

July 2, 2014

Dear Member of Congress:

The undersigned organizations, the Center for National Security Studies and the Constitution Project, write to urge you to insist that President Obama obtain congressional authorization before using military force to address the current conflict in Iraq. While we take no position on whether as a matter of policy the United States should use military force abroad in this or any situation, we believe that it is Congress' constitutional responsibility to make this solemn decision.

We supported congressional decision-making on whether to use force against al Qaeda and the Taliban in Afghanistan in 2001 and whether to use force in Iraq in 2003. We believe that the Constitution required the President to obtain congressional authorization before initiating the 2011 bombing campaign in Libya, and we supported his decision to seek a congressional vote on using force in Syria in 2013. The framers vested the power to make war in Congress precisely to ensure that these grave decisions were taken deliberately, transparently, and by both Houses of Congress as representatives of the people. Any decision to use force in connection with the current conflict, whether in Iraq or Syria, should be made accordingly.

President Obama himself described the importance of congressional authorization for the use of force abroad just last year when he announced his decision to seek a congressional vote before taking military action in Syria. "A country faces few decisions as grave as using military force, even when that force is limited," he said. As the President acknowledged, in our constitutional democracy the people's representatives must all be accountable for such decisions "and that can only be accomplished with a vote." The President further recognized that, although he believed he had the authority to carry out this military action on his own, "the country will be stronger if we take this course, and our actions will be even more effective." All of these reasons apply to the decision whether to take military action now.

The Constitution does not permit using military force to address the conflict in Iraq without prior congressional approval.

While the Executive has frequently challenged the extent of Congress' powers under Article I to declare war, grant letters of marque and reprisal, raise and support armies, *inter alia*, the better and wiser reading of the Constitution requires congressional authority for initiating the use of military force abroad in circumstances like those now confronting the world in Iraq.

We note that satisfying this constitutional responsibility does not require that Congress authorize all steps short of using military force. The deployment to date of several hundred U.S. troops to Iraq as described by the government—to provide support and security for U.S. personnel and the U.S. Embassy in Baghdad, to assess the situation, and to facilitate intelligence collection and planning—does not implicate constitutional war powers as the troops have not been authorized to initiate the use of force.

Nor must the president seek prior congressional approval to repel a sudden or imminent attack on the United States, as the requirement for timely and flexible action would make congressional deliberation difficult or impossible. But that is not the situation we now face in Iraq, and initiating the use of force there would be unlawful without prior congressional approval. This constitutional requirement is not limited to ordering U.S. troops into combat. Rather, it includes the full panoply of

means by which the United States may deploy such force, including the principal actions reportedly being considered: “targeted” air strikes, whether by manned aircraft or unmanned aerial vehicles and whether intended as a time-limited or open ended campaign.

Congress has not previously authorized the use of force to address the current conflict in Iraq.

As outlined above, we do not believe that the President has the constitutional authority to commit the United States to the use of military force to address the conflict in Iraq without prior congressional approval. No prior enactment by the Congress has provided such authorization and we are unaware of any claim by the administration that any has done so.

There is no plausible argument that when Congress authorized the invasion of Afghanistan in 2001—targeting those responsible for the September 11 attacks—or the invasion of Iraq in 2002—targeting the then government of Iraq and its claimed development of weapons of mass destruction—Congress intended to delegate to whoever might be President more than a decade later the sole authority to decide that the United States should join in a new war; one that at the time had not begun, was not foreseen, and involves parties who did not exist. This conclusion is bolstered by the fact that both of those uses of force were initiated consistent with resolutions of the United Nations Security Council adopted at the time concerning each conflict and the threat to international peace and security then posed by the situations in Afghanistan and Iraq, respectively.

Moreover, several leading commentators have argued that there has been no showing that the activities of ISIL come within the administration’s definition of “associated force” under the 2001 AUMF—(1) an organized, armed group that has entered the fight alongside al Qaeda, and (2) a co-belligerent with al Qaeda in hostilities against the United States or its coalition partners. Even if they did, there is no reasonable basis for concluding that Congress intended to reach so far when it passed the 2001 AUMF. To rely on that authorization to use force to address the current conflict in Iraq would stretch the meaning of the 2001 AUMF beyond Congress’ intent, beyond this administration’s reading to date, and beyond the constitutional command that war only be authorized through a process intended to maximize deliberation, political consensus, and political accountability.

With respect to the 2002 Iraq AUMF, the administration has conceded that it no longer has any force as it is essentially obsolete: officials in the administration have said repeatedly—and as recently as June 12—that it is no longer used for any U.S. government activities and thus the administration would support repealing it.

Finally, notwithstanding a perception to the contrary, the 1973 War Powers Resolution (WPR) does not authorize the President to use force for 60 (much less 90) days without prior congressional authorization. The constitutional rule is that the President can lawfully prosecute a war only if Congress has authorized it, not that the President may prosecute one until Congress has stopped it. Indeed, the WPR states explicitly that it is *not* intended “to alter the constitutional authority of the Congress or of the President...” Reading the WPR to permit unilateral executive use of force would be unconstitutional.

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Except in a narrow set of circumstances not relevant here, Congress alone possesses the constitutional authority to take the country from a state of peace to a state of war. The framers gave Congress that power to ensure that decisions to use force abroad would not be made by a single person,

but instead collectively and by a deliberative and politically accountable judgment of the legislature. Less than a year ago, leaders of the Congress from both parties agreed to schedule a debate and then a vote on using force in Syria. No less is required now should the President determine that in his judgment the use of military force is warranted. We respectfully urge you to exercise your constitutional responsibility by insisting on congressional deliberation and a vote before the United States uses military force to address the conflict in Iraq.

Thank you for your attention to this important matter. Please contact Kate Martin, Director of the Center for National Security Studies ([kmartin@cns.org](mailto:kmartin@cns.org); 202.721.5650) or Scott Roehm, Senior Counsel at the Constitution Project ([sroehm@constitutionproject.org](mailto:sroehm@constitutionproject.org); 202.580.6930) with any questions.

Sincerely,

Center for National Security Studies  
The Constitution Project