



President is briefed on Libya situation during secure conference call with National Security staff

White House (Pete Souza)

# The 2011 Libya Operation War Powers Redefined?

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**T**he recent hostilities in Libya between government forces of the late Muammar Qadhafi and insurgents have once again raised issues concerning whether a U.S. President can insert combat forces for more than 60 days without securing congressional approval. For more than 35 years, the War Powers Resolution<sup>1</sup> has required that all Presidents meet the criteria for compliance including prior consultation with Congress, fulfillment of reporting requirements, and

securing congressional authorization within 60 days of the introduction of forces.<sup>2</sup>

The War Powers Resolution has been much maligned, both by President Richard Nixon at the time and by each succeeding President. In fact, every President acting under the resolution has taken the position that it is an unconstitutional infringement on the President's authority as Commander in Chief.<sup>3</sup>

In brief, the War Powers Resolution states that the President's authority as Commander in Chief to introduce military forces into hostilities or imminent hostilities may only be exercised pursuant to a declaration of war, specific statutory authority, or a national emergency created by an attack on the United States or its forces.<sup>4</sup>

Key provisions are contained in sections 4(a)(1), 4(a)(2), and 4(a)(3), and sections 5(b) and (c). Section 4(a)(1) requires that the President consult with Congress in every possible instance prior to introducing U.S. forces into hostilities or imminent hostilities. This section also mandates that the President report to Congress any

introduction of U.S. forces into hostilities or imminent hostilities within 48 hours of that occurrence. Section 4(a)(2) carries this requirement a step further by providing that the President must report to Congress whenever U.S. forces equipped for combat enter foreign territory. Section 4(a)(3) adds

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the requirement that the President report to Congress whenever the United States substantially enlarges forces equipped for combat that are already in a foreign nation. Once an initial report is presented, under 4(a)(1), Congress must authorize the use of forces within 60 days, or 90 in exigent circumstances under section 5(b) of the resolution, or the forces must be withdrawn.<sup>5</sup>

It is the latter requirement, ignored in Libya in May 2011, that this article considers. The current analysis examines the Libya crisis in 2011, reviews U.S. involvement, and places the War Powers requirements during armed interventions in context with other Presidential requirements. It queries whether, through his actions in Libya, President Barack Obama has provided a restructuring of Presidential prerogatives concerning the use of force that will be politically and legally helpful to future chief executives. Equally significant, it questions whether President Obama has redefined the construct of *hostilities* under the resolution if no U.S. ground forces are introduced.

In February 2011, in the midst of world concerns related to regime brutality against civilians in Tunisia and Egypt, later described as the Arab Spring, protests also began in Benghazi in eastern Libya. Citizens there sought governmental reforms and the end of the 40-year reign of Qadhafi.<sup>6</sup> The response by the Qadhafi government was swift and deadly. Government forces strafed, shelled, and bombed civilian protestors in Benghazi and several other eastern cities, causing many to flee to Egypt.<sup>7</sup> The United Nations (UN) acted quickly. On February 26, 2011, the UN Security Council (UNSC) unanimously adopted UNSC Resolution (UNSCR) 1970, which “[e]xpress[ed] grave concern at the situation in the Arab Jamahiriya,” “condemn[ed] the violence and use of force against civilians,” and “[d]epl[or]ed the gross and systematic violation of human rights in Libya.”<sup>8</sup> The resolution called upon

member states to take “the necessary measures” to prevent arms transfers “from and through their territories or by their nationals, or using their flag vessels or aircraft,” to freeze the assets of Qadhafi and certain other close associates of the regime, and to “facilitate and support the return of humanitarian

agencies and make available humanitarian and related assistance” in Libya.<sup>9</sup> While important, this resolution did not authorize member states to use military force against Qadhafi’s regime.

The passage of UNSC Resolution 1970 had no noticeable effect. In fact, Qadhafi’s forces escalated the violence against civilians in the east of Libya.<sup>10</sup> That caused the Council of the League of Arab States to call upon the UNSC on March 12, 2011, “to take the necessary measures to impose immediately a no-fly zone on Libyan military aviation” and to “establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in Libya, while respecting the sovereignty and territorial integrity of neighboring states.”<sup>11</sup>

When Qadhafi’s forces ignored these resolutions and made plans for an assault on Benghazi on March 17, 2011,<sup>12</sup> the United Nations finally acted in a meaningful way. In UNSCR 1973, the Security Council, by a vote of 10–0,<sup>13</sup> imposed a no-fly zone over Libya and authorized the use of military force to protect civilians.<sup>14</sup> The UNSC determined that the “situation” in Libya “continues to constitute a threat to international peace and security” and demanded the “immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of civilians.”<sup>15</sup> In paragraph 4, UNSCR 1973 authorized member states, acting unilaterally or through regional organizations, “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 foreign occupation force of any form on any part of Libyan territory.”<sup>16</sup> UNSCR 1973 further authorized member states to enforce “a ban on all [unauthorized] flights in the airspace in the Libyan Arab Jamahiriya in order to help protect civilians” and to take “all mea-

asures commensurate to the specific circumstances” to inspect vessels on the high seas suspected of violating the arms embargo imposed on Libya by UNSCR 1970.<sup>17</sup> Despite statements indicating compliance by Libya’s foreign minister, Qadhafi’s forces continued their attacks, and civilian deaths mounted.<sup>18</sup>

Although involved in New York in the drafting of UNSCR 1970 through the office of UN Ambassador Susan Rice, the executive branch did not initially take the U.S. lead in actions to curb Libyan violence.<sup>19</sup> It was the Senate through the Committee on Foreign Relations that passed Senate Resolution 85 by unanimous consent on March 1, 2011.<sup>20</sup> Resolution 85, shepherded by Senators John Kerry and Richard Lugar, “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 Qadhafi to desist from further violence,” and “urg[ed] 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.”<sup>21</sup>

Following the passage of UNSCR 1973 on March 17, 2011, which authorized a no-fly zone, President Obama gave the U.S. position on March 18. He stated that for Qadhafi to avoid military intervention, he needed to implement an immediate cease-fire, including ending all attacks on civilians; halt his troops’ advance on Benghazi; pull his troops back from three other cities; and ensure the provision of water, electricity, and gas to all areas.<sup>22</sup> President Obama further defined those U.S. national interests impacted by Qadhafi’s continued attacks on his own citizens, stating:

*Left unchecked, we have every reason to believe that [Qadhafi] would commit atrocities against his people. Many thousands could die. A humanitarian crisis would ensue. The entire region could be destabilized, endangering many of our allies and partners. The calls of the Libyan people for help would go unanswered. The Democratic values that we stand for would be overrun. Moreover, the words of the international community would be rendered hollow.*<sup>23</sup>

When UNSCR 1973 was observed to have no visible effect (despite an initial

Libyan government statement that it would honor the requested cease-fire), the United States, with the support of coalition partners, launched airstrikes against Qadhafi to enforce UNSCR 1973. The President explained his actions in a March 21, 2011, letter to congressional leadership:

*At approximately 3:00 pm Eastern Daylight Time, on March 19, 2011, at my direction, U.S. military forces commenced operations to assist an international effort authorized by the United Nations Security Council and have undertaken with the support of European allies and Arab partners, to prevent a humanitarian catastrophe and address the threat posed to international peace and security by the crisis in Libya. As part of the multilateral response authorized under [UNSCR 1973], U.S. military forces, under command of the Commander, U.S. Africa Command, began a series of strikes against air defense systems and military airfields for the purposes of preparing a no-fly zone. These strikes will be limited in their nature, duration, and scope. Their purpose is to support an international coalition as it takes all necessary measures to enforce the terms of [UNSCR 1973]. These limited U.S. actions will set the stage for further action by other coalition partners.<sup>24</sup>*

It was the intent of the United States, he stated, to “seek a rapid, but responsible, transition of operations to coalition, regional, or international organizations that are postured to continue activities as may be necessary to realize the objectives of UN Security Council Resolutions 1970 and 1973.”<sup>25</sup>

When President Obama ordered U.S. military support for the UN-sanctioned no-fly zone,<sup>26</sup> he was triggering the requirements of the War Powers Resolution that was passed over President Nixon’s veto in 1973.<sup>27</sup> In the 40 years of its existence, eight Presidents have submitted more than 130 reports pursuant to its requirements.<sup>28</sup> In his decision of March 19, 2011, to use military force in Libya, President Obama was making two determinations. First, as reported in the Justice Department’s Office of Legal Counsel (OLC) analysis of April 1, 2011, he concluded that he “had the constitutional authority to direct the use of military force in Libya because he could reasonably determine that such use of force was in the national interest.” Second, he claimed that “[p]rior congressional approval was not constitutionally



**Airman checks cargo documents for mission processing at Ramstein Air Base, Germany, during Operation Unified Protector**

U.S. Air Force (Caleb Plence)

required to use military force in the limited operations under consideration.”<sup>29</sup>

This determination to use military force in Libya without seeking prior congressional approval must be examined in the context of the War Powers Resolution,<sup>30</sup> a statute intended “to fulfill the intent of the framers of the Constitution of the United States.”<sup>31</sup> The 1973 statute provides that, in the absence of a declaration of war, the President must report to Congress within 48 hours of taking certain actions, including introduction of U.S. forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances.<sup>32</sup>

The heart of the resolution is codified at 50 USC 1544(b), however. While the War Powers Resolution recognizes the President’s unilateral authority to deploy armed forces, it also requires that he must terminate such use of force within 60 days (or 90 days for military necessity) unless Congress extends the deadline, declares war, or “enact[s] a specific authorization.”<sup>33</sup> It is this issue that presents itself most significantly in the Libya involvement.

When President Obama failed to seek congressional approval for the operation on May 19, 2011, 60 days after the initiation

of hostilities, he argued that he was acting consistently with his March 21, 2011, letter report to Congress on the limited nature of U.S. involvement.<sup>34</sup> In that letter report, he explained that these actions were part of “the multilateral response authorized under UN Security Council Resolution 1973,” and that “these strikes will be limited in their nature, duration, and scope.”<sup>35</sup> He added that “their purpose is to support an international coalition as it takes all necessary measures to enforce the terms of UN Security Council Resolution 1973. These limited U.S. actions will set the stage for further action by other coalition partners.”<sup>36</sup>

When the House of Representatives called upon President Obama to justify his course in not seeking congressional authorization after 60 days of military involvement, the administration released an OLC memorandum denying a violation of his war powers requirements.<sup>37</sup> The memorandum provided the rationale that “war” within the meaning of the Constitution’s “Declare War Clause” does not encompass all military engagements, but only those that are “prolonged and substantial . . . typically involving exposure of U.S. military personnel to significant risk over a substantial period.”<sup>38</sup> The memorandum argued that the Libya

intervention “did not implicate the prerogatives of Congress because the U.S. role was limited; unlikely to expose any U.S. persons to attack; and was likely to end soon.”<sup>39</sup>

The House, led by Speaker John Boehner, was far from satisfied. The House passed a resolution on June 3, 2011, rebuking President Obama for failing to provide Congress with a “compelling rationale” for the military campaign in Libya, but stopped short of demanding that he withdraw U.S. forces from the operation.<sup>40</sup> This reprimand followed the House’s rejection of a more stringent resolution proposed by Democratic Representative Dennis Kucinich. That resolution would have required President Obama to remove forces from participation in Libya within 15 days.<sup>41</sup> The Democratic-controlled Senate took no action.

The immediate issue raised by the Libyan intervention is whether section 4(a) (1) (consultation with Congress) and section 5(b) (required authorization by Congress) of the War Powers Resolution trigger a time limitation on continued armed involvement unless Congress provides authorization to remain. On the one hand, congressional concurrence strengthens the President’s hand in his foreign policy actions. On the other, failure of the President to seek congressional approval may strengthen his posture in terms of flexibility compared to his options under the resolution.

Recent Presidential reporting provides insights into the interpretation of the resolution.<sup>42</sup> In Bosnia, for example, President Bill Clinton directed U.S. participation in UN actions without seeking prior congressional approval, at least regarding no-fly zones, enforcement of safe-havens, airlift of humanitarian supplies into Sarajevo, and naval monitoring of sanctions.<sup>43</sup> In October 1995, War Powers issues were raised again in the Balkans as President Clinton authorized the assignment of 20,000 combat troops to the force, led by the North Atlantic Treaty Organization (NATO).<sup>44</sup> The follow-on contingent of 8,500 for the Stabilization Force, again led by NATO, was the subject of a congressional vote in 1998 that continued the authorization and rejected a resolution that would have forced removal of U.S. forces from Herzegovina and Bosnia.<sup>45</sup>

The following year, after President Clinton ordered U.S. forces into Kosovo under NATO leadership,<sup>46</sup> litigation was filed in Federal District Court in Washing-

ton, DC, challenging his use of the military absent prior congressional authorization. This litigation was dismissed for lack of standing.<sup>47</sup> Meanwhile, the House on May 6, 1999, defeated an amendment to the fiscal year 1999 Defense Supplemental Appropriations bill that would have prohibited funds for U.S. forces to enter the former Yugoslavia except in time of war.<sup>48</sup> Congress subsequently passed legislation that approved supplemental appropriations for the Kosovo operation.<sup>49</sup>

Similarly, in Iraq after 1991, three situations raised War Powers issues. The first resulted from Baghdad’s refusal to cease repression of Kurdish and Shi’ite groups.<sup>50</sup> The second concerned violations of the April 3, 1991, cease-fire accord.<sup>51</sup> The third related to the Iraqi deployment of missiles in the no-fly zone in violation of UNSCR 687 and the threat it posed to coalition aircraft.<sup>52</sup>

In each instance in Iraq, to include the current conflict, and in the hostilities in Afghanistan, the President has reported to Congress “consistent with” the War Powers Resolution, not “pursuant to” it. This was true in Haiti, Bosnia, Kosovo, and Somalia as well. Congress agreed to disagree with this language but has nevertheless provided authorization and funding under section 5(b) of the resolution. What makes U.S. military involvement in Libya so different is the President’s failure to seek authorization for a *continued* military presence beyond the 60-day requirement.

As controversial as War Powers issues have been, President Obama is the first Commander in Chief to determine that bombing and blockading an adversary is not an engagement in “hostilities.” Section 2(a) of the War Powers Resolution states:

*2(a). It is the purpose of the joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of the United States armed forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situation.*

When military action reached day 60 on May 19, 2011, President Obama showed no inclination to seek the approval of Congress for the continuation of the Libya

mission. While it is true that *hostilities* are not defined in the War Powers Resolution, the United States had ground forces in Libya, and U.S. forces were enforcing a no-fly zone, conducting bombing raids, firing cruise missiles, directing lethal drone strikes, and maintaining a tight naval blockade. These are all acts of war and constitute involvement in hostilities in any nation’s lexicon. Moreover, while Washington has now taken on a supporting role under NATO leadership, U.S. military leaders lead NATO, and the War Powers Resolution clearly states that the “introduction of U.S. forces” applies in these circumstances.<sup>53</sup> U.S. participation in the NATO-led effort has included drone attacks, aerial refueling of allied combat aircraft, electronic jamming, search and rescue missions, and other assistance to the “kinetic operations” defined by President Obama to be outside the definition of “hostilities.”

One of the unfortunate realities about being a superpower, and the United States is arguably the only one at present, is that it possesses capabilities and resources not available elsewhere. The United States, as Professor Robert Chesney points out, “has close air support and quick response capabilities—including, but not limited to, armed drones—that the allies could not replicate, and without which the [Libya] operation might fail.”<sup>54</sup> More interesting, though, is the obvious result of the new White House definition of *hostilities* to embrace intensity, frequency, and risk to U.S. personnel. President Obama is likely creating a dangerous precedent that could severely limit congressional prerogatives in the War Powers process and frustrate the framers’ intent.

Current legal and policy planning for future operations could also be greatly altered by the new definition of hostilities.<sup>55</sup> If a serving or future President can argue that a lethal but singular strike on the nuclear weapons capability of a potential adversary is justified without congressional notification or approval, neither the War Powers statute nor constitutional parity between branches of government would any longer have relevance.

Of concern as well is the White House view that senior U.S. military commanders assigned to NATO or a similar UN structure are no longer subject to the constraints of section 8(c) of the War Powers Resolution.<sup>56</sup> This could provide a President absolute

license to support these operations militarily while avoiding the strictures of the resolution. Equally troubling for the Airmen flying bombing missions, Sailors enforcing a naval blockade, or U.S. personnel maintaining a no-fly zone, changing the definition will in no way diminish the risks they are exposed to in executing their missions. **JFQ**

## NOTES

<sup>1</sup> War Powers Resolution, Pub. L. 93-148 (November 7, 1973).

<sup>2</sup> *Ibid.*, sec. 5.

<sup>3</sup> See generally, James P. Terry, "The President as Commander-in-Chief," *Ave Maria Law Review* 7, no. 2 (Spring 2009).

<sup>4</sup> War Powers Resolution.

<sup>5</sup> *Ibid.*, sec. 5.

<sup>6</sup> Muammar Qadhafi of Sirte, Libya, had ruled the country since taking power in a 1969 tribal coup.

<sup>7</sup> See "Authority to Use Military Force in Libya," Office of Legal Counsel Memorandum Opinion for the Attorney General, U.S. Department of Justice, April 1, 2011.

<sup>8</sup> United Nations Security Council Resolution (UNSCR) 1970, UN Doc. S/Res/1970 (February 26, 2011).

<sup>9</sup> *Ibid.*, paras. 9, 17, 26.

<sup>10</sup> See, for example, African Union (AU) Communiqué of the 265<sup>th</sup> Meeting of the Peace and Security Council, PSC/PR/COMM.2 (CCLXV), March 10, 2011, describing the "prevailing situation in Libya as posing a serious threat to peace and security in that country and region as a whole and reiterating AU's strong and unequivocal condemnation of the indiscriminate use of force and lethal weapons."

<sup>11</sup> League of Arab States, "The Outcome of the Council of the League of Arab States Meeting at the Ministerial Level in its Extraordinary Session on the Implication of the Current Events in Libya and the Arab Position," Res. No. 7360, para. 1, March 12, 2011.

<sup>12</sup> Qadhafi, in a March 17 radio address to his supporters, pledged that his forces would begin an assault on Benghazi that night and "show no mercy and no pity" to those who would not give up resistance. He stated, "We will come house by house, room by room. It's over. The issue has been decided." See Dan Bilefsky and Mark Landler, "Military Action Against Qadhafi Is Backed by UN," *The New York Times*, March 18, 2011, A1.

<sup>13</sup> Five UNSC members abstained.

<sup>14</sup> See UNSCR 1973, UN Doc. S/RES/1973 (March 17, 2011).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, para. 4.

<sup>17</sup> *Ibid.*, paras. 6–8, 13.

<sup>18</sup> The White House, Office of the Press Secretary, press release, "Letter from the President Regarding Commencement of Operations in Libya: Text of Letter from President Obama to Speaker Boehner and the President Pro Tempore of the Senate," March 21, 2011, available at <[www.whitehouse.gov/the-press-office-/2011/03/21/letter-president-regarding-commencement-operations-libya](http://www.whitehouse.gov/the-press-office-/2011/03/21/letter-president-regarding-commencement-operations-libya)>.

<sup>19</sup> This is somewhat surprising in light of Qadhafi's well-documented state-sponsored terrorism against U.S. citizens in 1985–1986. See, for example, James P. Terry, "An Appraisal of Lawful Military Response to State-Sponsored Terrorism," *Naval War College Review* (May/June 1986).

<sup>20</sup> S. Res. 85, 112<sup>th</sup> Cong. (as passed by the Senate, March 1, 2011).

<sup>21</sup> *Ibid.*, paras 2, 3, and 7.

<sup>22</sup> The White House, Office of the Press Secretary, press release, "Remarks by the President on the Situation in Libya," March 18, 2011, available at <[www.whitehouse.gov/the-press-office/2011/03/18/remarks-president-situation-libya](http://www.whitehouse.gov/the-press-office/2011/03/18/remarks-president-situation-libya)>.

<sup>23</sup> *Ibid.*

<sup>24</sup> "Letter from the President."

<sup>25</sup> *Ibid.*

<sup>26</sup> See UNSCR 1973, UN Doc. S/RES/1973 (March 17, 2011).

<sup>27</sup> War Powers Resolution.

<sup>28</sup> See generally, Terry, "The President as Commander in Chief."

<sup>29</sup> "Authority to Use Military Force in Libya."

<sup>30</sup> War Powers Resolution, sec. 5.

<sup>31</sup> See 50 U.S.C. 1541(a).

<sup>32</sup> *Ibid.*, sec. 1543(a).

<sup>33</sup> *Ibid.*, sec. 1544(b).

<sup>34</sup> "Letter from the President."

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> "Authority to Use Military Force in Libya."

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> See David A. Fahrenthold, "House Reprimands Obama Over Military Effort in Libya," *The Washington Post*, June 3, 2011, A7.

<sup>41</sup> *Ibid.*

<sup>42</sup> President Gerald Ford submitted 4 reports; President Jimmy Carter 1; President Ronald Reagan 14; President George H.W. Bush 7; President Bill Clinton 60; President George W. Bush 39; and President Barack Obama 5. See Richard F. Grimmet, *The War Powers Resolution After 36 Years*, R41199 (Washington, DC: Congressional Research Service, 2009).

<sup>43</sup> *Ibid.*, 5.

<sup>44</sup> See generally, James P. Terry, "UN Peacekeeping and Military Reality," *Brown Journal of World Affairs* 3, no. 1 (Winter/Spring 1996).

<sup>45</sup> H. Con. Res. 227, March 18, 1998. Resolution 227 would have directed the President, pursuant to Section 5(c) of the War Powers

Resolution, to remove all forces from Bosnia and Herzegovina.

<sup>46</sup> See James P. Terry, "The Emerging Role of NATO in UN Peace Enforcement Operations," *International Law Studies* 72 (1998), 297.

<sup>47</sup> See *Campbell v. Clinton*, 52 F. Supp. 2<sup>nd</sup> 34 (1999). Judge Paul Friedman ruled on June 8, 1999, that Representative Tom Campbell (R-CA) and others lacked standing to bring the suit. The decision was affirmed by the DC Circuit Court of Appeals, 203 F. 3<sup>rd</sup> 19 (DC Cir. 2000), and *certiorari* was denied by the Supreme Court, 531 U.S. 815 (2000).

<sup>48</sup> HR 1664, Fiscal Year (FY) 1999, Defense Supplemental Appropriations 1999.

<sup>49</sup> HR 1141, FY99, Emergency Supplemental Appropriations, May 20, 1999.

<sup>50</sup> See UNSCR 688, April 5, 1991. The resolution condemned the repression of the Iraqi civilian population and appealed for contributions for humanitarian relief.

<sup>51</sup> UNSCR 687, April 3, 1991.

<sup>52</sup> Public Law 102-1 (1991) authorized the President to use U.S. Armed Forces pursuant to the cease-fire to achieve implementation of previous Security Council resolutions. UNSC Resolution 687 was adopted after this. On August 2, 1991, the Senate adopted an amendment to the Defense Authorization bill for FY92 supporting the use of all necessary means to achieve the goals of Resolution 687.

<sup>53</sup> Admiral James G. Stavridis, USN (Ret.), formerly commanded Supreme Allied Command Europe and the military arm of the North Atlantic Treaty Organization. Sec. 8(c) of the War Powers Resolution states, "For purposes of this joint resolution, the term 'introduction of United States Armed Forces' includes the assignment of a member of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities."

<sup>54</sup> Robert Chesney, *Primer on the Libya War Powers Resolution Compliance Debate* (Washington, DC: Brookings, July 19, 2011), available at <[www.brookings.edu/opinions/2011/0617\\_war\\_powers\\_chesney.aspx?p=1](http://www.brookings.edu/opinions/2011/0617_war_powers_chesney.aspx?p=1)>.

<sup>55</sup> Jeh Johnson (formerly) at the Defense Department and Caroline Krass at the Justice Department have advised the White House, although they disagree with the new definition of *hostilities*, fashioned by Harold Koh at the State Department and the White House Counsel's Office, for purposes of the War Powers Resolution.

<sup>56</sup> Chesney.