

PRESIDENT OBAMA'S EPISTOLARY WAR

Jack Goldsmith observes that President Obama seems to be skirting War Power Resolution rules by sending Congress notice of incremental battles against ISIS.

Yesterday President Obama sent a War Powers Resolution (WPR) letter to Congress concerning U.S. airstrikes “in support of an operation to deliver humanitarian assistance to civilians in the town of Amirli, Iraq.” This is the third Iraq WPR letter to Congress in a month, and the sixth this summer. In June the President sent three WPR letters – the first (June 16) on the initial deployment of 275 soldiers to protect the embassy; then another (June 26) on further troops to protect the embassy and increased intelligence-gathering against the Islamic State; and a third (June 30) for ore troops to protect the embassy. Six weeks later, on August 8, the President sent a WPR letter concerning the use of force in Iraq to stop the “current advance on Erbil by the terrorist group Islamic State of Iraq and the Levant and to help forces in Iraq as they fight to break the siege of Mount Sinjar and protect the civilians trapped there.” On August 17, he sent a letter concerning the use of force in Iraq “to support operations by Iraqi forces to recapture the Mosul Dam.” And then yesterday’s letter on Amirli. (John recently summarized how these WPR letters are typically generated.)

Such frequent letters to Congress about discrete missions within a single country are not typical. Typically the President sends one WPR letter to cover the use of force within a country, and

then updates that use of force as part of a biannual consolidated report.

[snip]

Why, then, has the President sent Congress six narrowly tailored WPR letters related to Iraq since mid-June? I can think of two possible explanations.

First, the President wants to keep Congress super-informed about what he is doing in Iraq. I doubt this is the reason, or at least the main reason, since the information in the letters was publicly known (or about to be). Relatedly, the administration might want to emphasize to Congress that each use of force is limited in scope and time, though in the aggregate such discrete reporting might have the opposite effect.

Second, the administration is trying to circumvent WPR time limits on its deployment of troops and uses of force in Iraq. (NSC spokeswoman Caitlin Hayden recently **dodged** whether the WPR applied to the recent air strikes and related actions in Iraq.)

Definitely click through to see the addendum Goldsmith put together, showing Obama's accelerating rate of WPR note-sending.

Not only does he seem to be dodging the intent of WPR (in more legalistic, though no less obstinate fashion than Obama did with Libya). But by attaching letters to each mountain or dam we have to defend on humanitarian grounds, you pretty much ensure a piecemeal approach.

That may still be better than declaring war against ISIS, with the inevitable mission creep that would bring. But I'm not sure that war by epistolary novel is any less likely to result in mission creep.