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President Trump's War Power Delusions

Donald Trump claims that he has right to unilaterally and irresponsibly go to war at his discretion. His aides appear to be creatively justifying that stance.

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We should celebrate the fact that President Donald Trump stepped back from war with Iran. But he followed up with even more violent rhetoric and the claim that he wasn't even required to notify Congress of his plans, let alone to seek its authorization to launch military strikes. However, the decision for war is not his to make.

Secretary of State Mike Pompeo took a different approach. He claimed that war with Iran would be covered by the 2001 Authorization for the Use of Military Force in response to Al Qaeda's attacks on 9/11. That argument may be even worse since it subverts the Constitution through misdirection and deception.

The Islamic Republic of Iran is a malign actor but that hardly sets it apart in the Middle East. To the contrary, Washington has consistently allied and partnered itself with malicious regional governments with malicious governments. In 1953, the United States helped overthrow the democratically-elected prime minister of Iran, Mohammad Mossadegh, replacing it with the autocratic Shah. He had his own geopolitical ambitions, which he put before those of the United States. He also began the country's nuclear program. Thus, if Iran ever develops nuclear weapons, then it will be a Persian bomb rather than an Islamic bomb, and the United States should consider itself the midwife.

By almost every standard, Saudi Arabia is worse than Iran.

- Less political and religious freedom. Greater ostentatious corruption.
- More aggressive foreign and military policy.
- Greater connection to and support for Islamic radicals, including Al Qaeda.
- Backing numerous brutal dictatorships, such as Bahrain and Egypt.
- United Arab Emirates also is repressive and aggressive.
- Turkey is slouching to autocracy.
- America's wealthy friends, Saudi Arabia, UAE, Kuwait, and Qatar have been complicit in terrorism financing.

The Middle East was important strategically to U.S. interests due to the country's dependence on the region's abundant oil exports. In recent years, the United States has been able to harness shale technology to become the world's top energy producer, so the Middle East's strategic importance has become weaker.

Washington has long been concerned about Israel's security, which is part of the reason for why it has remained deeply involved in the region. But these days Israel is a nuclear-armed regional superpower; its primary existential threat is internal, the growing tension between being democratic and Jewish. The United States cannot help it resolve that conundrum.

U.S. foreign policy in the region has, over the last several decades, been proven to be disastrous. The United States' support for autocratic regimes, persistent military interventionism, and its strong backing for Israel have made Americans a tempting target for terrorist groups; the 9/11 attack was a strong reminder of that. During the years that followed the attack, America's approach toward Afghanistan transitioned from counterterrorism to permanent nation-building. Its war in Iraq wrecked the country. Its presence in Libya created yet another broken state. Now, in Yemen, Washington is supporting an aggressive war with horrific humanitarian consequences that is fueling sectarian conflict.

The most obvious lesson should be that international social engineering isn't easy. Certainly, American policymakers have shown little aptitude for reordering the world. But past tragedies have not prevented President Donald Trump from threatening to destroy another Middle East country.

Washington would triumph militarily, but at potentially serious cost. Compared to Iraq under Saddam Hussein, the Iranian government has a strong ideological base with substantial popular support. Regardless of their political leanings, Iranians are nationalists and will likely rally around the regime when they perceive their country to be under attack by an external foe. Tehran has missiles and gunboats capable of sinking U.S. vessels and proxy forces capable of attacking American personnel. Any attacks likely would expand into Shia-majority Iraq, which has substantial connections to Iran. After 16 years the consequences of America's invasion of Iraq still roil the region. An American war against Tehran likely would have even greater and more long-lasting effects.

This personalized manner of exercising power justifies the Founders' wisdom in placing responsibility for deciding on war in Congress. One of the delegates to the Constitutional Convention, James Wilson, defended the document for shifting the power to start wars from the executive (i.e., the British king) to the legislature (the American Congress). "This system will not hurry us into war," he noted—rather like a president unilaterally deciding to attack another nation. Rather, "it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress, for the important power of declaring war is vested in the legislature at large." That means that the House of Representatives and Senate must agree.

This forces the president to make a case for war to citizens and legislators. It also makes legislators accountable. That is why they have routinely avoided voting on the most serious

decision a nation's leaders can make since World War II. Better to allow the president to act and applaud if the conflict goes well, carp if it does not, and carefully avoid taking responsibility for what happens.

President Trump claims the right to unilaterally and irresponsibly go to war at his discretion. His aides appear to be creatively justifying that stance. Pompeo went to Harvard Law School, so he should know better. But the president's more politically-attuned aides are aware that Congress is hostile; even the Republican-controlled Senate is seeking to end U.S. support for the Kingdom of Saudi Arabia's war against Yemen. Worse, Iraq soured the public on Middle Eastern wars. Attacking a nation like Iran would leave legislators naked politically if the war turned out badly, like Iraq.

So Pompeo is arguing that the administration already has congressional authorization, the 2001 AUMF. Why? Because of Iranian "connections to Al Qaeda." In April, he told the Senate: "There is no doubt there is a connection. Period. Full stop." He added: "The factual question with respect to Iran's connections to Al Qaeda is very real. They have hosted Al Qaeda. They have permitted Al Qaeda to transit their country." The point? The AUMF authorized use of force "against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attack that occurred on September 11, 2001, or harbored such organizations or persons."

The argument is highly misleading—offering a reminder of the George W. Bush administration's highly deceptive attempt to tie Al Qaeda to Iraq—but enjoys some superficial plausibility. If Washington can bomb Al Qaeda, then why not a supposed well-connected friend of Al Qaeda? In practice, however, the claim is fraudulent. Wrote Foreign Policy's Michael Hirsh: "experts familiar with the view of the U.S. intelligence community are contradicting these claims, saying that the Iran-al Qaeda relationship almost certainly does not include active collaboration in terrorist acts and is even less evident now than it was at the time of 9/11."

A gaggle of legal and foreign-policy experts dispute Pompeo's sneaky attempt to lay the groundwork for an attack on Iran. Brian Egan, former legal adviser to both the State Department and National Security Council, and Tess Bridgeman, at Stanford University, argue that "The 2001 AUMF does not authorize the use of force against Iran. Iran was not implicated in the 9/11 attacks, Iranian forces are not Al Qaeda or the Taliban, or their associated forces, nor are they a 'successor' to any of those forces." Moreover, argued Joshua Geltzer, Ryan Goodman, and Luke Hartig (respectively of Georgetown University Law Center, New York University School of Law, and National Journal/New America), "a 'connection' between Iran and Al Qaeda isn't even close to the relevant legal test for whether the 2001 AUMF authorizes the use of force against Iran."

To start, the three attorneys, all with executive branch legal and counterterrorism experience, noted "that Pompeo's chosen term—'connection'—is conspicuously absent from the statutory text itself and from the executive branch's interpretation of the statute, which has been ratified by federal courts." The administration's official interpretation last year made no changes in the understanding of the AUMF's reach. Moreover, the AUMF is retrospective. Iran was not

involved in 9/11 and did not aid those who were involved. By its own terms the resolution does not apply.

Moreover, at the time of the attacks there was no relationship between Iran and Al Qaeda. To the contrary, historically the two were adversaries. The latter is a Sunni organization, notably hostile to Shiites (as was the later Islamic State). Even Thomas Joscelyn of the Foundation for the Defense of Democracies, which relentlessly campaigns to confront Iran, admitted: “There are certainly plenty of examples of the two being at odds, particularly in Syria and Yemen. And Iran’s detention of some Al Qaeda personnel and family members became a flash point between the two sides. Bin Laden also didn’t approve of Iran expanding its regional footprint.”

Iran actually detained Al Qaeda operatives living in Iran after 9/11. Tehran apparently offered to swap them for operatives with the Mujahedin-e Khalq, a onetime terrorist group that had killed Americans in its attacks during the Shah’s rule and had backed Saddam Hussein’s Iraq against Iran. Daniel Benjamin, a counterterrorism expert during the Obama State Department, “There have been Al Qaeda people in Iran since shortly after 9/11, occasionally under house arrest,” which hardly counts as “harboring” under the AUMF.

Geltzer, Goodman, and Hartig added: “presence in the form of house arrest seems even less like ‘harboring,’ given the constraints imposed on such terrorists. And in some cases, Iran has gone even further, as when they extradited a key Al Qaeda operative to Mauritania in 2012.” An administration official admitted to Time: “The secretary has blown the level of collusion between Iran and a few of the remnants of Al Qaeda way out of proportion.” The official added that “there have been occasional marriages of convenience, but there is nothing in the intelligence to suggest that any of them has been consummated in any grand anti-American alliance.” Benjamin observed that Tehran’s position “maintained for many years has been to avoid anything that would provoke an American strike.”

The most the State Department’s yearly terrorism assessment could state was the refusal “to bring to justice senior [Al Qaeda] members residing in Iran.” This is hardly surprising. U.S. hostility rose over time—after the invasion of Iraq, some Neoconservatives were advocating an attack on Iran as the next step. That appears to have caused Tehran to adjust its attitude and allow some Al Qaeda operatives to stay in Iran as long as they were not involved in terrorist activities. George W. Bush’s Afghanistan envoy, James Dobbins, noted: “I don’t think there was ever any evidence of active collaboration or support from Iran.”

This “connection,” as Pompeo called it, both reduces the likelihood of the group targeting Tehran and provides possible leverage in future negotiations with America. The official told Time: “that’s kind of the opposite of what the secretary has said.”

Moreover, the “connection” appears to have fallen. Seth Jones, a political scientist at the Center for Strategic and International Studies, said that: “We are at the lowest point since 9/11 in terms of Al Qaeda numbers in that country. The numbers I have looked at suggest it’s less than five” people. Jones said there has been no change as tensions between Washington and Tehran increased.

As for financial support, America's allies have always been the biggest problem. Until the organization was foolish enough to attack the royal family, Riyadh tolerated its citizens underwriting Al Qaeda. For instance, the Treasury Department concluded that the Saudi-based International Islamic Relief Organization backed terrorist groups, including Al Qaeda, from the 1990s "through to at least the first half of 2006." More broadly, as part of the al-Saud family's deal with the Saudi clergy, the Kingdom subsidizes Wahhabism, the intolerant Salafist theology which demonizes "the other" and serves as a precursor to terrorism. The Brookings Institution's William McCants called the Saudis "both the arsonists and the firefighters."

More recently, the Saudis and Emiratis supported radical Islamist insurgents in Syria, including Al Qaeda's affiliates. In Yemen, Riyadh and Abu Dhabi are aiding former president Abdrabbuh Mansur Hadi, who has allied with Al Qaeda in the Arabian Peninsula, which is the most virulent national offshoot of Al Qaeda. Moreover, Amnesty International reported that "compromises and alliances have allowed Al Qaeda militants to survive to fight another day—and risk strengthening the most dangerous branch of the terror network that carried out the 9/11 attacks." Using Pompeo's rationale, the United States should be at war with its supposed allies against Iran.

The administration even more bizarrely cited Iranian aid to the Taliban as a possible *casus belli* while the Pentagon has cited infantry training and weapons transfers. Jones noted "limited lethal assistance" to the insurgents for years, even while maintaining "reasonable relations with the Afghan government." But this sort of aid has nothing to do with the 2001 AUMF, which related to helping those involved in 9/11, which the Taliban was not.

Moreover, the closer relationship reflects Washington's increasingly hostile campaign against Iran, which long had been at odds with the Taliban government. Iran almost attacked the Taliban in 1998 after the attack on the Iranian consulate and helped broker the new, U.S.-backed government after the Taliban's ouster. Newsweek's Maziar Bahari reported on being told by an Iranian official "We wanted to truly condemn the attacks, but we also wished to offer an olive branch to the United States, showing we were interested in peace." However, soon thereafter came George W. Bush's "axis of evil" speech and rejection of Tehran's offer to talk.

In contrast, if assisting the Taliban warranted war, the United States should have bombed Pakistan then and now, since the latter assisted the Taliban for years. And aiding insurgents with lethal aid is precisely what Washington did for the Mujahedeen against the Soviets and various groups against the Syrian government. Treating that as justification for war might be a precedent Washington would soon regret.

Attacking Iran would be a bad policy judgment, inexplicable for a president who declared that great powers don't fight "endless wars." Attacking Iran without congressional authorization also would be illegal. If President Trump really wants to make a mark, then he should be the first president in years to follow the Constitution and the letter of the law when it comes to making war.

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