

Trump Sets Deadly Precedent by Hiding Rationale for Bombing Syria

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Pressure is mounting as the Trump administration continues to refuse to reveal its legal justification for bombing Syria in April 2017, despite increased scrutiny from Democratic senators and a Freedom of Information Act lawsuit.

Sen. Tim Kaine (D-Virginia) wrote a letter to Secretary of State Rex Tillerson on February 8, 2018, requesting a copy of the State Department memo containing the Trump administration's legal justification for the US attack against Syria on April 6, 2017, when it bombed the Shayrat military airbase with 59 Tomahawk cruise missiles.

At the time of the bombing, Trump suggested that he ordered the launching of the missiles in retaliation for a sarin gas attack at Khan Sheikhoun, allegedly ordered by Syrian President Bashar al-Assad.

The Syrian government, however, denied responsibility for the chemical attack. Meanwhile, Defense Secretary James Mattis admitted earlier this month he has "no evidence" Assad ordered the use of sarin gas against his own people.

In his letter, Kaine expressed concern that the administration persists in refusing to reveal its legal rationale for the bombing. "The fact that there is a lengthy memo with a more detailed legal justification that has not been shared with Congress, or the American public, is unacceptable," Kaine wrote.

Yet, in spite of a Freedom of Information Act lawsuit filed by Protect Democracy on May 22, 2017, Trump refuses to release the memo. The administration claims it is classified. But, as Protect Democracy discovered during the litigation, the classified portion can be easily redacted.

Trump's Attack on Syria Violated US and International Law

In response to an April 2017 inquiry by Kaine and Rep. Adam Schiff (D-California), the administration said the 2017 missile strike in Syria was not based on the 2001 or 2002 authorizations for use of military force (AUMF), which related to Afghanistan and Iraq, respectively. Rather, the administration has cited the president's authority as Commander in Chief and Chief Executive under Article II of the Constitution "to defend important U.S. national interests."

But Article II does not give the president the power to mount a military attack in this instance. Article II states, "The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." Article I, however, says only Congress has the power to declare war. Taken together, Articles I and II mean that the president commands the armed forces once Congress has authorized war.

In fact, Trump's attack on Syria violated both US and international law.

Under the War Powers Resolution (WPR), the president can introduce US troops into hostilities or imminent hostilities only (1) after Congress has declared war, or (2) with "specific statutory authorization," or (3) in "a national emergency created by attack upon the United States, its territories or possessions, or its armed forces."

None of these three requirements was met to justify the use of military force in Syria. First, Congress had not declared war. Second, the administration stated it was not relying on the 2001 or 2002 AUMFs (which would not apply anyway) and there was no other congressional authorization. Third, there had been no attack on the United States or US armed forces before Trump's missile strike. It thus violated the WPR.

Moreover, even if the military attack on Syria did not run afoul of the WPR, it violated the United Nations Charter, a treaty the United States has ratified, making it part of US law under the Supremacy Clause of the Constitution, which says treaties shall be the supreme law of the land.

Article 2(4) of the Charter says that states "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."

The Charter only allows a military attack on another country when conducted in self-defense after an armed attack or if the Security Council has authorized it. Neither occurred in this case.

Syria had not attacked the United States or any other country before Trump directed the missile strike. "The use of chemical weapons within Syria is not an armed attack on the United States," according to Notre Dame law professor and international law expert Mary Ellen O'Connell. Nor had the Council approved Trump's attack. It therefore violated the Charter. In fact, Assad would have a valid self-defense claim, since the United States initiated an armed attack on Syria.

In his April 8, 2017, report to Congress, Trump claimed he ordered the missile strike to avert "a worsening of the region's current humanitarian catastrophe." So-called humanitarian intervention is not a settled norm of international law. To be lawful, military force can only be used in self-defense or with the blessing of the Security Council. Neither was present in this case.

It is critical that Americans know the administration's purported legal rationale for the Tomahawk missile strike because Trump has launched illegal strikes, and may launch additional military attacks in the future.

A Dangerous Precedent for Attacks on North Korea?

As Kaine wrote in his letter to Tillerson, "I am also concerned that this legal justification [in the secret memo] may now become precedent for additional executive unilateral military action, including this week's U.S. airstrikes in Syria against pro-Assad forces or even an extremely risky 'bloody nose' strike against North Korea."

Kaine was referring to the February 7 air and artillery strikes the US-led coalition mounted in Syria. And on February 10, the US-led coalition bombed a T-72 tank in Syria's Euphrates River Valley.

The Wall Street Journal reported in January that the Trump administration is considering a preemptive "bloody nose" strike against North Korea: "React to some nuclear or missile test with a targeted strike against a North Korean facility to bloody Pyongyang's nose and illustrate the high price the regime could pay for its behavior."

Preemptive military attacks violate the UN Charter's prohibition on the use of military force except in self-defense or with Security Council approval. In a February 5 letter, 18 senators informed Trump that he lacks the "legal authority" to conduct a preemptive military strike on North Korea. They cited "the risks of miscalculation and retaliation" and decried the administration's removal of Victor Cha from consideration for US ambassador to South Korea, reportedly due to his disagreement with the "bloody nose" strategy.

Besides being illegal, a preemptive strike on North Korea would be catastrophic. Nevertheless, Trump continues his provocative threats against Pyongyang.

Sen. Bob Corker (R-Tennessee), chairman of the Senate Foreign Relations Committee, said in October that Trump's dangerous threats could put the United States "on a path to World War III."

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