

America's "Permanent War": The "Authorization to Use Military Force" Forever?

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The Militant American Empire Doesn't Need Any More AUMF

On September 14, 2001, the Congress authorized the President to wage unfettered, permanent war against pretty much anyone the President, in his sole discretion, deemed related to the 9/11 attacks and any future attacks. On September 18, 2001, President Bush signed this authorization into law.

The United States has been in a permanent state of war ever since. And on May 16, 2013, the Obama Administration's Pentagon officials testified to the Senate Armed Services Committee that they expected this permanent state of war to last another 10 to 20 years.

This came as an apparent surprise to some senators, including John McCain, the Arizona Republican who voted for the initial authorization: *"This authority ... has grown way out of proportion and is no longer applicable to the conditions that prevailed, that motivated the United States Congress to pass the authorization for the use of military force that we did in 2001."*

Also expressing surprise was Harvard law professor Jack Goldsmith, who joined the Bush administration in the summer of 2002, serving in the Defense Department's General Counsel office and later in the Justice Department, where his work in the Office of Legal Counsel contributed to, but failed to mitigate the administration's "legalization" of torture. This failure contributed to his resignation in June 2004.

After the Armed Services Committee hearing, Goldsmith commented: *"I learned more in this hearing about the scope of the AUMF than in all of my study in the last four or five years....I thought I knew what the application [of the AUMF] meant, but I'm less confident now."*

Is the AUMF an Authorization to Use Military Force Forever?

The AUMF referred to by Goldsmith is the Authorization to Use Military Force (AUMF) that Congress passes in 2001. While Goldsmith was in the Bush Administration, the AUMF served as the basis for legitimating the American attack on Afghanistan, among others (not Iraq).

The AUMF is a relatively brief document [the full text appears at the end of this article] that expresses the post-9/11 fear and panic, as well as a desire to give the President the flexibility to protect the country against any further attacks.

The operative section of the AUMF says, in its entirety:

(a) IN GENERAL- That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

The only other operative section gives the President pre-clearance with regard to the requirements of the War Powers Act.

On its face, the AUMF imposes no specific restrictions on the President's freedom to wage war in any way he chooses, by any means he chooses, on any entity or person he chooses. Arguably, there is an implied limitation on the targets, but there is no definition of "aided" the terrorist attacks, creating a loophole big enough for any decent White House lawyer to waltz through with a herd of elephants.

And that loophole is rendered meaningless by the stated purpose of the law - "to prevent any future acts of international terrorism" - since "preventing future acts" is a concept that has no meaning unless it has no limitation.

In September 2001, it was no mystery to anyone who thought clearly about the AUMF - even Sen. McCain - that the AUMF was an anti-constitutional blank check for Presidential war making, freed by design from any check by Congress's constitutional war-making authority.

In 2001, Authorizing Permanent War Was Bi-Partisan

Given this blatant abdication of constitutional responsibility by Congress, one might assume its passage was controversial and fraught with high-minded argument. It was not. It passed both houses easily, without meaningful debate.

In the house, 420 Representatives voted for the AUMF, co-sponsored by Republican Richard Arme and Democrat Richard Gephardt, and ten (five of each party) did not vote. The identical Senate version of the AUMF, co-sponsored by Democrat Thomas Daschle and Republican Trent Lott, passed 98-0 with two Republicans not voting.

The only principled vote on the AUMF - the lone vote against it in the House - was cast by California Democrat Barbara Lee. Like the rest of her colleagues, Lee was ready to authorize the President to strike back against those who had attacked us. As she wrote in part at the time:

"Last week, filled with grief and sorrow for those killed and injured and with anger at those who had done this, I confronted the solemn responsibility of voting to authorize the nation to go to war. Some believe this resolution was only symbolic, designed to show national resolve. But I could not ignore that it provided explicit authority, under the War Powers Resolution and the Constitution, to go to war.

"It was a blank check to the president to attack anyone involved in the Sept. 11 events - anywhere, in any country, without regard to our nation's long-term foreign policy, economic and national security interests, and without time limit. In granting these overly broad powers, the Congress failed its

responsibility to understand the dimensions of its declaration. I could not support such a grant of war-making authority to the president; I believe it would put more innocent lives at risk.”

And so it has, thousands of innocent lives in at least half a dozen countries. Lee’s warning was Cassandra-like in its futility: *“The Congress should have waited for the facts to be presented and then acted with fuller knowledge of the consequences of our action.”*

Her courage and wisdom, while approved by her Congressional constituents, nevertheless brought a wave of vilification, angry charges of treason, and enough death threats that the Capitol Police assigned her and her family round-the-clock plainclothes bodyguards.

A Bill to Repeal the AUMF Has Been Introduced - Again

On April 24, 2013, Rep. Lee called for the AUMF to be repealed: *“I’m convinced that if we do not repeal this authorization to use force that I voted against in 2001, we are going to see this state of perpetual war forever.... The use of drones in many instances creates more hatred, more anger, more hostility toward our country....”*

On January 4, 2013, Rep. Lee introduced House Bill H.R. 198, to repeal the AUMF of 2001. She introduced a repeal bill in the previous Congress, but it was not acted on. The bill currently has 12 co-sponsors, all Democrats, and was referred to the House Committee on Foreign Affairs.

The Senate Armed Services Committee hearing on May 16 was not about repealing the AUMF, but about its “status,” as committee chair Sen. Carl Levin, Democrat of Michigan, put it. Since the status of the AUMF is the uncontested law of the land, Levin, who voted for it in 2001, was presumably referring to its continued relevance or applicability.

Among the questions he raised in his opening statement were “the continuing vitality” of the AUMF, its application to organizations unrelated to 9/11, the legal basis for U.S. war-making in Yemen or Somalia, the legal basis for drone strikes, and “How will we know when the current conflict is over?”

Sen. Graham Supports President’s Unfettered, Global, Endless War Power

The Endless Global War on Terror

For Sen. Lindsey Graham, South Carolina Republican, none of this was a problem. With a series of leading questions, the former military lawyer elicited the answers he wanted from the military panel that included two generals:

Ø that the “war against radical Islam, or terror, whatever description you like” will last another 10 to 20 years;

Ø that the military has “all of the authorization and legal authorities necessary to conduct a drone strike;”

Ø that the President has the “authority to put boots on the ground in Yemen” or in the Congo, or anywhere in the world, because “when it comes to international terrorism, we’re talking about a worldwide struggle.”

Only Independent Senator Angus King of Maine expressed strong reservations about the AUMF, asking at one point, *“How do you possibly square this [AUMF] with the requirement of the Constitution that the Congress has the power to declare war?”*

Later he said: *“Now, I’m just a little, old lawyer from Brunswick, Maine, but I don’t see how you can possibly read this [AUMF] to be in comport with the Constitution and authorize any acts by the president. You had testified to Senator Graham that you believe that you could put boots on the ground in Yemen now under this—under this document. That makes the war powers a nullity.”*

After a non-response response from a Pentagon spokesman, Sen. King reiterated his argument, concluding in reference to the AUMF: *“... the way you read it, there’s no limit. But that’s not what the Constitution contemplates.”*

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ANNEX

Authorization for Use of Military Force Against Terrorists

Joint Resolution

To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1 - Short Title [[edit](#)]

This joint resolution may be cited as the ‘Authorization for Use of Military Force’.

Section 2 - Authorization For Use of United States Armed Forces [[edit](#)]

(a) IN GENERAL- That the President is authorized to use all necessary and appropriate

force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the [terrorist](#) attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) War Powers Resolution Requirements-

(1) SPECIFIC STATUTORY AUTHORIZATION- Consistent with section 8(a)(1) of the [War Powers Resolution](#), the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) APPLICABILITY OF OTHER REQUIREMENTS- Nothing in this resolution supersedes any requirement of the War Powers Resolution.

<http://www.govtrack.us/congress/bills/107/sjres23>

http://en.wikipedia.org/wiki/Authorization_for_Use_of_Military_Force_Against_Terrorists

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