POLICY ADDRESS: ''LEGAL FRAMEWORK FOR THE U.S. USE OF MILITARY FORCE SINCE 9/11''

This policy address was given at 5:00 p.m., Friday, April 10. The speaker was Stephen Preston of the U.S. Department of Defense.

Remarks by Stephen Preston*

Thank you, Professor Damrosch, for that kind introduction and for the invitation to be here this afternoon. As a leader in ASIL, a professor of international law, and for many years editor of the *American Journal of International Law*, you have played a central role in shaping our understanding of international law. And you have done so with an eye to the practical realities faced by the government lawyer, which has made your contributions all the more meaningful. I also want to thank Mark Agrast and Wes Rist, who have done so much to make this event, and my participation in it, possible.

I am grateful, as well, to my colleagues in government, who have contributed to my remarks today in many ways—not least through the wisdom, learning, and hard work they have brought to bear in answering the difficult questions we regularly face together. Finally, I want to thank all of you—the members of the American Society of International Law assembled here this afternoon—for the warm reception I have received and, more important, for your keen interest in the legal issues affecting the national security of our country. I am very pleased to have the opportunity to speak with you today. Indeed, I am greatly honored.

The Department of Defense has a long history of engagement with the American Society of International Law. The first and longest-serving president of the Society, Elihu Root, served as Secretary of War under two presidents before founding the Society in 1906. He saw this organization as a place where the hard issues of the day could be discussed and debated. And he believed that by educating the American public about international law, the rush to war could be slowed. As he once put it, ''[i]n the great business of settling international controversies without war . . . essential conditions are reasonableness and good temper, a willingness to recognize facts and to weigh arguments which make *against* one's own country as well as those which make *for* one's own country.''[1] I could not agree more.

The theme of this year's annual meeting, ''Adapting to a Rapidly Changing World,'' is a pretty good description of our day-to-day job at the Defense Department. The conflicts and threats we face are constantly shifting and evolving. Today, I will discuss how the U.S. government has responded to this rapidly changing world and, specifically, how the legal framework for our military operations has developed since the attacks of 9/11.

Introduction

President Obama has made clear from the beginning of his presidency that he is deeply committed to transparency in government because it strengthens our democracy and promotes accountability. Although a certain degree of secrecy is of course required to protect our

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[1] Elihu Root, *The Need of Popular Understanding of International Law*, 1 AJIL 1, 2 (1907).

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country, the administration has demonstrated its commitment to greater transparency in matters of national security and, specifically, in explaining the bases, under domestic and international law, for the United States' use of military force abroad. We have seen this in the president's own speeches, for example, at the National Archives in May 2009, at National Defense University (NDU) in May 2013, and at West Point in May 2014.

Among senior administration lawyers, we saw this early on, in a speech by the State Department's Legal Adviser at ASIL in March 2010—this same meeting, five years ago—and in later speeches by the Attorney General at Northwestern in March 2012, and by my predecessor as Department of Defense General Counsel at Yale and at Oxford, both in 2012. There was even a very modest contribution by the CIA General Counsel in remarks at Harvard Law School in April 2012. My remarks here today are the latest in the series—an update of sorts—addressing the legal authority for U.S. military operations as the mission has evolved over the past year or so.

This talk will proceed in four parts. First, I want to review the legal framework for the use of military force developed in the aftermath of the 9/11 attacks. Second, I will explain the legal basis for current military operations against the so-called Islamic State of Iraq and the Levant, or ISIL. Third, I will discuss the end of the U.S. combat mission in Afghanistan and its impact on the legal basis for the continuing use of military force under the 2001 AUMF. Fourth, and finally, I will look ahead to the legal framework for counterterrorism operations in the future.

Legal Framework Developed in the Aftermath of the Attacks

Let us begin with a bit of history. It is only by seeing where we have been over the past decade and a half that we can understand where we are today.

Return to the first days after the attacks on September 11, 2001, for it is in that time that our government began to articulate the legal framework that we still rely on today. As many of you know, it was only days after the 9/11 attacks that Congress passed, and the president signed, an authorization for the use of military force, or AUMF, authorizing the president to take action to protect the United States against those who had attacked us. Even though it was only days later, we already knew that the attacks were the work of Al Qaeda, a terrorist organization operating out of Afghanistan, led by a man named Usama bin Laden.

The authorization that was enacted into law—which came to be known as the 2001 AUMF—was not a traditional declaration of war against a state. We had been attacked, instead, by a terrorist organization. Yes, the Taliban had allowed bin Laden and his organization to operate with impunity within Afghanistan. But it was not Afghanistan that had launched the attack. It was bin Laden and his terrorist organization.

The authorization for the use of military force that Congress passed aimed to give the president all the statutory authority he needed to fight back against bin Laden, his organization, and those who supported him, including the Taliban. At the same time, the 2001 AUMF was not without limits. It authorized the president 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 11, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.''[2]

[2] Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224, 224 (2001)

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With this statutory authorization, the United States commenced military operations against Al Qaeda and the Taliban in Afghanistan on October 7, 2001, notifying the UN Security Council consistent with Article 51 of the UN Charter that the United States was taking action in the exercise of its right of self-defense in response to the 9/11 attacks.

Although the 2001 AUMF was not unlimited, enacted as it was just a short time after the attacks, it was necessarily drafted in broad terms. Shortly after President Obama came into office, his administration filed a memorandum in Guantánamo habeas corpus litigation offering the new president's interpretation of his statutory authority to detain enemy forces as an aspect of his authority to use force under the 2001 AUMF. That memorandum explained that the statute authorized the detention of ''persons 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.''[3] Moreover, it stated that ''[p]rinciples derived from law-of-war rules governing international armed conflicts . . . must inform the interpretation of the detention authority Congress has authorized'' under the AUMF.[4]

This interpretation of the 2001 AUMF was adopted by the D.C. Circuit and, in 2011, it was expressly endorsed by Congress in the context of detention. The National Defense Authorization Act for Fiscal Year 2012 reaffirmed the authority to detain ''[a] person who was a part of or substantially supported al-Qaeda, the Taliban, 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 such hostilities in aid of such enemy forces.''[5] It also reaffirmed that dispositions of such individuals are made ''under the law of war.'' Thus, a decade after the conflict began, all three branches of the government weighed in to affirm the ongoing relevance of the 2001 AUMF and its application not only to those groups that perpetrated the 9/11 attacks or provided them safe haven, but also to certain others who were associated with them.

My predecessor, Jeh Johnson, later elaborated on the concept of associated forces. In a speech at Yale Law School in February 2012, he explained that the concept of associated forces is not open-ended. He pointed out that, consistent with international law principles, an associated force must 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. This means that not every group that commits terrorist acts is an associated force. Nor is a group an associated force simply because it aligns with Al Qaeda. Rather, a group must have also entered Al Qaeda's fight against the United States or its coalition partners.

More recently, during a public hearing before the Senate Foreign Relations Committee in May 2014, I discussed at some length the executive branch's interpretation of the 2001 AUMF and its application by the Department of Defense in armed conflict. In my testimony, I described in detail the groups and individuals against which the U.S. military was taking direct action (that is, capture or lethal operations) under the authority of the 2001 AUMF, including associated forces. Those groups and individuals are: Al Qaeda, the Taliban, and

[3] *In re* Guantanamo Bay Detainee Litigation, Misc. No. 08-0442, Respondents' Memorandum Regarding the Government's Detention Authority Relative to Detainees Held at Guantanamo Bay, 2 (D.D.C. Mar. 13, 2009).

[4] *Id*. at 1.

[5] National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 1021(b)(2), 125 Stat. 1298, 1562 (2011).

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certain other terrorist or insurgent groups in Afghanistan; Al Qaeda in the Arabian Peninsula (AQAP) in Yemen; and individuals who are part of Al Qaeda in Somalia and Libya. In addition, over the past year, we have conducted military operations under the 2001 AUMF against the Nusrah Front and, specifically, those members of Al Qaeda referred to as the Khorasan Group in Syria. We have also resumed such operations against the group we fought in Iraq when it was known as Al Qaeda in Iraq, which is now known as ISIL.

The concept of associated forces under the 2001 AUMF does not provide the president with unlimited flexibility to define the scope of his statutory authority. Our government monitors the threats posed to the United States and maintains the capacity to target (or stop targeting) groups covered by the statute as necessary and appropriate. But identifying a new group as an associated force is not done lightly. The determination that a particular group is an associated force is made at the most senior levels of the U.S. Government, following reviews by senior government lawyers and informed by departments and agencies with relevant expertise and institutional roles, including all-source intelligence from the U.S. intelligence community. In addition, military operations against these groups are regularly briefed to Congress. There are no other groups—other than those publicly identified, as I have just described—against which the U.S. military is currently taking direct action under the authority of the 2001 AUMF.

Legal Basis for Current Military Operations Against ISIL

That brings me to my second topic: the legal authority applicable to today's fight against ISIL. The military operations conducted by the United States against ISIL in Iraq and Syria are consistent with both domestic and international law.

First, a word about this group we call ISIL, referred to variously as ISIS, the Islamic State or Daesh (its acronym in Arabic). In 2003, a terrorist group founded by Abu Mu'sab al-Zarqawi—whose ties to bin Laden dated from al-Zarqawi's time in Afghanistan and Pakistan before 9/11—conducted a series of sensational terrorist attacks in Iraq. These attacks prompted bin Laden to ask al-Zarqawi to merge his group with Al Qaeda. In 2004, al-Zarqawi publicly pledged his group's allegiance to bin Laden, and bin Laden publicly endorsed al-Zarqawi as Al Qaeda's leader in Iraq. For years afterwards, al-Zarqawi's group, often referred to as Al Qaeda in Iraq, or AQI for short, conducted numerous deadly terrorist attacks against U.S. and coalition forces, as well as Iraqi civilians, using suicide bombers, car bombs, and executions. In response to these attacks, U.S. forces engaged in combat—at times, near daily combat—with the group from 2004 until U.S. and coalition forces left Iraq in 2011. Even since the departure of U.S. forces from Iraq, the group has continued to plot attacks against U.S. persons and interests in Iraq and the region—including the brutal murder of kidnapped American citizens in Syria and threats to U.S. military personnel in Iraq.

The 2001 AUMF has authorized the use of force against the group now called ISIL since at least 2004, when bin Laden and al-Zarqawi brought their groups together. The recent split between ISIL and current Al Qaeda leadership does not remove ISIL from coverage under the 2001 AUMF, because ISIL continues to wage the conflict against the United States that it entered into when, in 2004, it joined bin Laden's Al Qaeda organization in its conflict against the United States. As AQI, ISIL had a direct relationship with bin Laden himself and waged that conflict in allegiance to him while he was alive. ISIL now claims that it, not Al Qaeda's current leadership, is the true executor of bin Laden's legacy. There are rifts between ISIL and parts of the network bin Laden assembled, but some members and factions of Al Qaeda-aligned groups have publicly declared allegiance to ISIL. At the same time,

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ISIL continues to denounce the United States as its enemy and to target U.S. citizens and interests.

In these circumstances, the president is not divested of the previously available authority under the 2001 AUMF to continue protecting the country from ISIL—a group that has been subject to that statute for close to a decade—simply because of disagreements between the group and Al Qaeda's current leadership. A contrary interpretation of the statute would allow the enemy—rather than the president and Congress—to control the scope of the AUMF by splintering into rival factions while continuing to prosecute the same conflict against the United States.

Some initially greeted with skepticism the president's reliance on the 2001 AUMF for authority to renew military operations against ISIL last year. To be sure, we would be having a different conversation if ISIL had emerged out of nowhere a year ago, having no history with bin Laden and no more connection to current Al Qaeda leadership than it has today, or if the group once known as AQI had, for example, renounced terrorist violence against the United States at some point along the way. But ISIL did not spring fully formed from the head of Zeus a year ago, and the group certainly has never laid down its arms in its conflict against the United States.

The name may have changed, but the group we call ISIL today has been an enemy of the United States within the scope of the 2001 AUMF continuously since at least 2004. A power struggle may have broken out within bin Laden's jihadist movement, but this same enemy of the United States continues to plot and carry out violent attacks against us to this day. Viewed in this light, reliance on the AUMF for counter-ISIL operations is hardly an expansion of authority. After all, how many new terrorist groups have, by virtue of this reading of the statute, been determined to be among the groups against which military force may be used? The answer is zero.

The president's authority to fight ISIL is further reinforced by the 2002 authorization for the use of military force against Iraq (referred to as the 2002 AUMF). That AUMF authorized the use of force to, among other things, ''defend the national security of the United States against the continuing threat posed by Iraq.''[6] 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 long been understood to authorize the use of force for the related purposes of helping to establish a stable, democratic Iraq and addressing terrorist threats emanating from Iraq. After Saddam Hussein's regime fell in 2003, the United States, with its coalition partners, continued to take military action in Iraq under the 2002 AUMF to further these purposes, including action against AQI, which then, as now, posed a terrorist threat to the United States and its partners and undermined stability and democracy in Iraq. Accordingly, the 2002 AUMF authorizes military operations against ISIL in Iraq and, to the extent necessary to achieve these purposes, in Syria.

Beyond the domestic legal authorities, our military operations against ISIL have a firm foundation in international law, as well. The U.S. government remains deeply committed to abiding by our obligations under the applicable international law governing the resort to force and the conduct of hostilities. In Iraq, of course, the United States is operating against ISIL at the request and with the consent of the government of Iraq, which has sought U.S. and coalition support in its defense of the country against ISIL. In Syria, the United States

[6] Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. 107-243, § 3(a)(1), 116 Stat. 1498, 1501 (2002).

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is using force against ISIL in the collective self-defense of Iraq and U.S. national self-defense, and it has notified the UN Security Council that it is taking these actions in Syria consistent with Article 51 of the UN Charter. Under international law, states may defend themselves, in accordance with the inherent right of individual and collective self-defense, when they face armed attacks or the imminent threat of armed attacks and the use of force is necessary because the government of the state where the threat is located is unwilling or unable to prevent the use of its territory for such attacks.

The inherent right of self-defense is not restricted to threats posed by states, and over the past two centuries states have repeatedly invoked the right of self-defense in response to attacks by non-state actors. Iraq has been clear, including in letters it has submitted to the UN Security Council, that it is facing a serious threat of continuing armed attacks from ISIL coming out of safe havens in Syria, and it has asked the United States to lead international efforts to strike ISIL sites and strongholds in Syria in order to end the continuing armed attacks on Iraq, to protect Iraqi citizens and ultimately enable Iraqi forces to regain control of Iraqi borders. ISIL is a threat not only to Iraq and our partners in the region, but also to the United States. Finally, the Syrian government has shown that it cannot and will not confront these terrorist groups effectively itself.

The End of the U.S. Combat Mission in Afghanistan

Let us turn now to my third topic: the end of the U.S. combat mission in Afghanistan and its impact on the legal basis for the continuing use of military force under the 2001 AUMF.

At the outset, I pause to observe, as Clemenceau put it, ''It is far easier to make war than to make peace.'' That remains as true today as it was a hundred years ago. Indeed, in an armed conflict between a state and a terrorist organization like Al Qaeda or ISIL, it is highly unlikely that there will ever be an agreement to end the conflict. Unlike at the close of the World Wars, there will not be any instruments of surrender or peace treaties.

The situation is further complicated by the fact that the U.S. Constitution says nothing directly about how wars are to be ended. The closest it comes is the Treaty Clause, which gives the president and the Senate the power, together, to join treaties—which were, at the time the Constitution was written, the main way that wars were brought to an end. But, again, for a variety of reasons, the current conflict is unlikely to end in that way.

How, then, are we to know when the armed conflict has come to an end? The Supreme Court has not directly addressed this question, but it has offered important guidance. In *Hamdi v. Rumsfeld*, the plurality interpreted the 2001 AUMF as informed by the international law of war. Citing Article 118 of the Third Geneva Convention, it explained, ''[i]t is a clearly established principle of the law of war that detention may last no longer than active hostilities.''[7] It concluded, ''[t]he United States may detain, for the duration of these hostilities, individuals legitimately determined to be Taliban combatants who engaged in an armed conflict against the United States.''[8] Consistent with the Court's approach, the Obama administration has interpreted the AUMF as informed by these international law principles, and this interpretation has been embraced by the federal courts. Hence, where the armed conflict remains ongoing and active hostilities have not ceased, it is clear that congressional authorization to detain and use military force under the 2001 AUMF continues.

[7] Hamdi v. Rumsfeld, 542 U.S. 507 (2004).
[8] *Id.*

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Now what does this mean for U.S. military operations in Afghanistan after 2014? Although our presence in that country has been reduced and our mission there is more limited, the fact is that active hostilities continue. As a matter of international law, the United States remains in a state of armed conflict against the Taliban, Al Qaeda, and associated forces, and the 2001 AUMF continues to stand as statutory authority to use military force.

At the end of last year, the president made clear that ''our combat mission in Afghanistan is ending, and the longest war in American history is coming to a responsible conclusion.''[9] As a part of this transition, we have drawn down our forces to roughly 10,000—the fewest U.S. forces in Afghanistan in more than a decade. The U.S. military now has two missions in Afghanistan. First, the United States is participating in the NATO non-combat mission of training, advising, and assisting the Afghan National Security Forces. Second, the United States continues to engage in counterterrorism activity in Afghanistan to target the remnants of Al Qaeda and prevent an Al Qaeda resurgence or external plotting against the homeland or U.S. targets abroad. With respect to the Taliban, U.S. forces will take appropriate measures against Taliban members who directly threaten U.S. and coalition forces in Afghanistan, or provide direct support to Al Qaeda. The use of force by the U.S. military in Afghanistan is now limited to circumstances in which using force is necessary to execute those two missions or to protect our personnel.

At the same time, our military operations in Afghanistan remain substantial. Indeed, the president recently announced that U.S. force levels in Afghanistan will draw down more slowly than originally planned because Afghanistan remains a dangerous place. It is sometimes said that the enemy gets a vote. Taliban members continue to actively and directly threaten U.S. and coalition forces in Afghanistan, provide direct support to Al Qaeda, and pose a strategic threat to the Afghan National Security Forces. In response to these threats, U.S. forces are taking necessary and appropriate measures to keep the United States and U.S. forces safe and assist the Afghans. In short, the enemy has not relented, and significant armed violence continues.

The United States' armed conflict against Al Qaeda and associated forces in Afghanistan and elsewhere also continues. As my predecessor explained at the Oxford Union in 2012, there will come a time when so many of the leaders and operatives of Al Qaeda and its affiliates have been killed or captured, and the group is no longer able to attempt or launch a strategic attack against the United States, such that Al Qaeda as we know it has been effectively destroyed. Unfortunately, that day has not yet come. To be sure, progress has been made in disrupting and degrading Al Qaeda, particularly its core, senior leadership in the tribal areas along the Afghanistan-Pakistan border. But Al Qaeda and its militant adherents—including AQAP, that most virulent strain of Al Qaeda in Yemen—still pose a real and profound threat to U.S. national security—one that we cannot and will not ignore.

Because the Taliban continues to threaten U.S. and coalition forces in Afghanistan, and because Al Qaeda and associated forces continue to target U.S. persons and interests actively, the United States will use military force against them as necessary. Active hostilities will continue in Afghanistan (and elsewhere) at least through 2015 and perhaps beyond. There is no doubt that we remain in a state of armed conflict against the Taliban, Al Qaeda, and associated forces as a matter of international law. And the 2001 AUMF continues to provide the president with domestic legal authority to defend against these ongoing threats.

[9] Statement by the President on the End of the Combat Mission in Afghanistan (Dec. 28, 2014), *available at* https://www.whitehouse.gov/the-press-office/2014/12/28/statement-president-end-combat-mission-afghanistan.

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Legal Framework for Future Counterterrorism Operations

Finally, we have come to my fourth topic: the future of the legal framework governing the United States' use of military force. I have described for you how we arrived where we are over the course of nearly fourteen years. The 2001 AUMF continues to provide authority for our ongoing military operations against Al Qaeda, ISIL, and others, even though the conditions of the fight have changed since that authorization was first enacted.

In his 2013 NDU speech, the president anticipated ''engaging Congress and the American people in efforts to refine, and ultimately repeal, the AUMF's mandate.''[10] While, today, the administration's immediate focus is to work with Congress on a bipartisan, ISIL-specific AUMF, the president's position on the 2001 statute has not changed. When transmitting to Congress his draft AUMF against ISIL, he stated, ''Although my proposed AUMF does not address the 2001 AUMF, I remain committed to working with Congress and the American people to refine, and ultimately repeal, the 2001 AUMF,''[11] that is, to tailor the authorities granted by the AUMF to better fit the current fight and the strategy going forward. Our democracy is at its best when we openly debate matters of national security, and our nation is strongest when the president and Congress are in agreement on the employment of military force in its defense. The president has made clear that he stands ready to work with Congress to refine the 2001 AUMF after enactment of an ISIL-specific AUMF.

In February of this year, President Obama submitted to Congress draft legislation authorizing use of ''the Armed Forces of the United States as the president determines to be necessary and appropriate against ISIL or associated persons or forces.'' This raises the question: if the president already has the authority needed to take action against ISIL, why is he seeking a new authorization?

Most obviously and importantly, as the president has said, the world needs to know we are united behind the effort against ISIL, and the men and women of our military deserve our clear and unified support. Enacting the president's proposed AUMF will show our fighting forces, the American people, our foreign partners, and the enemy that the president and Congress are united in their resolve to degrade and defeat ISIL.

But the value of having a new authorization expressly directed against ISIL and associated forces of ISIL extends beyond its expression of the political branches' unified support for our counter-ISIL efforts. The 2001 and 2002 AUMFs authorize the current military operations against ISIL, but they were enacted more than a decade ago. The last fourteen years have taught us that the threats we face tomorrow will not be the same as the threats we faced yesterday or face today. This confrontation with ISIL will not be over quickly, and now is an appropriate time for the president, Congress, and the American people to define the scope of the conflict and make sure we have the appropriate authorities in place for the counter-ISIL fight.

To that end, the president has made clear that as part of the counter-ISIL mission he will not deploy U.S. forces to engage in long-term, large-scale ground combat operations like those our nation conducted in Iraq and Afghanistan. With its proposed AUMF, the administration has

[10] Remarks by the President at the National Defense University, Fort McNair, Washington D.C. (May 23, 2013), *available at* https://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university.

[11] Letter from the President to the Congress of the United States—Authorization for the Use of United States Armed Forces in Connection with the Islamic State of Iraq and the Levant (Feb. 11, 2015), *available at* https://www.whitehouse.gov/the-press-office/2015/02/11/letter-president-authorization-use-united-states-armed-forces-connection.

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sought to strike a balance, putting in place reasonable limitations that would, as the president said at NDU, ''discipline our thinking, our definition, [and] our actions,''[12] while continuing to provide the authority and flexibility needed to accomplish the mission and preserve the Commander in Chief's authority to respond to unforeseen circumstances. And by working with Congress and the American people to come up with appropriate authorizing legislation for the fight against ISIL, we might also create a model to guide future efforts to refine the 2001 AUMF or otherwise authorize the use of force against some new threat we may not yet foresee.

A central question as we look ahead is what follow-on legal framework will provide the authorities necessary in order for our government to meet the terrorist threat to our country, but will not greatly exceed what is needed to meet that threat. Drawing again from the president's NDU speech, the answer is not legislation granting the Executive ''unbound powers more suited for traditional armed conflicts between nations.''[13] Rather, the objective is a framework that will support ''a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America.''[14] The challenge is to ensure that the authorities for U.S. counterterrorism operations are both adequate and appropriately tailored to the present and foreseeable threat.

Of course, in conducting military operations under the authority of existing AUMFs, a new, ISIL-specific AUMF, or a follow-on framework designed to replace the 2001 AUMF, we will remain committed to acting in accordance with our international obligations. As I have already described, our actions against ISIL in Iraq and Syria are justified as a matter of international law, and our military operations are being carried out in accordance with the law of armed conflict. This will continue to be the case under any new domestic authorizations.

Conclusion

As a law partner of mine used to say, I go out the door I came in: I would like to close with a few words about transparency in matters of law and national security.

At the time I returned to government, in 2009, I could not pick up a newspaper or turn on a news broadcast without seeing erroneous references to ''illegal'' U.S. government counterterrorism operations overseas. Not fringe media, but mainstream press. Not isolated or occasional instances, but quite routine—as if it were conventional wisdom that the United States' use of lethal force in the armed conflict against Al Qaeda was ''unlawful.'' For me, and others in the administration, this was deeply disturbing, and something had to be done about it. The something that was done about it was the series of speeches that I mentioned at the outset of my remarks. It all began at this very meeting in 2010, with Harold Koh's defense of U.S. counterterrorism operations in which he identified the international and domestic legal bases for lethal operations, including the use of remotely piloted aircraft. And it continued with the speeches that followed, including Eric Holder's 2012 Northwestern speech, again noting the domestic and international legal authorities for U.S. counterterrorism operations and carefully explaining how citizenship does not confer immunity on one who takes up arms against our country. Repeatedly, in court filings as well as these speeches, the administration has sought to explain the legal rationale for the actions it has taken.

[12] Presidential Remarks at NDU, *supra* note 10.
[13] *Id.*
[14] *Id.*

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One result: You no longer find, in the popular press or in professional discourse, the same routine references to the U.S. government's counterterrorism operations as being ''illegal.'' Not that the administration has persuaded everyone or will ever satisfy all of its critics. But the lawfulness of our government's efforts to counter foreign terrorist threats is now better understood, and more widely accepted, at home and abroad.

Transparency to the extent possible in matters of law and national security is sound policy and just plain good government. As noted earlier, it strengthens our democracy and promotes accountability. Moreover, from the perspective of a government lawyer, transparency, including clarity in articulating the legal bases for U.S. military operations, is essential to ensure the lawfulness of our government's actions and to explain the legal framework on which we rely to the American public and our partners abroad. Finally, I firmly believe transparency is important to help inoculate, against legal exposure or misguided recriminations, the fine men and women the government puts at risk in order to defend our country. We agency counsel all serve the same client, the United States of America, and each of us answers to the head of our respective agencies. But our highest calling, in my personal view, is to serve those who serve us.

Ladies and gentlemen: If my remarks this afternoon, like the speeches in past years, go any distance towards furthering public understanding and protecting those in uniform who are protecting us, I will have done what I set out to do. I thank you for listening. And I want to thank for your continued support of the men and women serving us in the United States Armed Forces.

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