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**One Hundred Sixteenth Congress**  
**U.S. House of Representatives**  
**Committee on Foreign Affairs**  
2170 Rayburn House Office Building  
Washington, DC 20515  
[www.foreignaffairs.house.gov](http://www.foreignaffairs.house.gov)

January 22, 2020

The Honorable Mark T. Esper  
Secretary  
United States Department of Defense  
1000 Defense Pentagon  
Washington, D.C. 20301-1000

Dear Mr. Secretary:

I am deeply concerned about recent events in Iraq and the risk and legality of the use of U.S. military force in the region.

Tensions have grown following the December 29th strike against Kata'ib Hezbollah, the January 3rd killing of Qassem Soleimani in Iraq, and recent Iranian ballistic missile attacks on Iraqi bases housing American troops. Additionally, news reports indicate that the United States targeted another Iranian official in Yemen on the same day as the strike against Qassem Soleimani. To prepare for possible further escalation, the United States dispatched a brigade from the 82<sup>nd</sup> Airborne Division, a variety of ships and aircraft, and additional Marines to our embassy in Baghdad.

The risks and consequences of this escalatory pattern are very serious, and I am firmly committed to ensuring that the Trump Administration does not engage in ill-advised military action against Iran without the prior approval of Congress.<sup>1</sup>

No existing congressional Authorization for Use of Military Force (AUMF) can legitimately be interpreted as authorizing the strike against Qassem Soleimani or any other

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<sup>1</sup> See *U.S. to send 3,000 more troops to Middle East after embassy attack, Soleimani killing*, NBC News, January 4, 2020 (online at, <https://www.nbcnews.com/news/military/u-s-sending-thousands-more-troops-mideast-after-baghdad-attack-n1110081>).

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Iranian official. On June 28, 2019, the Department of State wrote to me that “the Administration has not, to date, interpreted either AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism or operations to establish a stable, democratic Iraq.”<sup>2</sup> On July 16, 2019, you confirmed in an exchange with Senator Duckworth that neither the 2001 AUMF, which authorized the President to use force against those responsible for the 9/11 attacks, nor the 2002 AUMF, which authorized the use of force to confront the threat posed by Saddam Hussein’s Iraq, authorizes the use of military force against Iran.<sup>3</sup> Yet, the President’s National Security Advisor, Robert O’Brien, claimed on January 3 that the President’s actions in Iran were “fully authorized under the 2002 AUMF.”<sup>4</sup>

The Administration owes the American people and Congress a clear explanation of how and why it suddenly believes an 18-year-old authorization for the Iraq War can now be used to fight Iran. The Administration’s initial assertion that this AUMF may provide congressional authorization for defensive action against Iran was already legally problematic. That legal theory is further undermined by the lack of evidence provided in support of the Administration’s shifting and unsubstantiated claim that offensive military action was necessary to prevent an imminent attack.<sup>5</sup>

This is not the only example of President Trump acting with disregard for the law. On January 4th, the President indicated the U.S. may be considering striking targets “important to Iranian culture.” I applaud your acknowledgment that doing so would violate the laws of armed conflict.<sup>6</sup> As you know, targeting Iranian cultural sites would also be a war crime under U.S. law.<sup>7</sup> It would, thus, be an unlawful order under both domestic and international law.<sup>8</sup> While I appreciate your public statement that the military would not follow such an order, openly contemplating and publicly signaling the intention to do so greatly undermines U.S. credibility.

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<sup>2</sup> Letter from Assistant Secretary of State for Legislative Affairs Mary Elizabeth Taylor to Eliot L. Engel, Chairman, House Committee on Foreign Affairs, June 28, 2019.

<sup>3</sup> Testimony of Mark Esper before the Senate Armed Services Committee, July 16, 2019.

<sup>4</sup> *White House says Trump used Iraq War authorization to kill Qassem Soleimani*, The Washington Examiner, January 3, 2020 (online at: <https://www.washingtonexaminer.com/news/white-house-says-trump-used-iraq-war-authorization-to-kill-qassem-soleimani>).

<sup>5</sup> *Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again*, The New York Times, January 12, 2020 (online at: <https://www.nytimes.com/2020/01/12/us/politics/esper-iran-trump-embassies.html>).

<sup>6</sup> See, e.g., 1907 Hague Conventions Respecting the Laws and Customs of War on Land, Art. 22 (“In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.”).

<sup>7</sup> See 18 U.S. Code § 2441.

<sup>8</sup> See Uniform Code of Military Justice, 10 U.S. Code § 892 (requiring military personnel to follow lawful orders).

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The fact that our national security professionals were unable to prevent the President from making such threats of illegal action raises profound and troubling questions about how decisions regarding the use of force, including those which could plunge the United States into a war, are being made in the Trump Administration.<sup>9</sup>

As the world's leading sponsor of international terror, Iran continues to play a destabilizing role in the region. On that, there is no disagreement, and I share a commitment to protecting U.S. military and diplomatic personnel, as well as our allies. But, any potential military action must be based on an honest calculation of regional threats, have clear objectives and end-states in mind, and be lawful under the Constitution and War Powers Resolution.

Therefore, I request that you provide to the Committee the following no later than **Friday, January 31:**

1. A detailed explanation of the President's domestic legal authority to conduct and the lawfulness under international law of:
  - a. the December 29, 2019 targeted strike operation against Kata'ib Hezbollah;
  - b. the January 3, 2020 targeted strike operation against Qassem Soleimani in Iraq; and
  - c. any other strikes conducted in the past 30 days targeting any Iranian officials, Iranian military forces, or other forces supported by Iran.
2. A detailed explanation of whether, and if so why, there was no "possible instance" in which the President could have consulted with Congress as required under section 3 of the War Powers Resolution prior to each strike described above.<sup>10</sup>
3. A detailed explanation of whether, and if so how, each strike described above complies with the United States Government's prohibition on assassinations.<sup>11</sup>
4. A detailed explanation of whether the United States has been in an armed conflict with Iran at any point in the past year, including:
  - a. when and the conditions under which any such armed conflict started;

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<sup>9</sup> See *Trump faces Iran crisis with fewer experienced advisers and strained relations with traditional allies*, The Washington Post, January 5, 2020 (online at: [https://www.washingtonpost.com/national-security/trump-faces-iran-crisis-with-fewer-experienced-advisers-and-strained-relations-with-traditional-allies/2020/01/05/9b42a240-2f1a-11ea-9b60-817cc18cf173\\_story.html](https://www.washingtonpost.com/national-security/trump-faces-iran-crisis-with-fewer-experienced-advisers-and-strained-relations-with-traditional-allies/2020/01/05/9b42a240-2f1a-11ea-9b60-817cc18cf173_story.html)).

<sup>10</sup> 50 U.S. Code § 1542.

<sup>11</sup> Exec. Order No. 12,333, 3 C.F.R. 200 (1981).

- b. whether any such armed conflict is ongoing and, if not, the conditions under which it ended;
  - c. whether Congress was notified of any such armed conflict and, if so, when and in what manner; and
  - d. a detailed explanation of the legal implications under domestic and international law of being in an armed conflict with Iran.
5. An analysis of how, in the view of the Executive Branch, the presence of ground troops, the open-ended mission and time frame, the escalatory nature of the U.S. strikes, and any other relevant factors connected with striking Iran could “rise to the level of a ‘war’ for constitutional purposes.”<sup>12</sup>
  6. An analysis of the potential policy consequences of killing Gen. Soleimani, including but not limited to whether killing Gen. Soleimani would prevent or deter future Iranian attacks, disrupt ongoing operations against the Islamic State, increase the risk of escalation, require additional U.S. troops in the region, and increase threats to U.S. persons, facilities, and allies.
  7. A detailed description of the imminent attack the U.S. sought to prevent by killing Gen. Soleimani.
  8. A description of the options presented to President Trump as potential responses to protests at the U.S. Embassy in Baghdad on December 31, 2019 and January 1, 2020.
  9. Any and all documents related to targeting “Iranian sites . . . important to Iran & the Iranian culture,” as President Trump threatened to do on January 4, 2020.<sup>13</sup>
  10. An analysis of how the United States views any potential or actual request by the Government of Iraq that U.S. forces leave Iraq in the wake of the killing of Qassem Soleimani, including but not limited to the legal and national security implications of such a request.

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<sup>12</sup> See, e.g., OLC Opinion re April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities (May 31, 2018) (arguing that, in the case of the 2018 Syria strikes, “Given the absence of ground troops, the limited mission and time frame, and the efforts to avoid escalation, the anticipated nature, scope, and duration of these airstrikes did not rise to the level of a ‘war’ for constitutional purposes”).

<sup>13</sup> Tweet by @realDonaldTrump, January 4, 2020, 5:52 PM (online at: <https://twitter.com/realDonaldTrump/status/1213593975732527112>).

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Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Eliot L. Engel". The signature is written in a cursive style with a large, stylized "E" at the beginning.

ELIOT L. ENGEL  
Chairman