

FAQ: The Islamic State in Iraq and Syria and Authorities for Use of Military Force

- ☑ **Question:** Is separate congressional authorization needed for United States military action against the Islamic State in Iraq and Syria (ISIS) in Iraq and Syria?
- ☑ **Answer:** Yes. As neither the 2001 nor the 2002 Authorization for the Use of Military Force (AUMF) clearly applies to ISIS, the president should seek separate congressional authorization to engage in sustained military action against ISIS. The president also has power under Article II of the Constitution to use military force to repel imminent threats from groups that are not covered by the 2001 or 2002 AUMF, including ISIS. Whether particular uses of force against ISIS can be justified without congressional authorization under the president's Article II authorities is a fact specific inquiry. Uses of force designed to repel imminent threats against American personnel or to rescue American hostages, for example, could be justified under the president's Article II authorities. A sustained military campaign—for example, aiding Iraqi or other armed forces to, assure that ISIS is “destroyed” and “crushed,” in the words of Secretary of State John Kerry—could not be justified under the president's Article II authorities.
- ☑ **Question:** What lessons have we learned in the past thirteen years that should inform any consideration of a new ISIS-specific AUMF?
- ☑ **Answer:** To maximize adherence to human rights norms, clarity in domestic law, and legitimacy with the U.S. and global publics, any new AUMF should contain:
 1. Explicit limits pertaining to time (e.g. a sunset clause), affiliation (e.g. the specific groups included) or mission (e.g. reduce a group's capacity so that it does not pose an imminent threat to the United States) which would provide increased opportunities for congressional and executive dialogue and ensure renewed national consideration at regular intervals;
 2. Strengthened congressional reporting requirements to ensure that the relevant committees regularly receive information on secret military and covert operations—to the extent permitted by operational security needs—including requiring that Congress be informed as to which groups are covered under the AUMF and in which nations the Department of Defense believes Congress has authorized the president to use military force; and
 3. Provisions requiring periodic public reporting on the number of combatants and civilians killed, as well as information regarding where and against whom the president is using military force under congressional authorization.
- ☑ **Question:** Why don't the 2001 and 2002 AUMF apply to ISIS?
- ☑ **Answer:** The [2001 AUMF](#) authorizes the use of force against those responsible for the 9/11 terrorist attacks or those harboring them. It has been construed by the executive branch and the courts to apply to al Qaeda, the Taliban, and their “associated forces.” According to information provided by

the administration, ISIS does not fall into any of these categories, especially since al Qaeda has officially and [publicly declared](#) that it “has no links to the ISIS group” and the two groups have engaged in hostilities against each other, with ISIS [killing key al Qaeda leaders](#). With no operational connection to al Qaeda or the Taliban, ISIS cannot be considered an “associated force” and is not a legitimate target under the 2001 AUMF. The 2002 AUMF was not written for the current situation in Iraq. That AUMF permitted the president to use force *against* Iraq in order to address concerns that Saddam Hussein had breached UN Security Council resolutions by stockpiling weapons of mass destruction. The Obama administration has stated that the 2002 AUMF is obsolete and has repeatedly supported its repeal.

- ☑ **Question:** Doesn't the rise of ISIS in Iraq and Syria mean the threat from international terrorism is increasing and that the United States should maintain a war footing to deal with these threats?
- ☑ **Answer:** The threat posed by ISIS—a regional insurgent group that uses terrorism among other tactics—should not be conflated with other threats from terrorist groups around the world. Each situation must be analyzed and dealt with separately to determine whether and under what circumstances the use of force would be likely to achieve the desired outcome or be counterproductive, as when it enhances terrorist recruiting or undermines our counterterrorism cooperation with allies. While the number of Salafi Jihadist groups has grown, “[approximately 99 percent of al Qa’ida and affiliated attacks in 2013 were against near-enemy targets](#),” rather than against the United States or the West. When terrorist groups are not targeting the United States, it is better to pursue terrorist threats primarily through security partnerships, diplomatic, law enforcement, and intelligence tools—reserving the use of military force as a last resort—rather than making the United States a party to a local conflict and risking inciting further acts of terrorism against the United States.
- ☑ **Question:** If the president decides to use force against a terrorist group, doesn't that mean the United States is entering an armed conflict with that group? Shouldn't the president seek congressional authorization before using any such force?
- ☑ **Answer:** Even in the event military force is required to respond to a threat from a terrorist group, it does not necessarily mean the United States would be engaged in an armed conflict with that group. An armed conflict exists as a matter of international law between the United States and only those groups who are sufficiently organized and engaged in hostilities of sufficient intensity to meet the threshold for armed conflict. Uses of force against imminent threats that do not meet that threshold are still permissible under international law, but would not create a state of armed conflict and therefore do not confer broader war authorities on the government. As a matter of domestic law, these uses of force against imminent threats are also permissible without congressional authorization pursuant to the president's Article II constitutional authorities. However, if the United States is engaged in an extended military campaign against a terrorist group that meets the threshold for armed conflict, the president should seek congressional authorization to support that military campaign.