

CRS Insights

Considerations for Possible Authorization for Use of Military Force Against the Islamic State

Matthew C. Weed, Analyst in Foreign Policy Legislation (mweed@crs.loc.gov, 7-4589)

September 9, 2014 (IN10147)

The armed offensive of the Islamic State (IS, also known as ISIL or ISIS) in northern and western Iraq and northeastern Syria has raised significant concerns for the Middle Eastern governments and the United States. Since June, President Obama has ordered multiple deployments of U.S. troops to Iraq to provide security to diplomatic personnel and facilities, advise Iraqi security forces, and conduct intelligence gathering and reconnaissance. He has also ordered U.S. military airstrikes on IS forces in Iraq as part of at least four military operations since August 7. Concerned with a perceived piecemeal build-up of troops, accumulation of narrowly defined uses of force, and lack of clearly articulated strategy informed by congressional consultation and oversight, several Members of Congress have expressed the view that continued use of military force against the Islamic State requires congressional authorization. Members differ on whether such authorization should be provided.

Authority to Deploy Troops and Use Military Force Against the Islamic State

Although [two](#) enacted [authorizations](#) for use of military force (AUMFs) might apply to U.S. military strikes against the Islamic State, the President in his [notifications](#) to Congress of deployments and airstrikes has relied upon his powers as Commander in Chief and Chief Executive under Article II of the Constitution. Obama Administration statements regarding the targeting of the Islamic State as a whole, potentially including elements operating in Syria, have raised concerns about the President's reliance on his inherent constitutional powers potentially to expand the use of force into Syrian territory.

Possible Elements of a New AUMF Targeting the Islamic State

A new AUMF targeting the Islamic State could both authorize presidential use of military force beyond what is considered valid under the President's

Article II war powers, and circumscribe and limit such use of force. Language in a new AUMF could either broaden the purpose of military force to include unspecified U.S. national security interests, or narrow the scope of authorization to specific objectives related to degrading or destroying the Islamic State. Congress could limit the AUMF's geographic scope, authorizing force only in Iraq where hostilities have taken place, or approve an expansion to Syria. With continued uncertainty surrounding the Iraqi government, Congress might include authorization to use U.S. Armed Forces in Iraq in furtherance of political stability objectives. Provisions in any AUMF targeting the Islamic State might address the possible effect that targeting the Islamic State in Syria and Iraq could have on the [ongoing conflict in Syria](#).

Other provisions might include

- the requirement that the President certify that use of military force pursuant to the authorization was necessary and no other course of action was available;
- a provision requiring the President to submit a strategy for conducting the conflict with the Islamic State;
- a sunset provision, limiting the President's authority to a set period of time, possibly with the option of extension through a presidential certification process;
- the prohibition on the use of appropriated funds for the use of military force outside the parameters of the specified authorization;
- congressional notification and reporting requirements on a periodic or incident-specific basis;
- the requirement that the President identify and certify potential targets of military force as forces or other elements of the Islamic State; and/or
- language stating that the authorization is intended to supersede other AUMFs.

Application of War Powers Resolution

In the case of strikes against IS forces, the President has cited his Article II powers, and arguably has not relied on congressional authorization to strike IS targets. Under the War Powers Resolution (WPR; [P.L. 93-148](#)), when the President introduces U.S. Armed Forces into hostilities, he must usually withdraw them within 60 days unless Congress authorizes continued action. If Congress were to decide against passing a new AUMF, it need not enact any legislation, and the President would be required to cease hostilities and remove U.S. Armed Forces involved in such hostilities from Iraq within 60 days. There is some question, however, about the determination of when the 60 days is triggered and when it is reset. If the U.S. airstrikes in Iraq could be deemed a continuous set of hostilities, the 60-day clock might be considered running since the first airstrikes in August 2014. If each airstrikes notification, however, is meant to represent a discrete instance of hostilities lasting a few days with a complete "withdrawal" as soon as the operation ends, the 60-day clock might be considered reset. This uncertainty over the

operation of the 60-day period might spur legislative action if Congress decided a cessation of hostilities were desirable. The WPR states that at any time after U.S. Armed Forces are introduced into hostilities, the President must withdraw such forces if directed by Congress in a concurrent resolution.

Current Legislative Proposals

Several legislative proposals have been introduced that relate to the use of military force against the Islamic State. [H.Con.Res. 105](#) would prohibit maintaining U.S. Armed Forces in a "sustained combat role" in Iraq without congressional authorization. [H.R. 5415](#) would authorize the use of military force "against international terrorism" generally, including force against the Islamic State. [S.J.Res. 42](#) would authorize force against the Islamic State to "prevent terrorist attacks on the people and interests of the United States and our allies," and includes a three-year sunset. [H.J.Res. 123](#) would authorize force "to defend the national security of the United States against the continuing threat posed by the Islamic State of Iraq and the Levant (ISIL)," with a 120-day sunset. The measure would also repeal the 2002 AUMF for Iraq, and contains a number of reporting requirements.

[H.J.Res. 58](#) would prohibit the use of funds by any U.S. government department or agency for the U.S. use of military force in Syria. Section 9013 of the Department of Defense Appropriations Act, 2015 ([H.R. 4870](#)), prohibits the use of funds with respect to Syria in contravention of the WPR.