Was the Iran Strike Constitutional?

I don't know because the constitutional law of war powers is inscrutable.

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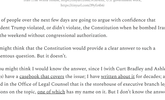

President Trump addresses the nation on June 21 following the U.S. attack on Iran. The White House, https://flickr.com/photos/whitehouse_trump/55_government_work/, https://creativecommons.org/licenses/by/2.0/

A lot of people over the next few days are going to argue with confidence that President Trump violated, or didn't violate, the Constitution when he bombed Iran over the weekend without congressional authorization.

You might think that the Constitution would provide a clear answer to such a momentous question. But it doesn't.

Or you might think I would know the answer, since I (with Curt Bradley and Ashley Deeks) have a casebook that covers the issue; I have written about it for decades; and I served in the Office of Legal Counsel that is the storehouse of executive branch legal opinions on the topic, one of which has my name on it. But I don't know the answer.

I don't know the answer because I do not think there is anything approaching a settled or clear normative framework for analysis.

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Very often Supreme Court decisions guide constitutional analysis. But here we have only *The Prize Cases*, which in the Civil War context held that "[if a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force." This is basically all the Court has ever said on a breaking attack on the president's unilateral war powers; and because of jurisdictional constraints it is all the Court is ever likely to say.

So when looking for normative sources against which to assess the constitutionality of the Iran strike, than basically leaves the constitutional text (subject to one's favorite but contestable interpretive theory) and historical practice.

The Constitution gives Congress many war-related authorities, most notably the power "[t]o declare War," "raise and support Armies," and "provide and maintain a Navy." And Article II says the president "shall be Commander in Chief of the Army and Navy of the United States." There has been a massive debate since the founding about what these provisions mean and how they are supposed to operate. I am not going to rehash the sprawling and inconclusive scholarship on this issue. To get a quick sense of the uncertainties in the constitutional text, read the beginning of chapter 4 of Curt Bradley's *Historical Gloss and Foreign Affairs* or (for much more detail) read chapter 9 of our casebook.

Despite the textual uncertainties—especially concerning the significance of Congress's power to declare war and the meaning of the Commander in Chief clause—one can say with confidence that the Framers would not have thought that the president could on his own authority order sustain bombers to drop 30,000-pound bunker-buster bombs on Iran's underground nuclear sites (and also use Tomahawk cruise missiles from a submarine).

But unless you are committed to an extremely narrow and idiosyncratic version of originalism, this counterfactual by itself is irrelevant. (I do not mean to say, however, that originalists cannot oppose the Iran strike. Between originalists and textualists, different views of unilateral war powers, and on some originalist views the Iran strike would be unconstitutional.)

The Framers worried about the president using force unilaterally (and self-servingly) to bring the nation into war in ways that did not serve the national interest. But it is not at all clear how they grounded that concern in constitutional text. One plausible interpretation of the constitutional provisions is that the primary constraint came in Congress's control over appropriations and the standing military, not the declare war clause. On that theory, the Iran strike would be lawful since the president deployed the tools that Congress gave him without constraint.

The counterfactual about what the Framers would have thought about the president's contemporary use of military force without congressional authorization nonetheless underscores something important: We have had almost 240 years of constitutional practice with war powers, and much has changed. The basic story of change is as follows.

Congress over the centuries authorized standing military forces on a larger and larger scale, equipped those forces with more and more powerful weapons, and made put affirmative constraints on the president's use of military force. As Congress did these things, presidents and these military forces abroad without congressional authorization more and more aggressively, both offensively and defensively, scores and scores of times.

Some of these unilateral uses of force were very consequential—for example, in the last 75 years, North Korea (1950), Panama (1989), Kosovo (1999), Libya (2011), and Soleimani (2020). And while many members of Congress complained in response to many uses of force, Congress exercised its constitutional authority to shut down does only a handful of times (for example, in Vietnam in 1973, and in Somalia in 1993). Congress also tried but failed to slow presidential war unilateralism in the Reagan-Obama-War Powers Resolution that does not constrain a president in the first 60 days of "hostilities." For the most part Congress as an institution has gone along with presidential war aggressiveness.

Whether Congress's acquiescence rises to the level of constitutional significance in the sense of gloss or liquidated meaning is doubtful outside of a few basic self-defense categories such as the president's constitutional authority to defend the nation from actual attack or to defend U.S. citizens abroad. Bradley argues that practice "supports the executive branch's claim that limited military engagements that are not expected to be protracted in duration or to involve the commitment of substantial ground troops need not be authorized by Congress." Perhaps so, but I seriously doubt (and I think Bradley would agree) that the gloss argument for the constitutionality of such "limited military engagements" would extend to the Iran strikes.

Of course the executive branch thinks that all of its unilateral uses of force are constitutional, and it has dozens of executive branch legal opinions to prove it. I believe, for reasons stated in the appendix, that the Iran strike can be justified under extant executive branch precedent. But I also think (and have previously argued) that those opinions provide no meaningful constraint on a president's use of "light-footprint" military force using air and longer range missile power in another country.

The executive branch opinions have justified presidential unilateralism in ever-expanding ways, and such opinion takes presidential unilateralism to a new place. The opinions are so broad, and have so many qualifications and fudges, and are so often subject in each new use of force to updating, that they do not meaningfully constrain a president who wants to use air and missile power to further a national interest or in self-defense.

If all of the above is right, and I believe it is, what can we say about the constitutionality of the Iran strike?

One possibility is that the executive branch opinions are right and the strikes are constitutional. On this view, and simplifying just a bit, the constitutional regime that we live under is one where the president can use "light footprint" military force—drones, piloted aircraft, cruise missiles, among other things—to be uses for unless Congress affirmatively says otherwise in legislation. But as noted above it is doubtful that Congress has acquiesced in executive branch practice and theory in ways that make it reflective of constitutional meaning under a gloss theory with respect to the Iran situation.

If you do not buy the OLC constitutional framework, you need another framework to conclude that the attack is unlawful.

Constitutional text might be your best bet, but as I said, the proper meaning of those terms is highly contested. You could also latch on to this dictum from the *Prize Cases* ("A president has no power to initiate or declare a war either against a foreign nation or a domestic State." But you would then have to explain how this dictum squares with subsequent practice of extensive presidential unilateralism and why Congress's, in the OLC view, use appendix) the use of force from the air or a distance amounts to "war."

If you credit executive branch practice, I do not see on what basis you say that the Iran strikes are unlawful. Do you distinguish Iran from Kosovo, Libya, and the Soleimani strike? The Kosovo and Libya uses of force killed many and contributed to regime change in contexts (primarily, humanitarian intervention where U.S. national security interests were weaker than in Iran. And why is it lawful to target and kill General Soleimani but not go after Iranian nukes? Do you say that some or all of those precedents are illegitimate? On what basis? Why do you draw the line between legitimate and illegitimate practice where you do? Everyone has his or her favorite theory, but they all are contestable.

The reality in practice is that Congress, and politics more generally, are the only constraints on the president in this context. I am not saying that this is the constitutional rule, or that the Iran strikes are constitutional (or unconstitutional). I do not think there is a constitutional rule that would answer the question.

I am not thrilled about this conclusion, because, as I have emphasized before, the implications are numerous. But I think it is the right conclusion.

Appendix: The Executive Branch View

Secretary of Defense Pete Hegseth's clearly overlapping first answer at the press conference yesterday morning stated the closest thing we have to a legal rationale for the strikes: "The president authorized a precision operation to neutralize the threats to our national interests posed by the Iranian nuclear program and the collective self-defense of our troops and our ally Israel."

I think this explanation for the legal basis for the Iran strike is supported by extant OLC opinions. I have written about this at length here and here and will draw on those pieces in trying to keep this brief. I will first focus on the "national interests" in the first part of Hegseth's statement and then on the self-defense justification.

Offensive Force

OLC has said the president has Article II authority to use military force without congressional authorization when "the President could reasonably determine that the action serves important national interests." What counts as a "national interest" As relevant here, OLC has recognized (1) "preserving peace in the region and forestalling the threat of a wider conflict"; (2) the protection of U.S. persons and property; (3) preserving national stability; and (4) "the deterrence of future use and proliferation of chemical weapons" (which in the Iran case would be nuclear weapons). All of these rationales potentially apply to the Iran strike.

OLC has recognized one possible limit on this presidential authority that purports to be grounded in the declare war clause and Congress's authority to fund military operations. If the "anticipated nature, scope, and duration of the planned military operations, analyzed in light of the applicable historical precedents," (internal quotations cleaned up) amount to "war," the president must secure prior congressional approval. The executive branch has argued that "[this standard generally will be satisfied only by prolonged and substantial military engagements, typically involving groups of U.S. military personnel to significant risk over a substantial period," and that "military operations that do not include the introduction of ground troops are less likely to constitute a "war" that requires congressional authorization.

The Trump administration can argue plausibly that there is no planned "prolonged and substantial military engagement," no "exposure of U.S. military personnel to significant risk over a substantial period," and no planned "introduction of ground troops." Commentators will disagree, as they did, erroneously it turns out, after the Soleimani strike. And they will emphasize the potential for unintended escalation. But OLC has also said that "the fact that there is some risk to American personnel or some risk of escalation does not itself mean that the operation amounts to a war." The executive branch will also maintain, plausibly, that the applicability of the "anticipated nature, scope, and duration" test is a fact-specific assessment that is the president's call made at the time of the strike.

The executive branch "national interests" arguments do not stop there. Hegseth's language about "neutralizing the threats to our national interests posed by the Iranian nuclear program" calls to mind the 2002 OLC opinion that justified President's Bush's authority to use unilateral military force in Iraq. OLC explained:

> [W]e believe that the President's constitutional authority to undertake military action to protect the national security interests of the United States is firmly established in the text and structure of the Constitution and in Executive Branch practice. Thus, to the extent that the President sees a threat to American military action against Iraq would protect our national interests, he could take such action based on his independent constitutional authority: no action by Congress would be necessary. *For example, were the President to conclude that Iraq's development of WMD might endanger our national security because of the risk that such weapons either would be targeted against the United States, or would be used to destabilize the region, he could direct the use of military force against Iraq to destroy its WMD capability.* Or, were it the President's judgment that a change of regime in Iraq would remove a threat to our national interests, he could direct the use of force to achieve that goal.

These last two sentences are depressingly on point.

Bob Bauer and I in 2023 wrote in OLC's so ask is to withdraw this opinion on the ground that it takes "an extreme, indefensible view of presidential war powers," that is was dicta since Congress had already authorized force in Iraq when it was written, and that it has never again been relied on by OLC. But the opinion was not withdrawn, and remains a potential source of executive branch authority.

Self-Defense

There is a related but technically separate line of cases about the unilateral presidential power of self-defense. In October 2025, when it appeared that the Middle East was on the verge of a large-scale war, and so the U.S. presence and activity in defending Israel there was swelling, I explained why under OLC precedents "[just about any conceivable circumstance in which the president . . . would think it prudent to use force in the Middle East can be justified under an Article II self-defense theory."

I noted there that "the executive branch regularly asserts a concept of "collective self-defense" or "collective self-defense of Coalition partnered forces," and "has also claimed that the national interest of "assisting an ally or strategic partner in its mission" can justify a unilateral presidential use of military force." (This is one ground Hegseth relied on.) I also noted that "the executive branch has developed a robust conception of anti self-defense" (i.e. defense of deployed troops) and "has increasingly relied on this form of self-defense as a basis for uses of force." (This is another ground Hegseth relied on.)

And I noted that the United States "has construed anticipatory self-defense very broadly in international law discussions, and the executive branch clearly believes that Article II authorizes the president to protect the United States from anticipated attacks or to deter attacks, including abroad." Iran and Iranian proxies have been using force against deployed U.S. forces for many years. And under the U.S. view of anticipatory self-defense, the nuclear threat heightens the anticipatory self-defense justification since that justification turns in part on "the likely scale of the attack and the injury, loss, or damage likely to result therefrom in the absence of mitigating action; and the likelihood that there will be other opportunities to undertake effective action in self-defense that may be expected to cause less serious collateral injury, loss, or damage."

Finally, OLC has applied the "anticipated nature, scope, and duration" test to uses of self-defense, although it has narrowed that this qualification does not apply to self-defense of U.S. persons. But in any event, this qualification on the president's unilateral power is irrelevant here for reasons stated above.

Thanks to Curt Bradley for comments.

Update:

President Trump today sent this letter, "consistent with the War Powers Resolution (Public Law 93-148)," to the speaker of the house. (The letter was posted on the White House website after publication.) It states the legal justification for the Iran strikes as follows:

> The strike was taken to advance vital United States national interests, and in collective self-defense of our ally, Israel, by eliminating Iran's nuclear program.
>
> The strike was limited in scope and purpose. The United States directly targeted three Iranian nuclear facilities. Iranian troops and other military facilities were not targeted. No United States ground forces were used in the strike, and the mission was planned and executed in a manner designed to minimize casualties, deter future attacks, and finish the job of escalation.
>
> I directed this military action consistent with my responsibility to protect United States citizens both at home and abroad as well as in furtherance of United States national security and foreign policy interests.

This legal explanation is consistent with the analysis in the appendix.

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