SEC. 1202. MILITARY-TO-MILITARY EXCHANGES.

(a) CODIFICATION IN NEW CHAPTER ON SECURITY COOPERATION ACTIVITIES.—Chapter 16 of title 10, United States Code, as added by section 1201(a)(3), is amended by inserting after the table of sections at the beginning of subchapter II a new section 311 consisting of—

(1) a heading as follows:

"§311. Exchange of defense personnel between United States and friendly foreign countries: authority"; and

(2) a text consisting of the text of section 1082 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 10 U.S.C. 168 note).

(b) REVISIONS TO INCORPORATE PERMANENT NONRECIPROCAL EXCHANGE AUTHORITY.—Section 311 of title 10, United States Code, as added by subsection (a), is amended as follows:

(1) Subsection (a) is amended—

(A) by adding at the end of paragraph (1) the following new sentence: "Exchanges of personnel under such an agreement are subject to paragraph (3).";

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking "an ally of the United States or another friendly foreign country for the exchange" and inserting "a friendly foreign country, or with an international or regional security organization, for the reciprocal or non-reciprocal exchange";

(ii) in subparagraph (A), by striking "military" and inserting "members of the armed forces"; and

(iii) in subparagraph (B), by inserting before the period at the end the following: "or personnel of a non-defense security ministry of that foreign government or personnel of that international or regional security organization, as the case may be"; and

(C) by adding at the end the following new paragraph:

"(3) SECRETARY OF STATE CONCURRENCE.—An exchange of personnel under an international defense personnel exchange agreement may only be made with the concurrence of the Secretary to State to the extent the exchange is with—

"(A) a non-defense security ministry of a foreign government; or

"(B) an international or regional security organization.".

(2) Subsection (b)(2) is amended by inserting before the period at the end the following: ", subject to the concurrence of the Secretary of State".

(3) Subsection (c) is amended—

(A) by striking "Each government shall be required under" and inserting "In the case of"; and

(B) by inserting after "exchange agreement" the following: "that provides for reciprocal exchanges, each government shall be required".

(4) Subsection (f) is amended by inserting "defense or security ministry of that" after "military personnel of the".

(c) CLARIFYING AMENDMENT RELATING TO STATUS OF DEPARTMENT OF DEFENSE CIVILIANS.—Subsection (d) of such section is amended by adding at the end the following new paragraph:

"(3) A civilian employee of the Department of Defense shall be considered, for all purposes, to remain an employee of the Department during the exchange assignment.".

(d) CONFORMING REPEALS.—The following provisions of law are repealed:

(1) Section 1082 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 10 U.S.C. 168 note).

(2) Section 1207 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 168 note).

Section-by-Section Analysis

This proposal would combine existing security cooperation authorities permitting the exchange of military and defense personnel with allies of the United States and other friendly foreign counties. This proposal would also make permanent the authority for reciprocal and non-reciprocal exchanges and would authorize exchanges with regional security organizations and international organizations.

This proposal is part of a package of Fiscal Year (FY) 2017 security cooperation authorities reform proposals sponsored by the Under Secretary of Defense for Policy intended to consolidate and simplify Title 10 authorities under a new Chapter 16 for security cooperation.

Several similar authorities in title 10, United States Code, permit the exchange of defense personnel between the United States and allies of the United States or other friendly foreign countries. These include: Military-to-Military contacts and comparable activities (10 U.S.C. 168); Agreements for Exchange of Defense Personnel between The United States and Foreign Countries (P.L. 104-201 Section 1082); Authority for Non-Reciprocal Exchanges of Defense Personnel between The United States and Foreign Countries (P.L. 111-84 Section 1207 – will expire December 31, 2021). These authorities would be consolidated and made permanent under this single proposed Section 311.

The consolidation of authorities under this proposal would clarify what is and is not permitted under current exchange authorities. The single authority would be easier for the security cooperation workforce to understand and execute.

The Department of Defense (DoD) would benefit from the permanent authority to conduct non-reciprocal exchanges. There are situations where it is in DoD's interest to place DoD personnel into positions in foreign defense and military organizations, but for which there is no clear benefit from placing foreign counterparts within DoD or military services. DoD has a much larger pool of highly qualified individuals to draw from in support of such exchanges than do most foreign partners. Some countries and organizations may struggle to find an individual available for an exchange who meets the standards necessary to provide benefit to DoD. In addition, requiring a reciprocal exchange of personnel could, in some cases, require a foreign

partner to pull a key individual from a vital role in the home ministry or regional organization. Nevertheless, DoD should retain the ability to emplace DoD personnel into foreign defense and military organizations in situations where doing so advances DoD objectives, regardless of the foreign partner's ability to act reciprocally.

The proposal would also authorize DoD to conduct exchanges, both reciprocal and non-reciprocal, with regional and international security organizations and alliance security organizations, thereby enabling DoD to provide targeted support to such organizations, to influence their strategic direction, and to expose their staffs to DoD strategy, organization, and processes. Regional organizations, such as the Gulf Cooperation Council (GCC), are increasingly involved in undertaking collective military action, providing direction to peacekeeping and security operations, and maintaining regional security architectures such as cooperative missile defense. International organizations, such as the United Nations, would benefit from the expertise and influence of DoD professionals in key positions within the organization. Conducting exchanges that enable DoD personnel to participate in the activities of these organizations could prove advantageous to shaping operations, providing guidance to planners and decision-makers, and influencing the development of the institution in ways that support U.S. security interests. Organizations such as the Association of Southeast Asian Nations (ASEAN) are developing multilateral frameworks to take on regional security challenges. Exchanges conducted with these nascent security organizations can shape the development and growth of the security organs to support U.S. regional security objectives.

Nothing in this proposed language compels DoD to place reciprocal or non-reciprocal exchange personnel when there is no clear benefit or advantage to be gained by DoD from the exchange.

A separate authority to provide staff officers and financial contributions to EUROCORPS (United States Participation in Headquarters EUROCORPS (P.L. 112-239 Section 1275)) is not included in this proposal. Although Section 1275's staffing provisions are similar to activities addressed by this proposal, its authority to make financial contributions to support EUROCORPS headquarters does not fit within this draft legislation.

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the FY2017 President's Budget. Services make limited use of exchange authority (Sec 1082) as reflected in the table below. The budgetary impact of non-reciprocal exchanges are deemed to be minimal by all Services.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	1.61	1.80	1.84	1.85	1.87	Operation and Maintenance,	03	323	0804752A

						Army			
USAF	1.747	1.729	1.741	1.753	1.766	Operation and Maintenance, Air Force	04	042G	91212F
Navy	Navy does not intend to use this authority which would have been funded in the following account: Operation and Maintenance, Navy.								
DoD	Defense-Wide Agencies do not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Defense-Wide.								

Changes to Existing Law: This proposal would make the following changes to existing law:
(1) Transfer section 1082 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201) to title 10, United States Code, as a new section 311, with the changes shown below.
(2) Repeal section 1207 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 168 note), set out below.

National Defense Authorization Act for Fiscal Year 1997

(Public Law 104-201; 10 U.S.C. 168 note)

~~SEC. 1082. AGREEMENTS FOR EXCHANGE OF DEFENSE PERSONNEL BETWEEN THE UNITED STATES AND FOREIGN COUNTRIES.~~

TITLE 10, UNITED STATES CODE

§311. Exchange of defense personnel between United States and friendly foreign countries: authority

(a) AUTHORITY TO ENTER INTO INTERNATIONAL EXCHANGE AGREEMENTS.—(1) The Secretary of Defense may enter into international defense personnel exchange agreements. **Exchanges of personnel under such an agreement are subject to paragraph (3).**

(2) For purposes of this section, an international defense personnel exchange agreement is an agreement with the government of ~~an ally of the United States or another~~ **a** friendly foreign country**, or with an international or regional security organization,** for the **reciprocal or non-reciprocal** exchange of —

(A) ~~military~~ **members of the armed forces** and civilian personnel of the Department of Defense; and

(B) military and civilian personnel of the defense ministry of that foreign government **or personnel of a non-defense security ministry of that foreign government or personnel of that international or regional security organization, as the case may be**.

(3) SECRETARY OF STATE CONCURRENCE.—An exchange of personnel under an international defense personnel exchange agreement may only be made with the concurrence of the Secretary to State to the extent the exchange is with—

(A) a non-defense security ministry of a foreign government; or

(B) an international or regional security organization.

(b) ASSIGNMENT OF PERSONNEL.—(1) Pursuant to an international defense personnel exchange agreement, personnel of the defense ministry of a foreign government may be assigned to positions in the Department of Defense and personnel of the Department of Defense may be assigned to positions in the defense ministry of such foreign government. Positions to which exchanged personnel are assigned may include positions of instructors.

(2) An agreement for the exchange of personnel engaged in research and development activities may provide for assignment of Department of Defense personnel to positions in private industry that support the defense ministry of the host foreign government **subject to the concurrence of the Secretary of State**.

(3) An individual may not be assigned to a position pursuant to an international defense personnel exchange agreement unless the assignment is acceptable to both governments.

(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS REQUIRED.~~—Each government shall be required under~~ **In the case of** an international defense personnel exchange agreement **that provides for reciprocal exchanges, each government shall be required** to provide personnel with qualifications, training, and skills that are essentially equal to those of the personnel provided by the other government.

(d) PAYMENT OF PERSONNEL COSTS.—(1) Each government shall pay the salary, per diem, cost of living, travel costs, cost of language or other training, and other costs for its own personnel in accordance with the applicable laws and regulations of such government.

(2) Paragraph (1) does not apply to the following costs:

(A) The cost of temporary duty directed by the host government.

(B) The cost of training programs conducted to familiarize, orient, or certify exchanged personnel regarding unique aspects of the assignments of the exchanged personnel.

(C) Costs incident to the use of the facilities of the host government in the performance of assigned duties.

(3) A civilian employee of the Department of Defense shall be considered, for all purposes, to remain an employee of the Department during the exchange assignment.

(e) PROHIBITED CONDITIONS.—No personnel exchanged pursuant to an agreement under this section may take or be required to take an oath of allegiance to the host country or to hold an official capacity in the government of such country.

(f) RELATIONSHIP TO OTHER AUTHORITY.—The requirements in subsections (c) and (d) shall apply in the exercise of any authority of the Secretaries of the military departments to enter into an agreement with the government of a foreign country to provide for the exchange of members of the armed forces and military personnel of the **defense or security ministry of that**

foreign country. The Secretary of Defense may prescribe regulations for the application of such subsections in the exercise of such authority.

Section 1207 of the National Defense Authorization Act for Fiscal Year 2010
(Public Law 111-84; 10 U.S.C. 168 note)

~~SEC. 1207. AUTHORITY FOR NON-RECIPROCAL EXCHANGES OF DEFENSE PERSONNEL BETWEEN THE UNITED STATES AND FOREIGN COUNTRIES~~

~~(a) AUTHORITY TO ENTER INTO NON-RECIPROCAL INTERNATIONAL EXCHANGE AGREEMENTS.—~~

~~(1) IN GENERAL.—The Secretary of Defense may enter into non-reciprocal international defense personnel exchange agreements.~~

~~(2) International defense personnel exchange agreements defined.-For purposes of this section, an international defense personnel exchange agreement is an agreement with the government of an ally of the United States or another friendly foreign country for the exchange of military and civilian personnel of the defense ministry of that foreign government.~~

~~(b) ASSIGNMENT OF PERSONNEL.—~~

~~(1) IN GENERAL.—Pursuant to a non-reciprocal international defense personnel exchange agreement, personnel of the defense ministry of a foreign government may be assigned to positions in the Department of Defense.~~

~~(2) MUTUAL AGREEMENT REQUIRED.—An individual may not be assigned to a position pursuant to a non-reciprocal international defense personnel exchange agreement unless the assignment is acceptable to both governments.~~

~~(c) PAYMENT OF PERSONNEL COSTS.—~~

~~(1) IN GENERAL.—The foreign government with which the United States has entered into a non-reciprocal international defense personnel exchange agreement shall pay the salary, per diem, cost of living, travel costs, cost of language or other training, and other costs for its personnel under such agreement in accordance with the applicable laws and regulations of such government.~~

~~(2) EXCLUDED COSTS.—Paragraph (1) does not apply to the following costs:~~

~~(A) The cost of training programs conducted to familiarize, orient, or certify exchanged personnel regarding unique aspects of the assignments of the exchanged personnel.~~

~~(B) Costs incident to the use of facilities of the United States Government in the performance of assigned duties.~~

~~(C) The cost of temporary duty of the exchanged personnel directed by the United States Government.~~

~~(d) PROHIBITED CONDITIONS.—No personnel exchanged pursuant to a non-reciprocal agreement under this section may take or be required to take an oath of allegiance or to hold an official capacity in the government.~~

~~(e) REPORT.—~~

~~(1) IN GENERAL.—Not later than 90 days after the end of the fiscal year in which the authority in subsection (a) has been exercised, the Secretary of Defense shall submit to the appropriate congressional committees a report on the use of the authority through the end of such fiscal year.~~

~~(2) MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall include the number of non-reciprocal international defense personnel exchange agreements, the number of personnel assigned pursuant to such agreements, the Department of Defense component to which the personnel have been assigned, the duty title of each assignment, and the countries with which the agreements have been concluded.~~

~~(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term "appropriate congressional committees" means—~~

~~(A) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and~~

~~(B) the Committee on Armed Services and the Committee on Foreign Relations of the Senate.~~

~~(f) DURATION OF AUTHORITY.—The authority under this section shall expire on December 31, 2021.~~