

Statement of the Former JAGs Working Group on the United States' "Covert" Attack on Venezuela

In February 2025, the "Former JAGs Working Group" was formed to express its members' collective opposition to the Secretary of Defense's systematic dismantling of the role of law and disregard for the Rule of Law in the United States Armed Forces. Since then, we have spoken out in response to specific actions taken by the Defense Department that called into question its commitment to the rule of law and the Constitution. Today, we once again raise our voices against another potential manifestation of this Administration's disdain for international law and disregard of U.S. law: the reported "covert" attack by the United States against Venezuela.

On 26 December 2025, President Trump revealed that the United States had attacked Venezuela by destroying "a big plant or facility where ships come from." Subsequent reporting suggests the CIA conducted a drone attack against a dock facility reportedly used by drug cartels.

As former senior judge advocates who provided legal advice to military commanders in a wide range of operations during our service in uniform, **we regard such a strike as a violation of international and domestic U.S. law.**

We have previously objected to the Administration's claims that its strikes against boats in the Caribbean and Eastern Pacific are lawful exercises of self-defense under international law because the introduction of drugs into the United States is equivalent to an "armed attack." Any similar justification of this strike on Venezuelan territory is likewise without legal basis. As the attached primer on the applicable international and domestic law explains, **all of these actions by the United States, regardless of whether the CIA or the military carried them out, are prohibited uses of force against other sovereign nations without legal justification or provocation.**

By its provocation, the Trump Administration may have just started a war without legal justification. If so, the unintended consequences would be significant and contrary to what the Administration apparently seeks to achieve:

- Attacks by Venezuela on U.S. forces would be lawful under international law.
- Further U.S. attacks against drug related facilities, boats, and persons would be war crimes because all would be targets unrelated to Venezuela's use of force against the United States.

In other words, the Administration has exchanged an effective law enforcement response to drug trafficking for a situation where U.S. troops may now be subject to lawful attack and a substantial risk of committing war crimes. We believe that is an irresponsible and reprehensible trade.

The Administration may also have given a green light to other nations – Russia and China come immediately to mind – **to justify or engage in their own attacks against the sovereignty and territorial integrity of other nations.**

Because the Constitution delegates to it alone the authority to declare war, **we call upon Congress** to investigate these press reports and ensure the United States complies with the Constitution and all applicable international and domestic laws in all its uses of armed force.

If the United States is to continue to have a strong, disciplined military and to consider itself a law-abiding nation, not only must it seek to enforce the law against other nations, it must follow the law itself.

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A Legal Primer

The United States has publicly based both its lethal strikes against alleged “narcotrafficking” vessels in the Caribbean and Eastern Pacific and this attack against Venezuelan territory on the premise that the introduction of drugs into our country is equivalent to an “armed attack” allowing it to resort to force in response. However, as we have previously explained, drug trafficking cannot be equated with an armed attack that triggers the right under international law to use force in self-defense. While drug trafficking is unlawful under U.S. domestic law, law enforcement may use deadly force only to defend against an immediate threat to life, not to prevent the transportation of drugs into the country.

Consistent with its mistaken view that narcotrafficking constitutes an armed attack against the United States, the Trump Administration insists that targeting boats allegedly carrying drugs in international waters constitutes a “Non-international Armed Conflict” (NIAC). To the contrary, a NIAC occurs when a state wages war against a non-state “organized armed group” and some of the laws of war (international humanitarian law) apply. That characterization is badly flawed in this case because the drug cartels the United States is targeting do not qualify as “organized armed groups” engaged in prolonged violence against the United States. We note that there are also other factual issues that call into question the legal justification for attacks against the “narcotrafficking” vessels, including the concern that whatever drugs may be on those vessels are not destined for the United States.

Putting the legal characterization of the boat strikes aside for the moment, the most important legal question the U.S. attack against Venezuelan territory raises is whether it now elevates this conflict’s status to an International Armed Conflict (IAC). By violating Venezuela’s territory using armed force – regardless of whether the incursion was conducted by the CIA or the U.S. military – we believe the United States has triggered an IAC against Venezuela and thereby given Venezuela a lawful right to engage U.S. forces in self-defense.

If the U.S. is now engaged in an IAC with Venezuela, the full scope of the laws of war apply to any armed force applied against Venezuela, its citizens, or its territory.

Another key question is whether this strike also elevates future boat strikes into the IAC domain. In other words, if the U.S. attack against a target in its territory is sufficient to trigger an IAC with Venezuela, are further armed attacks against boats departing from Venezuela included in that IAC?

Applicable International Law

After World War II, the international community established the United Nations as an entity it hoped would prevent future wars. Among the UN’s first principles is the commitment, enshrined in Article 2(4) of the Charter of the United Nations, that “[a]ll members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

Limited exceptions to this commitment not to attack other nations include, first, the right of self-defense acknowledged in Article 51 of the U.N. Charter and, second, Security Council authorization of the use of armed force provided in Chapter VII of the U.N. Charter. Neither of these exceptions applies here.

We conclude that the strike on Venezuelan territory clearly violates the prohibition against the use of force in international law. However, as we noted above, the question still remains whether the boat strikes must also be considered part of an IAC. **A very strong case can be made that the CIA strike triggered an IAC such that the law of war now applies to any further attacks against targets on Venezuelan territory, to drug boats originating in Venezuela, and to any Venezuelan attacks against U.S. forces that would now qualify as lawful targets.**

Domestic U.S. Law

Prior to the reported U.S. strike against a target on Venezuelan territory, we explained that, if the boat strikes cannot be deemed an NIAC, they are law enforcement operations improperly employing deadly force. The United States has thus unlawfully assumed the role of judge, jury, and executioner as it enforces U.S. drug laws on the high seas. The Department of Justice does not regard these drug smuggling operations as capital offenses. In fact, current DoJ policy is to repatriate rather than prosecute low-level drug smugglers when they are arrested by law enforcement personnel in international waters. Under these circumstances, the Administration's *de facto* application of the death penalty in these boat strikes constitutes murder under federal law.

It must be emphasized that, up to now, members of the U.S. military – at the direction of the President and Secretary of Defense – commit murder each and every time they plan, coordinate, and execute attacks that kill alleged “narcoterrorists.” If the boat strikes are elevated to IAC status, two major legal consequences will ensue:

- **The laws of war would apply and the military personnel involved would enjoy combatant immunity and thereby would avoid criminal liability except for war crimes.**
- **However, the drug boats would also become unlawful targets, attacks against them would be war crimes, and U.S. military personnel would become lawful targets.**

By elevating its response to narcotrafficking from law enforcement to IAC, the Administration has exchanged effective *law enforcement* interdiction of drugs and smugglers for a *military* situation that now exposes U.S. troops to the risks of committing war crimes and being considered lawful targets. In our view, that is an irresponsible and reprehensible bargain.

The Constitution

The possibility that the reported U.S. strike on Venezuelan territory has now elevated the Administration's use of armed force from the questionable NIAC status to IAC status also implicates the Constitution and a number of federal laws intended to apportion authority and responsibility for the conduct of military operations between the President and Congress.

The Constitution allocates war powers between Congress and the President.

Article I, Section 8 gives Congress the authority to declare war, raise armies, and fund the military.

Article II, Section 2 gives the President, as Commander-in-Chief, the authority to direct the armed forces.

While this President and many of his predecessors have often committed troops to armed conflict without seeking a formal declaration of war, we are not aware of any instance where a President

engaged U.S. forces outside the scope of self-defense or defense of our allies without prior congressional authorization. This strike on Venezuela was not a defensive act. We do not believe the United States Constitution gives the President the unilateral authority to commit acts of aggression against other sovereign nations without armed provocation.

The War Powers Resolution

In the aftermath of the Vietnam War and the secret bombing campaign against Cambodia, this tension between Congress and the President led to the passage in 1973 of the War Powers Resolution (WPR), a joint resolution of Congress that establishes ground rules for the initiation, conduct, and reporting of hostilities into which “United States Armed Forces” are introduced.

There is no question but that the WPR would apply to any engagement of the U.S. military in Venezuela. However, press reports of the strike on Venezuelan territory suggest that they may have been carried out by the CIA rather than the military. There is a question as to whether the WPR would apply to a CIA operation.

A 1983 DoJ Office of Legal Counsel opinion (available [here](#)), addressing the question whether a CIA operation using military equipment and military personnel detailed to the CIA would require compliance with the WPR, concluded that “CIA *civilian* operations are not covered by the War Powers Resolution” (emphasis in original). The opinion went on to say that OLC does “not believe that the legislative history [of the WPR] may be relied upon for the conclusion that the involvement of *military* personnel, if temporarily detailed to the CIA and under civilian control, would remain outside the War Powers Resolution.” (emphasis in original). If the CIA was responsible for this strike, WPR applicability would depend on whether its team consisted entirely of *civilian* operatives.

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The “Former JAGs Working Group” consists of a number of former and retired judge advocates who initially united in a common effort to express concerns about the February 2025 firing of the Judge Advocates General of the Army and Air Force. Our concern, which has come to fruition in a number of contexts since then, was that this act reflected a fundamental misunderstanding of and contempt for the Rule of Law in the United States military.

Our principal objective is to do whatever we can to restore the legal guardrails within which all military decisions should be made and operations should be conducted. We continue to pursue that objective by educating our fellow citizens on military law subjects relevant to contemporary events. We do not express any opinions about the Trump Administration’s political objectives except to the extent that their means violate domestic or international law or their ends are inimical to the national security or foreign affairs of the United States.