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# THE FUTURE OF THE WAR ON TERROR?

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*The use of force in countering international terrorist threats has been a foundational plank in the United States' post-Cold War national security architecture. The almost two decade-long war on terror since the 9/11 attacks, which began against Al-Qaida in Afghanistan, now includes an expanding list of self-identified foes and spans more than seventy countries. However, mounting pressures in the form of escalating costs, deteriorating public opinion and changing national security concerns weigh upon the status quo counterterrorism (CT) model of perpetual war. All the while, alternative approaches remain politically challenging. What then is the future of the war on terror? This article addresses the heretofore underacknowledged question of where the present international CT model might lead in the presence of escalating costs and the absence of politically practicable alternatives. It predicts a possible direction in which the forceful suppression of terrorist threats continues, but is carried out covertly by the Central Intelligence Agency pursuant to Title 50 as opposed to overtly by the military under Title 10. This potential reality has serious legal and policy implications that could bypass the War Powers Resolution, minimize congressional oversight and remove the public from use of force decisions.*

## INTRODUCTION

The present war on terror has now been ongoing for almost eighteen years. The initial thread in Afghanistan, a campaign directed against the alleged perpetrators of the September 11 attacks, has since become a complex fabric of interwoven counterterrorism (CT) operations against multifarious groups in more than seventy countries spanning multiple continents.<sup>1</sup> Facilitated by the expansive 2001 Congressional Authorization for the Use of Military Force (AUMF) and singular interpretations of relevant *jus ad bellum* and *jus in bello* precepts,<sup>2</sup> forcefully countering international terrorism has served as a foundational plank

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1. See Stephanie Savell, *Where We Fight: US Counterterror War Locations*, WATSON INST. FOR INT'L AND PUB. AFFAIRS (2019), <https://watson.brown.edu/costsofwar/papers/2019/where-we-fight-us-counterterror-war-locations-2017-2018>.

2. See, e.g., *The Legality of Armed Drones Under International Law*, INT'L BAR ASS'N HUM. RIGHTS INST. (May 25, 2017), <http://www.ibanet.org/Document/Default.aspx?DocumentUid=b0b8af88-fd20-44f8-a920-634484645113> (providing an overview of the international legal framework relating to armed drone use and an assessment of the United States' legal position).

in the United States' post-Cold War national security architecture. This bulwark, however, is not immune to strain. Growing costs, public opinion and new strategic national security priorities all weigh upon the reigning status quo of the war on terror. This article addresses the heretofore underacknowledged question of where the present international CT model might lead in light of these pressures. It objectively predicts one possible trajectory to be a gradual downsizing of Title 10 military operations and replacement with already extensive Title 50 covert strikes.<sup>3</sup>

This article proceeds in five parts. The first describes the prevailing model of countering international terrorism and highlights the prevalent practice of comingling Title 10 and Title 50 authorities. The second enumerates some of the key pressures impacting the prevailing model, including fiscal costs, public opinion and congressional initiative, as well as changes in the national security environment and focus. The third considers alternatives to the prevailing model and notes the impediments to their viability. The fourth then, in light of the first three, considers the future of the war on terror and predicts one conceivable path it might follow. The fifth highlights key legal and policy implications affiliated with this path.

### I. THE PREVAILING MODEL

The United States' aggressive international CT model has ballooned since 9/11, though its roots predate those transformative attacks. The end of the Cold War brought to a close a national security epoch characterized by major power rivalry. With relative tranquility in international state relations, non-state terrorism was to be a new predominate locus of national security concern. The 1990s saw the rise of the Taliban, the development of its relationship with al-Qaida and a string of bombings attributed to the latter.<sup>4</sup> The United States responded with increased surveillance and select aerial strikes on al-Qaida training sites.<sup>5</sup> The September 11 attacks then solidified the paradigmatic national security shift. President Bush officially proclaimed a "war on terror" to begin with al-Qaida, but "not [to] end until every terrorist group of global reach has been found, stopped and defeated."<sup>6</sup> Pursuit of this open-ended goal resulted in profound transformation to the national security infrastructure with the creation of new

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3. The author in no way endorses or proposes this course of action. This article sets forth a strictly objective prediction based upon empirical observation.

4. The Taliban seized control in Afghanistan following a power struggle in the wake of the Soviet-backed government's collapse. It established the Islamic Emirate of Afghanistan, to which Osama bin Laden (co-founder of al-Qaida) relocated from Sudan in 1996. The bombings of the Gold Mahur Hotel in Yemen in 1992, the United States embassies in Kenya and Tanzania in 1998 and Aden Harbor in Yemen in 2000 were all attributed to al-Qaida.

5. See Jamie McIntyre, *U.S. Missiles Pound Targets in Afghanistan, Sudan*, CNN (Aug. 21, 1998), <http://www.cnn.com/US/9808/20/us.strikes.01/>.

6. George W. Bush, *Address to a Joint Session of Congress and the American People* (Sept. 20, 2001), <https://2001-2009.state.gov/coalition/cr/rm/2001/5025.htm>.

agencies and positions, like the Department of Homeland Security, the National Counterterrorism Center and the Director of National Intelligence.<sup>7</sup>

The AUMF of September 14, 2001 provided for direct military invasion of Afghanistan. Its singular lack of restriction to a specific adversary or geographic locality, however, permitted the expansion of military operations far beyond the Afghan borders in the name of a broad non-international armed conflict (NIAC) “with al-Qaida, the Taliban and their associated forces.”<sup>8</sup> Thousands of aerial strikes in the Middle East and North Africa<sup>9</sup> against disparate groups with no apparent association to al-Qaida owe their claimed legitimacy to this NIAC with tenuous legal reinforcement from unique conceptions of self-defense and state consent.<sup>10</sup>

In addition to the military-run operations, the Central Intelligence Agency (CIA) has also played a significant role in carrying out CT actions. The CIA preceded the military in Afghanistan in the immediate aftermath of 9/11 and led the operation assisting Afghan forces in overthrowing the Taliban government in late 2001.<sup>11</sup> Early on, the CIA began conducting lethal strikes in cooperation with the military’s Joint Special Operations Command (JSOC)<sup>12</sup> with apparent extensive comingling of Title 10 military and Title 50 covert action authorities.<sup>13</sup> In his testimony before a 2011 hearing of the Emerging Threats and Capabilities Subcommittee of the House Armed Services Committee, acting Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, Michael Lumpkin, stated “[w]hichever organization [CIA or JSOC] has primary authority to conduct the operations leads; whichever organization has the superior planning and expertise plans it; both organizations share information about intelligence, plans and ongoing operations fully and completely.”<sup>14</sup>

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7. Office of the Dir. of Nat’l Intelligence, Office of Dir. of Nat’l Intelligence Org. [https://www.dni.gov/files/ODNI/documents/ODNI\\_Org\\_Chart.pdf](https://www.dni.gov/files/ODNI/documents/ODNI_Org_Chart.pdf).

8. Press Release, Office of the Press Secretary, *The Remarks by the President at the National Defense University* (May 23, 2013, 2:01 PM), <https://obamawhitehouse.archives.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

9. See, e.g., Jack Serle & Jessica Purkiss, *Drone Wars: The Full Data*, BUREAU OF INVESTIGATIVE JOURNALISM (Jan. 1, 2017), <https://www.thebureauinvestigates.com/stories/2017-01-01/drone-wars-the-full-data> (providing data for strikes in Afghanistan, Pakistan, Somalia and Yemen).

10. See *The Legality of Armed Drones Under International Law*, *supra* note 2.

11. See generally, GARY C. SCHROEN, *FIRST IN: AN INSIDER’S ACCOUNT OF HOW THE CIA SPEARHEADED THE WAR ON TERROR IN AFGHANISTAN* (2005).

12. *The Civilian Impact of Drone Strikes: Unexamined Costs, Unanswered Questions*, CTR. FOR CIVILIANS IN CONFLICT WITH COLUM. L. SCH. HUM. RIGHTS CLINIC (2012), <https://www.law.columbia.edu/human-rights-institute/counterterrorism/drone-strikes/civilian-impact-drone-strikes-unexamined-costs-unanswered-questions>.

13. Title 10 of the United States Code generally provides authority for military actions abroad. Title 50 covers covert actions undertaken by the CIA and unacknowledged by the United States government. For an in-depth discussion of each, see generally Andru E. Wall, *Demystifying the Title 10–Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action*, 3 HARV. NAT’L SECURITY J. 85 (2011).

14. *The Future of U.S. Special Operations Force: Ten Years After 9/11 and Twenty-Five Years After Goldwater-Nichols*: Hearing Before the Subcommittee of Emerging Threats and Capabilities of the House Committee on Armed Services, 112th Cong. 62 (Sept. 22, 2011) (statement of Michael Lumpkin, Acting Assistant Secretary of State for Special Operations and Low Intensity Conflict).

The United States' international CT model of the past eighteen years can be understood as one of perpetual force against an expanding list of self-identified threats. In theory, it has not been so dissimilar from a traditional law enforcement model—as long as there are criminals, there is a need for law enforcement actions. In the CT context, the refrain has been that as long as there are terror suspects conceivably plotting to hurt American interests, there is a need for forceful suppression actions. Indeed, as President Bush noted, “this war on terrorism is going to take a while.”<sup>15</sup>

## II. PRESSURES ON THE PREVAILING MODEL

Unlike the durability of domestic law enforcement's mission of apprehending criminals, the United States' constant international CT policing and forceful intervention efforts are proving to be less sustainable due to the weight of multiple pressures, not the least of which is the significant financial toll. Brown University's Watson Institute for International and Public Affairs estimates expenditures for post-9/11 wars between fiscal years 2001 and 2019 to be \$5.9 trillion, with an additional \$808 billion predicted over the next four years.<sup>16</sup> The long term healthcare costs of the roughly 4 million veterans of the Afghanistan and Iraq wars and the 14 thousand military personnel currently serving in non-combat support roles are expected to increase the tab by another \$1.8 trillion over the coming years.<sup>17</sup> Neta Crawford, author of the Institute study, suggests that these “high costs” incurred by the war on terror may “pose a national security concern because they are unsustainable,”<sup>18</sup> excessive in proportion to the threat they are expended to counter and can “alarm” other states into undesirable military buildup which they would not otherwise undertake.<sup>19</sup> Furthermore, elements of the government itself have identified billions of dollars of waste in post-9/11 war spending.<sup>20</sup>

General war weariness is another factor. The campaigns in Afghanistan, Iraq and Pakistan alone claimed the lives of almost 15 thousand United States military, contractor and Department of Defense personnel, in addition to upwards

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15. George Bush, Remarks by the President on the South Lawn on the War on Terrorism (Sept. 16, 2001, 3:23 PM), <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010916-2.html>.

16. *Costs of War*, WATSON INST. FOR INT'L AND PUB. AFFAIRS, <https://watson.brown.edu/costsofwar/> (last visited June 12, 2019).

17. Leo Shane III, *Price Tag of the 'War on Terror' Will Top \$6 Trillion Soon*, MILITARY TIMES (Nov. 14, 2018), <https://www.militarytimes.com/news/pentagon-congress/2018/11/14/price-tag-of-the-war-on-terror-will-top-6-trillion-soon/>.

18. *Costs of War*, *supra* note 16.

19. Neta C. Crawford, *United States Budgetary Costs of the Post-9/11 Wars Through FY2019: \$5.9 Trillion Spent and Obligated*, WATSON INST. FOR INT'L AND PUB. AFFAIRS 9 (Nov. 14, 2018), [https://watson.brown.edu/costsofwar/files/cow/imce/papers/2018/Crawford\\_Costs%20of%20War%20Estimates%20Through%20FY2019%20.pdf](https://watson.brown.edu/costsofwar/files/cow/imce/papers/2018/Crawford_Costs%20of%20War%20Estimates%20Through%20FY2019%20.pdf).

20. See, e.g., Letter from Special Inspector General for Afghanistan Reconstruction John F. Sopko, *SIGAR-18-60-SP Review Letter: Waste, Fraud and Abuse Uncovered by SIGAR*, Report from Special Investigator General for Afghanistan Reconstruction (2018), <https://www.sigar.mil/pdf/special%20projects/SIGAR-18-60-SP.pdf>.

of 240,000 civilians between 2003 and 2018.<sup>21</sup> This rising death toll, together with exorbitant fiscal costs, has led to public impatience with the seemingly ceaseless war on terror, exemplified by a recent survey in which 57% of respondents, including 69% of military veterans, indicated they would support a presidential decision to remove all troops from Afghanistan.<sup>22</sup> This popular sentiment is also translating into political action, as is evidenced by congressional efforts to revisit and restrict outstanding AUMFs,<sup>23</sup> pass unprecedented War Powers Resolution motions<sup>24</sup> and place conditions on defense spending, like the proposed amendment to the Fiscal Year 2020 National Defense Authorization Act (NDAA) that would prohibit funds from being used for military actions against Iran without congressional authorization.<sup>25</sup>

Additionally, the national security focus appears to be undergoing another recalibration. Russia's 2014 annexation of Crimea and China's continued economic rise and assertiveness in the South China Sea are swinging the strategic pendulum back in the direction of state rivalry.<sup>26</sup> The Trump Administration's new *National Security Strategy* plainly states "great power competition [has] returned," speaking directly to Russia and China's growing "influence regionally and globally."<sup>27</sup> The 2018 *Nuclear Posture Review* reemphasizes this shift, noting, "we have seen the return of great power competition" and that "Russia and China have made clear they seek to substantially revise the post-Cold War international order and norms of behavior."<sup>28</sup> In light of this development, the United States is paying increased attention to such weighty considerations as extended

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21. Neta C. Crawford, *Human Cost of the Post-9/11 Wars: Lethality and the Need for Transparency*, WATSON INST. FOR INT'L AND PUB. AFFAIRS 1 (Nov. 2018), <https://watson.brown.edu/costsofwar/files/cow/imce/papers/2018/Human%20Costs%2C%20Nov%208%202018%20CoW.pdf>.

22. *New Survey: Seventeen Years On, Americans—Including Veterans—Want Out of Afghanistan*, CHARLES KOCH INST. (Oct. 8, 2018, 8:55 AM), <https://www.charleskochinstitute.org/news/afghanistan-17-anniversary-poll/>.

23. See, e.g., Jack Goldsmith, *Senator Kaine on the Forever War*, LAWFARE (Dec. 3, 2016, 3:00 PM), <https://www.lawfareblog.com/senator-kaine-forever-war>.

24. See, e.g., Tara Golshan, *Congress Passes History Resolution to End US Support for Saudi-Led War in Yemen*, VOX (Apr. 4, 2019, 12:00 PM), <https://www.vox.com/2019/4/4/18293954/war-powers-resolution-passes-congress-yemen-bds>.

25. See, e.g., Press Release, Tim Kaine, Senator, United States Senate, Udall, Kaine, Senators File Bipartisan Iran Amendment to NDAA to Prevent Unauthorized War (June 13, 2019), <https://www.kaine.senate.gov/press-releases/udall-kaine-senators-file-bipartisan-iran-amendment-to-ndaa-to-prevent-unauthorized-war>.

26. Zhang Lihua, *Explaining China's Position on the Crimea Referendum*, CARNEGIE-TSINGHUA CTR. FOR GLOBAL POL'Y (Apr. 1, 2015), <https://carnegietsinghua.org/2015/04/01/explaining-china-s-position-on-crimea-referendum-pub-59600>.

27. EXEC. OFFICE OF THE PRESIDENT, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 27 (Dec. 2017), <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>.

28. OFFICE OF SEC'Y OF DEF., NUCLEAR POSTURE REVIEW 6 (2018), <https://media.defense.gov/2018/Feb/02/2001872886/-1/-1/1/2018-NUCLEAR-POSTURE-REVIEW-FINAL-REPORT.PDF>.

deterrence structures, modernization of its existing nuclear arsenal<sup>29</sup> and development of new nuclear-capable missiles.<sup>30</sup> These steps require time, attention and resources less readily available as a result of extensive global CT operations.

### III. ALTERNATIVES

The prevailing model clearly has its drawbacks. However, are there viable alternatives to replace or improve upon it that could reduce these issues while maintaining the high level of security necessary to protect the United States and its interests from the threats of transnational terrorism?

One oft-cited substitute for the use of force is a law enforcement-based model. Under such a schema, endorsed in Pillar II of the United Nations' (UN) *Global Counter-Terrorism Strategy*,<sup>31</sup> the perpetrators of international terrorist acts are considered criminals, not enemy combatants, and are subjected accordingly to legal sanction. To date, nineteen international legal instruments exist in the UN, setting forth a legal framework for the criminalization of terrorist acts relating to civil aviation, maritime navigation, attacks against international staff, hostage taking, nuclear materials, explosive materials, terrorist bombings, terrorist financing, and nuclear terrorism.<sup>32</sup> Furthermore, negotiations on the proposed *Comprehensive Convention on International Terrorism* have been pending in the UN General Assembly since 1996. It would provide, inter alia, a comprehensive definition of qualifying terrorist conduct, procedures for suspect apprehension and sanction, as well as jurisdictional parameters.<sup>33</sup>

Proponents contend that this criminal justice-based model would provide a relatively peaceful, transparent and accountable alternative to the use of force, rooted in and reinforcing of the rule of law and human rights principles.<sup>34</sup> Momentum toward widespread implementation, however, has been frustrated by an inability to reach consensus on the definition of terrorism itself.<sup>35</sup> Forceful arguments have also been made against this approach, citing the protracted nature of judicial proceedings, high evidentiary threshold requirements for prosecution and general foreclosure of the ability to respond immediately to time-sensitive threats in the field.<sup>36</sup>

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29. See Kingston Reif, *U.S. Nuclear Modernization Programs*, ARMS CONTROL ASS'N, <https://www.arm-control.org/factsheets/USNuclearModernization#snapshot> (last visited Sept. 9, 2019).

30. NUCLEAR POSTURE REVIEW, *supra* note 28, at XII (calling for development of a new sea-launched nuclear-capable cruise missile).

31. *UN Global Counter Terrorism Strategy*, UNITED NATIONS OFF. OF COUNTER-TERRORISM, <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy> (last visited Sept. 19, 2019).

32. *International Legal Instruments*, UNITED NATIONS OFF. OF COUNTER-TERRORISM, [www.un.org/en/counterterrorism/legal-instruments.shtml](http://www.un.org/en/counterterrorism/legal-instruments.shtml) (last visited Sept. 19, 2019).

33. Rep. of the Ad Hoc Comm. Established by Gen. Assembly Resolution 51/210 of 17 December 1996, at 3–16, U.N. Doc. A57/37 (2002).

34. *Id.*

35. Alan Greene, *Defining Terrorism: One Size Fits All?*, 66 INT'L & COMP. L.Q. 411 (2007).

36. See generally JOHN YOO, *WAR BY OTHER MEANS: AN INSIDER'S ACCOUNT OF THE WAR ON TERROR* (2006).

Another option, articulated in Pillar I of the UN *Strategy*, calls for embrace of the more holistic approach of addressing underlying conditions conducive to the spread of terrorism. It involves making

best use of the capacities of the United Nations in areas such as conflict prevention, negotiation, mediation, conciliation, judicial settlement, rule of law, peacekeeping and peacebuilding in order to contribute to the successful prevention and peaceful resolution of prolonged, unresolved conflicts.<sup>37</sup>

This approach of acknowledging and improving core conditions forming the genesis of terrorist activity is not without some precedent. The Good Friday Accords of 1998 provide an example of an effort toward this end in the context of the United Kingdom's struggle with the Irish nationalist movement.<sup>38</sup> The peace process in Colombia between the government and the Revolutionary Armed Forces of Colombia (FARC) offers another such template.<sup>39</sup> Under this model, the United States might consider the grievances motivating terrorist campaigns against it and work, through negotiation and other non-conflictual means, toward minimizing them. While this framework could have the potential to bring about a long-term, lasting solution, it would require the United States to forsake the use of unilateral force and rethink core aspects of its foreign policy positions, such as its relations with Israel and other Middle Eastern allies. As such, it remains on the shelf.

#### IV. POSSIBLE FUTURE OF THE WAR ON TERROR

Given the strains on the present model, contemporaneous obstacles to paradigmatic alternatives and the reality of persistent terrorist threats,<sup>40</sup> the question then becomes what is the future direction of the war on terror? This article predicts that one possible course, which maintains the current reliance on the use of force, might be the replacement of overt Title 10 military actions with covert Title 50 military actions. That is, publicly acknowledged military uses of force in the course of CT operations pursuant to the claimed NIAC will be phased out, while covert strikes under CIA control will remain. Indeed, movement in this direction already appears underway. In July 2018, the Trump Administration reversed course and ordered its diplomats to seek direct talks with the Taliban in furtherance of ending the then seventeen year-old war in Afghanistan.<sup>41</sup> Less

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37. See UN *Global Counter Terrorism Strategy*, *supra* note 31.

38. *What Was the Good Friday Agreement?*, BBC (Apr. 10, 2018), <https://www.bbc.co.uk/newsround/14118775>.

39. Adam Isacson, *To Save Columbia's Peace Process, Prove the Extremists Wrong*, N.Y. TIMES (Sept. 3, 2019), <https://www.nytimes.com/2019/09/03/opinion/international-world/colombia-farc-peace.html>.

40. See, e.g., Joseph Hincks, *ISIS Is Still Active in Iraq, Syria and Beyond: This Is What the Threat Looks Like Now*, TIME (Jan. 18, 2019), [time.com/5506007/trump-isis-victory-islamic-state/](http://time.com/5506007/trump-isis-victory-islamic-state/).

41. Mujib Mashal & Eric Schmitt, *White House Orders Direct Taliban Talks to Jump-Start Afghan Negotiations*, N.Y. TIMES (July 15, 2018), <https://www.nytimes.com/2018/07/15/world/asia/afghanistan-taliban-direct-negotiations.html>.

than six months later, the President ordered the withdrawal of more than 2 thousand United States troops from Syria.<sup>42</sup>

This looming prospect of military disengagement, however, does not impact the established CIA presence in the region or JSOC teams placed under the former's operational command. The CIA, operating under Title 50, has limited, but sophisticated, warfighting capabilities and reportedly plays the leading role in strike operations in Pakistan with a participatory role in Yemen, Somalia and Syria.<sup>43</sup> Juxtaposed to his recent decisions to scale down military involvement, the President appears to endorse ramping up CIA-led strikes by authorizing more of them and granting CIA officers wider autonomy in targeting decisions.<sup>44</sup> Additionally, the Administration has been considering expanding CIA authority to conduct strikes in a greater number of countries, both inside and outside of active war zones.<sup>45</sup> This comes as it revoked the section of Obama-era Executive Order 13732 requiring public disclosure by intelligence officials of civilian casualties in strikes outside zones of active hostilities.<sup>46</sup>

Heavier reliance on CIA-led, Title 50 operations would seem to relieve some of the strain bogging down the war on terror model as the United States attempts to reduce its military footprint in key conflict zones. Enabling a leaner CIA (and CIA-led JSOC teams) to execute forceful actions, functionally equivalent to those the military would be carrying out in the course of a war, allows for trimming of the swollen CT budget. Such savings, together with freed up military assets, would then be available for emerging strategic concerns involving state rivals. The move also largely avoids issues of public opinion, as Title 50 actions can continue unacknowledged, while attention is focused on military downsizing.

## V. IMPLICATIONS

Serious legal and policy implications accompany this idea of replacing overt military CT actions with covert CIA-led ones. Legally, it raises a fundamental war powers issue, as Title 50 operations are not subject to the War Powers Resolution. As a result, they constitute a loophole through which a president could utilize the CIA's (and JSOC's) robust capabilities to employ the use of force with relatively minimal congressional oversight.<sup>47</sup> To date, congressional

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42. Tom Vanden Brook & David Jackson, *Trump Orders US Troops Out of Syria, Declares Victory over ISIS, Senators Slam Action as Mistake*, USA TODAY (Dec. 19, 2018, 9:48 AM), <https://www.usatoday.com/story/news/world/2018/12/19/syria-troop-withdrawal/2361385002/>.

43. Ken Dilanian & Courtney Kube, *Trump Administration Wants to Increase CIA Drone Strikes*, NBC NEWS (Sept. 18, 2017, 1:58 PM), <https://www.nbcnews.com/news/military/trump-admin-wants-increase-cia-drone-strikes-n802311>.

44. *Id.*

45. *Id.*

46. Exec. Order No. 13,862, 84 Fed. Reg. 8789 (Mar. 6, 2019).

47. The president is required to keep congressional intelligence committees—i.e., the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence—“fully and currently informed of all covert actions.” See Presidential Approval and Reporting of Covert Actions, 50 U.S.C. § 3093(b)(1) (2012). The comprehensiveness of the oversight of these committees with respect to such actions as drone targeting,



efforts to constrain executive military action, i.e., War Powers Resolution motions, proposed AUMF constriction and defense appropriation conditioning, would all fail to reach CIA uses of force, which are subject to a separate legal authority (Title 50) and not directly funded by the NDAA. From a policy perspective, the government's use of covert, unacknowledged strikes largely removes the general public from the decision-making process with respect to the use of force. Recourse to Title 50 in this manner also necessitates the questionable practice of relying on intelligence organizations to direct and carry out war-like operations.

#### CONCLUSION

The nearly two decade-long war on terror has expanded considerably from its origins in the 2001 AUMF-authorized invasion of Afghanistan. Mounting pressures, however, in the form of escalating costs, deteriorating public opinion and changing national security concerns weigh upon the status quo of the perpetual CT war model. All the while, alternatives remain politically challenging. What then is the future of the war on terror? This article predicts a possible scenario in which the forceful suppression of terrorist threats continues, but is carried out covertly by the CIA pursuant to Title 50 as opposed to overtly by the military under Title 10. This potential reality would have substantial legal and policy implications that could bypass the War Powers Resolution, reduce oversight and remove the public from use of force decisions.