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## **Rethinking War Powers: Options for Reestablishing Congressional Authority Over US Foreign Policy**

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### **EXECUTIVE SUMMARY**

**A**merican military actions—most not subject to public scrutiny or congressional accountability—have occurred in at least 20 countries in 20 years. These military operations have been made possible through increasingly broad presidential war powers, despite the fact that the Constitution reserved most war powers for Congress. In addition to over half a million lives lost in these military operations and trillions spent, this executive encroachment on war powers has eroded governmental accountability, civil rights, democratic institutions, and the role of the public and Congress in war making.

This executive overreach in military affairs has occurred in a variety of ways, particularly through Congress' passage of the 2001 and 2002 Authorizations for Use of Military Force (AUMF). Yet many scholars have described a broader trend in the past several decades of increasing executive power in military affairs, such as presidents justifying unilateral operations through their inherent authorities as president and through international organizations.

Given the existing damages done and the threat of future blunders, it is critical to put more limits on presidential military power. The 2001 and 2002 AUMFs should be repealed. Bills such as the Senate's National Security Powers Act or the House's National Security Reforms and Accountability Act should be passed. These bills define key terms, shorten the presidential ability to have hostilities unauthorized by Congress from sixty to twenty days, automatically cut funding off when the president conducts military operations without congressional approval, and mandate that future AUMFs are more specifically defined. These policy items would be good first steps in helping to better prevent future unilateral presidential military actions and restore congressional oversight to war making.

## **An Imbalance of Powers**

Yemen. Somalia. The Philippines. Djibouti. And American military operations in many more countries across the world. Over 929,000 lives lost and eight trillion dollars, according to Brown University's Costs of War project.<sup>1</sup> No American voted for these military operations, despite a system of governance which hypothetically is representative of the public's interests. Americans' elected representatives did not vote on all of these military operations, either. Rather, many of them have been allowed as a result of an increasing trend in recent decades concentrating war powers in the executive branch instead of the legislative branch. This increasing executive encroachment on the balance of powers has facilitated unnecessary American military aggression abroad that has not been subject to public scrutiny or congressional accountability.

In Professor Sarah Burns' book, *The Politics of War Powers: The Theory and History of Presidential Unilateralism*, she describes how war powers were divided among the three branches of U.S. government. She stated, "The delicate separation and overlap of powers in the realm of war are designed to provide presidents a sufficiently large sphere of unilateral action to maintain security while simultaneously requiring congressional input for any large or sustained operation."<sup>2</sup> An idea built into the separation of powers was that the branches must work together, and as many understand it, the president's war sphere was designed for defensive actions, while legislative powers extended it beyond that. In the words of James Madison, the balance of powers allowed for "ambition to check ambition."<sup>3</sup> Yet arguably, according to many scholars, the United States has strayed from this vision: instead, the executive enjoys unilateral military power with little congressional oversight.

## **Recent AUMFs Have Led to Unnecessary Conflicts and Dramatically Extended Executive Military Power**

The 2001 and 2002 AUMFs mired U.S. troops in military operations in over 20 countries, many of them unrelated to the war authorizations' original mandates and expanded presidential war making powers.<sup>4</sup> Both AUMFs need to be repealed by Congress.

## **The 2001 AUMF Expanded Presidential Power Beyond Its Original Remit**

Three days after the 9/11 terror attacks, Congress passed S.J. Res. 23, a joint resolution "To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States."<sup>5</sup> S.J. Res. 23 was signed into law by President W. Bush on September 18, 2001, becoming Public Law 107-40, known as the 2001 Authorization for Use of Military Force (AUMF).<sup>6</sup>

The bill granted the president the power "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 United States by such nations, organizations, or persons." As the Congressional Research Service noted, this was the only AUMF passed by Congress which authorized military force against "organizations and persons."<sup>7</sup> The bill did not include a sunset clause; up until that point, nearly a third of AUMFs had included one.<sup>8</sup>

The bill was passed unanimously by Congress, with the exception of one dissenting vote from Representative Barbara Lee. She was afraid that the bill too broadly defined the executive's power; Lee cited the memorial service she had attended that same day in her dissent: "As we act, let us not become the evil that we deplore."<sup>9</sup>

Although she was harassed by the public for her decision, Lee's dissent was prescient. The executive branch has used the 2001 AUMF to justify a range of expansive presidential powers and military operations in the ensuing twenty years. At least 41 military operations have been in at least 20 countries, ranging from Georgia to Djibouti to Ethiopia to Iraq.<sup>10</sup> A letter from a coalition of groups advocating to repeal the 2001 AUMF noted, "This sustained use of military force is the longest in U.S. history, having lasted longer than [sic] the Civil War, World War I, and World War II combined."<sup>11</sup>

Although not named explicitly in the AUMF, which just stated it targeted those who perpetrated 9/11,

Congresspeople had intended for the targets of this AUMF to be Al Qaeda and the Taliban.<sup>12</sup> However, over the years, many of the presidential military actions that have been justified via the 2001 AUMF have been unrelated to the law’s original 9/11 enemy mandate. For example, the 2001 AUMF was used by President Obama to justify military action against the Islamic State, even though the Islamic State did not exist in 2001, and Al Qaeda and the Islamic State had been fighting against each other since 2014.<sup>13</sup> This maneuver was achieved through another aspect of the 2001 AUMF, that was not in the bill’s original language: the tack-on of “associated forces,” first done by President Bush and continued by successive presidents, to expansively refer to groups other than Al Qaeda and the Taliban.<sup>14</sup> The public may not even ever know the whole scope of these conflicts initiated by the executive—the full list of entities the U.S. is fighting against is classified.<sup>15</sup>

In addition to being the justification for military operations, the 2001 AUMF was also the justification for President Bush’s indefinite detention program at Guantanamo Bay.<sup>16</sup> As the Congressional Research Service noted, “the George W. Bush Administration claimed that the President’s Commander-in-Chief authority entails inherent authority with respect to the capture and detention of suspected terrorists, authority he has claimed cannot be infringed by legislation, meaning that even criminal laws prohibiting torture were deemed inapplicable to activities conducted pursuant to the President’s war powers.”<sup>17</sup> While this was challenged legally, the Supreme Court upheld that because Congress had passed the 2001 AUMF, this use was an allowable extension of the war. This 2004 Supreme Court action also was used as the justification for the Bush administration to conduct extensive surveillance on American citizens via the National Security Agency.<sup>18</sup>

## **The 2002 AUMF**

Public Law 107-243, the Joint Resolution “To authorize the use of United States Armed Forces against Iraq” is known as the 2002 AUMF. While it served as the “the green light for the George W. Bush administration’s ill-advised invasion of that country in 2003” in the words of Stephen Walt, the 2002 AUMF was used in legally creative ways by presidents after Bush to apply to other, unrelated military operations. These

include President Obama’s 2014 campaign against ISIS—for which the 2002 AUMF was a partial justification—as well as President Trump’s 2020 assassination of Iranian General Qassem Soleimani.

The law is not necessary, according to the Biden administration—no current military operations rely on it—and the House has recently repealed it.<sup>19</sup> According to Brian Finucane, if the law is repealed by the Senate, “it would be the first time in 50 years that a use of force authorization had been terminated by Congress. Appropriately enough, the last time Congress repealed such an authorization it was the Gulf of Tonkin Resolution, the principal statutory authority for the Vietnam War.”<sup>20</sup>

Even though no presidential military operations are presently being justified by the 2002 AUMF, it is imperative that it is repealed by the Senate. Like the 2001 AUMF, the 2002 AUMF far too widely extended executive power. The fact that President Trump was able to unilaterally bomb an important Iranian leader and use the 2002 AUMF as justification demonstrates the danger in allowing it to remain on the books and remain an ever-constant overreach of executive privilege. As Harvard University Professor Stephen Walt said of the 2001 and 2002 AUMFs, “Extending congressional authorizations in this way makes a mockery of the rule of law as well as the more fundamental principle that presidents should not be able to go to war on their own or expand military actions beyond their original mandate.”<sup>21</sup>

## **Other Expansive Presidential Military Powers**

Although the conversation around war powers typically focuses on the 2001 and 2002 AUMFs, they are not the only mechanisms that have extended executive military power in recent years. Presidents have frequently used resolutions and agreements from international organizations, as well as justifications that they have the constitutional authority because they are commander-in-chief and/or have “foreign affairs authority” under their Article II constitutional powers, to justify military operations which have not explicitly been approved by Congress.<sup>22</sup> Military operations justified by presidents in such ways include President Truman in South Korea, President Clinton in Bos-

nia & Herzegovina, and President Obama in Libya. Examining the ways in which presidents have justified these executive-led military operations is useful in better understanding how presidents have utilized, and in some cases over-extended, executive war powers.<sup>23</sup> Some scholars point to Truman's Korean War decision as the point where the executive branch began to greatly expand military powers, while other scholars point earlier, such as to World War II.<sup>24</sup>

## **Truman Justified the Korean War With UNSC Resolutions**

President Truman broke with precedent at the time by sending troops to South Korea in 1950 without congressional approval for the military action. This instance, along with a litany of other trends and changes, has helped to shift the delicate balance of powers away from Congress' constitutionally mandated war powers and to the executive overreach in conducting military operations that we see today. Burns characterized this shift as one in which presidential searches for justifications for the use of force changed; she stated "Starting with Franklin D. Roosevelt (FDR), presidents started looking for legitimacy from their lawyers rather than authority from Congress"—a phenomenon that is problematic because it circumvents the constitutional process while over-extending the executive branch.<sup>25</sup>

In 1950, President Truman sent troops to South Korea without congressional authorization or approval, claiming that both his own presidential authority and UN Security Council resolutions served as appropriate justification.<sup>26</sup> Notably, Burns points out that Truman did not claim to need congressional authorization—despite the constitutionally mandated war powers of Congress.<sup>27</sup> In 1951, he sent troops to Europe; the justification was that he had "constitutional powers as Commander in Chief... to send troops anywhere in the world"—a justification that likely does not hold up to light, given that it would obliterate the Constitution's balance of powers.<sup>28</sup>

## **Clinton Justified U.S. forces in Bosnia & Herzegovina With NATO**

In 1994, U.S. troops were sent to Bosnia & Herzegovina as part of NATO efforts. There was no con-

gressional authorization approving these U.S. forces; rather, President Clinton pointed to NATO and his Commander-in-Chief and presidential powers, which allowed him the "constitutional authority to conduct U.S. foreign relations."<sup>29</sup> As a Congressional Research Service brief noted, Clinton "protested efforts to restrict the use of military forces there and elsewhere as an improper and possibly unconstitutional limitation on his 'command and control' of U.S. forces."<sup>30</sup>

## **Obama Justified Libya Action With a UNSC Resolution**

In an example which in part helps demonstrate how the 1973 War Powers Resolution has been mis-used by presidents seeking to avoid having to approve military operations in Congress, in 2011, President Obama sent U.S. forces to Libya under the pretext of a UN Security Council resolution. He did not get congressional approval, and justified the action by stating that the operations were "limited" and that he had the power via "constitutional authority, as Commander in Chief and Chief Executive and pursuant to his foreign affairs powers, to direct such limited military operations abroad."<sup>31</sup> A Department of Justice Office of Legal Counsel opinion specifically cited the historical precedent of executives having the powers to conduct small-scale military operations without congressional authorization. It is important to examine examples of these executive uses of military power so that policy to right size war powers can be designed effectively.

## **Executive Overreach Has Had Extraordinarily Damaging Effects**

The effects of the U.S. constantly being engaged in military operations are innumerable and negative, from exacerbating global refugee crises, diverting taxpayer funds to defense when they could be spent better fighting climate change or pandemics, and the lives around the world lost. There are also many secondary forms of damage which will likely reverberate for years to come.

## **The Role of Public Opinion and Public Accountability in War Has Been Eroded**

The secrecy of much of the military operations conducted by the president through this executive overreach is damaging and worrisome. As mentioned in the AUMF section, the full list of entities the U.S. is in military operations against via the 2001 AUMF is classified. If the public is not even aware of the military actions the US is engaged in and does not have a say in what the groups are because of lack of congressional action on repealing the 2001 AUMF, then the war making process cannot be described as democratic. As Brian Finucane pointed out, “Such secrecy strains the notion that the war on terror enjoys democratic legitimacy.”<sup>32</sup>

Because of the enormous implications of going to war, wars should be informed by the public’s desires and by public debate among elected officials. Executive overreach made possible by the 2001 and 2002 AUMFs effectively has steamrolled over the possibility even of discourse around decisions about whether or not to engage in military operations. This is both anti-democratic and dangerous. At the very least, exposing potential executive military plans to Congress allows for them to be debated, and for Congress to help steer the foreign policy of the country. It does not necessarily mean better military decisions will be made – but it ensures that the groundwork to form better policy, or agitate against bad policy, is in place in Congress.

In a letter a coalition of groups wrote advocating to repeal the 2001 AUMF, they pointed out that, “Congress has never debated and voted on the uses of force, outside of Afghanistan, that the Executive Branch claims are authorized by the 2001 AUMF. The vast majority of members of Congress were not in office when this authorization was passed. Of the 435 current members of the House, only 67 of them (15.4%) voted for the 2001 AUMF, and only 35 sitting Senators voted for it. Indeed, more than 80% of current members of Congress have never voted on this authority.”<sup>33</sup>

Although it does not presently exist in any satisfactory form, the role of the public in war making is an important one. As the Vietnam War in part showed, public opinion can have an impact on the course

of wars and how the government makes decisions. Previous Congresspeople even wanted to expand the public’s role in war making: in the early 20th century, Representative Louis Ludlow proposed a constitutional amendment to have the public vote on the U.S.’s engagement in war.<sup>34</sup> Legal constitutional scholars like Josh Chafetz have even argued that part of Congress’ checks and balances come from leveraging tools like public opinion and freedom of speech.<sup>35</sup> Without full public awareness about all of the military operations the United States is even engaged in, there is no way for the public to ever be wholly knowledgeable or engaged in protest or discourse about those military operations.

## **The Damage on Democratic Institutions and the Danger of Executive Whim**

The president’s ability to conduct military operations effectively whenever he wants has had severe impacts on American democracy. Democratic institutions, human rights, civil rights, and the role of public opinion have all been damaged by militaristic executive overreaches facilitated by the over-extension of the 2001 and 2002 AUMFs. Much of these executive overreaches are fundamentally anti-democratic in nature, and present concerning precedents for the future of U.S. democracy.

As Sarah Burns stated, “war is the greatest test of institutions in a liberal system of government.”<sup>36</sup> The U.S. has a defense budget in the billions—one person should not be able to command all of it on his whims and mood alone. Yet disturbingly, that is more and more the position the U.S. finds itself in. Specifically, giving the executive this much power allows him to conduct military operations for personal political reasons. Burns pointed out, “Presidents do not deploy the military for every humanitarian crisis. Presidents do not intervene in every civil war. Presidents do not act whenever the UNSC passes a resolution suggesting action. They engage when they think it is politically advantageous. These political objectives do not, however, compel action.”<sup>37</sup> Some have speculated that political reasons were what motivated President Trump, embroiled in his first impeachment trial, to assassinate Iranian General Qassem Soleimani at the specific time he did. Elizabeth Warren stated that “Trump is taking us to the edge of war for his own political benefit,” and experts wrote in *Foreign Policy*

that Trump had “subordinated the safety of Americans to his own private political fortunes.”<sup>38</sup>

Burns also says, “Presidents since Jefferson have turned their backs on oppressed people attempting to overthrow their oppressors.”<sup>39</sup> This excellent point deserves further emphasis: while the U.S. frequently cites human rights and democratic abuses as reasons to militarily intervene in other countries, it does not universally intervene in every country where human rights abuses are taking place. Frequently the human rights abuses cited by the U.S. appear to have just been a pretext to commit an operation that the executive branch had also wanted to do for other reasons.

## **Human Rights, Civil Rights, and the Danger of Executive Crackdowns**

Having a president with the power to kill any American he deems a terrorist suspect—a right that Bush claimed for himself and that was justified by the 2001 AUMF—is also fundamentally anti-democratic. No president should be able to indefinitely detain people without cause. Hina Shamsi, the director of the ACLU’s National Security Project, said at a Demand Progress event that “if any other country had this program [of indefinite detention], our political leaders would rightly be condemning it. Instead, our country is setting a harmful precedent.”<sup>40</sup> Indeed, the United States has appeared to have condemned other countries for lesser human rights abuses.

That this executive overreach in military operations has empowered so many human rights abuses is both disturbing on its own and disturbing in the precedent it creates for this over-extended power to potentially be applied further. National security reporter Spencer Ackerman argues that Trump using the War on Terror apparatus against domestic protesters during the protests for George Floyd is “allowing the war on terror to be its most authentic self”—in other words, that the executive powers the president has gained via militaristic executive overreach are always at risk of being applied domestically, and not globally.<sup>41</sup> He stated in an interview with Vox, “We might perhaps better appreciate it when remembering that in the summer of 2020, the Trump administration maneuvered a lot of the mechanisms of the war on terror against its domestic opponents. There’s going to be another right-wing administration. It will probably look more like

Trump’s than not. It may be more competent, and it may be bolder, and it will have a precedent blessed by Obama’s Justice Department that says if it’s too hard to kill people, you declare to be dangerous terrorists, just ... sorry.”<sup>42</sup>

This danger that Ackerman points out is clear. Burns points out that the extent of executive overreach in military matters means that “we have started to rely on the virtue of the officeholder significantly more than relying on the system that keeps all members of government accountable.”<sup>43</sup> This is not a sustainable or healthy situation for the U.S. to be in. Years and years of executive overreaches have created dangerous precedents that presidents can fall back on to justify further overreaches and further over-extend executive powers.

## **Congress Must Reassert Itself**

Executive overreach is challenging to rectify, but must be combatted to prevent further unnecessary, unilateral military operations. Both the 2001 and 2002 AUMFs should be repealed, and it is critical to pass a bill in Congress like the Senate’s National Security Powers Act (NSPA) and/or the House’s National Security Reforms and Accountability Act (NSRAA) in order to regain the legislative branch’s war powers.

## **Replacing the Current Congressional AUMFs**

Efforts have been made to reform and repeal the 2001 and 2002 AUMFs. Given how the bills have been misused by presidents as a pretext for broad executive overreach and a variety of military operations irrelevant to the bills’ intended meanings, it is critical to continue the process of repealing these bills. Such efforts have not been successful yet, but a variety of civil society have been agitating for years and years to make this a reality.

Reforming or repealing the bill in Congress has been challenging and doing so requires surpassing many hurdles: much of the United States’ foreign policy around the globe is reliant on it. In testimony, Joint Chiefs Chairman General Mark Milley stated that “it is the critical one for us to continue operations.”<sup>44</sup> According to Brian Finucane, “reform of the 2001 AUMF would impact U.S. policy toward at least

Afghanistan, Yemen, Somalia, Libya, Iraq, and Syria, not to mention the seemingly intractable matter of detention at Guantanamo Bay.”<sup>45</sup>

Since current military operations on several continents are justified by the 2001 AUMF, repealing the 2001 AUMF would likely mean new authorizations would need to be passed to continue these operations. Unlike the 2001 AUMF, such authorizations should be more clearly defined, include a short sunset provision, and necessitate specificity about a clearly defined target.

Ideally, the necessity to pass new authorizations to continue the United States’ present military operations justified under the 2001 AUMF would mean that the utility and efficacy of these operations is debated. Hopefully, broader conversations about what the United States should be doing in these countries will come into the public fora as Congress debates passing new legislation, post-2001 AUMF, that would replace each present military operation in each country.

The Biden administration has stated it supports repealing the 2002 AUMF, which does not presently impact any military operations. The House has repealed it, and hopefully the full repeal process will come to fruition.

## **Older AUMFs Should Also Be Repealed**

Two other AUMFs still on the books – the 1991 Gulf War AUMF passed under President H. W. Bush and the 1957 AUMF to deter communist aggression in the Middle East passed under President Eisenhower – should also be repealed.<sup>46</sup>

These bills are not being used to justify any ongoing military operations. Moreover, the foreign policy goals and targets they describe do not exist as they did when they were passed; they are now relics of bygone times. The average age of a Senator is 64, and of a House Representative 58, meaning that on average, Congresspeople were born the year the 1957 bill was passed or several years after it.<sup>47</sup> While these AUMFs are not presently being used, there is always the possibility that a future president could abuse their power and attempt to cite them to justify military action. Were this to occur, because the present Congresspeople were largely not the elected officials to pass the

1957 and 1991 bills, it would represent presidential action not supported by representative democracy.

There has been bipartisan consensus in Congress on the hazard these bills represent. In June 2021, the House repealed them with 366 yeas and 46 nays in bills sponsored by Representative Abigail Spanberger, a Democrat from Virginia, and Representative Peter Meijer, a Republican from Michigan.<sup>48</sup>

## **The Importance of Passing the Senate’s National Security Powers Act (NSPA) and the House’s National Security Reforms and Accountability Act (NSRAA)**

In addition to AUMF repeal, it is necessary to attempt to claw back war powers by putting in place bills such as the NSRAA and/or NSPA, which seek to take back war powers from the executive branch. The Senate’s National Security Powers Act (S.2391) was introduced in July 2021 by Senator Chris Murphy (D-CT), and sponsored with Senator Bernie Sanders (I-VT) and Senator Mike Lee (R-UT).<sup>49</sup> In addition to reforming war powers, the bill also reforms emergency powers and arms exports. The NSPA defines terms that were undefined in the 1973 WPR and shortens the presidential leeway to have hostilities unauthorized by Congress from sixty days to twenty days. It also prevents future congressional legislation from falling into the same trap of the 2001 and 2002 AUMFs by mandating that future AUMFs have specific missions, a list of targets, and are only good for two years. Additionally, it cuts funding off when the President engages in military operations which are not authorized by Congress. Critically, the bill also retires existing AUMFs.

The companion bill to the NSPA is the House’s National Security Reforms and Accountability Act (NSRAA), which was introduced by Representative McGovern and Representative Meijer in September 2021, and like the NSPA serves as reform not only to war powers but also to emergency powers and arms exports. Like the NSPA, the NSRAA defines terms that were undefined in the 1973 WPR, shortens the clock from sixty to twenty days, automatically cuts funding off when the President conducts military operations without congressional approval, and requires future war authorization legislation to have specific

targets and a two year maximum limit.<sup>50</sup> Unlike the Senate version, this House bill does not repeal the existing congressional AUMFs (from 2002, 2001, 1991, and 1957)—likely, according to Tess Bridgeman, because there are other proposed laws on the books to repeal those bills.<sup>51</sup>

Enacting this legislation would hopefully start a positive feedback loop: there would necessarily be more buy-in from Congress, since the NSPA requires Congresspeople to vote every two years on continuing conflict, so American military operations would likely become something that Congresspeople and candidates campaigned on, and thus more of an issue for voters. Bringing military operations back into democratic debate is crucial, given American apathy towards many foreign issues. Having American military operations thus back in a more democratic sphere of influence could lead to the public leveraging public pressure on rectifying our existing war machining and the executive overreach that has made it possible.

## **The Challenges of Pulling Back Presidential Authority**

As Hina Shamsi said at the Demand Progress event in support of the NSRAA, “presidential powers, once claimed, are hard to claw back—whether by Congress or courts... the last twenty years show that unless constraints are imposed, they’ll continue to expand even beyond their original purpose, even though they perpetuate human, legal, and strategic costs.”<sup>52</sup> Yet, she continued, “if checks and balances in our system are to have meaning, surely they need to robustly apply to one of the most momentous decisions are nation can make.”<sup>53</sup> Sarah Burns echoed the immense challenges in rebalancing war powers as is Constitutionally mandated: “Given the immense unilateral power of the president, the far reach of the US military, and the secrecy associated with many of their activities, it is hard to claim that the institutions could rebalance in line with a plain reading of the constitutional text.”<sup>54</sup>

This is a grim reality. The goal, as these experts make clear, cannot be to remove executive overreach in military affairs entirely or all at once—that process will take time and will likely never be finished, given the enormity of the American national security apparatus. Sarah Burns even floats the idea that the Constitution, in attempting to delineate the balance of powers, con-

tains “a structural flaw that facilitate the concentration of war powers in the executive branch by assuming incentives in the legislative branch that no longer apply and a power of collective action that no longer exists.”<sup>55</sup> Even with the NSPA or NSRAA passed to check presidential military powers, it would still be possible for a president to engage in operations within the twenty day clock that could lead, within that time frame, to retaliatory actions that could lead to the United States engaged in a more protracted conflict. For example, had Iran struck back against the United States after President Trump assassinated General Qassem Soleimani, it would have been much more politically difficult for some members of Congress to then justify why the U.S. was not retaliating. Rather, the more immediate goal, through congressional reassertion of war powers through several bills, is to introduce more friction into presidential war making. Ideally, this will allow for more room in public debate about American military actions. Having fewer unnecessary military operations will mean that the U.S. is spending less of its already overly bloated defense budget on actions that are fruitlessly killing people and wasting money that could be better spent.

## **Conclusion**

Despite Congress’ constitutionally mandated war powers, the passage of the 2001 and 2002 AUMFs facilitated more expansive presidential war powers. These over-extended presidential powers have led to unnecessary and unwanted military operations over the past 20 years, and incalculable harm to civilians. Many of these military operations were never directly voted on or even debated by Congress.

It is imperative to reassert congressional authority over war powers in order to prevent further damages. Already, American democracy has suffered: the role of public opinion and accountability in American war making has been eroded, and there is the constant peril that an overzealous or unhinged executive could start a military conflict on political whim.

Congress must reassert itself by repealing the AUMFs presently on the books, and by passing a bill like the NSPA or NSRAA. These bills define key terms, shorten the presidential ability to have hostilities unauthorized by Congress, mandate that future AUMFs are more specifically defined, and automatically cut

funding off when a president conducts military operations without congressional approval. These are first steps in what some scholars have noted may be an impossible-to-finish process. But it is critical that we do as much as we can when lives are on the line.

## Endnotes

- 1 ["Latest Figures: Costs of War" Costs of War Project at the Watson Institute of International & Public Affairs at Brown University. Accessed December 1, 2021.](#)
- 2 [Burns, Sarah. \*The Politics of War Powers: The Theory and History of Presidential Unilateralism\*. University Press of Kansas, 2019.](#)
- 3 [Ibid.](#)
- 4 [Burns, Sarah. "Now that the US war in Afghanistan is over, it's time to revisit war powers." Responsible Statecraft. August 19, 2021.](#)
- 5 [Grimmett, Richard F. "Authorization For Use Of Military Force in Response to the 9/11 Attacks \(P.L. 107;40\): Legislative History." Congressional Research Service. January 16, 2007.](#)
- 6 [Ibid.](#)
- 7 [Ibid.](#)
- 8 [Brandon-Smith, Heather. "An ISIS AUMF: Where We Are Now, Where to Go Next, and Why It's So Important to Get It Right." Just Security. May 5, 2017.](#)
- 9 [Padgett, Kelsey and Matthew Kielty. "60 Words." WNYCSTUDIOS Radiolab. January 7, 2020.](#)
- 10 ["AUMF coalition support for H.R. 1274." About Face: Veterans Against the War, Action Corps, Action Corps NYC, American Civil Liberties Union, American Friends Service Committee, Amnesty International USA, Antiwar.com, Center for International Policy, Chicago Area Peace Action, Church of the Brethren Office of Peacebuilding and Policy, CODE PINK, Common Defense, Congregation of Our Lady of Charity of the Good Shepherd, US Provinces, Council for a Livable World, Council on American-Islamic Relations, CREDO Action, Defending Rights & Dissent, Demand Progress, FreedomWorks, Foreign Policy for America, Friends Committee on National Legislation, Human Rights First, Indivisible, Institute for Policy Studies, National Priorities Project, Institute for Policy Studies, New Internationalism Project, Just Foreign Policy, Justice for Muslims Collective, NIAC Action, National Advocacy Center of the Sisters of the Good Shepherd, National Religious Campaign Against Torture, Peace Action, Peace Action New York State, Peace Corps Iran Association Board of Directors, Ploughshares Fund, Presbyterian Church \(USA\), Project on Government Oversight, South East Asian Faith Initiatives, The United Methodist Church, General Board of Church and Society, United Church of Christ, Justice and Witness Ministries, VoteVets, Win Without War, Women's Action for New Directions \(WAND\), Yemen Peace Project. March 13, 2019; Woody, Christopher. "Congress may repeal the post-9/11 act the US military used to justify the fight against ISIS." Insider. June 29, 2017; Burns, Sarah. "Now that the US war in Afghanistan is over, it's time to revisit war powers." Responsible Statecraft. August 19, 2021.](#)
- 11 ["AUMF coalition support for H.R. 1274." About Face: Veterans Against the War, Action Corps, Action Corps NYC, American Civil Liberties Union, American Friends Service Committee, Amnesty International USA, Antiwar.com, Center for International Policy, Chicago Area Peace Action, Church of the Brethren Office of Peacebuilding and Policy, CODE PINK, Common Defense, Congregation of Our Lady of Charity of the Good Shepherd, US Provinces, Council for a Livable World, Council on American-Islamic Relations, CREDO Action, Defending Rights & Dissent, Demand Progress, FreedomWorks, Foreign Policy for America, Friends Committee on National Legislation, Human Rights First, Indivisible, Institute for Policy Studies, National Priorities Project, Institute for Policy Studies, New Internationalism Project, Just Foreign Policy, Justice for Muslims Collective, NIAC Action, National Advocacy Center of the Sisters of the Good Shepherd, National Religious Campaign Against Torture, Peace Action, Peace Action New York State, Peace Corps Iran Association Board of Directors, Ploughshares Fund, Presbyterian Church \(USA\), Project on Government Oversight, South East Asian Faith Initiatives, The United Methodist Church, General Board of Church and Society, United Church of Christ, Justice and Witness Ministries, VoteVets, Win Without War, Women's Action for New Directions \(WAND\), Yemen Peace Project. March 13, 2019.](#)
- 12 [Brandon-Smith, Heather. "The 2002 Iraq AUMF: What It Is and Why Congress Should Repeal It." Friends Committee on National Legislation. July 1, 2021.](#)

- 13 [“How a Single Phrase Defined the War on Terror.” World101 from the Council on Foreign Relations; Walt, Stephen M. “How Biden Benefits From Limiting His Own War Powers.” Foreign Policy. March 11, 2021.](#)
- 14 [“How a Single Phrase Defined the War on Terror.” World101 from the Council on Foreign Relations.](#)
- 15 [Finucane, Brian. “Putting AUMF Repeal Into Context.” Just Security. June 24, 2021; “Unclassified Annex: Report on the Legal and Policy Frameworks for the United States’ Use of Military Force and Related National Security Operations.” The White House. April 4, 2021.](#)
- 16 [“Understanding the National Security Reforms and Accountability Act \(NSRAA\) Part 1: War Powers Reform.” Demand Progress. October 13, 2021; Elsea, Jennifer K., Michael John Garcia, and Thomas J. Nicola. “Congressional Authority to Limit Military Operations.” Congressional Research Service. February 19, 2013.](#)
- 17 [Elsea, Jennifer K., Michael John Garcia, and Thomas J. Nicola. “Congressional Authority to Limit Military Operations.” Congressional Research Service. February 19, 2013.](#)
- 18 [“How a Single Phrase Defined the War on Terror.” World101 from the Council on Foreign Relations.](#)
- 19 [Finucane, Brian. “Putting AUMF Repeal Into Context.” Just Security. June 24, 2021; “House Repeal of 2002 AUMF Is an Important Step to Limit Presidential War Powers.” Quincy Institute for Responsible Statecraft. June 17, 2021.](#)
- 20 [Finucane, Brian. “Putting AUMF Repeal Into Context.” Just Security. June 24, 2021.](#)
- 21 [Walt, Stephen M. “How Biden Benefits From Limiting His Own War Powers.” Foreign Policy. March 11, 2021.](#)
- 22 [Elsea, Jennifer K. “Defense Primer: Legal Authorities for the Use of Military Forces.” Congressional Research Service. January 4, 2021.](#)
- 23 [Fisher, Louis. “Unconstitutional Presidential Wars.” Project on Government Oversight \(POGO\). August 29, 2018.](#)
- 24 Wertheim, Stephen. *Tomorrow, the World: The Birth of U.S. Global Supremacy*. The Belknap Press of Harvard University Press, 2020.
- 25 Burns, Sarah. *The Politics of War Powers: The Theory and History of Presidential Unilateralism*. University Press of Kansas, 2019.
- 26 [Elsea, Jennifer K. “Defense Primer: Legal Authorities for the Use of Military Forces.” Congressional Research Service. January 4, 2021; Burns, Sarah. “Presidents Were Never Meant to Have Unilateral War Powers.” Foreign Affairs. November 11, 2020.](#)
- 27 Burns, Sarah. *The Politics of War Powers: The Theory and History of Presidential Unilateralism*. University Press of Kansas, 2019.
- 28 Ibid.
- 29 [Elsea, Jennifer K., Michael John Garcia, and Thomas J. Nicola. “Congressional Authority to Limit Military Operations.” Congressional Research Service. February 19, 2013.](#)
- 30 Ibid.
- 31 Ibid.
- 32 [Finucane, Brian. “Putting AUMF Repeal Into Context.” Just Security. June 24, 2021.](#)
- 33 [“AUMF coalition support for H.R. 1274.” About Face: Veterans Against the War, Action Corps, Action Corps NYC, American Civil Liberties Union, American Friends Service Committee, Amnesty International USA, Antiwar.com, Center for International Policy, Chicago Area Peace Action, Church of the Brethren Office of Peacebuilding and Policy, CODE PINK, Common Defense, Congregation of Our Lady of Charity of the Good Shepherd, US Provinces, Council for a Livable World, Council on American-Islamic Relations, CREDO Action, Defending Rights & Dissent, Demand Progress, FreedomWorks, Foreign Policy for America, Friends Committee on National Legislation, Human Rights First, Indivisible, Institute for Policy Studies, National Priorities Project, Institute for Policy Studies, New Internationalism Project, Just Foreign Policy, Justice for Muslims Collective, NIAC Action, National Advocacy Center of the Sisters of the Good Shepherd, National](#)

- [Religious Campaign Against Torture, Peace Action, Peace Action New York State, Peace Corps Iran Association Board of Directors, Ploughshares Fund, Presbyterian Church \(USA\), Project on Government Oversight, South East Asian Faith Initiatives, The United Methodist Church, General Board of Church and Society, United Church of Christ, Justice and Witness Ministries, VoteVets, Win Without War, Women’s Action for New Directions \(WAND\), Yemen Peace Project. March 13, 2019.](#)
- 34 [Wertheim, Stephen. “Opinion: End the Imperial Presidency.” The New York Times. August 25, 2021.](#)
- 35 [Chafetz, Josh. “Congress’s Constitution.” Yale University Press; “Hot Off The Press Book Talks: Congress’s Constitution: Legislative Authority and the Separation of Powers with Josh Chafetz, Cornell Law School.” Program in Law and Public Affairs at Princeton University.](#)
- 36 Burns, Sarah. *The Politics of War Powers: The Theory and History of Presidential Unilateralism*. University Press of Kansas, 2019.
- 37 Ibid.
- 38 [Derysh, Igor. “Trump privately admits he killed Soleimani “under pressure” from upcoming impeachment trial: report.” Salon. January 10, 2020; Simon, Steven and Daniel Benjamin. “Trump’s ‘Wag the Dog’ Moment.” January 7, 2020.](#)
- 39 Burns, Sarah. *The Politics of War Powers: The Theory and History of Presidential Unilateralism*. University Press of Kansas, 2019.
- 40 [“Understanding the National Security Reforms and Accountability Act \(NSRAA\) Part 1: War Powers Reform.” Demand Progress. October 13, 2021.](#)
- 41 Ackerman, Spencer. *Reign of Terror: How the 9/11 Era Destablized America and Produced Trump*. Viking, 2021; [Illing, Sean. “America is still stuck in the world 9/11 built.” Vox. September 10, 2021.](#)
- 42 [Illing, Sean. “America is still stuck in the world 9/11 built.” Vox. September 10, 2021.](#)
- 43 Burns, Sarah. *The Politics of War Powers: The Theory and History of Presidential Unilateralism*. University Press of Kansas, 2019.
- 44 [Finucane, Brian. “Putting AUMF Repeal Into Context.” Just Security. June 24, 2021.](#)
- 45 Ibid.
- 46 [Waxman, Matthew. “Remembering Eisenhower’s Middle East Force Resolution.” Lawfare. March 9, 2019.](#)
- 47 [Manning, Jennifer E. “Membership of the 117th Congress: A Profile.” Congressional Research Service. November 8, 2021.](#)
- 48 [Wise, Lindsay. “House Votes to Repeal Two Older Military Force Authorizations.” The Wall Street Journal. June 29, 2021.](#)
- 49 [Manning, Jennifer E. “Membership of the 117th Congress: A Profile.” Congressional Research Service. November 8, 2021.](#)
- 50 [McGovern, James P. “National Security Reforms and Accountability Act Factsheet.” U.S. House of Representatives.](#)
- 51 [“Understanding the National Security Reforms and Accountability Act \(NSRAA\) Part 1: War Powers Reform.” Demand Progress. October 13, 2021.](#)
- 52 Ibid.
- 53 Ibid.
- 54 Burns, Sarah. *The Politics of War Powers: The Theory and History of Presidential Unilateralism*. University Press of Kansas, 2019.
- 55 Ibid.