

July 25, 2014

President Barack H. Obama
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. President:

The undersigned organizations, the Center for National Security Studies and the Constitution Project, urge you to obtain prior congressional authorization in the event that you decide that it is necessary for the United States to use 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 force in this or any situation, we believe that the Constitution vests the power to make this solemn decision in Congress. The framers gave the people's representatives the power to decide on war to ensure deliberate, transparent, and collective judgment.¹ Just last year, you made a forceful and convincing case for why congressional authorization makes our democracy stronger.

To be clear, we do not believe that constitutional separation of powers requires Congress to 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. However, additional actions your administration is reportedly considering—such as targeted air strikes, whether by manned aircraft or unmanned aerial vehicles and whether intended as a time-limited or open ended campaign—would be unlawful without prior congressional approval.

We recognize that your administration has previously taken the position that presidential powers to initiate the use of force abroad are broader than we believe to be the case. Even so, there are compelling reasons to seek a congressional vote before using force to address the conflict in Iraq. You articulated those reasons last year when you decided to seek authorization from Congress before using force in Syria, a decision we appreciated:

“But having made my decision as Commander-in-Chief based on what I am convinced is our national security interests, I'm also mindful that I'm the President of the world's oldest constitutional democracy. I've long believed that our power is rooted not just in our military might, but in our example as a government of the people, by the people, and for the people. And that's why I've made a second decision: I will seek authorization for the use of force from the American people's representatives in Congress.

...

[W]hile I believe I have the authority to carry out this military action without specific congressional authorization, I know that the country will be stronger if we take this course, and our actions will be even more effective. We should have this debate, because the issues are too big for business as usual.”

¹ We have written all Members of Congress urging them to exercise their constitutional responsibility.

You explained that “[a] country faces few decisions as grave as using military force, even when that force is limited,” that the people’s representatives must all be accountable for such decisions, and that accountability “can only be accomplished with a vote.” Your reasons for coming to Congress before using force in Syria are equally applicable and persuasive with respect to any decision to use force in Iraq now.

Congress has not already provided authorization to initiate the use of military force to address the conflict in Iraq. Congress authorized the invasion of Afghanistan in 2001 to target those responsible for the September 11 attacks, and the invasion of Iraq in 2002 to target the then government of Iraq and its claimed development of weapons of mass destruction. There is no plausible argument that in either case 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 then 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, your administration has conceded that the 2002 Iraq AUMF no longer has any force as it is essentially obsolete; government officials have said repeatedly—and as recently as June 12—that it is no longer used for any U.S. government activities and thus your administration would support repealing it. With respect to the 2001 AUMF, you have pledged to end the wars authorized by that resolution and whatever the activities of ISIL, there is no reasonable basis for concluding that Congress intended to cover them when it voted to respond militarily to the September 11 attacks. To rely on the 2001 AUMF to use force to address the current conflict in Iraq would stretch the meaning of that resolution beyond Congress’ intent, beyond your administration’s reading to date, and beyond the constitutional command that war only be authorized through a process intended to maximize informed debate, political consensus, and political accountability.

For the above reasons, should you determine that in your judgment the use of military force is necessary to address the conflict in Iraq, we urge you to seek an agreement from congressional leaders to schedule a debate and a vote on the issue. We believe that prior congressional approval is constitutionally required. Moreover, this year, like last year, the country is stronger when decisions to initiate the use of force abroad are made not by a single person, but instead by the deliberate, transparent, and collective judgment that the framers envisioned.

Thank you for your consideration of this request.

Respectfully,

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