

S. HRG. 115-639

**THE AUTHORIZATIONS FOR  
THE USE OF MILITARY FORCE:  
ADMINISTRATION PERSPECTIVE**

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**HEARING**

BEFORE THE

**COMMITTEE ON FOREIGN RELATIONS  
UNITED STATES SENATE**

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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OCTOBER 30, 2017  
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**MONDAY, OCTOBER 30, 2017**

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

The committee met, pursuant to notice, at 5:00 p.m., in Room SD-419, Dirksen Senate Office Building, Hon. Bob Corker, chairman of the committee, presiding.

Present: Senators Corker [presiding], Risch, Rubio, Johnson, Flake, Gardner, Young, Barrasso, Isakson, Portman, Paul, Cardin, Shaheen, Coons, Udall, Murphy, Kaine, Markey, Merkley, and Booker.

**OPENING STATEMENT OF HON. BOB CORKER,  
U.S. SENATOR FROM TENNESSEE**

The CHAIRMAN. The Foreign Relations committee will come to order, and I want to deal with two housekeeping issues, if I could. I know we have a number of people here in the audience, some of whom sometimes like to express themselves. We thank you for being here.

In the past when there have been interruptions, on occasion I have been able to have people un-arrested, but we have stopped that. So, please, do not do anything that causes you to have to be escorted out of the room because then the process continues with—being arrested is fairly unpleasant, and I would hate to see you go through that process.

Secondly, we have a vote. We actually have two votes today, and so, which is unfortunate. What we have talked before about doing is adjourning the hearing at about seven minutes to six, everybody rushing down and actually voting on the tail end of the first vote, the beginning of the second vote. There will be no speaking before the second vote, and then if we could hustle back and keep going. I know General Mattis—Secretary—excuse me—Mattis has a meeting he would like to attend. I know others want to complete our work in an appropriate way.

So, with that, I would like to thank Secretary Tillerson and Secretary Mattis for being with us today to share the administration's perspective on the Authorizations for the Use of Military Force. We are grateful to both of you for your service to our country and your willingness to come here again as we continue this critical discussion on behalf of the American people.

Oversight and debate of the 2001 AUMF is something in which this committee has been engaged for as long as I have helped lead it, beginning as ranking member in 2013. At that time, many of us from both parties sought to craft a revised authority to enable the President to address the threats we face from terrorism while ensuring an appropriate role for Congress.

When President Obama submitted an ISIS AUMF to Congress in February of 2015, our committee again held a hearing and debated the issue, but there was really no effort on the part of the White House to actually enact a new authorization. This year, we have already held two full committee hearings on this important topic, a public hearing in June with private witnesses and a classified briefing with Secretaries Tillerson and Mattis in August, and we thank you for that. We have been working to schedule this public hearing since that time.

Numbers of members both on and off this committee have raised questions about the executive's authorities with respect to war making, the use of nuclear weapons—the use of nuclear weapons, and, from a diplomatic perspective, entering into and terminating agreements with other countries. As I have mentioned publicly, this is the beginning of a series of hearings where our committee will also examine those issues. But today it is my hope we will remain focused on the topic at hand, the 2001 AUMF and the 2002 AUMF for Iraq.

The President's de facto ability to initiate conflict has grown in an age of advanced technology, including the use of unmanned drones and war from a distance where large numbers of boots on the ground are not necessary to conduct a very significant military engagement. Examples of significant military actions by recent presidents relying solely on Article II of the Constitution include air strikes in Kosovo, regime change in Libya, and the April missile strike against the Assad regime in Syria.

In his last War Powers Resolution letter to Congress, the President identified the following 19 countries where U.S. military personnel were deployed and equipped for combat: Afghanistan, Iraq, Syria, Yemen, Somalia, Libya, Kenya, Niger, Cameroon, Uganda, South Sudan, Democratic Republic of Congo, Central Africa—African Republic, Djibouti, Jordan, Turkey, Egypt, Cuba, and Kosovo. As this month's deadly attack in Niger proved, those forces can find themselves in combat at any moment.

As our men and women in uniform continue to meet threats around the world, I hope that our witnesses can help us examine what the appropriate oversight role for Congress is, and how we can work together to ensure that our Nation's political leadership is meeting the responsibility to decide when and where our country uses military force.

As I stated previously, in this hearing we will focus primarily on the two current Authorizations for the Use of Military Force. Unfortunately, the use of lethal force against ISIS, al-Qaeda, and other terrorist groups will remain necessary for the foreseeable future to prevent attacks against Americans and our allies.

The President, just like President Obama, believes he has the legal authority he needs under the 2001 AUMF to fight ISIS, al-Qaeda, and other terrorist groups, and I agree. I agreed with the

Obama administration, and I agree with this administration that they currently have that authority.

It is clear that Congress is united in the strong support of the fight against al-Qaeda, the Taliban, ISIS, and other terrorist groups, and I believe Congress as a whole would agree that the President should continue to act against these threats. Congress has regularly notified—been notified of troop deployments around the world, including the build-up in Niger, and has responded consistently by funding the Department of Defense and its operations against ISIS and terrorists around the world. At the same time, I also believe we should update the AUMF to reflect the current conflict and reassert Congress’ constitutional role, but we cannot risk undermining the legal foundation for this critical fight.

We must also be mindful that moving an AUMF without significant bipartisan support could send the wrong message to our allies and our adversaries that we are not united and committed to victory. So far, Congress has been unable to bridge the gap between those who see a new AUMF as primarily an opportunity to limit the President and those who believe constraining the Commander-in-Chief in wartime is unwise. And unfortunately, the inability to reconcile this divide without threatening the existing authorization has allowed the status quo to prevail.

This committee has always recognized that we have a special responsibility to try to speak with one voice on foreign policy. We have a great tradition of working together in a bipartisan way to advance the national interests. It is my hope that we will be able to do the same on this issue. I thank both of our distinguished witnesses and the members of this committee for the seriousness with which they approach the topic before us today. And I hope that together we can have a productive discussion about a way forward.

Our distinguished ranking member, Senator Cardin.

**STATEMENT OF HON. BENJAMIN L. CARDIN,  
U.S. SENATOR FROM MARYLAND**

Senator CARDIN. Well, thank you, Mr. Chairman. I join you in welcoming our two witnesses, and join you in our strong desire for this committee to operate in a nonpartisan way for the betterment of our national security, and I thank you for conducting this hearing. This is one of the most important topics the United States Senate and this committee could ever consider: under what circumstances and legal authority should the United States send men and women into war.

Mr. Chairman, I am pleased that you are reasserting this committee’s prerogatives on this issue. I hope that soon we will also be considering the repeal of the existing overextended Authorizations for the Use of Military Force from 9/11 and the Iraq War, and a new AUMF tailored to the current terrorist threats.

America faces unprecedented crises around the world, from ISIS in multiple countries, and al-Qaeda affiliates continuing to plot attacks against the United States, to a worsening nuclear crisis with North Korea, and a newly-manufactured crisis with Iran. I am deeply concerned about President Trump’s inclination to go to war rather than find diplomatic solutions to these crises.

It seems we have U.S. troops deployed almost everywhere in the world. In addition to significant deployments in Iraq, Afghanistan, and Syria, and major deployments in South Korea, Japan, and Europe, U.S. forces are and have been engaged in counterterrorism operations in Yemen, Somalia, Ethiopia, Libya, and Chad, with extensive advice, train, and capacity-building efforts in many more.

Two weeks ago, we learned that four service members were killed in Niger in circumstances that are still unclear, their mission and the mission of what many may be as many as 800 U.S. troops in Niger. What is also unclear, the loss of these four courageous soldiers—Sergeant La David Johnson, Staff Sergeant Dustin M. Wright, Staff Sergeant Bryan C. Black, and Staff Sergeant Jeremy W. Johnson—shows the danger faced by men and women who are deployed around the world, whether they are deployed with the expectation of combat or not.

Our hearts are with the families of these soldiers. They served their country courageously, and their families deserve the respect and appreciation that all men and women should receive after losing a loved one.

During this hearing, I am going to be asking the witnesses some specific questions about the Niger incident, the mission these soldiers were performing, and the legal authorities for their deployment. That is our responsibility, this committee's responsibility. If our witnesses are unable to answer these in open hearings, then I am going to ask that you return to provide this committee a classified hearing. I think that we and the American people are now asking if the United States is fighting and dying in Niger, where else are U.S. forces put in harm's way.

Some information has been provided to the Congress on this issue, including the June 27 notice to Congress that the chairman referred to. But there has been inadequate explanation of what activities are actually being done and under what legal authority. That is this committee's responsibility to deal with the authorization. Protecting the American people from terrorism extending from threats around the world is certainly important. But I think there needs to be more public discussion and light on these activities because I do not think the American people want the United States conducting a global endless shadow war under the radar, covert, and beyond scrutiny.

There have been developments since this committee's last conversation on this topic with the Secretaries in August. First, ISIS control of contiguous territories in Iraq and Syria have been broken with hundreds of ISIS fighters killed and hundreds more surrendering. Second, the crisis with North Korea has gotten worse with North Korea testing both the ICBM with the ability to reach the United States and a thermonuclear device amid a bitter war of words and threats between President Trump and Kim Jong-un. Third, President Trump has even threatened the use of military options in response to the crisis in Venezuela.

And finally, I am aware that we cannot discuss all the aspects of the use of the Authorization for Military Force in this meeting. The Foreign Relations Committee has jurisdiction over the AUMF and security assistance in the Senate, and an obligation to provide oversight as to how they can be used. Secretary Mattis and Sec-



retary Tillerson, I will be asking you to commit to come up shortly to this committee and brief us in a classified setting on the use of the 2001 AUMF, including for counterterrorism purposes.

As I said at our hearing in June, the 9/11 and Iraq AUMF have now become mere authorities of convenience for presidents to conduct military activities anywhere in the world. They should not be used as the legal justification for the administration's military activities around the world. I am not convinced that the evolving threat of ISIL to the United States and to our friends and allies necessitates committing more of our brave men and women to ground combat operations, and certainly not under the rubric of the 9/11 AUMF against al-Qaeda for their attacks in Washington and New York.

I am going to repeat one more time for the record what that says. The 2001 AUMF said the President is "authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11th, 2011, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, and purposes." As one who voted for that AUMF when I was in Congress in 2001, I never intended, and I think all of us never intended, it would still be used today to justify the use of military force against ISIS.

Just one last point, if I might, Mr. Chairman, and that is I think it is very clear that under this authorization, there is no authorization for the use of military force against North Korea, unless there is an—absent an imminent attack upon the United States or upon forces or allies in this region. And I would be interested in hearing the Secretaries' belief as to what authorizations exist today for military operations against North Korea.

Finally, it is important for Congress to better exercise its oversight over the use of force now. The United States has relied for too long on military force as the first response to the problems of terrorism, insurgency, and instability abroad. In this administration, one wonders—one wonders whether it has become the first and only response. It has proposed a dramatic increase in the defense budget, while the foreign affairs' budget has been slashed by 30 percent. Very soon, practically the only tools left in the U.S. foreign toolbox will be the massive hammer applied everywhere for lack of better options. We need to both authorize and to set limits on the use of that hammer. In so doing, perhaps the administration will rediscover the necessity and the value of diplomacy, development, and support for human rights as the means to build a safer world for everyone, especially the United States.

I know that our two witnesses share the commitment to our national security and the importance of diplomacy and the use of military, and I look forward to their testimony.

The CHAIRMAN. Thank you, Senator Cardin. We thank both of you for being here today. You have tremendous respect by almost every member of this committee. We support your efforts around the world. And if you could limit your comments to about 5 minutes or so, you are going to have a lot of questions I know. Any

written materials that you would like to have entered into the record will be done without objection.

And I guess we will start with you, Secretary Tillerson. Again, we thank you for your extraordinary efforts on behalf of our country.

**STATEMENT OF HON. REX TILLERSON, SECRETARY OF STATE,  
U.S. DEPARTMENT OF STATE, WASHINGTON, D.C.**

Secretary TILLERSON. Thank you, Mr. Chairman. Chairman Corker, Ranking Member Cardin, and distinguished members, I appreciate the opportunity to speak to you today. I know the Senate's desire to understand the United States' legal basis for military action is grounded in your constitutional role related to foreign policy and national security matters. I understand your sense of obligation to the American people well in this regard.

In the 2001 Authorization for the Use of Force, or AUMF, Congress authorized the President to "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11th, 2001, or harbored such organizations or persons." Congress granted the President this statutory authority "in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons."

The 2001 AUMF provides statutory authority for ongoing U.S. military operations against al-Qaeda, the Taliban, and associated forces, including against the Islamic State in Iraq and Syria, or ISIS. The administration relies on the 2001 AUMF as a domestic legal authority for our own military actions against these entities, as well as the military actions we take in conjunction with our partners in the coalition to defeat ISIS. The 2001 AUMF provides a domestic legal basis for our detention operations at Guantanamo Bay where the United States currently detains members of al-Qaeda, the Taliban, and associated forces.

The 2001 AUMF also authorizes the use of necessary and appropriate force to defend U.S., coalition, and partner forces engaged in the campaign to defeat ISIS in Iraq and Syria. In Syria, the efforts of the U.S.-led coalition are aimed at the defeat of ISIS. The United States does not seek to fight the Syrian government or pro-Syrian government forces. However, the United States will not hesitate to use necessary and proportionate force to defend U.S., coalition, or partner forces engaged in the campaign against ISIS. The President's authority to use force against ISIS is further reinforced by the Authorization for Use of Force against Iraq, or, in more plain terms, the 2002 AUMF.

In addition to authorities granted to the President by statute, the President has the power under Article II of the Constitution to use military force in certain circumstances to advance important U.S. national interests, including to defend the United States against terrorist attacks. As an example, President Reagan relied on his authority as Commander-in-Chief in 1986 when he ordered airstrikes against terrorist facilities and military installations in Libya following a terrorist attack by Libya in West Berlin, which killed and wounded both civilians and U.S. military personnel.

The United States has the legal authority to prosecute campaigns against the Taliban, al-Qaeda, and associated forces, including ISIS, and is not currently seeking any new or additional congressional authorization for the use of force. The 2001 AUMF remains a cornerstone for ongoing U.S. military operations and continues to provide legal authority relied upon to defeat this threat. However, should Congress decide to write a new AUMF legislation, I submit to you several recommendations that the administration would consider necessary to a new AUMF.

First, a new AUMF authorities must be in place prior to or simultaneous with the repeal of old ones. Failure to do so could cause operational paralysis and confusion in our military operations. Diplomatically speaking, it could cause our allies in the global coalition to question our commitment to defeating ISIS. And a potential repeal of the 2001 AUMF without an immediate and appropriate replacement could raise questions about the domestic legal basis for the United States' full range of military activities against the Taliban, al-Qaeda, and associated forces, including against ISIS, as well as our detention operations at Guantanamo Bay.

Second, any new authorization should not be time constrained. Legislation which would arbitrarily terminate the authorization to use force would be inconsistent with a conditions-based approach and could unintentionally embolden our enemies with the goal of outlasting us. Any oversight mechanism in a new AUMF also would have to allow the United States the freedom to quickly move against our enemies without being constrained by a feedback loop.

Third, a new AUMF must not be geographically restricted. As is the case under the AUMF, the administration would need to retain the statutory authority to use military force against an enemy that does not respect or limit itself based on geographic boundaries. As ISIS' fraudulent caliphate in Iraq and Syria has crumbled, it has tried to gain footholds in new locations. As was discussed with the Senate during a closed defeat ISIS briefing in July, the United States has a limited military presence in the Lake Chad Basin to support partners, including France, in their counterterrorism operations in the region. This information is also being conveyed to you in multiple periodic reports submitted to Congress consistent with the War Power Resolution.

The collapse of ISIS' so-called caliphate in Iraq and Syria means it will attempt to burrow into new countries and find new safe havens. Our legal authorities for heading off a transnational threat like ISIS cannot be constrained by geographic boundaries. Otherwise, ISIS may reestablish itself and gain strength in vulnerable spaces.

The United States must retain the proper legal authorities to ensure that nothing restricts or delays our ability to respond effectively and rapidly to terrorist threats to the United States. Secretary Mattis and I, along with the rest of the administration, are completely aligned on this issue. We fully recognize the need for transparency with you as we respond to what will be a dynamic regional and global issue. We will continue to regularly update Congress and to make sure you and the American people understand

our foreign policy goals, military operations, and national security objectives.

I thank the committee for supporting our efforts and look forward to your questions.

[Secretary Tillerson's prepared statement follows:]

PREPARED STATEMENT OF SECRETARY OF STATE REX TILLERSON

Chairman Corker, Ranking Member Cardin, and distinguished members, I appreciate the opportunity to speak to you today. I know the Senate's desire to understand the United States' legal basis for military action is grounded in your constitutional role related to foreign policy and national security matters. I understand your sense of obligation to the American people well in this regard.

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However, should Congress decide to write new AUMF legislation, I submit to you today several recommendations that the administration would consider necessary to a new AUMF:

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The United States must retain the proper legal authorities to ensure that nothing restricts or delays our ability to respond effectively and rapidly to terrorist threats to the United States. Secretary Mattis and I, along with the rest of the administration, are completely aligned on this issue. We fully recognize the need for transparency with you as we respond to what will be a dynamic regional and potentially global issue. We will continue to regularly update Congress to make sure you and the American people understand our foreign policy goals, military operations, and national security objectives.

I thank the committee for supporting our efforts, and look forward to your questions.

The CHAIRMAN. Thank you. Secretary Mattis, we thank you also for being here and your extraordinary service not only as Secretary, but through many, many years in our military. We especially appreciate the fact that the two of you work together constantly to deal with issues in a unified voice, and we very much appreciate that.

With that, if you would begin.

**STATEMENT OF HON. JAMES MATTIS, SECRETARY OF DEFENSE, U.S. DEPARTMENT OF DEFENSE, WASHINGTON, D.C.**

Secretary MATTIS. Thank you. Chairman Corker, Ranking Member Cardin, members of the committee, it is appropriate we appear before you today to explain what we are doing from DOD's perspective in our counterterrorism campaign and why.

This has been a long 16-year global conflict characterized by a very different form of warfare, specifically terrorism, fueled by extremism, aimed at innocents around the globe. Traditional campaigns to protect our people must adapt to the reality of today's nontraditional transnational character of this fight. The 2001 and 2002 Authorizations to Use of Military Force, or AUMF, remain a sound basis for ongoing U.S. military operations against a mutating threat.

In the aftermath of the deadly 9/11 attack and to prevent future acts of international terrorism against the United States, Congress passed the 2001 AUMF, finding the President has, and I quote, "authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States." The 2002 AUMF provides the President with authority to, and I quote again, "defend the national security of the United States against the continuing threat posed by Iraq." Previous administrations have cited these statutory authorities to address the threat posed by terrorist groups in Iraq and Syria.

As demonstrated by presidents from Washington to Lincoln, Wilson, FDR, and their successors, it lies firmly within any president's constitutional authority and responsibility as the elected Commander-in-Chief to designate who presents a threat to our country. To date, this Article II authority, reinforced by the 2001 and 2002 AUMFs, has been used to take action against al-Qaeda, the Taliban, ISIS, and associated forces.

Following the December 2011 pullout of our forces and—from Iraq and the outbreak of civil war in Syria, al-Qaeda in Iraq regained strength and rebranded itself as ISIS. In 2014 under its new name, ISIS unleashed mayhem in the heart of the Middle East, building its self-described caliphate and attracting the allegiance of terror groups from the Sahel to Southeast Asia. Groups would plan, inspire, and conduct external attacks around the globe, attacks that include San Bernardino, Paris, Orlando, London, and the Philippines to name only a few.

Though a statement of continued congressional support would be welcome, a new AUMF is not legally required to address the continuing threat posed by al-Qaeda, the Taliban, and ISIS. Article II of our Constitution, the 2001 and 2002 AUMFs provide sufficient legal authority for us to engage and defeat the current threat, which we are doing by working by, with, and through our allies and partners. That said, any new congressional expression of unity, whether or not an AUMF, would present a strong statement to the world of America's determination, demonstrating, as Senator Kaine has stated, "an important message of resolve to the American public and our troops that we stand behind them in their mission."

With that for background, I would like to note that to successfully prosecute the counterterrorism campaign, any debate on a new or revised AUMF needs to incorporate the following factors.

First, the 2001 and 2002 AUMFs should not be repealed. After numerous court cases and debates, there appears to now be a general consensus by all three branches of government that these two AUMFs provide sufficient authority to prosecute operations against al-Qaeda, the Taliban, and, we believe, ISIS.

Repealing the 2001 and 2002 AUMFs would only cause unnecessary policy and legal uncertainty, which could lead to additional litigation and public doubt. The uncertainty accompanying that situation could only signal to our enemies and our friends that we are backing away from this fight. It would stall our operations, immediately reduce allied commitments and support, and create significant opportunities for our enemies to seize the initiative. Additionally, repealing the AUMFs without new authority would deprive us of the ability to detain dangerous enemy combatants who could then be released to fight again.

Second, any new AUMF must not be time restricted. For example, President Trump's South Asia strategy is conditions-based, not time-based, because war is fundamentally unpredictable. We cannot put a firm timeline on conflict against an adaptive enemy who would hope that we have not the will to fight as long as necessary. Instead, we must recognize that we are in an era of frequent skirmishing, and we are more likely to end this fight sooner if we do not tell our adversary the day we intend to stop fighting. A conditions-based AUMF would not lessen Congress' authority. The

power of the purse remains firmly vested in your hand should the executive branch not present a persuasive case for continuing the campaign.

Lastly, any new AUMF must not be geographically constrained. As has been stated, these are not traditional threats. This is a fight against a transnational enemy, one that does not respect international borders, and does not place geographic limits on their areas of operations. So necessarily, to defend our country, we must be prepared to swiftly engage this global enemy in conjunction with our allies and partners.

Regardless of the adaptations we must make for the common defense, I recognize that it is incumbent on the Department of Defense to keep Congress fully informed to fulfill its constitutional role, and I will continue to do so. Accordingly, as our troops on the battlefield carry out the last 300 meters of American foreign policy to protect our way of life, I ask Congress for your continued support and commitment to ensure we retain the necessary authorities to take our own side in this fight.

Thank you.

The CHAIRMAN. Thank you very much. I am going to reserve my time for interjections and defer to our ranking member, and then move down the line. For those of you who may have stepped—may have stepped in late, I know giving guidance to senators is a useless effort—[Laughter.]

Senator RISCH. Very true.

The CHAIRMAN—[continuing]. But we are going to have a whole series of hearings. This one hopefully is mostly focused on the 2001/2002 AUMFs, but we will have a series of hearings looking at other war-making powers, whether it is North Korea, nuclear issues. We have had members on the committee and off ask about these issues. So, just know that, but I know you are going to ask whatever you wish.

With that, Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman. First, I want to welcome Senator King to our committee. It is not the first time he has attended our hearings, and it is nice to have you here.

I would ask consent that the statement from Human Rights First be made part of our record.

The CHAIRMAN. Without objection.

Senator CARDIN. Thank you.

[The information referred to is located at the end of this hearing transcript on pages 55–58.]

Senator CARDIN. Secretary Mattis and Secretary Tillerson, I think we all agree that we are not anxious to repeal the 2001 authorization without a new authorization being in force. That has certainly been the game plan. But I will point out that there are significant differences here about whether the 2001 authorization covers the military operation—counterterrorism operations against ISIS. Many of us believe that is not included in the 2001, but we do agree that Congress needs to make sure that there is authorization to pursue our counterterrorism efforts.

As I indicated in my opening statement, operational decisions on the use of AUMF for counterterrorism, I understand would not ap-

propriate in an open setting. So, my request, and I would ask that you respond to it, that you would be willing to return in a closed session in order that the committee of jurisdiction on the AUMF has a better understanding of how the operational decisions are being made?

Secretary TILLERSON. Certainly, Senator.

Senator CARDIN. Thank you.

Secretary MATTIS. Absolutely, sir.

Senator CARDIN. I appreciate that. I understand the chairman's admonition about North Korea, but I just really want to put on the record, would you agree that there is no congressional authorization for the use of military force against North Korea? I understand the President's authorities under Article II. If there is an imminent threat against the United States, he has certain powers. But as far as congressional authorization, there is no authorization. Is that correct?

Secretary TILLERSON. That is my understanding, yes.

Secretary MATTIS. I believe the President has Article II, you know, authority only.

Senator CARDIN. Thank you. I want to get to what happened in Niger and sort of understand where we are because there is also limitations on the introduction of troops under the War Powers Act limiting it to 60 days, and as I understand it, our troops in Northern Africa have been there much longer than 60 days. Can you just explain very briefly what our mission was in Niger when the tragedy occurred, and under what legal authority those troops were there?

Secretary MATTIS. I can, Senator. The troops are there are under Title 10 in a train and advise role. The letter from the President, from President Obama in 2013 to the president pro tem of the Senate and speaker of the House talks to the total number of U.S. military deployed there in 2013 was a hundred in furtherance of U.S. national security interests is President Obama's report to you. That continues to be the case at this time.

Senator CARDIN. But the specific mission that they were participating in, as I understand it, went beyond that. Am I wrong on that?

Secretary MATTIS. The mission of those troops on that patrol was a—was a combined patrol, which means they were with Niger troops, and they were on a patrol where they were teaching them how you do what is called key leader engagement. I would have to wait until I get the full investigation in to give you a more complete answer. But they are there with the Niger troops to train and advise them, consistent with the original intent they were sent there under the previous administration, continues to be the intent today.

Senator CARDIN. So, this is not 2001 authorization.

Secretary MATTIS. No, sir, this is under—this is under the Title 10, and requires us to report to you under that authority.

Senator CARDIN. I understand. Thank you for that answer. I want to know how far we would go in pursuing military options in that region of the world. Boko Haram is a horrible group doing terrible things. Do you have the authority under the 2001 to pursue Boko Haram's atrocities?



Secretary MATTIS. These troops were there under Title 10.

Senator CARDIN. I know.

Secretary MATTIS. But as far as Boko Haram goes, they have pledged allegiance to ISIS or al-Qaeda, and so either way, they have associated themselves with the very group that that authorization is targeted on.

Senator CARDIN. So, without any further authorization from Congress, you believe you have authorization if the determination is made to deploy whatever force is necessary to go after Boko Haram, including ground troops?

Secretary MATTIS. If the President detects that there is a threat from them against us, our interests, I believe he would have the authority to designate that group, yes, sir.

Senator CARDIN. Yes, I understand the threat, but the threat is related to the 2001 threat is what you are saying. That this is a group that is—whose terrorist activities are endangering—

Secretary MATTIS. If it is an associated group, he would, under that—

Senator CARDIN. Well, he could—he could declare that to be an associated group?

Secretary MATTIS. No, he didn't.

Senator CARDIN. He could—

Secretary MATTIS. Boko Haram declared that they were an associated group.

Senator CARDIN. They did, but the President could authorize them as an affiliate group, and then use the full force of our military, including ground troops, without further restrictions?

Secretary MATTIS. Right now, Senator, they are—our troops are there under Title 10. I do not want to speculate about that because that is not what they are doing right now. I would have to go back and study it, but I believe a group that declares its allegiance to either al-Qaeda or ISIS would then be part of al-Qaeda or ISIS, yes, sir.

Senator CARDIN. Yeah, but my question really is related to how far he could commit our military to these types of campaigns. When we were attacked on September the 11th, we recognized the need for a military response, and we certainly understood that American troops are going to be called upon to protect our country. I am not sure that Congress envisioned that we would have the potential of ground troops in Northern Africa in combat missions. However, if I understand what you are saying, unless we modify this AUMF, you would feel that you have adequate authorization to commit American ground troops in Northern Africa.

Secretary MATTIS. Senator, if the President determines they are a threat to the United States, and—under the AUMF, say, they are allied with al-Qaeda or ISIS, yes, sir, I believe so.

Senator CARDIN. Thank you.

The CHAIRMAN. Thank you. Senator Johnson.

Senator JOHNSON. Mr. Chairman, let me first start out by thanking both the Secretaries for their service to the country. Let me pick up on the point of ground troops.

Secretary Mattis, in your testimony, you talked about a 16-year global conflict, totally different than anything we have really witnessed in the past. I remember when we had this discussion a cou-

ple years ago with the advent of ISIS, trying to rewrite a new authorization for use of military force, there was an awful lot of discussion about limiting ground troops. No ground troops. Secretary Tillerson, I think you said in your testimony, you talked about the caliphate is basically ended, is it not, or really darn close?

Secretary TILLERSON. Well, we have liberated a large amount of area in Iraq and Syria, but that fight is not over yet.

Senator JOHNSON. Secretary Mattis, is there any way we could have done what we have done so far with the caliphate without ground troops?

Secretary MATTIS. I do not believe so, Senator.

Senator JOHNSON. And yet, 2 years ago we were debating in this committee replacing the Authorization for Use of Force with one that would have restricted President Obama's and his replacement, his successor, his ability to—his or her ability to use ground troops. That would have been a big mistake, would it not have?

Secretary MATTIS. Senator, generally speaking, when you—you do not tell the enemy in advance what you are not going to do. That is not a wise—even if you do not choose to do it, there is no need to announce that to the enemy and relieve them of that concern.

Senator JOHNSON. Yeah, in the 2001 authorization, I personally do not think the 2001 applies to this situation, I really do not, when you read it, but by precedent, it does. But it does not restrict the President's use of force. It says, "to use all necessary and appropriate force," and then it goes on to describe what those—what those nations, what those organizations really are.

In a real declaration of war against Japan and Germany, Congress declared that "The President is authorized and directed to employ the entire naval and military force of the United States and the resources of the government to carry on the war against," in this case, the government of Germany, "and to bring the conflict to a successful termination, all the—all the resources of the country are hereby pledged by the Congress of the United States."

So, both in the 2001 authorization and the declarations of war against both Germany and Japan, there were no restrictions. We pledged all necessary resources of this country to the defeat of our enemy.

In both your testimony, you laid out three conditions, but one thing I want to clear up. Secretary Mattis, you said we should not be—we should not repeal the 2001/2002 later on you talked about, without a new authorization. You are not—there is no difference in your testimony, correct?

Secretary MATTIS. No, sir.

Senator JOHNSON. You can repeal them as long as you have something else in its place.

Secretary MATTIS. There are some lawyers who will say it is good to hold on to what you have even if you pass a new one that perhaps changes it in some way.

Senator JOHNSON. So, is there a slight difference between your two testimonies then? You would prefer keeping the 2001/2002 AUMF in place.

Secretary MATTIS. I would have to see what came out next, Senator, but right now I would say yes. We have been through a lot

of difficulty trying to get the three branches of government aligned on this.

Senator JOHNSON. Okay. I am not disagreeing with you in any way, shape, or form. You both said that neither—if there is a new AUMF, it should not be time restricted. You both said it should not be geographically restricted. I was waiting for the fourth, but neither one of you said this: there should be no operational restrictions. Do you believe there should be operational restrictions as we contemplated a couple years ago? No ground troops or something of that type of restriction? Secretary Tillerson.

Secretary TILLERSON. No, I do not think we can restrict operations given the way this particular enemy morphs, changes its tactics. As we saw with the emergence of ISIS, we start with what might be a fairly limited group of terrorists who then are able to overrun large territories and amass armies, essentially their own armies of tens of thousands. That requires a very different use of force than trying to chase and defeat terrorists that are making their way through the jungles in smaller numbers.

This is an enemy that changes its names. It moves across borders. It is a non-state actor. And it has morphed and changed over this 16 years, which I know is part of why this is such a vexing issue because it does not fit a declaration of war. Certainly, it does not fit the criteria that Congress has used in the past for declarations of war.

Senator JOHNSON. It is a totally different enemy than we faced in the past, but this has been a 16-year struggle.

I do not think it is going to be over any time soon. Secretary Mattis, can you describe what has changed in the change of the administration that has allowed us to defeat the caliphate in relatively short order compared to what had been happening the previous 2 years?

Secretary MATTIS. Senator, what we did was we changed the tactics. We accelerated the number of partnered units that had American forces with them, not to do the fighting, but to call in air support. The change in tactics was one that where we could, we would surround the enemy first so they could not fall back and reinforce the next site, thus making it harder. And you saw the surround tactics used in Mosul, in Tal Afar, in Tatkal, in Raqqa.

And those are the big changes, sir, as we accelerated the campaign, but also lessened the chance that foreign fighters could escape to return home or to reinforce the next position.

Senator JOHNSON. Would you say it is true that we have allowed the commanders on the ground to make the decisions to defeat the enemy rather than direct them here from Washington, D.C.?

Secretary MATTIS. I have delegated authority to the appropriate levels, yes, sir.

Senator JOHNSON. Both of you seemed to indicate that continued congressional support would be welcome if it is a statement of unity. But it has to be an authorization that does not restrict the military's ability to defeat our enemies. Is that correct?

Secretary TILLERSON. That is correct.

Secretary MATTIS. I agree, Senator. Assuming strong and very robust feedback loops to the Congress to keep you fully informed.

Senator JOHNSON. I have no further questions. Again, thank you for your service.

The CHAIRMAN. Thank you. Senator Udall.

Senator UDALL. Thank you, Mr. Chairman, and thank you both for your service, and thank you for being here today.

Secretary Mattis, the existence of multiple local militia forces in Iraq remains a major problem as ISIL is driven out. Kurdish aspirations of nationhood may be just the tip of the iceberg, and I am concerned we are ending up on multiple sides of a complicated conflict in a post-ISIL, Iraq, and Syria. How many different groups are the Department of Defense advising and assisting in Iraq?

Secretary MATTIS. Sir, we advise and assist the Iraqi Security Forces only in Iraq. And I would just mention that Secretary Tillerson just returned from there, and this issue was brought up with the prime minister. Do you wish to say anything, Mr. Secretary?

Secretary TILLERSON. Yes, the prime minister is asserting authority himself over other various militias, including Popular Mobilization Forces, the PMF, which are by and large Iraqi forces. They are Iraqi citizens who are fighting under militia arrangements, including the Peshmerga forces of Kurdistan during the war to defeat ISIS, to liberate Mosul, to liberate large parts of Ninawa and other provinces. These forces put themselves under the command of Prime Minister Abadi.

So, there are multiple forces, but I think as the Secretary indicated, our support is through the Iraqi forces working with Prime Minister Abadi and under—and his authorities.

Senator UDALL. I am glad you brought that up because, Secretary Tillerson, it was reported that the Iraqi prime minister was pretty blunt in his response about Shia Iranian-backed militias in Iraq, stating that they are already home and they are not going anywhere, and that—and that maybe U.S. forces should leave. If U.S. forces are told to leave, will we depart Iraq, or will we stay uninvited as our forces are doing in Syria, and under what legal authority will they remain?

Secretary TILLERSON. Senator, the prime minister—I never heard the prime minister say U.S. forces should leave. What he did clarify is that, as I said, many of the PMF forces are Iraqi Shia forces, so they are Iraqi citizens. My comment was regarding foreign fighters, foreign fighters that may have come to Iraq. We know there are foreign fighters in Syria. And my comments were that any foreign fighters, particularly those from Iran, needed to leave Iraq and go home. Certainly, PMF Iraqi citizens, this is their home. They will remain. But I think the prime minister has also made it clear as to his expectations of how these forces will organize themselves, or put their arms down and just rejoin their villages as citizens.

Senator UDALL. But we have reached—we have reached this new phase, and I—and I think this is a real possibility that I am asking you about. If U.S. forces are told to leave, will we depart Iraq, or will we stay uninvited as our forces are doing in Syria, and under what legal authority?

Secretary TILLERSON. We will remain in Iraq until ISIS is defeated, and we are confident that ISIS has been defeated.

Senator UDALL. Under what legal authority?

Secretary TILLERSON. Under the 2001 and 2002 AUMFs. Now having said that, we are there also at the invitation of the Iraqi government, and Prime Minister Abadi has given to me no indication that he is in any particular hurry to have us depart.

Senator UDALL. Secretary Mattis and Secretary Tillerson, do you agree with the assertion that this fragmentation of security forces will pose difficulties to the Iraqi Government maintaining order in areas that the U.S. Government recently regained control of? What is your advice to ensure that these areas do not see resumed sectarian violence now that the fight with ISIL is nearly over, and does this necessitate U.S. troops on the ground?

Secretary TILLERSON. Senator, as areas have been liberated, we are working with the coalition partners and with the United Nations and other non-governmental organizations to create stability around liberated cities, in particular, as well as villages. And that means having the military forces, the armies, pull back out of the villages, allow the—our coalition to enter those villages, undertake de-mining of the villages so that it is safe for people to return, and then begin the process of training local basically police forces. And we have a number of coalition partners that have undertaken that activity. So, as we are liberating areas, we are preparing security forces, local security forces, to transplant the military forces.

Prime Minister Abadi made this direct observation to me. He said, I have to get my armies out of the cities. They are not—they are not policemen. They are not trained to be policemen, and they are not equipped to be policemen, and I have to replace them with trained security forces to carry out police activities and provide security for the civilians as they return. There is a lot of work to do to stabilize these areas, but that is how we will lock in the military gains that have been achieved with the liberation.

Senator UDALL. Secretary Mattis, do you have a comment on that issue?

Secretary MATTIS. It is the Iraqi forces, you know, operating under Prime Minister Abadi that have—that have liberated these areas. It is not any other armed groups. Now, there are PMF forces that are engaged with them, but he has insisted that they fall under the authority of his field commanders. That is being imperfectly done. I would not say it is happening in all cases, but you have seen the successes enjoyed so far. And we are moving now against al-Qaeda with Iraqi forces to restore the border against Syria. So, you see it unfolding in that direction. The next step is exactly what the Secretary of State has laid out.

Senator UDALL. Thank you both. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I think, Senator Flake, you are next. If it is okay, maybe we will go with about 3 minutes of your questions, and then come back and you can resume if that is okay.

Senator FLAKE. It is fine.

The CHAIRMAN. Okay.

Senator FLAKE. Thank you, Mr. Chairman. Thank you for being here.

I think that here, you know, in the Senate we aspire to be more than just one cog on a feedback loop. This is the body with Article I authority to declare war and to authorize the use of military

force. I understand the importance in looking at your three items that should not put a new AUMF—or should not repeal the old one until a new one is in its place: no time constraints—I will get to that in a second—not geographically limited. And the AUMF that Senator Kaine and I have introduced, the bipartisan AUMF, I think meets the conditions of the—of one and three.

But number two with regard to time constraints, anybody want to hazard a guess of how many in this body right here on the Senate Foreign Relations Committee were in the Senate when the 2011 AUMF was passed? Not one. Not one member of this panel was in the Senate when the 2001 AUMF was passed, or the 2002 for that matter. Seven of us were in the House during that time and voted on it, but not one has had the opportunity to weigh in on it 16 years later.

I would argue that the concern about giving our adversaries notice that we have to vote on something may be an issue, but it is overwhelmed in a big way by not having Congress buy in and not having us have skin in the game. It simply allows us to criticize the administration—Republican or Democrat—if we do not like what they are doing because we have not weighed in. We have not said our peace. We have not voted on this. So, I would simply say that any concern about having to come back—we have a 5-year sunset on ours. Five-years. That is pretty long.

But Congress needs to weigh in. We have to make sure that our adversaries, and our allies, and, most importantly, our troops know that we speak with one voice. And so, I hope that as we go along, we can—we can—we can talk about the relative importance of signaling that we might leave or might not finish, and not having Congress weigh in at all, to go for 16 years before we actually weigh in or have any skin in the game.

We, as I said, ought to aspire to be more than just part of a feedback loop. Article I authority is more than that. So, with that I will pull back.

The CHAIRMAN. Thank you.

Bertie, if you will keep 4 minutes and 15 seconds on Senator Flake's time. If we could all sprint over and sprint back, you will start again as soon as we will get back. And we will recess for about 14 minutes I hope. Thank you.

You are welcome to come into the back or do whatever. [Break.]

The CHAIRMAN. The Senate Foreign Relations Committee is now coming back out of recess. As with the Senate, we had one member kind of lollygagging around, and it took a little longer than we thought. It is the story of the United States Senate, but we are glad to be back in session.

Senator Flake, if you will, continue your work.

Senator FLAKE. Thank you, Mr. Chairman. We talked before the break about reasons we need an AUMF, and I mentioned how few people were actually here. Nobody on this panel voted in the Senate on the AUMF. In the House, fewer than a hundred members of the House were there when the 2001 AUMF was passed. I think total in the Senate, nobody on this panel, but only 23 members of the Senate were here to vote on the AUMF. And so, it simply helps. We have got to have a situation where the Congress is more involved here.

I understand what you say that a new AUMF would be welcomed, but not required. Just for the benefit of everybody here, no administration would ever concede that you need an AUMF because the absence of it would suggest that what we have been doing for 16 years would be illegal, or certain activities we have undertaken. So, I think we all understand that the administration will say that no new AUMF or no new authorities are needed.

But whether or not they are needed to provide a legal basis, it is certainly needed politically, and we cannot continue to go on in a situation where, you know, 70 percent of the House and the Senate has never voted on an AUMF, and has no reservation at all to criticize whatever administration is in power and their use of military force because they did not vote on it. And we cannot continue to go year after year after year without doing that.

But specifically on a question here, with regard to Niger, I understand that you say that is Title 10 authority. You expressed concern about not having authorities that expire so as not to tip off the enemy that we might leave. Explain Title 10 authority with regard to—now that is part of the NDAA that we gratefully—it is the one authorization bill that we pass every year. But what if we were not going to pass that next year, if we failed in our duty to do it? What would that do?

Secretary MATTIS. Well, we would—I believe, Senator, we would still have Title 10 authority under the U.S. Code, so we would not—I mean, we would have trouble probably getting appropriations if we did not have the NDA—the authorization. But I think that under the U.S. Code, we still exist as a military, so—I would have to turn to my general counsel, sir, to give you a better answer.

Senator FLAKE. You mentioned, Secretary Mattis, in your remarks that we still in Congress here have the power of the purse, and that maybe should be sufficient. There was one member of our body who said when he was briefed on what was going on in Niger, he said that Congress—we would—“We need to decide whether or not we want to authorize this operation through the appropriations process.”

Now, for us authorizers, that ought to be a hit right here that only the Appropriations Committee in this body has authority to look at what we are doing and decide whether or not appropriate authority exists and, through the appropriations process, give that authority. I would suggest that this committee ought to stand up and say that is not enough. That is not enough. Let us pass a new AUMF.

So, I know that—I hope Senator Kaine will go into the AUMF that we have proffered. It is gaining momentum certainly and support. And I hope, above all else, that we can come to a point where we speak with one voice overseas, whether it is use of diplomacy or use of military force. And under the current situation with a 16-year-old AUMF, I would suggest that we do not, and our adversaries, our allies, and our troops need to know that we do.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. If I could just for clarification, when you say “Title 10,” you are talking about the Train and Equip Program?

Secretary MATTIS. That is correct, Chairman. Basically, we have the authority under Title 10 to carry out these kind of partnering activities, yes, sir.

The CHAIRMAN. Throughout the world.

Secretary MATTIS. If the President directs it, yes, sir.

The CHAIRMAN. Senator Murphy.

Senator MURPHY. Thank you very much, Mr. Chairman. Thank you both for being here. You are both patriots, and thank you for your service to the country. I want to maybe get back to this question of exploring the limits of that Title 10 authority, but I wanted to build upon a question preview that Senator Cardin referenced, and that is on the existing authorities in North Korea.

The President has talked about our military options should we choose to use them in North Korea, and I just wanted to make sure that we understand the range of authority that the President has today with respect to potential military operations in the Korean peninsula. Would you both agree that absent a strike against the United States or the imminent threat of a strike against the United States, the administration would need congressional authorization to engage in military activity against North Korea?

Secretary TILLERSON. Well, Senator, I think it would depend, again, on all circumstances, and it is a fact-based decision. I think clearly today we are there under Article II authorities, and Article II is really—you know, if you look at it historically, it has been grounded in kind of two criteria. One is to protect United States' persons, property, and national security interests, and secondly, it has been used for circumstances that do not rise to the level of a declaration of war. And I think that is the circumstance we have in the peninsula today in Korea.

So, it is a question of the—of the threat, the imminent threat, the nature of the threat as to whether the President then would exercise his authorities without the need of further congressional authorization. So, it is—it will be fact-based, and all those will have to be considered.

Senator MURPHY. Secretary Mattis?

Secretary MATTIS. Yes, I believe under Article II, he has the responsibility obviously to protect the country. And if there was not time, I could imagine him not consulting or consulting as he is doing something, along the line, for example, of what we did at Shayrat Airfield here in Syria when we struck that and the Congress was notified immediately. This was after the chemical weapons use by the Assad regime. But in this case of North Korea, it would be a direct, imminent, or actual attack on the United States that I think Article II would apply.

Senator MURPHY. I think I would agree that if it is an attack or an imminent attack, and we can all split hairs as to what the definition of "imminent" would be. But let me try to get to the bottom of that. Would the possession of a weapon, a nuclear weapon, capable of reaching the United States fill—fulfill the definition of an "imminent threat" to the United States? Would a possession—the simple possession of a weapon that is capable of doing great damage to the United States be sufficient to qualify as an imminent threat?



Secretary TILLERSON. Well, again, I am always reluctant to get into too many hypotheticals because the possession can be sitting in an underground, not ready to be used condition, or possession could be sitting upright on a Tel about to be launched. So, again, I think it would be have to be fact-based and given consideration as to the circumstances around an imminent threat.

Senator MURPHY. Secretary Mattis?

Secretary MATTIS. I fully agree with Secretary Tillerson. I think this is an area that a number of facts would have to bear on the problem in order to give you a complete answer, Senator.

Senator MURPHY. I thank you both for your answers. I think the primary fact is whether there is an attack or an imminent attack. I think other than those two facts, you need to come to Congress for authorization, but I appreciate your answers.

Secretary Mattis, I wanted to drill down a little bit more on the Title 10 authority. You certainly have Title 10 authority to conduct training missions abroad. You are using that authority in Niger today. You have properly notified Congress. You referenced President Obama's notification. But how do you answer concerns that our constituents may have when it looks as if a training mission is something more than training, that we are actually putting American troops out in harm's way, partnered with local forces engaged in activity that imperils U.S. men and women?

To many folks, this did not look like a training mission. It did look like we were side-by-side with domestic forces, but we were actually helping them carry out pretty critical mission components. How do you address concerns that some of our constituents have that a training mission can very easily morph into something that looks much more like operational and offensive capabilities that are unauthorized by Congress?

Secretary MATTIS. It is a great question, Senator. When you look at why did President Obama send troops there, why did President Trump send troops there, it is because we sensed that as the physical caliphate is collapsing, the enemy is trying to move somewhere, and so, those troops are there. Most of them are providing, frankly, intelligence, surveillance, and reconnaissance support, intelligence support, refueling support. There are some doing this train and advise mission.

In this case, we are trying to build up the internal defenses of another country so they can do this job on their own. The French have carried the burden for this, have taken severe casualties at times in this mission. We are supporting them. But in this case, since April, I believe, and we will get the specific numbers once the investigation comes in, over 2 dozen patrols in this area with no enemy contact. I think it was reasonable to think they could go out and continue training these troops without the idea they were going into direct combat, but that is not a complete answer. I need to wait until I get the results of the investigation. —

Senator MURPHY. But you referenced the falling apart of the caliphate at the beginning of that answer, and so that suggests that this might not be a Title 10 authority mission. This might be a 2001 AUMF mission. And if that is the case, then—okay, you are not saying—

Secretary MATTIS. I misled you there.

Senator MURPHY. Okay.

Secretary MATTIS. This is a Title 10 train and advise, and we are trying to prepare them if, as the caliphate falls apart, their country comes under attack so they can defend their own population. You will remember Boko Haram nearby and the 276 girls they kidnapped. It is a real problem up in that region, and we are trying to get them in a position where they can defend themselves, and do it in accordance with the law of armed conflict in a very complex environment. This is tough training, sir.

Senator MURPHY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Senator Young.

Senator YOUNG. Thank you, Chairman. Secretary Mattis, you said in the past, you said again here today, that a new AUMF by this Congress would send a message of resolve to our troops and to our enemies. I absolutely agree with that. I would like to get into the law, though, the legal components of this.

Legally, there are at least—one, it seems we would have to make—concede that there is a principle, there is a logical argument that the 2001/2002 AUMFs do not apply, or now have a highly attenuated application to current circumstances. 2001 AUMF was in response to 9/11. It was directly in response to 9/11, albeit written broadly. 2002 AUMF was directed against the Saddam Hussain regime. In fact, it was invoked here today, but the language of that AUMF says “a threat posed by Iraq.” And then in 2014, ISIS leadership—al Baghdadi—actually disavowed very publicly any association with al-Qaeda.

Secretary Mattis, you indicated that a terrorist group—I think it was Boko Haram—but a terrorist group was covered by the 2001 AUMF because they swore allegiance to al-Qaeda. Now, by that same logic, if ISIS broke with al-Qaeda, why would the 2001 AUMF apply to the fight against ISIS?

Secretary MATTIS. Senator, what we have seen is these groups come apart, go back together. They change their name as often as a rock and roll band. They are keenly aware that they have got—they have got certain legal strictures on our side that they can take advantage of. We call lawfare where they actually use our laws against us. We have seen it. We read their mail. We know what they are thinking in many cases.

It is an associated group because if you look at the photographs we have from intelligence that shows who is leading in Baghdadi’s outfit, there is a remarkable resemblance to other photographs we have under al-Qaeda in Iraq. So, when the same group in the same area seems to be spawning from the same people, a disavowal is something that is of interest, but it is not necessarily compelling, especially since they seem to have many of the same tenets to their ideology as the group they disavow. And I am not sure I would call them “highly attenuated” in that circumstance.

Senator YOUNG. Well, that is my characterization. No, I respect yours, Mr. Secretary.

Secretary MATTIS. Yes, sir.

Senator YOUNG. So, it seems like these arguments could be made both ways. They swore an allegiance; therefore, they are covered by the AUMF. And then secondarily, well, you know, that factor is not all that important in our consideration based on a range of other

factors. It might be helpful to lay out what multi-factor analysis legally your attorneys are looking at to help make these decisions.

Secretary Mattis, on January 27, 2015, you testified before the Senate Armed Services Committee. You said the following: “We have observed the perplexing lack of detainee policy that has resulted in the return of released prisoners to the battlefield. We should not engage in another fight without resolving this issue up front. Treating hostile forces, in fact, is hostile.” When asked about that in the hearing, you continued: “I think that when we have—what we have to do is have a repeatable detainee policy so that when we take them, we hold them, and there is no confusion about their future, not among the enemy’s mind, certainly not among our own.” Do you stand by those statements, sir?

Secretary MATTIS. I do, Senator.

Senator YOUNG. Why do you believe it is important up front to ensure that there is no confusion regarding our Nation’s ability to detain enemy combatants under the law of war until the end of hostilities?

Secretary MATTIS. Senator, when we release people and eventually we find them back on the battlefield fighting us—when Rommel’s Africa corps was taken prisoner in World War II in North Africa, we did not let them go because they said, “well, I was only a tank driver, I was not a gunner,” and let them take another shot at us at Normandy. We held them in the prison camp until the war was over. I think that that is a rather straightforward proposition that we take our own side in this.

Senator YOUNG. Thank you, Mr. Secretary. So, if this body were to pass another AUMF, would you support an effort that seeks to eliminate any uncertainty whatsoever regarding our Nation’s ability to detain enemy combatants under the law of war until the end of hostilities?

Secretary MATTIS. For those taken overseas, yes, sir. I just want to make sure you understand I am not talking about people here in the United States who are taken.

Senator YOUNG. Nor am I, so thank you. Another legal point going back to the law here, I would argue—you invoked litigation risks. I would argue that the further away we get as a country from 2001 or 2002, the more attenuated the relationship exists between our ongoing fight against associated forces and that period of time in which our previous Congress, working with our previous Commander-in-Chief, passed an AUMF, but the litigation risk is only going to grow. So, kindly consult with your attorneys and give me their analysis about why I have it wrong or right, but I think I have it right.

Secretary Tillerson and Secretary Mattis, both of you over the course of this hearing have indicated that there are three essential elements for a new AUMF. And I think you worded them differently, but I think they are distilled down to no lapse in authorities, no time constraint, and no geographic restriction. Is that a correct and fair summary of the elements that need to be in there?

Secretary MATTIS. Yes, sir.

Secretary TILLERSON. Yes.

Senator YOUNG. Thank you. Well, I would just note for the record that the AUMF I introduced on March 2nd—Senate Joint Resolu-

tion 31—meets all of those criteria. So, I think it certainly satisfies that.

I am going to pivot to a different topic. Secretary Mattis, you mentioned ISR assets. And in testimony before the Senate Armed Services Committee on March 9, 2017, General Waldhauser, who is commander of AFRICOM, stated in his written testimony that only approximately 20 to 30 percent of Africa Commands' ISR requirements are met. The general wrote that "this shortfall in ISR limits situational understanding, support to operations, and fails to offer threat indications and warnings." Secretary Mattis, could you please discuss AFRICOM and DOD's ISR shortfalls and the operational impacts of those shortfalls, and what we can do to help?

Secretary MATTIS. Yes, sir. The ISR assets are insufficient basically worldwide. I can go to a number of other combatant commanders from the Pacific, even in the Middle East, CENTCOM, certainly EUCOM, and they would all say they have shortfalls. As you know, we've been under continuing resolutions for many of the last 10 years. We have been under budget reductions, and eventually real capability is insufficient.

At the same time, I think in this case, General Waldhauser is a hundred percent correct, but that force, again, was in an area where a reasonable person looking the last several months would say contact was not imminent, was not likely to be imminent. And so, you look at how you prioritize it. There is a finite amount of ISR assets, and we deal them out—we deal them out, frankly, like gold coins through the various combatant commanders.

Senator YOUNG. Thank you both for your service.

The CHAIRMAN. Thank you. Thank you very much. Senator Coons.

Senator COONS. Thank you, Chairman Corker, Ranking Member Cardin, for this important hearing. And thank you, Secretary Mattis and Secretary Tillerson, for the service you have rendered to our country, and for the men and women you lead and command. I think it is important that we as a committee come together in a bipartisan way and provide you with an updated authorization for the very demanding and difficult work that your men and women are doing around the world.

I think the tragedy in Niger—the loss of four American soldiers—helped focus on the fact that we have got citizens and we have got senators who are unclear on exactly where in the world we are engaged against this morphing, changing enemy in a new era of skirmishes, as you put it, sir. And in the opening list, you gave of roughly, I think, 19 countries, I will tell you it is a striking. A majority of them are on the continent of Africa in a region that is not that familiar to many senators and many Americans.

So, I will just assert that I believe it to be in our national interest to have a renewed, clearer, strengthened authorization of the very difficult work that you and the folks you lead are doing around the world. And I take seriously the risk presented of potentially emboldening our adversaries and undermining the confidence of our coalition partners if we do it in a way that is rough-hewn. But at the same time, it just defies my sense of our role to accept that a 2001 AUMF, where, as Senator Flake put it, fewer than a third of the currently-serving Congress voted for it, has become so

attenuated, I think was your phrase, so convoluted that it is hard to trace a path from 2001 and al-Qaeda in Afghanistan to young American men and women serving in the Philippines, or in Yemen, or in Niger.

So, we have to do this, I think, together. And I find it beyond my ability to get my head around that we must authorize an unlimited war that has no limits of geography, of time, or of an oversight mechanism. So, I commend my colleagues who have put together what I think are strong drafts and that attempt to tackle this. And I, frankly, think on both sides we are going to make concessions in order to provide our warfighters and our diplomats with the authorization that makes it clear what we intend to do and for how long we intend to do it. I think that strengthens our country. I think that shows democracy at work, but it also means we are going to have to take some risks.

Talk to me, if you would, for a moment about how we make sure that our citizens, that our senators, know where we are fighting beyond the current system of notification because I think it is not fully effective. And what do you think is the appropriate level of public transparency for military deployments outside of areas of active hostility? Is it helpful, is it important, and how do we strengthen accountability to the Senate and the public of where we are deployed, and what are the limits on that?

Secretary MATTIS. Senator, I would just say that in my Department's case, in Fiscal Year 2016, we submitted 901 reports to the Senate, which, for the number of days you are in session, is about six a day. It has been added in Fiscal Year 2017 another 175, so we will be submitting seven reports a day. Under the War Powers Resolution notification that comes in, Niger has been reported every 6 months under the previous administration as well as under our current administration.

The most recent in June reported about 645, thanks to the appropriation by the Congress, to work on airfield. We have actually got probably 150 more there right now, engineers working on airfield with the money you provided to make the airfield that will provide more ISR opportunity for our troops in that region. So, I think the most important thing is we look at the reports we are giving you to see if we are just bearing on the important information inside a mass of reports that pour into you every day literally, and make sure that maybe tier one issues that—and this would be—you would decide tier one, that we are highlighting that information to you to include in any closed hearing briefings that filled in any gaps you sensed.

Senator COONS. Thank you, Mr. Secretary. Secretary Tillerson.

Secretary TILLERSON. Well, Senator, I think your—what you have really put your finger on is what is, I think, concerning—I am hearing concerning this committee and others, and that is the level of transparency and understanding of where our forces are deployed, and in what role they are deployed, and to what levels they are deployed, and what is the expectation for the likelihood of combat engagement.

But I also think that when I consider the current AUMF, and I do not want to pretend to know what the intent of Congress was in 2001. But quite frankly, maybe the intent recognized that this

was a completely different situation than we have ever faced before. This was not a sovereign state actor that we can do a war declaration against. War declarations, I think as Senator Johnson pointed out, do not have timelines. We did not tell the Japanese we are going to come out and fight for 3 and a half years, and then we are going home, and we have done that. We have done that under this AUMF. We announced withdrawal from Iraq, and we see what happened. ISIL emerged and created an enormous caliphate.

So, anything that signals our intentions, this enemy takes advantage of that. We have now learned that lesson multiple times. So, I do appreciate that—the issue over what congressional control or oversight there is for this authorization. On the other hand, you know, Article I gave the Congress the right to declare war. Article II gave the Commander-in-Chief the right to conduct the military affairs. And I think the Founders recognized in writing Article I and Article II that you cannot fight war by consensus. You cannot fight war with a collective approach. There has to be one Commander-in-Chief to fight the war because someone has to take the hard decisions to win.

And so, the separation is there, I think, in Article I and Article II. And the reason there is not a declaration of war here is because, as I indicated earlier, the situation, the circumstances do not give rise to a declaration of war, which then puts into motion a number of other authorizations. So, I think the authority has been properly used by the Congress in the 2001 AUMF.

Secretary Mattis, I think, would welcome a strong statement from the Congress. But in many respects, the Congress can express its will now 16 years later and say this authorization is still valid, and it is serving the purposes of this war against this very unique and unusual enemy that we will fight for we do not know how long, or for where, or for—with what forces. That is the nature of this fight that we are in.

Senator COONS. Well, Mr. Secretary, I would like to thank both of you. I will just comment in closing. Having spent time in West Africa, I am particularly concerned about the ways in which associated forces morph and change, affiliate and disassociate, and the way in which who we are fighting metastasizes, more at their choice, and direction, and timing than ours, and how it is possible for something like Boko Haram to split into two, and to become now two enemies, one al-Qaeda-affiliated, one ISIS-affiliated, but without a significant amount of direction, or funding, or control from a core enemy.

This is a different kind of fight than we have been in as a Nation before, and I do think our constituents expect some sense of strategy, trajectory, timeline, and cost. Yet I am not blind to what you raise as the very real risks if we undermine the confidence of our coalition partners and our troops by failing to deliver a strong consensus AUMF.

I look forward to working on that with you both, and I thank you, Mr. Chairman and Mr. Ranking.

The CHAIRMAN. I will say before turning to Senator Isakson, with few exceptions—I have been here 11 years—I really have not heard a member specifically raise questions or criticize efforts that are

underway against ISIS, al-Qaeda, Boko Haram. So, I know everybody is concerned. I mean, I know that when this began, no one expected in 2001 that we would be continuing as we are today. I understand that, and I would like for us to strive for a balance.

But in fairness, and we may hear it—I know there is one member here that may express that in just a moment. But I really have not heard a member go down to the Senate floor and criticize the Bush administration—as it relates to al-Qaeda now—the Bush administration, the Obama administration, or this administration yet relative to the activities they have underway. It does seem to me that the Senate and the House, generally speaking, do support the efforts that underway.

So, with that, Senator Isakson.

Senator ISAKSON. Thank you, Mr. Chairman. Secretary Mattis, I want to thank you very much for mentioning the names of those four soldiers in Niger who lost their life last week. In particular, I want to be sure and mention Dustin Wright from Lyons, Georgia, who was one of the four troops who lost his life.

I want to thank you and repeat what was told to me in a Kroger grocery store in Marietta, Georgia, this past weekend when I was home by a lady who came up, whose son is in the United States Army, volunteer for the United States Army, is overseas now. She talked about how proud she was for him to be serving under people like you and the leadership we have in our country. So, I want to thank you from the bottom of my heart for that, but also tell you that is what the people in the streets are telling me.

Now, Senator Coons and I go way back, and, in fact, the chairman and I traveled to Africa and went to Darfur. We were the second and third senators to ever go to Darfur, if I remember correctly, and saw some of the horrible things that were happening in Africa. And I appreciate on the one hand what Senator Coons said about how complex the continent of Africa is, and how many players are, and how hard it is to keep up. But I think that underscores the reason you just cannot write an AUMF with restrictions, or try and be so prescriptive in the way you prescribe the geography—where they can fight or the tools that they can use, or anything like that—and do so without risking the life of your own troops.

I was in the military. It has been a long time ago. We had muskets back then, but—[Laughter.]

Senator ISAKSON. I remember the limitations on your ability to serve and what you could do, the rules of engagement, were affected, I am sure by the AUMF at the time. I am sure the AUMF—the rules of engagement flow down from the AUMF. Am I right?

Secretary MATTIS. Yes, sir.

Senator ISAKSON. So, when we are writing an AUMF here to restrict our soldiers geographically, methodology wise, or any other way, in the end we are affecting—potentially affecting the rules of engagement we have on the ground in countries where there are no rules, like Niger and the other countries we talk about in Africa.

So, I think we have to be very much aware the people that who are working for us—the people who we are working for are our constituents, and the people who are working for us are our soldiers in the field, our airmen and our soldiers and our naval personnel. And they operate under rules of engagement where they are lim-

ited to what they can do to carry out their mission, and those limitations are then somewhat affected by the AUMFs that exist at the time.

So, I just wanted to bring that point out. We have to be very careful about what we are really—we are not just dealing with limitations we as senators want to have—our country to have. We are limiting the people who are out there as volunteers fighting to save our country day in and day out in some very dangerous places. Am I right?

Secretary MATTIS. Well, you are, Senator, in terms of geography or time, this sort of thing. And I think that people run on hope, and if the enemy hopes we are going to quit on a certain day, or if they know we will not deal with them if they step over a certain border, then the enemy is going to do exactly that. As our sergeants say in the military, “the enemy gets a vote.”

Senator ISAKSON. Absolutely. By the way, your comment about a rock and roll band, that was—it piped something in my mind. My staff is going to get mad at me for doing this. I am ad libbing now. But I come from Athens, Georgia, and went to the University of Georgia, and it founded a lot of bands. One of the best ones is Wide Spread Panic, and that is what happens in continents like Africa, the type of countries they are. You have—you are not talking about an enemy that is just a country. You are talking about groups within those countries who are waging war in their own country that we end up getting engaged with one way or another.

My next question, Secretary of State Tillis, from the standpoint of any limitation whatsoever, from your testimony, I take it that you do not think there should be—if we were to write a new AUMF, it ought to simultaneously go into force and replace the one that exists today. There should no gap. Is that correct?

Secretary TILLERSON. Yes, Senator. We cannot afford to have any gap in terms of our authorities.

Senator ISAKSON. And like Secretary Mattis, you do not think there should be any limitation, geographic or otherwise, in that AUMF.

Secretary TILLERSON. No, Senator. Again, this is the nature of the enemy we are confronted with today.

Senator ISAKSON. And we have to be ready to make the decisions that those—that those lack of limitations allow us to make at the drop of a hat in today’s type of warfare and today’s type of conflict around the world.

Secretary TILLERSON. I think we have seen how quickly this enemy can collect itself, raise forces, and overrun territory. We saw that happen at an outstanding level of speed in Iraq.

Senator ISAKSON. My last comment, I have been giving a lot of thought to this issue for a lot of reasons. One of them is North Korea, which is a serious problem that all of us recognize is serious. I do not know if we all recognize it as serious as it really is.

But I was in college in the early 60s. John Kennedy was President of the United States. And it was a period of time where the Russians put missiles in Cuba and had the potential of launching missiles 90 miles north into the United States and into Miami. And that was a—you are talking about a huge issue that got everybody’s attention. For those few—Ms. Shaheen was not here.



She was not even born then I know, but most everybody in this room was not here, but they were tough times and perilous times.

President Kennedy did a great thing in that conflict because—there was a book, *Seven Days in May*, that described—he took it—we got to the point where we had done the air photography. We had the evidence. It was clear that the missiles had been installed in Cuba. Khrushchev had beat his shoe on a table and talked about he was not going to take them out. And Kennedy had done everything but tell him, yes, he was, and lock themselves away in a room. And finally, President Kennedy and his brother, Bobby, sat down one night and decided it was time to draw a line that he would have to cross. And they used an embargo on an island as a line—a red line in the sand, so to speak.

Now, I know North Korea is not an island. I do not want anybody to think I am comparing that. But what I am saying if there was a non-lethal, but provocative, way to force them to have to come into the game that they have started with, the North Koreans, we are getting close in my mind to that point. I know you all are thinking about it today, and the last thing I would want you to do is talk about it because he is over there in North Korea watching our television right now anyway getting his intelligence.

But we are getting close to that particular time in the history of our country where it is an example of how you go to the next step without necessarily risking a life, by drawing the line in the sand that somebody has got to cross, or else you do end up engaged with them. So, I just wanted to throw that thought out. I did not want you to have to respond to it. But I thought it was a great example of leadership by a great President at that time in a time that certainly was similar to what we face today with North Korea.

Thank you.

The CHAIRMAN. Thank you very much. Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman, and I thank you both for your service.

During the last Congress and again this past January, I introduced the Restricting First Use of Nuclear Weapons Act with Representative Ted Lieu. This bill would ensure that no President can launch a first-use nuclear attack against any target anywhere without a declaration of war from Congress. Under existing laws, the President possesses unilateral authority to use a first-use nuclear strike on anyone anywhere around the world, even in the absence of a nuclear attack against us or our allies.

There is no question that since the dawn of the nuclear age, it has been essential for the President to have clear authority to respond to nuclear attacks on the United States, our forces, or our allies. But in my view, no one person should have the power to launch a first-use nuclear strike without congressional approval.

Under Article II of the Constitution, the President has authority to repel sudden attacks as soon as our military and intelligence agencies inform him of such an attack. Nothing in our bill changes the President's authority to use nuclear weapons against anyone who is carrying out a nuclear attack on the United States, our territories, or our allies. What we do propose is a commonsense step to check any President's authority to launch a first-use nuclear strike by prohibiting such a strike unless explicitly authorized by

a congressional declaration of war. Since the dawn of the nuclear age 7 decades ago, we have been relying upon cooler heads and strategic doctrine to forestall the unthinkable, but too often those kind of ad hoc measures seem less reassuring than ever.

Do you think, Secretary Mattis, that the President has the authority to launch a first-use nuclear strike without congressional approval?

Secretary MATTIS. Senator, first, I would not say it is ad hoc. It is extremely rigorous the discussions and the step-through process for decision making. And I would just prefer not to talk about a hypothetical that we have never confronted since we—basically in the post-World War II time to today, we have never—we have never had something like that come up.

Senator MARKEY. Do you contemplate a circumstance within which the President of the United States could launch nuclear weapons against another country where that country has not launched nuclear weapons against us?

Secretary MATTIS. If we—if we saw they were preparing to do so and it was imminent, I could imagine it. It is not the only tool in the toolkit to try to address something like that, but I believe that congressional oversight does not equate to operational control. I think that we have to keep trust, keep faith in the system that we have that has proven effective now for decades.

Senator MARKEY. Well, again, we are in the circumstance now where the President talks at least elliptically to preventative war, which would mean the United States launching nuclear weapons potentially against North Korea as we did in Iraq. That is not nuclear weapons, but starting a war in order to disarm Saddam of nuclear weapons. That was at least the ostensible justification that Dick Cheney gave 2 days before the war began.

So, in your opinion, is there a circumstance under which we would be able to use nuclear weapons if we have not been attacked with them?

Secretary MATTIS. The question, again, please, Senator?

Senator MARKEY. Again, I am coming back to this question of whether or not there is a scenario under which a first strike using nuclear weapons could, in fact, be used by the President of the United States without consulting any member of the United States Congress, much less the entire Congress in its entirety.

Secretary MATTIS. Senator, again, it's a hypothetical. I think that if there was an imminent strike and it was the only way to stop it, and I am not saying that would happen. There may be different tools, conventional tools, to stop it, but he has a responsibility to protect the country.

Senator MARKEY. Well, I think—I think it is too important a subject for the United States Congress not to be informed as to what the circumstances are under which we would use nuclear weapons first. I think that it is imperative for you, and Secretary of State, and others, if necessary, to give us the classified briefing as to what those circumstances might be as to when you think they would have to be used, they could be used without ever consulting the Congress at all.

Would you be willing to come up and to give us a classified briefing on when you think first use of nuclear weapons is appropriate when we have not been attacked?

Secretary MATTIS. Senator, I have a record of never being reluctant to come up and speak. Some hearings are best in closed session, but I am often reluctant to speak to hypotheticals. But I can certainly go part way down that road in terms of what might occasion something like that, like an imminent attack, yes.

Senator MARKEY. Well, in my opinion, no human being should have the authority to use nuclear weapons if there has not been an attack. We have the most powerful military in the world—Air Force, Navy, Army. If there is—if there is a threat that is conventional, then we have a conventional response, but if nuclear weapons are used, I think that there has to be a process by which the United States Congress is consulted.

This is not something, in my opinion, which is any longer hypothetical. I think it is something that President Trump contemplates, although I will add that we introduced the legislation when Hillary Clinton was ahead by seven points last September. So, it has to do more with whether or not any President should have this authority unfettered.

What would be the process right now to use nuclear weapons? What would the President have to go through? Could you walk us through what that consultation would have to be?

The CHAIRMAN. We will walk that through in another hearing if it is okay. And just for what it is worth, we have had—I know that you have asked about this, and I appreciate that. Other members have asked the same. We have met with CRS and understand that there has not been a hearing on this topic, through them—they could be incorrect—since the 1970s. And so, we do plan to have a hearing to walk through how the process works. You know, there are multiple scenarios that come into play, and I think a full hearing would be much better than a 1-minute response.

Senator MARKEY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Risch.

Senator RISCH. Gentlemen, thank you, and thank you for your service.

You know I have been 9 years on this committee and the Intelligence Committee, and I have sat through literally dozens and dozens and dozens of debates, arguments, hearings, witnesses on AUMF and trying to redo the 2001/2002, or replace them and do a new one. And I am struck with a number of things after all that time.

Number one, everybody wants to do something. Everybody wants a new AUMF, and the parties on both sides are working, I really believe, in good faith. It certainly is not a partisan exercise. There are people on both sides working on a bipartisan basis to do this.

The second thing that has struck me is I have seen dozens of iterations of what a new—what a bill would look—a resolution would look like. And the problem is we get high centered on the details, and after listening to all this, I am a little pessimistic about whether we can actually do something new. The old system is in place, and with all due respect to my good—my really good friend, Senator Flake, you know, none of us voted on the original

2001/2001, but we vote every year on this when it comes to the appropriations. In fact, at times, we vote multiple times a year, depending upon how many CRs that we do.

So, Congress could stop fighting ISIS if we wanted to. You know, we all the time put restrictions on funding as to what the money cannot be used for, and we are pretty successful in that regard when we do it. The problem is, of course, we both know that the—that the will is different than what we would like to see in a perfect world. So, I agree with you, we did not vote on it directly, but all of us here have had a say every single year.

In any event, you know, the Founding Fathers had a really good idea. They said, look, the first branch of government, the legislative branch should decide when we are going to war. Really good idea because the—we are not made up of the military branch. The military branch is the one more likely to pull the trigger quicker than the—than the civilian branch is. So, they put that in our hands.

The other idea they had, which was also an excellent idea, is that Congress would not run the war. As has been pointed out here, you cannot have the politicians running the war. You need a commander-in-chief, and that was a really good idea. The difficulty, of course, today is things have changed so dramatically since the time that that was done. War fighting has changed. On top of that, those guys could not possibly have thought that a war we are fighting is against non-state actors, against people dispersed all over the world with a common idea of what they—what they want to accomplish. And it is so different today than what it was then.

So, where does that leave us? I think we have got the constitutional provisions, which are pretty clear. We have got the War Powers Act, which you can argue is constitutional in all or in part. And we are moving forward, but we do not seem to be headed towards a resolution on this AUMF.

I would like to get your thoughts on an issue that has already been touched on. We have talked a lot about terrorism because that is where the—that is where the fight is. But I think North Korea has been raised a couple of times, and to me, that is the biggest issue that we have if you are going to describe “big.” What happens when somebody knocks on the door of the Oval Office and says, Mr. President, North Korea has just launched, what do you want us to do? And, look, there is no time for an AUMF. There is no time to get the lawyers involved to determine what can or cannot be done. And somebody has got to make—somebody has got to make that decision.

So, I appreciate the chairman’s thoughts that we should have a—should have a separate hearing on this particular issue. But I would like to get your thoughts on what—and I know the lawyers are on both sides of this. I have heard cadres of lawyers argue whether the President has this power, whether it is limited, whether Congress has that power. I would like to get your thoughts under the scenario I just talked about.

As far as the terrorism thing, we deal with that regularly in the Intelligence Committee and on this committee. Tell me—tell me about North Korea. What happens? What happens if somebody knocks on the door and says, Mr. President, they have launched?

A summary. In summary. I am not going to ask you to give us anything classified obviously.

Secretary MATTIS. Senator, the first step, of course, would be that our ballistic missile defense forces at sea and in Alaska, California, the various radars would be feeding in, and they would do—they would do what they are designed to do as we make every effort to take them out. The response, if that is what you are referring to, after the immediate defense, would, of course, depend on the President and laying out options, a wide array of options, I will tell you, and in alliance with our allies as well, I might add, because many of them have roles to play here and have indicated they will be with us. And we would take the action the President directed, and I am sure that Congress would be intimately involved.

Senator RISCH. Well, and, of course, under the scenario I have outlined, this is a matter of minutes, not a matter of days or even hours.

Secretary MATTIS. Defenses will go, sir, if we do not do any—  
Senator RISCH. I get that.

Secretary MATTIS. I mean, the President will be woken up or whatever, but our commands are—we rehearse this, I will just tell you, routinely.

Senator RISCH. I get that.

Secretary MATTIS. I will just leave it at that in this open session, sir.

Senator RISCH. Secretary Tillerson, do you have anything to add to that?

Secretary TILLERSON. Well, I think as Secretary Mattis indicated, we do have defensive mechanisms which are in place. There would be some judgment made as to the effectiveness of those, and then there would be some judgment made of whether a necessary and proportionate response is required.

You know, one of the strengths over the last 70 years has been the deterrence, and the fact that no President—Republican or Democrat—has ever foresworn the first-strike capability. That has served us for 70 years. So, I think any consideration of foregoing that does change in a very material way the strength of that deterrence.

Senator RISCH. I agree, Mr. Secretary. And also, it seems to me that the enemy we are dealing with here with North Korea, that deterrence issue does not seem to be fazing them because either a man would have to be absolutely crazy or incredibly stupid to not know what was going to happen after that.

My time is up. Thank you, Mr. Chairman.

The CHAIRMAN. So, I think in that scenario, it is about a 15- to 20-minute process before response takes place. And, again, I think it would be very edifying for us to walk through that.

Let me, before I turn to Senator Kaine, Secretary Mattis, you have—you have, I know, said on several occasions that you think it would be great if Congress spoke with one voice on this issue and showed support. And, look, I hope we are going to have an outcome here that does that. But does anybody get any sense anywhere in the world that the United States and the people that are within

the United States are somehow divided over fighting ISIS, al-Qaeda, and groups that spin off?

Secretary MATTIS. Chairman, there have been times when allies and even, I think, our adversaries have been convinced we were willing to give up and pull out of certain theaters, yes, sir, I think so, but those are operational aspects. I think as far as our antipathy of people—

The CHAIRMAN. And you are really speaking more to what happened in Iraq and what happened—what are you speaking to when you say “them being concerned about.”

Secretary MATTIS. Pulling out—yeah, announcing the pullout from Iraq, sir. Obviously, that was one of the reasons ISIS had a chance to grow. When we were talking about pulling out of Afghanistan, we had a total of 50 nations in the field fighting the enemy. As we were pulling out, we have now dropped to 39. That is turning around, and those allies are coming back on board, adding troops based on the rollout of our South Asia strategy.

So, you can see what happens as both—you know, when we started pulling out of Afghanistan, people thought, well, maybe the Taliban will want to make peace then. Some of us doubted that, but, in fact, they accelerated their campaign. So, you see the enemy’s response. You see allies, 11 of them, leaving the field when they saw us saying we were going to leave. So, yes, it does have an effect. But I do not think it is that the enemy believes the American people are suddenly willing to vote for the kind of things our enemy exists for, believes in. But they at times question whether or not we have the will to stand the strain.

The CHAIRMAN. Thank you very much. Senator Kaine.

Senator KAINE. Thank you, Mr. Chair. The question of this hearing is whether we can be in an endless war with no congressional vote against newly-formed terrorist groups all over the world forever. We are in year 17, and I have heard testimony before that this could go on for generations with no vote of Congress.

The recent deaths of four American troops in Niger and the news about a June death of a Green Beret in Mali while deployed there on a special forces mission raise many questions about the geographic scope of the American military campaign against terrorism. And I repeat what I have often said in the last 4 years: it is time for Congress to have a public debate and vote about an authorization for U.S. military action against non-state terrorist groups. Many of us believe we are legally required to do. Others believe if not required, we would be wise to do so.

Secretary Mattis has testified in support of this on earlier occasions, as has the chairman of the Joint Chiefs of Staff, General Dunford. Our troops and the American public deserve an open debate and vote on the extent of military operations. If not in year 17, in year 30? In year 40? In year 50?

Mr. Chairman, I want to introduce for the record a contract solicitation issued by the Navy in 2014 seeking to contract with an entity able to provide casualty evacuation, search and rescue, and personnel recovery in connection with “high-risk activities” in Africa. It designates 14 nations, five of which have been identified to Congress in War Powers notice letters.

I find no fault with the contract solicitation. You have to plan. But I believe that this level of planning, and this is from the Obama administration era, demonstrates a contemplated scope for American counterterrorism activity in Africa far greater than what has been briefed to Congress, and significantly greater than what the American public understands.

[The information referred to is located at the end of this hearing transcript on pages 97.]

Senator KAINE. To our witnesses, Senator Flake and I have introduced an authorization for military action against ISIS, al-Qaeda, and the Taliban to replace 2001 and 2002, and to finally engage us in our Article I responsibility. You signed a letter to Congress on September 5th opposing the proposal. I will introduce that for the record as well.

The CHAIRMAN. Without objection.

[The information referred to is located at the end of this hearing transcript on page 93.]

Senator KAINE. I think we can stipulate that this administration, like the two preceding administrations, believes that the 2001 authorization and 2002 gives it broad power in this area, and would rather than not have any congressional revision. But we have a job to do, the Article I branch, so let me ask you about your reasoning.

Your first objection in the letter to the proposal is that “The legislation would arbitrarily terminate the authorization 5 years after date of enactment. This is inconsistent with a conditions-based approach in the President’s South Asia strategy. Such a provision could also unintentionally embolden our enemies with a recognizable goal of outlasting us.”

The annual NDAA we pass every year expires every year, but Congress still manages to pass the next NDAA. And appropriations bills and continuing resolutions expire every year, and then they are followed by subsequent appropriations. And other critical national security legislation must have legislation, like FISA, for example, commonly have an expiration date and a need for congressional reauthorization.

Do either of you view the annual expiration of the NDAA or defense appropriations as Congress “arbitrarily terminating our support for the military?”

Secretary MATTIS. No, sir, we have several hundred years that this works. It may be imperfectly with continuing resolutions, but I suggest the AUMF is substantially different.

Senator KAINE. Do you have any evidence that the annual expiration of the NDA or defense appropriations unintentionally emboldens our enemies?

Secretary MATTIS. The continuing resolution has certainly inhibited our ability to adjust the military to the modern threats.

Senator KAINE. Do you think the enemies are emboldened by thinking that we will not pass a CR or will not pass an appropriation?

Secretary MATTIS. I do not think they understand those kind of intricacies, whereas an AUMF is a statement of purpose.

Senator Kaine. You count on being able to get the next NDAA passed and the next appropriations bill passed because you have confidence in your request, and you have confidence in Congress to take seriously the need to defend the United States. Is that not correct?

Secretary Mattis. That is correct, Senator. My reservation is that, for example, I have several dozen people who have been waiting some time for hearings in order to give me the civilian oversight of the Department of Defense we need and respond appropriately in keeping Congress informed, and I cannot seem to get floor votes on some and certainly hearings for others. So, I think it is the speed at the—at the speed of relevance for something like this. We would want to make certain that where you get into could be construed as the—not just the oversight, but the management or direction of this fight has a degree of continuity that destroys the enemy's confidence that they can outlast their enemies.

Senator Kaine. If you deemed it advisable at the end of 5 years that we should continue the battle against these authorizations, do you doubt your ability to make the case to Congress, or you doubt—do you doubt the ability of Congress to take seriously the need to defend the Nation against terrorist organizations?

Secretary Mattis. Sir, I am not in the political realm. I realize I play a political role up here, but I am probably—

Senator Kaine. You do not—you do not doubt the will of Congress to battle non-state terrorist groups, do you, Secretary?

Secretary Mattis. Sir, this war is so non-traditional that I think we—

Senator Kaine. I understand that, but you do not doubt the will of Congress to defend the Nation against non-state terrorist groups, do you?

Secretary Mattis. No, I do not.

Senator Kaine. A second objection, if I could—I am sorry I am having to move—is that the resolution includes a definition of “associated persons or forces” that is inconsistent and could result in unnecessary uncertainty. The definition says, “associated persons or forces or individual entities other than a sovereign state that are part of or substantially support al-Qaeda, the Taliban, or ISIS, and are engaged in hostilities against U.S. armed forces and other personnel.” I am just going to leave that for the record. I think it is crystal clear, and there is no uncertainty about it.

The third and final objection in your letter is that the joint resolution would create a cumbersome congressional review process for use of force against new associated forces or new countries. Let me ask you this. Does the administration object to having to identify to Congress the associated forces we are targeting with military force, to notify us?

Secretary Mattis. I believe that under Article II of the Constitution, the President has the authority to declare a threat to the United States as the elected Commander-in-Chief.

Senator Kaine. Do you object—does the administration object to notifying Congress of the associated forces against which you are taking military action?

Secretary Mattis. I do not think so, sir. We have been forthcoming with that very information.



Senator KAINE. You have, and do you object to the need to notify Congress of the countries where military action is undertaken? You do that in the War Powers letters correct, right?

Secretary MATTIS. We do it routinely, sir.

Senator KAINE. That is all that Senator Flake and I have in our resolution. We require you to notify us about countries and notify us about associated forces, and you can immediately take action against them, subject only to a resolution of disapproval by Congress, which is the current law.

If I could just conclude, Mr. Chairman. Based on the answers in this quick thing, and it is tough to do it so quickly, I have a hard time understanding the opposition to the resolution as anything other than we do not want congressional oversight. There is a 5-year sunset reauthorization with an opportunity to extend just like we do in FISA, just like we do in the Patriot Act, just like we do in NDAA, just like we do in appropriations. The “associated forces” definition is extremely clear. The process for countries is not a geographic limitation. It is just a notice requirement that Congress can then affirmatively take steps under the normal rules of the Constitution to rebut.

I recognize that the administration feels like it does not want any more authority, but to quote my colleague, we are more than a feedback loop. This is a constitutional power, and we should not be putting troops into harm’s way, and as Congress standing back and trying not to have our fingerprints on this when it is mutating all over the globe.

The CHAIRMAN. I think we are good.

Senator KAINE. I think it is a forever war, and I worry about deeply about handing the power over to presidents to do this without the feel—the need to come to Congress at all. Thanks, Mr. Chair.

The CHAIRMAN. You did a good job. [Laughter.]

The CHAIRMAN. I do have remaining time. I do want to say that what the senator said is true. I mean, you just have to notify the countries. You just have to notify the additional groups, so that part is not cumbersome.

I would ask, and this was going to be a cue from us anyway, but I would like to know what the problem is with the associated forces. It does appear to be very broad, and I would like, if it takes a classified response, we will be glad to take it. But it is—I do not understand what the problem is with associated forces, and I think it would be—I actually ask, and I know you will send me a response to that. I appreciate it. Senator Paul.

Senator PAUL. You know, I think it should not surprise any of us that administrations, Republican and Democrat, come to us and say they believe in unlimited Article II power to execute war. What should surprise and worry us, though, is that it seems like they also argue that they have virtually unlimited power to initiate and to execute war, and that is where the real problem comes here.

I am pretty much like everybody else, execute the war. I do not want to have you restrained by rules of engagement, I want to engage and kill the enemy, but initiation of the war was given to us.

Madison wrote that the executive branch is the branch most prone to war, and, therefore, was studied—we gave that power to

the legislature. And so, while some would argue, well, we can just not appropriate money, that becomes very difficult. Even in Vietnam, nobody wanted to cut off the money because no one wants to be accused of not giving money to soldiers in the field. So, our real only chance of preventing war is not to initiate the war.

The problem we have with you coming forward to us and saying—my goodness, you will not even tell us we are not going to have preventative or preemptive war with North Korea. This sends a signal not just that we are willing to do first strike, but what signal does it send to enemies of other nuclear powers—enemies of Russia, enemies of China, enemies of Pakistan, of India—that we are reserving the right, if we do not like what weapon you have and you think it might reach us, we might as well just take you out.

I mean, look, Pakistan and India are pointed at each other. You have got Israel pointed at Saudi Arabia, pointed at Iran. You have all of these enemies, and if we are going to assert that, yes, we have the right and the will, and we will take preemptive war against a nuclear power, I think that is very troublesome. But if we want to fix it, we should fix it.

You know, we complain if administrations want to take II power, we reassert our power. It is not just us. It has been generation after generation of Congress just acquiescing in this. And while I applaud the AUMF that is being put forward as asserting our authority, if it does not limit the authority of the executive, I am not sure we are a lot better. My problem, if the executive branch thinks it is too restrictive, I think will still authorize war in 34 countries. At least seven for certain, but probably 30-some odd.

So, when we look at this and we want to ask whether or not there should be limitations, whether or not we are prepared to be involved in perpetual war, or whether we are prepared to let any president involve us in perpetual war, we have to think about this. I mean, the war started in the first generation after Muhammad. I mean, you have got Ali Hussein, and Yazid the First fighting in 66 A.D. They still remember the Battle of Karbala. The Shia still mourn that battle 13-some-odd years later. Are we willing just to not have any more votes and say the vote in 2011? No intellectually honest person thinks 2011 has anything—2001 has anything to do with this, I promise you that.

It says specifically we are going after the enemies who attacked us. ISIS has nothing to do with that. Nobody in Niger has anything to do with 9/11 other than they have sort of this ideology of radical Islam. But I do not think we gave the executive branch a blanket authority just to go to war anywhere they want against people who they say are, you know, a part of radical Islam. Ultimately there is going to have to be diplomacy involved in this as well.

You know, how are we ever going to end the war? Is there ever an end to this war? But really, the crux of the argument is over who has the power. You say you have got it. Dick Cheney once said that it should be unconstitutional to challenge Article II authority, which he also meant to be unlimited basically. The Constitution was very clear. We were supposed to initiate war. It does not matter whether it is a state or a non-state actor, initiation of war

comes from Congress, and I believe that very strongly. And I think if we all did, we should assert our power.

We have the ability to assert our power, and we should resist when the administration—anyone, Republican or Democrat—comes before us and tells us they have—they believe they have the ability to have preemptive war anywhere, any time, and they have the ability to continue to fight a war against an ideology wherever they perceive it to be. So, I think it is very, very dangerous, and this should be a wake-up call to all of us, and if we can come together.

What I would say, though, just passing an AUMF is not enough for me because it should be an AUMF that does give us some hope of someday coming to an end, and someday there will be an end to the war. I see no end to this war historically. I think the war and the answers are going to come from within Islam. I think Islam is going to ultimately have to stamp out. I think we are a target everywhere we go. And, yes, we can defeat anyone, but I do not think in the end it ends the war.

I mean, we went to Yemen. You guys just did it on your own. So, you are in a new war theater now. You are involved with Saudi Arabia there. You got 17 million people on the point of starvation in Yemen, and we are assisting and aiding the Saudis in blockading. We give them weapons. They kill civilians. They killed 150 people in a funeral procession.

So, when we go to a village and you guys come and say, oh, we got great information, which no one will tell me specifically what the information came from that village in Yemen. But when we went in there unavoidably, and I do not blame our soldiers, I blame us, the people in charge, but women and children were killed in that village. What do you think—and you say, well, we were—we did not try to do that. Sure, but what do you think they tell about us in the surrounding communities? What do you think they say about the time the Americans came in the night, and women, children, and a whole village was wiped out? What do you think they say about that? They will repeat that by oral tradition. The same way they remember Karbala from 680 A.D., they are going to remember this.

So, I do not think we can kill more than we create in the process, so ultimately there is going to have to be another way that involves some diplomacy, some discussion. It does not mean we cannot resist the enemy and we should not, but it should not be your power. I am here to say very forcefully it is not your power. But the only way we will ever change that is if we as a body stand up and say enough is enough, we are going to reassert the power of the Senate and the power of Congress to determine these things. And we could, and my admonition is to do that.

I am alarmed today to find out that Article 10 basically has us involved in civil wars in Africa. So, we can call any kind of euphemism we want—“train and equip”—but it sounds like you have got a conflict going on there. You have got conflict there. You have got conflict going on in Niger. We have 6,000 troops in 54 countries in Africa, and we should just politely say, oh, we were given this authority under Article 10 to be anywhere any time?

I was alarmed that you were going to justify it with 9/11. Now I am even more alarmed that Section 10 or Article 10 sounds like

you believe you can be anywhere any time whether there is a war going on or not. And we can say it is train and equip, but I suspect there is more going on in Niger than train and equip.

But I do not think there is ultimately a question there other than I hope that we as a body would pull together, and stand up, and resist, not because you are bad people. You are good people. You served your country. You want what is best for your country. All soldiers are. But the balance of power—Madison said we would pit ambition against ambition, so we would check and balance each other. We have not been checking and balancing the executive branch for 60-some odd years, maybe longer. So, we need to stand up, and that is my admonition to our body, and I do not think I will change your minds. But it is an admonition that we should have a real full-throated debate, and I thank the chairman for the beginning of this. Thank you.

The CHAIRMAN. No, thank you very much. And my guess is under Title 50 authorities, there is a great deal underway that the American people nor us are aware of, but that is part of what we are dealing with here. Senator Merkley.

Senator MERKLEY. Well, thank you, Mr. Chairman, and thank you to both of you, Secretaries, for your management of perilous circumstances around the world.

Secretary Tillerson, I believe I understood you to say that the retention of the potential for first use with nuclear weapons has been a foundational doctrine that has helped keep the peace over the last, I think you referred to 70 years. Did I catch that right?

Secretary TILLERSON. Yes, Senator.

Senator MERKLEY. I would say that maybe not. It has not generally been the retention of the potential for first use as it has been assured destruction, assured retaliation that has kept that peace, and there is a significant difference between the two. And I believe I heard one of you refer to that we had not really considered the use of nuclear weapons after World War II. I am not sure if I heard that right. Did I hear that right?

Secretary MATTIS. Senator, I said that we have not initiated the use of nuclear weapons since World War II.

Senator MERKLEY. Okay, great. And that would certainly be very accurate, but we have had serious conversations about the potential of using a nuclear weapon in—as a first-use weapon both in Vietnam and in Korea. And, Mr. Chairman, I would like to submit for the record a CIA document that goes through—it is March 18th, 1966.

Senator RISCH. [Presiding] There is no objection.

[The information referred to is located at the end of this hearing transcript on page 81.]

Senator MERKLEY. Thank you. It noted they were analyzing in the context of a debate about using nuclear weapons the issues that might flow should we choose to do so, and they noted some of the following things. They said NATO would be badly shaken. They said once a taboo had been broken, there would remain no effective barrier to the expansion of such weapons. They said there would be great agitation in Japan, probably including the loss of facilities available to the United States. They said there would be

accelerated momentum for nuclear proliferation, that there would be fundamental revulsion of the United States, including condemnation of the United States and the United Nations, that no British government that failed to condemn the U.S. would probably be able to stand, and that there would be pressure for immediate nuclear disarmament. This was the list of the things that they talked about that would be consequences.

Are these all kind of concerns that you all would share if the U.S. was to utilize a nuclear weapon against North Korea, or another circumstance where it is essentially a conventional setting?

Secretary TILLERSON. Senator, are you asking with respect to a first strike or use of a weapon under any circumstance?

Senator MERKLEY. Use of a first strike with a U.S. nuclear weapon against conventional forces.

Secretary TILLERSON. I am sure some of those conditions in that report are enduring. I am not sure all of them are. I would need to study it and give it greater thought.

Senator MERKLEY. Secretary Mattis?

Secretary MATTIS. I would have to study it, sir. I would just tell you that we have not been discussing this sort of thing in any kind of an actionable way.

Senator MERKLEY. Thank you. I am very, very pleased to hear that. I was very struck when I read this list. It is that they would all be things that probably stand up today if we were discussing them, the impact on NATO, our allies, the world attitude toward us, the effect on the British Government, and so forth. It just—I was almost like, wow, it could be a list for today's conversation.

Turning to the 2001 AUMF, my colleague from Kentucky, and please correct me if I get this wrong, but noted that most rational people looking at the 2001 AUMF would not see a connection to the uses in which it is being employed today. Did I get that right? And I have it—I have it here in my hand.

And earlier, Secretary Tillerson, you noted that you were not sure of the motivations behind that AUMF, but it is so clearly laid out in the “whereases” of that—of that AUMF. And it is very specifically targeted to use all necessary and appropriate force against nations, organizations, or persons planning, or authorized, or committed, or aided the terrorist attacks that occurred or harbored such organizations or persons. Completely the—completely about those 2001 attacks.

The thing that I think all we are struggling with as a committee in our role in this constitutional balance is between a situation—a vision of the past in which our Constitution was framed around a declaration of war and then an executive who commanded forces in such wars, and the modern battlefield of the world in which there are terrorist groups scattered about, and whether what you are asking for, which sounds like permanent worldwide ability for the executive on its own to take on radical Islam. And that is quite a different vision than the one laid out in our Constitution.

Am I—am I describing it fairly in terms of—because I did hear no timeline, no geographic constraints, no restriction on type of operations. That sounds a whole lot like a permanent transition of power to the executive that really takes Congress out of the picture.

Secretary MATTIS. Senator, that statement from the authorization goes on to say, “In order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.” And I think you bring up a very valid point because the Westphalian world that the Constitution was written in obviously has been thrown aside by these very powerful transnational groups that we see right now.

And so, however we deal with this to keep Congress’ legitimate, strong, constitutional power in play has got to recognize that traditional forms of warfare are no longer used. There are ways to do this. There are many variations that have been offered for AUMFs that could address this or, in some ways will not address it. But I think we do have to recognize that Congress was very blunt that it was to prevent future acts of terrorism.

Senator MERKLEY. Yes, and it sure was: “by such nations and organizations that had been involved in planning, authorizing, and assisting the terrorist attacks on September 11th.” But often I hear, and I think we have heard a number of times today, that this has been reinterpreted to involve any associated forces. Now, there is no wording in this of associated forces, and it is often, I find in just academic discussions, it is people think that those words exist in here.

And I do understand the point that organizations change names, and fracture, and move on. But we are quite distant in purpose and time from these groups which attacked us on 2001. And the challenge here is what—if one takes this “associated forces” as an add-on to this, an implication of this, then the question becomes is not almost anything associated in the world, and where is that line? And that is a challenge for this committee and in dialogue with the executive to figure out what is that line. And that is what we are struggling with. And I for one am not ready to concede that the line should be wiped out with no geographic limits, no time limits, no style of force limits.

Thank you, Mr. Chairman.

The CHAIRMAN. [Presiding] Thank you very much. Senator Gardner.

Senator GARDNER. Thank you, Mr. Chairman, and thank you, Secretaries Tillerson and Mattis, for your leadership and your commitment to our country.

A couple of questions. I believe, Secretary Mattis, you had stated that one of the advantages of Congress passing a new AUMF would be to show the resolve of Congress and the unity of Congress. What does—that does that look like, though, a “united Congress?” Is that a filibuster-proof passage of an AUMF? Is that a 100 to nothing passage? What does a “united passage” passed AUMF look like?

Secretary MATTIS. Well, I am not sure it would have to a hundred percent, sir, but it would have to show, I think, a bipartisan embrace of the definition of the threat, and then at least sufficient congressional support for what to do about that threat, that we would see America standing up saying that is where we stand, if that helps, Senator.

Senator GARDNER. Under the AUMF that is currently in effect, has there been any material change to the authorities that you view, the President views, the AUMF through that President

Obama had not already defined that way, utilizing the same authority, the same reasoning?

Secretary MATTIS. There have been some changes in the application.

Senator GARDNER. Rules of engagement issues.

Secretary MATTIS. That sort of thing. But I do not—I cannot think of any change in the authorities that we think we are operating under.

Senator GARDNER. Has there been any additional AUMF grant of authority since President Obama left office over the last 10 months?

Secretary MATTIS. I do not believe so, sir.

Senator GARDNER. If you move from a Title 10 type of action to an AUMF type of authorization, what would that require? What would that look like?

Secretary MATTIS. I think it would have to be an authorization that defines this enemy sufficiently, that it does not restrict our operations in the field, and sets a condition under which we are to fight for an objective.

Senator GARDNER. So, we are in the Philippines right now under Title 10. Is that correct? In the Philippines right now under Title 10. Is that correct? Do we have special operators in the Philippines?

Secretary MATTIS. Yes, sir, we do.

Senator GARDNER. And are they under Title 10?

Secretary MATTIS. I know we have had them there under Title 10. The difference is that now with the fight going on in Marawi, I believe we reported them under “other authorities” as well, AUMF, but I am not positive. I need to check on that.

Senator GARDNER. So, is that a presidential declaration? Is that a determination by you? I mean, when is there a cold break between a Title 10 action and a 2001 AUMF action?

Secretary MATTIS. Well if troops were to be sent into direct combat, which they are not in the Philippines—we are supporting, again, with intelligence, surveillance, reconnaissance—that would cause us, under the War Powers Resolution, to notify you of that. But I think we notify you of the troops there under our normal maintaining your knowledge of where we have troops deployed, not in a combat role.

Senator GARDNER. Quickly here because I want to move on to North Korea. Quickly here, what is the most significant rule of engagement change that we have seen right now in our fight against ISIS from the previous administration to this administration?

Secretary MATTIS. I believe it would be in Afghanistan where we have authorized the troops there not to have a requirement for proximity to the enemy. In other words, wherever we see them, we can attack them. They are declared hostile—Taliban, al-Qaeda, ISIS—and there is no need for them to have to be in self-defense mode to call our air support, for example.

Senator GARDNER. And that goes to your question—your point you made on lawfare earlier. They knew that, correct? Our enemy knew that.

Secretary MATTIS. Absolutely.

Senator GARDNER. They could utilize that rule of engagement against us, and that is your point on lawfare that they were protecting themselves based on rule of engagement, correct?

Secretary MATTIS. Absolutely, sir.

Senator GARDNER. And we have made significant progress in the fight against terrorism because of a change in the rule of engagement, correct?

Secretary MATTIS. And the tactics we have employed, yes, sir.

Senator GARDNER. Thank you. North Korea. Secretary Mattis, you said that North Korea was the most urgent national security threat facing our country. Do you still agree with that today?

Secretary MATTIS. I do.

Senator GARDNER. Secretary Tillerson, do you agree with that?

Secretary TILLERSON. I do.

Senator GARDNER. Has there been—I hear comments about first strike and nuclear capabilities. Kim Jong-un, to our knowledge, has not given up his first-strike capabilities. Is that correct?

Secretary TILLERSON. Well, it is unclear what his striking capabilities are at this point from a nuclear perspective.

Senator GARDNER. But should he have a nuclear weapon, has he given up a first-strike possibility?

Secretary TILLERSON. Not to my knowledge.

Senator GARDNER. Secretary Mattis?

Secretary MATTIS. No, sir.

Senator GARDNER. Has anything in our nuclear chain of command doctrine changed between the previous administration and this administration?

Secretary MATTIS. No, it has not.

Senator GARDNER. So, the chain of command, the response, the first-strike capability, that is all the same, correct?

Secretary MATTIS. Yes, sir.

Senator GARDNER. Secretary Tillerson, you may or may not wish to answer that?

Secretary TILLERSON. No, as far as I am aware, nothing has changed.

Senator GARDNER. Thank you. An additional question on North Korea. You have said, Secretary Mattis, I believe, that if there was an action going into North Korea, under Article II, the President would obviously act if need be, but an AUMF would be required for further operations. Is that correct?

Secretary MATTIS. I would think an AUMF, a declaration of war, you know, it would depend on the circumstance, so I would have to see the circumstances surrounding the requirement for—to engage in conflict, sir.

Senator GARDNER. Thank you. And I know that you have made, at least in the last week, Secretary Tillerson, that the Department of Treasury announced several new sanctions against Chinese entities. Are there more Chinese entities forthcoming in sanctions as it relates to North Korea?

Secretary TILLERSON. There are additional sanctioning targets that Treasury has developed.

Senator GARDNER. Thank you. And I am running out of time here, so a couple brief questions for you. Secretary Mattis, do you believe the Iraqi Security Forces' use of U.S. armor is legal under



the Iraqi constitution as it relates to what is taking place right now with the Kurds—Kurdistan?

Secretary MATTIS. Sir, right now we have got a pause in the activity on both sides as a result of the referendum, and I think we are talking our way through it right now.

Senator GARDNER. Well, I would like to have an answer, though, on the Iraqi Security Forces' use of U.S. armor and whether that is legal under the Iraqi constitution, and whether Iranian involvement in the current situation could create further implications under U.S. law as it relates to the use of that equipment. That is one question I would like to have an answer to.

The second question relates to Section 702 reauthorization. I know Senator Kaine mentioned FISA reauthorization earlier. Secretary, is the Department of Defense asking for Section 702 to be reauthorized as part of the Defense Authorization Act Conference Committee?

Secretary MATTIS. I need to talk with the President about that, sir.

Senator GARDNER. Thank you.

The CHAIRMAN. Before turning to Senator Booker, I do think as we move through this, the lawfare issue that you brought up relative to Afghanistan, that was a significant problem. Our enemies were aware it existed, and they took advantage of it. And I just—I think that was a very good line of questioning also. Senator Booker.

Senator BOOKER. Thank you, Mr. Chairman. Thank you, gentlemen, for being here, and I appreciate your service to our country.

Secretary Mattis, right now in Niger, it is becoming a pretty significant beneficiary of a lot of DOD activity, a lot of DOD funding under the train and equip—global train and equip program. To my understanding, there is a new Air Force facility in Agadez amounting to hundreds of millions of dollars. Is that correct?

Secretary MATTIS. That is correct.

Senator BOOKER. And we are seeing a lot of talk now about continued military operations in the region, continued investment of U.S. troops as well resources. Is that correct?

Secretary MATTIS. Senator, we have been operating in Niger and the surrounding area for about a little over 20 years now, yes, sir.

Senator BOOKER. But there is—but my point is that there has been a significant increase of recent.

Secretary MATTIS. There has been recently as we watch—as we try to build them up to take care of their own security.

Senator BOOKER. And at the same time, we are seeing that, at least a proposed budget from the administration for food peace programs. It used to total about \$33.8 million. The proposed budget is now being cut to \$1.6 million for all bilateral aid to Niger. Is that correct, sir, to your knowledge?

Secretary MATTIS. I am going to have go back and look at the figure.

Senator BOOKER. Those figures are correct, in the proposed budget. So, in other words, a massive ratcheting up of our military operations, a proposed decrease. Now, I bring that up to you really because, and I—and I think I have heard you talk to this, but I would like for you to speak to it now. You know, we are seeing in a lot

of these states we are involved in Africa very different conditions often than we have seen in other places we have been involved in train and equip programs or fighting in the sense of what is happening with a lot—in a lot of these countries.

Let us turn to Nigeria for a second. Nigerian military forces have conducted significant crimes, I would say, massacres of Shia Muslims in the northeast town of Zaria in which over 350 people were killed. The Nigerian air force bombed and displaced persons—a displaced persons camp killing 236 refugees and injuring thousands more. In 2014, the military was accused of over 600 unarmed detainees—of killings of over 600 armed detainees, interring them in mass graves. There has been very little progress or accountability for these incidents.

And I guess I say this because we seem to be involved in places like Nigeria, and you know that as we decrease efforts in stabilizing democracies, helping with food aid, creating an environment where there is stability, and we are involved in partnering with militaries that are responsible for atrocities, that that creates an environment for more terrorism, or do you disagree with that statement, Secretary Mattis?

Secretary MATTIS. Senator, what we try to do is maintain our diplomatic engagement, our development support, at the same time provide sufficient security, which is by training them how to do their own security behind which the development can occur to remove the root causes. Anywhere you see U.S. troops, Senator, you will find them schooling local troops. Part of our training, the law of armed conflict is military ethics. We are the good guys in trying to get this across.

Senator BOOKER. I do not take issue with that at all. What I take issue with is that you are saying we try to maintain our efforts at the diplomacy and food support because that is not reflected in budget numbers.

Let me just continue to the point I was trying to make, that there is a lot of extensive research, which I am sure you aware, that in addition to socioeconomic status, excessive force by police and military forces engenders deep grievances that lead to radicalization, and the heavy-handed responses from military drive recruitment and violent extremism in organizations that often then lead to terrorist activity. You are aware of that research.

Secretary MATTIS. I am not aware of what we have done. In May of 2014, when 276 Nigerian girls were kidnapped. I do not find the connection between our activities and Boko Haram's kidnapping of hundreds of girls.

Senator BOOKER. I was not making—I was not making that connection, sir. I am simply making the point Senator Paul made within Yemen, for example, that we are engaged in counterterrorism activities, partnering with military operations like we are seeing with Saudi Arabia, like we are seeing with the Nigerian forces. And they are conducting operations in a way in which civilians are killed, in which atrocities are accomplished. In your opinion, does that in any way often drive the creation or the—or the condition for radicalization?

Secretary MATTIS. I understand, Senator. It certainly could. I assure you that what we are trying to do is to keep that from hap-

pening, those very things. And in this case, the United Nations-recognized government in Yemen is fighting inside a civil war there to try to restore that government. And if we do not get it restored, then that will set the conditions for the very kind of growth of terrorist groups that you have mentioned.

Senator BOOKER. In Somalia, the language of your current notification of June 27th says, "United States forces also advise, assist, and now accompany regional forces." Is that a change that means that we could be accompanying regional forces, means a potential combat role for troops in Somalia?

Secretary MATTIS. Yes, sir. However, our mission there is still to train, and advise, and assist them by accompanying them how to carry out their own security. We are not taking over the fighting from the Somalia or the Africa Union Forces, AU Forces.

Senator BOOKER. So, I have run out of time. I just want to say there is a whole bunch more questions on a lot of the activities in Africa that I would love to get answers to, Mr. Chairman. I will also say that it strains my understanding of what an authorization for the use of military force—I do not want to tell you what I was doing 16 years ago. [Laughter.]

Senator BOOKER. But it really strains me—

The CHAIRMAN. I am sure we do not want to hear it.

Senator BOOKER. Okay. [Laughter.]

Senator BOOKER [continuing]. It strains me that this idea that somehow that authorization is being used, I do not care if it is Indonesia, where there is a terrorist activity in the Philippines, Niger, Somalia—I can go through—that we are still relying for all of these activities. There has been no objective, in my opinion, of a conversation had enough to see if we are really achieving U.S. aims or engaging in a way that is making this world a much more complex place. And I really do agree with a lot of my colleagues, that we should be having this debate openly and more in Congress.

The CHAIRMAN. Thank you so much. Senator Barrasso.

Senator BARRASSO. Thank you, Mr. Chairman. Secretary Mattis, as we were discussing, you have just gotten back from Korea, the—just right before this time today. You were at the DMZ, and you said, "North Korea has accelerated the threat that it poses to its neighbors in the world through its illegal and unnecessary missile and nuclear weapons program."

Well, today North Korea announced that it is going to be launching more "satellites" into space, and I am just wondering if these satellite launches are simply just another way for North Korea to test ballistic missiles under the guise now of a space program.

Secretary MATTIS. The application of technology is by and large the same, sir.

Senator BARRASSO. Secretary Tillerson, I want to switch a little bit to what I see happening in terms of recent confrontations between the government of Iraq and the Kurdistan regional government. I am very concerned about the Christians and the minority communities in the disputed territories that are being impacted by this. There have been recent media reports of 700 to a thousand Christian families forced to flee their homes in Telasofa, a Christian town about 19 miles north of Mosul. Many of these Iraqi

Christians recently just were able to return to their home, to their villages after ISIS had forced them out of the area.

So, could you just spend a little time explaining what are you hearing from Christian leaders in their—in these communities and what the U.S. is doing to ensure that Christian and other vulnerable minorities are being protected?

Secretary TILLERSON. Senator, the good news is they are trying to get back to their homes, their villages, their traditional homes that they fled when ISIS entered the area. And many of their villages have been spared because the fighting did not occur there. We have been in direct contact with Christian leaders in those communities who are concerned that this conflict between Kurdish Peshmerga forces and Iraqi Central Government forces not be fought out in their villages, and as a result, they have pulled their forces out.

Prime Minister Abadi has ensured that his forces stay out of those villages, and I think, to my knowledge, the Kurdish have pulled out of those villages as well. So, we have direct engagement with local leaders of those communities and Christian leaders that are trying to bring those populations back.

Senator BARRASSO. Thank you. Secretary Mattis, earlier this month there were violent clashes between the Iraqi Security Forces and the Kurdish Peshmerga in Northern Iraq. The media reports indicated that the Iraqi government had moved forces into the disputed areas and the region of Kurdistan. So, I am wondering what impact does the fighting have on our efforts of the U.S.-led international coalition against ISIS in terms of the ability to move military equipment and supplies to allied forces in Iraq and in Syria?

Secretary MATTIS. Senator, the fighting has disrupted and delayed some of those movements of our equipment, logistics support, ammunition, for example. But I would point out that the Iraqi forces moved into areas short of the 2004 green line. And as a result, although there were some firefights along there, Secretary Tillerson has been engaged diplomatically. We always lead diplomatically on all of our efforts, and those have been successful. And Prime Minister Abadi has, in effect, been able to hold things under control, make certain none of these militias are creating more problems as the Kurds sort out their political situation in Erbil.

Senator BARRASSO. Thank you. And in terms of moving first diplomatically, if I could Secretary Tillerson, turn to Pakistan. August 21st, President Trump gave a primetime address to announce his strategy for Afghanistan. He said a pillar of that strategy was, as he said, “to change the approach in how to deal with Pakistan.” You briefly discussed this issue while you were traveling in the region last week. You said that you have given the Pakistanis, I think, “certain expectations we have of their government.” And you went on to say that you were “attempting to put in place a mechanism of cooperation through information sharing and action to be taken to begin to deny these organizations the ability to launch attacks.”

So, could you talk a little bit about what is the change to approach to Pakistan and maybe some of the expectations that you have articulated for the Pakistani government that you could share

with the committee in terms of what this cooperation is going to look like?

Secretary TILLERSON. Well, I can share some broad contours, and if there is an interest in more detail, we might need to do that in a closed hearing. But the conversation with the Pakistani government is for them to recognize that they will be one of the greatest beneficiaries of a successful peace process in Afghanistan. Pakistan lives with two very unstable borders, one with Afghanistan and one with India. And our message to them is you have to begin to create greater stability inside your country, and that means denying safe haven to any of these organizations that launch attacks from your territory.

So, we are going to enter into an effort to have greater sharing of certain intelligence information. The Pakistanis have indicated they—if we provide the information, they will act. We are going to have to test that. We will give them an opportunity to do so.

And so, what will change is that Pakistan will find it in their interest to begin to disassociate these longstanding relationships that have developed over time with certain terrorist organizations—the Haqqani Network, the Taliban—inside of Pakistan, which may have served their purpose for stability once upon a time, but they no longer serve that purpose. And it is up to Pakistan, I think, to think about their longer-term stability and their future by changing that relationship with these organizations.

Senator BARRASSO. Okay. Thank you. Thank you very much. I am very grateful for your leadership and your service. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman, and thank you, Secretary Tillerson and Secretary Mattis, for being here, and for your service and your stamina, frankly, that we are still here.

Over the past several years, as has been pointed out in this discussion, the range of threats that we face from terrorist groups and state actors has become increasingly diverse, fragmented, and geographically expansive. And militants that we defeat in one country have spread their ideology and violence to other areas. Similarly, state actors, like Iran and Russia, are increasingly expanding their reach beyond their borders, particularly in the Middle East and Africa, where our troops are present.

So, I am concerned, as many on this committee are, that without an adequate understanding of the parameters that the administration is using to justify the use of force, that our strategies will remain ambiguous, and that our troops will have few limits to where they will be asked to go and what they will be asked to do.

And I have to say that I believe in the importance of U.S. engagement in the world, so I am not an isolationist. I do not think we should withdraw from everywhere. But I want to make sure, as Senator Booker said, that we are actually achieving the aims that we set out to achieve when we put troops in a particular area. And, Secretary Tillerson, as you point out, the American people and our soldiers have a right to know where they are being asked to go, what they are being asked to do, and what the expectations are, and what the end game is.

And I think one of the places where it is not at all clear to me what the end game is and that we have a strategy for that end game, is in Syria, which is—you know, the conflict there is one of the things that has allowed terrorist groups and ISIS to metastasize in the way that they have. So, as we look at the liberation of Raqqa, what is our end game for fighting ISIS along the Middle Euphrates River? Do we intend to continue down the Euphrates to Mayadin? Will the Assad regime or the Russians do that? It is not at all clear, and we have not just the terrorists that we are fighting there, but we also have those state actors—Russia, Syria, Iran—who are playing a role that is complicating the situation.

So, I guess this is for you, Secretary Mattis.

Secretary MATTIS. Senator, it is the most complex battlefield I think I have ever experienced. I would tell you right now that, again, our operational aspects are by, with, and through partnered or allied forces. That is why you see us helping others learn how to fight or putting our people, in this case in Syria, in a position to resupply them. Basically we, I believe, lost one soldier killed taking Raqqa, and the Kurds lost over 600 killed. You see it written in the grimmest possible statistic.

What we will do is knowing they have moved their external operations elements down toward Mayadin, as we gather strength from the Arab tribes, we certainly will continue to move against ISIS—move against ISIS because we—this thing is not over until it is over. At the same time, the regime, the pro-regime forces—I am talking about Iranian-supported elements—Lebanese Hezbollah—and the Russians forces are moving from Darzar in the same direction. Again, we do de-confliction, as you know with them, at several levels.

Senator SHAHEEN. Right, understand.

Secretary MATTIS. So, we will continue to move against them. The Iraqis will move against them from their side of the border. Even as this Kurdish referendum issue has been a distraction further north, they are continuing to move. So, we are still on the move. We are still de-conflicting, and Secretary Tillerson is coordinating the larger issue of the end state diplomatically.

Senator SHAHEEN. And so, is the expectation as we drive ISIS out, that we will leave that remaining sections of Syria to Assad, to the Russians, to Iran? Because it is not at all clear that once we are gone, what will happen in those territories?

Secretary TILLERSON. Well, Senator, that is where our diplomatic efforts are underway to create these de-escalation zones. That is, areas are liberated. We then de-escalate the conflict so that the civil war does not re-erupt. And in order for that to happen, that means that the regime hold its positions and not try to overrun or retake areas that were liberated by others.

We have successfully put one de-escalation zone in the southwest of Syria in conjunction with Jordan and Russia. That de-escalation zone went into effect January the 9th. There have been no aerial bombings in that area since, and we have had success moving Iranian presence as well as Lebanese Hezbollah presence out of those areas.

We are working to create additional de-escalation zones, and these are not demarcation zones. These are not intended to divide

the country. They are merely intended to de-escalate, de-conflict, and, in effect, get ceasefires in place so that we then can get representatives to the Geneva process pursuant to U.N. Security Council Resolution 2254, which has a very prescribed process for how Syria will work its way towards new elections over the next few years.

Senator SHAHEEN. Well, sorry to interrupt. I would like to pursue this discussion in a classified setting. But I did want to follow up on a statement that you made, Secretary Mattis, where you said that we always lead with diplomacy. I would like to think that we always lead with diplomacy, but given the current reorganization at the State Department, the current cuts to the budget at the State Department that were requested by this administration, the number of personnel, the number—the amount of years of expertise of people who have left the State Department, I guess I question whether, in fact, we are leading with diplomacy and putting our best foot forward.

So, I do not know, Mr. Secretary. Can you explain to me why this is a good time to let go of those personnel, to cut back on the budget of the State Department?

Secretary TILLERSON. We have let no one go, Senator. Some people have retired. Some people have chosen to leave and pursue other interests on their own. There have been no layoffs. There have been no terminations. And, quite frankly, Senator, I have to speak on behalf of the professional men and women at the State Department—Foreign Service officers and others—who have many, many years of experience that have stepped up to the open positions that are still open because we are waiting for confirmations, and are doing a superb job representing the American people's interests.

And our diplomacy has not stopped. It is not hampered. It is not slowed. These people are engaged directly with our counterparts and leading this diplomatic effort. I am proud of them. They are doing a great job, and we need some more help. We need some leadership help. But we have not depleted our ranks of expertise by any stretch of the imagination, and, quite frankly, on their behalf I want to defend their expertise, to you.

Senator SHAHEEN. Well, I certainly was not attacking the men and women of the State Department. I think they do an excellent job. And my concern is that we have seen many people with a lot of expertise who have left the Department because they are concerned about the direction there, and that is what I wanted to speak to. But I share your support for the work that they are doing.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Portman.

Senator PORTMAN. Thank you, Mr. Chairman. So, Secretary Mattis, Secretary Tillerson, in an increasingly dangerous and volatile world, I am glad you are where you are. And we have got a lot of challenges, and I think the current AUMF covers the fight against ISIS, even though as was stated earlier, 15 years ago there was no ISIS as such.

However, I also believe having a new AUMF has benefits. I think it can be worthwhile in providing greater clarity and guidance, in-

cluding to our military commanders and to your diplomats, Mr. Secretary. I think it can help you establish a firmer base of political support for overseas operations. I think it can send a clear signal of resolve from the United States Congress as well as the administration to friend and foe alike. And so, I am interested, but I am only interested in the right AUMF. It has got to be helpful in empowering those who are undertaking this incredibly important task during a time with such danger.

I guess my question to you would be, I understand looking at your testimony and having been here earlier, that you have laid out what you think the guiding principles ought to be. But are there any authorities or guidance that you now lack that a new AUMF could provide?

Secretary MATTIS. On the military side, Senator, I would just—I would say no as it stands right now. And, again, when I spoke, I just thought that we need to incorporate those factors that I brought up. I am not telling the Senate how to do its business. I just owe you my best military advice. How you deal with that, I salute, and we will—we will carry out our orders to the Commander-in-Chief.

But I think those factors of conditions-based and the timelines—anything that we do, we have to recognize has an impact on both our operations and on the enemy's view, and we just have to take that into account. That is a reality. And I am not saying that there is some prescriptive one way to solve these.

Senator PORTMAN. Secretary, any guidance or any authorities you lack?

Secretary TILLERSON. I do not think there are any authorities we lack. As we indicated, we think the current authorizations we have are sufficient to allow us to pursue this enemy wherever they choose to want to fight us. And, again, I think, you know, this is all about fighting them over there so they do not come here to attack us on the homeland again.

Senator PORTMAN. And the threat has evolved, and it will continue to evolve. And geographic limitations, as an example, would make no sense, I assume, given the fact that we have seen a metastasizing of the threat through countries we might never have imagined would be part of now ISIS or former al-Qaeda.

Let me ask you a broader question, and this is a tough one. But I have, as is true with many of my colleagues, been frustrated as you have with regard to Syria. You called it a very complex battlefield, and I know the President and our administration has focused on defeating ISIS as is appropriate. But there is a broader issue here, which is, you know, how did ISIS evolve in the first place, and how do we deal with the underlying problems and the chaos in that region, the instability that fueled the rise of ISIS in the first place.

And I guess my question to you is, let us say we continue to be successful with ISIS. You talked about Raqqa earlier, and you talked about some of the military success we have on the ground. As we do that, I would think our coalition partners and us are going to see the limitations of a military approach because you will continue to have sectarian divisions, competing interests, a worsening humanitarian crisis. And I just want to be sure if we are



doing a new AUMF we cover that. In other words, this is not just to give you the authority to use military force, but it is really to get at the underlying causes so that we do not have to go back again.

I guess, Secretary Tillerson, to ask you first, as an example, do you think there can be a lasting peace there as long as Assad is in power, and does the current AUMF give you the ability, Secretary Mattis, to be able to deal with that issue. If you—if you think that has to be resolved, that might be one example.

Secretary TILLERSON. Well, the current AUMF only authorizes our fight against ISIS in Syria, as I indicated in my remarks. We are not there to fight the regime. There is no authority beyond the fight against ISIS. Therefore, we have to pursue a future Syria that is kept whole and intact, and a process which the—which the U.N. Security Council process does provide a process by which, in our view, the Assad regime will step down from power.

How that occurs will be part of that process, and that is what we have continued to indicate. That is a view that is widely held by others in the region as well. It is a view that is widely held by our allies in Europe, and broadly by the coalition. So, what we want to do is create conditions so Geneva has an opportunity to succeed.

Senator PORTMAN. And, again, how does this play into the potential new AUMF, and, Secretary Mattis, you might focus, if you would, on the military operation side of this thing, in order to secure the peace after ISIS is defeated if we are successful. What would you like to see in an AUMF that would be broader and give you the ability to do what has to be done?

Secretary MATTIS. Sir, I think the AUMF has to address the two basic brands of terrorism that we have seen strike at civilized people everywhere, and to determine what it takes to define that problem in sufficient detail, and to a point that here in the Congress we are in agreement, if you go forward along those lines, so that we speak with one voice on the threat. If we spend time basically defining the threat in sufficient rigor, then I think much of the response to that threat will be understandable and supportable across the political spectrum.

Senator PORTMAN. Okay. And, again, I know this is a sensitive topic, but do you think a broader AUMF is needed to deal with the underlying issues, not just the immediate elimination of the ISIS threat in Syria, but some of the factors that have led to the rise of ISIS?

Secretary MATTIS. It could do that, Senator. Properly constructed, it could do that.

Secretary TILLERSON. I think it is a question of after we are successful as we are having success now, how do you stabilize these areas. And do we as—is there any military role for that stabilization? I am not—I would have to think about it further as to whether it is a military role or whether it is really we equip, which is what we are doing today, we equip local capacity to maintain the security of their communities.

And as I said, and even as Prime Minister Abadi noted, armies are not good at police—serving in a police role. They are not trained for that. So, we have to train security forces that are able

to provide a policing function to maintain stability and security for these communities, which helps tamp down the conditions that give rise then to this violent extremism again.

Senator PORTMAN. No question. I guess I am just—I am just again—I am out of time, and I appreciate your indulgence allowing me to go a little over, Mr. Chairman. But I do think this is a discussion that we can have as part of this potential new AUMF is, you know, what is the broader strategy here that we ought to be pursuing to avoiding getting back in the fight again.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. And before I turn to Senator Cardin for his closing comment, on that note, I mean, you guys, I just want to be clear—people are tuned into this. You are not asking for an authority to go against Assad.

Secretary TILLERSON. No, Senator.

The CHAIRMAN. And if you attempt—

Secretary MATTIS. No, sir.

The CHAIRMAN [continuing]. If you felt you needed to go against Assad as part of the broader picture that Senator Portman was bringing up, you would come to Congress because we would then be going against a country. Is that correct?

Secretary TILLERSON. That is correct.

The CHAIRMAN. Senator Cardin.

Senator CARDIN. Mr. Chairman, I first want to thank both of our witnesses for their service to our country and their participation in this hearing. There may be some disagreements about what the AUMF covers currently and what Congress should include in a more up-to-date AUMF. That is a healthy debate that we are having. There is no debate, as the chairman has pointed out, about our resolve to go after terrorists who are attacking our interests and our allies, and we want you to have the ability to root them out and destroy them. So, there is no disagreement about that.

I just would sort of conclude on this, and that is I think there is a real willingness of all of us to try to work together to modernize the AUMF. So, we are going to try—we are going to try to be able to do that. But I particularly want to thank you for the direct answers to our questions. I think you were very clear in responding to the questions that have been asked by the members of this committee, and that is very encouraging because this hearing, I think, has been extremely helpful to us to try to sort out how we can best represent the national security interests of this country.

The CHAIRMAN. I really want to thank you both for coming, for your service to our country, for the concrete answers that you gave. Obviously, the next logical step is for us to mark up an AUMF, and I would just ask while you are here that you agree to work with us promptly, and the work period is short. We have got other issues to deal with, and that you would both use your resources to respond quickly to questions we might have legally and otherwise relative to an AUMF.

Secretary TILLERSON. Will do.

Secretary MATTIS. Absolutely.

The CHAIRMAN. Yeah. Again, thank you so much. There will be additional questions that will be—we will take those through the close of business Wednesday. To the extent you can answer those

promptly considering the other duties you have, we would appreciate it.

Again, I cannot thank you enough for your service and for the time you spent with us today.

And with that, the meeting is adjourned.

[Whereupon, at 8:15 p.m., the hearing was adjourned.]

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## Additional Material Submitted for the Record

STATEMENT FOR THE RECORD SUBMITTED BY HUMAN RIGHTS FIRST

### INTRODUCTION

The recent deaths of 4 U.S. service members in Niger have prompted members of Congress to give renewed attention to the scope of war authorities that govern U.S. counterterrorism military operations abroad.<sup>1</sup> Within days of the 9/11 attacks, Congress passed an authorization for use of military force (“AUMF”) against those who “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 or harbored such organizations or persons.”<sup>2</sup> This language is widely understood as authorizing force against al-Qaeda, who planned and committed the attacks on the United States on 9/11, and the Afghan Taliban, who had harbored al-Qaeda before and after the attacks.

The 2001 AUMF is also expressly limited to using force to prevent future acts of terrorism against the United States by the entities responsible for 9/11, not their associated forces, successor entities, or unaffiliated terrorist organizations. Indeed, Congress expressly rejected the executive branch’s request for broad and open-ended authority to use military force against other terrorist groups without specific authorization from Congress.<sup>3</sup>

Yet for nearly 16 years, longer than any war in the nation’s history, the executive branch has been using the 2001 AUMF as the primary legal basis<sup>4</sup> for military operations against an array of terrorist organizations in at least seven different countries around the world.<sup>5</sup> Some of these groups, like ISIS and al Shabaab, not only played no role in the 9/11 attacks, but did not even exist at the time Congress authorized the use of force in 2001.<sup>6</sup>

The executive branch’s continued reliance on the 2001 AUMF for military operations far beyond what Congress originally authorized undermines Congress’ important constitutional role as the branch responsible for the decision to go to war. As Senator Todd Young noted during a keynote speech at the Heritage Foundation in May of this year, the founders entrusted Congress with the decision to go to war

<sup>1</sup> Connor O’Brien, *Niger Attack Fuels New Push for War Vote*, Politico, Oct. 20, 2017.

<sup>2</sup> 113 Stat. 224, 224 (2001) (codified at 50 U.S.C. § 1541 note).

<sup>3</sup> See David Abramowitz, *The President, the Congress, and the Use of Force: Legal and Political Considerations in Authorizing the Use of Force Against International Terrorism*, 43 Harv. Int’l L.J. 71 (2002); Gregory D. Johnsen, *60 Words And A War Without End: The Untold Story Of The Most Dangerous Sentence In U.S. History*, January 16, 2014, BuzzFeed.

<sup>4</sup> The executive branch has also relied on the 2002 Iraq AUMF to justify its counter-ISIL campaign. See e.g., Stephen Preston, *The Legal Framework for the United States’ Use of Military Force Since 9/11*, Remarks at the American Society for International Law, Washington, DC, April 10, 2015.

<sup>5</sup> *Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related Operations*, December 2016.

<sup>6</sup> It is worth recalling that in 2014 when the claim that the 2001 AUMF applied to ISIS was first made, national security law experts from both sides of the aisle were astounded. See e.g. Robert Chesney, *The 2001 AUMF: From Associated Forces to (Disassociated) Successor Forces*, Lawfare Blog, September 10, 2014. Before the announcement, law professor Ryan Goodman had noted the “remarkable consensus of opinion” among experts “that ISIS is not covered by the 2001 AUMF.” See Ryan Goodman, *The President Has No Congressional Authorization to Use Force against ISIS in Iraq*, June 19, 2014. National security expert Ben Wittes commented that extending the 2001 AUMF to ISIS “is not a stable or sustainable reading of the law.” See Ben Wittes, *Not Asking the Girl to Dance*, September 10, 2014. And former State Department legal advisor Harold Hongju Koh considered a new AUMF to be the only “lawful way to fight the Islamic State” and prevent a “constitutional battle over the president’s prerogative to conduct unilateral war.” See Harold Hongju Koh, *The Lawful Way to Fight the Islamic State*, August 29, 2014.

to “avoid foolish, hasty, unnecessary, and perpetual wars that tend to accrue debt and erode liberty.”<sup>7</sup> The lack of any sunset provision or reporting requirements in the 2001 AUMF also restricts the ability of Congress to conduct meaningful oversight over military operations and the foreign affairs of the United States.<sup>8</sup>

This untenable state of affairs has other dangerous consequences as well. Continued reliance on outdated and ill-defined war authorizations that blur the line between war and peace undermine national security, U.S. leadership in the world, and human rights both at home and abroad.

ILL-DEFINED WAR AUTHORITIES UNDERMINE NATIONAL SECURITY, U.S. GLOBAL LEADERSHIP, AND HUMAN RIGHTS AT HOME AND ABROAD.

War authorizations confer extraordinary powers on the president, powers that outside of war would amount to egregious violations of human rights. Wartime rules were designed for the unique circumstances of armed conflict between opposing armed forces. As a result, the laws of war sometimes permit killing as a first resort, detention without charge or trial, and the use of military tribunals—actions that are otherwise contrary to basic American values and human rights.

The United States has long been a global leader on human rights, leveraging its example to influence other nations to improve their own human rights records. The United States has rightly criticized other nations for improperly invoking wartime authorities in the name of national security. But the ability of the United States to level this criticism effectively demands that it demonstrate that its own use of wartime authorities is lawful and appropriate. Continued reliance on ill-defined authorities or questionable legal theories that enable the use of wartime authorities outside the lawful boundaries of war not only harms U.S. leadership on human rights, but U.S. national security as well.

The current status quo puts the United States at odds with allied nations, counterterrorism partners on the ground, and local populations whose help is critical to effective counterterrorism. As a result of doubts about the lawfulness or legitimacy of U.S. actions or policies, allies and partners withhold critical cooperation, consent, and intelligence information. Local populations turn against the United States, fueling terrorist recruitment and propaganda and increasing attacks against U.S. and allied forces. Assuring U.S. allies, counterterrorism partners, and local populations that the United States respects human rights and the rule of law—including important limits on where, when, and against whom wartime authorities may be employed—will improve cooperation, undermine terrorist recruitment and propaganda, and reduce attacks against U.S. forces.

Setting the country on a new course is also needed to ensure that the United States does not set dangerous precedents that are detrimental to its long-term interests. The policies, practices, and legal justifications used by the United States today will be used by other states tomorrow. Expansive interpretations of a state’s authority to use wartime powers—such as lethal force as a first resort, military tribunals, and detention without charge or trial—embolden other states to use such practices. Constraining the use of these exceptional authorities to circumstances meeting the legal threshold for armed conflict and to where their use is militarily necessary, will provide a model for other states on how to use wartime authorities lawfully, strategically, and responsibly.

Not only is it unlawful to apply wartime authorities to address terrorist threats off the battlefield, it is not necessary. The United States has a robust array of diplomatic, law enforcement, and intelligence resources to mitigate the threat of terrorism. And ultimately, partner nations in which terrorist threats reside must take the lead to address those threats head on, and effectively, with the support of the United States. The United States also retains the authority to act in self-defense, including through the use of military force, when there is an imminent threat that cannot be addressed through other means. Wartime authorities such as an AUMF are not necessary to take such action.

By tailoring congressional war authorizations to the conflicts to which they are intended to apply and conducting regular oversight of war, Congress provides a crucial check on the executive branch, ensuring that presidents do not stretch wartime killing, detention, and trial authorities beyond the bounds of armed conflicts authorized by Congress.

<sup>7</sup> *Is it Time for Congress to Pass an ISIS-Specific AUMF?*, The Heritage Foundation, May 1, 2017.

<sup>8</sup> Recent entanglements with Iranian and Russia-backed pro-Assad forces in Syria, where the U.S. is fighting ISIS, demonstrate just how far the 2001 AUMF has been stretched. See Kate Brannen et al., *White House Officials Push for Widening War in Syria Over Pentagon Objections*, Foreign Policy, June 16, 2017.

## RECOMMENDATIONS FOR DRAFTING AUTHORIZATIONS FOR USE OF MILITARY FORCE

Any new war authorization passed by Congress should be clear, specific, carefully tailored to the situation at hand, and aligned with the international legal obligations of the United States to respect state sovereignty, human rights, and the boundaries of wartime rules. Careful drafting is critical to prevent any new AUMF from being stretched to justify wars not authorized by Congress, to ensure ongoing congressional engagement and an informed public as the conflict proceeds, and to prevent the authorization from being used in ways that undermine human rights or U.S. national security.

To meet this standard, Human Rights First recommends that any new authorization for use of military force include the following elements:<sup>9</sup>

*Specify the enemy and the mission objectives:*

Any new AUMF should clearly specify the entity against which force is being authorized, the mission objectives or purpose for authorizing force, and where force may be used. These elements prevent the executive branch from overstepping Congress's intent, discourage mission creep, and ensure that the authorization will not be used to justify unlawful or perpetual armed conflict. Authorizing the president to use force against unknown future enemies,<sup>10</sup> for undefined purposes, or in unknown locations is an unconstitutional delegation of Congress's power to declare war. It is also unnecessary for national security. The president has authority to defend the nation from sudden attacks under Article II of the Constitution and Article 51 of the U.N. Charter. Moreover, Congress can authorize force against new threats when and if such threats arise.

*Reporting requirements:*

Regular and detailed reporting helps promote democratic accountability, maintain legitimacy both at home and abroad, ensure compliance with domestic and international law and enables Congress to fulfill its critical oversight functions. To properly keep Congress and the public informed of the scope and progress of the mission, the president should provide regular reports detailing at minimum: the entities the administration believes are covered under the new AUMF, the factual and legal basis for including these entities in the AUMF, the number of civilian and military personnel killed, and the legal analysis the administration is relying on for undertaking new actions. This information is critical for proper public transparency and engagement and enabling Congress to exercise its constitutional oversight responsibilities over a continuing armed conflict.

*Compliance with U.S. obligations under international law:*

For over 200 years the Supreme Court has held that domestic statutes must not be interpreted to conflict with U.S. obligations under international law if there is any other plausible interpretation.<sup>11</sup> An explicit statement in an AUMF that operations must only be carried out in compliance with U.S. international legal obligations would bolster global confidence in the United States as a national that complies with the rule of law and is committed to its obligations to respect state sovereignty under the U.N. Charter and customary international law, treaty and customary law-based human rights law, and the requirements of the law of armed conflict, where applicable. Such a statement would enhance the legitimacy of the mission, aid the effort to win hearts and minds, and encourage cooperation from allies, and partners.

*Supersession/sole source of authority provision:*

Any new AUMF should include language that makes it clear that it is the sole source of statutory authority to use force against the named enemy in the authorization. This is important to avoid overlap, confusion, or loopholes that could be used to evade the requirements of either an existing or new AUMF. For example, as the executive branch has claimed that the 2001 AUMF and 2002 Iraq AUMF already

<sup>9</sup>These elements have been recommended and endorsed by numerous national security experts from across the political spectrum. See e.g., Goldsmith et al., *Five Principles That Should Govern Any U.S. Authorization of Force*, Washington Post. These elements have also gained the support of a coalition of human rights, civil liberties, and faith groups. See "Re: Authorizing the Use of Military Force." Letter to Senator Bob Corker and Senator Ben Cardin. June 19, 2017.

<sup>10</sup>Should Congress to choose to authorize force against the associated forces of a group named in the authorization, it should carefully define the term associated forces in a manner that complies with the laws of war. Congress should not authorize force against so-called "successor entities." See Human Rights First, *Authorizing the Use of Force Against ISIS: How to Define "Associated Forces"*.

<sup>11</sup>*Murray v. The Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804).

provide authority to use force against ISIS, a new ISIS AUMF should either repeal the 2001 AUMF and 2002 Iraq AUMF, or include language that makes it clear that the new ISIS AUMF is the sole source of statutory authority for using force against ISIS.<sup>12</sup> Failing to include such clarifying language or to repeal old AUMFs opens the door for the executive branch to rely on the 2001 AUMF to avoid the requirements of the new ISIS AUMF.

*Sunset clause:*

Sunset provisions have been included in nearly a third of prior AUMFs.<sup>13</sup> They act as a forcing mechanism that guarantees continued congressional oversight and approval as the conflict evolves, providing a safeguard against perpetual armed conflict or executive branch overreach. Sunsets require Congress and the administration to come together to reexamine the AUMF at a future date in light of current conditions, and if necessary, reauthorize and/or refine the legislation to suit those new conditions. As former general counsel for the CIA and Department of Defense Stephen Preston has explained, requiring Congress to reauthorize an ongoing conflict does not signal to the enemy that the United States plans to walk away from the fight at a set date.<sup>14</sup> Rather, he explained, a properly structured reauthorization provision with a mechanism for renewing the authority in advance of the sunset would signal to our partners and adversaries that the United States is committed to its democratic institutions and will fight the fight for as long as it takes.

CONCLUSION

The founders of this nation recognized the profound significance of going to war and wisely assigned this power to Congress. If and when Congress passes a new war authorization, that authorization should reflect the hard lessons of the last decade and a half by including the above elements. If Congress cannot reach agreement on an authorization that meets these requirements, it should not pass one.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. REX TILLERSON, SECRETARY OF STATE, BY SENATOR BOB CORKER

*Question 1.* If Congress decided to repeal the 2001 and 2002 Authorizations for Use of Military Force (AUMFs), and simultaneously provide a replacement AUMF that authorizes the President to use all necessary and appropriate force against the Taliban, al-Qaeda, ISIS, and associated forces (appropriately defined):

- What would be the legal consequences, and what other provisions of law would be impacted? Please be as specific as possible.

Answer. The repeal of the 2001 and 2002 Authorizations for Use of Military Force (AUMF), even if accompanied by a simultaneous replacement statute, could cause unnecessary uncertainty to the President's authority to use military force in the midst of ongoing military operations.

With respect to the 2001 AUMF, all three branches of the U.S. Government have affirmed the ongoing authority conferred by the 2001 AUMF and its application to al-Qaeda, to the Taliban, and to forces associated with those two organizations within and outside Afghanistan. Specifically, the Federal courts have issued rulings in the detention context that affirmed the President's authority to detain individuals who were part of, or substantially supported, Taliban or al-Qaeda forces or associated forces that are engaged in hostilities against the United States or its Coalition partners. Congress has also affirmed the President's detention authority under the 2001 AUMF in the National Defense Authorization Act for Fiscal Year 2012.

Repeal of the 2001 AUMF could be seen as reopening settled legal questions regarding the President's detention authority. Such repeal would likely lead to renewed litigation by detainees at Guantanamo Bay seeking to challenge the legal basis for their continued detention beyond the date of the repeal of the statute under which they are currently being held notwithstanding the continuation of hostilities between the United States and the Taliban, al-Qaeda, and associated forces, including against ISIS.

<sup>12</sup>The Obama administration claimed that the 2001 and 2002 AUMFs already authorize force against ISIS. Failing to clarify that a new ISIS AUMF supersedes these authorizations confuses rather than clarifies the administration's powers. See Jen Daskal, *Why Sunset and Supersession Provisions Are Both Needed in an Anti-ISIS AUMF*, Just Security, March 18, 2015.

<sup>13</sup>*Ending the Endless War*, National Security Network, February 2015.

<sup>14</sup>*Is it Time for Congress to Pass an ISIS-Specific AUMF?*, The Heritage Foundation, May 1, 2017.

The 2002 AUMF provides authority “to defend the national security of the United States against the continuing threat posed by Iraq.” The repeal of the 2002 AUMF could call into question the President’s authority to use military force to assist the Government of Iraq both in the fight against ISIS and in stabilizing Iraq following the destruction of ISIS’s so-called caliphate.

*Question 2.* How could Congress mitigate any negative legal consequences in a replacement AUMF and ensure a smooth transition to the new authority, including with respect to legacy detainees? If possible, please provide specific language.

Answer. Ensuring that there are no negative consequences is the reason why this administration urged Congress not to repeal the 2001 and 2002 AUMFs. Therefore, at a minimum, any subsequent AUMF must not call into question the legal basis for the continued detention of individuals currently held at Guantanamo Bay. For example, the administration would seek language that avoids reopening settled legal questions relating to the President’s authority to continue to detain individuals at Guantanamo Bay, “who were part of, or substantially supported, Taliban or al-Qaeda forces or associated forces that are engaged in hostilities against the United States or its Coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces.”

The administration is prepared to review any proposed language that the committee might develop.

*Question 3.* In the alternative, if Congress decided to repeal the 2002 AUMF and amend the 2001 AUMF to provide fresh authorization for the use of military force against the Taliban, al-Qaeda, ISIS, and associated forces (appropriately defined):

- What would be the legal consequences, and what other provisions of law would be impacted? Please be as specific as possible.

Answer. The 2002 AUMF provides authority “to defend the national security of the United States against the continuing threat posed by Iraq.” Any repeal of the 2002 AUMF could call into question the President’s authority to use military force to assist the Government of Iraq in military operations against ISIS and in stabilizing Iraq following the destruction of ISIS’s so-called caliphate. The administration would need to review the specific language of any proposed legislation.

*Question 4.* How could Congress mitigate any negative legal consequences with an amended 2001 AUMF and ensure a smooth transition, including with respect to legacy detainees? If possible, please provide specific language.

Answer. Ensuring that there are no negative consequences is the reason why this administration urged Congress not to repeal the 2001 and 2002 AUMFs. Therefore, at a minimum, any subsequent AUMF must not call into question the legal basis for the continued detention of individuals currently held at Guantanamo Bay. For example, the administration would seek language that avoids reopening settled legal questions relating to the President’s authority to continue to detain individuals “who were part of, or substantially supported, Taliban or al-Qaeda forces or associated forces that are engaged in hostilities against the United States or its Coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces.”

The administration is prepared to review any proposed language that the committee might develop.

*Question 5.* In a letter to Senate leaders earlier this year, you and Secretary Mattis expressed concern about the definition of “associated persons or forces” in S.J. Res. 43, which you stated is “inconsistent with the standard applied by the Executive Branch and which could result in unnecessary uncertainty regarding its scope.”

- What is the “standard applied by the Executive Branch” to which you referred in your letter?

Answer. To be considered an “associated force” of al-Qaeda or the Taliban for purposes of the authority conferred by the 2001 AUMF, an entity must satisfy two conditions. First, the entity must be an organized, armed group that has entered the fight alongside al-Qaeda or the Taliban. Second, the group must be a co-belligerent with al-Qaeda or the Taliban in hostilities against the United States or its Coalition partners.

*Question 6.* If the administration does not support the definition of “associated persons or forces” in S.J. Res. 43, what definition does the administration recommend for a new AUMF?

Answer. The administration would want to ensure that any statutory definition of “associated force” is consistent with the standard currently applied by the Executive Branch as described in the answer to the previous question.

*Question 7.* Does your Department have any legal or policy concerns with repealing the 2002 AUMF? If yes, please explain.

Answer. The 2002 AUMF provides authority “to defend the national security of the United States against the continuing threat posed by Iraq.” The repeal of the 2002 AUMF could call into question the President’s authority to use military force to assist the Government of Iraq both in the fight against ISIS and in stabilizing Iraq following the destruction of ISIS’s so-called caliphate.

*Question 8.* Does your Department construe any of the following provisions of existing law as an Authorization for Use of Military Force? If yes to any, please specify and explain the interpretation:

- a. Authorization of the Secretary of Defense to provide support for friendly foreign countries (10 U.S.C. § 331).
- b. Authorization of the Secretary of Defense to support for foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing military operations by United States special operations forces to combat terrorism (10 U.S.C. § 127e).
- c. Authorization of the Secretary of Defense to conduct or support a program or programs to provide training and equipment to the national security forces of one or more foreign countries for the purpose of building the capacity of such forces to conduct one or more of the following (10 U.S.C. § 333):
  1. Counterterrorism operations.
  2. Counter-weapons of mass destruction operations.
  3. Counter-illicit drug trafficking operations.
  4. Counter-transnational organized crime operations.
  5. Maritime and border security operations.
  6. Military intelligence operations.
  7. Operations or activities that contribute to an international coalition operation that is determined by the Secretary to be in the national interest of the United States.

Answer. No, the administration does not interpret 10 U.S.C. § 331, § 127e, or § 333 to provide statutory authorization for the use of military force.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. REX TILLERSON, SECRETARY OF STATE, BY SENATOR BENJAMIN L. CARDIN

*Question.* Section 4(a) of the War Powers resolution requires that in the absence of a declaration of war, in any case in which “United States Armed Forces are introduced (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances,” the President must withdraw such forces within 60 days unless Congress has declared war or otherwise authorized their deployment. U.S. Forces in Niger are now, obviously, in an area in which imminent involvement in hostilities is clearly indicated by the circumstances of the attack on U.S. soldiers, and the resulting death of four of them, in early October. Does the administration now consider that the 60-day clock has begun, and if not, what is the legal reasoning behind this conclusion?

Answer. Consistent with the War Powers Resolution, the President previously reported the deployment of U.S. Armed Forces to Niger, including in a report submitted to Congress on June 6, 2017. The report of June 6, 2017, stated that there were approximately 645 U.S. military personnel deployed to Niger in support of our African partners’ counterterrorism operations in the Lake Chad Basin Region. Since submitting that report, the number of U.S. military personnel deployed to Niger has fluctuated consistent with operational requirements.

The October 4 ambush of U.S. and Nigerien forces was a tragic but isolated incident. It does not indicate imminent involvement of U.S. forces in further hostilities. Additionally, our assessment is that an ISIS group was responsible for that ambush. Operations against ISIS are authorized by the 2001 AUMF so would not be subject to the termination provision of the War Powers Resolution.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. REX TILLERSON, SECRETARY OF STATE, BY SENATOR TODD YOUNG

*Question.* I note that you spoke with the Burmese Armed Forces Commander-in-Chief on October 26 to discuss the Rohingya crisis. Can you please provide an update on the administration's efforts related to the situation in Burma?

*Answer.* This administration is undertaking significant efforts to ensure the violence and suffering end immediately, in addition to pursuing accountability for those responsible for human rights abuses. Our most pressing objectives are achieving protection for all local populations and meaningful, durable solutions for those who have been displaced, including the creation of conditions that will allow those displaced the chance to go home again voluntarily, in safety, and with dignity.

As part of those efforts, I traveled to Burma on November 15, where I met with high-level government officials, including State Counsellor Aung San Suu Kyi and Commander-in-Chief Senior General Min Aung Hlaing, and discussed ways forward on this crisis. While in Manila for the ASEAN-related summits, I met with numerous counterparts from across the region to coordinate efforts related to humanitarian assistance, repatriation of refugees, and accountability for abuses committed against members of communities in Rakhine State.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. REX TILLERSON, SECRETARY OF STATE, BY SENATOR ROBERT MENENDEZ

*Question 1.* You were recently quoted as saying "it's our view that we do not believe there is a future for the Assad regime, the Assad family." What implications does that have for U.S. policy in Syria? Are we actively engaged in a political dialogue that would remove Assad from power? With whom? How do you plan to promote this view with Russia and Iran? Will the United States actively seek to remove Assad from power? [If so] Under what authorities?

*Answer.* The United States believes a lasting peace in Syria ultimately means a Syria without Bashar al-Assad. That said, we do not seek the dissolution of the Syrian state, which would likely result in further chaos, violence, and instability. Nor is it ultimately a U.S. decision whether Assad stays or goes—that decision rests with the Syrian people. We will work to ensure that the Syrian people get that choice in a free and fair U.N.-supervised election.

Our priorities in Syria are defeating ISIS, countering malign Iranian influence, and de-escalating the Syrian conflict to create the necessary space for a political solution to the crisis. As part of our efforts to de-escalate violence, we reached the July 9, 2017 southwest ceasefire arrangement with Russia and Jordan, which is still largely holding. The United States, Russia, and Jordan signed a Memorandum of Principals in Amman on November 8, endorsed by Presidents Trump and Putin in Vietnam on November 10. We hope this arrangement, and other genuine efforts to de-escalate violence, will contribute to creating a better environment to negotiate a permanent political solution to the crisis.

As part of our diplomatic efforts, we are committed to the Geneva process and support a credible, U.N.-led political process to resolve the question of Syria's future. According to the U.N., it will host the next round of Geneva talks at the end of November or beginning of December, and we hope they will be another step towards implementing U.N. Security Council Resolution (UNSCR) 2254 and ending this crisis.

Russia voted for UNSCR 2254, which explicitly requested that the U.N. convene formal negotiations on a process for political transition between the regime and the opposition. And per UNSCR 2254, the Syrian parties were supposed to reach agreement on the shape of a transition within six months. President Putin reiterated Russia's commitment to a political transition and UNSCR 2254 in the joint statement our countries released November 10. Though the Russians continue to declare support for the efforts enshrined in UNSCR 2254, to date they have not used their influence to bring Assad to the negotiating table. Russia is concerned about terrorist threats emanating from Syria, which will continue as long as Assad remains in power. He has caused too much destruction in his country for Syria to return to or remain at peace under his leadership.

*Question 2.* Sanctions are one of the most powerful diplomatic tools we have, yet you have apparently eliminated the position of sanctions coordinator at the State Department. By systematically undermining crucial offices, are you pushing us into more inevitable conflicts?

Answer. Sanctions are a critical tool in supporting and advancing U.S. foreign policy and national security interests, and are fully integrated into all areas and levels of the Department diplomatic and policy activities. The State Department was at the forefront of coordinating and directing the use of sanctions as a tool of foreign policy before the Office of Sanctions Coordinator was established and remains a leader in the interagency. Dozens of officers within our Bureaus of Economic and Business Affairs (EB), Counter Terrorism (CT), International Security and Non-Proliferation (ISN), International Narcotics and Law Enforcement Affairs (INL), International Organizations (IO), Democracy Human Rights and Labor (DRL), and in every regional bureau and at countless posts overseas historically have, and continue to apply and implement the United States' sanctions commitments and obligations. These Bureaus work with the Policy Planning Staff (S/P) to continue to coordinate State Department sanctions activities with those of other departments and agencies, as well as foreign allies and partners. As long as sanctions remain a critical tool to advance foreign policy, the Department will continue to devote significant attention, personnel, and resources to sanctions policy, coordination, and implementation.

*Question 3.* As the fight to recapture territory held by ISIS seems to wind down, what are the standards and metrics you will use to determine the defeat of ISIS in Iraq and Syria?

Answer. Coalition-backed military operations have liberated over 90 percent of the territory ISIS once controlled in Syria and Iraq and freed an estimated 7.5 million people from ISIS's oppressive rule. Realizing that military operations while necessary are insufficient to achieve ISIS's enduring defeat, the U.S.-led Global Coalition to Defeat ISIS is committed to helping stabilize liberated communities and preventing ISIS's reemergence.

The United States and our Coalition partners are using several metrics to gauge the success of our efforts to militarily defeat ISIS and subsequently provide explosive remnant of war removal and stabilization assistance to enable the safe return of displaced persons and the restoration of essential services in liberated areas, in addition to humanitarian support for those affected by the conflict. First, ISIS has been unable to recapture a single inch of the over 103,000 square kilometers of territory liberated in Coalition-backed military operations, and which includes important cities such as Mosul, Fallujah, Ramadi, Tikrit, Tal Afar, Hawija, al-Qaim, Sinjar, Manbij, Tabqa, Shaddadi, and Raqqa. Second, the Coalition has trained-and-equipped over 122,000 members of the Iraqi Security Forces, to include the Iraqi Army, local and federal police, border guards, Kurdish Peshmerga, the Counter Terrorism Service, and local hold forces. The Coalition has also trained over 9,500 members of the Syrian Arab Coalition, the Arab element of the Syrian Democratic Forces, and over 2,000 members of the Raqqa Internal Security Force. These forces will be a vital component of our partnered forces' efforts to combat a likely ISIS insurgency in the weeks, months, and even years ahead. Third, Coalition-funded, Government of Iraq-led, United Nations Development Programme-implemented stabilization assistance has helped facilitate the safe and voluntary return of more than 2.6 million internally displaced Iraqis. Similarly, in Syria we are working with an array of local actors including the Raqqa Civilian Council to coordinate and implement stabilization programming. The longer it takes to establish the conditions that allow for the return or local integration of internally displaced persons (IDPs), the higher the risk for a potential re-emergence of ISIS or another violent extremist organization. We will continue to work with the Government of Iraq and Prime Minister Abadi in particular to ensure local authorities and beneficiary populations are included in the provision of humanitarian assistance and the implementation of stabilization projects to bolster trust between Iraqi citizens and the central government.

*Question 4.* What is your assessment of the ISIS threat[s] after the[y] lose their territory? Where will ISIS fighters go and what tactics will they employ? Is there a threat of ISIS fighter rebranding?

Answer. Despite losing over 90 percent of the territory it once controlled in Syria and Iraq, ISIS remains a capable adversary with the ability to conduct offensive operations in a number of areas of Iraq and Syria. The group also maintains its ability to direct, enable, and inspire external operations outside of Iraq and Syria.

ISIS maintains control over the city of Albu Kamal, pockets of territory in other areas of Syria, and a sizeable presence north of the Euphrates River in Syria's Deir Ez-Zour province. ISIS similarly maintains control over a small segment of territory in Iraq's Anbar province along the Euphrates River Valley, including the town of Rawa on the northern bank of the Euphrates River. The overall force strength of

ISIS in Iraq and Syria is approximately 1,500-3,000 fighters, though this number has likely been reduced further by recent military operations.

As ISIS loses territory in Iraq and Syria, ISIS is likely to evolve into a more traditional insurgency group, shifting tactics from larger, conventional operations to asymmetric guerrilla and terrorist attacks to sow instability. ISIS fighters in Syria and Iraq are still able to conduct improvised explosive device (IED), vehicle-borne improvised explosive device (VBIED), suicide, mortar, sniper, and small-arm attacks. They have also used unsophisticated, commercially-available unmanned aerial vehicle (UAV) technology to drop munitions from the air in harassing attacks, and rudimentary chemical weapons largely for psychological effect. And they maintain the capability to radicalize and recruit foreign sympathizers using the internet and other media. Furthermore, ISIS has deliberately hidden large numbers of IEDs and other unexploded munitions in territory it has fled, which will complicate stabilization efforts and likely continue to cause significant civilian casualties, damage cities, and incite apprehension.

ISIS is also a global phenomenon, unconstrained by international boundaries. In the Lake Chad Region, Yemen, North Africa and the Sahel, East Africa, and the Philippines, ISIS branches, affiliates, and sympathizers will continue to carry out terrorist attacks and look to recruit and radicalize potential followers. The U.S. Government will continue to work with local, regional, and international partners to degrade these individuals and cells, regardless of their location, and work to ensure they are unable to direct or enable attacks against the U.S. homeland, U.S. persons, or U.S. interests. Our security partnerships will persist beyond near-term battlefield victories to ensure our partners are able to effectively counter any new insurgency and to ensure ISIS is unable to re-emerge. Our Intelligence Community will continue to track the movement of ISIS fighters both inside Iraq and Syria and around the world.

The Global Coalition to Defeat ISIS is committed to ISIS's enduring defeat. Realizing that military operations are necessary, but alone insufficient to achieve that objective, the Coalition will remain engaged with our partners on the ground in Iraq and Syria to help stabilize liberated communities and prevent ISIS's reemergence. The United States Government, alongside our Coalition partners, will continue to engage in bilateral, regional, and international efforts to eliminate ISIS and ISIS facilitation networks.

*Question 5.* Is there a point at which you will run out of authorities to legally remain in Iraq—or Syria— if ISIS, al-Qaeda, Jabhat Fateh Al-Sham, or any other affiliate groups have been driven from their previously held territory?

Answer. As a matter of domestic law, the 2001 Authorization for Use of Military Force (AUMF) and the 2002 AUMF authorize the U.S. use of military force against ISIS in Iraq. As a matter of international law, the United States is using force against ISIS in Iraq at the request of and with the consent of the Government of Iraq.

In Syria, the 2001 AUMF and, in certain circumstances, the 2002 AUMF authorize the use of force in Syria against al-Qaeda in Syria and ISIS. As a matter of international law, the United States is using force in Syria against ISIS and is providing support to Syrian partners fighting ISIS in the collective self-defense of Iraq (and other states) and in U.S. national self-defense. The United States is also using force in Syria against al-Qaeda in self-defense of the United States.

These domestic and international legal bases for U.S. military operations in Iraq and Syria do not depend on ISIS's, or any other group's, physical control of territory. Whether and to what extent the United States would have legal authority to undertake specific military actions in Iraq and Syria in the future would necessarily depend upon the facts and circumstances of a specific situation.

*Question 6.* In Iraq, how do you determine which groups within the Popular Mobilization Forces are taking orders from Iran?

Answer 6. We are under no illusions about the destabilizing nature of Iran's activities in the region. To the extent that Iran pursues policies in Iraq that heighten sectarian tensions and undermine Iraqi sovereignty, we remain committed to helping the Government of Iraq (GoI) counter these activities.

The Popular Mobilization Forces (PMF) are part of the Iraqi Security Forces (ISF), reporting to the Prime Minister's Office. Over 40 groups are part of the PMF, many of them Shia, but also Sunni, Christian, and Yazidi.

Some PMF groups are openly close to Iran, and we monitor this closely. The United States carries out extensive vetting of all ISF units and their leaders before delivering any training or equipment. We do NOT provide support to groups or forces that are designated terrorist organizations, responsible for gross violations of human rights, or that are not under the full control of the GoI.

*Question 7.* What is the U.S. policy on demobilizing the PMF after ISIS is defeated in Iraq?

Answer. We agree with Prime Minister Abadi on the importance of ensuring that all participants in the shared fight against ISIS are under the control of the GoI and held to the same standards of accountability. We will support the GoI as it continues to reform its security sector, and begins to demobilize some PMF elements and make others a part of the Iraqi Army, Federal Police, or other security structures and institutions under the full control of the Iraqi state.

*Question 8.* Does PMF involvement in Kurdish majority areas threaten stability and civilian protection in these areas?

Answer. We remain concerned about the potential for violence between ISF and Kurdistan Regional Government (KRG) forces following the KRG's unconstitutional and ill-advised independence referendum. We continue to urge all parties in Iraq to halt any uncoordinated movement in disputed areas, and we are encouraged that parties have begun dialogue on establishing Federal authority at international border crossings. We expect enhanced military coordination will lead to constructive dialogue on a host of issues, from establishing joint security and administrative mechanisms in disputed territories to oil revenue sharing.

We have and will continue to express our concerns with undisciplined elements of the PMF having security responsibility in sensitive disputed areas or around minority communities. We continue to urge Iraqi leaders to withdraw PMF from these areas and replace them with Iraqi Army and local police units.

*Question 7:* As Iran's influence continues to grow in Syria, what measures would we take if Iran attacked U.S.-backed forces there? [If so] Under what authorities?

Answer. The efforts of the U.S.-led Global Coalition to Defeat ISIS in Syria are aimed at the defeat of ISIS. The United States does not seek to fight the Syrian Government or pro-Syrian-Government forces, including Iran.

The 2001 Authorization to Use Military Force (AUMF) authorizes the use of force against al-Qaeda and associated forces, including against ISIS, including in Iraq and Syria. The 2001 AUMF also provides authority to use force to defend U.S., Coalition, and partner forces engaged in the campaign to defeat ISIS to the extent such use of force is a necessary and appropriate measure in support of these counter-ISIS operations.

As a matter of international law, the United States is using force in Syria against al-Qaeda and associated forces, including against ISIS, and is providing support to Syrian partners fighting ISIS, such as the Syrian Democratic Forces, in the collective self-defense of Iraq (and other States) and in U.S. national self-defense. Necessary and proportionate measures in self-defense include the use of force as needed to defend U.S., Coalition, and U.S.-supported partner forces engaged in the campaign to defeat ISIS from interference by Syrian Government and pro-Syrian Government forces.

*Question 9.* In August, Secretary Tillerson said that it appeared Russia was ramping up support of the Taliban in Afghanistan. Is the friend of our enemy our enemy as well? Does this make Russia our enemy in Afghanistan or more broadly? What authorities do you believe you have to respond to state-sponsored support of the Taliban and how would you use those authorities? What authorities would you seek?

Answer. Russia maintains relationships with the Afghan government and the Taliban in part to hedge against instability in Afghanistan and in part to undermine U.S. influence in the region. Russia seeks to justify its relations with the Taliban by claiming it is to counter ISIS, promote a peace process, and protect Russian diplomatic personnel.

Our conditions-based South Asia Strategy is a strong rebuke to Russia's Taliban hedging strategy. We have made it clear the United States will stay in Afghanistan as long as it takes to ensure a peace agreement that ends the conflict and prevents Afghanistan from ever again becoming a safe haven for transnational terrorist groups. We will continue to engage all regional actors, including Russia, to reinforce the fact that the only way to promote security, including countering transnational terrorist groups, is to fully support the Afghanistan government and its security forces.

I am not aware of any additional authorities the State Department needs to respond to foreign support to the Taliban. We have made it clear to all parties in the region—Iran and Russia, in particular—that hedging behavior through support to the Taliban only undermines security in the region. Support to the Taliban's military capacities is especially dangerous and destabilizing. We will counter any and all support to the Taliban.

*Question 10.* Our military leaders generally agree that the best investments we can make into preventing war start with a robust diplomacy and development budget.

You submitted a budget with deep cuts to critical diplomatic initiatives and development efforts. The President has not provided a nomination for an Ambassador to South Korea—our most crucial ally as we seek to confront an aggressive North Korea. You shuttered the office of the Special representative for Afghanistan and Pakistan:

- What are the implications for cuts to the State Department? What are the implications for less than a fully staffed diplomatic presence in places like Iraq and Afghanistan?

Answer. The President's FY 2018 budget request prioritizes the well-being of Americans, bolsters U.S. national security, secures our borders, and advances U.S. economic interests. Within those priorities, the State Department's mission is focused on protecting our citizens at home and abroad, as well as advancing the economic interests of the American people.

Ensuring the security and prosperity of the American people and advancing our values has necessitated difficult tradeoffs in our budget. The State Department and USAID's FY 2018 budget request acknowledges that our operations must become more efficient, that our assistance must be more effective, and that our primary mission must always be advocating for the national interests of our country. Global challenges cannot be met by governments alone, and no longer rely so heavily on the United States. The FY 2018 request expects greater leveraging of U.S. dollars, along with increased efficiency and effectiveness of each dollar. In addition, the request expects that the private sector and countries themselves make better use of their own investments for development.

The FY 2018 budget request reorients our foreign assistance to the most critical priorities, which means revisiting where and at what level we provide assistance. If no bilateral funding is requested for a particular country, in some cases we are leveraging prior-year funds to continue some support. In other cases we may utilize funds from a regional line to support activities in a particular country.

Chargé d'Affaires Marc Knapper is leading our diplomatic mission in the Republic of Korea and the Secretary has full confidence in him. Mr. Knapper is a Korea expert with extensive experience working on Korea issues.

On November 18, 2016, the Department notified to Congress our intent to merge the U.S. Special Representative for Afghanistan and Pakistan (SRAP) into the Bureau of South and Central Asian Affairs (SCA). Subsequent to the November 18, 2016 notification, SCA has assumed the functions and staff of SRAP and coordinates across the government to meet U.S. strategic goals in the region.

Consistent with past practice, U.S. staffing abroad is driven by foreign policy priorities and weighed against risks to personnel, as well as the availability of resources to support the U.S. mission. Regarding staffing in Afghanistan and Iraq, staffing levels remain largely consistent with prior years.

*Question 11.* If the United States suffered a state-sponsored massive cyber-attack, how would we respond? Do the Departments of Defense and State have in place response plans to cyber-attacks? How should Congress authorize those responses? Should we measure cyber-attacks on a scale? Would an attack on the energy grid of a major city merit the same response as an attack on a nuclear facility? On a voter database?

Answer. The United States responds to cyber threats through a whole-of-government approach that leverages the full range of U.S. Government capabilities—diplomatic, economic, law enforcement, technical, and military.

The Department of Defense (DoD) maintains a deliberate planning process to prepare for the defense of the Nation across all domains, including cyberspace. DoD's plans and actions are always in support of the larger foreign policy and diplomatic efforts of the U.S. Government.

The Department of State supports interagency efforts to address cyber incidents that rise to the level of a national security concern by providing foreign policy guidance on appropriate responses, building support among foreign governments for such responses and, where appropriate, delivering messages of warning to potential adversaries.

The U.S. Government evaluates malicious cyber activities on a case-by-case basis precisely because, as your questions highlight, the appropriateness of a response is dependent on the specific facts and context of the particular malicious cyber activity in question. Factors to be assessed include the scope, scale, and impact of the activity; the entities targeted; the actor that executed the activity; and any broader con-

text from the international security environment. The loss of life and threats to public health and safety obviously raise the greatest concern.

When evaluating a cyber attack to determine the appropriate response, it is the effects of the attack, and not the instrument used to carry it out, that matters. If cyber operations cause effects that, if caused by traditional physical means, would be regarded as a use of force, then such cyber operations would likely also be regarded as a use of force.

Moreover, there need not be loss of life for a response to be merited. As we have seen during the past 18 months, our adversaries are seeking to act below the threshold of the use of force. To the extent that adversary cyber activity seeks to undermine U.S. national security interests the United States reserves the right to respond appropriately and proportionately at a time and place of its choosing by using any instrument of national power on land, in the air, at sea, in space or cyberspace.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. REX TILLERSON, SECRETARY OF STATE, BY SENATOR ROB PORTMAN

*Question 1.* Secretary Tillerson, do you still support providing defensive lethal military assistance to the Ukrainian armed forces? What is the status of this decision?

Answer. In response to Russian aggression, the United States has committed more than \$750 million in security assistance since 2014 to provide training and equipment to help Ukraine defend its sovereignty and territorial integrity, better monitor and secure its borders, and deploy its forces more safely and effectively.

The United States and partners also established a Multinational Joint Commission to coordinate international security assistance efforts and identify capability gaps. We will continue to use grant military assistance to build Ukraine's capabilities by investing in our ongoing Joint Multinational Training Group—Ukraine, defense reform and institutional advisors, secure communications, intelligence, surveillance, and reconnaissance, maritime domain awareness, counter-mortar/counter-artillery radars, night vision devices, HMWWVs, medical, and related sustainment and training.

*Question 2.* Is the State Department taking a lead role in implementing the administration's new Afghanistan strategy? Where are the State Department and USAID focusing their efforts in Afghanistan?

Answer. The State Department is taking the diplomatic lead to encourage a peaceful political settlement in Afghanistan. We have made significant progress in Afghanistan since 2001—on security, governance, socio-economic development, and regional integration—but the country remains fragile. To cement this progress, we have focused on building and strengthening the Afghan government led by President Ashraf Ghani and Chief Executive Abdullah Abdullah. In conjunction with our new strategy, and at the initiative of President Ghani, the Afghan government developed the Kabul Compact to monitor priority reforms in four key sectors: governance, economic development, the peace process, and security. We meet regularly with the Afghan government to assess progress on these reforms. We are particularly focused on supporting the Afghan government's effort to hold parliamentary elections scheduled for 2018 and a Presidential election in spring 2019.

In my recent visit to South Asia, I explained the President's South Asia strategy to leaders in Afghanistan, Pakistan, and India and reviewed what these countries could do to support it. We are working closely with our allies and partners to continue strong international support for the Afghan government and its security forces to help create the environment necessary to sustain peace. On October 16, we held the sixth meeting of the Quadrilateral Coordination Group (QCG) with Afghanistan, China, and Pakistan, to promote Afghanistan-Pakistan cooperation and align efforts in support of a peace process. The State Department leads the U.S. delegations to several international fora intended to renew and align international support for Afghanistan, including the Heart of Asia/Istanbul Process, the Regional Economic Cooperation Conference on Afghanistan, and the Kabul Process Conference.

USAID is developing strategies in Afghanistan and Pakistan to support the broad vision outlined in the South Asia strategy. The new USAID development strategy for Afghanistan will advance U.S. national security interests, and complement the efforts of the Departments of Defense and State to strengthen the government's ability to be an effective counterterrorism partner. The strategy aims to reduce Afghanistan's reliance on donor assistance, improve the country's stability, and en-

hance the accountability of our assistance. It focuses on increasing the government's revenue base by enabling private sector-led economic growth, strengthening service delivery in government-controlled areas, and helping Afghanistan sustain its gains in health, education, and women's empowerment.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. REX TILLERSON, SECRETARY OF STATE, BY SENATOR JEANNE SHAHEEN

*Question 1.* Earlier this summer, the Department of State briefed committee staff on your goals for the proposed reorganization of the State Department. At that time, Department officials stated that it was the intention of the Department to reduce the number of positions at the Department by at least 2,000 over the coming years. Can you confirm that this is still your intention? How does the Department intend to achieve those personnel reductions?

Answer. Yes, that is still our intention. The Department developed a workforce reduction plan consistent with OMB guidance. The plan consists of voluntary attrition, some strategic hiring, and incentivized attrition (e.g. buyouts) of approximately 641 voluntary early retirement authority and/or voluntary separation incentive payments (VERA/VSIP). VERA/VSIP plans must be approved by OPM and OMB. Foreign and Civil Service hiring (intake planning) is based on replacing less than 100 percent of projected attrition. In both cases, we believe this measured approach to hiring reflects a careful balance of workforce continuity and stability within the overarching context of the Department's ongoing workforce reductions.

For the Foreign Service, intake planning figures were developed to ensure that sufficient numbers of new entry level Foreign Service personnel are available to fill critical overseas postings and, over the course of their careers, fill higher level positions in our most critical Generalist and Specialist skill categories. Civil Service intake focuses hiring on those mission critical occupations that provide important policy development and program support here in Washington and in concert with our colleagues serving overseas.

*Question 2.* What is the current and anticipated intake of new entry-level Foreign Service generalists and specialists? What is the status of the State Department's hiring freeze and the rationale for its continuation?

Answer. The Department is continuing with strategically managed hiring while we undertake a comprehensive redesign of the Department in order to ensure strategic alignment. This is a temporary measure while a thorough review of the entire State Department is conducted. This initiative will direct sound decisions on how to best strengthen the institution and enhance our diversity. At the same time, we are committed to preserving future leadership pipelines and will continue to assess and hire Foreign Service candidates.

On September 18 we swore in the 192nd A-100 class for Foreign Service Officers and the 147th Foreign Service specialist class, comprised primarily of diplomatic security special agents and medical professionals. In Fiscal Year (FY) 2017, the State Department brought on board the following new Foreign Service personnel:

- 220 Foreign Service Officers
- 254 Foreign Service Specialists
- 126 Consular Fellows (limited non career appointments)
- 7 Medical and PEPFAR-related limited non career appointments Recruitment and assessment of candidates continues in order to preserve a future mid-level and leadership pipeline of talented and diverse Foreign Service Officers and Specialists, as well as to meet current entry-level needs overseas. Strategically managing hiring remains a priority for FY 2018, with a goal of onboarding the following number of new Foreign Service personnel:
- 101 Foreign Service Officers of whom 55 are Pickering and Rangel Fellows
- 91 Foreign Service Specialists

Additionally in accordance with EO 13870, the Department plans to onboard in FY 2018:

- 281 Consular Fellows (limited non-career appointments)

*Question 3.* Please provide the numbers of employees that have departed the State Department in 2016 and to date, for 2017. Please break those numbers down by month and by civil service versus Foreign Service. Do not include political appointments or Schedule B positions in the count.

Answer. Department of State loss<sup>1</sup> counts for career full-time permanent employees in FY 16 and FY 17 as of September 30, 2017 are provided in the table below. These counts exclude non-career losses including limited and political appointments.

DEPARTMENT OF STATE LOSS COUNTS FOR CAREER  
FULL-TIME PERMANENT EMPLOYEES

Month	FY 2016			FY 2017		
	Foreign Service	Civil Service	Total	Foreign Service	Civil Service	Total
Oct	36	84	120	30	63	93
Nov	61	42	103	56	53	109
Dec	37	74	111	43	75	118
Jan	24	93	117	36	113	149
Feb	25	43	68	18	47	65
Mar	21	54	75	24	73	97
Apr	55	88	143	50	47	97
May	21	38	59	24	50	74
Jun	36	59	95	42	56	98
Jul	39	60	99	*38	*45	*83
Aug	53	54	107	*35	*71	*106
Sep	124	74	198	*118	*49	*167
Total	532	763	1295	*514	*742	*1256

\* Preliminary counts as transactions may still be in process.

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. REX TILLERSON, SECRETARY OF STATE, BY SENATOR TIM KAINE

*Associated Forces*

*Question 1.* Can you please detail and list all the groups that have been deemed associated forces under the 2001 AUMF and all the locations where the U.S. military is involved under the 2001 AUMF? How many of these associated forces are engaged in hostilities against the United States, its Armed forces, or personnel? Which of these associated forces present a direct threat to the United States? Is there a single source that Congress can access to find up to date information on this question?

Answer. The U.S. military is currently taking direct action against the following individuals and groups under the authority of the 2001 Authorization for Use of Military Force (AUMF): 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 Syria; and ISIS.

During the Trump administration, the United States has used military force pursuant to the 2001 AUMF in Afghanistan, Cuba (detention operations), Iraq, Libya, Somalia, Syria, Niger, and Yemen.

As a matter of international law, the United States is in an ongoing non-international armed conflict with these groups and individuals and is engaged in hostilities against them. Counterterrorism operations against these individuals and groups are undertaken in furtherance of U.S. national self-defense and, in some cases, also in collective self-defense of partner States such as Iraq. The administration is committed to keeping Congress timely and fully informed of uses of military force pursuant to the 2001 AUMF, including in periodic reports submitted consistent with the War Powers Resolution.

*Question 2.* Please detail the process for which a new group is identified and approved as an associated force under the 2001 AUMF. Does such determination trigger a requirement to notify or brief Congress?

<sup>1</sup> Losses include retirements, non-retirement separations, and conversion between the Foreign Service and Civil Service.



Answer. A determination of whether a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group's organization, links with al-Qaeda or the Taliban, and participation in al-Qaeda's or the Taliban's ongoing hostilities against the United States or its coalition partners.

The administration periodically briefs members of Congress about U.S. operations against these groups and the legal basis for these operations.

*Question 3.* The administration considers ISIS an associated force of al-Qaeda and thus covered under the 2001 AUMF (in addition to being covered under the 2002 AUMF). Though we disagree on this, I am further troubled by suggestions that the administration may be expanding its definition of associated forces to include ISIS affiliated militants or ISIS associated forces. Previously, an associated force need to be both: 1) an organized, armed group that has entered the fight alongside al-Qaeda, and 2) a co-belligerent with al-Qaeda in hostilities against the United States or its coalition partners. As such, not every group that commits terrorist acts is an associated force and not every group aligned with al-Qaeda is an associated force. Can you confirm that the administration does not consider forces that are affiliated or associated with ISIS as covered under the 2001 AUMF? Please provide the administration's current definition of associated forces.

Answer. The administration has not determined that the 2001 AUMF applies to any group solely on the basis that the group is an "associated force" of ISIS. Although branches of ISIS have emerged in locations outside Iraq and Syria, we regard those branches in a number of locations as being part of ISIS.

The Government's definition of associated forces remains unchanged from the prior administration.

#### *Coalition Partner*

*Question 4.* Can you confirm that the current number of countries in the counter-ISIS coalition is currently 69? Do you believe the U.S. currently has the authority to undertake military action, outside of treaty obligation, to protect all of these countries in hostilities with al-Qaeda through U.S. military operations?

Answer. There are currently 70 countries in the Defeat-ISIS Coalition. Whether and to what extent the United States would have legal authority to undertake military action in defense of another country would necessarily depend upon the facts and circumstances of a specific situation. Of course, as the administration has previously reported, the 2001 AUMF provides the authority to use force to defend U.S. and Coalition forces engaged in the campaign to defeat ISIS to the extent such use of force is a necessary and appropriate measure in support of counter-ISIS operations.

#### *Syria Strikes*

*Question 5.* In April, Representative Schiff and I sent a letter to the President asking for the administration's legal justification for the April 6th strike against the Shayrat military airbase in Syria. I asked General Dunford the same question and he stated he would get back to me. To date, I still have not received a response. Can you please provide me with the legal justification under domestic and international law for these airstrikes?

Answer. The April 6 U.S. missile strike on Shayrat airfield in Syria was not based on the authority of the statutory authorizations for use of military force that we have been discussing at this hearing. The President authorized that strike pursuant to his power under Article II of the Constitution as Commander in Chief and Chief Executive to use this sort of military force overseas to defend important U.S. national interests. The U.S. military action was directed against Syrian military targets directly connected to the April 4 chemical weapons attack in Idlib and was justified and legitimate as a measure to deter and prevent Syria's illegal and unacceptable use of chemical weapons.

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### RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO HON. JAMES MATTIS, SECRETARY OF DEFENSE, BY SENATOR BOB CORKER

#### *2001 and 2002 AUMF Repeal*

*Question 1.* If Congress decided to repeal the 2001 and 2002 Authorizations for Use of Military Force (AUMFs), and simultaneously provide a replacement AUMF that authorizes the President to use all necessary and appropriate force against the Taliban, al-Qaeda, ISIS, and associated forces (appropriately defined):

- What would be the legal consequences, and what other provisions of law would be impacted? Please be as specific as possible.
- How could Congress mitigate any negative legal consequences in a replacement AUMF and ensure a smooth transition to the new authority, including with respect to legacy detainees? If possible, please provide specific language.

Answer. The U.S. Government's response in litigation of habeas corpus petitions brought on behalf of certain detainees has expressly relied on the 2001 Authorization for Use of Military Force (AUMF). One of the principal concerns with repealing the 2001 and 2002 authorizations would be uncertainty regarding the effect of such a repeal on the ongoing detention of those individuals. To the extent that the Government would seek to continue detaining the individuals on the basis of any new AUMF, the applicability of any subsequent law could be subject to further litigation. The administration would need to review any proposed language that the committee might develop.

#### *2002 AUMF Repeal and 2001 AUMF Amendment*

*Question 2.* In the alternative, if Congress decided to repeal the 2002 AUMF and amend the 2001 AUMF to provide fresh authorization for the use of military force against the Taliban, al-Qaeda, ISIS, and associated forces (appropriately defined):

- What would be the legal consequences, and what other provisions of law would be impacted? Please be as specific as possible.
- How could Congress mitigate any negative legal consequences with an amended 2001 AUMF and ensure a smooth transition, including with respect to legacy detainees? If possible, please provide specific language.

Answer. Amendment of the 2001 Authorization for Use of Military Force (AUMF) could present similar concerns as a repeal and replacement of that law, including that it could result in a need to re-litigate the lawfulness of the detention of certain individuals who are currently detained under the 2001 AUMF. The administration would need to review the specific language of any proposed legislation.

#### *Associated Persons or Forces*

*Question 3.* In a letter to Senate leaders earlier this year, you and Secretary Tillerson expressed concern about the definition of "associated persons or forces" in S.J. Res. 43, which you stated is "inconsistent with the standard applied by the Executive Branch and which could result in unnecessary uncertainty regarding its scope."

- What is the "standard applied by the Executive Branch" to which you referred in your letter?
- If the administration does not support the definition of "associated persons or forces" in S.J. Res. 43, what definition does the administration recommend for a new AUMF?

Answer. The Executive Branch has described a concept of "associated forces" in interpreting and applying the 2001 Authorization for Use of Military Force (AUMF). It requires, first, that the entity be an organized, armed group that has entered the fight alongside al-Qaeda or the Taliban and, second, that the group be a co-belligerent with al-Qaeda or the Taliban in hostilities against the United States or its coalition partners. In the context of detention, the Executive Branch has described the 2001 AUMF as applying to people who are part of or substantially support such groups.

#### *2002 AUMF Repeal*

*Question 4.* Does your Department have any legal or policy concerns with repealing the 2002 AUMF? If yes, please explain.

Answer. Although the threat posed by Saddam Hussein's regime in Iraq was the primary focus of the 2002 Authorization for Use of Military Force (AUMF), the statute, in accordance with its express goals, has always been understood to authorize the use of force for the related dual purposes of helping to establish a stable Iraq and of addressing terrorist threats emanating from Iraq. After Saddam Hussein's regime fell in 2003, the United States continued to take military action in Iraq under the 2002 AUMF to further these purposes, including action against al-Qaeda in Iraq (now known as the Islamic State of Iraq and Syria (ISIS)). Then, as now, that organization posed a terrorist threat to the United States and its partners and undermined stability and democracy in Iraq. The 2002 AUMF thus continues to provide authority for military operations against ISIS in Iraq and, to the extent necessary to achieve these purposes, elsewhere, including in Syria.

*Additional Authorizations for Use of Military Force*

*Question 5.* Does your Department construe any of the following provisions of existing law as an Authorization for Use of Military Force? If yes to any, please specify and explain the interpretation.

- Authorization of the Secretary of Defense to provide support for friendly foreign countries (10 U.S.C. § 331).
- Authorization of the Secretary of Defense to support for foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing military operations by United States special operations forces to combat terrorism (10 U.S.C. § 127e).
- Authorization of the Secretary of Defense to conduct or support a program or programs to provide training and equipment to the national security forces of one or more foreign countries for the purpose of building the capacity of such forces to conduct one or more of the following (10 U.S.C. § 333):
  1. Counterterrorism operations.
  2. Counter-weapons of mass destruction operations.
  3. Counter-illicit drug trafficking operations.
  4. Counter-transnational organized crime operations.
  5. Maritime and border security operations.
  6. Military intelligence operations.
  7. Operations or activities that contribute to an international coalition operation that is determined by the Secretary to be in the national interest of the United States.

*Answer.* The provisions of Title 10 cited in your question provide important authority for certain military activities that support counterterrorism operations and other aspects of U.S. national security, but they are not authorizations to use military force.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. JAMES MATTIS, SECRETARY OF DEFENSE, BY SENATOR BENJAMIN L. CARDIN

*Section 4(a) of the War Powers Resolution*

*Question.* Section 4(a) of the War Powers resolution requires that in the absence of a declaration of war, in any case in which “United States Armed Forces are introduced (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances,” the President must withdraw such forces within 60 days unless Congress has declared war or otherwise authorized their deployment. U.S. Forces in Niger are now, obviously, in an area in which imminent involvement in hostilities is clearly indicated by the circumstances of the attack on U.S. soldiers, and the resulting death of four of them, in early October. Does the administration now consider that the 60-day clock has begun, and if not, what is the legal reasoning behind this conclusion?

*Answer.* The October 4th ambush of U.S. and Nigerien forces was a tragic but isolated incident. It does not indicate imminent involvement of U.S. forces in further hostilities. Additionally, our assessment is that an ISIS group was responsible for that ambush. Operations against ISIS are authorized by the 2001 Authorization for Use of Military Force so would not be subject to the termination provision of the War Powers Resolution.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. JAMES MATTIS, SECRETARY OF DEFENSE, BY SENATOR JEFF FLAKE

*Operations Authorized by 2002 AUMF*

*Question.* In your prepared remarks and during the question and answer period of the hearing, you repeatedly referenced the need to maintain the authorities provided in both the 2001 and 2002 authorizations for the use of military force (PL 107-40, and PL 107-243, respectively). The 2002 law provides that, “The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to 1) defend the national security of the United States against the continuing threat posed by Iraq, and 2) enforce all relevant United Nations Security Council resolutions regarding Iraq.”

- Given the regime change that has taken place in Iraq following the U.S. invasion in 2003, what utility does PL 107–243 continue to serve?
- What U.S. military operations are currently taking place inside Iraq that rely on the authority provided in PL 107–243?

Answer. The United States continues to rely on the 2002 Authorization for Use of Military Force (AUMF) Against Iraq Resolution, along with the 2001 AUMF, as part of the domestic legal basis for conducting military operations against the Islamic State of Iraq and Syria (ISIS) in Iraq and Syria. Although the threat posed by Saddam Hussein's regime in Iraq was the primary focus of the 2002 AUMF, the statute, in accordance with its express goals, has always been understood to authorize the use of force for the related dual purposes of helping to establish a stable Iraq and of addressing terrorist threats emanating from Iraq. After Saddam Hussein's regime fell in 2003, the United States continued to take military action in Iraq under the 2002 AUMF to further these purposes, including action against al-Qaeda in Iraq (now known as ISIS). Then, as now, that organization posed a terrorist threat to the United States and its partners and undermined stability and democracy in Iraq. The 2002 AUMF continues to provide authority for military operations against ISIS in Iraq and, to the extent necessary to achieve these purposes, elsewhere, including in Syria. The 2002 AUMF also provides authority to respond to threats to U.S. national security from Iraq that may re-emerge in the future and that may not be covered by the 2001 AUMF. The repeal of the 2002 AUMF could call into question the President's authority to use military force to assist the Government of Iraq both in the fight against ISIS and in stabilizing Iraq following the destruction of ISIS's so-called caliphate.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. JAMES MATTIS, SECRETARY OF DEFENSE, BY SENATOR ROBERT MENENDEZ

*Defeating ISIS*

*Question 1.* As the fight to recapture territory held by ISIS seems to wind down, what are the standards and metrics you will use to determine the defeat of ISIS in Iraq and Syria?

Answer. The Islamic State of Iraq and Syria (ISIS) will be militarily defeated when it is unable to plot and carry out attacks against the United States, and when local security forces are capable of pursuing the group's underground networks. The coalition has liberated more than 90 percent of ISIS-held territory, its plotters are on the run, and fewer fighters are flocking to its banner. However, the job is not done. ISIS will continue to pose a terrorist threat to the U.S. and our interests in the region, as it continues efforts to destabilize the region and direct or inspire external attacks. The coalition has played, and will continue to play, a vital role in supporting partners in Iraq and Syria as they secure their hard fought gains.

*ISIS Threat After Fall of Rocca*

*Question 2.* What is your assessment of the ISIS threat after the lose their territory? Where will ISIS fighters go and what tactics will they employ? Is there a threat of ISIS fighter rebranding?

Answer. The Islamic State of Iraq and Syria (ISIS) still poses a security threat in Iraq and Syria despite losing large amounts of territory to Iraqi, pro-Syrian regime, and Coalition forces. ISIS probably is giving priority to clandestine operations to plot attacks to degrade local governance and security and maintain the group's legitimacy. ISIS members who remain loyal to the group may provide administrative or logistic support to these networks. Members who have become disillusioned by ISIS's apparent defeat probably will attempt to reintegrate into their communities. In areas such as Baghdad, Kirkuk, and Diyala where it has robust networks, ISIS is conducting sophisticated operations, including IEDs, ambushes, or suicide attacks. ISIS could engage in some localized rebranding or alliances to preserve the group's security. The group has not changed its extremist ideology to allow alliances with more moderate groups and is tailoring its narrative to highlight that considerable setbacks are part of its preordained, multi-generational struggle.

*Authorities to Remain in Iraq or Syria*

*Question 3.* Is there a point at which you will run out of authorities to legally remain in Iraq—or Syria—if ISIS, al-Qaeda, Jabhat Fateh Al-Sham, or any other affiliate groups have been driven from their previously held territory?

Answer. The domestic and international legal bases for U.S. military operations in Iraq and Syria do not depend on the Islamic State of Iraq and Syria's, or any other group's, physical control of territory. Whether and to what extent the United States would have legal authority to undertake specific military actions in Iraq and Syria in the future would necessarily depend upon the facts and circumstances of a specific situation.

*Iraqi Popular Mobilization Forces*

*Question 4.* In Iraq, how do you determine which groups within the Popular Mobilization Forces in Iraq are taking orders from Iran? What is the U.S. policy on demobilizing the PMF after ISIS is defeated in Iraq? Does PMF involvement in Kurdish majority areas threaten stability and civilian protection in these areas?

Answer. I am under no illusions about the destabilizing nature of Iran's activities in the region. The Department remains committed to helping the Government of Iraq (GoI) counter Iranian policies that heighten sectarian tensions and undermine Iraqi sovereignty. The Popular Mobilization Forces (PMF) are part of the Iraqi Security Forces (ISF), reporting to the Prime Minister's Office. The PMF is composed of more than 40 groups, many of them Shia, but also Sunni, Christian, and Yazidi. The Department will support the GoI as it continues to reform its security sector, including the GoI's efforts to ensure all armed groups are under their full control. The presence of any sectarian forces in sensitive, disputed areas is unhelpful and destabilizing. The Department has convened military leaders from the Iraqi Security Forces and the Iraqi Kurdish Peshmerga to promote calm, ensure situational awareness, and encourage the establishment of joint security mechanisms to ease tensions and facilitate a broader political dialogue. I expect enhanced military coordination will facilitate constructive dialogue on a host of political issues, from disputed internal boundaries to oil revenue sharing.

*Iranian Actions in Syria*

*Question 5.* As Iran's influence continues to grow in Syria, what measures would we take if Iran attacked U.S.-backed forces there? Under what authorities?

Answer. The efforts of the U.S.-led Global Coalition to Defeat the Islamic State of Iraq and Syria (ISIS) in Syria are aimed at the defeat of ISIS. The United States does not seek to fight the Syrian Government or pro-Syrian-Government forces, including Iran. The 2001 Authorization for Use of Military Force (AUMF) authorizes the use of force against al-Qaeda and associated forces, including against ISIS, including in Iraq and Syria. The 2001 AUMF also provides authority to use force to defend U.S., Coalition, and partner forces engaged in the campaign to defeat ISIS to the extent such use of force is a necessary and appropriate measure in support of these counter-ISIS operations. As a matter of international law, the United States is using force in Syria against al-Qaeda and associated forces, including against ISIS, and is providing support to Syrian partners fighting ISIS, such as the Syrian Democratic Forces, in the collective self-defense of Iraq (and other States) and in U.S. national self-defense. Necessary and proportionate measures in self-defense include the use of force as needed to defend U.S., Coalition, and U.S.-supported partner forces engaged in the campaign to defeat ISIS from interference by Syrian Government and pro-Syrian-Government forces.

*Russian Support to the Taliban*

*Question 6.* In August, Secretary Tillerson said that it appeared Russia was ramping up support of the Taliban in Afghanistan. Is the friend of our enemy our enemy as well? Does this make Russia our enemy in Afghanistan or more broadly? What authorities do you believe you have to respond to state-sponsored support of the Taliban and how would you use those authorities? What authorities would you seek?

Answer. Reports of Russian support to the Taliban are puzzling because a destabilized Afghanistan is clearly not in Russia's interest. I understand the Department is looking at this issue carefully to determine where it is necessary to moderate any unhelpful Russian behavior. Russia and the United States have a shared interest in Afghanistan's stability. Russia's participation in the Afghan-led and owned peace process and contributions to regional stability would be welcome. However, I do believe state sponsors of terror need to be held fully accountable, and I would work closely with the State Department and other agencies to ensure we are exercising all necessary tools and authorities to increase the costs on states that sponsor support of the Taliban.

*State Department Cuts*

*Question 7.* Our military leaders generally agree that the best investments we can make into preventing war start with a robust diplomacy and development budget. You submitted a budget with deep cuts to critical diplomatic initiatives and development efforts. The President has not provided a nomination for an Ambassador to South Korea—our most crucial ally as we seek to confront an aggressive North Korea. You shuttered the office of the Special representative for Afghanistan and Pakistan. What are the implications for cuts to the State Department? What are the implications for less than a fully staffed diplomatic presence in places like Iraq and Afghanistan?

*Answer.* The Department of Defense strongly supports, and relies on, the Department of State's leading role in establishing and implementing U.S. foreign policy. The Department of State needs to be appropriately staffed and resourced in order to protect our country's national security. The Department of Defense relies on our diplomatic corps to help resolve disputes before they become military crises. State Department personnel likewise play an invaluable role in theaters of conflict, leading the important work of diplomacy, humanitarian relief, and development. The role of the Department of State is particularly critical in areas where we are seeking to negotiate a peace, build an enduring relationship, or manage a potential contingency, as is the case in places like the Korean Peninsula, Afghanistan, and Iraq. The Department of Defense and the Department of State must work together closely and be able to call upon their respective authorities and expertise to navigate today's challenging global security environment and protect U.S., allied, and partner interests around the world.

*Cyberattack Response*

*Question 8.* If the United States suffered a state-sponsored massive cyberattack, how would we respond? Do the Departments of Defense and State have in place response plans to cyberattacks? How should Congress authorize those responses? Should we measure cyberattacks on a scale? Would an attack on the energy grid of a major city merit the same response as an attack on a nuclear facility? On a voter database?

*Answer.* The United States responds to cyber threats through a whole-of-government approach that leverages the full range of U.S. Government capabilities—diplomatic, economic, law enforcement, technical, and military. The Department of Defense (DoD) maintains a deliberate planning process to prepare for the defense of the Nation across all domains, including cyberspace. DoD's plans and actions are always in support of the larger foreign policy and diplomatic efforts of the U.S. Government. The Department of State supports interagency efforts to address cyber incidents that rise to the level of a national security concern by providing foreign policy guidance on appropriate responses, building support among foreign governments for such responses and, where appropriate, delivering messages of warning to potential adversaries.

The U.S. Government evaluates malicious cyber activities on a case-by-case basis precisely because, as your questions highlight, the appropriateness of a response is dependent on the specific facts and context of the particular malicious cyber activity in question. Factors to be assessed include the scope, scale, and impact of the activity; the entities targeted; the actor that executed the activity; and any broader context from the international security environment. The loss of life and threats to public health and safety obviously raise the greatest concern.

When evaluating a cyber attack to determine the appropriate response, it is the effects of the attack, and not the instrument used to carry it out, that matters. If cyber operations cause effects that, if caused by traditional physical means, would be regarded as a use of force, then such cyber operations would likely also be regarded as a use of force. Moreover, there need not be the loss of life for a response to be merited. As we have seen during the past 18 months, our adversaries are seeking to act below the threshold of the use of force. To the extent that adversary cyber activity seeks to undermine U.S. national security and prosperity, the United States reserves the right to respond appropriately and proportionately at a time and place of its choosing with any of the instruments of national power, including the military and including cyberspace.

*Al-Qaeda-Iran Connection*

*Question 9.* CIA Director Pompeo was recently quoted as saying the al-Qaeda-Iran connection is an "open secret." Do you agree that the al-Qaeda-Iran connection is an open secret? Was he laying groundwork to expand operations against al-Qaeda into Iran?

Answer. It would be inappropriate for me to speculate on the intent of Director Pompeo's remarks.

*POTUS in the Chain of Command*

*Question 10.* Civilian control of the military is one of the most critical underpinnings of a free and democratic society. Regarding the recent attack in Niger, the President recently told reporters on Wednesday of last week that he had not specifically authorized that mission. He said, "I have generals—they are great generals. I gave them authority to do what's right so that we win. I want to win and we're going to win and we're beating ISIS very badly... as far as the incident we're talking about I've been seeing it just like you've been seeing it.. They have to meet the enemy and they meet them tough and that's what happens." In your view, where does the chain of command begin and end? In other words—where does the buck stop with authorizing military operations?

Answer. The President of the United States is the Commander-in-Chief of the U.S. Armed Forces. The President delegates authority, through the military chain of command, to conduct a wide range of military operations.

*Rules of Engagement*

*Question 11.* In general, it seems that thus far, the President has largely continued policies of the Obama administration and claimed new ideas for fighting ISIS. On October 17, and other times as well, the President stated: "I totally changed rules of engagement. I totally changed our military, I totally changed the attitudes of the military and they have done a fantastic job." I understand the President sent a memo on January 28 directing the DOD to develop a plan to defeat ISIS and asked for recommended changes to ROE. What are those changes? Could they put our troops more in harm's way? Do they change our approach to civilian casualties? Do the American people have a right to know under what terms our military is engaging in conflict, widely and ambiguously defined training missions, and other deployments?

Answer. The President's delegation of certain authorities to appropriate levels has allowed the Department to be more flexible and react more quickly to battlefield opportunities against the Islamic State of Iraq and Syria (ISIS) and threats to our forces. These adjustments have accelerated the territorial defeat of ISIS and allowed us to degrade the group's leadership and capabilities while keeping our forces safe and minimizing the risks to civilians. The military continues to take all feasible measures to minimize civilian harm in military operations. The use of force continues to be governed by the law of armed conflict, including the principles of proportionality, distinction, necessity, and humanity. The Department is committed to transparency and provides regular updates to Congress on the military mission and force levels in Iraq and Syria.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
SECRETARY OF DEFENSE HON JAMES MATTIS BY SENATOR TODD YOUNG

*Excess Infrastructure*

*Question.* In its FY 2018 Budget Request, the Department of Defense requested authority to conduct a Base Realignment and Closure (BRAC) round in fiscal year 2021. The proposal noted that "the Department has about 20 percent more infrastructure capacity than required for its operations." What are the implications for readiness and modernization if the services are required to maintain infrastructure they don't need?

Answer. Like any business, maintaining excess infrastructure denies the Department the opportunity to spend funds on higher priorities. The Department requested a Base Realignment and Closure (BRAC) round for 2021 to provide a means to align infrastructure with force structure and to station our forces to enhance their capabilities and lethality. The Department is developing a new National Defense Strategy, and it must be supported by an updated basing strategy. Without BRAC, the Department cannot station forces as effectively as possible because we are locked into a status quo configuration, thereby negatively affecting readiness. I must be able to eliminate excess infrastructure in order to shift resources to readiness and modernization. The billions in annual recurring savings—otherwise wasted on

unnecessary infrastructure—could be applied directly to readiness (e.g. more training) and modernization (e.g. investing in next generation weapons systems).

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. JAMES MATTIS, SECRETARY OF DEFENSE, BY SENATOR JEANNE SHAHEEN

*Euphrates River Valley*

*Question.* Secretary Mattis, I agree with you when you said that Syria is “the most complex battlefield.” Also in your response to my question, you said that the United States will continue to clear the Euphrates River Valley. You specifically said that our military will move toward Mayadin. Reports, however, indicate that Assad’s regime forces and the Russians are in that area. What are the differences between regime’s goals in Mayadin and for the greater Euphrates River Valley, and U.S. goals? If we have similar goals, why is deconfliction necessary? If we have differing goals, how do we trust that the diplomatic process that you laid out will work?

*Answer.* The Syrian Government’s motivation for operations in the Euphrates River Valley is no different than its motivation for operations in western Syria: to regain control over the fractured Syrian state and reassert President Assad’s will over the Syrian people. Although the Syrian Government is finally confronting the Islamic State of Iraq and Syria (ISIS), make no mistake—we are not working together with Syria or its partners, and they are not approaching this fight in a way that will prevent ISIS’ return. In contrast, we are working “by, with, and through” local partners to defeat ISIS militarily and secure, stabilize, and restore local governance in liberated areas to prevent ISIS’ return. De-confliction measures are necessary to reduce the risk of escalatory incidents and ensure the safety of coalition forces operating nearby. Through the established deconfliction channels with Russia, we are able to mitigate risk from pro-regime forces and preserve the operational safety of coalition and coalition-supported forces. De-confliction discussions between the United States and Russia thus far have been professional and constructive.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. JAMES MATTIS, SECRETARY OF DEFENSE, BY SENATOR JOHNNY ISAKSON

*E-8 Joint Surveillance Attack Radar System (JSTARS)*

*Question 1.* During the hearing, you mentioned that not only are the intelligence, surveillance, and reconnaissance (ISR) requirements not being met within U.S. Africa Command’s (AFRICOM) area of responsibility, but also that ISR requirements are not being met worldwide. This is understandable as the number of priority intelligence requirements far outnumber the number of platforms available. This is only further complicated by the continued decentralization of operations by violent extremist organizations. Despite this, however, the Air Force has indicated its desire to divest the E-8 Joint Surveillance Attack Radar System (JSTARS) in favor of synchronizing a host of other platforms to provide the same capabilities. JSTARS’ unique ability to provide battle management, command and control, and ISR capabilities through a single platform are unparalleled and divestment should strongly be reconsidered bearing in mind the collection gaps and ISR shortages that you stated. Do you recommend that the Air Force continue forward with the recapitalization of JSTARS rather than planned retirement in order to meet the ISR demands of AFRICOM and the other combatant commands?

*Answer.* The Department of Defense will continue to evaluate any changes to programs that support our warfighters with the full and open participation of the Combatant Commands. I believe we must modernize the required capabilities for battlefield management; command and control; and intelligence, surveillance, and reconnaissance. As in all low-density, high-demand capabilities, careful analysis and allocation of these limited actions are required. This is done through an extensive process that includes the participation of the Joint Staff, Combatant Commanders, and the Services.

*DPRK Artillery*

*Question 2.* Even without a nuclear weapon, North Korea (DPRK) has hundreds of conventional artillery pieces capable of attacking Seoul. The devastation there would be catastrophic and millions of lives would be lost. What capabilities do we



have in place to counter such an attack? Do we need additional resources and capabilities there to protect our Korean allies and the U.S. citizens that live within the range of DPRK artillery?

Answer. The United States and the Republic of Korea (ROK) continue to modernize the Alliance posture in order to deter and respond to any conventional or nuclear attack by the Democratic People's Republic of Korea (DPRK). This includes the U.S. steady-state presence of 28,500 U.S. forces, a layered ballistic missile defense architecture, and rotational deployment of top U.S. capabilities in and around the Korean Peninsula. Our extended deterrence commitment to the ROK remains steadfast, and we are committed to defending our allies using the full range of our capabilities—including the U.S. nuclear umbrella and conventional capabilities—against the DPRK. We have substantially bolstered our ballistic missile defense capabilities in the Asia-Pacific region in recent years with the deployment of an additional AN-TPY-2 (ballistic missile warning) radar to Japan, an increased number of deployed U.S. Navy Aegis Ballistic Missile Defense capable ships, Patriot PAC-3 ballistic missile defense upgrades in the ROK, and deployments of a Terminal High-Altitude Area Defense (THAAD) battery to Guam and the ROK. The U.S.-ROK Alliance decision to operationalize the THAAD battery is part of a continued effort to acquire critical military capabilities to ensure the defense of both U.S. and ROK forces and citizens living in the ROK from the increasing North Korean nuclear and ballistic missile threats.

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RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. JAMES MATTIS, SECRETARY OF DEFENSE, BY SENATOR TIM Kaine

*Associated Forces*

*Question 1.* Can you please detail and list all the groups that have been deemed associated forces under the 2001 AUMF and all the locations where the U.S. military is involved under the 2001 AUMF? How many of these associated forces are engaged in hostilities against the United States, its Armed forces, or personnel? Which of these associated forces present a direct threat to the United States? Is there a single source that Congress can access to find up to date information on this question?

Answer. The U.S. military is currently taking direct action against the following individuals and groups under the authority of the 2001 Authorization for Use of Military Force (AUMF): 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 Syria; and ISIS.

During the Trump administration, the United States has used military force pursuant to the 2001 AUMF in Afghanistan, Cuba (detention operations), Iraq, Libya, Somalia, Syria, Niger, and Yemen.

As a matter of international law, the United States is in an ongoing non-international armed conflict with these groups and individuals and is engaged in hostilities against them. Counterterrorism operations against these individuals and groups are undertaken in furtherance of U.S. national self-defense and, in some cases, also in collective self-defense of partner States such as Iraq. The administration is committed to keeping Congress timely and fully informed of uses of military force pursuant to the 2001 AUMF, including in periodic reports submitted consistent with the War Powers Resolution.

*Question 2.* Please detail the process for which a new group is identified and approved as an associated force under the 2001 AUMF. Does such determination trigger a requirement to notify or brief Congress?

Answer. A determination of whether a group is covered by the 2001 AUMF is made at the most senior levels of the U.S. Government only after a careful evaluation of the intelligence concerning each group's organization, links with al-Qaeda or the Taliban, and participation in al-Qaeda's or the Taliban's ongoing hostilities against the United States or its coalition partners.

The administration periodically briefs members of Congress about U.S. operations against these groups and the legal basis for these operations.

*Question 3.* The administration considers ISIS an associated force of al-Qaeda and thus covered under the 2001 AUMF (in addition to being covered under the 2002 AUMF). Though we disagree on this, I am further troubled by suggestions that the administration may be expanding its definition of associated forces to include ISIS affiliated militants or ISIS associated forces. Previously, an associated force need to

be both: 1) an organized, armed group that has entered the fight alongside al-Qaeda, and 2) a co-belligerent with al-Qaeda in hostilities against the United States or its coalition partners. As such, not every group that commits terrorist acts is an associated force and not every group aligned with al-Qaeda is an associated force. Can you confirm that the administration does not consider forces that are affiliated or associated with ISIS as covered under the 2001 AUMF? Please provide the administration's current definition of associated forces.

Answer. The administration has not determined that the 2001 AUMF applies to any group solely on the basis that the group is an "associated force" of ISIS. Although branches of ISIS have emerged in locations outside Iraq and Syria, we regard those branches in a number of locations as being part of ISIS.

The Government's definition of associated forces remains unchanged from the prior administration.

#### *Coalition Partner*

*Question 4.* Can you confirm that the current number of countries in the counter-ISIS coalition is currently 69? Do you believe the U.S. currently has the authority to undertake military action, outside of treaty obligation, to protect all of these countries in hostilities with al-Qaeda through U.S. military operations?

Answer. There are currently 70 countries in the Defeat-ISIS Coalition. Whether and to what extent the United States would have legal authority to undertake military action in defense of another country would necessarily depend upon the facts and circumstances of a specific situation. Of course, as the administration has previously reported, the 2001 AUMF provides the authority to use force to defend U.S. and Coalition forces engaged in the campaign to defeat ISIS to the extent such use of force is a necessary and appropriate measure in support of counter-ISIS operations.

#### *Syria Strikes*

*Question 5.* In April, Representative Schiff and I sent a letter to the President asking for the administration's legal justification for the April 6th strike against the Shayrat military airbase in Syria (attached). I asked General Dunford the same question and he stated he would get back to me. To date, I still have not received a response. Can you please provide me with the legal justification under domestic and international law for these airstrikes?

Answer. The April 6 U.S. missile strike on Shayrat airfield in Syria was not based on the authority of the statutory authorizations for use of military force that we have been discussing at this hearing. The President authorized that strike pursuant to his power under Article II of the Constitution as Commander in Chief and Chief Executive to use this sort of military force overseas to defend important U.S. national interests. The U.S. military action was directed against Syrian military targets directly connected to the April 4 chemical weapons attack in Idlib and was justified and legitimate as a measure to deter and prevent Syria's illegal and unacceptable use of chemical weapons.

#### *Congressional Reports*

*Question 6.* In response to a question from Senator Coons regarding public transparency on military deployments, you referred to 901 reports to the Senate for FY 2016 and an additional 175, implying 1,076 reports, for FY 2017 in the your reply. In an effort to improve upon the communications between your Department and the Senate, could you provide responses to the following questions:

- Of the 901 reports cited for FY 2016, how many involved troop deployments, status updates on military operations or intended missions?
- For the reports involving troop deployments, status updates on military operations or intended missions, did these reports also note the legal authorization for such actions? What are the source documents requiring those reports?
- Do you have any recommendations to better consolidate or improve the process for generating and/or submitting reports on troop deployment status updates on military operations or intended missions and their legal authority to Congress?

Answer. I believe the process by which the Department provides reports to Congress needs appropriate transparency and reform to enable the Congress to conduct oversight. In that spirit, I look forward to working with the Congress on solutions to consolidate and improve the process for generating and submitting the needed reports on all topics of interest to the Congress. The Deputy Secretary of Defense is leading our efforts to improve this process.

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO  
HON. JAMES MATTIS, SECRETARY OF DEFENSE, BY SENATOR ROB PORTMAN

*Global Engagement Center*

*Question 1.* Secretary Mattis, as you know, the 2017 NDAA, which was signed into law in December 2016, authorized up to \$60 million to support interagency efforts led by the State Department's Global Engagement Center to counter propaganda and disinformation by countries like Russia, China, and Iran—as well as terrorist groups like ISIS. I was pleased to see Secretary Tillerson's decision to approve the GEC's strategic plan and release funds to execute it. The State Department also submitted a request to DoD for \$40 million to support the GEC's efforts to counter foreign disinformation and help ensure unity of effort between DoD and the State Department. Despite the urgency of the threat, I do not believe DoD has released these funds.

- Secretary Mattis, would you agree that the dangers posed by extremist messaging and state-sponsored information operations represent a critical national security threat to the United States?

Answer: I agree that extremist messaging and state-sponsored information operations represent a national security threat. The Global Engagement Center has the potential to play a key role in exposing and countering extremist and state-sponsored disinformation and propaganda aimed at countering U.S. national interests. The Department of Defense will continue to collaborate with the Department of State and other relevant U.S. departments and agencies to counter these threats.

*Question 2.* Secretary Mattis, as you know, the 2017 NDAA, which was signed into law in December 2016, authorized up to \$60 million to support interagency efforts led by the State Department's Global Engagement Center to counter propaganda and disinformation by countries like Russia, China, and Iran—as well as terrorist groups like ISIS. I was pleased to see Secretary Tillerson's decision to approve the GEC's strategic plan and release funds to execute it. The State Department also submitted a request to DoD for \$40 million to support the GEC's efforts to counter foreign disinformation and help ensure unity of effort between DoD and the State Department. Despite the urgency of the threat, I do not believe DoD has released these funds. Where does the Department of Defense stand on executing the transfer of the \$40 million for carrying out the GEC's important mandate?

Answer. The Department of Defense plans to support the Global Engagement Center in fulfilling its statutory roles and responsibilities by partnering with the Department of State on a mutually agreed upon collaborative pilot program in Fiscal Year 2018 to counter state actor disinformation and propaganda. The Department of Defense will propose the establishment of a joint Department of Defense and Department of State senior-level coordination group that would determine the scope of Department of Defense-supported programs. This proposed coordination group would be composed of relevant Department of Defense and Department of State regional and functional offices with equities in countering state and non-state actor disinformation and propaganda campaigns.

*Defensive Lethal Assistance to Ukraine*

*Question 3.* Since 2014, Ukraine has struggled to defend its sovereignty and territorial integrity against Russian aggression. I have long supported providing Ukraine with the support it needs, including defensive lethal military assistance, to defend itself and believe Russia must be held accountable for its unacceptable and destabilizing violations of Ukraine's sovereignty. Therefore, I was very encouraged by reports that a decision by the Trump administration to approve this vital capability was apparently imminent. Despite this optimism, however, a decision to provide lethal aid has not been forthcoming. I believe you are both on the record in favor of providing defensive lethal assistance to the Ukrainians (Tillerson said so in response to RP question at his confirmation hearing), so I'd be curious to hear your thoughts on where things stand. Secretary Mattis and Secretary Tillerson, do you both still support providing defensive lethal military assistance to the Ukrainian armed forces?

Answer. Since 2014, the United States has committed more than \$750 million in security assistance including training programs to improve Ukraine's internal defense capabilities, equipment to meet some of Ukraine's most critical operational needs, and advisory efforts to advance the implementation of critical defense reforms. In addition to this extensive support, the United States has not ruled out the option of providing weapons to Ukraine. I recently visited Kyiv and consulted with Ukrainian leaders in order to be able to inform the President and Secretary Tillerson in very specific terms on this issue. The Department will continue to ex-

amine how best to use U.S. security assistance to bolster Ukraine's ability to defend its sovereignty and territorial integrity, and to deter Russian aggression.

*Budapest Memorandum and Non-Proliferation*

*Question 4.* Far more than just the territorial integrity of Ukraine and the principle of respecting sovereign borders are at stake here. When Ukraine regained its independence following the collapse of the Soviet Union, it possessed the world's third-largest nuclear arsenal. In 1994, the United States, Britain, Russia, and Ukraine signed the Budapest Memorandum, which assured Ukraine's sovereignty and territorial integrity in return for Ukraine giving up its nuclear weapons. If the United States does not unequivocally support Ukraine's defense of its sovereignty and undermines the value of U.S. security assurances, what will be the impact on U.S. non-proliferation efforts around the world? Why should a country like North Korea give up its nuclear weapons?

*Answer:* The United States strongly supports Ukraine's sovereignty and territorial integrity, including Ukraine's right to choose its own foreign policy course. In contrast, Russia's actions continue to threaten Ukraine's security, stability, sovereignty, and territorial integrity. Russia must live up to its international commitments and remove its forces from Ukraine. The impact of Russia's actions on nuclear non-proliferation, the United States and the vast majority of nations worldwide remain committed to the global nuclear nonproliferation regime, with the Nuclear Non-Proliferation Treaty (NPT) as its foundation. Ukraine made the right strategic choice to give up its nuclear weapons in 1994, and it is imperative that the world community continue to condemn Russia for its flagrant violation of the understandings reached in the Budapest Memorandum.

With respect to North Korea, Kim Jung Un must recognize that the world is united against his regime's continued possession of nuclear weapons. There are multiple United Nations Security Council resolutions that call on the regime to relinquish its weapons of mass destruction capabilities and their means of delivery. North Korea must understand that these efforts will only make it more isolated and less secure than if it agreed to denuclearize comprehensively, verifiably, and irreversibly in order to rejoin the world community.

*Afghanistan Strategy*

*Question 5.* Secretary Mattis, can you please explain the relationship between the counter-terrorism mission in Afghanistan and our efforts to build the capacity of Afghan security forces and help them ensure stability throughout the country.

*Answer.* The U.S. counterterrorism mission complements the Resolute Support mission of train, advise, assist (TAA) to build the capacity of the Afghan National Defense and Security Forces (ANDSF). Limited U.S. unilateral direct action, coupled with a stronger and increasingly capable ANDSF, helps preserve the security gains to date and contributes to a robust, enduring partnership aimed at securing the people and territory of Afghanistan. The Special Operations Joint Task Force-Afghanistan (SOJTF-A) supports U.S. counterterrorism efforts through TAA with the Afghan Special Security Forces (ASSF) and by accompanying them on certain operations. The ASSF will continue to conduct operations in Afghanistan using its increasing capabilities to address both insurgent and transnational threats. The focus of SOJTF-A's TAA mission is to build the ASSF's capacity logistics, command and control, intelligence analysis and sharing, aviation, and interoperability between the ASSF and conventional forces.

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CIA MEMORANDUM FOR THE DIRECTOR: USE OF NUCLEAR WEAPONS  
IN THE VIETNAM WAR—18 MARCH 1966

OFFICE OF NATIONAL ESTIMATES

APPROVED FOR RELEASE  
DATE: JAN 2005

~~T-O-P S-E-C-R-E-T~~

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CENTRAL INTELLIGENCE AGENCY  
OFFICE OF NATIONAL ESTIMATES

*Cy. 13*

13 March 1966

MEMORANDUM FOR THE DIRECTOR

SUBJECT: Use of Nuclear Weapons in the Vietnam War

CONCLUSIONS

A. Use of nuclear weapons by the US in the Vietnam war would be one of the most important events of modern history. World reactions would be affected to some extent by the circumstances in which the US resorted to their use, and the targets attacked. But almost independent of these factors would be a widespread and fundamental revulsion that the US had broken the 20-year taboo on the use of nuclear weapons.

B. Among the consequences would be intense agitation in Japan, probably leading to a restriction on US use of Japanese facilities and possibly to denunciation of the US-Japan defense treaty; probably some accelerated momentum toward nuclear proliferation; accompanied, however, by international pressure for disarmament in the nuclear field, with scant patience for the technicalities of verification; a probable resolution of condemnation in the UN; and a marked diminution of such public support as US policy in Vietnam now has.

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Excluded from automatic  
downgrading and  
declassification~~

~~T-O-P S-E-C-R-E-T~~

C. It is possible that once the US had used nuclear weapons the Chinese Communists might move to disengage, but we think it more likely that they would not do so, but would hope that accumulating US losses and mounting world pressures would force the US to back down. The DRV would have been reduced to a secondary role. The USSR would act vigorously against the US on the political and propaganda front; we do not believe that it would enter the war or support the Chinese with nuclear weapons.

#### DISCUSSION

##### I. SCENARIO

1. It will be argued in this paper that foreign reactions to US use of nuclear weapons in the Vietnam war would be determined far more by the fact that the weapons were nuclear than by the circumstances in which they were used or the provocations which might have led the US to use them. Nevertheless, the circumstances would make some difference, at least in certain quarters. The following short list of conceivable scenarios begins with one in which US use of nuclear weapons would appear least justifiable in the eyes of the world generally and least in accord with Communist expectations, and proceeds to the one which is at the other extreme in these respects.

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- (a) The military situation in South Vietnam remains essentially as at present; the US employs nuclear weapons out of sheer frustration at its inability to obtain any decision by conventional means.
- (b) The US invades North Vietnam, either overland or by amphibious assault, or both; the Chinese Communists intervene in large combat force, either overtly or with "volunteers," and the US forces in North Vietnam find themselves threatened with destruction.
- (c) The US does not invade North Vietnam. But the PAVN, plus Chinese Communist ground forces, launch the largest scale overt invasion of South Vietnam of which they are capable, across and around the demilitarized zone. They may also come into northern Laos in strong force. US and South Vietnamese forces may or may not be seriously endangered; in any event a new phase of the war is opened by Chinese and DRV initiative.
- (d) The area of conflict is expanded by Chinese Communist initiative, involving invasions of Laos, Thailand, and perhaps Burma.
- (e) The Chinese Communists themselves first use a nuclear weapon.

2. Neither the first nor the last of these scenarios appears worth serious consideration; they are both so highly unlikely as to be virtually out of the question, and they are included only to illustrate the possibility of situations different from those which we shall discuss. Within each of the three middle scenarios there are, no doubt, a large number of possible attendant circumstances which would have some bearing on the situation and might modify to

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some small degree the judgments which the world made of the US nuclear response, and alter the reactions to it. Because the effect of such variations would almost certainly be minor it does not seem useful to attempt to explore any of them in detail. The discussion which follows applies principally to situation (c) -- a large-scale Communist invasion of South Vietnam -- but we have included some references to the differences in reaction which might be expected in situations (b) or (d).

## II. REACTIONS IN THE NON-COMMUNIST WORLD

3. In the non-Communist world there are a good many people who neither know nor care much about nuclear weapons and would not react one way or the other if the US used them in Vietnam, particularly so long as the danger seemed remote from themselves. There are governments which, whatever their public pronouncements on the subject, would in the light of their particular national interests be glad to see the Chinese Communist regime destroyed by this means. There are also individuals and governments who would consider the United States weak if it allowed substantial numbers of its armed forces to be destroyed without attempting to save them by the use of nuclear weapons. And there are some who would consider the United States foolish to accept defeat or even compromise in the Vietnam struggle without having recourse to its most formidable element of military power.

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4. Granting these and perhaps some other exceptions, there is in the field of international affairs probably no more universal opinion than that which holds the use of nuclear weapons to be abhorrent. Any use of nuclear weapons by the US in the Vietnam war would be viewed as among the most fearful and fateful events of modern history. World reactions would be affected to some extent by the conditions under which the US resorted to their use and the kinds of weapons and targets involved. But almost independent of these factors would be a fundamental revulsion that the US had broken the 20-year taboo on the use of nuclear weapons.

5. The use of atomic bombs against Japan in 1945 is still condemned by many, not only abroad but within the US. Most informed opinion, however, recognizes that it was intended to hasten the end of a long and bloody world war. Most important, it is seen as a bad moment of history that occurred nearly a generation ago and must never be repeated.

6. Over the years, world opinion has been generally surprised and relieved to discover that the US-Soviet nuclear race, rather than precipitating a war between the two powers, has tended to make

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such a war "unthinkable." Nuclear bombs and warheads thus tend to be looked upon as weapons which will never be used except in a world bent on self-destruction. It has come to be felt that the chances of a nuclear holocaust have significantly receded in recent years because the two super-powers are led by responsible governments which are prepared to go to great lengths to see that nuclear weapons will never again be employed.

7. Their use in Vietnam, regardless of the circumstances, would send a wave of fear and anger through most of the informed world. The general feeling would be that, once the taboo had been broken, there would remain no effective barrier to expanded use of such weapons. People would fear that the Communists would respond in kind if they had, or could acquire, a nuclear capability. Behind all this would lie a fear that the use of nuclear weapons might lead to a general nuclear war endangering the world at large.

8. Most friends of the US would condemn it for having dragged the world into a new and terrible phase of history in which nuclear weapons had become the working weapons of the times. Resolutions of condemnation would be introduced in the UN with the likelihood of winning a majority vote. NATO would be badly shaken. Such public support as US policy in Vietnam now receives from a number of governments, especially in Europe, would be ended.

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9. A British government which failed to make a public condemnation of the introduction of nuclear weapons into the Vietnam fighting would probably fall. In Japan, memories of Hiroshima and Nagasaki would make the people especially resentful of a second use of US nuclear weapons against Asians. At a minimum, Prime Minister Sato would feel compelled to end his support of US policy, and, in particular, to restrict the US use of Japanese facilities. More likely, the Liberal-Democratic Party would replace Sato with someone less identifiably pro-US in his views. It is possible that, under leftist prodding, the popular reaction would force a move to close US bases or even to denounce the US-Japan defense treaty. Most opinion in India and the Indian government would strongly condemn the US action, though some Indian leaders would be relieved to see the Chinese Communists set back, and some would be secretly pleased if Chinese nuclear facilities were destroyed. The general Indian condemnation would be somewhat reduced if the nuclear weapons were used to stop a Chinese invasion of Southeast Asia.

10. A very limited use of tactical weapons in only the immediate battle area would cause a less violent reaction in sophisticated circles than would the nuclear bombing of Chinese

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airfields, rail centers, and nuclear production sites. But to much of the world the distinction would not be significant; the important thing would be that these weapons had been used at all. The circumstances under which the weapons were used would also have some effect on reactions. The most severe reaction would occur if the US had invaded North Vietnam (case 'b'); on the other hand, the negative reactions would be reduced if nuclear weapons were employed as a last resort to stop the Communist Chinese from overwhelming the whole of Southeast Asia. Indeed, in this case some positive support would be manifested.

11. Beyond these direct reactions, there would be other effects having a growing impact in the future. There would probably be a wave of international pressure for immediate disarmament in the nuclear field. Most of this would be aimed at the US as the only nation to have used such weapons, and there would be little patience with continued US insistence on the need for inspection. It is possible, however, that some of this pressure could be diverted to the Soviets in the form of demands for "real" and "verified" disarmament.

12. Yet, paradoxically, there would probably also be an accelerated momentum toward nuclear proliferation. A US use which

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"legitimized" nuclear weapons and demonstrated their critical importance and practicability in today's wars would lead some governments to feel they must have such weapons in their arsenals. At the same time, the US argument against proliferation would lose moral credit and encounter cynical reactions.

### III. REACTIONS OF THE KEY COMMUNIST COUNTRIES

13. Communist China. The Chinese Communist leaders are quite conscious of the potent nuclear arsenal of the US. In adopting a policy involving the probability of war with the US, they would have considered the possibility that nuclear weapons might be used. They might have concluded that international and domestic pressures would prevent the US from using nuclear weapons under any conditions short of a direct threat to its national survival. They could not be certain of this, however, and their plans would have included courses to follow if nuclear weapons were used.

14. It is possible that once the US used nuclear weapons, the Chinese might move to disengage, particularly if they had not expected the US to do so. We think it more likely, however, that once committed, the Chinese would attempt to continue in spite of nuclear weapons. In the belief that they could eventually prevail,

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they would probably press on, accepting the military consequences while trying to minimize them by dispersal, close-embrace battlefield tactics, and an intensification of guerrilla warfare behind the US lines. They would hope thus to prolong the struggle to the point where accumulating US losses and mounting world pressures would force the US to back down.

15. The USSR. Moscow would be alarmed at the prospect of continued escalation which might force it into a nuclear confrontation with the US. It would take steps on all fronts to reduce the likelihood of such a development. It would act vigorously on the propaganda and political front, striving to generate sufficient international pressure in and out of the UN to force the US to pull back from its escalation. The Soviets would probably feel compelled to warn the US that the USSR would support China with military aid. At the same time, however, they would make it clear to Peking not to count on Soviet nuclear weapons. They would almost certainly not provide any nuclear weapons to the Chinese.

16. The DRV. With the war having expanded to the point where the Chinese were directly involved and nuclear weapons had been introduced, the DRV would have been reduced to a secondary role. The PAVN/VC would retain a significant capability in the

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South, but in the big picture they would have become an adjunct of the Chinese forces. In the event that the use of nuclear weapons so alarmed the DRV as to lead it to wish to quit the war, the Chinese involvement and presence would probably have foreclosed this option. They could end the war only if Peking concurred.

#### IV. LONGER TERM IMPLICATIONS

17. If the tactical use of nuclear weapons succeeded in turning back the Chinese and helped lead to a quick and advantageous settlement in Vietnam, there would be many gains for the US to set against the losses mentioned above. "Nothing succeeds like success," and many would forgive the US once the danger receded. Asian allies of the US would feel much more secure against Chinese encroachments. Peking, badly set back, would lose prestige, and this might lead to a reappraisal of the leadership by the masses and the younger party leaders. The Soviets would gain new fear and respect for the US hard liners; their conviction of the danger of "wars of national liberation" would be confirmed. At the same time, those in the USSR who advocate greater stress on military development and are unenthusiastic about detente would have their hands strengthened.

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18. If the US used nuclear weapons with some persistence and still failed to turn back the Chinese or bring a quick end to the war, the results would be serious indeed. The comparative impotence of the US and of its most vaunted weapons in coping with a "revolutionary struggle" would have been demonstrated to Peking's satisfaction and advantage. At the same time, the US would pay the whole political cost of having used these weapons in the first place.

19. There remains, of course, the question of the consequences of not using nuclear weapons, and of accepting a military disaster, perhaps extending to loss of the war, which these weapons might have averted. Such a development would have profound implications for the standing of the US in the world and for the balance of power in Asia. Examination of these implications, however, would involve consideration of the whole subject of US objectives and policies in Southeast Asia, and does not come within the scope of this paper.

FOR THE BOARD OF NATIONAL ESTIMATES:

[Redacted Signature]

ABDOL SMITH  
Acting Chairman

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LETTER EXPRESSING THE TRUMP ADMINISTRATION'S OPPOSITION TO  
S.J. RES. 41 AND S.J. RES. 43



SEP 5 2017

The Honorable  
Mitch McConnell  
Senate Majority Leader  
United States Senate  
Washington, DC 20510

Dear Senator McConnell:

As the Senate resumes its work on the Fiscal Year 2018 National Defense Authorization Act, we write to reaffirm the Administration's position that the United States has sufficient legal authority to prosecute the campaign against the Taliban, al-Qa'ida, and associated forces, including against the Islamic State of Iraq and Syria (ISIS). The legal authority for these operations includes the 2001 Authorization for the Use of Military Force (2001 AUMF), which authorizes the use of "all necessary and appropriate force" against these groups, including, as necessary, to implement the President's recently announced South Asia Strategy. The 2002 Authorization for the Use of Military Force (2002 AUMF) provides the President with the authority "to defend the national security of the United States against the continuing threat posed by Iraq," which the previous Administration invoked at points "to address the threat posed by ISIL's operations in Iraq."

The AUMFs also provide statutory authority for the United States to detain persons who were part of or substantially supporting the groups covered by the AUMFs. The United States continues to detain 41 individuals at Guantanamo Bay.

The Administration therefore opposes the adoption of any measure to revise or repeal the 2001 AUMF and 2002 AUMF. In the absence of an appropriate statutory replacement, changes to, or repeal of, the 2001 AUMF and 2002 AUMF could call into question the domestic legal basis for ongoing U.S. military and counterterrorism operations, including operations to defeat the Taliban, al-Qa'ida, and associated forces, including those to defeat ISIS, and for the detention of captured combatants at Guantanamo Bay. However, we look forward to working with the Congress to develop other appropriate expressions of national unity.

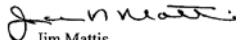
Specifically, the Administration opposes S.J. Res. 43, "To authorize the use of United States Armed Forces against al-Qaeda, the Taliban, and the Islamic State of Iraq and Syria, and associated persons or forces, that are engaged in hostilities against the United States, the Armed Forces, or its other personnel." For the reasons highlighted below, S.J. Res. 43 would undermine the President's authority to use force against the Taliban, al-Qa'ida, and associated forces, including against ISIS, which threaten U.S. national security.

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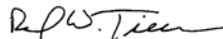
Among other key concerns, the legislation would arbitrarily terminate the authorization five years after the date of enactment. This is inconsistent with the conditions-based approach in the President's South Asia Strategy. Such a provision could also unintentionally embolden our enemies with the recognizable goal of outlasting us. In addition, S.J. Res. 43 includes a definition of "associated persons or forces" which is inconsistent with the standard applied by the Executive Branch and which could result in unnecessary uncertainty regarding its scope. Further, the joint resolution would create a cumbersome Congressional review and disapproval process for the use of force against new associated forces or in new countries.

In sum, the Administration affirms that the United States has sufficient legal authority to prosecute the campaign against the Taliban, al-Qa'ida, and associated forces, including against ISIS, and S.J. Res. 43 would, in our view, undermine this campaign. We look forward to working with Congress on reviewing and analyzing any further proposals.

Sincerely,



Jim Mattis  
Secretary of Defense



Rex W. Tillerson  
Secretary of State

Cc: Speaker Paul Ryan

NAVY CONTRACT SOLICITATION FOR PERSONNEL SUPPORT, PART 1

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**R--Personnel Recovery(PR)/ Casualty Evacuation (CASEVAC)/ Search and Recover (SAR) support to Department of Defense (DoD) for United States African Command (USAFRICOM)utilizing Short Take Off and Landin**

Solicitation Number: N0018914PRRSAR  
 Agency: Department of the Navy  
 Office: Naval Supply Systems Command  
 Location: NAVSUP Fleet Logistics Center Norfolk

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**Original Synopsis**  
Apr 24, 2014  
4:15 pm

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**Solicitation Number:** N0018914PRRSAR     **Notice Type:** Sources Sought

**Synopsis:**  
 Added: Apr 24, 2014 4:15 pm  
 Sources sought for information and planning purposes to identify qualified and experienced sources for an anticipated a Firm Fixed Price contract under NAICS code 481211. This proposed contract vehicle will provide Personnel Recovery(PRY) Casualty Evacuation (CASEVAC) Search and Recover (SAR) support to Department of Defense (DoD) for United States African Command (USAFRICOM), personnel and individuals as identified by USAFRICOM in West Africa.

Subject to FAR Clause 52.215-3, entitled "Request for Information or Solicitation for Planning Purposes," this announcement constitutes a sources sought synopsis for written information only. This is not a solicitation announcement for proposals and no contract will be awarded from this announcement.

This sources sought notice is not to be construed in any way as a commitment by the Government, nor will the Government pay for the information submitted in response.

The Fleet Logistics Center Norfolk (FLCN), Norfolk, Virginia is seeking information on qualified and experienced sources for planning purposes in an effort to derive a contract vehicle that will provide PR/CASEVAC/SAR support for USAFRICOM personnel and individuals as identified by the command in West Africa. The contractor shall provide all personnel, aircraft, equipment and supervision necessary to conduct PR/CASEVAC/SAR operations utilizing Short Take Off and Landing (STOL) fixed wing and rotary wing air lift for transport, insertions, and extractions.

Additionally, the contractor shall provide EMT-B medical care as a PR resource spanning from a fixed location in Niamey, Niger out to 500 nautical miles. This 500 mile radius shall be the contractors Area of Responsibility (AOR) under the pursuant contract. All PR/CASEVAC/SAR contractors must possess a Secret Clearance. The period of performance for this anticipated contract is a six (6) month base year with two (2) twelve (12) month option periods. See the attached draft Performance Work Statement (PWS) for additional information.

Responses to this Sources Sought notice should reference the Sources Sought number and shall include the following information in this format:

1. Company name, address, Point of Contact name, phone number, fax number and email address.

ALL FILES

[Attachment](#)

Apr 24, 2014  
[N0018914PRRSAR\\_SOURCE](#)

**GENERAL INFORMATION**

**Notice Type:** Sources Sought

**Posted Date:** April 24, 2014

**Response Date:** May 8, 2014

**Archiving Policy:** Automatic, on specified date

**Archive Date:** May 23, 2014

**Original Set Aside:** N/A

**Set Aside:** N/A

**Classification Code:** R -- Professional, administrative, and management support services

**NAICS Code:** 481 -- Air Transportation/481211 -- Nonscheduled Chartered Passenger Air Transportation

Print   Link

2. Contractor and Government Entity (CAGE) Code.
3. An estimated Rough Order of Magnitude (ROM).
4. Size of business - Large Business, Small Business, Small Disadvantage, 8(a), Hubzone, Woman-owned and/or Veteran-owned.
5. Capability statement displaying the contractor's ability to provide the minimum requirements to include past performance information. If past performance information is provided, please include only relevant past performance on the same/similar work within the last 5 years. Please also include in past performance information the contract numbers, dollar value, and period of performance for each contract referenced in the response to this sources sought.
6. Please include any questions or concerns you have in regards to this requirement.

Responses should be emailed to Anthony.Karanikas@navy.mil and John.W.North@navy.mil by 12:00 pm on Thursday, May 08, 2014. Again, this is not a request for a proposal. Respondents will not be notified of the results and the Government is not required to answer any questions submitted in regards to this sources sought notice. Please note the information within this sources sought notice will be updated and/or may change prior to an official synopsis/solicitation, if any.

Please consult the list of [document viewers](#) if you cannot open a file.

**Attachment**

Type: Other (Draft RFPs/RFIs, Responses to Questions, etc..)  
Posted Date: April 24, 2014

[https://www.ncco.navy.mil/synopsis\\_file/N0018914PRSA...](https://www.ncco.navy.mil/synopsis_file/N0018914PRSA...)  
Description: N0018914PR SAR\_SOURCES\_SOUGHT\_PWS\_4-24-14.docx

**Contracting Office Address:**  
N00189 NAVSUP Fleet Logistics Center Norfolk 1968 Gilbert Street, Suite 600  
NORFOLK, VA

**Point of Contact(s):**  
Anthony Karanikas  
anthony.karanikas@navy.mil

John North  
john.w.north@navy.mil

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## NAVY CONTRACT SOLICITATION FOR PERSONNEL SUPPORT, PART 2

PERFORMANCE WORK STATEMENT (PWS)  
AFRICOM PERSONNEL RECOVERY (PR)/  
CASUALTY EVACUATION (CASEVAC)/  
SEARCH AND RESCUE (SAR) SUPPORT

DATEXXXX

## 1.0 DESCRIPTION OF SERVICES.

## 1.1 PR / CASEVAC/SAR SUPPORT:

- 1.1.1. The contractor shall provide PR/CASEVAC/SAR support to Department of Defense (DoD), United States Africa Command (USAFRICOM), personnel and individuals as identified by Commander USAFRICOM in West Africa.
- 1.1.2. The contractor shall provide all personnel, equipment and supervision necessary to conduct PR/CASEVAC/SAR operations utilizing Short Take Off and landing (STOL) fixed wing and rotary wing airlift for transport, insertions, and extraction. Additionally, the contractor shall provide medical care as a PR resource spanning from a fixed location in Niamey, Niger out to 500 nautical miles. This 500 mile radius shall be the contractors Area of Responsibility (AOR) under this contract.
- 1.1.3. The contractor shall be capable of operating from alternate locations within the area of responsibility for periods of up to 10 continuous days with limited facilities in order to provide on-site PR/CASEVAC/SAR for at risk activities.
- 1.1.4. Contractor performance shall include day, night and low visibility mission requirements involving short field landings / take offs. Contractor shall be able to successfully operate on improved and unimproved airfield landing zones and non-surveyed helicopter landing areas in the performance of their duties.

## 1.2 GENERAL PERFORMANCE REQUIREMENTS

- 1.2.1. Services shall be based at Niamey, Niger and be capable of conducting operations from various temporary Forward Operating Locations (FOLs), to include primitive field accommodations (such as tents).
- 1.2.2. The principal place of performance for this contract shall be the Primary Operating Area (POA), as dictated by operational requirements. The contractor may be required to provide labor hours in excess of 40 hours per work week to include holiday and weekends, and/or during irregular times and shifts based upon USAFRICOM operations and exercises.
- 1.2.3. The POA includes, but is not limited to, the recognized political boundaries of Algeria, Burkina Faso, Chad, Libya, Mali, Morocco, Niger, Nigeria, Cameroon, Cot D'Ivoire, Ghana, Benin, Togo, Tunisia and as dictated by operational requirements. It is anticipated

the most likely locations for missions from the above list would be to: Burkina Faso, Togo, Cameroon, Chad, Libya, Mali, Morocco, Nigeria, and Tunisia.

- 1.2.4. All contractor personnel supporting overseas missions shall obtain and maintain visas as required to perform the services required in this contract.
- 1.2.5. Crew duty shall be limited to 14 hours for two-pilot crews and 18 hours for three or more pilot crews or as restricted by flight time limitations and rest requirements under FAA Part 135, whichever is more restrictive. Crew duty will be considered as beginning when the crewmember reports for duty and ending at block-in of the final DoD segment for that crew.
  - 1.2.5.1. Crew duty execution limits shall be the same as scheduled, except that the limits may be extended by two hours for two and three-pilot crews. This extension is at the contractor's discretion.
  - 1.2.5.2. The contractor shall maintain and provide to the Contracting Officer or his written designee upon request, statistical tracking of the number of times this extension is utilized.
  - 1.2.5.3. Minimum crew rest, prior to first DoD segment or between DoD segments, shall be 10 hours. At the contractor's discretion that rest can be reduced to nine hours if the crew is still able to receive eight hours of uninterrupted rest.
  - 1.2.5.4. The reduced rest shall not be combined with the two-hour crew duty extension during a preceding or subsequent duty period.
- 1.2.6. The contractor shall support operations 24 hours a day/7 days a week. Mission tasking for in-theater operations is typically initiated with 48 hours' notice. Although it is the Government's intent to have at least one aircraft operational 24 hours a day/7 days a week, there are times where the Government may require simultaneous PR/CASEVAC/SAR, cargo, passenger, and/or missions requiring use of both aircraft.
- 1.2.7. The contractor shall be able to land and take off at night from unlit airfields using contractor-provided night vision devices. The contractor shall have and maintain current night vision certification, by the FAA throughout the life of the contract, to be able to land and take off at night from unlit airfields using contractor-provided night vision devices.
- 1.2.8. The contractor shall assess the current situation (weather, Intel, NOTAMS, terrain, crew experience, and tactical situation) prior to launch to make an accurate risk assessment before performing a mission.
- 1.2.9. The contractor shall be responsible to provide, at a minimum, the following requirements at all locations as required:

- 1.2.9.1 All maintenance and supplies required to operate aircraft
  - 1.2.9.2 All medical equipment and supplies required to execute a CASEVAC
  - 1.2.9.3 All airport handling, landing, and Aerial Navigation in Africa (ASECNA) fees
  - 1.2.9.4 All contractor personnel support (lodging, meals, laundry, etc.) to include appropriate gear for personnel support in primitive environments at FOLs (such as tents)
  - 1.2.9.5 All force protection training prior to mission execution.
  - 1.2.9.6 Appropriate theater/country authorities for aircraft entry and personnel clearances as required by specific nations in the Foreign Clearance Guide.
- 1.2.10. The contractor shall be responsible to coordinate, at a minimum, the following requirements at all locations as required:
- 1.2.10.1 Fuel
  - 1.2.10.2 Parking
  - 1.2.10.3 Hangar space (if available and necessary)
  - 1.2.10.4 Office space at the base location (if necessary per the contractor's management approach)

### 1.3 MEDICAL SUPPORT

- 1.3.1. The contractor shall provide National Registry Emergency Medical Technician – Basic (NREMT-B) certified personnel in performance of the required PR/CASEVAC/SAR services.
- 1.3.2. Contractor NREMT-B personnel shall provide en route care capabilities for PR/CASEVAC/SAR events. These personnel shall be available 24 hours a day seven (7) days a week on a standby status and be flight ready within three (3) hours of notification (N+3) from the AFRICOM CDR or his designee and may be put on a heightened response posture to be airborne within one (1) hour of notification (N+1).
- 1.3.3. The contractor shall provide NREMT-B level certified trained medical personnel on each aircraft performing evacuation and will have no other responsibilities when patients are onboard. The contractor shall plan for up to two (2) aircraft performing evacuation operations at any time with up to four (4) patients per aircraft. Contractor personnel shall provide critical care NREMT-B level service determined necessary for life support as required during the performance of PR/CASEVAC/SAR operations. Routine medical care that is not associated with patient transport shall not be provided.
- 1.3.4. Contractor must document all patient care provided during each mission and provide a legible copy of medical documentation in English to the receiving medical facility or receiving medical crew (if being transferred to another medical aircraft) upon transfer of care. Copies of all medical documentation shall be retained by the contractor for (1) one year from date of mission and provided to the Contracting Officer Representative (COR) upon request.
- 1.3.5. Contractor will ensure all medical personnel wear the appropriate clothing/uniforms to safely operate and communicate during running aircraft operations (day or night).

Additionally, the contractor shall supply and wear the appropriate medical protection against disease, contamination and any other biological hazards during patient care.

- 1.3.6. Contractor shall ensure all medical personnel possess the appropriate medical supplies and equipment in working order to safely operate during PR/CASEVAC/SAR operations (day or night). Additionally, contractor shall ensure medical personnel possess the appropriate communications equipment needed to communicate during PR/CASEVAC/SAR operations.

**1.4 PR/CASEVAC/SAR AIRLIFT SERVICE:**

- 1.4.1 The contractor shall provide, operate, maintain, and fuel, at a minimum, one (1) STOL Fixed Wing and one (1) Rotary Wing aircraft based in Niamey, Niger.
- 1.4.2 The aircraft shall be operated and maintained entirely by contract personnel.
- 1.4.3 The contractor shall obtain and/or maintain blanket over flight clearances for all countries within the area of operations for the duration of the contract. Copies of these flight clearances shall be provided to the COR.
- 1.4.4 PR/CASEVAC/SAR airlift service shall be available 24 hours a day seven (7) days a week on a standby status and flight ready within three (3) hours of notification (N+3) and may be put on a heightened response posture to be airborne within one (1) hour of notification (N+1).
- 1.4.5 The contractor STOL aircraft shall have the capacity to safely transport a minimum of two (2) EMT-B and four (4) patients (ambulatory and/or on litters), person of interest or any combination thereof) (up to six (6) individuals in total) from unimproved landing strips or non-surveyed helicopter landing zones to an area designated by the USAFRICOM Commander or his/her designee. Patients and/ or passengers will possibly travel with personal weapons (small arms) and small amounts of ammunition. Planning weight for passengers plus baggage is 350 lbs per person. The aircraft must be capable of transporting 2,500 pounds of internal cargo. The internal cargo may be the six (6) personnel or a combination of personnel and cargo not to exceed 2,500 pounds.
- 1.4.6. The contractor STOL aircraft shall have the capability to load a patient on a litter with critical care equipment attached while maintaining the patient in a neutral horizontal position throughout the loading procedure. For this requirement, a loading door is an acceptable alternate to a ramp.
- 1.4.7. Additional STOL fixed wing capability is the availability for routine airlift movement of personnel, materials, and equipment approved by USAFRICOM Commander or his/her designee to various locations within the area of responsibility.
- 1.4.8. The Government will provide the contractor a manifest prior to boarding. The contractor



shall not permit any unauthorized personnel to board the aircraft without consent from USAFRICOM. The contractor shall verify passenger and cargo weights prior to takeoff to ensure they do not exceed the maximum limitations of the aircraft. Contractor shall leave an accurate passenger manifest at departure airfields with the user. Contractor shall present a safety briefing to all passengers prior to takeoff.

- 1.4.9. The contractor shall routinely be required to successfully land on unimproved dirt airfields of less than 2,500 feet in length and non-surveyed helicopter landing areas during PR/CASEVAC/SAR operations to resupply and perform personnel transport services for requirements in the AFRICOM AOR.

**1.5 CARGO AIRLIFT SERVICE:**

- 1.5.1. Cargo airlift service shall be available within a minimum of 48 hours notification by the AFRICOM CDR or his designee.
- 1.5.2. The contractor shall provide service for cargo loads up to 2,500 pounds.
- 1.5.3. The contractor shall ensure all Government Provided Materials (especially hazardous materials) being transported are properly loaded and secured in the aircraft. Prior to departure, the contractor pilot shall obtain the following information from the Government:
- Proper shipping name
  - United Nations (UN) number (if applicable)
  - Hazard class and division
  - Quantity in terms of weight or volume
  - Location of the hazardous item in the aircraft
  - Net Explosive Weight (NEW) for any Class 1 explosives
  - Passenger authorization
  - Any special handling instructions

**1.6. AIR DROP SERVICE:**

- 1.6.3. The contractor shall execute door bundle drops within 48-hours' notice by the AFRICOM CDR or his designee. Maximum door bundle dimensions are length: 36 inches, width: 30 inches, height: 47 inches, and weight: 75 pounds.
- 1.6.4. Aircraft shall be capable of static-line, personnel air drop operations.
- 1.6.5. Aircrew shall be air drop qualified in accordance with the contractor's training program as approved by the FAA.

1.6.6. Air drop services are anticipated to be used sparingly throughout contract performance.

**1.7. OPERATIONS SUPPORT:**

1.7.3. The Contracting Officer Representative (COR) will provide the contractor with the name of a Government Point of Contact (POC) who will act as the primary mission scheduler and will be responsible for providing all mission requirements and coordinating actions.

1.7.4. The contractor shall provide mission coordination personnel to coordinate with the Government POC. The contractor's person(s) performing mission coordination duties shall be available to interface with the Government POC(s) on short notice to support mission planning requirements.

1.7.5. The contractor shall provide mission coordination services to USAFRICOM's Government POC to include, but not limited to:

- Support for mission tasking, weather support, and publishing of all supporting documentation for the aircraft
- Coordinate and support ad-hoc mission planning
- Coordination of diplomatic and other required approvals for aircraft international transit, as well as lodging and transportation at intermediate and mission-approved stopover locations
- Operational support, mission scheduling, airspace coordination, and review of threat data for the operational area. All Crew is required to have a secret clearance.
- Support required for coordination for protocols to support aircraft communications, ad-hoc and in-flight mission tasking, and force protection mission procedures

1.7.6. The contractor shall report any change of mission availability status within 30 minutes of change to the Government POC and COR.

**1.8. FLIGHT HOURS:**

1.8.1. The contractor shall provide all necessary support required to include, but not limited to, personnel, equipment, and material supplies to provide up to an estimated 1000 flight hours per year (Combined), to be carried throughout the entire performance period.

1.8.2. Only flying hours in direct support of this contract shall be invoiced. Hours for orientation flights are not billable. Flight hours are calculated from the moment wheels are off the ground until the wheels touch the ground at completion of a mission time to the nearest 1/4 hour expressed in local time.

1.8.3. All regularly schedule maintenance downtime will be coordinated with the Government POC no later than three (3) days prior to start time of maintenance.

1.8.4. The contractor shall not exceed the flight hour limit without COR approval, regardless of

DoD personnel directions.

**1.9. MOBILIZATION AND PHASE-OUT:**

**1.9.1 Mobilization:** The mobilization period (phase-in) shall be sixty (60) consecutive days from the beginning of the contract period of performance to allow the contractor a preparation period for the purpose of relocating and training personnel (including site surveys and familiarization), travel, ordering materials, and inventory of Government Furnished Equipment (GFE). These supplies shall serve as the baseline for supply inventory used to support flights that shall be maintained by the contractor. A report of this inventory, replenishment and utilization history for the reporting period shall be delivered per section ~~XX~~ of this PWS. The contractor shall coordinate all mobilization efforts required to fully perform all aspects of the PWS after the mobilization period ends. Failure to become fully mission capable by the 60th day of the mobilization period will be grounds to pursue a Termination for Default.

**1.9.2.Phase-Out:** Should the incumbent contractor not be selected as the follow-on service provider, as applicable, the contractor shall participate in a transition phase to orderly and efficiently transition to a successor. The transition phase shall be considered the last sixty (60) days prior to the end of the contract period of performance. The transition phase shall consist of phase-in training for the successor and transition of all materials and documents needed so there is no break in service.

**1.10. RAPID BASE RELOCATION:**

**1.10.1.** If for some reason the Niamey, Niger base is no longer a feasible area to do emerging events or other impacts, the contractor must be able to set up a new base of operations within 40 days. Regardless of the new base locations, the contractor must be able to function within all time and location constraints per the PWS.

**1.12. REQUIRED AIRCRAFT EQUIPMENT:**

**1.12.1.** The aircraft shall contain the following installed equipment:

- Instrument Flight Rules (IFR) capable with Traffic Collision Avoidance System (TCAS)
- Very High Frequency (VHF), and Ultra High Frequency (UHF) Radios
- UHF Radio shall have capability to monitor guard
- Global Positioning Satellite (GPS) navigation equipment
- Oxygen readily available for crew and passengers above 10,000 feet IAW FAA requirements
- Ability to start aircraft engines without use of external ground power units
- Weather detection capable radar
- Global flight tracking equipment;

- Ability for U.S. Government members to access the system through an online Web portal (such as MS Internet Explorer), using only a standard web browser with no additional user software required to be loaded on the user's computer
- Minimum (5) user accounts for accessing flight tracking
- Near real time worldwide tracking (GPS/Iridium)
- Tracks location, velocity, heading, and altitude of asset
- Distress (Mayday, 911) capability
- 2-way text messaging
- Remote management of all GPS device settings
- Rotary Wing Hoist (From land/water, two (2) personnel at the same time or 1 stokes litter at a time.

### **1.13. FIRE CONTAINMENT COVERS**

- 1.13.1** In accordance with FAA airworthiness directive 93-07-15, Fire Containment Covers (FCCs) shall be placed on all cargo transported in the class B cargo compartment of combination aircraft. This airworthiness directive also stipulates alternate compliance for certain exempt items.
- 1.13.2.** The contractor shall furnish, transport, repair and replace sufficient FCCs on each operational aircraft. An FCC shall be deemed unserviceable if it has damage in excess of any of the following: 4" x 4" L-shaped tear, 8" long tear, 2" diameter tear.
- 1.13.3.** The contractor shall be responsible for covering and uncovering cargo with the FCCs. If the Government removes FCCs from the aircraft, the Government will ensure the same numbers of FCCs are returned to the aircraft.
- 1.13..4.** All passenger and cargo doors used for on-loading and off-loading of passengers, baggage, and cargo aboard the aircraft shall be equipped with a safety barrier at chest or waist level. This safety barrier is not to supersede or replace any Original Equipment Manufacturer (OEM) mandatory safety procedures or safety procedures under the Title 14 of the Code of federal Regulations (CFR) Part 135 (hereinafter also referred to as FAA Regulation Part 135) and Title 32 CFR Part 861.

### **1.14. AIRCRAFT PERFORMANCE REQUIREMENTS:**

- 1.14.1.** All aircraft used for this contract shall be multi-engine.
- 1.14.2** Depot-level maintenance, or any other non-tasking-related aircraft absences from the base location, shall not absolve the contractor from the requirements of this contract.
- 1.14.3.** At least two aircraft shall be utilized to meet PWS requirements.

1.14.4. The aircraft shall meet the following minimum performance requirements at sea level on a standard day.\*

\* The "standard day" model of the atmosphere is defined at sea level:

Density ( $\rho$ ): 1.229 kg/m<sup>3</sup>

Pressure ( $p$ ): 101.3 kPa

Temperature ( $T$ ): 15 °C

Viscosity ( $\mu$ ): 17.3  $\mu$ Pa·s

1.14.5. Aircraft shall be capable of taking off and landing with 2,500 lbs of cargo on an unimproved runway of a minimum of 2,500 feet in length.

1.14.6. Aircraft shall be capable of taking off and landing on unprepared and un-surveyed surfaces (for personnel recovery under emergency conditions during daylight hours), provided that sufficient information is made available to determine safe operations are possible in accordance with FAA guidelines. Pilot discretion may be employed for landing location.

1.14.7. Aircraft shall be capable operating in extreme heat and dusty conditions typical on the African continent.

1.14.8. The contractor shall obtain all necessary export licenses from the Department of State to address any International Traffic in Arms Regulations (ITAR) restrictions to facilitate performance in all required countries.

## 2.0. APPLICABLE REGULATIONS AND INFORMATION:

2.1. All aircraft operations shall be conducted under FAA Regulation Part 135.

2.2. Aircrew training, proficiency and aircraft maintenance shall be performed in accordance with FAA Regulation Part 135.

2.3. The contractor must be an approved DoD air carrier as determined by HQ AMC/A3B and the Commercial Airlift Review Board (CARB). The contractor must maintain this approval throughout the performance of this contract. The contractor shall comply with all FAA requirements and with all DoD additional standards as published on the following web site:  
<http://www.amc.af.mil/library/businesscustomers.asp>

## 3.0. PERSONNEL REQUIREMENTS:

3.1. The contractor shall provide an adequate number of supervisors, PR/CASEVAC/SAR Subject Matter Experts, pilots, medics, air cargo handling specialists, and mechanics to support operational requirements as detailed in this contract.

3.2. All personnel shall be able to read, speak and write English fluently. French language skills are highly desired, but not required.

- 3.3. Each mission shall be staffed with the appropriate number of pilots to safely and effectively operate the aircraft.
- 3.4. The contractor shall coordinate all missions with the appropriate fixed base of operation (FBO), military range control and air traffic control (ATC) facilities (military and civilian).
- 3.5. Aircrew members shall be trained, qualified, and maintain proficiency in accordance with FAA Category I International Aviation Safety Assessment Program or in accordance with FAA Regulation Part 135.3.
- 3.6. Aircraft maintenance personnel shall be trained, qualified, and will maintain proficiency in accordance with FAA regulation part 135.

**4.0. PERIOD OF PERFORMANCE:** The period of performance associated with this PWS will consist of one (1) six month base period and two (2) twelve month option periods to be exercised at the option of the Government. The period of performance for the service shall be as follows:

Period of Performance	Months
Base Period	6 Months
Option 1	12 Months
Option 2	12 Months

**5.0. INSURANCE REQUIREMENTS**

Prior to performance of any services hereunder, the contractor shall, at its own expense, procure and maintain during the entire performance period of this contract, with financially and legally responsible insurance company or companies, minimum insurance coverage as set forth below:

- 5.1. Liability for Bodily Injury to or Death of Aircraft Passengers: A limit for each person of at least three hundred thousand dollars (\$300,000.00), and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying three hundred thousand dollars (\$300,000.00) by the next highest whole number resulting from taking seventy-five percent (75%) of the total number of passenger seats.
- 5.2. Liability for Bodily Injury to or Death of Persons (Excluding Passengers) A limit of at least three hundred thousand dollars (\$300,000.00) for each person in any one accident, and limit of at least twenty million dollars (\$20,000,000.00) for each accident.
- 5.3. Liability for Loss of or Damage to Property: A limit of at least twenty million dollars (\$20,000,000.00) for each accident.
- 5.4. If Combined Single Limit Liability is used, the amount thereof shall be at least equal to the combined minimum prescribed above for the various categories of split limits coverage.

- 5.5. Liability payment insurance purchased pursuant to the requirements of this paragraph shall cover payment to the U.S. Government pursuant to the subrogation provisions of the Medical Care recovery Act (42 U.S.C. 2651-3) and, within the liability limitations of this contract, the cost of U.S. Government provided medical care to the extent that said insurance would cover payment of the cost of medical care in the absence of any U.S. Government obligation to provide medical care.
  - 5.6. The contractor will provide evidence of insurance to the Contracting Officer no later than ten (10) days following the contract award.
  - 5.7. The contractor will verify that all policies submitted (i) contain endorsements providing for the waiver of any right of subrogation the insurer may have against the United States by reason of any payment under the policy on account of any damage or injury in connection with the insured's use of any Government aviation facility, or the insured's purchase of services or supplies from the United States Government; and (ii) contain such provisions as the Government shall from time to time require in order to afford the Government adequate protections there under.
  - 5.8. In the event of cancellation or material change in policy coverage, thirty (30) days prior written notice shall be given to the Contracting Officer.
- 6.0. CONTRACTOR TRAVEL:**
- 6.1. Aircraft and crew shall meet all requirements specified in the Foreign Clearance Guide (FCG) for each country in the POA. The contractor shall be solely responsible for submitting all theater/country clearance requests for contractor aircraft and personnel in accordance with the Foreign Clearance Guide.
- 7.0. SECURITY:**
- 7.1. The majority of daily work associated with this PWS is at the unclassified level, but contractor personnel may be required to access SECRET information during performance of this contract. As such, all contract personnel shall have a secret clearance prior to performance. Specific security requirements are identified in the DD Form 254, DoD Contract Security Classification Specification.
  - 7.2. Contractor personnel performing services under this contract shall be citizens of the United States of America. Dual citizens will not be authorized interim or final security clearance determinations. US Citizens who currently have (either expired or active) foreign passports will not be able to obtain or hold interim or final security clearances within DOD. These contractors who maintain or have in their possession a valid or expired foreign passport are considered dual-citizens and will not be authorized classified material or access. The contractor and subcontractor shall possess the capability to articulate well, speak and write fluently in the English Language, and comprehend the English Language.

- 7.3. The contractor must have a valid Facilities Clearance Level (FCL) at the SECRET level. Interim FCLs are acceptable provided they are not expired. FCL procedures and security guidelines for adjudicative requirements are outlined in DOD 5220.22-M and DOD 5200.2-R. FCLs and Interim FCLs must be awarded by the Defense Security Service (DSS) field office. Contractor personnel must possess required security clearances granted by the Defense Industrial Security Clearance office (DISCO) prior to performance under the contract
- 7.4. Upon contract award, the COR shall submit the names of contractor personnel to the NAVAF Security Management Office for vetting through JPAS to ensure investigative and clearance requirements have been satisfied. This shall be completed before the COR/Trusted Agent (TA) accesses the DOD Contract Verification System (CVS) and submits a request for issuance of the CAC to the contractor's personnel. If a contractor's employee does not have the required investigative or security clearance level based on the Government's determination, the contractor's employee will be denied the ability to work in support of this contract and the employee's information will not be loaded into CVS.
- 7.5. Any visit(s) by contractor personnel require an electronic visit request be submitted using JPAS. JPAS visits can be forwarded to the Security Management Office (SMO) to location to be visited. The visit request shall annotate the contract number in the POC block of the visit request and the name/phone number of either the COR or CO in the phone number block.
- 7.6. If the Government notifies the contractor that the employment, or the continued employment, of any contractor personnel is prejudicial to the interests or endangers the security of the United States of America, that employee shall be removed from performance on this contract. This includes security deviations/incidents and credible derogatory information on contractor personnel during the course of the contract's period of performance as noted in JPAS. Personnel who have incident reports posted in JPAS will be denied the ability to support the task order until the issues have been resolved and the incident has been removed in JPAS. The contractor shall make any changes necessary in the appointment(s), at no additional cost to the Government.
- 7.7. The contractor shall establish a program to prevent unlawful seizure of the aircraft. At airports, bases, and air terminals where US forces are present and responsible for deployment or redeployment of forces, the military will be responsible for security processing of passengers at on- or off-load.
- 7.8. At en-route or operational stops and at locations where there is no military presence, security processing of passengers shall be the responsibility of the contractor. At these locations, the contractor shall satisfy the requirements of the Transportation Security Administration (TSA) security program for charter operations in commercial service.
- 7.9. Security Regulation Guidance:



Department of Defense (DOD):

2000.16 (DOD Antiterrorism (AT) Standards)  
 5200.01 (DOD Information Security Program)  
 5200.2-R (DOD Personnel Security Program)  
 5200.08-R (DOD Physical Security Program)  
 5220.22-M (National Industrial Security Program)  
 8500.1 (Information Assurance (IA))  
 2000.12 (DOD Antiterrorism (AT) Program)  
 8500.2 (Information Assurance (IA) Implementation)

DOD regulations found at: <http://www.dtic.mil/whs/directives/corres/pub1.html>

**7.10. USAFRICOM Force Protection (Industrial Security) Points of Contact:**

Provided upon award.

**8.0. INFORMATION ASSURANCE:**

- 8.1** The Contractor shall provide an Information Assurance Report to describe their environment that safeguards DOD non-public information resident on or transiting the contractor's unclassified information systems from unauthorized access and disclosure. Protection measures applied should consider the risks (i.e. consequences and their probability) of loss, misuse, unauthorized access, or modification of information. The report shall address the SANS (SysAdmin, Audit, Network, Security) Institute's Twenty Critical Security Controls for Effective Cyber Defense: Consensus Audit Guidelines (<http://www.sans.org/critical-security-controls>) and be provided in accordance with the template at Appendix XX. The contractor is encouraged to provide additional information above and beyond what is outlined in the SANS guidelines to enhance the government's understanding of their information security posture. The report will be updated 30 days prior to exercise of an option period, if applicable.

**8.2 CYBER SECURITY INCIDENTS.**

- 8.2.1** The contractor shall report to Commander Naval Forces Europe/Africa Commander SIXTH Fleet (CNE/A C6F) N6 Cyber Security (+39 081-568-6101) and/or the COR as soon as possible upon discovery of any suspected cyber intrusion events that affect DOD information resident on or transiting the contractor's unclassified information systems.

Initial report shall be provided even if some details are not yet available, with follow-on detailed reporting within 72 hours. Reportable cyber intrusion events include the following:

1. A cyber intrusion event appearing to be an advanced persistent threat

2. A cyber intrusion event involving data exfiltration or manipulation or other loss of any DOD information resident on or transiting the contractor's, or its subcontractors', unclassified information systems
3. Intrusion activities that allow unauthorized access to an unclassified information system on which DOD information is resident or transiting Definition of advanced persistent threat: An extremely proficient, patient, determined, and capable adversary, including two or more of such adversaries working together.

**8.2.2 Incident Report Content.** The incident report shall include, at a minimum, the following information:

1. Applicable dates (date of suspected compromise and date of discovery)
2. Threat methodology (all known resources used such as Internet Protocol (IP) addresses, domain names, copies malware, etc.)
3. An account of what actions the threat(s) may have taken on the victim system/network and what information may have been accessed
4. A description of the roles and functions of the threat-accessed system
5. An initial list of potentially impacted government programs and each program's classification
6. What information may have been exfiltrated that may impact government programs.
7. A list of all employees and subcontracted employees who work or have worked with the victim system/network
8. A point of contact to coordinate damage assessment activities

**8.2.3 Incident Report Submission.** The contractor will submit unclassified network cyber incident reports to the AFRICOM POC. Technical Information Analysis Center (TIAC) and USAFRICOM designated government personnel via encrypted email or another mutually agreed upon secure communications method. Copies of malware require special handling and pre-coordination must be accomplished prior to submission.

**9.0. NOTICES AND REPORTS:**

- 9.1 Notice of Accidents – DOD Missions. When the contractor's aircraft is involved in an accident or incident in support of a DOD mission, as defined in 49 CFR, Part 830, the contractor will transmit the following information by the most expeditious means available, to the CNE/A C6F Battle Watch. On the next business day, notification must also be made to the Contracting Officer identified in the contract. (1) Carrier and trip number, (2) aircraft type and number, (3) date and time of accident, (4) last point of departure and point of intended landing of the aircraft, (5) nature of the accident and the extent of damage to the aircraft so far as is known, (6) total number of crew members and

passengers on board, (7) number of injured and fatalities aboard the aircraft, and (8) condition of baggage or government owned material, if any, on board.

- 9.2 Notice of accidents – Non DOD Missions. When the contractor’s aircraft is involved in any accident or incident in support of a non-DOD mission, as defined in 49 CFR, Part 830, the contractor will transmit the information in paragraph 4.1 above by the most expeditious means available on the next business day to CNE/A C6F Battle Watch.
- 9.3 Aircraft Medical Incidents. Report all aircraft medical incidents in flight, or while DOD passengers are under control of the aircraft captain, to the first available COR or CO, at the next en route station for in flight incidents, or the station where the incident occurs. For all medical incidents, a DD Form 2852 shall be completed in English. On the DD Form 2852, all sections are mandatory except Section IV. TPMRC-E shall be notified within 24 hours if a death occurred. For all other medical incidents, TPMRC-E shall be notified within 72 hours.
- 9.4 DOD Casualties. In cases where death occurs on a contractor’s aircraft, the following information shall be furnished by telephone to the addresses below, with an information copy to CNE/A C6F Battle Watch:  
  
Name, service number and component of service identified as:  
Army-USA, Air Force-USAF, Navy-USN, Marine Corps-USMC, Coast Guard-USCG.
- 9.5 Safety and Financial Information. The contractor shall satisfy the requirements of 32 CFR, Part 861, Section 861.3. The DOD will conduct periodic evaluations to assess the contractor’s ability to perform safely. To complete the evaluation, the government may contact the contractor in order to obtain information bearing upon the contractor’s practices, resources, and capabilities. Upon request, the contractor shall provide data pertinent to such evaluations, including current audited financial statements, to NAVSUP Fleet Logistics Center Norfolk or the COR listed on this contract. NOTE: Data furnished pursuant to this paragraph may be utilized by the U.S. Government or its representatives for any matter related to this contract.

**10.0. GOVERNMENT FURNISHED PROPERTY.**

**To Be Provided in Solicitation.**

**11.0. CONTRACT DELIVERABLES.**

Deliverable Number	Name*	Due
A001	Master Schedule	Not Later Than (NLT) 10 calendar days after award; Updates due with

		monthly progress report
A002	Contractor's Progress, Status, and Management Report	Monthly; NLT 10 business days from end of previous month
A003	Operations Security (OPSEC) Plan	NLT 30 calendar days after award
A004	Status Meetings/Program Reviews	As required
A005	Quality Control Plan	NLT 30 calendar days after award
A006	Mission Capable Status Report	Daily
A007	Government Furnished Property Report	Weekly; NLT close of business each Monday
A008	Phase-Out Plan	NLT 100 calendar days after award; Updates due with monthly progress report

#### 11.1 Master Schedule (A001):

11.1.1 The contractor shall provide a Master Schedule to the Contracting Officer and COR for approval. The contractor shall create, maintain, and report the schedule in conjunction with the monthly progress report after initial delivery. The schedule shall cover all phases of the project from kick off to contract close out. The contractor's Master Schedule shall include, but not be limited to, the following information:

- Timeline for providing proposed staffing
- Timeline for procurement of equipment
- Timeline for development of an Implementation Plan
- Timeline for training
- Scheduled maintenance plan and schedule
- Repair concept and turn around schedule
- Milestones for contract deliverables

11.1.2 For the scheduled maintenance plan and schedule, any proposed changes shall be provided in the daily Mission Capable Status Report (reference paragraph 5.6) at least a month prior to the change for COR approval after POC review and concurrence. The

POC may possibly request variances based on upcoming mission requirements; the contractor shall coordinate scheduling to accommodate known upcoming mission tasking.

**11.2 Contractor's Progress, Status, and Management Report (A002):**

**11.2.1** The contractor shall provide a comprehensive monthly progress report that covers each operational area delivered to the Contracting Officer and COR. The report shall, at a minimum, contain the following:

- Updates to Master Schedule and Phase-Out plan
- Training status of medical personnel
- List of missions tasked
- Number of missions aborted
- Number of PR/CASEVAC/SAR missions aborted and the justification
- Number of mission flight hours
- Operational readiness of medical equipment/supplies
- Monthly performance metrics (from section XX. of this PWS) of availability rate, mission capable hours, pre-approved scheduled maintenance hours, and number of hours for each type of status (FMC and each PMC category)
- Latest approved scheduled maintenance schedule and any updates awaiting approval by the COR
- Accomplishments completed
- Lessons learned
- Issues to be addressed by the Contracting Officer

**11.2.2** Other items deemed necessary in this report may be added during the contract by the Contracting Officer or COR.

**11.2.3** Monthly Progress Site Inspections: The contractor shall allow for scheduled monthly progress site inspections made by the COR or authorized agent.

**11.3 Operations Security (OPSEC) Plan (A003):**

**11.3.1** The contractor shall be responsible for OPSEC procedures when operating missions for the DoD to include safeguarding critical information. OPSEC procedures shall include, but not be limited to:

- Assurance that employees receive OPSEC training upon initial assignment in support of this contract.

- Information such as flight schedules, hotels where crews are staying, return trips, and other facts about missions shall be kept close hold and only communicated to persons who have the proper security clearance and a need to know this information.
- Flight crews shall be aware of persons who are seeking information about the contractor, missions, flights, and schedules.
- Maintenance of a low profile while operating DoD missions. Any OPSEC questions can be addressed by the USAFRICOM Security Officer.

**11.3.2** The contractor shall provide a plan to the Contracting Officer and COR that demonstrates compliance with OPSEC procedures.

**11.4 Status Meetings/Program Reviews (A004):**

**11.4.1** The contractor shall participate in status meetings and Program Reviews (commonly called Program Management Reviews (PMR), as required, to be scheduled upon request of the Contracting Officer or COR, to discuss and to informally evaluate the contractor's efforts and accomplishments. All after-action reports shall be due 10 days after Government request. Status meetings and PMRs, when required, will be held at a CONUS/OCONUS location determined by the Government. Any required formats for PMRs will be provided by the Contracting Officer or COR ahead of PMRs. In some cases, time will be allotted for the contractor to meet individually with representatives from USAFRICOM to discuss contractual issues.

**11.4.2** During the meetings, the contractor shall present necessary data to enable a joint review of its various assigned tasks, attendant schedules, and reimbursable expenditures. The contractor shall present and participate in status discussions and shall inform, in a timely fashion, the Contracting Officer and COR of any problems with contract execution and any proposed solutions.

**11.5 Quality Control Plan (A005):**

**11.5.1** The contractor shall develop and implement a commercial quality control plan to ensure safe and reliable air transportation in accordance with FAA Regulation Part 135 and Title 32 CFR Part 861. The plan shall also address the contractor's approach to: (1) ensuring the control of GFE and consumable supplies, including controlled narcotics, (2) ensuring personnel provided to support this contract comply with and execute solely those functions required of this task, and (3) controlling reimbursable costs required to support this contract.

**11.6 Mission Capable Status Report - Daily (A006):**

**11.6.1** The contractor shall report Mission Capable status of each aircraft daily to the Contracting Officer, COR, and POC. The anticipation is that this report shall be sent via email every morning; however, operational tempo may require an alternate time of day

for reporting. The Contracting Officer will direct the reporting time of day at the kick-off, and direct any changes to that time during the period of performance.

- 11.6.2** For any status other than Fully Mission Capable (FMC), the daily report shall include a brief description of what missions can be supported by each aircraft, the reason FMC is not available, the steps being taken to upgrade status to FMC, the anticipated time for return to FMC status, and the number of hours the aircraft has been at each of the following types of statuses for the daily reporting period:

Pre-approved scheduled maintenance actual hours.

PMC(PR/CASEVAC/SAR) = Partially Mission Capable, able to perform PR/CASEVAC/SAR

PMC(Air Drop) = Partially Mission Capable, able to perform Air Drop

PMC(Airlift, Personnel) = Partially Mission Capable, able to perform Personnel Airlift

PMC(Airlift, Cargo) = Partially Mission Capable, able to perform Cargo Airlift

- 11.6.3** The contractor shall send an additional email to the same distribution list as the daily report at the time (within an hour) that any aircraft has changed status.

**11.7 Phase-Out Plan (A008):**

- 11.7.1** The contractor shall provide the Government with a phase-out plan.

- 11.7.2** The initial phase-out plan shall be delivered within 100 calendar days of contract award. Any changes to the plan shall be delivered with the monthly progress report (reference paragraph **XX**), with a separate notification (email-body) that the plan has been altered, what was altered, why it was altered, and any impacts to proposed schedule and cost caused by the alteration. The Contracting Officer must approve the initial plan and any altered plan before the plan is accepted into the contract.

**12.0. APPENDICES**

Appendix 6.1 – Vendor Assessment Guidelines for Twenty Critical Security Controls for Effective Cyber Defense: Consensus Audit Guidelines (CAG)

**Appendix 12.1**

**VENDOR ASSESSMENT GUIDELINES FOR TWENTY CRITICAL SECURITY CONTROLS FOR EFFECTIVE CYBER DEFENSE: CONSENSUS AUDIT GUIDELINES (CAG)**

**General:** Organizations should compare all 20 control areas against their current status.

The 20 Critical Controls are:

1. Inventory of Authorized and Unauthorized Devices
2. Inventory of Authorized and Unauthorized Software
3. Secure Configurations for Hardware and Software on Mobile Devices, Laptops, Workstations, and Servers
4. Continuous Vulnerability Assessment and Remediation
5. Malware Defenses
6. Application Software Security

- 7. Wireless Device Control
  - 8. Data Recovery Capability
  - 9. Security Skills Assessment and Appropriate Training to Fill Gaps
  - 10. Secure Configurations for Network Devices such as Firewalls, Routers, and Switches
  - 11. Limitation and Control of Network Ports, Protocols, and Services
  - 12. Controlled Use of Administrative Privileges
  - 13. Boundary Defense
  - 14. Maintenance, Monitoring, and Analysis of Audit Logs
  - 15. Controlled Access Based on the Need to Know
  - 16. Account Monitoring and Control
  - 17. Data Loss Prevention
  - 18. Incident Response and Management
  - 19. Secure Network Engineering
  - 20. Penetration Tests and Red Team Exercises
- The entire text of the 20 Critical Security Controls is available for reference at:  
<http://www.sans.org/critical-security-controls/>

**Procedures:**

- 1. Review each control.
- 2. Determine what procedures and tools exist within your organization to meet this control.
- 3. Document the result of 1-20 using the suggested template provided.
- 4. Provide any additional information about your company's cyber security posture.

**Company (Name): Information Assurance Report**

**Executive Summary: (descriptive self-assessment of the company's overall information security posture)**

**A. Assessment of Twenty Critical Security Controls for Effective Cyber Defense: Consensus Audit Guidelines (CAG)**

- 1. Control 1. Inventory of Authorized and Unauthorized Devices
  - a. Procedures and Tools supporting this control:  
(List the procedures and tools used in your organization for this control)
  - b. Method to achieve control metric:
- 2. (Continue for remaining 19 controls).

If a particular control does not exist or is not used within your organization, please state this.

**B. Assessment of Additional Security Measures for Effective Cyber Defense**

- 1. Measure. (Title of additional measure/control)
  - a. Procedures and Tools supporting this measure/control:  
(List the procedures and tools used in your organization)
  - b. Method to achieve measure/control metric:
- 2. (Continue for remaining measures/controls)

