

**REVIEWING AUTHORITIES FOR THE
USE OF MILITARY FORCE**

HEARING

BEFORE THE

**COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE**

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

—————
JULY 24, 2019
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Printed for the use of the Committee on Foreign Relations



Available via the World Wide Web:
<http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

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REVIEWING AUTHORITIES FOR THE USE OF MILITARY FORCE

WEDNESDAY, JULY 24, 2019

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:21 a.m., in room SD-419, Dirksen Senate Office Building, Hon. James E. Risch, chairman of the committee, presiding.

Present: Senators Risch [presiding], Romney, Barrasso, Young, Menendez, Cardin, Coons, Udall, Murphy, Kaine, Markey, and Merkley.

OPENING STATEMENT OF HON. JAMES E. RISCH, U.S. SENATOR FROM IDAHO

The CHAIRMAN. The Senate Foreign Relations Committee will come to order.

Good morning, everyone. Today, we meet once again—at least for me, once again—to review the authorities for the use of military force, or AUMF. Matters of war and peace are among the most sobering topics with which this committee and Congress are charged. I take this issue—and I think we all take this issue—and our committee’s oversight of this issue very seriously. I know it is of great importance to all of us here. I would like to thank Senators Young and Kaine especially, and, in particular, for their persistence on this matter.

This issue is one of the most vexing issues that I have dealt with in my years in the United States Senate, and I have sat through scores of hours of testimony and opinions from lawyers, wrestling with how we actually deal with this issue, the pragmatics of this issue. It is important that we debate this issue in search for a path forward. There is broad agreement that Congress ought to pass a new AUMF. The problem is there are 535 ideas of what that should look like and even more views in the executive branch. I have been working on this issue for more than a decade, and have found that the practical aspects and the legal aspects are incredibly difficult to reconcile. There are many different lawyers with many different opinions, and no clear consensus on what Congress should do, although all of us have strong opinions on what Congress should do.

One problem we have to address is that many of us have grown up thinking about war as military conflict between nation-states. But, over the last 20 years, we have learned that our enemies are not necessarily state actors. Today, we face rapidly evolving threats

without boundaries. Acts or threats of aggression can occur with virtually no warning, often asymmetrically, requiring swift responses to keep our Nation safe. We are blessed with the greatest military force in the world; indeed, the greatest military force the world has ever seen. And we do all we can to be prepared for acts of aggression. Our President needs to be able to respond as quickly as threats materialize.

Whatever we do, we should not politicize the AUMF issue, and we should not support an AUMF with irresponsible restrictions on our Commander-in-Chief or on the commanders in the field. This is truly not a political problem. This is an issue in which all Americans are concerned. Whether we agree with it or not, the 2001 AUMF provides the basis for our most important counterterrorism activities abroad against al-Qaeda and the Islamic state and associated terrorist groups. Consecutive Defense Secretaries spanning both Democrat and Republican administrations have reiterated that our counterterrorism operations, those activities that keep Americans safe, rely on the 2001 AUMF. Many recent legislative proposals, however, include a repeal of the 2001 AUMF. Any efforts to repeal an AUMF must also include efforts to pass a suitable replacement. That has proven difficult.

As unfortunate as it is, the threat from terrorism persists. If there is a path forward on this issue, we cannot let it jeopardize the hard-fought gains we have made over nearly two decades, the safety of the American homeland, nor the laws that provide key detention authorities. Indeed, some of the most hardened terrorists are kept off the battlefield under this authority.

Turning our attention to Iran, I am increasingly concerned with Iranian aggression. Iran's seizure of a British-flagged vessel in international waters is a clear violation of international norms. That said, maximum pressure is working. The Iranian economy will remain hobbled until the regime chooses to behave as a responsible member of the international community. Iran should take note, despite all of the debate on legal authorities, one thing remains clear: Article 2 of the Constitution provides the Commander-in-Chief with authority to use force to defend the United States and its citizens against attacks. This includes our men and women serving in harm's way. We owe them and their families no less.

I look forward to hearing from the two Administration witnesses on this issue today and to the discussions with the members of this committee regarding this complex issue. And it deserves a robust discussion which I know this committee is up to.

With that, Senator Menendez.

**STATEMENT OF HON. ROBERT MENENDEZ,
U.S. SENATOR FROM NEW JERSEY**

Senator MENENDEZ. Thank you, Mr. Chairman, for holding a very important hearing. In response to several of our colleagues—Senator Kaine, Senator Young, Senator Udall, Senator Murphy, just to mention some who have been pressing this issue for some time. So, I appreciate the hearing.

The Constitution of the United States gives to Congress the sole authority to declare war and, therefore, to authorize the use of military force. The vote we take to send America's sons and daugh-

ters into harm's way is one of our most grave responsibilities and one we must fully embrace. And let us be clear, Congress has, over the past decade, not adequately exercised our prerogative, allowing Presidents to abuse that authority for decades. Regardless of party, no President wants to be constrained. Recent past Presidents of both parties have placed U.S. forces in combat without authorization or stretched a past authorization beyond all recognition. It is unconscionable, and I also believe it is unconstitutional.

I take these votes very seriously. In response to a direct attack on the United States, I voted in favor of the 2001 AUMF against al-Qaeda. After careful review and consideration, I have voted against others, including the Iraq War authorization in 2002. As Chair of the Foreign Relations Committee in 2013, I worked arduously with all members of this committee to author an AUMF for Syria in response to the use of its chemical weapons, and again in 2014 to carefully authorize use of force against ISIS.

While this committee took our responsibilities seriously, and even the mere threat of the possibility of the authorization of the use of force in the case of Syria had Assad given up the chemical weapons we knew of at that time without firing a shot, these authorizations never made it to the Senate floor. Each time I cast a vote—and I am sure this is true of many of my colleagues, if not all of them—I carefully examine all of the facts and weigh the risk of using force. I ask myself if the cause is just and in the national security of the United States. If it is, I would vote to send my son and daughter into war, and also anyone else's. But, if I felt it was not, I would not vote to send my son or daughter, or anyone else's.

Before we authorize force, we must consider three issues. First, is military action necessary to advance and protect the national security interests of the United States? Second, we need a clear diplomatic and political strategy and to understand how military action advances our interests, including realistic timeframes. And lastly, we need to understand what authorities the Commander-in-Chief has, and what specifically they need from Congress, in terms of resources and authorities. This is our decision to make, not the President's, not the Secretary of State's. The Founding Fathers did not trust the executive to make the decision to take the United States to war, and I do not see why we should override their wisdom.

As I have said many times, I am not comfortable with this Administration or the last Administration's reliance on the 9/11 AUMF and the 2002 Iraq AUMF to pursue new enemies in different countries and under completely different circumstances than existed when those authorities were granted. Congress passed the 2001 AUMF to counter al-Qaeda in the wake of the September 11 attacks. No member could have foreseen that we would still be acting under its authority 18 years later. I do not believe that it provides the authority to justify an endless war or to engage in new wars beyond anything the Congress could have ever imagined. To be clear, I do not doubt that actions to defend our country against attack are necessary or that our military forces must be able to defend themselves, but new, significant combat actions require new and appropriate authorizations before they are undertaken.

I understand that this Administration and this State Department believe the 2001 9/11 AUMF could be twisted anew to provide

legal cover for any U.S. combat action against Iran, based upon some fictive connection between Tehran and al-Qaeda. That is absurd. And I ask our witnesses today not to insult our intelligence by claiming that.

My colleagues, we have seen the consequences before of an Administration's fictions to justify war in Vietnam and in Iraq. The results have been quagmires that have gone on for years, at the horrendous cost in lives of U.S. soldiers and innocent civilians. In the worst of cases, our military action has not only failed to achieve its goal, but a lack of diplomatic and strategic planning has beget more and evolving challenges and threats to the United States and our citizens.

In Iraq, arguably, we extended our tenure in a quagmire to ostensibly defeat ISIS. While the caliphate may be defeated, ISIS and its ideology is certainly not, with ISIS affiliates from Nigeria to Sri Lanka and even stirring again in Iraq. There are few remaining limits to a President's ability to wage war. That must change before we find ourselves in another war in the Middle East without Congress's approval, and possibly with Iran.

I look forward to the witnesses' testimony.

Thank you, Mr. Chair.

The CHAIRMAN. Thank you, Senator Menendez. And your work 5 years ago, as we wrestle with this issue in regards to Syria, certainly deserves to be recognized and to be commended. Also Senator Udall, Senator Murphy, Senator Kaine, and others. Senator Young has been particularly attentive to this issue, also. I think the Syria issue probably underscored, as much as any, how really difficult this issue is to wrestle with. And your efforts are to be commended in that regard.

We will turn now to the Honorable David Hale. Ambassador Hale serves as the Under Secretary of State for Political Affairs. Ambassador Hale previously served as U.S. Ambassador to Pakistan, Lebanon, Jordan, and as a Special Envoy for Middle East Peace.

So, Ambassador Hale, we welcome you, and we would love to hear your remarks.

**STATEMENT OF HON. DAVID HALE, UNDER SECRETARY FOR
POLITICAL AFFAIRS, BUREAU OF POLITICAL AFFAIRS, U.S.
DEPARTMENT OF STATE, WASHINGTON, DC**

Ambassador HALE. Well, Chairman Risch, Ranking Member Menendez, distinguished members of the committee, thank you for inviting me to testify today.

The Trump administration's unprecedented pressure campaign on Iran has two objectives: to deprive the Iranian regime of the money it needs to support its destabilizing activities, and, second, to bring Iran to the negotiating table to conclude a comprehensive and enduring deal, as outlined by Secretary Pompeo in May of 2018. President Trump and Secretary Pompeo have expressed clearly America's willingness to negotiate with Iran without preconditions, when the time is right. We have also been clear about our readiness to begin normalizing relations, should we reach a comprehensive deal.

Last year, Secretary Pompeo laid out 12 points on what a negotiated deal should address: Iran's nuclear program, its ballistic missile development and proliferation, its support for terrorist groups and proxies, and its treatment, wrongfully, of U.S. citizens who are detained. Before we reimposed sanctions and accelerated our pressure campaign, Iran was emboldened by the resources and legitimacy provided by our participation in JCPOA. It was increasing the scope of its malign activity, including expansive missile testing and proliferation, its involvement in regional conflicts, and it was unjustly detaining American citizens. In Yemen, Iran has funded, armed, and trained the Houthis, only prolonging the conflict and suffering of the Yemeni people. In Syria, Iran supports a regime that has killed hundreds of thousands of its own citizens, displaced millions, and which continues to spread violence throughout the country. And in Lebanon, Iran uses Hezbollah to provoke conflict with Lebanon's neighbors, imperil the Lebanese people, and generate instability. American pressure is aimed at reversing these trends. Today, the regime and its proxies are weaker than when our pressure began. Shia militant groups in Syria have stated that Iran no longer has enough money to pay them as they did in the past, and Hezbollah has enacted unprecedented austerity plans because of this lack of funding. We are making it harder for Iran to expand its own military capabilities. Military spending fell by nearly 10 percent in the first year of our pressure campaign, and Iran's 2019 budget proposed even steeper cuts, including a 28 percent cut in defense spending.

Our policy, at its core, is an economic and diplomatic one. We are focusing on maximizing economic pressure, linking that pressure to malign activities, and simultaneously increasing Iran's diplomatic isolation. Recently, Iran has responded to this campaign with violence. Iran attacked vessels near the UAE Port of Fujairah in May, and assaulted two oil tankers in the Gulf of Oman last month. Iran shot down an American unmanned aircraft lawfully operating in international airspace. As the Secretary said, Iran should meet diplomacy with diplomacy, not with terror, bloodshed, and extortion. The President has been clear that this Administration does not seek armed conflict with Iran, but we will defend our citizens, forces, and interests, including against attacks by Iran or its proxies. The Administration is not currently seeking a new Authorization for Use of Military Force, nor has the Administration, to date, interpreted either the 2001 or the 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq. The Department's Acting Legal Adviser, Mr. String, is here today to address AUMF issues from a legal standpoint.

We stand with our partners and allies to safeguard global commerce, regional stability, and freedom of navigation in, through, and around the Strait of Hormuz. One-fifth of the world's oil supply transits through the Strait. At the direction of President Trump, we are working to establish an international initiative to promote freedom of navigation and the free flow of commerce in the Gulf. It is vital that we and other nations preserve the right of all vessels to safely navigate there.

Iran's recent announcement that it is accelerating its uranium enrichment reminds us of the fatal flaws of the JCPOA deal. It left Iran's nuclear capabilities largely intact and placed Iran in a position to pursue rapid breakout at a time of its own choosing. Mr. Chairman, the terms of the JCPOA were time-bound by unacceptable sunset provisions; therefore, the world would have faced, soon enough, the problems presented by Iran's provocative building up of its nuclear capabilities.

Learning from past mistakes, we will demand a full accounting of Iran's past and present nuclear activities, as well as comprehensive and permanent restrictions on them, and we will continue to deny Iran access to the revenue streams it has used to destabilize the Middle East. As we raise the cost of Iran's expansionism and of the status quo, we seek a comprehensive deal and a far more peaceful and stable relationship.

Chairman Risch, Ranking Member Menendez, and other members of this committee, I thank you again for the opportunity to testify before you, and I welcome the opportunity to answer your questions.

[The prepared statement of Ambassador Hale follows:]

PREPARED STATEMENT OF AMBASSADOR DAVID HALE

Chairman Risch, Ranking Member Menendez, distinguished Members of the Committee, thank you for inviting me to testify today.

The Trump administration has implemented an unprecedented pressure campaign on Iran with two objectives: First, to deprive the Iranian regime of the money it needs to support its destabilizing activities. Second, to bring Iran to the negotiating table to conclude a comprehensive and enduring deal as outlined by Secretary Pompeo in May of 2018.

President Trump and Secretary Pompeo have expressed clearly America's willingness to negotiate with Iran without preconditions when the time is right. We have also been clear about our desire for peace and our readiness to begin normalizing relations should we reach a comprehensive deal. We have put the possibility of a much brighter future on the table for the Iranian people, and we mean it.

The comprehensive deal we seek with the Iranian regime should address four key areas: its nuclear program, its ballistic missile development and proliferation, its support for terrorist groups and proxies, and Iranian treatment of U.S. citizens, such as the wrongful detention of U.S. citizens like Siamak Namazi and Xiyue Wang, and the case of our missing citizen Bob Levinson.

Over a year ago, Secretary Pompeo laid out 12 points describing the negotiated deal we seek. These points reflect the wide extent of Iran's malign behavior as well as the global consensus before the JCPOA, as reflected in multiple U.N. Security Council resolutions that were adopted starting in 2006 following the revelation of Iran's nuclear violations.

Before we re-imposed sanctions and accelerated our pressure campaign, Iran was increasing the scope of its malign activity, emboldened by the resources and legitimacy provided by our participation in the JCPOA. These actions included engaging in expansive missile testing and proliferation, as well as continuing to unjustly detain American citizens and those of our allies.

Iran also deepened its involvement in regional conflicts.

In Yemen, Iran has provided funding, weapons, and training to the Houthis, only prolonging the conflict and suffering of the Yemeni people. Iran seeks to exploit Yemen's war to undermine its adversaries and expand its regional power. By contrast, America has given more than \$2 billion to help the Yemeni people since the start of the conflict. Iran has provided zero dollars for humanitarian assistance in Yemen. The Iranian regime would rather buy explosive drones to attack civilian airports and infrastructure than provide for the welfare of the Iranian people.

In Syria, Iran supports a regime that has killed hundreds of thousands, displaced millions of its own citizens, and which continues to spread violence throughout the country. Iran is trying to deepen its roots in Syria—economically, militarily, and socially—and use it as a forward operating base to threaten Syria's neighbors, especially Israel and Jordan.

In Lebanon, Iran uses Hezbollah to provoke conflict with Lebanon's neighbors, imperil the Lebanese people, and generate instability.

American pressure is aimed at reversing these trends. Today, the regime and its proxies are weaker than when our pressure began.

Shia militant groups in Syria have stated that Iran no longer has enough money to pay them as much as they have in the past. Hezbollah and Hamas have enacted unprecedented austerity plans because of a lack of funding from Iran. In March, Hezbollah's leader Hassan Nasrallah publicly said Hezbollah needed financial support to sustain its operations. Hezbollah has placed donation boxes in some small businesses and grocery stores asking the public for spare change.

We are also making it harder for Iran to expand its own military capabilities. Starting in 2014, Iran's military budget increased each year until it hit nearly \$14 billion in 2017. From 2017 to 2018, when our pressure campaign went into effect, military spending fell by nearly 10 percent. Iran's 2019 budget proposed even steeper cuts, including a 28 percent cut to their defense budget and a 17 percent cut for IRGC funding. The IRGC's cyber command is now low on cash, and the IRGC has told Iraq's Shia militia groups that they should start looking for other sources of revenue.

Our pressure is working. It is making the cost of Iran's violent and expansionist foreign policy prohibitive.

Our policy is at its core an economic and diplomatic one. We are focusing on maximizing economic pressure on the regime, linking that pressure to its malign activities, and simultaneously increasing Iran's diplomatic isolation. Recently, Iran has responded to this campaign with violence. Our diplomacy and economic pressure does not entitle Iran to undertake violence against any nation or to threaten maritime security. As the Secretary has said, Iran should meet diplomacy with diplomacy, not with terror, bloodshed, and extortion.

Iran was responsible for the attacks at the UAE Port of Fujairah in May as well as the assault on two oil tankers in the Gulf of Oman last month. Iran was responsible for shooting down an American unmanned aircraft lawfully operating in international airspace.

The President has been clear that this Administration does not seek armed conflict with Iran. However, we have also been clear to the regime that we will defend our citizens, forces, and interests, including against attacks by Iran or its proxies. As Secretary Pompeo has noted, the Administration's goal is to find a diplomatic solution to Iran's destabilizing actions, not to engage in a conflict with Iran. The Administration is not currently seeking a new authorization for use of military force. Nor has the Administration, to date, interpreted either the 2001 or the 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq. Marik String, the Department's Acting Legal Adviser, is here today to speak to this issue in more detail and about AUMF more generally.

Safeguarding freedom of navigation in, through, and around the Strait of Hormuz is paramount. One-fifth of the world's oil supply transits through the Strait, with the majority fueling the economies of Europe and Asia. We stand with our partners and allies to safeguard global commerce and regional stability. At the direction of President Trump, we are working to establish an international initiative to promote freedom of navigation and the free flow of commerce in the Gulf. It is vital that we and other nations preserve the ability and right of all vessels to safely navigate the Strait of Hormuz.

While threatening maritime shipping and plotting attacks against U.S. forces and interests, Iran is also continuing its longstanding practice of nuclear extortion.

The Iranian regime's recent announcement that it is accelerating its uranium enrichment reminds us of the fatal flaws of the JCPOA deal. It left Iran's nuclear capabilities largely intact and placed Iran in a position to pursue rapid breakout at a time of its choosing, if it decided to do so.

Mr. Chairman, the problems presented by Iran's provocative building up its stocks of nuclear material and increasing the level of enrichment are problems that the world would have faced soon anyway—at the very least because the terms of the JCPOA were time bound with unacceptable sunset provisions.

But the secret nuclear weapons archive discovered last year reminds us that Iran's nuclear ambitions are in no way peaceful. Iran hid this archive from the world before, during and after JCPOA negotiations. Iran hid this archive while maintaining an organization headed by the founder of Iran's former nuclear weapons program—an organization that employs scientists who worked on that nuclear weapons program.

Had we continued participating in the JCPOA until key aspects of the deal began to expire, we would have been faced with an Iranian regime that was more entrenched in the region and with an even greater conventional arsenal. It would have continued to reap revenue from abroad and funnel it into missile proliferation, support for terrorism, proxy warfare, and regional destabilization. The Iran we would have faced would be much more formidable than the Iran we in fact face.

We must learn from past mistakes. Any new deal must demand a full accounting of Iran's past and present nuclear activities, alongside comprehensive and permanent restrictions on Iran's activities and capabilities. Our pressure will continue to deny Iran access to the revenue streams it needs to destabilize the Middle East. It is time for the Iranian regime to leave 40 years of terror and failure for their people behind.

As we raise the cost of Iran's expansionism and of the status quo, we seek a comprehensive deal and a far more peaceful and stable relationship.

Iranians in the United States and around the world contribute to the vitality and success of their communities. We look forward to the day when we can restore diplomatic relations with Iran and work together with the Iranian people to bring them and their neighbors the peace and prosperity they deserve.

Chairman Risch, Ranking Member Menendez, and other Members of this Committee, I thank you again for the opportunity to testify before you. I welcome the opportunity to answer your questions.

The CHAIRMAN. Thank you, Ambassador Hale.

We will now turn to Mr. Marik String. Mr. String currently serves as the Acting Legal Adviser at the State Department, and has previously served in the Bureau of Political-Military Affairs.

Mr. String, the floor is yours.

**STATEMENT OF MARIK STRING, ACTING LEGAL ADVISER,
OFFICE OF THE LEGAL ADVISOR, U.S. DEPARTMENT OF
STATE, WASHINGTON, DC**

Mr. STRING. Chairman Risch, Ranking Member Menendez, distinguished members of the committee, thank you for inviting me to testify today. It is a particular privilege to be before you today, before the committee where I started my career working for then-Chairman Lugar.

I am here today to address the Administration's view of the scope of the 2001 and 2002 AUMFs as they relate to Iran, as well as more general questions about the President's current authorities to use force and the Administration's position on a new AUMF.

The Administration is not seeking a new AUMF against Iran or any other nation or nonstate actor at this time. In addition, the Administration has not, to date, interpreted either the 2001 or the 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces as they pursue missions authorized under either AUMF. The latter nuance is simply a reassertion of a longstanding right of self-defense for our military forces and those allies and partners deployed alongside of them. Simply put, where U.S. forces are engaged in operations with partner forces anywhere in the world pursuant to either the 2001 or 2002 AUMF, if those forces either come under attack or are faced with an imminent armed attack, U.S. forces are authorized to use appropriate force to respond where it is necessary and appropriate to defend themselves. This principle is not new, and it is not specific to Iran or to any other particular country or nonstate group. The 2001 and 2002 AUMFs remain the cornerstone of ongoing military operations in multiple theaters, and are a demonstration of U.S. strength and resolve.

The 2001 AUMF provides the President authority to use military force against al-Qaeda, the Taliban, and their associated forces, including against ISIS. That authority includes the authority to detain enemy personnel captured during the course of the ongoing armed conflict. But, it is important to note that the 2001 AUMF is not a blank slate. It does not authorize the President to use force against every group that commits terrorist acts or could have links to terrorist groups or facilitators. As of today, the executive branch has determined that only certain terrorist groups fall within the scope of the 2001 AUMF, none of which are currently state actors. These groups are al-Qaeda, the Taliban, certain other terrorist or insurgent groups affiliated with al-Qaeda and the Taliban in Afghanistan, al-Qaeda in the Arabian Peninsula, al-Shabaab, al-Qaeda in the Lands of the Islamic Maghreb, al-Qaeda in Syria, and ISIS.

The 2002 AUMF remains an important source of additional authority for military operations against ISIS in Iraq and to defend the national security of the United States against threats emanating from Iraq. The United States also relies on the 2002 AUMF as an additional source of authority to detain, including in recent litigation.

As you know, Section 1264(b) of the 2018 National Defense Authorization Act states that, “Not later than 30 days after the date on which a change is made to the legal and policy frameworks for the United States use of military force, the President is to notify the appropriate congressional committees of the change, including its legal, factual, and policy justifications.” As such, there is a mechanism to report to Congress if any changes to our legal assessments may occur in the future, which has been used by this Administration on more than one occasion. More generally, the Administration has kept Congress informed about overseas operations on a regular basis, consistent with the War Powers Resolution.

Beyond the AUMFs, Article 2 of the Constitution empowers the President, as Commander-in-Chief and Chief Executive, to order certain military action in order to protect the Nation from an attack or imminent threat of attack, and to protect important national security interests. The legal and historical foundation of this constitutional authority to protect the national security interests of the United States is extensive, as you know. The Department of Justice’s Office of Legal Counsel has issued a series of opinions under both Republican and Democratic administrations about the President’s use of Article 2 authority over more than two centuries.

Prior administrations have consistently relied on the President’s constitutional authority to direct military force without specific prior authorization, including 2011 military operations in Libya. More recently, OLC explained its view concerning the April 2018 use of force against chemical weapons targets in Syria.

Finally, besides not seeking any new AUMF at this time, the Administration is also not seeking any revisions to the existing AUMFs. We have sufficient statutory and constitutional authorities to protect the national security interests of the United States. If Congress were to consider a new or revised AUMF, the Administration affirms the same three criteria stated previously to the committee: first, that any new AUMF must have no sunset provision;

second, no geographic limitation; and third, no repeal before replacement. We believe that any repeal of the 2001 or 2002 AUMF before a new AUMF is in place would cast doubt on the U.S. Government's continued authority to use force against the terrorist groups subject to those authorizations, including the scope of the U.S. Government's detention authorities. It is also essential that any new legislation not undermine the President's constitutional authority to defend the Nation against threats or attacks. Finally, anything casting doubt on our ability to respond in self-defense to Iranian threats or attacks on U.S. or partner forces or interests increases the risk and emboldens Iran to make further provocations.

Mr. Chairman, Mr. Ranking Member, and other members of this committee, I thank you again for the opportunity to testify, and look forward to taking your questions.

[The prepared statement of Mr. String follows:]

PREPARED STATEMENT OF MR. MARIK STRING

Chairman Risch, Ranking Member Menendez, distinguished Members of the Committee, thank you for inviting me to testify today.

I am here today to address the Administration's view of the scope of the 2001 and 2002 AUMFs as they relate to Iran, as well as more general questions about the President's current authorities to use force and the Administration's position on a new AUMF.

The Administration is not seeking a new AUMF against Iran or any other nation or non-State actor at this time. In addition, the Administration has not, to date, interpreted either the 2001 or 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces as they pursue missions authorized under either AUMF. The latter nuance is simply a re-assertion of a long-standing right of self-defense for our military forces and those allies and partners deployed alongside them. Simply put, where U.S. forces are engaged in operations with partner forces anywhere in the world pursuant to either the 2001 or 2002 AUMF, if those forces either come under attack or are faced with an imminent armed attack, U.S. forces are authorized to use appropriate force to respond where it is necessary and appropriate to defend themselves or our partners. This principle is not new, and it is not specific to Iran or to any other particular country or non-State group.

The 2001 and 2002 AUMFs remain the cornerstone for ongoing military operations in multiple theaters and are a demonstration of U.S. strength and resolve. The 2001 AUMF provides the President authority to use military force against al-Qa'ida, the Taliban, and their associated forces, including against ISIS. That authority includes the authority to detain enemy personnel captured during the course of the ongoing armed conflict.

But it is important to note that the 2001 AUMF is not a blank check. It does not authorize the President to use force against every group that commits terrorist acts or could have links to terrorist groups or facilitators. As of today, the Executive Branch has determined that only certain terrorist groups fall within the scope of the 2001 AUMF, none of which are currently state actors. These groups are: 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.

The 2002 AUMF remains an important source of additional authority for military operations against ISIS in Iraq and to defend the national security of the United States against threats emanating from Iraq. The United States also relied on the 2002 AUMF as an additional source of authority to detain in recent litigation.

As you know, Section 1264(b) of the FY2018 National Defense Authorization Act states that, not later than 30 days after the date on which a change is made to the legal and policy frameworks for the United States' use of military force and related national security operations, the President is to notify the appropriate congressional committees of the change, including its legal, factual, and policy justifications. As such, there is a mechanism to report to Congress if any changes to our legal assessments may occur in the future, which has been used by this Administration on more than one occasion to keep the relevant Committees informed. More generally, the

Administration has kept Congress informed about operations overseas on a regular basis, consistent with the War Powers Resolution.

Beyond the AUMFs, Article II of the Constitution empowers the President, as Commander-in-Chief and Chief Executive, to order certain military action in order to protect the Nation from an attack or imminent threat of attack and to protect important national interests. The legal and historical foundation of this Constitutional authority to protect the national security interests of the United States is extensive. The Department of Justice's Office of Legal Counsel (OLC) has issued a series of opinions under both Democratic and Republican presidents about the President's use of the Article II authority over more than two centuries.

Prior Administrations have consistently relied on the President's Constitutional authority to direct military force without specific prior congressional authorization, including in military operations in Libya in 2011; a bombing campaign in Yugoslavia in 1999; troop deployments in Haiti twice, in 2004 and 1994, Bosnia in 1995, and Somalia in 1992; air patrols and airstrikes in Bosnia from 1993–1995; an intervention in Panama in 1989; and bombings in Libya in 1986. Most recently, OLC explained this view in its 2018 opinion concerning the April 2018 use of force against chemical weapons targets in Syria.

Finally, besides not seeking any new AUMF at this time, the Administration is also not seeking any revisions to the existing AUMFs. We have sufficient statutory and Constitutional authorities to protect the national security interests of the United States.

If Congress were to consider a new or revised AUMF, the Administration affirms the same three criteria stated previously to this committee: any new AUMF must have no sunset provision, no geographic limitation, and no repeal before replacement. Any repeal of the 2001 or 2002 AUMF before a new AUMF is in place would cast doubt on the U.S. Government's continued authority to use force against the terrorist groups subject to those authorizations, including the scope of the U.S. Government's detention authority over such groups.

Amending the 2001 AUMF could also create substantial, avoidable, and unnecessary litigation risk by potentially unsettling the existing legal framework as to current detainees.

It is also essential that any new legislation not undermine the President's Constitutional authority to defend the nation against threats or attacks.

Anything casting doubt on our ability to respond in self-defense to Iranian threats or attacks on U.S. or partner forces or interests increases risk and emboldens Iran to make further provocations.

Chairman Risch, Ranking Member Menendez, and other Members of this Committee, I thank you again for the opportunity to testify before you. I welcome the opportunity to answer your questions.

The CHAIRMAN. Thank you, Mr. String.

We are going to do a round of questions now, and we will start with Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Thank you both for your testimony.

Secretary Hale, I know that you focused your entire testimony on Iran. And, while Iran maybe creates a focal point for our attention on AUMF, this hearing is in a broader context about authorities under AUMF.

So, let me start with you, Mr. String. Do you believe that the Administration has any legal authorization to use military force against Iran, beyond self-defense of U.S. Armed Forces and personnel in the region?

Mr. STRING. Thank you, Senator, for the question.

As stated in my opening statement with respect to the 2001 and 2002 AUMFs, the Administration has not determined, to date, that either one of those statutory authorizations would apply or authorize force against Iran—

Senator MENENDEZ. Let me stop you there. "Has not determined, to date." "To date" is the very operative word in that sentence, and that is the same statement that was made to Chairman Engel in the House in a letter from Ms. Taylor, the Assistant Secretary for

Leg Affairs, "The Administration has not, to date, interpreted either AUMF as authorizing military force against Iran." So—that is not my question. My question is, does the Administration have any legal authorization to use military force against Iran, beyond self-defense of U.S. Armed Forces and personnel in the region?

Mr. STRING. Thank you, Senator, for pointing out the nuance in the letter. And it is important nuance, because what we can comment on is the facts that are presented to us as attorneys in the executive branch. The assertion that you referenced is based on the facts that we know today, that, to date, we have not made any such determination. I would also note that the Office of Legal Counsel has extensively analyzed the scenarios under which the President could exercise use of force, generally, with respect to any national security threat. That is not an unlimited or unbounded authority. The Office of Legal Counsel has laid forth two important—

Senator MENENDEZ. You do not believe, as the President said, I think, a day or two ago in a speech, that Article 2 allows the President to do anything he wants.

Mr. STRING. The Office of Legal Counsel has issued numerous opinions laying out the parameters, Senator, of any—

Senator MENENDEZ. Well, that is a simple yes or no. Does Article 2 of the Constitution of the United States say the President can do anything he wants?

Mr. STRING. The Office of Legal Counsel has laid forth particular criteria that must be followed in any assessment of any use of force pursuant to the—

Senator MENENDEZ. But, if the President, tomorrow, without any further provocation, wants to have military action against Iran, does he have any authorization, as of this point in time, to do so?

Mr. STRING. Again, Senator, I just refer back to the legal opinions that have been issued to date under this Administration and previous administrations about the criteria that lawyers would look at in order to determine whether a use of force under the Constitution is justified.

Senator MENENDEZ. Let me ask Secretary Hale. Will the Administration commit to seeking congressional authorization for any military action against Iran, other than a self-defensive one?

Ambassador HALE. I can certainly assure you, Senator, that we will act in accordance with the law and seek consultations with the Congress.

Senator MENENDEZ. That is not a commitment to seek an AUMF.

Mr. String, do you think it is necessary for Congress to pass a new AUMF in order for the Administration to enter into military conflict with Iran?

Mr. STRING. Senator, thank you for the question.

So, again, I will assert what I said before about the longstanding authority that both Republican and Democratic administrations have determined to exist under the Constitution to protect the United States and our national security interests. It is a necessarily flexible authority. However, we are committed to keeping the committee, the Congress, fully informed about how we think about these issues. We have submitted, a few months ago, the so-called 1264 Report, which talks about how we think about issues surrounding the use of force. We submit—

Senator MENENDEZ. This Administration, generally, is not very cooperative in giving members of this committee information, so I am not too, you know, warmed by that suggestion.

Can you explain the need for "to date" caveat in the letter sent by Chairman Engel? What would you expect the Department's interpretation would change from "to date" to "tomorrow"? What would change?

Mr. STRING. Thank you, Senator.

Again, as an attorney in the executive branch, we can only comment on the facts before us. It is a tumultuous region, and it would be difficult to speculate on what facts may arise in the future, and we would be asked by clients in the executive branch as to what might change, if anything.

Senator MENENDEZ. Well, let me just say, I am not asking you to be hypothetical, but the AUMF is an 18-year-old law that was passed without any thought regarding Iran. What would lead to a change in interpretation so that it could apply to Iran, when the plain language, legislative intent, and 18 years of interpretive history remain the same?

Mr. STRING. Thank you, Senator. I appreciate the question. And again, I just have to go back to the same statement—

Senator MENENDEZ. And I would appreciate a real answer.

Mr. STRING. Well, we cannot comment on hypothetical factual scenarios in—

Senator MENENDEZ. It is not a hypothetical. I have just told you the facts. That is not a hypothetical. It is not a hypothetical at all. It was very clear. Iran was not even in the focal point 18 years ago. Iran is not mentioned in the AUMF. There is nothing that has happened that that original AUMF authorized. This caveat, that "to date," creates a great deal of anxiety that you are all going to interpret this authorization, which is beyond the pale, to enter into a military engagement with Iran other than in response to an action that protects our personnel and our military. And I have to tell you, there is no appetite here to accept such an interpretation. And, at the end of the day, we are not going to get dragged into a war, when we have authorities over monies. So, we need a clearer response. Because I am not asking you for a hypothetical. I am asking you based on the facts that exist.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Cardin.

Senator CARDIN. Well, thank you, Mr. Chairman.

Let me thank both of our witnesses.

Mr. String, I just want to go back to the '01 authorization, the current ambiguity in regards to authorizations concerning Iran and what is the proper position for the United States to be in globally on the use of military force. I would think any Administration would be in a much stronger position if there is unity between Congress and the executive branch on our resolve for our policies and what is backed up with the Authorization for Use of Military Force.

And I hope you appreciate what has been said here about the 2001 authorization. It is personal to some of us because we voted for it. And there was, at the time that we voted on that authorization, such a need for unity in this country to show resolve against

the attack on our country on 9/11. And we wanted to make it clear that the President had complete authority to respond to the horrific attack on our country. I remember that debate very well. I participated in that debate. And it was clearly aimed at those that planned the attack against us and those who harbored those who planned the attack against us. And the interpretation, now, of three administrations to apply that '01 authorization to contemporary issues is totally absurd. Absurd. It is not what Congress intended.

Now, we have had administrations who have at least come forward and said, "Let us update that authorization. Let us debate what the authorization should be for the use of force against a current threat against this country." I am disappointed, if I understand your position. You are not coming to Congress for an authorization for force in regards to the current terrorist threat against this country. I find that extremely disappointing because you do not have the unity in Congress that a debate like that would lead to. And now, yes, the most recent challenge is what is happening in Iran. And Senator Menendez is absolutely right, there is no appetite here for use of force. We believe that would be counterproductive to America's national security interests. And your letter says, basically, "At this time, we do not intend to use the '01 authorization, but we reserve all rights." And that leads to nervousness in the Article 1 branch of government as to how we can express ourselves, where it would be much stronger if we could express ourselves in unity with an Administration as to the resolve of this Nation to fight those who want to harm us.

So, I am just expressing my frustration because I am afraid I am going to wake up one day and see American men and women in harm's way, ordered by the President of the United States, under the statement that has been authorized by Congress—which I do not believe we have authorized, which is going to cause division in this country, not strength. And, while we still have time to act, why are you not presenting to us an authorization that represents the current circumstances of this country, and not what we experienced in 2001?

Mr. STRING. Thank you, Senator, for the questions. I can answer that in a couple of different ways.

First, as to your first principle as to whether the United States is stronger when the executive branch and Congress act in concert, I fully agree with that proposition. I think everyone in the executive branch would agree that we are stronger as a Nation when we are aligned. What I have said in my testimony today is that we are not seeking a new AUMF, because we believe, at this time, that we have sufficient legal authorities to protect the United States against threats around the world.

That being said, we also respect the institutional prerogative of this committee, of this institution, to consider a new AUMF. And what we have tried to do is lay down some guideposts for what we think some of those key criteria would be in a new AUMF. And that is, as I mentioned in my opening—

Senator CARDIN. I would just submit to you, the chances of us passing an AUMF that is contemporary to needs without the active request from the Administration is rather remote.

Mr. STRING. I take your point. At the same time, we are willing to provide feedback on any proposals—

Senator CARDIN. And what you might get from Congress is restrictions that we can get into statute that you do not want, that you will have an option either to accept or veto a major bill because it is in there. I do not think that is the right way to proceed.

Mr. STRING. Okay. Thank you. I respect that point.

I will just note, also, with respect to the 2001 AUMF, it is also not an unbounded legal authority. There was a very careful inter-agency process which the previous Administration actually laid out in a 2016 report to Congress that describes how the executive branch would consider adding a new group to be a potential target under the 2001 AUMF.

Senator CARDIN. You are reinforcing my objections. The next Administration may add a different standard to it. And this was never anticipated when this authorization was given by Congress. I really do appreciate your efforts, and understand the deep frustration that is in this body.

The CHAIRMAN. Thank you, Senator Cardin.

Senator Coons.

Senator COONS. Thank you, Chairman Risch, Ranking Member Menendez, for holding this hearing.

And I want to thank Under Secretary Hale and Mr. String, Acting Legal Adviser, for your time today.

As we have covered so far, 18 years ago, this body came together in the aftermath of 9/11 to pass a resolution authorizing the President to use force against those responsible for that heinous and cowardly attack. And that passed by overwhelming margins. But, neither most of my colleagues nor the American people ever imagined that that 2001 vote would be used to justify U.S. force in places like Yemen or Libya or Somalia, as it is today. In fact, my review concludes that only 18 Senators who voted in favor of that resolution as Senators in '01 are still in office, and not one of the currently serving Foreign Relations Committee members voted for it as Senators, although a few did as House members. So, that means the overwhelming majority of us here today, more than 80 percent of the currently serving Senators, have not voted either in favor or against the way our government is using military force today against international terrorist groups. Of course, I believe that we should continue to fight al-Qaeda and ISIS. But, I think we need to update the authority we are using, to make sure it is relevant to today's fight, to make sure it engages and sustains not just the consent but support of the American people. I believed this when President Obama was in office and advocated for it. And I continue to believe it today.

The Constitution divides war-making power and responsibility between Congress and the President, for a good reason. And since 2001, I believe far too much power has gone to Presidents of both parties. And Congress needs to do more to ensure that the executive branch seeks and gets permission of the people's branch before extending the authority to wage war to new geographies or new associated forces. I think we, as elected leaders and policymakers, owe it to the men and women who fight overseas on our behalf to debate the use of force.

So, let me briefly say a word about Iran. I do not believe either the '01 or '02 AUMFs authorize war with Iran. And I do not think that Iran can be linked to al-Qaeda, ISIS, or other associated forces detailed in those AUMFs. And I think the President, if he is contemplating using military force against Iran, must come to Congress to seek authorization. And I want to commend my colleague from New Mexico, Senator Udall, for leading an effort for us to have a vote on this issue and to continue to advance this issue. And I think, given recent tensions with Iran, this committee should have an open, unclassified hearing on Iran with Secretary Pompeo or Brian Hook. I am concerned that, after the President's unilateral withdrawal from the JCPOA, Iran's bad behavior has increased dramatically, and our ability to rally our allies in the face of this provocation has decreased. So, I welcome this conversation and think it is important we continue to have a say, not on how we used force 18 years ago, but how we are using it today and in the future.

So, Ambassador Hale, if I might, the Washington Post reported, this week, a thousand ISIS fighters have crossed into Iraq, and there are reports that they have captured territory in Afghanistan, as well. What are we doing to ensure that ISIS does not retake territory in Iraq and Syria, or simply shift its operations into new areas? And what is our strategy to end these conflicts? The caliphate, as a geographic area, may have ended, but I do not think the fight against ISIS is over.

Ambassador HALE. Well, Senator, thank you for your comments and for your question.

I certainly agree with you that the fight is not over. We are, unfortunately, going to have to continue to do everything we can to wrap this up. We may have to continue the military pressure on ISIS fighters, but they have a remarkable ability to reconstitute themselves in stateless areas, which is what you have just referred to. I do not have specific facts to confirm the Washington Post's story, but this is the kind of phenomena that we have seen before from ISIS, and our strategy is not just military pressure, but, I think, more significantly, to build up the capacity of our partner nations in the region, the leadership of Iraq, the leadership of Afghanistan, so that they are capable of dealing with this problem, and to eliminate the stateless areas that are, unfortunately, the breeding ground for this phenomenon.

Senator COONS. One of my concerns is that we not lose focus in the ongoing fight against ISIS as the Administration and many of us shift focus to Iranian actions in the Gulf, as we lost focus on Afghanistan when we went to war in Iraq.

Mr. String, if all the forces we are currently fighting around the world are covered by the '01 AUMF, why do we need the '02 AUMF at all? If the '02 AUMF were repealed, is there something we are currently doing around the world that would have to stop?

Mr. STRING. Thank you, Senator. I had a good discussion with your staff about this question, as well, the other day.

I cannot point to a discrete set of operations that would be exclusively authorized right now under only the 2002 AUMF, but this is how we think about it. In 2011, the situation in Iraq was very different than it was today. We thought, in 2011, the need for an

AUMF with respect to Iraq was abating. The situation changed very quickly in Iraq, and the previous Administration made a decision that the 2002 AUMF may have become more relevant again. So, there is an ongoing relevance for both our operations in Syria as a source of a supplemental authority for Syria and Iraq. Secondly, we continue to rely on the 2002 AUMF for certain detention activities. We have cited this provision in recent litigation. And so we do continue to rely on it in the courts, in the third branch of government.

Senator COONS. I do think we should be capable enough and strong enough to provide continuing authorities for appropriate detention activities and authorization for ongoing conflict without relying on, I think, now badly outdated authorities.

Let me just, in closing, reference a letter that I led with four colleagues about the condition of hundreds of American citizens, including 230 children, stranded in Malaysia with their Yemeni families, waiting to obtain visas to the United States. The travel ban, the so-called "Muslim ban," does not have the sort of functioning exemption process that had been proffered in court. And I have not yet gotten a response to a letter about these cases of hundreds of stranded citizens. Will I get a response from the Administration to this letter of last month?

Mr. STRING. Thank you, Senator. I have not seen the letter, but I will look into it and ensure that we can get you all the information you need in response to that.

Senator COONS. Happy to make sure you have a copy today.

I just want to join my colleague from New Jersey in his concerns about the phrase, "We have not interpreted, to date, either AUMF." I think, as a policy matter, not as a matter of lawyering carefully, the Administration has to consult and get the approval of Congress before beginning any conflict with Iran.

Thank you.

The CHAIRMAN. Thank you, Senator Coons.

We will now turn to Senator Udall.

Senator UDALL. Thank you, Mr. Chairman, and thank both Senators Risch and Menendez for pursuing this hearing.

Under Secretary Hale and Acting Legal Adviser String, you are here before us because Congress, with the power to declare war, holds one of the most important responsibilities of any branch of government. There have been legitimate questions surrounding this Administration's Iran policy and whether proponents of war with Iran would attempt to usurp our constitutional authority. That is why I introduced the Prevention of Unconstitutional War with Iran Act with Senator Paul and others, and why I worked with Senators Kaine, Merkley, and Murphy and others to force a vote on a related bipartisan amendment on the floor. A bipartisan majority of members in both the Senate and the House voted to include this amendment in the NDAA. Finally, I hope that the conference report includes this prohibition.

The 9/11 Commission report concluded, and I quote here, "We have found no evidence that Iran or Hezbollah was aware of the planning for what later became the 9/11 attack." Do both witnesses acknowledge this conclusion from the 9/11 report?

Mr. STRING. Yes, Senator.

Senator UDALL. Yes?

Mr. Hale?

Ambassador HALE. Yes, sir, I do.

Senator UDALL. Thank you.

In testimony before this committee in 2017, John Bellinger III, the State Department Legal Adviser under Secretary Rice, stated that he was involved with the drafting of the 2001 9/11 AUMF. He testified that the 2001 AUMF was very broad in the way that it was written to authorize all necessary force, but he also underscored that the language he helped draft had, quote, “one important limitation. It authorizes force only against nations, organizations, and persons who planned, authorized, committed, or aided the 9/11 attacks.”

Mr. String, do you agree, as former Legal Adviser Bellinger concluded, that, in order to use force, the 2001 AUMF requires, “a nexus to the 9/11 terrorist attacks”?

Mr. STRING. Thank you, Senator, for that question.

So, the way that we interpret the 2001 AUMF—

Senator UDALL. It is a pretty simple yes-or-no on that, I think.

Mr. STRING. Yeah, and I will—

Senator UDALL. If you would start with a yes or no and then give your—

Mr. STRING. If I could elaborate just how we think about the scope of the 2001 AUMF, there are two prongs to consider whether a particular entity or group could become a target under the 2001 AUMF. The first prong is whether an entity is, de facto, part of al-Qaeda. So, that is prong one. Prong two is, we look at whether a particular entity could constitute a cobelligerent with al-Qaeda or the Taliban against the United States. So, broadly speaking, how we are continuing to interpret the AUMF is consistent with what Mr. Bellinger said, but I wanted to get in a little bit more granularity about how specifically we think about the 2001 AUMF today.

Senator UDALL. The War Powers Act has been interpreted to allow the Commander-in-Chief to retain numerous powers historically associated with the executive branch. These powers include the ability of the President to rescue hostages, defend our Armed Forces, and repel an imminent attack against the United States territories or possessions or its Armed Forces. Do you agree with this interpretation, Mr. String?

Mr. STRING. Senator, that was a quote from the War Powers Resolution?

Senator UDALL. It is a summary of the War Powers Act, which is law, what it does.

Mr. STRING. I do not have that Act in front of me, so that sounds like a correct summary of what is in that piece of legislation.

Senator UDALL. And it was reported that the United States recently brought down an Iranian drone, using electronic countermeasures after its approach brought it too close to the USS Boxer. Prior to that, Iran shot down an American unmanned aerial vehicle. Mr. String, in your legal opinion, do these actions constitute hostilities, as set forth in the War Powers Act?

Mr. STRING. I cannot get into that type of determination right now, but I will say that, and particularly with respect to the drone that closed within a threatening range of the USS Boxer, the

United States acted to ensure the safety of the ship and the crew. But, we have not made any determination, that I can talk about, about the hostilities issue, at this point.

Senator UDALL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

For members, a series of three votes has started. There is about 7 minutes left on the first vote. And so, we are going to have to deal with that. But, we will.

And, Senator Romney, you are up for questions.

Senator ROMNEY. Thank you, Mr. Chairman.

Clearly, there is a great deal of concern, on the part of all the members of this committee, about the line that exists between the constitutional authority that the President has to defend our troops, defend our citizens, defend our country, to respond to attacks, to deter future attacks, and the like, and, on the other hand, the declaration of war, a decision to engage in war conduct somewhere in the globe. And we have had a difficult time, as a body, defining where one authority begins and the other ends, or the other begins. And I do not know whether you have a description for us that will be better than the current legislation that exists.

But, with that as an introduction, I wanted to get your thoughts on a couple of things. First of all, there had been some rhetoric—and I do not think it is advanced by any of the members of this committee—that implies that the President of the United States could not respond to an attack on U.S. forces or U.S. citizens without first getting a vote for Congress. I believe, Mr. String, you would concur that, when there is an attack on our citizens, our properties, our Armed Forces, that there is authority for the President to respond immediately.

Mr. STRING. Yes, Senator, I agree, that is a flexible authority granted by the Constitution.

Senator ROMNEY. I guess the next question would be one which is a little different than that, which is not just defending our troops or our citizens in an attack, but if, for instance, a drone or a—heaven forbid, a—an aircraft were shot down by a foreign adversary, the question is, would the President, after due deliberation and consideration with his advisors, have the capacity to respond in like manner or in a similar manner to—even though 2 or 3 days might have passed, would he be able to respond, perhaps shooting down an aircraft of theirs or taking some other kind of hostile act to show that that was unacceptable on the part of the United States, or would he require the approval of the United States Congress before he was able to respond, in the event that—for instance, a drone or an aircraft were shot down?

Mr. STRING. Thank you, Senator.

So, without getting into any particular factual scenario, the Office of Legal Counsel at the Department of Justice has identified a number of important U.S. interests which the President could protect using his Article 2 constitutional authority. These refer to important interests, such as protecting U.S. persons, supporting allies, advancing regional stability. So, in general, the President has some authority to engage in limited types of military action in a manner short of war, in a constitutional sense. So, that is an important bounding factor for the constitutional authority.

Senator ROMNEY. Can you be more definitive than that distinction, which is “limited military response,” as opposed to “engaging in war”? Do you have a sense of where “limited military response” ends and war begins?

Mr. STRING. Thank you, Senator. It is a good question.

How the executive branch looks at these questions, it is really a facts-and-circumstances analysis. Some of the factors that we would look at are the nature, the scope, and the duration of any military action, whether military action would last a matter of hours or a matter of days. So, as the risk of a longer, prolonged conflict increases, I think it would obviously get closer to the concept of a war, in a constitutional sense.

Senator ROMNEY. Thank you.

We have also had some discussion recently, particularly with regards to arms for the Saudis in the conflict going on in Yemen, with regards to the definition of “hostilities” and whether we were engaged in hostilities as a nation by virtue of furnishing weaponry to the Saudis, whether we might be engaged in hostilities by providing intelligence or providing aircraft refueling and the like. Can you shed some light on the Administration’s view on what does constitute hostilities, and what does not?

Mr. STRING. Thank you, Senator. Another very good question.

So, the precise analysis as to “hostilities,” I think we should discuss in a different setting. But, the one critical factor that we have talked about with Congress in previous communications is whether there has been an exchange of fire between U.S. and hostile forces. So, that is one factor. There are other factors, which we need to be in a different setting to discuss. But, with respect to support to some Gulf partners, the Administration’s view, as I think you know, is that the types of logistics and defense services, defense articles that the executive branch, across administrations, has been providing falls well short of “hostilities,” as that term is used in the War Powers Resolution.

Senator ROMNEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Romney.

Senator Murphy.

Senator MURPHY. Thank you very much, Mr. Chairman.

Ambassador Hale, thank you very much for being here and for all your incredible work in and around—

Senator MENENDEZ. Would my colleague yield for just a second?

Senator MURPHY. Certainly.

Senator MENENDEZ. In terms of process, Mr. Chairman, the first vote is now expired, and I know there are other members that definitely want to ask questions in this regard. Is it the Chairman’s intention to recess, subject to the call of the Chair? Is it the Chairman’s intention to continue rolling through this? I just want to make sure I tell colleagues, when they ask me what we are doing, what we are doing.

The CHAIRMAN. My intention was to keep going, but, given the limited number here, it probably would make sense to recess briefly and reconvene here as quickly as we can get back. Would that—

Senator MURPHY. Why do not we do that now, then?

The CHAIRMAN. —be agreeable with all parties? Seems to be. So, with that, the committee will be at ease, subject to the call of the Chair.

[Recess.]

The CHAIRMAN. The committee will come back to order.

And Senator Murphy had the floor.

Senator MURPHY. I forgot what I was going to ask, but—

[Laughter.]

The CHAIRMAN. Well, moving right along, then.

[Laughter.]

Senator MURPHY. Thank you very much.

And thank you for sticking around with us.

Ambassador Hale, I was in the middle of asking you a question about your perception of legal authority for hostilities. Some of us are concerned about the way in which the President construes his inherent Article 2 authority. And so, I wanted to just confirm that there are really two legal justifications for a military strike against a country like Iran. The first would be that we are responding to an attack or we are attempting to prevent an imminent attack. That would be, as Mr. String has articulated, within the President's Article 2 authority. The second would be that the Administration comes to the conclusion that there is an existing congressional authorization that would cover such action, or that the Congress passes a new authorization. But, I just want to make sure that I am right, in general, that the two ways you could strike Iran is if you are responding to attack, or defending against an imminent attack, or you have an authorization from Congress.

Ambassador HALE. Well, thank you, Senator.

Those do seem to be fairly specific legal questions. Would you mind if the Acting Legal Adviser responded?

Senator MURPHY. I do not, as long as we get an answer.

Ambassador HALE. Sure.

Senator MURPHY. I was, maybe, hopeful you might give a little bit clearer answer than we have gotten from Mr. String. But, I will put it to Mr. String.

Mr. STRING. Thank you, Senator.

So, under U.S. law—I think your question is under U.S. law, rather than international—but, under U.S. law, there would need to be an AUMF, an authorization for the use of force, by Congress. And, as we have stated, there has been no determination, to date, that either AUMF would apply to Iran. And then, secondly, you talked about the constitutional authority. In previous OLC opinions across administrations, the authority has been described to be a little more flexible than what you stated. So, there needs to be a precise national interest that has been articulated by a President in order to justify the use of force under the Constitution. Some of those types of national interests that have been identified in the past are: protection of U.S. persons or property, support of allies, support of U.N. Security Council Resolutions, promoting regional stability, deterrence of the use of WMD. So, it is a little more flexible than you described, Senator, but it is broadly in line.

Senator MURPHY. Yeah, I think the issue that you will find with many of us is that that list would seem to describe almost any reason to use broad Article 2 authority to engage in hostilities. And

so, I think there will be a difference between our interpretation of that Article 2 authority and your Article 2 authority.

Mr. Hale, I wanted to follow up on your opening statement regarding the present situation with Iran. There has been a great deal of confusion as to what the Administration's position is with respect to negotiations with the Iranians. Say what you will about President Obama, he was pretty clear that he wanted a negotiation on their nuclear weapons program, and setting aside their other malevolent activity for future negotiations. The Iranians have telegraphed a potential interest, perhaps on terms that are unacceptable to us, but an interest nonetheless, to enter into negotiations. Is the United States prepared to sit down and talk with the Iranians if the subject is limited to their nuclear program or their potential nuclear weapons program, or are we still insisting that they commit to opening up negotiations on a host of other activities before we would entertain any discussions?

Ambassador HALE. The objective of our entire strategy here is to seek a negotiated outcome with Iran that is comprehensive, that covers the nuclear issue, the ballistic missiles, advanced weaponry, the malign behavior in the region, human rights practices, and treatment of U.S. citizens. We are open, today, to dialogue without preconditions. The President has signaled that consistently. We are ready to do that. But, the goal would have to be a comprehensive agreement along the lines I said.

Senator MURPHY. So, the position still remains: no preconditions, you are willing to sit down and talk, today.

Ambassador HALE. That is correct.

Senator MURPHY. Lastly, let me sneak one last in for Mr. String. And I apologize for going backwards and forwards.

I wanted to talk about this authority to protect partners. Now, I may disagree with you there is a broad Article 2 ability to protect partners without congressional authority, but let us drill down on the existing 2001 authorization. And you have referenced that the 2001 authorization may give you broad authority to protect partners who are engaged in fights with us against the enemy. I would submit that you are right, if they are engaged in fights against a named enemy under the 2001 authorization, and that enemy has attacked them. But, what about the case in which a group not listed in the 2001 AUMF has attacked a partner who is a partner in the fight against ISIS or the fight against al-Qaeda, but has been attacked by an entity that is not listed in the 2001 AUMF? Do you have any responsibility to come to Congress to launch an attack against that new entity, or is any attack against a partner of ours in the fight against extremism covered—our response to it covered under the 2001 AUMF? I think—you are nodding, so I think you get what I am asking.

Mr. STRING. Yeah. Thank you. I appreciate the question, understand the question.

So, Senator, what you have laid out is a very fact-specific hypothetical. And I prefer not to get into answering very hypothetical questions. I think what we have articulated in the testimony today is the first scenario that you mentioned, in that when U.S. forces are deployed alongside partners and allies, we have a right to defend our forces and those partner allied forces as they, together,

are pursuing missions pursuant to either the 2001 or 2002 AUMF. So, that was the core proposition that we are—

Senator MURPHY. But—you are prepared to argue affirmatively in that hypothetical, but you are not prepared to say you do not have the authority in the case that they are attacked by an entity not named by the Administration as a terrorist group affiliated with al-Qaeda.

Mr. STRING. Well, in some ways, the answer that I provided is not necessarily hypothetical, because I can cite a couple examples where we have actually exercised authority to protect our own forces as they are engaging in certain operations pursuant to the 2001 or 2002 AUMF, and come under attack by another group. For example, in 2011, U.S. forces were engaged in an operation in Iraq, and came under threat from some Iranian-backed militia groups. And, under the proposition that I laid out, our forces were able to respond appropriately to that threat.

Senator MURPHY. Okay. I have gone over my time.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murphy.

Senator Young.

Senator YOUNG. Well, thank you, Mr. Chairman, for agreeing to hold this hearing, per my request and, I know, the desires of other members of the committee.

Welcome, Mr. Hale and Mr. String.

In 1990, I graduated from high school. And, within weeks of graduating from high school, I enlisted in the U.S. Navy. And, within months of enlisting in the U.S. Navy, our Nation was marching towards war. And our Congress authorized the use of military force against Iraq. That was the first Gulf War. And there are a number of members of Congress that are now serving in the House of Representatives who were born after that period of time. That law is still on the books. So, I think it is right and appropriate that Congress has a public hearing about this matter. You know, what is Congress's role in determining when we authorize use of military force, or, more pointedly, when we declare war?

The parameters of this conversation here today are far more important than the here-and-now situation as it relates to Iran. I think they speak to the very heart and soul of this institution. I can think of no more fundamental responsibility than authorizing force and sending our men and women into harm's way. So, this is going to define the future of this institution for years to come.

The Chairman started off the hearing indicating that this is a really tough issue. In fact, 535 different views up here on the Hill, and then a number of different views in the executive branch. It is that latter part that I think often provides real challenges. And, I think, to the extent there are multiple views in the executive branch, that creates a problem, because if there are multiple views, there really is not one singular view, and there is no rule with respect to when we go to war, or do not go to war. So, hopefully, we will get clear answers to a couple of questions I have.

Iran, they have been engaging in various escalatory activities. And if they continue with these activities—civilian oil tanker attacks, attacks against energy infrastructure, perhaps they may attack U.S. military forces that are located in the region directly—

an isolated strike, like we did in Syria in 2017 and 2018, not done under an Authorization of the Use of Military Force, but instead under Article 2 prerogatives of the President, a surgical strike seems like it may not be possible, given Iran's capabilities and their proximity to U.S. assets and our partners and allies in the region, and their hardened network of terrorist proxies. So, recognizing that deterrence matters, but also that the role of Congress is fundamental here as we contemplate military force, how you gentlemen and others advise the Secretary and the President on these matters is quite important.

So, how do you balance responsibly our responsibility to maintain international order and dissuade a threat against our interests, on one hand, versus the awareness that a surgical retaliatory strike may not be possible in Iran?

Yeah, Mr. String.

Mr. STRING. Thank you for the question, Senator.

And, as I was discussing with Senator Cardin earlier, I completely agree with the proposition that when the executive branch and Congress are in alignment on a particular issue, that makes the United States all the stronger. So, complete alignment on that.

You have touched upon an important aspect of the analysis that would go into any decision to use force under the Constitution, under Article 2 of the Constitution, the Commander-in-Chief or the Chief Executive power. So, what executive branch attorneys would look at is whether a particular action would lead to a war, in the constitutional sense. That is an important limit under the constitutional authority, under Article 2. And so, how we would interpret that, we would look at particular facts and circumstances that would inhere as a result of a particular strike, in your example. We would look at things like the nature and the scope and the duration of a—

Senator YOUNG. Yes, those are factors.

Mr. STRING. Yes.

Senator YOUNG. And I have heard you mention them from when previous questions were asked. So, let me interject with a tactical question.

We have our naval assets in the region, in part, because we are sending a lot of jets to Saudi Arabia. We ought to be encouraging them to purchase vessels so they can do more of their own security. But, nonetheless, we are there, appropriately, I think, for deterrence, as well as to make sure that region maintains a measure of stability. Is it the Administration's view that an attack on a U.S. Navy ship or plane is—that our assets are under some obligation to respond with force, rather, if a civilian vessel is attacked, say an American civilian vessel is attacked by Iranian forces while transiting those waters where we have a military presence?

Mr. STRING. So, in terms of an attack on a U.S. naval vessel, a lot of different factors come into play, including some more tactical rules of engagement, which I think the Department of Defense is probably better positioned to answer.

Senator YOUNG. What about a civilian vessel?

Mr. STRING. I do not want to get into any legal conclusion that would flow from an attack on a civilian vessel. That would be, obviously, very concerning, for a number of policy reasons. But, I would

not want to provide a legal conclusion as to what would be authorized as a response. It would be an extremely concerning situation, as it has been——

Senator YOUNG. What authorities might allow the United States to respond militarily to an attack on a civilian vessel?

Mr. STRING. Well, as we were discussing earlier, without getting into any factual situation, the Commander-in-Chief power under Article 2 is flexible, depending on what particular facts were presented by an attack. So, I cannot provide a legal conclusion as to what authorities may be used, but we are confident that the President has the right authorities to keep the Nation safe.

Senator YOUNG. Okay. And let me pivot briefly to another authorization. Because we have had a number of them, and many of them have been on the books for years and years and years.

So, the 2002 AUMF—is Iraq an ally of the United States of America, as I have heard from other members of Department of Defense and Department of State, both in private settings and in public settings? Are they an ally of the United States of America? Is the Iraqi government an ally of the United States of America?

Ambassador HALE. I would characterize the relationship as one of partnership. We work well with the Iraqi leadership, with President Salih, with——

Senator YOUNG. You would not tell their top leadership they are allies of ours?

Ambassador HALE. Well, perhaps it is more——

Senator YOUNG. Or our Secretary——

Ambassador HALE. —of a legal terminology as to whether we have a formal treaty alliance with them. I do not believe we do. But, this is a very strong partnership, and we are very committed to helping the Iraqi government achieve its goal, our goals, of stabilizing their country and securing control over all of their territory, and countering the malign influence of Iran.

Senator YOUNG. Well, I think the current government is, indeed, a strong partner, and we need to do what we can to defend them against—whether it is encroachment from Iran or some internal extremists. I do not think we need to be prepared to wage war against them. And yet, we have this 2002 AUMF on the books. So, does the Administration oppose the repeal of the 2002 AUMF?

Mr. STRING. Thank you, Senator.

We believe we have important authorities under the 2002 AUMF that we still utilize for a couple of different types of operations. First, we continue to rely on the 2002 AUMF for certain operations, both in Iraq and in Syria. So, operationally, it is still relevant to what the Department of Defense is pursuing. Secondly, we also rely on the 2002 AUMF in litigation to defend some of our detention activities. So, it is something that we continue to cite in court filings in various litigation.

Senator YOUNG. So, it is under great dispute. It is under great dispute whether or not the—you say it is under, you know, court filings, and there is litigation. So, the parameters of that agreement and what it allows—the authority it allows the executive branch is—there is a dispute about that.

Mr. STRING. Senator, I would characterize it a little differently, in terms of the——

Senator YOUNG. Please.

Mr. STRING. —in terms of the litigation.

Senator YOUNG. Yes.

Mr. STRING. We have asserted, in litigation, that certain of our detention activities rely on both the 2001, 2002 AUMFs, as well as Article 2 of the Constitution. So, it is something we rely upon. I would not say that it is necessarily in formal dispute, but it is something that we actively assert.

Senator YOUNG. Thank you.

The CHAIRMAN. Thank you.

Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman, very much.

We are here discussing whether President Trump can strike Iran because President Trump's Iran policy is a disaster. And the President does not have clear authority to attack Iran under current AUMFs. And what is worse, some in the Administration are using the chaos to try to provoke a fight.

Ambassador Hale, yes or no, is Iran not enriching more nuclear material to higher enrichment levels now than it was before President Trump unilaterally withdrew from the Iran nuclear agreement?

Ambassador HALE. Yes, I believe they are.

Senator MARKEY. So, pulling out of the nuclear deal has resulted in Iran increasing its nuclear material production. Yes or no, was not this enrichment activity prohibited under the nuclear deal that President Trump has pulled our Nation out of?

Ambassador HALE. I believe the plan's intent was to prohibit that level of enrichment.

Senator MARKEY. Right. And is there any evidence that it was being enriched? There is none. The agreement was being abided by. So, it is hard to see how the Trump administration can say it wants Iran to cease its nuclear activities, but then forfeited the strict limits by leaving the deal. So, yes or no, we do not currently have a Foreign Minister-level diplomatic channel in Iran? Yes or no?

Ambassador HALE. It is true that the Foreign Ministers are not speaking, yes.

Senator MARKEY. So, that must make pursuing the diplomacy Trump claims to seek very difficult. I will also remind my colleagues that we did previously have such a channel, as well as robust working-level diplomatic contacts in the previous Administration. So, yes or no, when we were talking with Iran and we were in the nuclear deal, Iran did not attack or commandeer ships or shoot down U.S. drones? Yes or no?

Ambassador HALE. It was not conducting those kinds of attacks on our interests, but it was undermining our interests through the use of violence in other ways—

Senator MARKEY. But, it was not—

Ambassador HALE. —throughout the Middle East.

Senator MARKEY. —commandeering ships or shooting down U.S. drones, the casus belli that the President is now pointing at, that the people in his Administration are talking about. And, yes or no, is Iran doing these things now, commandeering ships and shooting down U.S. drones?

Ambassador HALE. It has, yes.

Senator MARKEY. Yeah. Yes or no, since leaving the nuclear deal, we have redeployed troops to Saudi Arabia for the first time in over a decade, sent an additional aircraft carrier strike group, and deployed B-52 bombers and a Patriot missile defense battery, while drastically decreasing our regional diplomatic presence, particularly in Iraq? Yes or no?

Ambassador HALE. I can certainly confirm that we are doing those things, but I would like an opportunity to provide a little more context—

Senator MARKEY. I only—

Ambassador HALE. —to what has happened—

Senator MARKEY. —get 5 minutes. I apologize to you. All those things are true. So, to me, President Trump's Iran policies are dangerously increasing tensions with Iran, and letting them restart their nuclear program right now with no enforceable limits on the Iranians, so this puts us on a road to yet another Middle Eastern conflict.

So, that brings us to what possible legal justifications the Trump administration might feel it has to strike Iran.

Ambassador Hale, during congressional testimony in April, Secretary Pompeo said that, "There is no doubt there is a connection between the Islamic Republic of Iran and al-Qaeda, period, full stop." What evidence is there to support the claim that there is a link between Iran and al-Qaeda?

Ambassador HALE. There has been the provision of safe haven by Iran to elements of al-Qaeda.

Senator MARKEY. So, is there plotting going on between these two groups towards our American interests? Do you have evidence of that?

Ambassador HALE. I think we would have to respond in a classified setting to that question, Senator.

Senator MARKEY. Well, will you commit to briefing our committee on exactly what Secretary Pompeo means, in a closed setting?

Ambassador HALE. I certainly commit to providing you with that information.

Senator MARKEY. Okay. We would be all ears to hear that connection, because, despite these serious claims, there has been no evidence, classified or otherwise, that has been offered to me that provides any evidence of this link between al-Qaeda and the Iranian government.

And, Mr. String, President Trump reportedly approved a strike against Iran before calling it off. Under what specific authority did he order this strike?

Mr. STRING. Thank you. Thank you, Senator, for the question.

So, just to be clear, he did not order the strike. The strike never—

Senator MARKEY. He ordered the strike before he withdrew the order for the strike. Under what authority did he order the strike before he withdrew? What was that authority?

Mr. STRING. Yeah, thank you, Senator.

So, your question gets at some of the most sensitive types of decision-making—

Senator MARKEY. What was the authority that was used to order a strike against Iran?

Mr. STRING. Senator, again, so your question gets to some of the most sensitive decision-making—

Senator MARKEY. So, what was the authority that was used?

Mr. STRING. I cannot get into specific deliberative issues surrounding that set of events.

Senator MARKEY. Well, that is why you are here to testify. You are here to tell us what was the authority, because we want to know. Was it the Iraq AUMF, was it the Afghanistan AUMF, or was it just some inherent authority that the President believes he has to just make a unilateral strike against another country that could cause an apocalyptic event, potentially, in the Middle East? What was the authority?

Mr. STRING. Yeah, Senator, I respect the question. Unfortunately, I cannot get into the specifics of particular deliberations that occurred at that time.

Senator MARKEY. Okay. Well, here is my conclusion, then, for you. The Administration has no authority to strike Iran. The Administration must consult and receive authorization if it wants to do so. And the Administration does not have the right to entangle the U.S. in yet another Middle East conflict without a buy-in from Congress, the people's representative. We are the ones who represent these young men and women who will be sent into that conflict. And, without clear proof that the President has authority that is presented to Congress, it would be a big mistake.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Markey.

I actually can provide a little context for you on that, since I was in the room when that decision was made. And without going into anything classified or anything else, I can tell you that, after there was an attack on U.S. assets, there was an in-depth discussion about what defensive measures were necessary for our assets in the region, which, in my judgment, would have been under Article 2. Now, there were not lawyers arguing whether it was one AUMF or another AUMF or Article 2, but, rather, the practical situation. And it is the practical situations that we are discussing here that make this thing so dicey. We all have general ideas and general agreement as to what should happen, but, when the pragmatics are right there, it becomes more difficult. And the decision was made, in my judgment, under Article 2. And I guess you could argue that that was not appropriate. But, there was no advice being given that Article 2 did not apply when we were talking about defending U.S. persons and U.S. assets in the region. So, it is a practical as well as a legal problem.

So, with that, we will turn to Senator Barrasso.

Senator BARRASSO. Thank you, Mr. Chairman.

Senator MENENDEZ. Mr. Chairman, if my colleague would yield for just a moment.

Senator BARRASSO. Sure.

Senator MENENDEZ. Procedure-wise, since this next vote is expiring now, is it the Chair's intention to continue through? In which case, I would like to go vote, come back, because I still have another round of questions when everybody else is—

The CHAIRMAN. Yeah, why do not you do that, Senator. We will keep going, if that is okay with you.

Senator MENENDEZ. Yep.

The CHAIRMAN. Yeah.

Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman.

I appreciate the work you do. Thank you for being with us today.

You know, since the collapse of the self-proclaimed ISIS caliphate in Syria, I have seen reports of approximately 1,000 ISIS fighters, mostly Iraqis, who crossed over the border to go back home to Iraq this year. Both the Obama and the Trump administration have used the 2001 AUMF as justification for engaging ISIS in both Iraq as well as in Syria. Does the Administration still view the 2001 AUMF as an authorization to militarily engage with ISIS?

Mr. STRING. Yes, Senator.

Senator BARRASSO. And what are your views of the risks associated if we reopened the 2001 AUMF? And what are some of the operational consequences in this effort?

Mr. STRING. Thank you, Senator. A good question.

So, right now, we rely on the 2001 AUMF, not only for operations in Syria and Iraq, as you mentioned, but also in five other countries, which we have disclosed in multiple reports to Congress. So, it would unsettle the legal foundation for several of these types of military operations in various theaters. We also rely on the 2001 AUMF for many of our detention operations, so it would also potentially unsettle the foundation for detention operations.

The CHAIRMAN. Senator, I am—

Senator BARRASSO. Mr. Chairman—

The CHAIRMAN. Yeah, I am going to have to interrupt for a minute. We are being told by the floor that they are going to close the vote. And it is important that we go down and vote. So, again, with my apologies to the witnesses and to everyone else, we are going to have to take a break again. So, we will break as briefly as we can, so, with that, the—

Senator KAINE. We have both voted—

Senator MERKLEY. Yes. Mr. Chairman, we have both voted. Perhaps you would like to have Mr. Kaine chair while you vote.

[Laughter.]

Senator KAINE. I will not do anything weird.

[Laughter.]

The CHAIRMAN. The record will reflect that he will not do anything weird.

And, with that, Senator Kaine, have at it.

[Laughter.]

Senator KAINE [presiding]. Thank you, Mr. Chair.

And thank you, to the witnesses, for this important testimony.

So, just jumping in, I am correct, am I not, that neither the 2001 nor 2002 authorizations even mention the word “Iran”? Correct?

Mr. STRING. That is correct, Senator.

Senator KAINE. Okay. And you earlier testified, in response, I believe, to a question from Senator Udall—he read a portion of the 9/11 Commission Report, where the Commission found that Iran did not have any connection to the attacks of 9/11. Is that correct?

Mr. STRING. That is correct.

Senator Kaine. The Administration has not, to date—and we talked about that phrase a little bit earlier—but, the Administration has not interpreted either the 2001 or 2002 authorization as an authorization for military action against Iran. Correct?

Mr. String. That is correct, sir, with the one caveat about self-defense that I mentioned in my opening statement.

Senator Kaine. And self-defense is an Article 2 issue. We would all agree on that.

Mr. String. U.S. forces could engage in self-defensive activities, both under the Constitution, pursuant to an Article 2 authority, or pursuant to an AUMF authority.

Senator Kaine. If one was granted. So, if there is an AUMF that does not say anything about Iran, you cannot use that to justify self-defense. You could use Article 2. Correct?

Mr. String. You are correct, Senator. Just to explain the nuance there, when U.S. forces are currently pursuing missions under the 2002 or 2001 AUMF, and in the pursuit of those missions, the current missions—if they come under attack, they have a right to defend themselves.

Senator Kaine. I hear you.

Senator Cardin indicated that he was here during the votes in both 2001 and 2002, and it was not his intention, in voting on both of those authorizations, or his understanding, that those were to be authorizations for military action against Iran. You may not have been here then, but you would not challenge his statement about what congressional intent was at the time, would you?

Mr. String. I would certainly take him at his word, Senator.

Senator Kaine. So, to close out on this one, and then I want to go to another topic, it would be fair to say, no mention of Iran, the Administration has not determined '01 or '02 to authorize military action against Iran, and the 9/11 Commission found that Iran was not connected to the 9/11 attack—it would be fair to say that neither the 2001 nor 2002 authorizations are a specific statutory authorization for military action against Iran. Is that fair to say?

Mr. String. Senator, I think that is broadly consistent with the assertions that we have made today. There has been no determination, to date, that either AUMF applies to authorize force against Iran.

Senator Kaine. Thank you for that.

I want to go to a line of questions that I think Senator Young was asking you, Under Secretary Hale. And it is good to see you again. With respect to Iraq, I think you were asked if Iraq was an ally, and you described them, you know, maybe not in the formal alliance sense, but they are certainly a partner. We are in Iraq right now conducting a counter-ISIS operation, at their invitation. They have asked us to come into Iraq to help them with that. We are doing all kinds of things to promote the stability of Iraq. We had a hearing last week with State Department witnesses talking about the activities that we are engaged in together with Iraq. And so, is it fair to say that we would view them now as a partner, and an important partner?

Ambassador Hale. I think that is exactly right, Senator.

Senator Kaine. So, we have two authorizations—a 1991 authorization, 2002 authorization—that authorize us to use military ac-

tion against the Government of Iraq. It is not authorizations to promote good things in Iraq or protect Iraq. Both of these authorizations, '91 and '02, are structured as military action against Iraq.

In response to an earlier question, Mr. String, I think you said that you did not know of any current operation or legal authority or even an incarceration of somebody at Guantanamo or something, that would be affected if the '91 and '02 authorizations were repealed. Do I understand that that was your earlier testimony?

Mr. STRING. With a slight nuance, Senator. What I stated is, I could not point to any particular operation that was exclusively justified under the 2002 AUMF.

Senator KAINE. Can you—

Mr. STRING. However—

Senator KAINE. Can you—operation—can you point to any incarceration of any individual that is based on the 2002 authorization, and that would not be covered by the 2001 authorization?

Mr. STRING. Senator, there has been some recent litigation regarding some novel detainee issues in which we, as the executive branch, have asserted, as an authority, three different legal bases: Article 2 of the Constitution, the 2001 AUMF, as well as the 2002 AUMF. So, I can point to particular cases and particular detention situations where we think we need that extra authority.

Senator KAINE. Are you aware of any situation where you are asserting only the 2002 authorization as basis for detention without also citing Article 2 or 2001?

Mr. STRING. At present, I am not aware of that.

Senator KAINE. And the last question I will ask is this. What does it say to a partner that we are working with to have an open-ended legal authorization to take military action against their nation? Is that the way we ought to treat a partner?

Mr. STRING. That may be more of a policy question, in terms of how a partner is reacting, but I will—

Senator KAINE. Well, it is a little bit of a diplomatic question. Since we have a great diplomat here—you have served all over the region. You know, military action is one of the most serious things we do. Taking the position that we are authorizing military action against your government, that is a serious thing. We are not taking military action now against the Iraqi government. There is no conceivable circumstance where, we hope, we would need to. It seems to me to be odd that we are talking about all the things we are doing together with Iraq and describing them as a partner, where we have two authorizations that are still on the books saying that we are allowed to take military action against them. Do you see why this troubles me?

Ambassador HALE. Senator, I certainly follow the logic that you are pursuing. I would say, though, as a practical matter, this is not an impediment or an issue between us and the Iraqi government. This is not a focus of concern, to my knowledge, on their part. We are focused together on the things that you heard about in the other hearing, about how we can be good partners together and we can support them in the incredible effort to stabilize that country against both ISIS and the Iranians.

Senator KAINE. And I would argue—and I may follow up with this for the record—nor is it a practical value-add for us when we

are not taking military action against Iraq and they are now a partner rather than an adversary, and we can cite no specific instance of a circumstance where we need the 2002 authorization to take action.

With that, I will yield to my colleague from Oregon.

Senator MERKLEY. Thank you.

Mr. STRING, did Iran plan or authorize the 9/11 attack?

Mr. STRING. Did Iran plan or authorize? Not that I am aware of, Senator.

Senator MERKLEY. Did they commit or aid that attack?

Mr. STRING. Not that I am aware of, Senator.

Senator MERKLEY. Did they harbor the folks who committed that attack?

Mr. STRING. Not that I am aware of at the time, but I think we want to get a—

Senator MERKLEY. Thank you.

Mr. STRING. —more complete answer—

Senator MERKLEY. Well, I think if you use your lawyerly mind to look at it, it was in past tense, it was “those who harbored those,” not who—before the attack.

So, we have five standards in the 2001 AUMF. Five standards. You have just said none of them are met. And yet, you persist in arguing an interpretation of an AUMF that Congress did not intend and is not there in the language.

Now, we have a system in which some issues can be adjudicated by the Supreme Court, but the Supreme Court defers on these issues. So, the only way that the Congress has any faith in what it is passing is that there is integrity interpretation by the executive branch. You have just told me that the five standards laid out are not met. And yet, you argue for an expanded interpretation that is not in the language. How can Congress play the role it is constitutionally assigned if the Administration expands the meaning beyond what is in the actual AUMF?

Mr. STRING. Senator, thank you. It is a good question.

So, we have largely continued the interpretations that were set forth in the previous Administration.

Senator MERKLEY. No, I do understand that, and I would have equal criticism of the prior Administration in that regard.

Mr. STRING. And—

Senator MERKLEY. But, you are there now. You have the responsibility now to honor the integrity of what Congress wrote and passed at the time in 2001. Do you not feel some commitment to honor the integrity of that language?

Mr. STRING. Yes, Senator, we feel a great commitment to—

Senator MERKLEY. Then how can you continue to argue the 2001 can apply to Iran, when you have just told me that the five standards in it have not been met?

Mr. STRING. Senator, we have not argued that. Actually, we have argued the opposite, that, to date, there has been no—

Senator MERKLEY. You are keeping the door open. You repeat it—

Mr. STRING. —that there has been no determination, to date, that either the 2001 or the 2002 AUMF would authorize force against—

Senator MERKLEY. If you were making a determination today, could you see any basis, since you have just said the five standards in there are not met? How could that change? You are keeping the door open to that possibility by not sharing your opinion. Maybe you would like to share your opinion.

Mr. STRING. Yes, Senator. So, as lawyers in the executive branch, we opine on facts before us. At present, we cannot predict future events, so all I can do is talk about what we have done to date—

Senator MERKLEY. Okay, let us turn to Article 2 powers. You have said that Article 2 empowers the Commander-in-Chief to act on regional stability. Is that not a rather large loophole to place under the Constitution? You know, Washington laid out, as the most honored and respected military commander in our history, how important this was that the executive not have the power to put people into positions of war except direct defense of an attack. So, Washington argued that. Jefferson, before he was President, argued for this vision. And when he was President, he said, “I will have to go to Congress.” He honored that vision, as well. Now you are telling me that Article 2—that is, in translation, the powers given to the Chief Executive, the President of the United States—allows going to war for some analysis of regional stability without a direct attack on the United States?

Mr. STRING. So, Article 2 of the Constitution does not provide the President with the ability to take the Nation to war in a constitutional sense. That is an important limit that has been recognized in Department of Justice opinions across administrations. There are a series of factors which previous opinions by the Department of Justice—again, across administrations—have looked at. One of those has been regional stability issues, attacks. Another one is an attack—

Senator MERKLEY. Again, I am trying to clarify for this committee and for the public. You are saying that Article 2, the war powers of a President as Commander-in-Chief, allow him to go to war without congressional authorization, based on some analysis of regional stability.

Mr. STRING. That is not quite correct, Senator. So, what I said is, the limit on the constitutional power under Article 2 does not authorize a President to take the Nation to war in a constitutional sense. In a constitutional sense, that is a power reserved to Congress.

Senator MERKLEY. What does that mean, “in a constitutional sense?” So, you can go to war in an unconstitutional sense?

Mr. STRING. Article 2 of the Constitution allows the President to take certain types of military action to defend important U.S. national interests. And that is an interpretation that the previous Administration used in at least two circumstances, the Administration before that, et cetera.

Senator MERKLEY. So, how is Article 1 the commitment that, in our Nation, decisions to use military force are vested—the war powers are vested in Congress—how is that relevant if you argue that the President can act without that authorization, based on something as vague as regional stability?

Mr. STRING. Senator, we have great respect for the constitutional prerogatives of Congress and the right to declare war under Article

1 of the Constitution. Article 2 of the Constitution has been long recognized by, again, administrations of both parties to authorize the President to take limited types of action to respond to——

Senator MERKLEY. Okay, let us explore the “limited.” Are you saying that responding to regional stability as an argument is only an argument for very limited military action?

Mr. STRING. It is always a facts-and-circumstances analysis, and it is an analysis that is conducted very carefully in the executive branch.

Senator MERKLEY. You are not willing to constrain it to limited or proportional response in your interpretation?

Mr. STRING. That is an important limit, in general. Under international law, it has to be necessary and proportionate. That is a limitation, as well.

Senator MERKLEY. Under international law. But, we are talking the Constitution right now, and the power that the President sees within that framework.

Mr. STRING. Yes. And these limits that I have just described are also adopted as part of U.S. law.

Senator MERKLEY. Since you have expounded here that none of the five standards in the 2001 AUMF are met, why would you not support eliminating that AUMF?

Mr. STRING. Senator, our position has been that the executive branch has sufficient authorities to take actions to defend the United States. We, of course, respect the——

Senator MERKLEY. If you have sufficient powers otherwise, why would you not support eliminating the 2001 AUMF?

Mr. STRING. Senator, because we continue to rely upon the 2001 AUMF.

Senator MERKLEY. But, you have said that the five standards are not met. So, why do you want to hold on to this?

Mr. STRING. Because we utilize this AUMF for operations in seven different theaters.

Senator MERKLEY. Those theaters do not meet the test, either—the five tests that are in it. And you previously cited the 2001 AUMF with the phrase “associated forces.” Can you point to me that phrase in the 2001 AUMF?

Mr. STRING. Senator, this is a longstanding interpretation that the executive branch has——

Senator MERKLEY. So, it is not in the AUMF?

Mr. STRING. It is a longstanding interpretation——

Senator MERKLEY. Again, how do we have integrity for congressional action if you rely on your own expanded interpretation, whether or not it was done by a previous administration?

Mr. STRING. Well, I think I can provide some assurance in that respect, Senator, in that there is a very careful process that we have continued from the previous Administration when we would be reviewing any potential additions to the list of entities that could fall under the 2001 AUMF.

Senator MERKLEY. This is my last question, Mr. Chairman.

You argued that the only replacement AUMF you would support would be one that had no repeal before replacement, no geographic limit, and no sunset. Unlimited in space, unlimited in time, and, according to the set of interpretations you have shared today, un-

limited in power. And how is that not a complete abrogation of the constitutional vision of the warmaking authority of Congress?

Mr. STRING. Senator, again, we would respect the prerogatives of this body in the Congress to determine what those parameters would be. We are simply offering our best advice to Congress about what some guideposts should be as this body may consider—

Senator MERKLEY. You are asking for no termination, no geographic boundary, you are not putting forward any provisions for limited power. I would say that sounds like a complete abrogation of the Article 1 warmaking power, completely inconsistent with this Constitution. And in your responsibility to have integrity to what Congress passes, I am very disappointed to hear your failure to honor that integrity.

The CHAIRMAN [presiding]. Thank you, Senator Merkley.

Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman. Let me first thank you for extending courtesies on both sides of the aisle in the time limitation on an issue that is of great importance to members. So, I appreciate that.

Let me ask you, Secretary Hale. In April of this year, Secretary Pompeo testified before this committee and said, “There is no doubt there is a connection between the Islamic Republic of Iran and al-Qaeda, period, full stop.” Is that the Administration’s position, that Iran and al-Qaeda are connected?

Ambassador HALE. I really cannot improve on what Secretary Pompeo said. In an earlier—

Senator MENENDEZ. Do not try. So, is that the position of the Administration, that Iran and al-Qaeda are connected?

Ambassador HALE. He stated that, and that is the position—

Senator MENENDEZ. So, to what extent? To what extent? Give me some depth, then. To what—

Ambassador HALE. The—

Senator MENENDEZ. —extent are they connected?

Ambassador HALE. The issue I am aware of is the continued provision of safe haven to al-Qaeda by the Iranian regime. But, that is what I am aware of—

Senator MENENDEZ. So, Mr. String, based upon that alone, has the Department, have you, as Legal Adviser, determined whether this connection would be sufficient to use force under the 2001 AUMF?

Mr. STRING. Senator, as I think the Secretary himself made clear, he was not making a legal conclusion as to those links. And, as we have discussed earlier, the Administration has not interpreted either the 2001 or the 2002 AUMF as authorizing force against Iran.

Senator MENENDEZ. So, you have not come to any conclusion as to whether that al-Qaeda connection invokes authorities under the 2001 AUMF.

Mr. STRING. We have not made any determination, to date, on that question.

Senator MENENDEZ. Have you been considering that question?

Mr. STRING. Senator, we are constantly vigilant on these issues, in responding and assessing threats. I would just have to return to

my previous statement that, to date, we have not made that determination, but we continue to be vigilant.

Senator MENENDEZ. Did the 2001 AUMF provide authorization to respond to the IRGC's takeover of a British ship?

Mr. STRING. Senator, I would prefer not to get into hypothetical—

Senator MENENDEZ. Well, it is not a hypothetical. That is a reality. The Iranians took over a British ship. Does the AUMF give you the authorization to respond to it?

Mr. STRING. Again, we have not interpreted either the 2001 or 2002 AUMF to authorize the use of force against Iran.

Senator MENENDEZ. What about a response to Iran exceeding JCPOA enrichment limits?

Mr. STRING. Senator, I would have the same answer with respect to that. The 2001 or 2002 AUMF have not been interpreted, to date, to authorize force in the respect that you just laid out.

Senator MENENDEZ. That does not mean it could not be interpreted as such.

Mr. STRING. Again, I would go back to the statement that I have been repeating, that we have not interpreted it, to date, based on the facts before us.

Senator MENENDEZ. Well, since I very rarely get the legal counselor before this committee, or the State Department, let me turn to another subject that maybe you can be more elucidating about. You are familiar with the recently concluded U.S.-Mexico Joint Declaration, are you not?

Mr. STRING. Yes, I am, Senator. Of June 7th.

Senator MENENDEZ. Good. As an expert on bilateral and multilateral agreements, treaties, and other types of international arrangements, you know the difference between a binding and a non-binding instrument, correct?

Mr. STRING. That is correct, Senator.

Senator MENENDEZ. So, let me ask you a simple question, based on your legal expertise. Just give me a yes-or-no answer. Is the U.S.-Mexico Joint Declaration binding for purposes of international law?

Mr. STRING. Senator, that is an important authoritative agreement that the Governments of the United States and Mexico entered into, and we are in the midst of implementing various—

Senator MENENDEZ. I did not ask you—

Mr. STRING. —elements of that agreement.

Senator MENENDEZ. —if that was an authoritative agreement. I asked you if it was binding for purposes of international law.

Mr. STRING. Senator, I would have to give the same answer. We view it as an important authoritative agreement—

Senator MENENDEZ. That is a non-answer. You know, I do not practice these days, but I did at one time, and that is a non-answer. It is a non-answer to my specific question. It is so beyond my pale to understand why the Department is so reluctant to answer a simple question. You signed, personally, the supplementary agreement. Is that correct?

Mr. STRING. That is correct, Senator.

Senator MENENDEZ. In that agreement, I see phrases like, "The U.S. and Mexico will begin discussions to establish definitive terms

for a binding bilateral agreement.” That sure does not sound binding to me. So, can you tell me, why has the Department been so reluctant to answer this basic question?

Mr. STRING. Senator, I believe we have provided answers to questions that your staff have raised with respect to the agreement. We continue to be engaged in important discussions with the Mexican government and other governments in the region about burden-sharing issues—

Senator MENENDEZ. Your answers have been totally nonresponsive. And it is the nonresponsiveness of these answers that has led me to use the limited tools that the Minority has, which I have been in consultation with the Chairman about, in terms of just getting a simple answer. Is this a binding international agreement, yes or no? It either is or it is not. If it is, fine, then we know what goes forth from it, though we do not what the agreement is, which is another problem. We do not know what the agreement is.

Does the Department intend to submit any part of this agreement to the Senate for advice and consent?

Mr. STRING. Senator, the parameters of an agreement are still subject to discussion, both within the executive branch and with our partners—

Senator MENENDEZ. But, you—

Mr. STRING. —so I do not have an answer on that.

Senator MENENDEZ. —you have an agreement. So, if you have an agreement, then you know whether or not you would be submitting it for advice and consent on it. Does the Department view this as an executive agreement?

Mr. STRING. The agreement that we are discussing with regional partners currently?

Senator MENENDEZ. The U.S.-Mexico declaration.

Mr. STRING. The U.S.-Mexico declaration will not be submitted as a treaty to the Senate for its—

Senator MENENDEZ. It will not be submitted as a treaty. Do you view it as an executive agreement?

Mr. STRING. Again, Senator, we view this as an important authoritative agreement that has been agreed to—

Senator MENENDEZ. Will you be reporting it under the CASE Act?

Mr. STRING. Senator, we are still looking at all those questions internally in the executive branch.

Senator MENENDEZ. So, here is our problem. You are before the oversight committee of your Department. You cannot give me a straightforward yes or no: Is this a binding international agreement? We cannot get a copy of the agreement. It is the most coveted, you know, secret agreement that should be very clear. We cannot get a sense of whether or not you consider this an executive agreement, whether you are answered under the CASE Act. Why? Why can you not give us simple answers to those questions?

Mr. STRING. Senator, I am trying to be as forthright as I can. We are still in discussions about the parameters of the agreements that you have referenced. So—

Senator MENENDEZ. So—

Mr. STRING. —several elements of this—

Senator MENENDEZ. So, then you do not have an agreement. If you are talking about the—either you know the agreement, the foursquare elements of what the agreement is, or you do not. If you do not, you do not have a final agreement, then.

Mr. STRING. Senator, we do have the June 7th declaration that you mentioned. That is obviously complete, because it has been posted publicly. So, I can talk about that, and I can talk about the agreement that you also mentioned about the important commitments to pursue additional discussions. That is what I can talk about at this stage.

Senator MENENDEZ. Secretary Hale, is there any reason why you cannot provide the committee with a copy of this agreement?

Ambassador HALE. I will have to come back to you, sir, on that. I have not been as informed as Marik has been on the detailed legal aspects of this agreement. So, let me get back to you and—

Senator MENENDEZ. Well, it is not—

Ambassador HALE. —get back to your staff.

Senator MENENDEZ. —it is not even the legal aspects of the agreement. That is for the Legal Adviser. Just in general—you are the Under Secretary for Political Affairs—why can this committee, the committee of oversight, not get a simple hard copy of the agreement?

Ambassador HALE. Let me take that back to the Department and get back to you, sir.

Senator MENENDEZ. Mr. Chairman, this is a challenge, that those of us who are interested in what this agreement is and believe we have the right to see the agreement and, therefore, decide what is the appropriate policy, maybe in support of what the President did, maybe in criticism of it; maybe, in part, support; maybe, in part, criticism. But, you cannot have this committee and its members seek to make judgments without having basic information. This is basic information.

So, anyhow, thank you, Mr. Chairman, for indulging me.

The CHAIRMAN. Thank you, Senator Menendez.

A sincere thank you to our witnesses.

And, for the information of members, the record will remain open until close of business on Friday. I would ask the witnesses to respond as promptly as possible to the questions for the record, and they will be made part of the record.

With that, this committee is adjourned.

[Whereupon, at 12:43 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

RESPONSES OF UNDER SECRETARY OF STATE DAVID HALE TO QUESTIONS SUBMITTED BY SENATOR ROBERT MENENDEZ

In questions for the record following your nomination hearing, I asked you about ongoing reports of prohibited personnel practices, including targeting and retaliation of career employees:

Question. Have you been made aware of any concerns regarding or reports of prohibited personnel practices during your tenure at State?

Answer. As a senior Department official I have been made aware of such allegations, and I take seriously any allegations of prohibited personnel practices, including politically motivated retaliation against career Department employees.

Question. If so, what actions have you taken to address them?

Answer. I have made clear in my words and deeds that such behavior is absolutely unacceptable and I support the Department's actions to ensure that any allegations are thoroughly investigated in order to establish facts, determine accountability, and provide appropriate redress.

Question. What steps have you taken, if any, to ensure that any inappropriate targeting and retaliation of career employees is not taking place?

Answer. As a leader and senior Department official, I have made clear in my words and deeds that such behavior is absolutely unacceptable. Moreover, I have emphasized that all personnel practices must be carried out consistent with all laws and regulations.

RESPONSES OF ACTING LEGAL ADVISER MARIK STRING TO QUESTIONS
SUBMITTED BY SENATOR ROBERT MENENDEZ

Question. Do you believe that the Administration has any legal authorization to use military force against Iran beyond self-defense of U.S. Armed Forces and personnel in the region? What authorization provides such a justification? Will you commit to seeking Congressional authorization for any other military action against Iran?

Answer. As Secretary Pompeo has noted, the Administration's goal is to find a diplomatic solution to Iran's malign activities, not to engage in a conflict with Iran.

The Administration is not seeking a new AUMF against Iran, or any other nation or non-State actor at this time. In addition, the Administration has not, to date, interpreted either the 2001 or 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq. The Administration is committed to consulting and keeping Congress informed about these very important matters.

Question. Do you think it is necessary for Congress to pass a new AUMF in order for this Administration to enter into military conflict with Iran?

Answer. As Secretary Pompeo has noted, the Administration's goal is to find a diplomatic solution to Iran's malign activities, not to engage in a conflict with Iran.

The Administration is not seeking a new AUMF against Iran, or any other nation or non-State actor at this time. In addition, the Administration has not, to date, interpreted either the 2001 or 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq.

Question. In June of this year, the president asserted that he ordered—then called off—a strike on Iran in response to the shooting down of an American aerial unmanned vehicle. He publicly stated that he called off the attack because he didn't see it as “proportionate.”

- a. Under what authority did the legal advisor determine the President was able to order this strike?
- b. Was there concurrence between the State Department, the Defense Department, and the DOJ Office of Legal Counsel?
- c. Was there a written opinion?
- d. Would the AUMF apply to the shooting down of an unmanned vehicle?

Answer. I am not able to provide further information on these deliberative, pre-decisional issues. The Administration has not, to date, interpreted either the 2001 or 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq.

Question. If you believe that the President has sufficient legal authority to engage in combat with Iran, what are the limits of such authority in terms of what types of military operations he can conduct? For example, would he be able to order airstrikes against targets in or around Tehran that were not involved in any direct attack on U.S. persons, property, or military forces? On Iranian nuclear-related sites?

Answer. The Administration has not, to date, interpreted either the 2001 or 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq.

Separately, Article II of the Constitution empowers the President, as Commander-in-Chief, to order certain military action to protect the Nation from an attack or threat of imminent attack and to protect important national interests. The Office of Legal Counsel at the U.S. Department of Justice (OLC) has issued a series of opinions about the President's Article II authority over the years under both Democratic and Republican Presidents. For example, in 2011, OLC explained that the President's legal authority to direct military force in the absence of specific prior congressional authorization turns on two questions: (1) whether the U.S. military operations would serve sufficiently important national interests; and (2) whether the military operations that the President anticipated ordering would not be so sufficiently extensive in "nature, scope, and duration" as to constitute a "war" within the meaning of Article I, § 8, cl. 11, which gives the Congress to power "[t]o declare War."

Question. The 2001 AUMF has operated as the legal justification for myriad conflicts over the past 17 years. Originally intended to target those responsible for the September 11 terrorist attacks, it is now used as a veritable blank check to prosecute combat operations around the globe.

- a. How does the 2001 AUMF apply to current combat operations in Middle East?
- b. How has the "associated forces" clause in the 2001 AUMF affected our ability to properly target enemies and combat terrorism?
- c. What limitations do you see on the Administration's assertion that the 2001 AUMF authorizes the United States to act in self-defense of partner forces? What if such "self-defense" actions risked hostilities between the United States and another country (e.g. Turkey, Russia, or Syria)—would the Administration view such "self-defense" as authorized by the 2001 AUMF?

Answer. The 2001 AUMF does not authorize the President to use force against every group that commits terrorist acts. 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 information concerning each group's organization, links with al-Qa'ida or the Taliban, and its participation in al-Qa'ida or the Taliban's ongoing hostilities against the United States or its coalition partners. These determinations are necessarily fact-specific. To date, the executive branch has determined that the following groups are covered by the 2001 AUMF: 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. The Administration has not, to date, interpreted either the 2001 or 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq.

The U.S. Department of Defense detailed the scope of its authorizations and practices in defending foreign partner forces in reports to the Armed Services Committees under Section 1031 of the National Defense Authorization Act for Fiscal Year 2019. When U.S. forces work with foreign partner forces or individuals incident to a military operation, the use of necessary and appropriate force to defend those partner forces is considered an inherent component of that U.S. operation. The legal basis for the defense of partner forces is thus the same as the legal authority under which the overall operation was authorized. For example, the President's authority pursuant to the 2001 AUMF encompasses not only the use of offensive force against al-Qa'ida, the Taliban, and associated forces, but also the use of necessary and appropriate force to defend our own forces and foreign partner forces conducting those operations.

Question. One of the key concerns that many in this body have noted about the 2001 AUMF is its lack of a sunset provision that would provide a definitive end date for combat operations.

- a. How do you think the lack of sunset provision in the 2001 AUMF has affected U.S. combat operations? How has it affected other nation's perception of U.S. combat operations?
- b. Do you believe such sunset provisions are beneficial to an AUMF?

Answer. The Administration has sufficient legal authority to prosecute the campaign against al-Qa'ida, the Taliban, and associated forces, including against ISIS. The President does not need a new or revised AUMF.

However, if Congress were to consider a new or revised AUMF, the Administration has stated any such new or revised AUMF must have no sunset provision, no geographic limitation, and no repeal before replacement. A sunset provision would be inconsistent with the President's direction that conditions on the battlefield, not artificial or arbitrary timelines, will dictate when a military campaign shifts or ends.

Many partner nations are contributing to the fight against the organizations the AUMFs were passed to defeat. The D-ISIS Coalition alone has 80 members, several of which have troops fighting alongside ours. This underscores how seriously other countries also continue to treat these threats, illustrates how much they value continued U.S. leadership in this mission, and highlights the mutually recognized need to continue to utilize all legal, available, and appropriate means to defeat these groups.

As Undersecretary Hale recently noted during the hearing, "as a practical matter, [the continuing existence of authorizations to use military force against Iraq] is not an impediment or an issue between us and the Iraqi government. This is not a focus of concern, to my knowledge, on their part. We are focused together on the things that you heard about in the other hearing, about . . . how we can be good partners together and we can support them in the incredible effort to stabilize that country against both ISIS and the Iranians."

Question. National Security Advisor John Bolton stated in June that the U.S. is expanding offensive cyber operations in order to counter digital economic espionage and other commercial issues. These comments followed on the continued empowering of the executive branch, whether via the Cyber Strategy or new National Security Presidential Memorandum 13, to prosecute offensive cyber operations in order to "defend forward." However, these operations put forth the question of what actions require Congressional approval.

- a. Please describe the types of cyber operations that the Administration would anticipate reporting pursuant to section 4 of the War Powers Resolution.
- b. Does the United States currently rely on either the 2001 or 2002 AUMFs as a statutory basis for cyber operations?
- c. What types of operations you believe require congressional authorization, and which ones do you believe fall below such a threshold?
- d. Do the operations that the U.S. is conducting to stop economic espionage in the digital domain require an authorization, in your estimation?
- e. What kinds of limits should a cyber AUMF place on U.S. actions in the digital domain? Should such an AUMF stretch beyond the digital domain and constrain actions in the physical world?

Answer. The Administration has reported to Congress on its military operations consistent with the War Powers Resolution. Officials within the Administration communicate regularly with congressional leadership and other Members of Congress with regard to military operations, and we will continue to do so. The Administration expects that such operations, like any other military operations, would be reviewed for consistency with domestic and international law.

Question. The United States remains a key protector of human rights and individual freedoms around the globe. Any AUMF must keep in mind the role the U.S. plays in protecting these rights.

- a. Do you believe that human rights should play a role in AUMFs, and what role should they play in an AUMF that specifically targets terrorists?
- b. What mechanisms can Congress institute to help ensure that human rights remain at the center of a new AUMF?

Answer. Promoting respect for human rights and international humanitarian law remain key foreign policy objectives of the United States. Congress has instituted this policy in a variety of ways, including by enacting restrictions on assistance to foreign security forces that are implicated credibly in gross violations of human rights. The United States is committed to complying with our international obligations in our military operations.

Question. In recent years, it seems that the executive branch has more frequently resorted to the use of force absent an AUMF or declaration of war. I think it is important for everyone to remember that declaring war and authorizing the use of force is a Constitutional role vested in Congress, and in this committee in particular. How, in your view, has the power to prosecute a conflict changed over the last several decades? Do you believe that there has been less transparency by the

executive branch regarding conflicts? What are the constraints on Article II authority that you see?

Answer. The Administration has great respect for the critical role played by Congress in authorizing the use of military force. The Administration believes that the interests of the nation are best served when the President and the Congress act together to support the men and women of our military as they defend our national security interests.

Article II of the Constitution empowers the President, as Commander-in-Chief, to order certain military action to protect the Nation from an attack or threat of imminent attack and to protect important national interests. The Office of Legal Counsel at the U.S. Department of Justice (OLC) has issued a series of opinions about the President's Article II authority over the years under both Democratic and Republican Presidents. For example, in 2011, OLC explained that the President's legal authority to direct military force in the absence of specific prior congressional authorization turns on two questions: (1) whether the U.S. military operations would serve sufficiently important national interests; and (2) whether the military operations that the President anticipated ordering would not be so sufficiently extensive in "nature, scope, and duration" as to constitute a "war" within the meaning of Article I, § 8, cl. 11, which gives the Congress the power "[t]o declare War."

The previous Administration relied on this understanding of the constitutional authority of the President to engage in military operations against Libya and against Houthi radar installations in Yemen in October 2016. OLC reiterated this view in its 2018 opinion concerning the April 2018 use of force against chemical weapons targets in Syria.

We agree it is important for the executive branch to be as transparent as possible with the Congress and with the public about the legal basis for U.S. military operations. The 2018 OLC opinion, which the Administration published, provides substantial insight into the Administration's view concerning the scope of the President's Article II authority.

Question. What do you believe is the proper balance between providing the President with the tools needed to respond to emergencies with Congress's role of being the body to declare war?

Answer. The Administration has great respect for the critical role played by Congress in authorizing the use of military force. Although we recognize that there are times when the President may authorize the use of force without prior congressional authorization, the Administration believes that the interests of the nation are best served when the President and the Congress act together to provide a statutory authorization to support the men and women of our military as they defend our national security interests.

Article II of the Constitution empowers the President, as Commander-in-Chief, to order certain military action to protect the Nation from an attack or threat of imminent attack and to protect important national interests. The Office of Legal Counsel at the U.S. Department of Justice (OLC) has issued a series of opinions about the President's Article II authority over the years under both Democratic and Republican Presidents. For example, in 2011, OLC explained that the President's legal authority to direct military force in the absence of specific prior congressional authorization turns on two questions: (1) whether the U.S. military operations would serve sufficiently important national interests; and (2) whether the military operations that the President anticipated ordering would not be so sufficiently extensive in "nature, scope, and duration" as to constitute a "war" within the meaning of Article I, § 8, cl. 11, which gives the Congress the power "[t]o declare War."

It is important for the executive branch to be as transparent as possible with the Congress and with the public about the legal basis for U.S. military operations.

Question. When is Congressional engagement necessary in the use of force?

Answer. The Office of Legal Counsel at the U.S. Department of Justice (OLC) has issued a series of opinions about the President's Article II authority over the years under both Democratic and Republican Presidents. The most recent, issued in 2018, provides substantial insight into the Administration's approach to such questions. The Administration is committed to consulting with Congress and keeping it informed with regard to issues relating to the use of force.

Question. Section 36(c)(2) of the AECA specifically says "if the President states in his certification that an emergency exists . . . thus waiving the requirements of subparagraphs (A) and (B) . . ."—but the commercial sales were under subparagraph (C).

- a. What is the Office of Legal Adviser's legal analysis of this provision? How does it conclude that the Secretary had the legal authority to use this provision with regard to the 13 direct commercial sales to Saudi Arabia and the UAE that he included in his May 24, 2019 emergency determination?
- b. What is the justification for invoking an emergency declaration, when the plain language of the statute does not say that there is such an authority for commercial sales?
- c. If your argument is that Congress erred when it amended that provision in 2002, please provide the evidentiary basis for that contention, including how you determined Congressional intent by citing the Congressional reports or statements that buttress your position.
- d. If your argument is that Congress erred when it amended that provision in 2002, is there not a legal doctrine of interpretation of law that states, basically, that a provision of law that has remained unchallenged for years or has not been the subject of attempts to correct, then that provision of law should be followed according to the plain-letter meaning? If so, why did the Office of Legal Adviser not use this doctrine of interpretation? Does the Office of Legal Adviser apply this doctrine of legal interpretation in other situations?

Answer. The Office of the Legal Adviser developed the legal advice in connection with the matter in question in advance of my designation as Acting Legal Adviser. The Office of the Legal Adviser assessed that the Secretary's certification met the requirements of section 36(c)(2) of the Arms Export Control Act for the sales at issue here in light of the opening clause of section 36(c)(2).

Question. Did you, or did anyone in the office of the Legal Adviser, produce a written legal analysis, determination, or recommendation that the Secretary of State had the authority to invoke an emergency certification? If so, will the State Department provide a copy of that written or any related legal analysis, determination and/or recommendation to the Committee? If not, what legal privilege is State claiming to exercise that prevents it, or enables it, from providing such written legal analysis, determination and/or recommendation to the Committee—the Committee of oversight for the Department and for these issues?

Answer. I am not in a position to describe deliberative, pre-decisional communications that may be subject to executive branch confidentiality interests. However, the Office of the Legal Adviser routinely clears packages involving congressional notifications, and did so in this case.

Question. Mr. String, is the U.S.-Mexico Joint Declaration binding for purposes of international law?

- a. As you know, I have asked variations on this question numerous times. Why has the Department been so reluctant to answer my basic questions about this?
- b. As a legal expert on international instruments, how would you characterize this agreement?

Answer. I can confirm that the United States regards the June 7 Joint Declaration and the Supplementary Agreement with Mexico, which we have previously provided to the Committee, collectively to constitute a binding agreement under international law. We have transmitted these instruments to Congress, in accordance with the Case Act.

Question. At the hearing, you stated that the U.S.-Mexico Declaration was "an important authoritative agreement that's been agreed to." What do you mean by an "important authoritative agreement"?

- a. Does an "authoritative agreement" impose any obligations on either country? If so, what obligations?
- b. Is such an agreement binding for purposes of international law?

Answer. I can confirm that the United States regards the June 7 Joint Declaration and the Supplementary Agreement with Mexico, which we have previously provided to the Committee, collectively to constitute a binding agreement under international law. We have transmitted these instruments to Congress, in accordance with the Case Act.

Question. What is your understanding of how the President views the U.S.-Mexico Joint Declaration, in terms of whether it imposes obligations on Mexico or the United States? Have you or has the Department briefed the President on the Joint Declaration?

Answer. I can confirm that the United States regards the June 7 Joint Declaration and the Supplementary Agreement with Mexico, which we have previously provided to the Committee, collectively to constitute a binding agreement under international law. We have transmitted these instruments to Congress, in accordance with the Case Act.

Question. Your answers at the hearing seemed to indicate that there are ongoing discussions with Mexico about other or related agreements. Can you clarify? What are the status of those? Are they intended to impose binding obligations for purposes of international law on each country?

Answer. Under the Supplementary Agreement, the United States and Mexico committed to begin discussions to establish definitive terms for a binding bilateral agreement to further address burden-sharing and the assignment of responsibility for processing refugee status claims of migrants. These discussions are ongoing.

Question. You stated that the executive branch was still considering whether the U.S.-Mexico Joint Declaration would be reported under the Case Act. Please provide an update of those discussions and the factors relevant to whether the Administration will do so.

Answer. I can confirm that the United States regards the June 7 Joint Declaration and the Supplementary Agreement with Mexico, which we have previously provided to the Committee, collectively to constitute a binding agreement under international law. We have transmitted these instruments to Congress, in accordance with the Case Act.

Question. Beyond the Joint Declaration—which appears to be just a statement by two parties—and the supplementary agreement, which on its face doesn't create any binding obligations, has the U.S. and Mexico entered into any other commitments or agreements related to migration? Any others that were supposedly to resolve the tariff threats? How would you characterize those agreements and when will this Committee receive copies?

Answer. As referenced in the Joint Declaration, there are a number of related arrangements, including the Migrant Protection Protocols and the Comprehensive Development Plan launched by the Government of Mexico with the Governments of El Salvador, Guatemala, and Honduras, which all aim to address the shared challenge of illegal migration in the region. Of note, the Comprehensive Development Plan launched by the Government of Mexico with the three NT Governments does not incorporate, nor does it involve, U.S. initiatives with the Governments of El Salvador, Guatemala, and Honduras.

Question. The U.S. also reportedly recently entered into an agreement with Guatemala on migration issues. What was agreed to? Is there a written document? When will you provide any such documents to the Committee?

Answer. On July 26, the United States signed a cooperative agreement with Guatemala to reduce the flow of irregular migration. The agreement has not entered into force. It will enter into force upon an exchange of notes between the United States and Guatemala indicating that each party has complied with the necessary domestic legal procedures for the Agreement to enter into force. A copy of the agreement has been submitted to Congress in accordance with the Case-Zablocki Act.

Question. Has the Department conducted its own assessment of whether Guatemala can serve as a safe third country under U.S. law? What was the result of that assessment?

Answer. 8 U.S.C. 1158(a)(2)(A) establishes a “safe third country” exception to the right of an alien to apply for asylum set forth in 8 U.S.C. 1158(a)(1). The statute does not assign responsibility to the Department of State for determining whether an alien can be removed to a particular country as a safe third country. Consistent with 8 U.S.C. 1158(a)(2)(A), the Attorney General and the Secretary of Homeland Security would determine that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General or the Secretary of Homeland Security finds that it is in the public interest for the alien to receive asylum in the United States.

The Department has identified that these provisions would govern the implementation in U.S. law of the agreement signed with Guatemala on July 26, 2019, upon

the future entry into force of that agreement and that these provisions would need to be satisfied prior to the commencement of implementation of the agreement.

Question. Has the Department provided a recommendation to the White House as to whether Guatemala can serve as a safe third country under U.S. law? What was that recommendation?

Answer. The Administration is not able to comment on matters relating to the executive branch's deliberative process.

Question. In the current or previous administrations, has the Office of the Legal Adviser analyzed the legality under international law of U.S. support for Saudi Arabia's prosecution of the conflict in Yemen (to include arms sales, logistical and intelligence support)? If yes, please indicate whether any such analysis resulted in the conclusion that U.S. officials or personnel participating in such activities would be exposed to charges of war crimes? Please provide any such analyses in unclassified form, to the extent possible, or in a classified format.

Answer. The U.S. Government takes all credible reports of civilian casualties in Yemen seriously and is proactively engaging with the Saudi-led Coalition to reduce the likelihood of harm to civilians and civilian infrastructure resulting from coalition operations. Through diplomatic and military-to-military engagements, we regularly emphasize to Saudi Arabia at the highest levels the strategic importance and legal obligation to comply with the law of armed conflict, including the obligation to take all feasible precautions to reduce the risk of harm to civilians.

Question. As you know, the Global Magnitsky Human Rights Accountability Act requires the President, upon receipt of a request from the Chairman and Ranking Member of the Senate Committee on Foreign Relations, to determine whether a foreign person is responsible for an extrajudicial killing, torture, or other gross violation of internationally recognized human rights against an individual exercising freedom of expression, and report to the Committee within 120 days with a determination and a decision on the imposition of sanctions on that foreign person or persons. Last year, Senator Menendez, as the Ranking Member of the Senate Foreign Relations Committee, along with then Chairman Bob Corker made such a request with respect to Saudis involved in the Khashoggi murder, including specifically Crown Prince Mohammed bin Salman. Yet the Administration has not made such a determination.

- a. Why has the Administration not made the determination as required by statute?
- b. Did the Department make a legal assessment regarding its obligation to submit a report to the Chairman and Ranking Member of the Senate Foreign Relations Committee pursuant to section 1263(d) of the Global Magnitsky Act? If so, what did that assessment conclude?
- c. Is the Department engaged in its own effort or supporting the efforts of other U.S. government agencies to uncover all of the perpetrators of Khashoggi's murder, including those who ordered, directed, or otherwise controlled the murder? If so, what is the status of that investigation and who is leading it? If not, why not?

Answer. As Secretary Pompeo has said, this was a terrible crime and one that requires the Saudi Government to hold every individual involved accountable. The United States was the first country in the world to take significant action to promote accountability in this case; under the Global Magnitsky sanctions program, the Administration aggressively pursued individuals in connection with the murder of Jamal Khashoggi, and on November 18, 2018, the Department of Treasury designated 17 individuals for having a role in the killing of Jamal Khashoggi. In addition to Global Magnitsky sanctions, on April 8, 2019, the Secretary publicly designated 16 Saudi officials under Section 7031(c) of the Department's Appropriations Act. This designation was based on credible information that these individuals were involved in gross violations of human rights regarding the killing of Mr. Khashoggi.

The Department shares your concerns that Saudi Arabia has not yet provided a credible and transparent accounting of Mr. Khashoggi's death, and this is something the Department regularly raises with Saudi counterparts. We are neither reducing our attention on Mr. Khashoggi's murder, nor ruling out appropriate steps to promote accountability for anyone who was involved in the murder, including at the highest levels of the Saudi government.

RESPONSES OF UNDER SECRETARY OF STATE DAVID HALE AND ACTING LEGAL
ADVISER MARIK STRING TO QUESTIONS SUBMITTED BY SENATOR TIM KAINÉ

Question. Is the Administration relying upon the 2002 AUMF as the sole legal authority to hold any detainees?

Answer. No, the Administration is not currently relying on the 2002 AUMF as the sole legal authority to hold any detainees. However, the 2002 AUMF remains an important source of additional authority for military operations against ISIS in Iraq and to defend the national security of the United States against threats emanating from Iraq. The Department of Justice cited the 2002 AUMF among the sources of legal authority for the detention of an individual in Iraq (*Doe v. Mattis*, Civil Action No. 1:17-cv-2069 (TSC)).

Question. Is the Administration relying upon the 2002 AUMF as the sole legal authority for any current U.S. military operations?

Answer. No, the Administration is not currently relying on the 2002 AUMF as the sole legal authority for any current U.S. military operations. However, the 2002 AUMF remains an important source of additional authority for military operations against ISIS in Iraq and to defend the national security of the United States against threats emanating from Iraq.

Question. Please describe what ongoing U.S. military operations would be harmed if the 2002 AUMF was repealed.

Answer. The 2002 AUMF remains an important source of additional authority for military operations against ISIS in Iraq and Syria and to defend the national security of the United States against threats emanating from Iraq. As part of a comprehensive strategy to defeat ISIS, U.S. Armed Forces are conducting a systematic campaign of airstrikes and other vital operations against ISIS forces in Iraq. U.S. Armed Forces are also advising and coordinating with Iraqi forces and providing training, equipment, communications support, intelligence support, and other support to select elements of the Iraqi security forces, including Iraqi Kurdish Peshmerga forces.

Question. Does the Administration oppose the repeal of the 1991 AUMF for the Gulf War? What impact would this repeal have on any current policies or operations?

Answer. The Administration is not requesting repeal or revision of any existing AUMFs. The Administration has not been presented with, or developed a definitive Administration position regarding, any proposal to repeal the 1991 AUMF that does not also include a repeal of the 2001 or 2002 AUMF.

Question. Has the State Department been informed that any of the additional U.S. troops the President is sending to the Middle East will be deployed to Iraq?

Answer. No, the Department has not been informed that additional U.S. military personnel will be deployed to Iraq. We would refer you to the Department of Defense for information on troop deployments.

Question. Has the State Department been informed that part of the U.S. military mission in Iraq is to “watch Iran?”

Answer. There has been no change in U.S. policy toward either Iran or Iraq. We are working to support Iraq as it fights ISIS remnants, deepens its relations with its Arab neighbors, and works toward energy independence. Iran seeks to keep Iraq weak through the destabilizing behavior of undisciplined militias, which contributes to radicalization in Sunni communities, and dependent on Iranian electricity and commercial goods. In great contrast, the United States supports a sovereign, prosperous, unified, and democratic Iraq with a viable Iraqi Kurdistan Region as an integral component.

Question. What impact would basing U.S. forces in Iraq to focus on a counter-Iran mission have on our bilateral relationship?

Answer. State Department policy is to support a strong, independent, and sovereign Iraq. Our bilateral relationship with Iraq is paramount to all we hope to achieve in the Middle East. The United States coordinates all of its activities with Prime Minister Adel Abd al-Mahdi and his government, ensuring that any new initiative bolsters and does not harm our partnership with Iraq.

Question. Does the State Department believe that Iraq has consented to the conduct of counter-Iran activities by U.S. military personnel on its territory? Does the State Department believe that U.S. personnel can pursue those activities in Iraq

without the Government of Iraq's consent under international and U.S. domestic law?

Answer. As part of a comprehensive strategy to defeat ISIS, U.S. Armed Forces are conducting a systematic campaign of airstrikes and other vital operations against ISIS forces in Iraq. U.S. Armed Forces are also advising and coordinating with Iraqi forces and providing training, equipment, communications support, intelligence support, and other support to select elements of the Iraqi security forces, including Iraqi Kurdish Peshmerga forces. Actions in Iraq are being undertaken in coordination with the Government of Iraq, and in conjunction with coalition partners. As a matter of domestic law, the 2001 AUMF and the 2002 AUMF authorize the U.S. use of force against ISIS in Iraq. As a matter of international law, the United States is using force against ISIS in Iraq at the request and with the consent of the Government of Iraq, which has sought U.S. and coalition support in its defense of the country against ISIS, and in furtherance of U.S. national self-defense.

Question. Does the Department believe that the fact that a majority of both chambers of the current Congress oppose the use of military force against Iran—as reflected in the recent 50–40 vote in the Senate in support of S. Amdt. 883 to S. 1790 and the recent 251–170 vote in support of H. Amdt. 554 to H.R. 2500, both of which prohibited the use of funds for using military force against Iran absent congressional authorization, except in certain limited cases of self-defense—demonstrates Congressional intent that should be considered when evaluating the scope of activities that could be initiated pursuant to any existing statutes, including the 1991, 2001 or 2002 AUMFs?

Answer. The Administration has not, to date, interpreted either AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq. The Administration appreciates the views expressed by various Members of Congress, including in recent debates.

Question. Does the Department believe that the following statement, which was included in the conference report for the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), demonstrates Congressional intent that should be considered when evaluating the scope of activities that could be initiated pursuant to statutes that pre-date the conference report, including the 1991, 2001 and 2002 AUMFs? “The conferees note that nothing in this Act may be construed to authorize the use of the Armed Forces of the United State against Iran. At the time of the signing of this report, the conferees are not aware of any information that would justify the use of military force against Iran under any other statutory authority.”

Answer. The Administration has not, to date, interpreted either AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq. The Administration understands that the John S. McCain National Defense Authorization Act for Fiscal Year 2019 does not include an authorization to use military force against Iran. The Administration appreciates the views expressed in the reports accompanying that Act.

Question. Will the Department commit to factoring this Congressional intent into its current and future evaluations of the 1991, 2001 and 2002 statutes?

Answer. The Administration has not, to date, interpreted either AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq. Consideration of legislative history is appropriate when interpreting statutes.

Question. Does the Department believe that the executive branch is required to comply with its international legal obligations relating to the conduct of international and non-international armed conflicts—including those relating to jus ad bellum and jus in bello—as a matter of U.S. domestic law?

Answer. The United States has the utmost respect for its international obligations, including its obligations relating to the conduct of international and non-international armed conflicts, including those under the jus ad bellum and jus in bello, and carries them out under applicable statutory and constitutional authorities.

RESPONSES OF UNDER SECRETARY OF STATE DAVID HALE TO QUESTIONS
SUBMITTED BY SENATOR EDWARD J. MARKEY

Question. Is Iran currently providing safe haven to al-Qa'ida? Has Iran provided safe haven to al-Qa'ida in the past?

Answer. Given the focus of these questions and the associated classification concerns they pose, I would refer you to the intelligence community who may be able to provide a classified briefing on this matter.

Question. Is Iran currently harboring al-Qa'ida? Has Iran harbored al-Qa'ida in the past?

Answer. Given the focus of this question and the associated classification concerns it poses, I would refer you to the intelligence community who may be able to provide a classified briefing on this matter.

Question. Are al-Qa'ida operatives currently planning attacks against the United States from Iranian territory? Have they done so from Iranian territory in the past? Please elaborate on any affirmative answer.

Answer. Despite leadership losses since 9/11, al-Qa'ida remains an enduring threat to the United States, its interests, and its allies across the globe. It has capitalized on the focus in recent years on the ISIS threat to reconstitute its capabilities and reach. For the details of al-Qa'ida activity, we defer to the intelligence community, which may be able to provide a classified briefing on this matter.

Question. Do any of the answers to the previous questions change if "al-Qa'ida" is broadened to encompass the list of groups currently within the scope of the 2001 AUMF?

Answer. Given the focus of these questions and the associated classification concerns they pose, I would refer you to the intelligence community who may be able to provide a classified briefing on this matter.

Question. Your testimony notes that Iran's military budget reached "nearly \$14 billion" in 2017. Using the same data source, what was Saudi Arabia's military budget in 2017? Please do not include the military budgets of Saudi Arabia's GCC partners.

Answer. The Saudi Government's 2017 end-of-year budget report stated that the Kingdom of Saudi Arabia spent 228 billion Saudi Arabia Riyals (roughly \$60.8 billion) on its military that calendar year.

Question. Your testimony references Iran's "longstanding practice of nuclear extortion." Has there been variation in the extent of "nuclear extortion" Iran has practiced over the last decade? If yes, what best explains the variation?

Answer. Iran's recent expansion of uranium enrichment activities, including expanding its stockpile of low enriched uranium above 300 kilograms and enriching uranium at levels above 3.67 percent, is deeply concerning. There is no credible reason for Iran to expand its nuclear program at this time and in this way, other than as a transparent attempt to extort the international community. Iran's past pursuit of nuclear weapons heightens the seriousness with which the Administration views these recent developments and provides the historical context in which we assess Iran's current actions and announcements. The Administration remains fully committed to preventing Iran from obtaining a nuclear weapon.

Question. Is reduction in Iran's revenue a means to achieving U.S. strategic goals like preventing "regional destabilization," or is revenue reduction the goal itself?

Answer. The objective of the Administration's maximum pressure campaign is to deprive the Iranian regime of the revenue it needs to fuel its malign behavior and to persuade it to negotiate a comprehensive deal. The Administration has implemented unprecedented sanctions on the Iranian regime, which are essential to convince Iran that it has no better alternative than to come to the negotiating table. Starving the regime of this funding means it has less money to spend on terror, missiles, and proxies like Hizballah, and the pressure campaign is yielding results. In March, Hizballah's leader, Hassan Nasrallah, publicly appealed for donations for the first time ever, and Hizballah has been forced to undertake unprecedented austerity measures. Ultimately, the Administration's objective is a comprehensive deal with Iran that permanently and verifiably prevents all paths to a nuclear weapon and addresses the full range of the Iranian regime's destructive behavior, including its support for terrorism and armed groups in the region, its development and proliferation of ballistic missiles, and its arbitrary detention of U.S. citizens.

RESPONSES OF ACTING LEGAL ADVISER MARIK STRING TO QUESTIONS
SUBMITTED BY SENATOR EDWARD J. MARKEY

Question. I, myself, along with many of my colleagues on this committee were dismayed by the Administration's emergency declaration allowing the White House to bypass Congress in authorizing arms sales to the Gulf in May:

In your role as then-Deputy Assistant Secretary for Political and Military Affairs, did you play a role in or participate in discussions about the emergency declaration? If yes, how long did the Department consider making an emergency declaration under the Arms Export Control Act?

Answer. The Department is not in a position to describe deliberative, pre-decisional communications that may be subject to executive branch confidentiality interests. However, in his previous position in the Bureau of Political and Military Affairs, Mr. String did participate in discussions regarding the emergency certification.

Question. I, myself, along with many of my colleagues on this committee were dismayed by the Administration's emergency declaration allowing the White House to bypass Congress in authorizing arms sales to the Gulf in May:

Did you play a role in or participate in drafting the justification memo or the emergency declaration?

Answer. The Department is not in a position to describe deliberative, pre-decisional communications that may be subject to executive branch confidentiality interests. However, the Bureau of Political Military Affairs prepares all packages related to sales and exports, and did so in this case. In his previous position in the Bureau of Political Military Affairs, Mr. String would have reviewed the package before it was sent to the Secretary.

Question. I, myself, along with many of my colleagues on this committee were dismayed by the Administration's emergency declaration allowing the White House to bypass Congress in authorizing arms sales to the Gulf in May:

Who was the final approver of the justification memo?

Answer. The Secretary of State approved the emergency certification and related memorandum of justification.

Question. I, myself, along with many of my colleagues on this committee were dismayed by the Administration's emergency declaration allowing the White House to bypass Congress in authorizing arms sales to the Gulf in May:

Did defense companies involved in the sale, such as Raytheon, contact the department in any way about the pending sales?

Answer. The Bureau of Political Military Affairs, at numerous levels, maintains an ongoing dialogue with the U.S. defense industry regarding export licenses, Foreign Military Sales (FMS) cases, cooperative projects, and any number of other aspects relating to defense trade matters. As such, Raytheon and others in the defense industry routinely contact the Bureau about FMS and direct commercial sales cases pending with the U.S. Government.

Question. I, myself, along with many of my colleagues on this committee were dismayed by the Administration's emergency declaration allowing the White House to bypass Congress in authorizing arms sales to the Gulf in May:

Will you provide a copy of the Office of the Legal Adviser's memo justifying the emergency sale to this committee?

Answer. The Office of the Legal Adviser (L) reviewed and cleared the action memorandum to the Secretary to approve the emergency certification and related memorandum of justification, consistent with regular practice. To support the Department's response to specific questions raised by the committee, L also provided legal advice on other issues. Committee staff was briefed on the Department's responses to the questions.

Question. I, myself, along with many of my colleagues on this committee were dismayed by the Administration's emergency declaration allowing the White House to bypass Congress in authorizing arms sales to the Gulf in May:

Who would know whether there was any connection between your promotion to the post of Acting Legal Adviser and the emergency declaration, which was sent to Congress the day of your promotion? If you are aware of any connection, please explain.

Answer. Mr. String's designation as Acting Legal Adviser was set in motion more than a month before the Secretary's emergency certification when the then-Legal Adviser announced her departure on April 22. The designation had no connection

whatsoever to the Secretary's decision to exercise the emergency authority, and the Office of the Legal Adviser provided legal advice in connection with this matter in advance of his designation.

