



Duckworth Demands Secretary Esper Disclose Why DOD Believes Killing Soleimani was Legal

January 13 2020 10:00 AM

– U.S. Senator Tammy Duckworth (D-IL), a combat Veteran and member of the Senate Armed Services Committee (SASC), wrote to U.S. Secretary of Defense Mark Esper requesting he inform Congress and the American people precisely what legal authority, or which legal authorities, authorized the military operation that killed General Qasem Soleimani. During Esper’s confirmation hearing last year, he [affirmed](#) to Duckworth that neither the 2001 Authorization for Use of Military Force (AUMF) nor the 2002 AUMF provided the Executive Branch with authority to use military force against Iran, though recent press reports have indicated that the Administration is now claiming the 2002 AUMF authorized the Soleimani strike.

“During your confirmation hearing before the Senate Armed Services Committee, I asked you if the 2001 Authorization for Use of Military Force (AUMF) or the 2002 AUMF provided legal authorization to use military force against Iran,” Duckworth said. **“In your sworn testimony, you affirmed that neither AUMF provided the Executive Branch with authority to use our military against Iran.”**

“Congress and the American people require a transparent explanation and clear understanding of why DoD believes its January 3, 2020 military operation was legal,” Duckworth continued. **“Securing an answer to the question of legality is vital to upholding constitutional principles and the rule of law.”**

A full copy of the letter is available below and online [here](#).

January 10, 2020

VIA ELECTRONIC DELIVERY

The Honorable Mark Esper

Secretary of Defense

U.S. Department of Defense

1000 Defense Pentagon

Washington, DC 20301-1300

Dear Secretary Esper:

I write to request the U.S. Department of Defense (DoD) act swiftly to inform the Congress and the American public precisely what legal authority, or which legal authorities, authorized the military operation on January 3, 2020 killing Major General Qasem Soleimani, head of Iran's Islamic Revolutionary Guard Corps (IRGC).

Specifically, I ask that no later than Monday, January 13, 2020, DoD post on its public website the specific legal memorandums or simply the list of authorities under which it acted.

During your confirmation hearing before the Senate Armed Services Committee, I asked you if the 2001 Authorization for Use of Military Force (AUMF) or the 2002 AUMF provided legal authorization to use military force against Iran. In your sworn testimony, you affirmed that neither AUMF provided the Executive Branch with authority to use our military against Iran:

Duckworth: *“Again, I want to address, since I get the last here I guess, about the ongoing use of the 2001 and AUMFs. The U.S. Constitution vests with Congress the solemn responsibility to declare war.*

However, past several years, administrations from both parties used the existing AUMF in a way that outstrips the Congress and has at best dubious legal justifications.

In a real world example of current concern, do believe that the 2001 AUMF or the 2002 AUMF provides necessary legal authorization for us to use military against Iran ?”

Esper: *“Not to conduct a war, Senator, as you discussed, but obviously, the President has under the right to respond if attacked. But, no, not in how you described it, as we discussed, to conduct a –”*

Duckworth: *“But Article 2 is aside from AUMF.”*

Esper: *“Right. I said if Iran were to attack our soldiers, we always have the right of self-defense to execute those types of –”*

Duckworth: *“But that is under Article 2. Speaking specifically of the 2001 and 2002 AUMFs. Either one of those authorize you to –”*

Esper: *“No, because 2001 applies to terrorist groups and organizations, and that would not be the here with regard to the country of Iran.”*

Duckworth: *“Thank you.”*

To date, the report and briefing provided to Congress on the use of military force is incomplete and unacceptably vague.

Accordingly, I request that in addition to publicly disclosing the legal authorities that authorized the DoD operation, you also provide the Congress with clear confirmation that neither the 2001 AUMF (Public Law 107-40) nor the 2002 AUMF (Public Law 107-243) authorized the military operation that killed the leader of the IRGC.

Congress and the American people require a transparent explanation and clear understanding of why DoD believes its January 3, 2020 military operation was legal. Securing an answer to the question of legality is vital to upholding constitutional principles and the rule of law. Thank you in advance for your response to my request.

Sincerely,

Tammy Duckworth

United States Senator