

~~SECRET//NOFORN~~



SPECIAL OPERATIONS  
LOW INTENSITY CONFLICT

ASSISTANT SECRETARY OF DEFENSE  
2500 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-2500

NOV 16 2018

The Honorable Tim Kaine  
United States Senate  
Washington, DC 20510

Dear Senator Kaine:

As a follow-up to the letter I sent you on October 23, 2018, I am enclosing a copy of the report provided to the Senate Armed Service Committee and House Armed Service Committee in response to Section 1031 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (P.L. 115-232). This report also responds to the questions on collective self-defense in your October 2, 2018, letter to Secretary Mattis.

The Department appreciates your continued support and remains committed to keeping Congress informed regarding military operations.

Sincerely,

A handwritten signature in black ink, appearing to read "Owen West".

Owen West

Enclosure:

List of information required pursuant to Section 1031 of the NDAA.

~~SECRET//NOFORN~~

This letter is UNCLASSIFIED when enclosure removed





SPECIAL OPERATIONS  
LOW INTENSITY CONFLICT

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ASSISTANT SECRETARY OF DEFENSE  
2500 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-2500

NOV 16 2019

The Honorable William M. "Mac" Thornberry  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

(U) This report responds to section 1031 of the John S. McCain National Defense Authorization Act for Fiscal Year (FY) 2019, which provides that the Secretary of Defense is to submit to the Committees on Armed Services of the Senate and the House of Representatives a report that includes a list of any instance in which a member of the Armed Forces has engaged or been engaged by enemy forces, used force in self-defense, or provided collective self-defense of foreign partner forces in a country other than Afghanistan, Iraq, or Syria since December 26, 2013, and a list of all foreign partner forces outside of Afghanistan, Iraq, and Syria for which the United States Armed Forces are authorized to provide collective self-defense.

(U) In addition to responding to the statutory report elements, the report presents related information about the Department's policy and process for approving rules of engagement authorizing the use of force to defend foreign forces or individuals, including an analysis of the legal bases and policy implications of such approvals.

(U) We are providing a similar letter to the Senate Armed Services Committee.

Sincerely,

Owen West

Enclosure:

List of information required pursuant to Section 1031 of the NDAA.

cc:

The Honorable Adam Smith  
Ranking Member





SPECIAL OPERATIONS  
LOW INTENSITY CONFLICT

~~SECRET~~  
ASSISTANT SECRETARY OF DEFENSE  
2500 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-2500

NOV 16 2019

The Honorable James Inhofe  
Chairman  
Committee on Armed Services  
U.S. Senate  
Washington, DC 20515

Dear Mr. Chairman:

(U) This report responds to section 1031 of the John S. McCain National Defense Authorization Act for Fiscal Year (FY) 2019, which provides that the Secretary of Defense is to submit to the Committees on Armed Services of the Senate and the House of Representatives a report that includes a list of any instance in which a member of the Armed Forces has engaged or been engaged by enemy forces, used force in self-defense, or provided collective self-defense of foreign partner forces in a country other than Afghanistan, Iraq, or Syria since December 26, 2013, and a list of all foreign partner forces outside of Afghanistan, Iraq, and Syria for which the United States Armed Forces are authorized to provide collective self-defense.



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(U) We are providing a similar letter to the House Armed Services Committee.

Sincerely,

Owen West

Enclosure:

List of information required pursuant to Section 1031 of the NDAA.

cc:

The Honorable Jack Reed  
Ranking Member



**(U) Report In Accordance With Section 1031 of the National Defense Authorization Act for Fiscal Year 2019**

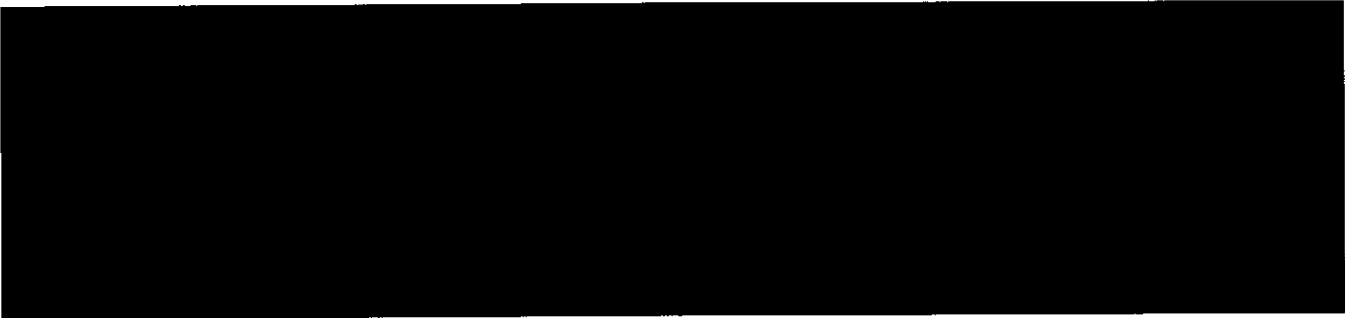
1. (U) Legal Authority for the Use of Military Force.

(U) As detailed in the December 2016 report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations and in the March 12, 2018, update to that report, the Department of Defense has conducted operations pursuant to the 2001 AUMF and the President's authority under Article II of the Constitution. The 2002 AUMF Against Iraq reinforces the authority for military operations against the Islamic State of Iraq and Syria (ISIS) in Iraq and, under certain circumstances, in Syria or elsewhere. As described below, certain other statutes providing for DoD support to the security of U.S. Government facilities and personnel are an additional source of legal authority for security operations, which may include incidental defense of foreign forces or individuals.

2. (U) Legal Basis for the Use of U.S. Military Force for Collective Self-defense.

(U) The legal basis for authorizing the use of U.S. military force to defend foreign forces or individuals depends on the context.

(U) When U.S. forces work with foreign partner forces or individuals incident to a U.S. military operation, the use of necessary and appropriate force to defend those partners is considered an inherent component of that U.S. operation. The legal basis for the defense of partner forces is thus the same as the legal authority under which the overall operation was authorized. For example, the President's authority pursuant to the 2001 AUMF encompasses not only the use of offensive force against al-Qa'ida, the Taliban, and associated forces, but also the use of necessary and appropriate force to defend foreign partner forces and designated foreign individuals from threats from other groups that may seek to interfere with the counterterrorism mission.



(U) Lastly, in the context of routine, peacetime security responsibilities, there are additional statutory authorizations available to the Secretary of Defense to support the security of U.S. Government facilities and personnel abroad.<sup>1</sup> These encompass the use of reasonable force to defend host nation security forces engaged in supporting U.S. Government activities abroad.

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<sup>1</sup> (U) See section 106 of the Diplomatic Security Act (22 USC 4805); section 8 of the Presidential Protection Assistance Act (Public Law 94-524). Also, section 1074 of the National Defense Authorization Act for Fiscal Year 2008 authorizes the Secretary of Defense to provide for the protection of foreign Heads of State, official representatives of foreign governments, and distinguished foreign visitors who are primarily conducting official business with the Department of Defense.

Classified by: Michael Gilday, VADM, USN, DJ-3

Reason: 1.4(a)

Declassify on: 11 September 2028

(U) In terms of international law, all current authorizations to use U.S. military force to defend foreign forces are justified either because they are incident to operations conducted with the consent of a host nation or because they are incident to an exercise of the right self-defense or of collective self-defense consistent with Article 51 of the UN Charter. Syria is the only location where U.S. military operations involving the use of force are ongoing without the consent of the territorial government.

3. (U) Legal and Operational Differences Between a Collective Defense Arrangement (Treaty) and Rules of Engagement Authorizing Defense of Partner Forces.

(U) Because rules of engagement authorizing the use of force to defend foreign forces or individuals are commonly called “collective self-defense rules of engagement” in DoD parlance, they are sometimes confused with the distinct concept of a collective defense arrangement under international law. A collective defense arrangement, established in a treaty, involves a degree of commitment to regard a threat or attack against one nation as a threat to the security of other participating nations, and a degree of commitment to a collective response.<sup>2</sup> Rules of engagement authorizing the defense of foreign forces are promulgated in a wide variety of contexts, many of which do not involve or require a collective defense arrangement. The approval of such rules of engagement may be appropriate in the course of multinational activities based on a partnership short of a formal collective defense arrangement, such as an ad hoc coalition to combat a common terrorist threat.

4. (U) The Standing Rules of Engagement (SROE).

(U) The Secretary of Defense most recently approved the Chairman of the Joint Chiefs of Staff Instruction on Standing Rules of Engagement (SROE) in 2005; it was last certified to be current in 2008. The SROE Instruction establishes fundamental policies and procedures governing actions to be taken by U.S. forces during all military operations, contingencies, and routines Military Department functions occurring outside U.S. territory. The SROE Instruction also includes a menu of mission-specific supplemental rules of engagement that may be approved operation-by-operation, one of which is for authorization to defend designated foreign forces or individuals. The SROE Instruction provides that only the President or Secretary of Defense may authorize the “collective self-defense” supplemental measure. Although the Department is in the process of reviewing the SROE Instruction for possible revision, there is no estimated time for completion of that review.

5. (U) Mission-Specific Collective Self-Defense Supplemental Measures Approval Authority.

(U) In all cases where U.S. forces are authorized to use force to defend foreign forces or individuals in the context of armed conflict or a significant threat from an organized armed group, the authorization comes from the President, whether expressly or implicitly in authorizing or directing U.S. forces to participate in multinational military operations. The Secretary of Defense approves military orders (rules of engagement) implementing that authorization, and in many instances the Geographic Combatant Commanders are responsible for identifying and designating specific foreign forces or individuals to be defended. In cases where the

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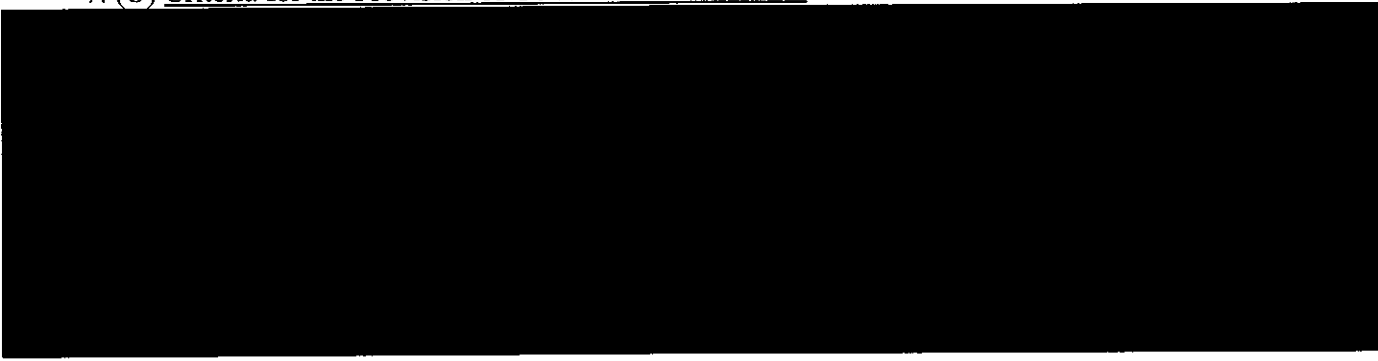
<sup>2</sup> (U) A list of current U.S. collective defense arrangements is available at [www.state.gov/s/l/treaty/collectivedefense/](http://www.state.gov/s/l/treaty/collectivedefense/).

contemplated use of defensive force foreseeably would place U.S. forces in hostilities against foreign military forces (including non—State armed groups), the Department of Defense seeks the express approval of the President. The Secretary of Defense may, without reliance on a delegation of presidential authority, authorize the use of force to defend foreign forces or individuals in peacetime operations to secure U.S. Government facilities or personnel against sporadic terrorist, insurgent, or criminal activity.

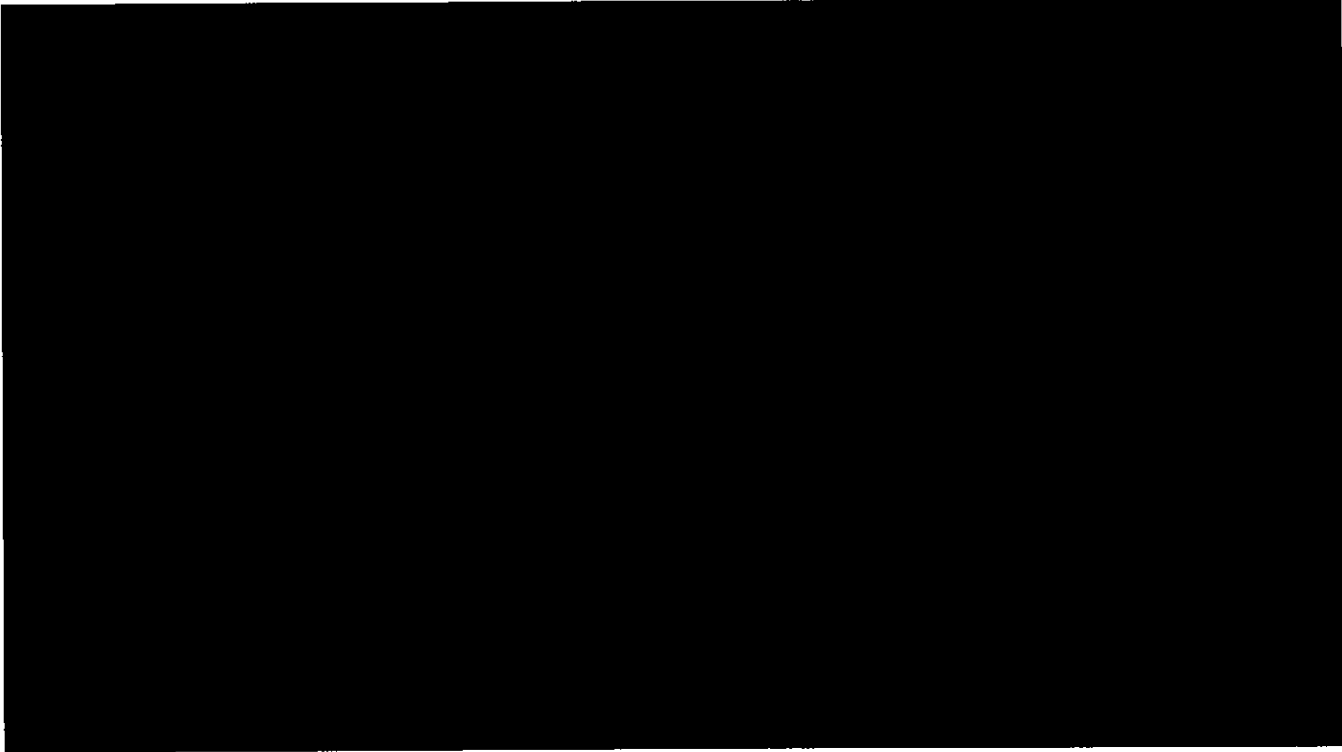
6. (U) Process for Designating a Partner Force as Eligible for the Provision of Collective Self-Defense, Including the Level of Approval.

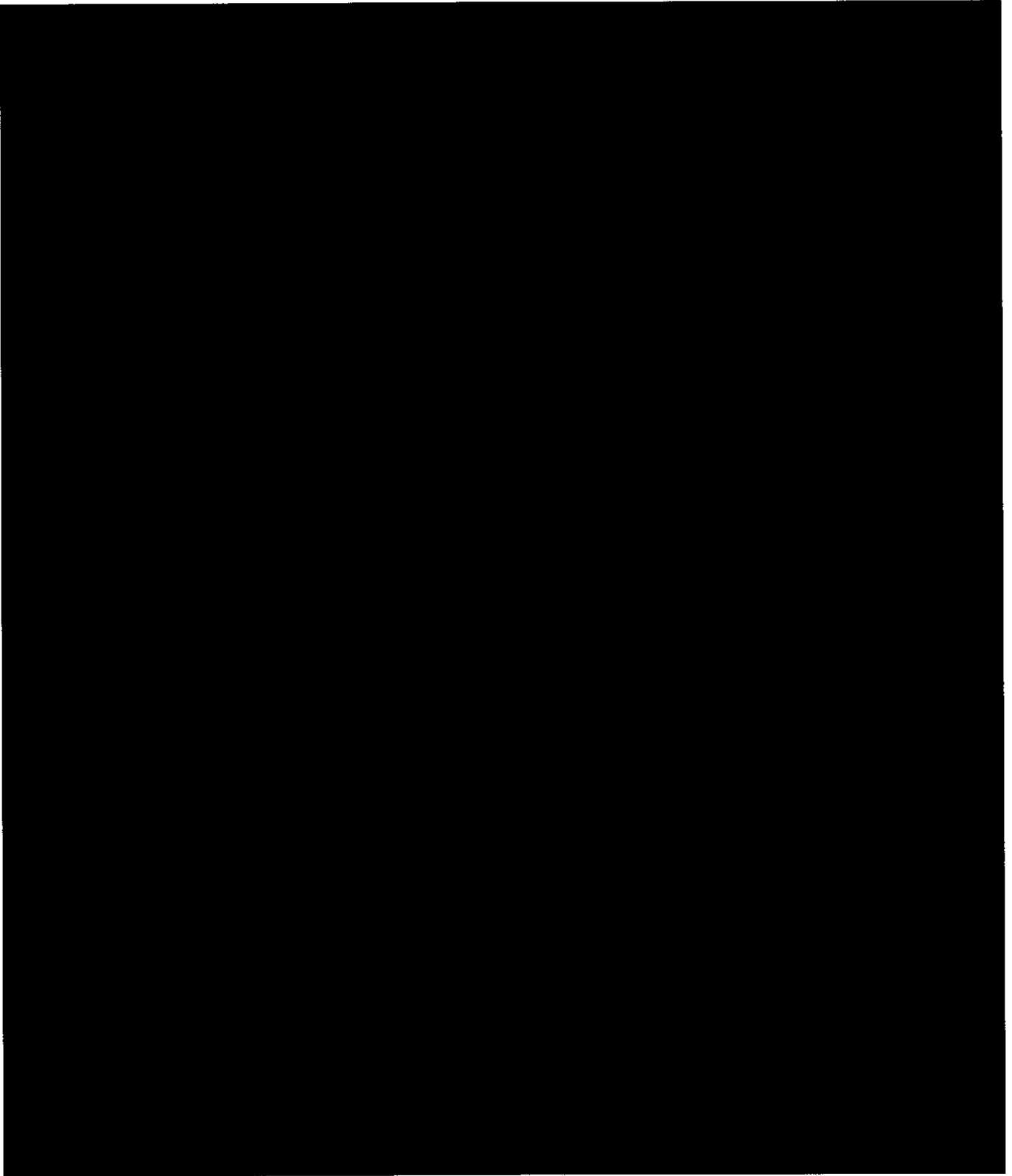
(U) When the Secretary of Defense approves military orders implementing collective self-defense rules of engagement for an operation, the Secretary of Defense may specifically designate which foreign forces or individuals U.S. forces are authorized to defend, and he may delegate authority to a Geographic Combatant Commander to designate forces to be defended.

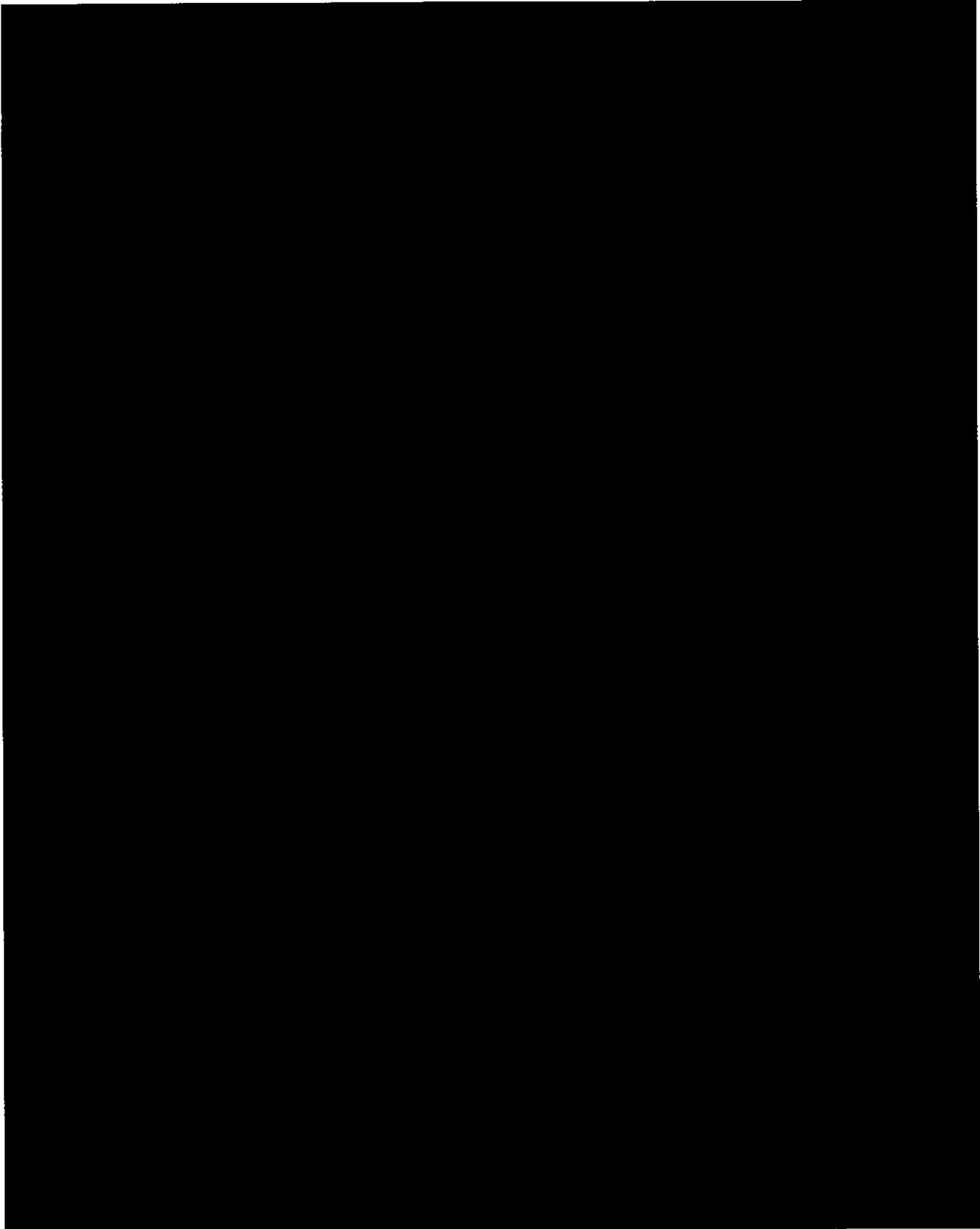
7. (U) Criteria for the Provision of Collective Self-defense.



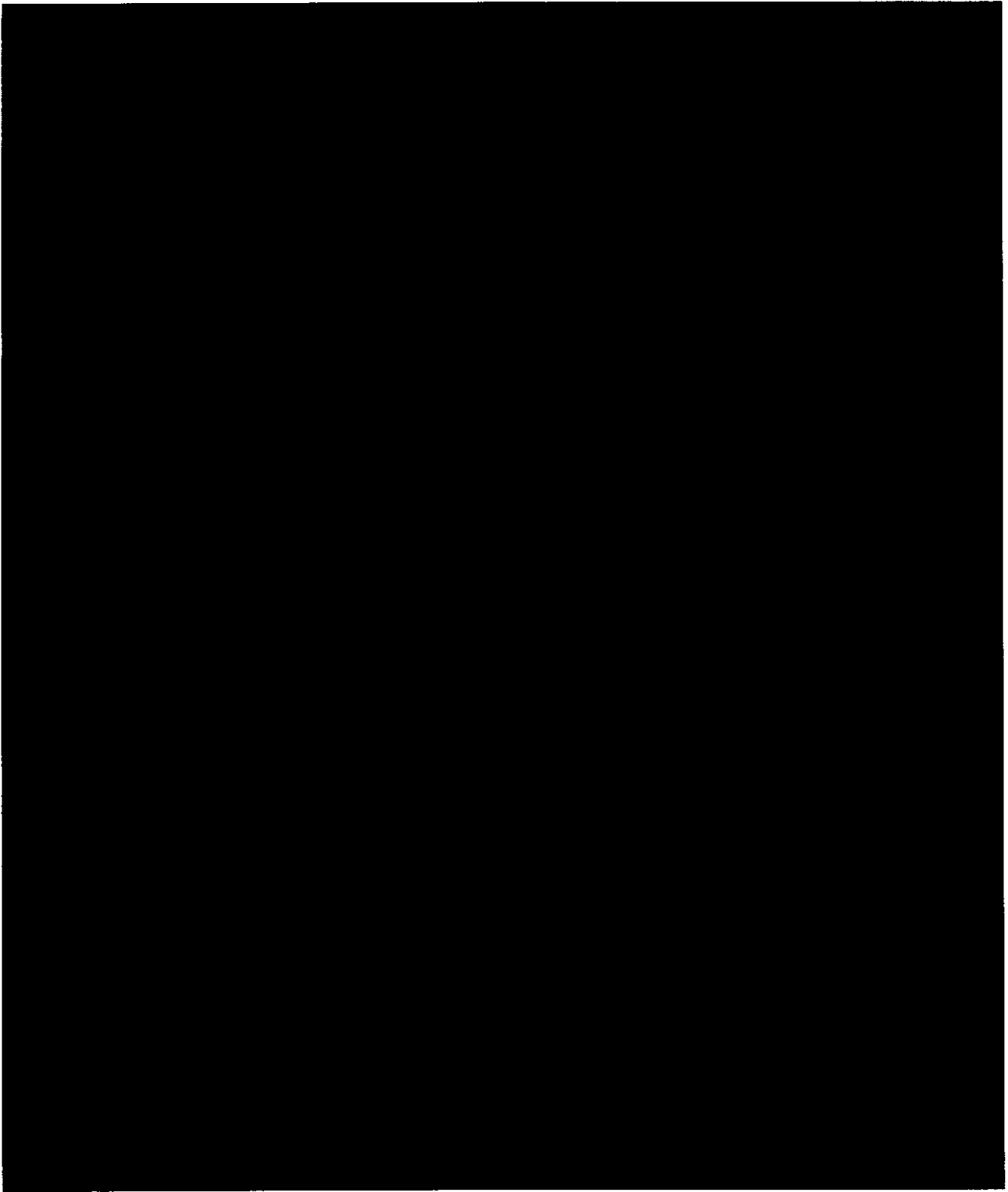
8. (U) Limiting Principles on the Use of Collective Self-defense.



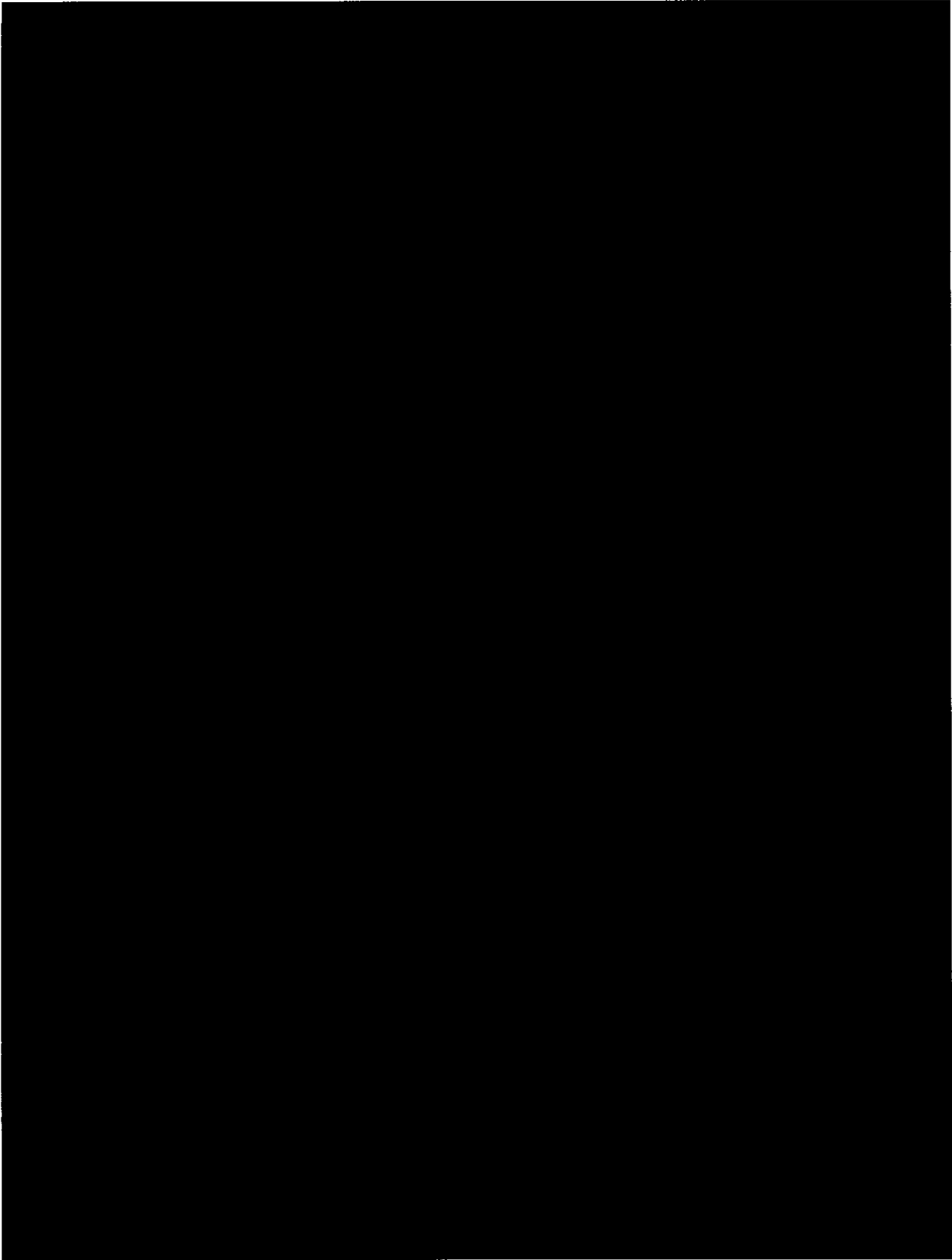


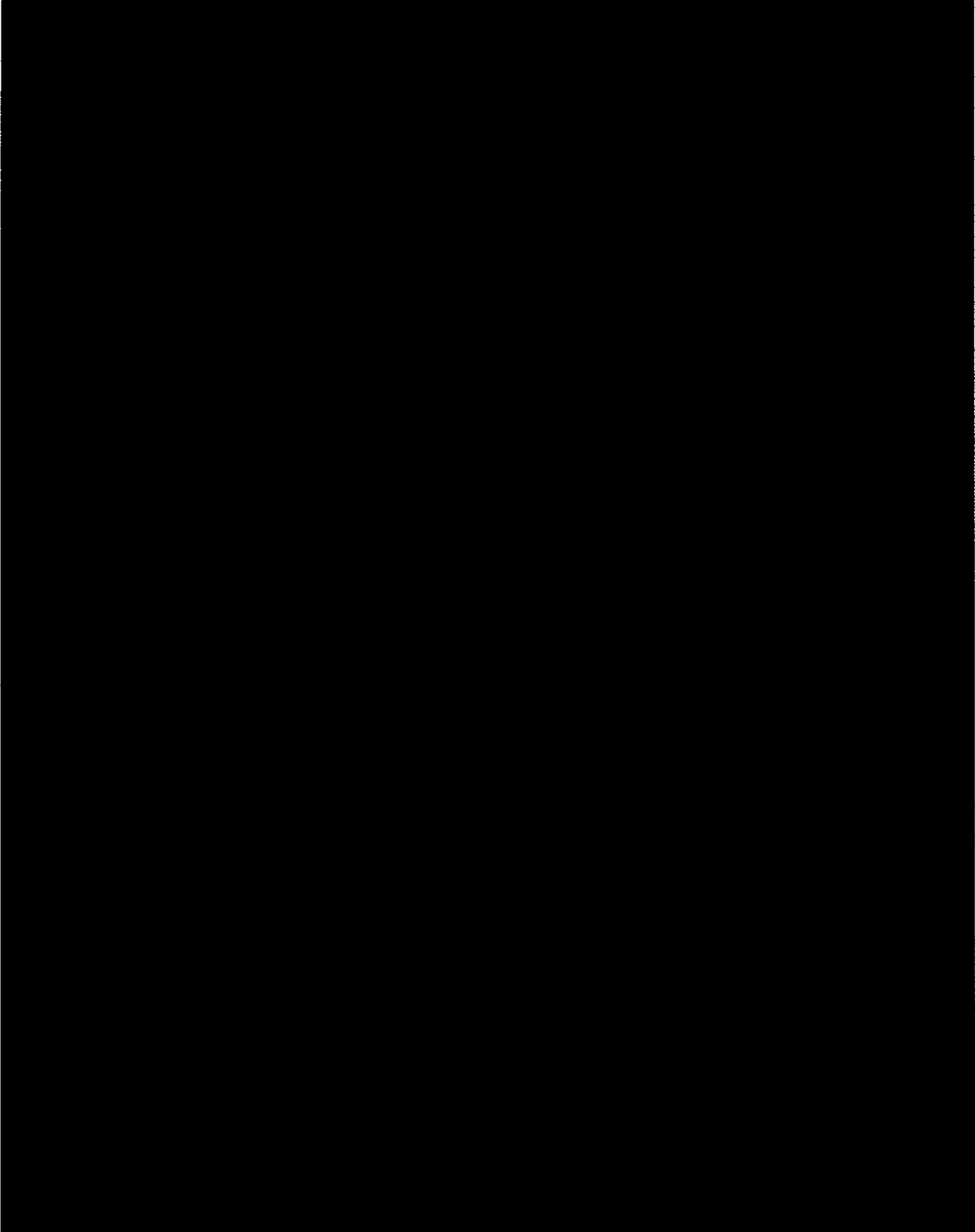


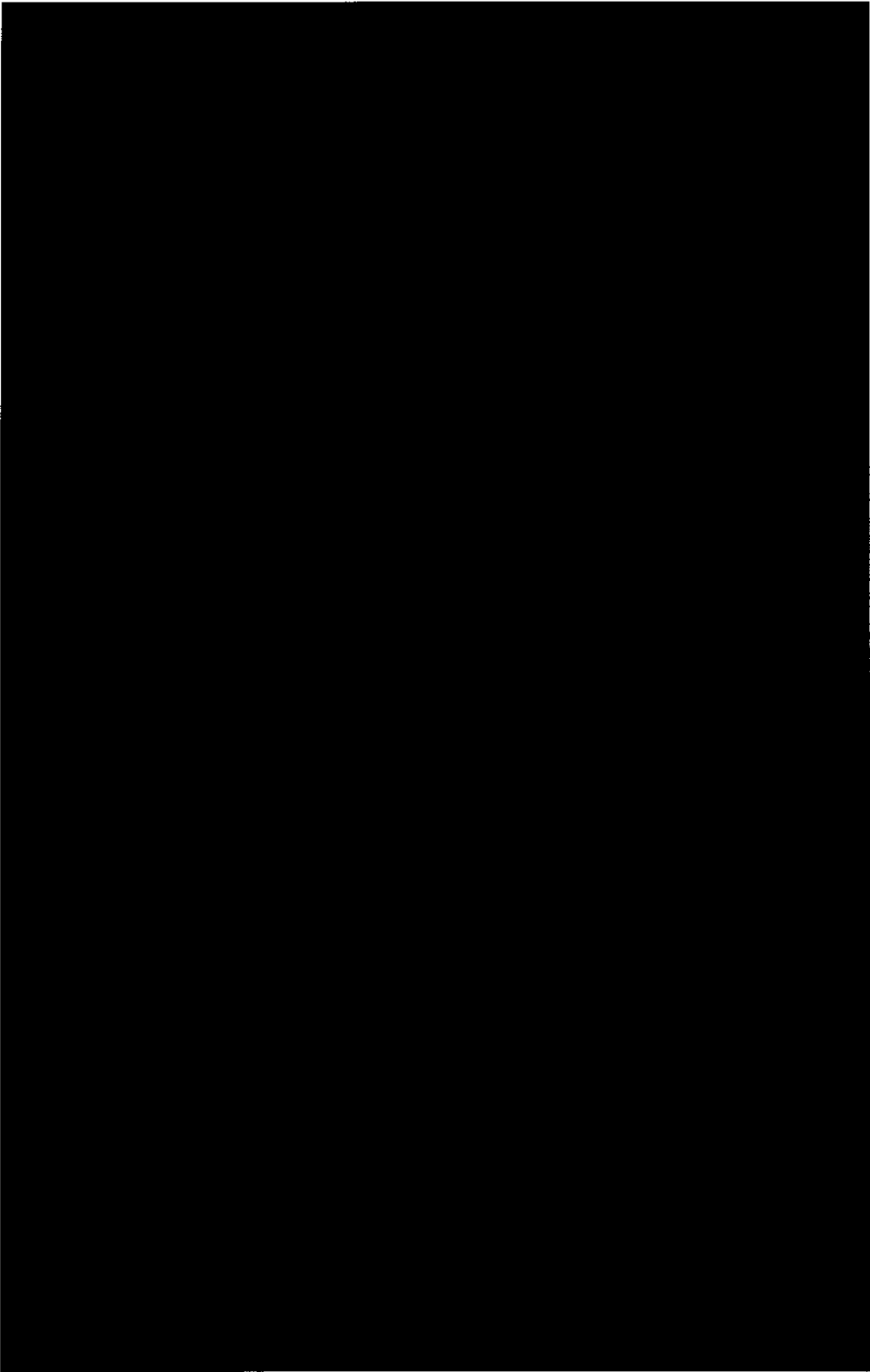


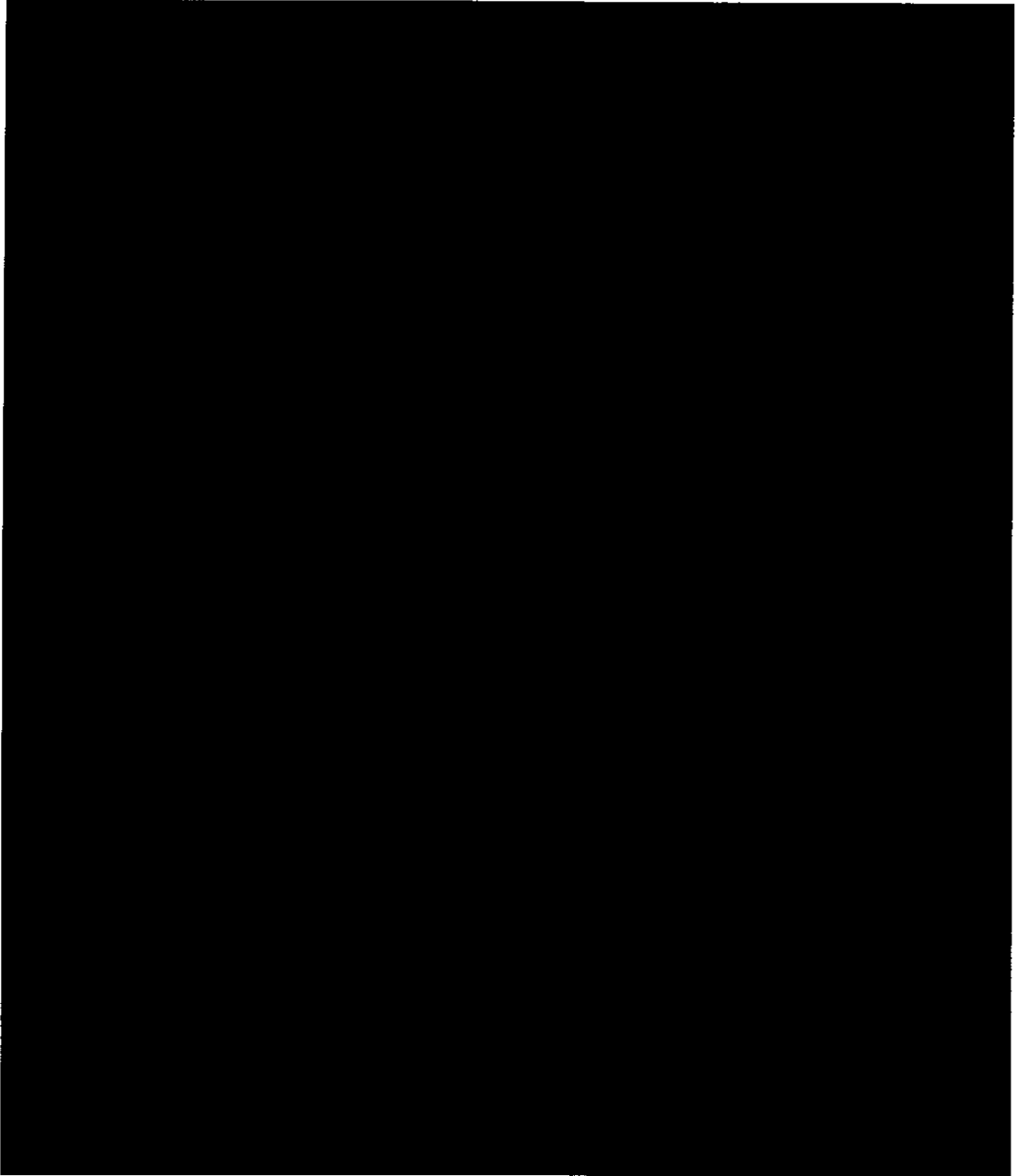












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ASSISTANT SECRETARY OF DEFENSE  
2500 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-2500

SPECIAL OPERATIONS /  
LOW INTENSITY CONFLICT

The Honorable Jack Reed  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

(U) Section 1754 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Public Law 116-92) provides that the Secretary of Defense is to submit to the congressional defense committees a report setting forth the Department of Defense's (DoD's) policy on "collective self-defense."

(U) The enclosed report describes DoD's policy regarding the authority to defend foreign partner forces and individuals. The Department remains committed to transparency to Congress regarding this policy and its role in U.S. national security. I am sending identical letters to the other appropriate congressional committees.

Sincerely,

Christopher P. Maier

Enclosure:  
As stated

cc:  
The Honorable James M. Inhofe  
Ranking Member



~~SECRET~~

UNCLASSIFIED when Separated from Classified Attachments DoD, DoD Release 0015

~~SECRET~~



SPECIAL OPERATIONS /  
LOW INTENSITY CONFLICT

ASSISTANT SECRETARY OF DEFENSE  
2500 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-2500

The Honorable Patrick J. Leahy  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

(U) Section 1754 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Public Law 116-92) provides that the Secretary of Defense is to submit to the congressional defense committees a report setting forth the Department of Defense's (DoD's) policy on "collective self-defense."

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Sincerely,

Christopher P. Maier

Enclosure:  
As stated

cc:  
The Honorable Richard C. Shelby  
Vice Chairman



~~SECRET~~

UNCLASSIFIED when Separated from Classified Attachments DoD, DoD Release 0016



~~SECRET~~



ASSISTANT SECRETARY OF DEFENSE  
2500 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-2500

SPECIAL OPERATIONS /  
LOW INTENSITY CONFLICT

The Honorable Adam Smith  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

(U) Section 1754 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Public Law 116-92) provides that the Secretary of Defense is to submit to the congressional defense committees a report setting forth the Department of Defense's (DoD's) policy on "collective self-defense."

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Sincerely,

Christopher P. Maier

Enclosure:  
As stated

cc:  
The Honorable Mike D. Rogers  
Ranking Member



~~SECRET~~

UNCLASSIFIED when Separated from Classified Attachments DoD, DoD Release 0017

~~SECRET~~



ASSISTANT SECRETARY OF DEFENSE  
2500 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-2500

SPECIAL OPERATIONS /  
LOW INTENSITY CONFLICT

The Honorable Rosa L. DeLauro  
Chairwoman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Madam Chair:

(U) Section 1754 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Public Law 116-92) provides that the Secretary of Defense is to submit to the congressional defense committees a report setting forth the Department of Defense's (DoD's) policy on "collective self-defense."

(U) The enclosed report describes DoD's policy regarding the authority to defend foreign partner forces and individuals. The Department remains committed to transparency to Congress regarding this policy and its role in U.S. national security. I am sending identical letters to the other appropriate congressional committees.

Sincerely,

Christopher P. Maier

Enclosure:  
As stated

cc:  
The Honorable Kay Granger  
Ranking Member




~~SECRET~~

UNCLASSIFIED when Separated from Classified Attachments DoD, DoD Release 0018

**Report on Collective Self-Defense in Accordance With Section 1754 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020**

(U) This report is provided in accordance with Section 1754(c) of the NDAA for FY 2020, which purports to require the Secretary of Defense to prescribe a comprehensive written policy for the Department of Defense (DoD) on the issuance and authorization for, and provision by members and units of the U.S. armed forces of, collective self-defense to designated foreign nationals, their facilities, and their property. This report was coordinated with the DoD Office of General Counsel, and the Acting General Counsel provides that the policy described in this report is consistent with domestic and international law.

***Purpose and Importance of Defending Foreign Partner Forces and Individuals***



(U) The commitment and authorization to defend allies and partners is a long-standing component of our national security efforts, going back decades, if not centuries. The authority to defend foreign partner forces and individuals exists in many scenarios outside of combined counterterrorism operations: maritime operations, NATO air defense, ballistic missile defense, and host nation security elements supporting operations at U.S. diplomatic facilities abroad or providing protection during U.S. Presidential and Vice Presidential foreign travel.

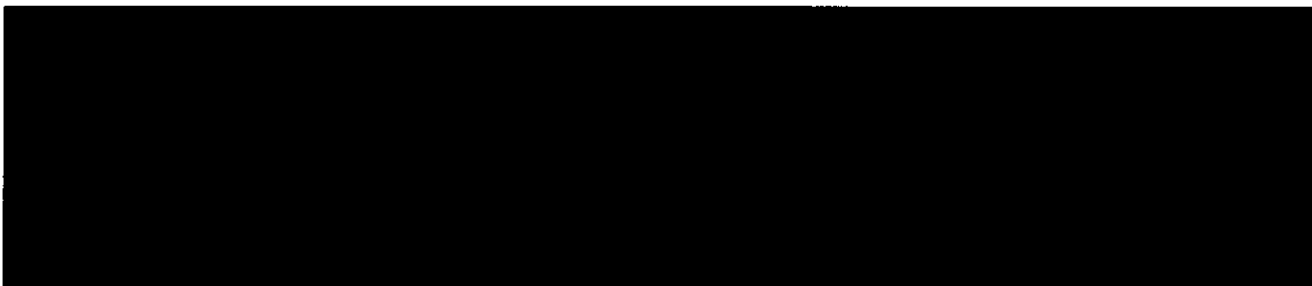
***DoD Policy on Rules of Engagement***

(U) As described in the report to Congress provided in accordance with Section 1031 of the NDAA for FY 2019, DoD's Standing Rules of Engagement (SROE) Instruction establishes fundamental policies and procedures governing actions to be taken by U.S. forces during all military operations, contingencies, and routine Military Department functions occurring outside U.S. territory. The SROE Instruction includes a menu of mission-specific supplemental rules of engagement that may be approved operation-by-operation, one of which is for authorization to defend designated foreign forces or individuals, often referred to by the shorthand term "collective self-defense." The SROE Instruction provides that only the President or Secretary of Defense may authorize the "collective self-defense" supplemental measure. Finally, the SROE Instruction provides guidance on the planning and development of rules of engagement and guidance for commanders to request and approve rules of engagement.

***Legal Basis for the Use of U.S. Military Force to Defend Foreign Forces or Individuals***

(U) The legal basis for authorizing the use of U.S. military force to defend foreign forces or individuals depends on the context.

(U) When U.S. forces work with foreign partner forces or individuals incident to a U.S. military operation, the use of necessary and appropriate force to defend those partners is considered an inherent component of that U.S. operation. The legal basis for the defense of partner forces is thus the same as the legal authority under which the overall operation was authorized. For example, the President's authority pursuant to the 2001 Authorization for Use of Military Force (AUMF) encompasses not only the use of offensive force against al-Qa'ida, the Taliban, and associated forces, but also the use of necessary and appropriate force to defend foreign partner forces and designated foreign individuals from threats from other groups that may seek to interfere with the counterterrorism mission.



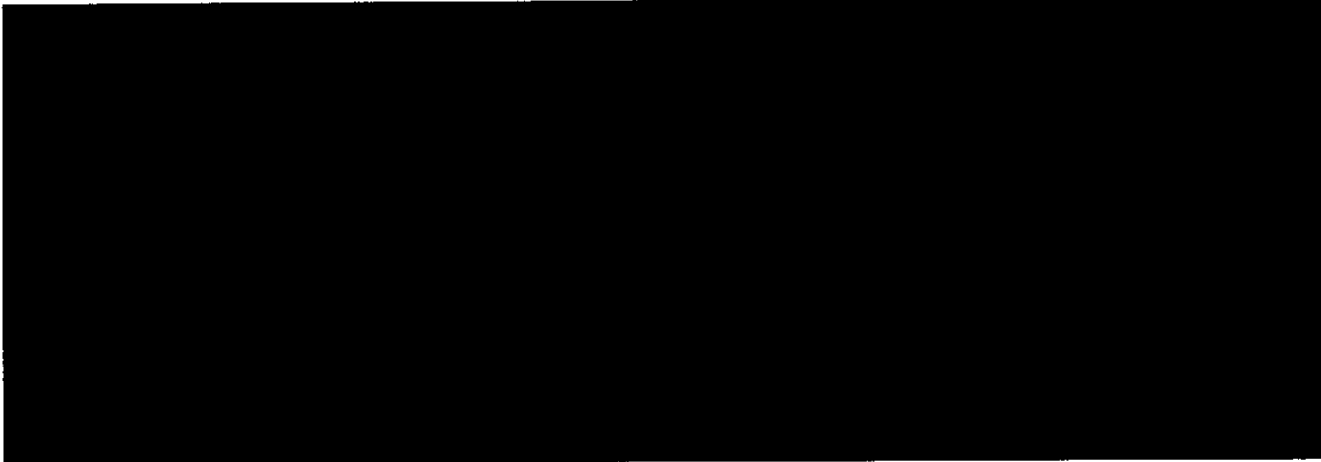
(U) Lastly, in the context of routine, peacetime security responsibilities, there are additional statutory authorizations available to the Secretary of Defense to support the security of U.S. Government facilities and personnel abroad.<sup>1</sup> These encompass the use of reasonable force to defend host nation security forces engaged in supporting U.S. Government activities abroad.

(U) In terms of international law, all current authorizations to use U.S. military force to defend foreign forces or individuals are justified either because they are incident to operations conducted with the consent of a host nation or because they are incident to an exercise of the right to self-defense or of collective self-defense consistent with Article 51 of the UN Charter. Syria is the only location where U.S. military operations involving the use of force are ongoing without the consent of the territorial government. Rules of engagement authorizing U.S. forces to defend foreign partner forces or individuals are issued consistent with the underlying international legal basis for the military operation and with general recognition of the right in customary international law for individuals and units to defend themselves and others against an attack or threat of imminent attack.

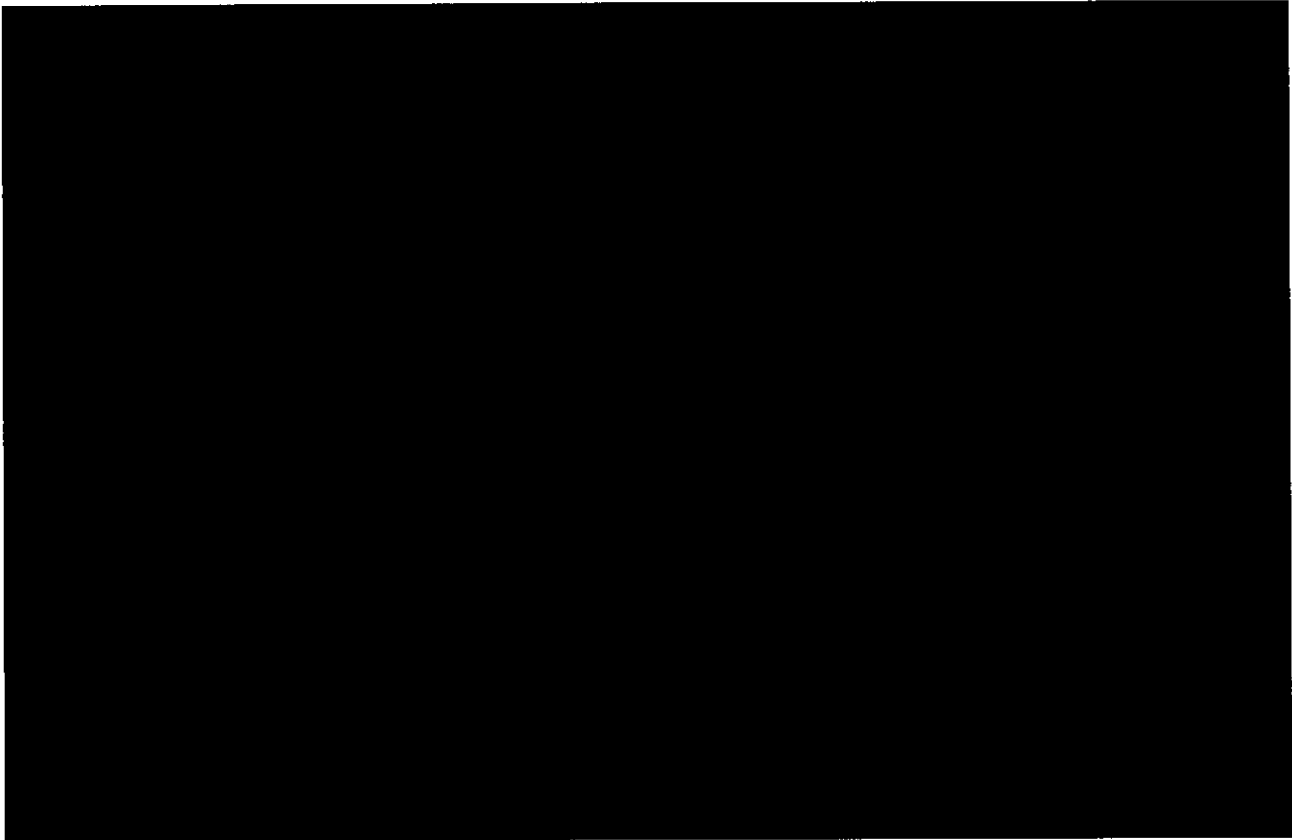


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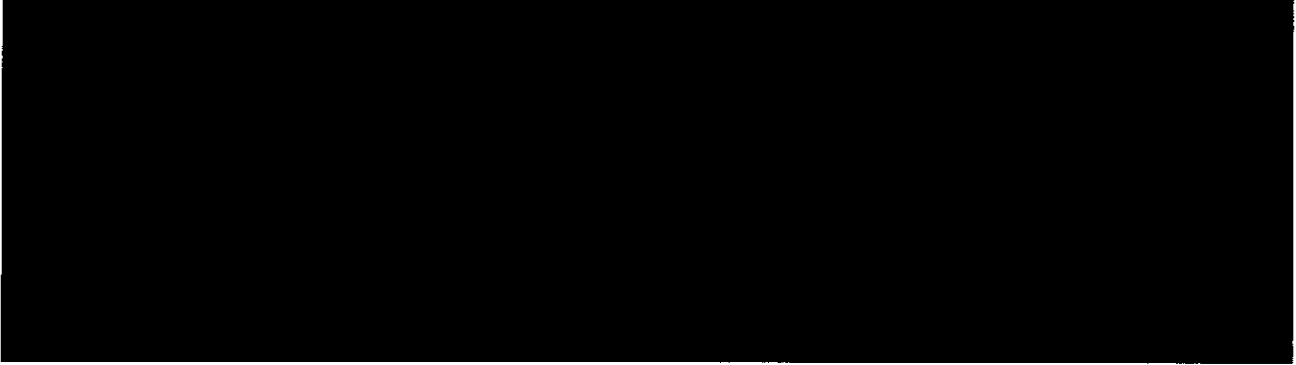
*Limiting Principles on the Use of U.S. Military Force to Defend Foreign Forces or  
Individuals*



*Procedures for Approval to Defend Foreign Forces or Individuals*

(U) In all cases where U.S. forces are authorized to use force to defend foreign forces or individuals in the context of armed conflict or a significant threat from an organized armed group, the authorization comes from the President, whether expressly or implicitly in authorizing or directing U.S. forces to participate in multinational military operations. In cases where the contemplated use of defensive force foreseeably would place U.S. forces in hostilities against

foreign military forces (including non-State armed groups), the Department of Defense seeks the express approval of the President. The Secretary of Defense may, without reliance on a delegation of presidential authority, authorize the use of force to defend foreign forces or individuals in peacetime operations to secure U.S. Government facilities or personnel against sporadic terrorist, insurgent, or criminal activity.



(U) The Secretary of Defense approves military orders (rules of engagement) implementing the President's authorization and providing additional guidance for a specific operation. When doing so, the Secretary of Defense may specifically designate which foreign forces or individuals U.S. forces are authorized to defend, and he may delegate authority to a Combatant Commander to designate forces and individuals to be defended.

(U) 10 U.S.C. 130f(f) requires DoD to notify the congressional defense committees in writing within 48 hours after the date on which a foreign partner force outside of Afghanistan, Iraq, or Syria has been designated as eligible for defense by U.S. forces.