

# A Rogue Nation on the High Seas

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Donald Trump is being cagey about how many people he's ordered the U.S. Navy to kill on the high seas. The official toll from American military strikes on two boats suspected of running drugs from Venezuela is now 14, but a few days ago, [Trump](#) teased the possibility that a third boat had been "knocked off," presumably on his orders.

The Trump administration's justification for these strikes, such as it is, seems to be that any shipment of drugs connected to the Venezuelan gang [Tren de Aragua](#) is a direct threat to the United States. These "narco-terrorists" may therefore be destroyed on sight, and without the fuss of asking permission from the U.S. Congress. This argument reflects the president's childlike but dangerous understanding of his role as commander in chief. The United States, once the leader of a global system of security and economic cooperation, is now acting like a rogue state on the high seas.

The White House position is wrong on many levels. I taught the rules and theories that govern the use of force to military officers at the Naval War College for many years, and every summer for two decades to civilians at Harvard; I always reminded students that international law and traditions require states to show that they are acting in some form of self-defense, either in response to an attack or to forestall more violence. Moreover, American law does not permit the president to designate people as terrorists and then declare open season on them in defiance of international agreements and without any involvement from Congress. Perhaps Trump's people are watching too many [Tom Clancy](#) movies, but he cannot legally send the Navy out onto the world's oceans as though they are seagoing sheriffs with satchels full of death warrants.

No one in the White House seems to care very much about the rules that govern killing people, at home or abroad, but these rules actually exist. International law allows interdicting contraband—drugs, weapons, captured human beings—under many circumstances, and countries execute such [missions](#) legally every day. These activities require great care to limit the danger to the military and the loss of civilian life, including diligently identifying suspect vessels, warning them to stop, and sometimes boarding them to identify and seize their cargo.

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Military ships can engage these targets in combat under limited conditions. If they open fire on American vessels, for example, no one would deny that they're signing their own death warrant. But in general, when states want to initiate the use of force in the international arena, their arguments are subject to what international law calls "the [Caroline test](#)," an 1837 case that led the U.S. to agree that to employ force, a threat must be "instant, overwhelming, leaving no choice of means, and no moment of deliberation." This is an elegant way of saying that nations can use violence in self-defense when they have neither the time nor ability to do anything else. What constitutes an "imminent" threat is an ongoing debate among international lawyers, but the recent Venezuela strikes do not appear to fall even remotely under any of this doctrine.

To understand just how far off the rails Trump has taken the military, imagine an alternate example. If the boats were carrying, say, explosives rather than drugs, and headed on a course for American waters, then yes, U.S. officials could claim that they had no choice but to act: Each minute would bring the chance of immediate death closer to American citizens, and no military is going to try to arrest or quarantine a giant, speeding bomb.

Now let's return to what Trump is actually doing. The president is trying to argue that drugs pose a similarly immediate threat to American lives, because once the smuggling boats unload their poisonous cargo, Americans will just as surely die as if they had been blown up in a harbor in Miami, and therefore the Navy must kill the terrorist-traffickers with the same alacrity it would use to destroy a bomb-laden paramilitary vessel.

This is nonsense. *If* the boats were carrying drugs (something Trump hasn't proved) and *if* the boats were full of terrorists (something Trump has asserted but without providing names or evidence) and *if* the boats were headed directly for a U.S. port (which Trump cannot show), *then* Trump would *still* be in the wrong to destroy them without warning. Other [presidents](#) have used drone strikes to kill terrorists, but they acted under narrow legal conditions, including [authority](#) granted by Congress, against targets they could not otherwise apprehend. But Trump thinks he can pick up the phone and have people blown up at sea on his personal orders—and so far, no one's stopped him from doing exactly that.

The president's actions and rationalizations flunk the smell test both for international and American law. You don't have to take my word for it: The former George W. Bush-administration lawyer John Yoo weighed in on this a few days ago. (Yoo came up with the legal justification for using "[enhanced interrogation techniques](#)"—also called "torture"—against captured terrorists after 9/11.) "There has to be a line between crime and war," Yoo told [Politico a few days ago](#). "We can't just consider anything that harms the country to be a matter for the military. Because that could potentially include every crime."

A former senior military lawyer, [Charles Dunlap](#), likewise told *Politico* that "there might be paths where the strikes could be legal," if the Trump administration would share evidence about the targets, which it won't. Trump says the [proof](#) is "spattered all over the ocean, big bags of cocaine and fentanyl all over the place," a convenient excuse that still doesn't answer how the ships posed such an imminent danger that they had to be destroyed at sea and their crews killed.

None of this seems to bother Trump or his circle. Almost two weeks ago, Vice President J. D. [Vance](#) posted on X: "Killing cartel members who poison our fellow citizens is the highest and best use of our military." (I think, having taught hundreds of them, that most military officers would say that defending America and the Constitution is their highest duty, not being the world's most brutal vice cops.) When one X user replied that what Trump is doing is a war crime, Vance, a graduate of Yale Law School, shot back: "I don't give a shit what you call it."

Meanwhile, White House officials are having a good laugh at how much they've scared innocent people in the region. Trump smirked this week that "no boats" are taking to the water in the Caribbean now. "I mean, to be honest, if I were a [fisherman](#), I wouldn't want to go fishing, either," presumably because the United States might think the boat is carrying drugs. Vance tried to run with the same joke a few days ago, yukking it up with Secretary of Defense Pete Hegseth at a Michigan rally. "I would stop too," [he said, laughing](#). "Hell, I wouldn't go fishing right now in that area of the world."

### [David A. Graham: Donald Trump's war of words](#)

Not everyone is smiling. Despite Trump's [firing of the top legal advisers](#) in the military, the Pentagon still employs attorneys, and they're worried. According to *The Wall Street Journal*, military [lawyers](#) are concerned not only about the justification for the strikes on the boats—something any other president would have worked out *before* ordering the attacks—but also the "legal implications for the U.S. military personnel involved in the operations."

Trump may have a special [Immunity Necklace](#) from the Supreme Court, but others do not. The military has a responsibility to reject orders that break American or international law, even if those orders come from the president himself. But the bar for disobedience is high: The military, as a general [legal principle](#), must presume that orders coming down the [chain of command](#) are legal and must be executed. Nor are officers getting much guidance; attorneys and other officials in the Pentagon who have raised such objections, the *Journal* reported, are "being ignored or deliberately sidelined."

A more worrisome problem here is that Trump's illegal orders to kill drug smugglers could acclimate the American public to the sinister idea that the military is the president's personal muscle and that it must do whatever he says. Earlier this week, he declared "["antifa"](#)"—a loose [affiliation](#) of people who identify themselves as "anti-fascists"—to be a "major terrorist organization." But because "antifa" isn't a single group with a headquarters and identified leaders, Trump could apply the label to anyone he thinks opposes him. The president has now claimed he can kill terrorists at will, and he has designated many of his American opponents as terrorists.

The Supreme Court majority, in its [Trump v. United States](#) decision, didn't seem very worried about Justice [Sonia Sotomayor](#)'s hypothetical objection that the president, bolstered by absolute immunity, could order the military to assassinate a political rival. But if he can order the Navy to operate as a presidential hit squad on the high seas, any number of grim hypotheticals could become reality sooner than Americans might expect.