

The 2001 Authorization for Use of Military Force and America's Endless War

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The Trump administration has argued that it is able to indefinitely deploy troops to fight the Islamic State under the 2001 Authorization for Use of Military Force (AUMF), which was passed in the aftermath of 9/11 to target al-Qaeda and its allies. This policy paper will argue that the 2001 AUMF is no longer applicable to these counterterrorism operations given the distinction between al-Qaeda and the Islamic State. Further, al-Qaeda's organization has evolved to a loose network of affiliated groups adopting the al-Qaeda brand that act autonomously within their own local conflicts. Despite the tendency to frame U.S. counterterrorism policy through the al-Qaeda frame, this current network is disconnected from the conditions outlined in the 2001 AUMF. Therefore, a new legal framework for U.S. counterterrorism operations is needed that supersedes the original authorization.

In late February 2018, letters from Pentagon and State Department officials to members of Congress were released outlining a plan to keep U.S. forces indefinitely deployed in Syria and Iraq, even in territory that had already been cleared of Islamic State fighters.¹

As legal justification, the Trump administration cited a nearly seventeen-year-old law, the 2001 Authorization for Use of Military Force (AUMF), which granted the president the authority to pursue al-Qaeda and its allies following 9/11. The AUMF has become ubiquitous in American counterterrorism operations under the Bush, Obama, and Trump administrations, having been invoked for military deployment in nineteen different countries. While testifying before the Senate Foreign Relations Committee in October 2017, Defense Secretary James Mattis argued that a new authorization “is not legally required to address the continuing threat posed by al-Qaeda, the Taliban, and ISIS.”²

In confronting these arguments, it is important to ask whether the conditions of this law and the threats it identifies are still applicable to the security challenges facing the U.S. today. While the U.S. government still perceives counterterrorism and imminent threats through the narrative frame of the 2001 AUMF and its focus on al-Qaeda, the nature of the al-Qaeda network has fundamentally changed. Its affiliate groups, many of whom were founded after 2001, are operating increasingly independent from the al-Qaeda core, focusing predominantly on their local conflict environments. As a result of these shifting security conditions, the 2001 AUMF is no longer applicable to operations targeting these groups.

¹ Charlie Savage, “U.S. Says Troops Can Stay in Syria Without New Authorization,” *New York Times*, 22 February 2018.

² Nicole Gaouette and Laura Koran, “Tillerson, Mattis: We Don't Need New War Authorization to Fight Terror,” *CNN*, 30 October 2017.

This policy paper will first provide an overview of the 2001 AUMF and its underlying assumptions. It will next discuss the distinction between the Islamic State and al-Qaeda and the adoption of the al-Qaeda brand by affiliate organizations. It will conclude with recommendations for a new legal framework for counterterrorism operations.

The 2001 AUMF

With just one vote against the bill, the United States Congress passed the AUMF three days after the attacks on September 11, 2001.³ In 243 words, this law authorized the president “to use all necessary and appropriate 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, in order to prevent any future acts of international terrorism against the U.S. by such nations, organizations or persons.”⁴ The passing of the AUMF was shaped by the impulse to act following the attack by al-Qaeda and was framed to target the Taliban government in Afghanistan, which provided protection to Osama bin Laden and his al-Qaeda network.

The general language of the 2001 AUMF, however, is not geographically or temporally bound. It has been used to authorize the deployment of military troops in Afghanistan, Iraq, Syria, Yemen, Somalia, Libya, Kenya, Niger, Cameroon, Uganda, South Sudan, Democratic Republic of Congo, Central African Republic, Djibouti, Jordan, Turkey, Egypt, Cuba, and Kosovo.⁵ It also authorized U.S. drone and air strikes in Yemen, Pakistan, Somalia, Libya, and Syria. Furthermore, this law requires no mechanism for oversight by or consultation with Congress for presidential decisions to deploy forces, essentially permitting an endless war against terrorism subject to the discretion of the president.

There are two assumptions that underpin the interpretation of this law: the nature of al-Qaeda’s network and the notion of self-defense. The AUMF is inextricably linked to al-Qaeda as the perpetrator of the 9/11 attacks without specifically mentioning the organization’s name. It leaves the scope under which it can be used intentionally general in order to be able to attack associated groups, such as the Taliban. The invocation of al-Qaeda links for targeting terrorist groups has been the hallmark of presidential counterterrorism rhetoric since the passing of the 2001 AUMF. However, there are no clear criteria or definition from the U.S. government about which groups are classified as an affiliate to al-Qaeda. This also connects to the idea that actions taken against al-Qaeda’s associates constitute a defensive action to counter an imminent threat and prevent future attacks against the U.S., a necessary condition to invoke the 2001 AUMF. In 2013, President Obama argued at the National Defense University: “under domestic law, and international law, the United States is at war with al-Qaeda, the Taliban, and

³ Democratic Congresswoman Barbara Lee of California issued the only vote against the AUMF in 2001 because of her concerns about the lack of Congressional oversight and the ambiguity of the law. See Austin Wright, “How Barbara Lee Became an Army of One,” *Politico*, 30 July 2017.

⁴ “Authorization for Use of Military Force,” PL 107-40 [S.J.RES 23], 107th Congress, 2001.

⁵ Charles Pena, “Here’s Why Authorization to Use Military Force is so Important,” *Hill*, 4 December 2017.

their associated forces. We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first. So this is just war—a war waged proportionally, in last resort, and in self-defense.”⁶ Shortly after taking office, the Trump administration also cited the al-Qaeda threat and the necessity for self-defense in justifying continued drone strikes in Yemen.⁷

Al-Qaeda versus the Islamic State

The Trump administration’s argument that the 2001 AUMF authorizes the deployment of troops in Syria is premised on the understanding that the Islamic State represents the same global network of terrorists that attacked the U.S. on 9/11. Unlike the al-Qaeda core responsible for 9/11, the Islamic State (then known as al-Qaeda in Iraq) was formed in 2004 in response to the U.S. invasion of Iraq. Its campaigns of violence have been shaped not by operational control from Osama bin Laden and al-Qaeda leadership, but by the political turmoil in Syria and Iraq. Thus, the Islamic State and al-Qaeda represent two distinct organizations with differing aims.

The roots of the Islamic State lie in the chaos of the 2003 U.S. invasion of Iraq and the efforts of the Jordanian Abu Masab al-Zarqawi. Despite fighting with bin Laden in Afghanistan during the 1980s, Zarqawi was reluctant to join forces with al-Qaeda and relinquish operational independence.⁸ However, following negotiations, Zarqawi and his followers from disaffected Sunni tribes affiliated themselves with al-Qaeda in 2004, becoming al-Qaeda in Iraq (AQI). There was tension from the beginning between the two groups. The core leadership of al-Qaeda focused on targeting the U.S. and other Western targets. Zarqawi, on the other hand, saw his fight through the frame of Iraqi politics, focusing on fomenting sectarian war against the Shi’a-led government along with its Sunni collaborators.⁹ AQI’s sectarian violence and brutality towards fellow Muslims strained its relationship with al-Qaeda who privately wished to “sever its ties” with the group.¹⁰ A letter from bin Laden, uncovered following the 2011 raid in Abbottabad, stated that he was ordering fighters in Iraq “to stay away from anyone who is fighting the crusaders during this phase, regardless of whether they are atheists, secular Ba’thists, or infidels.” Concerned that sectarian violence and attacking fellow Muslims would undermine al-Qaeda’s goals, Zarqawi, bin Laden reiterated, “had clear instructions to focus his fighting against the invader occupiers, starting with the Americans.”¹¹ Zarqawi

⁶ Mary Louise Kelly, “When the U.S. Military Strikes, White House Points to a 2001 Measure,” *NPR News*, 6 September 2016.

⁷ Barbara Starr and Ryan Browne, “U.S. Orders First Drone Strikes Under Trump,” *CNN*, 24 January 2017.

⁸ Daniel L. Byman, “Comparing Al Qaeda and ISIS: Different Goals, Different Targets,” *Brookings Institution*, 29 April 2015.

⁹ Brian Fishman, *The Master Plan: ISIS, Al Qaeda, and the Jihadi Strategy for Final Victory* (New Haven, CT: Yale University Press, 2016), 47.

¹⁰ Daniel L. Byman and Jennifer R. Williams, “ISIS vs. Al Qaeda: Jihadism’s Global Civil War,” *Brookings Institution*, 24 February 2015.

¹¹ Oren Dorell, “New Documents Show bin Laden was Warned of ISIL’s Brutality Against Muslims,” *USA Today*, 1 March 2016.

was killed in 2006 by a U.S. airstrike and, despite these directives from bin Laden, his successors remained focused on local sectarian politics. The Iraqi Abu Bakr Baghdadi, who was imprisoned by U.S. forces in 2004, assumed leadership of the group in 2010.

With the emergence of the Syrian Civil War in 2011, al-Qaeda central leadership hoped that Baghdadi and his followers would remain in Iraq, choosing Jabhat al-Nusra as its Syrian affiliate. The latter would themselves eventually split from al-Qaeda in July 2016. Baghdadi refused to accept this arrangement and, in defiance of al-Qaeda, moved his group into Syria in 2013. The group adopted the name the Islamic State in Iraq and Syria and focused on territorial control to create their Caliphate. With continued frustration over attacks against fellow Muslims, al-Qaeda officially renounced any connection to the group in 2014. An al-Qaeda spokesperson stated that the Islamic State “is not a branch of the al-Qaeda group...does not have an organizational relationship with it and [al-Qaeda] is not the group responsible for their actions.”¹² Even when nominally affiliated with al-Qaeda, the Islamic State possessed a distinct leadership structure and autonomous goals at odds with the al-Qaeda core.

Adopting the al-Qaeda Brand

Al-Qaeda, following the Soviet withdrawal from Afghanistan in 1989, saw its struggle primarily as a conflict with Western forces that had occupied Muslim lands and killed Muslim civilians. Bin Laden stated, “[t]he enemy invaded the land of our umma, violated her honor, shed her blood, and occupied her sanctuaries.”¹³ Bin Laden focused al-Qaeda efforts on high profile attacks against American targets, such as the 1998 U.S. Embassy bombings in Kenya and Tanzania, the 2000 USS Cole attack in Yemen, and the 9/11 attacks in New York and Washington. In regard to the 9/11 hijackers, he stated, “[t]hey are [the *umma*’s] vibrant conscience that sees it as imperative to take revenge from the evildoers and transgressors and criminals and terrorists that terrorize the true believers.”¹⁴

Scholars and policymakers have recognized that this al-Qaeda that sparked the “War on Terror” in 2001 has fundamentally changed. The core organization has been severely weakened and a network of local groups operating under the al-Qaeda brand, but fighting for local reasons, has driven its perceived growth in recent years.¹⁵ Many of the al-Qaeda affiliates emerged within pre-existing conflicts and adopted the brand for strategic purposes.

¹² Liz Sly, “Al-Qaeda Disavows any Ties with Radical Islamist ISIS Group in Syria, Iraq,” *Washington Post*, 3 February 2014.

¹³ Bruce Lawrence, ed. *Messages to the World: The Statements of Osama Bin Laden* (New York: Verso, 2005), 156.

¹⁴ Osama bin Laden, interview with Tayseer Allouni, parts 1-6 [English subtitles], YouTube.

¹⁵ Akbar Ahmed, *The Thistle and the Drone: How America’s War on Terror Became a Global War on Tribal Islam* (Washington, DC: Brookings Institution Press, 2013), 317; John Grady, “SOCOM Chief: Threats from Al-Qaeda Have Diminished in Last Five Years,” *USNI News*, 27 February 2014; and Bruce Hoffman, “Al-Qaeda’s Uncertain Future,” *Studies in Conflict & Terrorism* 36, no. 8: 635-653.

Militant groups are incentivized to outbid their contenders, especially when there is competition over resources and support. This could take the form of increased levels of violence or adopting a more extreme ideology, such as the al-Qaeda or Islamic State brand.¹⁶ This rebranding can carry with it increased support, a greater perceived effectiveness or even legitimacy amongst a target audience. It also leads to increased publicity and media attention. These groups with local leadership are, however, products of their conflict environment. They focus their struggle on local or regional goals, as opposed to the strategy of al-Qaeda that focuses on the West.¹⁷

Within Yemen, for example, the local al-Qaeda affiliate emerged from the disaffected southern tribes that had long resisted the northern dominated central government. Following the unification of North and South Yemen in 1990, many southern tribal groups saw the union as a victory for the north, and occupation of the south, with the seizure of southern land by northerners, as a major source of conflict.¹⁸ Al-Qaeda in Yemen (AQY) emerged as a distinct organization in south Yemen in the early 2000s, with its roots in returning *mujahideen* fighters from Afghanistan. It re-established itself as al-Qaeda in the Arabian Peninsula (AQAP) in 2009. Its ranks would swell as southern tribesmen fought for an independent South Yemen, increasingly targeting the Yemeni security services. This group, however, drew the attention of the U.S., which dispatched drones, cruise missiles, and Special Forces against AQAP targets. The Trump administration has continued these counterterrorism operations in Yemen. Relying on the 2001 AUMF for legal authorization, President Trump approved a Navy SEAL raid in his first week after taking office and increased anti-AQAP air strikes six-fold.¹⁹ Despite its rhetoric against the U.S., the actions of AQY/AQAP have been primarily framed by the civil conflict within Yemen. Of their 987 attacks between 2004 and 2016, 975 occurred within Yemen and 936, or 94.8 percent, were directed against Yemeni targets.²⁰

Al-Qaeda is also incentivized to frame the fight of Islamic militant groups around the world as part of their own efforts as means of promoting their own brand and demonstrating their global reach, despite local groups maintaining their own distinct aims and autonomy.²¹ Additionally, there are strategic advantages for governments to frame their struggle against militant groups through the al-Qaeda frame as a means of legitimizing their use of military force and potentially win support from the U.S.²²

¹⁶ Barbara F. Walter, "The Extremist's Advantage in Civil Wars," *International Security* 42, no. 2 (2017): 7-39.

¹⁷ Ahmed, *The Thistle and the Drone*, 258-289.

¹⁸ See Harrison Akins, *The Yemen Imbroglio: Understanding the Many Layers of the Yemeni Civil War*, Policy Brief 3, no. 17, Howard H. Baker, Jr. Center for Public Policy, April 2017.

¹⁹ Courtney Kube, Robert Windrem, and William M. Arkin, "U.S. Airstrikes in Yemen Have Increased Sixfold Under Trump," *NBC News*, 1 February 2018.

²⁰ National Consortium for the Study of Terrorism and Responses to Terrorism (START), 2017, Global Terrorism Database, available at <http://www.start.umd.edu/gtd>.

²¹ Daniel Byman, "Buddies or Burdens? Understanding the Al-Qaeda Relationship with Its Affiliate Organizations," *Security Studies* 23, no. 3 (2014): 431-470, and Elena Pokalova, "The Al-Qaeda Brand: The Strategic Use of the 'Terrorist' Label," *Terrorism and Political Violence* (2016).

²² Caitriona Dowd and Clionadh Raleigh, "The Myth of Global Islamic Terrorism and Local Conflict in Mali and the Sahel," *African Affairs* 112, no. 448 (2013): 498-509, and Ahmed, *Thistle and the Drone*, 289-299.

Even with nominal pledges of loyalty from groups such as al-Qaeda in Iraq, al-Qaeda in the Arabian Peninsula, Tehreek-e-Taliban Pakistan, al-Shabaab, and al-Qaeda in the Islamic Maghreb, documents from the 2011 Abbottabad raid show bin Laden's frustration with lack of control over, and even opposition to, the operations of its affiliate organizations. According to a report by the Combating Terrorism Center at West Point, bin Laden "was burdened by what he viewed as the incompetence of the 'affiliates,' including their lack of political acumen to win public support, their media campaigns and their poorly planned operations which resulted in the unnecessary deaths of thousands of Muslims."²³ Al-Qaeda is not a centralized, or even decentralized, organization coordinating attacks around the world, but a loose network of like-minded groups that have adopted a shared brand for strategic purposes within their own conflict areas.

Conclusion

The 2001 AUMF allows for an open-ended interpretation by any administration without oversight for its applicability or specification of the duration or type of force used, and is legally subject only to the determination of the president. The generality of the language has enabled the U.S. to deploy military force around the globe without consideration of the evolving dynamics of terrorism over the past fifteen years. The original conditions of this law, bound as they were to the 9/11 attacks, are no longer applicable to the security challenges facing the U.S. in the Middle East and elsewhere within the Islamic world. Affiliates of al-Qaeda are, in fact, autonomous organizations driven by factors within their own conflict environments. The AUMF, therefore, should not be interpreted as an open-ended authorization to target groups that have simply adopted the al-Qaeda brand and had nothing to do with 9/11. It is imperative that new military authorizations are passed which supersede the original authorization for use of military force.

In recent years, a debate has emerged over the repeal of the 2001 AUMF, but it has been difficult to find the political will to reach consensus on replacement legislation. In April 2018, Senator Bob Corker, the chair of the U.S. Senate Foreign Relations Committee, released a draft replacement for the 2001 AUMF. This bill, however, maintains much of the general language of the original law. It permits the government to continue to target "existing associated forces" of al-Qaeda—defined as AQAP, al-Shabaab, al-Qaeda in Syria, the Haqqani network, and al-Qaeda in the Islamic Maghreb—without temporal or geographic limit and no restrictions on the sustained use of ground forces, authorizing "all necessary and appropriate force."²⁴ Congressional oversight would include the requirement for the president to notify Congress within 48 hours for expanded military operations into new conflict zones and a resulting two-month review period. Congress would also revisit the law every four years, with modifications requiring a sixty-vote minimum. While this new authorization is an improvement with mechanisms for

²³ Nelly Lahoud, Stuart Caudill, Liam Collins, Gabriel Koehler-Derrick, Don Rassler, and Muhammad al-Ubaydi, "Letters from Abbottabad: Bin Ladin Sidelined?," *The Combating Terrorism Center at West Point*, 3 May, 2012, 2.

²⁴ Rachel Oswald, "Corker Releases AUMF Without an Expiration Date," *Roll Call*, 16 April 2018.

Congressional oversight, it institutionalizes many of the ambiguities within the old law—such as lack of limits on the use of force and the broad authorization to target groups that have adopted the al-Qaeda brand or are designated by the president as associated forces with al-Qaeda, the Taliban, or the Islamic State.

Instead of a single, overarching, and decontextualized legal mandate encompassing the entirety of American counterterrorism operations, separate authorizations for use of military force should be limited to the region of military deployment and connected to the scope of the targeted groups' activities. While the president holds the constitutional power to unilaterally act in the face of imminent threats, the interpretation of an "imminent threat" has been broadly applied to continuous and long-term counterterrorism operations against al-Qaeda affiliates within the framing of the 2001 AUMF. New laws should, in particular, possess two features that address the problems with the 2001 AUMF: 1) mechanisms for accountability, as outlined in the proposed replacement; and 2) boundaries for its applicability. By limiting the scope of authorizations, the administration is forced to articulate U.S. security interests and objectives in a particular conflict zone with each new authorization bill. This would serve as a further check on the president's ability to indefinitely engage in foreign conflicts and would be in line with the 1973 War Powers Resolution, which limits the ability of the president to act militarily without consulting Congress. If the government continues to frame national security through the narrative underpinning the 2001 AUMF, it is essentially opening itself to an endless war of its own making.