

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HM 1319 Declaration of War Against Global Islamic Terrorist Organizations

**SPONSOR(S):** Local & Federal Affairs Committee; Ahern and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SM 1710

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 0 N, As CS	Darden	Kiner
2) State Affairs Committee			

### SUMMARY ANALYSIS

The Islamic State of Iraq and the Levant (ISIL), al-Qaeda, and other global Islamist terrorist organizations have engaged in acts of terrorism leading to the loss of innocent life in the United States and other nations around the world, including most recently the November 13, 2015 attacks in Paris which killed 129 people and severely wounded hundreds more.

The memorial urges Congress to exercise its power pursuant by Article I, Section 8 of the United States Constitution to authorize the use of military force against ISIL, al-Qaeda, and all other global Islamist terrorist organizations that engage in acts of terrorism against the United States and its allies.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

This memorial does not have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Declarations of War

The United States Constitution vests Congress with the power to declare war.<sup>1</sup> This power has been exercised on eleven occasions in the nation's history:<sup>2</sup>

- United Kingdom (1812)
- Mexico (1846)
- Spain (1898)
- Germany (1917)
- Austria-Hungary (1917)
- Japan (1941)
- Germany (1941)
- Italy (1941)
- Bulgaria (1942)
- Hungary (1942)
- Romania (1942)

Congress's power to declare war has also been understood to include the power to authorize the use of military force.<sup>3</sup> Since the earliest days of the Republic, American jurisprudence has drawn a distinction between general war, in which "one whole nation is at war with another whole nation... in every place, and under every circumstance," and limited war, "confined in its nature and extent... as to places, persons, and things."<sup>4</sup> During the 19th century, formal declarations of war were reserved for conflicts against other nations, while authorizations for the use of military force (AUMF) allowed the President to take action against pirates and other non-state actors.<sup>5</sup>

Since the Second World War, the United States Congress has only adopted AUMFs.<sup>6</sup> These authorizations have included both non-state actors<sup>7</sup> and broad expressions of Presidential authority against nations.<sup>8</sup> Two factors led to the shift away from formal declarations of war. First, nations generally have moved away from issuing formal declarations of war, with at least one commentator asserting that no formal declaration of war has been delivered by diplomatic channels since 1945.<sup>9</sup> Nations has increasingly attempted to maintain diplomatic and commercial relationships to the extent possible during conflicts, with the historical tendency to abrogate treaties replaced by a tendency to

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<sup>1</sup> U.S. Const., art. I, s. 8, cl. 11.

<sup>2</sup> See Jennifer K. Elsea and Richard F. Grimmett, *Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications* 81-87, Congressional Research Service, available at <https://www.fas.org/sgp/crs/natsec/RL31133.pdf> (text of each formal declaration of war approved by Congress) (last visited Jan. 22, 2016).

<sup>3</sup> *Id.* at 24.

<sup>4</sup> *Id.*, quoting *Bas v. Tinghy*, 4 Dall. 37, 40 (1800).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 23.

<sup>7</sup> See Authorization for the President To Employ the Armed Forces of the United States for Protecting the Security of Formosa, the Pescadores, and Related Positions and Territories of That Area, Pub. L. No. 84-4, H.J. Res. 159, 84th Cong (Jan. 29, 1955) (authorizing the President to use force in defense of Formosa, part of the Republic of China (Taiwan), against the then-unrecognized People's Republic of China).

<sup>8</sup> Authorization of the Use of Force Against Iraq Resolution of 2002, Pub. L. 107-243, H.J. Res. 114, 107th Cong (Oct. 16, 2002) (authorizing the President to use force "as he determines to be necessary and appropriate" to defend the national security and enforce United Nations Security Council resolutions regarding Iraq).

<sup>9</sup> Elsea and Grimmett, at 23.

deem treaties as remaining in effect to the maximum possible extent.<sup>10</sup> Second, a formal declaration of war is the operative event in many statutes to confer special powers on the President, many of which directly affect domestic concerns.<sup>11</sup> These special powers include:

- Interdiction of trade;<sup>12</sup>
- Ordering manufacturing plants to produce arms and seizing them if they fail to comply;<sup>13</sup>
- Taking control of the transportation system;<sup>14</sup> and
- Taking control of communications systems.<sup>15</sup>

The most vital powers relevant to conducting a military operation, however, are triggered by either a declaration of war or an AUMF. Both types of resolutions eliminate the time limits imposed on military deployments by the War Powers Resolution<sup>16</sup> and authorize the capture and detention of enemy combatants to the duration of hostilities.<sup>17</sup>

### Islamic State of Iraq and the Levant (ISIL)

The Islamic State of Iraq and the Levant (ISIL) is a terrorist organization primarily operating in Iraq and Syria. The group is the current manifestation of earlier terrorist groups operating in Iraq from 2002 to 2006.<sup>18</sup> The group's leader was killed by American forces in 2006, after which the remaining organization rebranded as the Islamic State of Iraq.<sup>19</sup> By the time American forces left Iraq in 2011, the group had been weakened, but still existed.<sup>20</sup> The group would later rebrand as ISIL in 2013, after a merger with the al-Nusra Front in Syria.<sup>21</sup> In June 2014, ISIL's leadership declared the reestablishment of the caliphate<sup>22</sup> and began referring to themselves as the Islamic State.<sup>23</sup>

In addition the group's fighters in Iraq and Syria, ISIL has received pledges of support from various terrorist groups in the Middle East, Africa, and South Asia.<sup>24</sup> Prior to 2015, the majority of the group's attacks were concentrated in Iraq and Syria, but the attacks elsewhere in 2015 resulted in more than 1,000 deaths.<sup>25</sup> It is believed active ISIL cells currently operate in Yemen, Egypt, Algeria, Saudi Arabia, Libya, Afghanistan, and Nigeria.<sup>26</sup>

### November 2015 Paris Attacks

On November 13, 2015, ISIL conducted a series of coordinated terrorist attacks in and around Paris, France. Attacks against Stade de France, the Bataclan theatre, and four other sites left 130 people

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 25. Some of these powers are also triggered in the event the President declares a national emergency.

<sup>12</sup> 50 U.S.C. s. 1702.

<sup>13</sup> 10 U.S.C. s. 2538

<sup>14</sup> 10 U.S.C. s. 2644

<sup>15</sup> 47 U.S.C. s. 606.

<sup>16</sup> Elsea and Grimmer, at 25.

<sup>17</sup> *Id.*, citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (O'Connor, J., plurality opinion) and *Hamdi v. Rumsfeld*, 542 U.S. 507, 588-89 (2004) (Thomas, J., dissenting).

<sup>18</sup> John W. Rollins and Heidi M. Peters, *The Islamic State—Frequently Asked Questions: Threats, Global Implications, and U.S. Policy Responses 1*, Congressional Research Services, available at <https://www.fas.org/sgp/crs/mideast/R44276.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *What is 'Islamic State'?*, BBC (Dec. 2, 2015), <http://www.bbc.com/news/world-middle-east-29052144>.

<sup>22</sup> A "caliphate," a state governed by a "caliph," refers to the religious and political successors of Muhammad. Disputes over succession form the basis of the early fissures in Islam. Gerhard Bowering, *The Princeton Encyclopedia of Islamic Political Thought* 202 (1st ed. 2013).

<sup>23</sup> Rollins and Peters, at 1.

<sup>24</sup> Christopher M. Blanchard and Carla E. Humud, *The Islamic State and U.S. Policy 4*, Congressional Research Service, available at <https://fas.org/sgp/crs/mideast/R43612.pdf>.

<sup>25</sup> Rollins and Peters, at 2.

<sup>26</sup> *Id.*

dead and more than 350 injured.<sup>27</sup> ISIL claimed responsibility for the attack in a statement issued November 14, calling Paris “the lead carrier of the cross in Europe” and threatening violence against all nations opposed to their activities in Iraq and Syria.<sup>28</sup>

### Operation Inherent Resolve

On June 15, 2014, the United States and its allies launched Operation Inherent Resolve to combat ISIL.<sup>29</sup> As of January 19, 2016, American and coalition forces have conducted 9,782 airstrikes against ISIL in Syria and Iraq.<sup>30</sup> The American-led coalition contains 60 nations and partner organizations conducting military operations, stopping the flow of fighters and funds to ISIL, and addressing humanitarian crises that ISIL has previously exploited as a recruitment tool.<sup>31</sup> As a result of the operation, Kurdish forces and Arab allies have been able to recapture portions of Iraq and northern Syria.<sup>32</sup> It is unclear what impact Operation Inherent Resolve has had on the number of fighters ISIL is able to field in Iraq and Syria, with some reports suggesting the group has been forced to resort to conscription in some areas, while others suggest ISIL is still being replenished with significant numbers of foreign fighters.<sup>33</sup>

In addition to the efforts of the American-led coalition, Russian forces have also been engaged in the conflict.<sup>34</sup> While initially acting in support of Syrian President Bashir al-Assad, Russian efforts have been focused on ISIL since the group targeted a Russian airliner on October 31, 2015, killing all 224 passengers.<sup>35</sup>

### Legal Status of Operation Inherent Resolve

Operation Inherent Resolve was initially launched under a claim of Presidential authority under his Article II powers as commander-in-chief.<sup>36</sup> Later statements from the Obama administration, however, have cited to the authorizations for the use of military force against al-Qaeda and Iraq as providing the legal basis for the strikes.<sup>37</sup> The President also indicated in November 2014 that he intended to seek explicit Congressional authorization to specifically target ISIL, in order to “right-size and update” the earlier authorizations.<sup>38</sup>

Debates over a new authorization for the use of military force are still on-going. The Senate Foreign Relations Committee voted to approve a new AUMF in December 2014, but final passage was hamstrung by concerns of whether the authority granted to the President was too restricted.<sup>39</sup> The

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<sup>27</sup> Matthew Dalton, et al., *Seven Militants Led Deadly Paris Attacks*, Wall St. Journal (Nov. 14, 2015)

<http://www.wsj.com/articles/paris-attacks-were-an-act-of-war-by-islamic-state-french-president-francois-hollande-says-1447498080>.

<sup>28</sup> Swati Sharma, *Islamic State claims responsibility for Paris attacks*, Washington Post (Nov. 14, 2015),

<https://www.washingtonpost.com/news/worldviews/wp/2015/11/14/islamic-state-claims-responsibility-for-paris-attacks/>.

<sup>29</sup> See Chris Carroll, *Global War on Terrorism Expeditionary Medal authorized for Operation Inherent Resolve*, Stars and Stripes (Oct. 31, 2014), <http://www.stripes.com/news/global-war-on-terrorism-expeditionary-medal-authorized-for-operation-inherent-resolve-1.311466> (declaring June 15, 2014 as beginning of eligibility period for troops engaged in Operation Inherent Resolve).

<sup>30</sup> United States Dept. of Defense, *Operation Inherent Resolve: Targeted Operations against ISIL Terrorists*, [http://www.defense.gov/News/Special-Reports/0814\\_Inherent-Resolve](http://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve) (last visited Jan. 23, 2016).

<sup>31</sup> Rollins and Peters, at 3.

<sup>32</sup> Blanchard and Humud, at 5.

<sup>33</sup> *Id.*

<sup>34</sup> Rollins and Peters, at 4.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Karen DeYoung, *Senate committee approves military action against Islamic State*, Washington Post (Dec. 11, 2014), [https://www.washingtonpost.com/world/national-security/senate-committee-approves-military-action-against-islamic-state/2014/12/11/48dbd0fc-815b-11e4-9f38-95a187e4c1f7\\_story.html](https://www.washingtonpost.com/world/national-security/senate-committee-approves-military-action-against-islamic-state/2014/12/11/48dbd0fc-815b-11e4-9f38-95a187e4c1f7_story.html).

issue was again raised after the Obama administration announced in November 2015 that 50 special operations forces were being sent to Syria to act as advisors to allied rebel groups.<sup>40</sup>

### Pending Legislation

There are currently several proposals pending in Congress authorizing the President to use military force against ISIL.

Senate Joint Resolution 29 would authorize the president to use “all necessary and appropriate force” to defend the national security of the United States against ISIL and associated forces, organizations, and persons” as well as any successor organizations.<sup>41</sup> The resolution would also require the President to submit a report to Congress at least once every sixty days giving updates on matters relevant to the resolution.

An earlier measure, Senate Joint Resolution 26, contains virtually identical language.<sup>42</sup> Senate Joint Resolution 26 has a companion measure in the House.<sup>43</sup>

The broad contours of these resolutions appear to derive from a joint resolution filed in 2015.<sup>44</sup> House Joint Resolution 33 would authorize the President to use force against ISIL and associated persons and forces. The resolution would have also repealed the 2002 authorization for the use of military force against Iraq.

Another resolution, House Joint Resolution 27, is structured more narrowly as to only allow the President to use force against ISIL.<sup>45</sup> The resolution would also repeal the 2001 and 2002 authorizations for the use of military force against al-Qaeda and Iraq, respectively.

House Joint Resolution 73 states that a “state of war” exists between the United States and ISIL and authorizes the President to “use the Armed Forces of the United States to carry on war against the Islamic State.”<sup>46</sup>

### Effect of the Memorial

The memorial urges Congress to exercise its power, pursuant to Article I, Section 8 of the United States Constitution, to authorize the use of military force against al-Qaeda, ISIL, and all other global Islamic terrorist organizations that similarly engaged in acts of terrorism against the United States, its people, and allied and friendly governments and peoples.

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

### B. SECTION DIRECTORY:

Not applicable.

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<sup>40</sup> Karoun Demirjian, *Boots on the ground in Syria have lawmakers calling for a new AUMF*, Washington Post (Nov. 1, 2015), <https://www.washingtonpost.com/news/powerpost/wp/2015/11/01/boots-on-the-ground-in-syria-has-lawmakers-calling-for-a-new-aumf/>.

<sup>41</sup> S.J.Res 29, 114th Cong. (2016).

<sup>42</sup> S.J.Res. 26, 114th Cong (2015). S.J. Res 29 contains a precatory clause about ISIL’s use of social media and its online magazine in an attempt to radicalize Americans and inspire attacks within the United States.

<sup>43</sup> H.Con.Res. 106, 114th Cong (2016).

<sup>44</sup> H.J.Res. 33, 114th Cong. (2015).

<sup>45</sup> H.J.Res. 27, 114th Cong. (2015).

<sup>46</sup> H.J.Res. 73, 114th Cong. (2015).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This memorial does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The memorial does not provide rulemaking authority or require executive branch rulemaking.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 27, 2016, the Local & Federal Affairs Committee adopted one amendment and reported the memorial favorably as a committee substitute. The amendment urges the Congress of the United States to authorize the use of military force and makes a technical correction to one of the precatory clauses.

This analysis is drawn to the bill as amended.