

## Legal Sidebar

# The Obama Administration's Proposed AUMF against the Islamic State: Some Immediate Takeaways

2/19/2015

---

For several months, the United States has been engaged in offensive airstrikes against the Islamic State (sometimes referred to as ISIS or ISIL) in Iraq and Syria. On February 11, 2015, President Obama submitted [draft legislation to Congress that would authorize military force against the Islamic State](#) for three years, and repeal one of the existing legal authorities that has been cited by the Administration in support of current U.S. operations. The draft legislation has been the [subject of differing opinions](#) among Members of Congress, particularly regarding the scope and effect of the proposed authorization for the use of military force (AUMF), and its relationship with existing legal authorities cited by the Administration in support of current operations against the Islamic State. This post provides a brief overview of the Administration's legal justification for current operations, briefly describes the draft AUMF, and addresses some of the most frequently asked questions regarding the proposed legislation's legal effect.

### Authorities Cited by the Executive in Support of Ongoing Action against the Islamic State

Initially when U.S. airstrikes against the Islamic State began in August 2014, the executive branch cited only to the [President's independent authority under Article II of the Constitution](#) for legal justification. Some observers and lawmakers questioned this justification and asserted that legislative authorization was constitutionally required. Moreover, some noted that the [War Powers Resolution \(WPR\)](#) constrained the President's ability to engage in sustained operations against the Islamic State without congressional approval, as the law requires the termination of unauthorized hostilities within roughly 60 days of their initiation, unless a declaration of war or specific legislative authorization is obtained.

In September, the Administration began identifying the 2002 Authorization for Use of Military Force Against Iraq ([2002 Iraq AUMF](#)), along with the 2001 Authorization for Use of Military Force ([2001 AUMF](#)) targeting those responsible for the 9/11 terrorist attacks, as providing statutory authorization for U.S. military operations against the Islamic State. (Extensive discussion of the Administration's reasons for believing these AUMFs apply to the Islamic State, along with criticisms raised against these arguments, is found in [this report](#).) The immediate upshot of the Executive's argument, however, was to seemingly render the WPR's deadline for the termination of *unauthorized* hostilities inapplicable to the conflict with the Islamic State. Nonetheless, the Obama Administration has [stated repeatedly](#) that it would support explicit congressional authorization for the military conflict with the Islamic State, notwithstanding its belief that the conflict was already authorized by existing statutes.

### The Administration's draft AUMF against the Islamic State: Description and FAQs

The draft AUMF would provide specific authorization for the use of military force that "the President determines to be necessary and appropriate against [the Islamic State] or associated persons or forces." In the preamble, the bill describes various acts taken by the Islamic State within Iraq and Syria, including the destabilization of those countries, the commission of human rights abuses, and the killing of U.S. citizens. It also describes the Islamic State as a "grave threat to...the national security interests of the United States and its allies and partners," and characterizes current U.S. actions against the Islamic State as having been taken "in accordance with [the United States'] inherent right of individual and collective self-defense...."

The draft AUMF would terminate three years after its date of enactment (unless reauthorized), and specifies that it does not authorize the use of U.S. military forces in “enduring offensive ground combat operations.” The draft legislation would also repeal the 2002 Iraq AUMF, but not the 2001 AUMF. The draft AUMF further specifies that it constitutes specific authorization for hostilities under the WPR, and requires the President to submit reports to Congress at least every six months concerning specific activities taken pursuant to its force authorization.

### *Does the Draft AUMF Authorize the Use of Force against Entities Other than the Islamic State?*

The draft AUMF authorizes force against both the Islamic State and “associated persons or forces,” which the legislation defines to cover “individuals and organizations fighting for, on behalf of, or alongside [the Islamic State] or any closely-related successor entity in hostilities against the United States or its coalition partners.” This definition appears to allow the Executive to target a wider range of entities than would, for example, be permitted to be targeted under the 2001 AUMF on account of being part of an [“associated force”](#) of Al Qaeda or another covered group, including individuals who are not part of an organized group but have fought alongside the Islamic State in hostilities against the United States or its coalition partners.

### *Would the Draft AUMF Require the Termination of Hostilities against the Islamic State within Three Years of Enactment?*

The plain language of the draft AUMF states that the authorization expires three years after the date of enactment, unless reauthorized. However, the draft AUMF does not *require* the termination of hostilities upon the expiration of its force authorization. If the draft AUMF were enacted into law and subsequently expired, arguably the Executive could still point to other sources of authority – including the 2001 AUMF and the President’s independent constitutional authority – as providing a legal basis for continuing hostilities against the Islamic State. Moreover, the 60-day withdrawal requirement under the WPR would not appear to be triggered by the expiration of an AUMF.

### *Does the Draft AUMF Prohibit “Enduring Offensive Ground Combat Operations?”*

The draft AUMF expressly makes clear that it does not authorize “enduring offensive ground combat operations” (a term not precisely defined by the draft language, and for which there could be differing interpretations). However, it does not expressly prohibit such operations if authorized under a separate legal authority. Disagreement may arise as to whether other statutory authorities, including the 2001 AUMF, along with the President’s independent constitutional authority, may permit long-term offensive ground combat operations against the Islamic State, notwithstanding the qualifiers in the draft AUMF’s authorization.

### *What Is the Relationship Between the Draft AUMF and the 2001 AUMF?*

While the draft AUMF would repeal the 2002 Iraq AUMF, it does not repeal the 2001 AUMF, which has also been cited by the executive branch as providing legal authority for ongoing U.S. operations against the Islamic State. As noted above, it is possible that the draft AUMF might be interpreted to authorize force against some persons or groups on account of their affiliation with the Islamic State that could not be targeted under the 2001 AUMF.

### *Does the Draft AUMF Authorize the Use of Force Only in Iraq and Syria?*

The draft AUMF appears to authorize action which the President deems necessary and appropriate against Islamic State persons and assets, along with “associated persons and forces” of the Islamic State, regardless of their location. It does not require covered persons or groups to be located in Iraq or in Syria. This does not necessarily mean, for example, that military force could permissibly be used against an Islamic State target regardless of where he or she is found. But it might, for example, enable the Executive to detain a suspected Islamic State member captured outside Iraq or Syria on account of that person being an “enemy belligerent.”

Posted at 02/19/2015 09:04 AM by [Michael John Garcia](#)