Regulating irregular actors

Can due diligence checks mitigate the risks of working with non-state and substate forces?

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Abstract

In the last two decades, Western states have frequently worked with non-state or substate armed groups to confront security threats, whether as part of global counter-terrorism operations or as de facto security providers in stabilisation and peacebuilding contexts. But while these forces may be quick and easy to mobilise, they often come with substantial risks or drawbacks. Many have a reputation for abuses, may be linked to warlords, criminal networks, or terrorist groups, or present other political conflicts of interest. The greater frequency of such partnerships has sparked interest in how states might mitigate some of these risks, and what due diligence measures or accountability mechanisms should be adopted in dealings with nonstate or substate partners. To better understand this emerging challenge, this paper considers how the US applied a series of due diligence or risk mitigation measures in seven partnerships with local, substate and non-state forces in Afghanistan, Syria and Iraq. The conclusions suggest practical lessons about the effects and limitations of such measures, but also some larger unintended consequences, particularly where technical approaches to these issues obscured larger risks and skewed decision-making choices.

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Acronyms

ANA	Afghan National Army
ANA-TF	Afghan National Army Territorial Force
ALP	Afghan Local Police
ANP	Afghan National Police
CIA	Central Intelligence Agency (US)
CSO	Bureau of Conflict and Stabilization Operations (US)
COIN	counterinsurgency
DoD	Department of Defense (US)
DTO	designated terrorist organization
FSA	Free Syrian Army
GVHR	gross violations of human rights
ISAF	International Security Assistance Force
ISIL	Islamic State of Iraq and the Levant
LHSF	local, hybrid and substate forces
MOC	Military Operation Center
MoD	Ministry of Defense (Afghanistan)
MoI	Ministry of Interior (Afghanistan)
MOM	Müşterek Operasyon Merkezi (Joint Operation Center)
NDAA	National Defense Authorization Act (US)
PKK	Partîya Karkerên Kurdistanê (Kurdistan Workers' Party)
PMF	Popular Mobilization Force
SDF	Syrian Democratic Forces
SIGAR	Special Inspector General for Afghanistan Reconstruction
SOF	Special Operations Forces (US)
TMF	Tribal Mobilization Force
TOW	tube-launched, optically tracked, wireless-guided
UNAMA	United Nations Assistance Mission in Afghanistan
YPG	Yekîneyên Parastina Gel (People's Protection Units)

Executive summary

In the last two decades, Western states have frequently worked with non-state or substate armed groups to confront security threats – from tribal and community defence forces in Afghanistan and Iraq to opposition forces in Syria. Despite their prevalence, partnerships with local, hybrid or substate security forces (here referred to collectively as LHSFs) remain controversial. Non-state or irregular forces have frequently been associated with war crimes, death squads and other grave abuses. Many come with past or ongoing connections to warlords, terrorists or criminal groups. Unruly and uncontrolled substate forces have also in some cases weakened state control and authority, local governance or rule of law.

The prominence of LHSFs in many security governance environments, and Western partnerships with them, have led to greater interest in how states might address some of these concerns. Do Western states have an obligation to ensure that non-state partners comply with human rights or other legal standards? Would adopting certain checks and protocols reduce the risk of supported forces 'going rogue', or imperilling other security or policy goals? What sort of due diligence measures are appropriate in order to meet public expectations for accountability over public funds, particularly where lethal assistance and use of force are at issue?

Among Western countries, the US has had the most experience with such dilemmas, partnering with a range of LHSFs across a number of countries and contexts. As it has done so, the US has tested a range of what might be framed as due diligence or 'risk mitigation' approaches to working with LHSFs. While they do not quite reach the level of a standard 'toolkit' or policy, a series of vetting, monitoring, training and enforcement mechanisms have evolved into a fairly common practice in US security assistance with non-state or substate forces.

This paper explores the impact of such safeguards or control mechanisms by examining their use in seven US partnerships in Afghanistan, Iraq and Syria from 2009 to 2019. The case studies include forces with varying levels of organisation and size and differing degrees of legal recognition or status. They include non-state and opposition forces in Syria affiliated with the Free Syrian Army and the Syrian Democratic Forces, as well as several initiatives surrounding quasi-institutionalised tribal or community forces in Iraq and Afghanistan.

Despite the differences in the forces themselves, and in the surrounding conflict and political dynamics, many of the same checks and controls were deployed. They also faced many of the same limitations and pitfalls. LHSFs were mobilised in many cases as a substitute, or a quick fix, to fill gaps in state security or governance, or provide an alternative to (greater) US force deployment. However, the same security and governance gaps that motivated their use tended to limit the reach of the various control mechanisms. Limited knowledge about these groups, and the challenges of obtaining even basic information in complex and fast-changing conflict environments, undermined vetting and monitoring mechanisms. Certain types of risk, such as human rights abuses, were even harder to monitor and corroborate. They occurred in largely inaccessible terrain, and there were built-in reporting disincentives for local actors, who feared retaliation.

To overcome access issues, the US sometimes tried to institutionalise local forces into state structures, or relied on other community actors (that is, local elders, community leaders or civil society groups) to help monitor and enforce conduct standards. However, partner state institutions tended to have as limited a remit and authority in these areas as international forces, and their own dysfunction and rent-seeking sometimes created more risks than they resolved. Community structures had the potential to work well, but in communities roiled by decades of conflict and infighting such structures were often no longer resilient enough to provide strong checks, particularly *vis-à-vis* powerful armed actors with international support.

For all of these reasons, checks and controls struggled to contain or address the range of risks they were designed to mitigate, but came with significant trade-offs. Implementing cumbersome and multifaceted vetting and tracking measures slowed the speed of assistance or mobilisation, limited potential partners or absorbed significant staff time and resources. This frequently limited the impact of the assistance, and in some cases caused programmes to fail.

An even more significant cost was the way that control mechanisms appeared to skew political attention and decision-making. Because control mechanisms offered the possibility of being able to mitigate the substantial risks surrounding such partnerships, they tended to conceal some of the real costs implicit in working with a given force, or at least to prevent a full discussion of the drawbacks. Control mechanisms shifted the locus of attention from discussions about strategic and structural choices – whether to partner with a given force, or how to deal with systemic risks implicit in an engagement – to how to implement technical or tactical-level controls. In Iraq and Afghanistan, adopting vetting to screen for past human rights abuses or terrorist affiliation became a box-ticking exercise, foreclosing a more significant political discussion about those risks.

The focus on technical or tactical-level mechanisms also deflected attention from the trade-offs and costs that came with the decision to partner with a given LHSF. In Syria, the adoption of multifaceted vetting, monitoring and tracking measures on paper satisfied US goals of supporting strong, but accountable and rights-respecting, local forces. But in practice the bevy of criteria and controls had little connection with the reality of partner choices. The available partners were either incapable of carrying out the tactical objectives, presented substantial human rights risks or came with serious conflicts of interest, from questionable affiliations with extremist groups to provoking a stand-off with key US allies. Rather than confronting these unpalatable choices, or deciding what level of risks or costs was acceptable, control mechanisms allowed US policy-makers to reach for a false 'middle ground'. They enabled the policy to go forward as if these risks had been cancelled out or addressed, even as many of those implementing these programmes knew that the controls would deliver, at best, 'imperfect' results.

What such examples suggest is that the larger problem with control mechanisms might not be their failings in practice, but that they can too often substitute for hard choices and long-term thinking about engaging in these environments. Put another way, the issue is less that control mechanisms failed to constrain the behaviour of risky forces, but that they worked all too well in enabling risky choices in larger political decision-making.

1 Introduction

When the Islamic State in Iraq and the Levant (ISIL) assumed control of half of northern Iraq and much of eastern Syria in 2014, some of the strongest resistance came from, not state forces and governments in the region, but a motley collection of militias, rebels, tribal forces and other substate actors on both sides of the border. Iraqi Shi'a militias, later given legal baptism as the Popular Mobilization Forces (PMF), prevented ISIL's advance into Baghdad. Local Yezidi forces and the Kurdistan Workers' Party (PKK) – the Kurdish resistance group known for its armed struggle with Turkey – saved thousands of Iraqi minorities from ISIL's genocidal advance in August 2014 by opening an escape corridor into Syria. On the other side of the border, Syrian Kurdish forces and Arab tribal groups would eventually cohere into the Syrian Democratic Forces (SDF), the ground forces that would, by late 2017, retake ISIL-held territory in Syria.

The US and other Western states responded to the crisis by pouring support into Iraqi state forces, but also by backing many of these non-state and substate forces. US officials and forces helped recruit and fund tens of thousands of Iraqi tribal forces in Anbar and Ninewa provinces, which were later rolled into the PMF. The US and a dozen European states trained, armed and funded the Iraqi Peshmerga, a constitutionally recognised force, but one that is more often described as a 'substate' or 'hybrid' force given its militia-like qualities and tensions with the Iraqi state (Cambanis et al., 2019: 91–96; Fliervoet, 2018). To address the ISIL challenge in Syria, the US Congress authorised a multi-million-dollar initiative to 'train and equip' Syrian rebels. The US subsequently became the main backer of the SDF, providing weapons, training, tactical support and ample air cover.

Such dynamics are not novel: states have frequently turned to a range of tribes, warlords, community forces, rebels, militias, clans and other non-state or quasi-official forces to help confront security threats (Carey et al., 2013; Ahram, 2011; Salehyan, 2010; Marten, 2012; Sayigh, 2018; Jones, 2012). Local, hybrid or substate security forces (LHSFs) are dominant security-governance providers in many environments, often providing basic security and services in absence of the state, and sometimes enjoying more credibility with local communities or their own constituencies than state forces. As such, they have frequently proved valuable – and expedient – partners for Western states, particularly in areas where the sovereign state's territorial control or armed forces are weak. Increasingly over the last two decades, Western states have worked with LHSFs in a range of counter-terrorism missions and counter-insurgency campaigns, and in the context of international stabilisation and state-building projects in a range of countries (Day et al., 2020; Gaston, 2021; Watling and Reynolds, 2020).

With its broader global security footprint, the US has been the most active in working with non-state or substate forces. Where partnering with shadowy militias or non-state actors might once have been taboo, in the last two decades it has become fairly normal practice. US Special Forces and intelligence agents have relied on militias and local forces as auxiliaries in dozens of countries as part of global counter-terrorism operations since 2001 (Mazzetti, 2014a; Cleveland and Egel,

2020; Suhrke and De Lauri, 2019). In Iraq and Afghanistan, the mobilisation of tens of thousands of tribal or community-based defence forces was a crucial arm of the US counter-insurgency strategy, with these forces also intended as a form of 'bottom-up' security force development and state-building (Biddle, 2008; Vincent, Weigand and Hakimi, 2015). Such partnerships have become a standard part of the 'by, with, and through' approach, the operating paradigm embraced by the US of fighting through other forces rather than via substantial US troop deployments (Krieg, 2016; Rosenau and Gold, 2019; Votel and Keravuori, 2018).[1] As an example of how common such non-state partnerships have become, the so-called '127echo' fund (10 US Code § 127e), a standing fund for Special Forces to support proxy forces, is agnostic or 'indifferent' as to whether these funds go to state or non-state forces (Loredo et al., 2014, 15–17; Morgan, 2018).[2]

The US has been most expansive in this area, but other Western states have also directly supported or tacitly cooperated with LHSFs. The UK and France, for example, have worked with local militias or other non-state or substate armed groups through Special Forces deployments in the Sahel, Libya and Syria (Sabbagh, 2019; Powell, 2020; Megerisi and Lebovich, 2019; Watling and Reynolds, 2020). Other European countries also supported the Syrian opposition, ranging from supporting unarmed opposition groups to non-lethal assistance to the Free Syrian Army (Ruys, 2014; Loveluck, 2012; Policy and Operations Evaluation Department, 2018). Countries including France, the UK, Italy, the Netherlands, Germany, Australia and Denmark have alternately worked with or at least tacitly cooperated with substate or non-state actors who form part of the de facto security and governance architecture in Nigeria, Somalia, Libya, Iraq and Afghanistan, as part of internationally mandated stabilisation or peacekeeping missions (Day et al., 2020; Giustozzi, 2012; Badi, 2020).

While Western states' partnerships with these more irregular forces have been prominent in conflict and crisis scenarios in the last two decades (and well before), they remain controversial. Non-state or irregular forces often come with a reputation for unruly or predatory behaviour, and have frequently been associated with war crimes, death squads and other grave abuses (Campbell and Brenner, 2000; Stanton, 2015; Mitchell et al., 2014). Historically, non-state or substate forces have been used as proxies, facilitating external states' security interests or used to subvert the standing government (Innes, 2012; Mumford, 2013; Rosenau and Gold, 2019). This has left a lingering stigma, and partnering with substate or non-state forces tends to raise questions about sovereign prerogatives and international norms of non-intervention.

State forces might of course be equally abusive (and have also been used as proxies by the US and other regional and international powers). However, the status and typical characteristics of non-

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1   The 2018 National Defense Authorization Act defined irregular warfare as the 'activities in support of predetermined United States policy and military objectives conducted **by, with, and through** regular forces, irregular forces, groups, and individuals participating in competition between state and non-state actors short of traditional armed conflict' (Pub. L. 115-91, National Defense Authorization Act for Fiscal Year 2018, 12 December 2017) [emphasis added].
2   Congressional staff member, 6 June 2019, Washington DC.

state or substate forces tend to heighten these legal concerns. Irregular forces may lack the sort of command and control structures, or disciplinary processes that might constrain *ultra vires* acts or abuses (Mitchell et al., 2014). The lack of such institutional constraints not only might make abuses more likely, but also – given that institutions take time to build – can be harder to rapidly substitute. In addition, even though the same issues might manifest, supporting abusive non-state forces creates additional responsibility and liability issues not present when dealing with the forces of another state. From a legal standpoint, even where another state's institutional and military command structures do not actually fulfil their role of restraining or punishing misconduct or abuses, they at least absorb the legal responsibility for doing so.

The same concerns about weak command and control and questions of state responsibility also surround the quasi-official or 'hybrid' forces (defined further later). Many of the quasi-official or hybrid forces discussed in this paper originated as non-state or community-based armed groups and were only recently granted some degree of state recognition. They tend not to be fully integrated into state forces, not fully subject to regular disciplinary processes and routines, and frequently answer to command structures outside state control. As such, although there is a greater veneer of institutional state control with these forces, many function as 'militias' in practice and present similar legal or reputational costs.

In addition to such legal and normative concerns, Western states may be reluctant to partner with LHSFs because irregular forces are seen as unreliable, and may come with additional security risks or unintended consequences. As one former US Special Operations Commander working with Iraqi tribal forces joked: 'The problem with irregular actors is that they act irregularly'.[3] In most cases, little is known about non-state and local forces, which tend to operate in areas beyond state control and are fluid in their affiliation and form. Many come with their own interests and conflict equities, and may use external support to advance their own interests, foment conflict, seek revenge against rivals or entrap external states into deeper engagement (Byman, 2018; Hughes, 2012). Non-state forces may also go rogue and attack their foreign backers, whether the foreign personnel deployed alongside them, or in future conflicts. Most notoriously, some of those fighting with the US-supported Afghan mujahedeen in the 1980s went on to form Al-Qaeda, and turned their sights on their erstwhile backers.

There are also other risks or potential side-effects of supporting forces not squarely under state control. In many of the countries where Western states partner with local or non-state forces, they are doing so to support parallel state-building, governance and stabilisation objectives. Empowering predatory or unaccountable forces can undermine such goals by destabilising local environments, undermining the rule of law or further weakening local governance (Matta, 2015; Gaston, 2018; Reno, 2007; 2010; Giustozzi, 2012). In Afghanistan, for example, critics objected to the US arming local forces because past militia mobilisation had undermined what were seen as the primary goals of the post-2001 'state-building' and stabilisation project – building a state

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3   Interview with US official, Erbil, Iraq, December 2016.

monopoly on force and demobilising or disempowering warlords and other non-state power centres (Chandrasekaran, 2010; Goodhand and Hakimi, 2013; Derksen, 2016b). In addition, in many countries, LHSFs work closely with criminal networks, warlords or other illicit networks. Providing support to them could thus further fuel other sources of instability and incentives towards violence (Marten, 2012; Felbab-Brown et al., 2017; Jentzsch et al., 2015).

With Western states such as the US increasingly and more prominently partnering with non-state or quasi-official forces, there has been greater interest in how states try to address some of these risks. Among international lawyers, there has been much greater attention to the legal obligations surrounding partner operations, particularly those with non-state forces (American Bar Association, 2019; Droege and Tuck, 2017; Oswald, 2014). More broadly, with social media broadcasting armed groups' abuses or other adverse behaviour from even the remotest locations, policy-makers have come under greater pressure than ever to demonstrate accountability and some degree of control.

In response to such pressures, many Western states and UN missions have adopted, clarified or further developed their due diligence policies and risk mitigation approaches (Aust, 2015; Ferstman, 2020; United Nations, 2015). Because the US has partnered with LHSFs more regularly and frontally, it has gone furthest in this regard, or at least taken the most proscriptive approach. It has become 'common practice', said one State Department officer, for the US to adopt some or all of the following risk mitigation mechanisms when partnering with substate forces in environments such as Iraq, Afghanistan or Syria:

- Vetting mechanisms, which usually screen on both conduct-based grounds (for example, past human rights abuses) and on the potential security threat (due to affiliation, location or other factors).
- Establishing rules, standards or other codes of conduct.
- Instilling those rules through commitment mechanisms (pledges), training (usually including codes of conduct or legal issues) or other mentoring arrangements.
- Creating monitoring or oversight mechanisms, with checks sometimes spread across different institutional or community actors.
- Special tracking or monitoring for weapons or equipment.[4]
- Threatening sanctions or penalties (including being cut off from support) or offering incentives for better behaviour.

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4   There are an array of procurement and reporting requirements surrounding arms export and end-use monitoring, some, but not all, of which apply for transfers to non-state forces. The body of regulations in this area is vast, and would swamp other information in this report. It has also been well covered in other analysis and regulatory reviews. For that reason, although end-use monitoring with regard to transferred weapons will sometimes be mentioned it will not be the focus of any of the case studies.

While many of these 'risk mitigation' or control mechanisms[5] (as they are discussed generally here) have a legal-esque tenor, or mirror requirements and practices adopted for foreign assistance to regular state forces, in most cases they are not strictly or clearly required under either international or domestic law. Under international principles of state responsibility, states may bear responsibility for legal violations by armed actors they direct or support, even if those armed actors are not part of their own state forces (International Law Commission 2001, Arts. 8 & 16; ICRC, 2016a; American Bar Association, 2019: 15–18, 159–160). In addition, there is a basic due diligence principle understood to flow from Common Article 1 of the 1949 Geneva Conventions, under which states must refrain from actions that might assist or encourage violations of international humanitarian law (IHL), including via support to third parties (Dörmann and Serralvo, 2014: 717; ICRC, 2016b). However, these principles have been interpreted such that it is unlikely that states would be held to account for the conduct of third-party forces they supported, and in ways that do not clearly establish strong affirmative duties to prevent violations by supported forces (Gaston, 2017a: 17–18; American Bar Association, 2019: 15–18; Oswald, 2014).[6]

In some cases, control mechanisms have been mandated by domestic law, but this, too, tends to be the exception rather than the rule. Most Western states have robust domestic regulations with regard to assistance to other states, particularly when it comes to arms exports and assistance (American Bar Association, 2019: 24–25; Dörmann and Serralvo, 2014: 728–735).[7] But there is much less in the form of prescriptive obligations to regulate the *conduct* of third-party forces, and virtually none where the partners are non-state forces. Most countries have general due diligence and 'do no harm' principles within security assistance guidance, but these are applied on a discretionary and case-by-case basis.[8]

The US Leahy law (which is relevant for all of the case studies in this paper) is a rare example of a domestic law that prescribes a specific vetting procedure and processes or sanctions to prevent US

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5   Many of the tools and approaches adopted for constraining the behaviour or activities of the groups in the case studies could be analogised to those categorised as 'control mechanisms' in principal-agent theory, including those of selection, rules and standards, monitoring, sanctions or incentives, and checks and balances (Hawkins et al., 2006: 26–31; Kiewiet and McCubbins, 1991; Shapiro, 2005).

6   A full discussion of the legal debate surrounding these issues is beyond the scope of this paper. However, central to any such discussion would be an analysis of the International Court of Justice's *Nicaragua* decision 'effective control' standard (International Court of Justice, Military and Paramilitary Activities (Nicaragua v US), Judgment, 1986 I.C.J. Rep. 14, §115 (June 27)).

7   See, for example, Foreign Operations, Export Financing and Related Programs Appropriations Acts of 2001 (Pub L No 106–429, 114 Stat 1900, 2000) 563; Department of Defense Appropriations Act of 2001 (Pub L No 106-259, 114 Stat 656, 2000) 8092(2).

8   EU policies and case law under the European Court for Human Rights establish due diligence considerations for EU support to other state security forces, or EU activities or weapons and support going into areas in which LHSFs are active (General Secretariat of the Council of the European Union, 2015: 33; Wallace, 2016: 67–68) (Loizidou v Turkey (Preliminary Objections) (1995) 20 EHRR 99 at [62]; Al-Skeini and Others v United Kingdom (2011) 53 EHRR 18 at [138]).

funding to foreign forces that have engaged in human rights abuses.[9] The law requires prospective recipients of State or Defense Department funds to be screened for past gross violations of human rights (GVHR), and 'blocked' from funding where credible information of such is found (Serafino et al., 2014). However, even the Leahy law has been interpreted to apply only to state forces, or at a stretch to forces operating alongside and under the control of another state.[10] For example, it was deemed inapplicable to non-state armed groups in Syria, although US officials would go on to apply a 'Leahy-like' process of vetting, monitoring and blocks as a matter of policy rather than law.

The US Congress has at times attached human rights conditions or other accountability measures to funding bills for a particular country or force (Serafino et al., 2014: 3–4; Tate, 2011; Mertus, 2008). Such legislative controls come to bear in the case studies on LHSFs in Iraq and Syria discussed later. However, this has largely happened on an ad hoc or context-specific basis, and is far from a standard approach when it comes to US foreign assistance to non-state actors.

Box 1　The Leahy law

The "Leahy law," first promulgated in 1998, prohibits US State Department or Department of Defense assistance from going to foreign security forces that have committed "Gross Violations of Human Rights". It was designed primarily for US assistance to other state forces, but could also apply to paramilitary or nonstate forces linked to a foreign state (Serafino et al. 2014: 1). The Leahy law functions by cross-checking units or individuals against a database maintained by the State Department's Bureau of Democracy, Rights, and Labor (DRL), the INVEST database. When this database check reveals derogatory information or if other "credible information" of human rights violations is found, the individual or unit will be "blocked" from funding unless steps are taken by the host government to hold them accountable, known as "remediation" (Mahanty 2017; State 2021). Remediation could be satisfied through formal charges and prosecution for the individuals involved, or by other disciplinary measures, re-training, or re-organization of the unit (GAO 2013: 6–7).

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9   See, for example, Foreign Operations, Export Financing and Related Programs Appropriations Acts of 2001 (Pub L No 106-429, 114 Stat 1900, 2000) 563; Department of Defense Appropriations Act of 2001 (Pub L No 106-259, 114 Stat 656, 2000) 8092(2).

10   In all country examples reviewed and in all interviews with US officials, there was a common shared understanding that the Leahy law applies to state partners. However, the term foreign security forces is not specifically defined in law, and thus might theoretically extend to quasi-official or paramilitary units acting alongside state forces of another country (Serafino et al., 2014: 1, citing DOD Joint Publication 3-22, Foreign Internal Defense, 12 July 2010: VI–31).

As a whole, the law and guidance on such measures is thin. There is no consensus about what level of controls or accountability is necessary or appropriate for non-state or quasi-official forces. This area of practice is still nascent, under-documented and under-explored. This paper aims to help fill that gap by examining the use of risk mitigation measures or controls across US partnerships with local, substate and non-state forces in Afghanistan, Syria and Iraq.

The aim of the paper is to offer insights into this emerging area of practice, along two fronts. First, given that this is still an emerging area of practice, this report gathers comparative lessons and insights at a technical level, which might inform future practice. What were some of the common approaches or mechanisms deployed? How well did these different mechanisms work in addressing the risks in question? What challenges or dynamics frustrated risk mitigation efforts?

In addition, though, in most cases the effects of such risk mitigation approaches go beyond a technical or tactical level. As the case studies illustrate, many of these risk mitigation mechanisms came with trade-offs, slowing the speed of assistance or mobilisation, limiting potential partners or absorbing significant staff time and resources. In some cases, such consequences were significant enough to prevent the programme in question from achieving its objectives, or resulted in the programme's failure. There were also indications that these risk mitigation mechanisms could detract from larger policy decision-making in other ways, by deflecting a realistic appraisal of the risks and trade-offs involved in a given course of action, or shifting the nature of the political conversation and decision-making calculus surrounding these forces. The case studies each consider both the implementation challenges and records of the controls and risk mitigation mechanisms at issue and some of these wider challenges.

1.1   Methodology, terminology and framework of analysis

Most of the research for this study was conducted between 2016 and 2019, as part of a project led by the Global Public Policy institute (GPPi) on the role and impact of LHSFs in Afghanistan, Iraq and Syria. The analysis draws on 168 in-depth, qualitative interviews with US civilian and military officers; representatives of partner governments and militaries; Iraqi and Afghan officials and forces; representatives of the military and political bodies of the Autonomous Administration of North and East Syria (Rojava); international legal specialists; and international and national policy analysts, journalists and observers.

The vast majority of interviews were conducted by the author, with a limited number carried out by GPPi's partners or local researchers in Syria (Rojava only), Iraq and Afghanistan. Interviewees were identified through a process of snowball sampling. Most interviewees preferred to speak anonymously. Given that, and to further protect identities, the default preference is to quote all interviewees anonymously unless permission to do otherwise was explicitly granted by the interviewee.

The analysis included an extensive literature review of policy documents or studies that provided evidence on the control mechanisms or groups in question, and of other academic literature. Many of the groups and dynamics at issue have been discussed through other lenses or analytical frameworks – through the lens of proxy or surrogate warfare, or as an example of agency theory within such proxy dynamics; as part of so-called 'new war' modalities or hybrid warfare; or more broadly as manifestations of hybrid security governance or political orders, which sometimes form part of larger state-building or peacebuilding discussions.[11] It would not be possible to offer an analysis that fully captures the richness of these different lenses in one paper, nor is that the aim. The major contribution of this paper is to offer empirical evidence and policy as well as practitioner reflections. Although it is hoped that this may enable further academic exploration, the discussion and analysis do not focus on these theoretical lenses but on bringing to bear evidence of this emerging practice.

The initial purpose of this research was to better understand Western state policies and options for preventing or deterring violations of human rights or laws of war by non-state or quasi-official armed groups receiving their support. As the research evolved, it became difficult to distinguish legal or human rights-related risks from other types of risk that states try to guard against when working with such forces. Many of the mechanisms designed to prevent or address human rights or conduct-based concerns are deployed alongside, and are inseparable from, those designed to prevent security risks or other political repercussions. For example, the vetting schema for a given force may be designed to look for both past human rights violations and other security risks. In addition, there are inevitably trade-offs between human rights and security imperatives, and capturing efforts to mitigate both categories of risk allows that dynamic to be explored. Given this broader focus, this paper does not adopt a purely legal analysis, but is still influenced by a more regulatory or due diligence approach than other analyses of these groups, for example those anchored in power dynamics or socio-institutional analysis.

What to call these forces, and how to classify them, has been the subject of rigorous academic debate. Groups in the case studies include anti-government forces, often described as opposition forces or rebels, as well as those aligned with the sovereign government, which might be described as pro-government militias, paramilitary or state-parallel forces (Jentzsch et al., 2015; Aliyev, 2016; Ahram, 2011; Salehyan, 2009). Because they receive US or other support, many of these groups might alternatively be labelled proxies or 'surrogates' (Mumford, 2013; Byman, 2018; Marshall, 2016), or 'auxiliary' or 'partner' forces, where deployed alongside US forces or intelligence operatives (Long, 2011; Giustozzi, 2012). Some of the groups in question have featured prominently as case studies of so-called community defence groups, community watches, home guards or self-defence

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11   A full discussion of this literature is beyond the scope of this report. A small sample representing some of these different analytical frames would include: Hughes, 2012; Kaldor, 2010; Ahram, 2011; Mac Ginty, 2010; Goodhand and Sedra, 2013; Menkhaus, 2016; Bagayoko, 2012; Waldman, 2018; Cochran, 2010; Holden, 2004; Berman and Lake, 2019; Stys et al., 2020; Salehyan, 2010; Marten, 2012; Derksen, 2016a; Eaton et al., 2019; Sayigh, 2018; Mansour and Salisbury, 2019; Mukhopadhya, 2014; Thornton, 2015; Biddle, Macdonald and Baker, 2018; Lacher, 2020.

forces (Clayton and Thomson, 2014; Biberman, 2017; Long et al., 2012; Jones, 2012). A large body of literature has also discussed such forces in connection with warlords, criminal networks and gangs (Marten, 2011; Felbab-Brown et al., 2017; Berti, 2018).

Lastly, some of these groups have been discussed as 'hybrid armed actors', in a way that is connected to but also distinct from broader discussions of 'hybrid political orders' or 'hybridity' within the literature on state-building and security governance (Ahram, 2011; Sayigh, 2018; Bagayoko, 2012; Lawrence, 2012). Policy researchers and analysts have more recently begun to use the term 'hybrid armed actors' (or alternatively 'near-state actors') to describe a powerful subset of armed groups in the Middle East and North Africa that appears to straddle state and non-state definitions, statuses and power bases, allowing them to compete with or substitute for the 'state' (Cambanis, 2019; Mansour and Salisbury, 2019; Crawford and Miscik, 2010). Others have used 'hybrid' or 'quasi-official' descriptors when considering any paramilitary or irregular force – whatever its size or significance – that enjoys some degree of legal deputisation or recognition, but lacks full legal status or international recognition, for any number of reasons (Ahram, 2011; Gaston and Clark, 2017).

This paper does not attempt to advance the debate about these forces' classification or to further unpick any of the above terminology. Instead, because the case studies capture forces that span these different categories and statuses, it will refer collectively to the groups examined as LHSFs.

1.2 Selection of case studies

Afghanistan, Syria and Iraq were chosen as case studies because of the range of LHSF initiatives in each of them over the past two decades. In addition, the substantial differences in conflict, social and political dynamics between them allowed a comparison of how different operating environments, legal bases for intervention and security or mission objectives might influence the LHSF relationship.

Box 2 summarises the forces examined in each country. In some cases, the period examined is shorter than the full duration of the force or of US assistance to it, either because of a desire to isolate a particular period or modality of US assistance or because the force continued to exist beyond the period of active research.

Box 2   List of case studies

Afghanistan
- Afghan Local Police (2010–2020)
- Afghan National Army-Territorial Force (2018–2020[i])

Syria
- Non-lethal assistance to the Free Syrian Army (2012–2014[i])
- Central Intelligence Agency (CIA) covert support to the Free Syrian Army (mid-2013–2017)
- New Syrian Force (October 2014–October 2015)
- Syrian Democratic Forces (end-2014–2019[i])

Iraq
- Tribal Mobilization Force (2014–2019[i])

[i] End date denotes the end of the period considered in the case study; this force and the US partnership with them may have continued in some form beyond this date.

This report includes most of the major US-supported LHSF initiatives in each country over the timespan in question, but it should not be considered exhaustive.[12] Those included have been selected to capture some of the most prominent and significant initiatives, and to represent a spectrum of LHSF types and support relationships. The case studies include clearly non-state forces by any legal or practical definition (for example, the forces affiliated with the Free Syrian Army); those that might represent this emerging 'hybrid' category of forces with de facto, state-like control and authority, but with no sovereign legal recognition (the Syrian Democratic Forces (SDF)); local forces with some degree of para-statal or quasi-official status, but still operating largely as distinct militias (the Afghan Local Police (ALP) at their inception or the Tribal Mobilization Forces (TMF) in Iraq); and those fully vested as legal, substate forces (the Afghan National Army Territorial Force (ANA-TF), the ALP in its later stages). Although not offered here

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12   For example, in all three countries Special Forces or foreign intelligence agencies frequently turned to LHSFs as auxiliary forces on counter-terrorism or intelligence missions, often as one-off or short-term tactical partnerships, but some enduring over a number of years (Mazzetti, 2014a; Naylor, 2015; Suhrke and De Lauri, 2019). Leading up to and concurrent with the Afghan Local Police (ALP), there were also a number of other quasi-official and local defence force initiatives, which have been covered in other literature but are only briefly noted in the Afghanistan case study (Gaston and Clark, 2017; International Crisis Group, 2015). In Syria, in between and overlapping with the two Train and Equip initiatives discussed, there was also a limited Train and Equip endeavour jointly managed by the US and Turkey with northern Syria groups, and also US support to local forces in al-Tanf in southern Syria. Neither of these is fully analysed, nor are the different European initiatives (lethal or non-lethal) for supporting Syrian groups.

as a case study in itself (in part because of their differing status), some additional inferences will be drawn from research on the Peshmerga, the armed forces of Iraq's Kurdistan Regional Government (KRG), undertaken as part of the same GPPi research project.

Selecting cases that run the spectrum from non-state to quasi-state to substate partners is important because the status of these groups is often ambiguous and fluctuates over time. Although some may bear a degree of legal title, such designations are often recent and have not fully cohered. Many of these forces maintain separate local, regional or national lines of command and control, or otherwise continue to operate more like non-state forces. Providing case studies that traverse the full range of non-state to quasi-state or substate forces helps to recognise this fluidity and also captures the reality of partner choices in these environments.

In addition, examining forces with a range of statuses helps in drawing inferences about the success of institutionalisation within the state as a safeguard or risk mitigation strategy in itself. In many of the case studies, vesting local forces within a state institution was part of the strategy to control them, essentially placing them under the regulations, oversight and disciplinary or sanctioning instruments of the host state. Some studies have suggested that institutionalisation produces more accountable behaviour towards communities and better security performance (Gosztonyi et al., 2015), a theory that case studies like the ALP, the subsequent ANA-TF and the TMF in Iraq all test to varying degrees.

A last reason to consider this full range of forces is that, although each group and context presents unique challenges, the tools applied by the US or other foreign partners are often the same. How well those tools work, or the trade-offs they involve, often does not vary by the legal status of the group in question, but by other factors within these forces, or within the surrounding environment. The Syria case studies illustrate the substantially different challenges – in terms of the practical ability to manage forces, legal concerns and political risks – inherent in a hostile intervention context. Nonetheless, many of the issues and trade-offs that manifested in US attempts to vet, monitor, sanction or otherwise hold accountable Syrian non-state forces were the same challenges faced in trying to rein in community forces and militias in rural Afghanistan, or to support loosely organised and politically marginalised Iraqi tribal forces with a limited US field presence. The purpose of including these different types of force is not to equivocate their legal status or relationships, but to draw out common challenges across these different types of forces and contexts.

2   Afghanistan

LHSFs have been an inseparable part of the post-2001 landscape in Afghanistan, and well before that. US and international forces relied on anti-Taliban Northern Alliance militias as ground forces for the 2001 invasion of Afghanistan. These forces, alongside a range of other tribal forces, factional militias and strongmen, were then incorporated into the post-2001 security architecture. They became the Afghan National Security Forces, auxiliaries to international forces or CIA teams, or private security company guards, protecting international military bases, embassies and private businesses or organisations (Gaston and Clark, 2017; International Crisis Group, 2010; Aikins, 2012).

Despite efforts at disarmament and integration, warlords, militias and factional networks remained a dominant force in Afghanistan in the post-2001 period, challenging rule of law and Afghan state control, and often responsible for horrific abuses and war crimes (Derksen, 2015; Human Rights Watch, 2015a). Moreover, the Afghan National Security Forces were still very weak, particularly in the Pashtun rural areas where the Taliban drew its strength. As a result, Afghan leaders or international forces frequently turned to militias and strongmen in areas outside Kabul, resulting in a range of semi-official LHSF programmes or de facto partnerships (Gaston and Clark, 2017; Giustozzi, 2012).

Members of the Afghan Local Police, a US-funded local force initiative from 2010 to 2020, hold down an outpost in Nad Ali district, Helmand province in 2016. Photo credit: Andrew Quilty

Many of these early LHSF initiatives were branded failures, in part because of the abusive, unruly and corrupt behaviour of the LHSFs and militia forces in question (Wilder, 2007; Moyar, 2014). As a result, when US Special Operations Forces (SOF) proposed a new round of tribal and community mobilisation in 2009, they were careful to suggest a greater number of controls and safeguards. The subsequent case studies discuss those safeguards and their results in two related LHSF initiatives, the ALP, created in 2010, and the ANA-TF, created in 2018.

2.1 Afghan Local Police

In 2009, SOF began piloting a new community-based counterinsurgency initiative, mobilising tribal and community forces into so-called 'local defence forces' against the Taliban in strategic areas (Gaston and Clark, 2017: 5–16; Lefèvre, 2010). The idea was instantly controversial. The Afghan government argued that it harked back to militia mobilisation under the Communist regime in the 1980s, which had proved devastating for the state and the civilian population (Boone, 2009; Partlow and DeYoung, 2010). Civilian officials including then US Ambassador Karl Eikenberry argued that mobilising 'unregulated' militias outside state control would 'reinforce a traditional "worst practice"', and increase community divisions and violence (Eikenberry, 2009: para. 2; Goodhand and Hakimi, 2013). Even military analysts and commanders – at the time pursuing a counter-insurgency strategy the goals of which included improving 'good governance' and 'population protection' – were worried that uncontrolled militias would create strategic consequences, tarnishing the Afghan government's reputation and strengthening the Taliban's appeal (Moyar, 2014; McChrystal, 2009).

To counter such arguments, SOF and their advisors promised 'tight control mechanisms that prevent militia from challenging the state and committing human rights abuses' (Jones, 2012: v). As a 2011 Human Rights Watch report observed, 'the Afghan government and the US say they have learned the lessons of the past and that this time things will be different' (Reid, 2011: 2–3). Such arguments prevailed and the pilot local defence forces were approved for expansion as the 'ALP' in August 2010.

The ALP (and its precursor pilot programmes) were layered with multiple checks and controls. For ease of discussion, these are grouped according to the actors who would be responsible for implementing them: community leaders or actors, foreign military personnel and US institutions, and the Afghan government.

Figure 1 Afghan Local Police district locations, 2011–2017

2011: ALP established in 11 provinces

District-level activity
- ALP present
- No ALP
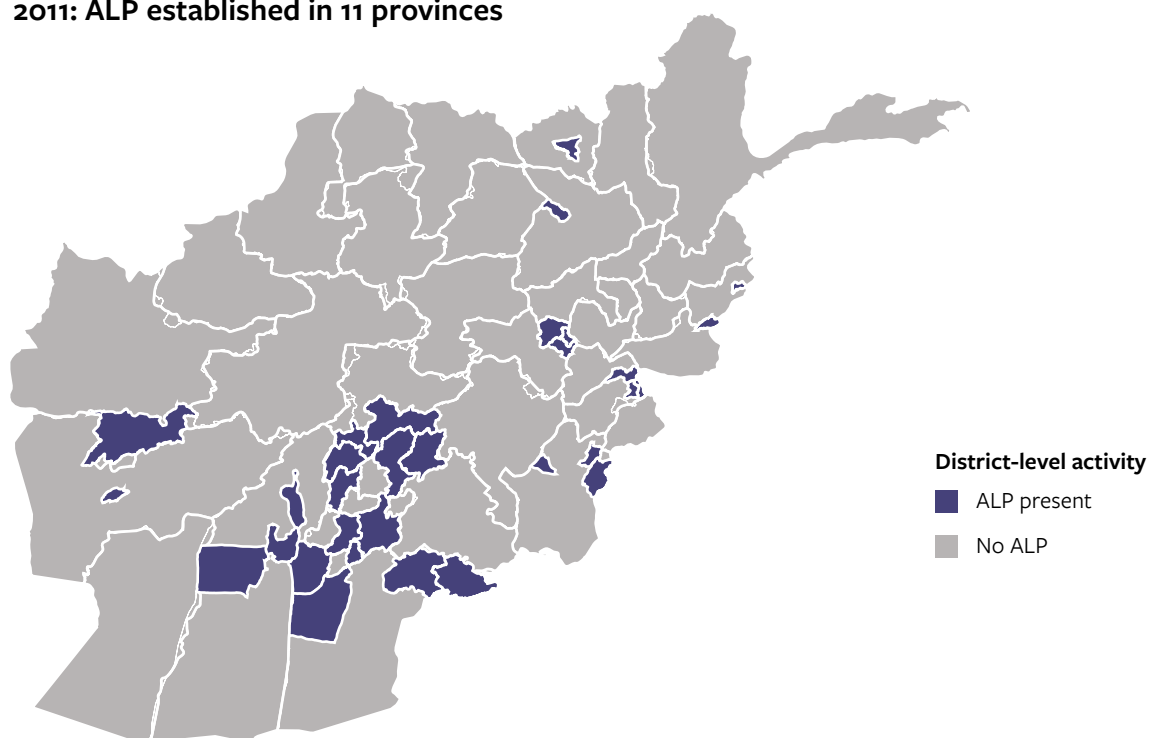
2017: ALP established in 32 provinces
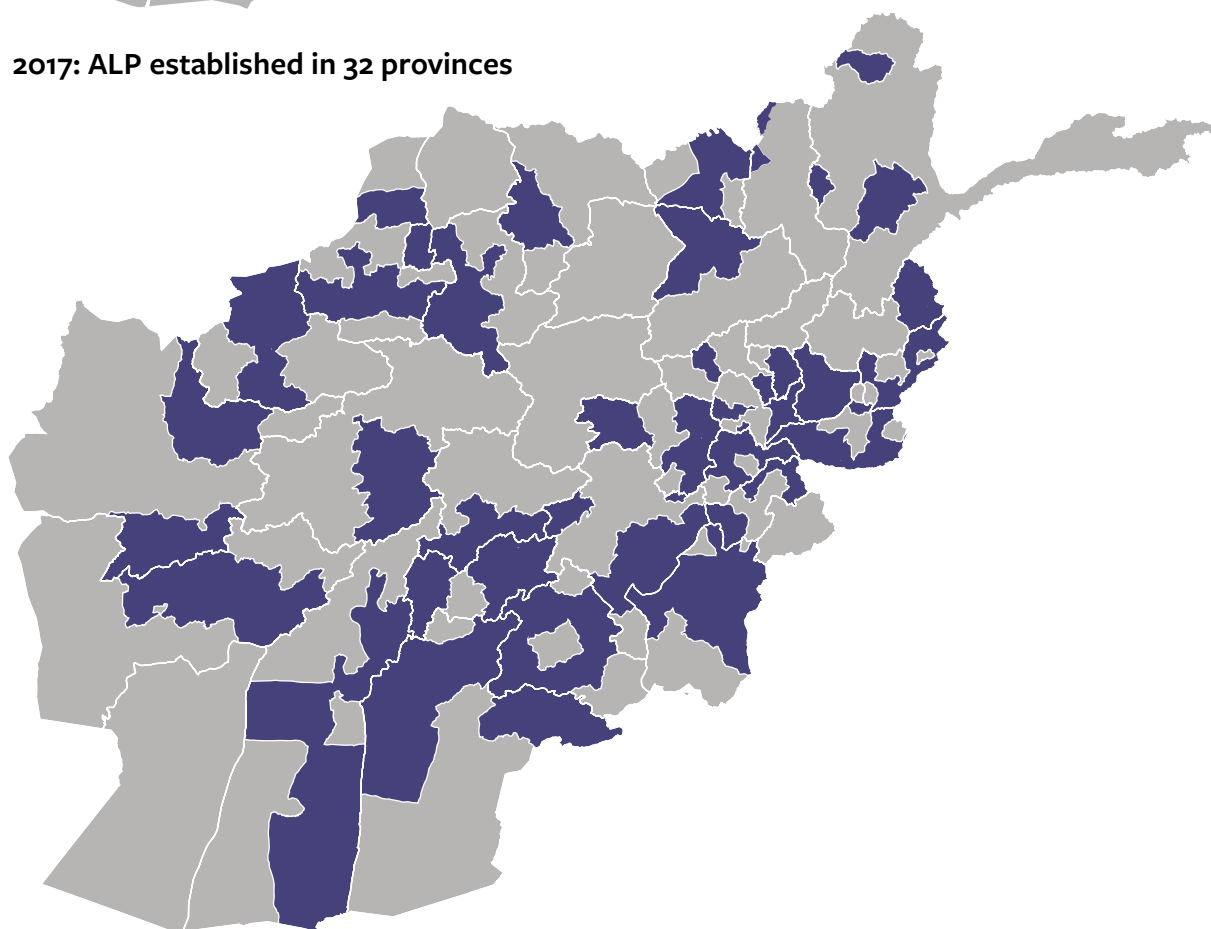
2.1.1 Community controls

A core premise of the local defence initiatives was that communities and community social structures (for example, pre-existing tribal or social structures and traditions) would be better placed to observe and check abusive or counter-productive behaviour than any outside force or state actor. The mistake with past militia mobilisation, it was argued, was that they recruited from existing commander networks, resulting in militias beholden to warlords and strongmen, rather than communities (Jones, 2012; Fair and Jones, 2009: 25). As a result, the original model for the local defence forces was that communities would have strong checks and controls: a say in whether a unit was established in their community, and then the ability to nominate or veto candidates (Saum-Manning, 2012: 10–11; Clark et al., 2020: 26–27). As one SOF advisor described the initial selection model: 'If the *shura* [the community representatives] was OK with them, we were OK with them'.[13] Once chosen, it was presumed that community structures and leaders would be in a natural position to oversee and check local forces, enforced through societal pressure and traditions and 'kinship and familial' ties (as one SOF commander framed it).[14]

2.1.2 International constraints and oversight

There was also a layer of scrutiny and oversight from international military engaged with the local defence forces and then, once established, with the ALP. In the early pilot programmes, SOF embedded in a given community for weeks or months, ensuring that the site was appropriate and not likely to fuel local conflict or militia empowerment, and mentoring the local defence forces (Jones, 2012: 29–30; Lefèvre, 2010). One former US intelligence official co-located with SOF in southern Afghanistan at the time described the SOF approach to building local defence forces as almost 'utopian' in nature, infused with the principles of 'good governance' and civilian protection.[15]

For the ALP as well, SOF were to be heavily engaged in recruitment and mobilisation, although rapid expansion and increasing numbers of ALP limited the degree of scrutiny and mentorship at each site (Clark et al., 2020: 27–28). Over time, an increasing number of formal safeguards and controls would apply. ALP were given 3–4 weeks of training, including a primer on human rights and the laws of war (Clark et al., 2020: 26–27; Lefèvre, 2010).[16] There was also a code of conduct, covering general conduct standards and principles, as well as explicit restrictions on risky activities or operating modalities. For example, ALP were limited to only defensive operations, and were prohibited from operating more than 1 km outside their home village. After later amendments to the code of conduct and programme restrictions, they would also be restricted from engaging in arrest and detention operations.

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13   Interview with RAND advisor Rebecca Zimmerman, 20 June 2018, Washington DC.
14   Interview with Special Forces Commander involved in ALP oversight, Kabul, Afghanistan, 12 November 2017.
15   Interview with former US intelligence officer, 15 June 2018, Washington DC.
16   During the local defence pilots and first few years of the ALP, three weeks of training were provided. By 2014, the duration had increased to four weeks, significantly due to allegations of abuse and misconduct (US Department of Defense, 2014: 59).

The US, the sole funder of the ALP, also created vetting, oversight and sanctioning mechanisms, which increased over time. US forces used biometric and background information to screen for terrorist or Taliban affiliation, and insisted on registration of all weapons (Saum Manning, 2012: 11). Although not applied in the early pilot programmes, at least from 2014 onwards the ALP were subject to Leahy law vetting and potential sanctions; units (or at least their commanders) were screened for any evidence of past GVHR, and some may have been cut from the programme where such evidence surfaced (CFSOCC-A, 2010; 2011; Gaston, 2017b). In response to allegations of human rights abuses, in September 2011 the Special Forces command in charge of the ALP issued a new rule that US forces working with the ALP must report allegations of abuse and cease partnership where 'probable cause' existed (Saum-Manning, 2012: 18 n. 54).

2.1.3 Afghan government oversight and controls

The ALP came under the Ministry of Interior (MoI), and were subject to all regular MoI regulations and disciplinary procedures (Jones, 2012: 30–31; Saum-Manning, 2012: 11; Clark et al., 2020: 26–27). At a local level, they came under the command and oversight of the local Afghan National Police (ANP) chief. The MoI and Afghan intelligence service also conducted background checks to screen out those with criminal records or Taliban ties. Over time, as the ALP became a more institutionalised force, some of these institutional control mechanisms developed further. From mid-2012, a specific ALP monitoring and accountability cell was created within MoI headquarters in Kabul to investigate ALP abuses and recommend appropriate disciplinary action or criminal referrals (Gaston and Clark, 2017; UNAMA, 2016a; International Crisis Group, 2015).

2.1.4 Implementation hurdles and structural challenges

Although the list of controls applicable to the ALP was robust on paper, many were abandoned almost as soon as the programme was initiated. There was substantial pressure to expand the ALP rapidly, and it grew from 1,000 to 17,000 members in the first two years (Saum-Manning, 2012: 9). With such rapid growth, slow and deliberative site selection, community consultation and careful recruitment, and implementation of mentoring, training and oversight, fell by the wayside (Clark et al., 2020: 27–28; Felbab-Brown, 2016). One monitor of the programme said that, in northern Afghanistan, SOF were given less than a week to recruit and mobilise an ALP. With such time pressures, it was often more expedient to mobilise units through known commanders, and communities complained that they were never consulted (Clark et al., 2020: 28–31; Vogt, 2011; Goodhand and Hakimi, 2013).

Under pressure to expand the ALP to ever-more sites, issues that should have triggered checks or blocks – that a community had not agreed to an ALP or chosen its members, or that a warlord or commander dominated the force and the area – were no longer decisive.

> The ALP pulled away from the original concept of local elders deciding and vetting who joins ALP based on community needs, to something much more like warlordism … Local warlords coopt the process, pulling it out of the hands of local elders and hijacking the local ALP for [their own] militia development.[17]

This rapid mobilisation undercut the potential for community controls to work in most areas from the start. But even with perfect implementation, they would likely have worked in only a minority of communities. A number of analysts, and even military leaders, argued against the local defence model, on the grounds that it was based on outdated notions of tribal self-defence traditions (known as *arbakai*), which were also not universal across Afghanistan (Vincent et al., 2015; Boone, 2008). Such arguments suggested that the sort of tribal leadership or community social structures that community controls were based on might not be present or resilient. A 2020 retrospective study of the ALP supports this contention: it found that the 'best case' examples of the ALP had been those where community consultation and community controls had happened 'to plan' (Clark et al., 2020: 52–53). However, it also found that the strong community structures and leadership necessary for these controls to work were in short supply in Afghanistan. Decades of communal conflict, displacement, shifts in socio-economic dynamics and targeting by or competition from other armed groups had winnowed down community structures (Gaston et al., 2013; International Crisis Group, 2003). The findings suggested that, while community controls offered the most promise of holding local forces accountable, they would not work in all areas, and might be particularly weak in the contested communities at which the ALP programme was aimed.

Afghan institutional oversight fell prey to a similar catch-22: the ALP was designed to fill security gaps and establish pro-government forces in areas where the Afghan security forces and state control were weakest. However, precisely because of this lack of state control, Afghan forces and the MoI were least able to hold community or militia forces to account in these areas. In an International Crisis Group study of the ALP (2015: 16), one senior police commander in Kunduz said that he was 'powerless to modify the behaviour' of the ALP or other militias in his area without substantially more forces. The MoI in Kabul had few resources or incentives to investigate complaints in far-flung areas of Afghanistan.

The practical barriers to access to territory and limitations on investigating allegations also challenged mechanisms of international oversight and control. As noted, rapid expansion of the ALP meant that the US military was less able to exercise the close oversight and mentorship envisioned in the model. With international withdrawals in 2014 'we no longer had eyes on the ground on the program', according to one US SOF commander.[18] With fewer resources in the field, US human rights monitors in the Kabul Embassy or in Washington were less aware of complaints (at least those specific enough to identify a unit to block) and had fewer opportunities to investigate

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17   Interview with US State Department officer, 1 September 2016, Washington DC.
18   Interview with SOF commander, 12 November 2017, Kabul, Afghanistan.

them, undermining the potential to apply the Leahy law. Alongside such practical constraints, political priorities and security exceptionalism were also at play. A loophole in congressional legislation allowed the Department of Defense (DoD) to waive application of the Leahy law in Afghanistan where security needs demanded it (Gaston, 2017b), and subsequent investigations suggested that this waiver was used broadly (SIGAR, 2018).

The MoI appeared to do better at investigating misconduct and applying disciplinary measures than international mechanisms. While still far from perfect, the ALP monitoring and investigations unit improved over time, and investigated dozens of allegations annually from 2012, recommending an increasing number for disciplinary action or prosecution. More than 100 ALP members were arrested and referred for prosecution in both 2015 and 2016 (UNAMA, 2016b: 67; 2017: 97). By contrast, only a handful of ALP may have ever been blocked under the Leahy law (if that). The rule noted earlier, that SOF would cut off abusive ALP units, does not appear to have been applied despite substantial evidence. A 2011 survey of US SOF who mentored the ALP estimated that 20% of ALP mentees had committed 'physical abuse/violence', with additional reports of bribe-taking, fraud, rape and drug trafficking (International Crisis Group, 2015: 8).

Although institutional mechanisms such as the monitoring and investigation unit had their merits, Afghan institutionalisation introduced a major drawback. As soon as the programme was brought under the Afghan government, politicians, power-brokers and politico-military factions used their power and influence to get forces and commanders loyal to them into the programme, subverting control mechanisms such as community selection and careful site selection (Clark et al., 2020: 84–89; Derksen, 2016b; Goodhand and Hakimi, 2013: 16).

Despite these issues, institutional controls did achieve some positive results. A longitudinal study comparing community attitudes towards formalised 'ALP' with those of unofficial *arbakai* or militias in northern Afghanistan found that the official ALP were perceived as performing better in terms of security and were less feared (Gosztonyi et al., 2015). As the subsequent section on the ANA-TF discusses, the larger lesson drawn by US and Afghan officials was that institutionalisation was a more important control than community or internationally based control mechanisms.

To fully assess the perceived success or failure of controls within the ALP, it is helpful to briefly consider the ANA-TF, which was significantly designed to correct for the missteps with the ALP. The subsequent section briefly discusses these efforts, before returning to some larger lessons from the Afghanistan LHSF experiences.

2.2 ANA-Territorial Force

In autumn 2017, the Afghan President and the US commanding general in Afghanistan began discussing a new local defence force for the Afghan National Army (ANA). The initiative was largely motivated by a need to confront increasing security threats, but at less cost given likely international funding cuts. To do so, the Afghan and US leadership turned again to the idea of

local forces, which were cheaper to mobilise and sustain. Moreover, despite the fact that the ALP had become something of a public eyesore, military officials argued that the model of local defence forces had proved sound: in many areas the ALP were effective, preferred by the community and less likely to retreat (Clark et al., 2020: 42–48). Where the ALP had gone awry, they argued, was due to the haste with which the ALP had been mobilised, and shortcuts in safeguards and controls.

For all these reasons, at the same time that the ALP was being closed down,[19] the Afghan government began developing and raising a new local defence force substantially based on the same model. The ANA-Territorial Force (ANA-TF), was officially created in February 2018. Most of those designing and advising the ANA-TF were the same international military officers and advisors who had developed or overseen the ALP, and they had no wish to recreate the same mistakes. The Afghan Ministry of Defense (MoD) for its part had no interest in tainting its professional military forces with the militia-like results of the ALP (Townsend, 2019: 77; Clark et al., 2020: 65). As a result, the ANA-TF was largely designed around what was perceived to have worked, and not worked, with the ALP.

The ANA-TF largely carried over the idea of an accountable and tightly controlled local force mobilisation, and most of the technical control mechanisms that had been developed for the ALP. This included (see chart at Clark et al., 2020: 66):

- Careful site selection to avoid warlord or militia empowerment, local conflict or other risks.
- Multi-pronged vetting and background checks.
- Training, including on human rights, laws of war and other conduct restrictions.
- Multi-layered monitoring and oversight.
- Potential for disciplinary action, prosecution or discharge.

However, because of the perceived mistakes with the ALP, there was renewed attention to actually enforcing these controls with the ANA-TF. There was much greater attention to slow expansion and mobilisation, and greater deliberation over site selection and recruitment (Clark et al., 2020: 63–71).

There were also key differences. With the ANA-TF, there was much greater emphasis on institutionalisation and formal controls. As one of the strategic advisors who had helped develop both the ANA-TF and ALP programme argued: 'This is the lesson learned from the ALP: It is important to deal with institutionalisation and accountability'.[20] From the start, the ANA-TF was more firmly entrenched in the MoD. At a tactical level, a regular ANA commissioned officer was to be in charge of each unit, rather than a locally appointed commander, as with the ALP (Clark
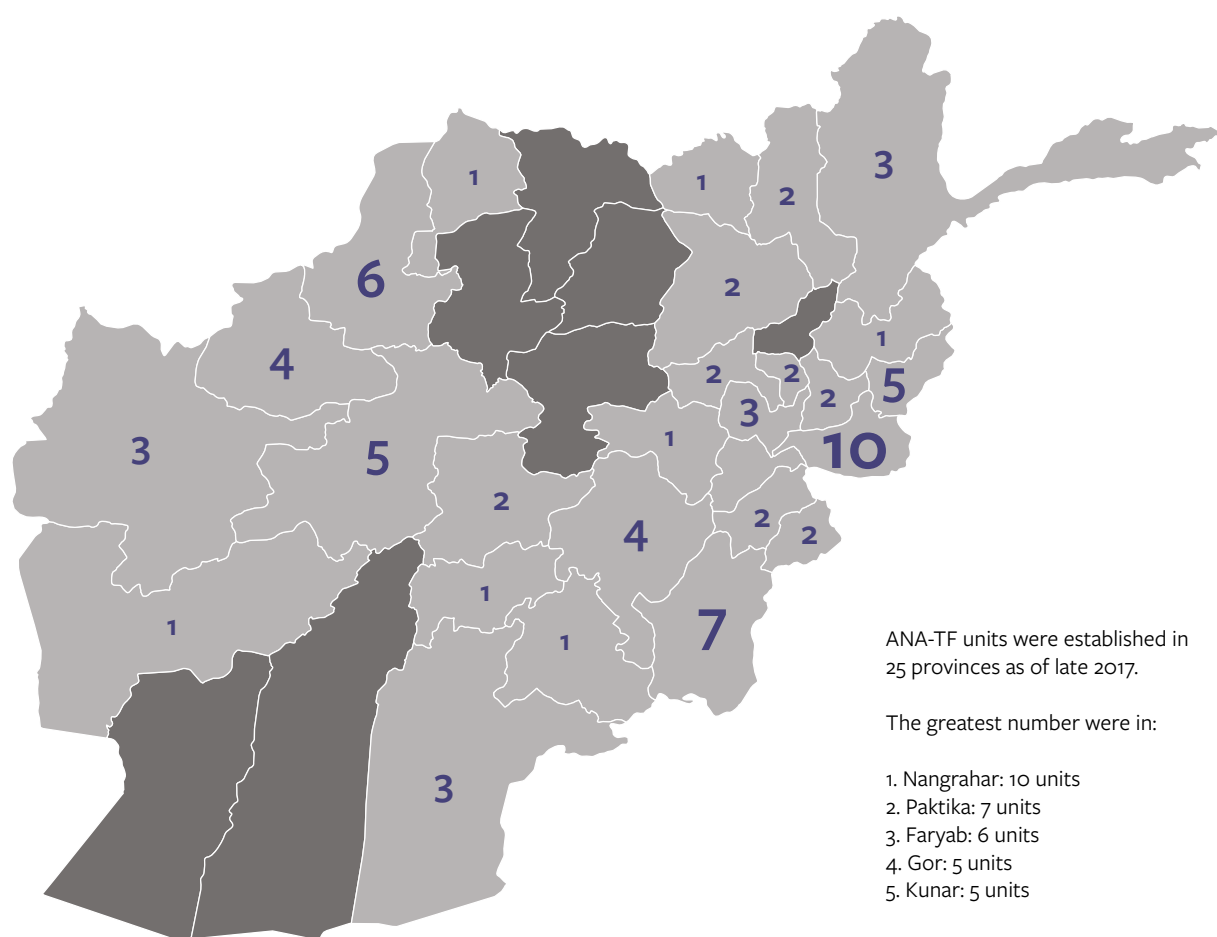
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19   The US stopped funding the ALP in September 2020. The intention to do so, effectively dissolving the force, was already under discussion in the autumn of 2017.
20   Telephone interview with ANA-TF advisor, 10 June 2019.

et al., 2020: 65). ANA-TF would live in barracks rather than in their homes wherever possible, and instead of the 3–4 weeks of training given to the ALP, the ANA-TF received the same 12 weeks of training as regular ANA (Townsend, 2019: 80–81).

By contrast, some of the other controls that featured in the ALP programme – in particular community controls – were all but absent. The ANA-TF kept the rhetoric of community engagement and selection, but site selection and recruitment processes appeared to be almost wholly decided by Afghan inter-ministerial processes, rather than by community input (Clark et al., 2020: 63–71). There was a strong preference for recruiting locals who were former ANA or ANP, while many local community members or members of previous local defence initiatives (the ALP, or another local force initiative known as the 'Uprising Forces') did not meet the ANA-TF criteria.

Figure 2 Number of ANA-TF units per province, December 2017

ANA-TF units were established in 25 provinces as of late 2017.

The greatest number were in:

1. Nangrahar: 10 units
2. Paktika: 7 units
3. Faryab: 6 units
4. Gor: 5 units
5. Kunar: 5 units

Source: GPPi/Ilja Sperling, CC BY-SA 4.0. Adapted from Clark et al., 2020: 68

In essence, the ANA-TF offered a competing vision to the ALP, in terms of what was needed to partner with – and control – local forces. The ALP was premised on working with militias or local forces in their decentralised and irregular form, but with some additional safeguards or controls. As one of the architects of the ALP, Seth Jones argued, a 'well-regulated militia appears to be an important – and perhaps an essential – part of a counterinsurgency campaign. Consequently, the emphasis of policymakers should be on the quality of regulation, not on whether a militia is inherently desirable' (Jones, 2012: v). The ANA-TF, working from the evidence of ALP failures, rejected this premise. Its answer to dealing with the risks associated with local forces was to fully integrate and institutionalise them into security institutions. The emphasis on institutionalisation was so great that, in the end, the force more closely resembled a local recruitment and deployment strategy for the regular ANA than a local force model.

Since most of the formation and deployment of units took place over the course of 2018 and 2019, and this research was largely concluded by 2020, it was too early to judge whether this greater institutionalisation would succeed. As of the time of the research, there had been no major reports of abuses by these forces. There also appeared to be greater efforts to block political interference with site selection and recruitment, which had shown some success (Clark, 2020).

However, there were also warning signs that the ANA-TF might be on the same trajectory as the ALP. Although there were strong early efforts to limit political interference in recruitment and site selection, by summer 2019 some of this resolve seemed to be weakening. Key politicians or power-brokers successfully lobbied for ANA-TF in their home areas, areas that otherwise did not match the criteria for site selection. In addition, when security pressures increased so did the pressure to quickly deploy forces, prompting some of the same shortcuts in safeguards and controls as with the ALP. Early in the mobilisation phase, US and Afghan leaders abandoned promises to first test and evaluate pilot models before moving to the next phase of expansion (Clark, 2020). Then, as Taliban pressure increased over the summer of 2019, a number of units were deployed to questionable site locations, nearly half without a full company, and/or with inadequate command structures and support in place (Clark, 2020: 30).[21] This was the same pattern of hasty mobilisation that had derailed many of the controls on the ALP.

US and Afghan officials suggested that these issues could still be corrected, for example by cancelling some ANA-TF sites or retraining units or commanders. However, the nature of these preliminary missteps, so similar to those with the ALP, points to some recurrent issues with controls.

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21   Interview with Afghan official, 23 July 2019, Kabul, Afghanistan; interview with international military advisor, 27 July 2019, Kabul, Afghanistan.

2.3 Afghanistan conclusions

The ALP programme might be seen as the first to try to fully 'regulate' militias. Proponents mooted the idea that it was possible for the US (and the Afghan government) to 'have their cake and eat it,' so to speak: to enjoy the advantages of partnering with irregular forces but without the risks that come with it through tight controls and oversight. There was a political element too: given the opposition to the force, it is unlikely that the ALP would have been authorised without the promise of greater regulation, oversight and controls.

While controls may have proved persuasive politically, they did not live up to their promise in terms of limiting the potential risks or side-effects of these forces. Some of the institutional controls showed incremental gains, and community controls proved highly effective in a limited number of areas. But the programme as a whole succumbed to exactly the sorts of issues anticipated, with abusive and predatory militias emerging in many areas. By 2012, the US commander in charge deemed one-third of ALP sites effective, but another third to be outright counter-productive, doing more to enable Taliban advances and insecurity than to counter it (Moyar et al., 2013). The force continued to enjoy this mixed record until its closure in September 2020.

Some of these issues might be attributed (at least partially) to under-implementation of safeguards and controls – from shortcuts taken as part of the rapid expansion of the force to the preference for strong or immediately available security forces over well-behaved ones. One senior US military commander with over a decade of experience mentoring Afghan forces argued that the failure to apply human rights or conduct-based controls to the ALP was part of a widespread issue: 'from what I've seen the US forces have never cut off Afghan forces on misconduct grounds,' he argued. 'In Afghanistan, the argument of operational expediency has always trumped.'[22]

However, a larger issue was that many of these tactical or ground-level controls proved insufficient to counter the larger drivers of risk and the hurdles to accountability in the environments where local forces operated. Technical vetting and selection controls could not alter the fundamental logic of the political economy surrounding these forces. Control over security forces and funding for armed groups had long been among the most coveted resources for warlords, power-brokers and strongmen, and these power-brokers and their factional networks were deeply enmeshed in the Afghan state. A programme that promised to support local forces through state funds was almost inevitably going to be co-opted by such actors, regardless of the degree of technical vetting. Such capture was facilitated, rather than limited, by institutionalisation within the Afghan government. The fact that such tendencies were already manifesting with the ANA-TF adds a further point of inference; even faithfully applied controls on site selection and recruitment could not fully check the neo-patrimonialist and rent-seeking tendencies deeply embedded in the system.

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22 Interview with former US military commander and Afghan security expert, 13 June 2019, Washington DC.

Controls also could not overcome the fundamental constraints to accountability that were pervasive in the sort of environments where local force units were mobilised. Both the Afghan state and international actors had limited remit in the parts of rural Afghanistan where ALP units were mobilised, negating the potential of most formal monitoring, disciplinary or accountability measures. Although community controls were designed to compensate for this, in most of these areas the authority of tribal or community actors and structures was as limited as government authority, and for the same reasons. The same cycles of conflict, displacement and 'rule by the gun' (International Crisis Group, 2003: 13) that hampered effective state control had also disrupted and eroded community structures and authority, particularly when it came to holding powerful armed groups in check.

3 Syria

The reasons driving US cooperation with non-state and community forces in Syria, and the environment surrounding them, were a world away from the counter-insurgency context in Afghanistan. There were certainly substantial challenges in trying to control or tame local forces, militias and strongmen in remote areas of Afghanistan. But at least there the US had tens of thousands of international forces available to oversee them, additional manpower from Afghan state forces, ample funding and open access to the terrain. In Syria, by contrast, the US had virtually no territorial access, no political will or appetite to deploy US forces, and an adversarial host state, the Syrian regime under Bashar al-Assad. In 2011, when support to Syrian rebels was first considered, there were still sanctions and congressional legislation barring any funds from going into Syria, and substantial resistance to any form of support for the opposition (Sharp and Blanchard, 2013: 20–22; Borger, 2013). The complexity of the Syrian conflict, with hundreds of non-state armed groups with shifting agendas and allegiances, and a host of external intervenors, many hostile to US interests, further complicated efforts by US institutions to operate, exert control or encourage accountability (Lister, 2016; Hughes, 2014).

Fighters associated with the Syrian and Arab coalition known as the Syrian Democratic Forces take part in operations to oust ISIL from Raqqa in 2017. Photo credit: Jake Simkin

All of this would affect not only the perception of risks, but also the tools available to try to mitigate them. As Lt General Mike Nagata, who was in charge of one of the US programmes for partnering with Syrian rebels, observed:

> 'Being able to accompany your proxy force is one universe where risks are more manageable; not being able to do so is a different universe where they are much less so. We were in that second universe'.[23]

Despite this very different context and risk profile, many of the same safeguards and controls adopted for Afghan local forces also manifested as the US embarked on initiatives with Syrian partner forces – from multi-layered vetting and monitoring processes to training and codes of conduct (for some but not all of the Syria initiative), to efforts to impose sanctions or checks to deter misconduct, or at least to cut US funding on those grounds.

The range of initiatives providing support to Syrian non-state forces varied greatly in size, the forces in question, the types of assistance and the goals of the programme. Four of these initiatives are discussed here:

- State Department non-lethal assistance for select groups of the Free Syrian Army (FSA).
- CIA covert and lethal support (including arms and anti-aircraft weapons) to select FSA groups.
- The first Congressionally authorised 'Train and Equip' programme for Syrian rebels to fight ISIL, called the 'New Syrian Force'.
- Subsequent DoD 'Train and Equip' support to SDF in north-east Syria.

3.1   Non-lethal assistance to the Free Syrian Army

In April 2012, as part of its commitments through the 'Friends of Syria' donor group, the US agreed to increase non-lethal assistance to the Syrian opposition. By early 2013 this included select groups within the FSA.[24] Much of this early assistance was implemented through the State Department's Bureau of Conflict and Stabilization Operations (CSO). Initially CSO provided food and humanitarian supplies, but by early 2014 this had expanded to include trucks and communications and logistical equipment (Blanchard et al., 2014: 29; Reuters, 2012).[25] US officials also considered providing portable air-defence systems (known as 'MANPADs'), but ultimately decided that such tactical equipment was too sensitive.

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23   Telephone interview with ret. Lt Gen. Mike Nagata, 12 October 2020.

24   The Netherlands, the UK, France, and Germany also provided non-lethal assistance to the FSA, ranging from body armour, trucks and transport, tactical (bullet-proof vests) and communications equipment to food, medical, and humanitarian supplies (Loveluck, 2012; Policy and Operations Evaluation Department, 2018; Ruys, 2014; Stark and Gebauer, 2013; BBC News, 2013).

25   The sort of vetting, monitoring and other scrutiny discussed also applied to other parts of non-lethal assistance programming, for example, to support Syrian local councils, opposition radio stations, emergency rescue and relief or the unarmed Free Syria Police (see for example, Office of Audits, 2015; 2016).

As the first iteration of US support to Syrian rebels, CSO assistance was highly controversial. Some argued that even non-lethal assistance was a form of intervention, providing support to those seeking to overthrow a sovereign government (Ruys, 2014; Loveluck, 2012). This was also an increasingly bloody, complex and internecine conflict, with human rights abuses and war crimes on all sides. The risk that US support would go to those engaged in atrocities, possibly even enabling such abuses, was extremely high.

State Department officials were also concerned that US funding or materiel would fall into the hands of terrorist and extremist groups. By late 2012 the extremist group Jabhat al-Nusra had become one of the most powerful forces among the Syrian opposition, and by the autumn of 2013 ISIL had established a power base in the Syrian city of Raqqa. If US-provided materiel or support was passed on to these groups, or seized, this would have provoked significant public and policy backlash, and potentially legal consequences under US provisions prohibiting 'material support' to 'designated terrorist organizations' (DTOs) (18 USC §§2339A and 2339B).[26] Broadly interpreted these provisions can result in felony imprisonment even if the support was not given with the intent of furthering terrorism (Doyle, 2016; Holder v. Humanitarian Law Project, 130 S. Ct. 2705, 2010). As one State Department appointee recalled, 'If anything went wrong – if something negative got out on the media, there was no way to undo or explain it. Those managing the programmes knew that in such a scenario it would be their jobs or their careers sacrificed, or worst case going to jail'.[27]

In response, US officials tried to steer assistance away from groups they viewed as 'too Islamist', with a clear affiliation with extremist groups, or in areas likely to be overrun by them (Stein, 2017; Lister, 2016). This proved challenging in practice. Internally, US policy-makers described the FSA as 'marbled' – so intermixed that it was virtually impossible to distinguish between more secular or 'moderate' groups and those whom the US viewed as 'too Islamist' or extremist.

Although legally there were few constraints or obligations on the programme due to the nature of the funding,[28] CSO adopted a number of control mechanisms to try to mitigate the risks. There was a heavy emphasis on vetting, primarily for evidence of human rights abuses or Islamist affiliation, but also potentially screening out groups based on other issues or misconduct. Although the Leahy law did not formally apply, CSO decided to apply a 'Leahy-like' process as a matter of policy (Byman, 2016: 25). After consulting with the Bureau for Democracy, Rights and Labor (DRL), which manages

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26   For example, when the BBC Panorama programme reported that materiel intended for the Free Syria Police had fallen into the hands of Nusra or ISIL affiliates, it caused a public scandal that nearly ended the programme (Panorama, 2017).

27   Interview with former State Department advisor, 24 March 2018, London.

28   Non-lethal assistance was funded initially on emergency and contingency funding, which allowed the president to authorise funding notwithstanding pre-existing sanctions and restrictions on funding into Syria, and which would also void other legislative constraints such as the Leahy law (Blanchard et al., 2014; Sharp and Blanchard, 2013: 20–22). Some standard legislative constraints, such as the Leahy law, were interpreted as inapplicable to non-state actors.

the Leahy process, CSO developed its own database and commissioned research and gathered information on potential recipients, which it used to vet prospective or existing fundees for credible allegations of GVHR (the Leahy law standard). The vetting process also screened for those with potential affiliation with the Syrian regime or other misconduct.[29]

Once groups passed this vetting, there were relatively extensive monitoring and reporting requirements. Given the lack of direct access to the territory for State Department personnel, much of the oversight was accomplished through third-party monitoring (Office of Audits, 2015; 2016; Policy and Operations Evaluation Department, 2018). However, there were also examples of remote tracking and accounting by State Department staff themselves, motivated by the higher risk profile and attention to such issues in Syria. Particularly in the initial stage, FSA leaders were brought to Turkey or other outside locations to meet State Department staff.[30] State Department officers in Washington Skyped local provincial council members, aid workers, Syrian NGOs, local police or other beneficiaries daily (or nightly, given time-zone differences) to check what was happening in the area or investigate accounts of breaches. All material was also tracked and signed for, even when doing so introduced bizarre project modalities. In one case, State Department diplomats found themselves bringing in suitcases of cash, and then requiring signed receipts from each local policeman.[31]

There was no training for the FSA who received non-lethal assistance, but accounts by both FSA members and State Department officials suggest that supported groups understood the redlines on human rights abuses and affiliation with what were known as 'banned' groups. These were backed by the threat of being cut off from funding, which was enforced to some degree. For example, the Al Zenki group was cut off from non-lethal assistance relatively early on because of reports of links with other blocked groups and persistent reports of its members abusing and harassing other civilian actors receiving US support (that is, demanding taxation or seizing equipment) (Heller, 2016). Especially in the early years of the programme, there was such a degree of 'risk aversion', according to one US official, that there was a 'tendency to cut off groups whenever there was an issue'.[32] The non-lethal assistance funds came in small spurts, sometimes having to be renewed every three months, and with each new iteration there was the prospect of new rounds of vetting and internal deliberations over which groups had transgressed redlines. Rather than having to relitigate allegations of transgressions every time the programme was renewed, those working with the programmes said it was easier to cut the FSA group than to continue funding.

The degree of risk aversion shifted over time, or at least had to be modified to keep pace with the reality on the ground. Early on, there was an internal debate whenever groups such as Nusra

29   Interview with US contractor, 21 September 2018, Istanbul; telephone interview with former US official, 6 July 2018; interview with US official, 18 November 2019, Washington DC.

30   Telephone interview with former State Department officer, 6 July 2018.

31   Interview with former US State Department official, March 2018 [location withheld].

32   Interview with US official, 21 September 2018, Istanbul. Similar risk aversion and tendency to cut off groups was also found in the Dutch review of the Netherlands' non-lethal assistance to the FSA and FSP (Policy and Operations Evaluation Department, 2018: 21, 26–27).

began operating in the same territory as funded groups, and whether support should be cut off for fear that other groups would be pressured to cooperate with Nusra or provide them with (US-funded) materiel. However, as the conflict wore on and this became a regular and almost inevitable part of operating in opposition-held areas, there was a de facto recognition that there would be some level of tacit or forced cooperation. As one State Department official observed, 'If the bar was "don't work with AQ," we would have had to cut off the entire opposition'.[33]

As a whole, control mechanisms proved extremely costly, not only in terms of resources but also in staff time and attention. Leahy vetting is cumbersome in itself, but at least builds from a pre-existing database and process. In Syria, CSO had to create an immediately operational database based on groups and individuals who were largely unknown. To try to populate the database, and then verify claims, CSO staff combed old newspaper accounts for past abuses, scoured social media, commissioned research and triangulated information from a range of sources. As noted, each time the short funding cycles ended – sometimes as short as a few months – recipients had to be re-vetted.

The vetting scrutiny and deliberations over whether supported groups had crossed redlines consumed increasing political energy and attention. As the conflict became messier, and abuses and conflicts of interests more prevalent, State Department officials began putting groups through 'double' or even 'triple' vetting, essentially redoing vetting even if no derogatory information was found. One State Department officer remembered that, when any allegation arose – no matter how weak the evidence – 'everything would grind to a halt'.[34] It was a degree of micro-management and attention to risks at a unit level that was unusual for foreign security assistance. Certainly, State Department officials in Washington had not been monitoring conflict developments in remote areas of Afghanistan, or gathering to analyse whether individual ALP units had crossed the line.

Despite the costs, controls – in particular vetting – offered only limited results. As one former staffer who managed vetting processes globally noted, 'vetting is only as good as the database and there are limits to what the database can give you'.[35] Syria was a largely blank slate as far as most US databases were concerned. It was also a complex and highly fluid situation. As one CSO staffer noted, 'There was always a new name, new groups. These guys are constantly changing [sides]. So there's always a risk, even if you do vet, of getting a bad actor, or them later affiliating with groups you don't want to affiliate with. It's just hard to tell who you are dealing with'.

Redlines and cut-offs were difficult to enforce because of challenges to verification. Allegations of affiliation or cooperation with banned groups, or of human rights violations, were particularly difficult to corroborate and gather evidence on compared with, for example, allegations of equipment transferred or misappropriated. For example, one Dutch review focused on the Netherlands' non-lethal assistance to the FSA (which happened in parallel with US efforts, and

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33   Telephone interview with US official advising on stabilisation in north-east Syria, 4 June 2019.
34   Interview with former State Department advisor, 24 March 2018, London.
35   Interview with former State Department official, 14 May 2019, Washington DC.

sometimes relied on the same third-party contractors and vetting standards) noted that human rights violations were hard to detect and verify due to lack of access to the territory and the natural disincentives for either the victims or the perpetrators of human rights abuse to report violations (Policy and Operations Evaluation Department, 2018). It also noted that vetting limited to key leaders or financial officers missed many potential abuses or transgressions (ibid.: 10), a limitation that would also apply to US vetting.

Even if allegations could be verified, consistent sanctions and redlines were difficult to enforce given the 'marbling' of groups and fluid conflict conditions in Syria. As one former State Department advisor noted, 'in a situation like Syria, a multi-year civil war in which actors on the ground face no good choices ... you will not get anyone who meets all the perfect standards'.[36] Many groups had no choice but to cooperate or affiliate with the most powerful armed actors in their area, which might result in their being blocked from funding. The result was a policy that – if applied to the letter – might have excluded nearly all recipients. Absent the decision to do so, State Department officials were left to apply the policy as best they could, but this inevitably led to inconsistent application of the rules and ultimately weaker US credibility and sanctions.

Overall there were substantial critiques that the laborious and time-consuming checks attached to Western (not just US) non-lethal assistance to the Syrian opposition were out of step with the reality in Syria and fundamentally hamstrung programming (see e.g. Policy and Operations Evaluation Department, 2018: 20). The controls in question certainly did not succeed in addressing all of the risks, but one State Department officer deeply involved in the processes observed that, 'It was a manageable risk if you could be allowed to have regular contacts [with Syrian actors]. ... Again, not perfect, because we're not there. But enough to know who you're dealing with and give some accountability'.[37]

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36   Interview with former State Department advisor, 24 March 2018, London.
37   Interview with former State Department officer, 6 July 2018, by telephone.

Figure 3   Syrian opposition areas of contestation, early 2013

The State Department began providing non-lethal support to Syrian opposition groups in 2012, first unarmed opposition (e.g., civil society groups, rescue or humanitarian services, unarmed police) and by early 2013 to select groups associated with the Free Syrian Army.

This map depicts areas under opposition control or significantly contested by early 2013 (shaded in purple).

3.2 CIA lethal support to the Free Syrian Army

As State Department non-lethal assistance was ongoing, there were continuing deliberations about whether to provide the Syrian opposition with more significant support, arms or salaries, or even support via limited US air operations. Although the US and other Western allies had called for Assad to go as early as August 2011, Security Council authorisation for any military action was blocked, and the US Congress was divided over intervention. As a result, supporting Syrian rebels covertly came to be viewed as the 'least bad option among many even worse alternatives', as Secretary of State Hillary Clinton would later recount (Clinton, 2014: 464).

US covert support to select FSA groups was authorised in mid-2013 and began to flow from the autumn of that year. Assistance was coordinated through Turkey- and Jordan-based coordination

cells, known as the Müşterek Operasyon Merkezi (MOM) and the Military Operation Center (MOC), which also included representatives from other donor countries, including Saudi Arabia, Qatar, the UAE, the UK and France. Support included salaries, training, ammunition, arms and anti-aircraft weapons (Entous, 2015; Mazzetti and Apuzzo, 2016; Sly, 2014; Mustafa, 2015).

Although President Barack Obama authorised covert assistance, it was with extreme misgivings. The administration spent nearly a year deliberating on proposed covert assistance, and the risks involved (Landler, 2016: 210–223; Clinton, 2014: 461). There were fears that US-provided weapons would be passed to extremist groups, that CIA support would enable commission of atrocities, or that the initiative simply would not work (Landler, 2016: 210–223; Mazzetti, 2014b). There was also substantial concern about seeding the next generation of Islamic insurgents. In the 1980s, the CIA had provided covert support to Afghan mujahedeen groups opposing Soviet occupation, some of whom went on to form Al-Qaeda. When it came to the question of arming Syrian rebels, 'the story of the mujahideen in Afghanistan remained a powerful cautionary tale never far from anyone's mind', Clinton noted (Clinton, 2014: 463). The parallel became even stronger once the US began providing anti-aircraft tube-launched, optically tracked, wireless-guided (TOW) missiles to select FSA groups; the US had spent decades trying to trace and reclaim anti-aircraft weapons given to the Afghan mujahedeen (Moore, 1994).

As a result of such deliberations, covert assistance came with many of the same control mechanisms and risk averse tendencies as overt support to the FSA (Entous, 2015; 2016; Gartenstein-Ross and Barr, 2016). Vetting and selection processes appeared similar to those in other overt programming, but more rigorous. FSA members who had observed or gone through multiple US vetting processes described the CIA scrutiny as more intensive than State or DoD vetting processes, like a 'job interview' or a 'visa process' rather than the primarily name-based, unit-level database check for other US support programmes. The process could take weeks or even months, particularly for those responsible for TOW missiles.

The vetting criteria and redlines primarily focused on affiliation and profile – selecting against groups whose ideology they deemed 'too Islamist' in favour of those viewed as more 'moderate'. As one FSA commander recalled, 'They would always ask us questions about why some commanders had a long beard and were they Islamists? But some commanders are religious without being fundamentalist'.[38] However, other conduct-based concerns could also be a basis for vetting or cut-offs. As one former FSA spokesman put it, 'They are primarily interested in affiliation with Islamists, but also human rights could play into it'.[39]

One example that illustrates these dual criteria is the cutting off of the al-Zenki group from MOM support. It had already had its funding cut due to its association with the kidnapping of foreign aid workers, as well as a litany of more minor complaints, such as community extortion

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38   Interview with former FSA commander, 24 September 2018, Gaziantep, Turkey.
39   Interview with former FSA spokesman, 8 May 2018, Istanbul.

and intimidation. The force's increasingly Islamist bent and cooperation with groups that the MOM was suspicious of did not help. In the process of renegotiating covert support a YouTube video surfaced of Zenki forces beheading a juvenile (alleged) ISIL fighter (Chulov, 2016; Amnesty International, 2015), after which the MOM refused further funding (Heller, 2016). Journalist Sam Heller interviewed one US official whose reaction to the Zenki incident reinforces the idea of some conduct-based standards for supported FSA groups. According to Heller's (2016) reporting, the US official stated: 'We routinely vet the groups we work with and support, as you might expect, and their human rights record figures prominently in that … We do not support groups that condone this sort of barbarity, period. We encourage al-Zinki to investigate the incident and expect all parties to comply with their obligations under the law of armed conflict' (Heller, 2016).

Public reporting reinforces the view that some of the vetting scrutiny or cut-offs related to conduct-based issues, both human rights violations and other misconduct (Sly, 2015; Heller, 2016). One example was a northern Syrian commander named Jamal Maarouf. Maarouf was effective and secular, but had 'established a reputation as a warlord' engaged in smuggling, extortion and other questionable behaviour, and so was passed over for US covert funding (Sly, 2015). Syria analyst Nick Heras said of Maarouf,

> 'Here's a guy who would have fit the 1980s playbook [of US covert support] but he didn't make it in this iteration' because of greater concerns within the Obama Administration over 'who we're backing'.[40]

Once vetted, intensive oversight and checks continued, seemingly as rigorous and micro-managed as that of the overt assistance. *Wall Street Journal* reporter Adam Entous (2015) writes that 'Those who made the cut, earning the label "trusted commanders," signed written agreements, submitted payroll information about their fighters and detailed their battlefield strategy'. Paying FSA groups by instalments (either monthly or on a per operation basis) forced a regular reporting cycle. A former FSA representative described the process as follows: 'Every month they have to go back to MOC or the MOM for new bags of cash. When they go back they have to give a situation report before representatives of all the different countries … If they've heard of something amiss in the fighters' area then they question them on it'.[41] They might also be asked to provide written reports. Those groups that received TOW missiles had to provide after-action reports, together with video evidence, and to return the spent missile launchers in order to get new ones (Mustafa, 2015; Lister, 2016; Entous, 2015).[42]

There were also reports of violations of human rights protocols and sanctions, although it was not clear to how many groups this applied. One commander whose group received TOW missiles

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40   Telephone interview with Nick Heras, 20 June 2018.
41   Interview with former FSA spokesman, 22 September 2018, Istanbul.
42   Interview with former FSA spokesman, 22 September 2018, Istanbul; interview with former FSA commander, 24 September 2018, Gaziantep, Turkey.

remembered them being taken away temporarily when their use threatened civilian targets:[43] 'They called back the launchers and rockets, and made the factions re-affirm a "protocol" [a document they had previously signed during training] agreeing to avoid harm to civilians'. He said that, after this incident, some of the political officers and those responsible for targeting the missiles were then forced to undergo more training in how to avoid civilian targets and other rights obligations under the protocol.[44]

Last, there were also reports of electronic surveillance and monitoring, tracking devices on certain equipment, and other remote monitoring, although the exact details have never been made public (Chivers and Schmitt, 2013).

Even with all of these intelligence and accounting efforts, lack of access to territory and the overall chaotic environment meant that full scrutiny or control was not possible. A senior White House advisor observed that, given the number of hostile actors and the nature of the environment in Syria: 'Inevitably weapons would go astray – and they did. [It is] impossible to say how many'.[45] Verifying allegations, whether of abuse, crossing redlines on affiliation, or misuse or transfer of weapons or equipment, was difficult given lack of access or presence on the ground. A European former political advisor engaged with the MOC processes said that, where funding was threatened, 'commanders would always try to push back against the idea that they'd done anything – blame it on slander, or misinformation from another group. And it was hard to vet whether the allegation had occurred'.[46] He offered the hypothetical example of weapons intended for a group of five subcommanders, but then some of the five later saying they never received them: 'Are they telling the truth and the main guy absconded with the weapons? Did they get them and sell them? Are they just trying to get more weapons?'.[47] In an environment such as Syria, he said, it was impossible to tell.

Meanwhile the extensive verification measures, tracking and lengthy approval processes slowed the pace of operations. Slow vetting meant that it could take months for a group to be approved, particularly those who received TOW missiles. FSA would request weapons, salaries or logistics to support a particular operation or respond to a threat, and by the time they received them, the operation or opportunity had passed (Entous and Malas, 2013; Entous, 2015). Lengthy procedures in verifying and tracking arms shipments slowed overall supply lines (Chivers and Schmitt, 2013; Entous and Malas, 2013). Cumulatively, the bureaucratic process and time-consuming controls

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43 Of note, the commander said that the group in question did not intend to use the TOW missiles against civilian targets but that it was an issue of mistaken intelligence, and the overall difficulty of identifying civilian versus military targets in the very inter-mixed environment. Interview with former FSA commander, 24 September 2018, Gaziantep, Turkey.

44 Interview with former FSA commander, 24 September 2018, Gaziantep, Turkey.

45 Telephone interview with former White House policy advisor, 29 May 2019.

46 Interview with former MOC political advisor, 30 May 2018, London.

47 Ibid.

hampered the pace and level of assistance to such a degree that it significantly undermined the fighting strength of the FSA and the impact of the support provided by the MOM and MOC (Solomon, 2017; Lister, 2016; Heras, 2016).

The tight vetting, and particularly the restrictions on those with Islamist affiliations or ideology, also limited the availability of partners, and possibly the overall strategic effects. In a context such as Syria, where most groups had some degree of Islamic affiliation or ideology, establishing this as one of the main criteria eliminated many potential partners, including those able to challenge extremist groups. As one senior European diplomat observed: 'What was lacking was an overall policy on what do you do [with] those groups that were Islamist in nature but did not have as extreme views, and certainly not transnational ambitions, such that they might prove a useful and ultimately not that risky, temporary partner in the Syria context'.[48] Charles Lister, an expert on opposition groups, suggested that, given the nature of the conflict and the armed groups fighting it, what was needed was more of a 'reality check' on how the vetting and selection processes lined up with overall objectives.

> 'How much does the US care about impact? If we want a big impact, then very strict criteria aren't going to work in our favour. We'll either get cheated, or we won't get the best players.'[49]

Lister's observation points to a larger issue with covert support to the FSA. Many officials, FSA members and observers argued that the US was more worried about the risks and unintended consequences than it was about whether the FSA succeeded. As Syria analyst Jeff Martini described it, 'There was a fear of "catastrophic success" – what if you roll back ISIS too quickly with no one to hold it after they leave? Or what if Assad is toppled but what comes after is worse?'.[50] The result was a deep ambivalence within the Obama Administration about FSA support (Entous and Malas, 2013). Reflecting the sentiment of many interviewed, one FSA representative said that the perception within the FSA was that 'this was the intention – to give them enough support to survive but not enough to overthrow Assad' (also Entous, 2015). In a context of divided support, risk aversion prevailed. Risk mitigation mechanisms were pursued to the fullest, even if this meant undercutting the value of assistance.

3.3 New Syrian Forces

ISIL's lightning advances and declaration of its 'caliphate' across large parts of Syria and Iraq in mid-2014 changed the political calculus, finally galvanising overt military support. In the autumn of 2014, Congress authorised $500 million for DoD to 'Train and Equip' Syrian rebels to fight ISIL (NDAA, 2015: sec. 1209, as amended; Blanchard and Belasco, 2015: 3–4). As initially formulated, the

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48   Interview with senior European diplomat, 8 May 2018, Istanbul.
49   Interview with Charles Lister, 23 May 2018, Washington DC.
50   Interview with RAND analyst Jeff Martini, 20 June 2018, Washington DC.

'New Syrian Forces' programme[51] was designed to recruit so-called 'moderate' Syrian rebels and form them into anti-ISIL fighting units. They would be provided with training, equipment and other support from bases in Jordan, Turkey and other Gulf countries, and then redeployed back into Syria.

The programme raised all of the same concerns and risks as the previous non-lethal and covert assistance programmes, but to an even greater degree given that it constituted overt military support. Congress debated the proposal for days, worried about the limited prospects of success and the substantial risks involved, from that of a 'slippery slope' to war in Syria, to concerns about weapons going astray or enabling war crimes (Weisman, 2014; Senate Armed Services Committee, 2014; O'Keefe and Kane, 2014).

Although Congress ultimately approved the programme, funding came with several conditions and explicitly mandated controls. First and most important of these, Congress made clear that it did not want the programme to be used to support anti-Assad efforts, and limited the purpose of the legislation accordingly (Blanchard and Belasco, 2015: 3; NDAA, 2015: sec. 1208). In implementing this mandate, DoD would screen out recruits who refused to commit to fight only ISIL and not Assad; those who 'expressed a desire to fight Assad' were sent home from training (Ryan and Miller 2015; Office of Inspector General, 2015: 20–21).

In addition, the authorising legislation mandated that all supported Syrian opposition groups were to be screened for affiliation with terrorist groups, Iranian groups, Shi'a militias or the Assad regime (NDAA, 2015: sec. 1209 (e)(1)). The law also required 'a commitment from such elements, groups, and individuals to promoting the respect for human rights and the rule of law', as well as other oversight and monitoring, for example requiring DoD to assess 'command and control' and overall effectiveness, and to report any inappropriate 'end-use' of training or equipment (NDAA, 2015: sec. 1209 (d) & (e)(2)).

Once authorised, DoD developed additional training and vetting requirements, and other risk mitigation processes. Following in the footsteps of the non-lethal assistance programme, DoD consulted with DRL and developed its own Leahy-like process to vet and block those who had committed GVHR. In keeping with the previous vetting standards, and the extensive focus on supporting 'moderate' Syrian rebels in the Congressional debate, vetting would also screen for Islamist extremist affiliations or ideology. Given that DoD trainers, alongside those of partner nations, would be involved in providing training, vetting also screened for personal security risks (Wright and Ewing, 2015).

DoD also developed a multi-week training package for recruits that included a full 'Law of Land Warfare' curriculum, as well as other conduct standards (Wright and Ewing, 2015; Ryan and Miller,

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51   The programme was more commonly known as the 'Train and Equip' programme or the programme to train 'moderate' rebels, but to avoid confusion with later iterations of the 'Train and Equip' programme or the loaded term 'moderate', the internal programme term 'New Syrian Forces' will be used.

2015; Office of Inspector General, 2015). Interviews with Syrian fighters who had been supported under Train and Equip funding suggested that there was also an emphasis – in both training and oversight – on preventing the use of child soldiers, a likely derivative of DoD obligations under the US Child Soldiers Prevention Act.

To reinforce all of these standards, DoD required recruits to pledge an oath that included an 'unconditional commitment to the rule of law and to following rules of the law of armed conflict' (Box 3; Office of Inspector General, 2015: 20–21). The pledge then set out a summary version of the key principles of the law of armed conflict, including no harm to civilians, the wounded or sick, those hors de combat and other protected persons and objects, and to investigate and take all necessary measures to discipline those who violated these principles (Office of Inspector General, 2015: 20–21). The pledge also included prohibitions on torture or mistreatment of detainees.

A concise 'law of armed conflict'-inspired primer on how to humanely arrest, interrogate and detain individuals was part of the training. It was not clear how such detention standards were to be implemented given that there were no established detention facilities in Syria. The general in charge of the programme, Nagata, reported that he had repeatedly asked for guidance on the 'inevitability of ISIS detainees inside Syria', but never received any. As a result, he said, 'I could never give the Syrian forces a straight answer for their predictable concerns over what to do when they captured ISIS personnel in the future'.[52]

Because Congress had raised substantial questions about how to ensure that weapons were not transferred to al-Nusra, ISIL or other hostile groups, there was also to be a remote tracking and oversight scheme for any weapons, communication devices or other equipment sent into Syria with trained fighters, including remote call-ins to check in on the equipment, or requests for video or photographic evidence or other reporting.[53] Nagata emphasised the limits of such remotely managed controls, but believed there was no alternative given the reluctance to co-deploy even minimal numbers of troops or advisors into Syria. In response to Congressional questioning about preventing supported forces from engaging in war crimes and atrocities, he said, 'The only thing I could tell them was that they [the Syrian forces] would receive law of land warfare training. But then I would say, once they're in Syria, I can't send people with them, so I hope the training sticks, but I have no way of enforcing it'.[54] He offered similar cautions on the limits of remotely monitoring and tracking weapons and equipment.

The full effects of this range of controls are difficult to judge given that the programme (at least in this form) was frozen within a year of being authorised. Of the estimated 7,000 who initially volunteered, by July 2015 only 60 had made it through training (Wright and Ewing, 2015). Many

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52   Telephone interview with ret. Lt Gen. Mike Nagata, 12 October 2020.
53   Ibid.
54   Ibid.

decamped or were attacked immediately on re-entry into Syria. By April 2015, with half of the $500 million spent, only 'four or five' trained fighters remained in the fight, according to Gen Lloyd Austin (Ackerman, 2015; Blanchard et al., 2015: 23). The numbers were still so low by the time the programme was put on hold in August 2015 that the average cost of each fighter was in the millions (Wright, 2015; Blanchard et al., 2015).

'Vetting killed this programme' was the candid conclusion of one former State Department official.[55] The condition that fighters commit only to fight ISIL and not Assad was its largest handicap. As one former DoD official observed, 'If you're an Arab fighter in Aleppo who equally hates Assad and ISIS, and you're told not to fight Assad, that's a dealbreaker. So then who's left? Most of the good fighters were fighting Assad'.[56] In addition to the anti-ISIL criteria, many recruits failed some of the other vetting criteria and checks. Some of those who committed to fight ISIL were ultimately not strongly motivated to do so and dropped out of the programme, either during training or once redeployed (Ryan and Miller, 2015).

It was not just that recruits failed the technical criteria of the vetting, but what these programme restrictions signalled to Syrian forces. Nagata argued that they sent a message that, 'while the Americans were eager to raise a proxy force to fight ISIS, there were significant limits to what it was willing to provide to that force … which had the predictable result of reducing the attractiveness of the programme'. The larger problem, as he saw it, was that 'We appeared to seek maximalist results for minimalist investment'.[57] Syrian forces could see that, and this undercut the potential for success.

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55   Interview with former State Department official, 30 March 2018, London.
56   Interview with former DoD official, 29 May 2019, Washington DC.
57   Telephone interview with ret. Lt Gen. Mike Nagata, 12 October 2020. Nagata stressed that, in attempting to share candid reflections on lessons learned, he was not attempting to 'pass the buck': he took full responsibility for the initiative's success or failure.

> ### Box 3   Excerpts from the pledge for New Syrian Forces
>
> "I swear by my God, as a member of the ... New Syrian Forces, to defend the Syrian people from Dai'ish... I announce my unconditional commitment to the rule of law and following rules of the law of armed conflict.
>
> I will only fight combatants. I will not harm civilians who are not directly participating in the fight... I will treat humanely all who surrender or are captured. I understand all detainees must receive medical treatments, food, water, shelter, basic hygiene... I will not kill or torture detained personnel. ...
>
> I will facilitate relief efforts and humanitarian work. Accordingly, I will protect hospitals, ambulances, and humanitarian and relief workers...
>
> I will destroy no more than the mission requires.
>
> I will treat all civilians humanely. I understand that attacks against civilians are strictly forbidden... I will not harm anyone on the basis of their religion, political affiliation, or gender. ...
>
> I will prevent violations. ... If in command, I will investigate all credible complaints regarding violations.
>
> I understand that I am duty bound to protect the principles and the responsibilities noted above and that failure to do so will subject me to discipline and possible expulsion from the New Syrian Forces."
>
> Source: Office of Inspector General (2015): 20–21

3.4 Syrian Democratic Forces

Given the failure of the New Syrian Forces, the Obama Administration requested the repurposing of 'Train and Equip' funds in October 2015. Rather than forming, training and funding a new anti-ISIL force in Jordan, Turkey or other locations outside Syria, the funds would be used to provide training and support to existing groups fighting ISIL inside Syria (Shear et al., 2015; Blanchard and Belasco, 2015). Initially the funds went to Syrian forces jointly identified and managed with Turkey in northern Syria, or to Syrian groups in the al-Tanf area in the south (the latter support continued until the time of writing). However, the vast majority of this 'Train and Equip' funding and energy would go to support a coalition of Arab and Kurdish groups fighting ISIL in north-east Syria. These groups would come to be known as the SDF.

Support to the SDF caused a diplomatic stand-off with Turkey from its inception. While the SDF included local Arab forces, the core military leadership and fighting strength came from the Yekîneyên Parastina Gel (YPG), a Kurdish militia force linked to the PKK. The PKK has been engaged in a decades-long conflict with Turkey, and has been designated a terrorist organisation by the US State Department since 1997. As a result, the prospect of US funding going to the PKK's Syrian partners (whom Turkey viewed as one and the same) provoked immediate and sustained objections from a significant NATO ally.[58]

Despite Turkey's opposition, by 2016 the SDF would become the US' main partner in Syria, with a greater level of political engagement, tactical support and funding and equipment than any of the previous Syrian initiatives. US support included training, limited heavy weapons, arms, ammunition, vehicles, support for salaries, communication and other tactical gear, uniforms and medical and humanitarian supplies, as well as co-deployment of trainers and advisors, significant air support and intelligence (Congressional Research Service, 2018).[59] Top US diplomats and even Congressional officials regularly visited or engaged with SDF political and military leaders.[60]

The US continued to try to placate Turkey, in part through a range of restrictions and controls on the support provided to the SDF. In the early stages, the US only provided arms and equipment to Arab forces in the coalition. While this technically meant that the US was not directly supporting Syrian Kurdish forces, in practice it was unlikely that the assistance remained segregated. Turkey was certainly not mollified by these measures, and they hampered the tactical support needed to defeat ISIL. As a result, the limits on arms and equipment going to the SDF writ large were soon abandoned, but the US kept limits on providing certain advanced weaponry (that is, anti-aircraft weapons). It also required tight inventories of the weapons and materiel provided. As one SDF advisor explained: 'There is a type of document that the SDF sign for getting support ... it is like an itemized list – this many vehicles, weapons, the serial numbers, etc ... Turkey gets a copy of the list that way if the weapons appear on the black market or are captured by criminals, Turkey knows where they came from'.[61]

There was also periodic verification to ensure that weapons, arms or other materiel transferred was still accounted for. As one senior commander in Manbij recounted,

58   The group even renamed itself in October 2015 – adopting the SDF moniker – to try to present a less controversial face for US support, and at US urging (Reuters, 2017). Turkey was never reassured by this semantic change.

59   Interview with SDF advisor, 8 October 2018, Qamishli, Syria.

60   Interview with SDF advisor, 8 October 2018, Qamishli, Syria; interview with senior official, Syrian Democratic Council Office of Foreign Affairs, 8 November 2018, Qamishli, Syria.

61   Interview with SDF advisor, 8 October 2018, Qamishli, Syria. Similar accounts of equipment tracking were provided in other interviews. See for example, interview with Serwan Derwish, Spokesman of the Manbij Military Council, 9 November 2018, Kobane, Syria.

> 'Everything is written and archived. Like when they give the salary for 300 fighters, they'll come and check that they are all there ... Even if it's a cigarette we have to sign our name for it'.[62]

US officials interviewed said that some of these weapons inventories or other accounting measures were shared with Turkish officials to inform them of what was being provided, and to reassure them that it was being closely tracked.

Such checks on weapons and materiel may present the image of a hyper-controlled force. To offer a contrast, it would be hard to imagine ALP forces signing for each piece of equipment, especially in the early stages of the programme. However, in many respects the SDF relationship enjoyed looser controls than some of the other Syria assistance. Support to the SDF was governed by the same Train and Equip legislation discussed earlier, which detailed explicit vetting standards, alongside other restrictions and controls (NDAA, 2015 (P.L. 113-291): section 1209 (e)(1)). Any other US counter-terrorism and 'Leahy-like' vetting processes developed for the original Train and Equip programme also applied, at least to those units or commanders that had direct training and/or materiel from US forces. SDF forces who received training from the US recalled having their background and biometric information taken, and presumed some basic scrutiny or vetting process had been applied.[63] There also appeared to be the same standards in training. Those involved said the training included not only tactical and operational lessons, but also basic IHL provisions and human rights. Some remembered a counterinsurgency-infused emphasis on population protection and outreach.[64]

While these controls existed on paper, in many ways they were applied less stringently than with past Syrian groups, or at least without the same tone of micro-management. In contrast to the 'double' and 'triple' vetting of FSA fighters, and cut-offs whenever associations with banned groups were indicated, there was little evidence of tightly scrutinised vetting of SDF units or fighters, and no evidence of SDF forces failing vetting or later being subject to sanctions or cut-offs. One translator who took part in US-provided training remembered only one person in their cohort failing vetting; no other officials, SDF or observers interviewed remembered a case of an individual or unit being excluded from US support. When asked if he was aware of any SDF being blocked from US funding for failing vetting, one State Department officer responded: 'Not so much. Conditionality is happening more as suggestions and informal recommendations. The US is in a good position to enforce rules informally because of the importance of maintaining US air support'.[65]

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62   Interview with Serwan Derwish, Spokesman of the Manbij Military Council, 9 November 2018, Kobane, Syria.

63   Interview with Serwan Derwish, Spokesman of the Manbij Military Council, 9 November 2018, Kobane, Syria; interview with former SDF media centre translator assisting in training, 11 November 2018.

64   Interview with SDF advisor, 8 October 2018, Qamishli, Syria; interview with former SDF training assistant, 11 November 2018, Qamishli, Syria; interview with Serwan Derwish, Spokesman of the Manbij Military Council, 9 November 2018, Kobane, Syria.

65   Interview with State Department officer working on Syria, 23 June 2018, Washington DC.

The way that the US responded to SDF reintegration efforts perhaps best illustrates the difference in tone and approach. As the SDF took over significant areas formerly occupied by ISIL, it brought many of those who had (voluntarily or under duress) cooperated with ISIL into local self-defence forces or governance positions. This was not an isolated practice, but a widespread approach, which had the result of integrating many former ISIL fighters or civilian partners into what were effectively US-supported units and governing structures. Despite the ongoing sensitivities regarding those with ISIL affiliation (partly codified in the funding legislation), no SDF officials, US forces or officials or other observers remembered this ever being a source of contention or an issue for the US.[66] By contrast, when asked most US forces or officials tended to credit it as an example of SDF competence and governing skills. Such an attitude provided a marked contrast with the approach taken with previous support to the FSA. In the past, allegations of engagement with Islamist groups, or even tacit partnerships on the battlefield, would have been enough for an FSA group to fail vetting or be cut from funding.

There were several factors behind the seemingly more relaxed approach to vetting and sanctions. Partly this was due to the SDF's overall reputation and profile, and a greater degree of US trust in the SDF leadership over time. Kurdish forces viewed Islamist extremist groups, and ISIL in particular, as an existential threat. Given this, US officials were not concerned about 'marbling' with extremist groups, as they had been with the FSA. Most independent analysts, monitors and US officials also credited Kurdish fighters with a better record in terms of conduct and discipline. For example, Noah Bonsey, International Crisis Group's former lead Syria researcher, observed that, while not perfect 'The SDF is better behaved in terms of human rights than almost any other armed actor in Syria'.[67]

A second key factor was the SDF's tighter command and control over its forces. The SDF had a military hierarchy that was closer to that of a state force, and in fact was better than that of many state forces in the region. Tighter command and control and better discipline contributed to the SDF's more credible reputation, including some of the observations on a better human rights record noted above. As one former State Department official commented (echoing the sentiments of interviewees): 'Command and control is the biggest thing. Masloom [Kobani, the commander-in-chief of the SDF] had a coordinated operation. He would tell someone to do something and they would execute it. The rest of the Syria groups just didn't have that'. Regarding vetting concerns, he said, 'It's not just vetting the person but the organisational structure. The Kurdish forces just stand out'.[68]

This military hierarchy and command structure, combined with the greater sense of trust, enabled a greater degree of delegation and lesser micro-management on the part of US officials.

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66   Interview with Gabriel Kino, SDF spokesperson, 12 November 2018, Qamishli, Syria; interview with Combined Joint Special Operations Task Force advisor, 15 March 2019, Baghdad; telephone interview with US official, 4 June 2019.

67   WhatsApp interview with Noah Bonsey, 1 August 2018.

68   Interview with former US State Department official, 20 November 2019, Washington DC.

Many parts of the SDF force likely were never explicitly put to US vetting or subject to other controls, because their training, equipment and direction was managed by the SDF leadership, without involving the sort of direct US personnel engagement or unit-specific assistance that invokes most US regulatory mechanisms.[69] For example, the reason that there may have been lesser scrutiny of the self-defence forces and their past affiliations was that the recruitment, background checks and scrutiny applied to these forces were almost solely taken on by the SDF, as was training and any subsequent disciplinary action.[70] It was the type of delegated oversight and control that is more typical of a regular state security assistance relationship.

Lastly, the military organisational structure meant that, where issues arose they could be negotiated with a military leadership capable of enforcing orders. Both outside observers and US officials argued that the SDF was responsive when the US raised issues. For example, when the US raised concerns about the use of child soldiers following allegations by Human Rights Watch (2015b), the SDF took extra measures to verify the age of recruits and dismiss those who did not meet this threshold.[71] In response to US pressure to demonstrate more 'inclusive governance' and power-sharing with other Arab constituencies, the SDF and its parallel governing body, the Syrian Democratic Council, created locally appointed councils in areas they governed, which included Arab representatives. This is not to suggest that such measures were sufficient, and that all concerns (whether on human rights or inclusive governance) were satisfied. For example, many argued that Arab members were given only superficial representation on councils: essentially lip-service to inclusive representation. But these examples do highlight the difference in approach compared with previous Syrian assistance. Rather than micro-managing the relationship via controls, US officials raised issues on a political level and left them to the SDF to resolve, as they would with state partners.

The SDF stands out from some of the other case studies in several respects. The SDF case shows why a strong institutional apparatus and command and control – the sort of attributes that institutionalisation approaches often attempt to achieve – are desirable. The SDF's administrative and disciplinary procedures appeared to have more capacity to prevent or mitigate some of the tactical-level risks, from human rights abuses to screening for potential ISIL loyalties – at least to a greater degree than the remotely managed control mechanisms of previous Syria

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69   For example, where Leahy law vetting is applied to the security forces of a foreign state, then individual forces or units that receive US training or some designated form of assistance might be cross-checked against the DRL database. However, if the US assistance involves a large force-wide commodity – for example, the provision of shoes or bullets – then every unit that receives those goods will not be specifically vetted under the Leahy law (Byman, 2016: 30).

70   Interview with SDF political advisor, 10 November 2018, Qamishli, Syria; interview with former SDF media representative, 11 November 2018.

71   Interview with Gabriel Kino, SDF Spokesman, 12 October 2018, Qamishli; interview with non-governmental humanitarian advisor, 16 October 2018, Erbil, Iraq.

support initiatives. Yet the higher level of institutional or hierarchical control was largely due to the decades-long military and political project of the YPG, rather than any short-term external incentives or control mechanisms.

Figure 4   Territorial control in Syria, early 2018

Legend:
- Syrian government
- Syrian Democratic Forces
- Turkish army and rebels
- Opposition
- ISIL
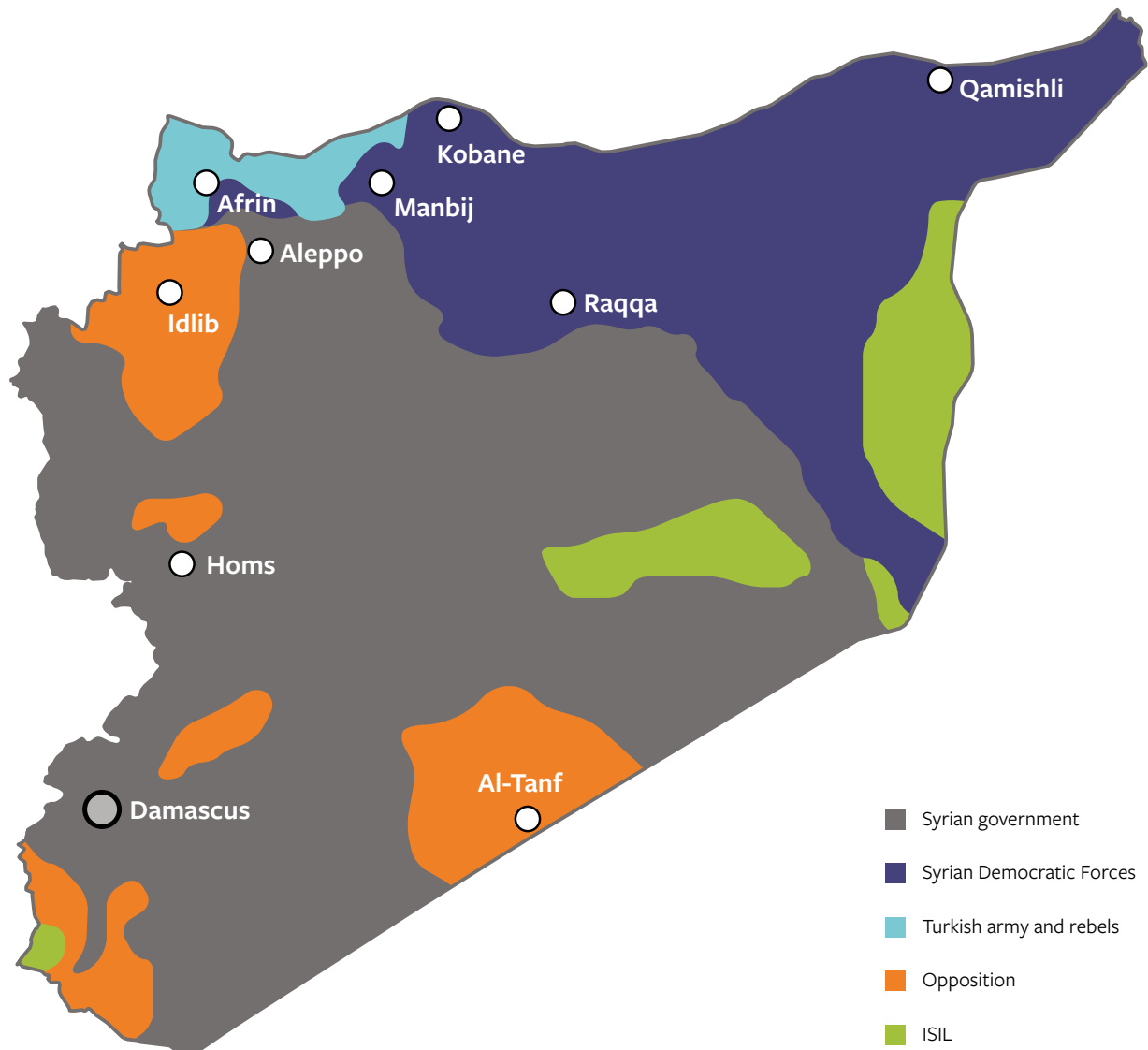
Comparing this example with the previous case studies points to the lesson that there are limits to how far short-term tactical controls and external pressure can change some of the fundamental attributes of the groups in question. As one former State Department advisor observed, reflecting on the differences between the FSA and the SDF, 'You can't transform your partner's identity. You can still draw lines – you can say – I won't work with Iranian militias or with Nusra, but you can't

change a partner to be something they're not'.[72] The SDF experience suggests that institutional or hierarchical control proves to be a very strong control, but that it is difficult to condition or create via short-term external assistance.

The other important take-away from the SDF case has to do with the control mechanisms designed to reassure Turkey (or rather their failure to do so). Support to a group it viewed as an existential threat was not something that could be assuaged or mitigated through tactical-level controls. Some US officials saw the dynamics surrounding Turkey and the SDF as symptomatic of a larger failure to make tough decisions between competing priorities, and their obvious trade-offs. 'There was no decision to abandon Turkey and its preferences, and no decision to abandon the fight against ISIL', a former State Department official observed. Instead of choosing priorities, she said, US officials and military officers at mid- and lower levels were forced to try to marry these irreconcilable goals in implementation, for example via control mechanisms that would never reassure Turkey. 'We should have come into it with clear eyes that you can either satisfy a NATO partner (Turkey) or you can have effective guys on the ground (YPG). There is no middle ground … From the start, you have to be comfortable with the predictable outcomes of your action or you shouldn't choose that route'.[73]

3.5 Syria conclusions

There were several notable elements of US efforts to address the risks in its Syrian partnerships. First was the degree of micro-management and attention to the risks involved, arguably in all but the SDF programme. This ranged from 'double' and 'triple' vetting around non-lethal assistance to requiring spent missile casings and lengthy debriefs around CIA covert support, to a vetting gauntlet so extensive that few fighters met the criteria for the New Syrian Forces. There was virtually no tolerance for risk, in an environment where the risks were substantial, foreseeable and largely unavoidable.

Many of these mechanisms were adopted on a policy basis, but were pursued with greater resources and attention than in other contexts where they might be legally required. To offer a contrast, in Afghanistan there was no 'double' and 'triple' vetting of ALP units, or lengthy deliberations in the halls of the State Department about whether a particular ALP unit had passed weapons on to criminal groups, harassed local civilians or engaged in war crimes.

Across all of the programmes providing support to the FSA, lengthy and time-intensive programme restrictions slowed the pace and volume of assistance to a degree that negated much (or any) impact. These restrictions undoubtedly limited the number of partners, without clearly limiting the risk that abuses would manifest, or that supported fighters might present a security threat.

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72   Interview with former State Department officer, 30 March 2018, London.
73   Interview with former State Department officer, 30 March 2018, London.

The extensive monitoring and reporting requirements were not unique to support for *armed* actors in Syria. There were heightened levels of scrutiny, monitoring and reporting across all forms of Syrian assistance – from humanitarian relief to civil society training and governance support in opposition areas. The degree of media attention and policy scrutiny invoked in any Syria policy cannot be understated, and certainly drove this hyper-attention to risk management and due diligence in the support for Syrian armed groups. However, the high level of controls for Syrian armed groups also appeared due to the lack of consensus among US policy-makers about the best course in Syria, which became particularly important for a controversial area such as support for armed groups. Although many in the US policy sphere championed greater support for the Syrian opposition, an equal number in the administration and in Congress doubted the potential for success, and saw only the risks and consequences. As a result, there was a lack of political will behind support for Syrian armed groups, except insofar as they might help pursue ISIL.

The deep ambivalence about Syria support programmes contributed to a degree of risk aversion – or risk intolerance – that led to ever-increasing levels of control mechanisms. The burgeoning controls might be seen as an unconscious by-product of unsettled policy and risk aversion. Some officials and analysts instead saw the heavy controls as an effort to prevent these controversial programmes from going very far. For example, one former State Department official described the vetting and other controls in the New Syria Forces programme as a 'ruse for inaction … [they] lawyered it up to the point of oblivion, and teed it up to fail'. In that way, he argued, 'You can blame it [failure in Syria] on the un-vettable entities instead of blaming our own inertia or lack of action'.[74]

Still other policy-makers interviewed saw the many controls and restrictions as the product of 'wishful thinking' and an unwillingness to confront the real costs and trade-offs inevitable in available policy choices. With the FSA, the panoply of control mechanisms and criteria that aligned with every possible concern created the illusion that the range of concerns with the forces in question had been satisfied, even if the criteria had little bearing on the reality of available partner options. In the case of the SDF, control mechanisms such as vetting or weapons tracking were a way to 'split the difference'– to work with the highly valued SDF but also address Turkey's concerns with the partnership. They had little hope of ever achieving that, and so instead of presenting a compromise, they offered a false alternative, which may have obscured some of the real costs of the endeavour.

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74   Interview with former US official, 19 November 2019, Washington DC.

4 Iraq

The US has mobilised or offered support to non-state and substate forces in Iraq at a greater volume than in perhaps any other country. US protection of Kurdish parties and forces – from the no-fly zone in the 1990s to support for greater Kurdish autonomy and representation in the post-2003 Iraqi state architecture – has been the primary enabler allowing the Kurds to carve out a de facto state in northern Iraq (Lawrence, 2008; Natali, 2010). With the 2006–2008 Sons of Iraq or Awakening ('*sahwa*') initiative, the US mobilised Sunni tribal forces and other community forces and local watch groups against Al-Qaeda in Iraq, ultimately placing approximately 100,000 local forces on the US payroll (Marten, 2012: 139–186; Benraad, 2011; Cambanis et al., 2019: 96–105; Cigar, 2014).

The next section follows up on a more recent and much less well-documented example of US support to Iraqi LHSFs, exploring US efforts to support Iraqi community and tribal mobilisation against ISIL from 2014 onwards. This proved to be a much smaller and lower-profile initiative than its predecessors in Iraq, or than some of the Afghanistan and Syria examples discussed. Nonetheless, it shared some of the same approaches to accountability and control demonstrated in Afghanistan and Syria. It thus helps provide a final comparative example of how such risk mitigation techniques might function in a different conflict context.

Iraqi Tribal Mobilization Forces man an outpost on the frontline with ISIL in Ninewa province. Photo credit: Erica Gaston

4.1 Tribal Mobilization Force

After ISIL's rapid advance across northern and central Iraq in mid-2014, the US' initial counter-strategy placed a strong emphasis on mobilising local communities against them, and in particular on rebooting the Sunni tribal 'awakening' or *sahwa* that had been so successful in routing the previous incarnation of Islamic insurgents (see for example, McGurk, 2014; Obama, 2014; HASC, 2014). This led to a new initiative from 2015 that would mobilise tens of thousands of Sunni tribal forces.[75] As one of the most senior SOF commanders involved in the anti-ISIL fight, Maj.-Gen. Pat Roberson, observed, 'I was here in 2016, and at that time, in DC and in the Embassy, tribal forces were treated like a silver bullet because of the past experience with the *sahwa*'.[76]

While US officials focused on mobilising Sunni tribal forces, a different and much more politically trenchant form of popular mobilisation was under way. In June 2014, following a call to arms by Iraq's senior Shi'a cleric, Ali al-Sistani, the Iraqi government created the *Hashd ash-Shaabi* or Popular Mobilization Force (PMF) (Mansour and Jabar, 2017). The PMF was legalised by parliament as an independent, but equivalent, armed force in November 2016 (Mansour, 2018). The PMF included some Sunni contingents (as well as a range of other constituencies), but was led by a dozen pre-existing Shi'a militias, many of which the US viewed as Iranian proxies (Gaston and Ollivant, 2020). For that reason, the US tried to keep the Sunni forces it funded somewhat distinct, even as they were increasingly subsumed within the PMF.[77] To distinguish US-funded Sunni forces from other forces in the PMF, this discussion uses the term Tribal Mobilization Force (TMF), a name some US policy-makers used internally for the programme.[78]

In the autumn of 2015, US forces and officials, in collaboration with their Iraqi counterparts, began reaching out to tribal leaders in Anbar province to form local anti-ISIL ground forces. By 2016 the initiative had expanded to Ninewa province. One US official who managed the programme in 2015 and 2016 estimated that well over 60,000 TMF were registered in Anbar and Ninewa by mid-2016,

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75   US officials proposed expanding the programme to both Salah ad-Din and Kirkuk provinces, but were denied (Gaston, 2017c; Knights et al., 2020: 39). Although never fully explained, there had also been resistance when the earlier sahwa programme began expanding into mixed or strategically sensitive areas (Marten, 2012: 171–177), and the same political resistance may have been at play here.

76   Interview with Maj. General Pat Roberson, 10 March 2019, Baghdad.

77   On paper all of the US-supported Sunni tribal units were also legally part of the PMF, at least from the point when it was legalised. They otherwise would have been viewed as illegal under article 9 of the Iraqi constitution, which prohibits armed groups from operating 'outside the framework of the armed forces'.

78   The leading Shi'a PMF groups also recruited Sunni tribal forces as subsidiaries, especially in other non-TMF provinces such as Salah ad-Din (Gaston, 2017c; Rudolf, 2020). These generally did not receive US funding. Also overlapping with TMF mobilisation, US Special Forces, sometimes operating in coordination with Danish Special Forces, partnered with a smaller number of tribal forces in Anbar, mostly those who hailed from border areas and could serve as auxiliary forces for counter-ISIL operations on both sides of the Iraqi and Syrian border. Because this was a much smaller subset, and the exact training, vetting or other control mechanisms are unclear for these forces, this section focuses on the overt TMF programme.

although tens of thousands of those were acting on a volunteer or part-time basis.[79] However, the Anbar offensive would prove the high-point of the initiative. The number of forces, and US policy-makers' enthusiasm for the programme, ebbed from then on. By early 2017, the number of officially salaried forces in both provinces was capped at 32,000, a number that declined steadily over 2018 and 2019 as US support decreased, and as the larger Shi'a PMF forces moved to exclude international support to any PMF (Gaston and Ollivant, 2020: 22, 55–56, n. 126; Knights et al., 2020: 39).

The TMF programme had an Iraqi face – the Iraqi government paid salaries and distributed all the equipment, and an Iraqi three-star general led these forces in the first years of mobilisation (Knights et al., 2020: 24, 39; Office of Inspector General, 2016a). However, the US always had significant engagement with the TMF, with US officials in Baghdad and Erbil regularly reaching out to tribal leaders, monitoring the operations and activities of the force and working alongside the Iraqi three-star general to address concerns raised either by TMF members or by the leadership in Baghdad or Erbil.[80] Armed group and foreign party control in Syria, early 2018.

There was a broad range of checks on these forces, across a range of institutions and stakeholders, in a way that was similar to the ALP programme. First, there were US checks and controls. Funding for the TMF was requested and authorised jointly with Syria anti-ISIL funds in 2014, and many of the legislative restrictions mirror those in the Syria train and equip programmes. The TMF would be subject to US vetting under the Leahy law (Office of Inspector General, 2016a), as well as for 'associations with terrorist groups or with groups associated with the Iranian government' (NDAA 2015, Section 1236 (e)(1)(2); Office of Inspector General, 2016a: 41–42). On the Iraqi side, the TMF were subject to formal background checks and vetting conducted by the Iraqi National Security Service (Office of Inspector General, 2016a: 5). In addition, for the Ninewa TMF recruits only, there was a multi-stakeholder selection committee, which included Coalition members, Iraqi government officials and Kurdish officials, and representatives of the Ninewa Governor's office.[81] As part of this, the Kurdish National Security office conducted its own background checks for the TMF in Ninewa.

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79   Telephone interview with US official, 21 April 2020; interview with US official, 7 December 2016, Erbil, Iraq; interview with US official, 28 February 2017, Erbil, Iraq.
80   Ibid.
81   Interview with US official, 28 February 2017, Erbil, Iraq.

Figure 5   Anti-ISIL tribal mobilisation forces in Iraq (post-2014)

■ US-funded Tribal Mobilisation Forces present

■ No US-funded tribal mobilisation (but others)

■ Provinces not subject to ISIL contestation
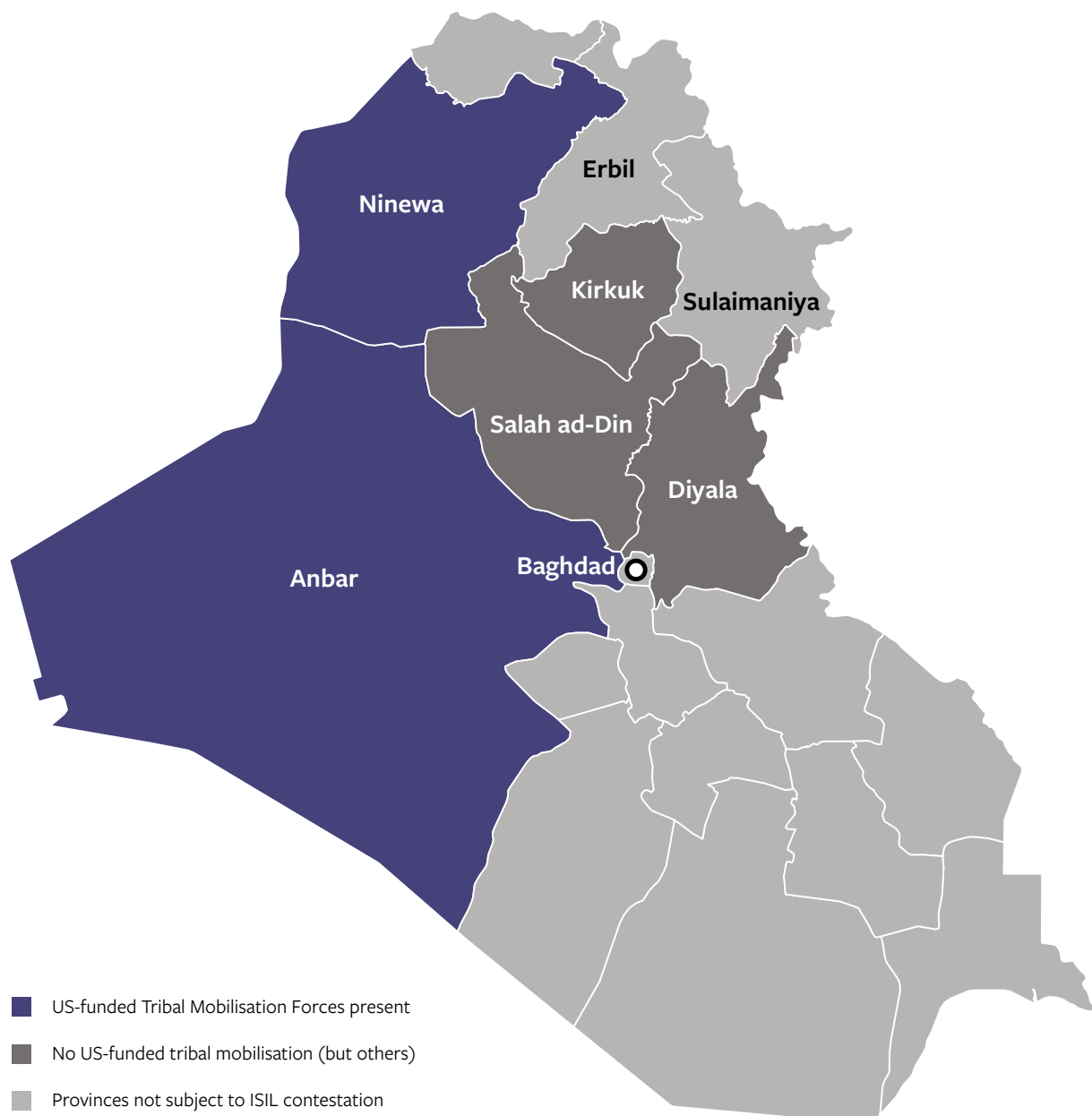
The mixed model of Iraqi and US input also carried over to programme management and oversight. As noted, the programme was managed by an Iraqi three-star general; contracts were issued and managed through the Iraqi National Security Service; and the programme would ultimately be absorbed into the larger PMF. On the ground, TMF tended to come under the direction of other Iraqi forces in their area, either the Iraqi army or the Federal Police. However, US officials were actively engaged in top-level oversight and management of the programme, and conducted their own monitoring and reporting of select issues. US forces and officials also developed and applied their own control mechanisms, including a 10-day training programme for the TMF, which covered

human rights and laws of war principles (Office of Inspector General, 2016b: 24); a code of conduct for those who underwent training; and other programme rules and restrictions, for example that TMF units keep to their local area (similar to the ALP model).[82]

US officials in Baghdad and Erbil also regularly tracked which forces were mobilised, where they were deployed and any complaints raised by or about TMF units. Much energy was focused on ensuring that the TMF programme did not suffer the same fate as the *sahwa*, which the Iraqi government had worked to dissolve as soon as the US handed over control (Cigar, 2014: 11–23). However, US personnel assigned to the programme also monitored TMF conduct and compliance with applicable programme standards. For example, US personnel were assigned to monitor allegations of GVHR (the Leahy law standard), and this resulted in some units subsequently being blocked under this law (Gaston, 2017c). US officials also monitored for evidence of the recruitment of minors into the force, which would violate US domestic and international obligations.

The degree to which these control mechanisms were implemented and enforced varied. There was some evidence that US vetting standards and blocks were applied, but this fluctuated with the degree of political imperative and attention, as well as with the capacity to apply them. There was little evidence of strict vetting scrutiny or other controls at the outset, when there was an urgent imperative to use tribal forces to push back ISIL in Anbar. One US official remembered little vetting or 'questions asked' about controls in the early days of the TMF programme, which he attributed to the TMF's perceived tactical successes: 'if you're winning, there is less second guessing of who is on the rolls ... They are less likely to ask you why you added another 7,000 forces if you've just won in Ramadi than if you've just lost'.[83] More examples of Leahy blocks being applied came in the context of TMF mobilisation during the slow, year-long Ninewa campaign, by which point the hope that the TMF could make a substantial contribution to the anti-ISIL effort had dissipated. Other checks were also applied variably. Training was provided by Coalition forces (not just US but also UK, Dutch, Danish and Spanish forces),[84] but it was not mandatory, and at least half of the units never received training, or had not done so before taking up their posts (Gaston, 2017c). This largely depended on the availability of Coalition staff to provide training, and the urgency with which local forces were needed to support a given operation.

Lack of capacity, resources, manpower and access also undermined US officials' ability to use monitoring or sanctions to ensure programme standard compliance. US officials tended to contrast their capacity and resources to monitor the TMF with their experience working with the *sahwa* initiative. According to these officials, there was no comparison between having a handful

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82 The training and programme restrictions may have been intended as a way to implement Congress' condition that supported groups agree to 'promote respect for human rights and the rule of law' (NDAA 2015, Section 1236 (e)(2)).
83 Telephone interview with US official, 21 April 2020.
84 Telephone interview with former US official monitoring the TMF programme, 18 February 2020; interview with US official, 7 December 2016, Erbil, Iraq; interview with US official, 28 February 2017, Erbil, Iraq.

of staff largely confined to embassies and consulates in Baghdad and Erbil (the TMF experience)[85] compared with, at its height, 100,000 US troops deployed alongside the *sahwa*. One US political officer who had experience with both programmes shared his observation that *ultra-vires* behaviour, ranging from shakedowns at checkpoints to abuses, decreases when international forces are the main source of funding and are visible in the vicinity: 'My experience is when you had US forces nearby your behaviour improves', he observed.[86]

In the end the most significant selection processes and blockages for the TMF came from informal political checks. In the Ninewa selection committee process, Iraqi or Kurdish stakeholders used their ability to vet or check forces as political vetoes, rejecting or simply indefinitely delaying approval of tribal leaders they viewed as a political threat or an opponent.[87] US officials in Baghdad described a sort of shuttle diplomacy to win the informal approval of key political stakeholders. One US official involved in early mobilisation efforts in Anbar said that this included not only approval of key Iraqi officials but also PMF leaders Hadi al Amri and Abu Mehdi al-Muhandis (the latter since killed in a US strike).[88] As one US official described it, the political reality was that 'If you're sending money, resources and equipment to Sunni tribal fighters, there have to be commensurate control mechanisms for Shi'a government officials and those with power behind them (and that could include Hadi al Amri or al-Muhandis) … They have to feel they have some control, and that these forces will not threaten your government'.[89]

These de facto stakeholders could effectively veto a Sunni tribal leader nominated for the force, or block additional allocations of salaries, weapons or equipment for already approved units. TMF were for the most part given only personal weapons, and of a lower quality; some of the more 'volunteer' parts of the force were asked to provide their own weapons. Where US officials wanted to provide some of the more competent and significant tribal forces with more advanced weaponry, such as heavy machine guns or armoured Humvees, this had to be negotiated on a case-by-case basis, with Iraqi officials and intermediaries ensuring that this was acceptable for all stakeholders, including those in the PMF.[90]

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85   The number of US officials and officers assigned to the TMF ranged from a dozen officials at the beginning to a couple of support officers in Baghdad and Erbil by 2016, and even fewer after that.

86   Telephone interview with US official formerly monitoring the tribal mobilisation programme, 18 February 2020.

87   Interview with US official, 28 February 2017, Erbil, Iraq.

88   Telephone interview with US official, 21 April 2020. A report by the DoD Inspector General also noted coordination with the Popular Mobilization Committee (the command and central management unit including al Amri and al-Muhandis) (Office of Inspector General, 2016a: 3).

89   Telephone interview with US official, 21 April 2020.

90   Ibid.

4.2 Iraq conclusions

Compared with the Afghanistan and Syria case studies, the TMF programme falls somewhere in the middle in terms of the degree of attention to oversight and controls, and the way risk mitigation was managed. US officials monitoring the programme from Erbil and Baghdad had some access to territory and a more granular sense of the tribal leaders involved and their engagement in operations than in some of the previous case studies, but it was still a small-footprint, and largely remote monitoring approach. US forces and officials had a physical presence in Iraq, and a partner relationship with the sovereign territory-holder, but they nonetheless faced some of the same limitations of territorial access and remote monitoring as with the programmes in Syria. A handful of US officers in Baghdad and Erbil may well have been closer to their partners than those working on assistance to Syrian forces, but it was still a league away from the level of observability and personal influence possible with 100,000 co-deployed troops (as with the *sahwa*).

The range of technical or tactical controls applicable to the TMF – which read almost like a combination of both the multi-stakeholder layers of engagement of the Afghanistan approaches and the rigid legislative controls of assistance in Syria – no doubt limited the size of the force, and the speed with which it was mobilised. One US officer involved with the TMF programme also noted that this slew of restrictions inevitably made the US programme less competitive in an environment with plenty of potential patrons: 'This is why the US has trouble competing with the Iranians – they give more stuff, pay better, and do it quicker'.[91]

The more serious limitations came not from technical controls but from the surrounding political and security dynamics. The TMF was quickly overshadowed by the much larger and politically entrenched Shi'a PMF mobilisation effort. The tepid nature of US support did not cause the TMF's marginalisation, but it certainly did nothing to prevent it. Here, too, there are parallels with the Syrian programmes. The Syrian New Force programme's failure to attract recruits was not purely due to technical restrictions but to the message these restrictions sent about the level of US commitment. Similarly, the low levels of US support to the TMF, the multiple requirements and deference to Iraqi vetting, and the fact that US support waned as soon as the campaign in Anbar was over, all contributed to a perception that the US was only looking for short-term proxies and would not protect TMF members in the future. This made the programme much less attractive for local forces, who had ample other backers to choose from.

Similar to the lessons from the Afghanistan cases, the TMF also suggests limitations on using technical controls to override larger risks or accountability deficits, and the importance of the political economy surrounding these forces. Despite legislative controls that were designed to ensure no links with Iranian-affiliated Iraqi groups – essentially the groups empowered within the PMF – these groups were so embedded in both formal and informal power structures that consultation with them was

91   Telephone interview with former US official, 6 July 2018. Counter-balancing the influence of Iran and some of these Shi'a forces was at least a subsidiary goal of the programme.

necessary. By virtue of their dominant influence in the security-governance space, and their power within the Iraqi government, the leading PMF groups would inevitably influence both the selection of the TMF and the operating space and constraints surrounding them.

The limitations on technical controls overcoming structural constraints in the environment was equally evident with regard to human rights-related controls. Although there were some meaningful efforts to apply human rights controls to the TMF itself – from training and codes of conduct to blocking units that failed Leahy law standards – such technical or tactical-level controls failed to overcome larger challenges to human rights accountability. There were limits to how much information US officials largely confined to consulates and embassies in Erbil and Baghdad could gather, making it difficult to corroborate unit- or commander-specific allegations in other provinces.

In addition, even if units were blocked, this was an environment flush with armed groups and sponsors, and there was substantial competition for local forces (Gaston and Ollivant, 2020: 13–20). If blocked, TMF units could easily find another sponsor. For example, in compliance with the Leahy law a TMF unit in southern Ninewa was blocked from US funding after evidence emerged that they had tortured suspected ISIL fighters they had captured.[92] The tribal leader and his unit simply changed affiliation, and worked alongside Iraqi security forces in the same area.

The fact that a blocked unit could switch to working under another part of Iraqi forces (also in theory subject to US Leahy law checks), points to a larger accountability deficit. Most of the allegations of misconduct on the anti-ISIL side – ranging from war crimes to mistreatment of or predation on civilians to mass forced displacement – involved regular Iraqi security forces, the Federal Police, Kurdish Peshmerga forces and larger PMF groups (Gaston and Schulz, 2019; Amnesty International, 2018; Human Rights Watch, 2017). There was no substantial evidence of Leahy law blocks or scrutiny of these larger forces, despite the fact that most of these groups also relied on US funding and equipment. Efforts to apply such constraints on one of the smallest and most marginalised forces (whose units were already regularly being held to account by Iraqi law enforcement) felt like a drop in the ocean in a climate of much more widespread abuses and impunity.

Control mechanisms such as Leahy vetting and blocks, or other training and codes of conduct, are designed not only to prevent US funding from going to perpetrators of human rights abuses, but also to send a larger accountability message to partner states. Additional requirements of Leahy vetting, including that the host state must be notified and that it is possible to 'remediate' or un-block the unit in question if held to account, are intended to encourage the host state to adopt its own accountability measures (Mahanty, 2017). Such effects would have required a much more aggressive prioritisation of human rights conditionality with the Iraqi government. This did not materialise in a moment where countering ISIL was the top priority.

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92   Interview with US official, 28 February 2017, Erbil, Iraq; interview with tribal force leader, 6 December 2016, Erbil, Iraq.

5 Conclusion

The forgoing case study examples and conclusions suggest substantial trade-offs and unintended consequences to such risk mitigation devices, at least as they have been applied so far. There is also a larger caution that a too technical approach to risk mitigation can distort larger political decision-making in such environments.

To begin delving into those larger issues, it is important to first summarise some of the technical or programmatic lessons learned and the common drawbacks that arose across all of the case studies:

- Remote or third-party monitoring was no substitute for co-deployed forces or officials and regular access to the terrain. Across multiple case studies and conflict situations, the evidence suggested that arm's-length direction and oversight created significant limitations not only in terms of the effectiveness of these forces, but also the degree of accountability and oversight. This was clearest across the Syria case studies, but was also evident in Afghanistan and Iraq, where US forces and officials often lacked the resources or remit to regularly engage in remote areas of the country.
- Vetting potential partners (on either human rights or security grounds) was often proposed as a safeguard, but offered no real check where there was insufficient knowledge of the actors or dynamics, as is common in fast-changing conflict situations or where there are limits on troops or personnel on the ground. A repeated refrain was that vetting was 'only as good as the database', which tended to be limited in these complex and fluid conflict environments. 'There is lots of dark matter out there,' one former State Department official quipped.[93] In addition, vetting was extremely costly to implement in terms of staff time and resources, slowed programme implementation and limited available partners.
- Human rights abuses and conduct-based transgressions were harder to monitor, investigate and hold to account than material losses. Across nearly all of the case studies, lack of access to territory and limits on information gathering and monitoring made it difficult to corroborate allegations of abuse or misconduct. Other observers or the victims were in a weak position to report on abusive forces in their area. In addition, as one State Department official working with the SDF observed, cut-offs were difficult to enforce because, even with confirmed information of violations, 'it's hard to isolate which unit or group of individuals were to blame for a given incident'.[94]
- Attempts to enforce standards or rules, through cut-offs and sanctions, were hamstrung by the same lack of access and information. Inconsistent and ad hoc application of sanctions, as with the FSA redlines in Syria or with the exceptional application of the Leahy law with regard to the ALP, undermined the credibility of these tools, and the US's ability to shape the behaviour of the forces it was supporting.

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93   Interview with former State Department official, 14 May 2019, Washington DC.
94   Interview with State Department officer working on Syria, 23 June 2018, Washington DC.

- Institutionalisation ultimately proved only as good as the institutions themselves. Weak institutions proved unable to constrain risks with forces operating in areas beyond state control. Where the institutions in question were already compromised by political interference and clientilistic behaviour, it could subvert other controls, for example those aimed at selecting against pre-existing militias or factional networks in Afghanistan. The most successful case of something such as institutional control came from a clearly non-state force, the SDF, and was due to its own organisational characteristics, rather than any prompting from outside.
- Community controls had the potential to work well, overcoming some of the knowledge and access issues of external actors, but they were only available in limited circumstances. This was best exemplified by the ALP. Across Afghanistan, the sort of community structures and authority that would have made such community checks effective had dissipated after decades of conflict, social change and targeting. Community figures, such as elders or civil society members, were in no position to check the behaviour of powerful armed groups with foreign backing.

Many of these deficits and failings are well known – well-trodden in practice by policy-makers and practitioners and amply theorised within the academic literature (see, for example, Biddle et al., 2018; Byman, 2006; Byman and Kreps, 2010). They are nonetheless worth emphasising here because of what they point to in terms of some of the structural factors and operating modalities that contributed to their failure.

5.1   Implications for 'low-footprint' operations and the 'by, with and through' approach

Across the case studies challenges to accountability were created by the surrounding environment – that is, the conflict context, lack of access to territory, fluctuating allegiances and facts on the ground, or limited choices in and capacity of partners – although those certainly contributed. Equally, US decisions on how it would engage in these environments limited its ability to influence those conditions and partners. Choosing to work via other partners with limited or no US presence on the ground offers advantages, but also comes with drawbacks, including a loss of control and awareness of what partners are doing.

There are also some inherent limitations and caps on influence when working with partners on a short-term, transactional basis, as has been the governing approach in LHSF partnerships. Even those that proved to be longer-running, such as the ALP, were not envisioned to be such initially. US forces who had decades of experience in developing and mentoring forces tended to argue that the most powerful constraints or incentives for shaping behaviour were only available in long-term relationships. The longer timespan allowed a level of trust and socialisation to develop at an inter-personal level. In addition, where partner forces knew that they would be protected, not just in the immediate threat environment, but tomorrow and thereafter, they were more willing to accept US conditions or constraints on behaviour. Technical controls and immediate transactional incentives could not substitute for these more powerful levers of control and influence, particularly when up against other countervailing influences.

The limitations on technical due diligence measures in such contexts is important to emphasize given the trend towards small footprint, remotely managed security operations – the approach associated with the 'by, with, and through' strategy. While control mechanisms might appear to be an appropriate accompaniment, a way to do some risk mitigation even in these low footprint operations, the findings suggest that these are areas where technical controls might fare the worst.

5.2 Implications for human rights and conduct concerns

A core inquiry for this research was how states might use due diligence checks or accountability mechanisms to ensure that support to LHSFs would not undermine human rights commitments. Some of the human rights or conduct-based mechanisms surveyed included human rights-based vetting and mandatory cut-offs (modelled on the Leahy law), human rights or IHL training, codes of conduct or pledges for fighters to commit to IHL, or mentoring, monitoring or other oversight structures designed to reinforce these conduct standards.

The record of success for these conduct-based mechanisms has so far been limited, with continued examples of US funds going to those with a clear record of abuse, and of many (though certainly not all) supported fighters continuing to transgress redlines and commit war crimes with impunity. Although human rights activists have long championed mechanisms like the Leahy law or provision of IHL training and requirements, many of those interviewed were unenthused by the results. Some argued that the vetting rules or guidelines were so under-enforced or selectively enforced (exempting valuable security partners) as to be meaningless. Taking an example from Iraq, activists interviewed saw little benefit in a few Leahy law-derivative blocks against a small-scale force like the TMF, in an environment where more widespread and systematic human rights abuses by Iraqi and Kurdish security forces were largely absent from the US diplomatic conversation

Others worried that a downside of human rights due diligence procedures was that they could become a 'check the box' exercise, and an excuse or a distraction from more meaningful steps. 'Having procedures in place debilitated a larger discussion of how to mitigate the risks,' one former State Department official involved in some of the Leahy vetting argued. 'It creates a sort of "artificial confidence" about the groups you're working with, and stops the degree of policy consideration of whether working with these groups is good.'[95] It shifted the locus of the policy discussion away from the larger political measures or choices that might have been a more significant constraint on abusive forces (see also Tate, 2011: 352–354).

At the same time, most saw a continued need for some form of human rights checks. One former DoD advisor who worked with local forces in both Iraq and Afghanistan observed that while deploying US advisors and mentors alongside local forces and human rights vetting procedures were not sufficient in themselves to prevent abuses, 'things could be a lot worse without it'.[96] He

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95   Interview with former State Department official, 14 May 2019, Washington DC.
96   Interview with former DoD official, 3 May 2021, by telephone.

said that from his personal observation, requirements like the Leahy law generated substantial attention to human rights issues among US policymakers at an embassy or command level, in ways that sometimes forced different partner choices or more stringent conditions with partners than would have otherwise been the case given competing security pressures.

Such observations suggest that Congressional requirements like the Leahy law can be an important forcing mechanism, but that a drawback so far has been their tendency to generate more attention for the mechanisms and machinery of vetting or checks, or to keep the focus on the unit or individual level of culpability, rather than larger structural or systemic choices. To better address this in the future, civilian officials, military officers, and human rights researchers alike tended to argue for greater investment in knowledge about the forces in question and the situation, and structuring the partner relationships in ways that allowed for continuing follow-up and pressure, rather than more mechanistic or one-off processes like an initial database check or training. Many also suggested creating opportunities for civilian oversight, civil society watchdog processes and input, and other regular accountability processes as more likely to yield results in the long-term than purely donor-instituted oversight checks alone.

Donor conditionality and continued insistence that supported security institutions or forces meet certain standards also appeared to be an important baseline. A senior Afghan defence and intelligence official argued that while international donor requirements on human rights or corruption had not entirely halted misconduct in Afghan forces, they at least imposed a degree of quality control and forced Afghan officials to take these issues into consideration.[97]   He pointed to the ANA-TF as an example, noting that US officials' close attention to the program, forcing careful selection and retraining where issues had arisen, had prevented it from becoming yet another unruly militia force. He worried that with future international withdrawal from Afghanistan, all that would be left were exigent security pressures, and the standards would slip even further.

5.3 Implications for larger decision-making (partner and intervention choices)

A last important set of issues surrounds the potential unintended consequences that a risk mitigation approach might have for larger policy decision-making. A concerning trend across many of the case studies was that control mechanisms facilitated approval of risky or controversial forces by appearing to minimise the costs or risks involved. In Afghanistan, the ALP faced such substantial opposition among a range of Afghan and international stakeholders that it likely would not have been expanded without some greater safeguards and checks. Across many of the Syria support initiatives, control mechanisms and safeguards helped to deflect critiques and concerns that supporting a given force was unwise, or outweighed by other policy commitments.

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97   Interview with senior Afghan defence official, 16 April 2021, by Whatsapp.

Although impossible to say how much, they may thus have played an enabling role, allowing programmes that did not have full political backing or whose costs outweighed their benefits to go forward.

Control mechanisms could also forestall or substitute for tough decision-making on competing policy goals, masking rather than mitigating risks. In Syria, the bevy of control mechanisms papered over what were in practice irreconcilable goals and tough trade-offs implicit in partner choices. As one former State Department official put it, 'There always was this cohort of what I would call Syria true believers who wanted to pretend that we could find groups who could fight for us in Syria ... that would be amazing fighters, from the right [ethnic or ideological] background, and abide by international law to the hilt'.[98] Elaborate vetting criteria, programme rules, training and codes of conduct were developed in pursuit of that 'idealised' force, but never bore much relation to the reality on the ground in Syria.

Control mechanisms could also pave the way for decisions whose consequences were unacceptable by offering a false 'middle ground', as raised in the SDF case study. Rather than choosing to prioritise the relationship with Turkey, or the immediate ability to pursue ISIL via the SDF, the US adopted control mechanisms that nominally allowed it do both – to work with the SDF, but with weapons tracking and accounting designed to reassure Turkey. In reality, weapons tracking did nothing to address Turkey's anger over US support to a group it viewed as an existential threat.

Some saw such false 'middle ground' choices as a reflection of a larger 'pathology' in US foreign policy. As one State Department officer put it: 'We want to have it all and believe we can do it if we just put our minds to it'.[99] Other US officials and implementing partners framed this as political buck-passing, pushing difficult political choices down to lower levels of the bureaucracy. Elaborate criteria and control mechanisms developed to satisfy a range of policy concerns and objections in Washington bore 'no relation with what was going on' in Syria.[100] But they were nonetheless adopted, and it was left to middle- and lower-level State Department officials and military officers, as well as their implementing partners and the Syrian forces themselves, to try to marry irreconcilable goals and positions at the level of implementation.

As a whole, the trend towards using control mechanisms in such situations often led to the substitution of technical or tactical mechanisms for larger strategic or political choices, for example, whether to intervene via LHSFs or whether to work with the group in question. More often than not, control mechanisms failed to mitigate the risks in question because they could not

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98   Interview with former State Department officer, 23 June 2018, Washington DC.
99   Interview with former State Department officer, 30 March 2018, London.
100   Interview with former State Department advisor, 24 March 2018, London.

overcome the structural challenges to oversight and control, nor obviate clear trade-offs implicit in partner choices or in the country dynamics in question. Rather than resolving the issue, they may have created policy blinders, dissimulating the risks, and leading to greater unintended side-effects.

5.4 Risk mitigation versus risk avoidance in future decision-making

Many of the above reflections and case study finding suggest very limited results for due diligence and risk mitigation mechanisms, despite some substantial costs. While these costs and drawbacks have to be weighed seriously, the argument here is not that US policymakers (or others working with LHSFs) should be sanguine about the risk of enabling human rights abuses, atrocities, or other criminal or threatening behaviour. Instead, the issue lies in relying too heavily on technical or tactical-level controls to address risks, in lieu of, rather than alongside larger operational or strategic choices.

What would be the alternative to these technical approaches? In some cases, where the risks are serious and cannot be constrained, the better option may be to avoid working with a given LHSF, or to avoid doing so unless it can be supported in a way that gives attention to both the short- and long-term costs. Here, it may be helpful to compare the US approaches to risk mitigation discussed so far with those of other countries or international organisations. Whereas the US tended to proceed with LHSF support, while attempting to constrain or mitigate risks through technical tools, European countries saw their primary risk mitigation tool as residing in the decision whether to partner with a force or not, and with what level of assistance or cooperation. European diplomats interviewed tended to argue that they not only lacked the manpower and resources to vet, track and account for partner forces the way the US did, but that they thought such efforts would prove futile. When confronted with a risky force, European partners simply avoided working with them. For example, no other ISAF country contributed funds to the ALP, the first large-scale Afghan force initiative that did not receive multi-donor funding. Most European countries also limited assistance to the Syrian opposition to either non-lethal assistance, or only channelled assistance to unarmed opposition groups, such as the Free Syrian Police, because of an assumption that foreign support would inevitably leak to more dominant extremist groups. As one European official explained: 'if a food basket ends up in Nusra's hands, it's not a big deal', but weapons gone astray would be a different order of political risk.[101]

A similar hands-off approach can be seen in the way that some UN missions have applied the United Nation Human Rights Due Diligence Policy. In the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), for example, the mission applies a Leahy law-like vetting mechanism to exclude support going to non-state armed groups, on the theory that they cannot predict or mitigate violations by those non-state armed groups (CIVIC 2020).

Such risk avoidance, as it might be framed, begets its own critiques. European diplomats themselves admitted that they could often afford not to partner with a risky force, because the US was already

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101   Interview with senior European diplomat, 8 May 2016, Istanbul.

doing so. In addition, as the Syria case suggests more than any, there can be as many strategic or human rights consequences from omissions and failures to act as might flow from choosing to intervene via partners. Given such realities, the US would be unlikely to choose to simply avoid an engagement because of the downstream or consequential risks that might flow from it. Last, as noted in the introduction, state forces may be as abusive as nonstate forces, and the changing international dynamics may make it impossible to avoid dealing with LHSF security providers.

The solution might be to avoid either extreme – either over-reliance on due diligence measures, or failure to engage because such measures will not entirely suffice. One senior European diplomat working on Syria argued that there had to be some degree of vetting or other due diligence criteria 'because of the political risks involved', but that there needed to be more holistic thinking about how to match those up with the overall political strategy, and what degree of risk tolerance was appropriate for that strategy.[102] Such reflections, combined with the way that controls impeded political decision-making and deliberation, suggest that, at a minimum, any future risk mitigation policy must come into the situation with 'clear eyes'[103] about the risks and trade-offs involved, and how little, rather than how much, tactical control might actually shift those risks.

102 Interview with senior European diplomat, 8 May 2018, Istanbul.
103 Interview with former State Department officer, 30 March 2018, London. The full quotation is included in the conclusion to the Syria case study above.

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