

By David Swanson

From WarIsACrime.org | Original Article

Now we know why Obama has gone to such outrageous lengths to keep Bush's lawyers out of prison, claiming powers of secrecy and immunity beyond Cheney's wildest dreams and pressuring foreign nations to clamp down on any outbreaks of law enforcement.

If the Bush lawyers who "legalized" aggressive war, lawless imprisonment, and torture were not consulted on how to keep the war in Libya going in perpetuity, they were certainly the inspiration for the latest White House brainstorming session.

Remember when Alberto Gonzales claimed that the U.S. Constitution gives no one the right to habeas corpus by merely asserting that if you had that right it could not be taken away? Amateur work.

Remember when John Yoo and Jay Bybee explained that a man tortured but never tried had no rights due to his guilt? Child's play.

Remember when Bush suggested he might get a war with Iraq started by painting airplanes with UN colors, flying them low, and trying to get them shot at? He was the warm-up act.

Obama's relationship with the U.S. Constitution, U.S. treaty obligations, and the War Powers Act is a mature performance, a masterpiece for the ages.

The U.S. Constitution allows no president to launch a war. The War Powers Act makes an exception for cases in which the United States has been attacked by another nation. Libya did not attack the United States. So, the War Powers Act does not apply.

But Obama's great legal minds decided to pretend it applied by submitting a report to Congress that pretended to comply with the reporting requirements of the War Powers Act. The pretense was pretty thin, as that law requires that certain items be reported, including "the estimated scope and duration of the hostilities or involvement," that were not included in the President's pretend report to Congress.

Obama's "Justice Department" then leaked [a memo](#) that Bush's gang would have been proud of but would have kept secret, a memo announcing more than arguing that Obama could make war in Libya if he damn well felt like it. We needed to defend regional stability, the DOJ argued, apparently forgetting what region we're in. And we needed to defend the United Nations, they claimed, even while rejecting UN demands to visit Bradley Manning or to cease murdering Pakistanis with drones.

And now we come to the end of the first 60 days of bombing Libya. If you're pretending to partially comply with the War Powers Act, then you're pretending that you have 60 days in which to wage unconstitutional war. After that, you have to put your guns and other toys away or ask the first branch of our government to authorize what you are doing. Here are two of [Obama's schemes](#) for getting around this law:

One:

"[An] idea is for the United States to order a complete -- but temporary -- halt to all of its efforts in the Libya mission. Some lawyers make the case that, after a complete pause, the United States could rejoin the mission with a new 60-day clock."

This is the one that has John Yoo kicking himself with jealousy, assuming he didn't provide it. You stop a war for a moment, and then restart it with another 60 days on the clock. If they could do this repeatedly, they could have permanent war while "complying" with the War Powers Act. Or perhaps they could just do it once, and in the interim Congress would pass its "Defense Authorization" including Congressman McKeon and Senator McCain's amendment to give Obama and all future presidents blanket authorization to launch wars. That might work.

Two:

"One concept being discussed is for the United States to halt the use of its Predator drones in attacking targets in Libya, and restrict them solely to a role gathering surveillance over targets. Over recent weeks, the Predators have been the only American weapon actually firing on ground targets, although many aircraft are assisting in refueling, intelligence gathering and electronic jamming. By ending all strike missions for American forces, the argument then could be made that the United States was no longer directly engaged in hostilities in Libya, but only providing support to NATO allies."

This is a curious idea. The United Nations investigator on extrajudicial killings has already declared U.S. drone use elsewhere illegal. The U.N. resolution that the U.S. Justice Department argues justifies the war forbids foreign ground troops and imposes an arms embargo. So, by halting one illegal action, the United States would "legalize" continuing others.

Except that NATO is not separate from the United States, but dominated by the United States, its largest member. Attributing atrocities to NATO puts them outside Congress' purview. Assigning whole wars to NATO, as was done by former president Clinton in Yugoslavia, should not provide the same cover.

There's nothing legal about this, and there wouldn't be even if NATO were a non-U.S. entity, or even if Congress had declared war on Libya. As Marjorie Cohn [points out](#) :

"The UN Charter does not permit the use of military force for humanitarian interventions It is only when peaceful means have been tried and proved inadequate that the Security Council can authorize action under Chapter VII of the Charter.

Cohn also looks at what the Libya resolution says:

"Security Council Resolution 1973 begins with the call for 'the immediate establishment of a ceasefire.' . . . The resolution authorizes UN Member States 'to take all necessary measures . . . to protect civilians and civilian populated areas' of Libya. But instead of pursuing an immediate ceasefire, immediate military action was taken The military force exceeds the bounds of the 'all necessary measures' authorization. 'All necessary measures' should first have been peaceful measures to settle the conflict. Yet peaceful means were not exhausted before the military invasion began. A high level international team -- consisting of representatives from the Arab League, the African Union, and the UN Secretary General -- should have been dispatched to Tripoli to attempt to negotiate a real cease-fire, and set up a mechanism for elections and for protecting civilians. Moreover, after the passage of the resolution, Libya immediately offered to accept international monitors and Qaddafi offered to step down and leave Libya. These offers were immediately rejected by the opposition. . . . Obama, France's President Nicolas Sarkozy and Britain's David Cameron penned an op-ed in the International Herald Tribune that said the NATO force will fight in Libya until President Muammar Qaddafi is gone, even though the Resolution does not sanction forcible regime change."

Even if you supported the initial "humanitarian" imposition of the "no fly zone" in Libya -- and the laws be damned -- you need a new reason to support the ongoing bombing of Tripoli and the West's efforts to impose a puppet government on Libya by force. The International Criminal Court's willingness to charge Gaddafi, but not Obama, with crimes is not a reason. Wars are not legally justified by a national leader's criminality. You need a new excuse. And I'm ashamed of the ones the White House is coming up with.

If we are going to properly educate our children to evade substantive compliance with laws and moral standards, we need to show them how to do it right. The Yoo-Bybee model, now perfected by Obama and Hillary Clinton's gang, still does not seem quite worthy of our position as world leader. I think we can do better, and I trust that our greatest legal minds are hard at work on the matter.

If something even more brilliant than "reset the clock" isn't thought of soon, I wouldn't be entirely shocked if a newspaper somewhere in the country thought to ask why Obama doesn't just ask Congress to authorize his war. And I would consider it a real, if remote, possibility that a reader somewhere might actually stop and think about that question.