

## The Problems with the 2001 AUMF and How to Fix Them

### Introduction

Within days of the 9/11 attacks, Congress passed an authorization for use of military force (AUMF) against those who **“planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 or harbored such organizations or persons.”**<sup>1</sup> This language is widely understood as authorizing force against al Qaeda, who planned and committed the attacks on the United States on 9/11, and the Afghan Taliban, who had harbored al Qaeda before and after the attacks.

The 2001 AUMF is also expressly limited to using force to prevent future acts of terrorism against the United States by the entities responsible for 9/11, not their associated forces, successor entities, or unaffiliated terrorist organizations.<sup>2</sup>

Yet for more than 17 years, longer than any war in the nation’s history, the executive branch has been using the 2001 AUMF as the primary legal basis<sup>3</sup> for military operations against an array of terrorist organizations in at least seven different countries around the world.<sup>4</sup>

The executive branch’s continued reliance on the 2001 AUMF for military operations far beyond what Congress originally authorized undermines Congress’ important constitutional role as the branch responsible for the decision to go to war. The lack of any sunset provision or reporting requirements in the 2001 AUMF also restricts the ability of Congress to conduct meaningful oversight over military operations and the foreign affairs of the United States.<sup>5</sup>

### Importance for National Security, Human Rights, and U.S. Leadership in the World

Continued reliance on outdated and ill-defined war authorizations that blur the line between war and peace undermine national security, U.S. leadership in the world, and human rights both at home and abroad.

War authorizations confer extraordinary powers on the president—powers that outside of war would amount to egregious violations of human rights. Wartime rules were designed for the unique circumstances of armed conflict between opposing armed forces. As a result, the laws of war

<sup>1</sup> <https://www.congress.gov/107/plaws/publ40/PLAW-107publ40.pdf>.

<sup>2</sup> Congress expressly rejected the executive branch’s request for broad and open-ended authority to use military force against other terrorist groups without specific authorization from Congress. See [https://www.buzzfeed.com/gregorydjohnsen/60-words-and-a-war-without-end-the-untold-story-of-the-most?utm\\_term=.yfdMEx3qa#.clg0N7zOo](https://www.buzzfeed.com/gregorydjohnsen/60-words-and-a-war-without-end-the-untold-story-of-the-most?utm_term=.yfdMEx3qa#.clg0N7zOo). See also <https://www.justsecurity.org/40549/isis-aumf-now-next-important/>.

<sup>3</sup> The executive branch has also relied on the 2002 Iraq AUMF to justify its counter-ISIL campaign. See e.g.,

<https://www.defense.gov/News/Speeches/Speech-View/Article/606662/>.

<sup>4</sup> [https://www.justsecurity.org/wp-content/uploads/2016/12/framework.Report\\_Final.pdf](https://www.justsecurity.org/wp-content/uploads/2016/12/framework.Report_Final.pdf).

<sup>5</sup> U.S. entanglements with Iranian and Russia-backed pro-Assad forces in Syria, where the United States is fighting ISIS, demonstrate just how far the 2001 AUMF has been stretched. See <http://foreignpolicy.com/2017/06/16/white-house-officials-push-for-widening-war-in-syria-over-pentagon-objections/>.

sometimes permit killing as a first resort, detention without charge or trial, and the use of military tribunals—actions that are otherwise contrary to basic American values and human rights.

The current status quo puts the United States at odds with allied nations, counterterrorism partners on the ground, and local populations whose help is critical to effective counterterrorism. Assuring these groups that the United States respects human rights and the rule of law—including important limits on wartime authorities—will improve cooperation, undermine terrorist recruitment and propaganda, and reduce attacks against U.S. forces.

Expansive interpretations of a state’s authority to use wartime powers—such as lethal force as a first resort, military tribunals, and detention without charge or trial—also embolden other states to use such practices. Constraining the use of these exceptional authorities will provide a model for other states on how to use wartime authorities lawfully, strategically, and responsibly.

Not only is it unlawful to apply wartime authorities to address terrorist threats off the battlefield, it is not necessary. The United States has a robust array of diplomatic, law enforcement, and intelligence resources to mitigate the threat of terrorism. Ultimately, partner nations in which terrorist threats reside must take the lead to address those threats effectively with the support of the United States.

Repealing the 2001 AUMF would bring an end to nearly two decades of creeping warfare and reflect the proper constitutional balance of war powers between the executive and legislative branches.

Repealing the 2001 AUMF now would not leave the United States vulnerable. In the past, Congress has demonstrated its ability to act swiftly when it believes

that authorizing military force is necessary.

Congress passed the 2001 AUMF within three days of the 9/11 attacks and historically has acted quickly in a number of similar contexts.<sup>6</sup> Congress can easily pass a new authorization if it believes that doing so is necessary and wise after carefully assessing today’s threat landscape. Even without an AUMF in place, however, the President has Article II authority to defend the nation from any sudden attacks if necessary.

## How to Draft Authorizations for Use of Military Force Effectively

If Congress decides to pass a new AUMF, that authorization should reflect the hard lessons of the last two decades and including the following elements to ensure continued congressional control over the decision to go to war:

- ☑ **Specify the enemy and the Mission Objectives;**
- ☑ **Reporting Requirements;**
- ☑ **Compliance with U.S. obligations Under International Law;**
- ☑ **Supersession/Sole Source of Authority Provision;**
- ☑ **Sunset Clause.**

These elements have garnered bipartisan support<sup>7</sup> and reflect an effective approach to drafting an ISIS AUMF that empowers the United States to counter the terrorist threat, uphold the rule of law, and maintain the global legitimacy that is crucial to U.S. national security.

<sup>6</sup> See <https://fas.org/sgp/crs/natsec/RL31133.pdf>.

<sup>7</sup> [http://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-7759fc1eacc\\_story.html](http://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-7759fc1eacc_story.html); <http://justsecurity.org/20546/intellectual-but-political-aumf-consensus/>; [http://justsecurity.org/wp-](http://justsecurity.org/wp-content/uploads/2014/11/ISIL-AUMF-Statement-FINAL.pdf)

[content/uploads/2014/11/ISIL-AUMF-Statement-FINAL.pdf](http://www.humanrightsfirst.org/sites/default/files/AUMF-letter-final-text-June-19-2017.pdf). These elements have also gained the support of a coalition of human rights, civil liberties, and faith groups: <http://www.humanrightsfirst.org/sites/default/files/AUMF-letter-final-text-June-19-2017.pdf>.