

Analysis of S 1587

Authorization of Use of Military Force

This bill was introduced in June, 2015, by Sen. Tim Kaine (D-VA) and cosponsored by Sen. Jeff Flake (R-AZ).

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 bill requires the President to report to Congress at six-month intervals on the military activities carried out under the bill. The authorization lasts for only three years (assuming it is not renewed at the end of that time). This is an especially controversial point, since it is impossible to predict how long the war against ISIL will last. Some with military expertise doubt that three years will be long enough and worry that ISIL will fight on the assumption that it need only hold out for three years, at which point the United States will throw in the towel. On the other hand, without an expiration date the authorization becomes available for a president to claim its use in a different situation, just as President Obama has cited the 2001 authorization as justification for attacking ISIL.

The bill is ambiguous on the reasons behind the need for the use of US military force. Its stated purpose is “to protect the lives of United States citizens and to provide military support to regional partners in their battle to defeat ISIL.” However, that is preceded by a list of “findings”, which discuss ISIL’s threat to Syria, Iraq, and the interests of the US and its allies, possible terrorism and genocide, and the mistreatment of women. Are these relevant to the authorization? Would passage of the bill indicate a willingness to commit US forces wherever aggression, terrorism, genocide, or the mistreatment of women is taking place, or even threatened? The implication is that these do constitute grounds for US attack, regardless of whether they are a threat to US national interests.

The bill also does not specify a clear military victory as a purpose, and includes what may be limitations on the type of military force to be used, similar to what President Obama recommended. It declares that the “use of significant United States ground troops in combat against ISIL, except to protect the lives of United States citizens from imminent threat, is not consistent” with the purpose of the authorization (as quoted above). However, it does not specifically prohibit such use, and certainly appears to allow assigning US advisors into front-line combat units.

Given that victory over ISIL is not listed as a purpose of US involvement, and that limitations on US commitment are at least strongly implied, it seems clear that this bill does not consider an ISIL takeover of even larger portions of Syria and Iraq, or even ISIL’s continued, long-term survival to be a serious threat to US national interests. Rather, ISIL is an annoyance to be eliminated or contained, if the job can be done primarily by regional allies. A successful ISIL offensive, and even terrorist attacks on the United States, would not allow the use of greater US military force until the President had received additional authorization from Congress.

The 2002 authorization of force against Iraq would be repealed and it is clearly stated that no previous authorization of force applies to ISIL.

*Prepared by The Conservative Caucus Foundation
92 Main Street, Ste 202-8, Warrenton, VA 20186 tccf.foundation
540-219-4536 info@conservativeusa.org*