

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

Obama Unilateral Action and Disregard for Legal Counsel Opinion on Libya Draws Condemnation

FOR IMMEDIATE RELEASE: June 20, 2011

CONTACT: Dallas Jamison, Senior Communications Director; cell: 720.333.1494;

djamison@constitutionproject.org

WASHINGTON - The Constitution Project (TCP) is very concerned by recent press accounts that the President disregarded an opinion by the Justice Department's Office of Legal Counsel (OLC). OLC had correctly concluded that the military action in Libya qualifies as "hostilities" for purposes of time limits under the War Powers Resolution (WPR). TCP condemns President Obama's decision to continue military action in Libya without seeking and obtaining congressional authorization as wholly lacking any legal authority. The President's use of force in Libya violates both the U.S. Constitution, which requires the President to obtain the authorization of Congress prior to initiating the use of force abroad except for a limited range of defensive purposes, and the statutory limits set by the WPR.

The following may be attributed to TCP's War Powers Committee's co-chairs, former Members of Congress Mickey Edwards (R - OK) and David Skaggs (D - CO):

"We deeply regret that the President has ignored the more considered advice of the Office of Legal Counsel and the General Counsel of the Department of Defense as to the applicability of time limits under the War Powers Resolution (WPR) for "hostilities" begun by the President without congressional authorization. For that matter, we believe the President had no constitutional authority to initiate this use of force abroad without congressional authorization to start with. That violation is aggravated by his decision - based on sophistry and semantics - to violate the WPR's statutory requirements. National security policy in such an important matter should not turn on such a tortured definitional exercise as was required to conclude that what we are doing in Libya does not constitute "hostilities." It is also a shame that Congress lacks the will or the votes to say either "no" or "yes" to this military action. From all we can learn, leaders do not have the stomach either to cut off funds (lacking the 2/3 needed to override a certain veto) or actually to authorize what we're doing, however belatedly."

In 2005, TCP's bipartisan War Powers Committee released a report entitled [*Deciding to Use Force Abroad: War Powers in a System of Checks and Balances*](#), in which committee members recommended improvements to war powers decision-making designed to restore the proper roles of all three branches of government. On May 18, 2011, members of TCP's War Powers Committee [*wrote*](#) to President Obama, to express "grave concerns" over the President's "decision to conduct military action in Libya without prior congressional approval and to urge [him] to seek such approval in the event [he planned] to continue military operations there."

About The Constitution Project

Established in 1997, The Constitution Project (TCP) is known for its ability to bring together unlikely allies-experts and practitioners from across the political spectrum-in order to promote and safeguard America's founding charter. TCP is working to reform the nation's broken criminal justice system and to strengthen the rule of law by undertaking scholarship, consensus policy reforms, advocacy and public education. TCP was born out of the belief that we must cast aside the labels that divide us, in order to keep our Constitution and our democracy strong.