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Congress and Parliaments in Security Sector Reform

Summary

- Legislative oversight of the security sector is crucial to ensure that security policies and expenditures are undertaken with full transparency, accountability and concern for other national priorities and popular attitudes. This is important in conflict states, particularly during peace or stability operations.
- Establishing legislative oversight is difficult in conflict countries because of the absence of historical tradition, the complexity of security agencies, the technical nature of the issues, secrecy laws and the lack of expertise among parliamentarians and their staffs.
- The U.S. Congress provides a model for effective legislative oversight of the security sector for other countries to emulate. Congress has developed the legal authorities and the traditions required to form an effective partnership with the Defense and Justice departments, the U.S. military forces and civilian security services.
- Due to the importance of legislative oversight of the security sector to the democratic process, the U.S. Congress provides advice and training to foreign parliaments and parliamentarians in security sector reform. Congress has important partnership arrangements with parliaments in Afghanistan, Pakistan, Georgia, Kosovo and other conflict countries.

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Parliamentary Oversight Is an Important Dimension of Security Sector Reform

It is generally agreed that security sector reform (SSR) involves improving the performance of the uniformed security services of the state and the executive ministries that are responsible for their oversight. What is overlooked in this definition is the fact that SSR is fundamentally a political process that concerns control of power, the exercise of authority, the allocation of critical resources and establishing legitimacy. This is especially true in conflict countries and particularly those engaged in peace or stability operations. In these cases, legislative oversight of the security sector is crucial to ensure that security policies and expenditures are undertaken with full transparency, accountability and concern for other national priorities. This is important to prevent the security services from acting as a state within the state or misusing economic resources required for development. It is also important to ensure that there is a link to the public and a conduit for inputs from civil society.

Establishing legislative oversight can be difficult because of the absence of historical tradition, the complexity of security agencies, the technical nature of the issues, secrecy laws and the lack of expertise among parliamentarians and their staffs. Even in Western Europe, there are few countries with a tradition of legislative oversight of the security sector. In some cases, this is a legacy of the Cold War when NATO member states with communist parties were unwilling to allow parliamentary involvement in issues related to national defense. In developing countries or conflict states, parliaments may have little legitimacy or institutional authority and may be seen as centers of corruption and influence peddling. Parliaments may be unable or unwilling to challenge powerful military and police establishments, or there may be political taboos against dealing with security or intelligence issues. Parliamentarians may be intimidated by the complexity of issues related to military procurement. They may also be barred by secrecy regulations from access to the information required to effectively challenge decisions taken by military professionals.

In countries experiencing peace or stability operations, the critical decisions concerning security sector reform, such as the size of national security forces, the procurement of equipment and the provision of training, may be made by donor countries with little reference to the national government and none to the parliament. In Afghanistan, for example, decisions concerning the Afghan security forces are made in Washington, at NATO headquarters and allied capitals. The Afghan parliament has committees with responsibility for defense oversight and considerable expertise and experience among its parliamentarians. Parliament enjoys good relations with the interior and defense ministries. The Afghan government, however, does not have the last word in deciding issues related to its security sector and the Afghan parliament has no means to exercise oversight concerning decisions made by foreign governments.

The U.S. Congress Is a Model for Effective National Legislatures

The U.S. Congress provides a model for effective legislative oversight of the security sector for other countries to emulate. Over time the U.S. Congress has developed the legal authorities and the traditions required to form an effective partnership with the Defense and Justice departments, the armed forces and civilian security services. Congressional hearings concerning these agencies and congressional adjustments in budget numbers, personnel ceilings and other administrative functions have become routine and accepted. Congress has developed extensive expertise on the part of elected representatives, professional staffs, the Congressional Research Service and the Congressional Budget Office, enabling it to understand the technical issues of complex weapons systems, property management and personnel policies. Congress is able to engage with the U.S. security sector to make policy, conduct real time oversight and evaluate programs.

National security policy involves decisions about how the security sector is organized and functions as well as the goals and objectives it is supposed to achieve. The FY 2010 National Defense Authorization Act includes several examples of how Congress sets policy and indicates direction for the U.S. government, and how Congress determines through foreign assistance the way (or the ways) to organize the security sector of foreign governments. Through legislative initiatives such as the "1206" and "1207" programs (named for sections of the Act), Congress has sought to promote whole-of-government approaches to U.S. security assistance programs and to encourage the State and Defense departments to work together to develop programs that reflect political, security, and developmental considerations. Under 1206, a pilot program run by the Defense Department with State Department concurrence, Congress has sought to shift responsibility from State to Defense for military assistance programs that create the capacity in foreign military forces

to conduct counterterrorism, peace and stability operations alongside U.S. forces. Under 1207, another pilot program, Congress has appropriated Defense Department funds that State can request for foreign civilian security assistance programs developed by embassy country teams abroad and approved by an interagency process in Washington. The Act includes an unprecedented number of requirements for the administration to file reports with both the congressional defense and foreign relations committees reforming the way Congress does business.

Looking abroad, the National Defense Authorization Act all but determines the size and composition of the Afghan security forces. The Act provides funding that will enable the expansion of the Afghan Army from an estimated 95,000 to 134,000 soldiers and the Afghan police from some 93,000 to 97,000 personnel. For Iraq, the Act provides the authority for the U.S. military to transfer equipment from its own stores to Iraqi forces that will enable the expansion of those forces and prevent equipment shortfalls. Through the Pakistan Counterinsurgency Fund (PCF), Congress has authorized funding that will encourage Pakistan to transfer its defense focus from its border with India to its border with Afghanistan by increasing the capacity of the Pakistan Frontier Corps and training the Pakistan Army in counterinsurgency operations. For the U.S. government, Congress determined that Defense will manage the funds for the PCF until State develops the capacity to manage the money starting in FY 2011, endorsing an agreement worked out between the two departments.

Legislative Oversight Is Critical to Setting Priorities

National security affects everyone and judgments concerning security policy should not be left exclusively to the executive and uniformed personnel. National security consumes a majority of the funds in national budgets. Funding for military and police forces can determine the amount of resources available for such essential programs as health and education. Given their dollar value and sensitive nature, weapons procurement and security infrastructure contracts can be a major source of corruption, particularly in conflict countries. Parliamentary oversight of security sector budgeting promotes transparency, accountability and public confidence in government decisions concerning the security sector. Through public and classified hearings, research and analysis and onsite investigations, the U.S. Congress exercises its legal authority to oversee security related budgets and evaluate the results of operational and assistance programs.

In Iraq, for example, congressional members and staff have repeatedly visited military installations in the field to evaluate the effectiveness of U.S. programs and the utility of U.S. assistance. As a result, congressional staff members have developed a level of expertise and experience that matches their counterparts in the executive branch of government and military. They have also built relationships with State and Defense officials that provide for a frank exchange of views on important policy decisions. Congress is something of a blunt instrument in that it is not responsible for policy implementation. It can, however, identify problems and demand that ineffective programs are revised or terminated.

Congress Trains Foreign Parliaments in Security Sector Oversight

Given the importance of legislative oversight of the security sector to the democratic process, it is not surprising that the U.S. Congress provides advice and training to foreign parliaments and parliamentarians in security sector reform. The House Democracy Partnership was authorized in 2005 to enable House members and staff to provide assistance to foreign parliaments, particularly those in conflict countries and emerging democracies. Currently, there are 14 partner parliaments.

ABOUT THIS BRIEF

This report is based on an October 29, 2009 meeting of the U.S. Institute of Peace's Security Sector Reform Working Group on "The Congressional Role in Military and Police Reform." The meeting featured presentations by a panel of distinguished experts including: Hans Born, director of the Geneva Center for the Democratic Control of the Armed Forces' Working Group on Parliamentary Accountability of the Security Sector; Patrick Garvey, staff member on the U.S. Senate Committee on Foreign Relations; William Monahan, counsel on the U.S. Senate Armed Services Committee; John Lis, staff director of the U.S. House of Representatives Democracy Partnership Committee on Foreign Affairs; and Pat Towel, specialist in national defense at Congressional Research Service. Robert Perito, director of USIP's Security Sector Governance Initiative, served as moderator.



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The Partnership has three programs related to security sector oversight: (1) one week seminars organized in cooperation with the Defense Department for visiting parliamentarians that include sessions with members of Congress and visits to the Pentagon; (2) congressional delegation visits to partner country capitals that involve two days of meetings with local parliamentarians; and, (3) staff delegations that hold extensive sessions with foreign counterparts concerning the technical aspects of budget analysis, procurement practices, and other topics related to oversight of the security services.

Included in the list of partner countries are Afghanistan, Pakistan, Georgia, Haiti, Lebanon and Kosovo. In these cases, the Partnership has sought to encourage and strengthen local parliamentary involvement and oversight in national security policy and control of the armed forces. In Georgia, for example, congressional intervention encouraged the Georgian parliament to create a special commission to hold hearings on the August 2008 Russian invasion that included a full day of testimony by Georgian President Mikheil Saakashvili and the announcement of the parliament's finding on national television. In Pakistan, U.S. members of Congress have encouraged the National Assembly Defense Committee to become more assertive in its oversight, while keeping in mind well-grounded fears of a military backlash if parliament pushes too hard. Creating parliament to Congress relations encourages the democratic process and builds a network of relations between the U.S. and other countries.

Recommendations

International donors cannot ordain effective parliamentary oversight in conflict countries, but they can lay the foundation and encourage the development of legal authorities and customary involvement. To ensure transparency, accountability and promote the public trust, international donors should encourage the following actions during post-conflict interventions:

- Ensure that the constitution and basic legislative structure provide for executive accountability to the parliament and gives the parliament the authority to exercise oversight of the security sector. Legal authorities should be reinforced by the early establishment of the tradition of parliamentary review of defense and security policies and budgets.
- Ensure that parliaments have access to information and expertise to enable analysis and evaluation of security related programs and expenditures. This capability does not exist in all developed countries and will take time to develop in conflict countries, but there should be a start.
- Ensure that parliamentary efforts are understood and supported through programs to educate and involve the media and civil society in oversight of the security sector. Such efforts will likely be resisted by vested interests, but international donors should support new governments to resist those alternative agendas.
- Ensure that newly established parliaments have routine involvement through official visits and exchanges with parliamentarians from democratic countries so that advice and training can be provided and democratic practices reinforced.