



Benjamin Wittes is a senior fellow in Governance Studies at The Brookings Institution. He co-founded and is the editor-in-chief of Lawfare.

Prepared statement of Benjamin Wittes, senior fellow at the Brookings Institution, before the House Committee on Armed Services

*Outside Perspectives on the President's Proposed Authorization for the Use of
Military Force Against the Islamic State of Iraq and the Levant*

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Thank you Chairman Thornberry, Ranking Member Smith, and members of the committee for inviting me to present my views on the President's proposed Authorization for the Use of Military Force against the Islamic State of Iraq and the Levant.¹ I am a senior fellow in Governance Studies at the Brookings Institution. I co-founded and am Editor in Chief of Lawfare, a website devoted to sober and serious discussion of "Hard National Security Choices." I am the author, co-author, or editor of several books on subjects related to law and national security. These include *The Future of Violence: Robots and Germs, Hackers and Drones—Confronting a New Age of Threat* (forthcoming 2015), *Speaking the Law: The Obama Administration's Addresses on National Security Law* (forthcoming 2015), *Detention and Denial: The Case for Candor After Guantánamo* (2011), *Law and the Long War: The Future of Justice in the Age of Terror* (2008), and *Legislating the War on Terror: An Agenda for Reform* (2009). I have written extensively on both the existing 2001 AUMF and on the need for a new one. The views I am expressing here are my own.

I want to advance two basic arguments today. First, I will argue that the administration's draft ISIL AUMF is a significantly flawed document, though flawed in ways somewhat different from many of the criticisms being advanced against it. Second, I will argue that many—though not all—of the legitimate criticisms that people of diverse politics are making against the administration's draft do not apply, or apply with significantly lesser force, to a draft AUMF that Jack Goldsmith,

¹ The proposal is available at http://www.whitehouse.gov/sites/default/files/docs/aumf_02112015.pdf. See President Barack Obama, Letter from the President—Authorization for the Use of United States Armed Forces in connection with the Islamic State of Iraq and the Levant, Feb. 11, 2015, <http://www.whitehouse.gov/the-press-office/2015/02/11/letter-president-authorization-use-united-states-armed-forces-connection>.

Matthew Waxman, my co-panelist Robert Chesney, and I put forth last year. Given the widespread criticisms of the administration's draft, I want to suggest that our draft may provide an alternative way forward for this body as it contemplates authorizing military force against ISIL.

CRITICISMS WORTH REJECTING

The administration's draft AUMF faces a variety of criticisms, criticisms that are by no means of equal weight. Let me start, therefore, by dispensing with a number of criticisms of the draft that are, in my judgment at least, meritless.

Many critics have worried that the draft AUMF would unduly limit the President—and his successor—in prosecuting the war against ISIL. In this regard, some have worried about limitations on the use of ground forces.² Others have argued the problem is chiefly the three-year proposed sunset provision.³ Still others have voiced concerns about both.⁴

Yet both concerns are actually misplaced, at least as a legal matter, and for largely the same reasons. First, the authorization is not the President's only source of power to wage war, so limiting an authorization does not limit presidential authority to the extent that other authorities exist for the contemplated action. And second, because the proposed authorization leaves in place the 2001 AUMF, which the administration has construed broadly to cover all current operations against ISIL, there is no dearth of underlying authority at all—even before one reaches the President's inherent Article II power to act in self-defense of the nation. While the authorization may create a measure of political constraint, it generates essentially no meaningful legal constraints.

As Jack Goldsmith has rightly argued:

[T]he Obama draft AUMF does not restrain the President. The ground troops and time limit limitations in the Obama draft limit only what that AUMF authorizes. They do not limit the President's entirely independent and temporally unbound power to use ground troops under the 2001 AUMF (which the President did not propose to repeal). Nor do they affect his probably narrower but still independent authority to introduce ground troops under Article II. If the President wanted to send 100,000 troops to Iraq tomorrow—which he

2 See, e.g., David Cohen, John McCain: Don't Handcuff President, Politico (Feb. 15, 2015, 1:28 PM), <http://www.politico.com/story/2015/02/mccain-dont-handcuff-president-115218.html> (quoting Sen. John McCain (R-Ariz.), who states: "To restrain him in our authorization of him taking military action, I think, frankly, is unconstitutional and eventually leads to 535 commanders in chief"; "I think we should not restrain the president of the United States. The Congress has the power of the purse. If we don't like what the commander in chief is doing, we can cut off his funds for doing so."). See also Editorial, No Way To Fight a War, Wash. Post, Feb. 14, 2014, http://www.washingtonpost.com/opinions/no-way-to-fight-a-war/2015/02/14/56f83fd2-b3b4-11e4-854b-a38d13486ba1_story.html ("At the same time, his language would constrain the next president, at least during the first year of his or her term. Neither Mr. Obama nor Congress should seek to limit military decisions that might be taken by the next commander in chief, even if the restrictions were not legally binding.").

3 See, e.g., Ruth Marcus, Op-Ed, Congress's War Duty, Wash. Post, Feb. 13, 2015, http://www.washingtonpost.com/opinions/congresss-war-duty/2015/02/13/2c05860a-b3b8-11e4-827f-93f454140e2b_story.html (arguing for elimination of the sunset provision).

4 See, e.g., John Yoo, Say No to the AUMF, Nat'l Rev. (Feb. 2, 2015, 4:00 AM), <http://www.nationalreview.com/article/398434/say-no-aumf-john-yoo>. Yoo writes:

Other unprecedented provisions in this draft AUMF further underscore the Obama administration's lack of seriousness in pursuing ISIS. In addition to the three-year deadline, the White House proposes that Congress prohibit the use of force "in enduring offensive ground combat operations." This bizarre restriction has never appeared before in any declaration of war or authorization for combat operations, nor does the proposal define it. Does it prohibit the deployment of large bodies of troops, such as a whole brigade or division (which, we have informed ISIS, will be there no longer than three years)? Does it restrict the use of heavy armaments, such as M-1 Abrams tanks? Does it bar the construction of bases and military infrastructure?

certainly doesn't want to do—he has full congressional authorization to do so under the 2001 AUMF, at least as his administration interprets that law. Nothing in the draft AUMF touches that power.⁵

Moreover, it is implausible, at least to my mind, that the ground-force limitation in the proposed AUMF would meaningfully constrain either this President or his successor even were it the only source of authority to use force. The proposed resolution says that it “does not authorize the use of the United States Armed Forces in enduring offensive ground combat operations.” But the resolution does not define “enduring,” which is a word ripe for elastic interpretation.⁶ All offensive combat operations, after all, endure for some period of time—if only the length of time required for a single shot to reach its target. So an administration that wished to find support for long-term, offensive ground operations under this resolution would merely have to convince itself that those operations would not last long enough to count as “enduring.” What's more, as long as the President might reasonably characterize such operations as defensive, the restriction would not apply at all—enduring defensive ground operations lying outside of its express terms.

A number of commentators have also complained that the draft resolution contains no hard geographic limitations that would contain the authorization to Iraq or Syria.⁷ This criticism denigrates what is actually a virtue in the President's draft. ISIL is a fluid enemy that is by no means likely to restrict its activities to Iraq and Syria. Groups elsewhere—for example, in Egypt⁸, Libya⁹, Algeria¹⁰ and Afghanistan¹¹—have already associated themselves with ISIS¹². At least to the extent that such pledges of loyalty amount to co-belligerency within the meaning of international law and to the extent that action on the soil of the relevant country would be otherwise lawful, it seems shortsighted for Congress to withhold authorization on grounds that the ISIL component in question does not happen to operate within specific territories Congress anticipated up to three years in advance. Had the 2001 AUMF contained geographic limitations of this type, it would have been an entirely ineffective instrument against, for example, Al Qaeda in the Arabian Peninsula.

CRITICISMS WITH MERIT

The administration's draft, however, has serious problems, which mostly have their roots in the proposal's breadth. The document does not, on its face, appear broad. The administration's lawyers wrote it cleverly to create the appearance of significant limitations. And as I have attempted to show above, they have succeeded to a significant

5 Jack Goldsmith, Errors and Misconceptions About the Obama Draft AUMF, Lawfare (Feb. 16, 2015, 3:03 PM), <http://www.lawfareblog.com/2015/02/errors-and-misconceptions-about-the-obama-draft-aumf>.

6 See Ilya Somin, Reactions to the Obama Administration's Proposed ISIS AUMF, Wash. Post: Volokh Conspiracy, Feb. 15, 2015, <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/02/15/reactions-to-the-obama-administrations-isis-aumf>.

7 See, e.g., Editorial, Obama Seeks an Expansive War Authorization to Combat ISIS, N.Y. Times, Feb. 11, 2015, <http://www.nytimes.com/2015/02/12/opinion/obama-seeking-an-expansive-war-authorization-congress.html> (“The parameters of a proposed war authorization the White House sent to Congress on Wednesday, however, are alarmingly broad. It does not limit the battlefield to Syria and Iraq, the strongholds of the Islamic State, also known as ISIS or ISIL, which is attempting to form a caliphate.”).

8 Patrick Kingsley, Martin Chulov & Lotfy Salman, Egyptian Jihadists Pledge Allegiance to ISIS, Guardian (Nov. 10, 2014, 4:11 EST), <http://www.theguardian.com/world/2014/nov/10/egyptian-jihadists-pledge-allegiance-isis> (reporting that Ansar Beit al-Maqdis, Egypt's most active jihadi group, had pledged its loyalty to the Islamic State).

9 Paul Cruickshank, Nic Robertson, Tim Lister & Jomana Karadsheh, ISIS Comes to Libya, CNN (Feb. 16, 2015, 6:34 AM), <http://www.cnn.com/2014/11/18/world/isis-libya>.

10 Madeline Grant, French Tourist ‘Beheaded’ by ISIS-Linked Group in Algeria, Newsweek (Sept. 24, 2014, 12:19 PM), <http://www.newsweek.com/french-tourist-beheaded-isis-linked-group-algeria-272897>.

11 Joseph Goldstein, Afghan Strike Is Said to Kill Commander Linked to ISIS, N.Y. Times, Feb. 9, 2015, <http://www.nytimes.com/2015/02/10/world/asia/former-taliban-commander-who-joined-isis-is-said-to-be-killed-in-afghanistan.html>.

12 Earlier this month, Lt. Gen. Vincent R. Stewart, the director of the Defense Intelligence Agency, stated that ISIL is “beginning to assemble a growing international footprint.” Eric Schmitt & David D. Kirkpatrick, Islamic State Sprouting Limbs Beyond Its Base, N.Y. Times, Feb. 14, 2015, <http://www.nytimes.com/2015/02/15/world/middleeast/islamic-state-sprouting-limbs-beyond-mideast.html>.

degree in conveying that impression to many people—the result being that the administration’s draft has been denounced for tying presidential hands.¹³ In fact, however, the real problem runs in the other direction. While offering an appearance of accepting restraints, the document contains virtually no meaningful ones at all. The reason is its failure to grapple at all with the 2001 AUMF, which—as numerous observers have noted—it leaves in place without a sunset.¹⁴

The result is that under the administration’s proposal, at least as a legal matter, the President would have all the authority he has today—including all the authority to fight ISIL—under the 2001 AUMF. And in addition, he would be granted three years of even broader authority to target ISIL and its associated forces, which the draft resolution defines broadly.¹⁵

Thus the limitation on ground forces is entirely meaningless, since the 2001 AUMF remains in place and contains no such limitation.¹⁶ This does not particularly concern me, as I do not favor a limitation on ground forces. Those who do favor such a limitation should be particularly concerned, however, by one that exists only optically.

The three-year sunset is also largely meaningless. The only authority, as I read it, that would actually sunset three years from the passage of the administration’s draft would be the authority to target those associated forces of ISIL that might not be covered separately by the 2001 AUMF and that did not pose the sort of imminent threat that would bring them under the ambit of the President’s inherent Article II authority.¹⁷ Given the sweep of the administration’s current interpretation of the 2001 AUMF, this is likely to be a small set of forces indeed.

Again, it is possible that these apparent restrictions will operate as genuine political constraints. They will not, however, legally constrain the President as a casual reader of the proposal might expect.

13 See Burgess Everett & Manu Raju, *President Obama’s War Pushes Rift with the Left*, Politico (Feb. 23, 2015, 5:39 AM), <http://www.politico.com/story/2015/02/president-obamas-war-push-faces-rift-with-the-left-115329.html> (noting that Republicans in control of Congress insist that the White House’s three-year draft does too much to limit President Obama and his successor).

14 Stephen Vladeck, *Obama Doubles Down on Perpetual War*, MSNBC (Feb. 11, 2015, 11:35 AM), <http://www.msnbc.com/msnbc/obamas-aumf-asks-congress-perpetual-war>. See also Joel Gillin, *Obama Isn’t Ready to Give Up His Broad War Powers*, New Republic, Feb. 12, 2015, <http://www.newrepublic.com/article/121043/obamas-isis-aumf-would-leave-2001-war-powers-place>; Jennifer Bendery, *Here’s Why Obama’s Request For War Limits Does Nothing To Limit War*, Huffington Post (Feb. 12, 2015, 9:59 AM), http://www.huffingtonpost.com/2015/02/11/obama-war-authorization-isis_n_6664900.html.

15 For more on the administration’s broad interpretation of associated forces, see Jack Goldsmith, Ryan Goodman & Steve Vladeck, *Six Questions Congress Should Ask the Administration about Its ISIL AUMF*, Lawfare (Feb. 20, 2015, 11:00 AM), <http://www.lawfareblog.com/2015/02/six-questions-congress-should-ask-the-administration-about-its-isis-aumf/> (“[T]he Administration draft’s definition of ‘associated forces’ is far broader than any interpretation that has previously been offered by the U.S. government.”). See also Jack Goldsmith, *The Administration’s Hard-To-Fathom Draft AUMF*, Lawfare (Feb. 12, 2015, 6:33 AM), <http://www.lawfareblog.com/2015/02/the-administrations-hard-to-fathom-draft-aumf/> (noting that section 5 of the draft AUMF defines “associated persons or forces . . . more broadly than I have ever seen”); Ryan Goodman, *Obama’s Forever War Starts Now*, Foreign Pol’y, Feb. 12, 2015, <http://foreignpolicy.com/2015/02/12/obamas-forever-war-starts-now-aumf-isis-islamic-state/> (noting that “if the authorization to strike al Qaeda targets has been far reaching, the Islamic State AUMF is even broader”); Ryan Goodman, *AUMF, “Associated Forces,” and Slippery Slopes: Two More Data Points*, Just Security (Feb. 18, 2015, 9:08 AM) <http://justsecurity.org/20163/aumf-associated-forces-slippery-slopes-data-points/> (“[T]he language defining associated forces in the President’s proposal is written in a way that appears broader than the framework that the administration has long been using under the 2001 AUMF”);

Marty Lederman, *Suggestions for clarifying/amending the President’s Draft ISIL AUMF*, Just Security (Feb. 12, 2015, 8:02 AM), <http://justsecurity.org/19928/suggestions-clarifying-amending-draft-aumf/> (arguing that section 5 of the draft AUMF is problematic in that it does not invoke the concept of belligerency to make clear Congress intends only to cover groups that fall within the concept of co-belligerency under the laws of war; does not refer to the requirement that the group be “organized [and] armed”; and suggests that “necessary and appropriate force” can be employed against “associated persons” not part of ISIL).

16 See Mike Lillis, *Pelosi on the Spot as War Debate Begins*, The Hill (Feb. 12, 2015, 6:00 AM), <http://thehill.com/homenews/house/232580-pelosi-faces-dilemma-on-presidents-legislation> (quoting Rep. Jim McGovern (D-Mass.), who states that the language forbidding “enduring offensive ground combat operations” is not a limitation but rather “language that’s supposed to make people like me feel better In real terms, it doesn’t mean anything.”)

17 Jack Goldsmith has effectively argued this point. See Goldsmith, *supra* note 15.

The reporting requirements, which are quite anemic on their own terms, are similarly empty. As proposed, section 4 would require a twice-annual report to Congress—though not to the public—“on specific actions taken pursuant to this authorization.” The trouble is that the proposal would not require reporting on such actions to the extent the President takes them pursuant to the 2001 AUMF. Nor, as Goldsmith, Stephen Vladeck, and Ryan Goodman point out, does it define “what is a ‘specific action’ that must be reported under the terms of the provision.”¹⁸ So it’s not clear that the law would require reporting with respect to any particular action, nor is it clear—assuming some actions would require reporting—what the character of those actions might be.

Finally, to say that the administration is correct to resist specific geographic limits in its draft is not to say that Congress should refrain from offering any geographic guidance in its authorization. The administration’s draft, for example, would, as a matter of U.S. domestic law, authorize operations in a great many countries where international law might prohibit them. For example, the draft by its terms would authorize military operations on the soil of non-consenting states in situations that do not amount to imminent threats and in circumstances in which the states in question were neither unable nor unwilling to neutralize the threats emanating from their territories. While I do not anticipate the Obama administration using the authorization in this fashion, there is something to be said for limiting the geography of the authorization to those places where international law would actually permit the use of force.

To summarize the matter bluntly, the administration’s draft fails—and intentionally fails—to address the relationship between this new authorization and the 2001 authorization. The result is that its authorities are, optics notwithstanding, simply additive with respect to presidential authority.

This is a problem for two distinct reasons. One is that the accretion of presidential authority under successive AUMFs, each lacking significant accountability mechanisms, is not a healthy thing. It is not a healthy thing for a Congress that wants to function as a partner in defining the parameters of a war. And it is not a healthy thing either for the Executive Branch, for which the essentially blank check serves to reduce accountability and diminish strategic focus.

The second reason is that most analysts agree that the 2001 AUMF is badly out of date and warrants reform on its own terms. Tied to the September 11 attacks, it no longer describes well the conflict the United States is currently pursuing, a conflict that includes groups that had nothing to do with 9/11 in parts of the world quite remote from those places where the core of the AUMF conflict has taken place. While I believe the administration’s reading of the law, which has allowed it to reach such targets where they lurk, is generally a reasonable one, it is not obvious when one reads the text of a law authorizing force against groups responsible for 9/11 how it authorizes force against groups in Yemen that did not exist in 2001. What’s more, the administration’s reading of the law has stopped short of reaching some potentially important targets against which a reasonable Congress might wish it to wield a freer hand.

The AUMF, in other words, describes rather badly the conflict that the United States is currently fighting, and that problem is likely to get far worse in the coming years, barring unpersuasively broad interpretations of the document like the one the administration has adopted to bring ISIL within its reach. The President has publicly committed

¹⁸ Goldsmith, Goodman & Vladeck, *supra* note 15 (emphasis in original).

to refining and ultimately repealing the 2001 AUMF.¹⁹ But his current proposal inexplicably declines to refine the existing authorization in the course of defining new authorities. This is not a course Congress should follow.

AN ALTERNATIVE APPROACH

In November of last year, Chesney, Goldsmith, Waxman, and I jointly drafted a possible AUMF.²⁰ Unlike the President's recent proposal, our proposal aimed to integrate authorization for the fight against ISIL into authorization for the larger conflict. It aimed to supplant the existing AUMF. And it aimed to have genuine accountability mechanisms and genuine limitations.

It read in its entirety as follows:

To revise and clarify the authority of the President to use all necessary and appropriate force against certain terrorists or terrorist organizations.

Whereas . . .

SEC 1. Short Title

This joint resolution may be cited as the "Revised Authorization for Use of Military Force of 2014"

SEC. 2. Authorization for Use of Force

(a) The President is authorized to use all necessary and appropriate force against Al Qaeda, the Islamic State, and the Afghan Taliban.

(b) The authorization of force in Section 2(a) extends to associated forces of the entities listed in section 2(a) insofar as such forces are engaged in hostilities against the United States.

SEC 3. Geography

The authorization of force in Section 2 extends only to operations in places where force can be used consistent with applicable international law concerning sovereignty and the use of force.

SEC 4. Sunset Clause

The authorization granted in Section 2 shall terminate on the date that is 36 months after the date of the enactment of this joint resolution.

SEC 5. Reporting

¹⁹ See Barack Obama, President of the United States, Remarks at the National Defense University (May 23, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

²⁰ Robert Chesney, Jack Goldsmith, Matthew Waxman & Benjamin Wittes, Draft AUMF to Get the Discussion Going, *Lawfare* (Nov. 10, 2014, 1:00 PM), <http://www.lawfareblog.com/2014/11/a-draft-aumf-to-get-the-discussion-going>.

(a) In addition to all reporting requirements under the War Powers Resolution or other applicable statute, the President shall:

(1) no less often than every ninety days publish in unclassified form a list of the entities against which the force authorized in Section 2 has been deployed and, to the extent not strictly precluded by national security, where such force was deployed;

(2) no less often than every ninety days report to the Senate and House armed services, foreign relations or affairs, and intelligence committees the geographic location of operations carried out pursuant to Section 2, and a summary of the factual predicate for concluding that an entity is an “associated force” covered by Section 2. To the extent strictly necessary in the interests of national security, this report may be made in classified form.

(b) If the President deploys force under his constitutional authorities in Article II against a terrorist or terrorist organization that does not fall within the authorization in Section 2, he shall, in addition to all reporting requirements under the War Powers Resolution or other applicable statute, comply with the reporting requirements specified in Section 5(a) concerning the identities of the terrorist or terrorist organizations, the geographic location of the use of force, and the summary of the factual predicate for the use of force.

SEC. 6. Repeal of Prior Authorizations

(a) The September 18, 2001 Authorization to Use Military Force (Public Law 107-40; 50 U.S.C. 1541 note) is repealed.

(b) The Authorization for Use of Military Force Against Iraq Resolution of 2002 (Public Law 107-243; 50 U.S.C. 1541 note) is repealed.

SEC. 7. War Powers Resolution Requirements

Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that section (a) is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

A few aspects of this proposal are notable in light of the criticisms that the President’s draft has faced.

First, unlike the administration’s draft, our proposal would subsume the current AUMF—which currently covers, as the administration and the courts have interpreted it, Al Qaeda, the Taliban, and associated forces—and then repeals the underlying document. The result is that there would be a single authorization for fighting Al Qaeda, the Taliban, ISIL, and all of their associated forces. There would be no duplication in the authorization that would allow an administration effectively to avoid congressional limitations by relying on a substantially overlapping document.

Second, because there would be no duplication in the authorization, the proposal’s sunset provision would actually mean something. To be precise, as we wrote the draft, the authorization for the entirety of the overseas counterterrorism effort would expire, absent renewal, after three years. This does not mean we think the conflict will

be over three years from now. I, for one, do not. It means only that we think it important Congress continue to be involved in decision-making and conflict definition. The sunset is a way of forcing renewed legislative attention to the question of the conflict's parameters.

For those who regard the three-year sunset as signaling weakness to the enemy or an absence of long-term commitment to the fight, there's a simple remedy: Add more time. The sunset could be after five years, or even after ten. The specific time frame is less important than having some clear mechanism built into the authorization to prevent it from functioning as an authorization for Forever War.

Third, while the draft does not contain specific geographic limitations, it "extends only to operations in places where force can be used consistent with applicable international law concerning sovereignty and the use of force." This limitation could be satisfied by the principle of consent as it is currently in Iraq and Afghanistan. The limitation would also permit force to be used in Syria to the extent international law permits it, as the administration currently claims it does. It would also permit the use of force in countries that do not consent to operations on their territory to the extent their sovereignty is overridden by self-defense principles. The United States's view of its authority to operate in the territory of non-consenting countries that it deems unwilling or unable to mitigate threats emanating from within their borders is not accepted universally.²¹ And the proposal does not try to determine the proper substance of international law on that point. It simply says that the administration has Congress's authorization to use force only in those locations where international law permits it.

Fourth, the proposal contains significantly more robust reporting requirements than does the administration's draft. Instead of requiring a twice-annual report on ill-defined "specific activities," it requires publication four times a year of an unclassified list of the entities against which force has been deployed under the resolution. It requires more-detailed reporting to the congressional armed services committees. And it requires reporting as well on operations undertaken under Article II inherent authority.

I have no doubt that this proposal could stand significant improvement in a number of areas. For example, the debate over whether the administration has defined "associated forces" too broadly makes we wonder whether we have limited it too strictly in this proposal. That said, our draft offers an approach that is far less susceptible than the administration's draft to the concerns raised by scholars and analysts across the political spectrum. As this body considers how to authorize the conflict against ISIL—and how that authorization should interact with the existing authorization for use of force against Al Qaeda—our proposal may offer an alternative way forward that might attract a broader swath of support.

Thank you very much. I look forward to taking your questions.

GOVERNANCE STUDIES

The Brookings Institution
1775 Massachusetts Ave., NW
Washington, DC 20036
Tel: 202.797.6090
Fax: 202.797.6144
brookings.edu/governance

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²¹ For a detailed discussion of the unwilling or unable standard, see Ashley S. Deeks, "Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense, 52 Va. J. Int'l L. 483 (2012).