

Notice on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations

This notice is provided consistent with Section 1264 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018, as amended.¹ It provides notice of a change in application of the existing legal and policy frameworks since the last comprehensive update to the December 2016 “Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations” that the President submitted to the appropriate congressional committees on March 12, 2018.² Consistent with Section 1264, this report contains a classified annex.

United States Military Action Against Qassem Soleimani

At the President's direction, United States Armed Forces conducted an air strike in Iraq on January 2, 2020, killing Qassem Soleimani, leader of Iran's Islamic Revolutionary Guard Corps-Qods Force, a designated foreign terrorist organization. The President directed this action in response to an escalating series of attacks in preceding months by Iran and Iran-backed militias on United States forces and interests in the Middle East region. The purposes of this action were to protect United States personnel, to deter Iran from conducting or supporting further attacks against United States forces and interests, to degrade Iran's and Qods Force-backed militias' ability to conduct attacks, and to end Iran's strategic escalation of attacks on, and threats to United States interests.

Article II of the United States Constitution, empowers the President, as Commander in Chief, to direct the use of military force to protect the Nation from an attack or threat of imminent attack and to protect important national interests. Article II thus authorized the President to use force against forces of Iran, a state responsible for conducting and directing attacks against United States forces in the region. In addition, under the 2002 Authorization for Use of Military Force Against Iraq (2002 AUMF) “the President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to ... defend the national security of the United States against the continuing threat posed by Iraq.”³ Although the threat posed by Saddam Hussein's regime was the initial focus of the statute, the United States has long relied upon the 2002 AUMF to authorize the use of force for the purpose of establishing a stable, democratic Iraq and addressing terrorist threats emanating from Iraq.⁴

¹ Section 1264, National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91 (2017) (“NDAA for FY 2018”), as amended by Section 1261, National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92 (2019) (“NDAA for FY 2020”).

² The *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations*, December 5, 2016, is available at <https://obamawhitehouse.archives.gov/the-press-office/2016/12/05/fact-sheet-presidential-memorandum-legal-and-policy-transparency>. The unclassified update to the *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations*, March 12, 2018, is available at <https://www.state.gov/wp-content/uploads/2019/10/Report-to-Congress-on-legal-and-policy-frameworks-guiding-use-of-military-force-pdf>.

³ Authorization for Use of Military Force Against Iraq, Pub. L. No. 107-243, 116 Stat. 1498, § 3(a)(1) (2002).

⁴ See, e.g., supra n. 2, at fn. 25.

Such uses of force need not address threats from the Iraqi Government apparatus only, but may address threats to the United States posed by militias, terrorist groups, or other armed groups in Iraq.

The airstrike against Soleimani in Iraq is consistent with this longstanding interpretation of the President's authority under Article II and the 2002 AUMF. Iran's past and recent activities, coupled with intelligence at the time of the air strike, indicated that Iran's Qods Force posed a threat to the United States in Iraq, and the air strike against Soleimani was intended to protect United States personnel and deter future Iranian attack plans against United States forces and interests in Iraq and threats emanating from Iraq. The use of military force against Iranian Armed Forces was tailored narrowly to the identified Qods Force target's presence in Iraq and support to, including in some cases direction of, Iraqi militias that attacked United States personnel.

As a matter of international law, the strike targeting Soleimani in Iraq was taken in United States national self-defense, as recognized in Article 51 of the United Nations Charter, in response to a series of escalating armed attacks that Iran and Iran-supported militias had already conducted against the United States. The United States reported the air strike to the United Nations Security Council on January 8, 2020, in accordance with Article 51 of the United Nations Charter. Although the threat of further attack existed, recourse to the inherent right of self-defense was justified sufficiently by the series of attacks that preceded the January 2 strike.