

SHORTER MAC THORNBERRY: THE ARMED SERVICES COMMITTEES DO OVERSIGHT, NOT INTELLIGENCE

As Bobby Chesney lays out, the GOP Chair of the Intelligence, Emerging Threats and Capabilities Subcommittee of the House Armed Services Committee, Mac Thornberry, has introduced legislation to codify oversight over kill-or-capture missions. Before you read the actual legislation, it's worth reading how Thornberry described the legislation to Craig Whitlock. According to Thornberry, this is mostly about codifying what is already in place, so that mere citizens will take comfort that the oversight is in place.

"We've been doing a lot of this oversight anyway," Thornberry said in an interview. "But I think it is time, for a variety of reasons, to formalize that in statute and make it clear to the American people that it's happening, because a lot of the oversight that has gone on, most people don't know about it."

[snip]

In recent years, the Armed Forces subcommittee has modified the military's reporting requirements to keep up with changes in the nature of warfare, he said. Two years ago, lawmakers passed a measure requiring the Defense Department to provide a formal quarterly briefing on counterterrorism operations. Last year, it did the same for cyber operations.

"There's been a comfort level that's been achieved and that's even an additional reason to say, 'Okay, we've got this down to where it's working pretty well, so let's put it in statute so everybody knows,' " he said.

At one level, this seems like Thornberry's just trying to claim credit for what is actually taking place (that's a read Micah Zenko also had).

But with that claim – and Ron Wyden's year-plus effort to get a list of all the countries we're using targeted killing authorities in – consider this aspect of the legislation.

- **Section 130f(c)** – defines "sensitive military operations" (SMOs) with four elements:

1. *Operation involves lethal force or attempt to capture*
2. *Carried out by US armed forces (without respect, notably, to whether those armed forces are acting in a Title 10 or Title 50 capacity, thus closing an oversight gap that arguably emerged thanks to the Traditional Military Activities exception to the Title 50 covert action definition and also*

ensuring that SASC and HASC stay informed on a timely and relatively granular basis when it comes to SOF or other armed forces acting temporarily within a Title 50 framework; note that the language would not obviously encompass a “proxy force” scenario involving close support to direct action conducted by a foreign security service/military).

3. Carried out abroad (but see section 130f(d) below, which excludes Afghanistan for now)
4. **Carried out under color of the 2001 AUMF or Article II authority** (that is, generally applicable except in the event of some future AUMF or some future declaration of war; obviously this element could have interactions with a possible revision to the 2001 AUMF...in the event there is a revision to the 2001 AUMF, either this

passage in the SMO oversight bill would need to be tweaked or else the AUMF renewal legislation should speak directly to the SMO scenario) [my emphasis]

The legislation requires the military to inform the Armed Services Committees of such SMOs after the fact. As Chesney describes, this is a similar, though not necessarily parallel, notification system as mandated by the National Security Act for CIA's covert ops.

Section 130f(a) – requires written, post-hoc notification to SASC and HASC. No specific deadline; the language is “promptly.” Not necessary that POTUS sign it, so this is not quite analogous to notification to SSCI and HPSCI of covert action findings (though there are obvious parallels).

I tend to believe that last difference – that this notification requirement doesn't mandate sign-off from the President – is a significant one, but maybe that's because I'm obsessed with the way Obama has hidden Bush's role in setting up the rendition and torture program.

In any case, given Thornberry's and Wyden's public comments, my takeaway from all this is that it serves silence concerns that the Intelligence Committees aren't getting briefings on JSOC's targeted killings (or the logic underlying the killings), because the Armed Services Committees are.

Well, fine.

But does that really satisfy oversight needs? Is there a reason for the Intelligence Committees to know everything that done under Title 50,

even while the Armed Services Committees know of everything done by DOD? Given the overlap between Defense and Intelligence at this point, is there a reason to sustain this dual reporting (it seems the Intelligence Committees increasingly serve as a legal way to spread propaganda about secret programs). Is either of the committees able to perform independent oversight (Intelligence clearly isn't; I suspect some on Armed Services are, but both committees are becoming increasingly means for politicians to tap into a steady stream of campaign donations).

Perhaps this legislation is just a means to make us comfortable with the current stance of the turf battle between these two committees. And I'm not actually opposed to codifying this, particularly the requirement that the Defense Secretary brief the committees on the targeting process (though I think it should be shared in unclassified form with the public).

I'm just not sure that it actually gives us adequate oversight.