



April 12, 2018

RE: Constitutional and Global War Concerns with Draft Corker AUMF Resolution

Dear Senator:

The American Civil Liberties Union strongly urges you to refrain from cosponsoring a new Authorization for Use of Military Force (AUMF), which Senator Bob Corker stated today that he plans to introduce as early as tomorrow. It would be hard to overstate the depth and breadth of our concern about reports of the new AUMF. Not only would the Corker AUMF almost irretrievably cede to the Executive Branch the most fundamental power that Congress has under Article I of the Constitution—the power to declare war—but it also would give this president and all future presidents authority to engage in worldwide war, sending American troops to countries where we are not now at war and against groups that the President alone decides are enemies.

An AUMF and a declaration of war are the two legislative vehicles that Congress has used to exercise its exclusive Article I power to declare war. The two most recently enacted AUMFs were a 2001 AUMF to authorize the use of military force in Afghanistan against the perpetrators of the 9/11 attacks, and a 2002 AUMF to use military force against the Saddam Hussein regime in Iraq. Through three presidents, both of these AUMFs have been cited as authority by the Executive Branch for the use of force in places, and against persons, far removed from the purpose and language of the two current AUMFs. But the answer for the overly expansive claims for the two current AUMFs is for Congress to repeal or carve back the current AUMF—and not to pass the Corker AUMF or any other proposal that is far broader and more dangerous than even current law.

Based on reporting this week in *Politico* and a short outline we received from a Senate office, we are extraordinarily concerned about the Corker AUMF. Although we have not seen the language, and we recognize that details are important, our understanding of the framework for the legislation is deeply troubling. Our understanding is that it would authorize force, without operational limitations, against a long list of organizations and in six or more countries—and then allow the Executive Branch authority to add to both lists, as long as the Executive Branch reports the expansion to Congress. The Executive Branch would be able to add additional countries (including the United States itself) to the list of countries where Congress is authorizing war, as well as additional enemies (including groups that do not even exist on the date of enactment).

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Although Congress could bar an expansion to additional countries or additional groups, such action would effectively require a two-thirds majority of both houses, given that the president presumably would veto legislation to curtail an expansion that the president ordered. This aspect of the legislation would upend, in perpetuity, the Constitution's specific process for the United States to go to war. Article I of the Constitution provides that Congress can authorize war with a majority vote and the signature of the president. By contrast, the Corker AUMF would authorize the President to go to war with the stroke of a pen, and Congress would effectively need two-thirds of both houses to stop the President from unilaterally starting a new war.

The Corker AUMF also reportedly will have no operational restrictions, no prohibition against using lethal force against or in sovereign countries, and no definitive sunset. President Trump—and his successors for the coming decades—will effectively be able to claim for the Executive Branch the power that the Constitution gave to Congress exclusively, and do so with no limitations on how, where, when, why, or against whom war is carried out.

The Corker AUMF would cause colossal harm to the Constitution's checks and balances, would jeopardize civil liberties and human rights at home and abroad, would lead to a breathtakingly broad expansion of war without meaningful oversight, and would represent a sharp break from adherence to international law, including the United Nations Charter. If enacted, a Corker AUMF could cause fundamental damage to the Constitution, civil liberties, and human rights for a generation or longer.

While we share the frustration of many senators with expansive presidential claims of war authority based on the 2001 AUMF and the 2002 AUMF, the proposed Corker AUMF would cause far greater problems, and unless the courts would invalidate it as unconstitutional, it would be exceedingly difficult to curtail its damage. The ACLU, along with other human rights, civil liberties, and religious organizations will make stopping a Corker AUMF from becoming law an exceedingly high priority, given the likelihood of long-term global damage if enacted.

We should add that, at the same time that Senator Corker is drafting this new AUMF, the Senate Foreign Relations Committee he chairs has not considered the consequences—including whether to authorize—the use of missiles against Syria, particularly in the wake of the President tweeting out threats against Syria and Russia. Five countries with nuclear arms have engaged militarily in Syria. If there was ever a need for immediate congressional review of a possible military action, it is now with the President tweeting out threats to fire missiles. The ACLU urges the Senate to consider the President's threats to fire missiles, rather than considering a Corker AUMF that would cause long-lasting damage.

Please contact us if you would like to discuss these concerns in greater detail (canders@aclu.org), but we want to make sure that you understand the depth and breadth of our concerns, at least based on early reporting of the Corker AUMF framework, before the legislation is introduced. Thank you for your consideration of our concerns.

Sincerely,



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