

June 19, 2017

Senator Bob Corker
United States Senate
425 Dirksen Senate Office Building
Washington, DC 20510

Senator Ben Cardin
United States Senate
509 Hart Senate Office Building
Washington, DC 20510

Re: Authorizing the Use of Military Force

Dear Chairman Corker and Ranking Member Cardin:

We, the undersigned, represent a wide swath of the human rights, civil liberties, and faith communities. While we do not have a coalition position on whether or when a nation should use military force, we share a common view on the appropriate procedures for considering a new authorization for use of military force (AUMF) and on the critical elements that any new AUMF that is passed should contain.

We commend you for addressing the issue of a new use-of-force authorization in the Foreign Relations Committee. Deciding to send the nation into war is Congress' gravest responsibility. To fully perform its constitutional role in authorizing military force and providing oversight over ongoing military operations, Congress should evaluate the administration's plans to identify and address where current or proposed missions lack adequate authorization. The Foreign Relations Committee is the appropriate forum to begin that evaluation, followed by a full and transparent debate in the full Senate if the Committee moves forward with an AUMF.

We urge you to ensure as well that any new AUMF is clear, specific, tailored to the particular situation for which force is being authorized, and comports with the international law obligations of the United States. We all agree that vague and overbroad war authorizations undermine accountability, frustrate effective oversight, invite mission creep, and risk embroiling the nation in unauthorized or perpetual wars that threaten human rights and the rule of law.

The following types of provisions would help Congress achieve clarity, specificity, and narrow tailoring if and when it next authorizes force:

Repeal or Supersede Other AUMFs: Any new AUMF should repeal old AUMFs or include "supersession" language. Such language would prevent old AUMFs from being interpreted beyond their original purpose, and prevent them from being used to circumvent the limitations and requirements of any new authorization. If, for instance, Congress fails to address both the 2001 AUMF and the 2002 Iraq AUMF in any new ISIS-focused AUMF it risks adding to what has become a tangled and ambiguous web of war authorities, and claims of war authorities, from

which a president might pick and choose without explanation, and invoke to engage in unlawful wars.¹ AUMFs that are no longer necessary should be repealed.

Clearly Specify the Mission Objectives and the Enemy: To prevent current or future administrations from overstepping Congress' intent, engaging in mission creep, and using the authorization to justify unlawful or perpetual armed conflict, a new AUMF should clearly specify the mission objectives, the entity against which force is being authorized, and geographic limits. Clear mission objectives will make it clear when the mission against the specified enemy is achieved and authorization has thus expired. Delegating Congress' authority to authorize war to the executive branch by authorizing force against unknown future threats or enemies is both unconstitutional and unnecessary for national security. Congress can specifically authorize force against threats that arise in the future and the president has authority under the Constitution to defend the nation from sudden attacks.

Increase Transparency and Reporting: Regular and thorough reporting sufficient to keep both Congress and the public informed is important for democratic accountability, ensuring compliance with domestic and international law, and enabling Congress to fulfill its critical oversight functions. For instance, requiring the president to provide regular reports on the specific organized armed groups considered covered under the new AUMF (including the factual and legal basis for this finding), the number of civilian and military personnel killed, relevant legal justifications for new actions, and other similar information, is critical for keeping the public informed and enabling Congress to exercise its war powers duties as the conflict unfolds.

Require Compliance with International Law: The Supreme Court has long held that domestic statutes must not be interpreted in a way that conflicts with the United States' international legal obligations if any other plausible interpretation exists. Nevertheless, explicitly stating that the force being authorized by Congress must comply with U.S. obligations under international law (including the U.N. Charter, international human rights law, and the law of armed conflict where applicable) will underscore that when Congress authorizes the use of force, the president is required to abide by the terms of the authorization as well as the international legal obligations of the United States.

Require Reauthorization: Setting a sunset or review date for use of force authorizations ensures continued congressional oversight and approval as the conflict evolves. A sunset is also an important safeguard against perpetual armed conflict or executive branch overreach. Sunsets act as forcing mechanisms, requiring Congress and the administration to reexamine the AUMF at a future date in light of more current conditions, and if necessary, reauthorize and/or refine the legislation to suit those new conditions. Sunset provisions have been included in

¹ Several of the undersigned organizations have previously written to Congress regarding the importance of any new war authorizations either repealing existing authorizations or containing explicit supersession language. See, e.g., <http://www.constitutionproject.org/wp-content/uploads/2014/11/141119-ISIL-AUMF-Coalition-Letter.pdf>; http://www.constitutionproject.org/wp-content/uploads/2015/02/150224_ISIL_AUMF_Coalition_Letter.pdf.

nearly a third of prior AUMFs. The 2001 AUMF, which was passed to authorize the use of force against those responsible for the 9/11 attacks, did not contain a sunset clause. That law has since been claimed to authorize the use of force for nearly 16 years, including against groups against which Congress did not intend to authorize force.

Provisions aimed at ensuring that use of force authorizations are sufficiently clear, specific, and tailored to particular conflicts are critical for the fulfillment of Congress' constitutional role. Congress is the branch that this country's founders entrusted with the solemn decision to send the country and its men and women to war. Broad, vague, or open-ended authorizations fail to fulfill Congress's role. While there are different ways to ensure that use of force authorizations are clear, specific, and narrowly tailored, any new authorization should meet this standard by including the above critical elements.

Sincerely,

American Civil Liberties Union
Appeal for Justice
The Constitution Project
Council on American-Islamic Relations
Human Rights First
Just Foreign Policy
National Religious Campaign Against Torture
OpenTheGovernment
Peace Action
US Labor Against the War
Win Without War
Women's Action for New Directions

Cc: Chairman Ed Royce and Ranking Member Eliot Engel, House Foreign Affairs Committee.