



Forum for American Leadership

What Congress Should Consider Before Repealing the Iraq AUMF

August 2, 2021

Congress is considering a resolution to repeal the 1991 and 2002 Authorizations for the Use of Military Force (“AUMF”) against Iraq. The Executive Branch has not invoked the 1991 AUMF since the First Gulf War, and its repeal is largely symbolic. However, both the Obama and Trump administrations relied on the 2002 AUMF as one legal basis (among others) for critical U.S. operations in Iraq and the surrounding region, including against both ISIS and Iranian General Qassem Soleimani, who orchestrated attacks on U.S. forces in Iraq. Although the Executive Branch does not rely *solely* upon the 2002 AUMF for any ongoing operations, its repeal will be closely watched by both allies and adversaries. Before repealing the 2002 AUMF, Congress should carefully consider how repeal could inadvertently establish precedent for greater Presidential authority in deploying force, as well as the strategic signaling that could potentially embolden regional adversaries, such as Iran and its proxies.

Background - The 2002 AUMF:

- Congress passed the [2002 AUMF](#) to authorize the President to “use all means that he determines to be appropriate, including force, in order to enforce the United Nations Security Council Resolutions... defend the national security interests of the United States against the threat posed by Iraq, and restore international peace and security in the region.” The 2002 AUMF provided the legal foundation for the Second Gulf War and the subsequent U.S. presence in Iraq until its withdrawal in 2011.
- In addition, although the threat posed by Saddam Hussein was clearly the focus of the 2002 AUMF, the AUMF has consistently been interpreted by [Democratic](#) and Republican administrations to authorize the use of force in specific instances to help establish a stable, democratic Iraq and to address terrorist threats emanating from Iraq.¹
- The United States continues to rely upon the separate 2001 AUMF for counter-terrorism operations against al-Qaeda, the Taliban, and forces associated with those two organizations within and outside Afghanistan.

¹ The Obama Administration set forth this legal reasoning in detail. *See Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related National Security Operations*, The White House, December 2016, p. 50, fn 25 (“The President’s authority to use force against ISIL is further reinforced by the Authorization for Use of Military Force Against Iraq... Although the threat posed by Saddam Hussein’s regime in Iraq was the primary focus of the 2002 AUMF, the statute, in accordance with its express goals, has always been understood to authorize the use of force for the related dual purposes of helping to establish a stable, democratic Iraq and of addressing terrorist threats emanating from Iraq. After Saddam Hussein’s regime fell in 2003, the United States continued to take military action in Iraq under the 2002 AUMF to further these purposes, including action against AQI (now known as ISIL). Then, as now, that organization posed a terrorist threat to the United States and its partners and undermined stability and democracy in Iraq.”)

Implications for Congressional Oversight of U.S. War Powers:

- Congressional oversight of the use of military force is vital to U.S. security. Vigorous Congressional engagement on war powers can limit Executive Branch overreach, check imprudent uses of force, and provide an effective vehicle for Congressional oversight of military operations. Congressional authorization of the use of force can also bolster the democratic legitimacy of military action and signal U.S. credibility and resolve.
- In contrast to the 1991 AUMF, whose purpose was fulfilled during the First Gulf War, the 2002 AUMF has provided a flexible underpinning for numerous U.S. operations in the Middle East since its passage.
 - The 2002 AUMF authorized the use of force to address other national security threats emanating from Iraq. In 2014, the Obama administration [relied in part](#) on the 2002 AUMF (in addition to the 2001 AUMF) as a basis for the use of force against ISIS in Iraq and Syria.
 - In 2020, the Trump administration also [relied in part](#) on the 2002 AUMF (in addition to Article II of the Constitution) in conducting the strike that killed Islamic Revolutionary Guards Commander Qassem Soleimani as he planned and directed attacks against U.S. forces in Iraq.
- Threats to U.S. national security interests continue to emanate from Iraq and the surrounding region. For example, Iranian-backed forces regularly attack U.S. personnel and facilities in Iraq; in late June, the Biden administration [authorized](#) airstrikes against facilities in Syria and Iraq targeting these forces.
- It is widely recognized that the President can take limited, defensive action under Article II of the Constitution to protect U.S. personnel—indeed, the Biden administration cited this as the sole authority for conducting the aforementioned airstrikes in June 2021 in Iraq and Syria. However, without the 2002 AUMF, the United States cannot currently deploy force against these Iranian-backed proxies in Iraq based on any existing Congressional authorization. Instead, absent the 2002 AUMF, the Executive Branch must rely solely on the President’s inherent authority under Article II.
- For decades after Congress enacted the 1973 War Powers Resolution to limit the President’s uses of force without Congressional authorization, Congress sought to ensure that the Executive Branch could not establish precedent for use of force without statutory authorization and solely in reliance on the President’s Article II powers. For example, this desire largely accounted for Congress’s [authorization](#) of President Reagan’s intervention in Lebanon in 1983, and for efforts by War Powers Resolution supporters to authorize various peacekeeping operations undertaken during the Clinton administration.
- Should Congress repeal a law which three previous administrations relied upon to conduct military operations within Iraq without taking any action to replace the statutory authority it is revoking (or otherwise purporting to prevent or limit the President from continuing to use force in Iraq and Syria on the basis of Article II alone)—at a time when the current administration has demonstrated that it is comfortable continuing to conduct substantially-similar operations solely on the basis of its Article II powers—it will have

created the precedent previous Congresses sought to avoid. The likely result will be to increase the latitude of the President to use force anywhere in the world under inherent Article II authorities without Congressional consent.

Implications for U.S. National Security Interests in the Middle East:

- *Existing authorities have offered a flexible, transparent framework to counter evolving U.S. adversaries.* While recognizing the importance of regular and comprehensive Congressional engagement in war powers, Congress should also consider the successful aspects of the current legal framework. Although the threats have evolved significantly since the early 2000s, such as the sudden emergence of ISIS, existing authorities have provided a basis to flexibly respond to military threats that have reconstituted themselves in different forms and in different locations. The United States has developed a relatively light military footprint to execute its missions, and the existing legal framework has been carefully interpreted by the Executive Branch with close and regular consultations with, and reporting to, Congress.
- *Unintended signals to Iran and its proxies.* Congress must evaluate how a repeal of the 2002 AUMF could affect U.S. diplomacy and strategic signaling in the Middle East. Repealing the 2002 AUMF at a key moment in U.S. negotiations with Iran over its nuclear program, at the same time that the United States is withdrawing from Afghanistan and ending its combat role in Iraq, may further embolden Iran, potentially encouraging it to harden its negotiating positions or to extract greater leverage by authorizing its proxies to target U.S. assets and allies. Absent careful messaging, repeal of the 2002 AUMF may be interpreted by Iran and its proxies in the Middle East as further evidence of U.S. retrenchment, which could encourage them to step up their destabilizing activities throughout the region.
- *Allied consultations.* Congress should seek input from regional allies about the potential implications of a repeal—first and foremost the Iraqi government, but also other partners that depend on U.S. strategic presence and flexibility in the Middle East. The views of U.S. allies may be particularly salient in light of the U.S. withdrawal from Afghanistan, as the Afghan government struggles to maintain its hold over the country. They may perceive a repeal of the 2002 AUMF as a sign that the United States is poised for a more complete withdrawal from the broader region.

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