



U.S. Department of Justice
Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530


March 10, 2020

MEMORANDUM FOR JOHN A. EISENBERG
LEGAL ADVISOR TO THE NATIONAL SECURITY COUNCIL


Re: January 2020 Airstrike in Iraq Against Qassem Soleimani

On January 2, 2020, at the direction of the President, the U.S. military conducted an airstrike in Iraq targeting Qassem Soleimani, commander of the Islamic Revolutionary Guard Corps-Qods Force ("Qods Force" or "IRGC-QF") of the Islamic Republic of Iran [REDACTED]

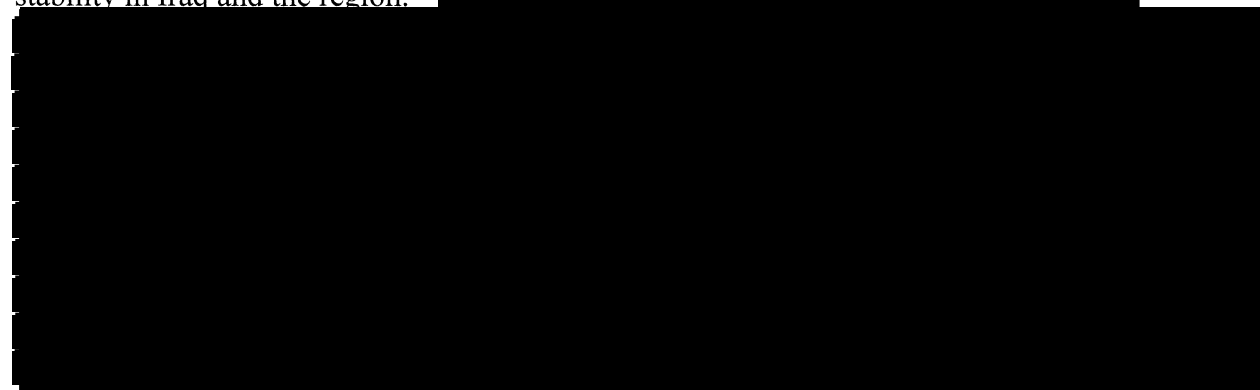
All redactions in this document pursuant to FOIA exemption (b) (5).



Although the primary focus of the 2002 AUMF was the threat posed by Saddam Hussein's regime, the statute has long been read 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.



In November 2008, the United States and Iraq signed a framework agreement for continued cooperation between the two governments to "improve and strengthen security and stability in Iraq and the region."



[REDACTED]

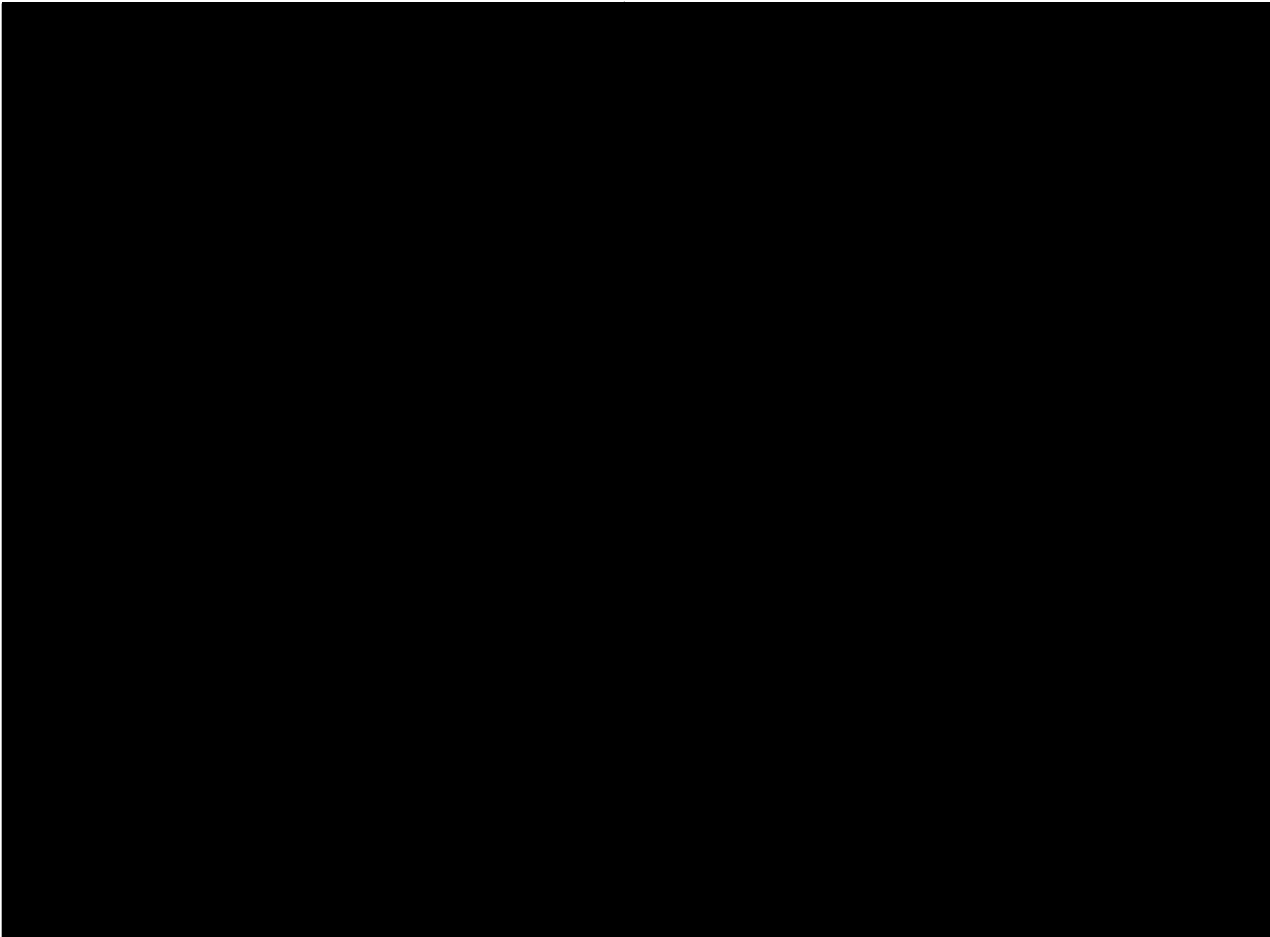
After U.S. forces left Iraq in 2011, sectarian divisions again widened, yielding further violence and unrest. [REDACTED] In late 2013, ISIS and its allies attacked and captured the Iraqi cities of Ramadi and Fallujah. [REDACTED] In June 2014, ISIS launched a major offensive and captured Mosul, Iraq's second largest city. [REDACTED]

After capturing Mosul, ISIS reached the outskirts of Baghdad and Erbil, prompting fears that these strategic locations, too, would fall. [REDACTED] The group's tactics were brutal: It targeted civilians, conducted mass executions, kidnapped and raped women and children, and displaced hundreds of thousands of Iraqis. [REDACTED]

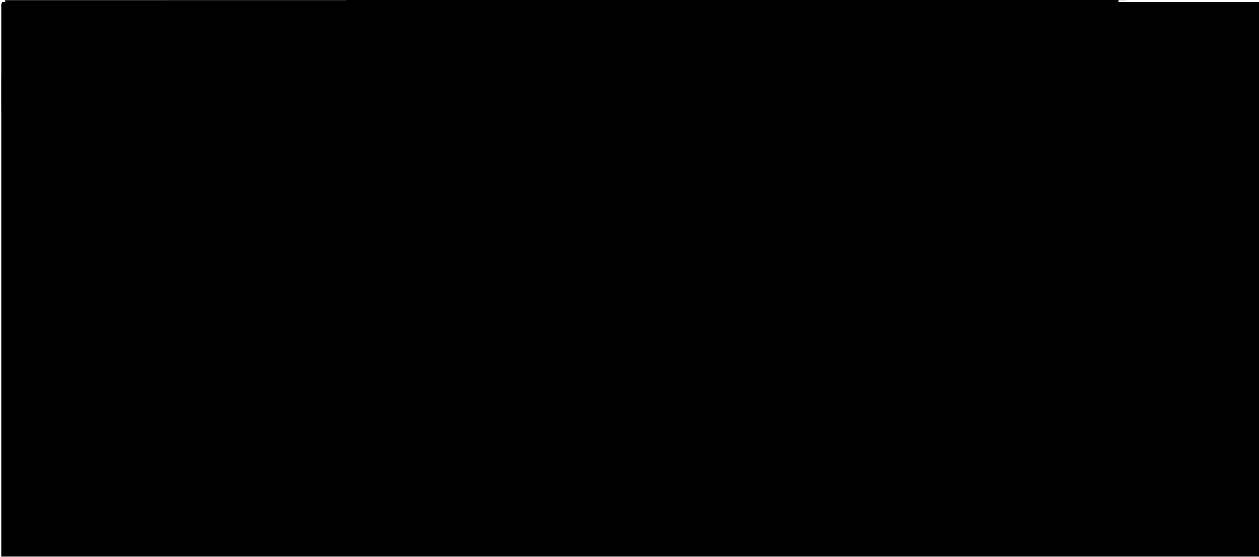
[REDACTED]

In June 2014, President Obama declared ISIS "a threat to the Iraqi people, to the region, and to U.S. interests." [REDACTED]

[REDACTED]



As the United States has sought to establish stability in Iraq and to address terrorist threats emanating from the country, Iran has remained a malign presence there and throughout the Middle East. According to the Defense Intelligence Agency, Iran remains “implacably opposed” to the United States, the U.S. presence in the Middle East, and U.S. support for certain governments, all of which Iran perceives as a threat to its goals of regime survival and regional dominance. [REDACTED]



To achieve its goals, Iran relies heavily on “unconventional warfare elements and asymmetric capabilities.” [REDACTED]

[REDACTED] These include “a complex network of state and nonstate partners and militant proxies.” DIA Assessment at v; *see also* President Donald J. Trump, *National Security Strategy of the United States of America* at 49 (Dec. 2017) (“*National Security Strategy*”), <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf> (“Iran, the world’s leading state sponsor of terrorism, has taken advantage of instability to expand its influence through partners and proxies[.]”); DNI Threat Assessment at 29 (discussing Iranian support for militia groups, including in Iraq). Iran’s “preference for using partners, proxies, and covert campaigns to intervene in regional affairs” owes to “limitations in its conventional military capability and a desire to maintain plausible deniability, thereby attempting to minimize the risk of escalation with its adversaries.” DIA Assessment at 33.

The Qods Force is Iran’s “primary tool” for conducting unconventional warfare and providing support to partners and proxies. [REDACTED]

[REDACTED] The Qods Force was founded in 1990, shortly after the Iran–Iraq War, and has since become “an increasingly professional unit trusted by the supreme leader [of Iran] to conduct operations outside Iran, provide support to Islamic militants, and collect intelligence against Iran’s enemies.” [REDACTED]

[REDACTED] Using Iranian-provided weapons, these groups are estimated to have killed more than 600 Americans serving in Iraq between 2003 and 2011. [REDACTED]

[REDACTED] Soleimani had commanded the Qods Force since the late 1990s, serving in that role as “key architect” and “chief executor” of Iran’s campaign of terrorism, assassinations, and violence throughout the Middle East. [REDACTED]

[REDACTED]
[REDACTED] In 2011, Soleimani oversaw a Qods Force plot to assassinate the Kingdom of Saudi Arabia's Ambassador to the United States through the use of explosives in a Washington, D.C., restaurant. [REDACTED]

[REDACTED]
[REDACTED] In view of Soleimani's role in directing Iranian support for the Shiite militias who had killed hundreds of Americans serving in Iraq, Secretary of State Pompeo recently observed that "[t]here is no terrorist except Usama bin Ladin who has more American blood on his hands than did Qasem Soleimani." [REDACTED]

[REDACTED]
[REDACTED] The Treasury Department simultaneously sanctioned Soleimani for activity related to the proliferation of weapons of mass destruction. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] During 2019, the United States and its partners were the targets of a series of escalating threats and attacks by Iran and Iranian-supported groups, including by the Qods Force and its network of militia groups in Iraq. In June 2019, an Iranian surface-to-air missile destroyed an unmanned U.S. Navy surveillance aircraft while it was on a routine mission in international airspace monitoring the Strait of Hormuz. [REDACTED]

[REDACTED] In July 2019, the

USS Boxer came under threat from an Iranian unmanned aerial system while conducting a planned transit of the Strait of Hormuz. [REDACTED] At roughly the same time, Iran attacked commercial vessels in the Gulf of Oman, threatening freedom of navigation and international commerce. [REDACTED]

Iran's campaign against the United States intensified in the weeks preceding the January 2 airstrike. Kata'ib Hizballah and other militia groups, which receive support from and sometimes act under the direction of the Qods Force, fired rockets at bases in Iraq where U.S. personnel are located. [REDACTED]

[REDACTED] Between November 9 and December 9, 2019, militia groups fired rockets at the Qayyarah-West Air Base, Al Asad Air Base, and Baghdad Diplomatic Support Center. [REDACTED]

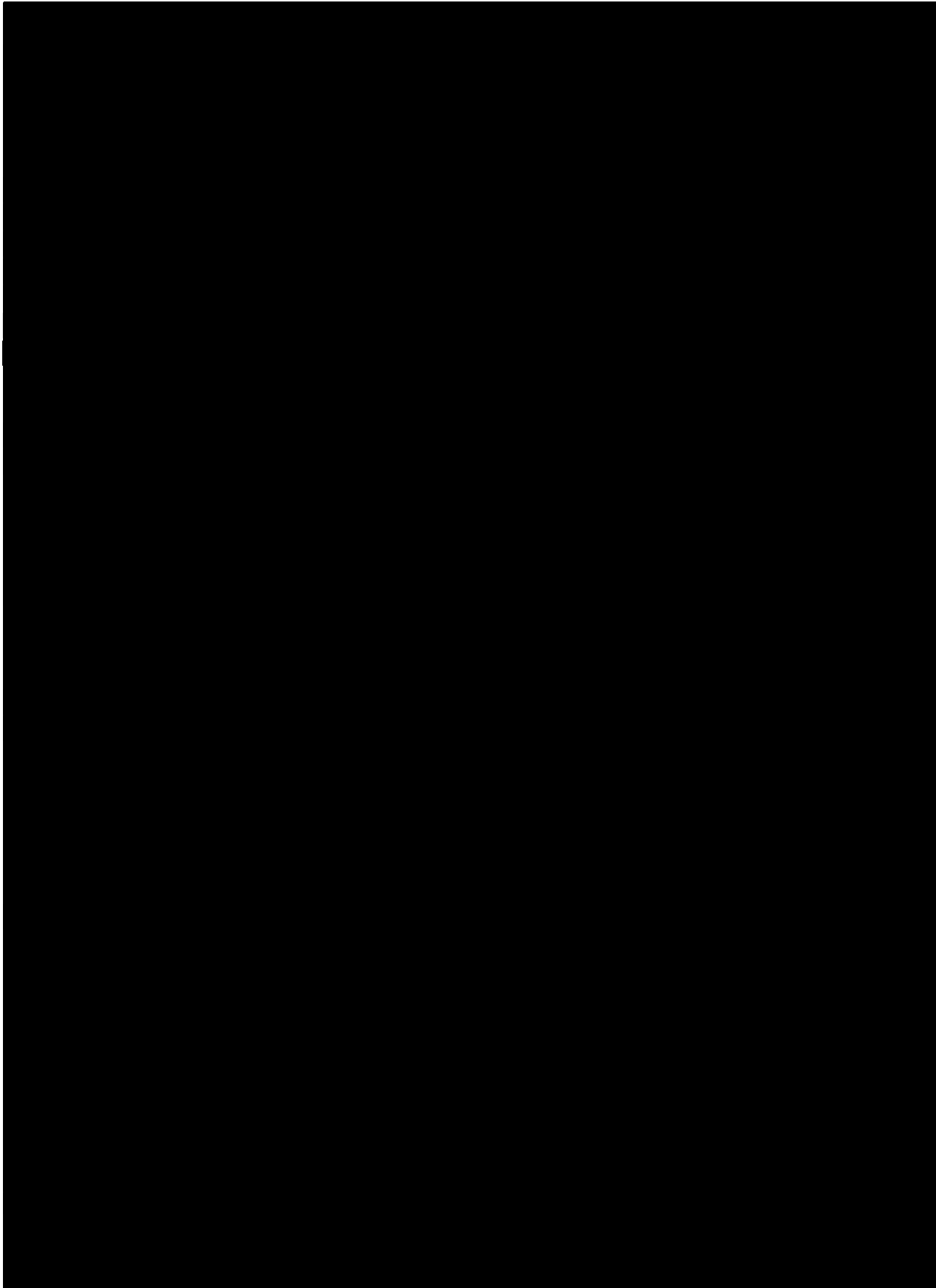
[REDACTED]

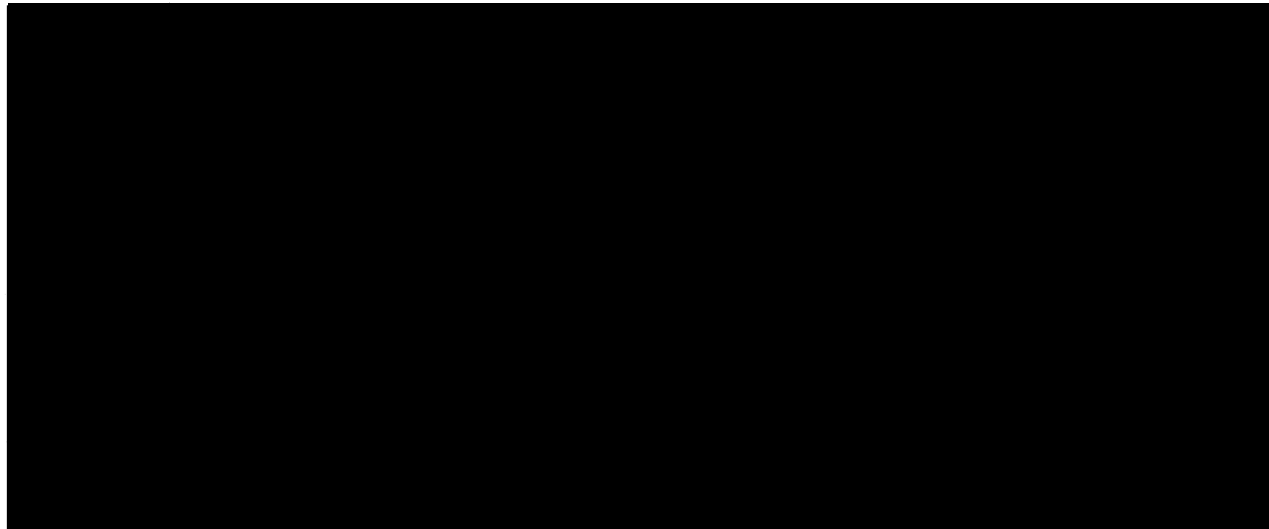
On December 27, Kata'ib Hizballah attacked the K-1 Air Base in Kirkuk, killing a U.S. contractor and injuring U.S. and Iraqi military officers. [REDACTED]

[REDACTED] In response, the President directed U.S. forces to strike Kata'ib Hizballah installations in Iraq and Syria to degrade the group's ability to launch additional attacks. [REDACTED] On December 31, Kata'ib Hizballah and other Iranian-backed militia groups organized a demonstration at the U.S. Embassy in Baghdad, which turned violent, inflicting significant damage to American property.

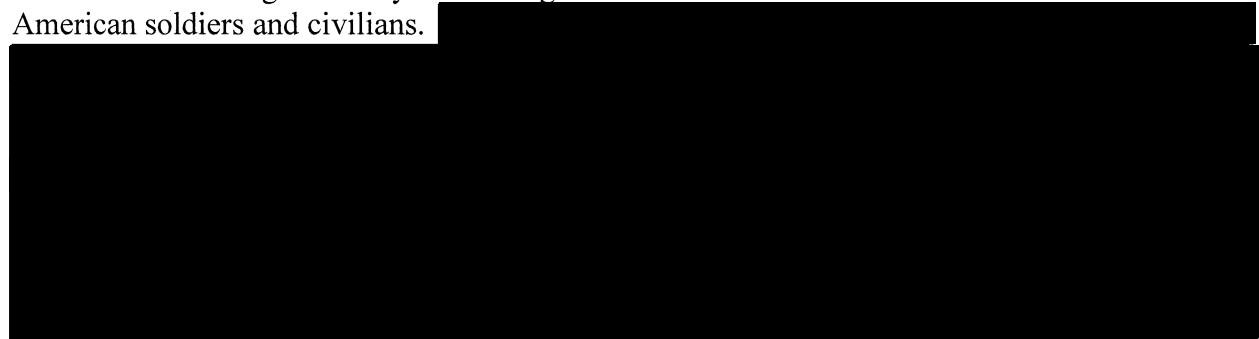

[REDACTED]

[REDACTED] Based on all available information, senior officials concluded that Soleimani was "actively developing plans" for further attacks against U.S. military personnel and diplomats in Iraq and throughout the region. [REDACTED]

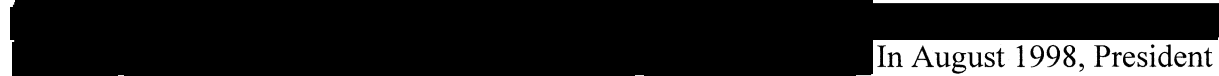




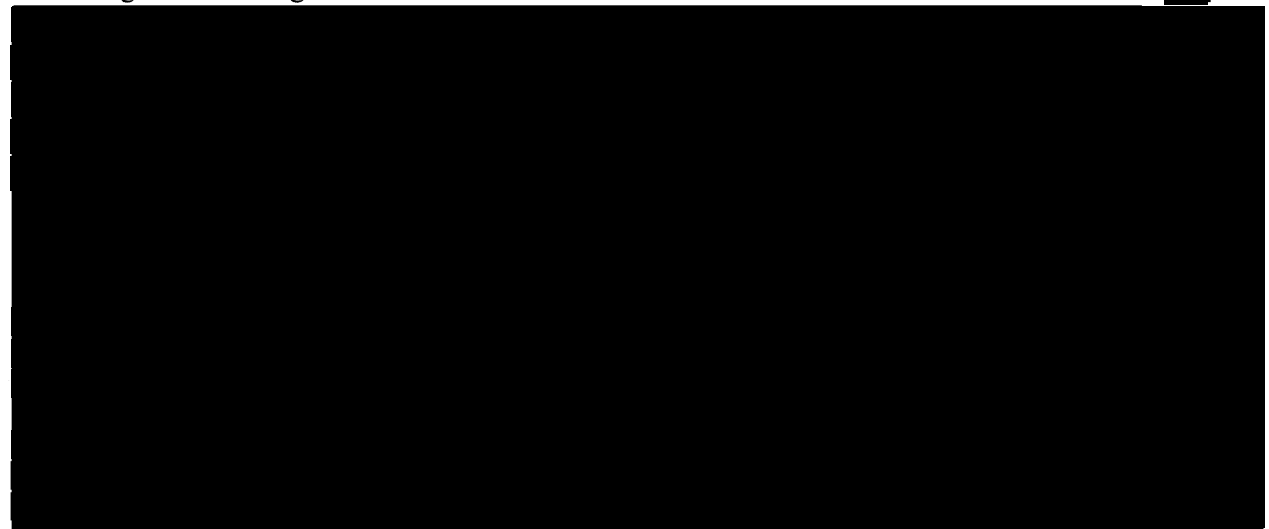
In recent decades, Presidents have frequently directed the use of military force in response to attacks on or threats against U.S. personnel. In April 1986, President Reagan directed airstrikes against Libya following a terrorist attack that had killed and wounded American soldiers and civilians.

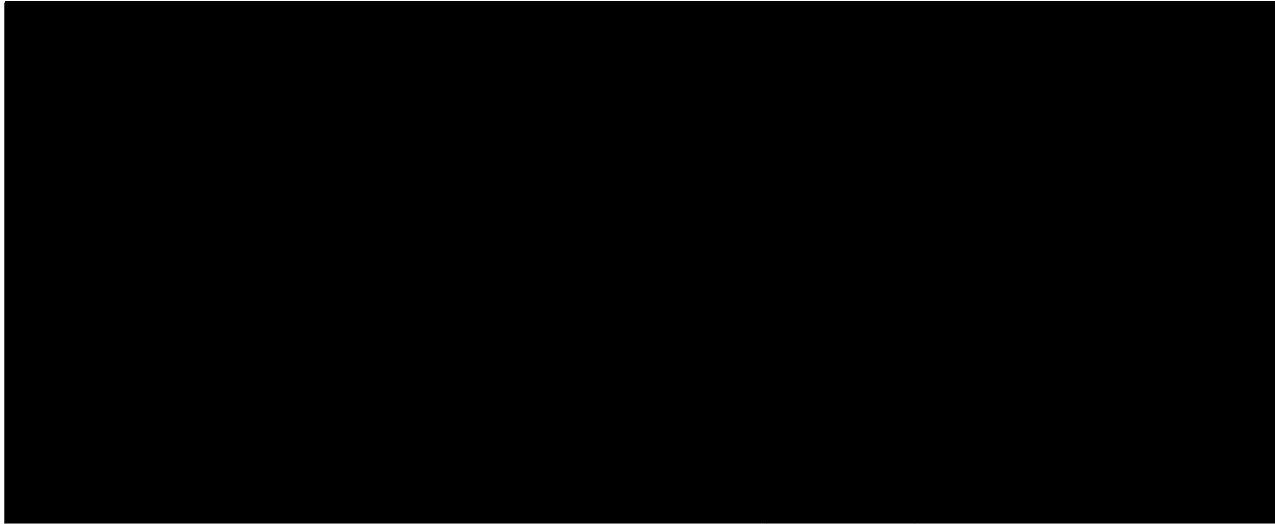


In June 1993, President Clinton directed the use of cruise missiles against Iraq in response to “compelling evidence” that Iraq had attempted to assassinate former President Bush.



In August 1998, President Clinton directed airstrikes in Afghanistan and Sudan targeting Osama bin Laden and al Qaeda following the bombings that month of the U.S. Embassies in Nairobi and Dar es Salaam.

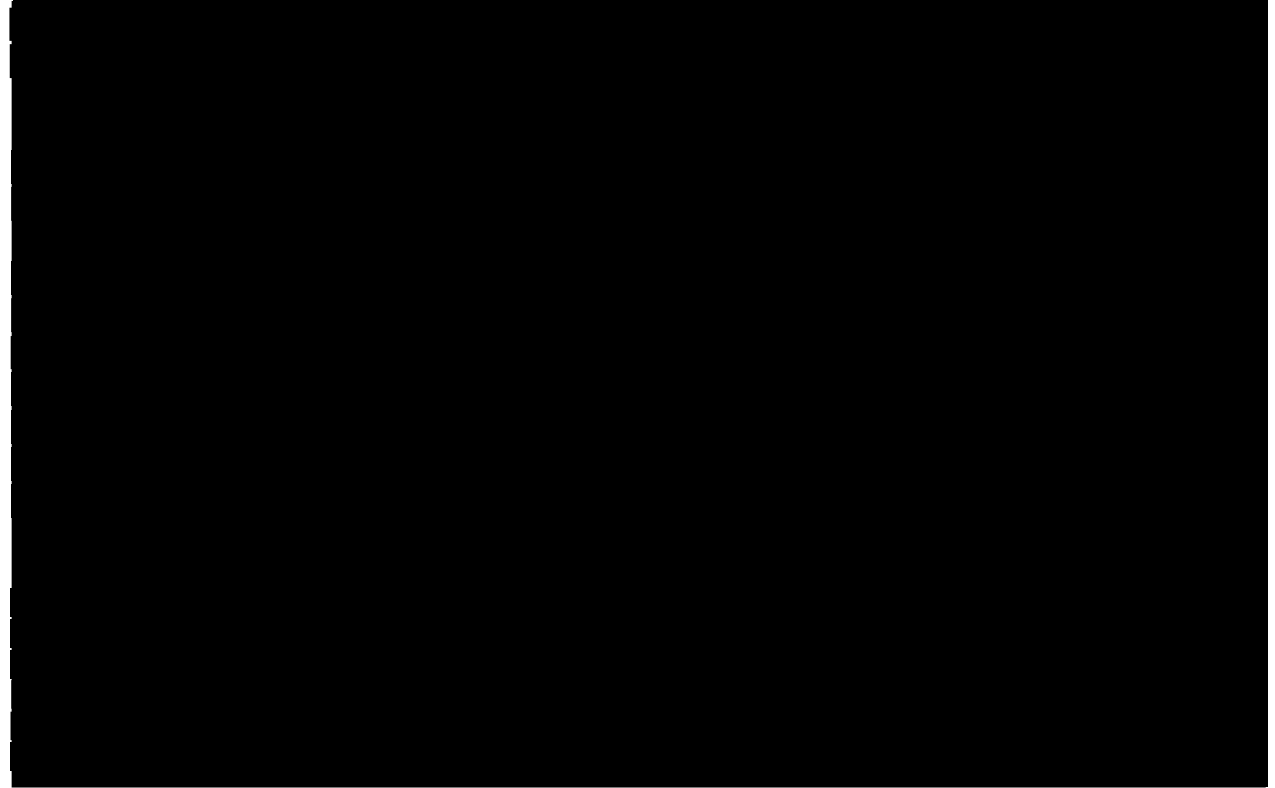


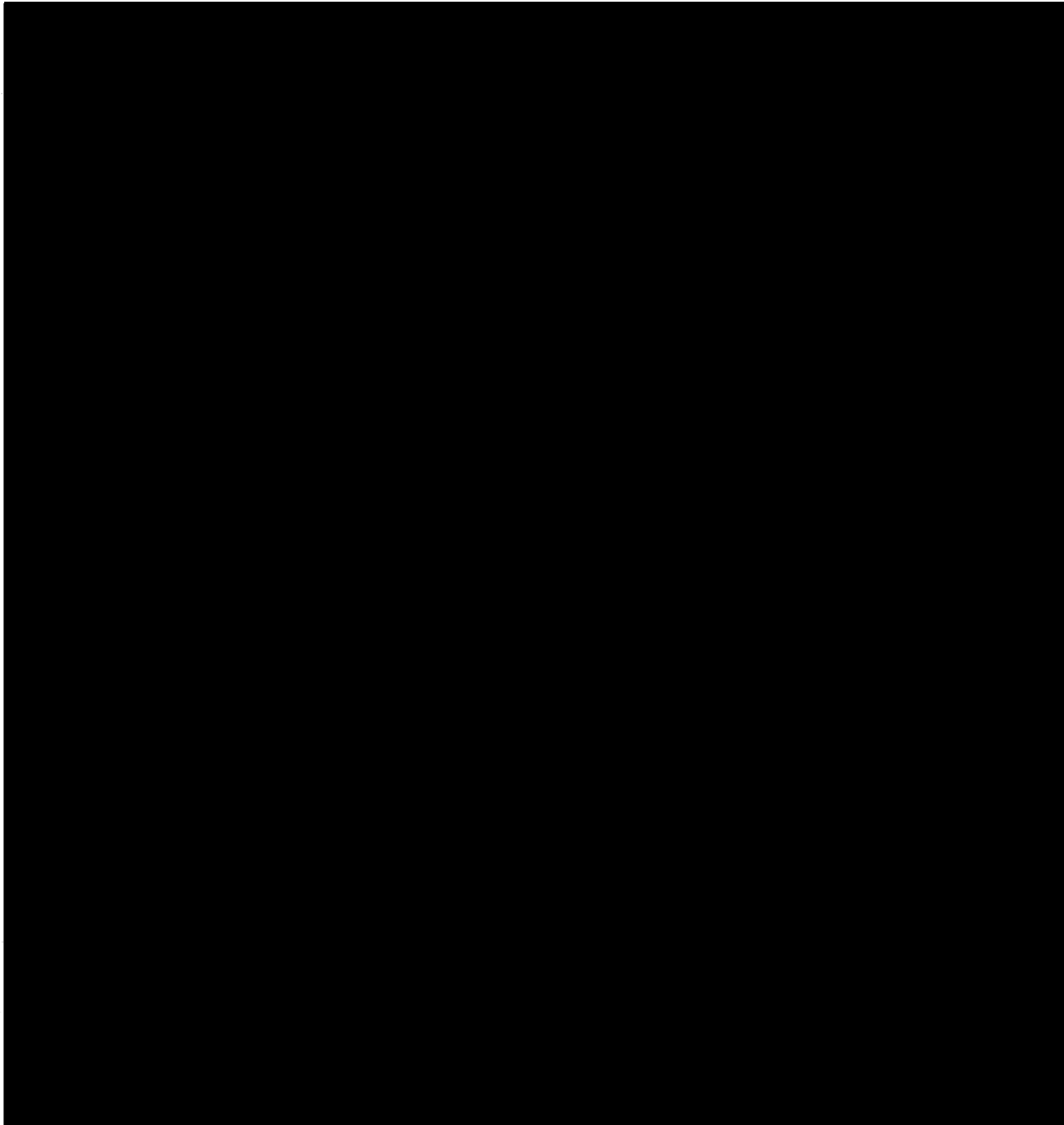


While the Constitution vests the President with independent authority to deploy military force, it reserves to Congress the power to “declare War,” U.S. Const. art. I, § 8, cl. 11, and the authority to fund military operations, *id.* art. I, § 8, cl. 12. This was a deliberate choice of the Founders. [REDACTED]

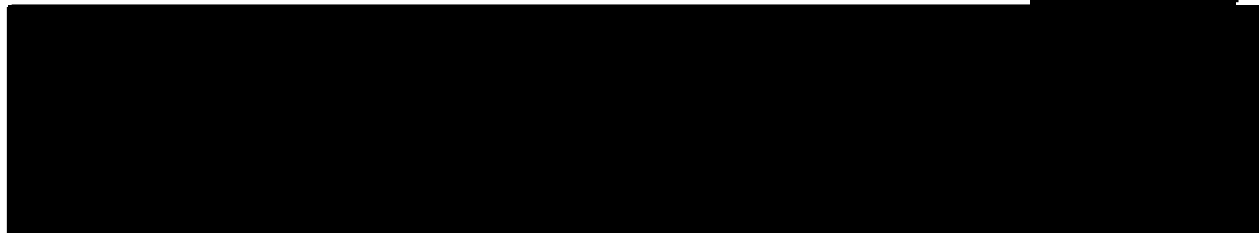
[REDACTED] For that reason, the use of force “cannot be sustained over time without the acquiescence, indeed the approval, of Congress, for it is Congress that must appropriate the money to fight a war or a police action.” [REDACTED]

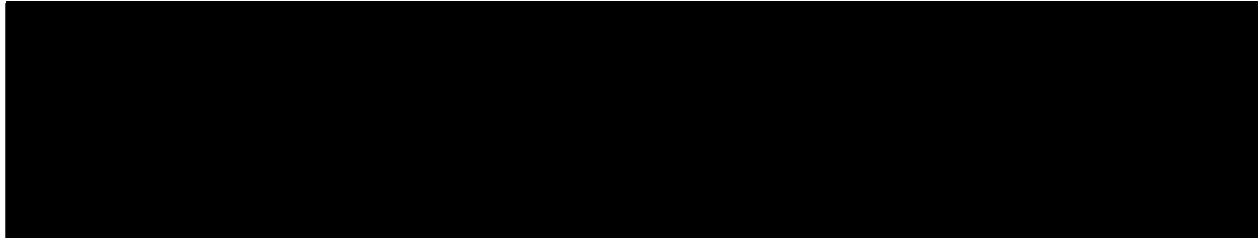
[REDACTED] We have thus recognized that the President should seek congressional approval prior to initiating military action that would bring the Nation into the kind of protracted conflict that would rise to the level of a war. [REDACTED]



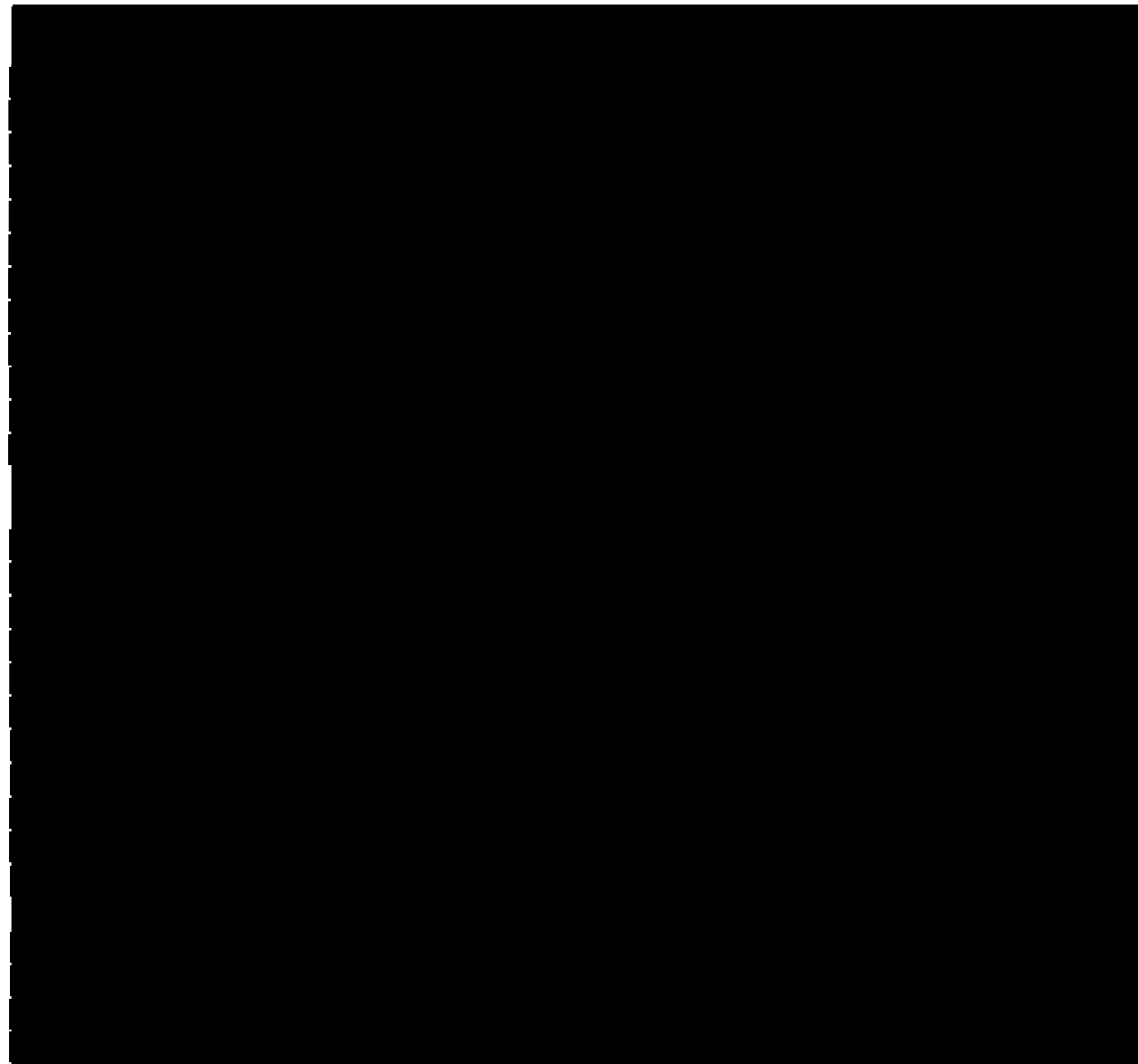


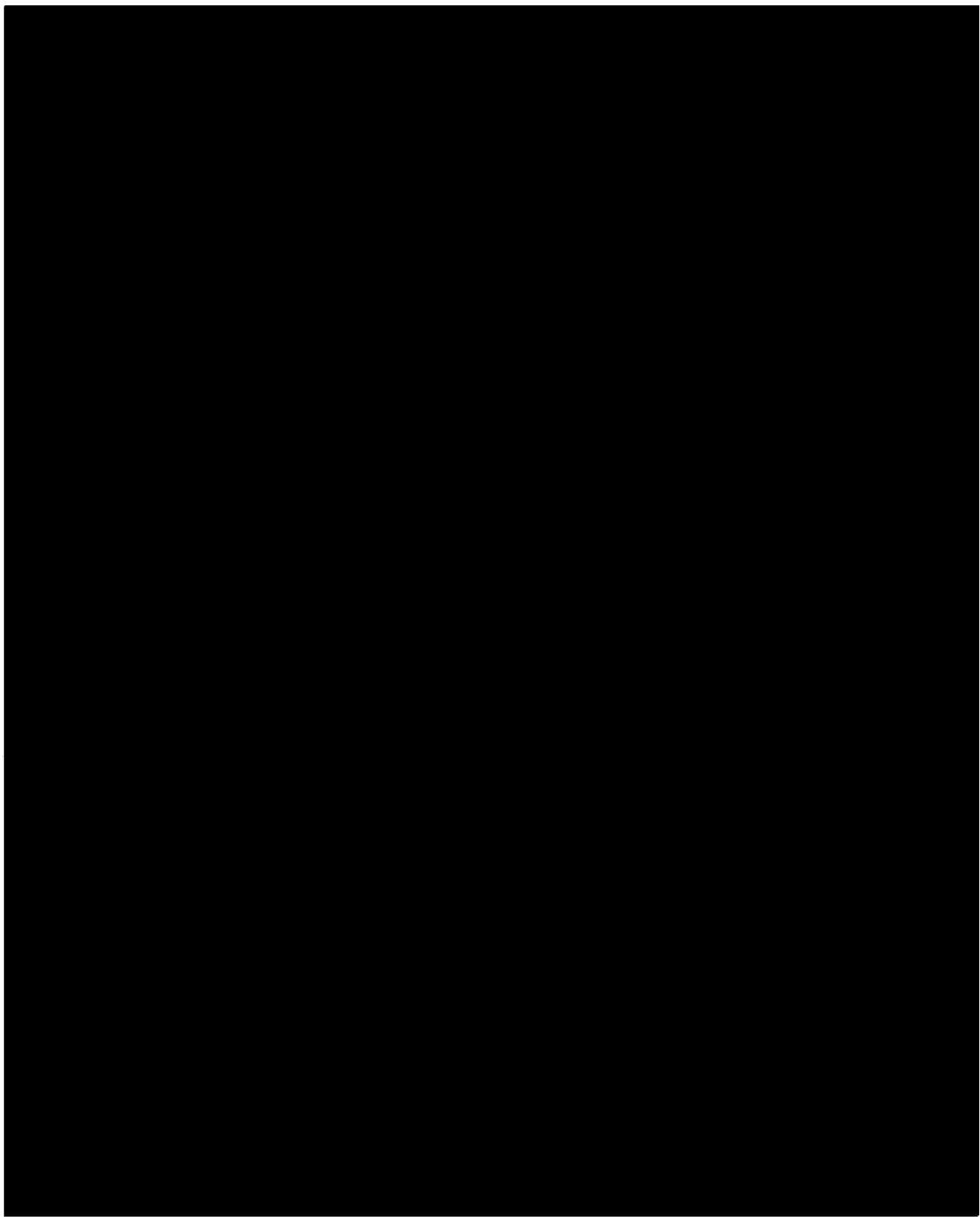
In evaluating whether a proposed military action falls within the President's constitutional authority, we have examined first whether the President could reasonably determine that the use of force would be in the national interest, and, second, whether the anticipated nature, scope, and duration of the conflict would rise to the level of a war under the Constitution. [REDACTED]



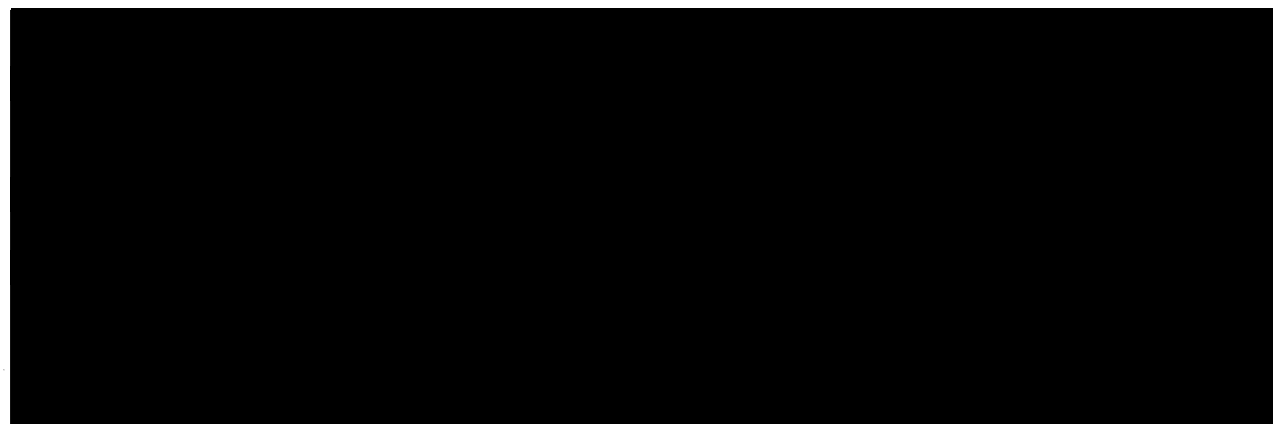


The airstrike sought to protect U.S. personnel, deter Iran from conducting or supporting further attacks against U.S. forces and interests, degrade Iran's and Qods-Force-backed militias' ability to conduct attacks, and end Iran's strategic escalation of attacks on U.S. interests. *See, e.g.*, Notice on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations at 2 (Jan. 31, 2020) ("Section 1264 Notice") (reported to Congress consistent with section 1264 of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283, 1689 (2017), as amended by section 1261 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92 (2019)).

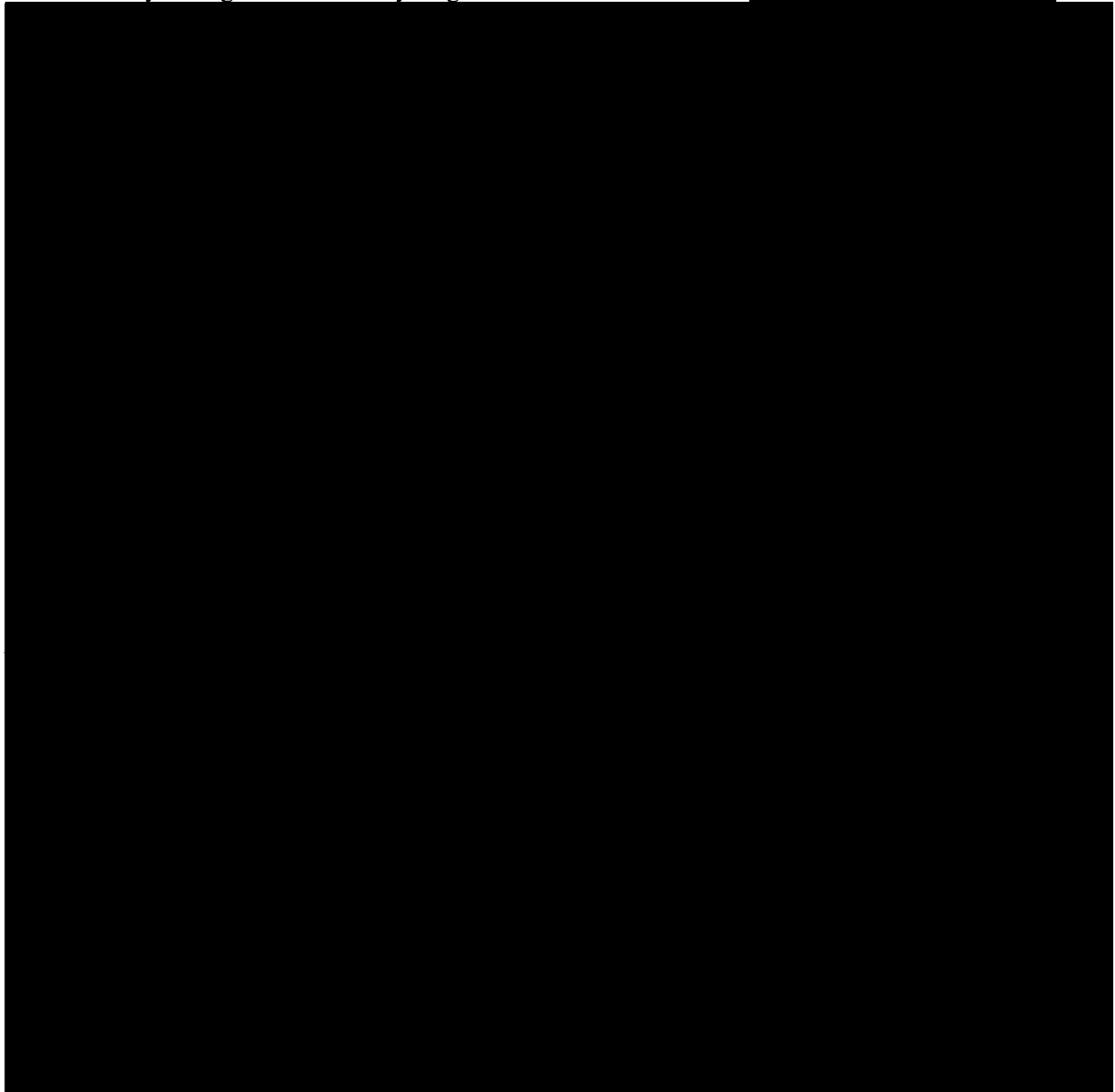


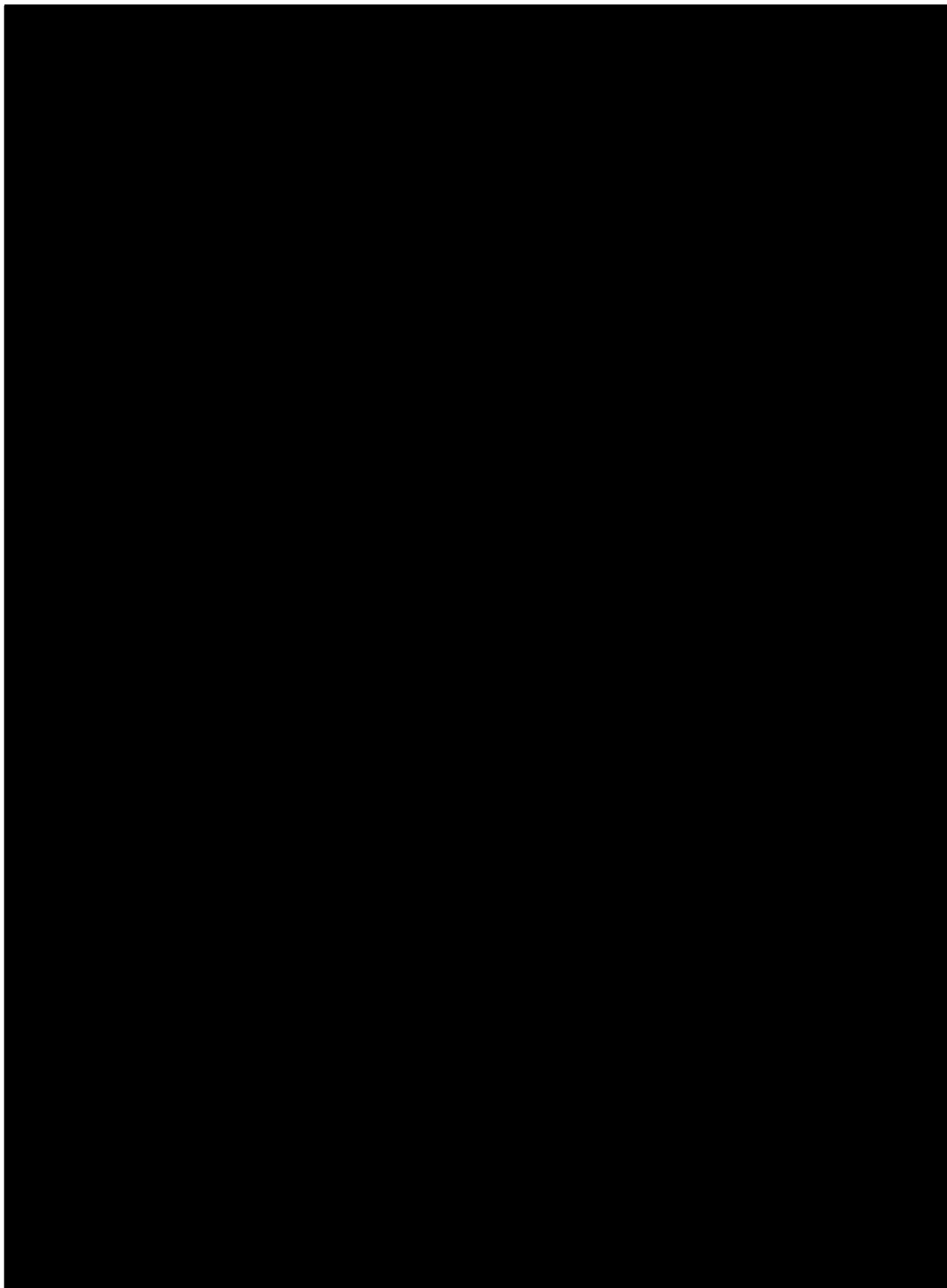


At the time of the January 2 airstrike, moreover, senior officials had concluded that Soleimani was “actively developing plans” for further attacks on Americans in Iraq and throughout the region, including through the use of Iranian-sponsored militias in Iraq. [REDACTED]



Military leaders who organize and oversee attacks against U.S. persons and interests may be legitimate military targets under the law of war.



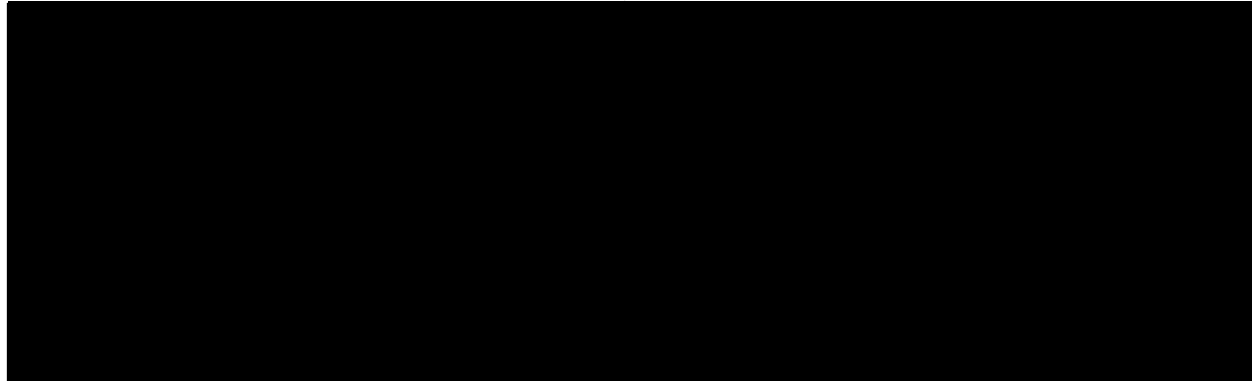


[REDACTED]

While the President has the constitutional authority to take defensive measures to protect U.S. persons, including U.S. forces deployed in a foreign theater, we believed that the operation here warranted the kind of “fact-specific assessment of the ‘anticipated nature, scope, and duration’ of the planned military operation[.]” that we have employed when the President seeks to advance national interests apart from the defense of U.S. persons. [REDACTED]

[REDACTED] Under this standard, military operations may rise to the level of a war when the actions are likely to lead to “prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period.” [REDACTED]

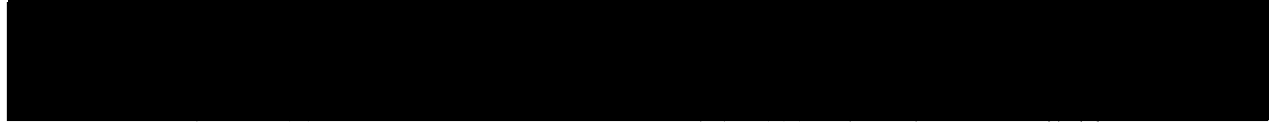
[REDACTED]



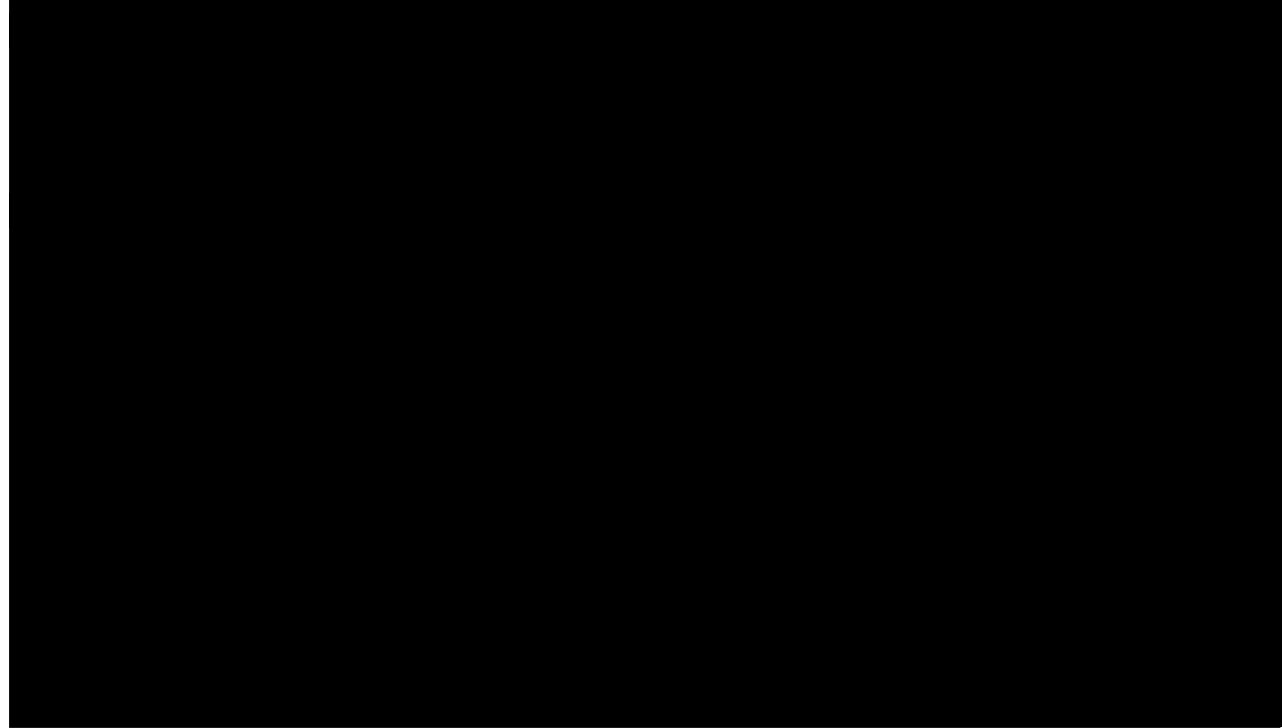
The action was circumscribed: It consisted of a targeted airstrike in Iraq, executed by an unmanned aerial vehicle, designed to avoid civilian casualties or substantial collateral damage, and intended to prevent future attacks against Americans in Iraq and throughout the region.

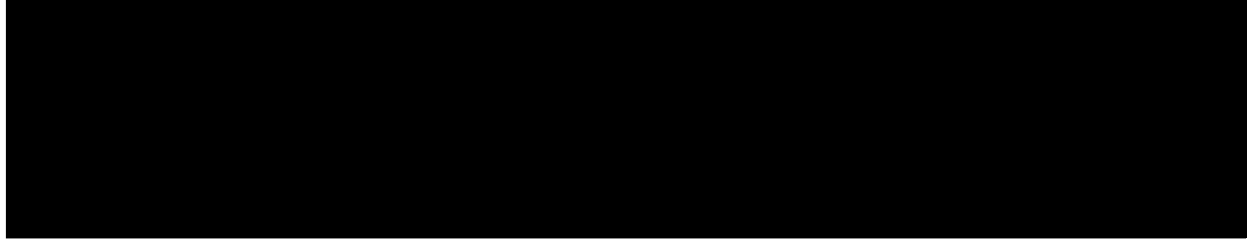
It was not “aim[ed] at the conquest or occupation of territory nor . . . at imposing through military means a change in the character of a political régime.”

At the same time, as in *Syrian Airstrikes*, we considered the risk that the operation could escalate into a broader conflict. The Qods Force is part of the military of Iran, a nation with a “substantial arsenal of ballistic missiles,” as well as significant numbers of small boats, naval mines, and anti-ship missiles.

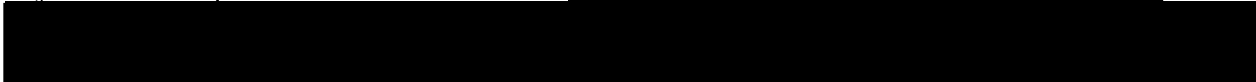


Nonetheless, the President’s national security team advised him, based upon available intelligence, that the targeted operation would be unlikely to escalate into a full-scale war, and that, by deterring further attacks orchestrated by the Qods Force, it could result in a strategic de-escalation of the conflict between the United States and Iran.

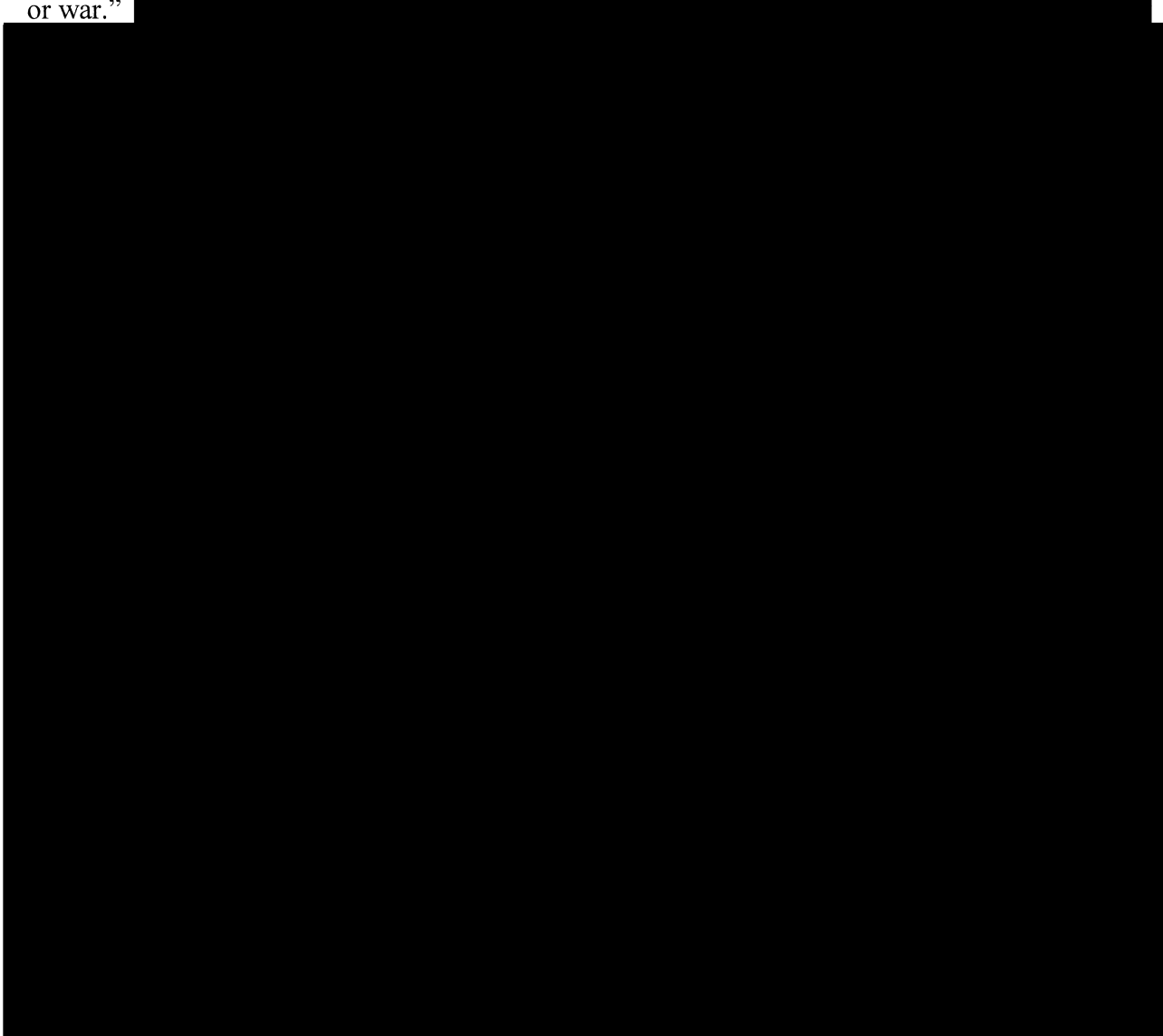




Although this Office provided advice in anticipation of the potential strike, subsequent events appear to have confirmed the reasonableness of the initial intelligence assessment that the strike would not provoke an immediate and substantial escalation by Iran. On January 7, 2020, Iran responded to the strike on Soleimani by firing ballistic missiles at two bases in Iraq, causing injuries to U.S. personnel but no fatalities.



Iran's foreign minister then claimed that his country "took [and] concluded proportionate measures" in response to the targeting of Soleimani, adding that Iran "do[es] not seek escalation or war."



[REDACTED]

In sum, given the targeted scope of the mission, the available intelligence, and the efforts to avoid escalation, we concluded that the President could reasonably determine that the nature, scope, and duration of hostilities directly resulting from the strike against Soleimani would not rise to the level of a war for constitutional purposes.

[REDACTED]

Although the President had independent constitutional authority under Article II to direct the January 2 airstrike, we also advised that he could rely on the 2002 AUMF. Congress has authorized the President “to use the Armed Forces of the United States *as he determines to be necessary and appropriate* in order to . . . defend the national security of the United States against the continuing threat posed by Iraq.” [REDACTED]

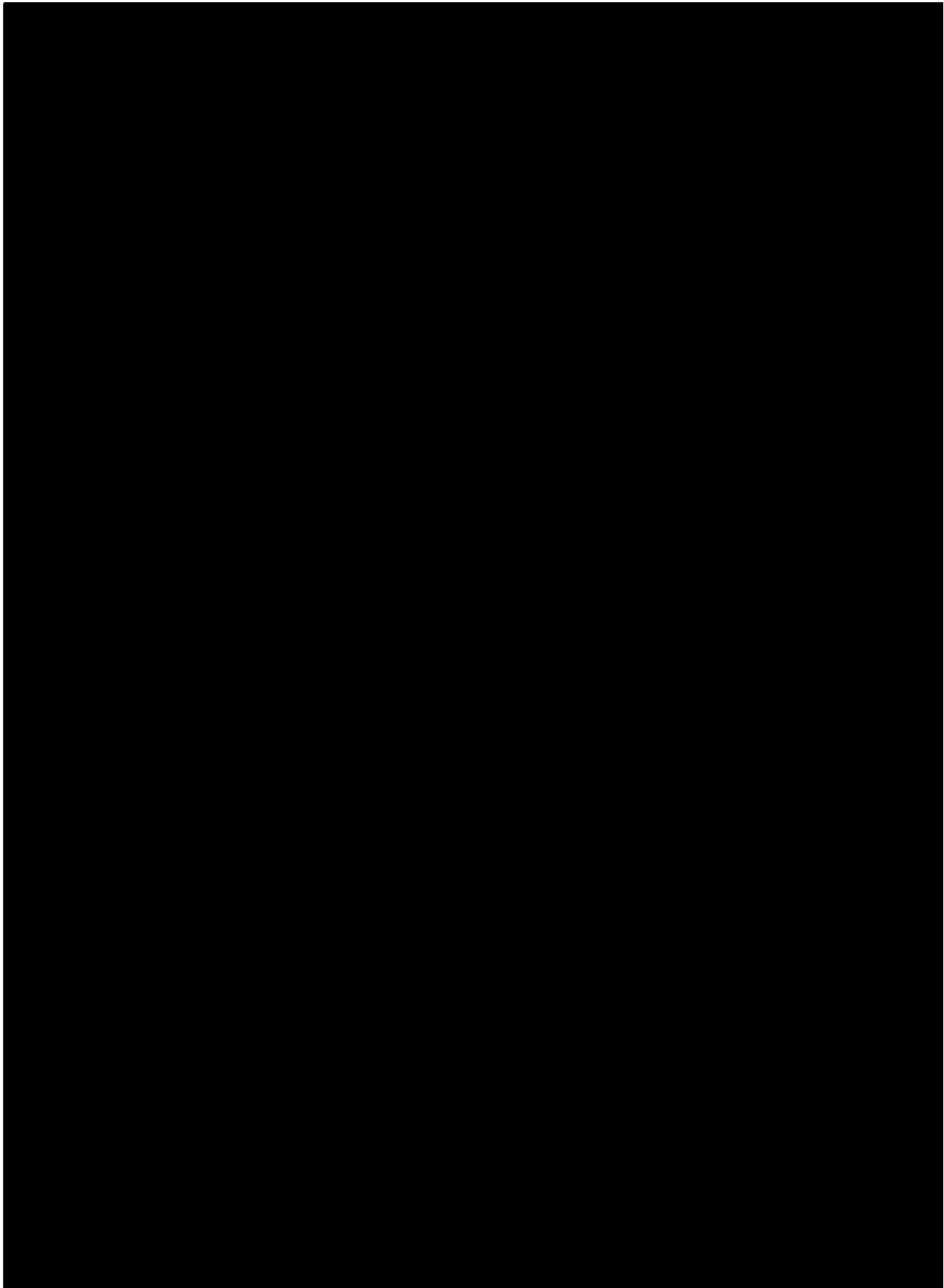
Although the primary focus of the 2002 AUMF was the threat posed by Saddam Hussein’s regime, the statute has long been read, in accordance with its express goals, to authorize the use of force for the related purposes of helping to establish a stable, democratic Iraq and addressing terrorist threats emanating from Iraq. [REDACTED]

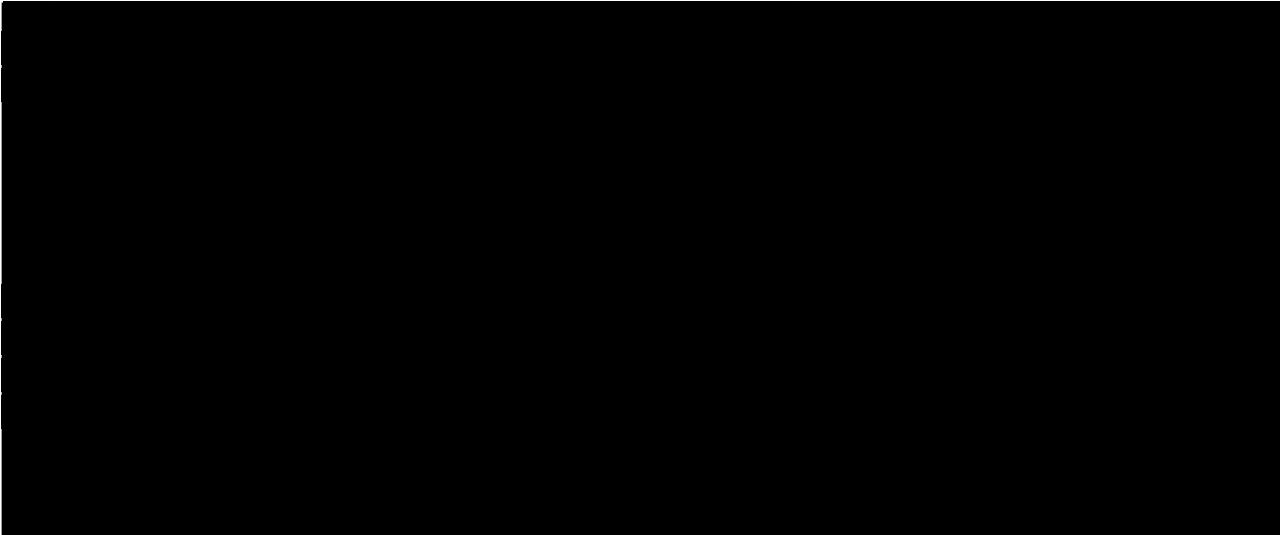
Such use of force need not address threats emanating from only the Iraqi government, but may address threats also posed by militias, terrorist groups, or other armed groups in Iraq. [REDACTED]

[REDACTED]

The January 2 airstrike in Iraq was consistent with this long-standing interpretation of the 2002 AUMF. Iran’s past and recent activities in Iraq, coupled with intelligence available to senior U.S. officials at the time of the airstrike, indicated that the Qods Force would continue to undermine stability in Iraq and continue to threaten U.S. personnel in Iraq. *See* Section 1264 Notice at 2. At the same time, the proposed operation was narrowly tailored to Soleimani’s presence in Iraq and to his support to and direction of militias operating in Iraq. *See id.* [REDACTED]

[REDACTED]





STEVEN A. ENGEL
Assistant Attorney General

