

Analysis of HJ Res 33

Authorization of Use of Military Force

This resolution was introduced in February, 2015, by Rep. Adam Kinzinger (R-IL).

Its major provision authorizes the use of military force against “the Islamic State of Iraq and the Levant (“ISIL”) or associated persons or forces.” President Obama has been carrying on the war against ISIL since the summer of 2014 without a specific congressional authorization, although he has claimed that the 2001 authorization for military action against Al Qaeda is sufficient.

The US Constitution, in Article I, Section 8, gives Congress the authority to declare war. No such authority is given to the President, and the debates in the Constitutional Convention of 1787 make it clear that he was never intended to be able to take the country into war without the permission of Congress.

Although the last formal US declaration of war was in 1942, Presidents since then have usually asked Congress for a resolution authorizing combat, a tradition of implicit declaration of war which goes back to 1798. (For a more detailed review of authorizations without a declaration of war, see “Undeclared Wars Tend to Be No-Win Wars” in the August 2011 issue of the *Constitutional Action Report*.)

The resolution requires the President to report to Congress at three-month intervals on the military activities carried out under the resolution. It does not have any expiration date, although some have suggested that any authorization should not be open-ended but should end on a certain date unless renewed. It also does not put any limitations on the type of military force to be used, although President Obama has expressed a preference for prohibiting placing ground troops in front-line combat.

The 2002 authorization of force against Iraq would be repealed.

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