

FOREIGN RELATIONS | SEPTEMBER 2014

Making the Case: Congress Should Pass New Authorization for Use of Force Against ISIS

By Mieke Eoyang and Peter Billerbeck

Congress should pass a new, specific authorization for the President to act against ISIS.

1. ISIS represents a substantial threat, and left unchecked, could launch attacks against the US.
2. Because defeating ISIS will be a long-term effort, it is incumbent on Congress to pass a new authorization for the use of force.
3. Unlike previous authorizations, this one should be carefully tailored and come in the context of a broader strategy.

BACKGROUND

The Islamic State of Iraq and al Sham (ISIS), a violent extremist movement, grew out of the ashes of Al Qaeda in Iraq and the Syrian civil war.¹ ISIS has advanced across the border between Iraq and Syria and is now seizing military bases and holding territory throughout the region.

At the request of the Iraqi government, President Obama has sent over 1,500 military advisors into Iraq and conducted over 150 airstrikes there to break the ISIS momentum, to protect U.S. personnel and save thousands of Iraq's religious minorities.² On September 10, 2014, President Obama announced a four-part plan for an expanded effort against ISIS. This plan will include: (1) a systematic campaign of airstrikes against ISIS; (2) increased military assistance to forces on the ground; (3) a regional political effort to work with allies; and (4) a humanitarian assistance to populations targeted by ISIS.³

The President welcomed Congressional support for this effort and affirmed "we are strongest as a nation when the President and Congress act together."⁴

"I believe we are strongest as a nation when the President and Congress work together. So I welcome congressional support for this effort in order to show the world that Americans are united in confronting this danger."

— President Obama,
September 10, 2014.

Now is the time for Congress to consider and pass legislation that provides necessary tailored authorization for the nation's effort against ISIS.

1. Left unchecked, ISIS will grow to threaten the US.

ISIS already controls about 13,000 square miles (roughly the size of Massachusetts), spanning territory in Iraq and Syria, and wields a fighting force of between 20,000 and 31,500 fighters.⁵

ISIS also commands substantial resources, including cash reserves estimated to be in the hundreds of millions of dollars (much of it looted and stolen) and daily revenue of \$3 million from largely criminal activities.⁶ Reports also indicate ISIS has captured 30-40 Soviet made tanks, dozens of U.S. made HMMWVs, Mine Resistant Ambush Protected (MRAP) vehicles, mortars and anti-tank missile launchers as well as hundreds of small arms from Iraqi armed forces warehouses.⁷

ISIS has shown no restraint in dealing with civilian populations, acting with the most heinous violence and brutality. Its fighters have slaughtered and kidnapped civilians throughout the territory under its control. Further, it has trumpeted the beheading of two American journalists, James Foley and Steven Sotloff⁸, and British aid worker David Haines.

While US intelligence officials have not identified specific plots to strike inside the U.S., ISIS leaders have threatened the US and our allies.⁹ Many of ISIS' fighters have European or American passports, making it easier for them to return home.¹⁰ In order to stop this growing threat to the region—and eventually the United States—Congress should pass an Authorization for the Use of Military Force (AUMF) for action specifically against ISIS as a component of a broader political plan for Iraq and Syria. But in so doing, Congress must act strategically and deliberately.

2. Because defeating ISIS will be a difficult, long-term effort, it is incumbent on Congress to pass a new authorization for the use of force.

In his September 10 remarks, the President asserted that he has all the authority he needs to attack ISIS under the 2001 AUMF and with his constitutional authority.¹¹ Some legal experts have

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ISIS is growing and could threaten us at home if left unchecked.

raised concerns about relying on the 2001 AUMF, because ISIS is not an associated force of al Qaeda and did not exist at the time that authorization was passed.¹²

Whether one believes that the President currently has full authority, limited authority, or no authority to act against ISIS, Congress should provide a new, specific AUMF against ISIS.¹⁴ The President has welcomed such action, and he has asked that Congress update the AUMF to address emerging terrorist threats.¹⁵

Given the threat ISIS poses to the region, and potentially to the US, Congress should provide specific authorization for use of force against the group for three reasons:

1. The campaign against ISIS will not be over quickly. We will have victories and suffer setbacks. Before our military engages in a sustained and difficult conflict, America's leaders should reach consensus about the need to send our troops into harm's way.
2. Congress will have to repeatedly make decisions about action against ISIS, from funding the military, to reprogramming existing funds, to explaining the campaign to their constituents. Members of Congress should be on record with their position on a war of this magnitude.¹⁶
3. The President's efforts to build an international coalition to effectively defeat ISIS will be strengthened if Congress has clearly shown its support for this action. Currently, the world believes that the President is weakened by partisan gridlock in Congress.¹⁷ In confronting a threat like ISIS, where the nation has consensus, Congress should not let partisanship stand in the way.

3. Congress should pass a new, tailored authorization as part of a broader political and military to degrade and ultimately destroy ISIS.

Congress should assert its authority as a co-equal branch of government to debate and vote on plans for war and, through authorizing and appropriations legislation, define and clarify the scope and limits upon what is certain to be an extended military campaign.

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Key Members calling for an authorization vote¹³

Senate	House
<i>Corker</i>	<i>Amash</i>
<i>Cruz</i>	<i>Bachmann</i>
<i>Inhofe</i>	Ellison
Kaine	Engel
King	<i>Issa</i>
<i>McCain</i>	<i>Jones</i>
Murphy	Lee
Nelson	<i>McKeon</i>
<i>Paul</i>	Schiff
	Smith (WA)
	<i>Rogers (MI)</i>
	Royce

Key: Dem. Rep. Ind.

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Congress must own its Constitutional responsibility to authorize military action.

Congress must avoid the mistakes of the past and pass an authorization that clearly defines the scope and limits. Third Way recommends that Congress focus on the following parameters:

- **Specificity:** the authorization should be limited to ISIS and not used as an attempt to go after a wider range of terrorist groups.
- **Geographic limits:** The authorization should be limited to Iraq (and eventually Syria). Before commencing action in Syria, the President should be required to satisfy certain concerns about international law, the impact on the Syrian civil war, and the Syrian opposition.
- **Avoiding a ground war:** The authorization should specify that no ground troops are to be used in direct combat operations. If a President were to deem it necessary to send ground troops, the Administration should return to Congress for further authorization.
- **Reporting requirements:** At regular intervals, the Administration should be required to report to Congress on the broader political, military and humanitarian plan for the military campaign, including the legal rationale for such action.
- **Expiration:** The authorization should expire that so that each session of Congress would vote on authorizing continued action—every 18 months or two years.

Hitting ISIS in Syria could raise some sticky legal questions. Because the United States has the consent of the Iraqi government, strikes in that country are clearly in keeping with international law. But in Syria, strikes against ISIS would be viewed as an act of war by the Assad regime and, perhaps, by their allies; Russia and Iran.¹⁸ Congress should carefully consider these questions before authorizing strikes inside Syria as striking Assad's adversaries would raise questions about the U.S. long-term commitment to a political transition away from the Assad regime.

Most importantly, Congress must seek clearly defined end-goals for any proposed military action. Members can learn the lessons from the Iraq War by forcing greater clarity of thinking about ensuring the executive acts with clear objectives communicated to Congress and the American people with a

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A new authorization should be carefully tailored to avoid past mistakes.

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Congress should act this fall after careful deliberation.

deliberate plan to address the longer term strategy necessary to defeat ISIS.

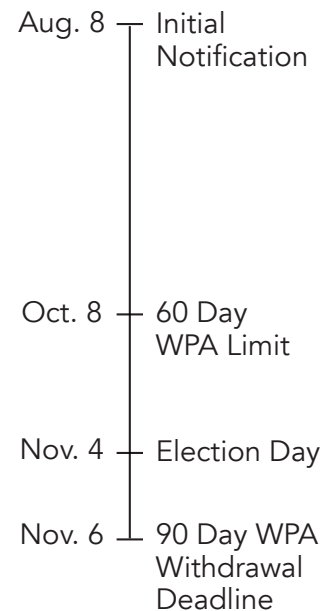
The need for Congress to pass an AUMF this fall is real, but it is not immediate. For now, the President can continue to act in Iraq under the War Powers Act (WPA) which gives the executive 60 days to conduct military action. That clock began running on August 8. After that, he would have in effect another 30 days to “withdraw” from the use of force. That means that after November 6 (and immediately after the midterm election), the President would need Congressional authorization to continue to battle ISIS militarily.¹⁹

CONCLUSION

ISIS is a barbaric terrorist group that is also a sprawling and effective military and criminal enterprise. Its growth and recent actions have made it a paramount threat to our allies, our people in the region, and potentially to the U.S. homeland. The President was right to strike ISIS when he did and present an initial plan to combat ISIS. Now, Congress should pass legislation further specifying and defining the goals and extent of continuing military action.

But all too often since the invasion of Iraq, U.S. policy has been shaped by a pursuit of means, not ends. The lack of clearly defined objectives—regionally, nationally, and locally—has hamstrung the effective implementation of policies in that region. Military action must come in the context of a broader political strategy that addresses the underlying drivers behind the growth of ISIS. Lawmakers should work to clearly define such strategic ends and political objectives while providing a tailored authorization for military force.

War Powers Act Timeline



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Military action must come as part of a broader political strategy.

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Endnotes

1 The President refers to this group as the Islamic State in Iraq and the Levant (ISIL), where as other media organizations refer to it simply as the Islamic State (IS). For purposes of this paper, we use the term ISIS.

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