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Expansion of Executive War Powers under the Obama and Trump Administrations

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Chapter 1: Introduction

What are the powers of the President and the powers of the legislature in declaring war and the use of force abroad? What are the responsibilities for accountability of every party involved? How have they changed over time? The Constitution of the United States provides Congress with the authority to declare war, along with the power to organize the armed forces and appropriate money. The Constitution provides the President with the power of Commander-in-Chief of the armed forces. However, beyond these specifically stated powers, there is a lot of ambiguity in the respective jurisdictions of Congress and the President.

The United States has not officially declared war since World War II, but has been involved in numerous conflicts under authorizations to use military force. The War Powers Resolution of 1973 dictates that the President of the United States must report and receive authorization by Congress for the use of military force within sixty days of U.S. armed forces becoming involved in hostilities. There is great controversy over both the scope and the effectiveness of the War Powers Resolution in restraining the executive war powers. This thesis is an analysis of the evolution of executive war powers under the Obama and Trump administrations. This thesis will first analyze the creation of war powers in the United States Constitution, then the evolution of war powers legislation, and finally review case studies under the Obama and Trump administrations to illustrate the great expansion of executive war powers in the administrations examined. Specifically, the case studies explored include Libya and the Islamic State under the Obama Administration, and Yemen, Islamic State, and Niger under the Trump Administration.
Chapter 2: History and Theory of War Powers

During the creation of the United States government, the Founding Fathers divided the responsibility of war powers between the executive and legislative branches of government in an attempt to avoid tyrannical tendencies. This separation of powers was also evident in many other aspects of the United States government. In Article 1 Section 8 of the United States Constitution, “Congress shall have Power to . . . declare War, grant Letter of Marque and Reprisal, and make Rules concerning Captures on land and Water; To raise and support armies, but no Appropriation to that Use shall be for a longer Term than two years; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval Forces . . .’’\(^1\) Section 2 of the United States Constitution outlines the President’s responsibility with regard to war powers: “The President shall be Commander in Chief of the Army and Navy of the United States.”\(^2\)

Although the Constitution clearly outlines the difference between the authorization and the command abilities of war powers in each branch of government, the degree to which the President has unilateral and autonomous control of the armed forces is highly contentious and debated to this day.

During the debates leading up to the creation of the Constitution of the United States, many of the Founding Fathers were concerned that if given too much power, the Executive would exert war powers to their own benefit. The priority of the prevention of unilateral executive control was particularly prevalent with respect for fear of backsliding into tyrannical rule similar to that which existed under Great Britain. Ultimately, the separation of powers between the branches of government were enacted to prevent one party from gaining too much

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\(^1\) *Constitution of the United States*. Articles I and II. 1787.  
\(^2\) *Constitution of the United States*. Articles I and II. 1787.
power. “James Madison's notes of the debates at the Constitutional Convention in 1787 reveal that when Pierce Butler of South Carolina urged that the President be given the power to initiate a war, the delegates overwhelmingly rejected his proposal.”

This strong distaste from the delegates of the Constitutional Convention demonstrates the resolve of ideology surrounding war powers in the early days of the United States. Within this separation of powers, it is important to examine the roles and timeframes that each branch of government must play with regard to the use of force: What can the president do and what should Congress do in response?

In the Federalist Papers No. 74, Alexander Hamilton states: “The direction of war implies the direction of the common strength and the power of directing and employing the common strength forms a usual and essential part in the direction of the executive authority.” This statement provides support for a vigorous Commander-in-Chief, but does not contradict an equally vigorous Congress which has the power to actually declare war which the Constitution asserts. Hamilton ultimately puts forward that a Commander-in-Chief must bring the nation together, but does not ever state that a Commander-in-Chief should have autonomous control in war powers. Additionally, one of the primary reasons that the ability to declare war is held only by Congress is that this allows for the most thorough deliberation and representation of the American people at large.

The significant war powers of Congress beyond the ability to declare war include the powers of appropriation of funds and the organization of armed forces. “These powers of the purse, organization, and the new arcane ability of Congress to authorize private groups to enter

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into armed conflict prove important vehicles for Congress to utilize its portion of the war powers.” In other words, through the control of the flow of money into the modern day Department of Defense, Congress has the potential to yield great regulation of armed forces by either allowing or disallowing the appropriation of funds. The ability to restructure the armed forces allows Congress to preside over everything from how military units are formed to the command structure of the military. In combination with the power to declare war, it is obvious that the Founding Fathers wanted Congress to play an extremely active and vigorous role in the decisions and activities surrounding every step of the United States using armed forces abroad.

During World War II, Congress passed the First War Powers Act, H.R. 6233, and the Second War Powers Act, H.R. 5744, which expanded presidential wartime powers. The First War Powers Act “empowered President Franklin D. Roosevelt to reorganize the executive branch, federal agencies, and government corporations.” This was ultimately intended to increase the efficiency of the United States in fighting the war at that time. The Second War Powers Act allowed the executive branch to allot resources for the war effort. Through World War II, the President of the United States was afforded extraordinary powers in order to assist in war efforts. This expanded upon the power to reorganize and create government agencies that Congress gave to President Woodrow Wilson during World War I.

The War Powers Resolution of 1973 was passed by Congress to place limits on executive control of the use of military action without Congressional approval. This momentous attempt to

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limit executive war powers largely resulted from distaste for the Vietnam War both by the
general public and in Congress. Under the War Powers Resolution of 1973, the President must
receive a declaration of war by Congress or a Congressional mandate authorizing the use of
military force within sixty days of sending armed forces into hostilities or a situation where
hostilities are imminent. An extension of an additional thirty days can ultimately be made
without Congressional approval. The War Powers Resolution of 1973 does not state what
actions Congress can or should take if the Executive is not compliant with the terms of the
Resolution.

The War Powers Resolution explicitly states it purpose:

It is the purpose of this joint resolution to fulfill the intent of the framers of the
Constitution of the United State to insure that the collective judgment of both the
Congress and the President will apply to the Introduction of the United States Armed
Forces into hostilities, or into situations where imminent involvement in hostilities is
clearly indicated by the circumstances, and the continued use of such forces in hostilities
or in such situations.

The War Powers Resolution was ultimately an attempt to create parameters for the practical
application of the separation of war powers outlined in the Constitution of the United States.
However, there are many obstacles and complexities that have prevented Congress from
wielding its authority under the War Powers Resolution. Congress has not formally declared war
since World War II because of the very real potential public opposition that would likely be
accompanied by unfavorable reelection results. Congress has instead used the authorization of

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the use of military force (AUMF) in order to provide a congressional mandate approving actions taken by the Commander-in-Chief. After providing an authorization for the use of military force, Congress is unable to change that authorization, according to the War Powers Resolution of 1973. In turn, the only regulation left to the legislature after an AUMF is passed is the appropriation of funds to the armed forces. The defunding of American troops is a highly unpopular move and can drastically shift constituent opinions regarding Members of Congress. As a result, this has become an unpopular safeguard to pursue. Divided Congresses and reluctance to intervene have caused the War Powers Resolution to be essentially useless without a President who voluntarily obeys its outlines. Recent history has demonstrated that Congress is unwilling to enforce its parameters even when that Congress’s partisanship is misaligned with the President.
Chapter 3: Past Administrations

Past administrations have faced challenging questions in determining the scope and limitations of the War Powers Resolution. The application of the War Powers Resolution to the terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001 provided the important question of broadness in approach to AUMFs. President Bush and congressional leaders attacked the scope of the executive ability to address these terrorist attacks with military action through a joint congressional resolution. The joint resolution was passed by Congress on September 14, 2001 and signed into law on September 18, 2001. The measure passed almost unanimously in both chambers of the legislature. The vote in the Senate was 98-0 and the vote in the House was 420-1. The joint resolution, S.J.Res. 23 authorized the President 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.*

Prior to this AUMF, Congress has always cited regions of the world or specific nations, never “individuals” or “organizations,” in AUMFs. “This authorization of military action against “organizations or persons” is unprecedented in American history, with the scope of its reach yet to be determined.” With its incredibly wide scope, there was concern about the ability and commitment of the President to abide by the sentiments of the War Powers Resolution regarding

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congressional notification. There was even a proposal to mandate sixty day updates on actions taken under the 2001 AUMF. However, this attempt to reel in the power that S.J.Res. 23 gave to the Executive was unsuccessful and unpopular overall. In the letters of notification that President Bush sent in the following days, he referred to his actions being taken consistent with both the War Powers Resolution and S.J.Res. 23 without specifically quoting text from section 4(a)(1) of the War Powers Resolution. This strategy was used to avoid a military withdrawal timetable dictated by the War Powers Resolution. This same tactic has been used by past presidents with regard to AUMF congressional updates. S.J.Res. 23 does not take precedence over that of the War Powers Resolution; instead, these two pieces of legislation are meant to coexist. “The President and Congress, in sum, maintained their respective positions on the constitutionality of the War Powers Resolution and the responsibilities of the President under it, while finding a legislative vehicle around which both branches could unite to support the President’s response to the terrorist attacks on the United States.”¹² It is essential to recognize that despite cooperation at the time between Congress and the President on the 2001 AUMF, the long-term ability for the president to abuse the powers granted by the broad legislation were great and has subsequently been used as a tool for expansion of executive powers at large.

In February 2011, protests began in Libya as part of the Arab Spring uprisings throughout the Middle East and North Africa. Libyan leader Muammar Gadhafi struck back against the protestors with violence and vengeance. As a result, the international community stepped in to prevent a humanitarian crisis in the region. The United Nations Security Council authorized the use of military action against Gadhafi’s regime which resulted in U.S. and European military forces conducting air strikes throughout Libya. Soon after the initial air strikes, the United States began transitioning from a lead role to a supporting role in the conflict. The United States did not withdraw until well after the sixty day limit set by the War Powers Resolution. “The Obama Administration reported the activity to Congress within forty-eight hours of the [initial] coalition intervention . . . [and] the Administration consulted with Congress throughout the operation, but Congress did not authorize the use of military force.”

The Obama Administration denied applicability of the War Powers Resolution to continued U.S. military intervention in Libya in 2011. In this defense of these actions, the Obama Administration, through Harold Koh, former Legal Adviser of the Department of State, “argued that the U.S. activity in Libya did not constitute ‘hostilities’ and this did not trigger the WPR’s sixty-day withdrawal rule [relying on] previous administrations’ interpretations of the WPR.”

The Obama Administration, in this incident, demonstrated a narrow interpretation of

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the War Powers Resolution, which ultimately was permitted due to the unwillingness of Congress to act to restrict executive war powers. This, in turn, created a limited scope of interpretation for many of the terms involved in the War Powers Resolution.

The legal trigger for the automatic pullout clock, “hostilities” is an ambiguous term of art that is defined nowhere in the statue. The legislative history, which we cite, makes clear there was no agreed-upon view of exactly what the term “hostilities” would encompass, nor has that standard ever been defined by any court or Congress itself.

The term “hostilities” was vague but they declined to give it more concrete meaning in part to avoid hampering future Presidents by making the resolution a one-size-fits-all straightjacket that would operate mechanically without regard to the facts.

Koh then went on to apply the limited mission, military means, exposure of U.S. forces, and risk of escalation as reasons to justify use of U.S. armed forces in Libya. Koh compared the use of force in Libya to that of Lebanon, Grenada, and Somalia. This comparison signaled a swift expansion of executive war powers through defining characteristics of war powers and the subsequent lack of authorizations of the use of military force by Congress. “Every president since the [War Powers Resolution’s] enactment has claimed that it’s an unconstitutional limit on inherent executive authority over military power.”

As courts have largely dismissed WPR litigation on prudential grounds, historical practice has become law in the Resolution’s regard, guiding its application. Koh properly sought to locate Libya amidst the universe of WPR precedents, but his analysis illustrates

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the indeterminacy inherent in a statutory structure with only contested, historical practice to fill textual silence. This ambiguity has weakened the WPR's ability to function as a general, ex ante time limit on executive action. Rather, Congress must actively participate in enforcing the Resolution's letter if it wishes to deny the executive the flexibility on which Koh's argument relied.\textsuperscript{17}

In addition to Koh’s argument and testimony before the Senate Committee on Foreign Relations, there was direct confrontation between Obama and the Speaker of the House at the time, Mr. Boehner. Boehner sent a letter to the Obama Administration in March 2011 demanding further information on U.S. involvement in Libya from both a Congressional and public perspective: “It is regrettable that no opportunity was afforded to consult with Congressional leaders, as was the custom of your predecessors, before your decision as Commander-in-Chief to deploy into combat the men and women of our armed forces.”\textsuperscript{18}

In June 2011, Boehner sent another letter to the Obama administration “warning him that he appeared to be out of time under the Vietnam-era law that says presidents must terminate a mission 60 or 90 days after notifying Congress that troops have been deployed into hostilities, unless lawmakers authorize the operation to continue.”\textsuperscript{19} In direct response to this letter, the Obama administration, specifically Acting Assistant Secretary Joseph Macmanus of Department of State and Assistant Secretary Elizabeth King of Department of Defense released a report describing U.S. activities in Libya. The unclassified portions of the report include political and


military objectives in Libya, assessments of the current situation, U.S. participation in the NATO operation, projected military, humanitarian, and related costs, and other direct reporting on the situations surrounding the U.S. actions. Furthermore, the report directly lists the congressional consultations taken by the Obama administration:

The administration has consulted extensively with Congress about U.S. engagement in Libya. Since March 1, the Administration has:

- Testified at over 10 hearings that included a substantial discussion of Libya;
- Participated in over 30 Member and/or other staff briefings, including the March 18 Presidential meeting with Congressional Leadership, Committee Chairs and Ranking Members; all three requested “All Members Briefings” (two requested by the Senate, one by the House); and all requested “All Staff Briefings;”
- Conducted dozens of calls with individual Members;

Provided 32 status updates via email to over 1,600 Congressional staff

The exchange of information and letters between the Obama administration and Speaker Boehner demonstrate a fundamentally different understanding of adequate congressional consultation regarding the use of military force as well as what constitutes as war and hostilities. Within these exchanges, it is clear that the President was actively gaining more autonomy and unilateral control of actions being taken in Libya. This was demonstrated by the interpretations of WPR and by narrowly defining what is not allowed by the Executive. The necessity for prompting additional congressional consultations and notifications signals the shift in power between Congress and the President.

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ISIS

Obama authorized a vast expansion of authorized drone strikes during his administration which has proven to be a powerful precedent for the Trump administration. “Whereas President George W. Bush authorized approximately 50 drone strikes that killed 296 terrorists and 195 civilians in Yemen, Pakistan, and Somalia, Obama has authorized 506 strikes that have killed 3040 terrorists and 391 civilians.” Under both Obama and Bush, the practice of non-battlefield drone strikes normalized and became a regular practice outside of direct conflict zones, usually resulting in some form of civilian casualty. Facing public backlash, Obama announced policy reforms that would guide a framework for counterterrorism drone strikes and provide some mechanisms of oversight and accountability. In his speech on May 23, 2013, Obama stated:

> Beyond Afghanistan, we must define our effort not as a boundless “global war on terror,” but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America. . . As was true in previous armed conflicts, this new technology [drones] raises profound questions -- about who is targeted, and why; about civilian casualties, and the risk of creating new enemies; about the legality of such strikes under U.S. and international law; about accountability and morality. And yet, as our fight enters a new phase, America’s legitimate claim of self-defense cannot be the end of the discussion. . . Over the last four years, my administration has worked vigorously to establish a framework that governs our use of force against terrorists -- insisting upon clear guidelines, oversight and accountability that is now codified in Presidential Policy Guidance that I signed yesterday . . . After I

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took office, my administration began briefing all strikes outside of Iraq and Afghanistan to the appropriate committees of Congress. Let me repeat that: Not only did Congress authorize the use of force, it is briefed on every strike that America takes.22

In this policy guidance, there were clear guidelines for future congressional notifications: relevant Members of Congress and congressional committees will be continuously informed with updates on operations where lethal force is to be used.23 “However, there is no evidence that most reforms were ever implemented, and officials emphasized that they did not apply to C.I.A. drone strikes in Pakistan, where roughly 40 percent of all non-battlefield drone strikes have since occurred.”24 Similarly, the policy outlined above was and is not law and therefore holds no serious repercussions for its violation. The portions of the policy that were released to the public on May 22, 2013 led to Obama’s subsequent speech mentioned above. They were nice words in theory, but proven to provide little constraint to a president’s unchecked abilities to conduct drone strikes abroad.


Targets Other Than Identified HVTs.”  These sections are much more extensive and revealing than the policy outlines that Obama released earlier in the year to set the public at ease.

Non-combat zone drone strikes have been considered by various Members of Congress to fall outside the scope of the 2001 AUMF. However, the Obama administration held that these drone strikes did indeed fall under the 2001 AUMF. Despite discontent with these executive actions and claims, Congress took no substantive action to refute the drone strikes’ classification under the 2001 AUMF. The drone strikes also have important implications for international law. “The targeted killing policy reflects a decision to pursue substantive action that is narrower than what international law arguably allows, without proffering a detailed position on those wider boundaries.”  These actions show not only a lack of accountability with respect to American law, but also that of international law.

Obama spent his administration expanding the use of unchecked executive authority in war powers in the name of the 2001 AUMF and set the precedent for the Trump administration to continue this trend. The United States must be mindful of James Madison’s warning that “No nation could preserve its freedom in the midst of continual warfare.”  The dangerous degree of broadness provided by the 2001 AUMF can potentially provide the justification for an endless war dictated completely by American presidents without a Congress that is willing to enforce the guidelines of the War Powers Resolution. Obama ultimately bypassed congressional oversight and the necessity of congressional authorization for the use of force throughout his presidency.

including Libya in 2011 and in Iraq and Syria against ISIS fighters. “Like the 2013 drone rule book, it was a bid at transparency that left a lot of questions unanswered and has no binding effect on the next administration.”

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Chapter 5: Trump Administration

Yemen

In 2015, civil war broke out in Yemen when the Ansar Allah/Houthi rebel movement moved forward to overthrow the government of Yemen. In response, Saudi Arabia led a coalition of countries in military actions against the Houthi rebel movement. “Houthi forces have conducted cross border missile and mortar attacks against Saudi Arabia and the UAE, with some apparent support from Iran. U.S. Armed Forces have provided discrete support to some Saudi and Emirati military operations against Houthi forces, with current operations reported to be specifically focused on Houthi missile force targets.”29 The U.S. support that the Saudi military has received throughout the duration of this coalition against the Houthi rebels in Yemen has included air-to-air refueling, intelligence support, and logistical support. On November 9, 2018, “the Trump administration [ended] the practice of refueling Saudi-coalition aircraft, halting the most tangible and controversial aspect of U.S. support for the kingdoms’ three year war in Yemen, U.S. and Saudi officials said.”30 In addition to the direct military actions taken by the Saudi-led coalition, the Saudi government has also imposed restrictions on the transit of vessels by sea and air into Yemen since 2015. In an address to the Cato Institute on April 10, 2019, Rep. Ro Khanna spoke about the humanitarian crisis in Yemen: “The United Nations reports that we could have a famine that affects 12 to 14 million people in Yemen. . . On the humanitarian crisis, it’s a very simple point. The Saudis right now are bombing Hodeidah. As a result, not enough food and medicine is getting in.”31

On January 30, 2019, Senator Bernie Sanders introduced S.J.Res.7 – A joint resolution to direct the removal of United States Armed Forces from hostilities in the Republic of Yemen that have not been authorized by Congress. In the text of the resolution, Congress made the following findings:

1. *Congress has the sole power to declare war.* . . .

2. *Congress has not declared war with respect to, or provided a specific statutory authorization for, the conflict between military forces led by Saudi Arabia* . . . *against the Houthis in the Republic of Yemen.*

3. *Since March 2015, members of the United States Armed Forces have been introduced into hostilities between the Saudi-led coalition and the Houthis.* . . .

4. *The United States has established a Joint Combined Planning Cell with Saudi Arabia, in which members of the United States Armed Forces assist in aerial targeting and help coordinate military and intelligence activities.*

5. *In December 2017, Secretary of Defense James Mattis stated, “We have gone in to be very – to be helpful where we can in identifying how you do target analysis and how you make certain you hit the right thing.”*

6. *The conflict between the Saudi-led coalition and the Houthis constitutes, within the meaning of section 4(a) of the War Powers Resolution (50U.S.C. 1542(a)), either hostilities or a situation where imminent involvement in hostilities is clearly indicated.* . . .

7. *Section 5(c) of the War Powers Resolution (50 U.S.C. 1544(c)) states that “at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration*
of war or specific statutory authorization, such forces shall be removed by the
President if the Congress so directs.”

8. Cont.\textsuperscript{32}

Furthermore, the Resolution directed President Trump to remove United States Armed Forces from hostilities in or affecting the Republic of Yemen. S.J.Res.7 passed in the Senate on March 13, 2019 by a Yea-Nay vote of 54-46 and passed in the House on April 4, 2019 by recorded vote 247 – 175.\textsuperscript{33} “This was the first time War Powers legislation passed Congress with bipartisan support and reached a president’s desk,”\textsuperscript{34} since its passage in 1973. President Trump subsequently vetoed this historic bipartisan resolution. On April 16, 2019, Trump stated in his veto message: “This resolution is an unnecessary, dangerous attempt to weaken my constitutional authorities, endangering the lives of American citizens and brave service members, both today and in the future.”\textsuperscript{35} Furthermore, in the same veto message, Trump claims that all actions of United States Armed Forces have been pursuant to the Arms Export Control Act; the actions the United States has taken are for the reasons of protecting Americans who reside in coalition countries attacked by Houthis; are necessary for our alliance with Saudi Arabia; and that S.J.Res 7 interferes with the President’s constitutional authority as Commander-in-Chief of the Armed Forces. In order to achieve an override of the President’s veto, the Senate needed 67 votes. On May 2, 2019, the Senate failed to override the veto with a vote of 53 – 45.

\textsuperscript{32} Sanders, Bernie. “S.J.Res.7 - A joint resolution to direct the removal of United States Armed Forces from hostilities in the Republic of Yemen that have not been authorized by Congress.” \textit{United States Senate Foreign Relations Committee}, January 30, 2019.

\textsuperscript{33} 116\textsuperscript{th} Congress. “All Actions S.J.Res.7.” \textit{Congress.gov}, May 2, 2019.


The conflict in Yemen has been deemed a humanitarian crisis by numerous human rights organizations worldwide as well as numerous United States lawmakers during the legislative process surrounding S.J.Res.7. Additionally, Trump’s claim that the Saudi Arabia alliance is of great importance to the United States came only a little over a year after the assassination of Jamal Khashoggi – a Saudi dissident, U.S. Resident, and Washington Post reporter – in a Turkish embassy. “As the U.S. intelligence community, and the United Nations, were determining that Saudi Arabia was culpable in the killing, members of Congress demanded accountability.” Longtime supporters of Saudi Arabia renounced their ties with the Saudi government in the aftermath of the incident including, but not limited the Brookings Institution and Sen. Lindsey Graham. Despite the outrage, Trump remains steadfast in his support of the Saudi government within the scope of this assassination and the civil war in Yemen. This event called into question the validity and the morality of a U.S.-Saudi alliance especially when viewed within the overall landscape of Khashoggi’s outspoken criticism of the Saudi military campaign in Yemen and the human rights violations perpetrated by Saudi-led coalitions in Yemen. According to Rep. Ro Khanna, the combination of highly distributed images of the humanitarian crisis and the controversy over the killing of Jamal Khashoggi caused both the Senate and in turn, the House of Representatives to make this a priority. Despite these changing intentions of Congress, there were still hardliners who backed U.S. involvement in the conflict with the opinion that congressional authorization was not necessary because of the nature of the support: “Senate

Foreign Relations Committee Chairman Jim Risch (R-Idaho) characterized the premise of the resolution ‘fundamentally flawed’ and called America’s role in Yemen ‘advisory in nature’.”

Not only do the incidents in Yemen surrounding the legislative process of S.J.Res.7 provide evidence of the further expansion of executive war powers under the Trump administration, they also demonstrate the vast weaknesses of the War Powers Resolution of 1973. In 46 years since enactment, this is the first time that legislation refuting a president’s involvement in hostilities abroad has even reached the desk of a president despite numerous questionable circumstances. Even in this case study, the legislation failed to pass, therefore setting a precedent of a narrow definition of the actions of United States Armed Forces as it pertains to the War Powers Resolution. This new precedent will persist to support the further expansion of war powers as time goes on.

**ISIS under Trump Administration**

Similar to the Obama administration, President Trump has relied on previous congressional authorizations to justify the continued U.S. military campaign against the Islamic State in Iraq and Syria. In a letter from President Trump to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, he outlines his position:

> *I am providing this supplemental consolidated report, prepared by my Administration and consistent with the War Powers Resolution (Public Law 93-148), as part of my efforts to keep the Congress informed about deployments of United States Armed Forces equipped for combat. . . Since October 7, 2001, United States Armed Forces, including Special Operations Forces, have conducted counterterrorism combat operations against al-Qa’ida, the Taliban, and associated forces. Since August 2014, these operations have*

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targeted the Islamic State of Iraq and Syria (ISIS), also known as the Islamic State of Iraq and the Levant (ISIL), which was formerly known as al-Qa’ida in Iraq. In support of these and other overseas operations, the United States has deployed combat-equipped forces to several locations in the United States Central, European, Africa, Southern, and Indo-Pacific Commands’ areas of responsibility. Such operations and deployments have been reported previously, consistent with Public Law 107-40, Public Law 107-243, the War Powers Resolution, and other statutes. These ongoing operations, which the United States has carried out with the assistance of numerous international partners, have been successful in seriously degrading ISIS capabilities in Syria and Iraq.39

Even with this continued use of authorizations that define neither the countries/territory in question nor the targeted terrorist group in question, Trump used the 2001 AUMF to justify his actions, carrying on Obama’s legacy of expansion of Executive war powers.

**Niger**

Title 10 of United States Code Section 333: *Foreign security forces: authority to build capacity* gives the Secretary of Defense and the President the ability to use military personnel abroad for the following specified non-combat purposes:

(a) Authority.—The Secretary of Defense is authorized to conduct or support a program or programs to provide training and equipment to the national security forces of one or more foreign countries for the purpose of building the capacity of such forces to conduct one or more of the following:

(1) Counterterrorism operations.

(2) Counter-weapons of mass destruction operations.

(3) Counter-illicit drug trafficking operations.

(4) Counter-transnational organized crime operations.

(5) Maritime and border security operations.

(6) Military intelligence operations.

(7) Operations or activities that contribute to an international coalition operation that is determined by the Secretary to be in the national interest of the United States.\textsuperscript{40}

Also under Title 10 Section 333 is the provision that dictates the necessity of notification to Congress no later than 15 days prior to initiation of the activities taken place under subsection (a). However, activities under Title 10 Section 333 are not required to be authorized as uses of force by the United States Congress.

On February 22, 2013, President Obama notified Congress of the deployment of 40 additional troops to Niger making a total of 100 with the purpose of “[providing] support for intelligence collection and [to] also facilitate intelligence sharing with French forces conducting operations in Mali, and with other partners in the region.”\textsuperscript{41} Also in this letter was the determination that these troop deployments fell under his authority as Commander-in-Chief and that this reporting was pursuant to the War Powers Resolution. Since 2013, the number of U.S. troops in Niger have increased to nearly 800 as of the June 2018 congressional notification. The continuation of the same mission of said troops in Niger was consistent until June 6, 2017 when President Trump, in his bi-yearly congressional notification, changed the purpose of these


deployments in Niger to “[providing] a wide variety of support to African partners conducting counterterrorism operations in the region.”\footnote{Trump, Donald. “Letter to Congressional Leaders on the Global Deployment of United States Combat-Equipped Armed Forces.” \textit{White House Archives}, June 6, 2017.} The category of notification was also changed to that of combat-equipped armed forces. This greatly broadened the scope of activities conducted by the U.S. troops present in Niger.

On October 4, 2017, four United States soldiers were killed in an ambush in Western Niger near Tongo Tongo. The militants responsible for the death of these soldiers were the Islamic State in the Greater Sahara.\footnote{Erickson, Amanda. “Everything we know about the Niger attack that left 4 U.S. soldiers dead.” \textit{The Washington Post}, October 20, 2017.} The primary question raised about this encounter was: “How did a group of American soldiers — who Defense Department officials insisted were in the country simply to train, advise and assist Niger’s military — suddenly get sent to search a terrorist camp, a much riskier mission than they had planned to carry out?”\footnote{Callimachi, Rukmini; Cooper, Helene; Schmitt, Eric; Blinder, Alan; and Gibbons-Neff, Thomas. “An Endless War: Why 4 U.S. Soldiers Died in a Remote African Desert.” \textit{New York Times}, February 20, 2018.} This set of circumstances and outcome led to outrage across the country and in Congress. “Several Members of Congress have shared that they weren’t aware of U.S. military presence in Niger.”\footnote{Center for Strategic and International Studies. “What Does Niger Have to Do with the AUMF?” \textit{CSIS}, October 26, 2017.}

Initially, the Trump administration stated that the U.S. Armed forces in Niger and the Sahel were operating under Title 10 Section 333 of the United States Code. However, the Trump administration later recanted and asserted that because the actions taken by U.S. troops in Niger were taken against elements of the Islamic State (The Islamic State of the Greater Sahara – ISGS), the actions fall under the 2001 Authorization for the Use of Military Force. This undisputed change of heart, for lack of a better term, serves as a testament to the extent that the...
2001 AUMF can be used to authorize U.S. forces well outside of its original scope, which is
evidence of expanded executive powers. The Department of Defense investigation into the
October 2017 Niger Ambush describes the activities in which U.S. troops were engaged included
conducting counterterrorism operations with Niger partners.\textsuperscript{46} The War Powers Resolution
specifically refers to the situations necessary for notification and consultation as: “the
introduction of United States Armed Forces into hostilities, or into situations where imminent
involvement in hostilities is clearly indicated by the circumstances, and to the continued use of
such forces in hostilities or in such situations.”\textsuperscript{47} It is clear, based on the outcome of the
encounter and the nature of the operation itself that the troop deployment to Niger necessitated
an AUMF from its beginning.

The attempt to first justify the deployments to Niger under Title 10 and then to re-justify
the deployments as being authorized under the 2001 AUMF demonstrates the broad power that
the President now has in terms of war powers. “U.S. Armed Forces deployed while equipped for
combat were operating in Niger and many other countries in Africa and elsewhere under Title 10
authority to assist foreign militaries: it seemed to some that such forces might at any time be
engaged in hostilities against terrorist groups or other enemies alongside foreign military
partners, just as had occurred in Niger.”\textsuperscript{48} It is clear President Trump felt the need to clarify that
the activities of U.S. troops in Niger fell under the umbrella of the 2001 AUMF when U.S.
troops were killed. Meanwhile, U.S. troops are being sent on missions to several African
countries without proper congressional authorization, the same set of circumstances that allowed

this situation to occur, and further demonstrating the ever-expanding war powers authority of the President of the United States.
Chapter 6: Conclusion

This thesis finds that the continued application of an outdated authorization mechanism for the use of military force, the declaration of war becoming obsolete, and the spinelessness of Congress to take substantive action have together resulted in expansion of executive war powers under the Obama and Trump administrations. The precedents set under the Obama Administration are continuing and expanding under the Trump Administration, rendering the War Powers Resolution impotent in limiting unilateral executive control of war powers in the United States of America.

The continued use of the 2001 AUMF by both President Obama and President Trump within countries and against organizations that are unequivocally outside of its original mandate has demonstrated that the 2001 AUMF has become a source of unlimited, unilateral, and autonomous war powers. It is a historical trend based on World War I and World War II that the President gains more war powers in times of war to ensure victory. However, this mindset should not apply to the War on Terror because Congress has not officially declared war. Additionally, the War on Terror under the authorization of the 2001 AUMF has allowed the longest conflict in the history of the United States to continue unchecked by Congress, and should not provide the President with a mandate for a never-ending war.

The seemingly voluntary suspension of declarations of war by Congress has severely limited their war powers. It is well documented that the United States has been involved in many wars since World War II including Vietnam, the Gulf War, and the War on Terror operating in numerous countries. Congress has given up its mandate to declare war only to replace it with weakly enforced and broadly defined AUMFs.
Even when both chambers of Congress were able to pass War Powers Resolution legislation in 2019 for the first time since its enactment, President Trump vetoed the resolution. The Senate was unable to override the veto, revealing that the most momentous step forward in checking and balancing the Executive’s war powers through the War Powers Resolution was useless and ineffective.

Finally, the use of Title 10 as a justification for combat-equipped troops deployed to Niger, and the subsequent change in rationale to that of the 2001 AUMF further serves the idea that President Obama and President Trump have expanded the original mandate of the Executive’s war powers, unchecked by Congress. Additionally, the same Title 10 justification is currently being used for other troop deployments in Africa that are similarly conducting counterterrorism operations. “United States military personnel in the Lake Chad Basin and Sahel Region continue to conduct airborne intelligence, surveillance, and reconnaissance operations and to provide support to African and European partners conducting counterterrorism operations in the region, including by advising, assisting, and accompanying these partner forces. . . United States military personnel are also deployed to Cameroon, Chad, and Nigeria to support counterterrorism operations.”49 Following the Trump Administration’s logic, all of these operations should fall under an authorization for the use of military force, but do not.

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