

Top Obama admin lawyers secretly worked on Osama raid: Report

29/10/2015 20:07 by admin

New York: Weeks before President Barack Obama ordered the raid on al-Qaeda chief Osama bin Laden's hideout in Abbottabad, his four top lawyers secretly worked on resolving sensitive legal issues including sending forces on Pakistani soil without its consent, according to a new report.

The New York Times report details how CIA's general counsel Stephen Preston, National Security Council's legal adviser Mary DeRosa, Pentagon's general counsel Jeh Johnson and Joint Chiefs of Staff legal adviser then-Rear Admiral James Crawford worked in "intense secrecy" to "hammer out rationales intended to overcome any legal obstacles" the May 2011 raid would raise later.

The work of the four lawyers was so secretive that the White House did not allow them to consult the administration's top lawyer, Attorney General Eric Holder for fear of leaks.

Holder was briefed only a day before the raid on May 1, 2011, long after the legal questions had been resolved, the report said.

The lawyers "did their own research, wrote memos on highly secure laptops and traded drafts hand-delivered by trusted couriers," it said.

Just days before the raid, the lawyers drafted five secret memos in order for them to prove later that they were not inventing after-the-fact reasons for having blessed it.

"We should memorialise our rationales because we may be called upon to explain our legal conclusions, particularly if the operation goes terribly badly," Preston said, according to officials familiar with the internal deliberations.

The NYT report said that the legal analysis offered the Obama administration "wide flexibility" to send ground forces onto Pakistani soil without the country's consent, to explicitly authorize a lethal mission, to delay telling Congress until afterward, and to bury a wartime enemy at sea.

Just days before the raid, Johnson wrote a memo on the operation violating Pakistani sovereignty. Since the US and Pakistan were not at war, it was against international law for one country to use force on the other's soil without consent.

The administration, however, feared that the US asking the Pakistani government to arrest Bin Laden or to authorize an American raid would have compromised the operation.

"The administration feared that the Pakistani intelligence service might have sanctioned Bin Laden's presence; if so, the reasoning went, asking for Pakistan's help might enable his escape," the report said.

It said the lawyers decided that a unilateral military incursion would be lawful because of a disputed exception to sovereignty for situations in which a government is "unwilling or unable" to suppress a threat to others emanating from its soil.

"Given fears of a tip-off, the lawyers signed off on invoking the exception. There was also a trump card. While the lawyers believed that Obama was bound to obey domestic law, they also believed he could decide to violate

international law when authorising a 'covert' action," the report said.

Preston wrote another memo addressing when the administration had to alert congressional leaders under a statute governing covert actions.

"Given the circumstances, the lawyers decided that the administration would be legally justified in delaying notification until after the raid," it said.

In a memo written by DeRosa, the lawyers agreed that it would be lawful for the SEAL team to go in intending to kill Bin Laden as its default option.

The lawyers had cautioned that the law of war required acceptance of any surrender offer that was feasible to accept.

"They discussed possible situations in which it might still be lawful to shoot Bin Laden even if he appeared to be surrendering ? for instance, if militants next to him were firing weapons, or if he could be concealing a suicide vest under his clothing," the report quoted officials as saying.

"The SEAL team expected to face resistance and would go in shooting, relying on the congressional authorisation to use military force against perpetrators of the September 11 terrorist attacks," it said.

DeRosa also wrote a memo on plans for detaining Bin Laden in the event of his capture.

The final legal question had been whether the United States, to avoid creating a potential Islamist shrine, could bury Bin Laden at sea, the report said.

The burial memo, handled by Crawford, stated that burial at sea is "religiously acceptable if necessary, and is not a desecration," the report said.

The lawyers had decided that Saudi Arabia, Bin Laden's home, must be asked whether it wanted his remains and if it refused burial at sea would be permissible.

"As expected, the Saudis declined," officials said.

On the option of destroying the compound with bombs, the lawyers were prepared to deem significant collateral damage as lawful, given the circumstances.

"Not only would there be noncombatants at the compound killed, there could be completely innocent people. That was a key factor in the decision" not to bomb it, national security adviser to Obama Thomas Donilon said.

Donilon added that the likely impossibility of verifying afterward that Bin Laden had been killed would have heightened controversy over bystander casualties.

"All it would have bought us was a propaganda fight."

- PTI