

## PRINCIPLES TO GUIDE CONGRESSIONAL AUTHORIZATION OF THE CONTINUED USE OF FORCE AGAINST ISIL

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Congress is poised to consider a new Authorization for the Use of Military Force (AUMF) for the ongoing military campaign in the armed conflict against the Islamic State of Iraq and the Levant (ISIL). For compelling reasons of practice and prudence, the following principles should guide the drafting of any such statute. These six principles are designed to reflect lessons learned from experiences with previous AUMFs; to ensure compliance with domestic and international law; and to strike an effective and appropriate balance of war powers between the political branches.

### 1. A NEW AUMF SHOULD BE ISIL-SPECIFIC AND MISSION-SPECIFIC:

- **ISIL-Specific:** Any new AUMF should be limited to the current armed conflict with ISIL, and should be as specific as possible about the objectives for which—and the particular organizations and groups against which—Congress is authorizing the use of force. Specifying both the identity of the enemy and the objectives of the authorized force is the epitome of democratic responsibility, as it ensures that any new AUMF will be appropriately tailored to the specific threat and conflict justifying such force.
  - Many previous use-of-force authorizations have included such specifications, and some have required that the President both formally determine when those objectives have been fulfilled and report such determinations to Congress.<sup>1</sup>
  - The statute should specify whether or not the authorization also authorizes the use of force against “associated forces” of ISIL. If it does, the statute should include a definition of that term that is narrowly tailored to include only those groups that are acting in concert with ISIL as parties to the armed conflict against the United States for which force is being authorized (and in all cases, require active military alliance, not merely ideological alignment).
  - Most importantly, it is both unnecessary and inappropriate for Congress to authorize the use of force against any other organizations with which the United States is not already engaged in an armed conflict—just as Congress refused to do in the days after the September 11 attacks. Other terrorist organizations and networks present a wide array of potential future threats across the globe. But those challenges are specific to individual organizations, locations, and geopolitical dynamics. Congress has, in the past 13 years, afforded the Executive many robust tools that have been and are effective in dealing with such threats, as described at length in the administration’s [2011 National Counterterrorism Strategy](#). The President also has constitutional authority to use appropriate force when necessary in self-defense if and when other organizations attack the United States or are actively planning to do so. Congress should not preemptively authorize force against as-yet unknown enemies.<sup>2</sup>

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1. For examples, see Authorization To Employ the Armed Forces of the United States for Protecting the Security of Formosa, the Pescadores, and Related Positions, Pub. L. No. 84-4, 69 Stat. 7 (1955); Joint Resolution to Promote Peace and Stability in the Middle East, Pub. L. No. 85-7, 71 Stat. 5 (1957); and Gulf of Tonkin Resolution, Pub. L. No. 88-408, 78 Stat. 384 (1964).

2. Of course, it is possible that the United States might subsequently become engaged in a substantial and long-term exchange of force with another such organization, or that other situations may arise in which it is necessary for Congress to supplement current statutory and constitutional authorities to authorize additional uses of force. But there

- **Mission-Specific:** The statute should also specify any substantive conditions on the use of force that Congress concludes are appropriate—such as the circumstances under which ground forces may be employed.

## 2. A NEW AUMF SHOULD INCLUDE GEOGRAPHIC LIMITS:

- Congress should geographically limit the authorization to uses of force in Iraq and Syria, where there is now an ongoing armed conflict between ISIL and Iraq and the United States, and to any other locations from which ISIL forces actively plan and/or launch attacks against the United States or Iraq. Many past congressional authorizations for use of force have contained geographic limits.<sup>3</sup>

## 3. A NEW AUMF SHOULD INCLUDE A SUNSET CLAUSE:

- The absence of temporal limits in the September 2001 AUMF has resulted in that statute being construed to provide authority for uses of force far removed in both time and location from anything that members of Congress anticipated thirteen years ago. A sunset clause in an ISIL-specific AUMF would ensure congressional deliberation regarding the scope and conduct of any extended or expanded campaign. The function of such a clause is not to terminate the campaign before it has achieved its objectives, but instead to ensure that Congress affirmatively decides whether and under what terms to continue to support the evolving nature of the conflict, consistent with its historical and constitutional role.
- Such a requirement is not unprecedented; for example, the 1983 AUMF for Lebanon authorized the President to use force for up to 18 months, unless Congress further extended the timeline, at least in part to require any reauthorization to take place after an intervening election.<sup>4</sup> A similar approach would be appropriate for a sunset here, as well.

## 4. CONGRESS SHOULD ALSO RECONSIDER AND REVISE THE 2001 AUMF AND REPEAL THE 2002 IRAQ AUMF:

- **Repeal the 2002 Iraq AUMF:** Although the administration has indicated that the 2002 Iraq AUMF may provide authorization for operations against ISIL, it has also supported repeal of that statute. An ISIL-specific AUMF would eliminate any continuing justification for keeping the 2002 Iraq AUMF on the books; and would clarify current U.S. objectives in Iraq, which are quite distinct from those described in the 2002 AUMF, a statute designed for an earlier and different armed conflict against a different enemy.
- **Sunset the 2001 AUMF:** As the nature of the armed conflict with al Qaeda has evolved, the focus of the administration's use of the September 2001 AUMF has increasingly shifted from the Afghan theater to other locations, such as Yemen and now Iraq and Syria. Reliance upon that AUMF for the military campaign against ISIL, in particular, raises substantial questions about whether such statutory authority does—or should—extend to this new campaign. Although outright repeal of the 2001 AUMF may be premature, enacting a new

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will be ample opportunity for Congress to debate whether and how to provide such authorization if and when those situations arise.

3. The National Security Network has determined that 60 percent of historical force authorizations have contained geographic limitations. See [http://nsnetwork.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR\\_FINAL.pdf](http://nsnetwork.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR_FINAL.pdf).

4. Multinational Force in Lebanon Resolution, Pub. L. No. 98-119, 97 Stat. 805 (1983).

AUMF without revisiting existing force authorization statutes could lead to a debilitating state of perpetual war, confusing legal authorities, and diminished congressional oversight. Accordingly, Congress should include within the ISIL-specific AUMF a sunset provision for the 2001 AUMF.

- As with a sunset for the ISIL-specific AUMF, an additional 18 months would establish an appropriate sunset date for the 2001 AUMF. Setting such a date would allow the next administration and Congress to consider afresh—and with the benefit of renewed democratic participation through the 2016 elections—how to ensure that both the ISIL-specific AUMF and the 2001 AUMF best address the situations that exist at *that* time.

**5. A NEW AUMF SHOULD ENSURE THAT U.S. USES OF FORCE ARE CONSISTENT WITH INTERNATIONAL LAW:**

- **“Necessary and Appropriate Force”:** By authorizing the use of force “necessary and appropriate” to this particular context of an ongoing armed conflict, Congress would, as it has in the past, implicitly authorize the President to use those means of force that are “fundamental and accepted” incidents of war by “universal agreement and practice.” Under standard canons of statutory construction, such force would thereby be limited to actions that comply with international law.<sup>5</sup> Such language would also ensure that the United States complies with all relevant treaty and customary international law obligations, including those establishing fundamental norms governing the use of force (such as the principles of precaution, distinction, and proportionality), and those respecting the sovereignty of other nations.

**6. A NEW AUMF SHOULD REQUIRE GREATER TRANSPARENCY AND CONGRESSIONAL OVERSIGHT:**

- One key lesson from the United States’ post-9/11 military engagements is the need for greater transparency, and for closer oversight by the Congress, regarding the United States’ use of force. It is a basic principle of democracy that the American public and Congress should understand the scope, progress, and costs of military operations—and on a continuing basis.
- **Transparency With Respect to Facts:** Accordingly, any new AUMF should mandate that, every six months, the President provide to Congress as a whole, and to the American people to the greatest possible extent, reports (1) describing the progress toward the mission’s objectives; (2) identifying any groups or nations other than ISIL that have joined the armed conflict; and (3) providing detailed information about civilian and combatant casualties on all sides.
- **Transparency With Respect to Law:** The President should also share with Congress, and make public to the greatest possible extent, any significant legal analyses regarding the scope of, and legal authority for, U.S. uses of force.

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5. See *Murray v. The Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804); see also *Hamdi v. Rumsfeld*, 542 U.S. 507, 520–21 (2004) (plurality opinion).

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