



Fact Sheet: Reclaiming Congress's War Power

The Problem

The United States has been at war since 2001, and Congress last voted to authorize the use of military force in 2002.¹ Following the withdrawal of troops from Afghanistan and the passage of House and Senate bills to repeal the 2002 authorization for the use of military force (AUMF) pertaining to the Iraq invasion, now is the time for Congress to reassess and reassert its prerogative over the war power.²

There is little clearer in the Constitution than which branch of government is intended to exercise the war power. Article I, Section 8, Clause 11 is unambiguous on this point: Congress has the power to “declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.”³

In 1973, Congress enacted the War Powers Resolution to further prescribe the war power.⁴ Of particular importance is the resolution’s explicit reiteration that the president may only deploy the military under specific criteria, including that Congress has declared war, in response to situations like an attack on the country or a national emergency, or via specific statutory authority granted by Congress, such as an Authorization for Use of Military Force.⁵ Both our Constitution and the law are clear and unequivocal: Congress is supposed to be in the driver’s seat in matters of war.

However, the practical reality is different from what the Constitution and the law would indicate. The 2001 authorization for use of force, explicitly enacted for the use of military force against al-Qaida and the Taliban in response to their roles in the September 11th terrorist attacks, has been invoked as the purported legal predicate for more than a dozen operations and deployments involving neither al-Qaida nor the Taliban.⁶ These operations have included countries and organizations wholly unrelated to the 9/11 attacks and entities that did not exist at the time of the enactment of the 2001 and 2002 AUMFs.⁷ In fact, the operations have spanned such a duration of time that only 46 members of the 119th Congress — around 8% of sitting senators and representatives — had the opportunity to vote on the authorizations nearly a quarter century ago.

¹ Katherine Hawkins, “Recommendation for Reclaiming Congress’s War Powers,” Project On Government Oversight, February 19, 2020, <https://www.pogo.org/analysis/recommendations-for-reclaiming-congress-war-powers>.

² Terri Moon Cronk, “Biden Announces Full U.S. Troop Withdrawal from Afghanistan by Sept. 11,” Department of Defense, April 14, 2021, <https://www.defense.gov/News/News-Stories/Article/article/2573268/biden-announces-full-us-troop-withdrawal-from-afghanistan-by-sept-11/>; Karoun Demirjian, “Decades Later, Senate Votes to Repeal Iraq Military Authorizations,” *New York Times*, March 29, 2023, <https://www.nytimes.com/2023/03/29/us/politics/congress-iraq-war-powers-authorization.html>; Claudia Grisales, “In Historic, Bipartisan Move, House Votes To Repeal 2002 Iraq War Powers Resolution,” NPR, June 17, 2021, <https://www.npr.org/2021/06/17/1007363054/congress-is-poised-to-take-back-some-of-its-war-powers-from-the-president>.

³ U.S. Constitution art. I, § 8, cl. 11.

⁴ 50 U.S.C. § 1541-1550 (2024), <https://www.law.cornell.edu/uscode/text/50/chapter-33>.

⁵ 50 U.S.C. § 1541 [see note 4].

⁶ Memorandum from Matthew Weed, Specialist in Foreign Policy Legislation, Congressional Research Service, about “Presidential References to the 2001 Authorization for the Use of Military Force in Publicly Available Executive Actions and Reports to Congress,” February 16, 2018, [https://lee.house.gov/imo/media/doc/Presidential%20Reference%20to%202001%20AUMF%20in%20Notifications%20and%20Executive%20Actions%20Memorandum%20Update%20\(2-16-2018\)%20Final.pdf](https://lee.house.gov/imo/media/doc/Presidential%20Reference%20to%202001%20AUMF%20in%20Notifications%20and%20Executive%20Actions%20Memorandum%20Update%20(2-16-2018)%20Final.pdf).

⁷ Dan Grazier, “Congress Dodges Its War Powers Responsibilities ... Again,” Project On Government Oversight, July 20, 2020, <https://www.pogo.org/analysis/congress-dodges-its-war-powers-responsibilities-again>.

The Solution

In order for Congress to begin to heal itself and take its rightful role as the first among equals across the three branches of government, it must take back and more effectively and responsibly exercise its fundamental authorities. None of these authorities hold more solemn and sacred responsibility than the power to declare war, an act that carries with it the potential for extraordinarily high costs in both human and financial terms. Below are some concrete steps Congress can take in order to reassert its primacy over matters of war and peace and, just as importantly, catalyze a long overdue rebalancing of power between the legislative and executive branches.

- **Oppose any attempts by the executive branch to use existing authorities for purposes and activities for which they were not intended.** A vital first step in an effort to rein in the executive branch and reclaim its own centrality in exercising the war power is to push back on dubious attempts to strain the bounds of existing and previously enacted authorities. This kind of expansion has been most evident in the abuse of the 2001 AUMF, which was focused on al-Qaida and the Taliban and the initial Afghanistan operations. It has since been used to justify more than a dozen operations all around the world, clearly violating the original intent and purpose of that AUMF. Congress has largely stood passively by and allowed successive administrations from both political parties to abuse the 2001 AUMF for whatever operations that administration wanted to undertake. That must end.
- **Repeal outdated existing AUMFs and start with a clean slate.** As noted above, the 2001 AUMF has been inappropriately invoked and used as the predicate for more than a dozen different military operations in various theaters across the globe. In order to effectively rebalance and reassert its power in this arena, Congress must start fresh. Necessary to this project is the repeal of the 2001 AUMF and any other existing authorizations that have similarly outlived their original purpose.
- **Define and specify key terms when drafting and advancing resolutions to authorize war.** One key problem with recent AUMFs is a lack of definitional specificity and clarity. As it seeks to better and more responsibly exercise its war power, Congress must be more judicious and rigorous in the way it drafts AUMFs in the future. This includes more clearly and narrowly defining against who and where the operations will take place and including a sunset clause to avoid the “endless war” dynamic of the past two decades.
- **Conduct better and more rigorous oversight of ongoing operations.** While accounting for reasonable needs around classification and operational security, Congress must be more diligent in its duty to keep tabs on military operations in real time. Public hearings and reports are a key part of this effort, though there is definitely a place for classified briefings and non-public oversight activities as well. It should never be the case, such as in the instance of the more than 20 years of the Afghanistan war, that it requires something like the *Washington Post*'s “Afghanistan Papers” series for the public to learn just how bad things were, or how dishonest the official story of that war was.⁸

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⁸ Craig Whitlock, Leslie Shapiro, and Armand Emamdjomeh, “The Afghanistan Papers: Documents Reveal U.S. Officials Knew the War had Become Unwinnable,” *Washington Post*, December 9, 2019, <https://www.washingtonpost.com/graphics/2019/investigations/afghanistan-papers/documents-database/>.