

WIN WITHOUT WAR



Analysis: The Trump Administration's Legal Justifications for the Soleimani Assassination

This memo analyzes the various legal arguments that the Trump administration has offered publicly to justify the Soleimani assassination, revealing it had no legal authority to carry out the attack against Iran.*

Background

On December 29, the United States bombed Kataib Hezbollah (HK) – an Iraqi militia in the Popular Mobilization Units (PMU) – facilities. The airstrikes were a U.S. retaliation for the earlier death of an American private security contractor in Kirkuk, Iraq that the Trump administration attributed to HK. Following the strike, which killed 29 and injured 50, unarmed Iraqis stormed, briefly occupied, and sacked parts of the U.S. Embassy in Baghdad. On January 2, the U.S. then assassinated Qasem Soleimani in a drone strike on a convoy in Iraq, with no congressional authorization or consultation.

Trump Administration's Claimed Legal Authorities

The 2001 Authorization for the Use of Military Force (AUMF)

Despite Vice President Mike Pence's [attempt](#) to push a conspiracy theory on Twitter, there is no evidence that ties the 9/11 attacks to Iran or Qasem Soleimani. With no proof that Iran, its military, or its paramilitary forces are linked to those who carried out 9/11, there is no scenario in which military action against Iran would be covered by the 2001 AUMF.

The 2002 Authorization for the Use of Military Force (AUMF)

National Security Advisor Robert C. O'Brien [claimed](#) that the strike was authorized by the 2002 AUMF, which Congress passed in 2002 to invade Saddam Hussein's Iraq. The U.S. invasion and occupation of Iraq under the 2002 AUMF officially ended with the U.S. withdrawal in 2011. The Trump administration has attempted to stretch the authority of this AUMF to cover counter-Islamic State operations by dubiously claiming that the 2002 AUMF provides authorization for military operations against any threats *emanating to or from* Iraq. The administration now appears to be claiming that Iran, and by extension Qasem Soleimani, was covered by this AUMF as it represents a threat from Iraq.

This legal argument has [no merit](#). According to former State Department Legal Adviser and former Legal Adviser to the National Security Council Brian Egan and former Deputy Legal Adviser to the National Security Council Tess Bridgeman, there is ["no viable argument"](#) that the 2002 AUMF could apply to Iran. Accepting this dangerous interpretation would imply that the executive branch has the authority to preemptively use force against any threat from or to Iraq in perpetuity, which, as the ACLU has argued, is [implausible on its face](#).

Article II

National Security Advisor O'Brien also [claimed](#) that the president's Article II powers provided the legal authority for the Soleimani strike. The Department of Defense claimed the strike was justified as an act of defense "aimed at deterring future Iranian attack plans." Secretary of State Mike Pompeo has continued to

*This memo discusses the public legal justifications offered by the Trump administration. As such, it does not address the legal arguments in the administration's classified War Powers report. Congress should move to declassify this report so its justifications can be publicly debated as the transparency requirements of the War Powers Resolution of 1973 intend.

claim the strike was aimed at disrupting an “imminent attack.” Article II of the Constitution only provides the president the authority to act in self-defense of the United States’ territories, possessions, or citizens *in response to imminent threats*, according to Gerard C. and Bernice Latrobe Smith Professor of International Law and Counselor to the Dean at the Yale Law School, Oona A. Hathaway. That [means](#) that the “threat must be so extreme and imminent that it would be unreasonable to seek the necessary approvals before taking action to defend the country.”

The administration has failed to publicly reveal what evidence of an imminent attack it relied on, and recent reporting suggests the intelligence, at best, was very thin. Pentagon officials [expressed](#) doubt over whether the U.S. military had the authority to conduct the strike and pushed back against the strike proposal during internal deliberations. Meanwhile officials [called](#) the intelligence “razor thin,” and [described](#) the reading of the intelligence as linking Soleimani to an imminent attack on American targets “an illogical leap.” Even Chairman of the Joint Chiefs of Staff Gen. Mark Milley [admitted](#) on Monday, “Did (the intelligence) exactly say who, what, when, where? No.”

International Law

International law experts have noted that the administration’s self-defense legal justification does not comply with international law. The ACLU [commented](#) immediately after the strike that “it is not permissible under international law or under the Constitution as an act of self-defense against an imminent attack.”

United Nations Special Rapporteur on Extra-judicial Executions Agnes Callamard [said](#) that Soleimani’s assassination represents an extra-judicial killing that violates international law, and that there is no evidence that a preemptive strike to kill Soleimani – which requires that there be “instant, overwhelming, and leaving no choice of means, and no moment of deliberation” before acting – was legally justified under international law. Further, the strike violated the UN Charter as it was an attack on another nation-state without authorization from the UN Security Council. The United States is legally bound to adhere to the Charter as it was ratified by the United States government, and by virtue of Article VI, section 2, of the U.S. Constitution, it also has the force of domestic law – meaning the strike [was illegal](#) under both international and domestic law.

Title 10, Section 127 (e), U.S. Code

There have also been [reports](#) of defense officials claiming that the Pentagon had the authority to carry out the Soleimani strike under [Title 10, Section 127\(e\), U.S. Code](#). Section 127 (e) [does not](#) give the president the authority to order the unilateral use of military force against another nation-state or nonstate actor. The authority allows the Department of Defense to provide [funding](#) to foreign forces, irregular and regular, to support U.S. counterterrorism operations, which rely on a statutory authorization for the use of force. While problematic on its own for [further shrouding](#) U.S. involvement in endless war around the world, Section 127(e) in no way, shape, or form could have provided the legal authority for the Soleimani strike.