

Impeachable Obama 'Channels Cheney'

May 26—Under the headline “Obama Admin. Channels Cheney, Claims Unlimited War Powers,” the *Daily Beast* reported on the May 21 hearing of the Senate Foreign Relations Committee, stating accurately, that two Obama Administration lawyers had told the committee that Obama does not need Congressional authorization to wage war on any terrorists he wants to attack. As Obama has already shown in the case of his attack on the sovereign nation of Libya, and in his threatened attack on another sovereign nation, Syria, he also thinks he doesn’t need the U.S. Constitution, which gives to Congress the exclusive power to declare war.

Although Democrats vigorously protested this Cheneyac “unitary executive” view of unfettered presidential war powers when asserted by the Bush-Cheney Administration, for the most part, they have applauded the same policy when carried out by a supposedly Democratic President. Lawyers who were outspoken in their opposition to Bush and Cheney now become fervid advocates of Obama’s kill-’em-all policy, as shown by now-former Obama State Department legal advisor Harold Koh, who also testified at the May 21 hearing. Or as demonstrated by the Senate Democrats’ confirmation of David Barron—author of the Justice Department memo justifying the extra-judicial execution of an American citizen by drone strike—for a lifetime seat on the U.S. Court of Appeals for the 1st Circuit.

But now, as indicated by the frustration expressed by both Democrats and Republicans at the May 21 hearing, Obama’s Cheney-Bush imitation may be wearing a bit thin.

‘We Don’t Need No Stinkin’ AUMF’

From *EIR*’s review of the hearing on “The Authorization for Use of Military Force After Iraq and Afghanistan” (AUMF), the *Daily Beast* account is not exaggerated in the least. Mary McLeod, the State Department’s Principal Deputy Legal Advisor, explicitly stated that the President could continue to conduct counter-terrorism operations today even if the present AUMF, issued in 2001, were repealed.

That AUMF, passed by Congress in the wake of the 9/11 attacks, authorized the President to use all necessary and appropriate military force against nations, organizations, or persons deemed to have planned, authorized, carried out, or aided, the Sept. 11, 2001 terrorist attacks on the United States, or to have harbored such organizations or persons. Today, almost 13 years later, President Obama, as did Bush and Cheney before him, uses the 2001 AUMF to conduct military raids and drone strikes around the world—most notably, in Yemen and Somalia—under the Executive branch’s interpretation of the 2001 AUMF as authorizing the use of force against al-Qaeda, the Taliban, and “associated forces.” (The fraud of the Bush-Obama “counter-terrorism” policy is most obvious in the continued protection of Saudi Arabia, the leading state sponsor of the 9/11 attacks and terrorism around the world today—as *EIR* has documented extensively.)¹

At the hearing, McLeod stated, in response to questioning by committee chairman Sen. Bob Menendez (D-N.J.), that the President’s “authority to act in self-defense doesn’t depend on the existence of an AUMF,” claiming that the President has all the authority he needs under Article II of the Constitution to use military force against anyone who poses an “imminent threat” of an armed attack on the United States. (As has been seen in the Obama Administration’s drone killing memos, the concept of “imminent” has been stretched beyond all recognition.)

Sen. Bob Corker (R-Tenn.), the Ranking Member, pressed McLeod, saying that he understood her to be saying that the President needs no authorization from Congress to conduct counter-terrorism activities around the world. “If the 2001 AUMF was undone, can the President carry out the activities that he’s carrying out right now?” Corker asked. McLeod’s answer was, “Yes, I believe he could.” When Corker said, “So it sounds to me like we’re pretty irrelevant to the process from the Administration standpoint,” McLeod protested that this wasn’t true, because the Administration has “consulted” Congress.

Stephen Preston, the Defense Department’s General Counsel, was more explicit: “I am not aware of any foreign terrorist group that presents a threat against this country that the President lacks authority to defend against, simply because they have not been determined

1. See, for example, “Charles of Arabia: The British Monarchy, Saudi Arabia, and 9/11,” *EIR*, May 23, 2014.

to be an ‘associated force’ within the AUMF.” If the group “presents a threat of violent attack to this country, Preston continued, the President does have authority to take action—including military action—to protect the country from that threat.”

Menendez then summarized Preston’s testimony as stating that “there’s no reason why the Administration would oppose the repeal of the 9/11 AUMF totally, because you basically say the President has all the authorities [he needs], notwithstanding the AUMF.” As Preston kept declaring that the Administration wants to “engage” with Congress on the future of war powers, a baffled Sen. Tim Kaine (D-Va.) told Preston that “you say ‘looking forward’ to engaging ... this is what engaging is ... that’s why we’re here.”

When the Administration spokesmen declined to say whether the Constitution’s Article II powers would allow the President to wage a war against a sovereign state that harbored a terrorist group, without explicit authorization from Congress, Sen. Chris Murphy (D-Conn.) said that he would like to have a clear indication that if a sovereign nation does not pose an imminent threat, that the Executive would have to come to Congress for authorization to attack that nation. Murphy stressed that both the Congress and the Executive are subject to Article I of the Constitution, which gives Congress the specific power to declare war and to raise armies, and he pointedly asked the Administration’s lawyers, “what is left in Article I if we understand the broad rendering of Article II powers that you’ve explained today?”

As the *Daily Beast*’s Eli Lake appropriately put it in his report: “Both McLeod and Preston said that the Constitution’s Article II gives the President all the authority he needs to take military action against any threat that he considers to be imminent. This was also the view of David Addington, the chief counsel to Vice President Cheney, who argued that the Constitution’s inherent wartime powers granted to the President authorized the detention, interrogation, capture and lethal strikes that comprised the war on terror after 9/11.”

Detain ‘em, or Kill ‘em?

Much of the post-hearing discussion on legal blogs, such as the center-right *Lawfare* blog, focused on the hearing’s second panel, where Koh presented testimony which appeared to unofficially reflect Obama’s view;

Koh stated, as had the previous witnesses, that Obama could continue to do everything he is now doing, even were the AUMF repealed. However, he noted, it might affect the Administration’s ability to hold prisoners at Guantanamo, since they are considered unlawful belligerents under the 2001 AUMF—but, he hastened to add, they might still be detainable under U.S. criminal anti-terrorism laws, which has been Obama’s position all along.

Jack Goldsmith, who headed the Bush-Cheney Justice Department’s Office of Legal Counsel, said he was “heartened” by Koh’s testimony, in which Koh also said that the AUMF is unnecessary because of the President’s Article II powers. Goldsmith summarized the hearing testimony as follows: “Reliance on Article II, while it potentially narrows the President’s detention powers, at the same time, unmoors the President’s power to use force from the already broad language of the AUMF and rests that power on Article II alone, which allows the use of force, in the absence of Congressional authorization, against an even broader array of threats.”

Unmentioned in most of the discussion, is the dirty secret that Obama doesn’t much care about detention authority and Guantanamo. His policy is not to capture and detain, but to *kill*. Why bother putting a terrorist “suspect” through due process, including a potential trial, when whacking him with a drone strike is so much simpler?

Drone-war expert Micah Zenko, writing on foreign-policy.com on May 22, said that since September 2011, the U.S. has conducted an estimated 187 drone strikes killing an estimated 925 people, including 85 civilians. But over that same time period, there have been only three (!) known captures.

As *Newsweek* reporter Daniel Klaidman pointed out in his 2012 book *Kill or Capture*, by the end of 2009, Obama had already authorized more drone strikes than had Bush during the eight years of his Presidency. By his third year in office, Obama had approved killing twice as many suspected terrorists, as had ever been imprisoned at Guantanamo.

The Constitution’s allocation of war powers to Congress, or its requirement of due process for the killing of an American citizen, are matters of indifference for Obama. That’s the real lesson of the current AUMF debate, and compelling reason for his immediate impeachment.