

Adding Operational Authorities for the Chairman of the Joint Chiefs of Staff

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BACKGROUND

The House and the Senate National Defense Authorization Act (NDAA) bills have several provisions seeking to strengthen the role of the chairman of the Joint Chiefs of Staff. This paper examines the proposals to give the chairman some operational authorities.

The debate over the proper role of the chairman of the Joint Chiefs of Staff stretches back to the original Goldwater-Nichols legislation in the late 1980s. There was a broad consensus that the position needed to be strengthened. However, there were also concerns about giving the senior military officer too much power, especially by putting him into the chain-of-command. As a compromise, the chairman was made explicitly the senior military officer and designated the principal military adviser to the president. He was not given an operational role. The Senate and House bills' attempt to clarify and strengthen the role of the chairman has renewed this debate.

The most important issue is addressing the complex cross-functional and transregional threats of the twenty-first century that have challenged the demarcations of the combatant command (COCOM) organizational structure. The concern is that global threats like ISIS or peer competitors like Russia and China cross regions and functions and, therefore, involve several COCOMs. Secretary Ash Carter, in his statements before Congress and elsewhere,

has said he relies on the chairman to address these boundary issues and has asked Congress to provide additional authority to the chairman.¹

Both bills would empower the chairman in this regard.

Section 922 of the SASC NDAA bill would enable the secretary to delegate authority to the chairman for transferring units, equipment, and capabilities across COCOM lines. The committee argues that it is responding to the secretary's request, that the secretary can use the authority as much or as little as desired, and that the secretary would be fully informed of all transfers. Arnold Punaro, a retired Marine Corps major general and former Senate Armed Services Committee aide who helped write the original Goldwater-Nichols Act, commented, "In the world that we're in, it probably makes sense for the chairman to have some delegated authority to allocate day-to-day activities."²

However, there are concerns about civil-military balance. John Hamre recently testified before the House Armed Services Committee: "This may sound like an insignificant matter. . . . But civilian control is a toggle switch—either on or off. It is not a rheostat where you can dial some level of civilian control and give powers directly to the Chairman." Hamre further noted that, from his experience, the transfer decisions mentioned were "matters that are dispensed with in minutes," and "if delegation authority for force movements is needed, a premise I do not accept, then the Secretary should be allowed to delegate to the Deputy Secretary or the appropriate Under Secretary, not to a military officer."³

There is broad agreement that any restructuring in the national security enterprise should not undermine civilian control. In March, 28 former senior officials signed an open letter on defense reform. Its first principle was, "[W]e must sustain civilian control of the military through the secretary of defense and the president of the United States and with the oversight of Congress."⁴

The House NDAA bill is more limited. It puts in statute the requirement that the chairman advise the secretary on the transfer of units across functional and geographic commands, and has not generated concerns. It's not clear, however, how different this is from current practice. The House NDAA report notes a concern about the chairman's proper role: "While the committee would grant the Chairman a greater role in advising on operations, it also believes that the Chairman should remain focused on strategic direction, strategic planning,

¹ U.S. Senate Armed Services Committee, "Department of Defense Budget Posture," March 17, 2016, <http://www.armed-services.senate.gov/hearings/16-03-17-department-of-defense-budget-posture>.

² Marcus Weisgerber, "Carter Seeks New Powers for Joint Chiefs, Top Commander in War on Terrorism," Defense One, April 5, 2016, <http://www.defenseone.com/business/2016/04/carter-seeks-new-powers-joint-chiefs/127245/>.

³ John J. Hamre, "Goldwater-Nichols Reform: The Way Ahead" (testimony before the House Armed Services Committee, July 7, 2016, <http://docs.house.gov/meetings/AS/AS00/20160707/105162/HHRG-114-AS00-Wstate-HarmeJ-20160707.pdf>).

⁴ "Open Letter on Defense Reform," press release, CSIS, March 14, 2016, <https://www.csis.org/news/open-letter-defense-reform>.

and contingency planning, for the Chairman is the only senior military leader that, independently and holistically, looks across the military services and the combatant commands.”⁵

Similarly, the House provision authorizing the chairman to give advice about ongoing military operations has not engendered controversy.

Table 1: Remarks from Congress and Administration

SASC	HASC	Secretary Carter/ Administration
Yes	Yes	Yes
<p>NDA 2017 S.2943, Section 922</p> <p>“The Secretary of Defense may, in the Secretary’s discretion, delegate to the Chairman of the Joint Chiefs of Staff the authority to direct the transfer of forces on behalf of the Secretary.”</p>	<p>NDA H.R. 4909 Section 908</p> <p>“Responsibilities of the Chairman of the Joint Chiefs of Staff ... Advice on operations.-- Advising— (A) the President and the Secretary of Defense on ongoing military operations; and (B) the Secretary on the allocation and transfer of forces among geographic and functional combatant commands, as necessary, to address transregional, multi-domain, and multifunctional threats.”</p>	<p>Carter Statement:</p> <p>“We need to clarify the role and authority of the Chairman, and in some cases the Joint Chiefs and the Joint Staff, in three ways: one, to help synchronize resources globally for daily operations around the world, enhancing our flexibility, and my ability, to move forces rapidly across the seams between our combatant commands; two, to provide objective military advice for ongoing operations, not just future planning; and three, to advise the Secretary of Defense on military strategy and operational plans.”</p>

ASSESSMENT

The White House and the DoD appear to be on board with both the House and Senate measures, as Secretary Carter has directly asked for this authority to be codified in statute, and there have been no objections to these provisions in the White House’s SAPs for the Senate or House NDA bills, or in the secretary’s “heartburn” letter. The administration does not view this as a civil-military balance issue.

⁵ U.S. House Armed Services Committee, “National Defense Authorization Act for Fiscal Year 2017,” H.R. 4909, 114th Congress, 2nd session, 207, <https://www.congress.gov/114/crpt/hrpt537/CRPT-114hrpt537.pdf>.

The House's provision of limited authority seems to signal opposition to the broader Senate language. The House could have followed the secretary's request but did not. Other opposition comes from outside of government. This is not unusual as incumbents often have confidence in their ability to successfully balance competing interests and desire expanded authorities to carry out their jobs, a confidence and desire not always shared by those out of government.

Transfer authority seems to imply an element of "command authority" regarding the organization of commands and forces as contained in 10 USC 164(c)(1)(C), although a final answer requires a legal determination by the general counsel.

It is also possible that the secretary already has the authority under 10 USC 153 to delegate authority to approve transfers. ("Unless specifically prohibited by law, the secretary may, without being relieved of his responsibility, perform any of his functions or duties, or exercise any of his powers through, or with the aid of, such persons in, or organizations of, the Department of Defense as he may designate.") Language in 10 USC 162 on force assignment and transfers does not appear to establish a statutory barrier although, again, a final answer requires a legal determination by the general counsel.

Because the Congress and executive branch are in general agreement, it appears likely that at least some language to strengthen the chairman's influence in addressing cross-domain, cross-functional, and transregional threats will appear in the conference legislation.

RECOMMENDATION FOR A WAY FORWARD

The House proposal specifically authorizing the chairman to give advice about ongoing military operations seems to be a useful clarification and should be accepted.

More difficult is what to do about cross-functional and transregional threats. There are several options to address concerns about civil-military balance.

- Accept the Senate proposal but add language specifying that the delegation of transfer authority does not convey further command authority of any kind. This would ensure that the chairman has an increased ability to assist the secretary but would explicitly limit the chairman's operational role and not put him implicitly into the chain of command.
- Accept the Senate proposal but delegate the authority to a civilian official, like the deputy or the undersecretary for policy, not to the chairman. Such a provision would be necessary only if the general counsel determined that the secretary did not already have such authority. The chairman would retain his advisory role.
- Accept the Senate proposal but limit the chairman's transfer authority in terms of number of transfer orders and the size of the orders, for example, a maximum of 10 transfer orders per month, each no larger than 1,000 service members. This would ensure that the authority could not be used to assume a larger role in the strategic control of military forces.

- Accept the House language. This may speed the transfer process in a modest way without raising civil-military balance concerns.



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