

AFTER KILLING THE GUY WHO STARTED THIS WAR, WE SIMPLY REDEFINE IT

Used to be, when you vanquished your enemy, you declared victory and went home.

Not this time. Just a week after the death of Osama bin Laden—who declared war on the US in 1996—Buck McKeon has renewed his effort to rewrite the 2001 Authorization to Use Military Force so as to include our secret wars in Yemen, Pakistan, and wherever else an unchecked President wants it to be. As part of the bargain, McKeon's GWOT 2.0 would give the President the authority to detain our enemies in this newly-redefined war for the length of the hostilities (otherwise known as "forever").

Benjamin Wittes has a good analysis of McKeon's GWOT 2.0 [here](#).

Now, I realize it's not as simple as declaring victory and going home. In fact, I bet that a new AUMF, which would divorce the President's super-duper terrorist fighting powers from the territory of Afghanistan, might make him more likely to declare victory in Afghanistan and go home. Moreover, by redefining the GWOT such that we can attach those super-duper powers to, say, Anwar al-Awlaki rather than 9/11, then the President won't face legal pressure to free indefinite detainees because the war has ended. While it won't happen yet, if the US were to nab a few more key al Qaeda leaders using the intelligence seized from OBL's compound, you could make a legitimate argument that it's time to let the indefinite detainees free.

I'm just betting, but I suspect that's the direction the Administration's thinking will head from where it's currently at, which—according to Josh Gerstein—is undecided.

A White House spokesman declined to comment to POLITICO about the administration's official position on whether the AUMF needs to be reaffirmed or replaced.

However, a senior administration official said Obama aides are split over whether to endorse the idea of updating the use-of-force resolution.

"After ten years, you may need something other than the AUMF," said the official, who spoke on condition of anonymity. "As an intellectual policy matter you can make a very good argument for doing that [but] there are divisions."

It would offer them flexibility in Afghanistan just in time for the electorate to voice its displeasure with our endless wars abroad, while guarding super-duper powers the President has come to apparently cherish.

I realize, too, that we can't say "we killed OBL, so let's stop fighting terrorists." But therein lies the key issue, the week after OBL's death. Note the logic Wittes gives for supporting some kind of new AUMF (though he has some concerns about McKeon's version):

This provision is sure to come under fire from the political left, which will argue that it is an expansion of the war just as Bin Laden has been killed. This is silly. It largely enshrines in law the administration's current interpretation of the AUMF as pertains to the scope of the conflict and the scope of detention authority in the conflict. And it would put Congress explicitly behind the power to detain the enemy for the first time. It is more of an updating of the AUMF, whose focus on the perpetrators of the September 11 attacks is requiring increasingly strained interpretation to address the

combatants in today's fight, than an expansion of it. The provision seems to me very healthy—for the reasons I have given in the past.

While Wittes' support for a new AUMF have been more thoughtful in the past, the logic here is basically that it is a good thing for Congress to endorse what a President is already doing if what he is already doing "strain[s] interpretation" of an original Congressional authorization. It's the same kind of logic that held Congress should pass the FISA Amendments Act with immunity to give legal sanction to what the President was already doing. And like the FAA, a new AUMF would take place without an assessment of efficacy. A year after FAA passed, the IG report on the illegal wiretap program showed that program had not been all that effective. But it was too late to go back and put those Presidential powers back in their genie bottle.

About the most valuable reason for engaging with the torture apologists' claims that torture led to OBL also has to do with efficacy. Human intelligence was critically important—particularly the kind practiced by people who could recognize the importance of a courier. NSA wiretaps abroad was crucially important. Our partnership with Pakistan was crucial as well. But even accounting for OBL's dead daughter, it's not clear that dropping drones based on dubious intelligence was all that effective (even ignoring the blowback that has led directly to radicalization of others). And given that a new AUMF would primarily authorize drone strikes in sovereign countries and indefinite detention (both enhanced wiretapping and intelligence ops are now tied to terrorism more generally, not an AUMF), it's not clear that it would support effective policies.

Spencer addresses this point well—particularly the expansion of the AUMF to include "associated forces"—in his story on GWOT 2.0.

“Associated forces” could place the U.S. at war with terrorist entities that don’t concern themselves with attacking the United States. Think Lashkar-e-Taiba, the Pakistani terrorist group aligned with al-Qaida that pulled off the Mumbai bombings of 2008. Under the House language, there’s nothing to stop Obama or his successors from waging war against them. It comes close to “terrorism creep,” says Karen Greenberg, the executive director of the Center for Law and Security at New York University.

Greenberg doesn’t dispute that the war on al-Qaida goes far beyond bin Laden. But before voting on an expansion of the war – beyond al-Qaida – “we need to absorb first what the death of bin Laden means,” she says. “We need to stop and think and re-think. The idea that we’re going to keep reacting and not have a thoughtful time out is just unacceptable.”

I’d add one more thing. If we embrace GWOT 2.0 without some real thought about what the most effective response should be, we’re also going to chip away at more widespread international adherence to rule of law. You’ll increasingly see countries using our practices as justification to, say, assassinate a political figure in a neighboring country as a terrorist. You’re going to see not just the US, but the entire globe, accelerate down a slippery slope, potentially greatly destabilizing the world as a result.

The Obama Administration has an excuse to rethink (though the attempted assassination of Anwar al-Awlaki suggests they don’t want to conduct such a rethink) not just about what we’ve done—and the legal cover that all that really should have had—but what has been effective and what has been counterproductive. It seems Republicans are in such a rush to double down on war powers that they may lead us,

and the world, further down the path of stupid
belligerency.

I think a parade to celebrate would be a much
smarter idea.