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100 Days, Trump, And Precaution

04/28/2017 03:50 pm ET

Environmental law embraces the “precautionary principle” as a guide for decision makers in dealing with uncertainty. The precautionary principle supports taking cost effective measures to address catastrophic or irreversible harm even *before* we have a complete understanding of an environmental threat, lest we act too late. We act on this common-sense principle when we look both ways *before* crossing a street or purchase insurance *before* a flood or hurricane occurs.

The precautionary principle may prove useful in managing the potential threats that an erratic and unpredictable Trump Administration may pose to national security in the next 100 days and beyond. Troubling revelations about the Trump campaign’s ties with Russia and Russian influence on the election dominated much of the first 100 days. Trump’s surprising decision to bomb Syria in response to a horrific gas attack on civilians and to claim that he was sending an armada to North Korea (when the ships were headed in the opposite direction) have commanded more attention than the Russian ties toward the end of the first 100 days, in spite of a new revelation that a special court found that the government had probable cause to believe that former Trump advisor Carter Page was a Russian agent.

Just as we often do not have a complete understanding of potential environmental threats that we must manage, we cannot know for sure what dangers the unpredictable Trump administration may pose to national security. Trump’s strike against Syria, while widely applauded as an appealing response to a horrific chemical weapons attack, may do more harm than good to our national security by further marginalizing the role of Congress in authorizing military force and causing Russia to repudiate an agreement to avoid interfering with our efforts to defeat Al Qaeda.

To what extent will Trump’s unconstitutional travel bans aid ISIS and Al Qaeda recruitment by suggesting that we disrespect Muslims? Will Russia dangerously assume that we will not defend the Ukraine because of Russia’s ties to Donald Trump? And how much damage may future impetuous decisions cause? We just don’t know.

Furthermore, impulsive unilateral measures can cause catastrophic and irreversible harms—the sort of harm that the precautionary principle is designed to address. the President’s bellicose threats to attack North Korea may make for good television sound bites, but they could lead to nuclear war. And by promising to send a battleship toward North



Instead of reacting to each new tweet and tick of the Trump administration we should take precautionary measures *before* irreversible and catastrophic harm takes place. The Constitution places the war power in the Congress precisely to prevent a single person from making decisions that imperil the country. Congress must now exercise its authority to explicitly limit Trump's discretion to act unilaterally. Congressmen Edward Markey and Ted Lieu have introduced legislation to prohibit first strikes with nuclear weapons. Congress should hold hearings on that bill and consider other limits on Trump's war power, such as geographic or enemy-specific limits on the use of military force. And, regardless of the views of individual Congressmen on the wisdom or desirability of the Syrian air strike or the evolving aggressive approach to Korea, they should reaffirm that President Trump does not have the constitutional authority to attack countries on his own unless they attack us first. That principle needs reassertion not just because of the dangers that Trump's actions have already created, but because of our inability to know the scope of dangers to national security future impetuous foreign policy may create. White House Press Secretary Sean Spicer has made it perfectly clear that President Trump is willing to violate his oath of office by attacking North Korea without Congressional authorization, relying on his constitutional powers. The Commander-in-Chief has authority to direct troops in battle once Congress declares war, but has no power to initiate a war without Congressional authorization.

Trump's ties with Russia and his praise of Putin also create the possibility that Trump may find waging war an attractive way of shoring up his own standing and of assuming more and more autocratic powers. The Senate investigation of Trump's ties with Russia must be aggressive and Congress should authorize a joint bipartisan commission to investigate as well. And we should demand the release of Trump's tax returns. Even if the horror of seeing "beautiful babies" slaughtered motivated the last strike, we need to know what private or foreign interests may influence the next one.

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