

centerforconstitutionalrights
on the front lines for social justice

May 15, 2018

The Honorable Bob Corker
Chair, Senate Foreign Relations Committee
435 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Robert Menendez
Ranking Member, Senate Foreign Relations Committee
528 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Corker, Ranking Member Menendez, and Members of the Senate Foreign Relations Committee:

The Center for Constitutional Rights, a non-profit legal organization dedicating to protecting the rights enshrined in the Constitution and the Universal Declaration of Human Rights, writes to express its deep concern with the Authorization for Use of Military Force (AUMF) introduced on April 16. The proposed AUMF, instead of restoring Congress' constitutional role in authorizing military force, further abdicates it. By granting the Executive presumptive authority to use military force against any group anywhere in the world, it nearly completes the erosion of congressional war-making authority set in motion by the 2001 AUMF.

The proposed AUMF effectively rewrites the Constitution by usurping Congress' war authorization power and handing it to the executive branch. This is troubling under any circumstance, but is especially so under a president who has unilaterally used or threatened unilateral military force more than once in the first year of his administration. The proposed bill allows the president to wage war against six enumerated groups and add new groups in the future, all without any geographic or time constraints. Congress may authorize or veto the use of military force only after the fact. And a congressional veto would require a two-thirds supermajority of both houses, rather than the simple majority needed to pass the AUMF. This presumptive grant of congressional authorization to the executive branch upsets the separation of powers contemplated by the Constitution, which gives Congress the exclusive authority to declare war. Vesting Congress with war-making authority ensures that the decision to use military force is a democratic one, subject to approval by elected representatives through whom the popular will about whether the country should be at war is expressed. A decision as weighty as the one to go to war should not be left in the hands of an impulsive president, and any

proposed AUMF must increase congressional oversight of military action, not delegate it, as the current bill does.

Over the last 16 years, there has been an unchecked expansion of U.S. militarism throughout the globe. This expansion has occurred through the misapplication of the 2001 AUMF, passed in a rushed response to the 9/11 attacks, which has been stretched beyond recognition to justify continuous war in half a dozen countries around the world. The public, and in some instances even members of Congress, have been unaware of the expanding U.S. military footprint, for example, in Niger. All this has come at the cost of hundreds of thousands of deaths and billions of dollars. Now, Congress has the opportunity to roll back this expansion. It must reassert its constitutional authority over the use of U.S. military force and rein in the unconstitutional extension of executive war-making power set in motion by the 2001 AUMF. The restoration of war-making power to Congress is not only required by the Constitution, but would bring decisions about the use of military force in conformity with the War Powers Act of 1973. It would also provide more of an opportunity to ensure that U.S. military action is subject to congressional oversight, conducted with more transparency, and abides by the requirements of international law.

Since the passage of the 2001 AUMF, there has been an increasing abdication of Congress' war powers. This has resulted in boundless U.S. military action throughout the world, a violation of fundamental separation-of-power principles, and an executive branch unhindered in its war-making capabilities. While the aim of the proposed AUMF may have been to correct course, its effect will be to normalize and complete the abdication of the constitutional role of Congress in declaring war.

Sincerely,



Maria C. LaHood
Deputy Legal Director
Center for Constitutional Rights

cc: Senator Jim Risch, Senator Ben Cardin, Senator Marco Rubio, Senator Jeanne Shaheen, Senator Ron Johnson, Senator Chris Coons, Senator Jeff Flake, Senator Tom Udall, Senator Cory Gardner, Senator Chris Murphy, Senator Todd Young, Senator Tim Kaine, Senator John Barrasso, Senator Ed Markey, Senator Johnny Isakson, Senator Jeff Merkley, Senator Rob Portman, Senator Cory Booker, Senator Rand Paul