicated defense provided by the United States may be

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directly correlated to the amount of NATO forces present in Eastern Europe. However, Russia’s actions in Crimea, Syria, and the increasingly aggressive posture towards the Baltic States, all of which were executed by Russia prior to this dramatic build-up by NATO, dispel this counter-argument. *Id.*

<sup>36</sup> Luis Simón, *Balancing Priorities in America’s European Strategy*, 46 *PARAMETERS* 13, 22 (2016) [hereinafter Simón]; *see also* OFF. OF THE UNDER SEC’Y OF DEF. (COMPTROLLER), EUROPEAN REASSURANCE INITIATIVE, DEP’T OF DEF. BUDGET FY 2017, at 1 (Feb. 2016), <http://comptroller.defense.gov/budgetmaterials.aspx> [hereinafter FY17 BUDGET REQUEST]. *See* discussion *infra* Section IV(B)(2).

<sup>37</sup> OPERATION ATLANTIC RESOLVE, *supra* note 33, at 2.

<sup>38</sup> *See* Simón, *supra* note 36, at 24. The U.S.’s commitment to NATO could be tried when the expansion of the Alliance includes less economically advanced members than the original NATO members, thereby offering less to the United States in return for its security protections. *Id.*

<sup>39</sup> Statement by the President on the Fiscal Year 2017 European Reassurance Initiative Budget Request (Feb. 2, 2016). Despite his assurances, former-President Obama called European allies “freeloaders” and reportedly told former United Kingdom (U.K.) Prime Minister David Cameron that the U.K. “would no longer be able to claim a ‘special relationship’ with the United States if it did not commit to spending at least [two] percent of its [gross domestic product] on defense,” leading the U.K. to meet the two percent threshold. Jeffrey Goldberg, *The Obama Doctrine*, *ATLANTIC* (Apr. 2016), <http://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/471525/>.

contingent on a NATO member's own defense spending.<sup>40</sup> Additionally, a “decade of foreign wars, a devastating global financial crisis, mounting public debt, and profound realignments in international political and economic power have inspired calls for fundamental change from the competing extremes of the American political landscape,” towards an isolationist strategy.<sup>41</sup> There are indications of bipartisan public support for foreign policy retrenchment as well. According to one poll, fifty-seven percent of Americans think the United States should deal with its own problems,<sup>42</sup> whereas only forty-four percent of the American public would support the use of U.S. troops to defend the Baltic States from a Russian invasion.<sup>43</sup>

Nonetheless, the importance of a credible deterrent and swift response to Russian aggression cannot be overstated. If Russia chose to attack a Baltic state, it will not only test the collective self-defense commitment under Article 5, it will test the credibility and durability of the United Nations Charter's prohibition of the use of force in other states.<sup>44</sup> Thus, NATO's response to any future aggression by Russia within the Alliance's territory “has significant implications for both NATO and the Charter.”<sup>45</sup> As such, “[t]he United States should treat [the Baltic States] with the same importance as France, Germany and the United Kingdom.”<sup>46</sup>

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<sup>40</sup> Andrius Sytas & Gederts Gelzis, *Baltics Keep Fingers Crossed that Trump Won't Keep his Campaign Pledges*, REUTERS (Nov. 9, 2016), <http://www.reuters.com/article/usa-election-baltics-idUSL8N1DA597>.

<sup>41</sup> Jeremi Suri & Benjamin Valentino, *Introduction to SUSTAINABLE SECURITY: RETHINKING AMERICAN NATIONAL SECURITY STRATEGY 1* (Jeremi Suri & Benjamin Valentino eds., 2016).

<sup>42</sup> Caitlyn Davis, Brookings Institution, *Muddying the Issues: Five Questionable Claims on U.S. Foreign Policy*, ORDER FROM CHAOS BLOG (Nov. 8, 2016), <https://www.brookings.edu/blog/order-from-chaos/2016/11/08/muddying-the-issues-five-questionable-claims-on-u-s-foreign-policy/>.

<sup>43</sup> Andrew Shearer, *Can America Still Rely on its Allies?*, CTR. FOR STRATEGIC & INT'L STUD. (Dec. 15, 2016), <https://www.csis.org/analysis/can-america-still-rely-its-allies> [hereinafter Shearer].

<sup>44</sup> U.N. Charter art. 2, ¶4; see Deeks & Wittes, *supra* note 6 (claiming the United Nations finds itself a little weaker every time a violation of Article 2(4) of the United Nations Charter, which prohibits the use of force against another state, goes unanswered).

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

<sup>46</sup> Mindy Belz, *Baltic Alert: Troop Buildups and New Leaders on Both Sides of the Atlantic could Spell Opportunity for Russia's Vladimir Putin, and Testing for NATO*, WORLD MAG. (Dec. 31, 2016), [https://world.wng.org/2016/12/baltic\\_alert](https://world.wng.org/2016/12/baltic_alert). Paul Miller, associate director of the Clements Center for National Security at The University of Texas at Austin, argues that the Baltics are the test case for the security guarantee

Whatever course of action the Trump administration chooses to take vis-à-vis Russian aggression in Eastern Europe, it is clear President Trump will have to lead NATO through this potentially catastrophic situation with Russia while navigating a fiscal maelstrom of overseas defense spending. Setting up a European response to a Russian A2/AD environment in the Baltics<sup>47</sup> will cost billions of dollars in planning, movement of troops and assets, and development of effective offset strategy;<sup>48</sup> the United States must carefully consider any financial assistance it provides.<sup>49</sup>

### III. Sources of NATO Funding

As one might expect from a multi-national, multi-cultural defense alliance, funding NATO operations is complex. The primary sources of

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provided by membership in the Alliance, stating “if the NATO Article 5 guarantee isn’t enforced for the Baltics, it won’t be enforced anywhere, and NATO is dead.” *Id.*

<sup>47</sup> See Dave Majumdar, *Can America Crush Russia’s A2/AD “Bubbles”?*, NAT’L INT. (June 29, 2016), <http://nationalinterest.org/blog/the-buzz/can-america-crush-russias-a2-ad-bubbles-16791>. While Russia’s military investments are modest in comparison to the United States, they have been strategic in their spending, focusing on increasing capabilities in certain key conventional areas, specifically in Anti-Access/Area Denial (A2/AD) capabilities that deny adversaries the ability to adequately intervene in an ongoing or imminent military action. *Id.* Russia created a large A2/AD zone in the Baltics, relying on the proximity of Kaliningrad, a Russian exclave, to Poland, Estonia, Latvia, and Lithuania, extending ground to air capabilities throughout a third of Poland’s airspace. Sydney J. Freedberg, Jr., *Russians “Closed the Gap” for A2/AD: Air Force Gen. Gorenc*, BREAKING DEFENSE (Sept. 14, 2015), <http://breakingdefense.com/2015/09/russians-closed-the-gap-for-a2ad-air-force-gen-gorenc/>. Thus, surface to air “launchers on Russian soil can hit targets in NATO airspace.” *Id.* (quoting General Frank Gorenc, commander of U.S. Air Forces in Europe). The United States has not fought a conflict without absolute control of the air since at least 1991; Russian A2/AD zones would severely blunt the U.S. military’s ability to operate as it became accustomed to since 1953, the last time a soldier was killed by enemy aircraft. *Id.*

<sup>48</sup> A report by RAND Corporation estimated the total cost of \$2.7 billion per year for their recommended deterrent posture of seven brigades, including three armored brigades as well as land-based fires and ready airpower support. See SHLAPAK & JOHNSON, *supra* note 13, at 1-2.

<sup>49</sup> Compounding this problem is the delicate balancing act played by NATO strategists when pushing military capabilities closer and closer to Russia’s borders. While outside the scope of this article, it is foreseeable that the act of placing U.S. military assets in Eastern Europe could provoke Russia, leading to “unnecessary escalation with Russia, which could tie down excessive resources and undermine U.S. interests beyond Europe.” Simón, *supra* note 36, at 21-22.

funding for NATO operations are national contributions and direct contributions.<sup>50</sup>

#### A. National Contributions

National contributions are the largest source of funds for NATO and come from member states volunteering military assets, such as troops or equipment to a military operation, taken from the member's "overall [defense] capability to form a combined Alliance capability."<sup>51</sup> The methodology for calculating each member state's national contribution is the dollar amount of its overall defense budget.<sup>52</sup>

Because the United States is engaged in military operations worldwide, the defense expenditures—or overall defense budget—of the United States represents about seventy-three percent of the entire Alliance's defense spending.<sup>53</sup> However, the U.S. defense budget does not translate to the United States covering seventy-three percent of the costs involved in running NATO operations as politicians from both sides of the aisle have claimed.<sup>54</sup> The failure of analysts, commentators, and politicians to make "the distinction between the

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<sup>50</sup> NATO, FUNDING NATO (June 3, 2015), [http://www.nato.int/cps/en/natohq/topics\\_67655.htm](http://www.nato.int/cps/en/natohq/topics_67655.htm) [hereinafter FUNDING NATO]. National contributions are also called indirect contributions. *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> NATO, SECRETARY GENERAL'S ANNUAL REPORT 122 (2015), [http://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2016\\_01/20160128\\_SG\\_AnnualReport\\_2015\\_en.pdf](http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_01/20160128_SG_AnnualReport_2015_en.pdf) [hereinafter ANNUAL REPORT]. Defense expenditures are defined "as payments made by a national government specifically to meet the needs of its armed forces of Allies," and includes land, sea, air, and joint formations financed by the respective defense ministry. *Id.* Included in the definition is operations and maintenance, procurement, research, and development, pensions for retired employees, peacekeeping and humanitarian funds. *Id.* Financial aid from one country to another for supporting the recipient's defense effort is included in the donor country's defense expenditures, not the recipient's. *Id.*

<sup>53</sup> FUNDING NATO, *supra* note 50. The United States' global responsibilities require much higher defense spending than other NATO members that are not engaged in operations around the world. Glenn Kessler, *Trump's Claim that the U.S. Pays the "Lion's Share" for NATO*, WASH. POST (Mar. 30, 2016),

[https://www.washingtonpost.com/news/fact-checker/wp/2016/03/30/trumps-claim-that-the-u-s-pays-the-lions-share-for-nato/?utm\\_term=.406d81b63e79](https://www.washingtonpost.com/news/fact-checker/wp/2016/03/30/trumps-claim-that-the-u-s-pays-the-lions-share-for-nato/?utm_term=.406d81b63e79) [hereinafter Kessler].

<sup>54</sup> During the 2016 Presidential Election, candidates from both political parties, including the otherwise diametrically opposed candidates, Donald Trump and Bernie Sanders, claimed the United States paid over seventy-three percent of NATO's budget. Kessler, *supra* note 53.

NATO commitment costs to the United States and the gap between the United States and allied defense efforts” has resulted in the erroneous belief that NATO is in crisis and in need of a dramatic policy departure.<sup>55</sup> To avoid such confusion, U.S. politicians must understand that the calculation of defense expenditures does not distinguish what portion of that amount is devoted to defense spending on the Alliance and other national defense responsibilities.<sup>56</sup> Ivo Daalder, a former U.S. ambassador to NATO, explained that it is difficult to calculate how much of overall U.S. defense spending is devoted exclusively for NATO. “Since we now have global responsibilities and since we now also redeploy forces that are based in Europe for other theaters (including Iraq, Afghanistan, Africa, etc.) it isn’t really possible to come up with an accurate picture of how much of U.S. spending is in fact for NATO.”<sup>57</sup>

Although it is difficult, if not impossible, to determine the precise amount of expenditures the United States commits directly to NATO, estimates by RAND Corporation and the Center for Strategic and International Studies (CSIS) place the total costs of keeping U.S. forces in key industrial nations at less than \$10 billion a year, or less than two percent of the total defense budget.<sup>58</sup> While the United States increased defense spending by over eighty percent since 2001, “virtually none of that increase was generated by NATO commitments.”<sup>59</sup> When compared to the defense posture the United States fielded in Europe during the Cold War, the resources currently obligated to defending

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<sup>55</sup> William C. Wohlforth, *The Right Choice for NATO*, in *SUSTAINABLE SECURITY: RETHINKING AMERICAN NATIONAL SECURITY STRATEGY* 256 (Jeremi Suri & Benjamin Valentino eds., 2016) [hereinafter Wohlforth].

<sup>56</sup> Mattelaer, *supra* note 19, at 27.

<sup>57</sup> Kessler, *supra* note 53. To illustrate how difficult it is to track U.S. spending for NATO, consider the role of an F-15E Strike Eagle stationed at Royal Air Force Lakenheath, United Kingdom. Because military assets are fungible, the Strike Eagle can be tasked to fly sorties in Europe, Africa, and the Middle East or conduct exercises in the United States. To complicate matters, note that flying and maintaining a Strike Eagle costs Operations & Maintenance (O&M) funds, with each mission described above funded by different commands under different authorizations, with the possibility the sortie could be funded by Overseas Contingency Operations (OCO) funds. Any costs assessment is further complicated by considering the original Research & Development (R&D) funds and Procurement funds used for the acquisition of the airframe, avionics, munitions, and upgrades.

<sup>58</sup> See Kathleen Hicks & Michael O’Hanlon, *Donald Trump is Wrong about NATO*, USA TODAY (July 8, 2016), <http://www.usatoday.com/story/opinion/columnist/2016/07/08/trump-nato-defense-summit-allies-column/86679096/>.

<sup>59</sup> Wohlforth, *supra* note 55, at 257.

Europe are remarkably low. In 1990, approximately fifteen percent of the total worldwide active strength was stationed in Europe, whereas only three percent of a significantly smaller total active force remains in Europe in 2017.<sup>60</sup> Thus, despite the political rhetoric and fact that the United States spends more on defense than all other NATO members combined, it is clear the actual contribution to NATO is a relatively small portion of the overall U.S. defense budget.

It is critical to understand the parameters of the United States' contribution to NATO because the United States has finite resources, and, since enactment of the Budget Control Act (BCA) of 2011, legally binding caps on funding.<sup>61</sup> Every dollar spent towards the objectives of NATO is, in theory, a dollar less going to fight the Islamic State or towards the Pacific pivot. However, the misunderstanding of the true costs of the United States' role in NATO could have dangerous consequences. If the U.S. budgets and plans for NATO operations based on the false premise that it already spends too much and its partners do not contribute enough, U.S. leadership will likely make decisions that adversely affect its own national security interests.

Although Europe is not as reliant on U.S. contributions, as is claimed, a spending and capability gap drives tension and strategy within the Alliance. Due to the proportionately lower defense spending by NATO members, the Alliance is dependent on the United States for essential capabilities, specifically "in regard to intelligence, surveillance and reconnaissance; air-to-air refueling; ballistic missile defense; and airborne electronic warfare."<sup>62</sup> Recognizing this gap, the members agreed during the 2014 Wales Summit to spend at least two percent of their respective Gross Domestic Product (GDP) on defense as well as devote at least twenty percent of defense expenditures to major equipment spending.<sup>63</sup> Despite this agreement, only five allies

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<sup>60</sup> ANTHONY H. CORDESMAN, CTR. FOR STRATEGIC & INT'L STUD., NATO AND THE DELICATE BALANCE OF DETERRENCE: STRATEGY VERSUS BURDEN SHARING 28 (Feb. 7, 2017) [hereinafter CORDESMAN]. In 1990, 321,300 U.S. military personnel were assigned to Europe, out of 2,117,900 active duty personnel; in 2017, 40,500 active duty personnel, only about seventeen percent of the 1990 figure, are assigned to Europe. *Id.*

<sup>61</sup> Budget Control Act of 2011, Pub. L. 112-25, 125 Stat. 240, 256; *see* discussion *infra* Section V(A).

<sup>62</sup> FUNDING NATO, *supra* note 50.

<sup>63</sup> *Id.* Major equipment includes: missile systems; missiles (conventional weapons); nuclear weapons; aircraft; artillery; combat vehicles; engineering equipment; weapons and small arms; transport vehicles; ships and harbor craft; and electronic and communications equipment. NATO Defense Expenditures, *supra* note 8.

met the two percent target in 2015, and only eight met the twenty percent goal.<sup>64</sup> However, the Warsaw Summit, held in July 2016, recognized the collective defense expenditures have increased for the first time in seven years, and the majority of the members have halted or reversed declines in their own budgets.<sup>65</sup> Moreover, “[fifteen] of the [twenty-eight] member states have increased their military spending, especially in countries on the NATO’s eastern flank that feel most threatened by Moscow.”<sup>66</sup> Nonetheless, the Warsaw Summit reiterated the need for all members to display the political will to provide required capabilities in defense, and to further a more balanced sharing of the costs and responsibilities.<sup>67</sup>

## B. Direct Contributions

The other, much smaller, source of funding comes from direct financial contributions in the form of common funding or joint funding.<sup>68</sup> Common funding occurs when NATO identifies a requirement that serves the interests of all the contributing members, and should be supported by

<sup>64</sup> Mattelaer, *supra* note 19, at 29. NATO members that met the two percent defense expenditures target were the United States, Greece, Poland, the United Kingdom, and Estonia. ANNUAL REPORT, *supra* note 52, at 28. The eight members that met the twenty percent equipment expenditures target were Luxembourg, Poland, the United States, Turkey, France, the United Kingdom, Norway, and Lithuania. *Id.*

<sup>65</sup> WARSAW SUMMIT, *supra* note 33, ¶ 34.

<sup>66</sup> Hammerstein, *supra* note 15. Latvia raised its defense budget by sixteen percent, while Poland spent an extra twenty-two percent. *Id.*

<sup>67</sup> WARSAW SUMMIT, *supra* note 33, ¶ 33. Several experts dismiss the wisdom of the two percent goal. *See, e.g.*, CORDESMAN, *supra* note 60, at 32-34; Judy Dempsey, *NATO’s Red Herring*, CARNEGIE EUROPE (Feb. 14, 2017), <http://carnegieeurope.eu/strategieurope/67986>; Richard Sokolsky & Gordon Adams, *Penny Wise, Pound Foolish: Trump’s Misguided Views of European Defense Spending*, WAR ON THE ROCKS (Mar. 7, 2017), <https://warontherocks.com/2017/03/penny-wise-pound-foolish-trumps-misguided-views-of-european-defense-spending/>. Each NATO member has very different resources and abilities to spend on defense; overspending on defense to meet an arbitrary threshold could lead to or exacerbate dysfunction within a country, which would certainly disrupt the defense strategy of NATO writ large more than universal spending at the two percent target could ever help the Alliance. *See* CORDESMAN, *supra* note 60, at 33. Spending metrics, without a nexus to a given military strategy or measures of effectiveness, have little to no meaning. *Id.* While this argument is persuasive, this article focuses on factors within the control of the U.S. Congress. Any change in NATO’s spending policy would have to come about organically within the Alliance and driven by the Executive branch rather than Congress.

<sup>68</sup> The common-funded military budget for 2016 was €1.16 billion, compared to about \$612 billion for the U.S. defense budget in 2016. *See* FUNDING NATO, *supra* note 50; National Defense Authorization Act for Fiscal Year 2016, Pub. L. 114-92, 129 Stat. 726 (2015) [hereinafter FY16 NDAA].

all members.<sup>69</sup> The personnel and administration of NATO headquarters and the NATO Command Structure use common funds, as well as military capabilities in excess of an individual nation's military requirements. The excess capability is pledged to NATO for common purposes such as the NATO Security Investment Program.<sup>70</sup> Member States contribute to common-funded budgets and programs through an agreed cost-sharing formula, based in part on each respective member's Gross National Income.<sup>71</sup> One caveat to this formula is the United States, which covers 22.14 percent of common-funded budgets and programs in 2016, "whereas its economic weight within the Alliance accounts for more than forty percent of the NATO total."<sup>72</sup> This cost-share system was structured to fairly apportion costs and "emphasize the strong cooperative nature of the organization, in which each member has an equal voice."<sup>73</sup>

Although the NATO common-funded programs account for a small portion of the total defense spending of NATO members, it easily demonstrates the benefit of the Alliance to the United States. "[E]very \$22 the U.S. contributes leverages \$100 worth of Alliance capability."<sup>74</sup> This cost-sharing method is used to "achieve economies of scale in developing collective capabilities to support critical NATO operational requirements," such as NATO Ballistic Missile Defense, NATO Airborne Early Warning Control, Alliance Ground Surveillance System, NATO Joint Intelligence, Surveillance and Reconnaissance, Strategic Airlift

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<sup>69</sup> FUNDING NATO, *supra* note 50.

<sup>70</sup> *See id.* The NATO Command Structure consists of permanent party civilians at NATO headquarters as well as other infrastructure. *Id.* The United States provides 930 personnel, or about ten percent of the 8,950 total personnel required to staff the NATO Command Structure. WHITE HOUSE FACT SHEET: U.S. CONTRIBUTIONS TO NATO CAPABILITIES (June 8, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/07/08/fact-sheet-us-contributions-nato-capabilities> [hereinafter U.S. CONTRIBUTIONS TO NATO CAPABILITIES].

<sup>71</sup> FUNDING NATO, *supra* note 50.

<sup>72</sup> Mattelaer, *supra* note 19, at 29. Germany, long accused of not meeting its two and twenty percent target requirements in national defense spending, bears the largest proportional share of NATO common funding. *Id.* The largest contributors to common-funded programs, aside from the United States, are Germany (14.65%), France (10.63%), the United Kingdom (9.85%), and Italy (8.41%). FUNDING NATO, *supra* note 50. In 2018, NATO common funding was budgeted for \$2.27 billion. *See id.*

<sup>73</sup> Major Israel D. King, *Preserving the Alliance: The Need for a New Commitment to Common Funding in NATO Financing*, 74 A.F. LAW REV. 113, 117 (2015) (quoting NATO, *The Establishment of an International Budget for NATO: First Interim Report of the Working Group*, at 4-8, NATO Doc. D-D(51)59 (Mar. 2, 1951), [http://archives.nato.int/uploads/r/null/3/1/31088/D-D\\_51\\_59\\_ENG.pdf](http://archives.nato.int/uploads/r/null/3/1/31088/D-D_51_59_ENG.pdf)).

<sup>74</sup> U.S. CONTRIBUTIONS TO NATO CAPABILITIES, *supra* note 70.



Command, and Precision-Guided Munitions.<sup>75</sup> Like common funding, the sum parts of the individual NATO members combined with the enabling capabilities of the U.S. equate to significant force multipliers for each of the members, including the United States.<sup>76</sup> Rather than viewing the collective defense of the other NATO members, the United States should recognize that the benefit of access to NATO's "nearly two million military personnel equipped and potentially available for joint operations"<sup>77</sup> outweighs the relatively small portion of the defense budget provided for NATO defense and deterrence.

Though this discussion sheds light on the erroneous belief that the United States bankrolls NATO, it is clear the United States' role in the collective defense is paramount. This understanding will allow Congress to more effectively appropriate funds towards NATO, armed with the ability to counter claims that it is spending too much on Europe. Given the modest increases in defense spending described above, focused appropriations on building defense capacity in the Baltic States are necessary to help close the capabilities gap and lead to better interoperability between U.S. forces and its NATO allies in the Alliance's eastern frontier. The following section examines some of the current programs aimed towards reassuring NATO members and building defense capabilities through U.S. funding.

#### IV. Current U.S. Contributions to NATO

Despite bipartisan criticism of the perceived lack of funding from other NATO members, the United States still recognizes that its leadership in the Alliance is vital to its own national security.<sup>78</sup> There are clear benefits to combined defense in terms of national security, foreign relations, and the economy,<sup>79</sup> placing U.S. funding of NATO at the

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<sup>75</sup> *Id.*

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

<sup>77</sup> *Id.*

<sup>78</sup> See S. 2943, 114th Cong. § 1259I (as passed by Senate on June 21, 2016) (providing that "[i]t is the sense of Congress that continued United States leadership in the North Atlantic Treaty Organization is critical to the national security of the United States").

<sup>79</sup> A recent study found "the economic losses from retrenchment [of U.S. overseas security commitments] are conservatively estimated to be three and a half times greater than the gains." Daniel Egel & Howard J. Shatz, *Economic Benefits of U.S. Overseas Security Commitments Appear to Outweigh Costs*, RAND BLOG (Sept. 23, 2016), <http://www.rand.org/blog/2016/09/economic-benefits-of-us-overseas-security-commitments.html>.

intersection of foreign and domestic policy. While the President has constitutional authority in defense, as the Commander-in-Chief, and to enter into agreements with foreign states,<sup>80</sup> Congress can affect both defense and foreign affairs through its power of the purse.<sup>81</sup> Accordingly, this section analyzes the reflection of U.S. foreign and defense policies through Congressional authorizations and appropriations that affect the implementation of Operation Atlantic Resolve's lines of operation, particularly in increasing interoperability and improving the defense capacity of the Baltic States.<sup>82</sup>

#### A. Congress's Role in Funding NATO Operations

Congress's power to authorize expenditures through legislation is instrumental in national security and foreign relations, as it determines the amount and purpose for which expenditures are authorized.<sup>83</sup> Because military activities and foreign assistance require expenditures of funds, the United States cannot implement its strategic goals in Eastern Europe without fiscal authority.<sup>84</sup> The constitutionally provided power of the

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<sup>80</sup> U.S. CONST. Art. II, § 2, cl. 1 ("The President shall be the Commander in Chief of the Army and Navy of the United States . . ."); U.S. CONST. Art. II, § 2, cl. 2 ("He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur . . .").

<sup>81</sup> See U.S. CONST. Art. I, § 9, cl. 7. While President Trump will undoubtedly face the challenges of countering Russia and navigating the complicated relationship with Vladimir Putin, he will not face those challenges alone. Congress "has an opportunity to address this threat by focusing time and resources on legislation and oversight to safeguard U.S. interests and influence abroad, demonstrating real leadership to fulfill its constitutionally mandated role in foreign policy." Jason Bruder, *How Congress Can Protect the U.S. from Russia*, POLITICO (Oct. 26, 2016), <http://www.politico.com/agenda/story/2016/10/congress-role-countering-russia-000225>.

<sup>82</sup> This is a non-exhaustive discussion of U.S. funded programs that benefit NATO. There are numerous operational funding programs, such as Humanitarian and Civic Assistance, Foreign Disaster Assistance, Emergency & Extraordinary Expenses, etc., that could be used to assist NATO members. However, this article focuses on funding reasonably likely to support the NATO mission of collective defense, specifically as a deterrent against Russia within the context of Article 5 of the North Atlantic Treaty.

<sup>83</sup> Congress, by controlling the government's money, "wields great power to shape and control the government itself by determining, for example, the purpose for which government may use money or the amounts that are available for its endeavors." GAO, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 1-4 (4th ed. 2016).

<sup>84</sup> Despite the responsibility of the president in national security and foreign affairs, the Constitution provides for checks and balances, prohibiting expenditures from the Treasury absent legislation to appropriate funds. See U.S. CONST. Art. I, § 9, cl. 7. An appropriation is the statutory authority to incur obligations and make payments out of the

purpose therefore places Congress as the cornerstone of the United States' participation in NATO operations. While U.S. funding for deterring Russian aggression is complex and lacks clarity, sources of funding generally fall within three categories: service component funds, the European Reassurance/Deterrence Initiative, and security cooperation.

## B. Building Better Allies through Funding Resources

### 1. *Service Operations & Maintenance Funds*

As the Unified Combatant Command with an area of responsibility covering Europe and Russia, EUCOM is tasked with managing theater requirements, to include supporting NATO operations and meeting U.S. national security objectives.<sup>85</sup> While EUCOM has authority over the conduct of operations within this region, it is the military services that receive direct funding from Congress through Operations and Maintenance (O&M) funds.<sup>86</sup> Like all Unified Combatant Commands during the budget planning phase, EUCOM is limited to providing inputs to influence the armed services, and sets priorities for funding, but Congress may appropriate different amounts and purposes than requested by the combatant commander.<sup>87</sup>

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Treasury for specified purposes. *See* 31 U.S.C. § 1101 (2016); 31 U.S.C. § 1301 (2016). Congress authorizes the appropriation of funds through permanent authorizations codified in a statute, or through temporary authorizations. *See* U.S. CONST. Art. I, § 9, cl. 7; 31 U.S.C. § 1341(a)(1)(A) (2016); *see also* United States v. MacCollom, 426 U.S. 317, 320 (1976) (holding “[t]he established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress”). Authority for defense expenditures is typically found in the annual National Defense Authorization Act (NDAA) and Department of Defense Appropriation Act (DODAA). *See, e.g.*, Nat’l Def. Authorization Act of 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) [hereinafter FY17 NDAA]; Dep’t of Def. Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242, 2333 (2015).

<sup>85</sup> EUCOM, MISSION, <http://www.eucom.mil/mission> (last visited Feb. 12, 2019).

<sup>86</sup> UNITED STATES EUROPEAN COMMAND OFFICE OF STRATEGY IMPLEMENTATION, THEATER SECURITY COOPERATION RESOURCES HANDBOOK 3 (Oct. 21, 2016) [hereinafter THEATER SECURITY COOPERATION RESOURCES HANDBOOK]. Each service makes annual requests to Congress for funding to train and equip their personnel; inherent in this function are the costs to maintain each service’s respective “baseline costs,” or certain level of preparedness. Lieutenant Colonel Teresa G. Love, *Overseas Contingency Operations: The Danger of Fiscal Mission Creep*, 41(2) REPORTER 7, 8 (2014). The combatant command missions are funded through the services via the annual Department of Defense Appropriation Act. *Id.*; *see, e.g.*, Dep’t of Def. Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (2015).

<sup>87</sup> THEATER SECURITY COOPERATION RESOURCES HANDBOOK, *supra* note 86, at 3.

To the extent an expense is necessary, fits within EUCOM's mission, and funds are authorized and appropriated, O&M funds are available for the expenditure,<sup>88</sup> unless the expense is covered by a more specific appropriation.<sup>89</sup> Another caveat is that the expenditure of funds must be for the primary benefit of the United States.<sup>90</sup> These two limitations to the use of service O&M funds obfuscate the analysis of how to fund operations in support of the NATO mission properly. First, it is unclear which agency's funds can be used. Under the Foreign Assistance Act, the Department of State (DoS) is the agency responsible for coordinating all foreign development activities.<sup>91</sup> An exception to the Foreign Assistance Act is when Congress specifically authorizes the Department of Defense (DoD) to obligate defense funding for the benefit of a foreign state, military or population, or if the funding is for "little t" training.<sup>92</sup> Because "little t" training, which protects U.S. forces by promoting safety, familiarization, and interoperability with foreign forces, does not constitute security cooperation, such activities are funded by O&M. However, a second issue arises because most efforts to build NATO ally and partner capacity likely will exceed the parameters of "little t" training and will fall under the umbrella of foreign assistance. Accordingly, funding for such security cooperation programs will come from more specific appropriations, as described below.

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<sup>88</sup> The NDAA contains funding tables of each authorized line item funded by acquisition type. See, e.g., FY17 NDAA, Pub. L. No. 114-328, § 4301, 130 Stat. 2000, 2851 (2016).

<sup>89</sup> See Hon. Lawrence B. Gibbs, 65 Comp. Gen. 881, 884 (Sept. 26, 1986) (explaining as a general rule, "an appropriation for a specific object is available for that object to the exclusion of a more general appropriation which might otherwise be considered available for the same object, and the exhaustion of the specific appropriation does not authorize charging any excess payment to a more general appropriation"); 31 U.S.C.A. § 1301 (West, Westlaw through Pub. L. No. 114-244) (citing 1908, 27 Op. Atty. Gen. 31, to explain the general rule of law is that, when Congress makes a general appropriation applicable to the same purpose as a specific appropriation, the specific appropriation "operates *pro tanto* as a repeal or suppression of the general, and renders its use for the specific purpose illegal").

<sup>90</sup> See Hon. Bill Alexander, 63 Comp. Gen. 422, 424 (1984) (determining the Department of Defense (DoD) may not use O&M funds when foreign assistance funds were specifically provided for by Congress in the applicable defense appropriations act).

<sup>91</sup> Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424 (codified as amended at 22 U.S.C. § 2151 (2012)).

<sup>92</sup> See *id.*; Hon. Bill Alexander, 63 Comp. Gen. at 441 (deciding that some degree of familiarization and safety instruction is necessary before combined-forces activities are undertaken, in order to ensure interoperability of the two forces, and such activities are financed by O&M appropriations because they do not constitute "training").

## 2. *European Reassurance/Deterrence Initiative*

Since the Wales Summit in 2014, the United States increased funding for building ally and partner capacity in line with the goals of NATO as well as its own national security objectives through Operation Atlantic Resolve.<sup>93</sup> Beginning in Fiscal Year 2015, Congress authorized funds for the European Reassurance Initiative (ERI) “to reassure allies through expanded U.S. military presence in Europe through rotational deployments of U.S. troops, bilateral and multilateral equipment, and building partner capacity.”<sup>94</sup> The ERI represents the U.S. contribution to NATO’s assurance efforts through the RAP.<sup>95</sup>

In 2016, the President requested \$3.4 billion for the ERI in the Fiscal Year 2017 National Defense Authorization Act (FY17 NDAA), nearly quadrupling the previous year’s appropriation, in order to begin the transition from reassurance to deterring Russian aggression in Eastern Europe.<sup>96</sup> The transition in focus from reassurance to deterrence was reflected in the change in terminology to European Deterrence Initiative (EDI), though both ERI and EDI are used, seemingly interchangeably, in the FY17 NDAA.<sup>97</sup> Congress received the request and approved the \$3.4 billion in funding for EDI, noting that it is an important step to “support the stability and security of the region and deter further Russian antagonism and aggression.” Adding that the funding will “serve as an

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<sup>93</sup> MARK CANCIAN & LISA SAMP, CTR. FOR STRATEGIC & INT’L STUD., CRITICAL QUESTIONS: THE EUROPEAN REASSURANCE INITIATIVE (Feb. 9, 2016), <https://www.csis.org/analysis/european-reassurance-initiative-0> [hereinafter CANCIAN & SAMP].

<sup>94</sup> FY15 NDAA, Pub. L. No. 113-291, §§ 1511, 4502, 128 Stat. 3612 (2014); S. 2943, 114th Cong. § 1234 (as passed by Senate on June 21, 2016). The ERI “does not require State Department concurrence or other input, to improve the security and capacity of U.S. partners in the region.” BOLKO J. SKORUPSKI & NINA M. SERAFINO, CONG. RESEARCH SERV., R44602, DOD SECURITY COOPERATION: AN OVERVIEW OF AUTHORITIES AND ISSUES 8 (Aug. 23, 2016).

<sup>95</sup> See CANCIAN & SAMP, *supra* note 93.

<sup>96</sup> FY17 NDAA, Pub. L. No. 114-328, § 1233, 130 Stat. 2000, 2488 (2016); *see also* Security Assistance Appropriations Act, 2017, Pub. L. No. 114-254, 130 Stat. 1005, 1023-24 (2017) (approving the requested ERI funding).

<sup>97</sup> Compare H.R. REP. NO. 114-840, at 1219 (2016) (describing the sense of Congress in support for the “European Deterrence Initiative”); with H.R. REP. NO. 114-840, at 865 (identifying line item appropriations in O&M OCO authorizations as “ERI”). Throughout this article, the specific efforts carried out pursuant to EUCOM’s mission under Operation Atlantic Resolve are referred to as “ERI” before FY17 and as “EDI” in FY17 and after.

important tool to bolster U.S. force presence in the region, train and equip the security forces of European partners and allies . . . and improve U.S. agility and flexibility through strategic infrastructure investments.”<sup>98</sup>

Included in the budget request was \$507 million to ensure that U.S. Army ABCTs are deployed to Europe on a continued rotation schedule that would have one ABCT in the Baltic States and Poland at all times, as well as \$1.8 billion to reposition equipment of a second ABCT which could be manned by troops flown in from the United States.<sup>99</sup> The \$3.4 billion EDI for Fiscal Year 2017 “strengthens deterrence through measures that provide a quick joint U.S. response against any threat made by aggressive actors in the region.”<sup>100</sup> Moreover, the request included increased funding for unconventional warfare resources such as “cyber and special operations forces, as well as for intelligence and indicators and warning.”<sup>101</sup> Congress accepted the importance of this request, adding “additional emphasis is necessary on developing capabilities for countering unconventional methods of warfare such as cyber warfare, economic coercion, information operations, and intelligence operations.”<sup>102</sup>

Operation Atlantic Resolve’s five lines of effort, as discussed above in Section II, are the focus of EDI.<sup>103</sup> While each line of effort makes up part of the strategic goal of deterring Russian aggression, combined, the five lines reinforce the necessity of building the capacity of the NATO members on the front line.<sup>104</sup> The increased presence of U.S. forces and additional exercises and training will build capability and confidence in the Baltic State forces.<sup>105</sup> Improved infrastructures, while necessary to support U.S. aircraft and vehicles in a contingency, serve as permanent improvements to local military installations, paving the way for more advanced weapon systems the host nation may not have been able to procure if not for the funded footprint. Encouraging the Baltic State militaries to invest in advanced systems of their own to occupy the

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<sup>98</sup> H.R. REP. NO. 114-840, at 1218.

<sup>99</sup> FY17 BUDGET REQUEST, *supra* note 36, at 1.

<sup>100</sup> THEATER SECURITY COOPERATION RESOURCES HANDBOOK, *supra* note 86, at 54.

<sup>101</sup> S. 2943, 114th Cong. § 1234 (as passed by Senate on June 21, 2016). Funding of these advanced capabilities is critically important to counter Russia’s advanced military capabilities, especially A2/AD and electronic warfare, which blunt NATO’s offensive air and sea capabilities. *See* CANCIAN & SAMP, *supra* note 93; Freedberg, *supra* note 47.

<sup>102</sup> H.R. REP. NO. 114-840, at 1218 (2016).

<sup>103</sup> *See* FY17 BUDGET REQUEST, *supra* note 36, at 1.

<sup>104</sup> *See id.*

<sup>105</sup> *See id.* at 5, 14-16.

improved infrastructure will further benefit interoperability with U.S. forces. Thus, through funding EDI, the United States will promote the capabilities of its NATO allies, and shore up its own national security interests on NATO's most vulnerable front. However, there are limitations with the EDI.

The funding for the EDI has always been included in Overseas Contingency Operations (OCO), or war funding, because budget caps do not restrict OCO.<sup>106</sup> Traditionally, OCO funding is reserved for operations designated by the Secretary of Defense as a contingency operation,<sup>107</sup> because contingency operations require more flexibility than steady state DoD activities which require advanced planning and budgeting.<sup>108</sup> However, Operation Atlantic Resolve is not a contingency operation; thus, the budget request and subsequent authorization of OCO funds towards EDI represents part of the increasing level of OCO funding for the base budget as a way to circumvent the BCA, limiting the amount of defense and nondefense spending.<sup>109</sup> The potential problem with OCO funding is that it lacks permanence as it is tied to overseas wars in Afghanistan and in Iraq against the Islamic State.<sup>110</sup> Moreover, the gradual blurring of the lines for OCO funded appropriations resulted in meaningless enforcement of the BCA, setting up costly delays in the signing of the FY17 NDAA.<sup>111</sup>

While Fiscal Year 2017 funding will dramatically improve readiness in the region and implement deterrence-based missions as well as reassurance, the key to making the most of the increased funding is how those funds are ultimately used. The gutting of most of the U.S. defense assets in the post-Cold War era led to a decline in overall European

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<sup>106</sup> See CANCIAN & SAMP, *supra* note 93.

<sup>107</sup> See 10 U.S.C. § 101(a)(13)(A) (2016).

<sup>108</sup> See Love, *supra* note 86, at 7.

<sup>109</sup> Budget Control Act of 2011, Pub. L. 112-25, § 302, 125 Stat. 240, 256. See SUSAN B. EPSTEIN & LYNN M. WILLIAMS, CONG. RESEARCH SERV., R44519, OVERSEAS CONTINGENCY OPERATIONS FUNDING: BACKGROUND AND STATUS, Summary (June 13, 2016).

<sup>110</sup> CANCIAN & SAMP, *supra* note 93.

<sup>111</sup> See EPSTEIN & WILLIAMS, *supra* note 109, at Summary (explaining that the House Armed Services Committee moved an additional \$18 billion in DoD base budget requirements to the OCO budget, effectively exempting over \$23 billion in defense funding from the spending caps set by the BCA. Without providing an equivalent increase in spending for nondefense programs, the Committee exacerbated the policy debate over spending in FY17, resulting in lengthy delays in the authorization and appropriation of OCO funds); see also discussion *infra* Section V(A).

security capabilities.<sup>112</sup> Because it is incredibly difficult to reverse decades of defense cuts in Europe, by both the United States and NATO members,<sup>113</sup> the gap must be filled by building capacity in the Baltic States by making the most effective use of the funding available.

Finally, outside of training Eastern European security forces in multilateral exercises, which is provided specific funding authorization,<sup>114</sup> funding activities in line with the EDI lacks clear authority from the FY17 NDAA.<sup>115</sup> Under the Fiscal Year 2015 NDAA—the first year of ERI—funds were authorized for Fiscal Year 2015 for expenses, not otherwise provided for, and were available through 30 September 2016, if they were used for one of the five purposes, or lines of effort.<sup>116</sup> The Fiscal Year 2016 NDAA does not discuss ERI as the authority from Fiscal Year 2015 extended to the end of Fiscal Year 2016,<sup>117</sup> although Congress fully

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<sup>112</sup> CANSIAN & SAMP, *supra* note 93.

<sup>113</sup> *See id.*

<sup>114</sup> FY17 NDAA, Pub. L. No. 114-328, § 1233, 130 Stat. 2000, 2488 (2016). Section 1233 amends Section 1251 of the FY16 NDAA, and provides specific authority to conduct training with security forces of countries that became members of NATO after 1 January 1999 for the purpose of increasing interoperability, build capacity to respond to external threats, hybrid warfare, and Article 5 calls to action. *See* FY16 NDAA, Pub. L. No. 114-92, § 1251, 129 Stat. 726, 1070 (2015). This includes each of the Baltic States, which all became NATO members on 29 March 2004. *Seven New Members Join NATO*, NATO UPDATE (Apr. 1, 2004), <http://www.nato.int/docu/update/2004/03-march/e0329a.htm>. The Secretary of Defense may pay up to \$28 million in incremental expenses to eligible countries from amounts authorized to be appropriated for O&M, Army, and available for the Combatant Commands Direct Support Program; O&M, Defense-wide, and available for the Wales Initiative Fund; and OCO O&M, Army, and available for additional activities for the European Deterrence Initiative. § 1233(b), 130 Stat. at 2488 (amending § 1251(d), 129 Stat. at 1070).

<sup>115</sup> The ERI “does not provide stand-alone authority to execute the stated purposes; ERI funding is predicated on other authorities to execute the stated purpose when that purpose does not fall within [EUCOM’s] general mission authority.” THEATER SECURITY COOPERATION RESOURCES HANDBOOK, *supra* note 86, at 55. For example, exercise-related construction projects in support of unspecified minor military construction, while receiving \$5 million in appropriated funds as part of the ERI, receives its authorization from 10 U.S.C. § 2805. *See* FY17 BUDGET REQUEST, *supra* note 36, at 8.

<sup>116</sup> National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113-291, §§ 1507, 1535, 128 Stat. 3292, 3612, 3618 (2014). The five purposes are: (1) Activities to increase the presence of the U.S. Armed Forces in Europe; (2) Bilateral and multilateral military exercises and training with allies and partner nations in Europe; (3) Activities to improve infrastructure in Europe to enhance the responsiveness of the U.S. Armed Forces; (4) Activities to enhance the prepositioning in Europe of equipment of the U.S. Armed Forces; and (5) Activities to build the defense and security capacity of allies and partner nations in Europe. § 1535, 128 Stat. at 3618.

<sup>117</sup> *See* FY16 NDAA, Pub. L. No. 114-92, § 1251, 129 Stat. 726, 1070 (2015) (providing authority for conducting training and exercises with Eastern European countries,



supported the President's budget request for \$789.3 million in ERI funding.<sup>118</sup> However, with the original funding authority expired and no clear authorization written specifically in the FY17 NDAA,<sup>119</sup> commanders and fiscal law attorneys in EUCOM are required to interpret the intent of Congress to derive authorization and navigate through a Byzantine system of various security cooperation authorities to lawfully fund activities in support of the ERI lines of effort.<sup>120</sup> As of October 2016, USAREUR interpreted Congress intent by requiring that ERI activities be funded only if there is a determination that the activity bolsters the security and capacity of a NATO ally or partner nation in Europe through one of the stated lines of effort.<sup>121</sup> With the FY17 NDAA unclear on authorization for EDI activities, the Security Assistance Appropriations Act, 2017—part of the Further Continuing Appropriations Act, 2017—provides better clarity as to what funds can be used for EDI activities as the law appropriated specific amounts to support EDI for Fiscal Year 2017

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consistent with the original Fiscal Year 2015 lines of effort, but omitted any mention of ERI).

<sup>118</sup> WHITE HOUSE FACT SHEET: THE FY2017 EUROPEAN REASSURANCE INITIATIVE BUDGET REQUEST (Feb. 2, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/02/02/fact-sheet-fy2017-european-reassurance-initiative-budget-request>; see LYNN M. WILLIAMS & SUSAN B. EPSTEIN, CONG. RESEARCH SERV., R44519, OVERSEAS CONTINGENCY OPERATIONS FUNDING: BACKGROUND AND STATUS 31-32 (Feb. 7, 2017).

<sup>119</sup> Rather than specifically state authorizations, Congress described its policy and how it sees the policy being implemented. See S. 2943, 114th Cong. § 1234(b) (as passed by Senate on 21 June 2016) (stating the policy of the United States “to reassure U.S. partners and allies in Europe and to work with U.S. partners and allies to deter aggression by the Government of the Russian Federation in order to enhance regional and global security and stability”). Following the statement of policy, the drafted legislation described how to implement the defense strategy, to include the increased presence of U.S. forces, repositioning of equipment, increased infrastructure, and building partnership capacity in Europe. S. 2943, § 1234(b)(2). However, even this broad language was not adopted in the final bill. H.R. REP. NO. 114-840, at 1217 (2016). Only the Conference Report provides any specificity of its intent in the authorization of EDI funding. See H.R. REP. NO. 114-840, at 1217-19.

<sup>120</sup> Illustrating this point, fiscal law attorneys from USAREUR remarked, “[f]or every great idea a USAREUR planner had to assure U.S. allies and deter Russian aggression, a USAREUR fiscal law attorney ensured the funding and authority was correctly in place to responsibly support the commander’s intent.” Lieutenant Colonel Mike Friess & Major Michael O’Connor, *Operation Atlantic Resolve: US Army Europe Forces and Regionally Aligned Forces in Action*, 16-4 THE OPERATIONAL LAW QUARTERLY 19, 20 (Apr. 8, 2016).

<sup>121</sup> Information paper from USAREUR Contract & Fiscal Law Division, subject: Appropriate Uses of European Reassurance Initiative (ERI) Funding (4 Oct. 2016) (on file with author).

in the OCO accounts for Military Personnel and O&M.<sup>122</sup> The Security Assistance Appropriations Act, 2017, also appropriated economic assistance and foreign military financing to countries affected by Russian aggression in DoS funds, separate from EDI.<sup>123</sup> The Consolidated Appropriations Act for Fiscal Year 2017 reportedly approved spending levels consistent with the Obama administration's budget request and the FY17 NDAA, though there is no specific discussion of what appropriations are available for EDI within the Appropriations Act itself.<sup>124</sup> Despite the funding provided for the overall EDI effort, there is a lack of clarity as to how activities carried out under EDI are funded.

The lack of clarity for EDI authorities notwithstanding, efforts to build defense capacity in the Baltic States were bolstered by the overhaul of the security cooperation regime in the FY17 NDAA. In an attempt to simplify the quagmire that security cooperation authorities had become over the past fifteen years, Congress streamlined the dozens of various temporary and permanent sources of authority and codified them under one chapter in Title 10 of the U.S. Code.<sup>125</sup> Congress noted the increasingly more important role security cooperation plays in DoD operations,<sup>126</sup> and the below discussion of how EUCOM can leverage these new authorities to augment EDI demonstrates the potential utility such activities can have within NATO's deterrence strategy.

### 3. *Defense Security Cooperation and the Baltic States*

Since the terrorist attacks of 11 September 2001, Congress granted more authority to the DoD to engage in security cooperation with foreign militaries, a mission originally conducted by the DoS. Over that time, security cooperation became an integral part of the DoD's mission and is considered an important tool for executing its national security

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<sup>122</sup> See Security Assistance Appropriations Act, 2017, Pub. L. No. 114-254, 130 Stat. 1005, 1023-24 (2017).

<sup>123</sup> 130 Stat. at 1028, 1030 (providing \$157 million for programs to counter Russian influence and \$200 million for foreign military financing out of the State Department's OCO funds).

<sup>124</sup> See Consolidated Appropriations Act, 2017, Pub. L. 115-31, 131 Stat. 135, 277 (2017); see U.S. H.R. Comm. on Appropriations, Press Release: Fiscal Year 2017 Defense Bill to Head to House Floor (Mar. 2, 2017), <http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=394777>.

<sup>125</sup> 10 U.S.C.S. § 301 et seq. (LexisNexis 2017). See discussion *infra* Section V(B) recommending additional changes to the security cooperation enterprise.

<sup>126</sup> See H.R. REP. NO. 114-840, at 1196 (2016).

responsibilities.<sup>127</sup> The FY17 NDAA overhauled the previously unwieldy patchwork of authorities that made up the security cooperation regime and provides authority for the DoD to enhance interoperability and increase defense capability of friendly foreign militaries. As building partner capacity with newer NATO members is one of the five lines of effort under EDI,<sup>128</sup> these new authorities should be leveraged to the maximum extent possible by EUCOM in the Baltic States to ensure sufficient capability exists in that vulnerable region to deter Russia aggression. However, as discussed below, the source of funding for these authorities and whether they can be used in conjunction with EDI funds remains ambiguous.

*a. Building Defense Capacity*

Key among the changes is the replacement of 10 U.S.C. § 2282 on “Authority to Build the Capacity of Foreign Security Forces” with a new permanent authority that widens the scope of security cooperation the DoD can provide.<sup>129</sup> While the scope of Section 2282 was limited primarily to counterterrorism and stability operations,<sup>130</sup> broadens the scope of authorized foreign capacity building to include, among other purposes, training, and equipping for border security and operations or activities that contribute to an international coalition operation that is in the national interest of the United States.<sup>131</sup> Moreover, 10 U.S.C. § 333, Section 2282’s replacement, will permit the DoD to provide lethal equipment on a global scale, which it was unable to do under Section 2282.<sup>132</sup> Finally, Section 333 allows the DoD to support the sustainment of previously provided equipment to foreign partners, whereas such sustainment was previously under the exclusive purview of the DoS through its Foreign

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<sup>127</sup> LIANA W. ROSEN ET AL., CONG. RESEARCH SERV., R44673, SECURITY COOPERATION: COMPARISON OF PROPOSED PROVISIONS FOR THE FY2017 NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) 1 (2016) [hereinafter ROSEN ET AL.].

<sup>128</sup> FY17 BUDGET REQUEST, *supra* note 36, at 1.

<sup>129</sup> *See id.* at 4-5.

<sup>130</sup> 10 U.S.C. § 2282(a) (2016). 10 U.S.C. § 2282 was 270 days after the 2017 NDAA was enacted. FY17 NDAA, Pub. L. No. 114-328, § 1241, 130 Stat. 2000, 2503 (2016). President Obama signed the Act on 23 December 2016, so the section was repealed on 18 September 2017. *See* 130 Stat. at 2000.

<sup>131</sup> 10 U.S.C. § 333(a).

<sup>132</sup> 10 U.S.C. § 333(c)(1), authorizing the provision and sustainment of defense articles, defined as “any weapon, weapons system, munition, aircraft, vessel, boat or other implement of war” by 22 U.S.C. § 2403(d)(1); ROSEN ET AL., *supra* note 127, at 5.

Military Financing account.<sup>133</sup> This bureaucratic anachronism resulted in equipment at risk of disrepair, misuse, and inoperability by the foreign recipient.<sup>134</sup>

Under the definitions section of the Security Cooperation chapter, security cooperation programs, such as those authorized by Section 333, include building and developing allied security capabilities for self-defense and building relationships that promote specific U.S. security interests.<sup>135</sup> The DoD should utilize these new authorities to build capacity in the security forces of the Baltic States in a way that it was unable to do so under the previous law. However, because Section 333 did not become law until the final days of Fiscal Year 2017 when it replaces Section 2282,<sup>136</sup> the utility of this new authority was largely unknown in FY17 and remains little used due to the complexity of funding Section 333 activities. Section 333 provides the sole source of funding shall come out of amounts authorized and appropriated for such fiscal year for O&M, Defense-wide, and available for the Defense Security Cooperation Agency.<sup>137</sup> However, Section 1241 of the FY17 NDAA adds additional sources of funding for Fiscal Year 2017 relevant to the Baltic States, including O&M Defense-wide, available for the Defense Security Cooperation Agency as specified in the funding table in Section 4301 of the FY17 NDAA,<sup>138</sup> as well as for the same line of items in the OCO O&M funding table in Section 4302.<sup>139</sup> The dual funding

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<sup>133</sup> ROSEN ET AL., *supra* note 127, at 5 n.15. The conference report to the NDAA noted the expectation that “there is a plan to transition sustainment support from DoD to other sources of funding, such as foreign countries’ national funds” for the sustainment of equipment provided under this authority. H.R. REP. NO. 114-840, at 1198 (2016). The sustainment is therefore generally limited to five years, unless the DoD provides written justification that sustainment support in excess of five years will enhance the national security of the United States. § 1241, 130 Stat. 2500-01 (to be codified at 10 U.S.C. § 333(d)-(e)).

<sup>134</sup> *See id.*

<sup>135</sup> *See* 10 U.S.C.S. § 301(7) (LexisNexis 2017); 10 U.S.C. § 333(a).

<sup>136</sup> *See* § 1241(d)(5), 130 Stat. at 2503.

<sup>137</sup> 10 U.S.C. § 333(g).

<sup>138</sup> § 1241(d)(2)(A), 130 Stat. at 2502; § 4301, 130 Stat. at 2861 (authorizing \$621.8 million in funding for the Defense Security Cooperation Agency). The House-passed bill for the Department of Defense Appropriation Act provided up to \$480 million in funds available until 30 September 2018, under the title of Defense-wide O&M to “provide support and assistance to foreign security forces . . . to conduct, support or facilitate counterterrorism, crisis response, or other Department of Defense security cooperation programs.” Dep’t of Def. Appropriation Act, H.R. 1301, 115th Cong. (as passed by H.R., Mar. 8, 2017).

<sup>139</sup> § 1241(d)(2)(C), 130 Stat. at 2502-03; § 4301, 130 Stat. at 2867 (authorizing \$2.16 billion in funding for the Defense Security Cooperation Agency). Under the title of

sources, O&M and OCO O&M, highlight the potential overlap between Section 333 capacity building, which are funded by O&M, and EDI capacity building, which is funded by OCO O&M. To avoid obligating funds from the wrong account, commanders must know whether the activity falls under EDI, and whether security cooperation funds can be used in addition to EDI or exclusively. Clarifying legislation can help resolve this confusion.<sup>140</sup>

*b. Operational Support to Foreign Forces*

In addition to the replacement of Section 2282, the FY17 NDAA greatly expands the authority to provide support for conduct of operations to friendly foreign countries, replacing Section 1207 from the Fiscal Year 2016 NDAA, which was limited to providing support to African countries conducting counterterrorism activities.<sup>141</sup> Section 1245 of the FY17 NDAA, codified at 10 U.S.C. § 331, greatly expands the scope of the previous authority by eliminating geographic limitations.<sup>142</sup> This new authority provides funding of logistic support, supplies, and services to security forces in a friendly country, as well as small-scale construction projects to facilitate friendly country participation in U.S.-supported operations.<sup>143</sup>

One provision that, if utilized by EUCOM, could meaningfully assist improving the defense capability in the Baltic States is the special procurement authority that allows the DoD to procure equipment “for the purpose of the loan of such equipment to the military forces of a friendly foreign country participating in a U.S.-supported coalition or combined operation.”<sup>144</sup> This is “to enhance capabilities or to increase interoperability with [U.S. forces] and other coalition partners.”<sup>145</sup> Because the intent of the authority is that the friendly country will

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Defense-wide O&M for OCO, the House-passed bill for the Department of Defense Appropriation Act provided up to \$750 million in funds available until 30 September 2018, to “provide support and assistance to foreign security forces . . . to conduct, support or facilitate counterterrorism, crisis response, or other Department of Defense security cooperation programs.” H.R. 1301, 115th Cong. (as passed by H.R., Mar. 8, 2017).

<sup>140</sup> See discussion *infra* Section V(C).

<sup>141</sup> See FY16 NDAA, Pub. L. No. 114-92, § 1207, 129 Stat. 726, 1040 (2015).

<sup>142</sup> See § 1245, 130 Stat. at 2517 (amending the current 10 U.S.C. § 127d, and repealing § 1207, 129 Stat. at 1040).

<sup>143</sup> 10 U.S.C.S. § 331(c) (LexisNexis 2017).

<sup>144</sup> 10 U.S.C.S. § 331(c)(3) (LexisNexis 2017).

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

reimburse the United States for the procurement, or the U.S. forces can to reuse the equipment, there is no limitation on the value of the procurement.<sup>146</sup>

The DoD should utilize this authorization to procure an excess quantity of U.S.-used systems to ensure friendly forces use and train on the same equipment as U.S. forces. Use of equipment, coupled with training and exercises will increase familiarity and interoperability with U.S. forces and provide friendly foreign forces with confidence in operating weapon systems alongside the United States. A successful loan may influence the friendly force's procurement decisions, leading to more effective use of defense spending by the friendly force at no real cost to the United States, as the equipment is returned at the end of the loan period. However, it remains unclear as to what limitations on the type of procurement there are, if any. For example, the law is silent as to whether this section authorizes procurement for loaning weapon systems.<sup>147</sup> Nor does it provide the maximum duration of any loan. Nonetheless, the DoD should leverage the seemingly broad authority granted by Congress to procure equipment for the purpose of loaning such equipment to its allies to improve interoperability and bolster the defense capability of its allies in Eastern Europe.

### *c. Training and Exercises*

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<sup>146</sup> 10 U.S.C.S. § 331(g) (LexisNexis 2017). The loan should be performed in accordance with the appropriate cross-servicing agreement under 10 U.S.C. § 2342 or acquisition and loan agreement under 10 U.S.C. § 2341 with the recipient country. This bilateral agreement makes clear the conditions of such loan and should assign responsibility for reimbursement or replacement of the equipment. 10 U.S.C. § 2344 (2016).

<sup>147</sup> Although Section 331 discussed logistic support, which is limited by 10 U.S.C. § 2350(1) and excludes “nonlethal items of military equipment which are not designated as significant military equipment on the United States Munitions List promulgated pursuant to section 38(a)(1) of the Arms Export Control Act,” the subsection authorizing the procurement of equipment for the purpose of the loan of such equipment does not state that the purpose is for logistic support. 10 U.S.C.S. § 331(c)(3) (LexisNexis 2017). In fact, the purpose appears much broader: “the loan of such equipment to those forces [is] to *enhance capabilities* or to *increase interoperability*.” *Id.* (emphasis added). This suggests that the Arms Export Control Act does not limit the authority; thus procurement and loan of lethal items may be authorized. *See id.*

Finally, perhaps the best way the DoD can maximize the operational readiness of its NATO partners is through extensive training and exercises.<sup>148</sup> Training of NATO members near Russia is essential to ensure those members, such as the Baltic States and Poland, can cope with hybrid warfare that may not trigger Article 5.<sup>149</sup> Moreover, frequent military exercises with U.S. forces can enhance those armed forces' capabilities. Wide-scale multinational exercises on NATO's eastern flank would also serve a dual purpose of reassuring allies and warning foes.<sup>150</sup> Recognizing the importance of multinational training and exercises, Congress sought to provide broader authority for commanders of combatant commands and service secretaries to authorize payment of certain expenses for friendly foreign countries resulting from participating in training and exercises with U.S. general forces.<sup>151</sup> This expands the previous authority, which was limited to payment of only incremental expenses to developing countries when authorized by the Secretary of Defense. This was only after a determination that "the participation by such country is necessary to the achievement of the fundamental objectives of the exercise and that those objectives cannot be achieved unless the United States provides the incremental expenses incurred by such country."<sup>152</sup> The new authority requires only the determination by the Secretary of Defense that support of the friendly foreign force is in the national security interest of the United States to do so, and expands the scope and type of payment for training and exercise expenses.<sup>153</sup> It allows a commander of a combatant command to authorize payment for expenses associated with training, exercises, deployment to such events, incremental expenses, and small-scale construction directly related to the effective accomplishment of such events, with the prior approval of the Secretary of Defense.<sup>154</sup>

Beyond the benefit of paying for expenses to attract participation by other countries, this authority also appears to permit foreign forces to

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<sup>148</sup> Interoperability is important in achieving effective multinational capability without sacrificing U.S. capabilities. JOINT CHIEFS OF STAFF, JOINT PUB. 3-16, MULTINATIONAL OPERATIONS I-6 (16 July 2013). Factors that promote interoperability within multinational coalitions include multinational training exercises. *Id.* at I-9.

<sup>149</sup> See RICHARD HAASS, A WORLD IN DISARRAY 217 (2017) [hereinafter HAASS].

<sup>150</sup> See *id.* at 218.

<sup>151</sup> See FY17 NDAA, Pub. L. No. 114-328, § 1244, 130 Stat. 2000, 2515 (2016) (codified at 10 U.S.C. § 321 (LexisNexis 2017)). Similar, but separate, authority for payment of expenses for friendly countries engaged in training or exercises with U.S. Special Operations is codified at 10 U.S.C. § 322.

<sup>152</sup> 10 U.S.C. § 2010 (2016).

<sup>153</sup> See 10 U.S.C.S. § 321(a) (LexisNexis 2017).

<sup>154</sup> 10 U.S.C. § 321(f) (LexisNexis 2017).

develop new capacity by allowing for training to improve the capacity of foreign forces beyond minimal level necessary to achieve interoperability, safety, or familiarization with U.S. forces in preparing for combined military operations.”<sup>155</sup> While the new law states that the primary purpose of the training and exercises is to train U.S. forces,<sup>156</sup> there is no limiting language, such as restricting the training of foreign forces to only safety and interoperability. Thus, so long as U.S. forces are receiving the benefit of the training and exercises, the participation by other friendly forces and use of this authority for funding is permitted. Granting the DoD this authority allows it to better program more robust exercises and training focused on capacity building of the Baltic States’ forces.

Consistent with the intent of EDI and RAP, EUCOM should use this authority to the fullest extent practicable to integrate multinational forces, particularly in command and control, intelligence, surveillance, reconnaissance, and cyber defense, where interoperability is critical to defending against Russian aggression.<sup>157</sup> Moreover, this authority’s provision for small-scale construction permits to building necessary infrastructure within Eastern Europe that would otherwise be challenging for approval. Provided the project does not represent a foreign assistance program, structures built in support of U.S. military personnel participating in overseas training and exercises need not be temporary structures.<sup>158</sup> The explicit limitation on such military construction is that no one project may exceed \$750,000 in costs,<sup>159</sup> and the implicit limitation comes from the absence of any authority for the maintenance of such construction projects after the completion of the exercise. Nonetheless, this authority appears to permit the United States to fund and build in a

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<sup>155</sup> DAVID E. THALER ET AL., RAND, FROM PATCHWORK TO FRAMEWORK: A REVIEW OF TITLE 10 AUTHORITIES FOR SECURITY COOPERATION 58 (2016) [hereinafter THALER ET AL.]. Typically, DoD training with foreign forces is limited to “little t” training, or training restricted to promoting safety and interoperability with U.S. forces; however, Section 1203 of the NDAA for Fiscal Year 2014, which is repealed by this authority, was intended to improve the military capacity of allied forces. *Id.* at 58, n. 19. While not explicitly stated, a contextual interpretation of the new authority implies that DoD-funded capacity building training for foreign forces is authorized.

<sup>156</sup> 10 U.S.C.S. § 321(c) (LexisNexis 2017).

<sup>157</sup> See CHIVVIS ET AL., *supra* note 9, at 6-7.

<sup>158</sup> See CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 4600.02A, EXERCISE RELATED CONSTRUCTION (ERC) PROGRAM MANAGEMENT encl. A, para. 5 (18 Mar. 2011).

<sup>159</sup> See 10 U.S.C.S. § 301(8) (LexisNexis 2017). There is also authority to pay for expenses that begin in one fiscal year but end in the next fiscal year. 10 U.S.C.S. § 321(d) (LexisNexis 2017). This authority will provide much needed flexibility to ensure the completion of construction projects, as well as plan for exercises and training that cross fiscal years.



friendly foreign country, and the beneficiary can then decide to keep and maintain the project for its own future use. The resulting infrastructure will provide training and exercise opportunities where there may have been none absent this authority.

Although Section 321 provides authority for training with friendly forces and payment of incremental training and exercise expenses like the more specific Section 1233 of the FY17 NDAA, which provides funding specifically for Eastern European countries, EUCOM can still use Section 321 authority to support the Baltic States. Section 1233 specifically states its authority is in addition to any other authority providing training for national security forces of a foreign country.<sup>160</sup> This allows for additional funding of this activity if necessary, and because Section 321 is a permanent authorization, it will still be available after 30 September 2018, when the authority in Section 1233 expires.<sup>161</sup>

Despite the clear benefits of using this overhauled authority in Eastern Europe, there are potentially damaging limitations written into the law. Payment of incremental expenses, such as fuel, rations, transportation, and training ammunition, is generally restricted to developing countries.<sup>162</sup> Also, the primary purpose of the training and exercises must be to train U.S. forces,<sup>163</sup> possibly limiting the types of training that, while rudimentary and superfluous for U.S. forces, is critical to forces in the Baltic States. There is no specific funding for this authority, requiring programs under this authority to compete with all other joint exercises throughout the DoD for limited O&M funds.<sup>164</sup> While this process for funding joint exercises remains the same as prior to the enactment of the FY17 NDAA,<sup>165</sup> Congress can ensure such funding and execution of such programs are prioritized, as discussed in Section V(C).

Efforts such as EDI and security cooperation reform are necessary steps towards defending the U.S.'s allies from Russia. However, these

<sup>160</sup> FY17 NDAA, Pub. L. No. 114-328, § 1233, 130 Stat. 2000, 2488-89 (2016) (extending FY16 NDAA, Pub. L. No. 114-92, § 1251(f), 129 Stat. 726, 1071). *See also supra* note 114 and accompanying text.

<sup>161</sup> § 1233(c), 130 Stat. at 2488-89.

<sup>162</sup> *See* 10 U.S.C.S. § 321(f)(2)(C) (LexisNexis 2017). The Secretary of Defense must define “developing countries” by 18 September 2017, 270 days after enactment of the FY17 NDAA. § 1241(n), 130 Stat. at 2510-11. Thus, it is currently unknown whether the Baltic States are eligible for payment of incremental expenses.

<sup>163</sup> 10 U.S.C.S. § 321(c) (LexisNexis 2017).

<sup>164</sup> CHAIRMAN, JOINT CHIEFS OF STAFF, MANUAL 3511.01, JOINT TRAINING RESOURCES FOR THE ARMED FORCES OF THE UNITED STATES app. D to encl. B, para. 1 (26 May 2015).

<sup>165</sup> *Id.*

laudable efforts remain insufficient. Congress must maximize the effect of U.S. efforts to deter Russian encroachment into NATO by removing impediments to intelligent planning, expanding upon recent reforms in security cooperation, and exerting legislative influence to improve the effectiveness and efficiency of NATO funding.

#### V. Recommendations for Congress to Improve NATO's Deterrence and Close the Defense Capabilities Gap

Section IV identified several issues with current fiscal law that represent obstacles to the United States effectively supporting its NATO allies in a deterrence-based strategy against Russian aggression. These issues underscore the importance of sound fiscal legislation to the success of NATO's mission and reinforce the critical role Congress plays in the collective defense. Congress must resolve these issues to increase the efficacy of U.S. forces and improve the defense capability of the Baltic States; its failure to do so could result in catastrophe. However, improved fiscal law is attainable and Russian encroachment into NATO territory is preventable. This section provides recommendations to Congress to overcome those obstacles, including ending sequestration, easing burdensome restrictions on security cooperation laws, clarifying fiscal authorities to provide clear and flexible funding sources, and influencing partner spending through conditional aid.

##### A. Repeal the BCA

One of the major obstacles to adequately responding to Russian aggression is the lack of consistent and predictable funding. While it is imperative for the European contingent of the Alliance to increase spending towards the collective defense, the United States must also reassess its spending in the European theater. More robust funding and flexibility to program future activities focused on collective defense in Eastern Europe is required to address the potential Article 5-triggering threat from Moscow adequately. EDI funding is a good start, but based on Russia's focused strategy to disrupt NATO and war gaming predictions, it appears sustained, if not increased, funding is

required to deter a Russian attack on the Baltic States.<sup>166</sup> Moreover, although EUCOM may have “the authority to plan and conduct security cooperation,” geographic combatant commanders “lack sufficient dedicated resources to support their security cooperation strategy.”<sup>167</sup> However, additional spending by the United States towards EDI will be difficult to obtain in future years due to Congress’s self-imposed restrictions under the BCA, known as sequestration.<sup>168</sup> Intended to reduce the federal debt and deficit, sequestration cuts spending automatically when cap levels, which were determined in 2011 and adjusted several times since, are breached.<sup>169</sup> Because the law rigidly applies automatically when Congress appropriates funds above the cap, sequestration effectively limits the flexibility and funding of defense operations.<sup>170</sup> Within the DoD, the BCA has exacerbated the inter-service rivalries and disconnecting strategy and force plans from long-term spending projections.<sup>171</sup> Furthermore, as OCO is exempt from the BCA caps, both the President and Congress have circumvented the defense spending cap by funding base budget activities through OCO, including the ERI, which does not meet the legal criteria for OCO funding.<sup>172</sup>

<sup>166</sup> See CANCIAN & SAMP, *supra* note 93 (arguing the FY17 NDAA level ERI budget of \$3.4 billion is not enough for the U.S. to “rebuild its capabilities to contend with Russia’s employment of advanced military capabilities—especially anti-access/area-denial (A2/AD), electronic warfare (EW), and unmanned aerial vehicles (UAVs)—and a sophisticated mix of deception and coercion in the political, economic, and information spaces”).

<sup>167</sup> GREGORY J. DYKEMAN, SECURITY COOPERATION: A KEY TO THE CHALLENGES OF THE 21ST CENTURY 5 (2007), <https://ssi.armywarcollege.edu/pubs/display.cfm?pubID=820>.

<sup>168</sup> See GRANT A. DRIESSEN & MARC LABONTE, CONG. RESEARCH SERV., R42506, THE BUDGET CONTROL ACT OF 2011 AS AMENDED: BUDGETARY EFFECTS 2 (2015).

Sequestration is a process that refers to “the cancellation of budgetary resources provided by discretionary appropriations or direct spending law.” 2 U.S.C. § 900(c)(2) (2016).

<sup>169</sup> See *id.* at 1-3.

<sup>170</sup> See PAT TOWELL & LYNN M. WILLIAMS, CONG. RESEARCH SERV., R44454, DEFENSE: FY2017 BUDGET REQUEST, AUTHORIZATION, AND APPROPRIATIONS 3 (Apr. 12, 2016) [hereinafter TOWELL & WILLIAMS]. “Sequestration occurs in any year in which appropriated funds exceed the statutory caps for either the defense or non-defense category than the relevant cap allows, and reduces the amount appropriated to the level of the cap through *largely indiscriminate, across-the board* reductions.” *Id.* (emphasis added).

<sup>171</sup> ANTHONY H. CORDESMAN, CTR. FOR STRATEGIC & INT’L STUD., TRUMP ON NATIONAL SECURITY: CALLING FOR MORE SPENDING IS NOT ENOUGH 7 (Mar. 2, 2017). Explaining how the BCA has made the budget cycle worse, Cordesman analogizes the service components’ budget planning process under the BCA to “the military equivalent of the food fight that John Belushi led in *Animal House*.” *Id.*

<sup>172</sup> See *supra* Section IV(B)(2). While the BCA was originally intended to force Congress to examine its fiscal policies, the severe imposed austerity of the spending caps “have controlled spending in an irresponsible way while encouraging Congress to game

These fiscal gymnastics result in unpredictability across fiscal years and in delays to authorizations as the NDAA is regularly held hostage by the political process.<sup>173</sup> The Senate Armed Services Committee recognized the problem with the DoD budgeting EDI activities in the OCO budget, and recommended efforts such as EDI be in the base budget to “address long-term stability on the European continent, reassure our European allies and partners, and deter further Russian aggression.”<sup>174</sup> The bicameral conference committee also encouraged the DoD “to include EDI resources and programs in the base budget in order to ensure persistent funding support.”<sup>175</sup> Yet, despite Congress’s message to the DoD, the BCA forces the executive branch to consider a lose-lose situation: budget EDI activities in the base budget and risk exceeding the budget cap, or make further cuts to already constrained defense spending.

Recent studies and war-gaming scenarios demonstrate the cumulative effects of years of limited defense spending on the readiness of U.S. forces. RAND Corporation, attempting to create budget scenarios sufficient to address the current myriad of national security threats, concluded:

Fielding military capabilities sufficient, in conjunction with those of our allies and partners, to deal with these disparate challenges will require substantial and sustained investments in a wide range of programs and initiatives well beyond what would be feasible under the terms of the Budget Control Act. Without such investments, America’s credibility and influence internationally, the safety and security of its nuclear arsenal, and the viability of its all-volunteer force could erode.<sup>176</sup>

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the system.” Shai Akabas, Ben Ritz & Mark White, *Congress Should Find Long-term Solution, Not Tricks to Avoid Defense Caps*, BIPARTISAN POLICY CENTER BLOG (June 22, 2015), <http://bipartisanpolicy.org/blog/congress-should-find-long-term-solution-not-tricks-to-avoid-defense-caps/>.

<sup>173</sup> See TOWELL & WILLIAMS, *supra* note 170, at 4. For Fiscal Year 2017, two issues have caused delay on all appropriation bills: whether OCO funding allows for a higher total appropriation for DoD than the Administration proposed and the demand of some House members to offset the increased non-defense spending by reductions in mandatory spending. *Id.*

<sup>174</sup> S. REP. NO. 114-255, at 313 (2016).

<sup>175</sup> H.R. REP. NO. 114-840, at 1218 (2016).

<sup>176</sup> DAVID OCHMANEK ET AL., RAND, AMERICA’S SECURITY DEFICIT: ADDRESSING THE IMBALANCE BETWEEN STRATEGY AND RESOURCES IN A TURBULENT WORLD 29 (2015).

Repealing the BCA, and ending sequestration, is the first step to implementing a sound deterrent strategy against Russia. The repeal would allow the President to budget and Congress to appropriate funds according to the current needs to provide for the common defense, and not to an arbitrary dollar amount set by a previous Congress, years prior to the current fiscal year. Moreover, the level of defense spending would have no impact on non-defense spending and will eliminate the need to budget, appropriate, and apportion funds through a separate funding stream under OCO, saving significant time and money in the planning process.

Finally, repealing the BCA would provide the flexibility to address unforeseen national security issues. Since 2014, the DoD addressed the rise of the Islamic State, the Russian invasion and annexation of Crimea, North Korean aggression, Chinese “island building” in the South China Sea, numerous terrorist attacks, a refugee crisis, as well as Ebola virus outbreaks.<sup>177</sup> The budget caps under the BCA did not account for any of these national security threats, yet the BCA forced the President to budget defense spending to combat each of these unforeseen issues appropriately. Continued or increased Russian aggression would make this already difficult task a Sisyphean effort.

However, repealing the BCA is not a solution in and of itself. The numerous threats, both internal and external, facing the United States are too many “to manage on its own, even if the new Congress repeals the sequester and defense spending is restored and maintained at a higher level.”<sup>178</sup> To defend its allies from Russia, Congress needs to ensure the United States maintains its status within NATO through strong leadership and assist its allies in building military capability to augment U.S. forces.

#### B. Continue to Reform the Security Cooperation Enterprise

While engagement with foreign states is typically within the purview of the DoS,<sup>179</sup> the last fifteen years has seen a growing emphasis on the role of the DoD in security cooperation activities.<sup>180</sup> Corresponding to that

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<sup>177</sup> See TOWELL & WILLIAMS, *supra* note 170, at 2.

<sup>178</sup> Shearer, *supra* note 43.

<sup>179</sup> Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424 (codified as amended at 22 U.S.C. § 2151 (2012)).

<sup>180</sup> STAFF OF S. COMM. ON ARMED SERVICES, 114TH CONG., NDAA FY17 EXECUTIVE SUMMARY 14 (2016) [hereinafter NDAA FY17 EXECUTIVE SUMMARY].

increased role, Congress enabled the DoD to respond to threats and build partner capacity through a myriad of authorities and associated funding.<sup>181</sup> The increase in the number of authorities permitting the DoD to engage with foreign militaries, though instrumental in commanders' efforts to improve interoperability in combined operations, resulted in a security cooperation enterprise that is incredibly cumbersome, complicating the ability of the DoD to effectively prioritize, plan, execute, and oversee these activities.<sup>182</sup>

The FY17 NDAA attempted to streamline the security cooperation enterprise by consolidating various train and equip authorities into one statute and codifying other security cooperation authorities into one chapter of Title 10 of the U.S. Code.<sup>183</sup> While this reform represented a vast improvement to the previous patchwork of legal authorities and assist DoD efforts to build capacity in the Baltic States under EDI, Congress can and should continue to improve security cooperation laws to maximize its impact in deterring Russian aggression against NATO allies.<sup>184</sup> Two courses of action Congress can take to improve efforts in accordance with the intent of EDI is to 1) authorize multi-year appropriations for EDI activities and 2) exempt certain expenditures of jointly procured equipment and military construction with certain allies, such as the Baltic States and Poland, from DoS concurrence.

### *1. Relax Funding Restrictions on Periods of Availability*

Most of the authorities within the security cooperation enterprise have a current fiscal year period of availability,<sup>185</sup> permitting the

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<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> 10 U.S.C.S. § 301 et seq. (LexisNexis 2017); NDAA FY17 EXECUTIVE SUMMARY, *supra* note 180, at 14; *see supra* Section IV(B)(3).

<sup>184</sup> Congress appears to understand the potential shortcomings of the FY17 NDAA with respect to security cooperation reform as it requires the Secretary of Defense to have an independent evaluation conducted in order to assess the strategic framework and recommend areas in which additional guidance “is necessary to achieve greater alignment between the Department of Defense security cooperation activities and the strategic goals and priorities identified within the strategic framework.” H.R. REP. NO. 114-840, at 481 (2016).

<sup>185</sup> Of the twenty-six sections in the new security cooperation chapter of Title 10, only two make funds available across fiscal years. §§ 1241-53, 130 Stat. at 2496-2532. The

obligation of appropriated funds only within the current fiscal year.<sup>186</sup> However, the complex nature of security cooperation makes it difficult for commanders to identify needs, plan an activity, coordinate appropriately, and receive authorization all within one fiscal year.<sup>187</sup> While the FY17 NDAA permitted training and exercises to cross fiscal years, if started in one and completed in another,<sup>188</sup> time remains a severe constraint on most security cooperation activities. Additional time to plan activities will lead to better use of funds, serving a dual benefit of providing better products to foreign forces and more appropriately utilizing U.S. resources. The flexibility gained by relaxing the time constraints will permit the DoD to complete construction projects that would otherwise not get approved despite the apparent necessity as it is nearly impossible to manage under current the authorities. Lengthening the time of the authorities would also permit planning more complex exercises, which is especially important in areas such as cyber defense and hybrid warfare that are particularly relevant to NATO's counter-Russian aggression strategy.<sup>189</sup> Such relief would likewise enable U.S. forces to complete construction projects and "to accommodate delays in the ordering and delivery of equipment" in NATO partner-nations.<sup>190</sup> Adjusting the period of availability of security cooperation funds to "two-year funding could better account for the unpredictability of foreign partner schedules."<sup>191</sup>

Prior to the enactment of the FY17 NDAA, RAND Corporation concluded that even modest extensions of the time available for security cooperation authorities would "help take some of the 'guesswork' out of [security cooperation] planning while continuing to facilitate close

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two exceptions are Sections 321 and 333. § 1241, 130 Stat. at 2502 (to be codified at 10 U.S.C. § 333(g)(2)); 10 U.S.C.S. § 321(d) (LexisNexis 2017).

<sup>186</sup> GAO, A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS 64 (2005) [hereinafter GAO GLOSSARY]; 31 U.S.C. § 1301(c)(2) (2016) (providing that an appropriation is authorized for only one fiscal year unless the appropriation "expressly provides that it is available after the fiscal year covered by the law in which it appears"; see, e.g., Consolidated Appropriations Act, 2015, Pub. L. No. 113-235, § 8003, 128 Stat. 5 (2015) (stating "[n]o part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless so provided herein").

<sup>187</sup> See THALER ET AL., *supra* note 155, at 53-54.

<sup>188</sup> See § 1241, 130 Stat. at 2502 (to be codified at 10 U.S.C. § 333(g)(2)); 10 U.S.C.S. § 321(d) (LexisNexis 2017).

<sup>189</sup> THALER ET AL., *supra* note 155, at 59.

<sup>190</sup> See *id.*

<sup>191</sup> *Id.* at 54.

congressional oversight of DoD activities.”<sup>192</sup> The report recommended extending funding to two years for military-to-military authorities and three years for train-and-equip statutes, as well as relaxing obligation timelines.<sup>193</sup> While Congress did not comply with that recommendation in its overhaul of security cooperation authorities in its FY17 NDAA,<sup>194</sup> it is worth revisiting for future NDAs. The congressional prerogative for transparency and oversight of the DoD may limit the desire of Congress to elongate the funding period, particularly in a field such as security cooperation and national security; however, the competing interest of ensuring commanders are able to perform their mission should override any trepidation by Congress under these circumstances.

## 2. *Provide Exemptions from DoS Coordination*

Another way Congress can help streamline the security cooperation process is to legislate exemptions for certain activities from prior coordination between DoD and DoS. There is the potential for relatively low-cost, high-reward activities that may not be possible if the planning takes too long. Congress recognized the process for coordination between the two departments on security cooperation programs “is too ad-hoc in nature and often elevates responsibility for such coordination, particularly those requiring concurrence, to the senior-most echelons of the respective organizations—to include the Deputy Secretary or Secretary level—resulting in a cumbersome and time-intensive process.”<sup>195</sup> Although the legislative history is clear, Congress intended for the secretaries to “designate individuals at the lowest level in their respective organizations with responsibility for such coordination,”<sup>196</sup> the new laws still require concurrence and coordination at the secretary level.<sup>197</sup>

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<sup>192</sup> *Id.* at 86.

<sup>193</sup> *Id.*

<sup>194</sup> See FY17 NDAA, Pub. L. No. 114-328, §§ 1241, 1244, and 1245, 130 Stat. 2000, 2496, 2515, 2517 (2016).

<sup>195</sup> H.R. REP. NO. 114-840, at 1198 (2016).

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

<sup>197</sup> See 10 U.S.C.S. § 331(e) (LexisNexis 2017). Section 331 requires coordination with the Secretary of State as the Secretary of Defense may designate operations to support only with the concurrence of the Secretary of State. *Id.*



Foreign assistance and security cooperation are traditionally diplomatic functions; however, the nature of coalition defense requires a singular voice, and in many cases, that voice should come from the Secretary of Defense. Thus, for small-scale projects that support the mission essential tasks of the combatant commander, Congress should limit the requirements for pre-coordination and concurrence. Rather than require additional levels of bureaucratic red tape that limit the utility and effectiveness of an otherwise useful security cooperation authorization, Congress could exempt logistic support, loans of military equipment, and certain small-scale construction projects from the requirement of prior DoS concurrence for each activity. By shifting the focus from prior coordination to reporting, the DoS and Congress will maintain oversight while allowing the DoD the necessary flexibility to provide support when and where it is needed. The exemption from inter-agency concurrence could be for specified equipment, dollar thresholds, as well as for properly vetted and approved recipient countries, such as the Baltic States and Poland, that have supported the United States in its operations in Afghanistan, meet the NATO defense spending thresholds, support democracy, human rights and civilian control of the military, and have a clear connection to the United States' security interests.

### C. Provide Specific Lines of Funding for EDI Activities

As previously discussed, one of the problems with EDI as a means to achieving the United States' strategic goals in the Baltic States is the lack of clarity in funding activities. This hampers efforts to plan, program, budget, and execute activities that could provide meaningful support to the deterrence effort.<sup>198</sup> Although the DoD submits a line item budget for EDI funding requests,<sup>199</sup> the FY17 NDAA did not provide funding authorizations for ERI activities in distinct line items in the funding tables.<sup>200</sup>

Congress should address this omission to ensure the greatest use of EDI funds possible. Unlike EDI, other operations funded by OCO funds, such as the Afghanistan Security Forces Fund (ASFF) and Counter-ISIL Fund, provide specific line item funding authorizations in the Funding

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<sup>198</sup> See *supra* Section IV(B)(2).

<sup>199</sup> FY17 BUDGET REQUEST, *supra* note 36, at 24-28.

<sup>200</sup> FY17 NDAA, Pub. L. No. 114-328, § 4302, 130 Stat. 2000, 2862 (2016).

Tables of the FY17 NDAA.<sup>201</sup> These authorizations provide the commander with clear limits and sources of funding. The ASFF provides a single appropriation with a two-year period of availability to various types of authorized assistance.<sup>202</sup> Accordingly, it is easier to align the authority with the source of funding available for each security cooperation activity.

Using ASFF funding as an example, Congress should simplify the funding authorization for EDI activities and earmark funds within each appropriation.<sup>203</sup> This will ensure greater ease in accounting and planning activities consistent with Congress's intent to deter Russian aggression through support of NATO. Designating a portion of appropriated funds specifically for EDI will avoid competition between other non-ERI authorities that are funded with the same money.

Moreover, separate lines of authority specific to EDI will eliminate confusion as to what authority EUCOM should use when multiple appropriations appear to authorize the use of funds for the same purpose. When there are multiple authorizations to use funds for the same purpose, the agency must elect which appropriation to use.<sup>204</sup> Due to the EDI's line of effort focusing on building capacity of foreign nations' security forces overlapping with security cooperation authorities,<sup>205</sup> there is confusion as to whether EUCOM can use security cooperation funds in addition to EDI funds, or whether one authority is the more specific of the two and must be used exclusively for its purpose. Separate and specific lines of accounting will at least disentangle funds with common purposes. To ensure maximum utility of all the fiscal authorities relevant to defending NATO allies from Russian aggression, Congress should specifically authorize the use of security cooperation appropriations provided for

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<sup>201</sup> § 4302, 130 Stat. at 2862-63.

<sup>202</sup> FY15 NDAA, Pub. L. No. 110-181, § 1513, 122 Stat. 428 (2008); FY19 NDAA, Pub. L. No. 115-232, § 4302, 132 Stat. 1636 (2018).

<sup>203</sup> See GAO GLOSSARY, *supra* note 186, at 46 (defining "earmarking" as "[d]esignating any portion of a lump-sum amount for particular purposes by means of legislative language").

<sup>204</sup> Payment of SES Performance Awards of the R.R. Ret. Board's Off. of Inspector Gen., 68 Comp. Gen. 337, 339 (1989).

<sup>205</sup> See *supra* Section IV(B)(3)(c).

DoD-wide use in addition to EDI funds for building capacity of the forces in the Baltic States.<sup>206</sup>

#### D. Influence Foreign Military Spending through Conditional Funding

The above recommendations to repeal BCA, remove cumbersome restrictions on security cooperation authorities, and clarify funding sources for U.S. efforts to support its allies all reflect the power Congress has on the conduct of U.S. military operations through fiscal law. However, U.S. money is also a powerful tool that can influence foreign allies.

To fight abroad is a military act, but to persuade enemies or allies that one would fight abroad, under circumstances of great cost and risk, requires more than military capability. It requires projecting intentions. It requires having those intentions . . . and communicating them persuasively to make other countries behave.<sup>207</sup>

Congress cannot afford to limit its legislative efforts in addressing the United States' role within the context of Russian threats to NATO; it must use its constitutional authority over fiscal law to communicate its intentions and influence military spending by the European contingent of NATO. It is critical for the United States to provide unconditional support to its NATO allies pursuant to Article 5 to ensure meaningful deterrence against Russia. Accordingly, Congress must take care not to undermine that message to the Baltic States, and reaffirm that deterring Russian aggression is the *raison d'être* of the Alliance. Both NATO and Russia should be confident of an unconditional guarantee of U.S. military response should Article 5 be triggered. Conditioning defense spending for activities intended to deter Russian aggression in Eastern Europe would send a mixed message to allies and Russia alike.

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<sup>206</sup> Examples of instances Congress specifically authorized the use of multiple accounts for the same purpose are 10 U.S.C. § 166a (2016) (providing any amount provided under the Combatant Commander Initiative Funds activities are “in addition to amounts otherwise available for that activity for that fiscal year”) and FY17 NDAA, Pub. L. No. 114-328, § 1237, 130 Stat. 2000, 2495 (2016) (explaining the authority to for the Ukraine Security Assistance Initiation “is in addition to authority to provide assistance and support under title 10, U.S. Code, the Foreign Assistance Act of 1961, the Arms Export Control Act, or any other provision of law”).

<sup>207</sup> THOMAS SCHELLING, *ARMS AND INFLUENCE* 36 (1966).

However, funding non-Article 5 activities contingent upon the demonstrated commitment to defense spending and collective security can promote NATO member spending and influence increased defense spending across the Alliance.<sup>208</sup> Such conditions would demonstrate the prioritization of collective defense. Conditioning foreign assistance on matters unrelated to defense capabilities can encourage allies to increase their own defense spending in order to maintain or improve their status with the United States. While maintaining the paramount importance of deterrence strategy through collective defense in NATO, the United States should tie some of its foreign assistance spending in Europe for non-Article 5 activities to a country's defense spending. Examples of such activities include counterterrorism training, refugee support, or even trade incentives.

Congress already places conditions on the appropriation of authorized funds on foreign assistance; however, it has not utilized this powerful foreign policy tool to influence NATO member defense spending. When drafting future conditional authorizations, Congress should look to its own example in the FY17 NDAA, for its specific and technical conditions imposed on Ukraine in the Extension and Enhancement of Ukraine Security Assistance Initiative.<sup>209</sup> While \$350 million was authorized to be appropriated in Fiscal Year 2017, Congress made available not more than \$175 million in funds to be used for the authorized purposes. The Secretary of Defense, in coordination with the Secretary of State, certified that Ukraine “ha[d] taken substantial actions to make defense institutional reforms, in such areas as civilian control of the military”; increased transparency and accountability in defense procurement; improved transparency to decrease corruption; and sustained improvements of combat capability, among other requirements.<sup>210</sup> By limiting the amount of assistance, and placing measurable requirements on the beneficiary as a condition to receiving a portion of the funding, Congress is able to maintain some control over the purpose and amount of spending that,

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<sup>208</sup> Michael O’Hanlon, *Trump’s \$54 Billion Rounding Error*, FOREIGN AFFAIRS (Mar. 1, 2017), <https://www.foreignaffairs.com/articles/2017-03-01/trumps-54-billion-rounding-error>. O’Hanlon laments the prospect of cutting foreign aid programs in order to boost U.S. military spending, arguing conditions-based foreign aid to Iraq gets the United States “leverage and influence, and improves the odds of making current hard-earned military gains durable.” *Id.*

<sup>209</sup> FY17 NDAA, Pub. L. No. 114-328, § 1237, 130 Stat. 2000, 2493-95 (2016).

<sup>210</sup> *See* § 1237, 130 Stat. at 2494.

absent such conditions, are within the exclusive purview of the recipient.

Congress can use similar conditions on future authorizations towards NATO members to influence the amount and purpose of ally defense expenditures. One possibility is to condition some or all Title 10 and Title 22 funding going to each NATO member on their certification, through its annual reporting requirements to the NATO Secretary General, that they have increased their defense spending, or met both defense spending and spending on military equipment targets. Absent certification, the Secretary of Defense can waive the conditions based on his determination that such waiver is in the best interest of the national security of the United States.<sup>211</sup> Another possibility is to focus conditions on the NATO members' commitment to improving combat capability through its spending on research and development or even buying specific weapon systems that promote interoperability with other members of the Alliance, such as cyber defense or intelligence, reconnaissance, and surveillance platforms that are important in countering Russia's hybrid warfare capabilities.

Conditional authorizations for funding foreign aid recognize the reality that there are many other issues, both internal and external, impacting NATO members. The refugee crisis, incidents of terrorism, and nationalism erode the foundations of the European Union. This could lead to decreased military spending and lack of political will to spend precious resources to come to the aid of another NATO member, placing the principles of Article 5, and indeed the very purpose of the Alliance, in question.<sup>212</sup> Fairly leveraging those threats is a prudent course of action that Congress can take to offer support to U.S. allies, albeit with strings attached, in order to refocus NATO on Article 5 deterrence and boost defense spending. Certain NATO members may see less of a need to meet the NATO defense spending targets, particularly those in the south or the west that have less to fear from Russian aggression than the Baltic States

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<sup>211</sup> Waivers of limitations on funding foreign assistance activities based on the Secretary's determination such waiver is in the national security interest of the United States is common. *See, e.g.*, § 1232(c), 130 Stat. at 2488. It is also extremely important in this context as the U.S. should not hold fast to its insistence that NATO members increase defense spending as it may cause more harm than its worth. Regardless of whether certain NATO members fail to increase defense spending to meet the Wales Summit targets, the United States should message clearly to its allies and enemies alike that it will honor its Article 5 obligations and unconditionally support its NATO allies in the event of an attack on its sovereignty.

<sup>212</sup> *See* Ivo Daalder, Opinion, *Ghost of European Re-nationalism*, POLITICO (Feb. 17, 2017), <http://www.politico.eu/article/ghost-of-european-re-nationalism/>.

or Poland. Those members would face receiving little to no support from the United States in their respective efforts to manage an influx of refugees from the Syrian conflict or train counterterrorism security forces.<sup>213</sup> By using a carrot to entice additional defense spending throughout the Alliance, Congress can reinforce a diplomatic truism: that supporting causes, such as the defense of the Baltic States' sovereignty from Russian aggression will earn goodwill from the rest of the Alliance—or more simply, supporting NATO results in NATO support.<sup>214</sup>

In the FY17 NDAA, Congress hinted that it may consider individual NATO member contributions in future foreign assistance authorizations. It decided against expressing the sense of Congress that NATO allies' investments in developing and employing security capabilities should “meet or exceed U.S. efforts in this regard.” Instead, Congress directed the Secretary of Defense to present to the armed services and foreign relations committees an accounting of European investment in security capabilities and efforts to contribute to global security outcomes.<sup>215</sup> This requirement, along with the reforms to the security cooperation framework that also require country-specific reporting,<sup>216</sup> indicates Congress may consider implementing conditional funding for NATO members, as they did with Ukraine.

Conditional spending provisions from Congress could also create secondary effects that positively impact the amount of defense spending throughout NATO. It is reasonably foreseeable that the European community could exert its own diplomatic pressure on an ally failing to meet the Wales Summit targets, especially if the loss of U.S. dollars consequently causes a state to struggle to contain their

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<sup>213</sup> European states receive comparatively less foreign assistance funding than other regions; however, \$54,440,000 in foreign aid is planned for NATO members for Fiscal Year 2017, almost entirely for peace and security sectors such as counterterrorism, stabilization operations, and transnational crime. FOREIGN ASSISTANCE, MAP OF FOREIGN ASSISTANCE—WORLDWIDE, <https://www.foreignassistance.gov/explore> (last visited Feb. 12, 2019).

<sup>214</sup> See CHIVVIS ET AL., *supra* note 9, at 3.

<sup>215</sup> H.R. REP. NO. 114-840, at 1218 (2016). Congress specifically requested a detailed accounting of initiatives by NATO allies to deter security challenges posed by Russia, increase capabilities to respond to unconventional or hybrid warfare tactics, enhance security in Europe in ways that match or compliment U.S. contributions to conventional deterrence in the region, as well as contributions to non-European campaigns, such as the counter-ISIS operation and in Afghanistan. *Id.* at 1218-19.

<sup>216</sup> 10 U.S.C.S. § 386 (LexisNexis 2017).

non-Article 5 security threats within their borders. This would serve as a secondary line of influence towards increasing defense spending. For example, if the Czech Republic, a NATO member that consistently spends less than one percent of its GDP on its defense,<sup>217</sup> were to lose the millions of dollars it receives from the United States in foreign assistance,<sup>218</sup> and fail to effectively manage internal security threats, neighboring NATO members, such as Germany or Poland, may exert their own diplomatic pressures on the Czech Republic to increase defense spending.

The United States' national security interest is better served when its NATO allies focus on discrete capabilities to defend and deter Russian aggression than if it were to encourage each of the Baltic States to be independently capable of defending against Russia. Given their size and resources, it is impossible to expect any of the Baltic States to match the strength of the Russian forces aligned on their eastern borders on their own. By influencing their defense spending, Congress can better ensure that the Baltic States' forces provide complementary and integrated capabilities, rather than incompatible or duplicative ones.<sup>219</sup> By avoiding the duplication of systems and capabilities between multiple allies, limited resources are better managed. Thoughtfully crafted conditions on security cooperation authorities can also leverage existing capabilities, such as encouraging Estonia to build upon their already sophisticated cyber defense capabilities.<sup>220</sup> Such influence will improve interoperability as Congress can ensure strategic oversight and leadership remains within the purview of the DoD.

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<sup>217</sup> ANNUAL REPORT, *supra* note 52, at 112.

<sup>218</sup> THEATER SECURITY COOPERATION RESOURCES HANDBOOK, *supra* note 86, at 152. The Czech Republic received over \$83 million in aid from the United States from Fiscal Year 2010 to Fiscal Year 2015. *See id.*

<sup>219</sup> *See* HAASS, *supra* note 149, at 284 (arguing that Europe must spend more on its defense, but more importantly, that the European states coordinate "their spending so the result is additive rather than duplicative," noting that doing so "will require far more specialization").

<sup>220</sup> In 2007, Estonia suffered weeks of cyberattacks from Russia, directed at Estonian government, businesses, and media outlets. Benjamin Oreskes, *Why Trump Makes this Small Country so Nervous*, POLITICO MAG. (Dec. 10, 2016), <http://www.politico.com/magazine/story/2016/12/trump-russia-worries-estonia-214511>. As a result, Estonia focused considerable efforts towards cyber defense and is on the cutting edge of cyber security. *Id.* Tallinn is also the host of its own brain-child, the NATO Cooperative Cyber Defence Centre of Excellence (CCDCOE), dedicated to enhancing the capability, cooperation, and information sharing among NATO, NATO nations, and partners in cyber defense. NATO, CCDCOE HISTORY, <https://ccdcOE.org/about-us/> (last visited Feb. 12, 2019).

Carefully drafting funding authorizations to maximize U.S. influence in improving NATO's defense capability, through conditional foreign aid and other economic incentives, will encourage defense spending and strengthen individual NATO member ties to the United States.<sup>221</sup> The resulting increase in ownership of collective security by the European contingent of NATO should improve individual defense capabilities. However, to create a meaningful deterrent to Russia and effectively counter its A2/AD capabilities in Eastern Europe, the whole of the Alliance must be greater than the sum of its parts. By focusing on improving NATO member forces, networks, and weapon systems, Congress can positively influence interoperability within NATO as well as ensure that U.S. dollars spent on defending NATO allies are effective.

## VI. Conclusion

Leaving Europe to defend itself against Russia would result in a loss to the United States, "[f]or NATO's borders have always been America's as well."<sup>222</sup> The persistent threat of Russian aggression over the last three years since its illegal annexation of Crimea has "shown that the military arm of the alliance remains a necessary, indeed, existential element of the transatlantic relationship."<sup>223</sup>

To defend its interests and allies closest to Russia, the United States must begin to understand the costs of supporting NATO and the consequences of ignoring the threat. Without a thorough understanding of the mechanisms that fund NATO missions, a fog of

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<sup>221</sup> While conditioning foreign assistance on the domestic spending of the recipient country should positively influence that country's behavior, it is entirely possible that a NATO member fails to increase its defense spending. This could have the unintended consequence of destabilizing a NATO member or region. Worse yet, Russia could attempt to fill the gap left by the United States and offer funding or assistance to a NATO member, disrupting the Alliance. Thus, the State Department should closely monitor any condition of funding passed by Congress.

<sup>222</sup> Josef Joffe, *The Folly of Abandoning Europe*, FOREIGN AFFAIRS (Dec. 12, 2016), <https://www.foreignaffairs.com/articles/europe/2016-12-12/foley-abandoning-europe> (noting that Europe is the United States' first line of defense).

<sup>223</sup> Constanze Stelzenmüller, *NATO: Necessary but Not Sufficient*, ORDER FROM CHAOS BLOG (Dec. 7, 2016), <https://www.brookings.edu/blog/order-from-chaos/2016/12/07/nato-necessary-but-not-sufficient/>.



rhetoric will continue to hamper decision-making. Absent this understanding, arguments that foreign policy is a zero-sum game will gain traction—calling into question the utility of the continued existence of NATO to the United States. This would be a grave mistake. The multilateral Alliance provides greater security for the United States than the United States is capable of providing itself. NATO, therefore, promotes, rather than diminishes, the United States' international influence and economic strength. The United States must remain engaged with and firmly entrenched within NATO.<sup>224</sup>

While foreign policy is the product of the executive and legislative branches, Congress alone has the fiscal authority to shape the means by which such policy is implemented. Although commanders have many tools afforded by EDI funding and security cooperation authority to build defense capacity and defend the Baltic States, Congress must improve the efficacy of those tools. By removing roadblocks such as the BCA and unduly burdensome limitations and requirements built into the security cooperation regime, and clarifying the funding sources for EDI, Congress can provide the U.S. military with a clear path to properly plan and execute its strategy to build better partners in NATO to collectively deter Russian aggression. Crafting legislation that focuses on Article 5 missions and incentivizes NATO members to bolster their own defense spending and capacity will ensure Congress's intent to strengthen the Alliance's security is realized.

Armed with its constitutionally ordained power of the purse, Congress is responsible for shaping the role of the United States in the strategy to defend its allies, and own interests, against Russia. Congress possesses the tools to influence NATO's ability to implement its deterrence-based strategy by strengthening its allies and address the dynamic threat from Russian aggression. Just as it successfully defended the Fulda Gap during the Cold War, NATO must commit to strengthening its forces to deter any conflict in the Baltic States. Because of its power over funding the U.S. military as well as programs to support and assist other NATO members, Congress is the focal point of the deterrence effort. Thus, how Congress

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<sup>224</sup> See Dani K. Nedal & Daniel H. Nexon, *Trump Won't Get the Best Deals*, FOREIGN AFFAIRS (Jan. 31, 2017), <https://www.foreignaffairs.com/articles/2017-01-31/trump-wont-get-best-deals?cid=int-lea&pgtype=hpg> (arguing that the United States should understand the importance of preserving the alliances and defending allies, the authors express hope that the Trump administration "soon realize[s] that burning your own house down is never terribly wise—especially when that house is nicer than any new one you can afford").

addresses, or fails to address, the obstacles to implementing the strategy to counter Russian aggression will have far-reaching impacts. A breakdown of international borders through hybrid aggression, an extension of Russia's A2/AD capabilities in Eastern Europe, or outright conflict, particularly if done so in contravention of Article 5, would mark a failure of U.S. national security and foreign policy, and collapse the American-led liberal world order.<sup>225</sup> Worse still is the possibility that failure to deter such violation of sovereignty by Russia could invite conflict, leading to an unnecessary and preventable war between nuclear powers.<sup>226</sup> To ensure such a fate does not become a forgone conclusion, Congress must improve upon its current legislative efforts and strengthen the NATO defense of the Baltic States through clear and intelligent fiscal laws.

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<sup>225</sup> See *id.*; see generally HAASS, *supra* note 150, at 216-18, 232-33.

<sup>226</sup> See Frum, *supra* note 35.