

RECLAIMING CONGRESS'S ARTICLE I POWERS: COUNTERTERRORISM AUMF REFORM

HEARING BEFORE THE COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTEENTH CONGRESS FIRST SESSION

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CONTENTS

	Page
WITNESSES	
Nuland, Victoria, Acting Deputy Secretary, Undersecretary for Political Affairs, Department of State	7
ADDITIONAL TESTIMONY SUBMITTED FOR THE RECORD	
Maier, Christopher, Assistant Secretary for Defense for Special Operations and Low-Intensity Conflict and Krass, Caroline, General Counsel, Department of Defense	10
Visek, Richard, Acting Legal Advisor, Department of State	16
INFORMATION SUBMITTED FOR THE RECORD	
What Now information submitted for the record from Waltz	54
Aghanistan 2022 information submitted for the record	59
United Nations U.S. News information submitted for the record	67
APPENDIX	
Hearing Notice	91
Hearing Minutes	93
Hearing Attendance	94
STATEMENT SUBMITTED FOR THE RECORD FROM REPRESENTATIVE CONNOLLY	
Statement submitted for the record from Representative Connolly	95
MATERIALS SUBMITTED FOR THE RECORD REPRESENTATIVE PHILLIPS	
Letter submitted for the record from Representative Phillips	97
RESPONSES TO QUESTIONS SUBMITTED FOR THE RECORD	
Responses to questions submitted for the record	99

RECLAIMING CONGRESS'S ARTICLE I POWERS: COUNTERTERRORISM AUMF REFORM

Thursday, September 28, 2023

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:09 a.m., in room 210, House Visitor Center, Hon. Michael McCaul (chairman of the committee) presiding.

Chairman McCAUL. The committee will come to order. And before we get started I want to say happy birthday to my dear and good friend from New York, the ranking member, Mr. Meeks, who celebrated a very big birthday this week. He is now 70 years old.

But can you give us that Muhammad Ali quote so we can—this is like the best line.

Mr. MEEKS. Ali always said, “Don’t count the years, make the days count.”

Chairman McCAUL. So we will make it count. We are going to do the John Boehner birthday song real quick if that is all right. All right, Republicans, ready? This is your birthday song, it does not last too long—hey.

We like to have some fun. We had a good time last night at the State Department, big music event. And the Secretary played a rhythm-and-blues song, amazing.

So now we get onto something very important. I am going to give an opening statement. The ranking member I believe, Secretary Nuland, will be giving the statement.

You know, Article 1 of the Constitution gives Congress alone the authority to declare war, and I believe it is our most solemn power. Declarations of war and authorizations for use of military force are this committee’s most consequential jurisdiction.

And now we are 22 years past the 9/11 attacks, and while we dramatically degraded those threats, we do face terrorists committed to our destruction.

The bipartisan 9/11 Commission led by New Jersey Governor Tom Kean, whose son is now on this committee, and former Democratic chair of this committee, Lee Hamilton, made clear that the fight against radical Islamist terror would be a “generational challenge likely to be measured in decades, not years.”

From my years as a counterterrorism Federal prosecutor and as former chairman of the Homeland Security Committee, I know that ongoing counterterrorism operations are legal and necessary and have saved us from many attacks.

But Congress has not revisited our authorities in over two decades. Ninety percent of current House members were not even here when Congress enacted the two key AUMFs still on the books.

Now, the 2001 post-9/11 AUMF has been used against Al Qaeda, the Taliban, and associated forces including ISIS. 2002 Iraq AUMF was used against Saddam Hussein and also against terror threats in Iraq, including IRGC Commander Soleimani and Iran-backed militias.

During that time, Congress has held hundreds of briefings and hearings. We have continued to appropriate funds for these engagements. But we have not revisited the authorities Congress gave to the President 11 congresses ago.

War should not be on autopilot. Congress owes our troops a clear commitment to the missions we are asking them to undertake. We need to exercise our Article 1 war powers and stop our unhealthy ongoing deference to the executive branch. And our troops deserve that.

My preference would be to repeal or replace all the AUMFs with a new, more limited authorization scoped to the terror threats that we face today. It would not apply to foreign nations or armed forces. It would not provide authority to occupy and reconstruct a country.

There is also bipartisan interest in making a new AUMF time-limited so that Congress is required to review and reauthorize more regularly. Doing this is hard, and that is why we have not done it in 22 years. To succeed, a new AUMF requires bipartisan, bicameral, and Presidential support. And it will require us to answer tough questions, such as which terrorist organizations should be covered.

As mentioned, current authorities cover al Qaeda, the Taliban, associated forces including ISIS. But the Administration is asking us to now exclude the Taliban and not add any new Iran-backed terrorist militias to any new AUMF.

I have to say that I have some concerns with that. Those groups have killed more Americans and pose ongoing threats today. Iran-backed militias have attacked U.S. personnel in the Middle East more than 80 times since the start of the Biden Administration. During the Iraq War, they killed more than 600 Americans.

The Taliban actively harbors terror threats including Zawahiri, Bin Laden's top lieutenant, and until recently the leader of Al Qaeda. The operational brains behind 9/11 were living in downtown Kabul under the Taliban's protection.

Many specially designated global terrorists serve as senior officials now in the Taliban government, including Interior Minister Haqqani, head of the Haqqani Network, which is a designated foreign terrorist organization.

It is simply not credible to exclude these extreme ongoing terror threats from a new counterterrorism AUMF. When the President says he can just address them using his Article 2 powers, he is telling Congress not to exercise our exclusive constitutional authority.

There is no consensus about the scope of the President's inherent power to use force, except in cases of self-defense after we have been attacked. I want the President to have that clear authority. He does not need to wait for these terrorists to attack us first.

So with that, I want to thank our panel here today and the Secretary. This is a very important discussion we will have today. It should not be a partisan exercise, but rather a bipartisan exercise.

It is my sincere hope that we can come together and mark up a new AUMF by next month.

And so with that, I would like to recognize the ranking member, Mr. Meeks.

Mr. MEEKS. Thank you, Mr. Chairman.

You know, as a member of the House of Representatives from the State of New York, I know how much that day, September 11, 2001, weighs on the hearts of all Americans. Thousands of men and women in New York City to this day still bear the physical and emotional scars of 9/11, as does those in the Pentagon and in Pennsylvania.

For them, for us, the phrase “Never forget” is as much a memorial as it is daily reality. Days after the attack, on Friday, September 14, I recall being on the House floor and reading the resolution to authorize the President to use military force and respond to that tragic attack on our homeland.

Let me read the pertinent part aloud again today. “The President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States.”

I voted for that authorization. And though I carry the burden of that vote, not for 1 second do I regret it. We needed to send a message. We needed to take action and prevent future terrorist attacks by those who orchestrated 9/11, and we did.

But let us be clear, that AUMF which my colleagues and I voted on was about 9/11, its perpetrators, and those who gave them refuge. The targets and scope of the AUMF were clear. Al Qaeda committed a terrorist attack on U.S. soil and the Taliban had harbored them, refusing to hand over Osama bin Laden.

My vote to cast off the—to cast authorized force against both Taliban and Al Qaeda alike. The Taliban, for all of their counter-productive and backward policies and what they are doing today, did not warrant a proactive designation by Congress as an organization that the President is authorized to use military force against.

We are fighting ISIS-K in Afghanistan and killed the organization’s leader earlier this year. In 2001, AUMF Repeal and Replace Bill should comport with that reality, rather than revive a 20-year-old war, which we just ended and which Americans have no interest in pursuing again.

A repeal-and-replace bill should, however, retain the President’s authority to target non-State actors that have the capability and intention to attack our homeland. I submitted and proposed—my proposed legislation includes three terrorist entities that the President would retain the right to use force against: ISIS-K in Afghanistan, ISIS in Iraq and Syria, and Al Qaeda in Afghanistan.

Without getting into information inappropriate to this public forum, I believe that several ISIS affiliates remain a threat to the United States. President Biden ordered a strike that killed ISIS leader in 2022. And our military has taken out several top com-

manders in 2023. Several other ISIS leaders have been killed by partner forces.

This constant pressure and the difficulty it creates for planning and executing terrorist operations keep us safer here at home, and it would be unwise to discontinue these operations. ISIS-K remains a top concern. ISIS-K continues to pose a threat to our country and remains engaged in global terror. Al Qaeda in Afghanistan is significantly debilitated.

But I do think operations like the 2022 strike against Al Qaeda's leader in 9/11, plotter Ayman al-Zawahiri, should be authorized by Congress. It is possible that new intelligence could convince me to add or subtract entities from this list.

These are not simple questions with easy answers, and I clearly understand that Mr. McCaul's draft legislation has a wider scope. And I hope that, as he has stated, we can reach an agreement and dialog together along with the Administration.

One thing I believe that I know we can agree on, we need to have this debate. And we need Congress to reassert its proper authority over the power to declare war under the Constitution. The time to pass repeal and replace of the 2001 AUMF legislation is now long overdue.

The American people elected us to make tough decisions, not duck hard questions by ceding our constitutional authority over the executive branch or—. Our constitutional order depends on us upholding that responsibility, and I look forward to hearing from our witnesses here today before this committee.

And again I thank the chairman for calling this hearing this morning.

Chairman McCAUL. I want to thank the ranking member. And I also want to thank Ken Buck and Dean Phillips for leading a task force engaging conversations with various groups across a spectrum on both sides of the aisle to try to get to a consensus. And I know you have put a lot of time and effort into this, and I want it to bear fruit at the end of this discussion.

So we have a distinguished panel. First, Ambassador Victoria Nuland is Acting Deputy Secretary, Undersecretary for Political Affairs, at the Department of State. Thank you for being here.

Mr. Christopher Maier is the Assistant Secretary for Defense for Special Operations and Low-Intensity Conflict.

Ms. Caroline Krass is the General Counsel at the Department of Defense.

And Mr. Richard Visek is the Acting Legal Advisor at the Department of State.

So with that, I believe that we will call upon Ms. Nuland for her testimony.

STATEMENT OF VICTORIA NULAND, ACTING DEPUTY SECRETARY, UNDERSECRETARY FOR POLITICAL AFFAIRS, DEPARTMENT OF STATE

Secretary NULAND. Thank you, Chairman McCaul. Ranking Member Meeks, happy birthday. Members of the committee, thank you for inviting all of us to testify today.

President Biden, Secretary Blinken, and the whole Administration welcome the opportunity to work with Congress to update the existing authorizations for the use of military force.

It is in that spirit that we gather today, as both of you said, to consider some of the gravest and weightiest questions we face as public servants, questions about how to address and eliminate emerging and imminent dangers to our citizens, when the use of military force is appropriate, and how those decisions should be made.

Twenty-two years ago the 9/11 terrorist attacks violently reminded our country of the threats we faced and renewed our national resolve to secure our homeland. Out of that moment of tragedy came a measure of unity.

In the aftermath, Members of the Congress came together to enact the 2001 AUMF, which created the legal bedrock of U.S. counterterrorism operations, enabling us to dismantle key terrorist organizations and thwart their plans to attack Americans.

The world is a different place now. The threat of terrorism persists, but it has also evolved. So too must the tools that we use to meet it.

We applaud congressional efforts to update this law to reflect the realities of the current landscape. There is no more powerful signal we can send to those who wish us harm than a new authorization which is broadly supported by both chambers of Congress and by both parties.

We agree that repealing and replacing the 2001 AUMF is warranted and is necessary. Here is how the Administration sees some of the key issues, some of which you have already highlighted in your opening statements.

First, when it comes—what comes next should provide our military with uninterrupted authority to continue critical operations authorized by the 2001 law and provide the flexibility to rapidly adapt to constantly changing dangers.

Second, a revised AUMF should explicitly authorize force against Al Qaeda and ISIS.

Third, a revised AUMF, in our view, should not include a date-certain expiration date, given the persistence of this threat. That said, we know how critical this issue is for members of this committee, and we are prepared to discuss ways to review the continuing need for these authorities on an agreed and regular basis.

Fourth, a revised AUMF should ensure uninterrupted authority for terrorist detention operations. And finally, we believe a revised AUMF should enable us to apply this authority to new geographic areas and groups as needed.

While the rate of global terrorist attacks has declined, groups like ISIS and Al Qaeda maintain safe havens across the globe and an intent to attack our Nation and our people overseas.

Over the past decade, we have built and led a successful coalition to root out ISIS, to reduce its territory, and to disrupt its recruitment and financial networks. Yet these groups continue to pose threats to the United States and our interests, whether it's al-Shabaab in Somalia, ISIS-K in Afghanistan, Al Qaeda in the Arabian Peninsula, to ISIS in Syria.

At the same time, terrorist activities in the Sahel are on the rise, a trend that is likely to worsen with increased political instability in the region. Meanwhile, we have taken significant steps toward closing the facility at Guantanamo Bay, and that remains our goal. But until that day comes, we cannot afford any gaps in our detention authorities.

We know that military force is only part of the answer to countering terrorist threats. With the support of the Congress, we are investing hundreds of millions of dollars in State Department-run programs in countries around the world to train, mentor, and equip law enforcement officers in counterterrorism to work effectively and to respect the rule of law and human rights.

We have also worked with partners in more than 25 countries across the globe to combat racially and ethnically motivated violent extremists. And through the Global Counterterrorism Forum, we have collaborated with over 40 countries to increase the resilience of local communities to terrorist actors.

But given the evolving threat, we must be able to use force when necessary to prevent groups from planning attacks, reestablishing footholds, reconstituting, and resurging. As we consider a new AUMF, we support congressional engagement on the use of this authorization, including which terrorist groups should be the targets.

The Administration is deeply committed to working with Congress on this new authorization and to remaining accountable to the American people for actions that are taken under the AUMF. We look forward to a very frank discussion today. Thank you.

[The prepared statement of Secretary Nuland follows:]

**Testimony of Acting Deputy Secretary Nuland
House Foreign Affairs Committee Hearing
“Reclaiming Congress’s Article I Powers: Counterterrorism AUMF Reform”
Thursday, September 28, 2023**

Chairman McCaul, Ranking Member Meeks, members of the committee: thank you for inviting us to testify today.

President Biden, Secretary Blinken, and the whole Administration welcome the opportunity to work with Congress to update existing Authorizations for the Use of Military Force.

In that spirit, we gather to consider some of the gravest and weightiest questions we face as public servants:

Questions about how to address and eliminate emerging and imminent dangers to our citizens, when the use of military force is appropriate, and how those decisions should be made.

Twenty-two years ago, the 9/11 terrorist attacks violently reminded our country of the threats we face and renewed our national resolve to secure our homeland.

Out of that moment of tragedy came a measure of unity. And in the aftermath, members of Congress came together to enact the 2001 AUMF, which created the legal bedrock of U.S. counterterrorism operations, enabling us to dismantle key terrorist organizations and thwart their plans to attack Americans.

The world is a different place now. The threat of terrorism persists, but it has evolved. So, too, must the tools to meet it.

We applaud congressional efforts to update this law to reflect the realities of the current threat landscape.

There is no more powerful signal we can send to those who wish us harm than a new authorization which is broadly supported by both chambers of Congress and both parties.

We agree that repealing and replacing the 2001 AUMF is warranted and necessary. Here is how the Administration views the key issues:

First: What comes next should provide our military with the uninterrupted authority to continue critical operations authorized by the 2001 law – and provide the flexibility to rapidly adapt to constantly-changing dangers.

Second: A revised AUMF should explicitly authorize force against al-Qaida and ISIS.

Third: A revised AUMF should not include a specific expiration date, given the persistence of these threats. We know that this is a critical issue for members of this committee, and we are prepared to discuss ways to review the continuing need for these authorities on an agreed, regular basis.

Fourth: A revised AUMF should ensure uninterrupted permission for terrorist detention operations.

Finally: A revised AUMF should enable us to apply this authority to new geographic areas and groups as needed.

While the rate of global terrorist attacks has declined, groups like ISIS and Al-Qaida maintain safe havens across the globe – and an intent to attack our nation and our people overseas.

Over the past decade, we've built and led a successful coalition to root out ISIS, to reduce its territory, and to disrupt its recruitment and financial networks.

Yet terrorist groups continue to pose threats to the U.S. and our interests, from Al-Shabaab in Somalia to ISIS-K in Afghanistan to Al-Qaida in the Arabian Peninsula to ISIS in Syria.

At the same time, terrorist activities in the Sahel are on the rise – a trend likely to worsen with increased political instability in the region.

Meanwhile, we've taken significant steps toward closing the facility at Guantanamo Bay. That remains our goal. But until that day comes, we cannot afford any gaps in our detention authorities there.

We know that military force is only part of the answer to countering terrorist threats.

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We have worked with partners in more than 25 countries across the globe to combat racially and ethnically-motivated violent extremists.

And through the Global Counterterrorism Forum, we have collaborated with over 40 countries to increase the resilience of local communities to terrorist actors.

But given evolving threats, we must be able to use force when necessary to prevent groups from planning attacks, reestablishing footholds, reconstituting, and resurging.

As we consider a new AUMF, we support effective congressional engagement on the use of this authorization, including which terrorist groups are targets.

The Biden Administration is deeply committed to working with Congress on a new authorization and remaining accountable to the American people for actions taken under any AUMF.

We look forward to a frank discussion today.

Thank you.

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JOINT STATEMENT SUBMITTED FOR THE RECORD FROM
MR. MAIER AND MS. KRASS

Joint Statement for the Record

United States Department of Defense

Mr. Christopher Maier
Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict
and
Ms. Caroline Krass
General Counsel

before the

Committee on Foreign Affairs
U.S. House of Representatives
September 28, 2023

Chairman McCaul, Ranking Member Meeks, and Members of the Committee on Foreign Affairs: thank you for the opportunity speak with you today about the Authorizations for Use of Military Force (AUMFs) that the United States has relied on for its counterterrorism operations, particularly the 2001 AUMF, which was passed shortly after the September 11th attacks on our Homeland. The Department of Defense (DoD) welcomes this dialogue with Congress and is committed to providing transparency regarding the circumstances in which the United States uses military force.

1957, 1991, and 2002 AUMFs

At the outset, we would like to emphasize that DoD supports repeal of the 1957, 1991 and 2002 AUMFs, including the Senate's passage of S.316, which would repeal the 2002 and 1991 AUMFs. We have no ongoing military activities that rely solely or primarily on the 2002 AUMF as a domestic legal basis and no activities that rely on the 1957 or 1991 AUMFs.

DoD's Current Activities Under the 2001 AUMF

The last twenty years of sustained counterterrorism pressure by the United States and our allies and partners has unquestionably degraded terrorist threats to the United States. Nevertheless, we continue to face threats from a number of terrorist groups committed to harming U.S. persons and vital U.S. interests. These groups seek to capitalize on instability and

ungoverned spaces overseas, leveraging new technologies and the information environment, circumventing traditional financial systems, and exercising influence over new generations of recruits to further their cause of harming the United States and our interests. Although degraded by our actions, the threats posed by those groups endure. DoD is addressing those continuing threats in a number of ways, including through activities authorized by the 2001 AUMF.

The 2001 AUMF provides the foundational legal basis for our continuing military operations against al-Qa'ida and associated forces, including against ISIS. DoD regularly relies on the 2001 AUMF to conduct military activities to address the threats these groups pose to the United States and to U.S. personnel and citizens around the world.

DoD conducts a variety of ongoing counterterrorism activities that rely on the 2001 AUMF. Direct action operations—including those in which U.S. military personnel employ lethal force, including airstrikes and raids, against al-Qa'ida and associated forces, including against ISIS—are the clearest example of operations that rely on the AUMF. In addition, military detention operations are a form of use of military force, and the 2001 AUMF is the basis for continued law of war detention of detainees at Guantanamo Bay, Cuba.

We remain in an ongoing armed conflict against several groups that continue to present threats to the United States in the following countries:

- **In Syria and Iraq,** ISIS remains a capable and dangerous threat. U.S. forces remain in Iraq to advise and assist at the invitation of the Government of Iraq and the U.S.-led Global Coalition to Defeat ISIS continues to work “by, with, and through” vetted local partner forces in Iraq and Syria, including the Iraqi security forces (ISF) and the Syrian Democratic Forces (SDF), to achieve the enduring defeat of ISIS. Without sustained military pressure, ISIS would almost certainly be able to reconstitute itself to pose a significantly greater threat to the United States and U.S. persons than it does right now. DoD remains committed to

supporting the Government of Iraq through security and counterterrorism cooperation in our shared fight against ISIS. The 2001 AUMF continues to provide critical authority for our counterterrorism operations in Iraq and Syria.

- **In Somalia**, we primarily work “by, with, and through” local partners to achieve stability and security, including in Somalia’s fight against al-Shabaab, an associated force of al-Qa’ida. DoD support to the African Union Transition Mission in Somalia (ATMIS) and the Somali National Army (SNA) focuses on building partner institutions and military capabilities that are keeping pressure on al-Shabaab as a means to counter terrorist threats to U.S. persons and interests in the region. DoD relies on the authority of the 2001 AUMF not only to use force in support of our partners but also for U.S. counterterrorism direct action operations in Somalia when necessary, such as the January 2023 raid that led to the death of ISIS leader Bilal al-Sudani.
- **In Afghanistan**, following the withdrawal of U.S. forces, we maintain our ability to counter terrorist threats to U.S. persons and interests by employing capabilities from outside the country to counter the ongoing threat from ISIS and al-Qa’ida when necessary.

Modernizing the 2001 AUMF

We are committed to working with Congress to ensure that outdated authorizations for the use of military force are replaced with a more specific framework that provides clear authority to address threats to the United States. We welcome the opportunity to continue to engage with Congress as it considers ways to modernize the existing AUMF framework. As this Committee considers replacement legislation, we would like to highlight some aspects of any proposed AUMF that we believe are critical to maintaining the United States’ uninterrupted ability to prevent terrorist attacks on U.S. personnel and vital U.S. interests.

First, it is critical that any new or updated AUMF provides uninterrupted authority to continue operations currently authorized by statute that the President and Congress deem necessary to address ongoing threats, including detention activities. Importantly, the 2001 AUMF is the domestic legal basis for continued law of war detention of detainees currently being held at Guantanamo Bay. Any AUMF should maintain a clear statement that this detention authority is uninterrupted.

Second, any new or updated AUMF also should include explicit authority to use necessary and appropriate force against ISIS and al-Qa'ida, which, as described above, continue to present terrorist threats to the United States. Furthermore, in any AUMF, Congress should consider establishing mechanisms and standards that (1) address how the authorization will apply to associated terrorist groups beyond those that may be identified by name in the text of the AUMF; and (2) include periodic review of the groups that are subject to the use of force, and the locations where force is used, under the AUMF.

As terrorist threats continue to evolve, our counterterrorism capabilities and authorities must evolve with them. We have seen terrorist groups splinter and re-align themselves under new names or new leadership, while still maintaining their intent to attack the United States. DoD works closely with our partners in the Intelligence Community and other departments and agencies to monitor new and emerging terrorist groups and to respond lawfully and appropriately when new threats emerge. The President's authority under the 2001 AUMF to use necessary and appropriate force against "associated forces," as affirmed in the National Defense Authorization Act for 2012, has been a critical component of the U.S. counterterrorism campaign, and any replacement AUMF should continue to provide similar flexibility to add new groups not listed by name.

Of course, this inclusion of a mechanism to add new groups in the scope of the 2001 AUMF does not mean that the United States may use military force against every international

terrorist group pursuant to the 2001 AUMF. The mere fact that an entity has been labeled as a terrorist group or has committed terrorist acts does not necessarily bring it within the scope of the 2001 AUMF. Indeed, the reality of the changing terrorism threat landscape reflects why authorizations for use of military force should be more specific to address current threats to the United States, while remaining appropriately adaptive to the dynamic nature of the evolving threat environment.

With respect to other notable groups, we do not believe it is necessary to add Iran-aligned militia groups (IAMGs) to a new or updated AUMF. We are not in an armed conflict with Iran, nor do we seek one. The 2022 National Security Strategy prioritizes China and Russia as the primary strategic threats to the United States. Engaging in a new, protracted conflict with Iranian partners and proxies in the Middle East would only serve to distract us from our far more critical task of modernizing the U.S. military to achieve our strategic priorities. And, as President Biden has demonstrated as recently as March 2023, he has sufficient legal authority under the Constitution to use military force to defend the United States and U.S. persons from attacks by Iran-aligned groups when necessary.

We also do not believe it is necessary to include the Taliban in a new or updated AUMF. The United States is not currently engaged in hostilities against the Taliban, and a new or updated AUMF should be forward-looking, focusing on terrorist groups that currently pose a threat to the United States. The Taliban leaders have pledged to take action against terrorists operating inside Afghanistan—in line with their Doha commitments—and we are indeed seeing increased capability in this regard. A new or updated AUMF should, however, be flexible enough to add groups as the situation changes. Should the nature of these threats change, we would consult with Congress on how to address the threats most effectively.

Finally, the current AUMF has enabled our persistent campaign against terrorist organizations for more than two decades. That persistence is a key component of our overall success countering al-Qa'ida and ISIS, and that is feasible only with an AUMF in place. It is critical that any replacement AUMF should similarly signal the United States' commitment to persistent engagement and should not include a sunset provision with an artificial end date, unmoored from the conditions on the ground. A sunset provision would add strategic and operational risk to our counterterrorism efforts and potentially undermine our international partnerships, delivering easy wins to adversaries as our foreign partners struggling with terrorist threats may begin to question our longer-term commitment and be tempted to turn to our competitors for assistance. This is critical, and we are happy to discuss with the Committee alternatives to a sunset that would ensure that we can both protect the nation and facilitate regularized congressional engagement on these important issues. But we must be clear: we regard a sunset as a major obstacle to providing the legal, strategy, and policy certainty needed to fulfill the nation's counterterrorism missions.

We have the utmost respect for the role of Congress in authorizing the use of force and will continue to engage actively with you on these important issues. We thank the Committee for convening today's hearing and look forward to your questions.

STATEMENT FOR THE RECORD FROM MR. VISEK

Statement for the Record
House Foreign Affairs Committee Hearing
“Reclaiming Congress’s Article I Powers: Counterterrorism AUMF Reform”
September 28, 2023
Acting Legal Adviser Richard C. Visek
U.S. Department of State

Thank you, Chairman McCaul, Ranking Member Meeks, and Members of the Committee for providing this opportunity to address the question of repealing and replacing Authorizations for Use of Military Force (AUMFs) that have been used for counterterrorism operations over the past two decades. The Biden-Harris Administration is committed to working with Congress to repeal outdated AUMFs and to replace the 2001 AUMF with a more specific framework that will ensure that we can continue to address threats to the United States with appropriately decisive and effective military action. President Biden and the entire Administration recognize that the power and strength of the United States are greatest when the President and Congress work together to address external threats.

Since Congress passed the 2001 AUMF shortly after the September 11, 2001, terrorist attacks, the 2001 AUMF has served as the cornerstone of our domestic legal authority for the use of force against al-Qa’ida and associated forces. The Executive Branch has provided Congress with a complete list of all groups that have been determined to be covered by the 2001 AUMF. These groups include al-Qa’ida, the Taliban, certain other terrorist or insurgent groups affiliated with al-Qa’ida and the Taliban in Afghanistan, al-Qa’ida in the Arabian Peninsula, al Shabaab, al-Qa’ida in the Lands of the Islamic Maghreb, al-Qa’ida in Syria, and ISIS.

Replacing the 2001 AUMF is not an easy task, and we welcome the opportunity to work with you as you consider new legislation. The terrorist threat has evolved since the 2001 AUMF was enacted, and it will continue to change going forward. Any new or updated AUMF should reflect those changes. It should maintain the critical authority needed to protect our country and people from terrorist threats, and it should ensure continued transparency and collaboration between the Executive Branch and Congress on the use of military force in the following ways.

First, any new counterterrorism AUMF should include explicit authority to use force against al-Qa’ida and ISIS, given that we are in an ongoing armed conflict with both groups. It should also include a mechanism to add associated forces of these groups. We know from experience that terrorist groups splinter and re-organize over time, and that new, associated groups may in the future pose a threat to the United States and Americans abroad.

In this connection, the Administration does not believe it is necessary to name groups in a new authorization against whom the United States is not currently in an armed conflict. There are other tools to appropriately and effectively address threats from such groups. In particular, Article II of the Constitution empowers the President to direct certain military action without prior Congressional approval in order to protect the national security interests of the United States. This authority has been recognized over more than two centuries, across Presidential Administrations, and has been effectively utilized to authorize discrete actions to address threats,

including threats to our forces when deployed overseas. If the nature of a threat changes and the President determines additional authorities are appropriate and necessary, the Administration would consult with Congress.

Second, a new or updated AUMF should include periodic review of the locations where force is used. We have over 20 years of experience in the fight against al-Qa'ida and associated forces, and we know that these terrorist groups' operations are not constrained by international boundaries. At the same time, the countries where the United States has used force under the 2001 AUMF have been limited. We are committed to transparency with Congress and the American people about the locations where military force is used.

Third, and most importantly, a new AUMF should *not* include a set end date. Sunsetting the authority based on a specific date—rather than conditions bearing on the need to use force—risks a lapse of this vital legal authority for ongoing operations, including detention operations, at a point in time in which it is still critically needed. The Administration fully recognizes the interest in having a more specific authorization, and we are committed to working with you to find a solution that ensures regular, transparent reviews of the authority. But it is essential that we avoid a possible gap or lapse in this vital authority. The expiration of the authority should be based on the threat posed by terrorist groups to the United States and the American people.

In addition to the 2001 AUMF, there are other AUMFs currently in effect, namely the 1957 “Joint Resolution to promote peace and stability in the Middle East” (Public Law 85-7), the 1991 “Authorization for Use of Military Force Against Iraq Resolution” (Public Law 102-1), and the “Authorization for Use of Military Force Against Iraq Resolution of 2002” (Public Law 107-243). The Administration supports repeal of these AUMFs.

No current U.S. military operations rely on the 1991 AUMF as a domestic legal basis. The United States also does not engage in any ongoing military activities that are dependent on the 2002 AUMF as a domestic legal basis. At least since 2015, the U.S. Government has at most referred to the 2002 AUMF as an “additional authority,” alongside the 2001 AUMF and, at times, the President’s Article II authority, underpinning ongoing counterterrorism operations against ISIS in Iraq and Syria. Repeal of the 2002 AUMF would have no impact on current U.S. military operations.

I look forward to answering your questions today, and to working with you on this important effort. Thank you.

Chairman MCCAUL. Thank you, Madam Secretary. We had a classified briefing last week as well as a very robust discussion, and it seems to me there are three issues, whether or not to keep the Taliban on the list. You know, as I mentioned, Haqqani is their Minister of Interior and was harboring Zawahiri. Haqqani Network being a foreign terrorist organization.

And the other one has to do with Iran Shia militia groups. General Kurilla testified 6 months ago that these Iran-backed militias had attacked us 78 times, our military, since January 2021.

And then finally, as you mentioned, the timeline. I think it has to be realistic. It has taken us 22 years to have this discussion, and that is for a reason, because it is hard. It is hard to get consensus. And so I had asked your legal counsel at the time to come up with maybe some creative options to that.

I will say I think most members do want a time-certain to expiration to force future congresses to deal with the issue. But having said that, those are the three big issues as I see it.

If I could maybe start with you, Madam Secretary, and then go down the panel.

Secretary NULAND. Thank you, Chairman. I am going to take these in turn, and I am going to guess we will come back around and around to them. But first with regard to the Taliban. We have been very clear, we are going to judge the Taliban by their actions.

It is our assessment that the Taliban have partially adhered to their CT commitments. We have seen them disrupt ISIS-K for example, but there is obviously plenty more to do to ensure that Afghanistan does not become a safe haven or return to safe haven or persist as a safe haven.

That said, I would note that the Director of the National Counterterrorism Center, Christine Abizaid, recently said publicly that Al Qaeda is at its historic nadir in Afghanistan, and its revival is unlikely.

I would say we have been able, with the authorities that we have, to maintain persistent counterterrorism action against Al Qaeda, most recently with the August 1922 strike against Zawahiri. So the President is not going to hesitate to go after Al Qaeda as he needs to. And we believe that we have the authorities under Article 2 to do that.

With regard to the Iran-backed militias, Iran is obviously a State sponsor of terrorism; it is the leading State sponsor of terrorism in the world. And as this committee knows very well, and especially those of you who served selflessly in Iraq and elsewhere, they continue in this effort.

President Biden has repeatedly warned Iran that we will hold them to account for any role in attacks against U.S. personnel, and the President, again, has done just that using his Article 2 authorities, most recently in March in Syria. And he is not going to hesitate to do that again.

So, again, this is a place where we believe we have the authorities that we need and the President has shown his willingness to use them under Article 2. But obviously we are open to further conversation about this.

Chairman MCCAUL. And I would just say that, yes, that is your Article 2 authority is self-defense, but that is not an authority authorized by Congress, though. But please continue.

Secretary NULAND. Understood. But in this case, when they attack us, we respond is the way that that has worked. And in fact, what we are trying to do is restore deterrence and we have—we feel that that has—we have sent that message strongly in March, and we have not seen any attacks since.

With regard to the sunset, we have a number of things that we can talk about. As you said, Chairman, a number of concrete proposals. I can run them down here or we can do it later.

I think our largest, our biggest issue with a firm date certain is it signals to our adversaries that they can wait us out. That is the biggest problem. It also signals to the partners we want to work with that they cannot count on us to lead this effort after that if the Congress is not able to continue the authority. So that is our biggest concern.

So we have put forward to members of this committee and to the staff some ideas for, as we said, regular reviews at set intervals, more reporting requirements, or even the requirement at a date that you set for a Presidential certification and a conversation about the need to continue these authorities.

We think that is a better way to go than setting a date now and telling the world that we are potentially out of this business on that date.

So let me pause there. Chris, anything to add?

Mr. MAIER. Chairman, the only thing I would add, especially on the sunset provision, is I think one of the strengths we see still to this day in things like the D/ISIS coalition is the really the consistency and sustainability of that coalition.

And we continue to be frankly surprised. Many of the capitals have continued to renew mandates in Iraq and Syria long after they have stopped contributing forces.

And I think if we look at this in the context of a sunset provision that had a time-directed end, those partners would become far less certain about making those political commitments certain.

Chairman MCCAUL. And you know, I do see some merit to that, because we also say conditions on the ground not a time-base to give the signal to the enemy when it is going to expire. So my time is running out, but I look forward to visiting with you about these options that you have proposed, and thank you for that.

The chair recognizes Mr. Meeks.

Mr. MEEKS. Thank you, Mr. Chairman.

Let me make sure that, so we are absolutely clear, and I guess Undersecretary Nuland. Does the Administration believe a repeal-and-replace of the 2001 AUMF should include an explicit authorization to use military force to strike the Taliban?

Secretary NULAND. Chairman, as I said, with regard to actions in Afghanistan, we want to see an explicit authorization for ISIS, for Al Qaeda. We do not believe that the Taliban needs to be in this authorization.

Mr. MEEKS. And what about does the Administration believe a repeal-and-replace of the 2001 AUMF should include an explicit au-

thorization to use military force against Iranian-backed Shia militia groups?

Secretary NULAND. Again, Ranking Member, we believe that we have proven that we have the authority under Article 2 to help defend the American people and restore deterrents, so we do not think that is necessary.

Mr. MEEKS. And does the Administration support a repeal of 2001 AUMF without a simultaneous replacement bill?

Secretary NULAND. We do not. We would immediately lose detention authorities, we would lose our ability to strike Al Qaeda and ISIS and other groups.

Mr. MEEKS. And let me jump to, you know, a couple of things because I agree that what the chairman said about some of the key issues. And I, as I said in my—I'm very firm about, you know, not giving over our authority to the executive branch. We have got to take the hard votes ourself.

So can any one of you tell me with precision the threat landscape in 2045? Which terrorist groups will be on the rise then, and what threats will they pose to the United States in 2045?

Secretary NULAND. I certainly would not want to get out my crystal ball. I do not know if the Assistant Secretary may or would like to get his out. We just hope we are still celebrating your birthday.

Mr. MEEKS. Me too. So with that, because when I stood on the House floor in 2001 and voted for the 2001 AUMF, I can tell you that I firmly and squarely and honestly that most of the members if not all of the Members of Congress did not believe that we were going to—we were authorizing a global war on terror that would still be in force 22 years later. But that is where we are now.

So why should members of this committee have the confidence that if we passed a new AUMF this year, that the President in 2045 would not use our law in ways we could have never predicted?

Secretary NULAND. Well, again, Ranking Member, our commitment to you is that we will continue to evolve both the groups and the needs, geographic and otherwise, together. And there are many ways that we can establish regular consultation to do that, regular ways to agree to do that, as I said in my opening.

And we think that is going to be necessary. We are going to need an open door to be able to evolve this or to update it again.

Mr. MEEKS. So that is why for me, because I know I cannot, as you could not, see what is going to take place in 2024—2045. But I can picture in my mind's eye, say what it looks like in 2024 or 2025 or 2026.

And that is why to me, a sunset makes sense. It forces us to stop and reevaluate if things change on the ground, or use a military force—the use of a military force has been on statutory autopilot for two decades.

And that is part of the reason why our policies, I believe, have been flawed. And I do not think Congress must make the same errors. And that is why I think that we need to have a sunset so that we can review that.

Let me just tell you real quickly the other pet peeve that I have had recently. And I do not know whether Ms. Krass has this answer or not. But are you familiar with Section 1285 report codified

as 50 USC 1550 that the Department of Defense sent to the House Foreign Affairs Committee this week?

Ms. KRASS. Yes, sir, I am.

Mr. MEEKS. Do you know if the statutory language mandating the report State that the report shall be submitted a few days before every full committee Foreign Affairs or AUMF issues, or does it State that the report shall be submitted every 180 days, and that briefing shall occur in the 180-day window?

Ms. KRASS. The latter, sir.

Mr. MEEKS. OK. So look, I have tremendous respect for the men and women who protect our national security every day across the Department of Defense and the Department of State and understand the workload is significant and the burden is real. I even understand that sometimes Congress mandates reports that are outdated or useless.

But that 1550 report is one that is necessary for Congress to do its job. And I again underscore and emphasize, as I did in 2022, look, for us to do our job, we have to have the report. So please, give us those reports in a timely manner.

And I yield back, Mr. Chair.

Chairman MCCAUL. The gentleman yields back. The chair now recognizes Ms. Wagner.

Mrs. WAGNER. I thank you, Mr. Chairman, for organizing this hearing and updating the United States' authorization for U.S. military against terrorists that seek to kill Americans is urgently needed in the current threat landscape.

Since the Administration's shameful, I think, and tragic flight from Afghanistan 2 years ago, the Taliban has been left to help manage the very significant terror threats emanating from Afghanistan.

And I know we are talking about leaving them out and really focusing on ISIS-K, and Al Qaeda, but I do want to say here that Taliban is a U.S. adversary that funds all—funds Al Qaeda. It employ Al Qaeda members and it permits Al Qaeda training camps. I would be interested in some of your thoughts in this regard.

And I want to add to that, though, that meanwhile Iran has only grown bolder and more aggressive in its support for terrorist proxies, I think we have seen.

And I will note here too that the Administration's policies have been exceedingly counterproductive. In fact, the Administration recently signaled to Tehran that its bad behavior will be in fact rewarded with cash payouts to the tune of \$6 billion.

Let's be clear. Iran is a State sponsor of terror. U.S. policy must always, always aim to deter or punish Iran's use of terrorist proxies to harm Americans and sow instability across the Middle East.

The U.S. must retain a powerful toolkit here that empowers us to address these threats to our citizens and homeland. And Congress has an important opportunity to update and strengthen this toolkit, and I look forward to working with my colleagues on this critical effort.

Assistant Secretary Maier, can you speak to a little bit both the Taliban activity that I have outlined and their involvement with Al Qaeda and the camps and such, along with the total attacks, how

many have Iran-backed made on American targets in the last 5 years?

We know that Commander Kurilla testified quite a while ago here earlier that there were 78 attacks. Surely there have been more. I am wondering if you can give us an update, both on those Iran-backed militias and proxies, and then the Taliban. Thank you.

Mr. MAIER. Yes, ma'am. So starting with the Taliban, I think as Secretary Nuland said, we are in a very-not-trust with the Taliban. But I think what we have seen is them take the fight to ISIS-Khorasan because they are definitely opposed from a number of different reasons, namely because ISIS-Khorasan attempts to undermine the Taliban governance.

And they—they, the Taliban have pressured and managed to exert a fair degree of control, we would say, over the Al Qaeda elements that still remain in Afghanistan to ensure that they aren't conducting plotting against Western targets. Now—

Mrs. WAGNER. Are they funding, excuse me, are they still funding Al Qaeda? Do they still employ Al Qaeda members? Are they still permitting Al Qaeda training camps, the Taliban?

Mr. MAIER. I think some of that would probably be better handled in a different session. But I think on balance we see that the Taliban remains in some sort of relationship with Al Qaeda. But what we have not seen is significant plotting by Al Qaeda toward Western interests.

And I think Secretary Nuland's reference to NCTC Director Abizaid is telling there, that Al Qaeda is being kept under wraps by the Taliban at this point. That said, we are carefully watching all of that because we know ultimately what Al Qaeda's intents are.

I think on Iran, I would not be able to give you the accurate number over the last 5 years of Iran, Iran in proxy attacks. But I can tell you since General Kurilla testified, we have seen a clear drop in Iranian proxy attacks toward U.S. forces in both Iraq and Syria.

Mrs. WAGNER. OK, thank you. I want to move and leave this question. I may not have enough time for it to be answered, but we see terrorism is exploding in Sub-Saharan Africa and the Sahel. Sub-Saharan Africa accounted for 60 percent of all terrorism deaths last year. The Sahel was the site of 43 percent of terrorism deaths, up from 1 percent in 2007.

Assistant Secretary Maier and Ms. Krass, what are the key terrorist organizations in Africa, and which are currently covered by the 2001 AUMF? And do you agree that a new AUMF must continue to cover those groups? I know that I am out of time.

I would appreciate it if I could get an answer in writing, Mr. Chairman, and because I do think it is important that we include Sub-Saharan Africa in this discussion, especially with the explosion of terrorist activities that are going on. And I thank you, and I yield back.

Chairman MCCAUL. The gentlelady yields back. Chair recognizes Mr. Sherman.

Mr. SHERMAN. I agree with the ranking member, we shouldn't be on autopilot. I hope my colleagues would me in introducing legislation to repeal the AUMF of 1957 dealing with communism in the

Middle East, and 1991, dealing with Saddam Hussein's invasion of Kuwait. We should also repeal the 2002 AUMF.

I agree with the ranking member that we need to revise the 2001 AUMF and put a sunset on it. Ms. Nuland argues well, that will embolden our enemies.

That is because everybody in the executive branch believes that when the executive branch makes foreign policy, that they make good foreign policy and instill fear in our enemies. But if God forbid Congress has a binding role, then we would make bad decisions and our enemies would be emboldened.

Nothing exemplifies this more than what every Administration since the Nixon Administration has said about everything we are talking about here today. The AUMF is meaningless and our discussion at this hearing and many other hearings is meaningless unless the War Powers Act is binding on the Administration.

Yet since the Nixon Administration, every—the executive branch has told us it is not binding. They have taken the position that it is really kind of a non-binding resolution maybe with a few reporting requirements, but that every president can send our troops anywhere for as long as that president wants, whether Congress wants to authorize it or not.

And then they work with us on the technicalities of the War Powers—of the AUMF to humor us, distract us, and pretend like it is important so that we never realize that it is not.

Ms. Nuland, is the War Powers Act binding on the executive branch? And I will point out that Senator Biden said yes. What is your answer?

Secretary NULAND. Yes, Congressman Sherman.

Mr. SHERMAN. It is. So the Administration will follow the law and will not deploy troops for over 60 or 90 days unless authorized by an AUMF?

Secretary NULAND. That is President Biden's commitment.

Mr. SHERMAN. I might add that I asked that same question of your predecessor and did not get an answer in this committee just a year and a half ago. And I want to thank you for that commitment.

Mr. Visek, as a matter of law, is the War Powers Act binding on the executive branch?

Mr. VISEK. Thank you for that question, Congressman. We are certainly aware of the history between the executive branch—

Mr. SHERMAN. Yes or no.

Mr. VISEK. And the legislative branch on this issue—

Mr. SHERMAN. Yes or no, is it binding?

Mr. VISEK. There are, certainly I think there would be general agreement that parts of the War Powers Act are absolutely—

Mr. SHERMAN. Is the part of it that says you cannot deploy troops for over 60/90 days binding on the Administration or not? Yes or no?

Mr. VISEK. I can say that this Administration has acted consistently with—

Mr. SHERMAN. Acting consistently? They act consistently with many of our non-binding resolutions. Is it binding or is it just something you choose to go along with?

Mr. VISEK. Congressman, I am not aware that it has been addressed at this point. But I've wanted——

Mr. SHERMAN. OK, so we have a disagreement. Your client says it is binding, you say it is not. Every Administration, prior to the statements of Ms. Nuland, have said it is not binding, and that is why last decade I put a provision's most important thing I ever enacted into proposal and it was actually enacted into law, that says that no money can be spent in contravention of the War Powers Act.

Now Attorney General Mukasey testified before this committee a long time ago that if such a provision was in the appropriations bill, it was—it was in the appropriations bill back a decade ago, because I finally won a vote on the floor. It is now in base text so it does not get much attention. But it says no money can be spent in contravention.

Is that provision binding, Mr. Visek?

Mr. VISEK. Congressman, I am not aware that this Administration has taken a position on that. We——

Mr. SHERMAN. Well, you realize that you were sitting there when Wendy Sherman, no relation, said that the Administration would look at that provision and reach a decision on that. Was she misleading us when she said the Administration would look at that?

Mr. VISEK. I do not believe Deputy——

Mr. SHERMAN. You were sitting right next to her.

Mr. VISEK. Would be—would mislead this committee. All I can say is that I am not aware——

Mr. SHERMAN. Will you get back with a yes-or-no answer as to whether in your legal opinion it is—the money can be spent in contravention of the War Powers Act out of the Defense Appropriations Bill that says no money shall be spent in contravention of the War Powers Act?

And Ms. Krass, you will be advising generals. Now and then we say no money shall be spent in the Defense bill for this or that. And if they just ignore that they could, I believe, go to jail.

Would you advise Defense officials that they could spend money in contravention of the War Powers Act if that money was appropriated by a bill that says no money shall be spent in contravention thereof?

Ms. KRASS. Congressman, we very much respect the role of Congress and clear language such as no money can be sent, implicates, as you say, the Antideficiency Act. We would always comply with that consistent with our constitutional——

Mr. SHERMAN. So as long as we put that provision in every Defense approps bill, and we frankly, and I hope my colleagues will join this, should put it in permanent law, you believe that the Defense Department has to abide by it?

Ms. KRASS. Consistent with our constitutional obligations, yes.

Mr. SHERMAN. Consistent with your constitutional—do you have a constitutional right to ignore it?

Ms. KRASS. It would very much depend on the circumstances. It would be very unusual that we would——

Mr. SHERMAN. OK, so sometimes you can ignore laws you do not like——

Ms. KRASS. Only——

Mr. SHERMAN. Depending upon the circumstances. I will yield back.

Chairman MCCAUL. The gentleman yields. The chair now recognizes Mr. Mast.

Mr. MAST. Thank you, Mr. Chairman

Assistant Secretary, I am going to ask you some very straightforward questions. I would say it is in everybody's best interest to give us simple and straightforward answers. It is an opportunity to clear the air on some ongoing issues.

There is currently an allegation that your chief of staff, who was also a former aide for Robert Malley, an Iran deal architect, that—who is currently has a revoked security clearance and is suspended for classified mishandling, allegedly, that she was a part of a group known as the Iran Expert Initiative, which reported to the Iranian Foreign Ministry and had the mission of influencing U.S. policy-makers to agree with what the Iranian Government wanted. That is an allegation.

The Pentagon issued a defense, saying that the doctor was thoroughly and properly vetted and that we are honored to have her serve. I would like to believe that in issuing the defense, that was thoughtful and thoroughly vetted as well, and I wanted to give you the opportunity to substantiate that.

So my questions are going to start with this. They will be very straightforward. Given that a defense was issued, I want to confirm what was reviewed to substantiate that defense.

Did your Chief of Staff have any affiliation with a group known as the Iranian Expert Initiative, its other reported associates, or any groups reporting to the Iranian Foreign Ministry?

Mr. MAIER. So Congressman Mast, I think you will appreciate this is a ongoing personnel matter. We received a letter from the House Armed Services Committee chairman and ranking member, or excuse me, subcommittee chair of the Intelligence Special Operations Committee 2 days ago. So we are looking into that.

I think the initial response you are referring to was issued by our public affairs folks. We are actively looking into whether all law and policy was properly followed in granting my chief of staff Top Secret Special Compartmented information.

Mr. MAST. Let's pause on that.

Mr. MAIER. Yes.

Mr. MAST. Was the security clearance a full scope polygraph background check, a single scope background check, can you speak to that?

Mr. MAIER. I cannot at this point, I do not know that information, sir.

Mr. MAST. Can you speak to the SF-86 national security questionnaire? Straightforward questions, they are black and white. And so I would ask this, can you say in Section 19, Foreign Contacts, was anybody listed within her contacts as a part of the Iranian Foreign Ministry?

Mr. MAIER. So Congressman, I think you will understand that I am not involved in the vetting process for a security clearance. That is part of what we are looking into. When I say ensuring it is consistent with law and policy, that would be a routine part of a background investigation from my experience, sir.

Mr. MAST. Absolutely. Can you help me with timeline on something on this? Understanding the SF-86 national security questionnaire, the questions relating to foreign associates, work, foreign business dealings, they have a 7-year statute of limitations for the questions.

Records show that she began working for Mr. Malley roughly in 2021. And the allegation is that this took place in roughly 2013/2014. Can you substantiate that if this was not listed, it may be because of the lapse of time, the 7-year time window that would put it just outside of that?

Mr. MAIER. Yes, again, Congressman, I do not have that level of detail of what went into her security clearance. But I think there are certainly pieces that have, as investigations are underway, as I understand it, they have discretion to look beyond that timeline as is required.

Mr. MAST. To the General Counsel, I would ask you the same questions.

Ms. KRASS. We are more than happy to take back your questions, sir.

Mr. MAST. Can you substantiate did the Chief of Staff have any affiliation with a group known as the Iranian Expert Initiative, its other reported associates, or any groups reporting to the Iranian Foreign Ministry?

Ms. KRASS. I do not know that.

Mr. MAST. OK. Can you substantiate whether that association, that alleged association, very alleged association, would have been outside of the timeframe in which she had to report according to her national security questionnaire?

Ms. KRASS. I do not know.

Mr. MAST. Thank you, Mr. Chairman, I yield back my time.

Chairman MCCAUL. The gentleman yields. The chair now recognizes Mr. Bera.

Mr. BERA. Thank you, Mr. Chairman. And thank you for holding this hearing. I mean, this is not a Democratic or a Republican issue, this is not a House or Senate issue.

It is something we talked about during the last Administration and again, from the comments of the witnesses, I think the Biden Administration also would love to see a sunset of the 2001 AUMF and a modernization of an AUMF that reflects today's world.

I was not in Congress post-9/11, but vividly remember the days immediately after 9/11 where the country came together. We weren't Democrats or Republicans, we were all Americans. And you know, watched this institution come together as well.

And I think there is a very non-partisan, bicameral desire to continue to do this and give the Administration, whether it is a Democratic or Republican Administration, the flexibility and ability to protect the American homeland and American interests around the world.

I think this is a place where we should work together and provide that flexibility for future Administrations. Thinking about the sunset provision, I certainly understand the delicacy of setting a hard timeline.

But I do think there's a compromise that, you know, can probably be reached where there are some forcing functions, some re-

porting functions that come back that do not set a hard-and-fast timeline but also give the legislative body the reassurances that on, whether it is every Congress coming back to, you know, the chairs of the relevant committees, Congress as a whole, etc.

And reporting, again, I think that certainly can be negotiated to where the executive branch is comfortable, we are comfortable, and we protect the homeland.

I also worry about future threats, and I appreciate none of us has a crystal ball. And the current AUMF addresses Al Qaeda and ISIS and affiliated groups like al-Shabaab et cetera.

But when I think about what keeps me awake at night, you know, having—being both on the Foreign Affairs and the Intelligence Committee and having traveled extensively throughout the Middle East recently, you see countries like Yemen.

And I do think there is a very real possibility that you will get some stabilization in South Yemen but, you know, I look at North Yemen, I look at the Houti movement. I look at a large number of young men heavily armed, nothing to do, no economy, etc.

And I would also like to think about how do we—the Houtis would not be covered under this AUMF and I do not—I am not suggesting that they should. But if a new rebel movement or terror, counterterror movement emerges, how do we allow the flexibility to address new threats?

And I, you know, I do not expect you to have that answer, but I do think it is important for us to give that flexibility. Certainly Article 2 would allow some immediate threats.

But having to come back to Congress every time, I think there is, you know, am I thinking about this correctly? Maybe Secretary Nuland.

Secretary NULAND. Thank you, Congressman Bera, and particularly for your openness to finding other ways to re-up these authorities short of date-certain for the reasons that we have talked about.

I have worked for a number of presidents who have tried to—of both parties who have tried to amend this, and with the Congress, and it is difficult. So we do not want to put ourselves in a position where we have a gap.

What we would also favor in addition to what we put explicitly in the law is provisions where we could come back to you ask for additional groups to be covered, whether we did that in open or whether we did that in a classified way so as not to signal. But we would be open to that for sure.

Mr. BERA. Great, thank you. And just a last question, we, recently in Mexico City, and I know some of my colleagues have introduced an AUMF to think about transnational drug cartels. I will just go on the record that I think that is a bad idea at this juncture.

And that is not to suggest that we do not have to use all means that we have as the Federal Government to address fentanyl, address these transnational drug cartels. But to, you know, our partners in Mexico, I think there are better ways for us to go about stamping out what is major issue here in the United States and certainly abroad.

Secretary NULAND. We agree with that. We think we should use criminal statutes against criminals and terrorist statutes against terrorists.

Mr. BERA. Great, thank you, and I will yield back.

Chairman MCCAUL. The gentleman yields. The chair recognizes Mr. Buck.

Mr. BUCK. Thank you, Mr. Chairman. And Mr. Chairman, thank you for allowing me to help on this issue. It has been a pleasure and an honor to work with you and the ranking member on this issue.

I guess I want to just make one statement about sunsets. Regular reviews do not work in Congress. We have a regular review of our appropriations process, and we have a term for it. It is called shutdown. We have a regular review of a debt ceiling, and it is called almost defaulting.

We have a regular review of many programs that we as Congress have authorized in the executive branch, and 1400 of those programs are unauthorized we still appropriate to. Regular reviews do not work.

When there is something significant, like FISA, we have a deadline accompanying that important program, we get our job done. Sometimes we have to kick it for a few months in order to get our job done, but we get our job done.

It is holding the collective feet of Congress to the fire that allows us to get something done. A review just does not work. The can will be kicked down the road, we will not do our job. And more importantly, the men and women who are risking their lives will not have the support of Congress.

It is too easy for Members of Congress to go run around and say I never supported that and I am not going to appropriate money to it because we did not do our job of reviewing it.

So I would really ask that you reconsider your position on a sunset. It will certainly be something that I will be pushing for.

But my question really is a little bit different, and that is how does a terrorist group earn its way onto a list that gets targeted? What are the considerations?

And I guess, Assistant Secretary Maier, I am directing this to you. In my mind, there are a few things. One, the group has explicitly sought to harm U.S. interests, whether they are personnel or embassies, or aided and abetted another group in that endeavor. Or sworn allegiance to a group that is involved in that.

But I would love to know, and really this is the key to me to gaining the confidence of other members in Congress, that we are carefully considering this. It isn't just we saw something in a newspaper and decided to target a group.

Mr. MAIER. Congressman Buck, it is a really important question. And I think, and we would look at it at the most basic as a group that has both the intent and capability to harm Americans. And by that, we are talking individual American citizens.

We often use broad, sweeping terms like U.S. interests and the United States and the homeland, but we are talking about groups that have a consistent, sustained intent to harm Americans and also have the capability to do so.

And then I think as we move past that we apply really a policy test to look at those groups that we would add as associated forces or affiliates, those that are associated with the larger Al Qaeda and ISIS group.

And there is really two tests to that. One is that it is an armed group, so meaning it has the capability. And it has entered the fight against the United States aligned with Al Qaeda, which is going back to the core of how this 2001 AUMF started.

And then the second is this group is a co-belligerent with Al Qaeda against the United States. And I think I already kind of covered that, but the intent has to be there to strike at the United States.

So we go through extensive policy discussions on the executive side informed by a whole host of information, a lot of it coming in of course classified, sir.

Mr. BUCK. So I am interested in—you used the word interest. And I guess capability is something that I am interested in also. Obviously we have embassies, we have a lot of American interests in other countries. The interest does not have to be attacking the homeland.

Mr. MAIER. Correct, sir, yes. We would look at it from the perspective of threats to Americans. Those can be official Americans working in embassies, but those can also be private citizens.

And in fact much of what we have seen Al Qaeda and ISIS focused on in recent years are soft targets. So those could be tourist locations, those could be businesses that are less protected, because they are frankly easier targets.

Mr. BUCK. I would love your help with—

Mr. MAIER. Including overseas, yes, absolutely.

Mr. BUCK. I would love your help with trying to identify that in more specific terms. The one thing that we are great at is sort of giving broad discretion to the executive branch and then blaming the executive branch for abusing or using that broad discretion.

I thank you for your answers, and I yield back.

Chairman McCaul. The gentleman yields. The chair recognizes Mr. Castro.

Mr. CASTRO. Thank you, Chairman. Thank you, Secretary Nuland, thank you to our panel for your testimony today on this very important discussion.

As you all know, the Constitution reserves the power to declare war to Congress, and this committee has jurisdiction over authorizations for use of military force. Both Democratic and Republican Administrations have seized more and more authority to unilaterally use force, and congressional inaction I believe has enabled this.

Now, I appreciate Chairman McCaul's decision to consider repeal and replacement of the 2001 authorization of the use of military force, and I look forward to the debate in this committee so Congress can reclaim these authorities that have been ceded over the last two decades.

And I want to first raise an alarming issue that has recently gained traction. Representative Bera alluded to it. It has gained traction, and I fear it is leading our country down a very dark path. There is now open discussion about the use of force in Mexico to

take on cartels, including air strikes, the deployment of armed forces, and special forces operations.

Now, I am alarmed that many are threatening to do so with or without the cooperation of the Mexican Government, which could be considered an act of aggression and a violation of international law. I am raising these issues and questions to get the Administration on the record today.

And I am directing these questions to Ms. Krass. Is there any interpretation of the 2001 AUMF that would allow the use of force against cartels in Mexico?

Ms. KRASS. We would not interpret the cartels in Mexico to be associated with forces of Al Qaeda.

Mr. CASTRO. Are you aware of any executive branch opinion or memo that says the President's Article 2 power to repel sudden attacks would permit the use of force against cartels?

Ms. KRASS. So the way that we have interpreted through the Justice Department the Article 2 power is a two-pronged test. One, whether a use of force would serve an important national interest, and two, whether or not the use of force would be likely to arise in terms of both the use and the response in an escalatory response to the war in the constitutional sense.

Just as you said, Congress has the power to declare war under the Constitution, and so that is the twofold test that would be applied.

Mr. CASTRO. To the best of your understanding, any memo or policy that you have seen in the executive branch, is it your understanding today that that would include the cartels?

Ms. KRASS. I have not seen anything that would indicate that, no.

Mr. CASTRO. What steps should Congress take to prevent overbroad interpretations of Article 2 that a future Administration might try to use to justify congressionally unauthorized hostilities with cartels?

Ms. KRASS. Well, that is something that I would have to take back to consider. I think that it is very important that the executive branch be required to consult with Congress and to engage with you fully on our interpretations of the law.

Mr. CASTRO. Thank you so much.

Mr. Visak, this question is for you. Under the U.N. Charter, States may use force without the territorial State's consent only in response to an, quote, armed attack or with the permission of the United Nation's Security Council. Does manufacturing, transporting, or selling fentanyl rise to the level of a "armed attack" in international law?

Mr. VISEK. Congressman, thank you for the question.

I am not aware of any statement by anyone to suggest that it would comply with international law. Normally the U.N. Charter talks about the use of force. And that is threats of use of force against the territorial integrity or political independence of another State.

Mr. CASTRO. All right. So, as far as you could tell, as far as you know that would be outside the definition?

Mr. VISEK. Yes. I always hesitate to engage in any hypotheticals, but it is, it is not an interpretation that immediately jumps to mind as the correct one.

Mr. CASTRO. Sure. Thank you, sir.

It is important to my colleagues to get on the record about how unwise it would be to start a war with Mexico in this manner. And I will soon be introducing a resolution rejecting the use of unilateral force in Mexico.

And so, I encourage my colleagues to please get in touch with me if they are in agreement and would like to support such a resolution.

Thank you. I yield back.

Chairman MCCAUL. The gentleman yields.

The chair recognizes Mr. Barr.

Mr. BARR. Thank you.

Secretary Nuland, welcome back to the committee.

In June of this year the President claimed that Al Qaeda was not present in Afghanistan and that the U.S. was “getting help from the Taliban.” This, ostensibly, would explain the Administration’s policy request excluding the Taliban from any new AUMF.

But in June of this year there was a U.N. report outlined, that outlined the threat that AQ, Al Qaeda, poses in Afghanistan.

According to the report there are 30 to 60 senior Al Qaeda officials, and 400 fighters in Afghanistan today. The Taliban provides monthly welfare payments to Al Qaeda. Al Qaeda has safe hub—safe houses, training camps, and trains suicide bombers in Afghanistan. At least three Al Qaeda members are serving in the Taliban’s Government. The Taliban issues passports and identity paperwork to foreign AQ members.

So, my question is, why would the Administration want to exclude the Taliban from an AUMF?

Secretary NULAND. Thanks, Congressman Barr.

I think you, I am not sure if you have been here from the beginning of this—

Mr. BARR. I have.

Secretary NULAND. Yes. So, as we said at the outset, we do see the Taliban in their own interests, as Assistant Secretary Maier underscored, taking actions against ISIS-K.

And we also see the capability of Al Qaeda in the current moment significantly reduced and attrited, including its ability to plot, and plan, and strike the homeland.

So, you know, we, with regard to the President’s statement we could address some of those things in a different setting than this one.

Mr. BARR. Well, we do not need a different setting. We do not need to go to the SCIF. This is a U.N. report. This is open source.

Are the Taliban actively giving aid, and comfort, and assistance to terrorists?

And the further question for any of them, is the Taliban killing our Afghan allies that this Administration left behind?

Secretary NULAND. I am going to defer to Assistant Secretary Maier on what we have seen the Al Qaeda be able to—

Mr. BARR. I think that is a very, very important question.

Is the Taliban murdering our Afghan allies today in Afghanistan?

And if they are, why are they not in an AUMF, or why should they not be in an AUMF?

Secretary NULAND. I do not believe we have seen a consistent pattern of those Afghans who worked and supported our efforts in Afghanistan being murdered by the Taliban. But I——

Mr. BARR. Well, my constituents, Marines at HKIA——

Secretary NULAND. Yes.

Mr. BARR [continuing]. Can tell you. They can tell you what the Taliban were doing when we were leaving.

I represent Marines who were at HKIA. They know what the Taliban were doing and planning to do to our Afghan allies that we abandoned. They know.

The Taliban is not our friend.

Secretary Maier, it is also puzzling that the Administration opposes inclusion of Iran-backed militia groups in a new AUMF, despite the fact that these very groups are responsible for dozens of attacks against U.S. servicemembers in the region.

Is the Administration wishing to not list Iran-backed groups in exchange for keeping the door open to a potential future Iranian nuclear deal?

Mr. MAIER. Congressman, I think we have said that the purpose of not putting Iranian-backed groups on this list is because we can already exercise all the military——

Mr. BARR. Yes, I heard that testimony earlier. We have a Georgetown Law grad and we have a Yale Law grad in the Administration sitting right next to you. And I know that they have read the Youngstown decision and the conferring opinion from Justice Jackson.

And I would like to ask the lawyers, is the Administration invoking Article II operating in a zone of twilight?

Shouldn't we in Congress specifically authorize use of force against these murderers of U.S. servicemembers to give the President, the Command-in-Chief, the zenith of his power here?

I will ask the lawyers.

Ms. KRASS. Congressman, you are absolutely correct that the President's power is at the extent of its zenith, as you say, when both Congress and the President are acting together. But we believe that the nature of the threat from the IMGs was one that the President has been able to address thus far, and has not shied away from addressing under his constitutional authority.

Mr. BARR. Well, I do not have time for a final question. And I am not really going to disagree necessarily with you on the President's Article II powers, but I think it would be wise, given the fact that these are groups that are killing U.S. servicemembers, that Congress authorize the President to give him maximum authority and flexibility with respect to responding to those, those attacks against U.S. servicemembers in Iraq and Syria.

I have run out of time. So, I will yield back. But I could go on for, for more time. Yield.

Chairman MCCAUL. The gentleman yields.

The chair recognizes Ms. Titus.

Ms. TITUS. Thank you, Mr. Chairman. Thank you to the witnesses.

Both the Biden Administration and senior military officials have made it clear—OK?—on several occasions that the 2002 AUMF no longer underpins any of our military operations. And the President said he would sign legislation that repeals it, passed by both chambers. So, and that seems to me an indication that we could do something here to make a difference, and he would be supportive of it.

Now, I know you all know that the Senate passed a bill repealing 1991 and 2002 just this last March. And it was bipartisan. And we have voted to repeal the 2002 several times in recent years, but not in this Congress.

So, I am just thinking that if this committee is really serious about doing something for war powers reform, and reclaiming our powers under the Article I, that maybe we should just take up the Senate bill that is sitting over here, and move forward and make some progress so we can get on to something else.

So, I would ask you all, do you find it necessary to replace the 2002 AUMF, as some of my Republican colleagues have suggested? Or should we just repeal it and then take these things up as they come along in a more appropriate and relevant way?

Secretary NULAND. We do not see the need to replace the 2002 AUMF, Congresswoman Titus.

Ms. TITUS. Will you just elaborate on that a little bit? And you probably already have and I missed it. I am sorry. But that would be helpful.

Secretary NULAND. So, just, just to say that, obviously, our relationship with Iraq has greatly evolved since the 2002 AUMF. We are now partners with Iraq in Iraq in fighting terrorists. We work intensively together.

And our relationship is, obviously, about much more than security. It is about energy independence, combating climate change, economic renewal, all of those kinds of things, being a good neighbor in the region. So, those circumstances have changed dramatically.

Ms. TITUS. And that brings me to my next point that the President has also said that we cannot afford to remain tethered to the old way or the old policies. We need to keep current with what is actually happening in the rest of the world because the security landscape has evolved, to use your word.

And our Constitution demands that Congress shapes our response to threats, especially when we are sending force.

Would you say the threats that we face today are different from the threats that we faced 2 years ago, 4 years ago, however long?

And how do we keep that relevant? Should we have reports back to the Congress? Because that has been pretty lacking in the past, of why we need the authorization, how it is being used, so that we can stay on top of it on a regular basis.

Secretary NULAND. I am going to hand to Chris in a minute for more detail. But, obviously, the threat is, is evolving significantly.

We talked about Al Qaeda at its nadir. We also talked about the increasing threat from affiliated groups in the Sahel, and particularly with the political instability that we have seen. And we do not

know how that is going to evolve going forward. We are doing our best diplomatically to try to restore democratic governance in some of the, in some of those countries.

But this is one of the reasons why one of the options that we proposed here is that the President could be asked to certify on a regular basis what groups needs to be covered, et cetera. That is one option available to, to you all as you think about how to maintain the freshness of this authorization.

Thank you.

Ms. TITUS. Before you go, when you said “affiliated groups,” how do you define “affiliated groups”? Do we have some certainty about what would be considered affiliated and not, or is it just I know it when I see it?

Secretary NULAND. Well, obviously, if they get support in the financial sense, in the military sense, in the training sense from ISIS or Al Qaeda in other parts of the world, that would be—make them an affiliated group.

Ms. TITUS. Africa?

Secretary NULAND. In Africa. And some of those groups do receive support.

But, again, Assistant Secretary Maier, who does this all day every day, can give you more detail.

Secretary NULAND. Thank you.

Mr. MAIER. Congresswoman, I think your two questions fit very well together. The dynamic nature of the threat is, especially in the context of Al Qaeda and ISIS, really one of these groups diversifying, and spreading to new places, and reinventing themselves.

So, as we talk about affiliates or associated forces, a lot of that is them looking to move to places where there is less pressure on them, like, in Africa.

Ms. TITUS. Uh-huh.

Mr. MAIER. And so, I think what we would like to see in working with the Congress in a consultative process, if possible, that reflection of a mechanism that reflects that dynamic nature of this threat over time, ma’am.

Ms. TITUS. Thank you.

I will yield back, Mr. Chairman.

Chairman MCCAUL. The gentlelady yields.

The chair recognizes Ms. Kim.

Mrs. KIM OF CALIFORNIA. Thank you, Chairman McCaul, and Ranking Member Meeks for holding today’s hearing.

Sorry. Excuse me.

You know, since the 2001 and 2002 AUMFs became law, the national security landscape has changed. And this has led to calls to reform or repeal the AUMFs. And I believe it is important that as Congress has this discussion that we carefully consider the fact that while the landscape may look different, the threats of terrorism to our national security still exists.

Congress must increase oversight of the use of military force, but it must be also careful not to eliminate the ability of the President to confront these threats before an attack on the U.S. homeland or our personnel abroad.

As a member of the Subcommittee on Africa, I am interested in how AUMF reform will affect our response to the terrorism in the

Sahel where the terrorists are proliferating. Sub-Saharan Africa accounted for 60 percent of all terrorism deaths last year. And the Sahel was the site of 43 percent of all terrorism deaths, which is one—this is up from 1 percent in 2007.

ISIS is present in the Sahel. And Burkina Faso, Niger, and Mali all recently had proof. I am deeply concerned that the destabilization in the region is further empowering ISIS. And as the U.S. loses security partners in the region to coups, we need to ensure that AUMF reform accommodates our military's ability to respond to terrorism threats in Sub-Saharan Africa.

So, I want to ask you what are the key terrorist organizations in Africa and which are currently covered by the 2001 AUMF?

Mr. MAIER. So, thank you for that question.

Very much agree with you. And I think all the indications point to these groups looking to exploit insecurity in Africa, especially West Africa.

And you highlighted the number of coups that are very disturbing to us. I would also add to that instability, the onset of Wagner, the Russia military contractor looking to exploit some of that, and some of these groups, some of these countries relying on that group.

So, I think the short answer, ma'am, is that both ISIS and Al Qaeda are covered under the AUMF. And they both have affiliates or associated forces operating there. We tend to think of ISIS as being more comprehensive. And so, when we think of ISIS operating there, it has different groups: ISIS West Africa,——

Mrs. KIM OF CALIFORNIA. Just quickly. Do you agree that a new AUMF must cover or continue to cover those groups?

Mr. MAIER. Yes, ma'am, I do.

Mrs. KIM OF CALIFORNIA. Are there terrorist groups in Sahel that are currently not covered by the 2001 AUMF?

Mr. MAIER. There are groups that we have not to date used force against using the AUMF. But I think that was, that is a question probably best handled by our, our legal folks.

Mrs. KIM OF CALIFORNIA. Let me ask one last question.

How would the Administration ask Congress to codify authorities to act against terrorist groups in the Sahel?

Secretary NULAND. Again, I think as Assistant Secretary Maier said, the vast majority of the ones that we have identified are affiliates of Al Qaeda or ISIS. And, therefore, we do feel that we are covered now. As we saw when we were able to operate in Mali, and when we were able to operate in Niger we did not hesitate.

The issue now is these coups and the difficulty of attacking these, this threat when these governments are not responsive to U.S. support. So, we are working on that diplomatically, as you know.

Mrs. KIM OF CALIFORNIA. Thank you.

Chairman, I would like to yield the balance of my time to Congressman Mast.

Mr. MAST. Thank you, Representative.

I just have one further question going back to our previous conversation.

Does Dr. Tabatabai currently have a suspended position or a suspended security clearance pending further review of his situation?

Mr. MAIER. No. No, she does not. At this point she is working in the Department.

Mr. MAST. In a capacity outside of your office?

Mr. MAIER. She is in the role she is in, and that she has been hired in.

Mr. MAST. Current chief of staff for you?

Mr. MAIER. She is current chief of staff, yes.

Mr. MAST. Thank you. Thank you for the clarification.

I yield back.

Chairman MCCAUL. The gentleman yields, the gentlelady yields. And Mr. Phillips is recognized.

Mr. PHILLIPS. Thank you, Mr. Chairman. And both to you and Ranking Member Meeks, thank you for leading this committee in such a thoughtful, principled, and effective manner at a time where we need more of that in this institution.

And I think our founders anticipated the very discussions like the one we are having today when they laid out Article I and Article II, some thoughtful tension between the two.

And I want to thank our witnesses for being here today, and also for your time spent with us over the last few weeks.

Starting with you, Secretary Nuland, I have heard from many Administration officials that the AUMF is a helpful tool but not necessarily a requisite tool to carry out the work about which we are speaking today.

Do you share that assertion?

Secretary NULAND. Congressman Phillips, as we have said, when the executive branch and the Congress speak together we are at our strongest. So, we very much want to update this AUMF and—

Mr. PHILLIPS. I understand that. And you have said it many times. But my question is a little bit more distinct.

Is it a helpful tool that would be nice to have? Or is it a mandatory tool in your estimation, necessary to have?

Secretary NULAND. Again, I think it would depend on the circumstance that you, you are in. And I want to defer to Counsel Visek on the specifics. Although there are circumstances that are covered by the AUMF where we could not act without it. But—

Mr. PHILLIPS. Yes, if you could lay out very specifically what authorities may not be included under Article II that you would require the tension, for example, others. I would like to hear.

Mr. VISEK. Thank you. It is an excellent question, Congressman.

I think what, what the question gets at is the interplay between the AUMF and Article II.

Mr. PHILLIPS. Uh-huh.

Mr. VISEK. And when do we use Article II? And what is the utility of an AUMF?

As Ms. Krass earlier noted, with respect to Article II typically does it serve a—would an operation serve an important national interest? And then also because of its duration, scope, and nature, and as well as any anticipated response, would that military action implicate the “declare war” clause of the Constitution?

And so, what I think that is getting at is we, we tend to use Article II for defensive, episodic sort of responses.

When we are looking at a more prolonged authority that is needed, if we have a foreseeable, enduring need, it is very important, I think, to have a statutory authorization.

Mr. PHILLIPS. OK. So, what I am hearing is there is a need. Is that a fair?

Mr. VISEK. Yes.

Mr. PHILLIPS. OK. My time is limited, so I would like to continue on to Mr. Maier and Ms. Krass.

You wrote in your testimony that a sunset would be “a major obstacle to providing the legal, strategic, and policy certainty needed to fulfill the Nation’s counterterrorism missions.”

Now, I know President Obama in his letter to Congress in February 2015 asked for a 3-year sunset. Asked for a 3-year sunset. So, I am just curious if you disagree with him? And is that congruent with your message today?

Mr. MAIER. So, I think, Congressman, we continue to consistently point to a time-based sunset clause as being challenging as we try to both maintain a large coalition and clearly articulate to our adversaries that they are not going to be able to wait us out, sir.

Ms. KRASS. And if I could just.

Mr. PHILLIPS. Ms. Krass.

Ms. KRASS. It is important to us to have uninterrupted authority for our detention activities. Back to your point, sir, that is one of the important functions that the 2001 AUMF is currently fulfilling in terms of—

Mr. PHILLIPS. Right.

Ms. KRASS [continuing]. All of our war detainees, as covered by the AUMF.

Mr. PHILLIPS. So, you have both spoken to some degree about alternatives to a sunset. Can you just articulate clearly and somewhat quickly, if you can, just what that looks like so our committee can better understand that?

And as I have said, I have said privately, you know, I think no sunset is a non-starter, I think, for this, for the U.S. Congress. But we should have that conversation. I would like you to respect it.

If you would just take 20 seconds, someone answer it. Thanks.

Secretary NULAND. Just to say a number of the things we have put on the table here.

Mr. PHILLIPS. Yes.

Mr. NULAND. Regular reviews by the President and Congress at set intervals as to whether it is still needed, would be one option.

Reporting or senior level briefing requirement.

Presidential, No. 3 would be Presidential certification to Congress, at dates certain, that the issue is still needing these authorities.

Next would be expedited procedure for consideration of legislation—

Mr. PHILLIPS. Uh-huh.

Secretary NULAND [continuing]. To expand or modify.

And we have engaged the staffs on both sides of the aisle on all of these ideas.

Mr. PHILLIPS. OK. And just, and I will close with this. You know, we currently have a, a reporting mandate every 180 days, of

course. The last we received until this last week was from June 2021.

So, if this is to work and we are to fill our, fulfill our constitutional responsibilities, we need to have that reporting done on a timely basis.

And I would ask that you bring that back to your respective offices most importantly.

Thank you. And I yield back.

Chairman McCAUL. The gentleman yields.

Mr. Green is recognized.

Mr. GREEN. Thank you, Mr. Chairman and ranking member.

As a combat veteran who served under the authorities of both 2001 and 2002 AUMFs, and a proud representative in Congress for the soldiers at Fort Campbell, Kentucky, for whom this isn't just an intellectual exercise, I would like to thank Chairman McCaul for his leadership and for organizing this hearing today.

I would also like to thank our witnesses for their time, expertise, and incredible service to the country.

One of my favorite days of the years is when I host Service Academy Day. Back in the district it is the coolest job I have. Meeting the immensely talented young men and women who seek to attend our military service academies makes me hopeful for the future of our country. It reaffirms the importance of everything we do here, that we truly can make this grand experiment of ours a more perfect union.

However, the joy and optimism of this day comes with a solemn responsibility. As Members of Congress, one of our greatest enumerated powers is to oversee and authorize the use of military force, oftentimes sending the very young men and women we have nominated to service academies to the battlefield and asking them to make, ultimately, the ultimate sacrifice at times.

Under the Constitution we swore an oath to uphold Congress is entrusted with the burden of determining if our Nation should undertake the trials and ultimate costs of a war. Congress has abdicated this duty for far too long, and failed to provide the proper legal standing to our troops.

I welcome the opportunity to work with my colleagues in the House to develop a path forward for AUMF authorities that respects congressional leadership on this issue, but also continues to grant our troops the authorities they need for combat operations against Jihadist terrorist groups.

These Jihadis are the successors of the terror cells that attacked our Nation on 9/11, and our operations against these groups remain critical to U.S. national security.

I am confident that there is a constitutionally appropriate solution that we can come to. I look forward to developing this solution with our witnesses here today.

Question really to whomever:

How important is it to ensure a seamless continuity of authority between the 2001 AUMF and any replacement to it?

Secretary NULAND. It is essential, Congressman, for all the reasons we have stated here: the tension of the ability to not lose an opportunity if we can and need to take a strike; but also as Assistant Secretary Maier has underscored, maintaining the confidence

of the coalition that we need around the world that we will stay in this fight, and so that they will stay with us in this fight; and budget enact appropriately.

Mr. GREEN. If the 2001 AUMF were repealed before a replacement was enacted, how would that impact or endanger our ability to legally detain the 30 Al Qaeda terrorists at Guantanamo?

Ms. KRASS. We would be very concerned by an interruption in that authority, sir. And we believe that without a doubt the detainees would bring litigation over whether there continued to be authority to hold them.

Mr. GREEN. Congress is likely to include a time limit in any new AUMF. I know my colleagues across the aisle, colleague has said yes/no to this. There are differences of opinion.

But what kind of concerns should we look at in deciding how long that should be, if there is a time limit?

Secretary NULAND. Again, I think we have been pretty clear here that a set date just will embolden our enemies.

Just to clarify one of the proposals that we have put on the table in this hearing and with staff is this idea of a Presidential certification that there is a continuing requirement. One way that you could work with this would be the right legislation that would lapse if the President did not certify. That would put this back in your hands and would create a sense of comity between the Executive and the Congress.

So, that that is one option that is available to you.

Mr. GREEN. I like that course of action.

Secretary NULAND. Yes. Uh-huh.

Mr. GREEN. Do you think a new counterterrorism AUMF should be global, or regional? I mean, I, I have my opinion, but I would be very interested to hear yours.

Secretary NULAND. It has got to be global, Congressman, because of the way, as Assistant Secretary Maier said, these groups are morphing and moving to more hospitable environments.

Mr. GREEN. So, we have got a lot of new organizations that have entered the fight. How do we word it so that we make sure any of these new entities that get new names are also included?

Secretary NULAND. We have talked about a number of mechanisms. As you know, we have not been shy about coming to you in open session or in classified session with new affiliated groups, et cetera. So, we would continue to do that.

You could do any of a number of things: a regular request to the Administration to re-up the list; regular reporting requirement; regular consultation; regular recertification. Any of those because, as you rightly point out, the groups are moving and morphing.

Mr. GREEN. Thank you.

My time is up. I yield.

Chairman McCAUL. The gentleman yields.

Ms. Jacobs is recognized.

Ms. JACOBS. Thank you, Mr. Chairman. And thank you to all of our witnesses for being here.

You know I represent San Diego, the biggest military community in the country. And, you know, my community has borne the cost of these decisions, or lack thereof, that Congress has not really

been making since I was in middle school, which was when we voted on this AUMF.

So, first I just wanted to followup on questions from Ranking Member Meeks and my colleague, Representative Phillips, on the Section 50 reporting.

Assistant Secretary Maier, will you commit to providing future Section 50 reporting by the statutory deadline?

Mr. MAIER. I will.

And just to hit that point, because it has come up a number of times, I am responsible for the late submission of that report. So, we have taken steps internally to ensure that we can meet that commitment, Congresswoman Jacobs.

Ms. JACOBS. Thank you. I appreciate that, especially since as you all are asking for a sunset and an exchange promising more transparency, it is just hard to believe that when the transparency we already mandate is not forthcoming.

And on that regard, last year in a hearing on the AUMF my colleague Mr. Castro asked why the Department of Defense had classified the list of countries in which the U.S. military had used force. And you responded that you would see if aspects of the classified report could be made public.

We have seen no real disclosure since then. So, can you commit to actually going back and taking that look and declassifying the list of groups, including affiliates that you considered to be covered by the 2001 AUMF?

Mr. MAIER. Yes, ma'am. And, actually, a number of those groups are already unclassified that we can speak openly to here.

In some cases we are careful about identifying countries for purposes of diplomatic and a host of other things. But I think the vast majority of the groups are known publicly, ma'am.

Ms. JACOBS. Great. Well, I will look forward to not having to ask you the same question in a year.

Moving on to discussion of associated or affiliated sources, I think that a key question for us in Congress and a key reason why it feels like the 2001 AUMF has gone so far beyond the original scope, you know, it was originally supposed to be about those people who perpetrated 9/11, which is why we went after Al Qaeda and the Taliban at the time, but some public reporting from what you said today we know that this AUMF has been used to justify force not only in Afghanistan, but in Iraq, Syria, Libya, Somalia, Mali, and Niger.

So, I want to talk about some hypothetical cases. I know you have said the standard is enter the fight alongside a named group co-belligerent and the intent. So, Ms. Krass, we did go through a couple hypothetical associated forces. And you can let me know with a yes or no answer if they would—if you would consider them covered.

So, first of all, if a group did not exist in 2001, could it still constitute an associated force or otherwise be covered by the 2001 AUMF?

Ms. KRASS. So, thank you for that question, Congresswoman Jacobs. And I apologize that I prefer not to engage in hypotheticals.

I think we can use as an example the designation of ISIS, which was—which is a group that stems from Al Qaeda in Iraq from

2003, so that is after the 2001 AUMF. But there were ties between its leader and Osama bin Laden before 9/11.

That group eventually split from Al Qaeda——

Ms. JACOBS. We are familiar with the history of ISIS. I would note there are a number of groups that did not exist in 2001 that are currently covered, Al-Shabaab, for instance, and did not have ties to Osama bin Laden prior to 2001.

And what if the group itself, this affiliated or associated group, if you want to use real examples you are welcome to, but if they do not have the ambition, intent, or capability to attack the U.S. homeland, as your own reporting that we just got this week says, most of the affiliated groups do not, would that be considered covered by the 2001 AUMF?

Ms. KRASS. And so, a group under the AUMF has to be one which, as Assistant Secretary Maier has explained, an organized armed group which has entered the fight alongside Al Qaeda or the Taliban, and is a co-belligerent——

Mr. JACOBS. I got that. But, but we know that in fact many of the groups that you all are counting do not actually have the intent to strike the United States, as per your own reporting.

Next, if their ends are primarily local, meaning their grievances are specific to their community, have nothing to do with the United States, and their aim is primarily attacks in the region, would that be covered?

The answer is yes. I will answer for you. I know you do not like hypotheticals. We have seen that in the case of the elements in the Sahel and Somalia.

Last, if the group is an affiliate of an affiliate, so ISIS is categorized because they were an affiliate, but now we are saying ISIS affiliates are also covered, would that be covered?

Ms. KRASS. So, again, to echo what Assistant Secretary Maier explained, we see ISIS as we do not look at ISIS as having associated forces itself. We see it as itself being a single organized group.

Ms. JACOBS. And I see that for some of the groups you are counting as affiliates. But I think, for instance, ISIS Mozambique it is very hard to say they are part of ISIS.

So, I will look forward to continuing this conversation. But I think it is clear that we have let these overly broad definitions make it so that we do not have any meaningful oversight over what you all are doing. And I think that just doing Al Qaeda and ISIS and not the affiliated forces specifically named is really problematic.

Thank you.

Chairman MCCAUL. The gentlelady yields.

The chair recognizes Mr. Huizenga.

Mr. HUIZENGA. Thank you, Mr. Chairman.

Right here I was actually a staffer when 9/11 happened. And I worked for a gentleman who had just been named to the Intel Committee, who actually ended up chairing the Intel Committee, Peter Hoekstra.

And I remember the robust debates, shall we call them, that surrounded what we were going to do as a country. And much like my friend the birthday boy, Mr. Meeks, had said, I do not think any-

body imagined that 22 years later we would be operating in the same manner.

And nor did—and I do not want to speak for him, I will speak for myself—but nor did we think that Congress would not have, at a minimum, periodic involvement in reviewing this. And that seems like where we are today, where we are asking, or you are asking for that not to be part of this.

And I would like to know, and probably it is going to be to you, Under Secretary, what does this Administration believe what Congress' role is in this in determining which groups are covered by an AUMF?

And I understand you do not like the timeline. And I understand the thinking and the reasoning why. But what is your take on us being involved in the who we are actually fighting?

Secretary NULAND. Congressman Huizenga, I think we would welcome a stronger partnership between the Executive and the Congress in the new legislation in terms of how we determine the groups and how we report the groups.

So, as we have said earlier in this hearing, there are many ways that we could create a mechanism where we would come to you on whatever basis you want, every 2 years, even longer, to specify more clearly the groups that we think are covered.

What I would say, though, as you know in the current circumstance we do some of this in the open, particularly with groups that we have already acted against, but we do need to maintain a classified ability with those groups—

Mr. HUIZENGA. OK.

Secretary NULAND [continuing]. With those groups that we may need to go on.

Mr. HUIZENGA. Real quickly.

Does the Administration oppose or support providing Congress with the opportunity to review counterterrorism-related deployments of troops?

Secretary NULAND. That is going to go to the scope of the—Yes.

Mr. MAIER. Yes. Congressman, I think we already do that. We provide regular updates to the Armed Services Committee on those exact things.

Mr. HUIZENGA. You had discussed, and my friend from Tennessee Congressman Green had thought he was intrigued by this, some type of certification by the President.

What I think maybe I would be more interested in is not just having a certification by the President, but a congressional review of said certification. Meaning Congress would have to approve that need for a certification.

And, now, that might be problematic with your date concerns. But I am not willing to give up the constitutional obligation and standing that we have on oversight and our involvement in what is going on.

So, I do not know, Mr. Chairman and Mr. Ranking Member, you know, if we can work through some of that type of language, I would like that to be a part of it.

My remaining minute and a half, I would like to know, moving to Afghanistan, has anyone at the Department of State or the De-

partment of Defense had conversations with Taliban leaders regarding its lack of inclusion in a future AUMF?

Secretary NULAND. I do not believe so, sir. Our conversations with the Taliban are extremely constrained and go primarily to—

Mr. HUIZENGA. So, I am not talking on necessarily official channels.

Secretary NULAND. Yes.

Mr. HUIZENGA. I mean, has there been any of that conversation?

Secretary NULAND. To my knowledge, no.

Mr. HUIZENGA. OK. Mr. Maier?

Mr. MAIER. No, I am not aware of any conversations of that ilk either.

Mr. HUIZENGA. OK. Does the Administration oppose listing the Taliban on an AUMF? Or is there a fear that somehow that would be angering them or set off the relationship?

Secretary NULAND. Congressman, we have been pretty clear that we do think they are making steady progress against ISIS-K. We can talk about that in a separate session.

And we do think that Al Qaeda is greatly attrited at the current moment.

Mr. HUIZENGA. My question is does the Administration oppose listing the Taliban on the AUMF?

Mr. MAIER. We do not think it is necessary.

Mr. HUIZENGA. OK.

Mr. MAIER. We think we have the authorities to act, including what we showed with Zawahiri.

Mr. HUIZENGA. OK. Well, I will finish on this with my friend Andy Barr's concerns. He has people that were at HKIA. I actually have a constituent who was injured at Abbey Gate. I have in past referred to him as Jose. He has not wanted to get his name out publicly. And I can tell you that he and his family, as he has been recovering from this, they do not feel confident that the Taliban has made the proper, the proper progress that is being claimed here. And that is going to be an ongoing concern for us, and should be.

And with that, my time is up.

Chairman McCAUL. The gentleman yields.

Raises an interesting point. If we got a Presidential certification and Congress either approves and moves forward, if we disapprove, that could trigger the sunset clause. That may be a possible solution.

And I know, yes, if you would get back to me on that particular mechanism, that would be interesting.

Secretary NULAND. In fact, I was just passed a note from folks who have been working on this with your staff, that is another way to go.

Chairman McCAUL. Gotcha.

Ms. Dean is recognized.

Ms. DEAN. I thank you, Chairman McCaul and Ranking Member Meeks, for holding this important hearing. I thank you all of you, our witnesses, for testifying today, but more importantly for your work on behalf of our Nation.

I want to do a little look back.

So, I understand, I was not here when the 2001 AUMF was signed, was passed, so a little history and then looking forward.

One of the things I am interested in is, maybe legal counsel can tell me, how was the 2001 AUMF, how was it so broadly interpreted as to allow for a full occupation and nation building attempts in Afghanistan? And I say that with great respect for what our troops did there. But how do we, what do we learn from that broad use of the 2001 AUMF?

And how do we structure a future AUMF to preclude such activities unless congressionally authorized?

Ms. KRASS. Maybe I will start that and then turn to my colleague Assistant Secretary Maier.

The language of the 2001 AUMF, as with other similar AUMFs, is broad in that it authorized the President to use all necessary and appropriate force to counter the threat determined to be a threat from Al Qaeda, and the Taliban, and associated forces. And so, various presidents exercised their authority consistent with that authorization to take the actions that they took in Afghanistan.

Ms. DEAN. Where down that road should we have constricted this? If the language was so broad, if we craft one better how do we constrict it so that does not go forward without congressional approval?

Ms. KRASS. The one means to ensure regular interactions with—between the executive branch and Congress are reporting mechanisms and consultation requirements.

Ms. DEAN. Did you want to add anything historically?

Mr. MAIER. The only thing I would say, Congresswoman, is one of the things that has evolved over time is a lot of statutory requirements to update the Congress on ongoing operations. And I think we have used that as a mechanism to both inform, but at some level continue to move forward understanding that there was not legislation that prevented us from doing that, ma'am.

Ms. DEAN. OK. And looking forward, I know a lot of us have talked about sunset, or a lot of people here.

And I apologize, we are in and out of this room because of conflicts, not because we do not know this is terribly important. So, if I, if I am repeating something, let me know.

Secretary, Assistant Secretary Maier, you testified that the sunset, a sunset provision would “add strategic and operational risks to our counterterrorism efforts and potentially undermine our international partnerships.”

In a little more plain English, what does that mean?

Mr. MAIER. I think in as plain an English as I can give you, Congresswoman, it means that if our partners start to see us backing away from our ongoing commitment, we are the global leader, they will do the same.

And one of the things that we have had as a benefit, especially in the defeat ISIS coalition, is a lot of small countries looking around seeing each other beginning to be involved and, perhaps, in some cases, challenging political mandates in their own systems. But they see the United States as the leader and the sustainable leader for that.

Secretary NULAND. And just to add to that, might be potential for the terrorists to wait us out. If they know in 3 years the author-

ity has expired, they are going to go to ground and get ready for that moment in 3 years, and then the detention authorities as well.

Ms. DEAN. I hear so many echoes of what our concerns are if we show weakening support for Ukraine. If others around the world think they can wait us out and just grind down this war, that level of uncertainty is globally so disastrous. We must stand with the folks in Ukraine.

Ambassador, you talked about this sort of hybrid approach, which would be not quite a sense that but a lapse unless Presidential certification takes place. What does Presidential certification look like, just to build on what you were all talking about?

Secretary NULAND. So, obviously, this is something that we need to discuss and work through. But a number of ideas here.

At regular intervals that you all would set in the law, 3 years, 5 years, 10 years, the President would have to come forward and say, I believe the Nation still needs these authorities. It could either be all the authorities or some of the authorities, as necessary.

There could be any number of, you know, you all would have to disapprove that if you did not want to grant them. That would be one way to go so that there would be a regular conversation, and you would have to engage as to whether you supported the certification or not. That's one idea and the one that the chairman just recently grabbed onto, so.

Ms. DEAN. Again I thank you all for your work. And thank you, Mr. Chairman.

I yield back.

Chairman MCCAUL. The gentlelady yields.

Mr. Hill is recognized.

Mr. HILL. Thank you, Chairman. Appreciate you holding this important hearing.

I was saying to my colleagues it is nice to be in a hearing room today working on something extremely important to the country. And so, thank you for calling this hearing.

And a happy birthday to Greg Meeks, the most energetic 70-year-old guy from Queens that I know personally, who knew Cassius Clay. You cannot beat that.

So, this has been a good discussion, but I want to explore, continue to explore this discussion. Thank the panel for being here.

Ms. Krass, Mr. Maier, you said in your testimony that you do not believe it is necessary to add or align militia groups to a new or upgraded AUMF, partly because—and this is a point I am not sure has been made—the 2022 National Security Strategy prioritizes China and Russia as the primary strategic threats to the U.S.

Is that really the reason why you do not suggest the Shia militia groups be included, or would you say it is the principal reason they should be included, Mr. Maier?

Mr. MAIER. Yes, Congressman, I would not say that.

I think we say in the National Defense Strategy that China is our pacing challenge, and Russia is our acute challenge. But often forgotten is the fact that we also identify Iran, North Korea, and violent extremist organizations as also being priorities for us, sir.

Mr. HILL. Yes. But when you think about that, who is more likely to conduct an attack inside the United States or against U.S.

forces on just an any day basis, one of those terror forces, or a Shia militia group, or the Russian Federation?

Hypothetical question. I know the under secretary will not answer it, but I know the assistant secretary might. So, I am letting you take a shot at that.

Secretary NULAND. I am just going to say that it is our job to ensure that none of us, none of them take a shot.

Mr. HILL. Correct. I agree. I agree.

But it is a difference between, you know, what we are dealing with in great power rivalry versus people who have a much lower cost potential of taking a shot at the United States or U.S. interests. And we have seen that consistently since the 1950's most, you know, predominantly I think about every day since it is October, October to mean means 1983, which means the loss of our Marines in Beirut.

And so, I want to get this right. So, the Shia militia groups, who besides the Shia militia groups are active in Syria, in Assad's Syria, aiding the Assad regime? Who on your list?

Mr. MAIER. Sir, I think some of that goes into a session we cannot talk to.

Mr. HILL. But are the Shia militia active and open-sourced, are they active in backing the Assad regime?

Mr. MAIER. Iran definitely used proxies to project its power in Syria, sir, yes.

Mr. HILL. And they have attacked Americans operating in Syria?

Mr. MAIER. They have.

Mr. HILL. And they have attacked other allied partners with United States in Syria?

Mr. MAIER. They have.

Mr. HILL. What is your view of the risk of a Shia militia becoming more active and more ingratiated, I would say, and having legal standing now in the country of Iraq? Is that a risk to expanded Shia militia activities against forces connected with the United States?

Secretary NULAND. I am going to in this open session just say that we are working intensively with the Iraqi Government and with our security partnership that we have there to ensure that Iraq cannot be used as a projection point for Iranian militia. I will just leave it there.

And then just to remind of the strike that the President authorized in Syria in March which, you know, was primarily designed to restore deterrence.

Mr. HILL. And in Afghanistan, when was the last time we conducted a strike in Afghanistan related to your authorities under the AUMF?

Secretary NULAND. The Zawahiri strike in 2022.

Mr. HILL. That was in July 2022?

Secretary NULAND. Correct.

Mr. HILL. Has there not been any rationale, do you think, for a strike since then against the—in the country of Afghanistan?

Secretary NULAND. Congressman Hill, I think it would be useful to get you a briefing in another session with regard to other work that has been ongoing in Afghanistan, if that makes sense.

Mr. HILL. That is good. Well, I have had those briefings, but thank you.

Ms. Krass, help me understand the legal limitations of using the President's Article II authority that you referenced in your testimony versus an AUMF from Congress?

Ms. KRASS. So, the President's Article II power is constrained in two ways:

One, he has to determine that the use of force serves an important national interest, and;

Two, that that use of force and any response that is likely from whomever the force is being used against would not escalate into war in the constitutional sense in terms of its nature, scope, or duration.

Mr. HILL. Good.

Thank you, Mr. Chairman. I yield back.

Chairman MCCAUL. The gentleman yields.

The chair recognizes Mr. Stanton.

Mr. STANTON. Thank you very much, Chairman.

Last year at hearing on the 2001 AUMF Administration officials opposed adding a sunset provision to the 2001 AUMF, or including a sunset provision in any replacement legislation.

As an alternative, they proposed conducting periodic reviews with Congress of the list of so-called "associated forces." And that has been covered, but I want to cover it a little bit more.

This is a question for Assistant Secretary Maier.

Given that the executive branch has habitually delayed complying with the war powers reporting requirements, how can Congress meaningfully participate in a periodic review of the AUMF?

Mr. MAIER. So, Congressman, I think some of the ways that we have highlighted that would go above and beyond a reporting requirement such as the Presidential certification, and more active engagement as opposed to simply a report, would be some options to, if you would, upgrade some, perhaps, some of that engagement, sir.

Mr. STANTON. And however Congress would participate, obviously it has to be full compliance with the re—with full compliance with the reporting requirements.

If Congress wanted to delist a group, how could Congress ensure that its decisions during a periodic review to delist a group would be legally binding?

Secretary NULAND. As we have talked about, one option could be that the President would need to certify to you that he needs the authorities to continue, or he needs them to continue over some or all of the statute. And then you could approve that or respond to that by rejecting some aspects of the Presidential request. That is another way to go.

Mr. STANTON. Your thought is that it would not require an actual act of Congress to pass a new bill subject to Presidential veto to delist a group?

Secretary NULAND. It might.

I am going to stop pretending to be a lawyer. I am not the effective lawyer

Mr. STANTON. Fair enough.

It is an interesting question and, you know, one that would depend on, on the wording, obviously, and what the procedure is. I mean, obviously we are mindful of the bicameralism and the presentment requirements.

But I think the idea, however, is to engage with Congress, you know, certification to be used as a mechanism to say, yes, there is this continuing mean, and then to build in procedures for Congress to express its view, whether by passing a law or by traditional oversight and reporting.

You know, obviously Congress always has the ability to pass a law. But I think what we are communicating is we are open to structuring as many ways as possible and is legal to, to increase engagement with Congress. Because I think as has been said previously, when Congress and the President are on the same page it sends the most powerful signal.

Ms. Krass, according to the Administration the 2001 AUMF allows hostilities with Al Qaeda and the Taliban's associated forces. But we know the Department of Defense has used the 2001 AUMF to pursue the Islamic State of Libya, the Islamic State Sinai Province, the Islamic State Yemen Province, among others.

These groups are affiliated devices, not Al Qaeda, and many of them are actually in conflict with regional Al Qaeda affiliates.

How far removed can a "associated force" be from Al Qaeda and the Taliban under the 2001 AUMF?

Ms. KRASS. Thank you, Congressman.

The Administration, the Obama Administration in 2014 determined that ISIS qualified as an associated force of Al Qaeda because ISIS is a successor to Al Qaeda in Iraq. And its leadership was closely aligned with Osama bin Laden and Al Qaeda and to further allegiance to Al Qaeda. They subsequently split off. But we cannot allow our adversaries in the terrorist group to determine whether they are covered by the AUMF by what they name themselves and who they, who they align with.

Mr. STANTON. I appreciate that.

Mr. Chairman, I yield back.

Chairman MCCAUL. The gentleman yields.

Mr. Davidson is recognized.

Mr. DAVIDSON. Thank you, Chairman.

I echo the sentiments of many colleagues. This is an incredibly important hearing and, frankly, one that is long overdue, but I am grateful to have it today.

Serving in the 75th Ranger Regiment, one of my soldiers who had been in combat in Mogadishu, Somalia, asked me whether he had done the right thing in a tough situation. He did. But he wanted my opinion on why America had asked such incredible things of him and then pulled out.

If we weren't committed to the victory, why did we even go? And if we were committed to victory, what did we actually achieve?

In the wake of 9/11 we saw President Bush fly a, quote, "Mission Accomplished" banner on the deck of a United States aircraft carrier. Everyone in the world knew that was a false claim and called him out on it. Few knew, but some suspected, that an endless war was lying ahead.

The Constitution reserves the declaration of war for Congress for a reason. When America is at war its people must support the cause. Even when an all volunteer force wages the wars, the American people are credited or blamed for victory or defeat and left with the tab.

It is vitally important that this body, this Congress, closest to the people, make the commitments to put America at war. Any other standard risks empowering a permanent police State. And for that reason, every single Congress must actively make that commitment. It is not an open checkbook for an unlimited duration. That is not acceptable and it cannot continue.

Now, to be clear, terrorists, transnational criminal organizations, and nation States who are actively preparing to harm the United States, Americans, or our allies should know that there will be no sanctuary for them anywhere. And in my view, we should address them all in an effective AUMF.

It seems the Administration wants to selectively apply that principle both in identifying and targeting enemies of our country and in whether to name them in an AUMF, whether in public or in a classified setting.

And they want to claim Article II has nearly unlimited and uncheckable application in nearly every situation, whether that is intelligence collection or active combat. To reclaim Article I constitutional authority on this matter, Congress must end the status quo with a focused AUMF and, separately, with reforms to the Patriot Act, and termination of Executive Order 12333.

Mr. Visek, how is an authorization for use of military force different than a declaration of war?

Mr. VISEK. Well, I think the authorization to use military force, I think it serves sort of three important functions. And here what we are talking about is non-State actors. I think traditionally they cannot give a declaration of war—

Mr. DAVIDSON. Focused on a nation State.

Mr. VISEK [continuing]. Focused on nation States.

But I think they both serve the same purpose in that they are authorizing sort of prolonged military activities, you know, where there is a continuing threat to the United States and I think, as I said, or U.S. interests.

I think previously, in a response to other questions, both Ms. Krass and I have noted that Article II authorizes activities short of war, and we tend to use in sort of episodic defensive response mode.

Mr. DAVIDSON. Right. Reactive.

So, how important is authorization for our actions on the battlefield or detention of enemy combatants?

Mr. VISEK. Well, I think, as my DoD colleagues and Acting Secretary, Deputy Secretary Nuland said, I think it is fairly important to have continuity in our authorities. And so, an AUMF, by virtue of the fact that it is sort of an authority that is enduring, if you will, until it is, obviously, modified or adjusted, is critical to maintaining authorities for detention, and also for, you know, operational purposes, and also the non-legal but the very, probably, equally important policy aspects of showing a commitment to our

allies, and also telling our adversaries that we are in it for the long haul.

Mr. DAVIDSON. Just because I will not have time for an answer, I would ask that we get a written response to this question.

In the past, AUMFs have led to large and enduring presence of boots on the ground, some would say occupation. In the Middle East it has led to regime change wars against nation States and subsequent, largely unproductive, nation building efforts.

What is considered an occupation? And what are the limiting factors, whether it is size, location, and duration?

And I think we need to address that in the AUMF. So, your feedback would be greatly helpful.

And I yield back.

Chairman McCAUL. The gentleman yields.

The chair recognizes Mr. Jackson.

Mr. JACKSON OF ILLINOIS. Thank you, Chairman.

And happy birthday to our Ranking Member Meeks, and many more.

Thank you to Mr. Visek. Can you explain the process whereby the Administration determines which and what entities qualify as associate forces, and who is at the table to make this decision?

Mr. VISEK. Well, I think determinations are made sort of at the most senior levels of the U.S. Government. It is an interagency process after careful evaluation of the intelligence.

The associated forces, it is a two-part test. And I think, first, the entity has to be an organized armed group that has entered the fight alongside Al Qaeda. Previously it was also the Taliban, but I think the focus here is really Al Qaeda.

Second, it is not just that they have, you know, entered a fight alongside Al Qaeda, but the group must be a co-belligerent with Al Qaeda in hostilities against the United States or our coalition partners.

And I think this has been an important sort of test for us because, as has been noted, groups can splinter. They can morph. They can rebrand. And we have to have some flexibility to be able to adjust.

Now, in the 2001 AUMF expand the associated forces test. I think that would be a familiar model and one that has been recognized by, you know, Congress, and the Judiciary and, obviously, the executive branch as, you know, a model that could be used going forward.

We would, of course, be open to, you know, other ways to provide flexibility in terms of—

Mr. JACKSON OF ILLINOIS. If I could ask a followup question on that.

How do you determine the scope, the nature, duration of which we will have these engagements going forward?

Mr. VISEK. Well, I think at this point I'd like to turn to Assistant Secretary Christopher Maier, because I think this is a predictive exercise that really involves sort of an intelligence in military assessments as well as sort of the expertise of policy officials at the State Department.

Mr. MAIER. So, Congressman, I think it's a multi-pronged consideration. So, when we look at what is going to be necessary in the context of military force, we're really applying a series of tests.

But I think in most—most simply and in the plainest English, we're trying to mitigate the threat within the means that we have.

So, that is not always exclusively military force, of course. We use a variety of other instruments. But I think from a Department of Defense perspective, we're looking to do this as effectively and efficiently as possible.

Mr. JACKSON OF ILLINOIS. In light of the Administration withdrawing from Afghanistan, what is the process, are there any people or any groups that have come off of our watch list as a result of the shift in the policy in Afghanistan?

Mr. MAIER. Congressman, we have not taken anybody off the AUMF Associated Forces List. As too watch-listing, if that's what you're also getting at, I think that's probably better handled in a different session, sir.

Mr. JACKSON OF ILLINOIS. Thank you. And probably the last question is, only a handful of members were able to sign this AUMF and most of them are gone now. And this is a key responsibility, a core responsibility for the—why we got elected to be a part of this.

What would you say, recommend on, that could give us some comfort on why we're here and what we can do to help better assist in your service?

Secretary NULAND. Well, Congressman Jackson, I think that's exactly why we're here. That we would welcome a re-upping of appropriate authorities through a new AUMF. And discussing what needs to be there together.

And that's, I think, why we've been going through all of this today. So, because we want members like you to be part of the next chapter of this fight against terror.

Mr. JACKSON OF ILLINOIS. Thank you, Victoria. I yield back my time. Thank you.

Chairman MCCAUL. The gentleman yields and Mr. Baird is recognized.

Mr. BAIRD. Thank you, Mr. Chairman. And thank you and the Ranking Member for holding this important discussion. And happy birthday, Ranking Member. We appreciate—also, we appreciate all of our witnesses being here today.

But my area focuses on terrorism is exploding in Africa, Sub-Saharan Africa accounted for 60 percent of all terrorism deaths last year. AFRICOM describes Al-Shabaab as al-Qaeda's largest and best financed affiliate with annual revenues around \$150 million.

So, despite robust U.S. and African Union missions to degrade the group, DoD reports that Al-Shabaab poses a high terrorist threat to the U.S. interest in Somalia and even a weak to moderate threat to the U.S. homeland.

So, is it important that Al-Shabaab be covered by any new AUMF?

Secretary NULAND. Absolutely.

Mr. BAIRD. Took care of that question, did not it. So, anyway. But under the 2001 AUMF, Al-Shabaab has been targeted as an associated force of al-Qaeda.

And in a new AUMF, should Al-Shabaab be listed as a targetable group rather than just an affiliated or associated force of al-Qaeda? And why or why not?

Secretary NULAND. So, I'm going to let Assistant Secretary Maier elaborate. But Al-Shabaab started as an affiliate of al-Qaeda. It still works with al-Qaeda.

That would not preclude them being listed separately if that's what the Congress wanted to do. But under the current AUMF that's how we think about them.

Mr. MAIER. Really Congressman, nothing to add other than the fact that the reason we would keep al-Qaeda and Al-Shabaab together is because Al-Shabaab's largely speaking on behalf of al-Qaeda and using their ideology to really be the impetus for why they would threaten Americans.

So, there's a lineage there, sir.

Mr. BAIRD. Anyone else?

Thank you. I yield back.

Chairman MCCAUL. The gentleman yields. Ms. Kamlager-Dove is recognized.

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair and Ranking Member Meeks. Happy birthday to you as well.

I want to thank the witnesses who are here. I know it is rare to have you here. And I have questions. But before I get to them, I do just kind of what to reconnect us to reality for a moment.

We're on the verge of a congressional shutdown. And I hear members demanding a more aggressive stance against malign actors and posturing a more defiant defense of democracy around the globe.

But when Congress shuts down the government, half of the Pentagon's civilian employees will be furloughed. In the event of a national defense crisis, new contracts will not be awarded.

Payments to defense contractors would be delayed. Foreign aid programs supporting our allies would dry up. Members of the military would be expected to maintain operations and posts without pay. State Department employees and consular operations would only continue for as long as there is funding.

And in fact later on today, we'll be voting on amendments that would compromise and cut critical programs that support our national security and diplomacy. So, I do not want us to compartmentalize reality here.

But now for my questions and so grateful that the member before me asked about Al-Shabaab, because Africa is now the epicenter of international terrorism, with total terrorism related fatalities rising by nearly 50 percent since 1921 to 1922.

And this is while the United States has had a counter-terrorism presence on the continent for over 15 years. The international community has seen the destabilizing impacts of this violence and the flawed counter-terrorism policies meant to address it.

So, Assistant Secretary Maier, U.S. forces have been engaged in Somalia against Al-Shabaab since 2017. Yet, aside from some momentum in 2012, we have not seen Somali and international forces decisively turn the tide against Al-Shabaab.

So, looking back over the past 15 years, why do you believe we have not been more successful in Somalia?

An, please cover our shortcomings in the U.S. Government response as well as any structural obstacles.

Mr. MAIER. So, Congresswoman, I think this is a multi-pronged question and a multi-pronged answer. I'll try to be very brief in saying that our ability to operate unilaterally, the U.S. Government only can deal with some of this problem.

Many of the conditions in Somalia are a function of poor governance. And until really recently, and by that I mean, in the last year or so, we have not seen the Somali government really take the fight to Al-Shabaab the way we'd like.

I think with President Hassan Sheikh, we've seen that. So, we have a partner there that is much stronger.

And I'd be remiss if I did not mention that the decision at the end of the last Administration to pull all U.S. forces out of Somalia and then have our forces commuting to work in a less than ideal circumstance certainly had impact operationally on our ability to get after the Al-Shabaab threats.

Ms. KAMLAGER-DOVE. OK. Thank you for that. And following up on that question, Undersecretary Nuland, even if we're making significant gains, many experts have advised that sustaining those over the long term would require restabilization and rehabilitation efforts, a local security presence, addressing clan divisions, and standing up government services. Yet, we sort of mainly allocated military resources.

So, given this discrepancy, what is your view of our end goal in Somalia? And what are the means that we need to achieve it?

Secretary NULAND. First Congresswoman Kamlager-Dove, thank you on behalf of the men and women of the State Department and DoD for noting how deleterious a shutdown would be for government operations and all that we do around the world.

Just to say in Somalia and to echo what Assistant Secretary Maier said, we now have a government in Somalia that's taking the fight to Al-Shabaab. We work with them in every way in terms of mentoring, going along with them, et cetera.

But we are also providing significant support to them on the economic side where we can, on the humanitarian side where we can, thanks to the generosity of the Congress in helping to rehabilitate communities when they are cleared of Al-Shabaab.

It is difficult. But the Somalia we seek is obviously one that is democratic, at peace and free of terror.

Ms. KAMLAGER-DOVE. Thank you. And I yield back, Mr. Chair.

Chairman MCCAUL. The lady yields. The Chair recognizes Mr. Waltz.

Mr. WALTZ. Thank you, Mr. Chair. I actually had some other things I wanted to talk about today. But, Mr. Chairman, it was just brought to my attention, Ms. Nuland, you said earlier in this hearing, I quote, I do not believe we've seen consis—a consistent pattern of those Afghans who worked and supported our efforts.

And this was in response to a question about SIVs and by extension commandos and others who stood and fought with us. I do not believe we've seen a consistent pattern of those Afghans who worked and supported our efforts in Afghanistan being murdered by the Taliban, end quote from earlier in this hearing.

Ms. Nuland, I'll be candid with you, that is one of the most ignorant and shameful statements I have heard in this Congress. But let me just take a moment and tell you what's happening in the real world outside of the cubicles and the bureaucracy in the State Department.

One of the SIVs I successfully got out, his cousin was just drug through his village behind a Taliban truck to death, to send a message about ever working with Americans again.

His brother was beaten to an inch of his life just long enough so that he could call the SIV that's now in the United States and tell him what happened before they killed him.

I just talked to another SIV that we got out, the Taliban kidnaped his 10 year old nephew, had his nephew call him here and say, you come back to face Taliban justice, or the 10-year old boy will.

I can keep going. I just had an Uber driver last night that said the Taliban just visited his house for the fifth time looking for him, and have now kidnapped one of his relatives until he comes out. He's put the rest of his family in hiding.

I can put you in touch with veterans' groups. One gentleman I just spoke with exhausted his entire savings and his kid's 529 plan, still having people in hiding 2 years later, doing your job.

I can go on and on. But, Mr. Chairman, for the record, I'd like to enter in just three from a quick Google search, Human Rights Watch, No End to Taliban Revenge Killings in Afghanistan. I'd like to enter that for the record. Dated August 2023.

[The Information follows:]



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No End to Taliban Revenge Killings in Afghanistan

New UN Report Documents Recent Extrajudicial Executions, Enforced Disappearances



Patricia Gossman
Associate Asia Director



Taliban fighters patrol in Kabul, Afghanistan, August 19, 2021. © 2021 Rahmat Gul/AP Photo

A new [United Nations report](#) on extrajudicial killings in Afghanistan under the Taliban makes for very grim reading. The report confirms fears about the Taliban's treatment of the former government's security force personnel.

10/12/23, 4:54 PM

No End to Taliban Revenge Killings in Afghanistan | Human Rights Watch

After the Taliban took control of Afghanistan in August 2021, its forces carried out revenge killings and enforced disappearances of former police, army, and intelligence officers. Two years later, such grave violations have not stopped.

The United Nations Assistance Mission in Afghanistan (UNAMA) found that the majority of killings and disappearances of former Afghan National Defense and Security Forces (ANDSF) took place in the four months immediately following the Taliban takeover. During that period, UNAMA documented 148 extrajudicial killings. UNAMA has documented another 70 extrajudicial killings taking place between January 1 and December 31, 2022, and has continued to document such incidents through 2023. On May 17, Taliban security personnel shot and killed a former Afghan army soldier in Takhar province.

The Taliban have also arbitrarily detained former ANDSF members, providing no basis for their detention and frequently holding them incommunicado. Their families often say they have been given no information as to their whereabouts, or why they are being held. Such cases constitute enforced disappearance under international law, and follow a pattern [Human Rights Watch has documented](#). UNAMA cites a recent case in which the family of a former soldier visited numerous detention facilities in Paktya province trying to locate him. After three months, the Taliban returned his body to them.

The UNAMA report also highlights the case of [Alia Azizi](#), the former head of the Women's Prison in Herat, who disappeared in October 2021 after Taliban authorities told her to return to her job, and remains missing.

According to the report, Taliban officials have attempted to dismiss these killings and disappearances as based on "personal enmity or revenge" and to downplay the numbers. While they claim to have held their personnel accountable for violations, they have not made public the results of any investigations or punishments.

Upon taking power, the Taliban leadership [promised amnesty](#) to former security force members, but this has not stopped local commanders from carrying out revenge attacks. The burden is on the Taliban leadership to prevent further killings, hold those responsible to account, and compensate the victims' families.

10/12/23, 4:54 PM

No End to Taliban Revenge Killings in Afghanistan | Human Rights Watch



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3/5

Chairman MCCAUL. Without objection, so ordered.

Mr. WALTZ. Amnesty International, at least 237 extra judicial executions from the Taliban takeover until June of last year.

[The Information follows:]



Amnesty International takes no position on issues of sovereignty or territorial disputes. Borders on this map are based on UN Geospatial data.

[← Back to Afghanistan](#)

AFGHANISTAN 2022

Restrictions on women's rights, freedom of the media and freedom of expression increased exponentially. Institutions designed to support human rights were severely limited or shut down completely. Peaceful protesters faced arbitrary arrests, torture and enforced disappearance. The Taliban conducted extrajudicial executions, arbitrary arrests, torture and unlawful detention of perceived opponents with impunity, creating an atmosphere of fear. Extreme poverty increased, exacerbated by drought and other natural disasters. Public executions and floggings were used as punishment for crimes such as murder, theft, "illegitimate" relationships or violating social norms. Women's rights continued to be attacked, and women's participation in public life was severely

limited. Afghanistan was the only country in the world where girls were banned from attending secondary school. Almost all institutions set up to address gender-based violence under the former government were shut down by the Taliban.

Background

Already a poor country, Afghanistan plunged deeper into poverty due to its international isolation and the economic upheaval brought on by the Taliban takeover in 2021. According to the UN Office for the Coordination of Humanitarian Affairs, 97% of Afghans were living in poverty, up from 47% in 2020. The lack of social protections led families to resort to measures including child marriage and the selling of organs. The level of humanitarian assistance did not meet the population's needs. The economy continued to be seriously hampered by the freezing of Afghan foreign reserves and the cutting of development assistance, steps taken by the international community following the Taliban takeover. The aid received by Afghanistan in 2022 was mostly humanitarian assistance, aimed at preventing starvation, but not contributing to other social needs. As a result, access to healthcare, employment and education continued to suffer. The exodus of doctors, engineers, lawyers, teachers and government officials left those sectors severely under-resourced.

The increasing humanitarian crisis was made worse by drought, flash flooding, earthquakes and other natural disasters, some exacerbated by climate change.

The Taliban Supreme Leader ordered the Taliban judges to impose sharia law – Islamic law – in November, and thereafter public executions and floggings began.

Extrajudicial executions

Under the Taliban, extrajudicial executions of people associated with the former government, members of armed groups such as the National Resistance Front (NRF), Islamic State of Khorasan Province (IS-KP) and those allegedly not following the Taliban's rules appeared to be widespread and systematic. This included Afghans associated with the former government or former security forces. The UN Assistance Mission in Afghanistan (UNAMA) recorded at least 237 extrajudicial executions between the Taliban takeover on 15 August 2021 and 15 June 2022. In December, the

UN reported at least another 69 extrajudicial killings primarily of NRF members, 48 of which had occurred between 12 and 14 September in Panjshir province.

In one incident in Ghor province on 26 June, the Taliban attacked the home of a man associated with the former government, killing six Shia Hazaras: four men, a woman and a girl. Three of the men killed were members of the former anti-Taliban groups known as the People's Uprising. Following the extrajudicial killings the Taliban claimed that they were rebels, despite the fact that all those killed were civilians. In September, fresh videos and pictures of extrajudicial killings by the Taliban of people associated with the NRF in Panjshir province appeared on social media. The attacks clearly constituted a war crime. The Taliban Ministry of Defence announced an investigation into the incident, but no findings were made public. Media reported that civilians in the area were evicted and their homes taken over to be used as police and military installations. The Taliban authorities also tortured to death civilians in Panjshir province, according to media reports. On 6 September the UN Special Rapporteur on the situation in Afghanistan reported on executions of captured fighters in Balkhab district of Sar-i-Pul Province.

Impunity prevailed for such crimes under the Taliban. There were no proper or transparent investigations into extrajudicial executions or other gross human rights violations. Taliban officials continued to deny that such violations had occurred and rejected the findings of NGOs including Amnesty International.

Death penalty, torture, and cruel, inhuman or degrading punishment

The Taliban began publicly executing and flogging people for crimes such as murder, theft, "illegitimate" relationships or violations of social norms. Between 18 November and 16 December, more than 100 people were publicly flogged in stadiums in several provinces, according to UN human rights experts.

In December, the Taliban authorities carried out their first public execution in Farah province in the presence of senior Taliban officials including the deputy prime minister, ministers and the chief justice.

Freedom of expression, association and assembly

The space for free media shrank drastically as the Taliban created an increasingly intimidating environment, forcing many media outlets to close. Journalists faced growing restrictions including arbitrary arrest, unlawful detentions and torture in response to reporting that criticized the Taliban, leading many to self-censor. Journalists were beaten and faced other forms of torture while detained. Many journalists fled the country. Women television reporters were forced to almost completely cover their faces.

The Afghanistan Independent Human Rights Commission (AIHRC), the national human rights institution, remained closed, and the space for civil society organizations to document and report on human rights shrank significantly. Independent human rights groups were unable to work freely. The Taliban arrested and unlawfully detained those who criticized the Taliban on social media, particularly Facebook.

The Taliban dismantled any space for peaceful assembly, demonstration or gathering. Taliban police used excessive and unnecessary force against demonstrators, and peaceful protesters were arbitrary arrested, detained, tortured and forcibly disappeared. Detained protesters faced physical and psychological torture. Family members prevented female relatives from protesting out of fear of repercussions, further shrinking the space for freedom of assembly.

Women's and girls' rights

The Taliban shut down the Ministry of Women's Affairs (MoWA) and replaced it with the Ministry for the Propagation of Virtue and Prevention of Vice, which issued restrictive and abusive decrees on women's and girls' rights. Women who protested against these restrictions were met with unlawful detention and violence.

Girls remained barred from attending secondary school, and from December, from tertiary education. Previously, women attending universities were required to learn in gender-segregated classrooms wearing head-to-toe coverings, among other restrictions. They faced difficulties registering for classes and the national university entrance exam and, in some instances, were denied entrance to university buildings, making higher education almost inaccessible. Women were also barred from studying certain subjects. By the end of the year, women and girls were only permitted to attend primary schools.

Women and girls were increasingly prevented from freely accessing other public spaces through various measures. The Taliban imposed a dress code, required women to have a chaperone (*mahram*) to accompany them in public, and banned women and girls from public parks. In August, the media reported that 60 women university students were denied the right to leave Afghanistan because they did not have a *mahram*. These rules were arbitrarily and randomly enforced and many women chose not to travel alone as a result.

The Taliban announced that male relatives would be responsible for any violations of the restrictions by women and girls in their families. This led to family members restricting the rights of female relatives out of fear of reprisals by the Taliban authorities. The Taliban cracked down on women who protested against these restrictions publicly or on social media, including through beatings, arrests, unlawful detention and arrests of family members. Some of the women arrested, including those fleeing abuses, were charged with a vague and ambiguous “crime” of “moral corruption”. However, following the Taliban takeover the applicability of previously existing laws remained mostly unclear as the Taliban publicly enforced their narrow and restrictive understanding of the sharia laws in the country. While protests continued throughout the year, they were increasingly met with resistance from Taliban police who blocked the way of protesters and arrested journalists attempting to cover the protests.

The dismantling of former government structures, including the MoWA and the AIHRC, and the conversion of the judicial system into the religious-based sharia system, reduced the protections previously available to women and girls. This led to an increase in reports of domestic violence and forced marriages. There was no reliable mechanism to which women victims of domestic violence could turn. Courts and prosecution units that were previously responsible for investigating and adjudicating cases of gender-based violence remained shut. The Taliban authorities and community-level dispute resolution mechanisms both punished women for reporting domestic violence.

The Taliban additionally barred women and girls from working with NGOs in December. This and other Taliban restrictions on women's rights to work outside the home hugely affected women's livelihoods – in particular households where they are the sole breadwinners – at a time of increasing national food insecurity.

Unlawful attacks and killings

Between August 2021 and June 2022, UNAMA recorded 2,106 civilian casualties. Many were people killed by the IS-KP, which continued to carry out systematic and targeted attacks on minority ethnic and religious groups, including by bombing religious and educational centres and attacking public transportation taken by these groups. Such instances included an attack on a Sikh temple in the capital, Kabul, on 18 June and the bombing of an education centre in a primarily Hazara neighbourhood on 30 September. The latter killed at least 52 teenagers, mostly girls. The Taliban authorities failed to investigate these attacks or take adequate steps to protect minorities. Instead, in some instances, the Taliban removed existing security measures set up under the former government to protect these minority groups. This included removing guards protecting sites likely to be targeted, exposing them to further risk of attack.

In areas of ongoing armed resistance against the Taliban – particularly in the provinces of Panjshir, Baghlan, Badakhshan and Sari Pul – civilians continued to face death, arbitrary arrest, torture and restricted movement enforced by local Taliban authorities. Locals also reported that the Taliban carried out forced evictions in these areas, particularly in Panjshir.

Right to health

The government takeover by the Taliban continued to be deeply damaging to the country's healthcare system. The Taliban policy on women healthcare workers remained ambiguous and inconsistent. Because of requirements that women travel with a *mahram*, as well as fears of Taliban reprisals against women and the large numbers of educated women who fled the country, the healthcare sector faced a serious depletion in human resources. This was particularly challenging in rural areas where health resources were already limited under the previous government. The freezing of most international aid, which had been largely responsible for supporting healthcare before 2021, left hospitals and health clinics with limited resources or staff, contributing to a widespread inability to access healthcare.

Refugees and internally displaced people

Large numbers of Afghans continued to flee the country due to a well-founded fear of persecution by the Taliban. Despite the dangers they were subject to in Afghanistan, other countries continued to deport Afghan refugees and asylum seekers. Some fleeing

Afghans were shot dead, denied the right to apply for asylum, faced pushbacks on the border, or met with other violations and exploitation by the authorities of the countries in which they sought refuge.

At the beginning of the year, 3.8 million people were internally displaced in Afghanistan, living in precarious circumstances with limited ability to access their human rights. The Norwegian Refugee Council reported that the Taliban forcibly evicted some of these internally displaced people from urban areas and forced them to return to their villages of origin, where they faced extreme poverty and an inability to sustain themselves.

LGBTI people's rights

LGBTI people in Afghanistan continued to face grave human rights violations perpetrated by the Taliban, including threats, targeted attacks, sexual assaults, arbitrary detentions and other violations. Many LGBTI people remained fearful that past discriminatory practices by the Taliban would resurface. These historically included punishing those believed to be engaging in same-sex relations with death. Many LGBTI people remained in hiding, fearing a risk to their lives.

Impunity

The Taliban governance structure lacked justice, truth or reparation for crimes under international law or human rights violations. Courts and prosecutors did not investigate extrajudicial executions or prosecute those committing other human rights violations. The independence of the judicial system was severely damaged by the Taliban replacing judges and courts with their own systems of justice.

In October, the ICC Pre-Trial Chamber authorized the ICC Prosecutor to resume its investigation into the situation in Afghanistan. In its decision, the Court stressed that such an investigation should be with regard "to all alleged crimes and actors", including "members of armed forces or security and intelligence services of non-States parties", in contrast to the Prosecutor's prior decision to focus his attention on crimes committed only by the Taliban and IS-KP.

Chairman MCCAUL. Without objection, so ordered.

Mr. WALTZ. The U.N. UNAMA, U.N. News, Afghanistan's Taliban responsible for revenge killings, torture of former officials. I can go on.

[The Information follows:]



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Afghanistan's Taliban responsible for revenge killings, torture of former officials






UN News / Ezzat El-Ferri | Flags of the de facto Taliban authorities fly outside the Governor's compound in Jalalabad, Afghanistan.

22 August 2023 | **Human Rights**



In Afghanistan, hundreds of former government officials and members of the armed forces have allegedly been killed despite

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A new [publication](#)  from the UN Assistance Mission in Afghanistan ([UNAMA](#) ) presents “credible” reports that between 15 August 2021 and 30 June 2023, the country’s de facto authorities were responsible for 218 extrajudicial killings, 14 enforced disappearances, over 144 instances of torture and ill treatment, and 424 arbitrary arrests and detentions.

‘Betrayal of trust’


UN human rights chief Volker Türk said that the targeting of former officials despite the announcement by the Taliban when it returned to power of a “general amnesty” for former government officials and members of the Afghan National Defense and Security Forces, is a “betrayal of the people’s trust”.

He urged the de facto authorities to prevent further abuses and hold perpetrators to account.

The report points out that officials from the previous democratically elected administration are entitled to the same human rights protections as all Afghans and that Afghanistan remains a party to international human rights treaties banning the violations described.

First-hand accounts of torture

In interviews, individuals recounted beatings with pipes, cables, verbal threats and abuse at the hands of de facto security force members.

[UNAMA](#) , also heard from family members whose relatives had been arrested or gone missing, their bodies found days or even months later.

‘Whereabouts unknown’

In some instances, missing individuals have never been found. This was the case of the former Head of the Herat Women’s Prison, Alia Azizi, who never returned home from work on 2 October 2021.

Welcome to the United Nations

remain unknown, UNAMA said, even though Taliban authorities reportedly "initiated an investigation" into her disappearance.

Impunity prevails

According to UNAMA, efforts by the de facto authorities to investigate and hold perpetrators accountable for the incidents described in the report have been "extremely limited".

Investigations were announced in a handful of cases, but even then, UNAMA says, "progress lacks transparency and accountability; impunity prevails".

No guidance on amnesty

The report calls on the Taliban to clarify the terms of the general amnesty and ensure that it is upheld.

UNAMA noted that to date, the de facto authorities have not publicly released any written text or guidance setting out the scope of the amnesty, which was only announced in public comments made by their leadership.

UNAMA Head Roza Otunbayeva said that the de facto authorities must demonstrate a "genuine commitment" to the general amnesty, which is a crucial step in ensuring "real prospects" for justice, reconciliation and peace in the country.

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"These incidents breach international human rights treaties to which the state of [Afghanistan](#) is a party... and they betray the trust of those who were guaranteed protection," says UNAMA human rights chief Fiona Frazer.

Press release [rb.gy/kue0u](#)

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Chairman McCAUL. Without Objection, so ordered.

Mr. WALTZ. Ms. Nuland, I do not know how you and Secretary Blinken look yourselves in the mirror. I do not know how you collect a paycheck in good conscious.

But I can tell you what, I and others on this Committee and other veterans who are out there watching you guys pat yourselves on the back as we have a spike in veteran suicide, I will not quit for those Gold Star families until you all are held accountable.

When you make statements like that, it only reinforces why I get up in the morning to come and hold this position the American people have elected me to.

Let me switch very quickly. We mentioned two cartels. There's two tests, right? It's international interest and it will not escalate to war.

We've had hundreds of thousands, we've had more people killed in the United States from the poison these cartels are pumping over the border than we lost in every major war since World War II.

So, I want to open it up to the panel, but Assistant Secretary Maier, I'll go with you first, is it in our national interest to prevent the deaths of 100 thousand Americans a year?

Mr. MAIER. Yes, Congressman Waltz, absolutely. And I think the fentanyl challenge and other opioid challenges are really something that this also falls in my portfolio and we're focused on all the time.

Mr. WALTZ. Right.

Mr. MAIER. I think the one nuance I would give you is, I'm not sure that military force in every instance is the right tool. As we—

Mr. WALTZ. So, we all remember in the 90's, we were using legal authorities to try to run around the world and arrest al-Qaeda, right?

Whether that was in Africa or elsewhere. It was not until 3,000 Americans were killed on 9/11 this body and other, and the President at the time decided it was a national security issue that warranted military force.

Mr. Chairman, we are losing far more than that every day. These cartels, if we change the name tomorrow from Sinaloa and Jalisco to Isis and al-Qaeda, it would not even be a debate on what action that we have to take.

And I will certainly support that in this Committee. Thank you, Mr. Chairman. I yield my time.

Chairman McCAUL. The gentleman yields. Mr. Crow is recognized.

Mr. CROW. Thank you, Chairman. And thank you to all of you for coming in today and for your professional testimony and your work.

You know, I do want to address though, I think, a fundamental misunderstanding of something that we have not really dove into. And that is just the real meaning behind this relationship, the relationship between the executive branch and the legislative branch.

And there have been some phrases that have been used consistently today. Comments like, we want to have a stronger partnership. Comments like, you know, there has to be periodic reviews

and only in the absence of periodic reviews does Congress then come in and exercise its constitutional obligations.

Comments like, we want to make Congress a stronger part of the next chapter of terrorism, counter-terrorism. I think all of those fundamentally misunderstand the issue here.

Twenty-two years, \$3 trillion by most estimations, thousands of American lives, hundreds of thousands of non-American lives. I fought the war three times, was on a, you know, a special operations task force. Conducted direct action missions against many of these entities we're talking about here today.

But Congress has to make the decision. Congress is in charge. There is no partnership. We make the decision. We take the vote.

And when there's a situation regarding sunset provisions, we've talked a lot about sunset provisions, and the refrain over and over again is, if we forecast to our partners that there's a sunset, maybe they'll back away. Maybe they'll lose resolve. That's kind of the point.

Now, if they're a partner and they're willing to back away only if we're engaged or if they're willing to lose their resolve if we actually do not have a debate, then maybe they're not a good partner. Then maybe we should back away.

That is the debate that has to happen in this body before the American people. And that's the debate that hasn't happened the last two decades. That is the point.

So, I'm not afraid of those debates. And I'm not afraid of putting a sunset provision in there, to actually have a discussion about maybe we shouldn't be in some of these places.

Maybe after 20 years and hundreds of billions of dollars in Afghanistan we should have had a discussion earlier about their lack of resolve and the nature of their partnership.

So, I think that is really the debate here. And for my part, I will not vote for anything that does not put an affirmative obligation in the U.S. Congress to cast a vote to use force. Period.

There's no certification in my view. There's nowhere the President has to act or not act and then Congress steps in later. That is not the way the Constitution works.

And if history has shown anything, that is a failed policy. It has failed, because it will not force a discussion on the nature of our partners and allies. And it will not hold them accountable too for their own destiny.

It has failed because we're not actually having a discussion about what success looks like. Right, over and over again Presidents, regardless of political affiliation, define success as, there's been no attacks on the homeland. Yes, that is a success. I agree with that.

But also look at the other elements of success, because if that is our definition of success and that is our only definition of success, then we will be locked into this in perpetuity. It will go on forever, because forever we will have to be doing this to prevent an attack on the homeland.

Another element of success has to be, it has to be, what is the geographic scope of these entities? Are they growing?

Are they metastasizing? Because by that definition of success, we are failing. We are actually failing.

And we have to have a debate about what other elements of our national policies and our national security that we need to bring to bear, humanitarian, diplomatic, governance, that we are not bringing to bear in appropriate ratios to achieve that other definition of success.

We are locked into a perpetual conflict that unless we are very serious and have debate in this body, will go on forever. So, I'm sorry, I had some questions, I will submit those for the record.

But I think it's just really important that we level set about what this is really about. And I am not afraid of having the discussion, an honest discussion about what we should and shouldn't be doing.

And we should not, as a country, shy away from that. And if our partners are afraid of that, if they waver because we want to have that debate, then good riddance to them. Maybe they shouldn't be a partner.

Thank you. I yield back.

Chairman McCAUL. The gentleman yields. The Chair recognizes Mr. Lawler.

Mr. LAWLER. Thank you, Mr. Chairman. Sanctions should be tied to behavioral change. But under the recent Iranian hostage deal, the Biden Administration waived certain sanctions to facilitate the transfer of \$6 billion in frozen Iranian funds to accounts in Qatar despite Iran's ongoing malign activity.

Ms. Nuland, what message does this send regarding U.S. sanctions policies?

Secretary NULAND. Congressman, thank you. Just to remind and to be very clear, no American taxpayer dollars went to Iran to get our five American citizens and two family members home.

This was money that was Iran's to begin with that was frozen at our request by our allies and partners so that it could—

Mr. LAWLER. Frozen why?

Secretary NULAND. Frozen because of our concern about their malign activity, including the—

Mr. LAWLER. So, what has changed—what has changed about their malign activity since this Administration chose to unfreeze \$6 billion in Iranian assets that were sanctioned?

Secretary NULAND. One aspect of what has changed, is they have been willing to release these seven people after exceptionally—

Mr. LAWLER. Did we not trade—did we not trade hostages for hostages?

Secretary NULAND. Again, let me just also remind, if I may.

Mr. LAWLER. Did we not trade hostages for hostages?

Secretary NULAND. I'm not sure what you're—

Mr. LAWLER. Did we not give hostages?

Secretary NULAND. We did. Of course we did.

Mr. LAWLER. OK. So, not only did we trade hostages—

Secretary NULAND. They were not hostages. Our people were not hostages.

Mr. LAWLER. Not only did we—not only did we trade hostages, we then did what? We gave \$6 billion to the biggest State sponsor of terrorism.

And you know what was insulting? That this Administration informed Congress on September 11. The worst terrorist attack in

the history of our Nation. That's the day that this Administration chose to inform Congress officially?

Secretary NULAND. Congressman, let me just clarify one thing here first of all. The people that we got home were wrongfully detained in Iran. The people that we ultimately released, had been charged and convicted in American courts.

We made that decision because——

Mr. LAWLER. Right. So, on top of that we gave——

Secretary NULAND. Because, if I may finish——

Mr. LAWLER. We gave six—no. We gave six——

Secretary NULAND. If I may finish?

Mr. LAWLER. I'm reclaiming my time. We gave \$6 billion on top of that exchange.

Secretary NULAND. Again, this——

Mr. LAWLER. For what—what does that say, as my original question, what does that say about our policies with respect to sanctions?

It says they mean nothing. That's what it says. It says they mean absolutely nothing.

Secretary NULAND. First that was——

Mr. LAWLER. And we all know that money is fungible. So, what we're doing is freeing up \$6 billion that Iran otherwise would have had to spend on humanitarian efforts to go fund terrorism once again.

It is idiotic, truly.

Secretary NULAND. This money can only be drawn on for food or medicine for the Iranian people. And that is a stipulation——

Mr. LAWLER. Right. But it is freeing up \$6 billion that they otherwise would have had to spend on food and water and humanitarian aid to go fund terrorism.

This is the problem when you start negotiating with terrorist regimes.

Secretary NULAND. Except that they have not been spending money on food or medicine for their own people as you have seen.

Listen, I would also make the point that we continue to have over hundreds of sanctions on Iranian entities and individuals for all of their nefarious and malign behavior around the world. And we were——

Mr. LAWLER. Except we just undercut that by unfreezing \$6 billion in assets.

Moving onto a different topic. If we included al-Qaeda in the new AUMF, but not the Taliban, could the Taliban later become a targetable associate force of al-Qaeda if the Taliban increase cooperation with them?

Ms. KRASS. Yes, I can take that question, sir. And the answer is yes. Particularly if the current draft Committee proposal were enacted. And it would have the same associated forces construct that we have now.

Mr. LAWLER. OK. Given the extensive current al-Qaeda/Taliban cooperation that we see, what else would we have to see for the Taliban to be listed?

Mr. MAIER. I think Congressman, we would need to see actual Taliban facilitation of al-Qaeda's attacks on Americans. At this point, we're not seeing that, sir.

Mr. LAWLER. Thank you, Mr. Chairman. I yield back.

Chairman McCAUL. The gentleman yields. The Chair recognizes Mr. Lieu.

Mr. LIEU. Thank you, Mr. Chair. Let me start by thanking Secretary Nuland and Secretary Blinken and the State Department for fighting very hard to try to get more jet fighters to Ukraine last March.

The State Department understood the importance of air power in modern warfare. The State Department made the decision to win very early on in this war. And I thank the State Department for doing so.

I have some questions about now the AUMF. I support repealing other existing AUMFs, because I believe they've been abused by both Republican and Democratic Administrations. The hard part is putting in a new one.

In 2015, the Obama Administration tried to put in a new AUMF if you recall. I came out against it pretty early on, because as I read that AUMF, it was going to give the Administration authority to put our personnel, our men and women in our Armed Forces in harm's way and then handcuff them by not letting them do what they needed to win.

It had a phrase basically saying, you could go fight the enemy, except you cannot do enduring offensive ground combat operations. Which made literally no sense.

Because, why would you allow our troops to be in harm's way and not let them destroy the enemy?

It would seem that if we're going to authorize force, we better give our military the ability to use the force they need too win.

So, I have a question for the panel. Do you think that limitation was good to have been in that 2015 AUMF?

Would you want something like that? Or would you oppose something like that?

Ms. KRASS. Thank you very much for the question, Congressman. Speaking as a lawyer, I would prefer the formulation allowing the President to use all necessary and appropriate force.

Mr. LIEU. Thank you. So, I would agree with you on that. Now, it appears to me the panel does not like a time limitation. You do not seem like a sunset.

I'm sort of curious why you'd be opposed to just listing additional groups like the Taliban?

I mean, you do not have to use it. You do not have to use that authority. I'm just wondering, is there—what is driving that?

Are you waiting for the Taliban to do something? Do you think this would offend them?

What is sort of saying, no, no, no, we do not actually want this authority.

Secretary NULAND. So, Congressman Lieu, first of all, thank you for your comments on Ukraine and for your stalwart support of Ukraine against Russian aggression.

With regard to the Taliban, three things here. First of all, they are making steady, if not sufficient, progress against ISIS-K.

We have also said here that at the current moment under the environment that they've created, al-Qaeda is at its weakest point in a long, long time.

Mr. LIEU. No, no, no, I understand the argument between them.

Secretary NULAND. Yes.

Mr. LIEU. I'm just wondering, if you do not want a time limitation in the AUMF, how do you know what the Taliban looks like in 7 years?

And why would not you just want that authority? I do not sort of get why it's necessary, and say no, no, no, do not give us this authority.

Secretary NULAND. I think we should probably have a consultation in a setting other than this one on some aspects——

Mr. LIEU. I got it. All right.

Secretary NULAND. Of this.

Mr. LIEU. OK. That's fine. I'll wait.

Secretary NULAND. With regard to a sunset, you know, we've talked about being able to adjust in consultation the groups, et cetera, as needed.

And as Chris said earlier, if the Taliban were to take a different stance, vis-a-vis terrorist groups on their territory and a significantly different one, obviously we would want them listed.

Mr. LIEU. Thank you. I have a question about what you all view as force. So, right now, and let's say there were no AUMFs, the Administration could not launch missiles at Iran.

Could the Administration launch a cyber attack without an AUMF? Is that force?

Ms. KRASS. So, depending on the facts and circumstances, a cyber attack could constitute a use of force, in which case it would need to be authorized either by Congress or by the President's Article II power.

Mr. LIEU. All right. If the Administration had some special operations unit go and take out an Iranian scientist who was working on nuclear weapons, would that constitute force?

Would—they must issue an AUMF to do that?

Ms. KRASS. Again, I prefer not to engage in hypotheticals. But a use of force would include killing an individual, yes.

Mr. LIEU. OK. And would a use of force include, let's say, the U.S. installing a computer virus on centrifuges that make them not work well?

Would that constitute force?

Ms. KRASS. I think it would really depend on the circumstance of whether whatever it was that was being done constituted an actual use of force in terms of a kinetic.

As you may be aware, there are challenges in determining what in cyber actually constitutes a use of force. And so, we have mainly kept to those things that we know would be a use of force in the more physical context.

Mr. LIEU. Thank you. So, my time is up. I just want to request the Chairman to maybe set up a classified briefing on what constitutes force, especially in terms of cyber.

Chairman MCCAUL. And I think those are very good questions. I'd be happy to do so.

The Chair recognizes Mr. Self.

Ms. SELF. Thank you, Mr. Chairman. As I've listened to this discussion back and forth, the panel has used the word depends and

depending a lot. I understand while I was not here that you had a discussion about the War Powers Act.

And basically the Administration does not believe the War Powers Act is a constraint on the Presidency. And that's where my concern lies, because I am from Texas. We have an international situation on the southern border in which the President considers the Congress and the law irrelevant.

And that informs my opinions about this discussion, along with, I share Mr. Waltz' concerns, because I've not been in Afghanistan as recently as he has been, I was there very early. But I want to ask you about, and the first question will maybe get at it.

Is there any consideration in the Administration to recognize the Taliban as the government of Afghanistan?

Secretary NULAND. No. We have not taken that up. And we do not intend to.

Ms. SELF. So, what do you consider the situation of the Taliban in Afghanistan today? How do you characterize it?

Secretary NULAND. They have self described themselves as assuming governing authority in Afghanistan.

Ms. SELF. No. How do you consider it?

Secretary NULAND. Um—

Ms. SELF. Who governs Afghanistan?

Secretary NULAND. They are in their own telling, endeavoring to govern Afghanistan. But we do not consider this authority that they have assumed to be constitutional within Afghanistan's own circumstances.

Rich, I do not know if you want to take this?

Mr. VISEK. Yes. Thank you for the question. At this point we do not recognize any entity as the government of Afghanistan.

Ms. SELF. Yes. That's, I think you're absolutely correct. We have discussed permutations here. I like some of the issues, some of the suggestions that have been made.

But in my opinion, this Administration will take liberties with whatever this body and the U.S. Senate pass and agree to. And even if it's signed, I think they will take liberties.

So, I've heard lists, I've heard time, I've heard global. From my career in the military, I want it to be as broad as possible and that will actually relieve us of the Administration taking liberties.

But there also is Mr. Crow's concern that Congress must have the vote. However we work that out, Congress must have a vote that is meaningful in this AUMF replacement.

So, I'm going to go ahead and yield back my time. Those are my concerns. And again, Mr. Chairman, I want this to be tight enough that the Administration will find it hard-pressed to take liberties with it without the congressional say so.

Chairman McCAUL. Thank you, sir. The gentleman yields. The Chair recognizes Mr. Schneider.

Mr. SCHNEIDER. Thank you, Mr. Chairman. I want to thank the witnesses for your patience. It's been a long day. It's been a long week for most of us here.

And, Ambassador Nuland, I want to thank you for clarifying that the United States does not take hostages. We have just in the course of my lifetime, I can think of prisoner swaps with the former Soviet Union, with current day Russia, with other countries.

We do not take hostages. We do not hold hostages. We deal with other countries who are taking American citizens. And we've always had to make very difficult choices.

As we turn our attention now to the AUMF, look, I think there's universal agreement on the dais that Congress has, as it should, the sole authority to declare war as well as the authority to raise and support armies.

The Administration has its own authorities under Article II. But at the end of the day, and we've talked about the War Powers Act among other things, it is Congress's responsibility.

I think all of us will say here, and I know we say it when we go home, that the most difficult decision we ever face as a Member of Congress is when to send American men and women into harm's way, defending our Nation, protecting our freedoms, but also laying their lives on the line.

And this is something we do have to take seriously. I was not here in 2001 or 2002 when the decisions were taken then. But I have been here for now pretty much a decade. I'm in my fifth term.

We have not been able to express our voice necessarily on these. It is critical, and I agree with my colleague, Mr. Crow, that Congress has to have its say and evaluate these.

But I also have real concerns about this idea of an absolute sunset. And I'd like to explore that a little bit with you.

And maybe you've talked about this, because we've had to come and go. But what are some of the implications of a date certain that an authority ends on December 31, 2029?

Secretary NULAND. Congressman Schneider, let me just first reiterate, because I did not get a chance to answer Congressman Crow.

Obviously, Article I powers are for the Congress alone. We are your invited guests to engage in a conversation about where you might take this based on our experiences implementing the legislation that you have, we have in front of us. And we thank you for that.

Let me just say that with regard to sunset, I think we've made critical over the course of this hearing the three concerns that we have. No. 1, a date certain tells our adversaries, tells every terrorist out there that they can go into their hole and wait us out and come back out on that date certain if Congress is not able to act. That's No. 1.

No. 2, detention authorities. You know, if there's a lapse, we will not have the authority we need to continue to detain.

And then the last one, which, you know, for those of us who spend our lives building international coalitions, if the United States does not lead, coalitions rarely cohere. When our partners and allies are not sure that our authorities persist, they are less likely to ensure that they have the authority absent us.

So, those are the three reasons.

Mr. SCHNEIDER. I think that's important. Look, we have the greatest military force in the world. We should all be rightly proud of that.

But I think our secret weapon is our convening powers as a Nation. That ability to lead. So, I agree with you and that comes from the authority. And the authority is what really matters.

As I've been sitting here listening and I've been thinking, you know, how do wars in previous times come to an end?

You know, you can sue for peace. There's an armistice, there's a truce, there's a treaty. We tend to think of wars as a conflict between nation States.

That people get together at a table or on the deck of a battleship and say, this war is coming to an end. We will agree to this, that, and the other thing.

We're in a different time. We're in a different place. My colleague at the beginning of the questioning asked you what will the threat landscape look like in 2045?

He picked that number for a specific reason. That is as far to the future as we are today from when the first AUMF was authorized.

We do not know. But I think I can say with some degree of confidence that in the conflict we're fighting today where we're trying to resolve what we do here, there is not going to be a peace treaty with al-Qaeda or a cessation of hostilities with ISIS.

It's going to be a war that we're going to have to win as Mr. Crow said. We're going to have to define success and recognize it in our own terms, in our own way, at our own time.

And it is imperative, I agree with Mr. Crow, this Congress has to make our voice heard. It's essential that the debates take place on the floor and in the committee rooms of the House and the Senate.

And we have to figure out a way to do that. And I'm running out of time. But I think it's really important that we understand what the implications of sunsets are.

What we ask, how we answer the questions of why, who, what, where, and when in a way that does not hamstring our Nation, but allows us to lead our allies and make sure that we keep our citizens safe, our interests protected and our role in the world as a leader, preserved.

I yield back.

Mr. SMITH [presiding]. Thank you. The Chair recognizes Dr. McCormick.

Mr. MCCORMICK. All right. Thank you, Mr. Chair. In earlier testimony we were talking, and I'll get right to the point, because I know time is short.

Congressman, Congresswoman Wagner asked about the Iran-based militias and you discussed how in the last 6 months there's been a decrease in violence. We talked about the inclusion in the AUMF.

Obviously, there's been a drop. But we know that they in Iraq killed around 600 of ours. They've also had 80 attacks in the last 2 years.

We talked about in a 5-year report. For the record, do we have that report available?

Mr. MAIER. Congressman, we can compile that report. We have not done specifically a 5-year report. But that information is in our possession.

Mr. MCCORMICK. OK. When can we get that?

Mr. MAIER. We can turn it as quickly as we can pull people together to put that information in. And within, you know, some number of weeks or assuming no government shutdown.

Mr. McCORMICK. I hate that answer. Some number of weeks is way too vague for me. Can we assume within 4 weeks?

Mr. MAIER. Congressman, I think we can get that information to you within 4 weeks if the government is open.

Mr. McCORMICK. OK. I'll leave it at that. I'll hold you to your word.

Also, just so you know I was paying attention at least during the time I was here, I heard you specifically say, Mr. Maier, al-Qaeda is not significantly planning to harm western interests.

I wrote that down, because I thought, that's interesting. We know that al-Qaeda is training people in Afghanistan and several regions under the protection of the Taliban, which is kind of how we ended up in this situation to begin with.

If they're not training to harm western interests, what are they training for?

Mr. MAIER. Congressman, I think what we see on balance and what I can talk about in this forum is not al-Qaeda having the capability or the intent under the Taliban regime to be able to strike at the United States.

Mr. McCORMICK. So, as a veteran of the Persian Gulf and Afghanistan, I dispute that claim. I do not think they ever have an intent not to harm us. They've been openly and significantly, and contrary to everything that we stand for.

And would do great harm to us if they were able to. They may not be able to right now. But I think you mistake their intent. That's just my opinion.

As far as in review of the Taliban's association with al-Qaeda, I'm just going to go on further with this, and I'm going to stick with you, Mr. Maier.

On July 22, 2022, the CI Special Activity Center drone over Kabul fired two hellfire missiles, killing al-Zawahiri, the Emir of al-Qaeda. At the time al-Zawahiri enjoyed Taliban protection in a house owned by the leader of the Haqqani Network.

On June 1 a report released in the United Nations confirmed that there are between 30 and 60 senior al-Qaeda officials in country. Four hundred fighters in country. At least three al-Qaeda members in the Taliban government.

So, there's an obvious link between al-Qaeda and Taliban. They've been very open about their intentions toward the west.

And toward us and what they intend to do. I think they're violent people. They're training for violent things.

Undersecretary Nuland, do you agree with the U.N.'s report assessment?

And would you agree that the Taliban is currently supporting, enabling terrorist groups, and we can call al-Qaeda a terrorist group, that they're associated with?

Secretary NULAND. Congressman, as we have said here, one of the things that we have documented most recently by the public comments of Christy Abizaid of the National Counterterrorism Center is, regardless of the protection that they continue to have under the Taliban, al-Qaeda's capabilities and membership have shrunk significantly.

They're at the lowest level. And we do not access that they have the capability of—

Mr. MCCORMICK. So, we're going back to capabilities. Let me talk about intent. At one time we did not have a problem with al-Qaeda at all. It did not exist.

We've seen terrorist organizations wax and wane in the past. The question goes back to, integrated inside the Taliban.

The reason that they've had, that they've been weakened is because we fought a war for 20 years there. Which I was part of.

That's why they do not have the capability. We're no longer there. Thanks to politicians, we withdrew after we won the war.

Where we had stabilized the Nation with 25 hundred people, we're losing less than a dozen people in 10 years. We withdrew.

Now, they're incorporated in the Taliban government. Their training bases are there inside of a country that trained people to kill us originally. That's why we went there in the first place.

So, let's not say that they're too weak to attack us, because that's really myopic thinking. We started, and I'm going to finish, because I'm out of time.

But we started this without a problem until those training bases and al-Qaeda and other organizations inside of a foreign government, ruled by the same government that exists there now, harbored these people that crashed four planes into United States territory, killing thousands of people.

And then, we fought a two decade war only to give it back to the same people who are now harboring terrorist groups again. The same people, Taliban harboring terrorist organizations, dozens of bases training to do harm.

And I do not know if you think it's not for, against western interests, I'd like to know what interest it's against. Because I've never seen a terrorist organization that was pro west or pro United States. I'm pretty sure they're anti-United States and anti-Semite.

With that, I rest.

Mr. SMITH. Did you want to respond? All right.

Secretary NULAND. You know what, I think the Congressman just made the point for a continued AUMF and continued Article II ability to strike, as the President authorized against al-Zawahiri. And to remain vigilant.

Mr. SMITH. Thank you. Thank you, Dr. McCormick. Just let me ask you, if in reading the prepared testimony, I was late because I was at a meeting on the Committee of anti-Semitism. And then, I was on the floor with the foreign office bill.

So, I apologize, I did not hear your presentations. But in reading through at least one of them, and I'll read the others later, it seems that you're suggesting that the President does not really need the AUMF, because he has the inherent power to use force as Mr. Vissek puts it, to protect the national security interest of the United States.

But as I think the lawyers on the panel understand, that view is only an opinion internal to the executive branch. It has never been ratified by Congress, in law, or affirmed by the Supreme Court.

In fact, the one law that—on the books that addresses the issue, the War Powers Resolution, spells out a far more limited view of the President's power to act without congressional authority.

According to the War Powers Resolution, the President's Constitutional powers to introduce U.S. forces into hostilities quote, are exercises only pursuant to one, a declaration of war specific—two, specific statutory authorization, or three, a national emergency created by attack upon the United States, its territories or possessions or its armed forces, close quote.

In other words, the law says that the President can only use force with congressional authorization or after we've been attacked.

So, just to be very clear, are you saying that you're not bound by that portion of the 50 USC Code, Section 1541 that I just quoted, Mr. Visek?

Mr. VISEK. Well, thank you, Congressman. The—just a couple points of clarification.

Mr. SMITH. Sure.

Mr. VISEK. First, I think with respect to Article II authorities, we do not see them as unbounded. We do see them as limited by the Declare War Clause.

That's why we've characterized our exercise of the Article II authorities in the space as episodic. You know, it's defensive in nature, intended to deter.

We see the value in the AUMF of providing a prolonged authority. Now, I realize that there have been, you know, debates over the years about whether the War Powers Resolution, you know, addresses all the instances that might be, might arise under an Article II context.

But the point is that this Administration, and I think many Administrations, have acted consistently with the War Powers Resolution, such that the legal debates do not have to be engaged.

And I think the way this all gets tied together, I think, is look, there are instances where Article II authorities are appropriate and useful. We've noted how they've been used in the context of the Iran aligned militia groups.

But where we have a prolonged need for enduring authority to engage in not just defense but also offensive acts, the authorizations are vital. And I think that is consistent with this notion.

And without weighing in one way or the other on the ultimate legality, but, you know, the idea that the War Powers Resolution has this 60 day clock, that tends to reinforce this notion that when we're in it for a longer term, we want Congress onboard.

Mr. SMITH. Let me just ask one other question and I'll yield to my distinguished colleague. Do you have any concerns that the deal with Iran will incentivize any further hostage taking? Ms. Nuland?

Secretary NULAND. We obviously made clear, Congressman Smith, that this deal needed to be the end of this kind of practice.

And, frankly, this was a long negotiation. It was a difficult one. And when you look at the balance here, getting our Americans back who had been wrongfully detained and their two family members, was extremely important to do.

To underscore to Iran that this kind of behavior does not, in fact, pay and makes everything else in their, from their international reputation to the relationship that they say they want with the international community, harder.

Mr. SMITH. In looking at the Iranians who were released, if what I read was accurate, they're mostly for crimes of sanctions.

Are there any terrorists among them? That we released to Iran. Not the Americans, they were hostages and victims.

Secretary NULAND. My memory of this, Rich may correct me, is that they were all charged for criminal behavior.

Mr. SMITH. Yes. But was the criminality—

Secretary NULAND. Not terrorist behavior but sanctions violations and/or drugs or other things.

Mr. SMITH. That's what I thought. And finally, again on the incentivization of hostage taking, when the negotiations were ongoing about the amount of money, were there various proposals put forward for less or more?

Or, I mean, \$6 billion is what we, I know where that's coming from. But how did that get on the table?

I mean, that's a lot of money. And as Mr. Lawler pointed out, money is fungible. And I remember I met with Zarif once when we were trying to get Pastor Abedini out of Iran, because he was wrongfully held as well.

It was appalling to me that he said, oh, you're sanctions. He knows that I wrote the Trafficked Victim's Protection Act. He did his homework. And he goes, the sanctions are causing Iranian women to be trafficked.

And he made this big spiel. I said, well, change your behavior, you know, stop your human rights abuse against your own people. But he did use that as a lever.

And I'm just wondering, you know, when it came to the \$6 billion, what was on the table?

Secretary NULAND. Congressman, let's have a private discussion about the intricacies of the negotiation if you'd like. You can image that Iran had a higher price tag at one point. This was a particular chunk of money that was held by a U.S. ally at our request, et cetera.

I want to go back to another point you made, which is arbitrary detention of Americans and deterring it. This is a major priority of Secretary Blinken and our team.

And we are working with other international partners, including Canada. There was a meeting on this at the U.N. General Assembly last week to increase deterrence measures in common.

So, to ensure that countries that do this, from Russia, to Iran, to North Korea, pay a steep price. And it's a consistent multi-lateral price.

Mr. SMITH. Thank you. Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. And welcome to our panel. I'm sorry I'm late, but I was at the impeachment hearing, which was a real treat.

And let me just say, some of my colleagues on the other side want to have an AUMF that specifically says Taliban. I wish they'd been equally concerned about the Taliban when the previous President, President Trump, ordered negotiations under Ambassador Khalilzad. I think in Doha, was it not Ms. Nuland?

Secretary NULAND. It was, Congressman Connolly.

Mr. CONNOLLY. Yes. And is it not true that the President authorized negotiations without the presence of the then Afghan government we were purportedly supporting, so that the negotiations

were directly with the Taliban without representatives of the Afghan government.

Is that true?

Secretary NULAND. That is correct. At least for the majority of the time.

Mr. CONNOLLY. And is it not also true that under President Trump and Ambassador Khalilzad, those negotiations led to the release of five thousand Taliban prisoners, many of whom we'd tagged as terrorists.

Is that correct?

Secretary NULAND. Also correct.

Mr. CONNOLLY. Thank you. Ms. Nuland, I have to say, I think the Administration is going to have trouble with an AUMF on the Democrat side, and let me cite two aspects of your testimony today.

One is, you say you want an AUMF without sunset provisions. You do not want an expiration date. Is that correct?

Is that your testimony?

Secretary NULAND. Congressman, in your absence, we spoke about our concerns about a date certain and what that would do in terms of empowering terrorists to wait us out. Concerns about losing our detention authority.

Concerns about our partner's worry about our staying power.

Mr. CONNOLLY. Yes.

Secretary NULAND. However, we did hear during the course of the hearing, put on the table, a number of new ideas or ideas that we've been talking with Committee staff about—

Mr. CONNOLLY. OK.

Secretary NULAND. For ensuring that there is, that the Congress has the opportunity to cancel this legislation as needed.

Mr. CONNOLLY. You, I was informed, but thank you. And I certainly concede the complexity and nuance of the issue and why we have to tread delicately on that.

But, you know, I'm a child the Vietnam War. And I remember vividly the Gulf of Tonkin Resolution, which was supposed to be a limited reaction to two events, alleged events in the Gulf of Tonkin.

And the President of the United States then, a Democrat, Lyndon Johnson, used that Resolution as an open-ended commitment and we did not end that war until 11 years later. Ignorant of many maybe, but we ended it.

Never did Congress intend that that Resolution would be used to justify a half a million U.S. troops being introduced onto the soil of Vietnam.

And so, I hope you can appreciate there's deep sensitivity here about the issue of an expiration date. Though we're not unmindful of the points you made.

And so, I think that's got to be worked out if we're going to have common ground.

The other is, I think your testimony also said that you did not want us to—you wanted to be able to have an AUMF that authorized introduction of troops or some military presence to new geographic areas and groups as needed, quote/unquote.

Is that correct? Your microphone.

Secretary NULAND. Sorry. Yes. I think what we were reflecting there, was the fact that the greatest rise of terrorism currently is in the Sahel as a result of recent coops——

Mr. CONNOLLY. The coops, yes.

Secretary NULAND. Of governments. So, and we have been able, all of those, the groups that we work against with our allies and partners, there are affiliates of al-Qaeda.

But we want to be able to work with you and say hey, this thing has morphed and moved and renamed itself.

Mr. CONNOLLY. Right. And again, I do not think there's a desire to hamstring the Administration in responding quickly to emergency situations. We, you know, we're not unsupportive of that.

But again, if you think about the history and you think about Article I of the Constitution of the United States, which has been, you know, diluted over many decades with the compliance of Congress, nonetheless the War Power is exclusively granted to the Congress of the United States, under the Constitution.

And so, circumscribing that power is something we need to do in a responsible way working with you. But an open-ended commitment with respect to geography and groups as needed, the downside of that is maybe you would never abuse it.

You would never do anything untoward. But that does not mean your successor would not gleefully take that open-ended authority and use it in ways never envisioned by the Congress and not supported by the American people.

And so, I just think, especially in those two areas, we understand the desire of any Administration to want flexibility.

But I hope the Administration understands the desire of the legislative branch on both sides to circumscribe that flexibility in the interest of Constitutional prerogatives. And the prerogative of war making is exclusively granted to the Congress of the United States.

And, you know, we talk about implied powers for the Executive, it's time we talk about implied powers under Article I, that are Legislative powers. And so, this is a necessary dialog. But I think it is a necessary dialog.

And I—speaking on the Democratic side of the aisle, and I know some of my colleagues previously raised concerns about this, let me add my voice to it, happy to work with you. But we're very reluctant to grant broad new authorities that are not circumscribed by time and geography.

And with that, I yield back. Unless Ms. Nuland wants to respond. She's fully welcomed to, if you will allow Mr. Chairman.

I thank my friend.

Secretary NULAND. Thank you, Congressman Connolly. I think this is a perfect ending, I think, to this hearing.

We very much appreciate understanding that these powers are yours. The opportunity to come and present and to be in conversation about how we go forward here.

We have, I think, over the course of this hearing teased out a number of options that might bridge the gap here to ensure that Congress is regularly reviewing both the geography, the lists, the authorities.

And we would welcome that obviously. Thank you.

Mr. SMITH. Thank you. On behalf of Chairman McCaul and the Committee, I want to thank the witnesses for their testimony and the Members for their questions.

The Members of the committee may have some additional questions for the witnesses. And we respectfully ask that you respond in writing to those questions.

Pursuant to the Committee rules, all Members may have five legislative days, 5 days to submit statements, questions, and extraneous materials for the record, subject to the length limitations.

Without objection, the committee stands adjourned, and thank you.

[Whereupon, at 1:15 p.m., the subcommittee was adjourned.]

APPENDIX



**COMMITTEE ON FOREIGN AFFAIRS
FULL COMMITTEE HEARING NOTICE**
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Michael T. McCaul (R-TX), Chairman

September 21, 2023

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs to be held at 10:00 a.m. in room 210 of the House Visitor Center. The hearing is available by live webcast on the Committee website at <https://foreignaffairs.house.gov/>.

DATE: Thursday, September 28, 2023

TIME: 10:00 a.m.

LOCATION: HVC-210

SUBJECT: Reclaiming Congress's Article I Powers:
Counterterrorism AUMF Reform

WITNESSES: The Honorable Victoria Nuland
Undersecretary of State for Political Affairs
United States Department of State

The Honorable Christopher P. Maier
Assistant Secretary of Defense for Special Operations
and Low Intensity Conflict
United States Department of Defense

The Honorable Caroline Krass
General Counsel
United States Department of Defense

Richard C. Visek
Acting Legal Adviser
United States Department of State

*NOTE: Witnesses may be added.

By Direction of the Chair

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-226-8467 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS
MINUTES OF FULL COMMITTEE HEARING

Day Thursday Date September 28, 2023 Room HVC-210

Starting Time 10:09 Ending Time 13:15

Recesses ☐ (____ to ____) (____ to ____) (____ to ____) (____ to ____) (____ to ____) (____ to ____)

Presiding Member(s)

Chairman McCaul, Rep. Smith

Check all of the following that apply:

Open Session ☒

Electronically Recorded (taped) ☒

Executive (closed) Session ☐

Stenographic Record ☒

Televised ☒

TITLE OF HEARING:

**RECLAIMING CONGRESS'S ARTICLE I POWERS:
COUNTERTERRORISM AUMF REFORM**

COMMITTEE MEMBERS PRESENT:

Attached

NON-COMMITTEE MEMBERS PRESENT:

NA

HEARING WITNESSES: Same as meeting notice attached? Yes ☒ No ☐

(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: (List any statements submitted for the record.)

Attached

TIME SCHEDULED TO RECONVENE _____

or

TIME ADJOURNED 13:15

Meg Wagner
Full Committee Hearing Coordinator

Committee on Foreign Affairs

118th Congress

ATTENDANCE

Meeting on:

Date:

Representative	Present	Absent	Representative	Present	Absent
Mr. McCaul	X		Mr. Meeks	X	
Mr. Smith	X		Mr. Sherman	X	
Mr. Wilson		X	Mr. Connolly	X	
Mr. Perry		X	Mr. Keating	X	
Mr. Issa		X	Mr. Bera	X	
Mrs. Wagner	X		Mr. Castro	X	
Mr. Mast	X		Ms. Titus	X	
Mr. Buck	X		Mr. Lieu	X	
Mr. Burchett		X	Ms. Wild		X
Mr. Green	X		Mr. Phillips	X	
Mr. Barr	X		Mr. Allred		X
Mr. Jackson		X	Mr. Kim	X	
Mrs. Kim	X		Ms. Jacobs	X	
Mrs. Salazar		X	Ms. Manning	X	
Mr. Huizenga	X		Mrs. Cherfilus-McCormick	X	
Mrs. Radewagen	X		Mr. Stanton	X	
Mr. Hill	X		Ms. Dean	X	
Mr. Davidson	X		Mr. Moskowitz		X
Mr. Baird	X		Mr. Jackson	X	
Mr. Waltz	X		Mrs. Kamlager-Dove	X	
Mr. Kean	X		Mr. Costa	X	
Mr. Lawler	X		Mr. Crow	X	
Mr. Mills		X	Mr. Schneider	X	
Mr. McCormick	X				
Mr. Moran	X				
Mr. James	X				
Mr. Self	X				

STATEMENT FOR THE RECORD FROM REPRESENTATIVE CONNOLLY

“Reclaiming Congress’s Article I Powers: Counterterrorism AUMF Reform”

HFAC Full Committee

10:00AM, Thursday, September 28, 2023

HVC-210

Rep. Gerald E. Connolly (D-VA)

Congress must reassert its constitutional authority and clarify the circumstances under which our country makes the fateful decision to put our men and women in uniform in harm’s way. On September 18, 2001, Congress authorized military action “against those who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.” That authorization is now older than some of the young men and women are committed to foreign battlefields under its authority. On October 16, 2002, an authorization for the use of military force was authorized for the purposes of carrying out the misguided and unjust Iraq War. That AUMF is totally defunct and demands repeal.

Unfortunately, these two AUMFs have been stretched beyond recognition in the years since they passed, and it is high time for Congress to reassert its Article I responsibilities as mandated by the Constitution.

Article I, Section 8 of the United States Constitution states that “Congress shall have power...to declare war...and to raise and support armies” and other armed forces. While Article II, Section 2 designates “the President shall be Commander in Chief” of the nation’s armed forces. These constitutional duties have been in competition ever since the ratification of the Constitution. While Congress has officially declared war only five times, American presidents have initiated military operations without Congressional approval more than one hundred times. In the aftermath of the Vietnam War and the exploitation of the open-ended authorization contained in the Gulf of Tonkin Resolution, Congress sought to clearly define the procedures by which Congress and the President would participate in decisions to send U.S. Armed Forces into hostilities by passing the War Powers Resolution (P.L. 93-148). Every president since the enactment of the War Powers Resolution has taken the position that it is an unconstitutional infringement on the president’s authority as Commander in Chief.

While the 2001 and 2002 AUMFs were sufficient to authorize the wars in Afghanistan and Iraq, it stretches credulity to claim that these same resolutions extend authorization to the present-day fight against the Islamic State, which was only established in 2013. Both the Obama and Trump Administrations have cited the 2001 and 2002 AUMFs to justify military actions against the Islamic State. In 2020, then President Trump cited the 2002 AUMF to kill Iranian Major General Qassem Suleimani on Iraqi soil. This killing led to a major escalation in tensions and rhetoric between Washington and Tehran and galvanized public sympathy for and support behind the Iranian government. A 2018 skirmish in Syria saw U.S. servicemembers fighting Russian mercenaries in eastern Syria. In 2017, Trump also used fifty-nine cruise missiles to attack a Syrian airfield in response to Assad’s chemical weapons attacks on civilians. While Assad’s action was barbaric and warranted an international response, a missile strike without proper Congressional authorization was reckless, put U.S. national security risk, and could not be accepted as a substitute for a coherent Syria policy.

In the Middle East and around the globe, the proliferation of terrorism undermines U.S. national security interests, threatens vulnerable populations and American lives, destabilizes partner and allied countries, and contributes to instability. *However, kneejerk kinetic military responses without an overarching strategy endanger American lives and diminish U.S. global leadership. Congress must make crystal clear to the Administration, our allies, our constituents, and our military families the circumstances and limitations under which we would authorize engagement by our men and women in uniform in hostilities overseas.*

The still active 1991 Gulf War AUMF (P.L. 102-1), 2001 AUMF, and 2002 AUMF are obsolete and have been coopted for bad U.S. foreign policy decisions in the Middle East. That is why I proudly voted to repeal the 2001 and 2002 AUMFs nearly 20 years after opposing the Iraq War in the first place. Reviewing and replacing the 2001 AUMF with clearly defined mission and parameters, possibly to include a sunset clause, must be taken up urgently by this Congress. To that end I welcome President Biden's commitment to work with Congress to replace existing AUMFs with "a narrow and specific framework that will ensure we can protect Americans from terrorist threats while ending the forever wars."

The contortion of AUMF's has raised fundamental questions about the future of fighting terror and how we accommodate necessary military action in an AUMF that would allow the U.S. to effectively prosecute terrorism without committing to war in perpetuity. Rather than resigning to the sidelines, Congress must act as the preeminent constitutional authority on the matter and take greater ownership in U.S. military engagement and anti-terrorism activities overseas. An effective AUMF would need to address the purpose, scope of authorized force, targeted entities, geographic limitations, timeline, and reporting requirements.

The full assertion of Congress' Article I duty is long overdue. I look forward to hearing from our witnesses how Congress and the Biden Administration can reassert our constitutional roles to protect long and short-term U.S. national security.

MATERIALS SUBMITTED FOR THE RECORD FROM
REPRESENTATIVE PHILLIPS

Congress of the United States
Washington, DC 20515

January 21, 2021

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden:

Please let us extend our warmest congratulations on your inauguration as President of the United States. We look forward to working with you and your administration across a variety of arenas to strengthen our nation. One in particular that we believe deserves your early attention is repealing outdated and overly broad Authorizations for Use of Military Force (AUMFs). We ask that you commit to working with Congress to address this issue.

We appreciate your stated ambition to end the “forever wars” that have stretched on for decades at great cost in human life and our resources. As you have said, these conflicts “drain our capacity to lead on other issues that require our attention, and it prevents us from rebuilding the other instruments of American power.”¹

We agree that our government is past due for a reexamination of our security needs and authorities to determine whether we are directing our efforts and resources in ways that truly make Americans more secure. Our view, which we hope you share, is that by reexamining outdated AUMFs we can align the legal authorities we need with the threats we face as well as our responsibilities to the U.S. Constitution and the American people. This process should begin early in your administration with an effort to engage with Congress to fulfill the commitment of the 2020 Democratic platform to “work with Congress to repeal decades-old authorizations for the use of military force and replace them with a narrow and specific framework that will ensure we can protect Americans from terrorist threats while ending the forever wars.”

The 2001 and 2002 AUMFs were both passed nearly 20 years ago and bear little resemblance to the threats we face today. The 2001 AUMF (P.L. 107-40) has been employed by successive presidents to wage war in ways well beyond the scope that Congress initially intended when it was passed on September 14, 2001. Over the past 19 years, three successive presidents have used military force pursuant to the 2001 AUMF in more than seven countries, against a continuously expanding list of targetable adversaries. These presidents have further identified to Congress combat-ready counterterrorism deployments to at least 14 additional countries, indicating that armed combat pursuant to the 2001 AUMF could arise in additional countries as well.

The 2002 AUMF (P.L. 107-243) was drafted more narrowly than the 2001 AUMF. It is not a necessary source of authorization for any current military operations, all of which could be conducted pursuant to the 2001 AUMF according to executive branch legal interpretations.

¹ Joe Biden, speech at City University of New York, July 11, 2019

However, the 2002 AUMF has been stretched to cover past operations Congress never authorized, including the January 2020 killing of Iranian General Qassem Soleimani in Baghdad.

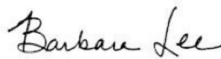
Both of these authorities should be reviewed closely. As a first step, we urge you to call for the immediate repeal of the 2002 AUMF, a policy which was adopted in a bipartisan vote by the House of Representatives in 2019, and which would not disrupt any ongoing operations. Additionally, we urge you to work closely with Congress to consider how the 2001 AUMF should be addressed.

Any new authorization for the use of military force must include—

1. A sunset clause and timeframe within which Congress should revisit the authority provided in the new authorization for use of military force;
2. A clear and specific expression of defined mission objectives, named opponents (i.e. specified states or organized armed groups), and countries in which the authority applies, as well as provisions to protect against expanding the authority to countries or entities not explicitly named in the authorization;
3. Language making clear that any new legislation to use military force is the sole, superseding statutory source of authority to use force against the state or armed group to which it applies;
4. Regular and specific reporting requirements to increase transparency, promote democratic accountability, ensure compliance with domestic and international law, and allow Congress to fulfill its oversight responsibilities; and
5. An explicit statement that its authorities are limited to “necessary and appropriate” actions and may only be exercised in compliance with the U.S. Constitution and America’s other domestic and international legal obligations.

We look forward to working with you to end the ongoing wars, provide for the safe return home of our troops in the field, and restore the credibility and influence of the United States. We also hope you will work closely with Congress to ensure America’s full array of foreign policy tools are used to advance U.S. interests and national security while ensuring that military force is a last resort. We would welcome the opportunity to discuss these recommendations in more detail.

Sincerely,



Barbara Lee
Member of Congress



Gregory W. Meeks
Member of Congress



James P. McGovern
Member of Congress



Adam B. Schiff
Member of Congress



Anthony G. Brown
Member of Congress

RESPONSES TO QUESTIONS SUBMITTED FOR THE RECORD

UNCLASSIFIED

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Joaquin Castro #1
House Foreign Affairs Committee
September 28, 2023**

Question:

Since redeploying U.S. forces to Somalia to work with foreign partners combatting al-Shabaab, the U.S. military has repeatedly conducted airstrikes against al-Shabaab fighters. According to AFRICOM, these airstrikes are justified on the basis “collective self-defense,” or the legal authority to defend foreign partners. Executive branch lawyers have asserted that “collective self-defense” is permitted under the 2001 AUMF and also under Article II of the Constitution. When the U.S. military conducts airstrikes against al-Shabaab, is it relying on the 2001 AUMF, Article II, or both?

Answer:

As a general matter, the United States defends partner forces in various circumstances pursuant to both the 2001 AUMF and the President’s authority under Article II of the Constitution. Whether we are able to defend partner forces in particular circumstances would depend on the specific facts at the time. In this specific circumstance, the United States defends partner forces in Somalia against al-Shabaab pursuant to the 2001 AUMF. The international legal basis for these airstrikes is the consent of the Federal Government of Somalia.

UNCLASSIFIED

UNCLASSIFIED

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Jason Crow #1
House Foreign Affairs Committee
September 28, 2023**

Question:

There is bipartisan consensus to include a sunset or reauthorization requirement in a 2001 AUMF repeal and replace bill. What intelligence do we have that suggests that a sunset or reauthorization requirement would impinge upon our national security or unduly bolden any terrorist entities?

Answer:

I'll defer to the Intelligence Community regarding specific intelligence reporting, but the Biden-Harris Administration does not support including a specific expiration date because it could signal to our adversaries that they can simply wait us out; it could leave our partners wondering if they can rely on us long-term; and it could risk creating gaps in our detention authorities.

UNCLASSIFIED

UNCLASSIFIED

-2-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Jason Crow #2
House Foreign Affairs Committee
September 28, 2023**

Question:

Which groups and nations would be considered our 'coalition partners' by this Administration?

Answer:

All foreign countries considered to be coalition partners in operations covered under the 2001 AUMF are listed in the classified annex of the most recent section 1285 reports of the FY 2020 NDAA, which was submitted to Congress in September.

UNCLASSIFIED

UNCLASSIFIED

-3-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Jason Crow #3
House Foreign Affairs Committee
September 28, 2023**

Question:

What definition will be used to define a 'coalition partner'?

Answer:

In this context, a "coalition partner" is a foreign country that participates in an international coalition with the United States to combat entities covered by the 2001 AUMF, including terrorist entities such as al--Qa'ida and associated forces.

UNCLASSIFIED

UNCLASSIFIED

-4-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Jason Crow #4
House Foreign Affairs Committee
September 28, 2023**

Question:

How do the 'coalition partners' of the Administration differ from the partners of the prior administration?

Answer:

The Administration lists updates to coalition partners in the classified annex of the section 1285 report. More generally, the Biden-Harris Administration's National Security Strategy and International Counterterrorism Policy emphasize a shift to a partner-led, U.S.-enabled approach that prioritizes diplomacy, multilateralism, and building partners' civilian capabilities.

UNCLASSIFIED

UNCLASSIFIED

-5-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Jason Crow #5
House Foreign Affairs Committee
September 28, 2023**

Question:

Would the Administration support new reporting requirements about civilian casualties resulting from US strikes?

Answer:

Pursuant to section 1057 of the FY 2018 NDAA (Public Law 115-91), as amended, the Secretary of Defense is required to submit an annual report to Congress detailing the civilian casualties caused by U.S. military operations during the preceding year. The Administration is committed to transparency with respect to the use of force.

UNCLASSIFIED

UNCLASSIFIED

-6-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Jason Crow #6
House Foreign Affairs Committee
September 28, 2023**

Question:

Does the Administration consider democratic and human rights records of partner forces in determining whether such a force is eligible for a collective self-defense designation?

Answer:

The Department of Defense, who is responsible for determining partner force eligibility for collective self-defense operations, is responding to this question separately.

UNCLASSIFIED

UNCLASSIFIED

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Sara Jacobs #1
House Foreign Affairs Committee
September 28, 2023**

Question:

Under Secretary Nuland indicated that the administration needed to retain authority to add additional groups to any replacement AUMF and opposed any geographic limits because of the need to retain flexibility to use force, including in the Sahel. What groups in the Sahel does the administration consider currently covered by the 2001 AUMF?

Answer:

The full list of groups covered by the AUMF has been submitted to Congress pursuant to the reporting requirement in 10 U.S.C. § 1549. The list contains groups operating in the Sahel, including al-Qa'ida in the Lands of the Islamic Maghreb (AQIM) and Islamic State in Iraq and Syria (ISIS) affiliates—ISIS-Greater Sahara (ISIS-GS) and ISIS-West Africa (ISIS-WA).

UNCLASSIFIED

UNCLASSIFIED

-2-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Sara Jacobs #2
House Foreign Affairs Committee
September 28, 2023**

Question:

What is the nature of the threat these groups pose to the United States?

Answer:

AQIM and ISIS affiliates in the Sahel pose grave threats to the personal safety of U.S. persons and facilities in West Africa. AQIM and ISIS affiliates have actively plotted to harm or kill U.S. persons, as well as to target U.S. government facilities or facilities known to be frequented by U.S. persons.

AQIM-associated fighters killed a U.S. citizen in Mali in 2015 and in Burkina Faso in 2016, and elements of both AQIM and ISIS-GS have engaged in kidnapping operations against U.S. citizens.

UNCLASSIFIED

UNCLASSIFIED

-3-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Sara Jacobs #3
House Foreign Affairs Committee
September 28, 2023**

Question:

Are there additional groups in the Sahel the administration anticipates adding to the scope of either the 2001 AUMF or any replacement authorization?

Answer:

The Administration would notify Congress within 30 days of any determination that a new group is covered by the 2001 AUMF, in accordance with the statutory requirements under section 1264 of the FY 2018 National Defense Authorization Act (codified at 50 U.S.C. 1549).

UNCLASSIFIED

UNCLASSIFIED

-4-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Sara Jacobs #4
House Foreign Affairs Committee
September 28, 2023**

Question:

The Obama administration supported a sunset in its 2015 draft counter-ISIS legislation, near the start of the conflict with ISIS. Given this fact, why does the administration now oppose sunset even after the defeat of ISIS “territorial caliphate”?

Answer:

The Biden-Harris Administration does not support including a specific expiration date because it could signal to our adversaries that they can simply wait us out; it could leave our partners wondering if they can rely on us long-term; and it could risk creating gaps in our detention authorities. We would support including a Presidential certification and/or a periodic reporting requirement in a new AUMF.

UNCLASSIFIED

UNCLASSIFIED

-5-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Sara Jacobs #5
House Foreign Affairs Committee
September 28, 2023**

Question:

Would the administration support a prohibition on the use of appropriated funds for any use of force in Mexico taken without prior congressional authorization?

Answer:

The United States has been able to leverage its strong law enforcement relationship with Mexico to address activities that threaten our interests. We do not currently foresee a need to use military force in Mexico.

UNCLASSIFIED

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Sara Jacobs #6
House Foreign Affairs Committee
September 28, 2023**

Question:

Does the Biden administration believe that the President could “override” Article 2(4) of the UN Charter as a 1989 opinion by the DOJ's Office of Legal Counsel held and use force in Mexico without congressional authorization even if it violated international law?

Answer:

Whether acting on statutory or constitutional authority, the Administration conducts military operations in accordance with international law, including the United Nations Charter.

UNCLASSIFIED

-7-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Sara Jacobs #7
House Foreign Affairs Committee
September 28, 2023**

Question:

Article 2(4) of the UN Charter: Would the administration support a prohibition on the use of appropriated funds for any use of force in Mexico taken without prior congressional authorization?

Answer:

Whether acting on statutory or constitutional authority, the Biden-Harris Administration conducts military operations in accordance with international law. This includes the UN Charter rule. The United States has been able to leverage its strong law enforcement relationship with Mexico to address activities that threaten our interests. We do not currently foresee a need to use military force in Mexico.

UNCLASSIFIED

UNCLASSIFIED

-8-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Sara Jacobs #8
House Foreign Affairs Committee
September 28, 2023**

Question:

Given the administration's assertions of the President's authority to use force under Article II of the Constitution, why does the administration need a mechanism to unilaterally add new "associated forces" to the scope of a replacement AUMF?

Answer:

A mechanism to add new groups, such as through the associated forces standard, allows the U.S. government to adapt to continuously evolving terrorist threats. An AUMF allows for prolonged military operations against terrorist groups and provides clear statutory authorization for detention.

UNCLASSIFIED

UNCLASSIFIED

-9-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Sara Jacobs #9
House Foreign Affairs Committee
September 28, 2023**

Question:

If the President needed to use force against a new group or in a new country, couldn't he rely on Article II of the Constitution in the short-term while at the same time seeking congressional authorization for if longer-term or larger scale operations were necessary?

Answer:

The President is authorized to use force pursuant to Article II when the action would serve an important national security interest and would not reasonably be expected to rise to the level of war based on the scope, duration, and the nature of the action and any possible responses. To ensure the ability to address terrorist threats in all circumstances and in a sustained manner, a new authorization should establish a mechanism and standards to enable coverage of terrorist groups beyond those identified by name, through appropriate input from and engagement with Congress.

UNCLASSIFIED

UNCLASSIFIED

-10-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Sara Jacobs #10
House Foreign Affairs Committee
September 28, 2023**

Question:

In your testimony before the committee, you said that the State Department does believe that the War Powers Resolution of 1973 was binding on the President. Your legal counterpart disagreed. Can you please explain this discrepancy?

Answer:

As Acting Legal Adviser Visek testified, the Administration's military operations are conducted consistent with the War Powers Resolution. I share the President's commitment in this regard.

UNCLASSIFIED

UNCLASSIFIED

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #1
House Foreign Affairs Committee
September 28, 2023**

Question:

OVERSIGHT: Congress, in the FY20 National Defense Authorization Act (PL 116-92, 50 USC 1550), required that the Administration report every six months on use of force pursuant to the 2001 Authorization for Use of Military Force (AUMFs). This requirement was enacted in December of 2019. The executive branch failed to comply with this provision until March 2022—only providing the required reporting on the eve of a Congressional hearing on AUMFs. The administration has subsequently failed to provide Congress with any further reports—until earlier this week, when the Biden Administration delivered two years’ worth of delayed reports to Congress. Again, it required the House scheduling a hearing to get the reports. Why has the Biden administration failed to provide Congress with the information required by section 1285 by the required deadline and failed to provide information in classified form as specified in the statute?

Answer:

We are committed to providing timely reports but understand the Department of Defense is responding to this question directly since this reporting requirement has been delegated to the Secretary of Defense.

UNCLASSIFIED

UNCLASSIFIED

-2-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #2
House Foreign Affairs Committee
September 28, 2023**

Question:

Will you commit to providing future section 1285 reporting by the statutory deadline?

Answer:

As this reporting requirement has been delegated to the Secretary of Defense, we understand the Department of Defense will provide a response directly.

UNCLASSIFIED

UNCLASSIFIED

-3-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #3
House Foreign Affairs Committee
September 28, 2023**

Question:

Will you commit to producing a public list of countries in which force has been used by your administration?

Answer:

The Biden-Harris Administration has publicly reported every country in which the U.S. military used force pursuant to applicable reporting requirements.

UNCLASSIFIED

UNCLASSIFIED

-4-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #4
House Foreign Affairs Committee
September 28, 2023**

Question:

Given the failure of both Republican and Democratic presidents to comply with the most basic legally mandated reporting requirements until Congress takes formal oversight action, does this not suggest that Congress needs to include sunset clauses in AUMFs to ensure that the executive complies with even the most basic oversight requests?

Answer:

As discussed in the hearing, the Administration does not believe the use of a sunset clause is the right approach given real concerns about strategic consequences. However, the Biden-Harris Administration is committed to working with Congress to provide timely reporting and to ensure that any new AUMF includes provisions for the executive branch to engage meaningfully with Congress through periodic reviews, Presidential certifications, reporting requirements, or other mechanisms.

UNCLASSIFIED

UNCLASSIFIED

-5-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #5
House Foreign Affairs Committee
September 28, 2023**

Question:

Associated Forces: The 2001 AUMF authorized force against those responsible for the 9/11 attacks and those who harbored them, understood to be al Qaeda and the Taliban. However, since its enactment, this AUMF has been used in over a dozen countries, against adversaries well beyond these groups. We are in this position because the executive branch reads the AUMF to allow the use of force against supposed “associated forces” of al Qaeda and the Taliban. As former deputy legal advisor to President Obama’s National Security Council Tess Bridgeman recently said, authorizing force against associated forces “risks hard-wiring a multi-front war that can continue to expand by unilateral presidential action – without Congress fulfilling its constitutional duty to decide when and against whom the nation should be at war.” How can Congress fulfill its constitutional responsibility to declare war if the executive branch continues to unilaterally add new groups to a more than 20- year-old war administration to cover groups that didn’t even exist at the time of its passage?

Answer:

The Biden-Harris Administration supports Congressional efforts to repeal and replace the 2001 AUMF with a more specific framework that reflects the evolving threat landscape and is more precise regarding which groups are covered by the authorization.

UNCLASSIFIED

UNCLASSIFIED

-6-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #6
House Foreign Affairs Committee
September 28, 2023**

Question:

Can Congress prevent the president from designating additional “associated forces” or new countries to either the 2001 or 2002 AUMFs?

Answer:

The 2001 AUMF authorizes force against al-Qa'ida, the Taliban, and associated forces. The Biden-Harris administration supports Congressional efforts to repeal and replace the 2001 AUMF with a more specific framework that reflects the evolving threat landscape and that is more precise regarding which groups are covered by the authorization. The United States has not construed the 2002 AUMF to include associated forces and the Administration supports its repeal.

UNCLASSIFIED

UNCLASSIFIED

-7-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #7
House Foreign Affairs Committee
September 28, 2023**

Question:

What prevents the President from seeking new Congressional authority to use force against specific new groups if the President deems them a threat?

Answer:

We are only seeking authority in a new AUMF to use force against al-Qa'ida, ISIS, and associated forces. These are the groups against whom we are in armed conflict and assess a continuing need for a statutory authorization to use persistent military force. With respect to other groups, if the nature of the threat from such groups changes and if the President determines additional authorities are appropriate to address the threat effectively, Administration would consult with Congress.

UNCLASSIFIED

UNCLASSIFIED

-8-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #8
House Foreign Affairs Committee
September 28, 2023**

Question:

Wouldn't this approach be more constitutionally appropriate?

Answer:

We are only seeking authority to use force against al-Qa'ida, ISIS, and associated forces. These are the groups against whom we are in armed conflict and assess a continuing need for a statutory authorization to use persistent military force. With respect to other groups, if the nature of the threat from such groups changes and if the President determines additional authorities are appropriate to address the threat effectively, the Administration would consult with Congress.

UNCLASSIFIED

UNCLASSIFIED

-9-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #9
House Foreign Affairs Committee
September 28, 2023**

Question:

Sunset: Last year, at a hearing on the 2001 AUMF, administration officials opposed adding a sunset provision to the 2001 AUMF or including a sunset provision in any replacement legislation. Sunsets both guard against the misuse of old AUMFs being interpreted to authorize wars against groups that Congress never voted on, while serving as a forcing mechanism to ensure that Congress, as the branch most responsible to the American people, debate and vote on whether the United States should be at war, and against whom, in accordance with the Constitution. In an alternative to sunsets, the administration proposed working with Congress to conduct periodic reviews of the list of associated forces covered by the AUMF. However, the executive branch has consistently failed to comply with existing statutory reporting requirements on operations conducted under the 2001 AUMF, including the requirements to provide a comprehensive annual report on the legal and policy frameworks guiding the United States' use of force and related national security operations and to provide reports every six months on operations conducted under the 2001 AUMF. Twenty-nine percent of prior AUMFs have included sunsets. The Obama administration also supported a sunset in its ISIS AUMF proposal. Would you agree that sunsets serve an important forcing function for Congress and the executive branch?

Answer:

The Biden-Harris Administration does not support including a specific expiration date because it could signal to our adversaries that they can simply wait us out; it could leave our partners wondering if they can rely on

UNCLASSIFIED

UNCLASSIFIED

-10-

us long-term; and it could risk creating gaps in our detention authorities.

However, as stated in our testimony, we are committed to finding mechanisms for the executive branch to meaningfully engage Congress through periodic reviews, Presidential certifications, reporting requirements, or other solutions.

UNCLASSIFIED

UNCLASSIFIED

-11-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #10
House Foreign Affairs Committee
September 28, 2023**

Question:

Given the executive branch's delayed compliance or noncompliance with war powers reporting requirements, without including a sunset in AUMFs, how could Congress have confidence that the executive branch will provide the required information needed to meaningfully engage in a periodic review of AUMFs?

Answer:

The Biden-Harris Administration is committed to working with Congress to ensure any new AUMF includes provisions that ensure the executive branch meaningfully engages Congress through mechanisms such as periodic reviews, Presidential certifications, and reporting requirements.

UNCLASSIFIED

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #11
House Foreign Affairs Committee
September 28, 2023**

Question:

2002 AUMF repeal: The Biden administration has confirmed on several occasions, including through statements of administration policy (here and here) that the 2002 AUMF is not being used as the sole source of authority for any ongoing military and that the president would sign any repeal legislation passed by both chambers. Former Deputy Secretary of State Wendy Sherman said that the authorization has “outlived its usefulness and should be repealed.” This past March, the Senate passed S.316, repealing the 1991 and 2002 AUMFs and the House has voted to repeal the 2002 AUMF multiple times in recent years, including my bill, H.R. 256, in 2021. If the House put S.316 on the floor and pass it unamended, can you reaffirm that the president would quickly sign it into law?

Answer:

I cannot speak for the President on specific legislation but the Biden-Harris Administration supports repeal of the 1991 and 2002 AUMFs.

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #12
House Foreign Affairs Committee
September 28, 2023**

Question:

Do you agree that there is no need to replace the 2002 AUMF?

Answer:

Yes.

UNCLASSIFIED

-14-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #13
House Foreign Affairs Committee
September 28, 2023**

Question:

Ending the Forever War: During the Obama-Biden administration, senior officials talked publicly about not just reforming the 2001 AUMF but repealing it. President Obama himself spoke of the need to “fight terrorism without keeping America on a perpetual wartime footing” and his intention to “refine, and ultimately repeal, the AUMF’s mandate.” And then-DoD General Counsel Jeh Johnson discussed that there would come “a tipping point at which so many of the leaders and operatives of al Qaeda and its affiliates have been killed or captured, and the group is no longer able to attempt or launch a strategic attack against the United States” such that “our efforts should no longer be considered an ‘armed conflict’.” Johnson said that at this point, we should essentially move off a war footing to one underpinned by the “law enforcement and intelligence resources of our government ... in cooperation with the international community.” Do you agree with this “tipping point” framework for how our wartime footing will end?

Answer:

At a certain point, the United States will degrade and dismantle the operational capacity and supporting networks of terrorist organizations like al-Qa’ida to such an extent that they will have been effectively destroyed and will no longer be able to attempt or launch a strategic attack against the United States. At that point, there will no longer be an ongoing armed

UNCLASSIFIED

conflict between the United States and those forces. In the meantime, countering these groups requires a mix of military, law enforcement, and intelligence community resources – in addition to civilian counterterrorism programs.

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Barbara Lee #14
House Foreign Affairs Committee
September 28, 2023**

Question:

How close are we to reaching a point at which our counterterrorism efforts should no longer be considered armed conflict but should be guided primarily by our law enforcement and intelligence resources, in cooperation with the international community, as Jeh Johnson discussed.

Answer:

The Biden-Harris Administration assesses that countering current terrorism threats continues to require a mix of tools, including military force and civilian counterterrorism efforts. U.S. counterterrorism strategy focuses on the importance of a partner-led, U.S.-enabled approach that prioritizes diplomacy, multilateralism, and building partners' civilian capabilities. The President has demonstrated that he will not hesitate to use force when necessary to protect the United States from terrorist groups, as demonstrated in the al-Zawahiri strike in Afghanistan in July 2022.

UNCLASSIFIED

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Dean Phillips #1
House Foreign Affairs Committee
September 28, 2023**

Question:

Under Secretary Nuland indicated that the administration needed to retain authority to add additional groups to any replacement AUMF and opposed any geographic limits because of the need to retain flexibility to use force, including in the Sahel. What groups in the Sahel does the administration consider currently covered by the 2001 AUMF?

Answer:

The full list of groups covered by the AUMF has been submitted to Congress pursuant to the reporting requirement in 10 U.S.C. § 1549. The list contains groups operating in the Sahel, including al-Qa'ida in the Lands of the Islamic Maghreb (AQIM) and Islamic State in Iraq and Syria (ISIS) affiliates—ISIS-Greater Sahara (ISIS-GS) and ISIS-West Africa (ISIS-WA).

UNCLASSIFIED

UNCLASSIFIED

-2-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Dean Phillips #2
House Foreign Affairs Committee
September 28, 2023**

Question:

What is the nature of the threat these groups pose to the United States?

Answer:

AQIM and ISIS affiliates in the Sahel pose grave threats to the personal safety of U.S. persons and facilities in West Africa. AQIM and ISIS affiliates have actively plotted to harm or kill U.S. persons, as well as to target U.S. government facilities or facilities known to be frequented by U.S. persons.

AQIM-associated fighters killed a U.S. citizen in Mali in 2015 and in Burkina Faso in 2016, and elements of both AQIM and ISIS-GS have engaged in kidnapping operations against U.S. citizens.

UNCLASSIFIED

UNCLASSIFIED

-3-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Dean Phillips #3
House Foreign Affairs Committee
September 28, 2023**

Question:

Are there additional groups in the Sahel the administration anticipates adding to the scope of either the 2001 AUMF or any replacement authorization?

Answer:

The Administration would notify Congress within 30 days of any determination that a new group is covered by the 2001 AUMF, in accordance with the statutory requirements under section 1264 of the FY 2018 National Defense Authorization Act (codified at 50 U.S.C. 1549).

UNCLASSIFIED

UNCLASSIFIED

-4-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Dean Phillips #4
House Foreign Affairs Committee
September 28, 2023**

Question:

The Obama administration supported a sunset in its 2015 draft counter-ISIS legislation, near the start of the conflict with ISIS. Given this fact, why does the administration now oppose sunset even after the defeat of ISIS “territorial caliphate”?

Answer:

The Biden-Harris Administration does not support including a specific expiration date because it could signal to our adversaries that they can simply wait us out; it could leave our partners wondering if they can rely on us long-term; and it could risk creating gaps in our detention authorities. However, as stated in our testimony, we are committed to finding mechanisms for the executive branch to meaningfully engage Congress through periodic reviews, Presidential certifications, reporting requirements, or other methods.

UNCLASSIFIED

UNCLASSIFIED

-5-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Dean Phillips #5
House Foreign Affairs Committee
September 28, 2023**

Question:

Does the Biden administration believe that the President could “override” Article 2(4) of the UN Charter as a 1989 opinion by the DOJ's Office of Legal Counsel held and use force in Mexico without congressional authorization even if it violated international law?

Answer:

Whether acting on statutory or constitutional authority, the Administration conducts military operations in accordance with international law, including the United Nations Charter.

UNCLASSIFIED

UNCLASSIFIED

-6-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Dean Phillips #6
House Foreign Affairs Committee
September 28, 2023**

Question:

Would the administration support a prohibition on the use of appropriated funds for any use of force in Mexico taken without prior congressional authorization?

Answer:

The United States has been able to leverage its strong law enforcement relationship with Mexico to address activities that threaten our interests. We do not currently foresee a need to use military force in Mexico.

UNCLASSIFIED

UNCLASSIFIED

-7-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Dean Phillips #7
House Foreign Affairs Committee
September 28, 2023**

Question:

Given the administration's assertions of the President's authority to use force under Article II of the Constitution, why does the administration need a mechanism to unilaterally add new "associated forces" to the scope of a replacement AUMF?

Answer:

A mechanism to add new groups, such as through the associated forces standard, allows the U.S. government to adapt to continuously evolving terrorist threats. An AUMF allows for prolonged military operations against terrorist groups and provides clear statutory authorization for detention.

UNCLASSIFIED

UNCLASSIFIED

-8-

**Questions for the Record Submitted to
Under Secretary Victoria Nuland by
Representative Dean Phillips #8
House Foreign Affairs Committee
September 28, 2023**

Question:

If the President needed to use force against a new group or in a new country, couldn't he rely on Article II of the Constitution in the short-term while at the same time seeking congressional authorization for if longer-term or larger scale operations were necessary?

Answer:

The President is authorized to use force pursuant to Article II when the action would serve an important national security interest and would not reasonably be expected to rise to the level of war based on the scope, duration, and the nature of the action and any possible responses. To ensure the ability to address terrorist threats in all circumstances and in a sustained manner, a new authorization should establish a mechanism and standards to enable coverage of terrorist groups beyond those identified by name, through appropriate input from and engagement with Congress.

UNCLASSIFIED

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 1:

I am concerned by recent proposals by some U.S. politicians to use military force in Mexico, likely in violation of international law including Article 2(4) of the U.N. Charter. Given the Biden administration's opposition to Russia's illegal invasion of Ukraine and support for an aggression tribunal, I hope the administration will support efforts to strengthen the prohibition on the use of force domestically as well. Will the administration commit to rescinding the 1989 opinion by the Department of Justice's Office of Legal Counsel that holds the president may unilaterally "override" Article 2(4) of the U.N. Charter?

Answer 1:

Whether acting under statutory or constitutional authority, the President conducts military operations in accordance with international law. This includes the UN Charter rule that outside of certain narrow exceptions, states must "refrain from ... the threat or use of force against the territorial integrity or political independence of any state." The United States generally recognizes three circumstances under which international law does not prohibit the use of force: (1) use of force authorized by the U.N. Security Council acting under the authority of Chapter VII of the U.N.

Charter; (2) use of force in self-defense; and (3) use of force in an otherwise lawful manner with the consent of the territorial State.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 2:

Does the administration believe that the use of force in Mexico is currently justified under the “unable or unwilling” doctrine?

Answer 2:

Whether acting on statutory or constitutional authority, the Biden Administration conducts military operations in accordance with international law. This includes the UN Charter rule that outside of certain narrow exceptions such as the exercise of the inherent right of self-defense, states must “refrain from ... the threat or use of force against the territorial integrity or political independence of any state.” To date, the United States has been able to leverage its strong law enforcement relationship with Mexico to address activity in Mexico that threatens our interests. Mexico is a close partner of the United States. We do not intend and do not foresee a need to use military force in Mexico.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 3:

During the hearing, I asked Acting Legal Adviser Visek whether manufacturing, transporting, or selling fentanyl amounts to an “armed attack” in international law. Will the administration clearly state that manufacturing, transporting, or selling fentanyl does not constitute an armed attack?

Answer 3:

Whether acting on statutory or constitutional authority, the Biden Administration conducts military operations in accordance with international law. This includes the UN Charter rule that outside of certain narrow exceptions such as the exercise of the inherent right of self-defense, states must “refrain from ... the threat or use of force against the territorial integrity or political independence of any state.” To date, the United States has been able to leverage its strong law enforcement relationship with Mexico to address activity in Mexico that threatens our interests. Mexico is a close partner of the United States. We do not intend and do not foresee a need to use military force in Mexico.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 4:

Does the Biden administration believe the president has legal authority to use military force in Mexico to counter fentanyl even without congressional authorization?

Answer 4:

To date, the United States has been able to leverage its strong law enforcement relationship with Mexico to address activity in Mexico that threatens our interests. Mexico is a close partner of the United States. We do not intend and do not foresee a need to use military force in Mexico.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 5:

What limiting principles apply to executive branch lawyers' identification of an "important national interest" for purposes of the Office of Legal Counsel's national-interest test?

Answer 5:

As explained in a series of opinions by the Justice Department's Office of Legal Counsel across Administrations of both parties, the President may order military action without the prior approval of Congress using his Article II authority when: (1) that action serves an important national interest and (2) the reasonably anticipated nature, scope, and duration of the operation and any possible responses would not rise to the level of "war" for purposes of the Constitution's Declare War Clause. All military operations under the Biden Administration are conducted consistent with domestic and international law.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 6:

In its 2011 Libya opinion, the Office of Legal Counsel assessed that the "nature, scope, and duration" prong of the national-interest test would "generally . . . be satisfied only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period." Would a Department of Defense campaign of periodic airstrikes and raids in Mexico meet this high threshold? If not, will the administration commit to rescinding the 2011 Libya opinion and any opinion issued thereafter that relies on this high threshold?

Answer 6:

To date, the United States has been able to leverage its strong law enforcement relationship with Mexico to address activity in Mexico that threatens our interests. Mexico is a close partner of the United States. We do not intend and do not foresee a need to use military force in Mexico.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 7:

Would the administration support legislation that would prohibit the use of appropriated funds for any use of military force in Mexico without congressional authorization?

Answer 7:

To date, the United States has been able to leverage its strong law enforcement relationship with Mexico to address activity in Mexico that threatens our interests. Mexico is a close partner of the United States. We do not intend and do not foresee a need to use military force in Mexico. All military operations by the Biden Administration are conducted consistent with domestic and international law.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 8:

When the administration designates a new entity as an “associated force” under the 2001 AUMF, in what manner do you notify Congress of such a designation?

Answer 8:

All groups the Executive Branch considers to be covered by the AUMF are reported to Congress, and the Executive Branch will continue to report to Congress when groups are added to the list of groups considered to be associated forces. Current law requires notifying Congress within 30 days after a decision to designate any new associated force (50 U.S.C. 1549, Section 1264 of the FY 2018 NDAA, as amended).

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 9:

Has this administration ever reviewed the list of "associated forces" to determine whether groups should be removed?

Answer 9:

The Administration reviews the list of groups considered to be associated forces periodically to ensure it remains consistent with current facts.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 10:

If so, how many times and at what intervals have such reviews happened, and what specific test or criteria has the administration used to determine whether a group should be de-listed?

Answer 10:

Although the Administration will review the list of groups considered to be associated forces periodically to ensure it remains consistent with current facts, we are not aware of any groups having been removed.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 11:

Can groups or individuals who are not themselves covered by the 2001 AUMF be identified as “declared hostile forces” or “affiliated organizations”? If so, what specific test or criteria does the administration use to determine whether a group or individual is a “declared hostile force” or “affiliated organization”?

Answer 11:

All groups considered to be associated forces under the 2001 AUMF are reported to Congress. As a general matter, a determination that a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group’s organization, links with al-Qa’ida, and its participation in ongoing hostilities against the United States or its coalition partners.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 12:

Can groups or individuals who are not themselves covered by the 2001 AUMF be identified as “declared hostile forces” or “affiliated organizations”? If so, what specific test or criteria does the administration use to determine whether a group or individual is a “declared hostile force” or “affiliated organization”?

Answer 12:

All groups considered to be associated forces under the 2001 AUMF are reported to Congress. As a general matter, a determination that a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group’s organization, links with al-Qa’ida, and its participation in ongoing hostilities against the United States or its coalition partners.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 13:

Which offices in the Department of Defense are responsible for determining whether a group or individual qualifies as a “declared hostile force” or “affiliated organization”?

Answer 13:

I would defer this question to the Department of Defense.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 14:

What is the Department of State's role, if any, in determining whether a group or individual qualifies as a "declared hostile force" or "affiliated organization"?

Answer 14:

All groups considered to be associated forces under the 2001 AUMF are reported to Congress. As a general matter, a determination that a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group's organization, links with al-Qa'ida, and its participation in ongoing hostilities against the United States or its coalition partners.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 15:

What specific test or criteria does the administration use to determine whether a splinter or successor group qualifies as a “successor force” under the 2001 AUMF?

Answer 15:

As a general matter, a determination that a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group’s organization, links with al-Qa’ida, and its participation in ongoing hostilities against the United States or its coalition partners. In 2014, there was a split between ISIS and al-Qa’ida leadership, but the same organization continues to wage hostilities against the United States, as it has since 2004 when it joined al-Qa’ida. Under these circumstances, conflicts between ISIS leaders and al-Qa’ida’s current leadership have not affected the authorization provided by the 2001 AUMF for the President to use force against ISIS.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 16:

Does the administration consider JNIM, HTS, or Hurras al-Din to be a successor force for purposes of the 2001 AUMF?

Answer 16:

The Administration is committed to transparency with respect to the use of force. All groups the Executive Branch considers to be covered by the 2001 AUMF have been reported to Congress. However, there could be a national security need to classify the identity of a group covered by the AUMF and reported to Congress.

The 2001 AUMF has been the legal basis for operations against entities including Al-Qa'ida; the Taliban; certain other terrorist groups affiliated with al-Qa'ida and the Taliban in Afghanistan; Al-Qa'ida in the Arabian Peninsula; Al-Shabaab; Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM); Al-Qa'ida in Syria; and the Islamic State of Iraq and Syria (ISIS).

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 17:

What facts underpin the administration's decision to treat the Islamic State and its affiliates differently from how al-Qaeda and its affiliates were treated?

Answer 17:

Despite significant leadership losses over the years, ISIS continues to command a cohesive global network that allows it to sustain a presence and influence in several regions throughout the world. In light of ISIS' centralized organizational structure, we do not consider different branches of ISIS as distinct associated forces under the 2001 AUMF.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 18:

Has the Department of Defense prepared or received any memorandum, opinion, or other document assessing the appropriate way to treat Islamic State affiliates under the 2001 AUMF? If such a memorandum, opinion, or other document exists, will the Department of Defense share it with Congress and the public?

Answer 18:

I would defer this question to the Department of Defense.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 19:

Has the Department of State prepared or received any memorandum, opinion, or other document assessing the appropriate way to treat Islamic State affiliates under the 2001 AUMF? If such a memorandum, opinion, or other document exists, will the Department of State share it with Congress and the public?

Answer 19:

President Obama described the applicability of the 2001 AUMF to ISIS in the 2016 Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations. This Administration keeps Congress fully informed of the legal and policy frameworks governing the United States' use of force consistent with 50 U.S.C. § 1549.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 20:

How is the administration defining “coalition partner”? Does it include any country that has participated in one of these operations?

Answer 20:

We list our coalition partners in the report provided to Congress under Section 1285 of the NDAA for FY 2020, codified at 50 USC § 1550. This group is determined by the countries’ contributions to, or participation in, the counterterrorism campaign against al-Qa’ida and associated forces.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 21:

Under the current interpretation of the 2001 AUMF, could the administration designate and use force against a coalition partner's adversary that poses no threat to U.S. persons or the homeland?

Answer 21:

The 2001 AUMF does not authorize the President to use force against every terrorist group. The mere fact that an entity has been labeled a terrorist group, or that it has committed terrorist acts, does not bring it within the scope of the 2001 AUMF.

As a general matter, a determination that a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group's organization, links with al-Qa'ida, and its participation in ongoing hostilities against the United States or its coalition partners.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 22:

Under the 2001 AUMF and under Article II, what specific test or criteria does the administration use to determine which partner forces, under which circumstances, are eligible for collective self defense?

Answer 22:

In all cases where U.S. forces are authorized to use force to defend foreign forces in the context of armed conflict or a significant threat from an organized armed group, the authorization comes from the President, whether expressly or implicitly in authorizing or directing U.S. forces to participate in multinational military operations. The Secretary of Defense approves military orders (rules of engagement) implementing that authorization.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 23:

Are there circumstances in which a partner force may be eligible for collective self-defense under the 2001 AUMF but not under Article II?

Answer 23:

The United States defends partner forces in various circumstances pursuant both to the 2001 AUMF and the President's authority under Article II. Whether we are able to defend partner forces in particular circumstances would depend on the specific facts at the time.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 24:

Which offices in the Department of Defense are responsible for determining whether a partner force is eligible for collective self-defense?

Answer 24:

I would defer to the Department of Defense to respond to this question.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 25:

What is the Department of State's role, if any, in determining whether a partner force is eligible for collective self-defense?

Answer 25:

In all cases where U.S. forces are authorized to use force to defend foreign forces in the context of armed conflict or a significant threat from an organized armed group, the authorization comes from the President, whether expressly or implicitly in authorizing or directing U.S. forces to participate in multinational military operations. The Secretary of Defense approves military orders (rules of engagement) implementing that authorization.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 26:

Will you commit to sharing with this committee a list of all partner forces currently eligible for collective self-defense, specifying whether each partner force is eligible under the 2001 AUMF, Article II, or both?

Answer 26:

The Administration is committed to transparency with respect to the use of force. DoD has previously reported to Congress with a list of all partner forces designated for defense, pursuant to previous congressional reporting requirements, and DoD reports to Congress on any new forces designated for defense within 48-hours pursuant to the requirements of 10 U.S.C. § 130f.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 27:

When the U.S. military conducts airstrikes against al-Shabaab, is it relying on the 2001 AUMF, Article II, or both?

Answer 27:

As a matter of domestic law, the authority for airstrikes against al-Shabaab is the 2001 AUMF. As a matter of international law, the legal basis for use of force by the United States in the territory of Somalia is consent of the Federal Government of Somalia.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 28:

In what countries does the administration believe the 2001 AUMF authorizes the use of force against ISIS or ISIS affiliates?

Answer 28:

In light of ISIS' centralized organizational structure, we do not consider different branches of ISIS as distinct associated forces under the 2001 AUMF. Terrorist groups do not respect national boundaries, and the threat picture can shift over time. As such, the Administration conducts a robust interagency review process to evaluate proposals to conduct direct action against ISIS in new locations. The purpose of that process is to confirm that ISIS branch that will be subject to direct action is a bona fide part of ISIS. The process includes the required notifications to Congress under 50 USC § 1549.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 29:

What is the nature of the threat to the United States of ISIS in each of these countries?

Answer 29:

ISIS remains committed to attacking the United States and numerous allies and partners. To prevent this, the United States, the Global Coalition, and our allies maintain counterterrorism pressure on the organization by countering ISIS' ideological message, cutting off its funding, building strong communities that are resilient to ISIS recruitment, and when necessary, using military force.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 30:

Will the Biden administration publicly identify all of the groups, including each ISIS 'province' outside Iraq and Syria, the executive branch regards as covered by the 2001 AUMF?

Answer 30:

The Administration is committed to transparency with respect to the use of force. All groups the Executive Branch considers to be covered by the AUMF are currently reported to Congress. However, there could be a national security need to classify the identity of a group covered by the AUMF and reported to Congress.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 31:

Will the Biden administration publicly identify all countries in which force has been used pursuant to the 2001 AUMF since 2001?

Answer 31:

Since 2001, DoD has used force under the 2001 AUMF in locations including Afghanistan, Cuba (for detention), Iraq, Libya, Niger, Somalia, Syria, and Yemen.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 32:

Does the Biden administration subscribe to the “tipping point” standard articulated by former DoD General Counsel Jeh Johnson in his 2012 speech at Oxford University?

Answer 32:

We regularly consider the threat posed by terrorist groups, based on their intent and their capabilities. We have been effective in degrading the capabilities of ISIS and al-Qa’ida, but there is still work to be done, as these groups continue to pose a threat to Americans, particularly Americans located overseas.

At a certain point, the United States will degrade and dismantle the operational capacity and supporting networks of terrorist organizations like al-Qa’ida to such an extent that they will have been effectively destroyed and will no longer be able to attempt or launch a strategic attack against the United States. At that point, there will no longer be an ongoing armed

conflict between the United States and those forces. Unfortunately, that day has not yet come.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 33:

If not, what standard does the administration use for determining the end of the war authorized by the 2001 AUMF? In the administration's view, what would be an appropriate standard for Congress to include in any replacement war authority?

Answer 33:

We regularly consider the threat posed by terrorist groups, based on their intent and their capabilities. We have been effective in degrading the capabilities of ISIS and al-Qa'ida, but there is still work to be done, as these groups continue to pose a threat to Americans, particularly Americans located overseas.

At a certain point, the United States will degrade and dismantle the operational capacity and supporting networks of terrorist organizations like al-Qa'ida to such an extent that they will have been effectively destroyed and will no longer be able to attempt or launch a strategic attack against the United States. At that point, there will no longer be an ongoing armed

conflict between the United States and those forces. Unfortunately, that day has not yet come.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 34:

If not, what standard does the administration use for determining the end of the war on terror?

Answer 34:

We regularly consider the threat posed by terrorist groups, based on their intent and their capabilities. We have been effective in degrading the capabilities of ISIS and al-Qa'ida, but there is still work to be done, as these groups continue to pose a threat to Americans, particularly Americans located overseas.

At a certain point, the United States will degrade and dismantle the operational capacity and supporting networks of terrorist organizations like al-Qa'ida to such an extent that they will have been effectively destroyed and will no longer be able to attempt or launch a strategic attack against the United States. At that point, there will no longer be an ongoing armed conflict between the United States and those forces. Unfortunately, that day has not yet come.

**Questions for the Record Submitted to
Acting Legal Adviser Richard Visek by
Representative Joaquin Castro
House Foreign Affairs Committee
September 28, 2023**

Question 35:

Mr. Maier testified that al Qaeda in Afghanistan “does not have the capability or intent under the Taliban to strike the United States.” Does that mean that the United States has passed the “tipping point” such that the armed conflict with al-Qaeida is over? If not, why not?

Answer 35:

We regularly consider the threat posed by terrorist groups, based on their intent and their capabilities. We have been effective in degrading the capabilities of ISIS and al-Qa’ida, but there is still work to be done, as these groups continue to pose a threat to Americans, particularly Americans located overseas.

Questions for the Record:

**September 28, 2023 House Foreign Affairs Committee Hearing Titled
“Reclaiming Congress’s Article I Powers: Counterterrorism AUMF Reform”
Honorable Caroline Krass, General Counsel, United States Department of Defense**

Representative Sara Jacobs (CA-51)

Question 1: In what countries does the administration believe the 2001 AUMF authorizes the use of force against ISIS or ISIS affiliates?

The 2001 Authorization for Use of Military Force (AUMF) provides the foundational legal basis for our continuing military operations against al-Qa’ida and associated forces, including against the Islamic State of Iraq and Syria (ISIS). The Department of Defense (DoD) uses the 2001 AUMF in conducting military activities to reduce the threat these groups pose to the United States and to our allies and partners around the world.

In light of ISIS’ centralized organizational structure, we do not consider different branches of ISIS as distinct associated forces under the 2001 AUMF.

Terrorist groups do not respect national boundaries, and the threat picture can shift over time. The Administration conducts a robust interagency review process to evaluate proposals to conduct direct action against ISIS in new locations. One purpose of that process is to confirm that the ISIS branch that will be subject to direct action is a bona fide part of ISIS. The interagency review process culminates with the required notifications to Congress under 50 U.S.C § 1549.

Since 2001, DoD has used force under the 2001 AUMF against ISIS in Afghanistan, Iraq, Syria, Somalia, Libya, Yemen, and Niger.

Question 2: Does the Biden administration subscribe to the “tipping point” standard articulated by former DoD General Counsel Jeh Johnson in his 2012 speech at Oxford University? If not, what standard does the administration use for determining the end of the war on terror?

We regularly consider the threat posed by terrorist groups, based on their intent and their capabilities. We have been effective in degrading the capabilities of ISIS and al-Qa’ida, but there is still work to be done, as these groups continue to pose a threat to Americans, particularly Americans located overseas.

At a certain point, the United States will degrade and dismantle the operational capacity and supporting networks of terrorist organizations like al-Qa’ida to such an extent that they will have been effectively destroyed and will no longer be able to attempt or launch a strategic attack against the United States. At that point, there will no longer be an ongoing armed conflict between the United States and those forces. Unfortunately, that day has not yet come.

Question 3: When you were nominated to be GC of the CIA you received the following question about the use of force. **QUESTION:** Other than the AUMF, are you aware of any existing authorities—legal, policy, or other authorities—that allow the President to use “all necessary and appropriate force” against “those nations, organizations, or persons” determined to plan authorize, commit or aide terrorist attacks against the United States? **ANSWER:** Other than the Authorization for Use of Military Force, Pub. L. No. 107–40 (Sept. 18, 2001) (AUMF), the President has constitutional authority as Commander in Chief and Chief Executive and pursuant to his authority to conduct U.S. foreign relations to direct the use of force to further an important national interest, provided that the use of force is not sufficiently extensive in nature, scope, and duration to constitute a “war” requiring prior specific congressional approval under the Constitution’s Declaration of War Clause. For example, the President may authorize the use of force in self-defense to protect against an imminent threat to U.S. national security, such as the threat posed by terrorist attacks against the United States.

Please define what “not sufficiently extensive in nature, scope, and duration to constitute a ‘war’” means? What is the limiting principle for each of these terms “nature”, “scope” and “duration” such that should an action exceed that limiting principle it would constitute “war” in the constitutional sense.

As explained in a series of opinions by the Justice Department’s Office of Legal Counsel across Administrations of both parties, the President may order military action without the prior approval of Congress using his Article II authority when: (1) that action serves an important national interest and (2) the reasonably anticipated nature, scope, and duration of the operation, including anticipated responses and the risk of escalation, would not rise to the level of “war” for purposes of the Constitution’s Declare War Clause.

Whether a particular planned engagement constitutes a “war” for constitutional purposes requires a fact-specific assessment of the anticipated nature, scope, and duration of the planned military operations. “War” under this standard generally would be characterized by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period.

Representative Brad Sherman (CA-32)

At the March 2nd, 2022 House Foreign Affairs Committee hearing on the AUMF, I asked whether you think that the War Powers Act is a constitutional law binding on the Administration or that the Constitution prevents it from being binding on the Administration. Your response was that “I have not or in this administration had an opportunity to talk to my colleagues about that very question. It just hasn't come up.” I asked the same question in the September 28th House Foreign Affairs Committee hearing on the AUMF, and your response was that you were “not aware that it’s been addressed at this point.” Given that over a year and a half has passed since former Deputy Secretary of State Wendy Sherman’s commitment to take a look at this issue and that on September 28th, 2023, Undersecretary of State for Political Affairs Victoria Nuland has stated that the War Powers Act is in fact binding on the Administration, please answer the following:

Question 1: Is the War Powers Act binding on the Administration?

The President understands and respects the constitutional role of Congress to declare war. The United States’ power and strength are greatest when the President and Congress work together to address an external threat.

Historically, there has been a difference of view between the Executive and Legislative branches over the operation of the Constitution and the War Powers Resolution. My understanding is that Presidents historically have acted consistent with the War Powers Resolution.

Question 2: If appropriations legislation contains language that none of the funding be spent in contravention of the War Powers Act, is that binding on the Administration?

The Biden Administration’s military operations are conducted consistent with the War Powers Resolution.

Representative Joaquin Castro (TX-20)Unilateral Use of Force in Mexico:

1. I am concerned by recent proposals by some U.S. politicians to use military force in Mexico, likely in violation of international law including Article 2(4) of the U.N. Charter. Given the Biden administration's opposition to Russia's illegal invasion of Ukraine and support for an aggression tribunal, I hope the administration will support efforts to strengthen the prohibition on the use of force domestically as well.

- **Will the administration commit to rescinding the 1989 opinion by the Department of Justice's Office of Legal Counsel that holds the president may unilaterally "override" Article 2(4) of the U.N. Charter?**

Whether acting under statutory or constitutional authority, the President conducts military operations in accordance with international law. This includes the United Nations Charter rule that, outside of certain narrow exceptions, states must "refrain from ... the threat or use of force against the territorial integrity or political independence of any state." The United States generally recognizes three circumstances under which international law does not prohibit the use of force: (1) use of force authorized by the U.N. Security Council acting under the authority of Chapter VII of the U.N. Charter; (2) use of force in self-defense; and (3) use of force in an otherwise lawful manner with the consent of the territorial State.

2. Some backers of U.S. military intervention in Mexico have suggested that such action by the United States would be lawful under international law because Mexico is unable or unwilling to effectively counter the threat that drug cartels or fentanyl pose.

- **Does the administration believe that the use of force in Mexico is currently justified under the "unable or unwilling" doctrine?**

Law enforcement agencies at all levels—federal, state, local, Tribal, and territorial—are working to disrupt the trafficking of synthetic drugs and their precursors to save American lives. The Administration's National Drug Control Strategy prioritizes a targeted response to drug traffickers and transnational criminal organizations (TCOs) by hitting them where it hurts the most: their wallets. It also includes efforts to strengthen domestic law enforcement cooperation to disrupt the trafficking of illicit drugs within the United States and increase collaboration with international partners to disrupt the supply chain of illicit substances and the precursor chemicals used to produce them. Finally, the National Drug Control Strategy includes three companion documents that direct Federal agencies to take actions that stop the trafficking of drugs across our Caribbean, Northern, and Southwest borders.

Use of U.S. military force in Mexico is not a part of the Administration's drug control strategy.

- **During the hearing, I asked Acting Legal Adviser Visek whether manufacturing, transporting, or selling fentanyl amounts to an “armed attack” in international law. Will the administration clearly state that manufacturing, transporting, or selling fentanyl does not constitute an armed attack?**

The loss of life due to the drug overdose epidemic is staggering in scale and heartbreaking for the families and communities affected. Without diminishing the gravity of the problem presented by illicit drug trafficking, the Administration does not believe that manufacturing, transporting, or selling fentanyl itself constitutes an “armed attack” as that phrase is understood in international law.

3. During the hearing, Representative Waltz suggested that preventing the deaths of U.S. citizens due to fentanyl would constitute a “national interest.” The Office of Legal Counsel has previously assessed that the president can use military force without congressional authorization to protect “important national interests.”

- **Does the Biden administration believe the president has legal authority to use military force in Mexico to counter fentanyl even without congressional authorization?**

Use of U.S. military force in Mexico is not a part of the Administration’s drug control strategy.

- **What limiting principles apply to executive branch lawyers’ identification of an “important national interest” for purposes of the Office of Legal Counsel’s national-interest test?**

The Administration has the utmost respect for the important role Congress plays in these matters and is committed to working with Congress on national security issues. Published opinions of the Department of Justice Office of Legal Counsel detail the national interests that have justified prior uses of military force under Article II of the Constitution.

Any contemplated use of U.S. military force is also reviewed for consistency with international law, including the international law governing resort to force in self-defense.

- **In its 2011 Libya opinion, the Office of Legal Counsel assessed that the “nature, scope, and duration” prong of the national-interest test would “generally . . . be satisfied only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period.” Would a Department of Defense campaign of periodic airstrikes and raids in Mexico meet this high threshold? If not, will the administration commit to rescinding the 2011 Libya opinion and any opinion issued thereafter that relies on this high threshold?**

Use of U.S. military force in Mexico is not a part of the Administration’s drug control strategy.

4. Would the administration support legislation that would prohibit the use of appropriated funds for any use of military force in Mexico without congressional authorization?

Use of U.S. military force in Mexico is not a part of the Administration's drug control strategy.

5. When the administration designates a new entity as an "associated force" under the 2001 AUMF, in what manner do you notify Congress of such a designation?

All groups the Executive Branch considers to be covered by the AUMF are currently reported to Congress, and the Executive Branch will continue to report to Congress when groups are added to the list of groups considered to be associated forces. Current law requires notifying Congress within 30 days after a decision to designate any new associated force (50 U.S.C. § 1549).

6. At the March 2022 hearing, in response to my question, the administration informed this committee that it had never de-listed an "associated force" under the 2001 AUMF.

- **Has this administration ever reviewed the list of "associated forces" to determine whether groups should be removed?**

Yes.

- **If so, how many times and at what intervals have such reviews happened, and what specific test or criteria has the administration used to determine whether a group should be de-listed?**

As a general matter, a determination that a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group's organization, links with al-Qa'ida, and its participation in ongoing hostilities against the United States or its coalition partners.

Although the Administration will review the list of groups considered to be associated forces in case of a material change of circumstances, I am not aware of any groups having been removed.

Groups

7. The Department of Defense's rules of engagement and orders may identify groups or individuals as "declared hostile forces" or "affiliated organizations" who can be targeted without an immediate hostile act or demonstration of hostile intent.

- **Can groups or individuals who are not themselves covered by the 2001 AUMF be identified as "declared hostile forces" or "affiliated organizations"? If so, what specific test or criteria does the administration**

use to determine whether a group or individual is a “declared hostile force” or “affiliated organization”?

As a general matter, a determination that a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group’s organization, links with al-Qa’ida, and its participation in ongoing hostilities against the United States or its coalition partners.

In addition, the President could authorize the Department of Defense to implement rules of engagement that would allow targeting of individuals or groups not themselves covered by the 2001 AUMF. As a matter of domestic law, such Presidential authorization would be based on another AUMF or the President’s Article II authority.

- **What is the list of all groups identified as “declared hostile forces” or “affiliated organizations,” with a brief description of the legal authority and factual basis for each group’s designation? If this list contains legitimately classified information and cannot be publicly disclosed, please provide the reason the list is classified and provide the number of listed groups for the public record.**

The 2001 AUMF has been the legal basis for operations against entities including:

- Al-Qa’ida;
- The Taliban;
- Certain other terrorist groups affiliated with al-Qa’ida and the Taliban in Afghanistan;
- Al-Qa’ida in the Arabian Peninsula;
- Al-Shabaab;
- Al-Qa’ida in the Lands of the Islamic Maghreb (AQIM);
- Al-Qa’ida in Syria; and
- The Islamic State of Iraq and Syria (ISIS).

The factual basis for targeting each of these groups is described in the 2016 Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related National Security Operations, along with subsequent reports submitted under 50 U.S.C. § 1549.

All groups the Executive Branch considers to be covered by the AUMF are currently reported to Congress, and the Executive Branch will continue to report to Congress when groups are added to the list of groups considered to be associated forces. Such reports will be classified if necessary to protect national security. Further information may be provided in a different setting.

- **Which offices in the Department of Defense are responsible for determining whether a group or individual qualifies as a “declared hostile force” or “affiliated organization”?**

As a general matter, a decision that U.S. military force should be applied against an enemy group is made by the President pursuant to a statutory AUMF or his constitutional authority.

- **What is the Department of State's role, if any, in determining whether a group or individual qualifies as a "declared hostile force" or "affiliated organization"?**

As a general matter, a decision that U.S. military force should be applied against an enemy group is made by the President pursuant to a statutory AUMF or his constitutional authority.

- 8. In 2014, ISIS separated from and opened hostilities against al-Qaeda. Because ISIS had previously been considered al-Qaeda in Iraq, the Obama administration identified ISIS as a "successor force" that should be covered by the 2001 AUMF. Since 2014, other al-Qaeda affiliates have split or disbanded and given way to new terrorist groups — such as Jamaat Nusrat al-Islam wal-Muslimin ("JNIM"), Hayat Tahrir al-Sham ("HTS"), and Hurras al-Din. The administration has not publicly disclosed its test or criteria for assessing successor forces and has not publicly disclosed whether new terrorist groups like JNIM, HTS, and Hurras al-Din fall within the scope of the 2001 AUMF.**

- **What specific test or criteria does the administration use to determine whether a splinter or successor group qualifies as a "successor force" under the 2001 AUMF?**

There are no specific criteria for a category called "successor force." A determination that a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group's organization, links with al-Qa'ida, and its participation in ongoing hostilities against the United States or U.S. coalition partners.

- **Does the administration consider JNIM, HTS, or Hurras al-Din to be a successor force for purposes of the 2001 AUMF?**

The Administration is committed to transparency with respect to the use of force. All groups the Executive Branch considers to be covered by the AUMF are currently reported to Congress.

The 2001 AUMF has been the legal basis for operations against entities including al-Qa'ida, the Taliban, certain other terrorist groups affiliated with al-Qa'ida and the Taliban in Afghanistan, al-Qa'ida in the Arabian Peninsula, al-Shabaab, al-Qa'ida in the Lands of the Islamic Maghreb (AQIM), al-Qa'ida in Syria, and the Islamic State of Iraq and Syria (ISIS).

- 9. In response to a question from Representative Jacobs, General Counsel Krass suggested that the administration views the Islamic State in Iraq and Syria and its**

geographically diffuse affiliates as “a single organized group.” As a result, Islamic State affiliates have not been separately designated as “associated forces.” This approach departs from how past administrations treated al-Qaeda and its geographically diffuse affiliates — each of which was separately assessed and designated pursuant to the two-pronged test for identifying “associated forces.”

- **What facts underpin the administration’s decision to treat the Islamic State and its affiliates differently from how al-Qaeda and its affiliates were treated?**

In light of ISIS’ centralized organizational structure, we do not consider different branches of ISIS as distinct associated forces under the 2001 AUMF.

- **Has the Department of Defense prepared or received any memorandum, opinion, or other document assessing the appropriate way to treat Islamic State affiliates under the 2001 AUMF? If such a memorandum, opinion, or other document exists, will the Department of Defense share it with Congress and the public?**

President Obama described the applicability of the 2001 AUMF to ISIS in 2016 in the Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related National Security Operations. This Administration keeps Congress fully informed of the legal and policy frameworks governing the United States’ use of force consistent with 50 U.S.C. § 1549.

- **Has the Department of State prepared or received any memorandum, opinion, or other document assessing the appropriate way to treat Islamic State affiliates under the 2001 AUMF? If such a memorandum, opinion, or other document exists, will the Department of State share it with Congress and the public?**

Respectfully, I defer to the Department of State.

10. The administration’s test for identifying “associated forces” under the 2001 AUMF allows al-Qaeda affiliates to be designated if they have engaged in hostilities against the United States “or its coalition partners.” Around 60 countries participated in Operation Enduring Freedom, and over 30 participated in Operation Inherent Resolve.

- **How is the administration defining “coalition partner”? Does it include *any* country that has participated in one of these operations?**

We list our coalition partners in the report provided to Congress under Section 1285 of the National Defense Authorization Act for Fiscal Year 2020, codified at 50 U.S.C. § 1550. This group is determined by the countries’ contributions to, or participation in, the counterterrorism campaign against al-Qa’ida and associated forces.

- **Under the current interpretation of the 2001 AUMF, could the administration designate and use force against a coalition partner's adversary that poses no threat to U.S. persons or the homeland?**

No. The 2001 AUMF does not authorize the President to use force against every terrorist group. The mere fact that an entity has been labeled a terrorist group, or that it has committed terrorist acts, does not bring it within the scope of the 2001 AUMF.

As a general matter, a determination that a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group's organization, links with al-Qa'ida, and its participation in ongoing hostilities against the United States or its coalition partners.

Collective Self-Defense

11. This and previous administrations have used force under the 2001 AUMF and Article II to defend partner forces, even in the absence of a direct threat to U.S. forces, persons, or territory.

- **Under the 2001 AUMF and under Article II, what specific test or criteria does the administration use to determine which partner forces, under which circumstances, are eligible for collective self-defense?**

The use of force in defense of partner forces is a valuable tool and can be imperative in working effectively with partners in combined or coalition operations.

In all cases where U.S. forces are deployed, they have an inherent right and obligation to defend themselves.

The domestic legal basis for authorizing the use of U.S. military force to defend partner forces depends on the context. When U.S. forces work with foreign partner forces or individuals incident to a U.S. military operation, the legal basis for using necessary and appropriate force to defend those partners is typically the same as the legal authority under which the overall operation was authorized, which could be either the 2001 AUMF or Article II.

- **Are there circumstances in which a partner force may be eligible for collective self-defense under the 2001 AUMF but not under Article II?**

The United States defends partner forces in various circumstances pursuant both to the 2001 AUMF and the President's authority under Article II. Whether we are able to defend partner forces in particular circumstances would depend on the specific facts at the time.

- **Which offices in the Department of Defense are responsible for determining whether a partner force is eligible for collective self-defense?**

In all cases where U.S. forces are authorized to use force to defend foreign forces in the context of armed conflict or a significant threat from an organized armed group, the authorization comes from the President, whether expressly or implicitly in authorizing or directing U.S. forces to participate in multinational military operations. The Secretary of Defense approves military orders (Rules of Engagement) implementing that authorization.

- **What is the Department of State's role, if any, in determining whether a partner force is eligible for collective self-defense?**

Respectfully, I defer to the Department of State.

- **Will you commit to sharing with this committee a list of all partner forces currently eligible for collective self-defense, specifying whether each partner force is eligible under the 2001 AUMF, Article II, or both?**

The Administration is committed to transparency with respect to the use of force. DoD has previously reported to Congress a list of all partner forces designated for defense, pursuant to previous congressional reporting requirements, and DoD reports to Congress on any new forces designated for defense within 48 hours pursuant to the requirements of 10 U.S.C. § 130f.

12. Since redeploying U.S. forces to Somalia to work with foreign partners combatting al-Shabaab, the U.S. military has repeatedly conducted airstrikes against al-Shabaab fighters. According to AFRICOM, these airstrikes are justified on the basis "collective self-defense," or the legal authority to defend foreign partners. Executive branch lawyers have asserted that "collective self-defense" is permitted under the 2001 AUMF and also under Article II of the Constitution.

- **When the U.S. military conducts airstrikes against al-Shabaab, is it relying on the 2001 AUMF, Article II, or both?**

As a matter of domestic law, the 2001 AUMF has been the legal authority for use of force by the United States against al-Shabaab in the territory of Somalia. As a matter of international law, the legal basis for use of force by the United States in the territory of Somalia has been consent of the Federal Government of Somalia.

- **If Congress repealed the 2001 AUMF, would the Department of Defense still claim the authority to conduct these airstrikes?**

An AUMF is important when we want to take *persistent* action against terrorist groups who pose an enduring threat, like ISIS and al-Qa'ida and associated forces. Presidents have relied on Article II authority in recent years to take sporadic, episodic, defensive action against groups not covered by an AUMF.

ISIS

13. Ms. Krass testified that the administration sees ISIS as a single organized group.

- **In what countries does the administration believe the 2001 AUMF authorizes the use of force against ISIS or ISIS affiliates?**

In light of ISIS' centralized organizational structure, we do not consider different branches of ISIS as distinct associated forces under the 2001 AUMF.

Terrorist groups do not respect national boundaries, and the threat picture can shift over time. The Administration conducts a robust interagency review process to evaluate proposals to conduct direct action against ISIS in new locations. One purpose of that process is to confirm that the ISIS branch that will be subject to direct action is a bona fide part of ISIS. The process culminates with the required notifications to Congress under 50 U.S.C. § 1549.

DoD has used force under the 2001 AUMF against ISIS in Afghanistan, Iraq, Syria, Somalia, Libya, Yemen, and Niger.

Transparency

14. Will the Biden administration publicly identify all of the groups, including each ISIS 'province' outside Iraq and Syria, the executive branch regards as covered by the 2001 AUMF?

The Administration is committed to transparency with respect to the use of force. All groups the Executive Branch considers to be covered by the AUMF are currently reported to Congress. However, there could be a national security need to classify the identity of a group covered by the AUMF.

The 2001 AUMF has been the legal basis for operations against entities including al-Qa'ida, the Taliban, certain other terrorist groups affiliated with al-Qa'ida and the Taliban in Afghanistan, al-Qa'ida in the Arabian Peninsula, al-Shabaab, al-Qa'ida in the Lands of the Islamic Maghreb (AQIM), al-Qa'ida in Syria, and the Islamic State of Iraq and Syria (ISIS).

DoD has used force under the 2001 AUMF against ISIS in Afghanistan, Iraq, Syria, Somalia, Libya, Yemen, and Niger.

The End of the War on Terror

In September 2021, President Biden announced to the UN General Assembly that "I stand here today, for the first time in 20 years, with the United States not at war." Yet, the Biden administration wishes to retain authority to wage war without either temporal or geographic limit. By law, the State Department prepares annual "country reports on terrorism," which must include statistics on U.S. citizens killed, injured, or captured by terrorists abroad. The most recent report identifies 0 U.S. citizens harmed by terrorism.

Similarly, the President's most recent 1285 report on how the 2001 AUMF has been used assesses that al-Qaeda probably "pose[s] a low threat" and ISIS probably "lack[s] the capability to direct an attack against the U.S. homeland."

- **Does the Biden administration subscribe to the "tipping point" standard articulated by former DoD General Counsel Jeh Johnson in his 2012 speech at Oxford University?**

We regularly consider the threat posed by terrorist groups, based on their intent and their capabilities. We have been effective in degrading the capabilities of ISIS and al-Qa'ida, but there is still work to be done, as these groups continue to pose a threat to Americans, particularly Americans located overseas.

At a certain point, the United States will degrade and dismantle the operational capacity and supporting networks of terrorist organizations like al-Qa'ida to such an extent that they will have been effectively destroyed and will no longer be able to attempt or launch a strategic attack against the United States. At that point, there will no longer be an ongoing armed conflict between the United States and those forces. Unfortunately, that day has not yet come.

- **If not, what standard does the administration use for determining the end of the war authorized by the 2001 AUMF? In the administration's view, what would be an appropriate standard for Congress to include in any replacement war authority?**

See response above.

- **If not, what standard does the administration use for determining the end of the war on terror?**

See response above.

- **Mr. Maier testified that al-Qaeda in Afghanistan "does not have the capability or intent under the Taliban to strike the United States." Does that mean that the United States has passed the "tipping point" such that the armed conflict with al-Qaeda is over? If not, why not?**

At a certain point, the United States will degrade and dismantle the operational capacity and supporting networks of terrorist organizations like al-Qa'ida to such an extent that they will have been effectively destroyed and will no longer be able to attempt or launch a strategic attack against the United States. At that point, there will no longer be an ongoing armed conflict between the United States and those forces. Unfortunately, that day has not yet come.

**Questions for the Record: September 28, 2023, House Foreign Affairs Committee Hearing
on “Reclaiming Congress’s Article I Powers: Counterterrorism AUMF Reform”**

Representative Joaquin Castro of Texas

**The Honorable Christopher P. Maier, Assistant Secretary of Defense for Special Operations
and Low Intensity Conflict, United States Department of Defense**

Collective Self-Defense

1. Since redeploying U.S. forces to Somalia to work with foreign partners combatting al-Shabaab, the U.S. military has repeatedly conducted airstrikes against al-Shabaab fighters. According to AFRICOM, these airstrikes are justified on the basis “collective self-defense,” or the legal authority to defend foreign partners. Executive branch lawyers have asserted that “collective self-defense” is permitted under the 2001 AUMF *and also* under Article II of the Constitution.

- **When the U.S. military conducts airstrikes against al-Shabaab, is it relying on the 2001 AUMF, Article II, or both?**

Answer: Al-Shabaab is an associated force of al-Qa’ida. The 2001 AUMF, therefore, provides legal authorization for using lethal force against al-Shabaab, and the U.S. military relies on this authorization in conducting airstrikes against al-Shabaab. When U.S. forces use force in self-defense or collective self-defense, the authority can also be Article II of the U.S. Constitution.

- **If Congress repealed the 2001 AUMF, would the Department of Defense still claim the authority to conduct these airstrikes?**

Answer: If the underlying authorities for DoD’s military operations were to change, DoD would review the legal basis for continuing those operations. In recent years, presidents have relied on Article II authority to take sporadic, episodic, defensive action against groups not covered by an AUMF. An AUMF is important for undertaking persistent operations against an adversary that poses an enduring threat, like ISIS and al-Qa’ida. We would also strongly advocate against a lapse in authority between the 2001 AUMF and its successor authorization to ensure we have the necessary authority to conduct operations against ISIS, al-Qa’ida, and their associated forces.

ISIS

2. Ms. Krass testified that the administration sees ISIS as a single organized group.

- **What is the nature of the threat to the United States of ISIS in each of these countries?**

Answer: In light of ISIS’ centralized organizational structure, we do not consider different branches of ISIS as distinct associated forces under the 2001 AUMF. ISIS uses a hierarchical organizational structure with a senior leadership cadre akin to a “C-suite” with geographically aligned “department” analogues that ensure the organization maintains common values and goals, and shares resources. This organizational structure

enables ISIS leadership to direct and support the efforts of the geographically dispersed elements. One of the major strategic goals ISIS seeks to achieve is attacking the United States homeland and Western Europe. In regions where ISIS operates, they also often seek to conduct attacks on western diplomatic and military facilities. ISIS also uses kidnapping as a method of raising funds and often sends funds gathered by one element across the world to support the efforts of a completely different element.

More information is available at higher classifications.

Transparency

3. Will the Biden administration publicly identify all countries in which force has been used pursuant to the 2001 AUMF since 2001?

Answer: The President reports this information annually, in accordance with Section 1264(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. No. 115-91), as amended by Section 1261 of the NDAA for FY 2020 (Pub. L. No. 116-92), codified at 50 U.S.C. §1549(a). Since 2001, DoD has used force under the 2001 AUMF in Afghanistan, Iraq, Syria, Somalia, Libya, Yemen, and Niger.

**Questions for the Record: September 28, 2023, House Foreign Affairs Committee Hearing
on “Reclaiming Congress’s Article I Powers: Counterterrorism AUMF Reform”
Representative Jason Crow of Colorado**

**The Honorable Christopher P. Maier, Assistant Secretary of Defense for Special Operations
and Low Intensity Conflict, United States Department of Defense**

Question 1:

There is bipartisan consensus to include a sunset or reauthorization requirement in a 2001 AUMF repeal and replace bill. What intelligence do we have that suggests that a sunset or reauthorization requirement would impinge upon our national security or unduly burden any terrorist entities?

Answer: I would defer to the intelligence community for a comprehensive answer. However, our experience confronting terrorist organizations over the past two decades suggests that terrorist groups are patient and wait out their adversaries, and strengthen their organization and resolve to continue terrorist activities when counterterrorism pressure is removed. Any sunset or amendment to the current AUMF framework should ensure that consistent counterterrorism pressure can be maintained to avoid the creation of safe-havens that can allow a terrorist organization to recover and strengthen its ability to threaten U.S. citizens or national security interests globally.

Question 2:

Which groups and nations would be considered our ‘coalition partners’ by this Administration? What definition will be used to define a ‘coalition partner’? How do the ‘coalition partners’ of the Administration differ from the partners of the prior administration?

Answer: In the context of counterterrorism operations based on the 2001 AUMF, we list our coalition partners in the report provided to Congress under Section 1285 of the NDAA for FY 2020, codified at 50 U.S.C. § 1550. This group is determined by the countries’ contributions to, or participation in, the counterterrorism campaign against al-Qa’ida and associated forces.

Question 3:

Would the Administration support new reporting requirements about civilian casualties resulting from US strikes?

Answer: I believe the essential reporting requirements regarding civilian harm are already in place. The DoD reports civilian casualties annually per Section 1057 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. § 113 note), as amended. Furthermore, the Secretary of Defense approved and released the Civilian Harm Mitigation Response Action Plan (CHMR-AP) on August 25, 2022, which lays out a systematic approach to considering, mitigating, assessing, and responding to civilian harm caused by military operations. We also have a stand-alone OSD-Policy CHMR team, under my management, that

will coordinate on CHMR issues across the force, advise senior leaders, and provide policy guidance on CHMR issues. The CHMR-AP also charges the Civilian Protection Center of Excellence (CP CoE) to be a hub and facilitator of DoD wide analysis, learning, and training related to CHMR. Additionally, the Civilian Harm Assessment Cells (CHACs) and Civilian Harm Mitigation and Response Officers (CHMROs) across the joint force will effectively assess civilian harm and ensure CHMR activities are appropriately integrated and tracked in their commands. Finally, DoD released the U.S. Department of Defense Instruction (DoDI) on CHMR on December 21, which will institutionalize the CHMR-AP and a range of policies that will enhance our ability to understand, monitor, and timely report instances of civilian harm.

Question 4:

Does the Administration consider democratic and human rights records of partner forces in determining whether such a force is eligible for a collective self-defense designation?

Answer: The use of force in defense of partner forces is a valuable tool and can be imperative to working effectively with partners in combined or coalition operations. When U.S. forces are authorized to use force to defend foreign forces in the context of armed conflict or a significant threat from an organized armed group, the authorization comes from the President, taking into consideration all elements of U.S. national security and foreign policy interests. DoD has previously reported to Congress a list of all partner forces designated for defense, pursuant to previous congressional reporting requirements, and does so annually. DoD also reports to Congress on any new forces designated for defense within 48-hours pursuant to the requirements of 10 U.S.C. 130f.

**Questions for the Record: September 28, 2023, House Foreign Affairs Committee Hearing
on “Reclaiming Congress’s Article I Powers: Counterterrorism AUMF Reform”**

Representative Sara Jacobs of California

**The Honorable Christopher P. Maier, Assistant Secretary of Defense for Special Operations
and Low Intensity Conflict, United States Department of Defense**

Question 1:

Ms. Krass testified that the administration sees ISIS as a single organized group.

**In what countries does the administration believe the 2001 AUMF authorizes the use of
force against ISIS?**

- **Can you provide the complete list of ISIS branded groups that are part the single
group that is ISIS?**
- **What is the nature of the threat to the United States – including to U.S. persons
and the homeland – of ISIS in each of these countries?**
- **Is ISIS Mozambique considered part of the single group that is ISIS?**

Answer: In light of ISIS’ centralized organizational structure, we do not consider different branches of ISIS as distinct associated forces under the 2001 AUMF. ISIS uses a hierarchical organizational structure with a senior leadership cadre akin to a “C-suite” with geographically aligned “department” analogues that ensure the organization maintains common values and goals, and shares resources. This organizational structure enables ISIS leadership to direct and support the efforts of the geographically dispersed elements.

Although there are many geographically dispersed elements of ISIS, of which ISIS Mozambique is one, the Department of Defense does not use military force in all countries where ISIS has a presence. The Administration conducts a robust interagency staff process to evaluate proposals to conduct direct action against ISIS in new locations. One purpose of that process is to confirm that the ISIS branch that will be subject to direct action is a bona fide part of ISIS. The interagency process culminates with the required notifications to Congress under 50 U.S.C § 1549. Since 2001, DoD has used force under the 2001 AUMF against ISIS in Afghanistan, Iraq, Syria, Somalia, Libya, Yemen, and Niger. One of the major strategic goals ISIS seeks to achieve is attacking the United States homeland and Western Europe.

In regions where ISIS operates, they often seek to conduct attacks on Western diplomatic and military facilities. ISIS also uses kidnapping as a method of raising funds and often sends funds gathered by one element across the world to support the efforts of a completely different element. More information is available at higher classifications.

Question 2:

Will the Biden administration publicly identify all of the groups the executive branch regards as covered by the 2001 AUMF? If not, what is the specific national security rationale to limit this information to the public?

Answer: The Administration is committed to transparency regarding its use of military force. All groups the Executive Branch considers to be covered by the AUMF are currently reported to Congress, and the Executive Branch will continue to report to Congress when groups are added to the list of groups determined to be associated forces.

The 2001 AUMF has been the legal basis for operations against entities including:

- Al-Qa'ida;
- The Taliban;
- Certain other terrorist groups affiliated with al-Qa'ida and the Taliban in Afghanistan;
- Al-Qa'ida in the Arabian Peninsula;
- Al-Shabaab;
- Al-Qa'ida in the Lands of the Islamic Maghreb (AQIM);
- Al-Qa'ida in Syria; and
- The Islamic State of Iraq and Syria (ISIS).

When necessary, the Executive Branch's reports to Congress on groups covered by the AUMF are classified to protect national security. For instance, a group newly identified as being covered by the 2001 AUMF could disperse members or move locations to avoid targeting if the Administration's determination is made public. Additionally, if the information that links the group to al-Qa'ida was collected through sensitive means, for example a private pledge of loyalty or directive tasking that only occurred in a small group of individuals, public identification could cause the United States to lose access to that means of collection.

Question 3:

Has any group that has been considered covered by the 2001 AUMF ever been removed from the list of groups covered by the 2001 AUMF?

Answer: The U.S. government periodically reviews the list of groups to determine if they still pose a threat to the United States, however, I am not aware of any group being removed from that list.

Question 4:

Has force been used against every group that is listed as a legitimate target under your legal interpretation of the 2001 AUMF or have some groups that are listed never actually been attacked by the United State?

Answer: This information is reported annually, in accordance with Section 1264(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. No. 115-91), as amended by Section 1261 of the NDAA for FY 2020 (Pub. L. No. 116-92), codified at 50 U.S.C. §1549(a).

Will the Biden administration publicly identify all countries in which force has been used pursuant to the 2001 AUMF since 2001?

Answer: The U.S. Government has made public all countries in which the Department of Defense has used military force pursuant to the 2001 AUMF. The President reports this information annually, in accordance with Section 1264(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. No. 115-91), as amended by Section 1261 of the NDAA for FY 2020 (Pub. L. No. 116-92), codified at 50 U.S.C. §1549(a). Since 2001, DoD has used force under the 2001 AUMF in Afghanistan, Iraq, Syria, Somalia, Libya, Yemen, and Niger.

Question 5:

In September 2021, President Biden announced to the UN General Assembly that “I stand here today, for the first time in 20 years, with the United States not at war.” Yet, the Biden administration wishes to retain authority to wage war without either temporal or geographic limit. How does the administration define the end of the war on terror?

Answer: Although we have been effective in degrading the capabilities of ISIS and al-Qa’ida, these groups continue to pose a threat to Americans, particularly Americans located overseas. These groups continue to have the operational capacity and support networks to effectively threaten the United States and its interests, and the armed conflict against these groups remains ongoing.

Question 6:

You testified that al Qaeda in Afghanistan “does not have the capability or intent under the Taliban to strike the United States.” Does that mean that the United States has passed the “tipping point” such that the armed conflict with al Qa’ida is over? If not, why not?

Answer: Although al-Qa’ida’s capabilities have been severely degraded over the past two decades, the organization consists of thousands of members in total across the globe, who profess their loyalty to al-Qa’ida leaders and their alignment with al-Qa’ida’s core ideology of a violent struggle against the West. The group is not geographically restricted to one place. Its members have shown an ability to communicate, recruit, and travel across borders. Al-Qa’ida and its affiliates continue to threaten U.S. persons around the world. Al-Qa’ida has not abandoned its ideological goals, including attacking the United States. The Taliban has limited al-Qa’ida’s ability to use the territory of Afghanistan for plotting attacks, but al-Qa’ida has not given up its goal of attacking the West.

**House Foreign Affairs Committee Hearing on “Reclaiming Congress’s Article I Powers”
September 28, 2023**

Questions for the Record from Rep. Barbara Lee of California

**The Honorable Christopher P. Maier, Assistant Secretary of Defense for Special Operations
and Low Intensity Conflict, United States Department of Defense**

Question 1:

OVERSIGHT: Congress, in the FY20 National Defense Authorization Act (PL 116-92, 50 USC 1550), required that the Administration report every six months on use of force pursuant to the 2001 Authorization for Use of Military Force (AUMFs). This requirement was enacted in December of 2019.

The executive branch failed to comply with this provision until March 2022—only providing the required reporting on the eve of a Congressional hearing on AUMFs.

The administration has subsequently failed to provide Congress with any further reports—until earlier this week, when the Biden Administration delivered two years’ worth of delayed reports to Congress. Again, it required the House scheduling a hearing to get the reports.

Why has the Biden administration failed to provide Congress with the information required by section 1285 by the required deadline and failed to provide information in classified form as specified in the statute?

- Will you commit to providing future section 1285 reporting by the statutory deadline?
- Will you commit to producing a public list of countries in which force has been used by your administration?
- Given the failure of both Republican and Democratic presidents to comply with the most basic legally mandated reporting requirements until Congress takes formal oversight action, does this not suggest that Congress needs to include sunset clauses in AUMFs to ensure that the executive complies with even the most basic oversight requests?

Answer:

The Department regrets the delay in submitting past Section 1285 reports and will ensure that future 1285 reporting is completed in accordance with the congressionally-required deadline.

The President reports countries in which force is used annually, in accordance with Section 1264(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. No. 115-91), as amended by Section 1261 of the NDAA for FY 2020 (Pub. L. No. 116-92), codified at 50 U.S.C. §1549(a). The DoD also briefs congressional defense committee staff members monthly and the HASC Intelligence and Special Operations sub-committee quarterly in

detail on all counterterrorism operations conducted globally, in addition to other reporting requirements related to these operations.

Question 2:

Associated Forces: The 2001 AUMF authorized force against those responsible for the 9/11 attacks and those who harbored them, understood to be al Qaeda and the Taliban. However, since its enactment, this AUMF has been used in over a dozen countries, against adversaries well beyond these groups. We are in this position because the executive branch reads the AUMF to allow the use of force against supposed “associated forces” of al Qaeda and the Taliban. As former deputy legal advisor to President Obama’s National Security Council Tess Bridgeman recently said, authorizing force against associated forces “risks hard-wiring a multi-front war that can continue to expand by unilateral presidential action – without Congress fulfilling its constitutional duty to decide when and against whom the nation should be at war.”

How can Congress fulfill its constitutional responsibility to declare war if the executive branch continues to unilaterally add new groups to a more than 20- year-old war administration to cover groups that didn’t even exist at the time of its passage?

- Can Congress prevent the president from designating additional “associated forces” or new countries to either the 2001 or 2002 AUMFs?
- What prevents the President from seeking new Congressional authority to use force against specific new groups if the President deems them a threat? Wouldn’t this approach be more constitutionally appropriate?

Answer: The Administration is committed to working with Congress to develop a more specific framework for an AUMF. A new authorization for use of military force should be more specific to address current threats to the United States, while also remaining appropriately adaptive to the dynamic and transnational nature of the evolving threat environment.

Question 3:

Sunset: Last year, at a hearing on the 2001 AUMF, administration officials opposed adding a sunset provision to the 2001 AUMF or including a sunset provision in any replacement legislation. Sunsets both guard against the misuse of old AUMFs being interpreted to authorize wars against groups that Congress never voted on, while serving as a forcing mechanism to ensure that Congress, as the branch most responsible to the American people, debate and vote on whether the United States should be at war, and against whom, in accordance with the Constitution. In an alternative to sunsets, the administration proposed working with Congress to conduct periodic reviews of the list of associated forces covered by the AUMF. However, the executive branch has consistently failed to comply with existing statutory reporting requirements on operations conducted under the 2001 AUMF, including the requirements to provide a comprehensive annual report on the legal and policy frameworks guiding the United States’ use of force and related national security

operations and to provide reports every six months on operations conducted under the 2001 AUMF.

- **Twenty-nine percent of prior AUMFs have included sunsets. The Obama administration also supported a sunset in its ISIS AUMF proposal. Would you agree that sunsets serve an important forcing function for Congress and the executive branch?**
- **Given the executive branch's delayed compliance or noncompliance with war powers reporting requirements, without including a sunset in AUMFs, how could Congress have confidence that the executive branch will provide the required information needed to meaningfully engage in a periodic review of AUMFs?**

Answer: Persistence is a key component of our overall success countering al-Qa'ida and ISIS, and that is feasible only with an AUMF in place. A sunset provision would add strategic and operational risk to our counterterrorism efforts and potentially undermine our international partnerships, delivering easy wins to adversaries as our foreign partners struggling with terrorist threats may begin to question our longer-term commitment and be tempted to turn to our competitors for assistance. The Department of Defense provides monthly and quarterly briefings on ongoing counterterrorism threats and operations to the congressional defense committees, which provide detailed, up-to-date information and meaningful engagements with members of Congress.

Question 4:

2002 AUMF repeal: The Biden administration has confirmed on several occasions, including through statements of administration policy that the 2002 AUMF is not being used as the sole source of authority for any ongoing military and that the president would sign any repeal legislation passed by both chambers. Former Deputy Secretary of State Wendy Sherman said that the authorization has “outlived its usefulness and should be repealed.” This past March, the Senate passed S.316, repealing the 1991 and 2002 AUMFs and the House has voted to repeal the 2002 AUMF multiple times in recent years, including my bill, H.R. 256, in 2021.

- **If the House put S.316 on the floor and pass it unamended, can you reaffirm that the president would quickly sign it into law? Do you agree that there is no need to replace the 2002 AUMF?**

Answer: In 2023, the White House released a statement of administration policy that stated support for the repeal of the 2002 AUMF. Although recent 48-hour War Power reports regarding strikes in Iraq cite the 2002 AUMF, the position has not changed.

Question 5:

Ending the Forever War: During the Obama-Biden administration, senior officials talked publicly about not just reforming the 2001 AUMF but repealing it. President Obama himself spoke of the need to “fight terrorism without keeping America on a perpetual

wartime footing” and his intention to “refine, and ultimately repeal, the AUMF’s mandate.” And then-DoD General Counsel Jeh Johnson discussed that there would come “a tipping point at which so many of the leaders and operatives of al Qaeda and its affiliates have been killed or captured, and the group is no longer able to attempt or launch a strategic attack against the United States” such that “our efforts should no longer be considered an ‘armed conflict’.” Johnson said that at this point, we should essentially move off a war footing to one underpinned by the “law enforcement and intelligence resources of our government ... in cooperation with the international community.”

- Do you agree with this “tipping point” framework for how our wartime footing will end? How close are we to reaching a point at which our counterterrorism efforts should no longer be considered armed conflict but should be guided primarily by our law enforcement and intelligence resources, in cooperation with the international community, as Jeh Johnson discussed.

Answer: Although we have been effective in degrading the capabilities of ISIS and al-Qa’ida, these groups continue to pose a threat to Americans, particularly Americans located overseas. These groups continue to have the operational capacity and support networks to effectively threaten the United States and its interests, and the armed conflict against these groups remains ongoing.

