

WE WILL ALWAYS BE AT WAR AGAINST EVERYONE

As Spencer reported yesterday, the incoming Chair of the House Armed Services Committee Buck McKeon wants to revisit and expand the 2001 AUMF authorizing our war against al Qaeda.

The objective wouldn't be the "drop a new Authorization to Use Military Force, but to reaffirm and strengthen the existing one," says an aide to McKeon who requested anonymity, "recognizing that the enemy has changed geographically and evolved since 2001."

I'm thoroughly unsurprised by this. As I pointed out the other day, if we're going to hold Khalid Sheikh Mohammed solely using the justification of the AUMF, then we're going to want to make sure that AUMF is designed to last forever; otherwise, KSM would be entitled to get out when—for example—we withdraw from Afghanistan. Frankly, I expect the Administration will be happy to be forced to accept another AUMF, because it'll get them out of some really terrible arguments they've been making as they try to apply the AUMF to detention situations it clearly doesn't apply to.

But there are two other aspects to a "reaffirmed and strengthened" AUMF. As McKeon's aide notes, the enemy has changed geographically, moving to Yemen and Somalia. A new AUMF will make it easier to build the new bases in Yemen they're planning.

The U.S. is preparing for an expanded campaign against al Qaeda in Yemen, mobilizing military and intelligence resources to enable Yemeni and American strikes and drawing up a longer-term proposal to establish Yemeni bases in remote areas where militants operate.

And I would bet that the AUMF is drafted broadly enough to allow drone strikes anywhere the government decides it sees a terrorist.

Which brings us to the most insidious part of a call for a new AUMF: the "homeland." The AUMF serves or has served as the basis for the government's expanded powers in the US, to do things like wiretap Americans. Now that the Republicans know all the powers the government might want to use against US persons domestically, do you really think they will resist the opportunity to write those powers into an AUMF (whether through vagueness or specificity), so as to avoid the quadrennial review and debate over the PATRIOT Act (not to mention the oversight currently exercised by DOJ's Inspector General)? The only matter of suspense, for me, is what role they specify for drones operating domestically...

Remember, John Yoo once wrote an OLC memo claiming that because of the nature of this war the military could operate in the US with no limitations by the Fourth Amendment. That memo remained in effect for seven years. We know where they want to go with this permanent war against terror.