



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

May 11, 2020

DELIVERED VIA EMAIL

Mr. Benjamin L. Berwick
The Protect Democracy Project, Inc.
15 Main Street, Suite 312
Watertown, MA 02742

Re: Protect Democracy Project v. Department of Justice, et al.,
Civil Action No. 1:20-cv-00172 (RC)

Dear Mr. Devine:

This letter and accompanying documents are in response to The Protect Democracy Project's Freedom of Information Act (FOIA) request dated January 3, 2020, for records concerning the January 2, 2020 military strike in Iraq. This request, which is now the subject of the above-captioned litigation, was assigned the DoD FOIA case number 20-F-0469.

Enclosed are 27 pages of records that have been determined to be responsive to your request. The Bates numbers for this interim response are 000001-000027. Certain information within these records has been withheld under Title 5 U.S.C. § 552 (b)(5), which pertains to certain inter- or intra-agency communications protected by the deliberative process, executive privilege, and/or attorney-client privilege; and (b)(6), which allows for withholding information the disclosure of which would result in a clearly unwarranted invasion of personal privacy.

Sincerely,

John B. Renehan
Associate Deputy General Counsel
Office of Information Counsel
U.S. Department of Defense

Enclosure:
As Stated



3

TAMMY DUCKWORTH
ILLINOIS

COMMITTEE:
ARMED SERVICES
COMMERCE, SCIENCE
AND TRANSPORTATION
ENVIRONMENT AND PUBLIC WORKS
SMALL BUSINESS
AND ENTREPRENEURSHIP

United States Senate

January 10, 2020

VIA ELECTRONIC DELIVERY

The Honorable Mark Esper
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1300

Dear Secretary Esper:

I write to request the U.S. Department of Defense (DoD) act swiftly to inform the Congress and the American public precisely what legal authority, or which legal authorities, authorized the military operation on January 3, 2020 killing Major General Qasem Soleimani, head of Iran's Islamic Revolutionary Guard Corps (IRGC).

Specifically, I ask that no later than Monday, January 13, 2020, DoD post on its public website the specific legal memorandums or simply the list of authorities under which it acted.

During your confirmation hearing before the Senate Armed Services Committee, I asked you if the 2001 Authorization for Use of Military Force (AUMF) or the 2002 AUMF provided legal authorization to use military force against Iran. In your sworn testimony, you affirmed that neither AUMF provided the Executive Branch with authority to use our military against Iran:

Duckworth: *"Again, I want to address, since I get the last here I guess, about the ongoing use of the 2001 and AUMFs. The U.S. Constitution vests with Congress the solemn responsibility to declare war.*

However, past several years, administrations from both parties used the existing AUMF in a way that outstrips the Congress and has at best dubious legal justifications.

In a real world example of current concern, do believe that the 2001 AUMF or the 2002 AUMF provides necessary legal authorization for us to use military against Iran [emphasis added]?"

Esper: *"Not to conduct a war, Senator, as you discussed, but obviously, the President has under the right to respond if attacked. But, no, not in how you described it, as we discussed, to conduct a –"*



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Letter to the Honorable Mark Esper
January 10, 2020
Page 2 of 2

Duckworth: *"But Article 2 is aside from AUMF."*

Esper: *"Right. I said if Iran were to attack our soldiers, we always have the right of self-defense to execute those types of -"*

Duckworth: *"But that is under Article 2. Speaking specifically of the 2001 and 2002 AUMFs. Either one of those authorize you to -"*

Esper: *"No, because 2001 applies to terrorist groups and organizations, and that would not be the here with regard to the country of Iran."*

Duckworth: *"Thank you."*

To date, the report and briefing provided to Congress on the use of military force is incomplete and unacceptably vague.

Accordingly, I request that in addition to publicly disclosing the legal authorities that authorized the DoD operation, you also provide the Congress with clear confirmation that neither the 2001 AUMF (Public Law 107-40) nor the 2002 AUMF (Public Law 107-243) authorized the military operation that killed the leader of the IRGC.

Congress and the American people require a transparent explanation and clear understanding of why DoD believes its January 3, 2020 military operation was legal. Securing an answer to the question of legality is vital to upholding constitutional principles and the rule of law. Thank you in advance for your response to my request.

Sincerely,



Tammy Duckworth
United States Senator

(b) (6) [redacted] OSD OUSD POLICY (USA)

Subject: FW: MOC Escobar incoming
Signed By: (b) (6) [redacted]@mail.mil

From: (b) (6) [redacted] OSD OUSD POLICY (USA)
Sent: Tuesday, January 14, 2020 8:40 AM
To: (b) (6) [redacted] SD' <(b) (6) [redacted]@sd.mil>
Cc: SD - ExecSec MA <(b) (6) [redacted]@sd.mil>; OSD Pentagon OUSD Policy List USDP MAs and SAs <(b) (6) [redacted]@mail.mil>
Subject: MOC Escobar incoming

(b) (6) [redacted]

Good morning! Per our discussion, please see note on (b) (5) [redacted] The letter asks for a briefing on US Strategy; (b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]	OSD000051-20	[redacted]	SECDEF	FO REVIEW - U.S. STRIKE IN IRAQ STRATEGY GUIDING POLICY IN IRAN AND OPERATIONS IN THE REGION	(b) (5) [redacted]
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r/
(b) (6) [redacted]



Congress of the United States
Washington, DC 20515

January 3, 2020

The Honorable Mark T. Esper
Secretary of Defense
1000 Defense Pentagon
Washington, D.C., 2030-1000

Secretary Esper,

We write to express grave concerns over the January 2nd, U.S. strike in Baghdad, authorized by the President, which resulted in the death of General Qassem Soleimani, head of the Quds Force of Iran's Islamic Revolutionary Guard Corps. This extreme escalation, undertaken without Congressional consultation or approval, greatly endangers American troops, diplomats, and allies throughout the region.

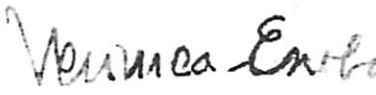
We are further concerned by the apparent absence of a clear strategy guiding policy toward Iran. Predictably, yesterday's actions have been met with Iranian promises of retaliation, risking further escalation of an already challenging relationship. The Administration's withdrawal from the JCPOA and "maximum pressure campaign" have only destabilized relations with Iran and inflamed regional tensions leading to a series of reciprocal escalations.

We request that you immediately provide briefings to Congress regarding the details of this and imminent operations in the region, as well as to articulate the broader strategy for ongoing relations with Iran and impacted parties, including implications for the ongoing campaign to defeat ISIS.

War with Iran would come at great cost to U.S. national security interests and grave risk to the men and women who serve in our armed services, diplomatic corps, and civilians of all nationalities who call the region home. This is not an outcome the American people want, and it would be highly inappropriate to – by design or negligence – enter into so momentous a conflict without fully consulting the American public and their representatives in Congress.

We urge you to meaningfully engage Congress in advance of any further escalatory actions. It is imperative, and indeed required by law, that Congress authorize any protracted conflict.

Sincerely,


Veronica Escobar
Member of Congress


Jackie Speier
Member of Congress


Deb Haaland
Member of Congress

PRINTED ON RECYCLED PAPER



OSD000051-20/CMD000067-20

PDP/20-cv-172(DoD 20-L-0469)/0004

INFO MEMO

FOR: SECRETARY OF DEFENSE

FROM: Mr. Robert Hood, Assistant Secretary of Defense for Legislative Affairs

PURPOSE: Provide an update on the Senate's consideration of War Powers Act resolutions and broader Authorization of Use of Military Force (AUMF) debate following the U.S. strike that killed Qassem Soleimani and the subsequent Iranian strike on bases housing U.S. forces in Iraq.

BACKGROUND: Following the 02 JAN U.S. strike that killed Iranian Quds Force commander Soleimani, members of Congress have moved quickly to introduce (or re-introduce) legislation to restrict the President's ability to take military action in or against the Islamic Republic of Iran. These bills fall into three categories: 1) War Powers Act resolutions restricting U.S. actions against Iran (Rep. Slotkin's H.Con.Res.83 / Sen. Kaine's S.J.Res.68); 2) Prohibiting funding for military action against Iran (Rep. Khanna's H.R.5543 / Sen. Sanders' S.3159); and 3) Repealing the 2002 Iraq AUMF (Rep. Lee).

- **House War Powers Act Resolution:** Last week, on Thursday 09 JAN, the House passed the non-binding H.Con.Res.83 - Directing the President pursuant to section 5(c) of the War Powers Resolution to terminate the use of United States Armed Forces to engage in hostilities in or against Iran, by a mostly party line vote of 224-194. The resolution was sponsored by House Armed Services Committee member Rep. Elissa Slotkin (D-MI), a former CIA officer who specialized in Iran. Three Republicans, including HASC member Rep. Matt Gaetz (R-FL), broke to support the non-binding resolution while seven Democrats opposed the measure, including HASC members Rep. Anthony Brindisi (D-NY), Rep. Kendra Horn (D-OK), and Rep. Elaine Luria (D-VA).
- **Current State Of Play In The Senate:** A companion Senate resolution, sponsored by Senate Armed Services Committee (SASC) and Senate Foreign Relations Committee (SFRC) member Sen. Tim Kaine (D-VA), is expected to come to the Senate floor as soon as Tuesday, 14 JAN, and voted on before the President's impeachment trial. The resolution (S.J.Res.68) is privileged and will be voted at a simple majority-vote threshold. It would direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress, while not preventing the U.S. from defending itself from imminent attack.
 - o **Timeline:** On 03 JAN Sen. Kaine's introduced his resolution (S.J.Res.63) with Sen. Dick Durbin (D-IL) as an original co-sponsor. After discussions with Sens. Rand Paul (R-KY) and Mike Lee (R-UT), language criticizing President Trump was removed, and an updated resolution (S.J.Res.68) was introduced on 09 JAN. Sens. Lee, Paul, and Durbin were original co-sponsors. SASC members Sen. Mazie Hirono (D-HI), Kirsten Gillibrand (D-NY), Angus King (I-ME), Jack Reed (D-R), and Sen. Bernie Sanders (I-VT) have subsequently joined as co-sponsors, while SASC member Sen. Martin Heinrich (D-NM) has also announced his intent to co-sponsor. (See Tab A for the text of S.J.Res.68).



SENATE WHIP CHECK FOR S.J.Res.68

SFRC			SASC		
Support	Oppose	Undecided/No Comment	Support	Oppose	Undecided/No Comment
5 (1 R [Paul]; 4 D)	4 (4 R)	13	5 (5 D)	2 (2 R)	21

Relevant votes asserting congressional authority over AUMF matters in 2019:

- **Sen. Udall's Anti- Iran AUMF Amendment (SA#883):** On 28 JUN 2019, during floor consideration of the Senate's fiscal year 2020 (FY20) National Defense Authorization Act, Sen. Tom Udall (D-NM)'s amendment prohibiting military "hostilities" against Iran was defeated 50-40, falling short of the required 60 votes needed for passage. Four Republican senators voted in favor of the amendment: Susan Collins (R-ME), Mike Lee (R-UT), Jerry Moran (R-KS) and Rand Paul (R-KY).
- **Sen. Sander's Yemen War Powers Act Resolution (S.J.Res.7):** In MAR 2019, the Senate passed S.J.Res.7 - A joint resolution to direct the removal of United States Armed Forces from hostilities in the Republic of Yemen that have not been authorized by Congress by a vote of 54-46. Seven Republican senators voted in favor of the resolution (which was ultimately vetoed by the president): Susan Collins (R-ME), Mike Lee (R-UT), Steve Daines (R-MT), Jerry Moran (R-KS) Lisa Murkowski (R-AK), Rand Paul (R-KY) and Todd Young (R-IN).

MEMBER VIEWS AS OF 14 JAN 2019

LEADERSHIP

- **Majority Leader Mitch McConnell (R-KY):** "I expect the Senate will soon debate Senator Kaine's war powers resolution. For a year now I've wanted the Senate to go on the record about our military presence and strategy in Syria and Iraq. I'm glad my Democratic colleagues may finally be interested in having that discussion rather than ducking it. I don't believe the blunt instrument of a war powers resolution is an acceptable substitute for the studied oversight the Senate can exercise through hearings, resolutions, and more tailored legislation. So I will strongly oppose this resolution." (Floor Remarks, 13 JAN 2020)
- **Minority Leader Chuck Schumer (D-NY):** "We need Senator Kaine's bipartisan War Powers resolution now more than ever. President Trump's erratic and impulsive decisions have made Americans less safe. Congress must hold the president accountable and assert our authority over matters of war and peace." (Twitter, 09 JAN 2020)

REPUBLICAN SUPPORT FOR THE RESOLUTION SO FAR

After the 08 JAN DoD Senate All-Member Brief on Iran, Sens. Mike Lee (R-UT) and Rand Paul (R-KY) held a press conference announcing their support for an AUMF debate, and an amended version of Sen. Kaine's legislation in particular. The updated resolution (S.J.Res.68) was introduced on 09 JAN.

- **Sen. Mike Lee (R-UT):** "I walked into that briefing undecided as to whether to support a resolution under the War Powers Act introduced by Senator Kaine... That briefing is what changed my mind."
- **Sen. Rand Paul (R-KY):** "I join Senator Lee in making the decision to also support the War Powers resolution." Paul continued: "They have justified the killing of an Iranian general as being something that Congress gave them permission to do in 2002. That is absurd; that is an insult, and every time someone writes that Congress needs to take back their authority on war, that is what we are here to do."

NOTE: Despite their rhetoric, their previous records on AUMF matters would indicate they would have had substantially similar positions regardless of the content of the briefing.

On 14 JAN, Sen. Kaine claimed "**Probably about 10**" Republicans total are considering supporting the resolution. According to press reporting, they include Sens. Susan Collins (R-ME), Lisa Murkowski (R-AK), Todd Young (R-IN), and Mitt Romney (R-UT), who are currently reviewing the legislation.

SENATE FOREIGN RELATIONS COMMITTEE (SFRC)

- **Chairman Jim Risch (R-ID):** "I fully understand there is a partisan divide on this, and we have two to three members on our side who also disagree, but for different reasons. This is healthy, we'll get through this. **This debate over the authorization of the use of military force has been going on since George Washington was president. This is a democracy and this is how it should work.**" (Interview, *Fox News*, 09 JAN 2020)
<https://www.risch.senate.gov/public/index.cfm/pressreleases?ID=F0FF2323-91F8-4CA3-A9B7-82BD7764351E>
- **Ranking Member Bob Menendez (D-NJ):** "That is why the Congress' role in shaping and advancing U.S. foreign policy has never mattered more. That is why I will continue to advance strategic legislation—from Turkey to Climate Change to new Ukraine support—to conduct oversight, and to speak on behalf of the American people and the values and norms that define us and our place in this complicated world."
 - "We here in the Senate have an obligation. We cannot cynically look the other way or be silent or enable that which we know to be wrong, risky, and morally reprehensible. History will not judge us kindly if we do. I, for one, will not stand idly by and be judged that way." (Senate Floor Speech, 07 JAN 2020)

- **Sen. Marco Rubio (R-FL):** “The last point I want to make is all this talk about an authorization for use of force. I want to begin by saying my personal view. I believe the War Powers Resolution is unconstitutional. I think the power of Congress resides in the opportunity to declare war and to fund it. Every presidential administration, Republican and Democrat alike, has taken the same position. That doesn't mean we should never have an AUMF. I think our nation — our actions are stronger when it is clear that it has strong bipartisan support from both houses of Congress. I also think all this talk about AUMFs is completely and utterly irrelevant to the case in point.”
 - “Number one, under the Constitution of the United States, and the War Powers Resolution by the way, the President of the United States not only has the authority to act in self-defense, but an obligation to do so — an obligation to do so. That's number one. Number two, it is especially true in this case where the lives and the troops that he sought to protect were deployed to Iraq on an anti-ISIS, antiterrorism mission approved by Congress through an AUMF. An AUMF that states very clearly one of the reasons we are allowed to use military force as authorized by Congress is to defend against attacks.... So not only do you not need an AUMF or congressional authority to act in self-defense, but the troops that were defending themselves here, and the troops that we were defending in the Soleimani strike and preventing an attack against, are deployed pursuant to a congressional authorization.” (Senate Floor Speech, 09 JAN 2020)
<https://www.rubio.senate.gov/public/index.cfm/press-releases?ID=AAB612C0-BE77-4EDE-896D-687EB992C7DE>
- **Sen. Ron Johnson (R-WI):** [In an interview, Sen. Johnson said “he will vote against limiting President Trump's authority” and he does not want to “hamstring” Trump or future presidents.] “Public opinion does not want to get involved in wars. That is the biggest restraint any president has. And if you have any president go too far, beyond public opinion, Congress can always pull back the funding authority.” [Sen. Johnson also said he will offer an amendment during Senate debate to “pre-authorize the use of military force if it is pretty apparent that Iran is going to become a nuclear power.”] (Interview, *WISN*, 12 JAN 2020)
- **Sen. Mitt Romney (R-UT):** [In an interview] Romney, meanwhile, noted to reporters that he voted against Kaine's Iran proposal in June but “he has made a number of changes since then, and I've not seen the latest version, so I'll be taking a look.” (Interview, *TheHill.com*, 12 JAN 2020)
- **Sen. Lindsey Graham (R-SC):** “The War Powers Resolution is an infringement on the president's constitutional powers as Commander in Chief.”
 - “At the end of the day, this House vote is meaningless when it comes to President @realDonaldTrump's ability to protect the nation and only serves as an inducement for Iran and other radical Islamic elements to become more provocative.”
 - “To the House Dems and GOPers who voted for this resolution: You have done nothing to legally restrict President Trump's power as Commander in Chief. Unfortunately however, you have increased the likelihood of conflict.” (Twitter, 09 JAN 2020)
 - “Thank goodness that our Constitution does not make Congress the Commander in Chief. The balance of power in the Constitution regarding military power and war is quite

- brilliant. No single individual – including the president – can put the nation in a legal state of war.”
- “However, when it comes to commanding the military and directing our forces, we have a single Commander in Chief -- not 535 of them. The War Powers Resolution seeks to destroy this balance.”
 - “I have said for decades that I believe the War Powers Resolution is unconstitutional. If you don’t like what the Commander in Chief is doing -- cut off funding.” (Twitter, 09 JAN 2020)
 - **Sen. Todd Young (R-IN):** “[In an interview regarding the resolution] “I do have some reservations that I shared with him [Sen. Kaine]. Candidly, I’ve been trying to think through the implications of its introduction ... and whether, you know, it’s still every bit as relevant as it would have been prior to the strikes’ on Iraqi bases by Iran, Young added.” (Interview, *TheHill.com*, 12 JAN 2020)”
 - **Sen. Ed Markey (D-MA):** [Quote tweeting a news report stating the president authorized the strike against General Soleimani seven months ago] “This wasn’t just a misrepresentation about the ‘imminent threat’ of Soleimani, this looks to be a fabrication intended to bypass Congress’s Constitutional role to authorize war. Those in the Trump admin obsessed w/ regime change in Iran seem willing to outright lie to achieve it.”
 - **Sen. Chris Murphy (D-CT):** [Quote tweeting a news report stating the president authorized the strike against General Soleimani seven months ago] “Morning. You cannot take military action against another nation without congressional consent unless to defend against an imminent attack. It’s clear now this was an illegal action. That also has made America less safe.”

SENATE ARMED SERVICES COMMITTEE (SASC)

- **Chairman Jim Inhofe (R-OK):** “Today’s war powers vote is nothing more than a political effort by Democrats who want to paint a single airstrike as a rush to war. Defending American citizens and assets is not war. My full statement on House Democrats’ vote today” (Twitter, 09 JAN)
 - “Today’s war powers vote is nothing more than a political effort by Democrats who want to paint a single airstrike as a rush to war. There is no war. An airstrike is not war. Defending American citizens and assets is not war. But, restricting the President’s ability to defend Americans only makes us vulnerable and makes war more likely.
 - “Some Democrats have such contempt for our President - our Commander-in-Chief - that they are more concerned about publically rebuking him than they are about defending America. The rush to pass this legislation-legislation that was drafted before the House received a briefing about the airstrike, without any committee hearings and with only two hours of floor debate-shows their focus isn’t on the facts; it’s on politics.
 - “The fact is that the Soleimani strike held Iran accountable for killing countless Americans over the last several decades, including the father of two young children last week. The strike has also resulted in a de-escalation in tensions. It was a success. President Trump has repeatedly affirmed America has no desire to go to war, and his

strategy has shown restraint in the face of Tehran's provocations. His decision to eliminate Soleimani has put us on our strongest footing with Iran in more than 40 years. President Trump has made it clear to Iran that its aggression cannot and will not continue unchecked, but the only ones claiming that war is imminent are Congressional Democrats, not even the Iranians themselves." (Press Release, 09 JAN 2020)

- **Ranking Member Jack Reed (D-RI):** "Pres Trump has no clear plan for Iran. His weak War Powers notification should be declassified & made public ASAP. Why is POTUS unwilling to level with the American people?" (Twitter, 07 JAN 2020)
- **Sen. Thom Tillis (R-NC):** "To be clear, America did not provoke Iran. America eliminated a notorious terrorist leader 15 miles from the U.S. Embassy in Baghdad...**Our retaliatory action does not meet the threshold required under the War Powers Act.** Op-ed: <https://www.foxnews.com/opinion/sen-thom-tillis-iran-war-powers-resolution-is-dangerous-returns-us-to-appeasement-posture>" (Twitter, 09 JAN 2020)
- **Sen. Angus King (I-ME):** "For decades, Congress has ceded its war powers to presidents of both parties and abdicated our constitutionally-designated responsibility to make these decisions on behalf of the American people. I'm cosponsoring @TimKaine's resolution to try to remedy this." (Twitter, 08 JAN 2020)
- **Sen. Kirsten Gillibrand (D-NY):** "Congress must assert its war powers authority before it's too late. That's why I'm sponsoring @SenSanders's No War With Iran Act to prohibit the president from taking any further military action involving Iran, unless he notifies Congress immediately and obtains authorization." (Twitter, 09 JAN 2020)
- **Sen. Martin Heinrich (D-NM):** "I'm cosponsoring @timkaine's war powers resolution to prevent an unauthorized war with Iran. Congress must step in to hold a debate and vote on whether or not we continue to allow this dangerous escalation to continue." (Twitter, 08 JAN 2020)

ATTACHMENTS:

Tab A – S.J.Res.68 Language

TAB A

116TH CONGRESS
2D SESSION

S. J. RES. 68

To direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress.

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2020

Mr. KAINE (for himself, Mr. DURBIN, Mr. LEE, and Mr. PAUL) introduced the following joint resolution; which was read twice and referred to the Committee on Foreign Relations

JOINT RESOLUTION

To direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress makes the following findings:

5 (1) Congress has the sole power to declare war
6 under article I, section 8, clause 11 of the United
7 States Constitution.

8 (2) Congress has not yet declared war upon,
9 nor enacted a specific statutory authorization for use

1 of military force against, the Islamic Republic of
2 Iran. The 2001 Authorization for Use of Military
3 Force (Public Law 107-40; 50 U.S.C. 1541 note)
4 against the perpetrators of the 9/11 attack and the
5 Authorization for Use of Military Force Against Iraq
6 Resolution of 2002 (Public Law 107-243; 50 U.S.C.
7 1541 note) do not serve as a specific statutory au-
8 thorization for the use of force against Iran.

9 (3) The conflict between the United States and
10 the Islamic Republic of Iran constitutes, within the
11 meaning of section 4(a) of the War Powers Resolu-
12 tion (50 U.S.C. 1543(a)), either hostilities or a situ-
13 ation where imminent involvement in hostilities is
14 clearly indicated by the circumstances into which
15 United States Armed Forces have been introduced.

16 (4) Section 5(c) of the War Powers Resolution
17 (50 U.S.C. 1544(c)) states that “at any time that
18 United States Armed Forces are engaged in hos-
19 tilities outside the territory of the United States, its
20 possessions and territories without a declaration of
21 war or specific statutory authorization, such forces
22 shall be removed by the President if the Congress so
23 directs”.

24 (5) Section 8(c) of the War Powers Resolution
25 (50 U.S.C. 1547(c)) defines the introduction of the

1 United States Armed Forces to include “the assign-
2 ment of members of such armed forces to command,
3 coordinate, participate in the movement of, or ac-
4 company the regular or irregular forces of any for-
5 eign country or government when such military
6 forces are engaged, or there exists an imminent
7 threat that such forces will become engaged in, hos-
8 tilities”.

9 (6) The United States Armed Forces have been
10 introduced into hostilities, as defined by the War
11 Powers Resolution, against Iran.

12 (7) The question of whether United States
13 forces should be engaged in hostilities against Iran
14 should be answered following a full briefing to Con-
15 gress and the American public of the issues at stake,
16 a public debate in Congress, and a congressional
17 vote as contemplated by the Constitution.

18 (8) Section 1013 of the Department of State
19 Authorization Act, Fiscal Years 1984 and 1985 (50
20 U.S.C. 1546a) provides that any joint resolution or
21 bill to require the removal of United States Armed
22 Forces engaged in hostilities without a declaration of
23 war or specific statutory authorization shall be con-
24 sidered in accordance with the expedited procedures

1 of section 601(b) of the International Security and
2 Arms Export Control Act of 1976.

3 **SEC. 2. TERMINATION OF THE USE OF UNITED STATES**
4 **FORCES FOR HOSTILITIES AGAINST THE IS-**
5 **LAMIC REPUBLIC OF IRAN.**

6 (a) **TERMINATION.**—Pursuant to section 1013 of the
7 Department of State Authorization Act, Fiscal Years
8 1984 and 1985 (50 U.S.C. 1546a), and in accordance with
9 the provisions of section 601(b) of the International Secu-
10 rity Assistance and Arms Export Control Act of 1976,
11 Congress hereby directs the President to terminate the use
12 of United States Armed Forces for hostilities against the
13 Islamic Republic of Iran or any part of its government
14 or military, unless explicitly authorized by a declaration
15 of war or specific authorization for use of military force
16 against Iran.

17 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-
18 tion shall be construed to prevent the United States from
19 defending itself from imminent attack.

○

INFO MEMO

FOR: SECRETARY OF DEFENSE

FROM: Mr. Robert Hood, Assistant Secretary of Defense for Legislative Affairs

PURPOSE: Provide background on War Powers Act resolutions introduced in Congress following the U.S. strike that killed Qassem Soleimani and the subsequent Iranian strike targeting bases housing U.S. forces in Iraq

BACKGROUND: Since the 18 APR 2019 designation of the Islamic Revolutionary Guard Corps as a Foreign Terrorist Organization, escalating U.S.-Iranian tensions have repeatedly elicited strong reactions in Congress. Illustrative Democratic comments include Rep. Ilhan Omar's (D-MN) 14 MAY 2019 statement, in response to a New York Times report that as many as 120,000 U.S. troops could be deployed to the CENTCOM AOR: "This is chilling. Trump and John Bolton are openly laying the groundwork for another war"; or Rep. Ro Khanna's (D-CA) 18 SEP 2019 contention that: "President Trump has taken us to the brink of war with Iran, and escalated tensions in the Middle East." This opposition by congressional Democrats led to various legislative proposals in 2019, most notably an amendment to the House FY20 National Defense Authorization Act (NDAA) by Rep. Khanna restricting military actions against Iran, which was adopted 251-170, and an amendment by Rep. Barbara Lee (D-CA) repealing the 2002 Iraq Authorization for the Use of Military Force (AUMF), which was adopted 242-180. Both amendments were later stripped from the NDAA conference report before final passage.

Following the 02 JAN U.S. strike that killed Iranian Quds Force commander Soleimani, members of Congress have moved quickly to introduce (or re-introduce) legislation to restrict the President's ability to take military action in or against the Islamic Republic of Iran. These bills fall into three categories: 1) War Powers Act resolutions restricting U.S. actions against Iran (Rep. Slotkin's H.Con.Res.83 / Sen. Kaine's S.J.Res.63); 2) Prohibiting funding for military action against Iran (Rep. Khanna's H.R.5543 / Sen. Sanders' S. 3159); and 3) Repealing the 2002 Iraq AUMF (Rep. Lee). On 08 JAN, Speaker Pelosi announced her intent to hold a vote on Rep. Slotkin's H.Con.Res.83, and also potentially revisit Rep. Lee and Rep. Khanna's legislation.

- **H.Con.Res. 83** – Directing the President pursuant to section 5(c) of the War Powers Resolution to terminate the use of United States Armed Forces to engage in hostilities in or against Iran (See Tab A)
Introduced 08 JAN by HASC & HFAC member Rep. Elissa Slotkin (D-MD)
 - The resolution would end the use of military force to engage Iran unless Congress has formally authorized action or if there is an "imminent armed attack upon the United States."
 - 134 original cosponsors, including 20 HASC members. No Republican co-sponsors.
 - Passed by the House on 09 JAN in a mostly party line vote of 224-194, with only three Republicans breaking to support and eight democrats breaking to oppose.
 - The President issued a Statement of Administration Policy on 09 JAN declaring it "unnecessary," "misguided, and its adoption by Congress could undermine the ability of



the United States to protect American citizens whom Iran continues to seek to harm.”
(See Tab B)

- **S.J.Res. 63** – A joint resolution to direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress (See Tab C)

Introduced 03 JAN by SASC & SFRC member Sen. Tim Kaine (D-VA)

- The resolution would require that any hostilities with Iran must be explicitly authorized by a declaration of war or specific authorization for use of military force (AUMF) but would not prevent the U.S. from defending itself from imminent attack.
- 29 original cosponsors, including six SASC members.
- **Companion Bill:** On 05 JAN HAC member Rep. Barbara Lee (D-CA) and HFAC member Rep. Ilhan Omar (D-MN) announced their intention to file a companion bill to S.J.Res.63 in the House. It is unclear whether this effort has been overtaken by H.Con.Res.83.

NOTE: After the 08 JAN DoD Senate All-Member Brief on Iran, Sens. Mike Lee (R-UT) and Rand Paul (R-KY) held a press conference announcing their support for an AUMF debate, and an amended version of Sen. Kaine’s legislation in particular.

- **Sen. Mike Lee (R-UT):** “I walked into that briefing undecided as to whether to support a resolution under the War Powers Act introduced by Senator Kaine... That briefing is what changed my mind.”
- **Sen. Rand Paul (R-KY):** “I join Senator Lee in making the decision to also support the War Powers resolution.” Paul continued: “They have justified the killing of an Iranian general as being something that Congress gave them permission to do in 2002. That is absurd; that is an insult, and every time someone writes that Congress needs to take back their authority on war, that is what we are here to do.”

- **S. 3159** – A bill to prohibit the use of funds for military force against Iran

Introduced 08 JAN by Sen. Bernie Sanders (I-VT)

- The bill would restrict funding for offensive military force in or against Iran without prior congressional authorization. A similar measure was passed by a bipartisan, 251-margin vote in the House but was later stripped during FY20 NDAA conference negotiations.
- 12 original cosponsors, including three SASC members.
- **Companion Bill:** H.R. 5543 – No War Against Iran Act was introduced by HASC member Rep. Ro Khanna (D-CA). The bill has 59 original cosponsors, including nine HASC members.

- **Not yet introduced:** On 07 JAN, Co-Chairs of the Congressional Progressive Caucus, HAC member Rep. Barbara Lee (D-CA), Rep. Mark Pocan (D-WI) and Rep. Pramila Jayapay (D-WA) announced their intention to re-introduce H.R. 2456, a bill repealing the Authorization for Use of Military Force Against Iraq Resolution of 2002.

ATTACHMENTS:

As noted

TAB A

116TH CONGRESS
2D SESSION

H. CON. RES. 83

Directing the President pursuant to section 5(c) of the War Powers Resolution to terminate the use of United States Armed Forces to engage in hostilities in or against Iran.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2020

Ms. SLOTKIN (for herself, Mr. GREEN of Texas, Mr. CISNEROS, Mr. GALLEGO, Mr. BERA, Mr. CONNOLLY, Mr. CLAY, Mr. ALLRED, Mr. LARSEN of Washington, Ms. SPANBERGER, Mr. TONKO, Mr. HASTINGS, Mr. JOHNSON of Georgia, Mrs. WATSON COLEMAN, Ms. SPEIER, Mr. HIGGINS of New York, Ms. ADAMS, Ms. HOULAHAN, Ms. OMAR, Mr. LARSON of Connecticut, Mr. BROWN of Maryland, Mr. ESPALLAT, Mr. DEUTCH, Mr. ENGEL, Mr. TED LIEU of California, Mr. GARAMENDI, Mr. COX of California, Mr. TAKANO, Ms. ESCOBAR, Ms. BARRAGÁN, Mr. LEVIN of California, Ms. CASTOR of Florida, Mr. CASTRO of Texas, Mr. CÁRDENAS, Mr. SIRES, Ms. WILD, Ms. GARCIA of Texas, Miss RICE of New York, Mr. LANGEVIN, Ms. SÁNCHEZ, Mr. SERRANO, Mr. KEATING, Ms. HAALAND, Mr. CROW, Ms. VELÁZQUEZ, Mr. SCHRADER, Mr. BEYER, Ms. BROWNLEY of California, Ms. WILSON of Florida, Ms. SHERRILL, Mr. SOTO, Ms. PINGREE, Mr. THOMPSON of California, Ms. KAPTUR, Mr. MALINOWSKI, Ms. WEXTON, Mr. KILDEE, Mrs. DINGELL, Mr. COOPER, Ms. ESHOO, Ms. DELAUBO, Mr. MORELLE, Mr. SCHIFF, Mr. DANNY K. DAVIS of Illinois, Ms. WATERS, Mr. CARTWRIGHT, Ms. JACKSON LEE, Mr. YARMUTH, Mr. PASCRELL, Mr. LOWENTHAL, Mr. MOULTON, Mr. HIMES, Mrs. NAPOLITANO, Mr. KILMER, Mr. WELCH, Ms. NORTON, Ms. PRESSLEY, Mr. RUPPERSBERGER, Mr. MCEACHIN, Ms. MATSUI, Ms. GABBARD, Mr. TRONE, Mr. LEWIS, Mr. CASTEN of Illinois, Mr. MEEKS, Mr. COHEN, Mr. KENNEDY, Mrs. CAROLYN B. MALONEY of New York, Mr. RYAN, Mr. LUJÁN, Mr. KIND, Ms. SCANLON, Ms. DELBENE, Mr. VISCLOSKEY, Ms. PORTER, Mr. CASE, Mr. PANETTA, Mr. HARDER of California, Mr. CORREA, Mr. NEAL, Ms. MCCOLLUM, Mr. SUOZZI, Ms. KUSTER of New Hampshire, Mr. PAPPAS, Ms. SHALALA, Mr. PRICE of North Carolina, Mr. HUFFMAN, Mrs. DAVIS of California, Mr. KHANNA, Mr. CLEAVER, Ms. FRANKEL, Ms. MENG, Mr. NORCROSS, Mr. GRIJALVA, Ms. JOHNSON of Texas, Ms. DEGETTE, Mr. NEGUSE, Mr. BISHOP of Georgia, Ms. ROYBAL-ALLARD, Mr. STANTON, Mr. GARCÍA of Illinois, Mr. JEFFRIES, Mr. BUTTERFIELD, Mr. DEFazio, Mrs. TRAHAN, Ms. BLUNT ROCHESTER, Mr. SCOTT of Virginia, Mr. SCHNEIDER, Mr.

1 (3) In matters of imminent armed attacks, the
2 executive branch should indicate to Congress why
3 military action was necessary within a certain win-
4 dow of opportunity, the possible harm that missing
5 the window would cause, and why the action was
6 likely to prevent future disastrous attacks against
7 the United States.

8 (4) The United States has national interests in
9 preserving its partnership with Iraq and other coun-
10 tries in the region, including by—

11 (A) combating terrorists, including the Is-
12 lamic State of Iraq and Syria (ISIS);

13 (B) preventing Iran from achieving a nu-
14 clear weapons capability; and

15 (C) supporting the people of Iraq, Iran,
16 and other countries throughout the Middle East
17 who demand an end to government corruption
18 and violations of basic human rights.

19 (5) Over the past eight months, in response to
20 rising tensions with Iran, the United States has in-
21 troduced over 15,000 additional forces into the Mid-
22 dle East. The killing of Iranian General Qassem
23 Soleimani, as well as Iran's ballistic missile attack
24 on Iraqi bases, risks significant escalation in hos-
25 tilities between the United States and Iran.

1 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion may be construed—

3 (1) to prevent the President from using military
4 force against al Qaeda or associated forces;

5 (2) to limit the obligations of the executive
6 branch set forth in the War Powers Resolution (50
7 U.S.C. 1541 et seq.);

8 (3) to affect the provisions of an Act or joint
9 resolution of Congress specifically authorizing the
10 use of United States Armed Forces to engage in
11 hostilities against Iran or any part of its government
12 or military that is enacted after the date of the
13 adoption of this concurrent resolution;

14 (4) to prevent the use of necessary and appro-
15 priate military force to defend United States allies
16 and partners if authorized by Congress consistent
17 with the requirements of the War Powers Resolu-
18 tion; or

19 (5) to authorize the use of military force.

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TAB B



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 9, 2020
(House)

STATEMENT OF ADMINISTRATION POLICY

H.Con.Res. 83 – Directing the President Pursuant to Section 5(c) of the War Powers Resolution to Terminate the Use of United States Armed Forces to Engage in Hostilities in or Against Iran

(Rep. Slotkin, D-MI, and 134 cosponsors)

The Administration strongly opposes passage of H.Con.Res. 83, which purports to direct the President to terminate the use of United States Armed Forces engaged in hostilities in or against Iran or any part of its government or military unless authorized by Congress.

At the President's direction, on January 2, the United States military successfully executed a strike in Iraq that killed Qassem Soleimani, the Commander of the Islamic Revolutionary Guard Corps-Qods Force, a designated foreign terrorist organization. Soleimani was personally responsible for terrible atrocities. He trained terrorist armies, including Hezbollah, launching terror strikes against civilian targets. He fueled bloody civil wars all across the region. He directed and facilitated actions that viciously wounded and murdered thousands of United States troops, including by planting bombs that maim and dismember their victims. In eliminating Soleimani from the battlefield, the President took action to stop a war, not to start a war. He took action to protect our diplomats, our service members, our allies, and all Americans.

Although concurrent resolutions like H.Con.Res. 83 lack the force of law under controlling Supreme Court precedent, *I.N.S. v. Chadha*, 462 U.S. 919 (1983), it is nevertheless important to highlight some of its deficiencies.

First, H.Con.Res. 83 is unnecessary because the military actions to which it applies are already authorized by law, including the Authorization for Use of Military Force Against Iraq Resolution of 2002 (Public Law 107-243) ("2002 AUMF"). The 2002 AUMF provides specific statutory authorization to engage in military action to "defend the national security of the United States against the *continuing threat posed by Iraq*." Public Law 107-243, § 3(a)(1). The United States forces that have been threatened by Iranian and Iran-backed attacks in Iraq are there to combat terrorist groups—such as ISIS. Thus, in addition to acting in accordance with his Constitutional authorities as Commander in Chief and Chief Executive, the President also acted against Soleimani pursuant to existing statutory authorization. The 2002 AUMF has always been understood to authorize the use of force for, among other purposes, addressing terrorist threats—like Soleimani and the attacks he was planning and facilitating—emanating from Iraq. This is consistent with actions taken by previous Presidents pursuant to the 2002 AUMF. For example, during the last administration, United States forces frequently conducted operations in response to attacks and threats by Iran-backed militias in Iraq under the authority conferred by the 2002 AUMF. Moreover, the Administration's engagement with Congress on this strike has been fully

TAB C

116TH CONGRESS
2D SESSION

S. J. RES. 63

To direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress.

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 2020

Mr. KAINE (for himself and Mr. DURBIN) introduced the following joint resolution; which was read twice and referred to the Committee on Foreign Relations

JOINT RESOLUTION

To direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress makes the following findings:

5 (1) Congress has the sole power to declare war
6 under article I, section 8, clause 11 of the United
7 States Constitution.

8 (2) Congress has not yet declared war upon,
9 nor enacted a specific statutory authorization for use

1 United States Armed Forces are engaged in hos-
2 tilities outside the territory of the United States, its
3 possessions and territories without a declaration of
4 war or specific statutory authorization, such forces
5 shall be removed by the President if the Congress so
6 directs”.

7 (6) Section 8(c) of the War Powers Resolution
8 (50 U.S.C. 1547(c)) defines the introduction of the
9 United States Armed Forces to include “the assign-
10 ment of members of such armed forces to command,
11 coordinate, participate in the movement of, or ac-
12 company the regular or irregular forces of any for-
13 eign country or government when such military
14 forces are engaged, or there exists an imminent
15 threat that such forces will become engaged in, hos-
16 tilities”.

17 (7) The United States Armed Forces have been
18 introduced into hostilities, as defined by the War
19 Powers Resolution, against Iran.

20 (8) Department of Defense officials have been
21 warning for more than a year that the Trump Ad-
22 ministration “maximum pressure campaign” against
23 Iran, which has included economic, diplomatic and
24 military pressure, is raising the risk of retaliation
25 against United States troops and personnel. The

1 **SEC. 2. REMOVAL OF UNITED STATES FORCES FROM HOS-**
2 **TILITIES AGAINST THE ISLAMIC REPUBLIC**
3 **OF IRAN.**

4 (a) **REMOVAL OF FORCES.**—Pursuant to section
5 1013 of the Department of State Authorization Act, Fis-
6 cal Years 1984 and 1985 (50 U.S.C. 1546a), and in ac-
7 cordance with the provisions of section 601(b) of the Inter-
8 national Security Assistance and Arms Export Control Act
9 of 1976, Congress hereby directs the President to remove
10 United States Armed Forces from hostilities against the
11 Islamic Republic of Iran or any part of its government
12 or military, by not later than the date that is 30 days
13 after the date of the enactment of this joint resolution un-
14 less explicitly authorized by a declaration of war or specific
15 authorization for use of military force.

16 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-
17 tion shall be construed to prevent the United States from
18 defending itself from imminent attack.

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