

## *The Law*

# Military Operations in Libya: No War? No Hostilities?

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*The Obama administration produced two remarkable legal opinions about the use of military force against Libya. A memo by the Office of Legal Counsel reasoned that the operations did not amount to “war.” Later, after military actions exceeded the 90-day limit of the War Powers Resolution (WPR), President Obama was advised by White House Counsel Robert Bauer and State Department Legal Advisor Harold Koh that the operations did not even constitute “hostilities” within the meaning of the WPR. This article examines those interpretations and other legal arguments by the executive branch, including the claim that the military actions in Libya had been “authorized” by the UN Security Council and North Atlantic Treaty Organization allies.*

While escalating the war in Afghanistan and attempting to withdraw U.S. forces from Iraq, President Barack Obama in March 2011 opened a new war in Libya without seeking or obtaining authority from Congress. Instead, he claimed legal support from two outside organizations: the UN Security Council and North Atlantic Treaty Organization (NATO) allies. In doing so, he abandoned the constitutional principles he carefully articulated as a presidential candidate in 2007 and ignored the reality that accompanies any military commitment: the inability to anticipate or control its direction. What was announced by President Obama on March 21 as limited in its “nature, duration, and scope” turned out, not surprisingly, to be much broader in its actual operation and

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purpose (U.S. White House 2011a). The decision to act unilaterally without seeking congressional authority eventually forced the administration to adopt legal interpretations that were not only strained, but in several cases incredulous. Weak or not, those legal precedents are likely to broaden presidential power for future military actions.

### Constitutional Principles

During his presidential campaign, Obama was asked by *Boston Globe* reporter Charlie Savage for his position on several constitutional questions. He was asked under what circumstances a president had constitutional authority to bomb Iran without seeking a use-of-force authorization from Congress. The question was aimed specifically at the strategic bombing of suspected nuclear sites in Iran that did not involve an “imminent” threat. Obama replied, “The President does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation.” He added that the president, as Commander in Chief, “does have a duty to protect and defend the United States. In instances of self-defense, the President would be within his constitutional authority to act before advising Congress or seeking its consent. History has shown us time and again, however, that military action is most successful when it is authorized and supported by the Legislative branch. It is always preferable to have informed consent of Congress prior to any military action” (Obama 2007).

A different picture of the war power appears in President Obama’s December 10, 2009, speech in Oslo while accepting the Nobel Speech Prize. He spoke of the concept of a “just war,” particularly when waged “as a last resort or in self-defense; if the force used is proportional; and if, whenever possible, civilians are spared from violence.” There was no element of self-defense with military actions against Libya, which did not present any “actual or imminent threat” to the United States. In Oslo, Obama also defended the use of force “on humanitarian grounds, as it was in the Balkans, or in other places that have been scarred by war” (U.S. White House 2009, 3).

### Initiating Military Force in Libya

Steps toward military action against Libya began with the decision of the Security Council on March 17, 2011, to pass Resolution 1973. After expressing its earlier concern about the escalation of violence and heavy civilian casualties in Libya, it established a ban on “all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians” (UN Security Council 2011, para. 6). Of course the ban did not apply to “all” flights. It covered only those by the Libyan government. Military flights by coalition forces would be necessary to enforce the ban by bombing air defense systems and other targets. Resolution 1973 authorized member states “to take all necessary measures . . . to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form

on any part of Libyan territory” (UN Security Council 2011, para. 4). “All necessary measures” are diplomatic code words for military force.

Passage of Resolution 1973 came only after the Arab League had agreed to support a no-fly zone over Libya (DeYoung and Lynch 2011, A1, A6). By the time of the March 17 action, “at least two Arab governments appeared ready to participate in enforcing a no-fly zone,” according to officials from the Obama administration (Wilson and Warrick 2011, A1, A11). This development persuaded Russia and China, prepared to veto the resolution, to abstain. So did Germany, India, and Brazil. The full reasons for these abstentions may never be known. Russia and China might have welcomed the United States and NATO getting bogged down in another costly, misguided war. Once military action began and the Arab League watched the intensity and destructive force of the bombings, it “voiced concern about civilian deaths” from collateral damage (Fina and Jaffe 2011, A1). Amr Moussa, Secretary General of the 22-member Arab League, remarked, “What is happening in Libya differs from the aim of imposing a no-fly zone, and what we want is the protection of civilians and not the bombardment of more civilians” (Fina and Jaffe 2011, A11).

On March 21, 2011, President Obama notified Congress that, two days earlier at 3 p.m. Eastern Daylight Time, U.S. forces “at my direction” commenced military operations against Libya “to assist an international effort authorized by the United Nations (U.N.) Security Council” (U.S. White House 2011a). His statement offered several details on the scope of military operations. Acting under Resolution 1973, coalition partners began a series of strikes against Libya’s air defense systems and military airfields “for the purposes of preparing a no-fly zone.” The strikes “will be limited in their nature, duration, and scope.” U.S. military efforts were designed to be “discrete and focused” on American capabilities “to set the conditions for our European allies and Arab partners to carry out the measures authorized by the U.N. Security Council Resolution.”

Expectations and plans about the military action on Libya began to shift, week by week. On March 21, President Obama announced at a news conference: “It is U.S. policy that Qaddafi needs to go” (Bumiller and Fahim 2011, A1, A11). The initial no-fly zone policy supported by the Security Council now included the element of regime change. Initially, General Carter F. Ham, in charge of the coalition effort, stated that the United States was not working with the rebels: “Our mission is not to support any opposition forces” (Bumiller and Fahim 2011, A11). Allied bombing operations in Libya soon proceeded to do precisely that. On April 21, the Pentagon announced that President Obama had authorized the use of armed Predator drones against Qaddafi forces (Kirkpatrick and Shanker 2011, A9). On April 25, NATO directed two bombs into a residential and military complex used by Qaddafi in central Tripoli (Denyer and Fadel 2011, A9). On May 5, the Obama administration announced that it had begun efforts to release some of the more than \$30 billion in assets it had seized from Libya and divert the money to Libyan rebels. Secretary of State Hillary Clinton said that the administration would ask Congress for legislative authority to shift some of the frozen assets to help the Libyan people, including assistance to the rebels (Myers and Donadio 2011, A9; Sheridan 2011, A8).

### **“Authorization” from the Security Council**

President Obama and his legal advisors repeatedly stated that he received “authorization” from the UN Security Council to conduct military operations in Libya. His March 21 notice informed Congress that U.S. military forces commenced military initiatives in Libya as “authorized by the United Nations (U.N.) Security Council” (U.S. White House 2011a). His administration regularly spoke of “authorization” received from the Security Council. Previous presidents also claimed “authorization” from the Security Council to use military force without coming to Congress: Truman in Korea, Bush I in Iraq, and Clinton in Haiti and Bosnia. As I have explained in earlier studies, it is legally and constitutionally impermissible to transfer the powers of Congress to an international (UN) or regional (NATO) body (Fisher 1995, 1997, 2011a). The president and the Senate through the treaty process may not eliminate power vested in the House of Representatives and the Senate by Article I of the U.S. Constitution. Treaties may not amend the Constitution.

In a May 20 letter to Congress, President Obama spoke again about “authorization by the United Nations Security Council.” He said that congressional action supporting the military action in Libya “would underline the U.S. commitment to this remarkable international effort.” Moreover, a resolution by Congress “is also important in the context of our constitutional framework, as it would demonstrate a unity of purpose among the political branches on this important national security matter. It has always been my view that it is better to take military action, even in limited actions such as this, with Congressional engagement, consultation, and support” (U.S. White House 2011c, 2). If that had always been Obama’s view, it was his constitutional obligation to come to Congress in February to seek legislative authorization.

### **“Authorization” from NATO**

On March 28, in an address to the nation, President Obama announced that after U.S. military operations had been carried out against Libyan troops and air defenses, he would “transfer responsibilities to our allies and partners.” NATO “has taken command of the enforcement of the arms embargo and the no-fly zone” (U.S. White House 2011b, 2). Two days earlier, State Department Legal Advisor Harold Koh spoke of this so-called transfer to NATO: “All 28 allies have also now authorized military authorities to develop an operations plan for NATO to take on the broader civilian protection mission under Resolution 1973” (Koh 2011, 2). The May 20 letter from President Obama to Congress explained that by April 4 “the United States had transferred responsibility for the military operations in Libya to the North Atlantic Treaty Organization (NATO) and the U.S. involvement has assumed a supporting role in the coalition’s efforts” (U.S. White House 2011c, 1).

Nothing in these or any other communications from the administration could identify a credible source of authorization from NATO for military operations. Like the UN Charter, NATO was created by treaty. The president and the Senate through the treaty process may not shift the Article I authorizing function from Congress to outside

bodies, whether the Security Council or NATO. Section 8 of the War Powers Resolution specifically states that authority to introduce U.S. armed forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances “shall not be inferred . . . from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution” (87 Stat. 555, 558, sec. 8(a)(2)). The authorizing body is always Congress, not the Security Council or NATO.

### Were Military Operations in Libya a “War”?

The Obama administration made repeated efforts to interpret words beyond their ordinary and plain meaning. In an April 1 memo, the Office of Legal Counsel (OLC) reasoned that “a planned military engagement that constitutes a ‘war’ within the meaning of the Declaration of War Clause may require prior congressional authorization.” But it decided that the determination of what “constitutes a ‘war’ for constitutional purposes” requires a “fact-specific assessment of the ‘anticipated nature, scope, and duration’ of the planned military operations.” The internal quotes appear in a previous OLC opinion. Meeting the standard of “war” is satisfied “only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a significant period” (U.S. Justice Department 2011, 8). The War Powers Resolution does not speak of “risk.” It speaks of *hostilities*.

Under OLC’s analysis, it concluded that the operations in Libya did not meet the administration’s definition of “war.” If U.S. casualties can be kept low—no matter the extent of physical destruction to another nation and loss of life—war to OLC would not exist within the meaning of the Constitution. If another nation sent missiles into New York City or Washington, DC, and did not suffer significant casualties, would we call it war? Obviously we would. When Pearl Harbor was attacked on December 7, 1941, the United States immediately knew it was at war regardless of the extent of military losses by Japan.

### Were There “Hostilities” in Libya?

By early June 2011, U.S. military actions in Libya had exceeded the 60-day clock of the War Powers Resolution. Under the terms of that statute, presidents who engage in military hostilities for up to 60 days without congressional authorization must begin withdrawing troops and complete that step within the next 30 days. As explained during debate in the House of Representatives on June 3, 2011: “The 60-day authorization deadline expired on May 20, and the 30-day withdrawal deadline expires on June 19” (U.S. Congress 2011a, H3991). Those statutory deadlines prompted the House to pass House Resolution 292. Section 1(1) provided, “The President has failed to provide Congress with a compelling rationale based upon United States national security interests for current United States

military activities regarding Libya.” Section 3 directed President Obama to submit a report to the House within 14 days describing the national security interests in Libya, including the “President’s justification for not seeking authorization by Congress for the use of military force in Libya.” The resolution passed by a vote of 268 to 145.

In response to this resolution, the Obama administration on June 15 submitted a 32-page report to the House. A section on legal analysis examined the constitutional basis for military actions in Libya. The opening sentence stated, “Given the important U.S. interests served by U.S. military operations in Libya and the limited nature, scope and duration of the anticipated actions, the President had constitutional authority, as Commander in Chief and Chief Executive and pursuant to his foreign affairs powers, to direct such limited military operations abroad” (U.S. White House 2011d, 25). The administration thus concluded that Obama had independent constitutional authority to conduct the military operations and was not required to seek or obtain congressional authority. The administration chose not to challenge the constitutionality of the War Powers Resolution. Instead, the “President is of the view that the current U.S. military operations in Libya are consistent with the War Powers Resolution and do not under that law require further congressional authorization, because U.S. military operations are distinct from the kind of ‘hostilities’ contemplated by the Resolution’s 60 day termination provision” (U.S. White House 2011d, 25)

Several issues of interest appear in this sentence. First, it speaks of no need for “further congressional authorization.” *Further?* There had been no congressional authorization at all for the Libyan military action. Second, the administration interpreted the word “hostilities” in the War Powers Resolution to mean that hostilities did not exist with the U.S. military effort in Libya:

U.S. forces are playing a constrained and supporting role in a multinational coalition, whose operations are both legitimated by and limited to the terms of a United Nations Security Council Resolution that authorizes the use of force solely to protect civilians and civilian populated areas under attack or threat of attack and to enforce a no-fly zone and an arms embargo. U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by those factors. (U.S. White House 2011d, 25)

This interpretation is unpersuasive. It ignores the political context under which the War Powers Resolution was debated and enacted. Part of the momentum behind passage of the statute concerned the decision of the Nixon administration to bomb Cambodia (Eagleton 1974, 150-83). The massive U.S. air campaign did not involve “sustained fighting or active exchanges of fire with hostile forces,” the presence of U.S. ground troops, or substantial U.S. casualties (U.S. White House 2011d, 25). Nevertheless, it was understood by all parties that the bombing constituted hostilities and helped prompt Congress to enact statutory restrictions on presidential power.

According to the analysis by the Obama administration, if the United States conducted military operations by bombing at 30,000 feet, launching Tomahawk missiles from ships in the Mediterranean, and using armed drones, there would be no “hostilities” in Libya (or anywhere else) under the terms of the War Powers Resolution, provided that

U.S. casualties were minimal or nonexistent. Under that interpretation, a nation with superior military force could pulverize another country—including the use of nuclear weapons—and there would be neither hostilities nor war.

Although OLC in its April 1 memo offered a legal defense for President Obama's military actions in Libya, despite the lack of statutory authorization, it was later asked to argue that "hostilities" (as used in the War Powers Resolution) were absent in Libya. It refused to offer that conclusion. Similarly, the legal advisor in the Defense Department declined to say that no hostilities existed with the operations in Libya. Deprived of support from OLC and the Pentagon, President Obama received from White House Counsel Robert Bauer and State Department Legal Advisor Harold Koh supportive legal analysis (Savage 2011, A1). It would have been difficult for OLC to credibly justify this reasoning. Page 1 of its April 1 memo defended the "use of force" in Libya because President Obama "could reasonably determine that such use of force was in the national interest." OLC advised that prior congressional approval was not constitutionally required "to use military force" in the limited operations under consideration. Page 6 of the memo referred to the "destruction of Libyan military assets."

A newspaper story in June 2011 reported that the Pentagon was giving extra pay to U.S. troops assisting with military actions in Libya because they are serving in "imminent danger." The Defense Department decided two months earlier to pay an extra \$225 a month in "imminent danger pay" to service members who fly planes over Libya or serve on ships within 110 nautical miles of its shores. To authorize such pay, the Pentagon must decide that troops in those places are "subject to the threat of physical harm or imminent danger because of civil insurrection, civil war, terrorism or wartime conditions" (Farhenhold 2011, A8). Senator Richard Durbin (D-Ill.) noted that "hostilities by remote control are still hostilities." The Obama administration, he said, chose to kill with armed drones "what we would otherwise be killing with fighter planes" (Farhenhold 2011, A8).

Finally, nothing in the War Powers Resolution waives the 60-90 day limitation if military operations against another country are "limited" and there are few or limited U.S. casualties. Nothing in the statute waives the deadlines if the president is operating with the assistance of a UN resolution or the cooperation of NATO allies. In fact, section 8(a)(2) of the War Powers Resolution expressly states that authority to introduce U.S. troops into hostilities shall not be inferred from any treaty unless it is implemented by legislation that specifically authorizes the introduction of U.S. armed forces into hostilities. Congress did not in the UN Charter or the NATO treaty include any language that could be cited to authorize military actions against Libya. Any such reading would allow the president and the Senate through the treaty process to transfer the Article I powers of Congress to international and regional organizations.

### Why Did Obama Report?

Section 4 of the War Powers Resolution requires the president to report to Congress within 48 hours under very specific conditions: "In the absence of a declaration of war, in

any case in which United States Armed Forces are introduced—(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances; (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation.”

If President Obama did not anticipate hostilities in sending U.S. forces to Libya, he had no obligation to report within the 48-hour deadline. Yet he did so. Through his public action he acknowledged hostilities or imminent hostilities. His March 21 letter to Congress reported that on March 19 he ordered U.S. military forces to commence operations in Libya. His letter concluded with these words: “I am providing this report as part of my efforts to keep the Congress fully informed, consistent with the War Powers Resolution” (U.S. White House 2011a). It does not matter if he was reporting “consistent with” or in “compliance with” the War Powers Resolution. He was reporting, and in so doing he admitted the existence of hostilities, a fact that he and two advisors attempted to deny in June.

Did “hostilities” within the terms of the War Powers Resolution disappear because the United States decided to hand over to NATO allies the bulk of military attacks on Libya? The administration wrote to Speaker John Boehner on June 15, 2011, that “the United States supports NATO military operations pursuant to UNSCR 1973” (Boehner 2011, 1). No one could deny that NATO was engaged in “hostilities” against Libya. By its own words, the Obama administration admitted that it was at least *supporting* hostilities. Moreover, NATO is not a separate, autonomous organization. Its operations rely heavily on the United States for funding and military capacity. Efforts by the Obama administration to hide behind NATO as a means of denying the existence of hostilities lack credibility. Hostilities were present in mid-March when Obama initiated military action, continued in June when he attempted to deny hostilities, and continued at the end of September when I completed this article.

### Dodging Reality

Various administrations, eager to press the limits of presidential war power, seem to understand that they may not—legally and politically—use the words “war” or “hostilities.” Apparently they recognize that using words in their normal sense, as understood by members of Congress, federal judges, and the general public, would acknowledge congressional preeminence. Other than repelling sudden attacks and protecting American lives overseas, presidents may not take the country from a state of peace to a state of war without seeking and obtaining statutory authority. To sidestep that constitutional principle, presidents have gone to great lengths to explain to Congress and the public that what they are doing is not what they are doing. When President Harry Truman went to war against North Korea in 1950 without coming to Congress for authority, he described the military operation as “a police action under the United Nations” (Fisher 1995, 34). Other presidents, including Lyndon Johnson and Bill Clinton, have been duplicitous with words and actions in their use of military force (Fisher 2011b).

### “Non-Kinetic” Assistance

In describing its military actions in Libya, the Obama administration distinguished between “kinetic” and “non-kinetic” actions, with the latter apparently referring to no use of military force. The March 21, 2011, letter from President Obama to Congress identified particular kinetic activities. U.S. forces had “targeted the Qadhafi regime’s air defense systems, command and control structures, and other capabilities of Qadhafi’s armed forces used to attack civilians and civilian populated areas” (U.S. White House 2011a). On May 20, in a letter to Congress, President Obama referred to U.S. participation that consists of “non-kinetic” support of the NATO operation. Activities not directly using military force included intelligence, logistical support, and search and rescue missions. The letter acknowledged continued applications of military force: “aircraft that have assisted in the suppression and destruction of air defenses in support of the no-fly zone” and “since April 23, precision strikes by unmanned aerial vehicles against a limited set of clearly defined targets in support of the NATO-led coalition’s efforts” (U.S. White House 2011c, 1).

### Seeking Support from Senate Resolution 85

OLC in its April 1 memo relied in part on legislative support from the Senate: “On March 1, 2011, the United States Senate passed by unanimous consent Senate Resolution 85. Among other things, the Resolution ‘strongly condemn[ed] the gross and systematic violations of human rights in Libya, including violent attacks on protesters demanding democratic reforms,’ ‘call[ed] on Muammar Gadhafi to desist from further violence,’ and ‘urge[d] the United Nations Security Council to take such further action as may be necessary to protect civilians in Libya from attack, including the possible imposition of a no-fly zone over Libyan territory’ ” (U.S. Justice Department 2011, 2). Action by “unanimous consent” implies that senators strongly endorsed the resolution, but the legislative record provides no support for that impression. Even if there had been evidence of senators involved in drafting, debating, and adopting this language, a resolution passed by a single chamber contains no statutory support. Passage of Senate Resolution 85 reveals little other than marginal involvement by a few senators.

Resolution 7 of Senate Resolution 85 urged the Security Council “to take such further action as may be necessary to protect civilians in Libya from attack, including the possible imposition of a no-fly zone over Libyan territory.” When was this no-fly language added to the resolution? Were senators adequately informed of this amendment? There is evidence they were not. The legislative history of Senate Resolution 85 is sparse. There were no hearings or committee report. The resolution was not referred to any committee. Sponsors of the resolution included ten Democrats (Bob Menendez, Frank Lautenberg, Dick Durbin, Kirsten Gillibrand, Bernie Sanders, Sheldon Whitehouse, Chuck Schumer, Bob Casey, Ron Wyden, and Benjamin Cardin) and one Republican (Mark Kirk).

There was *no debate* on Senate Resolution 85. It appears that the only senators on the floor were Senator Schumer and the presiding officer. Schumer asked for unanimous

consent to take up the resolution. No one objected, possibly because there was no one present to object. Senate “deliberation” took less than a minute. When one watches Senate action on C-SPAN, consideration of the resolution began at 4:13:44 p.m. and ended at 4:14:19: a total of 35 seconds. On March 30, Senator John Ensign (R-Nev.) objected that Senate Resolution 85 “received the same amount of consideration that a bill to name a post office has. This legislation was hotlined” (U.S. Congress 2011b, S1952). That is, Senate offices were notified by automated phone calls and e-mails of pending action on the resolution, often late in the evening when few senators are present. According to some Senate aides, “almost no members” knew that the no-fly zone language had been added to the resolution (Carroll 2011). At 4:03 p.m., through the hotlined procedure, Senate offices received Senate Resolution 85 with the no-fly zone provision but without flagging the significant change (Carroll 2011). Senator Mike Lee (R-Utah) noted, “Clearly, the process was abused. You don’t use a hotline to bait and switch the country into a military conflict” (Carroll 2011). Senator Jeff Sessions (R-Ala.) remarked, “I am also not happy at the way some resolution was passed here that seemed to have authorized force in some way that nobody I know of in the Senate was aware that it was in the resolution when it passed” (U.S. Congress 2011c, S2010).

### The “Mandate” for Military Action

President Obama’s speech to the nation on March 28, 2011, described his Libyan actions in this manner: “The United States has done what we said we would do.” His reference to “the United States” did not mean the executive and legislative branches working jointly. Obama alone made the military commitment. He did identify some supporting political institutions: “We had a unique ability to stop the violence: an international mandate to action, a broad coalition prepare to join us, the support of Arab countries, and a plea for help from the Libyan people themselves” (U.S. White House 2011b, 3). Absent from this picture were Congress and the American people. President Obama in this speech spoke of “a plea for help from the Libyan people themselves.” He offered his support “for a set of universal rights, including the freedom for people to express themselves” and for governments “that are ultimately responsive to the aspirations of the people” (U.S. White House 2011b, 4). Yet throughout this period there had been no effort by the president or his administration to listen to the American people or secure their support.

On May 20, in a letter to Congress, President Obama said that he acted militarily against Libya “pursuant to a request from the Arab League and authorization by the United Nations Security Council” (U.S. White House 2011c, 1). Obama went beyond the Security Council resolution in several ways, such as attempting regime change and giving direct aid to the rebels. When the administration submitted its June 15 report to Congress, it claimed that President Obama acted militarily in Libya “with a mandate from the United Nations” (Boehner 2011, 1). There is only one permitted mandate under the U.S. Constitution for the use of military force against another nation that has not attacked or threatened the United States. That mandate must come from Congress.

Senate Joint Resolution 20, introduced on June 21, 2011, was designed to authorize the use of U.S. armed forces in Libya. In two places the resolution uses the word “mandate.” Security Council Resolution 1970 “mandates international economic sanctions and an arms embargo.” Security Council Resolution 1973 “mandates ‘all necessary measures’ to protect civilians in Libya, implement a ‘no-fly zone’, and enforce an arms embargo against the Qaddafi regime.” The Security Council cannot mandate, order, or command the United States. Under the U.S. Constitution, mandates come from laws enacted by Congress.

### Presidential Obfuscation

When presidents and executive officials attempt to defend military actions that cannot be justified by talking straight, they resort to what can accurately be called “double-talk.” This term may appear to be too crude and unscholarly when analyzing the presidency, but its meaning fits the conduct. Double-talk is defined as “language used to deceive, usually through concealment or misrepresentation of truth” (*Merriam Webster’s Collegiate Dictionary* 1993, 347). Another dictionary explains that the term “appears to be earnest and meaningful but in fact is a mixture of sense and nonsense.” It produces in the listener “a strong suspicion that he is either hard of hearing or slowing going mad.” The language is typically “inflated, involved, and often deliberately ambiguous” (*Webster’s Third New International Dictionary* 1993, 679). Presidents frequently use double-talk, deception, and false statements in their efforts to justify military initiatives (Fisher 2010).

As with previous Presidents, Barack Obama has a record of speaking with inconsistency and incoherence. Whether it is deliberate or careless is difficult to judge. People called upon to talk frequently and at length about many subjects are apt to make errors. It is especially damaging to the nation when presidents speak at cross-purposes when engaging in military operations. David Bromwich, writing in the *New York Review of Books*, commented on Obama’s shortcomings with speech. He has “an unfortunate propensity to be specific when it would serve him well to avoid particulars, and to become vague at times when dates, names, numbers, or ‘a line in the sand’ is what is needed to clarify a policy.” With regards to Libya, Obama was at times specific. The American commitment would last “days, not weeks” (Bromwich 2011, 8). When Bromwich wrote, the commitment had lasted almost three months. When I completed this article, the commitment exceeded six months and was still continuing. Unable to predict military commitments, Obama would have been wise to avoid the “days” imagery. But he had political motivations to be specific. He wanted to assure Congress and the American public that his initiative, however questionable it was legally and constitutionally, would be of short duration. Specificity proved politically costly.

In another analysis of Obama’s inability to speak clearly, Drew Westen writing for the *New York Times* confessed, “Like most Americans, at this point, I have no idea what Barack Obama—and by extension the party he leads—believes on virtually any issue.” He called attention to Obama’s pattern of “presenting inconsistent positions with no

apparent recognition of their incoherence.” Westen wondered why Obama seemed “so compelled to take both sides of every issue, encouraging voters to project whatever they want on him, and hoping they won’t realize which hand is holding the rabbit” (2011, 7).

Westen’s article provoked several letters to the *New York Times*, expressing comparable themes. One reader described Obama as an “amateur,” someone who was “feckless except when it comes to rhetoric.” Another expressed frustration with Obama’s “inability to stick up for all the lofty goals he articulated (and hooked me with) during the campaign.” To another, Obama’s “centrist posture is an expression of a lifelong struggle to please people and make sense of what it means to be both black and white.” A similar observation: “He is the same person he described in ‘Dreams From My Father,’ as unsure of his own identity and obsessively seeking acceptance from others, all others” (Letters 2011, A18).

These traits by President Obama appear in a key speech he delivered at the State Department on May 19, 2011. It was an opportunity to address what he called the “extraordinary change taking place in the Middle East and North Africa,” a public uprising against centralized authority frequently referred to as the “Arab Spring.” He called attention to voices in Cairo, Sanaa, Benghazi, and Damascus that hungered for freedom: “These shouts of human dignity are being heard across the region. And through the moral force of nonviolence, the people of the region have achieved more change in six months than terrorists have accomplished in decades” (U.S. White House 2011e, 2). The principle of nonviolence is repeated several times: “The United States opposes the use of violence and repression against the people of the region.” That line provoked applause. Toward the end of his speech he strongly defended “the moral force of nonviolence” (U.S. White House 2011e, 6).

How could Obama speak about the principle of nonviolence after he had unleashed military force against Libya? He could not speak coherently about nonviolence. At the very end of his speech he reminded the audience that the “scenes of upheaval” in the region might be “unsettling” but were “not unfamiliar.” As he explained, “our own nation was founded through a rebellion against an empire.” The nation of America appeared after a “War of Independence.” In addition, the American people had “fought a painful Civil War that extended freedom and dignity to those who were enslaved” (U.S. White House 2011e, 6). Obama was in no position to intellectually uphold the principle of nonviolence.

Obama had difficulty in defending another basic principle. He reminded the audience that one of his first acts as president was to deliver a speech at Cairo where he began “to broaden our engagement based upon mutual interests and mutual respect.” He believed then “and I believe now—that we have a stake not just in the stability of nations, but in the self-determination of individuals.” There could be “no doubt that the United States of America welcomes change that advances self-determination and opportunity.” He explained that the United States “supports a set of universal rights,” and among those rights are free speech, the freedom of peaceful assembly, the freedom of religion, equality of men and women under the rule of law, “and the right to choose your own leaders” (U.S. White House 2011e, 2-3).

At the very moment of uttering those words, Obama was in the process of forcing regime change in Libya to drive Colonel Qaddafi out of power. Moreover, he supported the Syrian people in urging a transition to democracy and advised President Assad to either “lead that transition, or get out of the way” (U.S. White House 2011e, 3). Having temporized on the fate of President Mubarak in Egypt, he finally supported his removal. As for President Saleh in Yemen, he urged that he “follow through on his commitment to transfer power” (U.S. White House 2011e, 3). Nothing in those remarks about nonviolence and self-determination carry any evidence of consistency, coherence, or commitment to fundamental constitutional principles.

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