

Middle East Turmoil and the Continuing Terrorist Threat—Still No Easy Solutions

Addendum

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Middle East Turmoil and the Continuing Terrorist Threat—Still No Easy Solutions

Testimony of Brian Michael Jenkins¹
The RAND Corporation²

Before the Committee on Armed Services
United States House of Representatives

February 14, 2017

Question for the record from James R. Langevin: Lessons learned from Iraq, Afghanistan, and other engagements around the world have demonstrated the importance of minimizing civilian casualties to winning the “hearts and minds” of locals and ultimately decreasing animosity towards the United States. Civilian casualties aid in propaganda and recruitment efforts, as demonstrated by al Qaeda’s social media use of the inadvertent death of an eight-year-old girl in the recent raid in Yemen. I believe precise and quality policies, procedures, and guidelines are essential to minimizing civilian casualties—both inside and outside areas of active hostilities. They are also critical to our broader strategy and must remain in place under the current administration. In your opinion:

How does the loss of civilian life in operations undermine our counterterrorism efforts? How does it aid propaganda and recruitment efforts?

How do we strike a balance of effective kinetic and nonkinetic activities against terrorists that accounts for the deleterious effects of civilian casualties?

Brian Jenkins: Avoiding unnecessary loss of civilian life is a tenet of American military operations. It is critical in counterinsurgency and counterterrorist campaigns where combatants on both sides compete for the loyalty of the people. Civilian casualties fuel terrorist propaganda and can aid terrorist recruitment.

America’s current military engagements pose exceptional challenges. American forces—any foreign forces—are at a disadvantage when engaged in operations against local opponents. Foreign soldiers can be portrayed as invaders and occupiers. Their victims, whether terrorists or

¹ The opinions and conclusions expressed in this testimony are the author’s alone and should not be interpreted as representing those of the RAND Corporation or any of the sponsors of its research.

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civilian bystanders, are locals. That creates resentment, no matter how careful American forces are.

And civilians are more likely to be killed in irregular warfare, where it is often difficult to distinguish civilians from combatants. The Taliban wear no uniform to distinguish themselves from the local population. Reports from Afghanistan indicate that the Taliban have in some cases forced local villagers to shoot at American forces. American soldiers justifiably fired back, causing casualties, which then led to accusations that the Americans had killed “innocent” civilians. Reports from Iraq and Syria indicate that Islamic State of Iraq and Syria (ISIS) fighters are using civilians as human shields. It is also common for jihadist leaders and fighters to headquarter themselves in buildings occupied by civilians, making it impossible to target them without civilian casualties.

All civilian deaths are exploited by enemy propaganda to underscore the narrative of infidel aggression. That the *ummah*, or Muslim community, is under attack by nonbelievers, requiring all Muslims to respond, is a regular recruiting theme.

The tensions between achieving military objectives and risking civilian casualties are likely to increase. In Syria and Iraq, Secretary of Defense James Mattis has announced that the rules of engagement have not changed and that U.S. forces will continue extraordinary efforts to avoid innocent civilian casualties. However, he also said that the United States was shifting from attrition tactics, that is, pushing ISIS fighters out of their strongholds, to an annihilation strategy aimed at surrounding and preventing the foreign fighters from escaping. That means a fight to the finish in urban areas, which means a greater risk of civilians being caught in the crossfire. Circumstances in Afghanistan could require that American forces resume a direct combat role in that country, which means Americans shooting at Afghans.

Waging war with zero risk of civilian casualties is not realistic. In every case, the importance of the objective must be weighed against the risks. However, several principles will apply to the current conflicts in which the United States is engaged. First, the terrorist threat is not existential—U.S. survival is not at stake. Second, kinetic operations are only one component of these conflicts. Perceptions count. And third, maintaining the continuing support of the American people for what promise to be long campaigns means operating within boundaries established by American values, U.S. military tradition, and international law.

Question for the record from Trent Franks: Do you believe we need a 21st-century National Security Council (NSC) Report–68 for our fight against radical Islam?

Brian Jenkins: NSC-68 set forth what it would require to address the threat posed by the Soviet Union. George Kennan had earlier outlined a strategy of containment. The Marshall Plan to economically support the reconstruction of Europe was under way. The treaty creating the North Atlantic Treaty Organization (NATO) alliance had been signed. NSC-68 made the Cold War the paramount national security issue of the United States and set forth a coherent long-term containment strategy for the United States, including the military capabilities needed to implement it.

The last five U.S. administrations have offered a number of strategic documents for dealing with the terrorist threat, and the current administration will soon offer another. None of the past national security directives ascend to the ambitious commitment outlined in NSC-68. I have not seen the current administration's new counterterrorism strategy and therefore cannot comment upon it. Formulating a new NSC-68 would raise a number of fundamental strategic questions.

Although the 9/11 attacks raised the level of threat, there is no agreement that terrorism represents an existential threat to the nation, or even that terrorism poses a greater threat than the other security challenges faced by the United States, including a revanchist Russia, an increasingly assertive China, or an aggressive North Korea.

The current threat of jihadist terrorism is inextricably intertwined with events in a broad arc across Northern Africa through the Middle East to Western Asia. It encompasses a host of unstable countries, failed and failing states, ungoverned spaces, and ongoing conflicts. The 21st-century equivalent of an NSC-68 (and the parallel Marshall Plan and NATO alliance) would require a long-term commitment to address the problems of this region economically and militarily—a potentially huge investment in military, diplomatic, and economic resources. Its results would be uncertain. Any American effort would be challenged internationally and a hard political sell domestically.

That said, I do see utility in conducting a broad strategic review that can help inform the public and political debate, and possibly become the basis for a national consensus on the threat posed by radical Islam and how best to address it.

Question for the record from Trent Franks: What happens in the coming months and years as we diminish the territorial holdings of ISIS in the Middle East? What will happen as we squeeze ISIS and take away their territory? Will there be an increase in small-scale terror attacks in Europe and the United States? How do we combat this?

Brian Jenkins: Driving ISIS out of its stronghold in Mosul and eventually its remaining territory in Syria is achievable. It will not end the armed struggle, but it will have important consequences.

The leaders of ISIS spent years underground before breaking into the open during Syria's civil war. Deprived of territory, they can revert to an underground struggle and continue to fight on as insurgents. A stay-behind infrastructure probably already exists. Although tyrannical and brutal, the Islamic State probably can count on the continued support of some portion of the local population, which already may be disaffected by the casualties and destruction of the military campaign against ISIS and further alienated by postliberation score-settling of the occupying forces. Unless the Islamic State is replaced by effective local authorities, able to command the allegiance of and, at the same time, protect the Sunni population while rooting out the Islamic State's underground, ISIS will remain a formidable threat.

ISIS has managed to carry on a concurrent terrorist campaign with bombings in Baghdad, Damascus, and other places, even while fighting the armies closing in on it. This will continue. Further terrorist attacks in Syria, Iraq, and the surrounding countries are likely.

ISIS's foreign fighters will have difficulty surviving in an underground contest. As foreigners, they can more easily be identified and picked off. ISIS's leadership knows the foreign fighters have limited future utility and may view them as a commodity to be sacrificed in a bloody final defense.

The United States is determined to annihilate as many ISIS fighters as possible in order to prevent them from returning home or going elsewhere to initiate new terrorist campaigns. Reportedly some of these foreign fighters have already fled—European authorities estimated in 2016 that approximately 30 percent of those who went to Syria from Europe already had returned.³ Not all of the returnees had joined ISIS. No doubt a number of those who did will return disillusioned or traumatized by their experience, but some will return determined to continue the armed jihad and exact revenge. As a consequence of military success against ISIS on the ground in Syria and Iraq, we may see an upsurge in terrorist violence elsewhere.

The recent terrorist attacks in Europe indicate that when returning fighters can connect with local confederates, the combination is extremely dangerous. The returning fighters, who come back with combat experience and skills, also appear more violent. Syrian veterans carried out the seven suicide bombings in Paris in November 2015 and one in the March 2016 Brussels attacks. In contrast, two other designated suicide bombers, neither of whom went to Syria, decided at the last moment not to detonate their device.⁴ The Syrian veterans' greater willingness to kill and die may reflect their experience in Syria, but their decision to go to Syria in the first place may reflect a higher degree of commitment and perhaps attraction to the kind of extreme violence ISIS advertised in its recruiting.

The United States has not seen the violent radical subcultures and terrorist undergrounds that exist in Europe. Most jihadist terrorist plots in the United States since 9/11 have involved a single individual, inspired by jihadist ideology, but not physically connected to any organization. Arrests of other individuals in these plots often involve friends and relatives who are presumed to have known in advance that the attacker was planning some kind of action (but said nothing) or who are accused of lying to investigators after the event. They are not evidence of a jihadist network. Returning fighters will find no supporting infrastructure. So long as this holds true, low-level attacks are more likely, although these still can be extremely lethal.

The country can best combat this threat through community policing and intelligence collection aimed at preventing the emergence of an underground that may sympathize with the jihadist extremists.

Question for the record from Trent Franks: What is your definition of victory against the Islamic State? Is complete defeat plausible?

³ International Centre for Counter-Terrorism—The Hague, *The Foreign Fighters Phenomenon in the European Union: Profiles, Threats, and Policies*, The Hague: International Centre for Counter-Terrorism, April 2016.

⁴ Brian Michael Jenkins and Jean-Francois Clair, *Trains, Concert Halls, Airports, and Restaurants—All Soft Targets: What the Terrorist Campaign in France and Belgium Tells Us about the Future of Terrorism in Europe*, San Jose, Calif.: Mineta Transportation Institute, 2016.

Brian Jenkins: This question parallels the questions asked by Mr. Lamborn. The two questions are answered together in the next response.

Question for the record from Doug Lamborn: Clausewitz said: “The political object—the original motive for the war—will thus determine both the military objective to be reached and the amount of effort it requires.”

What does winning look like against this threat? What should our political, strategic, and military objectives be? How optimistic or pessimistic are you that these objectives are achievable?

Brian Jenkins: Contemporary armed conflict differs from what it was in the first half of the 20th century, when the nature of the enemy allowed us to more precisely define our political and military objectives and measure progress on a map. Irregular warfare with guerrillas and terrorists differs from war between organized states. It seems logical therefore that how we define success has also changed. Old generals remind us that in war there is no substitute for victory, but just as there are many kinds of war, there may be different ways of winning.

The United States is currently engaged in a global campaign to reduce the terrorist threat. It is actually a constellation of conflicts. In some of these, U.S. armed forces are directly involved in military operations. Military objectives can be clearly identified. In other cases, the United States aims at reducing local vulnerabilities and improving local capabilities. While this multifront, multilayered contest continues, the United States has sought to create a more hostile environment for terrorists internationally through law codified in international conventions, greater cooperation in intelligence sharing, reducing radicalization, recruitment and incitement to terrorism, and improving security worldwide.

When President Richard Nixon in October 1972 created the U.S. government’s first interagency group to coordinate U.S. efforts against terrorism, it was called the Cabinet Committee to Combat Terrorism.⁵ The term “combatting” terrorism remained in official use until President George W. Bush announced the “Global War on Terror” (GWOT). The change in wording conveyed a change in policy, which had, in fact, been evolving over the years.

The United States no longer would respond to individual terrorist attacks with isolated attacks, but would initiate a worldwide campaign aimed at destroying the terrorist enterprise responsible for the 9/11 attacks. This objective was endorsed by Congress in the 2001 Joint Resolution, authorizing the president to use “all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” Taken together, the GWOT and the Authorization for the Use of Military Force (AUMF) were a declaration of war on these two entities.

⁵ As an historical footnote, on the basis of a memorandum I had written earlier that year, suggesting that the threat of terrorism was likely to increase and would require the United States to think about how it would respond. Shortly after the creation of the Cabinet Committee, the Departments of State and Defense asked the RAND Corporation to initiate research to examine these issues. RAND’s research effort has continued since.

The word “war,” however, created new expectations, which are relevant to the questions asked by both representatives Franks and Lamborn. What is the definition of victory? What does winning look like?

“Combatting” terrorism implied an enduring task. The objective was to discourage the use of terrorist tactics in general and to protect the United States. Victory was neither defined nor expected. There was no expectation that all of the world’s terrorist groups would someday be destroyed or that terrorist attacks would end. Instead, efforts were focused on apprehending and punishing individual terrorists, discouraging groups from attacking the United States, deterring state-sponsored terrorism, increasing security, and responding effectively to those attacks that did occur.

The GWOT altered perceptions. Americans traditionally think of wars as finite undertakings with precise beginnings and clear endings. The war on terror began on a sunny late summer morning in New York. How it would end was less clear.

Some questioned whether war could be waged on terrorism—a set of tactics—or an ideology. Personally, I argued for the use of the term “war.”⁶ It conveyed urgency, the need for a national effort, and would facilitate mobilization of the necessary resources. The effort would require international diplomacy to enlist allies, improved intelligence, and a worldwide police effort, but it would also require the use of military force.

That the outcome of the war on terror was not precisely identified when it began made little difference. This was not a blueprint, but rather a desperate effort to prevent further attacks.⁷

The AUMF established two specific targets—al Qaeda and the Taliban. The Taliban were quickly removed from power, which was a victory, although they fight on in Afghanistan as insurgents. As an organization, al Qaeda was dispersed, its leadership decimated, and its operational capabilities were degraded—another achievement, although we cannot say that its determination has been dented. Its ideology continues to attract adherents while organizationally al Qaeda has morphed into a decentralized project. It also has been rent by an internal schism that has spawned an even more dangerous entity, the Islamic State of Iraq and Syria or ISIS. We now speak of a global jihadist terrorist threat, which poses different challenges on different fronts.

You ask how optimistic or pessimistic I am that our objectives can be achieved. I believe that a realistic assessment permits a quantum of optimism, but only over the very long run.

Efforts to combat terrorist tactics as a mode of political means of waging war will continue indefinitely. We cannot realistically expect a final victory here any more than we can hope that law enforcement will ultimately end crime. There will always be individuals and groups, whose grievances, real or imaginary, may persuade them to resort to violence. Instead, success in this dimension of the contest can be defined as effectively containing terrorists and the terror they

⁶ Brian Michael Jenkins, “This Time It Is Different,” *San Diego Union Tribune*, September 16, 2001.

⁷ There was a brief spasm of hubris in 2002 when some in Washington defined the GWOT as a campaign to take down all terrorist groups worldwide. The AUMF envisioned no such objective and the notion of destroying the world’s terrorists faded during the grueling insurgency in Iraq.

create without surrendering our fundamental freedoms or paralyzing the country with security measures.

The conflict in Afghanistan has become America's longest war. The United States has defeated the Taliban, but with good reason fears that any slackening of the American effort will enable the Taliban to reverse hard won gains. History suggests that Afghanistan's resistance fighters will outlast the determination of the United States to prevent them from retaking power, but it is not inconceivable that at some point even the Taliban—or a major share of the Taliban—may look for a way to end the armed struggle. A political settlement that reduces the level of violence without sacrificing Afghanistan's citizens to brutal oppression or permitting a return of al Qaeda could be regarded as a form of victory. Getting to meaningful negotiations, however, may take a very long time. It is easy to imagine the armed struggle in Afghanistan, which, in one form or another, has continued since the 1970s, may go on for decades into the future.

Although British authorities operated on their own territory and had overwhelming power, it took more than quarter of a century for the Irish Republican Army to agree to abandon its terrorist campaign, and not all of its fighters did so. The guerrilla war in Colombia dragged on for more than half a century before the main guerrilla army agreed to peace. An achievable “victory” in Afghanistan may come in the form of a gradual waning of the violence or a series of political arrangements that enable most of the fighting to end.

Al Qaeda's central command is weak—that is a success—although it continues to exhort its followers to carry out attacks abroad. Its main affiliates in the Maghreb, Yemen, and Somalia are engulfed in local conflicts; however, al Qaeda in the Arabian Peninsula, while actively engaged in Yemen's complicated civil war, has continued to target U.S. aviation. It remains a persistent threat.

Meanwhile, al Qaeda's Syrian affiliate has changed its name to portray greater independence. Its future trajectory is unclear. Its fighters could be absorbed into Syria's broader Sunni insurgency. It could absorb fighters fleeing from the battered Islamic State. It could end up rejoining the remnants of ISIS in a continuing underground campaign.

As with the Taliban, dealing with the various al Qaeda fronts will require a long-term effort. The continuing U.S. objective here is to prevent jihadist terrorist foes from mounting large-scale terrorist attacks against the United States.

It is ISIS that currently poses the biggest terrorist threat to the United States and therefore commands most attention and resources. Since its creation, the Islamic State has lost a lot of territory, largely as a result of U.S.-supported military operations by Iraq and local allies on the ground. One can envision the eventual fall of Raqqa and the end of the Islamic State as a defined space governed by ISIS. That will not likely end the armed struggle, which is likely to continue as an underground insurgency and terrorist campaign. But it will deprive future foreign volunteers of an easily accessible destination and safe space, and that will reduce one important dimension of the threat. The eventual suppression of ISIS will depend on the creation of an effective local authority, which at present does not exist.

The 9/11 attacks propelled the United States into these conflicts and it remains involved in them for reasons of its own national security—the prevention of major terrorist attacks on the United States itself. These have become open-ended contests, meaning that we cannot with any

confidence set a timetable for success or withdrawal. The fighting will ebb and flow, at times requiring reinforcements to meet changing circumstances and new challenges.

Since 9/11, U.S. authorities have been remarkably successful in protecting Americans against homegrown and foreign terrorists. Apart from a small number of misfits, jihadist terrorism has not taken root in the United States while most terrorist plots here have been uncovered and thwarted. Despite that significant achievement, Americans continue to live in fear. We cannot allow that fear to drive America into the strategic trap of assuming an imperial mission of waging endless wars on distant frontiers in order to protect the homeland.

American strategic objectives are clear but the constraints are equally obvious. We are in it for the long haul. Time is not a variable—it is a given. Escalation will not shorten the time horizon. The United States wields immense military power that can be decisive in the short term, but committing American forces can also alter the dynamics of the contest in ways that can be counterproductive. In most cases, the United States is at the margin in achieving anything like a lasting military victory over its jihadist foes. Whether these contests end favorably depends very much on the military and political capabilities of local governments.

Question for the record from Jackie Speier: Mr. Jenkins, I read with great interest *your* commentary from last September, “Fifteen Years on, Where Are We in the ‘War on Terror’?” This point in particular caught *my* attention: “The United States’ frightened, angry, and divided society remains the country’s biggest vulnerability. Progress in degrading al-Qaida’s capabilities or dismantling the Islamic State is almost completely divorced from popular perceptions. Rather than appeal to traditional American values . . . our current political system incentivizes the creation of fear.” Unfortunately, our society isn’t less frightened, angry, or divided now than it was in September. Can you elaborate a bit further on why you think this is the nation’s biggest vulnerability? What would be your advice to our political leadership for how to address this vulnerability?

Brian Jenkins: Thank you for inviting me to expand upon my earlier remarks.

I have always defined terrorism as actual or threatened violence calculated to create fear and alarm or, in a word, terror. Its effects, above all, are intended to be psychological.⁸ Terrorism is a matter of perceptions.

Terrorism (the actions of terrorists) and terror (the psychological effects of terrorist actions) are separate domains. Even low levels of terrorism can, and do, cause high levels of alarm. Therefore, terrorists with limited capabilities and minimal resources can achieve disproportionate effects.

Despite some criticisms that the news media have underreported jihadist terrorism, most terrorist incidents receive intense coverage, especially when they occur in the United States, involve U.S. citizens, or take place in countries Americans consider to be like the United States. In the on-air discussions that accompany terrorist attacks, the uncovering of new plots, or the

⁸ Brian Michael Jenkins, *International Terrorism: A New Mode of Conflict*. Los Angeles: Crescent Publications, 1974.

revelations of new threats, warnings of imminent doom have an advantage over those counseling calm. Fear commands attention.

Sometimes, the rhetoric of America's own leaders contributes to the general alarm. Referring to ISIS, senior officials have publicly stated that "We are in the most dangerous position we have ever been in as a nation."⁹ Others have described ISIS as an existential threat to the United States about to kill us all. Should American citizens be afraid? "If [you] knew what I knew about terrorism," said one high-level official recently, "[you'd] never leave the house."¹⁰ These thoughts convey the understandable concern that officials have for the country as a whole—they worry about a single attack anywhere.

Partisan politics further incentivize the creation of fear. Every terrorist incident can be portrayed as a failure for which someone is to blame and heads must roll. Politicians pound podiums and point fingers. They demand that more be done to protect citizens. It is politically safer to support increases in security than to oppose them. Even those who see little utility in particular proposed security measures risk being condemned for their substandard zeal, for imperiling the lives of citizens if they do not agree—and being pilloried if another attack occurs—any terrorist attack, which most likely will happen.

Fear drives security increases that, once decided upon, must then be supported by a commensurate level of assumed threat. As a result, the security measures adopted end up driving subsequent threat portrayals.

The public contributes to its own fear, demanding 100-percent protection, which no government can guarantee. But terrorism also taps into deeper anxieties. It is a condenser of broad fears about immigration, America's changing demographics, its primacy of power, the nation's (and its citizens') economic future.

Jihadists exploit this psychological vulnerability. They have learned that low-level attacks by homegrown terrorists, even if they fail, will still provoke public alarm and political reactions that provide them with a good return on their investment.

America's counterterrorist strategy understandably focuses on reducing the risk of further terrorist attacks. That addresses the terrorism component of the threat but ignores the terror component. The possibility of creating a counterterror strategy that draws upon traditional and admired strengths in American society—courage, true grit, coolness under fire, self-reliance, sticking together in the face of danger, helping each other in emergencies—has hardly been explored. Such a strategy does not mean building new barriers or belittling individual fears, but helping society understand how terrorism works, enabling people to more realistically assess the risks they face.

Such a strategy also calls for a rhetoric of fortitude rather than fear. It is difficult for those directly in charge of intelligence and security to argue for stoicism in the face of real threats—it can appear that they are making excuses in advance for anticipated failures. But elected and

⁹ "Inhofe: ISIS Wants to Attack 'Major U.S. City,'" *Fox News*, August 22, 2014.

¹⁰ "Terrorism in America: If You Knew What I Knew, You'd Never Leave The House, DHS's Kelly Says," *Newsweek*, May 26, 2017.

high-ranking appointed officials can set the tone. It is the Islamic State, not the United States, that faces doom.

Question for the record from Jackie Speier: Mr. Jenkins, you provided some valuable context in an interview last month with the Cipher Brief. After tallying 89 people who have been killed as a result of fatal jihadist-driven terrorist attacks in the United States since 9/11, you asked “How many of those lives would have been saved had [Trump’s Executive Order] been put into effect after 9/11 and applied for the entire 15-year period? The answer is zero.” You further noted that none of the 19 attackers on 9/11 were from the countries named in Trump’s order. Regardless of what ends up happening in the courts, have you seen evidence that Trump’s executive order is being used as a rallying cry and recruitment tool for jihadists? Has the damage already been done, and is it irreparable?

Brian Jenkins: The total number of fatalities in attacks by jihadist terrorists in the United States since 9/11 varies according to what incidents are included. Chronologies of jihadist terrorist plots can be contentious. There is no single charge of terrorism that legally defines what should be included or excluded. Defendants in the cases listed below have been charged with violation of a variety of federal terrorism statutes, often the material support statutes (18 USC 2339 § A, B, and C) and use of weapons of mass destruction (18 USC § 2332a) as well as other more general offenses, including lying to investigators. The aim of U.S. authorities is to deter and disrupt terrorism plots at a very early stage through prosecution, using whatever legal tools can be mobilized. Some of the prosecutions have taken place in state courts or military courts, where different terms and different laws apply.

Leaning toward inclusiveness, according to the latest figures I have assembled, since 9/11 jihadist terrorists have killed 95 persons in the United States.¹¹ The addition of six fatalities results from including several cases that I had not included in the earlier interview and which, frankly, I still regard as problematic. However, I want to avoid any allegation that I am deliberately omitting cases to minimize the threat. Even the broadest definitions don’t get much north of 100 fatalities. All of these deaths are tragic, but over a nearly 16-year period, this is still a very small number.

Of the 13 terrorist assailants involved in the ten jihadist attacks with fatalities, eight were born in the United States. The other 5 attackers came from Egypt, Russia, Kyrgyzstan, Kuwait, and Pakistan. None came from the countries named in the most recently proposed travel restriction.

¹¹ The fatal terrorist attacks inspired by jihadist ideology include: the 2002 shooting at Los Angeles International Airport (two dead); the 2009 shooting in Little Rock (one dead); the 2009 shooting at Fort Hood (13 dead); the 2013 Boston Marathon bombing (three killed in the explosion, one police officer killed in the subsequent confrontation with the bombers, and one who died of injuries months later); the 2014 murders in Washington and New Jersey (four dead); the 2014 Oklahoma City beheading (one dead); the 2015 Chattanooga shooting (five dead); the 2015 San Bernardino shooting (14 dead); the 2016 Orlando nightclub shooting (49 dead); and a 2017 murder in Denver (one dead). (These fatality numbers do not include perpetrators.) In addition, ten other attacks by homegrown terrorists did not result in fatalities (other than the perpetrator)—one of these, the 2010 attempted bombing of Times Square, resulted in no injuries.

Of the 11 persons responsible for the nine attacks with injuries only, six were born in the United States. (The bomb planted in Times Square by Faisal Shahzad, a naturalized U.S. citizen from Pakistan, caused no casualties.) The five others came from Ethiopia, Afghanistan, Iran, and Somalia (two persons). However, the individual from Iran came to the United States in 1985 and one of the two Somalis came in 1996, and therefore, they would not have been affected by a post-9/11 ban. That leaves one Somali, the 2016 attacker at Ohio State University, who arrived in 2014 and is the only one that would have been affected had a ban been in place since 9/11.

ISIS and al Qaeda promulgate a large volume of propaganda, well beyond what I can personally monitor. I have not yet seen a specific reference to the proposed ban in their official publications; however, references to it have appeared in jihadist social media. The ban supports the general jihadist narrative that the United States is an enemy of Islam and hostile to all Muslims, which is a continuing theme in jihadist recruiting and exhortations to action.

That said, motives for joining the armed jihad are complex. Individual actions are fueled as much by personal circumstances as by ideology. Further terrorist attacks are likely to take place. We will not be able to count how many attacks a travel ban might prevent. But neither will we be able to say that future attacks were specifically provoked by the proposed travel ban.

Question for the record from Brad R. Wenstrup: What constraints do the current legal authorities for the counter-ISIL mission—primarily the 2001 and 2002 AUMFs, in addition to the President’s Article II authority—impose on our counterterrorism operations? Do you believe these limitations are appropriate?

Brian Jenkins: Article II of the Constitution and the 2001 and 2002 AUMFs give the president broad powers to pursue current counterterrorism operations against the global jihadist enterprise. Although I am not a lawyer, in my view, the 2001 AUMF offers the greatest latitude.

The 2002 resolution allows the president to use military force against threats posed by Iraq. It was written to allow military action against the government of Saddam Hussein, but it can be interpreted to encompass any threat from Iraq, including ISIS. The 2001 resolution, however, authorizes the use of force against “those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent future acts of international terrorism against the United States.” This referred specifically to al Qaeda, but easily applies to al Qaeda’s affiliates, allies, and even ISIS, which is an offshoot of al Qaeda (albeit a rebellious one).

It is also entirely possible that while the two terrorist organizations are opponents today, they share a jihadist ideology and could in the future reunite or cooperate in common cause. The mandate to prevent “future acts of international terrorism against the United States” reinforces an inclusive interpretation. Given the organizational fluidity of the jihadist universe, it would be difficult to argue that the 2001 AUMF applies to one group or affiliate and not another. In the legal sense, the United States is at war with the jihadist global enterprise.

The 2002 AUMF identifies Iraq, but does not limit actions to Iraq. If the United States can use force against ISIS, it can do so against its “provinces” anywhere in the world. The 2001

AUMF does not set geographic boundaries. In order to prevent attacks on the United States, the United States can attack jihadists wherever they are.

Neither do the two authorizations set a timetable nor limit the means that can be used—means are governed by the rules of war. Beyond the rules of war, there are few legal constraints.