

Renewing the National Security Consensus in Congress

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About this Series

The Key National Security Issues for Congress policy brief series is part of CNAS' new initiative Renewing the National Security Consensus in Congress. The project will promote bipartisan cooperation on Capitol Hill by offering a series of practical policy proposals for lawmakers and staff, creating fora for productive engagement on complex foreign policy challenges, and focusing dialogue on Congress's role in national security.

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To Compete with China, Get the New U.S. Development Finance Corporation Right

Daniel Kliman





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KEY ACTIONS

Encourage the creation of an office for strategic investments.

Grant the USDFC a “surge financing” authority.

Provide the USDFC with political space for riskier projects.

Oversee the linkage between USDFC lending and public diplomacy.

Appropriate funds for a cohort of “Development Finance Fellows.”

China’s economic statecraft advances its broader vision of a future defined by great power spheres of influence, rigged economic interactions, and creeping authoritarianism. The new U.S. Development Finance Corporation (USDFC) set in motion by Congress last year could significantly enhance America’s ability to compete with China. However, the staffing, organization, and activities of the USDFC remain in flux.¹ Congress should shape the new USDFC to ensure it will sharpen America’s strategic edge by taking the following steps:

- » Encourage the creation of an office for strategic investments led by a new member of the USDFC’s executive team.
- » Grant the USDFC a “surge financing” authority to capitalize on emerging windows of opportunity generated by blowback against Chinese investment in some recipient countries.
- » Provide the USDFC with the political space to make somewhat riskier investments in countries with weaker regulatory environments where China is actively competing.
- » Oversee USDFC lending to track whether sufficient resources go to commercially viable, highly visible projects that could become pivotal to U.S. diplomatic messaging.
- » Appropriate funds for a cohort of “Development Finance Fellows” who could cost-effectively provide the USDFC with an on-the-ground presence in key countries.

U.S.-CHINA COMPETITION: THE INFRASTRUCTURE ANGLE

The United States and China are engaged in a global contest to set the rules and norms of the 21st century. A key dimension of this contest is infrastructure. Under the umbrella of “One Belt, One Road,” Beijing has put forward a vision of a world connected through a web of largely Chinese-funded ports, railways, pipelines, power grids, and telecommunications networks.² Beijing has allocated significant resources to the Belt and Road: independent estimates have identified roughly \$340 billion in construction and investment by China from 2014 to 2017.³

Although the global demand for infrastructure is real, China’s economic statecraft in the form of the Belt and Road is ultimately a power play anchored in Beijing’s vision of a world reordered. Through the construction of dual-use infrastructure, Beijing has paved the way for its military to operate more globally. The unsustainable debt incurred by some countries receiving Chinese investment has translated into long-term diplomatic leverage for Beijing. China’s often opaque financing, disregard for local environmental concerns, and willingness to import labor stand in contrast to international best practices. Lastly, investment from China, particularly in developing countries, has fueled corruption and served to export digital surveillance tools that Beijing employs at home to monitor and control its populace.⁴

Until mid-2018, China’s use of infrastructure to advance its geopolitical ambitions appeared destined for success, with Beijing exerting growing influence over strategic ports, becoming a major player in digital connectivity, and forging close ties with local elites in many recipient

1. This policy brief draws on ideas and several recommendations first advanced in Daniel Kliman, “Leverage the new US International Development Finance Corporation to compete with China,” *The Hill*, November 16, 2018, <https://thehill.com/opinion/international/416904-leverage-us-international-development-finance-corporation-compete-with-china>.

2. Nadege Rolland, *China’s Eurasian Century? Political and Strategic Implications of the Belt and Road Initiative* (Seattle Washington: National Bureau of Asian Research, 2017).

3. Cecilia Joy-Perez and Derek Scissors, “The Chinese State Funds Belt and Road but Does Not Have Trillions to Spare,” (American Enterprise Institute, March 2018), 2.

4. Daniel Kliman, Abigail Grace, “Power Play: Addressing China’s Belt and Road Strategy,” (Center for a New American Security, September 2018).

countries.⁵ More recently, however, China has encountered setbacks. From Malaysia to the Maldives, a growing set of countries has begun to express concerns about the risks accompanying Chinese investment, centering in particular on debt and the attendant erosion of national sovereignty. Consequently, the United States has a strategic window of opportunity to advance a positive vision of economic development and infrastructure connectivity, while blunting and even rolling back the geopolitical gains made by China's infrastructure push.

A POTENTIAL GAME CHANGER

In 2018, the United States formulated and began to implement a response to the Belt and Road. Nested within a larger competitive U.S. strategy toward China spanning the diplomatic, economic, and military domains, this response has focused on U.S. areas of comparative advantage such as energy and digital connectivity, promoted capacity building in countries considering Chinese investment, and emphasized cooperation with high-capability American allies and partners.⁶ However, the U.S. response to Belt and Road has suffered from a lack of resources, a weakness that generated concern among American allies and partners and became a talking point for China.

This could change in October 2019 when the new U.S. Development Finance Corporation opens its doors. The USDFC is the result of the bipartisan Better Utilization of Investment Leading to Development (Build) Act, which Congress passed in October 2018.⁷ With a lending ceiling more than double that of the existing Overseas Private Investment Corporation (OPIC), the USDFC will have roughly \$30 billion in additional funds to galvanize private-sector participation in commercial projects overseas. The USDFC will also possess a broader and more agile toolkit than OPIC, including the ability to take equity in projects, loosened restrictions on partnering with non-American companies, and some private-sector-facing functions of the U.S. Agency for International Development.⁸

The USDFC could prove a potential game changer as America seeks to compete with the Belt and Road and offer a positive vision of development and connectivity. The additional \$30 billion in lending resources could galvanize 2.6 times that in private capital.⁹ If focused on key countries, this combined financing could significantly expand America's economic footprint. The USDFC could also become a focal point for cooperation with high-capability U.S. allies and partners, opening up additional public and private-sector resources for countries seeking alternatives to Chinese investment.¹⁰

“The USDFC could prove a potential game changer as America seeks to compete with the Belt and Road and offer a positive vision of development and connectivity.”

5. Devin Thorne and Ben Spevack, “Harbored Ambitions: How China’s Port Investments Are Strategically Reshaping the Indo-Pacific,” (Center for Advanced Defense Studies, April 2018); Sheridan Prasso, “China’s Digital Silk Road Is Looking More Like an Iron Curtain,” Bloomberg, January 10, 2019; and Will Doig, “The Belt and Road Initiative Is a Corruption Bonanza,” ForeignPolicy.com, January 15, 2019, <https://foreignpolicy.com/2019/01/15/the-belt-and-road-initiative-is-a-corruption-bonanza/>.

6. The U.S. Department of State, “Remarks on America’s Indo-Pacific Economic Vision,” U.S. Chamber of Commerce, Washington, July 30, 2018, <https://www.state.gov/secretary/remarks/2018/07/284722.html>.

7. Patricia Zengerle, “Congress, eyeing China, votes to overhaul development finance,” Reuters, October 3, 2018.

8. Daniel F. Runde, Romina Bandura, “The BUILD Act Has Passed: What’s Next?,” CSIS Critical Questions, October 12, 2018, <https://www.csis.org/analysis/build-act-has-passed-whats-next>.

9. Figure provided by OPIC to author on February 4, 2019.

10. “US, Japan, Australia Sign First Trilateral Agreement on Development Finance Collaboration,” The Overseas Private Investment Corporation, press release, <https://www.opic.gov/press-releases/2018/us-japan-australia-sign-first-trilateral-agreement-development-finance-collaboration>.



Yet, whether the USDFC will ultimately realize its potential to enhance America’s strategic edge remains unclear. The Build Act took several steps to orient the USDFC toward the China challenge. It stipulates that U.S. policy seeks “to provide countries a robust alternative to state-directed investments by authoritarian governments.”¹¹ Additionally, the Build Act designates the secretary of state as the chairperson of the USDFC’s board, in order to better align investment decisions with U.S. foreign policy priorities. Beyond these measures, however, the Build Act grants the executive branch significant discretion over the USDFC’s organization, staffing, and activities.

GETTING THE USDFC RIGHT

Prior to October 2019, Congress has a window to ensure that the USDFC is positioned to backstop a more competitive U.S. approach toward China. Key steps for Congress to take include the following:

“Whether or not the United States can effectively seize this moment of opportunity will depend in part on the new USDFC.”

- » **Encourage the creation of an office for strategic investments.** Without the need to compete with China baked into the internal structure of the USDFC, it will likely lose strategic focus over time. An office of strategic investments led by a new member of the USDFC’s executive team would provide essential continuity of focus. The office would collaborate with the intelligence community, the Department of Defense, and the Department of State and seek to mobilize private-sector funding for commercial projects with significant geopolitical value. In addition, the office would spearhead the USDFC’s engagement with U.S. allies and partners looking to jointly finance infrastructure projects.
- » **Grant the USDFC a “surge financing” authority.** Investment decisions taken by the USDFC should generally require extended time given the stakeholders involved and the need for due diligence. However, an inflexible lending timeline will prevent the United States from fully capitalizing on rapidly emerging opportunities, such as recent elections in Malaysia and the Maldives that resulted in much more scrutiny of Chinese investments. Congress should legislate a new “surge financing” authority that would permit the USDFC to accelerate investment decisions in select cases. To ensure judicious use of this authority, Congress should cap total annual “surge financing,” and require a presidential letter explaining the strategic rationale for each project.
- » **Provide the USDFC with political space for riskier projects.** The USDFC’s predecessor, OPIC, justified its existence to Congress in part by pointing to its positive return on investment. OPIC’s returns reflected a relatively conservative investment portfolio. To compete with China, the USDFC will have to incentivize American companies to play a more active role in countries with weaker regulatory environments and greater political instability. Its portfolio will become riskier. At some stage, a project financed by the USDFC will fail. Congress should anticipate this—and convey to the executive branch that it will grade the USDFC’s performance based on its contribution to American foreign policy objectives, and not solely return on investment.
- » **Oversee the linkage between USDFC lending and public diplomacy.** Beijing’s propaganda effort plays up the size of its Belt and Road investments, with mega-projects reinforcing China’s narrative. American economic engagement in the developing world,

11. U.S. House of Representatives, BUILD Act of 2018, H.R. 302, 115th Cong., 2nd sess. https://www.opic.gov/sites/default/files/files/BILLS-115hr302_BUILDAct2018.pdf.

though extensive and more attuned to local needs, often occurs in less visible forms. U.S. diplomatic messaging would prove more credible if backed by a handful of commercially viable, high-profile projects in key regions such as the Indo-Pacific, the Middle East, Africa, and Latin America. Congress should provide oversight of the USDFC to ensure that it invests sufficiently in such projects. In addition, Congress, in hearings, should encourage the State Department and the U.S. Agency for Global Media (formerly the Broadcasting Board of Governors) to leverage these projects as anchors for public diplomacy.

- » **Appropriate funds for a cohort of “Development Finance Fellows.** An on-the-ground presence in key countries would enhance the USDFC’s ability to compete with China by enabling it to spot potential projects early and create a large flow of high-quality deals. Rather than vastly expanding the USDFC’s full-time staff, a cost-effective approach that Congress could champion would be to create a new State Department “Development Finance Fellows” program that would, in partnership with major U.S. companies and top business schools, deploy newly minted MBAs to priority U.S. embassies for a gap year between graduation and private-sector employment.¹²

AMERICA’S COMPETITION TO WIN—OR LOSE

Countries across the globe have begun to awaken to the challenges associated with China’s investment in their physical and digital infrastructure. The Belt and Road has lost its initial sheen. Whether or not the United States can effectively seize this moment of opportunity will depend in part on the new USDFC. Congress can—and should—work with the executive branch to ensure that the hard-won results of the Build Act advance international development while sharpening America’s strategic edge.

“Congress has a window to ensure that the USDFC is positioned to backstop a more competitive U.S. approach toward China.”

¹². The author wishes to credit another participant at a non-attribution roundtable for first floating this recommendation during the course of the discussion.

Congress Should Vigorously Oversee Implementation of the Mission Act

Kayla Williams





SUMMARY

The draft standards the VA has announced detailing the circumstances under which veterans will be able to access health care in the community are inadequate and ill-designed. Congress should rigorously oversee implementation of the Mission Act to ensure that quality of care and fiscal responsibility are not sacrificed to the illusion that community choices are superior.

BACKGROUND

The VA Mission Act (Public Law 115-182), signed into law in June 2018, was crafted in the wake of the 2014 veterans' health care access scandal and the resulting problem-plagued rollout of the Choice Act, hastily passed that same year.¹ Incorporating input from the Commission on Care, veterans service organizations, and the Department of Veterans Affairs (VA), bipartisan leaders in Congress reached a compromise agreement that addresses multiple areas of veteran health care, including asset and infrastructure review and expansion of the caregiver support program. It also created the Veterans Community Care Program (VCCP), which will consolidate seven existing programs through which veterans access non-VA health care and change the circumstances under which veterans are authorized to get care outside VA.

PROPOSED ACCESS STANDARDS

To implement the Mission Act, the VA has developed and announced the following draft access standards:²

“The VA is proposing new access standards, effective when the final regulations publish (expected in June 2019), to ensure Veterans have greater choice in receiving care. Eligibility criteria and final standards as follows were based on VA’s analysis of all of the best practices both in government and in the private sector and tailored to the needs of our Veteran patients:

- » Access standards will be based on average drive time and appointment wait times.
- » For primary care, mental health, and non-institutional extended care services, VA is proposing a 30-minute average drive time standard.
- » For specialty care, VA is proposing a 60-minute average drive time standard.
- » VA is proposing appointment wait-time standards of 20 days for primary care, mental health care, and non-institutional extended care services, and 28 days for specialty care from the date of request with certain exceptions.

Eligible Veterans who cannot access care within those standards would be able to choose between eligible community providers and care at a VA medical facility.”

WEAKNESSES OF PROPOSED STANDARDS

The VA’s press release states that these standards are specifically designed “to ensure Veterans have greater choice.” While seen by some as inherently good, choice alone is neither the highest priority for medical care, nor a desirable end in and of itself. The VA’s drive and wait-time based standards make no mention of ensuring veterans have access to the highest quality care, in the timeliest manner, or at optimal cost to taxpayers—all of which are more likely within a strong VA.

1. Public Law 115-182, *John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018*, June 6, 2018, Section 2372. <https://www.congress.gov/bill/115th-congress/senate-bill/2372/text>.

2. Office of Public and Intergovernmental Affairs, “VA announces access standards for health care,” U.S. Department of Veterans Affairs, January 30, 2019, <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5187>.

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KEY TAKEAWAYS

Rigorously oversee Veterans Community Care Program implementation.

Require quality of care take precedence.

Insist the VA hold non-VA community providers to the same standards and requirements as VA providers.

Ensure the VA works swiftly and diligently to improve hiring of qualified personnel.

The draft standards also make no reference to what will be required for community providers to be considered eligible or how the department will ensure those providers can deliver high-quality, evidence-based, culturally competent care to veterans. This is unfortunate, given the multiple studies showing that the VA provides higher quality care on many measures, including mental health.³ In addition, mental health care providers who work in community settings are far less likely to have military cultural competence and training in evidence-based therapies for post-traumatic stress disorder or other conditions that are more prevalent in veteran populations.⁴

Basing access standards on average drive times and wait times may not even improve access for veterans. Estimating drive times based on the closest VA Medical Center, rather than considering whether needed care can be accessed at one of the far more numerous Community-Based Outpatient Clinics, artificially harms the appearance of proximity to a VA facility. In addition, the assumption that community providers will exist may also be misplaced: while veterans live in all but one of the nation's 3,142 counties, "fifty five percent of U.S. counties, all rural, have no practicing psychiatrists, psychologists, or social workers."⁵ The mean wait time for new primary care appointments at the VA is exactly 20 days, meaning a high percentage of VA patients will be able to request referral to community care ... where the mean wait time is over twice as high, at 40.7 days.⁶

The drive to increase veterans' choices is also based on the flawed underlying assumption that having more choices is inherently better. However, research does not support this assertion. Numerous studies have shown "not only that excessive choice can produce 'choice paralysis' but also that it can reduce people's satisfaction with their decisions, even if they made good ones."⁷ Crucially, the elderly and those with lower cognitive ability are less likely to make optimal decisions when navigating complicated health care landscapes replete with choices.⁸ Opening the aperture on choice for veterans struggling with heavy disease burdens, traumatic brain injuries, and mental health conditions puts these veterans and their families at increased risk of being targeted by unscrupulous private sector providers willing to prey on their desperation to profit from offering unproven "treatments," repeating the same pattern we have already seen with for-profit colleges eager to leach federal dollars at the expense of wounded warriors.⁹

Despite—or perhaps because of—providing higher quality, more integrated, more comprehensive care for the unique population it serves, the VA also does so at lower cost.¹⁰

“The drive to increase veterans’ choices is also based on the flawed underlying assumption that having more choices is inherently better.”

3. Claire O'Hanlon, Christina Huang, Elizabeth Sloss, Rebecca Anhang Price, Peter Hussey, Carrie Farmer, and Courtney Gidengil, "Comparing VA and Non-VA Quality of Care: A Systematic Review," *Journal of General Internal Medicine*, 32 no. 1 (January 2017), 105-121, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5215146/>; Rebecca Anhang Price, Elizabeth Sloss, Matthew Cefalu, Carrie Farmer, and Peter Hussey, "Comparing Quality of Care in Veterans Affairs and Non-Veterans Affairs Settings," *Journal of General Internal Medicine*, 33 no. 10 (October 2018), 1631-1638, <https://link.springer.com/article/10.1007/s11606-018-4433-7>; and Katherine Watkins, Brad Smith, Ayse Akincigil, Melony Sorbero, Susan Paddock, Abigail Woodroffe, Cecilia Huang, Stephen Crystal, and Harold Alan Pincus, "The Quality of Medication Treatment for Mental Disorders in the Department of Veterans Affairs and in Private-Sector Plans," *Psychiatric Services*, 67 no. 4 (April 2017), 391-396, <https://www.ncbi.nlm.nih.gov/pubmed/26567931>.

4. Terri Tanielian, Coreen Farris, Caroline Epley, Carrie Farmer, Eric Robinson, Charles Engle, Michael William Robbins, and Lisa Jaycox, "Ready to Serve: Community-Based Provider Capacity to Deliver Culturally Competent, Quality Mental Health Care to Veterans and Their Families," (Rand Corporation, 2014), https://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR806/RAND_RR806.pdf.

5. Karen Jowers, "There are 3,142 counties in the US. This one has zero veterans," *Military Times*, May 24, 2018, <https://www.military-times.com/veterans/2018/05/24/there-are-3142-counties-in-the-us-this-one-has-zero-veterans/>; and Pamela Hyde, "Report to Congress on the Nation's Substance Abuse and Mental Health Workforce Issues," (U.S. Department of Health and Human Services, January 24, 2013).

6. Madeline Penn, Saurabha Bhatnagar, and SreyRam Kuy, "Comparison of Wait Times for New Patients Between the Private Sector and United States Department of Veterans Affairs Medical Centers," *JAMA Network Open*, 2 no. 1 (2019), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2720917>.

7. Barry Schwartz, "More Isn't Always Better," *Harvard Business Review*, June 2006, <https://hbr.org/2006/06/more-isnt-always-better>.

8. Jason Abaluck and Jonathan Gruber, "Choice Inconsistencies Among the Elderly: Evidence from Plan Choice in the Medicare Part D Program," *American Economic Review*, 101 no. 4: (June 2011), 1180-1210, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3157937/>; and J. Michael McWilliams, Christopher Afendulis, Thomas McGure, and Bruce Landon, "Cognitive Functioning and Choice between Traditional Medicare and Medicare Advantage," *Health Affairs (Millwood)*, 30 no. 9 (September 2011), 1786-1794, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3513347/>.

9. "DoD, VA research again finds hyperbaric oxygen ineffective at treating concussion-related injuries," *VA Research Currents*, January 21, 2015, <https://www.research.va.gov/currents/winter2015/winter2015-9.cfm>; and Daniel Golden, "For-Profit Colleges Target the Military," *Bloomberg Businessweek*, December 30, 2009, <https://www.bloomberg.com/news/articles/2009-12-30/for-profit-colleges-target-the-military>.

10. Carrie Farmer, Susan Hosek, and David Adamson, "Balancing Demand and Supply for Veterans' health Care," (Rand Corporation,



Increasing the number of veterans eligible for community care could come at tremendous cost to taxpayers—in billions of dollars of added costs that are not going toward health care—while not improving veterans’ health outcomes.¹¹

WHAT CONGRESS SHOULD DO

Secretary Wilkie’s statement about the draft access standards says that they are “based on what matters most: the convenience of our Veteran customers.”¹² Convenience, however, should not be “what matters most” without consideration for quality or outcomes. VA patients tend to be older, sicker, and poorer: they have more complex needs than typical patients.¹³ Community providers will not be integrated into the VA’s efforts to screen for—and refer patients for assistance with—homelessness or housing instability, food insecurity, military sexual trauma, legal woes, intimate partner violence, and suicidality.¹⁴

Congress must therefore rigorously oversee the VCCP implementation now underway to ensure the best outcomes for our nation’s veterans. Access standards should align with true congressional intent, rather than simply providing increased access to community care for the sake of offering greater choice.

It is imperative that Congress insist the VA provide additional details on the proposed regulations for implementing the VA Mission Act, rigorously uphold its oversight role, and ensure that the VA’s finalized standards meet the spirit and letter of the hard-fought consensus that led key stakeholders to support its passage. The Independent Budget Veterans Agenda for the 116th Congress contains carefully considered recommendations with thoughtful supporting rationales that should inform the aggressive oversight required to truly serve veterans in the long run¹⁵. Crucial among these are holding non-VA community providers to the same standards and requirements as VA providers and ensuring the VA works swiftly and diligently to improve hiring of qualified personnel.

Veterans, particularly those wounded in service to our country, deserve a strong VA, one that continues to provide innovative, patient-centered care, particularly for issues that may disproportionately affect them such as traumatic brain injuries, post-traumatic stress disorders, amputations, spinal cord injuries, and blindness. Taxpayers also deserve a robust VA, one that continues to fulfill its missions not only of delivering clinical care to veterans but also supporting all Americans by conducting incomparable research, training medical residents, and supporting local communities in emergencies. Rather than being seduced by platitudes about choice and convenience, Congress must consider the extensive evidence about the quality, timeliness, and cost-effectiveness of VA care and insist that in-house care is strengthened, rather than allowing it to be diluted by diverting further funds to community care.

2016), https://www.rand.org/pubs/research_reports/RR1165z4.html; and “Comparing the Costs of the Veterans’ Health Care System With Private-Sector Costs,” (Congressional Budget Office, December 2014), https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/49763-VA_Healthcare_Costs.pdf.

11. “S.2193 Caring for Our Veterans Act of 2017,” (Congressional Budget Office Cost Estimate, January 17, 2018), <https://www.cbo.gov/system/files?file=115th-congress-2017-2018/costestimate/s2193.pdf>; and Isaac Arnsdorf and Jon Greenberg, “The VA’s Private Care Program Gave Companies Billions and Vets Longer Waits,” *ProPublica*, December 18, 2018, <https://www.propublica.org/article/va-private-care-program-gave-companies-billions-and-vets-longer-waits>.

12. Secretary Robert Wilkie, “Revolutionizing VA Health Care,” U.S. Department of Veterans Affairs, Office of Public and Intergovernmental Affairs, January 28, 2019, <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5186>.

13. Christine Eibner, Heather Krull, Carrie Farmer, David Adamson, and Susan Hosek, “Assessment A (Demographics),” (Rand Corporation, September 1, 2015), https://www.va.gov/opa/choiceact/documents/assessments/assessment_a_demographics.pdf.

14. Veteran Homelessness, “Homelessness Screening Clinical Reminder,” *U.S. Department of Veterans Affairs*, May 4, 2017, <https://www.va.gov/homeless/nchav/research/assessment-tools/hscr.asp>; Caitlin Dewey, “Why so many veterans go hungry—and the VA’s new plan to fix it,” *The Washington Post*, October 9, 2017, https://www.washingtonpost.com/news/wonk/wp/2017/10/09/why-so-many-veterans-go-hungry-and-the-vas-new-plan-to-fix-it/?utm_term=.e03580e2fba3; “Military Sexual Trauma,” *U.S. Department of Veterans Affairs*, <https://www.mentalhealth.va.gov/mentalhealth/msthome/index.asp>; Alexis Ferruccio, “Medical Legal Partnerships: Veterans’ health beyond the stethoscope,” *VAntage*, May 17, 2017, <https://www.blogs.va.gov/VAntage/38055/medical-legal-partnerships-veterans-health-beyond-stethoscope/>; VHA Social Work, “Intimate Partner Violence (IPV) Assistance Program,” *U.S. Department of Veterans Affairs*, <https://www.socialwork.va.gov/IPV/Index.asp>; and “National Strategy for Preventing Veteran Suicide 2018-2028,” (U.S. Department of Veterans Affairs, 2018), https://www.mentalhealth.va.gov/suicide_prevention/docs/Office-of-Mental-Health-and-Suicide-Prevention-National-Strategy-for-Preventing-Veterans-Suicide.pdf.

15. The Independent Budget. *The Independent Budget Veterans Agenda for the 116th Congress*, (January 17, 2019), <http://www.independentbudget.org/116-congress/criticalissue.html>.

“Access standards should align with true congressional intent, rather than simply providing increased access to community care for the sake of offering greater choice.”

H.J. Res. 37: Congressional Action on Yemen Isn't Only About Yemen

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KEY ACTIONS

Initiate sustainable debate on U.S. role in Yemen, U.S.-partner relationships in the Middle East, and proper role of U.S. in Middle East conflicts.

Pursue credible oversight of what organizations U.S./partner forces work with in Yemen and risks of weapons transfers to extremist organizations.

Press for comprehensive threat assessment of Houthi as against Saudi and U.S. interests.

Study how limits on U.S. arms sales to Saudi Arabia would or would not pressure Saudi behavior in Yemen conflict.

Use H.J. Res. 37 as entry point for debate on Congressional role in matters of use of force.

SUMMARY

House Joint Resolution 37 (H.J. Res. 37), concerns U.S. support for Saudi Arabia/U.A.E.-led coalition military activities against the Iran-backed Ansar Allah (Houthi) movement in Yemen. As currently framed, it would have only modest impact on Saudi Arabia's calculus in prolonging Yemen's brutal, four-year old war. The resolution also will not alleviate, in and of itself, the ongoing dire humanitarian crisis in Yemen. Nonetheless, H.J. Res. 37 is a rebuke of the Saudi- and Emirati-led coalition's prosecution of the war—which has caused the world's worst current humanitarian crisis—and the U.S. role in supporting the coalition's military activities. To date, more than 60,000 Yemenis, including thousands of children, have been killed in the conflict.¹ Despite Saudi Arabia and the United Arab Emirates having received U.S. sales of precision weapons, U.S. training, U.S. refueling, and U.S. intelligence support, the U.N. has calculated that the "vast majority" of civilian casualties in Yemen have been caused by the 19,000-plus coalition airstrikes.² Beyond the serious undertaking of addressing U.S. role in the Yemen conflict, the resolution has other strategic potential if Congress pursues constructively. Review of this legislation and continued oversight work may succeed in sparking a sustainable debate on the future role of the United States in Yemen's conflict, the U.S.-Saudi and U.S.-U.A.E. relationships, and more broadly, on the proper role of the United States in the Middle East and its conflicts.

WHAT THIS RESOLUTION SAYS

H.J. Res. 37 was adopted under the procedures laid out in the War Powers Resolution, which empowers Congress to curtail the use of U.S. military forces in hostilities overseas. In this case, the resolution requires the removal of U.S. forces from the conflict being waged by the Saudi/U.A.E.-led coalition and the Yemeni government against the Houthis. The substantive provisions of H.J. Res. 37 are identical to those in S.J. Res. 54, passed by a bipartisan majority in the Senate in December 2018, but not taken up by the House during the last Congress. The Senate is expected to vote again on this resolution in the near future. In substance, H.J. Res. 37:

- » Directs the President to remove U.S. armed forces from hostilities in or affecting Yemen within 30 days unless the U.S. Congress authorizes a later withdrawal date, issues a declaration of war, or specifically authorizes the use of U.S. armed forces in Yemen;
- » Prohibits the U.S. armed forces from conducting activities such as in-flight fueling for non-U.S. aircraft conducting missions as part of the conflict in Yemen;
- » Requires the President to submit a report to the U.S. Congress within 90 days that assesses the risk posed by the United States ceasing support for operations in Yemen and if Saudi Arabia stopped sharing Yemen-related intelligence with the United States; and
- » States that the resolution does not restrict U.S. military operations against al Qaeda (and by extension ISIS).

1. "Group says Yemen war killed 60,000 since 2016," Associated Press, December 12, 2018, <https://federalnewsnetwork.com/government-news/2018/12/the-latest-group-says-yemen-war-killed-60000-since-2016/>.

2. "Yemen Data Project Air Raids Summary for January 2019," Yemen Data Project, February 19, 2019, <https://mailchi.mp/89d-ccc9c8978/february2019-yemen-data-project-update-469991>; "Press briefing note on Yemen, Cambodia, Cuba, Nicaragua and Montenegro," U.N. Office of the High Commissioner for Human Rights, May 11, 2018, <https://reliefweb.int/report/yemen/press-briefing-note-yemen-cambodia-cuba-nicaragua-and-montenegro>.

WHAT IS THE IMPACT OF THIS RESOLUTION

On the surface, H.J. Res. 37 would remove the U.S. military from operating as a party to the Saudi/U.A.E. coalition and Yemeni government's conflict with the Houthis in Yemen. However, the direct impacts of H.J. Res. 37 will be limited. While H.J. Res. 37 seeks to halt U.S. military aerial refueling for the coalition, the U.S. military already stopped providing aerial refueling for the coalition in late 2018. Previous legislation, as well as H.J. Res. 37, also provides a number of certification and reporting requirements that could allow for some limited assistance to continue. The administration nominally cooperated with existing certifications requirements in FY2019 National Defense Authorization Act (NDAA) Sec 1290 (in September 2018). Though that certification was criticized as insufficient by the language's sponsors, and the administration failed to submit a second required certification in February 2019 (with a third to be required in August 2019), the administration could continue to provide U.S. military assistance.^{3,4} H.J. Res. 37 also allows for continued U.S.-Saudi/Emirati intelligence sharing. The administration could also make an argument that such activities would not meet the standard of "hostilities" on which the War Powers Resolution is grounded and thus would not be prohibited.⁵ These loopholes could be addressed in future legislation regarding Yemen, especially if Congress assesses that the administration is not adhering to the spirit of H.J. Res. 37 and is continuing to support coalition activities against the Houthis.

H.J. Res. 37 also does not explicitly address U.S. military vessels deployed to protect the international maritime lines of trade and communication off the Yemen coast in the Red Sea, which also can interdict weapons shipments from Iran to the Houthis in Yemen, or from responding in self-defense to Houthi attacks in the littoral zone or beyond.⁶ U.S. vessels have engaged Houthi littoral targets at different times during the conflict, and the maritime domain remains the most likely domain in which direct fighting between the Houthis and the U.S. military could break out.⁷ If Congress is interested in comprehensively removing the U.S. military from situations where it would engage in hostilities against the Houthis, it could hold hearings with the administration and outside experts to assess the likelihood that such conflict could occur in the maritime and littoral domain, and potentially include explicit language prohibiting the U.S. military from participating in maritime operations off the coast of Yemen.

Finally, the resolution does not explicitly prevent U.S. armed forces from supporting local Yemeni partners, whether directly or indirectly through the Saudi and Emirati-led coalition, in areas of Yemen where these local Yemeni partner forces are fighting against al Qaeda and

"To date, more than 60,000 Yemenis, including thousands of children, have been killed in the conflict."¹

3. Hugh T. Ferguson, "Pompeo Bolsters Saudi Military Actions in Yemen," Politico, September 12, 2018, <https://www.politico.com/story/2018/09/12/pompeo-certifies-saudi-military-actions-815802>.

4. Jack Detsch, "Trump blows off Congressionally mandated Yemen certification," Al-Monitor, February 13, 2019, <https://www.al-monitor.com/pulse/originals/2019/02/trump-blows-off-congress-yemen-war-certification.html>.

5. Phil Stewart, "U.S. halting refueling of Saudi-led coalition aircraft in Yemen's war," Reuters, November 9, 2018, <https://www.reuters.com/article/us-usa-yemen-refueling/u-s-halting-refueling-of-saudi-led-coalition-aircraft-in-yemens-war-idUSKCNINE2LJ>.

6. Missy Ryan, "U.S., U.N. seek to identify weapons seized off the coast of Yemen," *The Washington Post*, October 25, 2018, https://www.washingtonpost.com/world/national-security/us-un-look-to-identify-weapons-seized-off-the-coast-of-yemen/2018/10/25/08a6763f-6deb-4294-8c4b-939a1c741b15_story.html?utm_term=.0da49199b6ff; Jon Gambrell, "US Navy Seizes 1,000 Smuggled Rifles Off War-Torn Yemen," Associated Press, August 31, 2018, <https://www.nbcchicago.com/news/national-international/US-Navy-Smuggled-Rifles-Yemen-492156431.html>; and C. J. Chivers and Eric Schmitt, "Arms Seized Off Coast of Yemen Appear to Have Been Made in Yemen," *The New York Times*, January 10, 2017, <https://www.nytimes.com/2017/01/10/world/middleeast/yemen-iran-weapons-houthis.html>.

7. Matthew Rosenberg and Mark Mazzetti, "U.S. Ship Off Yemen Fires Missiles at Houthi Rebel Sites," *The New York Times*, October 12, 2016, <https://www.nytimes.com/2016/10/13/world/middleeast/yemen-rebels-missile-warship.html>.



“Yemen’s civil war has indisputably led to one of the worst humanitarian crises in modern history, and it is a positive sign that Congress wants to expand its oversight of U.S. involvement in the Yemeni conflict.”

ISIS (even if those same partner forces may find themselves engaged against Houthi forces in the same areas of the country). Although regulating this particular involvement of the U.S. military in combat activities against the Houthis is difficult, Congress could seek additional information from the administration and U.S. military and intelligence agencies, in public or classified venues, on the frequency of this situation occurring.

SUGGESTIONS FOR FUTURE CONGRESSIONAL OVERSIGHT ON YEMEN

Yemen’s civil war has indisputably led to one of the worst humanitarian crises in modern history, and it is a positive sign that Congress wants to expand its oversight of U.S. involvement in the Yemeni conflict. According to the U.N., more than 24 million people—80 percent of Yemen’s population—require assistance and protection, with 14.3 million people considered in “acute” need, 20 million people “food insecure,” 19.8 million people lacking access to health care, and 17.8 million people lacking access to safe water and sanitation.⁸ Save the Children has calculated that more than 85,000 children under age five have starved to death since the conflict began in March 2015, and five of the leading humanitarian aid groups recently warned that international aid “can no longer prevent mass starvation if the war is not brought to an end immediately.”⁹ The U.N. assesses that the humanitarian response for 2019 will cost over \$4 billion.

There are several pathways for Congress to expand its role in determining how the United States engages in the Yemen war, but it is unclear the extent to which U.S. military support and arms sales can influence partner policies (especially those of Saudi Arabia and the United Arab Emirates). There are also several strategic questions regarding the relationship between the United States and Saudi Arabia in the broader Middle East, and the proper role of the United States in the region’s conflicts.

Regarding Yemen’s Conflict

One area of inquiry that Congress could pursue is how future legislation could be applied to counterterrorism operations conducted by the United States and its partners in Yemen. H.J. Res. 37 explicitly states that it does not apply to U.S. counterterrorism operations against al Qaeda and ISIS. It is these very operations that are the focus for direct U.S. action in Yemen, and they regularly are conducted in partnership with forces from Saudi Arabia and the United Arab Emirates. However, the coalition has been credibly linked to support for actors in Yemen that are tied to al Qaeda and ISIS. The sustained presence of AQAP (al Qaeda in the Arabian Peninsula) and ISIS affiliates in Yemen continues to pose a long-term threat to U.S. national security.¹⁰ H.J. Res. 37 does not address this significant issue raised by the conduct of U.S. partners in the Middle East, and future congressional action could be an important source of oversight on who exactly U.S. and partner forces work with in Yemen, and what kind of hard and soft assets end up in the hands of questionable actors on the battlefield.¹¹

8. “Humanitarian Crisis in Yemen remains the worst in the world, warns the UN,” UN News, February 14, 2019, <https://news.un.org/en/story/2019/02/1032811>.

9. Laura Smith-Spark and Nima Elbagir, “Act now over Yemen conflict or share blame for mass famine, charities tell US,” CNN, November 26, 2018, <https://edition.cnn.com/2018/11/26/middleeast/humanitarian-groups-yemen-plea-intl/index.html>.

10. Nima Elbagir, Salma Abdelaziz, Mohamed Abo El Gheit, and Laura Smith-Spark, “Sold to an ally, lost to an enemy,” CNN, February 2019, <https://www.cnn.com/interactive/2019/02/middleeast/yemen-lost-us-arms/>; Sudarsan Raghavan, “The U.S. Put a Yemeni warlord on a terrorist list. One of its close allies is still arming him,” *The Washington Post*, December 29, 2018, https://www.washingtonpost.com/world/middle_east/the-us-put-a-yemeni-warlord-on-a-terrorist-list-one-of-its-close-allies-is-still-arming-him/2018/12/28/f3c4fb5b-f366-4570-b27b-75a3ed0f0f52_story.html?utm_term=.b1246a5a7b1d.

11. *Ibid.*

Another path of inquiry for Congress to pursue, which can build off H.J. Res. 37's directive for a report on the risks of ceasing U.S. operations in Yemen, is how to impact Saudi Arabia's strategic calculus as it pertains to assessing the threat the Houthis pose to its national security. In many ways, the Yemen conflict has become a self-fulfilling prophecy; as the conflict drags on and Saudi Arabia and the United Arab Emirates find their intervention ineffective and their reputations damaged, Iran increasingly sees its marginal support for the Houthis as an effective and inexpensive means of securing strategic advantage over Riyadh and Abu Dhabi. At this stage, unless an end to the current war in Yemen is negotiated, both Saudi Arabia and the United Arab Emirates have reason to be concerned about the Houthi movement as a long-term threat to their national security and territorial integrity. The Houthis conduct frequent cross-border raids into Saudi Arabia's southwest Najran and Asir provinces, which reportedly has led the Trump administration to deploy U.S. Army Special Forces advisers to Saudi Arabia's southwest border with Yemen.¹² Over the last several years, the Houthis also have developed a ballistic missile and armed unmanned aerial vehicle capability (with technical training and component parts from Iran) that can threaten both Saudi Arabia and the United Arab Emirates. This capability is not indigenous to Yemen, was provided by Iran, and has translated into the capacity to target and disrupt maritime traffic in the Red Sea with medium-range missiles and significant payloads.¹³ Their stockpile of missiles makes the Houthis most useful to the Islamic Revolutionary Guard Corps as a potential partner force that can be supported to apply strategic pressure against Saudi Arabia.¹⁴

Regarding Defense Sales to Saudi Arabia and the UAE and Their Relationship with the United States

This resolution (and its companion bill in the Senate) will not be the last actions taken by Congress on Yemen, or on the broader issue of U.S.-Saudi and U.S.-Emirati relations in the near term. Bipartisan legislation introduced in both this session and last (H.R. 643 in this session and H.R. 7082) would curtail U.S. arms sales to Saudi Arabia and the United Arab Emirates until they end their military intervention against the Houthis in Yemen. Though it is unclear whether the bipartisan bill will be given a vote as a stand-alone measure in the Senate, a parallel House bill likely will garner support, which could result in relevant language (banning arms sales) being included in the next NDAA or other "must-pass" legislation. Together, such actions would follow the lead of more than half a dozen European countries who have cut off defense sales to Saudi Arabia and the United Arab Emirates. And they could have more tangible results in building the kind of leverage necessary to impact the Saudi and Emirati calculus. Congress also could hold hearings on the extent to which these measures would positively impact the conduct of the war in Yemen and potentially provide additional pressure on the Saudi and Emirati-led coalition to put greater effort into the U.N.-led peace process.

“In many ways, the Yemen conflict has become a self-fulfilling prophecy; as the conflict drags on and Saudi Arabia and the United Arab Emirates find their intervention ineffective and their reputations damaged, Iran increasingly sees its marginal support for the Houthis as an effective and inexpensive means of securing strategic advantage over Riyadh and Abu Dhabi.”

12. Helene Cooper, Thomas Gibbons-Neff, and Eric Schmitt, "Army Special Forces Secretly Help Saudi Combat Threat From Yemeni Rebels," *The New York Times*, May 3, 2018, <https://www.nytimes.com/2018/05/03/us/politics/green-berets-saudi-yemen-border-houthi.html>.

13. Sunniva Rose, "Hezbollah is flaunting its support for Yemen's Houthis," *The National*, September 16, 2018, <https://www.thenational.ae/world/mena/hezbollah-is-flaunting-its-support-for-yemen-s-houthis-1.770904>; "US hits Iran IRGC with sanctions over support of Yemen's Houthis," *Al-Jazeera*, May 23, 2018, <https://www.aljazeera.com/news/2018/05/hits-iran-irgc-sanctions-support-yemen-houthis-180523053245629.html>.

14. U.S. Department of State, "Special Briefing with Brian Hook, Senior Policy Advisor to the Secretary of State and Special Representative for Iran," November 29, 2018, <https://www.state.gov/r/pa/prs/ps/2018/11/287661.htm>.



“It is no secret that there is a growing, bipartisan desire within the U.S. Congress to rigorously debate and analyze the U.S.-Saudi relationship, and the extent to which America’s interests and values diverge from Saudi interests.”

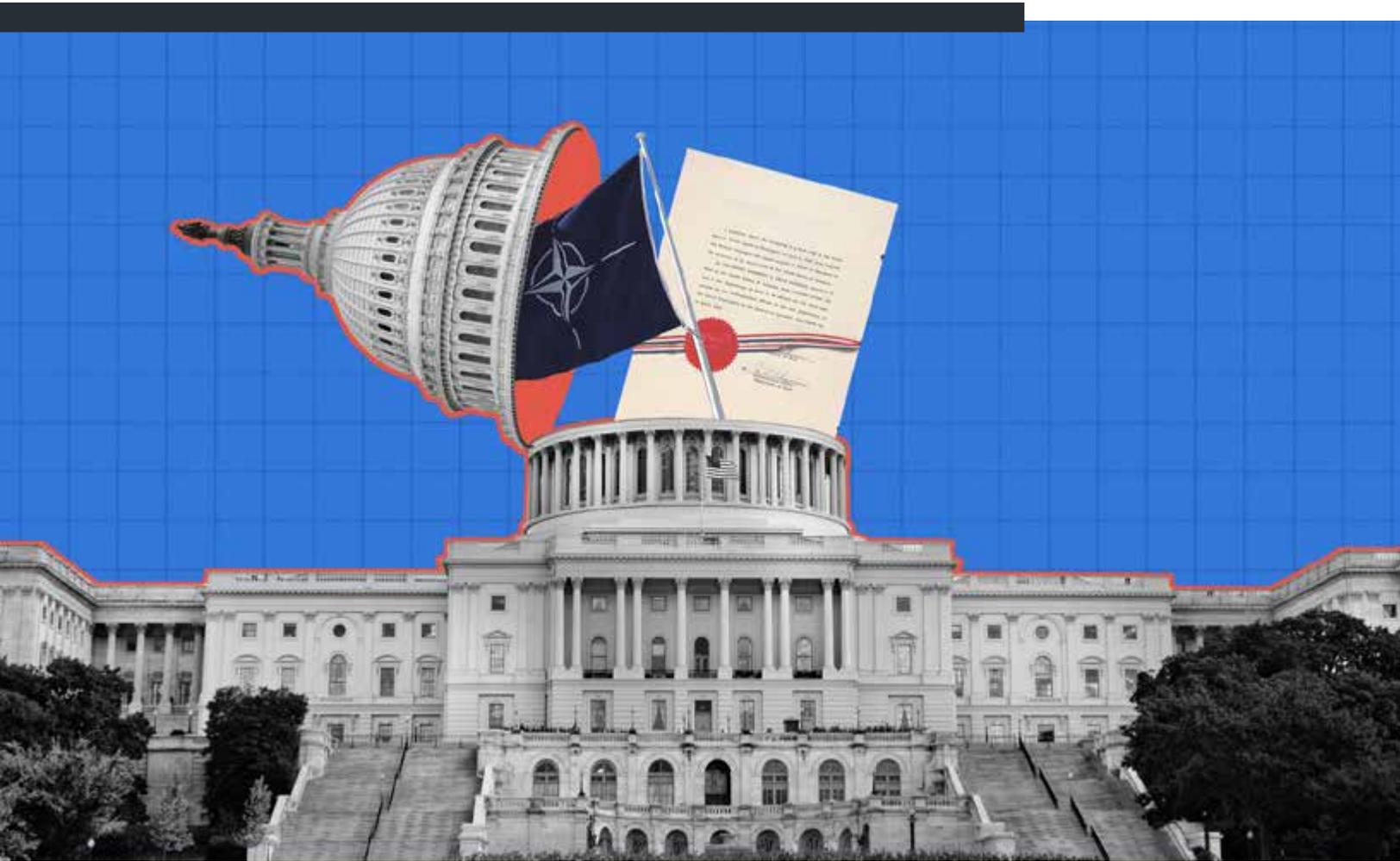
H.J. Res. 37 also suggests a trend developing that both chambers of Congress not only support a marked shift in U.S. policy toward Yemen, but also believe that there is a need to reevaluate the U.S. relationship with Saudi Arabia and the United Arab Emirates, specifically including the role of Saudi Crown Prince Muhammad bin Salman. It is no secret that there is a growing, bipartisan desire within the U.S. Congress to rigorously debate and analyze the U.S.-Saudi relationship, and the extent to which America’s interests and values diverge from Saudi interests. The resolution is part of a larger effort to bring that discussion to the fore, building on the momentum caused by outrage over the murder of Jamal Khashoggi and other actions taken by the Kingdom—whether against women activists at home or in ongoing diplomatic confrontations abroad. This is an important topic with great impact on the future of U.S. policy toward the Middle East, and Congress could hold a deeper inquiry into this subject.

Regarding The U.S. Role in the Middle East and War Powers

H.J. Res 37 does more than reflect Congress’ outrage over Saudi/U.A.E. conduct in the war in Yemen. The anticipated adoption of a War Powers Resolution by both houses of Congress in early 2019 (following the Senate vote to do so last year) also serves as an entry point to a long-overdue debate over what power Congress has in matters related to the deployment of the U.S. military abroad, especially in the Middle East. The fact that Congress has overwhelmingly supported the counter-ISIS campaign for the past five years, while being unable to agree on the legal authorization for the use of force for this conflict, instead allowing the Obama and Trump administrations to use the 2001 Authorization for Use of Military Force as the basis for the U.S. military intervention, is a major failure and abdication of congressional responsibility under the Constitution. Although the catastrophe of the Yemen war will inform this debate significantly, the tug-of-war between Congress and the Trump administration also will be driven by questions about the U.S.-Saudi and U.S.-Emirati relationships more broadly, and about the proper direction of U.S. policy toward (and military posture within) the Middle East in the 21st century. This push-and-pull will continue to grow more vocal and visible throughout the next two years, and likely beyond. Congress can use H.J. Res. 37 and its complementary pieces of legislation as further entry points into the debate on this important set of issues.

Congressional Support for NATO

Rachel Rizzo and Carrie Cordero





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KEY ACTIONS

Pass a bill through both chambers that includes provisions stating that withdrawal from NATO would require a 2/3 majority vote in the Senate and that no funds can be used to withdraw from NATO without congressional approval.

Signal congressional support for NATO by passing a resolution highlighting the importance of a 21st-century NATO that furthers the alliance's three pillars of collective defense, crisis management, and cooperative security.

Determine whether the administration has developed a legal theory that the president may unilaterally withdraw from NATO and/or any other Article II treaty.

Call for testimony by the leadership of the Defense Department, Joint Chiefs, and other senior national security leaders to provide transparency for the public about the role that NATO provides in maintaining global security.

In January, *The New York Times* reported that President Trump suggested to senior advisors several times over the course of the previous year that he might withdraw the United States from the North Atlantic Treaty Organization (NATO or the alliance).¹ Accordingly, the time is ripe for Congress to refresh its institutional understanding of the history of NATO, the contribution the alliance makes to global security, current challenges in modernizing the alliance, and the legal issues that would be involved in a potential effort by the president to withdraw. Congress is a key player in protecting the integrity of NATO, and it is vital that policymakers understand the tools at their disposal.

This brief addresses:

- » The role of NATO today;
- » Whether the executive can lawfully unilaterally withdraw the United States from NATO; and
- » Steps Congress can take to protect this long-standing alliance.

IS NATO OBSOLETE OR IS THE ALLIANCE MODERNIZING?

Lord Hastings Ismay, the first secretary general of NATO, famously stated that NATO was created to keep “the Soviet Union out, the Americans in, and the Germans down” after the end of World War II.² The alliance soon evolved to represent a pillar of Western solidarity against Soviet encroachment until the end of the Cold War. But as NATO’s 2010 *Strategic Concept* explains, throughout history and still today, “NATO’s fundamental and enduring purpose is to safeguard the freedom and security of all its members by political and military means.”³ Members of the alliance have struggled over the years to make sense of multi-directional shifts in the strategic landscape, but the overall utility of NATO membership seemed obvious, especially to the United States.

Today is a different story. It appears President Trump is the first American president to openly question the value of U.S. participation in the alliance. This is indicative of how the president views not only NATO, but rather treaties in general. From the Joint Comprehensive Plan of Action (JCPOA) with Iran to the Paris Climate Agreement, withdrawal from treaties and other international agreements has emerged as a substantial foreign policy tool of the Trump administration.⁴ The president seems to view at least some of these international agreements as political decisions made by the former administration, and is thus especially critical of them.⁵

Yet, NATO remains a bedrock of the transatlantic relationship and is representative of deep ties between the United States and Europe. NATO offers a consortium of allies who

1. Julian E. Barnes and Helene Cooper, “Trump Discussed Pulling U.S. From NATO, Aides Say Amid New Concerns Over Russia,” *The New York Times*, January 14, 2019, www.nytimes.com/2019/01/14/us/politics/nato-president-trump.html.

2. The North Atlantic Treaty Organization, *NATO Declassified*, www.nato.int/cps/us/natohq/declassified_137930.htm.

3. The North Atlantic Treaty Organization, *NATO Strategic Concept 2010*, November 19, 2010, www.nato.int/cps/en/natohq/topics_82705.htm.

4. Chimene Keitner, “What Are the Consequences of the Trump Administration’s Recent Treaty Withdrawals?” *Just Security*, October 17, 2018, www.justsecurity.org/61101/consequences-trump-administrations-treaty-withdrawals/.

5. Lena Felton, “Read Trump’s Speech Withdrawing from the Iran Deal,” *The Atlantic*, May, 8, 2018, www.theatlantic.com/politics/archive/2018/05/full-transcript-iran-deal-trump/559892/.

have proven their willingness to fight alongside the United States.⁶ In addition, NATO is a consensus organization: it provides legitimacy for foreign policy decisions made both within and beyond the boundaries of the United States and Europe.

NATO also provides a conduit through which the United States and Europe can work together in a larger framework on challenges that will shape the future of our societies. Populist parties are gaining traction within the borders of some of the United States' most important allies, such as Germany, France, and Italy. These emerging political movements pose a threat to transatlantic unity given that many are anti-NATO, Eurosceptic, and anti-U.S. In addition, U.S.-European partnership is needed to address hybrid threats like terrorism, disinformation campaigns, and malign cyber activities. Finally, global stability in the coming decades will largely be defined by the relationships between and among the United States, China, and Russia. A strong NATO is necessary to provide a foundation for the U.S.-European relationship, and it will need to adjust to the emerging competitive environment.

However, even supporters of NATO must be clear-eyed about its faults. Burden-sharing is still an issue; Europeans have been too dependent on the United States' security guarantees and have, as a result, spent less than they should on their own defense budgets.⁷ Although allies are finally turning this around, the process has been long. Additionally, NATO as an institution has struggled to define its modern-day purpose. Although it has shown an ability to adapt to reflect the current security environment, such as the recent decision at the 2018 NATO Summit to adjust and strengthen its command structure, these adaptations often happen too slowly. For example, NATO still has work to do to clarify information-sharing in support of cyber defense activities.⁸

For NATO to remain relevant, allies will need to continue to work together to find common approaches to emerging 21st-century security challenges. Congress can play an important role in determining how the United States fits into this puzzle going forward.

“NATO also provides a conduit through which the United States and Europe can work together in a larger framework on challenges that will shape the future of our societies.”

CAN THE PRESIDENT UNILATERALLY WITHDRAW FROM NATO?

While it is hard to determine the seriousness with which to take President Trump's threats to abandon the alliance, Congress must nevertheless understand the legal parameters of the executive power in this situation. According to the limited existing precedent and recent historical practice, prevailing legal opinion is that probably yes, the president could lawfully unilaterally withdraw from NATO if he wanted to without congressional approval.⁹ In fact,

6. Philip H. Gordon, "NATO and the War on Terrorism: A Changing Alliance" (Brookings Institution, June 1, 2002), <https://www.brookings.edu/articles/nato-and-the-war-on-terrorism-a-changing-alliance/>.

7. *Defence Expenditures of NATO Countries 2010-2017*, NATO, press release, March 15, 2018, www.nato.int/nato_static_fl2014/assets/pdf/pdf_2018_03/20180315_180315-pr2018-16-en.pdf.

8. Christopher Porter and Klara Jordan, "Don't Let Cyber Attribution Debates Tear Apart the NATO Alliance," *Lawfare*, February 14, 2019, www.lawfareblog.com/dont-let-cyber-attribution-debates-tear-apart-nato-alliance.

9. Curtis Bradley and Jack Goldsmith, "Constitutional Issues Relating to the NATO Support Act," *Lawfare*, January 28, 2019, www.lawfareblog.com/constitutional-issues-relating-nato-support-act (concluding that "Trump has the constitutional authority to withdraw from [NATO] in accordance with its terms and in the face of congressional silence ... [and that] his authority to do so would be much less certain if Congress were to bar such withdrawal."). But see, Harold Hongju Koh, "Presidential Power to Terminate International Agreements," *The Yale Law Journal Forum*, November 12, 2018, https://www.yalelawjournal.org/pdf/Koh_r5kyrm5m.pdf (concluding that the prevailing view among legal experts that a president can terminate treaties is wrong, and that a comparable, or "mirror principle" of original legislative action, should apply).



U.S. presidents have repeatedly withdrawn from treaties unilaterally.¹⁰ Although early U.S. government tradition contemplated a substantial role for Congress in terminating treaties, more recent 20th-century practice has repeatedly acknowledged executive's ability to withdraw unilaterally.¹¹

Article II, Section 2 of the Constitution provides that the president "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur." The text of the Constitution is silent, however, on presidential power to withdraw from treaties that have been subject to congressional action.

Treaty withdrawal clauses provide a process by which a country may withdraw.¹² NATO's founding document is no exception. The North Atlantic Treaty of 1949, which created NATO, contains a withdrawal clause in Article 13, providing,

After the Treaty has been in force for twenty years, any Party may cease to be a Party one year after its notice of denunciation has been given to the Government of the United States of America, which will inform the Governments of the other Parties of the deposit of each notice of denunciation.¹³

Most notably, the withdrawal provision states that the nation withdrawing must notify the United States. This indicates that we are experiencing a dilemma for which there is no historical precedent: at its creation the participating nations appear to have never expected a scenario could evolve where the United States would be the nation to withdraw.¹⁴

A president seeking to withdraw from NATO would likely point to two cases considered by the federal courts in the past 50 years. *Goldwater v. Carter* considered a challenge brought by members of Congress to President Jimmy Carter's decision to withdraw from the Sino-American Mutual Defense Treaty as part of the United States' recognition of the People's Republic of China. The Supreme Court declined to overturn the D.C. Circuit decision affirming the president's authority.¹⁵ The decision also started an intense debate within Congress, which included three days of Senate Foreign Relations Committee hearings, and a resolution sponsored by Senator Harry Byrd Jr. that stated the Senate should be required to approve any withdrawal from a mutual defense treaty.¹⁶ The Senate never voted on the resolution. In 2002, President George W. Bush announced his intention to withdraw the United States from the Anti-Ballistic Missile Treaty with Russia.¹⁷ Yet again, members of Congress challenged Bush's action in *Kucinich v. Bush*.¹⁸ The district court dismissed the case without reaching the merits.

10. Bradley and Goldsmith, "Constitutional Issues Relating to the NATO Support Act."

11. Curtis A. Bradley, "Treaty Termination and Historical Gloss," *Texas Law Review* 92, (2014), 773-835 https://scholarship.law.duke.edu/faculty_scholarship/3105.

12. Bradley, *Treaty Termination*, 778

13. The North Atlantic Treaty Organization, *The North Atlantic Treaty*, April 4, 1949, www.nato.int/cps/ie/natohq/official_texts_17120.htm.

14. Bradley and Goldsmith, "Constitutional Issues Relating to the NATO Support Act."

15. *Goldwater v. Carter*, 100 S. Ct. 533 (1979).

16. Bradley, *Treaty Termination*, 811-812.

17. Bradley, *Treaty Termination*, 784.

18. *Kucinich v. Bush*, 236 F. Supp. 2d 1, 2 (D.D.C. 2002); Bradley, *Treaty Termination*, 787.

“According to the limited existing precedent and recent historical practice, prevailing legal opinion is that probably yes, the president could lawfully unilaterally withdraw from NATO if he wanted to without congressional approval.”

Both the Justice Department's Office of Legal Counsel and State Department's Legal Advisor have previously supported the executive branch position that a president may unilaterally withdraw from treaties, including Article II treaties.¹⁹ There is, however, an alternative view that the modern historical precedent supporting this position is wrong and that a "mirror principle" should apply. In other words, the mechanism to exit the treaty should "mirror" the mechanism to enter the treaty.²⁰ There is a logical quality and a symmetry to this argument, although it has yet to be tested in court. This view rejects the prevailing analysis that historical practice following *Goldwater* is dispositive, in light of the lack of textual or binding precedent.²¹ This view right-sizes the debate by acknowledging that the adherence to past practice is not the same as Supreme Court precedent on the specific issue.

If the current administration takes the legal position that a president has the authority to unilaterally withdraw from NATO (or any other treaty for that matter), the argument would be consistent with prior administrations of both parties. Substantively, the position that withdrawing from NATO is in U.S. national security interests is on the outskirts of a bipartisan national security consensus. As a legal matter, however, and in the absence of additional congressional action,²² the administration would be comfortably in the mainstream of legal interpretation to date.

ROLE OF CONGRESS IN PROTECTING NATO

Despite the prevailing legal analysis, Congress has an avenue available to it to protect U.S. participation in NATO and strengthen the relevance of the alliance itself. After President Trump's implied threat to leave NATO in July 2018 at the Brussels Summit, Congress sprang into action to reassure European allies of continued U.S. support.²³ On January 22, 2019, the House passed H.R. 676, the NATO Support Act, which reaffirmed Congress's commitment to NATO. The bill expresses a Sense of Congress that the president "shall not withdraw the United States from NATO," and includes a statement of policy that the United States will "remain a member of good standing in NATO. The bill further states that "no funds are authorized to be appropriated, obligated, or expended to take any action to withdraw the United States from the North Atlantic Treaty."²⁴

19. Bradley, *Treaty Termination*, 784.

20. Harold Hongju Koh, "Presidential Power to Terminate International Agreements," *The Yale Law Journal Forum* (November 12, 2018), 453-453, www.yalelawjournal.org/pdf/Koh_r5kyrm5m.pdf (articulating the mirror principle as "the commonsense notion that the degree of legislative participation necessary to exit an international agreement should mirror the degree of legislative participation required to enter it in the first place).

21. Koh, "Presidential Power," 43.

22. Bradley and Goldsmith, "Constitutional Issues Relating to the NATO Support Act."

23. Brian Naylor, *Trump's Harsh Words for NATO Meet with Pushback from Democrats and Republicans*, NPR, July 11, 2018, www.npr.org/2018/07/11/628015546/trumps-harsh-words-for-nato-meet-with-pushback-from-republicans-and-democrats. In addition, congressional leadership issued a bipartisan invitation to the NATO Secretary General to speak to a joint session of Congress. Catie Edmondson, "Congressional Leaders Invite NATO Chief to Speak, in Jab at Trump," *The New York Times*, March 11, 2019, <https://www.nytimes.com/2019/03/11/us/politics/congress-nato-trump.html>.

24. H.R. 676, 116th Congress, 1st Session (NATO Support Act), <https://www.congress.gov/116/bills/hr676/BILLS-116hr676eh.pdf>.



Meanwhile, the Senate introduced (but has not acted on) S.J. Resolution 4 which contains a more specific statement:

The President shall not suspend, terminate, or withdraw the United States from [NATO] except by and with the advice and consent of the Senate, provided that two thirds of the Senators present concur, or pursuant to an Act of Congress.”

The Senate bill also prohibited the use of funds for withdrawal purposes.

Neither bill seeks to solve the broader question of whether the executive needs congressional approval to withdraw from all Article II treaties. And if Congress seeks to protect NATO specifically, one approach would be to focus exclusively on NATO and not attempt to challenge the president’s power regarding Article II treaties more broadly. As one observer writes, NATO “has never been a typical alliance.”²⁵ NATO has served in a unique role in maintaining post–World War II order by underpinning the U.S.-European relationship and helping preserve peace on the European continent. Accordingly, a potential legal challenge to a presidential unilateral withdrawal might be framed in as narrow a manner possible so as to not require a court to rule beyond the North Atlantic Treaty, specifically, given its foundational role in supporting post–World War II international security.

RECOMMENDATIONS

As a matter of foreign policy, withdrawing from NATO would cause irreparable damage to the U.S. relationship with European allies and would have profound consequences for cooperation on military defense, counterterrorism, counterproliferation, and counterintelligence activities. While the current world order cannot be expected to remain static, the United States needs a modern NATO attuned to today’s threats, not an abandonment of alliances built over decades. Congress’s engagement on this issue, even in the absence of presidential action to withdraw, could also have the ancillary effect of bolstering public understanding of NATO’s role and function.

Congress can take proactive steps to express its consensus support for NATO and bolster its role as a matter of law in any potential presidential attempt to withdraw.²⁶ If the president were to unilaterally withdraw from NATO, prior action by Congress would be considered in subsequent litigation, assuming litigation would ensue. Steps that Congress could take include:

- » Passing a bill through both chambers that includes a provision that withdrawal from NATO would require a 2/3 majority vote in the Senate, which would strengthen Congress’s constitutional position. The bill should also include strong language regarding the power of the purse, saying no funds can be used to withdraw from NATO without congressional approval.

25. Celeste Wallander, “NATO’s Enemies Within: How Democratic Decline Could Destroy the Alliance,” *Foreign Affairs* (July/August 2018), www.foreignaffairs.com/articles/2018-06-14/natos-enemies-within (From its inception in 1949, NATO has not only deterred and defended against external threats; it has also advanced the principles of liberal democratic governance).

26. Bradley and Goldsmith, “Constitutional Issues Relating to the NATO Support Act.”

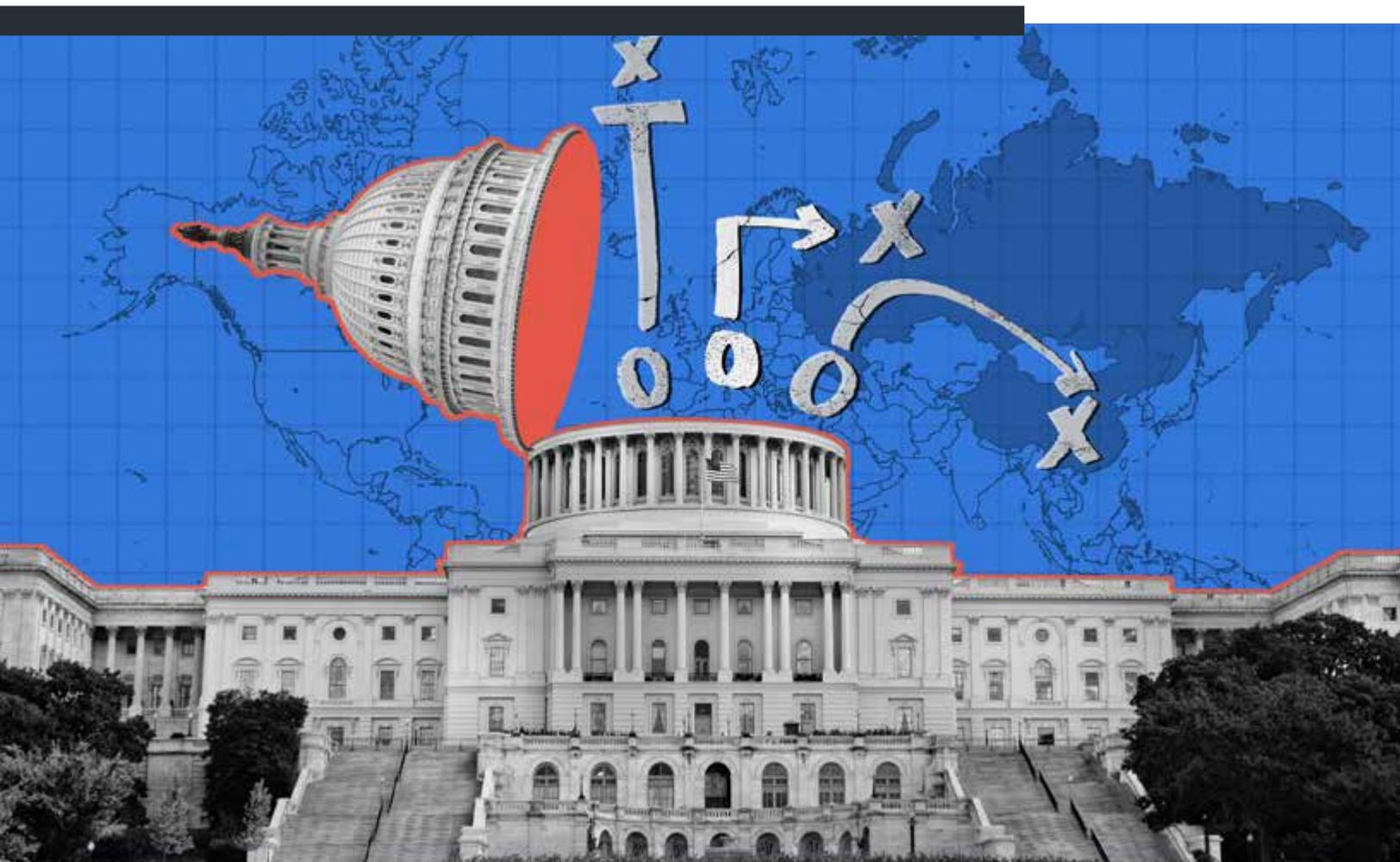
“A potential legal challenge to a presidential unilateral withdrawal might be framed in as narrow a manner possible so as to not require a court to rule beyond the North Atlantic Treaty.”

- » Signaling its support for NATO and the United States' continued participation by passing a resolution highlighting the importance of a 21st-century NATO that furthers the alliance's three pillars of collective defense, crisis management, and cooperative security.
- » Determining whether the administration has developed a legal theory that the president may unilaterally withdraw from NATO and/or any other Article II treaty. This includes calling for testimony from the State Department legal advisor and the attorney general.
- » Conducting oversight by calling for leadership of the Defense Department, Joint Chiefs, and other senior national security leaders to provide transparency for the public about the critical role that NATO provides in maintaining global security and providing mutual protection against common enemies.

Congress will play an increasingly central role in defending the integrity of NATO and ensuring it stays relevant in the years to come. While the alliance may not be perfect, given today's tepid relationship between the United States and Europe, it is worth protecting.

Implementing the National Defense Strategy Demands Operational Concepts for Defeating Chinese and Russian Aggression

Chris Dougherty





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KEY ISSUES

The 2018 National Defense Strategy is a rare area of bipartisan consensus, with defense experts from both parties viewing it as a prudent guide for long-term competition with China and Russia.

Implementing this strategy demands new operational concepts for defeating Chinese and Russian aggression.

Without these concepts as a framework, DoD and Congress may not be making the best use of the recent budget increases.

Work on these concepts continues to lag; congressional intervention could give it a much-needed boost.

SUMMARY

The 2018 National Defense Strategy (NDS) shifted the Department of Defense (DoD) away from a strategy focused on counterterrorism and deterring regional threats like Iran toward competing with, deterring, and, if necessary, defeating Chinese and Russian aggression. DoD is portraying the President's Budget Request for Fiscal Year 2020, which is the first such request submitted since the release of the NDS, as a down payment on the long-term investments required to develop a future force that can execute this strategy. Given the price tag of \$750 billion, Congress and the American people should, in the words of Ronald Reagan, trust DoD, but verify that this is money well spent on advancing the priorities of the NDS.

DoD leaders briefing Congress will argue that their proposed budget choices align with the NDS—even when they're continuations of past budgets or longstanding bureaucratic preferences. These officials aren't intentionally misleading Congress. Radical change risks disrupting current and future operations and the defense industrial base. Defense leaders are therefore reluctant to share with Congress options that stray from the status quo. Likewise, they are wary of providing any analyses of alternative means to support the strategy. But maintaining the status quo is a path to failure given the seismic shift of the NDS. Successful implementation of a strategy for great-power competition will require Congress to foster change and hold DoD accountable when its investment choices don't align with its strategic priorities.

New operational concepts, backed by independent analysis, are vital for DoD to meet its goal of deterring and, if necessary, defeating Chinese and Russian aggression should competition lead to conflict. Crucially, such new approaches cannot just be internal tools, but should play a role in enabling congressional oversight. They are important lenses for Congress to use in examining defense investment choices, separating the critical programs from the nice-to-have or the unnecessary.

To this end, Congress should encourage the development of new operational concepts for fighting China in East Asia and Russia in Eastern Europe. Congress should request that multiple organizations—both government and non-government—lead independent studies to develop operational concepts and provide supporting analysis to both DoD and Congress.

Congress has used this approach before to examine the size and shape of the future Navy fleet and Air Force inventory of aircraft, with good results. A similar effort aimed at developing new operational concepts would advance the bipartisan understanding of the NDS and provide tremendous value to the American taxpayer.

WHAT IS AN OPERATIONAL CONCEPT?

Operational concepts have become trendy in defense circles since the release of the NDS and the subsequent report of the Commission on the National Defense Strategy. By calling for new joint thinking on war with China and Russia, these two documents took operational concepts, previously the narrow concern of military historians and small circles of defense planners, and inserted them into the broader debate on defense issues.

Despite their trendiness, or perhaps because of it, the defense world is awash in conceptual vaporware—shallow PowerPoint decks masquerading as joint concepts—while bereft of meaningful operational thinking supporting the NDS that could be used as a framework to understand the massive investments in recent defense budget requests.

Part of the reason operational concepts lack coherence or fidelity is that there is no agreed upon definition as to what they are or what they should contain. To remedy this definitional gap, Congress should demand that, at a minimum, these concepts describe how commanders seek to achieve strategic objectives within constraints by

- » Positioning forces geographically;
- » Sequencing operations in time;
- » Informing their forces and denying information to the adversary;
- » Coordinating the actions of their forces in time and space;
- » Maneuvering their forces to and within the theater;
- » Directing their available firepower, particularly preferred munitions and cyberattacks; and
- » Sustaining their forces logistically.

While operational concepts focus on military art and science, the inclusion of strategic objectives and constraints is a critical point. A concept that fails to achieve its political objectives, or is unimplementable because of political constraints is a failure, even if it solves every operational problem. The Army's AirLand Battle concept, which it developed with the Air Force during the late Cold War, demonstrated how strategic constraints can lead to operational innovation. Facing numerical inferiority versus the Soviet Union and the Warsaw Pact, the standard solution was to retreat, trade space for time, and use a mix of tactical nuclear weapons and "people's war" to grind down Warsaw Pact forces. Frontline NATO Allies like Germany were understandably perturbed by the notion of fighting a nuclear guerilla war on their own territory, thereby destroying their countries in order to save them. These constraints helped lead to the innovative idea of fighting an "offense in depth" against the Warsaw Pact's follow-on forces using long-range precision strike weapons.

A *good* operational concept should conduct these activities in a way that exploits enemy weaknesses and maximizes friendly strengths (and vice versa) to achieve better-than-expected outcomes based on comparisons of the forces involved. A *great* operational concept should achieve this disproportionate effect through methods that the adversary is systemically unwilling or unable to counter. For example, AirLand Battle leveraged U.S.

“A concept that fails to achieve its political objectives, or is unimplementable because of political constraints is a failure, even if it solves every operational problem.”



advantages in airpower and precision strike to attack Soviet and Warsaw Pact follow-on forces, thereby offsetting U.S. and NATO numerical disadvantages. This concept leveraged systemic U.S. advantages in sensors, networks, microcomputing, personnel, and training that the Soviet Union and Warsaw Pact could not match.

HOW CONGRESS COULD USE OPERATIONAL CONCEPTS FOR BUDGETING AND OVERSIGHT

Congress could use operational concepts and supporting analysis in myriad ways to advance implementation of the NDS. First, congressional interest would force DoD to accelerate and escalate the importance of concept development. One of the more frustrating aspects of DoD is that innovative thinking is often trapped under layers of bureaucracy or detached from decision-making processes. Congressional pressure, combined with the risk of being out-innovated by FFRDCs and think tanks can surface the good work that is occurring in DoD and ensure that senior leaders are paying attention.

Second, Congress can use these concepts to guide its oversight of complex issues by contextualizing key decisions. For example, aircraft procurement is a perennial area of focus, given its share of the budget. An operational concept could demonstrate the role of a given aircraft in a potential conflict and show how the concept relies (or does not) on the aircraft. Moreover, the concept could highlight the critical factors that comprise effective airpower—sensors, networks, munitions, air bases, maintainers, etc.—that are often overlooked in the focus on aircraft numbers. Thinking conceptually can remedy this imbalance by showing the interdependence of investments.

Commissioning operational concepts and supporting analysis from multiple independent sources will help level the playing field between Congress and DoD—particularly vis-à-vis the military services. This work will not make members and staff experts overnight, but it will enable them to ask better questions and draw on independent analysis to dig into the answers. The services will likely respond to this demand the way they did when Secretary of Defense Robert McNamara introduced systems analysis into DoD’s planning and budgeting process: they’ll seek to master it for their purposes.¹ This is a feature of this process, not a bug—service staffs should spend far more time developing, analyzing, wargaming, exercising, and improving warfighting concepts for their most stressing challenges.

BUILDING ON PAST SUCCESS WITH MANDATED INDEPENDENT STUDIES ON DEFENSE PLANNING

Congress has successfully used legislation to provoke creative military thinking and analysis in the recent past. The 2016 National Defense Authorization Act (NDAA) tasked the Navy, a federally funded research and development corporation (FFRDC), and a think tank to submit separate reports to Congress on the future architecture of the Navy’s fleet. The recommendations in these reports, as well as the analysis that went into them, greatly advanced thinking on the future Navy fleet and continues to inform the Navy’s force-planning decisions. The 2018 NDAA tasked similar studies on the Air Force’s inventory of aircraft, which have not yet been released.

1. See RAND’s classic book on the advent of systems analysis in the Pentagon, *How Much is Enough*, by Alain C. Enthoven and K. Wayne Smith, in particular, p. 44, https://www.rand.org/content/dam/rand/pubs/commercial_books/2010/RAND_CB403.pdf.

“Congressional pressure, combined with the risk of being out-innovated by FFRDCs and think tanks can surface the good work that is occurring in DoD and ensure that senior leaders are paying attention.”

Comparable legislation could task some combination of the military services, the Joint Staff, FFRDCs, independent think tanks, and the relevant combatant commands to develop operational concepts and supporting analysis for related to potential military scenarios in East Asia and Eastern Europe. The ideal end-goal of such an effort would be coherent joint operational concepts for defeating Chinese and Russian aggression. Given the difficulty of this goal, Congress may need to accept service-specific concepts as an interim step, then work over time to stitch these into coherent joint concepts.

The mixture of analysis and competition from different viewpoints—including from organizations without vested interests in the outcome—is key, and Congress can play a critical role in surfacing choices and tensions resident in the range of perspectives. Congress, and particularly the staff responsible for the nuts and bolts of the National Defense Authorization Act, need to understand how new concepts measurably improve warfighting outcomes, and how proposed or potential major investments in the Defense budget fit into these concepts.

The military services conduct enormous amounts of analysis on alternative concepts and force structures, but they are loathe to share work that doesn't support their official position (both inside DoD and externally). DoD formerly developed a joint analytic basis to enable comparisons of different concepts and force compositions, but Pentagon leadership killed this process in 2017. The resultant gap makes the use of competing concepts and analysis by independent organizations critical. Without an independent check, the military services are essentially grading their own homework.

WHY NOT USE OPERATIONAL PLANS?

Many in DoD and Congress wrongly view operational plans (OPLANS) as interchangeable with operational concepts and use them as a basis for program and budget decisions. OPLANS should be informed by operational concepts, but the two are not the same. The distinction may seem arcane, but operational concepts should matter far more than OPLANS to both DoD and Congress in developing the future force through the budget process.

OPLANS are the most detailed form of planning for real-world contingencies, like the Gulf War. They focus on near-term challenges and, as such, combatant command planners build them assuming they have access to current forces—not future investments. This makes the plans feasible to execute, but makes them poor guides for investments in the defense budget for two reasons.

First, OPLANS' near-term focus is out of step with a budget process that funds programs and technologies that can take years or even decades to reach fruition. Benchmarking potential investments against their relevance to current threats is a surefire way to lag behind adversaries' future capabilities and leave the joint force at a disadvantage. While this wasn't a major problem when threats were static or deteriorating, like Saddam Hussein's Iraq, it is problematic against dynamic competitors like China and Russia.

“The mixture of analysis and competition from different viewpoints—including from organizations without vested interests in the outcome—is key, and Congress can play a critical role in surfacing choices and tensions resident in the range of perspectives.”



Second, since the combatant commands build OPLANS with the current force, using them as a basis for building the future force creates a circular logic. If, for example, DoD were to have X aircraft carriers, Y fighter squadrons, and Z brigade combat teams, the current plan would require X aircraft carriers, Y fighter squadrons, and Z brigade combat teams. In the next budget cycle, DoD would maintain X aircraft carriers, Y fighter squadrons, and Z brigade combat teams; so the *next* plan would require X aircraft carriers, Y fighter squadrons, and Z brigade combat teams; and so on. Building a future force based on OPLAN requirements severely inhibits change to the force and throttles long-term innovation.

Instead of a being a deterministic endpoint set in the near term, operational concepts should be set in the future and use the current joint force’s inventory and capabilities only as a starting point. They should be specific to a potential adversary and a theater of operations, but they should not be as detailed as an OPLAN. They should be set far enough in the future that they can guide multi-year budget decisions, without being so distant that uncertainty undermines their utility for decision making; seven to ten years is appropriate. Finally, they should not be constrained by the projected joint force. If a concept demands capabilities or force structure that are feasible, but don’t yet exist, they should be included to help push DoD and the services to think creatively and embrace change.

RECOMMENDATIONS

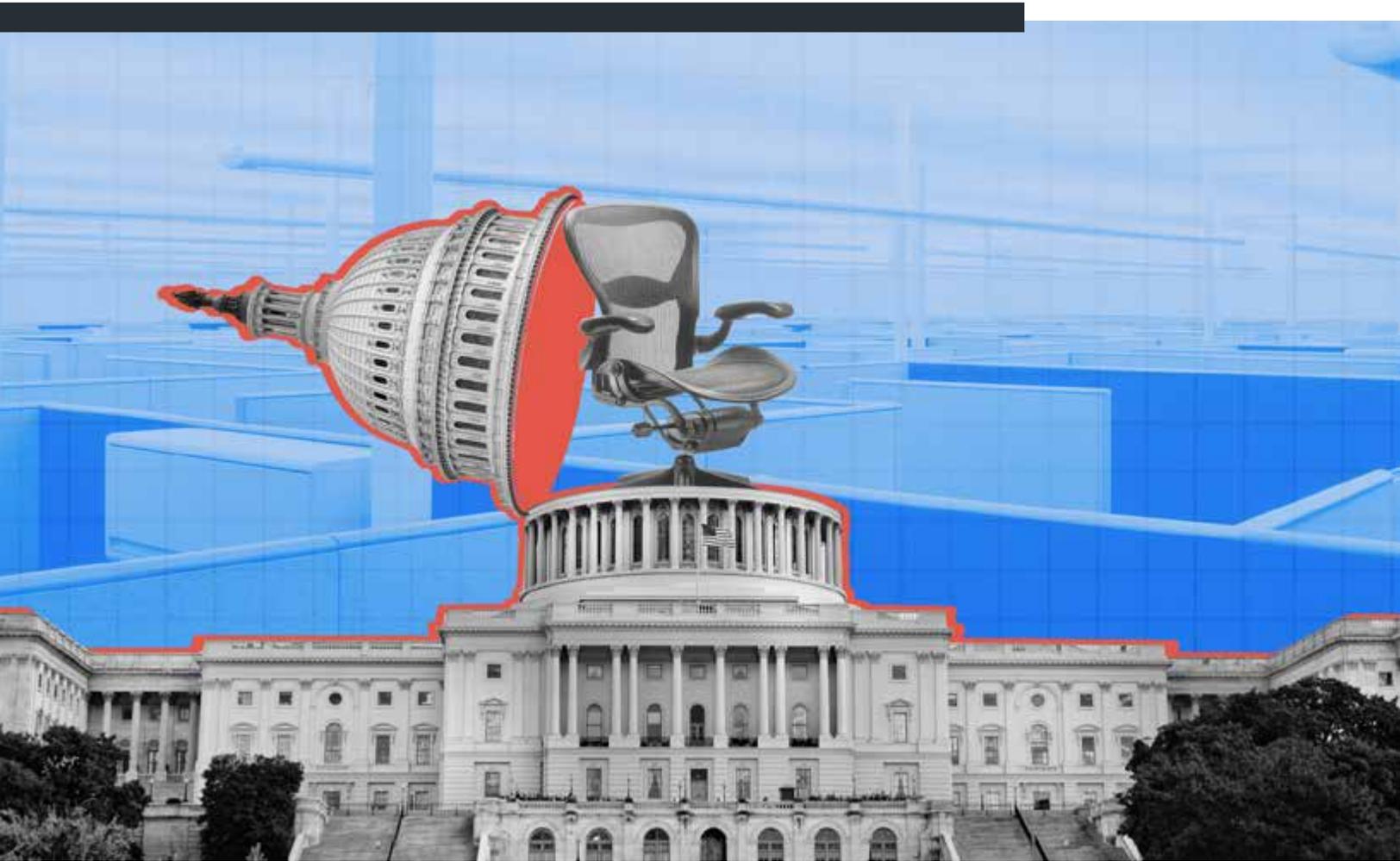
- » Commission multiple independent organizations to develop operational concepts, along with supporting analysis, for defeating Chinese and Russian aggression.
- » Hold DoD and service leadership accountable by asking how their proposed investments support these concepts and, if necessary, shifting funds to more promising initiatives.

Legislatively mandating the development of new operational concepts is a good start, but it may not ensure the services use these concepts to build their forces. Members and staff should require the services, the Joint Staff, and the Office of the Secretary of Defense to show how choices in the budget—such as the decision to start or cancel a major program—align with their concepts and prove the effectiveness of their choices with analysis and data. Should Pentagon leaders fail to demonstrate how their decisions support their warfighting concepts, Congress should be willing to withhold funding until answers are forthcoming.

The NDS noted that the U.S. military advantage against China and Russia is eroding and that urgent action is needed to arrest this erosion. One can imagine many U.S. taxpayers and members of Congress shaking their heads in disbelief, knowing that the U.S. defense budget vastly exceeds those of China and Russia combined. The NDS provides a clear and coherent strategy for addressing this issue. The U.S. military will need to develop operational concepts that are more than catchphrases or slide decks to implement this strategy and spend taxpayer dollars more effectively. Congress can and should help make this happen.

Managing the National Security Workforce Crisis

Loren DeJonge Schulman





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KEY ISSUES

The federal government is not on track to hire, retain, develop, or promote the diverse and highly skilled civilian experts and leaders it believes it needs for today's and tomorrow's national security challenges.

Talented national security experts are deterred from federal service due to needless barriers.

The federal workplace's tools, benefits, and incentives have fallen behind private counterparts.

Toxic rhetoric across the political spectrum inaccurately paints federal workers as lazy, untrustworthy, disloyal, and less valued than their military counterparts.

Congress must make national security workforce as a vital component of a strong national security strategy by pursuing known tactical fixes, elevating human capital into oversight discussions, and laying the groundwork for a long-term personnel reform agenda.

The federal national security workforce is entering a perfect storm shaped by workforce demographic trends, short-sighted leadership, slow adaptation to modern challenges, and inflexible talent acquisition and management. Government civilian human capital is typically relegated to an administrative function not demanding serious legislative or senior policymaker attention—despite intensive interest in military counterparts. But senior leaders should begin to imagine a future crisis or opportunity wherein the people required to manage such events on behalf of the nation will not be in the right place, and, more importantly, not be accessible in the time they are needed. This should not come as a surprise to any lawmakers—respected institutions such as the Partnership for Public Service have been highlighting these problems for years.¹ And much of the challenge is not subject to a legislative fix as the dysfunction is due to a complex mix of law, regulation, leadership, and culture. But if the United States is entering an era of great power competition, doing so with a weakened intellectual roster inside its own public bureaucracy is foolhardy—and demands immediate focus.

It is critical for members of Congress to recognize that deliberate, often well-intentioned policy choices have severely impacted civil servant morale and development. In the past six years the national security bureaucracy has faced three recent government shutdowns with unpaid furloughs, multiple years of frozen pay, recent proposals to cut federal compensation and retirement, and unpredictable hiring freezes. Uncertainty over hiring, promotion, and pay can have a large effect on retention—particularly for staff with high-demand skills—and policymakers too rarely utilize employment models that tell them how their tactical budget and policy changes will impact the workforce. In short, both Congress and the executive branch have made highly consequential moves on the federal workforce with little assessment of the consequences. Congressional national security committees should treat civilian human capital as a vital building block to any American foreign policy by pursuing known tactical fixes across the workforce, elevating human capital into oversight discussions, and laying the groundwork for a long-term personnel reform agenda.

MAKE UP OF THE NATIONAL SECURITY WORKFORCE

The federal government is not on track to hire, retain, develop, or promote the diverse and highly skilled civilian experts and leaders it believes it needs for today's and tomorrow's national security challenges. Despite public service remaining a top career interest for college graduates,² several indicators for national security talent recruitment and management are flashing red, with little energy and few avenues for repair. Notable trends include:

1. The Partnership for Public Service's Civil Service Reform research efforts are thorough and thoughtful; though most of their work does not highlight the specific needs of the national security field, many of their findings are broadly applicable. Their collection of research can be found here <https://ourpublicservice.org/our-work/civil-service-reform/>.

2. "College Students are Attracted to Federal Service, but Agencies need to capitalize on their interest," Partnership for Public Service, March 2014, https://www.govexec.com/media/gbc/docs/pdfs_edit/031713e2.pdf.

- » **Young talent is under-represented:** Only around 6 percent of the professional federal workforce is under 30 (versus 24 percent of the overall workforce), constraining access to fresh perspectives and cutting-edge skill sets.³ At the Department of Defense, where innovative and technical skills are at a premium, the share of employees with less than 5 years of federal experience—the pipeline for future leadership—has plummeted since 2011.⁴
- » **Government hiring is under frequent unmitigable stress:** Periodic government-wide and agency-specific hiring freezes (government wide in 2017;⁵ 2017–2018 at State;⁶ and periodic in the Office of the Secretary of Defense due to headquarters cuts⁷) have cut off agency access to request influxes of cutting-edge expertise necessary to sustain dynamic national security analysis and policymaking. Applications for the foreign service officer test have decreased significantly, from 14,580 in 2015 to 9,519 in 2017.⁸ Prestigious new-entry programs (Presidential Management Fellowship, Boren, Rangel⁹) face lower confidence from applicants and hiring managers due to unplanned pauses and wavering commitments to transition sought-after fellows into permanent positions.
- » **Mid- and senior-level talent are departing disproportionately:** Short periods of attrition in federal departments are expected during administration transitions. But the recent scale of departures in the national security civilian workforce exceed prior trends; for example, between September 2016 and September 2018, the State Department lost 9 percent of its civil service workforce and just over 20 percent of staff with five to nine years of service. The Office of the Secretary of Defense (OSD) has experienced a roughly 9 percent drop off in its staff in the same period: those with five to nine years federal service has decreased by 24 percent. A series of interviews with current and recent federal employees raised greater alarm about these departures than any other current national security challenge. “The people who are leaving will have an effect on government over the long term. There are pockets of talent, but the ranks are so thin,” one said.¹⁰
- » **Diversity may be valued, but policies constrain it:** Recent assessments find that the national security workforce is generally less diverse than the overall federal workforce, though this varies widely across agencies.¹¹ While some trends influencing diversity align with the broader economy, a few are driven by policies specific to the national security community. One example is the application of veterans’ preference. Veterans are overrepresented in the federal workforce and particularly so in specific agencies: they represent 30 percent of all federal employees, 49 percent of all DoD civilians, 40 percent

“If the United States is entering an era of great power competition, doing so with a weakened intellectual roster inside its own public bureaucracy is foolhardy—and demands immediate focus.”

3. “Fed Figures,” Partnership for Public Service, https://ourpublicservice.org/wp-content/uploads/2019/01/FedFigures_19Shutdown.pdf.

4. Unless noted otherwise, federal employee statistics originate from the Office of Personnel Management’s “Fedscope” database, <https://www.fedscope.opm.gov/>.

5. *Presidential Memorandum Regarding Hiring Freeze*, The White House, January 23, 2017, <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-regarding-hiring-freeze/>.

6. Robbie Gramer, “Pompeo’s Pledge to Lift hiring Freeze at State Department Hits a Big Snag,” *Foreign Policy*, June 7, 2018, <https://foreignpolicy.com/2018/06/07/pompeos-pledge-to-lift-hiring-freeze-at-state-department-hits-big-snag-diplomacy-tillerson-congress/>.

7. Gordon Adams, “Behind the Rhetoric,” *Foreign Policy*, January 15, 2013, <https://foreignpolicy.com/2013/01/15/behind-the-rhetoric/>.

8. State Department Briefing by Heather Nauert, November 17, 2017, <https://www.state.gov/r/pa/prs/dpb/2017/11/275768.htm>.

9. Robbie Gramer, “State Department Withdraws from Top Recruitment Programs - Sowing Confusion,” *Foreign Policy*, July 28, 2017, <https://foreignpolicy.com/2017/07/28/state-department-withdraws-from-top-recruitment-program-sowing-confusion/>.

10. In the summer of 2018, the author conducted a series of not-for-attributions interviews with current and former DoD, State, and NSC employees on the state of the national security bureaucracy for a project sponsored by the MacArthur Foundation.

11. Deborah A. McCarthy, “Leveraging Diversity for Global Leadership,” (Center for Strategic and International Studies, May 2018), https://csis-prod.s3.amazonaws.com/s3fs-public/publication/180522_McCarthy_LeveragingDiversity_Web_0.pdf?LAMarroxZNhfMxM-DtUrvE6EesifBlg6S.



of all new federal hires, and 50 percent of all new defense civilians.¹² Consequently, the gender and ethnic makeup of the veteran population influences the civilian workforce; for example, because veterans are preponderantly male, there is a 9-percent representation gap between the civilian and the DoD workforce.¹³ Some OSD personnel perceive that hiring a non-veteran is nearly impossible administratively.

RECRUITING THE RIGHT TALENT

Because each department and agency in the national security sphere maintains or relies on a range of personnel systems and policies (itself a barrier), it is difficult to generalize the overall challenges they face. However, one assessment is alarming: senior policymakers in the national security civilian workforce cannot get timely access to the specific expertise they need for the period they need it, even when resources are available for such requirements and the requirement is urgent and consequential. More broadly, they cannot shape the workforce they require for today's and tomorrow's challenges. On the other side of this dynamic, talented national security experts are significantly deterred from federal service—and not because public sector hiring is so selective, but because it has needless barriers. The reasons for this are numerous and well documented; organizations like the Partnership for Public Service and government study groups such as the Defense Innovation Board have routinely detailed the flawed logic of relying on a decades-old civil service system that in no way reflects the “changes in the nature of work or the expanded responsibilities of our government.”¹⁴ Key challenges include:

- » **Government hiring processes for permanent full-time positions remain harmfully slow:** The average government hiring action is over three months long (well over private-sector standards), with clearance-requiring jobs potentially tripling that time.¹⁵ This dynamic deters high-demand talent from applying, or loses such talent mid-process.
- » **Personnel systems are out of step with labor force expectations and hiring manager needs:** Government hiring practices presume a workforce that will stay in a single organization for the duration of a 30-year career and not require reskilling or broader exposure.¹⁶ In contrast, trends in the broader labor force indicate demand for regular career shifts, mid-career upskilling and broadening, and “on demand” talent offerings and availability. As a result, the sort of deeply expert, highly-technical, frequently re-trained, flexible workforce the national security world needs cannot be attained with the present federal model. This has serious impacts on policymaking. A DoD office seeking a leading-edge expert in artificial intelligence for an urgent short-term assignment can't get it in a timely manner—even if it could afford it. A former foreign service officer with six years managing a sector at Google cannot be rehired at a level reflecting her experience. A civil

12. “Employment of Veterans in the Federal Executive Branch for Fiscal Year 2017,” Office of Personnel Management, February 2019, <https://www.fedshirevets.gov/veterans-council/veteran-employment-data/employment-of-veterans-in-the-federal-executive-branch-fy2017.pdf>.

13. David Schulker and Miriam Matthews, “Women’s Representation in the U.S. Department of Defense Workforce: Addressing the Influence of Veterans’ Employment,” (Santa Monica, CA: RAND Corporation, 2018), https://www.rand.org/pubs/research_reports/RR2458.html.

14. Max Stier and Thomas W. Ross, “Civil Service is stuck in the mid-20th century,” *The Hill*, October 10, 2018, <https://thehill.com/opinion/finance/410722-civil-services-are-stuck-in-the-mid-20th-century>.

15. Nicole Ogrysko, “It took agencies an average of 106 days to hire new employees in 2017,” Federal News Radio, March 1, 2018, <https://bit.ly/2F6uXQp>.

16. “Renewing America’s Civil Service: Partnership for Public Service and the Volcker Alliance, <https://www.volckeralliance.org/sites/default/files/attachments/Renewing%20America%27s%20Civil%20Service%20Policy%20paper%20-%20FINAL.pdf>.

servant within DoD moving within the department to another subcomponent as treated as a totally new employee. “Exchange” programs encouraging broadening experiences in the private sector or non-profit world are too bureaucratically constrained or poorly rewarded. Recently departed government experts with irreplaceable knowledge are inconsistently given ongoing access for consultative roles. None of these practices serve the nation well and substantially drive up costs for talent management.

- » **On-ramps for highly qualified entry-level personnel are too limited or poorly understood:** The federal government has a large pool of highly qualified entry-level talent at its fingertips due to widespread federal internship and specialized fellowship programs (Presidential Management Fellow, Boren, American Association for the Advancement of Science, etc.). The Partnership for Public Service has assessed that the federal government lags far behind the private sector in hiring its interns into permanent positions.¹⁷ Likewise, specialized fellowships, including programs in which the government pays for education in high-demand skills, are not well understood by human resources personnel;¹⁸ hiring freezes and headquarters cuts have also made it challenging to bring such candidates into suitable roles. Put simply: the government is making investments in talent it requires and not using it.
- » **Hiring flexibilities for specialized fields exist, but are too niche and poorly utilized:** Congress has authorized a wide range of hiring authorities to bring on board high-demand technical talent for short- and long-term government roles at high speed. These programs are well intentioned, but face a range of challenges: human capital specialists and hiring managers are poorly educated about their availability (with resources for training limited);¹⁹ credential expectations for these hires are out of alignment with the sorts of experts available in technical fields;²⁰ and overall, the pilot programs offer a Band-Aid to a limited set of typically cybersecurity roles when many other fields face similar challenges.
- » **Efficiency initiatives target the strengths of the national security workforce:** Recent federal reform drives—both congressionally and executive branch led—have emphasized the need for headquarters cuts and bureaucratic de-layering (as in the years-long effort to shrink the Office of the Secretary of Defense). These initiatives are well intentioned, but generate minimal savings, target the small pool of experts available to defense leaders, and prevent hiring new talent into the civilian defense world.

“Congressional national security committees should treat civilian human capital as a vital building block to any American foreign policy.”

STRENGTHENING THE CURRENT WORKFORCE

Senior political and congressional leadership have historically paid too little attention to the management of the existing civilian national security workforce, despite ongoing intensive investments in their military counterparts (the Joint Chiefs routinely raise concerns about military readiness for national security challenges; there is no equivalent civilian measure). The necessity of talented civilians in developing, assessing, implementing, and evaluating

17. Testimony of Max Stier, President and CEO of the Partnership for Public Service, “Improving the USAJobs Website” testimony to the Committee on Homeland Security and Government Affairs, Subcommittee on Regulatory Affairs and Federal Management, U.S. Senate, April 12, 2016, <https://www.hsgac.senate.gov/imo/media/doc/Stier%20Statement.pdf>.

18. Testimony of Laura Junor, Acting Director of the Institute for National Strategic Studies National Defense University, before the Armed Services Committee Personnel Subcommittee on Department of Defense Civilian Personnel Reform, U.S. Senate, March 23, 2017, https://www.armed-services.senate.gov/imo/media/doc/Junor_03-23-17.pdf.

19. Congressional Research Services, *The Federal Cybersecurity Workforce: Background and Congressional Oversight Issues for the Departments of Defense and Homeland Security*, R44364, January 8, 2016, <https://crsreports.congress.gov/product/pdf/R/R44364>.

20. J. Michael McQuade and Richard M. Murray (co-chairs) Gilman Louie, Milo Medin, Jennifer Pahlka, Trae Stephens, *Software Is Never Done: Refactoring the Acquisition Code for Competitive Advantage*, Defense Innovation Board, https://media.defense.gov/2019/Mar/26/2002105908/-1/-1/0/SWAP.REPORT_SUPPLEMENTARY.DOCS.3.21.19.PDF.



policy agendas is a bizarre afterthought for too many political leaders. Agencies already have a range of reports assigned by Congress or otherwise to map their human capital; reports are not the gap, leadership and accountability are. With this inattention, the federal workplace's tools, benefits, and incentives have fallen behind private counterparts, and federal service is growing into an unnecessarily difficult and unrewarding field that pushes away talent. Put simply, executive and legislative branch leaders have missed opportunities to treat the national security workforce as a national asset. Present challenges include:

“Senior political and congressional leadership have historically paid too little attention to the management of the existing civilian national security workforce, despite ongoing intensive investments in their military counterparts.”

- » **Professional development opportunities for civilian staff across national security agencies lag far behind military counterparts:** National security professionals don't benefit from the formal paths of military members, who will spend much of their career in carefully structured training and education opportunities designed to refine talents, reskill as requirements change, develop leaders, and prepare for specific assignments.²¹
- » **Technical development of present staff lags behind in two critical ways:** As national security agencies recognize their urgent requirements in highly technical fields—cyber, artificial intelligence, quantum computing, and more—they are lagging behind in upskilling their current technical workforce to advance in these areas.²² Moreover, non-technical staff—particularly in the international affairs policy and acquisition sectors—will need to be conversant in these cutting-edge capabilities, their strengths and limitations, and political and ethical concerns in their employment. Few agencies take the substantial time or investment necessary for the continual professional development the national security workforce requires.²³
- » **Incentives for high performance, flexibility for high-demand career group salaries, and accountability for poor performers are not easily available:** One massive attempt at personnel pay and evaluation reform, the National Security Personnel System, was disestablished in 2009 largely due to minimal attempts at bringing stakeholders on board the reform, and the remaining tools meant to continue to allow managers means for rewarding or holding employees accountable are scarcely used.²⁴
- » **Modern benefits and flexible workplace features are increasingly available in the private sector, but are either not available, discouraged, or inconsistently offered in the national security workforce:** The absence of paid family leave and widely available childcare benefits, as well as inflexible working arrangements, have negative impacts on retention; their availability is assessed to drive healthier and more effective workforces. The federal government's antique approach to modern workforce practices has resulted in and will continue to result in vital talent avoiding the public sector for private opportunities that offer modern benefits. Worse, due to constraints on re-accession into the federal workforce, off-ramps pursued for more work/life flexibility are often permanent.

21. Loren DeJonge Schulman and Kate Kidder, “Defense Problems as People Problems,” War on the Rocks, July 5, 2017, <https://warontherocks.com/2017/07/defense-problems-as-people-problems-mattiss-human-capital-challenge/>.

22. McQuade et al. *Software is Never Done*.

23. “Mobilizing Tech Talent: Hiring Technologists to Power Better Government,” Partnership for Public Service, September 2018, https://ourpublicservice.org/wp-content/uploads/2018/09/Mobilizing_Tech_Talent-2018.09.26.pdf.

24. Peter Levine, “Civilian Personnel Reform at the Department of Defense: Lessons from the Failure of the National Security Personnel System,” (Institute for Defense Analyses, October 2017), https://www.ida.org/idamedia/Corporate/Files/Publications/IDA_Documents/SFRD/2017/P-8656.ashx.

PUBLIC PERCEPTIONS AND LEADERSHIP RHETORIC OF THE NATIONAL SECURITY WORKFORCE

Perhaps most challenging to measure, but also most insidious in its impact, are the recent series of rhetorical and cultural shifts around the national security workforce. Painting bureaucrats as lazy or even evil has become an accepted, if short-sighted, political position across partisan lines, to include by executive branch leaders. The theory of a deep state, working behind the scenes toward their own ends and even against the president, has emerged from a paranoid conspiracy to a growing presence in the halls of Congress and at the White House podium. Trust in the assessments of the intelligence community, the loyalty of the diplomatic corps, and the judgment of the average policymaker has been questioned by senior officials, publicly and privately. Civil servants have complained about increased incidents of political retribution—sometimes career ending—and raised concerns about their avenues for fair hearings. More narrowly, civil-military relations experts have highlighted signals of weakening civilian control and over-reliance on military expertise in policy realms. As one former official said in 2017, “it is hard to believe we will continue to attract top talent with this as a background vocal.”²⁵

RECOMMENDATIONS

Congress must consider the national security workforce as a vital component to developing, honing, and executing a strong national security strategy. Relevant national security committees should pursue fixes to the challenges outlined above in three general buckets of activity: instituting system-wide tactical repairs; conducting productive oversight; and laying the groundwork for extensive reforms. Other organizations and experts have studied these and other recommendations extensively; there is a significant body of work available to congressional overseers and staffs in pursuing this agenda. What the agenda lacks is an urgency and a willingness to recognize that effective American foreign policy is not possible without people. Congress is vital to making this case.

Tactical Repairs

- » Professionalize professional development: Allocate specific funds for professional development of the current national security workforce (general, technical, and managerial).
- » Elevate talent management: Dedicate resources for regular retraining of human resource specialists to access the full range of authorities and opportunities for hiring and managing a workforce. Create pilot programs for specialized recruitment and talent management teams akin to those used by the United States Digital Service, with plans to transition those programs to the broader workforce.²⁶
- » Enhance talent mobility: Permit prior government employees to be re-hired non-competitively at any level for which they are qualified. Remove barriers to talent movement between departments and agencies and for on-ramps for internship and fellowship programs.

25. Laura Junor testimony.

26. Mobilizing Tech Talent.



- » Share lessons and make them permanent: Use lessons learned from specialized technical hiring pilot programs across government. Expand and make permanent career-specific hiring authorities and salary caps for technical fields. End the Band-Aid/special case mentality of special hiring authorities.
- » Create a paid federal family leave program.
- » Measure twice, maybe don't cut: Develop and rely on employment modeling to assess impact of proposed workforce policies on recruiting and retention.

Productive Oversight

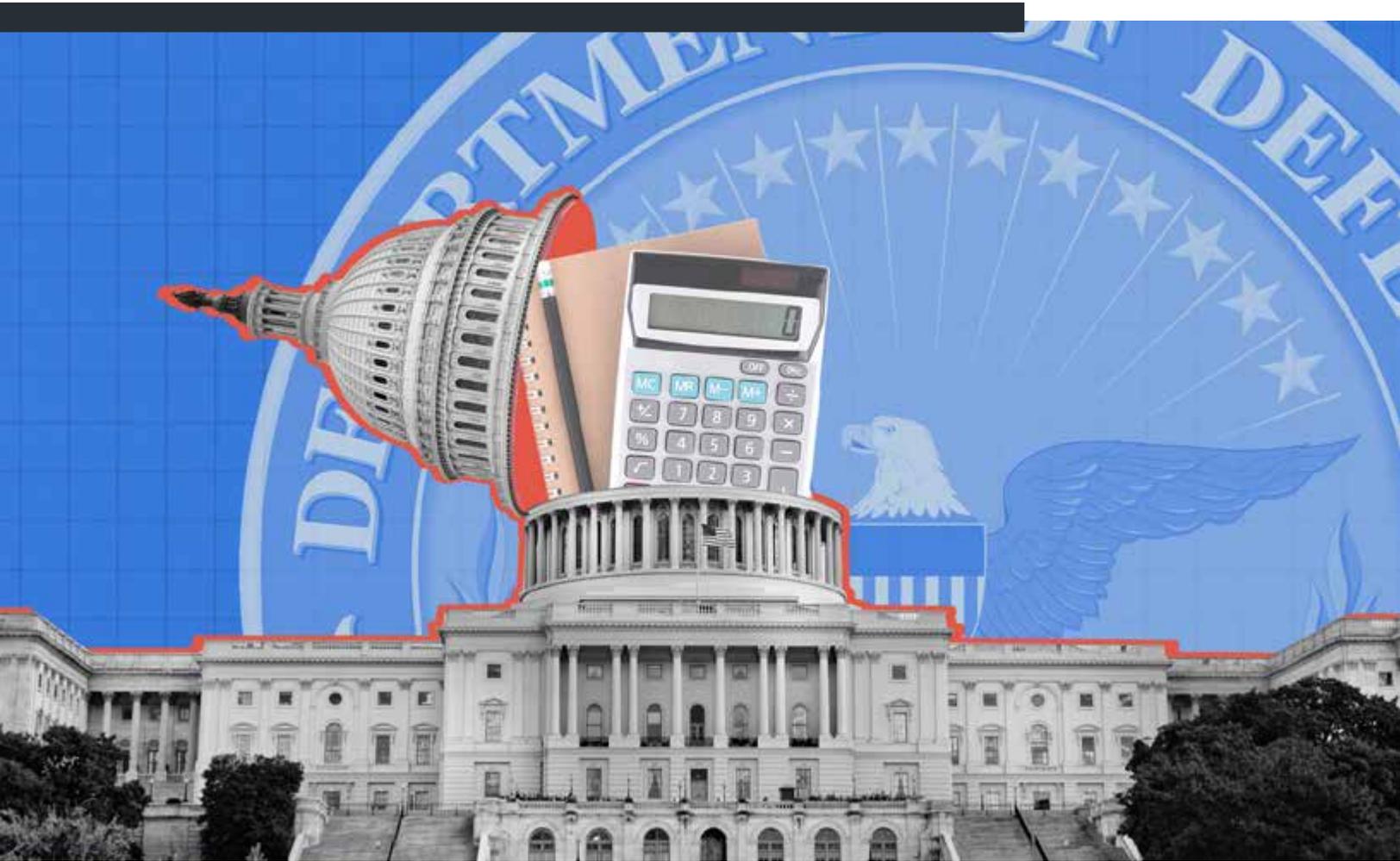
- » Generate leadership expectations: Raise national security human capital questions in confirmation and oversight hearings with senior administration officials, making clear that Congress expects federal personnel to be a priority matter in the nominee's tenure.
- » Drive the conversations: Regularly engage (in briefings and public hearings) agency leaders on how they use authorities aimed at shaping and strengthening the civilian workforce. Demand progress reports on how these opportunities and authorities are being maximized. Engage directly with recent federal hires and departed employees for personal experiences.
- » Investigate retaliation and workforce protections: Based on allegations of political retaliation, pursue long-term investigations of relevant reporting and the strength of whistleblower protections in the national security workforce, particularly when they may reference sensitive material.

Groundwork for Reform

- » Generate options for continuum of service: Begin a series of policy-generating studies and hearings setting an expectation for the national security field to be able to hire the talent it needs, in the time needed, for the period needed, and at a reasonable market cost. Likewise, set expectations for those in the national security workforce to be able to pursue flexible and rewarding careers that enhance their skills, broaden their exposure, and make them competitive for roles in and out of government. Consider a model in which sought-after national security experts are able to transition in and out of federal service multiple times throughout their career, in a wide range of time periods, with minimal barriers to entry, or in which federal offices with volatile technical requirements are able to generate, consult, and motivate further development of a community of interest within and outside government.
- » Pursue simpler personnel system with widespread flexibility in the national security space: Begin a series of studies and hearings that values long-term reform instead of packaging Band-Aids for each high-demand skillset.

What Congress Should do with the 2020 Defense Budget

Susanna V. Blume





SUMMARY

There are many things that the administration's 2020 defense budget request gets right. However, the proposal remains too focused on both the size of the joint force as opposed to its overall capability, and on reducing risk in the near term at the expense of investment in the future. Fortunately, Congress has the opportunity to rectify these shortcomings in its upcoming defense authorization and appropriations bills.

LINKING STRATEGY TO RESOURCES

The defense establishment is presently enjoying a moment of bipartisan agreement about the Department of Defense's strategic priorities, namely competition with China and Russia.¹ The Trump administration's 2018 *National Defense Strategy* (NDS) clearly articulated these priorities, continuing down the path set by the Obama administration in the Third Offset.²

In response to the direction set by the NDS, one would expect to see some critical shifts in how the department allocates its resources. Broadly, one would expect to see a shift away from investment in force size, or capacity, and toward the advanced capabilities required to sustain the U.S. military's technological advantage.³ In essence, this shift would reflect acceptance of more risk in the present in order to make the investments required to reduce greater risk in the future.

WHAT'S GOOD IN THE 2020 PRESIDENT'S DEFENSE BUDGET REQUEST?

The administration's 2020 defense budget request does make some progress in this direction. For example, the Army has chosen to slow its rate of growth in the number of soldiers, while increasing investment in next generation systems, setting a goal of achieving 50-50 split between investment in legacy and next generation systems by 2024, compared to a ratio 80-20 today.⁴ The Navy is shifting substantial resources into unmanned systems, accelerating development of both large unmanned surface vessels (USV) and extra-large unmanned undersea vessels (UUVs).⁵ The administration has finally settled on a reasonable way to organize for future wars that will extend into outer space, creating a new service (Space Force) within the Department of the Air Force.⁶

1. U.S. Department of Defense, *Summary of the 2018 National Defense Strategy of the United States of America: Sharpening the American Military's Competitive Edge*, (2018), 4 <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>.

2. U.S. Department of Defense, "Reagan Defense Forum: The Third Offset Strategy As Delivered by Deputy Secretary of Defense Bob Work," interview by Tom Shanker, (Reagan Presidential Library, Simi Valley, CA, November 7, 2015), <https://dod.defense.gov/News/Speeches/Speech-View/Article/628246/reagan-defense-forum-the-third-offset-strategy/>.

3. U.S. Secretary of Defense James N. Mattis, "Remarks by Secretary Mattis on National Defense Strategy," (Ronald Reagan Defense Forum, Simi Valley, CA, December 1, 2018), <https://dod.defense.gov/News/Transcripts/Transcript-View/Article/1702965/remarks-by-secretary-mattis-on-national-defense-strategy/>.

4. Army Undersecretary Ryan McCarthy and Army Lt. Gen Thomas Horlander, "Department of Defense Press Briefing on the President's Fiscal Year 2020 Defense Budget for the Army," (Washington, March 12, 2019), <https://dod.defense.gov/News/Transcripts/Transcript-View/Article/1784223/department-of-defense-press-briefing-on-the-presidents-fiscal-year-2020-defense/>.

5. Department of Navy, Office of Budget, *Highlights of the Department of the Navy FY 2020 Budget*, (March 12, 2019), 5-3, <https://www.secnavy.mil/fmc/fmb/Documents/20pres/Budget%20Highlights%20Book.pdf>.

6. White House, *Text of Space Policy Directive-4: Establishment of the United States Space Force*, (February 19, 2019), <https://www.whitehouse.gov/presidential-actions/text-space-policy-directive-4-establishment-united-states-space-force/>.

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KEY ISSUES

There is currently bipartisan agreement on the prioritization of strategic competition with China and Russia.

These priorities should drive a shift in resource allocation away from force size and toward investment in sustaining the U.S. military's technological advantage.

However, the 2020 defense budget request remains too focused on reducing risk in the near term at the expense of investment in the future.

WHAT COULD BE BETTER?

However, on the whole, the administration's defense budget request still falls short of the "masterpiece" Deputy Secretary of Defense Patrick Shanahan promised last year.⁷

For example, the department's total 2020 request for artificial intelligence (AI) is less than \$1 billion.⁸ This sum seems insufficient when considering that AI has more potential to change the way we fight wars than any other emerging technology. While it is true that the private sector is investing heavily in development of these technologies, the reluctance of some of these companies to work with the Department of Defense limits the military's access to them. No doubt, Chairman of the Joint Chiefs of Staff General Joe Dunford's remarks before the Senate Armed Services Committee condemning Google for declining to work with the U.S. Department of Defense, while at the same time working on projects that directly and indirectly benefit the Chinese military, were satisfying to those of us similarly frustrated with this state of affairs.⁹ However, they were not constructive in terms of developing and deepening the relationship between the Pentagon and America's premiere technology companies. A healthy and productive relationship will be essential to maintaining the U.S. military's technological advantage over China.

The budget request funds procurement of critical munitions, such as the joint direct attack munition (JDAM) and the long-range anti-ship missile (LRASM), at maximum production rates. This decision is a good one, however the fact that the department is procuring these munitions at maximum rates during peacetime is a red flag that industrial base capacity in this sector may not be sufficient should the United States find itself in a shooting war with a similarly armed adversary. Further, lack of funding for development of new advanced munitions is concerning. Specifically, Navy research, development, test, and evaluation (RDT&E) funding for munitions development decreases by about half between 2020 and 2024.¹⁰

The department's continued focus on numbers of platforms—355 ships in the Navy, 386 squadrons in the Air Force—is misguided. These numeric targets, arguably unachievable even with sustained topline in the neighborhood of \$750 billion, bias program decisions in favor of numbers of platforms at the expense of the kinds of things that make those platforms lethal—advanced munitions, electronic warfare capability, and training for the sailors and airmen that man them. The result can be a military that has more force structure than it can afford to keep modernized and ready, in other words, a hollow force. In order to engage in a meaningful discussion about force planning, both the department and Congress must forsake these easy quantitative metrics in favor of a deeper qualitative conversation about U.S. military advantages over key competitors.

“The department’s continued focus on numbers of platforms—355 ships in the Navy, 386 squadrons in the Air Force—is misguided.”

7. U.S. Department of Defense, “Off-Camera, On-The-Record Media Availability with Deputy Secretary Shanahan,” interview with Deputy Secretary of Defense Patrick M. Shanahan, U.S. Department of Defense, December 21, 2017, <https://dod.defense.gov/News/Transcripts/Transcript-View/Article/1402941/off-camera-on-the-record-media-availability-with-deputy-secretary-shanahan>.

8. Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, *Defense Budget Overview: United States Department of Defense Fiscal Year 2020 Budget Request*, (March 2019), 1-9, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/fy2020_Budget_Request_Overview_Book.pdf.

9. General Joseph F. Dunford, Jr., USMC, Chairman of the Joint Chiefs of Staff, testimony to the Committee on Armed Services, U.S. Senate, March 14, 2019, 82, <https://www.armed-services.senate.gov/imo/media/doc/19-25-03-14-19.pdf>.

10. Govini, “FY20 President’s Budget Analytic Review: Fighter Aircraft and Munitions Investment,” (PowerPoint presentation, Washington, D.C., March 19, 2019), 2.



A final, but major, shortcoming of this budget request is its structure. In an attempt to avoid negotiating with Congress about non-defense discretionary spending levels, the Trump administration has submitted a request that technically complies with existing budget caps, but that increases defense spending considerably by more than tripling overseas contingency operations (OCO) accounts, which are not subject to the caps.¹¹ This unrealistic opening gambit has wasted precious time needed to arrive at a new budget deal prior to the end of the fiscal year on September 30, or failing that, before sequestration takes effect in January 2020.

RECOMMENDATIONS

In considering the president's defense budget request and writing the defense authorization and appropriations bills, Congress should:

- » Reject the administration's abuse of OCO funding and instead pass a bipartisan deal to raise both defense and non-defense discretionary spending caps for fiscal years 2020 and 2021.
- » End focus on numbers of ships, aircraft, or soldiers as a means of measuring military capability or force sufficiency.
- » Support the administration's plan to establish a Space Force, settling the question of how to organize the department's space warfighting.
- » Increase investment in critical advanced technologies, such as artificial intelligence and uninhabited systems.

“A final, but major, shortcoming of this budget request is its structure.”

11. Office of the Under Secretary of Defense (Comptroller)/CFO, *Fiscal Year 2020 Budget Request Brief*, (March 2019), 16, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/fy2020_Budget_Request.pdf.

Proliferation Finance: Critical Issues and Priorities for Congress

Elizabeth Rosenberg, Neil Bhatiya, Claire Groden, and Ashley Feng





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KEY ISSUES

The lack of effective and universal financial controls to prevent weapons of mass destruction (WMD) proliferation is a gaping security vulnerability for the international community.

The United States has a unique responsibility to combine domestic legislative and regulatory reforms with international leadership in order to strengthen the countering proliferation finance regime. Doing so will require overcoming significant political-will obstacles.

Congress can lead the way by strengthening financial transparency domestically and ensuring that the executive branch is adequately resourced.

SUMMARY

The U.S. government and Congress have long prioritized reducing the risk of weapons of mass destruction (WMD) proliferation, whether from state actors such as North Korea and Iran, or from non-state actors, particularly criminals and transnational terrorist networks.

Despite this concern, however, there remains a significant blind spot: the efforts to prevent the *financing* of WMD proliferation are only in their infancy. The legal framework to prevent the financing of proliferation is weak, and implementation across the world is spotty. The United States in particular suffers from easily fixable deficiencies in its approach to this critical national security issue.

North Korea and Iran in particular have operated (and North Korea continues to operate) egregious, publicly documented, sophisticated global networks of trusted financial agents. These networks are quite sophisticated at evading detection and know how to exploit weak regulations and enforcement in jurisdictions around the world.

These states are creative and diligent in developing new ways to continually disguise their activities, pioneering new technology and networks to sustain themselves and grow. The United States has prioritized dealing with North Korea and Iran as high-level security threats, but the proliferation finance aspect of that strategy has been woefully underdeveloped.

WHAT IS PROLIFERATION FINANCE?

In contrast to the nuclear weapons programs of advanced industrial states, many U.S. adversaries do not have the indigenous research, development, and deployment capacity to constitute WMD programs entirely on their own. As a result, they have to seek financial resources, goods, and know-how elsewhere, including from reputable industrial firms throughout the world, especially from the United States and Europe. The illicit networks that procure these goods and the revenue to sustain illicit WMD programs represent a serious national security threat: financing of proliferation is the essential money trail that enables rogue states, and non-state actors, to threaten peace and security.

Figure 1, which describes Pan Systems and GLOCOM business activities in Asia, demonstrates some of the hallmarks of a North Korean proliferation network:

- » Use of front or shell companies to disguise the controlling entities and to avoid sanctions screening by financial institutions handling the transactions;
- » Strong geographic nexus with China;
- » Use of other vulnerable jurisdictions (Malaysia), or jurisdictions that are global financial and trade centers (Singapore); and
- » Revenue raised from non-military activity (sale of radio equipment) is for the ultimate benefit of the DPRK's weapons program.

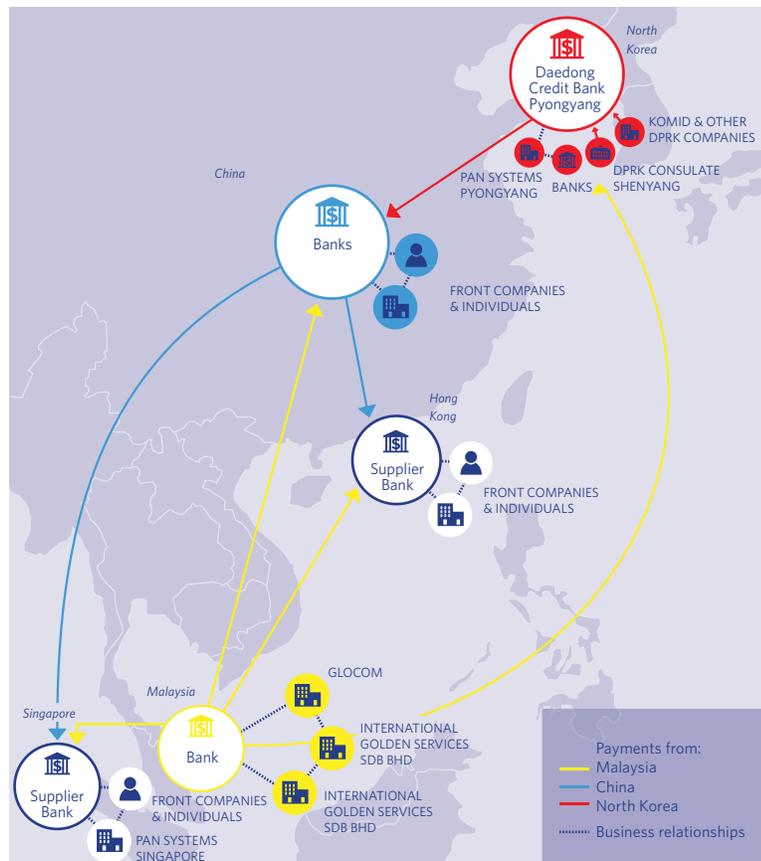


Figure 1: A simplified illustration of North Korea's sophisticated procurement networks, based in multiple countries. In this case, Pan Systems Pyongyang and its front companies carry out financial activity in multiple jurisdictions, which benefits, among others, the Korea Mining and Development Trading Corporation (KOMID), which is widely considered to be North Korea's primary arms dealer and main exporter of goods and equipment related to ballistic missiles and conventional weapons. Pan Systems Pyongyang's involvement in Middle East business is referenced without details (not shown).

“These states are creative and diligent in developing new ways to continually disguise their activities, pioneering new technology and networks to sustain themselves and grow.”

It is possible to detect and track the financing of proliferation. By going outside their own national borders to find support for illicit weapons programs, proliferating states leave themselves open to discovery by the international community. If moving money in exchange for goods is essential to building a weapons of mass destruction program, then it becomes possible for financial regulators, law enforcement, and intelligence agencies to track and disrupt it, and, where possible, to apprehend members of the proliferation networks. Ultimately, cracking down on the financing of illicit activities is an effective way to stop the illicit activity itself.



“It is possible to detect and track the financing of proliferation.”

THE ROLE OF THE UNITED STATES

The United States is well placed to correct this misperception and make a meaningful difference to check the global nuclear threat. The dollar is the global currency of choice for trade, investment, and as a reserve currency, and the U.S. financial sector is the largest globally.

The United States deserves credit for attempting to address this situation, but must do much more to focus maximum effort on constraining rogue countries’ ability to pursue an illicit weapons capability, including increasing global cooperation to address this issue. This includes specific enforcement actions domestically, such as strengthening rules around financial transparency, extending safe harbor provisions for banks working creatively on finding proliferation finance typologies internally, and increasing resources for national law enforcement, and regulatory and intelligence agencies.

NEXT STEPS

- » Congress should pass legislation requiring the reporting to law enforcement of the ultimate beneficial ownership of corporate entities that are created in the United States. Doing so would provide an invaluable tool for information gathering about illicit financial actors, including proliferation networks. The existing Customer Due Diligence Rule is insufficient because it only requires certain financial institutions to collect such information, without a mandate that it be automatically transmitted to government authorities.
- » Congress should consider advancing a financial requirement to mandate the declaration of all cross-border payments, possibly including information that would be relevant to bridging the gap between data about financial transactions and the physical shipment of potentially proliferation-related goods. As currently formulated, the Travel Rule is only for transactions above \$3,000 and requires only retention, not transmittal to relevant authorities. U.S. partners Canada and Australia already operate significantly tougher Cross-Border Transfer Rules.
- » Congress should use its significant oversight responsibilities to ensure the administration’s timely implementation of the Customer Due Diligence Requirements for Financial Institutions Rule, which became effective in May 2018. The rule strengthens the requirement for financial institutions to verify the identity of account holders, requiring the ongoing monitoring of customer accounts for suspicious transactions.
- » Congress should prioritize additional increases on a yearly basis for the Treasury Department’s Office of Terrorism and Financial Intelligence (TFI) in order to more adequately provide resources for activities to counter proliferation finance. TFI’s activities include the formulation and enforcement of all financial measures to counter weapons of mass destruction.
- » Congress is currently taking steps to require the administration to create a Virtual Currency Task Force; it should mandate that such a Task Force produce analysis on the impact of financial technology on financial crimes compliance, including its specific application to countering proliferation finance.

- » Congress should appropriate more resources to expand technical assistance programs run by the Departments of State (Export Control and Related Border Security or the Bureau of International Security and Nonproliferation) and Defense (Defense Threat Reduction Agency). These programs enable partner countries to tighten their regulatory and legal regimes to combat proliferation finance.
- » Congress should use its significant oversight ability to ensure that U.S. diplomatic engagement with North Korea adequately addresses Pyongyang’s abuse of the international financial system.

FURTHER READING

- » Elizabeth Rosenberg, Neil Bhatiya, Claire Groden and Ashley Feng, “Financial Networks of Mass Destruction,” (Center for a New American Security, January 2019) <https://www.cnas.org/publications/reports/financial-networks-of-mass-destruction>.
- » Jonathan Brewer, “The Financing of WMD Proliferation: Conducting Risk Assessments,” (Center for a New American Security, October 2018), <https://www.cnas.org/publications/reports/the-financing-of-wmd-proliferation>.
- » Jonathan Brewer, “The Financing of Nuclear and other Weapons of Mass Destruction Proliferation,” (Center for a New American Security, January 2018), <https://www.cnas.org/publications/reports/the-financing-of-nuclear-and-other-weapons-of-mass-destruction-proliferation>.

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