

Obama in Africa: Somalia, Mali and the War Powers Resolution

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Critics of President Obama's 2011 aerial intervention in Libya may recall one of that conflict's most striking features: the administration's failure to invoke the [1973 War Powers Resolution](#) (WPR). The War Powers Resolution is that tasteless congressional fruit of the late Vietnam War era. A war-weary Congress, finally cognizant of decade-long failure to perform its most important duty, passed the joint resolution over Nixon's veto as US troops departed South Vietnam for home. Engendered by a well-founded if woefully tardy legislative realization that presidents of neither party could be trusted with sole authority over decisions regarding overseas bombing, strafing, and shooting—never mind that the Constitution provided no such unilateral power—the WPR placed some real if manageable limits on presidential war making power.

The WPR permits the president to commit US forces abroad only with the express authorization of Congress or when forced to by “a national emergency created by attack on the United States, its territories or possessions, or its armed forces.” The law requires the president to alert Congress within forty-eight hours of committing armed forces to combat. It limits their deployment to sixty days, plus a further thirty-day withdrawal period, without a declaration of war or authorization for the use of military force.

Without exception, chief executives from Nixon on claimed the act unconstitutional. It's not as easy to play Imperial President when hemmed in by such legal nonsense. Nevertheless, presidents have by and large played along with the terms of the WPR, mostly because it hasn't much cramped their interventionary muscles, and because successive Congresses have authorized presidential wars when asked. Party affiliation does not predict the most egregious gaming of the WPR. Clinton and Obama were and are as manipulative as were Reagan or the Bushs. Cowardly federal courts have shied away from determining the constitutionality of the law.

A strict reading of the law ought to have prevented nearly all of the 130 plus instances when presidents reported their armed actions to Congress under the resolution. This is so for the simple reason that the US and its armed forces rarely find themselves under attack. Ironically, 9/11, the “new Pearl Harbor,” legally justified an armed response but the glaring absence of a conventional enemy (obvious to some of us even then) has bedeviled the US military ever since. But, of course, the WPR has not been subject to plain readings.

Instead, presidents have gone to war when they saw fit, twisting or ignoring the WPR as needed to preclude or fend off the principled protests of a handful of legislators. When compelled by the WPR to stop bombing Kosovo in 1999, Bill Clinton kept the planes flying more than two weeks past the sixty-day deadline on the theory that Congress had funded

and thus implicitly authorized the operation, a reading that directly contradicted the resolution's clause that funding was not equivalent to authorization. When compelled by the WPR to stop bombing Libya in 2011, Barack Obama kept the planes flying long past the deadline on the theory that the hundreds of sorties did not constitute "hostilities," and that the operation was under NATO not US command.

Considering President Obama's disingenuous response to the WPR in 2011, what explains his timely report to Congress of US aerial participation in the failed French extrication of its captive agent from Somalia? Newfound respect for the rule of law? Hardly. Instead, the action enables the President to claim he adhered to the law in a low risk one-off operation on behalf of an ally while scoring points with François Hollande. The US will collaborate closely with France as the war in Mali escalates. If US participation is limited to drones, there will not be much clamor for invocation of the WPR. The test will come should the French get bogged down in the vast deserts of northern Mali, and the armed US role expands.

The French expressed surprise, after the downing of an attack helicopter, at how well armed are its Islamist opponents in Mali. But why the surprise? The US knows, as France surely must, that thousands of Soviet-era MANPADS (shoulder-fired anti-aircraft missiles), among other lethal hardware, went missing following the fall of Ghaddafi. Tuareg members of Ghaddafi's military likely made off with a bunch of them as they returned home to northern Mali. Some of these surely made their way into the hands of the new Islamist overlords of northern Mali who quickly sidelined the Tuareg struggle for an independent homeland. Only some portion of them are probably still functional (they require charged battery packs), but these are weapons that can far more easily down airliners than contemporary military aircraft. They are dream weapons for harming the innocent, for producing 'collateral damage.' They are on the loose as a direct result of US/NATO intervention in Libya, the conflict where President Obama failed to abide by the War Powers Resolution.

The WPR is the vehicle by which Congress sought to reassert its authority in the wake of its tragic failure in Vietnam. It is arguably unnecessary given Congress' enumerated powers to declare war and mind the national treasury. But constitutionally necessary or not, the WPR is a failed means to the noble end of limiting executive war making. Congress should begin immediate hearings to consider a replacement, and in the meantime insist the current administration adhere to its imperfect writ in Mali and elsewhere.

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