

Droit - Economie - Sciences Sociales

Melun

Session :

Septembre 2018



Année d'étude :

Deuxième année de Licence Droit

Discipline :

Anglais juridique

Examen :

Premier semestre

Durée :

1h30

Titulaires du cours :

Ms. Cingal, Mr. Jendoubi, Mr. Lecocq, Ms. Lévy, Ms. Regen

Les documents et les appareils électroniques ne sont pas autorisés.

Exercises can be done in any order.

I. Complete the following sentences, adding between 10 and 25 words. Do not start a new sentence. (20 points)

- 1 Article III, section 1. ...
2. Besides having enumerated powers...
3. US Circuit Courts ...
4. Due to the Full Faith and Credit Clause...
5. Thanks to the Checks and Balances System...

II. Choose ONE of the following topics and write an essay in approximately 250 words (+/- 10%). (50 points)

- 1/ How have the Founding Fathers prevented the growth of tyranny in the US?
- 2/ What is the extent of states' rights in the American system of government?

III. Read the following document and answer each of the questions below. (approximately ten lines/100 words for each question). Use your own words. DO NOT QUOTE DIRECTLY FROM THE TEXT. (30 points)

Was Trump's Syria Strike Illegal? Explaining Presidential War Powers

By Charlie Savage, *New York Times*, APRIL 7, 2017

<https://www.nytimes.com/2017/04/07/us/politics/military-force-presidential-power.html>

WASHINGTON — *President Trump ordered the military on Thursday to carry out a missile attack on Syrian forces for using chemical weapons against civilians. The unilateral attack lacked authorization from Congress or from the United Nations Security Council, raising the question of whether he had legal authority to commit the act of war.*

Mr. Trump and top members of his administration initially justified the operation as a punishment for Syria's violating the ban on chemical weapons and an attempt at deterrence. But they did not make clear whether that was a legal argument or just a policy rationale. (...)

Did Trump have clear authority under international law to attack Syria?

No. The United Nations Charter, a treaty the United States has ratified, recognizes two justifications for using force on another country's soil without its consent: the permission of the Security Council or a self-defense claim. In the case of Syria, the United Nations did not approve the strike, and the Defense Department justified it as "intended to deter the regime from using chemical weapons again," which is not self-defense. (...)

Did Trump have domestic legal authority to attack Syria?

The answer is murky because of a split between the apparent intent of the Constitution and how the country has been governed in practice. Most legal scholars agree that the founders wanted Congress to decide whether to go to war, except when the country is under an attack. But presidents of both parties have a long history of carrying out military operations without authorization from Congress, especially since the end of World War II, when the United States maintained a large standing army instead of demobilizing.

In the modern era, executive branch lawyers have argued that the president, as commander in chief, may use military force unilaterally if he decides a strike would be in the national interest, at least when its anticipated nature, scope and duration fall short of "a 'war' in the constitutional sense," as a Clinton administration lawyer wrote in the context of a contemplated intervention in Haiti.

On Thursday, Mr. Trump said, "It is in this vital national security interest of the United States to prevent and deter the spread and use of deadly chemical weapons." He also invoked the Syrian refugee crisis and continuing regional instability.

Jack Goldsmith, a Harvard law professor who led the Office of Legal Counsel at the Justice Department in the Bush administration, wrote that this criteria for what is sufficient to constitute a national interest was even thinner than previous precedents and would seemingly justify almost any unilateral use of force.

"The interests invoked — protecting regional security and in upholding or enforcing important treaty norms — will always be present when the president is considering military intervention," he wrote. "Taken alone — and they are all we have here — these interests provide no practical limitation on presidential power."

Did Trump violate the War Powers Resolution?

In 1973, at the end of the Vietnam War, Congress tried to reclaim some of its eroding authority by enacting the War Powers Resolution, overriding President Richard M. Nixon's veto of the law. It says a president may only introduce forces into hostilities with congressional authorization or if the United States has been attacked. But, confusingly, it also requires presidents to terminate deployments after 60 days if they lack authorization, which could suggest that one-off strikes and brief operations are allowed. Presidents of both parties have acted beyond the statute's purported constraint about when they may launch an attack, seeing it as unconstitutionally narrow.

QUESTIONS

1. What is the issue at stake here?
2. Could the Trump administration have violated international laws? Justify.
3. Could they have violated the US Constitution? Justify.