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Trump's First Hundred Days of War Crimes

By Charles Pierson
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President Donald J. Trump closed out his first hundred days in office on April 29. Not marked by any notable achievements, Trump's first hundred days did yield an impressive and ever-lengthening list of scandals.

And war crimes. During his short time in office, Trump has racked up an impressive list of war crimes. Congratulations, Mr. President!

Where to begin? Nine days after Trump's Inauguration, US Navy SEALs together with elite troops from the United Arab Emirates descended on the village of Yaklaa in the Yemeni governorate of Bayda. At the time, the White House said that the mission's objective was to enter a compound controlled by Al-Qaeda in the Arabian Peninsula (AQAP) and gather

intelligence by grabbing computers and cell phones. It was not until a week later that US military officials stated that the prime objective of the raid was to capture or kill AQAP emir Qassim al-Rimi.

The January 29 raid was executed with the same meticulous care President Trump brings to all facets of his administration. What was conceived as a swift there-and-gone operation descended into an hour-long firefight with AQAP, bodies everywhere, and the loss of a \$70 million MV-22 Osprey aircraft.

Two deaths stand out. One was the Trump Administration's first combat fatality: 36-year old Chief Special Warfare Operator William "Ryan" Owens.

The second was an 8-year old American citizen, Nawar Al-Awlaki. Nawar's father was the US-born cleric and Al-Qaeda recruiter and propagandist, Anwar Al-Awlaki. Al-Awlaki was assassinated in a US drone strike in Yemen on September 30, 2011. Shortly afterwards, Nawar's 16-year old brother Abdulrahman was also killed by a US drone, probably inadvertently.

Thanks to the US, the Awlakis—father, son, and daughter—are together again. It's too bad the Awlakis can't thank the Pentagon themselves.

Civilian Fatalities

Trump has killed enormous numbers of civilians in drone strikes, attacks by manned aircraft, and ground assaults. Many of these attacks have taken place far from any battlefield, in places such as Yemen, Pakistan, and Somalia. International humanitarian law (IHL), however, restricts the use of military force to areas of "armed conflict." [1] Jeanne Mirer, President of the International Association of Democratic Lawyers and co-chair of the International Committee of the National Lawyers Guild, observes that the United States is *not* involved in an armed conflict with Pakistan, Yemen, and Somalia. [2] Nor has any of these countries attacked the United States. If any of them had, that would have triggered the United States' right to self-defense under Article 51 of the United Nations Charter.

President George W. Bush maintained that the "armed conflict" against terrorist groups like Al-Qaeda extended over the entire world. That would have allowed Bush to launch attacks anywhere he pleased. *The World Is a Battlefield*, the subtitle of investigative journalist Jeremy Scahill's 2013 book *Dirty Wars*, encapsulates this notion. [3] Barack Obama and Donald Trump, have likewise believed that there are no limits to their power to project force anywhere in the world.

But even when an armed conflict does exist, such as the wars in Iraq and Afghanistan, other principles of IHL must be observed.

Under the principle of discernment, civilians are not to be deliberately targeted. (There is an exception for civilians who "directly participate in hostilities.") Precautions must be taken to minimize civilian casualties.

The principle of proportionality prohibits using excessive force in achieving a legitimate military objective. To simplify greatly, you cannot kill one hundred innocents in order to kill one terrorist.

Large numbers of civilians have been killed in US attacks. Fourteen militants died in Trump's January 29 raid in Yemen, but US forces also killed twenty-five civilians, including women and nine children under the age of 13—these figures from the independent Bureau of Investigative Journalism.

Not killed was AQAP leader Qassim al-Rimi, the object of the raid. Al-Rimi got away, later mocking Trump on video as a “fool.”

Trump's worst slaughter of civilians is the March 17, 2017 US airstrike on west Mosul in Iraq which killed 200+ civilians. The Iraqi government had told the residents of Mosul, then under occupation by ISIS, to remain indoors. The US knew or ought to have known west Mosul's residents were in harm's way.

War Crimes by Remote Control: Targeted Assassinations by Drone

President Barack Obama had launched ten times as many killer drone strikes as President George W. Bush. Donald Trump looks set to top Obama's record.

Micah Zenko is an expert on drone strikes at the Council on Foreign Relations. In a March 2 tweet, Zenko calculated that Obama conducted a drone strike every 5.4 days; Trump has upped the rate to a drone strike every 1.6 days.

Again, apart from Iraq and Afghanistan, US drone strikes take place outside areas of armed conflict. Professor Mary Ellen O'Connell, who teaches law and conflict resolution at the University of Notre Dame, writes: “[T]he law absolutely prohibits ... targeted killing beyond armed conflict zones.”

There are some differences between how Obama and Trump have used drones. President Obama took most drone strikes out of the CIA's hands. Instead, Obama left most drone strikes to the Pentagon's Joint Special Operations Command (JSOC). Trump has brought the CIA back into the picture.

Obama set certain restrictions on drone strikes outside war zones, such as requiring “near certainty” that civilians will not be injured or killed. Trump's National Security Council is considering abandoning the Obama era restrictions.

Still, Obama was not over-scrupulous in who qualified as a civilian. Any military-age male in an area where terrorists were active was presumed to be a terrorist himself. Many victims, under Obama as well as Trump, have been children: “fun-size terrorists” as some drone pilots call them. US drones have attacked weddings and funerals. “Double-tap” strikes fire on first responders hurrying to aid people wounded in a drone's initial strike.

In a just world, Bush, Obama, and Trump would share a cell at The Hague. Obama largely escaped criticism from the liberal left for his drone strikes because, as Mike Whitney observes: “[L]iberals always sleep while their man is in office.” Whitney might have added that liberals will go back to sleep once the Republicans are out of the White House.

Escalating the Illegal US War in Syria

On April 4, a suspected sarin gas attack killed more than 70 people in the rebel-held town of Khan Sheikhun. Who launched the attack—rebels or the Syrian government—still hasn’t been proven. Does it matter? Those 70 people are just as dead no matter who killed them. All of the belligerents in Syria have committed war crimes, including the United States. The antiwar movement holds firm to its demand that the US withdraw from Syria *now*.

Donald Trump, not a man plagued by doubt, was certain that Syrian President Bashar al-Assad was the culprit. On April 7, 59 US Tomahawk cruise missiles pounded a government airfield in Syria while Trump was eating chocolate cake at Mar-a-Lago with the President of China. Whether the US attack accomplished anything is unclear; Syrian military aircraft were taking off from the field a few days later. At nearly \$1.59 million for each Tomahawk missile, Trump would have achieved the same end result if he had burned \$93 million on the White House lawn.

It suddenly occurred to the American public that the US was at war in Syria. It seems to have escaped Americans’ notice that the US has been bombing ISIS in Syria since September 23, 2014 and in Iraq since August 8, 2014. According to Airwars.org, which monitors Coalition airstrikes in Iraq and Syria, 3,530 civilians have been killed as of May 16. Also overlooked was the fact that Obama had sent Special Operations Forces to both countries to fight ISIS. So has Trump. According to Professor Marjorie Cohn, as of April 5 there were close to a thousand US Special Ops forces, Marines, and Rangers in northern Syria. The Trump Administration plans to up that number.

The Syrian government, needless to say, has refused consent to both US bombing and the presence of US troops within its borders. (In sharp contrast, Russian military forces are in Syria at the invitation of the Syrian government.) US military involvement in Syria is, thus, *prima facie* a violation of international law. Article 2(4) of the United Nations Charter requires states to “refrain ... from the threat or use of force against the territorial integrity or political independence of any state.” Article 51 provides an exception for self-defense “if an armed attack occurs” (and then only “until the Security Council has taken measures necessary to maintain international peace and security”). *Syria has not attacked the United States*. Not even the Trump Administration has claimed that the April 7 attack was made defensively. Instead, the Trump Administration said that the purpose of the US attack was to deter *future* uses of chemical weapons by Bashar al-Assad’s regime. That makes the April 7 attack a reprisal. Reprisals are forbidden under international law. Professor Mary Ellen O’Connell, one of the foremost authorities on the use of force under international law, quotes the 1970 UN Declaration on Friendly Relations which says: “States have a duty to refrain from acts of reprisal involving the use of force.”

In theory, US attacks on Syria expose Obama and Trump to prosecution for “waging aggressive war,” the principal charge against the Nazis at Nuremberg. George W. Bush, of course, would face the same charge for his 2003 invasion of Iraq.

I say “in theory” because what court would try them? President George W. Bush “unsigned” the treaty that created the International Criminal Court. (And we thought Bush was stupid.) In the 1990s, the UN Security Council created ad hoc criminal tribunals for Rwanda and Yugoslavia. The US would veto any attempt to create an ad hoc tribunal empowered to try US leaders for war crimes in Syria.

There have been no prosecutions under the federal War Crimes Act which criminalizes “grave breaches” of the Geneva Conventions. In fact, President Barack Obama expressly ruled out prosecuting officials from the George W. Bush Administration.

Trump’s actions are by no means a sharp break with the past. War crimes are how the Pentagon rolls. Noam Chomsky has stated that if the standards of the Nuremberg Trials were applied, every American president since World War Two would have been hanged as a war criminal. Something to think about.

Notes.

[1] IHL is the branch of international law which “prescribes rules for the conduct of war.” The sources for IHL are primarily the four Geneva Conventions of 1949 together with their two Additional Protocols. The central concern of IHL is protection of civilians. Jeanne Mirer, *US Policy of Targeted Killing with Drones: Unsafe at Any Speed*, in *DRONES AND TARGETED KILLING: LEGAL, MORAL, AND GEOPOLITICAL ISSUES* (Marjorie Cohn, ed. 2015) at pages 136, 138.

[2] Mirer at pages 136, 139.

[3] JEREMY SCAHILL, *DIRTY WARS: THE WORLD IS A BATTLEFIELD* (2013), at page 78.