

Myth v. Fact: Sunsets in AUMFs

- ☑ **MYTH:** AUMFs never have sunsets.
- ☑ **FACT:** Ten prior AUMFs (almost a third to the total number of AUMFs) have included sunsets.¹ Recent examples include the 1983 AUMF for Lebanon (18 months) and the 1993 AUMF for Somalia (approximately 5 months).
- ☑ **MYTH:** A sunset is the same as a repeal.

FACT: A sunset and a repeal are two different mechanisms. If legislation is repealed, it is immediately taken off the books. Sunset provisions act as forcing mechanisms, requiring Congress and the administration to reexamine the legislation at some future date, in light of more recent conditions, and if necessary, reauthorize and refine the legislation to suit those conditions.² As Secretary of Defense Ashton Carter recently testified to the Senate Foreign Relations Committee, an AUMF sunset clause is “a sensible and principled provision.”³ Sunset provisions are also included in several important pieces of post-9/11 counterterrorism legislation, including the PATRIOT Act and the Foreign Intelligence Surveillance Act (“FISA”). At each sunset date, these statutes have been refined and reenacted to better suit existing conditions. Sunsets in AUMFs provide a date for Congress and the administration to come together and if necessary, update the AUMF to suit an evolving conflict. Sunsets are responsible mechanisms of congressional oversight that strengthen our democracy.
- ☑ **MYTH:** A sunset in an AUMF sets an arbitrary deadline for our involvement in an armed conflict. It shows weakness, emboldens our enemies to outlast us, and shows that our hearts are not really in the game.
- ☑ **FACT:** As a sunset is not the same as a repeal, it has no such effect. An AUMF sunset is a forcing mechanism for a conversation between Congress and the administration on the state of the armed conflict and the appropriate legislation to authorize the use of force for that conflict. If the conflict is ongoing, the AUMF can be reauthorized. Even in the recent 112th and 113th sessions, Congress has proven, time and time again, that it is capable of acting responsibly to reauthorize—with important revisions—key national security authorities, including passing renewals of important provisions in the PATRIOT Act and FISA. These processes have demonstrated the effectiveness of sunsets, as mechanisms to strengthen congressional oversight and refine our national security authorities to suit changing circumstances. Including a sunset in an AUMF provides an opportunity for Congress to tailor an AUMF to better suit an evolving conflict. It shows Congress’ commitment to ensuring that the AUMF continues to give the president the authorities needed to conduct the war and to win and it prevents the AUMF from being used in ways that Congress did not intend.
- ☑ **MYTH:** Sunsetting the 2001 AUMF could have dangerous consequences for the war in Afghanistan. It would mean an abrupt and irresponsible end to the war against al Qaeda and would severely curtail the U.S. military’s ability to conduct global counterterrorism operations against them.
- ☑ **FACT:** A sunset would have no impact on the war in Afghanistan and against al Qaeda. It would require a discussion between Congress and the administration, at some future date, on the state of the war, the threat posed by al Qaeda, the Taliban, and their associated forces, and the extent to which continued military force is necessary. If such force is still needed, Congress would reauthorize the AUMF, as Congress has shown itself very capable of doing with other critical national security

¹ See http://nsnetwork.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR_2.2015-UPDATE.pdf.

² In recent testimony before the House Armed Services Committee, Professor Robert Chesney of the University of Texas Law School, testified that sunset provisions might be better served by being labeled “renewal or forcing function provisions,” reflecting the true purpose of sunsets, being to “create an occasion after a certain period of time for the authorization, if appropriate, to receive the fresh imprimatur of a Congress and a president, acting on the most recent conditions,” and if necessary, reauthorize and refine the AUMF, to suit an evolving conflict.” Hearing before the House Armed Services Committee, February 26, 2015, video available at https://www.youtube.com/watch?v=FQd4w68QM_c.

³ Secretary Carter testified that a three-year sunset “affords the American people the chance to assess our progress in three years’ time, and provides the next president and the next Congress the opportunity to reauthorize it, if they find it necessary.” Hearing before the Senate Foreign Relations Committee, March 11, 2015, video available at <http://www.c-span.org/video/?324700-1/john-kerry-ashton-carter-general-martin-dempsey-testimony-use-force-isis>.

authorities. A sunset is a responsible device that requires the administration to report on the scope and progress of the war. It would increase information flow from the administration and provide a much-needed opportunity for Congress to weigh in on the state of the longest war in U.S. history.

- ☑ **MYTH:** Sunsetting the 2001 AUMF would deprive the president of the latitude he needs to meet emerging threats and to target those groups that adapt, change allegiances, and can be hard to define.
- ☑ **FACT:** The president has broad authority under Article II of the Constitution to use force in self-defense against emerging groups that pose an imminent threat to the United States. The 2001 AUMF is not a catch-all authority to use prolonged military force against all emerging threats, nor should it be. If the threat from a new group rises to the level that requires prolonged military force, the president should make the case for this to Congress and Congress should pass a new AUMF, in accordance with its constitutional power to declare war. Defining the enemy in an AUMF does not prevent our military from dealing with enemies that adapt or join the fight against us. There are significant downsides to leaving the enemy undefined; it feeds into the narrative that the United States is at war with Islam, undermines the support of our partners in the Middle East and Afghanistan, and extremist groups use it as a recruitment tool. It is prudent to clearly define the enemy, so that the authorization is properly tailored to the actual threat and the conflict that justifies using force.