



LEGAL ADVISER
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Dear Judge Kirsch,

This letter responds, on behalf of the North Atlantic Treaty Organization (NATO), to the Commission's letters of 11 November and 15 December, 2011. Those letters posed a series of questions regarding the conduct of Operation Unified Protector (OUP), the military operation in Libya led by NATO. As the Commission's queries are almost entirely confined to airstrikes conducted in accordance with the "protect civilians" mandate contained in operative paragraph 4 of United Nations Security Council Resolution (UNSCR) 1973 (2011) and focus in particular on questions relating to possible harm to civilians, unless otherwise noted the comments below relate to those aspects of the overall operation.

After expressing grave concern at the "escalation of violence, and the heavy civilian casualties" and considering that the "widespread and systematic attacks ... against the civilian population may amount to crimes against humanity," the Security Council determined that the situation in Libya constituted a threat to international peace and security. UNSCR 1973 consequently authorized a series of actions to address the situation in Libya associated with the violent suppression of protests against the regime led by Col. Muammar Gaddafi. Building on the Security Council's earlier Resolution 1970 (2011), UNSCR 1973 provided for strengthened enforcement of an arms embargo, expanded an assets freeze, banned flights of Libyan aircraft outside Libya and authorized UN member States, acting nationally or through regional organizations or arrangements, to take "all necessary measures" in order to implement a No Fly Zone and to "protect civilians and civilian populated areas under threat of attack" in Libya.

The 28 UN member States making up the North Atlantic Alliance authorized the planning and execution of OUP as a contribution to implementing their mandate under UNSCR 1973. OUP was accordingly an operation established by the members of the Alliance in implementation of their responsibilities as UN member States.

In the discussion below, "OUP" and "NATO" are for convenience often treated as co-terminous, but it should be understood that the two are not, strictly speaking, co-extensive. While all NATO Allies participated in the approval and overall direction of OUP, not all played active operational roles. In addition, several non-NATO

Nations joined and participated in OUP which became, as a result, a NATO-led operation. NATO's supreme decision-making authority, the North Atlantic Council, exercised overall direction of OUP. The execution of that direction was the responsibility of the military chain of command consisting of the Supreme Headquarters, Allied Powers in Europe (SHAPE); its subordinates were Joint Force Command Naples which delegated the execution to Combined Joint Task Force Command OUP (in Naples), which in turn operationally commanded OUP and consequently commanded the tactical air operations headquarters at Poggio Renatico and the tactical maritime operations at Maritime Command Naples headquarters. Non-NATO partners participated in almost all meetings of the NAC relating to OUP as well as at the operational headquarters.

We agree with the Commission that international humanitarian law is the *lex specialis* applicable to armed conflict; that body of law is intended to minimize harm to civilians. It does so in large part through principles of distinction, proportionality and military necessity designed to ensure that the risk to civilians is not excessive in relation to the military advantage anticipated. Strict compliance with these requirements was of obvious importance in a case such as OUP, where a core purpose of the Security Council's mandate authorizing use of "all necessary measures" – and thus the essential military objective – was itself to protect civilians and civilian areas from attack or threat of attack, in particular by their own government. NATO believes that its attentiveness during the course of OUP to a rigorous implementation of the rules of that body of law – and, indeed, to a standard exceeding what was required under international humanitarian law – contributed significantly to an extraordinarily low incidence of harm to civilians and civilian property.

The conduct of Operation Unified Protector was highly successful, both overall in protecting the civilian population of Libya and in implementation of an operational approach which minimized harm to civilians. Although no complex campaign can exclude that civilians suffer harm during its course, NATO deeply regrets any such harm that may have been caused by those strikes.

Many of the Commission's questions are best addressed by a general description of the targeting policy and practices followed by NATO during OUP. Application of that policy in particular cases is further treated in several of the subsequent discussions of individual incidents.

OUP Targeting Policy. OUP targets were all affirmatively selected to advance the operation's military objectives, which in turn derived ultimately from UNSCR 1973. Targets struck included military forces attacking or threatening to attack civilians or civilian-populated areas, as well as the command and control, logistics and other systems directly involved in directing, enabling or facilitating those attacks. Facilities and resources that did not provide a definite military advantage in achieving the military objectives were not targeted.

The OUP targeting policy was designed and implemented with the Security Council mandate to "protect civilians and civilian-populated areas under threat of attack" firmly at its core. The overriding objective throughout the campaign was to avoid any harm to civilians. Not one of the targets struck, involving over 7700 weapons, was approved for attack, or in fact attacked, if either those designating and approving the target or the pilot executing it had any evidence or other reason to believe that civilians would be injured or killed by a strike. As explicitly directed in the Operation Plan for OUP as approved by the North Atlantic Council, no civilians, and no specific individual, civilian or military, were ever intentionally targeted in that operation.

Rigorous procedures were in all cases followed for approving both "deliberate" (i.e., pre-planned) and "dynamic" strikes (i.e., strikes on targets that presented themselves during the course of a mission) to ensure that there was a "zero expectation" of death or injury to civilians.

In determining which targets should and could be struck, intelligence from all available sources (including signals intelligence, imagery and other sources) was obtained and analyzed to ensure its continued accuracy and to confirm that civilians were not inadvertently put at risk. In appropriate cases, as much as fifty hours of airborne video observation was conducted and analyzed before a strike was authorized. The potential for harm to civilians was carefully assessed with respect to each proposed target, including before authorizing "re-strikes" of targets following an unsuccessful or partially unsuccessful attack or when regime forces were observed re-using a previously struck facility.

Whether deliberate or dynamic, no target was struck that had not been extensively considered in light of all available intelligence, assessed in light of the targeting standards approved by the North Atlantic Council, reviewed by legal officers for compliance with the requirements of the law of armed conflict and specifically approved by the overall OUP commander or deputy commander or, in some cases of dynamic targeting, the general officer in command of the Combat Air Operations Centre. All deliberate strikes, and the great majority of dynamic attacks, were made on the basis of multiple intelligence sources. Some two-thirds of sites seriously assessed as possible targets were for one or another reason, notably including concerns over potential harm to civilians, removed from consideration during the course of these reviews.

Equally rigorous procedures were followed with respect to strike execution. Through leaflets and other means, general and location-specific warnings to the civilian population were repeatedly made in order to advise them to avoid areas likely to be struck. The day of the week, time of day or night (notably during Ramadan), on occasion even the direction of attack were all carefully considered to minimize any risk of civilian casualties. In most cases information was available permitting an analysis of the construction materials and design of buildings, and munitions were selected and fused so as to contain the blast within the structure to the maximum extent possible. The great majority of munitions used delayed fusing for this reason. In preparing for individual missions, planners consistently employed the minimum-sized munitions necessary to accomplish the military objective; on numerous occasions multiple munitions with lower blast radii, rather than fewer munitions or

even a single larger one, were employed to ensure that the blast and ejecta radius did not include civilian areas or other risk to civilians. All aerial munitions employed in OUP were precision-guided, and the type of precision guidance (e.g., GPS- or laser-guided) was selected to maximize accuracy in light of local conditions at the time. (A limited number of strikes involved use of direct-fire munitions, which are under the direct control of pilots and of comparable accuracy to precision-guided munitions.) In many cases special measures were taken to increase the ability of commanders and pilots to assess whether civilians were present up virtually to the moment of attack. For certain strikes near civilian areas, for example, essentially contemporaneous airborne video observation was required before a target was struck. With respect to deliberate naval fires, all salvoes were fired under positive control, with the fall of shot observed by spotters embarked in aircraft. Many attacks were called off, including some at the last minute, in order to avoid striking those whom NATO was mandated to protect.

Battle damage assessment following attacks was conducted when possible to determine damage and otherwise evaluate the effects of the strike. NATO had no ground observers in Libya, and had no ability during the campaign to assess the effects of its strikes from the ground. It did, however, employ its extensive air and intelligence, surveillance and reconnaissance assets of all kinds, as well as video footage and other evidence acquired during the attack and open source and media reporting, to assess those effects. Although weather and atmospheric conditions on occasion precluded doing so, additional assessment was carried out where possible in instances where there was a claim of civilian casualties.

Targeting and execution practices were further enhanced during the course of OUP with the goal of avoiding any civilian loss. In keeping with standard practice, NATO is reviewing the conduct of OUP in order to identify any ways in which its planning and execution can be further improved as a result of experience gained during the campaign.

As a result of all the precautions taken, NATO is convinced – and considers that the record of OUP amply demonstrates – that the targeting and strike methods employed in OUP were as well-designed and as successfully implemented to avoid civilian casualties as was humanly and technically possible.

Conduct of the campaign. The North Atlantic Council mandated OUP on 31 March 2011, and the operation terminated seven months later, on 31 October. During the course of the campaign a total of 25,944 air sorties were made, of which 25,011 were by fixed-wing aircraft, 424 by rotary-wing aircraft and 509 by unmanned aerial vehicles (UAVs) conducting intelligence, surveillance or reconnaissance (ISR) missions. All sorties were armed, either defensively or offensively, with the exception of air-to-air refuelling flights, and some UAV electronic warfare and ISR flights. Of the 17,939 sorties (approximately 70%) that were armed, 17,314 were by fixed-wing aircraft, 375 by rotary-wing aircraft and 250 by UAVs conducting ISR missions.

A total of 7642 air-to-surface weapons, including 3644 laser-guided bombs (e.g., GBU-12, GBU-24), 2844 GPS-guided munitions (e.g., GBU-31, GBU-38), 1150 precision-guided direct fire weapons (e.g., AGM-114 Hellfire and HOT missiles), as well as four miscellaneous precision-guided munitions, were employed during OUP. 6278 (82.2%) were 500-lb. or smaller in weight, 562 (7.4%) between 500 and 1000 lb., and 802 (10.5%) between 1000 and 2000 lb.

The scale of the use of precision-guided munitions during this campaign is unprecedented; due to their increased precision, such weapons dramatically reduce the risk of collateral damage, both because they require greatly reduced explosive effect to achieve their purpose and because they are less likely to cause unintended damage by hitting the wrong location.

The minimum-sized weapon required to achieve the military objective and consistent with the "zero expectation of civilian casualties" targeting criterion was used on all occasions. The great majority of weapons were fitted with delayed fusing, thereby further minimizing risk to civilians who might have been in the vicinity of the target. We can confirm that no incendiary or obscuring (white phosphorus) munitions were used during OUP. Fewer than a hundred illuminating rounds were fired by NATO vessels as part of operations relating to coastal targets near Zlitan, Sirte, al Khums and Misrata. All such rounds are designed to initiate in the air and illuminate the ground under parachute from above; all are fused to burn to extinction before the parachute drifts to ground.

The munitions and guidance systems used by Nations in execution of actions during a NATO or NATO-led operation are provided by those Nations, and NATO does not have information on their expiration date. The fact alone that an expiration date has been passed does not mean that a weapon is no longer reliable, and the period of time during which a guidance system or munition is considered appropriate for use is thus a matter for individual Nations rather than for NATO itself. Multiple weapons systems checks, following national procedures, are standard when munitions are loaded onto the aircraft.

The Commission has as a rule not requested information from NATO regarding weapons use by regime forces, but in response to its specific query, NATO is aware of three SCUDs that were launched by regime forces during the course of OUP – one targeting Misrata on 14 August, and two targeting Brega on 23 August. None of these launches was intercepted.

Individual incidents. The following discussions of the individual incidents or groups of events referred to by the Commission in its two letters must be read in conjunction with the general information on targeting and strike execution provided above. Please note that it is longstanding NATO policy not to provide information as to which Nation may have conducted any particular military action during a NATO operation.

Please note as well that in certain cases the description provided was of such a general character that it was difficult or impossible to identify the specific strikes or incidents to which the Commission referred. In those cases, we have looked at information on strikes taking place at the same time and in the same area in an effort to respond to the Commission's inquiries.

The first six incidents are referenced in the Commission's 11 November letter, and the final three (numbers 7 through 9 below) in its letter of 15 December.

1. 20 June (Surman). The compound included a number of command and control buildings as well as an ammunition storage facility. Between 20 and 30 satellite communication dishes were observed in the compound and on the buildings, along with a lattice tower aerial immediately across the street. The compound was at an isolated location outside Tripoli and was guarded by checkpoints, guards and patrol vehicles forming several rings of security around the facility. Although a school and mosque were located in close proximity to the target, aerial video surveillance identified no civilians in the area. The target was struck at night to minimize any possibility of casualties to transient civilians; for similar reasons the ammunition dump and other military objects located on the site were also not struck.

2. 30 July (Libyan State Television). Transmission dishes belonging to Libyan State Television were deliberately targeted and destroyed to prevent their continued use to incite regime supporters to violence against civilians. This transmission station was a key element in broadcasting such incitement by regime leaders. Although the target had earlier been rejected because the rhetoric broadcast over it did not at that time reach the threshold of incitement to violence, speeches made in early July reached a new level of intensity and focus. It should also be noted that the crimes against humanity (including murder and persecution) for which the International Criminal Court (ICC) had in late June indicted Col. Gaddafi and other senior regime members corresponded closely to the actions incited via the Libyan State Television transmission station.

The target was struck at night, on a particular heading, to minimize any chance of injury to civilians. The dishes were targeted precisely and with low-intensity weapons both to minimize the risk of collateral damage and to avoid broader disruption to the Libyan communications infrastructure. Battle damage assessment indicated that these precautions were fully successful in avoiding such injury or damage.

3. 1 May (Tripoli). This site was a key node for regime-associated forces in Tripoli, and served as an alternate command authority site for the Libyan leadership. The critical element of this facility was the command building. While several VIP buildings and satellite communication dishes were also located at this site, these were neither targeted nor struck. Destruction of the command building degraded the regime command authority's backup command and control capabilities and in turn its overall military effectiveness.

As noted above, civilians and specific individuals were at no point targeted during OUP. Full-motion video acquired by manned aircraft and UAVs at the time of the strike indicated that no civilians were in the target area. In addition, the strike was conducted at night to reduce the possibility that transient personnel would be in the target area. Multiple smaller munitions were utilized on a single building to minimize collateral damage to surrounding buildings within the installation.

4. 23 April. NATO did not target health or water facilities, including those at military sites, at any time during OUP. On 23 April, there were strikes at five separate deliberate targets including command and control and ammunition bunkers. No known health or water facilities were within the target or weapons effects areas, and post-strike battle damage assessment indicated no collateral damage. In addition, 14 dynamic targets (main battle tanks, missile and rocket launchers, tank carriers, other military vehicles and a military command post) were struck in the Misrata and central regions; assessment by the aircraft delivering the weapon immediately following these strikes gave no indication of collateral damage.

5. 9 May. No strikes took place in the Tripoli region on 9 May. A total of eight strikes took place in the Tripoli region on 8 and 10 May, including five on deliberate targets on known military installations including intelligence headquarters and communications facilities and a weapons storage and vehicle maintenance area, and three on dynamic targets, all positively identified as surface-to-air missile launchers. Battle damage assessment indicated no collateral damage.

6. 12-13 May (Brega). The Marsa El Brega Residence and Command Bunker Facility served as the primary C2 facility for forces fielded by the 32d Brigade in and around Brega. It was deliberately targeted and struck on 13 May. During engagement of the target, it was positively identified and four precision-guided munitions were dropped. The strike was highly effective, and decisively degraded command and control in the Brega area. Battle damage assessment indicated no collateral damage.

After this strike, an engineer who had been involved in design and construction of the command bunker facility publicly confirmed that it had been constructed for Col. Gaddafi and had been purpose-built for command and control functions.

7. EI-Grarry residence (Mhalat El Fath). The Tarabulus SA-2 Support Facility was an active military storage and support site directly supporting regime forces in the region with military equipment as well as efforts to reconstitute air-defense capabilities throughout Libya. It was struck on three separate occasions, targeting at least ten separate buildings and bunkers. During the 19 June target engagement in question, the targeted structures were positively identified and two precision-guided weapons were dropped. The second of these two weapons appears to have malfunctioned due to laser guidance problems, its impact was not observed and NATO was not able to determine where it in fact landed.

After reviewing the case, it was concluded that it was possible that the errant weapon had caused such casualties. A public statement was made at the time by the OUP commander acknowledging this possibility and expressing regret for any casualties that may have resulted. This incident is under further assessment.

8. Mustafa Najl residence (Zlitan). This target had been identified as a regime senior commander's command and control node, located within a residential property four miles west of Zlitan. At no time were civilians intentionally targeted. The target building and buildings immediately adjacent to it were used exclusively by senior regime commanders as an active command and control facility directing forces in the Zlitan area. The structure was positively identified and one precision-guided weapon was dropped on 4 August. Review of intelligence confirms that the correct and intended building was struck, and assessment of the claimed civilian casualties at the time concluded that this was highly unlikely. This incident is under further assessment.

9. Majer. The four buildings addressed in the questions relating to Majer were deliberate targets, based on their functioning as a troop staging area. They were located within a farm compound in a rural area. On the basis of observation and other intelligence, it was assessed that no civilians were in the area, and none were observed at the time of the attack or of the subsequent re-strike of one of those buildings. If civilians had been identified, standard procedure was to abort the drop or, if noticed after time of release, to direct a laser-guided weapon away from the target area. This incident is under further assessment.

In the comments above, NATO has done its utmost to address the substantive points raised by the Commission with respect to NATO's conduct of OUP. As has been indicated in previous correspondence, some of the specific information sought by the Commission cannot be made public. Video footage in particular is the property of the individual Nations operating the video recording platforms and is classified in order to protect important information about platform capabilities. Where possible, however, information has been declassified in order to respond comprehensively to the Commission's questions.

Two other considerations, one relating to the scope of the Commission's inquiry and the second to the evidence supporting allegations of violation of international law, affect the character of our response. The Human Rights Council's Resolution S-15/1 mandated the Commission to look into "alleged violations of international human rights law." Although NATO has in this letter responded in detail to the Commission's request for information, it is for a variety of reasons not evident that many of the queries posed in the Commission's letters of 11 November and 15 December, including those relating to the law of armed conflict, fall within that mandate. NATO nonetheless trusts that its comments in this letter will address any concerns the Commission may have with respect to the lawfulness of NATO actions during OUP.

In several cases, the descriptions of the incidents referenced by the Commission appear to derive in whole or in part from allegations made by the former regime during the course of OUP. While we have discussed all incidents referenced

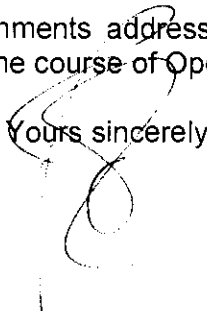
by the Commission, in light of the fact that regime statements were repeatedly shown to be incomplete, inaccurate, or based upon fabricated or non-existent evidence, we assume the Commission agrees that uncorroborated regime assertions, are not credible evidence as to the actual facts. We note in this context the Commission's comments, in its 1 June Report to the Human Rights Council, that on the occasion of its visit to Libya in late April 2011 the "the [former] Libyan Government did not provide the details or show concrete evidence of alleged incidents, such as civilian objects which had been destroyed (e.g. schools)" and that "the Commission has not seen evidence to suggest that civilian areas have been intentionally targeted by NATO forces, nor that it has engaged in indiscriminate attacks on civilians" (paragraphs 233 and 235).

Throughout OUP, and to the present day, NATO has given consideration to every allegation of harm to civilians of which it has been made aware, and in each such case reviews its actions with care in order to assess whether there is merit to the allegation. That review involves, as appropriate to the individual case, assessment of all NATO's records from selection of the target through any data it possesses gathered following the attack.

As noted above, NATO did not have a presence on the ground in Libya during OUP; following conclusion of the operation on 31 October, the Organization has no mandate that would allow it to establish such a presence. While NATO therefore does not itself have the ability to gather evidence onsite with respect to strikes conducted during OUP, it appreciates that the Libyan authorities, officials of NATO Allies and other states, international organizations and bodies including the Commission, journalists and others will gather such evidence. If as a result serious questions arise with respect to NATO's conduct or understanding of the effects of its strikes, NATO is fully prepared to evaluate those questions and any new evidence that may be adduced.

I trust that the above comments address the Commission's concerns with regard to NATO's actions during the course of Operation Unified Protector.

Yours sincerely,



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