


3-13-2018

Reforming the Pentagon: Reflections on *How Everything Became War and the Military Became Everything*

Mark P. Nevitt

University of Pennsylvania Law School

Follow this and additional works at: https://scholarship.law.upenn.edu/faculty_scholarship

 Part of the [American Politics Commons](#), [Constitutional Law Commons](#), [Law and Society Commons](#), [Legal History Commons](#), [Legislation Commons](#), [Military and Veterans Studies Commons](#), [Military, War, and Peace Commons](#), [National Security Law Commons](#), [Peace and Conflict Studies Commons](#), [Policy Design, Analysis, and Evaluation Commons](#), [Policy History, Theory, and Methods Commons](#), [President/Executive Department Commons](#), and the [Public Law and Legal Theory Commons](#)

Repository Citation

Nevitt, Mark P., "Reforming the Pentagon: Reflections on *How Everything Became War and the Military Became Everything*" (2018). *Faculty Scholarship*. 1975.

https://scholarship.law.upenn.edu/faculty_scholarship/1975

This Article is brought to you for free and open access by Penn Law: Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Penn Law: Legal Scholarship Repository. For more information, please contact PennlawIR@law.upenn.edu.

**REFORMING THE PENTAGON: REFLECTIONS ON *HOW EVERYTHING BECAME WAR*
*AND THE MILITARY BECAME EVERYTHING***

*Mark Patrick Nevitt**

ABSTRACT

What best explains how “*Everything Became War and the Military Became Everything?*”—the provocative title of a recent book by Professor Rosa Brooks of Georgetown Law. In this Essay, I turn to the Department of Defense’s (DoD) unique agency design as the vehicle to address this question. Specifically, I first describe and analyze the role that the 1947 National Security Act and 1986 Goldwater-Nichols Act play in incentivizing organizational behavior within the DoD. These two Acts have broad implications for national security governance. Relatedly, I address the consequences of these two core national security laws, focusing on the rise of overseas combatant commands. Led by four-star military officers, these commands are increasingly participating in a wide variety of both military and non-military missions. Second, I turn to Special Operations Command (SOCOM) as a case study to highlight the rise of these combatant commands. Special operations forces now operate in over 70% of the world’s nations, and this percentage is only rising. And since President Trump was elected, the Commander in Chief has delegated even broader authorities to operational military commanders. This serves to reaffirm Professor Brooks’s prescient themes of “war everywhere” while raising additional concerns regarding the underlying health of civil-military relations.

TABLE OF CONTENTS

I. INTRODUCTION	X
II. THE 1947 NATIONAL SECURITY ACT AND THE 1986 GOLDWATER-NICHOLS ACT: ESTABLISHING THE DEPARTMENT OF DEFENSE’S LEGAL ARCHITECTURE	X
A. <i>The National Security Act of 1947: Laying the Foundation for the Modern Pentagon Bureaucracy</i>	X
B. <i>The 1986 Goldwater-Nichols Act: Its Ongoing Legacy and the Rise of the Combatant Commands</i>	X
III. THE MILITARY’S LEGAL ARCHITECTURE, COVERT ACTION, AND THE RISE OF SPECIAL OPERATIONS FORCES	X
IV. CONCLUSION	X

I. INTRODUCTION

Professor Rosa Brooks’s recent book, *How Everything Became War and the Military Became Everything: Tales from the Pentagon*,¹ is a welcome literary contribution to national

This essay was first prepared for a book roundtable co-hosted by the Institute for International Law and Public Policy at Temple University Beasley School of Law and the National Constitution Center on September 15, 2017. The essays

security scholarship and the increasingly important field of civil-military relations. She brings a unique perspective to this issue: Already an accomplished legal academic, Professor Brooks also has professional experience serving as a special advisor to the Under Secretary of Defense in the Pentagon (then Michèle Flournoy), as well as personal experience via her own service as a military spouse married to an Army Special Forces Officer.² Professor Brooks’s keen observational eye, intellectual background, and her willingness to ask tough, thoughtful questions all combine to create an extremely important and provocative book.

Indeed, controversial and difficult topics are not set aside. Professor Brooks addresses such weighty topics as how we go to war, how modern wars and conflicts end (if at all) what do we mean by “civilian control over the military,” and how might we go about reforming the United States Department of Defense (DoD) as an institution in light of the above?³

In this brief Essay, I pick up where Brooks left off, focusing on her discussion on reforming DoD as an institution, which has continual implications for national security governance. This Essay was inspired, in some respects, by my personal experience as an officer in the Navy—the final two years of which were spent at the Pentagon where I had the opportunity to witness up close the vast military apparatus viewed with a mixture of skepticism and awe throughout Professor Brooks’s book.

from this roundtable have been published as a symposium collection within issue 32.1 of the Temple International & Comparative Law Journal.

* Sharswood Fellow & Lecturer-in-Law at the University of Pennsylvania Law School. A former Navy Commander, tactical jet aviator and attorney in the Navy Judge Advocate General (JAG) Corps, he most recently served as the Deputy Director of Administrative Law for the Office of the Navy’s Judge Advocate General in the Pentagon. Special thanks to Professor Peter Spiro for the invitation to the forum and the Editors of the *Temple International and Comparative Law Journal* for their editorial assistance. All mistakes are my own.

¹ Rosa Brooks, *How Everything Became War and the Military Became Everything: Tales from the Pentagon* (2016).

² *Id.* at 5–6.

³ See BROOKS, *supra* note 1.

In this Essay, I first describe and analyze the two core laws that provide for the military's legal organizational framework: the National Security Act of 1947 and the Goldwater-Nichols Act of 1986. Second, I highlight one example—the rise of special operations forces and covert action—where existing laws may be inadequate to restrain military action. This may, indeed, facilitate a world of “war everywhere”—a core theme of Professor Brooks's book.

II. THE 1947 NATIONAL SECURITY ACT AND THE 1986 GOLDWATER-NICHOLS ACT: ESTABLISHING THE DEPARTMENT OF DEFENSE'S LEGAL ARCHITECTURE

What laws govern the DoD as a federal *agency*? It is an important question in light of the DoD's sheer size and mission. The U.S. military has a history that predates the Constitution and remains the largest employer and bureaucracy in the world.⁴ The military also has a special place in the text of the Constitution with numerous military-related provisions sprinkled throughout.⁵ Perhaps most important, the DoD's mission is unlike that of any other federal agency: “[Its] primary ‘output’ is lethal force, controlled in ways that compel people to do what they don't want to do.”⁶

The two laws that continue to have an outsized role in the DoD's day-to-day activities include the National Security Act of 1947⁷ and the Goldwater-Nichols Act of 1986 (“Goldwater-Nichols”).⁸ While the National Security Act is the subject of a fair amount of legal scholarship, Goldwater-Nichols' role is largely unexplored. This is unfortunate and somewhat surprising in

⁴ BROOKS, *supra* note 1, at 162. (“The Defense Department is the nation's largest employer . . . there were roughly 1.4 million active duty military personnel along with 843,000 reservists [at the end of fiscal year 2013].”); *see, e.g.*, Niall McCarthy, *The World's Biggest Employers*, FORBES (June 23, 2015), <http://www.forbes.com/sites/niallmccarthy/2015/06/23/the-worlds-biggest-employers-infographic/#3ae7382c51d0>.

⁵ Specifically, Congress has the constitutional authority “to raise and support Armies,” “to provide and maintain a Navy,” and “to make rules for the Government and Regulation of the land and naval Forces,” U.S. CONST. art. I, § 8 cl. 12–14, and the President is the Commander in Chief. U.S. CONST. art. II § 2.

⁶ Forest L. Reinhardt & Michael W. Toffel, *Managing Climate Change: Lessons from the U.S. Navy*, HARV. BUS. REV. Jul/Aug 2017, <https://hbr.org/2017/07/managing-climate-change>.

⁷ National Security Act of 1947, ch. 343, 61 Stat. 495 (1947) (current version at 50 U.S.C. § 3001 (2013)).

⁸ Goldwater-Nichols Department of Defense Reorganization Act of 1986, 100 Stat. 992 (current version at 10 U.S.C.A. § 111 (2017)).

light of the law’s importance. Goldwater-Nichols established the modern military organization in use today and represents Congress’s latest attempt to comprehensively organize and define DoD’s myriad roles and responsibilities.⁹ As discussed below, these two laws governing the military have served the nation well, but they are beginning to show some fraying at the edges. As such, they should be given a “fresh look” by Congress and updated to reflect modern warfare realities.

A. The National Security Act of 1947: Laying the Foundation for the Modern Pentagon Bureaucracy

The National Security Act of 1947 fundamentally transformed U.S. national security governance. It established the modern national security processes as well as the organizational institutions to include the DoD, Central Intelligence Agency (CIA), and National Security Council (NSC).¹⁰ Passed in the aftermath of the Second World War, it corresponded with the retention of a continual, standing Army for the first time in American history and the emergence of the Cold War with the Soviet Union.¹¹ Specifically, it established the “National Military Establishment” with three co-equal services—Army, Navy, Air Force—reporting to the Office of the Secretary of Defense. Former Army General Omar Bradley described the significance of the National Security Act as follows:

[The National Security Act] created what was called the National Military Establishment, with a Secretary of Defense presiding over three co-equal services: Army, Navy, and Air Force. . . . [T]he act established secretaries of the Army (instead of War), Navy and Air Force, and for the first time gave the Joint Chiefs of Staff legal standing. It also created the National Security Council (NSC) and the Central Intelligence Agency (CIA).¹²

⁹ See generally KATHLEEN MCINNIS, CONG. RESEARCH SERV., R 44474 GOLDWATER-NICHOLS AT 30: DEFENSE REFORM AND ISSUES FOR CONGRESS 7–57 (2016).

¹⁰ National Security Act of 1947, 50 U.S.C.A. § 3021–3035 (2017).

¹¹ The role of standing armies was debated at the nation’s founding. In her book, Brooks makes the point about the size of the military and how standing armies—and military conscription—actually only occurred for a brief snapshot in American history, roughly between World War II and the end of the Vietnam War. See BROOKS, *supra* note 1, at 257–58.

¹² OMAR N. BRADLEY & CLAY BLAIR, A GENERAL'S LIFE 466 (1983). In 1949, two years after the National Security Act’s passage, the National Military Establishment was formally changed to the Department of Defense. *Id.* at 504.

But despite the scope and overall ambition of the Act, many aspects were left unresolved, and continue to remain unresolved—themes that Brooks picks up in her book. Consider, for example, existing questions around the precise role of the NSC. The NSC was established by the National Security Act to serve as an advisor to the President, but it was placed outside the formal military chain of command.¹³ It enjoys an enviable place at the very top of the national security pyramid, but the NSC staff lacks any *direct* authority over ongoing military operations. Its power (and access) is tremendous but inherently “soft.” It advises and makes recommendations to the President.¹⁴ It cannot *direct* operational military actions. A fundamental question arises: In the course of developing and executing plans, how should the NSC staff interact with Congress, DoD, and the operational commanders in the field?

The National Security Act’s silence on this issue came to the fore in Brooks’s book when she was faced with this question: How should she respond if an NSC staff member bypasses any semblance of the chain of command when making a request? In her book, Brooks recalled a tale when an NSC staff member contacted her at the Pentagon and requested that she facilitate the movement of a drone to conduct surveillance operations in Kyrgyzstan within the Central Command Area of Operations (AOR).¹⁵ While the ends may have been justified, the means—bypassing the normal bureaucratic process and established chain of command—were not. Brooks correctly demurred at the staff member’s awkward attempt at an order, explaining that “he . . . was the wrong civilian” when the staff member invoked civilian control over the military in requesting

¹³ See generally 50 U.S.C. § 3021 (2017).

¹⁴ See 50 U.S.C. § 3021(b)(1) (2017) (“[NSC’s duty is] to assess and appraise the objectives, commitments, and risks of the United States . . . in the interest of national security . . . for the purpose of making recommendations to the President . . .”).

¹⁵ BROOKS, *supra* note 1, at 307–09. The National Security Council’s Staff has exploded in size since its inception and has led to DoD-NSC coordination problems. *Id.* See generally ROBERT GATES, *DUTY: MEMOIRS OF A SECRETARY AT WAR* (Alfred A. Knopf 2014). Former Secretary of Defense Robert Gates implies that DoD-NSC coordination can be problematic. *Id.* at 483. Central Command is the combatant command responsible for military operations in the Middle East and parts of Asia.

that she take action.¹⁶ And this back and forth is not at all infrequent. In fact, former Secretary of Defense Robert Gates expressed frustration about National Security Council staff members routinely calling operational commanders in the field.¹⁷

B. The 1986 Goldwater-Nichols Act: Its Ongoing Legacy and the Rise of the Combatant Commands

The Goldwater-Nichols Act is the second law having a continual and outsized influence on the modern military.¹⁸ Its passage followed a massive legislative effort that occurred over several years of intense debates within Congress and the Pentagon. It was passed in the aftermath of military tragedies that include the failed hostage rescue efforts in Iran and the poorly coordinated and executed “invasion” of Grenada.¹⁹ While it was passed with the noble goals of increasing military operational effectiveness, reducing inter-service rivalry, and reinforcing civilian control over the military,²⁰ its legacy has been mixed and its influence immense.

Unlike the National Security Act, which is located within Title 50 of U.S. Code and addresses myriad national security organizations and actors, Goldwater-Nichols is a comparably “cleaner” Title 10 law that solely addresses Armed Forces matters. Today it serves as *the* critical component of DoD’s legal architecture, functioning as a sort of DoD “mini-Constitution.”

Thirty years following its passage, Goldwater-Nichols continues to provide the organizational blueprint for the DoD, establishing and defining two legal chains of command: administrative and operational.²¹ It also clarified the legal relationships between the senior uniformed members such as the operational combatant commanders, Chairman of the Joint Chiefs

¹⁶ BROOKS, *supra* note 1, at 309.

¹⁷ *See generally* ROBERT GATES, *supra* note 15, at 482 (ordering direct phone line from NSS to operational command in center in Bagram Air Base removed).

¹⁸ Goldwater-Nichols Department of Defense Reorganization Act, 100 Stat. 992 (current version at 10 U.S.C.A. § 111 (2017)).

¹⁹ *See generally* James R. Locher, III, *Victory on the Potomac* (2002).

²⁰ H.R. REP. NO. 99-824 at 1 (1986).

²¹ 10 U.S.C. § 162 (b) (2017).

of Staff, and senior civilian leadership—Secretaries of the Military Departments. In doing so, it altered the power balance, favoring the rapid—and lethal—response of joint warfare embedded with the operational and uniformed chain of command at the expense of civilian leadership.²²

Throughout her book, Brooks highlighted the need to reinvigorate civilian control over the military.²³ This begins, I believe, with addressing Goldwater-Nichols’ consequences – unintended or otherwise. While it has been updated and provisions tweaked throughout the years, Goldwater-Nichols has not been substantively changed since its passage thirty years ago. But the world—and warfare—have changed dramatically since 1986.²⁴

Consider but one example. Under the Goldwater-Nichols scheme, a new combatant command with unique legal authorities was formed: Special Operations Command. Part III, *infra*, addresses the interplay between the National Security Act, Goldwater-Nichols Act, and this unique command.

III. THE MILITARY’S LEGAL ARCHITECTURE, COVERT ACTION, AND THE RISE OF SPECIAL OPERATIONS FORCES

The National Security Act of 1947 addresses a broad range of security activities and authorities—which include not only DoD activities, but also CIA and intelligence activities.²⁵ By

²² For instance, the Secretaries of Military Departments were placed outside the operational chain of command and were required to assign all of their forces to combatant commands. In turn, the combatant commands resided at the heart of the operational chain of command, reporting directly to the Secretary of Defense via the Chairman of the Joint Chiefs of Staff. 10 U.S.C. § 162 (a)–(b) (2017) (discussing the assignment of forces and prescribing the chain of command).

²³ BROOKS, *supra* note 1, at 357–60.

²⁴ Consider, too, how much Congress has changed during that time. Military service in Congress rests at an all-time low—it was as high as 70% in the 1970s and now rests around 20-25%. Abigail Geiger & John Gramlich, *The Changing Face of Congress in 5 Charts*, THE PEW RESEARCH CTR. (Feb. 2, 2017), <http://www.pewresearch.org/fact-tank/2017/02/02/the-changing-face-of-congress-in-5-charts/>.

²⁵ See generally Robert Chesney, *Military Intelligence Convergence and the Law of the Title 10/Title 50 Divide*, 14 J. NAT’L SEC. L. & POL’Y 539 (2012) (addressing the “armed forces” in Title 10); see also National Security Act of 1947, ch. 343, 61 Stat. 495 (1947) (current version at 50 U.S.C. § 3001 (2013)) (passed “[t]o promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security.”).

placing different agencies with different authorities within the National Security Act, the seeds for future confusion may have been planted.²⁶ Covert action, embedded within the Act, was later defined within the body of the National Security Act.²⁷ Brooks highlighted the recent co-mingling of intelligence and military activities in her chapter titled “Secret Wars.”²⁸ While care has historically been taken to differentiate CIA activities from DoD activities, this has become an increasingly difficult task²⁹ due to the nature and complexity of modern threats, and how we respond to them.

In 1991, Congress passed the Intelligence Authorization Act, which defined covert action activities. Placed within Title 50 and the National Security Act statutory scheme, “covert action” is defined as:

[A]n activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government *will not be apparent or acknowledged publicly*.³⁰

Under this definition, covert action is purposely broad in scope and care is taken to not limit what actions are precluded or otherwise limited by law. This definition also has a defining characteristic that is exceptional within American law: In order for an activity to qualify as a bona fide covert action, it must “not be apparent or acknowledged publicly” to the American people or the world.³¹

²⁶ *Id.*

²⁷ *See* Intelligence Authorization Act, 50 U.S.C. § 3093 (1991) (defining “covert action”).

²⁸ *See* BROOKS, *supra* note 1, at 122–23 (referring to covert action’s modern usage as “semi-covert action” in her chapter on Secret Wars).

²⁹ *See id.* at 122 (“In practice, military and CIA personnel generally work together quite closely when planning and engaging in drone strikes or raids But the increasing fuzziness of the line between the intelligence community and the military creates confusion and uncertainty.”).

³⁰ 50 U.S.C. § 3093 (emphasis added). Joint military doctrine does not use the term “covert action” in the context of special operations forces. It does, however, utilize the term “covert operation” defined as “an operation that is so planned and executed as to conceal the identity of or permit plausible denial by the sponsor.” DEPT. OF DEF., *DICTIONARY OF MILITARY AND ASSOCIATED TERMS* 55 (2016), https://fas.org/irp/doddir/dod/jp1_02.pdf.

³¹ 50 U.S.C. § 3093 (emphasis added).

So how does the law ensure accountability over these secret actions that are never to appear as or be acknowledged in public as related to United States action? Within the statute, a certain check on executive power does exist—a written legal finding and notification to Congress must accompany a “covert action”.³² Thus, a Presidential finding triggers a notification process to senior congressional leaders in the intelligence committees.³³

But covert action *does not* include traditional military activities (TMA), or activities that provide routine support to the overt activities of other U.S. government agencies abroad.³⁴ One can see a certain appeal to the executive branch of using such exemptions. If a military action falls into one of covert action’s exemptions, it may never be reported to Congress—or anyone.³⁵ If history is any guide, the executive branch will continue to seek operational latitude and independence without complying with broader oversight requirements if it doesn’t have to.³⁶ Hence, there is a built-in statutory incentive for the executive to utilize the TMA and other exemptions, eliminating the legal need to notify both Congress and the American people of such an operation.³⁷ Since the attacks of September 11th, the TMA exception under covert action

³² Id.

³³ These senior congressional leaders make up the so-called “Gang of Eight.” Manu Raju & Tom LoBianco, *FBI Director James Comey Meets with Congress ‘Gang of Eight’*, CNN (Mar. 10, 2017, 11:13 AM), <https://www.cnn.com/2017/03/09/politics/fbi-director-james-comey-meets-with-congress-gang-of-eight/index.html>; see BROOKS, *supra* note 1, at 122 (“[A]ll activity designated as ‘covert’ requires a presidential finding and subsequent notification of the intelligence committee, even if just the so-called Gang of Eight: the Senate and House majority and minority leaders, and the chairs and ranking members of the House and Senate intelligence committees.”).

³⁴ 50 U.S.C. § 3093(e) (2014). In his statement to Congress concerning the 1991 covert action statute, President Bush said in 1990: “I believe that the Act’s definition of ‘covert action’ is unnecessary. In determining whether particular military activities constitute covert actions, I shall continue to bear in mind the historic missions of the Armed Forces to protect the United States and its interests, influence foreign capabilities and intentions, and conduct activities preparatory to the execution of operations.” *Statement on Signing the Intelligence Authorization Act, Fiscal Year 1991*, THE AM. PRESIDENCY PROJECT (Aug. 14, 1991), <http://www.presidency.ucsb.edu/ws/index.php?pid=19899>.

³⁵ See BROOKS, *supra* note 1, at 123 (“The CIA wants to keep journalists and the ACLU off its back; the military mostly just wants the intelligence committees to leave it alone.”).

³⁶ For example, consider the case study of the Iran-Contra affair.

³⁷ This exception is not defined in law. See 50 U.S.C. § 3093(e)(2) (2014) (stating that “covert action” as defined in this statute does not include traditional military activities, nor does it include a definition of what constitutes traditional military activities).

appears to have been widely invoked, although it is impossible to precisely know *how* many times this occurred (after all, secrecy is the name of the game).³⁸

Now enter special operational forces to the covert action mix. Today, special operations forces are the darling of the military, media and the executive branch. And they are operating almost everywhere throughout the world.³⁹ In the face of new threats posed by transnational non-state actors, special operations forces now play an increasing role as part of the covert action congressional-executive notification dance. Congress has responded with increased funding and granting increased authorities to Special Operations Command, a transnational combatant command with worldwide reach and authorities.

Brooks is rightly concerned about the change in the nature of these so-called “gray zone” conflicts that muddy the intelligence/military divide.⁴⁰ Such activities include both special operations forces (military) and CIA personnel (civilian), further obscuring the lines between intelligence collection and kinetic operations.

Special operations forces are everywhere, and Congress often does not know about *where* they are and the nature of their activities.⁴¹ The missions run from intelligence gathering to direct

³⁸ See BROOKS, *supra* note 1, at 122 (“[T]he Intelligence Authorization Act, which lays out most of the rules for covert activities, exempts ‘traditional military activities’ from its definition of covert action—though the definition and scope of ‘traditional military activities’ remains hotly contested.”).

³⁹ As of the time of this article, within the special operations community alone, there are special operations forces in over 137 countries of the world (70% of all nations). See, e.g., Nick Turse, *American Special Ops Forces Have Deployed to 70 Percent of the World’s Countries in 2017*, THE NATION (June 26, 2017), <https://www.thenation.com/article/american-special-ops-forces-have-deployed-to-70-percent-of-the-worlds-countries-in-2017/>.

⁴⁰ See Eric Gomez, *Book Review*, 37 CATO J. (2) 430–34 (2017) (reviewing ROSA BROOKS, *HOW EVERYTHING BECAME WAR AND THE MILITARY BECAME EVERYTHING: TALES FROM THE PENTAGON* (2016)) (“The key premise of *How Everything Became War* is that, in an age of non-state actors, new technology, and general interconnectedness, the distinction between war and peace has broken down. Instead of there being clear states of war and peace, the world is now faced with a continuum where most activities fall somewhere in between. Russia’s intervention in Ukraine, characterized by disinformation operations, ‘little green men’ in Crimea, and proxy forces, is an example of such ‘gray zone’ conflicts. Brooks argues that such conflicts are not a temporary aberration but a new paradigm that is already affecting the international legal system and the U.S. military.”).

⁴¹ During the recent military tragedy in Niger and Mali where four U.S. special forces personnel were killed, Senators Schumer (D-NY) and Graham (R-SC), both charged with military oversight, were unaware that the U.S. military was even present in that part of the world. Dionne Searcey & Eric Schmitt, *In Niger, Where U.S. Troops Died, a Lawless*

kinetic action.⁴² Special operations forces now operate pursuant to two distinct threads in the national security tapestry: Title 10 activities, and activities pursuant to a covert action Title 50 TMA exemption.⁴³ Hence, the rise of what Brooks calls “semi-covert” action.⁴⁴

Questions arise: If an action is not clearly an intelligence or military activity (with many Special Operations Forces personnel not in military uniform), then what is the combatant status of the personnel engaging in covert action?⁴⁵ Indeed, her book is more relevant than ever in light of the Trump administration’s recent announcements that they are considering the use of contractor forces as part of covert actions. How should military “covert” contractors be treated under international humanitarian law?⁴⁶

IV. CONCLUSION

The success of Brooks’s book is encouraging. And the book is timelier than ever in light of President Trump’s election and the placement of active and retired military members to senior

and Shifting Landscape, N.Y. Times, Oct. 30, 2017, at A5 (quoting Senator Graham as stating, “[w]e don’t know exactly where we’re at in the world, militarily, and what we’re doing”).

⁴² See, e.g., Nick Turse, *Why are U.S. Special Operations Forces Deployed in Over 100 Countries?*, THE NATION (Jan. 7, 2014), <https://www.thenation.com/article/why-are-us-special-operations-forces-deployed-over-100-countries/>.

⁴³ Title 50 refers to a section of the U.S. Code that addresses the Central Intelligence Agency’s authorities to include other intelligence authorities. Title 10 is a section of U.S. Code that is devoted exclusively to the armed forces of the United States. See also Robert Chesney, *supra* note 25.

⁴⁴ See BROOKS, *supra* note 1, at 123 (“The end result is the same: when the covert goes semi-overt, and the overt goes semi-covert, the public is left in the dark.”); Rosa Brooks, *By Other Means: Shadow Wars*, FOREIGN POL’Y (Sept. 20, 2012, 10:07 PM), <http://foreignpolicy.com/2012/09/20/shadow-wars/> (“All covert activity requires a presidential finding and subsequent notification of the intelligence committee (even if just the Gang of Eight)—a fact that gives the Pentagon a strong incentive to insist that whatever it is that special operations forces are doing, it’s *not* covert activities.”).

⁴⁵ Some legal scholars have argued that the military members lose their protected combatant privilege and status under the Geneva Convention due to this co-mingled chain of command. To highlight one prominent example, the Osama bin Laden raid involved both military and CIA personnel. And there has been an increased interest in using contractor personnel for such activities in the Trump Administration.

⁴⁶ See Laura A. Dickinson, *Outsourcing Covert Activities*, 5 J. NAT’L SEC. L. & POL’Y 521 (2012) (describing the increased role that contractors have played in gathering intelligence, interrogating detainees, and engaging in hostile activities); see also Lindsay Windsor, *Note: James Bond Inc.: Private Contractors and Covert Action*, 101 GEO. L. J. 1427 (2012).

civilian positions at the White House, DoD, and National Security Council.⁴⁷ Further, President Trump has demonstrated a willingness to delegate more and more authority to operational military commanders.⁴⁸ It is no exaggeration to state that President Trump “loves his generals.”⁴⁹

Since President Trump was elected, Brooks’s themes of “war everywhere” have, unfortunately, been reaffirmed. And the threat of conflict continues to be everywhere and has infiltrated our daily lives respective social media feeds—Twitter⁵⁰ is but one prominent example. Indeed, a sequel to Brooks’s book addressing “How Everything *Truly* Became War” in the Trump administration is waiting to be written.

⁴⁷ See, e.g., James Kitfield, *Trump’s Generals are Trying to Save the World. Starting with the White House*, POLITICO (Aug. 4, 2017), <https://www.politico.com/magazine/story/2017/08/04/donald-trump-generals-mattis-mcmaster-kelly-flynn-215455> (discussing the circumstances of Trump appointees, and their military backgrounds, to positions of power in the executive branch).

⁴⁸ President Trump just recently released his 2017 National Security Strategy, reflecting a significant departure from earlier national security strategies adopted in the Obama Administration. See *National Security Strategy of the United States of America*, NATIONAL SECURITY STRATEGY ARCHIVE 29 (Dec. 2017), <http://nssarchive.us/wp-content/uploads/2017/12/2017.pdf> (“The United States must reverse recent decisions to reduce the size of the Joint Force and grow the force while modernizing and ensuring readiness.”); see also Christopher Fonzone, *How Much Should Trump Delegate to His Generals?*, NEWSWEEK (May 30, 2017, 11:54 AM), <http://www.newsweek.com/how-much-should-trump-delegate-his-generals-617643> (exploring the ways in which President Trump has shifted power over to the military).

⁴⁹ Consider the number of high-profile military and retired military officers within the Trump Cabinet. See Rob Garver, *Trump’s Military Buildup Makes Even His Generals Nervous*, THE FISCAL TIMES (Feb. 28, 2017), <http://www.thefiscaltimes.com/2017/02/28/Trump-s-Stake-Military-Industrial-Complex-Makes-His-Generals-Nervous> (“President Donald Trump loves his generals In the first weeks of his presidency, he has stocked the top ranks of his defense and national security team with them.”).

⁵⁰ See, e.g., Donald Trump (@realDonaldTrump), Twitter (2 Jan. 2, 2018, 7:49 PM), <https://twitter.com/realDonaldTrump/status/948355557022420992>.