

Authorizing the Use of Force Against ISIS: How to Define “Associated Forces”

Introduction

Several congressional proposals for the authorization of the use of military force (AUMF) against ISIS have included authorization to target not just ISIS but also “associated forces” of ISIS¹ The Obama Administration developed the theory of associated forces² to expand the reach of the 2001 AUMF without going back to Congress for approval to fight new groups.³ The concept of associated forces does not appear in the 2001 AUMF itself.⁴ That law authorized force only against those who attacked the United States on 9/11 and those who harbored them—namely al Qaeda and the Taliban. By stretching the 2001 AUMF to apply to associated forces, the Obama administration used it to justify operations around the world against over half a dozen organizations, including groups that did not exist on 9/11.

National security law experts across the aisle agree that if an AUMF authorizes force not just against a specifically named group but also against associated forces associated of that group then, it should include a definition of that term.⁵ They also agree that the definition of associated forces should only include those groups who can legally be targeted

under the laws of war: groups who are parties to the armed conflict against the United States. Clearly specifying the enemy is the height of democratic responsibility. It helps prevent mission creep and to ensure that the executive branch cannot interpret any new AUMF beyond what Congress authorized.

Defining “associated forces” in an AUMF

An AUMF that authorizes force against associated forces should include a definition of that term that complies with the laws of war, and thus against whom use of force is both lawful and appropriate. To comply with the laws of war, the definition should apply to organized armed groups who are parties to the conflict against the United States. For example:

“An organized armed group that has entered the fight alongside [insert named enemies] as a party to the armed conflict with the United States.”

¹ <http://www.humanrightsfirst.org/sites/default/files/ISIS-AUMF-Proposal-Chart.pdf>.

² Report on The Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related National Security Operations, p. 4, <https://fas.org/man/eprint/frameworks.pdf>.

³ Ryan Goodman, “Obama’s Forever War Starts Now” *Foreign Policy*, <http://foreignpolicy.com/2015/02/12/obamas-forever-war-starts-now-aumf-isis-islamic-state/>.

⁴ <https://www.govtrack.us/congress/bills/107/sjres23/text>.

⁵ “The Intellectual---But Not Political---Consensus on AUMF” *Lawfare*, <https://www.lawfareblog.com/intellectual-not-political-aumf-consensus>. See also Principles to Guide the Congressional Authorization of the Continued Use of Force Against ISIL, <https://www.justsecurity.org/wp-content/uploads/2014/11/ISIL-AUMF-Statement.pdf>.

☑ The president’s Article II authority to respond to imminent attacks

Some ISIS AUMF proposals have defined associated forces extremely broadly, including to cover groups who are not fighting the United States and groups that may become a threat at some point in the future.⁶ Congress should not authorize force pre-emptively against emerging threats or unknown enemies. Experience under the 2001 AUMF has shown that uncertainty about who is a legitimate target has harmed U.S. efforts to win hearts and minds—the ultimate goal of counterterrorism—and damaged perceptions of American legitimacy globally.

As noted by national security experts, such excessively broad definitions of associated forces would “effectively grant the administration a blank check.”⁷

Further, such a broad definition is unnecessary; the president already retains authority under Article II of the Constitution to use force in self-defense to respond to an attack or an imminent threat of attack⁸ from a group that is not covered by an AUMF. The president also has this power under Article 51 of the U.N. Charter.

⁶ See for example the ISIS AUMF by Senators Tim Kaine (D-VA) and Jeff Flake (R-AZ). This proposal authorizes force against “associated persons or forces,” defined as “(1) individuals and organizations fighting for, on behalf of, or alongside ISIL or any closely-related successor entity in hostilities against the United States or its coalition partners; and (2) refers to any individual or organization that presents a direct threat to members of the United States Armed Forces, coalition partner forces, or forces trained by the coalition, in their fight against ISIL.” <https://www.kaine.senate.gov/press-releases/10-months-into-war-against-isil-kaine-and-flake-introduce-bipartisan-authorization-for-use-of-military-force->

☑ The problem with authorizing force against “successor entities”

Several ISIS AUMF proposals, including President Obama’s,⁹ authorize force against “successor entities.” This term has attracted significant criticism from national security law experts, as it would excessively broaden the scope of an AUMF. As law professor and former Department of Defense Special Counsel to the General Counsel Ryan Goodman has noted, authorizing force against successor entities amounts to “asking Congress to endorse [President Obama’s] theory that looped the Islamic State under the 2001 AUMF as a ‘successor’ to al Qaeda.”¹⁰ This “dangerous methodology”¹¹ could be used to allow the executive branch to interpret the new AUMF to target groups that do not exist and against whom Congress never intended to authorize force.

As noted above, the president has inherent constitutional authority to use force in self-defense against groups that attack the United States or pose an imminent threat of attack. Authorizing force against “successor entities” would amount to a substantial delegation of congressional war powers to the president. ●

⁷ <https://www.lawfareblog.com/intellectual-not-political-aumf-consensus>.

⁸ <http://www.humanrightsfirst.org/sites/default/files/Administration-Proposed-ISIL-AUMF.pdf>; <https://www.justsecurity.org/wp-content/uploads/2014/11/ISIL-AUMF-Statement.pdf>.

⁹ https://obamawhitehouse.archives.gov/sites/default/files/docs/aumf_02112015.pdf.

¹⁰ <http://foreignpolicy.com/2015/02/12/obamas-forever-war-starts-now-aumf-isis-islamic-state/>. See also <http://www.humanrightsfirst.org/sites/default/files/Administration-Proposed-ISIL-AUMF.pdf>.

¹¹ *Id.*