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The Sophists' War

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The White House sent to Congress on Wednesday a report on Libya that contains the administration's argument as to why the continued U.S. involvement in the war there supposedly does not violate the War Powers Resolution. The argument, [according to State Department legal adviser Harold Koh and White House counsel Robert Bauer](#), centers on the contention that this isn't really the sort of conflict that the War Powers Resolution was intended to cover. Or rather, maybe the conflict as a whole is, but not the U.S. part in it. It certainly would be hard to say that the overall conflict is not a war. (The editors at the Associated Press, bowing to the obvious, [recently determined](#) that their stories would refer to the conflict as a “civil war” rather than a popular uprising or something else.) It would be interesting to know what most of the NATO allies think of Washington's position that the U.S. contribution to this conflict is so peripheral that it doesn't even count as involvement in a war—especially coming on the heels of [Secretary of Defense Robert Gates's lambasting of the](#)

[allies](#) (in which he invoked the Libya conflict itself as an example) for not contributing more to joint military tasks.

[Another administration official](#), speaking anonymously, expanded on why the U.S. military's part of the Libya war—which includes such things as surveillance, aerial refueling of attack aircraft, and firing missiles from drones—doesn't count as war. "We are not engaged in sustained fighting," he said. "There has been no exchange of fire with hostile forces, we don't have troops on the ground, we don't risk casualties to those troops." Many who have been involved in war would consider those odd criteria for defining what constitutes being in a war or not being in a war. Members of the Navy and Air Force would understandably question whether troops on the ground should be a defining characteristic. And if our military operations stay largely free of two-way fire and risks of casualties to our troops, that can be function of good strategy and good generalship rather than not being in a war at all. (The Clinton administration considered the casualty-free air war against Serbia over Kosovo to constitute U.S. involvement in a war, but to be in compliance with the War Powers Resolution because Congress passed an appropriation specifically for this campaign.) As for whether fighting is "sustained," tell that one to the many veterans whose war experiences consisted of long periods of boredom interspersed with short bursts of danger and fighting.

The notion that support functions performed by military personnel in a war theater, even if those functions do not directly involve exchanges of fire with the enemy, somehow do not constitute being in a war is at odds with how the U.S. military is organized and how it fights war. The forces have both tooth and tail, and the tail is commonly larger than the tooth. The administration's strange interpretation of this subject is an insult to anyone who has served in a war zone in, say, a logistical support capacity.

Perhaps even more strange is the argument of Koh and Bauer that there is little chance of the U.S. role escalating into something more deadly because the Western military effort is constrained by the United Nations Security Council resolution that authorized the use of force only to protect Libyan civilians. How does that square with the voluminous evidence that this war has become much more about regime change? Oh, say the administration's lawyers, regime change may be a "diplomatic goal," but that is separate from the "military mission" of protecting civilians. I see—so the mission of allied forces in World War II in Europe was to protect civilians and maybe to enforce the neutrality of Poland; overthrowing the Nazi regime was only a "diplomatic goal." [For the second time in the past few days I must invoke Clausewitz](#), who pointed out long ago that wars are the use of military force to accomplish political and diplomatic goals. Separating the two is nonsensical.

The importance of involving Congress in decisions about going to war should not rest on fine lines being drawn about tactics currently being used and casualties currently being incurred. Notwithstanding the wording of Security Council resolutions, there is significant potential for deeper U.S. involvement in this conflict. [Doug Bandow recently noted](#) in these spaces the possibility that Qaddafi's departure would be followed by a new

phase in the civil war and new pressures for the allies to sort things out and engage in more nation-building.

The War Powers Resolution has been heavily criticized from the day it was passed (over Richard Nixon's veto). Maybe it needs to be replaced with something else. A panel convened a few years ago by the Miller Center at the University of Virginia, and headed by former secretaries of state James Baker and Warren Christopher, drafted [a suggested alternative](#). But the flaws of the current law are not a reason for the kind of contorted reasoning we are hearing to justify lack of Congressional involvement in the Libyan decision.

Such sophistry is unbecoming to the Obama administration. And it constitutes obfuscation of the issues at stake, hindering informed and honest debate on important issues of war and peace.

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