

ANALYSIS

Attack in Venezuela Was Unconstitutional

Congress must assert its control of military matters.



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Government Power

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At his [press conference](#) [link-2] on the U.S. military operation in Venezuela to capture Nicolás Maduro, President Trump only once referred to the “law” purportedly justifying the attack: “These are the iron laws that have always

determined global power.” It’s not clear what laws he was referring to. (“Might makes right” seems hardly an ideal legal code.)

Other administration officials have called Venezuela an [imminent threat](#) [link-3] or claimed that [drug smuggling](#) [link-4] by cartels served as a rationale.

As they scramble to get their stories straight, a bipartisan group

in Congress is working toward a war powers resolution to reassert its constitutional power. It's a rare moment that has seemed to expose Republican divisions and unite the Democrats. We will learn later this week whether Congress will step up to its constitutionally mandated role in matters of war and peace or roll over again.

At the Brennan Center, we don't comment on foreign policy. Leave it to others to decry the new threats to annex Greenland, the talk of oil as a primary motive for the Venezuela operation, or the president's open threats to Cuba, Colombia, and Mexico. We can state unequivocally that Maduro was an authoritarian and an illegitimate president. He stayed in power after losing an election. (Happy January 6!) Nevertheless, I won't presume to predict what is best for Venezuela's future.

But we do comment on the law — the actual law.

One thing is clear: Trump's bombing and regime-decapitation operation in Venezuela was unconstitutional. The Constitution gives Congress, not the president, the power to decide when, where, and against whom the United States goes to war. It's a core part of our system of checks and balances — and for good reason.

There were no threats to U.S. troops or imminent attack on our country preceding the Venezuela operation. Presidents properly have power to use defensive military force without waiting for a congressional vote. But the use of offensive force is constitutionally permissible only if Congress has authorized action, as it did before the invasions of Afghanistan and Iraq.

Congress and the president have pushed and pulled over what constitutes defensive or offensive force. But this was different. It was an attack on a sovereign country and the seizing of its leader,

followed by a vow to now “run” Venezuela and exploit its oil. Undertaking hostilities, with all the risks and costs of war, shouldn’t depend on the whims of a single leader.

Lessons from the trauma of the Vietnam War led Congress to enact the War Powers Resolution in 1973, which reaffirms Congress’s primacy in decisions around the use of force and the president’s limited defensive role. That law also requires the president to consult with and report to Congress when using defensive force in advance of a congressional debate and vote. Despite having planned the operation for months, Trump didn’t even notify Congress before sending special forces into Maduro’s compound and bombing targets in and around Caracas, let alone consult with lawmakers or seek authorization. Leading up to the attack, according to Sen. Charles Schumer (D-NY), the

administration repeatedly and explicitly told members of Congress that it would not undertake regime change operations.

To be sure, previous administrations have blurred the boundaries of war-making authorities. In 1989, under the George H. W. Bush administration, the United States invaded Panama, arrested leader Manuel Noriega, and indicted him for drug smuggling and money laundering, all in the name of self-defense. Bush too had not sought congressional approval. But in that case, Panama had declared that it was in a “state of war” with the United States and had repeatedly attacked U.S. service members. The U.S. Senate had already adopted language calling for the use of military options to depose Panama’s government.

What happened in Panama was an overreach. What happened in Venezuela was a blatant violation of

the constitutional order. There was no declaration of war, no attacks on American troops, not even threats of force (other than the threat, perversely cited by Trump administration officials, that Venezuela might try to defend itself against a U.S. invasion).

Courts considering the use of the Alien Enemies Act have repeatedly rejected the administration's argument that Venezuela has committed acts of aggression that would justify the invocation of war powers. And it's absurd to suggest that the indictments against Maduro for cocaine trafficking and firearm possession, first handed down years ago, create a basis for war and regime change.

It's hard to avoid the impression that Trump did this at least in part to show he could. That's the same reason he sent troops to American cities. Indeed, at his press conference Saturday, he free-associated that connection himself.

As Rachel Maddow noted last night, each successive breach of the law bends the military more to his will.

We are in the early days of the Venezuela story. In Iraq, "shock and awe" looked great until the occupation quickly soured. Trump has expressed his willingness to use boots on the ground and further military attacks to "run" Venezuela. Last night he [told](#) [\[link-5\]](#) NBC, "We have to fix the country first. You can't have an election." But the internal politics of Venezuela are messy to say the least. There's no guarantee that a transition back to democracy will be simple, smooth, or short.

The administration says that a war powers vote is not needed. "This wasn't an invasion, we didn't occupy a country,"

[explained](#) [\[link-6\]](#) Secretary of State Marco Rubio. But neither the Constitution nor the War Powers Resolution conditions Congress's

role on the existence of a military occupation. In any event, Trump has made clear that we now “run” Venezuela, even naming Rubio as one of the overlords. This is different from a missile strike, say, to stop Houthi terrorists from bombing American ships. If Maduro’s reign produced instability, resulting in hundreds of thousands of migrants fleeing to the United States, who knows what kind of chaos could follow now?

On this, as on so much else, Congress must assert its central role in the constitutional order. Lawmakers have the power and responsibility to ensure that these solemn decisions of war and peace are made democratically, accountably, and in line with our Constitution.

Will Congress finally step up to reclaim its constitutional authority? Or will it shirk its responsibility once again? Just a few weeks ago, a resolution in the House to curtail

Trump’s unilateral strikes on Venezuelan boats in the Caribbean failed 210–216.

Several members have introduced resolutions reaffirming Trump’s lack of power to use military force without congressional authorization. Those resolutions should be brought to a vote, and quickly. Congress must act before the situation escalates, and it must strengthen existing checks on presidential power to prevent future unilateral acts of aggression.

Let’s be clear-eyed: The president can veto even a successful war powers resolution. Only a two-thirds vote in each chamber could override. But history shows that congressional pushback can temper executive branch aggressiveness.

Our founders knew deeply the danger of putting the power of war in the wrong institutional hands. Many of them had lived through two

major wars and had served themselves. It's a main reason why they left the power of war-making with Congress.

In 1789, James Madison [wrote](#) [\[link-7\]](#) in a letter to Thomas Jefferson: "The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and

most prone to it. It has accordingly with studied care, vested the question of war in the Legislature."

No matter the justification the administration lands on, the recent operation runs directly counter to the Constitution and our deepest American values. It's imperative that Congress acts to reassert the checks and balances that keep our democracy free.

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Links

link-1: here [https://www.brennancenter.org/briefing?](https://www.brennancenter.org/briefing?utm_medium=WEB&utm_source=mainsite&utm_content=general&cid=7013s000000a0ZlAAY&ms=EML_mainsite_general)

[utm_medium=WEB&utm_source=mainsite&utm_content=general&cid=7013s000000a0ZlAAY&ms=EML_mainsite_general](https://www.brennancenter.org/briefing?utm_medium=WEB&utm_source=mainsite&utm_content=general&cid=7013s000000a0ZlAAY&ms=EML_mainsite_general)

link-2: press conference <https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-venezuela-maduro-january-3-2026/>

link-3: imminent threat <https://www.cbsnews.com/news/marco-rubio-secretary-of-state-face-the-nation-transcript-01-04-2026/>

link-4: drug smuggling <https://x.com/JDVance/status/2007447388697268441>

link-5: told <https://www.nbcnews.com/politics/donald-trump/trump-says-us-not-war-venezuela-rcna252427>

link-6: explained <https://abcnews.go.com/ThisWeek/video/1-1-secretary-state-marco-rubio-128886956>

link-7: wrote https://press-pubs.uchicago.edu/founders/documents/a1_8_11s8.html