

TIM KAINE  
VIRGINIA

COMMITTEE ON  
ARMED SERVICES

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FOREIGN RELATIONS

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THE BUDGET

SPECIAL COMMITTEE  
ON AGING

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## United States Senate

WASHINGTON, DC 20510-4607

December 19, 2017

The Honorable Rex Tillerson  
Secretary of State  
U.S. Department of State  
2201 C St, NW  
Washington, DC 20520

The Honorable James Mattis  
Secretary of Defense  
U.S. Department of Defense  
100 Defense Pentagon,  
Washington, DC 20301

Dear Secretaries Tillerson and Mattis:

I write to seek clarification and additional information on the counter-ISIS campaign in Iraq and Syria following the submission of the December War Powers notification, statements from a recent Pentagon press briefing and troubling news reports on the changing U.S. mission in Syria. I am concerned that the United States will soon find itself lacking domestic or international legal standing for operations in Syria based on official statements that our presence, intended for a narrowly-scoped campaign to fight ISIS, might now be used to pressure the Syrian government, target Iran and its proxies, and engage other entities not covered under the 2001 AUMF.

The December War Powers Act notification to Congress does not specify the number of U.S. troops in Iraq or Syria, but at a recent Pentagon press conference, a DOD spokesman stated that there are approximately 2,000 troops in Syria, a 397% increase from the 503 troops cited six months earlier in the June notification. He further stated that, "We will be in Syria as long as it takes to make sure that ISIS is not afforded the ability to re-establish safe havens and conduct attacks."

Following this press briefing, Russia's military announced on December 7 that it had accomplished its mission of defeating ISIS in Syria and that there were no remaining settlements there under ISIS control. On December 9, Iraqi Prime Minister Abadi declared victory over ISIS in Iraq and the end of more than three years of battles to regain control over areas that had been under ISIS's dominion. Abadi stated, "Our forces fully control the Iraqi-Syrian border, and thus we can announce the end of the war against Daesh." That same day, the State Department agreed with Prime Minister Abadi noting, "The Iraqi announcement signals the last remnants of ISIS's self-proclaimed 'caliphate' in Iraq have been erased and the people living in those areas have been freed from ISIS's brutal control."

However, while welcoming Abadi's announcement, additional Administration statements have suggested that a military presence in Syria could be open-ended to pursue objectives unrelated to the counter-ISIS mission. The original mission relied upon an expansive legal interpretation of the 2001 and 2002 AUMFs detailed in the December 2016 White House report: "Legal and Policy Frameworks Guiding The United States' Use Of Military Force And Related National Security Operations."

Additionally, on December 13, the *Wall Street Journal* published an article quoting an unnamed U.S. official who said, "Our leadership has set as an objective not to allow Iran and its proxies to be able to establish a presence in Syria that they can use to threaten our allies or us in the region." The article also states that the Administration is considering whether to make "confronting Iran an explicit new goal for the more than 2,000 American forces currently in Syria." If these reports accurately reflect your intentions, the actions you are likely considering far exceed the counter-ISIS mandate and lack domestic or international legal authority to support the continued presence of U.S. forces absent host nation approval or evidence of an enemy that poses an imminent threat to the United States.

As such, I request answers to the following questions:

- Is the Administration contemplating a policy that makes "confronting Iran an explicit new goal for the more than 2,000 American forces currently in Syria?"
- Has the Administration previously targeted, or is planning to target Shia militias operating in Iraq that are aligned with the Iraqi government? If so, under what legal authority?
- Does the Administration have any plans to target Shia militias or Iranian proxies in Syria? If so, under what legal authority?
- Does the Administration intend to retain a military presence in Iraq or Syria to combat Iran? If so, under what legal authority?
- Do you agree that ISIS is defeated in Iraq? Syria?
- How does the Administration define the "defeat" of ISIS? Please describe the conditions being evaluated for a "conditions-based" withdrawal of U.S. forces from Syria.
- Please clarify what reporting changes you made, if any, that could have resulted in the stark difference in U.S. troop numbers in Syria between this month and last.
- Do you believe the 2002 AUMF authorizing the war in Iraq is still necessary? What operations in the past 5 years solely relied on the 2002 AUMF for legal justification?
- Secretary Mattis, you announced that the U.S. military would remain in Syria to fight ISIS and to propel Bashar al-Assad into participating in political negotiations in Syria. What would be the legal basis for using military force to compel Bashar al-Assad into participating in political negotiations?
- The December 2017 War Powers notification to Congress states "the Defeat-ISIS campaign in Syria have undertaken a limited number of strikes against Syrian government and pro-Syrian government forces." Have you deemed that Syrian government and pro-Syrian government forces are Associated Forces of ISIS pursuant to the 2001 AUMF?

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Kaine". The signature is stylized and fluid, with a large initial "T" and "K".

Tim Kaine



OFFICE OF THE UNDER SECRETARY OF DEFENSE  
2000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-2000

JAN 29 2018

POLICY

The Honorable Tim Kaine  
Senator  
United States Senate  
Washington, DC 20510

Dear Senator Kaine:

This letter responds to your December 19, 2017, letter to Secretary Mattis requesting a more detailed explanation of the Department of Defense's (DoD) missions in Syria and Iraq, as well as the conditions for the defeat of ISIS.

The 2001 Authorization for Use of Military Force (AUMF) authorizes the United States to use force against al-Qa'ida, the Taliban, and associated forces and against ISIS. DoD remains particularly focused on targeting ISIS and al-Qa'ida in Iraq and Syria. U.S. and partner forces in both countries continue to fight ISIS and al-Qa'ida and disrupt terrorist attack plotting. The Department of Defense is not targeting other militias or organizations, including Shia militia groups or Iranian proxies.

In support of the President's Iran Strategy, DoD is reviewing the breadth of our security cooperation activities, force posture, and plans. The Department of Defense is identifying new areas where we will work with allies and partners to pressure the Iranian regime, neutralize its destabilizing influences, and constrain its aggressive power projection, particularly its support for terrorist groups and militants. DoD supports State Department-led efforts to collaborate with allies and partners- and, through sanctions and multilateral organizations like the United Nations, to pressure Iran to halt its destabilizing activities.

Although U.S. and Coalition-backed forces have liberated the vast majority of the territory ISIS once held in Iraq and Syria, more tough fighting remains ahead to defeat ISIS's physical "caliphate" and achieve the group's permanent defeat. ISIS is transitioning to an insurgency in Iraq and Syria, while continuing to support the global terrorist operations of its branches, networks, and individual supporters worldwide. Just as when we previously removed U.S. forces prematurely, the group will look to exploit any abatement in pressure to regenerate capabilities and reestablish local control of territory. As ISIS evolves, so too, is the campaign to defeat ISIS transitioning to a new phase in Iraq and Syria. DoD is optimizing and adapting our military presence to maintain counterterrorism pressure on the enemy, while facilitating stabilization and political reconciliation efforts needed to ensure the enduring defeat of ISIS. We, along with the Coalition and our partners, remain committed to ISIS's permanent defeat. ISIS will be defeated when local security forces are capable of effectively responding to and containing the group, and when ISIS is unable to function as a global organization.



With the approval of the Government of Iraq, DoD and other foreign partners are working with the Iraqi Security Forces to improve their capabilities and secure areas liberated from ISIS. In Syria, operating under current authorities, the U.S. military will continue to support local partner forces in Syria to complete the military defeat of ISIS and prevent its resurgence. The United States continues to support the Geneva-based political process pursuant to United Nations Security Council Resolution 2254. I would refer you to the State Department for more information regarding stabilization efforts and the political process.

As part of our effort to accelerate the campaign against ISIS, DoD revised how it publicly reports force levels in Iraq and Syria. As a result, DoD now publicly reports that it has approximately 2,000 forces in Syria. These numbers do not reflect an increase in the number of personnel on the ground; rather, they represent a change in how these numbers are publicly reported. Under previous reporting practices, certain forces in Syria on a temporary duty status were not publicly reported, but they are now included in the 2,000 force total. For operational security reasons, U.S. forces conducting sensitive missions are not included in the publicly reported numbers. As you know, DoD provides these classified details to its congressional oversight committees in closed sessions. We anticipate these numbers will decrease as the nature of our operations change in Iraq and Syria, but we do not have a timeline-based approach to our presence in either Iraq or Syria.

In addition to providing authority to conduct offensive counterterrorism operations against al-Qa'ida and ISIS 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 force is a necessary and appropriate measure in support of the D-ISIS campaign. The small number of strikes taken by U.S. forces since May 2017 against the Syrian Government and pro-Syrian Government forces, referenced in the June and December 2017 periodic reports to Congress consistent with the War Powers Resolution, were limited and lawful measures taken under this authority to counter immediate threats to U.S. or partner forces engaged in the D-ISIS campaign. There has been no assessment that either the Syrian Government or pro-Syrian Government forces are "associated forces" of ISIS under the 2001 AUMF.

The April 6, 2017, U.S. missile strike on Shayrat airfield in Syria was not based on the authority of either the 2001 or 2002 AUMFs. Rather, as was notified to the Congress on April 8, 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, legitimate, and proportionate as a measure to deter and prevent Syria's illegal and provocative use of chemical weapons.

Finally, the 2002 Authorization for Use of Military Force Against Iraq Resolution (2002 AUMF) continues to provide authority for military operations against ISIS in Iraq. It also provides authority to respond to threats to U.S. national security emanating from Iraq that may re-emerge and that may not be covered by the 2001 AUMF. The 2002 AUMF thus remains necessary to support the use of 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.

Sincerely,



David J. Trachtenberg  
Deputy Under Secretary of Defense (Policy)

cc:

National Security Advisor, LTG H.R. McMaster  
Secretary of State, The Honorable Rex Tillerson



United States Department of State

Washington, D.C. 20520

FEB 12 2018

The Honorable  
Tim Kaine  
United States Senate  
Washington, DC 20510

Dear Senator Kaine:

Thank you for your letter of December 19, 2017 about the U.S. military counter ISIS campaign in Iraq and Syria. This response has been coordinated with the Department of Defense (DoD), which I understand has written to you on January 29, 2018.

Our purpose and reasons for being in Iraq and Syria are unchanged: defeating ISIS and degrading al-Qa'ida. The Iraqi Security Forces, including the Kurdish Peshmerga, and local partner forces in Syria, with the support of the 74-member Global Coalition to Defeat ISIS, have made great progress in destroying ISIS's so-called "caliphate." With Coalition support, our partners on the ground have liberated nearly all of the territory and millions of civilians once under ISIS's despotic control. However, the threat posed by ISIS and al-Qa'ida is not solely dependent upon the physical control of territory by these groups. Ensuring that ISIS cannot regenerate its forces or reclaim lost ground is essential to the protection of our homeland. Realizing that military operations are necessary, but insufficient by themselves, to achieve ISIS's enduring defeat, the U.S.-led Global Coalition to Defeat ISIS is committed to helping stabilize liberated communities through activities including restoring basic essential services, de-mining, and facilitating our partners' transition to sustainable, self-sufficient security forces and credible, inclusive governance. Through this approach, we are laying the groundwork to prevent ISIS's reemergence and setting the conditions that are ultimately conducive to allowing displaced Syrians and refugees to safely and voluntarily return to their homes.

The United States also continues to believe that the Syrian civil conflict must be resolved through a political solution, and a political solution can only be reached through the full implementation of United Nations Security Council Resolution 2254.

The domestic and international legal bases for use of military force by the United States in Iraq and Syria are unchanged, and outlined below.

As a matter of domestic law, legal authority for the use of military force against ISIS and al-Qa'ida includes the Authorizations for Use of Military Force (AUMF) of 2001 and 2002. 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 counter-ISIS operations. The strikes taken by the United States in May and June 2017 against the Syrian Government and pro-Syrian-Government forces were limited and lawful measures taken under that authority to counter immediate threats to U.S. or partner forces engaged in that campaign. The United States does not seek to fight the Government of Syria or Iran or Iranian-supported groups in Iraq or Syria. However, the United

States will not hesitate to use necessary and proportionate force to defend U.S., Coalition, or partner forces engaged in operations to defeat ISIS and degrade al-Qa'ida. There has been no assessment that either the Syrian Government or pro-Syrian-Government forces are "associated forces" of ISIS under the 2001 AUMF.

The 2002 AUMF provides authority "to defend the national security of the United States against the continuing threat posed by Iraq." The 2002 AUMF is an important source of authority for the use of military force to assist the Government of Iraq in military operations against ISIS and in continuing counterterrorism operations to address threats to U.S. national security emanating from Iraq following the destruction of ISIS's so-called physical "caliphate."

As a matter of international law, the United States is using force in Iraq with the consent of the Iraqi government. In Syria, the United States is using force against ISIS and al-Qa'ida, and is providing support to Syrian partner forces 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. Consistent with the inherent right of self-defense, the United States initiated necessary and proportionate actions in Syria against ISIS and al-Qa'ida in 2014, and those actions continue to the present day. Such necessary and proportionate measures include the use of force to defend U.S., Coalition, and U.S.-supported partner forces from any threats from the Syrian Government and pro-Syrian Government forces.

We hope this information is useful. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Mary K. Waters". The signature is written in a cursive, slightly slanted style.

Mary K. Waters  
Assistant Secretary  
Legislative Affairs