



Preventing Endless War Requires Real Congressional Oversight—Not New War Authority

By Ken Gude and Kate Martin December 2018



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Introduction and summary

It has been 17 years since the Congress enacted the Authorization for Use of Military Force (AUMF) against Al Qaeda and the Taliban in response to the terrorist attacks on 9/11.¹ However, the AUMF, which empowered the president to use “all necessary and appropriate force” against all actors linked to 9/11—those actors being Al Qaeda and the Taliban—has been stretched beyond its original intent. The United States is now relying on the AUMF as the legal authority to conduct wars against multiple terrorist groups in at least seven different countries.²

The duration of these conflicts—already the longest by far in U.S. history—and the ever-expanding list of countries involved has sparked justifiable concerns that the United States is caught up in waging endless war.³ The wars now being fought in seven countries—all relying on the authority of the AUMF—show no signs of ending either. Moreover, there is no strategy for winning them, and their costs continue to mount. The war in Afghanistan alone is costing 45 billion a year in addition to the incalculable loss of American and Afghan lives.⁴ Yet Congress has been largely absent from the decision-making when it comes to these wars. Tellingly, some congressional members, when asked by reporters about military actions in Niger that cost the lives of four U.S. service members, expressed surprise that the United States was at war there.⁵ To the extent there has been congressional engagement, it has largely focused on a debate about replacing the 2001 AUMF with a new one. But simply enacting a new authorization to explicitly cover the ongoing wars in any of these countries would fail to address the most pressing question: What should be done about these ongoing wars, and, most fundamentally, does it make sense for the United States to continue them?

Consequently, Congress should:

- Put on hold consideration of a new or revised 2001 AUMF
- Request that the Trump administration provide, in unclassified form, a complete list of countries in which the United States is at war relying upon the 2001 AUMF; organizations the United States is fighting in those countries; and the countries where the United States is providing partner assistance against terrorist groups, even if U.S. troops are not participating in hostilities
- Hold robust hearings into these ongoing conflicts in the mold of the Fulbright Hearings into the Vietnam War
- Use all available means to obtain critical information about the state of the wars, including enforcement of current reporting requirements on the executive branch
- Examine each conflict separately—in a country-by-country, conflict-by-conflict manner—to ensure that each conflict gets individualized congressional oversight and that there is an individualized decision about how to move forward in each case

The issue confronting Congress is not whether to authorize a new war—that was the question before it in 2001. Rather, Congress must now decide whether the current wars should continue, and if so, how? To answer that question, Congress must first conduct meaningful oversight of the multiple wars now being fought. It is only then that Congress and the American people will have a better understanding of these ongoing conflicts and the best path forward in each of them.

Trump's lack of strategy is a recipe for endless war

President Donald Trump inherited from the Obama administration a set of conflicts in six countries—Afghanistan (including the border region of Pakistan), Yemen, Somalia, Iraq, Syria, and Libya—relying on authority of the 2001 AUMF and with significant guidelines and parameters.⁶ The Obama administration published its policies, including detailed descriptions of its rules for targeting combatants, limiting civilian casualties, the battlefield capture of combatants, the detention of combatants, and their prosecution in either criminal courts or military commissions at the end of its term in office in December 2016.⁷ While the Obama administration applied more stringent parameters to the scope of the authority of the 2001 AUMF than the Bush administration did with the global war on terrorism, both the number of countries in which the United States was at war and the groups against which it was fighting were larger by the end of the Obama administration than they were at the beginning.⁸

Nearly two years into its own term, the Trump administration has an incoherent strategy for the wars it's waging against terrorist groups. On the one hand, the Trump administration has escalated the wars, expanded into new countries, and cast off many of the limits imposed during the Obama administration.⁹ On the other hand, President Trump regularly claims that he wants to end U.S. involvement in these wars. To date, he has yet to visit any of the troops in any of the theaters of conflict, and his stated defense strategy is shifting toward Russia and China and away from fighting terrorism.¹⁰ This incoherence is contributing to concerns that the United States is mired in an endless war.

Under President Trump, the United States is known to be currently at war in Afghanistan and the border region of Pakistan, Iraq, Syria, Yemen, Somalia, Libya, and Niger, relying on the authorities of the 2001 AUMF.¹¹ Without much, if any, public debate or discussion, the Trump administration has escalated the U.S.

involvement in each of these conflicts.¹² Specifically, the Trump administration has:

- Nearly doubled the number of U.S. troops fighting in Afghanistan¹³
- Dramatically accelerated the air war in Afghanistan, Syria, Iraq, Somalia, and Yemen and loosened the rules of engagement¹⁴
- Declared parts of Somalia and Yemen to be areas of active hostilities, which previously had not been designated¹⁵
- Conducted twice the number of airstrikes in Libya than have been publicly acknowledged¹⁶
- Expanded the mission of the nearly 1,000 U.S. troops in Niger, going beyond the original train-and-assist mission announced by the Obama administration when it first sent 100 troops to the country in 2013. He has expanded the mission to include combat operations¹⁷

This silent surge stands in stark contrast to the ambivalence President Trump and his administration have shown toward these wars. Even while increasing the number of U.S. troops in the war in Afghanistan, Trump has suggested that he wants to pull out and never even met with the outgoing U.S. commander, Gen. John Nicholson, in the 20 months their tenures overlapped.¹⁸ Trump has also said he “want[s] to get out” of the fight against the Islamic State (IS) in Syria.¹⁹ And, earlier this year—despite currently fighting wars against terrorist groups in at least seven different countries—the Defense Department announced it was shifting its focus toward great power competition with countries such as Russia and China and away from fighting terrorism.²⁰ Stuck between escalation and ambivalence, the wars grind on.

More congressional oversight of the wars is urgently needed

Congressional oversight of the wars against terrorist groups has been insufficient for some time now. But the Republican-controlled 115th Congress did not do nearly enough to examine the current state of these multiple ongoing conflicts, especially in contrast to past congressional oversight of another long war in U.S. history: Vietnam. That must change. The foreign policy and armed services committees in both the House and the Senate have primary oversight responsibility for the conduct of these wars. In 2017 and 2018, those four committees held a total of 16 full committee hearings on the broad subject of these various ongoing wars or the countries in which these wars are being fought. Of these hearings, there were only three in the House, and three hearings in the Senate were closed.²¹

While public hearings were held on most of the conflicts in which the United States is currently engaged, there were not nearly enough in total, considering their importance. Both the House Foreign Affairs Committee and the Senate Foreign Relations Committee held one full committee hearing on Afghanistan during the 115th Congress.²² The fight against IS in Syria and Iraq got more attention, but only in the Senate, with four full committee hearings. There were no hearings on this particular conflict in the House.²³ And despite U.S. involvement in two ongoing wars in Yemen, only two hearings were held during the 115th Congress, both in the Senate Foreign Relations Committee.²⁴

The way the 115th Congress handled the Niger ambush is particularly instructive. Several members of Congress expressed surprise that the United States was even fighting there when the ambush was publicly revealed. However, there were no public hearings into U.S. military involvement there in either the House or Senate.²⁵ The Senate Armed Services Committee has held the only two hearings on U.S. involvement in Niger. However, both of those were closed and focused on the investigation and report on the ambush that killed four U.S. Green Berets, not on the overall mission and strategy in Niger.²⁶

By contrast, the Senate Foreign Relations Committee, under the leadership of Sen. William Fulbright (D-AR), held two sets of probing examinations of the Vietnam War, one in 1966 and another in 1971.²⁷ The first series, in 1966, was a national sensation featuring high-ranking administration officials and prominent former government officials and thought leaders.²⁸ The hearings were broadcast live on both CBS and NBC, two of the three national television networks at the time.²⁹ And, over a five-week period in January and February 1971, Sen. Fulbright held 22 hearings over eleven days on Vietnam, more than have been held in the entire 115th Congress by the four committees described above.³⁰

To its credit, the 115th Congress has adopted some relevant reporting requirements. One such requirement, for example, directs the Trump administration to provide an update to an Obama administration report on the legal and policy frameworks for the United States' use of force.³¹ But, in responding to this requirement, the Trump administration provided less public information than had the Obama administration.

Notable action in this Congress related to the wars has primarily occurred around the 2001 AUMF. In late June 2017, Rep. Barbara Lee (D-CA) proposed an amendment to the Defense Appropriations Act that would sunset the entire 2001 AUMF in 240 days. In a surprise move, the House Appropriations Committee approved this amendment by a voice vote.³² House Republican leaders stripped the provision from the bill considered on the House floor.³³ But the surprisingly easy win by critics of the 2001 AUMF signaled much greater bi-partisan discontent with the wars against terrorist groups than was previously understood.³⁴

Senate Foreign Relations Committee Chairman Bob Corker (R-TN) and Sen. Tim Kaine (D-VA) introduced a revised AUMF in May 2018, which is intended to replace the existing 2001 AUMF and also repeal the 2002 AUMF that authorized the Bush administration's invasion of Iraq.³⁵ The proposal explicitly authorizes all of the current wars that are being fought under the 2001 AUMF and would establish a mechanism for expanding the list of wars deemed authorized even without a congressional vote—a list that would most certainly only increase over time. Essentially, this new AUMF would enshrine endless war as the norm.³⁶ The Senate Foreign Relations Committee previously held two hearings on the AUMF in this Congress but none on this new proposal.³⁷ As it currently stands, it does not appear as if this version of a modification to the 2001 AUMF will move forward.

Endless war is not inevitable if Congress plays its proper role

Congress has not yet conducted sufficiently thorough oversight of these complex and evolving conflicts to make an informed decision about their continuation. And such decisions are a prerequisite to deciding on the need for and consequences of any new or revised AUMF. Therefore, revising the 2001 AUMF should be put on hold and Congress must conduct an extensive assessment of the U.S. wars against terrorist groups that claim 2001 AUMF authorization.

Congress needs to examine these conflicts in detail and, importantly, come to its own conclusions about the current state of these wars and the best future direction for each. In order to do so, the House and Senate foreign policy and armed services committees should take a page from Sen. Fulbright's book and hold a series of hearings with both administration witnesses and outside experts to probe the wars in depth. The hearings need to be public, and where there is relevant classified information, an unclassified summary should be used in order to assure necessary information is communicated broadly to both Congress and the American people. Furthermore, the hearings should be supplemented by other means of obtaining the relevant information, including written requests for information and reporting requirements.

As a threshold matter, Congress must require the Trump administration to provide a complete and public list of all countries in which the United States is currently engaged in military operations claiming authorization under the 2001 AUMF and the identities of the groups it is fighting. The Trump administration also needs to publicly identify where it is providing lethal assistance to partners and whether there is a risk that such assistance will involve U.S. forces in military operations, as apparently happened in Niger.³⁸ While some of this information is outlined in the Trump administration's March 2018 report to Congress, that report includes a classified annex that could list additional countries or enemies. For example, in an effort to authorize all of the current wars, the Corker-Kaine AUMF included authorization of force in Mali, even though that country is not listed in the public section of the Trump administration's report on the countries in which the United States is at war.³⁹

These wars need to be examined on a country-by-country, conflict-by-conflict basis to the satisfaction of Congress and, ultimately, the American people. But there are overriding questions common to all, including the following:

- What is the current threat posed by each of the enemy groups to the United States, to U.S. interests more generally, and to the population of the country and region in which the enemy operates?
- What is the Trump administration's estimate of the threat? Does it differ from Congress' conclusions?
- How has that threat changed over time? How have U.S. military operations and other factors affected the threat?
- What is the Trump administration's strategy for dealing with the threat in each specific country and is their description of their strategy consistent with their actions?
- What are the strategic costs and risks, including to the U.S. military, regional peace and security, and other U.S. interests, of continuing with the status quo?
- What options are available to the United States, including, in particular, diplomatic, humanitarian, foreign aid, and multilateral alternatives to deal with the threat? In the short-term? Medium-term? Long-term?
- What are the costs and risks of such alternative options?

There are also a set of additional general questions relating to the unintended consequences of U.S. military engagement, which need to be understood before deciding how the United States should proceed. They include, for example:

- What has been the effect of U.S. inflicted civilian casualties on the involved populations, even when those casualties have been unintentional? What has been their effect on overall counterterrorism efforts and efforts to promote democracy and human rights? Are hostilities involving civilian casualties likely to continue? What can be done to reduce civilian casualties?
- Similarly, what has been the effect of the United States' use of drone strikes on the attitudes toward the United States and toward the targeted terrorist groups by the population in those countries where strikes have taken place?
- What has been the overall effect of U.S. counterterror policies—torture and unfair detention among others—that have been the subject of sustained international criticism, such as those implemented at Guantanamo and Abu Ghraib, even after the

U.S. has changed those policies? Will continuing current counterterror operations erode the ability of the United States to champion the values of democracy and human rights around the world?

- What has been the effect of the wars on overall regional stability? On the growth of democratic and accountable regimes? On dealing with sectarian and ethnic tensions? And what is the likely effect on these areas going forward?

At the same time, the bulk of the work Congress needs to do requires examining the conflicts individually by country. Such a country-by-country analysis is consistent with U.S. government practices. That's the approach the U.S. government generally used in the past when deciding whether to send U.S. military forces to fight abroad, and it tracked its progress on that basis. Congress will have to decide on a country-by-country basis regarding what to do going forward. Of course, some of the conflicts bleed over national boundaries, and conditions in one country have an effect on neighboring countries and the region at large. But only a country-by-country analysis will provide the necessary information to illuminate the available options.

The largest and most pressing conflict is in Afghanistan and across the border of Pakistan. While the U.S. government still refuses to acknowledge that it is fighting the Taliban and its allies with air strikes in Pakistan, there is no doubt that such operations are part of the ongoing war in Afghanistan.⁴⁰ The war in Afghanistan is plagued by multiple layers of stalemate. A complete military victory by either the U.S.- and NATO-backed Afghan government forces or the Taliban and other insurgents is extremely unlikely. Despite this military quagmire, there is no sign of a political consensus between and within the warring sides in Afghanistan on how to end the fighting. Moreover, in the United States, there is neither the appetite for a return to a more robust military commitment (for example, up to 100,000 troops) nor is there a clear mandate for the withdrawal of U.S. military forces. That leaves the United States with 15,000 troops fighting in Afghanistan at the cost of \$45 billion a year with no identifiable plan for change.⁴¹

It should be noted, that despite his announced desire to withdraw U.S. forces, Trump has failed to begin serious discussions; examine the consequences of U.S. withdrawal; determine how it could be responsibly accomplished; and ascertain what could be done to ameliorate the conditions for the Afghan people should the U.S. withdraw.

Without detailing the many specific questions that Congress needs to examine, this summary recital illustrates the importance of a country-by-country review.

Evaluation of U.S. options and decisions on the way forward needs to be based on an understanding of the local conditions, including the stance of the national governments in each separate country. Each review needs to be based on an evaluation of the specific threats posed by terrorist groups operating in a specific country and on the position of U.S. allies, including their willingness to help or their criticism of current operations. The situation in Yemen, for example, with multiple conflicts between both local groups and outside countries is much different from the situation in Somalia. Similarly, the conflict against IS, which continues in Syria and Iraq, must be understood in all the ways it differs from the ongoing conflict against IS in Libya. Even though those conflicts all involve IS and have created massive refugee crises, they differ in many significant ways, including, for example, the response of the national governments of each country.

Once the policy options and costs and benefits of continued U.S. military operations in each country are understood, the analysis of the legality of any continued operations will also depend on the country-specific conditions. For example, the consent or lack of by the respective country's national government and the existence of recognized armed conflicts in the country must be a consideration. Moreover, one of the most important issues—the threat posed to the United States or U.S. interests from terrorist groups—can only be properly understood by looking at the groups operating in a specific country. For example, the AQAP—the Al Qaeda group in Yemen—has focused in the past on attacking U.S. targets, including inside the United States, in a way that al-Shabab—the Al Qaeda affiliate in Somalia—has not.⁴²

Just as importantly, a country-by-country examination is key to ensuring that Congress and the American public are fully informed concerning all the places where the U.S. military is fighting or is at risk of fighting terrorist groups. As outlined above, it is not clear that Congress has been kept fully informed of those places and conflicts. Moreover, it appears that train-and-assist missions carried out by U.S. troops to aid countries in Africa that may be confronting local terrorists or insurgencies pose serious risks. Such risks include both loss of American life and involvement in hostilities—conflicts that are neither authorized by Congress nor known about by the American people.

Conclusion

Many congressional leaders and policy advocates have noted that the AUMF enacted in 2001 has been stretched far beyond its original intent during the unforeseen 17 years of war since.⁴³ But simply enacting a new authorization to explicitly cover the ongoing wars in any of the seven countries noted above would not fulfill Congress' constitutional war powers responsibilities.

Over the past 17 years, Congress has failed to fulfill its constitutional responsibility to decide whether the U.S. should go to war in new countries or against new groups. The wars that the United States are now engaged in were started without congressional debate or vote. Fulfillment of its constitutional responsibility requires Congress to examine the costs, benefits, and outcomes of and alternatives to America's ongoing and seemingly endless wars. Congress should do so in a manner that ensures that both it and the American people are fully informed in order to be sufficiently positioned to evaluate those questions and decide on a path forward. Only after Congress concludes that task will the question of whether new legal authorities are needed for these existing wars be an appropriate one for consideration.

About the authors

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