

POLICY BRIEF

**RECOMMENDATIONS
FOR THE NEW
ADMINISTRATION**

U.S. Military Action in the Middle East: The Next President Should Seek Congressional Approval

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The United States has been at war against ISIS for two years without specific congressional approval. President-Elect Donald J. Trump's future policies in Iraq and particularly Syria remain unclear. Still, his comments during the campaign, though far from definitive, offer some clues. Unlike his opponent, Hillary Clinton, he appears willing to cooperate more closely with Russia on Syria. All signs indicate that he places a much lower priority on removing the Assad regime than he does on defeating ISIS. Indeed, he has promised to increase military action against the organization. In other words, our war against ISIS will continue and perhaps intensify.

Given this likelihood, the Trump administration should push for formal congressional authorization of ongoing operations against ISIS and any significant increase in U.S. military action in Syria or Iraq.

The War Powers Resolution of 1973¹ was passed to limit the president's ability to initiate a war without congressional approval. It includes a provision mandating that Congress pass—either before or after the fact—an authorization for use of military force (or AUMF).

Previous administrations have asserted that the resolution places unwarranted constraints on the president's constitutional prerogatives as commander in chief. Its constitutionality has never been definitively determined by the U.S. Supreme Court. Nonetheless, President George H.W. Bush sought and received an AUMF for the Gulf War in 1991. President George W. Bush

likewise obtained an AUMF authorizing action against Al-Qaeda in 2001.² A year later, he also secured an AUMF for the invasion of Iraq.³ President Barack Obama did not request an AUMF for the intervention in Libya (and was widely criticized for his failure to do so). He submitted a draft AUMF at the time of the 2013 crisis over the Syrian regime's use of chemical weapons, though the draft was overtaken by events when a U.S. attack in Syria was averted by a Russian initiative to broker a deal.⁴ In 2015, Obama submitted a draft AUMF to authorize military action against ISIS.⁵

The 2015 draft AUMF is still languishing on Capitol Hill. No one appears particularly exercised about the situation. Congress can quibble about the scope and duration of the draft authorization. The president can appear to meet legal niceties while still proceeding with military action; the administration claims it has sufficient authority to act against ISIS under the 2001 AUMF. Meanwhile, the war goes on. President Trump should either push for passage of Obama's 2015 AUMF or submit his own.

There are real advantages to seeking an AUMF.

By seeking—and aggressively pushing for—an AUMF that would include an escalation of U.S. military action in Iraq and especially Syria, the president can secure congressional "buy in" for the effort. There will, of course, always be carping on Capitol Hill. But a vote on an AUMF—by compelling members of Congress to make formal their positions—would force senators and



Whoever is elected in November should push for formal congressional authorization of both the ongoing operations against ISIS and any significant increase in U.S. military action in Syria.

This policy brief is part of a series of recommendations from the Baker Institute for the incoming president's administration.

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representatives to accept at least partial ownership of the policy.

President Trump can also bring an AUMF to the table in international negotiations. It will strengthen the president's hand by showing substantial domestic support for his policy. This will send a clear signal of resolve to U.S. clients and competitors alike.

Not least, getting an AUMF is simply the right thing to do.

As a nation, we need a more open and extended discussion of U.S. policy in the Middle East. This is a region, after all, where 20 years of intervention, large or small, has cost more than 4,000 U.S. lives, trillions of dollars, and vast expenditures of diplomatic effort. The result: the strategic position of the U.S. is arguably worse than on the eve of the September 11 attacks. Perhaps the U.S. should stick with Obama's risk-averse "light touch" approach in the region. Perhaps the U.S. should deploy more "robust" (i.e. deadly) military options. Perhaps the U.S. should even cut its losses and reduce its current involvement. But one thing is certain: the next administration needs to make a clear and compelling case for its Middle East policy. Otherwise, it risks drifting into conflicts or commitments without domestic political support.

President Trump will no doubt be able to find lawyers at the Justice or State Departments willing to provide some legal justification for whatever he wants to do in the Middle East. That, after all, is what such lawyers do. Presidential advisors will grouse at the onerous task of gaining congressional passage of an AUMF. Members of Congress will squirm at actually making a decision.

But any significant escalation of U.S. military action in Iraq and Syria demands more than legal casuistry or a cynical game of pass the blame. These issues demand debate. The American public deserves it. And an AUMF—however clumsy and frustrating it may be—is the best way to get it.

ENDNOTES

1. For text of the War Powers Resolution of 1973, see: <https://www.law.cornell.edu/uscode/text/50/chapter-33>.

2. For text of the 2001 AUMF, see: <https://www.gpo.gov/fdsys/pkg/PLAW-107publ40/html/PLAW-107publ40.htm>.

3. For text of the 2002 AUMF, see: <https://www.gpo.gov/fdsys/pkg/PLAW-107publ243/content-detail.html>.

4. For text of the proposed 2013 AUMF, see: <http://www.cnn.com/2013/08/31/us/obama-authorization-request-text/>.

5. For text of the proposed 2015 AUMF, see: <https://www.washingtonpost.com/news/post-politics/wp/2015/02/11/obamas-request-for-congressional-authorization-to-fight-the-islamic-state-full-text/>.

6. On the potential risks of a no-fly zone in Syria, see: <http://www.cfr.org/conflict-assessment/no-fly-zone-doesnt-mean-no-war-zone/p38257>.

7. For Obama's views on safe zones in Syria, see: <http://www.bloomberg.com/politics/articles/2016-04-24/obama-says-syria-safe-zones-won-t-work-as-merkel-backs-the-idea>.