

TO REPEAL THE AUTHORIZATION FOR USE OF MILITARY
FORCE AGAINST IRAQ RESOLUTION OF 2002

JUNE 8, 2021.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. MEEKS, from the Committee on Foreign Affairs,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 256]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill
(H.R. 256) to repeal the Authorization for Use of Military Force
Against Iraq Resolution of 2002, having considered the same, re-
ports favorably thereon without amendment and recommends that
the bill do pass.

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PURPOSE AND SUMMARY

The legislation H.R. 256—To repeal the Authorization for Use of Military Force Against Iraq Resolution of 2002—would terminate the nearly two-decade old Congressional authorization for using military force in Iraq.

BACKGROUND AND NEED FOR LEGISLATION

During a mere two-week period in October 2002, Congress authorized the use of military force against Iraq. H.J. Res. 114 was introduced by the Speaker of the House on October 2, 2002. Five days later on October 7, 2002, the House Foreign Affairs Committee reported the amended bill out of Committee. On October 10th, 2002, the legislation passed the House in a 296–133 vote. The Senate took up the legislation the next day and voted 77–23 to authorize the use of military force. The legislation was signed by the President on October 16, 2002.

On March 20, 2003, the Iraq War commenced when the United States launched a shock and awe bombing campaign. By April 9, 2003, Baghdad had fallen and Saddam Hussein's tenure as the leader of Iraq had ended. Hussein was captured and executed in 2006. A formal end to U.S. military operations and the United States-Iraqi status-of-forces agreement both expired in 2011.

Nonetheless, the 2002 Authorization for the Use of Military Force Against Iraq continued to be used as a legal authority. In 2014, the President cited the 2002 AUMF as an alternative statutory authority for the United States' campaign against the Islamic State. More recently, the Executive Branch proclaimed that the 2002 AUMF was a legal authority for the killing of Iran Quds force leader Qassem Soleimani. The Executive Branch's expansive reading of the 2002 authorization to justify the Soleimani strike shows the danger of leaving the 2002 AUMF on the books. Soleimani rose to prominence fighting Hussein's forces in the Iran-Iraq War of the 1980s, yet somehow an authorization to attack Hussein's Iraq was used to justify a strike against Iran's Soleimani eighteen years later.

There are no valid reasons to leave the 2002 AUMF as good law. The 2001 Authorization for the Use of Military Force provides the President the authority for some operations against terrorist groups, and under Article II of the Constitution of the United States the President has the right to undertake operations to defend America and its citizens.

This legislation is supported by Concerned Veterans for America, Common Defense, Friends Committee on National Legislation, Human Rights First, FreedomWorks, National Council of Churches, Open Society, Public Citizen, R Street Institute, the ACLU, VoteVets, and Win Without War.

The Constitution explicitly leaves the power to declare war to Congress, but expansive interpretations of outdated authorizations have caused the legislative branch to functionally forfeit this constitutionally derived responsibility. By repealing the 2002 AUMF, Congress will take a step towards reclaiming its proper constitutional authority over the use of military force.

HEARINGS

On March 23, 2021, the Full Committee held a hearing entitled “Reclaiming Congressional War Powers.” The hearing witnesses were Ms. Oona A. Hathaway, Professor of Law at Yale Law School, and former Special Counsel to the General Counsel at the U.S. Department of Defense; Mr. Bob Bauer, Professor of Practice and Distinguished Scholar in Residence at the New York University School of Law, and former White House Counsel; and The Honorable Jack Goldsmith, Learned Hand Professor at Harvard Law School, and former Assistant Attorney General, Office of Legal Counsel at the U.S. Department of Justice.

On March 10, 2021, the Full Committee held a hearing entitled “Secretary Blinken: The Biden Administration’s Priorities for U.S. Foreign Policy.” The hearing witness was The Honorable Antony Blinken, Secretary, U.S. Department of State.

On February 24, 2021, the Full Committee held a hearing entitled “America Forward: Restoring Diplomacy and Development in a Fracturing World.” The hearing witnesses were Dr. Anne-Marie Slaughter, former Director of Policy Planning at the Department of State; The Honorable Gayle Smith, former Administrator of the U.S. Agency for International Development; The Honorable Ruben Brigety, former U.S. Ambassador to the African Union; and The Honorable Ryan Crocker, former U.S. Ambassador to Afghanistan, Iraq, Pakistan, Syria, Kuwait, and Lebanon.

Additionally, hearings were held in the prior Congress that informed the development of H.R. 256 in this Congress.

On June 16, 2020, the Subcommittee on the Middle East, North Africa, and International Terrorism held a hearing entitled “Objectives of U.S. Arms Sales to the Gulf: Examining Strategic Goals, Risks and Benefits.” Witnesses included Dr. Andrew Exum, Partner at Hakluyt & Company, and Former Deputy Assistant Secretary, Middle East Policy, at the U.S. Department of Defense; Lt. Col. (Ret.) Dr. Jodi Vittori, Nonresident Scholar, Democracy, Conflict, and Governance Program, Carnegie Endowment for International Peace, U.S. Research and Policy Manager, Defense and Security Program, and Transparency International; and Mr. Bradley Bowman, Senior Director at Center on Military and Political Power and Foundation for Defense of Democracies.

On December 10, 2019, the Subcommittee on the Middle East, North Africa, and International Terrorism held a hearing entitled “The Way Forward in Iraq.” The hearing witness was Mr. Joey Hood, Principal Deputy Assistant Secretary, Bureau of Near Eastern Affairs at the U.S. Department of State.

On May 8, 2019, the Subcommittee on the Middle East, North Africa, and International Terrorism held a hearing entitled “Opportunities and Challenges in U.S. Relations with the Gulf States.” The hearing witness was Mr. Timothy A. Lenderking, Deputy Assistant Secretary for Arabian Gulf Affairs, Bureau of Near Eastern Affairs at the U.S. Department of State.

On April 3, 2019, the Subcommittee on the Middle East, North Africa, and International Terrorism held a hearing entitled “Assessing U.S. Policy Priorities in the Middle East.” Witnesses included Ms. Elisa Catalano Ewers, Adjunct Senior Fellow, Middle East Security Program at the Center for a New American Security;

Mr. Dan Benaim Senior Fellow at the Center for American Progress; and Ms. Danielle Pletka Senior Vice President, Foreign and Defense Policy Studies at American Enterprise Institute.

DESIGNATION OF HEARINGS USED TO DEVELOP OR CONSIDER H.R.
256

Pursuant to Clause 3 of Rule XIII of the Rules of the House of Representatives, the following Committee or Subcommittee hearings were used to develop or consider H.R. 256.

On March 23, 2021, the Full Committee held a hearing entitled “Reclaiming Congressional War Powers.” The hearing witnesses were Ms. Oona A. Hathaway, Professor of Law at Yale Law School, and former Special Counsel to the General Counsel at the U.S. Department of Defense; Mr. Bob Bauer, Professor of Practice and Distinguished Scholar in Residence at the New York University School of Law, and former White House Counsel; and The Honorable Jack Goldsmith, Learned Hand Professor at Harvard Law School, and former Assistant Attorney General, Office of Legal Counsel at the U.S. Department of Justice.

Additionally, hearings were held in the prior Congress that informed the development of H.R. 256 in this Congress.

On December 10, 2019, the Subcommittee on the Middle East, North Africa, and International Terrorism held a hearing entitled “The Way Forward in Iraq.” The hearing witness was Mr. Joey Hood, Principal Deputy Assistant Secretary, Bureau of Near Eastern Affairs at the U.S. Department of State.

COMMITTEE CONSIDERATION

On March 25, 2021, the Committee marked up H.R. 256, To repeal the Authorization for Use of Military Force Against Iraq Resolution of 2002, pursuant to notice in open session.

The Chair called up the measure and amendments previously provided to Members, to be considered:

H.R. 256 To repeal the Authorization for Use of Military Force Against Iraq Resolution of 2002 (Rep. Barbara Lee).

The following amendments were considered separately:

- Perry Amendment No. 52: An amendment to delay repeal of the Authorization for Use of Military Force (AUMF) Against Iraq Resolution of 2002 until Congress passes an AUMF against terrorist groups and repeals the 2001 AUMF.

Record Vote Description: Perry Amendment No. 52 to H.R. 256, amends H.R. 256 to include a delay to the repeal of the Authorization for Use of Military Force (AUMF) Against Iraq Resolution of 2002 until Congress passes an AUMF against terrorist groups and repeals the 2001 AUMF.

Not Adopted 27–19.

Members Voting Yes (27): Gregory W. Meeks, D-NY, Chair; Brad Sherman, D-CA; Albio Sires, D-NJ; Gerald E. Connolly, D-VA; Theodore E. Deutch, D-FL; William R. Keating, D-MA; David N. Cicilline, D-RI; Ami Bera, D-CA; Joaquin Castro, D-TX; Dina Titus, D-NV; Ted Lieu, D-CA; Susan Wild, D-PA; Dean Phillips, D-MN; Colin Allred, D-TX; Andy Levin, D-MI; Abigail Spanberger, D-VA; Chrissy Houlahan, D-PA; Tom Malinowski, D-NJ; Andy Kim, D-NJ; Sara Jacobs, D-CA;

Kathy Manning, D-NC; Jim Costa, D-CA; Juan Vargas, D-CA; Vicente Gonzalez, D-TX; Brad Schneider, D-IL; Ken Buck, R-CO; Peter Meijer, R-MI.

Members Voting No (19): Michael T. McCaul, R-TX; Chris Smith, R-NJ; Steve Chabot, R-OH; Joe Wilson, R-SC; Scott Perry, R-PA; Darrell Issa, R-CA; Adam Kinzinger, R-IL; Lee Zeldin, R-NY; Ann Wagner, R-MO; Brian Mast, R-FL; Brian Fitzpatrick, R-PA; Tim Burchett, R-TN; Mark Green, R-TN; Andy Barr, R-KY; Dan Meuser, R-PA; August Pfluger, R-TX; Nicole Malliotakis, R-NY; Ronny Jackson, R-TX; Young Kim, R-CA.

- Issa Amendment No. 18: Grants the President the authority to delay the repeal of the Authorization for Use of Military Force Against Iraq Resolution.

Not adopted by Voice Vote.

The Committee then proceeded to vote on the underlying measure. H.R. 256 was ordered to be reported by the Yays and Nays: 28–19.

Record Vote Description: H.R. 256, to repeal the authorization for use of military force against Iraq resolution of 2002.

Adopted 28–19.

Members Voting Yes (28): Gregory W. Meeks, D-NY, Chair; Brad Sherman, D-CA; Albio Sires, D-NJ; Gerald E. Connolly, D-VA; Theodore E. Deutch, D-FL; Karen Bass, D-CA; William R. Keating, D-MA; David N. Cicilline, D-RI; Ami Bera, D-CA; Joaquin Castro, D-TX; Dina Titus, D-NV; Ted Lieu, D-CA; Susan Wild, D-PA; Dean Phillips, D-MN; Colin Allred, D-TX; Andy Levin, D-MI; Abigail Spanberger, D-VA; Chrissy Houlahan, D-PA; Tom Malinowski, D-NJ; Andy Kim, D-NJ; Sara Jacobs, D-CA; Kathy Manning, D-NC; Jim Costa, D-CA; Juan Vargas, D-CA; Vicente Gonzalez, D-TX; Brad Schneider, D-IL; Ken Buck, R-CO; Peter Meijer, R-MI.

Members Voting No. (19): Michael T. McCaul, R-TX; Chris Smith, R-NJ; Steve Chabot, R-OH; Joe Wilson, R-SC; Scott Perry, R-PA; Darrell Issa, R-CA; Adam Kinzinger, R-IL; Lee Zeldin, R-NY; Ann Wagner, R-MO; Brian Mast, R-FL; Brian Fitzpatrick, R-PA; Tim Burchett, R-TN; Mark Green, R-TN; Andy Barr, R-KY; Dan Meuser, R-PA; August Pfluger, R-TX; Nicole Malliotakis, R-NY; Ronny Jackson, R-TX; Young Kim, R-CA.

COMMITTEE OVERSIGHT FINDINGS

In compliance with Clause 3(c)(1) of rule XIII of the rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under Clause 2(b)(1) of rule X of the House of Representatives are incorporated in the descriptive portions of this report, particularly in the “Background and Need for Legislation” section.

NEW BUDGET AUTHORITY, TAX EXPENDITURES, AND CONGRESSIONAL BUDGET OFFICE ESTIMATES

In compliance with clause 3(c)(2) of House rule XIII and the Unfunded Mandates Reform Act (P.L. 104–4), the committee adopts as its own the estimate of new budget authority, entitlement author-

ity, tax expenditure or revenues, and Federal mandates contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

H.R. 256, To Repeal the Authorization for Use of Military Force Against Iraq Resolution of 2002			
As ordered reported by the House Committee on Foreign Affairs on March 25, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 256 would repeal Public Law 107–243, which authorized the President to use the armed forces to defend the United States against the threat posed by Iraq and to enforce all relevant United Nations Security Council resolutions regarding Iraq.

The Administration has not cited the legal authorities of P.L. 107–243 as the basis for recent military operations in Iraq. Rather, the Department of Defense has asserted that operations to protect U.S. armed forces in combat theaters are justified under Article II of the Constitution. Additionally, the department has stated that Article 51 of the United Nations Charter provides the right of self-defense to member nations involved in ongoing military operations. On the basis of such information, CBO estimates that repealing the authorizing legislation would not affect spending to support current military operations in Iraq; thus enacting the bill would not affect the federal budget.

The CBO staff contact for this estimate is Aldo Prosperi. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

NON-DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, the committee states that no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

PERFORMANCE GOALS AND OBJECTIVES

As explained with greater specificity in the “Purpose and Summary” and “Section-by-Section Analysis” sections of this report, the general goal of H.R. 256 is to repeal the Authorization for Use of Military Force Against Iraq Resolution of 2002.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 256 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

NEW ADVISORY COMMITTEES

H.R. 256 does not establish or authorize any new advisory committees.

EARMARK IDENTIFICATION

H.R. 256 contains no congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of House rule XXI.

SECTION-BY-SECTION ANALYSIS

Section 1: Repeals the Authorization for Use of Military Force Against Iraq Resolution of 2002.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST IRAQ RESOLUTION OF 2002

- [**Whereas in 1990 in response to Iraq’s war of aggression against and illegal occupation of Kuwait, the United States forged a coalition of nations to liberate Kuwait and its people in order to defend the national security of the United States and enforce United Nations Security Council resolutions relating to Iraq;
- [**Whereas after the liberation of Kuwait in 1991, Iraq entered into a United Nations sponsored cease-fire agreement pursuant to which Iraq unequivocally agreed, among other things, to eliminate its nuclear, biological, and chemical weapons programs and the means to deliver and develop them, and to end its support for international terrorism;
- [**Whereas the efforts of international weapons inspectors, United States intelligence agencies, and Iraqi defectors led to the discovery that Iraq had large stockpiles of chemical weapons and a large scale biological weapons program, and that Iraq had an advanced nuclear weapons development program that was much closer to producing a nuclear weapon than intelligence reporting had previously indicated;

- 【Whereas Iraq, in direct and flagrant violation of the cease-fire, attempted to thwart the efforts of weapons inspectors to identify and destroy Iraq's weapons of mass destruction stockpiles and development capabilities, which finally resulted in the withdrawal of inspectors from Iraq on October 31, 1998;
- 【Whereas in Public Law 105-235 (August 14, 1998), Congress concluded that Iraq's continuing weapons of mass destruction programs threatened vital United States interests and international peace and security, declared Iraq to be in "material and unacceptable breach of its international obligations" and urged the President "to take appropriate action, in accordance with the Constitution and relevant laws of the United States, to bring Iraq into compliance with its international obligations";
- 【Whereas Iraq both poses a continuing threat to the national security of the United States and international peace and security in the Persian Gulf region and remains in material and unacceptable breach of its international obligations by, among other things, continuing to possess and develop a significant chemical and biological weapons capability, actively seeking a nuclear weapons capability, and supporting and harboring terrorist organizations;
- 【Whereas Iraq persists in violating resolution of the United Nations Security Council by continuing to engage in brutal repression of its civilian population thereby threatening international peace and security in the region, by refusing to release, repatriate, or account for non-Iraqi citizens wrongfully detained by Iraq, including an American serviceman, and by failing to return property wrongfully seized by Iraq from Kuwait;
- 【Whereas the current Iraqi regime has demonstrated its capability and willingness to use weapons of mass destruction against other nations and its own people;
- 【Whereas the current Iraqi regime has demonstrated its continuing hostility toward, and willingness to attack, the United States, including by attempting in 1993 to assassinate former President Bush and by firing on many thousands of occasions on United States and Coalition Armed Forces engaged in enforcing the resolutions of the United Nations Security Council;
- 【Whereas members of al Qaida, an organization bearing responsibility for attacks on the United States, its citizens, and interests, including the attacks that occurred on September 11, 2001, are known to be in Iraq;
- 【Whereas Iraq continues to aid and harbor other international terrorist organizations, including organizations that threaten the lives and safety of United States citizens;
- 【Whereas the attacks on the United States of September 11, 2001, underscored the gravity of the threat posed by the acquisition of weapons of mass destruction by international terrorist organizations;
- 【Whereas Iraq's demonstrated capability and willingness to use weapons of mass destruction, the risk that the current Iraqi regime will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to international terrorists who would do so, and the extreme magnitude of harm that would result to the United States

and its citizens from such an attack, combine to justify action by the United States to defend itself;

- 【Whereas United Nations Security Council Resolution 678 (1990) authorizes the use of all necessary means to enforce United Nations Security Council Resolution 660 (1990) and subsequent relevant resolutions and to compel Iraq to cease certain activities that threaten international peace and security, including the development of weapons of mass destruction and refusal or obstruction of United Nations weapons inspections in violation of United Nations Security Council Resolution 687 (1991), repression of its civilian population in violation of United Nations Security Council Resolution 688 (1991), and threatening its neighbors or United Nations operations in Iraq in violation of United Nations Security Council Resolution 949 (1994);
- 【Whereas in the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102-1), Congress has authorized the President “to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolution 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677”;
- 【Whereas in December 1991, Congress expressed its sense that it “supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 687 as being consistent with the Authorization of Use of Military Force Against Iraq Resolution (Public Law 102-1),” that Iraq’s repression of its civilian population violates United Nations Security Council Resolution 688 and “constitutes a continuing threat to the peace, security, and stability of the Persian Gulf region,” and that Congress, “supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 688”;
- 【Whereas the Iraq Liberation Act of 1998 (Public Law 105-338) expressed the sense of Congress that it should be the policy of the United States to support efforts to remove from power the current Iraqi regime and promote the emergence of a democratic government to replace that regime;
- 【Whereas on September 12, 2002, President Bush committed the United States to “work with the United Nations Security Council to meet our common challenge” posed by Iraq and to “work for the necessary resolutions,” while also making clear that “the Security Council resolutions will be enforced, and the just demands of peace and security will be met, or action will be unavoidable”;
- 【Whereas the United States is determined to prosecute the war on terrorism and Iraq’s ongoing support for international terrorist groups combined with its development of weapons of mass destruction in direct violation of its obligations under the 1991 cease-fire and other United Nations Security Council resolutions make clear that it is in the national security interests of the United States and in furtherance of the war on terrorism that all relevant United Nations Security Council resolutions be enforced, including through the use of force if necessary;
- 【Whereas Congress has taken steps to pursue vigorously the war on terrorism through the provision of authorities and funding requested by the President to take the necessary actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized,

committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

【Whereas the President and Congress are determined to continue to take all appropriate actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

【Whereas the President has authority under the Constitution to take action in order to deter and prevent acts of international terrorism against the United States, as Congress recognized in the joint resolution on Authorization for Use of Military Force (Public Law 107-40); and

【Whereas it is in the national security interests of the United States to restore international peace and security to the Persian Gulf region: Now, therefore, be it

[SECTION 1. SHORT TITLE.

【This joint resolution may be cited as the “Authorization for Use of Military Force Against Iraq Resolution of 2002”.】

[SEC. 2. SUPPORT FOR UNITED STATES DIPLOMATIC EFFORTS.

【The Congress of the United States supports the efforts by the President to—

【(1) strictly enforce through the United Nations Security Council all relevant Security Council resolutions regarding Iraq and encourages him in those efforts; and

【(2) obtain prompt and decisive action by the Security Council to ensure that Iraq abandons its strategy of delay, evasion and noncompliance and promptly and strictly complies with all relevant Security Council resolutions regarding Iraq.

[SEC. 3. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

【(a) AUTHORIZATION.—The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to—

【(1) defend the national security of the United States against the continuing threat posed by Iraq; and

【(2) enforce all relevant United Nations Security Council resolutions regarding Iraq.

【(b) PRESIDENTIAL DETERMINATION.—In connection with the exercise of the authority granted in subsection (a) to use force the President shall, prior to such exercise or as soon thereafter as may be feasible, but no later than 48 hours after exercising such authority, make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that—

【(1) reliance by the United States on further diplomatic or other peaceful means alone either (A) will not adequately protect the national security of the United States against the continuing threat posed by Iraq or (B) is not likely to lead to enforcement of all relevant United Nations Security Council resolutions regarding Iraq; and

【(2) acting pursuant to this joint resolution is consistent with the United States and other countries continuing to take the necessary actions against international terrorist and ter-

rorist organizations, including those nations, organizations, or persons who planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001.

[(c) WAR POWERS RESOLUTION REQUIREMENTS.—

[(1) SPECIFIC STATUTORY AUTHORIZATION.—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

[(2) APPLICABILITY OF OTHER REQUIREMENTS.—Nothing in this joint resolution supersedes any requirement of the War Powers Resolution.

[SEC. 4. REPORTS TO CONGRESS.

[(a) REPORTS.—The President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution, including actions taken pursuant to the exercise of authority granted in section 3 and the status of planning for efforts that are expected to be required after such actions are completed, including those actions described in section 7 of the Iraq Liberation Act of 1998 (Public Law 105–338).

[(b) SINGLE CONSOLIDATED REPORT.—To the extent that the submission of any report described in subsection (a) coincides with the submission of any other report on matters relevant to this joint resolution otherwise required to be submitted to Congress pursuant to the reporting requirements of the War Powers Resolution (Public Law 93–148), all such reports may be submitted as a single consolidated report to the Congress.

[(c) RULE OF CONSTRUCTION.—To the extent that the information required by section 3 of the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102–1) is included in the report required by this section, such report shall be considered as meeting the requirements of section 3 of such resolution.】

DISSENTING VIEWS

I appreciated the excellent first discussion the Committee held on March 23, 2021, to begin exploring serious war powers reform. Congress needs to be more active in exercising and overseeing the use of our authorities under Article I of the Constitution.

But I strongly opposed rushing this stand-alone statutory repeal through the committee of jurisdiction for the first time ever, just two days after starting this conversation, without the due diligence that it clearly requires.

Doing this the right way involves consulting the Departments of State and Defense, the White House, the Intelligence Community, the Government of Iraq, and our coalition partners and allies regarding the proposed repeal of Public Law 107–243. The Committee has not done any of those things.

I understand the desire to repeal the aging 2002 Iraq AUMF as well as the 2001 post-9/11 AUMF (Public Law 107–40).

But that must be done as part of enacting a comprehensive replacement to provide clear, updated authorities against the terrorists who still plot to kill Americans at home and abroad. As I know from my years as Chairman of the Committee on Homeland Security and my tenure on this Committee: That threat is not gone; it has evolved.

At several points, the text of the 2002 AUMF clearly addresses international terrorist threats arising in Iraq. While people can disagree about whether that authority should still be used, it *has been used* for that purpose by every prior administration since 9/11, both Republican and Democrat. In fact, the Obama and Trump administrations used identical language to describe the scope of 2002 law:

“Although the threat posed by Saddam Hussein’s regime in Iraq was the primary focus of the 2002 AUMF, the statute, in accordance with its express goals, has always been understood to authorize the use of force for the related dual purposes of helping to establish a stable, democratic Iraq and of addressing terrorist threats emanating from Iraq. After Saddam Hussein’s regime fell in 2003, the United States continued to take military action in Iraq under the 2002 AUMF to further these purposes. . . . Congress ratified this understanding of the 2002 AUMF by appropriating [billions of dollars to support such operations].”¹

There are terrorist groups active today inside Iraq who threaten our diplomats, our soldiers, and our partners, who can’t be targeted

¹Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related National Security Operations (The White House, December 2016) at 50; 2019 Update to the Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related National Security Operations, submitted pursuant to Section 1264 of the National Defense Authorization Act for Fiscal Year 2018 (P.L. 115–91) at 3.

under the 2001 AUMF because they are not associated forces of al Qaeda, the Taliban, or ISIS.

A rushed, stand-alone repeal of our 2002 Iraq force authority, which could be used against such threats, sends a message of U.S. disengagement that could destabilize Iraq, embolden Iran, and strengthen al Qaeda and ISIS.

As the current migrant crisis on our southern border illustrates, messaging from our leaders matters. Bad messaging causes real world problems that can cost lives.

In the AUMF context, this danger would be eliminated by taking up repeal and replacement together.

Real AUMF reform requires Congress and the Administration to work together on actual text to replace the aging 2001 and 2002 AUMFs, to provide the authorities needed to keep the American people and our deployed troops safe from terrorists. I look forward to working on real AUMF reform with all stakeholders, and especially the members of this Committee.

I support serious war powers reform, but this bill is not it.

MICHAEL T. MCCAUL,
Ranking Member.

