# CRS Insights

Use of Force Considerations in Iraq

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Armed forces of the Islamic State of Iraq and the Levant (ISIL, also known as ISIS or the "Islamic State"), already playing a major role in Syria's civil conflict, in June 2014 took control of significant territory and several cities in northwest Iraq, and have advanced close to Baghdad. These developments and emerging U.S. responses have raised concerns over Obama Administration policy and authority for any new use of U.S. military force in Iraq.

U.S. Response to ISIL Threat

President Obama has deployed up to 775 U.S. troops to provide security for the U.S. embassy in Baghdad, among other facilities, and to advise Iraq's military. President Obama stated in June that he might also order the U.S. military to use force in Iraq against ISIL, in the form of "targeted and precise military action," not to include engagement of U.S. ground forces. The President averred that such action would protect U.S. national security interests to maintain regional stability and prevent ISIL, a U.S.-designated Foreign Terrorist Organization (FTO), from establishing a safe haven in Iraq.

Possible Authorities for Use of Force in Iraq

Observers have questioned what authority the President could rely on if he decided to use military force against ISIL in Iraq. The President has not stated what specific authority he would utilize to conduct military operations in Iraq. Three primary sources of authority have been discussed:

2002 Authorization for Use of Military Force Against Iraq (AUMF-I)

Congress enacted the AUMF-I prior to the 2003 U.S. invasion of Iraq that toppled the government of Saddam Hussein, with U.S. military deployments to and operations in Iraq continuing until December 2011. The AUMF-I authorizes the President to use U.S. armed forces to enforce relevant United Nations Security Council resolutions and to "defend the national security of the United States against the continuing threat posed by Iraq.... " Although the AUMF-I has no sunset provision and Congress has not repealed it, one view is that after the establishment of a new Iraqi government, the restoration of full Iraqi sovereignty, and the U.S. withdrawal from Iraq, the AUMF-I no longer has force. Obama Administration officials have recently voiced support for repealing the AUMF-I, reflecting the Administration's belief that it is no longer needed. Conversely, another view asserts that, although its preamble focuses on the Saddam Hussein regime and its WMD programs, the AUMF-I's authorization language is broad, referring only to a "continuing threat" from Iraq. Thus the ISIL threat in Iraq could be seen as breathing new life into AUMF-I authority. In addition, former supporters of Saddam Hussein reportedly provide support to ISIL, possibly forming a link between the original aims of the AUMF-I and any future actions taken against ISIL.

2001 Authorization for Use of Military Force (AUMF)

In response to the 9/11 terrorist attacks, Congress enacted the AUMF authorizing the President to use military 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.... " Although ISIL does not fall within that language, the executive branch has stated that in some circumstances "associated forces" that are fighting alongside Al Qaeda and the Taliban can also be targeted under the AUMF. The Obama Administration has stated that it will use force against such associated forces under the AUMF only when they are lawful military targets that "pose a continuing, imminent threat to U.S. persons.... " Due to Al Qaeda's February 2014 disavowal of any remaining ties with ISIL, some question whether ISIL can be considered an associated force under

the AUMF. It is not clear whether the Administration considers this public split to be a factor in identifying ISIL as an associated force, or whether U.S. intelligence corroborates the Al Qaeda-ISIL split.

## Presidential Article II Powers

Article II of the Constitution makes the President Commander in Chief of the U.S. armed forces, and gives the President certain foreign affairs powers. It is often debated to what extent Article II authorizes the President to use military force unilaterally, especially given Congress's Article I war powers authorities, including the power to declare war. The President's authority to use force to defend the United States, its personnel, and citizens against ongoing or imminent attack has been generally accepted, while employing such force simply to further foreign policy or general national security goals is more controversial. In Iraq, the President would seem to have substantial authority to use force to defend U.S. personnel, the U.S. embassy in Baghdad, and any other U.S. facilities and property. If ISIL is found to be planning attacks against the United States, or other U.S. diplomatic posts, personnel, or property outside Iraq, the President might justify the use of force against ISIL by claiming such attacks are imminent.

## Relevant Proposed Legislation

Several Members of Congress have expressed concern over the President's deployments and have questioned the President's authority to use military force against ISIL in Iraq. Several Members have written to the President stating that Congress should be informed of any decisions to use military force in Iraq and that congressional authorization of such new military action is constitutionally required. A concurrent resolution introduced recently seeks to require withdrawal of U.S. armed forces within 30 days of passage, pursuant to the War Powers Resolution. Two amendments proposed to the House FY2015 Department of Defense appropriations bill would have prohibited the use of appropriated funds pursuant to the authority in the AUMF-I, and the engagement in ground combat operations in Iraq in general. These amendments were not adopted, but an amendment prohibiting the use of funds in contravention of the War Powers Resolution, including its requirements for presidential consultation with Congress prior to and congressional notification of any introduction of combat-equipped troops into hostilities in Iraq, was included in the bill before House passage. A bill introduced in the House would prohibit use of DOD funds for supporting any U.S. combat operations "in or around Iraq," as well as military training or advising of Iraqi forces.