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# **U.S. Diplomatic Missions: Background and Issues on Chief of Mission (COM) Authority**

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## Summary

“Chief of Mission,” or COM, is the title conferred on the principal officer in charge of each U.S. diplomatic mission to a foreign country, foreign territory, or international organization. Usually the term refers to the U.S. ambassadors who lead U.S. embassies abroad, but the term also is used for ambassadors who head other official U.S. missions and to other diplomatic personnel who may step in when no ambassador is present. Appointed by the President, each COM serves as the President’s personal representative, leading diplomatic efforts for a particular mission or in the country of assignment. U.S. ambassadors and others exercising COM authority are by law the cornerstone of U.S. foreign policy coordination in their respective countries. Their jobs are highly complex, demanding a broad knowledge of the U.S. foreign policy toolkit and the ability to oversee the activities and manage the representatives of many U.S. government entities, with some exceptions for those under military command. Congress plays an important role in setting standards for the exercise of COM authority and providing COMs with the resources—training, personnel, monetary—to promote its effective exercise. A number of recent developments have increased congressional attention to issues associated with the roles and responsibilities of COMs.

The statutory basis for COM authority and responsibilities is the Foreign Service Act of 1980, as amended (FSA 1980; P.L. 96-465), which states that the COM has “full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that countries,” with some exceptions; and for keeping “fully and currently informed” about all government activities and operations within that country. COM authority is also conferred by other sources of legal authority, which include executive orders and other presidential directives and State Department regulations, some of which provide more extensive authority than the FSA 1980. The Chief of Mission role in conducting and coordinating diplomacy abroad was also invoked in the first Quadrennial Diplomacy and Development Review (QDDR), released by the State Department in 2010.

The scope and exercise of COM authority, both generally and in specific instances, have been of ongoing interest and concern to Congress. This report summarizes the current legal authority of Chiefs of Mission to include relevant legislation and executive branch directives and regulations. It includes brief discussion of common questions related to COM authority such as:

- Does COM authority extend to Department of Defense (DOD) personnel?
- Who exercises COM authority in countries without a U.S. embassy or diplomatic presence?
- Is COM authority in effect in countries where the United States is engaging in hostilities?
- What is the COM’s authority over the legislative branch?

Finally, specific concerns, possible options, and reform proposals for improving COM authority and effectiveness are explored. This report may be updated as events warrant.

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## Introduction

In recent years, congressional attention has been drawn to the roles and responsibilities of U.S. ambassadors who serve as Chiefs of Mission in U.S. embassies abroad. The death of Ambassador Christopher Stevens in Benghazi, Libya, in September 2012 highlighted the dangers that ambassadors may encounter as the front-line face of U.S. diplomacy, and the availability of resources, leadership, and communication relative to those dangers.<sup>1</sup> The ongoing debate on interagency reform for missions abroad stresses the need to improve coordination among all U.S. agencies, a key responsibility of U.S. ambassadors.<sup>2</sup> The State Department and United States Agency for International Development (USAID) 2010 Quadrennial Diplomacy and Development Review (QDDR) emphasized the need to equip ambassadors to better perform that role.<sup>3</sup>

In addition to these specific concerns, congressional interest stems from Congress's part in selecting U.S. ambassadors (as the U.S. Senate advises and consents on their appointment), providing the resources they need to accomplish their missions, and overseeing their conduct of those missions.

This report addresses the role and effectiveness of U.S. ambassadors and others who serve as a Chief of Mission (COM) abroad,<sup>4</sup> particularly their responsibility for coordinating interagency activities and their control over U.S. forces operating in their countries of assignment. After a background section on the history of COM roles and a section on the sources of COM legal authority, this report addresses four commonly asked questions regarding the scope and exercise of COM authority. It concludes with a discussion of two prominent congressional concerns: (1) how effective is COM authority in practice? and (2) how might the exercise of COM authority be improved? It will be updated as warranted.

## Background on the COM Role

“Chief of Mission,” or COM, is the title conferred on the principal officer in charge of each U.S. diplomatic mission to a foreign country, foreign territory, or international organization. Usually the term refers to the U.S. ambassadors who lead U.S. embassies abroad, but the term also is used for ambassadors who head other official U.S. missions and to other diplomatic personnel who may step in when no ambassador is present. The U.S. Constitution authorizes the President to

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<sup>1</sup> The unclassified version of the Benghazi Accountability Review Board Report cited a lack of security resources and to leadership and management deficiencies of senior leadership and management in two supporting State Department bureaus as contributing to the tragedy. Department of State, *Report of the Accountability Review Board for Benghazi*, December 19, 2012, p. 4.

<sup>2</sup> See CRS Report R42133, *Building Civilian Interagency Capacity for Missions Abroad: Key Proposals and Issues for Congress*, by Nina M. Serafino, Catherine Dale, and Pat Towell, Appendix D, pp. 60-72. Hereinafter cited as CRS Report R42133, *Building Civilian Interagency Capacity for Missions Abroad*.

<sup>3</sup> Department of State and United States Agency for International Development, *Leading Through Civilian Power: The First Quadrennial Diplomacy and Development Review*, 2010, pp. vi, 29. This source is hereinafter referred to as *The QDDR*.

<sup>4</sup> Please note that the term “ambassador” may at certain points be used interchangeably with the term “chief of mission” or COM in this report.

appoint ambassadors with the advice and consent of the Senate, that is to say, subject to Senate confirmation.<sup>5</sup>

In circumstances where no presidentially appointed ambassador is currently serving at a U.S. mission abroad, legislation further authorizes the President to appoint a career U.S. foreign service officer as a *chargé d'affaires* or “otherwise as the head of a mission ... for such period as the public interest may require.”<sup>6</sup> An ambassador or other foreign service official may hold the COM position within a given U.S. mission abroad. Appointed by the President, each COM serves as the President’s personal representative, leading diplomatic efforts for a particular mission or in the country of assignment under the general supervision of the Secretary of State and with the support of the regional assistant secretary of state.

The role of the COM has expanded considerably since World War II. With the postwar expansion of U.S. foreign assistance around the world, COMs assigned to head U.S. embassies or other country-based diplomatic missions abroad have been charged with responsibility for overseeing nearly all U.S. government activities in their country of assignment, with the primary exception of military operations. Most often, they exercise this authority through their leadership of the embassy’s “country team,” the membership of which includes the chief representative of each U.S. government agency undertaking activities in a host country or other mission.

The State Department/USAID 2010 Quadrennial Diplomacy and Development Review (QDDR) casts ambassadors as chief executive officers or “CEOs” of multi-agency missions, not only conducting traditional diplomacy, but also leading and overseeing civilians from multiple federal agencies in other work.<sup>7</sup> The QDDR highlights the key role of country teams and ambassadors in the conduct of foreign policy and assistance, and sets forth ways in which the Obama Administration would try to improve the knowledge and skills of COMs and their ability to lead country teams. Civilian agencies “possess some of the world’s leading expertise on issues increasingly central to our diplomacy and development work,” the QDDR states.<sup>8</sup> “The United States benefits when government agencies can combine their expertise overseas as part of an integrated country strategy,” when “implemented under Chief of Mission authority, and when those agencies build lasting working relationships with their foreign counterparts.”<sup>9</sup> At the time of the QDDR’s release, then-Secretary of State Clinton also announced that Chiefs of Mission were to play a role in integrating country-level strategic plans and budgets.

## Current Legal Authority of Chiefs of Mission

The authorities and responsibilities of COMs are explained primarily in the Foreign Service Act of 1980, as amended (FSA 1980; P.L. 96-465). (This legislation also explains the responsibility of all U.S. government officials operating under a U.S. mission abroad to report to the COM and abide by COM directives.) Section 207 of FSA 1980 serves as a codification in legislation of

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<sup>5</sup> U.S. Constitution, Sec. 2, cl. 2. See also Section 302(a)(1) of the Foreign Service Act of 1980, as amended (“FSA 1980”; P.L. 96-465; 22 U.S.C. §3942(a)(1)).

<sup>6</sup> Section 502(c) of FSA 1980 (22 U.S.C. §3982(c)).

<sup>7</sup> *The QDDR*, pp. vi, 29.

<sup>8</sup> *Ibid.*, p. 33.

<sup>9</sup> *Ibid.*

many of the provisions in previous executive orders setting out and developing COM authority as U.S. government activities abroad increased throughout the latter half of the 20<sup>th</sup> century.

COM authority is also shaped by executive branch directives, which include executive orders and other presidential directives and State Department regulations, some of which provide more extensive authority than FSA 1980. According to State Department regulations, COM authority derives originally from the President's general constitutional powers in foreign affairs. Because of this constitutional basis for COM authority, according to the State Department, the President's letter of instruction (see "Letter of Instruction," below) providing greater detail to COMs is of greater significance in determining a COM's authority than the pertinent legislative provisions relating to such authority.<sup>10</sup>

## Legislation

Section 207 of the FSA 1980 (22 U.S.C. §3927) sets out the three main components of COM authority: (1) the COM's responsibilities, (2) the COM's authority over the personnel stationed at the embassy and in the country of assignment, and (3) the obligations of U.S. government personnel and agencies to that COM. Each component is outlined below.

- **COM Responsibilities.**

- Section 207(a)(1) of FSA 1980 states that, under the direction of the President, a COM "shall have full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country,"<sup>11</sup> except for Voice of America (VOA) correspondents on official assignment and employees under the command of a U.S. Geographic Combatant Commander (GCC).<sup>12</sup> (Recent Presidential Letters of Instruction exclude personnel on the staff of an international organization, but do not reference VOA correspondents, see below.)
- Pursuant to Section 207(a)(2), the COM is also responsible for keeping "fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government executive branch employees in that country (except for Voice of America correspondents on official assignment and employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission."

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<sup>10</sup> 2 F.A.H.-2 §H-114.6(b).

<sup>11</sup> A number of provisions relating to the activities of other executive branch agencies confirm the authority of the COM to supervise, coordinate, and direct agency representatives in a pertinent foreign country. See, e.g., Section 515 of the Foreign Assistance Act of 1961, as amended (P.L. 87-195; 22 U.S.C. §2321i).

<sup>12</sup> There are six U.S. Geographic Combatant Commanders, each heading one of the U.S. geographic combatant commands (COCOMs): U.S. Africa Command (AFRICOM); U.S. Central Command (CENTCOM); U.S. European Command (EUCOM); U.S. Northern Command (NORTHCOM); U.S. Pacific Command (PACOM); and U.S. Southern Command (SOUTHCOM). For more on the GCCs and COCOMs, see CRS Report R42077, *The Unified Command Plan and Combatant Commands: Background and Issues for Congress*, by Andrew Feickert.

- A principal duty of each U.S. Chief of Mission in a foreign country, under Section 207(c) is “the promotion of United States goods and services for export to such country.”
- **COM Authority over Personnel.** Section 207(b) of FSA 1980 states that any executive branch agency with employees in a foreign country “shall insure that all of its employees in that country” (except for VOA correspondents on official assignment and those under the command of a GCC) “comply fully with all applicable directives” of the COM.
- **Obligation to Keep COM Fully Informed.** Subsection (b) also provides that any executive branch agency with employees in a foreign country “shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country....”<sup>13</sup>

Section 207 of FSA 1980 limits COM authority to coordinate and supervise U.S. government activities in a host country to executive branch agencies. In general, representatives of the judicial and legislative branches, including Members of Congress and their staffs, are not subject to the same coordinating and supervisory authorities of the COM.

## Executive Branch Directives and Regulations

In addition to and in accordance with the relevant legislative mandates, COM authority derives from an array of executive branch orders and directives, explained below.

### Letter of Instruction

Presidents provide their primary directives in a Letter of Instruction to each COM, setting out each COM’s role and responsibilities as the President’s personal representative at each U.S. mission abroad. Although the State Department stresses the distinction between the constitutional and legislative sources of COM authority, the Letter of Instruction and Section 207 of FSA 1980 contain similar language on the central points of COM authority. They do not contradict each other in their explanation of responsibilities of the COM and the obligations of other U.S. agency representatives to adhere to the COM’s directives in each host country.<sup>14</sup>

One difference with the FSA 1980 is the personnel excluded from COM authority. The FSA 1980 excludes VOA correspondents on assignment and personnel under the command of a GCC, as mentioned above. The template of an Obama Administration Letter of Instruction excludes personnel on the staff of an international organization.<sup>15</sup>

Another difference is that Letters of Instruction (as indicated by templates of presidential Letters of Instruction of two administrations) state that ambassadors have the right to see “all communications to and from Mission elements,” except those exempted by law or executive decision.<sup>16</sup>

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<sup>13</sup> See also the Foreign Affairs Handbook, at 2 F.A.H.-2 §H-112.1(a)(2).

<sup>14</sup> The President’s Letter of Instruction is set out general form at 1 F.A.M. 013 Exhibit 013.2.

<sup>15</sup> Template of an Obama Administration Letter of Instruction for bilateral Chiefs of Mission, dated May 26, 2009.

<sup>16</sup> Templates of the Obama Administration Letter of Instruction, cited above, and of the George H.W. Bush (continued...)

## Executive Orders

Executive orders have gradually expanded the authority and responsibilities of COMs. The requirement that COMs coordinate all U.S. government activities in a host country and be kept informed of all activities by U.S. government personnel dates back at least to the early years after World War II, when concerns surfaced about the management of U.S. humanitarian and security assistance to various Western European countries. In 1952, President Harry S. Truman issued Executive Order 10338, which directed the Chief of Mission to coordinate the activities carried out by representatives of U.S. government agencies under the Mutual Security Act of 1951. This included the activities of chiefs of economic missions, military assistance, advisory groups, and other representatives of U.S. government agencies. The COM was also tasked with responsibility “for assuring the unified development and execution of the said program in each country.” To that end, the representatives of U.S. agencies covered by the order were directed to “keep the respective Chief of United States Diplomatic Missions and each other fully and currently informed on all matters, including prospective plans, recommendations, and actions relating to the programs under the Act....”<sup>17</sup>

Subsequent executive orders conferred on each COM to a country broader authority over U.S. government agencies’ activities in that country, not specifically including or excluding any agency or type of activity. Section 201 of Executive Order 10893 of 1960, which remains in force, states,

SEC. 201. *Functions of Chiefs of United States Diplomatic Missions.* The several Chiefs of the United States Diplomatic Missions in foreign countries, as the representatives of the President and acting on his behalf, shall have and exercise, to the extent permitted by law and in accordance with such instructions as the President may from time to time promulgate, affirmative responsibility for the coordination and supervision over the carrying out by agencies of their functions in the respective countries.<sup>18</sup>

## National Security Decision Directive 38

National Security Decision Directive 38 of June 1982 (NSDD-38) provides that a COM’s approval is required before executive agencies may change the size, composition, or mandate of the staff at a diplomatic post. NSDD-38 states that the COM shall make such decisions through a process determined by the President. Current legislation requires the Secretary of State to direct each COM to review at least every five years “every staff element under chief of mission authority, including staff from other departments or agencies” and recommend approval or disapproval of each element pursuant to the “NSDD-38 process.”<sup>19</sup> NSDD-38 disputes concerning staffing between the COM and executive agency representatives are resolved by the decision of the COM or of the President. Agreement concerning mission structure and individual agency presence and activities in a host country are often set out in a memorandum of

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(...continued)

Administration Letter of instruction, posted on the State Department website at <http://www.state.gov/document/organization/28466.pdf>.

<sup>17</sup> E.O. 10338 (17 F.R. 3009, April 8, 1952; 22 U.S.C. §2382 note).

<sup>18</sup> 25 F.R. 10732.

<sup>19</sup> Section 409(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Appropriations Act, 2005 (Division B of the Consolidated Appropriations Act, 2005; P.L. 108-447; 22 U.S.C. §3927a).

understanding (MOU) executed by a COM and a U.S. government agency operating in the mission.

## Internal State Department Guidelines

**In General.** The Foreign Affairs Manual (FAM) and the Foreign Affairs Handbook (FAH) provide further detail on COM authority based on legislative and executive directives. Many pertinent provisions relate to the COM's overall authority over a given U.S. diplomatic mission abroad, stating that the COM "determines the precise structure of a mission, in light of local circumstances and the specific nature and scope of function assigned to the post."<sup>20</sup> As per the President's Letters of Instruction, FSA 1980, and E.O. 10893, each COM is charged with integrating all mission activities at all posts within a host country,<sup>21</sup> and attachés from other executive branch agencies, including Department of Defense attachés and other military personnel attached to a U.S. Embassy, perform their duties under the direction of the COM.<sup>22</sup> The FAM also specifies that while the COM is the President's personal representative in a foreign country or international organization, the Secretary of State supervises the COM generally, and the pertinent regional Assistant Secretary of State is tasked with providing support to the COM.<sup>23</sup>

**Security.** As explained above, COM authority over coordination and supervision of U.S. government activities in a host country extends only to the executive branch, and not generally to the legislative and judicial branches. The Secretary of State, however, is tasked with ensuring the security of all U.S. government personnel, including all branches of the federal government, pursuant to the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (P.L. 99-399; 22 U.S.C. §4801 et seq.).<sup>24</sup> According to the FAH, the COM is also responsible for the security of personnel "by extension," except for VOA personnel and employees under the command of a GCC.<sup>25</sup> The State Department and DOD in 1997 executed a comprehensive memorandum of understanding on the security of DOD personnel in foreign countries.<sup>26</sup> Supplementary memoranda of agreement (MOAs) must be executed between the State Department and DOD in each country to carefully delineate between personnel under the security protection of the COM and the GCC.<sup>27</sup> VOA personnel are required to inform the COM of their presence in a host country and receive a security briefing, but are otherwise treated like other U.S. journalists, due to journalistic independence requirements in U.S. law.<sup>28</sup>

**Personnel.** The NSDD-38 process ensures that the COM is informed of, reviews, and approves all changes in the size, composition, and mandate of each executive agency operating in a host country. The FAM and the FAH provide additional information concerning staffing decisions for

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<sup>20</sup> 2 F.A.M. §112.1(b.).

<sup>21</sup> 2 F.A.M. §113.1(b.).

<sup>22</sup> 2 F.A.M. §113.6.

<sup>23</sup> 2 F.A.M. §112.1(a.).

<sup>24</sup> For more information on Secretary of State/Department of State roles and responsibilities in the area of diplomatic security, see CRS Report R42834, *Securing U.S. Diplomatic Facilities and Personnel Abroad: Background and Policy Issues*, by Alex Tiersky and Susan B. Epstein.

<sup>25</sup> 2 F.A.H.-2 §H-112.3(a.).

<sup>26</sup> 2 F.A.M. Exh. 111.3(I).

<sup>27</sup> 2 F.A.H.-2 §H-116.4.

<sup>28</sup> 2 F.A.M.-2 §H-116.

each mission abroad. The COM must approve entry into a host country by all personnel, including personnel assigned to temporary duty in a country.<sup>29</sup> The COM maintains supervisory authority over all personnel, including full-time, non-full-time, non-permanent, and non-direct-hire personnel operating in a foreign country or at a U.S. mission abroad. Decisions as to additions or subtractions of such personnel are also subject to COM approval under the NSDD-38 process.<sup>30</sup> In general, contractors working for commercial firms engaged by executive agencies in a host country are not under COM coordinating and supervisory authority, but any such engagement that would change the composition of an agency's presence in a host country is subject to COM approval.<sup>31</sup>

## Common Questions

A number of questions are often raised regarding the scope and exercise of COM authority. This section responds to four of the most common questions:

1. Does COM authority extend to Department of Defense (DOD) personnel?
2. Who exercises COM authority in a country without a U.S. embassy or U.S. diplomatic presence?
3. Is COM authority in effect in countries where the United States is engaging in hostilities?
4. What is the COM's authority over Members of Congress, legislative branch employees, and congressional foreign travel?

### Does COM Authority Extend to DOD Personnel?<sup>32</sup>

COM authority extends to all DOD personnel in a country except those under the command of a GCC. An ambassador is also charged with responsibility for the activities of in-country military personnel by a variety of statutes, presidential directives, and executive branch arrangements, as well as the President's Letter of Instruction. The following is an overview of key aspects of the COM relationship with GCCs and military personnel, but it is not exhaustive. In practice, this relationship may vary because of personalities, special circumstances, or different perceptions of COM responsibilities.

### DOD Personnel Under COM Authority

As mentioned earlier in this report, Section 207 of the FSA 1980 place under COM authority, that is to say, subject to a COM's "direction, coordination, and supervision," all executive branch personnel, with specified exclusions, including those under the command of an "area military commander" (now referred to as a geographic combatant commander). This FSA 1980 exclusion is reiterated in the Presidential Letter of Instruction that each ambassador receives when assigned

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<sup>29</sup> 2 F.A.M. §116.6-1.

<sup>30</sup> 2 F.A.M. §H-114.

<sup>31</sup> 2 F.A.M. §H-114.5.

<sup>32</sup> This section was prepared after consultation with officials at the Department of State, DOD, and the U.S. Special Operations Command, and two retired U.S. ambassadors.

to a post.<sup>33</sup> Thus, COM authority extends to military personnel such as Marine security guards, the Defense Attaché, personnel serving in Security Cooperation Organizations (SCOs) in-country who plan and implement U.S. military assistance programs under specified provisions of the FAA and under the Arms Export Control Act (AECA),<sup>34</sup> and a number of other military personnel.

The FSA 1980 COM authority is augmented by other provisions of law that create overlapping or additional COM responsibilities regarding certain military personnel stationed abroad. The Foreign Assistance Act of 1961, as amended (FAA 1961), places under COM “direction and supervision” military personnel serving in a SCO.<sup>35</sup> These personnel, as well as other military personnel stationed in-country, including Marine security guards, are subject to NSDD 38 of June 1982, mentioned earlier, which requires the COM’s approval before executive agencies may change the size, composition, or mandate of their staff at a diplomatic post. In addition, the FAA 1961 charges the COM with responsibility for seeing that the recommendations of DOD representatives “pertaining to military assistance (including civic action) and military education and training programs are coordinated with political and economic considerations, and his comments shall accompany such recommendations if he so desires.”<sup>36</sup>

Special COM authorities are conveyed by presidential order or directive. For instance, National Security Policy Directive 36 (NSPD-36) of May 11, 2004, charged the Secretary of State with responsibility for “the continuous supervision and general direction” of all assistance for Iraq. At the same time, it charged the commander of the U.S. Central Command (USCENTCOM) with responsibility for directing “all U.S. government efforts” and coordination of “international efforts in support of organizing, equipping, and training all Iraqi security forces.” NSPD-36 mandated that the Commander was to exercise his responsibility “with the policy guidance of the Chief of Mission.” It also instructed the Commander and the COM to “ensure the closest cooperation and mutual support” in all activities.<sup>37</sup>

## **COM Relationship to GCCs**

COMs have no authority over GCCs, who are responsible by law to the President and Secretary of Defense,<sup>38</sup> but the COM and the GCC are expected to maintain a cooperative relationship. The FSA 1980 requirement that executive branch agencies with employees in a foreign country keep the COM “fully and currently informed with respect to all activities and operations of its employees in that country,” applies to the GCC.<sup>39</sup> In addition, templates of presidential Letters of Instruction of two administrations indicate that presidents expect such communication to flow both ways and differences of opinion to be reported to Washington. “You [the Ambassador] and the area military commander must keep each other currently and fully informed and cooperate on

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<sup>33</sup> This exclusion can be seen in the templates of the Obama Administration and George H.W. Bush Administration Letters of Instruction, cited above.

<sup>34</sup> Security Cooperation Organization (SCO) is the generic term for units that go by various names at U.S. embassies abroad, for example the Office of Military Cooperation in Egypt, the Office of Security Cooperation-Iraq, the U.S. Military Group (Milgroup) in Colombia, and the Joint U.S. Military Affairs Group-Korea.

<sup>35</sup> Section 515(e) of the FAA (P.L. 87-195; 22 U.S.C. 2321i(e)).

<sup>36</sup> Section 622(b) of the FAA 1961 (P.L. 87-195, 22 U.S.C. 2382).

<sup>37</sup> NSPD-36, as posted on the website of the Federation of American Scientists (FAS). Accessible through <http://www.fas.org>.

<sup>38</sup> 10 U.S.C. 164.

<sup>39</sup> FSA 1980, Section 207(c).

all matters of mutual interest,” according to the more recent template. “Any difference that cannot be resolved in the field will be reported to the Secretary of State and the Secretary of Defense.”<sup>40</sup>

As directed by legislation and presidential directive,<sup>41</sup> the Secretary of State, and by extension COMs, are responsible for the security of all U.S. government personnel on official duty abroad and their accompanying dependents, except for personnel under the command of a U.S. area military commander and Voice of America correspondents on official assignment. By definition, this includes DOD personnel serving under COM authority. However, the law allows the Secretary of State to delegate operational responsibilities to the heads of agencies. Thus, responsibility for DOD personnel under COM authority may be delegated to the GCC if so negotiated in a memorandum of agreement (MOA) between the GCC and the COM.<sup>42</sup>

### **COM Relationship to Special Operations Forces**

A COM’s relationship to Special Operations Forces (SOF) in-country depends on the activity being performed and under whose command they are operating. When operating abroad, SOF will generally be under the command of the GCC.<sup>43</sup> These personnel are performing activities that the GCC is explicitly given authority to oversee. Like other GCC personnel, SOF forces deployed under the GCC are not subject to COM authority. However, SOF forces may operate under COM authority when performing certain functions or conducting certain activities. In addition, in some cases, the Special Operations Command (SOCOM) commander, who is not a GCC, may exercise command of a special operations mission at the direction of the President or Secretary of Defense. These are limited circumstances authorized by the President where SOF personnel are deployed outside of COM or GCC authority. In such cases the relationship with the COM would generally be clarified in the President’s authorizing directive.

### **Other COM Responsibilities Concerning Military Activities or Missions**

The COM’s position as the eyes, ears, and hands on the ground of the President and the Secretary of State, with responsibility for the overall bilateral relationship with a country, may have implications for the role that the COM plays in relation to military activities. Presidential Letters of Instruction make clear that the Secretary of State is responsible, under the direction of the President and to the fullest extent provided by law, for the overall coordination of U.S. government activities abroad. The FAA 1961 charges the Secretary of State with responsibility for the “continuous supervision and general direction of ... military assistance” (an undefined term). Some perceive the COM as the best-placed person to exercise these responsibilities on behalf of the Secretary. In effect, a COM sometimes carries out this role, but there appears to be no

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<sup>40</sup> The templates of Letters of Instruction of the Obama and George H.W. Bush administrations, cited above.

<sup>41</sup> Section 102 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (P.L. 99-399; 22 U.S.C. §4801) charges the Secretary of State with the overall responsibility for the security of U.S. government facilities and personnel and their dependents abroad. The President’s Letter of Instruction then directs the COM to carry out these responsibilities at each post.

<sup>42</sup> The MOA implements on a country basis the terms of a 1997 memorandum of understanding (MOU) between the Departments of State and Defense governing security responsibility for personnel that requires assignment of all individual personnel to the responsibility of either the COM or a combatant commander. See 2 F.A.M. Exhibit 111.3i.

<sup>43</sup> Under 10 U.S.C. §167, special operations activities or missions are conducted under the command of a GCC Commander unless otherwise directed by the President or the Secretary of Defense.

consistency in practice or consensus on when and how this should occur.<sup>44</sup> In a number of cases, Congress has mandated in law a COM role regarding specific military activities or DOD has written such a role into its guidance for an activity that falls under the command of the GCC. For instance, Congress requires COM concurrence (i.e., approval) for Special Operations Forces to provide support to “foreign forces, irregular forces, groups, or individuals” that assist or facilitate U.S. military operations to combat terrorism.<sup>45</sup> In a case of DOD policy guidance, SOCOM Directive 350-3 “specifies that planners coordinate with ambassadors and country teams during the planning process” for Title 10 Section 2011 Joint Combined Exchange Training (JCET) events “and with State during the approval process....”<sup>46</sup>

## **Why Are Voice of America Correspondents Exempted from COM Authority?**

Congress amended Section 207 of the FSA 1980 in 2002, exempting Voice of America (VOA) correspondents from COM authority.<sup>47</sup> In explaining this decision, the conference report accompanying the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228) stated,

Although VOA correspondents are on the federal payroll, they are unique in that they are working journalists. Accordingly, their independent decisions on when and where to cover the news should not be governed by other considerations.<sup>48</sup>

This exemption is in accord with legislation authorizing VOA broadcasts and U.S. international broadcasting in general, which requires such broadcasting to comport with journalistic standards of objectivity and independence.<sup>49</sup>

## **Who Exercises COM Authority in Countries Without a U.S. Embassy or U.S. Diplomatic Presence?**

The United States does not maintain an embassy or even a diplomatic presence in all countries and political entities due to severed or strained diplomatic relations, contested sovereignty claims in a given geographic area, autonomous, semi-autonomous, or other special status of entities or

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<sup>44</sup> FAA Section 622(c) (22 U.S.C. §2382) states that the Secretary of State, under the direction of the President, “shall be responsible for the continuous supervision and general direction of economic assistance, military assistance, and military education and training programs, including but not limited to determining whether there shall be a military assistance (including civic action) or a military education and training program for a country and the value thereof, to the end that such programs are effectively integrated both at home and abroad and the foreign policy of the United States is best served thereby.”

<sup>45</sup> Section 1208(a) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, P.L. 108-375, as amended.

<sup>46</sup> U.S. Government Accountability Office, DOD’s Consideration of Unintended Consequences, Perverse Incentives, and Moral Hazards in Security Force Assistance: A Briefing to the Staff of the House Committee on Armed Services, GAO 13-241R, November 30, 2012, p. 15.

<sup>47</sup> Section 505(b) of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228), 116 Stat. 1393.

<sup>48</sup> U.S. Congress, House of Representatives, conference report to accompany H.R. 1646, Foreign Relations Authorization Act, Fiscal Year 2003, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 23, 2002, H.Rept. 107-671 (Washington: GPO, 2002), p. 135.

<sup>49</sup> See Section 303 of the United States International Broadcasting Act of 1994, as amended (Title III of P.L. 103-236; 22 U.S.C. §6202).

regions, or geographic remoteness, among other reasons. Nevertheless, in most cases there are fully authorized COMs assigned to such countries and entities.

COMs assigned to such countries exercise COM authority regarding diplomatic relations and U.S. government activities in such countries and political entities, despite the limited nature of such activities when access is restricted. For instance, in the case of Cuba, with which the United States has no diplomatic relations, the principal officer of the U.S. Interests Section in Havana has been designated a COM. Also, with the February 2012 closure of the U.S. embassy in Damascus, the current U.S. ambassador exercises his COM authority via the U.S. Interests Section of the Czech Republic's Damascus embassy. Consuls general leading the U.S. consulates in Jerusalem and Hong Kong also possess COM authority.<sup>50</sup>

Some ambassadors are appointed to cover a number of states at one time and therefore exercise COM authority over a number of countries at once; for example, the U.S. ambassador to Fiji is also U.S. ambassador to Kiribati, Nauru, Tonga, and Tuvalu. In some cases, online websites function as virtual diplomatic posts to extend a U.S. diplomatic presence to those countries lacking a physical U.S. diplomatic presence, such as the Virtual Embassy of the United States for Tehran.<sup>51</sup>

In the case of a country experiencing an irregular change of government or the collapse of government, COM's authority does not appear to change under U.S. law and practice. The State Department's Foreign Affairs Manual states that "diplomatic relations are maintained between states, not governments. The absence of a government that has clear control or that has obtained power through legitimate means does not automatically result in a rupture of diplomatic relations."<sup>52</sup>

In the case of a change in government or other political or social upheaval in a foreign country resulting in a U.S. government policy of non-recognition, the COM is tasked with establishing guidelines for U.S. government communications with the country's officials in accordance with that policy, and all U.S. government representatives are required to abide by those guidelines.<sup>53</sup>

## **Is COM Authority in Effect in Countries Where the United States Is Engaging in Hostilities?**

COM authority in a specific country is not necessarily terminated or curtailed if the United States engages in hostilities with that country or within that country's borders. Only if hostilities lead to the permanent withdrawal of an ambassador, permanent closure of U.S. diplomatic facilities, and evacuation of diplomatic mission personnel and dependents, does COM authority effectively cease. A COM may decide to suspend operations of a U.S. diplomatic mission in a foreign country in emergency circumstances, including circumstances of armed hostilities, whether the United States is participating in such hostilities or not.<sup>54</sup> A U.S. diplomatic mission officially closes upon termination of diplomatic relations between the United States and the pertinent

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<sup>50</sup> 1 F.A.M. §013.2(a); 2 FAH-2 H-112(a).

<sup>51</sup> See <http://iran.usembassy.gov/>.

<sup>52</sup> 2 F.A.M. §111.1-4(b).

<sup>53</sup> 2 F.A.M. §111.1-4(d).

<sup>54</sup> 2 F.A.M. §436.

foreign country.<sup>55</sup> In all circumstances, the President makes the final decision to close any U.S. diplomatic mission.<sup>56</sup>

In both Iraq and Afghanistan during the recent conflicts in those two countries, U.S. ambassadors and *chargés d'affaires* acted with COM authority contemporaneously with ongoing U.S. military operations, although it can be noted that these COMs were installed only after the success of the initial invasions in toppling each of the governments of these two countries. As discussed above, a COM in a foreign country where U.S. armed forces are conducting military operations must coordinate with the pertinent GCC on many matters. A non-permissive security environment in a foreign country where armed conflict is taking place may limit a COM's options otherwise available in carrying out COM roles and responsibilities.

When Congress declares war under its constitutional powers, or some state of armed conflict otherwise prevails between the United States and a foreign country, the ambassador or other COM to that country can be expected to be recalled, and the diplomatic mission closed or substantially curtailed. For instance, Ambassador Joseph Grew left Japan in 1942, soon after Japan attacked Pearl Harbor and Congress declared war on Japan. Although the United States occupied Japan after the war, no ambassador in the role of the COM was appointed until 1952, after the Allied handover of control to the Japanese government.

## **What Is the COM's Authority over Members of Congress, Legislative Branch Employees, and Congressional Foreign Travel?**

As explained above, COM authority to approve or supervise U.S. government personnel in a foreign country does not extend to the legislative branch. State Department guidelines nonetheless assert the primacy of the COM as the President's representative to a foreign government. Given the presidential prerogative concerning the conduct of foreign relations, the guidelines suggest that any relations with a foreign government must be coordinated through the COM, including those undertaken by the legislative branch. Members of Congress and their staffs may travel to foreign countries without specific COM approval, but accepted practice includes notification to (rather than clearance by) the COM concerning congressional travel to a foreign country.<sup>57</sup> The State Department's Bureau of Legislative Affairs is tasked with informing U.S. missions abroad of planned visits by Members of Congress and their staffs. The COM will advise on current local conditions within a host country in relation with such travel, and the COM remains responsible for the security of Members and other legislative branch personnel in the host country.<sup>58</sup>

With regard to employees of the Government Accountability Office (GAO), the State Department and the GAO have executed an MOU that places GAO personnel under the authority of the COM except with regard to their overseas audit, investigation, and evaluation-related activities. Library

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<sup>55</sup> 2 F.A.M. §431.

<sup>56</sup> 2 F.A.M. §411.

<sup>57</sup> 2 F.A.H.-2 §H-114.6.

<sup>58</sup> 2 F.A.M. §116.6-2.

of Congress personnel stationed abroad are subject to COM authority, pursuant to an MOU executed between the Library and the State Department.<sup>59</sup>

## Current Concerns and Possible Options

Congress plays an important role in setting standards for the exercise of COM authority and providing COMs with the resources—training, personnel, monetary—to promote its effective exercise. The following two sections address current concerns regarding the effectiveness of COM authority in practice and possible options to improve COM performance.

### How Effective Is COM Authority in Practice?

The State Department’s 2010 QDDR stressed the need for capable COMs to act as CEOs of U.S. embassies. Although there have not been systematic studies of the exercise of COM powers, recently some analysts have raised questions concerning the effectiveness of individual ambassadors and other COMs in managing their embassies and exerting their authority.

In a report released in September 2012, weaknesses in COM leadership and management were discerned by the State Department’s Office of Inspector General (OIG), which reportedly have caused “reduced productivity, low morale, and stress-related curtailments” of tours of duty at approximately 25% of posts abroad. These findings, based on surveys of personnel at a select grouping of diplomatic posts abroad, do not clearly spell out the exact weaknesses of COMs, but state that they are related to “basic leadership or management principles and the failure to observe [these] basic principles....”<sup>60</sup>

Assessing the ability of COMs to carry out a key function, the coordination of the activities of all U.S. government agencies in a country, one former U.S. ambassador has asserted that COMs cannot count on State Department officials to support their efforts to assert and protect their authority over other executive branch representatives, and thus are discouraged from exercising the authority granted to them as the President’s representative.<sup>61</sup> He found that the authority provided by statutes and hierarchical position can easily be undermined by actual practices:

Solid backing from [the Department of] State in a difference of opinion with another agency’s representatives, for example, cannot be depended upon. Messages from the department on the subject, often distributed to other agencies, sometimes dismiss legitimate concerns in an offhand manner. Similarly cables addressed to chiefs of mission, often prepared by individuals not in the proximate chain of command, do not always convey the impression that the COM’s authorities or views are of particular importance. If State does not treat chiefs of mission as personal representatives of the president, especially in open

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<sup>59</sup> See 2 F.A.M. Exhibit 111.3(J); 2 F.A.M. Exhibit 111.3(K).

<sup>60</sup> United States Department of State and the Broadcasting Board of Governors Office of Inspector General, *Memorandum Report, Improving Leadership at Posts and Bureaus (ISP-I-12-48)*, September 19, 2012 (hereinafter referred to as *OIG Memorandum Report*).

<sup>61</sup> Edward Peck, “Chief-of-Mission Authority: A Powerful but Underused Tool,” *Foreign Service Journal*, vol. 84, no. 12 (December 2007), pp. 29-32 (hereinafter *Chief-of-Mission Authority: A Powerful but Underused Tool*).

communications, it cannot expect others to do so—or respect their authority in the interagency process.<sup>62</sup>

## **How Might the Exercise of COM Authority Be Improved?**

Over the past several years, a number of institutions, including think tanks and government agencies, have advanced proposals to improve the exercise of COM authority. These have included selecting potential ambassadors and others in line for COM posts for interagency experience, expertise, and inclination, and standardizing the education and training of potential ambassadors.<sup>63</sup>

With regard to COM education and training, the Foreign Service Institute (FSI) has taken steps to enhance its two-week training course for new COMs. In response to suggestions in the QDDR, FSI has created a new handbook on COM interagency leadership, and has stressed COM authority with regard to coordination and supervision of all U.S. government activities related to a mission, NSDD-38 procedures, and diplomatic security responsibilities. The “ambassador as CEO” concept found in the QDDR has been integrated into COM training, and interagency panels conducted during the training educate new COMs on the many interagency aspects of COM authority.<sup>64</sup>

The State Department OIG, in the report mentioned above, cited a lack of management and leadership guidance in the FAM and FAH, and called for creating a new handbook for COMs focusing on post management. OIG also recommended instituting a performance assessment system across U.S. missions abroad to consistently monitor COM performance, identify trouble spots, and inform COM training and best practices, through regular confidential surveys of post personnel.<sup>65</sup>

Nevertheless, some analysts doubt that such steps will suffice if an ambassador or other COM does not have the support of officials in Washington at the appropriate time to overcome the pull of agency interests and pressures on a country team. A COM’s ability to manage and coordinate effectively depends on respect for an ambassador’s authority and expertise within the State Department itself, and the Department’s direct support for a COM’s position when necessary, as well as recognition of the COM’s role with respect to other agencies. In line with these concerns, it has been recommended that documents on COM authority be provided to all regional assistant and deputy assistant secretaries in order to improve relations between Department bureaus in Washington and COMs in the field. It has also been suggested that State representatives to DOD training facilities make presentations explaining the extent and importance of COM authority.<sup>66</sup>

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<sup>62</sup> Chief-of-Mission Authority: A Powerful but Underused Tool, p. 32.

<sup>63</sup> For more on options to enhance COM authority and capacity, see CRS Report R42133, *Building Civilian Interagency Capacity for Missions Abroad: Key Proposals and Issues for Congress*, by Nina M. Serafino, Catherine Dale, and Pat Towell, Appendix D, pp. 69-72.

<sup>64</sup> It is not clear at this time whether any specific assessments of the effectiveness of these measures have been undertaken.

<sup>65</sup> OIG Memorandum Report. The State Department states that its Bureau of Human Resources (M/DGHR) has responded to these recommendations, including preparation of the recommended survey.

<sup>66</sup> Chief-of-Mission Authority: A Powerful but Underused Tool, p. 32.

## Conclusion

U.S. ambassadors and others exercising COM authority are by law the cornerstone of U.S. foreign policy coordination in their respective countries. Their jobs are highly complex, demanding a broad knowledge of the U.S. foreign policy toolkit and the ability to oversee the activities and manage the representatives of from many U.S. government entities, which in some embassies number about 40 U.S. departments and agencies.<sup>67</sup> Understanding the position and core authorities of U.S. Chiefs of Mission is a key element to appreciating the conduct of U.S. foreign policy abroad.

Moreover, Members of Congress may wish to examine whether current efforts to improve COM effectiveness in ensuring interagency coordination are sufficient. Specific questions might include whether (1) the two-week FSI training course required for new ambassadors is adequate; (2) interagency experience should be a standard expectation for prospective COMs; (3) FSI career-long leadership training courses are sufficient to build effective leaders and managers at the COM and Deputy COM level; (4) agency representatives on country teams, and their supervisors in Washington, fully understand and comply with their obligations to the COM; and (5) State Department leaders provide the needed backing, support, and resources.

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<sup>67</sup> In addition to State Department personnel, many embassies have personnel from the departments of Agriculture, Defense, Commerce, Homeland Security, and Justice, as well as USAID. Other departments may be represented, including Health and Human Services, Interior, Labor, Transportation, and Treasury. In addition, individual agencies within these departments may also be represented on country teams.