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A New Authorization for Use of Military Force Against the Islamic State: Comparison of Proposals in Brief

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December 19, 2014

Congressional Research Service

7-5700

www.crs.gov

R43760

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The IS Crisis and the U.S. Response

In 2014, the armed offensive of the Islamic State (IS, also known as ISIL or ISIS) in northern and western Iraq and northeastern Syria raised significant concerns for the United States. After first ordering multiple deployments of U.S. troops to Iraq to provide security to diplomatic personnel and facilities, advise Iraqi security forces, and conduct intelligence gathering and reconnaissance, President Obama began ordering U.S. military airstrikes on IS forces in Iraq in August 2014. Later in September, after laying out plans for expanded use of military force against the Islamic State in a televised speech to the American people, the President ordered U.S. military airstrikes in Syria against both IS forces and forces of the “Khorasan Group,” identified by the President as part of Al Qaeda. The intensified U.S. military engagement has raised numerous questions about the President’s authority to use military force against the Islamic State.

Presidential Authority to Use Military Force Against the Islamic State¹

The President in his August 2014 notifications to Congress of deployments and airstrikes in Iraq indicated his powers as Commander in Chief and Chief Executive under Article II of the Constitution gave him authority to undertake such action. Obama Administration officials and the President’s September 2014 notifications² to Congress for airstrikes and other actions in Iraq and Syria, however, stated that two enacted authorizations for use of military force (AUMFs), the Authorization for Use of Military Force (2001 AUMF; P.L. 107-40), and the Authorization for Use of Military Force Against Iraq Resolution of 2002 (2002 AUMF; P.L. 107-243), provide authorization for certain U.S. military strikes against the Islamic State in Iraq and Syria, as well as the Khorasan Group of Al Qaeda in Syria. Most recently, the President on November 5, 2014, indicated that he intends to enter into discussions with congressional leaders to develop a new AUMF specifically targeting the Islamic State, in order to “right-size and update whatever authorization Congress provides to suit the current fight, rather than previous fights” authorized by the 2001 and 2002 AUMFs.³

¹ For more information and analysis of the IS crisis, the U.S. response, presidential authority to use military force, and the operation of the War Powers Resolution in this situation, see CRS Report RL33487, *Armed Conflict in Syria: Overview and U.S. Response*, coordinated by Christopher M. Blanchard; CRS Insight IN10147, *Considerations for Possible Authorization for Use of Military Force Against the Islamic State*, by Matthew C. Weed; and CRS Report R43720, *U.S. Military Action Against the Islamic State: Answers to Frequently Asked Legal Questions*, by Michael John Garcia and Jennifer K. Elsea.

Another proposal, H.J.Res. 127, introduced September 8, 2014, would recognize a state of war exists between the United States and the Islamic State, and authorize the use of military force against the Islamic State and associated forces.

² Available at <http://www.whitehouse.gov/the-press-office/2014/09/23/letter-president-war-powers-resolution-regarding-iraq>; <http://www.whitehouse.gov/the-press-office/2014/09/23/letter-president-war-powers-resolution-regarding-syria>.

³ President Barack Obama, remarks at a press conference, November 5, 2014, <http://www.whitehouse.gov/the-press-office/2014/11/05/remarks-president-press-conference>.

2001 Post-9/11 Authorization for Use of Military Force

In response to the 9/11 terrorist attacks, Congress enacted the AUMF authorizing the President to use military 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....” Although the Islamic State does not appear to fall within that language, it is possible that the executive branch regards it as one of the “associated forces” fighting alongside Al Qaeda and the Taliban that it asserts are also targetable under the 2001 AUMF.⁴ The Obama Administration had stated previous to the latest action against the Islamic State and the Khorasan Group that it will use force against such associated forces under the 2001 AUMF only when they are lawful military targets that “pose a continuing, imminent threat to U.S. persons....” Due to Al Qaeda’s February 2014 disavowal of any remaining ties with the Islamic State, some question whether the Islamic State can be considered an associated force under the 2001 AUMF. The Obama Administration has stated that the Islamic State can be targeted under the 2001 AUMF because its predecessor organization, Al Qaeda in Iraq, communicated and coordinated with Al Qaeda; the Islamic State currently has ties with Al Qaeda fighter and operatives; the Islamic State employs tactics similar to Al Qaeda; and the Islamic State, with its intentions of creating a new Islamic caliphate, is the “true inheritor of Osama bin Laden’s legacy.”⁵

2002 Authorization for Use of Military Force Against Iraq

Congress enacted the 2002 AUMF prior to the 2003 U.S. invasion of Iraq that toppled the government of Saddam Hussein, with U.S. military deployments to and operations in Iraq continuing until December 2011. The 2002 AUMF authorizes the President to use U.S. Armed Forces to enforce relevant United Nations Security Council resolutions and to “defend the national security of the United States against the continuing threat posed by Iraq....” Although the 2002 AUMF has no sunset provision and Congress has not repealed it, one view is that after the establishment of a new Iraqi government, the restoration of full Iraqi sovereignty, and the U.S. withdrawal from Iraq, the 2002 AUMF no longer has force. Obama Administration officials have recently voiced support for repealing the 2002 AUMF, reflecting the Administration’s belief that it is no longer needed. Conversely, another view asserts that, although its preamble focuses on the Saddam Hussein regime and its WMD programs, the 2002 AUMF’s authorization language is broad, referring only to a “continuing threat” from Iraq, and that the 2002 AUMF could provide authority to defend against threats to Iraq as well as threats posed by Iraq. Indeed, 2002 AUMF authority was the basis for the U.S. military presence in Iraq from the fall of Saddam Hussein and completion of the WMD search to its 2011 withdrawal, a span of over eight years, a period that could be characterized as dealing with threats to Iraq rather than threats from Iraq. The IS threat in Iraq could therefore be seen as breathing new life into 2002 AUMF authority. In addition, former supporters of Saddam Hussein reportedly provide support to the Islamic State, possibly forming a link between the original aims of the 2002 AUMF and any future actions taken against the Islamic State.

⁴ Testimony of Stephen W. Preston, General Counsel, Department of Defense, before the Senate Committee on Foreign Relations, hearing on the Authorization for Use of Military Force, 113th Cong., 2nd sess., May 21, 2014, http://www.foreign.senate.gov/imo/media/doc/Preston_Testimony.pdf.

⁵ White House, “Press Briefing by Press Secretary Josh Earnest,” press release, September 11, 2014, <http://www.whitehouse.gov/the-press-office/2014/09/11/press-briefing-press-secretary-josh-earnest-9112014>.

Presidential Authority Under Article II of the Constitution

Article II of the Constitution makes the President Commander in Chief of the U.S. Armed Forces, and gives the President certain foreign affairs powers. It is debated to what extent Article II authorizes the President to unilaterally use military force, especially given Congress's Article I war powers, including the power to declare war. The President's authority to use force to defend the United States, its personnel, and citizens against ongoing or imminent attack has been generally accepted, while employing such force simply to further foreign policy or general national security goals is more controversial. In Iraq, the President would seem to have substantial authority to use force to defend U.S. personnel, the U.S. embassy in Baghdad, and any other U.S. facilities and property. His August 2014 notifications of airstrikes in Iraq, however, have also cited as justification furthering U.S. national security and foreign policy interests, and have described uses of force to provide humanitarian assistance, and to aid Iraqi security forces in their fight against the Islamic State. In addition, the President's stated strategy for degrading and destroying the Islamic State, as well as his September 2014 notifications to Congress of airstrikes and other actions in Iraq and Syria, are not based primarily on immediate protection of the United States, its personnel, or citizens. Thus, it can be argued that Article II alone might not provide sufficient authorization for the use of military force against IS and Khorasan Group forces in Iraq and Syria.

Calls for a New AUMF Targeting the Islamic State

Although the Obama Administration has claimed 2001 AUMF and 2002 AUMF authority for its recent and future actions against the Islamic State, it might be argued that these authorizations do not apply, and that these actions also fall outside the President's Article II powers. Concerned with Congress's constitutional role in the exercise of the war power, perceived presidential overreach in that area of constitutional powers, and the President's expansion of the use of military force in Iraq and Syria, several Members of Congress have expressed the view that continued use of military force against the Islamic State requires congressional authorization. Members differ on whether such authorization is needed, given existing authorities, or whether such a measure should be enacted. As mentioned above, President Obama has stated that he would seek to come to agreement with congressional leaders on a new AUMF targeting the Islamic State, bolstering calls from Congress for such new authorization.

Language in a new AUMF targeting the Islamic State and other groups (IS AUMF) could either broaden the purpose of military force to include unspecified U.S. national security interests, or narrow the scope of authorization to specific objectives related to the Administration's stated goal of "degrading and ultimately destroying" the Islamic State. Congress could limit the IS AUMF's geographic scope, authorizing force only in Iraq and/or Syria. With continued uncertainty surrounding the Iraqi government, Congress might include authorization to use U.S. Armed Forces in Iraq in furtherance of political stability objectives. Provisions in any IS AUMF targeting the Islamic State might address the possible effect that targeting the Islamic State in Syria and Iraq could have on the ongoing conflict in Syria. Congress might also include a prohibition on the use of appropriated funds for the use of military force outside the scope of the specified authorization.

IS AUMF Proposals During the 113th Congress⁶

In September 2014, a number of Members proposed several new authorizations to use military force against the Islamic State:

Table 1. Proposed Authorizations to Use Force Against the Islamic State

Bill or Resolution	Title	Sponsor	Date Introduced
H.R. 5415	Authorization for Use of Military Force against International Terrorism Act	Representative Frank Wolf	September 8, 2014
H.J.Res. 123	Authorization for the Use of Military Force Against the Islamic State of Iraq and the Levant (ISIL)	Representative Darrell Issa	September 8, 2014
S.J.Res. 42	Authorization for Use of Military Force against the Islamic State in Iraq and the Levant	Senator Bill Nelson	September 8, 2014
S.J.Res. 43	Authorization for Use of Force Against the Organization Called the Islamic State	Senator James Inhofe	September 8, 2014
S.J.Res. 44	Authorization for Use of Military Force against the Islamic State in Iraq and the Levant	Senator Tim Kaine	September 8, 2014
H.J.Res. 125	Authorization for Use of Military Force Against ISIL Resolution	Representative Adam Schiff	September 16, 2014
H.J.Res. 128	Authorization for Use of Military Force Against ISIL Resolution	Representative John Larson	September 19, 2014

Note: As of the date of this report, each proposal has been referred to either the House Foreign Affairs Committee or Senate Foreign Relations Committee, except H.J.Res. 128, which is before both the House Foreign Affairs and House Rules Committees.

None of these proposals received any formal action from their assigned committees. A new proposal (S.J.Res. 47) was marked up in the Senate Foreign Relations Committee and reported to the Senate in December 2014, but has received no further action as of the date of this report (see “December 2014 Senate Foreign Relations Committee Activities,” below). The President’s recent statement that he would enter into discussions with congressional leaders on enacting a new AUMF targeting the Islamic State might affect future congressional action on these or similar proposals. Although one of the current IS AUMF proposals might be adopted as the vehicle for any congressional-executive agreement on authorization, it is not clear what authorization language might be proposed by the executive branch in its discussions with congressional leaders, possibly requiring significant changes to existing proposals or the introduction of a new IS AUMF. In addition, a number of the proposals listed above contain provisions to limit presidential authority to use military force against the Islamic State as to scope and duration, and in some cases to sunset or repeal the existing authority in the 2001 and 2002 AUMFs. The Administration might seek to roll back such restrictions to ensure the maximum authority for the President to carry out the military campaign against the Islamic State “not just ... over the next

⁶ This section does not include proposals introduced earlier in the 113th Congress that would, for example, repeal existing AUMFs or express a sense-of-Congress about military action in Iraq and/or Syria.

two or three months, but our strategy going forward.”⁷ Although the President indicated that discussions with congressional leaders on this issue would begin in November 2014, he stated that the process involved with a new IS AUMF may carry over into the 114th Congress.⁸

Scope of Force and Military Activities Authorized

All but one of the proposed IS AUMFs listed above are substantially similar in their description of the scope of authorized force, stating that the President is authorized to use “necessary and appropriate force.” Two of the proposals grant the President the authority to determine what type and degree of force is necessary and appropriate, while four others state that “necessary and appropriate force” is authorized, without stating who is authorized to make such a determination. H.J.Res. 125 does not limit the scope of the use of force in this way, however, stating that the President is authorized to “use the Armed Forces of the United States,” without requiring such use of force to be “necessary and appropriate” as determined by the President or otherwise. While it might be expected that the President, as Commander in Chief, will make the “necessary and appropriate” determination in all cases regardless, explicitly granting the President that role in the authorization might preclude congressional challenges to presidential decision making after an authorization is enacted.

S.J.Res. 44 also specifies the scope of military activities authorized and the objective of those activities. Under this proposed IS AUMF, the President is authorized “to participate in a campaign of airstrikes ... to degrade and defeat ISIL....” Coupled with a general prohibition against the President’s use of ground troops against the Islamic State, this provision might be effective in preventing expansion of the military activities that the President might utilize against IS forces.

Targeted Entities

Each of the proposed IS AUMFs identifies the Islamic State (using that moniker or one of the ISIS/ISIL aliases) as the target of authorized U.S. military force. S.J.Res. 43 specifies “ISIL” but also “any successor organization” to the Islamic State. S.J.Res. 44 extends the authorization to IS-associated forces, subject to the President’s identification of such groups to Congress through a certification process set out in the resolution. While these provisions seem straightforwardly effective in ensuring they authorize force against the Islamic State, they might be considered less than sufficient in their coverage of the overall situation in Iraq and Syria. In late September, President Obama notified Congress of strikes against IS forces in Syria, but also made a separate notification of airstrikes in that country against the “Khorasan Group,” identified by the President as part of Al Qaeda. If Congress intends to enact an AUMF to direct the President to conduct military activities in Iraq and Syria, it might craft authorization language that can encompass non-IS associated groups, of which the Khorasan group might be an example. On the other hand, Congress might choose to deliberately exclude such groups from a new authorization.

H.R. 5415 includes the Islamic State as a target, but also covers a number of other named terrorist groups and expansive categories of terrorist threats. The lawful targets of the bill include

⁷ President Barack Obama, remarks at a press conference, November 5, 2014, <http://www.whitehouse.gov/the-press-office/2014/11/05/remarks-president-press-conference>.

⁸ Ibid.

those countries, organizations, or persons associated with or supporting terrorist groups, including al Qaeda and its regional affiliates, the Islamic State of Iraq and Syria, al Shabaab, Boko Haram, and any other emerging regional terrorist groups that share a common violent extremist ideology with such terrorist groups, regional affiliates, or emerging terrorist groups....

This broad language would significantly expand the authorized use of military force not only with regard to the current crisis with the Islamic State in Iraq and Syria, but also in terms of U.S. counterterrorism activities worldwide. The authorization seems to include every state, other entity, or person that is part of or supporting a terrorist group, authorizing use of U.S. Armed Forces against each. In this regard, H.R. 5415 would seem to essentially serve as an expansive replacement for the authorities in the 2001 AUMF, delinking U.S. military action from the September 11, 2001, attacks that serve as some limitation on the use of military force in that earlier authorization.

Purpose of Authorization

Most of the proposed IS AUMFs state that their purpose, at least in part, is to “defend the national security of the United States” against the Islamic State. Some of these proposals include additional elements, however, that expand the purpose past U.S. national security. S.J.Res. 44, for example, states that the authorization is also intended to protect the United States and “other countries” from terrorist attacks. Should the Islamic State expand its operations or shift its tactics toward an expansive transnational terrorist agenda, such authorization could prove to be far reaching. S.J.Res. 44 also authorizes the use of force to “protect individuals from acts of violence in clear contravention of international law and basic human rights....” Read as an additional purpose to authorize the use of military force against IS forces, this language might be read to allow the President to use U.S. Armed Forces to fight the Islamic State even in cases where the United States is not facing a threat to its security. If the additional language were interpreted to be a second purpose, the authorization could be read to include military action against actors other than the Islamic State in order to stop human rights violations, greatly increasing the scope of the authorization.

Another proposal, S.J.Res. 42, does not include the “defend the national security” language, instead stating the authorization’s purpose is “to prevent terrorist attacks on the people and interests of the United States and our allies.” While the focus on the prevention of terrorist attacks is arguably more limited than a general protection of undefined national security interests, the inclusion of protecting of U.S. “interests” and allies generally from such attacks could be seen as broadening the authorization beyond the “U.S. national security” language of other proposals. Limiting the purpose to preventing terrorist attacks also might narrow the authorization insofar as it would not necessarily include a broader purpose to “defeat” the Islamic State completely or stop the Islamic State’s ability to operate in a non-ally state such as Syria. H.R. 5415 has similar purpose language to that of S.J.Res. 42, but also states it is also the authorization’s purpose “to eliminate” a wide range of terrorist groups (explained in the “Targeted Entities” section, above). This purpose language, therefore, might not require a known threat to the United States or its allies prior to the President using military force against a terrorist group. Criteria for assessing the “defeat” or “elimination” of targeted entities are not included.

Conditions on Use of Military Force

Three of the proposals include authorization language that states the President has authority to use military force when the United States is part of an effort by the broader international community, or part thereof, to meet the threat posed by the Islamic State. H.R. 5415 states that the President may use military force “with the close consultation, coordination, and cooperation with NATO and regional allies....” S.J.Res. 44 authorizes the President to use military force “as part of a multinational coalition....” H.J.Res. 128 includes two authorizing provisions, one of which seems to be intended to operate when the U.N. Security Council has passed a resolution authorizing its membership to use force against the Islamic State. Although each of these proposals seems to indicate an intent to ensure the United States does not use military force without international support, it is difficult to say whether the language might strictly require such multilateral action, or to what extent cooperation and coordinated action with other nations might be required.

Limitations on Use of Military Force

The proposed IS AUMFs contain a number of provisions intended to limit the authority to use military force. Some of the proposals include language excluding the deployment of U.S. ground troops from the President’s authority, except for certain types of military units or to carry out certain activities. These proposals include language excluding authority for “deployment of ground forces in a combat role,” “Armed Forces in direct combat operations,” “rotational ground forces,” or “United States ground combat forces.” Each of these descriptions might be interpreted to affect the President’s authority differently. Excluding deployment of ground forces “in a combat role” might be more restrictive than excluding forces that engage in “direct combat operations,” as there might be combat roles for U.S. Armed Forces that do not fall within the interpretation of the term “direct.” A number of types of ground combat forces might also fall outside the definition of “rotational” ground forces. These differences in language might result in authorizations with limitations on presidential authority of varied effectiveness. In addition, two of the proposed IS AUMFs provide exceptions to the limitation on ground troops. H.J.Res. 125 would allow deployment of ground troops that are “special operations forces” or forces “deployed in a training, advisory, or intelligence capacity.” While these exceptions might still exclude most U.S. Armed Forces units from deployment under the proposed AUMF, the overall number of troops that could be deployed under the exceptions could be sizeable, and their roles could place them in harm’s way in many cases. S.J.Res. 44 also includes exceptions to the ban on ground troops, allowing deployments for military assistance and training, protection or rescue of U.S. Armed Forces or citizens, and “limited operations against high value targets.”

H.J.Res. 125 and S.J.Res. 44 also include geographic limitations to their respective overall authority to use military force. Both limit that authority to Iraq and Syria.⁹ In light of the Islamic State’s expansive ambitions and operations close to the borders of Turkey, Jordan, Lebanon, and potentially other countries, such language could prove more restrictive in an evolving conflict than might be initially assumed. In the context of implementation of recent AUMFs, especially the 2001 AUMF, such limitations seem to be important, as successive Presidents have interpreted the 2001 AUMF to allow for use of military force in multiple countries that might not have been contemplated when Congress enacted the original authorization. S.J.Res. 44 also limits any use of force against IS associated forces, stating that there is no authority to use force against those

⁹ H.J.Res. 125 states that the limitation does not apply to foreign military training, although this type of activity would not be expected to raise questions concerning the authority to use military force.

forces unless the President identifies such forces in periodic reports to Congress. Again, this seems to be a response to the executive branch's implementation of the 2001 AUMF; both President Bush and Obama have independently interpreted that authority to extend to associated forces that are "co-belligerents" with Al Qaeda and the Taliban, including forces in multiple countries outside the original target of U.S. military action, Afghanistan.

Five of the proposed IS AUMFs include a provision that automatically terminates their respective authorizations after a certain period of time, with sunset provisions of 120 days, one year, 18 months, two years, and three years.

S.J.Res. 44 also includes an interpretive provision, stating that its authorization should not be construed as "authorizing support for force in support of, or in cooperation with, the national government of Syria ... or its security services...."

Repeal of Previous AUMFs

Four of the proposals would repeal the 2002 AUMF authorizing the use of military force against Iraq. Two of these four, H.J.Res. 125 and H.J.Res. 128, would also repeal the 2001 AUMF with a delay, with repeal taking effect 18 months and two years after enactment, respectively. The Obama Administration had recently adopted the position both that the 2002 AUMF could be repealed without detriment to U.S. Armed Forces or U.S. interests, and that the 2001 AUMF could be amended or repealed once the planned U.S. Armed Forces withdrawal from Afghanistan was completed and a bilateral security agreement with Afghanistan is finalized.¹⁰ These repeal provisions seem to generally correspond with these recent Administration positions. Recent statements by the Obama Administration and the President's September 23, 2014, notification to Congress of strikes against IS forces, however, indicate that the President considers the 2001 and 2002 AUMFs as authority to conduct a military campaign against the Islamic State as well as other Al Qaeda-related groups. Given this presidential application of existing AUMFs, the repeal provisions might take on the role of repudiating the President's positions on his existing authority to use military force against the Islamic State and other terrorist groups. Repeal of these AUMFs could be seen as an indication that Congress disagrees with the President's interpretation of his existing authorities to use force and that it intends to replace his existing authority with a possibly narrower authority in an IS AUMF.

Reporting and Certification Requirements

Five of the proposed IS AUMFs require presidential reporting to Congress to include various information, including

- the Administration's strategy for military action against the Islamic State and in Iraq and Syria generally, and implementation of or changes to the strategy;
- the status of military actions taken under a given authorization;
- descriptions of plans for further military action, as well as redeployment of U.S. Armed Forces after military action is completed;

¹⁰ See testimony of Mary McLeod and Stephen Preston, U.S. Congress, Senate Committee on Foreign Relations, hearing on Authorization for Use of Military Force, 113th Cong., 2nd sess., May 21, 2014.

- expenditures made pursuant to the authorization, or the budgetary effects of military action taken; and
- the status and actions of any multinational coalition cooperating with the United States to engage the Islamic State and other groups militarily.

S.J.Res. 44 requires the President to report to Congress every 90 days on his identification of IS associated forces in order to gain the authority to use military force against such associated forces. In order for the President to have authority to use military force without a relevant U.N. Security Council resolution, H.J.Res. 128 requires the President to certify that the United States sought approval of such a resolution, that the Security Council is unlikely to approve such a resolution, and that the President has instead sought to build a broad coalition of nations to counter the IS threat.

War Powers Resolution and Expedited Consideration Provisions

Each of the proposals states that its respective provision authorizing the use of military force is intended to constitute specific statutory authorization within the meaning of Section 5(b) of the War Powers Resolution (WPR; P.L. 93-148; 50 U.S.C. §§1541-1548). Section 5(b) of the WPR states that the President shall withdraw U.S. Armed Forces from active or imminent hostilities within 60 days after a presidential notification of the introduction of U.S. Armed Forces into such hostilities is made or is required to be made under Section 4(a)(1) of the WPR, unless Congress has enacted a declaration of war or authorization to use military force, among other exceptions. The statement that these proposals are intended to act as authorization under the WPR might indicate Congress's desire to approve the President's current military actions, within the scope and limitations explained above. Although the President ordered the first airstrikes against IS forces in early August, there does not seem to be clear consensus among experts or Members of Congress on when the 60-day period began running, and whether it is running currently. The President's reliance on the existing AUMFs to conduct military operations against the Islamic State and other groups in Iraq and Syria, if accepted by Congress, would have stopped any running of the 60-day clock, whether or not a new IS AUMF is enacted, as there would be existing congressional authorization for his actions.

Section 6 of the WPR provides for expedited consideration of legislative proposals introduced in accordance with Section 5(b); it is not apparent that any of the current IS AUMF proposals are currently being subjected to these expedited procedures. Although the WPR sets out these procedures in legislation, such procedural provisions do not take precedence over the rulemaking and procedural prerogatives of either house of Congress, and each house maintains the authority to enforce its own rules at its discretion.¹¹ H.J.Res. 128 sets out its own procedures for expedited consideration of a further resolution authorizing military force against the Islamic State, if such resolution meets H.J.Res. 128's definition of a "qualified resolution." The process is described in **Table 2** below, in the "Expedited Consideration" section.

¹¹ For more information, see CRS Report 98-888, *"Fast-Track" or Expedited Procedures: Their Purposes, Elements, and Implications*, by Christopher M. Davis; CRS Report RS20234, *Expedited or "Fast-Track" Legislative Procedures*, by Christopher M. Davis; CRS Report RL30599, *Expedited Procedures in the House: Variations Enacted Into Law*, by Christopher M. Davis.

December 2014 Senate Foreign Relations Committee Activities

In December 2014, the Senate Foreign Relations Committee conducted a hearing and considered legislation concerning a new authorization for use of military force against the Islamic State. After Senator Rand Paul reportedly intended to propose an amendment to S. 2946 prior to the committee's vote on that bill that would have declared a state of war between the United States and the Islamic State, the committee decided to consider an IS AUMF proposed by Committee Chairman Robert Menendez. Prior to the committee's markup of the proposal on December 11, the committee held a hearing on December 9 with Secretary of State John Kerry to discuss the Obama Administration's views on enactment of a new IS AUMF.

Senator Menendez's IS AUMF proposal, as amended and reported favorably out of committee on December 13 (S.J.Res. 47), would authorize the use of U.S. Armed Forces against the Islamic State and "associated persons or forces," defined as "individuals and organizations fighting for or on behalf of the Islamic State ... or a closely-related successor entity...." The authorization would prohibit "ground combat operations" except for the rescue or protection of U.S. Armed Forces or U.S. citizens, intelligence gathering, enabling kinetic strikes, operational planning, and providing assistance to forces fighting the Islamic State in Iraq and Syria. The AUMF would repeal the 2002 AUMF and sunset the authorization in the 2001 AUMF three years after enactment of S.J.Res. 47. It states that the authority contained in the AUMF supersedes any previous authority that could apply to the use of force against the Islamic State. The AUMF's authority would terminate three years after enactment, "unless reauthorized."

At the hearing, Secretary Kerry reiterated President Obama's earlier-stated position that the Administration supports enactment of a new AUMF targeting the Islamic State, agreeing with the goal of providing specific and limited authority to conduct operations against this organization and its associated forces. The Secretary informed the committee that the Administration supports the three-year sunset of the authorization contained in Senator Menendez's proposal, "subject to provisions for extension" of that authorization. He stated the Administration's view, however, that such authority "should give the President the clear mandate and flexibility he needs to successfully prosecute the armed conflict against [the Islamic State]...." The Administration, according to Secretary Kerry, therefore opposes inclusion of a limitation on the use of ground combat forces, and any geographic restriction limiting operations to Iraq and Syria. With regard to the definition of "associated persons or forces" in Senator Menendez's proposed IS AUMF, Secretary Kerry stated that the Administration would prefer the definition be based on those "fighting alongside" the Islamic State, rather than the current language, which he stated might require a determination of "ideological association or other kind of affiliation."¹²

With regard to the sunset provisions in Senator Menendez's proposal, automatically terminating both the IS-specific authorization as well as the authorization in the 2001 AUMF after three years, there is concern that Congress placing time limitations on the campaigns against the Islamic State, as well as Al Qaeda and other terrorist groups targeted under the 2001 AUMF, would send the wrong message to such targeted groups and the world about U.S. resolve to defeat these

¹² Testimony of Secretary of State John Kerry, U.S. Congress, Senate Committee on Foreign Relations, *Authorization For The Use of Military Force Against ISIL*, 113th Cong., 2nd sess., December 11, 2014.

groups. On the other hand, a sunset on authority to use military force could be utilized to ensure that the IS and 2001 AUMF authorizations are not interpreted to authorize the use of military force in perpetuity, and in a manner that some perceive as outside the scope and intent of the original authorizations. Given the Obama Administration's continuing reliance on that authorization to conduct the current campaign against the Islamic State, for example, leaving the 2001 AUMF in place without amendment might be a continuing source of confusion and contention concerning presidential authority to use military force against the Islamic State, and in Iraq, Syria, and the Middle East/North Africa region in general. In any case, some argue, automatic terminations of authority might force Congress to reconsider previous AUMFs and their provisions in light of changed circumstances, amending and reauthorizing as Congress sees necessary.

In considering any proposals to limit the authority of an IS AUMF by prohibiting the use of ground forces or constraining operations to a certain geographic area, Congress must weigh competing interests. The limitation on the use of ground forces or prohibiting ground combat operations might, as some argue, significantly restrict the ability of the President and U.S. military leadership to prosecute conflict against the Islamic State in the manner they feel is most effective. Congress might consider such restriction acceptable, however, if it is determined to avoid the involvement of the U.S. Armed Forces in another large-scale ground conflict following so closely upon the end of two such conflicts in Iraq and Afghanistan.

A geographic limitation might hinder the President's ability to strike IS and associated forces in countries other than Iraq and Syria, despite these forces' proven ability to cross state borders when it suits their purposes. In addition, as more groups pledge to fight alongside the Islamic State in countries such as Egypt, Libya, Algeria, Saudi Arabia, and Yemen, it could be reasonably expected that the President would determine U.S. military operations should expand outside Iraq and Syria in the future. Congress, however, might wish to include such a limitation to prevent a similar geographic expansion of military operations to the President's expansion under the 2001 AUMF's authority to several countries other than Afghanistan.

It can be argued that even if such limitations are perceived later to have a deleterious effect on the U.S. campaign against the Islamic State, either limitation could be removed or modified through subsequent legislative action if the need arises. Such limitations and an overall lack of flexibility in any IS AUMF, however, might be difficult to change legislatively if Members of Congress cannot agree to changes; neither the 2001 nor 2002 AUMF has been amended, for example, despite the stated need for amendments by observers and Members over the lifespan of those two measures.

Table 2. Proposed Authorizations for Use of Military Force Against the Islamic State in the 113th Congress

Comparison of Similar Provisions (as of October 20, 2014)

Provision	H.R. 5415	H.J.Res. 123	H.J.Res. 125	H.J.Res. 128^a with U.N. Security Council Resolution	H.J.Res. 128^a without U.N. Security Council Resolution	S.J.Res. 42	S.J.Res. 43	S.J.Res. 44
Scope of authorized force	“The President is authorized ... to use all necessary and appropriate force”	“The President is authorized to use the Armed Forces of the United States as the President determines to be necessary and appropriate”	“The President is authorized to use the Armed Forces of the United States”	“The President is authorized to use the United States Armed Forces as the President determines to be necessary and appropriate”	Same, except subject to conditions (see Reporting/Certification row, below) and enactment of a second joint resolution under expedited procedures	“The President is authorized to use appropriate force”	“the President is authorized to use all necessary and appropriate force”	“the President is authorized ... to use all necessary and appropriate force”
International conditions for use of force	“with the close consultation, coordination, and cooperation with NATO and regional allies”	none specified	none specified	U.N. Security Council resolution authorizing use of force against ISIL	No U.N. Security Council resolution authorizing use of force against ISIL	none specified	none specified	“as part of a multinational coalition”

Provision	H.R. 5415	H.J.Res. 123	H.J.Res. 125	H.J.Res. 128^a with U.N. Security Council Resolution	H.J.Res. 128^a without U.N. Security Council Resolution	S.J.Res. 42	S.J.Res. 43	S.J.Res. 44
Types of military action authorized	none specified	none specified	none specified	none specified		none specified	none specified	<p>“to participate in a campaign of airstrikes in Iraq, and if the President deems necessary, in Syria, to degrade and defeat ISIL”</p> <p>The resolution would also authorize the President to “provide military equipment and training to forces fighting ISIL in Iraq or Syria”</p>

Provision	H.R. 5415	H.J.Res. 123	H.J.Res. 125	H.J.Res. 128^a with U.N. Security Council Resolution	H.J.Res. 128^a without U.N. Security Council Resolution	S.J.Res. 42	S.J.Res. 43	S.J.Res. 44
Target of use of military force	“those countries, organizations, or persons associated with or supporting terrorist groups, including al Qaeda and its regional affiliates, the Islamic State of Iraq and Syria, al Shabaab, Boko Haram, and any other emerging regional terrorist groups that share a common violent extremist ideology with such terrorist groups, regional affiliates, or emerging terrorist groups”	“Islamic State of Iraq and the Levant (ISIL)”	“Islamic State of Iraq and the Levant (ISIL)”	“Islamic State of Iraq and the Levant (‘ISIL’)”	“Islamic State of Iraq and the Levant (‘ISIL’)”	“Islamic State of Iraq and the Levant (ISIL)”	“Islamic State (or ‘IS’), formally known as the Islamic State of Iraq and the Levant, as well as any successor organization”	“Islamic State in Iraq and the Levant (ISIL)”, as well as ISIL-associated forces, subject to requirements in Section 4 (see below)
Purpose	“to eliminate all such terrorist groups and prevent any future acts of international terrorism against the United States or its allies by such terrorist groups, countries, organization, or persons”	“to defend the national security of the United States against the continuing threat posed by the Islamic State of Iraq and the Levant (ISIL)”	none specified	“to ... defend the national security of the United States against the Islamic State of Iraq and the Levant (‘ISIL’); and enforce a United Nations Security Council resolution” that authorizes a multilateral coalition to take several types of action against ISIL	“to defend the national security of the United States against the Islamic State of Iraq and the Levant (‘ISIL’)”	“to prevent terrorist attacks on the people and interests of the United States and our allies”	“to defend the national security of the United States against the threat posed by the organization called the Islamic State (or ‘IS’), formally known as the Islamic State of Iraq and the Levant, as well as any successor organization”	“to protect the United States and other countries from terrorist attacks by the Islamic State in Iraq and the Levant (ISIL), and in order to protect individuals from acts of violence in clear contravention of international law and basic human rights”

Provision	H.R. 5415	H.J.Res. 123	H.J.Res. 125	H.J.Res. 128^a with U.N. Security Council Resolution	H.J.Res. 128^a without U.N. Security Council Resolution	S.J.Res. 42	S.J.Res. 43	S.J.Res. 44
Geographic limitation	none specified	none specified	“authority ... shall be confined to the territory of the Republic of Iraq and the Syrian Arab Republic” Limitation does not apply to foreign military training activities	none specified		none specified	none specified	Authorization applies to Iraq and Syria
Military unit limitation	none specified	none specified	“does not include the authority for the deployment of ground forces in a combat role” Limitation does not apply to “special operations forces or other forces that may be deployed in a training, advisory, or intelligence capacity”	none specified	use of U.S. Armed Forces authorized “other than the use of such Armed Forces in direct ground combat operations”	“does not include authorization for the use of rotational ground forces”	none specified	“does not include ... use of United States ground combat forces, except for [military assistance and training] or as necessary for the protection or rescue of members of the United States Armed Forces or United States citizens..., or for limited operations against high value targets”
Targeting associated forces limitation	none specified	none specified	none specified	none specified		none specified	none specified	“does not include ... authorization for the use of force against forces associated with ISIL, unless such forces are identified in a report submitted under section 4” of the resolution.

Provision	H.R. 5415	H.J.Res. 123	H.J.Res. 125	H.J.Res. 128^a with U.N. Security Council Resolution	H.J.Res. 128^a without U.N. Security Council Resolution	S.J.Res. 42	S.J.Res. 43	S.J.Res. 44
Government of Syria limitation	none	none	none	none		none	none	“Nothing in this resolution shall be construed as ... authorizing support for force in support of, or in cooperation with, the national government of Syria ... or its security services”
Sunset	none	120 days after date of enactment	18 months after date of enactment	2 years		3 years after date of enactment	none	1 year from date of enactment
AUMF Repeal	none	Resolution would repeal 2002 AUMF	Resolution would repeal 2002 AUMF immediately, and repeal the 2001 AUMF 18 months after date of enactment	Resolution would repeal 2002 AUMF immediately, and repeal the 2001 AUMF 2 years after date of enactment		none	none	Resolution would repeal 2002 AUMF

Provision	H.R. 5415	H.J.Res. 123	H.J.Res. 125	H.J.Res. 128^a with U.N. Security Council Resolution	H.J.Res. 128^a without U.N. Security Council Resolution	S.J.Res. 42	S.J.Res. 43	S.J.Res. 44
Reporting/ Certification	none	Not later than 60 days after enactment, President is required to report on “status of all actions taken”; “description of all proposed actions”; “status of engagement of allies of the United States and international coalitions in combating” ISIL; and “estimated budgetary effects of actions proposed”	“The President shall, at least once every 60 days” after enactment, report on relevant matters including actions taken and planned actions under the authorization	none specified	President must certify that the United States has sought, but the United Nations Security Council has not approved, a resolution authorizing the use of force, and is unlikely to; and that the President has sought to build a broad international coalition to counter ISIL President must present a strategy for use of military force against ISIL	none	Not later than 15 days after enactment, President is required to submit comprehensive strategy to defeat the Islamic State; not later than 90 days after the first report is required, President must report on implementation of the strategy; any substantive change to strategy requires an immediate additional report	Section 4 requires the President to identify ISIL-associated forces targetable under the resolution in a report every 90 days
				In both cases, every 60 days the President must report on uses of lethal force and their circumstances, civilian casualties resulting from such use of force, estimate of expenditures resulting from the use of force, and planning for redeployment of U.S. Armed Forces after military action against ISIL is completed				
Consultation	none specified	none specified	none specified	“The President shall consult on a regular basis with the congressional committees of jurisdiction to provide updated information on actions being taken pursuant to this joint resolution in either public or closed sessions”		none specified	none specified	none specified

Provision	H.R. 5415	H.J.Res. 123	H.J.Res. 125	H.J.Res. 128^a with U.N. Security Council Resolution	H.J.Res. 128^a without U.N. Security Council Resolution	S.J.Res. 42	S.J.Res. 43	S.J.Res. 44
War Powers Resolution	Bill states authorization section is “intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution”	Resolution states authorization section is “intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution”	Resolution states authorization section is “intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution”	(in both cases) Resolution states that authorization sections are “intended to constitute specific authorization within the meaning of section 5(b) of the War Powers Resolution”		Resolution states authorization section is “intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution”	Resolution states authorization section is “intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution”	Resolution states authorization section is “intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution”

Provision	H.R. 5415	H.J.Res. 123	H.J.Res. 125	H.J.Res. 128^a with U.N. Security Council Resolution	H.J.Res. 128^a without U.N. Security Council Resolution	S.J.Res. 42	S.J.Res. 43	S.J.Res. 44
Expedited Consideration	none	none	none	none	Provides expedited consideration for a second resolution, if such resolution is introduced by the majority or minority leader in the House or Senate within the next legislative day after a required Presidential certification is submitted In both houses, second resolution is to be placed on the calendar, considered within one legislative day, debated for a maximum of 20 hours, and voted upon immediately following debate; passage of resolution in one chamber requires immediate action by the second chamber on the resolution received	none	none	none

Source: Congress.gov.

- a. H.J.Res. 128 contains two separate authorization provisions. Section 3 of the resolution operates when the U.N. Security Council has adopted a resolution authorizing the use of military force against the Islamic State; Section 4 operates when no such resolution has been adopted. Section 4 does not in fact authorize the use of military force, but instead creates a process of presidential reporting and certification and expedited consideration procedures for a separate resolution to be introduced after such reporting and certification has been made to Congress. The table therefore sets out the operative provisions and language in H.J.Res. 128 in two columns to separate the operative language of the two authorization sections. For provisions that apply no matter which authorization section is operative, or where the resolution does not contain the type of provision being explained, the two columns are combined.

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