

February 24, 2015

Dear Senator / Representative,

We are a diverse coalition of organizations, all of which maintain that any new legislation authorizing the use of force against the Islamic State of Iraq and the Levant (ISIL) must be clear, specific, and narrowly tailored to address the particular threat that ISIL poses. Several of our groups have suggested steps that Congress can take to accomplish those objectives.¹ We write collectively to emphasize one step that is critically important: Congress must address the 2001 Authorization for Use of Military Force (AUMF) and the 2002 Iraq AUMF in any new ISIL-focused AUMF.

Specifically, we urge that any new legislation that does not repeal the 2001 AUMF and the 2002 Iraq AUMF state explicitly that neither of those laws authorizes the use of force against ISIL.²

Several proposals developed by Members of Congress contain this key limitation, including the AUMF passed out of the Senate Foreign Relations Committee (SFRC) late last year.³ Secretary of State John Kerry also fully endorsed it in recent testimony before the SFRC:

If congress passes a new [ISIL] specific AUMF, we will support the inclusion of language in the new AUMF that will clarify that the [ISIL] specific AUMF rather than the 2001 AUMF is the basis for the use of military force, and I think that will give comfort to a lot of people... [W]e will also support the repeal of the 2002 AUMF as part of an effort to clarify that the ISIL-specific AUMF would be the only source of legitimacy for the use of military force against [ISIL]. Therefore, we would live under the confines of what we pass here.⁴

Unfortunately, the President's newly proposed AUMF does not fulfill Secretary Kerry's commitment. We applaud the President for seeking to repeal the 2002 Iraq AUMF. But we are

¹ See, e.g., materials developed by the National Security Network (<http://nsnetwork.org/policy-brief-navigating-an-aumf-for-the-islamic-state-toward-a-high-standard-authorization/>) and the ACLU (https://www.aclu.org/sites/default/files/assets/140912_isis_authorization_senate.pdf). A group of prominent national security law scholars has offered similar recommendations: <http://justsecurity.org/wp-content/uploads/2014/11/ISIS-AUMF-Statement-FINAL.pdf>.

² If Congress chooses to sunset either the 2001 AUMF or the 2002 Iraq AUMF as part of a new ISIL-specific force authorization it should include this explicit statement to ensure that Congress' intent is clear during the interim.

³ See Authorization for the Use of Military Force against the Islamic State of Iraq and the Levant, S.J. Res. __, 113th Cong. (2014) § 3 ("The provisions of this joint resolution pertaining to the authorization of use of force against the Islamic State of Iraq and the Levant shall supersede any preceding authorization for the use of military force."), available at <http://www.lawfareblog.com/wp-content/uploads/2014/12/ISIS-AUMF-As-Reported.pdf>. Senator Paul's proposed declaration of war against ISIL includes a similar limitation. See http://www.paul.senate.gov/?p=press_release&id=1249 ("The Authorization for the Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) does not provide any authority for the use of military force against the organization referring to itself as the Islamic State, and shall not be construed as providing such authority.")

⁴ *Authorization For The Use of Military Force Against ISIL*, Hearing before the Senate Foreign Relations Committee, December 9, 2014, video available at <http://www.foreign.senate.gov/hearings/authorization-for-the-use-of-military-force-against-isis> (Secretary Kerry's remarks, in response to a question from Senator Corker, begin at approximately 01:09:00 of the video).

both disappointed and concerned that his proposal is silent on the 2001 AUMF, especially given that he continues to [claim](#) that “existing statutes provide me with the authority I need” to wage the war against ISIL.

Against this background, Members cannot be confident that any administration will dutifully respect the letter and spirit of a new ISIL-focused force authorization if the 2001 AUMF goes unattended.

On August 8, the President began unilaterally conducting airstrikes against ISIL. He did not seek prior congressional approval, claiming authority under Article II of the Constitution to conduct the strikes on his own. Since then, both the combat mission against ISIL and the President’s claims of pre-existing legal authority to conduct it have expanded significantly. On September 10, the President announced that he was “order[ing] implementation of a new comprehensive and sustained counterterrorism strategy to degrade, and ultimately defeat, ISIL,” which has included a significant increase in the use of military force. In a subsequent [letter to Congress](#), the President reiterated that he has constitutional authority to conduct at least some aspects of this campaign *and* asserted that Congress had already authorized it through *both* the 2001 AUMF and the 2002 Iraq AUMF. The President has not, however, identified which of these authorities his administration believes sanction what activities, how they relate to one another, or their limits.

As a threshold matter, we reject the President’s legal position. There is no evidence 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 that did not exist. But it is the position that the President has staked, lumping together controversial statutory and constitutional arguments, and Congress must legislate accordingly.

If Congress fails to tackle both the 2001 AUMF and the 2002 Iraq AUMF in any new ISIL-focused AUMF it risks simply adding to what has become a tangled and ambiguous web of war authorities from which a president might pick and choose without explanation. In other words, even if Congress were to pass legislation that clearly and precisely defines the President’s power to combat ISIL, those statutes lurk as opportunities to try to circumvent Congress’ will. Going forward, clarity is at an absolute premium.

The Constitution assigns Congress the power to decide on war for good reasons: collective judgment, arrived at through robust and transparent debate, is superior to that of a single individual; Members should be politically accountable when our government asks U.S. service men and women to risk their lives; and because human nature demands it – as James Madison cautioned, if war powers were accumulated in the executive branch “the temptation would be too great for any one man.” Significant ambiguity about what Congress has authorized undermines each of these purposes.

Congress has a constitutional responsibility to eliminate to the extent possible any ambiguity in a new ISIL-focused AUMF. If any such legislation does not repeal the 2001 AUMF and the 2002 Iraq AUMF, it should state explicitly that neither of those laws authorizes the use of force against ISIL.

Thank you for your attention to this important matter.

Sincerely,

American Civil Liberties Union
Appeal for Justice
The Constitution Project
Council on American-Islamic Relations
Defending Dissent Foundation
International Justice Network
Just Foreign Policy
Liberty Coalition
National Religious Campaign Against Torture
National Security Network
OpenTheGovernment.org
Peace Action
Peace Action West
United for Peace and Justice
United Methodist General Board of Church and Society
Win Without War