

Creating Zones of Lawlessness: Trump, Venezuela, and the Piecemeal Construction of an Authoritarian State

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The United States Government has deployed a large military task force to the waters in the Caribbean Sea, while making a variety of threats against the government of Venezuela and against drug traffickers it alleges are operating in that country and elsewhere. It is also conducting a campaign of killings against alleged drug traffickers, using drones and aircraft to attack and destroy small boats without warning far from U.S. shores, in almost every instance leaving no survivors.

The Trump administration has provided publicly only the bare outline of a legal rationale for either the threats of armed force against Venezuela or the use of military force against small craft far from the United States. It has offered only broad-brush, factually unsubstantiated claims that the top officials of the Venezuelan government, including its President, lead and direct drug cartels responsible for the deaths of large numbers of Americans from drug use and to the use of violence by the cartels in the U.S. and elsewhere, claiming the actions of the cartels constitute an “armed attack against the United States.”¹ It has further labeled those drug cartels as “terrorist” organizations, despite having provided no substantial evidence of any motive, political or otherwise, beyond the accumulation of profit through the drug trade, human trafficking, and other ventures involving clandestine international transportation of people and things. Such activities heretofore have been addressed as a matter for law enforcement under U.S. statutes and international agreements governing extraterritorial application of U.S. law.

The use of military force to kill alleged drug traffickers without warning and without legal process violates both human rights principles and international law governing the use of military force. A direct use of military force against Venezuela in these circumstances would further fray a post-World War II international order already severely strained. These actions signal the tightening of the grip of a lawless, authoritarian faction on the executive and military powers and functions of the United States Government.

The first part of this essay describes the Trump administration’s threats of military force against Venezuela and its killings of alleged drug traffickers in small boats in the Caribbean, providing an analysis of relevant law. The concluding section, “States of Emergency: The Wars Abroad and the Wars at Home,” examines how the administration has combined narratives about the drug trade, terrorism, and immigration to assemble a legal and ideological toolbox for the construction of an authoritarian state.

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Threat and use of armed force

The two World Wars of the 20th century resulted in the deaths of millions of people and the devastation of cities and countryside spanning continents. These catastrophes impelled the world's governments, beginning after World War I with the League of Nations and the Kellogg-Briand Pact, to move towards prohibition of the use of armed force as a lawful means for the resolution of international disputes. The global conflagration of World War II, culminating in the U.S. atomic bombings of Japan, brought a more comprehensive effort, the United Nations Charter, the first goal of its Preamble being "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."

Article 2§3 of the Charter requires all members to settle their international disputes by peaceful means.... Article 2§4 further states 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."

The Charter further mandates that parties to a dispute that could endanger international peace and security must first seek a resolution via all available peaceful means, such as negotiation, mediation, arbitration, judicial settlement, or resort to any available regional organizations that might provide assistance (Article 33). If these efforts fail, the parties must refer their dispute to the Security Council (Article 37), which may recommend a variety of means, including where appropriate referral to the International Court of Justice (Article 36). Where there is an act of aggression or in other instances where peaceful dispute resolution fails and a threat to peace remains, the Security Council may recommend measures for dispute resolution, and means to enforce those measures up to and including collective deployment of armed forces by United Nations member states (Article 39 et seq.).

The Charter allows states to use military force only for self-defense. Article 51 recognizes the "inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures to maintain international peace and security."

Article 24 of the Charter of the Organization of American States (OAS), an organization of which both the United States and Venezuela are members, requires that "International disputes between Member States shall be submitted to the peaceful procedures set forth in this Charter." It has additional provisions similar to UN Charter Article 33 et. seq. In the event of an armed attack on any member state, the chair of the OAS Permanent Council is required "without delay" to consider whether a consultation of the member states foreign ministers is required (OAS Charter Article 65). Any OAS member also may ask the Permanent Council for a consultation of foreign ministers, a request that can be granted by a majority vote.

The threat and potential use of military force by the United States against Venezuela

The Trump administration has never provided a detailed legal rationale for its military strikes on small boats allegedly carrying illegal drugs and its broader, ill-defined campaign of military pressure on Venezuela. The key words in Article 51 of the UN Charter in evaluating the legality

of these actions are that “individual or collective self-defense” is permissible “if an *armed attack* occurs against a Member of the United Nations...”

Lacking both anything resembling a military assault by Venezuela on the United States and any legal basis for treating civilian small craft operating far from U.S. waters as an imminent threat of attack requiring immediate military action, the Trump is engaging in a kind of ideological sleight of hand to conjure a crude simulacrum of an “armed attack.” It takes a Venezuelan government known to have significant corruption problems and difficulty maintaining full control of its territory, rebrands what its own intelligence agencies describe as “loosely-organized cells of localized, individual criminal networks”² as fearsome “narco-terrorist” organizations under the Venezuelan government’s direct command, and then places the full weight of the public health effects of mass drug consumption and the gun violence associated with the drug trade at the end of the causal chain, hoping that no one will closely scrutinize any of its links.

It is hard to find all the elements of the argument in any one Trump administration official statement. Perhaps the most complete version can be found in October 10, 2015 remarks by a U.S. official, political counselor John Kelley to the UN Security Council. Kelley told the Council that the United States “has designated Tren de Aragua and Cartel de Los Soles as terrorist groups” and is going to “put an end to the drug cartels that are flooding American streets with their product and killing Americans.” Kelley claimed that

[T]he cartels carrying out this assault against our citizens are armed, well organized, and violent. They have financial means, technical sophistication, and extensive paramilitary capabilities. They are bringing death and destruction to Americans. Therefore, President Trump determined these cartels are non-state armed groups, designated them as terrorist organizations, and determined that their actions constitute an armed attack against the United States.

Friendly foreign nations have made significant efforts to combat these terroristic organizations and have suffered significant loss of life as a result.

The United States has reached a critical point where we must use force in self-defense and defense of others. Based on the cumulative effect of these hostile acts against the citizens and interests of the United States and friendly foreign nations, President Trump has determined the United States is in a non-international armed conflict and has directed the Department of War to conduct operations against them pursuant to the law of armed conflict and consistent with Article 51 of the UN Charter.

Kelley also asserted that the current Venezuelan government is responsible for this alleged armed attack.

...The United States does not recognize Nicolas Maduro or his cronies as the government of Venezuela. Nicolas Maduro is a fugitive from American justice and the head of the vicious narco-terrorist Cartel de Los Soles.

Moreover, it is the action and policies of the illegitimate Maduro regime that pose an extraordinary threat to both the region and the national security of the United States.³

For purposes of assessing the legality of U.S. actions in connection with this alleged “armed attack,” two sets of activities must be considered. The first is the current, ongoing campaign of destroying without warning small boats purportedly carrying drugs. The second is a continuing stream of statements on and off the record by U.S. government officials, including by the President of the United States, that could be interpreted as threats of military action against Venezuela, accompanied by a large and increasing deployment of military forces to the Caribbean Sea and to bases in the region.

The first problem for the Trump administration in establishing a legal basis for their military campaign against the small boats and Venezuela is that drug trafficking has not heretofore been seen as a use of armed force, nor does it bear much resemblance to instances where actions of irregular armed groups have been classified as “armed attacks.”

Drug trafficking, including that which crosses international borders or engages in transport of drugs on the high seas, has up to now been treated as a law enforcement problem and not a military one for both legal and practical reasons. U.S. extraterritorial drug enforcement is governed by a combination of federal criminal statutes and international agreements. Existing procedures to warn, stop, and seize suspect vessels and their crews allows for building criminal cases against organizations and management of relations with countries believed to support the drug trade.⁴

Authority is sparse regarding what kind of incursion by irregular forces constitutes aggression sufficiently grave for a state to consider it an “armed attack” allowing a state to take military action under the UN Charter Article 51 rights to individual or collective self-defense. Nonetheless, it is clear that the drug cartel operations cited by the Trump administration fall well below that threshold. *In Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), The International Court of Justice stated that

There appears now to be general agreement... that an armed attack must be understood as including not merely action by regular armed forces across an international border, but also “the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to” (inter alia) an actual armed attack conducted by regular forces, “or its substantial involvement therein”. This description, contained in Article 3, paragraph (g), of the Definition of Aggression annexed to General Assembly resolution 3314 (XXIX), may be taken to reflect customary international law.⁵

To justify military action against the government and territory of Venezuela, the Trump administration would have to show a strong link between the parties carrying out the purported assault and the Venezuelan state. President Trump has proclaimed that the drug cartel Tren de Aragua “is undertaking hostile actions and conducting irregular warfare against the territory of the United States both directly and at the direction, clandestine or otherwise, of the Maduro regime in Venezuela.”⁶

It stretches credibility beyond the breaking point to describe the activities in the United States of Venezuelan-based drug drug-trafficking groups as being of the same order as “an actual armed attack conducted by regular forces.” There is violence associated with the drug trade, but at least to date in the United States nothing on the order of what would constitute a cross- border attack by armed bands.⁷ The Trump administration has attempted to transmogrify drug trafficking into something with the weight of a military incursion by shifting the focus to the effects of drug use. President Trump, addressing the UN general Assembly, claimed that Venezuela bears much of the responsibility for “hundreds of thousands” of deaths through the actions of the Tren de Aragua cartel and “trafficking networks led by [Venezuelan President] Nicolas Maduro.”⁸

While unquestionably a serious public health threat, the impacts of the drug trade resulting from use and addiction bear little resemblance to the effects of attack by an organized armed force. Even John Yoo, who wrote legal opinions during the George. W. Bush administration’s “war on terror” justifying “enhanced interrogation” techniques, sees deploying the might of the military against the drug trade as a bridge too far.

Americans have died in car wrecks at an annual rate of about 40,000 in recent years; the nation does not wage war on auto companies. American law instead relies upon the criminal justice or civil tort systems to respond to broad, persistent social harms. In war, nations use extraordinary powers against other nations to prevent future attacks on their citizens and territory.⁹

Moreover, drug traffic from or through Venezuela accounts for a relatively minor share of the drugs reaching the United States, and particularly fentanyl, which accounts for the largest share of overdose deaths.¹⁰

Even if drug trafficking by the Tren de Aragua (TDA) cartel or other channels from or through Venezuela fit the requirements for an “armed attack,” there is little evidence that cartel operators were sent to the United States “on behalf” of the government of Venezuela, or that the Venezuelan government has “substantial involvement” in their operations.¹¹ Trump’s own intelligence agencies have stated that to the contrary, “[w]hile Venezuela's permissive environment enables TDA to operate, the Maduro regime probably does not have a policy of cooperating with TDA and is not directing TDA movement to and operations in the United States.”¹² The U.S. intelligence community also describes Tren de Aragua as “a transnational gang based in Venezuela that has spread to at least seven South America and Caribbean countries, operating in loosely-organized cells of localized, individual criminal networks.”¹³ Although the intelligence community memorandum states that Tren de Aragua leaders have been located in Venezuela and “broadly benefitted from various permissive conditions and incapacities” there, both the nature of the Tren de Aragua network and its relationship with the Venezuelan government fall far below the threshold of conducting an “armed attack” by Venezuela on the United States.

The Trump administration also has asserted that another organization, “Cartel de los Soles,” is “responsible for terrorist violence throughout our hemisphere as well as for trafficking drugs into the United States and Europe” and is “headed by Nicolás Maduro and other high-ranking

individuals of the illegitimate Maduro regime.” On November 16, 2025 the State Department designated Cartel de Los Soles as a “foreign terrorist organization.”¹⁴ The Trump administration has provided no evidence for these claims, and independent analysts of both the drug trade and the region have voiced doubts that the “Cartel de los Soles” is an actual organization, rather than an ironic Venezuelan label for the endemic corruption of their government.¹⁵

Although it is unclear whether it is doing so in regard only to purported anti-drug military operations at sea or possible additional military action against Venezuela, the United States government has tried to invoke collective self-defense in addition to its right to use military force on its own behalf. U.S. Political advisor John Kelley told the Security Council that the United States “has reached a critical point where we must use force in self-defense and defense of others.”¹⁶ It also has been reported that the Trump administration is relying on a still-unreleased classified legal opinion which argues that it is assisting countries fighting drug cartels that have requested assistance confidentially.¹⁷

The entitlement to act in collective self-defense, however, requires an actual armed attack, not some lesser use of force by another state.¹⁸ In addition, a state cannot use “collective self-defense” as a basis for use of force on behalf of third parties unless those states have declared themselves to be victims of armed attack.¹⁹ There is no evidence that other states have declared that the drug trafficking the United States is using as the basis for its collective self-defense claim constitutes an armed attack, or have requested assistance either from the Security Council or the United States on that basis.

Even when an armed attack occurs, the inherent right to self-defense is limited by principles of necessity and proportionality

The use of armed force even in response to armed attack is subject to limits. As the International Court of Justice wrote in its advisory opinion on the threat or use of nuclear weapons,

The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law. As the Court stated in the case concerning *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*): there is a “specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law” (I. C. J. *Reports* 1986, p. 94, para. 176). This dual condition applies equally to Article 51 of the Charter, whatever the means of force employed.²⁰

As discussed above, the Court decided that neither incursion constituted an armed attack. In the *Nicaragua* case, it further addressed whether U.S. actions, including support for the Contras (an insurgent force), attacks on ports and oil installations, and mining of harbors would have met standards of necessity and proportionality as a response to Nicaragua’s support for Salvadoran rebels. It found those actions unnecessary, due to their coming subsequent to El Salvador’s largely having defeated the insurgent forces, and the harbor mining and port and oil facility attacks to be disproportionate.

Whether or not the assistance to the contras might meet the criterion of proportionality, the Court cannot regard the United States activities summarized in paragraphs 80, 81 and 86, i.e., those relating to the mining of the Nicaraguan ports and the attacks on ports, oil installations, etc., as satisfying that criterion. Whatever uncertainty may exist as to the exact scale of the aid received by the Salvadorian armed opposition from Nicaragua, it is clear that these latter United States activities in question could not have been proportionate to that aid.²¹

In another case, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the Court, having found that the conditions did not exist for Uganda to exercise its right to self-defense against the Democratic Republic of Congo, did not need to examine whether Uganda's military actions complied with requirements of necessity or proportionality. Nonetheless, the Court observed that "...[T]he taking of airports and towns many hundreds of kilometres from Uganda's border would not seem proportionate to the series of transborder attacks it claimed had given rise to the right of self-defence, nor to be necessary to that end."²²

Both the *Nicaragua* and *Uganda* cases concerned responses to substantial insurgencies, with armed groups with safe havens in one country attacking the territory of another. The International Court of Justice found links between the governments and insurgents operating from their countries insufficient to claim they constituted armed attacks, and also observed that the military responses of the countries attacked or their allies failed to meet standards of necessity and proportionality required to justify the use of military force in self-defense. The use of military force by the United States against the territory of Venezuela, a country on another continent, based on unproven allegations that it directs international drug traffickers who account for a small share of the illegal drugs sold to willing consumers in the U.S., would fall far short of the standards for self-defense.

Threats of force

Article 2§4 of the UN Charter states 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." President Trump and other U.S. officials have engaged in bellicose rhetoric targeting Venezuela's leadership and signaled the possibility of military action in a variety of off-the-record comments to journalists. Combined with its deployment of large military forces at Caribbean bases and in waters close to Venezuela, and ongoing military operations in the Caribbean, all this raises the question of whether U.S. actions constitute unlawful threats.

The hostile rhetoric is coming straight from the top. In a September social media post demanding that Venezuela accept more deportees, Trump wrote "GET THEM THE HELL OUT OF OUR COUNTRY, RIGHT NOW, OR THE PRICE YOU PAY WILL BE INCALCULABLE!" When a reporter asked what he meant, according to the Associated Press, "Trump said, 'You're gonna have to figure that out.'"²³ Asked in November whether he was considering putting U.S. forces

on the ground in Venezuela, Trump responded “I don’t rule out anything.... We just have to take care of Venezuela.”²⁴

Over the summer, the Trump administration reportedly considered options that included seizure of Venezuelan oil fields and a “snatch and grab’ of Maduro.”²⁵ In mid-November, The Trump administration let it be known that the President had held meetings in the situation room to review options, including use of special forces and other “direct action” inside Venezuela.²⁶ In late November, President Trump warned in a social media post that all aircraft should “consider the airspace above and surrounding Venezuela to be closed in its entirety,” a statement that arguably carries an implied threat of enforcement by military action.²⁷

These Presidential statements and high-level leaks have been accompanied by the active boat strike campaign and a steady buildup of military forces in the Caribbean, now including a carrier surface action group, attack aircraft, special operations forces, a Marine Amphibious Ready Group, and ships capable of launching more Tomahawk cruise missiles than were used by the U.S. in the 2011 NATO Libya intervention supporting the overthrow of Muammar Gaddafi.²⁸

The conduct of large military exercises, testing of nuclear-capable missiles, and the deployment of military forces by the world’s most powerful governments to “signal” displeasure with adversaries unfortunately has become commonplace, shifting the threshold for what might be perceived as an unlawful threat. The actions of the U.S. government nonetheless exceed even today’s lax standards. Expert observers see a U.S. attack on Venezuela as increasingly likely. Former U.S. Ambassador James Story told the Guardian in early November that he sees a strike as an 80% probability. “I’d say [something is] imminent, without a doubt,’ Story predicted.”²⁹ In the words of international law expert and former military lawyer Michael Schmidt, “To suggest that the U.S. force assembled in the Caribbean is there in a law enforcement mode would simply not pass the straight-face test.”³⁰

The lack of clarity—or perhaps the multiplicity—of the Trump administration’s demands should not be understood to detract from their serious nature. Trump and his ruling circle have a pattern and practice of making threats, including mortal threats, both internationally and domestically, and then attempting to elide their implications with blizzards of confusing messages. No system of law, international or domestic, can function effectively if statements by heads of state and other high government officials regarding the use of lethal state force can be dismissed as mere rhetoric, having no legal effect. These gravest of public utterances must be taken into account, and those who make them should be held accountable. Floods of subsequent contradictory semi-denials do little to mitigate the harm. As is the case with ignorance of the law, incoherence in the flouting of it should be no defense.

Further, Trump’s pattern of bellicose verbiage, military deployments, and an agenda that seeks to use threats of force to combine political subjugation with economic extraction has sparked comparisons with the “gunboat diplomacy” of the imperial age.³¹ As Oona Hathaway and Stewart Patrick warn, “If major powers come to view threats and the use of force as increasingly viable policy tools, including to wring concessions and seize territory from weaker countries, the

carefully constructed post–World War II framework for managing interstate relations— and the global economy—will collapse.”³²

The drug boat strikes

Stripped of the tenuous claim that the people crewing the target boats are the equivalent of state-sponsored armed bands, the U.S. military strikes are revealed as government-sanctioned murder. I will not use the term “extra-judicial killing,” which implies that the taking of life occurs somewhere in the vicinity of the legally acceptable, perhaps just skirting the rules. Here, Trump and his ruling circle are intentionally trying to create a zone for executive and military action where no law applies.³³ They paint the boat strike campaign as enough of a war to constitute self-defense against a significant “armed attack,” but not enough of one to require compliance with the War Powers Act.³⁴ They seek to wage it against adversaries they hope to have demonized so successfully that neither the due process requirements of criminal law, the laws of armed conflict, or even basic human rights rules will provide them with protection. And if there is any kind of war going on in the Caribbean right now, the U.S. armed forces are the aggressor, and perhaps the only combatants. All the casualties are on the other side, and there have been no reports of anyone on the targeted boats firing a single shot.³⁵

Yet however the Trump Administration tries to characterize its drug boat strikes, there will be law that applies. As many critics of the strikes have argued, international drug trafficking long has been treated, both under U.S. law and internationally, as a matter for law enforcement. The focus of the U.S. maritime drug enforcement effort has been to seize suspect vessels and capture crews without lethal force, in order to facilitate both criminal prosecutions and further investigation of the cartels.

This model reflects a deliberate policy choice to preserve life and capture suspects for prosecution rather than destroy vessels and kill crews. The approach lends itself to building criminal cases against organizations and their leaders, rather than taking out low-level operatives. It also allows careful management of relationships with countries known or believed to support narcotics trafficking. The model historically has resulted in high rates of efficient and successful criminal prosecutions. It is precisely this longstanding framework that makes the 2 September strike so remarkable. The operation bypassed the Coast Guard’s established procedures of warning, disabling, and boarding in favor of immediate lethal force, foregoing any notion of protecting the due process rights of the individuals involved.³⁶

U.S. extraterritorial drug enforcement is governed by a combination of federal criminal statutes and international agreements.³⁷ Even proponents of broad extraterritorial reach for U.S. criminal law insist that it be subject to due process requirements,³⁸ although U.S. statutes have also been criticized for providing insufficient due process protections.³⁹ Those statutes, however, still provide some measure of due process for accused and apprehended drug trafficking suspects. Killing by missile attack without warning does not.

Seeking to escape the strictures of criminal procedure and perhaps hedging its bets on proving a connection between the alleged drug traffickers targeted and the Venezuelan government, the

Trump administration has labeled their military campaign as a response to a “non-international armed conflict.”⁴⁰ The decision-makers that matter apparently wanted to believe that this somehow creates a condition in which little law applies, and fired, evaded, or simply ignored the government or military lawyers who disagreed.⁴¹ As the Washington Post reported,

Amid pushback on CIA action from lawyers in the late spring, the administration forged ahead with an alternative plan that was already under discussion: to use the U.S. military. And it came up with a legal justification that national security law experts inside and out of government have said does not stand up to facts: that the country was in a ‘non-international’ armed conflict with ‘designated terrorist organizations.’⁴²

But simply slapping the “terrorist” label onto alleged drug traffickers does not provide an escape hatch from the law. U.S. criminal law still applies where the allegations are that the accused are using profits from the drug trade to support terrorist activities. These statutes have been criticized for their lack of adequate due process protections,⁴³ but they do not authorize the killing of suspected drug traffickers without warning.

Nor does branding the purported threat to the United States as a “non-international armed conflict” situate it in some kind of international law-free zone. The U.S. *Department of Defense Law of War Manual* states that although the law of armed conflict as applied to non-international armed conflict is not well developed,⁴⁴ “[t]he law of war applicable in a non-international armed conflict is binding upon all parties to the armed conflict, including State armed forces and non-State armed groups.”⁴⁵ The *Manual* states that its contents reflect “the practice of the U.S. armed forces in applying the law of war to non-international armed conflict,” but that “the rules articulated may exceed the requirements of applicable customary international law and treaty law.”⁴⁶

The most important rule in this instance is the principle of distinction: “Combatants may not direct attacks against civilians, civilian objects, or other protected persons and objects.”⁴⁷ To assure this, “... those who plan or decide upon an attack must take feasible precautions to verify that the targets to be attacked are military objectives and not protected by the law of war from being made the object of attack.”⁴⁸ As the *Department of Defense Law of War Manual* notes, the conditions of non-international armed conflict may make it particularly difficult to distinguish combatants, some of whom may not be in uniform or may “blend in with the civilian population, from noncombatants.”⁴⁹ This makes taking “feasible precautions” to avoid harm to civilians and civilian object particularly important in non-international armed conflicts.

Among the “feasible precautions” listed in the *Department of Defense Law of War Manual* are:

- Taking steps when carrying out a planned attack to confirm that the person or object to be attacked, is, in fact, the intended target of the attack; and
- Issuing communications to elicit reactions that inform whether a person or object is a military objective, such as summons of vessels to stop; directions given from intercepting aircraft; warnings required before the cessation of protection of medical units, vessels, or

facilities; or some types of warnings before attacks that may affect the civilian population.⁵⁰

These precautions resemble what U.S. maritime enforcement agencies already were doing to interdict drug traffic. Further, they are trained for the law enforcement mission, and have long experience in accomplishing it with far less use of force.

The principle of proportionality, requiring that “combatants must not exercise the right to engage in attacks against military objectives in an unreasonable or excessive way,”⁵¹ would require similar precautions. Given their central purpose of preventing incidental or collateral harm to civilians and civilian objects,⁵² these rules apply only narrowly here, if at all. The attacks are taking place in open ocean, and the intent to completely destroy the boats is clear. It has been reported that a classified legal opinion relied on by the Trump administration asserts that the target is the cocaine, not the crews, and that the deaths of crew members should be treated as either the killing of combatants or as collateral damage.⁵³ Even if the contents of the boats are lawful military targets, however, the measures reasonably required by the principle of proportionality should be similar to the precautions required by the principle of distinction. These would be feasible measures to assure that the boats and crews are in fact legitimate military targets, and not civilian fishing boats or pleasure craft engaged in lawful pursuits—or even in pursuits that are criminal, but that do not constitute activities that justify the use of military force in response.⁵⁴ If the activities engaged in by the target boats are not in fact acts hostile to the United States as part of an armed attack sufficient to justify the use of military force, the principle of proportionality would not apply at all. As the *Department of Defense Law of War Manual* notes, “[W]here there is no justification for acting, such as unlawful attacks directed against the civilian population, a *proportionality* analysis would not be necessary to reach the conclusion that the attack would be unlawful.”⁵⁵

President Trump told the United Nations General Assembly that

...[W]e've recently begun using the supreme power of the United States military to destroy Venezuelan terrorists and trafficking networks led by Nicolas Maduro. To every terrorist thug smuggling poisonous drugs into the United States of America, please be warned that we will blow you out of existence.⁵⁶

This supports a strong inference that not only the destruction of boats and but the killing of their crews here, and doing so without warning, is intentional, the central purpose of the attacks, and not “collateral damage.”⁵⁷

Further, set against the background of the extreme ruthlessness and near 100% mortality rate of the boat attacks already in progress, Trump's words here verge on a public threat to take no quarter, long forbidden by the laws of armed conflict.⁵⁸ In the words of the *Department of Defense, Law of War Manual*,

It is forbidden to declare that no quarter will be given. This means that it is prohibited to order that legitimate offers of surrender will be refused or that detainees, such as unprivileged belligerents, will be summarily executed. *Moreover, it is also prohibited to*

conduct hostilities on the basis that there shall be no survivors, or to threaten the adversary with the denial of quarter. This rule is based on both humanitarian and military considerations. This rule also applies during non-international armed conflict.⁵⁹

If reports that Secretary of Defense Pete Hegspeth ordered that the units executing the boat attacks “kill everybody” prove true, the case that the boat strikes violate this rule would be conclusive.⁶⁰

Human rights

And if the targets of the boat attacks are merely criminals, however heinous their conduct, rather than “armed bands” engaged in an attack of sufficient gravity to entitle the United States to the use of force in self-defense, the far more restrictive requirements for the use of force in policing apply.⁶¹ Evaluated by these standards, the Trump administration has blown right by all the procedural U.S. and international human rights accorded to those suspected of crimes, from due process rights to access to the courts to requirements that law enforcement use force only where necessary, and use it as little as possible, and gone straight to denial of the right to life,⁶² the most fundamental human right of all.

UN High Commissioner for Human Rights Volker Türk described the boat attacks as “extrajudicial killing.” He emphasized that countering drug trafficking is a law enforcement matter, and that human rights law mandates that “the intentional use of lethal force is only permissible as a last resort against individuals who pose an imminent threat to life.”⁶³

It must be noted that the United States takes the position that its obligations under human rights treaties generally have no extraterritorial application. As one critic has argued, this is a minority position

“...increasingly out-of-step with the established jurisprudence and with arguments being advanced—and conceded—by our coalition partners and other allies. As such, the United States now finds itself in a knotty adversarial posture with several human rights bodies on this issue and the related choice of law question.”⁶⁴

Where the United States claims extraterritorial jurisdiction to apprehend accused criminals on the high seas and to try them in U.S. courts, as is the case with maritime drug enforcement,⁶⁵ U.S. human rights obligations—and its own framework of Constitutionally-based rights—should apply throughout the entire process, from interdiction at sea to any detention, apprehension, and trial.

Pushback from Congress?

Resolutions under the War Powers Act⁶⁶ have been introduced in both the House of Representatives and the Senate. The Act requires that the President provide a report to Congress within 48 hours when, in the absence of a Congressional declaration of war, U.S. forces are introduced “into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances.”⁶⁷ Trump provided an initial notification regarding the boat strikes to the Senate on September 4, but provided little information regarding either the basis or

scope of those operations beyond broad claims about the threat posed by drug cartels. There was no mention of Venezuela.⁶⁸

The first of two House resolutions, introduced September 19, addressed the boat attacks. It requested more specific information regarding the nature of the purported threat, the availability of non-lethal means to interdict the vessels, and the legal basis for the operations, and declared that drug trafficking does not constitute “an armed attack or threat of an imminent armed attack.”⁶⁹ The Senate resolution, introduced October 16, addressed the marshalling of forces and threats against Venezuela.⁷⁰ An additional House resolution was introduced December 1, “To direct the removal of United States Armed Forces from hostilities within or against Venezuela that have not been authorized by Congress.”⁷¹ It has been referred to the House Foreign Affairs Committee.

With Trump still retaining decisive, if eroding power over his party’s Congressional delegation, neither of the earlier resolutions were successful. The first House measure so far has not been allowed a vote, and the Senate resolution was rejected by a narrow party line vote November 6. Despite Trump’s initial notification in early September, the administration subsequently has taken the line that the War Powers Act does not apply to the boat strikes,⁷² remaining silent regarding its application to the threats and deployment of forces towards Venezuela. Following the revelation that Secretary of Defense Hegseth’s orders regarding lethal strikes against the alleged drug boats might rise to the level of a war crime, a few Republican lawmakers have joined Democrats in calling for an inquiry on that narrow issue.⁷³ Unless the members of Trump’s party in Congress make a decisive break with the President, none of these resolutions are likely to succeed.

Perhaps the most noteworthy action by members of Congress regarding the Trump administration’s use of force, not only in the Caribbean but in such actions as the National Guard deployments at home, has been a video released by six Senators and Congressional Representatives, all of whom served in the military or in intelligence agencies, telling serving military members that they have a right to refuse illegal orders.⁷⁴ Even more significant was Trump’s reaction to their straightforward restatement of the law.⁷⁵ In a furious social media post, Trump accused the six lawmakers of “‘SEDITIONOUS BEHAVIOR, punishable by DEATH!’”⁷⁶ Trump’s response betrays his desire to suspend the rule of law entirely. It reflects a view that there is no law but that which the Leader declares.

States of Emergency: The Wars Abroad and the Wars at Home.

“The tradition of the oppressed teaches us that the ‘state of emergency’ in which we live is not the exception but the rule.” Walter Benjamin, “Theses on the Philosophy of History,” 1940.⁷⁷

States of emergency create zones of lawlessness, of unconstrained exercise of executive and military power. Aspiring authoritarians long have used “states of emergency” to suspend the rule of law, and then to consolidate power to allow rule by decree. But Benjamin, writing as Germany descended into war, totalitarian rule, and industrialized annihilation of targeted “minorities,” was making an additional point. Real democracy is something that still lies in the future. Every existing government, even those that claim to be constitutional democracies, accords those with

the least power something less than full protection of the law, subjecting them to a greater degree to arbitrary power of the state. In a world of *Nation*-states, immigrants and other “minorities” in effect live under the equivalent of a permanent “state of emergency.”

This remains true today. In 2019, Gerald Lopez wrote that “...[In] the United States, “groups can be and have been regarded and treated as exceptions without a formal declaration by the executive proclaiming a state of emergency.”⁷⁸ For groups targeted as “exceptions,”

...[L]aw enforcement officers, prosecutors, judges, corrections officials, prison guards, parole officers, probation officers, truancy officers, ICE employees, and border patrol officers use law as they choose-as they please-to surveil, to stop and question and frisk, to knock and talk, to arrest, to charge, to deport, to prosecute, to sentence, to incarcerate, to detain, and, upon release, to degrade reentry into a cycle of soul-numbing dead ends, almost as if designed to make certain the formerly incarcerated end up once again locked up and, in any event, shrunk into existential despair.”⁷⁹

All of this is made possible because there still exist in the United States and elsewhere significant factions for whom the ideal type of state is a polity in which a single, majority ethnic group dominates both governance and culture. Ethnonationalist narratives remain potent elements available for strategies of rule and contending for rule. This image of the state remains entrenched in the foundations of mainstream discourses about the nature of war, and in the frames and assumptions underlying the law of armed conflict as well.⁸⁰

Ethnonationalism, the most common form of politics based on fomenting strong “friend/enemy” distinctions, thrives on war, and on metaphors of war. And both actual wars and law enforcement campaigns that politicians can convince publics are war-like create opportunities for the further aggrandizement of executive power and for the loosening of constraints on state violence. The result can be the creation of dangerous zones of lawlessness, in which the Constitution and human rights have been left behind, but in which the threshold of “actual war” requiring compliance with the law of armed conflict has not been reached, as has been the case in the “wars” on drugs and on terror:

Among other lapses, we forget important moral limits in real war - both limited objectives and limited means. In short, we forget the just-war tradition, with its moral conditions for resorting to and waging war. We are tempted by seedy realism, with its doctrine that might makes right, or we are tempted by an equally dangerous mentality of crusade or holy war, with its doctrine that right makes might of any kind acceptable.⁸¹

It is precisely this moral and legal void that the Trump regime aims to exploit, and expand. Amidst both wars and moral panics, legislatures and courts expand the “emergency” powers of the state, and particularly of the executive branch—powers that seldom have been pared back after the precipitating crisis has waned. As Justice Jackson warned in his 1944 dissent in *Korematsu v. United States*, an “emergency” power, once deemed constitutional by the courts, “then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.”⁸²

Trump and his ruling circle have combined narratives about the drug trade, terrorism, and immigration to assemble a legal and ideological toolbox for the piecemeal construction of an authoritarian state. Their task is made easier by resonances of ethnic and racial profiling from past iterations of the wars on drugs and terror,⁸³ and by the legal tools those campaigns left behind like “loaded weapons.” The Trump administration’s patchwork deployment of emergency powers has been somewhat chaotic, reflecting both Trump’s personal style and an inner circle with a range of priorities and obsessions. The Cabinet members responsible for the deployment of state force—Defense, Homeland Security, and Justice—all appear firmly committed to the pursuit of authoritarian rule. The rest seem willing to go along for the ride, so long as it serves their own agendas—with Secretary of State Rubio, for example, likely the main driver of efforts to remove Venezuela’s Maduro government.

Some commentators have observed that the ultimate goals of Trump’s Venezuelan adventure are unclear. Is the main purpose really the interdiction of drugs? Is it the overthrow of the Maduro government, and perhaps gaining increased access to Venezuela’s immense oil reserves? But this may be looking at particular lawless trees rather than the looming authoritarian forest. The military operations in the Caribbean are only the latest in the Trump regime’s assertions of unbridled executive authority, announced through a series of decrees invoking emergency powers. Their subjects have ranged from tariffs to expediting energy extraction on federal lands to dispatching the National Guard to Washington D.C. to counter crime.⁸⁴

But the main focus of his emergency orders has been immigration and the drug trade, couched in a manner that ties the two issues closely together. The centerpiece of Trump’s baldly ethnonationalist strategy of rule is hostility to immigrants, and Venezuelans have been the poster “foreign other” for his extreme anti-immigrant agenda. There is a direct line running from Trump’s Alien Enemies Act proclamation used to justify the initial rounds of deportations without due process in the spring through the summer’s brutal immigration raids in Chicago to the boat strikes and threats of war against Venezuela today.

Having invoked emergency powers to designate Tren de Aragua (TdA) as a “foreign terrorist organization” on his first day in office,⁸⁵ Trump declared that

“TdA operates in conjunction with *Cártel de los Soles*, the Nicolas Maduro regime-sponsored, narco-terrorism enterprise based in Venezuela, and commits brutal crimes, including murders, kidnappings, extortions, and human, drug, and weapons trafficking. TdA has engaged in and continues to engage in mass illegal migration to the United States to further its objectives of harming United States citizens, undermining public safety, and supporting the Maduro regime’s goal of destabilizing democratic nations in the Americas, including the United States....

The proclamation declared Tren de Aragua members who are not naturalized citizens or lawful permanent residents to be “Alien Enemies,” and ordered them to be summarily apprehended, detained, and removed from the United States.⁸⁶ The initial detainees, most of whom denied affiliation with Tren de Aragua, were speedily deported with no opportunity to counter

allegations of cartel membership in court.⁸⁷ They were sent to an El Salvador prison rife with human rights abuses.⁸⁸ Justice Sotomayor, writing for the dissenting justices, warned that

The implication of the Government's position is that not only noncitizens but also United States citizens could be taken off the streets, forced onto planes, and confined to foreign prisons with no opportunity for redress if judicial review is denied unlawfully before removal. History is no stranger to such lawless regimes, but this Nation's system of laws is designed to prevent, not enable, their rise.⁸⁹

In Chicago, claims that an apartment complex was “filled with TdA terrorists” were the supposed basis of a midnight raid by hundreds of federal agents, knocking down doors, throwing flash-bang grenades, and rousting families from their beds. Thirty-seven people were arrested, and a number of U.S. citizens were zip-tied and detained for hours. A Pro Publica investigation revealed that while most of those arrested were Venezuelans, there is no evidence any were Tren de Aragua members. Nonetheless, what might have been the main mission of the raid was accomplished: “Soon afterward, President Donald Trump's administration released a slickly produced video of the operation.”⁹⁰ It featured a hovering helicopter and squads of armed and armored agents arresting people in their night clothes.

Then this fall in the Caribbean, the Trump administration has escalated the level of state violence to mass killings of purported criminals without trial. The apparent goal of Trump and his ruling circle is a showy demonstration of force in which killing without restraint is an essential feature. So too is making the killings fit fodder for prime-time TV. The Washington Post reported that Homeland Security Advisor Stephen Miller rejected covert strikes.

“Though the hand behind covert actions is supposed to be hidden, Miller and his team wanted to publicize any strikes on what Trump has deemed ‘narcoterrorists,’ including through videos of drug labs or boats being blown up, one person familiar with the matter said.”⁹¹

As with the Chicago immigration raids, the display here of cruelty and of power unconstrained by law is not incidental. They are authoritarian political spectacle, designed to instill fear in adversaries abroad and at home while shoring up Trump's anti-immigrant base. Its targets were carefully chosen to avoid the domestic discontent that might result from U.S. military casualties, targets unable to shoot back: the administration has argued that the War Powers Act does not apply because “‘The operation comprises precise strikes conducted largely by unmanned aerial vehicles launched from naval vessels in international waters at distances too far away for the crews of the targeted vessels to endanger American personnel.’”⁹²

The Trump administration continues to argue against all evidence that its Caribbean killings are lawful, with Defense Secretary Pete Hegseth claiming on X that “Our current operations in the Caribbean are lawful under both U.S. and international law, with all actions in compliance with the law of armed conflict....”⁹³ It is missing the point to see this simply as a lie about compliance with the law of armed conflict; it is also a legal bait-and-switch. Cordula Droege, Chief Legal Officer for the International Committee of the Red Cross, has observed that

The Geneva Conventions were designed to prevent the recurrence of horrors inflicted on soldiers and civilians during two world wars. More recently though, parties to armed conflicts have used IHL to justify their actions when they depart from the expectations that would ordinarily apply in peacetime, especially those concerning human rights.

In short, armed conflict, as governed by IHL, has come to be seen as an alternative moral and ethical landscape — a space in which states consider themselves free to apply an extraordinary degree of military force and control, inside and outside their own territory, while being able to maintain the stance of law-abiding actors.⁹⁴

The Trump administration has attempted to create a law-free “alternative moral universe” all its own, one where it can claim that it is in a state of war to allow the greatest latitude for the use of force, but can deny it is at war at all when doing so allows them to evade scrutiny and constraint.

The next step up the ladder of escalating state violence could be a “real” war, with the massive task force poised off Venezuela’s coast sent into action against its territory. War allows a shift to a higher level of violence to pursue political goals abroad, but also provides the opportunity for the most expansive claims of emergency powers at home. If Trump chooses to go to war, it will be a moment of profound danger, raising the level of risk for all who would stand in opposition, and most of all for those facing the choice of whether to obey illegal orders. Yet we must hope that many have the fortitude to do so, and the rest of us must do everything we can to support those who do.

We may yet avoid the worst. Trump and his circle may not choose war as a way to salvage a declining presidency and the collapse of their broader authoritarian project. The disorganization, inexperience, and incompetence at the top of this Trump administration may make any coherent program of action difficult, much less further consolidation of power in the face of declining popularity. But the ease with which a group of inexperienced ideologues have been able to exploit the weaknesses of our system of government and the deep divisions and entrenched inequality in our populace show us that profound change must come before the United States is on a path where something like real democracy is possible.

*Out of the rack and ruin of our gangster death,
The rape and rot of graft, and stealth, and lies,
We, the people, must redeem
The land, the mines, the plants, the rivers.
The mountains and the endless plain—
All, all the stretch of these great green states—
And make America again!*

Langston Hughes, “Let America Be America Again,” 1936.⁹⁵

Notes

¹ John Kelley, Political Advisor, Remarks at a UN Security Council Briefing on Venezuela, United States Mission to the United Nations, October 10, 2025 <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela/>

² “Venezuela: Examining Regime Ties to Tren de Aragua,” National Intelligence Council, Sense of the Community Memorandum SOCM 2025-11374, April 7, 2025 posted by the New York Times in connection with article by Charlie Savage and Julian E. Barnes, “Spy Agencies Do Not Think Venezuela Directs Gang, Declassified Memo Shows,” The New York Times, May 5, 2025, 1. <https://static01.nyt.com/newsgraphics/documenttools/32f71f10c36cc482/d90251d5-full.pdf>

³ John Kelley, Political Advisor, Remarks at a UN Security Council Briefing on Venezuela, United States Mission to the United Nations, October 10, 2025 <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela/>

⁴ Annie W. Morgan and James Halsell, “Drug Boats: Where Questions of Lethality and Legality Meet,” *Proceedings*, Vol. 151/9/1,471, U.S. Naval Institute, September, 2025. https://www.usni.org/lethality_and_legality; see further discussion below regarding the legality of the drug boat strikes.

⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. I.C.J. Reports 1986, p. 14, para.195.

⁶ President of the United States Donald Trump, Proclamation, Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua, March 15, 2025, <https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/>

⁷ “Generally speaking, the law of war does not apply to ‘banditry’ or ‘isolated and sporadic acts of violence,’ including, in most circumstances, the brutality of criminal organizations and gangs. To be sure, drug war violence is horrifying and far too frequent in the United States. Yet it would likely be seen as intermittent and moderate in terms of, inter alia: the duration and intensity of any armed confrontations, the kind of forces involved in combat, the amount of death and injury, and the extent of physical destruction. The familiar belligerence of the American drug war - for instance, a shootout among drug gang members or between a drug dealer and law enforcement, perhaps lasting a few minutes if not seconds, and producing some injuries (or even deaths) and relatively minor property damage - is not the kind of protracted armed violence usually associated with a non-international armed conflict. Certainly, it is not comparable to the fighting in, say, a literal civil war, which stands as the archetype of armed conflict not of an international character.” Erik Luna, “Symposium: Drug War and Peace,” 50 U.C. Davis L. Rev. 813, 886-887.

⁸ Transcript of speech, Donald Trump Addresses the 80th Session of the United Nations General Assembly, - September 23, 2025, Roll Call, <https://rollcall.com/factbase/trump/transcript/donald-trump-speech-80th-united-nations-general-assembly-september-23-2025/>

⁹ John Yoo, “Opinion: What’s wrong with a military campaign against the drug trade: Trump’s boat strikes against the cartels risk crossing the line between law enforcement and war,” Washington Post, September 23, 2025. <https://www.washingtonpost.com/opinions/2025/09/23/trump-boat-strikes-drug-cartels-venezuela/>

¹⁰ Dan De Luce, Courtney Kube and Gordon Lubold, “Drug boats from Venezuela are mainly moving cocaine to Europe — not fentanyl to the U.S., experts say,” NBC News, November 21, 2025. <https://www.nbcnews.com/news/military/drug-boats-venezuela-are-mainly-moving-cocaine-europe-not-fentanyl-us-rcna244583>

Regarding the share of overdose deaths attributable to fentanyl, see also U.S. Government Accountability Office, “Fentanyl Continues to Be the Leading Cause of Overdose Deaths. What’s Being Done to Combat Trafficking into

the United States?” September 4, 2025. <https://www.gao.gov/blog/fentanyl-continues-be-leading-cause-overdose-deaths.-whats-being-done-combat-trafficking-united-states>

¹¹ See *Nicaragua v. United States of America*, *supra*, para.195. See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, para.146:

“It is further to be noted that, while Uganda claimed to have acted in self-defence, it did not ever claim that it had been subjected to an armed attack by the armed forces of the DRC. The “armed attacks” to *59 which reference was made came rather from the ADF. The Court has found above (paragraphs 131-135) that there is no satisfactory proof of the involvement in these attacks, direct or indirect, of the Government of the DRC. The attacks did not emanate from armed bands or irregulars sent by the DRC or on behalf of the DRC, within the sense of Article 3 (g) of General Assembly resolution 3314 (XXIX) on the definition of aggression, adopted on 14 December 1974. The Court is of the view that, on the evidence before it, even if this series of deplorable attacks could be regarded as cumulative in character, they still remained non-attributable to the DRC.”

¹² “Venezuela: Examining Regime Ties to Tren de Aragua,” National Intelligence Council, Sense of the Community Memorandum SOCM 2025-11374, April 7, 2025 posted by the New York Times in connection with article by Charlie Savage and Julian E. Barnes, “Spy Agencies Do Not Think Venezuela Directs Gang, Declassified Memo Shows,” The New York Times, May 5, 2025, 1. <https://static01.nyt.com/newsgraphics/documenttools/32f71f10c36cc482/d90251d5-full.pdf>

¹³ “Venezuela: Examining Regime Ties to Tren de Aragua,” National Intelligence Council, Sense of the Community Memorandum SOCM 2025-11374, April 7, 2025 posted by the New York Times in connection with article by Charlie Savage and Julian E. Barnes, “Spy Agencies Do Not Think Venezuela Directs Gang, Declassified Memo Shows,” The New York Times, May 5, 2025, 2. <https://static01.nyt.com/newsgraphics/documenttools/32f71f10c36cc482/d90251d5-full.pdf>

¹⁴ U.S. Department of State, Press Statement, Marco Rubio, “Terrorist Designations of Cartel de los Soles,” November 16, 2025. <https://www.state.gov/releases/office-of-the-spokesperson/2025/11/terrorist-designations-of-cartel-de-los-soles>

¹⁵ “US targets Venezuela over 'Soles' cartel. Does it exist?” Agence France-Press, August 29, 2025. <https://www.france24.com/en/live-news/20250828-us-targets-venezuela-over-soles-cartel-does-it-exist>; “U.S. set to label Maduro-tied Cartel de los Soles as a terror organization. It’s not a cartel per se,” Regina Garcia Cano, Associated Press/PBS, November 24, 2025. <https://www.pbs.org/newshour/world/u-s-set-to-label-maduro-tied-cartel-de-los-soles-as-a-terror-organization-its-not-a-cartel-per-se>

¹⁶ John Kelley, Political Advisor, Remarks at a UN Security Council Briefing on Venezuela, United States Mission to the United Nations, October 10, 2025 <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela/> See text accompanying note 3 above.

¹⁷ The memo as reported seems to advance a number of broad legal theories while providing few facts to support them. Regarding cartel activities that might be related to an “armed attack,”

Martin Lederman, a former deputy assistant attorney general at OLC during the Obama and Biden administrations, expressed skepticism with the administration’s claims about collective self-defense. “A significant problem with this theory is that they still have not identified any state that’s engaged in an armed conflict with a particular cartel,” said Lederman.

“Nor has the administration provided any evidence that another state engaged in such an armed conflict has asked the US to destroy cocaine shipments that are allegedly being used to subsidize armed violence against the requesting state,” he said. Hugo Lowell, “US justice department memo about boat strikes diverges from Trump narrative,” The Guardian, November 25, 2025. <https://www.theguardian.com/us-news/2025/nov/25/trump-caribbean-boat-strikes-memo>

¹⁸ “The Court has recalled above (paragraphs 193 to 195) that for one State to use force against another, on the ground that that State has committed a wrongful act of force against a third State, is regarded as lawful, by way of exception, only when the wrongful act provoking the response was an armed attack. Thus the lawfulness of the use of force by a State in response to a wrongful act of which it has not itself been the victim is not admitted when this wrongful act is not an armed attack. In the view of the Court, under international law in force today - whether customary international law or that of the United Nations system - States do not have a right of "collective" armed response to acts which do not constitute an "armed attack". *Nicaragua v. United States of America*, Para.211.

¹⁹ “It is also clear that it is the State which is the victim of an armed attack which must form and declare the view that it has been so attacked. There is no rule in customary international law permitting another State to exercise the right of collective self-defence on the basis of its own assessment of the situation. Where collective self-defence is invoked, it is to be expected that the State for whose benefit this right is used will have declared itself to be the victim of an armed attack”. *Nicaragua v. United States of America*, para. 195.

²⁰ International Court of Justice, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 ICJ REP. 226, para.41.

²¹ *Nicaragua v. United States of America*, para. 237.

²² *Democratic Republic of the Congo v. Uganda*, para.147. These observations likely are dicta, as Thomas Franck notes in a useful article on necessity and proportionality. Nonetheless, Franck writes, although the Court in the *Uganda* and *Nicaragua* cases did not do much to clarify the content of the “necessity” and “proportionality” standards, “[T]he Court, in both instances, staked out the right to determine, case by case, whether a provocation rises to a threshold permitting the taking of military countermeasures (*the jus ad bellum*).” Thomas M. Franck, "On Proportionality of Countermeasures in International Law," *American Journal of International Law* 102, no. 4 (October 2008): 715-767, 721-722.

²³ Ben Finley, Konstantin Toropin and Regina Garcia Cano, “Boat strikes, warships and Venezuela rhetoric raise questions about Trump’s goals,” *The Associated Press*, September 25, 2025. <https://apnews.com/article/trump-venezuela-boat-strikes-warships-6ffd9e6f4eb738048c816c6d8257a6ef>

²⁴ Tyler Pager, “Trump Won’t Rule Out Sending Troops to Venezuela,” *The New York Times*, November 17, 2025. <https://www.nytimes.com/2025/11/17/us/politics/trump-venezuela-maduro.html>

²⁵ Ellen Nakashima, Warren P. Strobel, and Alex Horton, “White House blew past legal concerns in deadly strikes on drug boats,” *The Washington Post*, November 22, 2025. <https://www.washingtonpost.com/national-security/2025/11/22/drug-boats-strikes-cia-legal-concerns/>

²⁶ Tyler Pager, “Trump Won’t Rule Out Sending Troops to Venezuela,” *The New York Times*, November 17, 2025. <https://www.nytimes.com/2025/11/17/us/politics/trump-venezuela-maduro.html>

²⁷ José Olivares and agencies, “Venezuela denounces ‘colonialist threat’ as Trump orders airspace closed,” *The Guardian*, November 29, 2025. <https://www.theguardian.com/world/2025/nov/29/donald-trump-venezuela-airspace-closure>

²⁸ Regarding the forces deployed, see Mark F. Cancian and Chris H. Park, “Trump’s Caribbean Campaign: The Data Behind Operation Southern Spear,” *Center for Strategic and International Studies*, November 10, 2025.

Secretary of War (previously Defense) Pete Hegspeth entire announcement of the operation by the expanded task force in the Caribbean was as follows (on X):

“President Trump ordered action — and the Department of War is delivering. Today, I’m announcing Operation SOUTHERN SPEAR. Led by Joint Task Force Southern Spear and @SOUTHCOM, this mission defends our Homeland, removes narco-terrorists from our Hemisphere, and secures our Homeland from the drugs that are killing our people. The Western Hemisphere is America’s neighborhood – and we will protect it.”

²⁹ Tom Phillips, “Stakes rise as Trump deploys world’s largest aircraft carrier to the Caribbean,” *The Guardian*, November 12, 2025. <https://www.theguardian.com/world/2025/nov/12/trump-caribbean-warships-venezuela-conflict>

³⁰ Michael Schmitt, “U.S. Saber Rattling and Venezuela: Lawful Show of Force or Unlawful Threat of Force?” *Just Security*, November 4, 2025. <https://www.justsecurity.org/123896/us-venezuela-threat-show-force/> Schmidt’s detailed analysis here is worth reading.

³¹ “In private, Mr. Trump has talked to aides about Venezuela’s huge oil reserves, estimated at 300 billion barrels, the largest in the world. He had an offer from Mr. Maduro that would have essentially given the United States rights to much of it, without resorting to military action. Mr. Trump called off those talks, though on Friday a senior administration official, speaking on condition of anonymity to discuss the situation, said the talks were not entirely dead — and that the deployment of the aircraft carrier was a means to gain leverage over Mr. Maduro. If so, it would be a return to the era of “gunboat diplomacy,” a phrase that became popular in the 19th century as great powers used their naval capabilities to intimidate lesser powers — including Venezuela, which was the target of a European-led naval blockade from 1902 to 1903. Just as the blockade was ending, the U.S. Navy intervened to support Panama’s secession from Colombia, paving the way for the construction of the Panama Canal.” David E. Sanger, Eric Schmitt, Tyler Pager and Zolan Kanno-Youngs, “Trump Escalates Pressure on Venezuela, but Endgame Is Unclear,” *The New York Times*, November 14, 2025. <https://www.nytimes.com/2025/11/14/us/politics/trump-pressure-venezuela.html>

³² Oona A. Hathaway and Stewart Patrick, “Is the Prohibition on the Use of Force Collapsing?” *Carnegie Endowment for International Peace*, August 26, 2025. <https://carnegieendowment.org/research/2025/08/is-the-prohibition-on-the-use-of-force-collapsing?lang=en>

³³ One might argue that many U.S. military actions and covert uses of force in past decades, certainly from the post-9/11 “War on Terror” onward, could be described this way; in any event they created the slippery slope that accelerated the slide to the nadir of Trumpian lawlessness. See text at notes 80 and following below.

³⁴ “In the summer, the Justice Department’s Office of Legal Counsel produced a classified opinion that asserted a legal foundation for the strikes. The memo, which runs several dozen pages, is said to argue that the U.S. is in an armed conflict with “narcoterrorists,” and that using lethal force against them advances an important national interest while not rising to a level of war that constitutionally would require congressional authorization.” Ellen Nakashima, Warren P. Strobel, and Alex Horton, “White House blew past legal concerns in deadly strikes on drug boats,” *The Washington Post*, November 22, 2025. <https://www.washingtonpost.com/national-security/2025/11/22/drug-boats-strikes-cia-legal-concerns/> See also Charlie Savage and Julian E. Barnes, “War Powers Law Does Not Apply to Trump’s Boat Strikes, Administration Says,” *The New York Times*, November 1, 2025. <https://www.nytimes.com/2025/11/01/us/politics/trump-boat-attacks-war-powers.html>

³⁵ See, e.g., Lazaro Gamio, Carol Rosenberg and Charlie Savage, “Tracking U.S. Military Killings in Boat Attacks,” *The New York Times*, Updated November 16, 2025, <https://www.nytimes.com/interactive/2025/10/29/us-us-caribbean-pacific-boat-strikes.html> and reports linked therein.

³⁶ Annie W. Morgan and James Halsell, “Drug Boats: Where Questions of Lethality and Legality Meet,” *Proceedings*, Vol. 151/9/1,471, U.S. Naval Institute, September, 2025. https://www.usni.org/lethality_and_legality

³⁷ Annie W. Morgan and James Halsell, “Drug Boats: Where Questions of Lethality and Legality Meet,” *Proceedings*, Vol. 151/9/1,471, U.S. Naval Institute, September, 2025. https://www.usni.org/lethality_and_legality, see also, e.g. 46 U.S. Code Subtitle VII Chapter 705 - Maritime Drug Law Enforcement.

³⁸ “Properly understood, due process limits on legislative jurisdiction are loose enough to allow the United States to pursue serious wrongdoing around the world. But, this Article has argued, due process checks on personal jurisdiction must be tight enough to require the United States to pursue global crime with scrupulous concern for adjudicative accuracy. ‘[G]uilt shall not escape,’ and ‘innocence [will not] suffer.’ This is no contradiction. It is, rather, our criminal law’s most basic creed.” Michael Farbiarz, “Accuracy and Adjudication: The Promise of

Extraterritorial Due Process,” 116 Colum. L. Rev. 625, 685-686.

³⁹ See, e.g. Laurence E. Stuart, “The Third Circuit Sinks Due Process Limits on the Maritime Drug Law Enforcement Act: *United States v. Martinez-Hidalgo*,” *Tulane Maritime Law Journal* 18, no. 2 (Summer 1994): 401-414, and Mark Gibney, “Legal Imperialism by Other Means: The Selective Extraterritorial Application of U.S. Law and the Denial of Human Rights Protection,” 54 Cal. W. Int’l L.J. 61-89. (Fall 2023).

⁴⁰ See John Kelley, Political Advisor, Remarks at a UN Security Council Briefing on Venezuela, United States Mission to the United Nations, October 10, 2025 <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela/>.

⁴¹ Ellen Nakashima, Warren P. Strobel, and Alex Horton, “White House blew past legal concerns in deadly strikes on drug boats,” *The Washington Post*, November 22, 2025. <https://www.washingtonpost.com/national-security/2025/11/22/drug-boats-strikes-cia-legal-concerns/>; Gordon Lubold, Courtney Kube and Dan De Luce, “Top military lawyer raised legal concerns about boat strikes,” *NBC News*, November 19, 2025. <https://www.nbcnews.com/politics/national-security/top-military-lawyer-raised-legal-concerns-boat-strikes-rcna243694>

⁴² Ellen Nakashima, Warren P. Strobel, and Alex Horton, “White House blew past legal concerns in deadly strikes on drug boats,” *The Washington Post*, November 22, 2025. <https://www.washingtonpost.com/national-security/2025/11/22/drug-boats-strikes-cia-legal-concerns/>

⁴³ The global reach and the adequacy of the due process protections of these statutes have been criticized:

The *Alizai* case, while the most recent and, perhaps, the most spectacular, is not the only example of the United States extending the reach of its long arm of the law beyond its own borders, in the commingling of both the war on drugs and war on terror. The authority for this type of “long-arm” arrest can be found in the aptly described “Narco-Terrorism” legislation enacted by Congress in 2006. 21 U.S.C. § 960a is extraordinary enough to cite substantially:

Whoever engages in [drug activity] that would be punishable . . . if committed within the jurisdiction of the United States . . . knowing or intending to provide, directly or indirectly, anything of pecuniary value to any person or organization that has engaged or engages in terrorist activity . . . shall be sentenced to a term of imprisonment of not less than twice the minimum punishment [otherwise required for the drug crime].

Thus, any drug-related crime, committed anywhere in the world, by any person, no matter how remote or indeed non-existent the link with the United States, is now subject to being charged and tried in a U.S. federal court, after being transported, most often forcibly, to United States territory. Indeed, the Department of Justice readily acknowledges that it has brought a “number of cases under Section 960A of Title 21, the narco-terrorism statute, to disrupt individuals and networks attempting to use narcotics proceeds to finance terrorist organizations” including FARC, the Taliban, and al Qaeda. The room for prosecutorial abuse in these instances seems virtually self-evident. Thomas A. Durkin, “Apocalyptic War Rhetoric: Drugs, Narco-Terrorism, and A Federal Court Nightmare from Here to Guantanamo,” 2 *Notre Dame J. Int’l & Comp. L.* 257, 277-278.

⁴⁴ *Department of Defense Law of War Manual*, Office of the General Counsel, Department of Defense, June 2015 (updated July 2023), §17.2, p.1045. (hereafter *Department of Defense Law of War Manual*)

⁴⁵ *Department of Defense Law of War Manual*, June 2015 (updated July 2023), §17.2.4, p.1052.

⁴⁶ *Department of Defense Law of War Manual*, June 2015 (updated July 2023), §17.2, p.1046

⁴⁷ *Department of Defense Law of War Manual*, June 2015 (updated July 2023), § 17.7 Rules on Conducting Attacks in NIAC [Non-international armed conflicts].

This is also a well-established principle of customary international law; see the International Committee of the Red Cross International Humanitarian Law Databases, Customary IHL Database:

Rule 1. The Principle of Distinction between Civilians and Combatants

The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.” International Committee of the Red Cross, International Humanitarian Law Databases, Customary IHL, Rule 1, The Principle of Distinction between Civilians and Combatants <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule1>

And

Rule 7. The Principle of Distinction between Civilian Objects and Military Objectives

The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects. International Committee of the Red Cross, International Humanitarian Law Databases, Customary IHL Rule 7, The Principle of Distinction between Civilian Objects and Military Objectives, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule7>

⁴⁸ *Department of Defense Law of War Manual*, June 2015 (updated July 2023), §5.5.3 Feasible Precautions to Verify Whether the Objects of Attack Are Military, p.214.

See also regarding the customary international law rule:

Rule 16. Target Verification Each party to the conflict must do everything feasible to verify that targets are military objectives. International Committee of the Red Cross, International Humanitarian Law Databases, Customary IHL Rule 16. Target Verification <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule16>

⁴⁹ *Department of Defense Law of War Manual*, June 2015 (updated July 2023), §17.5.1.1., Increased Difficulty in Identifying Enemy Forces and Other Military Objectives, p.1059. On this point see also generally Nils Melzer, *Interpretive Guidance on The Notion of Direct Participation In Hostilities Under International Humanitarian Law*, (Geneva, Switzerland: International Committee of the Red Cross, 2209).

⁵⁰ *U.S. Department of Defense, Law of War Manual*, June 2015 (updated July 2023), §5.5.3 Feasible Precautions to Verify Whether the Objects of Attack Are Military, p. 216. Note that this section is incorporated by reference in the *Manual’s* §17.7 RULES ON CONDUCTING ATTACKS IN NIAC [non-international armed conflicts] n.114, p.1063.

⁵¹ *Department of Defense Law of War Manual*, June 2015, (updated July 2023), §5.10, Proportionality of Attacks, p.246.

⁵² *Department of Defense Law of War Manual*, June 2015, (updated July 2023), §§5.10, Proportionality of Attacks, et seq.

⁵³ Hugo Lowell, “US justice department memo about boat strikes diverges from Trump narrative,” *The Guardian*, November 25, 2025. <https://www.theguardian.com/us-news/2025/nov/25/trump-caribbean-boat-strikes-memo>

⁵⁴ The *Department of Defense Law of War Manual* recommends erring on the side of care in taking reasonable precautions to avoid harm to civilians or civilian objects:

Feasibility of Taking Additional Precautions to Reduce the Risk of Incidental Harm. Incidental harm is more likely to be regarded as excessive in attacks in which it would be feasible to take additional precautions and those precautions are not taken. The obligation to take feasible precautions is

fundamentally connected to the prohibition on attacks expected to cause excessive incidental harm, and the two obligations are mutually reinforcing. Thus, although the obligation to take feasible precautions applies even if an attack is expected not to cause excessive incidental harm, incidental harm expected to result from strikes in which additional precautions are feasible, but have not been taken, would be more likely to be considered excessive. *U.S. Department of Defense, Law of War Manual*, June 2015, (updated July 2023), §5.12.3.2, p.276.

In the case of small, unarmed boats in open ocean, the same measures required by the principle of distinction would be required under the principle of proportionality. Attacks intended to kill all aboard the boats would clearly constitute excessive incidental harm when feasible precautions—akin to established, developed and practiced law enforcement procedures for stopping and searching craft suspected of carrying drugs and confiscating illegal cargo—are available.

⁵⁵ “2.4.1.1 *Justification in Acting. Proportionality* is implicated in cases in which one is justified in acting. In *jus in bello*, for example, *military necessity* justifies making military objectives, such as enemy combatants, the object of attack. So, an attack on enemy combatants that incidentally damages civilian property would raise *proportionality* considerations. On the other hand, where there is no justification for acting, such as unlawful attacks directed against the civilian population, a *proportionality* analysis would not be necessary to reach the conclusion that the attack would be unlawful.” § 5.10, Proportionality of Attacks, p.61. [Emphasis original].

⁵⁶ Transcript of speech, Donald Trump Addresses the 80th Session of the United Nations General Assembly, - September 23, 2025, Roll Call, <https://rollcall.com/factbase/trump/transcript/donald-trump-speech-80th-united-nations-general-assembly-september-23-2025/>

⁵⁷ Reports that both Trump and top aide Steven Miller were seeking ways to make lethal attacks on drug traffickers, and also desired that these strikes be highly visible, further support this inference. See Ellen Nakashima, Warren P. Strobel, and Alex Horton, “White House blew past legal concerns in deadly strikes on drug boats,” *The Washington Post*, November 22, 2025. <https://www.washingtonpost.com/national-security/2025/11/22/drug-boats-strikes-cia-legal-concerns/>

⁵⁸ *Department of Defense Law of War Manual*, June 2015 (updated July 2023), §5.4.7, pp. 210-211. [Emphasis added]

See also International Committee of the Red Cross, International Humanitarian Law Databases, Customary IHL, Rule 46, Orders or Threats that No Quarter Will Be Given. <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule46>

⁵⁹ *Department of Defense Law of War Manual*, June 2015 (updated July 2023), § 5.4.7, pp. 210-211.

See also International Committee of the Red Cross, International Humanitarian Law Databases, Rule 46, Orders or Threats that No Quarter Will Be Given. <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule46>

⁶⁰ Alex Horton and Ellen Nakashima, “Hegseth order on first Caribbean boat strike, officials say: Kill them all,” *The Washington Post*, November 28, 2025, <https://www.washingtonpost.com/national-security/2025/11/28/hegseth-kill-them-all-survivors-boat-strike/> See also “Statement of the ‘Former JAGs Working Group’ on Media Reports of Pentagon ‘No Quarter’ Orders in Caribbean Boat Strikes,” November 29, 2025. <https://www.justsecurity.org/wp-content/uploads/2025/11/former-jag-working-group-no-quarter-statement.pdf>

⁶¹ See United Nations High Commissioner for Human Rights Centre for Human Rights, *International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police* (New York and Geneva: United Nations Publications, 1996) and International Committee of the Red Cross, *International Rules and Standards for Policing* (Geneva, Switzerland: ICRC, 2015).

⁶² “Everyone has the right to life, liberty and security of person.” Universal Declaration of Human Rights United Nations General Assembly res. 217A, 10 December 1948, Article 3. See also Human Rights Committee, International Covenant on Civil and Political Rights, General comment 36, Article 6: right to life.

⁶³ United Nations Office of the High Commissioner for Human Rights, Press Release, “US attacks in Caribbean and Pacific violate international human rights law – UN Human Rights Chief,” October 31, 2025. <https://www.ohchr.org/en/press-releases/2025/10/us-attacks-caribbean-and-pacific-violate-international-human-rights-law-un>

⁶⁴ Beth Van Schaack, “The United States’ Position on the Extraterritorial Application of Human Rights Obligations: Now is the Time for Change,” 90 Int’l L. Stud. 20 (2014), 23.

⁶⁵ Regarding U.S. claims to jurisdiction for drug law enforcement on the high seas see 46 U.S. Code § 70504(b)(2), - Jurisdiction and venue, a subsection of 46 U.S. Code Subtitle VII Chapter 705 - Maritime Drug Law Enforcement, providing that “if the offense was begun or committed upon the high seas, or elsewhere outside the jurisdiction of any particular State or district, may be tried in any district.”

⁶⁶ War Powers Resolution, 50 U.S. Code Chapter 33.

⁶⁷ 50 U.S. Code § 1543.

⁶⁸ Letter, President Donald Trump to Charles Grassley President pro tempore of the U.S. Senate, September 4, 2025.

⁶⁹ H.J.Res.126, A joint resolution to direct the removal of United States Armed Forces from hostilities that have not been authorized by Congress, introduced September 19, 2025.

⁷⁰ S. J. RES. 90, To direct the removal of United States Armed Forces from hostilities within or against Venezuela that have not been authorized by Congress, Introduced October 16, 2025.

⁷¹ H.Con.Res.64 – To direct the removal of United States Armed Forces from hostilities within or against Venezuela that have not been authorized by Congress, Introduced by Rep. James P. McGovern (Massachusetts, 2d Dist.), December 1, 2025, referred to the House Committee on Foreign Affairs December 1, 2025.

⁷² Charlie Savage and Julian E. Barnes, “War Powers Law Does Not Apply to Trump’s Boat Strikes, Administration Says,” The New York Times, November 1, 2025. <https://www.nytimes.com/2025/11/01/us/politics/trump-boat-attacks-war-powers.html>

⁷³ Michael Gold, “Lawmakers Suggest Follow-Up Boat Strike Could Be a War Crime,” The New York Times, November 30, 2025. <https://www.nytimes.com/2025/11/30/us/politics/trump-boat-strikes-war-crime.html>

⁷⁴ Greg Jaffe, “Democratic Lawmakers Tell Military to Refuse Illegal Orders,” The New York Times, November 18, 2025. <https://www.nytimes.com/2025/11/18/us/politics/democratic-lawmakers-illegal-orders.html>

⁷⁵ “*Clearly Illegal Orders to Commit Law of War Violations*. The requirement to refuse to comply with orders to commit law of war violations applies to orders to perform conduct that is clearly illegal or orders that the subordinate knows, in fact, are illegal. For example, orders to fire upon the shipwrecked would be clearly illegal. Similarly, orders to *1089 kill defenseless persons who have submitted to and are under effective physical control would also be clearly illegal. On the other hand, the duty not to comply with orders that are clearly illegal would be limited in its application when the subordinate is not competent to evaluate whether the rule has been violated.

Subordinates are not required to screen the orders of superiors for questionable points of legality, and may, absent specific knowledge to the contrary, presume that orders have been lawfully issued.” *Department of Defense Law of War Manual*, June 2015 (updated July 2023), §18.3.2.1, pp. 1088-1089.

For a useful analysis of these principles in the context of the boat strikes, see Michael Schmitt, Ryan Goodman and Tess Bridgeman, “Unlawful Orders and Killing Shipwrecked Boat Strike Survivors: An Expert Backgrounder,” Just Security, December 1, 2025. <https://www.justsecurity.org/125948/illegal-orders-shipwrecked-boat-strike-survivors/>

“While subordinates are not required to screen the orders of superiors for questionable points of legality,” those higher in the chain of command, however, cannot escape responsibility, especially those at the highest level of

authority over the military in the executive branch, the Secretary of Defense and the “Commander in Chief,” the President of the United States.

⁷⁶ Doina Chiacu, Nandita Bose and Bo Erickson, “Trump says 'seditious' Democrats urging US troops to refuse illegal orders should face death, Reuters, November 20, 2025, <https://www.reuters.com/world/us/trump-says-democrats-who-told-us-military-refuse-illegal-orders-deserve-death-2025-11-20/>

⁷⁷ Walter Benjamin, “Theses on the Philosophy of History,” *Illuminations*, Hannah Arendt, ed. (New York: Harcourt Brace and World, 1968), p.257. “Theses on the Philosophy of History” completed in spring 1940, first published in *Neue Rundschau*, 61, 3, 1950. *Illuminations*, Editor’s Note, .267.

⁷⁸ Gerald P. Lopez, “Growing up in Authoritarian 1950s East LA,” *UCLA Law Review* 66, no.6 (December 2019): 1532-1587, 1540.

⁷⁹ Gerald P. Lopez, “Growing up in Authoritarian 1950s East LA,” *UCLA Law Review* 66, no.6 (December 2019): 1532-1587, 1534.

⁸⁰ For more on this point see Andrew Lichterman, “Today’s Wars and the Nation-State Foundations of the Laws of Armed Conflict: Thoughts on Ways Forward in Work for Peace and Disarmament,” *Western States Legal Foundation Commentary*, November, 2024. <http://wslfweb.org/docs/WSLF-Commentary-Lichterman-11-24.pdf>

⁸¹ Erik Luna, Symposium: “Drug War and Peace,” 50 U.C. Davis L. Rev. 813, 823, quoting ethicist James Childress; see also Wadie E. Said, “Limitless Discretion in The Wars on Drugs and Terror,” 89 U. Colo. L. Rev. 93 (Winter 2018).

⁸² *Korematsu v. United States* (1944) 323 U.S. 214, 246, see also on this point and on this quote Erik Luna, “Symposium: Drug War and Peace,” 50 U.C. Davis L. Rev. 813, 823.

⁸³ “Given the charges of impermissible ethnic and racial discrimination that haunt much of the enforcement of the drug laws, as well as the focus on Muslims as terrorists, these two constructs begin to resemble each other in that they represent the strategic by-products of a decision to fight a war with both worldwide and domestic enforcement. Although the government employs the war metaphor to grant itself the right to combat the threat wherever it occurs, these loosely defined but suggestive profiles allow the authorities to focus their energies on what they perceive as the main threat - namely, the Muslim terrorist, and the minority drug criminal. The government cannot quite put it in those terms, but the perceived foreign-ness of the terrorist threat allows for a more explicit profile, whereas the drug profile must be more malleable so as to accommodate the requirements of domestic policing in a diverse and fractious society. Both, however, are well served by being at war.” Wadie E. Said, “Limitless Discretion in the Wars on Drugs and Terror,” 89 U. Colo. L. Rev. 93, 129-130

⁸⁴ Karen Yourish and Charlie Smart, “How Trump Used 10 Emergency Declarations to Justify Hundreds of Actions,” *The New York Times*, August 22, 2025. <https://www.nytimes.com/interactive/2025/08/22/us/politics/trump-emergency-immigration-tariffs-crime.html>

⁸⁵ The White House, “Designating Cartels And Other Organizations As Foreign Terrorist Organizations And Specially Designated Global Terrorists,” January 20, 2025.

⁸⁶ President of the United States, A Proclamation, “Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua, The White House, March 15, 2025.

⁸⁷ *Trump v. J.G.G.* (2025) 604 U.S. 670, 678-679, Justice Sotomayor, with whom Justice Kagan and Justice Jackson join, and with whom Justice Barrett joins as to Parts II and III-B, dissenting.

⁸⁸ Human rights Watch and Cristosal, “You Have Arrived in Hell”: Torture and Other Abuses Against Venezuelans in El Salvador’s Mega Prison,” 2025. <https://www.hrw.org/report/2025/11/12/you-have-arrived-in-hell/torture-and-other-abuses-against-venezuelans-in-el>

⁸⁹ *Trump v. J.G.G.* (2025) 604 U.S. 670, 682. Justice Sotomayor, with whom Justice Kagan and Justice Jackson join, and with whom Justice Barrett joins as to Parts II and III-B, dissenting.

⁹⁰ Melissa Sanchez, Jodi S. Cohen, T. Christian Miller, Sebastian Rotella and Mariam Elba, “‘I Lost Everything’: Venezuelans Were Rounded Up in a Dramatic Midnight Raid but Never Charged with a Crime,” *Pro Publica*, November 13, 2025.

⁹¹ Ellen Nakashima, Warren P. Strobel, and Alex Horton, “White House blew past legal concerns in deadly strikes on drug boats,” *The Washington Post*, November 22, 2025. <https://www.washingtonpost.com/national-security/2025/11/22/drug-boats-strikes-cia-legal-concerns/>

⁹² Charlie Savage and Julian E. Barnes, “War Powers Law Does Not Apply to Trump’s Boat Strikes, Administration Says,” *The New York Times*, November 1, 2025. <https://www.nytimes.com/2025/11/01/us/politics/trump-boat-attacks-war-powers.html>

⁹³ Secretary of War (sic) Pete Hegspeth, X, November 28, 2025.

⁹⁴ Cordula Droege, “War and what we make of the law,” *Humanitarian Law and Policy*, International Committee of the Red Cross, July 18, 2024. <https://blogs.icrc.org/law-and-policy/2024/07/18/war-and-what-we-make-of-the-law/>

⁹⁵ Langston Hughes, *The Collected Poems of Langston Hughes*, Copyright © 1994 the Estate of Langston Hughes, accessed via poets.org at <https://poets.org/poem/let-america-be-america-again>

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