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American Wars Will Be Increasingly Secret

By John Glaser

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The Obama administration responded to pressure this week regarding the legality of American military involvement in Libya by [claiming that the War Powers Resolution does not apply](#). Citing a limited support role in the NATO intervention, the President decreed the Vietnam-era legislation which requires Congressional approval for any military engagement surpassing 60 days irrelevant in the current context.

The House of Representatives [passed an amendment](#) last Monday onto a military appropriations bill that would prohibit any funding of the war in Libya, which will have cost \$1.1 billion by September. Additionally, a group of ten representatives have [filed a formal lawsuit](#) against President Obama and outgoing Defense Secretary Robert Gates on the grounds that the intervention in Libya is illegal and unconstitutional. Still, the administration refuses to ask permission from Congress and continues to maintain, [as State Department legal advisor Harold Koh said](#), “We are acting lawfully.”

The administration’s defiance in this regard notes an expanded authority ascribed to the Executive Branch, unrestricted by traditional checks and balances in war-making powers. And the legal position they are taking – that supporting, planning, and conducting attacks from the air does not amount to the “hostilities” specified by the War Powers Resolution – is not very strong. Indeed, [the law](#) requires the President to seek Congressional approval “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 ...”

The ability of the President to go to war against the wishes of Congress and the American people has expanded dramatically over the years. But technological advances in airpower are beginning to allow entire wars to be conducted without the introduction of United States Armed Forces into any field of conflict. As former Assistant Attorney General for the Office of Legal Counsel under the Bush administration [Jack Goldsmith](#) told [the New York Times](#), “The administration’s theory implies that the president can wage war with drones and all manner of offshore missiles without having to bother with the War Powers Resolution’s time limits.”

Obama has significantly [increased the drone program](#) in Pakistan during his tenure. The remote controlled aerial vehicles have allowed the administration to conduct an aggressive bombing campaign in Pakistan’s Northwest Frontier Province with pilots safely sitting far away from the targeted area. The program is managed by the Central Intelligence Agency and, while widely known about in the public, is technically covert, excusing the administration from answering any questions about it or from adhering to any legal requirements to seek the approval of Congress.

Various reports have confirmed that the Obama administration has been [conducting another drone war in Yemen for about two years](#), with at least 15 attacks and 130 killed so far this month. These operations have been similarly free from any accountability, legal justification, or Congressional pressure as has been the case with Libya.

The important difference between Obama’s wars in Pakistan and Yemen and his war in Libya is not in the level of hostilities or security interests, but rather in the ability to call one kind of war secret and another kind public. This realization, coupled with the cutting edge technology that enables such shadow wars, carries dire prospects for the future. If this administration, or any successor, is faced with an option to either carry out war in the open and be held accountable, or in secret and avoid any responsibility or checks to his power, the allure of the latter option may prove too enticing. An impending disintegration of the rule of law which at one time limited the Executive’s ability to make war with impunity is the unfortunate predictable consequence.

Not only may laws limiting war become obsolete or disregarded, but America’s legal, geographical jurisdiction will extend to the entire globe. Any dark corner or ostensibly threatening pocket of any country in the world suddenly becomes subject to the President’s discretion in a drone war. If protocols of secrecy are followed as they have been in Pakistan and Yemen, no legal sanction from Congress will be required, no justification to the American people need be put forth, and no limit to the President’s war prerogative will be observed.

Whether the administration’s legal position regarding the war in Libya will be accepted by the majority of a typically ineffectual Congress remains to be seen. The pressure to be held accountable and adhere to the law may be over in this case, but Obama and his national security team have by this time learned their lesson. Their next war will likely avoid such public scrutiny.