

## Drafting an Effective Authorization for Use of Military Force

### 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 harbored al Qaeda before and after the attacks.

The 2001 AUMF is expressly limited to using force to prevent future acts of terrorism against the United States by the entities responsible for 9/11.<sup>2</sup>

Yet since its passage, 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 eight different countries around the world,<sup>4</sup> including against associated forces and successor entities of those responsible for 9/11.

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 limits the ability of Congress to conduct meaningful oversight of military operations and the foreign affairs of the United States.<sup>5</sup>

Some have argued that any new AUMF should not include constraints on time or geography and that the authorization should be as broad as possible to cover threats that may materialize at a later date. This approach would not only cede Congress’ constitutional power over declaring war to the president, it would be inconsistent with over two hundred years of congressional practice in drafting AUMFs.

A comprehensive analysis of congressional force authorizations going back to 1790 shows that Congress has included geographic limitations in 56 percent of AUMFs (19 total); restricted permissible military operations 37 percent of the time (13 total);

<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/>.

and included a sunset provision in 29 percent of AUMFs (10 total).<sup>6</sup>

Supreme Court precedent, dating back to 1800, confirms Congress' power to restrict the scope of force authorizations. In *Bas v. Tingy*, the Court held that Congress could authorize wars that were "limited as to places, persons, and things."<sup>7</sup>

Congress has continued to include limits in AUMFs, with more recent examples including the 1983 AUMF for Lebanon and the 1993 AUMF for Somalia, which both limited the type of operations permitted, the location where force could be used, and set an expiration date.

## 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 undermines 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 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 United States has long been a global leader on human rights, leveraging its example to influence other nations to improve their own human rights records. The United States has rightly criticized other nations for improperly invoking wartime authorities in the name of national security. But the ability of the United States to level this criticism effectively demands that it demonstrate that its own use of wartime authorities is lawful and appropriate.

Continued reliance on ill-defined authorities or questionable legal theories that enable the use of wartime authorities outside the lawful boundaries of war not only harms U.S. leadership on human rights, but U.S. national security as well.

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. As a result of doubts about the lawfulness or legitimacy of U.S. actions or policies, allies and partners withhold critical cooperation, consent, and intelligence information. Local populations also turn against the United States, fueling terrorist recruitment and propaganda and increasing attacks against U.S. and allied forces.

Assuring U.S. allies, counterterrorism partners, and local populations that the United States respects human rights and the rule of law—including important limits on where, when, and against whom wartime authorities may be employed—will improve cooperation, undermine terrorist recruitment and propaganda, and reduce attacks against U.S. forces.

Putting the country on a new course is also needed to ensure that the United States does not set dangerous precedents that are detrimental to its long-term interests. The policies, practices, and legal justifications used by the United States today will be used by other states tomorrow. 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—embolden other states to use such practices. Constraining the use of these exceptional authorities to circumstances meeting the legal threshold for armed conflict and to where their use is militarily necessary, 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

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<sup>6</sup> See Appendix 1, [http://nsnetwork.org/cms/assets/uploads/2014/08/ENDING-THE-ENDLESS-WAR\\_2.2015-UPDATE.pdf](http://nsnetwork.org/cms/assets/uploads/2014/08/ENDING-THE-ENDLESS-WAR_2.2015-UPDATE.pdf).

<sup>7</sup> *Bas v. Tingy* 4 U.S. (4 Dall) 37, 40 (Justice Chase) and 43 (Justice Washington) available at <http://caselaw.findlaw.com/us-supreme-court/4/37.html>.

diplomatic, law enforcement, and intelligence resources to mitigate the threat of terrorism. And ultimately, partner nations in which terrorist threats reside must take the lead to address those threats head on, and effectively, with the support of the United States. The United States also retains the authority to act in self-defense, including using military force, when there is an imminent threat that cannot be addressed through other means. Wartime authorities such as an AUMF are not necessary to take such action.

By tailoring congressional war authorizations to the conflicts to which they are intended to apply and conducting regular oversight of war, Congress provides a crucial check on the executive branch, ensuring that presidents do not stretch wartime killing, detention, and trial authorities beyond the bounds of armed conflicts authorized by Congress.

## 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 decade and a half by including the following elements. These elements have garnered bipartisan support<sup>8</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 the success of the mission:

- ☑ **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.**

There are many ways these fundamental elements can be incorporated into a new AUMF. This issue brief discusses each of the elements, along with background information, analysis of the most prominent ISIS AUMF proposals, and examples of suggested language for including these elements in a new AUMF.

In the final section of this issue brief we assess the most prominent ISIS AUMF proposals against this standard. The proposals included in this analysis are those by Representative Eliot Engel (D-NY);<sup>9</sup> Senators Tim Kaine (D-VA) and Jeff Flake (R-AZ);<sup>10</sup> Representative Adam Schiff (D-CA);<sup>11</sup> Senator Todd Young (R-IN) (which is the same as Representative Jim Banks' (R-IN) proposal);<sup>12</sup> Senate Majority Leader Mitch McConnell (R-KY) (which is the same as Senator Lindsey Graham's (R-SC) proposal);<sup>13</sup> the Senate Foreign Relations Committee's 2014 proposal;<sup>14</sup> the Obama Administration's proposal;<sup>15</sup> and the proposal published on *Lawfare* co-authored

<sup>8</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-content/uploads/2014/11/ISIL-AUMF-Statement-FINAL.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>.

<sup>9</sup> [https://www.justsecurity.org/wp-content/uploads/2017/06/ENGEL\\_Discussion-Draft-AUMF-2017.pdf](https://www.justsecurity.org/wp-content/uploads/2017/06/ENGEL_Discussion-Draft-AUMF-2017.pdf).

<sup>10</sup> <https://www.congress.gov/115/bills/sjres43/BILLS-115sjres43is.pdf>.

<sup>11</sup> <https://www.congress.gov/115/bills/hjres100/BILLS-115hjres100ih.pdf>.

<sup>12</sup> <https://www.congress.gov/115/bills/sjres31/BILLS-115sjres31is.pdf>.

<sup>13</sup> <https://www.congress.gov/114/bills/sjres29/BILLS-114sjres29pcs.pdf>.

<sup>14</sup> <https://www.govtrack.us/congress/bills/113/sjres47>.

<sup>15</sup> [https://obamawhitehouse.archives.gov/sites/default/files/docs/aumf\\_02112015.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/aumf_02112015.pdf).

by Benjamin Wittes, Robert Chesney, Jack Goldsmith, and Matthew Waxman.<sup>16</sup>

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<sup>16</sup> <https://www.lawfareblog.com/draft-aumf-get-discussion-going>.

## 1. Specify the Enemy and the Mission Objectives

### Background

Specifying the group(s) against which force is authorized and the objectives, or purpose, for authorizing force and where, prevents the executive branch from overstepping Congress' intent behind the AUMF. The 2001 AUMF<sup>17</sup> was passed to authorize force against those responsible for the 9/11 attacks—namely al Qaeda and the Taliban. Congress had earlier rejected a broader AUMF proposed by the Bush Administration that was not tied to the perpetrators of the 9/11 attacks.<sup>18</sup> Members of Congress on both sides of the aisle explicitly stated that the 2001 AUMF was intended to be limited to those who attacked the United States on 9/11.<sup>19</sup> For example, Rep. Lamar Smith (R-TX) said: “The resolution limits the President to using force only against those responsible for the terrorist attacks last Tuesday”;<sup>20</sup> and Rep. Jan Schakowsky (D-IL) said: “This resolution has been carefully drafted to restrict our response to those we know to be responsible for this atrocity.”<sup>21</sup>

However, the 2001 AUMF did not explicitly name these groups, referring instead to those who “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 or harbored such organizations or persons.”

This lack of specificity coupled with the failure to include reporting requirements<sup>22</sup> or a sunset provision<sup>23</sup> allowed the executive branch to expand the scope of the 2001 AUMF to groups and locations that Congress did not intend. Any new AUMF should correct these deficiencies by being clear about who the enemy is and what the mission objective, or purpose, is for authorizing force.

#### Drafting a provision authorizing force against a specific enemy, for a specific purpose

An effective AUMF should include a provision that specifies the purpose or objective for authorizing force and then connects that purpose with a specified enemy. For example:

**“The President is authorized to use necessary and appropriate force to protect the national security of the United States against [insert named group(s)].”**

Section 3(a)(1) of Representative Eliot Engel's (D-NY) proposal and section 2 of Representative Adam Schiff's (D-CA) proposal authorize force against a specific enemy for a clear purpose. Other proposals are clear about either the purpose for which force is being authorized or the enemy but not both. For example, section 2 of the proposal from Senate Majority Leader Mitch McConnell (R-KY) and Senator Lindsey Graham (R-SC) has a clear

<sup>17</sup> <https://www.congress.gov/107/plaws/publ40/PLAW-107publ40.pdf>.

<sup>18</sup> [https://www.buzzfeed.com/gregoryjohnsen/60-words-and-a-war-without-end-the-untold-story-of-the-most?utm\\_term=.gn5qMp02d#.odxa6LQoE](https://www.buzzfeed.com/gregoryjohnsen/60-words-and-a-war-without-end-the-untold-story-of-the-most?utm_term=.gn5qMp02d#.odxa6LQoE).

<sup>19</sup> <https://www.justsecurity.org/40549/isis-aumf-now-next-important/>.

<sup>20</sup> [http://avalon.law.yale.edu/sept11/house\\_proc\\_091401.asp](http://avalon.law.yale.edu/sept11/house_proc_091401.asp).

<sup>21</sup> *Id.*

<sup>22</sup> See section 2 of this issue brief, Reporting Requirements.

<sup>23</sup> See section 5 of this issue brief, Sunset Clause.

purpose but does not clearly specify the enemy. Section 3(a) of the AUMF proposal from Senators Tim Kaine (D-VA) and Jeff Flake (R-AZ) clearly specifies the enemy but does not connect the named enemies with the purpose of the authorization.

### ■ Specifying the enemy

Explicitly stating the groups against which force is being authorized in any new AUMF will ensure that congressional intent cannot be overridden by subsequent executive branch interpretation. If Congress wishes to authorize force against other groups that are “associated forces” of a named enemy, the AUMF should define this term to include only those groups who are a party to the armed conflict and therefore subject to engagement under the laws of war.<sup>24</sup>

Some have expressed concerns that an AUMF should not tie the president’s hands or prevent the president from responding with force to emerging threats or unknown enemies. However, pre-emptively authorizing force against groups that do not pose a threat to the United States is both an unconstitutional delegation of congressional war powers<sup>25</sup> and unnecessary for national security. The president has authority under Article II of the Constitution and Article 51 of the U.N. Charter to target groups that are currently unknown, but in the future pose an imminent threat to the United States.

Failing to properly define the enemy also feeds into the narrative that the United States is at war with Islam. This undermines the support of our allies and partners on the ground, and provides a powerful recruitment tool for extremist groups.

### ■ Specifying the mission

Specifying clear mission objectives in an AUMF helps prevent the executive branch from using the authorization beyond what Congress intended. Mission objectives also discourage mission creep and guard against using the authorization to justify perpetual armed conflict, as the AUMF will expire when the purpose for which force was authorized is achieved.

Perpetual war erodes the important line between war and peace, which undermines human rights protections around the world. Wartime authorities can confer extraordinary powers on the president. They allow actions that would otherwise be egregious human rights violations, such as killing as a first resort, proportionate civilian harm, military trials, and detention without charge or trial. Using wartime powers outside of war threatens fundamental human rights protections delegitimizes the mission, and damages U.S. efforts to win hearts and minds, resulting in significant strategic costs.

### ☑ Defining “Associated Forces”

Several congressional proposals for the AUMF against ISIS have included the authorization to target not just ISIS but also “associated forces” of ISIS and other persons or organizations that have some connection to ISIS.<sup>26</sup> The Obama Administration further expanded the Bush Administration’s theory of associated forces<sup>27</sup> to expand the reach of the 2001 AUMF without going back to Congress for approval to fight new groups.<sup>28</sup> The term “associated forces” does not appear in the

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<sup>24</sup> For specific guidance on how to define “associated forces,” see Section 1 of this issue brief, Specify the Enemy and the Mission Objectives, which has a subsection on Defining “Associated Forces.”

<sup>25</sup>[http://www.constitutionproject.org/pdf/War\\_Powers\\_Deciding\\_To\\_Use\\_Force\\_Abroad1.pdf](http://www.constitutionproject.org/pdf/War_Powers_Deciding_To_Use_Force_Abroad1.pdf), p. 42.

<sup>26</sup> See the Summary of ISIS AUMF Proposals at the end of this issue brief.

<sup>27</sup> <https://fas.org/man/eprint/frameworks.pdf>, p. 4.

<sup>28</sup> <http://foreignpolicy.com/2015/02/12/obamas-forever-war-starts-now-aumf-isis-islamic-state/>.



2001 AUMF itself.<sup>29</sup> That law authorized force only against those who attacked the United States on 9/11 and those who harbored them—al Qaeda and the Taliban. By stretching the 2001 AUMF to apply to associated forces, it is now being used 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 against associated forces of a named group, it should also define that term.<sup>30</sup> 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.

■ **Defining “associated forces” in accordance with the laws of war**

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 and continues to be engaged in active hostilities against the United States alongside [insert named enemies], respectively, as a party to an ongoing armed conflict with the United States.”**

■ **The president’s Article II authority to defend against sudden attacks**

Some ISIS AUMF proposals suggest authorizing force against associated forces without defining that term or have defined it broadly to include groups who are not currently fighting the United States but may become a threat at some point in the future.<sup>31</sup> 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.”<sup>32</sup> Some have argued that an AUMF must be flexible, so the president can continue to use force against groups who change their name or their allegiance, and to target groups who threaten the United States in the future. This is not the case. A good definition of associated forces, like the example above, will ensure that a group that is fighting the United States remains covered by the AUMF regardless of whether it changes its name or allegiance. Further, the president retains authority under Article II of the Constitution to use force in self-defense to respond to an attack or an imminent threat of attack<sup>33</sup> from a group that is not covered by an AUMF.

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<sup>29</sup> <https://www.govtrack.us/congress/bills/107/sjres23/text>.

<sup>30</sup> <https://www.lawfareblog.com/intellectual-not-political-aumf-consensus>. See also <https://www.justsecurity.org/wp-content/uploads/2014/11/ISIL-AUMF-Statement.pdf>.

<sup>31</sup> See e.g. proposal from Senate Majority Leader Mitch McConnell (R-KY) and Lindsey Graham (R-SC), which authorizes force against “associated forces, organizations, and persons, and

any successor organizations” The proposal does not define “associated forces” or “successor entities.”

<sup>32</sup> <https://www.lawfareblog.com/intellectual-not-political-aumf-consensus>.

<sup>33</sup> <http://www.humanrightsfirst.org/sites/default/files/Administration-Proposed-ISIL-AUMF.pdf>.

The president also has this power under Article 51 of the U.N. Charter.

### ■ **The problem with authorizing force against “successor entities”**

Some AUMF proposals, including the Obama Administration’s proposal,<sup>34</sup> suggest authorizing force against “successor entities” or “successor organizations.” These terms have attracted significant criticism from national security law experts, as they would excessively broaden the scope of an AUMF. As law professor and former Department of Defense special counsel to the general counsel Ryan Goodman said, “successor organization” is not a legal term and does not have a stable meaning in policy either.”<sup>35</sup> Goodman has noted that authorizing force against successor entities amounts to

“asking Congress to endorse [the Obama Administration] theory that looped the Islamic State under the 2001 AUMF as a ‘successor’ to al Qaeda.”<sup>36</sup> This “dangerous methodology” 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” or “successor organizations” would amount to a substantial delegation of congressional war powers to the president. ●

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<sup>34</sup>[https://obamawhitehouse.archives.gov/sites/default/files/docs/aumf\\_02112015.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/aumf_02112015.pdf).

<sup>35</sup> <https://www.justsecurity.org/40534/congress-add-successor-organizations-authorizing-war-isis/>.

<sup>36</sup> <http://foreignpolicy.com/2015/02/12/obamas-forever-war-starts-now-aumf-isis-islamic-state/>.



## 2. Reporting Requirements

### Background

Regular and specific reporting requirements promote democratic accountability, ensure compliance with domestic and international law, and enable Congress to fulfill its critical oversight function. Reporting requirements in an AUMF provide a critical safeguard against endless war and provide transparency that is crucial to maintaining legitimacy and support for the mission both at home and abroad.

#### **Regular reporting enables Congress to fulfill its constitutional war powers duties**

The Constitution vests the power to declare war in Congress. As stated in an expert report on war powers, “Congress does not complete its war powers duties by authorizing the use of force abroad.” Rather, Congress “should also conduct appropriate and regular oversight of the strategic use of force, monitor the domino domestic legal effects of the authorization, and, when appropriate, revise or rescind the authorization.”<sup>37</sup> The 2001 AUMF did not contain any reporting requirements and the 2002 Iraq AUMF only required the president to report on “matters relevant” under the resolution. With these minimal obligations, the executive branch did not publicly disclose all the groups the United States was fighting under those AUMF until 2015.<sup>38</sup> The lack of thorough and specific reporting

requirements in the 2001 and 2002 AUMFs has impeded Congress’ ability to fulfill its constitutional duty to oversee the longest war in U.S. history.

#### **Reporting requirements needed to keep Congress and the public informed**

To sufficiently keep Congress and the public informed of the scope and progress of the mission, any new AUMF should, at minimum, require the president to provide regular reports on:

- The groups considered covered under the AUMF;
- The numbers of civilians and military personnel killed on all sides of the conflict;
- The legal and factual basis for targeting particular groups; and
- The legal and factual basis for using force in countries other than Iraq and Syria.

Several AUMF proposals include other important reporting requirements. For example, sections 4, 5, and 12 of the AUMF from Senators Tim Kaine (D-VA) and Jeff Flake (R-AZ), sections 4 and 5 in the AUMF from Senator Todd Young (R-IN), and section 3 of the AUMF from Representative Adam Schiff (D-CA). ●

<sup>37</sup>[http://www.constitutionproject.org/pdf/War\\_Powers\\_Deciding\\_The\\_Use\\_of\\_Force\\_Abroad1.pdf](http://www.constitutionproject.org/pdf/War_Powers_Deciding_The_Use_of_Force_Abroad1.pdf).

<sup>38</sup> <https://www.defense.gov/News/Speeches/Speech-View/Article/606662/>.

### 3. Compliance with U.S. Obligations Under International Law

#### Background

The Supreme Court has long held that domestic statutes must not be interpreted to violate U.S. obligations under international law if any other possible interpretation exists. An explicit statement in any new AUMF that operations must only be carried out in compliance with U.S. international legal obligations would bolster global confidence in the United States as a nation that complies with the rule of law. It would enhance the legitimacy of the mission, aid in the effort to win hearts and minds, and encourage cooperation from allies and partners on the ground in the fight against ISIS.

#### Authorizing “necessary and appropriate force”

The Supreme Court held in *Hamdi v. Rumsfeld*<sup>39</sup> that the 2001 AUMF’s authorization for the president to use “necessary and appropriate force” required that this force comply with U.S. obligations under international law. As such, one way to ensure any new AUMF requires compliance with these obligations is to authorize the use of “necessary and appropriate force.” For example:

“The President is authorized to use necessary and appropriate force to [insert mission objectives]<sup>40</sup> against [insert named group(s)].”

#### Drafting a provision that requires explicit compliance with U.S. international legal obligations

A separate provision that explicitly requires compliance with U.S. obligations under international law would go one step further to demonstrate, both at home and abroad, that the United States is committed to these legal obligations, including under the U.N. Charter, international human rights law, and the law of armed conflict where applicable. It would underscore that when Congress authorizes the use of force, the president is required to abide by both the terms of the AUMF and the international legal obligations of the United States. For example:

“The authorization of force in [insert section of the AUMF that authorizes the use of force] may only be exercised consistent with the United States’ obligations under international law.”

<sup>39</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

<sup>40</sup> See Section 1 of this issue brief, Clearly Specify the Enemy and the Mission Objectives.

## 4. Supersession/Sole Source of Authority Provision

### Background

The executive branch has claimed that existing AUMFs—namely the 2001 AUMF (authorizing force against al Qaeda and the Taliban) and 2002 AUMF (authorizing force against the Saddam Hussein regime)—already provide sufficient congressional authorization for the president to fight ISIS.<sup>41</sup> This was first articulated in 2014, after the United States returned to Iraq and began using force against ISIS.

Before the administration made this claim, national security law experts believed that ongoing military operations would require Congress to pass a new ISIS-specific AUMF.<sup>42</sup> While ISIS had once been an ally of al Qaeda, the two groups had since split and were then fighting against each other. The Obama Administration justified including ISIS under existing AUMFs by saying that ISIS had essentially become the new al Qaeda as “some al Qaeda operatives ... believe ISIL is the true inheritor of Osama bin Laden’s legacy.”<sup>43</sup>

Given the executive branch’s assertion that existing AUMFs already authorize the use of force against ISIS, if a new ISIS-specific AUMF does not repeal the 2001 and 2002 AUMFs, it should make it clear that the ISIS AUMF is the sole source of authority to use force against ISIS. Without language clarifying that the ISIS AUMF supersedes the 2001 and 2002

AUMFs, a new authorization could expand and confuse the administration’s war-making powers, rather than clarify them. As law professor Jennifer Daskal said in congressional testimony, failing to include such a provision “opens up the possibility of a future executive relying on the 2001 AUMF as an end run around any restriction in an ISIL-specific AUMF it doesn’t like.”<sup>44</sup>

### Drafting a supersession provision

An effective supersession provision should clearly state that:

- Only the new ISIS AUMF provides statutory authority to use force against ISIS; and
- The new ISIS AUMF supersedes any other statutory authority to use force against ISIS.

For example:

**“Notwithstanding any other provision of law, section [insert section of the AUMF that authorizes the use of force] shall henceforth supersede any preceding statutory authorization for the use of military force with respect to ISIS.”**

Such a provision would ensure that existing AUMFs could not be used to disregard congressional intent and circumvent the requirements of a new authorization. ●

<sup>41</sup> <https://fas.org/man/eprint/frameworks.pdf>.

<sup>42</sup> <https://www.justsecurity.org/40549/isis-aumf-now-next-important/>.

<sup>43</sup> <https://obamawhitehouse.archives.gov/the-press-office/2014/09/11/press-briefing-press-secretary-josh-earnest-9112014>.

<sup>44</sup> <https://www.justsecurity.org/21220/sunsets-supersession-alternatives-another-cpc/>.

## 5. Sunset Clause

### Background

Sunset clauses have been included in nearly one-third of prior AUMFs.<sup>45</sup> These provisions set a future date for Congress and the executive branch to reexamine the AUMF in light of more recent conditions and, if necessary, reauthorize and refine the legislation to suit those conditions. One of the most significant shortfalls of the 2001 AUMF was its lack of a sunset clause to bring Congress and the administration back to the table and prevent the executive branch's unilateral expansion of the scope of the 2001 AUMF to groups and locations never intended by those who voted for it.

Bipartisan national security law experts recommend including a sunset clause in any new ISIS AUMF.<sup>46</sup> These experts also call for the 2001 AUMF to be sunset to mandate a review by Congress and the executive branch to determine the appropriate scope of war authorities to fight al Qaeda, the Taliban, and "associated forces."<sup>47</sup>

Sunsets are responsible mechanisms of congressional oversight that strengthen our democracy. Including a sunset in any new ISIS AUMF provides an opportunity for Congress to

exercise its war powers and weigh in on the scope and progress of the longest war in U.S. history.

Several ISIS AUMF proposals include sunsets for both the ISIS AUMF and the 2001 AUMF. The proposal from Representative Engel (D-NY) amends the 2001 AUMF to explicitly authorize force against ISIS, and sunsets the authorization after three years. The proposals from Senators Tim Kaine (D-VA) and Jeff Flake (R-AZ), Representative Adam Schiff (D-CA), and the proposal published in *Lawfare* by national security law experts fold the 2001 AUMF into a new AUMF that targets ISIS, al Qaeda, the Taliban, and "associated" forces. This "consolidated" AUMF then sunsets after a set period. The Kaine/Flake proposal sunsets after five years, with an expedited reauthorization procedure for a further five years. The Schiff and *Lawfare* proposals sunset after three years.

#### Many prior AUMFs have included sunsets

Sunset clauses have been included in 10 prior AUMFs—almost a third of the total number of AUMFs.<sup>48</sup> Examples include the 1983 AUMF for Lebanon (18 months) and the 1993 AUMF for Somalia (approximately 5 months).

<sup>45</sup> See [http://nsnetwork.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR\\_2.2015-UPDATE.pdf](http://nsnetwork.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR_2.2015-UPDATE.pdf), p. 24-26.

<sup>46</sup> [https://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-77759fc1eacc\\_story.html?utm\\_term=.60400d8c3455](https://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-77759fc1eacc_story.html?utm_term=.60400d8c3455). See also <https://www.lawfareblog.com/intellectual-not-political-aumf-consensus>.

<sup>47</sup> *Id.* For more on the concept of "associated forces," including how to define this term in an AUMF, see Section 1 of this issue brief, *Specify the Enemy and the Mission Objectives*, which has subsection on *Defining "Associated Forces."*

<sup>48</sup> See [http://nsnetwork.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR\\_2.2015-UPDATE.pdf](http://nsnetwork.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR_2.2015-UPDATE.pdf), p. 24-26.

✓ **Other national security legislation includes sunsets**

Sunset clauses are included in several post-9/11 national security statutes, including provisions of the USA PATRIOT Act<sup>49</sup> and of the Foreign Intelligence Surveillance Act (“FISA”) Amendments Act.<sup>50</sup> Congress has proved itself capable of renewing these authorizations—with important revisions—on numerous occasions.

✓ **Sunsets do not tell the enemy when the United States will end combat operations**

An AUMF sunset does not set an arbitrary deadline of U.S. involvement in war, tell the enemy when military operations will end, or allow the enemy to bide their time until the authorization expires. An AUMF sunset is a forcing mechanism for a conversation between Congress and the executive branch 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 or refined to suit changed circumstances.

In congressional testimony, law professor Bobby Chesney said that sunsets were “highly desirable as

a matter of democratic accountability.”<sup>51</sup> Former secretary of defense Ash Carter called a three-year sunset a “sensible and principled” provision, notwithstanding that the conflict may last longer than three years.<sup>52</sup> And former Department of Defense general counsel Stephen Preston said that a “properly structured” sunset provision with “some mechanism for renewing the authority in advance of the sunset” would not serve as an end date for the conflict but rather would signal to our partners and adversaries that we are “committed to our democratic institutions and we have set up a mechanism to fight this fight as long as we have to fight the fight.”<sup>53</sup>

✓ **Sunsets do not deprive the president of the authority to target new threats**

Setting a sunset date for either existing AUMFs or a new ISIS AUMF would have no effect on the lethal authority the president already has to respond, with force, to new threats. The president has inherent authority under Article II of the Constitution to use force in self-defense against emerging groups that either attack or pose an imminent threat of attack to the United States. The president also has this power under Article 51 of the U.N. Charter. ●

<sup>49</sup> <http://thehill.com/policy/national-security/243850-obama-signs-nsa-bill-renewing-patriot-act-powers>.

<sup>50</sup> <http://www.politico.com/story/2012/12/congress-extends-foreign-surveillance-law-085563>.

<sup>51</sup> <http://docs.house.gov/meetings/AS/AS00/20150226/103019/HH-RG-114-AS00-Wstate-ChesneyR-20150226.pdf>.

<sup>52</sup> <https://www.defense.gov/News/Speeches/Article/606652/>.

<sup>53</sup> <https://www.justsecurity.org/40601/2-points-stephen-preston-congressional-war-authorization-isis/>.

## Summary of ISIS AUMF Proposals

There have been many calls for Congress to pass an AUMF against ISIS,<sup>54</sup> and several members of Congress have released AUMF proposals. To ensure that the United States is empowered to counter the terrorist threat while upholding the rule of law and maintaining global legitimacy, Human Rights First recommends that any authorization to use force against ISIS include the following elements. These elements have garnered bipartisan support<sup>55</sup> and articulate a prudent approach to drafting an effective ISIS AUMF:

- ✓ **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**

This summary chart shows the extent to which the most prominent ISIS AUMF proposals are in line with these recommendations. The proposals included are from: Representative Eliot Engel (D-NY);<sup>56</sup> Senators Tim Kaine (D-VA) and Jeff Flake (R-AZ);<sup>57</sup> Representative Adam Schiff (D-CA);<sup>58</sup> Senator Todd Young (R-IN) (which is the same as Representative Jim Banks' (R-IN) proposal);<sup>59</sup> Senate Majority Leader Mitch McConnell (R-KY) (which is the same as Senator Lindsey Graham's (R-SC) proposal);<sup>60</sup> the Senate Foreign Relations Committee's 2014 proposal;<sup>61</sup> the Obama Administration's proposal;<sup>62</sup> and the proposal published on the *Lawfare* blog and co-authored by Benjamin Wittes, Robert Chesney, Jack Goldsmith,

<sup>54</sup> See e.g. <http://www.politico.com/story/2017/05/25/trump-military-powers-senate-response-238817>; [http://www.realcleardefense.com/articles/2017/03/02/time\\_to\\_pass\\_an\\_aumf\\_targeting\\_isis\\_110889.html](http://www.realcleardefense.com/articles/2017/03/02/time_to_pass_an_aumf_targeting_isis_110889.html); <http://www.cnn.com/2017/04/27/politics/adam-schiff-isis-war-authorization-aumf/index.html>.

<sup>55</sup> [https://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-77759fc1eacc\\_story.html](https://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-77759fc1eacc_story.html); <https://www.lawfareblog.com/hasc-testimony-towards-better-aumf>; <https://www.lawfareblog.com/intellectual-not-political-aumf-consensus>; <https://www.justsecurity.org/wp-content/uploads/2014/11/ISIS-AUMF-Statement-FINAL.pdf>.

<sup>56</sup> [https://www.justsecurity.org/wp-content/uploads/2017/06/ENGEL\\_Discussion-Draft-AUMF-2017.pdf](https://www.justsecurity.org/wp-content/uploads/2017/06/ENGEL_Discussion-Draft-AUMF-2017.pdf).

<sup>57</sup> <https://www.congress.gov/115/bills/sjres43/BILLS-115sjres43is.pdf>.

<sup>58</sup> <https://www.congress.gov/115/bills/hjres100/BILLS-115hjres100ih.pdf>.

<sup>59</sup> <https://www.congress.gov/115/bills/sjres31/BILLS-115sjres31is.pdf>.

<sup>60</sup> <https://www.congress.gov/114/bills/sjres29/BILLS-114sjres29pcs.pdf>.

<sup>61</sup> <https://www.govtrack.us/congress/bills/113/sjres47>.

<sup>62</sup> [https://obamawhitehouse.archives.gov/sites/default/files/docs/aumf\\_02112015.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/aumf_02112015.pdf).



and Matthew Waxman.<sup>63</sup> A detailed chart of each proposal follows.

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<sup>63</sup> <https://www.lawfareblog.com/draft-aumf-get-discussion-going>.

## Overview

### Key

- Green** Satisfactory
- Red** Unsatisfactory
- Orange** Requires modification
- Grey** Not specified

	Clearly Defined Enemy	Mission Objectives	Reporting Requirements	Compliance with International Law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<b>Engel</b>	Yes. Authorizes force against ISIS and “associated forces.” Clear definition of “associated forces”	Yes	Robust and frequent but should be stronger	Yes, includes explicit statement	Yes	Yes, 3 years	Yes, 3 years
<b>Flake/Kaine</b>	Yes. Authorizes force against ISIS, al Qaeda, the Taliban, and “associated persons or forces.” Clear definition of “associated persons or forces”	Should be more clear	Robust and frequent but should be stronger	Yes, but should be more explicit	Not required (see details)	Yes, 5 years but includes provision to re-enact for further 5-years with no changes	Yes, 5 years but includes provision to re-enact for further 5-years with no changes
<b>Schiff</b>	Yes. Authorizes force against ISIS, al Qaeda, the Afghan Taliban, and “associated forces.” Clear definition of “associated forces”	Yes	Robust and frequent but should be stronger	Yes, but should be more explicit	Not required (see details)	Yes, 3 years	Yes, 3 years
<b>Young/Banks</b>	No. Authorizes force against “associated forces” and “successor organizations” of ISIS, al Qaeda, and the Taliban. Does not define “associated forces”	No, but requires the president to provide “strategic and operational objectives”	Robust one-time reporting, insufficient regular reporting	Yes, but should be more explicit	Not required (see details)	No	No

	Clearly Defined Enemy	Mission Objectives	Reporting Requirements	Compliance with International Law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<b>Coffman/ Gallego/ Bacon/ Panetta</b>	Requires clarification. Authorizes force against al Qaeda, the Taliban, ISIS, and “persons” that substantially support them in hostilities against the United States. Unclear if this includes “associated forces” currently being targeted	Yes	Frequent but insufficient	Yes, but should be more explicit	Not required (see details)	Yes, 5 years	Yes, de facto 5-year sunset
<b>McConnell/ Graham</b>	No. Authorizes force against ISIS and “associated forces, organizations, and persons” and “successor organizations.” Does not define “associated forces”	Yes	Frequent but insufficient	Yes, but should be more explicit	No	No	No
<b>Senate Foreign Relations Committee</b>	No. Authorizes force against ISIS and “associated forces” but defines this too broadly, including a “closely-related successor entity”	No, but requires president to provide “military objectives”	Robust one-time reporting, insufficient regular reporting	Yes, but should be more clear and explicit	Yes	Yes, 3 years	Yes, 3 years

	Clearly Defined Enemy	Mission Objectives	Reporting Requirements	Compliance with International Law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<b>Obama Admin</b>	No. Authorizes force against ISIS and “associated persons or forces” but defines this too broadly, including a “closely-related successor entity”	No	Frequent but insufficient	Yes, but should be more clear and explicit	No	Yes, 3 years	No
<b>Lawfare</b>	Requires clarification. Authorizes force against al Qaeda, the Afghan Taliban, ISIS and their “associated forces” but does not define this term	None, however several of the proposal’s authors argue in favor of mission objectives (see details)	Robust and frequent but should be stronger	Yes, includes explicit statement	Not required (see details)	Yes, 3 years	Yes, 3 years

Engel

Clearly Defined Target	Mission Objectives	Reporting requirements	Compliance with International Law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<p><b>Yes.</b></p> <p>Names ISIS and authorizes force against “associated forces” of ISIS.</p> <p>“Associated force” is defined as “an organized, armed group that has and continues to be engaged in active hostilities against the United States alongside al-Qaeda, the Taliban, or ISIL, respectively, as a party to an ongoing armed conflict with the United States.”</p>	<p><b>Yes</b></p> <p>“To protect the national security of the United States against the Islamic State of Iraq and the Levant (ISIL) and associated forces of ISIL.”</p>	<p><b>Robust and frequent but should be stronger</b></p> <p>Frequent reporting (every 6 months) on groups considered covered under the AUMF, civilian and combatant casualties, the geographic scope of operations, and legal basis for targeting particular groups.<sup>64</sup></p> <p><i>Would be strengthened by requiring reporting of the legal basis for the geographic scope of operations.</i></p>	<p><b>Yes</b></p> <p>“The authorities granted under this joint resolution shall not be exercised in any way that is inconsistent with the obligations of the United States under international law.”</p>	<p><b>Yes</b></p> <p>“Notwithstanding any other provision of law, this section shall supersede any other statutory authorization for the use of military force with respect to ISIL and associated forces of ISIL.”</p>	<p><b>Yes</b></p> <p>3 years.</p> <p>This AUMF is structured as an amendment to the 2001 AUMF. The amendment sunsets the 2001 AUMF and the new authorization of force against ISIS in 3 years.</p>	<p><b>Yes</b></p> <p>3 years.</p> <p>This AUMF is structured as an amendment to the 2001 AUMF. The amendment sunsets the 2001 AUMF in 3 years.</p>

<sup>64</sup> The president must provide, every six months: A list of associated forces of al Qaeda, the Taliban, and ISIS, including the legal and factual basis for designating these groups as associated forces; an intelligence assessment of the risk to the United States posed by al Qaeda the Taliban, ISIS, and their respective associated forces; the geographic scope; the number of civilian casualties, the number of combatant casualties, and the total number of all casualties; methods used to limit civilian casualties; a description of humanitarian assistance and support provided for displaced civilian populations; actual and proposed contributions, including financing, equipment, training, troops, and logistical support, provided by coalition partners; a diplomatic, military, and development strategy for restoring governance and civil society; benchmarks for assessing progress toward political, diplomatic, and military objectives; and a description of the lessons learned. The president must also provide this information whenever the president uses force against any non-state terrorist actor pursuant to powers not provided in the AUMF.

## Flake/Kaine (2017)

Clearly Defined Enemy	Mission Objectives	Reporting requirements	Compliance with International Law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<p><b>Yes</b></p> <p>Names al Qaeda, the Taliban, ISIS, and authorizes force against “associated persons or forces.”</p> <p>“Associated persons or forces” are defined as “any person or force, other than a sovereign nation, that is a part of, or substantially supports al-Qaeda, the Taliban, or the Islamic State of Iraq and Syria; and is engaged in hostilities against the United States, its Armed Forces, or its other personnel.”</p>	<p><b>Should be more clear</b></p> <p>Authorizes force “to prevent any future acts of international terrorism against the United States.”</p> <p><i>This would be improved by specifying that the purpose is to prevent these future acts by al Qaeda, the Taliban, ISIS and their “associated persons or forces.”</i></p>	<p><b>Robust and frequent but should be stronger</b></p> <p>Requires the president report to Congress after 60 days on any groups or persons that force is being used against that have not previously been disclosed. The president must also notify Congress each time a new associated person or force is designated and every 90 days, must provide a list of “organizations, persons, or forces” targeted in the preceding 90-day period. Must also provide a “comprehensive strategy” after 90 days and updates on the implementation of that strategy every 180 days.<sup>65</sup></p> <p><i>Would be strengthened by also requiring reports on civilian and combatant casualties and explicitly requiring disclosure of legal basis for targeting particular groups or using force in countries other than Iraq, Syria or Afghanistan.</i></p>	<p><b>Yes, but should be more explicit</b></p> <p>Authorizes “necessary and appropriate” force.</p> <p><i>The Supreme Court held that this implies the use of force must comply with international law.<sup>66</sup> An explicit provision is preferable.</i></p>	<p><b>Not required</b></p> <p>Folds the 2001 AUMF (against al Qaeda and the Afghan Taliban) into a new AUMF and repeals both the 2001 AUMF and the 2002 Iraq AUMF. Therefore, there is no need to state that the ISIS AUMF supersedes any preexisting authorization to use force against ISIS.</p>	<p><b>Yes, but includes provision to re-enact for further 5 years with no changes.</b></p> <p>5-year sunset &amp; provision allowing AUMF to be re-authorized in its entirety for 5 more years via expedited procedure.</p> <p><i>Prevents Congress from making any necessary revisions to the AUMF to adjust for changed circumstances.</i></p>	<p><b>Yes, but includes provision to re-enact for further 5 years with no changes.</b></p> <p>De facto 5-year sunset from folding the 2001 AUMF into this new AUMF. Includes provision for AUMF to be re-authorized in its entirety for 5 more years via expedited procedure.</p> <p><i>Prevents Congress from revising the AUMF to adjust for changed circumstances.</i></p>

<sup>65</sup> Within 60 days, the president must Congress with a report specifying the persons or forces (other than al-Nusra Front (also known as Jabhat al-Nusra and Jabhat Fateh al-Sham), Khorasan Group, al-Qaeda in the Arabian Peninsula, and al-Shabaab, considered to be associated persons or forces under the AUMF as of the date of the enactment of the AUMF; Within 90 days, the president must provide a report on the “comprehensive strategy of the United States, encompassing military, economic, humanitarian, and diplomatic capabilities”; Every 180 days, the president must provide Congress with a report on the “current comprehensive assessment of the implementation of the strategy...including a description of the specific authorities relied upon for such actions; the persons and forces targeted by such actions; the nature and location of such actions; and an evaluation of the effectiveness of such actions”; Every 90 days, the president must provide a list of the “organizations, persons and forces against which operations were conducted under the [AUMF] during the 90-day period ending on the date of the report” and “a list of all foreign countries in which the United States conducted operations under the [AUMF] during such 90-day period.”

<sup>66</sup> See Section 3 of this issue brief, Compliance with U.S. Obligations Under International Law.



Schiff (2017)

Clearly Defined Target	Mission Objectives	Reporting Requirements	Compliance with International Law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<p><b>Clearly defined</b></p> <p>Names al Qaeda, ISIS, and the Afghan Taliban and authorizes force against “associated groups.” These must be “organized and armed group[s]” that are “co-belligerent with [al Qaeda, ISIL, or the Afghan Taliban] in hostilities against the United States.”</p>	<p><b>Yes</b></p> <p>“To protect the national security of the United States.”</p>	<p><b>Robust and frequent but should be stronger</b></p> <p>Frequent reporting (every 90 days) on targets and geographic scope; and “factual predicate” for designating new associated groups. Must also report if ground forces are deployed. May be submitted in classified form if “the President determines it is necessary to protect the national security of the United States.”<sup>67</sup> Must also be accompanied by “unclassified written findings to support such a determination.”</p> <p><i>Would be strengthened by also requiring reports on civilian and combatant casualties, mission progress, and legal basis for targeting particular groups or using force in countries other than Iraq, Syria or Afghanistan.</i></p>	<p><b>Yes but should be more explicit</b></p> <p>Authorizes “necessary and appropriate” force.</p> <p><i>The Supreme Court held that this implies the use of force must comply with international law.<sup>68</sup> An explicit provision is preferable.</i></p>	<p><b>Not required</b></p> <p>Folds the 2001 AUMF (against al Qaeda and the Afghan Taliban) into this new “consolidated” AUMF and repeals both the 2001 AUMF and the 2002 Iraq AUMF. Therefore, there is no need to state that the ISIS AUMF supersedes any preexisting congressional authorization to use force against ISIS.</p>	<p><b>Yes</b></p> <p>3 years</p>	<p><b>Yes</b></p> <p>3-year sunset from folding the 2001 AUMF into the ISIS AUMF.</p>

<sup>67</sup> **Targets & locations:** Report every 90 days to “appropriate congressional committees” and publish in Federal Register “a list of entities and organized and armed groups against which” force has been used and the geographic location where force has been used; **Associated groups:** If force is used against an organized armed group that is a co-belligerent of al Qaeda, ISIS, or the Afghan Taliban, the President must provide the “appropriate congressional committees” a summary of the factual predicate for concluding a group is associated and co-belligerent with al Qaeda, ISIS, or the Afghan Taliban. **Ground forces in a combat role:** If “ground forces in a combat role” are deployed, notify “appropriate congressional committees at the earliest possible date after such deployment consistent with the national security interests of the United States.”

<sup>68</sup> See Section 3 of this issue brief, Compliance with U.S. Obligations Under International Law.

## Young/Banks

Clearly Defined Target	Mission Objectives	Reporting Requirements	Compliance with International Law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<p><b>Not clearly defined</b></p> <p>Names al Qaeda, the Taliban, and ISIS but authorizes force against “associated forces” and “successor organizations.” Does not define either of these terms.</p> <p><i>The term “associated forces” should be carefully defined to prevent this or a future president interpreting the AUMF to apply to groups that Congress did not intend to authorize force against.</i></p> <p><i>The AUMF should not authorize force against “successor entities.” This would amount to a substantial delegation of congressional war powers, greatly expanding the scope of the AUMF.<sup>69</sup></i></p>	<p><b>No, but requires the president to provide</b></p> <p>Requires the president to submit “strategic and operational objectives” within 30 days.</p>	<p><b>Frequent but insufficient</b></p> <p>Frequent reporting (every 60 days) but vague requirement to report on “matters relevant” under the AUMF. Robust one-time “comprehensive strategy” required 30 days after enactment.<sup>70</sup></p> <p><i>Would be strengthened by requiring regular reporting on groups considered covered under the AUMF, civilian and combatant casualties, and legal basis for targeting particular groups or using force in countries other than Iraq, Syria, or Afghanistan.</i></p>	<p><b>Yes, but should be more explicit</b></p> <p>Authorizes the President to use all “necessary and appropriate” force.</p> <p><i>The Supreme Court held that this implies the use of force must comply with international law.<sup>71</sup> An explicit provision is preferable.</i></p>	<p><b>Not required</b></p> <p>Folds the 2001 AUMF (against al Qaeda and the Afghan Taliban) into this new “consolidated” AUMF and repeals both the 2001 AUMF and the 2002 Iraq AUMF. Therefore, there is no need to state that the ISIS AUMF supersedes any preexisting congressional authorization to use force against ISIS.</p>	<p><b>No</b></p>	<p><b>No</b></p> <p>Folds the 2001 AUMF into a new “consolidated” AUMF that does not include a sunset.</p>

<sup>69</sup> See Section 1 of this issue brief, Specify the Enemy and the Mission Objectives, which has subsection on Defining “Associated Forces” and the problem with authorizing force against “successor entities.”

<sup>70</sup> The one-time comprehensive strategy requires the president to report on the U.S. national security interests threatened by ISIS; strategic and operational objectives; milestones for assessing progress; risks for the strategy; public diplomacy, information operations, and cyber strategies to isolate and delegitimize ISIS; actual and proposed contributions of coalition partners; humanitarian assistance and support for displaced civilian populations; mechanisms to cut off or seize ISIS’ financial support; plans for countering the international travel of ISIS terrorists; plans for the law of war detention and interrogation of ISIS combatants; plans for sustainable governance and security in areas retaken from ISIS; an end state and exit strategy for any U.S. ground troops; an estimate of the costs of carrying out the strategy; and plans to inform periodically the people of the United States about the campaign to defeat ISIS.

<sup>71</sup> See Section 3 of this issue brief, Compliance with U.S. Obligations Under International Law.

Coffman/Gallego/Bacon/Panetta

Clearly Defined Target	Mission Objectives	Reporting Requirements	Compliance with International Law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<p><b>Requires clarification</b></p> <p>ISIS, al Qaeda, the Taliban, and any “person” that is a “part of, or substantially supports” them, and has engaged in hostilities against the United State.</p> <p><i>Should more clearly specify who is covered.</i></p> <p><i>Unclear if other groups currently being targeted are included.</i></p>	<p><b>Yes</b></p> <p>“To prevent any future acts of international terrorism against the United States by ISIS, al Qaeda, the Taliban,” and any person who is “part of, or substantially supports” them, and has engaged in hostilities against the United States.</p> <p><i>Clear and specific, yet flexible mission objective.</i></p>	<p><b>Frequent but insufficient</b></p> <p>Frequent reporting (within 60 days, with updates every 90 days thereafter) but vague requirement to report on “action taken” under the AUMF.</p> <p><i>“Action taken” is too vague. The reporting requirement should specify the information required, including reports on civilian and combatant casualties.</i></p> <p><i>It should also explicitly require the legal basis for targeting particular groups or using force in countries other than Iraq, Syria, or Afghanistan.</i></p>	<p><b>Yes but should be more explicit</b></p> <p>Authorizes the President to use all “necessary and appropriate” force.</p> <p><i>The Supreme Court held that this implies the use of force must comply with international law. An explicit provision is preferable.<sup>72</sup></i></p>	<p><b>Not required</b></p> <p>Folds the 2001 AUMF (against al Qaeda and the Afghan Taliban) into this new “consolidated” AUMF and repeals both the 2001 AUMF and the 2002 Iraq AUMF.</p> <p><i>Therefore, there is no need to state that the ISIS AUMF supersedes any preexisting congressional authorization to use force against ISIS.</i></p>	<p><b>Yes</b></p> <p>5 years</p>	<p><b>Yes</b></p> <p>De facto 5-year sunset from folding the 2001 AUMF into the ISIS AUMF.</p>

<sup>72</sup> See Section 3 of this issue brief, Compliance with U.S. Obligations Under International Law.

## McConnell/Graham

Clearly Defined Target	Mission Objectives	Reporting Requirements	Compliance with international law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<p><b>Not clearly defined</b></p> <p>Names ISIS but also authorizes force against “associated forces” and “successor entities.” Does not define “associated forces.”</p> <p><i>The term “associated forces” should be carefully defined to prevent this or a future president interpreting the AUMF to apply to groups that Congress did not intend to authorize force against.</i></p> <p><i>The AUMF should not authorize force against “successor entities.” This would amount to a substantial delegation of congressional war powers, greatly expanding the scope of the AUMF.<sup>73</sup></i></p>	<p><b>Yes</b></p> <p>“To defend the national security of the United States against the continuing threat posed by [ISIS], its associated forces, organizations, and persons, and any successor entities.”</p>	<p><b>Frequent but Insufficient</b></p> <p>Frequent reporting (every 60 days) but very vague requirement to report only on “matters relevant” under the AUMF.<sup>74</sup></p> <p><i>This is insufficient to keep Congress and the public informed.</i></p>	<p><b>Yes but should be more explicit</b></p> <p>Authorizes “necessary and appropriate” force.</p> <p><i>The Supreme Court held that this implies the use of force must comply with international law. An explicit provision is preferable.<sup>75</sup></i></p>	<b>No</b>	<b>No</b>	<b>No</b>

<sup>73</sup> See Section 1 of this issue brief, Specify the Enemy and the Mission Objectives, which has subsection on Defining “Associated Forces” and the problem with authorizing force against “successor entities.”

<sup>74</sup> Report to Congress “not less frequently than once every 60 days ... on matters relevant to this joint resolution, including actions taken pursuant to the exercise of authority granted in section 2.”

<sup>75</sup> See Section 3 of this issue brief, Compliance with U.S. Obligations Under International Law.

Senate Foreign Relations Committee

Clearly Defined Target	Mission Objectives	Reporting Requirements	Compliance with International law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<p><b>Not clearly defined</b></p> <p>Names ISIS but also authorizes force against “associated persons or forces.” The definition of this term is too broad and includes the ambiguous term “closely-related successor entity.”</p> <p><i>The term “associated forces” should be carefully defined to prevent this or a future president interpreting the AUMF to apply to groups that Congress did not intend to authorize force against. The AUMF should not authorize force against “successor entities.” This would amount to a substantial delegation of congressional war powers, greatly expanding the scope of the AUMF.<sup>76</sup></i></p>	<p><b>No but requires the president to provide</b></p> <p>Requires the president to provide mission objectives 30 days after the enactment of the AUMF.</p>	<p><b>Frequent but insufficient</b></p> <p>Frequent reporting (every 60 days) but vague requirement to report “specific actions” pursuant to the AUMF. Robust one-time “comprehensive strategy report” required 30 days after enactment.<sup>77</sup></p> <p><i>Would be strengthened by requiring regular reporting on groups considered covered under the AUMF, civilians and combatant casualties, and legal basis for targeting particular groups or using force in countries other than Iraq or Syria.</i></p>	<p><b>Yes, but should be more clear and explicit</b></p> <p>Authorizes force “as the President determines to be necessary and appropriate.”</p> <p><i>The Supreme Court has held that the authorization of “necessary and appropriate force” implicitly requires the use of force to comply with international law. Subjecting this to a separate presidential determination is unnecessary. Further, an explicit provision is preferable.<sup>78</sup></i></p>	<p><b>Yes</b></p> <p>“The provisions of this joint resolution pertaining to the authorization of use of force against the Islamic State of Iraq and the Levant shall supersede any preceding authorization for the use of military force.”</p>	<p><b>Yes</b></p> <p>3 years</p>	<p><b>Yes</b></p> <p>3 years</p>

<sup>76</sup> See Section 1 of this issue brief, Specify the Enemy and the Mission Objectives, which has subsection on Defining “Associated Forces” and the problem with authorizing force against “successor entities.”

<sup>77</sup> The comprehensive strategy report must include information on objectives for authorizing force, groups targeted, geographic scope, methods for limiting civilian casualties, costs, benchmarks for assessing progress, and “a realistic end goal and exit strategy.”

<sup>78</sup> See Section 3 of this issue brief, Compliance with U.S. Obligations Under International Law.

## Obama Administration

Clearly Defined Target	Mission Objectives	Reporting Requirements	Compliance with International law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<p><b>Not clearly defined</b></p> <p>Names ISIS but also authorizes force against “associated persons or forces” and defines this term to include a “closely-related successor entity” of ISIS without defining this term.</p> <p><i>This essentially codifies the Obama Administration’s problematic interpretation that the 2001 AUMF applies to ISIS.<sup>79</sup> The AUMF should not authorize force against “successor entities.” This would amount to a substantial delegation of congressional war powers, greatly expanding the scope of the AUMF.<sup>80</sup></i></p>	<p><b>No</b></p>	<p><b>Frequent but insufficient</b></p> <p>Vague requirement to report only on “specific actions” and reports only required every six months.<sup>81</sup></p> <p><i>Would be strengthened by requiring regular reporting on groups considered covered under the AUMF, civilians and combatant casualties, and legal basis for targeting particular groups or using force in countries other than Iraq or Syria.</i></p>	<p><b>Yes, but should be more clear and explicit</b></p> <p>Authorizes force “as the President determines to be necessary and appropriate.”</p> <p><i>The Supreme Court has held that the authorization of “necessary and appropriate force” implicitly requires the use of force to comply with international law. Subjecting this to a separate presidential determination is unnecessary. An explicit provision is preferable.<sup>82</sup></i></p>	<p><b>No</b></p>	<p><b>Yes</b></p> <p>3 years.</p>	<p><b>No</b></p>

<sup>79</sup> <https://www.justsecurity.org/20163/aumf-associated-forces-slippery-slopes-data-points/>.

<sup>80</sup> See Section 1 of this issue brief, Specify the Enemy and the Mission Objectives, which has subsection on Defining “Associated Forces” and the problem with authorizing force against “successor entities.”

<sup>81</sup> Report to Congress “at least once every six months on specific actions taken pursuant to this authorization.”

<sup>82</sup> See Section 3 of this issue brief, Compliance with U.S. Obligations Under International Law.



Lawfare

Clearly Defined Target	Mission Objectives	Reporting requirements	Compliance with International law	Sole Source of Authority	ISIS AUMF Sunset	2001 AUMF Sunset
<p><b>Could be more clear</b></p> <p>Names al Qaeda, ISIS, and the Afghan Taliban. Also authorizes force against “associated forces” that “are engaged in hostilities against the United States” but does not define “associated forces.”</p> <p><i>The term “associated forces” should be carefully defined to prevent this or a future president interpreting the AUMF to apply to groups that Congress did not intend to authorize force against.</i></p>	<p><b>Not specified</b></p> <p>However, one of the <i>Lawfare</i> proposal’s authors has noted that the drafters were not in a position to address objectives<sup>83</sup> and two of the other authors argue in favor of mission objectives.<sup>84</sup></p>	<p><b>Robust and frequent but should be stronger</b></p> <p>Frequent reporting (every 90 days) on targets and locations where force is being used. Must also provide “factual predicate” for determining a group is an associate group. If force is used under Article II authority, must provide the same information on targets, location, and factual predicate for using force, as for those entities covered by this AUMF.<sup>85</sup></p> <p><i>Would be strengthened by requiring reports on civilian and combatant casualties, mission progress, and legal basis for targeting particular groups or using force in countries other than Iraq, Syria or Afghanistan.</i></p>	<p><b>Yes</b></p> <p>Authorizes “necessary and appropriate” force.</p> <p><i>The Supreme Court held that this implies the use of force must comply with international law.<sup>86</sup></i></p> <p>The <i>Lawfare</i> proposal also mandates that the geographic locations where force is used must also be limited to those “where force can be used consistent with applicable international law concerning sovereignty and the use of force.”</p>	<p><b>Not required</b></p> <p><i>Lawfare’s</i> AUMF folds the authorization in the 2001 AUMF (against al Qaeda and the Afghan Taliban) into the ISIS AUMF and repeals both the 2001 AUMF and the 2002 Iraq AUMF. Therefore, there is no need to state that the ISIS AUMF supersedes any preexisting congressional authorization to use force against ISIS.</p>	<p><b>Yes</b></p> <p>3 years</p>	<p><b>Yes</b></p> <p>De facto 3-year sunset from folding the 2001 AUMF into the ISIS AUMF.</p>

<sup>83</sup> <https://www.justsecurity.org/20546/intellectual-but-political-aumf-consensus/>

<sup>84</sup> [https://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-77759fc1eacc\\_story.html](https://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-77759fc1eacc_story.html); <https://www.lawfareblog.com/hasc-testimony-towards-better-aumf>; <https://www.lawfareblog.com/six-questions-congress-should-ask-administration-about-its-isil-aumf>.

<sup>85</sup> **Targets & Locations:** Every 90 days must “publish in unclassified form a list of the entities against which” force has been used and, “to the extent not strictly precluded by national security, where such force was deployed.” **Associated groups:** Every 90 days must report to the Senate and House armed services, foreign relations or affairs, and intelligence committees the geographic location where force is being used and a “summary of the factual predicate for concluding that an entity is an ‘associated force’.” **Article II:** If the President uses force under Article II authority against a “terrorist or terrorist organization” not covered by this AUMF, must provide the same information on the identities of the target, where force was used, and the factual predicate for using force, as for those entities covered by this AUMF.

<sup>86</sup> See Section 3 of this issue brief on Requiring Compliance with U.S. Obligations Under International Law.

